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DEVELOPMENT IN THE DEBATE OVER DIPLOMATIC IMMUNITY FOR DIPLOMATS WHO ENSLAVE DOMESTIC WORKERS

Usama Kahf

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I. INTRODUCTION

On December 23, 2008, President George W. Bush signed into law the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.[1] This Act was hailed by human rights advocates as a great stride "towards preventing the abuse, exploitation and trafficking of domestic workers employed by foreign diplomats in the United States."[2] Acknowledging the particular vulnerability of these workers, the law contains specific provisions to enhance their protection and sanction their employers for exploiting the situation. These provisions seek to ensure that domestic workers are made aware of their rights in this country directly by consular officers who will be trained on U.S. labor standards and separately from their employers.[3] It also requires a diplomat to have a contract with a domestic worker containing conditions of employment.[4] It mandates that the State Department suspend the issuance of visas to a particular mission when the department receives credible evidence that a

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[1] Fred Lucas, *Sex Trafficking Law Expands Federal Authority*, CNSNEWS.COM (Dec. 24, 2008), http://www.cnsnews.com/Public/content/article.aspx?RsrcID=41249; *Migration Committee Chairman Lauds Enactment of Anti-Trafficking Legislation*, U.S. FED. NEWS (Dec. 23, 2008), 2008 WLNR 24646261.

[2] Press Release, Am. Civil Liberties Union, ACLU Applauds Passage of Human Trafficking Legislation (Dec. 11, 2007), http://www.aclu.org/womensrights/employ/ 38058prs20081211.html.

[3] *Id*.

[4] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub.L. 110-457, § 203(b), 122 Stat 5044, 5058 (codified at 8 U.S.C. § 1375c(b) (2009)) [hereinafter "Wilberforce Act"].

worker was exploited or abused and the mission tolerated the conduct.[5] It further institutes mandatory recordkeeping on diplomats and domestic workers by the State Department, including allegations of trafficking or abuse.[6] The legislation also requires that several compensation approaches be studied and evaluated so that workers may receive appropriate compensation when their employment contracts are violated.[7]

For a long time, diplomatic immunity has prevented any prosecution of foreign diplomats who enslave domestic workers in their homes.[8] It has given power to abusers, rendering the servants helpless in the face of their untouchable masters. This new law is a reaction to this historic and persistent abuse. However, the law lacks any teeth because it fails to solve the underlying problem of absolute diplomatic immunity. It gives the Secretary of State the power to refuse to issue A-3 and G-5 visas under certain circumstances, but it does not suspend or limit the applicability of diplomatic immunity for diplomats suspected of trafficking. The law does not provide law enforcement or prosecutors any tools to criminally prosecute diplomats who enslave their workers. Nevertheless, what the law lacks in enforcement, it compensates for in prevention. Though the only recourse against current abusers is deportation, the law establishes

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[5] Wilberforce Act of 2008, Pub.L. 110-457, § 203(a), 122 Stat 5044, 5057 (codified at 8 U.S.C. § 1375c(a) (2009)).

[6] *Id*.

[7] Wilberforce Act of 2008, Pub.L. 110-457, § 203(d), 122 Stat 5044, 5059 (codified at 8 U.S.C. § 1375c(d) (2009)).

[8] *See* Amy Tai, *Unlocking the Doors to Justice: Protecting the Rights and Remedies of Domestic Workers in the Face of Diplomatic Immunity*, 16 AM. U. J. GENDER SOC. POL'Y & L. 175, 178-79 (2007).

a mechanism that can be used to prevent domestic workers from ending up in conditions of slavery by refusing to issue them visas in the first place. This paper will examine the provisions of the new law that pertain to foreign diplomats, explore the prospects of enforcement and prevention under these provisions, and identify areas for improvement.

Part II charts out the background of human trafficking in the United States with a focus on the trafficking of domestic workers and diplomatic immunity as a bar to criminal and civil prosecution of traffickers. Part III discusses the latest reauthorization of the Trafficking Victims Protection Act, and examines the new provisions of the William Wilberforce Act aimed at preventing the trafficking of domestic workers by diplomats. Part IV critiques these new provisions by analyzing the advantages and disadvantages of the new anti-trafficking tools and the extent of their potential effectiveness.

II. BACKGROUND: TRAFFICKING FOR "WORK" IN THE HOME

A. Human Trafficking in the United States

Trafficking in persons is "the modern day form of slavery."[9] Trafficking does not necessarily involve the crossing of international borders, and if it does, such crossing is often legal, i.e., with proper visas and immigration paperwork. What makes trafficking a form of slavery are the slave-like conditions that a person ends up in—inability to leave, confiscation of passports and immigration documents, physical or psychological abuse, among other conditions.[10] Kidnapping and forcible abduction are too risky for traffickers, so they resort to

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[9] Stephanie Richard, Note, *State Legislation and Human Trafficking: Helpful or Harmful?*, 38 U. MICH. J.L. REFORM 447, 447 (2005).

[10] *See* Margaret Murphy, *Modern Day Slavery: The Trafficking of Women to the United States*, 9 BUFF. WOMEN'S L.J. 11, 13 (2000).

preying on impoverished and vulnerable individuals who lack knowledge of the terms and conditions they will face. According to the State Department Trafficking in Persons Office, about 17,500 people are trafficked into the United States each year; this number is part of the worldwide total of 800,000 trafficked across international borders, half of whom are minors and 80 percent of whom are women.[11] The Department of Justice reports that it prosecuted 156 trafficking cases, secured 342 convictions and rescued more than 1,400 victims from 2001 to 2007.[12] Among an estimated 14,000-17,000 victims trafficked into the U.S. each year, about 27% are trafficked for domestic service.[13] Trafficked domestic workers are often lured by fraudulent promises of great jobs and great pay.[14] Once they legally enter the United States, the traffickers subject them to working conditions to which they never would have consented.[15]

B. Legal Efforts Against Trafficking of Domestic Workers

Since its enactment in 2000, the Victims of Trafficking and Violence Protection Act had outlawed involuntary servitude and other crimes of human trafficking,[16] and yet diplomatic

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[11] Lucas, *supra*, note 1.

[12] *Id*.

[13] Stephen Lendman, *Modern Slavery*, PALESTINE CHRON. (Mar. 6, 2009), 2009 WLNR 4361383.

