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## Implementation Analysis of Two Legal Means to Grant Undocumented Immigrant Crime Victims U.S. Residency Status

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**Implementation Analysis of Two Legal Means  
to Grant Undocumented  
Immigrant Crime Victims  
U.S. Residency Status**

Capstone Project  
Martin School of Public Policy and Administration  
University of Kentucky

Shelley Sellwood-Davis  
Spring 2011

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## Executive Summary

In order to complete an implementation analysis of the T Human Trafficking Status and the U Victims of Crime Status, legislation, articles, annual reports produced by the government and its agencies, and written documents were assessed and compiled to create a framework for highlighting the significant elements of each status, a process that has not been done prior to this effort. This framework was then examined from an intervention theorist's perspective to assess whether the statuses have been implemented in a manner that meets the goals of the authorizing legislation.

The T Human Trafficking Status and U Victims of Crime Status are successful programs in that they appear to have reduced an important barrier to prosecutions of the targeted categories of criminals. However, implementation of both statuses falls short of legislative goals, largely because of failures on the part of USCIS. The most serious failure in the implementation of the statuses has been USCIS's delay in implementing the U Victims of Crime Status and the related adjustment process. USCIS could benefit by partnering with other agencies to better coordinate and cooperate in meeting the requirements of the U Victims of Crime Status. From an intervention theorist's perspective, the program is beneficial in that more prosecutions appear to have resulted, but the implementation still falls short of reasonable measures of agency responsiveness.

This analysis found that local law officers need to be better educated about the goal and process of the U Victims of Crime Status, along with the nature of their role in the process. It is recommended that the U.S. Attorney General require states, in conjunction with their individual law enforcement agencies, to submit reports on their anti-trafficking efforts so this information can be included in the Annual Trafficking In Persons Report.

USCIS should consider reviewing the purpose of the authorizing legislation and how that purpose might be advanced by allowing civil cases and the related investigations meet the requirement that victims be helpful in prosecuting the perpetrators of the crimes against them. The results of such an analysis should be provided to Congress for its consideration as one way to ensure that victims of crimes are not penalized by the long time horizon associated with some criminal cases, particularly those related to human trafficking. USCIS should also begin tracking and reporting important information from the U and T status applications. Furthermore, as USCIS begins to review petitions for the adjustment of status, it will be important that the agency consider accommodating those people who have been waiting for the agency to implement the measures. Overall, it is strongly recommended that USCIS attempt to secure additional funding or reallocate existing staff to increase the number of employees processing the applications.

Additionally, the terminology and wording in both the T Human Trafficking Status and the U Victims of Crime Status should be defined more clearly. It is further suggested that documents explaining both statuses be developed in a multitude of languages and that social service agencies provide translators when appropriate to assist undocumented residents with language barriers.

It was found that the acceptance rates for the T and U statuses are dramatically different; thus, it is recommended that further research be done to assess why this difference has arisen.

Ultimately, it is strongly recommended that Congress provide USCIS clear deadlines and follow-up on them to ensure that applications are being handled in an appropriate and timely manner.

## **U.S. Undocumented Resident Population**

The purpose of this paper is to provide a focused implementation analysis of the two legal options for undocumented residents who are victims of crime to attain temporary U.S. residency. The analysis is developed utilizing the lens of intervention theory.

The term “undocumented residents” refers to individuals who are residing in the United States without authorization<sup>1</sup> (Shaw, 2009). Since 2003 the governmental agency responsible for processing individual petitions to obtain and/or adjust visas, or statuses, to travel within the United States has been the U.S. Citizenship and Immigration Services (hereafter referred to as USCIS). USCIS is responsible for implementing all legal means to obtain U.S. residency status (U.S. Citizenship and Immigration Services, 2011). It is an entirely separate federal agency from the two other agencies responsible with enforcing immigration laws, U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection. U.S. Immigration and Customs Enforcement is focused on monitoring border control and how such infringements impact national security; U.S. Customs and Border Protection’s duties include effectively securing the country by protecting it from terrorists’ presence and enabling safe trade and travel (U.S. Immigration and Customs Enforcement, 2011; Customs and Border Protection, 2011). Both U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement are charged with enforcing immigration laws, whereas U.S. Citizenship and Immigration Services is responsible for those attaining citizenship by granting immigration documents (U.S. Immigration and Customs Enforcement, 2011; Customs and Border Protection, 2011; U.S. Citizenship and Immigration Services, 2011).

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<sup>1</sup> This term makes no distinction between those who entered the country legally (all non-United States citizens who were lawfully admitted by a US Customs and Board Protection officer at a point of entry) as opposed to illegally (any other type of entry by any non-United States citizen); it simply refers to their present immigration status.

According to a 2009 report, the number of undocumented residents in the United States is estimated to be 11.9 million people<sup>2</sup> (Passel and Cohen, 2009). This population grew at a rapid rate, nearly doubling in number from 1990 to 2006, but has since become relatively stable (Passel and Cohen, 2009). Undocumented residents now, more than ever, are dispersed across the United States and nearly 73% of this population is estimated to have a child who is a U.S. citizen (Passel and Cohen, 2009).

Undocumented residents are estimated to comprise over 4% of the U.S. population (Passel and Cohen, 2009). With such a significant presence in the United States today, the issues affecting those residents are significant and recent legislation has addressed one such issue – that of crimes against undocumented residents. One of the primary concerns of law enforcement regarding this population is that undocumented residents are often unwilling to report crimes or assist in prosecution for fear of deportation. With the victim unwilling to cooperate in the investigation and press charges against the criminal, law enforcement officials find it difficult to prosecute the criminals. Of those crimes committed against undocumented residents, several crimes began to emerge as the most common and with arguably the greatest need for a response. This report will focus on the implementation of protections from deportation that lawmakers have enacted for undocumented residents to encourage their assistance in the prosecution of two types of crimes that were thought to particularly affect undocumented residents: sexual & domestic violence and human trafficking.

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<sup>2</sup> By and large this number was estimated through the use of the 2008 Census Bureau, along with adjusting this number slightly to account for those not reporting (Passel and Cohen, 2009). It should be noted that numerous articles have recently come out questioning such methods of counting the undocumented resident population, according to the Wall Street Journal (Bialik, 2010).

In 2000, the Victims of Trafficking and Violence Protection Act created two new statuses that provide temporary residency<sup>3</sup>. The U Nonimmigrant Status (hereafter referred to as the U Victims of Crime Status), which was not implemented until 2007, was developed for victims of a crime who suffer mental or physical abuse and are willing to assist officials in the investigation of the crime. The T Nonimmigrant Status (hereafter referred to as the T Human Trafficking Status) was implemented in 2000 and offers temporary residency to a victim of a severe form of trafficking who would suffer extreme hardship if removed from the United States. Thus, the U Victims of Crime Status applies more generally to undocumented victims of various crimes in exchange for their assistance in the investigation of the crime, whereas the T Human Trafficking Status applies only to undocumented victims of human trafficking in exchange for their assistance in the investigation of the crime. Both the U and T Statuses can be used by human trafficking victims.

### **Sexual and Domestic Violence Among Undocumented Residents**

Nearly 90% of sexual and domestic violence crimes occur against women (Shaw, 2009). The National Institute of Justice and Centers for Disease Control and Prevention recently reported that 1 in 4 women will experience domestic violence in her lifetime and the U.S. Department of Justice found that 1 in 6 has experienced an attempted or completed rape (Tjaden and Thoennes, 2000; U.S. Department of Justice, 1998). Overall, sexual and domestic violence accounts for a more significant proportion of crime victims than any other violent crime (Shaw, 2009). Of these crime victims, undocumented residents have been identified as the most vulnerable group with a greater number of undocumented resident women being abused by their partners than women in the general U.S. population (Shaw, 2009). Because strangers

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<sup>3</sup> An additional alternative exists for undocumented residents called Continued Presence. This is only a short-term status that is to be used prior to the T or U Status. For that reason, it will not be included for analysis in this paper.



commit fewer than 33% of sexual and domestic violence crimes, the vast majority of sexual and domestic violence victims know their attacker (Rand, 2009). With knowledge of who the alleged criminal is, the victim is likely able to assist in the prosecution of the crime. This is particularly important in regards to undocumented resident women who experience sexual and domestic violence as they are more frequently victims of such a crime.

The U Victims of Crime Status was created in the Violence Against Women sections within the Victims of Trafficking and Violence Prevention Act of 2000 after the original attempt to address the issue of undocumented residents who were victims of sexual and domestic violence crimes in the 1994 Violence Against Women Act. The status was created to encourage victims to cooperate with law enforcement officials in the prosecution of the crimes against them. Lawmakers acknowledged the need for legislation that would offer protection to victims of crime, as without such protection, non-citizen victims were unlikely to come forward as victims in fear that they would be removed from the United States in the process. The U Victims of Crime Status provides the framework for a non-citizen victim of a crime to report the criminal activity and, in turn, attain temporary residency (Hafiz, Orloff, Kavitha, & Estrada, 2010). Not only do the victims have to report the crime, but to be protected from deportation, the non-citizen victims must also provide information and assistance to law enforcement in the investigation of the criminal activity.

