DIPLOMATIC IMMUNITY AND THE ABUSE OF DOMESTIC WORKERS: CRIMINAL AND CIVIL REMEDIES IN THE UNITED STATES

MARTINA E. VANDENBERG* & SARAH BESSELL**

TABLE OF CONTENTS

INTRODUCTION ................................................................................................ 596
I. CRIMINAL REMEDIES: ORDERLY DIPLOMACY V. CRIMINAL ACCOUNTABILITY ............................................................................... 598
A. U.S. v. Khobragade: An Anomaly, Not the Rule ..................................... 603
B. Post-Khobragade Accountability Cold Feet? Implications for Criminal Prosecution of Diplomats and Foreign Officials for Human Trafficking ................................................................. 605
1. U.S. v. Amal ................................................................................... 607
2. U.S. v. Al Homoud ........................................................................... 608
II. THE RISE OF CIVIL LITIGATION FOR DOMESTIC WORKERS ABUSED BY DIPLOMATS .................................................................... 610
A. Immigration Relief and Civil Litigation ............................................... 611
B. Post-Swarna: Residual Immunity and the End of Futility .................... 611
C. The Road Not Taken: Civil Cases Without Indictments ...................... 614
1. Waru v. Madhvani ............................................................................. 614
2. Sabbithi v. Al Saleh ........................................................................... 615
3. Leo v. Al Naser .................................................................................. 615
4. Lipenga v. Kambalame ..................................................................... 618
5. Rana v. Islam ................................................................................... 618
III. HOLDING STATES ACCOUNTABLE ....................................................... 619
A. The Special Problem of Unpaid Default Judgments ............................ 620
1. Carazani v. Zegarre .......................................................................... 621
2. Butigan v. Al-Malki .......................................................................... 622

Copyright © 2016 Martina E. Vandenberg & Sarah Bessell* Martina E. Vandenberg is the President and Founder of The Human Trafficking Pro Bono Legal Center. She has litigated extensively on behalf of domestic workers trafficked to the United States on A-3 and G-5 non-immigrant visas. ** Sarah Bessell is a 2015 graduate of The George Washington University Law School and a legal fellow at The Human Trafficking Pro Bono Legal Center, where she conducts research on human trafficking civil litigation. The authors would like to thank Samantha Baker, Dylan Weisenfels, Professor Annie Smith, and the University of Arkansas Law School Human Trafficking Legal Clinic for their in-depth research on diplomatic immunity and trafficking of domestic workers in the United States. This article would not have been possible without their extensive investigation and analysis of this topic.
INTRODUCTION

Trafficking of domestic workers by diplomats and international organization employees is not a new phenomenon.¹ In a 1981 State Department diplomatic note issued to all embassies in the United States, the Secretary of State expressed “deep concern . . . over the evidence that some members of diplomatic missions have seriously abused or exploited household servants who are in the United States under nonimmigrant A-3

visas.” The diplomatic note stated that the Department of State would “look to each mission to take appropriate measures to ensure that domestic employees of their staff members are treated fairly and equitably.” The State Department note went on to promise that “[v]erified instances of abuse will be dealt with effectively.”

Thirty-five years after the State Department’s expression of “deep concern,” does the United States deal “effectively” with diplomatic abuse of domestic workers? The State Department does get high marks for improvement. The State Department deals with this abuse more effectively than it did before 2008 that was the year that Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act. Analysis of the criminal dockets following the 2008 Act’s passage reveals that the United States government has ramped up federal enforcement measures to protect domestic workers brought to the United States by diplomats and foreign officials.

These more aggressive enforcement measures reflect the State Department’s realization that “look[ing] to each mission” to ensure fair treatment of domestic workers is insufficient. But there is far more work to be done. Analysis of the federal civil dockets reveals that many diplomatic trafficking cases are never criminally prosecuted. These cases could be filed in the federal courts as civil cases thanks to a 2003 amendment to the Trafficking Victims Protection Act—18 U.S.C. § 1595. That amendment created a federal civil right of action for trafficking crimes, providing domestic workers an avenue for relief, even in the absence of a federal

---


3. Id.

4. Id.

5. Id. In 2015, the State Department issued a Diplomatic Note announcing the launch of an “annual in-person registration process for domestic workers employed by foreign mission personnel” in the Washington, D.C. area. Diplomatic Note, U.S. Dep’t of State, Annual Review of Domestic Workers (Sept. 25, 2015), http://www.state.gov/s/cpr/248451.htm. It is hoped that these annual check-ins will deter abuse of domestic workers by diplomats and international organization officials.

criminal prosecution.7 But, since 2003, domestic workers have filed only twenty-eight civil cases against diplomats and other international officials in U.S. federal courts.8 It is likely that the actual number of domestic workers trafficked by diplomats and international officials is much higher.9

This Article analyzes the U.S. government’s role in building effective civil and criminal remedies for domestic workers abused by diplomats and international organization employees. Thus far, the record is mixed. Part I discusses the tension between criminal accountability and diplomatic relations. Part II explores the rise of civil litigation as an alternative means of accountability. Part III describes how advocates in the United States and other countries are working to hold both host and sending states accountable.

I. CRIMINAL REMEDIES: ORDERLY DIPLOMACY V. CRIMINAL ACCOUNTABILITY

The United States is one of a few countries that prosecutes diplomats and other foreign officials for abuse and trafficking of domestic workers. In most countries, these cases are relegated to voluntary mediation panels or employment tribunals, if they are pursued at all.10 But even in the United States, criminal prosecutions are rare. Criminal cases are most frequently brought against officials with lesser degrees of immunity, such as consular

---


8. Plaintiffs filed all but one of the 28 cases under 18 U.S.C. § 1595. The remaining case, which predated passage of the statute, was filed under the Alien Tort Statute. In all, 172 civil trafficking cases have been filed by trafficking victims under § 1595 since 2003. This number does not include multiple cases filed separately by individual victims against the same defendant arising out of the same fact pattern. See Federal Civil Human Trafficking Case Database, HUMAN TRAFFICKING PRO BONO LEGAL CTR., http://www.htprobono.org/resources/ (last visited June 26, 2016) (access to the password protected database may be requested by emailing info@htprobono.org).


10. See KARTUSCH, supra note 1, at 54. Because of the innate power imbalances between diplomats and their domestic workers, these “voluntary” mediation programs appear to result in small settlements for domestic workers harmed by diplomats. See id. at 53–54.
immunity. Federal prosecutors have also indicted in cases involving former diplomats. And, in very rare instances, the U.S. has requested a waiver of diplomatic immunity to prosecute an individual with full immunity under the Vienna Convention on Diplomatic Relations. In all, since passage of the Trafficking Victims Protection Act in 2000, the U.S. has brought nine criminal cases against diplomats and international organization officials for trafficking-related crimes.

The inadequacy of the government’s criminal enforcement efforts may be traceable to a troubling conundrum that lurks at the heart of diplomatic relations. The State Department is charged with “advanc[ing] U.S. objectives and interests in shaping a freer, more secure, and more prosperous world through its primary role in developing and implementing the President’s foreign policy.” Prosecuting diplomats stationed in the United States for their crimes would certainly enhance the rule of law. But it presents a danger of severely disrupting the orderly implementation of the President’s foreign policy. No case illustrates this dilemma more vividly than \textit{U.S. v. Khobragade}, a 2014 case from the Southern District of New York.

