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ACCESS TO JUSTICE FOR UNDOCUMENTED FEMALE VICTIMS OF SEX TRAFFICKING

“You may choose to look the other way, but you can never say again that you did not know.”

--William Wilberforce¹

AUTHOR'S NOTES

Human trafficking is an issue that has existed for centuries. As much as the world has progressed in the 21st century, slavery remains a constant on each continent and in every country. Many governmental organizations, NGOs, and individual human rights activists have proposed solutions they believed would end human trafficking on a global scale. Unfortunately, human trafficking is still on the rise.² In part, advanced technology has driven accessibility and furthered this sick business. This article does not provide a quick fix. Stopping human trafficking overnight is an impossible task. And yet, it is a task the world must attempt. This article is intended to invite rage, sadness, and disgust; but, especially, it is an invitation to hope and to dream of a future free of slavery. As long as the world does not know the pervasiveness of the issue, it cannot begin to envision a complete solution.

The article takes place during a time in the history of the United States when, yet again, this nation faces anti-immigration rhetoric from the current administration. The Trump administration does no favors to victims of human trafficking by criminalizing *92 any and all undocumented people within the borders of the United States.³ In fact, citizens of the United States are currently seeing one of the toughest immigration stances that the United States has taken in recent years. This article looks at a multi-faceted way to address the problem of human trafficking while also working with the current administration to suggest changes that are likely to be passed and implemented.

I. INTRODUCTION TO HUMAN TRAFFICKING

There are no holidays, vacations, or rest days for victims of human trafficking.⁴ Women and girls are sent to homes, brothels, motels, and street sides.⁵ Girls are made to “service” more than thirty customers a day, seven days a week.⁶ As impossible as it may be to imagine this kind of life, this is the daily reality for many women around the world. Human trafficking is a global issue that impacts women of almost every culture, background, and national origin. In order to understand the issue of human trafficking at a micro level, this article will look solely at the human trafficking demand created by the United States and supplied from Mexico. On both sides of the United States-Mexico border, traffickers rent out women and children for sex

for as little as fifteen minutes at a time, dozens of times a day.⁷ Specifically, this article will analyze the relationship between New York and Tenancingo, Tlaxcala, Mexico. Human trafficking is legally defined as

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or vulnerability or of the giving *93 or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.⁸

Even when police are able to uncover covert human trafficking operations, they often do not have the training to understand why women are engaging in these sexual acts.⁹ Many times, because prostitution is illegal in all states except Nevada, officers assume that trafficked women are prostitutes.¹⁰ Instead of concluding these women are victims, police arrest the women for prostitution violations.¹¹ This allows traffickers to walk away unscathed and forces their victims to walk away with a criminal record.¹² Law enforcement can only begin to reverse this trend when they understand that some of the women they encounter do not earn money, are engaging in sex acts involuntarily, and are beaten, and in some cases killed, in their attempts to get out of their situation.¹³

The women who end up in motels and houses across the United States are often brought across Mexico's border into the United States by traffickers based in Mexico.¹⁴ The United States-Mexico border allows access for a variety of criminal activities to flourish, including human trafficking.¹⁵ These border cities are one of the main stages for this industry, where women and children are considered mere tools from which traffickers profit.¹⁶ These harsh borderlands serve as the starting point for women and children who are ultimately headed to the major sex-trafficking hot spots of New York and other major U.S. cities.¹⁷

*94 The United Nations reports that in general, ninety-seven percent of all trafficked victims are women, regardless of age.¹⁸ Human trafficking covers a wide range of activities. While most people may associate human trafficking with sexual servitude and exploitation, human trafficking also includes trafficking persons for forced labor or even organ harvesting.¹⁹

Of the adult women who are trafficked, seventy-nine percent are trafficked for the purpose of sexual exploitation.²⁰ Each year, 17,500 people are trafficked into the United States.²¹ Since the majority of human trafficking involves women exposed to sexual abuse, this article focuses on the need for change in that specific area.

There is a fundamental link between the illegal sex trade, human trafficking, and immigration. Victims of human trafficking fail to seek legal redress because they are terrified to come forward for fear of being criminalized for engaging in illicit sexual activity or for fear of being deported because of their undocumented status. Victims' ability to seek legal remedy without fear of re-victimization and deportation can be improved by changing specific policies within the Immigration and Nationality Act (INA);²² preventing Immigration and Customs Enforcement (ICE) officers from entering diversion courts for victims of human trafficking;²³ and amending Article 230 of the New York Penal Law.²⁴ The implementation of the three previous solutions would allow at least 5,000²⁵ victims each year to seek legal remedy without fear of prosecution, re-victimization, or deportation.

*95 The language of the T visa should be amended, specialized courts should be protected from ICE intervention, and prostitution should be legalized to best address the injustices human trafficking victims suffer. These changes to current law and policies will eliminate the fear of prosecution and deportation and encourage victims to come forward to report the terrible crime of human trafficking. Simultaneous changes at both the state and federal level will slow and eventually stop human trafficking altogether.

This article first addresses the current federal and local laws. Second, the article explains the importance of the two geographical locations chosen for analysis. Third, the article expands on the daily issues victims of human trafficking face, how victims are controlled, and why the majority of victims do not come forward. Finally, the article addresses three possible solutions to the issues raised in the first part of the article and discusses and responds to potential criticism of the three proposed solutions. The proposed solutions begin with the easiest and most feasible to implement and then build in complexity and difficulty.

II. CURRENT FEDERAL LAWS AND REGULATIONS

*A. The Trafficking Victims Protection Act (TVPA)*²⁶

Congress adopted the TVPA in 2000 as a victim-centric approach to fighting human trafficking in the United States.²⁷ The main focus of the legislation is the prosecution of traffickers, protection of trafficked victims, and prevention of future trafficking crimes.²⁸ The TVPA empowers law enforcement and the federal government to prosecute traffickers while simultaneously protecting victims.²⁹ When Congress first adopted the TVPA, it was considered critically important for anti-trafficking proponents.³⁰ The TVPA authorized the establishment of two agencies specifically tasked to help with the *96 issue of trafficking victims--the State Department's Office to Monitor and Combat Trafficking in Persons and the President's Interagency Task Force to Monitor and Combat Trafficking in Persons.³¹

