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EMPOWERING VICTIMS, OPENING BORDERS
PREVENTING HUMAN TRAFFICKING BY ADJUSTING IMMIGRATION LAWS TO ACCOMMODATE THE SUPPLY AND DEMAND OF MIGRANT WORKERS

JULIE KRÜGER*

Every year, approximately 800,000 people are trafficked internationally, the majority of which are women and children trafficked for commercial sexual exploitation.¹ According to the U.S. Department of State, approximately 14,500 to 17,500 people are trafficked into the United States annually.² In this paper, I will argue that victims of human trafficking are rational, intentional migrants who become victims because of economic desperation, a demand for exploitable workers, and restrictive immigration policies.

Part I of this paper will explore two definitions of human trafficking and their consequences, and will briefly identify the victims and traffickers. Part II will focus on theories of migration, and how the motivations of migrants may leave them vulnerable to trafficking. Part III will consider the demand for trafficked workers. Part IV will examine how the current restrictive U.S. immigration policy leaves migrant workers vulnerable and exploitable, as well as some proposed changes to that policy. Finally, in Part V, I will conclude that more restrictive immigration policies increase the number of women and children trafficked into the United States.

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² Mark P. Lagon, U.S. Department of State Senior Advisor on Trafficking in Persons, Briefing: Release of the 2007 Trafficking in Persons Report (June 12, 2007), http://www.state.gov/g/tip/rls/rm/07/86306.htm (last visited Oct. 26, 2008). These numbers are estimates only, and their accuracy has been widely disputed. CLARE RIBANDO SEEKE & ALISON SISKIN, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 3 (2008) [hereinafter CRS REPORT]. In fact, much of the available information pertaining to human trafficking is speculative and rarely backed by hard data.
PART I: DEFINING HUMAN TRAFFICKING

The Victims

The majority of people trafficked into the United States are from Southeast Asia, Russia/Newly Independent States, and Latin America.\(^3\) Forms of exploitation include, among other things, labor trafficking, bonded labor, debt bondage, involuntary domestic servitude, forced child labor, child soldiers, sex trafficking and prostitution, and child sexual exploitation.\(^4\) It is estimated that the majority of trafficking victims are women, about 80 percent, and that approximately 50 percent are children.\(^5\) The International Labor Organization estimates that women and girls make up 98 percent of those exploited for commercial sex purposes, and 56 percent of those exploited for other types of forced labor.\(^6\) Most of the analysis and research into the problem of human trafficking focuses on women and children in commercial sexual exploitation. Because of this bias in available research and data, I will also focus on female victims of human trafficking, although I believe my analysis applies equally to male victims. I will not specifically address the problem of child victims here.

The Traffickers

Traffickers range from individuals exploiting one person, perhaps as a domestic servant in their home, to international crime syndicates trafficking thousands of people and bankrolling billions of dollars.\(^7\) Preliminary data from the database on human trafficking of the Global Programme Against Trafficking in Human Beings indicates that the highest number of traffickers originate from the Russian

\(^3\) CRS REPORT, \textit{supra} note 2, at 16.
\(^4\) TIP REPORT, \textit{supra} note 1, at 20-30.
\(^5\) \textit{Id.} at 8.
\(^7\) \textit{See} Janice G. Raymond, \textit{Introduction}, \textit{in} \textit{A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS} 1, 1 (2002).
Federation, Nigeria, and Ukraine. Many researchers connect traffickers with organized crime, including the Russian and Italian mafias, organized crime syndicates in the Newly Independent States, Chinese and Vietnamese Triads, the Japanese Yakuza, and South American drug cartels. Trafficking organizations are often linked with other criminal activities, such as money laundering, drugs and weapons trafficking, document forgery, racketeering, gambling, and pornography.

The International Organization for Migration identified three organizational structures used by trafficking networks. There are “large-scale networks with political and financial contacts that enable them to establish links between countries of origin and destination countries; medium-sized networks that concentrate on trafficking in women from one country only; and small networks that place one or two women at a time as required.”

Traffickers use a variety of methods to ensnare their victims. Some advertise well-compensated employment opportunities abroad in positions such as waitresses, dancers, and domestic workers, while others use

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11 BRUCKERT & PARENT, supra note 9, at 15 (citing Andrea Marie Bertone, *Sexual Trafficking in Women: International Political Economy and the Politics of Sex*, 18 GENDER ISSUES 1, 4-22 (2000)).