On December 12, 2013, U.S. Diplomatic Security Service agents arrested Deputy Consul General of India Devyani Khobragade in
Manhattan. The original, sealed criminal complaint alleged that Khobragade had made false statements to obtain a visa for her domestic worker and then failed to pay the worker in accordance with U.S. minimum wage standards. In the weeks that followed, the case exploded into a full-blown diplomatic incident, dominating headlines in India and in the United States. Indian government officials insisted—erroneously—that Khobragade enjoyed full diplomatic immunity as a consular officer. When that failed, the Indian government reassigned Khobragade to the Indian Mission to the United Nations. The human rights community derided this transparent attempt to cloak Khobragade with diplomatic immunity. Advocates pressured the Obama administration to deny Khobragade’s reaccreditation to the United Nations, issuing a Change.org petition that garnered 89,616 signatures. On January 8, 2014, Secretary of State Kerry approved Khobragade’s transfer. Khobragade was granted full diplomatic immunity on January 8, 2014. She departed the United States approximately 24 hours later, on the evening of January 9, 2014.

On January 9, 2014, prior to Khobragade’s departure, a federal grand jury returned an indictment. The counts included visa fraud and providing

19. Id.
22. Khobragade was appointed a Counselor to the Permanent Mission of India to the United Nations, a position that provided her with full diplomatic immunity. United States v. Khobragade, 15 F. Supp. 3d 383, 384–87 and 384 n.6 (S.D.N.Y. 2014). As John Bellinger, former Legal Adviser at the State Department, pointed out at the time, allowing India to reassign Ms. Khobragade from India’s Consulate in New York to India’s Mission to the UN provided her with diplomatic immunity. Bellinger, supra note 20.
24. Khobragade, 15 F. Supp. 3d at 386.
false statements to the U.S. government. 26 Unfortunately, when the indictment issued, Khobragade was still in the United States, protected by her newly-minted diplomatic status. Absent a waiver of immunity from the Indian government, Khobragade was shielded from prosecution. 27 The State Department requested the waiver of immunity on January 9, 2014. India denied the request. 28 The United States government requested Khobragade’s immediate departure from the United States. 29 Khobragade’s lawyers moved to dismiss the indictment. 30

Judge Shira Sheindlin ruled on March 12, 2014 that Khobragade’s diplomatic immunity required dismissal of the January 9, 2014 indictment. 31 Judge Sheindlin’s decision stated that “[e]ven if Khobragade had no immunity at the time of her arrest and has none now, her acquisition of immunity during the pendency of proceedings mandates dismissal.” 32 The indictment re-issued on March 14, 2014, two days after the dismissal. 33 It remains valid. Khobragade is an international fugitive. 34 Khobragade is therefore subject to arrest upon her return to the United States.

27. See Khobragade, 15 F. Supp. 3d at 388.
28. Id. at 384.
29. See Diplomatic Note from the U.S. Mission to the United Nations, to the Permanent Mission of India (Jan. 9, 2014), Exhibit G to Memorandum of Law of the United States of America in Opposition to Defendant’s Motion to Dismiss Indictment, United States v. Khobragade, 15 F. Supp. 3d 383 (S.D.N.Y. 2014) (“The United States Mission has received the Permanent Mission [of India]’s note of January 9th declining to waive the immunity of Dr. Khobragade, and accordingly this Mission requests her immediate departure from the United States.”).
34. Poonam Agarwal, “I Feel Arrested in My Own Country,” Says Devyani Khobragade, QUINT (Feb. 5, 2016), http://www.thequint.com/india/2016/02/05/i-feel-arrested-in-my-own-country-says-devyani-khobragade. The U.S. Marshals Service defines international fugitives as individuals “wanted in the United States who have fled to foreign countries to avoid prosecution or incarceration.”
Unfortunately, the focus on Ms. Khobragade’s arrest and the ensuing firestorm obscured the facts giving rise to the indictment. Ms. Khobragade allegedly forced her domestic worker to toil long hours for approximately $1.22 per hour.\textsuperscript{35} That wage, which violated federal minimum wage laws,\textsuperscript{36} also violated the contract Khobragade had signed with the domestic worker in India.\textsuperscript{37} The contract initially submitted to U.S. consular officials to obtain the domestic worker’s visa complied with U.S. legal requirements, including wage laws.\textsuperscript{38} After the domestic worker obtained her A-3 domestic worker visa and arrived in the U.S., however, Khobragade allegedly forced her to sign a second, illegal employment contract.\textsuperscript{39} The Department of State Trafficking in Persons Report published in 2014 referred to the \textit{Khobragade} case as a trafficking case.\textsuperscript{40}

The \textit{Khobragade} indictment was the third case of alleged trafficking in the Indian consulate in New York.\textsuperscript{41} Trafficking victims had previously filed two civil cases against Indian consular officials in New York.\textsuperscript{42} One, against the Indian Consul General, ended in an undisclosed settlement.\textsuperscript{43}
The second, against a lower-ranking consular official, ended in a $1.4 million default judgment.\footnote{Gurung v. Malhotra, 851 F. Supp. 2d 583, 598 (S.D.N.Y. 2012). The judgment remains unpaid.} Given the serious allegations of abuse made against other officials in the Indian Consulate in New York, the Indian government should have been on notice. Indeed, the U.S. government sent a letter to the Indian government in September 2013, outlining the allegations against Khobragade.\footnote{In Response to a Media Query Relating to Dr Devyani Khobragade, EMBASSY OF INDIA (Dec. 18, 2013), https://www.indianembassy.org/press_detail.php?nid=1990.} The State Department received no response.


A. \textit{U.S. v. Khobragade: An Anomaly, Not the Rule}

India’s reaction to the Khobragade arrest and indictment was utterly unprecedented. Analysis of the six criminal indictments brought by federal prosecutors against foreign officials for domestic worker abuse in the United States \textit{before} the Khobragade case is instructive. The outcomes in those cases look nothing like the Khobragade case: Khobragade is a complete anomaly. In none of the prior cases did the officials’ sending states ratchet the incident into a diplomatic fracas.\footnote{These cases include Penzato, Soborun, Liu, Al-Ali, Tolan, and Bakilana. See Appendix A.} Indeed, in all of the remaining criminal cases, the foreign officials’ countries of origin
cooperated with federal authorities, or at least allowed the cases to proceed without objection.\(^{50}\) In four of the six cases, the criminal matter ended with a plea agreement and substantial restitution for the domestic worker.\(^{51}\) In one case, the defendants absconded.\(^{52}\) And a final case ended in acquittal.\(^{53}\)

The *Khobragade* case marked only the second time on record that the State Department had requested a waiver of diplomatic immunity in a domestic worker trafficking case in the United States. The first request, made in 2012 against the Ambassador of Mauritius to the United Nations (and, later, to the United States), was granted.\(^{54}\) In November 2012, Mauritius’s ambassador to the United States, Somduth Soborun, pled guilty to charges that he had failed to pay his domestic worker minimum wage or overtime while Soborun was serving as his country’s permanent representative to the United Nations.\(^{55}\) Soborun, who had full diplomatic immunity, pled guilty in a New Jersey federal court after the government of Mauritius waived his immunity.\(^{56}\) As part of the plea, he paid a $5,000 fine as well as $24,153 in back wages to the domestic worker.\(^{57}\)

---


52. The defendants in *United States v. Tolan* fled the country. Memorandum from the U.S. Attorney’s Office for the Eastern District of Virginia, Human Trafficking and Related Cases, Alexandria Division 9 (March 24, 2013) (on file with authors). According to PACER, the docket in this case is currently sealed.