[14] Kevin Sieff, *New Law Expected to Protect Migrant Workers*, BROWNSVILLE HERALD-TX (Dec. 24, 2008), 2008 WLNR 24659712.

[15] *Developments in the Law-Jobs and Borders: II. The Trafficking Victims Protection Act*, 118 HARV. L. REV. 2180, 2184-85 (2005).

[16] Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (Oct. 28, 2000); Free the Slaves, Washington, D.C., and the Human Rights Center of the

immunity has not only barred prosecutions, but also eliminated any government incentive to rescue victims and investigate or even expel the offending diplomats.[17] The victims' civil remedies under the Trafficking Victims Protection Reauthorization Act of 2003 are available against all perpetrators of trafficking except diplomats.[18] Victims cannot even sue for unpaid wages. The good news for victims, however, is that victims of trafficking by diplomats immune from prosecution can still obtain T-visas.[19] The sad irony in all this is that some of these diplomats who enslave workers are actually officials of international organizations "philosophically dedicated to combating human rights violations."[20] The story of Juana Condori

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University of California, Berkeley, *Hidden Slaves: Forced Labor in the United States*, 23 BERKELEY J. INT'L L. 47, 67 (2005).

[17] Nidhi Kumar, Note, *Reinforcing Thirteenth and Fourteenth Amendment Principles in the Twenty-First Century: How to Punish Today's Masters and Compensate Their Immigrant Slaves*, 58 RUTGERS L. REV. 303, 306 (2005) ("[T]he exemption of foreign officials from criminal suit is a severe obstacle in redressing the grievances of immigrant workers in the United States")

[18] Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (Dec. 19, 2003).

[19] *See, e.g.*, Elizabeth Keyes, *Casa of Maryland and the Battle Regarding Human Trafficking and Domestic Workers' Rights*, 7 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 14, 16 (2007) ("CASA has successfully applied for T-Visas for all of the workers it has identified as victims of trafficking.").

[20] Tai, *supra* note 8, at 1142, 1161.

is a good example.[21] Condori is a Bolivian woman who legally entered the U.S. to work for a human rights attorney employed by the Organization of American States.[22] When a friend of her employer's family raped her, her employer offered her no assistance and refused to take her to see a doctor.[23]

Powerful economic and legal forces have ensured that domestic workers remain exploited.[24] Domestic workers with A-3 or G-5 visas are obliged or tied to one employer no matter how abusive.[25] If they leave their employment situation, they lose their immigration status and can be deported.[26] This is one of the tools the law supplies to abusive employers who threaten their domestic workers with deportation. Additionally, U.S. labor and employment law explicitly excludes migrant domestic workers from many of the protections available to other

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[21] Abid Aslam, *Plight of Domestic Workers Wins Congressional Ear*, INTERPRESS SERV. (Feb. 16, 2000), http://www.globalexchange.org/campaigns/wbimf/ ips021600.html.pf.

[22] *Id*.

[23] *Id*.

[24] Margaret Satterthwaite, *Beyond Nannygate: Using Human Rights Law to Empower Migrant Domestic Workers in the Inter-American System*, CTR. FOR HUMAN RIGHTS & GLOBAL JUSTICE – N.Y.U. LAW SCHOOL, at 5 (2006), *available at* http://www.chrgj.org/publications/docs/wp/ WPS_NYU_CHRGJ_Satterthwaite_Final.pdf (last visited May 12, 2009).

[25] Lendman, supra note 13; Krista Friedrich, *Statutes of Liberty?: Seeking Justice Under United States Law When Diplomats Traffic in Persons*, 72 BROOK. L. REV. 1139, 1155 (2007).

[26] Friedrich, *supra* note 25, at 1155.

workers.[27] This exclusion is based on the legal fiction that private homes cannot be considered workplaces. Live-in domestic workers have no protected right to overtime pay and no right to organize, strike and bargain collectively.[28] They also lack any OSHA protection against sexual harassment in the workplace because OSHA's safeguards apply only to employers with 15 or more workers.[29] This lack of protection under fair labor laws is compounded by the politically-motivated focus of U.S. policymakers and prosecutors on trafficking for sexual exploitation over other types of trafficking.[30]

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[27] Satterthwaite, *supra* note 24, at 5; National Labor Relations Act, 29 U.S.C. § 152(3) (2009) ("The term 'employee' shall include any employee . . . but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home."); Kevin Shawn Hsu, *Masters and Servants in America: The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the Purposes of Domestic Servitude*, 14 GEO. J. ON POVERTY L. & POL'Y 489, 499-500 (2007).

[28] Lendman, *supra* note 13.

[29] *Id*.

[30] Tai, *supra* note 8, at 1146 (citing Elzbieta M. Gozdziak & Elizabeth A. Collett, *Research on Human Trafficking in North America: A Review of Literature*, *in* INTERNATIONAL ORGANIZATION FOR MIGRATION, DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY 116, 117 (2005)).

C. Trafficking of Domestic Workers by Diplomats

Social service organizations estimate that one-third of their domestic servitude cases implicate diplomats with immunity.[31] According to its president, the Spanish Coalition Center in Washington, D.C. has seen approximately a thousand cases of domestic worker exploitation by employers with immunity since its inception in 1967.[32] In its July 2008 report on trafficking by diplomats, the Government Accountability Office ("GAO") identified only 42 cases from 2000 to 2008 of household workers with A-3 or G-5 visas who were allegedly abused by foreign diplomats with immunity.[33] The GAO suggests that the total number is likely much higher due to four factors: household workers' fear of contacting law enforcement, nongovernmental organizations' protection of victim confidentiality, limited information on some cases handled by the U.S. government, and federal agencies' challenges identifying cases.[34]

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[31] Friedrich, *supra* note 25, at 1160 (citing Lena H. Sun, *"Modern-Day Slavery" Prompts Rescue Efforts; Groups Target Abuse of Foreign Maids, Nannies*, WASH. POST, May 3, 2004, at A1).

[32] Aslam, *supra* note 21 (quoting the head of the Spanish Catholic Center).

[33] U.S. GOV'T ACCOUNTABILITY OFFICE, REPORT TO S. JUDICIARY COMMITTEE: U.S. GOVERNMENT'S EFFORTS TO ADDRESS ALLEGED ABUSE OF HOUSEHOLD WORKERS BY FOREIGN DIPLOMATS WITH IMMUNITY COULD BE STRENGTHENED (July 2008), http://www.gao.gov/new.items/d08892.pdf (last visited May 12, 2009).

