

## Human Trafficking and Terrorism: Utilizing National Security Resources to Prevent Human Trafficking in the Islamic State

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“The related global problems of migrant smuggling, trafficking in persons and clandestine terrorist travel are increasingly significant both in terms of the human tragedy they represent and their impact on national security, primarily with respect to terrorism, crime, health and welfare, and border control.”

–Charter and Amendments: Human Smuggling and Trafficking Center, U.S. Department of State

The United States needs new strategies to tackle the growing threat of human trafficking as it becomes the favorite tactic of the Islamic State (“ISIS”). Trafficking traditionally was the localized crime of choice for gangs in underdeveloped countries. Now it is one of the largest sources of income for ISIS. Trafficking serves the needs of terrorists both as a fear tactic and a source of profit. Human trafficking is both an issue of human rights and a larger threat to national security. The porous borders traffickers move through are equally as porous to terrorists, disease, weapons, and more.

The “3P Paradigm” used to combat human trafficking—prevention, protection, and prosecution—falls short of dealing with human trafficking executed by known enemies of the United States. Victim-centered approaches emphasize the protection and prosecution efforts, while prevention falls by the wayside. True, there are millions of victims of trafficking that desperately need help. But with the advent of systematized and institutionalized human trafficking within terrorist organizations comes an opportunity to use preventative, national security based tactics. Human trafficking networks must be uprooted using counter-terrorism resources and intelligence.

Borrowing from well-established counter-terrorism strategy, the United States can bring about a more effective prevention effort to target the sources of human trafficking. First, this note will describe the evolution of human trafficking from large organized crime syndicates, to smaller gangs, to terrorists. Second, this note will survey existing human trafficking laws and policies to identify gaps in coverage. Finally, in light of the new threats from the Islamic State, I propose a

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series of changes to existing laws governing the treatment of the crime of human trafficking, borrowing from counter-terrorism and national security tactics.

### I. DEFINING THE EVOLVING THREAT OF HUMAN TRAFFICKING: THE RISE OF ISIS

At its core, human trafficking has three elements: 1) an act of recruitment, movement, harboring, or receipt of a person, 2) means of force, fraud, or coercion, 3) for the purpose of “exploitation.”<sup>1</sup> Recruitment, fear, and profit. Notably, physical movement is not a requirement of human trafficking. Historically facilitated by gangs, broader terrorist networks including ISIS have entered the human trafficking market with their own brutal ideology of subjugation, fear, and profit.<sup>2</sup> The human rights abuses are self-evident: kidnapping, rape, forced labor, and torture number among the atrocities committed against trafficking victims.<sup>3</sup> Human trafficking incorporates aspects of slavery, sexual exploitation, and smuggling, but is separate in kind.<sup>4</sup> The crime spans the areas of global health, law enforcement, gender rights, child exploitation, employment and labor law, cyber crime, and national security. Elements that situate it in the national security context include terrorism, war crimes, border security, and undocumented smuggling.

The sheer scale of the problem indicates that a broader coordinated effort to stop human trafficking would be a more effective strategy, rather than remedial measures alone. While the numbers are somewhat dated, their magnitude cannot be ignored. As of 2000, as many as 27 million people in the world lived in some form of human trafficking.<sup>5</sup> The ILO estimated that 20.9 million people suffered under a forced labor regime, from child labor to sexual servitude, of which 2.4 million are being trafficked at any given moment.<sup>6</sup> The U.S. State Department has estimated that approximately 800,000 victims are trafficked annually across international borders worldwide and approximately half of these victims are

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1. Jamie A. Chuang, *Exploitation Creep and the Unmaking of Human Trafficking Law*, 108 AM. J. INT’L L. 609, 610 (2014) (citing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Art. 3, Nov. 15, 2000, 2237 UNTS 319).

2. “The use of modern slavery in armed conflicts is not unique to ISIL, but is also evident in the case of other armed groups that are forcibly recruiting children and training them to be soldiers or otherwise exploiting them. Boko Haram has forcibly recruited and used child soldiers as young as 12 years old, and abducted women and girls in the northern region of Nigeria, some of whom it later subjected to domestic servitude, other forms of forced labor, and sexual servitude through forced marriages to its militants. In Somalia, al-Shabaab has recruited and used children in armed conflict. The Lord’s Resistance Army, a Ugandan rebel group that operates in eastern regions of the Central African Republic, enslaves boys and girls for use as cooks, porters, concubines, and combatants. The use of human trafficking in the midst of armed conflicts further amplifies the unspeakable devastation communities and families experience and perpetuates intimidation and fear among oppressed communities.” U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 37* (2015), <http://www.state.gov/documents/organization/245365.pdf>.

3. *Id.* at 27.

4. *See id.*

5. KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 8 (3rd ed. 2012)

6. *Human Trafficking and Transnational Organized Crime: Assessing Trends and Combat Strategies: Hearing Before the Commission on Security and Cooperation in Europe*, 112th Cong. 31 (2011).

younger than the age of eighteen.<sup>7</sup> Forced labor accounts for a 150 billion dollar black market.<sup>8</sup> But it is hard to extract from that number just how much of that profit derives from human trafficking. There is a blending of terms, which Jamie A. Chuang titles “exploitation creep,” where the data on sex trafficking, slavery, human trafficking, and forced labor bleeds together.<sup>9</sup> But numbering in the millions of individuals and billions of dollars, the issue is as pervasive as it is threatening to security.

Human trafficking finds both its victims and perpetrators in regions of poverty, violence, and corruption. Victims of human trafficking share a few key characteristics now well understood and targeted by law enforcement efforts. These include “poverty, young age, limited education, lack of work opportunities, lack of family support (e.g., orphaned, runaway/throwaway, homeless, family members collaborating with traffickers), history of previous sexual abuse, health or mental health challenges, and living in vulnerable areas (e.g., areas with police corruption and high crime).”<sup>10</sup> Human traffickers prey on vulnerable countries and vulnerable peoples. War torn nations create thousands of displaced persons, perfect targets as they already lack a home and support network to stay alert to their absence.<sup>11</sup> Regions with corrupt governments or power vacuums are breeding grounds for organized crime that use human trafficking as a means of control and profit.<sup>12</sup> Countries with wide gaps between the upper and lower class similarly breed exploitation, as the poor seek to escape their condition and the wealthy look for cheap labor.<sup>13</sup> Finally, countries with pervasive gender inequality are prime environments for sex trafficking.<sup>14</sup> No matter their origin, victims enter the United States and other countries using falsified documents, smuggled in along borders, and stowed away in shipping containers. Some come willingly, hoping for a better future, other through force, but all end up indebted, bonded, and coerced into labor and exploitation.<sup>15</sup>

In the wake of tightening security after September 11<sup>th</sup> only two categories of criminal organizations were able to continue to effectively traffic men, women,

7. *Id.*; Heather J. Clawson, *Human Trafficking Into and Within the United States: A Review of the Literature*, U.S. DEP’T OF HEALTH & HUMAN SERV. OFFICE OF THE ASSISTANT SEC’Y FOR PLANNING AND EVALUATION, <http://aspe.hhs.gov/basic-report/human-trafficking-and-within-united-states-review-literature#Commonalities> (last visited Nov. 10, 2015). *See also* Human Trafficking Statistics, POLARIS PROJECT, <http://www.cicatelli.org/titlex/downloadable/human%20trafficking%20statistics.pdf> (last visited May 6, 2014).

8. *Human Trafficking and Transnational Organized Crime: Assessing Trends and Combat Strategies: Hearing Before the Commission on Security and Cooperation in Europe*, 112th Cong. 31 (2011)(prepared statement of Marco Rubio, Commissioner). *See also* U.S. DEP’T OF STATE, *supra* note 2, at 31.

9. *See* Chuang, *supra* note 1, at 618.

10. Clawson, *supra* note 7, at 7.

11. *See* Cynthia Shepherd Torg, *Human Trafficking Enforcement in the United States*, 14 TUL. J. INT’L & COMP. L. 503, 505 (2006).

12. *See id.*

13. *See* Bridget Anderson & Julia O’Connell, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study*, 15 IOM RES. SERIES 28 (2003).

14. *See* Torg, *supra* note 11, at 505; *see also* Laura Smith-Spark, *How did rape become a weapon of war?*, BBC NEWS, Aug. 12, 2004, 4:39 PM, <http://news.bbc.co.uk/2/hi/4078677.stm>.

15. *See generally id.*

and children into the United States: large international criminal organizations and small local organizations.<sup>16</sup> These smaller groups are harder to track and monitor, and therefore escape detection by law enforcement. At the same time, large gangs including *Mara Salvatrucha* (MS 13) thrive and grow off of the profits of human trafficking enterprise.<sup>17</sup> These gangs combine traditional drug smuggling routes with human trafficking trade, often using victims as drug mules.<sup>18</sup> The sophisticated framework and hierarchies already in place for smuggling weapons and drugs are well suited to moving bodies across the border.<sup>19</sup> Combating human trafficking then went hand in hand with combatting the drug trade, a traditionally law enforcement centered activity. Policy developed in response to human trafficking had the same focus.

