

NOTE

CAUGHT IN A BAD ROMANCE: HUMAN TRAFFICKING'S INTIMATE RELATIONSHIP WITH LEGITIMATE BUSINESSES

I. INTRODUCTION

Imagine this—you live in Mexico with your four children.¹ But wait, your baby is sick and you cannot afford to take her to the hospital.² Now you have three children.³ You do not want to lose another child because of money.⁴ So, in hopes of turning your life around, you begin taking sewing classes to one day open your own business.⁵ Things are looking up; your sewing teacher tells you about a fantastic opportunity in the United States.⁶ You need to leave your children, but you will have a job and be able to send money home for them.⁷ You arrive in Los Angeles, California.⁸ The woman who brought you there tells you that you now owe her almost \$3,000 to repay her for bringing you here.⁹ You were never told this before arriving.¹⁰ Now, you have to work for her to pay her back.¹¹ You have to work eighteen hours a day to make dresses that cost over \$200 in stores, clean the factory, sleep there, and share a mattress with another victim.¹² You cannot talk to the other workers, leave the factory, or contact anyone outside the factory.¹³ You get one meal a day.¹⁴ To make matters worse, your trafficker coerces you into

1. *See Flor Molina*, END SLAVERY NOW (Jan. 1, 2015), <http://www.endslaverynow.org/blog/articles/flor-molina>.

2. *See id.*

3. *See id.*

4. *See id.*

5. *See id.*

6. *Id.*

7. *See id.*

8. *Id.*

9. *Id.*

10. *See id.*

11. *Id.*

12. *Id.*

13. *See id.*

14. *Id.*

compliance by threatening your family—the very people you came to the United States to protect.¹⁵

This may be shocking to hear, but the account above is a real story told by a very real individual, Flor Molina.¹⁶ What may be even more shocking to hear is that she is not alone in her story.¹⁷ Contrary to common misconceptions that human trafficking is predominately a huge problem in other countries, the United States is considered to be one of the “top destinations” for human trafficking.¹⁸ Being the second largest criminal industry in the world,¹⁹ human trafficking occurs in all fifty states.²⁰ While there is no official number, mostly because it is so hard to estimate given the covertness of the practice, it has been estimated that there are somewhere between 14,000 to 50,000 people trafficked in the United States each year.²¹

This Note proposes that since human trafficking is a multifaceted issue, it requires a multifaceted response.²² In order to best combat this issue, there needs to be a response in the form of business regulations, as well as a change in the current labor laws.²³ The current lack of transparency requirements in business regulations and the lack of access to labor protections are two of the driving forces that allow the human

15. *See id.*

16. *See generally id.* After about forty days, Flor Molina was able to gain her freedom through the help of a coworker. *See id.* Her trafficker was ultimately charged with labor abuse and was sentenced to only six months of house arrest. *See id.*

17. *See generally Modern Slave Narratives, END SLAVERY NOW*, <http://www.endslaverynow.org/blog?topic=4775> (last visited Aug. 1, 2021) (displaying various accounts of human trafficking).

18. Marie Rosenthal, *Human Trafficking: Hiding in Plain Sight*, PHARMACY PRAC. NEWS (Sept. 10, 2019), <https://www.pharmacypracticenews.com/Policy/Article/09-19/Human-Trafficking-Hiding-in-Plain-Sight/55806>.

19. *See* Richard Lapchick, *The Super Bowl Remains Target for Human Trafficking*, ESPN (Jan. 31, 2020), https://www.espn.com/nfl/story/_/id/28607449/the-super-bowl-remains-target-human-trafficking (“[T]he sex and labor trafficking industry is only second to drug trafficking as the world’s largest criminal industry.”).

20. Rosenthal, *supra* note 18.

21. *See id.*; *Human Trafficking: Modern Enslavement of Immigrant Women in the United States*, ACLU, <https://www.aclu.org/other/human-trafficking-modern-enslavement-immigrant-women-united-states> (last visited Aug. 1, 2021).

22. *See* Fara Gold, *Redefining the Slave Trade: The Current Trends in the International Trafficking of Women*, U. MIA. INT’L & COMPAR. L. REV., Summer 2003, at 99, 121 (“Trafficking is a multifaceted, complex problem that does not lend itself to simple solutions.”).

23. *See* Rosenthal, *supra* note 18 (suggesting that legitimate businesses are major abusers of human trafficking, thus leading this Note to propose that targeting businesses through regulation may help to alleviate this problem); *see also* Hila Shamir, *A Labor Paradigm for Human Trafficking*, 60 UCLA L. REV. 76, 80, 94 (2012) (“[T]he labor approach has the potential to alter fundamentally the conditions that cause workers’ vulnerability and enable human trafficking.”).

trafficking industry to prosper.²⁴ In Part II, this Note will break down much of the terminology important to understanding what human trafficking is, discuss some basics regarding how these trafficked individuals are coerced into these situations, and delve more into actual accounts of human trafficking.²⁵ In Part III, this Note will discuss the current lack of business regulations, during which a large part of the discussion will be based on the lax transparency requirements that perpetuate human trafficking practices and other illicit activities.²⁶ Part III will also discuss the lack of labor laws available to protect otherwise legal employees.²⁷ Part IV of this Note will propose that the United States adopt business regulations that require disclosure of beneficial owners and supply chain transparency, specifically for industries that are particularly plagued by the use of human trafficking practices, making workers in these industries more vulnerable to abuse.²⁸ Part IV will also propose certain labor reforms providing for better redress when individuals do become victims of these practices.²⁹ Lastly, Part V will conclude this Note and reiterate the key provisions that will best help combat human trafficking, which hides behind otherwise legitimate businesses.³⁰

II. A BRIEF BACKGROUND ON THE PREVALENCE OF HUMAN TRAFFICKING IN THE UNITED STATES

According to the American Civil Liberties Union (“ACLU”), “[t]he hidden nature of forced labor and trafficking makes it extremely difficult to calculate the actual numbers of victims.”³¹ Nevertheless, the ACLU reports that the International Labor Organization estimated 2.4 million people to be victims of forced labor as a result of being trafficked.³² Trafficking victims can be individuals recruited from outside the United

24. See POLARIS, HIDDEN IN PLAIN SIGHT: HOW CORPORATE SECRECY FACILITATES HUMAN TRAFFICKING IN ILLICIT MESSAGE PARLORS 2 (Apr. 1, 2018), <https://polarisproject.org/wp-content/uploads/2018/04/How-Corporate-Secrecy-Facilitates-Human-Trafficking-in-Illicit-Message-Parlors.pdf> (discussing the level of anonymity that is allowed when registering a business, making it hard to track down owners to hold responsible); see also Shamir, *supra* note 23, at 99, 102 (arguing that the current human rights approach does not properly account for the unequal bargaining power between migrant workers and employers that perpetuate the industry).

25. See *infra* Part II.

26. See *infra* Part III.

27. See *infra* Part III.

28. See *infra* Part IV.

29. See *infra* Part IV.

30. See *infra* Part V.

31. *Human Trafficking: Modern Enslavement of Immigrant Women in the United States*, *supra* note 21.

32. *Id.*

States to work within it, but they can also be individuals recruited from within the United States.³³

Subpart A will define human trafficking and the various subtypes.³⁴ Then, Subpart B will discuss the predatory recruitment practices which are utilized to lure migrant workers into trafficking situations.³⁵ Finally, Subpart C will explore common industries in which forced labor trafficking takes place, discussing the prevalence of this practice in the United States by detailing actual accounts of human trafficking.³⁶

A. *Human Trafficking and the Sub-Types Defined*

As a form of modern-day slavery, human trafficking is defined by the United Nations as “[t]he recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, . . . for the purpose of exploitation.”³⁷ This differs from smuggling, which involves importing people into the United States while deliberately evading immigration laws through transportation or fraudulent documentation.³⁸ There are various types of human trafficking.³⁹ According to the Human Trafficking Search, “[h]uman trafficking is often broken into two broad categories—sex trafficking and labor trafficking.”⁴⁰ Sex trafficking is defined as an individual engaging in commercial sex acts as a result of force, fraud, or coercion.⁴¹ However, this Note will focus predominately on forced labor trafficking, which encompasses all work or service done involuntarily by a person under the duress of threats.⁴² Businesses and individuals seeking to make a profit—the “private economy”—exploit

33. *See id.*

34. *See infra* Part II.A.

35. *See infra* Part II.B.

36. *See infra* Part II.C.

37. *What Is Human Trafficking?*, HUM. RTS. COMM’N, <https://sf-hrc.org/what-human-trafficking> (last visited Aug. 1, 2021).

38. *See* 13 U.S. IMMIGR. & CUSTOMS ENF’T, HUMAN TRAFFICKING VS HUMAN SMUGGLING I (2017), <https://www.ice.gov/sites/default/files/documents/Report/2017/CSRReport-13-1.pdf>.

39. *See Types of Trafficking*, HUM. TRAFFICKING SEARCH, <https://humantraffickingsearch.org/types-of-trafficking> (last visited Aug. 1, 2021).

40. *Id.*

41. *Id.* While most forms of human trafficking are encompassed under labor trafficking, including sex work, sex work is often discussed separately because sex trafficking is a separately defined crime. *See Forced Labor*, END SLAVERY NOW, <http://www.endslaverynow.org/learn/slavery-today/forced-labor> (last visited Aug. 1, 2021).

42. *See Types of Trafficking*, *supra* note 39; *see also* Int’l Lab. Org. [ILO], *Forced Labor Convention* art. 2, ¶ 1, No. 29 (June 28, 1930), https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029

(defining forced labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”).

about ninety percent of the forced laborers in the world.⁴³ Many governments also partake in the practice of forced labor by exploiting individuals' bodies for their own personal gain.⁴⁴

There are a few different types of forced labor trafficking.⁴⁵ Debt bondage labor trafficking involves a debt that the individual is being forced to pay off through work.⁴⁶ While quite similar, it is important to note that debt bondage is distinct from involuntary domestic servitude—when a domestic worker is entrapped in a situation in which they cannot leave and receive little or no pay.⁴⁷ This type of forced labor often takes place under the guise of “live-in help,” such as “nannies or other domestic help.”⁴⁸ Despite the various types of forced labor that exist, this Note will focus primarily on accounts of debt bondage, since debt bondage is more likely to occur under the cover of legitimate businesses.⁴⁹

B. *Predatory Migrant Worker Recruitment Practices*

Migrant workers are particularly vulnerable to debt bondage trafficking.⁵⁰ Many of these workers live in impoverished conditions in their home countries and contract with recruitment agencies to seek economic opportunity in other countries.⁵¹ Deception is a common practice in these transactions where migrant workers are usually misinformed regarding salary, working conditions, living conditions, and the necessary fees involved in relocating.⁵² As a result, these

43. *Forced Labor*, *supra* note 41.

44. *Id.* (“[Forced labor] occurs in state prisons, in convict leasing programs and in work imposed by military or rebel armed forces.”).

45. *See Types of Trafficking*, *supra* note 39 (“Types of forced labor include debt bondage, domestic servitude, forced child labor, and unlawful recruitment and use of child soldiers.”).

46. *Id.*

47. *Id.*

48. *Domestic Servitude*, END SLAVERY NOW, <http://www.endslaverynow.org/learn/slavery-today/domestic-servitude> (last visited Aug. 1, 2021).

49. *See* Rosenthal, *supra* note 18 (“Labor trafficking in particular is very widespread, and somewhat harder to identify and deal with because most of the actors who are perpetuating trafficking are actually legitimate businesses.”); *Bonded Labor*, END SLAVERY NOW, <http://www.endslaverynow.org/learn/slavery-today/bonded-labor> (last visited Aug. 1, 2021).

50. *See Bonded Labor*, *supra* note 49.

51. Bassina Farbenblum & Justine Nolan, *The Business of Migrant Worker Recruitment: Who Has the Responsibility and Leverage to Protect Rights?*, 52 TEX. INT’L L.J. 1, 6-7 (2017).

52. *See id.* at 9. Recruitment agencies shift the blame onto the subagents that are in direct contact with these workers. *See id.* However, the agencies often fail to adequately set out the employment terms in a language that the workers can understand, fail to explain the terms properly, or fail to provide the terms to the workers at a time where they can still deny the offered position. *See id.*

workers arrive to their destination country already in significant debt.⁵³ This debt is then exploited by recruiters who add on extra immigration, housing, and other fees, which are designed to have the effect of keeping the migrant workers in debt.⁵⁴

These agencies commonly falsify travel documents on behalf of these workers, making them particularly vulnerable to exploitation and preventing them from accessing protection services.⁵⁵ While there are a number of different visa programs that can be utilized to work in the United States,⁵⁶ even when recruiters obtain the appropriate legal documentation for migrant workers, they often threaten to or do confiscate these documents, making these workers entirely dependent on their employers to maintain their legal status.⁵⁷ The H-1B, H-2A, and H-2B visa programs are “employer-specific,” which means that these workers lose their legal status if they stop working for the employer that is identified on their visa applications.⁵⁸ Therefore, these workers face heightened anxiety and fear in the face of defying their employer’s wishes.⁵⁹

Human trafficking victims can obtain some immigration relief through U visa and T visa programs.⁶⁰ The U visa grants immigrants the opportunity to apply for lawful, permanent resident status and eventually become United States citizens if they were victims of a crime.⁶¹ Success on U visa applications often hinges on the physical or mental abuse resulting from one of the specifically listed crimes.⁶² Additionally, the application for a U visa requires certification from a government official

53. See *Bonded Labor*, *supra* note 49.

54. See *id.*

55. Farbenblum & Nolan, *supra* note 51, at 10.

56. See STEPHANIE HEPBURN & RITA J. SIMON, HUMAN TRAFFICKING AROUND THE WORLD: HIDDEN IN PLAIN SIGHT 13-14 (2013). For more information on the different visa programs, consider the following excerpt from Hepburn and Simon’s piece:

The H-1B temporary visa program is designed to attract foreign workers in specialized fields such as technology, engineering, and medicine; the H-2A visa program allows for the temporary hire of nonimmigrant foreign workers to perform agricultural labor; and the H-2B visa program allows for the hire of temporary nonimmigrant workers to perform nonagricultural labor on a onetime, seasonal, peak-load, or intermittent basis.

