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Myths Meet Reality: How We Are Not Fighting Trafficking or Supporting Trafficking Survivors

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I. MYTHS, PANICS, AND THE SHAPING OF ANTI-TRAFFICKING POLICY

We are sixteen years into "fighting" trafficking in the United States, and the earliest mistakes, misconceptions, and myths still guide policy, media storylines, and the public's understanding of human trafficking. This essay addresses how these policies have: (1) left workers not designated as "trafficked" under the Trafficking Victims Protection Act (TVPA)¹ to continue working unprotected, in a kind of labor purgatory; (2) insufficiently helped migrant workers who in fact did qualify for trafficking assistance; and (3) harmed all workers—foreign nationals and U.S. citizens—in the sex sector. True innovations in fighting trafficking must seek to protect all low-wage migrant workers, not just the most exploited. They must not fuel panics that equate all forms of sex work with trafficking. And they must offer more varied forms of assistance, over longer periods of time, to trafficking survivors.

The U.S. government defines human trafficking as recruiting, harboring, transporting, providing, or obtaining a person to work under conditions of "force, fraud, or coercion."² Trafficking occurs in all labor sectors, but since the enactment of the TVPA in 2000, trafficking into all forms of labor often has been conflated with trafficking into just one: the sex sector. Since the early years of the TVPA's implementation, trafficking has become synonymous with prostitution.³ It has been

- 2. Section 7102(9) of the TVPA defines "severe forms of trafficking in persons" as follows:
 - (A) [S]ex 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.

22 U.S.C. § 7102(9).

3. The Bush administration launched an all-out assault on sex work as the way to end trafficking. The United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, created under the Bush administration, included a provision (commonly referred to as the "Anti-Prostitution Pledge") requiring potential grantees to sign a pledge stating that they opposed sex trafficking and prostitution. Additionally, the Act itself stated that dispersed funds could not be used "to promote or advocate the legalization or practice of prostitution or sex trafficking." United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, Pub. L. No. 108-25, § 301(e), 117 Stat. 711, 733-34 (codified as amended at 22 U.S.C. §§ 7601-7682 (2012)); see also Cheryl Wetzstein, Supreme Court Strikes Down Obama-backed 'Prostitution Pledge' in AIDS Funding, WASH. TIMES (June 20, 2013), http:// www.washingtontimes.com/news/2013/jun/20/supreme-court-nixes-prostitution-pledge-aids-funds/?page=all. This policy was later found unconstitutional by the U.S. Supreme Court on the grounds that it violated the First Amendment. Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc., 133 S. Ct. 2321, 2332 (2013).

Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified at 22 U.S.C. §§ 7101–7112 (2015)). The passage of the TVPA in 2000 kicked off anti-trafficking efforts in the United States. Since 2000, Congress has reauthorized the TVPA four times: in 2003, 2005, 2008, and 2013. U.S. Laws and Legislation on Trafficking in Persons, U.S. DEP'T ST., www.state.gov/j/tip/laws (last visited Apr. 20, 2016). Three key aspects of federal government activity are the cornerstones of the U.S. effort to combat trafficking in persons: prosecution, protection, and prevention (commonly known as the "3 Ps"). See The 3Ps: Prosecution, Protection, and Prevention, U.S. DEP'T ST. (June 20, 2014), http:// www.state.gov/j/tip/rls/fs/2014/233736.htm.

entangled with ideological claims passed off as data, a powerful anti-prostitution lobby, and pop-up non-profit organizations lacking any experience with refugees, migrants, or worker exploitation. Statistics that defy logic have been repeated over and over—such as the fantastical expected deluge of tens of thousands of trafficked women to meet the demand of sex-starved World Cup and Super Bowl fans.⁴ During the run up to the 2006 World Cup, media stories claimed that 40,000 women would be trafficked to Germany.⁵ Likewise, before the 2011 Super Bowl in Dallas, Police Sergeant Louis Felini predicted that as many as 100,000 women would be trafficked to Dallas.⁶ A similar panic took place during the 2014 Super Bowl in New Jersey.⁷