Almost eighteen years after Congress enacted the TVPA, law enforcement is still re-victimizing and criminalizing victims of human trafficking.³² Practical and procedural problems arose soon after the passage of the TVPA. First, lawmakers and law enforcement officials ignored and hid the reasons behind trafficking, in order to prioritize political agendas or interests.³³ Second, many agencies did not properly implement anti-human trafficking statutes because they misread or misinterpreted certain provisions and failed to implement others.³⁴ This resulted in poor implementation of the TVPA and a lack of understanding in the field of human trafficking by the very people most likely to encounter a trafficking victim.³⁵ As a result, the police, tasked with following these agency guidelines, were charging these trafficking victims with prostitution or immigration offenses instead of helping them find a way out of this waking nightmare.³⁶

The following trafficked victim's interaction with the U.S. government illustrates the dangerous consequences of the inability to identify victims of human trafficking:

After three weeks of threats and closely controlled travel, Ahn³⁷ arrived for the second time in the United States by plane. This time, rather than being immediately deported, she was immediately arrested by the U.S. government and charged with the federal offense of entering with the false passport that her traffickers gave her when they took hers. Instead of being recognized as a trafficking victim and assisted by, the Department of Homeland Security inspector, she was detained, arrested, and held in a federal prison facility. After Ahn was charged, convicted, and jailed, she met several times with FBI agents, providing them with the names, phone numbers, and contact *97 information of everyone she believed was involved in the trafficking scheme, including people in the United States, whom she had been told she must contact upon arrival or face grave consequences. Despite cooperating with the FBI and completing her federal criminal sentence, she remained in detention for a further eighteen months because she had no identification documents, as required by the Department of Homeland Security to be eligible to apply for a bond.³⁸

Ahn's situation illustrates that the TVPA generally offers only "symbolic support" to victims³⁹ even after multiple amendments of the original Act in 2003, 2005, 2008, and 2013.⁴⁰ The law only provides relief to victims if they are willing to assist in the prosecution of their abuser.⁴¹ Victims are intimidated, and this requirement deters victims from seeking the help they desperately need.⁴² The law also ignores the victims' need to protect their family members from continued violence at the hands of traffickers.⁴³ Family members who are already in the United States, along with those who remain in the victim's home country, are at risk of violence and need protection.⁴⁴

In order to protect both victims and their families, the United States and Mexico must cooperate and coordinate protection for people in multiple countries.⁴⁵ In order to make this happen, both countries must change current border relations--which is quite difficult, especially in today's current political climate.⁴⁶ The general rhetoric coming from the White House disparaging immigrants and Mexicans has harmed Mexican-American relations, making the necessary cooperation and coordination unlikely.⁴⁷ *98 Mexico is less likely to work with the United States in a future where the United States is actively seeking to discourage immigration from Mexico.⁴⁸ By Mexico and the United States coming together in a joint effort to combat human trafficking through their borders, both victims of human trafficking and their families will receive greater protection.

B. T Nonimmigrant Eligibility (T visa)

In October of 2000, Congress created the T nonimmigrant status after passing the TVPA.⁴⁹ This application process allows victims of human trafficking to gain legal status in order to remain in the United States and avoid future persecution in their home country.⁵⁰ The legislation also allows law enforcement agencies the ability to offer protection for victims while simultaneously investigating and prosecuting human traffickers.⁵¹

In order to be eligible for a T visa, victims must comply with the following requirements:

1. They are or were a victim of trafficking, as defined by law;
2. They are in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking;
3. They comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (or they are under the age of 18, or they are unable to cooperate due to physical or psychological trauma);
4. They demonstrate that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States; and
- *99 5. They are admissible to the United States. If not admissible, they may apply for a waiver on a Form I-192, Application for Advance Permission to Enter as a Non-Immigrant.⁵²

The T visa is not a perfect fix to the issue of human trafficking.⁵³ Many consider the T visa a process of re-victimization because it forces the victim to “snitch” on her abuser.⁵⁴ Many women do not want to report their abuser because they fear retribution.⁵⁵ Additionally, re-victimization combined with a need to repeatedly re-tell their story causes further trauma.⁵⁶ The federal government must set up safety mechanisms for these women so they can come forward without fear to report the crimes committed against them. This fear is a real impediment for women seeking T visas.⁵⁷

Only a few women apply for a T visa each year.⁵⁸ Congress sets a yearly cap of 5,000 visas, and only 150 visas were processed in 2003.⁵⁹ This speaks to witnesses' distrust in the witness protection plan.⁶⁰ While more victims have slowly come forward, they have still not managed to reach the 5,000 cap.⁶¹ As recently as 2015, only 2,224 victims applied.⁶² Of those, only 1,304 applications were approved.⁶³ T visa applicants are authorized to work in the United States, to receive social benefits like medical care and relocation services, and to apply for permanent residency after three years.⁶⁴ It is imperative that Congress amends the application process to encourage victims to take advantage of the help available.

Other T visa requirements impede access to relief. A very high burden is placed on victims to prove that they would suffer “extreme hardship involving unusual and severe *100 harm” if they were removed from the United States.⁶⁵ Inability to sustain this standard impedes many victims from having their T visa approved--effectively sending these vulnerable people back to the very place where their victimization and abuse began.⁶⁶

III. CURRENT NEW YORK STATE LAWS AND REGULATIONS

*A. The Trafficking Victims Protection and Justice Act (TVPJA)*⁶⁷

The New York legislature proposed the TVPJA in 2012.⁶⁸ On January 12th, 2015, the New York State Senate passed the TVPJA unanimously.⁶⁹ In April of 2015, the New York State Assembly voted to unanimously pass the TVPJA.⁷⁰ The TVPJA made the following changes:

1. Increased penalties by making sex trafficking a Class B violent felony and creating the new offense of aggravated labor trafficking. Additionally, in certain cases, the new law classifies labor trafficking as a Class D violent felony.
2. Aligned the penalties for buying sex from a minor with those for statutory rape; knowledge - or lack thereof - of the child's age is not a defense.
3. Established sex trafficking as an affirmative defense to prostitution.
4. Provided a civil remedy for victims to recover damages and reasonable attorney's fees from their exploiters.
5. Developed protocols to increase law enforcement's awareness to better identify and assist human trafficking victims.

***101** 6. Eliminated the stigmatizing word “prostitute” used in the New York Penal Code and replace it with the term “person for prostitution.”⁷¹

Although the TVPJA aides anti-trafficking goals, the New York Penal Code still makes it necessary to have an affirmative defense to prostitution convictions.⁷² The burden of proof remains on the victims, undermining the TVPJA's purpose.⁷³

B. New York Penal Code⁷⁴

Under Article 230 of the New York Penal Code, “[a] person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.”⁷⁵ The law contains no reference to the consent of the person engaging in the sex act, nor does it refer to whether the act is voluntary or not.⁷⁶ Even those persons “engaged” in sexual conduct without their consent are violating the law.⁷⁷ In order to address this issue, Article 230.01 allows for an affirmative defense.⁷⁸ The code provides:

[I]t is an affirmative defense that the defendant's participation in the offense was a result of having been a victim of compelling prostitution under section 230.33, a victim of sex trafficking under section 230.34 of this article or a victim of trafficking in persons under the Trafficking Victims Protection Act.⁷⁹

Essentially, victims must first be arrested and charged with a prostitution violation before they can bring an affirmative defense proving they were a victim of human trafficking.