[34] *Id*; *see also* Anthony M. Destefano, *Abused by Diplomats?*, NEWSDAY (July 28, 2008), at A16, 2008 WLNR 14037305; Anthony M. DeStefano, *Study: Diplomats Abuse Domestic Help, Immunity Shields Envoys From Charges*, CHI. TRIB. (July 29, 2008), at 3, 2008 WLNR 14104004.

Diplomats are not all to blame for the trafficking of domestic workers, but they do represent the one gray area in which traffickers are legally empowered to take advantage of their domestic servants, refuse to compensate them for their work, and even subject them to deplorable conditions of slavery. The victims are on their own; besides a few nonprofit organizations, nobody cares for these victims and their abusers are rarely even given a slap on the wrist.[35] Employees of international organizations, such as the United Nations and the International Monetary Fund, ambassadors, foreign diplomats, consular officers residing in the United States often bring with them their own nannies, chefs and household servants.[36] Around 2,000 of these domestic workers enter the U.S. legally each year on A-3 and G-5 visas applied for and secured by their employers.[37]

Since the actual entry and immigration status of these workers is legal, immigration officials have no incentive to care about their work and living conditions so long as they are not deportable. Domestic workers are particularly susceptible to abuse because domestic jobs are less visible, less formal, and subject to fewer legal protections.[38] Diplomats and officials of international organizations traffic domestic workers with relative ease because diplomats have easy access to special A-3 and G-5 visas for their servants and domestic employees.[39] Many

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[35] As of 2001, the U.N. had yet to discipline any employee for mistreatment of a G-5 domestic worker. *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, HUMAN RIGHTS WATCH, June 2001, at 38 [hereinafter *Hidden in the Home*].

[36] Friedrich, *supra* note 25, at 1154-55.

[37] Murphy, supra note 10, at 13; Destefano, *supra* note 34.

[38] Tai, *supra* note 8, at 1145-46.

[39] *Id*.

employers coercively or fraudulently induce workers to travel to the U.S. and then subject their servants upon arrival to abusive, unfair and inhumane working conditions "akin to slavery."[40] While technically this type of trafficking is illegal, it has gone unpunished and undeterred as long as the perpetrators have absolute diplomatic immunity from both criminal and civil liability. When non-diplomats subject domestic servants to exactly the same slave-like conditions, the non-diplomats are prosecuted and the victims get some sort of redress or justice.[41]

The typical case involves a worker forced to work long hours with little to no pay, threatened with deportation, verbally abused and humiliated, and never allowed to leave their employer's home without supervision.[42] Cases reported over the years have involved abuses like assault and battery, including physical beatings and threats of serious harm; limited freedom of movement, including arbitrary and enforced loss of liberty by use of locks, bars, confiscation of

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[40] A. Yasmine Rassam, *International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach*, 23 PENN ST. INT'L L. REV. 809, 824 (2005) (describing the "fundamental characteristics of ownership-total dominion over one's autonomy through the use of coercion for purposes of economic/sexual exploitation" used to identify "modern forms of slavery").

[41] *See, e.g.*, NAT'L PUB. RADIO, *All Things Considered: Diplomatic Abuse of Servants Hard to Prosecute* (Mar. 1, 2007), 2007 WLNR 3997847 (reporting story of American couple prosecuted for subjecting a domestic worker to conditions of slavery).

[42] *Hidden in the Home*, supra note 35, at 1, 13 (discussing various tactics that employers use to confine domestic workers to their home, including withholding passports, limiting or denying workers the right to leave their home, forbidding workers to speak with strangers, and distorting U.S. law and culture so that workers are afraid to leave the house).

passports and travel documents, chains, and threats of retaliation against other family members; health and safety hazards, including unhealthy sleeping situations in basements, utility rooms, or other unsanitary places; unsafe working conditions endangering health; denial of food or proper nutrition; and refusal to provide medical care and having to work when ill; long hours, little rest, and low pay; privacy invasions; psychological abuse, often highlighting employer superiority and worker inferiority to enforce control and render employees powerless; other abuses include insults, food restrictions, denying proper clothing, and various other demeaning practices.[43]

D. Diplomatic Immunity Bar to Civil and Criminal Prosecution of Traffickers

The Vienna Convention on Diplomatic Relations, which was ratified by the United States, requires signatory nations to grant immunity to diplomats, ambassadors and officials of international organizations residing within the signatory country's borders.[44] There are three levels of diplomatic immunity in the U.S.[45] First, absolute diplomatic immunity, or full immunity "from the criminal, civil, and administrative jurisdiction of the United States" extends to diplomatic agents, diplomatic-level staff of missions to international organizations such as the U.N. and the I.M.F., and their families.[46] Full immunity means these individuals cannot be arrested and do not have to answer any civil complaint (though if sued, they have to invoke their immunity or else risk waiving it).[47] Second, functional immunity protects consular officers and

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[43] Lendman, *supra* note 13.

[44] *See* William G. Morris, *Constitutional Solutions to the Problem of Diplomatic Crime and Immunity*, 36 HOFSTRA L. REV. 601, 601-05 (2007).

[45] Friedrich, *supra* note 25, at 1157-60.

[46] *Id*. at 1157 (citing RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §§ 464, 470 (1987)).

[47] *Id*. at 1157-58.

most employees of international organizations from criminal and civil liability for any act performed within the scope of their official capacity.[48] Third, limited absolute immunity fully protects members of the technical and administrative staff of diplomatic missions and their family members from only criminal liability; they only enjoy immunity from civil or administrative jurisdiction for acts related to the performance of their job duties.[49]

When a defendant asserts diplomatic immunity, the State Department certifies to the court the diplomatic status of the defendant and the level of immunity he or she enjoys.[50] The State Department can request a waiver from a diplomat's home country, which has the power to waive a diplomat's immunity because this kind of immunity is a right of the home state and not the individual.[51] If the sending country refuses to waive its diplomat's immunity and the diplomat is accused of committing serious crimes, State Department policy states that the diplomat is not to be permitted to remain in the U.S.[52] Though reports of diplomats enslaving their domestic servants have emerged for decades, the first and possibly last diplomat to be

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[48] *Id*. at 1158 (citing Veronica L. Maginnis, Note, *Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations*, 28 BROOK. J. INT'L L. 989, 1012-13 (2003)).

