

# Chapter 2

## Legal Aspects of Sex Trafficking in America

# **Major Topics to be Discussed**

- The Mann Act
- The Differences Between the Most Current Sex Trafficking Acts Passed by Congress and the Mann Act
- The Travel Act
- Creation of Special Status Visas
- Trafficking Victims Protection Act 2000
- Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA)

# **Major Topics to be Discussed**

**(continued)**

- Trafficking Victims Protection Reauthorization Act of 2005
- William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
- Federal Laws Related to Domestic Minor Sex Trafficking
- The Racketeer Influenced and Corrupt Organizations Act (RICO)
- Money Laundering of Sex Trafficking Profits
- States That Have Sex Trafficking Laws

# The Mann Act

- The Mann Act, or White-Slave Traffic Act, was named after Representative James Robert Mann (R-IL)
- It became law on June 25, 1910
- The Mann Act was passed at a time when the prostitution debate and the white-slave trade were high-profile issues

Rep. James Robert Mann

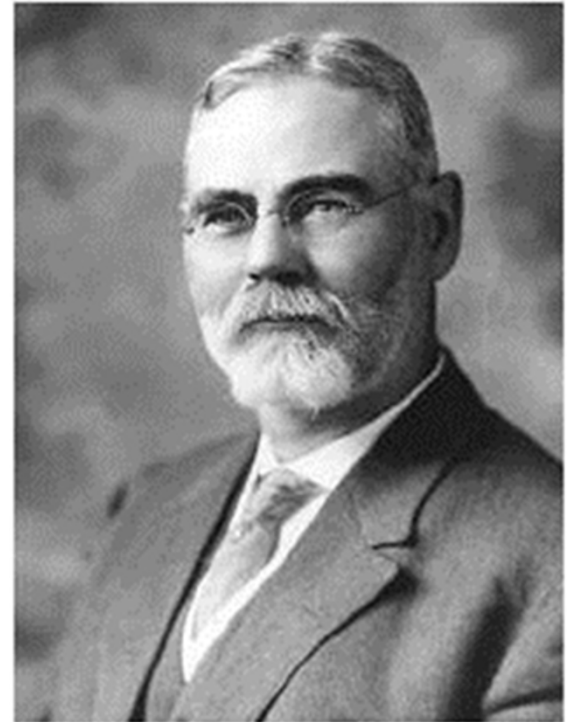


Photo: Library of Congress

# The Mann Act – As it Relates to Adults

- The law states the following as it relates to adults
  - whoever knowingly transports any individual in interstate or foreign commerce
  - or in any territory or possession of the United States with the intent that such individual engage in prostitution
  - or in any sexual activity for which any person can be charged with a criminal offense
  - or attempts to do so, shall be fined under this title or imprisoned not more than ten years

# The Mann Act - As it Relates to Minors

- The law states the following as it relates to minors
  - a person who knowingly transports an individual who has not attained the age of eighteen years in interstate or foreign commerce
  - or in any commonwealth, territory, or possession of the United States, with intent that the individual engage in prostitution
  - or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than ten years or life

# **The Differences Between the Most Current Sex Trafficking Acts Passed by Congress and the Mann Act**

- The Mann Act does not require any showing that the transported individual was compelled through improper means to engage in the prohibited sexual activity
- It is not necessary to show that the transported individual engaged in any sexual activity
- It is the act of transporting the individual in interstate or foreign commerce “with intent” that the individual engage in the prohibited sex act that violates the statute

# **The Differences Between the Most Current Sex Trafficking Acts Passed by Congress and the Mann Act**

**(continued)**

- Under the provisions of the Mann Act, physical movement across a state line or international border is required
- Also, it should be noted the Mann Act does not require that the sexual activity for which the individual is transported be “commercial”

# **The Differences Between the Most Current Sex Trafficking Acts Passed by Congress and the Mann Act**

**(continued)**

- The Mann Act provides an option for plea negotiations where the trafficking case involves adult victims and the evidence of compulsion is not strong, since the law contains no mandatory minimum sentence

# **The Differences Between the Most Current Sex Trafficking Acts Passed by Congress and the Mann Act**

**(continued)**

- It can also be used to prosecute “sex tourism” in which the defendant travels to another country for the following purposes
  - engaging in sexual conduct that is illegal in the United States and also may be illegal in the country where the conduct occurs
  - such as sex with minors

# **The Differences Between the Most Current Sex Trafficking Acts Passed by Congress and the Mann Act**

**(continued)**

- The Mann Act specifically prohibits persons from traveling from the United States to a foreign country to engage in illegal sexual activity
- Also prohibits U.S. citizens or permanent residents from traveling *between* foreign countries for this purpose

# **The Differences Between the Most Current Sex Trafficking Acts Passed by Congress and the Mann Act**

**(continued)**

- Finally, one unique and seemingly under-utilized Mann Act provision is that it criminalizes conduct relating to the following
  - S keeping
  - S harboring
  - S controlling of illegal aliens for purposes of prostitution or
  - S “other immoral purpose”

# **The Differences Between the Most Current Sex Trafficking Acts Passed by Congress and the Mann Act**

**(continued)**

- The law requires that anyone who engages in this activity to do the following
  - file a statement with the Commissioner of Immigration setting forth each alien's name, where the alien is being kept and
  - all facts relating to the alien's entry into the United States
- The failure to file this report is punishable by up to ten years imprisonment

# The Travel Act

- The Travel Act, passed in 1952, federalizes the crime of operating a prostitution business
- It prohibits, in relevant part, the following activities
  - traveling in interstate or foreign commerce
  - using the mail or any facility in interstate or foreign commerce with the intent to do the following
    - promote
    - manage
    - establish
    - carry on
    - or facilitate the promotion
    - management
    - establishment or
    - carrying on of any unlawful activity [including] any business enterprise involving ... prostitution offenses in violation of the laws of the State in which they are committed or of the United States

# **The Travel Act**

**(continued)**

- It is similar to the Mann Act in that it does not require a showing of compelled prostitution
- It does however require the following
  - S a showing of a “business enterprise” that
  - S was involved in prostitution
  - S which has been interpreted to mean “a continuous course of action”
  - S as opposed to “isolated casual or sporadic activity”

# **The Travel Act**

**(continued)**

- The Travel Act, in contrast to the Mann Act, also requires the actual carrying on of the prostitution business as opposed to the mere intent to do so
- Like the Mann Act there is no statutorily mandated minimum sentence where adult transportees or victims are involved