Critically, anti-prostitution and anti-migrant policies have thwarted, contradicted, and undone the effectiveness of anti-trafficking efforts. Anti-prostitution activists have stretched anti-trafficking campaigns far beyond the goal of ending forced sexual labor. "Fighting trafficking" became a call to arms to eliminate all forms of commercial sexual transactions. Many governmental and non-governmental organizations (NGOs) have utilized so-called end demand policies in an attempt to accomplish this goal.⁸ Regardless of the methods used, the "rescue" of sex workers, both U.S. citizens and foreign nationals who choose to work in the sex trade, in the name of "fighting trafficking" has resulted in their incarceration and deportation.⁹ These "coercive rescues" render workers even more vulnerable and unlikely to report actual instances of exploitation.¹⁰

With this hyper-scrutiny of the sex sector, workers who need assistance and protections in other labor sectors—such as agriculture, construction, child and elder

- 4. Julie Ham, Glob. All. Against Traffic in Women, What's the Cost of a Rumour? A Guide to Sorting out the Myths and the Facts About Sporting Events and Trafficking 8 (2011).
- 5. Id.; see also Mark Landler, World Cup Brings Little Pleasure to German Brothels, N.Y. TIMES (July 3, 2006), http://www.nytimes.com/2006/07/03/world/europe/03berlin.html?_r=0.
- 6. Pete Kotz, The Super Bowl Prostitute Myth: 100,000 Hookers Won't be Showing up in Dallas, DALL. OBSERVER (Jan. 27, 2011, 4:00 AM), http://www.dallasobserver.com/news/the-super-bowl-prostitute-myth-100-000-hookers-wont-be-showing-up-in-dallas-6424288. Kotz's news organization had phoned police sergeants in cities that had hosted past Super Bowls. The police sergeant in Phoenix, which had hosted the 2008 Super Bowl, said his vice officers "didn't notice any sort of glitch in the number of prostitution arrests leading up to the Super Bowl." Id. A police spokeswoman for Tampa, host of the 2009 Super Bowl, also reported that, despite their special operations on the sex trade, "[t]he arrests were not a lot a higher. They were almost the same." Id.
- 7. Kate Mogulescu, *The Super Bowl and Sex Trafficking*, N.Y. TIMES (Jan. 31, 2014), http://www.nytimes. com/2014/02/01/opinion/the-super-bowl-of-sex-trafficking.html.
- 8. These policies work to end demand for sexual exploitation. One method has been use of so-called "John Schools," educational workshops typically offered to defendants who have no criminal records and are caught soliciting an adult prostitute. The workshops often focus on the psychological and medical risks of engaging with prostitutes and aim to help defendants acknowledge that prostitution is not a victimless crime. See Stephanie Chen, John Schools' Try to Change Attitudes About Paid Sex, CNN (Aug. 28, 2009), http://www.cnn.com/2009/CRIME/08/27/tennessee.john.school/index.html?eref=rss_us.
- 9. See Melissa Ditmore, Sex Workers Project, The Use of Raids to Fight Trafficking in Persons 7–9 (2009).
- 10. See Denise Brennan, Life Interrupted: Trafficking into Forced Labor in the United States 38–39, 72–73 (2014).

care, and manufacturing—have been left out in the cold. Of course, overlooking exploitation in labor sectors that undergird the U.S. economy sidesteps the thorny issue of expanding protections in immigration and labor law.¹¹ The failure to enforce labor laws and to protect the rights of all workers—including undocumented migrants and those working in the sex sector—creates the conditions that allow forced labor to flourish and employers to exploit with impunity.

