

# HUMAN TRAFFICKING

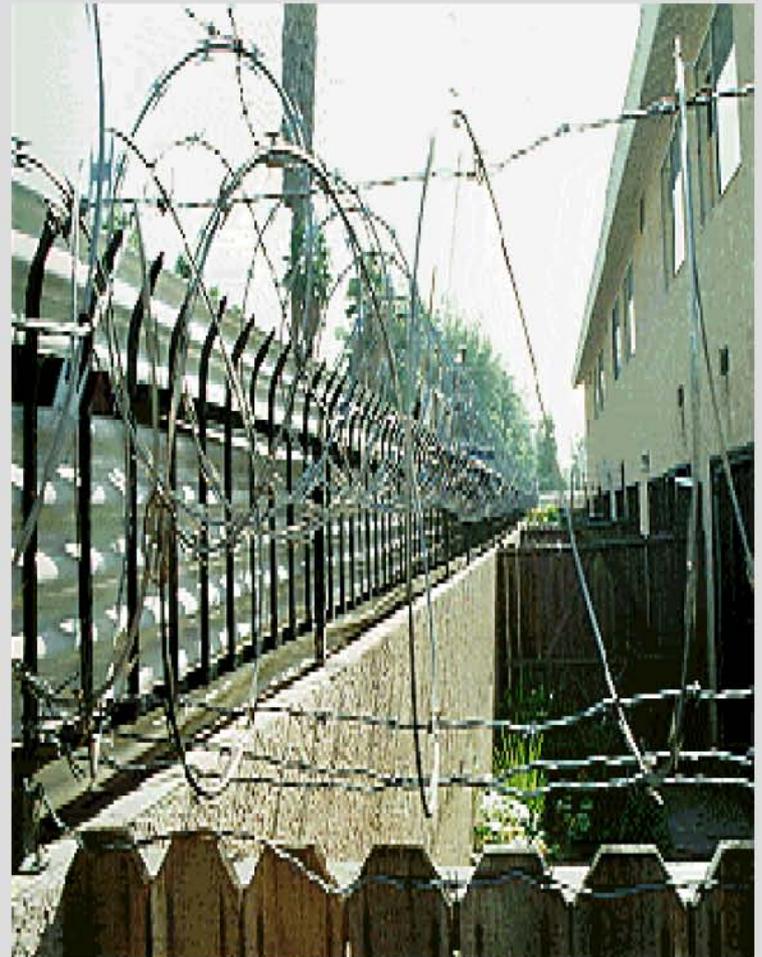
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Western District of Tennessee  
United States Department of Justice

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# What is Human Trafficking?

- **Compelling or coercing another person's labor, services, or commercial sex acts; or commercial sex of a minor**
- **Coercion can be subtle or overt; physical or psychological**
- ***Need not include smuggling or movement***



# § 1589 Forced Labor: Elements

- 1) **Provided or obtained the labor or services of a person;**
- 2) **Did so through one of, or any combination of, four prohibited means; and**
- 3) **Did so knowingly**



# Title 18, Chapter 77 Offenses

- Peonage § 1581
- Involuntary Servitude § 1584
- *Forced Labor § 1589*
- Trafficking Into Servitude § 1590
- *Sex Trafficking § 1591*
- Document Servitude § 1592
- Benefitting Financially § 1593A
- Attempt and Conspiracy § 1594



# Trafficking vs. Smuggling

## Trafficking

- Focus is compelled labor, service, or commercial sex; no movement required
- Victim can be citizen, documented migrant, or undocumented migrant
- Crime is against victim's human rights
- *Criminalized in Title 18*

## Smuggling

- Focus is transporting or harboring illegal alien
- Must involve undocumented migrant
- Crime is against integrity of border
- *Criminalized in Title 8*



## § 1589 Forced Labor: Prohibited Means

- force, threats of force, physical restraint, or threats of physical restraint against *any person*;
- serious harm or threats of serious harm to *any person*;
- abuse or threatened abuse of law or legal process;
- any scheme, plan, or pattern intended to cause fear of serious harm to *any person*



