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## HUMAN TRAFFICKING VS. HUMAN SMUGGLING

### EXECUTIVE SUMMARY

Human trafficking and human smuggling are often confused in open source, intelligence, and law enforcement reporting. The two are very different crimes, and it is critical to refer to them accurately to avoid confusion and misrepresentation.

Human trafficking is a crime involving the exploitation of someone for the purposes of compelled labor or a commercial sex act through the use of force, fraud, or coercion. Where a person younger than 18 is induced to perform a commercial sex act, it is a crime regardless of whether there is any force, fraud, or coercion.

Human smuggling involves the provision of a service—typically, transportation or fraudulent documents—to an individual who voluntarily seeks to enter a foreign country illegally.

**Table 1: Trafficking vs. Smuggling**

TRAFFICKING	SMUGGLING
Crime against a person	Crime against a border
Victims can be U.S. citizens or foreign nationals	Involves foreign nationals
Exploitation-based	Transportation-based
No movement required	Requires border crossing
Involuntary	Voluntary

*Note: This Fact Sheet emphasizes the differences between human trafficking and human smuggling; therefore, the examples focus on foreign victims, but it is important to remember that trafficking victims may also be U.S. citizens.*

## DEFINITION OF HUMAN TRAFFICKING

Human trafficking—also called trafficking in persons and frequently referred to as modern slavery—involves exploiting men, women, and children for the purposes of forced labor or commercial sex. The Trafficking Victims Protection Act (TVPA) is the United States’ comprehensive Federal law on human trafficking.<sup>A</sup> Since passage of the TVPA, 50 states plus the District of Columbia have enacted anti-human trafficking legislation including criminal trafficking statutes.<sup>1</sup>

The TVPA defines human trafficking as either:

- (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

International law defines human trafficking similarly. The 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Protocol) also focuses on force, fraud, or coercion for the purpose of exploitation:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.”<sup>2</sup>

A victim of human trafficking does not need to be transported from one location to another for the crime of trafficking to occur (although movement can occur). Trafficking can take place within a country as well as across international borders. The defining element of trafficking is exploitation for the purposes of forced labor or commercial sex, not transportation.

Much of the discussion in the public sphere about human trafficking revolves around sex trafficking. However, human trafficking includes both sex trafficking and labor trafficking. Forced labor, also referred to as labor trafficking, involves the use of force or physical threats, psychological coercion, abuse of the legal process, deception, or other coercive means to compel

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<sup>A</sup> Trafficking Victims Protection Act of 2000, P.L. 106-386, 114 Stat. 1464 (2000) (reauthorized in 2003, 2005, 2008, and 2013).

someone to work. One common form of coercion is the use of debt; if an individual's labor is demanded as repayment for a loan or service and the individual is unable to repay the debt, the individual has been subjected to debt bondage (also known as bonded labor). Debt bondage can also be found in sex trafficking cases, for example, where the victim may be passed from one trafficker to another and then told he or she must repay the money the trafficker spent in purchasing the victim from the original trafficker.

The following are examples of situations that do not constitute trafficking, although other criminal statutes may apply and victims of crime may be eligible for services. Each situation should always be examined closely to determine if trafficking occurred.

- **Prostitution.** Prostitution is often conflated with sex trafficking. However, under current U.S. law prostitution and sex trafficking are distinct crimes. Both U.S. law and the UN Protocol require force, fraud, or coercion for a commercial sex act to be considered trafficking. An important exception involves the sex trafficking of minors, in which case force, fraud, or coercion is not required to prove sex trafficking.
- **Harsh working conditions.** If an individual is subjected to harsh working conditions—such as not being properly compensated or being required to work long hours without breaks in violation of Federal, state, or local labor laws—but is able to quit the job without punishment or threat of punishment, the individual is not a trafficking victim.
- **Hostage for ransom.** If an individual is held hostage or held for ransom and abused—that is, someone who paid to be smuggled into another country is held captive and raped or tortured until they pay a ransom or smuggling fee—but is not in a situation of forced labor or commercial sex, the individual is not a trafficking victim.
- **“Mail-order brides.”** Marriage through international marriage brokers does not automatically constitute trafficking. If a “mail-order bride” is assaulted or otherwise mistreated, but is not exploited for a commercial benefit, she is not a trafficking victim. If, however, she finds herself forced into commercial sex or placed in a situation of involuntary domestic servitude, she is a trafficking victim.
- **Illegal adoption.** Illegal adoption, including the kidnapping or buying or selling of a child for the purpose of offering that child for adoption, is not a form of human trafficking.
- **Organ trafficking.** Although part of the UN Protocol, U.S. law does not consider the trade in human organs to be human trafficking.
- **Distribution and possession of child pornography.** Distribution and possession of child pornography—while criminally prohibited—are not acts of human trafficking. Producing child pornography may constitute human trafficking if a child is induced to perform a commercial sex act while producing the pornography.

