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Abstract

With an estimated 24.9 million victims of human trafficking around the world, trafficking in persons is increasingly one of the most pressing issues of our time (International Labor Organization, 2017). While human trafficking is not a new phenomenon, it was not until 2000 that the first federal human trafficking legislation was enacted in the U.S. The Trafficking Victims Protection Act, the TVPA, provided the first definition for trafficking in persons, enabling prosecutors to combat human trafficking in court. The TVPA was equally significant in the new protections it offered to victims; namely, the T Visa. The T Visa grants nonimmigrant status to trafficking survivors who meet certain criteria, allowing them to remain in the U.S. during the investigation or prosecution of their trafficker(s) before applying for permanent resident status. While the gravity of human trafficking is uniformly recognized, the T Visa is severely undersubscribed. Under the TVPA, U.S. Citizenship and Immigration Services, or CIS, may issue 5,000 T Visas per year, yet the number of visas granted has never reached this cap. As the twentieth anniversary of the TVPA approaches, this thesis will explore why the share of T Visas approved versus applied for has varied since 2002. Based on an analysis of legislative and executive discourse pertaining to T Visas, this study hypothesizes that contrasting rhetoric pertaining to T Visas between the executive and legislative branches during periods of divided government leads to bureaucratic confusion within the agencies tasked with approving visa applications. By raising awareness of what may limit our ability to protect victims of human trafficking, this thesis suggests changes that may enable more T visa applicants to receive the protection they deserve.

Keywords: TVPA, T Visa, human trafficking, victim protection, executive and legislative discourse, CIS
Introduction

Two years after the Trafficking Victims Protection Act was enacted, Attorney General Ashcroft issued the first T Visa to Maria Choz, a 19-year-old Guatemalan victim of sex trafficking. This action symbolized the Department of Justice’s commitment to combatting human trafficking (Ashcroft, 2002). However, since 2002, the number of T Visas granted has never reached the maximum of 5,000 set by Congress. The graph below shows the share of T Visas that have been granted versus applied for since 2002.

![Graph showing the share of T Visas approved versus applied for from 2002 to 2019.](Data taken from uscis.gov)

The T Visa is undersubscribed in terms of both the number of applicants and the number of approvals. The number of T Visas approved has only matched the number of applications once in 2013. Given the essential role the T Visa plays in protecting trafficking victims and their families, the share of T Visas granted versus applied for should near 1 consistently. Regularity in the number of visas granted is also essential to give victims confidence that the visa process is in their favor. However, this thesis is concerned with why this number varied considerably between 2007 and 2016.
Given the widespread, bipartisan support of the TVPA and its subsequent reauthorizations in 2003, 2005, 2008, 2013, and 2017, human trafficking is typically considered a nonpartisan issue. Yet, as indicated by the graph below, periods of either a divided government or a divided Congress correlate to fluctuations in the share of applicants granted T Visas. While several possible arguments may explain the variation in the share of T Visas approved versus applied for, this thesis hypothesizes that contrasting rhetoric about T Visas between the executive and legislative branches during periods of divided government leads to bureaucratic confusion within the agencies tasked with approving visa applications.

Data taken from uscis.gov

As executive agencies under the Bush Administration began strengthening the T Visa adjudication process after 2002, the share of applicants who received T nonimmigrant status began increasing. After five years of a Republican Congress and President, in 2007, the Democrats took hold of Congress until Obama entered the Oval Office in 2009. Two years later, Republicans regained the House. In 2015, the Senate joined the House with a Republican majority, diverging from the President’s party until 2016 when President Trump was elected.
Divided government – whether within Congress or between branches – often creates obstacles to passing significant legislation. This thesis predicts that different parties created competing narratives surrounding the T Visa and human trafficking, creating ambiguity around what constitutes a trafficking victim and the purpose of the T Visa. Without a consistent narrative to follow, executive agencies tasked with the responsibility of adjudicating T Visas are left less confident in victim identification and knowing how to implement the visa. Ambiguity in legislative language and tension between executive and legislative discourse may also lead to confusion among potential applicants who are unsure whether the trauma they endured warrants a T Visa, leading to fluctuations in the number of applicants. The number of applicants each year is displayed by the graph below.

![T-Visa Applicants Graph](Data taken from uscis.gov)

To understand the underlying causes of variation in the share of T Visa applications approved versus applied for, this thesis analyzes executive and legislative discourse. The legislative language studied includes relevant legislation between 2000 and 2016, Congressional hearings, and proposed amendments to the T visa. The equivalent executive documents include
statements by the President and the Attorney General and annual reports by U.S. Citizenship and Immigration Services. By recognizing how a lack of consistent discourse between the executive and legislative branches inhibits protection for victims of human trafficking, this thesis promotes an understanding of effective victim protection in the United States.

**Background**

*Human Trafficking*

Human trafficking first garnered attention from the U.S. government in the mid-1990s, as the media began publicizing cases of women and girls trapped in brothels across Europe. As awareness of sex trafficking increased, First Lady Hillary Clinton incorporated the fight against sex trafficking into her campaign for women’s human rights and the Clinton Administration established the Presidential Interagency Council of Women tasked with “heading the administration’s anti-trafficking efforts as part of their human rights mandate” (Farrell and Fahy, 2009). In 1998, President Clinton launched the country’s first anti-human trafficking strategy based on the “Three P’s”: prevention, protection for victims, and prosecution of traffickers (Siskin and Wyler, 2013). Prevention included “raising public awareness, increasing coordination and communication efforts, and emphasizing implementation,” Protection stressed services that allow victims to safely recover. Finally, prosecution prioritized putting the perpetrators of human trafficking behind bars with appropriate sentences (Enrile, 2018). While President Clinton introduced this course of action, the legislative branch was tasked with translating it into law.

In 2000, the Trafficking Victims Protection Act was passed. For the first time, a definition was given to “severe forms of human trafficking”: 
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 service, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery (TVPA, 22 U.S.C. § 7102 (9))

Prior to the TVPA, the U.S. defined slavery as requiring physical coercion, according to legislation enacted after the Civil War. When cases of human trafficking arose, they were tried using the Mann Act of 1910, which addressed “commerce for the purpose of prostitution,” commonly known as “white slavery” (Enrile, 2017). The TVPA finally recognized the various forms of human trafficking that exist today, which extend far beyond prostitution to fields and factories where human beings are forced to perform labor.

