The Trafficking Victims Protection Act: The Prosecution of Traffickers, Prevention of Trafficking, and Protection of Victims of a Severe Form of Human Trafficking

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I. INTRODUCTION

Human trafficking is a global issue and the third largest global crime that exploits men, women, and children for forced labor and sex. Congress recognizes that human trafficking continues throughout the world, and at least 700,000 people, mostly women and children, are trafficking in and out international borders. Congress also acknowledges that about 50,000 women and children are trafficking into the United States each year.

Such trafficking occurs by force, fraud, or coercion, and it is an ever-growing industry that profits through the sexual exploitation of people involving activities such as “prostitution, pornography, sex tourism, and other commercial sexual services.” Human trafficking is one of the fastest growing enterprises worldwide, and is perpetrated by organized and sophisticated criminal organizations. The profits made from human trafficking further and advance all types of organized crime in the United States, and threatens the rule of law.

Women and girls who are adversely affected by poverty, discrimination, and a lack of economic and educational opportunities in foreign countries are more likely to become victims of human trafficking. Such indigent women and girls are lured by traffickers by false promises of good economic opportunity, or they purchase children from poor families, and sell them into prostitution or other forced labor.

The issue of human trafficking is a very prevalent and dominant issue on the global scale, and an important issue that needs to be dealt with within the United States. Human trafficking is

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1 22 U.S.C.A. § 7101. In 2012, the U.S. Department of State concluded in their Trafficking in Persons Report that an estimated 27 million people are trafficked worldwide.
2 Id.
3 Id.
4 Id.
5 Id.
6 Id.
7 Id.
a highly organized and underground crime, so reported numbers and statistics on victims and
crime rates are likely to be lower than the true numbers and statistics.

As a result of the issues presented by human trafficking, Congress enacted the
Trafficking Victims Protection Act (herein after “TVPA”) in 2000 to combat human trafficking
in the United States. The altruistic good intentions of the TVPA are misplaced because it places
an emphasis on the prosecution of criminals, rather than providing protection to the victims. In
order for the TVPA to effectively combat human trafficking, it needs to broaden protections and
opportunities for all victims of human trafficking, and not force them to assist the United States
government in the prosecution of their traffickers to be eligible for benefits.

II. THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

The first and most significant piece of U.S. legislation created to combat human trafficking was the Trafficking Victims Protection Act of 2000.

Several courts have stated that the overarching purpose of the TVPA is to “combat trafficking of persons, especially into the sex trade, slavery, and slavery-like conditions, in the United States and countries around the world through prevention, through prosecution and enforcement against traffickers, and through protection and assistance to victims of trafficking.”

Courts also acknowledge that human trafficking “is a widespread form of modern-day slavery,” and that women and girls account for 98% of individuals trafficking to perform sexual acts through force or coercion. Further, courts recognize that the women and girls who are

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8 Aguilera v. Aegis Communications Group, LLC., 72 F.Supp.3d 975, 978 (W.D. Miss. 2014);
Nunas-Tanedo v. East Baton Rouge Parish School Board, 790 F.Supp.2d 1134, 1143
9 American Civil Liberties Union of Mass. v. U.S. Conference of Catholic Bishops, 705 F.3d 44,
48 (1st Cir. 2013).
victims of sex trafficking are “subject to a variety of abuses, including rape and other forms of sexual assault, and they may seek abortions, contraceptives, and other medical services.\textsuperscript{10}"

In 2000, the act established three main ways to combat human trafficking, which is to prosecute traffickers, prevent human trafficking and protect victims and survivors of trafficking.\textsuperscript{11} It also established a federal agency called the Office to Monitor and Combat Trafficking in Persons to monitor and report a Trafficking Persons report every year, and establishes a task force to implement and enforce the provisions of the Trafficking Victims Protection Act. In 2000, the TVPA created a T visa, which allows victims of human trafficking to become temporary U.S. residents in order to assist in their protection from traffickers.\textsuperscript{12}

Congress has the ability to reauthorized the act every few years to implement necessary changes. For example, in 2003 the act established a right for victims of human trafficking to file civil lawsuits against their traffickers in the courts. The Ninth Circuit Court of Appeals added more substance to legal remedies for victims in 2011 when it held that the, “TVPA permits recovery of punitive damages because it creates a cause of action that sounds in tort and punitive damages are available in tort actions under the common law.\textsuperscript{13}"

