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## Determining the Reasonableness of Non-Compliance: Examining the Trauma Exception for T-Visa Applicants.

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## ARTICLES

### DETERMINING THE REASONABLENESS OF NON-COMPLIANCE: EXAMINING THE “TRAUMA EXCEPTION” FOR T-VISA APPLICANTS

BENJAMIN THOMAS GREER\*  
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## I. INTRODUCTION

Human trafficking and sexual exploitation are unspeakable atrocities that devastate the lives of trafficking victims. It treats bodies as renewable resources. Too often victims sustain horrific physical and psychological abuse from their traffickers and exploitative consumers.<sup>1</sup> The nature of trafficking leaves survivors, especially those who are sexually abused, with enduring mental trauma.<sup>2</sup> This trauma should not prevent the vic-

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1. See NAT’L COAL. AGAINST DOMESTIC VIOLENCE, HUMAN TRAFFICKING FACTS 1 (2012), available at <http://www.ncadv.org/files/HumanTrafficking.pdf> (reporting that female victims of sex trafficking sustain serious physical injuries, have an increased risk of contracting HIV, and other sexually transmitted diseases, and meet the clinical criteria for posttraumatic stress disorder).

2. VIOLENCE AGAINST WOMEN OFFICE, U.S. DEP’T OF JUSTICE, HUMAN TRAFFICKING AND THE T-VISA 2 (2012), available at <http://vaw.umn.edu/documents/humantrafficking/humantrafficking.pdf> (“Victims of human trafficking are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor . . . . It is a serious violation of their rights and a threat to their health.”).

tims from obtaining the services and legal benefits afforded them under law.

Human trafficking and forced labor infects almost every corner of the globe.<sup>3</sup> According to the State Department, there are as many as 20.9 million adults and children in forced labor, bonded labor, and forced prostitution worldwide.<sup>4</sup> Human trafficking is widely recognized as the fastest growing<sup>5</sup> and the third most widespread criminal enterprise in the world.<sup>6</sup> Global profits from forced labor are estimated to be in excess of \$32 billion annually.<sup>7</sup> This pernicious crime infests 161 countries, either by being classified as a source, transit, or destination country.<sup>8</sup> Victims have been known to originate from 127 different countries to be trans-

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3. See generally U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 7* (2012), available at <http://www.state.gov/documents/organization/192587.pdf> (documenting the prevalence of human trafficking in numerous countries across the globe).

4. *Id.*

5. See Nidhi Kumar, *Reinforcing Thirteenth and Fourteenth Amendment Principles in the Twenty-first Century: How to Punish Today's Masters and Compensate Their Immigrant Slaves*, 58 RUTGERS L. REV. 303, 306–07 (2005) (quoting KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 6, 232 (1999)) (identifying three factors that he believes have led to the resurgence of slavery).

The first is the population explosion that flooded the world's labor markets with millions of poor and vulnerable people. The second is the revolution of economic globalization and modernized agriculture, which has dispossessed poor farmers and made them vulnerable to enslavement. In the new world economy capital flies wherever labor is cheapest, and the financial links of slavery can stretch around the world. The third factor is the chaos of greed, violence, and corruption created by this economic change in many developing countries, change that is destroying the social rules and traditional bonds of responsibility that might have protected potential slaves.

*Id.*

6. Luz Estella Nagle, *Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude*, 26 WIS. INT'L L.J. 131, 131 (2008).

Human trafficking is not a new occurrence, but today is more pervasive and wide ranging than in the past constituting one of the most heinous, unintended consequences of globalization. Human trafficking benefits from one of the crucial engines of globalization—the supply and demand of transportable commodities, as well as from the transfer of capital, the opening of borders, and trade deregulation.

*Id.* at 137.

7. See Patrick Bestler, *Forced Labour and Human Trafficking: Estimating the Profits* 17 (Geneva Int'l Labor Office, Working Paper No. 42, 2005), available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_081971.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081971.pdf) (calculating that \$15 billion, or 49 percent of forced labor profit is generated in industrialized economies, \$9.7 billion, or 30.6 percent, comes from Asia and the Pacific, \$1.3 billion, or 4.1 percent, comes from Latin America and the Caribbean, \$1.6 billion, or 5 percent, comes from Sub-Saharan Africa, and \$1.5 billion, or 4.7 percent is generated in the Middle East and North Africa).

8. U.N. OFFICE ON DRUGS AND CRIME, *TRAFFICKING IN PERSON: GLOBAL PATTERNS* 58 (2006).

ported and exploited in 137 destination countries.<sup>9</sup> Over the past few years the U.S. government has increased their awareness of this heinous crime, and enhanced immigration laws focused on restorative justice for the trafficked victim.<sup>10</sup>

In 2000, Congress created the T-Visa.<sup>11</sup> This new visa allows a victim of severe forms of human trafficking to reside, receive services, and work legally in the United States for up to four years. Issuance of a T-Visa requires a victim meet certain requirements.<sup>12</sup> For victims of severe forms of trafficking, likely manifesting mental trauma and/or Post-traumatic Stress Disorder symptoms, adhering to the requirement to comply with all reasonable law enforcement requests may prove to be a daunting

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9. Dr. Ranee Khooshi Lal Panjabi, *Born Free Yet Everywhere in Chains: Global Slavery in the Twenty-First Century*, 37 DENVER J. INT'L L. & POL'Y 1, 14 (2009).

10. 22 U.S.C. § 7105 (2008).

The Secretary of State and the Administrator of the United States Agency for International Development, in consultation with appropriate nongovernmental organizations, shall establish and carry out programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking. Such programs and initiatives shall be designed to meet the appropriate assistance needs of such persons and their children, as identified by the Task Force, and shall be carried out in a manner which takes into account the cross-border, regional, and transnational aspects of trafficking in persons.

*Id.*

11. *Id.*

12. *See id.* (“[A]n alien who . . . is a victim of a severe form of trafficking in persons . . . shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency.”); *see also* 8 U.S.C. § 1101(a)(15)(T)(i) (2012) (listing the requirements necessary to become eligible for T-Visa benefits and fulfill the four-pronged test).

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of Title 22;

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an actor a perpetrator of trafficking;

(III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal

*Id.*

or insurmountable request. Acknowledging this difficulty, the T-Visa process was modified in the Violence Against Women Act 2005.<sup>13</sup> Congress recognized the untenable position in which many victims may find themselves and provided an alternative avenue for qualified victims to achieve their rightful visa.<sup>14</sup> Victims suffering from significant mental trauma can apply for T-Visa protection directly to the United States Customs and Immigration Service without the previously required law enforcement certification.<sup>15</sup>

This Article will highlight the horrendous nature of human trafficking by exposing the physical and psychological injuries victims are likely to endure and by demonstrating how a victim suffering from extreme injury may utilize methods alternative to law enforcement certification, may obtain a T-Visa. Section II of this Article will illustrate how human trafficking is essentially a form of modern day slavery, will demonstrate its prevalence in the United States, and will discuss the forms of force, fraud, or coercion traffickers commonly employ to control their victims. Section III will explain T-Visa and U-Visa application process while also exploring potential methods for approval available to a trafficked victim. Lastly, Section IV will examine Post-traumatic Stress Disorder (PTSD) and its likely manifestation in trafficked victims, provide clear examples of trafficking cases whose factual scenarios are likely to induce PTSD in the victims, and explain why a victim may want to consider submitting a T-Visa, even without law enforcement certification, when a victim is suffering from severe mental health injuries.

## II. THE PREVALENCE OF HUMAN TRAFFICKING IN THE UNITED STATES

While forced labor and sexual exploitation is not new a practice, the legal concept and crime of human trafficking is quite new.<sup>16</sup> The terms forced labor, sexual exploitation, and human trafficking have varying def-

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13. Violence Against Women Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006).

14. *See id.* § 801(a)(3) (inserting the language "if the Secretary of Homeland Security, in his or her discretion and with the consultation of the Attorney General, determines that a trafficking victim, due to psychological or physical trauma, is unable to cooperate with a request for assistance described in clause (i)(III)(aa), the request is unreasonable" to modify the eligibility requirements for a T-Visa).

15. *Id.* § 801(a)(3)(iii) (creating a "trauma exception" to the requirement of cooperation with law enforcement).

16. *See* Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (2000) ("The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure effective punishment of traffickers, and to protect their victims."); *see also* 22 U.S.C. § 7105(c)(3)(A)(i) (2008) (stating an alien victim of a severe form of human trafficking is permitted to remain in the United States to aid in the "prosecution of those responsible for such a crime").

initions; however, forced labor has been generally defined as, “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>17</sup> The worth of one’s labor and body has long been understood to be a valuable asset and an individual’s personal property within the American legal construct.<sup>18</sup> For the purposes of the following analysis, we will apply two main operable definitions; the Federal definition and the California state definition. California law defines human trafficking as:

[A]ll 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.<sup>19</sup>

Federal law defines trafficking in persons as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained [eighteen] years of age” or “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or

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17. Convention Concerning Forced or Compulsory Labour, art. 2(1), June 28, 1930, 39 U.N.T.S. 55, 58 (entered into force May 1, 1932); *see also* Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, art 3(a)–(d), June 17, 1999, S. Treaty Doc. No. 106-5, 1, 4, 38 I.L.M. 1207, 1208 (entered into force Nov. 19, 2000) (defining one of “the worst forms of child labour” as “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children to be used in armed conflict”).

18. JOHN LOCKE, TWO TREATISES OF GOVERNMENT 209–10 (R. Butler, 1821).

[E]very Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are property his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes his Property . . . it hath by this Labour being the unquestionable Property of the Labour, no Man but he can have the right to what that is once joined to . . . and as good left in common for others.

*Id.*

19. Cal. Office of the Att’y Gen., *What is Human Trafficking?*, HUMAN TRAFFICKING IN CAL., <http://oag.ca.gov/human-trafficking/what-is> (last visited Dec. 27, 2012); *see also* CAL. PENAL CODE § 236.1(a) (2012) (establishing that “[a]ny person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of Section 266 (prostitution), 266h (pimping), 266i (sex trafficking), 267 (prostitution of minors), 311.4 (child pornography), or 518 (extortion), or to obtain forced labor or services, is guilty of human trafficking.”).

coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."<sup>20</sup>

While cross border transit is not a required element, the U.S. Department of State approximates some 800,000 to 900,000 people are trafficked annually across sovereign borders with approximately 18,000 to 20,000 of these people coming into the United States.<sup>21</sup> According to the International Labour Organization, human traffickers reap immense profits, estimated to be approximately \$32 billion annually, world-wide.<sup>22</sup> Primarily surpassed by the narcotics trade, trafficking of humans is commonly understood to be the third largest criminal industry in the world and is the fastest growing criminal act in the 21st century.<sup>23</sup>

Facing this evolution of criminal activity, Congress passed the Trafficking Victims Protection Act of 2000 (TVPA) with the intent to help stem the tide of this crime and provide services to its victims:<sup>24</sup>

The TVPA enhanced three aspects of federal government activity to combat trafficking in person: it provided for a range of new protections and assistance for victims of trafficking in persons; it expanded the crimes and enhanced the penalties available to federal investigators and prosecutors pursuing traffickers; and it expanded United States activities internationally to prevent victims from being trafficked in the first place.<sup>25</sup>

Traffickers are devoid of normal humanity, and with it, the concern for others. They are solely motivated by profit.<sup>26</sup> They torture, defeat, starve, and fracture the lives of their victims.<sup>27</sup> They intentionally attack

20. Cal. Office of the Att'y Gen., *supra* note 19. See 22 U.S.C. § 7102 (2012) (defining human trafficking the same as under the Trafficking Victims Protection Act of 2000).

21. CONG. RESEARCH SERV., *TRAFFICKING IN WOMEN AND CHILDREN: THE U.S. AND INT'L RESPONSE 12* (2004), available at <http://fpc.state.gov/documents/organization/31990.pdf>.

22. Besler, *supra* note 7.

23. Loring Jones et al., *Globalization and Human Trafficking*, 34 J. SOC. & SOC. WELFARE 107, 108 (2007).

24. Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (2000).

25. ATTORNEY GEN. JOHN ASHCROFT, U.S. DEPT. OF JUSTICE, *REPORT TO CONGRESS FROM ATTORNEY GENERAL JOHN ASHCROFT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2003*, at 4 (2004), <http://www.justice.gov/archive/ag/annualreports/tr2003/050104agreporttocongressvprav10.pdf>.

26. See Jones et al., *supra* note 23, at 110 (listing deception, false promises, coercion, threats, bribes, and force as methods used by traffickers to obtain control over their victims and continuously profit off of them).

27. Hussein Sadruddin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV 379, 383 (2005).

The language is strong and often shocking in its descriptions of how traffickers specifically target vulnerable populations as victims, brutalize them into submission through



the self-control and identity of their victims in order to strip them of their will and self-determination.<sup>28</sup> In this void they insert themselves as the sole controlling force—the force that dictates every aspect of the victims' lives: Traffickers control everything, from when to eat, when to sleep, with whom to interact, and when to use the bathroom.<sup>29</sup> This complete control of their victim is crucial to the trafficker's business model. If the victim were to retain their own free will, the victim would seek help and the trafficker's crime would be illuminated.<sup>30</sup> The extent to which traffickers will go to maintain control knows no bounds.<sup>31</sup> Based on the surplus of vulnerable people in the world, traffickers are willing to extend their abuse to murder if their methods of mental and physical abuse are not effective.<sup>32</sup>

Trafficked victims are at a significantly high risk for mental health problems, stemming directly from their chronic brutalization.<sup>33</sup> The California Attorney General's Office has recognized victims often suffer from physical and developmental disabilities, PTSD, depression, suicidal tendencies, and other dissociative disorders.<sup>34</sup> Because this depth of victimization carries with it lasting significant physical and emotional symptoms,

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systematic violence and threats, isolate them from familiar people or surroundings, and control their every movement. Traffickers often chain, lock up, or otherwise detain and guard victims to prevent the loss of their profitable, income-generating "property."

*Id.*

28. *See id.* (“[T]raffickers use psychological torture and fear to maintain control, threatening to physically harm the victims, their families or others . . . . They take away victim's identity documents and threaten to report them to government authorities for arrest, detention, or deportation.”).

29. *See Identifying a Victim of Human Trafficking*, WEAVE, <http://www.weaveinc.org/post/identifying-victim-human-trafficking> (last visited Dec. 17, 2012) (providing a list of warning signs to determine if an individual is a victim of human trafficking).

30. *See Jones et al.*, *supra* note 23, at 117 (arguing tactics such as violence and deception used by traffickers can instill a sense of self-blame and learned helplessness in a victim, which decreases the likelihood of that victim seeking out help or accepting help when it is offered).

31. *See Sadruddin et al.*, *supra* note 27 (“Sudden, unexpected physical assaults, burnings, and the use of rape or murder as tools of control all instill terror in victims . . .”).

32. *See Jennifer Murray, Who Will Police the Peace-Builders? The Failure to Establish Accountability for the Participation of United Nations Civilian Police in the Trafficking of Women in Post-Conflict Bosnia and Herzegovina*, 34 COLUM. HUM. RTS. L. REV. 475, 494 (2003) (“In some cases, one woman may be killed to dissuade others from attempts to resist or escape.”).

33. *See Sadruddin et al.*, *supra* note 27, at 405 (“Human trafficking victims are at an extremely high risk for developing medical and mental health consequences from their trauma due to the types of horrific physical and psychological assaults they suffer and the circumstances under which they experience this trauma.”).

