

## HUMAN TRAFFICKING: THE NEED FOR FEDERAL PROSECUTION OF ACCUSED TRAFFICKERS

*Eileen Overbaugh\**

*The baby girl . . . was born in a toilet in a cramped apartment in Hudson County. The baby died before the next sunrise. . . . The baby's mother was one of dozens of young Honduran women smuggled into New Jersey by a human-trafficking ring . . . . When an enforcer for the ring learned of the pregnancy, the woman . . . was forced to swallow abortion-inducing pills.<sup>1</sup>*

### I. INTRODUCTION

Human trafficking is prohibited under federal law by the Trafficking Victims Protection Act of 2000.<sup>2</sup> In the last several years, numerous states have enacted similar legislation criminalizing human trafficking.<sup>3</sup> Consequently, in many states, including New Jersey,<sup>4</sup> both the federal and state governments have the power to prosecute

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\* J.D. Candidate, May 2009, Seton Hall University School of Law; B.A., *summa cum laude*, 2006, Drew University.

<sup>1</sup> *The Underside of Immigration*, RECORD (Bergen County, N.J.), Dec. 4, 2005, at 1.

<sup>2</sup> Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified in scattered sections of 18 U.S.C. and 22 U.S.C. (2000)).

<sup>3</sup> See ALASKA STAT. §§ 11.41.360–365 (2007); ARIZ. REV. STAT. ANN. §§ 13-1307–1309 (2007); ARK. CODE ANN. § 5-11-108 (West 2007); CAL. PENAL CODE §§ 236.1–237 (West 2007); COLO. REV. STAT. ANN. § 18-6-402, 18-13-127 (West 2007); CONN. GEN. STAT. ANN. § 33a-192a (West 2007); DEL. CODE ANN. tit. 11, § 787 (2007); FLA. STAT. ANN. § 787.06 (West 2007); GA. CODE ANN. § 16-5-46 (West 2007); IDAHO CODE ANN. §§ 18-8601–8605 (2007); 720 ILL. COMP. STAT. 5/10A-10 (2007); IND. CODE § 35-42-3.5-1 (2008); IOWA CODE §§ 710A.1–5 (2007); KAN. STAT. ANN. § 21-3446 (2007); KY. REV. STAT. ANN. §§ 529.100–110 (West 2008); LA. REV. STAT. ANN. § 14:46.2 (2007); MD. CODE ANN., CRIM. LAW § 11-303 (West 2008); MICH. COMP. LAWS §§ 750.462a–.462i (2007); MINN. STAT. §§ 609.281–.284 (2007); MISS. CODE ANN. § 97-3-54.1 (2007); MO. REV. STAT. §§ 566.200–.223 (2007); MONT. CODE ANN. § 45-5-306 (2008); NEB. REV. STAT. §§ 23-830–832 (2007); NEV. REV. STAT. §§ 200.467–.468 (2008); N.M. STAT. §§ 30-52-1–3 (2008); N.Y. PENAL LAW § 230.34 (McKinney 2008); N.C. GEN. STAT. ANN. §§ 14-43.10–.13 (West 2007); OKLA. STAT. tit. 21, §§ 748–748.2 (2008); OR. REV. STAT. § 163.266 (2008); 18 PA. CONS. STAT. ANN. §§ 3002–3004 (West 2007); R.I. GEN. LAWS §§ 11-67-1–5 (2007); S.C. CODE ANN. § 16-3-930 (2007); TEX. PENAL CODE ANN. §§ 20A.01–.02 (Vernon 2007); UTAH CODE ANN. §§ 76-5-308–310 (2008); WASH. REV. CODE § 9A.40.100 (2007).

<sup>4</sup> See N.J. STAT. ANN. § 2C:13-8 (West 2005).

human traffickers. The challenge, therefore, is to determine which government can most effectively prosecute traffickers and to develop an appropriate role for the non-prosecuting government.<sup>5</sup> Significant prosecutorial advantages—including a well-established federal infrastructure designed to handle trafficking cases, federal control over victims' immigration status, the extensive reach of federal jurisdiction, and the breadth of federal statutes under which traffickers may be prosecuted—suggest that the federal government can most effectively and successfully prosecute human trafficking cases. The need to effectively deter traffickers, local prosecutors' hesitance to use human trafficking statutes, and the failure of various states to utilize trafficking laws, despite the documented existence of trafficking within a particular state, also demonstrate the need for a dominant role for federal law enforcement in this area. Given these prosecutorial advantages and the fact that successful prosecution is “the linchpin to eradicating human trafficking,”<sup>6</sup> federal rather than state officials should take the lead in the prosecution of human trafficking cases. This Comment therefore contends that states, such as New Jersey, should take an “action-support role”<sup>7</sup> which is secondary to the federal government in the investigation and prosecution of human trafficking.

Part II of this Comment provides background on the international phenomenon of human trafficking and explains the particular importance of prosecution in combating trafficking. Part III examines the Federal Trafficking Victims Protection Act of 2000 (TVPA),

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<sup>5</sup> Kate Brookson-Morris discusses a similar issue in international criminal law: [M]ore than one State may have legitimate jurisdiction to legislate for the same conduct and the courts of more than one State may be entitled to exercise judicial jurisdiction over those persons charged . . . . For prosecutors, the problem may present itself as one of prosecutorial efficiency—how may the case be proceeded . . . expeditiously, in particular, in which jurisdiction is a conviction most likely to be secured?

Kate Brookson-Morris, *Conflicts of Criminal Jurisdiction*, 56 INT'L & COMP. L.Q. 659, 659 (2007).

<sup>6</sup> Cynthia Shepherd Torg, *Human Trafficking Enforcement in the United States*, 14 TUL. J. INT'L & COMP. L. 503, 503 (2006).

<sup>7</sup> M. ELAINE NUGENT ET AL., AMERICAN PROSECUTORS RESEARCH INSTITUTE, LOCAL PROSECUTORS' RESPONSE TO TERRORISM 8–10 (2005), available at [http://www.ndaa.org/pdf/terrorism\\_2005.pdf](http://www.ndaa.org/pdf/terrorism_2005.pdf) (finding that in the wake of newly enacted state statutes criminalizing terror-related activities already criminalized under federal law, local prosecutors played an action role, a support role, or a dual action-support role in handling homeland security matters).

provides a similar review of the New Jersey Human Trafficking Law,<sup>8</sup> and offers a comparison of the two laws. Part IV evaluates the strength of the federal response to trafficking in persons, analyzes the relative advantages of federal prosecution, and concludes that the federal government, rather than state governments, should pursue human trafficking prosecutions. Part V recommends that state prosecutors take a dual “action-support” role, similar to the role played by local prosecutors in the sphere of anti-terrorism.

## II. HUMAN TRAFFICKING AND THE IMPORTANCE OF CRIMINAL PROSECUTION

### A. *Understanding Human Trafficking*

Human trafficking is known as “modern slavery.”<sup>9</sup> It exists in a variety of forms but primarily involves sex trafficking or forced labor.<sup>10</sup> Traffickers who engage in forced labor typically force a small number of domestic servants to work in a private home or force hundreds of workers to labor on farms or in factories.<sup>11</sup> Sex trafficking is the largest subcategory of human trafficking,<sup>12</sup> and it exists in places which are visible to the public, such as bars and gentlemen’s clubs.<sup>13</sup> All traffickers use force, fraud, or coercion to ensure victims remain in service to the trafficker.<sup>14</sup> Traffickers typically target women and children and lure them with promises of lucrative jobs, education, and marriage.<sup>15</sup> Traffickers then use rape, sexual abuse, torture, star-

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<sup>8</sup> The New Jersey bill creating the crime of human trafficking does not have a unique name; this Comment will therefore refer to the legislation as the New Jersey Human Trafficking Law.

<sup>9</sup> *E.g.*, DEP’T OF JUSTICE, ATTORNEY GENERAL’S ANNUAL REPORT TO CONGRESS ON U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS: FISCAL YEAR 2006 1 (2007), *available at* [www.usdoj.gov/ag/annualreports/tr2006/agreporthumantrafficking2006.pdf](http://www.usdoj.gov/ag/annualreports/tr2006/agreporthumantrafficking2006.pdf) [hereinafter ANNUAL REPORT]; DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 6 (2007), *available at* <http://www.state.gov/documents/organization/82902.pdf> [hereinafter TIP REPORT]; Stephanie Richard, Note, *State Legislation and Human Trafficking: Helpful or Harmful?*, 38 U. MICH. J.L. REFORM 447, 447 (2005).

<sup>10</sup> TIP REPORT, *supra* note 9, at 8.

<sup>11</sup> *Id.* at 18; *See* DEP’T OF JUSTICE, REPORT ON ACTIVITIES TO COMBAT HUMAN TRAFFICKING: FISCAL YEARS 2001–2005 2 (2006), *available at* [www.usdoj.gov/crt/crim/trafficking\\_report\\_2006.pdf](http://www.usdoj.gov/crt/crim/trafficking_report_2006.pdf) [hereinafter REPORT ON ACTIVITIES].

<sup>12</sup> TIP REPORT, *supra* note 9, at 27.

<sup>13</sup> *Id.* at 30.

<sup>14</sup> *Id.* at 31.

<sup>15</sup> *Id.* at 8.

vation, and psychological abuse to force victims to work against their will.<sup>16</sup>

Approximately 800,000 people are trafficked across national borders each year;<sup>17</sup> the majority of these victims are female and approximately half are minors.<sup>18</sup> Compiling accurate data about trafficking victims is challenging because of the difficulty in identifying victims and the confusion as to whether a person was smuggled or actually trafficked into a foreign nation.<sup>19</sup> Congressional findings, codified within the TVPA, estimate that 50,000 women and children are trafficked into the United States each year.<sup>20</sup> The U.S. Department of Justice estimates that there are only 17,500 victims per year in the United States, but it concedes this may be a low estimate because of the difficulties in gathering data about trafficking victims.<sup>21</sup> Regardless of the exact figure, human trafficking remains a constant danger for women and children throughout the world.