Although the TVPA instituted different avenues for victims of trafficking to seek relief from the horrors they face each day, the act is still flawed. Provisions within the TVPA are more centralized and focused around the prosecution of traffickers, and such provisions compromise the act’s ability to protect victims and prevent trafficking. Further, immigration issues, legislation and partisanship clash with the altruistic goals of the TVPA. As a result, the TVPA is

\textsuperscript{10} Id
\textsuperscript{11} Ditullio v. Boehm, 662 F.3d 1091, 1093 (9th Cir. 2011).
\textsuperscript{12} 8 U.S.C.A. § 1011 (a)(15)(T)(i)(I)
\textsuperscript{13} Ditullio v. Boehm, 662 F.3d. 1091, 1094 (9th Cir. 2011).
unable to achieve all of the goals its seeks, and goals set by alternative legislation contradict
TVPA goals and at times, exacerbates problems created by human trafficking.

a) Research on Domestic and International Trafficking

The TVPA tasks the President and his constituents with carrying out research, including
providing grants to both governmental and non-governmental organizations to further the
purposes of the statute. The research subsection of the TVPA includes a non-exhaustive list the
President and his constituents, such as the Council of Economic Advisors, the National Research
Council of the National Academies, the Secretary of State, the Secretary of Health, the Attorney
General, the Secretary of Health, and others should learn about concerning trafficked victims

The said list includes, but is not limited to: “The economic causes and consequences of
trafficking in persons; the effectiveness of programs and initiatives funded or administered by
Federal agencies to prevent trafficking in persons and to protect and assist victims of trafficking;
the interrelationship between trafficking in persons and global health risks, particularly
HIV/AIDS;... the interrelationship between trafficking in persons and terrorism, including the
use of profits from trafficking in persons to finance terrorism; and effective mechanism for
quantifying the number of victims of trafficking on a national, regional, and international
basis...; [and] the abduction and enslavement of children as soldiers.

The aforementioned research shall be collected and used for the purposes of combating
human trafficking by the Human Smuggling and Trafficking Center. The Interagency Task

\[15\] Id
\[16\] Id at (a)(1-6).
\[17\] 22 U.S.C.A. § 7109a (b) (1)
Force to Monitor and Combat Trafficking should also use the data to combat human trafficking in a manner consistent with the goals of the TVPA.\textsuperscript{18}

b) Award for individuals who show “extraordinary efforts” to combat human trafficking.

The TVPA establishes an award known as “Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons,” for the President to give to individuals who are United States citizens or foreign nationals for their “extraordinary efforts to combat trafficking in persons.”\textsuperscript{19} The President may not give the award to more than 5 individuals each year.\textsuperscript{20}

c) The Interagency Task Force to Monitor and Combat Trafficking

The TVPA gave the President authority to establish an “Interagency Task Force to Monitor and Combat Trafficking.”\textsuperscript{21} Further, the TVPA appointed the Secretary of State as the Chairman of the Task Force.\textsuperscript{22}

The Task Force is assigned with the responsibility of gathering information and data pertaining to the extent of human trafficking within the United States and to measure and evaluate the United States’ progress in combating trafficking.\textsuperscript{23} Additionally, the agency must collect data concerning ascertained individuals charged with human trafficking, the prosecution of these individuals, ascertained victims, and any role federal agencies took up in the prosecution traffickers and assisting victims.\textsuperscript{24} The Task Force must examine the internal workings of “sex

\textsuperscript{18} 22 U.S.C.A. § 7109(b)(2).
\textsuperscript{19} 22 U.S.C.A. § 7109b(a)(1).
\textsuperscript{20} Id.
\textsuperscript{21} 22 U.S.C.A. § 7103
\textsuperscript{22} Id.
\textsuperscript{23} Id.
\textsuperscript{24} Id.
tourism” in the United States and act as a consultant to Congress and other governmental agencies that are working towards combating the epidemic.25

d) Prevention of Human Trafficking.

The President is tasked with establishing and carrying out programs to heighten economic opportunity for people who may be a “potential victim” or trafficking as a means to prevent trafficking.26 Such programs include: job counseling; initiatives to “promote women’s participation in economic decision-making;” programs to keep children “especially girls,” in elementary schools, and grants to nongovernmental organizations to advance the “roles and capacities” of women in their countries.27

Notably, the President also has the authority to establish and carry out programs of border interception of human trafficking outside of the United States.28 This provision focuses on assisting nongovernmental organizations provide for victims and survivors of trafficking.29

The TVPA makes it a crime to traffic people with respect to forced labor, involuntary servitude, and slavery.30 Further, the act makes it a criminal offense for a person to confiscate a trafficked victim’s documentation in furtherance of a trafficking crime.31 Since the enactment of the TVPA, many states have adopted their own trafficking statutes.32 The TVPA subjects traffickers to fines and/or imprisonment, and permits victims of trafficking to receive restitution in criminal proceedings against their traffickers.33

25 \textit{Id.}
27 \textit{Id} at (a).
28 \textit{Id} at (c).
29 \textit{Id.}
30 22 U.S.C.A. § 7101
31 \textit{Id.}
32 \textit{Id.}
33 \textit{Id.}
e) Assistance to Victims of “Severe” Forms of Human Trafficking and the Prosecution of Their Traffickers.

