



# Human Smuggling and Trafficking Center

## Fact Sheet

### **HUMAN TRAFFICKING VS. HUMAN SMUGGLING**

**1 July 2013**

**HSTC2013070001**

# HUMAN TRAFFICKING VS. HUMAN SMUGGLING

## EXECUTIVE SUMMARY

Human trafficking and human smuggling are often confused in open source, intelligence, and law enforcement reporting. The two are very different crimes and it is critical to refer to them accurately to avoid confusion and misrepresentation.

Human trafficking involves exploiting men, women, or children for the purposes of forced labor or commercial sexual exploitation.

Human smuggling involves the provision of a service—typically, transportation or fraudulent documents—to an individual who voluntarily seeks to gain illegal entry into a foreign country.

## DEFINITION OF HUMAN TRAFFICKING

Human trafficking—also called trafficking in persons and frequently referred to as modern-day slavery—involves exploiting men, women, and children for the purposes of forced labor or commercial sex. The definition of human trafficking is codified in U.S. law in the Trafficking Victims Protection Act (TVPA), the first comprehensive Federal law on human trafficking.<sup>A</sup> Since passage of the TVPA, 50 states plus the District of Columbia have enacted anti-human trafficking legislation.<sup>1</sup>

### U.S. Trafficking Victims Protection Act

The U.S. Trafficking Victims Protection Act (TVPA) of 2000 (Public Law 106-386) and subsequent reauthorizations define “severe forms of trafficking in persons” as:

- (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The TVPA requires the Secretary of State to report to Congress annually on foreign governments’ compliance with the minimum standards to eliminate trafficking as defined by the TVPA. This annual report is the U.S. State Department’s Trafficking in Persons Report, which can be found at <http://www.state.gov/j/tip/rls/tiprpt/index.htm>.

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<sup>A</sup> The TVPA was passed in 2000 and was reauthorized as the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, the TVPRA of 2005, the TVPRA of 2008, and the TVPRA of 2013.

International law defines human trafficking similarly. The 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Protocol) also focuses on force, fraud, or coercion for the purpose of exploitation: “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.”<sup>2</sup> (*Analyst note: the removal of organs is not part of the U.S. definition in the TVPA.*)

Movement is not required for an act to be trafficking (although it can occur). A victim of human trafficking does not need to be transported from one location to another in order for the crime of trafficking to occur. Trafficking can take place within a country as well as across international borders. The defining element of trafficking is exploitation for the purposes of forced labor or commercial sex, not transportation.

Much of the discussion in the public sphere about human trafficking revolves around the exploitation of women and children for prostitution. However, human trafficking involves any person trafficked to participate in forced labor and services as well as those trafficked for commercial sexual exploitation. Forced labor involves the use of force, fraud, or coercion to compel someone to work. One common form of coercion is the use of debt; if an individual’s labor is demanded as repayment for a loan or service and the individual is unable to ever repay the debt, the individual has been subjected to debt bondage (also known as bonded labor). Bonded labor is common throughout South Asia, particularly in the brick kiln industry, where debt may be passed down from generation to generation. Debt bondage can also be found in sex trafficking cases where the victim may be passed from one trafficker to another and then told he or she must repay the money the trafficker spent in purchasing the victim from the original trafficker.

In the United States, there is a common perception that trafficking victims are primarily foreign nationals; however, human trafficking involves American citizens as well as foreign victims.