34. ATTORNEY GEN. KAMALA D. HARRIS, CAL. DEP'T OF JUSTICE, THE STATE OF HUMAN TRAFFICKING IN CALIFORNIA 76 (2012).

updating the T-Visa application and qualification process to account for these symptoms must be considered an integral part of a strategic and a holistic approach to fighting human trafficking.

Updating immigration rules to ensure equity for the victim is crucial as governments struggle with the concurrent challenges of conceptualizing what human trafficking is and modernizing criminal statutes to adequately combat it.

### III. T-VISA—FORM I-914

In 2000, Congress passed the Trafficking Victims Protection Act thereby creating the T-Visa.<sup>35</sup> Congress recognized the inequity of deporting trafficking victims who had been trafficked into the United States from countries around the globe.<sup>36</sup> Being placed in this untenable position inhibits victims from seeking law enforcement aid and reporting crime, thus retarding the discovery and prosecution of human trafficking.<sup>37</sup> Created to provide immigration safeguards for victims of trafficking, the T-Visa provides an avenue for victims to remain in the United States.<sup>38</sup> It was designed with the understanding that a victim's undocumented presence in the United States was not volitional, was a result of

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Human trafficking victims are often locked in situations that are almost impossible to escape. Even where escape is physically possible, victims may be psychologically incapable of escape due to their constant terror. This sense of having no control over one's safety, daily movement, or future makes victims particularly vulnerable to traumatic stress disorders. The types of experiences that trafficking victims suffer tend to lead to the development of a range of disorders including PTSD, dissociative disorders, anxiety disorders, depression, and substance abuse.

Sadrudin et al., *supra* note 27, at 405.

35. Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (2000).

36. It should be noted that smuggling is different than trafficking. Smuggling entails an undocumented immigrant knowingly working with another individual to enter the United States illegally. While an individual smuggled into the United States may become a trafficking victim once in the United States, a victim trafficked into the United States either did not intend to enter the United States or was tricked into believing they were entering the United States legally.

37. Panjabi, *supra* note 9, at 18.

There is also the ancillary problem whereby freed slaves can themselves face prosecution, with as illegal immigrants or as criminals where they have been forced to work as prostitutes. Often the victims have no identification papers as their exploiters all too often take their documents away. These legal anomalies whereby victims are criminalized by the law are being redressed in some countries.

*Id.*

38. VIOLENCE AGAINST WOMEN OFFICE, *supra* note 2 (stating that the T-Visa enables a victim of severe forms of trafficking to receive services, work legally in the United States, and potentially earn permanent residency if the victim cooperates with the criminal justice system).

their victimization, and would help law enforcement prosecute trafficking.<sup>39</sup>

#### A. I-914 Form Application Process

The I-914 application, which trafficking victims must complete to obtain a T-Visa, in-and-of-itself is a nine-page form, divided into eight parts, A–H.<sup>40</sup> Part C has particular importance because it is the section in which the trafficking victim applicant will demonstrate that he or she complies with all the necessary statutory elements.<sup>41</sup> This includes asserting and providing evidence that he or she is a “victim of a severe form of trafficking in persons,”<sup>42</sup> “will suffer extreme hardship involving unusual and severe harm upon removal,”<sup>43</sup> and “whether the applicant has complied with all reasonable requests from Federal, State, or local law enforcement authorities during the investigation and prosecution of the acts of trafficking” relating to the victim.<sup>44</sup>

The applicant must clearly state whether or not he or she is submitting a law enforcement agency declaration, which would provide prima facie evidence the victim complied with all reasonable law enforcement authority requests.<sup>45</sup> While governmental statements and regulations implemented by Congress indicate that victim recovery and rehabilitation are just as important as the investigation and prosecution of a victim’s traffickers,<sup>46</sup> it is unlikely that applicants will be issued a T-Visa without a

39. See 22 U.S.C. § 7105(b)(1)(E)(iii) (2008) (declaring statement made to law enforcement and a willingness to “assist in every reasonable way with the respect to the investigation and prosecution” of local crimes associated with trafficking offenses as meeting the requirement of cooperation for a T-Visa).

40. USCIS, DHS, I-914 FORM: APPLICATION FOR T NONIMMIGRANT STATUS OMB No. 1615-0099, available at <http://www.uscis.gov/files/form/i-914.pdf> (last revised May 4, 2012).

41. *Id.* at 2.

42. *Id.* at PART C, QUESTION 1 (requiring the victim to attach evidence of specific facts to support the claim). Trafficking victims are also strongly encouraged to submit a personal statement detailing the trafficking. *Id.*

43. *Id.* at PART C, QUESTION 4.

44. *Id.* at PART C, QUESTION 7. This question requires the trafficking victim to explain the circumstances if the answer to the question is in the negative.

45. See *id.* at PART C, QUESTION 2 (allowing the applicant to designate if they are including a LEA declaration form). If the applicant is submitting a law enforcement agency endorsement, he or she must submit as part of the application Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

46. See TRAFFICKING IN PERSONS REPORT, *supra* note 3 (explaining that if governments do not provide protection in addition to prosecution and prevention efforts, they risk worsening the original harm).

law enforcement agency endorsement.<sup>47</sup> The instruction section to Form I-914 provided by U.S. Citizenship and Immigration Services<sup>48</sup> states that the applicant must demonstrate that "[he or she has] complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime, unless [he or she is] under the age of [eighteen]."<sup>49</sup> While federal law does not require an applicant to comply with reasonable law enforcement requests if he or she is unable to do so because of physical or psychological trauma<sup>50</sup> the I-914 form fails the victim in that it makes no mention of this exception to the applicant.<sup>51</sup> To utilize this federal exception, one would need assistance from a well-informed legal advocate or a victim service provider with specialized knowledge.

### B. *Approval and Denial Statistics*

By carefully examining and plotting the statistical history of the T-Visa, we are able to glean valuable insight on past practices and review the success of the program in assisting victims. This special visa for trafficked victims was created twelve years ago and has been vastly underutilized.<sup>52</sup> There are 5,000 T-Visas allotted for each year; therefore, since 2000, 60,000 T-Visas could have been issued, however, this has not been the case.<sup>53</sup> The T-Visa annual limitation of 5,000 was a procedural safeguard

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47. See *supra* PART V (relating to how prosecution of traffickers take precedence over aiding victims and victims services by requiring applicants to have contact with a Law Enforcement Agency trafficking to be eligible for a T-Visa).

48. USCIS, INSTRUCTIONS FOR FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS OMB No. 1615-0099, at 1, available at <http://www.uscis.gov/files/form/i-914instr.pdf> (last revised May 4, 2012).

49. *Id.*

50. See ALISON SISKIN & LIANA SUN WYLER, CONG. RESEARCH SERV., TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 25 (2010), available at <http://www.fas.org/sgp/crs/misc/RL34317.pdf> (explaining there is an also exception to this requirement if the alien is under the age of eighteen).

51. I-914 FORM: APPLICATION FOR T NONIMMIGRANT STATUS, *supra* note 40 (last revised May 4, 2012) (this question does not mention this exception).

52. See N.Y. ANTI-TRAFFICKING NETWORK LEGAL SUBCOMM., IMMIGRATION RELIEF FOR CRIME VICTIMS: THE U VISA MANUAL A-iv (2010), available at <http://aaldef.org/docs/U-Visa-Manual.pdf> (stating the U-Visa status was created with the passage of the Trafficking Victims Protection Act of 2000 and was reauthorized in 2003, 2005, and 2008 with the Trafficking Victims Protection Reauthorization Act).

53. See *Feds to Increase Awareness of Humanitarian Visas*, U.S. IMMIGR., <http://www.usimmigration.com/awareness-of-humanitarian-visas.html> (last visited Dec. 27, 2012) (identifying that in 2010 only 796 T-Visas were issued); see also USCIS, FORM I-914 – APPLICATION FOR T NONIMMIGRANT STATUS AND FORM I-918 – PETITION FOR U NONIMMIGRANT STATUS VISA FISCAL YEARS 2002 THROUGH 2012 (2012), <http://www.uscis.gov/>

to protect against misuse and fraud.<sup>54</sup> While the number of T-Visas has steadily increased, the forecasted fear of widespread misuse and fraud has not materialized.<sup>55</sup>

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USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/1914T-1918U-visastatistics-2012-sep.pdf (demonstrating that 5,000 T-Visas have never been issued in a single year since 2002).

54. See *TRAFFICKING IN PERSONS REPORT* *supra* note 3, at 15 (stating that when the TVPA was passed in 2000, Congress was concerned of massive fraud relating to immigration relief for trafficking victims).

55. See *id.* (demonstrating the fear of fraud has not materialized because since 2002 less than half of the allotment allowed for each year has been approved).

T-VISA APPROVAL AND DENIAL CHART 2002-2010

T-VISAS	Form I-914 - Application for T Nonimmigrant Status						I-914 TOTALS		
	VICTIMS			FAMILY OF VICTIMS			Receipts	Approved	Denied
Fiscal yr	Receipts	Approved	Denied	Receipts	Approved	Denied	Receipts	Approved	Denied
2002	163	17	12	234	9	4	397	26	16
2003	750	283	51	274	51	8	1,024	334	59
2004	566	163	344	86	106	11	652	269	355
2005	379	113	321	34	73	21	413	186	342
2006	384	212	127	19	95	45	403	307	172
2007	269	287	106	24	257	64	293	544	170
2008	408	243	78	118	228	40	526	471	118
2009	475	313	77	235	273	54	710	586	131
2010	574	447	138	463	349	105	1,037	796	243
2011	967	557	223	795	722	137	1,762	1,279	360
2012 YTD	624	447	138	854	491	68	1,478	938	206
<b>TOTAL</b>	<b>5,559</b>	<b>3,082</b>	<b>1,615</b>	<b>3,136</b>	<b>2,654</b>	<b>557</b>	<b>8,695</b>	<b>5,736</b>	<b>2,172</b>

Source: Compiled from the U.S. Citizenship and Immigration Service (USCIS) disclosures<sup>56</sup>

56. See U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-914—APPLICATION FOR T NONIMMIGRANT STATUS AND FORM I-918—PETITION FOR U NONIMMIGRANT STATUS Visa Fiscal Years 2002 THROUGH 2012 (2012), <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Data/Victims/1914T-1918U-visastatistics-2012-sep.pdf> (listing the number of applications received and denied in various categories).

In contrast, the U-Visa provides relief for nonimmigrants who are victims of enumerated crimes, including human trafficking.<sup>57</sup> A U-Visa will provide the individual with temporary legal status and work eligibility.<sup>58</sup> The U-Visa, like the T-Visa, was created under the TVPA<sup>59</sup> and is meant to aid the investigation and prosecution of crime(s), while also providing services and protection for its victims.<sup>60</sup> U.S. Citizenship and Immigration Services (USCIS), the governmental organization that issues U-Visas, can issue up to 10,000 U-Visas each fiscal year.<sup>61</sup> Additionally, certain family members can apply for derivative U-Visas.<sup>62</sup>

Successfully obtaining a U-Visa requires an applicant to submit an I-918 form and supporting evidence<sup>63</sup> showing the applicant: 1) has sustained “substantial physical or mental abuse as a result of having been a

57. See *Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status*, USCIS, <http://www.uscis.gov/portal/site/uscis/menuitem> (follow “Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status” hyperlink) (last updated Nov. 22, 2010) (detailing that to qualify for a U-Visa the person must have suffered mental or physical abuse as the result of being a victim of a crime, the person must have information relating to the criminal act, the individual must be helpful in the prosecution of the crime, and the criminal act must have violated U.S. law).

58. See *U Visa for Immigrants Who Are Victims of Crimes*, U.S. IMMIGR. SUPPORT, <http://www.usimmigrationsupport.org/visa-u.html> (last visited Dec. 27, 2012) (asserting that U-Visas last up to four years and only 10,000 may be allotted each fiscal year); see also 8 U.S.C. § 1184 (2011) (“The Attorney General shall, during the period those aliens are in lawful temporary resident status under that subsection, provide the aliens with employment authorization.”).

59. See *Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status*, *supra* note 57 (recognizing the U-Visa status was created with the passage of the TVPA); see also Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000) (setting out methods for combating trafficking).

60. See *Victims of Human Trafficking: T Nonimmigrant Status*, USCIS, <http://www.uscis.gov/portal/site/uscis/menuitem> (follow “Victims of Human Trafficking: T Nonimmigrant Status” hyperlink) (last visited Dec. 27, 2012) (indicating that the T-status protects victims of human trafficking and allows them to remain in the United States to assist in the prosecution or investigation).

61. 8 U.S.C. § 1184 (2012) (setting the statutory maximum of U-Visas per year at 10,000); see also *USCIS Reaches Milestone for Third Straight Year: 10,000 U Visas Approved in Fiscal Year 2012*, USCIS, <http://www.uscis.gov/portal/site/uscis/menuitem> (follow “News” hyperlink) (last updated Aug. 21, 2012) (indicating that for the third straight year in a row the maximum number of U-Visas were issued).

62. See 8 U.S.C. § 1184 (2012) (capping the U-Visas to 10,000 for principal applicants and not for the derivative applicants such as children, spouses, the parents of a child victim).

63. See *id.* (indicating that the U-Visa applications, unlike T-Visa applications, must include a letter of certification from a law enforcement agency attesting to the applicants assertion that they were, are, or will be helpful during the investigation or prosecution of the criminal activity of which they are a victim); see generally INSTRUCTIONS FOR FORM I-918, *supra* note 48 (instructions for completing the U-Visa petition).

victim of criminal activity;"<sup>64</sup> 2) "possesses information concerning criminal activity;"<sup>65</sup> 3) "has been helpful, is being helpful, or is likely to be helpful" to the governmental agencies investigating or prosecuting that crime;<sup>66</sup> and 4) that the crime "violated the laws of the United States or occurred in the United States."<sup>67</sup> The following chart illustrates the successful U-Visa applications for the years 2009 to 2012:

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64. 8 U.S.C. § 1101 (2012).

65. *Id.*

66. *Id.*

67. *Id.*



Form I-918 - Petition for U Nonimmigrant Status											
U-VISAS		VICTIMS				FAMILY OF VICTIMS				TOTALS	
Fiscal yr	Receipts	Approved	Denied	Receipts	Approved	Denied	Receipts	Approved	Denied	Approved	Denied
2009	6,835	5,825	688	4,102	2,838	158	10,937	8,663	846		
2010	10,742	10,073	4,347	6,418	9,315	2,576	17,160	19,388	6,923		
2011	16,768	10,088	2,929	10,033	7,602	1,645	26,801	17,690	4,574		
2012 YTD	24,768	10,122	2866	15126	7,421	1,465	39,884	15,543	4,331		
<b>TOTAL</b>	<b>59,113</b>	<b>36,108</b>	<b>10,830</b>	<b>35,679</b>	<b>27,176</b>	<b>5,844</b>	<b>94,792</b>	<b>61,284</b>	<b>16,674</b>		

Source: Compiled from the U.S. Citizenship and Immigration Service (USCIS) disclosures.<sup>68</sup>

68. See USCIS, FORM I-914—APPLICATION FOR T NONIMMIGRANT STATUS AND FORM I-918—PETITION FOR U NONIMMIGRANT STATUS Visa FISCAL YEARS 2002 THROUGH 2012 (2012), <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914T-I918U-visastatistics-2012-sep.pdf> (listing totals for U-Visa applications received and denied).