The TVPA recognizes that victims of trafficking are usually unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, such as the United States.\(^{34}\) The TVPA also recognizes that trafficked victims are often subjected to coercion and intimidation by their traffickers.\(^{35}\) The TVPA also recognizes that trafficked victims are in constant fear of retribution by their traffickers or in fear that they will be removed into their origin countries where they will face other hardship.\(^{36}\) As a result, victims of human trafficking will find it difficult or impossible to report the crimes committed against them or assist in the prosecution of their traffickers.\(^{37}\)

Regardless of the Act’s recognition of the foregoing truths victims face every day, the TVPA mandates that the victim’s assist the United States in the prosecution of their traffickers to receive the assistance the Act provides.

To be eligible for benefits provided by the government, a victim of sex trafficking must fall within the category of a “severe form of trafficking.” The TPVA defines a “victim of a severe form of trafficking” as a person who was trafficked in a:

a) a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

b) 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, peonage, debt bondage, or slavery.\(^{38}\)

\(^{34}\) 22 U.S.C.A. § 7101

\(^{35}\) Id.

\(^{36}\) Id.

\(^{37}\) Id.

\(^{38}\) 22 USCA § 7102
As an alternative, a “victim of severe form of trafficking” can also be defined as, a victim who is willing to assist the United States “in every reasonable way” in the investigation and prosecution of traffickers, unless they are unable to cooperate due to physical or psychological trauma. In addition, for a victim to fall under the category eligible for benefits as a “victim of a severe form of trafficking,” he or she must have made a bona fide application for a T visa that has not been denied.

If an alien immigrant victim of human trafficking does not qualify as a victim of “severe trafficking,” he or she will not be eligible for assistance from the plethora of benefits under Federal and State funded programs such as benefits provided by: The Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation.

In discussing the application of the Trafficking Victims Protection Act, the Ninth Circuit stated, “Congress intended to ‘reach cases in which persons are held in a condition of servitude through nonviolent coercion’... and the means used by modern-day traffickers are increasingly subtle.” However, not all bad employer-employee relationships will constitute forced labor. It was the legislature’s intent to address serious trafficking, and the threat considered from the viewpoint of a reasonable person in the shoes of the victim must be sufficiently serious to force that person to stay in that situation of serious trafficking.

Furthermore, the Trafficking Victims Protection Act defines assisting the United States “in every reasonable way” as requiring the victim to identify people who has committed

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40 Id.
41 U.S. v. Dann, 652 F.3d 1160, 1169 (9th Cir. 2011).
42 Id. at 1170.
43 Id.
trafficking, identifying the trafficker’s location, testifying against the trafficker and responding to and cooperating with requests made by the government.\textsuperscript{44} If the trafficked victim is a United States citizen or lawful permanent resident, he or she is not required to assist the government in every reasonable way in the prosecution of their trafficker to be eligible for the aforementioned benefits.

Although Congress allocated up to $12,500,000 to the U.S. Department of Health and Human Services to “expand benefits and services” to victims of human trafficking, only victims of “severe forms of trafficking” receive medical care; are provided protection if their safety is at risk; and have access to information about their rights and translation services.\textsuperscript{45} Therefore, the Department of Health and Human Services implemented the “severe victim” services mandate of the TVPA by providing grants to private providers on a case-by-case basis.\textsuperscript{46} In 2006, the Department of Health and Human Services started to delegate its duties to non-governmental organizations within “its oversight umbrella.\textsuperscript{47}"

One such non-governmental organization the Department of Health and Human Services enlisted was the United States Conference of Catholic Bishops (hereinafter “USCCB”). The USCCB, as a Catholic organization, created a “conscience exception” to ensure that their “victim service funds are not used to refer or fund activities that would be contrary to [their] moral convictions and religious beliefs.\textsuperscript{48}” As a result, from 2008-2011 more than $3,500,000 allocated to the USCCB was not provided to subcontractors who provide or refer victims of

\textsuperscript{44} 22 U.S.C.A. § 7105 (1) (E).
\textsuperscript{47} id.
\textsuperscript{48} id at 467.
severe trafficking for abortion services or contraceptive materials. The District Court held that, the Department of Health and Human Services permitting a Catholic organization to exclude certain services for victims of severe trafficking, funded by taxpayers, due to deeply held religious beliefs was a violation of the "separation of church and state." 

