

Comments

Suspending A License to Traffick: Using Section 203 of the William Wilberforce Trafficking Victims Protection Reauthorization Act to Burn The Bridge Between Diplomatic Immunity and Domestic Labor Trafficking

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ABSTRACT

While many Americans have heard the phrase “diplomatic immunity,” few likely understand how far such immunity extends or its effect on various areas of law. The doctrine of diplomatic immunity, established via the Vienna Convention on Diplomatic Relations in 1961, protects envoys of a diplomatic mission from criminal and civil liability when they are within a country that is not their own. Diplomatic immunity has allowed the perpetuation of a specific type of human trafficking within the United States: domestic labor trafficking. Through special types of immigration visas, specifically A-3 and G-5 visas,

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individuals with diplomatic immunity are able to bring personal employees into the country. However, in several cases, employers have subjected these employees to abusive working conditions that rise to the level of labor trafficking.

To curb these abuses, President George W. Bush enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA or “Act”). The Act grants the Secretary of State the power to terminate a diplomatic mission’s A-3 and G-5 visa privileges if that mission’s envoys are found to have submitted their employees to labor trafficking. However, to this day, the Secretary of State has never formally utilized this power.

This Comment will address the history, definition, and function of diplomatic immunity, as well as how diplomatic immunity fits within the context of human trafficking. Additionally, this Comment will address the operation of diplomatic visas and how diplomats’ domestic employees enter the United States. Finally, through an analysis of *United States v. Al Homoud* and *United States v. Khobragade*, this Comment will address two potential methods for enforcing the TVPRA: formal and informal enforcement. This Comment proposes that utilizing methods of both formal and informal enforcement of the TVPRA would allow the Secretary and Department of State to better bar this specific form of trafficking within the United States.

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I. INTRODUCTION

In 2015, a Qatari military official named Hassam Salem Al Homoud and his wife were charged with two counts of forced labor.¹ Al Homoud brought two domestic employees into the United States to work in his home; however, these two women were allegedly subjected to egregious working conditions.² They worked for no pay, had their visas and identifications withheld, were often forced to work without bathroom breaks, and lived in an apartment void of furniture, toiletries, or any other comforts.³ If they ate, they were given only leftovers from Al Homoud and his wife's meals.⁴ For all intents and purposes, these women were slaves. Importantly, however, these women were subjected to these conditions due to Al Homoud's diplomatic privileges.

The doctrine of diplomatic immunity has presented numerous legal and political issues over the years and in many countries, from foreign ambassadors committing petty crimes to diplomats aiding in or committing violent offenses without facing so much as a slap on the wrist.⁵ Diplomats⁶ and officials from foreign international organizations have also found an unexpected way to contribute to human trafficking in the United States. Through the issuance of A-3 and G-5 visas,⁷ foreign and international officials are able to bring employees and servants into the country to become "domestic workers."⁸ Despite the numerous constraints placed upon issuing A-3 and G-5 visas, certain diplomats have been caught abusing the system.⁹ These diplomats have assaulted,

1. See Indictment at 2–3, *United States v. Al Homoud*, No. 5:15-cr-00391 (W.D. Tex. June 3, 2015).

2. See Complaint at 3–4, *United States v. Al Homoud*, No. 5:15-cr-00391 (W.D. Tex. June 1, 2015) [hereinafter Complaint, *Al Homoud*].

3. See *id.* at 3.

4. *Id.*

5. See *Sudan Diplomat in New York and Other Cases of Diplomatic Immunity*, BBC NEWS (Jan. 11, 2017), <http://www.bbc.com/news/magazine-38576257> (detailing stories of a Sudanese diplomat sexually assaulting a woman in a New York subway, a diplomat from the Democratic Republic of Congo avoiding rent, and a Libyan diplomat shooting and killing a police officer in London, among others).

6. For purposes of this Comment, a diplomat is defined as a member of a foreign country's effort to establish a relationship with the United States, and is granted certain privileges by virtue of that membership. See 22 U.S.C. § 254a (2012).

7. See *infra* Section II.C for a discussion of these types of visas.

8. 8 U.S.C. § 1101(a)(15)(G)(v) (2012); see also *id.* § 1101(a)(15)(A)(iii).

9. See U.S. DEP'T OF STATE, 9 FOREIGN AFFAIRS MANUAL 402.3-9(B)(4)(a)(1)–(7) (2016) [hereinafter FAM] (the handbook used by government agents and employees

abused, and exploited their household staff with little to no repercussions from the United States.¹⁰ However, despite such abuses, the mechanisms¹¹ by which diplomats may perpetuate these crimes remain intact.¹²

Diplomatic immunity stands in the way of relief for these trafficking victims by virtue of what diplomatic immunity is: immunity for diplomats and employees of certain international organizations from civil and criminal liability outside the individual's home country.¹³ Despite the Department of State and federal government's crackdown on human trafficking in recent years, diplomats continue to submit their employees to labor trafficking.¹⁴ In 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act¹⁵ (TVPRA or "Act") became law, which allows the Department of State to enforce human trafficking protections against diplomatic agents.¹⁶

Through this legislation, the Secretary of State has the authority to suspend A-3 and G-5 visa privileges held by diplomatic missions and international organizations, thereby stripping these groups of their right to bring "domestic workers" into the United States.¹⁷ Section 203 of the TVPRA (Section 203) expressly provides that the Secretary of State can suspend diplomatic missions' visa privileges upon a finding that: (1) the diplomatic agent abused an employee; and (2) the diplomatic mission

employed in foreign relations and visa provision capacities); *see also Sudan Diplomat in New York and Other Cases of Diplomatic Immunity*, *supra* note 5.

10. *See, e.g.,* Complaint, *Al Homoud*, *supra* note 2, at 3–4 (alleging that two domestic employees were kept in a small apartment with no furniture, toiletries, or communication devices); Complaint at 1, *Doe v. Amal*, No. 1:12-cv-01359 (E.D. Va. Nov. 27, 2012) [hereinafter Complaint, *Amal*] (alleging that a former Moroccan diplomat subjected the plaintiff to trafficking conditions, such as refusing to pay her the promised compensation and subjecting her to continued physical and sexual abuse). Despite the legal actions taken against offending individuals, the United States did not exact lasting consequences.

11. By "mechanisms," the author is referring to the main topic of this paper: A-3 and G-5 immigration visas. These visas are defined and addressed in Section II.C.2. *See* discussion *infra* notes 100–06.

12. *See* 8 U.S.C. § 1101(a)(15)(G)(v); *see also id.* § 1101(a)(15)(A)(iii).

13. *See generally* Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95.

14. *See generally* HUMAN SMUGGLING & TRAFFICKING CTR., DOMESTIC HUMAN TRAFFICKING: AN INTERNAL ISSUE (2008), <http://www.state.gov/documents/organization/113612.pdf> (explaining the prevalence of trafficking, the federal government's methods for investigation and prosecution, and the federal government's commitment to curing trafficking as a whole).

15. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044.

16. *See id.*

17. *See id.* § 203(a), 122 Stat. at 5057.

tolerated the abuse.¹⁸ However, to date, no Secretary of State has formally utilized this statutory tool.¹⁹ To solve the problem of diplomatic immunity and human trafficking, this Comment proposes stricter and more prevalent methods of enforcing Section 203 of the TVPRA.²⁰

This Comment first addresses the varying definitions of human trafficking in federal and international law.²¹ Second, this Comment defines diplomatic immunity in terms of both international and federal law.²² Third, this Comment expounds upon who qualifies as a diplomatic agent, how these agents enter the United States, and how they bring domestic workers with them.²³ Fourth, this Comment explains the intersectionality between diplomatic agents, domestic workers, and the perpetuation of labor trafficking.²⁴ Finally, following a case study of two distinct criminal cases against diplomatic agents,²⁵ this Comment proposes a dichotomous approach to enforcing the protections set out by the TVPRA: formal enforcement and informal enforcement.²⁶

Formal enforcement entails the Secretary of State officially invoking Section 203 of the TVPRA to suspend a diplomatic mission's A-3 or G-5 visa privileges.²⁷ On the other hand, informal enforcement takes a more clandestine approach, which involves the Secretary of State threatening to invoke Section 203 behind closed doors to convince a

18. *Id.* "Abuse" in Section 203 is likely synonymous with the definition of abuse in Section 202 of the same statute:

[A]ny conduct which would constitute a violation of [S]ection 1466A [obscene visual representations of the sexual abuse of children], 1589 [forced labor], 1591 [sex trafficking of children or by force, fraud, or coercion], 1592 [unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor], 2251 [sexual exploitation of children], or 2251A [buying or selling children] of [T]itle 18 [of the] United States Code.

