

The Travel Industry on Trial: The “State of the Art” of Human Trafficking Awareness and the Impact of Third-Party Civil Cases

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It is critical to assess the travel industry’s actions or inaction in any civil matter involving allegations of trafficking through the lens of the state of the art existing at the time – as ever-cunning traffickers and their sophisticated international rings target unwitting hoteliers, airlines and others.

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In this article, we focus on the state of the art of human trafficking awareness, how this crime has evolved over the centuries it has existed, and the extent to which civil litigation has impacted this crime. Often called “modern-day slavery,” human trafficking continues to plague society domestically and globally, even after the Thirteenth Amendment to the U.S. Constitution abolished chattel slavery. Only recently have human trafficking countermeasures taken center stage as a major public concern. For example, not until 2000 did Congress enact the Trafficking Victims Protection Act (TVPA), which established a comprehensive campaign to eliminate domestic and international human trafficking.¹

Now twenty (20) years after the TVPA was enacted, human trafficking is getting significant attention in the media and in the courts. Notwithstanding the civil litigation, the human trafficking remains a significant problem that experts say may be addressed by reducing the supply and demand. Human trafficking typically falls into two categories: sex trafficking and labor trafficking. Sex trafficking across America has flourished within the commercial sex industry for centuries due to its clandestine, hidden nature.² Despite concerted efforts on countermeasures by trade associations, businesses, legislators, law

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- 1 Early forms of human trafficking occurred as far back as the early Roman Empire as an accepted practice. This article focuses on modern-day forms of slavery and society’s developing understanding, awareness and efforts to combat human trafficking in this century.
 - 2 Mehlman-Orozco, Kimberly. *Hidden in Plain Sight: America’s Slaves of the New Millennium*. Praeger, 2017.



enforcement and others, the crime has continued. Training businesses to spot human trafficking is an evolving process, as the traffickers continue to morph and adapt to evade identification techniques used by law enforcement and innocent third-party businesses. While eradicating human trafficking is the ultimate goal, based on the duration that trafficking has existed worldwide, stemming the spread of this crime has focused on slowing the demand for commercial sex, as well as education and training of third parties to identify it and activate law enforcement when trafficking is suspected.

In the twenty years since Congress passed the TVPA, the U.S. Government has made numerous efforts to strengthen the domestic response to trafficking and to punish international violators. For example, in 2008, Congress took a monumental step in creating and enacting a civil cause of action for trafficking victims – the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008). As civil TVPRA cases against hoteliers have cropped up recently around the country, a deeper dive into the “state of the art” of industry’s burgeoning knowledge and notice helps to educate litigants, jurors, and jurists assessing the adequacy of third-party businesses’ trafficking countermeasures and the applicable duty of care owed in such situations.

Third-party businesses only can be held to a standard of care with respect to training based on the knowledge available at the time; they cannot be held to a Sisyphean standard of care to eradicate human trafficking. To do so would hold such businesses to a higher standard of care than trained law enforcement. Efforts to hold businesses to such higher duty of care is not impacting the incidence of such trafficking, but rather is merely misdirecting accusations of culpability toward the travel and hospitality industries, with unwarranted claims of liability for damages, regardless of their lack of participation in the trafficking actions. Basic economic principles of supply and demand apply to human trafficking; thus, the latest countermeasures have tried to focus on reducing the demand for commercial sex services in order to reduce the crime’s prevalence. Global Centurion, for instance, is a non-profit organization fighting human trafficking by focusing on the demand side of the equation - the perpetrators, exploiters, buyers, and end-users of human

beings who fuel the market for forced labor and commercial sex.³ Global Centurion employs a three-pronged approach to combat demand:

1. “Developing demand-focused research and programs;
2. Providing cutting-edge education, awareness and advocacy training to communities, civic leaders, NGOs, law enforcement and at-risk populations; and,
3. Establishing partnership and collaborative networks to respond to modern slavery.”⁴

Examples of deterrent actions include the threat of being added to a sex offender registry, imprisonment, fines, or public exposure, such as postings on billboard announcements, newspaper notices, Internet webpages, or through letters to the sex offender’s family or employer.⁵ Another demand-centric approach has implemented diversion programs for commercial sex consumers.⁶ While civil lawsuits against third party businesses, which neither collaborated with the traffickers, nor had knowledge of the trafficking on premises, have commenced, there has been no empirical evidence that such lawsuits in any way reduce the prevalence of this crime in today’s society. To the contrary, such lawsuits arguably amount to secondary exploitation by the Plaintiffs’ bar of those allegedly trafficked. Although there is a dearth of research on the efficacy of anti-trafficking interventions⁷, a growing body of research has shown that addressing the supply and demand for commercial sex services has made an impact in reducing traditional trafficking incidents, while less effective when trafficking moves virtually.

For example, in 2008 Shively, et al. found commercial sex consumer attendance at a John School reduced recidivism by over forty percent (40%).⁸ This shift happened immediately and was continually observed over the next ten (10) years.⁹ Further, in 2006 Weisburd, et al. studied a supply/demand targeted enforcement which reduced prostitution by 75 percent (75%) in Jersey City.¹⁰ The study’s design ensured the findings were not due to displacement.¹¹ Internationally, the government of Sweden has reported that there is an observable reduction in street prostitution by 50-70 percent since adopting a demand-focused enforcement model in 1999.¹² Finally, a 2019 book by Laura Lederer entitled, “Modern Slavery: A Documentary and Reference Guide,” focuses in part on demand-targeted solutions.¹³ While none of the studies to date are without limitation, certainly suing innocent third party businesses has demonstrated the least positive traction as far as anti-trafficking countermeasures go.

3 <https://www.globalcenturion.org/about/about/>

4 *Id.*

5 <https://www.cairn.info/revue-internationale-de-droit-penal-2010-3-page-607.htm>

6 *Id.*

7 <https://onlinelibrary.wiley.com/doi/10.4073/csr.2011.9>

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 <https://www.globalcenturion.org/available-on-amazon-modern-slavery-a-documentary-and-reference-guide/>

What Is “State of the Art”?