53. Judgment of Acquittal, United States v. Al-Ali, No. 1:11-cr-00051 (D.R.I. Aug. 8, 2011). The cases in this list are, admittedly, somewhat apples and oranges. Only Soborun enjoyed full immunity. Liu, Bakilana, and Penzato enjoyed only consular immunity (or the equivalent). And, arguably, Al-Ali, Tolan, and Amal possessed no immunity at the time of the indictment. The pattern of indictments brought does indicate that the United States seems to prefer pursuing trafficking cases where full diplomatic immunity is not present.


The Soborun case was resolved quietly and diplomatically, despite being a criminal matter. The case provided a road map that could have been followed in the Khobragade case: a quiet waiver, a plea to a lesser charge, payment of back wages through criminal restitution, and no prison time.58 Indeed, in the past, almost all cases involving foreign officials with only consular immunity (or lesser status) had ended similarly.59 But India, hemmed in by international publicity, national pride, and looming elections, chose a more confrontational route. The Government of India’s waiver denial required that Khobragade depart the United States.60

B. Post-Khobragade Accountability Cold Feet? Implications for Criminal Prosecution of Diplomats and Foreign Officials for Human Trafficking

Diplomatic fall-out from the Khobragade case included significant retaliation by the Indian Government. India removed security barriers from the U.S. Embassy, expelled a Diplomatic Security Service agent and his family, and stripped U.S. diplomats and consular officers stationed in India of previously-granted privileges.61

India’s protests may have squeezed concessions from the State Department, but the overreaction failed to derail the criminal case. U.S. Attorney Preet Bharara has made no move toward having the indictment dismissed.62 Nevertheless, advocates for domestic workers trafficked by diplomats feared that the Khobragade fall-out would lead to cold feet and

---


58. **See Plea Agreement, United States v. Soborun, No. 2:12-mj-03121 (D.N.J. Sept. 7, 2012).**

59. Vandenberg, supra note 41.

60. “[I]n those instances in which a person with immunity is believed to have committed a serious offense (any felony or crime of violence) and the sending country has not acceded to the U.S. Department of State’s request for a waiver of immunity, it is the Department’s policy to require the departure of that individual from the United States.” U.S. DEP’T OF STATE OFFICE OF FOREIGN MISSIONS, DIPLOMATIC AND CONSULAR IMMUNITY: GUIDANCE FOR LAW ENFORCEMENT AND JUDICIAL AUTHORITIES 22 (2015), http://www.state.gov/documents/organization/150546.pdf.


an end to prosecutions. Advocates also feared that defendants with mere consular immunity might take a page from the Khobragade playbook, launching campaigns to join their country’s mission to the UN to gain full diplomatic immunity.

Two developments partially allayed these fears: the closing of the “Khobragade Loophole” and the return to pre-Khobragade patterns. First, the Khobragade case exposed a huge lacuna in U.S. policy on diplomatic immunity. Khobragade created a veritable playbook for transforming a non-immune, non-diplomat into a fully-immune diplomat with the stroke of pen on a transfer order. In response to the “Khobragade Loophole,” the U.S. Mission to the United Nations issued a diplomatic memorandum on January 13, 2016.63 The communication altered the criteria required for accreditation by the United States Government. Now, to qualify for diplomatic privileges and immunities, the U.S. Mission to the United Nations stated, a person must:

(8) not be subject, at the time accreditation is sought, to any pending criminal charges in the United States punishable by incarceration for more than one year nor have a family member forming part of the diplomatic envoy’s household who is subject to any such charges and is present in the United States at the time such accreditation is sought.64

Paragraph 8 effectively ended the “Khobragade Loophole.”65

Two criminal indictments that followed the Khobragade incident evidenced a return to the normal patterns of criminal prosecution. Those two cases, described below, are the sum total of federal criminal cases alleging A-3/G-5 abuse filed post-Khobragade. What cannot be known is

63. Diplomatic Note from the U.S. Mission to the United Nations, to the Permanent Missions to the United Nations (Jan. 13, 2016), http://usun.state.gov/sites/default/files/organization_pdf/hc-01-16.pdf. The memorandum summarizes the criteria that apply to “the registration and inclusion of an individual in the list of Members of the Permanent Missions Entitled to Diplomatic Privileges and Immunities in the United States under the provisions of Article V, Section 15 of the Headquarters Agreement between the United States and the United Nations.” Id. at 1. Had Paragraph 8 existed at the time of the Khobragade case, it would not have been possible for the Government of India to transfer Khobragade to a position at the Permanent Mission of India to the United Nations. As a consular official, protected only by the Vienna Convention on Consular Relations, Khobragade would have been forced to face the criminal charges against her without recourse to a defense of diplomatic immunity.

64. Id. at 3.

65. At the time the State Department approved Khobragade’s transfer to the Indian Mission to the United Nations, two unnamed State Department officials told CNN that the State Department had no alternative but to approve the transfer, as Khobragade did not pose a national security threat. Jethro Mullen & Harmeet Shah Singh, India Asks U.S. to Withdraw Official From its Embassy in New Delhi, Source Says, CNN (Jan. 10, 2014 12:01 PM), http://www.cnn.com/2014/01/10/politics/us-india-diplomacy/index.html?hpt=hp_i2.
how many more cases were not indicted due to the chilling effect of the Khobragade incident. At the time of publication, the authors are aware of at least five cases that the United States has failed to indict.

The two post-Khobragade cases indicted were U.S. v. Amal and U.S. v. Al Homoud.

1. **U.S. v. Amal**

   This case against a former foreign official proceeded without diplomatic immunity claims. Federal prosecutors indicted Abdelkader Amal, a former defense attaché at the Moroccan Embassy to the United States, and his wife, Hnia Amal, for alien harboring in the U.S. District Court for the Eastern District of Virginia on March 4, 2014. Abdelkader Amal had previously held an A-1 diplomatic visa as a military official in the Moroccan Embassy in Washington, D.C. The charges stemmed from allegations of trafficking of a domestic worker from Morocco to the United States for forced labor. The defendants pled guilty to alien harboring on May 6, 2014, and agreed to pay at least $52,700 in restitution to the victim, F.H. The defendants admitted that they had fraudulently obtained an A-3 visa. Mrs. Amal received a sentence of three months home confinement and two years probation. Mr. Amal, who pled guilty in a separate case,

---


70. Complaint at 1, Doe v. Amal, No. 1:12-cv-01359 (E.D. Va. Nov. 27, 2012). The civil case was filed prior to the criminal case.


72. See May 2014 DOJ Press Release, supra note 69.

was sentenced to three years of probation and payment of restitution. The victim also filed a federal civil trafficking case, alleging that Mr. Amal had both trafficked her into forced labor and repeatedly raped her. The civil case, which preceded the criminal indictment, ended in an undisclosed settlement.

2. U.S. v. Al Homoud

On June 3, 2015 a federal grand jury in the U.S. District Court of the Western District of Texas charged Hassan Salem Al-Homoud and his wife, Zainab Mohamed Hasan Hatim Al-Hosani, with two counts of forced labor. The indictment alleged that the defendants trafficked two women, R.R. and R.O., to the United States for forced labor. The women had A-3 visas. Mr. Al-Homoud, a colonel in the Qatari military, was reportedly present in the United States to attend military training at Camp Bullis. The domestic workers, one from Indonesia and one from Bangladesh, alleged that the defendants forced them to work long hours each day for approximately eight months. The women received no compensation for their work. They were not allowed breaks or use of the restroom, and were only fed small amounts of leftovers at the end of the day. The defendants kept R.R. and R.O. in a separate, unfurnished apartment where they were forced to sleep on the floor. The domestic workers alleged that the defendants locked them inside at night. The defendants confiscated their passports and cut off all communication with the outside world.