“She was 14 when her mother smuggled her into Los Angeles. She met her future husband, a legal resident, two years later. He had all the cards, and played them cruelly... He would not let her go to school or work, [did not] support her citizenship request, and called her fat and ugly after she became pregnant... She caught him with... a 13-year-old-girl... When she complained, he beat her bloody, tried to rape her, and fled with the girl to Arizona” (Ellison, 2010).

Today the criminal is in prison and the victim has a U Victims of Crime Status.

## Human Trafficking of Undocumented Residents

Human trafficking, or trafficking in persons as some refer to it, is viewed to be an extensive form of modern day slavery estimated to affect approximately 800,000 people worldwide. Though it is difficult to estimate, as many as 17,500 people are trafficked into the U.S. each year, with cases of human trafficking having been reported from all fifty states

"She came from Guatemala, a woman in her early 20's, smuggled into the U.S. for what she thought was a housekeeping job. The journey from her small town to the Texas border took 26 days. [Ultimately being moved to] Jacksonville, [Florida], an enforcer for the... operation told the woman her debt had jumped from \$5,000 to \$30,000. He said she'd have to pay back the debt as a prostitute... She turned 25 tricks the next day and nearly every day for eight or nine months. This tortured existence — the daily life of a human trafficking victim — ended May 22, 2007, when authorities intervened" (Abel, 2009).

A task force identified seven traffickers and six victims. Today, the woman is living in the southern U.S. with a T Human Trafficking Status.

(Trafficking In Persons Report, 2009; Trafficking In Persons Report, 2010). Human trafficking has been acknowledged as the fastest growing crime by the U.S. Attorney General and, in response, the United States Congress enacted legislation to combat human trafficking (Trafficking In Persons Report, 2010). In a review of Anthony DeStefano's *The War on Human Trafficking: U.S. Policy Assessed* it is noted that the legislation passed on human trafficking is one of the "landmark acts [that was] overwhelmingly bipartisan" (Payne, 2009, p. 163)<sup>4</sup>. Components of this legislation include not only creating a framework for prosecuting the traffickers, but also developing a structure to effectively meet the needs of those trafficked.

The need for victim protection has been a component of discussions since the human trafficking legislation first passed. The Trafficking Victims Protection Act of 2000 asserted that victims' illegal entry, unauthorized work, and/or other criminal activities did not

<sup>4</sup> The legislation passed in the House of Representatives with a vote of 371 to 1 and in the Senate with a vote of 95 to 0 (Payne, 2009).

necessarily preclude them from protection as long as the illegal acts were a direct result of their being trafficked (Trafficking Victims Protection Act, 2010).

The act defined human trafficking as having two components: sex trafficking and labor trafficking. Sex trafficking is a sex act caused out of force, fraud, or coercion. If the victim is under the age of eighteen, then force, fraud, and coercion are not necessary; the involvement with a sex act performed by a minor is a crime. Labor trafficking is the process, or attempted process, of using a person for labor by force, fraud, or coercion with the intention of subjecting the person to involuntary servitude<sup>5</sup>, peonage<sup>6</sup>, debt bondage<sup>7</sup> or slavery (Trafficking Victims Protection Act, 2010).

Advocates of this act have encouraged states to create state-specific versions of the legislation. Currently, thirty-nine states have passed legislation regarding human trafficking, with Kentucky doing so in 2007 (Hunt, 2009). However, the extent to which the states have responded varies greatly, with some states utilizing task forces to identify potential victims and others only outlawing trafficking activities. As Table 1 denotes, as of 2010, there are nine states that have not formally criminalized trafficking and only 17 of the 50 states, or 34%, have developed a statewide task force (U.S. Policy Advocacy to Combat Trafficking, 2010). The task forces that are in place, though they vary slightly, are responsible for identifying potential trafficking victims and providing necessary services.

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<sup>5</sup> Involuntary servitude is “when victims are forced to work against their will, under the threat of violence or some other form of punishment. Traffickers could threaten to physically harm the victim or the victim’s family and loved ones, but may also threaten to report the victim to the police if he/she does not continue to work for the trafficker (known as ‘abuse of the legal process’)” (WomensLaw.org, 2009).

<sup>6</sup> Peonage is defined as “compulsory service based upon the indebtedness of the peon to the master” (Civil Rights, 1994).

<sup>7</sup> Debt bondage is defined as being “forced to work indefinitely (without any reasonable limits on services or time) to pay off the person who smuggled him/her into the United States... The value of her work generally ends up being greater than the original amount of money borrowed” (WomensLaw.org, 2009).

Table 18: Synopsis of State Legislation Regarding Human Trafficking

| State          | State Criminalization Statute | Statewide Task Force |
|----------------|-------------------------------|----------------------|
| Alabama        |                               |                      |
| Alaska         | ✓                             |                      |
| Arizona        | ✓                             |                      |
| Arkansas       | ✓                             |                      |
| California     | ✓                             | ✓                    |
| Colorado       | ✓                             | ✓                    |
| Connecticut    | ✓                             | ✓                    |
| Delaware       | ✓                             |                      |
| Florida        | ✓                             | ✓                    |
| Georgia        | ✓                             |                      |
| Hawaii         |                               | ✓                    |
| Idaho          | ✓                             | ✓                    |
| Illinois       | ✓                             |                      |
| Indiana        | ✓                             |                      |
| Iowa           | ✓                             | ✓                    |
| Kansas         | ✓                             |                      |
| Kentucky       | ✓                             |                      |
| Louisiana      | ✓                             |                      |
| Maine          | ✓                             | ✓                    |
| Maryland       | ✓                             |                      |
| Massachusetts  |                               |                      |
| Michigan       | ✓                             |                      |
| Minnesota      | ✓                             | ✓                    |
| Mississippi    | ✓                             |                      |
| Missouri       | ✓                             |                      |
| Montana        | ✓                             |                      |
| Nebraska       | ✓                             |                      |
| Nevada         | ✓                             |                      |
| New Hampshire  | ✓                             | ✓                    |
| New Jersey     | ✓                             |                      |
| New Mexico     | ✓                             | ✓                    |
| New York       | ✓                             | ✓                    |
| North Carolina | ✓                             |                      |
| North Dakota   | ✓                             |                      |
| Ohio           |                               | ✓                    |
| Oklahoma       | ✓                             |                      |
| Oregon         | ✓                             |                      |
| Pennsylvania   | ✓                             |                      |
| Rhode Island   | ✓                             | ✓                    |
| South Carolina | ✓                             |                      |
| South Dakota   |                               |                      |
| Tennessee      | ✓                             |                      |
| Texas          | ✓                             | ✓                    |
| Utah           | ✓                             |                      |
| Vermont        |                               |                      |
| Virginia       |                               | ✓                    |
| Washington     | ✓                             | ✓                    |
| West Virginia  |                               |                      |
| Wisconsin      | ✓                             |                      |
| Wyoming        |                               |                      |

<sup>8</sup> The chart is from the U.S. Policy Advocacy to Combat Trafficking, 2010, p. 2.

The Polaris Project, a national organization that strives to create long-term solutions to human trafficking, defined human trafficking in different, yet important, terms: “a market-based economy that exists on principles of supply and demand. It thrives due to conditions which allow for high profits to be gathered” (Polaris Project, 2009a). The supply and demand component of human trafficking is significant, and worth noting, because it is estimated to bring in billions of dollars of revenue each year for the human traffickers (Payne, 2009).

The U.S. Attorney General’s 2010 Annual Report on Trafficking In Persons discussed a need to provide more service and support for undocumented residents who are victims of crimes or human trafficking, especially through training federal departments and agencies that work with the victims to ensure the employees are educated on the appropriate measures to take (Trafficking In Persons Report, 2010). Coinciding with the needs outlined in the report, social service agencies have recently recognized the need for an implementation analysis on both statuses, as it is important that the statuses are being implemented as was intended by the law. In addition to this, the stated perception of social service workers and scholars of immigration law is that law enforcement officers are unclear about the use of the statuses, the process of attaining them, and their own roles and responsibilities regarding how the status changes can aid their efforts to arrest and prosecute criminals.

The following sections will include an implementation analysis of the victims of crime status and human trafficking status and assess how effectively the statuses have been implemented, with a specific focus on the roles of USCIS, social service agencies, and law enforcement officials.