- In 2012, a MS-13 member in Virginia was sentenced to 50 years in prison for recruiting girls from Northern Virginia middle schools, high schools, and homeless shelters and forcing them to engage in commercial sex acts on behalf of MS-13. Five of the victims were between the ages of 14 and 17 and were required to have sex with up to 10 paying customers per day.<sup>3</sup>
- In 2011, the U.S. Equal Employment Opportunity Commission filed a lawsuit against Hill Country Farms (doing business as Henry’s Turkey Service) in Iowa for subjecting 32 intellectually disabled workers to abuse and harassment, forcing them to live in unsafe housing, and restricting their freedom of movement. The disabled workers were also reportedly paid far less than workers without disabilities. The workers were awarded \$1.37 million in lost wages in 2012; additional damages were awarded in May 2013.<sup>4</sup>

Not every case of abusive treatment is a trafficking case. Under U.S. law, trafficking must entail the use of force or threat of force or other forms of coercion or fraud (except in the case of

minors involved in commercial sex where force, fraud, or coercion do not need to be proved) to exploit a person for commercial sex or for forced labor or services.

The following are examples of abusive situations that do not constitute trafficking, although other criminal statutes may apply.

- If an individual is subjected to harsh working conditions—such as not being properly compensated or being required to work long hours without breaks in violation of Federal, state, or local labor laws—but is able to quit the job without punishment or threat of punishment, the individual is not a trafficking victim.
- If an individual is held hostage or held for ransom and abused—that is, someone who paid to be smuggled into another country is held captive and raped or tortured until they pay a ransom or smuggling fee—but is not exploited for labor or commercial sex, the individual is not a trafficking victim.
- Prostitution is often conflated with trafficking. However, under current U.S. law and the UN Protocol, force, fraud, or coercion must be evident for a commercial sex act to be considered trafficking. An important exception involves the commercial sexual exploitation of minors, in which case force, fraud, or coercion are not required to prove sex trafficking.
- “Mail-order brides” are not necessarily trafficking victims, although trafficking can occur. If a mail-order bride is assaulted or otherwise mistreated, but is not exploited for a commercial benefit, she is not a trafficking victim. If, however, she finds herself forced into prostitution or placed in a situation of involuntary domestic servitude, she is a trafficking victim.
- Illegal adoptions, including the kidnapping or buying or selling of a child for the purpose of offering that child for adoption, is not a form of human trafficking.
- Production, distribution, and possession of child pornography—while criminally prohibited—are not acts of human trafficking unless a child is induced to perform a commercial sex act for the purpose of producing the pornography.

## DEFINITION OF HUMAN SMUGGLING

Human trafficking is often confused with human smuggling. Human smuggling—also called alien or migrant smuggling—involves the provision of a service, such as transportation or fraudulent documents to an individual who voluntarily seeks to gain illegal entry into a foreign country. Human smuggling, therefore, is a crime against a state while human trafficking is a crime against a person.

*Human smuggling is a crime against a state while human trafficking is a crime against a person.*

In the United States, human smuggling is generally defined as the importation of people into the country involving deliberate violation of immigration laws. This offense includes bringing illegal aliens into the country, as well as the unlawful transportation and harboring of aliens already in the United States. In international law, the Protocol against the Smuggling of Migrants by Land,

Sea and Air defines migrant smuggling as the “procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”<sup>5</sup>

The distinction between human smuggling and human trafficking can become complicated when an act that begins as smuggling turns into trafficking. In a smuggling case, two willing parties usually go their separate ways once the transaction is complete (for example, the individual paying for smuggling services arrives at his or her destination). However, an individual may initially consent to being smuggled across a country’s borders and then become exploited for forced labor or commercial sex en route or upon entering the destination country; in such a case, the individual would be considered a victim of human trafficking once the exploitation has occurred.

- For instance, an individual may pay for fraudulent documents or transportation into the United States where a promised job as a housekeeper awaits; at this point, the individual has consented to be smuggled into the United States and is not a victim. If, however, upon arrival, the individual is threatened if he or she complains or speaks to anyone, is forced to work for little or no pay, and has his or her freedoms restricted, that individual is now a victim of trafficking.
- Similarly, an individual may pay a smuggler to be transported into the United States but, upon arrival, is told he or she must pay additional money to the smuggler and is forced into commercial sex. That individual is now a trafficking victim.

