

Using Anti-trafficking Laws to Advance Workers' Rights

BY SPRING MILLER AND STACIE JONAS

Since Congress passed the Victims of Trafficking and Violence Protection Act in 2000, federal human trafficking law has become increasingly important for practitioners representing vulnerable low-wage workers.¹ The Act prohibits certain forms of coercive labor relationships, seeks to deter and punish those who benefit from those relationships, and establishes mechanisms to protect and compensate victims. Since 2000, legislative updates and litigation have clarified and advanced federal trafficking law. Workers' advocates have found that the Act holds significant, though qualified, promise as a means of protecting workers and deterring exploitative employers.

In 2004 *Clearinghouse Review* published an overview of the Trafficking Victims Protection Act, then a relatively new piece of legislation.² Here we update federal human trafficking law since that article, with a particular emphasis on the ways in which developments in the law hold promise for vulnerable, low-wage workers.³ We highlight ways in which workers' advocates, including those who work at entities funded by the Legal Services Corporation



(LSC), can use the Act's private right of action, criminal penalties, and immigration protections to advance workers' rights. We discuss the challenges that workers face when pursuing the Act's protections.

The Trafficking Victims Protection Act defines "severe forms of trafficking in persons" to include not only sex trafficking but also "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."⁴ This definition, codified in Title 22 of the U.S. Code, governs a victim's eligibility for immigration relief and other federal benefits. Involuntary servitude is defined broadly to include labor obtained through threats of serious harm; 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"; and "abuse or threatened abuse of the legal process."⁵

Codified in Chapter 77 of Title 18 of the U.S. Code, the Trafficking Victims Protection Act provisions that govern civil and criminal liability for traffickers include many of the terms in Title 22. However, the Title 22 and Title 18 provisions are not identical. For example, the Title 18 prohibition against forced labor, a meaningful provision for workers' advocates, contains terms that are slightly different from those in Title 22. Section 1589 of Title 18 prohibits knowingly providing or obtaining the labor or services of a person

1 [Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464](#). The Act is commonly referred to as the Trafficking Victims Protection Act of 2000. Although in much of this article we discuss congressional reauthorizations of the Act, we use "Trafficking Victims Protection Act" and "the Act" to refer to both the original legislation and its reauthorizations.

2 [Sheila Neville & Susanna Martinez, *The Law of Human Trafficking: What Legal Aid Providers Should Know*, 37 CLEARINGHOUSE REVIEW 551 \(March–April 2004\)](#).

3 Many states have adopted anti-trafficking laws, and practitioners should familiarize themselves with these laws as well.

4 [22 U.S.C. § 7102\(9\)\(B\)](#) (2013).

5 [Id.](#), § 7102(6). This definition is "intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion" and rejects the narrow interpretation in [United States v. Kozminski](#), 487 U.S. 931 (1988) ([22 U.S.C. § 7101\(13\)](#)). See [Kiwanuka v. Bakilana](#), 844 F. Supp. 2d 107, 114–15 (D.D.C. 2012).

(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;

(2) by means of serious harm or threats of serious harm to that person or another person;

(3) by means of the abuse or threatened abuse of law or legal process; or

(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.⁶

The Title 18 mandate against labor trafficking prohibits knowingly recruiting, harboring, transporting, providing, or obtaining a person for labor or services in violation of any provision of Chapter 77 of Title 18, including Section 1589.⁷ Neither the Title 22 nor the Title 18 definition requires that a victim of trafficking or forced labor cross an international border.

Trafficking Victims Protection Act Developments from a Workers' Rights Perspective

Since the passage of the Trafficking Victims Protection Act, statutory amendments, emerging case law, and other developments have made federal trafficking remedies increasingly relevant for victims of workplace abuses.

Trafficking Victims Protection Reauthorization Act of 2008. Amendments to the Trafficking Victims Protection Act in 2008 broadened the availability of civil remedies for victims of trafficking. While the Act previously made a private civil action available for violations of the prohibitions against trafficking, forced labor, or child

sex trafficking, the law now explicitly authorizes lawsuits based on a violation of any provision of Chapter 77 of Title 18.⁸ At least one court has found that civil liability extends to the Act's attempt and conspiracy provisions.⁹ The 2008 amendments allow victims to bring a lawsuit not only against those who directly victimized them but also

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against anyone who knowingly benefits financially from labor obtained in violation of Chapter 77 of Title 18.¹⁰ These provisions are notable for workers' advocates seeking to hold exploitative employers accountable.