12 CRS REPORT, supra note 2, at 6.
match-making agencies to arrange fraudulent marriages.\textsuperscript{13} A small number of victims are simply kidnapped.\textsuperscript{14} Once "recruited," traffickers arrange for the victims’ transportation to their destination.\textsuperscript{15} Traffickers arrange travel both through legal channels, such as applying for visitor’s visas with the victims’ actual documents, and through illegal channels, using fraudulent documents or smuggling.\textsuperscript{16} Exploitation and control begins as soon as the victims arrive at the destination. Traffickers control their victims by confiscating their documentation, moving them from place to place, keeping them locked inside, demanding exorbitant repayments for the cost of transporting them, and drugging them.\textsuperscript{17} Once they have control over them, traffickers force their victims into prostitution, domestic servitude, and/or other forms of exploitation.\textsuperscript{18}

\textit{The Definition}

It is important to understand what is meant by human trafficking.\textsuperscript{19} The elements included in the definition of human trafficking affect how researchers compile statistics on trafficking, who legislators protect with anti-trafficking legislation, to whom governments offer social services, and ultimately, whose human rights the global community recognizes. Defining trafficking necessarily excludes some potential victims, and thus is controversial. Those fighting human trafficking have struggled with its definition, and have not yet reached consensus.\textsuperscript{20} In this section I will set out several dichotomies in the profile of a victim: trafficking v.

\begin{itemize}
\item \textsuperscript{13} \textit{Id.}
\item \textsuperscript{14} \textit{Id.}
\item \textsuperscript{15} \textit{See id.}
\item \textsuperscript{16} \textit{See id.}
\item \textsuperscript{17} \textit{See id.}
\item \textsuperscript{18} \textit{TIP REPORT, supra note 1, at 8.}
\item \textsuperscript{20} \textit{BRUCKERT \\& PARENT, supra, note 9, at 5.}
\end{itemize}
smuggling, prostitution v. other exploited labor, and intentional v. passive migrants. I will then examine two formal definitions of human trafficking.

Distinguishing trafficking from smuggling has been central to attempts at defining human trafficking. Factors include how aliens entered the country, whether they received assistance from a third party, the working conditions they are subjected to, and whether they consented to the migration and work. The relationship of the migrants to their “transporter” also distinguishes trafficking from smuggling. The migrants' relationship with their smuggler ends once the destination has been reached, whereas the relationship of the victim to the trafficker continues after the destination has been reached. Most definitions distinguish between trafficking and smuggling, and view trafficking to include “severe forms of labour exploitation,” whereas smuggling “may be simply to facilitate the illegal crossing of a border.” In reality, it is difficult to draw the line between trafficking and smuggling. Some researchers argue that differentiating between trafficking and smuggling is false, “of little use,” and “only does a disservice to the population in need--that is, people exploited during the migration process.”

Advocates also contest which purposes of exploitation to include in the definition of human trafficking. Some focus exclusively on sex workers/prostitutes (predominantly women and children), while others include victims of forced labor, child

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21 Salt, supra note 9, at 33.
22 Id. at 34.
23 Id.
25 See, e.g., Rathgeber, supra note 9. The very terms “sex worker” and “prostitute” are politically charged. BRIDGET ANDERSON & JULIA O'CONNELL DAVIDSON, INT'L ORG. FOR MIGRATION, IS TRAFFICKING IN HUMAN BEINGS DEMAND DRIVEN? A MULTI-COUNTRY PILOT STUDY 14-15 (IOM Migration Research Series No. 15, 2003). I use both interchangeably throughout this paper.
soldiers, slaves, and other exploited workers. Again, the consent of the migrant to the work performed is a controversial element, especially in the case of sex workers. Some advocates argue that consent to sex work is meaningless and therefore irrelevant to the definition. Others assert that sex work can be consensual, and therefore the definition of human trafficking should include only non-consensual sex work.

A third consideration is whether victims of human trafficking should include intentional, or only passive, migrants; that is, whether those who made a conscious choice to emigrate based on a rational assessment of the relevant motivating factors, but who fell into an exploitative situation, are victims of trafficking. Some argue that "[t]rafficking victims, described as vulnerable women and children forced from the safety of their home/homelands into gross sexual exploitation, are distinguished from economic migrants who are understood to be men who have willfully violated national borders for individual gain." In 2000, the United Nations (UN) introduced the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Protocol"). The Protocol was the result of two years of deliberations, and involved over 120 countries, as well as international non-governmental organizations. The most contentious debates on the Protocol surrounded the definition of human trafficking, and focused on two issues: whether human trafficking requires an element of force, and whether a person who consented to being trafficked could be considered a victim.