## **Historical Overview of Legislation Regarding Undocumented Residents**

The United States has had a noteworthy history in its position on human rights, most notably on slavery. In 1865, the significant struggle over slavery ended with the creation of the thirteenth amendment to the U.S. Constitution, which formally prohibited slavery, or involuntary servitude, of any kind. In the late 20<sup>th</sup> century, undocumented residents who were victims of human trafficking, some with success and some without, used the thirteenth amendment as the basis for prosecuting their traffickers.

Beginning in the early 1990's the National Organization of Women lobbied for the Violence Against Women Act (Office on the Violence Against Women Act, 2009). It was signed into law as part of the Violent Crime Control and Law Enforcement Act in 1994 (Office on the Violence Against Women Act, 2009). This act strengthened federal penalties currently in place for sex offenders and created legal relief for undocumented victims that discouraged the use of immigration law by alleged criminals in order to prevent the victims from contacting law enforcement officers (Office on the Violence Against Women Act, 2009).

Throughout the late 1990's, this act was augmented in several ways, with the most significant being the creation of a Violence Against Women office. At the same time, the fight against human trafficking was organized and prioritized on the international level by the United Nations as the "Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children" (Polaris Project, 2009a). First, the Clinton administration noted the importance of a United States response and, ultimately, the Bush administration carried that sentiment into action.

The Victims of Trafficking and Prevention Act of 2000 updated what the thirteenth amendment had begun to establish and put the prohibition against slavery into more contemporary language. Specifically, the legislation focused on prevention, protection, and

prosecution by creating the T Human Trafficking Status for victims of human trafficking (Trafficking In Persons Report, 2005). This legislation included an amended version of the Violence Against Women Act. The amended act reauthorized the programs and laws included in the 1994 act, the amendments made since that time, and the inclusion of relief for undocumented residents who are victims of a crime, under the U Victims of Crime Status. The purpose of the status is to encourage non-citizen victims, who have suffered mental or physical abuse because of a crime, to be helpful in providing information and/or assistance in the investigation of the crime. As a result, the undocumented resident is provided with protection from deportation in the form of the 4-year temporary residency status (Medige, n.d.).

Though this legislation was adopted in 2000, it was not until October 19, 2007, seven years later, that the first U Victims of Crime Status was processed. This came only after Catholic Charities filed a lawsuit against USCIS and Michael Chertoff, the Secretary of the Department of Homeland Security, on March 6, 2007 (Payne, 2009). The result of the lawsuit was that the government was required to report monthly outlining steps taken toward implementing the U Victims of Crime Status (Payne, 2009). Finally, in October 2007, the 8,919 petitioners, who had applied since the Victims of Trafficking and Violence Protection Act of 2000 created the U Victims of Crime Status, began to have their victims of crime status applications reviewed (Payne, 2009).

USCIS attributed the delay to many factors. USCIS noted that the delay was due to the complicated and dramatically different structure of the U Victims of Crime Status as opposed to other immigration policies and legislation. This process included defining the terms in the legislation such as *victim* and *qualifying criminal activity* (USCIS Offices of Communications, 2007). In addition to this, the Victims of Trafficking and Violence Protection Act did not include a time-frame during which the U Victims of Crime Status needed to be processed

(Payne, 2009). Nonetheless, the federal court of the Northern District of California ruled for Catholic Charities, the party who filed the lawsuit, agreeing that seven years for this process was unreasonable and insufficient (Payne, 2009).

Since 2000, the legislation was reauthorized, amended, and updated in 2003, 2005, and, most recently, 2008 with the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Hunt, 2009).

*Victims of Trafficking and Violence Reauthorization Act of 2003*

The 2003 Reauthorization Act impacted the T Human Trafficking Status in numerous ways; the most significant change extended the protection of the status to siblings of crime victims under eighteen. Prior to this change, the legislation allowed the status to apply to the victim's spouse, children, and parents, if the victim was under eighteen<sup>9</sup>. Additionally, the minimum age was altered from fifteen to eighteen years of age and victims were given the "private right to sue traffickers civilly for damages and attorney fees" (Payne, 2009, p. 179-180). The revision also created a task force

"Emily came to the U.S. from the Philippines two years ago to find a better life, but she says that what she found instead was indentured servitude.

The contract she signed with a Kentucky couple stated that she would work 40 hours a week, for \$200 a month... In a lawsuit against the couple, she [states] that things were much worse than the low pay. The couple made her wash cars, do yard work, power stain decks and fences, and paint. The couple forced her to work around the clock and on her days off. [She] was not allowed to use the phone, and if she did, her calls were screened... The couple physically assaulted her in the garage and said they were deporting her for disobeying their orders" (WLKY.com, 2006).

The couple was charged with second-degree human trafficking and Emily's status is unknown.

to ensure that the enforcement of the associated status was being done as intended (Payne, 2009). Most significant to researchers, the 2003 legislation required the U.S. Attorney General

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<sup>9</sup> For these people (children, parents, siblings) to receive coverage under the T Human Trafficking Status, they must submit an application when the victim has been accepted for his or her status.



to publish an annual report with statistics on the T Human Trafficking Status and progress made on the fight against human trafficking, both in the United States and in other countries (Payne, 2009). This progress report is to include specific measures, such as listing the prosecution rate of human traffickers (Payne, 2009).

### **Victims of Trafficking and Violence Reauthorization Act of 2005**

The Trafficking Victims Protection Reauthorization Act of 2005 focused on providing human trafficking victims with access to legal counsel and social service agencies providing aid (Payne, 2009). Following the language of the 2003 reauthorization act, the 2005 act simply restated the importance and awareness of the fight against human trafficking and asked that state and local legislators be involved.

### **William Wilberforce Victims of Trafficking and Violence Reauthorization Act of 2008**

The 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act was the most far-reaching amendment and included the most significant changes. Included in these changes are the altering of the language to provide exceptions to the requirement for prosecution assistance from victims deemed unable to assist because of extenuating physical or psychological trauma<sup>10</sup> and the extension of the benefits of the status to parents and siblings of adult trafficking victims, which was previously only applied to victims of crime under eighteen years of age<sup>11</sup>. The act mandated that minor victims be provided with legal counsel. The act also extended the definition of trafficker to include any person who gains financially from trafficking, even if that person is not directly involved in the process (Payne, 2009).

The act responded to many critiques regarding the definition of coercion by clarifying that it includes more subtle, and often times psychological, versions of coercion, including those

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<sup>10</sup> For more information, see Immigration and Nationality Act, 2010.

<sup>11</sup> Parents and siblings of adult trafficking victims can apply to receive the benefits of the status if their safety is compromised by the victim's assistance with the prosecution effort.

referencing cultural and religious values (Hunt, 2009). Once again, the 2008 Reauthorization Act urged state and local legislators to be involved in the fight against violence and trafficking of undocumented residents, but did not stipulate any measurable ways in which state or local legislators might go about becoming involved or any requirements that they do so. In addition, because of the controversy surrounding the lengthy process by USCIS in implementing the U Victims of Crime Status, the act added statutorily mandated deadlines to help ensure that the processing moves as quickly as possible and included a requirement that USCIS provide monthly reports to the federal courts (Payne, 2009).

### **U Victims of Crime Status Overview**

The intention of the U Victims of Crime Status was two-fold: to build upon law enforcement's ability to identify, investigate, and prosecute crimes against undocumented persons and to provide protection to those crime victims by investigating and prosecuting the criminal (Trafficking Victims Protection Act, 2010). It was the goal of the legislation to encourage victims of crime to come forward to reduce the incidence of such crime and to prosecute those committing the crimes (Zota, 2009).