“State of the art” has been defined in various ways by different jurisdictions.¹⁴ In Maryland, “state of the art” includes all of the available knowledge on a subject at a given time, and this includes scientific, medical, engineering, and any other knowledge that may be available.”¹⁵ In some cases, it may be important to know whether a defendant’s actions conformed to the “state of the art” at the time of the alleged negligent act or omission to assess a particular duty of care owed. The state of knowledge about human trafficking has evolved and continues to evolve as society, technology, governments and others invest more time and resources to uncover trafficking rings and develop sophisticated countermeasures. This evolution is depicted in the timeline below, spanning some 400 years.

It is critical to assess the travel industry’s actions or inaction in any civil matter involving allegations of trafficking through the lens of the state of the art existing at the time – as ever-cunning traffickers and their sophisticated international rings target unwitting hoteliers, airlines and others. Third-party businesses do not have more knowledge about trafficking than governmental, judicial, or law enforcement professionals. Therefore, attempting to hold businesses liable for not spotting and eradicating trafficking on their premises essentially imposes on them a higher standard of care than on the very experts in this arena. A review of the state of the art helps to explain the evolution of knowledge of trafficking and elucidates the standard of care and duty applicable to third parties sued in civil cases.

Relevance of “State of the Art” to State and Federal Claims

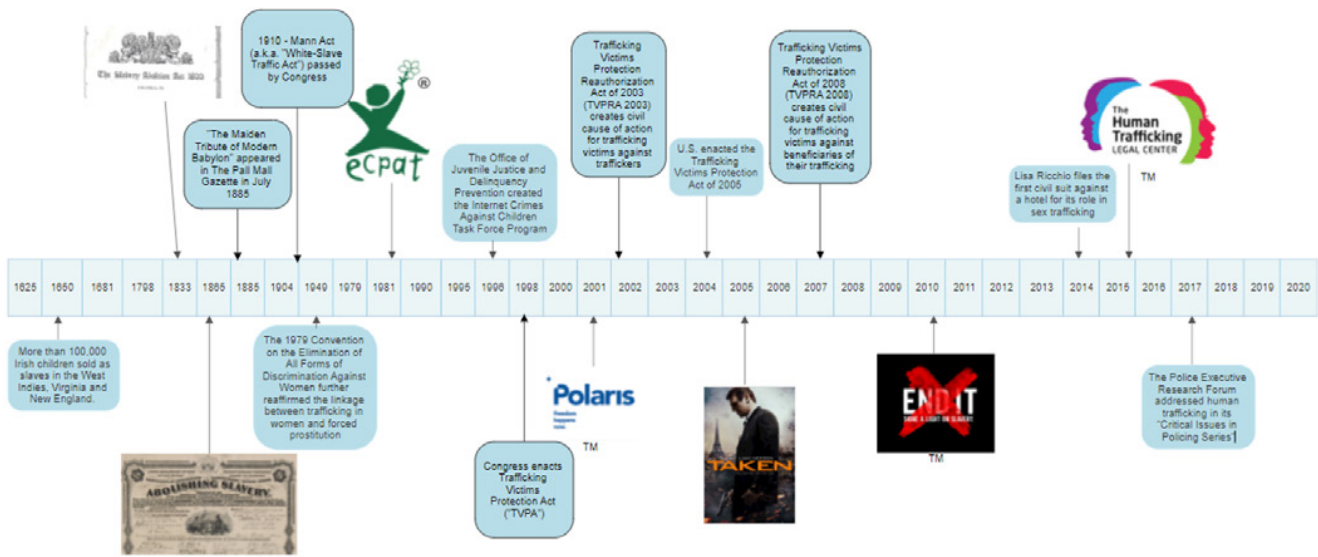
“State of the art” experts are pivotal in establishing what a defendant “knew or should have known” about a particular concern at a given point in time. “State of the art” is particularly relevant in environmental and toxic tort matters such as asbestos, but equally relevant to the newfangled third-party claims brought by trafficked survivors alleging that business owners knew or should have known of alleged labor and sex trafficking on their premises. In environmental and toxic tort matters, for example, in order to establish negligence, a plaintiff must show that the defendant’s waste handling/disposal practices were substandard based on established EPA, NIOSH, and other governmental and industry standards.¹⁶ Likewise, what a defendant “knew” is significant in human and sex trafficking cases brought under 18 U.S.C. § 1595(a), where claims allege that the business “knowingly benefitted” from a particular victim’s trafficking.¹⁷ When assessing state of the art standards, experts look at historical information as to what was available to various classes of industry, commerce, governing bodies and the public over time. Based on that timeline, experts then opine as to the level of knowledge and standard of care attributable to a party for liability

14 Buckler, Patrick R "Comments: State of the Art Evidence in Products Liability Suits in Maryland," University of Baltimore Law Review: Vol. 28: Iss. 1, Article 3. (1998). Available at: <http://scholarworks.law.ubalt.edu/ublrvol28/iss1/3>

15 *d.* (citing *ACandS, Inc. v. Asner*, 344 Md. 155, 165, 686 A.2d 250, 254 (1996)).

16 James B. Burns, *Deposing Expert Witnesses in Environmental Litigation*, 4 Vill. Envtl. L.J. 51 (1993). Specifically, in *Sterling v. Velsicol Chem. Corp.*, 647 F. Supp. 303, 316, 317 (W.D. Tenn. 1986), modified, 855 F.2d 1188 (6th Cir. 1988), the court’s finding of negligence was based partially on defendant’s failure to comply with state-of-the-art methods of hazardous waste disposal.

17 See 18 U.S.C. § 1595(a). (“An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys’ fees.”)



*Timeline is illustrative but not inclusive of all events discussed herein.

purposes. The state of the art experts play crucial roles in cases where industry practices, standards and applicable laws have evolved over time and a defendant’s conduct is being adjudged against accumulated knowledge, standards and industry practices. Against this backdrop, we have set out below a brief historical timeline reflecting the evolution of trafficking and the very recent training and educational countermeasures that have taken shape during the 21st century in an attempt to eradicate this crime.