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26 See, e.g., TIP REPORT, supra note 1.
28 Id.
31 Gozdziak & Collett, supra note 27, at 103.
On one side of the debate, the Coalition Against Trafficking in Women International (CATW) and others argued for a definition “that protected all victims of trafficking, not just those who could prove they had been forced,” because “only this kind of principled and inclusive definition of trafficking would take the burden of proof off the exploited and place it on the exploiters and make no distinction between deserving and undeserving victims of trafficking.” CATW further argued that “prostitution is never voluntary, because women’s consent to sex work is meaningless.” The Human Rights Caucus argued, on the other side, that prostitution is a legitimate form of work that women can consent to, and therefore the definition of human trafficking should distinguish between smuggled sex workers who knowingly consented to their work, and those who were forced or deceived into sex work.

The definition adopted by the UN in the Protocol embraced CATW’s concept of trafficking, in which the consent of the person trafficked is irrelevant. It defined human trafficking as:

(a) “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

32 Raymond, supra note 30, at 494.
33 Gozdiak & Collett, supra note 27, at 103.
others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of the victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used . . . . 35

Human trafficking thus defined comprises three elements:

(1) the activities that constitute human trafficking (recruitment, transportation, harbouring, receipt of persons);

(2) the means being used (force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability;

(3) the purpose, which is exploitation (prostitution of others, sexual exploitation, forced labour or services, slavery or practices similar to slavery).36

It includes persons trafficked for prostitution, forced labor, or removal of organs, regardless of whether they consented to the work performed. The UN adopted a separate protocol on smuggling, which defined the smuggled as willing participants who should be treated humanely, but at the same time are not deserving of special state protection.37


37 See CRS REPORT, supra note 2, at 2.
Critics of the Protocol's definition point to its failure to further define the loaded terms it uses, such as “exploitation of the prostitution of others” and “coercion,” as well as its failure to clarify the difference between trafficking, smuggling, and migration. Critics also argue that the Protocol's emphasis on law enforcement resulted in a document that fails to sufficiently address human rights violations and victim assistance.

The Protocol's definition of human trafficking has not been universally adopted. The United States defined "severe forms of trafficking in persons" in § 7102 of the Trafficking Victims Protection Act (TVPA) as:

(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 an 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.

The TVPA definition includes both prostitution and forced labor, but separates the two forms of exploitation into subsections with distinct elements. Subsection (A) covers sex trafficking, but fails to define the activities that constitute sex trafficking. The means used are force, fraud, or coercion, but the definition lacks a clearly stated purpose element (although the term "commercial sex act" implies that the purpose is prostitution). Subsection (B) defines trafficking for purposes of forced labor. The activities that constitute trafficking under this subsection largely track those identified in the UN

38 Anderson & O'Connell Davidson, supra note 25, at 7.
definition, and include recruitment, harboring, transportation, provision, or obtaining of a person. The means used are identical to subsection (A), force, fraud, or coercion, but this subsection includes a purpose element: “subjection to involuntary servitude, peonage, debt bondage, or slavery.”

The TVPA definition omits the notion of consent, ostensibly leaving those who consented to the work they performed unprotected by this statute.

Critics of the TVPA definition of trafficking argue that it reinforces the long-standing belief that innocent victims in need of protection from their oppressors are distinct from mere illegal immigrants, who are violators of the law and should be punished. Chapkis asserts the TVPA does this in three ways: by relying on “a repressive moral panic about ‘sexual slavery’ created through slippery statistics and sliding definitions,” by differentiating “between ‘innocent’ and ‘guilty’ prostitutes and provid[ing] support only to the innocent,” and “by making assistance to even ‘deserving’ victims contingent on their willingness to assist authorities in the prosecution of traffickers.”

PART II: MOTIVATIONS

Victims of human trafficking make the conscious choice to migrate. They are motivated by economic factors, including wage differentials, employment rates, perceived opportunities abroad, as well as subordination and hardships brought on by war. And because the United States compares favorably to their home country in terms of these factors, they choose to migrate to the United States.