Trafficking syndicates are often organized and sophisticated enterprises.<sup>22</sup> Indeed, trafficking provides the fastest growing source of profits for organized crime syndicates throughout the world and contributes to the growth of organized crime within the United States.<sup>23</sup> Trafficking produces approximately seven to ten billion dollars of worldwide profit each year.<sup>24</sup> Such massive profits are possible because the contraband of the trade, the human victims, may be sold and repeatedly re-sold.<sup>25</sup>

While many victims are moved across borders, human trafficking does not require the transportation of a victim from one place to another.<sup>26</sup> The U.S. State Department's annual Trafficking in Persons

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<sup>16</sup> 22 U.S.C. § 7101(b)(6) (2000).

<sup>17</sup> TIP REPORT, *supra* note 9, at 8.

<sup>18</sup> *Id.*

<sup>19</sup> REPORT ON ACTIVITIES, *supra* note 11, at 9–11.

<sup>20</sup> 22 U.S.C. § 7101(b)(1) (2000).

<sup>21</sup> REPORT ON ACTIVITIES, *supra* note 11, at 9.

<sup>22</sup> 22 U.S.C. § 7101(b)(8) (2000).

<sup>23</sup> *Id.*

<sup>24</sup> DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 9 (2003), *available at* <http://www.state.gov/documents/organization/21555.pdf> [hereinafter TIP REPORT 2003].

<sup>25</sup> Hanh Diep, Note, *We Pay—The Economic Manipulation of International and Domestic Laws to Sustain Sex Trafficking*, 2 LOY. U. CHI. INT'L L. REV. 309, 311 (2005) (arguing that the legalization of prostitution, designed to decrease human trafficking, actually increases demand within the sex industry, thereby encouraging more human trafficking).

<sup>26</sup> HUMAN SMUGGLING AND TRAFFICKING CTR., FACT SHEET: DISTINCTIONS BETWEEN HUMAN SMUGGLING AND HUMAN TRAFFICKING 3 (2006), *available at* <http://www.state.gov/documents/organization/69496.pdf> [hereinafter FACT SHEET].

Report notes, “[t]o define trafficking in persons on the basis of movement is to create an artificial and unfounded distinction between victims who are exploited without being moved and those who are moved prior to and during their exploitation.”<sup>27</sup> Those victims who are transported beyond the boundaries of their home country often live in social isolation compounded by their inability to speak the language, fear of American law enforcement, and fear of traffickers’ retaliation against family members.<sup>28</sup> The victims’ plight is worsened by the devastating mental and physical consequences of forced labor and forced prostitution.<sup>29</sup> Victims commonly suffer from depression, anxiety, and post-traumatic stress disorder.<sup>30</sup> According to the State Department, sex trafficking also contributes to the worldwide epidemic of HIV/AIDS.<sup>31</sup>

To understand the dimensions of trafficking, one must recognize the distinctions between human trafficking and human smuggling. Human smuggling, by definition, involves the illegal crossing of an international border.<sup>32</sup> Human trafficking, as stated above, does not require any transportation of the victim.<sup>33</sup> Smuggling is distinct in that all parties are complicit in the act, while trafficking is marked by force, fraud, or coercion.<sup>34</sup> Most aliens who illegally enter the United States are smuggled, rather than trafficked, although vulnerable aliens may become victims of trafficking during the smuggling process.<sup>35</sup> Similarly, aliens who enter contracts to work off the debt incurred for smuggling fees are not victims of trafficking unless they are later forced to work off the debt through force, fraud, or coercion.<sup>36</sup>

#### B. *Human Trafficking in New Jersey*

New Jersey is a locus of human trafficking because of the unique characteristics of the state. The state serves as a transportation hub and a farming center, facilitating the movement of trafficking victims

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<sup>27</sup> TIP REPORT, *supra* note 9, at 31.

<sup>28</sup> REPORT ON ACTIVITIES, *supra* note 11, at 12.

<sup>29</sup> TIP REPORT, *supra* note 9, at 33.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 35.

<sup>32</sup> FACT SHEET, *supra* note 26, at 2.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 3.

and creating a demand for their labor.<sup>37</sup> The state's dense population and ethnic diversity make it easy for traffickers and victims to blend.<sup>38</sup> Since 2002, the U.S. Attorney for the District of New Jersey has federally prosecuted four high-profile human trafficking cases.<sup>39</sup> These notorious cases exposed the nature of smuggling, forced prostitution, and human trafficking in New Jersey.

For example, in 2002, local police raided a house in Plainfield, New Jersey, based on suspicion that the house was a brothel.<sup>40</sup> The police discovered that traffickers had forced four teenage girls to work as prostitutes in the brothel.<sup>41</sup> Delfino Jimenez-Calderon and Luis Jimenez-Calderon met the girls in small Mexican towns, promised marriage, and convinced the girls to travel illegally to the United States to find lucrative jobs.<sup>42</sup> Once in America, the women who operated the brothel forced the girls to prostitute themselves or face physical abuse.<sup>43</sup> In the first application of the TVPA in New Jersey, federal prosecutors charged the operators with conspiracy to traffic children for sexual purposes.<sup>44</sup>

In another case, federal prosecutors charged three Russian immigrants with trafficking for the purpose of forced labor, conspiracy, and extortion.<sup>45</sup> The group lured women from Russia, falsified visa information, purported that the women were members of theater and dancing groups, and then forced at least thirty of them to dance in New Jersey strip clubs.<sup>46</sup> The trio kept the victims in apartments in Brooklyn, without access to their immigration papers, and threatened the women that their families in Russia would be harmed by the Russian mafia if they refused to work.<sup>47</sup> The Organized Crime Bureau of

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<sup>37</sup> Mary P. Gallagher, *State, County Law Enforcers Gear Up for Human-Trafficking Prosecutions: Attorney General Forms Task Force as Criminal Legislation Nears Passage*, N.J. L.J., Mar. 7, 2005, at 1.

<sup>38</sup> Wayne Parry, *Arrests Highlight Scope of Human Trafficking: The Major Case Is the Fourth in Recent Years in N.J., Where Culprits and Victims Blend into the Ethnic Mix*, PHILADELPHIA INQUIRER, May 3, 2006, at B2.

<sup>39</sup> *Ending Modern Slavery*, RECORD (Bergen County, N.J.), Sept. 14, 2006, at L6.

<sup>40</sup> Ronald Smothers, *6 Are Accused of Forcing Girls from Mexico into Prostitution*, N.Y. TIMES, Mar. 26, 2002, at B5.

<sup>41</sup> Robert Rudolph & Gabriel H. Gluck, *5 Indicted in Brothel Case in Plainfield: County Social Worker One of Those Charged*, STAR-LEDGER (Newark, N.J.), July 19, 2002, at 37.

<sup>42</sup> Smothers, *supra* note 40.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Robert Rudolph, *Russian Trio Called Enslavers of Women: 3 Allegedly Supplied Strip Clubs' Dancers*, STAR-LEDGER (Newark, N.J.), Aug. 28, 2002, at 1.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

New Jersey's Division of Criminal Justice, in collaboration with both the Federal Bureau of Investigation (FBI) and the Immigration and Naturalization Service, initiated the investigation.<sup>48</sup> Two of the Russian immigrants pled guilty to federal charges and the third was sentenced to five years in prison.<sup>49</sup>

In April 2005, federal authorities discovered that nearly thirty Honduran women were being held against their will and forced to work in New Jersey bars to repay their smuggling debts.<sup>50</sup> Fellow illegal immigrants, known as "enforcers," agreed to enforce the traffickers' rules and control the trafficking victims in exchange for free room and board.<sup>51</sup> An enforcer compelled one of the victims to ingest an abortion-inducing pill and the victim delivered a live baby in the toilet; the baby died before reaching the hospital.<sup>52</sup> One member of the human trafficking ring pled guilty to conspiracy;<sup>53</sup> the ring leader also pled guilty to federal charges.<sup>54</sup>

The most recent case of human trafficking in New Jersey involved the Notario brothers, who allegedly trafficked women from Mexico into the United States and then couriered the women to brothels in Virginia, Pennsylvania, and Maryland.<sup>55</sup> While conducting a routine traffic stop, a New Jersey State Trooper discovered the victims, who were being shuttled from a Washington, D.C., brothel.<sup>56</sup> Federal officials subsequently raided safe houses in New York and New Jersey.<sup>57</sup> Federal prosecutors charged both Notario brothers with operating an illegal money transfer operation and charged one brother with conspiracy to harbor illegal aliens.<sup>58</sup>

Each of these cases illustrates the common characteristics of human trafficking in New Jersey. Victims are typically young females lured by promises of marriage or employment. Although these victims initially agreed to be smuggled into the United States, once in the country they became victims of trafficking by threats of violence, isolation, and fear of American law enforcement. Further themes al-

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Woman Pleads Guilty in Human Trafficking in N.J.*, RECORD (Bergen County, N.J.), Nov. 17, 2005, at A1.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Ending Modern Slavery*, *supra* note 39.

<sup>55</sup> *Neighborhood in Disbelief*, RECORD (Bergen County, N.J.), May 3, 2006, at A3.

<sup>56</sup> Parry, *supra* note 38.

<sup>57</sup> *Neighborhood in Disbelief*, *supra* note 55, at A3.