# **The Travel Act**

**(continued)**

- The maximum sentence under the Travel Act is only 5 years for each count (unless death results) as compared to 10 years under the Mann Act
- It does offer a distinct advantage over the Mann Act in that it
  - proscribes the use of “any facility interstate or foreign commerce” such as a telephone or Internet, to carry on the prostitution business
- The physical transportation or travel of the person who performs the prostitution is not required

# **Creation of Special Status Visas**

- These visas are intended to assist trafficking victims to stay in the United States as long as certain stipulations are met

# T Nonimmigrant Status Visa

- The Trafficking Victims Protection Act of 2000 created a new nonimmigrant category
- It is known as T status or T-visa
- It is intended for aliens who are victims of severe forms of Trafficking in Persons(TIP)
- Aliens who receive T status are eligible for the following benefits
  - to remain in the United States for four years and
  - may apply for lawful permanent residence status (LPR) after being continually present in the United States for three years

# T Nonimmigrant Status

(continued)

- To receive T status, the alien must also be admissible to the United States or obtain a waiver of inadmissibility
- A waiver of inadmissibility is available for the following
  - S health related grounds
  - S public charge grounds or
  - S criminal grounds if the activity rendering the alien inadmissible were caused by, or were incident to the alien's victimization

# T Nonimmigrant Status

(continued)

- Waivers are not automatically granted and there is no appeal if the admissibility waiver is denied
- This waiver is especially important for those involved in sexual trafficking
- This is a necessary provision since prostitution is one of the grounds of inadmissibility specified in the Immigration and Nationality Act (INA)

# T Nonimmigrant Status

(continued)

- Additionally, aliens who are present without being admitted or paroled into the United States are inadmissible and would need to obtain a waiver to be eligible for T status
- For example, an alien who paid a smuggler to enter the country illegally and then was held in servitude would need to get an admissibility waiver to be eligible for T status
- The T status is limited to 5,000 principal aliens each fiscal year

# T Nonimmigrant Status

(continued)

- Additionally, the spouse, children, or parents of an alien under age 21, in order to avoid extreme hardship, may be given derivative T status, which is not counted against a numerical limit
- Individuals who are eligible for the T status may be granted work authorization

# T Nonimmigrant Status

(continued)

- T status is valid for four years and may be extended if the following occurs
  - S a federal
  - S state
  - S local law enforcement official
  - S prosecutor
  - S judge
  - S or other authority investigating or prosecuting activity related to human trafficking certifies that the
  - S presence of the alien in the United States is necessary to assist in the investigation or prosecution

# T Nonimmigrant Status

(continued)

- In addition regulations require that federal officials provide trafficking victims with specific information regarding their rights and services such as
  - immigration benefits
  - federal and state benefits and services (e.g., certification by the Department of Health and Human Services (HHS) and assistance through HHS's Office of Refugee Resettlement (ORR))
  - medical services
  - pro-bono and low cost legal services
  - victim service organization
  - victims' compensation (trafficked aliens are often eligible for compensation from state and federal crime victims programs)
  - the right to restitution and
  - the rights of privacy and confidentiality

# Continued Presence

- Federal law enforcement officials, who encounter victims of severe forms of Trafficking in Persons (TIP) and are potential witnesses to that trafficking may request the Department of Homeland Security (DHS) grant the continued presence of the alien in the United States
- Historically, the attorney general has had the discretionary authority to use a variety of statutory and administrative mechanisms to insure the alien's continued presence

# Continued Presence

(continued)

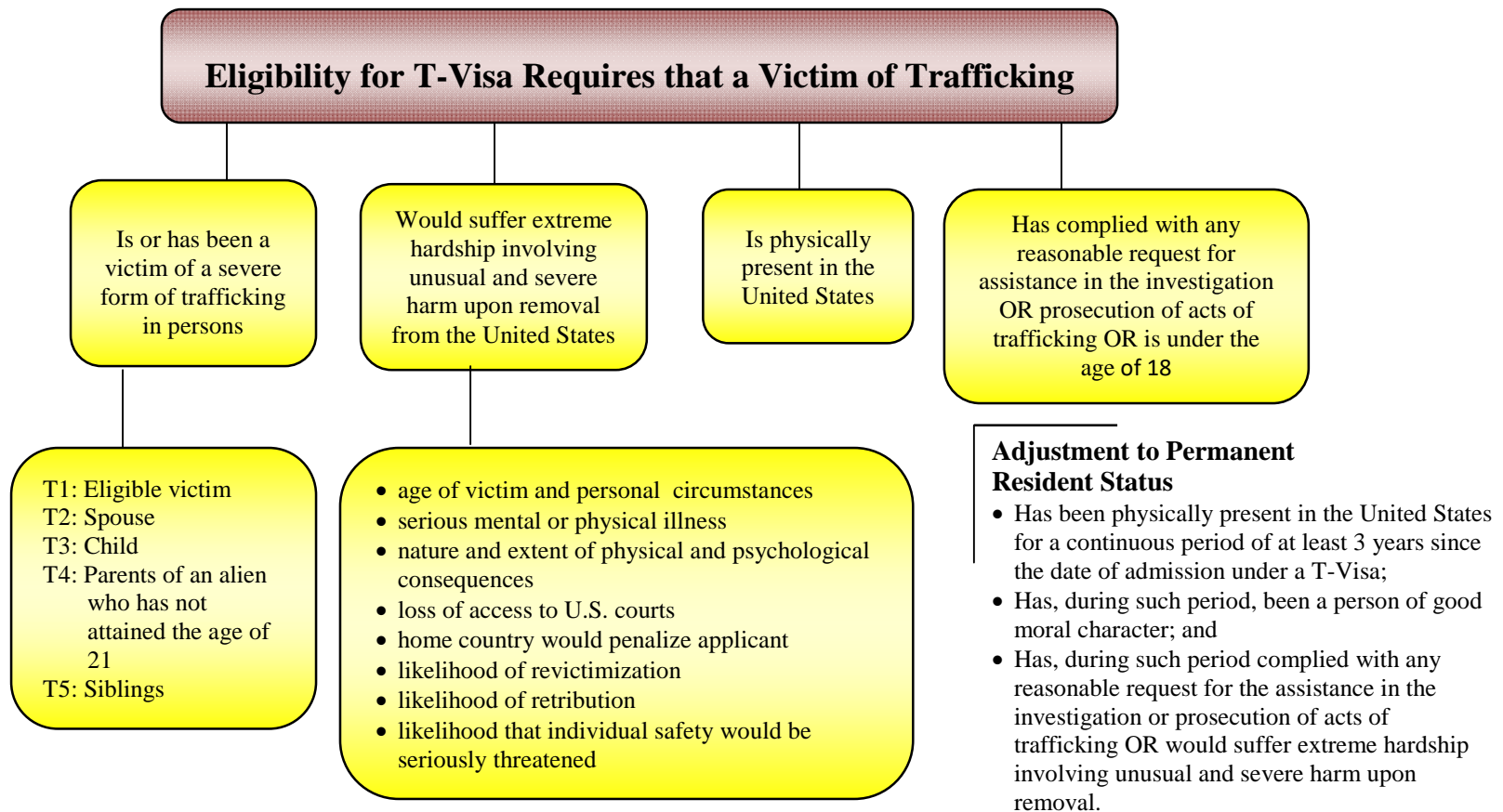
- Most of the statutory and administrative mechanisms for continued presence previously required the following
  - that the alien depart from the United States once their presence for the criminal investigation or prosecution is no longer required
- In most cases, victims granted continued presence are eligible for work authorization