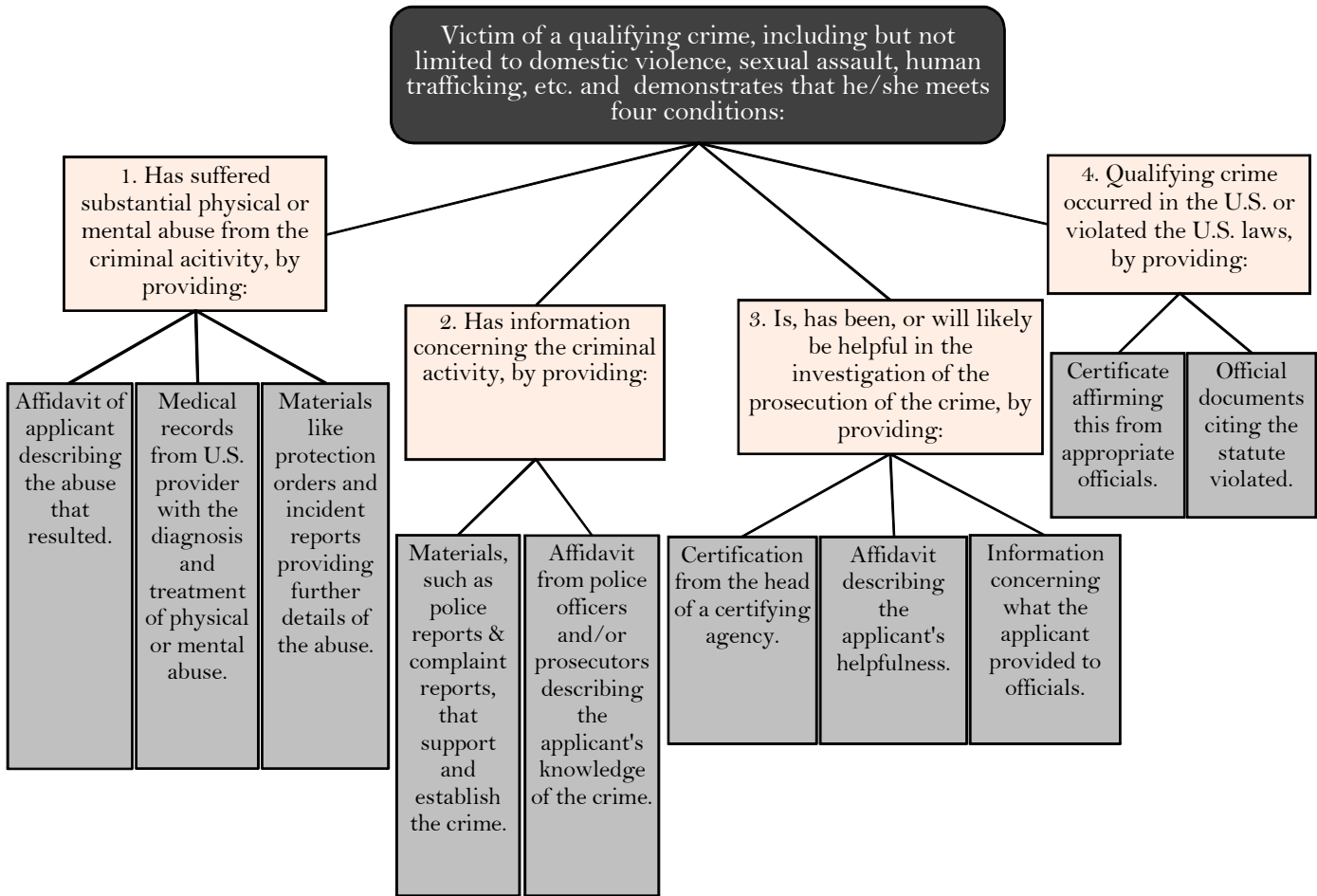
In order to qualify for the U Victims of Crime Status, the applicant must demonstrate several components including that the person was a victim of a qualifying crime<sup>12</sup> from which he/she suffered significant physical or mental abuse, and is helpful in the investigation and/or prosecution of the crime by providing information about the crime (Trafficking In Persons

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<sup>12</sup> The statute lists a non-exclusive list of criminal activities: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, solicitation to commit any of the above crimes, or the attempt or conspiracy to commit any of the above crimes (Immigration and Nationality Act, 2010).

Report, 2010). The applicant need not be in the United States at the time of applying for the status and can do so while in the native country.

Figure 1<sup>13</sup>: U Status Application Process



The definition of “helpful” in relation to the status includes three components: was helpful, is helpful, and is likely to be helpful. The applicant must demonstrate that law enforcement will find helpful the information that the person has to offer (Zota, 2009). Specific examples of this include reporting a crime, appearing at court hearings, completing a victim-impact statement, and identifying the criminal (Hafiz, Orloff, Kavitha, & Estrada, 2010).

The process requires that the applicant provide his/her criminal history, and a personal statement that includes the proof that he/she complied with a reasonable request for assistance.

<sup>13</sup> Data in Figure 1 is from WomensLaw.org, 2009.

This reasonable request for assistance is met through having a certification from what is referred to as a certifying agency. Certifying agencies include law enforcement, a prosecutor, a judge, Immigration and Naturalization Services, and other federal or state authorities. The requirements state that the certification must come from the supervisor or head of the certifying agency (Citizenship and Immigration of Services Ombudsman, 2009). This person/agency certifies that the applicant is helpful in the investigation. This certification, along with any reports that demonstrate that information of the crime has been provided to law enforcement, is required for the application to be accepted.

There have been exceptions in which a person was charged with a crime and the prosecutor learned that the alleged criminal was also guilty of domestic violence of his wife. In this scenario, the spouse could provide the prosecutor with information on the separate crime and still qualify for the U Victims of Crime Status.

If a person receives the U Victims of Crime Status, the certifying agent can at any time revoke the certification. Thus, the person cannot apply and then refuse to assist further in the process. The person must continue to be helpful in the process or the U Victims of Crime Status will be revoked, at which time the person will have thirty days to respond or have his/her status effectively revoked (Citizenship and Immigration of Services Ombudsman, 2009).

The U Victims of Crime Status was designated a quota limit of 10,000 statuses approved per year. If a U Victims of Crime Status application comes in after the quota has been met, it will be held in the order that it was received and reviewed at the start of the next fiscal year.

#### *Implications of U Victims of Crime Status*

Undocumented residents who receive the U Victims of Crime Status **are not** eligible for public benefits, such as housing assistance, Medicaid, and food stamps (Hunt, 2009). U Victims of Crime Status recipients can apply for derivative residency statuses for family members.

Those eligible for coverage under the derivative status include the spouse and child of a victim who is over the age of 21. If the victim is under 21, parents and single siblings under the age of 18 are also eligible to apply. The family members need not be in the United States, or have ever lived in the United States, when applying for the application. These family members must prove that their relationship to the victim would cause them extreme hardship if they returned or remained in the native country.

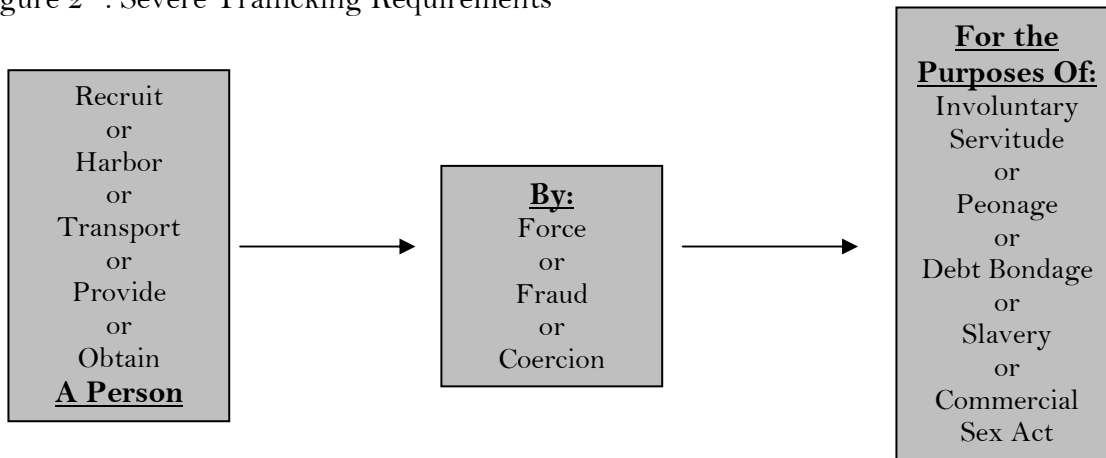
A U Victims of Crime Status can be granted to a person who has been a criminal previously (Hafiz, Orloff, Kavitha, & Estrada, 2010). When the Trafficking Victims Protection Act was developed, lawmakers concluded that this would be a decision left to the guidance of USCIS (Hafiz, Orloff, Kavitha, & Estrada, 2010). It is analyzed on a case-by-case basis and each applicant is screened for a criminal background (Hafiz, Orloff, Kavitha, & Estrada, 2010).

The U Victims of Crime Status lasts up to four years. A person with a victims-of-crime status can apply for an extension to this, but must present a certificate from one of the appropriate officials that the person's presence is necessary for the investigation and prosecution of the crime. This extension lasts up to one year, when the victim must apply for an adjustment of status. Adjustment of status is a petition for permanent residency. A person can receive the adjustment of status after the time period has lapsed if the person has fulfilled the requirements of the U Victims of Crime Status in being helpful to the investigation of the criminal activity and that the person's "continued presence in the country is justified on humanitarian grounds to ensure continuation of a cohesive family, or is otherwise in the best interest of the public" (USCIS Offices of Communications, 2007, p. 3). If the applicant does not receive permanent residency as a result, then he/she must return to the native country (USCIS Offices of Communications, 2007).