Id. § 202(f)(4), 122 Stat. at 5057. "Tolerated" is not defined in the statute, but based on the rest of the statute, it is likely defined as a lack of disciplinary action against the offending diplomat on behalf of the diplomatic mission. *See id.* § 203(a)(2), 122 Stat. at 5057.

19. Letter from the Human Trafficking Pro Bono Legal Center et al. to John Kerry, Sec'y of State (Aug. 30, 2016), https://freedomnetworkusa.org/app/uploads/2017/01/FINAL-Letter-to-Secretary-of-State-re-Suspension-of-Qatar_August-2016.pdf. No credible reports exist as to *why* the Secretary of State has yet to implement Section 203. For a possible explanation, see *infra* Part IV and the discussion on the difficulties surrounding "formal enforcement."

20. *See* discussion *infra* Part IV.

21. *See* discussion *infra* Sections II.A.1–.2.

22. *See* discussion *infra* Section II.B.

23. *See* discussion *infra* Sections II.C, II.C.1.

24. *See* discussion *infra* Section II.C.2.

25. *See* discussion *infra* Sections III.A–.B.

26. *See* discussion *infra* Part IV.

27. *See* discussion *infra* Part IV.

diplomatic mission to correct its violations.²⁸ Through this two-pronged approach to the enforcement of Section 203, the Secretary of State can help to ensure the reduction of labor trafficking in the United States.

II. BACKGROUND

Contextually, the intersection between human trafficking and diplomatic immunity branches across several different areas of law, both federal and international. Additionally, each area of law the intersection inhabits operates differently. Thus, this Comment will first explore this intersection and how it operates within each of those areas of law.

A. *The Concept of Human Trafficking*

Human trafficking is the modern incarnation of slavery, a practice many in our country believe to have been abolished. The American population has become increasingly concerned with, and aware of, human trafficking, largely through the work of Hollywood and non-governmental organizations.²⁹ For example, the popularized image of human trafficking is a young girl in a foreign country shoved into a small space and shipped halfway across the world to be sold into prostitution.³⁰ However, human trafficking can occur within one country or even within one city—no extensive international transportation is necessary.³¹ Additionally, trafficking victims are not all foreign individuals; United States citizens make up a significant portion of trafficking victims and are most often trafficked within the United States' borders.³²

“Human trafficking” serves as an umbrella or catch-all phrase that includes a number of different crimes against persons.³³ However, the phrase “human trafficking” can generally be divided into two separate categories: (1) forced labor or labor trafficking; and (2) “sex slavery” or sex trafficking.³⁴ Labor trafficking victims are forced to provide physical labor services, usually for the trafficker, without any pay or at least

28. See discussion *infra* Part IV.

29. See, e.g., Jamie J. Hagen, *5 Things You Didn't Know About Human Trafficking*, ROLLING STONE (Aug. 19, 2014), <http://www.rollingstone.com/politics/news/5-things-you-didnt-know-about-human-trafficking-20140819>.

30. See, e.g., *TAKEN* (20th Century Fox 2009) (popularizing the image of a young American woman kidnapped and forced into sex slavery).

31. See generally HUMAN SMUGGLING & TRAFFICKING CTR., *supra* note 14 (describing the prevalence of trafficking in the United States and its varying characteristics).

32. See *id.* at 2.

33. See *id.*

34. See *id.* at 3.

without a legally sufficient amount of compensation.³⁵ Labor trafficking is what one generally conceptualizes when hearing the term “slavery.”

Alternatively, sex trafficking involves forcing individuals to perform commercial sex acts for money that directly benefits the trafficker.³⁶ Despite the horrendous nature of the crime, sex trafficking has become an extensive and lucrative international criminal industry with an origin worthy of numerous other publications.³⁷ However, the intersection between diplomatic immunity and human trafficking discussed in this Comment is dominated by forced labor rather than sex trafficking.³⁸ Therefore, this Comment will focus primarily on labor trafficking. To better illustrate the different components of human trafficking, this Comment will examine the definition of human trafficking in both international and United States federal law.

1. International Definition of Human Trafficking

The international definition of human trafficking is codified in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Protocol”), an addendum to the United Nations Convention against Transnational Organized Crime.³⁹ The Protocol defines human trafficking as follows:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of

35. See *id.*

36. See *id.* at 4–5.

37. See *Human Trafficking by the Numbers*, HUMAN RIGHTS FIRST (Jan. 7, 2017), <http://www.humanrightsfirst.org/resource/human-trafficking-numbers>.

38. The reason for labor trafficking’s dominance in this context is likely the method by which domestic workers are trafficked. Domestic workers are brought into the country to perform various labor and personal services for their employer, the diplomat. See 8 U.S.C. § 1101(a)(15)(G)(v) (2012); see also *id.* § 1101(a)(15)(A)(iii). The visas that the employees are given are essentially work visas, and must be accompanied by an employment contract. 9 FAM 402.3-9(B)(4)(a). Although some abused employees do suffer sexual violence, see Complaint, *Amal*, *supra* note 10, at 1 (alleging sexual abuse by a former Moroccan diplomat), the chief purpose of their exploitation is for labor, not sex. See Complaint, *Al Homoud*, *supra* note 2, at 3 (describing employee’s horrid living conditions and lack of compensation).

39. A Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children art. 3(a), Nov. 15, 2000, 2237 U.N.T.S. 319. The Protocol has been signed by 117 countries. See *Status of Treaties: A Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. TREATY COLLECTION [hereinafter *Status of Protocol*], https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-12-a&chapter=18&clang=_en (last visited Sept. 18, 2016).

the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴⁰

If any one of the above methods of exploitation is used, the consent of the individual is irrelevant.⁴¹ Additionally, “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons,’” regardless of the means used.⁴²

A significant question that arises when discussing international law’s relevance in the United States is whether the United States has accepted, either in full or in part, the international sphere’s definitions.⁴³ The United States appears to subscribe to the international findings regarding human trafficking—it signed the Protocol on December 13, 2000, and subsequently ratified its provisions on November 3, 2005.⁴⁴ However, the United States did not subscribe to *every* provision within the Protocol. The United States made one significant reservation to the Protocol—the general principles of federalism within the United States trump the principles set out in the Protocol.⁴⁵

In application, this reservation means that if any provision within the Protocol required the federal government to perform a function reserved for the states by the United States Constitution, the Constitution would preempt that provision.⁴⁶ For example, if the treaty required a certain kind of law enforcement at a local level, the federal government would not enforce this provision because police powers are generally reserved for the states. Therefore, because the United States carved out an exception through which it could apply its own law, an examination of the definition of human trafficking in U.S. law is prudent.

40. A Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, *supra* note 39, at art. 3(a), 2237 U.N.T.S. at 344.

41. *Id.* at art. 3(b), 2237 U.N.T.S. at 344.

42. *Id.* at art. 3(c), 2237 U.N.T.S. at 344.

43. International treaties are generally not *prima facie* binding authorities on countries; they must first be signed and ratified. *See, e.g.*, U.S. CONST. art. II, § 2, cl. 2 (stating that, in the United States, treaties must first be signed by the President and ratified by Congress before they take effect).

