



**THE CASE FOR
THE UNITED STATES HUMAN TRAFFICKING COURTS**

Jaco Booyens Ministries

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I. EXECUTIVE SUMMARY

Legislative and executive efforts to combat human trafficking in the United States at both the federal and state levels have proliferated over the past quarter century. So has human trafficking. Since 2015, the National Human Trafficking Hotline has identified an average of 17,770 potential victims per year—a figure that underrepresents the true scope of the problem. Yet during that same period, federal prosecutors averaged just 184 trafficking cases per year. State and local prosecutors similarly struggle with prosecution volume, but their more pressing challenge is obtaining convictions, achieving *at best* a 45% conviction rate.

These challenges require a new solution. Policymakers have enacted anti-trafficking statutes, devoted new prosecutorial and investigatory personnel, and increased funding to anti-trafficking efforts. Such efforts have been necessary—and should continue—but are not sufficient. Rather, the human trafficking problem is ripe for a *judicial* solution. Specifically, Congress should create first-of-their-kind Article III courts, open to both federal and state prosecutors, dedicated to the adjudication of criminal and civil human trafficking cases: the United States Human Trafficking Courts (“HTCs”).

The solution of a dedicated court for human trafficking cases has been hiding in plain sight. Researchers and prosecutors have understood for over a decade that many of the challenges in human trafficking prosecutions flow from the bench. Human trafficking cases are notoriously complex and involve uniquely vulnerable witnesses, requiring substantially more time for generalist judges to resolve than other criminal cases. This extended duration appears to limit the capacity of prosecutors to bring such cases. Judicial misunderstandings, biases, and mishandling of witnesses further contribute to the low volume of prosecutions at the federal level and the paltry conviction rate at the state level. At the same time, the advantages of speed and subject-matter expertise offered by dedicated courts are well known and support a growing trend of specialty courts in complex subject areas.

HTCs could enhance prosecution volume and conviction rates by deploying subject-matter-expert jurists to expeditiously and efficiently handle these intricate cases. HTCs could be opened to state prosecutors via the expansion of a cross-designation mechanism already available for one human trafficking crime (18 U.S.C. § 2421). And HTCs could aid judges in handling delicate witnesses in all human trafficking cases by the expansion of an option for 2-way video testimony already available for victims of child exploitation (18 U.S.C. § 3509(b)(1)). Thus, HTCs could leverage existing tools to address root causes of deficiencies in both federal and state prosecutions of human traffickers.

This white paper details the prior efforts of policymakers to combat human trafficking, probes what is still lacking from those efforts, and outlines the contours of a new system of federal human trafficking courts to remedy persistent challenges to human trafficking prosecutions.

II. BACKGROUND: PRIOR EFFORTS TO COMBAT HUMAN TRAFFICKING

The turn of the millennium marked a seminal year in anti-trafficking efforts. In late 2000, the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.¹ Since then, anti-trafficking criminal and civil laws in the United States have become ubiquitous.

A. Federal Efforts

Also in 2000, Congress passed a novel framework for criminalizing human trafficking called the Victims of Trafficking and Violence Protection Act of 2000 (the “TVPA”).² The federal government has since enacted at least 29 additional pieces of legislation, published 3 federal regulations, issued 8 executive orders, and adopted 2 pieces of international law that specifically target domestic human trafficking.³

The policy mechanisms for these anti-trafficking efforts fall into five categories. Every federal effort since 2000 has sought to enact or enhance criminal statutes,⁴ establish investigatory or prosecutorial bodies,⁵ improve data collection,⁶ fund anti-trafficking efforts,⁷ or provide education and relief to victims of human trafficking.⁸ In other words, the U.S. portfolio of anti-trafficking policy flexes core *legislative* and *executive* muscle.

Many of these efforts have had a significant impact on state efforts to combat human trafficking. For example, when Congress passed the TVPA, it was the only comprehensive criminal statutory scheme defining and outlawing human trafficking in the United States.⁹ Since then, every state has expressly outlawed human trafficking.¹⁰ Congress has also directly assisted states in combatting human trafficking. For instance, beginning in 2005, Congress began providing grants to states to improve investigation and prosecution.¹¹ Also, in 2015, Congress amended 18 U.S.C. § 2421 to provide state prosecutors an opportunity to be “cross designated” by the U.S. Attorney General to prosecute a violation of the Mann Act.¹² Although Congress had previously provided a general mechanism for the Attorney General to cross designate (or “appoint”) non-AUSAs to prosecute federal crime in federal court,¹³ the amendment to the Mann Act is more forceful. Specifically, it limits the Attorney General’s discretion to deny a cross-designation request by a state prosecutor to only those which would “undermine the administration of justice,” and it further requires the Attorney General to provide the state prosecutor a “detailed reason for the denial” within 60 days.¹⁴

B. State Efforts

Although every state has criminalized human trafficking since the federal TVPA, “the laws vary in form and content.”¹⁵ For example, states’ laws vary on the definition of “trafficker,” the

statutory elements required to establish guilt, and the seriousness of the criminal and financial penalties associated with conviction.¹⁶

Aside from criminalization, state and local governments have also formed task forces geared at investigating and prosecuting human trafficking in conjunction with the federal government. The Department of Justice (“DOJ”) funds 41 such task forces throughout the United States.¹⁷ With respect to child exploitation and human trafficking, the FBI counts 86 dedicated task forces launched as part of the DOJ’s Innocence Lost National Initiative.¹⁸

III. PROBLEM: CURRENT FEDERAL AND STATE ENFORCEMENT IS INSUFFICIENT

Despite tremendous attention from legislators, investigators, and prosecutors at both the federal and state levels during the last quarter century, the problem of human trafficking has metastasized.¹⁹ Or, as one researcher explains, “[p]assing an anti-trafficking law alone is not sufficient to bring cases of human trafficking forward to prosecution.”²⁰ At the federal level, the most significant problem facing enforcement of human trafficking laws is underprosecution. At the state level, there is also underprosecution, but more troubling is an underwhelming conviction rate. And beneath all these problems is the distinctive complexity of human trafficking cases.

A. Human Trafficking Estimates in the United States

Estimating the volume of human trafficking is “particularly challenging.”²¹ But many experts argue that the magnitude of the crime is increasing despite the federal and state efforts discussed above.²²

From 2007 to 2014, the National Human Trafficking Hotline (the “Hotline”) identified an annual average of 4,634 victims of human trafficking.²³ From 2015 to 2023, the annual average of victims nearly quadrupled to 17,770.²⁴ Regarding trafficking incidents involving “force, fraud, or coercion,” in 2013, the FBI’s Uniform Crime Reporting (“UCR”) program identified just 22 human trafficking incidents.²⁵ This low rate is mostly attributable to a poor rate of participation—just 34%—among reporting agencies.²⁶ Regardless, that number has steadily increased every year since. In 2022—with 77% participation²⁷—the FBI tallied 2,378 such human trafficking incidents,²⁸ and in 2023, the FBI reported 3,244 such human trafficking incidents.²⁹

Significant as these numbers are, researchers almost universally believe the reality is substantially worse. Estimates of the number of victims are hindered by methodological challenges to collecting statistics on “a population that is completely confined.”³⁰ Furthermore, the accuracy of the Hotline is undermined by research showing that “[v]ictims or victims’ families seldom report victimization”—just 13% of the time according to a study examining cases from 2005 to 2010.³¹ The

data collected by UCR, too, is widely accepted to be “significantly underreported for several reasons.”³² One reason for UCR underreporting is that prosecutors often—due to motivations discussed below—prosecute human trafficking cases under “lesser non-trafficking charges,” and, “[a]s a result, the true prevalence of identified human trafficking cases is hidden.”³³ The consequent underreporting is not immaterial: the victim count from law enforcement records sometimes comprise just 2.5% to 3% of the actual victims of human trafficking.³⁴

Alternative measurements of the volume of human trafficking occurring further challenge the accuracy of the Hotline and UCR data. For example, researchers studying online sex ads that were posted on the now-defunct Backpage.com from December 2015 to April 2016 accumulated 513,705 unique advertisements within just 14 U.S. states.³⁵ Nearly a decade later, in 2025, a more expansive study of “the top 15 most relevant sex trafficking websites” collected “more than 100,000 publicly available ads” for sex within the entire United States *each day* during a three-month period—over 10 million in total.³⁶ There are, however, limitations to the utility of these numbers. Because they pertain only to *sex* (not labor) trafficking, and because “[d]uplicate sex ads pervade the online ad ecosystem,” these numbers are not an exact proxy for human trafficking volume. But they demonstrate that the demand fueling sex trafficking is substantially greater than the Hotline and UCR data would suggest.

B. Enforcement at the Federal Level

Regardless of how one quantifies the volume of human trafficking occurring in the United States, the number of prosecutions and convictions at the federal level are relatively low.³⁷ The Department of State’s Trafficking in Persons Report for the United States indicates that the DOJ initiated just 162 and 181 prosecutions in 2022 and 2023, respectively, under the TVPA, 18 U.S.C. §§ 1581 *et seq.*³⁸ The Bureau of Justice’s 2024 report on Human Trafficking Data Collection Activities expands that data further to add other human trafficking statutes concerning exploitation and transportation (not just the TVPA), focuses more granularly on the number of defendants (not just cases), and shows that a total of 1,656 defendants were prosecuted for human trafficking in 2022.³⁹ The average number of defendants each year was 1,290 from 2015 to 2022.⁴⁰

Yet an even broader, more probing study of *all* federal human trafficking prosecutions⁴¹—not just those under the TVPA, child exploitation, and transportation laws⁴²—in which researchers “remove[d] false positives” and sorted out certain prosecutions to “avoid over-inclusivity” resulting from prosecutorial practices such as “charge stacking,”⁴³ showed an average of just 103 human trafficking cases comprising 200 defendants and affecting 527 victims per year from 2000 to 2022.⁴⁴ For the years 2015 to 2022, those averages were 184 trafficking cases comprising 304 defendants affecting 566 victims per year.⁴⁵

Researchers have identified several potential reasons for these low prosecution numbers, including prosecutorial discretion, the reluctance of victims to testify, and negative preconceptions among judges about human trafficking cases.

The exercise of prosecutorial discretion has limited the number of federal human trafficking cases. Some federal prosecutors—even in task force jurisdictions—are unwilling to take on human trafficking cases because they “involve a low number of victims or suspects,” or because cases have adult victims (which, unlike child victims, require a showing of “force, fraud, or coercion”).⁴⁶ In other words, federal prosecutors prefer “bigger and badder” cases to those just involving “pimps.”⁴⁷ And even when a case meets that criteria, federal prosecutors demand “substantial evidence of trafficking” before they are willing to take it on.⁴⁸ This heightened demand has sometimes fed unnecessary expectations at the institutional level. Nearly every federal jurisdiction has an informal policy requiring “transportation across state lines” before a human trafficking case is accepted—even though interstate transportation is not required under most federal human trafficking statutes.⁴⁹

The reluctance of human trafficking victims to testify also challenges federal prosecutions of human trafficking cases. Due to the nature of human trafficking cases, victim cooperation is regarded as “crucial” to obtaining a conviction⁵⁰—especially since the Supreme Court decided *Crawford v. Washington* in 2004, which precludes corroborating evidence such as victim statements on hearsay grounds absent victim testimony in court.⁵¹ Yet one study shows that “gaining cooperation from victims” in federal human trafficking cases is “one of, if not the largest hurdle to overcome.”⁵²

Experts in human trafficking cases have identified several common reasons for victims’ reluctance to testify or cooperate. Foremost among those reasons is a “fear of retribution by traffickers,” which is “almost universal among human trafficking victims.”⁵³ The fear of retribution often stems from the unique “psychological dynamics and coercion” between a trafficker and its victim.⁵⁴ This fear of retribution is not limited to the victims themselves, but sometimes also extends to “the victim’s family.”⁵⁵ Victims also are reluctant to cooperate because they are often “guilty of committing other crimes,” such as being unlawfully present in the United States, drug use or distribution, or, most commonly, prostitution.⁵⁶ Even if their motives are benign, victims also are uncooperative due to distrust of the judicial process, trauma, and a desire to “avoid having to put themselves through a lengthy legal process.”⁵⁷ This last reason is especially prevalent at the federal level, where human trafficking cases can take upwards of two years to prosecute.⁵⁸ Regardless of the reason, some federal prosecutors believe that, without victim cooperation and testimony, they “would be unable to continue with the case.”⁵⁹

Lastly, issues on the bench appear to be contributing to the low volume of federal prosecutions. For starters, it takes judges substantially longer to resolve trafficking cases than general federal criminal cases. From 2019 to 2023, the average disposition length of human trafficking cases

in federal courts was 562 days (~19 months) for labor trafficking cases and 501 days (~17 months) for sex trafficking cases.⁶⁰ By comparison, during that same period, the median disposition length for all federal criminal cases was 268 days (~9 months).⁶¹ The additional time required to resolve trafficking cases consumes limited federal resources—such as DOJ’s 41 task forces—and may help explain the low overall number of trafficking prosecutions.