76. Id. at 10–11.
79. Id. at 2–3.
80. Id.
84. Id. at 21, 23.
85. Id. at 18–19, 21.
86. Id. at 21
87. Id. at 18.
88. Id. at 16–17.

Unlike Khobragade, whose government fought the indictment and improperly claimed immunity, Mr. Al-Homoud pled guilty to visa fraud. His wife, Ms. Al-Hosani, pled guilty to failing to report knowledge of a felony. Mr. Al-Homoud was sentenced to five years supervised released probation and immediate removal from the United States. Ms. Al-Hosani was sentenced to three years’ probation and immediate removal from the United States. The court also ordered restitution in the amount of $120,000. At sentencing, Mr. Al-Homoud stated that he took full responsibility for his actions. He told the federal judge presiding over the case, “My conduct has brought shame upon myself, my lovely wife, upon my family and upon my country.”

The defendants departed the United States on February 10, 2016. Diplomatic immunity was never raised as a defense. Instead, it was announced that military officers from Qatar would no longer be permitted to bring domestic workers to the United States.

*Amal* and *Al Homoud* ended just as other pre-*Khobragade* cases had ended: a plea to a lesser crime, criminal restitution for the victim(s), and

---

89. *Id.* at 18–19, 22–23.
90. *Id.* at 19–20.
91. *Id.* at 19–20, 22–23. R.O. suffered from undiagnosed cancer while held in the Al Homoud residence. *Id.* at 22.
93. *Id.*
95. *Id.*
96. *Id.* This amount represented $60,000 to each of the two victims. In addition to this amount, the prosecutor disclosed in the sentencing hearing that each of the victims had reached a confidential civil settlement with the defendants. *Id.* at 6.
97. *Id.* at 37.
98. *Id.* at 8.
100. *Id.* at 26.
little or no prison time. Six of nine criminal cases prosecuted against foreign officials by federal authorities have ended with a plea agreement and restitution. Two indictments remain outstanding. Given the alternative—impunity—these results are acceptable.

But to gain a full understanding of trafficking of domestic workers by diplomats, one must also examine the federal civil dockets. Those dockets reveal serious crimes, the vast majority never indicted.

II. THE RISE OF CIVIL LITIGATION FOR DOMESTIC WORKERS ABUSED BY DIPLOMATS

Domestic workers trafficked by foreign officials have filed more than two dozen federal civil trafficking cases since 2003. These include cases against sitting diplomats, World Bank employees, and consular officials. Traditionally, civil suits against diplomats presented a somewhat hopeless prospect. Because full diplomats could easily have cases dismissed on grounds of immunity, some advocates questioned whether the suits were worthwhile. But two developments since 2008 changed the attitude

102. These cases are *Penzato*, *Sobotun*, *Amal*, *Al Homoud*, *Liu*, and *Bakilana*. See Appendix A.
103. These cases are *Khobragade* and *Tolan*. Id.
104. The Trafficking Victims Protection Reauthorization Act of 2003 created a civil cause of action. Pub. L. 108-193, 117 Stat. 2875 (codified as amended at 18 U.S.C. § 1595 (2012)). As of May 2016, civil trafficking cases had been brought against diplomats and other foreign officials from Bangladesh (1); Bolivia/Germany (dual citizen) (1); Burkina Faso (1); Cameroon (1); Ethiopia (1); India (2); Indonesia (1); Italy (1); Kenya (1); Kuwait (3); Malawi (1); Morocco (2); Pakistan (1); Peru (2); the Philippines (2); Qatar (2); Sudan (1); Tanzania (2); Uganda (1); and the United Arab Emirates (1). See Appendix B for case list.
105. *See id.* A civil case that predated the TVPRA, *Park v. Shin*, settled the question of whether consular immunity precluded a civil suit against a consular official for abuse of a domestic worker. The Ninth Circuit Court of Appeals held that the defendants, deputy consul of Korea and his wife, were not entitled to consular immunity. “Defendants’ hiring and supervision of Plaintiff was not a consular function because Plaintiff was employed primarily as a personal domestic servant of the Shin family. Further, the employment-related acts allegedly committed by Defendants were not performed in the exercise of a consular function. Accordingly, the Vienna Convention does not provide them with immunity.” *Park v. Shin*, 313 F.3d 1138, 1145–46 (9th Cir. 2002).
106. This was particularly true after the loss on the question of the “commercial activity exception” to the Vienna Convention on Diplomatic Relations in the *Tabion* case. The case held that “[d]ay-to-day living services such as domestic help were not meant to be treated as outside a diplomat’s official functions.” *Tabion* v. Mufti, 73 F.3d 535, 538–39 (4th Cir. 1996). Subsequent cases also foreclosed reliance on the commercial activity exception of the VCDR as a vehicle to pierce diplomatic immunity. In the words of the U.S. Government’s Statement of Interest filed in the *Paredes v. Vila* case, “[w]hen diplomats enter into contractual relationships for personal goods or services incidental to residing in the host country, including the employment of domestic workers, they are not engaging in ‘commercial activity’ as that term is used in the Diplomatic Relations Convention.” Opinion at 9,
toward these suits entirely: (1) Congress extension of immigration relief to A-3/G-5 visa holders suing their employers; and (2) the State Department’s intervention in the Swarna and Baoanan cases.

A. Immigration Relief and Civil Litigation

In 2008, Congress legislated incentives for domestic workers abused by diplomats to seek a remedy in federal court. In an effort to encourage lawsuits by A-3 and G-5 visa-holding domestic workers, Congress created a new immigration remedy for A-3/G-5 visa holders filing lawsuits against their traffickers. Under Section 203(c)(1)(A) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, domestic workers with special visas may remain in the United States to pursue their case against the defendants. Domestic workers need only file a copy of their civil complaint with U.S. Citizenship and Immigration Services (USCIS) to receive immediate deferred action and work authorization. While the new immigration regime has not resulted in a surge in lawsuits, the deferred action option does provide victims some relief, particularly in cases where the U.S. government declines prosecution.

B. Post-Swarna: Residual Immunity and the End of Futility

Civil litigation also became a more promising proposition after the State Department intervened in two cases, Swarna and Baoanan. The State Department’s interventions in these cases educated courts—and litigators—about diplomats’ amenability to suit following their departure from their post. For litigators who had spent years unsuccessfully...
fighting to trump immunity through the “commercial activity exception” to the Vienna Convention on Diplomatic Relations, the State Department’s legal arguments were a revelation.

Vishranthamma Swarna, a citizen of India, brought Alien Tort Statute claims against Mr. Badar Al-Awadi, his wife, and the State of Kuwait.112 She alleged that the defendants trafficked her from Kuwait to the United States for forced labor.113 At the time of the alleged abuse, Al-Awadi was a diplomat stationed at the Kuwaiti Mission to the United Nations.114 Ms. Swarna, who entered the United States on a G-5 visa in September 1996, alleged that the defendants forced her to work sixteen to seventeen hours each day for approximately four years.115 Ms. Swarna alleged that she received only $200 per month for the first year.116 Her complaint alleged that Ms. Swarna had suffered extreme physical, verbal, and psychological abuse.117 Mr. Al-Awadi allegedly raped Ms. Swarna on many occasions, threatening to kill her if she told anyone about the abuse.118

The complaint also alleged that the defendants confiscated her passport and isolated Ms. Swarna from her family and the outside world.119 The defendants did not allow Ms. Swarna to leave the apartment alone, telling her that the police would arrest her if she left.120 Ms. Swarna was not allowed to attend church, speak with non-family members, or learn English.121 The defendants also restricted her phone calls and read the letters she received and sent.122 On one occasion when both defendants were out of the apartment, Ms. Swarna fled.123

The case might have proceeded to a full dismissal on grounds of diplomatic immunity, as had so many cases in the past. But on this occasion, as in the Baoanan case, the United States Department of State intervened with a brief clarifying the law on residual immunity under Article 39(2) of the Vienna Convention on Diplomatic Relations.124 The

113. Id. at 1.
114. Swarna, 622 F.3d at 128.
115. Id. at 129.
116. Id. at 128.
117. Id. at 129–30.
118. Id. at 130.
119. Id. at 128.
121. Swarna, 622 F.3d at 129.
122. Id.
124. Brief for the United States of America as Amicus Curiae, Swarna v. Al-Awadi, 622 F.3d 123 (2d Cir. 2010).
U.S. government argued—and the Second Circuit Court of Appeals agreed—that full diplomatic immunity ceases to protect diplomats once they have left their post. Departed diplomats enjoy a residual diplomatic immunity that covers only their official acts. Unofficial acts, such as trafficking and raping a domestic worker, do not fall under the immunity provided to diplomats who have left their posts.