With a Republican and a Democrat sponsoring the TVPA, the act garnered widespread support across both parties and passed without much debate. On October 28, 2000 President Clinton signed the TVPA into law after only 5 voted against the act in the Senate and only one was opposed in the House (Congressional Research Service). Arguments against the bill were made by staunch fiscal conservatives and senators who viewed the act as outside of the Foreign Relations Committee’s jurisdiction. The Act gave law enforcement the tool required to prosecute human traffickers justly, while the T Visa that it created enabled law enforcement to protect victims simultaneously.

T Visa

The Department of Justice estimates that 14,500 to 17,500 victims are trafficked into the United States each year (Siskin and Wyler, 2013). Given the association between immigration and human trafficking, the T nonimmigrant visa for trafficking victims and qualifying family
members is a crucial element of the TVPA. To qualify for a T Visa, a noncitizen survivor must meet four criteria: they are a victim of a “severe form of trafficking in persons” as defined above, are physically present in the U.S. on account of trafficking, they have complied with reasonable requests from law enforcement to cooperate in the investigation or prosecution of their trafficker, and they would suffer “extreme hardship involving unusual and severe harm” if they return to their country of origin (U.S. (8 U.S.C. § 1101(a)(15)(T)(i)).

The TVPA reauthorization of 2003 added the “trauma exception” to the T visa criteria. This amendment ensured that if a victim is unable to assist law enforcement due to physical or psychological trauma or they are under eighteen, the victim may be exempt from the third criteria (Pub. L. No. 108-193, 2003). Subsequent reauthorizations of the TVPA enabled trafficking survivors with T Visas to apply for lawful permanent residence status after remaining in the U.S. for three years.

Though the T Visa seemed to reinforce Congress’ commitment to the protection component of the “Three P” strategy, there are several critiques of the program. The T Visa was created for multiple reasons: to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes...committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States” (Pub. L. No. 106-386 § 1513, 2, 2000).

The Congressional report about the creation of the T Visa claims that it is intended “to encourage law enforcement officials to better serve immigrant crime victims” and to “facilitate the reporting of crimes to law by trafficked, exploited, victimized, and abused aliens,” recognizing that without legal immigration status, many victims resist coming forward (Pub. L.
However, laws are only as effective as their implementation, which falls in the hands of the executive agency charged with adjudicating T Visas: U.S. Citizenship and Immigration Services, abbreviated as CIS. The Vermont Service Center, abbreviated as VSC, is the only CIS office responsible for processing T Visa requests.

The TVPA set a cap of 5,000 on the number of T Visas that could be granted annually, yet the annual cap was not meant until ten years after the first one was granted. The undersubscription of the visa led to debate over whether the visa was primarily intended to increase prosecutions or protect victims. Attorney General Ashcroft declared that the resources allocated to the Department of Justice would first go to prosecuting trafficking cases and secondly to victim outreach (Implementation on the TVPA, 2001).

19-year-old Maria Choz was kidnapped in Guatemala by Jose Tecum and brought to Florida where she was imprisoned in Tecum’s spare bedroom. In Florida, she was forced to work on tomato fields during the day, giving her wages directly to trafficker, and forced into sexual servitude at night. Three years after she was trafficked into the U.S., Maria was rescued by local law enforcement and Tecum was sentenced to only 9 years behind bars. The next year, Attorney General Ashcroft launched new regulations that finally enforced the T Visa provision of the TVPA and 19-year-old Maria Choz became the first survivor of human trafficking to receive a T nonimmigrant status (Ashcroft, 2002). “Because of the good law passed, [Maria] remains in the U.S. and is working to rebuild her life,” President Bush said at the National Training Conference on Human Trafficking in 2004 (Bush, 2004).

Unfortunately, the T Visa remains restrictive. During the application process, victims may be asked to provide inadmissibility waivers for crimes they were forced to commit by their traffickers (Siskin and Wyler, 2013). Immigration lawyers at legal clinics that assist with T Visa
applications also report challenges proving that their clients are still in the U.S. on account of trafficking and that their clients endured a severe form of trafficking rather than domestic abuse or smuggling (Kinsman and Tomatore). This thesis will explore the possibility that some of these obstacles that prevent human trafficking victims from gaining protection may result from confusion within CIS due to inconsistent narratives between the executive and legislative branches.

**Literature Review**

Nearly twenty years after the passage of the TVPA, there is little research on the effectiveness of legislation in protecting victims of human trafficking. Several studies cite a lack of accurate data as a reason for inconclusive research. It was not until the 2008 reauthorization of the TVPA that it became mandatory for the FBI to use its Uniform Crime Reporting unit to collect data on human trafficking (Siskin and Wyler, 2013). Another possible explanation for the lack of research on victim protection is the difficulty in measuring the success of the TVPA and its subsequent reauthorizations; there is debate over the best metric of success. For the purposes of this study, we use the T Visa as a measurement of the United States’ success in protecting victims of human trafficking.

Amy Farrell and Stephanie Fahy discuss challenges to accurate human trafficking data in their study, “The Problem of Human Trafficking in the U.S.: Public Frames and Policy Responses.” By 2009, only 1,300 human trafficking victims had received certification for victim services in the U.S., despite predictions of the number of victims in the U.S. that ranged from tens to hundreds of thousands. This study predicted that the evolution in the framing of human trafficking explains the “discrepancy between published estimates of human trafficking victims and the actual cases of human trafficking discovered by government officials” (Farrell and Fahy,
Farrell and Fahy traced the definition of human trafficking through the media from one of a women’s human rights issue to a crime problem to a national security threat. Each frame is used to legitimize a different response from the government. As an issue of national security, human trafficking has most recently elicited a criminal justice system response, thus success at combatting this issue has been evaluated primarily in terms of prosecutions and arrests, the authors argue. This thesis examines this idea of an evolution in the definition of human trafficking within the context of a unified and divided government in an attempt to evaluate the impact of an inconsistent narrative on protecting human trafficking victims with the T Visa.

The connection between human trafficking and immigration has been researched in multiple articles. In “Hidden in Plain Sight: Human Trafficking in the United States,” Stephanie Hepburn and Rita Simon write that “you can’t properly address the post-trafficking experience of victims without mentioning the hot button issue of immigration” (Hepburn and Simon, 2010, 1). The authors proceed to suggest that certain objectives in the U.S. to combat illegal immigration directly challenge the country’s efforts to combat human trafficking. For example, the TVPA’s objective of protecting victims is directly contradicted by U.S. Immigration and Customs Enforcement’s arrest quota for illegal immigrants.