With the advent of ISIS and the rise of terrorism, human trafficking is now globally used for the dual purposes of fear and funding these huge groups. Human trafficking is now enshrined by ideology.<sup>20</sup> As many as 5,000 women are now enslaved in the Islamic State, trafficked around the region at alarming rates.<sup>21</sup> ISIS uses fear, dehumanization, and violence to oppress women. Moreover, they use human trafficking to systematically target and decimate ethnic and religious minorities in the region. U.N. reports state that ISIS human trafficking is part of their broader “policy that aims to suppress, permanently cleanse or expel, or in some instances, destroy those communities within areas of its control.”<sup>22</sup> The Islamic State indoctrinates its fighters, as part of its warped creed, that rape and sexual slavery are a form of worship, punishing the non-believer.<sup>23</sup> Not only is this

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16. See Roza Pati, *Human Trafficking: An Issue of Human and National Security*, 4 U. MIAMI NAT'L SEC. & ARMED CONFLICT L. REV. 29, 40 (2014).

17. See *id.*

18. *Id.*

19. See *id.*

20. See generally Ishaan Tharoor, *Islamic State Burned a Woman Alive for not Engaging in an 'Extreme' Sex Act*, U.N. Official Says, WASH. POST WORLDVIEWS, May 22, 2015, <https://www.washingtonpost.com/news/worldviews/wp/2015/05/22/islamic-state-burned-a-woman-alive-for-not-engaging-in-an-extreme-sex-act-u-n-official-says/>.

21. *Id.*

22. *Id.* See also United Nations, *Security Council Condemns Human Trafficking Strongest Terms, Unanimously Adopting Resolution 2331*, December 20, 2016, <https://www.un.org/press/en/2016/sc12647.doc.htm> (“The Council stressed that acts of human trafficking during armed conflict as well as sexual and gender-based violence could be part of the strategic objectives and ideologies of certain terrorist groups by, among other things, incentivizing recruitment, supporting financing through the sale of women, girls and boys, and use of religious justifications to codify and institutionalize sexual slavery.”).

23. Rukmini Callimachi, *Enslaving Young Girls, the Islamic State Builds a Vast System of Rape*, N.Y. TIMES, Aug. 14, 2015, at A1. Rukmini Callimachi, reporter for the New York Times, has covered war crimes and rape in war torn regions for her long career as a journalist, and described the difference between the situation in the Islamic state as compared to other atrocities she witnessed. “I have covered rape in numerous war settings before, I have interviewed rape victims in the Congo, in Guinea, in Mali, in Senegal, and rape has been used as an instrument of war in all of these places, but the difference is that the perpetrators never admit it. It’s always something hidden, something shameful. When there is a trial, if there is a trial, the perpetrators deny that they ever did the said crime. Here, the Islamic State was publicly advertising it. Of course, they don’t use the word ‘rape.’ They don’t consider what they are doing to these women to be rape, they just call it sexual intercourse. We know better, so we

market a clear source of income for the ISIS, but also is deeply imbedded in their ideology.

ISIS is one of the first organizations to create a sophisticated, openly public market for human trafficking. Zainab Bangura, a U.N. special representative, described the methodical and institutionalized approach of the ISIS to human trafficking.

After attacking a village, [ISIS] splits women from men and executes boys and men aged 14 and over . . . [G]irls are stripped naked, tested for virginity and examined for breast size and prettiness. The youngest, and those considered the prettiest virgins fetch higher prices and are sent to Raqqa, the IS stronghold. There is a hierarchy: sheikhs get first choice, then emirs, then fighters . . . We heard about one girl who was traded 22 times, and another, who had escaped, told us that the sheikh who had captured her wrote his name on the back of her hand to show that she was his "property."<sup>24</sup>

From capture, to market, to treatment, to resale, ISIS instituted a ruthless system of human trafficking, sexual violence, and slavery. "Their captors appeared to have a system . . . of inventorying the women, as well as their own lexicon.<sup>25</sup> Women and girls were referred to as 'Sabaya,' meaning slave, followed by their name.<sup>26</sup> Some were bought by wholesalers, who photographed and gave them numbers, to advertise them to potential buyers."<sup>27</sup> Women are both terrorized and used for lucrative profit, feeding the internal economy of the Islamic State and rewarding fighters.<sup>28</sup>

Human trafficking is now being carried out in a large scale, systematic, public, and institutionalized manner, and must be combatted in a new manner. Rather than small autonomous and scattered perpetrators, ISIS has built the foundation of their terrorist network on the backs of human trafficking victims. Human trafficking is now an act of war and must be treated as such.<sup>29</sup> While the direct victims of ISIS's slave market have not yet permeated throughout the United States, their sale funds our enemies. There is a very real possibility that ISIS or other terrorist organizations will use existing trafficking networks in South America to enter across our borders undetected. Threatening our domestic integrity and international security, the issue implicates public health, labor exploitation, sexual abuse, counterterrorism, and child welfare concerns. Only a

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will call it what it is, but I just was dumbfounded that a group would admit to such a horrible, horrible practice." See generally Kaelyn Forde, *How One Woman Exposed the Way ISIS Uses Rape as a Weapon*, REFINERY 29 (Aug. 13, 2015), <http://www.refinery29.com/2015/08/92321/how-isis-uses-rape-as-a-weapon-of-war#.kc97usk:cv2y>.

24. Tharoor, *supra* note 20 (quoting Zainab Bangura's account of ISIS's approach to conducting human trafficking).

25. Callimachi, *supra* note 23.

26. *Id.*

27. *Id.*

28. *Id.*

29. Gjini, Otion, *Human Trafficking as a War Crime: Why it Happens and How to Stop It* (2014) (unpublished paper, Seaton Hall Law School) (*available at* [http://scholarship.shu.edu/student\\_scholarship/626](http://scholarship.shu.edu/student_scholarship/626)).

coordinated global approach attacking the source of trafficking will successfully combat this growing threat.

## II. EXISTING LAW ON HUMAN TRAFFICKING: SPOTLIGHT ON THE VICTIM

Beginning with the development of the Trafficking Victims Protection Act (TVPA), the United States has conceptualized human trafficking legislation in the form of “three P’s”: prevention, protection, and prosecution,<sup>30</sup> but law makers fell short of developing a prevention strategy. The TVPA defined trafficking, provided grants and assistance to NGOs, established T visas and certifications to facilitate immigration, expanded prosecutorial power, and created a Tier system to categorize countries in compliance with human trafficking law.<sup>31</sup> None of these components work directly to prevent trafficking initially. These are tools for law enforcement, NGOs, and prosecutors to punish perpetrators and aid victims. Going down the list of human trafficking legislation of the most recent congressional term, none touch on the foundations of large global networks like that of ISIS and how to uproot them.

The U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons served as a foundation for U.S. legislation combating human trafficking. The Protocol is part of the larger U.N. Convention Against Transnational Organized Crime, and came into force on December 25, 2003.<sup>32</sup> The United States signed the protocol on December 13, 2000 and ratified it November 3, 2005, executing the TVPA on October 28, 2000. The Trafficking Protocol took a new approach to defining human trafficking, removing lack of consent as an element of the offense.<sup>33</sup> The definition embraced an understanding of the situation of sex workers throughout the world, acknowledging that consent to initial labor does not constitute consent to the total condition of sex trafficking.<sup>34</sup> The Trafficking Protocol calls for the criminalization of human trafficking behavior and assistance to victims. But the Protocol largely established a suggested floor, not a hard and fast standard, for the treatment of human trafficking victims and prevention efforts. Signatories to the Protocol pledge to provide basic resources and

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30. *The “3P” Paradigm: Prevention, Protection, and Prosecution*, U.S. DEP’T OF STATE, June 14, 2010 <http://www.state.gov/j/tip/rls/fs/2010/143248.htm> (last visited Nov. 10, 2015).

31. *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP AND IMMIGRATION SERV., <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status> (last visited Nov. 10, 2015).

32. G.A. Res. 25, U.N. Doc A/Res/55/25 Protocol to Prevent, Suppress and Punish Trafficking in Persons (Nov. 5, 2000) (hereinafter “U.N. Protocol”).

33. *See id.* (“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; (b) The consent of a 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.”).

34. Angela D. Giampolo, *The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking*, 16 TEMP. POL. & C.R. L. REV. 195, 205 (2006).

protections to victims in “appropriate cases” and “to the extent possible.”<sup>35</sup> The effectiveness of the Protocol is contingent on the level to which signing states enforce and adopt its contents.

The TVPA, while an essential landmark piece of legislation, has been and continues to be a victim centered law, focusing on resources for victims rather than preventing victimization in the first place. In the wake of the 1988 Supreme Court decision of *United States v. Kozminski*,<sup>36</sup> Congress expanded existing legislation in the comprehensive Victims of Trafficking and Violence Protection Act of 2000.<sup>37</sup> Prior to this act, prosecutors could only charge perpetrators with component crimes but not for the act as a whole.<sup>38</sup> The TVPA codified a broad understanding of what human trafficking entailed. The “severe forms of trafficking” defined by the TVPA include:

(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.<sup>39</sup>

This statute incorporates coercion and perceived threats in the definition of trafficking, expanding the scope of human trafficking to include psychological trauma as well as physical force to control.