The Swarna decision sent a shockwave through the community of attorneys representing abused domestic workers. No longer were civil suits against diplomats an exercise in futility. Rather, civil suits, even against sitting diplomats, became an exercise in strategic negotiation and timing. At some stage, the diplomat would leave the United States. And at that moment, like Khobragade, that diplomat would become amenable to suit and indictment.

Eighteen federal civil cases have been filed against officials who held full diplomatic accreditation at the time of the alleged trafficking. Yet only two (2) cases resulted in an involuntary dismissal. The knowledge that a defendant would eventually become amenable to suit changed the conversation entirely. Defense attorneys began to advise their diplomat clients to resolve the cases prior to departure from the United States. And pro bono attorneys for trafficking victims began to focus more intensely on civil, as well as criminal, remedies.

125. See Swarna, 622 F.3d at 134–40.
126. Id. at 137.
127. Id. at 145–46.
128. See Appendix B.
C. The Road Not Taken: Civil Cases Without Indictments

It is fair to assume that the trafficking victims who filed federal civil cases also reported the crimes to federal law enforcement officials. These victims have little choice. With few exceptions, all trafficking victims must report to law enforcement if they wish to obtain a T-visa to remain in the United States.131 Because these victims must attest that they “have complied with requests from Federal, State, or local law enforcement to assist in the investigation or prosecution of acts of trafficking,”132 diplomatic trafficking cases are routinely reported to law enforcement. Since 2003, twenty-eight domestic worker cases have proceeded as federal civil trafficking cases;133 twenty-seven under 18 USC §1595 and one under the Alien Tort Statute.134 In four cases, the civil case proceeded alongside a federal criminal indictment.135 But twenty-four civil cases represent allegations of trafficking reported to federal authorities—and filed as civil cases—that did not result in federal criminal charges.136

Examples of several cases with serious allegations that did not end in criminal indictments demonstrate this trend:

1. Waru v. Madhvani137

Nimisha Madhvani was the First Secretary at the Embassy of Uganda.138 Susan Waru, a domestic worker, brought suit against Ms. Madhvani, her brother Amit Madhvani, and her sister-in-law Neeta Madhvani.139 The complaint alleged that the defendants trafficked Ms. Waru from Uganda to the United States for forced labor.140 The defendants

131. U.S. Dep’t of Homeland Sec., U.S. Citizenship & Immigration Servs., I-914 Application for T Nonimmigrant Status, at Part C(7) (July 29, 2014), https://www.uscis.gov/sites/default/files/files/form/i-914.pdf. Victims need not cooperate if they are minors or can show that they are too traumatized to respond to law enforcement requests.

132. Id.

133. See Appendix B. The number of federal civil suits is only part of the picture. Current numbers do not provide the full scope of trafficking of domestic workers by diplomats. Current numbers of diplomatic human trafficking cases in the United States are misleading. This is because many cases settle before the complaints are even filed. Many cases against diplomats and international organization officials have settled on the basis of demand letters alone.

134. Swarna v. Al-Awadi, 622 F.3d 123 (2d Cir. 2010). Swarna predated passage of 18 U.S.C. § 1595 and was filed under the Alien Tort Statute.

135. See supra note 6.

136. A PACER search revealed no corresponding criminal dockets for these twenty-four civil cases.


140. Id. at 1.
offered Ms. Waru employment in the United States, promising a fair salary, schooling, and room and board.\textsuperscript{141} Ms. Waru entered the United States on an A-3 visa in April 1999.\textsuperscript{142} For four and a half years, Ms. Waru worked in both Nishima Madhvani’s residence and in Amit and Neeta Madhvani’s residence.\textsuperscript{143} She worked seven days a week and did not receive any wages.\textsuperscript{144} The defendants also allegedly forced her to clean their friends’ homes without proper compensation.\textsuperscript{145} Ms. Waru’s complaint alleged that the defendants confiscated her passport and that she feared arrest and deportation if she left.\textsuperscript{146} Ms. Waru was not permitted to communicate with outsiders, answer the door, or answer the telephone.\textsuperscript{147} Nishima Madhvani claimed diplomatic immunity,\textsuperscript{148} but the fact that the two family members also named as defendants did not have immunity complicated the case for the defense.\textsuperscript{149} The case ultimately settled.\textsuperscript{150} No criminal charges were filed.\textsuperscript{151}

2. Sabbithi v. Al Saleh\textsuperscript{152}

Major Waleed KH N.S. Al Saleh was Attaché to the Embassy of Kuwait in Washington, D.C.\textsuperscript{153} Three Indian domestic workers filed a federal civil suit alleging that Major Al Saleh and his wife, Ms. Al Amor, trafficked them from Kuwait to the United States for forced labor.\textsuperscript{154} The complaint also listed the State of Kuwait as a defendant.\textsuperscript{155} All three plaintiffs worked for the defendants in Kuwait prior to their arrival in the

\begin{itemize}
  \item \textsuperscript{141} Id. at 3.
  \item \textsuperscript{142} Id.
  \item \textsuperscript{143} Id. at 4.
  \item \textsuperscript{144} Id.
  \item \textsuperscript{145} Id.
  \item \textsuperscript{146} Id. at 1, 4.
  \item \textsuperscript{147} Id. at 4.
  \item \textsuperscript{148} Motion to Dismiss the Complaint and to Quash Service on Grounds of Diplomatic Immunity by Nimisha Madhvani, Waru v. Madhvani, No. 1:05-cv-00662 (D.D.C. May 13, 2005).
  \item \textsuperscript{149} The U.S. filed a statement of interest confirming that Ms. Madhvani had diplomatic immunity, but made no such intervention on behalf of the additional two defendants. U.S. Statement of Interest at 1, Waru v. Madhvani, No. 1:05-cv-00662 (D.D.C. May 13, 2005). The mix of immune and non-immune defendants often leads defendants to settle. See Martina E. Vandenberg & Alexandra Levy, Human Trafficking and Diplomatic Immunity: Impunity No More?, 7 INTERCULTURAL HUM. RTS. L. REV. 77, 97–98 (2012).
  \item \textsuperscript{150} Civil Docket, Waru v. Madhvani, No. 1:05-cv-00662 (D.D.C. Apr. 1, 2005).
  \item \textsuperscript{151} A PACER search revealed no corresponding criminal docket for this case.
  \item \textsuperscript{152} Sabbithi v. Al Saleh, No. 1:07-cv-00115 (D.D.C. Jan. 18, 2007).
  \item \textsuperscript{153} Amended Complaint, Sabbithi v. Al Saleh, No. 1:07-cv-00115 (D.D.C. May 26, 2010).
  \item \textsuperscript{154} Id. at 32–34.
  \item \textsuperscript{155} Id. at 5.
\end{itemize}
United States. The domestic workers each entered the United States on an A-3 visa. The complaint alleged that the plaintiffs worked sixteen to nineteen hours each day. They did not receive any direct wages. Small amounts were transferred to their families each month. The plaintiffs allegedly suffered verbal and psychological abuse, as well as threats of serious physical harm. The defendants confiscated the plaintiffs’ passports and created a climate of fear and isolation. The plaintiffs were prohibited from leaving the house alone, approaching the windows, looking outside, or opening the door. The defendants told them that they would be arrested or kidnapped if anyone saw them. The plaintiffs were only allowed one telephone call per month to their families. After three months of alleged forced labor, Ms. Sabbithi—one of the domestic workers—escaped and sought refuge with the defendants’ neighbor. He took her in and called the police. After her escape, Mr. Al Omar allegedly threatened the other two plaintiffs, Ms. Quadros and Ms. Fernandes, with harm if they attempted to escape. More than two months later, the two escaped and found refuge with the neighbor who had helped Ms. Sabbithi. The defendants’ motion to dismiss based on diplomatic immunity was first granted and then vacated. The case ultimately settled. Although the case was reported to federal authorities, no criminal indictment was brought.