44. *See Status of Protocol, supra* note 39.

45. *Id.* Reservations are typically made upon “ratification, acceptance, approval or accession” of a treaty, and then stored in United Nations records. *See id.*

46. *See id.* (“The United States of America reserves the right to assume obligations under this Protocol in a manner consistent with its fundamental principles of federalism, pursuant to which both federal and state criminal laws must be considered in relation to conduct addressed in the Protocol.”).

2. Federal Definitions of Human Trafficking

Human trafficking is addressed in United States Code Title 22, “Foreign Relations and Intercourse.”⁴⁷ Section 7102 of Title 22 of the United States Code defines both sex and forced labor trafficking under the umbrella of “Severe Forms of Trafficking in Persons.”⁴⁸ Federal law defines “forced labor” as the “recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁴⁹

Additionally, Title 18 of the United States Code defines forced labor as a situation in which a person is coerced into providing labor or services:

- (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
- (2) by means of serious harm or threats of serious harm to that person or another person;
- (3) by means of the abuse or threatened abuse of law or legal process; or
- (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint⁵⁰

While several groups of people are affected by labor trafficking under these conditions, one marginalized group consistently in danger of becoming victims is that of domestic employees of foreign government and international organization officials.⁵¹ A number of techniques described in the above definitions have been employed against domestic employees of foreign diplomats and international organization

47. See 22 U.S.C. §§ 7101–7114 (2012).

48. See *id.* § 7102(9).

49. *Id.* § 7102(9)(B).

50. 18 U.S.C. § 1589(a) (2012). The difference between the definitions in Title 22 and Title 18 is contextual. Title 22 defines trafficking in terms of foreign relations, see 22 U.S.C. § 7102, while Title 18 defines trafficking for purposes of federal criminal law, see 18 U.S.C. § 1589(a).

51. See *Human Trafficking by the Numbers*, *supra* note 37 (“3.8 million [] forced labor victims are domestic workers[.]”); POLARIS PROJECT, LABOR TRAFFICKING OF DOMESTIC WORKERS AT-A-GLANCE 3 (2011), <https://traffickingresourcecenter.org/sites/default/files/Labor%20Trafficking%20of%20Domestic%20Workers%20-%20At-A-Glance.pdf>.

employees, resulting in everything from poor employment conditions to full-fledged human trafficking.⁵²

B. Diplomatic Immunity, Privilege, and Impunity

Diplomatic immunity, or diplomatic privilege, is another broad, seemingly amorphous concept engrained in American culture.⁵³ Diplomatic immunity once had a very important function: protecting foreign officials from persecution when they entered into a host country, effectively granting them safe passage.⁵⁴ Diplomatic immunity became a significant component of international law and diplomacy through the Vienna Convention on Diplomatic Relations of 1961 (“Convention”).⁵⁵ Article 29 of the Convention provides that “[t]he person of a diplomatic agent shall be inviolable[—][h]e shall not be liable to any form of arrest or detention.”⁵⁶ Thus, the Convention succinctly lays out the privilege held by diplomats.

However, the privilege established by the Convention is in no way absolute. Article 32 of the Convention provides, in part, that the sending State⁵⁷ may waive or revoke an official’s immunity at its own discretion.⁵⁸ Therefore, an official’s privilege or immunity exists at the whim of the sending State, and as such, can be disposed of in any situation where the sending State believes that individual should no longer be protected.⁵⁹

On December 13, 1972, the Convention’s protections and definitions were adopted⁶⁰ into U.S. federal law.⁶¹ Diplomatic immunity

52. See POLARIS PROJECT, *supra* note 51, at 1; see also Martina E. Vandenberg & Sarah Bessell, *Diplomatic Immunity and The Abuse Of Domestic Workers: Criminal And Civil Remedies In The United States*, 26 DUKE J. COMP. & INT’L L. 595, 603–04, 607–09 (2016) (discussing *United States v. Al Homoud*, No. 5:15-cr-00391 (W.D. Tex. dismissed Feb. 10, 2016); *United States v. Amal*, No. 1:14-cr-00151 (E.D. Va. dismissed Sept. 29, 2014); *United States v. Khobragade*, No. 1:14-cr-00176 (S.D.N.Y. filed Mar. 14, 2014)).

53. See *LETHAL WEAPON 2* (Warner Bros. 1989). *Lethal Weapon 2* is a popular film about South African drug dealers who hide behind an official’s diplomatic immunity to carry out their operations. See *id.*

54. See Vienna Convention on Diplomatic Relations, *supra* note 13, at pmb1., 500 U.N.T.S. at 96.

55. See generally *id.*

56. *Id.* at art. 29, 500 U.N.T.S. at 110.

57. In this instance, “sending State” means the diplomat’s country of origin. See *id.* at art. 1, 500 U.N.T.S. at 96, 98.

58. *Id.* at art. 32, 500 U.N.T.S. at 112. The Convention does not explicitly state in what situations a sending State may revoke an individual’s immunity, but only indicates that the State can do so of its own volition. See *id.* The Convention likely does not name the circumstances because a sending State likely needs no reason to revoke it.

59. See *id.*

60. The United States did have objections to the Vienna Convention, but only in relation to other States’ reservations. See *Status of Treaties: Vienna Convention on*

in the United States today extends to a number of personnel and officials, rather than only to the individuals with the highest level of authority within a State's government.⁶² Certain high-ranking government officials, such as Prime Ministers, Presidents, and Secretaries of State, are automatically granted immunity when they enter the United States.⁶³ Meanwhile, public ministers and lower-ranking officials, such as administrative and technical staff members, may also be granted immunity upon entering the United States as long as the sending State informs the United States government that the individual is a part of the sending State's diplomatic mission.⁶⁴ In addition to employees of foreign governments, federal law provides that many members of international organizations ("IOs") also enjoy the privilege of diplomatic immunity.⁶⁵ Immunity rests with members of IOs' official envoys, as well as certain employees.⁶⁶

In the United States, one of the ways diplomatic immunity is realized, in a more concrete and material sense, is through the procurement of special visas.⁶⁷ Specifically, this Comment will focus on special types of immigration visas, including A-1 through A-3 visas and G-1 through G-5 visas.

C. *Diplomatic Visas and How They Function*

This Section will explain the functions of and differences between the special types of diplomatic visas.⁶⁸ It is important to note that, in the employment relationship discussed in this Comment, A-1, A-2, and G-1 through G-4 visas are given to the *employer*, while A-3 and G-5 visas are given to the *employee*.⁶⁹

Diplomatic Relations, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=III-3&chapter=3&lang=en#EndDec (last visited Dec. 28, 2017).

61. See 22 U.S.C. §§ 254a(4), 254d (2012).

62. See *id.* §§ 254a(1)–(3), 254d.

63. See Vienna Convention on Diplomatic Relations, *supra* note 13, at art. 1, 500 U.N.T.S. at 96, 98; 22 U.S.C. §§ 254a(4) (stating that the United States has entered the treaty, and therefore its provisions and definitions, into force), 254d; 8 U.S.C. § 1102 (2012); 9 FAM 402.3-5(C)(1)–(3).

64. See Vienna Convention on Diplomatic Relations, *supra* note 13, at art. 1, 500 U.N.T.S. at 96, 98; see also 22 U.S.C. § 254a(4); 8 U.S.C. § 1102; 9 FAM 402.3-5(C)(1)–(3). A diplomatic mission, generally, is a group of individuals that represents one country but is present in another in order to promote its home country's interests. See Vienna Convention on Diplomatic Relations, *supra* note 13, at art. 3, 500 U.N.T.S. at 98.

65. See 8 U.S.C. §§ 1101(a)(15)(G)(i)–(v), 1102 (2012). For the definition of "international organization," see *infra* note 89 and accompanying text.