#### IV. POST-TRAUMATIC STRESS DISORDER

PTSD "refers to certain enduring psychological symptoms that occur in reaction to a highly distressing, psychically disruptive event."<sup>69</sup> Originally created to describe mental health injuries for war combatants and disaster victims,<sup>70</sup> "PTSD is one of the few psychiatric conditions to which the manual (DSM-III) ascribes a definite cause."<sup>71</sup>

##### A. Medical Explanation

"PTSD requires the occurrence of a traumatic event as well as (1) frequent re-experiencing of the event through nightmares or intrusive thoughts, (2) a numbing of general responsiveness to, or avoidance of, current events, and (3) persistent symptoms of increased arousal, such as jumpiness, sleep disturbance, or poor concentration."<sup>72</sup> "[A] traumatic experience is defined as one that involves a threat (or reality) of death, serious injury, or damage to physical integrity, and inspires intense fear, helplessness, or horror."<sup>73</sup> However, it does not matter whether the individual experiences the event immediately, merely witnesses it, or is confronted with the traumatic event in any other way.<sup>74</sup>

Adult survivors of sexual abuse commonly suffer from PTSD flashbacks.<sup>75</sup> Flashbacks are sudden and disturbing sensory experiences in which the victim relives some or all of the sensations experienced during the original assault, as if the traumatic event was happening all over

69. John N. Briere & Diana M. Elliot, *Immediate and Long-Term Impacts of Child Sexual Abuse*, 4 FUTURE OF CHILD. 54, 55 (1994) (discussing that recent research has linked posttraumatic symptoms of short and long-term to child abuse victims. Further indicating that sexually abused children are 48 percent more likely to receive a diagnosis of PTSD than their non-abused peers).

70. See HEATHER J. CLAWSON ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVICES, TREATING THE HIDDEN WOUNDS: TRAUMA TREATMENT AND MENTAL HEALTH RECOVERY FOR VICTIMS OF HUMAN TRAFFICKING 2 (2008), available at [aspe.hhs.gov/hsp/07/HumanTrafficking/Treating/ib.pdf](http://aspe.hhs.gov/hsp/07/HumanTrafficking/Treating/ib.pdf) (claiming that although PTSD was originally created for specific victims, this list has expanded to include victims of other traumas such as human trafficking victims).

71. *Id.* (suggesting however, that a debate about the causes of PTSD has been ignited and reform could ensue).

72. Briere & Elliot, *supra* note 69, at 55–56.

73. Harvard Med. Sch., *Rethinking Posttraumatic Stress Disorder*, 24 HARV. MENTAL HEALTH LETTER 1, 1–2 (2007), available at <http://www.health.harvard.edu/newsweek/rethinking-posttraumatic-stress-disorder.htm>.

74. *Id.* This view represents an important shift from the previous DSM definition. *Id.* The focus is now on the individual's response to what is experienced, and less on the traumatic event. *Id.*

75. Briere & Elliot, *supra* note 69, at 56.

again.<sup>76</sup> PTSD symptoms also commonly involve repetitive and intrusive thoughts or memories of the traumatic event, which can be highly distressing and disruptive.<sup>77</sup> Other than flashbacks, which focus on the sensory aspects of trauma, these thoughts and recollections mainly affect the cognitive system.<sup>78</sup> While, in the case of sexual abuse victims, intrusive thoughts often evolve around themes of danger and humiliation as well as guilt and “badness,” intrusive memories are best described as spontaneous recollections of specific traumatic events of abuse.<sup>79</sup> Nightmares are also commonly associated with PTSD, and in the case of sexual abuse victims, they often involve themes of violence and abuse.<sup>80</sup>

To summarize, as the disorder is currently understood, it can be divided into three sets of symptoms, the first of which is hyper-arousal.<sup>81</sup> Individuals suffering from PTSD appear constantly on guard, are irritable, easily startled, and have difficulties sleeping or concentrating.<sup>82</sup> The second set of symptoms involves re-experiencing, or intrusion.<sup>83</sup> The traumatic event keeps haunting the victim through vivid memories, flashbacks, or nightmares.<sup>84</sup> Anything, a particular object, a specific situation, or a certain feeling can trigger intense distress, and while experiencing these symptoms, the victim may feel, or even behave, as if everything is happening in real time.<sup>85</sup> Avoidance and emotional numbing dominate the final set of PTSD symptoms.<sup>86</sup> The victim seeks to avoid potential triggers such as persons, places, situations, or thoughts.<sup>87</sup> In addition, the individual loses interest in her usual activities and feels estranged not only from other people, but also from her own feelings.<sup>88</sup> The avoidant behavior becomes a coping mechanism, aimed at the chronic trauma and accompanying feelings of sadness and anxiety caused by the victimization.<sup>89</sup> Some of the dysfunctional activities commonly associated with

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76. *Id.* This can affect all sensory systems, from visual or auditory to tactile or olfactory sensations—or a combination thereof. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. Harvard Med. Sch., *supra* note 73, at 1.

82. *Id.* Fixation on the trauma is the common theme in all three sets of PTSD symptoms. *Id.*

83. *Id.*

84. *Id.*

85. Harvard Med. Sch., *supra* note 73, at 1.

86. *Id.*

87. *Id.*

88. *Id.* The traumatic event controls and dominates the lives of people who suffer from PTSD. *Id.* They repeatedly re-experience the event with the same intensity as when it actually occurred. *Id.*

89. Briere & Elliot, *supra* note 69, at 59.

avoidance are: dissociation, substance abuse, suicidal behavior, and various activities that are geared toward reducing the tension induced by abuse-specific memories and feelings.<sup>90</sup>

In diagnosing PTSD, certain similarities with other psychiatric disorders may pose a challenge.<sup>91</sup> Experts increasingly view rape trauma syndrome (RTS) as a subset of PTSD.<sup>92</sup> Only very few people who experience a traumatic event subsequently develop PTSD,<sup>93</sup> however, having previously suffered traumatic events makes the development of PTSD more likely.<sup>94</sup> The risk of PTSD is also higher when a person experiences injury that is intentionally inflicted by another human being, as opposed to an accident or a natural disaster.<sup>95</sup> This effect is exacerbated if the victim feels guilty, due to a widely held, yet generally mistaken, belief that she is in some way responsible for what has happened to her.<sup>96</sup>

90. *Id.* Dissociation occurs when a person detaches herself from her subjective awareness, behavior, and inner processes to reduce psychological distress. *Id.* This may happen consciously or not. *Id.* A person in a disassociated state may appear "spaced out" or disengaged to an observer. *Id.* Emotional or physical numbness, a feeling that one's self or a familiar environment is suddenly strange or unreal, or even out-of-body experiences may be present. *Id.* Abuse-related memory loss is common as well. *Id.* Tension-reducing activities may include indiscriminate sexual behavior, self-mutilation, or bingeing and purging. *Id.* at 60.

91. Harvard Med. Sch., *supra* note 73. Depression and anxiety are two common disorders that may display similar symptoms. *Id.* However, while practitioners may currently reexamine the diagnosis of PTSD, the consensus remains that traumatic events can have lasting effects on an individual, thus posing a clear threat to mental health, which warrants care and support for the victim. *Id.*

92. Laura E. Boeschen et al., *Rape Trauma Experts in the Courtroom*, 4 PSYCHOL. PUB. POL'Y & L. 414, 416 (1998). One reason for this development is that rape trauma as a syndrome is not included in the current DSM-IV, whereas posttraumatic stress syndrome is. *Id.* at 417. However, this practice is not unproblematic, since RTS and PTSD are not entirely the same. *Id.* at 418. Critics point out that PTSD ignores the complexity of post-rape symptoms in women. *Id.*

93. Harvard Med. Sch., *supra* note 73, at 1. A large study from Germany found PTSD rates as low as 10 percent for women and 3 percent for men. *Id.*

94. *Id.* at 1–3. Another factor that may increase the risk for PTSD is gender. *Id.* Women bear a two-to-three times higher risk than men to develop PTSD. *Id.* Possible explanations for this gender gap are: genetic or hormonal factors, differences in the types of trauma commonly experienced by men and women, the quality of emotional and social support, and a greater willingness in women to acknowledge their symptoms and seek help. *Id.*

95. *Id.* at 1–5.

96. *Id.* at 1–4; see also Steffen Bieneck & Barbara Krahé, *Blaming the Victim and Exonerating the Perpetrator in Cases of Rape and Robbery: Is There a Double Standard?*, 26 J. INTERPERSONAL VIOLENCE 1785, 1786, 1794 (2011) (discussing the results of a study that demonstrated the existence of a systematic tendency to blame victims of rape but not those of other violent crimes).

### B. *Human Trafficking is Likely to Induce PTSD*

Human trafficking reports and indictments from around the world include deplorable descriptions of the extreme forms of physical, psychological, and sexual abuse perpetrated upon people who are trafficked, especially victims in the sex industry.<sup>97</sup> These abuses can also occur in a multitude of non-sex related labor settings, including construction, agriculture, and domestic servitude.<sup>98</sup> While the State Department acknowledges that “[i]t is essential that governments give trafficking victims a reasonable length of time to recover from the immediate trauma,”<sup>99</sup> the lasting health consequences of human trafficking have received relatively little attention.

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97. See generally CATHY ZIMMERMAN ET AL., LONDON SCH. OF HYGIENE & TROPICAL MED., *STOLEN SMILES: THE PHYSICAL AND PSYCHOLOGICAL HEALTH CONSEQUENCES OF WOMEN AND ADOLESCENTS TRAFFICKED IN EUROPE 2* (2006), available at <http://genderviolence.lshhtm.ac.uk/files/Stolen-Smiles-Trafficking-and-Health-2006.pdf> (presenting statistical data concerning the wide range of negative health consequences endured by female victims of trafficking, the majority of whom are systematically exposed to physical and sexual violence); see also REBECCA SURTEES, INT’L ORG. FOR MIGRATION (IOM), *TRAFFICKING OF MEN – A TREND LESS CONSIDERED: THE CASE OF BELARUS AND UKRAINE RESEARCH SERIES No. 36*, at 10, 12 (2008), available at [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/serial\\_publications/MRS-36.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/MRS-36.pdf) (addressing the situation of adult male trafficking victims, a group that is often overlooked yet not immune from exploitation and violation); see also ANTI-SLAVERY INT’L, *TRAFFICKING FOR FORCED LABOUR IN EUROPE: REPORT ON A STUDY IN THE UK, IRELAND, THE CZECH REPUBLIC, AND PORTUGAL 1–2* (2006), available at [http://www.antislavery.org/includes/documents/cm\\_docs/2009/t/trafficking\\_for\\_fl\\_in\\_europe\\_4\\_country\\_report.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/t/trafficking_for_fl_in_europe_4_country_report.pdf) (discussing the plight of migrant workers who end up being trafficked for forced labor due to several factors such as isolation and lack of sophistication, restrictive immigration policies, coercive strategies used by employers and agents, all fueled by growing demand for cheap labor); see also Anti-Slavery Int’l, *Trafficking in Women, Forced Labour, and Domestic Work in the Context of the Middle East and Gulf Region 3* (Fed. Ministry for Econ. Cooperation & Dev., Working Paper, 2006), available at [http://www.antislavery.org/includes/documents/cm\\_docs/2009/t/traffic\\_women\\_forced\\_labour\\_domestic\\_2006.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/t/traffic_women_forced_labour_domestic_2006.pdf) (focusing on the factors which make female domestic workers vulnerable to exploitation and serious abuse).

98. See, e.g., REBECCA SURTEES, INT’L ORG. FOR MIGRATION (IOM), *TRAFFICKING OF MEN – A TREND LESS CONSIDERED: THE CASE OF BELARUS AND UKRAINE RESEARCH SERIES No. 36*, at 10, 12 (2008), available at [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/serial\\_publications/MRS-36.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/MRS-36.pdf) (indicating that construction, agriculture, and factory work are among the most common areas in which male trafficking victims are exploited as forced laborers); see also Anti-Slavery Int’l, *Trafficking in Women, Forced Labour, and Domestic Work in the Context of the Middle East and Gulf Region 3* (Fed. Ministry for Econ. Cooperation & Dev., Working Paper, 2006), available at [http://www.antislavery.org/includes/documents/cm\\_docs/2009/t/traffic\\_women\\_forced\\_labour\\_domestic\\_2006.pdf](http://www.antislavery.org/includes/documents/cm_docs/2009/t/traffic_women_forced_labour_domestic_2006.pdf) (exploring the situation of female domestic workers).

99. *TRAFFICKING IN PERSONS REPORT supra* note 3, at 17.

Enduring physical and psychological problems are widespread among trafficked victims.<sup>100</sup> Common psychological problems include depression, anxiety, suicidal ideation, PTSD, and addiction.<sup>101</sup> In a recent study of prostitution and trafficking in nine countries, researchers found that sixty-eight percent of the interviewed participants met the criteria for PTSD.<sup>102</sup> Other emotional problems reported by participants, and characterized by the researchers as "severe," were mood swings, anxiety, terror, depression, and wanting to die as a means of escape.<sup>103</sup> One Moldavian study used a validated diagnostic instrument to assess psychiatric disorder among trafficked women.<sup>104</sup> The DSM-IV Structured Clinical Interview was conducted with women who had been trafficked abroad, had returned to Moldavia within 2–12 months of the study, had registered for post-trafficking support services, and were in the process of

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100. Donna Sabella, *The Role of the Nurse in Combating Human Trafficking: Learn How to Recognize the Signs that Someone is Being Trafficked and How to Safely Intervene*, 111 AM. J. OF NURSING 28, 32 (2011).

101. See generally JANICE G. RAYMOND & DONNA M. HUGHES, COAL. AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES (2001), available at [http://www.uri.edu/artsci/wms/hughes/sex\\_traff\\_us.pdf](http://www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf) (presenting the results of a comprehensive study on sexually exploited female trafficking victims in the United States). Eight out of ten women who were interviewed reported symptoms of depression. *Id.* at 12. Approximately half of the women experienced hopelessness, while up to a third felt anger and rage. *Id.* A majority of the study's subjects had either suicidal thoughts, or had actually attempted to commit suicide, and half of them reported using drugs or alcohol to numb the effects of their trauma. *Id.*; see also Atsuro Tsutsumi et al., *Mental Health of Female Survivors of Human Trafficking in Nepal*, 66 SOC. SCI. & MED. 1841, 1842–43 (2008) (comparing the mental health status of female trafficking victims who were forced to work in the sex industry with those who performed forced labor in other areas). The study calls to attention that sex workers in general present higher rates of depression, PTSD, suicide attempts, and addiction. *Id.* at 1842.

102. Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 33, 34 (Melissa Farley ed., 2003).

103. *Id.* at 53.

104. Nicolae V. Ostrovschi et al., *Women in Post-Trafficking Services in Moldova: Diagnostic Interviews Over Two Time Periods to Assess Returning Women's Mental Health*, 11 BMC PUB. HEALTH, Apr. 14, 2011, at 2, <http://www.biomedcentral.com/content/pdf/1471-2458-11-232.pdf> (presenting the results of a study which focused on the mental health of women who had returned home to Moldavia after a trafficking experience abroad and were trying to readjust). The researchers noted the lack of studies using clinician-administered diagnostic assessment tools to describe mental health conditions. *Id.* at 2. They employed the Structured Clinical Interview for DSM-IV Axis I Disorders in its Romanian version. *Id.* at 3. See generally MICHAEL B. FIRST ET AL., N.Y. STATE PSYCHIATRIC INST., BIOMETRIC RESEARCH, STRUCTURED CLINICAL INTERVIEW FOR DSM-IV-TR AXIS I DISORDERS, RESEARCH VERSION, NON-PATIENT EDITION (SCID-I/NP) (2002) (laying out the exam process for diagnosing major mental or personality disorders).

rehabilitation.<sup>105</sup> Among the participants, 16.7 percent were diagnosed with major depression, and 35.8 percent met the diagnostic criteria for PTSD.<sup>106</sup>

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children entered into force on December 25, 2003.<sup>107</sup> It calls on each state party to implement “measures to provide for the physical, psychological, and social recovery of victims of trafficking in persons . . . .”<sup>108</sup> Recently, a team of researchers conducted a systematic review of the current literature to help illuminate the potential implications of human trafficking for public health systems.<sup>109</sup> The meta-analysis confirmed that trafficking leads to serious health issues and reemphasized the need for affected countries to coordinate their responses in the fields of health care and other support services.<sup>110</sup>

In 2006, an in-depth study was conducted in Europe.<sup>111</sup> The researchers interviewed adolescents and women, all of whom had either been trafficked as sex workers or were sexually abused during their time in domestic services.<sup>112</sup> The study involved two hundred seven women, originating from fourteen different home countries.<sup>113</sup> Nearly nine in ten (eighty-nine percent) had been enslaved for more than one month and

105. Ostrovschi et al., *supra* note 104. Women who appeared too distressed or unwell to undergo the clinical interview were excluded from the study. *Id.* at 3.