In this section, I will review two theories that attempt to understand and explain why migration occurs. The neoclassical economics theory and the new economics of migration theory examine migration in terms of the unit of decision making—the individual and the household,

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41 Id.
42 Id.
43 Chapkis, supra note 29, at 924.
44 Id. at 924-25.
respectively. These two theories both view migration from the supply side: that is, what motivates the workers to migrate. I will then look at data from two studies on human trafficking victims to examine the motivations that led them to migrate, and conclude with a synthesized theory of migration that explains human trafficking victims' initial decision to migrate.

Neoclassical economics explains international migration as the result of "geographic differences in the supply of and demand for labor." Individuals from states with a large supply of available labor (which results in low wages), make the rational choice to migrate to states with high wages as a result of the low supply of available labor. Individuals decide to migrate by weighing, among other things, the costs of traveling and adapting to a new culture against the benefits of an increased wage. This theory has "strongly shaped public thinking and has provided the intellectual basis for much immigration policy."

Studies of migration to the United States from Puerto Rico, Mexico, and El Salvador show that there is a relationship between wage differential and migration. The same studies indicate, however, that a wage differential is not the sole factor accounting for migration. Employment rates are also a critical factor in migration, equal to or greater than that of wage differential. Thus, while the neoclassical economics theory accurately describes some of the motivations and calculations made by migrants, it presents only a part of the story of migration.

Proponents of the new economics of migration theory widen the unit of decision making from the individual to the

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46 Massey et al., *supra* note 45, at 433.


48 Massey et al., *supra* note 45, at 433.


50 Id.
household. "[M]igration decisions are not made by isolated individual actors, but by larger units of related people—typically families or households—in which people act collectively not only to maximize expected income, but also to minimize risks and to loosen constraints associated with a variety of market failures, apart from those in the labor market."\textsuperscript{51} Households achieve this maximization of income and minimization of risks by diversifying their revenue sources.\textsuperscript{52} To insulate the household from potential dips in the local economy, households send one or more members for employment outside the country, with the expectation that the members will send part of their paycheck back home.\textsuperscript{53}

Critics of the new economics of migration theory argue that households are not coherent units capable of collectively making such decisions.\textsuperscript{54} Household decisions "are more likely to derive from decisions made by the most powerful household members."\textsuperscript{55} Subordinate household members may feel resentment and vulnerability as a result of their powerlessness.\textsuperscript{56} Decision-making power is often split along gender lines, with males/husbands as heads of household and therefore in control over the choice to migrate, and females/wives bearing the consequences of that choice.\textsuperscript{57}

Motivations and Trafficking Victims

Some researchers argue that human trafficking should be understood as "a problem of exploitation," and not of

\begin{footnotesize}
\textsuperscript{51} Massey et al., supra note 45, at 436.
\textsuperscript{52} Id.
\textsuperscript{53} Id.
\textsuperscript{54} Cerrutti & Massey, supra note 45, at 188.
\textsuperscript{55} Cerrutti & Massey, supra note 45, at 188 (quoting N.E. Riley & R.W. Gardner, Migration Decisions: The Role of Gender, in INTERNAL MIGRATION OF WOMEN IN DEVELOPING COUNTRIES 195-206 (United Nations ed., 1993)).
\textsuperscript{56} Id.
\textsuperscript{57} Id.
\end{footnotesize}
They believe that looking at the motivations of trafficking victims places the blame on and criminalizes the victims. Moreover, blaming the victims ignores the traffickers who exploit them and the customers who create the demand. However, to ignore the hopes, dreams, and decisions that cause victims to initiate the migration process infantilizes them. It ignores a significant part of the migration equation, and it fails to recognize that by understanding the motivations behind migration, advocates and governments can take steps to empower potential victims to achieve their dreams without falling prey to traffickers. Empowering the most vulnerable populations through education and economic opportunities will sharply decrease the supply of potential victims for traffickers to exploit. This is not to suggest that the criminal activity of traffickers and customers should be excused, but rather to acknowledge that the root of the problem lies in extreme poverty and deprivation, and that addressing those problems, while a more arduous and lengthy process, will ultimately result in a more permanent solution.