The State of the Art of Human Trafficking Awareness

In order to fully appreciate the current state of the art of human trafficking awareness and the best ways to minimize its prevalence, one must look to the history of such trafficking. *The 17th Century to 1865: The growth of the African and Irish slave trade with no recognition of trafficking as a crime against humanity.*

Much has been written about the African slave trade during 17th to 19th centuries. Lesser known is the Irish slave trade that began in the early 1600s when the Privy Council decreed the transportation of convicts to the New World and into forced labor.¹⁸ In January 1618, King James I dispatched 100 “rowdy youths” to Virginia for forced labor.¹⁹ The Irish were one example of “forgotten white slaves” - sent to work for English colonial elites in the British territories of the Caribbean.²⁰ The African slave trade was just beginning during this same period, and African slaves were very expensive during

18 Jordan, D., & Walsh, M. (2008). *White Cargo: The Forgotten History of Britain's White Slaves in America*. New York University Press, p. 71.

19 *Id.* at p. 72.

20 *Id.* at p. 143.

the late 1600s.²¹ During the 1650s, more than 100,000 Irish children between the ages of 10 and 14 were taken from their parents and sold as slaves in the West Indies, Virginia and New England.²² England continued to ship tens of thousands of Irish slaves for more than a century.²³ In 1839, Britain finally decided to end its participation in transporting slaves with the organization of the British and Foreign Anti-Slavery Society²⁴, and nearly 20 years later, in 1865, Congress abolished chattel slavery in the United States with the passage and ratification of the Thirteenth Amendment.²⁵ This all-too-long chapter in American and European history foreshadowed the modern-day slavery that we now see play out in human trafficking domestically and internationally.

The 1900s: An attempt to bring global awareness to trafficking in 1998 would catalyze further awareness campaigns in the United States in the 2000s.

Human trafficking awareness gained traction internationally in the 1900s, primarily limited to women and white slave traffic. The perceived threat of human trafficking, however, was more existential in the early 1900s than in the 2000s, and in the late 1900s, the tourism industry began to take meaningful steps to combat trafficking based on the then-known state of the art. In 1885, "The Maiden Tribute of Modern Babylon" by W.T. Stead was published in the *Pall Mall Gazette* and exposed the dark underbelly of prostitution in late nineteenth century London.²⁶ The publication was a highly scandalous expose of child prostitution and "exposed in graphic detail the entrapment, abduction and 'sale' of young under-privileged girls to London brothels."²⁷ Such salaciousness and moral opacity led to the implementation of the Criminal Law Amendment Act of 1885, which raised the age of consent for girls from 13 to 16, and also re-criminalized homosexual acts.²⁸

The first major international treaty to address human trafficking, the International Agreement for the Suppression of the "White Slave Traffic" (the 1904 Agreement), was adopted on May 18, 1904, and entered into force on July 18, 1905.²⁹ The purpose of the 1904 Agreement was to protect women and girls from being involved in "white slave traffic."³⁰

In 1910, Congress passed the Mann Act, also known as the White-Slave Traffic Act of 1910, making it illegal

21 *Id.* at p. 254

22 *Id.*

23 *Id.*

24 http://www.bbc.co.uk/history/british/empire_seapower/antislavery_01.shtml

25 <https://www.archives.gov/historical-docs/13th-amendment#:~:text=Passed%20by%20Congress%20on%20January,within%20the%20United%20States%2C%20or>

26 Owen Mulpetre, "The Pall Mall Gazette/The Maiden Tribute", in W.T. Stead (ed.), *The Maiden Tribute of Modern Babylon*, (London: 1885). Online Available: The W.T. Stead Resource Site. <<https://www.attackingthedevel.co.uk/pmg/tribute/>> January 12, 2021

27 *Id.*

28 *Id.*

29 United Nations Treaty Collection, Chapter VII, Traffic in Persons, 8. International Agreement for the suppression of the "White Slave Traffic," Paris, 18 May 1904. [treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-8&chapter=7&clang=en](https://www.un.org/LegalLibrary/treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-8&chapter=7&clang=en).

30 <https://www.ohchr.org/en/professionalinterest/pages/traffickingpersons.aspx>

to “transport any woman or girl” across state lines “for any immoral purpose.”³¹ Unfortunately, the Mann Act injected race and politics into the issue of human trafficking. While the Mann Act was designed to prevent human trafficking and protect women from that concern, it was primarily invoked to punish black men for their relationships with white women.³² The law also recognized the evolving mobility of women and racial characterizations of non-white men.³³ Jack Johnson, the first African-American world heavyweight title holder, was accused of violating the Mann Act in 1912.³⁴ 72 years after his death, President Donald J. Trump pardoned Jack Johnson.³⁵

Over the next 90 years, there were few to no major anti-trafficking actions on the domestic and international levels. That changed, however, in 1998, when the FBI created multiple human trafficking task forces that used “collaborative, multi-agency approach[es] with our federal, state, local, and tribal partners.”³⁶ Specifically, the Office of Juvenile Justice and Delinquency Prevention created the Internet Crimes Against Children Task Force Program (ICAC Program).³⁷

In April 1998, ECPAT (End Child Prostitution and Trafficking) Sweden, in cooperation with Scandinavian tour operators and the World Tourism Organization (WTO), collaborated to develop the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (the Code) to combat the sexual exploitation of children at European tourism destinations.³⁸ The travel industry in the United States did not sign on to a similar “Code of Conduct” until 2004.

Since 2000, the Code has been developed using mainly public funding provided by the European Commission, contributions from the six European ECPAT partners, and logistical support from the WTO and the tourism industry. The Code currently is implemented globally by more than 40 companies, tour operators, travel agencies, tourism associations and tourism unions; more than 40 tour operators from 13 countries (including the 25 members of the Tour Operators Initiative for Sustainable Tourism Development (UNEP.UNESCO.WTO)); and three hotel chains.³⁹

31 History.com Editors. “Congress Passes Mann Act, Aimed at Curbing Sex Trafficking.” History.com, A&E Television Networks, 13 Nov. 2009, www.history.com/this-day-in-history/congress-passes-mann-act.

32 Erin Blakemore. “The ‘White Slavery’ Law That Brought Down Jack Johnson is Still in Effect.” History.com, A&E Television Networks, 24 May 2018, <https://www.history.com/news/white-slave-mann-act-jack-johnson-pardon>

33 *Id.*

34 *d.*

35 *Id.*

36 FBI. “Human Trafficking Task Forces.” 3 May 2016, www.fbi.gov/investigate/violent-crime/human-trafficking#:~:text=The%20ultimate%20goal%20of%20these,the%20state%20and%20federal%20level.&text=The%20Enhanced%20Collaborative%20Model%20Human,and%20Bureau%20of%20Justice%20Assistance.