66. See 8 U.S.C. §§ 1101(a)(15)(G)(iii)–(v), 1102.

67. See discussion *infra* Section II.C.

68. Compare discussion *infra* Section II.C.1, with discussion *infra* Section II.C.2.

69. Compare *infra* Section II.C.1, with *infra* Section II.C.2.

1. Visas Provided for Foreign and International Organization Officials

Foreign government and international organization officials are given special visas that enable them to enter the United States to perform various tasks.⁷⁰ A-1 and A-2 visas are granted to foreign officials, while G-1 through G-4 visas are granted to members of IOs.⁷¹ The “A” or “G” designation is derived from the appropriate subsection of 8 U.S.C. § 1101.⁷² “A” represents the subsection that defines who a foreign government official is,⁷³ while “G” refers to the subsection that indicates which IO representatives are able to receive visas.⁷⁴

A-1 visas are granted to heads of state, public ministers, or “other high-level officials” if recognized by their government as high-level officials.⁷⁵ A-2 visas are granted to foreign government employees with lesser authority than those who qualify for A-1 visas.⁷⁶ These individuals’ authority is recognized within the United States based on a system of “reciprocity”⁷⁷ with other countries.⁷⁸ Officials’ immediate family members are also granted A-1 and A-2 visas; immediate family members of an A-1 visa holder will receive A-1 visas, and immediate family members of an A-2 visa holder will receive A-2 visas.⁷⁹

To obtain an A-1 or A-2 visa, an official must provide written communication to the Secretary of State from that individual’s government that states, among other things, the validity and purpose of that individual’s mission.⁸⁰ Additionally, that validity must continue to be recognized by the Secretary of State for the official to remain in the United States.⁸¹ If it is no longer satisfactory, that individual’s visa can be revoked and the diplomatic mission summarily ended.⁸²

70. See 8 U.S.C. §§ 1101(a)(15)(A)(i)–(ii), 1101(a)(15)(G)(i)–(v), 1102; 9 FAM 402.3-5(B)(1).

71. See 8 U.S.C. §§ 1101(a)(15)(A)(i)–(ii), 1101(a)(15)(G)(i)–(v), 1102; 9 FAM 402.3-5(B)(1), 402.3-7(B).

72. See generally 8 U.S.C. § 1101.

73. See *id.* § 1101(a)(15)(A).

74. See *id.* § 1101(a)(15)(G).

75. See *id.* § 1101(a)(15)(A)(i); see also 9 FAM 402.3-5(C)(1)–(3); 1 PHILIP HORNIK ET AL., IMMIGRATION LAW AND DEFENSE § 3:4 (2017).

76. See 8 U.S.C. § 1101(a)(15)(A)(ii); 9 FAM 402.3-5(D).

77. The system of reciprocity functions as the baseline for who is able to receive A-2 visas, which are granted to government employees sent by countries that also recognize the rights and immunities of United States officials with an equivalent diplomatic status. See 8 U.S.C. § 1101(a)(15)(A)(ii).

78. *Id.*; see also 9 FAM 402.3-5(D)(1)–(6); HORNIK ET AL., *supra* note 75, § 3:5.

79. See 8 U.S.C. § 1101(a)(15)(A)(i)–(ii); see also 9 FAM 402.3-5(C)(4), (D)(4).

80. See 9 FAM 402.3-4(C)(a)–(b).

81. See HORNIK ET AL., *supra* note 75, §§ 3:4, 3:5.

82. *Id.*

Although two distinct levels of government employees hold A-1 and A-2 visas, the privileges that the holders receive as a result of these visas are not necessarily hierarchical. The Vienna Convention and federal law extend immunity from civil and criminal liability to all “diplomatic agents,”⁸³ which include mission heads or diplomatic staff members of the mission.⁸⁴ Diplomatic agents can receive either A-1 or A-2 visas depending upon their job description,⁸⁵ and therefore both visas ultimately recognize the same exact level of immunity.

Alternatively, “G” visas are granted to high-ranking government officials that are members of IOs, or employees of IOs themselves, as well as each of those individuals’ family members, who are visiting the United States for the purposes of furthering those IOs’ interests.⁸⁶ G-1 visas are granted to “a designated principal resident” of a foreign government that is recognized by the United States and is also a member of an IO protected and recognized under the International Organizations Immunities Act⁸⁷ (IOIA or “Act”). G-2 visas are granted to “other accredited representatives [and members of their immediate families] of such a foreign government” that is recognized by the United States and is also a member of those recognized organizations.⁸⁸

The IOIA defines a recognized international organization as “a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress . . . and which shall have been designated by the President through appropriate Executive order.”⁸⁹ The Act guarantees that representatives and officials from these organizations have the same immunity “from suit and every form of judicial process” that foreign government officials possess, “except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or . . . contract.”⁹⁰ Numerous IOs have been incorporated into the Act’s protections including the African Union,⁹¹ the International Committee of the Red Cross,⁹² and even the Holy See.⁹³

83. See, e.g., Vienna Convention on Diplomatic Relations, *supra* note 13, at art. 29, 500 U.N.T.S. at 110; see also 22 U.S.C. § 254a(1) (2012); 8 U.S.C. § 1102.

84. Vienna Convention on Diplomatic Relations, *supra* note 13, at art. 1(e), 500 U.N.T.S. at 98.

85. See *supra* notes 75–79 and accompanying text.

86. See 8 U.S.C. § 1101(a)(15)(G); 9 FAM 402.3-7(B).

87. See 8 U.S.C. § 1101(a)(15)(G)(i); see also International Organizations Immunities Act, ch. 652, tit. I, § 1, 59 Stat. 669, 669 (1945) (codified as amended at 22 U.S.C. § 288).

88. 8 U.S.C. § 1101(a)(15)(G)(ii); see also 9 FAM 402.3-7(B).

89. 22 U.S.C. § 288 (2012); see also 22 C.F.R. § 41.24 (2017).

90. 22 U.S.C. § 288a(b).

91. See *id.* § 288f-2.

92. See *id.* § 288f-3.

However, representatives from organizations other than those described under the IOIA are also able to claim “G” visas. G-3 visas are provided to those representatives who would normally be considered under G-1 or G-2 status, except that the government that person serves is not recognized by the United States government under the IOIA, or the government that individual serves is not a part of a recognized IO.⁹⁴ Finally, G-4 visas are provided to individuals who do not operate on behalf of any government, but instead are the heads or employees of IOs themselves, as well as those heads’ or employees’ immediate family members.⁹⁵ For example, all individual members of the International Committee of the Red Cross are given immunity while residing in the United States on official business from the Red Cross—not just diplomats operating vicariously through the United Nations or another IO.⁹⁶

Aside from residency, additional privileges are granted to those representatives with “A” or “G” status.⁹⁷ By virtue of their diplomatic status, these officials are able to procure special visas for their servants, staff, and other subordinate employees.⁹⁸ A-3 visas are special visas granted to employees of government officials, while G-5 visas are special visas given to employees of IO officials.⁹⁹ These visas serve as the vehicles by which diplomats commit labor trafficking.

2. A-3 and G-5 Visas Allow Diplomats and IO Employees to Bring Domestic Workers into the Country

A-3 and G-5 visas are not given to any actual representatives of organizations. Rather, these visas are given to “attendants, servants, and personal employees” of “A” and “G” visa holders, as well as those subordinate employees’ immediate families.¹⁰⁰ The “A” and “G” visa holders must follow several procedures and comply with a number of

93. See *id.* § 288*l*. The Holy See is the name of the Catholic Church’s government. See Bureau of European and Eurasian Affairs, *U.S. Relations with the Holy See*, U.S. DEP’T ST., <https://www.state.gov/r/pa/ei/bgn/3819.htm> (last visited Dec. 28, 2017).

94. 8 U.S.C. § 1101(a)(15)(G)(iii) (2012); 9 FAM 402.3-7(B)(a)(3).

95. 8 U.S.C. § 1101(a)(15)(G)(iv); 9 FAM 402.3-7(B)(a)(4).