As an anthropologist, I spent nearly ten years conducting ethnographic field research with migrant workers who were exploited in low-wage labor sectors—some of whom qualified as "trafficked" under the TVPA and were issued trafficking visas ("T visas"), and some of whom did not.¹² My research, which resulted in a book, *Life Interrupted: Trafficking into Forced Labor in the United States*, takes as a starting point that trafficking into forced labor is intimately tied up with workers' legal status.¹³ Since individuals designated "trafficked" are just one small part of a much larger story of everyday exploitation, I situate trafficking into forced labor on one end of a continuum of abuse of migrant workers. The focus on the most extreme cases of exploitation overlooks the normalization of migrant abuse across low-wage sectors as "part of doing business." Trafficking may not be all around us, but exploitation in labor sectors like agriculture and domestic work is. While exploitation in these labor sectors helps sustain the U.S. economy, only the most egregiously affected are assisted, and so the structural inequities continue.

I argue that rights-based, peer-to-peer outreach is at the forefront of fighting trafficking. The current deportation regime silences workers from reporting a range of abuses.¹⁴ Rescinding state and local-level legislation that promotes racial profiling

13. BRENNAN, supra note 10.

^{11.} See Jennifer M. Chacón, Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking, 74 FORDHAM L. REV. 2977 (2006).

^{12.} To be eligible for the T nonimmigrant status (commonly known as the T visa), an applicant must be a "victim of trafficking"; be "in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking"; "[c]omply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking"; demonstrate that she would suffer "extreme hardship involving unusual and severe harm" if she were "removed from the United States"; and be "admissible to the United States." Victims of Human Trafficking: T Nonimmigrant Status, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/humanitarian/ victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status (last updated Oct. 3, 2011). Under the TVPA, an individual who has been certified as a victim of severe trafficking by the Department of Health and Human Services "shall be eligible for benefits and services under any Federal or State program or activity . . . to the same extent . . . as a refugee" 22 U.S.C. § 7105(b)(1)(A) (2012). Certification cannot be obtained until a T visa application is approved or the trafficked person is granted "Continued Presence." U.S. DEP'T OF HEALTH & HUMAN SERVS., SERVICES Available to Victims of Human Trafficking: A Resource Guide for Social Service Providers 8 (2012). Law enforcement agencies sponsor the Continued Presence, which "allows the victim to remain in the United States during the course of an investigation or prosecution as well as obtain an Employment Authorization Document." Id. at 9.

Denise Brennan, Migrants at Risk: How U.S. Policies Facilitate Human Trafficking, DISSENT MAG. (Mar. 24, 2014), https://www.dissentmagazine.org/online_articles/migrants-at-risk-how-u-s-policies-facilitate-human-trafficking.

(such as section 287(g) agreements)¹⁵ is essential to preventing trafficking into forced labor. Otherwise, we will continue to offer protections to an exceptional few while holding out handcuffs to the many. The numbers say it all: fewer than 10,000 individuals have been designated "trafficked," while twelve million individuals labor in the shadows.¹⁶

II. THE REALITY: LIFE AFTER TRAFFICKING INTO FORCED LABOR

Building a new life in a new country is difficult in the best of circumstances. But what if one's introduction to the United States is through forced labor? How do individuals who were trafficked into forced labor set up their households, care for their children (whether in the United States or at a distance), find decent work, take classes, make friends, fall in love, and spend their free time?

Anthropologist Veena Das identified eloquently the challenge for those who have suffered through brutality as not merely to survive, but also to generate "a renewed capability to address the future."¹⁷ The formerly trafficked persons I met insisted that coerced labor had changed them but does not define them.¹⁸ Instead, they look forward to what lies ahead and try not to dwell on past experiences. As they once again make decisions in their lives, the smallest of these, such as deciding what to cook for dinner, can propel them forward. Solving immediate material needs—housing, work, health care—while also putting plans into place for the future is a tall order. Until they receive their T visas, and eventually their green cards, they remain in legal limbo and often emotional limbo as well. A physician in Los Angeles who cares for patients who have been trafficked into forced labor explains that her

^{15.} Agreements pursuant to section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act deputize local law enforcement to enforce federal immigration laws. These agreements have been widely criticized, including by the Police Foundation. See ANITA KHASHU, POLICE FOUND., THE ROLE OF LOCAL POLICE: STRIKING A BALANCE BETWEEN IMMIGRATION ENFORCEMENT AND CIVIL LIBERTIES vii, xii, 30–35 (2009).

