



**MODERN-DAY SLAVERY IN U.S.-MEXICAN TERRITORY:  
HUMAN TRAFFICKING AT THE BORDER**

by

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A young girl was placed with a family to work as a housemaid in their residence in Southern California. Her job became two years of continuous, dawn-to-dusk cleaning schedules, a \$45 per month salary and life in a windowless garage. Several miles east, in Arizona, a group of 20 migrant laborers were forced to work against their will under various death threats, in order to pay off the exorbitant price for being brought into the country, an amount which traffickers doubled as soon as the migrants crossed into the United States. In the meantime, in Mexico, several women and girls of various ages were kept under forced security in a brothel for several years, where they were required to service clients without pay, and were beaten to the point of death if they refused.

Gruesome examples of human trafficking, such as the ones described above, abound in the U.S.-Mexico border area, and are believed to be on the increase. Whether by deception, force or coercion, men, women and children are being used to supply thousands of underground labor and sex markets in the region between the United States and Mexico. Furthermore, the border also serves as a major gateway for victims arriving from different regions in the world, including Latin America, Asia and Eastern Europe, to be trafficked into the United States.

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Although many human trafficking cases have been made known to us through the testimonies of rescued victims, the intervention of authorities and the subsequent prosecution of some traffickers, myriads of similar situations remain hidden and many victims never make it out of their slavery condition alive. Unfortunately, in various instances traffickers have gone unprosecuted because victims have refused to testify due to fear of deportation, or fear of retaliatory harm inflicted on them or their family from trafficking gang members. Moreover, anti-trafficking legislation is fairly new in the United States and Mexico, and both countries are still in the process of criminalizing human trafficking at local levels, all of which has slowed down the battle against human trafficking on the U.S.-Mexican border.

This brief attempts to provide an open window into the grim reality of human trafficking in the U.S.-Mexico context, by describing its different manifestations and providing current statistics that demonstrate its prevalence. It also highlights recent legislation (within the last five years) which has been drafted and implemented in each country at both federal and state levels in an effort to effectively combat this modern-day form of slavery.

**What Is Human Trafficking?**

Broadly speaking, human trafficking pertains to the use of a human being(s) as a commodity for the profit of other(s). Therefore, human trafficking is widely considered to be a modern-day form of slavery where, in the same way that merchandise is appropriated and transported across territory, whether nationally or trans-nationally, human beings are obtained and retained against their will for the financial benefit of

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others. Human trafficking includes the following: forced labor in agriculture, domestic service, construction work, transportation, restaurant services, and sweatshops; commercial sexual exploitation, which involves prostitution, pornography, and sex tourism through various outlets such as massage parlors, friendship clubs, brothels, and beauty parlors; the forced sale of organs; and illegal adoptions (California Alliance to Combat Trafficking and Slavery, 2007, p. 17). Methods used by traffickers to enforce bondage include but are not limited to physical and sexual abuse, confiscation of legal documents, starvation, and psychological manipulation (Office of the Attorney General of Texas, 2008, p. 1).

In the last decade, various definitions of human trafficking have surfaced in legal and governmental spheres due to the broad and increasing scope of actions that make up this dark and secret activity. The United Nations has defined human trafficking as the “recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of 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 of the prostitution of others or other forms of exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs”<sup>1</sup> (United Nations’ Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2003).

And in 2000 the Government of the United States defined trafficking in persons as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.” And “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 involuntary servitude, peonage, debt bondage, or slavery” (Trafficking Victims Protections Act).

When defining human trafficking, it is also important to differentiate between human trafficking and migrant smuggling. The United Nations, in its Anti-human Trafficking Manual for Criminal Justice Practitioners defines the smuggling of migrants as

“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”

Thus, human trafficking is always exploitative and the consent of the person “transacted” is irrelevant, while migrant smuggling is commercial in nature, and the person smuggled offers his or her consent. Also, although migrant smuggling is always transnational in nature, it may not necessarily be so for human trafficking. However, smuggling can become human trafficking when smugglers or “coyotes” force the person(s) smuggled to pay additional fees, whether in the form of currency or labor and/or sexual services (U.S. Immigration and Customs Enforcement, 2010).

Figure 1

ACTIVITY	Human Trafficking	Migrant Smuggling
PURPOSE	Exploitative	Commercial
MEANS	-Violation of Human Rights -Consent Irrelevant	-Not Necessarily Violent or Abusive -Consent Exists
TRANSPORT	National/Trans-National	Trans-National

*Adapted from the Florida Coalition against Human Trafficking, with data from The Texas Response to Human Trafficking.*

### Human Trafficking in the U.S. and Mexico: Manifestations, Figures and the Border

The many cases of human trafficking uncovered in North America have exposed the United States as one of the top destinations for victims of human trafficking, and have also revealed Mexico to be a main source and destination country for trafficked persons.

The United States is attractive to traffickers for many reasons, including the country’s extensive international borders with Canada to the north and with Mexico to the south, its economic strength and

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rising industries, and its growing immigrant population. In addition, the current global economic recession has resulted in a decrease in labor demand and an increase in the number of desperate men and women ready to take greater risks to find employment. Unfortunately, people who have taken these “risks”- such as voluntary physical separation from loved ones and/or their willingness to work illegally in the U.S.- have become easy prey for human traffickers. Heightened border enforcement has also led more and more migrants to resort to smugglers - many of whom are traffickers in disguise - rather than crossing on their own, increasing their vulnerability to trafficking networks (Tiano, Ulibarri and Ramos, 2010).