Beyond the practical challenges judges face in handling intricate trafficking cases, some federal judges’ misconceptions and biases about human trafficking also appear to contribute to the low number of prosecutions.⁶² For example, local law enforcement will “refrain from taking cases to federal prosecutors for fear of giving the wrong impression to federal judges by bringing cases that some may feel are inappropriate.”⁶³ It is known among law enforcement officers that “[m]any federal judges view human trafficking cases as local problems, not issues worth bringing to the federal level.”⁶⁴ Even when prosecutions go forward in federal court, prosecutors observe that some federal judges “tend[] to sympathize with the [buyers of sexual services]” and “did not view human trafficking as a serious crime.”⁶⁵ In part, that attitude among federal courts stems from the fact that the unique dynamic between a trafficker and a victim—which is necessary to dissect in most human trafficking cases—is simply “not the subject of common knowledge.”⁶⁶

Notably, despite these causes of low prosecution volumes at the federal level, when federal prosecutors actually take a human trafficking case, they are often successful at obtaining a conviction. The Human Trafficking Institute estimates that the conviction rates in 2022 and 2023 for federal *sex* trafficking prosecutions was 96% each year.⁶⁷ And the conviction rates in 2022 and 2023 for *labor* trafficking were 91% and 100%, respectively.⁶⁸ These rates track federal conviction rates for other crimes generally.⁶⁹

C. Enforcement at the State Level

The quantum of prosecutions at the state level is likewise perceived as underwhelming by researchers,⁷⁰ but the more pressing issue is the rate at which state prosecutors achieve a human trafficking conviction.

Official statistics showing the efficacy of state anti-human trafficking enforcement are in short supply. This dearth of statistics is not for Congress’s lack of trying. In 2015, Congress as part of the Combat Human Trafficking Act began requiring the Bureau of Justice Statistics to prepare an annual report on human trafficking that includes the number of prosecutions and convictions in state court systems for sex trafficking offenses.⁷¹ Unfortunately, as of 2024, the Bureau of Justice Statistics has yet to collect sufficient data to report on prosecutions and convictions at the state level.⁷²

Yet *all* of the relatively few inquiries into the efficacy of state anti-human trafficking enforcement suggest state conviction rates are unimpressive. The most comprehensive study of state human trafficking conviction rates to date, in which researchers examined state human trafficking prosecutions from 2003 to 2012, determined that only 45% of human trafficking suspects were convicted of state human trafficking crimes.⁷³ And a less formal but more recent study conducted by the Associated Press, in which all but five states participated, suggests that, from 2003 through 2019, the rate at which human trafficking suspects were convicted of a state human trafficking crime was closer to 16%.⁷⁴

Recently, this author conducted research into the efficacy of Texas's human trafficking prosecutions which is consistent with these conviction-rate estimates. An evaluation of Texas's trafficking prosecutions is especially relevant because Texas is believed to have the second highest number of trafficking cases in the United States and is one of the only states to have received a perfect score for its anti-trafficking criminal provisions by Shared Hope International.⁷⁵ Yet data obtained from the Texas Department of Public Safety shows that, from 2004 to 2023, Texas prosecutors achieved a human trafficking conviction just 28% of the time an individual was arrested under Texas's anti-trafficking laws.⁷⁶ Although this figure is an imperfect comparator to the previously mentioned convictions rates among states because it pertains to individuals *arrested*—not formally indicted—under Texas's trafficking laws, it is generally consistent with those low conviction rates. A chart reflecting these statistics is attached as Appendix A.

Whether the real state conviction rate is 45%, 16%, or somewhere in between, state prosecutions of human trafficking offenses significantly underperform their federal counterparts (as mentioned above, ranging between 91% and 100% in recent years). And these rates for state human trafficking convictions may also lag the general conviction rate for all felonies at the state level. For instance, in California, for the years 2000 to 2023, the conviction rate for all felonies averaged over 67%.⁷⁷ These comparators, albeit imperfect,⁷⁸ suggest there is significant room for states to improve their conviction rates for state human trafficking offenses.

As with issues undermining federal prosecutions, researchers trying to understand the general lack of vigor and efficacy in state prosecutions of human trafficking point to, *inter alia*, problems with prosecutorial discretion, victim cooperation, and judicial misunderstanding and bias.

Many state and local prosecutors are so taxed by the general complexity of human trafficking that they are apt to turn human trafficking cases over the federal authorities rather than proceed with state prosecution.⁷⁹ Indeed, from the earliest days of federal enforcement of anti-trafficking laws, the U.S. Department of State has ranked human trafficking cases as “the most labor and time-intensive matters undertaken by the Department of Justice” due to the complexity of the cases and challenges working with highly traumatized victims.⁸⁰

Issues with victims in state court largely mirror those at the federal level, as “reluctance to testify or lack of cooperation” is by far “the biggest challenge” to a successful human trafficking prosecution.⁸¹ As discussed above, human trafficking victims are often reluctant to testify out of fear of retribution from their trafficker. In state courts, the effect of losing a victim witness in many cases is similar as in federal court: charges are “dropped or lessened and the traffickers [go] free.”⁸²

But the most significant issues derailing state prosecutions may come from the bench itself. As prosecutors have observed, “human trafficking [cases are] complex for everyone in the justice system, including judges.”⁸³ Thus, even if a prosecutor is able to secure victim cooperation, they can face “challenges in the form of judge . . . misunderstanding, bias, and lack of knowledge about human trafficking.”⁸⁴ In one example, a state judge allowed a defense attorney to insist that human trafficking “only happens to un-documented immigrants smuggled across borders” in a sex trafficking case involving a U.S. citizen.⁸⁵ Elsewhere, judges often admit evidence of “irrelevant factors regarding a victim’s past,” which is typically checkered with poor decisions resulting from an impoverished background.⁸⁶ Yet prosecutors who then seek to overcome such victim credibility issues with expert testimony are sometimes prevented from doing so by judges.⁸⁷

The impact of judicial misunderstanding, bias, and mishandling of witnesses is not limited to conviction outcomes but extends to the number of cases brought by prosecutors to begin with. Prosecutors refuse to bring some cases simply because they believe a judge will not think a human trafficker is “serious enough” to receive significant punishment until “you can show the kind of money [the trafficker] is making.”⁸⁸ This perception of judges among state prosecutors stems from the fact that many judges are “uninformed and have never presided over trafficking cases, or because they are biased against the victims who[m] they see as ‘prostitutes.’”⁸⁹ These difficulties flowing from the bench have led many prosecutors to “see it as part of their duty to educate judges” on “the dynamics of human trafficking.”⁹⁰ But in the worst of cases, education is meaningless, as resistance flows from state judges “who may have been involved in trafficking themselves”—“as customers.”⁹¹

Due to these challenges from the bench, prosecutors have been apt to prosecute human trafficking cases under non-trafficking statutes, such as promoting prostitution or kidnapping. Judges are “more familiar” with such crimes.⁹² These decisions have impacts not only on the severity of punishment dealt to offenders (who avoid the harsher sentences of human trafficking crimes),⁹³ but also on the actions of investigators and police, who are less inclined to make arrests for human trafficking when they know prosecutors will not take the baton.⁹⁴ In other words, the lack of familiarity with human trafficking cases by judges has a negative upstream effect on the investigation of human trafficking cases.⁹⁵

D. Complexity

Underlying most of the issues with federal and state prosecutions of human traffickers is the unparalleled complexity of such cases, from both factual and legal perspectives.⁹⁶

Factually, the contexts from which trafficking cases spring is both broad and veiled. Labor trafficking, for example, can range from “transnational crime rings” to “small-scale family style channels,” and can reach industries as varied as “domestic service, restaurants, construction, agriculture, garment, and commercial sex.”⁹⁷ Further, labor trafficking typically involves “some network, whether organized or not, including recruiters, document forgers, transporters, and contractors.”⁹⁸ Within this web, trafficking can emerge from other criminal activity. For instance, human trafficking may arise from the crime of human smuggling when “a voluntary migrant utilizes the services of a smuggler, but is then forced to work off newly accrued debt under subsequent threats of harm.”⁹⁹ For fact finders, that transition requires a challenging determination of the “turning point from initial consent to subsequent coercion” which is based on facts that are often “purely psychological.”¹⁰⁰ Making such a determination requires “a complex and detailed factual examination of the victim’s state of mind and the trafficker’s actions.”¹⁰¹

The challenge of psychological evidence is especially pronounced (and complicated) in sex trafficking cases requiring a showing of coercion.¹⁰² To avoid detection, sex traffickers often “control[] victims so they appear to be acting independently” as prostitutes, so much so that even the “*victims* do not recognize their own victimization.”¹⁰³ And even when they do, victims of sex trafficking may incur such a magnitude of “[t]rauma bonding” with their trafficker that it “interferes with [their] ability and willingness to divulge their victimization and identify an exploiter.”¹⁰⁴ Thus, unlike stereotypical victims, most sex trafficking victims are not “wait[ing] to be rescued.”¹⁰⁵ Accordingly, the “forces” traffickers use to perpetuate sex trafficking “are more complex and subtle than ‘force, fraud, and coercion’ and go beyond the role of the trafficker.”¹⁰⁶

Legally, the statutory regimes criminalizing trafficking are paragons of difficulty. As researchers have observed, the sex and labor human trafficking statutes practically “constitute multiple co-occurring crimes under specific conditions and in a particular order.”¹⁰⁷ Indeed, the crime of adult sex trafficking is established where, *inter alia*, a defendant knowingly “recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person . . . knowing, or, . . . in reckless disregard of the fact, that means of force, threats of force, fraud, coercion . . . will be used to cause the person to engage in a commercial sex act.”¹⁰⁸ Thus, a prosecutor must establish that (1) there was an illicit commercial sex act (similar to prostitution under state law, *e.g.*, FLA. STAT. § 796.07(2)(b)), (2) the defendant somehow facilitated that commercial sex act (similar to the promotion of prostitution outlawed by 18 U.S.C. § 2421A), and (3) the victim was somehow

compelled to do that commercial sex act by some type of coercion (similar to coercion to engage in prostitution outlawed by 18 U.S.C. § 2422).¹⁰⁹

Within these elements, human trafficking statutes present uniquely thorny issues. For example, unlike most other crimes, human trafficking crimes often require inquiry into the state of mind of both the defendant *and* the victim. Drug trafficking, for instance, is established exclusively through the knowledge of the defendant (for the manufacture, distribution, or dispensing, etc. of a controlled substance).¹¹⁰ Human trafficking, by comparison, often requires prosecutors to prove both the knowledge of the defendant (for facilitating the trafficking activity) *and* account for the mental state of the victim (for their willingness to “engage in a commercial sex act” when examining the compulsion element).¹¹¹ Hence, prosecutors and judges addressing a human trafficking charge sometimes must deal with victims who testify that they were a “willing prostitute and business partner”—seemingly undermining the element of “coercion” required for adult sex trafficking—by piecing together a tapestry of “other acts” evidence and expert testimony to undermine the victim.¹¹² This all-too-common situation once led the Seventh Circuit to lament, in the human trafficking context, that “[f]orce and coercion can be complicated topics.”¹¹³

Given these factual and legal complexities, the low, slow, and ineffective productivity of federal and state officials in human trafficking cases is hardly a surprise. Simply put, the “inherent complexity of the [federal human trafficking] crime” can make the task of identifying an actual trafficking case a challenge.¹¹⁴ That is true for victims themselves¹¹⁵—but *also* for investigators, prosecutors, and judges.¹¹⁶

IV. SOLUTION: THE UNITED STATES HUMAN TRAFFICKING COURTS

After a quarter century of flexing core *legislative* and *executive* muscle without achieving a level of success with human trafficking prosecutions commensurate with the magnitude of the human trafficking problem, it is time for a *judicial* solution. A judicial solution will enhance the volume of prosecutions and conviction rates if it leverages judicial expertise, is open to state prosecutors, and accommodates victims of human trafficking by extending existing procedural protections.