^{16.} The total number of T visas issued to date is not printed anywhere but can be calculated by adding up figures from different U.S. government sources. Only by adding up the number of T visas approved from 2002 to 2011 in a chart in the Attorney General's Annual Report to Congress can one find the number of T visas issued through 2011. This figure amounted to 4,798 T visas granted to victims and immediate families of victims. U.S DEP'T oF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 56 (2011). The 2013 Trafficking in Persons (TIP) Report noted that 674 T visas were granted to victims and 758 to immediate family members of victims in 2012. The total number of T visas issued through 2012 was 6,230. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2013, at 384 (2013). The 2015 TIP Report noted that through 2014, T visas were granted to 613 victims and 788 immediate family members of victims, a decrease from 848 and 975, respectively, from 2013. This put the total number of T visas issued through 2014 at 9,454. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JULY 2015, at 355 (2015). These figures refer to the T visas issued thus far and not those in the pipeline waiting to be processed.

^{17.} Veena Das & Arthur Kleinman, *Introduction* to REMAKING A WORLD: VIOLENCE, SOCIAL SUFFERING, AND RECOVERY 1, 4 (Veena Das et al. eds., 2001).

^{18.} Hence the title of my book, Life Interrupted: Trafficking into Forced Labor in the United States. Brennan, *supra* note 10.

trafficking patients only begin to relax when their legal situation is more certain. Only then can "they sleep and eat and finally find some relief."

From a strictly legal perspective, it would seem that being classified as "trafficked" under the TVPA would change everything. Indeed, the former lawbreaker who receives a trafficking designation and a T visa is delivered into a state of immigration grace. Despite this legal relief, along with forms of social assistance much like refugees receive, these formerly trafficked persons tread water in poor neighborhoods and low-wage jobs much like their migrant neighbors, coworkers, and friends. Like others trying to get ahead on poverty wages, they face setback after setback, but with limited safety nets. They often know no one in the United States and must build all new social networks from scratch.

Assistance through the trafficking care regime is shabby. The lucky few who receive T visas are largely on their own after approximately one year, when the initial government assistance runs out. Chronic financial insecurity characterizes formerly trafficked persons' lives in the United States, not only in the short term but also for years into resettlement. Life after forced labor in the United States is life on the margins.

Carmen,¹⁹ who had been trafficked into domestic work, was frustrated that she could not travel outside of the United States to see her ailing father in Ecuador while she waited for her green card. She noted that "The T visa does not really give you much." Social workers resettling trafficking clients throughout the United States resoundingly agree with Carmen's assessment and believe that the timetable for government benefits is completely out of sync with their clients' needs, particularly in the long term. They point out that without more benefits, the current program is creating what one social worker in California called "a new subset of poor immigrant workers." As the former Director of Anti-Trafficking Programs at the largest service provider in New York City has emphasized, "[f]inancial support is awarded and then stopped . . . seemingly with no consideration to what happens to the victims and ultimately, to the case. The timelines for service provision put forth by governmentfunded programs do not match the reality of a survivor's life."²⁰ We are not giving out enough T visas, and we are letting the exceptional few who receive them live on poverty's edge.²¹

^{19.} Interviewed by the author during research for her book. *Id.* at 2, 17.

^{20.} Flortie Burke, *Notes from the Field*, *in* Woodrow Wilson International Center for Scholars, Occasional Paper Series: Rethinking Human "Trafficking" 22, 23 (2010).