2002 CATW Comparative Study

In 2002, CATW produced A Comparative Study of Women Trafficked in the Migration Process. In the study, researchers interviewed victims of human trafficking in five countries: Indonesia, the Philippines, Thailand, Venezuela, and the United States. The study focused on collecting primary data from trafficked workers, and studying the health effects of trafficking on victims. While the researchers did not directly analyze the victims' motivations for migrating, the study

58 Janice G. Raymond, Intersections Between Migration and Trafficking, in A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS 8, 8 (2002).
59 See Raymond, supra note 30, at 494.
60 JANICE G. RAYMOND ET AL., A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS (2002).
61 Raymond, supra note 7, at 5.
62 Id.
provides insight because the victims volunteered their motivations throughout their interviews.63

H. Patricia Hynes led the study of trafficking in the United States.64 Hynes interviewed thirty-four women who were trafficked into and within the United States.65 The women were from Russia/Newly Independent States, the Philippines, and the United States.66 All of the victims were trafficked for prostitution and/or sexual exploitation.67 Some of the victims continued to work in prostitution at the time of the survey.68

The women interviewed reported being recruited through newspaper advertisements and employment agencies, as well as arriving as spouses of United States citizens, as lawful permanent residents, or at the invitation of family members.69 They trusted their recruiter or family member, and “thought that achieving employment and success in the United States was a guaranteed option. Desperation from poverty and hopelessness in their home country led many to throw caution to the wind.”70

Some women directly expressed the motivations that drove their migration. When asked how they got into prostitution, the women from Russia/Newly Independent States generally responded that they were forced or that their trafficker exploited their economic desperation.71 Some of the

63 In fact, as noted earlier , this study deliberately de-emphasizes women's conscious choices to migrate, and explicitly assigns blame on men for women's trafficking: "The dominant picture of recruitment for the women we interviewed is that of male individuals—some strangers, some known and intimate, some in recruiting networks and industries—taking advantage of and deceiving economically desperate women." Hynes, supra note 10, at 191. Because the study fails to provide either the questionnaire used by interviewers or much of the raw data, and only includes the researchers' conclusions, it is more difficult to make accurate extrapolations.
64 Hynes, supra note 10, at 188.
65 Id.
66 Id.
67 Id.
68 Id. at 210.
69 Id. at 191.
70 Id.
71 Id. at 193.
women stated that the traffickers “prey on those who are most vulnerable and disenfranchised,” those “who don’t have relatives or friends, people who cannot resist.”

Motivations can also be extrapolated through the method of recruitment that enticed the women to migrate. Women recruited for job opportunities were likely economically motivated, seeking a higher wage or more secure employment than was available at home. Some of the women who came as spouses and relatives may have done so out of love and for purposes of reunification with family, although none of them stated that based on the information provided in the study. It is more likely they married with hopes of financial security.

Destination Thailand

In 2005, the International Labour Organization published Destination Thailand: A Cross-Border Labour Migration Survey in Banteay Meanchey Province, Cambodia. The survey “examines quantitatively, the experiences of young Cambodian migrants from one of the country’s primary sending provinces.” It focused on the ambitions and aspirations of young migrants “to better understand the thought processes of some of those most vulnerable to human trafficking.” Because it focused directly on the motivations of migrant workers, it provides greater insight into those motivations than the CATW survey. It surveyed three types of respondents: children and youth, household heads, and returned laborers.

The researchers interviewed 246 children and youth ranging in age from ten to twenty-five, about 60 percent of whom were female. Almost all of those interviewed were either currently employed or had been employed at some time in the past. Of those who had worked outside of their village,

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72 Id. at 191.
73 INT'L LABOR ORG., DESTINATION THAILAND: A CROSS-BORDER LABOUR MIGRATION SURVEY IN BANTEAY MEANCHEY PROVINCE CAMBODIA iii (2005).
74 Id.
75 Id. at vii.
76 Id. at 14.
77 Id. at 17.
75 percent had worked in Thailand.\textsuperscript{78} All of those who had left their village and lived elsewhere indicated they did so for work.\textsuperscript{79} The reasons they cited for leaving included to earn better wages, because there were no jobs in the village, because they were following parents or relatives, or because their parents were unable to support them.\textsuperscript{80}

The researchers also surveyed 239 households,\textsuperscript{81} 67 percent of which were headed by males.\textsuperscript{82} Eighteen percent of the total household members (aged ten to fifty-nine) had migrated for work in the six months preceding the survey.\textsuperscript{83} Of the households with someone working in Thailand, only 15 percent received remittances.\textsuperscript{84} Eighty-five percent of households indicated that the foremost reason why a family member migrated for work was that the family did not have enough rice for the family's consumption.\textsuperscript{85}