# Continued Presence

(continued)

- In some cases, law enforcement prefers giving the alien continued presence rather than T status
- This is done in order to prevent the appearance, during the prosecution of the traffickers, that the alien's testimony was "bought"

# T-Visa Requirements



U.S. Trafficking Victims Protection Act, 2000, (Section 107).

Source: Mohamed Mattar, Comprehensive Legal Approaches to Combating Trafficking in Persons: an International and Comparative Perspective, Protection Project, (Washington, DC: Johns Hopkins University, 2006), p. 40.

# U Nonimmigrant Status

- Some victims of trafficking are eligible for U nonimmigrant status
- The Violence Against Women Act of 2000 of TVPA, created the U nonimmigrant status, often called the U visa, for victims of physical or mental abuse
- To qualify for U status, the alien must file a petition and establish the following
  - he/she suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activities
- This refers to one or more of the following or any similar activity in violation of federal or state criminal law

# U Nonimmigrant Status

(continued)

- rape
- prostitution
- kidnapping
- murder
- torture
- sexual exploitation
- abduction
- felonious assault
- trafficking
- female genital mutilation
- unlawful criminal restraint
- witness tampering
- Incest
- being held hostage
- false imprisonment
- obstruction of justice
- domestic violence
- peonage
- blackmail
- perjury or attempt
- sexual assault
- involuntary servitude
- Extortion
- conspiracy
- abusive sexual contact
- slave trade
- manslaughter
- solicitation to commit any of the above crimes

# U Nonimmigrant Status

(continued)

- As certified by law enforcement or immigration officials
  - he/she (or if the alien is a child under the age of 16, the child's parent, guardian or friend) possess information about the criminal activity involved

# U Nonimmigrant Status

(continued)

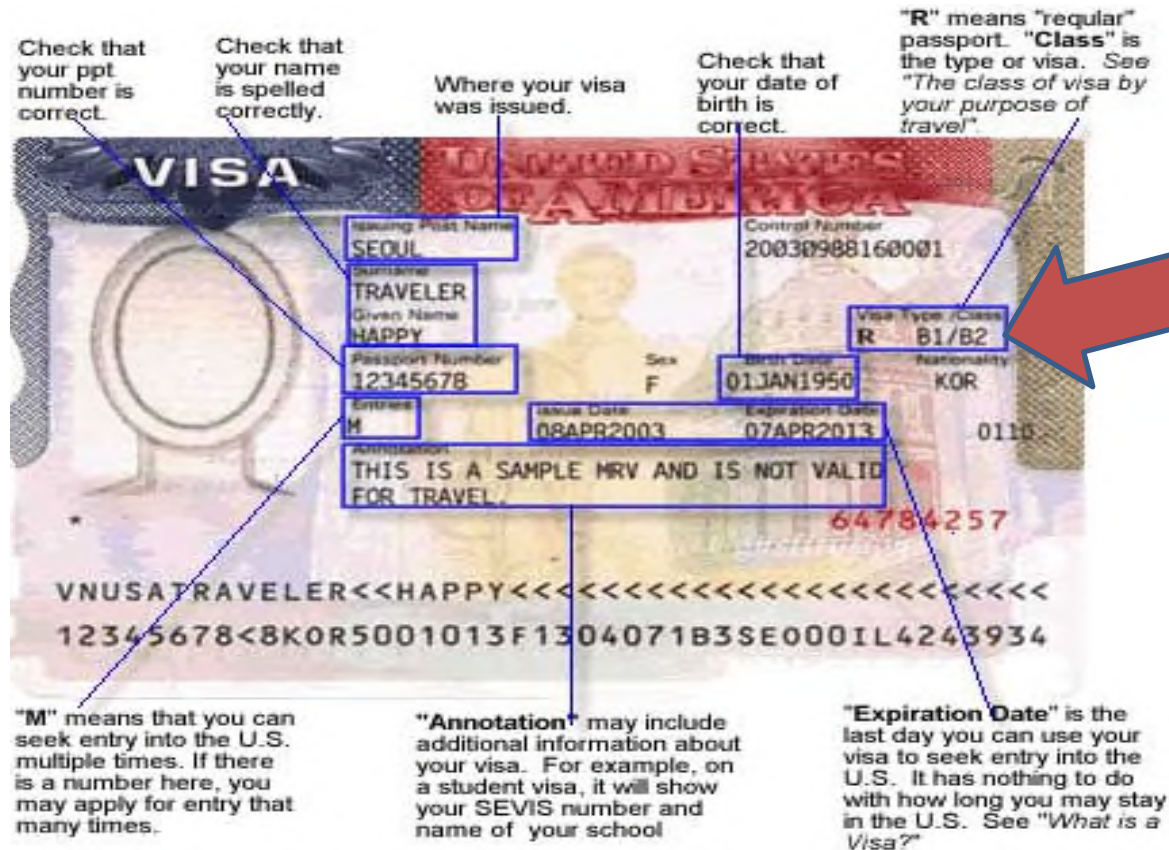
- He/she has been  
S is being or  
S is likely to be helpful in the investigation and  
S prosecution of the criminal activity by  
S federal, state or local law enforcement  
authorities and
- The criminal activity violated the laws of the  
United States or occurred in the United States

# U Nonimmigrant Status

(continued)

- The U category is limited to 10,000 principal aliens per year
- Even when the statutory cap has been reached the United States Citizenship and Immigration Services (USCIS) will do the following
  - continue to accept and process new petitions for U status and
  - issue a notice of conditional approval to petitioners, who are found eligible for U status but are unable to receive U status because the cap has been reached

# United States Visa



The T visa and U visa are recognized by the letter T or U in the upper right side of the card in the box labeled “Type/Class.”

Source: U.S. Department of State, available at [http://travel.state.gov/visa/questions/questions\\_1253.html](http://travel.state.gov/visa/questions/questions_1253.html).