^{21.} Fewer than 10,000 T visas have been issued since the passage of the TVPA in 2000. See supra note 16. This is particularly low in light of the fact that the TVPA allows 5,000 T visas to be issued per year. ANTHONY M. DESTEFANO, THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED 42, 44 (2007). The scope of trafficking has long been in dispute and the U.S. government's estimates have fluctuated significantly—revising its own estimate in 2003 downward from 50,000 to 18,000–20,000, and to 14,500–17,500 in 2004. HEATHER J. CLAWSON ET AL., CALIBER, ESTIMATING HUMAN TRAFFICKING INTO THE UNITED STATES: DEVELOPMENT OF A METHODOLOGY 2–4 (2006), https://www.ncjrs.gov/pdffiles1/nij/grants/215475.pdf. The original figure of 50,000 has been widely discredited. See Ronald Weitzer, Sex Trafficking and the Sex Industry: The Need for Evidence-Based Theory and Legislation, 101 J. CRIM. L. & CRIMINOLOGY 1337, 1349–52 (2011).

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Eventually, a formerly trafficked person's choices become less informed by their legal status, and more informed by their life experiences, education, and skills. Local factors, such as the rising cost of housing, social networks, and potential job opportunities, also begin to inform their decisions. The outside world only knows them as new migrants, not as trafficked persons. Short of becoming locally—or nationally—known anti-trafficking activists and publically referencing past exploitation (for example, in legislative venues), formerly trafficked persons look, sound, and struggle like their migrant friends, coworkers, and neighbors. These individuals rarely discuss their trafficking past, or their current trafficking status. When they do choose to reference their past, it is generally done during private moments with those they trust.

Social workers and attorneys throughout the country have expressed concern that the deck is stacked against their trafficking clients. While a variety of programs around the world that assist trafficked persons use the language of recovery or restoration, this language of "healing" pathologizes a time of economic uncertainty and legal limbo. To live more securely and to make their decision to stay in the United States worthwhile, formerly trafficked persons need legal assistance and steady work that pays well.

Most trafficking survivors, however, have never met another survivor.²² Trafficking survivors thus often navigate the legal process in a vacuum. Their isolation sharply contrasts with the kind of knowledge and assistance that circulates among co-ethnics in migrant and refugee communities.²³ They do not tell their families back home, or their new friends in the United States, about their experience in forced labor. They often remain silent about their past because trust in others has been profoundly ruptured. Trusting others again is a central theme in formerly trafficked persons' resettlement.²⁴ Retreating from their own co-ethnic communities' gossip, a group of friends who met at a shelter in California dedicated to housing trafficking survivors asserted that they felt they only could trust one another. Though from different backgrounds, this group felt that because of their shared experiences, they had more in common with each other than with those who have not experienced forced labor. "Your own community can judge you. They blame you. They say you knew you were here illegally—and look what happened! They make it your fault."

^{22.} In my interviews with formerly trafficked persons, they explained that they had not known about the antitrafficking legal and care regime while they were in a situation of forced labor. Rather, they first met their social workers and attorneys through law enforcement (if law enforcement had been involved in helping them exit their situation of forced labor). Other clients exited forced labor on their own, without law enforcement's involvement. Only when those clients sought legal advice or social assistance at a communitybased organization did they learn that their level of coerced labor may qualify them for a T visa.

^{23.} Anthroplogist Aihwa Ong writes about the knowledge that traveled through refugee camps on how to be a desirable and compliant refugee worthy of resettlement to the United States. *See generally* AIHWA ONG, BUDDHA IS HIDING: REFUGEES, CITIZENSHIP, THE NEW AMERICA (2003).

^{24.} For an illuminating discussion about refugee resettlement and the process by which someone who was duped and abused begins to trust others again, as well as the role community support plays in that process, see MISTRUSTING REFUGEES (E. Valentine Daniel & John Chr. Knudsen, eds., 1995).

Thus, unlike other migrants who negotiate living with members of home communities that are reconstituted in the United States, formerly trafficked persons try to feel at home while confronting struggles that arise from an absence of community.²⁵ Successful resettlement is traditionally thought of in terms of "stability" and "well-being." What we should also include in the idea of successful resettlement is the sense of belonging or place, or what I refer to as "home sense." For formerly trafficked people, gaining this "home sense" is not easily done—especially because the idea of home implies sharing one's life with others. These individuals face extra hurdles building a new home without immediate ties to, and economic and emotional benefits from, the ongoing rhythms and rituals of an existing community.