The last group the researchers interviewed were migrant laborers who returned while the survey was conducted.\textsuperscript{86} Fifty-nine percent of these were female; 41 percent were male.\textsuperscript{87} While the majority of the laborers indicated that the reason they left the village was to earn money to support their family, others said they "wanted to have experiences and seek opportunities for their future."\textsuperscript{88} Most of the respondents said that they made the decision to migrate for work; although a small minority said another person, such as a parent or

\textsuperscript{78} Id. None of those interviewed had worked abroad in a country other than Thailand.  
\textsuperscript{79} Id. at 19.  
\textsuperscript{80} Id.  
\textsuperscript{81} Id. at 26.  
\textsuperscript{82} Id. at 31.  
\textsuperscript{83} Id. at 29.  
\textsuperscript{84} Id. at 33. Most households did not receive any remittances. The study indicated that most households did not receive remittances because no one had migrated; but did not further analyze the number of households receiving remittances where someone had migrated.  
\textsuperscript{85} Id. at 32.  
\textsuperscript{86} See id. at 35.  
\textsuperscript{87} Id.  
\textsuperscript{88} Id. at 37.
relative, made the decision for them. Seventy-four percent of respondents claimed to remit a portion of their earnings to their family.

Based on the migrants interviewed in these two studies, the neoclassical economics theory of migration most closely describes the circumstances under which the victims and migrants studied chose to emigrate. Economic disparities between the sending and receiving countries pushed them to seek opportunities in the receiving countries. The data from the Cambodian study refutes the new economics of migration theory that households collectively make the decision to migrate to diversify their income sources. Only 15 percent of households reported receiving remittances, indicating that rather than increasing a household's overall income, migration actually reduces the household's income by, in most cases, removing one potential wage earner. Moreover, most of the migrant laborers indicated they made the decision to migrate on their own, not as part of a collective household process. Proving the theory's critics right, those who did not make the choice to migrate themselves had the decision made for them by a dominant figure; again, not as a part of a collective process.

Yet, wage differentials between sending and receiving countries do not tell the whole story. The women interviewed in the CATW study talked about employment and success, not just about earning a higher wage. The Cambodian children also cited the employment rate, as well as their families' inability to support them. Heads of households pointed to the lack of sufficient food, and returning laborers sought opportunities and experiences. Other research shows that additional factors pushing women to migrate include their continued subordination in many societies, and the hardships caused by war and the collapse of Communism in the former Soviet Union.

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89 See id. at 38.
90 Id. at 44.
91 Id. at 33.
92 CRS REPORT, supra note 2, at 4.
Thus, the neoclassical economics theory in part explains why migrants are pushed to emigrate from their homeland. But research demonstrates that some migrants are also pushed by employment rates, perceived opportunities abroad, and hardships brought on by war. Migrants who are overwhelmed by these factors may become desperate, and therefore vulnerable to traffickers. The neoclassical economics theory also explains why migrants who are pushed to emigrate are pulled to the United States. Wages in the United States are considerably higher than in the home counties of trafficking victims, even at the lowest wage levels.\textsuperscript{93} Subordination of women in sending countries leads to fewer employment opportunities for women. These factors along with hardships caused by war push women to migrate from their home. Relatively higher wages in the United States combined with greater equality between men and women, perceived opportunity, and a stable political situation pull women disposed to migration towards the United States.

\textbf{PART III: DEMAND FOR TRAFFICKED WORKERS}

It is impossible to separate the demand for workers who have been trafficked from the more general demand for workers who can be exploited.\textsuperscript{94} Rather, it is more likely that the human rights of trafficked workers are irrelevant to the consumers of their goods and services.\textsuperscript{95} Self-interested employers and consumers want the most out of their workers and products/services, and the vulnerability of trafficked workers makes them easy to control and exploit to that end.

In 2003, Anderson and O'Connell Davidson performed a study on consumer demand for commercial sexual services and

\textsuperscript{93} The national minimum wage in the United is $6.55 per hour; an annual salary of $13,624. In comparison, the annual salary of minimum wage earners in Russia is $1747, in Ukraine $1300, in Thailand $2276 (depending on the province), and in Mexico $1721 (depending on the zone). See Wikipedia, http://en.wikipedia.org/wiki/List_of_minimum_wages_by_country (last visited Oct. 26, 2008).

\textsuperscript{94} ANDERSON & O'CONNELL DAVIDSON, supra note 25, at 9.