[49] *Id*.

[50] *Id*. at 1158-59.

[51] *Id*.

[52] *Id*.

deported (or asked to leave or be recalled by the sending country) for abusing a domestic worker in the U.S. was a Kuwaiti diplomat in November, 2007.[53]

State Department policy and actual practice seem to have no correlation. The State Department does not request waivers of diplomatic immunity of diplomats suspected of trafficking and enslaving domestic workers.[54] This is actually not surprising; the very existence of diplomatic immunity either prevents or discourages law enforcement from investigating diplomats for trafficking, and this lack of investigation means the State Department does not even find out about potential trafficking by diplomats and has no reason to request waivers of immunity. "In the politically delicate arena of diplomatic immunity, each agency involved may shift responsibility onto another, until it is no longer clear at which point in the process a breakdown occurred."[55]

As for civil liability, a trafficking victim can technically sue employers with limited diplomatic immunity because the trafficking acts would not be within the scope of the defendant's job functions.[56] Thus, a domestic worker employed by a consular official has at least some opportunity to adjudicate claims against her employer even though the employer would be immune from criminal prosecution.[57] For example, in *Park v. Shin*,[58] the Ninth Circuit

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[53] NAT'L PUB. RADIO, *NPR Morning Edition: U.S. Ousts Kuwaiti Diplomat, Investigates Tanzania* (Nov. 6, 2007), 2007 WLNR 21923187.

[54] Friedrich, *supra* note 25, at 1159-60.

[55] *Id*. at 1160.

[56] *Id*. at 1158.

[57] Tai, *supra* note 8, at 187.

[58] 313 F.3d 1138 (9th Cir. 2002).

found that the consular official was not performing his consular functions when he hired and supervised Park as a domestic servant.[59] The court applied this two-prong test to determine the scope of the consular official's immunity: (1) "whether the functions asserted are 'legitimate consular functions;'" and (2) whether the acts performed by the consular officer are in the scope of his legitimate consular functions.[60] However, even if cases like *Park* are successfully litigated, the chances of recovering any damages are little to none.[61] These defendants are not permanent residents; most or all of their assets are usually back in their home country, and it is the customary practice of international organizations that employ these types of defendants to assert immunity from garnishment orders against their employees' salaries.[62]

E. Case Law on Exceptions to Diplomatic Immunity

One exception to diplomatic immunity relevant to domestic worker cases is the commercial activities exception.[63] Diplomatic immunity does not extend to a diplomat's private commercial activities.[64] If the diplomat is running a business on the side, for example, the diplomat is not immune from liability for actions relating to that business. Unfortunately, the courts have not been receptive to extending this exception to the act of making a contract with

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[59] *Id*. at 1145-46 (holding that the consular officer hired the domestic worker as a personal employee, so he is not protected by any immunity privileges).

[60] *Id*. at 1141-43.

[61] Friedrich, *supra* note 25, at 1158.

[62] *Id*.

[63] *See* Vienna Convention on Diplomatic Relations art. 31(1), Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95 [hereinafter VCDR]; *see also* Tai, *supra* note 8, at 185-86.

[64] *Id*.

and employing domestic workers.[65] The Vienna Convention on Diplomatic Relations does not define commercial activity explicitly, and instead provides a non-exhaustive list of the official functions of diplomats.[66] This list does not explicitly or implicitly include the employment of a domestic worker as an official function. However, U.S. courts have decided to follow the guidance of the State Department and narrowly interpret the "commercial activity" exception to include activities that relate "only to trade or business activity engaged in for personal profit."[67] This exception does not include "occasional service contracts" that are "incidental to the daily life of the diplomat."[68]

In *Tabion v. Mufti*,[69] the Fourth Circuit applied this narrow interpretation and dismissed on diplomatic immunity grounds a lawsuit brought a domestic worker from the Philippines against a Jordanian diplomat she worked for in Washington, D.C.[70] The worker, Corazon Tabion, had sued the diplomat, Faris Mufti, for false imprisonment and fair labor violations,

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[65] *See* Tai, *supra* note 8, at 185-90.

[66] *See* VCDR, supra note 64, art. 31(1); U.N. Conference on Diplomatic Intercourse & Immunities, 36th mtg. at ¶¶ 3-4, U.N. Doc. A/Conf.20/14 (Mar. 30, 1961) (discussing whether investing in a company is a commercial activity, but not revealing a definitive answer).

[67] Tabion v. Mufti, 73 F.3d 535, 538-39 (4th Cir. 1996).

[68] *Id*. at 537.

[69] 73 F.3d 535 (4th Cir. 1996).

[70] *Id*. at 539 (explaining that the court's decision to dismiss the case, despite its unfairness, reflects policy choices that Congress and the Executive Branch have already determined in balancing the purpose of diplomatic immunity and the private interest of the aggrieved party).

among other claims.[71] The court held that employment of household workers is not a commercial activity.[72] The same holding was affirmed in later cases and several lawsuits brought by domestic workers against their former employers have been dismissed based on the defendants' full diplomatic immunity.[73]

III. WILLIAM WILBERFORCE ACT OF 2008

A. Overview of the Act, Its Passage, and Brief Legislative History

President George W. Bush signed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (the "Wilberforce Act") into law on December 23, 2008.[74] The Wilberforce Act had been passed by both chambers of Congress without any debate. Perhaps legislators assumed there was no need for debate because of the odd bedfellow collection of political forces that joined to support this bill.[75] Evangelical Christians, social conservatives, feminist groups and human rights organization were all on the same side![76] It was not just the prevalence of modern forms of slavery that invigorated these groups; the sexual exploitation of trafficked women and children seemed to provide the most compelling impetus

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[71] *Id*. at 535.

[72] *Id*. at 537-39.

[73] *See* Tai, *supra* note 8, at 186.

[74] *Bush Signs Anti-Trafficking Legislation*, NAT'L CATH. REP. (Jan. 9, 2009), at 15, 2009 WLNR 1376394.

[75] Lucas, *supra* note 1.