The 2008 amendments also clarified the Act's coverage abroad. The amendments made explicit the Act's extraterritorial reach, allowing for criminal and civil liability for acts committed outside the United States.¹¹ Congress added a criminal prohibition against fraud in foreign labor contracting.¹² Congress subsequently added such fraud to the list of U visa qualifying criminal activities.¹³

The amendments defined the term "serious harm" in the Section 1589 forced-labor provision. A term often at the heart of forced-labor cases, "serious harm" is "any harm, whether physical or nonphysical, including psychological, financial, or repu-

tational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm."¹⁴ This amendment codified prior interpretations of the term, and courts

have interpreted the provision broadly.¹⁵ Congress likewise included an expansive definition of the term "abuse or threatened abuse of law or legal process."¹⁶

Congress added immigration protections that enhance some workers' ability to participate in civil lawsuits. For example, if domestic workers of diplomats or international organizations file a lawsuit based on violations of the Trafficking Victims Protection Act, the contract with their sponsoring employer, or any U.S. law governing their terms of employment, the worker must be permitted "to remain legally in the United States for time sufficient to fully and effectively participate in all legal proceedings related to such action" and given work authorization.¹⁷ The Act now also specifies that a trafficking victim who is granted an immigration protection called "Continued Presence"

8 *Id.* § 1595.

9 See *Nuñag-Tanedo v. East Baton Rouge Parish School Board*, 790 F. Supp. 2d 1134, 1147 (C.D. Cal. 2011) (allowing claims under 18 U.S.C. § 1594(a)-(b)).

10 18 U.S.C. §§ 1589(b), 1593A, 1595(a).

11 *Id.* § 1596.

12 *Id.* § 1351. Because this provision was not added to Chapter 77, there is no civil action under 18 U.S.C. § 1595.

13 *Violence Against Women Reauthorization Act of 2013*, Pub. L. No. 113-4, § 1222, 127 Stat. 54, 144. The U visa is a form of immigration protection available to individuals who are victims of certain forms of qualifying criminal activity and who meet other statutory criteria.

14 18 U.S.C. § 1589(c)(2).

15 See, e.g., *Tanedo v. East Baton Rouge Parish School Board*, No. 10-cv-01172, 2012 WL 5378742, at *3-4 (C.D. Cal. Aug. 27, 2012) (discussing *United States v. Dann*, 652 F.3d 1160, 1163-66 (9th Cir. 2011), and *United States v. Sou*, No. 09-cv-00345, 2011 WL 3207265, at *3-5 (D. Haw. July 26, 2011)).

16 18 U.S.C. § 1589(c)(1) ("[t]he use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action").

17 8 U.S.C. §§ 1375(c)(1)(A), (c)(2) (2013).

6 18 U.S.C. § 1589(a) (2013).

7 *Id.* § 1590.

must be allowed to retain that status pending a civil lawsuit under the Act.¹⁸

Labor-Trafficking Case Law Developments. A number of civil and criminal cases have clarified the breadth of what constitutes labor trafficking and have debunked common myths about this form of workplace abuse.

Workers need not be held in chains to prevail on claims under the Trafficking Victims Protection Act: “[T]he [Act] not only protects victims from the most heinous human trafficking crimes, but also various additional types of fraud and extortion leading to forced labor.”¹⁹ While trafficking victims are often isolated, a forced-labor victim may have the freedom to drive in the community or to the workplace.²⁰ Workers may be coerced to return to their traffickers after leaving.²¹ Labor trafficking often involves low or nonexistent wages, but some victims may be coerced to work even though they are being paid, albeit usually less than was promised.²² Employers’ economic threats—including threats to collect an alleged debt from a worker or threats not to pay a worker unless the worker continues to labor—also may constitute threats of serious harm.²³ Courts continue to find that threats of deportation, even standing alone, may con-

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stitute serious harm or threatened abuse of the legal process under Section 1589.²⁴ Threatened abuse of the legal process can extend to statements that traffickers argue are simply true (e.g., that the defendant must report a guest worker who leaves employment to immigration or that an undocumented worker may be deported) as long as the employer makes those threats for a purpose not intended by the law, that is, to force an individual to continue working.²⁵