37 “Internet Crimes Against Children Task Force Program.” DOJ Office of Juvenile Justice and Delinquency Prevention, <https://ojjdp.ojp.gov/programs/internet-crimes-against-children-task-force-program>.

38 World Tourism Organization. “Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.” https://www.ecpat.org/wp-content/uploads/2016/04/Code_of_Conduct_ENG.pdf.

39 *Id.*

*The twenty-first century is by far the most active century for human trafficking countermeasures; but trafficking persists and outranks guns and drugs as the fastest-growing criminal enterprise in the United States and across the world.*⁴⁰

The modern concept of human trafficking did not become internationally popularized until 2000.⁴¹ At that time, human trafficking became a major concern domestically and commercially, so much so that the federal government made human trafficking a federal crime.⁴²

On October 28, 2000, the U.S. Congress enacted the TVPA, which set up formidable actions, primarily directed to women and children, to combat trafficking in persons.⁴³ Specifically, to:

- Coordinate and monitor anti-trafficking activities through an interagency task force.
- Prevent human trafficking through vocation training, education and human trafficking public awareness campaigns.
- Protect human trafficking survivors by not detaining them in correctional facilities, providing them with medical care and other assistance, and protecting them and their families from revictimization and/or deportation.
- Strengthen prosecution and punishment of human traffickers⁴⁴

Congress also created the “T” nonimmigrant status (T visa) to combat human trafficking and to provide immigration relief for those who are trafficked into the United States.⁴⁵ In December 2000, the United Nations met in Palermo, Italy, and adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (the Palermo Protocol). The purpose of the protocol was threefold:

- To prevent and combat trafficking in persons, paying particular attention to women and children;
- To protect and assist the victims of such trafficking, with full respect for their human rights; and

To promote cooperation among states’ parties in order to meet those objectives⁴⁶ In the same year, the anti-trafficking organization Polaris was founded with several goals in mind. First, Polaris serves trafficking victims and survivors through the U.S. National Human Trafficking Hotline.⁴⁷

40 Martin, Philip. “Human Trafficking Outpaces Drugs, Guns As World’s Fastest Growing Criminal Industry,” GBH, 27 Dec. 2010, <https://www.wgbh.org/news/post/human-trafficking-outpaces-drugs-guns-worlds-fastest-growing-criminal-industry>.

41 Mehlman-Orozco, *supra* note 2.

42 Pasley, James. “20 Staggering Facts about Human Trafficking in the US,” *Business Insider*, 25 July 2019, www.businessinsider.com/human-trafficking-in-the-us-facts-statistics-2019-7.

43 Mehlman-Orozco, *supra* note 2.

44 *Id.*

45 Kamhi, Alison, and Prandini, Rachel. “T Visas: What Are They and How They Can Help Your Clients.” Immigrant Legal Resource Center, Apr. 2017, www.ilrc.org/sites/default/files/resources/t_visas_advisory-20170509.pdf.

46 Mehlman-Orozco, *supra* note 2.

47 <https://polarisproject.org/#:~:text=Founded%20in%202002%2C%20Polaris%20is,navigate%20their%20way%20to%20freedom.&text=Servicing%20victims%20and%20survivors%20through,really%20works%2C%20in%20real%20time>.

Second, Polaris builds a real-time dataset that illuminates how human trafficking really works.⁴⁸ Recently, to combat the human trafficking problem in the hospitality industry, various major hotel brands have teamed with Polaris to develop human trafficking awareness.⁴⁹ Since 2000, there has been a substantial increase in public awareness of human trafficking.⁵⁰ There also have been major developments legislatively and through corporate activism.

The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003) (Pub. L. No. 108-193) reauthorized and amended the TVPA to further address domestic and international trafficking concerns.⁵¹ The TVPRA 2003 also created a new civil action that allowed trafficking victims to sue their traffickers in federal district court and required the Attorney General to report annually on various anti-trafficking efforts pursuant to obligations created in the TVPRA 2003. In April 2004, UNICEF, the World Tourism Organization and the international advocacy group ECPAT launched a “Code of Conduct” for the North American travel industry⁵² - including North America-based travel agencies - designed to protect children from commercial sexual exploitation.⁵³ Recognizing the need to expand the U.S. government’s international reach to prosecute traffickers and to provide trafficking victims with additional support, the Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005) (Pub. L. No. 109-164) provided extraterritorial jurisdiction over trafficking offenses committed overseas by persons employed by or accompanying the federal government.⁵⁴ The TVPRA 2005 also established certain grant programs for states, American Indian tribes, local governments, nongovernmental organizations (NGOs), and state and local law enforcement agencies to create service and rehabilitative facilities for human trafficking victims and expand efforts to combat trafficking.

In 2008, the TVPRA arguably underwent its most drastic transformation, notably creating a civil remedy for trafficking victims against beneficiaries of their trafficking. The TVPRA 2008 (Pub. L. No. 110-457) enacted new measures to combat and prevent various forms of trafficking and hold traffickers accountable for their crimes.⁵⁵ Notably, the TVPRA 2008 expanded trafficking victims’ civil remedies beyond their trafficker(s) to those who knowingly benefit financially from their participation in the trafficking venture. The TVPRA 2008 also directed the implementation of other anti-trafficking measures and directed the FBI to begin collecting, aggregating and reporting human trafficking data annually. In a sign that federal law enforcement was taking seriously the prevalence of human trafficking in the United States, in 2009, the FBI executed raids and hundreds of arrests as part of a nationwide prostitution

48 *Id.*

49 “Hotel Companies Step Up to Fight Human Trafficking.” *Polaris*, 16 Jan. 2019, polarisproject.org/blog/2019/01/hotel-companies-step-up-to-fight-human-trafficking/#:~:text=In%20an%20unprecedented%20move%2C%20Marriott,through%20trafficking%20signage%20and%20posters.