# Cooperation with Law Enforcement Needed for a U Visa

- According to the statute creating U status, victims must show the following
  - they “have been helpful, are being helpful to, or
  - are likely to be helpful” to
  - a federal, state, or local law enforcement official, prosecutor, or judge

# Cooperation with Law Enforcement Needed for a U Visa (continued)

- The *only* way for U applicants to establish that they have cooperated with law enforcement is by submitting a certificate of cooperation on a form signed by law enforcement
- Authority to issue certifications of cooperation is not limited to police or prosecutors

# Cooperation with Law Enforcement Needed for a U Visa

(continued)

- Under the regulations, any government agency with authority to investigate a crime may issue certificates
- This includes judges as well as agencies with investigative powers that can issue certificates of cooperation
- This also includes such agencies as
  - S child protective services or
  - S the Department of Labor

# **Trafficking Victims Protection Act 2000**

- In 2000, the U.S. government enacted the Trafficking Victims Protection Act (TVPA), which does the following
  - makes human trafficking a federal crime
  - establishes resources to combat human trafficking, and
  - issues measures for the protection of victims, thus squarely targeting human trafficking for federal criminal protection

# **Trafficking Victims Protection Act**

## **2000**

**(continued)**

- The key provisions on human trafficking in this law are as follows
- Directed by the Secretary of State to
  - S provide an annual report by June 1, listing countries that do and do not comply with minimum standards for the elimination of trafficking
  - S provide information of the nature and extent of severe forms of trafficking in persons (TIP) in each country and
  - S an assessment of the efforts by each government to combat trafficking in the State Department's annual human rights report

# **Trafficking Victims Protection Act**

## **2000**

**(continued)**

- Called for establishing an Interagency Task Force to do the following
  - monitor and Combat Trafficking, chaired by the Secretary of State and
  - authorized the Secretary to establish within the Department of State an Office to Monitor and Combat Trafficking to assist the Task Force

# **Trafficking Victims Protection Act 2000**

**(continued)**

- Called for measures to do the following
  - enhance economic opportunity for potential victims of trafficking as a method to deter trafficking
  - to increase public awareness, particularly among potential victims, of the dangers of trafficking and
  - the protections that are available for victims and
  - for the government to work with NGOs to combat trafficking

# **Trafficking Victims Protection Act**

## **2000**

**(continued)**

- Provided protection and assistance for victims of severe forms of trafficking while in the United States
- It amended the Federal Criminal code to do the following
  - make funds derived from the sale of assets seized from and forfeited by traffickers available for victims assistance programs under this act

# **Trafficking Victims Protection Act 2000**

**(continued)**

- Amended the Immigration and Nationality Act (INA) to allow the Attorney General to grant nonimmigrant visas (T visas)
- Established minimum standards to assist in accomplishing the following
  - S combat human trafficking applicable to countries that have a significant trafficking problem
  - S urged such countries to prohibit severe forms of (TIP)
  - S to punish such acts and
  - S to make serious and sustained efforts to eliminate such trafficking

# **Trafficking Victims Protection Act 2000**

**(continued)**

- Provided for assistance to foreign countries for programs and activities designed to meet the minimum international standards for the elimination of trafficking
- Encouraged the President to do the following
  - compile and publish a list of foreign persons who play a significant role in a severe form of TIP
  - impose sanctions under the International Emergency Economic Powers Act including
  - freezing of assets located in the United States

# **Trafficking Victims Protection Act 2000**

**(continued)**

- The law amended the Federal Criminal Code (18 U.S.C.) to double the current maximum penalties for the following offenses
  - S peonage
  - S enticement into slavery and
  - S sale into involuntary servitude from 10 to 20 years imprisonment and to
  - S add the possibility of life imprisonment for such violations resulting in
    - death
    - or involving kidnapping
    - aggravated sexual abuse
    - or an attempt to kill

# **Trafficking Victims Protection Act**

## **2000**

**(continued)**

- Called for the United States to do the following
  - withhold non-humanitarian assistance
  - instructed the U.S. executive director of each multilateral development bank and the International Monetary Fund to do the following
    - vote against non-humanitarian assistance to such countries that do not meet minimum standards against trafficking or are
    - not making efforts to meet minimum standards, unless continued assistance is deemed to be in the U.S. national interest
- The device used to evaluate compliance by foreign countries was called the Tier System

# The Tier System

- Pursuant to the passage of the original 2000 TVPA the U.S. government created a Tier system to be used as a guide in determining which countries would be eligible for certain types of U.S. aid

# The Tier System

(continued)

- It is the policy of the U.S. government to deny
  - non-humanitarian
  - non-trade related foreign assistance, including both bi-lateral and multi-lateral assistance
  - to any foreign government that does not comply with the minimum standards for the elimination of trafficking and
  - is not making significant efforts to bring itself into compliance with such standards

# Elements of the Tier Ranking System

Tier rankings are based upon the following

- Enactment of laws prohibiting severe forms of trafficking in persons, as defined by the TVPA and provision of criminal punishments for trafficking offenses
- Criminal Penalties prescribed for human trafficking offenses with the maximum of at least four years' deprivation of liberty or a more severe penalty
- Implementation of human trafficking laws through vigorous prosecution of the prevalent forms of trafficking in the country

# Elements of the Tier Ranking System

(continued)

- Proactive victim identification measures with systematic procedures to
  - S guide law enforcement and
  - S other government-supported front-line responders in the process of victim identification
- Government funding and partnerships with NGOs to
  - S provide victims with access to primary health care
  - S counseling
  - S shelter
  - S allowing them to recount their trafficking experiences to trained social counselors and law enforcement in an environment of minimal pressure

# Elements of the Tier Ranking System

(continued)

- Victim protection efforts that include
  - S access to services and shelter without detention and
  - S with legal alternatives to removal to countries in which the victim would face retribution or hardship
- The extent to which a government ensures victims are provided with legal and other assistance and that consistent with domestic law, proceedings are not
  - S prejudicial against victims' rights
  - S dignity
  - S psychological wellbeing

# Elements of the Tier Ranking System

(continued)

- The extent to which a government ensures
  - S the safe, humane, and
  - S to the extent possible, voluntary repatriation and reintegration of victims
- Governmental measures to prevent human trafficking, including efforts to curb practices identified as follows
  - S contributing factors to human trafficking including
  - S forced labor, such as employers' confiscation of foreign workers' passports and
  - S allowing labor recruiters to charge prospective migrants excessive fees