The TVPA created a system of T visas and certification letters. T visas are for qualifying victims of human trafficking, allowing them to stay in the United States to assist in prosecution of traffickers.<sup>40</sup> Certification “allows adult victims of

35. U.N. Protocol, *supra* note 32.

36. See *Involuntary Servitude, Forced Labor, and Sex Trafficking Statutes Enforced*, DEP’T OF JUSTICE: C.R. DIV., <http://www.justice.gov/crt/involuntary-servitude-forced-labor-and-sex-trafficking-statutes-enforced> (Congress enacted § 1589 in response to the Supreme Court’s decision in *United States v. Kozminski*, 487 U.S. 931 (1988), which interpreted § 1584 to require the “use or threatened use of physical or legal coercion” to be guilty of involuntary servitude).

37. See DEP’T OF JUSTICE: CIV. DIV., REPORT ON THE TENTH ANNIVERSARY OF THE TRAFFICKING VICTIMS PROTECTION ACT 4 (Oct. 29, 2010). The TVPA was subsequently reauthorized in the Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620), the Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972), and the Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311). Note the TVPA lapsed in 2011 but was reinstated in its entirety as an amendment to Title XII of the Violence Against Women Reauthorization Act of 2013. See *U.S. Laws on Trafficking in Persons*, U.S. DEP’T OF STATE, <http://www.state.gov/j/tip/laws/> (last visited Dec. 8, 2015).

38. See Giampolo, *supra* note 34, at 199.

39. Trafficking Victims Protection Act, 22 U.S.C. § 7102 (2000).

40. *Fact Sheet: Certification for Adult Victims of Trafficking*, U.S. DEP’T OF HEALTH & HUM. SERVICES: OFF. OF REFUGEE RESETTLEMENT (Aug. 8, 2012), <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-certification-for-adult-victims-of-trafficking>. T visa qualifications include: 1) Are or were a victim of trafficking, as defined by law, 2) Are in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking, 3) Comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (or you are under the age of 18, or you are unable to cooperate due to physical or psychological trauma), 4) Demonstrate that you would suffer extreme hardship involving unusual and severe harm if you were removed from the United States. *Id.*

trafficking who are not United States (U.S.) citizens or Lawful Permanent Residents (LPRs) to be eligible to receive benefits and services under any Federal or state program or activity to the same extent as a refugee.”<sup>41</sup> The requirements for certification include “assist[ing] in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons, [applying] for a T visa, and . . . not [being] denied.”<sup>42</sup> These both incentivize victims to cooperate with prosecution and ensure they are not re-victimized by offering them a path to benefits and assistance under U.S. law. The visa system again underscores the prosecution focus of the TVPA, with little to no recognition of the need for a path to citizenship. These visas are incredibly difficult to qualify for and receive. To prevent human trafficking there must be a means to keep these women out of harm’s way, and also keep them from being reabsorbed into this human black market.

The only mentions of the word prevention in the TVPA, however, come in the form of preventative education and research. Small grants are given to NGOs to promote “quality of life” improvement in the regions within which these victims originate.<sup>43</sup> But the TVPA reflects the reality of the understanding of human trafficking in the early 2000s as secretive, localized, and executed by smaller autonomous gangs. The TVPA established the Interagency Task Force to Monitor and Combat Trafficking (“ITF”), to collect data on human trafficking, track the progress started by the TVPA, and facilitate international collaboration. But these preventative efforts still take a victim centered approach, attempting to reach out and identify, educate, and bolster women at risk of falling victim to human trafficking. These do not go after trafficking organizations themselves to dismantle them.

The TVPA establishes a three Tier system for evaluating nations of the world for their willingness to comply with minimum trafficking standards, and directly empowers the president to take action against those countries exhibiting little to no compliance. The State Department determines Tier placements.<sup>44</sup> Governments that fully comply with minimum standards for eliminating human trafficking in

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41. Giampolo, *supra* note 34, 199.

42. *Id.* at 197.

43. *Id.*

44. U.S. DEP’T OF STATE, *supra* note 2, at 45–47. Factors effecting tier ranking include: “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 a 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 and sentencing of offenders; proactive victim identification measures; government funding and partnerships with NGOs to provide victims with access to primary health care, counseling, and shelter; victim protection efforts that include access to services and shelter without detention and with legal alternatives to removal to countries in which victims 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 prejudicial to victims’ rights, dignity, or psychological well-being; the extent to which a government ensures the safe, humane, and voluntary repatriation and reintegration of victims; and governmental measures to prevent human trafficking, including efforts to curb practices identified as contributing factors to human trafficking, such as employers’ confiscation of foreign workers’ passports and allowing labor recruiters to charge prospective migrants excessive fees.” *Id.*

the U.N. Protocol are placed in Tier 1.<sup>45</sup> Tier 2 countries do not fully comply with the TVPA's minimum standards "but are making significant efforts to bring themselves in compliance with those standards."<sup>46</sup> There is also a Tier 2 watch list for countries meeting the criteria for Tier 2, and for which

- a) the *absolute number* of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of *increasing efforts* to combat severe forms of trafficking in persons from the previous year . . . or c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take *additional steps over the next year*.<sup>47</sup>

Tier 3 countries do not comply and are not making significant efforts to do so.<sup>48</sup> There is only one Tier 3 country in the Western Hemisphere. The majority of countries sit in the Tier 2 and Tier 2 watch list categories. The majority of the Tier 3 countries reside in the Near East, with huge swaths of East Asia, the Pacific, and former USSR territory straddling the Tier 2 and Tier 3 divide.<sup>49</sup> The State Department also pens a yearly report, including updates to the Tier lists, and

45. Tier 1 countries include Armenia, Australia, Austria, the Bahamas, Belgium, Canada, Chile, Czech Republic, Denmark, Finland, France, Germany, Iceland, Ireland, Israel, Italy, S. Korea, Luxembourg, Macedonia, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Taiwan, U.K., and U.S. *Id.* at 45–54. ("While Tier 1 is the highest ranking, it does not mean that a country has no human trafficking problem or that it is doing enough to address the problem. Rather, a Tier 1 ranking indicates that a government has acknowledged the existence of human trafficking, has made efforts to address the problem, and meets the TVPA's minimum standards. Each year, governments need to demonstrate appreciable progress in combating trafficking to maintain a Tier 1 ranking. Indeed, Tier 1 represents a responsibility rather than a reprieve. A country is never finished with the job of fighting trafficking.")

46. *Id.*

47. *Id.* (emphasis in original).

48. Tier 3 countries include: Algeria, Belarus, Belize, Burundi, Central African Republic, Comoros, Equatorial Guinea, Eritrea, Gambia, Guinea-Bissau, Iran, N. Korea, Kuwait, Libya, Marshall islands, Mauritania, Russia, South Sudan, Syria, Thailand, Yemen, Venezuela, Zimbabwe. *Id.* Many of these countries are hotbeds of terrorist activities, and number among the greatest threats to American national security as part of the "axis of evil" identified by President George W. Bush. Most are relatively unstable, with common features including governmental corruption and recent insurrection. See Arthur Rizer and Sheri R. Glaser, *Breach: The National Security Implications of Human Trafficking*, 17 WIDENER L. REV. 69, 76–77 (2011). "Pursuant to the TVPA, governments of countries on Tier 3 may be subject to certain restrictions on bilateral assistance, whereby the U.S. government may withhold or withdraw non-humanitarian, non-trade-related foreign assistance. In addition, certain countries on Tier 3 may not receive funding for government employees' participation in educational and cultural exchange programs. Consistent with the TVPA, governments subject to restrictions would also face U.S. opposition to the provision of assistance (except for humanitarian, trade-related, and certain development-related assistance) by international financial institutions, such as the International Monetary Fund and the World Bank. Funding restrictions will take effect upon the beginning of the U.S. government's next Fiscal Year—October 1, 2015—however, all or part of the TVPA's restrictions can be waived if the President determines that the provision of such assistance to the government would promote the purposes of the TVPA or is otherwise in the United States' national interest. The TVPA also authorizes the President to waive funding restrictions if necessary to avoid significant adverse effects on vulnerable populations, including women and children." U.S. DEP'T OF STATE, *supra* note 2, at 48.

49. U.S. DEP'T OF STATE, *supra* note 2.

individual narratives describing the particular issues at play in each country and region. This is vital information for a broader, national security focused effort at ending human trafficking, but is also incomplete as it focuses on victim assistance factors.

The power to combat human trafficking is an overlapping power shared by the states, executive, and legislative branches. By its very nature human trafficking is a chimera, with elements of law enforcement, public health, economic regulation, and prosecution. Congress wields the bulk of domestic human trafficking prevention power through the commerce clause power to declare war, raise the military, define and punish federal crimes and regulate immigration. But the President, as commander-in-chief and leader of executive agencies including the Department of Justice (“DOJ”), has in his or her power the ability to form a grand strategy, a broader coordinated effort to link international and domestic prevention efforts. Particularly as human trafficking becomes inexorably linked with the war on terror, presidential wartime powers give the executive unique discretion to incorporate prevention efforts into broader military operations and counterterrorism efforts.