106. *Id.* Another common diagnosis for women during their rehabilitation period was harmful alcohol use. *Id.* at 6.

107. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Dec. 25, 2003, 2237 U.N.T.S. 319.

108. *Id.* at 345. The protocol is a supplement to the United Nations Convention Against Transnational Organized Crime. *Id.* at 343.

109. Siân Oram et al., *Prevalence and Risk of Violence and the Physical, Mental, and Sexual Health Problems Associated with Human Trafficking: Systematic Review*, 9 PLOS MED., May 29, 2012, <http://www.plosmedicine.org/article/info%253Adoi%252F10.1371%252Fjournal.pmed.1001224>. The researchers focused on the prevalence and likelihood of experiencing violence among trafficking victims, as well as these individuals' physical, mental, and sexual health, including HIV/AIDS. *Id.* at 2.

110. *Id.* The review also confirmed that physical and sexual violence are extremely common experiences among women and girls who are trafficked for prostitution. *Id.* at 9. However, the authors caution that an absence of physical or sexual violence does not automatically negate a victim's claim of sexual exploitation. *Id.* at 10. Finally, it appears that the experiences of trafficked men, children, and generally those who are victims of trafficking for forced labor are still not sufficiently documented. *Id.*

111. See ZIMMERMAN ET AL., *supra* note 97 (providing a summary of statistical evidence concerning the health needs of women who had just recently gone through a trafficking experience).

112. *Id.* at 7.

113. *Id.* at 7. Most women came from Eastern European states, but a few were from Non-European countries. *Id.* Over fifty percent of the women were trafficked within Europe. *Id.*

ten percent were enslaved for over two years.<sup>114</sup> The following is a review of Cathy Zimmerman's findings:

PTSD ASSOCIATED SYMPTOMS AND THE PERCENT OF TRAFFICKED  
WOMEN RANKING THESE SYMPTOMS AS SEVERE<sup>115</sup>

Recurrent thoughts/memories of terrifying events	75%
Feeling as though the event is happening again	52%
Recurrent nightmares	54%
Feeling detached/withdrawn	60%
Unable to feel emotion	44%
Jumpy, easily startled	67%
Difficulty concentrating	52%
Trouble sleeping	67%
Feeling on guard	64%
Feeling irritable, having outbursts of anger	53%
Avoiding activities that remind them of the traumatic or hurtful event	61%
Inability to remember part or most of traumatic or hurtful event	36%
Less interest in daily activities	46%
Feeling as if you didn't have a future	65%
Avoiding thoughts or feelings associated with the traumatic events	58%
Sudden emotional or physical reaction when reminded of the most hurtful or traumatic events	65%

Trafficking victims are often forced into dangerous situations and may be unable, or unwilling, to jeopardize their safety, or the safety of their family, by reporting or seeking help from law enforcement.<sup>116</sup> It is widely recognized that victims may not be able to feel fully secure and ready to move past their victimization until they are confident their family mem-

114. *Id.* at 2.

115. *Id.*

116. See generally T.K. Logan et al., *Understanding Human Trafficking in the United States*, 10 *TRAUMA, VIOLENCE, & ABUSE* 3, 13 (2009) (giving the four main reasons that keep the victims entrapped as fear, lack of knowledge about alternatives, isolation, and physical and psychological confinement; fear being the biggest factor).

A trafficker will go to a family and deceive them about what will happen if they take a family member, like a child, to the U.S. They will be told the child will receive an education or that they'll be able to send money back home or that they will have a better future, etc. When the person gets over here they cut off contact so the person is essentially stuck in the situation.

*Id.* at 11.



bers are safe.<sup>117</sup> Some trafficked victims are identified and rescued quickly, however many are trapped and remain ensnared by their trafficker for years before they are able to break free.<sup>118</sup> Victims attempt to survive daily with emotional and physical abuse, inhumane treatment, and threats to their families and loved ones.<sup>119</sup>

Some people view prostitution and other sexual exploitation as a victimless crime committed between two consenting adults.<sup>120</sup> But victims of the commercial sex trade are often not adults, but girls and boys as young as twelve.<sup>121</sup> The risks of the commercial sex industry are so prominent that the average age of death among prostitutes is 34, and “. . . the *American Journal of Epidemiology* reported that prostitutes suffer a ‘workplace homicide rate’ fifty-one times higher than that of the next most dangerous occupation, working in a liquor store.”<sup>122</sup> While in the commercial sex industry, women face considerable violence at the hands of both traffickers and those who purchase their “services.”<sup>123</sup> In one study, eighty-two percent of women in prostitution had been physically

117. *TRAFFICKING IN PERSONS REPORT* *supra* note 3, at 18. Often the best option for the victim is a path to citizenship or permanent residence in the country where they were trafficked. *Id.* This allows the victim to feel safe and allows them to integrate more fully into society. *Id.* However the decision should be made on a case-by-case determination looking at the best interest of the victim involved. *Id.*

118. *See, e.g.,* *United States v. Calimlim*, 538 F.3d 706, 708–09 (2008) (noting that at the age of nineteen, Irma Martinez was trafficked into domestic labor in the United States, but it was not until nineteen years later that she was rescued); *see also* *United States v. Udeozor*, 515 F.3d 260, 263–64 (2008) (recounting the traumas suffered by a girl held in captivity from the age of fourteen to nineteen).

119. *See generally* T.K. Logan et al., *supra* note 116, at 15 (explaining that the victims develop incredible coping mechanisms which may have significant consequences for their physical health, mental health, and recovery).

120. *See* Melissa Farley & Victor Malarek, *The Myth of the Victimless Crime*, N.Y. TIMES, Mar. 12, 2008, [http://www.nytimes.com/2008/03/12/opinion/12farley.html?\\_r=0](http://www.nytimes.com/2008/03/12/opinion/12farley.html?_r=0) (speaking about the false belief that prostitution is a victimless crime).

121. *See Street Prostitution*, POLARIS PROJECT, [www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us/street-prostitution](http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us/street-prostitution) (last visited Dec. 27, 2012) (“Street prostitution becomes trafficking when a pimp uses force, fraud and/or coercion to maintain control over the person providing commercial sexual services and cause[s] the person to engage in commercial sex acts.”). One victim explained that she had been with a pimp from fourteen years of age and was only allowed on a two-block area. *Id.* Another victim talked about being picked up by the police for solicitation (“prostitution”), but was too scared to give any information about her pimp, knowing he would be there to bail her out. *Id.*

122. Leslie Bennetts, *The John Next Door*, THE DAILY BEAST (July 18, 2011), available at <http://www.thedailybeast.com/newsweek/2011/07/17/the-growing-demand-for-prostitution.html>.

123. *See id.* (referencing the high rate of violence committed by “Johns” towards the prostitutes and the emotional disorders prostitutes often face due to the commercial sex trade as well as their troubled pasts).

assaulted, eighty-three percent had been threatened with a weapon, sixty-eight percent had been raped, and eighty-four percent reported current or past homelessness.<sup>124</sup>

Traffickers that trade in sexual exploitation do so by employing grotesque, chronic, and dehumanizing physical and emotional trauma to their victims.<sup>125</sup> Survivors of sexual abuse and exploitation are often left to a life of isolation, devoid of normal human emotions, and burdened with profound feelings of anger and disjointed thoughts.<sup>126</sup> Trafficking victims forced into sex work often experience severe physical violence "including being kicked while pregnant, burned, punched, thrown against a wall or floor, hit with bats or other objects, and dragged by the hair."<sup>127</sup> These victims also often sustain lacerations, bruises, scars, burns, bite marks, and bald patches where hair has been ripped out.<sup>128</sup>

And although the traumas inflicted are countless, victims may not be able or willing to assist in prosecution efforts for a myriad of reasons. Lack of trust and understanding of the U.S. criminal legal process can lead to fear of law enforcement and prosecutors.<sup>129</sup> The lack of understanding of their legal rights, fear of detention and deportation, the continual influence and fear of their traffickers, and lasting psychological impacts from the trauma that they have experienced, similarly, all lead to cooperation barriers.<sup>130</sup> Victims may also be mentally traumatized to the extent they are rendered unable to retell their story, thereby causing them to be unable to adequately inform law enforcement of the underlying

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124. Melissa Farley & Howard Barkan, *Prostitution, Violence Against Women, and Posttraumatic Stress Disorder*, 27 *WOMEN & HEALTH* 37–49 (1998), available at <http://www.prostitutionresearch.com/ProsViolPosttrauStress.html>.

125. See *TRAFFICKING IN PERSONS REPORT* *supra* note 3, at 23 ("[P]rostitution is inherently harmful and dehumanizing . . . enabling [an] environment for human trafficking."). These brutal sexual exploitations effect children in large numbers as well, with more than two million children entering into the sex trade each year. *Id.* at 24.

126. Mary-Ann Burkhart & Joyce Lombardi, *Maryland's Response to Human Trafficking A New Statute for New Times*, 41 *MD. B.J.* 12, 14 (2008). These emotional and psychological symptoms derive from the inhumane treatment the victims are put through. *Id.* These situations include having their identification and all other necessary documentation taken, threats to their well being and their family, humiliation, and violence which can often have permanent damage. *Id.* "There are experts who believe that human trafficking victims never recover, suffering lifelong effects of Posttraumatic Stress Disorder (PTSD), among other mental disorders." *Id.*

127. Sabella, *supra* note 100. Other common physical health problems found among victims of the sex trade include "sexually transmitted diseases, vaginal and rectal trauma, unintended pregnancies, infertility, and urinary tract infections." *Id.*

128. *Id.*

129. Ankita Patel, *Back to the Drawing Board: Rethinking Protections Available to Victims of Trafficking*, 9 *SEATTLE J. FOR SOC. JUST.* 813, 814 (2011).

130. *Id.*

ing crime.<sup>131</sup> All these factors potentially contribute to the appearance of lack of cooperation with law enforcement and could be seen by law enforcement as opposition to assisting in the investigation of their trafficker.<sup>132</sup>

Moreover, many traffickers utilize misinformation to control a victim's willingness to cooperate with law enforcement.<sup>133</sup> One common myth told to the victim is they are in the United States illegally and if they were to seek out help from law enforcement they will be deported back to their country of origin.<sup>134</sup> The victim could reasonably believe this threat and be fearful that if identified by local law enforcement, Immigration and Customs Enforcement (ICE) would be contacted.<sup>135</sup>

From a legal standpoint, ICE has an inherent conflict of interest in handling a trafficking victim.<sup>136</sup> ICE is not only the governmental agency responsible for detaining and deporting undocumented immigrants, but ICE is also in charge of the issuance of a T-Visa.<sup>137</sup>

131. See Christine Stark & Carol Hodgson, *Sister Oppressions: A Comparison of Wife Battering and Prostitution*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 17, 22 (Melissa Farley ed., 2003) (explaining that pimps, like traffickers, utilize "hitting, punching, kicking, starving, raping, verbally abusing [a woman], telling her she chose to be in prostitution, and telling her she is good for nothing but sex."); see also TRAFFICKING IN PERSONS REPORT *supra* note 3, at 17–18 (citing to numerous emotional reactions due to the trauma and victimization including loss of memory related to the traumatic event, frequent bouts of fearlessness, detachment, feelings of self-blame, emotional numbing or emotional response that does not fit the situation, flashbacks or nightmares, anxiety, difficulty making decision or concentrating, and avoidance of eye contact).

132. See generally T.K. Logan et al., *supra* note 116 (listing reasons why victims remain entrapped, including fear, lack of knowledge about alternatives, isolation, and physical and psychological confinement); see also TRAFFICKING IN PERSONS REPORT *supra* note 3, at 17–18 (describing how the victims are often emotionally unable to cooperate with law enforcement due to the extreme trauma they have just experienced).

133. OFFICE OF THE ATT'Y GEN., CAL. DEP'T OF JUSTICE, HUMAN TRAFFICKING IN CALIFORNIA: AN ANALYSIS OF CURRENT AND FUTURE EFFORTS TO COMBAT HUMAN TRAFFICKING AND EXPLOITATION IN CALIFORNIA 24 (2012). Often the trafficker completely removes any sense of identity the victim once had and replaces it with a new name and false identification. *Id.* This allows the traffickers to control every facet of a victim's life and ensure their cooperation and dependence. *Id.*

134. Patel, *supra* note 129, at 823–34; OFFICE OF THE ATT'Y GEN., CAL. DEP'T OF JUSTICE, *supra* note 133.

135. See *id.* (explaining the fears the victims have which are perpetuated by the false information supplied to them by the traffickers as well as law enforcements mixed signals or relief).

136. *Id.* at 828–29.

137. *Id.* Not only does ICE have a contradictory role in human trafficking, T-Visas purpose and how they are actually acquired is conflicting as well. *Id.* at 824. In order to be eligible for a T-Visa and be given protection, a victim must provide assistance and be certified by law enforcement as having "complied with 'reasonable requests' to cooperate with the investigation." *Id.* If the victim does not provide such cooperation to law enforcement,

These two responsibilities are in conflict because ICE is an investigative arm of the Department of Homeland Security (DHS)—an agency that is primarily responsible for identifying, detaining, and deporting undocumented immigrants, not providing a safe haven for them. However, DHS is also one of the federal entities responsible for investigating human trafficking, which includes identifying and providing certification to victims for cooperation.<sup>138</sup>

With ICE playing dual roles and victims fearful of physical harm to their families and/or deportation, traffickers are able to exploit the situation and continue to subjugate their victims.<sup>139</sup>

### C. Case-By-Case Illustration of Traumatic Events

Many victims of trafficking endure a multitude of human rights violations, including graphic, sexual and physical abuse.<sup>140</sup> Trauma is experienced and manifested differently by each victim: ranging from intense feelings of fear and anger to a "flat" or dissociative affect founded in a survival coping method.<sup>141</sup> The following cases are just a handful of examples of their traumas. The following cases are explicit, but not gratuitous. The facts included herein are factual and necessary. When demonstrating why PTSD is likely to be induced by trafficking, and why the Department of Immigration and Customs Enforcement should be in-

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their T-Visa must be denied which may even result in deportation. *Id.* T-Visas are accessible via the TVPA, which was created to address prosecution barriers. *Id.* But in reality, the enforcement of the TVPA creates barriers in and of itself. *Id.* The implementation of T-Visas and the TVPA also runs afoul of the second purpose of the TVPA, which was to curtail the improper detention of victims. *Id.* So although the TVPA was aimed at curtailing human trafficking and supporting victims in their freedom and recovery, the fact that a victim's protection is conditioned upon cooperation with an investigation creates a burden, which is placed solely on the injured party, the victim. *Id.* at 824–25.