A. HTC's Should Fit Within the Current Regime of Dedicated Federal Courts by Leveraging Judicial Expertise

Dedicated courts are not a novel concept to American law. At the federal level, there are currently two Article III dedicated courts with dedicated judges: the Court of Appeals for the Federal Circuit and the Court of International Trade.¹¹⁷ There are also dedicated courts staffed with Article III judges who serve concurrently on generalist courts, including the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review (together, the “FISA Courts”).¹¹⁸

And there are several more Article I dedicated courts, including the Tax Court, Bankruptcy Courts, and Court of Federal Claims. At the state level, specialized courts abound,¹¹⁹ most notably with the recent proliferation of business courts.¹²⁰

With few exceptions, a key premise shared by most such courts is that “specialized courts are more likely to make correct decisions in complex areas.”¹²¹ This conceptual framework is unsurprising, as the notion that specialization begets competence is as old as our Republic,¹²² and it endures in modern times as a “foundational impetus” for dedicated courts.¹²³

Further, expertise in the judiciary can be enhanced by certain structural factors. For example, the benefits of judicial expertise are especially pronounced when the complexity within a court’s jurisdiction pertains to the “underlying facts” of the usual case, as opposed to just the underlying law.¹²⁴ For that reason—and with the exception of the Court of Appeals for the Federal Circuit—most dedicated courts in the United States have been given fact-finding, rather than appellate, capacity.¹²⁵ Also, judicial expertise is strengthened when, unlike administrators, judges are given the protections of life tenure and no diminution of salary. It has therefore been observed that judges on the Court of International Trade—which has Article III status—are able to “develop expertise while on the bench.”¹²⁶

With respect to human trafficking cases, the need for expertise among judges is paramount. As proven by over two decades of underwhelming justice, the complexity inherent in such cases too often leads generalist judges at both the federal and state levels to flub the complicated issues therein.¹²⁷ Indeed, “[p]residing over human trafficking cases is a challenging . . . task that requires specialized legal knowledge, along with compassion and understanding of the complex interpersonal dynamics between traffickers and victims.”¹²⁸

Because human trafficking adjudications present complex legal and factual issues, HTCs should draw from the existing framework and rationale for dedicated courts. To be truly specialized, HTCs should have exclusive jurisdiction over criminal cases involving at least one human trafficking offense.¹²⁹ To account for the benefits of specialization where factual issues are complex, HTCs should be trial-level courts rather than appellate courts. Lastly, HTCs should be Article III courts on which judges are endowed with life tenure and salary protections, both to ensure the ongoing development of their expertise and because the Constitution demands that criminal adjudications be handled by an Article III judge.¹³⁰

The expertise of HTC judges could mitigate the limitations of generalist judges affecting human trafficking prosecutions and investigations. At the federal level, the inherent complexity of human trafficking cases may be contributing to generalist judges taking substantially longer to dispose of human trafficking cases than other criminal cases. That added disposition time bogs down

resources devoted to investigating and prosecuting human trafficking cases, leading to lower trafficking prosecution volume. Assigning these cases to judges with subject-matter expertise could shorten the disposition time, thus maximizing the output of prosecutors and investigators. Additionally, federal judicial preconceptions about the seriousness of human trafficking appears to be contributing to prosecutors cherry-picking just a handful of human trafficking cases each year. A dedicated court would remedy that issue because, as a matter of common sense, it is unlikely that a judge whose jurisdiction is devoted to adjudicating human trafficking cases would downplay the seriousness of that crime—or even risk being perceived as doing so.

At the state level, judicial misunderstandings, biases, and general lack of knowledge about human trafficking seem to be driving prosecutors to down-charge or lose cases and, consequently, suppressing the volume of state human trafficking prosecutions and investigations. But state prosecutors that use HTC judges (through a mechanism discussed next) will find expert jurists whose facility with the particular challenges of human trafficking cases will lead to higher conviction rates, thus encouraging prosecutions. In other words, the expertise of HTC judges will cause investigators to be more apt to investigate and prosecutors to be more apt to bring human trafficking cases.

Recent historical precedent suggests that dedicated HTCs would increase the number of human trafficking cases brought each year. During the ten years *before* Congress created the United States Bankruptcy Courts, which are dedicated to the adjudication of bankruptcy cases and opened in 1979,¹³¹ there were 208,619 bankruptcy cases filed annually in federal district courts.¹³² During the ten years *after* the creation of the Bankruptcy Courts, there were on average 436,632 bankruptcy cases filed annually in those specialty courts—a 109% increase.¹³³ While this increase is undoubtedly owed to a variety of factors, including the creation of the Bankruptcy Code itself, it seems likely that the dedicated forum, with its expert jurists, was a significant contributing factor. Hence, the average length of a bankruptcy reorganization dropped from 27 to 21 months immediately after the creation of the Bankruptcy Courts¹³⁴—a 22% decrease.

B. HTCs Should be Open to State Prosecutors

HTCs should expand existing procedural mechanisms to open their doors to state prosecutors without violating principles of federalism and the separation of powers. Walking this careful line is not only prudent but necessary to maximize the efficacy of HTCs.

The bedrock of federalism is that “[e]ach State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own *voluntary act*.”¹³⁵ Thus, any federal directive *requiring* state actors “to address particular problems” or “to administer or enforce a federal regulatory program” is “fundamentally incompatible with our constitutional system of dual sovereignty.”¹³⁶

The relevant tenet of the separation-of-powers doctrine is that Congress shall not infringe upon the “executive Power,” which contains the exclusive authority to “take Care that the Laws be faithfully executed.”¹³⁷ Thus, the President’s exclusive authority to execute the laws of the United States “would be shattered” if “Congress could act as effectively without the President as with him, by simply *requiring* state officers to execute its laws.”¹³⁸

To uphold these principles, Congress must afford discretion to both the states and the President in prosecuting human trafficking law in HTC. Specifically, any participation of states in HTCs must be “voluntary.” And any grant of permission to states to participate in the prosecution of federal laws in HTCs must come from the President (through the Attorney General).

Congress recently walked this line in 2015. In the Justice for Victims of Trafficking Act,¹³⁹ Congress amended the Mann Act, 18 U.S.C. § 2421(b), which criminalizes interstate transportation of persons for the purpose of criminal sexual activity, to require the Attorney General to grant a request by state or local prosecutors to be cross-designated to prosecute a Mann Act violation, “unless the Attorney General determines that granting the request would undermine the administration of justice.”¹⁴⁰ In doing so, Congress afforded states a path to voluntarily partake in federal human trafficking prosecution. And it left room for the Attorney General to exercise discretion (albeit limited) to grant or deny such a request.

Accordingly, in conjunction with the creation of the HTCs, Congress should expand the Attorney General’s cross-designation authority under Section 2421 to all federal offenses under the jurisdiction of the HTCs. Doing so would offer a powerful tool to state prosecutors who are currently unable to achieve desirable conviction rates in generalist state courts. State prosecutors would have access to the HTCs’ expert jurists, which would encourage state prosecutors (and investigators) to pursue human trafficking cases and reduce the incentive for state prosecutors to down charge to a lesser offense. And state prosecutors would be further incentivized to use the HTCs due to the relatively higher penalties at the federal level.¹⁴¹

Notably, most human trafficking cases “affect interstate commerce” sufficient to gain access to the federal forum. Many cases involve interstate travel;¹⁴² but regardless, all that is required to affect interstate commerce is the use of a cell phone, internet, or hotel¹⁴³—tools of nearly every human trafficker. That is why there already exists a pipeline (albeit narrow) through which state prosecutors refer cases to federal prosecutors; most cases could be prosecuted at either the state or federal level.¹⁴⁴ But affording state prosecutors an opportunity to use the federal forum themselves avoids issues related to the hyper selectivity of federal prosecutors and increases the likelihood that state prosecutors charge and successfully prosecute actual human trafficking crimes.

C. HTCs Should Extend the Use of 2-Way Video Testimony to Improve Victim Cooperation

To further encourage state and federal prosecutors to bring anti-trafficking claims in HTCs, Congress should take steps to improve victim cooperation.

The most significant issue (of several) affecting victims is fear of their trafficker.¹⁴⁵ This fear, stemming from unique “psychological dynamics and coercion” inherent in trafficking,¹⁴⁶ often causes victims to avoid providing testimony against their trafficker.¹⁴⁷ Congress has previously provided a solution to this problem for victims of child exploitation. In 1990, the Crime Control Act provided victims of child abuse and exploitation the option to testify through “2-way closed circuit television” in a room “outside the courtroom” if the child suffers or would suffer from “fear,” “emotional trauma,” or “mental . . . infirmity.”¹⁴⁸ This 2-way mechanism has proven extremely popular in recent decades.¹⁴⁹

Because human trafficking victims—regardless of age—often suffer from the same fear, trauma, and infirmity as victims of child abuse, Congress should expand the 2-way testimony option to all human trafficking offenses falling under HTC jurisdiction. Doing so would vastly improve the number, quality, and credibility of testimonies provided by victims. In turn, prosecutors would be encouraged to bring more human trafficking (and not lesser) charges and investigators would be encouraged to pursue human traffickers.

Notably, the Confrontation Clause’s general demand for “face-to-face” testimony is potentially implicated by the use of 2-way testimony.¹⁵⁰ But the United States’ interest in protecting victims of human trafficking and exploitation is likely a sufficiently important state interest to overcome the face-to-face requirement—regardless of whether that victim is a child or adult.¹⁵¹ Any court that finds 2-way testimony is necessary to further that important state interest must also conclude that the manner in which the 2-way testimony is conducted is sufficiently reliable.¹⁵² The Supreme Court has found sufficient reliability where the witness was administered an oath, defense counsel was afforded a full and contemporaneous cross-examination, and the technology permitted the judge, jury, and defendant to observation the witness’s demeanor.¹⁵³ Accordingly, Congress, while extending the 2-way option to human trafficking offenses in the HTC, should require these reliability measures.