[76] *Id*.

for action on this legislation.[77] The new law is named after William Wilberforce, an evangelical Christian member of the British parliament in the early 19th century who led the effort to end the slave trade in Britain.[78] In addition to reauthorizing funds from the initial 2000 TVPA for the fiscal years of 2008-2011, the Wilberforce Act also creates new federal crimes, higher penalties for existing crimes, and new law enforcement tools and broader authority to prosecute trafficking crimes.[79] As one person who attended the bill signing ceremony told a reporter, "It will alleviate a great deal of human suffering and will have a tremendous impact in terms of providing very effective tools for government prosecutors to prosecute those who traffic in human flesh. This is bad news for a lot of really bad people."[80]

While this paper focuses only on the provisions of the Wilberforce Act that relate to the trafficking of domestic workers by diplomats, this new law instituted some significant changes worth mentioning. The law expands the jurisdiction of the Department of Justice into sex crimes that had previously been prosecuted at the state or local level.[81] It also provides state and local law enforcement with guidelines or model policies for prosecuting trafficking cases.[82] The Act provides for a ten to twenty year sentence for "brothel landlords" who use minors who are also

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[77] *Id*. (quoting president of Southern Baptist Ethics & Religious Liberty Comm'n: "There are arguably more slaves in the world today than at any time in the last 300 years—and *most* of them are being trafficked for *sexual* purposes.") (emphasis added).

[78] *Id*.

[79] *Id*.

[80] *Id*.

[81] *Id*.

[82] *Id*.

victims of human trafficking, whether or not the defendant actually knew the minors were trafficking victims.[83] The Act also imposes harsher sentences for defendants convicted of "alien harboring" for the purpose of prostitution.[84] The Act creates the new federal crimes of obstructing the investigation of human trafficking, conspiring to traffic humans, and receiving financial benefit from trafficking.[85] As a change in remedies for victims, the Act also requires that funds seized from traffickers will not go to the federal treasury, but instead to help victims.[86]

The bill, introduced by California Representative Howard Berman, overwhelmingly passed in the House of Representatives on December 12, 2008, and by unanimous consent in the Senate on the same day.[87] Representative Carolyn B. Maloney, co-chair of the House Human Trafficking Caucus, made this statement: "The House and Senate have again shown our commitment to ending this form of modern-day slavery by passing this important legislation."[88] The final legislation signed by President Bush closely resembled the House version, which was supported by a coalition of groups, including Stop Violence Against Women, the American Civil Liberties Union and the Polaris Project.[89] Some of these groups considered the Senate version to

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[83] *Id*.

[84] *Id*.

[85] *Id*.

[86] *Id*.

[87] *Id*. *See also* Press Release, Stop Violence Against Women, Congress Passes Trafficking Victims Protection Reauthorization Act of 2008 (Dec. 22, 2008), http://www.stopvaw.org/U_S_Trafficking_Victims_Protection_Bill_Ready_for_President_Bush_s_Signature.html.

[88] Lucas, *supra* note 1.

[89] *Id*.

be too weak.[90] However, the Justice Department argued in favor of the Senate version, suggesting that the House measure put too many limitations on state and local prosecutors.[91] The Justice Department cited concerns about the House version by the National Association of District Attorneys, National Association of Attorneys General and the Fraternal Order of Police.[92] The National Association of District Attorneys stated its position in a letter to the Senate Judiciary Committee: "Because prostitution-related crimes are of a substantially local nature, states and localities have historically and effectively prosecuted these types of crimes. Federalization of these types of crimes is ill-advised as these crimes have minimal federal contact . . . [and] would divert federal resources from human trafficking cases involving fraud, coercion or force, and unnecessarily involve all levels of government."[93]

B. New Provisions To Prevent Trafficking of Domestic Workers by Diplomats

There are six key provisions in the Wilberforce Act that pertain to domestic workers employed by diplomats in the United States. Section 203 of the Wilberforce Act is encouragingly entitled "Protections, Remedies and Limitations on Issuance for A-3 and G-5

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[90] *Id*.

[91] *Id*.

[92] *Id*. *See also* Jessica Malmgren, *Sex Worker Measure Splits DOJ, Baptists*, THE HILL.COM (Apr. 7, 2008), http://thehill.com/business--lobby/sex-worker-measure-splits-doj-baptists-2008-04-07.html.

[93] Lucas, *supra* note 1.

Visas."[94] Section 202 of the Act also requires consular officers to inform A-3 and G-5 visa applicants of their rights before they enter the U.S.

1. Power to Suspend Issuance of A-3 or G-5 Visas

First, section 203 *requires* the Secretary of State to suspend, but for such period as the Secretary determines necessary, the issuance of A-3or G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that (1) one or more employees of such mission or international organization have abused or exploited one or more A-3 or G-5 visa holder, and (2) that the diplomatic mission or international organization tolerated such conduct.[95] One factor that may influence the Secretary's discretion over how long to keep the suspension in place is affirmative action by the international organization or mission to prevent or abate the abuse (such as recalling abusers to their home country or disciplining employees). The Secretary may start to issue A-3 or G-5 visas again if the Secretary determines and reports to the appropriate congressional committees that the mission or international organization has put a mechanism in place to ensure that the previously reported kind of abuse or exploitation would not reoccur or be inflicted upon A-3 or G-5 visa holders employed by employees of the mission or organization.[96]

2. Contract Requirements

Second, section 203 prohibits the Secretary of State from issuing an A-3 or G-5 visa unless the applicant is employed, or has signed a contract to be employed by an officer of a

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[94] Wilberforce Act of 2008, Pub.L. 110-457, § 203, 122 Stat 5044, 5058 (codified at 8 U.S.C. § 1375c (2009)).

[95] 8 U.S.C. § 1375c(a)(2) (2009).

[96] 8 U.S.C. § 1375c(a)(3).

diplomatic mission or consular post for an A-3 visa, or by an employee of an international organization for a G-5 visa.[97] The Secretary may not issue or renew an A-3 or G-5 visa unless (a) the applicant has executed a contract with the employer or prospective employer containing certain provisions set forth in another subsection; and (b) a consular officer has conducted a personal interview with the applicant *outside* the presence of the employer or any recruitment agent in which the officer reviewed the terms of the contract and the provisions of the pamphlet required under section 202.[98] Consular officers who conduct these interviews will be required to undergo training on U.S. fair labor standards and anti-trafficking laws.[99] The mandatory contract between the employer and domestic worker (A-3 or G-5 visa applicant) must include (a) an agreement by the employer to abide by all federal, state, and local laws in the U.S.; (b) information on the frequency and form of payment, work duties, weekly work hours, holidays, sick days, and vacation days; and (c) an agreement by the employer not to withhold the passport, employment contract, or other personal property of the employee.[100]

3. Mandatory Recordkeeping

Third, section 203 of the Act directs the Secretary of State to maintain records on the presence of nonimmigrants holding an A-3 or G-5 visa in the U.S., including (a) information about when the domestic worker entered and permanently exited the U.S.; (b) the official title,

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[97] 8 U.S.C. § 1375c(a)(1).