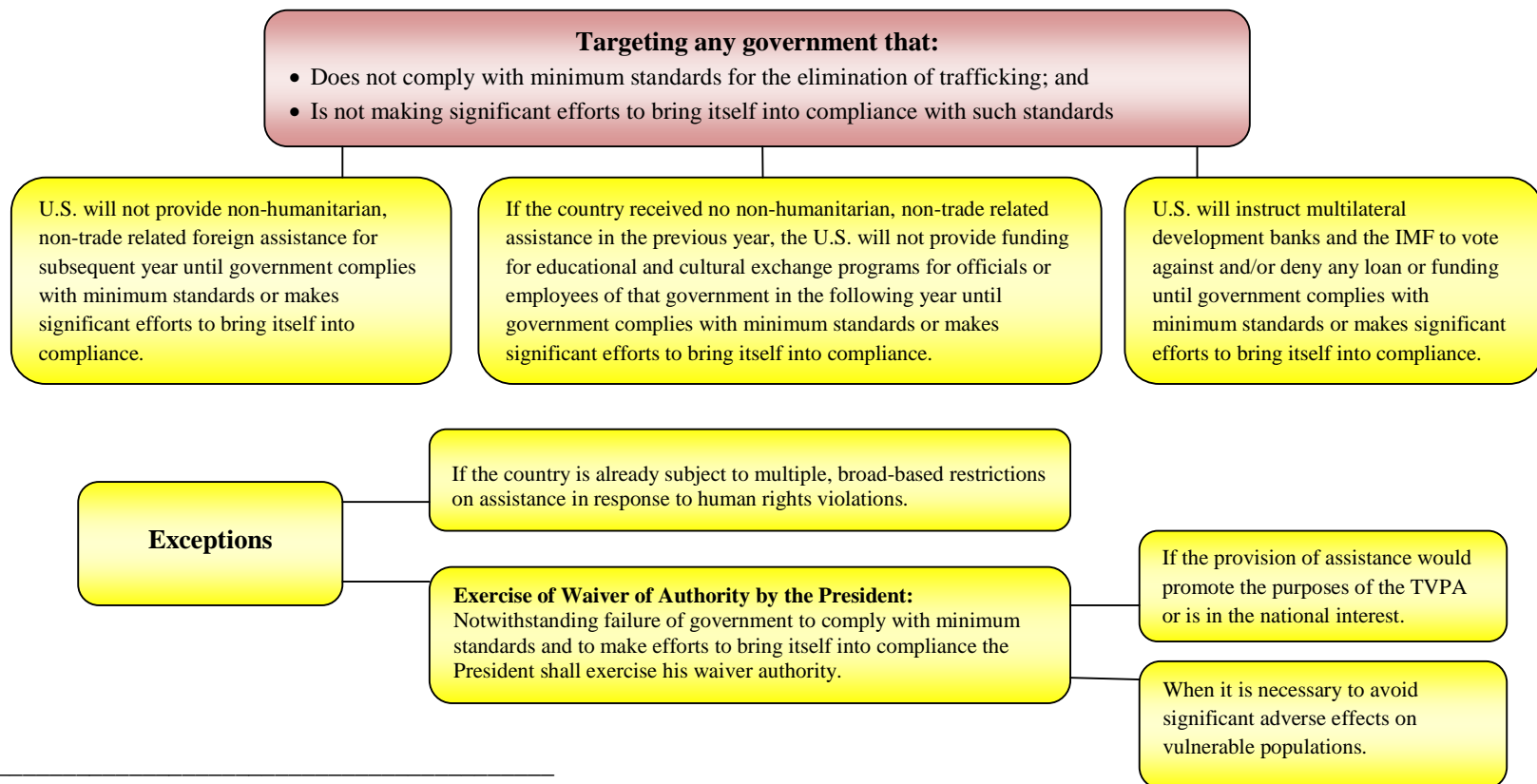
# Tier Rankings and Narratives are NOT Affected by the Following

- Efforts, however laudable, undertaken exclusively by nongovernmental actors in the country
- General public awareness events – government-sponsored and otherwise – lacking concrete ties to the prosecution of traffickers, protection of victims, or prevention of trafficking
- Broad-based development or law enforcement initiatives without a specific human trafficking focus

# The Tier System

## Actions against Governments Failing to Meet Minimum Standards

### Withholding of Assistance by Presidential Determination



U.S. Trafficking Victims Protection Act, 2000, (Section 110).

Source: Mohamed Matter, Comprehensive Legal Approaches to Combating Trafficking in Persons: an International and Comparative Perspective, Protection Project, (Washington, DC: Johns Hopkins University, 2006).

**Tier 1 Countries** -These are made up of countries deemed by the State Department as having fully complied with the minimum standards for eliminating trafficking .

### **Tier 1 Countries in the 2011 TIP Report, by Region**

<b>Region</b>	<b>Country Names</b>
East Asia & the Pacific (4 of 26)	Australia, New Zealand, South Korea, and Taiwan
Europe (21 of 46)	Austria, Belgium, Bosnia, Croatia, Czech Republic, Denmark, Finland, France, Georgia, Germany, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Norway, Poland, Slovenia, Spain, Sweden, and United Kingdom
Middle East & North Africa (0 of 18)	—
South & Central Asia (0 & 12)	—
Sub-Saharan Africa (2 of 43)	Mauritius and Nigeria
Western Hemisphere (3 of 30)	Canada, Columbia, and United States

Source: U.S. Department of State, 2011 TIP Report.

**Tier 2 Countries** -Countries viewed by the State Department as not fully complying with the minimum standards for eliminating trafficking, which are seen as making significant efforts to bring themselves into compliance

### **Tier 2 Countries in the 2011 TIP Report, by Region**

<b>Region</b>	<b>Country Names</b>
East Asia & the Pacific (14 of 29)	Cambodia, Fiji, Hong Kong, Indonesia, Japan, Laos, Macau, Marshall Island, Mongolia, Palau, Philippines, Singapore, Timor-Leste, and Tonga
Europe (17 of 47)	Albania, Armenia, Aruba, Bulgaria, Czech Republic, Greece, Hungary, Iceland, Kosovo, Latvia, Moldova, Montenegro, Romania, Serbia, Switzerland,. Turkey, and the Ukraine
Middle East & North Africa (7 of 18)	Bahrain, Egypt, Israel, Morocco, Oman, and the United Arab Emirates
South & Central Asia (7 of 18)	India, Kazakhstan, Kyrgyz Republic, Nepal, Pakistan, Sri Lanka, and Tajikistan
Sub-Saharan Africa (21 of 46)	Benin, Botswana, Burkina Faso, Djibouti, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Togo, Uganda, and Zambia
Western Hemisphere (19 of 32)	Antigua & Barbuda, Argentina, Belize, Bolivia, Brazil, Chile, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, St. Lucia, Suriname, Trinidad & Tobago, and Uruguay

Source: U.S. Department of State, 2011 TIP Report.