3. Leo v. Al Naser

Ahmed S.J. Al Naser was an Attaché to the Embassy of the State of Kuwait in Washington, D.C. Ms. Regina Leo, a citizen of India, filed a

156. Id. at 12, 14, 16.
157. Id. at 4.
158. Id. at 1.
159. Id. at 2.
160. Id. at 18–19.
161. Id. at 3, 21–28.
162. Id. at 2.
163. Id.
164. Id. at 25.
165. Id. at 28–29.
166. Id. at 29.
167. Id. at 30.
federal civil suit in the District Court of the District of Columbia, alleging that Mr. Al Naser and his wife, Ms. Al Najadi, trafficked her from Kuwait to the United States for forced labor.\footnote{Complaint at 3, Leo v. Al Naser, No. 1:08-cv-01263 (D.D.C. July 22, 2008).} Ms. Leo had previously worked as housekeeper in Kuwait for Ms. Al Najadi’s sister.\footnote{Id. at 14–17.} The defendants offered Ms. Leo a position as their housekeeper in the United States and allegedly threatened to send Ms. Leo back to India if she did not accept.\footnote{Id. at 4.} According to the complaint, Ms. Leo worked for 16 to 18 hours each day for approximately seven months.\footnote{Id.} In return, she received virtually no compensation.\footnote{Id.} Eventually, the defendants instructed Ms. Leo to give them what little money she possessed for “safekeeping.”\footnote{Id. at 10.} Ms. Leo alleged that she experienced extreme physical, verbal, and psychological abuse.\footnote{Id. at 6.} According to the complaint, defendants forced Ms. Leo to eat her meals on the kitchen floor.\footnote{Id. at 7.} They also allegedly pushed, dragged, scratched, and kicked her.\footnote{Id. at 8–9.} The complaint alleged that the defendants confiscated Ms. Leo’s passport and visa and isolated her.\footnote{Id. at 6–8.} Ms. Leo was not allowed to leave the house alone and prohibited from looking out the window.\footnote{Id. at 8.} Defendants told her that there were video cameras in the house and threatened her with deportation.\footnote{Id. at 7–8.} Ms. Leo also alleged that Mr. Al Naser repeatedly raped her, threatening to deport her to India if she refused his advances.\footnote{Id. at 8–9.} Ms. Leo eventually met another neighborhood housekeeper who agreed to help her.\footnote{Id. at 10.} With the help of a non-governmental organization, she was able to flee.\footnote{Id.} The case eventually settled.\footnote{Motion for Voluntary Dismissal with Prejudice at 1, Leo v. Al Naser, No. 1:08-cv-01263 (D.D.C. June 1, 2011).} Although the case was reported to federal authorities, no criminal indictment was brought.\footnote{A PACER search revealed no corresponding criminal docket for this case.}
4. Lipenga v. Kambalame

Jane Ngineriwa Kambalame was a diplomat at the Embassy of the Republic of Malawi. Fainess Lipenga filed a federal civil suit in the District of Maryland, alleging that Ms. Kambalame trafficked her from Malawi to the United States for forced labor. The complaint alleged that Ms. Lipenga worked 16 hours each day for approximately two years and eight months. She received no wages for the first few months and later received between $100 and $180 per month. Ms. Kambalame allegedly threatened Ms. Lipenga with arrest and deportation if she left or ran away. The Malaysian diplomat repeatedly told the victim that she would “never get into trouble” because of her diplomatic status. The defendant also subjected Ms. Lipenga to severe emotional distress. Ms. Kambalame allegedly refused to provide the victim with adequate medical care in the face of obviously declining health. Following her escape, Ms. Lipenga was diagnosed with tuberculosis, HIV, and depression. This civil case is ongoing. There is no federal criminal indictment.

5. Rana v. Islam

Monirul Islam was the Consul General of Bangladesh at the Consulate General of Bangladesh in New York City. Mashud Parves Rana, a domestic worker, brought suit against Mr. Islam and his wife alleging that the couple trafficked him from Bangladesh to the United States for forced labor. Mr. Rana alleged that the defendants forced him into domestic servitude for almost 19 months. The victim worked 17 hours each day as a domestic worker and also as a cook, busboy, and server for events at the

192. Id. at 12.
193. Id.
194. Id.
195. Id. at 13.
196. Id. at 6.
197. Id.
198. Id. at 9–11.
200. This case was reported to federal law enforcement authorities, as the victim received a T-Visa. Complaint at 2, Lipenga v. Kambalame, No. 8:14-cv-03980 (D. Md. Dec. 29, 2014). There is no corresponding criminal case on PACER.
203. Id. at 2–3.
204. Id. at 2.
Bangladesh Consulate. Mr. Rana received zero compensation. When he asked about his wages, the defendants struck him. Mr. Rana alleged that the defendants threatened to beat and kill him if he left the apartment without permission. The defendants allegedly confiscated his passport and told the victim that the police would kill him if they found him outside without the document. Mr. Islam allegedly claimed that he could kill the victim and “not have to answer to anyone.” The Court denied the defendants’ motion to dismiss based on consular immunity. The civil case is ongoing. There is no federal criminal indictment.

The failure to prosecute these cases is indicative of two phenomena. The first is the general failure to bring single-victim forced labor cases. In 2015, for example, federal prosecutors brought 257 federal trafficking cases. Of those, only nine involved predominantly forced labor; all the remaining cases involved sex trafficking. The second phenomenon is a general reluctance to request waivers of immunity. In the absence of prosecutions, trafficking victims exploited by foreign officials have turned to civil litigation as the only remaining vehicle to obtain accountability.

III. HOLDING STATES ACCOUNTABLE

While civil litigation is playing an increasing role in holding diplomats and international officials accountable, it is not without its flaws. Once a civil judgment is handed down, there is the matter of enforcement—a problem not unique to the United States. This Part explores the creative ways in which advocates are holding diplomats’ sending states and host states accountable.