Recent Congresses, while expanding prevention efforts into new and important areas, continue to frame human trafficking in a law enforcement context, expanding domestic victim-assistance efforts rather than using a target international approach. For example, the 114th Congress took a victim-centered view at the core of the TVPA. The three broad categories of laws deal with “Restoring Victims,” “Criminal Justice,” and “Domestic Sex Trafficking of Children.” Congress clearly recognized new, previously unaddressed threats, particularly in the realm of cyber-crime.<sup>50</sup> But, in the prologue to the CRS report, Kristin Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin acknowledge “TIP [trafficking in persons] is both an international and domestic crime that involves violations of labor, public health, and human rights standards, as well as criminal law.”<sup>51</sup> No mention of national security. At the very end of the report the authors raise concerns about the general lack of a national strategy directed at combating human trafficking. H.R. 350 and S. 178 direct the President’s Interagency Task Force to Monitor and Combat Trafficking to conduct research on improving better prevention methods.<sup>52</sup> But to date Congress has taken a passive role when it comes to prevention, focusing instead on policing and prosecution, leaving open powers to the executive to act.<sup>53</sup>

The executive only recently began to lead the way on targeted efforts to dismantle human trafficking networks. The executive order “Strengthening

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50. See Liana W. Rosen, *Trafficking in Persons and U.S. Foreign Policy Responses in the 114<sup>th</sup> Congress* (August 5, 2016) <https://fas.org/sgp/crs/row/R44581.pdf>; see also Kristin Finklea, *Domestic Human Trafficking Legislation in the 114<sup>th</sup> Congress* (April 16, 2015) <https://fas.org/sgp/crs/misc/R43917.pdf>.

51. KRISTEN FINKLEA ET AL., CONG. RES. SERV., R43917, DOMESTIC HUMAN TRAFFICKING LEGISLATION IN THE 114TH CONGRESS 1 (Apr. 16, 2015).

52. *Id.*

53. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring) (“Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.”).

Protections Against Trafficking In Persons In Federal Contracts” dated September 25, 2012 gives teeth to the United States’ “zero tolerance policy on human trafficking in government contracting.”<sup>54</sup> This is part of a broader targeting of “supply chain vulnerabilities,”<sup>55</sup> and recognition that both the United States government and its citizens are indirectly funding human trafficking networks by purchasing goods produced by exploitative labor. Moving outside the realm of law enforcement, the Obama administration recognized that without a demand, the supply of goods produced by slave labor will run dry. Tactics discussed at the annual forum observing National Slavery and Human Trafficking Prevention Month included: prohibiting charging workers fees or holding their papers hostage in return for work, limiting contracting out for work, meeting with foreign governments to coordinate efforts to end human trafficking, and developing transparent labor standards for consumers.<sup>56</sup> The focus of the executive, however, remained on victim support rather than prevention.<sup>57</sup>

President Obama similarly directed the interagency Human Smuggling and Trafficking Center (HSTC) to partner with the intelligence community to assess both the global and domestic trends in human trafficking.<sup>58</sup> The HSTC answers to the Secretary of State, Secretary of Homeland Security, and the Attorney General.<sup>59</sup> In an effort to consolidate executive directives, laws, and strategy memoranda,<sup>60</sup>

54. Exec. Order No. 13627, 3 C.F.R. 13627 (2012).

55. *Fact Sheet: the Obama Administration Announces Efforts to Combat Human Trafficking at Home and Abroad*, THE WHITE HOUSE: OFF. OF THE PRESS SEC’Y (Sept. 25, 2012) <https://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficki>. See also the “Made in a Free World” mission, “We don’t believe this is someone else’s problem. We built Slavery Footprint to help understand how slavery touches our lives and connect concerned citizens. Then we built campaigns and tools to communicate this collective ambition to end slavery with our favorite companies. Supply chains aren’t as simple as they used to be. Today they wrap around the globe and are harder than ever to manage. Despite these challenges, they’re also the key to ending the multibillion-dollar black market of forced economic exploitation. . . The most powerful moment in a purchase is when a buyer chooses a supplier. It’s at this point that supply chains have the power to become values chains. We are empowering companies to engage with their suppliers all the way down to raw materials. Over time, we believe that a network of aligned buyers and suppliers will systematically disrupt illicit markets that use slave labor deep in supply chains. Businesses have the potential to become the new leaders of a free world.” Mission, MADE IN A FREE WORLD, <https://madeinafreeworld.com/mission> (last visited Nov. 10, 2015).

56. Amy Pope, *Combating Human Trafficking in Supply Chains*, THE WHITE HOUSE BLOG (Jan. 29, 2015, 5:07 PM), <https://www.whitehouse.gov/blog/2015/01/29/combating-human-trafficking-supply-chains> (last visited Nov. 10, 2015).

57. THE WHITE HOUSE: OFFICE OF THE PRESS SEC’Y, PRESIDENTIAL PROCLAMATION—NATIONAL SLAVERY AND HUMAN TRAFFICKING PREVENTION MONTH (Dec. 28, 2016), <https://www.whitehouse.gov/the-press-office/2016/12/28/presidential-proclamation-national-slavery-and-human-trafficking>.

58. THE WHITE HOUSE: OFFICE OF THE PRESS SEC’Y, FACT SHEET: THE OBAMA ADMINISTRATION ANNOUNCES EFFORTS TO COMBAT HUMAN TRAFFICKING AT HOME AND ABROAD (Sept. 25, 2012), <https://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficki>.

59. U.S. DEP’T OF STATE, CHARTER AND AMENDMENTS: HUMAN SMUGGLING AND TRAFFICKING CENTER (HSTC) (July 9, 2004), <http://www.state.gov/m/ds/hstcenter/41444.htm>.

60. See Presidential Directive on Procedures for Dealing with Non-Military Incidents (PD-27), January 19, 1978; PDD/NSC-9, Alien Smuggling, June 18, 1993; Presidential Memorandum on Deterring

and adapt to the rise in international terrorist organizations profiting off of human trafficking, the center acts as an intelligence reservoir for agencies and governmental organizations. The center is “fundamentally supportive rather than directive in nature, consisting primarily of: facilitating the dissemination of intelligence; preparing strategic assessments; identifying issues that would benefit from enhanced interagency coordination and/or attention; and coordinating or otherwise supporting agency or interagency efforts in appropriate cases.”<sup>61</sup> This leaves the question of what agency will take the lead in preventative efforts.

As one example, the Department of Homeland Security (“DHS”) launched the “Blue campaign” to unite efforts to end human trafficking. The focus, however, is on uniting private non-profit organizations with law enforcement agents and DHS resources.<sup>62</sup> The DHS explicitly takes a victim-centered approach to human trafficking. “DHS utilizes a victim-centered approach to combat human trafficking, which places equal value on identifying and stabilizing victims and on investigating and prosecuting traffickers. Victims are crucial to investigations and prosecutions; each case and every conviction changes lives. DHS understands how difficult it can be for victims to come forward and work with law enforcement due to their trauma.”<sup>63</sup> But the clear emphasis is on protection and prosecution, with prevention efforts taking the form of educating the public and law enforcement about recognizing human trafficking. These efforts are vital, but not complete. One agency or task force, bridging both national security and law enforcement, must take the lead on stopping human trafficking at the source.

None of these domestic efforts address human trafficking organizations outside of the United States that may not move human beings across our borders, but still threaten our national security. Human trafficking is a two-fold national security threat: to our immediate security through the movement of undocumented persons across our borders and into our cities, and by funding and strengthening our enemies abroad. The only way to attack both these fronts in a coordinated effort to end human trafficking is through a global national security law driven approach. Particularly now that human trafficking has become a wartime tactic of one of our fastest growing enemies, prevention efforts must take center stage.

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Illegal Immigration, February 7, 1995; PDD/NSC-35, Intelligence Priorities, March 2, 1995; PDD/NSC-42, International Organized Crime, October 21, 1995; Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000); Presidential Statement of December 15, 2000 Homeland Security Presidential Directive - 2, October 29, 2001; President’s National Security Strategy, September 2002; National Security Presidential Directive on Combating Trafficking in Persons (NSPD-22), December 2002; National Strategy for Combating Terrorism, February 2003; and Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003).

61. U.S. DEP’T OF STATE, CHARTER AND AMENDMENTS: HUMAN SMUGGLING AND TRAFFICKING CENTER (HSTC), *supra* note 59.

62. See DEP’T OF HOMELAND SEC., *About the Blue Campaign*, <http://www.dhs.gov/blue-campaign/about-blue-campaign> (last visited Nov. 8, 2015).

63. *Id.*

### III. REFRAMING HUMAN TRAFFICKING AS A NATIONAL SECURITY ISSUE: PROPOSALS FOR CUTTING OFF ISIS HUMAN TRAFFICKING OPERATIONS BY MOBILIZING COUNTER-TERRORISM RESOURCES

Since September 11th the United States has undergone a radical shift in the structuring and execution of counterterrorism efforts. Threats to national security drastically changed in definition, from large nation states to small extremist groups. With this change the intelligence, military, and defense communities had to streamline counterterrorism efforts. Our understanding of the threat of human trafficking is similarly evolving from localized threats to our boarder security to broader threats to our national security at home and abroad. The national security community is best equipped to tackle these problems on both fronts and prevent human trafficking. The United States must begin developing open lines of communications, establishing a lead agency for the effort, committing resources to cyber prevention efforts, amending legislation to recognize the link between terrorism and trafficking, identifying targets, and developing countries listed on the Tier III TVPA list in order to better combat the new threat of ISIS human trafficking operations.