138. *Id.* at 828–29.

139. See generally Kathleen Kim, *The Coercion of Trafficked Workers*, 96 IOWA L. REV. 409, 417–19 (2011) (discussing the ways traffickers coerce their victims); see also OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, THE CRIME OF HUMAN TRAFFICKING: A LAW ENFORCEMENT GUIDE TO IDENTIFICATION AND INVESTIGATION, available at <http://vaw.umn.edu/documents/completehtguide/completehtguide.pdf> (last visited Dec. 27, 2012) (demonstrating that law enforcement techniques and practices need to be tailored to human trafficking victims as to facilitate a feeling of safety for the victims and cooperation for the law enforcement).

140. OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUSTICE, THE CRIME OF HUMAN TRAFFICKING: A LAW ENFORCEMENT GUIDE TO IDENTIFICATION AND INVESTIGATION, available at <http://vaw.umn.edu/documents/completehtguide/completehtguide.pdf> (last visited Dec. 27, 2012).

141. *Id.*; see T.K. Logan et al., *supra* note 116, at 15 (victims emotionally handle the traumas in a multitude of ways, including fear, submission, fantasizing, rationalizing, and comparing oneself to others worse off).

formed of the scenarios trafficked victims are likely to bear, it is imperative that we have a frank discussion of fact. We have selected a variety of forced labor situations—two forced domestic servitude situations, one forced agricultural labor situation, and two commercial sexual exploitation situations—whereby PTSD symptoms may induce the survivor to seek non-law enforcement certification.

#### 1. United States v. Djoumessi (forced domestic servitude)

“In 1996, Joseph and Evelyn Djoumessi, immigrants from Cameroon living in a Detroit suburb, arranged for then fourteen-year-old Pridine Fru to immigrate to the United States from Cameroon under a false name and with a fraudulent passport.”<sup>142</sup> The idea was that Fru would perform housekeeping and other domestic service tasks for the Djoumessis and look after their two young children, and in exchange they would provide for her and send her to school.<sup>143</sup> The arrangement did not work out the way the Djoumessis described.<sup>144</sup> Instead, Fru would suffer three years of forced labor and exploitation.<sup>145</sup>

“The Djoumessi’s required Fru to perform substantially all of their housework and to provide essentially all of the care for their children.”<sup>146</sup> She worked every day from 6:00 a.m. to 10:00 p.m. without compensation, other than room and board, and never attended school as promised.<sup>147</sup> Her housing consisted of a dilapidated, dark, and sometimes-flooded space in the basement.<sup>148</sup> “The Djoumessis did not allow her to use any of the working showers in the home, reducing her to collecting hot water from the basement sink in a bucket to clean herself. When Fru started her menstrual cycle, Evelyn refused to give her sanitary pads, leaving her to use her clothing instead.”<sup>149</sup>

They strictly restricted Fru’s contact with the outside world by only allowing her outside to take their children to school and other events.<sup>150</sup> Even worse, the Djoumessi’s threatened that she would be imprisoned if she contacted authorities.<sup>151</sup> Also, Fru was beaten and threatened when

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142. United States v. Djoumessi, 538 F.3d 547, 549 (6th Cir. 2008).

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Djoumessi*, 538 F.3d at 549.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

they felt her work was not up to standard.<sup>152</sup> Fru's abuse also included three occasions of sexual abuse by Joseph Djoumessi.<sup>153</sup>

## 2. United States v. Bradley (forced agricultural labor)

The case of *United States v. Bradley*<sup>154</sup> illustrates how PTSD may be caused by forced agricultural labor.<sup>155</sup> In this case, the defendants traveled to Jamaica to hire seasonal employees for their tree removal company.<sup>156</sup> The defendants hired two men, Wilson and Clarke, and promised them pay of \$15–\$20 an hour and provide them free housing.<sup>157</sup> Upon arrival in the United States, they were provided only a camping trailer with no utilities.<sup>158</sup> Rather than paying the men what was promised, they were paid \$7 per hour.<sup>159</sup> The men were controlled at work via verbal abuse including shouting, curses, and intimidation.<sup>160</sup> Only a week after beginning work, Clarke fled to another state and received a phone call from one of the defendants threatening to "kick his ass" and call authorities if he did not come back.<sup>161</sup>

When Clarke left, the defendants took Wilson's passport and plane tickets to prevent escape.<sup>162</sup> Clarke never came back to work, but instead left from New York and returned to Jamaica.<sup>163</sup> Wilson also eventually returned to Jamaica.<sup>164</sup> After Wilson left, the defendants returned to Jamaica and recruited three more men with similar promises—and treated them similarly when they arrived in the United States.<sup>165</sup>

## 3. United States v. Calimlim (forced domestic servitude)

The case *United States v. Calimlim*<sup>166</sup> illustrates how PTSD may be caused by forced domestic servitude. Irma Martinez, at age nineteen, came to the United States, from the Philippines, to work for the Calimlim

152. *Djoumessi*, 538 F.3d at 549.

153. *Id.* It was not until a neighbor called the police that Fru was removed from the Djoumessi's home and Djoumessi was criminally charged and convicted of "third degree criminal sexual conduct and child abuse. *Id.*

154. 390 F.3d 145 (1st Cir. 2004).

155. *United States v. Bradley*, 390 F.3d 145, 148 (1st Cir. 2004).

156. *Id.*

157. *Id.*

158. *Id.*

159. *Bradley*, 390 F.3d at 148.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Bradley*, 390 F.3d at 148–49.

165. *Id.* at 149.

166. 538 F.3d 706 (7th Cir. 2008).

family.<sup>167</sup> When she arrived, Mr. and Mrs. Calimlim seized her passport and told her she was in the United States illegally.<sup>168</sup> She worked for the couple as a live-in housekeeper, with duties including care of the household, the children, cars, investment properties, and medical offices.<sup>169</sup> Her hours began at 6:00 a.m. and ended around 10:00 p.m., seven days a week.<sup>170</sup> After ten years, the family moved to a more lavish house—8,600 square feet in area.<sup>171</sup> Despite its enormous size, Martinez was the only housekeeper for the new home.<sup>172</sup>

Throughout her entire time working for the Calimlins, Martinez was extremely restricted with regard to what she was allowed to do.<sup>173</sup> She never walked out the front door of the first house, and only answered the door in the second house once—on Halloween, wearing a mask.<sup>174</sup> She was told not to play outside with the children or leave her room in the basement during social functions, even to go to the bathroom.<sup>175</sup> Martinez was permitted to walk to a church that was selected by Elnora, but only via a back path that was well away from possible observation.<sup>176</sup> Elnora did not allow her to go to the same church too many times in a row.<sup>177</sup> When driven anywhere, Martinez was forced to ride in the back seat with her head down so that nobody could see her.<sup>178</sup> The “house rules” included a phone code that enabled Martinez to answer the phone when the children called, but not when outsiders did.<sup>179</sup> The children were told not to discuss Martinez with anyone outside the family.<sup>180</sup> Martinez was not permitted to seek medical care outside of the house, even for special needs such as dentistry.<sup>181</sup>

The Calimlins allowed Martinez to speak with her family a mere four or five times over the nineteen years she worked for them—even then,

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167. United States v. Calimlim, 538 F.3d 706, 708 (7th Cir. 2008).

168. *Id.*

169. *Id.*

170. *Id.*

171. *See id.* at 708–09 (describing the conditions Martinez worked under).

172. *See Calimlim*, 538 F.3d at 709 (stating that Martinez was the sole provider of housekeeping services for the estate and the private tennis court).

173. *See id.* (explaining that Martinez was “greatly restricted” in her interaction with the outside world).

174. *Id.*

175. *Id.*

176. *See id.* (discussing the rules Martinez had to abide by in order to attend church).

177. *Calimlim*, 538 F.3d at 709.

178. *See id.* (explaining the measures the family took to keep Martinez a secret).

179. *Id.*

180. *Id.*

181. *See id.* (stating that because the Calimlim’s were physicians, they provided basic medical care).

the Calimlim family surrounded her while she spoke on the phone.<sup>182</sup> Martinez initially had a savings account where her earnings were deposited, but Elnora closed it one day after Martinez's visa expired.<sup>183</sup> Martinez authorized Elnora to send money to Martinez's family in the Philippines, through Elnora's parents' account, but over the entire 19-year period, the total that the Calimlins sent was only 654,412 pesos, or approximately \$19,000.<sup>184</sup> Her earnings were nothing more than a book entry in the Calimlins' financial accounts.<sup>185</sup> Martinez was allowed to shop for personal items, but she had to leave the cart in the store and go wait in the car so that Elnora Calimlim could pay; she would later "reimburse" the Calimlins for the cost through withheld "wages."<sup>186</sup> The Calimlins told Martinez repeatedly that if anyone discovered her she could be arrested, imprisoned, and deported, and she would not be able to send any more money back to her family.<sup>187</sup> Fear of those consequences kept her from breaking any of the rules or appearing outside the house.<sup>188</sup>

#### 4. United States v. Paris, et al. (commercial sexual exploitation)

In June 2004, the Hartford, Connecticut Police Department conducted an undercover prostitution sting.<sup>189</sup> During the sting, numerous women were arrested and interviewed.<sup>190</sup> Through further investigating and interviews, the police began to uncover the predatory and exploitative nature of the women's work.<sup>191</sup> Victim number one, an eighteen-year-old woman, gave a detailed account of being held against her will and forced into prostitution.<sup>192</sup> She was forcibly given heroin, beaten, and sexually assaulted on a regular basis by the defendant and his associates.<sup>193</sup> Individuals related to this case were running a bail bonding company.<sup>194</sup>

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182. *Calimlim*, 538 F.3d at 709.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Calimlim*, 538 F.3d at 709 .

188. *Id.*

189. HUMAN TRAFFICKING PROSECUTION UNIT, U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., UNITED STATES V. DENNIS PARIS 3 (2008), [http://www.ct.gov/dcf/lib/dcf/best\\_practices\\_workgroup/paris\\_case\\_review\\_handout.pdf](http://www.ct.gov/dcf/lib/dcf/best_practices_workgroup/paris_case_review_handout.pdf).

190. *Id.*

191. *See id.* (stating that the detective learned from the accused that "local suspects ('pimps') were running large-scale prostitution operations throughout the greater Hartford area under the guise of 'escort services'").

192. *Id.*

193. *Id.*

194. HUMAN TRAFFICKING PROSECUTION UNIT, U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., UNITED STATES V. DENNIS PARIS, *supra* note 189.



“The Liberty Bail Bond Company was used as a means to find girls that had been arrested and needed help bonding out.”<sup>195</sup> “The girls would be bonded out and then informed that they would be required to work off their bonds by working at the Escort Services as a prostitute.”<sup>196</sup>

In September 2004, Hartford Police spoke with Victim number two, also an eighteen-year-old female.<sup>197</sup> “Victim [number] 2 had been lured to Hartford, CT. from New Hampshire and once she was away from her friends and family, she was held against her will and forced into prostitution.”<sup>198</sup> Victim number 2 stated that at one point, when she refused to comply with one of the accused orders, she was badly beaten, tied up, and rolled up in a rug.<sup>199</sup> “She was told that she was going to be given an overdose of heroin and that Paris and his associates were going to throw her body into the Connecticut River.”<sup>200</sup> “At this point, one of the accused’s associates stopped this assault from proceeding any further, stating that they could still make money off her.”<sup>201</sup> Both victims reported that they had been sold from one pimp and his “manager” to another pimp for \$1,200 when the first pimp grew tired of the victims.<sup>202</sup>

#### 5. United States v. Bagley, et al. (commercial sexual exploitation)

On March 31, 2011,<sup>203</sup> six people were served with a superseding (second) indictment by the State of Missouri and were charged with a number of crimes including sex trafficking.<sup>204</sup> According to this superseding indictment, the following events took place.

Edward Bagley, Sr. (also known as “Master Ed”), his wife Marilyn Bagley, Michael Stokes (also known as “The Rodent”), Bradley Cook (also known as “PutHer2GoodUse”), James Noel, and Dennis Henry lured a sixteen-year-old mentally handicapped girl (identified as FV) to

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195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. HUMAN TRAFFICKING PROSECUTION UNIT, U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIV., UNITED STATES V. DENNIS PARIS, *supra* note 189.

200. *Id.*

201. *Id.*

202. *Id.*

203. The authors recognize that this case has not been fully adjudicated, thus the facts are still open to debate, however the authors believe they are likely to be true in light of the fact that co-defendants have plead guilty to many of the common facts. The authors also concede the victim in this case is a U.S. citizen and would not be eligible for a T-Visa. The intent and function of this fact pattern is to demonstrate the type and kind of mental and physical trauma sexually exploited trafficking victims may be exposed to.

204. *See* Indictment, United States v. Bagley, No. 10–00244 (W.D. Mo. Sept. 8, 2010) (listing the defendants and the crimes they were being charged with committing).

their trailer home in a wooded area near Lebanon, Missouri.<sup>205</sup> The young girl had run away from her home in December 2002.<sup>206</sup> The defendants had promised her a "great life," and also promised to help her become a model and dancer.<sup>207</sup> Reality was outrageously different from all the bountiful promises. Bagley regularly gave FV marijuana and ecstasy, showed her images of pornography and sadomasochistic activities, and sexually abused her.<sup>208</sup> However, "Bagley was not [as] interested in the 'role play' aspect of [bondage, dominance and sadomasochism] BDSM," as he "was focused on the 'objectification' and 'humiliation' of FV."<sup>209</sup> After FV turned eighteen years old, Bagley forced her to sign a "sex slave contract"<sup>210</sup> and convinced her that this legally bound her to him as his slave for the rest of her life.<sup>211</sup> When Bagley suspected FV became pregnant he personally terminated the pregnancy; Bagley aborted several possible pregnancies.<sup>212</sup>

The Bagleys forced FV to work as a stripper at local gentlemen's clubs<sup>213</sup> and "engaged in sexual intercourse and sexual torture activities with [her] to groom and coerce her into becoming a 'sex slave.'"<sup>214</sup> Edward Bagley used every torture method imaginable including "waterboarding."<sup>215</sup> He "beat, whipped, flogged, suffocated, choked, electrocuted, caned, skewered, drowned, mutilated, hung and caged FV" in order to maintain her role as his sex slave.<sup>216</sup> When the suffering grew too great, FV would cry for help, but Bagley would just escalate the torture.<sup>217</sup> Bagley threatened to kill her and demonstrated that he could do

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205. *See id.* at 5.

206. *See id.* at 8 (explaining how F.V. was lured to their home in December 2002).

207. *Id.*

208. Superseding Indictment at 6, 8-12, *Bagley*, No. 10CR00244.

209. Plea Agreement, *United States v. Cook*, No. 10CR00244 (W.D. Mo. Dec. 20, 2011), 2011 WL 7431210 (according to defendant Cook's characterization of Bagley in his plea agreement).

210. *But see* AMY O'NEILL RICHARD, INT'L TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME vi (1999), available at <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf> (contradicting the idea that anyone can contract to be a sex slave). "A person cannot consent to enslavement or forced labor of any kind. The Thirteenth Amendment outlawing slavery prohibits an individual from selling himself or herself into bondage, and Western legal tradition prohibits contracts consenting in advance to assaults and other criminal wrongs." *Id.*

211. Superseding Indictment at 9, *Bagley*, No. 10CR00244.

212. *Id.* at 14.

213. *Id.* at 19-20.

214. *Id.* at 6.

215. *Id.* at 12.