D. HTCs Should Have Jurisdiction Over a Broad Array of Trafficking-Related Crimes and Civil Actions

The traditional slate of anti-trafficking statutes includes 18 U.S.C. §§ 1581–1590 and 1592, which criminalize various forms slavery, 18 U.S.C. § 1591, which criminalizes adult and child sex trafficking, 18 U.S.C. § 1593A, which criminalizes benefiting from trafficking, 18 U.S.C. §§ 2421–2423,

which criminalize transporting individuals for the purpose of criminal sexual activity, and 18 U.S.C. §§ 2251 & 2251A, which criminalize sexual exploitation of and selling or buying of children.¹⁵⁴

Because HTC judges will possess and develop expertise in the topic of human trafficking, Congress should also include within their jurisdiction peripheral crimes that are sometimes brought in conjunction with or alternatively to human trafficking crimes. Those crimes include 18 U.S.C. §§ 1466A, 2252–2252C, which criminalize the distribution and possession of child pornography and related internet activity, 18 U.S.C. §§ 2257 & 2257A, which criminalize the failure to keep certain records when producing sexually explicit conduct, 18 U.S.C. §§ 2258 & 2258A, which criminalize the failure to report child abuse, 18 U.S.C. § 2421A, which criminalizes the promotion or facilitation of prostitution through an interactive computer service, 18 U.S.C. § 1470, which criminalizes the transfer of obscene material to minors, and 18 U.S.C. § 1201, which criminalizes kidnapping.

For the same reason, in addition to having jurisdiction over criminal statutes, the HTCs should have jurisdiction over civil suits brought by victims of human trafficking. Private rights of action have long been acknowledged as a critical component of justice for trafficking victims.¹⁵⁵ Since the enactment of the first private right of action specific for trafficking survivors in the 2003 reauthorization of the TVPA,¹⁵⁶ hundreds of survivors have taken advantage of its “unique benefits” toward restoration and justice, enjoying greater success at obtaining restitution and “greater control over the case” than with mere criminal prosecution.¹⁵⁷ States have taken the cue, as at least 40 have passed similar laws.¹⁵⁸ The federal code presently provides eight statutory civil remedies for victims of human trafficking: 18 U.S.C. §§ 1595, 2254, 2255, 2259, 2259B, 2429, 3663 and 3663A. By including these statutes within the jurisdiction of HTCs, victims will have access to expert jurists who are likely already familiar with the specifics of the underlying criminal prosecution.

Of course, human trafficking offenses and civil claims are often adjudicated alongside non-human-trafficking offenses and claims. In those instances, HTCs should possess exclusive jurisdiction over all offenses and claims at least through the motion to dismiss stage. To discourage forum shopping favoring HTCs, judges in any case in which all human trafficking offenses or claims are dismissed should have the discretion to transfer such case to the relevant federal district court.

E. HTCs Should Be Strategically Located and Flexibly Staffed

To be strategic about meeting the volume of demand on HTCs, Congress should work with the Administrative Office of the U.S. Courts to determine how many judges are necessary to accommodate the aforementioned jurisdiction. The data that is publicly available suggests only one HTC district per state may be necessary (which is also the constitutional minimum for a criminal court). For states with a relatively low number of human trafficking cases, Congress should grant flexibility by permitting district court judges to serve concurrently on HTCs.

The only publicly available study on the number of federal human trafficking cases per state shows a substantial disparity among states with respect to the number of prosecutions since 2000.¹⁵⁹ Whereas the average total number of human trafficking cases prosecuted since 2000 in the top five states is 186, the average total of the bottom five states is just 3 prosecutions.¹⁶⁰ Of course, that particular study sought to identify the number of human trafficking cases that were *true* trafficking cases,¹⁶¹ and thus it is not a perfect indicator of the total quantum of prosecutions that would fall under the jurisdiction of HTCs. Rather, a better (but still imperfect) indicator of the number of prosecutions that would fall under the jurisdiction of HTCs is from the Bureau of Justice Statistics, which shows an average of 1,290 prosecutions per year throughout the United States from 2015 to 2022.¹⁶²

For context, these numbers are dwarfed by the total volume of criminal prosecutions brought in federal district courts each year. From 2019 to 2023, there were an average of 60,363 criminal cases per year throughout the United States.¹⁶³ Notably, these cases were divvied up (asymmetrically) among 677 federal district judges.¹⁶⁴ Thus, the annual average number of criminal cases filed per judge during that period was 89.

Therefore, whereas one HTC per existing federal district is likely too many, one HTC district per state is likely sufficient. Assuming HTCs would handle all human trafficking criminal cases brought by federal prosecutors, a substantial portion of human trafficking criminal cases brought by state prosecutors, all federal child pornography, child abuse, kidnapping, sexually explicit record keeping crimes, and all civil suits arising from human trafficking crimes, it is reasonable to estimate that one HTC district per state, each staffed with at least one expert judge, should be able to handle the caseload. Notably, one district per state is likely the constitutional minimum number of districts because HTCs will handle criminal trials; every defendant is entitled to a trial “in” and a jury “of” the state of the alleged crime.¹⁶⁵

For HTC districts with an insufficient HTC-specific caseload to justify a dedicated judge, Congress should permit the HTC judge to serve concurrent judgeships on a federal district court within the relevant HTC district. In that way, the HTC judge will function similarly to FISA judges, who serve concurrent judgeships on other Article III courts while serving on the FISA court. Moreover, allowing concurrent judgeships will enable Congress to create HTCs in a budget-friendly manner.

V. CONCLUSION

Human trafficking continues to grow without commensurate prosecution despite focused attention from legislators and executive officials for a quarter century. Many causes of the relatively low and ineffective prosecution of human trafficking offenses at the federal and state levels relate to

judicial mishandling of notoriously complex human trafficking cases. The solution to these problems is a federal court system dedicated to human trafficking adjudications. Such a forum should be staffed with judges who are (and would increasingly become) subject-matter experts, be open to states, and be accommodating of victims whose testimony is key to successful prosecutions.

Although statistics and trend data strongly support such a forum, it is important for policymakers to keep in mind that victims and survivors of human trafficking are not just statistics: they are sons and daughters—many still children—who walk into courtrooms already carrying unspeakable trauma. In this delicate state, the justice they need eschews retraumatization caused by judges and attorneys who, though perhaps well intentioned, may misunderstand the complex brutality of human trafficking. And they deserve justice that matches the crime, not a downgraded version of it. This human element distinguishes human trafficking adjudications from other complex areas of law, such as antitrust. Victims and survivors of human trafficking need more than mere anti-trafficking laws and the usual march through the courts—they need a court system specifically calibrated for empathy and consistency. The United States Human Trafficking Courts proposed here would be just that. As such, these courts are not just another policy reform. They are a moral imperative to restore dignity and faith in the justice system for those who need it most.

REFERENCES

¹ See G.A. Res. 55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Nov. 15, 2000), <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>.

² Victims of Trafficking & Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1466 (codified at 22 U.S.C. § 7101).

³ See *Federal Response on Human Trafficking: Anti-Trafficking Legal Authorities and Mandates*, U.S. DEP'T OF STATE, <https://2017-2021.state.gov/humantrafficking-anti-trafficking-legal-authorities-and-mandates/> (archive) (last visited Apr. 10, 2025) (listing numerous U.S. legal authorities on human trafficking); see also Exec. Order No. 14,060, 86 Fed. Reg. 71793 (Dec. 15, 2021) (establishing the United States Council on Transnational Organized Crime). Note, numerous other acts of Congress have been passed that funded anti-human trafficking efforts. See, e.g., National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, §§ 5102, 6407, 135 Stat. 1541, 1562, 1564 (2021).

⁴ See, e.g., 18 U.S.C. §§ 1581–1597, 2421–2423.

⁵ See, e.g., 6 U.S.C. § 242a; 8 U.S.C. § 1777; 34 U.S.C. §§ 20712, 20711–20713; 22 U.S.C. §§ 7103, 7103a, 7104b, 7109; President's Interagency Task Force to Monitor and Combat Trafficking in Persons, Exec. Order No. 13,257, 67 Fed. Reg. 7259 (Feb. 13, 2002); Combating Human Trafficking

and Online Child Exploitation in the United States, Exec. Order No. 13,903, 85 Fed. Reg. 6721 (Jan. 31, 2020); Providing for the Performance by the Director of Defense Mobilization of Certain Functions Relating to Telecommunications, Exec. Order No. 10,460, 18 Fed. Reg. 3513 (June 16, 1953).

⁶ See, e.g., 34 U.S.C. §§ 20701; 20709(e).

⁷ See, e.g., 22 U.S.C. § 7110; 34 U.S.C. §§ 20702–20706, 20708.

⁸ See, e.g., 18 U.S.C. § 1593; 34 U.S.C. §§ 20710, 20713.

⁹ See Michael R. Candes, *The Victims of Trafficking and Violence Protection Act of 2000: Will it Become the Thirteenth Amendment of the Twenty-First Century?*, 32 U. MIA. INTER-AM. L. REV. 571, 574 (2001) (calling the TVPA the “only comprehensive law that exists on trafficking of human beings”).

¹⁰ See U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., 2024 Trafficking in Persons Report: United States, (2024) [hereinafter, “2024 Trafficking in Persons Report”] <https://www.state.gov/reports/2024-trafficking-in-persons-report/united-states/> (last visited Apr. 10, 2025) (“All U.S. states and territories have anti-trafficking criminal statutes.”); Jennifer M. Chacón, *Human Trafficking, Immigration Regulation, and Subfederal Criminalization*, 20 NEW CRIM. L. REV. 96, 105 (2017) (footnote omitted) (“At present, each state in the United States has its own antitrafficking legislation.”). Notably, in 2004, the Department of Justice developed model state legislation for criminalizing human trafficking. See Appendix I, *Model State Anti-Trafficking Criminal Statute [to the U.S. Department of Justice Civil Rights Division Report on Activities to Combat Human Trafficking Fiscal Years 2001–2005]*, U.S. DEP’T OF JUST., <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/appendices.pdf> (last visited Apr. 10, 2025).

¹¹ See Chacón, *supra* note 10, at 105 & n.28 (citing Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, § 201(a), 119 Stat. 3558, 3567 (2006) (codified as amended at 42 U.S.C. § 14044c)); see also Office for Victims of Crime, *Human Trafficking, Grants & Funding*, U.S. DEP’T OF JUST., <https://ovc.ojp.gov/program/human-trafficking/grants-funding> (last visited Apr. 10, 2025) (showing over \$100 million in grants for victims of human trafficking since 2011 pursuant to 22 U.S.C. § 7105(b)(2)).

¹² 18 U.S.C. § 2421(b)(1) (“The Attorney General shall grant a request by a State attorney general that a State or local attorney be cross designated to prosecute a violation of this section unless the Attorney General determines that granting the request would undermine the administration of justice.”); see also Liz Ruskin, *Sullivan Wins Amendment to Let States Prosecute Mann Act*, ALASKA PUB. MEDIA (Apr. 22, 2015, 9:30 PM AKDT), <https://alaskapublic.org/news/2015-04-23/sen-sullivan-wins-amendment-to-let-states-prosecute-mann-act>.

¹³ See 28 U.S.C. § 543(a) (“The Attorney General may appoint attorneys to assist United States attorneys when the public interest so requires.”); 28 U.S.C. § 515(a) (“The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrate judges, which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.”).

¹⁴ 18 U.S.C. § 2421(b)(1)–(2).

¹⁵ Chacón, *supra* note 10, at 105; see also Amy Farrell et al., *Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases*, NE. U. INST. ON RACE & JUST. SCH. OF CRIMINOLOGY & CRIM. JUST. & URB. INST. JUST. POL’Y CTR. (submitted to NAT’L INST. OF JUST.) at 4 (Apr. 2012), <https://www.ojp.gov/pdffiles1/nij/grants/238795.pdf> (“State anti-trafficking laws differ widely in both the definition of what actions constitute a human trafficking crime and the focus of the state response to the problem.”).