# TVPPRA 2008 Amendments

- § 1589 now has four ‘prohibited means,’ expressly including force and threats of force
- §§ 1589 and 1591 now clarify ‘any combination of means’ to preclude potential unanimity issue
- §§ 1589(c) and § 1591(e) now broadly define ‘abuse of legal process’ and ‘serious harm’
- Effective December 23, 2008

## TVPPRA 2008 Definitions: §§ 1589(c) and 1591(e)

- “the use or threatened use of a law or legal process...in *any manner* or for *any purpose* for which the law was not designed, in order to exert pressure on another person...”
- “*any harm*, whether *physical or non-physical*, including *psychological, financial, or reputational* harm, that is *sufficiently serious*, under all the surrounding circumstances, to *compel a reasonable person of the same background* and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm”

# TVPRA 2008 Definitions

- Amendment “merely clarifies” broad definitions of coercion used in TVPA of 2000. **154 Cong. Rec. H10888, 10904 (Dec. 10, 2008).**
- Mitigates ex post facto concerns of applying new statutory language



# “Abuse of Legal Process”

- Using process for improper purpose to compel someone
- Threat of deportation, arrest, detention
- “Warnings” unlawful where used to coerce
- Broad definitions codified in TVPRA 2008



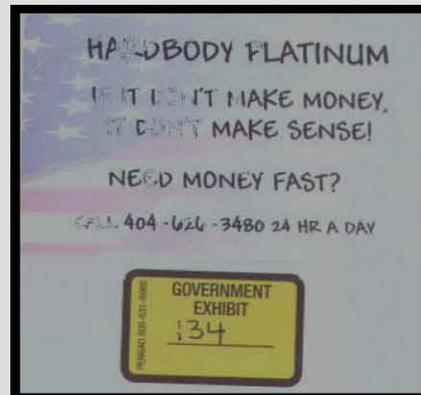
# § 1589 Forced Labor Penalties

- **Maximum Penalty 20 years**
- **Maximum Penalty of life if offense causes death, or involves:**
  - **aggravated sexual abuse**
  - **Kidnaping or attempted kidnaping**
  - **or attempt to kill**



# Sex Trafficking: § 1591

- Applies to commercial sex acts, not other forms of sexual exploitation
- “Coercion” defined as in § 1589 Forced Labor
- Force and fraud are also proscribed means
- Force, fraud, or coercion need not be proven for minors, but often occurs, and raises mandatory minimum





# Sex Trafficking by Force, Fraud, or Coercion: Elements

- 1) Knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person; OR knowingly benefitted, financially or by receiving something of value from participating in a venture that did so;
- 2) Knew [or recklessly disregarded] the fact that force, fraud, or coercion would be used to cause the person to engage in commercial sex acts; and
- 3) Acts were in or affecting interstate commerce



# § 1591 Sex Trafficking of a Minor: Elements

- 1) Knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained a person; OR knowingly benefitted, financially or by receiving something of value, from participating in a venture that did so;
- 2) Knew [or recklessly disregarded] that the person was under 18; OR had reasonable opportunity to observe the minor; and
- 3) Acts were in or affecting interstate commerce

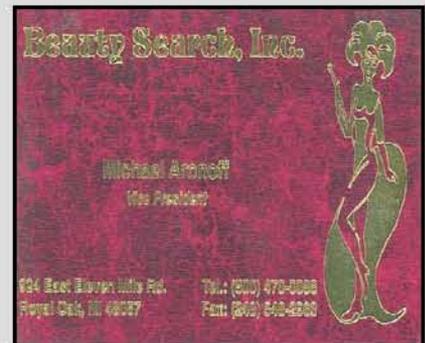


# § 1591 Sex Trafficking of a Minor: Elements

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- 3) Acts were in or affecting interstate commerce