#### A. Inter-governmental Coordination

One of the greatest lessons of September 11th was the need for information sharing, coordination, and communication, a lesson that must be incorporated into human trafficking prevention efforts. Approximately thirty offices in seven major agencies and sectors of government handle human trafficking issues,<sup>64</sup> not to mention private organizations and global partners. The HSTC serves a predominantly research based function, with no real power to act on the intelligence. Using the three P's framework, local District Attorney's offices, the U.S. Attorney's Office, and Congress have a firm handle on prosecution, while NGOs, States, and the DOJ protect victims. But one organization must have both a tap into the lines of intelligence and the ability to take preventative action.

Daniel Langberg suggests the Department of Homeland Security as a good candidate for this effort.<sup>65</sup> This was a wise choice, as DHS absorbed INS and therefore its border control and immigration enforcement functions. However, DHS is one of the largest governmental departments, with connections closer to the civilian world than the military. Moreover, DHS inherently does not handle cases of human trafficking that do not touch our citizens and borders directly. Similarly, the Department of Defense and Department of Justice, while housing many of the resources necessary to uproot global human trafficking networks and prosecute them respectively, do not separately have the ability to streamline these resources effectively. The Department of Defense can dedicate resources to developing detection technology, but cannot itself use that technology to prosecute or prevent human trafficking, rather passing it off to local prosecutors'

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64. Daniel Langberg, *Organizational Innovations in Counterterrorism: Lessons for Cyber-Security, Human Trafficking, and Other Complex National Missions*, HOMELAND SECURITY AFFAIRS 6, Article 1 (September 2010), <https://www.hsaj.org/articles/76> (Daniel Langberg is a founding member of the Project on National Security Reform (PNSR)).

65. *Id.*

offices.<sup>66</sup> None of these organizations seek to connect combating human trafficking that touches our specific borders with uprooting trafficking networks abroad utilizing national security resources.

HSTC should take the lead on shaping policy, strategy, and prevention efforts with a broader global understanding of human trafficking. In addition to the Secretary of State, Secretary of Homeland Security, and Attorney General, the Secretary of Defense should be brought in to coordinate efforts. But, the fundamental purpose of the agency must change. Currently the purpose is “(1) prevention and deterrence of smuggling and related trafficking activities; (2) investigation and prosecution of the criminals involved in such activity; and (3) protection of and assistance for victims as provided in applicable law and policy.”<sup>67</sup> The Attorney General is well apprised of efforts to prosecute criminals involved in human trafficking, as the Secretary of State will take command of victim protection efforts.<sup>68</sup> I propose the center should shift focus to prevention: (1) identifying and tracking the supply chains of organizations that either traffic into the United States or engage our enemies in this enterprise, (2) using this intelligence to target perpetrators and educate government officials, military branches, and global partners on strategies to break supply chains, and (3) suggesting amendments to policies and legislation to reflect the rapidly changing understanding of human trafficking.

With the mandate of the National Counter Terrorism Center, Congress acknowledged the importance of coordinating the “diplomatic, financial, *military*, intelligence, homeland security, and law enforcement activities within and among agencies.”<sup>69</sup> Just as counterterrorism operations first understand and then undermine or target organizations, HSTC must act with intelligence and precision to cut human trafficking supply chains. HSTC must have the ear of the military and intelligence communities. The HSTC must have direct lines of communication to Congress and the President. As both branches of government have overlapping duties and powers relating to human trafficking, both must be able to readily access new intelligence and understand the strategy experts at the HSTC develop to shape legislation and executive orders accordingly. Not only will this promote accountability, education, and cooperation, it will also reduce redundancies and ensure the success of the strategy. In the wake of September 11th, one of the sharpest lessons was the need for information flow both horizontally and vertically, balancing the need for secrecy with the need for unified efforts.

## B. U.S. Borders and Intelligence Community

The next piece of the prevention puzzle must come in the form of establishing mechanisms for tracking and documenting the covert movements of victims across both U.S. and international borders. Undocumented workers and

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66. Cheryl Pellerin, *DARPA Program Helps to Fight Human Trafficking*, U.S. DEP'T OF DEF (Jan. 4, 2017), <https://www.defense.gov/News/Article/Article/1041509/darpa-program-helps-to-fight-human-trafficking?source=GovDelivery>.

67. U.S. DEP'T OF STATE, *supra* note 59.

68. See Langberg, *supra* note 64, at 4.

69. Exec. Order No. 13,354, 69 Fed. Reg. 53589 (Aug. 27, 2004) (emphasis added).

immigrants are a vulnerable pool for human traffickers to target and exploit.<sup>70</sup> Todd Rosenblum suggests as a solution a system for classifying illicit border crossings, and creating unique responses to different kinds of undocumented individuals crossing our borders.<sup>71</sup> Creating a tiered system where exploited victims are treated differently than human smugglers and drug traffickers will help prioritize cases for immigration courts, create a streamlined process to give access to T visas, and help intelligence agencies to track the movement of victims, separate from those smuggled in.

Broadly, incorporating human trafficking into legislation already in place to help collect intelligence and prevent drug trafficking would help shore up our borders. Executive Order 12333 acknowledges the global threat of organized drug trafficking along with terrorism and weapons trafficking and authorizes government agencies to coordinate sweeping efforts to collect intelligence on these activities.<sup>72</sup> Human trafficking must make this list. An essential element of intelligence collection is dissemination and sharing.<sup>73</sup> At the moment, human trafficking intelligence gathering is a secondary mission to counterterrorism for most of the intelligence community.<sup>74</sup> Moreover intelligence-gathering activities focus on prosecution, not prevention. Incorporating human trafficking prevention into national security intelligence gathering, rather than law enforcement, will broaden both the authority and the focus of utilizing information.

### C. Financing Terrorism

Whether directly through internal trafficking operations or partnerships with other criminal organizations, human trafficking now rivals drug trafficking as the

70. See generally *Continuing to Strengthen Border Security*, THE WHITE HOUSE, <https://archive.org> (search <http://www.whitehouse.gov/issues/immigration/border-security>) (last visited Nov. 1, 2015); *Continued Presence: Temporary Immigration Status for Victims of Human Trafficking*, U.S. IMMIGRATION AND CUSTOMS ENF'T, available at <http://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf>.

71. Todd Rosenblum, *The truth about border security*, CNN (Jan. 28, 2015), <http://www.cnn.com/2015/01/28/opinion/rosenblum-immigration-reform/> (Todd Rosenblum is president of National Security Outcomes LLC., a consulting firm specializing in emerging threat prevention. He previously served as the Pentagon's acting assistant secretary for homeland defense and deputy undersecretary of intelligence at the Department of Homeland Security.).

72. Exec. Order No. 12333, (Dec. 4, 1981), <https://www.cia.gov/about-cia/eo12333.html> (as amended by Exec. Orders 13284 (2003), 13355 (2004), and 13470 (2008)); see Presidential Policy Directive 28, January 17, 2014, [https://lawfare.s3-us-west-2.amazonaws.com/staging/s3fs-public/uploads/2014/01/2014sigint.mem\\_ppd\\_rel\\_.pdf](https://lawfare.s3-us-west-2.amazonaws.com/staging/s3fs-public/uploads/2014/01/2014sigint.mem_ppd_rel_.pdf); see also Lauren Bateman, *NSA, CIA, and FBI Implementation of PPD-28*, LAWFARE: SURVEILLANCE, Feb. 9, 2015, <https://www.lawfareblog.com/nsa-cia-and-fbi-implementation-ppd-28>; see generally *Drug Enforcement Administration, Office of National Security Intelligence, Presidential Policy Directive 28—Policies and Procedures*, DEP'T OF JUSTICE: DRUG ENFORCEMENT ADMIN. <http://www.dea.gov/FOIA/DEA%20ONSI%20PPD%2028%20Policies%20and%20Procedures.pdf>.

73. See *Federal Anti-Trafficking Efforts*, NATIONAL HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/federal-anti-trafficking-efforts> (last visited Mar. 31, 2017).

74. See Cheryl Pellerin, *DARPA Program Helps to Fight Human Trafficking*, U.S. DEP'T OF DEF. (January 4, 2017) <https://www.defense.gov/News/Article/Article/1041509/darpa-program-helps-to-fight-human-trafficking?source=GovDelivery> (Highlighting new Department of Defense efforts to develop and adapt technology to track and map human trafficking networks across the globe).

main source of funding for terrorism.<sup>75</sup> Child soldiers, domestic servants, and sex slaves are exchanged between terrorists as rewards, and moved into countries without documentation. Because the penalties are negligible, profits high, and investment low, sex trafficking is becoming the crime of choice for these organizations.<sup>76</sup> But raising the legal penalties for traffickers themselves is only as effective as the ability to catch them. Instead, using existing counter-terrorism legislation and incorporating human trafficking prosecutions and prevention into these laws and executive orders, the United States can more effectively cut off the sources of funding and victims for traffickers.<sup>77</sup>

The fundamental power to take on these efforts will come from an understanding that participating in human trafficking is material support of terrorism under 18 U.S.C. 2339B. Prosecutions for material support have become the centerpiece of counterterrorism efforts by the U.S. government.<sup>78</sup> Incorporating an understanding of “trafficker” into terrorist organizations that engage in this practice will accomplish the goal of drying up the financial gain in the enterprise. Targeting traffickers, suppliers, producers, and financial institutions that all have some hand in the movement and exploitation of trafficking victims for prosecution under material support statutes will have a deterrent effect.