When Hepburn and Simon’s article was published in 2008, only 1,308 T Visas had been approved. The authors predict that a mistrust between law enforcement and victims of human trafficking leads to the underutilization of the T Visa by victims who fear deportation. The article further suggests that the strict criteria victims must meet to qualify for a T Visa also prevents the success of this tool. Hepburn and Simon propose more cooperation between social service providers who specialize in identifying cases of human trafficking and law enforcement.
Additionally, they recommend softening the T Visa criteria so that victims can focus on rebuilding their lives. If victims can receive protection faster and with more ease, the authors “expect that they would eventually cooperate [with law enforcement] on their own but in a way that would be far more effective” (Hepburn and Simon, 2010, 20).

Not only may objectives contradict each other within policy, but another study by Jennifer Chacón describes how different priorities between the legislative and executive branches may also prevent protection for trafficking victims. Chacón’s study, “Tension and trade-offs: Protecting trafficking victims in the era of immigration enforcement,” proposes that when law enforcement is left with the authority to decide whether an individual is a “smuggled migrant” that has been subjected “to everyday forms of labor exploitation” or a victim of “severe” trafficking, “it is common for USCIS to treat the individual” as the former, preventing them from being eligible to receive the protections available to trafficking victims (Chacón, 2010, 1635).

CIS’s ability to declare someone a criminal rather than a victim results from the “gray area” that occurs when “lawmakers seek to maintain clear distinctions between noncitizens who have voluntarily contracted to be smuggled into the country and those who are here as a direct consequence of force, fraud, or coercion,” Chacón argues (Chacón, 2010, 1627). This thesis expands on the idea of bureaucratic confusion that may ensue when legislative and executive language is inconsistent and/or ambiguous, which occurs during periods of divided government, the following study argues.

In 2014, Amy Farrell, Colleen Owens, and Jack McDevitt conducted a study on the limitations of human trafficking legislation on investigating and prosecuting human trafficking cases. Their study uses data from investigative case records and court files for 140 human
trafficking cases in 12 U.S. counties. Due to “legal, institutional, and attitudinal challenges,” the authors found that prosecutors tend to pursue cases of sex trafficking that involve U.S. citizens, which may explain why T Visas are not commonly discussed in the literature on human trafficking (Farrell, Owens, and McDevitt, 2014, 139). This also means there is an underrepresentation of human trafficking cases that involve immigrants and labor trafficking in the literature on the TVPA’s success. By discussing the success and failures of policies that serve victims, we can gain a better understanding of a more representative range of human trafficking cases.

Farrell, Owens, and McDevitt’s study exposes the disconnect between those who pass legislation and those who enforce it. The legislation “rarely directs specific actions by agencies responsible for enforcement of new laws” and “rarely do they impose systems of accountability to ensure agencies use the new criminal provisions” (Farrell, Owens, and McDevitt, 2014, 141). The study also indicates that law enforcement agents and prosecutors often maintain negative attitudes toward illegal immigrant victims since their victimization often necessitates crimes such as prostitution. This is not only an obstacle for victims who need certification to bolster their T Visa applications, but it also supports the argument for a consistent narrative in defining trafficking victims that may be lost during periods of divided government.

Joycelyn M. Pollock and Valerie Hollier argue that the problem with undersubscription of the T Visa can be attributed to a “lack of clarity in the original purpose of the visa itself” (Pollock and Hollier, 2010, 127). While Congress originally claimed that the T Visa was meant to support the humanitarian mission of the United States by protecting victims of human trafficking, Pollock and Hollier argue that the visa is used primarily as a tool for prosecutors to increase the number of trafficking convictions that they can point to as a measure of success in
combatting TIP. By requiring that victims endured a strict definition of a “severe” form of trafficking, the T Visa cannot serve its humanitarian purpose. Pollock and Hollier argue for a greater role for victim service advocates in determining whether T Visa applicants meet the “trauma exception” requirements that prevent them from cooperating with law enforcement and for an increase in the staff at the VSC to make the adjudication process more efficient. This thesis will contribute to the literature that points to a disconnect between the T Visa’s intended purpose and its implementation by increasing awareness of how bureaucratic confusion may be amplified during periods of divided government.

**Methods**

The data following this section is analyzed to determine whether contrasting rhetoric about T Visas between the executive and legislative branches during periods of divided government creates bureaucratic confusion within CIS and therefore inconsistency in the share of T Visas approved. This data comes from documents from the legislative and executive branches in addition to interviews with representatives from legal clinics who assist victims in the T Visa application process and representatives from law enforcement with experience in human trafficking cases. The executive and legislative documents are analyzed to detect a disconnect between the way in which legislative and executive branches define human trafficking and prioritize victim protection.

The first government documents included in the study are the original Trafficking Victims Protection Act and its subsequent reauthorizations passed by Congress and signed by President Clinton, President Bush, and President Obama between 2000 and 2015. Each act was scanned for the following terms: “trafficking,” “victim,” “T Visa,” “nonimmigrant status,” and “protection,” to analyze sections that describe the problem of human trafficking, protecting
victims, and the T Visa. Differences in how each law describes each concept are recorded. A Lexis Nexis search for the five key terms listed above also resulted in relevant proposed amendments and commentary found in Congressional reports and hearings from sponsors of the bills, which were used to gain greater insight into legislative perspectives behind each law.

The next section of data includes executive documents that were found from another Lexis Nexis search of government publications containing “trafficking,” “victim,” “T Visa,” “nonimmigrant status,” and “protection.” These terms were also used in a search of presidential archives. The documents that resulted from these searches were analyzed to determine differences and similarities in discourse surrounding human trafficking and T Visas both between administrations and between the legislative and executive branches. To gain greater insight into the problems that CIS experiences in implementing the T Visa following the passage of the TVPA 2000, annual CIS reports were included in this study. This written data is combined with interviews with immigration lawyers and law enforcement officials who have personal experience applying for and approving T Visas to test the accuracy of the thesis’ hypothesis in practice.

By comparing legislative and executive discourse during the Bush administration, when the President and Congress were Republican until 2007, and the Obama administration, which was characterized by several periods of divided government, this study attempts to determine whether divided government played a role in the variation of T Visa approvals. The analysis may find no significant difference in the legislation or implementation of the T Visa between the Obama and Bush administrations, in which case other potential explanations are offered. However, this study initially predicts that different discourses surrounded human trafficking and therefore human trafficking victims during each administration, which led to confusion within
CIS about when to grant T visas

Although one more reauthorization of the TVPA was passed in 2017, this study elected to exclude documents from the Trump Administration due to a lack of data and glaring factors that have led to a decrease in applicants. Namely, an executive directive to initiate removal proceedings for those denied a T visa. The different circumstances during the Trump administration and a lack of data create an unequal comparison to the Bush and Obama Administrations.