¹⁶ See *Human Trafficking State Laws*, NAT’L CONF. OF STATE LEGISLATURES (Aug. 12, 2020), <https://www.ncsl.org/civil-and-criminal-justice/human-trafficking-state-laws>; *Report Cards on Child & Youth Sex Trafficking 2023 Toolkit*, SHARED HOPE INT’L INST. FOR JUST. & ADVOC. (2023), https://sharedhope.org/wp-content/uploads/2024/09/2023_ToolkitrevSept24.pdf [hereinafter “2023 State Report Card”] (grading every state on six areas of law that address the child and youth sex trafficking); see also Christine M. Raino, *Criminalizing Buyers Under Child Sex-Trafficking Laws as a Critical Protection for Child Victims*, 52 WAKE FOREST L. REV. 435, 436 (2017) (“Even though every state in the nation has a law specifically criminalizing sex trafficking, *there is considerable variation in the construction of these laws*, and almost half of the states have a limited definition of child sex trafficking that does not include all commercial sexual exploitation of children.” (emphasis added)).

¹⁷ See *Human Trafficking Task Forces*, U.S. DEP’T. OF JUST. OFF. OF JUST. PROGRAMS & NAT’L INST. OF JUST., <https://nij.ojp.gov/media/image/19586> (last visited Apr. 10, 2025).

¹⁸ See *What We Investigate, Human Trafficking*, FBI, <https://www.fbi.gov/investigate/violent-crime/human-trafficking> (last visited Apr. 10, 2025).

¹⁹ See Janie A. Chuang, *Preventing Trafficking Through New Global Governance Over Labor Migration*, 36 GA. ST. U. L. REV. 1027, 1028 (2020) (footnote omitted) (commenting that global “prosecution and post-hoc protection strategies have hardly made a dent in the problem” of worldwide human trafficking).

²⁰ Farrell et al., *supra* note 15, at 173. Notably, novel anti-trafficking laws may be ineffective even where they remove the notorious “force, fraud, or coercion” element. See Emma Coreno, *Finding*

the Line Between Choice and Coercion: An Analysis of Massachusetts's Attempt to Define Sex Trafficking, 13 NE. U.L. REV. 125, 130 (2021) (surveying court cases following Massachusetts' human trafficking statute which did not contain any force, fraud, or coercion limitation and concluding that “this new statute is not successfully aiding the fight against sex trafficking”).

²¹ Kevin Bales et al., *How Many Trafficked People Are There in Greater New Orleans? Lessons in Measurement*, 6 J. HUM. TRAFFICKING 375, 376 (2020); see also Kelle Barrick & Rebecca Pfeffer, *Advances in Measurement: A Scoping Review of Prior Human Trafficking Prevalence Studies and Recommendations for Future Research*, 10 J. HUM. TRAFFICKING 1, 2 (2024) (listing the “many reasons for the broad and inconsistent ranges of estimates in published human trafficking studies and reports”); Heather C. Gregorio, *More Than “Johns,” Less Than Traffickers: In Search of Just and Proportional Sanctions for Buyers of Sex with Trafficking Victims*, 90 N.Y.U. L. REV. 626, 633–34 (2015) (“The illegal and largely underground nature of the commercial sex industry makes it difficult to obtain accurate statistics about the number of sex-trafficking victims.”).

²² See EVELYN F. MCCOY ET AL., JUST. POL’Y CTR., FINDINGS FROM AN EVALUATION OF THE ENHANCED COLLABORATIVE MODEL TASK FORCES TO COMBAT HUMAN TRAFFICKING 2 (Jan. 2022), <https://www.urban.org/sites/default/files/publication/105326/findings-from-an-evaluation-of-the-enhanced-collaborative-model-task-forces-to-combat-human-trafficking.pdf> (“Although the prevalence of human trafficking in the United States is unknown, scholars and practitioners argue that investigations are disproportionately low relative to the number of occurrences.”).

²³ See *National Statistics*, NAT’L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/en/statistics> (select “Statistics by Year 2007-2014”; then scroll to “Cases Identified in 2007-2014”) (last visited Apr. 11, 2025) (showing 37,073 victims for the eight years between 2007 and 2014).

²⁴ See *id.* (select applicable year under “Statistics by Year; then scroll to “Cases Identified in [year]”) (showing 16,999 victims for 2023, 15,299 victims for 2022, 16,708 victims for 2021, 16,984 victims for 2020, 22,163 victims for 2019, 21,714 victims for 2018, 21,305 victims for 2017, 16,747 victims for 2016, and 12,008 victims for 2015).

²⁵ See *Special Report: Human Trafficking and Drug Offenses 2013-2022*, FBI at 6 & nn.5–6 (Summer 2024), <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/special-reports> (select “Human Trafficking and Drug Offenses: 2013–2022”) (last visited Apr. 11, 2025).

²⁶ *Id.* at 3.

²⁷ *Id.*

²⁸ *Id.* at 4.

²⁹ See *Human Trafficking 2023*, FBI at 1 (2024).

³⁰ Barrick & Pfeffer, *supra* note 21, at 12. See also Farrell et al., *supra* note 15, at 75 (noting that “one of the greatest impediments to identifying [human trafficking] cases” is “the hidden nature of human trafficking victimization”); Alfonso López de la Osa Escribano, *Addressing Human Trafficking from a Comparative Legal Perspective Mexico - United States*, 42 HOUS. J. OF INT’L L. 521, 523 (“As the National Institute of Justice states, human trafficking is a largely hidden crime, and that is precisely what makes it so complex to address.”).

³¹ Farrell et al., *supra* note 15, at 40.

³² Bales et al., *supra* note 21, at 376 (“[T]he law enforcement data collected by the UCR is significantly *underreported* for several reasons.” (emphasis added)); see also Amy Farrell, *Capturing Human Trafficking Victimization Through Crime Reporting*, NAT’L INST. OF JUST., U.S. DEP’T OF JUST. at 30 (2020) (“The human trafficking offenses that are reported by the UCR Program *significantly undercount* potential sex and labor trafficking offenses in a community.” (emphasis added)); *id.* (“Despite dramatic increases in public attention and improved responses from governmental and non-governmental organizations to human trafficking, it has proven difficult to reliably measure the magnitude of the problem. Local, national and global estimates have commonly utilized non-systematic and incomplete data, and have suffered from numerous operational, definitional and methodological limitations.” (citation omitted)).

³³ Farrell et al., *supra* note 15, at 165.

³⁴ Farrell, *supra* note 32, at 31.

³⁵ Vageesh Saxena et al., *IDTRAFFICKERS: An Authorship Attribution Dataset to Link and Connect Potential Human-Trafficking Operations on Text Escort Advertisements*, ASS’N FOR COMPUTATIONAL LINGUISTICS at 3 (2023), <https://aclanthology.org/2023.emnlp-main.524/>.

³⁶ Nicholas K. Freeman et al., *A Multi-Site Data Sample for Analyzing the Online Commercial Sex Ecosystem*, SCI. DATA at 2 (2025), <https://doi.org/10.1038/s41597-025-04442-w> (last visited Mar. 25, 2025).

³⁷ Alicen Rodolph, *Part I: The Task Ahead-Improving the United States’ Task Force Model to Better Serve Victims and Survivors of Human Trafficking*, PROSECUTOR 14, 17 (2023) (“The number of prosecutions for human trafficking cases has fallen significantly over the past few years, yet the number of victims and survivors continues to increase.” (citations omitted)).

³⁸ See 2024 Trafficking in Persons Report, *supra* note 10. Looking broadly at *all* federal trafficking-related offenses—not just those involving the “force, fraud, or coercion” element or prosecuted under the TVPA—the Bureau of Justice Statistics reports there were 1,656 person prosecuted for a human trafficking offense under the TVPA, statutes criminalizing sexual exploitation

and other abuse of children, 18 U.S.C. §§ 2251–2251A, and transportation for illegal sexual activity and related crimes, 18 U.S.C. §§ 2422–2423. *See also* HUMAN TRAFFICKING INSTITUTE, 2022 FEDERAL HUMAN TRAFFICKING REPORT 112 (2023) [hereinafter HTI 2022 Federal Report] (estimating that the federal government prosecuted an additional 55 offenders in 2022 exclusively under the Mann Act, 18 U.S.C. §§ 2421–2423); HUMAN TRAFFICKING INSTITUTE, 2023 FEDERAL HUMAN TRAFFICKING REPORT 116 (2024) [hereinafter HTI 2023 Federal Report] (estimating that the federal government prosecuted an additional 30 offenders in 2023 exclusively under the Mann Act).

³⁹ U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, HUMAN TRAFFICKING DATA COLLECTION ACTIVITIES, 2024 at 3 (2024) (listing prosecutions for 18 U.S.C. §§ 1581–1595, 2251–2251A, 2422–2423).

⁴⁰ *Id.* at 6 (showing 1,049 prosecutions in 2015; 1,093 prosecutions in 2016; 1,163 prosecutions in 2017; 1,107 prosecutions in 2018; 1,235 prosecutions in 2019; 1,343 prosecutions in 2020; 1,672 prosecutions in 2021; 1,656 prosecutions in 2022).

⁴¹ *See* Vanessa Bouché, *Federal Human Trafficking Prosecution Data: Identifying Trends, Gaps, and Disparities to Advance Evidence-Based Reforms*, J. HUM. TRAFFICKING, Feb. 7, 2025, at 17, [hereinafter Bouché, *Federal Human Trafficking Prosecution Data*] <https://doi.org/10.1080/23322705.2025.2458446> (describing its findings as “a comprehensive dataset on federal human trafficking prosecutions from 2000 to 2022” which fill a “well-documented gap in existing research” (citations omitted)).

⁴² *Id.* at 3 (explaining the study’s scope as capturing “two types of human trafficking cases: (a) cases in which prosecutors charge defendants under the principal federal human trafficking statutes, 18 U.S.C. §§ 1581–1596 (Chapter 77) and 18 U.S.C. §§ 2421–2425 (Mann Act), and (b) cases in which defendants are charged under other statutes for crimes related to human trafficking, such as 8 U.S.C. § 1324 (Bringing in and Harboring Certain Aliens), 18 U.S. Code § 2251 (Sexual Exploitation of Children) and 18 U.S.C. § 2252 (Certain Activities Relating to Material Involving the Sexual Exploitation of Minors)”).

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 7 (“From 2000 to 2022, the federal government prosecuted 2,390 cases of human trafficking,”); *id.* at 6 (“These cases identified 4,584 defendants, resulting in an average of 1.9 defendants per case.”); *id.* at 9 (“Across all cases, a total of 12,132 victims were identified.”).

⁴⁵ *See* ALLIES AGAINST SLAVERY, LIGHTHOUSE DATA, <https://lighthouse-data.alliesagainstsavery.org/dataexplorer> (last visited Mar. 18, 2025) (showing 223 cases, 414 defendants, and 732 victims in 2015; 218 cases, 393 defendants, and 736 victims in 2016; 224 cases, 424 defendants, and 598 victims in 2017; 170 cases, 254 defendants, and 414 victims in 2018; 167 cases, 278 defendants, and 578 victims in 2019; 184 cases, 276 defendants, and 379 victims in 2020;

157 cases, 219 defendants, and 839 victims in 2021; and 129 cases, 170 defendants, and 255 victims in 2022).

⁴⁶ Farrell et al., *supra* note 15, at 164–65; 18 U.S.C. § 1591(a).

⁴⁷ Farrell et al., *supra* note 15, at 197; *see also* Jason Brumbelow, *Overcoming Challenges in Obtaining and Presenting Evidence in Federal Sex Trafficking Prosecutions* at 15 (2024) (unpublished Ph.D. dissertation, Nova Southeastern University) (on file with author) (“The challenges in proving [a victim’s mindset] can lead prosecutors only to pursue the most extreme cases of sex trafficking.”).

⁴⁸ Farrell et al., *supra* note 15, at 198; *see also* Brumbelow, *supra* note 47, at 17 (arguing that “a lack of evidence” has led to federal prosecutors “declin[ing] to prosecute a considerable number of sex trafficking cases”).

⁴⁹ Farrell et al., *supra* note 15, at 164. *But see, e.g.*, 18 U.S.C. § 2421(a) (criminalizing transporting individuals to engage in prostitution “in interstate . . . commerce”).