\textsuperscript{95} Id.
employer demand for domestic workers in private households. The purpose of the study was to research “the demand for the most common forms of exploitation of trafficked women and children, in particular for commercial sex services.”

To analyze the demand for commercial sex, the researchers interviewed and surveyed almost 400 men from six countries: India, Thailand, Italy, Sweden, Denmark, and Japan. Forty-seven percent of those surveyed had purchased sexual services. The men interviewed overwhelmingly indicated that purchasing sexual services was a social activity done with friends and relatives. It served as a “rite of passage,” encouraged male bonding, and was a way of “publicly demonstrating membership of a particular male subgroup, and/or to claim a particular social identity (as ‘adult,’ ‘man’ or ‘not gay’).” Most of the men were under age twenty-one the first time they visited a prostitute. Regardless of their own age, the men overwhelmingly stated a preference for prostitutes under the age of twenty-five. Although they preferred younger women, they did not want to purchase sex from women who were too young to consent to the sex or would be harmed by the experience.

Just under half of the men had purchased sex from foreign sex workers. Some indicated that it was “easier to control the amount of ‘value’ for a given sum of money from migrant prostitutes, and described migrant prostitutes as cheaper and more malleable than local women.” Many of the clients seemed to rank the desirability of the women based on

96 Id. at 5.
97 Id.
98 Id. at 16-17.
99 Id. at 17.
100 Id. at 17-18.
101 Id.
102 Id. at 18.
103 Id. at 19.
104 Id. at 19-20.
105 Id. at 20.
106 Id. at 20-21.
racial and ethnic stereotypes; the darker the skin, the lower on the hierarchy the men placed the prostitute.107 They also expressed a preference for prostitutes that spoke their own language.108 In every country, clients appeared to view certain groups of migrant workers as "down market," and preferred local sex workers.109 This did not, however, prevent them from visiting migrant prostitutes when it was more expedient to do so.110

The researchers also interviewed and surveyed over 200 employers of domestic workers in India, Thailand, Italy, and Sweden "to map employer's attitudes to domestic labour in general, and their employment practices and attitudes towards trafficked and forced domestic workers."111 Like consumers of commercial sex, employers also ranked domestic workers based on stereotypes of race and ethnicity.112 Some employers preferred migrant workers because they were perceived as cheap, hardworking, and obedient.113 Employers also believed that migrant workers were desirable because they were more flexible in the number of hours they worked, the timing of those hours, their greater cooperativeness, and their lower turnover rates.114 Employers explicitly stated that one of the benefits of migrant workers is that they are "easier to control because they had fewer options."115 Racial differences between employer and worker eased employers' misgivings about the power differences inherent in having an employee live in their home.116 Many employers seemed not to recognize that they were exploiting another human being, and rather viewed the

107 Id. at 21-22.
108 Id. at 22.
109 Id.
110 Id. at 23.
111 Id. at 27.
112 Id. at 29.
113 Id. at 30.
114 Id.
115 Id. at 31.
116 Id.
relationship in paternalistic terms, as one of “obligation, support, and responsibility.”

Based on this study, the demand for trafficked workers is more complicated than simply demand for the service the workers provide. The personal characteristics of the worker influence the consumer or employer’s decision to purchase their services. Consumers of commercial sex, while desiring the services they purchase, prefer non-trafficked workers—but they are willing to procure the services of foreign prostitutes if there are no other immediately available alternatives. The men identified foreign prostitutes’ vulnerability, and thus controllability, as a benefit—a way to get more for their money. Employers of domestic servants seemed to prefer trafficked workers, likewise prizing their vulnerability and controllability.

Thus, while there is not necessarily a demand for trafficked workers specifically, there is a demand for workers who can be exploited, workers whose vulnerability and lack of options due to economic deprivation and illegal immigration status make them easy to manipulate. This demand exists in the United States, as well, and the United States is a destination country for trafficking victims. The demand in the United States for migrant labor includes much more than sex workers and domestic servants. There is also a rising demand for labor in low-skilled occupations. Migrant workers fulfill labor demands in construction, manufacturing, leisure and hospitality, agriculture, and a variety of other industries.