Data: Findings and Analysis

This section summarizes the findings of the relevant sections of each document studied. An analysis of the findings in each document follows a discussion of each document’s language surrounding the topics of human trafficking, victims, and the T Visa. The section concludes with an overview of the significance of the findings.

Legislative Document: TVPA 2000

The Victims of Trafficking and Violence Protection Act was introduced in the House on November 8, 1999 by Representative Chris H. Smith (R-NJ) and signed into law by President Clinton on October 28, 2000 with near unanimous support from Congress. The original document declares the TVPA, “an act to combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain Federal programs to prevent violence against women, and for other purposes.” The act was organized into three divisions: Trafficking Victims Protection Act of 2000, Violence Against Women Act of 2000, and Miscellaneous Provisions (114 Stat. 1464, TVPA 2000).

The purposes of the first division, the legislation states, “are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and
children, to ensure just and effective punishment of traffickers, and to protect their victims.”

Under findings, the language continues to characterize trafficking as a problem that disproportionately affects women and children, claiming that “at least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.”

While the legislation acknowledges that “trafficking in persons is not limited to the sex industry,” there is special emphasis on those who are “trafficked into the international sex trade, often by force, fraud, or coercion” (114 Stat. 1466, Sec. 102, TVPA 2000).

This section includes prostitution and pornography in its description of trafficking situations, stating that trafficking in the sex industry “involves sexual exploitation…involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services” (114 Stat. 1466, Sec. 102, TVPA 2000) Under “definitions,” “severe forms of trafficking in persons” are listed (as described on page 9) followed by a distinct definition for “sex trafficking:” “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act” (114 Stat. 1469, Sec. 103, TVPA 2000).

The introduction to human trafficking in the TVPA presents a few challenges that may translate into confusion at the bureaucratic level. Over-emphasizing female victims and including issues like prostitution and pornography within the definition of human trafficking creates a specific identity for human trafficking victims, making it more difficult for victims of labor trafficking to prove that their experience constitutes a “severe form of trafficking.” Moreover, by separating the definition of “sex trafficking” from a “severe form of trafficking,” the legislation generates confusion about where the criminality lies in commercial sexual acts like prostitution or pornography – should the victim in a trafficking situation that is not considered “severe” be
charged or just the trafficker?

The “findings” section serves to support the creation of the T Visa: “Existing laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves” (114 Stat. 1468, Sec. 102, TVPA 2000). Anticipating the problems that may arise when law enforcement is confronted with a situation in which their objective to punish crimes like illegal immigration or prostitution is complicated by a possible situation of trafficking, the list cautions that “victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked” (114 Stat. 1468, Sec. 102, TVPA 2000). This language attempts to clarify potential confusion for law enforcement.

Section 1513 of the act, “Protection for Certain Crime Victims Including Victims of Crimes Against Women,” finds that immigrant women and children are frequently victims of crimes like trafficking in the United States. “All women and children who are victims of these crimes…must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes,” the act states under “findings” (114 Stat. 1533, Sec. 1512, TVPA 2000). This phrasing frames the T Visa as a tool to empower victims, while the subsequent stated purpose of the nonimmigrant visa classification is to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes…committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States” (114 Stat. 1534, Sec. 1513, TVPA 2000).
Additional purposes are to “facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status [and] regularize the status of cooperating individuals during investigations or prosecutions.” Despite the prosecutorial benefits of the T Visa, “providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States” (114 Stat. 1534, Sec. 1513, TVPA 2000).

After purposes, the act lists the criteria for obtaining a T Visa: one must be a victim of a “severe form of trafficking,” be physically present in the United States or American territories “on account of such trafficking,” and comply with “any reasonable request for assistance in the investigation or prosecution of acts of trafficking” (114 Stat. 1534, Sec. 1513, TVPA 2000). Alternatively, victims under the age of 15 who are at risk of facing “extreme hardship” upon removal may qualify for a T Visa without cooperation. This section also lists the qualifications for family members to receive derivative T nonimmigrant status (114 Stat. 1534, Sec. 1513, TVPA 2000).

The legislative language surrounding the intent behind the T Visa in the TVPA introduces a tension in treating the T Visa as a tool for law enforcement to investigate and prosecute human trafficking cases or as essential to protecting trafficking victims. While the T Visa may be able to perform both functions, scenarios may arise in which law enforcement decides not to pursue a victim’s case. Should INS continue to grant this victim a T Visa?

The definitions and purposes listed in the legislation may also create complications when law enforcement and INS are confronted with situations in which they must decide whether a case of “sex trafficking” should be considered “severe” or not. In one scenario, the individual committing the sexual act may be viewed as a criminal and whereas in another they may be
viewed as a victim. Confusion about who fits the definition of a “severe form of trafficking” is further amplified when law enforcement labels a situation a severe case of sex trafficking, while INS adjudicators may consider the situation illegal prostitution. Only victims of a “severe” form of sex trafficking are offered the protection of a T Visa.


House and Senate hearings following the passage of the TVPA amplify and clarify certain components of the act. A little over a year after President Clinton signed the act, Representative Henry Hyde (R-IL) emphasized one of the most important decisions that was made leading up to the creation of the TVPA: “we had to choose between two dramatically different views on the commercial sex trade and its contribution to the problem of human trafficking,” he stated. One view regarded prostitution as “another form of labor or service.” The other viewed prostitution as “inherently a form of degradation and enticement into prostitution is invariably characterized by force, fraud or extreme desperation.” The result was an act that “squarely rejects any effort to legitimize prostitution” (Hearing on the Implementation of the TVPA, 1, 2001).

Despite deeming prostitution a form of trafficking, Rep. Hyde insisted that “the act resisted efforts to define ‘trafficking’ so broadly that it would dilute and diminish the effort to attack the core problem,” so other forms of “immigrant smuggling and unfair labor practices” must be addressed in other laws (Hearing on the Implementation of the TVPA, 1, 2001). In the TVPA, “labor” is only mentioned 37 times, while “sex” is repeated 136 times. In this hearing, “labor” is mentioned 27 times, while “sex” is mentioned 83 times. The initial introduction of human trafficking legislation begins a clear narrative that both demonizes prostitution and sex work and frames trafficking victims as females.
In the same hearing, Representative Lantos (D-CA) acknowledged the common disconnect between legislation and implementation, calling on the Justice Department to not only “actively prosecute cases, but also to issue final regulations under the new trafficking victims’ visas” (Hearing on the Implementation of the TVPA, 3, 2001). He also offered guidance on Congress’ stance regarding the apparent tension between the T Visa as a humanitarian versus law enforcement tool, “As the statute provides, the visa should be, in the first instance, a humanitarian visa, not one used only as a club to obtain the law enforcement cooperation from frightened and abused victims...” (Hearing on the Implementation of the TVPA, 3, 2001).