***102** Under the New York Penal Code, prostitution is a Class B misdemeanor.⁸⁰ Additional offenses include patronizing a prostitute, promoting prostitution, compelling prostitution, sex trafficking, and permitting prostitution.⁸¹ The New York Penal Code is not explicit in its definition of sexual conduct in relation to prostitution.⁸² The New York Penal Code forces victims of human trafficking to go through a long and arduous process in order to prove the affirmative defense to prostitution. This law prevents victims from gaining help immediately after they are taken into custody, as victims of trafficking are first criminalized for engaging in non-consensual, sexual acts.

C. Human Trafficking Intervention Courts

While many laws exist that do prosecute human traffickers, victims still fear retribution.⁸³ There are thousands of trafficking victims present in the United States, yet prosecution under trafficking statutes remains disparagingly low.⁸⁴ Even in New York, one state with the most comprehensive anti-trafficking law in the nation,⁸⁵ law enforcement made only forty arrests for sex trafficking in 2012.⁸⁶ These low numbers directly correspond with the difficulties that come with identifying and investigating human trafficking cases.⁸⁷ While there were only forty arrests for sex trafficking in 2012, there were 3,400 arrests for prostitution related offenses that same year.⁸⁸ The reason arrest numbers are so high for prostitution and so low for trafficking points to law enforcement officers' inability to identify victims.⁸⁹ In the majority of arrests, law ***103** enforcement officials believe trafficking victims are violators of New York prostitution law.⁹⁰

Fortunately, the court system attempts to remedy this issue in special, Problem-Solving Courts.⁹¹ These courts hire judges who are specifically trained to deal with sensitive issues like human trafficking.⁹² These courts prioritize judicial monitoring of victims and provide access to services that more effectively address trafficking issues.⁹³

While these courts encourage victims to come forward and share their stories, ICE agents have taken advantage of the fact that the majority of the women arrested for prostitution are also undocumented. In June 2017, ICE agents appeared at a specialized court in Queens, New York looking for undocumented victims of human trafficking.⁹⁴ ICE agents were physically present inside the courthouse looking for an undocumented woman.⁹⁵ The physical presence of ICE inside specialized diversion courts is unprecedented.⁹⁶

Local members of Congress wrote to the Department of Homeland Security stating that they were “concerned that sending ICE personnel to specialized institutions or courts designed to assist human trafficking victims [would] deter others from coming forward and seeking assistance for fear of facing detainment or deportation by immigration officials.”⁹⁷ These specialized courts were designed to allow victims to come forward without fear of further persecution or deportation. This recent change in tactic by ICE agents undermines this goal by deterring victims from accessing such courts.

***104 IV. WHY NEW YORK?**

Human trafficking is a \$32 billion industry, and New York is a major hub for trafficking.⁹⁸ Sexual exploitation makes up a staggering \$7 billion of this total.⁹⁹ Victims have been found in a plethora of environments including massage parlors, strip clubs, live-sex shows, hotels, pornography, domestic servitude, and restaurants.¹⁰⁰ New York implements a wide-range of tactics in an attempt to prevent human trafficking.¹⁰¹

Many laws, including the TVPJA and the Interagency Task Force on Human Trafficking, attempt to enforce an anti-trafficking policy in New York.¹⁰² Still, many officers are unable to differentiate between victims of the sex trade and women engaging in illegal prostitution.¹⁰³ Victims are also hidden in plain sight--making detection particularly difficult.¹⁰⁴ Victims do not view police officers as a haven or refuge because those officers arrest and criminalize these women, and victims often end up returning to their original abusers because they have no money, documentation, or place to go.¹⁰⁵

Anti-human trafficking laws in New York cover a plethora of initiatives ranging from providing services to victims, harshly prosecuting those who visit victims of human trafficking, and focusing on detaining businesses engaged in trafficking activities.¹⁰⁶ These laws do not make up for lack of training and awareness these officers need to have when it comes to identifying the victims of human trafficking.

New York must implement more effective practices to combat human trafficking. A task force was implemented in 2007; however, the task force's latest report is only as recent as 2008.¹⁰⁷ New York law enforcement has failed to implement the policies put in place to help victims. A new strategy is needed moving forward. Additionally, local or state anti-prostitution, loitering, and drug laws often make federal and state anti-trafficking law enforcement difficult because officers are faced with an arrest for clearly defined violations and may not look further to see if other issues are present.¹⁰⁸

V. WHY MEXICO?

The demand for illegal sex seems to have no limit in the United States.¹⁰⁹ Someone, inevitably, is going to supply that demand.¹¹⁰ Many officials in Mexico see sex trafficking as a U.S. problem.¹¹¹ If there were not such a large demand for trafficked people, there would be no reason to create a business that makes money from the misery of others.

Traffickers have resorted to psychological deception and fake relationships in order to meet this demand.¹¹² The United States is an enticing opportunity for many poor, uneducated, Mexican women.¹¹³ Women sometimes do not know they have been forced into the sex trade until they are already in the United States, deprived of their personal documents, unable to speak the language, and without any knowledge of who can offer help.¹¹⁴

Traffickers in Tenancingo, one of Tlaxcala, Mexico's most notorious hotspots for trafficking, engage in the business of deceit in order to lure their victims into trafficking.¹¹⁵ Tenancingo is an unassuming suburb, just two hours east of Mexico City.¹¹⁶ One in ten people is actively involved in trafficking in Tenancingo.¹¹⁷ Traffickers persuade girls to leave with them for a better life in the United States.¹¹⁸ The trafficker creates an initial "love affair" which often culminates in marriage and children; traffickers then use the victim's children to control the girls and continue their sexual exploitation.¹¹⁹ Women must engage in forced prostitution while their children are held as ransom in Tenancingo.¹²⁰

The trafficking networks originating in this charmless city supply the biggest source of sex slaves in the United States.¹²¹ One recent trafficking case demonstrates a multigenerational trafficking scheme originating in Tenancingo.¹²² The Carreto family "engaged in a scheme to lure, entice, compel, and coerce young Mexican women and girls into prostitution in Mexico and the United States to reap the profits."¹²³ The Carretos recruited the women primarily from impoverished communities in Mexico, smuggled them across the border, brought them to New York, and housed them in simple apartments, including two near Roosevelt Avenue in Corona, Queens.¹²⁴ The Carretos were only discovered after nine women who were trafficked and forced into prostitution told their stories.¹²⁵

Easy access to the United States combined with the promise of a better life facilitates human trafficking in Mexico. Many traffickers begin their journey in Mexico because of close proximity to the United States.¹²⁶ Families in Tenancingo utilize a family-centric trafficking approach, making law enforcement officers' jobs much more difficult¹⁰⁷ because the trafficking rings are close-knit and hard to penetrate from the outside.¹²⁷ Once in the United States, traffickers can easily return to Mexico to capture more girls for their next trip--creating a never-ending cycle of abuse for thousands of girls.