50 Mehlman-Orozco, *supra* note 2.

51 Trafficking Victims Protection Reauthorization Act of 2003, H.R. 2620, 108th Cong. (2003).

52 UNICEF. *Press Release*, “Launch of ‘Code of Conduct’ for travel industry to protect children from tourism.” 21 April 2004. https://www.unicef.org/media/media_20445.html.

53 *Id.*

54 “Key Legislation.” The United States Department of Justice, 6 Jan. 2017, www.justice.gov/humantrafficking/key-legislation.

55 *Id.*

sting that focused on people who forced teens into prostitution, and successfully broke up 12 large-scale prostitution rings that operated through call services, truck stops, casinos, and web sites.⁵⁶ Internationally, in 2008, the Council of Europe Convention on Action against Trafficking in Human Beings was created with a focus on the protection of victims of trafficking and the safeguarding of their rights, and applied to all forms of trafficking.⁵⁷ One year later in 2009, the U.S.-Mexico Bilateral Human Trafficking Enforcement Initiative was launched to address transborder trafficking threats.⁵⁸ Law enforcement and governmental awareness of human trafficking gained momentum through these countermeasures.

Societal Perception of Human Trafficking in the 21st Century

Although many Americans are aware of the concept of human trafficking, few understand how the crime manifests in reality.⁵⁹ Hollywood depictions that began to crop up illustrated the confusion. The 2009 movie *Taken*, for example, is one of the most widely recognized movies on human trafficking, though admittedly it looks very different from the trafficking that is alleged against the travel industry in the cases advanced beginning in 2015. The movie portrays a more forceful and dramatic image of human trafficking. In reality, however, traffickers use persuasion and grooming techniques to exploit the vulnerabilities of their victims and to prevent third-party businesses from knowing the true extent of the relationship.⁶⁰ Additionally, traffickers make targeted efforts to lure their victims by exploiting their homelessness, hunger, and need for companionship and/or support; essentially, traffickers look to fill voids in their victims' lives. Traffickers also attempt to relate to their victims through similar personal experiences.⁶¹ *The 2010s.*

In sporadic localities, local governments began clamping down on hoteliers to combat human trafficking in 2010.⁶² Human trafficking awareness and prevention also were ramped up at the state and federal levels.

State and Federal Action

In 2011, the Anti-Trafficking Coordination Team (ACTeam) Initiative was launched under the leadership of the Civil Rights Division's Human Trafficking Prosecution Unit.⁶³ Also in 2011, the Northern Virginia Human Trafficking Task Force teamed with Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI) and the Polaris Project in an initiative to crack down on commercial sexual exploitation and potential human trafficking in Virginia.⁶⁴ In one raid, officials checked 23 businesses and filed charges against 7 of them, primarily for licensing violations.⁶⁵

56 <https://www.sfgate.com/crime/article/100-arrested-in-Bay-Area-in-prostitution-sting-3188138.php>.

57 "Details of Treaty No. 197," Treaty Office, www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197.

58 "Special Initiatives," The United States Department of Justice, 26 May 2017, [https://www.justice.gov/humantrafficking/special-initiatives#:~:text=Anti%2DTrafficking%20Coordination%20Team%20\(ACTeam\)%20Initiative%20is%20a%20multi,Division's%20Human%20Trafficking%20Prosecution%20Unit](https://www.justice.gov/humantrafficking/special-initiatives#:~:text=Anti%2DTrafficking%20Coordination%20Team%20(ACTeam)%20Initiative%20is%20a%20multi,Division's%20Human%20Trafficking%20Prosecution%20Unit).

59 Mehlman-Orozco, *supra* note 2.

60 *Id.*

61 See footnote 2, *supra*.

62 See, e.g., https://sist.com/2010/12/23/oakland_fining_hotels_for_toleratin/.

63 The United States Department of Justice, *supra* note 37.

64 Mehlman-Orozco, *supra* note 2.

65 *Id.*

According to the leading human trafficking expert in the U.S., Kimberly Mehlman-Orozco, Ph.D., the wave of crackdowns in Virginia focused on erotic massage parlors, not the travel industry.⁶⁶ In his September 25, 2012, “Remarks by the President to the Clinton Global Initiative,” President Barack Obama said, “Our fight against human trafficking is one of the great human rights causes of our time, and the United States will continue to lead it..”⁶⁷ President Obama identified three methods for combating human trafficking, including preparing a new assessment of human trafficking in the United States to better grasp the scope and scale of the problem, harness technology to combat trafficking, and help victims recover and rebuild their lives.⁶⁸ The TVPRA was reauthorized in 2013 and underwent changes primarily to address supply chain-related trafficking. The Trafficking Victims Protection Reauthorization Act of 2013 (TVPRA 2013) (Pub. L. No. 113-4) was passed as an amendment to the Violence Against Women Act and establishes and strengthens programs to ensure that U.S. citizens do not purchase products made by victims of human trafficking, and to prevent child marriage.⁶⁹

The year 2013 also marked a turning point for human trafficking data collection efforts at the federal level and resulted in more transparency, awareness and collaboration between federal and state law enforcement. The FBI’s Uniform Crime Reporting (UCR) Program’s Human Trafficking Data Collection efforts, which began in 2013, are fueled by the FBI’s National Incident-Based Reporting System (NIBRS), which captures details on each single crime incident – as well as on separate offenses within the same incident – including information on victims, known offenders, relationships between victims and offenders, arrestees and property involved in crimes.⁷⁰ NIBRS goes much deeper because of its ability to provide circumstances and context for crimes, such as location, time of day and whether the incident was cleared. In 2013, there was a total of 14 reports of human trafficking offenses across only 13 states that participated in the UCR Program’s Human Trafficking Data Collection.⁷¹ Targeting sex trafficking prevention at the state level, the Preventing Sex Trafficking and Strengthening Families Act of 2014 (Pub. L. No. 133-183), among other things, placed requirements on states to address child sex trafficking of children under the child welfare agency’s care and supervision, and ultimately influenced a vast number of states to enact anti-human trafficking legislation.⁷²

66 *Id.* at p. 26.

67 “Remarks by the President to the Clinton Global Initiative.” National Archives and Records Administration, obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative.