<sup>58</sup> Parry, *supra* note 38.

so emerge from these cases. First, trafficking rings often include family members and spouses. This may make investigation more difficult by decreasing the chances that one trafficker will cooperate with the police in exchange for leniency. Second, traffickers, like their victims, are often female immigrants. The disturbing reality that victims are often preyed upon by members of their own gender and culture suggests that victims will likely be found in ethnic enclaves where traffickers feel comfortable and secure. Third, bars and strip clubs are hotbeds of trafficking activity. Fourth, the cases demonstrate that local and federal officials frequently collaborate during the investigation of trafficking rings, while the U.S. Attorney's Office controls the ultimate prosecution. Finally, the cases reveal that prosecutors rarely charge human traffickers with the offense of human trafficking and traffickers often plead guilty to lesser charges.

C. *The Importance of Criminal Prosecution in Combating Human Trafficking*

Criminal prosecution is critical to combat human trafficking because it prevents further trafficking and protects victims. Cynthia Shepherd Torg, Chief Counsel for the Human Smuggling and Trafficking Center of the Department of Justice, noted:

While efforts to protect victims and prevent further victimization are clearly important goals . . . effective prosecution is the linchpin to eradicating human trafficking. Prosecution, combined with the imposition of significant penalties, not only provides protection by eliminating the perpetrator's immediate ability to exploit the victim, but also serves to deter future criminal acts.<sup>59</sup>

Thus, prosecution deters further trafficking, incapacitates current traffickers, and removes the powerful financial incentive to traffic through both asset forfeiture and mandatory restitution.<sup>60</sup> Prosecution protects trafficking victims by removing them from immediate danger and averting further harm or exploitation. Moreover, the legislative history of the TVPA demonstrates the emphasis Congress placed upon criminal prosecution.<sup>61</sup> Indeed, Congress explicitly designed the TVPA to ensure just and effective punishment of traffick-

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<sup>59</sup> Torg, *supra* note 6, at 503.

<sup>60</sup> Both the TVPA and New Jersey's Human Trafficking Law require mandatory restitution to victims. See 18 U.S.C. § 1593 (2000); N.J. STAT. ANN. § 2C:13-8(e) (West 2005).

<sup>61</sup> See H.R. REP. NO. 106-487(II), at 16 (2000); 146 CONG. REC. S2617-01, S2630-32 (2000) (statement of Sen. Wellstone).

ers and to protect victims.<sup>62</sup> As Congressman Christopher Smith of New Jersey stated, “Putting these gangsters away for life would not only be just punishment but also a powerful deterrent . . . .”<sup>63</sup> Given the importance of criminal prosecution, prosecutorial efficacy is an important consideration when evaluating federal and state efforts to combat human trafficking.

### III. COMPARISON OF THE FEDERAL TVPA AND NEW JERSEY’S HUMAN TRAFFICKING LAW

Because both laws are designed to impede the same criminal behavior, the TVPA and New Jersey’s Human Trafficking Law are similar in a variety of ways. Both laws, which punish traffickers while simultaneously protecting victims, require that trafficking be linked to sex acts or forced labor. The TVPA created the crimes of forced labor, trafficking with respect to forced labor, sex trafficking, and unlawful conduct with respect to immigration documents as federal offenses.<sup>64</sup> Broadly speaking, forced labor and trafficking with respect to forced labor criminalize providing or obtaining labor through force or threats.<sup>65</sup> The offense of sex trafficking involves forcing or coercing an adult victim to engage in a commercial sex act or causing a minor, even without force or coercion, to engage in a sex act.<sup>66</sup> Further, the destruction or confiscation of immigration documents to facilitate forced labor or sex trafficking is also a crime.<sup>67</sup> In New Jersey, human trafficking encompasses recruiting, providing, or obtaining another to engage in sexual acts or forced labor.<sup>68</sup> These acts must be accomplished by physical harm, threats, or physical or psychological coercion.<sup>69</sup> In New Jersey, it is an affirmative defense to a prosecution for human trafficking that the accused was a victim of human trafficking at the time of the alleged crime.<sup>70</sup>

Both statutes seek to punish the “muscle” and the “brains” of trafficking enterprises by penalizing those who organize and finance trafficking, as well as those who carry out the plans. Under the TVPA, anyone who financially benefits from participating in an enterprise

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<sup>62</sup> 22 U.S.C. § 7101(a) (2000).

<sup>63</sup> 146 CONG. REC. H2675-01, H2684 (2000) (statement of Rep. Smith).

<sup>64</sup> 18 U.S.C. §§ 1589–1592 (2000).

<sup>65</sup> *Id.* § 1589.

<sup>66</sup> 18 U.S.C. § 1591 (2000 & Supp. V 2005).

<sup>67</sup> *Id.* § 1592.

<sup>68</sup> N.J. STAT. ANN. § 2C:13-8(a)(1) (West 2005).

<sup>69</sup> *Id.* § 2C:13-8(a)(1)(A)–(E).

<sup>70</sup> *Id.* § 2C:13-8(c).

that engages in sex trafficking is punished as if he committed the substantive offense.<sup>71</sup> In New Jersey, any person who receives anything of value as an organizer, supervisor, financier, or manager of a human trafficking enterprise commits the substantive crime of human trafficking.<sup>72</sup> Moreover, both federal and New Jersey law establish human trafficking as a predicate crime for a Racketeering Influenced Corrupt Organization (RICO) prosecution.<sup>73</sup> Further, while the federal statute specifically allows for forfeiture of a defendant's property,<sup>74</sup> New Jersey's general asset forfeiture provision operates against all criminal activity, including human trafficking.<sup>75</sup>

Under both federal and state law, restitution to the victim is mandatory. The TVPA requires that the defendant pay restitution to the victim of any violation, including payment for the value of the victim's labor.<sup>76</sup> In addition to mandatory restitution, New Jersey's Victim of Crime Compensation Agency has the authority to award compensation to a victim of human trafficking who suffered personal injury or death.<sup>77</sup> Furthermore, the New Jersey Office of Victim-Witness Advocacy, an integral part of most local prosecutors' offices, must ensure that victims of trafficking receive any available federal benefits.<sup>78</sup>

Despite these similarities, the TVPA and New Jersey's Human Trafficking Law are markedly different in a variety of ways. First, the Trafficking Victims Reauthorization Act of 2003 added a civil remedy for victims of trafficking, under which the victim may sue the trafficker in federal court for damages and legal fees.<sup>79</sup> New Jersey law, however, lacks a civil remedy for trafficking victims. Second, under federal law, a victim of human trafficking qualifies for the witness protection program, while New Jersey lacks a witness protection program and, therefore, cannot provide a similar level of security.<sup>80</sup> Third, the federal statute mandates an interagency task force and reports by the Attorney General, Secretary of State, and Secretary of Homeland Security, while New Jersey law does not mandate a task

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<sup>71</sup> 18 U.S.C. § 1591(a)(2) (2000).

<sup>72</sup> N.J. STAT. ANN. § 2C:13-8(a)(2) (West 2005).

<sup>73</sup> See 18 U.S.C. § 1961 (Supp. V 2005); N.J. STAT. ANN. § 2C:41-1(a)(1)(Z).

<sup>74</sup> 18 U.S.C. § 1594(b) (2000).

<sup>75</sup> See S. Judiciary Comm., 211th Leg., Comm. Statement on Assembly Bill 2730 (N.J. 2005).

<sup>76</sup> 18 U.S.C. § 1593(a)-(b) (2000).

<sup>77</sup> N.J. STAT. ANN. § 52:4B-11(b)(13) (West Supp. 2008).

<sup>78</sup> *Id.* § 52:4B-44(e).

<sup>79</sup> 18 U.S.C. § 1595 (Supp. V 2005).

<sup>80</sup> 18 U.S.C. § 1594(d) (2000).

force or reporting.<sup>81</sup> Fourth, under the TVPA, a sex trafficker must force the victim to engage in a *commercial* sex act,<sup>82</sup> while the New Jersey statute only requires that sexual acts, as defined under the prostitution statute, occur even if the parties do not exchange anything of value.<sup>83</sup> Fifth, the penalty for trafficking of any kind is less severe under the New Jersey statute than under federal law. Under the federal scheme, a convicted sex trafficker faces up to life in prison depending on the circumstances of the crime; a trafficker for labor or services may be sentenced to twenty years in prison.<sup>84</sup> In New Jersey, under any of these circumstances, the court must sentence a trafficker to ten to twenty years in prison.<sup>85</sup>

Finally, and most importantly, the New Jersey statute is far broader in its application than its federal counterpart. For instance, the TVPA generally requires that a person commit trafficking by force, fraud, or coercion, and treats unlawful conduct with regard to immigration documents as a distinct criminal offense, not a means by which to commit human trafficking.<sup>86</sup> Under the New Jersey Human Trafficking Law, in contrast, destroying or concealing immigration documents is a means or method by which to commit human trafficking; it is not a distinct or separate offense.<sup>87</sup> Moreover, New Jersey criminalizes human trafficking when, with the purpose of unlawfully restricting another's freedom, a person threatens to inflict bodily injury, to accuse the victim of an offense, to expose any secret which would subject the victim to hatred or ridicule, or to testify or withhold testimony.<sup>88</sup> Thus, under New Jersey's law, trafficking occurs when, for example, a trafficker recruits the victim to engage in sexual activity or to provide labor by threatening to expose a secret in order to restrict the victim's movement. This definition is far broader than any provision of the federal statute. While a broader definition of any crime would be beneficial to the prosecution, it is not so with the crime of human trafficking. Such a broad definition dilutes the significance of the most egregious cases of human trafficking and moves far beyond the core assumption that trafficking must be committed through force, fraud, or traditional coercion.

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<sup>81</sup> 22 U.S.C. §§ 7103, 7105(g), 7107(b)(1) (2000 & Supp. V 2005).

<sup>82</sup> A commercial sex act is an act for which an individual exchanges something of value. 18 U.S.C. § 1591(c)(1) (2000).

<sup>83</sup> N.J. STAT. ANN. §§ 2C:13-8(a)(1), 2C:34-1(a)(2) (West 2005).

<sup>84</sup> 18 U.S.C. § 1590 (2000); 18 U.S.C.A. § 1591(b) (West 2008).