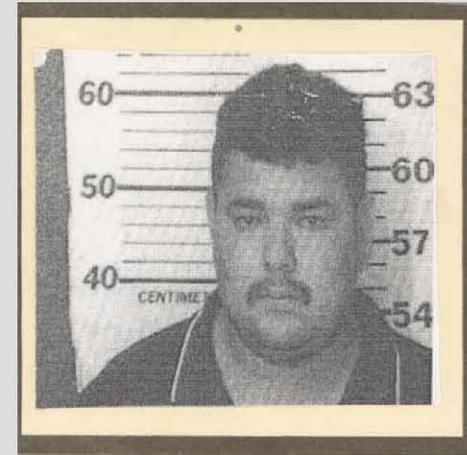
# Forced Labor & Commercial Sex:

Strip clubs, karaoke bars, massage parlors, cantinas, and 'modeling' agencies can combine sexualized labor & compelled commercial sex: charge §§ 1589 and 1591 together where appropriate



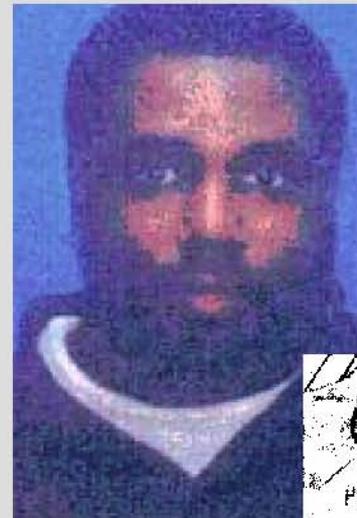
# “Commercial Sex Act”

- “anything of value is given to or received by any person”
- Not Personal Sexual Servitude
- Not Sexual Abuse as Coercion



# Sex Trafficking: Interstate or Foreign Commerce

- Crossing state or international lines is just one way to prove interstate or foreign commerce nexus
- Hotels, cell phones, condoms, advertising, credit cards
- Aggregate effect of commercial or economic activity: *U.S. v. Evans*, 476 F.3d 1176 (11<sup>th</sup> Cir. 2007).



240 05340102 911

NAME: JASON BRICE  
STREET: 5013 9th St  
CITY: Washington DC STATE: DC ZIP CODE: 20002

NO. IN PARTY: 1 FNO: NO STATE: DC

**BUDGET MOTOR INN**  
1615 New York Ave., N.E.  
Washington, D.C. 20002  
202-529-3900

NOTICE TO GUEST  
This property is privately owned and the management reserves the right to refuse service to anyone and will not be responsible for accidents, injury to guests or for loss of money, jewelry or valuables of any kind. Management has right to check room at any time. NO REFUND policy.

Signature: Jason Brice

REMARKS	ROOM RENT (INCLUDE TAX)
	17.00
	KEY DEPOSIT
	10.00
	PHONE DEPOSIT
	OTHER
CHECK OUT TIME 11:00 AM	TOTAL 17.00

**CREDIT SALE RECEIPT**

PARIS ENTERPRISE, GIGAWATT  
173 TROLLEY CROSSING LN  
MIDDLETOWN, CT 06457  
(860) 818-0921  
Thru 1000

Merch. Id: 267795215283  
Term Id: WSCM Item # 100  
MasterCard: SALE SWIPEU  
Order Number: 13422564321862188  
Acct: 13422564321862188  
Exp: 04/04

**AMOUNT \$175.00**

*M. J. Smith*



# **TVPRA 2008 Expansion of § 1591**

- **Adds reckless disregard to element requiring knowledge of age or of force, fraud, or coercion**
- **Special evidentiary provision: where defendant had a reasonable opportunity to observe the minor, no need to prove knowledge of age**
- **Contact CRM-CEOS re: sex trafficking of minors**



## § 1591 Sex Trafficking Penalties

- If effected by force, fraud or coercion, or if victim under age fourteen: 15 years to life
- If no force, fraud, or coercion and victim aged fourteen to eighteen: 10 to life



# Document Servitude: § 1592

- Holding actual or purported identity documents in the course of committing, or with intent to commit, ANY trafficking crime, or to restrict movement of trafficking victim to maintain her labor or services