VI. HOW TRAFFICKERS EXERT CONTROL OVER THEIR VICTIMS

Traffickers exert control over their victims in a variety of ways. The New York District Attorney's Office outlined the main ways that traffickers exert their control, which include debt, documents, deportation, family, drugs, and abuse.¹²⁸ These methods are particularly successful with undocumented immigrants because of their unstable residency in the United States.

As Kevin Bales, professor of Contemporary Slavery at the University of Nottingham, explains, "all sex-trafficking operations, whether Mexican, Ukrainian or Thai, are vast criminal underworlds with roots and branches that reach back to the countries, towns, and neighborhoods of their victims."¹²⁹ Traffickers threaten to harm the victim's family as a way to keep them subservient.¹³⁰ The trafficker uses the victim's family as collateral for her body and as a way to intimidate the victim into submission.¹³¹

Threats to family are not the only means traffickers use to gain control over their victims. Professor Bales adds that

The physical path of a person being trafficked includes stages of degradation of a person's mental state. A victim gets deprived of food, gets hungry, a little dizzy and sleep-deprived. She begins to break down; she can't think for herself. Then take away her travel documents, and you've made her stateless. Then layer on physical violence, and she begins to follow orders. Then add a foreign culture and language, and she's trapped.¹³²

Victims of human trafficking do not have control over anything in their lives. The trafficker forces the victim to depend on them for even her most basic needs. This *108 exertion of control is just one reason why victims have such a difficult time coming forward and reporting their abuse. Victims struggle to come forward because they fear deportation, criminalization, and further abuse from their trafficker for reporting their crime.

VII. WHY VICTIMS DON'T COME FORWARD

One of the main issues lawmakers and anti-trafficking advocates must address is the reticence of victims to come forward and report the crimes committed against them. Victims go through so much trauma during their time in the sex trade that it is often difficult to create a safe space where they can share their story. Victims' testimonies are the most important component of any trafficking prosecution.¹³³ It is essential that prosecutors, law enforcement, and investigators proceed with "heightened sensitivity to the needs and vulnerabilities of the often-traumatized victims."¹³⁴ Many law enforcement officers are not trained to interact with victims with the requisite sensitivity necessary to gain trust and adequately handle such delicate situations.

The evidence showing that trauma has a profound impact on the victim means that law enforcement officers must proceed with caution when working with a traumatized victim of sexual exploitation.¹³⁵ If trauma is left untreated over a long period, everyday stressors begin to elicit exaggerated reactivity, the victim lives in a constant state of fear, and the victim can transition rapidly from anxiety to terror.¹³⁶

Cultural competency training is an important component, and law enforcement must integrate this training into all mandatory training programs. Culture competency means law enforcement officers must be thoughtful and mindful of their words and aware of their voices and body language.¹³⁷ When engaging with victims of human trafficking, officers must pay close attention to the personal boundaries of the victim.¹³⁸ Trauma can deeply impact behavior, and law enforcement must remain positive if the person they *109 are working with is unwilling or unable to communicate clearly during the first round of interviews.¹³⁹

A victim's undocumented status, captors' threats, fear of unjust treatment by law enforcement, and cultural differences often encourage victims to avoid and distrust law enforcement.¹⁴⁰ Creating a relationship built on trust can be a long and arduous process. Many victims may not be willing to cooperate with the prosecution in the early stages of the investigation for the reasons mentioned above.¹⁴¹

In sex trafficking cases, sexual abuse is an especially traumatic crime.¹⁴² As such, victims are often unable to speak publicly about their abuse because of shame or continued trauma. Many victims undergo re-victimization and trauma when they are asked to explicitly describe the abuse they suffered, explain previously inconsistent statements, or relive their trauma in any way.¹⁴³ It is the responsibility of the prosecution to build a case using the victim's testimony. This only happens if the victim is willing to trust and confide in law enforcement--something they may have never done in their lives.

VIII. T VISA AMENDMENT, SPECIALIZED COURT PROTECTION, AND LEGALIZED PROSTITUTION

This section first addresses the most feasible of the three solutions--integral changes to the existing T visa option for victims of human trafficking. This section then explores the option to stop and prevent ICE from entering specialized courts. Finally, this section delves into the most complex and controversial solution--the legalization of prostitution throughout the United States.

The combination of the following recommendations increases accessibility of available legal remedies and expanded protection for victims of human trafficking, specifically for undocumented female victims of the sex trade in New York trafficked *110 from Mexico. The implementation of changes to both federal and state law is instrumental to a holistic change to current anti-trafficking laws.

Transformative policy implementation requires a combination of state and federal changes. Currently, federal statutes are at odds with state law.¹⁴⁴ Law enforcement officers criminalize victims instead of treating them for trauma, and perpetrators are released because victims are unable to come forward safely.¹⁴⁵ The United States needs increased public awareness about the realities of sex trafficking and to highlight the alarming demand for illegal sex in order to strengthen public recognition of the issue.¹⁴⁶

A. Changing the Functionality of the T Visa

The implementation of an anonymous reporting option, permissive and victim-friendly language, and trained counselors can fix the fundamental inadequacies of the T visa application process. To apply for a T visa, victims of human trafficking must submit form I-914, their application for T Nonimmigrant Status, three passport size photographs, a personal statement explaining how they were a victim of trafficking (on the Form I-914), and evidence to show they meet eligibility requirements.¹⁴⁷ While this part of the process is the most straight forward and formulaic, is still a large burden for victims to overcome. The system does not leave room for victims to have much, if any, control.