<sup>85</sup> N.J. STAT. ANN. §§ 2C:13-8(b), 2C:43-6(a)(1) (West 2005).

<sup>86</sup> 18 U.S.C. § 1592 (2000).

<sup>87</sup> N.J. STAT. ANN. § 2C:13-8(a)(1)(d) (West 2005).

<sup>88</sup> *Id.* § 2C:13-5(a).

## IV. THE NEED FOR FEDERAL PROSECUTION OF ACCUSED TRAFFICKERS

There are undoubtedly advantages to the federal prosecution of human trafficking. Professor John C. Jefferies and district court Judge John Gleeson assert that “federal prosecutors should—and probably do—bring cases in which there is a comparative advantage in federal prosecution.”<sup>89</sup> In this unique way, federal prosecutorial selection determines the magnitude and reach of federal criminal law.<sup>90</sup> Professor Jefferies and Judge Gleeson note:

What is unique about federal prosecutors . . . is that their discretionary agendas and enforcement strategies effectively determine the scope of federal law . . . . It follows that the right place to locate a debate about the federalization of crime is not the text of the federal statutes . . . but the resources and priorities of federal prosecutors.<sup>91</sup>

Current state and federal capabilities and the potential immigration challenges faced by victims in state cases support the proposition that the federal government is best equipped to prosecute human trafficking. The need for effective deterrence of traffickers, the amount of federal laws with which to charge traffickers, and the extensive reach of federal jurisdiction suggest that the federal government should handle the bulk of trafficking prosecutions. Additionally, the failure of various states to utilize trafficking statutes and the reluctance of local prosecutors to charge defendants with human trafficking suggest that state governments should pursue a secondary, action-support role. As such, local prosecutors should collaborate with the U.S. Attorneys to make human trafficking a federally prosecuted crime.

A. *The Federal Government Has the Well-Established Infrastructure and Expertise Necessary to Pursue Human Traffickers*

Human trafficking investigations and prosecutions are most effective and efficient at the federal level because of extensive federal resources and the experience of federal law enforcement.<sup>92</sup> The bulk of state law enforcement resources are swallowed by routine criminal prosecutions. Asking states to actively investigate and prosecute human trafficking would have a detrimental impact on other criminal

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<sup>89</sup> John C. Jefferies Jr. & Hon. John Gleeson, *The Federalization of Organized Crime: Advantages of Federal Prosecution*, 46 HASTINGS L.J. 1095, 1101 (1995) (arguing for federal prosecution of organized crime because of the evidentiary, procedural, and sentencing advantages over state and local prosecution).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> See Torg, *supra* note 6, at 516–19.

investigations by stretching already limited resources and funding. The federal government, in contrast, employs a robust budget to actively investigate and prosecute human traffickers.<sup>93</sup> Simply stated, the federal government has the national power, international presence, funding, manpower, and specialized knowledge necessary to effectively combat trafficking in persons.

The Criminal Section of the Civil Rights Division of the Department of Justice has primary authority to prosecute trafficking cases.<sup>94</sup> The FBI and Immigration and Customs Enforcement (ICE) are tasked with investigating human trafficking.<sup>95</sup> Other agencies contribute to detecting and investigating trafficking in persons,<sup>96</sup> and several agencies actively participate in the Human Smuggling and Trafficking Center, a national intelligence clearinghouse that gathers and synthesizes trafficking data.<sup>97</sup> Further, the TVPA mandates a federal interagency task force.<sup>98</sup> Federal agencies also collaborate on a variety of supplemental interagency task forces, such as the Trafficking in Persons and Worker Exploitation Task Force.<sup>99</sup>

In contrast, New Jersey's Anti-Trafficking Task Force is not statutorily mandated and is funded with federal grant money.<sup>100</sup> The task force includes representatives from the U.S. Attorney's Office, a liaison from each county prosecutor's office, members of police agencies, and representatives from various non-profit and community or-

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<sup>93</sup> See, e.g., 22 U.S.C. § 7110 (2000 & Supp. V 2005).

<sup>94</sup> *Id.* at 513.

<sup>95</sup> *Id.*

<sup>96</sup> For example, the Department of State's Diplomatic Security Service, the Department of Labor's Wage and Hour Division, and the National Center for Missing and Exploited Children aid in trafficking investigations. *Id.* at 513–16.

<sup>97</sup> These agencies include the Departments of State, Justice, and Homeland Security. *Id.* at 518.

<sup>98</sup> The interagency task force consists of the Administrator of the United States Agency for International Development, the Attorney General, the Director National Intelligence, and the Secretaries of State, Labor, Health and Human Services, Defense, and Homeland Security. 22 U.S.C. § 7103(b) (2000 & Supp. V 2005).

<sup>99</sup> Torg, *supra* note 6, at 514. Federal agencies effectively combat "domestic human trafficking" in a variety of ways. The Innocence Lost Project protects children from forced prostitution; the FBI, the Department of Justice's Child Exploitation and Obscenity Section, and the National Center for Missing and Exploited Children are all members of the project. *Id.* at 516. Separately, the FBI operates the National Hispanic Sex Trafficking Initiative. *Id.* ICE operates Operation Predator to guard children from trafficking, pedophiles, international sex tourists, and online predators. *Id.* Furthermore, the Office of Refugee Resettlement, a subdivision of the Department of Health and Human Services, has an agreement with the United States Conference of Catholic Bishops to provide immediate support to the victims of human trafficking. ANNUAL REPORT, *supra* note 9, at 4–5.

<sup>100</sup> Gallagher, *supra* note 37, at 1.

ganizations.<sup>101</sup> The New Jersey task force is inadequate in several ways. First, because the task force is not statutorily mandated, it is not an institutionalized part of New Jersey law enforcement and resources may be shifted away from the task force based on a change of administration or a change in policy. Second, there is no official clearinghouse for intelligence that is analogous to the federal Human Smuggling and Trafficking Center. Information must, therefore, be shared through more informal channels. Finally, the task force does not integrate the New Jersey Department of Labor and Workforce Development with the Department of Health and Senior Services, even though these departments would be particularly helpful in developing strategies for identifying trafficking victims and assisting victims after prosecution.

Despite the focus on detecting and preventing terrorist activity post-September 11, federal agencies have consistently increased their investigation and prosecution of human trafficking.<sup>102</sup> Legal scholars have recognized the federal government's diligent efforts. Professor Susan W. Tiefenbrun's assessment of the TVPA's effectiveness concluded that since the enactment of the TVPA, the federal government's response has been slow, steady, and substantive.<sup>103</sup> Furthermore, Professor Tiefenbrun notes, "In addition to amending existing criminal statutes, the Department of Justice has made significant efforts at prosecution, outreach, coordination among agencies, and protection and assistance to victims of trafficking."<sup>104</sup>

Funding is another significant advantage of federal investigation and prosecution. Both the FBI and the Department of Homeland Security are statutorily provided millions of dollars per year to combat human trafficking.<sup>105</sup> Congress also earmarked several million dollars to fund federal task forces in 2006 and 2007.<sup>106</sup> Additionally, the TVPA authorizes the Attorney General to issue generous grants to

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<sup>101</sup> Statewide Human Trafficking Task Force, New Jersey Office of the Attorney General, <http://www.njshddf.nj.gov/liason.htm> (last visited Sept. 10, 2008) (members of the task force include the New Jersey State Police, the New Jersey Association of Police Chiefs, Legal Services of New Jersey, New Jersey's Coalition for Battered Women, Catholic Charities, and the New Jersey Community Policing Initiative).

<sup>102</sup> For example, in 2001 the Civil Rights Division filed ten cases and secured twenty-three convictions. ANNUAL REPORT, *supra* note 9, at 17. In 2006, the Civil Rights Division filed thirty-two cases and secured ninety-eight convictions. *Id.*

<sup>103</sup> Susan W. Tiefenbrun, *Updating the Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, 38 CASE W. RES. J. INT'L L. 249, 254 (2006-2007).

<sup>104</sup> *Id.* at 257.

<sup>105</sup> 22 U.S.C. § 7110 (2000 & Supp. V 2005).

<sup>106</sup> *Id.*

state and local governments for the investigation and prosecution of trafficking cases and the development and improvement of law enforcement training.<sup>107</sup> Even with these federal funds, New Jersey's county prosecutors' offices are simply not as well funded as federal agencies.<sup>108</sup> Moreover, local prosecutors have little choice but to pursue the homicides, robberies, and assaults that flood their offices. The U.S. Attorneys, on the other hand, have more flexibility to re-prioritize their agenda and focus on human trafficking.<sup>109</sup>

*B. Federal Prosecution of Traffickers Will Avoid Confusion and Conflict Regarding a Victim's Immigration Status*

The federal government governs matters of immigration and naturalization exclusively.<sup>110</sup> As such, a variety of federal agencies ultimately determine the immigration status of both traffickers and their victims.<sup>111</sup> Because the federal government controls the immigration process, differing definitions of human trafficking under various state laws create the potential for conflict and confusion.<sup>112</sup>

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<sup>107</sup> *Id.* In 2006, New Jersey only received \$76,000 of federal grant money. JON S. CORZINE, FISCAL YEAR 2008 BUDGET A-37 (2007), available at <http://www.state.nj.us/treasury/omb/publications/08bib/pdf/bib.pdf>. Governor Jon Corzine's proposed 2008 budget anticipated receiving \$600,000 in similar grants in each of the next two years. *Id.*

<sup>108</sup> For example, the 2007 operating budget for the Ocean County Prosecutor's Office is \$12.8 million. THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF OCEAN, BUDGET OF THE COUNTY OF OCEAN FOR THE FISCAL YEAR 2007 Sheet 11 (2007), available at <http://www.co.ocean.nj.us/.%5C%5CPDFs%5C%5C2007Budget.pdf>. The 2007 operating budget for the Atlantic County Prosecutor's Office is \$11.5 million. Atlantic County Budget 2007, available at <http://www.aclink.org/Budget/2007/Budget2007.asp>.