96. See 9 FAM 402.3-7(M) (detailing a list of international organizations recognized for G-visa privileges).

97. See 8 U.S.C. § 1101(a)(15)(G)(v), 1101(a)(15)(A)(iii). See discussion *infra* Section II.C.2.

98. See 8 U.S.C. § 1101(a)(15)(G)(v); see also *id.* § 1101(a)(15)(A)(iii).

99. See 2 SHANE DIZON & NADINE K. WETTSTEIN, *IMMIGRATION LAW SERVICE* 2D § 6:52 (2017); HORNIK ET AL., *supra* note 75, § 3:6.

100. 8 U.S.C. § 1101(a)(15)(A)(iii), 1101(a)(15)(G)(v); 9 FAM 402.3-7(B)(5), 402.3-9(B)(1).

statutory requirements to be given these visa privileges.¹⁰¹ These visas represent the crux of this Comment's argument—although seemingly heavily regulated, A-3 and G-5 visas provide a vehicle by which officials and representatives are able to commit various forms of human trafficking.¹⁰²

To obtain an A-3 or G-5 visa, three general requirements must be met.¹⁰³ First, the individual must be currently employed or will be employed in the future as the “attendant, servant, or personal employee of the employer” seeking the visa.¹⁰⁴ Second, that employer must possess an A-1, A-2, or G-1 through G-4 visa.¹⁰⁵ Finally, the employer and employee must both intend to enter into or continue their employer-employee relationship.¹⁰⁶

In addition to these three basic requirements, other conditions must also be met. An A-3 or G-5 visa applicant must present a copy of an employment contract that has been signed by both the applicant and employer showing that the applicant is aware of and understands his or her terms of employment, including rights and payment.¹⁰⁷ According to the United States Foreign Affairs Manual (FAM), that contract must contain the following: (1) the employee's duties, (2) the employee's expected hours of work, (3) the employee's hourly minimum wage, (4) a provision providing for overtime work conditions, (5) the method and timeline of payments, (6) how the employee will be transported to and from the country, and (7) “[o]ther [r]equired [t]erms of [e]mployment.”¹⁰⁸ The FAM also requires A-3 and G-5 applicants to be aware of their rights under the TVPRA.¹⁰⁹

101. See *infra* notes 103–09 and accompanying text.

102. See Domani Spero, *Embassy Row's Dirty Little Secret: Abuse of Migrant Workers by Diplomats*, DIPLOPUNDIT (Dec. 23, 2013), <https://diplopundit.net/2013/12/23/embassy-rows-dirty-little-secret-abuse-of-migrant-domestic-workers-by-diplomats/> (discussing the prevalence of diplomatic immunity abuses for purposes of perpetrating trafficking).

103. See HORNICK ET AL., *supra* note 75, §§ 3:6, 3:61.

104. *Id.*

105. *Id.*

106. *Id.*

107. 9 FAM 402.3-9(B)(4)(a).

108. See *id.* 402.3-9(B)(4)(a)(1)–(7). The Foreign Affairs Manual defines “Other Required Terms of Employment” as: a provision whereby the employer agrees (1) “to abide by all Federal, State, and local laws in the United States,” (2) that the employee's passport and visa will be in the employee's “sole possession” and will not be “withheld . . . for any reason,” and (3) that the employee is not required to be at the employer's residence “except during working hours.” *Id.* 402.3-9(B)(4)(a)(7).

109. *Id.* 402.3-9(B)(1)(a); The TVPRA will be addressed in Section II.D of this Comment. See *infra* notes 117–27 and accompanying text.

Furthermore, the Secretary of State has authority over A-3 and G-5 visas.¹¹⁰ Before one of these visas is renewed, the Secretary of State must ensure that:

(A) the visa applicant has executed a contract with the employer or prospective employer containing provisions described in paragraph (2); 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 1375b of this title.¹¹¹

Between 2000 and 2007, the United States issued 10,386 A-3 visas and 7,522 G-5 visas.¹¹² Beginning in 2008, however, the United States cut its A-3 and G-5 visa issuances roughly in half.¹¹³ Between 2008 and 2012, the United States issued 5,330 A-3 visas and 4,196 G-5 visas.¹¹⁴ This dramatic change might have occurred following heavy government oversight included within the TVPRA to ensure compliance and prevent abuse, perhaps once the government realized the visas' capacity for such abuse.¹¹⁵

D. The Implementation of the William Wilberforce Trafficking Victims Protection Reauthorization Act

The TVPRA is an amendment to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA).¹¹⁶ This amendment was

110. See generally 8 U.S.C. § 1375c (2012) (listing the Secretary of State's duties in relation to A-3 and G-5 visas).

111. *Id.* § 1375c(b)(1).

112. Spero, *supra* note 102.

113. See *id.*

114. *Id.*

115. See Vandenberg & Bessell, *supra* note 52, at 597; see also *supra* note 10 and accompanying text.

116. Victims of Trafficking and Violence Protection Act of 2000 (sometimes referred to as the "Trafficking Victims Protection Act of 2000"), Pub. L. No. 106-386, 114 Stat. 1464; see also William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, 5044. The TVPRA is not the only amendment or reauthorization of the VTVPA. The most recent proposed reauthorization is the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2017 (FDTVPPRA), H.R. 2200, 115th Cong. (2017). If passed as written, the FDTVPPRA would change some of the language in Section 203 of the TVPRA and would also list some specific circumstances in which a diplomatic mission's visa privileges could be suspended, as opposed to simply deferring to the Secretary of State's discretion. *Id.* § 123. As of December 29, 2017, H.R. 2200 has passed the House of Representatives and is being reviewed by the Senate Committee on Foreign Relations. *H.R.2200—Frederick Douglass Trafficking Victims Prevention and Protection*

meant to both enhance the VTVPA's protections and add appropriations for the fiscal years of 2008 to 2011 for the purposes of further funding and implementing those new protections.¹¹⁷ Additionally, the TVPRA serves as a means of preventing further abuse of domestic workers employed by diplomats in the United States.¹¹⁸

Section 203¹¹⁹ is the most significant of the TVPRA's additional protections. Section 203 provides a mechanism by which the Secretary of State shall suspend a diplomatic mission's privileges to obtain either A-3 or G-5 visas.¹²⁰ The Secretary of State shall suspend these privileges upon two findings: (1) that credible evidence exists that one or more officials abused or exploited an employee; and (2) that the organization or mission of which the abusing official is a member tolerated the abuse or exploitation.¹²¹ The significance of this language cannot be understated: both prongs of Section 203 must be met for the Secretary of State to enforce it.¹²²

In addition to providing a method of revoking a diplomatic mission's privileges, Section 203 also provides certain protections to the victimized employees.¹²³ Victims are given protection from their employers, the ability to stay in the country, and the ability to work in a position unassociated with their former employer.¹²⁴ The government, therefore, closely guards the victimized employees, and also ensures that they can continue their lives within the country.

Despite the obvious utility of Section 203 and the TVPRA's ability to significantly curtail domestic labor trafficking, to date, no Secretary of State has ever used this mechanism to suspend a diplomatic mission or IO's A-3 or G-5 privileges.¹²⁵ Based on the futility of other methods that have been used to try and punish these government and IO officials,¹²⁶

Reauthorization Act of 2017, CONGRESS.GOV, <https://www.congress.gov/bill/115th-congress/house-bill/2200> (last visited Dec. 29, 2017).

117. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 122 Stat. at 5044.

118. Spero, *supra* note 102.

119. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 203, 122 Stat. at 5057–60.

120. *Id.* § 203(a)(2), 122 Stat. at 5057.

121. *Id.*

122. See *id.*

123. See *id.* § 203(b)–(c), 122 Stat. at 5057–59.

124. See *id.*

125. See Letter from the Human Trafficking Pro Bono Legal Center et al. to John Kerry, *supra* note 19; Spero, *supra* note 102. No credible reports exist as to *why* the Secretary of State has yet to implement Section 203. For a possible explanation, see *infra* Part IV.