216. Superseding Indictment at 7, *Bagley*, No. 10CR00244.

217. *Id.* at 12.

so with the numerous guns he kept in the home.<sup>218</sup> He also shot several animals that FV “cared for in front of her, and bragg[ed] about the bodies he had already buried in the woods behind the trailer home.”<sup>219</sup> Edward Bagley also “threatened to bury FV alive and showed her a video demonstrating how he intended to do it.”<sup>220</sup> Bagley even “had FV tattooed to mark her as his property,” including “(1) a bar code on her neck; (2) a tribal tattoo on her back with the letter “S.” to mark her as a slave; and (3) the Chinese symbol for slave on her ankle.”<sup>221</sup> Bagley went so far as to sew FV’s “urinary opening and vagina shut” to demonstrate what was “expected of her,”<sup>222</sup> and nailed her nipples to slabs of wood.<sup>223</sup> After he had broken her will, Bagley advertised online that FV was his slave and could be sexually tortured by others during live online sessions or in person.<sup>224</sup> Michael Stokes and Bradley Cook participated as customers who paid Bagley to sexually abuse and torture the girl.<sup>225</sup> Cook stated the abuse FV endured was the “most extreme he had ever seen.”<sup>226</sup> Bagley also forced FV to work as a stripper and kept approximately \$112,000 from her work.<sup>227</sup>

Finally, Bagley went too far—even for him. On February 27, 2009, he tortured FV so horribly that she had a heart attack and was hospitalized.<sup>228</sup> After she returned “home,” Cook tried to kill her at some point between September 28 and December 9, 2010.<sup>229</sup> FV appeared on the cover of the July 2007 edition of *Hustler* magazine’s *Taboo*.<sup>230</sup> Bagley’s

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218. *Id.* at 13. The weapons confiscated from Bagley included: North American Arms, .22 caliber revolver; Ruger, Model Single Six, .22 caliber revolver; Sig Sauer, Model Mosquito, .22 caliber pistol; HS Products, Model XD45, .45 caliber pistol; Colt, Model Commander, .45 caliber pistol; CBC, 12 gauge caliber shotgun; two (2) Ruger, Model 10/22, .22 caliber rifle; Marlin Firearms Co., Model 23, .22 caliber rifle; Remington Arms Company, Model 742, .22 caliber rifle; and a Winchester, Model 67, .22 caliber rifle. *Id.* at 24-25.

219. *Id.* at 13.

220. *Id.* at 14.

221. Superseding Indictment at 9, *Bagley*, No. 10CR00244.

222. *Id.* at 9.

223. *Id.* at 11.

224. *Id.* at 7.

225. *Id.*

226. Plea Agreement, *United States v. Cook*, No. 10CR00244 (W.D. Mo. Dec. 20, 2011), 2011 WL 7431210.

227. Superseding Indictment at 30, *Bagley*, No. 10CR00244.

228. *Id.* at 19. This event prompted federal authorities to begin investigating the Bagleys. Bill Draper, *Marilyn Bagley, Wife Of ‘Master Ed’ Bagley, Pleads Guilty In Sex Slave Case*, HUFFINGTON POST (Dec. 6, 2012, 5:50 PM), [http://www.huffingtonpost.com/2012/12/06/marilyn-bagley-guilty-sex-slave\\_n\\_2253601.html](http://www.huffingtonpost.com/2012/12/06/marilyn-bagley-guilty-sex-slave_n_2253601.html).

229. Superseding Indictment at 26, *Bagley*, No. 10CR00244.

230. Hunter Walker, *FBI Questions Hustler Editor, Photographer in Sex Slave Case*, THE WRAP (Sept. 12, 2010, 6:45 PM), <http://www.thewrap.com/media/column-post/alleged->

photo also appeared in the magazine.<sup>231</sup> Bagley bragged on an online sadomasochism forum that "My slave girl is in Taboo magazine, but it's the July issue, she is in and on the cover . . . . Also, the interview about the slave and myself is in the August issue of Taboo . . . . It was a very fun experience."<sup>232</sup>

Between February 2004 and February 2009, Bagley tortured FV via live web casts.<sup>233</sup> Cook downloaded pictures of FV to his computer, and sent images to Edward Bagley of women he had beaten and bound in his residence, in order "to share ideas with Defendant Bagley of how to abuse FV."<sup>234</sup> Stokes traveled to the Bagleys' residence and engaged in both sexually torturing FV and watching Edward Bagley torture her.<sup>235</sup> Stokes gave Bagley "steaks, cigarettes, coats, clothing, lighters, and cash," and paid \$1,000 for Bagley to transport FV to California in December 2006 for a photo shoot in which FV performed various deviant sexual acts.<sup>236</sup> Stokes also paid Bagley \$300 to build a home-made device to sexually torture FV.<sup>237</sup> Noel, Henry, and Stokes all pleaded guilty to conspiracy to commit sex trafficking.<sup>238</sup> Cook has pleaded guilty to sex trafficking with an expected twenty-year sentence.<sup>239</sup>

These situations demonstrate that traffickers brutalize their victims who come to bear a whole host of human rights violations.<sup>240</sup> Governments should be better informed of scenarios that trafficked victims are

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sex-slave-appeared-hustler-photoshoots-20766. She was photographed with fetish model Anastasia Price by Hollywood photographer Ken Marcus. *Id.* F.V. appeared in the magazine again the following month in an interview discussing her relationship with Bagley accompanied by photographs taken by Bagley. *Id.*

231. *Id.*

232. *Id.*

233. Superseding Indictment at 13, *Bagley*, No. 10CR00244.

234. *Id.* at 16.

235. *Id.* at 17-18.

236. *Id.* at 18.

237. *Id.*

238. Bill Draper, *Marilyn Bagley, Wife Of 'Master Ed' Bagley, Pleads Guilty In Sex Slave Case*, HUFFINGTON POST (Dec. 6, 2012, 5:50 PM), [http://www.huffingtonpost.com/2012/12/06/marilyn-bagley-guilty-sex-slave\\_n\\_2253601.html](http://www.huffingtonpost.com/2012/12/06/marilyn-bagley-guilty-sex-slave_n_2253601.html).

239. *Id.* Marilyn Bagley has also admitted participation with her husband in an offered plea agreement. *Id.*

Bagley pleaded guilty to conspiracy to commit sex trafficking in exchange for prosecutors dropping all other charges against her and recommending that she serve only probation. If the judge rejects the recommendation, she can plead not guilty again and go to trial. There was no indication of when the judge might rule on the matter. *Id.*

240. See THE CRIME OF HUMAN TRAFFICKING: A LAW ENFORCEMENT GUIDE TO IDENTIFICATION AND INVESTIGATION, *supra* note 140 (discussing the abuses likely to be enacted against victims of human trafficking, the trauma that they face, and the likely complications law enforcement agents will face when working with such victims).

likely to face. It is through this deeper understanding that they are in a better position to weigh all factors and reasonably analyze the dynamics.

## V. T-VISA APPLICATION AND SUPPORTING EVIDENCE

While the T-Visa is multi-faceted, the focus of our discussion is on law enforcement cooperation. Each T-Visa applicant must demonstrate that he or she has complied with any reasonable request for assistance by law enforcement with the investigation or prosecution of the trafficking act.<sup>241</sup> As illustrated above, victims of human trafficking commonly endure extreme trauma, thus placing them in a position of appearing non-compliant with law enforcement.

### A. Procedural Requirements

“Reasonableness” depends on the “totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including the fear, severe traumatization (both mental and physical), and the age and maturity of young victims.”<sup>242</sup> This definition fails to provide clear guidance and decisive bright line rules of application. Some law enforcement agencies may interpret all requests to be “reasonable requests,” and each agency may have a much higher standard in determining whether a victim has fully complied with, and assisted, in the investigation of the underlying trafficking case.<sup>243</sup> The current standard gives law enforcement and prosecutors tremendous discretion in determining whether a victim has complied and, thus, whether a person is eligible for law enforcement certification, which is crucial to obtaining a T-Visa.<sup>244</sup> There is an array of reasons why a certification may not be issued, which provides no indication of the level of cooperation by the vic-

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241. 8 C.F.R. § 214.11(d)(1), (d)(2)(vi), (h) (2009); I-914 FORM: APPLICATION FOR T NONIMMIGRANT STATUS, *supra* note 40, at 2.

242. *Id.* § 214.11(a).

243. See HUMAN TRAFFICKING AND THE T-VISA, *supra* note 2 (explaining the requirement that applicants assist law enforcement officials with all reasonable requests); see also Marisa Silenzi Cianciarulo, *Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Human Trafficking*, 7 NEV. L.J. 826, 832–34 (2007) (discussing the cultural and legal barriers between law enforcement agencies and victims of human trafficking).

244. 8 C.F.R. § 214.11 (2009). Victims under the age of eighteen are not required to cooperate with law enforcement. *Id.* Also, while victims may apply for T-Visas without certification from law enforcement, they have to provide extensive corroborative/secondary evidence to show that they are victims of trafficking. *Id.* Law enforcement certification qualifies as primary evidence. *Id.*

tim.<sup>245</sup> Scenarios include: the law enforcement agency has not responded to a victim's report of a trafficking incident, the law enforcement agency has not been able to complete interviews needed for them to determine that the victim is a trafficking victim, or the law enforcement agency has a policy not to provide certifications or has a timeline for providing certifications.<sup>246</sup> These are hurdles that are out of the control of the victim and should not prevent an eligible victim from their fully entitled benefit.

The Law Enforcement Agency<sup>247</sup> (LEA) endorsement provides the only prima facie evidence of the applicant's reasonable compliance with a request.<sup>248</sup> While the law enforcement endorsement is not a mandatory part of the T-Visa application, it will most easily satisfy the required element. If the applicant does not provide an LEA endorsement, secondary evidence may include an affidavit outlining a good faith attempt to obtain an endorsement or other supporting witness statements.<sup>249</sup> The regulations require an applicant to have contact with an LEA regarding the acts of severe forms of trafficking in persons to be eligible for the T-Visa.<sup>250</sup> In the Violence Against Women Act 2005, Congress made changes to TVPA by including provisions that law enforcement cooperation is not required for trafficking victims whose physical or psychological trauma impedes their ability to cooperate with law enforcement.<sup>251</sup>

#### B. *Type and Form of Secondary Medical Evidence*

If an applicant were to consider submitting an application without LEA certification, based on the physical or psychological trauma sustained, how could the victim support a claim? While there are international protocol standards for forensic medical examination of victims, including the victims of torture and sexual violence, standards are not yet available for the examination of trafficking victims.<sup>252</sup> The complexity of human trafficking and the varied forms of victimization makes the crea-

245. See HUMAN TRAFFICKING AND THE T-VISA, *supra* note 2 (indicating scenarios in which a certification may not be issued).

246. See *id.* (indicating scenarios in which a certification may not be issued).

247. 8 CFR § 214.11(a) (2012). A LEA is defined as a Federal law enforcement agency charged with detection, investigation, or prosecution of trafficking cases. *Id.* LEAs include U.S. Attorney's Offices, Department of Justice's Criminal and Civil Rights Divisions, the Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement of the Department of Homeland Security, the United States Marshals Service, and the Department of State's Diplomatic Security Service. *Id.*

248. *Id.* § 214.11(h)(1).

249. *Id.* § 214.11(h)(2).

250. *Id.*

251. INA § 101(a)(15)(T)(iii); 8 U.S.C. § 1101(a)(15)(T)(iii) (2012).

252. See Djordje Alempijevic et al., *Forensic Medical Examination of Victims of Trafficking in Human Beings*, 17 TORTURE 117, 119 (2007) available at <http://www.ncbi.nlm.nih>.

tion of standard guidelines and protocols complicated.<sup>253</sup> However, there are a series of common medical evidence records, and other current practices, that should be reasonably inferred as sufficient.

Evidence of physical trauma suffered can be provided with photographic evidence of bruises and injuries, police reports, medical reports, and affidavits by witnesses.<sup>254</sup> Physical health problems related to prostitution or sexual slavery, which includes sexually transmitted diseases, vaginal and rectal trauma, unintended pregnancies, infertility, and urinary tract infections in minors and should support such a claim.<sup>255</sup> Victims forced into sex work often experience severe physical violence including being kicked while pregnant, burned, punched, thrown against a wall or floor, hit with bats or other objects, and dragged by the hair.<sup>256</sup> Victims may have lacerations, bruises, scars, burns, bite marks, and bald patches where hair has been torn out.<sup>257</sup>

According to the Department of Justice, “evidence of psychological trauma suffered can be provided through medical reports or affidavits by medical personnel.”<sup>258</sup> “Anti-trafficking service providers are experts and their affidavits will be considered as critical supporting evidence. These affidavits are extremely critical when the victim is submitting an application with no [law enforcement] certification.”<sup>259</sup> It is advised that when these service providers prepare their affidavits they take extreme care and make sure to be thorough and complete in their description of the client’s trauma.

Accepting psychological medical evidence of PTSD is not a new process for the Federal Government. The Department of Veterans Affairs and the Social Security Administration both have procedures for assessing applications claiming PTSD to receive special benefits from which we can derive guidance of the type and form of supporting evidence. PTSD

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gov/pubmed/17728488 (explaining the difficulty in creating an objective standard for the definition of trafficking victims).

253. *See id.* (describing how this difficulty arises from the broad range of circumstances in human trafficking).

254. HUMAN TRAFFICKING AND THE T-VISA, *supra* note 2 (explaining the ways in which evidence of physical abuse may be provided).

255. *See Sabella, supra* note 100 (listing a number of the physical health problems experienced by women in human trafficking).

256. *See id.* (describing the atrocities inflicted on human trafficking victims).

257. *See id.* (showing physical evidence of the ravages of human trafficking); *see also* Alyse Faye Haugen, *When It Rains, It Pours: The Violence Against Women Act’s Failure to Provide Shelter from the Storm of Domestic Violence*, 14 SCHOLAR 1035, 1043 (2012) (describing how violence, particularly against women, can become accepted and even commonplace).

258. HUMAN TRAFFICKING AND THE T-VISA, *supra* note 2.

259. *Id.* at 13.

was originally created to describe mental health injuries for war combatants and disaster victims.<sup>260</sup> Title 38, Section 3.304(f) of the Code of Federal Regulations, allows Veterans Affairs to bestow special services for veterans suffering from PTSD.<sup>261</sup> A rightful claim must demonstrate medical evidence of a clear and current diagnosis of PTSD, a causal linkage between current PTSD symptoms, and an in-service/combat PTSD stressor supported by credible evidence.<sup>262</sup> The veteran's lay testimony alone can establish the claimed stressor occurred.<sup>263</sup> The same applies to stressors related to captivity where evidence demonstrates that the veteran was a prisoner-of-war.<sup>264</sup> If the claimed stressor is not related to combat, the veteran is given an exhaustive list of forms of evidence from which they must prove its existence.<sup>265</sup> The evidence includes medical or personnel records, unit records, or witness affidavits.<sup>266</sup> Veterans Affairs form number 21-0960P-3 is available for the applicant to supply their treating psychiatrist, psychologist, licensed clinical social worker (LCSW), or a nurse practitioner.<sup>267</sup> This short, six-page form asks for relatively brief descriptions of differentiation of symptoms, clinical findings, and a six-part checklist of PTSD criterion.<sup>268</sup> Over the years, the Department of Veterans Affairs has conducted millions of these evalua-

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260. CLAWSON ET AL., *supra* note 70.

261. 38 C.F.R. § 3.304(f) (2011); *see also* Bradley A. Fink, *Presume Too Much: An Examination of How the Proposed Combat PTSD Act Would Alter the Presumption of A Traumatic Stressor's Occurrence for Veterans*, 2 VETERANS L. REV. 221, 222 (2010) (describing the process of these special services).