## DEFINITION OF HUMAN SMUGGLING

Human trafficking is often confused with human smuggling. Human smuggling—frequently called alien or migrant smuggling—involves the provision of a service, such as transportation or fraudulent documents to an individual who voluntarily seeks to gain illegal entry into a foreign country. Human smuggling, therefore, is a crime against a border while human trafficking is a crime against a person.

In the United States, human smuggling is generally defined as the importation of people into the country involving deliberate evasion of immigration laws.<sup>3</sup> This offense involves bringing undocumented foreign nationals into the country, as well as the unlawful transportation and harboring of such foreign nationals already in the United States. In international law, the Protocol against the Smuggling of Migrants by Land, Sea and Air defines migrant smuggling as the “procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”<sup>4</sup>

The distinction between human smuggling and human trafficking can become complicated when an act that begins as smuggling turns into trafficking. In a smuggling case, two willing parties usually go their separate ways once the transaction is complete (for example, the individual paying for smuggling services arrives at his or her destination). However, an individual may initially consent to being smuggled across a country’s borders and then become exploited in a situation of forced labor or commercial sex en route to or upon entering the destination country; in such a case, the individual would be considered a victim of human trafficking.

- For instance, an individual may pay for fraudulent documents or transportation into the United States where a promised job as a housekeeper awaits; at this point, the individual has consented to be smuggled into the United States and is not a victim. If, however, upon arrival, the individual is threatened, is forced to work for little or no pay, and has his or her freedoms restricted, that individual is now a victim of trafficking.
- Similarly, an individual may pay a smuggler to be transported into the United States but, upon arrival, may be told he or she must pay additional money to the smuggler and be forced into commercial sex. That individual is now a trafficking victim.

It is important to note that although smuggled persons can become the victims of crime, not all crimes are trafficking. A smuggled person is at risk of abuse; however, as discussed above, although a smuggled person may be subjected to physical or sexual violence or held for ransom, the individual is not a trafficking victim unless he or she is compelled into forced labor or commercial sex.

## CASE SCENARIOS: TRAFFICKING OR SMUGGLING?

### CASE SCENARIO 1

#### QUESTION

A recruiting agency in India was looking for welders to work at a company in the United States for \$10.00 an hour. The agency charged each prospective worker a non-refundable \$2,500 application fee. While en route to the United States, the workers were told to sign a contract that obligated them to work for the next six months for less than \$3.00 per hour or else they would be sent home. The workers felt that they could not refuse because they had invested all their savings and were already on their way to the United States. Once they arrived, they were confined to the factory grounds, and the owner of the company kept their passports. Were the workers smuggled or trafficked?

#### ANSWER

The workers were trafficked. The workers were transported for the purposes of forced labor through the use of fraud and coercion, which resulted in the workers being subjected to involuntary servitude. Confiscation of the workers' passports by the employer also further restricted the workers' freedom, compelling them to stay with the company.

### CASE SCENARIO 2

#### QUESTION

Mario wanted to come to the United States to work in construction and send money home to his family. He paid a smuggler \$3,000 to facilitate his illegal entry through the Southwest border. Mario crossed the border with a group of other illegal migrants. Once they reached the United States, the smuggler took them to a safe house and demanded the migrants obtain an additional \$10,000 from family members or other contacts before he would release them. The smuggler locked the migrants in a basement, deprived them of food and water, and beat them. The smuggler told Mario he would kill Mario's family in Mexico if he did not pay the ransom. The smuggler and his friends raped the female migrants, and the smuggler threatened additional abuse if the women did not pay the \$10,000. Were the migrants smuggled or trafficked?