205. Id. at 3.
206. Id.
207. Id.
208. Id.
209. Id.
211. Order Denying Motion to Dismiss at 1, Rana v. Islam, No. 1:14-cv-01993 (S.D.N.Y Jan. 6, 2015).
213. A PACER search revealed no corresponding criminal docket for this case.
214. TRAFFICKING IN PERSONS REPORT, supra note 109, at 389.
215. Id.
216. To date, the State Department has requested a diplomatic waiver in just two domestic worker criminal trafficking cases: Khobragade and Soburun. See supra Part II.A.
A. The Special Problem of Unpaid Default Judgments

Congress has mandated that the Secretary of State “should assist in obtaining payment of final court judgments awarded to A–3 and G–5 visa holders, including encouraging the sending states to provide compensation directly to victims.”

But assistance in enforcing these judgments is extremely rare.

In the United States, there are four outstanding civil judgments against diplomats and foreign officials, totaling $4,371,540.77 in compensatory and punitive damages.

When faced with outstanding judgments, advocates have had to think creatively. Some advocates have successfully looked to the diplomat’s sending state for redress.

In 2013, the Government of Tanzania agreed to make an ex gratia payment to settle a case against a Tanzanian diplomat, five years after the court entered a default judgment.

Ms. Zipora Mazengo filed a federal civil suit in the District Court of the District of Columbia, alleging that diplomat Alan Mzengi and his wife, Stella Mzengi, trafficked her from Tanzania to the United States for forced labor.

Mr. Mzengi was the Minister-Counselor at the Embassy of Tanzania to the United States at the time of the alleged trafficking.

Ms. Mazengo worked for four years, without pay, in the Mzengi household and for their African food catering business.

Mr. Mzengi raised a diplomatic immunity defense, but failed to prove his diplomatic status. Following the defendants’ failure to appear, a

---


221. Id. at 3.

222. Id. at 1, 5–8. Ms. Mazengo suffered extreme verbal, physical, and psychological abuse. Id. at 9–10. She was also denied medical care, despite the fact that she suffered ingrown toenails that made it difficult for her to walk or wear shoes. Report and Recommendation at 5–6, Mazengo v. Mzengi, No. 1:07-cv-00756 (D.D.C. Dec. 20, 2008).

223. Memorandum Opinion at 5–7, Mazengo v. Mzengi, No. 1:07-cv-00756 (D.D.C. Apr. 10, 2008) (“Mr. Mzengi has not offered any affidavit, statement from the Embassy of Tanzania, or documents with his alleged credentials to bolster his claim of immunity, despite his burden to do so.”).
A federal judge entered a default judgment against the defendants. The court awarded Ms. Mazengo $1,059,348.79 in damages, consisting of $150,000 in punitive damages and $510,249.21 in compensatory damages and back wages. Succumbing to pressure from the White House and the Department of State, the Government of Tanzania settled the case with an ex gratia payment to the victim.

This was not the only example of a case that ended with an ex gratia payment. Bin Yang, a non-governmental organization based in Germany, obtained an ex gratia payment of EUR 23,250 for a domestic worker employed by a Yemeni diplomat.

Other cases with default judgments, however, remain unresolved:

1. Carazani v. Zegarra

The District Court of the District of Columbia awarded a Bolivian domestic worker, allegedly trafficked by an administrator for the World Bank, $1,188,688.77 in compensatory and punitive damages. The victim received no compensation for three years of domestic servitude.

Mrs. Mzengi did not raise diplomatic immunity as a defense. The court awarded Ms. Mazengo $1,059,348.79 in damages, consisting of $150,000 in punitive damages and $510,249.21 in compensatory damages and back wages. Succumbing to pressure from the White House and the Department of State, the Government of Tanzania settled the case with an ex gratia payment to the victim.

This was not the only example of a case that ended with an ex gratia payment. Bin Yang, a non-governmental organization based in Germany, obtained an ex gratia payment of EUR 23,250 for a domestic worker employed by a Yemeni diplomat.

Other cases with default judgments, however, remain unresolved:

1. Carazani v. Zegarra

The District Court of the District of Columbia awarded a Bolivian domestic worker, allegedly trafficked by an administrator for the World Bank, $1,188,688.77 in compensatory and punitive damages. The victim received no compensation for three years of domestic servitude.
The defendant threatened to deport Ms. Carazani if she ever told anyone that she was not getting paid. 234 The judgment remains outstanding.

2. Butigan v. Al-Malki 235

The District Court of the Eastern District of Virginia awarded a Filipina domestic worker, allegedly trafficked by the medical attaché at the Embassy of Qatar and his wife, $492,717 in compensatory and punitive damages. 236 Ms. Butigan alleged that she worked around the clock for five months, and received just $1700—approximately 75 cents per hour. 237 The defendants told her that she could not return to the Philippines unless she paid them back for her travel and training expenses. 238 She suffered extensive emotional and verbal abuse, was denied necessary dental care, and slept on the floor. 239 The judgment remains outstanding.


The District Court of Rhode Island awarded a Filipina domestic worker, allegedly trafficked by a United Arab Emirates naval officer and his wife, $1,231,800 in compensatory and punitive damages. 240 The defendants allegedly forced Ms. Ballesteros into domestic servitude for two-and-a-half months. 241 Ms. Ballesteros never received payment. Instead, the defendants sent approximately $410 to her family in the Philippines. 242 According to the complaint, Col. Al-Ali warned Ms. Ballesteros against running away stating that he “had the support of the Navy.” 243 The judgment remains outstanding.

234. Id. at 5.
237. Id. at 15–16.
238. Id. at 12.
239. Id. at 3, 9, 14.
242. Id. at 2
243. Id. at 3.
B. Host State Liability

Host states are increasingly being held to task for the failure to provide protections for domestic workers trafficked by diplomats within their borders. Advocates are pursuing litigation in international and regional human rights courts to enforce states’ international obligations. The United States is no exception.

In 2007, six domestic workers allegedly trafficked by diplomats filed a petition against the United States with the Inter-American Commission on Human Rights. The petition alleged that the United States violated its obligations under the American Declaration by “failing to adopt special measures of protection against abuse by diplomats.”[244] Though this case is ongoing, a similar case before the European Court of Human Rights (ECHR) illustrates one possible outcome.

In 2012, the ECHR held that France violated its positive obligations under Article 4 of the European Convention on Human Rights when it failed to put in place a “legislative and administrative framework to effectively combat servitude and forced labour.”[245] The ECHR ordered damages to the victims in the amount of EUR 30,000.[246] The case was filed by two orphaned sisters from Burundi, aged sixteen and ten. The two girls had been trafficked to France by their uncle, a high-level official working at UNESCO, and his wife.[247] The victims lived in an unconverted cellar in the basement that contained a boiler, a washing machine, and two beds.[248] For four years, the elder victim worked as a housemaid seven days a week. She cared for her cousin, who was disabled, and maintained the garden. [249] The victims were physically and verbally harassed by their aunt.[250] The elder victim was hospitalized on three occasions after being beaten by a male cousin.[251] The ECHR held that France’s criminal law at the time of the trafficking “did not afford the applicant...practical and effective protection against the actions of which she was a victim.”[252]

246. Id. ¶ 121.
247. Id. ¶¶ 7–8.
248. Id. ¶ 10.
249. Id. ¶ 12.
250. Id. ¶ 20.
251. Id. ¶ 19.
252. Id. ¶ 106.
In a separate case, a French Supreme Court for Administrative Matters (Conseil d’État) ruled that France was liable to pay compensation awarded to a domestic worker trafficked by Oman’s former permanent representative to UNESCO. The domestic worker, Ms. Susilawati, had been awarded EUR 33,400 in unpaid wages by a French labour court, but was unable to obtain payment due to the defendant’s immunity from execution. Ms. Susilawati petitioned the Government of France to pay. France refused. The Conseil d’État ruled that under French administrative law, the state was liable in situations where the application of its international treaty obligations, here the Vienna Convention on Diplomatic Relations, resulted in “special and severe” loss.