<sup>109</sup> See Jefferies & Gleeson, *supra* note 89, at 1100–01.

<sup>110</sup> See U.S. CONST. art. I, § 8, cl. 4; *Hines v. Davidowitz*, 312 U.S. 52, 62–63 (1941).

<sup>111</sup> Trafficking does not require the crossing of state or international borders and can occur entirely within the United States. See *supra* Part II.A. Typical human trafficking cases, however, involve illegal entrance into the United States. See *id.*

<sup>112</sup> The House Committee on the Judiciary, discussing the availability of immigration benefits for victims endorsed by state or local law enforcement agencies, recognized a potential for conflict. The Committee stated:

[A]n individual might be cooperating with local law enforcement in a human trafficking investigation, but the Federal prosecutors, who are investigating the underlying activities, might have information that the victim does not meet the definition of a victim of a "severe form of trafficking in persons," the statutory standard for receipt of benefits. . . . Continuing to limit the endorsements to Federal law enforcement is more efficient and ensures uniformity in determining whether victims are cooperating with (the likely) Federal investigation or prosecution. . . . We believe this provision would cause confusion and potentially place Federal law enforcement against State and local law

Victims of crimes prosecuted under state trafficking laws may not qualify as victims of “severe human trafficking,” as required under the TVPA, and, therefore, may not qualify for permanent residence in the United States.<sup>113</sup> This is especially problematic as Congress specifically intended that the TVPA prevent the deportation of innocent victims.<sup>114</sup> If, however, the federal government prosecutes a trafficker, the victim is more likely to qualify as a victim of “severe human trafficking” and receive permanent residence.<sup>115</sup>

The TVPA provides victims of human trafficking legal status in the United States and a pathway to permanent residence through a special T-visa.<sup>116</sup> An individual qualifies for the special visa if the individual has been a victim of severe human trafficking, is physically present in the United States, and either has assisted in the investigation and prosecution of the trafficker or is under the age of fifteen.<sup>117</sup> A person is a victim of a severe form of human trafficking if the victim was subjected to sex trafficking or labor by force, fraud, or coercion, or sex trafficking while under the age of eighteen.<sup>118</sup> Unless the victim is a child, the Secretary of Health and Human Services must also certify the victim.<sup>119</sup>

A state-level investigation compounds the complexities of the immigration process for a victim because it may be more difficult for the victim to receive certification from the Secretary of Health and Human Services.<sup>120</sup> Difficulties in certification may arise because a victim, as defined by state law, may not qualify as a victim of a “severe

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enforcement in determinations regarding cooperation in what is likely to be a Federal preserve.

H.R. REP. NO. 108-264(II), at 14–16 (2003).

<sup>113</sup> *Id.* at 14–15.

<sup>114</sup> 146 CONG. REC. H2675-01, H2684 (2000) (statement of Rep. Smith) (“[W]omen and sometimes children in the brothel are typically deported if they are not citizens . . . This not only inflicts further cruelty on the victims, it also leaves nobody to testify against the real criminals, and frightens other victims from coming forward.”).

<sup>115</sup> *See* H.R. REP. NO. 108-264(II), at 14–15 (2003).

<sup>116</sup> 8 U.S.C. § 1255(l) (2000 & Supp. V 2005).

<sup>117</sup> 8 U.S.C. §§ 1101(a)(15)(T)(i), 1255(l) (2000 & Supp. V 2005).

<sup>118</sup> 22 U.S.C. § 7102(8) (2000).

<sup>119</sup> 22 U.S.C. § 7105(b)(1)(C) (2000). The Secretary may issue the required certification after consultation with the Secretary of Homeland Security to confirm that the victim is willing to assist in the investigation and prosecution of the trafficker and that either the victim has made a good faith application for a T-visa or the victim’s continued presence is needed to prosecute the trafficker. 22 U.S.C. § 7105(b)(1)(E)(i) (2000 & Supp. V 2005). Additionally, the Secretary may grant witnesses for the prosecution temporary legal status to assist in the prosecution of traffickers. *Id.* § 7105(b)(1)(E)(i).

<sup>120</sup> Richard, *supra* note 9, at 463–64.

form of human trafficking” as required by the TVPA.<sup>121</sup> For instance, under New Jersey law, a person commits human trafficking by knowingly luring another to engage in sexual activity by destroying or concealing that person’s government-issued identification.<sup>122</sup> While the victim may be a victim of human trafficking in New Jersey, she is not a victim of severe human trafficking under the federal statute and is not eligible for a T-visa. New Jersey’s definition of sex trafficking, which does not require the exchange of anything of value,<sup>123</sup> is also particularly problematic in this context. Because under the federal statute the definition of sex trafficking requires the exchange of goods of value,<sup>124</sup> a victim of sex trafficking under New Jersey law is not necessarily a victim under federal law if there was no exchange of goods. It is unclear if federal immigration authorities will look to the factual circumstances of the crime suffered by the victim to determine if the facts satisfy the federal definition of a commercial sexual act or if New Jersey victims will never qualify as federal victims.<sup>125</sup> If the federal government is unwilling to look to the specific facts of each crime, the victim may not qualify for a T-visa. The failure to provide a path to permanent residence exposes victims to retaliation in their home country and inhibits law enforcement investigations by discouraging cooperation.<sup>126</sup>

The interaction of federal immigration law and state human trafficking law is further complicated by federal skepticism regarding state-level investigations. The House Committee on the Judiciary expressed concern about states’ ability to determine whether an individual is a victim of severe human trafficking under the TVPA.<sup>127</sup> The

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<sup>121</sup> *Id.* at 466.

<sup>122</sup> N.J. STAT. ANN. § 2C:13-8(a)(1)(d) (West 2005).

<sup>123</sup> *Id.* § 2C:13-8(a)(1); 2C:34-1(a)(2).

<sup>124</sup> 18 U.S.C. § 1591(c)(1) (2000).

<sup>125</sup> It is unlikely that the federal government will look to the factual circumstances of each crime. The House Committee on the Judiciary voiced apprehension about such an inquiry:

[W]e are concerned about forcing the Department of Health and Human Services, when certifying trafficking victims, to reconcile possibly conflicting factual conclusions made by various Federal, State and local law enforcement authorities. For example, an individual might be cooperating with local law enforcement in a human trafficking investigation, but the Federal prosecutors, who are investigating the underlying activities, might have information that the victim does not meet the definition of a victim of a “severe form of trafficking in persons,” the statutory standard for receipt of benefits.

H.R. REP. NO. 108-264(II), at 15 (2003).

<sup>126</sup> 22 U.S.C. § 7101(b)(20) (2000).

<sup>127</sup> H.R. REP. NO. 108-264(II), at 14 (2003).

Committee stated, “We have reservations about altering the current statutory standard for the certification of victims to receive benefits and services . . . . We are concerned that State and local agencies may lack the resources or expertise to conduct the necessary inquiry [regarding certification].”<sup>128</sup> A Department of Justice regulation expressed further doubts regarding states’ capacity to investigate by limiting the law enforcement agencies that may provide a crucial immigration endorsement for victims to federal agencies.<sup>129</sup> The regulation implied it was very difficult for a victim to become certified with an endorsement from a state or local law enforcement agency.<sup>130</sup> The regulation was not redrafted after the Trafficking Victims Reauthorization Act of 2003 explicitly allowed certification based on cooperation with state and local authorities.<sup>131</sup> Despite its current legal irrelevance, this regulation demonstrates a generalized sense of distrust by federal officials of state authorities.<sup>132</sup>

There is a strong possibility that the victims of state human trafficking cases will not qualify as “federal victims” and will face deportation despite the TVPA’s explicit goal of preventing the deportation of victims.<sup>133</sup> Moreover, victims who bravely risk retaliation to testify against their captors may, nevertheless, be sent back to impoverished and dangerous areas of the world. If human trafficking cases were only prosecuted at the federal level, there would be a uniform definition of human trafficking. Victims would, therefore, meet the certification requirements and ultimately qualify for a T-visa and permanent residence in the United States. Such uniformity would be consistent with Congress’s desire to streamline prosecutions and to end the punishment of trafficking victims by deportation.<sup>134</sup>

*C. Human Traffickers Will Be Most Effectively Deterred if Trafficking Is a Federally Prosecuted Crime*

Traffickers will be most effectively deterred by stiffer federal penalties, liability under various federal statutes, and the international reach of the federal government. Criminal statutes successfully deter crime when several conditions are fulfilled. First, the potential

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<sup>128</sup> *Id.* at 14–15.

<sup>129</sup> Richard, *supra* note 9, at 465 (citing 8 C.F.R. § 214.11 (2004)).

<sup>130</sup> *Id.*

<sup>131</sup> 22 U.S.C. § 7105(b)(1)(E)(iv) (2000 & Supp. V 2005); 8 C.F.R. § 214.11 (2007).

<sup>132</sup> Richard, *supra* note 9, at 465–66.

<sup>133</sup> See 146 CONG. REC. H2675-01, H2684 (2000) (statement of Rep. Smith).

<sup>134</sup> *E.g.*, 146 CONG. REC. H2675-01, H2684 (2000).

offender must know his actions are criminal and understand the associated punishment.<sup>135</sup> Second, the offender must consider this information when deciding whether to commit the crime.<sup>136</sup> Finally, the costs of criminality must outweigh the benefits of criminality.<sup>137</sup> Federal rather than state prosecution of human traffickers ensures deterrence by guaranteeing that the punishment for human trafficking outweighs any potential benefits.