### T Human Trafficking Status Overview

To be eligible for a T Human Trafficking Status, a person must have experienced what is legislatively entitled *a severe form of trafficking*:

Figure 2<sup>14</sup>: Severe Trafficking Requirements



Severe trafficking includes the attempt to use or actual use of a person without consent for either labor or sex trafficking. Assuming that a person is indeed a victim of a severe form of trafficking, the victim must be in the United States, which is notably different from the requirements of the U Victims of Crime Visa which states that a person can apply from inside or outside the United States.

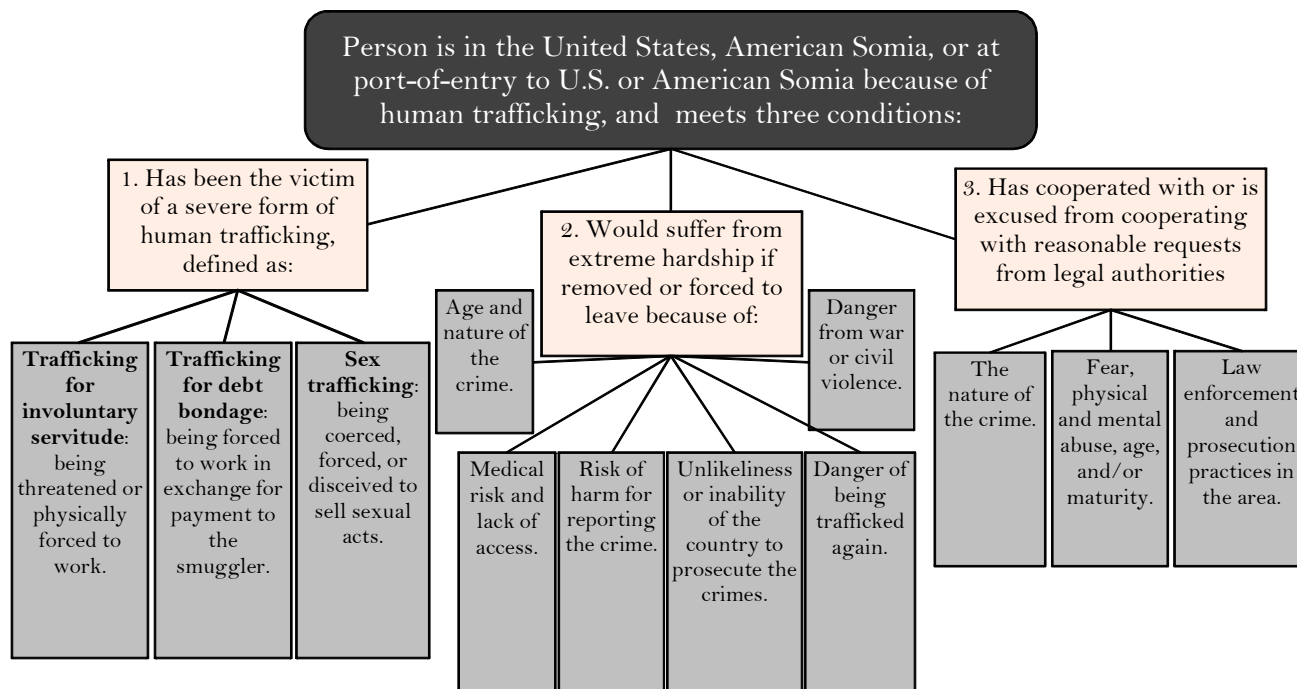
In addition, the application must comply with a reasonable request from law enforcement in the investigation of the trafficking crimes<sup>15</sup>. Provided all of these are appropriate, it must be established that the person would suffer extreme hardship involving unusual and severe harm if deported and returned to the native country (Hunt, 2009). As Figure 3 demonstrates, the extreme hardship clause can be met through consideration of the person’s medical status, age and circumstances, current situation in the native country, and whether the crimes would be punishable in that country.

<sup>14</sup> Figure 2 is the work of Sreeharsha and Fletcher, 2009.

<sup>15</sup> If the victim is under eighteen years of age, then assistance in the prosecution is not required.

The third and final requirement of the T Human Trafficking Status involves the applicant’s cooperation with law enforcement. A person who is under the age of eighteen does not need to meet the criteria along with those suffering from extreme fear or physical and mental trauma; thus, anyone under eighteen need only meet the first two criteria in Figure 3.

Figure 3<sup>16</sup>: T Human Trafficking Status Criteria



The T Human Trafficking Status has an annual quota of up to 5,000 statuses (U.S. Department of Justice, 2002). If this number has already been met, then the applicant’s application for status could be received but will not be reviewed until the next fiscal year (U.S. Department of Justice, 2002).

*Implications of T Human Trafficking Status*

Those who receive the T Human Trafficking Status **are** eligible to apply for public benefits, including housing assistance, Medicaid, food stamps, and if they are under the age of

<sup>16</sup> The data in Figure 3 is from WomensLaw.org, 2009.

18 they can apply upon receipt of the application by USCIS, prior to acceptance or denial of the application (Hunt, 2009).

Upon receiving the T Human Trafficking Status, a person is then able to apply for the benefits of the status to be applied to relevant family members<sup>17</sup>, legally referred to as a derivative status. At the end of a person's third year under the T Human Trafficking Status, the person can apply for permanent residency, along with their family members. The process of apply for permanent residency is formally known as the adjustment of status. If USCIS does not accept the request for permanent residency, then the victim must return to the native country.

#### *Conclusion of Overview*

Overall, the work to end human trafficking and the need to protect victims is ongoing. The legislation regarding this has crossed party lines and united legislators, advocates, and members of the media as the Victims of Trafficking and Violence Prevention Act passed by a nearly uncontested vote and the reauthorization acts have also passed with ease (Payne, 2009). However, as Valerie Payne notes, the fight is often convoluted by the emotion involved (Payne, 2009). It is also complicated by what authors have referred to as the "era against immigration" (Chacon, 2010). Despite differing opinions on immigration, relief for undocumented residents that are crime victims has been created. With the framework established, the question remains whether the law has been implemented as it was intended and as the statutes set forth.

In the report that follows, a detailed implementation analysis with an intervention theorist lens of the T Human Trafficking Status and the U Victims of Crime Status is presented, along with recommendations for those involved, including USCIS, Congress, social service agencies, and law enforcement officials.

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<sup>17</sup> These family members include spouses, children, parents, and siblings of the victim (WomensLaw.org, 2009).



## Comparison

In order to complete an implementation analysis of the T Human Trafficking Status and the U Victims of Crime Status, legislation, articles, annual reports produced by the government and its agencies, and written documents were assessed and compiled to create a framework for analysis. In addition to the materials, interviews with social service providers and law enforcement officials were conducted to identify additional barriers and miscommunications in the process. These methods and the necessary theory framework were combined to complete the implementation analysis.

To effectively conduct an implementation analysis, it is important to first consider which theories are most applicable to facilitate the process. Though both the victims of crime and trafficking status have been passed and are law, there is still much uncertainty about the statuses. Because there are many stakeholders, the best theory to use in this analysis is the intervention theory. Intervention theory is a presumption of how a program might have an impact on the situation and alter it in a way that is or is not beneficial to the situation that would have existed without the program or when applying a different program (Hansen and Vedung, 2010).

The intervention theory has three components: situation theory, causal theory, and normative theory (Hansen and Vedung, 2010). Situation theory includes the scope of the situation, including causes, growth of the situation and what might occur if the program is not created to intervene in stopping or slowing the situation or problem (Hansen and Vedung, 2010). Causal theory refers to how the program will impact the problem and if there will be other effects from the program; normative theory requires the program to address how it is beneficial to the situation more so than without the program or with a different program (Hansen and Vedung, 2010). This theory is best summarized in relation to the creation of both

statuses when saying, “It is not only about including, but how to include; it is not only about voicing, but also about listening” (Villalon, 2010, p. 553).

The overall goal of both statuses is an increase in prosecutions of perpetrators of the targeted crimes. This goal is agreed upon by all stakeholders and is clearly defined in the Trafficking Victims Protection Act by saying that each status is implemented to encourage willingness to assist in the investigations or prosecutions of criminals. Furthermore, the Annual Trafficking In Persons Report produced by the U.S. Attorney General encourages other countries to report only concrete actions made towards eliminating human trafficking, namely securing prosecutions, convictions, and prison sentences for traffickers (Trafficking In Persons Report, 2010).

With this framework in mind, the situation theory has been identified by lawmakers and in the introduction of this paper. Undocumented residents will continue to be victims of crime and crimes will continue to go unreported unless victims of crimes feel protected in the process. Thus, the problem of crimes against undocumented residents will not stop and, in the case of human trafficking, is expected to continue to grow, unless a program is enacted.

The analysis of this paper, particularly this section, will focus upon causal theory and how the program(s) will impact the problem. It is suggested that a follow-up study focus on normative theory and how victims of crime would have been impacted by a different program or approach.