⁵⁰ Brumbelow, *supra* note 47, at 3; *see also* Alicen Rodolph & Tyler Dunman, *Charging Ahead: Prosecuting Human Trafficking Cases Without Victim Cooperation*, PROSECUTOR 4, 5 (2022) (“Successful human trafficking prosecutions usually rely heavily on victim testimony and cooperation.”); Farrell et al., *supra* note 15, at 107 (“As victims are the primary source of evidence in human trafficking investigations, securing victim cooperation is critical.”).

⁵¹ Farrell et al., *supra* note 15, at 174–75 (discussing the impact of *Crawford v. Washington*, 541 U.S. 36 (2004), on human trafficking prosecutions).

⁵² Farrell et al., *supra* note 15, at 201; *see also* Brumbelow, *supra* note 47, at 3 (noting “sex trafficking victims’ reluctance to cooperate with law enforcement as a significant obstacle in prosecuting sex trafficking”).

⁵³ Farrell et al., *supra* note 15, at 84; *see also* Rodolph & Dunman, *supra* note 50, at 5 (listing “fear of retaliation by the traffickers” as a factor preventing victims from testifying).

⁵⁴ Farrell et al., *supra* note 15, at 179; *see also* Brumbelow, *supra* note 47, at 24–25, 28 (detailing various techniques used by traffickers to exercise coercive control over their victims, including “grooming” to “gain a victims’ trust by seeking to fulfill their physical or emotional needs,” and the ensuing “trauma bonding” which occurs when a victim views the abuser as a “need-fulfilling object” (citations omitted)).

⁵⁵ Farrell et al., *supra* note 15, at 191; *see, e.g.*, Brumbelow, *supra* note 47, at 60–61 (describing an incident in which a trafficking suspect texted his victim with addresses of her family members and a message saying, “I know them all”).

⁵⁶ Jessica Swanson, *Sexual Liberation or Violence Against Women? The Debate on the Legalization of Prostitution and the Relationship to Human Trafficking*, 19 NEW CRIM. L. REV. 592, 630 (2016).

⁵⁷ Farrell et al., *supra* note 15, at 201; *see also* Rodolph & Dunman, *supra* note 50, at 5 (listing “wariness of possible implications of complicity in the traffickers’ crimes, inability or unwillingness to identify themselves as victims, and lack of trust in authorities” as additional factors preventing victims from testifying).

⁵⁸ Farrell et al., *supra* note 15, at 202.

⁵⁹ *Id.*

⁶⁰ *See* HTI 2023 Federal Report, *supra* note 38, at 137.

⁶¹ *See* U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, FEDERAL JUSTICE STATISTICS, 2023 at 11 (2025) (showing median case disposition of 316 days); U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, FEDERAL JUSTICE STATISTICS, 2022 at 11 (2024) (showing median case disposition of 311 days); U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, FEDERAL JUSTICE STATISTICS, 2021 at 11 (2022) (showing median case disposition of 300 days); U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, FEDERAL JUSTICE STATISTICS, 2020 at 10 (2022) (showing median case disposition of 212 days); U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, FEDERAL JUSTICE STATISTICS, 2019 at 10 (2021) (showing median case disposition of 202 days).

⁶² *See* Brumbelow, *supra* note 47, at 33 (describing a challenge to successfully prosecuting a federal sex trafficking case as “countering the misconceptions and implicit biases that juries or judges may hold toward sex trafficking victims”).

⁶³ Farrell et al., *supra* note 15, at 210.

⁶⁴ *Id.*

⁶⁵ *Id.*; *see also* Brumbelow, *supra* note 47, at 92 (“Judges and juries may not have the experience and expertise to understand how a trafficker’s actions may impact a vulnerable person.”).

⁶⁶ *United States v. Taylor*, 239 F.3d 994, 998 (9th Cir. 2001) (citation omitted); *see also United States v. Shankle*, No. 16-CR-7, 2017 WL 11505346, at *3 (E.D. Wis. Sept. 1, 2017) (same).

⁶⁷ *See* HTI 2022 Federal Report, *supra* note 38, at 117; HTI 2023 Federal Report, *supra* note 38, at 121.

⁶⁸ *See* HTI 2022 Federal Report, *supra* note 38, at 117; HTI 2023 Federal Report, *supra* note 38, at 121.

⁶⁹ *See* U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, FEDERAL JUSTICE STATISTICS, 2023 at 11 (2025) (showing an aggregate conviction rate of 91.1% for all offenses in a U.S. district court).

⁷⁰ Chacón, *supra* note 10, at 120 (analyzing both “media accounts” and “court databases” of “most states” and concluding “there simply are not that many prosecutions” for human trafficking at the state level).

⁷¹ See Justice For Victims of Trafficking Act of 2015, Pub. L. 114-22, Title I, § 114 (May 29, 2015), codified at 34 U.S.C. § 20709(e).

⁷² See DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, HUMAN TRAFFICKING DATA COLLECTIONS ACTIVITIES, 2024 at 2 (2024) (“After initial data collection and processing are complete, [the Bureau of Justice Statistics] will be able to assess the extent to which the [Criminal Cases in State Courts data collection] can provide information on prosecutions, convictions, and sentences imposed by state courts for human trafficking offenses. [The Bureau of Justice Statistics] will also be able to examine the feasibility of identifying the non-trafficking criminal charges most commonly associated with human trafficking cases.”).

⁷³ See Vanessa Bouché et al., *Identifying Effective Counter-Trafficking Programs and Practices in the U.S.: Legislative, Legal, and Public Opinion Strategies that Work*, INTER-UNIV. CONSORTIUM FOR POL. & SOC. RSCH. at ii (2017), <https://doi.org/10.3886/ICPSR36348.v1>.

⁷⁴ See Nikko Price, *Better Together? The Peril and Promise of Aggregate Litigation for Trafficked Workers*, 129 YALE L.J. 1214, 1228 & n.81 (2020) (“Since Washington passed the country’s first state statute criminalizing trafficking in 2003, at least 2,700 trafficking defendants nationwide have been charged. State prosecutors have secured convictions against about 440 in that sixteen-year period.” (citing, *inter alia*, Philip Marcelo, *State Prosecutors Struggle with Human Trafficking Cases*, Associated Press (May 26, 2019), <https://apnews.com/a27f0cb72b4a48ca96f9b8249480d579> [<https://perma.cc/BYZ2-7UHT>])).

⁷⁵ See HUMAN TRAFFICKING HOTLINE, STATISTICS, <https://humantraffickinghotline.org/en/statistics> (last visited Mar. 27, 2025); 2023 State Report Card, *supra* note 16, at 38, 40; Madison Tate Santana, *Trafficked in Texas: Combatting the Sex-Trafficking Epidemic Through Prostitution Law and Sentencing Reform in the Lone Star State*, 71 VAND. L. REV. 1739, 1743 (2018) (“Texas, second only to California, is the largest hub for human trafficking in the United States.”).

⁷⁶ Those laws include TEXAS PENAL CODE §§ 20A.02 and 20A.03.

⁷⁷ See Cal. Dep’t of Just., 2023 Crime in California 56 tbl.37 (2024) (showing a conviction rate of 69.6% in 2000, 67.5% in 2001, 68% in 2002, 68.7% in 2003, 70.5% in 2004, 71% in 2005, 69.3% in 2006, 69.4% in 2007, 70% in 2008, 67.9% in 2009, 67.6% in 2010, 67% in 2011, 68.5% in 2012, 69.8% in 2013, 68.9% in 2014, 66.9% in 2015, 66.4% in 2016, 66% in 2017, 65.7% in 2018, 68.4% in 2019, 60.3% in 2020, 62% in 2021, 61.4% in 2022, and 60% in 2023).

⁷⁸ Comparing the conviction rate of federal human trafficking enforcement to state human trafficking enforcement is somewhat of an apples-to-oranges comparison, as federal prosecutors appear to be significantly more selective in their caseload than their state counterparts. For this reason, this author initially sought to compare the conviction rate for state level human trafficking offenses to the conviction rate for *all* state level felonies, generally. Unfortunately, there does not appear to be a reliable source of statistics for the latter within the relevant time period. *Cf.* U.S. DEP'T OF JUST., BUREAU OF JUSTICE STATISTICS, PROSECUTORS IN STATE COURTS, 1996 at 5 (showing a median conviction rate for all felonies among states of 89%). The general felony conviction rate from California for the relevant years is the only such statistic that this author has identified to date.

⁷⁹ Farrell et al., *supra* note 15, at 10 (citation omitted).

⁸⁰ U.S. DEP'T OF STATE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS at 24 (2004).

⁸¹ Farrell et al., *supra* note 15, at 173.

⁸² *Id.* at 176.

⁸³ Summer Stephan & Wendy Patrick, *Fighting Modern-Day Slavery Justice in Human Trafficking Cases Requires A Victim-Centered Approach*, 60 JUDGES' J. 10, 11 (2021).

⁸⁴ Farrell et al., *supra* note 15, at 181–82; *see also* Brumbelow, *supra* note 47, at 34–35.

⁸⁵ Farrell et al., *supra* note 15, at 183.

⁸⁶ *Id.*

⁸⁷ *Id.* at 179.

⁸⁸ *Id.* at 169, 171.

⁸⁹ *Id.* at 184.

⁹⁰ *Id.* at 182.

⁹¹ *Id.*

⁹² *Id.* at 146.

⁹³ *Id.* at 128–29 (“[I]n some cases prosecutors may find that it is easier to prosecute cases under a lesser charge (i.e., kidnapping, rape, prostitution) that may carry less severe penalties but that they are more familiar with and have more experience prosecuting.” (citation omitted)).

⁹⁴ *Id.* at 159 (“[W]hen prosecutors decide not to file charges in cases where law enforcement make arrests, the number and quality of cases referred by police will eventually decline, ultimately leading to fewer cases being prosecuted.” (citation omitted)).

⁹⁵ See Swanson, *supra* note 56, at 606 (“[L]aw enforcement is not generally inspired to pursue criminal networks of human traffickers due to their already heavy workload and to the complexities of successfully investigating a lead to result in the prosecution of a trafficker.”).

⁹⁶ See Brumbelow, *supra* note 47, at 35–36 (noting a “consistent theme throughout [a] review [of sex trafficking research literature] was that sex trafficking cases are complex and challenging to investigate and prosecute,” which “may even lead prosecutors to decline to charge some offenders with sex trafficking” (citations omitted)).

⁹⁷ Kathleen Kim, *Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting United States v. Kozminski and Understanding Human Trafficking*, 38 U. TOL. L. REV. 941, 957–58 (2007); Gergana Danailova-Trainor, *Global and U.S. Trends and Patterns in Human Trafficking: A Synthesis of the Evidence*, 28 ILSA J. INT’L & COMPAR. L. 1, 3 (2021) (“Human trafficking, modern slavery, and forced labor are complex and interrelated forms of exploitation which involve different forms, economic sectors, and types of offenders internally and across countries.”).

⁹⁸ Kim, *supra* note 97, at 958.

⁹⁹ *Id.* at 959–60.

¹⁰⁰ *Id.*

¹⁰¹ Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 192 (2007); see also Hannah Simon, *Human Trafficking from an International Protection Perspective: Probing the Meaning of Anti-Trafficking Measures for the Protection of Trafficking Victims, with Special Regard to the United Kingdom*, 28 PENN ST. INT’L L. REV. 633, 669 (2010) (observing that, with labor trafficking, “[i]dentification is . . . all the more complex since the affected persons often do not consider themselves as trafficking victims”); Amy Farrell et al., *Understanding and Improving Law Enforcement Responses to Human Trafficking: Final Report*, INST. ON RACE & JUST. AT NE. U. at 10 (Dec. 2008), <http://www.ncjrs.gov/pdffiles1/nij/grants/222752.pdf> (“Human trafficking investigations are often lengthier and more complex than other criminal investigations.”); Lauren A. McCarthy, *Human Trafficking and the New Slavery*, 10 ANN. REV. L. & SOC. SCI. 221, 233–34 (2014) (explaining that “trafficking cases” are “seen as long and complicated to investigate”).