Id. at 13.

57. See *Bonded Labor*, *supra* note 49.

58. HEPBURN & SIMON, *supra* note 56, at 14.

59. See *Bonded Labor*, *supra* note 49 (stating that these migrant workers often fear seeking redress).

60. HEPBURN & SIMON, *supra* note 56, at 28-29.

61. *Id.*

62. See *id.* at 29. This list of crimes includes, but is not limited to, trafficking, rape, torture, sexual assault, sexual exploitation, prostitution, kidnapping, and false imprisonment. *Id.*

that the applicant is likely to be helpful in an investigation or the prosecution of the criminal who victimized the applicant.⁶³

On the other hand, T visas specifically provide protection to those who are victims of severe forms of trafficking, allowing them to become lawful permanent residents and eventually United States citizens.⁶⁴ T visas similarly impose the pressure of cooperating with law enforcement.⁶⁵ Overall, the pressure to assist law enforcement under both visa programs tends to discourage victims from seeking help or hinders the prosecutorial process because of mistrust of police and fear of retaliation from traffickers, leading these individuals to leave out key details.⁶⁶

A few years ago, the policy regarding T visas was changed, making it harder for human trafficking victims to seek out help.⁶⁷ In order to get a T visa, applicants had to prove their story to the United States Citizenship and Immigration Services and, if their application was denied, deportation proceedings began almost immediately, whereas previously, these proceedings were not immediate.⁶⁸ Essentially, these visa applications become a “‘race against the clock’ situation as to what will happen first—deportation or protection.”⁶⁹ However, there has been a recent push to provide more protections for T visa applicants.⁷⁰

C. Prevalence of Human Trafficking in the United States

Victims of forced labor are found in many different industries throughout the United States.⁷¹ Many of these industries are ones that a lot of individuals interact with, at least indirectly, every day.⁷² Some common industries include those involving agriculture, factory work,

63. *Id.*

64. *Id.*

65. *Id.* at 29-31.

66. *Id.*

67. Jason Fields, *New Rule Puts U.S. Trafficking Victims at Higher Risk of Deportation*, THOMSON REUTERS FOUND. NEWS (Nov. 29, 2018), <https://news.trust.org/item/20181129013802-so5sl>.

68. *See id.*

69. HEPBURN & SIMON, *supra* note 56, at 29.

70. *Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment to Modernize Our Immigration System*, WHITE HOUSE (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system>.

71. *See Forced Labor*, *supra* note 41.

72. *See* Cherida Patterson, *Slavery Is Still Happening Today, and the Proof Is in Your Closet*, SWAAY (Aug. 25, 2020), <https://swaay.com/fast-fashion-modern-slavery-labor> (demonstrating how prevalent the use of modern slavery is in the fashion industry).

hospitality,⁷³ and construction.⁷⁴ Forced labor operations tend to thrive in these industries because of the low wages, lack of regulation, or poor working conditions.⁷⁵ States with large populations, sizable immigrant communities, and transit routes for international travelers also tend to have a higher risk of trafficking practices.⁷⁶

Agriculture is an industry that often gives rise to forced labor.⁷⁷ There have been a number of cases of forced labor situations which occurred on farms within the United States.⁷⁸ Hundreds of workers, recruited mostly from Mexico, were forced to harvest asparagus in California for Victoria Island Farms.⁷⁹ All but twenty dollars a week was withheld from them.⁸⁰ Living in substandard conditions, these asparagus harvesters testified that at times they were fed spoiled eggs.⁸¹

In another account involving agriculture, the owners of R&A Harvesting were actually convicted of forced labor.⁸² This company, run by Jose Ramiro and Juan Ramos, supplied labor to citrus farms for some of the largest farm enterprises in the United States.⁸³ They employed around seven hundred workers from Guatemala and Mexico to work on a citrus farm in Florida for little to no pay.⁸⁴ The employers deducted

73. Danyella Wilder, *Top 5 Industries Using Forced Labor*, DRESSEMBER (Dec. 19, 2018), <https://www.dresseMBER.org/blog/top-5-industries-using-forced-labor>.

74. INT'L LABOUR OFF., HUMAN TRAFFICKING AND FORCED LABOUR EXPLOITATION: GUIDELINES FOR LEGISLATION AND LAW ENFORCEMENT 59 (2005), https://www.ilo.org/wcmsp5/grounds/public/—ed_norm/—declaration/documents/publication/wcms_081999.pdf.

75. Chrissey Buckley, *Forced Labor in the United States: A Contemporary Problem in Need of a Contemporary Solution*, in TOPICAL RESEARCH DIGEST: HUMAN RIGHTS AND CONTEMPORARY SLAVERY 116 (2008), <https://www.du.edu/korbel/hrhw/researchdigest/slavery/slavery.pdf>.

76. FREE THE SLAVES & HUM. RTS. CTR., UNIV. OF CAL., BERKLEY, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 1 (2004), <https://www.humanrights.berkeley.edu/sites/default/files/publications/hidden-slaves-september-2004.pdf> (including states such as California, New York, Florida, and Texas).

77. Gina-Marie Cheeseman, *Forced Labor Is More Common in the U.S. Than You Might Think*, TRIPLEPUNDIT (Jan. 17, 2017), <https://www.triplepundit.com/story/2017/forced-labor-more-common-us-you-might-think/56461>.

78. See HEPBURN & SIMON, *supra* note 56, at 15-16 (demonstrating instances of forced labor on farms); FREE THE SLAVES & HUM. RTS. CTR., UNIV. OF CAL., BERKLEY, *supra* note 76, at 7-8 (displaying two more accounts of forced labor on farms).

79. FREE THE SLAVES & HUM. RTS. CTR., UNIV. OF CAL., BERKLEY, *supra* note 76, at 7. “The complaint alleged that the workers were ‘essentially held hostage in their camps . . . with promises of future payments of owed wages . . . with direct and implied threats against the workers and their families in Mexico.’” *Id.* at 61 n.74.

80. *Id.* at 26 (“[T]he labor contractor who hired the workers . . . withheld all but \$20 per week of their paychecks to satisfy their transportation ‘debt.’”).

81. *Id.* at 39.

82. *Id.* at 8.

83. INT'L LABOUR OFF., *supra* note 74, at 36.

84. *Id.*; FREE THE SLAVES & HUM. RTS. CTR., UNIV. OF CAL., BERKLEY, *supra* note 76, at 8.

costs for transportation from Arizona, food, rent, and work equipment, which was deducted from their worker's weekly pay.⁸⁵ The employers controlled these workers through their debt, psychological coercion, and threats.⁸⁶

Consider yet another situation, which involved both agriculture and construction—victims were recruited from Thailand to work in the United States under the pretenses of legal visas and pay that was well above minimum wage.⁸⁷ In order to obtain a loan that could properly cover the \$11,000 in fees, these victims were referred to a lending agency that was in cahoots with the traffickers.⁸⁸ These victims put up their land and the land of their families as collateral for the loan.⁸⁹ Once they arrived, armed guards confiscated all of their documentation.⁹⁰ These victims were moved around from project to project, first starting in North Carolina working on Howell Farms, Inc., then moving to New Orleans to demolish buildings that were affected by Hurricane Katrina.⁹¹ These individuals were kept in appalling conditions by being forced to sleep in the “hurricane-damaged buildings riddled with mold and debris” that they were demolishing.⁹² They were supervised by armed guards and charged for food with money they were not paid.⁹³ Lastly, these

85. Micah Maidenberg, *Florida Employers Guilty of Slavery*, LAB. NOTES (July 31, 2002), <https://www.labornotes.org/2002/07/florida-employers-guilty-slavery>.

86. *Id.* “‘The employers basically try to control every aspect of the workers’ lives,’ . . . [they] controlled the substandard housing where workers lived, and family members of the Ramoses even owned the stores where the workers were taken to shop. Nor was physical violence out of bounds.” *Id.* “The workers were threatened with violence and told they could not leave until they paid a \$1,000 debt to the defendants. The evidence at trial also revealed that the defendants threatened individuals at gunpoint.” *Three Florida Men Sentenced in Conspiracy to Detain Workers in Conditions of Involuntary Servitude*, DEP’T OF JUST. (Nov. 20, 2002), https://www.justice.gov/archive/opa/pr/2002/November/02_crt_687.htm.

87. See HEPBURN & SIMON, *supra* note 56, at 17-18 (demonstrating that these workers were promised a pay of \$8.24 per hour); see also *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938–2009*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/minimum-wage/history/chart> (last visited Aug. 1, 2021) (demonstrating that at the time of this incident, around 2005, the prevailing minimum wage for covered workers was \$5.15).

88. HEPBURN & SIMON, *supra* note 56, at 18.

89. *Id.* The book notes that most rice farmers in the northeast region of Thailand make less than \$500 per year, so effectively, there was no way that these individuals would ever be able to pay back this debt. *Id.*

90. *Id.* (“Upon arrival, armed guards confiscated the victims’ return tickets, visas, and passports.”).

91. *Id.* “One indicia of trafficking is that victims are moved from place to place, so that they are kept disoriented.” *Id.*

92. *Id.* at 17.

93. *Id.* at 18.

victims were so desperate for something to fill their stomachs that they began to build traps to capture and eat pigeons to sustain themselves.⁹⁴

Another famous case alleging forced labor in the factory setting took place in Oklahoma.⁹⁵ In September of 2001, workers were recruited from India under the promise of jobs in manufacturing pressure valves.⁹⁶ When they arrived in Oklahoma, they were forced to surrender their travel documentation, live in the factory, work twelve- to sixteen-hour days, and were paid below the legal minimum wage.⁹⁷ These workers allegedly suffered from malnourishment because the food was severely rationed, the food provided was inadequate, and the kitchen was too small to cook enough meals for fifty-two workers.⁹⁸

Forced labor in the hospitality industry looks a little different; consider the following account of Sally Agaton.⁹⁹ After her husband was incapacitated due to a stroke, and having a child with special needs, Agaton applied to work in the United States through an agency in Manila.¹⁰⁰ She arrived with a \$3,000 debt already mounted over her.¹⁰¹ The hotel jobs she worked did not meet the contract specifications, which detailed that she would work forty hours a week at the rate of \$8.50 an hour.¹⁰² She worked at a variety of hotels in Scottsdale,

94. *Id.* at 17.

95. FREE THE SLAVES & HUM. RTS. CTR., UNIV. OF CAL., BERKLEY, *supra* note 76, at 8.

96. *Id.* These workers did work as welders, fitters, roll/break operators, painters, and electrical maintenance workers; however, in addition, they also performed janitorial, kitchen, and yard work. Amended Findings of Fact and Conclusions of Law, para. 9, 13, *Chellen v. John Pickle Co.*, 446 F. Supp. 2d 1247 (N.D. Okla. 2006) (No. 02-CV-0085-CVE-FHM).

97. FREE THE SLAVES & HUM. RTS. CTR., UNIV. OF CAL., BERKLEY, *supra* note 76, at 8. The plaintiffs allege that there was a guard specifically hired to prevent unauthorized departures. Amended Findings of Fact and Conclusions of Law, *supra* note 96, at para. 20. The workers were threatened that if they ever did leave without permission, they would be reported to and jailed by the police. *Id.* at para. 19. Occasionally, the doors to their dormitory would be chained at night. *Id.* at para. 20.

98. FREE THE SLAVES & HUM. RTS. CTR., UNIV. OF CAL., BERKLEY, *supra* note 76, at 39; Amended Findings of Fact and Conclusions of Law, *supra* note 96, at para. 37 (“One of the two cooks . . . testified that he was even made to serve rotten apples.”). According to the Amended Findings of Fact and Conclusions of Law: “A representative of the company that provided food ordered by JPC for the Chellen plaintiffs testified to the quantity of food ordered by JPC. That quantity was based on a representation by John Pickle that he needed to feed 25-30 men, and that allocation did not change over time.” Amended Findings of Fact and Conclusions of Law, *supra* note 96, at para. 35.

