


S E P A R A T I N G

FACT + FICTION

The crimes of human  
**TRAFFICKING + SMUGGLING**  
aren't always portrayed accurately

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Law enforcement may fail to recognize the victims of human trafficking as they often emerge as undocumented individuals, unlawfully present in a given country, and are frequently involved in adjunct criminal activity. Discerning the victims of human trafficking from the onset of their initial encounter with law enforcement is critical to developing a successful prosecution of the organizations and individuals involved in trafficking humans. Immediately deporting or placing the victims into criminal justice systems will likely impede the ability to successfully investigate and prosecute trafficking organizations successfully. Additionally, failing to recognize the physical and psychological trauma that the victims may be experiencing will often limit their cooperation with law enforcement. Several misconceptions are pervasive throughout law enforcement communities and civil societies worldwide that impede the effective investigation and prosecution of trafficking organizations. This article seeks to address some of those common fallacies.

### FALLACY #1:

*Human trafficking and human smuggling are the same type of criminal activity.*

On the contrary, human trafficking and human smuggling are completely different types of crimes. Human smuggling involves the facilitation, transportation, or illegal entry of a person across an international border in an effort to evade a particular country's immigration laws. Human smuggling is often conducted to provide a material benefit to the person being smuggled, benefits such as employment, education, health services and reunification with family. Human smuggling generally occurs with the consent of the person being smuggled. In fact, that individual may often hire a smuggling guide to assist him with his illegal entry into another

country. In human smuggling, once a person arrives he is often free to leave and enter the economy, make social arrangements, and participate in the commerce of the country he has illegally entered.

Human trafficking, on the other hand, is about the exploitation of victim. The victims of human trafficking are mere commodities to the criminal organizations that smuggle them. Human trafficking victims are almost always forced into labor or employment against their will. They are frequently not free to leave the supervision of their controller and typically have their identification documents taken from them (Lehman & Janssens 2007). Human trafficking victims are often kept incommunicado from their families. Entry to another country for a human trafficking victim is often done under some type of fraud, coercion, force or threat.



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Above: Would-be immigrants sit on a bus on the Italian island of Lampedusa after fleeing North Africa in 2011. Human smuggling grew in popularity as popular uprisings engulfed Tunisia, Egypt and Libya.



THE ASSOCIATED PRESS

Foreign prostitutes on the streets of Rome.

On occasion, the differences blur as people who initially paid to be smuggled into a country find they are not released after entry, but rather held captive until additional smuggling fees are supplied. Under this type of scenario, human smuggling may morph into crimes that range from unlawful restraint to kidnapping. Unless additional smuggling fees or ransoms are paid to the smugglers, threats of violence and actual violence may befall the subject of the smuggling venture.

### **FALLACY #2:**

*Illegal entrants are undocumented.*

This is frequently not the case. Illegal entrants often have identity documents, but are lacking identity documents that would allow them to enter or remain in a given country after a certain period. Illegal entrants frequently possess identification, including licenses, identity cards and passports, but they lack documentation immigration authorities require.

For example, a student lawfully entering on a student visa drops out of school or stays beyond the time authorized by the visa. The student maintains his passport (with an expired or invalid visa) and other identity documents, but no longer possesses the required documentation to stay lawfully in a country. Similarly, when illegal aliens are arrested along the southwest border in the United States, they frequently possess driver's licenses, fishing licenses, passports, Matricula Consular cards, or other identification documents. Matricula Consular cards are documents Mexican Consulates issue to Mexican citizens who do not reside in Mexico. However, they have no relevance to an individual's immigration status.

Individuals without immigration documents allowing them lawful admission and/or presence in a country are often subject to deportation.

### **FALLACY #3:**

*An international border must be crossed for a crime to qualify as human smuggling or human trafficking.*

Human smuggling does require crossing an international border as the intent of this crime is to evade the immigration laws of the country where entry is made. In human

trafficking, although crossing an international border is frequently a part of the crime, it is not a necessary element of the crime. Human trafficking can occur within a single town, province, state, district or country.