*Senate Hearing Before the Subcommittee on Immigration: Immigration Policy: An Overview*

In a Senate hearing before the Subcommittee on Immigration in 2001, Senator Brownback (R-KS) emphasized the challenges of giving INS adjudicators “wide latitude in interpreting the eligibility standards for immigrant and nonimmigrant visa categories,” calling for “clearly articulated standards for eligibility [to] improve consistency” (Hearing on Immigration Policy, 15, 2001). By calling attention to the broad discretion INS was granted in determining who qualifies for a T Visa, Senator Brownback acknowledged that while Congress created the law governing protections for trafficking victims, the adjudicators of the visa have the power of deciding whether the visa would be narrowly or broadly implemented to protect as many victims as possible.

*Legislative Document: TVPA 2003*

In June 2003, Rep. Smith (R-NJ) proposed the reauthorization of the TVPA, abbreviated as the TVPRA 2003. After a proposed amendment by the Committee on the Judiciary and the Committee on International Relations, the bill was again passed unanimously and signed by President Bush on December 19, 2003. Congress’ description of victims at the beginning of the
TVPRA is broader than in 2000, stating that “trafficking in persons continues to victimize countless men, women, and children in the United States and abroad” (117 Stat. 2875, Sec. 2, TVPRA 2003). While Congress’ findings commend the U.S. for progress in “investigating and prosecuting acts of trafficking,” they also acknowledge the “unintended obstacles” faced by victims in receiving assistance, “including admission to the United States” via the T Visa (117 Stat. 2875, Sec. 2, TVPRA 2003).

To address the challenges that victims face when applying for T nonimmigrant status, the TVPRA 2003 created more explicit T Visa guidelines. First, participation in state or local law enforcement human trafficking investigations could meet the cooperation criteria for receiving a T Visa; previously, only federal investigations were considered. Next, the TVPRA increased “the minimum age at which a trafficking victim is required to assist in investigations and prosecutions” from 15 to 18 (117 Stat. 2878, Sec. 1595, TVPRA 2003). Finally, the TVPRA required the Attorney General to report “the number of persons who have applied for, been granted, or been denied a “T” visa or otherwise provided status under the Immigration and Nationality Act” (117 Stat. 2880, Sec. 6, TVPRA 2003).

While the TVPRA 2003 discusses issues of sex and labor trafficking more evenly than the TVPA, a new controversial amendment was added that prohibited using funds under the act to: “(1) promote, support, or advocate the legalization or practice of prostitution; or (2) implement any program that targets victims of severe forms of trafficking in persons through any organization that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution” (117 Stat. 2886, Sec. 7, TVPRA 2003). By including this language, the TVPRA 2003 reinforced the original anti-commercial sex work discourse of the TVPA, limiting the work of organizations
that assist survivors of sexual violence.

An amendment adopted by the Committee on the Judiciary and the Committee on International Relations demonstrated concerns surrounding the T Visa’s implementation. Representative Hostettler (R-IN) urged the INS to reconsider their decision to allow individuals to apply for T nonimmigrant status without certification from law enforcement in the form of Supplement B. Without requiring Supplement B, the Judiciary Committee expressed concerns that too many aliens who initially paid smugglers to enter the U.S. before becoming victims of trafficking would gain amnesty, thus incentivizing “alien smuggling” (H. Rept. No. 108-264). This amendment highlighted an issue that may arise when INS handles situations in which smuggling becomes trafficking. One approach would be to prioritize victim protection, while another would entail punishing illegal immigration.

*Legislative Document: TVPRA 2005*

The second reauthorization of the TVPA was introduced by Rep. Smith (R-NJ) in February 2005 and passed through Congress with unanimous consent for the third time, resulting in its passage on January 10, 2006. The findings at the beginning of the act drew equal attention to both “forced labor and commercial sex exploitation.” The TVPRA 2005 also gave more credible justification for its emphasis on female victims, stating that of the “600,000 to 800,000 individuals trafficked across international borders each year…an estimated 80% of such individuals are women and girls” (119 Stat. 3558, Sec. 2, TVPRA 2005).

Neither the TVPRA 2005 nor related amendments make any mention of the T Visa, allowing USCIS - which took over INS responsibilities in 2003 following the establishment of the Department of Homeland Security – to continue carrying out its duties without interference from Congress. However, the act appropriated funds to enable more DHS investigations of
severe forms of trafficking through the Bureau of Immigration and Customs Enforcement. By specifically directing DHS funds to ICE, the TVPRA 2005 failed to prioritize expanding staff or programs at the VSC where T Visas are adjudicated.

Legislative Document: TVPRA 2008

The final reauthorization that passed during the Bush Administration was introduced by Representative Howard L. Berman (D-CA) on December 9, 2008, passed by unanimous consent and was enacted on December 23rd. While there was no introduction to the general problem of human trafficking, more specific efforts to combat TIP were outlined. Section 201 of the TVPRA 2008 addresses the T Visa, authorizing the Secretary of Homeland Security, to “extend the period of T-visa status” and “waive the disqualification for lack of good moral character for T-visa holders applying for adjustment to permanent resident status if the qualification is caused by or incident to the trafficking” (122 Stat. 5054, Sec. 201, TVPRA 2008) Most importantly, the TVPRA 2008 established the “trauma exception” in which victims who are “unable to participate in a law enforcement interview because of physical or psychological trauma” may still be considered for a T Visa’s original purpose of serving to protect victims rather than solely assist law enforcement.

Departments and agencies such as the Department of Health and Human Services, the FBI, and the Department of Homeland Security were directed to carry out specific procedures related to combatting trafficking in persons, such as developing safe child repatriation programs, creating new categories in the Uniform Crime Reports, and reporting on the operations of the Violence Against Women Act Unit at the CIS Vermont Service Center. However, the TVPRA 2008 did not address the implementation of the new T Visa regulations. Again, this reauthorization prohibited “anything in this Act…from being construed to treat prostitution as a
valid form of employment under federal law” (122 Stat. 5072, Sec. 225, TVPRA 2008).