C. International Coordination

The United States is not alone in confronting abuse of domestic workers by diplomats and other foreign officials. The trafficking of domestic workers by diplomats and international officials is a global issue. Indeed, the Organization for Security and Cooperation in Europe (OSCE), a fifty-seven member international organization, convened a series of high-level meetings for Protocol Departments between June 2012 and March 2014 to address these issues. Forty-three member states participated in the discussions held in Geneva, Kiev, The Hague, and Brussels.

Following these meetings, the OSCE published a “Handbook” with extensive information on prevention and enforcement mechanisms adopted by OSCE member states. The final document reflected the good practices in states’ efforts to combat trafficking of domestic workers. The Handbook provided concrete examples of strategies spearheaded by several OSCE states but applicable in other jurisdictions.

254. KARTUSCH, supra note 1, at 34.
256. Id.
257. See OSCE supra note 1, at 10.
258. Id. The meetings were hosted by the Ministries of Foreign Affairs headquartered in each of the respective cities. Attendees included Protocol Department officers and a limited number of non-governmental organizations. One of the authors attended and presented at the meetings in Brussels and The Hague as a representative of the Human Trafficking Pro Bono Legal Center. The dismissal of the Khobragade indictment unfolded while delegates attended the March 2014 meeting in The Hague.
259. Id.
260. Id. at 9.
workers’ bank accounts, distribution of “know your rights” materials, mediation by state authorities to resolve allegations of abuse, declaration of a diplomat as a persona non grata, civil litigation, and referrals for criminal prosecution.261

CONCLUSION

The United States has taken some significant steps to end trafficking by foreign officials. But there is still some distance to go. As the cases discussed above illustrate, the Khobragade case could have ended much differently. As PJ Crowley, a former U.S. Assistant Secretary of State, pointed out in an article published in 2013, the U.S. “could have declared Ms. Khobragade persona non grata, demanded her immediate departure, and refused further work visas for domestic help for Indian diplomats.” 262 Alternatively, Khobragade could have negotiated a plea deal and paid criminal restitution to the domestic worker victim, as did most other individuals with functional immunity facing criminal charges of domestic worker abuse. 263 India could have waived Khobragade’s immunity, as Mauritius did in the case of its ambassador, allowing the prosecution to proceed. 264

But the early analysis seems to indicate that the Khobragade case, while highly problematic, has not completely derailed the march toward accountability. It seems likely that India’s reaction in the Khobragade case will, in hindsight, appear as an unfortunate aberration. India temporarily disrupted the U.S. government’s efforts to end the scourge of forced labor in the diplomatic community. But if U.S. efforts are to succeed, a robust policy of prosecution must co-exist with a ramped up prevention strategy. The Department of State has started down the path of prevention, but prosecutions must also increase to deter would-be abusers. And while advocates look forward to a day when there will be no more diplomatic trafficking cases to prosecute or litigate, that day is a long way in the future.

261. Id. at 36, 47–49, 51.
263. See supra Part II.A.
### Federal Criminal Trafficking Cases Involving Diplomats, Consular Officials, International Organization Officials, Military Officials, and Other (9 cases)

#### Countries with 2 Cases

<table>
<thead>
<tr>
<th>Country</th>
<th>Case Docket</th>
<th>Sponsoring Organization</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Arab Emirates</td>
<td>U.S. v. Tolan, No. 11-00536 (E.D. Va filed Nov. 23, 2011)</td>
<td>Embassy of the United Arab Emirates</td>
<td>The defendants fled the jurisdiction and “remain at large.”</td>
</tr>
<tr>
<td>(Egyptian Citizens)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Countries with 1 Case

<table>
<thead>
<tr>
<th>Country</th>
<th>Case Docket</th>
<th>Sponsoring Organization</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>U.S. v. Khobragade,</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Indicates corresponding federal civil case.
<table>
<thead>
<tr>
<th>Country</th>
<th>Case Details</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mauritius</td>
<td>U.S. v. Soborun, No. 12-03121 (D.N.J. filed Sept. 7, 2012) Embassy of Mauritius</td>
<td>The Government of Mauritius waived the defendant’s immunity. Mr. Soborun pled guilty to failing to pay the minimum wage rate and paid a $5,000 fine and $24,153 in criminal restitution (back wages) to the victim.</td>
</tr>
<tr>
<td>Location</td>
<td>Case Details</td>
<td>Alleged Crime</td>
</tr>
<tr>
<td>-----------</td>
<td>--------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Morocco</td>
<td>U.S. v. Amal, Nos. 14-151; 14-152 (E.D. Va filed Mar. 4, 2014)*</td>
<td>Embassy of Morocco</td>
</tr>
<tr>
<td>Qatar</td>
<td>United States v. Al Homoud, No. 15-00391 (W.D. Tex. filed Jun. 1, 2015)</td>
<td>Camp Bullis Military Training Reservation (training)</td>
</tr>
<tr>
<td>Taiwan</td>
<td>U.S. v. Liu, No. 11-00284 (W.D. Mo. filed Nov. 18, 2011)</td>
<td>Taipei Economic and Cultural Office</td>
</tr>
<tr>
<td>Country</td>
<td>Case Details</td>
<td>Organization</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------------------------------------------------------------------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td>Tanzania</td>
<td>Ms. Bakilana pled guilty to two counts of making false statements to federal authorities and paid restitution to the victim in the amount of $41,626.80.</td>
<td>World Bank Group</td>
</tr>
</tbody>
</table>

restitution to the victim and an $11,040 fine for costs associated with her time served and transportation costs associated with her deportation.
APPENDIX B: FEDERAL CIVIL TRAFFICKING CASES INVOLVING DIPLOMATS, CONSULAR OFFICIALS, INTERNATIONAL ORGANIZATION OFFICIALS, MILITARY OFFICIALS, AND OTHER

<table>
<thead>
<tr>
<th>Country</th>
<th>Case Docket</th>
<th>Status</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>Gurung v. Malhotra, No. 10-cv-5086 (S.D.N.Y. filed July 1, 2010)</td>
<td>Consulate General of India</td>
<td>Default judgment for plaintiff in the amount of $1,458,335 (unpaid)</td>
</tr>
<tr>
<td>India</td>
<td>Bhardwaj v. Dayal, No. 11-cv-04170 (S.D.N.Y. June 20, 2011)</td>
<td>Consulate General of India</td>
<td>Settled</td>
</tr>
</tbody>
</table>

* Indicates a corresponding federal criminal case.
<table>
<thead>
<tr>
<th>Country</th>
<th>Case Details</th>
<th>Respondent</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peru</td>
<td>Villarreal v. Tenorio, No. 11-cv-2147 (D. Md. Filed Aug. 9, 2011)</td>
<td>Embassy of Peru</td>
<td>Dismissed (not voluntarily) on diplomatic immunity grounds</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Country</th>
<th>Case Docket</th>
<th>Status</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>Doe v. Penzato, No. 10-cv-5154 (N.D.</td>
<td>Consulate General of Italy</td>
<td>Settled</td>
</tr>
<tr>
<td>Country</td>
<td>Case Details</td>
<td>Location</td>
<td>Status</td>
</tr>
<tr>
<td>-----------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>----------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>Ballesteros v. Al-Ali, No. 11-cv-00152 (D.R.I. filed Apr. 12, 2011)*</td>
<td>U.S. Naval War College (training)</td>
<td>Default judgment for the plaintiff in the amount of $1,231,800 (unpaid)</td>
</tr>
</tbody>
</table>