#### **FALLACY #4:**

*Human trafficking victims are always involved in other criminal activities.*

Many victims of human trafficking may become involved in ensuing criminal activity, but this is often not the case. Although many human trafficking victims engage in prostitution, drug abuse, robberies, identity theft, and many other crimes, others may work under compulsion in venues like sweatshops, construction sites, farms or private homes as au pairs or servants. These individuals may never attempt, or commit, any subsequent crimes while they remain victims of human trafficking.

#### **FALLACY #5:**

*Human trafficking victims know exactly what they are getting themselves into.*

Human trafficking victims are often subjected to fraud by relatives, close friends, employment agencies and others. The literature is replete with examples of young women forced into prostitution after thinking they would be taking legitimate jobs such as waitressing and travel guides. There are also frequent depictions of relatives holding victims as captives in domestic servitude after enticing them with offers of high pay and short hours, or soliciting them as au pairs. Employment agencies often gain notoriety in cases where they advertise for employment in jobs that do not exist with the intent of enticing victims into human trafficking and the forced labor that often emanates from it. In some extreme cases of human trafficking, the victims may not even know where they are or what country they are in (Finnegan 2008).

Once in the world of human trafficking, victims are often subjected to threats, violence, physical and emotional

abuse, disease, captivity, and situations that they could not even have imagined when they responded to an advertisement for employment abroad. Men, children and women may all fall prey to human traffickers.

#### **FALLACY #6:**

*Human trafficking victims are always harshly treated during transportation.*

Criminal organizations certainly have used almost unthinkable means to transport human trafficking victims. Reports of victims dying while being held in ocean containers or locked commercial trucks or being forced to cross through unforgiving terrain are not uncommon. However, the criminal trafficking element has come to realize that a worker who has not been subjected to extreme duress will likely be more profitable. A concept referred to as “soft trafficking” has become more prevalent, wherein a victim might just be given a plane ticket, rail ticket, or some other public means of transport (Finnegan 2008).

Certainly, when a victim is falsely enticed by employment opportunities, they are much more willing to travel voluntarily for what they believe is their personal betterment. Only when they arrive in the trafficking venue, see their promised job evaporate, and are faced with living, often in a strange land and stripped of their identity documents, do threats, violence, and other coercive means come into play to keep them under the control of the traffickers.

#### **FALLACY #7:**

*Human trafficking victims want help from law enforcement.*

Cooperation from human trafficking victims becomes almost an imperative in successfully prosecuting trafficking organizations. Unfortunately, human trafficking victims often are extremely distrustful of law enforcement (Bales & Lize 2007). They may be fleeing a country where police corruption is pervasive, or be running away from personal or economic oppression in their homelands. As noted earlier,

human trafficking victims may be involved in other criminal activity and thus do not want the knowledge of that criminal activity to become apparent to law enforcement. Others, because of their circumstances, may refuse to trust anyone they encounter. The mental and physical anguish they have been subjected to may be overwhelming. When sex trafficking victims escape from their exploiters, they often go to nongovernmental organizations instead of law enforcement (Moosy 2009). Law enforcement practitioners must recognize the potentially fragile state of human trafficking victims when they are initially encountered.

## **CONCLUSION**

Differentiating the crimes of human smuggling and human trafficking is the first step toward effective law enforcement efforts against human trafficking organizations. As trafficking organizations are often difficult to penetrate, the effective use of victim-witnesses to provide relevant evidence can be an invaluable tool. Furthermore, understanding the nature and scope of the situations human trafficking victims may find themselves trapped in will increase law enforcement’s ability to recognize and address their needs appropriately. Law enforcement should consider providing legal, psychological and limited economic support to the victim-witnesses of human trafficking in conjunction with appropriate nongovernmental organizations. Countries may also be able to provide incentives to cooperating victim-witnesses such as stays of deportation, visas, temporary residency or even permanent residency. Law enforcement must continue to recognize that without the cooperation of human trafficking victims, prosecution of the trafficking organizations is often much more problematic. □

*The next issue of per Concordiam will focus on migration and its impact on security.*

#### Sources:

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