¹⁰² See Jessica Visage, *A Labor of Love: The Intersection of Domestic Violence and Human Trafficking and Why Attorneys Have A Duty to Understand the Difference*, 49 S. ILL. U. L.J. 541, 555 (2025) (“While psychological coercion is sufficient to meet the elements of human trafficking, it can be more difficult to identify.”); Alicen Rodolph & Tyler Dunman, *Charging Ahead: Prosecuting Human Trafficking Cases Without Victim Cooperation*, 56 PROSECUTOR 4, 11 (2022) (discussing how victim hesitation to testify contributes to the “unique complexities presented in human trafficking cases”).

¹⁰³ See Raino, *supra* note 16, at 437–38 (emphasis added); Gregorio, *supra* note 21, at 632 (“Domestic sex trafficking is a complex phenomenon.”).

¹⁰⁴ Raino, *supra* note 16, at 437–38; see also Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. SAINT THOMAS L.J. 96, 112 (2008) (“Traffickers prey on the most vulnerable people and employ all kinds of tactics to keep victims scared, dependent, and motivated not to report their traffickers. Pimps employ the same kinds of methods to ensnare and prostitute minors and to keep them under their control.”).

¹⁰⁵ Raino, *supra* note 16, at 439; see also Blanche Cook, *Complicit Bias: Sex-Offender Registration as a Penalty for Obstructing Sex-Trafficking Prosecutions*, 96 NEB. L. REV. 138, 185 (2017) (defining “[t]rauma bonding” as “a state wherein victims form strong emotional attachments to an abuser because of a complex dynamic between abusive control tactics, power imbalances, and intermittent punishments and rewards given by the abuser, a form of Stockholm syndrome”); Erika R. George & Scarlet R. Smith, *In Good Company: How Corporate Social Responsibility Can Protect Rights and Aid Efforts to End Child Sex Trafficking and Modern Slavery*, 46 N.Y.U. J. INT’L L. & POL. 55, 68 (2013) (“Furthermore, when police arrest children for prostitution, they rarely identify their trafficker or testify against them because they have become dependent on the trafficker or they are fearful of retaliation.” (cleaned up)).

¹⁰⁶ Raino, *supra* note 16, at 439; see also Gregorio, *supra* note 21, at 634 (“Traffickers often engage in a ‘grooming’ process, offering love and affection to young runaways, presenting themselves as boyfriends or father figures, and later asking or insisting that they engage in prostitution.”); Cristina Solis, *Addressing the Needs of Overlooked Victims: Providing Child Support for Children of Human Trafficking Victims*, 32 W. MICH. U. T.M. COOLEY L. REV. 77, 85 (2015) (acknowledging that the “needs” of victims of sex trafficking are the “most complex of crime victims,” requiring “medical and mental health care for severe trauma, a safe place to live, protection from their traffickers,” “economic empowerment,” and “legal services to address family law, immigration, and public benefits concerns, as well as criminal defense”).

¹⁰⁷ Ryan Goehrung & Rachel Castellano, *Misrecognitions of Victimhood: Discretionary Power of Street-Level Bureaucrats in Humanitarian Visas*, 49 LAW & SOC. INQUIRY 1192, 1206 (2024) (referencing 22 U.S.C. § 7102(11)).

¹⁰⁸ 18 U.S.C. § 1591(a).

¹⁰⁹ See also Brumbelow, *supra* note 47, at 12–14 fig.1, 74–75 (charting elements of 18 U.S.C. § 1591); *id.* at 75 (observing that “sex trafficking involves overlapping crimes” which “can hamper a law enforcement officer’s ability to identify sex trafficking scenarios”).

¹¹⁰ See 21 U.S.C. § 841(a); see also Iveta Cherneva, *Human Trafficking for Begging*, 17 BUFF. HUM. RTS. L. REV. 25, 36 (2011) (“Trafficking in persons is arguably [a] more complex phenomenon [than

smuggling].”); Suzanna L. Tiapula & Melissa Millican, *Identifying the Victims of Human Trafficking*, 42 PROSECUTOR 34, 38 (2008) (noting “the complex jurisdictional nature of trafficking cases which often involve international boundaries, foreign evidence collection and a multitude of interpretation/translation issues”).

¹¹¹ See 18 U.S.C. § 1591(a); Brumbelow, *supra* note 47, at 3 (“[P]roving the crime of sex trafficking to a legal standard of ‘beyond a reasonable doubt’ can be a complex, challenging, and resource-intensive endeavor. In many cases, the federal sex trafficking statute requires a prosecutor to provide proof of the victim’s state of mind at the time of the alleged crime.”).

¹¹² *United States v. Washington*, 810 F. App’x 478, 481 (8th Cir. 2020) (affirming trial court’s admission of “other acts” evidence to challenge the victim’s testimony that her prostitution was voluntary because, “[e]ven though [the victim] testified that her prostitution was her idea, the evidence presented by the government tended to establish that during the course of the relationship [the defendant] forced or coerced [the victim] to prostitute herself”); see also, e.g., *United States v. Carson*, 870 F.3d 584, 591 (7th Cir. 2017) (“[T]he jury heard evidence that [the victims] both left [the defendant] and then returned, and that at times both could have left but did not do so. The jury heard evidence intended to convince them that these women willingly agreed to work as prostitutes. *But whether they willingly agreed to essentially become enslaved—that is, to turn over all of their money and freedom and suffer abuse—is another question, and the one at the heart of the sex trafficking statute, of course.*” (emphasis added)); *Commonwealth v. Crowell*, 258 A.3d 509 (Pa. Super. Ct. 2021) (dismissing on procedural grounds appellant’s argument that certain unadmitted evidence was “relevant to and probative of his defense that his victims were engaged in the business of prostitution prior to becoming involved in [his] prostitution business and joined [him] in his prostitution business willingly”); *State v. Jeffries*, No. M201800625CCAR3CD, 2019 WL 5078723, at *6 (Tenn. Crim. App. Oct. 10, 2019) (noting the state’s argument at trial that, “while the victim may at first have been a willing participant, [the defendant] eventually secured her cooperation by assaulting and threatening to assault her and controlling her belongings and movements”).

¹¹³ *Carson*, 870 F.3d at 594.

¹¹⁴ Goehring & Castellano, *supra* note 1077, at 1206.

¹¹⁵ *Id.* (observing it is “quite rare” for victims of human trafficking to “self-identify”)

¹¹⁶ Amanda Peters, *Reconsidering Federal and State Obstacles to Human Trafficking Victim Status and Entitlements*, 2016 UTAH L. REV. 535, 548 (2016) (“Not only have law enforcement officers and prosecutors struggled with determining whether a person is a victim or defendant in the context of human trafficking, but judges have too.”); see also Brumbelow, *supra* note 47, at 73–74, 93–94 (noting “[i]dentifying sex trafficking victims” as “one challenge for law enforcement”).

¹¹⁷ Richard L. Revesz, *Specialized Courts and the Administrative Lawmaking System*, 138 U. PA. L. REV. 1111, 1111 (1990).

¹¹⁸ *Id.* at 1111–12.

¹¹⁹ Erin R. Collins, *The Problem of Problem-Solving Courts*, 54 U.C. DAVIS L. REV. 1573, 1575 (2021) (“There are now more than 4,000 specialized courts throughout the country dedicated to an ever-expanding roster of issues.”).

¹²⁰ Andre G. Bouchard, *The Delaware Court of Chancery's 225th Anniversary*, 73 BUS. LAW. 953, 959 (2018) (“[T]he number of States with business courts has multiplied exponentially.”).

¹²¹ Revesz, *supra* note 1177, at 1117.

¹²² See ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS at 16 (The Modern Library ed., Random House, Inc. 1994) (1776) (“The difference of natural talents in different men is, in reality, much less than we are aware of; and the very different genius which appears to distinguish men of different professions, when grown up to maturity, is not upon many occasions so much the cause, as the effect of the division of labour.”).

¹²³ See, e.g., Benjamin F. Tennille et al., *Getting to Yes in Specialized Courts: The Unique Role of ADR in Business Court Cases*, 11 PEPP. DISP. RESOL. L.J. 35, 42 (2010) (“Belief in the efficacy of judicial expertise and specialization serves as the foundational impetus for the creation and proliferation of specialized business courts.”); *id.* at 71 (“Through repeated experience in business court cases, the business court judge may . . . become an expert on business case litigation . . .”).

¹²⁴ Revesz, *supra* note 1177, at 1166.

¹²⁵ *Id.*

¹²⁶ LeRoy L. Kondo, *Untangling the Tangled Web: Federal Court Reform Through Specialization for Internet Law and Other High Technology Cases*, UCLA J. L. & TECH. 1 (2002).

¹²⁷ See *supra* Section III.B & C; Peters, *supra* note 1166, at 552 (“[F]ederal and state judges alike are confused about how to view someone who occupies roles of defendant and victim simultaneously.”).

¹²⁸ Stephan & Patrick, *supra* note 83, at 15.

¹²⁹ Congress is permitted to create Article III courts that specialize in adjudicating specific crimes. See *United States v. Union Pac. R.R. Co.*, 98 U.S. 569, 603 (1878) (“[W]ith the exception of the Supreme Court, the authority of Congress, in creating courts and conferring on them all or much *or little* of the judicial power of the United States, is unlimited by the Constitution.” (emphasis added)); *Glidden Co. v. Zdanok*, 370 U.S. 530, 561 (1962) (holding a judge from the Court of Customs and Patent Appeals may preside by designation over a criminal adjudication in a district court because he was an

Article III judge, explaining that “Congress has never been compelled to vest the entire jurisdiction provided for in Article III upon inferior courts of its creation” and “[t]he Court of Customs and Patent Appeals therefore fits harmoniously into the federal judicial system authorized by Article III”).

¹³⁰ See *Hamdan v. Rumsfeld*, 548 U.S. 557, 591 (2006) (“Exigency alone . . . will not justify the establishment and use of penal tribunals not contemplated by Article I, § 8, and Article III, § 1, of the Constitution”); *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 121 (1866) (finding defendant’s Article III constitutional right to be tried by a court “ordained and established by Congress” was violated when tried by a military commission).

¹³¹ See Bankruptcy Reform Act, Pub. L. 95-598, 92 Stat. 2549 (1978).

¹³² See FEDERAL JUDICIAL CENTER, CASELOADS: BANKRUPTCY CASES, 1899-2017, <https://www.fjc.gov/history/work-courts/caseloads-bankruptcy-cases-1899-2017> (last visited Mar. 18, 2025) (showing 194,399 filings in 1970, 201,352 filings in 1971, 182,869 filings in 1972, 173,197 filings in 1973, 189,513 filings in 1974, 254,484 filings in 1975, 246,549 filings in 1976, 214,399 filings in 1977, 202,951 filings in 1978, and 226,476 filings in 1979).

¹³³ *Id.* (showing 277,881 filings in 1980, 360,329 filings in 1981, 367,866 filings in 1982, 374,734 filings in 1983, 344,275 filings in 1984, 364,536 filings in 1985, 477,856 filings in 1986, 561,278 filings in 1987, 594,567 filings in 1988, 642,993 filings in 1989).

¹³⁴ See Edward I. Altman, *Evaluating the Chapter 11 Bankruptcy-Reorganization Process*, 1993 COLUM. BUS. L. REV. 1, 3 (1993).

¹³⁵ THE FEDERALIST NO. 39 at 244 (James Madison) (Clinton Rossiter ed., 1961) (emphasis added).

¹³⁶ *Printz v. United States*, 521 U.S. 898, 935 (1997).

¹³⁷ U.S. CONST. art. II, §§ 1, 3.

¹³⁸ *Printz*, 521 U.S. at 923 (emphasis added).