While several recent cases have focused on the application of the Trafficking Victims Protection Act to conduct committed abroad, U.S. citizen workers can also be victims under the Act.²⁶ Victims can be subjected to trafficking or forced labor in violation of the Act by their family members.²⁷ The Sixth Circuit recently clarified, however, that parents could not

be held liable under the Act for coercing children to perform household chores.²⁸

In sum, courts have largely applied an expansive interpretation of the Trafficking Victims Protection Act and its forced-labor provision, holding that the statute reaches a diverse array of coercive labor relationships.

Legal Services Corporation Regulations Update.

The Trafficking Victims Protection Act allowed LSC-funded providers to serve victims of trafficking and certain family members as an exception to LSC’s alien-eligibility laws. For several years, LSC’s guidelines regarding such representation were embodied in program letters. The agency issued a 2014 final rule on alien eligibility specifying that LSC-funded organizations may offer any legal services to victims of a “severe form of trafficking,” as defined in 22 U.S.C. § 7105(b)(1)(C), and related legal services to “victims of trafficking,” as defined by any relevant law.²⁹ The rule requires that these victims be physically present in the United States or have initiated representation in the United States and that their victimization occurred in the United States or violated a law of the United States.³⁰ A recent program letter clarifies that an activity violates the law of the United States if the activity meets the definition of a severe form of trafficking set

24 See, e.g., *Antonatos v. Waraich*, No. 1:12-cv-01905 (D.S.C. Aug. 27, 2013); *Shukla v. Sharma*, No. 07-cv-2972 (E.D.N.Y. Feb. 14, 2012) (“The threat of deportation may itself constitute a threat sufficient to satisfy the second element of forced labor.”) (citing *United States v. Calimlim*, 538 F.3d 706, 713 (7th Cir. 2008)).

25 See, e.g., *Javier*, 2014 WL 3058456, at *6 (rejecting argument that threat to withdraw visa application was “legitimate”); *Ramos-Madrigal v. Mendiola Forestry Service*, 799 F. Supp. 2d 958, 960 (W.D. Ark. 2011) (threatening to report H-2B workers to immigration constitutes threatened abuse of legal process); *Ramos v. Hoyle*, No. 08-21809, 2008 WL 5381821, at *4 (S.D. Fla. Dec. 19, 2008) (immigration status threats constituted threatened abuse of legal process despite argument that statement was truthful).

26 See, e.g., *United States v. Kaufman*, 546 F.3d 1242 (10th Cir. 2008) (upholding Trafficking Victims Protection Act verdict involving forced labor of U.S. citizens with mental illness); *United States v. Callahan*, No. 13-cr-00339 (N.D. Ohio 2014) (guilty verdict in forced-labor case involving coercion of disabled U.S. citizen); Report and Recommendation on Signal’s Motion for Partial Summary Judgment at 7, *Samuel*, No. 1:13-cv-323 (analyzing extraterritorial reach of Act and finding “that transporting or recruiting of workers into the United States is a domestic—not extraterritorial—application of the [Act]”).

27 See, e.g., *Shuvalova v. Cunningham*, No. 10-cv-02159, 2010 U.S. Dist. LEXIS 135502, at *4 (N.D. Cal. Dec. 22, 2010) (trafficking by spouse).

28 See *United States v. Toviave*, 761 F.3d 623 (6th Cir. 2014).

29 45 C.F.R. §§ 1626.2(i), (k)(2), 1626.4(b)(1) (2015).

30 *Id.* §§ 1628.4(c)(1), (c)(2)(ii); *Restrictions on Legal Assistance to Aliens*, 79 Fed. Reg. 21861, 21866 (April 18, 2014) (to be codified at 45 C.F.R. pt. 1626) (once services commence, departure from United States does not necessarily render client ineligible). Victims of trafficking who also qualify for a U visa or who are victims of sexual assault need not meet this physical-presence requirement (45 C.F.R. § 1626.4(c)(2)(i)).

18 22 U.S.C. § 7105(c)(3)(A)(iii); see also Neville & Martinez, *supra* note 2, at 562.

19 *Nuñag-Tanedo*, 790 F. Supp. 2d at 1145.