68 *Id.*

69 Alliance to End Slavery & Trafficking (ATEST). “Summary of the Trafficking Victims Protection Act (TVPA) and Reauthorizations FY 2017.” 11 Jan. 2017, <https://endslaveryandtrafficking.org/summary-trafficking-victims-protection-act-tvpa-reauthorizations-fy-2017-2/>.

70 FBI. National Incident-Based Reporting System (NIBRS). 10 Sept. 2018, www.fbi.gov/services/cjis/ucr/nibrs.

71 FBI. “State Participation in the UCR Human Trafficking Data Collection (2013).” *Human Trafficking in the Uniform Crime Reporting (UCR) Program*, 2013, ucr.fbi.gov/human-trafficking.

72 National Conference of State Legislatures. “Human Trafficking.” NCSL, <https://www.ncsl.org/GoogleResults.aspx?q=human-trafficking-legislation#gsc.tab=0&gsc.q=human-trafficking-legislation&gsc.page=1>

The Justice for Victims of Trafficking Act of 2015 (JVTA 2015) bolstered human trafficking laws by, among other things, expanding the category of individuals who may be prosecuted under 18 U.S.C. § 1591(a) to those who “patronize” and “solicit” sex trafficking, and amending 18 U.S.C. § 1594 to direct any assets forfeited in a human trafficking case to be used to satisfy a victim restitution order.⁷³ During the Trump Administration, human trafficking consciousness and countermeasures became an even bigger priority at the government, industry, and consumer levels. The Trump Administration created a human trafficking task force determined to combat the crime at every level and at every border. Specifically, President Trump⁷⁴ implemented the following: On December 21, 2018, President Trump signed the Abolish Human Trafficking Act, which strengthened programs supporting survivors and resources for combating modern slavery, and the Trafficking Victims Protection Act of 2017, which established a new prevention, prosecution and collaboration initiative to bring human traffickers to justice.

On January 8, 2019, President Trump signed the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, which contains several provisions that improve the federal government’s authorities to combat human trafficking. One day later, on January 9, 2019, President Trump signed the Trafficking Victims Protection Reauthorization Act (S. 1862), which tightens criteria for whether countries are meeting standards for eliminating trafficking. Finally, on June 25, 2020, the State Department named 10 countries that it said engaged in government-sponsored forced labor.⁷⁵ This was the first year in which governments were named as complicit in human trafficking under a law signed by President Trump.

Crypto Transactions, Cyber Measures, and Human Trafficking

It is no surprise that human trafficking is an extremely lucrative clandestine crime. But with the clandestine nature of the crime comes clandestine transactions to fuel the market and evade law enforcement. Enter crypto-exchanges and cryptocurrency, which are frequently used by traffickers to fuel their crimes.⁷⁶

According to Brian Monroe of the Association of Certified Financial Crime Specialists, criminals are making it harder for anti-money laundering officers to uncover and for law enforcement to investigate their networks because they flow illicit funds into the virtual world using cryptocurrency.⁷⁷ Monroe also notes that the number of suspicious activity reports (SARs) tied to human trafficking filed by banks and money services “exploded” from 109 in 2018 to 3,384 in 2019, primarily due to the addition of the crime as a

73 *Id.*

74 “President Donald J. Trump Is Fighting to Eradicate Human Trafficking.” *The White House*, The United States Government, www.whitehouse.gov/briefings-statements/president-donald-j-trump-fighting-eradicate-human-trafficking/#:~:text=The%20President%20signed%20the%20Trafficking,bring%20human%20traffickers%20to%20justice.

75 Morello, Carol. “State Department Accuses 10 Countries, Including China and North Korea, of Government-Sponsored Human Trafficking.” *The Washington Post*, 25 June 2020. www.washingtonpost.com/national-security/state-department-accuses-10-countries-including-china-and-north-korea-of-government-sponsored-human-trafficking/2020/06/25/fea79ba4-b716-11ea-9b0f-c797548c1154_story.html

76 Monroe, Brian, “Top five ways to detect, counter human trafficking in bank, crypto exchange transactions,” 30 Jan. 2020, <https://www.acfcs.org/top-five-ways-to-detect-counter-human-trafficking-in-bank-crypto-exchange-transactions/>

77 <https://securitiesanalytics.com/>

checkbox option for reporting and 2019 being the first full year of reporting, according to the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) and analysis by Dynamic Securities Analytics.⁷⁸ Monroe lists five human trafficking crypto-related red flags⁷⁹:

- Making frequent purchases in multiples of small amounts of Bitcoin or virtual currencies, directly by the client or through exchanges.
- Engaging in crypto-transactions between 11:00 p.m. and 5:00 a.m., particularly on weekends. This is a classic red flag indicating that operations such as massage parlors may be up to no good with trafficked labor.
- Engaging in crypto-transactions – either directly or tied to prepaid and credit cards – to make large/frequent purchases related to food, motel/hotel rooms, movies and entertainment, vehicle rentals, phones, advertisements and online classified websites.
- Using Bitcoin or other virtual currencies to make payments to sites associated with the adult industry or offering escort, massage and related “personal” services.
- Using virtual currencies to purchase tokens associated with or specifically designed for the adult industry.⁸⁰

While traffickers use crypto-exchanges and cryptocurrencies to hide transactions related to their crimes, organizations have harnessed cyber-technology to detect and combat human trafficking. For instance, in 2014, actors Ashton Kutcher and Demi Moore co-founded Thorn, a company that harnesses technology to detect child sex trafficking victims online.⁸¹ Thorn has three strategic pillars: (1) accelerating victim identification, (2) equipping platforms and (3) empowering the public. Thorn also “house[s] the first engineering and data science team focused solely on developing new technologies to combat online child sexual abuse.” In 2014 after it prototyped a product to aid in identifying child sex trafficking victims who were sold online, Thorn made the innovative decision to develop the product itself and provide it free to law enforcement. In 2016, Booz Allen partnered with Polaris to host a Hackathon for Social Good.⁸² As part of this event, nearly 50 Booz Allen data scientists volunteered their time and expertise to explore a variety of data sources and develop automated approaches for mapping networks of illicit massage businesses (IMBs) currently operating in the United States. These tools developed to fight human trafficking contributed in part to Booz Allen’s Dr. Lauren Neal winning the National TIMMY Award for Best Tech Manager on December 8, 2020.⁸³

78 *Id.*

79 The authors could find no evidence that the red flags have been tested for sensitivity and specificity.

80 *Id.*

81 <https://www.thorn.org/about-our-fight-against-sexual-exploitation-of-children/>

82 Booz Allen Hamilton, “Booz Allen Data Scientists Participate in Hackathon to End Human Trafficking,” 19 Feb. 2016, <https://www.3blmedia.com/News/Booz-Allen-Data-Scientists-Participate-Hackathon-End-Human-Trafficking>

83 Booz Allen Hamilton. “Booz Allen’s Dr. Lauren Neal Wins National TIMMY Award for Best Tech Manager.” www.3blmedia.com/News/Booz-Allens-Dr-Lauren-Neal-Wins-National-TIMMY-Award-Best-Tech-Manager.