*Legislative Document: TVPRA 2013*

After the TVPRA 2008, the next reauthorization was introduced in a divided Congress in 2011. However, the initial reauthorization was not met with unanimous support as in years past and was not signed by President Obama until 2013. The proposed reauthorization addressed human trafficking as “a modern-day form of slavery involving victims who are forced, defrauded, or coerced labor or sexual exploitation” and described victims as “children, women, and men.” The TVPRA of 2011 also called for a fourth “P” in the U.S.’s strategy to combat TIP – interagency partnership to increase victim identification and prosecutions (H.R. 112-96, 3, 2011).

In terms of T Visa regulations, the TVPRA 2011 increased the list of family members who are eligible for derivative T Visa status and directed the Department of Justice and the Department of State to provide potential applicants pamphlets containing information regarding the protection they’re entitled to. The legislation also does not note the success of the T Visa despite the mandated reports on T Visa data required by the previous reauthorizations. Instead, Senator Patrick Leahy (D-VT) points to the success of the TVPA in the “number of criminal convictions secured against human traffickers” and the “number of States that have passed comprehensive anti-trafficking laws” (H.R. 112-96, 2, 2011).

*Legislative Document: Hearing on the TVPRA in the Senate, September 2011*

In a 2011 hearing before the Committee on the Judiciary, representatives questioned Kelly Ryan, the Acting Deputy Assistant Secretary on Immigration and Border Security on why the number of T Visas granted was so low. Ryan cited “difficulty in finding victims” and a “lack of trust in the law enforcement community” as reasons for the T Visas undersubscription
Legislative Document: TVPRA 2013

Perhaps in response to Ryan’s statement, the TVPRA 2013 that eventually passed, included “better coordination among federal agencies [and] between law enforcement and victim service providers.” However, rather than emphasize the protection that T Visas offer victims as previous legislation did, Sen. Leahy described the visa as a “measure to encourage victims to come forward” and “to cooperate with law enforcement, which leads to more prosecutions and help for more victims” (Leahy, 2013). Ten days after Leahy’s encouragement, the TVPRA 2013 was passed by the Senate and signed by President Obama. This emphasis on using the T Visa to raise the number of prosecutions rather than highlighting its humanitarian purpose may indicate an appeasement in the legislation to satisfy Republican senators who originally opposed the TVPRA 2011.

Executive Documents: Bush Administration

In January 2002, over a year after the TVPA was passed, Attorney General Ashcroft issued regulations to implement the T visa. In his announcement of the regulations, Ashcroft stated that the visa “is specifically designed for the victims of severe forms of trafficking in persons who cooperate with law enforcement against those responsible for their enslavement” (Ashcroft, 2002). This description of the purpose of the T Visa lacks an emphasis on protection for victims of trafficking that is included in the legislation.

The regulations that Ashcroft referred to in his speech were published on January 31, 2002 and were intended to guide officials of the INS in implementing the T Visa. The regulations place the burden on victims to prove in their applications not only that they have cooperated with law enforcement, but also that “they would suffer extreme hardship involving
unusual and severe hardship involving unusual and severe harm if they were removed from the United States.” Victims must also prove that they are “physically present [in the United States or an American territory] on account of the trafficking.” Furthermore, it is the “applicant’s burden to demonstrate” that a particular means – force, fraud, or coercion – and a particular end – sex trafficking, involuntary servitude, peonage, debt bondage, or slavery – were both present in their case (Eligibility for “T” Nonimmigrant Status, 2002).

These requirements place an onerous burden on an already distressed victim by asking them to prove the trauma that they endured. The regulations don’t clarify how officials in the INS evaluate applications; other than by encouraging victims to submit Supplement B forms as evidence. Immigration attorneys Alicia Kinsman and Suzanne Tomatore and a Special Agent with Homeland Security Investigations note that no interview is required and the officials who adjudicate the T visas at the VSC are far removed from the situations that they are judging. The regulations also do not encourage officials to do their utmost to grant protection to survivors of trafficking. The regulations even note that the “Service acknowledges that the T-1 status will not be an appropriate response with respect to many cases involving aliens who are victims of severe forms of trafficking,” given the annual limit of 5,000 visas (Eligibility for “T” Nonimmigrant Status, 2002).

In September 2003, President Bush addressed human trafficking in a speech to the United Nations General Assembly. He stated that “each year, an estimated 800,000 to 900,000 human beings are bought, sold, or forced across the world’s borders. Among them are hundreds of thousands of teenage girls, and others as young as five, who fall victim to the sex trade” (Bush, 2003). President Bush continued to characterize the crisis of human trafficking as one of sex trafficking, noting particular support for “organizations that are rescuing women and children
from exploitation” (Bush, 2003). His language reinforced the legislative discourse at the time surrounding human trafficking and its victims.

At the first-ever national training conference on human trafficking in 2004 called, “Human Trafficking into the United States: Rescuing Women and Children from Slavery,” President Bush again reinforced the framing of human trafficking victims as women and children subjected to sex crimes. “The lives of tens of thousands innocent women and children depend on your compassion,” he told law enforcement officers. Of the “600,000 to 800,000 human beings trafficked across international borders each year…it is believed that more than 80% are women and girls, and that 70 percent of them forced into sexual servitude,” he continued (Bush, 2004).

In terms of protection offered to victims, President Bush explained that threatening deportation is one tool used by traffickers to keep “women and girls” enslaved. The T Visa removes “that tool of coercion by treating the victims of trafficking not as illegal aliens but as refugees…allowing [them] to remain in the United States and receive the same services and counseling that are provided to refugees” (Bush, 2004). In this speech, President Bush echoes the TVPA by characterizing the T Visa as a mechanism to provide safety to victims and depicting human trafficking victims as females or children subjected to sex trafficking.

The narrative that framed human trafficking as an issue that impacts women and children and primarily involves sex crimes was perpetuated until the end of the Bush Administration. At the National Human Trafficking Conference in 2006, Assistant Attorney General Regina B. Schofield described most victims as “women and children” who are “systematically abused, sexually exploited, and brutalized in “prostitution, sweatshops, and domestic servitude” (Schofield, 2006). During his presidential campaign in 2008, Sen. John McCain (R-AZ) claimed that “most of the victims of human trafficking in the United States and in most other places in the
world are the most vulnerable among us: destitute women and children who are sold into bondage as sex slaves” (Bummiller, 2008).