99. See Karen Schwartz, *New Report Details Exploitation of Hotel Industry Workers*, N.Y. TIMES (Apr. 10, 2017), <https://www.nytimes.com/2017/04/10/travel/new-report-human-trafficking-exploitation-of-hotel-industry-workers.html>.

100. *Id.*

101. *Id.* (“[S]he owed \$3,000 for her H-2B visa, airfare and interest on money that she borrowed from a lending agency recommended by the recruiter.”).

102. *Id.*

Arizona; Mackinac Island, Michigan; and Bossier Parish, Louisiana.¹⁰³ Agaton lived with five other workers in a two-bedroom apartment, arranged by the agency that deducted \$300 a month from each of their paychecks for rent.¹⁰⁴ After the agency deducted the cost of her bus pass and rent, Agaton was left with only fifty dollars a week to pay for food, repay her loan, and support her children back in the Philippines.¹⁰⁵ Since H-2B visas are employer-specific, she could not just leave and find employment elsewhere, because this would be illegal.¹⁰⁶ She was able to flee to New York, obtain legal assistance, and successfully obtain a T visa.¹⁰⁷ Agaton now works as a nanny and gets paid enough to send money back home.¹⁰⁸ According to an interview with the *New York Times* she said, “I am happy because I am legally working now. . . . Now again I feel like a human being.”¹⁰⁹

III. SOMETHING HAS TO CHANGE—PROBLEMS IN THE CURRENT BUSINESS AND LABOR REGULATIONS

The first comprehensive federal law in the United States addressing the trafficking of persons was passed in 2000.¹¹⁰ Through the Trafficking Victims Protection Act of 2000, human trafficking was made illegal.¹¹¹

103. *Id.*

104. *Id.* Upon eviction, they learned that the actual rent of the apartment was only \$630 a month, and not the \$1,800 they were collectively paying. *See id.*

105. *See id.* Agaton was only working about three to four hours a day for three days a week, and when she begged her employer for more hours, they denied her. *Id.*

106. *Id.* She was charged each time she applied for a new visa, costing her \$750 for her second visa application and \$1,600 to apply for her third. *Id.* After the application for her third visa was declined, the agency allowed her to keep working with them during her appeal, but when she inquired about the status of her visa, she was threatened with deportation. *Id.*

107. *Id.* According to Agaton, she does not believe that anyone involved in her victimization was arrested. *Id.* In a similar matter, Hyatt Regency in Florida was sued by a class of “indigent immigrant workers” claiming that Hyatt recruited them through companies called Northwest Placement and DHI, LLC, and that Hyatt withheld money from their wages exceeding the actual cost of housing to help DHI profit and that the workers were paid less than minimum wage. Courthouse News Staff, *Hyatt Regency in Florida Accused of Cheating 100 Filipina Housekeepers*, COURTHOUSE NEWS SERV. (Dec. 19, 2008), <https://www.courthousenews.com/hyatt-regency-in-florida-accused-of-cheating-100-filipina-housekeepers>. Northwest Placement Agency and DHI, LLC were two companies that were listed on Agaton’s T visa application as places that coordinated her work. Schwartz, *supra* note 99.

108. Schwartz, *supra* note 99.

109. *Id.*

110. *Federal Law, NAT’L HUM. TRAFFICKING HOTLINE*, <https://humantraffickinghotline.org/what-human-trafficking/federal-law> (last visited Aug. 1, 2021). The Trafficking Victims Protection Act has been reauthorized and amended several times throughout the years. *Id.* The most recent reauthorization was in 2017. *Id.*

111. *See Human Trafficking Legislation*, ABA, https://www.americanbar.org/groups/human_rights/human-trafficking/trafficking-legislation (last visited Aug. 1, 2021).

However, there is still much to do, as current United States business regulations provide protections for business owners, insulating them from liability and protecting their privacy.¹¹² These protections, in addition to other business regulations, fail to require much transparency from companies, which tends to lead to this so-called “veil” of corporate secrecy.¹¹³ This, in effect, makes it difficult to discover illicit activities, or in the event that these activities are discovered, identify and prosecute the individuals responsible for the illicit activities.¹¹⁴ Additionally, there is a labor law problem at play, as not every industry in which human trafficking practices are widespread are included in the National Labor Relations Act (“NLRA”), nor do they enjoy all the protections of the Fair Labor Standards Act (“FLSA”).¹¹⁵

Subpart A will break down some of the main components that create this “veil” of corporate secrecy by defining what shell companies are,¹¹⁶ discussing the significance of beneficial owners,¹¹⁷ exploring transparency in supply chains,¹¹⁸ and explaining how this affects human trafficking.¹¹⁹ Subpart B will explore labor laws and how they fall short of protecting the victims in industries that are common abusers of human trafficking practices.¹²⁰ Lastly, Subpart C will address proposed or enacted legislations within the United States and explain why they do not quite solve the issue of combatting human trafficking, but are a good start.¹²¹

A. *The “Veil” of Corporate Secrecy*

There are around two million corporations and limited liability companies (“LLC”) formed each year, and very few of the states in which these entities are formed require information about the beneficial owners of the corporations.¹²² Currently, no state in the United States

112. See *Shell Corporation: Everything You Need to Know*, UPCOUNSEL, <https://www.upcounsel.com/shell-corporation> (June 23, 2020) (demonstrating that shell companies can be used to insulate owners from liability and protect their identity).

113. See POLARIS, *supra* note 24, at 3, 5.

114. *Id.*; see also *House Passes Maloney Bill to Crack Down on Anonymous Shell Companies*, REP. CAROLYN B. MALONEY (Oct. 22, 2019), <https://maloney.house.gov/media-center/press-releases/house-passes-maloney-bill-to-crack-down-on-anonymous-shell-companies>.

115. See Buckley, *supra* note 75, at 116-17; see, e.g., Shamir, *supra* note 23, at 94 (proposing that the best way to combat human trafficking is through labor reforms).

116. See *infra* Part III.A.1.

117. See *infra* Part III.A.2.

118. See *infra* Part III.A.3.

119. See *infra* Part III.A.3.

120. See *infra* Part III.B.

121. See *infra* Part III.C.

122. See Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. § 2(1)-(2) (2019).

requires “companies to provide the identities of the company’s true, beneficial owners.”¹²³ Thus, this gives rise to the use of anonymous shell companies,¹²⁴ or the use of another’s name.¹²⁵ This makes it difficult to discern who is responsible for a business, which results in difficulties regarding holding individuals accountable for their illicit actions.¹²⁶ The prominent use of anonymous companies leads to the “veil” of corporate secrecy in the United States, making it very easy to conduct illicit activity.¹²⁷

1. What the Shell Are Shell Companies?

The United States Securities and Exchange Commission (“SEC”) defines a shell company as:

[A] registrant, other than an asset-backed issuer . . . that has: (1) [n]o or nominal operations; and (2) [e]ither: (i) [n]o or nominal assets; (ii) [a]ssets consisting solely of cash and cash equivalents; or (iii) [a]ssets consisting of any amount of cash and cash equivalents and nominal other assets.¹²⁸

According to the Department of Treasury, “shell companies—generally defined as business entities without active business or significant assets—are an attractive vehicle for those seeking to launder money or conduct illicit activity.”¹²⁹ Often, these companies are used to hide the identities of their owners and can be set up anonymously, letting businesses and individuals engage in financial dealings without disclosing their identities.¹³⁰ While there are various legal uses of shell companies,¹³¹ as Congresswoman Maloney put it, “[t]he illicit use of

123. *House Passes Maloney Bill to Crack Down on Anonymous Shell Companies*, *supra* note 114.

124. *Id.*

125. *See* POLARIS, *supra* note 24, at 2-3.

126. *Id.* (“Because many of the businesses are registered anonymously, as shell companies . . . or in the name of someone other than the actual owner, these connections are often missed, along with the opportunity to prosecute and shut down these human trafficking venues.”).

127. *See id.*

128. *Guide to Shell Corporations*, WEISBLATT L. FIRM, <https://weisblattlaw.com/blog/holding-companies-vs-shell-corporations> (last visited Aug. 1, 2021); *see* 17 C.F.R. § 229.1101(b) (2020) (defining an asset-backed issuer as “an issuer whose reporting obligation results from either the registration of an offering of asset-backed securities under the Securities Act, or the registration of a class of asset-backed securities under section 12 of the Exchange Act”).

129. FIN. CRIMES ENF’T NETWORK, DEP’T OF THE TREASURY, THE ROLE OF DOMESTIC SHELL COMPANIES IN FINANCIAL CRIME AND MONEY LAUNDERING: LIMITED LIABILITY COMPANIES 2 (2006), https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.

130. *Shell Corporation: Everything You Need to Know*, *supra* note 112.

131. *See id.* (detailing several legal purposes of shell companies, such as protecting assets and investing in foreign markets); *see also* Oscar Gomez, *What Are Some of the Benefits of Having a*

anonymous shell companies is one of the most pressing national security problems we currently face.”¹³² This may be surprising, but it has been said that the “United States was the 2nd easiest place in the world for criminals to incorporate an anonymous shell company for clearly illegal activities.”¹³³ These companies can be created in less than a day; in fact, Global Financial Integrity humorously included in a report that these entities can be set up in under five minutes, as was the case when a woman set up a Delaware corporation for her pet cat.¹³⁴

As stated by Polaris, “[s]hell companies are intended to make it difficult to discover true business ownership.”¹³⁵ The initial forms that these companies fill out upon creation are often the only public proof of the company’s existence; however, according to Global Financial Integrity, the forms “rarely ask for enough information to track down the

Shell Company?, EPGD BUS. L. (Jan. 16, 2019, 12:04 AM), <https://www.epgdlaw.com/what-are-some-of-the-benefits-of-having-a-shell-company> (“The number one legitimate reason for shell companies is to realize a tax haven abroad, such as Panama or Switzerland.”).

132. *House Passes Maloney Bill to Crack Down on Anonymous Shell Companies*, *supra* note 114. *But see* Scott Royal Smith, *Benefits of LLC for Rental Property Ownership*, ROYAL LEGAL SOLS., <https://royallegalsolutions.com/benefits-of-llc-for-rental-property-ownership> (last visited Aug. 1, 2021) (recommending the use of a shell company to insulate property owners from liability). While a limited liability company (“LLC”) is a great vehicle to insulate property owners from liability, rental properties still hold a lot of risk. *Id.* Royal Legal Solutions suggests that in addition to creating an LLC, property owners should consider creating a secondary LLC to function similarly to a property management company that does not own any of the property. *Id.* This company can be used to collect rent, pay for repairs, and carry out any other operations necessary in managing the property. *Id.* Since this LLC carries out the operations, it is more susceptible to the risk of being sued. *See id.* However, since the property-holding LLC is not directly involved in any of these operations, the property is not at risk. *See id.*

133. *Anonymous Companies*, GLOB. FIN. INTEGRITY, <https://gfintegrity.org/issue/anonymous-companies> (last visited Aug. 1, 2021). “The world’s most significant providers of financial secrecy, the places that harbor the most concealed assets, are mostly not small palm-fringed islands but rather Switzerland, the United States, Singapore, Luxembourg, and Germany. In 2017, the United States ranked second in terms of providing financial secrecy.” Carl Pacini & Nate Wadlinger, *How Shell Entities and Lack of Ownership Transparency Facilitate Tax Evasion and Modern Policy Responses to These Problems*, 102 MARQ. L. REV. 111, 116-17 (2018). *But see* Ciaran Doyle, *Why Shell Companies Are So Risky (and Hard to Spot)*, IBM (Jan. 21, 2020), <https://www.ibm.com/blogs/regtech/why-shell-companies-are-so-risky-and-hard-to-spot> (“[T]wo of the legitimate uses of shell companies are the ability to shield owners from litigation and as a vehicle for tax avoidance (not evasion).”).

134. GLOB. FIN. INTEGRITY, *THE LIBRARY CARD PROJECT: THE EASE OF FORMING ANONYMOUS COMPANIES IN THE UNITED STATES* 3 (2019), <https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2019/03/GFI-Library-Card-Project.pdf?time=1608722069> (citing Fusion, *How to Start an Anonymous Shell Company for Your Cat: Dirty Little Secrets*, YOUTUBE (Mar. 31, 2016), <https://www.youtube.com/watch?v=R0nHETD1wxg>) (reiterating how easy and quick it is to set up anonymous companies in the United States for any purpose). In the video, one of the individuals who works for the company says: “Actually, it’s pretty easy. You don’t need any documents. You pay for our service, and we go ahead and form the entity.” Fusion, *supra*.