126. See, e.g., *infra* notes 135–49 and accompanying text (discussing the failure of the United States to prosecute an Indian diplomat for labor trafficking).

Section 203 should be used substantially more often to protect trafficked persons.

III. ANALYSIS OF CASE STUDIES: HOW SECTION 203 COULD HAVE BEEN USED TO PREVENT FURTHER TRAFFICKING IN PERSONS

The potential impact of Section 203 of the TVPRA is best illustrated through two scenarios presented by high-profile labor trafficking cases involving foreign officials. In the first case, *United States v. Khobragade*,¹²⁷ the Secretary of State never utilized Section 203, despite both requirements of the TVPRA being satisfied.¹²⁸ The second case, *United States v. Al Homoud*,¹²⁹ illustrates a peculiar scenario; it resulted in the suspension of a certain category of individuals' visa privileges, but the Secretary of State did not publically or formally go through the channels outlined in Section 203.¹³⁰

Khobragade and *Al Homoud* together represent what this Comment will frame as the two forms of Section 203 enforcement: "formal" enforcement, which could have been utilized in *Khobragade*, and "informal" enforcement, as illustrated by *Al Homoud*.¹³¹ Formal enforcement entails a "by the book" implementation of the provisions in Section 203. Informal enforcement, on the other hand, is an unofficial and private diplomatic approach to Section 203 implementation that results in visa suspension on a smaller, but more pointed, scale.

A. Formal Enforcement of Section 203

Formal enforcement of Section 203 would be complete, clear, and public. If evidence is put forth that (1) an official has abused an employee, and (2) the diplomatic mission tolerated the abuse, then the Secretary of State would make an official statement¹³² declaring,

127. *United States v. Khobragade*, No. 1:14-cr-00176 (S.D.N.Y. filed Mar. 14, 2014).

128. See Vandenberg & Bessell, *supra* note 52, at 599–603 (detailing the crimes committed in *Khobragade* and the Secretary of State's lack of appropriate action).

129. *United States v. Al Homoud*, No. 5:15-cr-00391 (W.D. Tex. dismissed Feb. 10, 2016).

130. See Transcript of Status Conference at 26, *United States v. Al Homoud*, No. 5:15-cr-00391 (W.D. Tex. Oct. 26, 2015). Supposedly, the Qatari government decided to ban its own military officials from obtaining A-3 visas; however, that the Secretary and Department of State had no hand in this is unlikely. See *id.*

131. These terms and the distinction between the two types of enforcement are original conceptions of this Comment's author.

132. Official press releases are a common vehicle by which the Department or Secretary of State issues an official decision or guidance. See, e.g., *Secretary's Determination of Six-Months Suspension Under Title III of LIBERTAD*, U.S. DEP'T ST. (July 15, 2014), <https://2009-2017.state.gov/p/wha/rls/prsr/2014/229313.htm> (describing

pursuant to Section 203, that the diplomatic mission would have its A-3 and G-5 visa privileges suspended.¹³³ *United States v. Khobragade* represents the perfect scenario in which formal enforcement of Section 203 would have been possible and ultimately would have led to a better result.

In *Khobragade*,¹³⁴ the Deputy Consul General of India was arrested on allegations of making a false statement to procure an A-3 visa and failing to pay that worker in accordance with United States standards.¹³⁵ Khobragade allegedly presented the United States government with one contract for her employee that met United States standards, but then forced her employee to sign a separate, illegal contract that reduced the employee's wages to \$1.22 per hour.¹³⁶ At the time of the arrest, Khobragade was a consular officer and thus did not have full diplomatic immunity.¹³⁷ However, once arrested, India reassigned Khobragade to the Indian Mission to the United Nations, a transfer that would have granted her full immunity.¹³⁸

Despite public outrage, Secretary of State John Kerry approved Khobragade's transfer, solidifying her newfound complete diplomatic privilege.¹³⁹ Khobragade subsequently left the United States, but not before she was indicted by a federal grand jury on visa fraud and making false statements to the United States government.¹⁴⁰ The U.S. Department of State requested that India waive Khobragade's newfound

the Secretary of State's statutory authority to make official decisions that impact foreign and diplomatic relations with Cuba).

133. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 203(a)(2), 122 Stat. 5044, 5057.

134. The story of *United States v. Khobragade* played out over 3 separate filings, each containing different documents used to describe the same sequence of events. To avoid confusion, all in-text mentions of the *Khobragade* cases will only say "*Khobragade*." The footnotes, however, will contain a "*(Khobragade I)*," "*(Khobragade II)*," or "*(Khobragade III)*" to better identify each individual case filing. See *United States v. Khobragade (Khobragade I)*, No. 1:13-MJ-02870 (S.D.N.Y. dismissed Jan. 9, 2014); *United States v. Khobragade (Khobragade II)*, No. 1:14-cr-00008 (S.D.N.Y. dismissed Mar. 12, 2014); *United States v. Khobragade (Khobragade III)*, No. 1:14-cr-00176 (S.D.N.Y. filed Mar. 14, 2014).

135. See Vandenberg & Bessell, *supra* note 52, at 599–600 (citing Sealed Complaint at 1, *United States v. Khobragade (Khobragade I)*, No. 1:13-MJ-02870 (S.D.N.Y. Dec. 11, 2013)).

136. Indictment at 8–11, 12–14, *United States v. Khobragade (Khobragade II)*, No. 1:14-cr-00008 (S.D.N.Y. Jan. 9, 2014) [hereinafter Indictment, *Khobragade II*].

137. See Vandenberg & Bessell, *supra* note 52, at 600.

138. *Id.*

139. *Id.*

140. See generally Indictment, *United States v. Khobragade (Khobragade III)*, No. 1:14-cr-00176 (S.D.N.Y. Mar. 14, 2014) [hereinafter Indictment, *Khobragade III*]. It is important to note that diplomatic immunity does not protect an individual from being indicted; it just serves as a legal defense that requires charges to be dismissed. See 22 U.S.C. § 254d (2012).

immunity, but the Indian government refused.¹⁴¹ Khobragade's indictment was subsequently dismissed as a result of her immunity;¹⁴² however, it was reissued soon thereafter.¹⁴³ To this day, India has not extradited her, and if Khobragade ever re-enters the United States, she is subject to immediate arrest.¹⁴⁴

The Department of State classified Khobragade's treatment of her employee as trafficking.¹⁴⁵ *Khobragade* was also one of three trafficking cases, though the only criminal case, brought against Indian officials in less than three years.¹⁴⁶ Despite the United States government being aware of these cases, the Secretary of State took no action against Indian diplomatic missions.¹⁴⁷ The United States would have had the ability, under the TVPRA, to limit India's diplomatic missions' A-3 and G-5 visa privileges. Both prongs of Section 203 were satisfied: sufficient evidence existed that the foreign official, Khobragade, abused a worker, and the Indian government tolerated the action by granting Khobragade immunity and by refusing to submit her to the United States' legal system.¹⁴⁸ However, to this date, no effective action has been taken.¹⁴⁹

The fact that Section 203 was not implemented does not belittle the ripeness of *Khobragade*'s facts; instead, it illustrates how formal enforcement of Section 203 would have led to a better outcome. Diplomatic immunity was raised as a defense, allowing Khobragade to evade criminal or civil liability.¹⁵⁰ In response, the Secretary of State was uniquely positioned to utilize Section 203 to prevent future labor trafficking, while simultaneously alerting India's government and the rest of the world to the seriousness of India's diplomatic mission's actions. Formal enforcement's inherently public nature¹⁵¹ would have left

141. Vandenberg & Bessell, *supra* note 52, at 602.

142. Opinion and Order at 13, *United States v. Khobragade (Khobragade II)*, No. 1:14-cr-00008 (S.D.N.Y. Mar. 12, 2014).

143. *See generally* Indictment, *Khobragade III*, *supra* note 140.