Although the Department of Health and Human Services did not renew their contract with the USCCB when the contract expired in 2011, the 1st Circuit Court heard the appeal by the Defendants USCC and Department of Health. The Circuit Court vacated the judgement in the District Court, and remanded with instructions to dismiss because the matter was moot. The 1st Circuit vacated the judgement by the District Court to eliminate its "binding effect, and clear the path for future relitigation should it be necessary."

The Trafficking Victims Protection Act Provides Civil Remedies to Victims of Trafficking.

In 2003, Congress enacted a civil-remedy provision within the TVPA allowing victim of human trafficking to seek compensation for their economic losses as well as losses incurred for pain and suffering against their trafficker. Victims may also seek relief for violations of federal and state labor laws. The civil-remedy provision permits actions by private parties for violations of the TVPA, which states:

"In addition to any domestic of extra-territorial otherwise provided by law, the courts of the United States have extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit an offense) under [the provisions of the TVPA] if:

49 Id at 477.
50 Id at 488.
51 American Civil Liberties Union of Mass. v. U.S. Conference of Catholic Bishops, 705 F.3d 44, 57 (1st Cir. 2013)
52 Id at 58.
53 18 U.S.C.A § 1596(a).
54 Id.
1) an alleged offender is a national of the United State or an alien lawfully admitted for permanent residence; or
2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender.\textsuperscript{55}

The 2003 amendment to the Trafficking Victims Protection Act expressly granted federal United States courts extra-territorial jurisdiction as substantive, rather than procedural; and thus, it removed a previously available defense of extraterritoriality and expanded a class of plaintiffs that could bring suit in American courts.\textsuperscript{56} However, the amendment cannot be applied retroactively since that would increase potential liability of defendants for past conduct.\textsuperscript{57}

Before or at the conclusion of all criminal and civil proceedings against the trafficker, the victim alien who assisted in the United States’ prosecution may be deported.\textsuperscript{58}

f) The Trafficking Victims Protection Act and the T Visa Requirement.

Congress created the nonimmigrant T-Visa as a part of the Trafficking Victims Protection Act in 2000. The purpose of the Visa was to increase the ability of law enforcement agencies to prosecute traffickers, while offering protection to the victims of such crimes.\textsuperscript{59} Furthermore, the T-Visa was intended to encourage law enforcement to report crimes of human trafficking to the Federal and State government and to report the numbers of exploited aliens who are not lawful immigrants of the United States.\textsuperscript{60}

Moreover, the T-Visa was created to give law enforcement officials a “means to regularize the status of cooperating individuals during investigations or prosecutions.”\textsuperscript{61}

\textsuperscript{55} Id.
\textsuperscript{57} Id.
\textsuperscript{58} 22 U.S.C.A. § 7105 (3) (A).
\textsuperscript{60} Id.
\textsuperscript{61} Id.
Congress limited the number of any alien who may obtain a T-Visa each year to 250 people each year. The number of aliens who may receive a T-Visa as nonimmigrants, if they are “in possession of critical reliable information concerning a criminal organization or enterprise,” may not exceed 200 each year. Furthermore, the government cannot issue more than 50 T-Visas each year to nonimmigrants, if they are willing to supply critical reliable information concerning their traffickers to the Federal or State government; and their continued presence in the United States is essential to the successful prosecution of the trafficker. A victim of severe human trafficking may satisfy the compliance with government officials requirement as long as the victim has “complied with any reasonable request for assistance in the investigation or prosecution” of their trafficker.

The validity of a T-Visa may not exceed three years, unless the Attorney General extends the period of admission as a nonimmigrant. In matters concerning human trafficking, any Federal or State law enforcement official, prosecutor or judge may extend the period of admission for a victim of severe human trafficking if they certify that the victim’s presence in the United States is necessary for the investigation or prosecution of the trafficker. The ability to issue a T-Visa to a victim of human trafficking is not mandatory, and is at the discretion of the issuer only if the issuer has responsibility pertaining to the investigation or prosecution of the trafficker.