135. POLARIS, *supra* note 24, at 4.

individuals controlling it [and] [e]ven when they do, this information can be misleading.”¹³⁶ Some have pointed out that more information is required to register to vote, obtain a driver’s license,¹³⁷ and even more surprisingly, to obtain a library card.¹³⁸ One way these shell companies can maximize on their concealment is to hire a nominee as the company’s director.¹³⁹ According to Pacini and Wadlinger, “[a] nominee is one who holds bare legal title for another, or is designated to act in place of another in a limited way, ‘or who receives and distributes funds for the benefit of others.’”¹⁴⁰ Nominees can be just about anyone—such as relatives, friends, associates,¹⁴¹ or they can be an individual from some sort of “nominee incorporation service[.]”¹⁴²

An LLC may be owned and managed anonymously through the use of shell companies, making them very susceptible to abuse.¹⁴³ LLCs can be used to remove the members and managers from liability and to enjoy tax benefits.¹⁴⁴ LLCs are relatively easy to set up and are subject to few

136. *Anonymous Companies*, *supra* note 133. Making it even more difficult to discern ownership, individuals can “layer” and “chain” shell entities by inserting layers of legal entities in between the beneficial owners and the assets that the shell holds. *See Pacini & Wadlinger*, *supra* note 133, at 132.

137. *See GLOB. WITNESS, THE GREAT RIP OFF: ANONYMOUS COMPANY OWNERS AND THE THREAT TO AMERICAN INTERESTS 5* (2014), <http://www.financialtransparency.org/wp-content/uploads/2015/04/the-great-rip-off.pdf>.

138. *GLOB. FIN. INTEGRITY*, *supra* note 134, at 2-3. A woman going through the process of obtaining a library card “was filling out the required paperwork and providing her driving license and a utility bill as proof of existence and residence, [when] she realized that she had to provide far more personal information than would be required to create a company.” *Id.* at 2. Global Financial Integrity notes the difference in the severity of damage access to a library card can cause in contrast with the damage that access to an anonymous company can cause. *Id.*; *see also* Will Parker, *House Passes Bill to Expose Owners of Shell Companies*, *WALL ST. J.* (Oct. 22, 2019, 7:05 PM), <https://www.wsj.com/articles/house-passes-bill-to-expose-owners-of-shell-companies-11571785516> (“In every state, it requires more information to get a library card than it does to register a company.”).

139. *Pacini & Wadlinger*, *supra* note 133, at 121; *GLOB. WITNESS*, *supra* note 137, at 5 (“The evidence strongly suggests that, in most cases, company service providers are not interested in who you are or what you might be doing, and current U.S. laws do not require them to be.”).

140. *Pacini & Wadlinger*, *supra* note 133, at 121. Note that states usually require a registered agent, an individual with an in-state address acting as a representative, to be named when forming an LLC, but this is not the same thing as a nominee, because registered agents are not given any decision-making authority. Terry Lane, *What Is an LLC Nominee?*, *CHRON*, <https://smallbusiness.chron.com/llc-nominee-68106.html> (last visited Aug. 1, 2021).

141. *See Anonymous Companies*, *supra* note 133; *Pacini & Wadlinger*, *supra* note 133, at 121.

142. *Pacini & Wadlinger*, *supra* note 133, at 121; *see also Nominee Service – Officers, Directors and Managers*, *COS. INC.*, <https://companiesinc.com/grow-your-business-/nominee-service> (last visited Aug. 1, 2021) (“Nominee service is a privacy technique used by corporate shareholders and LLC members to keep their names out of the public records.”).

143. *See Pacini & Wadlinger*, *supra* note 133, at 118.

144. *See FIN. CRIMES ENF’T NETWORK, DEP’T OF THE TREASURY*, *supra* note 129, at 7.

procedural requirements.¹⁴⁵ While registration requirements vary by jurisdiction and each state in the United States determines its own requirements, those states requiring less transparency are likely to be more attractive to those seeking to use LLCs for illicit activity.¹⁴⁶ Additionally, an LLC partaking in isolated transactions, but no significant business in a particular state, may not have to register in that state.¹⁴⁷ As a result, LLCs and shell companies have been an issue in the United States due to their use in illicit acts.¹⁴⁸

Once they are created, shell companies are not required to carry out business activities, existing and functioning almost entirely on paper.¹⁴⁹ Traditionally, whether their purposes are legal or illegal, these companies are able to open bank accounts and own assets without ever revealing the name of the true person who benefits from the company's conduct.¹⁵⁰ The effect of these companies creates "multiple layers of cloaked ownership," making it incredibly difficult to determine the identity of beneficial owners.¹⁵¹

2. Beneficial Who?

But who controls these companies?¹⁵² The person who actually owns and controls such a company is known as the beneficial owner.¹⁵³

145. *See id.* In some states, it is extremely simple to form an LLC and can be done in about two hours for about \$100-\$200. *See Pacini & Wadlinger, supra* note 133, at 119.

146. *See* FIN. CRIMES ENF'T NETWORK, DEP'T OF THE TREASURY, *supra* note 129, at 8-9. As of the time that this report was released, fourteen states had no requirements concerning identifying members or managers of LLCs. *See id.* However, the Financial Crimes Enforcement Network also notes that "[s]tates with more transparency have exhibited slightly higher growth on average than states with less transparency." *See id.*

147. *See id.* at 10 ("[A]n LLC conducting isolated transactions as a conduit may have no obligation to register as a foreign business entity. The LLC could reorganize in a state offering the least transparency and conduct activities in a number of other states without reporting the identities of members or managers.").

148. *See* Peter J. Henning, *Is This the End of Anonymous Shell Companies? Not Too Fast*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/business/dealbook/llc-shell-companies-money-laundering.html> ("The use of L.L.C.s [sic] and shell corporations has been an issue for the United States for more than a decade.").

149. *Anonymous Companies, supra* note 133.

150. *Id.*

151. Pacini & Wadlinger, *supra* note 133, at 118; *see also* FIN. CRIMES ENF'T NETWORK, DEP'T OF THE TREASURY, *supra* note 129, at 10 ("[B]ecause an LLC can be owned or managed by one or more other business entities—a corporation, a limited partnership, a general partnership, a trust, or even another LLC—layers of ownership can be devised which make it highly unlikely that relations between various individuals and companies can be discerned, even if one or more of the beneficial owners are actually known or discovered.").

152. *See Anonymous Companies, supra* note 133 (defining beneficial owner); *see also* Pacini & Wadlinger, *supra* note 133, at 129 ("Ownership transparency refers to disclosing majority and minority shareholders, members, beneficiaries, protectors, trustees, founders, and directors,

Although the property may be in another name, these are the individuals who enjoy “the benefits of ownership.”¹⁵⁴ According to the Financial Action Task Force (“FATF”), a beneficial owner is “the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.”¹⁵⁵ The FATF explains that the

definition focuses on the natural (not legal) persons who actually own and take advantage of capital or assets of the legal person; as well as on those who really exert effective control over it (whether or not they occupy formal positions within the legal person), rather than just the (natural or legal) persons who are legally (on paper) entitled to do so.¹⁵⁶

“Beneficial owner” is the general term that is often used, and it usually is meant to encompass the term “ultimate beneficial owner.”¹⁵⁷ It is important to note that ultimately the beneficial owner needs to be a natural individual and not an entity, because all entities are ultimately owned by a natural person, even if you have to go through a long and winding chain to discover them.¹⁵⁸ This idea is what is meant by the term “ultimate beneficial owner.”¹⁵⁹

Effective control can be exercised in a number of ways, for example: owning or controlling more than twenty-five percent of the shares or the voting rights in a legal entity, holding the rights to appoint or remove the majority of the board of directors, or having the right to exercise substantial influence or control over the entire company.¹⁶⁰ Those are just a few of the ways which indicate that effective control is

depending upon the type of legal entity, or any other natural person who is in a position to control and benefit from an asset.”)

153. *Anonymous Companies*, *supra* note 133.

154. *See* James Chen, *Beneficial Owner*, INVESTOPEDIA, <https://www.investopedia.com/terms/b/beneficialowner.asp> (Nov. 17, 2020).

155. FIN. ACTION TASK FORCE, FATF GUIDANCE: TRANSPARENCY AND BENEFICIAL OWNERSHIP 8 (2014), <https://perma.cc/6PSH-M2D4>.

156. *Id.*

157. *Finding Ultimate Beneficial Owners – Harder Than Playing Pokemon Go*, FINEXTRA (Aug. 18, 2016), <https://www.finextra.com/blogposting/12986/finding-ultimate-beneficial-owners—-harder-than-playing-pokemon-go>.

158. *See id.*

159. *Id.*

160. *See* Paul Charmatz, *Identifying and Verifying Ultimate Beneficial Owners*, CORP. COMPLIANCE INSIGHTS (Apr. 19, 2018), <https://www.corporatecomplianceinsights.com/identifying-verifying-ultimate-beneficial-owners>; *see also* THE SECRETARIAT OF THE GLOB. F. ON TRANSPARENCY AND EXCH. OF INFO. FOR TAX PURPOSES & INTER-AM. DEV. BANK, A BENEFICIAL OWNERSHIP IMPLEMENTATION TOOLKIT 4 (2019), <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>.

being exercised.¹⁶¹ However, there are also many other ways, making it very difficult to determine who the beneficial owner is, which often requires a case-by-case analysis.¹⁶²

A huge obstacle in achieving transparency of ownership stems from the vastly different requirements across the variety of jurisdictions.¹⁶³ A prime example of this exists within the United States, where entity formation requirements are governed by the individual states.¹⁶⁴ According to Section Two of the Corporate Transparency Act of 2019, “[l]aw enforcement efforts to investigate corporations and limited liability companies suspected of committing crimes have been impeded by the lack of available beneficial ownership information, as documented in reports and testimony by [various] officials.”¹⁶⁵

In addition to the lack of transparency requirements, there are other factors at play that make it difficult to discern who the beneficial owners are.¹⁶⁶ Some of these factors include: the complexity of the legal structures;¹⁶⁷ the multiple ways to effectuate ownership and control;¹⁶⁸ and the criteria used in defining beneficial owners.¹⁶⁹ According to Finextra, all of these difficulties, in addition to the difficulty of obtaining the documentation that is needed to identify the ultimate beneficial owner, “becomes like finding a needle in a haystack but the haystack is hidden too.”¹⁷⁰

161. THE SECRETARIAT OF THE GLOB. F. ON TRANSPARENCY AND EXCH. OF INFO. FOR TAX PURPOSES & INTER-AM. DEV. BANK, *supra* note 160, at 4.

162. *Id.* (detailing that these determinations often need to be made on a case-by-case basis). Ownership and control can be in direct and indirect forms, such as through ownership of shares, ownership of voting rights, other ownership arrangements, contractual associations, personal connections, management control, receipt of a loan, receipt of a license, tenancy of property, veto rights, right to profit, etc. *Id.* at 8.

163. *See* Pacini & Wadlinger, *supra* note 133, at 130.

164. *See id.*

165. Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. § 2(5) (2019) (referencing reports by the Department of Justice, the Department of Homeland Security, the Department of the Treasury, the Government Accountability Office, and others); *cf. id.* § 2(8) (“[A]ll 28 countries in the European Union are required to have corporate registries that include beneficial ownership information.”).

166. *See Finding Ultimate Beneficial Owners – Harder Than Playing Pokemon Go*, *supra* note 157.

167. *Id.*

168. *Id.*; *see supra* note 136 and accompanying text (discussing the issue of layering companies).

169. *See supra* notes 160-62 and accompanying text.

170. *Finding Ultimate Beneficial Owners – Harder Than Playing Pokemon Go*, *supra* note 157.

3. Supply Chain Transparency

In efforts to cut costs, many companies utilize elaborate supply chains to source, manufacture, assemble, transport, distribute, warehouse, market, and sell their products.¹⁷¹ These tactics tend to function as a double-edged sword, allowing these companies a competitive advantage at the risk of a huge reputational cost.¹⁷² Recent media attention has shed light on some of these cost-cutting practices, revealing human rights violations by some of the biggest and most well-loved brands.¹⁷³ As a result, there has been a push for companies to adopt practices promoting “Corporate Social Responsibility” (“CSR”).¹⁷⁴ According to Investopedia, “[CSR] is a self-regulating business model that helps a company be socially accountable . . . [by being] conscious of the kind of impact [it is] having on all aspects of society, including economic, social, and environmental.”¹⁷⁵

Currently, there is a push toward adopting regulations that would require companies to partake in the “responsible sourcing” of goods, to help combat human rights violations that take place in supply chains.¹⁷⁶ Domestic laws are being utilized to target and regulate these largely discretionary standards.¹⁷⁷ By using domestic supply chain-related regulation, home states can set regulations furthering human rights policy goals that companies have to comply with when working with third-party suppliers and their host governments.¹⁷⁸ Many of these new regulations require companies to conduct due diligence, which requires

171. See Kishanthi Parella, *Improving Human Rights Compliance in Supply Chains*, 95 NOTRE DAME L. REV. 727, 729 (2019).

172. See *id.* at 729-30.

173. See *id.* Parella details an example of Nike, who had at one point received severe backlash due to their cost-cutting practices:

For example, Nike vaulted to the top of the footwear industry through smart choices concerning its supply chain that allowed it to save on production costs and divert those resources to marketing. But media exposure revealed that this cost saving also comes at a cost, contributing to ‘sweatshop conditions’ in these supply chains. Exposure of supply chain conditions contributed to consumer boycotts and shareholder activism—all with serious and negative reputational effects for Nike. . . . Apple has [also] been plagued with media exposure and public criticism concerning labor practices in its supply chain.

Id. (footnotes omitted).