144. *See* Vandenberg & Bessell, *supra* note 52, 601.

145. *Id.* at 602.

146. *Id.*

147. *See id.* at 602–03. Though the Department of State sparred with India, no formal action was taken against India's diplomatic mission. *See id.*

148. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 203(a)(2), 122 Stat. 5044, 5057; *supra* notes 120–22 and accompanying text; Indictment, *Khobragade II*, at 8–11, 12–14, *supra* note 136; Vandenberg & Bessell, *supra* note 52, at 602.

149. *See* Vandenberg & Bessell, *supra* note 52, at 603.

150. *See id.* at 600.

151. While the specific types of “bad publicity” that could result from formal enforcement are not always readily apparent, the consequences are not difficult to predict. If one country outright bans another country from specific diplomatic privileges, a strong likelihood exists that it would be widely reported in major news networks or be publicized by the government. *See, e.g., Qatar Military Official and Wife Plead Guilty to*

a lasting mark upon the diplomatic sphere, while also cementing the United States' commitment to enforcing its own protections against trafficking. Instead, *Khobragade* merely illustrates a “what could have been” scenario.

B. Informal Enforcement of Section 203

The informal enforcement of Section 203 is a far more clandestine approach to trafficking protections. Instead of relying upon the international spectacle that formal enforcement creates, informal enforcement would materialize as a *threat* of formal enforcement. Informal enforcement could potentially prove to be more efficient because the “under the table” nature of informal enforcement would allow the Secretary of State to bypass Section 203's second requirement: finding that an entire diplomatic mission tolerated abusive behavior toward domestic employees.¹⁵² This approach is best illustrated by the scenario presented in *United States v. Al Homoud*.¹⁵³

The 2015 case of *United States v. Al Homoud* represents an oddity in the history of the Department of State's relationship with the TVPRA. In *Al Homoud*, a military official from Qatar and his wife admitted to labor trafficking two women,¹⁵⁴ but pled guilty to lower charges.¹⁵⁵ Both women held visas sponsored by Al Homoud.¹⁵⁶ The women worked for almost a year without any compensation¹⁵⁷ and were forced to live in an apartment with “absolutely no furnishings, minimal toiletries . . . , no linens, no utensils, minimal food . . . , no clothes, no television, no reading material, and no communication devices.”¹⁵⁸ The victims alleged that they suffered both physical and emotional abuse and were denied medical treatment.¹⁵⁹ Additionally, Al Homoud confiscated both victims'

Federal Charges, U.S. DEP'T JUST. (Dec. 11, 2015), <https://www.justice.gov/usao-wdtx/pr/qatar-military-official-and-wife-plead-guilty-federal-charges>. The reasons for the ban would then also be publicized, effectively placing a black mark on the sending State's reputation.

152. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 203(a)(2), 122 Stat. at 5057; see also *supra* notes 120–22 and accompanying text.

153. *United States v. Al Homoud*, No. 5:15-cr-00391 (W.D. Tex. dismissed Feb. 10, 2016).

154. See Jim Forsyth, *U.S. Judge Deports Qatar Military Officer Accused of Enslaving Servants*, REUTERS (Feb. 9, 2016, 5:51 PM), <http://www.reuters.com/article/us-texas-qatar-crime-idUSKCN0VI28L>.

155. *Qatar Military Official and Wife Plead Guilty to Federal Charges*, *supra* note 151.

156. *Id.*

157. Complaint, *Al Homoud*, *supra* note 2, at 2–3.

158. *Id.* at 3.

159. Transcript of Sentencing Hearing at 17–23, *United States v. Al Homoud*, No. 5:15-cr-00391 (W.D. Tex. Feb. 10, 2016).

passports and forbade the two workers from communicating with the public.¹⁶⁰

Upon pleading guilty to a lesser offense of visa fraud, Al Homoud and his wife agreed to leave the country.¹⁶¹ Al Homoud was also ordered to pay \$120,000 in restitution to the victims (\$60,000 each).¹⁶² Finally, the Qatar government created a new policy forbidding military officers from Qatar from seeking A-3 visas for their domestic employees.¹⁶³ Although diplomatic immunity was available to Al Homoud, he never raised the defense.¹⁶⁴

While *Al Homoud* wound up preventing Qatar military officials from procuring A-3 visas, other Qatar officials can still obtain these visas.¹⁶⁵ Thus, the Secretary of State did not suspend Qatar's privileges.¹⁶⁶ This result raises many questions, chief amongst them being why Section 203 was never invoked. If Section 203 *had* been invoked, the prohibition against procuring A-3 visas would have been much broader, and thus, more protective.

Perhaps the Qatari diplomatic mission's visa privileges remain intact as a result of the failure to satisfy the second prong of the TVPRA test.¹⁶⁷ As mentioned above, the Secretary of State must find that the diplomatic mission of which the trafficker is a part tolerated the abusive behavior for the Secretary to suspend its diplomatic privilege.¹⁶⁸ In *Al Homoud*, the prosecution put forth no evidence to show that the Qatar military had any knowledge of Al Homoud or his wife's crimes prior to the case filing.¹⁶⁹ Therefore, the Secretary of State would not have been able to suspend all of Qatar's A-3 visa privileges.¹⁷⁰

160. See Complaint, *Al Homoud*, *supra* note 2, at 3; Transcript of Sentencing Hearing, *supra* note 159, at 18, 21, 22.

161. See Transcript of Sentencing Hearing, *supra* note 159, at 11.

162. *Id.* at 7, 10, 12–13.

163. See Transcript of Status Conference, *supra* note 130, at 26.

164. See Vandenberg & Bessell, *supra* note 52, at 609. The reason Al Homoud did not raise this defense is unknown. He possessed an A-2 visa, and therefore, he would have been subject to immunity. See Transcript of Status Conference, *supra* note 130, at 25.

165. Office of the Chief of Protocol, *Qatar-Zimbabwe*, U.S. DEP'T ST. (July 27, 2016), <https://www.state.gov/s/cpr/260778.htm> (showing a list of recognized diplomats from Qatar and the continued presence of Qatar's embassy within the United States).

166. See *id.*

167. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 203(a)(2), 122 Stat. 5044, 5057.

168. See *supra* notes 120–22 and accompanying text.

169. See Transcript of Status Conference, *supra* note 130, at 26; Vandenberg & Bessell, *supra* note 52, at 608–10 (citing *United States v. Al Homoud*, No. 5:15-cr-00391 (W.D. Tex. dismissed Feb. 10, 2016)).

170. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 § 203(a)(2), 122 Stat. at 5057 (stating that the Secretary of State must have knowledge that the diplomatic mission tolerated the employee's abuse).

However, the possibility exists that Section 203 *was* utilized, only in an entirely different manner—a manner that could be easily replicated in the future. Implicit in the Qatari government’s decision to suspend Qatar military officers’ A-3 visa privileges could be the United States’ informal invocation of Section 203.¹⁷¹ Though the Department of State has never made public any documents pertaining to the situation, imagine that the outcome in *Al Homoud* was the result of an agreement between the Department of State and the government of Qatar.¹⁷² Instead of an all-out utilization of Section 203 to cripple Qatar’s diplomatic mission, the Department of State *could* have threatened its use to spur negotiations with Qatar, resulting in only a ban on military officers’ visa privileges. As such, the privileges granted to the remaining members of Qatar’s diplomatic mission would have remained entirely intact.

Al Homoud indicates the potential for an informal method of Section 203 enforcement. Informal enforcement by means of threatening the use of the Secretary of State’s power to suspend A-3 and G-5 visa privileges could be an effective tool in curbing labor trafficking.¹⁷³ Instead of the international publicity inherent in formal enforcement, informal enforcement would allow for both the continuation of diplomatic relations *and* the strict enforcement of federal trafficking protections. On the other hand, informal enforcement is not free of faults. As in *Al Homoud*, the majority of a State’s diplomatic mission would likely remain intact.¹⁷⁴ If labor trafficking is rampant among a specific diplomatic mission, then informal enforcement is likely an insufficient solution and the Secretary should instead explore formal enforcement.