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64 Id.
68 Id at (o)(1)
The United States Citizenship and Immigration Services has sole jurisdiction over T-visa applications, not the Interagency Task Force to Monitor and Combat Trafficking, which was created by the TVPA.\textsuperscript{70}

g) The Trafficking Victims Protection Act loosened stringent requirement for minor immigrant children to obtain legal status in the United States.

When Congress enacted the Trafficking Victim Protection Act in 2008, its intent was to expand the Special Immigrant Juvenile status from the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security, to include protection for minor children victims of human trafficking.\textsuperscript{71}

Prior to 2008, for a minor immigrant to obtain Special Immigrant Juvenile status in the United States, the minor must be eligible for long-term foster care.\textsuperscript{72} The TVPA replaced the said language, “requiring that the child not be able to reunify with “I or both” parents because of ‘abuse, neglect, abandonment, or a similar basis’ under state law.”\textsuperscript{73} The legislature who enacted the Trafficking Victim Protection Act reasoned that such rights should be afforded to juveniles when it is not in their “best interest” to be returned to his or her parents’ previously country of nationality, when it is likely the child will suffer from some form of abuse when deported.

III. JOHN FINNIS’ THEORY OF JUSTICE AND THE SEVEN BASIC GOODS.

John Finnis’ book on “Natural Law & Natural Rights (Second Edition),” is an authoritative restatement of natural law and the philosophy of law. The book outlines Finnis’ theory on the seven basic requirements for human good, providing an explanation as to why

\textsuperscript{70} 8 C.F.R. § 214.14(c)(1)
\textsuperscript{72} 8 U.S.C.A. § 1101 (a)(27(J)(i).
\textsuperscript{73} Id.
people think and act the way they do. Finnis' seven basic goods are: life, knowledge, play, aesthetic experience, sociability, practicable reasonableness, and religion.

The rest of this article will apply how Finnis' theory of the requirements for human good; life, knowledge, sociability, and practicable reasonableness, are of concern to the Trafficking Victim Protection Act, and how Finnis' theory can further the good-willed goals of the TVPA if applied properly.

a) Life

According to Finnis, in order to enjoy a rational plan of life, one must have a harmonious set of purposes and orientation. He states that, "it is unreasonable to live merely from moment to moment;" and further, "irrational to devote one's attention exclusively to specific projects."74

All human activities must contribute to life as a whole. In other words, isolated actions and moments should not be favored more than another because each action and moment needs to be harmonized in order to establish the proper perspective for choosing how to live a good life.75

For example, Finnis states that in all different aspects of life, from the scholarly profession of medicine to marital relationships, require the control of impulses; direction; and undergoing specific tasks and projects; however, all aspects of life also require redirection; reformation of habits; and the abandonment of old habits as circumstances change.76 These principals apply to legislation such as the Trafficking Victims Protection Act. Since there is no "recipe or blueprint" to seek justice and human good, pieces of legislation such as the TVPA

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74 John Finnis, Natural Law & Natural Rights 104 (2d ed. 2011)
75 Id
76 Id
need to be living documents that seek specific long-term projects in a manner that is always reforming as the time and circumstances change.\footnote{Id}

The Trafficking Victims Protection uses prosecution, prevention and protection as the three main ways to combat human trafficking. However, the act’s emphasis on prosecution of traffickers comes at the expense of protecting victims. Congress needs to change the direction and reform the goals of the TVPA to accommodate victims who are adversely affected by their traffickers. The Act should not require immigrant victims to assist the United States in the prosecution of their trafficker to receive healthcare, educational, and safeguarding benefits.

The Trafficking Victims Protection Act recognizes that combatting human trafficking is a multi-lateral effort. The act pursues the protection of victim; the prosecution of traffickers; and prevention tactics consisting of educating targeted communities within at-risk populations. However, the act seems to place more of a focus on the prosecution of traffickers rather than treating each part as an equal component of combating human trafficking within the United States.

b) Knowledge

According to Finnis, the pursuit of knowledge is reflecting on a particular form of human activity and, trying to understand said activity, and judge the matter correctly.\footnote{Id at 60.}

Everyone recognizes the good in having knowledge, but the value of the truth in the knowledge is only valuable to the one who experiences the urge to question, and grasps the connection between the question and the answer.\footnote{Id at 65.}
In the first few pages of the Trafficking Victims Protection Act, the legislature established a body to seek knowledge on the severity of trafficking within the United States. The starting point for Congress was to recognize that a human trafficking problem existed, then ask "why?"