681204  
REPUBLIC OF CAMEROON  
Paix - Travail - Progrès

PROVINCE  
**NORTH WEST**

DEPARTEMENT  
**MEZAM**

ARRONDISSEMENT  
SUB - DIVISION  
**BAMENDA CENTRAL**

CENTRE D'ETAT CIVIL  
CIVIL STATUS REGISTRATION CENTRE  
BAMENDA URBAN COUNCIL

Do - Of

**ACTE DE NAISSANCE**  
**BIRTH CERTIFICATE** N° 166/2000

Nom de l'enfant  
Name of the child Cecilia Bikan Nkoko

Lé - On the 19 September Nineteen Eighty Five

Est né à  
Was born at Buea - Fako

Nom de l'enfant  
Name of child Cecilia Bikan Nkoko

De sexe - sex  
De - Of Femelle

N° s' - Born at  
Bambui

Domicile à  
Resident at Bamenda - Mezam

Profession - Occupation  
Et de - And of Driving

Née à - Born at  
Bambui

Le - On the 19 September Ninety Five

Domicile à  
Resident at Bamenda - Mezam

Profession - Occupation  
Dressé le - Drawn upon the 19 August Two Thousand

Sur la déclaration de Alhadji Salidou Mwanen No. 166/2000  
in accordance with the Declaration of 26 2000

Lesquels ont certifié la sincérité de la présente déclaration.  
Who attested to the truth of this declaration.

Par nous, **ALHADJI SALIDOU MWANEN** Officier  
de l'état civil du Centre  
By us, **ALHADJI SALIDOU MWANEN** Centre  
Aide Civilus ANWAFU

Assisté de  
in the presence of  
le Secrétaire d'état civil  
Confessaire Responsable  
**THE GOVERNMENT DELEGATE  
BY DELEGATION**  
Signature of the GOVERNMENT DELEGATE

Signature de l'Officier d'état civil  
Signature of Civil Status Registrar

# New Crime: Benefitting Financially

- Formerly only in § 1591
- Now also in § 1589(b) for forced labor and § 1593A for peonage and document servitude
- Punishable as completed crime
- Requires knowledge of financial benefit, knowledge or reckless disregard of coercion, and participation in venture



# Attempt and Conspiracy: § 1594

- Punishable as completed offense, except no mandatory minimum for sex trafficking conspiracy
- Trafficking conspiracy does not require overt act
- Mandatory restitution and forfeiture apply



# New Crime: Fraud in Foreign Labor Contracting

**“Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the U.S. for employment in the U.S. by means of materially false or fraudulent pretenses, representations, or promises regarding that employment...”**

**18 U.S.C. § 1351**



# Proving Coercion: Two Key Principles

- **Climate of Fear: totality of conduct and conditions**
- **Victim Vulnerabilities: significance of coercion and climate of fear is examined from perspective of *reasonable person in victim's situation***





# Climate of Fear

- Poor conditions, isolation, and vulnerability indicative that threats “actually compelled the workers to serve:” *U.S. v. Farrell*, 563 F.3d 364, 373 (8<sup>th</sup> Cir. 2009)
- Sexual abuse by co-conspirator: *U.S. v. Udeozor*, 515 F.3d 260, 266 (4<sup>th</sup> Cir. 2008)
- Violence among co-defendants: *U.S. v. Alzanki*, 54 F.3d 994, 999 (1<sup>st</sup> Cir. 1995)
- General atmosphere of violence: *U.S. v. Harris*, 701 F.2d 1095, 1100 (4<sup>th</sup> Cir. 1983)
- Conduct toward other victims: *U.S. v. Bibbs*, 564 F.2d 1165, 1168 (5<sup>th</sup> Cir. 1977)

# Corroborating Evidence

- Outcry and isolation witnesses
- Visas, travel records, ID documents
- Phone records, wire transfers, ledgers, bank records, receipts,
- Physical surroundings
- Photos, videotapes, surveillance cameras, computers
- Medical records, police records
- Prostitution paraphernalia: condoms, lubricant, medications, tickets