III. YEARS AFTER TRAFFICKING: "TRAFFICKING PLUS"

In my field research, I interviewed a number of men and women who were among the first recipients of T visas. They now have their green cards and can finally travel home to see their families. Carmen, for example, has traveled to Ecuador to see her father. But economic security in the United States is fragile; a funeral back home or a medical emergency can wipe out any savings put aside for a down payment on an apartment in a safer neighborhood or class tuition. An attorney in New York City describes her clients' economic precarity as "trafficking plus." Their insecurity is often built into particular forms of low-wage work. Working in housekeeping in a swanky midtown hotel, Carmen regularly has her hours cut during the low-tourist seasons. Childcare workers who work in private homes lose their jobs when employers move or the employers' children begin elementary school. Those working in construction often do not have steady work.

Coerced labor shapes formerly trafficked persons' sense of self and of their futures. Many tell of previous work experiences—before their experiences in forced labor—that occurred because of a general sense that employers were untouchable. Maria, a child-care provider from the Philippines, had virtually no opportunities to make demands of her past employers. She now has requirements, such as vacation and overtime pay, that must be agreed upon before she begins working. She began asserting her rights soon after her exit from forced labor, when the family she had been working for did not pay her for three weeks while they visited their home country in northern Europe. Maria, furious about the way she had been treated, quit working for the family after she was refused the back pay she requested. After exiting the sphere of forced labor, being able to navigate through the workplace without the help of others can provide formerly trafficked persons with a deep sense of fulfillment. Work, after all, is why they sought to migrate to the United States in the first place.

^{25.} Writing about Ethiopian refugee repatriation, Laura Hammond describes "home" as the "conceptual and affective space in which community, identity, and political and cultural membership intersect." LAURA C. HAMMOND, THIS PLACE WILL BECOME HOME: REFUGEE REPATRIATION TO ETHIOPIA 10 (2004).

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IV. CONCLUSION

Trafficking survivors are crafting lives on their own, in spite of policies and programs that have failed them. Pressured by families to send remittances, while also taking care of family members who may be reunited with them in the United States, they are not cowed by setbacks.

Yet with some formerly trafficked persons homeless, still separated from their children, or living in a relationship they wish to sever but cannot because they cannot afford to live on their own, the uncomfortable realities of life after trafficking do not produce easy storylines that raise funds or sell newspapers. Despite the proliferation of new NGOs working on trafficking (usually sex trafficking), media attention to trafficking (usually sex trafficking), and frequent conferences about trafficking (usually sex trafficking), most formerly trafficked persons' everyday struggles are unrecognized, misunderstood, and unaddressed. Far from the sensationalized headlines that luridly depict abuses or focus on the moment of escape or rescue, trafficking survivors' experiences involve everyday tasks of resettlement.

Their concerns are often banal. Car ownership, for example, is a goal for many survivors. Since many work late night shifts and more than one job, traveling by car would shave hours off of their daily commutes. But I know of no fundraising campaigns, media accounts, or government programs designed to help formerly trafficked persons drive. Programs that put trafficking survivors in drivers' seats would be truly innovative. So too would programs that underwrite educational opportunities. Creating a confidential mentoring program in which some of the first T visa recipients could listen and support those currently waiting for their green cards could reduce survivors' feelings of isolation.

Truly innovative policies and programs must be rooted in the realities of trafficking survivors' lives. They should reflect and offer what trafficking survivors and other low-wage workers identify as meaningful assistance. Innovative policies would bring survivors like Carmen to the table to identify the weaknesses in the current trafficking care regime. Otherwise, myths and panic will continue to outpace real needs, real vulnerabilities, and real instances of exploitation.