Executive Documents: Obama Administration

It was not until just after President Obama took office, in January 2009, that the Department of Homeland Security issued its first recommendations to improve the T Visa process. The report states that the non-immigrant classification provides “temporary legal status to victims of trafficking…who assist with the investigations or prosecutions of the criminal activity,” while acknowledging that the “T visa is a powerful new tool to protect the most vulnerable victims and prevent future trafficking” (Department of Homeland Security, 2009). The report notes the delays that victims face in obtaining legal status, but does not indicate why this is an issue. To increase efficiency, DHS recommended adding adjudicators to the five that were charged with approving T Visas at the VSC in October 2008 and instructs CIS to clarify what evidence should be used to prove willingness to assist in investigations or prosecutions. The report also indicates problems with officers being “more responsive to certain types of crimes, such as sexual assault” (Department of Homeland Security, 2009). This seems to indicate the influence of the discourse surrounding human trafficking and its victims during the Bush Administration.

In front of the Clinton Global Initiative in 2012, President Obama gave his most prominent speech on combatting human trafficking in the U.S. Rather than continuing to restrict the problem to a specific category of victims or crimes, the President began his speech by stating, human trafficking “ought to concern every person, because it is a debasement of our common humanity” (Obama, 2012). He continues by addressing the devastating impact that “modern slavery” has on every community, business, and nation. When describing victims, President
Obama narrates situations of labor trafficking in factories, fields, and sweatshops; he describes children turned into soldiers and girls being bought and sold into brothels (Obama, 2012).

The President also encouraged “training, so investigators and law enforcement are even better equipped to take action – and treat victims as victims, not as criminals” (Obama 2012). Immigration attorneys at nonprofit legal clinics note the cooperation that President Obama enforced between law enforcement and victim service providers which led to better victim identification and trust between victims and officers (Interviews and Hepburn and Simon).

Finally, in his speech to the CGI, Obama claimed to prioritize “simplifying procedures for “T” visas so that innocent victims from other countries can stay here as they help us prosecute their traffickers” (Obama, 2012). After his administration named January National Slavery and Human Trafficking Prevention Month, Obama’s presidential proclamations each year addressed the broad range of victims in need of protection and his intent to streamline immigration procedures. To ensure that more victims of every type of severe form of trafficking were protected by the T Visa, Obama authorized the Department of Labor to certify T Visa applications in 2014 (Manuel, 2014).

**Executive Documents: CIS Reports**

The first annual report by the CIS Ombudsman that mentions the T Visa was published in 2009, following two years of a dramatic decrease in the share of T Visas approved. While there is no reason given, perhaps this sudden decrease prompted an investigation into the efficacy of the T Visa adjudication process. The report claims that the T nonimmigrant classification was created “to provide temporary lawful status for victims of trafficking…for those who assist with the investigation and prosecution of trafficking” (Department of Homeland Security, 57, 2009). This description leaves out any emphasis on the T Visa’s purpose to protect victims and does not
refer to the “trauma exception” established in the TVPRA 2008.

The Ombudsman’s report revealed confusion among law enforcement agencies in understanding human trafficking laws and related immigration options as well as a reluctance among other agencies to assist possible victims. Similar to DHS’ report on *Improving the Process for Victims of Human Trafficking and Certain Criminal Activity* published five months earlier, the Ombudsman’s investigation on the efficiency of CIS’s adjudication of T visas resulted in recommendations to provide adequate staff at the VSC and to increase government training for both law enforcement officials and agencies. Officials expressed concern that “training by community-based organizations is presented solely from a victim advocate’s perspective” (Department of Homeland Security, 59, 2009). Overall, the discourse in this report was pragmatic, but avoided addressing the T Visa’s ability to protect victims and demonstrated resistance to taking a victim-centered approach to granting visas.

In 2010, the annual report took a more emotional approach to discussing issues within CIS stating that, “the victims of modern slavery have many faces…whether they are trapped in forced sexual or labor exploitation,” human trafficking victims suffer “from horrible physical and sexual abuse, it is hard for them to imagine that there might be a place of refuge” (Department of Homeland Security, 99, 2010). This introduction is a call to action for CIS, who can grant refuge to a great number of victims.

The report continues by commending DHS efforts to educate law enforcement and victim service providers so that victims are made aware of their immigration options. Yet the report does not note ways in which CIS adjudicators have been educated themselves. The report also reveals an increase of 80 to 90 percent in the rate of additional Requests for Evidence in T Visa applications, which imposes an additional burden on victims and their advocates. The
Ombudsman’s office highlighted a need for regulatory action regarding implementing the “trauma exception.” More clarification about this component of the TVPRA 2008 may reduce RFEs. Finally, the Ombudsman reports an inadequate number of staff at the VSC again (Department of Homeland Security, 99-103, 2010).

The 2011 report by the Ombudsman of CIS describes an interagency task force established by DHS to increase cooperation between law enforcement and immigration officers. Interagency cooperation is essential to ensuring that those who investigate human trafficking cases and those who decide whether a victim’s case warrants a T Visa have a uniform understanding of what constitutes a human trafficking victim. Special agents with experience in human trafficking cases still report difficulties with CIS officials who continue to request evidence even after agents have certified that a victim endured trafficking (interviewee prefers not to be named).

The 2012 CIS report highlights many of the same efforts and recommendations as the previous year’s report, but indicates that CIS failed to implement new legislation that grants immigration benefits to surviving relatives of T Visa recipients. At the time of the report, CIS stated that they would not be issuing new regulations to clarify application procedures for family members, creating more confusion and stress for potential applicants (Department of Homeland Security, 2012).

The 2013 report only specifically discusses the T Visa one time in a list of the types of visas CIS processes (Department of Homeland Security, 2013).

In 2014, the CIS Ombudsman reported increased collaboration between “law enforcement, first responders, prosecutors, government, non-governmental, faith-based, and private organizations to conduct training and outreach that expands awareness of human
trafficking and helps to identify and protect victims and prosecute traffickers” (Department of Homeland Security, 33, 2014). This report continues to advocate for victims by drawing attention to the consequences of “unnecessary RFEs” that “contribute to delays and impact the quality of adjudications.” The report states that “it is time-consuming for petitioners and their representatives, often nonprofit agencies with limited resources” (Department of Homeland Security, 36, 2014).

Finally, the CIS Ombudsman reports of 2015 and 2016 discuss the T Visa primarily in terms of protecting labor trafficking victims. In an effort to increase protection for labor trafficking victims, in 2014, the Department of Labor became a certifier for T Visa petitions (Manuel, 2014). As a result, CIS updated a *U and T Visa Law Enforcement Resource Guide* to provide more guidance on the application and certification process. These efforts indicate the challenges that labor trafficking victims faced, as opposed to sex trafficking victims, in obtaining protection previously.