With prosecutions as the goal, the objective of both the victims of crime and human trafficking statuses is to provide a motivation for victims to come forward with information to support prosecution of perpetrators. The motivation provided is that the victims will be protected and provided security through temporary residency in the country for crimes suffered within its borders.

Because there was no human trafficking legislation or victims of crime legislation prior to this program, though there were human trafficking convictions based on the groundwork that the thirteenth amendment provided, the framework for supporting prosecutions was not nearly as established. With that in mind, prior to the Trafficking Victims Protection Act of 2000, there were 67 human trafficking convictions from 1995 to 2000. In 2001, 54 cases of human trafficking were opened and there were 15 convictions; whereas in 2006, 126 human trafficking cases were opened and there were 70 convictions<sup>18</sup> (Polaris Project, 2009b).

“Lexington, Kentucky police are investigating [human trafficking] allegations by a woman, Lopez, who says she was kidnapped from Guatemala by a man who forced her to live and work for him for 20 years. [They] moved to Lexington about five years ago [and] the man left town roughly two years ago; his whereabouts are unknown. Lopez claims that the man took money belonging [her]. According to police, Lopez and the man who allegedly took her were never legally married, but they have two children together: an 18-year-old daughter... and an adult son...Guatemala is where she (Lopez) was allegedly kidnapped from. She was then taken to Mexico by this man and brought into the U.S. Police became involved in the case when the daughter, then a minor, made an allegation against her father. As a result of counseling that Lopez and her daughter began in connection with that case, Lopez recently decided to tell police about the alleged kidnapping. Lopez told them she was 17 when the man allegedly took her from her home in Guatemala. Both Lopez and her alleged abductor are natives of Guatemala” (Warren and Ward, 2009).

The investigation is ongoing.

In regards to the U Victims of Crime Status, it is difficult to know the number of prosecutions that resulted prior to this legislation. Though this framework did not exist to monitor the number of prosecutions, there were likely prosecutions. Another significant measure that is also difficult to gauge is the number of undocumented residents who were deported after being victims of crimes and reporting the criminal activity. Nonetheless, it can be assumed that this number has increased as the fear of deportation in undocumented residents has been removed. Thus, any

<sup>18</sup> The conviction rate does not necessarily correspond to the open rate in the given year, as some of the convictions are a result of cases opened in previous years.

prosecutions that result from the creation of the U Victims of Crime Status will be an improvement on the lack of framework and prosecutions prior to the status.

## **U Victims of Crime Status**

### *Insufficient Quota*

The U Victims of Crime Status reached its quota limit in the second week of July 2010; statuses could not be issued again until the next fiscal year, beginning October 1, 2010 (Bajana, 2010). Because of the seven-year delay in processing applications, it is unreasonable to apply the one-year quota of 10,000 to seven years of applications. A suggestion is for the quota limit to be applied to the year in which the application was submitted, rather than the year the application is approved. This would allow USCIS sufficient time to review applications, without penalizing applicants for USCIS's delay in reviewing their applications. This prevents undocumented residents from suffering due to the administrative limitations of USCIS. An additional, long-term suggestion is for the quota amount to be revisited periodically by Congress to ensure that the number is in line with the incidence of crimes covered by the status.

### *Need for Law Enforcement Training*

To apply for a U Victims of Crime Status, an applicant must have certification from the head or supervisor of federal, state or local law enforcement, a prosecutor, a judge, federal or state authorities, or Immigration and Neutralization Services. Of these agencies, the one most directly involved in the relevant crimes and easily accessible to victims is local law enforcement. Allowing local law enforcement officials to certify the application not only involves local authorities in a criminal situation they have to manage, it also distributes the burden of completing the administrative determinations needed to allow victims to apply for

the status and alleviates the work of federal authorities, such as Immigration and Customs Enforcement.

It was quickly recognized that law enforcement agencies were not consistent in their willingness to participate in the certification process, and this was also repeated in interviews conducted for this study with social service agencies (Flores and Estrada, 2011; M. Castellanos, Personal Communication, February 8, 2011). Law enforcement officials appear to need clarification about what the certification process requires of them and what the certification ultimately means. Perhaps in terming the process a *certification* and requiring that supervisors be responsible for certifying the status, there has been some misunderstanding, not to mention that supervisors are often not as connected to victims as the officers (Citizenship and Immigration of Services Ombudsman, 2009). In “certifying” the status, local officers are not responsible for denoting who is and is not a victim of crime; USCIS determines this when the application is reviewed (Flores and Estrada, 2011). In certifying the application, officers are only asserting that the applicant has been, is being, or will likely be helpful in the investigation of a prosecution for the crime (Flores and Estrada, 2011).

This issue became a newsworthy topic drawing headlines, including a *New York Daily News* article which claimed that the New York Police Department established a 20 step process for certifying the status applications. This process proved to be so complex that only one certificate came from the department in over two years (Evans, 2010). Stemming from the concerns regarding local law enforcement, the U.S. Department of Justice’s Bureau of Justice Assistance designated a three-year grant to develop and distribute tools and resources for law enforcement officials regarding the U Victims of Crime Status. This project is entitled the National Immigrant’s Victims’ Access to Justice Partnership (Flores and Estrada, 2011). It is

recommended that this project also consider the lack of incentive for law enforcement officials to assist in the process, as their workload is significant enough without an additional burden.

As this project grows and more local law enforcement officials are informed of what the U Victims of Crime Status is and what it requires of them, these officials are expected to take a greater role in certification and in educating victims about the existence of the status change opportunity (Flores and Estrada, 2011). After all, as officials see local crimes, they can tell the victims about the opportunity and encourage them to apply for the status, thus preventing the criminal from continuing to commit crimes, which was the legislative goal of creating the status.

## **T Human Trafficking Status**

### *Statewide legislation*

As Figure 4 illustrates, the majority of human trafficking task forces are currently located in states along the border, many of which have several task forces. Figure 4 also demonstrates the work of the task forces by showing the number of reported incidences as identified by the task force.

Figure 4<sup>19</sup>: Trafficking Task Forces and Reported Incidences of Trafficking

As of 2009, 42 states had criminalization statutes for human trafficking and 17 had statewide task forces. Task forces generally attempt to coordinate communication among federal, state, and local law enforcement officials to ensure that anti-human trafficking policies are working as effectively and efficiently as possible. Kyckelhahn et al. received data from 38 task forces across the United States, with many of these task forces operating out of the same state (Kyckelhahn, Beck, & Cohen, 2009).

Recent studies have found that task forces reported arrest information for 216 of the 543 suspects in alleged human trafficking incidents in a given area. In addition to this, 68% of these traffickers were arrested at the state level and 26% were arrested at the federal level (Kyckelhahn, Beck, & Cohen, 2009).

<sup>19</sup> Figure 4 is from Kyckelhahn, Beck, & Cohen, *Characteristics of Suspected Human Trafficking*, 2009.

Initially, the most helpful recommendation would likely be for Congress to require states report the number of human trafficking prosecutions. This information could then be published in the U.S. Attorney General's Trafficking In Persons Report. The report should note which prosecutions were the result of efforts by federal law enforcement officials and which were the result of efforts by state or local law enforcement officials. This might account

While working in Dubai, India, he, along with other men, noticed an advertisement for a migration opportunity that guaranteed high-paying work in America, complete with permanent residency and the opportunity for family members to accompany the employee. Upon completion of the application and payment of initial expenses (primarily for green card costs), he was transported to Texas where he worked and lived in a camp that was supervised at all times by security guards. He was only allowed to leave for work; his family members did not join him. He and his 300 friends quickly realized that they were not going to get their promised green card. Finally, one of the men was able to escape and share their story.

Most of his friends applied for the T Human Trafficking Statuses and have been granted one. Some of his friends have had a more difficult time, as officers did not need their additional statements since they already had enough for prosecution and so, they wait for prosecutors to develop their criminal case against the large company. Meanwhile, the civil case settled last year finding the company guilty.

He was one of the lucky ones who received the T Status; he recently learned that his wife and children are receiving derivative statuses (M. Castellanos, Personal Communication, February 8, 2011).

for such things as the work of task forces, number of prosecutions, number of cases opened, and number of human trafficking victims identified. This framework is already developed and being followed in the Attorney General's Trafficking In Persons Report in regards to international human trafficking activities. More specifically, the U.S. collects data by country in regards to how much money each country spends; aid that is provided; processes developed to prevent human trafficking; and

implications and results of the anti-trafficking effort. With this reporting system already in place, the time and labor to develop such a system for the states could be reduced. Until such a requirement is made, it is recommended that states be informed of this possibility and encouraged to develop their own human trafficking prosecution efforts.