[98] 8 U.S.C. § 1375c(b)(1).

[99] 8 U.S.C. § 1375c(b)(3).

[100] 8 U.S.C. § 1375c(b)(2).

contact information, and immunity level of the employer; and (c) information regarding any allegations of employer abuse received by the State Department.[101]

4. Protection Against Deportation and Ability to Work in the U.S. During Civil Action Against Former Employers

Fourth, Section 203 provides A-3 and G-5 visa holders some protection against deportation while they seek legal redress against former employers.[102] If an A-3 or G-5 visa holder files a civil action alleging a violation of any term of their employment contract, or a violation of any federal, state or local law governing the terms and conditions of their employment, the Attorney General and Secretary of Homeland Security must permit that person to remain legally in the U.S. for time sufficient to fully and effectively participate in all legal proceedings related to the lawsuit.[103] The litigant would also be authorized to work in the U.S. for the duration of the lawsuit.[104] There are two exceptions to this automatic bar on deportation. First, the A-3 or G-5 visa holder may be deported before the conclusion of the legal proceedings related to the lawsuit if the person is either inadmissible, or otherwise deportable under the Immigration and Nationality Act.[105] Second, the A-3 or G-5 visa holder may be deported if the Secretary of Homeland Security, after consultation with the Attorney General, determines that the litigant has failed to exercise due diligence in pursuing the civil suit.[106]

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[101] 8 U.S.C. § 1375c(b)(4).

[102] 8 U.S.C. § 1375c(c)(1).

[103] *Id*.

[104] 8 U.S.C. § 1375c(c)(2).

[105] 8 U.S.C. § 1375c(c)(1).

[106] *Id*.

5. Studies and Reports on Domestic Worker Protections

Fifth, Section 203 also directs the Secretary of State to conduct certain studies and report back to congress on the trafficking of domestic workers by diplomats, the effectiveness of the new prevention tools, and the feasibility of government oversight of the working conditions of A-3 and G-5 visa holders.[107] The Secretary is required to submit an investigative report on the implementation of Section 203 to the appropriate congressional committees every two years for the following ten years.[108] This report will include (a) an assessment of the actions taken by the Department of State and the Department of Justice to investigate allegations of trafficking or abuse of domestic workers holding an A-3 or G-5 visa; and (b) the results of such investigations.[109] Additionally, the Secretary will be submitting a report on the feasibility of (a) establishing a system to monitor the treatment of A-3 and G-5 visa holders in the U.S.; and (b) a range of compensation approaches, such as a bond program, compensation fund, or insurance scheme, to ensure that these domestic workers receive appropriate compensation if their employers violate the terms of their employment contracts.[110] The report will also include an evaluation of each compensation approach and its process for (i) adjudicating claims of rights

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[107] 8 U.S.C. § 1375c(d).

[108] *Id*. The term ''appropriate congressional committees'' means the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives; and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate. 8 U.S.C. § 1375c(f).

[109] 8 U.S.C. § 1375c(d)(1).

[110] 8 U.S.C. § 1375c(d)(2).

violations; (ii) determining the level of compensation; and (iii) administering the program, fund, or scheme.[111]

6. Educating Domestic Workers of Their Rights

Finally, Section 202 of the Wilberforce Act directs the Secretary of State to create and make available (including in translation) an information pamphlet on legal rights and resources for aliens applying for employment-based or education-based nonimmigrant visas.[112] This pamphlet would be given to A-3 and G-5 visa applicants since these types of visas are employment-based. The Secretary of State is to create this pamphlet in consultation with the Secretary of Homeland Security, Attorney General, and the Secretary of Labor, as well as with "nongovernmental organizations with expertise on the legal rights of workers and victims of severe forms of trafficking in persons."[113] The pamphlet will include information on: (1) nonimmigrant visa application processes; (2) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the U.S.; (3) legal rights and services for trafficking victims and worker exploitation in the U.S.; (4) foreign labor contracting requirements; and (5) nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation.[114]

Information on the legal rights of trafficking victims will include information on (a) the right of access to immigrant and labor rights groups; (b) the right to seek redress in U.S. courts; (c) the right to report abuse without retaliation; (d) the right of the domestic worker to relinquish

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[111] *Id*.

[112] 8 U.S.C. § 1375b.

[113] 8 U.S.C. § 1375b(a).

[114] 8 U.S.C. § 1375b(b).

possession of his or her passport to his or her employer; (e) the requirement of an employment contract between the employer and the worker; and (f) an explanation of the rights and protections included in the contract.[115] Information on service providers will include (a) anti-trafficking in persons telephone hotlines operated by the federal government; (b) the Operation Rescue and Restore hotline; and (c) a general description of the types of victims services available for individuals subjected to trafficking or exploitation.[116]

As for distribution, the pamphlet will be posted on the websites of the Department of State, the Department of Homeland Security, the Department of Justice, the Department of Labor, and all United States consular posts processing applications for employment- or education-based nonimmigrant visas.[117] The pamphlet will also be made available to any government agency, nongovernmental advocacy organization, or foreign labor broker doing business in the United States.[118] Additionally, a consular officer conducting an interview of an applicant for an employment-based nonimmigrant visa (which includes A-3 and G-5 visa) is now required to confirm that the applicant has received, read, and understood the contents of the pamphlet.[119] If the applicant has not received, read, or understood the contents of the pamphlet, the consular officer is required to give the applicant a copy of the pamphlet and to *orally* disclose to the applicant the contents in a language that the applicant understands.[120] The consular officer

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[115] *Id*.

[116] *Id*.

[117] 8 U.S.C. § 1375b(d).

[118] 8 U.S.C. § 1375b(d)(2).

[119] 8 U.S.C. § 1375b(e).