**Tier 3 Countries** – Includes countries whose governments the State Department deems are not fully compliant with those standards and are making significant efforts to do so.

**Tier 3 Countries in the 2011 TIP Report, by Region**

Region	Country Names
East Asia & the Pacific (4 of 29)	Burma, Micronesia, North Korea, and Papua New Guinea
Europe (0 of 47)	—
Middle East & North Africa (7 of 18)	Algeria, Iran, Kuwait, Lebanon, Libya, Saudi Arabia, and Yemen
South & Central Asia (1 of 12)	Turkmenistan
Sub-Saharan Africa (9 of 46)	Central African Republic, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Guinea-Bissau, Madagascar, Mauritania, Sudan, and Zimbabwe
Western Hemisphere (2 of 32)	Cuba and Venezuela

Source: U.S. Department of State, 2011 TIP Report.

# **Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA)**

- The TVPA 2000 was amended by Congress with the passage of the Trafficking Victims Prevention Reauthorization Act of 2003 (TVPRA)
- It was passed in order to meet the increasing challenges posed by human trafficking
- This includes new legal resources against trafficking, such as allowing victims to bring civil law suits against traffickers

# **Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA)**

**(continued)**

- This new law authorized substantial increases in funding for anti-trafficking programs for 2004 and 2005 (over \$100 million for each fiscal year)
- The law refined and expanded the minimum standards for the elimination of trafficking that governments must meet

# **Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA) (continued)**

- It also placed on such governments the responsibility to provide information and data on which their compliance with the standards could be judged
- The legislation created a “special watch list” of countries that the Secretary of State determined were to get special scrutiny in the coming year

# **Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA)**

**(continued)**

- The “special watch list” was to include countries where the following occurs
  - the absolute number of victims of severe forms of trafficking is very significant, or is significantly increasing
  - there is a failure to provide evidence of increasing efforts to combat severe forms of TIP from the previous year or
  - the determination that a country is making significant efforts to bring itself into compliance with minimum standards is based on its commitments to take additional steps over the next year

# **Trafficking Victims Protection Reauthorization Act of 2005**

- The TVPA 2000 and TVPRA 2003, had some shortcomings that needed to be rectified by supplementary legislation
- As a result of this, the TVPRA 2005 was passed

# Trafficking Victims Protection Reauthorization Act of 2005

(continued)

Signing Ceremony

- This law gives jurisdiction to U.S. courts over governmental employees who become involved in human trafficking abroad
- It provides new anti-trafficking measures such as the following
  - developing grant programs directed towards aiding state and local law enforcement anti-trafficking initiatives, and
  - expanding assistance programs to aid victims who are U.S. citizens or resident aliens



President George W. Bush signing the 2005 Trafficking Victims Protection Reauthorization Act, which expanded the provisions of the original 2000 Trafficking Victims Protection Act. Courtesy: Reprinted with permission from the March 2006 issue of New Jersey Municipalities Magazine.

# **William Wilberforce**

## **Trafficking Victims Protection Reauthorization Act of 2008**

- This act requires the establishment of an integrated database to be used by U.S. government departments and agencies to collect data for analysis on TIP

**William Wilberforce**



William Wilberforce was a deeply religious 19<sup>th</sup> century member of the British Parliament and social reformer who was very influential in the abolition of the slave trade and eventually slavery itself in the British Empire.

Photo: public domain.

# **William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008**

**(continued)**

- The act establishes new provisions to accomplish the following
  - aid domestic trafficking victims
  - makes it unnecessary for prosecutors to prove the trafficker knew the victim was a minor and
  - requiring them to, instead, demonstrate that the accused had a “reasonable opportunity to observe” the victim
- The new law also requires the following
  - all types of pimping and pandering be criminalized and
  - that the President develop a system to monitor federal anti-trafficking programs

# **William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008**

**(continued)**

- The act also
  - increases the technical assistance and other support to help foreign governments inspect locations where forced labor occurs,
  - register vulnerable populations, and
  - provide more protection to foreign migrant workers

# **William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008**

**(continued)**

- The act also requires the following
  - that specific acts should be taken against governments or countries that have been in the Tier 2 watch list system for two consecutive years and
  - the U.S. Department of State must translate the TIP Report into the principal languages of as many countries as possible
- The act prohibits military assistance to foreign governments that recruit and use child soldiers

# Preventing Trafficking to the United States

- TVPRA 2008 also requires
  - pamphlets on the Rights and Responsibilities of the Employees to be produced and
  - be given to the employment-based and educational-based non-immigrants

# Preventing Trafficking to the United States

(continued)

- The TVPRA 2008 act also requires consular officers to make sure that certain aliens interviewing for non-immigrant visas have done the following
  - S received
  - S read, and
  - S understood the pamphlet
- During the interview, the consular officer is also required to discuss the alien's legal rights under U.S. immigration, labor and employment law

# Measures to Address Trafficking in the United States

- The TVPRA 2008 amends the requirements for the T visa
- This new law allows the following to occur
  - an alien would be eligible for a T visa if the alien was unable to comply with requests for assistance in the investigation and
  - prosecution of acts of trafficking due to physical or psychological trauma

# Measures to Address Trafficking in the United States

(continued)

- The Act also requires the following when determining whether the alien meets the extreme hardship requirement for T status
  - that the Secretary of the Department of Homeland Security (DHS) consider whether the country to which the alien would be removed can adequately address the alien's security and
  - mental and physical health needs

# Measures to Address Trafficking in the United States

(continued)

- In addition, the act amends the following requirements for the T visa
  - an alien would be eligible if she was present in the United States after being allowed entry to aid in the prosecution of traffickers
- The act also broadens the requirements for an alien to receive continued presence in the United States
- It also makes it easier for families of trafficking victims to be paroled into the United States

# Measures to Address Trafficking in the United States

(continued)

- The act amends the law to allow the Secretary of DHS to waive the good moral character requirement for those adjusting from T to Legal Permanent Resident (LPR) status
- It also allows the Secretary of DHS to provide a “stay of removal” for aliens with pending T applications until the application has been adjudicated

# Measures to Address Trafficking in the United States

(continued)

- TVPRA 2008 has provisions relating to enhancing protections for child victims of trafficking
- Among these provisions are the following
  - requiring the United States to enter into agreements with contiguous countries regarding the return of unaccompanied minors designed to protect children from severe forms of TIP and
  - specifying screening procedures for children suspected of being trafficking victims

# Measures to Address Trafficking in the United States

(continued)