174. See *id.* at 729-31.

175. *Corporate Social Responsibility (CSR)*, INVESTOPEDIA, <https://www.investopedia.com/terms/c/corp-social-responsibility.asp> (Sept. 4, 2021).

176. See Galit A. Sarfaty, *Shining Light on Global Supply Chains*, 56 HARV. INT’L L.J. 419, 424-25 (2015).

177. See *id.* at 420, 427.

178. See *id.*

companies to investigate their third party suppliers' activities to identify actual or potential human rights violations.¹⁷⁹

However, there can be major difficulties in complying with these types of disclosure requirements.¹⁸⁰ There are often multiple layers of suppliers involved in supply chains, making it extremely difficult to perform comprehensive monitoring of the suppliers with which they are working.¹⁸¹ Companies can perform due diligence on the first tier of suppliers, but will often rely on such suppliers to identify and audit second-tier suppliers, who will then rely on the next tier, and the chain continues.¹⁸² Therefore, it can be difficult to identify and conduct effective due diligence on all the suppliers.¹⁸³

4. What Does This Have to Do with Human Trafficking?

According to Global Witness, the laws currently in place within the United States afford criminals the opportunity to hide behind the secrecy of anonymous companies.¹⁸⁴ While there are good reasons to have anonymous companies,¹⁸⁵ they are "being abused, by people who have no interest in legitimate business."¹⁸⁶ These criminals have figured out ways to take advantage of the gaps that currently exist in the law.¹⁸⁷

A letter written by a group of fourteen anti-human trafficking organizations to members of Congress detailed the following:

Anonymously owned companies are also used by human traffickers who employ other types of schemes beside massage parlors to exploit people for profit. . . . Without beneficial ownership reporting, law enforcement's ability to enforce anti-human trafficking laws is

179. *See id.* at 431.

180. *See id.*

181. *See id.*

182. *See id.* ("[F]or electric components, the supply chain can easily be [fifty] tiers deep, many of which provide [] limited or no information.").

183. *See id.* at 431-32 (stating that it took one company more than one year to map out its supply chain).

184. GLOB. WITNESS, *supra* note 137, at 3.

185. *See supra* notes 131-32; *see also* GLOB. WITNESS, *supra* note 137, at 4 ("Companies exist for a good reason – to limit liability if a business idea does not work out, and make sure would-be entrepreneurs do not go bankrupt.").

186. *See* GLOB. WITNESS, *supra* note 137, at 4.

187. *See id.* at 5. Consider the following excerpt by Bob Rogers, the Chief Executive Officer of Street Grace at the time of the statement: "Traffickers thrive in the shadows of our economy. They engage in this illicit activity because it is, sadly, profitable – a \$290 million illegal industry in Georgia alone. Traffickers often hide behind the façade of legal businesses that, in fact, provide cover for the illegal activity." FACT COAL., ANONYMOUS COMPANIES AND HUMAN TRAFFICKING 2 (2020), <https://thefactcoalition.org/wp-content/uploads/2020/01/FACT-Sheet-Human-Trafficking-Anonymous-Companies-Sep-15-2020-FINAL.pdf>.

restricted to sweeping the site of trafficking operation and arresting everyone there—which rarely includes the real owners of that business or operation.¹⁸⁸

The same letter details an instance in 2010 in which a “forced labor criminal enterprise” was discovered to have lured victims to the United States from Jamaica, the Dominican Republic, and the Philippines, promising the “American Dream.”¹⁸⁹ Instead, these victims lived a nightmare and were “forced to live in over-priced, overcrowded, sub-standard apartments” and work in hotels, resorts, and casinos while their traffickers “withheld their earnings and threatened the workers with deportation and fees if they left.”¹⁹⁰ This was able to occur because the gang that ran this operation, according to Global Witness, “used [] anonymous companies to obscure the links between the illegal activity and the main corporation they used in the scam,” allowing them to hide their identities.¹⁹¹

B. *Is This a Labor Problem?*

Victims of human trafficking, even if they come to the United States under legal documentation, are often excluded from many labor protections due to the industry they work in or because of their status.¹⁹² The lack of regulations makes these industries, and the workers within them, that much more vulnerable and susceptible to the abuse of traffickers.¹⁹³ Much of the legislation in place to combat human trafficking tends to focus more on sex trafficking, rather than on forced

188. Letter from Agape International Missions et al. to Hon. Mike Crapo, Chairman, Comm. on Banking, Hous., & Urb. Affs., U.S. Senate & Hon. Sherrod Brown, Ranking Member, Comm. on Banking, Hous., & Urb. Affs., U.S. Senate (Sept. 23, 2019), <https://thefactcoalition.org/wp-content/uploads/2019/09/Anti-Trafficking-Letter-Anonymous-Companies-Sept-2019.pdf>.

189. *Id.* Global Witness states, “America has always been a country which welcomes immigrants who want to work for a better life. That promise lay behind a \$6 million human trafficking scheme in which anonymous company owners tricked their victims into a life likened to ‘modern-day slavery.’” GLOB. WITNESS, *supra* note 137, at 11.

190. Letter from Agape International Missions et al. to Hon. Mike Crapo & Hon. Sherrod Brown, *supra* note 188. According to Global Witness, the traffickers let the visas of the immigrants expire, which added to the severity of the deportation threats. *See* GLOB. WITNESS, *supra* note 137, at 11.

191. GLOB. WITNESS, *supra* note 137, at 11; *see also* Letter from Agape International Missions et al. to Hon. Mike Crapo & Hon. Sherrod Brown, *supra* note 188.

192. Buckley, *supra* note 75, at 116-17; *see also* Shamir, *supra* note 23, at 110-11. Consider the following quote from *A Labor Paradigm for Human Trafficking*, which drives home the idea that the current regulations are not doing enough to protect these victims: “[T]he legal system itself exacerbates their vulnerability since even when workers do come forward they may be formally ineligible to benefit from the protective legislation, either because they are migrants or because they work in sectors that have been excluded from the law’s application.” Shamir, *supra* note 23, at 111.

193. Buckley, *supra* note 75, at 116-17.

labor, failing to provide mechanisms that address susceptibility of certain groups of people and certain markets, and thus, failing to address the labor issue that is prominent in many situations of forced labor.¹⁹⁴

The FLSA and the NLRA are two acts that regulate labor standards.¹⁹⁵ According to the Department of Labor, “[t]he FLSA is the federal law which sets minimum wage, overtime, recordkeeping, and youth employment standards for most employment, including agricultural employment. There are, however, some exceptions which exempt certain employees from the minimum wage provisions, the overtime provisions, or both.”¹⁹⁶ While there are regulations through the FLSA and the Occupational Safety and Health Act that do grant minimum wage regulations and workplace safety requirements to migrant workers in certain occupations and workers on temporary visas, these regulations are underenforced.¹⁹⁷

According to the National Labor Relations Board, “[NLRA] is a federal law that grants employees the right to form or join unions; engage in protected, concerted activities to address or improve working conditions; or refrain from engaging in these activities.”¹⁹⁸ While the NLRA was enacted to encourage collective bargaining, certain sectors are excluded from coverage under the NLRA, such as public-sector employees, agricultural and domestic workers, and independent contractors.¹⁹⁹ The rights under the NLRA are guaranteed regardless of

194. See Shamir, *supra* note 23, at 79, 91. Shamir compares the United Nations Trafficking Protocol and the Trafficking Victims Protection Act of 2000 from the United States and comes to the conclusion that both have a greater focus on criminal and border protection with a stronger focus on sex trafficking, and, consequently, a weak commitment to labor rights. See *id.* at 91.

195. See *Fair Labor Standards Act in Agriculture*, U.S. DEP’T. OF LAB., <https://www.dol.gov/agencies/whd/agriculture/flsa> (last visited Aug. 1, 2021); *The Law*, NAT’L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/the-law> (last visited Aug. 1, 2020).

196. See *Fair Labor Standards Act in Agriculture*, *supra* note 195.

197. See Buckley, *supra* note 75, at 117. For examples of regulations that touch upon migrant worker pay and work conditions, see *H-2B Program*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/immigration/h2b> (last visited Aug. 1, 2021); *H-2A: Temporary Agricultural Employment of Foreign Workers*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/agriculture/h2a> (last visited Aug. 1, 2020); *H-1B Program*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/immigration/h1b> (last visited Aug. 1, 2021); *Migrant and Seasonal Agricultural Worker Protection Act (MSPA)*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/agriculture/mspa> (last visited Aug. 1, 2020).

198. *Frequently Asked Questions – NRLB*, NAT’L LAB. RELS. BD., <https://www.nlr.gov/resources/faq/nlr#:~:text=The%20NLRA%20is%20a%20federal,see%20our%20Employee%20Rights%20page> (last visited Aug. 1, 2021).

199. See *Are You Covered?*, NAT’L LAB. RELS. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/employees/are-you-covered#:~:text=Excluded%20from%20coverage%20under%20the,the%20Railway%20Labor%20Act%2C%20and> (last visited Aug. 1, 2021); *National Labor Relations Act*, NAT’L LAB. RELS. BD.,

immigration status, and it is a crime for an employer to use immigration status against their employees.²⁰⁰ However, as evidenced through many accounts of human trafficking, immigration status and threats of deportation are commonly used to coerce victims into compliance.²⁰¹

As mentioned earlier, forced labor practices tend to thrive in industries that offer low wages and in industries where the laws provide for little to no regulation of the working conditions.²⁰² As Hila Shamir discusses and largely focuses on in *A Labor Paradigm for Human Trafficking*, in order to appropriately combat human trafficking, there needs to be a focus on fixing the factors which create the current conditions of vulnerability.²⁰³ Across the current literature on this topic, there appears to be a few factors which lead to the current level of vulnerability, and this Note will highlight just a few of those contributing factors.²⁰⁴

One contributing factor to the vulnerability of victims who are subject to forced labor is that there is a market for these kinds of services due to the high demand for cheap labor.²⁰⁵ This is part of the reason why forced labor practices are particularly common in factories or the manufacturing industry.²⁰⁶ According to the Human Trafficking Hotline:

[M]anufacturing is driven by competition from offshore industries where labor is outsourced, particularly garment and apparel manufacturing. As a result, factories are particularly vulnerable to trafficking when traffickers, seeking to meet the demand for cheap labor, are able to coerce victims into working in high production, low profit operations for little to no pay.²⁰⁷

Another major contributing factor in the exploitation of these vulnerable individuals is the fear of retaliation.²⁰⁸ This fear stems from

<https://www.nlr.gov/guidance/key-reference-materials/national-labor-relations-act> (last visited Aug. 1, 2021).

200. *Immigrant Employee Rights Under the National Labor Relations Act*, NAT'L LAB. RELS. BD., https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/immigrant_employee_rights_one_pager_english_pdf_21860.pdf (last visited Aug. 1, 2021).

201. For a discussion of some different accounts of human trafficking that represent the fear of deportation, see *supra* notes 77-109 and accompanying text.

202. See *supra* notes 75-76 and accompanying text; see also *supra* notes 193-94 and accompanying text.

203. See Shamir, *supra* note 23, at 106.

204. See *infra* notes 205-18 and accompanying text.

205. See Buckley, *supra* note 75, at 116.

206. See Wilder, *supra* note 73; *Factories*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/labor-trafficking-venuesindustries/factories> (last visited Aug. 1, 2021).

207. *Factories*, *supra* note 206.

208. See Shamir, *supra* note 23, at 110-11, 114-15.

two sources—the government and the employer—but boils down to one fear—deportation.²⁰⁹ The current “guest worker regimes” lead to a large disincentive for victims to leave their employer and a large incentive to stay with the employer and to avoid deportation.²¹⁰ This is because the current “guest worker regimes” in place, which allow the individual to remain in the United States and obtain employment legally, effectively tie the individual to a single designated employer.²¹¹ Leaving that employer entails losing their documented status.²¹² Thus, without any sort of immunity protecting these victims who come forward or leave their employers to seek out a better life, the law gives employers much control over their employees who seemingly have no other choice but to comply and remain silent in their exploited situations.²¹³

Yet, another major contributing factor in perpetuating this industry is the binding agreements themselves, which many workers enter into in order to legally enter this country in the first place.²¹⁴ These agreements, in effect, limit the amount of control that these workers have over their own lives—limiting them to specific markets and employers.²¹⁵ Often times, these agreements, which limit the worker’s freedom to leave willingly, are also accompanied by exorbitant recruitment fees.²¹⁶ Many recruitment agencies charge workers fees that are not transparent and end up being significantly more than the victims are told.²¹⁷ As a result, these workers have a large amount of debt looming over their heads, which coerces them into accepting poorer work conditions or lower wages than originally promised.²¹⁸

209. *See id.* at 110-11.

210. *See id.* at 112, 114-15.

211. *See id.*

212. *See id.*; *see also supra* text accompanying note 58.

213. *See Shamir, supra* note 23, at 113-17 (providing recommended measures to help give these workers more control and diminish their vulnerability). Shamir recommends that governments should continue to focus efforts on refraining from criminalizing the status of workers who are victimized under these types of conditions and who chose to leave their employers, thereby losing their legal status. *See id.* at 113-14. For more discussion on what these binding agreements are, *see supra* notes 51-54 and accompanying text (detailing the agreements these migrant workers enter into in order to be recruited for work in the United States).