117 Id. at 32.
118 H. Patricia Hynes, The United States: Migration and Trafficking in Women, in A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS, supra note 7, at 47, 47.
119 Id.
PART IV: U.S. IMMIGRATION POLICY

"[A]s borders get tight in receiving countries, traffickers will tell desperate women they have ways to cross and they (the women) will find themselves as trafficking victims." 122

Aliens wishing to legally and permanently migrate to the United States have limited options. 123 They must qualify for an immigrant visa based on either family reunification or employment, qualify for refugee/asylee status, 124 or "win" a visa under the Diversity Visa program (available to persons from countries with low immigration rates to the United States). 125 Even if an alien qualifies under one of those categories, almost all of the categories have numerical caps. 126 Once the cap is reached, aliens must wait until their approved visa's priority date is current to legally enter, up to twenty years in some (extreme) cases. 127 This restrictive immigration policy, inconsistent with the demand for migrant labor, has exacerbated the number of aliens entering illegally. Aliens who do not fit within one of the immigrant categories, or who must wait years for their number to come up, are left without legal options for permanent immigration. 128 Those without legal options whose desperation to migrate is fueled by low wages, low employment rates, perceived opportunities abroad, and other hardships, and who are lured to the United States with hopes of higher wages and better opportunities, often find their way here through illegal means. It is estimated that 40 percent of aliens living in the United States today, or 11.6 million, are

122 Chapkis, supra note 29, at 934 (citation omitted).
124 Hynes, supra note 118, at 50.
127 For example, the current priority date for aliens from the Philippines in the fourth preference family-based category is February 15, 1986. Id.
here without legal status. They enter by a variety of routes, including crossing the land borders, overstaying temporary visas, using fraudulent documents, and smuggling.

Because restrictive immigration policies force migrants to seek illegal means to cross the border, “traffickers become the major international players who facilitate international migration . . . . Many would-be immigrants turn to the smugglers, who are often the traffickers, who then channel numbers of women and children into global trafficking networks that supply local sex industries and cheap labor markets in countries of destination.” Thus, restrictive immigration policies leave many migrant workers “vulnerable to abuse and exploitation by agents, employers, and traffickers, who [take] advantage of their precarious situation.”

Preventing human trafficking requires an immigration system that recognizes the motivation of migrants to come to the United States and the demand for migrant workers in the United States. At a minimum, lawmakers should realistically assess the supply of and demand for migrant workers, and raise the numerical caps to accommodate that supply and demand. Trafficking is not recognized by many American Immigration Judges and asylum officers as a basis for an asylum claim, although it is in the United Kingdom and other countries. Trafficking should be recognized as a basis for an asylum claim, either as a result of a change to the statutory grounds for asylum, or by recognizing trafficking victims as members of a particular social group (one of the current grounds for an asylum claim). Additionally, the grant of

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130 Hynes, supra note 118, at 50-51.

131 Raymond, supra note 30, at 500.


133 Haynes, supra note 24, at 378.

134 See id.
immigration status to trafficking victims should not be tied to their willingness to testify against their traffickers and prosecutors’ decisions to use that testimony.\textsuperscript{134} Such conditions “re-victimize” and “doubly coerce” the victim.\textsuperscript{135} “An offer that involves soliciting the testimony of the trafficking victim and then deporting her is even worse, and certainly cannot be considered part of a ‘victim-protection’ approach to combating trafficking.”\textsuperscript{136}

\textbf{PART VI: CONCLUSION}

In conclusion, victims of human trafficking are migrants who made a rational, intentional decision to migrate from their homeland. They are motivated by wage differentials, employment rates, perceived opportunities abroad, subordination of women, and hardships brought on by war. Because the United States compares favorably in terms of these factors with sending countries, many victims of human trafficking choose to migrate here. Their desperation makes them vulnerable and exploitable. There is a demand for migrant labor in the United States, which, because of its current restrictive immigration system, is in part filled by illegal immigrants. Those illegal immigrants’ lack of status adds to their vulnerability and exploitability.

To prevent human trafficking, both the motivations of migrants and the United States’ restrictive immigration system must be addressed. Potential migrants need to be empowered with education and economic opportunities at home, thereby reducing their desperation. The United States must recognize that its demand for migrant workers is not met by the current system, and that its restrictive policies lead to the victimization of human beings living in our community. The United States should address this by restructuring its immigration system and by raising the numerical caps. At a minimum, the United States should make basic changes to its policy towards victims of human trafficking to allow them to

\textsuperscript{134} Id. at 377.
\textsuperscript{135} Id.
\textsuperscript{136} Id. at 377-78.
qualify for asylum, and not to condition the grant of legal status on their willingness to testify against their traffickers.