262. 38 C.F.R. § 3.304(f) (2011).

263. *Id.* § 3.304(f)(1).

264. *Id.* § 3.304(f)(4).

265. *Id.* § 3.304(f)(5).

Examples of such evidence include, but are not limited to: records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians; pregnancy tests or tests for sexually transmitted diseases; and statements from family members, roommates, fellow service members, or clergy. Evidence of behavior changes following the claimed assault is one type of relevant evidence that may be found in these sources. Examples of behavior changes that may constitute credible evidence of the stressor include, but are not limited to: a request for a transfer to another military duty assignment; deterioration in work performance; substance abuse; episodes of depression, panic attacks, or anxiety without an identifiable cause; or unexplained economic or social behavior changes.

*Id.*

266. *Id.*

267. DEPT OF VETERANS AFFAIRS, REVIEW POSTTRAUMATIC STRESS DISORDER (PTSD) DISABILITY BENEFITS QUESTIONNAIRE OMB NO. 2900-0779 (2010), *available at* <http://www.vba.va.gov/pubs/forms/VBA-21-0960P-3-ARE.pdf>.

268. *Id.*



tions.<sup>269</sup> While a service member may enjoy special deference in the burden of proof threshold in demonstrating their PTSD injury, as compared to victims of trafficking, the type and form of evidence the government is willing to accept as corroboration should remain static.

The applicant, assisted by counsel, should build a mosaic of evidence that demonstrates the progression of trauma and why the victim is not able to reasonably cooperate with LEA requests. No one piece of evidence should be assessed in a vacuum. It should be the totality of medical evidence and findings coupled with police reports, witness statements, case-worker affidavits, as well as the personal statement by the victim upon which a final decision should be made. In applying a “totality of evidence” approach, the absence of any one type or form of evidence should not render an applicant’s application incomplete, thus ineligible for relief.

With the over-arching concerns of consistent application of law and the concern that victims are treated with due care,<sup>270</sup> ICE should design and promulgate a PTSD form specifically tailored for victims of trafficking, specifically allowing their treating psychiatrist, psychologist, LCSW, or a nurse practitioner to clearly document the victim’s PTSD. This form could be very similar if not identical to Veterans Affairs form number 21-0960P-3.<sup>271</sup>

## VI. T-VISA APPLICATION AND THIRD PRONG ANALYSIS

T-Visa applicants—whether “nonimmigrants” or “derivative family members”—or their sponsors must submit a completed I-914 Form<sup>272</sup> with all necessary documentation and evidence to demonstrate eligibility,<sup>273</sup> including a personal statement describing the nature of the appli-

269. Bryan A. Liang and Mark S. Boyd, *PTSD in Returning Wounded Warriors: Ensuring Medically Appropriate Evaluation and Legal Representation Through Legislative Reform*, 22 STAN. L. & POL’Y REV. 177, 199–200 (2011).

270. TRAFFICKING IN PERSONS REPORT *supra* note 3, at 14.

271. DEP’T OF VETERANS AFFAIRS, *supra* note 267.

272. 8 C.F.R. § 214.11(d)(1) (2009). The I-914 form is the specific application for T nonimmigrant status required by the Department of Homeland Security and is available at <http://www.uscis.gov/files/form/i-914.pdf>. *Id.*

273. *Id.* This information and a more general discussion of the process and forms necessary are available at the U.S. Citizenship and Immigration Services website and in the instructions for Form I-914. Specifically, though, the applicant must provide evidence demonstrating that they meet all the eligibility requirements criteria for a T-Visa: that they are a victim of a severe form of trafficking in persons, are physically in the United States on account of being a trafficking victim, complied with all reasonable law enforcement requests or doesn’t have to due to extenuating circumstances, and that they would “suffer extreme hardship involving unusual and severe harm” if removed from the U.S. 8 C.F.R. § 214.11(d)(2)(iv)–(vii) (2009).

cant's trafficking experience,<sup>274</sup> and three current passport-size photographs.<sup>275</sup> The I-914 application is a nine-page form divided into eight parts. Part C is particularly significant because it is the section in which the trafficking victim applicant will demonstrate that he or she has complied with all statutory elements.<sup>276</sup> This includes supporting evidence demonstrating they were a "victim of a severe form of trafficking in persons,"<sup>277</sup> "will suffer extreme hardship involving unusual and severe harm upon removal,"<sup>278</sup> and that the applicant has complied with all reasonable requests<sup>279</sup> from LEA<sup>280</sup> during the investigation and prosecution process.<sup>281</sup>

The form requests the applicant to state whether or not he or she is submitting a LEA endorsement which would attest to whether or not the victims complied with all reasonable LEA requests.<sup>282</sup> Without this endorsement it is unlikely that applicants will be successful in receiving their visa. History has shown that the federal government has not been compassionate to the plight of nonimmigrants,<sup>283</sup> even when their presence in

274. I-914 FORM: APPLICATION FOR T NONIMMIGRANT STATUS, *supra* note 40, PART C.

275. 8 C.F.R. § 214.11(d)(2)(ii) (2009).

276. I-914 FORM: APPLICATION FOR T NONIMMIGRANT STATUS, *supra* note 40, PART C.

277. *Id.*

278. *Id.* This Article will not go into detail on this "prong" of the T-Visa application, but it should be noted that this is an extremely hard burden to meet because the undocumented immigrant must not just establish that he or she would experience extreme hardship if removed, but that hardship must also involve "unusual and severe harm." *Id.* This is an extreme hardship standard and simply proving extreme hardship will not suffice. *Id.* In a case involving a Filipino T-Visa applicant, who had law enforcement certification, the application was denied. Despite circumstances such as financial hardships, lack of access to necessary medical care, lack of legal recourse against his traffickers, and potential harm from his traffickers, it was initially determined, and upheld on appeal that the applicant did not prove he would suffer extreme hardship involving unusual and severe harm should he return to the Philippines. *See also* 16–17 BENDER'S IMMIGR. BULL. 6 (2011) (discussing the importance of these visas in helping victims put off removal from the United States).

279. 8 C.F.R. § 214.11(a) (2009) "The 'reasonableness' of the request depends on the totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical), and the age and maturity of young victims." *Id.*

280. 8 C.F.R. § 214.11(a) (2009).

281. I-914 FORM: APPLICATION FOR T NONIMMIGRANT STATUS, *supra* note 40, PART C, QUESTION 1.

282. *Id.* at PART C, QUESTION 2. If the applicant is submitting a LEA endorsement, he or she must submit as part of the application Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.).

283. *See generally* Leticia Saucedo, *A New "U": Organizing and Protecting Immigrant Workers*, 42 U. RICH. L. REV. 891, 893–901 (2008) (describing how the government has

the United States is through no fault of their own.<sup>284</sup> This can be best illustrated when minors, having been trafficked to the United States, are subsequently arrested for prostitution,<sup>285</sup> even though, under federal law, they should have been classified as victims of slavery.<sup>286</sup> Criminalization of the victim is in direct conflict with governmental statements and regulations implemented by Congress signifying victim recovery and rehabilitation should take precedence over the successful investigation and prosecution of a victim's traffickers.

In fact, Form I-914, provided by U.S. Citizenship and Immigration Services,<sup>287</sup> states that the applicant must demonstrate that, “[he or she has] complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution . . . unless [he or she is] under the age of [eighteen].”<sup>288</sup> Federal law does not require that an applicant comply with reasonable LEA requests if he or she is unable to do so because of physical or psychological trauma;<sup>289</sup> however, the instructions to Form I-914 fail to reference this exception. This significant error potentially closes this legitimate avenue of application, and could go underutilized or unexercised without a well-informed victim or legal advocate.

#### A. “Severe Form” of Human Trafficking Requirement

T-Visa eligibility requires the Secretary of Homeland Security<sup>290</sup> make a finding that the applicant “has been a victim of a severe form of trafficking in persons.”<sup>291</sup> “Severe forms” of human trafficking have been defined as: either “sex trafficking<sup>292</sup> in which a commercial sex act<sup>293</sup> is induced by force, fraud or coercion, or in which the person induced to

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continued actions such as ICE workplace raids and increasing immigration enforcement efforts even against undocumented workers who have been exploited by employers, had wages unilaterally cut, and experienced many characteristics of involuntary servitude and debt bondage).

284. See TRAFFICKING IN PERSONS REPORT *supra* note 3, at 14 (“Unfortunately, the arrest, incarceration, and/or deportation of trafficking victims occurs far too often.”).

285. See *id.* (“Research reveals . . . that a considerable number of prostituted minors . . . are arrested every year in many countries, including the United States.”).

286. 22 U.S.C. § 7102(8) (2012).

287. INSTRUCTIONS FOR FORM I-918, *supra* note 48, at 1.

288. *Id.*

289. 8 U.S.C. § 1101 (a)(15)(T)(i)(III)(bb) (2012).

290. *Id.* § 1101 (a)(15)(T)(i)(I). In certain circumstances the Secretary of Homeland Security makes a finding jointly with the U.S. Attorney General. *Id.*

291. *Id.* § 1101 (a)(15)(T)(i)(I).

292. 22 U.S.C. § 7102(9) (2012). Sex trafficking means, “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” *Id.*

293. *Id.* § 7102(3). Commercial sex act is “any sex act on account of which anything of value is given to or received by any person.” *Id.*

perform such act has not attained [eighteen] years of age,"<sup>294</sup> or "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude,<sup>295</sup> peonage,<sup>296</sup> debt bondage,<sup>297</sup> or slavery."<sup>298</sup> Thus, a victim of human trafficking is only eligible for a T-Visa if they were: 1) under the age of eighteen and induced into performing commercial sex acts; 2) were an adult and were induced to perform commercial sex acts by means of force, fraud, or coercion; or 3) performed labor or services for another, by means of force, fraud, or coercion and were not adequately compensated for their services.<sup>299</sup>

### 1. Satisfying T-Visa's Third Prong

If a trafficking victim seeking a T-Visa does not comply with all reasonable LEA requests<sup>300</sup> and is not under the age of eighteen, the only way in which he or she can obtain a T-Visa is if non-compliance occurred as a result of mental or physical trauma.<sup>301</sup> Thus, an applicant seeking to obtain a T-Visa through this route will most likely have survived an extremely abusive and mentally impactful form of human trafficking victimization.<sup>302</sup>

While human trafficking victims can obtain a T-Visa without complying with all reasonable LEA requests, applicants should only consider this

294. *Id.* § 7102(8)(A).

295. *Id.* § 7102(5)(A)–(B). Involuntary servitude involves inducing a person into servitude for another, through any plan or pattern, by means of coercion, such as actual or threatened serious harm or the abuse or threatened abuse of the legal process. *Id.*

296. BLACK'S LAW DICTIONARY 955 (Abridged 8th ed. 2005).

297. 22 U.S.C. § 7102(4) (2012).

298. *Id.* § 7102(8)(B).

299. *Id.* § 7102(8).

300. *See* 8 U.S.C. § 1101(a)(15)(U)(i)(III) (2012) (noting the differences between the level of cooperation, and proof of said cooperation, between T- and U-Visas. Successful U-Visa applicants must help law enforcement in the investigation or prosecution of a crime and subsequently obtain law enforcement certification.). *See also* 8 C.F.R. § 214.14(a)(3)(i) (2012) (noting that law enforcement certification entails a LEA completing a U Non-immigrant Status Certification, Form I-918, Supplement B.); *see also* 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa)–(cc) (2012) (noting that T-Visa applicants must comply with reasonable requests from law enforcement unless they meet the exemption criteria. However, unlike U-Visa applicants, a T-Visa applicant, whether stating he/she has complied with all reasonable law enforcement requests or he/she is exempt from doing so, is *not* required to submit Form I-918B, official law enforcement certification.).

301. *See* 8 C.F.R. § 214.11(h) (2009) (stating that compliance with reasonable requests by law enforcement agencies is required unless the applicant satisfies a specific exception).

302. *Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status*, *supra* note 57 (follow "Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status" hyperlink) (last updated Nov. 22, 2010).

method if they attempted and were unable to comply with law enforcement requests.<sup>303</sup> USCIS is unlikely to treat this exception as an optional choice for the victim.<sup>304</sup> Physical or mental trauma does not give a human trafficking victim carte blanche to disregard all LEA requests.<sup>305</sup> Non-compliance is based on a request-by-request basis; it must be determined that an applicant “is unable to cooperate with a [*LEA reasonable request*] due to physical or psychological trauma.”<sup>306</sup> The statutory language specifically limited non-compliance to single instances of LEA requests and the subsequent non-compliance.<sup>307</sup> The section does not act as an umbrella, covering all of an applicant’s instances of non-compliance due to their physical or mental trauma.

## 2. Legislative Intent Favors Aiding Law Enforcement Over Victims’ Services

Successfully obtaining a T-Visa is a tremendous step forward in the restorative justice and protection of any victim of trafficking.<sup>308</sup> However, regulations and the legislative intent behind the T-Visa prioritize aiding law enforcement’s investigation and prosecution of traffickers over protecting and providing services for the victims. The Congressional Research Service relied heavily upon a policy memorandum indicating “the T classification provides an immigration mechanism for cooperating victims to remain temporarily in the United States to assist in investigations and prosecutions and provide humanitarian protection to the victims.”<sup>309</sup> While providing protection and aid to victims is indeed a major policy for issuing T-Visas, the policy does not clarify which is the primary and secondary goal.

The importance of a T-Visa applicant attempting to comply with LEA requests is also evidenced by the federal government’s acknowledgement that some victims of severe trafficking may not receive a T-Visa. “In view of the annual limit imposed by Congress for T-1 status and the standard of extreme hardship involving unusual and severe harm, [DHS] acknowledges that the T-1 status will not be an appropriate response with respect to many cases involving aliens who are victims of severe forms of traffick-

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303. 8 C.F.R. § 214.11(h)(2) (2009).

304. *Id.*

305. *Id.*

306. *Id.* § 1101 (a)(15)(T)(i)(III)(bb) (emphasis added).

307. *Id.*

308. *Victims of Trafficking and Violence Protection Act (T and U Visas)*, IMMIGR. CENTER FOR WOMEN & CHILD., <http://icwclaw.org/services-available/victims-of-trafficking-and-violence-protection-act-t-and-u-visas> (last visited Dec. 27, 2012).

309. SISKIN & WYLER, *supra* note 50, at 41.

ing.”<sup>310</sup> This language seems to indicate that victims—or survivors—of severe trafficking would not receive a T-Visa because they may be unable to satisfy the fourth prong: conflating the third prong’s analysis requiring applicants to demonstrate “extreme hardship involving unusual and severe harm” if removed from the United States.<sup>311</sup> However, there are two main subjective and limiting factors. First, while a T-Visa applicant must meet the requisite criteria, an application is evaluated by a USCIS official who has wide discretion in issuing a T-Visa.<sup>312</sup> Second, the regulation indicated that the annual statutory quota for T-Visas would limit successful applications; since the T-Visa’s inception, however, USCIS has yet to reach just one year’s statutory limit.<sup>313</sup>

### 3. Federal Regulations: Limiting the Impact of Exceptions to Requiring a Victim Comply with all Reasonable Law Enforcement Agency Requests

While the default rule is that a T-Visa applicant must comply with all reasonable LEA requests, a closer look at the definition of “reasonableness” demonstrates the limited impact these statutory exceptions have. “The ‘reasonableness’ of the request depends on the totality of the circumstances taking into account general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, *severe traumatization (both mental and physical)*, and the age and maturity of young victims.”<sup>314</sup> This illustrates that federal regulations require a USCIS official to consider the traumatization an applicant has experienced when determining the reasonableness of LEA requests to victims.