First, the T visa application process should be amended to allow anonymous reporting and anonymous testimony against perpetrators. The law should place victims in charge of their testimony. The law should not force victims to share intimate details of their lives simply to apply for a coveted T visa under the INA without the ability to do so anonymously. The current system uses victims' testimonies about their traumatic abuse as an attempt to prosecute current traffickers and to deter future ones.¹⁴⁸ The United States must focus on protecting victims currently in the country. Congress and *111 local legislation must implement safe reporting mechanisms and victim-friendly language to help courts understand that all victims are traumatized and deserve a safe and anonymous application process.

Second, victims are only able to apply for a T visa when they comply with “any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime” unless the victim “is unable to cooperate with a request described ... due to physical or psychological trauma” or “has not attained 18 years of age.”¹⁴⁹ The language of the T visa currently requires victims to report on their perpetrators without assurance of law enforcement's protection. This can be a daunting process for victims who live in constant fear of their trafficker.

The DMA does not specify how victims can prove that they are unable to cooperate due to severe trauma. This ambiguity in the law allows courts to conclude that a victim was not truly traumatized enough to avoid cooperating with law enforcement. The Act is also silent on what constitutes a “reasonable request” by the government for assistance in investigating and prosecuting a trafficking allegation. Is it reasonable for the government to request the victim wear a wire and re-enter the world of abuse and trafficking in order to determine who the head traffickers are? Alternatively, is it reasonable for the government to simply request the victim shares her story with law enforcement and prosecutors? Victims do not have the power to dictate what is a reasonable request because the language in the T visa application is ambiguous.

Congress should further amend the DMA to read “may comply” instead of “have complied” with any reasonable requests. This change would allow victims to have power over their story instead of being used as a pawn in the court's prosecutorial system. Victims deserve the option to tell their story. If they must speak out in order to apply for a T visa, the law should, at the very least, guarantee a safe and anonymous reporting system.

***112** Additionally, confronting one's abuser is extremely upsetting and often quite dangerous. The law should not force victims to face their abuser in court. Instead, all victims should be considered to have “physical or psychological trauma.” Therefore, they should not be required to assist in the investigation or prosecution unless an anonymous option is available that will protect the victim throughout the entire process.

In the United States, the accused has a right to confront her accuser.¹⁵⁰ Currently, a system exists for victims of child abuse to testify without having to be in the same room as their abuser.¹⁵¹ Children have two options available to them in court--they can give a live testimony via two-way closed-circuit television, or they can give a videotaped deposition.¹⁵² These options allow children who have suffered extreme abuse the right to not directly face their accuser in court, but this method is not in violation of the accused right to confront their accuser. Victims of human trafficking have suffered just as much as victims of child abuse. Victims of human trafficking deserve the right to not face their abuser directly in court if doing so would re-traumatize them.

Finally, trafficked victims have the added fear of threat to their lives and their families if their trafficker knows who they are. Videotaped depositions are a great start. However, trafficked victims must be allowed to report anonymously. In order to guarantee an anonymous reporting system, Congress needs to further amend the T visa in the INA to impose a requirement for a trained counselor to be available for victims during the reporting stage of trial and their ultimate testimony. Counselors often testify by giving their expert opinion on a client's traumatic experience with the express consent of the client.¹⁵³ Expert testimony would allow trained counselors to testify about the emotional, physical, and psychological trauma a victim endured during her time as a trafficking victim. This, coupled with video depositions or recordings of the victim's ***113** testimony, may allow anonymous reporting to occur without violating any current rules of evidence.

Counselors have a client-patient confidentiality privilege that would allow victims to speak freely without worrying that their personal information will be leaked to the press, ICE, or anyone else who may cause them harm.¹⁵⁴ This option can be funded and supported through aid organizations like Mental Health America that offer free counseling and other alternatives for people going through traumatic events.¹⁵⁵

This recommendation raises the issue of Congressional approval. Congress will have to agree that an amendment of the INA is a legislative priority. Congress is not likely to see the pressing need unless activists engage in a serious public awareness campaign to help the general American public care about detaining traffickers and helping victims. It will take time, effort, and funding from anti-trafficking groups and pro-immigration agencies to pay for lobbyists to encourage Congress to see the need to amend the Act.

B. Making Specialized Courts Untouchable by ICE

The second recommendation this article discusses is the implementation of a legal, protective barrier to prevent ICE intervention at specialized courts. Victims need to be able to come forward without fear of deportation before their case has even been heard. Sanctuary cities¹⁵⁶ across the United States agree that allowing ICE to intervene and deport undocumented immigrants is a violation of human rights.¹⁵⁷

In 2013, New York created specialized courts to help deal with highly sensitive human trafficking cases and to provide services to victims rather than immediately criminalizing them for their engagement in prostitution or other crimes.¹⁵⁸ Across New York state, eleven new courts were modeled on three pilot projects in New York City and Nassau County, bringing together specially

trained prosecutors, judges, and defense ¹¹⁴ lawyers, along with social workers and an array of other service providers for victims of human trafficking. ¹⁵⁹ These courts play a key role in the decriminalization process of victims of human trafficking.

Specialized courts offer a glimmer of hope for victims through the use of diversion programs. While victims are still arrested for prostitution-related offenses, the women may ultimately be diverted to these diversion courts, allowing victim-specialized proceedings with judges that understand the specific issues victims of human trafficking must overcome. Chief Judge Lippman, former chief judge of the New York Court of Appeals and human rights advocate, explains the importance of specialized courts stating

Human trafficking is a crime that inflicts terrible harm on the most vulnerable members of society: victims of abuse, the poor, children, runaways, immigrants. We cannot tolerate this practice in a civilized society, nor can we afford to let victims of trafficking slip between the cracks of our justice system. ¹⁶⁰

He continues by describing human trafficking as, “in every sense a form of modern-day slavery.” ¹⁶¹ Diversion and specialized courts are instrumental in allowing victims to rebuild their lives.

The situation for undocumented immigrants has gone from bad to worse under the Trump administration, as ICE agents now seek out victims where they are most vulnerable. ¹⁶² ICE agents now stalk diversion courts to find undocumented immigrants. ¹⁶³ ICE places a high priority on finding and detaining undocumented ¹¹⁵ immigrants who have participated in criminal activity. ¹⁶⁴ This means that victims of human trafficking can also be swept up under the large umbrella of undocumented immigrants ICE is seeking to deport.

Many victims of human trafficking are arrested and convicted for a variety of crimes, and these convictions place their names in a large, online database that ICE utilizes to find undocumented immigrants. ¹⁶⁵ Victims of trafficking need to have these special courts free of ICE intervention, and their names must be kept off these databases. Victims of human trafficking are not criminals, and they should not be treated as such.