Organizational Actions to Combat Human Trafficking and the Rise of Trafficking Litigation

Beginning in 2011, hoteliers began to sign the 2004 ECPAT “Code of Conduct,” reaffirming their commitment to fight child trafficking.⁸⁴ There is no empirical evidence, however, that any of the ECPAT countermeasures have diminished human trafficking incidents or improve the likelihood of correct identification. For instance, in 2011, a Campbell Systematic Review entitled, “Cross-border Trafficking in Human Beings: Prevention and Intervention Strategies for Reducing Sexual Exploitation,” determined that “[n]o studies were found that met all criteria (prevention and suppression strategies, cross-border trafficking, sexual exploitation and a design of at least level 3 of the Maryland Scientific Method Scale (SMS), i.e., a controlled design with both pretest and posttest measures and comparable control conditions.)”⁸⁵

84 NCL staff. “Hyatt Signs ‘The Code.’” *National Consumers League*, 2015, www.nclnet.org/hyatt_the_code.

85 van der Laan P, Smit M, Busschers I, Aarten P. Cross-border trafficking in human beings: prevention and intervention strategies for reducing sexual exploitation. *Campbell Systematic Reviews* 2011:9

Moreover, they determined that “no conclusions could be drawn on the effectiveness of anti-THB [trafficking in human beings] intervention strategies for preventing and reducing sexual exploitation.”⁸⁶ The Campbell study demonstrates that while anti-trafficking organizations such as ECPAT and Polaris have developed human trafficking countermeasures, there is no empirical evidence that those countermeasures are effective. Currently, there is no human trafficking countermeasure training with the requisite sensitivity and specificity to consistently and accurately spot human trafficking—in part, because of its clandestine nature, and also because the crime continues to evolve, including moving online, making it more difficult to combat.⁸⁷

The End It Movement was founded in 2013 to educate the public on the issue and direct visitors to anti-trafficking partner organizations.⁸⁸ The End It Movement provides a collection of resources about human trafficking, from statistics to graphics, and in a sign that the hospitality industry takes seriously its role in preventing human trafficking, it recently partnered with the American Hotel & Lodging Association (AHLA) to spread awareness of human trafficking.⁸⁹ In 2014, the United States saw a significant increase in human trafficking offenses, which correlated with an uptick in state participation in the reporting of human trafficking offenses.⁹⁰ The increase in the prevalence of human trafficking became evident with the 2014 lawsuit against Backpage.com, a classified advertising website that had become the largest marketplace for buying and selling sex, culminating in federal law enforcement agencies shuttering the site seized in April 2018.⁹¹ The First Circuit Court of Appeals ruled that the Communications Decency Act, which prevents a website operator from being held liable as the “publisher or speaker” of its user-generated content, granted broad protections to internet publishers.⁹² Backpage.com also faced additional legal exposure in 2018, when a federal grand jury in Arizona indicted seven people behind the classified-ads website Backpage.com on 93 counts, including charges of facilitating prostitution and money laundering.⁹³

Online service providers, like Backpage.com, often invoke immunity through Section 230 of the Communications Act of 1934, enacted as part of the Communications Decency Act of 1996 when facing potential liability for transmitting or taking down user-generated content.⁹⁴ Section 230 broadly protects

86 Id.

87 There is a current movement afoot by those combatting trafficking to retool third party training away from spotting “red flags” and move toward situational training. Time will tell whether the revised tools will be effective and impact the prevalence of human trafficking.

88 End it Movement, <https://enditmovement.com/take-action/>.

89 <https://www.ecpatusa.org/blog/tag/AHLA>

90 FBI. “2014 Crime in the United States, Human Trafficking, 2014.” 2014, <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/additional-reports/human-trafficking-report/human-trafficking.pdf>.

91 <https://www.reuters.com/article/us-usa-court-backpage/u-s-supreme-court-will-not-examine-tech-industry-legal-shield-idUSKBN14T1OR>

92 *Id.*

93 Selyukh, Alina. “Backpage Founders Indicted on Charges of Facilitating Prostitution.” *NPR*, 9 Apr. 2018, www.npr.org/sections/thetwo-way/2018/04/09/600360618/backpage-founders-indicted-on-charges-of-facilitating-prostitution.

94 <https://fas.org/sgp/crs/misc/LSB10306.pdf>

online service providers like social media companies from being held liable for transmitting or taking down user-generated content.⁹⁵ Due to this apparent broad immunity for online service providers, social media platforms and other online content hosts have largely operated without outside regulation, resulting in a mostly self-policed industry.⁹⁶ The immunity created by Section 230, while expansive, however, is not absolute.⁹⁷ For example, courts have said that if a service provider “passively displays content that is created entirely by third parties,” Section 230 immunity will apply; but if the service provider helps to develop the problematic content, it may be subject to liability.⁹⁸ Recently, Congress has also begun to take a deeper dive into Section 230 immunity, such that online content providers may see more and more lawsuits arising from human trafficking allegations.