20 See, e.g., *United States v. Bradley*, 390 F.3d 145, 149 (1st Cir. 2004); Report and Recommendation on Signal’s Motion for Partial Summary Judgment at 10, *Samuel v. Signal International Limited Liability Company*, No. 1:13-cv-323 (E.D. Tex. Jan. 23, 2015).

21 *United States v. Farrell*, 563 F.3d 364, 375 (8th Cir. 2009).

22 See, e.g., *Bradley*, 390 F.3d at 148 (upholding forced-labor verdict where workers were paid \$7 to \$8 an hour); *Indictment, United States v. Kalu*, No. 12-cr-00106 (D. Colo. March 1, 2012) (indictment leading to guilty verdict for trafficking where workers were paid less than promised).

23 See, e.g., *Dann*, 652 F.3d at 1171 (failure to pay immigrant worker, under certain circumstances, may be “sufficiently serious to compel [victim] to continue working”); *David v. Signal*, No. 8-cv-1220, 2014 WL 4063875, at *7 (E.D. La. Aug. 12, 2014) (“Courts have found that threats of being in debt and being unable to repay those debts constitutes ‘serious harm’”); *Javier v. Beck*, No. 13-cv-2926, 2014 WL 3058456, at *6 (S.D.N.Y. July 3, 2014).



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forth in the Trafficking Victims Protection Act or the definition of trafficking found in 45 C.F.R. § 1626.2(k).³¹ LSC-funded organizations' ability to offer legal services to victims of trafficking and certain family members of trafficking victims expands the availability of legal representation to exploited noncitizen workers.

Advancing Workers' Rights Through the Trafficking Victims Protection Act

Workers' rights advocates are increasingly turning to the Trafficking Victims Protection Act to protect and make workplace-exploitation victims whole. Trafficking protections hold significant promise, although limitations in the law and practical challenges in its application remain.

Benefits of the Trafficking Victims Protection Act. Federal civil trafficking claims

31 [Program Letter 14-3](#), Ronald S. Flagg, General Counsel and Vice President for Legal Affairs, Legal Services Corporation, Assessing Eligibility of Aliens Under 45 C.F.R. § 1626.4(c)(1) (Oct. 29, 2014).

may have advantages over or complement traditional employment claims. The Trafficking Victims Protection Act's statute of limitations is ten years, far longer than the limitations periods for claims arising under the Fair Labor Standards Act, Title VII, or many state contract and tort laws.³² The various exemptions or exceptions to coverage under state and federal wage-and-hour laws do not apply to civil trafficking or forced-labor claims, and workers may recover unpaid minimum or prevailing wages under the Trafficking Victims Protection Act.³³ Workers may be able to recover far more than unpaid wages pursuant to the Trafficking Victims Protection Act; several

32 [18 U.S.C. § 1595\(c\)](#). See *Cruz v. Maypa*, No. 13-2363 (4th Cir. Dec. 1, 2014) (“[T]he ten-year statute of limitations applies to any claims that were unexpired at the time of enactment [of 18 U.S.C. § 1595(c)].”).

33 See, e.g., *Francisco v. Susano*, No. 12-1376 (10th Cir. May 28, 2013) (upholding use of prevailing wage rate to calculate compensatory damages for forced labor because “forced labor addressed by the [Trafficking Victims Protection Act] is a categorically different wrong” than failure to pay minimum wage); *Shuvalova*, 2010 WL 5387770, at *4–5 (basing Trafficking Victims Protection Act wage damages on federal minimum wage but dismissing Fair Labor Standards Act claims).

courts have awarded and upheld large damages awards in these cases.³⁴ Two circuits have confirmed that the Trafficking Victims Protection Act allows for punitive damages.³⁵ Violations of the Trafficking Victims Protection Act also may form the basis for claims under the Racketeer Influenced and Corrupt Organizations Act, which allows recovery of treble damages.³⁶