This recommendation will, in effect, take sanctuary cities to the next level by barring ICE from staking out victims of trafficking crimes who are also undocumented immigrants. Local courts in New York and other states should employ mechanisms to deny ICE agents access to court buildings. ICE currently does not enter schools, places of worship, or hospitals unless there are exigent circumstances. ¹⁶⁶ Exigent circumstances exist when there may be a threat to national security, terrorism, public safety, or where there is an imminent risk of destruction of evidence material to an ongoing criminal case. ¹⁶⁷

Current policy prevents ICE from entering sensitive locations. ¹⁶⁸ The ICE Sensitive Locations Policy was implemented to place restrictions on when and where ICE can enter and deport undocumented people. ¹⁶⁹ Currently, ICE cannot enter sensitive locations without the prior approval of one of the following officials: the Assistant Director of Operations, Homeland Security Investigations, the Executive Associate Director of Homeland Security, the Assistant Director for Field Operations, or Enforcement and Removal Operations. ¹⁷⁰ Thus, these restrictions force ICE to follow certain protocol before making arrests at a variety of protected locations. Like the ¹¹⁶ sensitive locations mentioned above, ¹⁷¹ diversion courts should be treated with the same deference by ICE.

Currently, ICE does not consider courts to be a sensitive location. ¹⁷² This article recommends that the current policy be extended to specialized courts for victims of trafficking. This does not mean that no arrest could ever be made at these specialized courts, but ICE must follow certain protocol before entering and making an arrest. ¹⁷³ The addition of special courts to the

restricted list of locations ICE cannot visit without prior approval would help women feel safe and confident when coming forward to testify against an abuser.

State statutes or other federal regulatory measures must be implemented to bar any intervention on behalf of ICE until a victim's case has been decided and she has been issued some sort of temporary protective measure. States must implement a system that does not allow ICE to determine the "exigent circumstances" necessary to enter a sensitive location. Additionally, state law must dictate that ICE cannot, under any circumstance, enter a sensitive location. Victims must feel safe while they are a part of the criminal justice system. Failure to guarantee safety during the process renders any attempt to thwart traffickers useless because victims will not come forward.

C. Decriminalization of Prostitution--Changing Article 230 of the New York Penal Code

The final recommendation, the decriminalization of prostitution, has the potential to be implemented nationwide in the United States. States are in a better position to regulate sex work, and a blanket federal regulation would be too broad and potentially ill-suited to individual states. This article uses New York's state law to demonstrate how the decriminalization of prostitution could be implemented across the entire United States. If implemented, the legalization of prostitution will slow demand as people gain access to legal sex workers and do not have to resort to visiting victims of human trafficking to satisfy their sexual desires.

***117** Prostitution should be legalized and decriminalized in the United States at a state level. In New York, this would entail the removal of section 230 and 230.01 of the New York Penal Code. These two provisions cover prostitution and the affirmative defense for prostitution. The law should criminalize the promotion of prostitution and the patronizing of prostitutes when victims of human trafficking are involved. With a comprehensive registration system, law enforcement officers would know exactly which women were engaging in legal prostitution and which were not. Legal patronizing would be allowed with registered, adult sex workers, engaging in legal prostitution. Victims of human trafficking would no longer be arrested for engaging in illegal sex acts. Instead, once discovered, women and girls would be treated immediately as victims of human trafficking. Following Nevada's lead, federally, prostitution should be allowed as long as women are not forced into the sexual act. ¹⁷⁴

The legalization of prostitution will allow officers to distinguish between those who are engaging in prostitution through their own free-will, and those who are victims of human trafficking. This will remove the affirmative defense burden that currently rests on the victim. Women and children are often first arrested and prosecuted as prostitutes before they are given the opportunity to convince the court that they are victims of human trafficking under the affirmative defense in the New York Penal Code. ¹⁷⁵

Until New York, and ultimately the rest of the United States, changes its laws relating to prostitution, implements a system of decriminalization, and develops an ethos of compassion towards victims of sex-trafficking, victims will continue to need to defend themselves in court as criminals before they can seek justice against their trafficker to ensure safety for themselves and their families. Law enforcement will continue to arrest and convict victims of human trafficking for nonconsensual acts unless the law changes.

New York courts make it clear that criminalizing prostitution does not address the underlying human trafficking issue. In *People v. G.M.*, a defendant had been previously ***118** convicted of a variety of crimes including prostitution, criminal trespass, and drug possession. ¹⁷⁶ She moved to vacate these convictions on the grounds that she was a victim of human trafficking. ¹⁷⁷ The court stated that the "defendant has provided a very compelling narrative of the circumstances surrounding all of her arrests, demonstrating that they were the product of years of brutal physical, psychological and sexual violence by her husband, which resulted in having been trafficked by him." ¹⁷⁸ This defendant had been criminalized repeatedly. ¹⁷⁹ Police officers either refused to see her plight or were untrained and unable to identify a case of human trafficking when illegal prostitution was an option for arrest. The court finally decided to vacate the defendant's prior convictions. ¹⁸⁰

This case illustrates the underlying issue: law enforcement officers are criminalizing victims of human trafficking for nonconsensual sexual acts. Law enforcement officers are repeatedly arresting victims without identifying them as victims of a crime. The current local laws that criminalize prostitution make it easy for traffickers to avoid suspicion. Women are simply arrested for breaking the law, criminalized because of their crime, and released. More often than not, these women fall right back into the hands of the very same traffickers who forced them into this position in the first place.

In the United States, a criminal record is a serious impediment when searching for jobs, attempting to find housing, or even applying for basic financial help.¹⁸¹ Victims who are treated as criminals and receive a criminal record are now in a more financially restrictive situation. Instead of helping these women, the current system punishes them further. This criminalization is indicative of a state's inability to treat them as traumatized humans deserving of safety.

There are many laws in place that do not explicitly target prostitutes. Yet, implicitly, these laws are designed to stop certain activities from occurring on the street near or around local businesses. Anti-loitering laws directly impact prostitutes and the homeless *119 population.¹⁸² These two vulnerable populations are disproportionately impacted by seemingly innocent, peacekeeping laws.