For example, the Trafficking Victims Protection Act tasked the President, administrative governmental bodies and congress to research different organizations throughout the country that would assist in furthering the goals of the Act. Further, the TVPA required the government to discover the economic causes and consequences of human trafficking in the United States; the health risks caused by human trafficking; and the relationship between human trafficking and other crimes. The foregoing are all good and relevant questions one should ask in the pursuit of knowledge and to stray away from being ignorant.

Moreover, the TVPA established the Human Smuggling and Trafficking Center, which acts as a brain for the executive branch body that carries out the duties involved with stopping trafficking in the United States. However, the Act still remains ignorant to the consequences of not giving benefits to all victims of human trafficking in the United States. For example, once a victim returns to his or her country of origin, the United States has no knowledge of whether or not that victim fell back into human trafficking. The current law attempts to stop trafficking by acquiring knowledge about the traffickers from the victims. The Trafficking Victims Protection Act does little to acquire knowledge about the victims. The current legislation needs to be modified so we can find out about how the victims are suffering and what we can do so they will never again fall as a victim of human trafficking.
c) **Sociability**

Human life and friendship are inherently good. Finnis warns to not keep arbitrary preferences among people. The language within the Trafficking Victims Protection Act furthers notions of double-standards, hypocrisy, indifference to the good of others whom one could easily help, and group bias that Finnis warns about. The language within the TVPA makes a distinction between victims of human trafficking who are citizens and victims of human trafficking who are immigrants. Further, the language in the TVPA expresses that victims who are citizens are more deserving of help than victims who are immigrants.

As previously stated, if the trafficked victim is a United States citizen or lawful permanent resident, he or she is not required to assist the government in every reasonable way in the prosecution of their trafficker to be eligible for the aforementioned benefits. Conversely, if the trafficked victim is an immigrant, he or she must fall within the narrow definition of a victim of a “severe form” of trafficking, or he or she must assist authorities in the prosecution of the trafficker to receive help from the United States.

Finnis' theory of practicable reasonableness highlights “do to others what you would have them do to yourself." Surely no president or lawmaker would want to place themselves in a position as an immigrant within the United States, who was taken there for purposes of being sexually trafficked because immigrant victims have no access to protection unless they are able to fall within the two narrow categories. On the contrary, Finnis' theory of sociability states that the creation and realization of friendships is fundamentally good. The TVPA needs to bring people together, rather than make distinctions between them and ambiguously state that one group of people is more deserving of benefits than another. The Trafficking Victims Protection

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80 *Id* at 108.
Act does not provide any assistance to the immigrant victim once they are deported. If the immigrant victim’s home country does not provide its citizens with protections against human trafficking, the victim may end up back in the United States as a trafficked victim. Thus, leading to a containing cycle of the helpless deportee returning to the U.S., or some other country, as a victim of human trafficking.

Nothing within the Trafficking Victims Protection Act states why a United States citizen who is a victim of human trafficking is more deserving of help than an immigrant victim of human trafficking, and according to Finnis, improper favor to individuals and discrimination to groups do not meet the threshold for the requirement of reason. As a result, the Trafficking Victims Protection Act is flawed in its attempt to combat human trafficking through protecting victims.

d) Practical Reasonableness

In his chapter titled, “The Basic Requirements of Practical Reasonableness,” Finnis ponders how one determines that a decision is practically reasonable. According to Finnis, practical reasonableness has two aspects: an internal aspect when one harmonizes his or her emotions with inner peace of mind; and an external aspect, when one strives to make her or her actions authentic, and to truly realize one’s own autonomy and “freely ordered evaluations, preferences, hopes, and self-determination.” In summary, one’s perception of what is good and ethical, and how they execute that perception out in the world is what draws the different lines of morality throughout mankind.

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81 Id at 101.
82 Finnis 2011, 87.
The first requirement of practical reasonableness is a rational plan of life. One must not rely on the same “blue print” of commitment to certain goals, but one must have a set of harmonious purposes. Additionally, one must work towards the end purpose, and not focus on moments or parts of the whole to achieve such harmonization in furtherance of practical reason.

Second and third, there must be no arbitrary preference among basic human values, nor any arbitrary preference among persons. Finnis reasons that we must do for others, what we would want done for ourselves. Further, we must do away with partiality, bias, and favoritism, and to overall respect each other.