The Trafficking Victims Protection Act's immigration remedies are among the strongest worker protections in the statute. While some cases of U.S. citizens subjected to labor trafficking have been documented, a majority of reported labor-trafficking cases in the United States involve noncitizens. The Act's immigration remedies can help these victims overcome retaliation fears that often prevent them from holding exploitative employers accountable. Acquiring legal status can transform a worker's life and reduce the risk of worker revictimization. Noncitizen victims of a “severe form of trafficking in persons” are eligible for T visas, a generous form of immigration relief that can lead to permanent residency and citizenship.³⁷ T visas are available to victims who collaborate with law enforcement, are in the United States on account of their trafficking, and would suffer extreme hardship upon returning to their home countries.³⁸ Workers who have been subjected to trafficking, forced labor, fraud in foreign labor contracting, or similar forms of criminal workplace abuse

34 See, e.g., *Doe v. Howard*, No. 11-cv-1105 (E.D. Va. Sept. 4, 2012) (award of \$500 per day for emotional distress from forced labor in addition to punitive damages and wage restitution); *Gurung v. Malhotra*, 851 F. Supp. 2d 583, 587–88, 595 (S.D.N.Y. 2012) (awarding \$500,000 in damages for emotional distress resulting from forced labor and \$300,000 in punitive damages); *Shukla*, No. 07-cv-2972 (upholding compensatory damages award of \$800 per day and \$1 million punitive damages award for violations of Act).

35 See *Francisco*, No. 12-1376; *Ditullio v. Boehm*, 662 F.3d 1091, 1096 (9th Cir. 2011).

36 [18 U.S.C. §§ 1961\(1\), 1964\(c\)](#).

37 See [22 U.S.C. § 7102\(a\)](#); [8 C.F.R. § 214.11\(a\)](#) (2015).

38 *Neville & Martinez*, *supra* note 2, at 563.

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may also be eligible for U visas, which can also lead to permanent residency.³⁹ Unlike the T visa, the U visa requires that applicants obtain a certification from a law enforcement agency. U visa applicants must also demonstrate that they have suffered “substantial physical or mental abuse” as a result of the criminal activity, and this can be a high threshold. While the annual U visa cap is hit earlier each fiscal year, the number of T visa applications has never come close to the annual cap of 5,000, and T visas are generally processed more quickly than U visas. As detailed below, T visa applicants also are eligible for additional social services and federal benefits. In general the T visa is preferable for a worker who can make a trafficking claim.⁴⁰

Labor-trafficking cases may draw increased attention from agencies charged with enforcing federal employment laws. The U.S. Department of Labor and the U.S. Equal Employment Opportunity Commission (EEOC) have in recent years prioritized cases involving trafficking, and both agencies have formal U visa certification procedures for crimes including involuntary servitude and trafficking.⁴¹ While the EEOC enforces only Title VII of the Civil Rights Act, the agency has successfully litigated several cases on

behalf of human trafficking victims.⁴² The Labor Department has participated in criminal trafficking investigations as well.⁴³

While the U.S. Department of Justice has historically prosecuted more sex-trafficking than labor-trafficking cases, it has prioritized labor trafficking in recent years with some success.⁴⁴ The Justice Department created a unit in 2007 to focus on trafficking cases. While the total number remains relatively small, the unit doubled the number of labor-trafficking prosecutions between 2009 and 2011, compared to the prior three years.⁴⁵ Where a defendant is found guilty of violating the Trafficking Victims Protection Act, criminal restitution for victims is mandatory.⁴⁶ A criminal restitution award does not preclude a civil lawsuit.⁴⁷

Services and benefits available to trafficking victims support workers as they leave

42 See, e.g., *EEOC v. Global Horizons Incorporated*, No. 11-cv-00257 (D. Haw. Dec. 19, 2014); *EEOC v. Hill Country Farms Incorporated*, 899 F. Supp. 2d 827 (S.D. Iowa 2012), *aff'd*, No. 13-2796 (8th Cir. 2014); *Chellen v. John Pickle Company*, 434 F. Supp. 2d 1069 (N.D. Okla. 2006); Press Release, U.S. Equal Employment Opportunity Commission, *EEOC Sues Marine Services Company for Labor Trafficking, Discrimination* (April 20, 2011).

43 See, e.g., Press Release, U.S. Attorney's Office, District of Colorado, *Highlands Ranch Man Found Guilty of Human Trafficking and Other Offenses* (July 1, 2013) (U.S. Department of Labor Office of Inspector General participated in investigation).

44 See, e.g., *Dann*, 652 F.3d 1160, 1171; *Callahan*, No. 13-cr-00339; Press Release, U.S. Attorney's Office, District of Colorado, *supra* note 43.