For deterrence to succeed, potential traffickers must understand, in a general sense, that their actions are punishable.<sup>138</sup> As legal and psychological researchers Paul H. Robinson and John M. Darley explain, the potential offender does not need to know anything “about the law per se, yet may through his experience and that of others . . . indirectly come to understand . . . the conditions of criminal liability or punishment that the criminal law sets out.”<sup>139</sup> Assuredly, human traffickers understand that their actions are criminal. Human trafficking is not a crime derived from an abstract regulatory scheme. Rather, human trafficking derives from the most basic of crimes, including slavery, rape, and kidnapping, which have been criminalized for centuries in a variety of cultures. While traffickers may not understand that human trafficking is a specifically enumerated as a crime, they undoubtedly know these basic crimes are punishable and, by extension, understand that their own actions are criminal.

Second, potential traffickers must contemplate the criminality of their acts and the potential for punishment.<sup>140</sup> Human trafficking organizations are sophisticated criminal enterprises and can, therefore, be influenced by the knowledge that their activities are criminal. Robinson and Darley suggest that deterrence often fails because criminals are frequently impulsive risk-seekers who are swept into a group dynamic without considering the criminality of their actions.<sup>141</sup> Unlike the impulsive street criminal, the leaders of trafficking organizations plan, deliberate, and scheme to accomplish their crimes, much like the leaders of organized crime syndicates.<sup>142</sup> While traffickers may be opportunistic, their acts demonstrate that they are not

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<sup>135</sup> Paul H. Robinson & John M. Darley, *Does Criminal Law Deter? A Behavioural Science Investigation*, 24 OXFORD J. LEGAL STUD., 173, 175 (2004).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 177.

<sup>140</sup> *Id.* at 175.

<sup>141</sup> Robinson & Darley, *supra* note 135, at 181.

<sup>142</sup> See Torg, *supra* note 6, at 505–06.

impulsive, nor are they swept into the frenzy of a group mentality. For example, in the Russian Trio case, the traffickers spent time and exerted considerable effort and planning to lure women from Russia and to commit well-planned visa fraud.<sup>143</sup> The Notario brothers, who ran brothels in several cities, demonstrated sophistication and patience by arranging for women to be smuggled into the United States and by trafficking them up and down the East Coast without detection.<sup>144</sup> These crimes involve long-term planning, knowledge of the immigration system, and coordination among numerous participants, which demonstrates the traffickers' ability to understand the illegality of trafficking and the potential for punishment.

Whether trafficking statutes have a deterrent effect must, therefore, center on whether the punishment outweighs the benefits of human trafficking; the potential for massive trafficking profits makes this particularly difficult. Traffickers undoubtedly conduct a cost-benefit analysis before engaging in trafficking.<sup>145</sup> Traffickers consider the opportunity for and profits from legitimate income, the profits of illegal activity, the probability of being arrested, and the potential punishment.<sup>146</sup> To combat these massive benefits, punishment must be proportional and swift; such punishment can only be accomplished under federal law.

Federal prosecution of human traffickers will deter trafficking by ensuring that the punishment for trafficking outweighs the benefits. First, the penalties for human trafficking are stiffer under federal law than under state law. For instance, a trafficker in New Jersey typically faces a maximum of twenty years in prison if prosecuted under state law.<sup>147</sup> The same trafficker, if prosecuted under federal law, faces up to life in prison, depending upon the circumstances of the crime.<sup>148</sup> Second, traffickers face prosecution under a variety of other federal laws, including RICO, the Mann Act, and the Protect Act.<sup>149</sup> Under state law, traffickers not charged with human trafficking face charges for less significant crimes such as promoting prostitution or false imprisonment, which carry shorter prison sentences.<sup>150</sup> Third, the in-

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<sup>143</sup> See *supra* Part II.B.

<sup>144</sup> See *supra* Part II.B.

<sup>145</sup> Diep, *supra* note 25, at 327.

<sup>146</sup> *Id.*

<sup>147</sup> N.J. STAT. ANN. § 2C:43-6(a)(1) (West 2005).

<sup>148</sup> See 18 U.S.C.A. § 1591(b) (West 2008).

<sup>149</sup> See *infra* Part IV.E.

<sup>150</sup> Promoting prostitution, for example, is typically a third-degree crime, carrying a sentence of three to five years in prison. N.J. STAT. ANN. §§ 2C:34-1(b)(2), 2C:43-6(a)(3) (West 2005). False imprisonment is a disorderly persons offense (New Jer-

ternational reach of the federal government ensures that traffickers in other nations, including those who have fled the United States, will be brought to justice in America.

Further, to guarantee that the benefits of trafficking do not outweigh the potential for arrest and punishment, uniformity in trafficking laws is necessary to prevent traffickers from shifting their activities to states with weak human trafficking laws.<sup>151</sup> Legal scholars who focus on the intersection of crime and economics suggest that “disparity in legal conditions creates disparate markets, which traffickers exploit for their gain.”<sup>152</sup> One researcher, examining international patterns of human trafficking, argues that because traffickers exploit discrepancies and ambiguities in the law, the international sex trade can be eliminated by using uniform international barriers to trafficking rather than individualized national prosecutions.<sup>153</sup> In other words, criminalization at a national level is insufficient because a single country cannot reach suppliers and consumers outside of the country and cannot protect women and children who are victimized outside the nation’s borders.<sup>154</sup> This argument easily translates to trafficking within the United States. Because traffickers exploit weaknesses and inconsistencies in state laws and because state governments cannot necessarily reach traffickers beyond their borders, the most effective way to attack trafficking is to rely on a uniform federal law. Instead of passing laws to criminalize human trafficking in every state, deterrence of human trafficking will be best accomplished by uniformity on the national level.

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sey’s equivalent of a misdemeanor) and carries a presumption against incarceration. *Id.* §§ 2C:13-3, 44-1(e).

<sup>151</sup> The other factors that influence the location of trafficking, including easy transportation, demand for domestic and farm workers, and a large immigrant population, are also significant to the trafficker’s cost-benefit analysis. Even if these factors facilitate trafficking and increase the profitability of trafficking, harsh punishment (which can be best assured by the federal government) will outweigh these potential benefits and trafficking will be avoided.

<sup>152</sup> Diep, *supra* note 25, at 326; *see also* Mónica Serrano, *Transnational Organized Crime and International Security: Business as Usual?*, in *TRANSNATIONAL ORGANIZED CRIME & INTERNATIONAL SECURITY: BUSINESS AS USUAL?* 16 (Mats Berdal and Mónica Serrano eds., 2002) (“[S]tate borders have themselves invariably created opportunities for crime—by generating variation in levels of taxation, ‘subsidization,’ and prohibition, by creating problems of legal jurisdiction, and by raising investigative costs.”); *cf.* Alex Y. Seita, *The Role of Market Forces in Transnational Violence*, 60 *ALB. L. REV.* 635, 635 (1997) (arguing that forces such as supply and demand drive the market for both legal and illegal goods and that these market forces may ultimately cause transnational violence).

<sup>153</sup> Diep, *supra* note 25, at 310; *see also* Seita, *supra* note 152, at 639.

<sup>154</sup> Seita, *supra* note 152, at 648.

Uniform national enforcement under the TVPA lessens the danger that traffickers will exploit disparate legal conditions by shifting human trafficking from state to state. Further, it is unlikely that sole reliance on federal human trafficking laws will decrease the detection and arrest of traffickers. Indeed, prior to New Jersey's passage of a human trafficking law, state and local law enforcement were often the first to discover victims and arrest traffickers, despite the ultimate federal prosecution. For instance, police found victims during a raid on a suspected brothel<sup>155</sup> and during a traffic stop.<sup>156</sup> Moreover, deterrence is served by ensuring that federal prosecutions are always accompanied by asset forfeiture, thereby reducing the profitability of illegal activity. Finally, as a means of general deterrence, trafficking prosecutions must be well publicized in the mainstream media and in media outlets that target ethnic enclaves within the United States.

*D. The Underutilization of State Human Trafficking Laws  
Demonstrates the Advantage of Federal Prosecution*

Since the passage of the TVPA, numerous states,<sup>157</sup> including Florida, California, and Texas, have enacted legislation criminalizing human trafficking. Like New Jersey, these states are prime locations for human trafficking because they are border states with large populations and substantial immigrant communities and because they are transportation hubs.<sup>158</sup> Nevertheless, the human trafficking laws in these states remain virtually unused, while the federal government continues to prosecute trafficking cases within the same jurisdictions.<sup>159</sup> Indeed, the former head of New Jersey's human trafficking task force, Deputy Attorney General Linda Rinaldi, predicted shortly after the passage of New Jersey's Human Trafficking Law that federal prosecutors would continue to handle cross-border trafficking cases while the state would prosecute smaller cases.<sup>160</sup> The failure of states to enforce their own human trafficking laws indicates that, despite the states' ability to prosecute these crimes, the prosecution of human trafficking remains within the federal dominion.

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<sup>155</sup> Smothers, *supra* note 40.

<sup>156</sup> Parry, *supra* note 38.

<sup>157</sup> See *supra* note 3.

<sup>158</sup> See Gallagher, *supra* note 37, at 1.

<sup>159</sup> Compare *Protect Trafficking Victims First, Criminal Cases Will Follow*, TAMPA TRIB., July 17, 2006, at 10, with *Successful Communities Offer Lessons in Fighting Trafficking*, TAMPA TRIB., July 18, 2006, at 10.

<sup>160</sup> Gallagher, *supra* note 37, at 1.