The fourth and fifth requirements of practical reasonableness are interlocked with one another. The fourth requirement is to undergo certain detachment from all limited projects one undertakes. Such limited projects restrict the overarching horizon one tries to achieve by harmonizing all goals and working towards a purpose. Additionally, the consequences are severe when we latch on to one project that fails, and doesn’t add meaning to our life. The fifth requirement provides a gateway for the troubles one may encounter when dealing with the fourth requirement. The fifth requirement requires that we do not abandon our commitments light-
heartedly, but find creative ways to not focus on one commitment and be able to carry out all projects and routines.\textsuperscript{93}

The sixth requirement of practical reasonableness is to bring out good in your own life and the life of others by “actions that are efficient for their purposes.”\textsuperscript{94} The seventh requirement of practical reasonableness is to refrain from acting in a way that impedes the participation in any form of human good.\textsuperscript{95}

The eight requirements of practical reasonableness require that we foster common good of our own communities. The ninth requirement is that we must act accordingly to our conscious.

When applying these requirements to the Trafficking Victims Protection Act, it is clear that our legislature enacted such a law to do good for our community. The law was passed in order to better the United States as a whole, and to better the communities within the United States. However, the act focuses on the prosecution of traffickers, and it does not work towards the overarching purpose of stopping human trafficking in the United States. The Act focuses too heavily on a few sub-parts, and as a result, our government body is unable to find a creative way to carry out all of the Act’s goals and purposes because it focuses too heavily on the sub-part of prosecution. Furthermore, the TVPA fails because its makes an arbitrary distinction amongst victims who are not eligible for benefits, and severe victims who are eligible for benefits.

Human trafficking must be combated in the U.S. through legislation that ensures victim safety and rehabilitation as the centerpiece of combatting human trafficking. Furthermore, anti-human trafficking agencies and immigration agencies need to work together in order for them to

\textsuperscript{93} \textit{Id}.
\textsuperscript{94} \textit{Id} at 111.
\textsuperscript{95} \textit{Id} at 118.
assist each other in achieving anti-trafficking goals, as opposed to having conflicting legislation which prevents each other from succeeding.

A concerning issue with the TVPA is the extremely limited number of victims who are eligible to receive help from the United States. The TVPA only provides relief to the “severe trafficking victim,” in other words it only provides relief to a certain type of victim. “Severe trafficking,” is defined as:

(A) 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 18 years of age; or
(B) 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, peonage, debt bondage, or slavery.96

In order for a victim to be eligible for benefits such as a T Visa, shelter, food, protection, translation services and legal and medical assistance the Department of Health and Human Services must certify them as a qualified victim.97 Without proper training in the specified field of human trafficking crimes, a law enforcement agent cannot be expected to be able to differentiate between an “involuntary” victim of “severe” human trafficking or someone who was induced to perform sexual acts by “force” during the execution of their work, without engaging in extensive and lengthy investigations. There are many barriers that may inhibit the furtherance of such investigations, such as language barriers, a foreigner’s fear of the United States government, or a victim’s fear of his or her trafficker.

Finnis reasons that we must do for others, what we would want done for ourselves, so laws such as the TVPA must not make arbitrary preferences among people. For most to qualify as a victim of a “severe form of human trafficking,” he or she must assist law enforcement in “a

96 22 USCA § 7102
97 Id.
reasonable way” in the prosecution of the trafficker in order to receive benefits under the Trafficking Victims Protection Act. In other words, victims cannot obtain T Visas unless they assist in the prosecution of their traffickers. The certification process exacerbates human trafficking problems because it takes weeks or months for a victim to become certified and eligible for housing. Victims need to be able to immediately leave their traffickers and any unnecessary or undue delay. Such delays create a threat to the safety of the victim and it fosters a foundation of distrust that victims have for the American government.

Most victims of human trafficking suffer from physical and mental trauma, and as a result it may not be reasonable to require victims to have to talk about their experience and be required to testify or conspire against their trafficker especially when there is no guarantee the trafficker will be convicted. Victims that suffer from such traumas live in constant fear and may not be prepared to help prosecute their traffickers, especially if they have not obtained professional help, food or housing under the Trafficking Victims Protection Act. Undocumented victims of human trafficking do not qualify as “severe victims” if they cannot prove they were forced into trafficking, and if they do not assist law enforcement they face deportation. If they cannot prove they were coerced into their unfortunate situation, they will then be detained and deported if they do not assist in the prosecution of their trafficker.

Many women who are currently victims of trafficking were once promised better economic opportunities than what they can achieve in their home country. Since most trafficked victims come from other countries, there is likely to be a language barrier between a victim and any type of help they seek out from an authority.