45 U.S. Department of Justice, *Human Trafficking Prosecution Unit: Overview* (n.d.).

46 18 U.S.C. § 1593(a). But a recent study finds that less than half of guilty pleas and convictions under the Act lead to court-ordered victim restitution (see *Human Trafficking Pro Bono Legal Center & WilmerHale, When “Mandatory” Does Not Mean Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking Cases in the United States* 4 (n.d.)).

47 See *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 115–16 (D.D.C. 2012).

abusive employment situations. Noncitizen victims who receive “certification” from the U.S. Department of Health and Human Services (HHS) are eligible for the federal public benefits available to recently arrived refugees. HHS most commonly issues certifications for adult victims upon the U.S. Department of Homeland Security's issuance of a T visa or Continued Presence to a victim.⁴⁸ The most vulnerable and critical period for victims, however, is often immediately following departure from a trafficking situation and prior to acquiring immigration status. HHS funds case management services for trafficking victims while they are seeking certification. In parts of the country, service providers are available to help potential trafficking victims access housing, medical and psychological services, and even direct financial support in this “precertified” period, while legal proceedings related to their trafficking move forward.

Challenges and Limitations of the Trafficking Victims Protection Act.

Despite the Trafficking Victims Protection Act's potential for protecting and empowering vulnerable, low-wage workers, its promise has limits.

First, the Act does not protect workers against all extreme forms of workplace exploitation. It prohibits a particular kind of coerced labor. A worker could be severely underpaid, subjected to extremely dangerous working conditions, or even suffer physical or sexual assaults at work but not meet the definition of forced labor or trafficking. Ironically the most vulnerable and desperate workers may be the least able to articulate that an employer's coercive actions or scheme—as opposed

39 See Eunice Hyunhye Cho, *U Visa Protections for Immigrant Victims of Workplace Crimes*, 46 CLEARINGHOUSE REVIEW 122 (July–Aug. 2012).

40 Because of the T visa requirement that a victim be present in the United States “on account of” trafficking, a U visa may be the only viable form of relief for a victim who left the United States after escaping the trafficking.

41 The U.S. Department of Labor will begin issuing T visa certifications in 2015 as well (U.S. Department of Labor, *Fact Sheet: The Department of Labor's Wage and Hour Division Will Expand Its Support of Victims of Human Trafficking and Other Crimes Seeking Immigration Relief from DHS* (n.d.)).

48 22 U.S.C. § 7105(b)(1)(E); Carmel Clay-Thompson, Acting Director, Office of Refugee Resettlement, U.S. Department of Health and Human Services, *State Letter #01-13, The Trafficking Victims Protection Act of 2000* (May 3, 2001).

to impoverished circumstances or lack of options—caused them to continue to labor in an exploitative relationship.

Second, even when a worker can articulate a trafficking claim, a number of practical obstacles remain. While the Act offers some advantages to litigants, workers who sue must contend with the challenges that other low-wage worker plaintiffs face. Lawsuits can be slow and costly, and traffickers may be insolvent. Trafficking victims may face additional challenges in participating in civil or criminal proceedings. Trafficking defendants may leave the country. Victims may be traumatized and fearful, and unfamiliar with and distrustful of U.S. legal systems. While the Act's immigration remedies may protect workers from threats of deportation, victims may still face other forms of retaliation. For example, the U.S. legal system is poorly equipped to protect against traffickers' extraterritorial retaliation, which may include threats of or actual violence against family members in home countries, blacklisting friends and family from temporary worker opportunities, or devastating reputational assaults.⁴⁹

Third, the intersection of criminal and civil trafficking proceedings can complicate a victim's access to relief. The Act requires a stay of civil actions pending the resolution of "any criminal action arising out of the same occurrence in which the claimant is the victim."⁵⁰ Some courts have issued indefinite stays of all civil claims pending a criminal trafficking investigation, and this can delay victims' ability to vindicate their rights under the Trafficking Victims Protection Act

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and other workplace laws.⁵¹ Defending against a criminal prosecution may also deplete a trafficker's financial resources.