Noncompliance with LEA reasonable requests due to physical and mental trauma was statutorily added to help legitimate victims who oth-

310. 67 Fed. Reg. 21, 4785 (Jan. 31, 2002).

311. 8 U.S.C. § 1101 (a)(15)(T)(i)(IV) (2012).

312. See DHS, IMPROVING THE PROCESS FOR VICTIMS OF HUMAN TRAFFICKING AND CERTAIN CRIMINAL ACTIVITY: THE T AND U VISA JANUARY 29, 2009, at 9 (2009), available at [http://www.dhs.gov/xlibrary/assets/cisomb\\_tandu\\_visa\\_recommendation\\_2009-01-26.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-26.pdf) (explaining that USCIS reviews both T- and U-Visas); see also *U.S. Citizenship and Immigration Services*, U.S. DEP’T OF HOMELAND SEC., <http://www.uscis.gov/portal/site/uscis> (last visited Dec. 27, 2012) (noting that the Department of Homeland Security is an entity under USCIS).

313. See *supra* Part III.B, T-Visa Approval and Denial Chart (showing that since 2002 only 3,082 T-1 visas have been issued and 5,000 T-1 visas may be issued annually). While the total number of T-Visas issued hasn’t even reached the number allowed in one year, for the past three years, USCIS has approved as many U-Visas as statutorily permitted, 10,000 annually.

314. 8 C.F.R. § 214.11(a) (2009) (emphasis added).

erwise would have been denied an avenue to obtain a T-Visa.<sup>315</sup> By expressly including this exception as a factor in the general rule, the breadth of the exception is remarkably limited, particularly in light of the broad discretion USCIS has when reviewing T-Visa applications.

#### VII. T-VISA'S THIRD PRONG EVIDENTIARY BURDEN

A T-Visa applicant should try to exhaust all possible methods to fully comply with the LEA; however, there may be scenarios where requests simply are not reasonable in light of the trauma the victim has experienced. The reasonableness standard is not only used by USCIS in determining whether to grant a T-Visa,<sup>316</sup> but is also applied by other agencies when considering whether or not to supply a T- (or U-) Visa applicant with law enforcement certification. Unfortunately, it is likely presumed that all LEA requests may be interpreted as reasonable requests, preweighing the discretionary decision against the applicant.<sup>317</sup> In the case, however, in which an applicant has not complied with a reasonable request and is unable to retain an LEA endorsement, DHS will contact LEA to examine a means to resolve the problem.<sup>318</sup>

The extent to which a victim's traumatization is factored into determining the reasonableness of LEA requests hinges upon the victim's ability to provide clear and convincing evidence of such traumatization.<sup>319</sup> There are no cases or regulations directly stating how these factors such as the victim's fear and traumatization are weighed in determining the reasonableness of LEA requests.<sup>320</sup> Are these factors to be gauged on a sliding scale, and then taken in their totality, or does the failure of one factor disqualify the applicant? What is the weight of each factor?

Particularly in light of the "trauma exception" statutory language, the reasonableness of an LEA request should be viewed on a sliding scale, as a victim's trauma can be thought to be conversely related to LEA requests. If a victim has sustained significant trauma, an LEA request

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315. Luis CdeBaca, *Keynote Address: Successes and Failures in International Human Trafficking Law*, 33 MICH. J. INT'L L. 37, 40-41 (2011) (discussing the importance of victim care to obtain successful prosecutions).

316. See HUMAN TRAFFICKING AND THE T-VISA, *supra* note 2 (explaining the role of the "reasonableness standard" in awarding T-Visas).

317. See *Zhiqiang Wu v. Duffy*, No. 11cv0750, 2011 U.S. Dist. LEXIS 44064, at \*2 (S.D. Cal. 2011) (finding plaintiff unlikely to succeed on a claim on the basis that law enforcement has discretion over issuing certification on plaintiff's behalf).

318. HUMAN TRAFFICKING AND THE T-VISA, *supra* note 2.

319. See *id.* at 13 (explaining the significance of an individual having the ability to articulate their traumatic past when applying for a T-Visa).

320. See *id.* at 10 (providing possible exceptions that can be used to demonstrate trauma).

would have to be one with which it is much easier to comply. Thus, if a T-Visa applicant is unable to obtain law enforcement certification, the burden is on the applicant to show either that she has complied with *all* LEA reasonable requests or that noncompliance with an LEA request *was reasonable as documented in an affidavit written by the applicant*.<sup>321</sup>

A. *U-Visa's Requirement of "[Suffering] [S]ubstantial [P]hysical or [M]ental [A]buse"*<sup>322</sup>

When seeking guidance on the T-Visa evaluation process, we may be able to garner insight from the related U-Visa, especially since human trafficking is a qualified crime for U-Visa issuance.<sup>323</sup> Eligibility for a U-Visa requires that an applicant "has suffered substantial physical or mental abuse as a result of having been a victim of [crime]."<sup>324</sup> Whether the abuse the victim sustained constitutes substantial abuse is assessed by a number of factors, including:

The nature of the injury inflicted or suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions.<sup>325</sup>

None of the factors are a prerequisite and the existence of any one factor is not dispositive proof the abuse suffered constitutes "substantial physical or mental abuse."<sup>326</sup> To date, "there are no specific cases that interpret what constitutes 'substantial physical or mental abuse.'"<sup>327</sup> Therefore, it is critical that applicants submit supporting documentation or evidence.<sup>328</sup>

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321. *See id.* at 9 (explaining that a T-Visa applicant may provide an affidavit denoting a good faith effort to obtain LEA endorsement in the case that applicant was unable to provide compliance with obtaining the endorsement).

322. 8 U.S.C. § 1101(a)(15)(U)(i)(I) (2012). The U-Visa is an immigration remedy for nonimmigrants who are victims of specific statutorily chosen crimes and have added law enforcement in the investigation or prosecution of the crime of which they are a victim. *See generally id.* § 1101(a)(15)(U) (discussing the general provisions of obtaining a U-Visa).

323. *See id.* § 1101(a)(15)(U)(iii).

324. 8 C.F.R. § 214.14(b)(1) (2009).

325. *Id.*

326. *Id.*

327. Jean Pierre Espinoza & Jung Choi, *Overview of the U Visa: "Race between Approval and Removal,"* 15 BENDER'S IMMIGR. BULL. 645, 647 (2010).

328. *Id.*



### B. *Proving Mental or Physical Trauma*

Just as it is critical for a U-Visa applicant to provide evidence that he or she suffered substantial physical or mental abuse, it is equally critical for a T-Visa applicant to provide evidence as to why he or she did not comply with a LEA request.<sup>329</sup> First, it is important for an applicant and his or her legal advocate to understand the evidentiary burden presented and how to document the extent of the applicant's trauma before pursuing this option. Suggested issues that an applicant's legal advocate could inquire about in order to determine if applicant's sustained trauma include: if physical injuries were sustained,<sup>330</sup> the nature of the crime against the applicant,<sup>331</sup> if applicant is currently taking medication,<sup>332</sup> and if applicant is under the care of a therapist or doctor.<sup>333</sup> These questions would obviously be tailored to case-specific facts, by the advocate, to better illicit meaningful responses. These answers will help provide the trier of fact with guidance on how to properly weigh the extent of the trauma a victim has sustained and the reasonableness of LEA requests.

For guidance on proving physical or mental trauma, it is helpful to once again turn to regulations concerning U-Visas. A U-Visa applicant must provide proof that his or her substantial physical or mental abuse results from criminal activity.<sup>334</sup> "Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel."<sup>335</sup> Photos of any physical abuse, supported by affidavits of persons who have personal knowledge of the facts of the crime, could also prove helpful.<sup>336</sup> These guidelines create a helpful template in determining what evidence a T-Visa applicant would want to provide in their application to support their claim that an LEA request is unreasonable due to the applicant's underlying physical or mental

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329. See HUMAN TRAFFICKING AND THE T-VISA, *supra* note 2 (explaining that a T-Visa applicant may provide an affidavit denoting a good faith effort to obtain LEA endorsement in the case that applicant was unable to obtain one).

330. IMMIGRANTS' RIGHTS CLINIC, STANFORD LAW SCH., GETTING A U-VISA: IMMIGRATION HELP FOR VICTIMS OF CRIME 31, *available at* [http://www.ilrc.org/files/documents/proseuvisamanual\\_english.pdf](http://www.ilrc.org/files/documents/proseuvisamanual_english.pdf) (last updated Mar. 2012).

331. *Id.*

332. *Id.*

333. *Id.* (discussing the types of questions a U-Visa applicant should address when writing the personal statement they will attach with their application).

334. 8 C.F.R. § 214.14(c)(2)(ii) (2009).

335. *Id.* § 204.2(c)(2)(iv).

336. *Id.* "[A] combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits . . ." may be used by a visa applicant as evidence to prove abuse. *Id.*

trauma.<sup>337</sup> It would also behoove a T-Visa applicant to submit a full psychological examination to support any claim of existing mental trauma.<sup>338</sup> Service providers often recommend that victims of crimes, such as domestic abuse, keep a diary of thoughts, feelings, dreams, and memories.<sup>339</sup>

Evidence of brain trauma can be captured on various types of neurological testing, most prominently in computerized tomography scans.<sup>340</sup> Such evidence could play an integral role in proving both physical and mental trauma. Bruising on the brain and other sustained head injuries could affect cognitive functioning such as memory, attention, and understanding language,<sup>341</sup> all of which could qualify as physical or mental trauma.

### C. *Balancing Victim Trauma and the "Reasonableness" of LEA Requests*

The reasonableness of any LEA request requires balancing general law enforcement and prosecutorial practices the actual requests made balanced against the nature of the victimization, and the specific circum-

337. It should be reiterated that this will only prove as a guidepost because there are significant differences between U- and T-Visa requirements. For instance, while the U-Visa applicant must establish that he sustained substantial physical or mental abuse, it is undetermined whether that abuse focuses on what the victim-applicant actually felt, or the abuse inflicted by the criminal. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,018, USCIS (Sept. 17, 2007), <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-123038/0-0-0-133528/0-0-0-137708.html>. "The statutory provision does not make clear, however, whether the standard of 'substantial' physical or mental abuse is intended to address the severity of the injury suffered by the victim, or the severity of the abuse inflicted by the perpetrator." *Id.* Because the T-Visa exception to complying with LEA requests focuses explicitly on the trauma felt by the applicant, a USCIS official reviewing an application will give less weight to the severity of the perpetrator's actions in a T-Visa application than in a U-Visa application, although the "nature of the victimization" is a factor in determining the reasonableness of law enforcement requests under the T-Visa. 8 C.F.R. § 214.11(a) (2009).

338. See N.Y. ANTI-TRAFFICKING NETWORK LEGAL SUBCOMM., *supra* note 52, at A-17 (asserting that an applicant in need of counseling as a result of the trauma endured should "consider including a psychological evaluation" in their application packet).

339. See *Domestic Violence*, ASIAN PACIFIC AM. LEGAL CENTER, <http://www.apalc.org/what-we-do/direct-services/domestic-violence-and-family-law/domestic-violence> (last visited Dec. 27, 2012) (addressing the significance of domestic abuse survivors documenting the abuse they endured).

340. See *Computed Tomography (CT) Scan of the Head and Face*, WEBMD, <http://www.webmd.com/cancer/brain-cancer/computed-tomography-ct-scan-of-the-head-and-face> (last visited Dec. 27, 2012) (stating that CT scans can show evidence of brain injury).

341. Jean-Michel Mazaux et al., *Long-Term Neuropsychological Outcome and Loss of Social Autonomy After Traumatic Brain Injury*, 78 ARCH. PHYS. MED. REHABIL. 1316, 1316 (1997), available at <http://www.sciencedirect.com/science/article/pii/S0003999397903038>.

stances of the victim, including fear, and severe mental and physical traumatization.<sup>342</sup> It is important that fear was explicitly included in the regulations because fear is a palpable response victims may feel from mental trauma inflicted upon them by their traffickers.<sup>343</sup> There are numerous physical manifestations of fear, such as a myriad of dissociative disorders and the repression of memory.<sup>344</sup> These physical manifestations of fear may make it extremely difficult for victims of human trafficking to comply with LEA requests, especially testifying against their traffickers, or even picking them out of a lineup. This is best demonstrated in the State Department's most recent report on human trafficking that urged governments to seek non-traditional methods of demonstrating their prosecutorial evidence as an alternative to calling the victim to testify (e.g., video testimony) in an attempt to ease the burden on the victim.<sup>345</sup>

### VIII. CONCLUSION

We've learned that victim care is a necessary predicate to successful prosecution, that empowered victims with brave lawyers can make change through civil action, that all survivors should be able to have their voices heard and see their traffickers brought to justice, and that survivors should be welcomed into society with programs like the T-[V]isa, not repatriated after being displayed in court . . . . While noting that the vulnerability of the victims should be taken into account, the Court suggested that if our antislavery statutes were to be updated in order to capture modern concepts of dependency and abuse, it would have to happen through legislation, not through litigation.<sup>346</sup>

As Congress continues to re-evaluate the United States' human trafficking policies, the steps legislators are making to combat this horrific crime are methodical and thoughtfully executed. While the arc of history

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342. See 8 C.F.R. § 214.11(a) (2009) (stating the factors that will be considered when determining the reasonableness of any LEA request).

343. CLAWSON ET AL., *supra* note 70, at 1. "[R]esearchers report that victims often experience multiple layers of trauma including psychological damage from captivity and fear of reprisals if escape is contemplated, brainwashing, and for some, a long history of family, community, or national violence." *Id.* at 1; see *What is Trauma?*, NAT'L INST. OF MENTAL HEALTH, <http://www.nimh.nih.gov/health/publications/helping-children-and-adolescents-cope-with-violence-and-disasters-parents/what-is-trauma.shtml> (last visited Dec. 27, 2012) ("Mental trauma . . . can produce extreme behavior; such as intense fear . . .").

344. Briere & Elliot, *supra* note 69, at 59–60.

345. TRAFFICKING IN PERSONS REPORT *supra* note 3, at 29.

346. CdeBaca, *supra* note 315.

may bend toward justice,<sup>347</sup> to adequately provide immigration services for trafficking victims, it is imperative to recognize and fully credit victims of crime for their experiences. Services and benefits developed for these individuals should account for their foreseeable injuries. The new T-Visa application process will help address previous shortfalls in its initial design and will be judged successful when applied. The alternate avenue of certification should be used only when LEA certification may not be accessible. As previously summarized, the entire T-Visa program is underutilized.

Evidence concerning the physical and mental health consequences of human trafficking is building, thus expanding the work of mental health researchers.<sup>348</sup> Lawmakers and the legal profession should attend to the nexus between human trafficking and immigration policies. When victims are faced with internal mental barriers inhibiting them from assisting in investigation efforts, their reluctance should not automatically be seen as obstruction. A deeper and more nuanced understanding of human trafficking, and the injuries victims are likely to incur, should result in a more flexible immigration policy. The T-Visa was intended to allow for "aggressive prosecution [and] protection of [the] victims."<sup>349</sup> Providing non-law enforcement certification options is necessary change for meaningful application.

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347. *See id.* (addressing the methods used to bring justice to survivors of sex trafficking via legal representation, victim care, and the T-Visa program).

348. *See generally* Oram et al., *supra* note 109 (addressing the extensive research conducted on the sexual, physical and mental health of sex trafficker survivors).

349. 146 CONG. REC. S10139 (daily ed. Oct. 10, 2000) (statement of Sen. Brownback).