Khobragade and *Al Homoud*, which are both criminal cases involving diplomatic immunity and labor trafficking, present two sides of the same coin. *Khobragade* represents a failure by the United States government to rectify foreign officials’ labor trafficking and a failure to take advantage of a situation ripe for Section 203 enforcement.¹⁷⁵ The *Al*

171. See *supra* note 130 and accompanying text (discussing the unlikelihood that Qatar made the decision to suspend military officials’ visa privileges without prodding by the Secretary of State).

172. Because the Department of State has control over diplomatic relations, and because the Secretary of State has power over A-3 and G-5 visas, see 8 U.S.C. § 1375c (2012), any decision regarding a country’s visa privileges would likely involve a conversation between the sending State and the Department of State. Thus, it is far more likely than not that Qatari officials and the Secretary or other members of the Department of State discussed this outcome.

173. See discussion *infra* Part IV.

174. See, e.g., Transcript of Status Conference, *supra* note 130, at 26 (discussing the Qatari government’s decision to suspend only its own military officials’ visa privileges).

175. See generally *United States v. Khobragade (Khobragade III)*, No. 1:14-cr-00176 (S.D.N.Y. filed Mar. 14, 2014) (failing to prosecute an Indian diplomat accused of labor trafficking due to the diplomat’s assertion of immunity and subsequent flight from the

Homoud case, however, illustrates the likely success of the informal enforcement model. Through a dichotomous approach, these two enforcement techniques can be utilized to prevent the labor trafficking that a given diplomatic mission may be otherwise incentivized to perpetuate.

IV. RECOMMENDATION FOR THE INCREASED UTILIZATION OF BOTH FORMAL AND INFORMAL SECTION 203 ENFORCEMENT

The dichotomy between formal and informal enforcement presents a case-by-case approach to fighting the connection between labor trafficking and diplomatic immunity that covers several circumstances, such that many more instances of labor trafficking can be addressed.¹⁷⁶ In the future, if both prongs of Section 203(a)(2) of the TVPRA are met, and if a showing of strength by the Secretary of State is beneficial to diplomatic interests, then the Secretary should seize the opportunity for formal enforcement. In all other situations, where the Secretary must act to combat trafficking but the circumstances provide barriers to formal enforcement, the Secretary should utilize the flexible nature of informal enforcement.

Formal enforcement necessarily entails heavy international publicity,¹⁷⁷ while also posing significant challenges for United States foreign relations. If the Secretary of State were to suspend a diplomatic mission's visa privileges, the suspension would undoubtedly give rise to diplomatic tension.¹⁷⁸ Therefore, only in rare circumstances, such as that of *Khobragade* where a diplomat's sending State indiscriminately and unrelentingly shields that individual from liability,¹⁷⁹ should the Secretary of State trigger formal enforcement. Additionally, satisfying both prongs of Section 203 is likely extremely difficult,¹⁸⁰ and is perhaps why the TVPRA has never formally been invoked. That said, formal enforcement has a powerful function in the realm of diplomatic relations: formal enforcement is a demonstration of commitment to the United States' anti-trafficking principles and of its diplomatic strength.

country). Despite the incident, India's diplomatic mission retained its visa privileges. See Office of the Chief of Protocol, Iceland–Portugal, <https://www.state.gov/s/cpr/260776.htm#india> (last visited Dec. 29, 2017) (listing recognized India diplomats in residency at the Indian embassy in the United States); see also Vandenberg & Bessell, *supra* note 52, at 603.

176. See discussion *supra* Part III.

177. See *supra* notes 151, 154 and accompanying text.

178. See, e.g., Ellen Barry, *India Tires of Diplomatic Rift Over Arrest of Devyani Khobragade*, N.Y. TIMES (Dec. 20, 2014), <https://www.nytimes.com/2014/12/21/world/asia/india-tires-of-diplomatic-rift-over-arrest.html>

179. See *supra* note 141 and accompanying text.

180. See *supra* notes 167–70 and accompanying text.

Khobragade, a failed trafficking prosecution caused by a sending State's obstruction of justice, illustrates the necessity for the United States to begin flexing this long-dormant muscle.

Informal enforcement is inherently less powerful than formal enforcement, but can be just as attractive for that very reason. Informal enforcement is difficult to publicize due to its lack of statutory or policy form, and, as such, aids in preserving diplomatic relations. In *Al Homoud*, Qatar made the decision to prevent its own military officers from bringing domestic employees into the United States.¹⁸¹ Through the informal enforcement of Section 203 by way of "behind the scenes" conversations and threats against a diplomatic mission, the Secretary of State can attack the cause of specific labor trafficking operations while not exposing the governments of sending States.

However, informal enforcement does have downsides. It is inherently less powerful than formal enforcement and entails a risk of sending States calling the United States' bluff.¹⁸² If the Secretary of State seeks informal enforcement against a sending State, but conclusively lacks the evidence required for formal enforcement, then the Secretary is left with no adequate means of recourse against particularly stubborn sending States. That said, the flexibility of this particular type of enforcement allows it to remain a viable alternative to formal enforcement in a variety of circumstances.

V. CONCLUSION

As established by the Vienna Convention, diplomatic immunity presents a unique conflict in the United States. Though immunity is an important part of diplomatic relations with other countries, it is also a conduit through which diplomatic agents can commit human trafficking. By virtue of their diplomatic status, foreign government officials and certain employees of IOs are able to procure special visas allowing them to bring domestic workers into the country to serve as their personal staff.¹⁸³ However, these visas are also the means by which diplomatic agents are able to commit human trafficking.¹⁸⁴ In response to labor trafficking via the use of A-3 and G-5 visas within the United States, the United States passed the TVPRA.¹⁸⁵ Section 203 of the TVPRA allows the Secretary of State to strip visa privileges from diplomatic missions

181. See *supra* note 163 and accompanying text.

182. If the sending State believes the Secretary of State has insufficient evidence, it may refuse to buckle under the United States' threats.

183. See discussion *supra* Section II.C.

184. See discussion *supra* Sections II.C.2, II.D; see also *supra* note 10 and accompanying text.

185. See discussion *supra* Section II.D.

upon finding that the missions facilitated labor trafficking.¹⁸⁶ Section 203 can be utilized through one of two means: formal enforcement and informal enforcement.¹⁸⁷

Formal enforcement entails the Secretary of State (1) finding sufficient evidence of State-tolerated human trafficking within a diplomatic mission and (2) responding to that evidence by publicly and completely revoking that diplomatic mission's visa privileges, a powerful gesture that places a heavy burden on diplomatic relations.¹⁸⁸ Informal enforcement, by contrast, is best realized through a less public *threat* of Section 203 enforcement.¹⁸⁹ Informal enforcement would allow the Department of State to preserve diplomatic relations with offending States, while at the same time protecting victims and preventing future transgressions.¹⁹⁰ This enforcement mechanism would result in an outcome similar to *Al Homoud*, where only a part of a State's diplomatic mission was suspended.¹⁹¹ Though these enforcement mechanisms are different, they both allow for the realization of the TVPRA's purpose: ridding the United States of its federally-sanctioned licenses to traffick persons under the protection of diplomatic immunity. Thus, utilizing a case-by-case approach, the Secretary of State should increase the utilization of both formal and informal enforcement to better aid in the United States' efforts against human trafficking.

186. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 203(a)(2), 122 Stat. 5044, 5057.

187. See discussion *supra* Part III.

188. See discussion *supra* Sections III.A, IV.

189. See discussion *supra* Section III.B.

190. See discussion *supra* Part IV.

191. See *supra* notes 163, 165–66 and accompanying text.