- The act creates new grant programs for U.S. citizen victims of severe forms of trafficking and authorizes appropriations for such programs
- The act also requires the following
  - that the Secretary of HHS and the Attorney General, within one year of enactment, to submit a report to Congress identifying any gaps between services provided to U.S. citizens and noncitizen victims of trafficking

# Measures to Address Trafficking in the United States

(continued)

- In addition the Act directs the Secretary of HHS to the extent possible, to provide legal council and appoint child advocates for child trafficking victims and other vulnerable unaccompanied alien children

# Measures to Address Trafficking in the United States

(continued)

- The act also prohibits DHS from issuing passports to those convicted of sex tourism until the person has completed their sentence
- The act creates new criminal offenses related to human trafficking, including criminalizing retaliation in foreign labor contracting
- The act creates additional jurisdiction in U.S. courts for trafficking offenses occurring in other countries if the alleged offender is present in the United States

# Federal Laws Related to Domestic Minor Sex Trafficking\*

Federal	Minimum Sentence	Maximum Sentence
18 U.S.C. §2251 – Sex Exploitation of Children	15 years 25 years 35 years	30 years 30 years (first offense) 50 years (one prior conviction) Life (two or more prior convictions) Life (if caused the death of the victim in the course of the crime) or sentence of death
18 U.S.C. §2422 – Coercion and Enticement (Transportation for Prostitution or Other Criminal Sexual Activity)	10 years	Life
18 U.S.C. §2423 – Transportation of a Minor with Intent to Engage in Criminal Sexual Activity	10 years	Life

\*These are a few of the most commonly used federal laws in the prosecution of domestic minor sex trafficking.

# **The Racketeer Influenced and Corrupt Organizations Act (RICO)**

- Congress enacted RICO in 1970 to “seek the eradication of organized crime”
- Originally formed in response to the increasing problem of organized crime’s penetration into lawful business operations “
- RICO authorized the imposition of enhanced criminal penalties
- It also created new civil sanctions to provide new legal remedies for all types of organized criminal behavior

# RICO as a Tool to Combat Sex Trafficking by Organized Crime

## FBI Special Agent Announcing the Arrest of Gambino Crime Family Members

FBI Special Agent in Charge George Venizelos announces the arrest of members of the Gambino organized crime family for racketeering in conjunction with the sex trafficking of minors and children.

Photo Credit: FBI New York.



# RICO as a Tool to Combat Sex Trafficking by Organized Crime

(continued)

- RICO has been successfully expanded to prosecute large criminal syndicates involved in the following types of criminal activities
  - narcotics
  - arms dealing
  - gambling
  - prostitution, and
  - sex trafficking

# Harsher Penalties Under RICO

- It allows for a 21-year prison sentence, or more if the underlying offense has a greater penalty
- Because a defendant can be charged both with a RICO violation and with conspiracy to violate RICO, the potential for a 40-year sentence exists

# Harsher Penalties Under RICO

(continued)

- Additionally, a defendant can receive consecutive sentences for a RICO violation and a predicate offense
- Participants in an enterprise can be convicted of racketeering conspiracy without being convicted of an underlying predicate offense

# Asset Forfeiture and RICO Violations

- An additional lure for prosecutors is the portion of the law which requires asset forfeiture of any interest or property gained as a result of a RICO violation
- Congress included the criminal forfeiture a provision in RICO to “break the economic power of organized crime as well as to punish and deter offenders”

# Asset Forfeiture and RICO Violations

(continued)

- The provision mandates the following
  - the forfeiture of a defendant's entire interest in the enterprise, possibly including the enterprise itself
  - regardless of whether some parts are engaged in legitimate business
  - The law also specifies forfeiture of “property or contractual right[s] of any kind affording a source of influence over” the enterprise.

# Asset Forfeiture and RICO Violations

(continued)

- The consequences of a RICO conviction also deters traffickers because in addition to lengthier incarcerations, the criminal forfeiture provision can irreparably damage the economic infrastructure of a trafficking enterprise

# **Money Laundering of Sex Trafficking Profits**

- Money laundering entails taking criminal profits and moving them in a prohibited manner
- Specifically criminals or persons acting on their behalf generate proceeds in the form of money or property as a result of committing a crime designated as a specified unlawful activity (SUA)

# Money Laundering of Sex Trafficking Profits

(continued)

- Criminals then move that money, often with the intent to accomplish the following
  - disguise the nature
  - location
  - source
  - ownership or
  - control of funds, which is known as “concealment” money laundering

Money Laundering



Billions of dollars are made each year in the sex and narcotics trade and traffickers are always looking for creative ways to conceal and launder their profits.

Source: <http://www.justice.gov/dea/ops/money.shtml>; accessed December 11, 2012.

# Elements Needed to Pursue Money Laundering Charges

- The elements needed under Title 18, Section 1956 U.S. Code are as follows
  - Specified Unlawful Activity (SUA) proceeds
  - knowledge by the perpetrator that the profits resulted from some type of felony and
  - a financial transaction intended to conceal the proceeds or to promote an SUA

# International Movement of Money

- Provided that subjects move the money to or from the United States to promote an SUA, investigators need not prove the money is dirty
- Even clean money sent internationally to promote an SUA will sufficiently support a charge of money laundering
- Thus, the only elements requiring proof include the following
  - S the movement or attempted movements of funds
  - S to or from the United States, and
  - S with the intent to promote an SUA

# Reverse Sting Operation

- Money launders can be charged as long as they believe they are moving SUA proceeds
- This applies even when the profits actually consist of “case funds” or other government property
- This opportunity regularly presents itself when the undercover employees or confidential human sources in covert roles get introduced to money launderers

# Reverse Sting Operation

(continued)

- In either case law enforcement can engage in reverse money laundering transactions with these criminals who then can be charged with money laundering
- The elements necessary for the charge of reverse money laundering include the following
  - S transfer or attempted transfer
  - S of funds believed to be SUA profits
  - S with intent to conceal the proceeds or promote an SUA
- The maximum sentence for violating Section 1956 is 20 years imprisonment

# The Money Spending Statute

- In addition to the money laundering violations in Section 1956 a second, often overlooked money laundering charge exists in Title 18, Section 1957, U.S. Code
- Also known as the Money Spending Statute, a 10-year maximum penalty exists for moving SUA proceeds in an amount greater than \$10,000 into or through a financial institution

# The Money Spending Statute

(continued)

- Two important facets about the money spending statute inure to the benefit of the investigator
- First, unlike the money laundering violations of Section 1956, investigators do not need to prove an intent by subjects to promote an SUA or conceal the proceeds thereof

# The Money Spending Statute

(continued)