While the definition of material support of terrorism is blurred around the edges,<sup>79</sup> dealing in products produced by victims of human trafficking seems closest in kind with the buying and selling of ancient artifacts looted from the region. While clearly not stating humans are property, the parallels begin with examining the warning issued by the FBI to art dealers and collectors.<sup>80</sup> The FBI warns that the onus is on the individual to do “due diligence” to ensure the source of the goods is not linked to terrorist organizations. The logic behind this is clear:

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75. Vivienne Walt, *ISIS Makes a Fortune From Smuggling Migrants Says Report*, <http://time.com/3857121/isis-smuggling/>; see also Nathan Vardi, *Al-Qaeda's New Business Model: Cocaine and Human Trafficking*, FORBES, Dec. 18, 2009, <http://www.forbes.com/2009/12/18/al-qaeda-cocaine-business-beltway-al-qaeda.html>.

76. See Susan Tiefenbrun, *The Saga of Susannah A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 107 UTAH L. REV. 107, 111, 113–14, 116–17 (2002).

77. See Charles Lister, *Cutting off ISIS' Cash Flow*, BROOKINGS INSTIT., Oct. 24, 2014, <http://www.brookings.edu/blogs/markaz/posts/2014/10/24-lister-cutting-off-isis-jabhat-al-nusra-cash-flow>; see also Stephanie Condon, *Can the U.S. cut off ISIS from its funding?*, CBS NEWS, Aug. 14, 2014, <http://www.cbsnews.com/news/can-the-u-s-cut-off-isis-from-its-funding/>; see also Dennis M. Lormel, *Testimony Before the House Committee on Financial Services*, FBI (Oct. 3, 2001), <https://www.fbi.gov/news/testimony/cutting-off-the-financial-lifeblood-of-the-terrorists>.

78. See Nicole Hong, *'Material Support' Statute is Front and Center in Antiterror Push*, WALL ST. J. (May 27, 2015), <http://www.wsj.com/articles/material-support-statute-is-front-and-center-in-antiterror-push-1432719002>; see generally Norman Abrams, *The Material Support Terrorism Offense: Perspectives Derived from the (Early) Model Penal Code*, 1 J. OF NAT'L SEC. L. & POL. 5 (2005).

79. See Hong, *supra* note 78; Material support includes both direct contributions and now agreeing to travel to join, or declaring on social media, intent to travel. Courts have yet to set a firm definition on the term. See generally *Financing of the Terrorist Organization Islamic State in Iraq and the Levant*, FIN. ACTION TASK FORCE (Feb. 2015), <http://www.fatf-gafi.org/media/fatf/documents/reports/Financing-of-the-terrorist-organisation-ISIL.pdf>.

80. *ISIL and Antiquities Trafficking*, FBI (Aug. 26, 2015), <https://www.fbi.gov/news/stories/2015/august/isil-and-antiquities-trafficking/isil-and-antiquities-trafficking>.

the whole world is on notice now to the activities of ISIS ransacking ancient historical sites. Those receiving artifacts then must know the risk and potential crime associated with the origin of the piece, and take on the liability by purchasing it without further investigation. The same UN Security Council Resolution cited by the FBI warning also covers hostages and trafficking victims on top of oil and antiquities. The responsibility falls to member states to recognize and prevent terrorist groups from benefitting from these enterprises.<sup>81</sup>

The link between terrorism and human trafficking is undeniable and openly public. Not only do individuals buying and selling individuals directly from terrorists clearly qualify as material support, but also buyers once removed still contribute funds that find their way into the pockets of terrorist organizations. Buyers on the receiving end of victims or goods and services produced by human trafficking victims are clearly on notice as to the criminal nature of their procurement. Financial institutions, using the toolkit created by the United States Department of the Treasury Financial Crimes Enforcement Network (FinCEN), are similarly on notice.<sup>82</sup> It is therefore fair and necessary to classify receiving human trafficking victims, using and selling products created by trafficked labor, and utilizing services performed by victims, as material support of terrorism. Whether directly or indirectly, the funds put towards these services land in the pocket of terrorist groups.<sup>83</sup>

The United States must take a carrot-and-stick approach to financial institutions and human trafficking, both educating and rewarding good behavior and imposing stiff penalties for those who ignore the risks. FinCEN drafted a list of transactional and customer “red flags” that financial institutions from casinos to check cashers should use to identify financial actions associated with human trafficking.<sup>84</sup> FinCEN proposes utilizing the networks for information sharing and fraud detection already implemented by the Patriot Act and counterterrorism networks together with specific red flag factors to create a new system for identifying human trafficking transactions.<sup>85</sup> In the Suspicious Activity Report (SAR) the institution must already file, they should include the term “advisory human smuggling” or “advisory human trafficking” to alert law enforcement and officials of the risks. This is both a required filing<sup>86</sup> and a way to acquire protection from civil liability for suspicious activity.<sup>87</sup>

81. *Id.*

82. *Advisory: Guidance on Recognizing Activity that May be Associated with Human Smuggling and Human Trafficking—Financial Red Flags*, U.S. DEPT OF THE TREASURY FINCEN (Sep. 11, 2014), [https://www.fincen.gov/statutes\\_regs/guidance/pdf/FIN-2014-A008.pdf](https://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-A008.pdf).

83. *See id.*

84. *Id.* These include business customers who do not exhibit normal payroll expenditures, frequent outbound wire transfers directed to countries at higher risk for human trafficking, transactions conducted by individuals escorted by a third party, payments to employment recruitment agencies that are not licensed or registered, multiple apparently unrelated customers sending wire transfers to the same beneficiary, funnel accounts, and cashing payroll checks where the majority of the funds are kept by the employer or are deposited back into the employers account. *Id.*

85. *Id.*

86. *Id.*

87. 31 U.S.C. 5318(g)(3).

Once classified as material support, 18 U.S.C. 2339B provides requirements and punishments for failing to report suspicious financial activity. 18 U.S.C. 2339B(a)(2) states “any financial institution that becomes aware that it has possession of or control over, any funds in which a foreign terrorist organization or its agent, has an interest, shall (A) retain possession of, or maintain control over, such funds; and (B) report to the Secretary the existence of such funds in accordance with regulations issued by the Secretary.”<sup>88</sup> As a penalty, any institution that “knowingly fails to comply” will be subject to a penalty of “(a) \$50,000 per violation or (B) twice the amount of which the financial institution was required under subsection (a)(2) to retain possession or control.”<sup>89</sup> These harsh penalties will incentivize financial institutions to carefully monitor transactions, and impose accountability on those that do not.

Issues with prosecuting material support cases against financial institutions center around proving proximate cause, but this concern is lessened in instances of human trafficking. Recent cases including *Rothstein v. UBS* show the difficulty of implicating financial institutions in funding terrorist attacks.<sup>90</sup> The Second Circuit in *Rothstein* held that claims of “material support of terrorism” by financial institutions do not “permit recovery on a showing of less than proximate cause.”<sup>91</sup> The Second Circuit generally holds the test of proximate causation to be “reasonable foreseeability.” In *Rothstein* the victims of Hamas and Hizbollah terrorist attacks alleged UBS transferred money to Iran, a key sponsor of terrorism.<sup>92</sup> The Second Circuit held that the claim failed because it did not allege that “(i) UBS was a participant in the terrorist attacks that injured plaintiffs;” (ii) “UBS provided money to Hizbollah or Hamas;” (iii) “U.S. currency UBS transferred to Iran was given to Hizbollah or Hamas;” or (iv) “if UBS had not transferred U.S. Currency to Iran, Iran, with its billions of dollars in reserve, would not have funded the attacks in which plaintiffs were injured.”<sup>93</sup> Functionally the Court found the link between terrorist and bank too attenuated because it passed through the vast treasury of Iran. The specific dollar transacted to Iran could not be traced to a dollar spent by terrorist groups.

Transacting in the profits of human trafficking does not bear the same proximate cause issues. Rather than tracing the money from the bank to the terrorist attack, the logic runs upstream, from the dollar earned through the illegal

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88. 18 U.S.C. 2339B.

89. *Id.*

90. See *Rothstein v. UBS AG*, 708 F.3d 82, 95 (2d Cir. 2013); see generally, Paul Barret, *The Big Bet to Hold Banks Liable for Terrorism*, BLOOMBERG BUS., Feb 19, 2015, <http://www.bloomberg.com/news/articles/2015-02-19/are-credit-suisse-rbs-standard-chartered-hsbc-and-barclays-terrorist-banks-;but-see-Stephanie-Clifford,-Arab-Bank-Reaches-Settlement-in-Suit-Accusing-it-of-Financing-Terrorism>, N.Y. TIMES Aug. 14, 2015, [http://www.nytimes.com/2015/08/15/nyregion/arab-bank-reaches-settlement-in-suit-accusing-it-of-financing-terrorism.html?\\_r=0](http://www.nytimes.com/2015/08/15/nyregion/arab-bank-reaches-settlement-in-suit-accusing-it-of-financing-terrorism.html?_r=0) (Arab Bank reached a settlement with victims of a Hamas terrorist attack after a series of lower court trials sided for the victims in finding them liable under a theory of material support to terrorism); see also, Alison Frankel, *How Western banks hope to shake ex-U.S. soldiers' in Iran terror suit*, REUTERS, Apr. 6, 2015, <http://blogs.reuters.com/alison-frankel/2015/04/06/how-western-banks-hope-to-shake-ex-u-s-soldiers-iran-terror-suit/>.