Trafficked victims are at a disadvantage when they encounter law enforcement because they live and work in marginalized communities within society and are quickly labeled illegal or as voluntary prostitutes instead of trafficked slaves. Law enforcement agents need to receive proper training to identify possible situations of trafficking rings and be conditioned to treat victims as victims and not criminals. Many victims are manipulated into staying within trafficking rings, and taught not to trust government officials because they will be sent back to their home country and get kidnapped again or continue to live in a life of war and poverty.

Victims of human trafficking are manipulated and intimidated by their traffickers. When law enforcement officials break up human trafficking rings, many victims may be confused about what will happen to them due to language barriers between them and the law enforcement agents. The TVPA does not address the existence of such barriers, nor does it address how agencies such as ICE can be expected to make a swift determination as to whether the victims are victims of a severe form of human trafficking or prostitutes. The TVPA does not address how agents of ICE can differentiate between a woman who is selling her body for sex via her own consent versus one who is trafficked in the United States and is a slave to her trafficker. Making any type of distinguishing between people who are voluntarily or involuntarily trafficked and people who are sex trafficked or severely sex trafficked shows that Congress deems that some people who are sold into sex slave labor are deserving of help and others do not deserve any type of government assistance. Incorporating the element that some victims deserve help and others do not into the legislation exacerbates the epidemic because the issues that human trafficking bring into the United States do not discriminate against who they impact.

Another problematic provision of the TVPA is requiring trafficking victims to cooperate with the prosecution of their traffickers, and if they do not cooperate then they are not eligible for
benefits under the TVPA, including a temporary visa.\textsuperscript{99} Victims of rape and victims of domestic violence are not required to testify against their abuser or rapist for obvious reasons, such as it not being good for their mental health to relive the trauma they sustained. Many victims fear retaliations from their traffickers if they cooperate with law enforcement, and even fear that working with government officials will not guarantee the victim themselves freedom. Unless the victim qualifies as a victim of a severe form of human trafficking, the TVPA does not provide protections. Victims are more concerned about their own well-being and rebuilding their lives than they are concerned about putting their trafficker in jail. Also, since prosecution takes many years to complete, any victim living in the United States pending the criminal matter may be living in fear of the organization who trafficked him or her.

Another unsuccessful provision of the Trafficking Victims Protection Act is that it requires victims to successfully request a T Visa after meeting the requirements for a victim of a severe form of trafficking. If the victim is not granted a T Visa, she is only allowed to stay in the country for the duration of her trafficker’s trials before he/she is deported.\textsuperscript{100} If the victim is deported, they are likely to go back to live in a life of poverty, get executed in their home country, or they are likely to get wrapped up in human trafficking again if their trafficker knew information on where their victim lived. Therefore, deportation does not help end the cycle.

Addition, a victim must demonstrate that he/she suffered from “severe trafficking” to obtain temporary residency in the United States. As stated above, it is not a simple task for a victim of human trafficking to prove that they suffered from “severe trafficking.” Further, once all criminal and civil proceedings against the trafficker are finished, the victim’s visa expires, and he or she is deported to his or her country of origin.

\textsuperscript{100} 22 U.S.C.A. § 7105 (3) (A).
Also, T Visas are expensive to obtain. T Visas can cost up to hundreds of dollars, and it is obvious that victims of human trafficking who come from impoverished countries, who are mostly either women or children, do not have the means within their life of slavery to save hundreds of dollars for a T Visa.

**IV. Conclusion**

The Trafficking Victims Protection Act needs to rebuild its goals to emphasis victim protection and not prosecution of traffickers. A victim-centered approach is essential to treat victims as human beings and not criminals, to remove them from inhumane settings and empower them to better be able to hold traffickers accountable. In addition, the victim-centered approach should focus on intercepting victims of human trafficking and rehabilitating them into society, so they do not fall back into human trafficking. Law enforcement officials need to be taught on how to deal with people who could possibly be victims of human trafficking and not illegal immigrants who came to the United States to prostitute themselves as a means of making an income. A victim’s corporation is essential to prosecute and convict traffickers, however it should not be the contingency to receive benefits under the Trafficking Victims Protection Act.

Victims should be given the benefits and resources to restore their lives back to normal and to empower themselves before they feel confident enough to take down their traffickers. One of these benefits should be the T Visa. T Visas should be made easily accessible to victims of human trafficking because once the fear of deportation and the distrust in the American government is eradicated, victims may feel more confident in themselves to get themselves and others out of a life of human trafficking. The Trafficking Victims Protection Act should incorporate concepts from Finnis’ theory of good and justice by doing away with arbitrary
distinctions between classes of people because all people who are victims of human trafficking are deserving of help.