[120] 8 U.S.C. § 1375b.(e)(1).

must also offer to answer any questions the applicant may have regarding the contents of the pamphlet.[121] At the very least, the consular officer is required to inform the applicant of the legal rights identified in the pamphlet, as well as the availability of services for victims of human trafficking and worker exploitation in the U.S..[122]

IV. CRITIQUE OF THE NEW LAW

A. Advantages & Prevention

Previous critiques of government anti-trafficking legislation and enforcement suggest that the government has focused more on prosecution of traffickers rather than prevention of trafficking. To qualify for a T-visa, for example, victims of trafficking have to be willing to cooperate with government investigation and prosecution of the traffickers.[123] The government has prioritized putting bad people in jail and other after-the-fact measures and civil remedies for only some victims of trafficking over trying to solve the underlying systemic causes of trafficking. U.S. immigration policies continue to force the poorest and most vulnerable people from around the world to resort to whatever means available to get into the U.S., including means that come with great risk of dying during the trip across the border or getting trafficked. Immigration laws favor the rich, educated, elite and connected members of other societies who wish to relocate to or work in the U.S.

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[121] 8 U.S.C. § 1375b.(e)(1)(B).

[122] 8 U.S.C. § 1375b.(e)(2).

[123] *See* Dina Francesca Haynes, *Exploitation Nation: The Thin and Grey Legal Lines Between Trafficked Persons and Abused Migrant Laborers*, 23 NOTRE DAME J.L. ETHICS & PUB. POL'Y 1, 47 (2009).

The William Wilberforce Act's provisions pertaining to domestic workers employed by diplomats represent a significant change from a focus on prosecution to prevention. The presence of thousands of diplomats in the U.S. creates a great demand for household services, especially since many of these diplomats come from countries where it is normal for people of their status and class to employ live-in servants. This means there will always be domestic workers in the homes of many diplomats in the U.S., whether or not legal means exist to bring such workers with them from their home country. If all the government did was create a trafficking exception to diplomatic immunity, the same critique of prosecution over prevention would still apply. Diplomatic immunity is asserted during and after the act of trafficking and subjecting a worker to conditions of slavery. This is why any action on the plight of domestic workers employed by diplomats should prioritize preventing the abuse from taking place in the first place and empowering the workers with knowledge of their rights and access to hotlines and services available to them if they experience any abuse. The William Wilberforce Act has the potential to prevent many of the abuses of domestic workers by diplomats that were commonplace in the past. This prevention can be achieved in three ways.

1. Prevention Through Suspension of A-3 and G-5 Visas

First, the power to suspend the issuance of A-3 and G-5 visas to employees of a mission or international organization suspected of past abuse or tolerating abuse can prevent the domestic worker from getting trafficked to the U.S. in the first place. This power is further enhanced by newly instituted coordination and information-sharing between the State Department and Justice Department on investigations of trafficking by diplomats.[124] The State Department no longer has to wait until it gets word through the grapevine that a certain diplomat has abused their domestic

[124] *See, e.g.*, 8 U.S.C. § 1375c(e).

worker. The option to seek an immunity waiver or to expel the diplomat is available to the State Department only after a trafficking incident is reported and investigated. Since very few of these incidents are reported or investigated, only prevention can reach all those other unreported potential cases of trafficking.

Now, the State Department has both the authority and the duty to be proactive and suspend the issuance of these visas until the mission or organization institute a mechanism to prevent future abuse. This also allows the State Department to diplomatically place the ball in the court of these foreign missions and organizations. Embassies and international organizations like the U.N. would no longer be allowed to stand by and tolerate trafficking by one of their members or employees. To be granted the privilege of bringing with them their own household servants, they have to affirmatively act to discipline abusers, recall them back to their home country, or institute a policy of automatic immunity waiver for trafficking prosecutions.

2. Prevention Through Educating Applicants of Their Rights

Second, the Wilberforce Act also has the potential of preventing future abuse by requiring that A-3 and G-5 visa applicants get informed and educated about their rights in the U.S. before they enter the country. As with most "know-your-rights" provisions in any statute, the fear will be that this procedure will be hollow because the workers will not know what to do in case of abuse by their employers, and they will most likely nod their head and say whatever they have to say to obtain the A-3 or G-5 visa; after all, severe desperation for work is a common factor among most trafficked domestic workers. However, this provision in the Act seems to be genuine and strong enough to achieve at least some prevention. Specifically, consular officers conducting interviews with visa applicants must undergo training on U.S. fair labor standards, anti-trafficking laws and the legal rights they have to inform applicants about. This training at

best means that the interviewers will not just be mouthpieces reading text of the page like in a scripted colloquy.

Additionally, the consular officer will be discussing with the applicant the terms of the applicant's employment contract with the diplomat, and the officer will inform the applicant of their rights in a language that the applicant understands. Discussing the contract terms will be helpful because many domestic workers in the past had signed contracts written in a language they do not understand and with complicated terms that were never explained to them. The applicant will not just receive a copy of the informational pamphlet; the Act requires both (1) that the pamphlet be provided in different languages depending on statistics of the languages spoken by applicants in previous years, AND (2) that the consular officer "*orally*" inform the applicant of certain rights they have under various U.S. laws and of the availability of social services and government hotlines in case they experience abuse by their employers. This means that whether or not the applicant is literate, and whether or not the applicant has read and understood the pamphlet, the consular officer is still required to orally discuss the contents of the pamphlet with the applicant. Educating future domestic workers of their rights can also serve to prevent trafficking because the interview is conducted outside the presence of the employer or recruiting agent. This would prevent potential traffickers from psychologically manipulating the applicant during the interview or making representations about the employment contract.

3. Prevention Through Recordkeeping and Compensation Studies

Finally, the Wilberforce Act may contribute to the prevention of trafficking by diplomats and the protection of domestic workers trafficked by diplomats depending on what the State and Justice Departments do with the new records and reports the Act requires them to maintain. The recordkeeping provision requires the State Department to monitor the situation and conditions of

domestic workers with A-3 and G-5 visas. The State Department has to keep tabs on when the worker enters and permanently leaves the U.S., the contact information and immunity level of the employer, and any allegations of abuse or trafficking reported to the State Department. The State Department also has to submit a report to Congress every two years assessing investigations of abuse of domestic workers by diplomats. In the past, lack of information about potential trafficking by diplomats has prevented or inhibited government action to remedy the situation; each agency was able to pass the buck. While the mere keeping of information in and of itself may not do much, the hope is that the monitoring of serious allegations may compel the State Department to get involved in the investigation of trafficking by diplomats. The mandatory recordkeeping may also lead the State Department to request immunity waivers in certain cases or to expel abusive diplomats more often than they had in the past.