In 2015, increased participation in human trafficking reporting resulted in more data on human trafficking offenses.⁹⁹ There were a total of 965 human trafficking offenses across 40 states and territories in 2015.¹⁰⁰ Of those 40 entities, Texas (285), Nevada (216) and Minnesota (119) reported the most human trafficking offenses.¹⁰¹

Also in 2015, in a sign that trafficking victims were prepared to seek TVPRA-mandated remedies from alleged beneficiaries of their trafficking, the first civil TVPRA lawsuit against members of the hospitality industry was filed in the District Court of Massachusetts.¹⁰² In *Ricchio v. McLean*, 1:15-cv-13519 (D. Mass., Oct. 7, 2015), the plaintiff sued her trafficker and the owners/operators of the Shangri-La Motel where she was trafficked. The plaintiff argued that Ashvinkumar Patel and Sima Patel (the Patels) knowingly benefitted from participation in a venture that they knew or should have known was engaged in trafficking. The *Ricchio* case has been cited by parties on both sides – by plaintiffs to support their TVPRA allegations and by defendants to distinguish the Patels’ conduct from the conduct of hoteliers in their suits.

Signaling further action in the hospitality industry to combat human trafficking, hoteliers began to join the Global Business Initiative on Human Rights in 2016¹⁰³ and began to join the UK Stop Slavery Hotel Industry Network.¹⁰⁴ Hoteliers were committed to training their staff worldwide in slavery, human trafficking, ethics and human rights topics – the best they could do in response to a crime that continued to elude governments, law enforcement, legislatures and judiciaries due to trafficking’s expansive and evolving worldwide presence.

95 *d.*

96 *Id.*

97 *Id.*

98 *Id.*

99 FBI. “2015 Crime in the United States, Human Trafficking, 2015.” https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/additional-reports/human-trafficking/copy_of_humantrafficking_2015_final.pdf.

100 *Id.*

101 *Id.*

102 Adams, Emily, and Mashelkar, Shubhra. “Human Trafficking Lawsuits and the Hotel Industry.” *Hotel Business*, 11 Aug. 2020, www.hotelbusiness.com/human-trafficking-lawsuits-and-the-hotel-industry/.

103 Monika, “Sleep Tight: What Hotels Are Doing to Fight Human Trafficking.” 12 Jan. 2018. <http://www.internationelle.org/hotels-against-trafficking/>

104 *Id.*

Various states are now mandating human trafficking training and education for hotels and motels.¹⁰⁵ For instance, in California, Senate Bill 970 requires California hotels and motels to provide at least 20 minutes of interactive training and education on human trafficking awareness to all employees who are likely to interact or come into contact with traffickers or victims of human trafficking, and applies to employees hired as of July 1, 2019.¹⁰⁶ These employees were required to be trained by January 1, 2020, and then every two years thereafter.¹⁰⁷ New hires must be trained within six months.

Finally, in August 2020, the Police Executive Research Forum addressed human trafficking in its “Critical Issues in Policing Series,” reflecting law enforcement’s commitment to combatting human trafficking.

Increase in Reported Instances of Human Trafficking

A 2018 publication by the Human Trafficking Legal Center indicates that in 2009, the first federal civil case alleging sex trafficking was brought against a defendant who pled guilty to conspiracy to commit sex trafficking four years earlier.¹⁰⁸ An August 30, 2009, review of the literature on human trafficking into, and within, the United States conducted by the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation examined reported instances of human trafficking versus its estimated prevalence.¹⁰⁹ The 2009 review states that “[b]etween 244,000 and 325,000 America youth are considered at risk for sexual exploitation, and an estimated 199,000 incidents of sexual exploitation of minors occur each year in the United States. These figures, however, are limited estimates of youth at risk for human trafficking and do not address adult U.S. citizens trafficked into the sex industry or American children and adults trafficked for labor.”¹¹⁰

Despite the increase in legislation and the available civil remedies, the reported incidences of human trafficking have not subsided. In 2016, 34 states and the U.S. Virgin Islands and Puerto Rico reported human trafficking offenses, and across the 36 states and territories, a total of 1,196 human trafficking offenses were reported.¹¹¹ Texas (257), Minnesota (235) and Nevada (140) reported the most offenses.¹¹²

In 2017 and 2018, reported instances of human trafficking increased, following an increase in state participation in federal reporting. In 2017, 45 states, Guam and Puerto Rico contributed to the UCR Human Trafficking Data Collection initiative.¹¹³ Among those 47 states and territories, a total of 1,220 human trafficking offenses were reported in 2017. Texas (312), Minnesota (173) and Arizona (99) reported the most

105 Four states require training – California, Connecticut, Minnesota and New Jersey.

106 “California Hotels Must Provide Human Trafficking Training by Jan. 1, 2020.” Traliant, 20 Mar. 2020, www.traliant.com/blog/2019/12/12/california-hotels-must-provide-human-trafficking-training/.

107 *Id.*

108 *Ditullio v. Boehm*, 3:09-cv-00113 (D.Ak. June 1, 2009).

109 <https://aspe.hhs.gov/system/files/pdf/75891/index.pdf>

110 *Id.* (citing Estes & Weiner, 2001).

111 FBI. “2016 Crime in the United States, Human Trafficking, 2016.” <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/additional-publications/human-trafficking/human-trafficking.pdf>.

112 *Id.*

113 FBI. “2017 Crime in the United States, Human Trafficking, 2017.” <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/additional-data-collections/human-trafficking/human-trafficking.pdf>.

offenses. In 2018, 48 states reported a total 1,450 human trafficking offenses.¹¹⁴ Texas (312), Nevada (212) and Minnesota (123) reported the most offenses.¹¹⁵

At present, there are at least 115 active state and federal civil trafficking cases.¹¹⁶

Conclusion

Human trafficking is an issue that continues to ravage our society, and has done so for centuries. Despite the increase in legislation extending civil liability, an examination of the evolution of trafficking through the centuries supports the thesis that forging an attack on the demand for commercial sex may be a key to curbing this crime, rather than passing off the policing responsibilities to those in the hospitality and travel industries. There have been suggestions that demand can be slowed through deterrents such as stiffer sentencing for violators, employment consequences for offenders, and rehabilitation programs for offenders. Absent actual knowledge and collaboration between third-party businesses and the traffickers, civil lawsuits have not been shown to alone quell the demand for commercial sex.

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114 FBI. “2018 Crime in the United States, Human Trafficking, 2018.” <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/additional-data-collections/human-trafficking/human-trafficking.pdf>.

115 *Id.*

116 This number includes the previously consolidated thirty (30) S.Y./C.S. cases in the Middle District of Florida. Last checked PACER on February 1, 2021 and state dockets as of January 29, 2021.

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