Likewise, the victim in *People v. Doe* was impacted by anti-prostitution laws when she was arrested multiple times for loitering for the purpose of engaging in prostitution.¹⁸³ The defendant moved to vacate her convictions, and this motion was granted.¹⁸⁴ Cases often come before state courts where victims must first prove their innocence. Here, the defendant was a minor when she was first arrested.¹⁸⁵ She even gave her correct age (seventeen) the first time that she was arrested.¹⁸⁶ During subsequent arrests, the defendant gave law enforcement officers a false age and false documentation that her pimp and abuser had given her.¹⁸⁷

Police failed to view the defendant in *People v. Doe* as a victim. They were only able to see her past criminal actions and record. For this reason, the defendant was arrested repeatedly. Each time she was released, she returned to her captor.¹⁸⁸ This cycle of abuse is not uncommon. Many of these women have been in abusive situations for so long that they feel returning to their trafficker is the only “safe” option after arrest.

The laws currently in place continue to criminalize the most vulnerable people in society. Criminalization of prostitution through loitering and drug charges simply continues the cycle of abuse. Decriminalization of prostitution is one feasible way for officers to begin to see beyond the sex worker and realize what is truly going on--serious abuse that must be stopped and dealt with immediately.

***120 1. Overview of the Implementation of Legalized Prostitution in the United States**

Nevada has led the way as the first state to legalize prostitution while maintaining strict laws against human trafficking.¹⁸⁹ Nevada's state law legalizing prostitution¹⁹⁰ distinguishes legalized prostitution from forced sexual acts by defining prostitution as a consensual sexual act between two or more consenting adults.¹⁹¹ Pandering is defined by Nevada state law as “encouraging or enticing another individual to become a prostitute through the use of threats, violence, fraud, duress, or forcing a spouse into prostitution.”¹⁹² Nevada continues to prosecute to the fullest extent of the law those crimes that involve pandering a victim of human trafficking or sexual slavery.¹⁹³ Pandering, more commonly known as pimping,¹⁹⁴ carries the same punishment as states where prostitution is illegal.¹⁹⁵ In Nevada, soliciting a child (people under 18 years old) for prostitution is a Class E felony, which is punishable by imprisonment for up to four years and/or a fine of up to \$5,000.¹⁹⁶ Pandering, in Nevada, is a Class C felony and is punishable by imprisonment for up to five years, and/or a fine of up to \$10,000.¹⁹⁷

Nevada, however, does not prosecute people who pay for, or engage in, consensual sexual activity. The way in which Nevada structures its laws in this area allows women (or men) who are forced into sex with another to avoid costly and damaging criminal proceedings trying to absolve themselves of their criminal record. In contrast to New York, Nevada's laws help victims of human trafficking avoid being prosecuted for prostitution in the first place. This increases the likelihood women will avail themselves of the T visa and help law enforcement with its investigation and prosecution of traffickers because they do not fear criminalization.

***121 2. Arguments Against the Legalization of Prostitution: Anti-Prostitution Approach Analysis**

The traditional view against prostitution is an abolitionist view that advocates for the criminalization of prostitution. This traditionalist approach argues that when prostitution is legalized, human trafficking rates increase to meet the open demand for sex.¹⁹⁸ This approach also argues that women who are engaged in prostitution, whether it is legal or otherwise, are stigmatized.¹⁹⁹ These women often internalize public and private contempt--which can be quite toxic.²⁰⁰ Internalizing contempt can lead women to feel that they will never be part of "normal" society and must continue to be a sex worker for the remainder of their lives. Anti-prostitution advocates see prostitution as a mechanism keeping women in poverty, facing constant violence, and lacking societal acceptance.

One of the main issues for women engaged in the world of prostitution is that there is "no legal redress for coercion, physical assault, and rape."²⁰¹ Women are unable to escape sexual assault, harassment, rape, or other acts that may even constitute forms of torture.²⁰² Pretending that prostitution is a reasonable job choice for poor women ignores their strong desire to escape prostitution.²⁰³ Allowing legalized prostitution legitimizes violence perpetrated against women and disallows legal intervention when it is needed the most

3. Arguments in Favor of the Decriminalization of Prostitution: Feminist Lens Analysis on the Legalization of Prostitution

The abolitionist, or traditionalist, view of prostitution argues that prostitution is a form of violence against women that cannot be tolerated.²⁰⁴ This viewpoint fails to take into account different standards of living, cultural acceptance of legalized prostitution, and *122 the underlying issues that lead to human trafficking.²⁰⁵ Essentially, the abolitionist view arrives at the conclusion that all forms of prostitution are equal.²⁰⁶

In contrast, the feminist view on prosecution recognizes that the criminalization of prostitution places victims of human trafficking in the role of both victim and criminal. Identifying victims as offenders significantly weakens their credibility with law enforcement and judges if their case goes to trial.²⁰⁷ Many prostitution offenses include drug-related charges.²⁰⁸ Victim's testimonies are often the only piece of evidence available to a prosecutor in human trafficking cases.²⁰⁹ Any drug charge on record against the victim harms her credibility in the eyes of the judge.

The combination of prostitution and drug use often means that law enforcement discredits statements made by victims because they seem untrustworthy. Many times, the only witness against human traffickers is the victim.²¹⁰ If she seems unstable, on drugs, or mentally impeded in any way, courts may not find her credible. Re-victimization, continued trauma, and drug dependency can often impede criminal trials. If victims are treated as victims, and not as offenders or criminals, the system will be better suited to help them.

IX. POTENTIAL CRITICISM

This article has offered various recommendations that would allow victims of sex trafficking to come forward without fear of deportation and criminalization. This section *123 will address the potential criticism each of the recommendations could face and solutions that could potentially combat the criticism.

A. First Recommendation--T visa

In the current political climate, Congress may be forced to focus on more holistic immigration reform instead of a specialized change for a relatively small group of people. Fortunately, most people are likely to support legislation that protects victims of human trafficking. It would be difficult for any group to come out against this type of legislation because the facts are so atrocious. Congress may be more amenable to this type of reform, which focuses on protecting victims of human trafficking, over other, more politicized issues related to more general immigration issues. Otherwise, it may face unforgiving constituents.

Congress has amended the INA in the past.²¹¹ There has been precedent for amendments that favor the victims of human trafficking in 2003, 2005, 2008, and 2013.²¹² The recent and continual changes made by Congress show a willingness to support victims and update current laws in this area. Alternatively, critics could argue that the INA has recently been amended, so there is no need to address it again. A public awareness campaign is necessary to pressure Congress to amend the INA and to engage and educate the general public about the continued issue of human trafficking.

Another critique of the solutions suggested by this article is that many women do not know what legal options they have until they have already been arrested and charged, or worse, face deportation. One of the most difficult aspects of human trafficking is the inability to speak with victims because they are sequestered and secluded from society by their trafficker. This means that all anti-trafficking legislation will be ineffective unless victims know what legal options are available.