214. *See Shamir, supra* note 23, at 110-11, 114-16.

215. *See id.* As mentioned earlier, this perpetuates the fear of deportation because a migrant worker’s legal status is essentially tied to their current employer. *See id.* at 115. Furthermore, this allows the employer to keep the worker under their control, by holding legal status over their head, or by keeping them in an industry that does not have many labor protections. *See, e.g., id.* at 115-16.

216. *See id.*

217. *See Farbenblum & Nolan, supra* note 51, at 8.

218. *See id.* Both the fear of deportation and the fear of the potential inability to pay off these debts keep these workers silenced. *See, e.g., id.* (“Those debts often compel workers to acquiesce to poorer work conditions or lower wages than those promised by the subagent or recruitment agency at home, for fear of deportation and debt-laden unemployment.”); *see also Shamir, supra* note 23, at

C. Proposed Solutions That Do Not Quite Solve the Problem

While there have been some attempts to remedy the above-mentioned issues, these solutions do not entirely solve the issue at hand.²¹⁹ Additionally, competing interests between groups tend to complicate the issue even further.²²⁰ This Subpart will discuss some of these attempts and the issues which still remain,²²¹ as well as discuss the concerns that arise regarding the impact on small businesses.²²²

1. The Corporate Transparency Act and Beyond

On October 22, 2019, the House of Representatives passed a bill known as the Corporate Transparency Act of 2019, but it has not yet been passed by the Senate.²²³ The Corporate Transparency Act explains that in order to

reduce the vulnerability of the United States to wrongdoing by United States corporations and limited liability companies with hidden

116 (“This debt, which traps workers in what is akin to debt bondage, is a convenient means for employers to ensure a docile and controllable workforce that is, consequently, easily exploited.”). Consider also the following quote from Farbenblum’s and Nolan’s work, *The Business of Migrant Worker Recruitment*:

Labor migration has the potential to improve the lives of migrant workers and their families, and to bring increased prosperity to their communities and countries of origin through remittances and development of new skills. However, for many migrant workers, this promise has not been realized. Low-wage migrant workers are routinely underpaid and made to work long hours under unsafe conditions; their precarious immigration and economic status in their country of employment often acts as a powerful barrier to protesting against and obtaining remedies for mistreatment.

See Farbenblum & Nolan, *supra* note 51, at 3.

219. See, e.g., Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. (2019) (demonstrating that nowhere in the Act is the term “substantial control” defined); see also Shamir, *supra* note 23, at 91 (“The [Trafficking Victims Protection Act] served to reinforce the criminalization and border protection aspects of the protocol and its focus on sex trafficking, as well the protocol’s weak commitment to human rights and labor and employment rights.”).

220. See Parker, *supra* note 138 (discussing the burden on small businesses). However, note the following excerpt from the Library Card Project:

In 2012, the most recent year for which data are available, there were 170,593,000 registered library card holders. That is 170,593,000 Americans who were willing to provide detailed information about their identity, personal contact details, and address and to provide verification of this information in-person. Yet time and again state and federal lawmakers bemoan that requiring any information about people who own or control companies is an unwarranted invasion of privacy, is too technologically difficult or costly to collect, and will make incorporating companies unacceptably slow.

GLOB. FIN. INTEGRITY, *supra* note 134, at 3 (insinuating that the burden is not so onerous).

221. See *infra* Part III.C.1.

222. See *infra* Part III.C.2.

223. See generally *H.R.2513 – Corporate Transparency Act of 2019*, CONGRESS.GOV, <https://www.congress.gov/bill/116th-congress/house-bill/2513/text> (last visited Aug. 1, 2021) (demonstrating that it is unenacted).

owners, . . . to strengthen law enforcement investigations of suspect corporations and limited liability companies, to set a clear, universal standard for State incorporation practices, . . . Federal legislation is needed to require the collection of beneficial ownership information²²⁴

This Act would require that small corporations and LLCs disclose information as to who their beneficial owners are.²²⁵ For the purposes of the Act, a beneficial owner is defined as “a natural person who, directly or indirectly,” through some sort of agreement or understanding “exercises substantial control” of the entity; “owns 25 percent or more of the equity interests” of the entity; or “receives substantial economic benefits from the assets of” that entity.²²⁶

There are two glaring issues with the current structure of this proposed Act.²²⁷ First, there are a number of businesses that will be able to avoid complying with these regulations because they do not meet certain requirements.²²⁸ Secondly, while the Act defines “substantial economic benefit,”²²⁹ it does not define what constitutes “substantial control,” which may lead to ambiguities, as it leaves too much room for interpretation, potentially causing issues in the prosecution of individuals down the line.²³⁰

The Business Supply Chain Transparency on Trafficking and Slavery Act of 2020 is another act which was introduced to Congress,

224. *Id.* § 2(9).

225. *See generally id.* § 5333 (a)(1)(A) (showing that a list of beneficial owners would be required for those seeking to register a company).

226. *Id.* §§ 5333(d)(3)(A)(i)-(iii).

227. *See, e.g., id.* § 5333 (d)(4)(C) (demonstrating that the Act is both under- and over-inclusive in that it fails to include all businesses in vulnerable industries within its purview as it excludes many larger businesses, and demonstrating that the Act lacks a clear definition of “substantial control”).

228. *See id.* The Act states that:

(4) CORPORATION; LIMITED LIABILITY COMPANY—The terms ‘corporation’ and ‘limited liability company’

(C) do not include any entity that is—

(i) a business concern that is an issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 . . . or that is required to file reports under section 15(d) of that Act

(xvii) any business concern that —

(I) employs more than 20 employees on a full-time basis in the United States;

(II) files income tax returns in the United States demonstrating more than \$5,000,000 in gross receipts or sales; and

(III) has an operating presence at a physical office within the United States

H.R. 2513 § 5333 (d)(4)(C).

229. *See id.* § 5333(d)(3)(C)(i).

230. *See, e.g., id.* (demonstrating that the term is undefined).

but has not yet been passed.²³¹ The purpose of this Act was to combat the introduction of products produced by forced labor and human trafficking conditions into the United States' stream of commerce.²³² This would be accomplished by amending the Securities Exchange Act of 1934, thereby requiring certain companies through "publicly available disclosures" to detail their efforts to "identify and address conditions of" human trafficking in their supply chains.²³³ One issue with this proposed legislation is that, once again, it has the potential to be both over- and under-inclusive by requiring companies to register that may have a very low risk of utilizing human trafficking practices, and excluding companies that may be within industries that are highly susceptible to these practices.²³⁴

With greater public awareness of these issues and concern over companies' corporate, socially responsible actions, having public

231. See, e.g., Business Supply Chain Transparency on Trafficking and Slavery Act of 2020, H.R. 6279, 116th Cong. (2020) (showing that it has not yet been enacted); see also *The California Transparency in Supply Chains Act*, STATE OF CAL. DEP'T OF JUST., <https://oag.ca.gov/SB657> (last visited Aug. 1, 2021) (discussing the Transparency in Supply Chains Act, which was enacted by the California State Legislature). The Transparency in Supply Chains Act subjects companies which meet the following criteria to the disclosure requirements set out in the law: "[Companies which] (a) identify [] as a retail seller or manufacturer in [their] tax returns; (b) satisfy the legal requirements for 'doing business' in California; and (c) have annual worldwide gross receipts exceeding \$100,000,000." *The California Transparency in Supply Chains Act*, *supra*. If a business is subject to the Act in that it meets the just-mentioned criteria, the business is required to disclose to what extent, if any, it:

1. Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery
2. Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. . . .
3. Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
4. Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
5. Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

Id.

232. H.R. 6279 § 2(b)(2).

233. *Id.* §§ 2(b)(4), 3(s)(1), 3(s)(2)(B). The disclosures that would be required by the Business Supply Chain Transparency on Trafficking and Slavery Act are largely the same as those required by the California Transparency in Supply Chains Act. See *The California Transparency in Supply Chains Act*, *supra* note 231.

234. See Ingrid Landau, *Human Rights Due Diligence and the Risk of Cosmetic Compliance*, 20 MELB. J. INT'L L. 221, 234-35, 238 (2019) (warning that requiring disclosures may result in companies making disclosures just to comply with the law without taking any real meaningful action); Parella, *supra* note 171, at 729-30, 749-50 (demonstrating the pros of requiring public disclosures because sometimes the resulting reputational damage, or risk of reputational damage, incentivizes companies to make real change).

disclosures may or may not be a good thing.²³⁵ An argument in favor of public disclosures is that companies who participate in human rights violations may face heightened legal or reputational violations.²³⁶ Conversely, others argue that companies who have to make such disclosures will partake in “cosmetic compliance” by formally meeting the requirements for a reputational gain, without actually doing anything substantively to avoid utilizing human trafficking practices.²³⁷

On the other hand, the Trafficking Victims Protection Act of 2000 did actually become law.²³⁸ As the first comprehensive federal law addressing trafficking of persons, the law uses a three-pronged approach to combat human trafficking through prevention, protection, and prosecution.²³⁹ However, one issue with this Act is that while there are requirements for the government to provide protections once victims are identified, it can be hard to identify these victims in the first place due to the disincentive of retaliation if these individuals come forward.²⁴⁰ Likewise, there is a similar issue in terms of prosecution in that it can be

235. Gerlinde Berger-Walliser & Inara Scott, *Redefining Corporate Social Responsibility in an Era of Globalization and Regulatory Hardening*, 55 AM. BUS. L.J. 167, 196 (2018).

236. *Id.*

237. Landau, *supra* note 234, at 222-23. Ingrid Landau warns of this risk:

There is a significant risk that these regulatory interventions will result in companies adopting policies and implementing internal compliance structures that exhibit some or all of the formal elements of [human rights due diligence (“HRDD”)] – and have the purpose of conveying the appearance of taking action – but ultimately fail to achieve the public goal they are designed to achieve: that is, the reduction or elimination of adverse human rights impacts. In short, they will achieve what Kimberly Krawiec has described as “cosmetic compliance”. . . . [G]reater attention should be paid by lawmakers and civil society to crafting regulatory interventions that seek to influence the *quality* of HRDD undertaken, rather than simply its quantity.

Id. at 222-23.

238. *See, e.g.*, Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101. While the Act does address both sex and labor trafficking, there is some criticism that the Act focuses much more on sex trafficking. *See* Shamir, *supra* note 23, at 91. As Shamir puts it, the Trafficking Victims Protection Act of 2000 “gave the protocol’s main provisions teeth by creating an international monitoring scheme accompanied by financial sanctions against countries that fail to meet certain minimum standards” Shamir, *supra* note 23, at 91.

239. *Federal Law, supra* note 110; Trafficking Victims Protection Act of 2000 § 7104 (detailing prevention tactics such as establishing international financial incentives to deter trafficking and increasing public awareness of the issue); *see* Trafficking Victims Protection Act of 2000 § 7107(a) (detailing that one international financial incentive to complying with the policies set forth in furtherance of the Trafficking Victims Protection Act is the possibility of aid from the United States being withheld); § 7105 (detailing measures to protect and assist victims of trafficking).

240. *See, e.g.*, Trafficking Victims Protection Act of 2000 § 7105(b); *see supra* notes 208-13 and accompanying text.

difficult to identify who exactly the violator is, if and when a victim does come forward.²⁴¹

2. What About the Little Guy?

One argument against the Corporate Transparency Act, and other similar Acts which strive to impose disclosure requirements, is that these requirements impose a big burden on small businesses.²⁴² According to the Wall Street Journal, “[s]ome House Republicans and other opponents have said the legislation would expose small-business owners’ personal information to law enforcement and create excessive paperwork for these businesses.”²⁴³ Additionally, the United States Chamber of Commerce believes that the “proposed disclosure rules” would be “‘especially problematic’ for small companies.”²⁴⁴ While there is some weight to this argument, excluding small businesses from the grasp of these disclosure requirements would be drastically underinclusive.²⁴⁵ This is because human trafficking takes place over a broad breadth of industries and is not immune from being used in big or small businesses alike.²⁴⁶

IV. DISCLOSURES AND AMENDMENTS

While the Trafficking Victims Protection Act made trafficking illegal, there are two major issues which remain—identifying who to prosecute when human trafficking violations come to light and the fear that these victims experience which coerces them into compliance.²⁴⁷

241. See, e.g., Trafficking Victims Protection Act of 2000 § 7107 (demonstrating that there is not much within the Act to help break down barriers in terms of identifying violators or breaking down victims’ deterrents); see also *supra* Part III.A (discussing the factors which make it hard to identify the true violator); *supra* Part III.B (analyzing a number of disincentivizing factors which keep victims quiet and deter them from coming forward).

242. See Parker, *supra* note 138.

243. *Id.*

244. *Id.*

245. See *supra* notes 227-28 and accompanying text (demonstrating that, as of now, the law is both under- and over-inclusive).