Additionally, the Wilberforce Act requires the State Department to report to Congress on the feasibility of (a) establishing a system to monitor the treatment of A-3 and G-5 visa holders in the U.S.; and (b) a range of compensation approaches, such as a bond program, compensation fund, or insurance scheme, to ensure that domestic workers receive appropriate compensation if their employers violate the terms of their employment contracts.[125] Again, this is just a provision to study the possibility of future action to protect domestic workers abused by diplomats. The State Department may report that monitoring A-3 and G-5 visa holders is not feasible because there are too many of them and they work in the home, which is a sanctuary protected from government observation. The State Department may also report that no compensation program is feasible and workers who do not get paid by their diplomat employers are on their own. Therefore, what the government decides to do with the State Department reports is hard to

[125] 8 U.S.C. § 1375c(d)(2).

predict. At the very least, the Wilberforce Act takes the initial step in any policymaking process of directing an agency to study and report on the feasibility of future government action to protect and compensate domestic workers trafficked by diplomats.

B. Disadvantages & Drawbacks

1. Some Diplomats Will Resort to Employing Undocumented Workers

As an otherwise preventive measure, suspending the issuance of A-3 and G-5 visas is a policy in tune with general immigration law's tendency to make it more and more difficult for poor people around the world to legally enter the United States. Diplomats bent on having live-in domestic servants will find one whether or not through legal means; after all, diplomats have full immunity so they can do whatever they want. Domestic worker abuse by diplomats is bad enough with the workers having legal immigration status because immunity empowers evil people to act with impunity and disregard of the workers' human rights. If A-3 and G-5 visas are suspended for a mission or international organization whose diplomats have abused workers in the past, those same diplomats will likely either smuggle workers into the U.S. or find an undocumented worker already in the U.S. to take advantage of. This drawback is inevitable and difficult to measure or predict. The fact that evil people will always find a way to do more evil is not unique to anything the government does. This type of critique can potentially be levied against any government action to prevent abuse from taking place. Suspending the issuance of A-3 and G-5 visas at the very least would prevent the trafficking of those applicants that would have only been subjected to abuse had they been issued a visa.

2. Suspending the Issuance of Visas Only Pushes the Trafficking to Other Countries

A drawback of visa suspension is that it would only prevent the trafficking of domestic servants into the United States; the same visa applicants may have already been enslaved by the diplomat seeking to bring them to the U.S. For applicants who are already victims of trafficking at the hands of diplomats outside the U.S., refusing to issue them A-3 or G-5 visas reduces the likelihood that these victims would ever be rescued. The U.S. government would never find out about these victims, and their abusers would continue to reside in the U.S. as diplomats. However, this drawback has a flipside; many domestic workers abused by diplomats in the U.S. are recruited by employment agencies operating in their home countries. Many of these workers do not even meet their diplomat employers until they enter the U.S. While the suspension of A-3 and G-5 visas would do nothing for workers already employed and enslaved by the same diplomats outside the U.S., this suspension prevents new employees of diplomats from *becoming* victims of trafficking. Additionally, it is unrealistic and impractical to expect the U.S. government to singlehandedly pass legislation that prevents trafficking of domestic workers by diplomats outside the U.S. What diplomats residing in the U.S. do outside the U.S. is beyond the powers of the U.S. government to deal with.

3. Diplomatic Immunity Remains a Powerful Tool for Traffickers

Finally, the most crucial drawback of the Wilberforce Act's provisions pertaining to domestic workers is that the Act does nothing about diplomatic immunity. This immunity remains a systemic hurdle to any prevention of trafficking, prosecution of traffickers and protection of victims. It is a powerful tool that abusive diplomats hold over their domestic workers, convincing the workers that they are powerless and helpless despite any knowledge or

comprehension of their legal rights. This drawback may actually materialize because it is often the immunity itself that primarily contributes to the underreporting of abuse at the hands of diplomats. If diplomatic immunity deters victims from calling the hotline the consular officer told them about during the visa interview, the State Department would not find out about many of these cases, creating an obstacle to any of the prevention methods discussed above. Without information about trafficking by diplomats, the State Department may have no reason or credible evidence to suspend the issuance of A-3 or G-5 visas to a particular mission. Lack of information that results from underreporting would also render the monitoring and recordkeeping provisions practically meaningless.

Moreover, since the law on diplomatic immunity remains unchanged, the provision in the Wilberforce Act that protects domestic workers from deportation while they are suing their former employers has little practical effect. Except for consular officials with limited diplomatic immunity, domestic workers are effectively barred from bringing any civil action against diplomats. Lawsuits that are filed will likely be dismissed at the earliest stage since diplomatic immunity is usually the first defense asserted by diplomat defendants, even before an answer to the complaint. The workers can still technically sue and be allowed to remain in the U.S., but only for the few days it would take the judge to dismiss the lawsuit.

VI. CONCLUSION

Thousands of domestic workers are employed by diplomats residing in the United States. A significant number of these workers are subjecting to trafficking, exploitation and abuse at the hands of their employers. However, diplomatic immunity protects these employers from both criminal and civil liability, often leaving the victims to fend for themselves with no legal recourse and no way out of their slave-like situation. The William Wilberforce Act of 2008 does

nothing to change the role diplomatic immunity plays in the trafficking of domestic workers. However, this new law represents a shift in government focus from after-the-fact protection and prosecution measures to measures that may prevent trafficking by diplomats in the first place. If the law's preventive measures achieve their full potential, diplomatic immunity may become irrelevant. Educating workers of their rights and what to do in case they become a victim can go a long way to empowering the workers. Refusing to issue A-3 and G-5 visas to missions with diplomats who abused workers in the past may prevent the workers from being trafficked.

Nevertheless, the Wilberforce Act should certainly not be the end of the line for anti-trafficking legislation aimed at protecting domestic workers employed by diplomats. The recordkeeping and study provisions imply that the government will have to undertake the courses of action determined to be feasible and workable by the State Department. The Act's focus on prevention is only an accurate statement when it comes to provisions dealing with domestic workers holding A-3 and G-5 visas; the rest of the Act's provisions are quite in line with the government's otherwise unwavering commitment to prosecuting traffickers first, think of the victims second, and try to prevent trafficking last.