*Criminal Investigation*

A prosecution is not necessary for a person to receive either the U or T status. If a criminal is not prosecuted because the prosecutors cannot locate the alleged criminal or the person has fled or been deported, the case will not move forward (Zota, 2009). This allows the law to be used for purposes other than what was intended, as a person could fraudulently report a crime, knowing the alleged criminal was not in the country. However, if law mandated that a prosecution was necessary, this would be ignoring the many facets of a case, including the willingness of the accused to be of assistance, previous criminal history, and legal representation.

Table 2 shows the number of federal human trafficking cases opened, indictments, and convictions, as reported in the Attorney General's Trafficking In Persons Report, resulting from the Trafficking Victims and Violence Protection Act of 2000. This number has increased through the years, though it is small in comparison to the number of alleged traffickers in the United States. Nonetheless, the trend is that the number of cases opened, indictments, and prosecutions are increasing.

Table 2<sup>20</sup>: Human Trafficking Cases, Indictments, and Convictions

| <b>Year</b>         | <b>2001</b> | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>2009</b>      |
|---------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------------|
| <b>Cases Opened</b> | 10          | 10          | 11          | 26          | 35          | 32          | 32          | 39          | 43               |
| <b>Indictments</b>  | 38          | 41          | 27          | 47          | 96          | 111         | 89          | 81          | 114              |
| <b>Convictions</b>  | 23          | 28          | 21          | 33          | 35          | 99          | 103         | 107         | 47 <sup>21</sup> |

<sup>20</sup> The data in Table 2 is provided from the Trafficking In Persons Report, 2010.

<sup>21</sup> This number is noticeably lower than those in the previous two fiscal years. The Trafficking In Persons Report notes that the 2009 fiscal year was the highest yet in the number of initiated human trafficking investigations and defendants charged and states that the lowered conviction rate is a sign of previous years, as it often takes more than one year for a conviction. Nonetheless, this does not explain the significant drop.

While a prosecution is not mandated, the law requires that a criminal case be opened and under investigation for a person to be eligible to apply for the U or T status. Therefore, a civil case does not satisfy the criteria. This can be a specific concern in regards to human trafficking cases, as identifying who to prosecute in a criminal case can be a lengthy process. Therefore, the intent of the law may not be effectively met in this regard, as the victim has likely been active in the civil case and is awaiting the criminal case to be prosecuted. Thus, Congress should research the effects of this requirement and if the applicants of the T Human Trafficking Status would be better served in having civil cases fulfill the requirement, as well.

### **U Victims of Crime and T Human Trafficking Statuses**

#### *Subjective-Decision Making*

The awarding of both the U and T Statuses rely on subjective assessments by law enforcement officials. For example, the T Human Trafficking Status requires that applicants submit a letter from law enforcement officials stating that the applicants are assisting the investigation in a “*reasonable*” manner. However, the term “*reasonable*” is never elaborated or defined (Shinkle, 2007). This leaves the term to be interpreted differently depending on the particular law enforcement official or the practices in a specific law enforcement unit.

In addition, the T Human Trafficking Status allows for subjective decision-making in that it fails to elaborate on the meaning of “*extreme hardship*” (Wetmore, 2002). The term “*extreme hardship*” is never defined and has only been used previously in the law with suspension of deportation and cancellation of removal (Wetmore, 2002). Therefore, this terminology needs to be clarified to prevent misinterpretation or inconsistent implementation of the status.

On the other hand, the U Victims of Crime Status fails to be clear in use of the term “*helpful*”. In addition to this, “*helpful*” is denoted as applying to the past, present, or future. Even though the status can be revoked, the process is complicated. These complications might

leave certifying agents, such as law enforcement officers, unwilling to certify a status without an applicant who has already proven helpful in the investigation. Therefore, clarification of what is intended by the legislation is recommended. The previous reauthorization acts of the Victims of Trafficking and Violence Prevention Act have addressed other confusing terms, thus, it is recommended that Congress consider doing the same with the words “*helpful*”, “*extreme hardship*”, and “*reasonable*”.

### *Language Barrier*

The William Wilberforce Trafficking Victims Protection Reauthorization Act previously extended services to ensure that victims of crime, including human trafficking, have the necessary resources to assist with the prosecution. Currently, both processes are particularly difficult for those that do not speak fluent English, which is a significant majority of the undocumented resident population (Shinkle, 2007).

More specifically, a recent study conducted in Kentucky surveying those working with human trafficking victims, found that nine languages other than English were the victims’ native languages, such as Spanish, Chinese, Tagalog, Russian, and Korean (Logan, 2007). This study found that the primary need for resources centered on language, including the ability to translate key documents and to assist in language access (Logan, 2007). Providing access to translators and ensuring that application materials are disbursed in a variety of languages would be helpful to ensure that the goals of the law are met—that victims are aware of the protection if they provide helpful prosecution information to law enforcement officers. Thus, it is recommended that USCIS publish documents in the languages deemed necessary and that social service agencies provide translators.

*Need for Data*

In the process of gathering the necessary research, it was found that USCIS is not tracking or reporting key information from the applications received from the T Human Trafficking Status or the U Victims of Crime Status. Useful information would include the native country of the applicant, the state and location of the crime, the type of crime committed against the person, and information on whether the person applied for a one-year continuation of the status and/or petitioned for an adjustment of status. Ultimately, it is suggested that law enforcement officials be required to update the prosecution information concerning accepted applications. This information could ultimately prove to be of the utmost importance, as it will detail specifically how many prosecutions result from these statuses.

*Differing Acceptance Rates*

Included in the Attorney General's Trafficking In Persons Report is the application and acceptance rates of both the T Human Trafficking Status and the U Victims of Crime Status. As Table 3 demonstrates, the T Human Trafficking Status has an average acceptance rate of 59%, whereas the U Victims of Crime Status has an average acceptance rate of 94%. The acceptance rates are drastically different. Because the U Victims of Crime Status is much broader and applicable to a larger group of people and the T Human Trafficking Status is more specific in the criminal activity involved, one would think that the T Human Trafficking Status would have a higher acceptance rate. However, it is clear that this is not the case. Therefore, further analysis is required to determine what additional differences exist that could be causing this dissimilarity in rate of acceptance.

Table 3<sup>22</sup>: U and T Status Acceptance Rates

|               | Year               | T Human Trafficking Status |          |            | U Victims of Crime Status |         |            |
|---------------|--------------------|----------------------------|----------|------------|---------------------------|---------|------------|
|               |                    | Applied                    | Approved | Percentage | Applied                   | Approve | Percentage |
|               | 2002               | 163                        | 17       | 10%        |                           |         |            |
|               | 2003               | 587                        | 285      | 49%        |                           |         |            |
|               | 2004               | 352                        | 156      | 44%        |                           |         |            |
|               | 2005               | 229                        | 112      | 49%        |                           |         |            |
|               | 2006               | 346                        | 182      | 53%        |                           |         |            |
|               | 2007               | 230                        | 279      | 121%       |                           |         |            |
|               | 2008               | 394                        | 247      | 63%        |                           |         |            |
|               | 2009               | 475                        | 313      | 66%        | 6,835                     | 5,825   | 85%        |
|               | 2010               | 574                        | 447      | 78%        | 9,745                     | 10,073  | 103%       |
|               | 2011 <sup>24</sup> | 222                        | 74       | 33%        | 3,331                     | 2,756   | 83%        |
| <b>Totals</b> |                    | 3,572                      | 2,112    | 59%        | 19,911                    | 18,654  | 94%        |

The distinct difference in the two statuses is that the U Victims of Crime status **does not** require the applicant to prove that if the victim is returned to the native country, he/she would suffer extreme hardship, whereas the T Human Trafficking Status **does** have such a requirement. Therefore, future research is needed to determine if this difference is the cause, or one of the causes, of the differing acceptance rates. This research might include acquiring data about the reasons the T Human Trafficking Status is denied. With this data, an analysis could be conducted on how many of those denied applications were a result of a failure to prove extreme hardship upon removal.

<sup>22</sup> Data from Table 3 is from the Trafficking In Persons Report, 2010 and C. Rhatigan, Personal Communication, January 31, 2011.

<sup>23</sup> The number of approved applications reflects any applications approved in that fiscal year, regardless in what year they were approved.

<sup>24</sup> The 2011 information is through the first half of the fiscal year, through December of 2010.

Instead of only analyzing the steps that are more stringent for the T Human Trafficking Status, it is also helpful to look to the U Victims of Crime Status to see the ways in which that process is different. One key difference is the level of involvement of law enforcement officials. Both the T Human Trafficking Status and the U Victims of Crime Status require that a victim be helpful in the process, but to a very different degree. Applicants for the U Victims of Crime Status must prove that they can provide helpful information in the prosecution process, whereas applicants for the T Human Trafficking Status must cooperate with reasonable requests from law enforcement. Perhaps the lack of specificity in the level of cooperation with law enforcement has led to the denial of applications.