Fourth, collaboration with law enforcement, which is generally a prerequisite to seeking immigration relief under the Act and can be necessary to ensuring a victim's safety, can be fraught, particularly for workers who fear deportation or whose traffickers' coercive scheme included threats to report them to law enforcement. While there are immigration protections for trafficking victims, law enforcement agencies may not concur in an advocate's assessment that an exploited worker is a trafficking victim. Defendants are increasingly seeking discovery on a victim's immigration status and using any related visa applications to attack the victim's motive and credibility.⁵² For this reason, some law enforcement agencies may be reluctant to issue visa certifications prior to the conclusion of criminal proceedings. But a delay in access to these protections imposes extreme personal hardship on victims and can impede their full participation as witnesses in civil or criminal proceedings.

Fifth, there are limits to the Act's immigration protections. While the Department of Homeland Security generally adjudicates T visas more quickly than U visas, processing times for both visas are lengthy, and vic-

tims remain extraordinarily vulnerable while applications are pending. The mere filing of a T or U visa application does not confer lawful status or work authorization. Furthermore, victims who seek T visas are not allowed to leave the United States prior to filing or pending their application; this can be difficult for temporary workers and other victims accustomed to seasonal migration between their home countries and the United States. The Department of Homeland Security's exclusion of economic hardship in its regulatory definition of the "extreme hardship" requirement in the T visa statute creates needless barriers to victims' access to this protection, particularly in light of the extreme poverty that frequently underlies vulnerability to trafficking victimization.⁵³

The Act's immigration protections also are underutilized. Between 2008 and 2013 the Department of Homeland Security received only 4,108 T visa applications, even though the Act allows for 5,000 T visas per year.⁵⁴ Victims of trafficking rarely self-identify, and fears of retaliation and law enforcement often impede them from reporting their victimization. Some law enforcement agents and frontline service providers who are most likely to come into contact with victims have misconceptions about trafficking.

Employment-law practitioners must coordinate representation on civil lawsuits or other matters carefully with immigration attorneys if the worker is represented separately on this matter. For example, employment attorneys must avoid language in settlement agreements, such as confidentiality or nondisparagement clauses, that could preclude the worker

51 *Lunkes v. Yannai*, 882 F. Supp. 2d 545, 550 (S.D.N.Y. 2012); *Antonio-Morales v. Bimbo's Best Produce Incorporated*, No. 8-cv-5105, 2009 WL 1591172, at *1-2 (E.D. La. April 20, 2009).

52 See, e.g., *EEOC v. Global Horizons Incorporated*, No. CV-11-3045 (E.D. Wash. July 31, 2013); *David v. Signal International Limited Liability Company*, No. 08-1220 (E.D. La. Nov. 5, 2010).

53 See 8 C.F.R. § 214.11(i)(1). However, financial harm can be relevant to the likelihood of revictimization—a factor the U.S. Department of Homeland Security considers.

54 [U.S. Citizenship and Immigration Services, Number of I-914 Applications for T Nonimmigrant Status \(Victims of Severe Forms of Trafficking and Family Members\) by Fiscal Year, Quarter, and Case Status 2008–2014](#) (Sept. 2014).

49 Victims can apply for immigration protections for certain family members, but applications take time, and not all relatives qualify.

50 [18 U.S.C. § 1595\(b\)\(1\)](#).

from continuing to cooperate with a law enforcement investigation (a requirement for both U and T visas). Coordination is critical because workers may submit sworn statements as part of both their immigration and their civil cases.

Sixth, the Act's provisions for victims' services cannot easily be implemented. In some locations, especially in smaller cities and rural areas, few service providers have the capacity to serve trafficking victims or help them access the federal benefits to which they are entitled. Even those service providers willing and able to serve trafficking victims of diverse linguistic and cultural backgrounds may be unfamiliar with the needs of male labor-trafficking victims.

The Trafficking Victims Protection Act does not protect against all forms of extreme workplace exploitation, and even those workers subjected to forced labor or trafficking face a number of challenges in accessing the robust victim protections that Congress contemplated at the Act's passage. However, the Act's criminal and civil prohibitions reach a growing number of exploitative labor relationships, and its immigration protections and civil relief can transform victims' lives. The Act, with its powerful tools for employment practitioners serving vulnerable, low-wage clients, has proven to be significantly protective for workers.

new attorneys. Her work lives on through the vibrant and growing trafficking advocacy community she helped create.

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