At the same time, it is important to note that although smuggled persons can become the victims of crime, not all crimes are trafficking. A smuggled person is at risk of abuse; however, as discussed above, although a smuggled person may be subjected to physical or sexual violence or held for ransom, the individual is not a trafficking victim unless he or she is compelled into forced labor or commercial sex.

The Department of Homeland Security’s Blue Campaign is an initiative to combat human trafficking through public awareness, victim assistance programs, and law enforcement training.

Trafficking vs. Smuggling	
<p><b>Human Trafficking</b> is defined as:</p> <ul style="list-style-type: none"><li>• sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; <i>or</i></li><li>• the recruitment, harboring, transportation, provision or obtaining of a person for labor or services through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.</li></ul>	<p><b>Human Smuggling</b> is defined as the importation of people into the United States involving deliberate evasion of immigration laws. This offense includes bringing illegal aliens into the United States as well as the unlawful transportation and harboring of aliens already in the United States.</p>
<p><b>These are <i>not</i> interchangeable terms</b></p> <ul style="list-style-type: none"><li>• Smuggling is transportation-based</li><li>• Trafficking is exploitation-based</li></ul>	
	
<p>Report Suspicious Activity: <b>1-866-DHS-2-ICE (1-866-347-2423)</b> <a href="http://www.dhs.gov/bluecampaign">www.dhs.gov/bluecampaign</a></p>	

Identifying human trafficking can be a challenge but the key elements that distinguish it from smuggling are force, fraud, or coercion for the purpose of commercial sex or forced labor, or the involvement of minors in commercial sex. The U.S. Department of Homeland Security's Blue Campaign has identified several additional indicators that may point to trafficking:

**Trafficking Indicators**

<input type="checkbox"/> Is the victim in possession of identification and travel documents; if not, who has control of the documents?	<input type="checkbox"/> Has the victim or family been threatened with harm if the victim attempts to escape?
<input type="checkbox"/> Was the victim coached on what to say to law enforcement and immigration officials?	<input type="checkbox"/> Has the victim been threatened with deportation or law enforcement action?
<input type="checkbox"/> Was the victim recruited for one purpose and forced to engage in some other job?	<input type="checkbox"/> Has the victim been harmed or deprived of food, water, sleep, medical care or other life necessities?
<input type="checkbox"/> Is the victim's salary being garnished to pay off a smuggling fee? (Paying off a smuggling fee alone is not considered trafficking.)	<input type="checkbox"/> Can the victim freely contact friends or family?
<input type="checkbox"/> Was the victim forced to perform sexual acts?	<input type="checkbox"/> Is the victim a juvenile engaged in commercial sex?
<input type="checkbox"/> Does the victim have freedom of movement?	<input type="checkbox"/> Is the victim allowed to socialize or attend religious services?

Report Suspicious Activity: **1-866-DHS-2-ICE** (1-866-347-2423)  
[www.dhs.gov/bluecampaign](http://www.dhs.gov/bluecampaign)

To order a card, contact [icehumantrafficking.helpdesk@ice.dhs.gov](mailto:icehumantrafficking.helpdesk@ice.dhs.gov). Cards are available in 17 languages.

## CASE SCENARIOS: TRAFFICKING OR SMUGGLING?

### CASE SCENARIO 1

#### QUESTION

A recruiting agency in India was looking for welders to work at a company in the United States for \$10.00 an hour. The agency charged each prospective worker a non-refundable \$2,500 application fee. En route to the United States the workers were given contracts to sign. The contracts obligated the workers to work for the next 6 months for less than \$3.00 per hour. They were told to sign the contracts or they would be sent back home. The workers felt that they could not back out because they had invested all their savings, and were already on their way to the United States. Once they arrived, they were confined to the factory grounds and the owner of the company kept their passports. Were the workers smuggled or trafficked?

#### ANSWER

The workers were trafficked. The workers were transported for the purposes of labor through the use of fraud and coercion, which resulted in the workers being subjected to involuntary servitude. Confiscation of the workers' passports by the employer also caused the workers to believe that they were forced to stay with the company.