246. See Sarah Maslin Nir, *The Price of Nice Nails*, N.Y. TIMES (May 7, 2015), <https://www.nytimes.com/2015/05/10/nyregion/at-nail-salons-in-nyc-manicurists-are-underpaid-and-unprotected.html> (demonstrating that small and large nail parlors alike are not immune from engaging in forced labor-like practices, such as withholding wages); Wilder, *supra* note 73 (detailing that agriculture, hospitality, and factory work are industries which are susceptible to human trafficking); INT’L LABOUR OFF., *supra* note 74, at 59 (stating that construction is a common industry for human trafficking practices). See generally POLARIS, *supra* note 24 (demonstrating that even small massage parlors are susceptible to human trafficking practices).

247. See, e.g., Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (showing that these aspects are not really addressed within the text of the act); see *supra* Part III.A–B.

This Note will predominately focus on those two overarching issues by proposing these solutions—registration and disclosure of beneficial owners and adopting regulations which will help to dismantle the fear that many migrant workers face.²⁴⁸ In attempting to solve some of these issues, the goal of Subpart A is to propose effective regulations which create more transparency in industries where human trafficking practices are very common, while trying not to impose too heavy of a burden on small businesses.²⁴⁹ Subpart B will focus more on the constructs that keep migrant workers from being able to demand better working conditions, which is due to the fear of deportation, insurmountable debt, and the lack of appropriate avenues for them to seek out action.²⁵⁰

A. *Identifying Beneficial Owners*

A major issue regarding human trafficking is enforceability, which largely stems from the “veil” of corporate secrecy.²⁵¹ One big factor that plays into this “veil” is the lack of information regarding the identities of the beneficial owners of businesses that take part in this horrific industry.²⁵² Through the use of shell companies, or other avenues which allow for individuals to register their businesses anonymously, there is difficulty in drawing connections and discerning who is the appropriate party to prosecute once human trafficking violations are identified.²⁵³ This Subpart is not proposing to do away with shell companies or LLCs, as there are significant benefits to having such entities, however, something needs to be done to dismantle the ability to abuse these vehicles for illicit purposes.²⁵⁴ This Note proposes that beneficial

248. See *infra* Parts IV.A–B.

249. See *infra* Part IV.A.

250. See *infra* Part IV.B.

251. See POLARIS, *supra* note 24, at 2-3, 5.

252. See *id.*

253. See *id.* at 3, 5; see also *House Passes Maloney Bill to Crack Down on Anonymous Shell Companies*, *supra* note 114 (reiterating that shell companies create national security concerns); Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. § 2(5) (2019) (stating that law enforcement efforts in investigating companies suspected of committing crimes have been seriously impaired by the lack of beneficial owner information). Recall from earlier in this Note that there was a discussion on layering shell companies. See *supra* note 136 and accompanying text. This creates added difficulty by creating a web of companies making it even harder to track down which company is the root of the organization in violation. See Pacini & Wadlinger, *supra* note 133, at 132.

254. See Smith, *supra* note 132 (demonstrating that shell companies and LLCs are great vehicles to use in insulating owners from liability in legitimate businesses); see also *Shell Corporation: Everything You Need to Know*, *supra* note 112 (reiterating that there are legal reasons to use these companies, such as protecting assets and investing in foreign markets).

ownership should be required upon registration and disclosures should be made by businesses in high-risk industries.²⁵⁵

1. Registration Requirements

The first issue that needs to be resolved in this solution is specifying what constitutes a beneficial owner.²⁵⁶ As demonstrated earlier in this Note, there are many different factors considered in determining whether an individual is a beneficial owner, which can cause issues of ambiguity in enforcing legislation down the line.²⁵⁷ The Corporate Transparency Act did a relatively good job at addressing this problem by detailing which factors would be used in determining whether someone was a beneficial owner.²⁵⁸ The Act focused on natural persons who either exercised substantial control over the entity, owned twenty-five percent or more of the interest in the entity, or whether they received substantial economic benefits.²⁵⁹ However, the Act fell short by not clearly defining what “substantial control” means.²⁶⁰ This can be problematic in that it leaves room for ambiguity and can create difficulty in enforcement.²⁶¹ While the Corporate Transparency Act set standards as to what constitutes a beneficial owner, it would be best to go a little further and also define substantial control.²⁶² This Note proposes that substantial control should be defined as “the ability or power to direct or cause the direction of the management or policies of an institution.”²⁶³

Another major issue regarding registration requirements is that they vary greatly by jurisdiction.²⁶⁴ This is particularly an issue within the United States because the requirements for forming entities are left up to the individual states.²⁶⁵ In effect, those seeking out the least stringent

255. See *supra* Part IV.A.

256. See, e.g., Charnatz, *supra* note 160 (describing what constitutes an ultimate beneficial owner); THE SECRETARIAT OF THE GLOB. F. ON TRANSPARENCY AND EXCH. OF INFO. FOR TAX PURPOSES & INTER-AM. DEV. BANK, *supra* note 160, at 4 (demonstrating that there are so many factors that play into defining beneficial owners that there really is no clear standard).

257. See *supra* notes 160-162 and accompanying text.

258. See H.R. 2513 § 5333(d)(3).

259. *Id.* § 5333(d)(3).

260. See, e.g., H.R. 2513 (demonstrating the lack of an appropriate definition for “substantial control”).

261. See, e.g., *supra* note 260 and accompanying text. *But see* H.R. 2513 § 5333(d)(3)(C)(i) (defining what constitutes substantial economic benefit, demonstrating that the drafters understood the importance of trying to avoid ambiguities).

262. See, e.g., *supra* note 260 and accompanying text.

263. *Substantial Control Defined*, L. INSIDER, <https://www.lawinsider.com/dictionary/substantial-control> (last visited Aug. 1, 2020).

264. Pacini & Wadlinger, *supra* note 133, at 130.

265. *Id.*

requirements can pick which state they would prefer to register in, allowing them to shop around.²⁶⁶ According to the Corporate Transparency Act, the FATF, an international anti-money laundering standard-setting body, has criticized the United States “for failing to comply with an FATF standard on the need to collect beneficial ownership information and urged the United States to correct this deficiency by July 2008.”²⁶⁷ The United States, in response to this report, urged the states to obtain beneficial ownership information, but according to the FATF’s 2016 report, there was little improvement in the United States.²⁶⁸ Therefore, it is imperative for the United States to pass a federal law that would apply nationwide, as there is still too much discrepancy when left up to the states.²⁶⁹

2. Disclosure Requirements

Yet, another issue that must be solved is determining which companies would be required to comply with these regulations and who will have access to this information.²⁷⁰ There is a valid concern as to whether these disclosure requirements would impose too large of a burden on small businesses who set up companies in this manner as a way to preserve privacy and insulate themselves from certain liabilities.²⁷¹ Taking into account this concern, this Note proposes that these disclosure requirements should be limited to those industries in

266. *See, e.g., id.* (leading one to draw the inference that if there are different choices in terms of registration requirements, individuals may choose to shop around). *But see* FIN. CRIMES ENFT NETWORK, DEP’T OF THE TREASURY, *supra* note 129, at 8-9 (stating that more registrations may be occurring in states with more transparency requirements).

267. Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. § 2(6) (2019). The Financial Action Task Force on Money Laundering is an organization of which the United States is a part. *Id.*

268. *Id.* § 2(7). According to the Corporate Transparency Act,

In December 2016, FATF issued another evaluation of the United States, which found that little progress has been made over the last ten years to address this problem. It identified the “lack of timely access to adequate, accurate and current beneficial ownership information” as a fundamental gap in the United States['] efforts

Id. § 2(6). *But see id.* § 2(8) (“In contrast to practices in the United States, all 28 countries in the European Union are required to have corporate registries that include beneficial ownership information.”).

269. *See, e.g., id.* §§ 2(6)–(8) (demonstrating that there has been little improvement in obtaining this information).

270. *See* Parker, *supra* note 138 (demonstrating that there is a concern over the impact that these requirements will have on small businesses).

271. *See id.* (“[T]he legislation would expose small-business owners’ personal information.”); Smith, *supra* note 132 (discussing legal reasons to create these companies).

which human trafficking is largely abused.²⁷² Some of these industries include, but are not limited to, agriculture, factory work, hospitality, construction, and those industries that are not commonly protected by labor regulations.²⁷³ By limiting these requirements to industries that are determined to be especially vulnerable to human trafficking, this will help to avoid unnecessarily burdening certain businesses.²⁷⁴

An argument can be made to exclude small businesses altogether from making these disclosures because, as the *Wall Street Journal* states, the burden will particularly be felt by them.²⁷⁵ However, this is unlikely to effectively solve the issue.²⁷⁶ This is because small businesses are also capable of abusing the system and utilizing human trafficking-like tactics in their businesses.²⁷⁷ This is evidenced by Polaris's study on illicit massage parlors, which register as if they were legitimate businesses, but as evidence suggests, use these businesses as fronts to victimize women through human trafficking into the commercial sex industry.²⁷⁸ In utilizing the current laws in the United States, traffickers

272. See Wilder, *supra* note 73 (detailing that agriculture, hospitality, and factory work are common industries for abuse); INT'L LABOUR OFF., *supra* note 74, at 59 (stating that construction is a common industry abused).

273. See Shamir, *supra* note 23, at 106 (listing factors which contribute to vulnerability, including, but not limited to, limited market mobility because of visa restrictions or contractual restraints; debts to be repaid; and employment in labor sectors that are excluded from certain labor law protections); see also *supra* note 272 and accompanying text. The fact that a particular sector is not covered by certain labor standards may be the reason that makes that industry so vulnerable. See, e.g., Buckley, *supra* note 75, at 117 (stating that agriculture is a vulnerable industry because of the lack of labor protections that are afforded to the industry). According to Buckley,

The agricultural sector also experiences a high occurrence of forced labor in the United States. This is due to the absence of labor standards and regulations in the industry, and to the increasing number of undocumented immigrant farm workers that have no legal protection. Currently, farm workers are excluded from the NRLA [sic], which denies them the ability to organize and to form unions. In addition, the Fair Labor Standards Act (FLSA) does not guarantee overtime pay to farm workers. FLSA and the Occupational Safety and Health Act (OSHA) do grant minimum wage and workplace safety protections to farm workers, but these regulations are severely under-enforced.

See *id.*

274. See, e.g., Parker, *supra* note 138 (demonstrating the concern for small businesses).

275. See *id.* ("As recently as last year, the USCC testified against proposed disclosure rules, calling them 'especially problematic' for small companies.")

276. See *supra* note 246 and accompanying text (representing that large and small businesses alike abuse the current laws to further trafficking goals).

277. See *supra* note 246 and accompanying text.

278. See POLARIS, *supra* note 24, at 1-2. While the Article does not talk much about coercion or about transporting workers into the United States through trafficking, *The Price of Nice Nails* demonstrates that certain industries are more susceptible to certain kinds of abuses that are also found in forced labor situations. See Nir, *supra* note 246. The Article discusses that many of the workers they interviewed were immigrants and were either paid well below minimum wage or were not paid at all. See *id.*

are able to hide their identities from law enforcement.²⁷⁹ Therefore, because small businesses are also susceptible to taking part in certain human trafficking practices, all businesses that fall within those common industries should be subject to complying with disclosure requirements.²⁸⁰

There are two concerns that should be considered when determining who will have access to these disclosures—“cosmetic compliance” and privacy.²⁸¹ As defined earlier in this Note, cosmetic compliance is the idea that if companies are required to adopt policies that show they are actively seeking out human rights violations, they may superficially implement such policies but fail to actually enforce them and take action.²⁸² Ultimately, they will implement policies just to look good to the public.²⁸³ However, there is evidence that public opinion of a company can actually have a huge impact and that cosmetic compliance may not be something that needs to be feared.²⁸⁴ Nike and Apple are two companies that have experienced backlash regarding sweatshop conditions or other labor violations within their supply chains.²⁸⁵ As a result of public shame over their labor practices, Nike’s

279. See POLARIS, *supra* note 24, at 1.

280. See *supra* note 246 and accompanying text. This combats one of the issues of over- and under-inclusivity, as seen in the Corporate Transparency Act, because at least this includes all business within a vulnerable industry. See, e.g., Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. § 5333(d)(4) (2019) (demonstrating that the Act included businesses that were not affected and did not include those businesses which were affected, leaving major gaps in coverage).

281. See Landau, *supra* note 234, at 222-23, 234-35, 238 (defining “cosmetic compliance” as a concept of businesses complying with disclosure laws without taking any meaningful action); Parker, *supra* note 138 (implying that public disclosures may reveal private information about small owners).

282. See Landau, *supra* note 234, at 222-23, 234-35; see also *supra* note 237 and accompanying text.

283. See, e.g., Landau, *supra* note 234, at 222-23, 234-35.

284. See Parella, *supra* note 171, at 729-30 (demonstrating that failure to make socially responsible decisions can impact a business).