- For this reason, law enforcement may charge Section 1957, along with Section 1956 whenever ample proof supports both
- A judge or jury disagreeing with proof of intent to conceal or promote would have to dismiss or acquit on that count of Section 1956
- However this could still result in the following
  - S a conviction under a corresponding Section 1957 charge
  - S Section 1957 is not a lesser included offense of Section 1956 so a jury can convict on both charges

# The Money Spending Statute

(continued)

- The simple fact of the transaction is all that is required
- Second, the broad definition of what constitutes a financial institution goes well beyond banks and credit unions
- It includes most merchants, such as the following
  - S jewelry stores
  - S car and boat dealerships
  - S casinos
  - S travel agencies
  - S pawnbrokers and many others through which a criminal would ordinarily spend criminal proceeds

# The Money Spending Statute

(continued)

- The elements required to charge a violation of Section 1957 are as follows
  - a transfer of SUA proceeds in a transaction of over \$10,000
  - involving a financial institution
  - knowing that the proceeds are dirty

# Specific Investigative Suggestions for Making an Asset Trace

## (Investigative Subpoenas)

- Some banks may notify the account holders of the existence of a state-issued subpoena unless it contains the correct non-disclosure language from the Bank Secrecy Act
- Coordinate with the United States Attorney and State Attorney to ensure the correct language appears on the subpoena

# Specific Investigative Suggestions for Making an Asset Trace

(Public Records and Commercial  
Public Records Databases)

- These databases can provide leads to vehicles, boats, and land
- Cross-references between loan and bank accounts to relatives or associates can help reveal when a suspect hides assets in other names

# Specific Investigative Suggestions for Making an Asset Trace

## (Public Records and Commercial Public Records Databases)

(continued)

- Federal legislation requires reporting of certain financial transactions by designated financial institutions and businesses
- A Suspicious Activity Report (SAR) is required for all transactions in excess of \$10,000 when the transaction appears to be suspicious
- A Currency Transaction Report (CTR) is required on all cash transactions over \$10,000

# Specific Investigative Suggestions for Making an Asset Trace

## (Public Records and Commercial Public Records Databases)

(continued)

- Casinos are required to file a “Currency Transaction Report (CTR) for Casinos” on cash transactions over \$10,000
- An Internal Revenue Service (IRS) Form 8300 is required on all cash business transactions over \$10,000 (For example, if a person pays over \$10,000 cash for a new car, the dealership has to file this form)

# Specific Investigative Suggestions for Making an Asset Trace

## (Public Records and Commercial Public Records Databases)

(continued)

- The Financial Crime Enforcement Network (FinCEN) records checks by name on Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs); and runs wire transfers reports over \$10,000
- The reports include CTRs for casinos, money transmitters, banks, auto dealerships, and other regulated businesses for cash transactions over \$10,000

# Specific Investigative Suggestions for Making an Asset Trace

(Public Records and Commercial  
Public Records Databases)

(continued)

- The reports include SARs submitted by regulated businesses (banks) when it appears to the bank/business that a person or business is attempting to structure transactions to avoid the reporting threshold or other suspicious cash transactions

# Specific Investigative Suggestions for Making an Asset Trace

(Public Records and Commercial  
Public Records Databases)

(continued)

- Proper training in the use of computer software for analysis of information, such as
  - S Microsoft<sup>®</sup> Excel or other spreadsheet software
  - S Microsoft Visio
  - S i2 Analysts Notebook<sup>®</sup>, or
  - S flowchart software

# Specific Investigative Suggestions for Making an Asset Trace (Public Records and Commercial Public Records Databases) (continued)

- When tracing assets of a human trafficking operation, investigators are trying to prove the suspect engaged in trafficking for a profit
- The operation may have legitimate income, such as from contractual payments for leasing housekeeping workers to hotels

# Specific Investigative Suggestions for Making an Asset Trace (Public Records and Commercial Public Records Databases) (continued)

- The company may have excess, unexplained income from exploitation of the workers (excessive debt repayment, deduction from pay, excessive housing fees, prostitution, and tip confirmation)

# Specific Investigative Suggestions for Making an Asset Trace (Public Records and Commercial Public Records Databases) (continued)

- The asset trace first attempts to identify all legitimate sources of income (loans are included as a source of income), followed by identifying all known expenditures. For our purposes, expenditure includes money placed in saving or checking accounts, loans or credit card payments, down payments, purchases, and utility payments

# Specific Investigative Suggestions for Making an Asset Trace (Public Records and Commercial Public Records Databases) (continued)

- Identify and total all legitimate forms of income (including loans), compare this amount to the amount of the funds the suspect has applied or expended

# Specific Investigative Suggestions for Making an Asset Trace (Public Records and Commercial Public Records Databases) (continued)

- If, for example, the investigation results in the discovery of \$1 million of income, and \$1.5 million of expenses, then you could conclude that there is either half a million dollars in unidentified legal income, or half a million dollars in illegal income

# Specific Investigative Suggestions for Making an Asset Trace (Public Records and Commercial Public Records Databases) (continued)

- Suspects will usually try to hide the illegal income by making it appear the money came from legitimate sources
- They may set up shell or front companies with falsified sales contracts and falsify mortgage or property sales transactions to show a larger profit than was actually achieved

# Specific Investigative Suggestions for Making an Asset Trace (Public Records and Commercial Public Records Databases)

(continued)

- Credit bureau information that requires a subpoena or court order should be sought
- Cooperating witness or informant may provide a known bank used by suspects, cell phone numbers, and names of associates in whose names there may be other accounts
- Mail covers through the United States Postal Service

# Conspiracy as a Separate Charge

- Each act of money laundering must be charged as a separate offense
- To charge money laundering as a continuing course of conduct, it must be charged as a conspiracy
- Investigators are not required to prove that conspirators knew the precise SUA that generated the laundered proceeds
- They need only to prove that two or more criminals intended to launder dirty money

# Conspiracy as a Separate Charge

(continued)

- Venue for a money laundering conspiracy includes any district where the agreement to launder money took place or where any act occurred in furtherance of the conspiracy
- However, unlike most conspiracies, no overt act is necessary in the charge of conspiracy to commit money laundering

# **States That Have Sex Trafficking Laws\***

- The two broad categories of state statutes provided herein deal primarily with the following
  - state statutes dealing with the commercial sexual exploitation of children or prostitution of children
  - states statutes along the U.S. southern border dealing with the commercial exploitation of both adults and children

*\* Instructors who are teaching sex trafficking in police academies or exclusively for law enforcement officers in their state should familiarize themselves with their individual state statutes and incorporate them into these PowerPoints.*