Therefore, the best way to get the necessary legal information to this specific type of victim is to make it public knowledge through public awareness campaigns. For this reason, in order to truly and successfully implement the policy and changes outlined above, a public awareness campaign is essential to inform the general public of the signs *124 of human trafficking. Many times, victims are housed in normal, American neighborhoods, yet subjected to sexual slavery. If people do not know the signs of such a situation, they will not report any suspicious activity. A public education campaign would help the average citizen be on the lookout for suspicious activity in their own neighborhood. Police officers cannot be everywhere at once. Everyday citizens must act as watchdogs to help stop human trafficking.

In order to implement a public campaign without requiring the use of taxpayer dollars, large-scale organizations should be engaged to produce and distribute television ads, Facebook and Twitter ads, and radio ads. Organizations like Amnesty International might provide critical funding for such a project. Engaging the public can bring attention to trafficked victims as soon as they are brought into neighborhoods in the United States. That way, victims of human trafficking can immediately get the help they need without concern of the cost imposed on society.

Additionally, the Trump administration has made multiple comments in favor of deporting criminals from the United States.²¹³ These comments show a potential opportunity to pursue harsher penalties and deportation strategies against traffickers. President Donald Trump himself stated that he believes Mexico is “sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists.”²¹⁴ President Trump’s comments relating to immigration indicate he has an anti-crime stance. This may help anti-trafficking proponents pass or amend laws that prioritize the deportation of criminals (traffickers) who come into the country without documentation.

B. Second Recommendation--Protection of Specialized Courts

This article's second recommendation raises the issue of federal funding. Like the issue many sanctuary cities face, if states decide to keep federal agents out of state activities, the federal government may decide to pull federal funding.²¹⁵ Lack of federal *125 funding would severely impact access to courts for those who need it. Many states are currently suing or being sued by the Trump administration because they continue to disobey federal orders to turn undocumented immigrants over to federal authorities.²¹⁶ Any failure to comply with federal agents could potentially be met with harsh repercussions when it comes to federal funding.

It may violate the United States Constitution, however, for the federal government to simply deny states federal funding. Current pending legislation against sanctuary cities claims that under Section 1373, "a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual."²¹⁷ If states deny the federal government access to court buildings where known undocumented immigrants are taking part in a diversion program, the state could argue that Section 1373 mandate is unconstitutional, as it violates the Tenth Amendment.²¹⁸

In order to keep federal funding, states can make two arguments. First, Supreme Court precedent mandates that the federal government may not impose conditions on grants to states and localities unless the conditions are "unambiguously" stated in the text of the law "so that the States can knowingly decide whether or not to accept those funds."²¹⁹ It is well established that the federal government may not "commandeer" state and local officials by compelling them to enforce federal law.²²⁰ This policy would *126 violate the Tenth Amendment²²¹ and force states to be coerced into complying with federal mandates in order to receive necessary funding.²²²

C. Third Recommendation--Legalization of Prostitution

This article's final recommendation raises the issue of whether the American people are progressive enough to be ready to legalize prostitution. While Nevada has legalized prostitution and Washington D.C. may soon follow suit,²²³ the vast majority of states have chosen not to legalize or decriminalize prostitution. This suggests that the United States may not be ready to implement a full-fledged pro-prostitution system nationwide. This article recommends starting small. New York's penal code should be amended first in order to see the small-scale implementation of more trafficked women both seeking help and succeeding in the prosecution of their abusers. It will be an uphill battle to convince the entire nation that this is a good idea. A public awareness campaign may be a solution to this issue.

In order to decriminalize prostitution, New York will have to train their officers on how to interact with traumatized victims. This will take time and money out of often scarce state resources. States are already short on funds.²²⁴ This financial strain may be alleviated by monetary contributions by governmental or private organizations.

New York, being a progressive state, is the perfect political climate to test the waters with the decriminalization of prostitution. The current penal code does not support victims of trafficking, and the federal T visa option is not being utilized by victims. Something needs to change. If the legalization of prostitution can slow the supply even marginally, more states will begin the process of legalization and decriminalization. If there is less emphasis on arresting, incarcerating, and convicting victims of human trafficking for minor loitering or drug-related offenses, then states can divert funds from *127 the costly business of incarceration²²⁵ to additional training programs and safety mechanism creation for victims.

X. SOLVING THE ISSUE OF DEMAND

As discussed above, the demand for illegal sex in the United States creates the supply human trafficking provides. In any business, the economics of supply and demand function the same.²²⁶ Without demand, there is no supply.²²⁷ Ultimately, the only way to stop supply is to deter and extinguish demand. It may be impossible to end the demand for illegal sex completely. In part, that is why this article focuses primarily on the issue of supply. It is important to consider how demand may be solved in the future. The demand in the United States for illegal sex is inexplicably linked to the human trafficking supply in Mexico. Human traffickers will soon find themselves out of business if people in the United States no longer demand access to illegal sex.

Demand is, first and foremost, a mental health issue. Sex addiction, lack of respect for women, and a need for easy access to cheap sex, all stem from deep-seated mental health issues.²²⁸ Such illness can only be combatted with increased awareness of mental illness, sex addiction rehabilitation, and regulation of legal access to sex. Currently, the United States does not place emphasis on mental health initiatives.²²⁹ This may change over time, but solving the nation's problem of addiction is costly and controversial.²³⁰ Decriminalization of the sex industry is a way to regulate supply and allow those who demand paid-sex a way to engage in a legal and safe system. Increased criminalization of those who seek out illegal sex will also drive down the demand.

Unless and until the U.S. can figure out a way to solve the moral and national health crisis on its hands,²³¹ demand will continue to rise, and the supply will increase accordingly. The best, immediately attainable goal is to make sure that those engaging in the sex industry are legal, healthy, and consenting individuals who are not forced into this business through sex trafficking.

XI. CONCLUSION

No easy solution exists when it comes to a topic as complex as human trafficking. Congress has not taken into account how fear and isolation directly impact and deter victims from accessing legal protection. Small policy changes would allow victims to have agency over their story. Protecting specialized courts would further encourage victims to seek justice and allow prosecutors to prosecute and detain those associated with this horrible trade. Finally, the legalization of prostitution would encourage healthy regulation of the sex trade within the United States. Law enforcement officers would no longer have to balance competing state and federal laws in order to do their job and protect the most vulnerable women in society. Combatting the issue of human trafficking and sexual exploitation of women will be successful if local and federal forces join together. While nothing will completely stop the supply until the demand is controlled, small changes combined with large scale policy change as suggested above places the power of justice back in the hands of victims of human trafficking.

Footnotes

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