#### ANSWER

The migrants were smuggled. The abuse and deprivation they suffered in the safe house do not constitute human trafficking because the migrants were not forced to work or engage in commercial sex. The women were victims of sexual assault but not trafficking, as there was no commercial exchange. If the smuggler had charged his friends a fee for having sex with the women, at that point the women would have been subjected to commercial sex and become victims of sex trafficking.

### CASE SCENARIO 3

#### QUESTION

Local law enforcement authorities in the United States executed a search warrant at a brothel and arrested three 19-year-old foreign national women for prostitution. Homeland Security Investigations agents interviewed the women and learned that they were smuggled into the United States. Were the women smuggled or trafficked?

#### ANSWER

The women were smuggled; there is not enough information to determine if they were also trafficked. Additional questions need to be answered to make the determination. For example: Were the women threatened with harm if they attempted to leave? Did they have possession of their passports or other identity documents? Were the women free to contact friends or family? Were they engaged in prostitution to pay off a debt? What were their living conditions?<sup>B</sup>

#### QUESTION

Would the situation be different if the women were 17 years old?

#### ANSWER

Yes. If they were 17 years old, they were trafficked. All three were juveniles and were performing commercial sex acts. Since they were under 18 years of age, they would be considered victims of trafficking, regardless of whether or not they consented to participate.

<sup>B</sup> For a list of human trafficking indicators and other resources, see the U.S. Department of Homeland Security's Blue Campaign website: <https://www.dhs.gov/blue-campaign/indicators-human-trafficking>.

### PRODUCT FEEDBACK

Please direct any information, questions, or comments concerning this fact sheet to:



HUMAN SMUGGLING AND TRAFFICKING CENTER  
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## SOURCES

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<sup>1</sup> Internet Site; Author: Polaris Project and International Justice Mission; Site: Polaris Project; Title: Wyoming Becomes 50<sup>th</sup> State to Outlaw Human Trafficking; Posting Date: February 27, 2013; Page/Paragraph Number: N/A; URL: <http://www.polarisproject.org/media-center/press-releases/742-wyoming-becomes-50th-state-to-outlaw-human-trafficking>; Date of Access: 1 March 2016.

<sup>2</sup> Online Publication; Author: United Nations Office on Drugs and Crime; Site: UNODC; Title: United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, Annex II, “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”; Publication Date: 2004; Page/Paragraph Number: Page 42, Paragraph 3(a); URL:

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>; Date of Access: 1 March 2016.

<sup>3</sup> Internet Site; Author: U.S. Immigration and Customs Enforcement; Site: U.S. Immigration and Customs Enforcement; Title: Human Smuggling; Posting Date: N/A; Page/Paragraph Number: N/A; URL: <https://www.ice.gov/human-smuggling>; Date of Access: 21 March 2016.

<sup>4</sup> Online Publication; Author: United Nations Office on Drugs and Crime; Site: UNODC; Title: United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, Annex III, “Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime”; Publication Date: 2004; Page/Paragraph Number: Page 54, Paragraph 3(a); URL:

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>; Date of Access: 1 March 2016.



# HUMAN SMUGGLING AND TRAFFICKING CENTER CUSTOMER FEEDBACK

Product Title:

Product Number:

**1. Please select the organization type:**  **and mission:**

**2. Overall, how satisfied are you with the usefulness of this product?**

- Very Satisfied   
  Somewhat Satisfied   
  Neither Satisfied Nor Dissatisfied   
  Somewhat Dissatisfied   
  Very Dissatisfied

**3. Overall, how relevant was the product to your mission?**

- Critical   
  Very Important   
  Somewhat Important   
  Not Important   
  N/A

**4. Please rate your agreement with each of the following:**

	Strongly Agree	Somewhat Agree	N/A	Somewhat Disagree	Strongly Disagree
Helped in deciding on a course of action in an operational mission or investigation	<input type="radio"/>				
Timely to my intelligence needs	<input type="radio"/>				
Influenced resource planning and/or allocation	<input type="radio"/>				
The product was readable	<input type="radio"/>				
The product was professional in appearance	<input type="radio"/>				

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**6. How could this product or dissemination be improved to increase its value to your mission?**

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