Another key difference between the two statuses is the way in which they were implemented. Though there was a seven-year delay with the U Victims of Crime Status, this does not necessarily mean that more time was spent creating the framework. Contrary to this, it seems likely that after the federal court ruled that USCIS must make advancements in the creation of the U Victims of Crime Status, USCIS quickly developed a framework that was not evaluated and as carefully discussed as was the T Human Trafficking Status.

A final possibility for the significant difference in the acceptance rates of both statuses is related to the seven-year delay in the U Victims of Crime Status. Because the status was not yet processing, perhaps only applicants that were qualified applied. This point is not supported by evidence, but worth discussion as continued analysis of the acceptance rate would help determine whether or not this is true. With all of these possibilities, it is clear that more research is needed to determine what disparity is leading the T Human Trafficking Status to be denied at a much higher rate than the U Victims of Crime Status.

*Additional USCIS Employees Responsible for U Victims of Crime Status*

In 2009, it was acknowledged publicly that USCIS employed five people responsible for the T Human Trafficking Status, including reviewing applications and adjusting statuses, and two employees for the U Victims of Crime Status. The lack of employees assigned to the U Victims of Crime Status is concerning, especially considering the high application rate. It is recommended that additional employees be hired for the implementation of both statuses, with the U Victims of Crime Status receiving priority. The funds for these positions could come from Congress after USCIS requests the funds for an increase in personnel. However, given the current economic climate, that does not seem likely. Therefore, it is most advantageous for USCIS to consider reallocating funds so that additional personnel are implementing the U Victims of Crime Status.

*Work Authorization*

Because of the delay in review for U Victims of Crime Status, USCIS provided those applicants with a temporary work authorization. Thus, while the application was being reviewed, the applicant was able to work. The ability to work while the application is pending, which is often a lengthy process, particularly for the U Victims of Crime Status that has many more applicants, would be helpful for all crime-victim applicants (Citizenship and Immigration of Services Ombudsman, 2009). As the Citizenship and Immigration of Services Ombudsman noted, “The ability to work legally... is a strong incentive for victims to gain independence and become less reliant on public assistance” (Citizenship and Immigration of Services Ombudsman, 2009, p. 13). Therefore, it is recommended that the T Human Trafficking Status and U Victims of Crime Status applicants receive work authorization while awaiting decisions on their applications.

*Clarification in the Adjustment of Status Process*

When a victim with a T or U Status has fulfilled the four-year time period, he/she may apply for permanent residency—this process is formally known as the adjustment of status. Though the T Human Trafficking Status and the U Victims of Crime Status were created in 2000, the regulations regarding the adjustment of status procedures were not promulgated until December 12, 2008 and became effective as of January 12, 2009. This comes after the seven-year delay in the implementation of the U Victims of Crime Status. With the U Victims of Crime Status implementation delay, USCIS attempted to accommodate the petitioners, who had applied for the U Status and had not been reviewed, by granting those petitioners accommodations like temporary work authorization. However, no such accommodations have been made for those people who have been awaiting the review of for their adjustment of statuses applications. Currently, this problem is only impacting those people with a T Human Trafficking Status, as the U Victims of Crime Status has not been implemented for four years. Nonetheless, USCIS should develop an accommodating framework for both statuses, if the agency continues to handle applications at the pace at which they are currently being reviewed.

Another complication that should be addressed in the near future is the fact that the T Human Trafficking Status has a 5,000 limit of how many statuses can be adjusted in a given year. While the T Human Trafficking Status does not appear to yet require the use of all 5,000 statuses in one year, with the delay in beginning this policy, it is likely that this number could rapidly approach the limit. On the other hand, the U Victims of Crime Status does not have a limit on the number of statuses that can be adjusted each year<sup>25</sup>.

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<sup>25</sup> This is not to be confused with the U Victims of Crime Status quota limit of 10,000 statuses per fiscal year. A maximum of 10,000 statuses can be granted each year, but there is no limit on the number of these statuses that can be adjusted to permanent citizenship after the four-year status has been fulfilled.



*Lack of Deadlines*

Though it offers the defense that it is short-staffed, USCIS has still failed to implement the legislation within a reasonable amount of time. Therefore, it seems appropriate that USCIS be provided deadlines and time limits on when legislative mandates, such as the design of the U Victims of Crime Status, should be finished and the amount of time that a status must be received within, assuming that the quota limit for that status has not been met. These deadlines will help keep USCIS on track and hopefully provide the federal government with an incentive to allot the agency more funds for staffing and expertise. Additionally, it is recommended that Congress provide penalties to USCIS when such deadlines are not met to ensure that USCIS will follow through with the imposed deadlines.

## Conclusions

Overall, the T Human Trafficking Status and U Victims of Crime Status are successful programs in that they appear to have addressed barriers to prosecutions of the targeted categories of criminals. However, implementation of both statuses falls short of legislative goals, especially on the part of USCIS. The biggest failure in the development of the statuses has been USCIS's delay in implementing the U Victims of Crime Status and the adjustment process. USCIS could benefit greatly from partnering with other agencies to develop a framework for participating in meeting the requirements of the U Victims of Crime Status. In doing this, misunderstandings could be avoided and the process could move more efficiently and effectively for all concerned.

From an intervention theorist's perspective, the program is beneficial in that more prosecutions appear to have resulted. Intervention theory's second component, causal theory, also asks what additional impacts result from the program, if any. There are other impacts, aside from the prosecutions. For the U Victims of Crime Status, most of these impacts are not yet known as the status has not been in place long enough to assess. In regards to the T Human Trafficking Status, other impacts include an increased risk to human traffickers and, therefore, a decrease in the number of humans trafficked.

If data were accessible, it would greatly help the United States learn from where most trafficking victims are being trafficked, more precise information on where the crimes are occurring, and additional data on what type of crimes are being committed against this population. This information could then, in turn, be helpful in working with the countries of origin to develop their own anti-crime efforts, particularly those related to human trafficking.

### **Overall Recommendations**

1. The U Victims of Crime Status should be allocated based upon the year in which the applicant applied, rather than the year the application was accepted. This will help USCIS to continue to review applications and be fair to those applicants, while also acknowledging the seven-year delay in processing applications.
2. Local law officers need to be trained on the goal and process of the U Victims of Crime Status, along with their role in the process.
3. It is recommended that Congress require states to submit their anti-trafficking efforts and include this in the U.S. Attorney General's Annual Trafficking In Persons Report.
4. Congress should consider reviewing the purpose of legislation and how that would be impacted by allowing civil cases and the investigation involved with that process to meet the criminal investigation component of the T Status.
5. Congress should consider reviewing and clarifying the terminology and wording in both the T Human Trafficking Status and the U Victims of Crime Status, including the use of reasonable and extreme hardship in the T Human Trafficking Status and the use of "helpful" in the U Victims of Crime Status.
6. It is suggested that USCIS develop and provide documents in a multitude of languages and that social service agencies provide translators when appropriate to assist the majority of undocumented residents with language barriers.
7. USCIS should begin tracking and reporting important information from the U and T status applications, such as state and location in which the crime occurred; the type of criminal activity the application is based upon; and the native country of the applicant.
8. Because the acceptance rates for the T and U statuses are dramatically different, it is recommended that further research be done to assess why this difference has arisen.

9. It is strongly recommended that USCIS take whatever measures necessary to seek additional funding for employees, particularly to assist with the U Victims of Crime Status.
10. USCIS should consider providing a temporary work authorization to T and U status applicants.
11. As USCIS begins to review petitions for adjustment of status, it will be important that the agency consider accommodating those people who have been waiting for the agency to implement the adjustment of status. Such accommodations might include extending temporary residency, providing work authorization, and providing benefits such as health care and food stamps.
12. Ultimately, it is highly recommended that the federal government provide USCIS clear deadlines and follow-up on these to ensure that these are being handled in an appropriate, timely manner.

### **Caveats**

The most significant limitation involves the lack of data available on the T Human Trafficking Status and the U Victims of Crime Status.

Additional limitations of the analysis include the lack of literature available on the U Victims of Crime Status, as it is more recent than the T Human Trafficking Status. Along with this, not many articles reviewed the statuses from the perspective of providing services to undocumented residents; rather, most of the studies analyze the statuses from the human trafficking lens. These articles along with limited others are written from a specific standpoint. Therefore, additional unbiased assessments from the viewpoint of undocumented residents are needed to fully understand the effect of both statuses.

Overall, implementation theory demonstrates that the U and T Statuses are beneficial in that they have led to an increase in prosecutions. In addition, both statuses have provided protection for fearful victims of crime. The implementation process has been slower than expected due to delays from USCIS. Both the T Human Trafficking Status and U Victims of Crime Status require further research to ensure that they are being implemented as they were intended. Generally speaking, the statuses have accomplished what the legislation intended.

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