285. *Id.* at 729-30. In 2013, the Rana Plaza building in Bangladesh collapsed, killing 1,134 and leaving thousands more injured. *Rana Plaza*, CLEAN CLOTHES CAMPAIGN, <https://cleanclothes.org/campaigns/past/rana-plaza> (last visited Aug. 1, 2020). When signs of large, dangerous structural cracks were discovered, the garment factory owners ignored warnings and ordered their employees to continue working. See *id.* The workers of that garment factory did not receive fair wages or safe working conditions. See Tejshree Thapa, *Remember Rana Plaza: Bangladesh’s Garment Workers Still Need Better Protection*, HUM. RTS. WATCH (Apr. 24, 2018, 9:02 PM), <https://www.hrw.org/news/2018/04/24/remember-rana-plaza>. Yet, many large retailers in America had contractors there. Kristin Schulz, *Why We Can’t Stay Forever 21*, END SLAVERY NOW (Dec. 29, 2016), <https://www.endslaverynow.org/blog/articles/why-we-cant-stay-forever-21> (representing that Walmart, The Children’s Place, and JCPenney had contractors in the Rana Plaza building that collapsed).

image, along with its sales, suffered.²⁸⁶ In a 1998 speech, the then Chief Executive Officer, Phil Knight, said: “The Nike product has become synonymous with slave wages, forced overtime, and arbitrary abuse.”²⁸⁷ As a result, Nike managed to turn its practices around and become a leader in transparency, demonstrating that public opinion can shape a company’s practices.²⁸⁸

Privacy, on the other hand, may be a more valid concern, primarily for small businesses.²⁸⁹ As previously discussed, many small business owners may register for anonymous companies because they are concerned about their exposure to liability and maintaining privacy in their personal lives.²⁹⁰ Additionally, public opinion may not have the same effect on a small local business as it does on bigger corporations and brands.²⁹¹ However, as has been demonstrated, having access to beneficial ownership information is important if a violation is discovered, as it is necessary to figure out who to hold accountable.²⁹² Therefore, to preserve this privacy and lessen the burden on small, private businesses, these disclosures should still be required; however, they should only be made available to the government and law enforcement agencies.²⁹³ A strict line should be drawn between public

286. See Max Nisen, *How Nike Solved Its Sweatshop Problem*, BUS. INSIDER (May 9, 2013, 10:00 PM), <https://www.businessinsider.com/how-nike-solved-its-sweatshop-problem-2013-5>.

287. *Id.* Another company that has received much backlash for their suppliers and labor conditions that accompany their supplies is Forever 21. See Schulz, *supra* note 285. According to End Slavery Now, “[t]he International Labor Rights Forum called out Forever 21 for not joining retailers like Gap Inc., Levi Strauss, American Eagle Outfitters and other companies in making a commitment not to buy cotton from Uzbekistan factories, where alleged forced child labor takes place.” *Id.* According to Business Insider, Forever 21’s factories attract a large amount of labor complaints and “[o]ne Los Angeles factory worker told Bloomberg BusinessWeek she was paid 12 cents a piece to sew vests that sell for \$13.80. It would take 67 vests an hour to earn \$8 minimum wage.” Melanie Hicken, *The Secret Behind Forever 21’s Dirt Cheap Clothing*, BUS. INSIDER (Feb. 27, 2012, 11:25 AM), <https://www.businessinsider.com/the-secret-behind-forever-21s-dirt-cheap-clothing-2012-2>.

288. See, e.g., Nisen, *supra* note 286 (demonstrating that as a result of bad publicity, Nike changed its business practices and became more transparent and socially responsible).

289. See, e.g., Parker, *supra* note 138 (implying that public disclosures may reveal information about small owners).

290. See *Shell Corporation: Everything You Need to Know*, *supra* note 112 (describing that shell companies can be used to hide identities).

291. See, e.g., Nisen, *supra* note 286 (demonstrating again that Nike received a lot of backlash).

292. POLARIS, *supra* note 24, at 3 (“Because many of the businesses are registered anonymously, . . . in the name of someone other than the actual owner, these connections are often missed, along with the opportunity to prosecute and shut down these human trafficking venues.”).

293. See, e.g., Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. § 5333(a)(5)(C)(i)(III) (2019) (demonstrating that disclosures would be available for law enforcement use).

and private companies in this context.²⁹⁴ Therefore, concerning publicly traded corporations and other companies who are subject to the SEC's disclosures, this information should be publicly available, because public pressure and opinion has the opportunity to have a real impact on a company's socially responsible behaviors, as seen with Nike.²⁹⁵

B. Labor Regulations

There are a number of factors within the current labor regulations that contribute to the exploitation of human trafficking victims.²⁹⁶ Two of the overarching themes in contributing to this issue are the fear of deportation and the insurmountable debt.²⁹⁷ In order to best combat these issues, there needs to be better protections in place which account for those individuals who are commonly affected by these abuses.²⁹⁸

As previously mentioned, currently under the NLRA, not all types of employees are covered and, therefore, they are not guaranteed the right to unionize.²⁹⁹ This creates an uneven bargaining power between employers and their victims because it allows employers to instill fear of retaliation through deportation or termination of employment, thereby leaving them with no way to pay back the debt that commonly accompanies these victims.³⁰⁰ The NLRA excludes agricultural and other workers from coverage, which includes sectors that are commonly associated with a high risk of this type of exploitation.³⁰¹ Therefore, the

294. See *supra* notes 228-30 (demonstrating that the Act is over- and under-inclusive when drawing categories, because it leaves out certain companies which would be part of the susceptible industries and includes those that are not). Public corporations are not subject to the same privacy argument because once they register with the Securities Exchange Commission, they are already subject to public disclosures. See *Public Companies*, INVESTOR.GOV, <https://www.investor.gov/introduction-investing/investing-basics/how-stock-markets-work/public-companies> (last visited Aug. 1, 2021); Troy Segal, *Disclosure*, INVESTOPEDIA, <https://www.investopedia.com/terms/d/disclosure.asp> (June 22, 2020); see also Marcus A. Asner et al., *Shining a Spotlight: US Legislation to Require Disclosure of the US Companies' Beneficial Ownership*, ARNOLD & PORTER (June 3, 2020), <https://www.arnoldporter.com/en/perspectives/publications/2020/06/legislation-to-require-disclosure-of-ownership> (explaining that many publicly traded corporations are already required to disclose beneficial owner information if they meet certain requirements).

295. See, e.g., Nisen, *supra* note 286 (demonstrating Nike's response to backlash).

296. See *supra* note 273 and accompanying text.

297. See *supra* notes 208-13 and accompanying text.

298. See *infra* notes 299-316 and accompanying text.

299. See *Frequently Asked Questions – NLRB*, *supra* note 198; *Are You Covered?*, *supra* note 199.

300. See, e.g., Shamir, *supra* note 23, at 111, 116-17 (“[T]heir fear of deportation makes them reluctant to complain to the authorities about violations of their human rights and workers’ rights, exacerbating their exposure to exploitation.”).

301. See *Are You Covered?*, *supra* note 199; see also *supra* note 273 (detailing industries that are susceptible to human trafficking violations).

right to unionize and demand change in working conditions should be extended to all industries to best combat the exploitation of human trafficking victims.³⁰² This would give all workers the opportunity to have control over their own working conditions, rather than to frame these victims as powerless.³⁰³ As Shamir writes:

The labor framework . . . conceptualizes trafficked persons as agents of change who can negotiate better working conditions rather than be limited to exiting their workplaces. The labor approach therefore advocates for policies of worker empowerment using such labor and employment tools as protective employment legislation and the rights to unionize and to collective action, which bolster workers' bargaining power.³⁰⁴

In combatting this issue by granting all workers the ability to unionize and advocate for their own change in the workplace, there needs to be more steps taken to ensure that workers are not silenced by fear, particularly when migrant workers are involved, as the fear of deportation often makes these workers reluctant to complain.³⁰⁵ There are two ways to combat this issue: by changing the current guest worker regimes and by regulating the current worker recruitment practices.³⁰⁶ Currently, many guest worker regimes that allow migrant workers to legally enter the United States on work visas tie those employees to specific employers.³⁰⁷ This makes these workers dependent on remaining with these employers to preserve their legal status.³⁰⁸ Therefore, by revising these programs in a way that allows these workers the ability to look for work outside of their current employment situation without losing their legal status, this may help combat the fear of deportation.³⁰⁹ Government programs can be created to assist or grant asylum to those

302. See, e.g., Shamir, *supra* note 23, 107-08, 116-17 (analyzing how the right to unionize can increase a worker's bargaining power in the labor market).

303. *Id.*

304. *Id.* at 107-08.

305. See *id.* at 111; *supra* notes 77-109 and accompanying text (detailing accounts of victims and some of the fear tactics that were utilized against them).

306. See Shamir, *supra* note 23, 110-12, 114-17 (demonstrating that guest worker regimes and recruitment practices play a big role in exploiting these victims).

307. *Id.* at 115.

308. See *id.* at 112, 115; see also *Bonded Labor*, *supra* note 49.

309. See, e.g., Shamir, *supra* note 23, at 114-16 (implying that since guest worker regimes and recruitment practices play a big role in exploitation, if these practices were regulated, there may be less exploitation of victims). This could potentially be accomplished by granting migrant workers a grace period, allotting them time to quit, and time to look around for new employment opportunities without losing their status or being deported. See, e.g., *id.* at 114 (“[A]llowing workers to terminate their employment contracts at will without financial or other penalty.”).

who do speak up about current employment violations, so that these victims can speak up without the fear of deportation.³¹⁰

Recruitment practices contribute to the fear of being unable to pay off the insurmountable debt, as well as the fear of deportation.³¹¹ As detailed earlier in this Note, through the use of predatory and deceptive recruitment practices, recruiters bringing workers into the United States have been known to misrepresent information regarding fees, salaries, working conditions, and even the legitimacy of a migrant worker's travel documentation.³¹² As a result, these workers are at an even higher risk of deportation because they may not be here legally.³¹³ Or, they experience great fear in not being able to pay back their debt.³¹⁴ Therefore, to best combat this issue, there should be further regulation of recruitment practices to ensure that recruitment practices are fair, as was recommended in the Business Supply Chains Transparency Act.³¹⁵ By breaking down the sources, which generate the fear that suppresses these workers, and combining it with more avenues for them to exert control over their own lives through collective bargaining, the exploitation of these victims will largely diminish.³¹⁶

V. CONCLUSION

Human trafficking is a widespread issue and is present in numerous industries that affect many individuals' everyday lives.³¹⁷ Forced labor affects the food people eat, the clothes people wear, the technology on which people rely, and so on.³¹⁸ While not the only victims of these practices, migrant workers are particularly susceptible to these abuses due to predatory recruitment practices and conditions in their home countries, which coerce them into these conditions.³¹⁹ There are several factors that perpetuate the continuity of these practices, such as the demand for cheap labor, the fear of deportation, and the insurmountable

310. See, e.g., *id.* at 115-16 (demonstrating that measures need to be taken to help these workers obtain more mobility in their work situations).

311. See Farbenblum & Nolan, *supra* note 51, at 7; *Bonded Labor*, *supra* note 49.

312. See Farbenblum & Nolan, *supra* note 51, at 7, 9-10.

313. *Id.* at 10.

314. *Bonded Labor*, *supra* note 49 (risking the debt being passed off to their families).

315. Business Supply Chain Transparency on Trafficking and Slavery Act of 2020, H.R. 6279, 116th Cong. § (3)(s)(1)(E)(iv) (2020).

316. See Shamir, *supra* note 23, 107-08.

317. See *supra* notes 18-21 and accompanying text; *supra* notes 272-73.

318. See *supra* notes 272-73 (demonstrating the variety of industries in which labor trafficking tactics are prevalent).

319. See *supra* Part II.B.

debt that is borne by many migrant workers.³²⁰ The current business regulations in the United States are also a key player in the victimization of these workers, as they make it extremely difficult to identify perpetrators.³²¹ This is due to the ease and convenience of establishing anonymous companies in the United States, allowing these individuals to hide their identities and create complicated webs.³²²

In order to best combat the factors that lead to the perpetuation of forced labor practices, a few strategies must be employed.³²³ First, there must be more transparency within the current business regulations.³²⁴ This can be accomplished through the registrations of beneficial ownership information, both in small and large companies located in industries that are commonly plagued by these abusive practices to help law enforcement to best identify the parties responsible for abuses.³²⁵ Second, it is important to break down the fear factors that coerce these workers into acquiescing to their conditions.³²⁶ This can be accomplished by amending the NLRA to ensure that workers in all industries have the right to unionize.³²⁷ This, in combination with amending the current guest worker regimes, as well as monitoring recruitment practices, can help to ensure that these workers are afforded bargaining power in their workplaces.³²⁸ In effect, this bargaining power can help to ensure that workers are not left in constant fear and that their jobs or legal status are not constantly on the line.³²⁹ Due to how widespread this issue is and the number of factors that perpetuate this industry, the best approach in dismantling human trafficking is through a multifaceted approach.³³⁰

320. *See supra* Part III.B.
321. *See supra* Part III.A.
322. *See supra* Part III.A.
323. *See supra* Part IV.
324. *See supra* Part IV.A.
325. *See supra* Part IV.A.
326. *See supra* Part IV.B.
327. *See supra* notes 299-304 and accompanying text.
328. *See supra* notes 305-16 and accompanying text.
329. *See supra* notes 305-16 and accompanying text.
330. *See supra* Part I.

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