¹³⁹ Justice For Victims of Trafficking Act of 2015, Pub. L. 114-22, Title III, § 303 (May 29, 2015), codified at 18 U.S.C. § 2421(b).

¹⁴⁰ 18 U.S.C. § 2421(b); see also 28 U.S.C. § 543 (“The Attorney General may appoint attorneys to assist United States attorneys when the public interest so requires.”); 28 U.S.C. § 515(a) (“The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrate judges, which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.”).

¹⁴¹ Farrell et al., *supra* note 15, at 195 (explaining that the federal anti-trafficking penalty structure is “much more severe than most state human trafficking laws and certainly more severe than the types of state offenses such as pandering or promoting prostitution that human trafficking offenders are often charged with at the local level”).

¹⁴² *Id.* at 164 (“In our review of human trafficking cases, it was common for victims and suspects to have crossed state lines in the perpetration of the offense.”).

¹⁴³ See, e.g., *United States v. Koech*, 992 F.3d 686, 693 (8th Cir. 2021) (affirming jury finding that defendant’s human trafficking activity affected interstate commerce based on his “text messages and a Verizon cell phone manufactured in China to negotiate the price for obtaining . . . commercial sex acts”); *United States v. Phea*, 755 F.3d 255, 263 (5th Cir. 2014) (affirming jury instruction in a Section 1591 trafficking case which stated that “telephones, the Internet, and hotels that service interstate travelers are all means or facilities of interstate commerce sufficient to establish the requisite interstate nexus”).

¹⁴⁴ Farrell et al., *supra* note 15, at 10.

¹⁴⁵ *Id.* at 84.

¹⁴⁶ *Id.* at 191.

¹⁴⁷ See *supra* Section III.B & C.

¹⁴⁸ Crime Control Act, Pub. L. No. 101-647, 104 Stat. 4789 (1990) (codified at 18 U.S.C. § 3509(b)(1)).

¹⁴⁹ See Myrna S. Raeder, *Enhancing the Legal Profession’s Response to Victims of Child Abuse*, 24 CRIM. JUST. 12, 23 (2009) (“All states have provided for the taking of remote testimony.”).

¹⁵⁰ See U.S. CONST. amend. VI (“[I]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.”); *Mattox v. United States*, 156 U.S. 237, 244 (1895) (“The substance of the [Confrontation Clause] protection is preserved to the prisoner in the advantage he has once had of seeing the witness face to face, and of subjecting him to the ordeal of a cross-examination.”); *Maryland v. Craig*, 497 U.S. 836, 852 (1990) (addressing whether 1-way testimony—in which the defendant could see the victim but the victim could not see the defendant—which blatantly thwarted the face-to-face demand, was nonetheless permissible). Although the Supreme Court has not yet addressed whether 2-way testimony fails to provide face-to-face interaction, the vast majority of circuit courts to address the issue have concluded it fails and that *Craig* supplies the relevant rule for the assessing such testimony. Compare *United States v. Gigante*, 166 F.3d 75, 80 (2d Cir. 1999) (concluding 2-way testimony “preserved all of [the constitutional] characteristics of in-court testimony” because the witness was “sworn,” “subject to full cross-examination,” “in full view of the

jury, court, and defense counsel,” and “under the eye of [the defendant]”); *United States v. Benson*, 79 F. App’x 813, 821 (6th Cir. 2003) (same), with *United States v. Yates*, 438 F.3d 1307, 1315 (11th Cir. 2006) (concluding 2-way testimony “denied a physical face-to-face confrontation with the witnesses against them at trial” and therefore analyzing whether the use of 2-way testimony satisfied “the requirements of the *Craig* rule”); *United States v. Farley*, 992 F.2d 1122, 1125 (10th Cir. 1993) (analyzing 2-way testimony under *Craig*); *United States v. Quintero*, 21 F.3d 885, 892 (9th Cir. 1994) (same); *United States v. Bordeaux*, 400 F.3d 548, 554 (8th Cir. 2005) (same); *United States v. Prothro*, 41 F.4th 812, 826–27 (7th Cir. 2022) (same); *United States v. Moses*, 137 F.3d 894, 897–98 (6th Cir. 1998) (same); *Horn v. Quarterman*, 508 F.3d 306, 318 (5th Cir. 2007) (same); *United States v. Abu Ali*, 528 F.3d 210, 239–41 (4th Cir. 2008) (same); *United States v. Cotto-Flores*, 970 F.3d 17, 37–38 (1st Cir. 2020) (same).

¹⁵¹ *Craig* held that face-to-face confrontation is not necessary if overshadowed by some “important state interest”—there, a state’s interest in “protecting children who are allegedly victims of child abuse from the trauma of testifying against the alleged perpetrator.” 497 U.S. at 852. Although the Supreme Court has not had occasion to expand *Craig*’s holding to testimony by adults, one federal circuit has acknowledged that *Craig* was not meant to be “limited” to children, but rather, provided “a necessity-based exception” where “the witness’s inability to testify invokes *the state’s interest in protecting the witness*—from trauma in child sexual abuse cases or . . . from physical danger or suffering” with adult witnesses. *Horn*, 508 F.3d at 319–20 (emphasis added) (finding no error in trial court permitting 2-way testimony of a terminally ill adult witness who was unable to travel from another state to trial—despite there being no statutory basis for permitting the 2-way testimony). And another circuit has concluded *Craig* was appropriately extended to allow 2-way testimony from an adult to protect a state’s interest in the “prosecution of those bent on inflicting mass civilian casualties or assassinating high public officials.” *Abu Ali*, 528 F.3d at 242 (finding no error in trial court permitting 2-way testimony of adult officials of a foreign government where “logistical and international necessities required the [the] officials to testify without the defendant present in order to further the government’s undoubted national security interests”). In line with these readings of *Craig*, several other courts have similarly concluded a state has an important interest in protecting adults under certain circumstances. See, e.g., *People v. Franklin*, 229 N.E.3d 364, 378 (Ill. App. Ct. 2023), *appeal denied*, 221 N.E.3d 390 (Ill. 2023) *cert. denied sub nom. Franklin v. Illinois*, 144 S. Ct. 852 (2024) (approving 2-way testimony pursuant to 725 Ill. Comp. Stat. 5/106B-5 for “adult witnesses with intellectual disabilities” under *Craig*); *People v. Hernandez*, 488 P.3d 1055, 1062 (Co. 2021) (approving 2-way testimony by adult witnesses during the Covid-19 pandemic in furtherance of the state’s “important public policy of maintaining the safety of all court users, in light of the health concerns related to Covid-19” (cleaned up)); *Vazquez Diaz v. Commonwealth*, 167 N.E.3d 822, 832 (Mass. 2021) (same); *State v. Comacho*, 960 N.W.2d 739, 753–56 (Neb. 2021) (same); *Johnson v. Warden, Lebanon Corr. Inst.*, 2014 WL 4829592, at

*20 (S.D. Ohio Sept. 29, 2014), *report and recommendation adopted*, 2015 WL 268924 (S.D. Ohio Jan. 21, 2015) (approving 2-way testimony by three “non-victim adult witnesses” who had been intimidated by defendants friends and family, in furtherance of the state’s interests in “justly resolving the criminal case” and “protecting the well-being of the state’s witnesses”).

¹⁵² See *Craig*, 497 U.S. at 850 (“[A] defendant’s right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured.”).

¹⁵³ See *id.* at 851.

¹⁵⁴ Cf. U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, HUMAN TRAFFICKING DATA COLLECTION ACTIVITIES, 2024 at 3 (2024) (showing statistics for 18 U.S.C. §§ 1581–1595, 2251–2251A, 2422–2423).

¹⁵⁵ See Kathleen Kim & Kusia Hreschyschyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN’S L.J. 1, 1 (2004) (explaining that a 2003 reauthorization of the TVPA provided a new private right of action as a “result of efforts by advocates who recognized inherent limitations in a prosecution-based approach to the problem of human trafficking”).

¹⁵⁶ 18 U.S.C. § 1595.

¹⁵⁷ Renee M. Knudsen, *From Second Class to Certified Class: Using Class-Action Lawsuits to Combat Human Trafficking*, 28 REGENT U. L. REV. 137, 151 (2016); The Human Trafficking Legal Center, *Using Civil Litigation to Combat Human Trafficking: Federal Human Trafficking Civil Litigation: 2022 Data Update*, at 7 (showing 678 federal civil trafficking cases filed since 2003).

¹⁵⁸ Gregory Zarzaur, *Fighting for Their Lives Defeating Human Trafficking*, 53 TRIAL 50, 52 (2017) (noting states with a private right of action for trafficking victims as of 2015).

¹⁵⁹ Bouché, *Federal Human Trafficking Prosecution Data*, *supra* note 41, at 8.

¹⁶⁰ See *id.* (showing case counts since 2000 in California (n = 222), Florida (n = 215), Texas (n = 206), New York (n = 184), Virginia (n = 105), Wyoming (n = 0), Delaware (n = 2), Colorado (n = 5), New Hampshire (n = 5), and Vermont (n = 5)).

¹⁶¹ See *id.* at 4.

¹⁶² See U.S. DEP’T OF JUST., BUREAU OF JUSTICE STATISTICS, HUMAN TRAFFICKING DATA COLLECTION ACTIVITIES, 2024 at 3 (2024) (listing prosecutions for 18 U.S.C. §§ 1581–1595, 2251–2251A, 2422–2423).

¹⁶³ See U.S. COURTS, JUDICIAL FACTS & FIGURES, TABLE 5.1 (Sept. 30, 2023), <https://www.uscourts.gov/data-news/data-tables/2023/09/30/judicial-facts-and-figures/51> (last visited Apr. 4, 2025) (showing 75,029 criminal cases in 2019; 59,884 criminal cases in 2020; 58,824 criminal cases in 2021; 54,931 criminal cases in 2022; and 53,148 criminal cases in 2023).

¹⁶⁴ See *id.*

¹⁶⁵ See U.S. CONST. art. III, § 2 (“The Trial of all Crimes . . . shall be by Jury; and such Trial shall be held *in the State where the said Crimes shall have been committed.*” (emphasis added)); *id.* amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury *of the State and district wherein the crime shall have been committed,* which district shall have been previously ascertained by law, . . .” (emphasis added)).

APPENDIX A

Texas Human Trafficking Arrests & Convictions 2004-2023						
	Tex. Penal Code § 20A.02 - Trafficking in Persons		Tex. Penal Code § 20A.03 - Continuous Trafficking of Persons		All Human Trafficking Offenses	
Year	Arrests	Convictions	Arrests	Convictions	Arrests (total)	Convictions (total)
2004	7	1	-	-	7	1
2005	22	-	-	-	22	-
2006	30	7	-	-	30	7
2007	34	22	-	-	34	22
2008	22	13	-	-	22	13
2009	11	3	-	-	11	3
2010	20	2	-	-	20	2
2011	32	8	1	-	33	8
2012	72	9	6	-	78	9
2013	95	14	9	-	104	14
2014	101	26	16	2	117	28
2015	123	39	10	3	133	42
2016	120	56	16	4	136	60
2017	125	38	17	6	142	44
2018	152	48	42	9	194	57
2019	172	50	16	9	188	59
2020	197	26	32	4	229	30
2021	237	41	34	6	271	47
2022	148	73	37	10	185	83
2023	164	64	30	15	194	79
Total	1,884	540	266	68	2,150	608
%	-	29%	-	26%	-	28%

Jaco Booyens Ministries (JBM) is a Christian-based non-profit anti-trafficking organization headquartered in Dallas, Texas. JBM exists to end human trafficking, rescue victims, and walk alongside survivors throughout their healing journey. The organization accomplishes these goals by equipping frontline professionals through specialized training, collaborating with law enforcement, advocating for survivor-centered policies, and championing anti-trafficking legislation at both the state and federal levels.