91. *Rothstein*, 708 F.3d at 95.

92. *Id.* at 97.

93. *Id.*

trading or exploitation of trafficking victims to the institution that banks it. This is tracing profits, not donations. The money will not move as an investment through multiple parties. Instead regulators will target banking institutions that terrorists use to deposit and invest their profits. This will more closely mirror the efforts of governmental officials to shut down money laundering schemes executed by drug cartels,<sup>94</sup> but with heavier sanctions associated with the financing of terrorism. These sanctions will also open doors to further investigation: institutions that transact in illegal profits probably also participate in illicit investments and funding. Intelligence officials should engage in controlled buys, and follow the money used to traffic individuals back to the institution that banks the profit.<sup>95</sup> The only link that must be shown is between the terrorist organization and human trafficking enterprise, but with the level of pride and publicity that ISIS executes its operation, the fear factor ISIS hopes to foster will work to the Government's advantage.

#### D. Cyber Warfare and Social Media

Cyberspace has become both a recruitment tool and virtual market for human trafficking victims. But laws lag behind the times, as legislators scramble to incorporate cyber trafficking into criminal codes,<sup>96</sup> yet continue to focus on human trafficking as a cybercrime, instead of an element of cyber warfare.<sup>97</sup> Again, the law enforcement view of human trafficking pervades efforts to both entrap traffickers and save individuals lured over social media into trafficking, focusing on individual cases of domestic trafficking, rather than a larger strategy to combat the threat of groups like ISIS.<sup>98</sup> Individual law enforcement agencies, nonprofits, and hackers cannot prevent cyber trafficking on a global scale, as women are

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94. See generally Christina Sterbenz, *These are the 2 classic ways Mexican cartels launder money*, BUSINESS INSIDER, Feb. 20, 2015, <http://www.businessinsider.com/how-mexican-cartels-launder-their-money-2015-2>.

95. However, a recent study by the Duke Law International Human Rights Clinic found that as often as these financial regulations can be helpful, they can also impede efforts of international women focused nonprofits who are targeted by their government for sanction. See Duke Law International Human Rights Clinic and Women Peacemakers Program, *Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security* (2017) (arguing that as a direct and indirect result of these financial regulations, women's rights organizations have lost critical access to resources, as well as use of banking facilities, all of which circumscribes how and where women's rights organizations can undertake their work).

96. See *Current Federal and State Policy on Technology and Trafficking*, U.S.C ANNENBERG CENTER ON COMM. LEADERSHIP & POL. (2012), <https://technologyandtrafficking.usc.edu/current-federal-and-state-policy-on-technology-and-trafficking-2012/>. "We're turning the tables on the traffickers. Just as they are now using technology and the Internet to exploit their victims, we're going to harness technology to stop them. We're encouraging tech companies and advocates and law enforcement—and we're also challenging college students—to develop tools that our young people can use to stay safe online and on their smart phones."—Barak Obama. *Id.*

97. See Alan Johnson, *Sex traffickers reach girls via social media*, COLUMBUS DISPATCH, Jan. 24, 2013, <http://www.dispatch.com/content/stories/local/2013/01/24/sex-traffickers-reach-girls-via-social-media.html>.

98. Amendments to the TVPA in 2011 and beyond continually focus on coordinating efforts to gather intelligence between private companies and law enforcement agencies. U.S.C ANNENBERG CENTER ON COMM. LEADERSHIP & POL., *supra* note 96.

trafficked into the Islamic State at alarming rates.<sup>99</sup> Conversations in academia and among lawmakers about the responsibilities of private companies in monitoring for terrorist activity must also include human trafficking.<sup>100</sup>

ISIS may execute smaller portions of their sexual slave market over social media, but they broadly use the promise of an obedient wife or faithful husband to recruit foreign fighters and women from across the globe.<sup>101</sup> But many of these women are not allowed to leave.<sup>102</sup> This is human trafficking: recruitment and

99. See *Digital Activism in Anti-Trafficking Efforts*, U.S.C ANNENBERG CENTER ON COMM. LEADERSHIP & POL. (2012), <https://technologyandtrafficking.usc.edu/digital-activism-in-anti-trafficking-efforts/>.

100. See Elizabeth MacDonald, *FBI Says Twitter Needs to Do More to Combat Terrorism*, FOX BUSINESS, Jul. 29, 2015, <http://www.foxbusiness.com/economy-policy/2015/07/29/exclusive-fbi-to-fbn-twitter-needs-to-do-more-to-combat-terrorism/>; see generally *Summary of Key Findings, Further Research, and Guiding Principles*, U.S.C ANNENBERG CENTER ON COMM. LEADERSHIP & POL (2012), <https://technologyandtrafficking.usc.edu/summary-of-key-findings-further-research-and-guiding-principles/>; see generally Scott Highman and Ellen Nakashima, *Why the Islamic State leaves tech companies torn between free speech and security*, WASH. POST, Jul. 16, 2015, [https://www.washingtonpost.com/world/national-security/islamic-states-embrace-of-social-media-puts-tech-companies-in-a-bind/2015/07/15/0e5624c4-169c-11e5-89f3-61410da94eb1\\_story.html?kmap=1](https://www.washingtonpost.com/world/national-security/islamic-states-embrace-of-social-media-puts-tech-companies-in-a-bind/2015/07/15/0e5624c4-169c-11e5-89f3-61410da94eb1_story.html?kmap=1).

101. See, e.g., Greg Botelho, *ISIS: Enslaving, having sex with 'unbelieving' women, girls is OK*, CNN World, Dec. 13, 2014, <http://www.cnn.com/2014/12/12/world/meast/isis-justification-female-slaves/> (noting that Muslim extremists in ISIS distributed a pamphlet entitled, "Questions and Answers on Female Slaves and their Freedom"); see also Ivan Watson, *Treated like Cattle: Yazidi women sold, raped, enslaved by ISIS*, CNN World, Nov. 7, 2014, <http://www.cnn.com/2014/10/30/world/meast/isis-female-slaves/> (detailing how male members of ISIS abduct women and subject them to physical and sexual violence, rape, and sexual slavery); see generally *Human Trafficking*, FBI, [https://www.fbi.gov/about-us/investigate/civilrights/human\\_trafficking](https://www.fbi.gov/about-us/investigate/civilrights/human_trafficking) (last visited July 31, 2015).

102. Many of the women who join willingly become disillusioned and are not permitted to leave. One French journalist went "undercover" to understand better the online recruitment of women to join ISIS. "Under the pseudonym Melodie, the journalist shared a video on the account, almost immediately getting a message from a man identified as Bilel, who asked how she'd liked the montage of him showing off in a 4X4 and with his weapons. 'I passed myself off as a 20-something, not stupid but a little lost, who suddenly found a huge response from a man in Syria,' said the journalist. . . Bilel's doubts about her began to grow as her reluctance to join him became clear. She ended up getting threats that she said would likely frighten a bewildered young woman into submission. As it was, the journalist, who never met Bilal in person, remains under constant police protection a year later. 'We'll find you, we have the best operators here, you don't know what you're getting into, you're messing with a terrorist group, you and your family will pay,' the woman said, recounting the litany of threats she received after returning to France. 'If they were speaking to a 20-year-old, it would be very hard for her.'" Lori Hinnant, *Female Jihadis In Syria Find Themselves Unable to Return to their Home Countries*, HUFFINGTON POST, May 28, 2015, [http://www.huffingtonpost.com/2015/05/28/female-isis-recruits-syria-jihadis\\_n\\_7459328.html](http://www.huffingtonpost.com/2015/05/28/female-isis-recruits-syria-jihadis_n_7459328.html). "Mia Bloom, a security studies professor at Massachusetts University and author of *Bombshell: Women and Terrorism*, said the recruitment campaign painted a 'Disney-like' picture of life in the caliphate. Some young women were offered financial incentives, such as travel expenses or compensation for bearing children. . . But the reality was very different, she said. Both Bloom and Rolf Tophoven, director of Germany's Institute for Terrorism Research and Security Policy, said reports indicated that women had been raped, abused, sold into slavery or forced to marry. '[ISIS] is a strictly Islamist, brutal movement . . . the power, the leadership structure, are clearly a male domain,' said Tophoven." Harriet Sherwood, *Schoolgirl jihadis: the female Islamits leaving home to join Isis Fighters*, THE GUARDIAN, Sep. 29, 2015, <http://www.theguardian.com/world/2014/sep/29/schoolgirl-jihadis-female-islamists-leaving-home-join-isis-iraq-syria>.

movement through coercion and fraud, for exploitation.<sup>103</sup> Just as in the traditional picture of human trafficking, these women of ISIS are recruited with one vision of their future lives, only to experience another, unable to escape. Classifying these women as victims rather than criminals has drastic implications not only for how we combat cyber recruitment, but also how we treat victims of ISIS efforts. Rather than threatening these women with prosecution, we must bring them back with the promise of help and support, creating networks to retrieve them from their captors. These women could be vital assets in understanding the philosophy and vulnerabilities of ISIS.