The failed impact of state human trafficking laws in Florida, California, and Texas illustrates the clear preference for federal prosecution of traffickers. For example, two years after Florida criminalized forced labor, local prosecutors had not pursued any trafficking cases.<sup>161</sup> The *Tampa Tribune* lamented, “Florida has human trafficking victims. What it doesn’t have is human trafficking cases.”<sup>162</sup> While Florida failed to prosecute traffickers under its own laws, Assistant U.S. Attorney for the Middle District of Florida, Doug Molloy, was lauded as “one of the nation’s most successful prosecutors” of federal trafficking cases.<sup>163</sup> The situation is comparable in California where, a year after criminalizing forced labor and sex trafficking, the state law remained unused.<sup>164</sup> Local law enforcement officials claimed that the California law made it too difficult to prove a trafficker held a victim against her will.<sup>165</sup> Meanwhile, federal prosecutors in California actively pursued various human trafficking cases during the same time period.<sup>166</sup>

Similarly, a year after Texas’s trafficking law was enacted, human trafficking activists expressed distress that while the U.S. Department of Health and Human Services identified more trafficking victims in Texas than in any other state, there were no state-level prosecutions.<sup>167</sup> Indeed, the spokeswoman for the Texas District and County Attorneys Association stated that the organization was unaware of any prosecution under the state law.<sup>168</sup> Further, the spokeswoman asserted that “[t]he penalties are stiffer at the federal level so usually that’s what happens; the feds take those [cases].”<sup>169</sup> Clearly, the Tex-

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<sup>161</sup> FLA. STAT. ANN. § 787.06 (West 2007); *Bush’s Anti-Slavery Initiative Falters in Quest for Freedom*, TAMPA TRIB., July 16, 2006, at 2.

<sup>162</sup> *Protect Trafficking Victims First, Criminal Cases Will Follow*, *supra* note 159, at 10.

<sup>163</sup> *Successful Communities Offer Lessons in Fighting Trafficking*, *supra* note 159, at 10.

<sup>164</sup> *State Law Not Deterring Enslavement*, MONTEREY COUNTY HERALD (Monterey, Cal.), Nov. 26, 2006, at B7.

<sup>165</sup> *Id.*

<sup>166</sup> The federal government charged James and Elizabeth Jackson with forced labor conspiracy for compelling a Filipina woman to act as a domestic servant. ANNUAL REPORT, *supra* note 9, at 43. In San Francisco, thirty-six defendants faced federal charges of conspiracy to commit sex trafficking based on accusations that they smuggled women from Korea and forced the victims to work as prostitutes. *Id.* at 49.

<sup>167</sup> Patrick McGee, *Human-Trafficking Bills Would Toughen Laws*, FORT WORTH STAR-TELEGRAM (Tex.), Apr. 5, 2007, at B4.

<sup>168</sup> *Id.* There is one reported local prosecution under Texas’s forced labor statute. Britney Booth, *Woman Receives \$10,000 Fine, Four Years Probation in Slave Trial*, MONITOR (McAllen, Tex.), May 9, 2006. In May 2006, a Hidalgo County jury convicted Ellilian Jud De Leon Ramos of one count of human trafficking under the Texas state law. *Id.*

<sup>169</sup> McGee, *supra* note 167, at B4.

as human trafficking law did not create a swell of local district attorneys seeking to test the law. Nevertheless, federal authorities in Texas remained active in prosecuting human trafficking cases.<sup>170</sup>

Local prosecutors, like those in Florida, California, and Texas, may hesitate to pursue human trafficking cases for several reasons. First, trafficking cases are particularly difficult to prosecute because they are time and labor intensive.<sup>171</sup> Unlike Department of Justice attorneys devoted only to trafficking prosecutions, local prosecutors must allocate resources to these cases at the expense of other trial and investigative units. Second, human trafficking cases are arduous to present to a jury.<sup>172</sup> As with battered-women cases, a jury may find it difficult to believe that a victim was unable to escape her captor, especially in situations where the victim was mobile and in contact with outsiders. Considering the current political debate over illegal immigration, a jury may also harbor animosity toward those who enter the United States illegally and may be particularly unsympathetic if a victim was initially complicit in being smuggled. Furthermore, the language and culture barrier may make it difficult for a jury to identify with the victim and feel compassion for her plight. These difficulties significantly decrease the likelihood that state and local prosecutors will pursue crimes under human trafficking statutes. Finally, pragmatic concerns about unresolved legal issues and success on appeal may inhibit otherwise eager prosecutors. For instance, the Ohio Prosecuting Attorneys Association expressed concern that a proposed state human trafficking law would conflict with kidnapping, abduction, extortion, and assault statutes, which could result in a conflict over which law takes precedence.<sup>173</sup> In New Jersey, prosecutors confronted with a human trafficking situation may be particularly reluctant to pursue the case under the state's trafficking statute because there are no appellate decisions on the matter. Without guidance from the courts, prosecutors may be hesitant to risk trying a defendant under the statute only to have the conviction overturned

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<sup>170</sup> For example, a couple pled guilty to federal charges for smuggling a young girl into the United States to serve as a babysitter. ANNUAL REPORT, *supra* note 9, at 45.

<sup>171</sup> John Tanagho, Note, *New Illinois Legislation Combats Modern-Day Slavery: A Comparative Analysis of Illinois Anti-Trafficking Law with Its Federal and State Counterparts*, 38 LOY. U. CHI. L.J. 895, 942 (2007).

<sup>172</sup> Federal prosecutors are confronted with similar jury challenges that may discourage the use of human-trafficking statutes. These obstacles, however, may be tempered by a larger and more geographically diverse jury pool. John S. Baker, Jr., *State Police Powers and the Federalization of Local Crime*, 72 TEMP. L. REV. 673, 710 (1999).

<sup>173</sup> Reginald Fields, *Proposed Laws Target Human Trafficking: But Prosecutors Fear Clash with Statutes Already on Books*, PLAIN DEALER (Cleveland, Ohio), Mar. 30, 2007, at B1.

on appeal. This is especially true in New Jersey where the supreme court is particularly pro-defendant.<sup>174</sup>

*E. The Breadth of Federal Statutes with Which to Charge Traffickers Assures Sufficient Punishment of Traffickers*

Federal prosecution is preferable because the breadth of federal statutes under which traffickers may be prosecuted provides prosecutors with the flexibility to overcome the formidable challenges of prosecuting traffickers. Because state and local prosecutors do not charge defendants under current state human trafficking statutes, these prosecutors will likely charge defendants under alternative criminal statutes. An assessment of whether the state or the federal government should pursue human trafficking prosecutions must, therefore, consider the strength of alternative charges. While states lack criminal statutes that accurately reflect the true nature of human trafficking and carry substantial prison sentences, the federal government has a variety of criminal provisions with stringent sentences, providing federal prosecutors with the flexibility to surmount the challenges of trafficking prosecutions and successfully punish traffickers.

An analysis of alternative charges demonstrates that the federal government has a wider breadth of criminal laws with which to charge accused human traffickers.<sup>175</sup> Typically, states are limited to charges such as promoting prostitution, criminal restraint, assault, sexual assault, criminal coercion, terroristic threats, and false imprisonment. These crimes do not all carry significant jail time<sup>176</sup> and do not reflect the extent and impact of their psychological effects on victims. These crimes also fail to label traffickers as such; their organization, sophistication, and international reach make traffickers worse than abusers, kidnappers, or pimps, and their convictions should re-

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<sup>174</sup> New Jersey routinely provides more constitutional rights to defendants than the Supreme Court of the United States. *Compare* California v. Hodari D., 499 U.S. 621, 626 (1991) (holding that suspect who fled at sight of police and dropped drugs while fleeing had not been seized and, therefore, the discarded drugs were admissible), *with* State v. Tucker, 642 A.2d 401, 405–09 (N.J. 1994) (expressly rejecting *Hodari D.* and holding that suspect who fled at sight of police and dropped drugs while fleeing had been unjustifiably seized and therefore suppressed the discarded drugs). *See also* John B. Wefing, *The New Jersey Supreme Court 1948–1998: Fifty Years of Independence and Activism*, 29 RUTGERS L.J. 701, 701–02 (1998).

<sup>175</sup> *See* Torg, *supra* note 6, at 508–13.

<sup>176</sup> For example, criminal restraint is a third-degree crime in New Jersey, which carries a sentence of three to five years in prison. N.J. STAT. ANN. §§ 2C:13-2, 2C:43-6(a)(3) (West 2005). Sexual assault is a second-degree crime, carrying a sentence of five to ten years in prison. *Id.* §§ 2C:14-2, 2C:43-6(a)(2).

flect this reality. The federal government, on the other hand, may be able to charge the accused trafficker with a crime that seems more analogous to human trafficking and reflects the traffickers' sophistication and international presence. According to the Chief Counsel for the Smuggling and Human Trafficking Center, federal prosecutors may charge a defendant with peonage, alien smuggling and harboring, passport and visa fraud, money laundering, and conspiracy.<sup>177</sup> In *United States v. Maka*,<sup>178</sup> the United States Court of Appeals for the Ninth Circuit held that human trafficking charges are not duplicative of involuntary servitude, alien smuggling, or alien harboring charges, allowing a defendant to be convicted of each count and enabling federal prosecutors to bring multiple charges against a trafficking defendant.

Federal prosecutors may also implement the Mann Act,<sup>179</sup> which prohibits the transportation of an individual in interstate or foreign commerce for the purpose of prostitution.<sup>180</sup> The Attorney General's annual report on human trafficking suggests that the Mann Act and immigration violations sufficiently punish traffickers when there is not enough evidence to ensure a TVPA conviction.<sup>181</sup> In *United States v. Robinson*,<sup>182</sup> the United States District Court for the Middle District of Pennsylvania found that a defendant may be convicted under both the TVPA and the Mann Act based on the same conduct because each statute requires a distinct mens rea. Importantly, the court noted that it was difficult to imagine a realistic situation in which a defendant could be convicted under one statute but not the other.<sup>183</sup> *Robinson* implies that whenever a victim commits prostitution linked to interstate travel, the promoter, trafficker, and kidnapper should be charged under both the TVPA and the Mann Act.

The Protect Act, passed in 2003, increased the penalty for interstate or international transportation of minors for illegal sexual activity to a maximum of thirty years in prison in an effort to end sexual tourism.<sup>184</sup> This provision is particularly favored by federal prosecutors because there is no statute of limitations and it can punish U.S.