While there are no CIS reports from the Bush administration that contain information on the T Visa for comparison, the reports from 2009 to 2016 indicate confusion among CIS officials and law enforcement agents in how to identify cases of human trafficking, and therefore how to identify victims. By not highlighting this as an issue in previous reports, the Ombudsman clearly did not find issues in this area until 2009 when issues with significant delays in adjudications were reported and the share of applications approved began decreasing. The concern with a lack of understanding in the initial reports may be attributed to the introduction of a new narrative from the executive branch as well as a lack of new guidance from the legislative branch.

The reports also highlight significant effort by DHS to educate other relevant agencies and officials on immigration options for trafficking victims, but they fail to discuss how T Visa
adjudicators themselves are being trained. This begs the question, do CIS officials receive uniform training in how the T Visa should be used? Another issue presented in the reports is the number of immigration officials who approve T Visas in the VSC. By confining the number of adjudicators to five officials (which has not been sufficiently increased since the first recommendation), few perspectives go into the decision of who receives protection.

Summary of Analysis

While the CIS documents serve a more pragmatic purpose and therefore do not contribute largely to any specific narratives, the other legislative and executive discourse examined in the previous section indicate a clear shift in discourse surrounding human trafficking and human trafficking victims. The initial anti-human trafficking legislation passed by Congress equated commercial sex acts to human trafficking and depicted victims as women and children, beginning a narrative that was perpetuated by the executive branch.

Framing human trafficking as an evil that corrupted family values garnered initial support for anti-human trafficking efforts from the religious conservatives, which constituted a large part of President Bush’s constituents (Gulati, 2012). While subsequent reauthorizations during the Bush administration included men and labor trafficking in their description of modern slavery, sections that restricted funds from organizations that legitimized prostitution as a form of labor ensured the support of religious, conservative constituents that supported the majority party of both the legislative and executive branches.

Under a unified government, a consistent narrative was reinforced in similar legislation that was easily reauthorized each year. This narrative guided law enforcement and immigration officials to prioritize cases of sex trafficking, which was made possible by extending protection to victims who cooperated. Confusion about whether to use T Visas as a humanitarian tool to
protect survivors or as a tool to coerce victims into cooperating in prosecutions was perpetuated by members of the executive and legislative branches during the Bush administration, which may explain the overall low numbers of T Visas granted. However, a consistent frame led victims of sex trafficking to apply for T Visas in higher numbers than other types of victims, therefore the share of applicants granted visas granted steadily increased. Immigration attorney Alicia Kinsman reported clients who endured other severe forms of trafficking did not recognize themselves as victims and therefore did not seek help with T Visa applications as often.

The lack of human trafficking legislation and infrequent discussion of the T Visa during periods of divided government under the Obama Administration make it difficult to draw a definitive conclusion that divided government causes bureaucratic confusion that limits the share of T Visa applicants granted nonimmigrant status. However, the lack of legislation passed during this time also indicates that efficiency in combatting a historically nonpartisan issue like human trafficking is lost during divided government.

As Obama began expanding the definition of a human trafficking victim during his presidency and shifting the narrative, more cases of labor trafficking were investigated (Farrell and Fahy, 2009). Victims were no longer limited to innocent women and girls. The TVPRA 2011 did not contain the same provisions as previous reauthorizations that served to fortify the act’s fervent stance against commercial sex acts. As a result, the TVPRA 2011 suddenly became a more partisan issue and took two years to pass. The five-year gap in human trafficking legislation left executive agencies like CIS to heed the guidance of the president who was taking a broader, more victim-centered approach to human trafficking.

President Obama urged more forms of trafficking to be investigated and for victims to be treated as victims, rather than criminals (Obama, 2012). As new types of cases were investigated
and new types of victims began applying for T Visas, especially given the “trauma exception” introduced in 2008, CIS had to decide whether to take a conservative or liberal stance in issuing the visas: issue as many visas as possible to victims or carefully determine which cases constitute “severe” forms of trafficking.

The lack of legislative guidance offered to executive agencies like CIS during divided government combined with a new executive narrative surrounding trafficking victims that legislation failed to enforce, created room for T Visa adjudicators to inconsistently approve applications. The CIS reports that were published during periods of divided government, indicate a failure to implement regulations that serve to benefit victims, such as the “trauma exception” and extending immigration benefits to family members. The reports also lack a clear narrative for T Visa adjudicators to follow in terms of the visas purpose. More consistent discourse from both the executive and legislative branches may help to rectify these issues within CIS, in turn creating a steadier rate in the share of T Visa applications approved.

Additional Analysis

In addition to the conclusions drawn from the study above, the data also reveals other possible reasons for the variation in T Visa approvals under divided government.

Interviews with immigration attorneys Alicia Kinsman and Suzanne Tomatore as well as with law enforcement agents who prefer not to be named, revealed the disconnect between CIS officials and those who investigate human trafficking and assist victims in the application process. Despite law enforcement certification, immigration officers often ask for additional evidence. One Special Agent believes this is an indication of a lack of training in both the purpose of the T Visa and what constitutes evidence. Another special agent with Homeland Security Investigations explained the human element involved, claiming that when officers with
different perspectives on illegal immigration and human trafficking switch out in the adjudicating role, there is inconsistency in the share of T Visas approved.

The two attorneys interviewed experience more challenges in receiving T Visa approvals under the current administration which is characterized by skepticism about illegal immigration. There are more requests for evidence that victims are still present in the U.S. on account of trafficking and more resistance against trafficking victims who were originally smuggled into the U.S. The human element behind who is directly reviewing T Visa applications and the narrative within training of adjudicators requires more research.

**Conclusion**

Based on an analysis of documents in the executive and legislative branches pertaining to human trafficking victims and T Visas, this study finds that even an issue as bipartisan as human trafficking can be impacted by divided government. Given the wide range of factors that contribute to T Visa procedures such as a lack of published guidelines by CIS and few adjudicators, it is difficult to isolate divided government as a root cause of variation in the share of T Visa applications approved. However, when the executive and legislative branches prioritize different types of human trafficking victims and evaluate the success of anti-human trafficking efforts in different ways, the officials in charge of granting visas are forced to choose between two different perspectives rather than follow one consistent narrative. The lack of legislative and executive action to advance anti-human trafficking efforts during divided government is also concerning, as victim protection suffers in the meantime. In view of how the narrative around human trafficking can shift due to politics, CIS should collaborate with victim-service providers and law enforcement officials who work directly with victims to establish its own guidelines on maximizing the potential of the T Visa to offer protection to survivors of human trafficking.
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Interview with Suzanne Tomatore

Interview with Alicia Kinsman

Interview with two Special Agents from Homeland Security Investigations (prefer not to be named).