On the intelligence side, incorporating human trafficking concerns into the concept of counter-terrorism opens up a variety of resources and powers to leverage against private individuals and companies enabling platforms for cyber trafficking recruitment and sale. Proposed bills now before Congress create sweeping programs to monitor and remove social media accounts recruiting terrorists to ISIS.<sup>104</sup> Senator Dianne Feinstein (D-CA) proposed language for the annual Intelligence Authorization Bill that read “requirement to report terrorist activities and the unlawful distribution of information relating to explosives,” requiring private social media companies to report language in accounts related to “section 842(p) of title 18, United States Code, explosives, destructive devices, and weapons of mass destruction.”<sup>105</sup> Two-fold concerns make shutting down social media accounts inadvisable. First, the FBI and intelligence officers use accounts to track and prosecute terrorists. Second, there are legitimate concerns about the constitutionality of such a law. Here, as with many national security threats, security and civil liberties come into tension.<sup>106</sup>

The tensions between free speech and security play out in social media human trafficking prevention in two parts: what to do with accounts involved in these practices, and how to prosecute those individuals caught facilitating trafficking over social media. Rather than taking down these accounts, private companies should coordinate with intelligence agencies to monitor accounts reaching out to other individuals in attempt to facilitate their migration to ISIS. This goes one step beyond a data sweep, searching for the word explosive, and instead targets those who directly reach out to women and provide them false incentive to leave and join ISIS. Sweeps targeting trafficking of women into the

103. Chuang, *supra* note 1, at 610.

104. See Anne Flaherty, *Social media companies push back on terrorism bill*, DENVER POST BUS., Jul. 26, 2015, [http://www.denverpost.com/business/ci\\_28535502/social-media-companies-push-back-terrorism-bill](http://www.denverpost.com/business/ci_28535502/social-media-companies-push-back-terrorism-bill).

105. See Patrick G. Eddington, *Senate Intelligence Committee Ends Efforts to Turn Social Media Companies into Government Spies*, CATO INST., Sep. 24, 2015, <http://www.cato.org/blog/senate-intelligence-committee-ends-efforts-turn-social-media-companies-government-spies>; see also Callum Borchers, *Hillary Clinton wants to shut down social media accounts. Would that work?*, WASH. POST, Nov 22, 2015, <https://www.washingtonpost.com/news/the-fix/wp/2015/11/22/hillary-clinton-wants-to-shut-down-terrorists-social-media-accounts-would-that-even-work/>; see also Highman & Nakashima, *supra* note 100.

106. See Highman and Nakashima, *supra* note 100; see also *Jihadist Use of Social Media—How to Prevent Terrorism and Preserve Innovations; Hearing before the Subcomm. on Counterterrorism and Intelligence of the H. Comm. on Homeland Security*, 112th Cong. (2011), <http://www.gpo.gov/fdsys/pkg/CHRG-112hrg74647/html/CHRG-112hrg74647.htm>.

ISIS would focus on whether the individual is communicating a promise to women to get them to move and then acting on that promise, instead of sharing in a public post thoughts of violence. There is both an *actus reus* and *mens rea* in communicating with women directly to get them to leave their home for false promises of a fulfilling future in ISIS.

There must be a nuanced approach to prosecuting material support cases surrounding human trafficking, as the women receiving the advice and aid should be treated with an understanding they are the victims of tactics meant to radicalize and capture them. *Holder v. Humanitarian Law Project* lays out the bounds of prosecution for material support of terrorism and speech. The Roberts Court held that the language of material support statutes making it illegal to provide “expert advice” to terrorists was not void for vagueness and did not violate the First Amendment.<sup>107</sup> Those aiding the women in moving overseas are guilty of material support, but the women themselves, in many cases, are being coerced into moving into a culture and family that will hold them prisoner. Human trafficking victims are often guilty of crimes as a result of their situation, for example, prostitution. But, there must be discretion in prosecuting victims for these crimes in light of the larger goal of ending trafficking entirely. The victim centered approach of human trafficking, combined with powers activated by threats to our national security, provide an avenue to prevent human traffickers from using social media to victimize women in the United States.

#### E. Military and Humanitarian Solutions

The institutionalization of human trafficking in the Islamic State presents a unique opportunity to use military force to target the human trafficking slave market.<sup>108</sup> Before now human trafficking was an inherently covert localized crime, with victims streaming across borders in one off transactions. Now there is a physical market, filled with about 500 victims at any given time.<sup>109</sup> If the United States were to successfully dismantle this market and save the women there, or stop the buses moving through the region trafficking women to the market, it would not only damage the institution itself, but also the core ideology of ISIS, and one of their key sources of funding and recruitment. This must become a priority target for United States military operations. Likewise, towns known to be holdouts for ethnic and religious minorities in the region must be bolstered with aid and forces to prevent the enslavement of more women.<sup>110</sup> Tens of thousands of Yazidis, a favorite target for ISIS human traffickers, fled to Mount Sinjar, and were trapped without resources to survive raids by ISIS forces.<sup>111</sup> Forces from Iraqi Kurdistan

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107. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 20 (2010).

108. See Barbara Starr et al., *U.S. Military carries out air-strikes, aid drops to Iraqi town surrounded by ISIS*, CNN, Aug. 30, 2014, <http://www.cnn.com/2014/08/30/world/meast/isis-iraq-syria/>; see also U.S. *Special Ops Forces Enter Syria, Kill Senior ISIS Member*, NBC NEWS, May 16, 2015, <http://www.nbcnews.com/storyline/isis-terror/u-s-special-ops-forces-enter-syria-kill-senior-isis-n360016>.

109. Callimachi, *supra* note 23; Patrice Taddonio, *Watch: On “Slave Market Day,” ISIS Trades Women for Cash, Weapons*, PBS: FRONTLINE, Jul. 14, 2015, <http://www.pbs.org/wggbh/pages/frontline/foreign-affairs-defense/escaping-isis/watch-on-slave-market-day-isis-trades-women-for-cash-weapons/>.

110. See Starr et al., *supra* note 108.

111. *Id.*

managed to help most of the Yazidis escape with the aid of U.S. airstrikes.<sup>112</sup> Similar efforts must be made in the region to protect the remaining Yazidis and other minorities from further enslavement.

The military must continue to develop extensive training on recognizing trafficking.<sup>113</sup> Borrowing from law enforcement protocols, military intelligence groups must be able to recognize and usurp trafficking pipelines. Through targeted intelligence gathering about the methods and movements of women throughout the region, as well as developing a strategy to remove women from the cycle, the military can steadily chip away at ISIS profits. Law enforcement already uses planted phone numbers in bibles, business cards, takeout menus, and more in the United States. Similar tactics must be adopted for wartime efforts to move women out of the market and to safety.

The final piece of the puzzle of defeating human trafficking efforts comes through minimizing the risk factors for human trafficking in regions surrounding the Islamic State. As part of United States military and humanitarian strategy going forward, there must be a prevention plan put in to place that recognizes one of the greatest sources of human trafficking victims is war.<sup>114</sup> Recognizing and incorporating this into future military strategies is crucial to prevention efforts.

#### IV. CONCLUSION

There are resources and tools in place for prosecution of perpetrators and protection of victims of human trafficking. But as a whole, prevention efforts fall short, as law enforcement approaches inherently focus on the aftermath of a crime. With the advent of ISIS and institutionalization of human trafficking as a terrorist tactic, human trafficking is now an issue of war and security. Congress failed to take substantial prevention efforts, leaving it to the executive branch and national security resources to take the lead. Not only are executive agencies the best equipped to react quickly to the changing face of human trafficking and unite resources that cut across multiple areas of law, the executive branch traditionally leads national security efforts. These must come to bear on human trafficking.

First, preventing human trafficking will take a shift in how we frame the problem. Recognizing human trafficking in a modern understanding that neither requires movement nor physical force, the women running to join ISIS become victims, not perpetrators, of crimes. Framing the problem as part and parcel of counterterrorism efforts will open the door to agencies authorized to take action against enemies both foreign and domestic. Understanding how human trafficking fits largely into our global market, in order to root it out, will deplete criminal and terrorist war chests. Second, preventing trafficking will require focusing the right tools on the right targets. Using intelligence and prosecutions to target known supply chains, markets, financiers, and perpetrators of human

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112. *Id.*

113. See generally *Combating Trafficking in Persons (CTIP)*, U.S. DEP'T OF DEF. (Apr. 21, 2015), <http://www.dtic.mil/whs/directives/corres/pdf/220001p.pdf>; see also *Human Trafficking Awareness Training: TIP "101"*, U.S. DEP'T OF STATE, <http://www.state.gov/j/tip/training/>; see also *Combating Trafficking in Persons General Awareness Training*, U.S. DEP'T OF DEF., <http://ctip.defense.gov/Training/GeneralAwareness.aspx>.

114. See U.S. DEP'T OF STATE, *supra* note 2, at 37.

trafficking in precision strikes will go far in preventing future victims from falling into human trafficking. Last, preventing human trafficking will take a long-term strategy to incorporate intelligence about the causes of trafficking into future international plans for peace, war, aid, and negotiation. We must model, within our borders, and in our interactions with the world, a zero tolerance policy for trafficking.