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<sup>177</sup> Torg, *supra* note 6, at 506–12.

<sup>178</sup> 237 F. App'x 225, 227 (9th Cir. 2007).

<sup>179</sup> 18 U.S.C. § 2421 (2000).

<sup>180</sup> Torg, *supra* note 6, at 509.

<sup>181</sup> REPORT ON ACTIVITIES, *supra* note 11, at 4.

<sup>182</sup> *United States v. Robinson*, No. 05-CR-443, 2007 WL 790013, at \*9 (M.D. Pa. Mar. 14, 2007).

<sup>183</sup> *Id.* at \*8.

<sup>184</sup> Torg, *supra* note 6, at 509–10.

citizens for their actions abroad.<sup>185</sup> In addition, RICO<sup>186</sup> is popular with federal prosecutors because it is a flexible and broad law used primarily against organized criminal enterprises. Prosecution under RICO may work best to dismantle large human trafficking rings because it allows prosecutors to show long-term criminal activity and to present evidence of earlier prosecutions.<sup>187</sup> Moreover, RICO allows for joinder of many defendants and many charges, and allows criminal conduct to be considered as a predicate offense even if the statute of limitations has run on the underlying crime.<sup>188</sup>

Prosecutors at all levels rely on alternative charges to garner power for plea negotiations and to combat evidentiary challenges.<sup>189</sup> In human trafficking cases, federal prosecutors, unlike their state counterparts, can rely on numerous and significant alternative charges. The Mann Act, Protect Act, and RICO demonstrate the breadth and strength of federal laws under which traffickers may be charged. As an alternative to, or in addition to, a charge under the TVPA, these charges carry harsher penalties and more accurately reflect the complexity of human trafficking than the state alternatives to human trafficking charges.

#### V. ACTION-SUPPORT ROLE FOR STATES

Local prosecutors should pattern their approach to human trafficking investigation and prosecution on the dual action-support role played by prosecutors in terrorism cases. The American Prosecutors Research Institute studied the effects of state anti-terror legislation on local prosecutors.<sup>190</sup> The research demonstrated that the most common role for local prosecutors in the area of anti-terrorism was the investigation and enforcement of precursor crimes such as identity theft and money laundering.<sup>191</sup> Further, over half of the responding prosecutors' offices belonged to terrorism task forces.<sup>192</sup> Prosecutors reported that they regularly attended meetings with the U.S. Attorney in their jurisdiction to overcome jurisdictional and investigative chal-

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<sup>185</sup> *Id.*

<sup>186</sup> 18 U.S.C. §§ 1961–1963 (2000 & Supp. V 2005).

<sup>187</sup> Torg, *supra* note 6, at 512.

<sup>188</sup> *Id.*

<sup>189</sup> *Cf.* FRANK W. MILLER, PROSECUTION: THE DECISION TO CHARGE A SUSPECT WITH A CRIME 154–172 (Frank J. Remington ed., 1970) (discussing prosecutorial discretion in charging).

<sup>190</sup> NUGENT ET AL., *supra* note 7, at 2.

<sup>191</sup> *Id.* at 2, 7.

<sup>192</sup> *Id.* at 5.

lenges.<sup>193</sup> Many offices also participated in joint investigations with state or federal agencies.<sup>194</sup>

The study ultimately found that local prosecutors' offices engaged in one of three typical functions: support, action, or dual action-support roles.<sup>195</sup> Offices with a high perceived risk of a terrorist attack took an active role participating in task forces, coordinating information, actively gathering intelligence, developing cases, and prosecuting both precursor crimes and terrorism offenses.<sup>196</sup> Supportive offices passively belonged to task forces, assisted federal authorities as needed, and reviewed intelligence before they passed it to the federal government.<sup>197</sup> Other prosecutors took a dual action-support role. They participated actively in task forces, coordinated information between local and federal governments, prosecuted cases as requested by state or federal prosecutors, and made policy and organizational changes to accommodate their new roles.<sup>198</sup>

In the fight against human trafficking, state and local prosecutors should become active participants on task forces with federal officials. High-level prosecutors should attend regular meetings with the local U.S. Attorney to discuss and share information about potential human trafficking cases. Importantly, local prosecutors should continue to serve as a conduit of information for other agencies. Because the nature of local policing requires officers to be on the street, among the community, and aware of local patterns of crime and behavior, local officers may be the first to detect human trafficking.<sup>199</sup> In this way, local law enforcement and local prosecutors may actively pursue precursor crimes, just as in terrorism cases. Local offices should pursue any precursor crimes, such as identity theft or promoting prostitution, as these cases develop. Further, local prosecutors may prosecute low-level trafficking or precursor crimes as requested by the U.S. Attorney.<sup>200</sup> Likewise, the U.S. Attorney should take on cases which local prosecutors believe are beyond the capabilities of

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<sup>193</sup> *Id.* at 21.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* at 8.

<sup>196</sup> NUGENT ET AL., *supra* note 7, at 8.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> For instance, the case against the Guzman brothers in New Jersey evolved from a traffic stop made by a New Jersey State Trooper. Parry, *supra* note 38.

<sup>200</sup> This Comment does not suggest that the federal government should direct or order local law enforcement or prosecutors to carry out federal law, as this would violate the constitution. *See* *Printz v. United States*, 521 U.S. 898, 944–45 (1997) (holding that Congress cannot command state and local law enforcement officials to administer federal law because to do so would violate the system of dual sovereignty).

their offices. State prosecutors, however, should not actively pursue human trafficking prosecutions because of the significant federal advantages discussed throughout this Comment, including infrastructure, expertise, prosecutorial flexibility, and the breadth of federal statutes.

Most importantly, local, state, and federal prosecutors should develop an informal pact recognizing the importance and advantages of federal prosecution of human trafficking. Such agreements among prosecutors are not uncommon.<sup>201</sup> Under a human trafficking pact, local prosecutors should agree to offer human trafficking cases to federal prosecutors if they do not believe they will pursue the case under the local human-trafficking statute; federal prosecutors may agree to shift smaller, less-demanding cases to local prosecutors. This pact should be a flexible agreement between attorneys and policy makers who have the same goals of prevention, protection, and prosecution. The agreement should be developed by the human trafficking task force and should be reviewed frequently to ensure it is workable in practice. The pact should consider the role of successive prosecution and whether each government will attempt to prosecute defendants after an acquittal in the other jurisdiction.<sup>202</sup> The Civil Rights Division of the Department of Justice should also consider adopting a detailed internal policy regarding when to exercise successive prosecution.<sup>203</sup> While there is a strong desire to preserve the balance of state and federal power, this arrangement would ensure that the extensive resources of the federal government are available for the most difficult and complex human trafficking cases. Moreover, although federal prosecutors are agents of the federal govern-

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<sup>201</sup> E.g., Joel Cohen, *Second Bite at the Apple: Successive and Concurrent Prosecutions*, N.Y. L.J., May 12, 2003, at 2, available at <http://www.stroock.com/SiteFiles/Pub183.pdf>.

<sup>202</sup> The Dual Sovereignty exception to the Fifth Amendment's protection against Double Jeopardy allows state and federal governments to prosecute for criminal acts arising from the same conduct or same transaction without violating a defendant's constitutional rights. ADAM HARRIS KURLAND, *SUCCESSIVE CRIMINAL PROSECUTIONS: THE DUAL SOVEREIGNTY EXCEPTION TO DOUBLE JEOPARDY IN STATE AND FEDERAL COURTS* xxii (2001). The Department of Justice's Petite Policy is an internal guideline to determine which successive prosecution cases the Department will pursue. *Id.* at 3. In theory, successive prosecution could be a powerful weapon for prosecutors. Yet, the Department of Justice only allows approximately 150 of these prosecutions each year. *Id.* at xxiv. The New Jersey statute likewise presents a formidable barrier for successive state prosecution. See N.J. STAT. ANN. § 2C:13-8 (West 2005).

<sup>203</sup> KURLAND, *supra* note 202, at 24–25 (in police brutality cases the Department of Justice requires full cooperation with state prosecutions, requires the FBI to halt any on-going investigation when a state initiates a prosecution on the same matter, and mandates that the U.S. Attorney remain apprised of the details of the case).

ment, they are undoubtedly local actors who develop goals and target defendants based on local concerns and local needs.<sup>204</sup>

States do have a role in the fight against human trafficking; that role, however, is not the prosecution of traffickers. Rather, the states should focus their efforts on educating those who may first encounter trafficking victims, including fire and health inspectors, firefighters, paramedics, and police, and on raising awareness within ethnic communities and among people who work in those communities, including clergy members. Further, the social services organizations within each state, aided as much as possible by private charitable organizations, should assist victims who have received temporary or permanent residence to find a home, medical care, schooling, and employment. Thus, the states should remain oriented to the needs of victims, not to the prosecution of traffickers.

## VI. CONCLUSION

The significance of prosecution in the fight against human trafficking cannot be overstated. Prosecution is the most obvious means by which the government can prevent trafficking and protect victims. Despite the challenge of defining a proper role for the federal and state justice systems, members of each system have a vested interest in the efficiency and efficacy of human-trafficking prosecutions. A comprehensive analysis of federal and state laws and infrastructure, immigration complications, deterrence mechanisms, and prosecutorial attitudes demonstrates that the federal government can most efficiently and effectively prosecute human traffickers. State prosecutors, including those in New Jersey, can most effectively contribute to the fight against trafficking by acting in a supportive role, which is secondary to the federal government. State governments should focus upon raising public awareness, aiding victims, participating in task forces, prosecuting precursor crimes, and pursuing cases according to a prearranged pact between local prosecutors and the U.S. Attorney.

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<sup>204</sup> Jefferies & Gleeson, *supra* note 89, at 1099.