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## CASE SCENARIO 2

### QUESTION

Local law enforcement authorities in the United States executed a search warrant at a brothel and arrested three 19-year-old foreign national females for prostitution. Immigration and Customs Enforcement agents interviewed the three women and learned that they were smuggled into the United States. Were the females smuggled or trafficked?

### ANSWER

The females were smuggled; there is not enough information to determine if they were also trafficked. Additional questions need to be answered to make the determination. For example: Did the females feel free to leave or did they fear retaliation from the brothel owner or pimp? Were they engaged in prostitution to pay off a debt? How were their living conditions?

### QUESTION

Would the situation be different if the females were 17 years old?

### ANSWER

Yes. If the females were 17 years old, they were trafficked. All three girls were juveniles and were performing commercial sex acts. Since the girls were under 18 years of age, they would be considered victims of trafficking, regardless of whether or not they consented to participate.

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## CASE SCENARIO 3

### QUESTION

Mario wanted to come to the United States to work in construction and send money home to his family. He paid a smuggler \$3000 to facilitate his illegal entry through the Southwest border. Mario crossed the border with a group of other illegal migrants. Once they reached the United States, the smuggler took them to a safe house and demanded an additional \$10,000 from each migrant before he would release them. The smuggler locked the migrants in a basement, deprived them of food and water, and beat them. The smuggler told Mario he would kill Mario's family in Mexico if he did not pay the ransom. The smuggler and his friends raped the female migrants, and the smuggler threatened additional abuse if the women did not pay the \$10,000. Were the migrants smuggled or trafficked?

### ANSWER

The migrants were smuggled. The abuse and deprivation they suffered in the safe house do not constitute human trafficking, since the migrants were not forced to work or engage in commercial sex. The women who were raped were victims of sexual assault but not trafficking, since the perpetrators did not pay to have sex with them. If the smuggler had charged his friends a fee for having sex with the women, at that point the women would have been subjected to commercial sexual exploitation and become victims of sex trafficking.

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## **PRODUCT FEEDBACK**

Please direct any information, questions, or comments concerning this fact sheet to:



HUMAN SMUGGLING AND TRAFFICKING CENTER  
(202) 312-9746  
HSTC@STATE.GOV

## **APPENDIX: GLOSSARY<sup>6</sup>**

**Commercial Sex Act:** Any sex act on account of which anything of value is given to or received by any person.

**Sex Trafficking:** The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

**Involuntary Servitude:** A condition or servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process.

**Debt Bondage:** The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

## SOURCES

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<sup>1</sup> Polaris Project and International Justice Mission press release, “Wyoming Becomes 50<sup>th</sup> State to Outlaw Human Trafficking,” February 27, 2013. Accessed from: <http://www.polarisproject.org/media-center/press-releases/742-wyoming-becomes-50th-state-to-outlaw-human-trafficking>

<sup>2</sup> UNGA Res. 55/25 (15 November 2000), Annex II, “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,” Art. 3(a)

<sup>3</sup> Federal Bureau of Investigation press release, “Leader of MS-13 Gang Sentenced to 50 Years in Prison for Sex Trafficking Multiple Teens,” 2012. Retrieved from: <http://www.fbi.gov/washingtondc/press-releases/2012/leader-of-ms-13-gang-sentenced-to-50-years-in-prison-for-sex-trafficking-multiple-teens>

<sup>4</sup> U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, “Obama Administration Accomplishments on Combating Trafficking in Persons as of February 2013,” 9 April 2013. Retrieved from: <http://www.state.gov/j/tip/rls/reports/2013/207199.htm>

<sup>5</sup> UNGA Res. 55/25 (15 November 2000), Annex III, “Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,” Art. 3(a)

<sup>6</sup> U.S. Trafficking Victims Protection Act of 2000 (Public Law 106-386)