The U.S. Department of State has estimated that between 14,500 and 17,500 people are victims of human trafficking in the United States each year of which 80% are female and 50% are children (U.S. Department of State, 2009; The Human Trafficking Project, 2010). Furthermore, according to anti-trafficking organizations such as the Polaris Project and governmental initiatives such as the Immigration and Customs Enforcement’s Operation Predator, more than 20,000 U.S. children are at high risk of being trafficked into the sex industry each year, while 1 in 5 girls and 1 in 10 boys in the United States are sexually exploited before they reach adulthood (U.S. Immigration and Custom Enforcement, 2008; Polaris Project, 2010). Recent governmental research has also revealed that the primary purpose behind human trafficking cases in the United States is sexual, followed by forced labor. Indeed, during Fiscal Year 2008, of the 40 cases of human trafficking investigated by the U.S. Government, 27 involved commercial sexual exploitation and 13 involved forced labor (U.S. Department of State, 2009).

Mexico is not only a top destination country for human trafficking victims, as is the U.S., but it is also fertile ground for the supply and movement of trafficked persons. Indeed, while some victims remain enslaved in Mexican territory, others transit through the country on their way to the United States, Canada, or Western Europe (Finckenauer and Schrock, 2000). In both cases, the main purposes that drive traffickers to enslave and exploit their victims are forced labor and commercial sexual exploitation. In most cases, victims will become deceived by traffickers’ promises of financially secure jobs and, due to the persistently

unstable Mexican economy and the high levels of unemployment, they unknowingly or knowingly agree to illegal work schemes, both in their country and across the border (Tiano, Ulibarri and Ramos, 2010). It is estimated that between 20,000 and 50,000 people become victims of human trafficking in Mexico every year, and, according to Mexico’s National Institute of Migration, 68% of trafficked victims are females and 32% are males (American Bar Association, 2005; A favor de las victimas de trata de personas, 2010). Official Children Protection data has indicated that 42% of Mexico’s trafficked population is made up of adults, and 58% consists of minors (Office of Governor Arnold Schwarzenegger, 2008).

Women and children, along with indigenous people and undocumented migrants are considered the most vulnerable parties to human trafficking in Mexico. For the most part, local victims are women and children who are lured from impoverished rural areas into urban centers with false promises of better employment, and then subsequently enslaved in commercial sex operations. Men and boys from Southern Mexico are also taken to Northern Mexico where they become enslaved in labor and are commercially exploited. On the other hand, the majority of foreign victims who are exploited for commercial sex in Mexico come from Central America, specifically from El Salvador, Guatemala and Honduras. Central American victims are commonly trafficked for labor purposes into Southern Mexico, while victims coming from the Caribbean, Europe and Asia are also trafficked into Mexico for labor exploitation (U.S. Department of State, 2009).

Figure 2

	U.S.A	MEXICO
% Of Trafficked Population/Year	14,500-17,500	20,000-50,000
% Of Trafficked Males and Females/Year	20% Males and 80% Females	32% Males and 68% Females
% Of Trafficked Children/Year	50% Minors	58% Minors

*Adapted from data provided by 2009 Trafficking in Persons Report, U.S. Department of State, Mexico’s National Institute of Migration and the Comisión Especial de Lucha contra la Trata de Personas.*

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### Federal and State Legal Efforts to Combat Human Trafficking in the United States

In 2000 the Government of the United States of America enacted the Trafficking Victims Protection Act (TVPA), which makes human trafficking a federal crime, establishes resources to combat human trafficking and issues measures for the protection of victims, which include eligibility for certain services and benefits regardless of immigration status (crisis counseling, mental health assistance, shelter), and available interpreting and translation services (United States Department of Justice, 2008).

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Prevention Reauthorization Act of 2005 (TVPRA), which gives jurisdiction to U.S. courts over Governmental employees who become involved in human trafficking abroad. This amendment also provides new anti-trafficking measures such as developing grant programs directed towards aiding state and local law enforcement anti-trafficking initiatives, and expanding assistance programs to aid victims who are U.S. citizens or resident aliens (Northeastern University, 2009).

The most recent federal amendment is The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, which establishes new provisions to aid domestic trafficking victims, and new

measures such as making it unnecessary for prosecutors to prove the trafficker knew the victim was a minor and requiring them to, instead, demonstrate that the accused had a “reasonable opportunity to observe” the victim. This new law also requires that all types of pimping and pandering be criminalized, and that the President develop a system to monitor federal anti-trafficking programs (Northeastern University, 2010).

Since the passing of these laws by the U.S. Government, the number of investigations and prosecutions has increased. For instance, between 2000 and 2005, out of 555 suspects of human trafficking, 146 suspects were charged and prosecuted for criminal behavior (California Alliance to Combat Trafficking and Slavery, 2007), whereas in fiscal year 2008 alone the U.S. Government realized 183 investigations, 82 prosecutions, and 77 convictions. Regarding the trafficking of children for sexual purposes, 2008 ended with 486 arrests, 148 state and federal convictions, and the recovery of 245 children (U.S. Department of State, 2009).

At present, 42 states have passed criminal statutes to combat human trafficking, with the remaining eight states - Alabama, Hawaii, Ohio, South Dakota, Vermont, Virginia, West Virginia and Wyoming - yet to enact anti-trafficking legislation (U.S. Department of State, 2009; Center for Women Policy Studies, 2010).

#### *Anti-Trafficking Legislation in California:*

In 2006 AB 22 took effect. This law establishes trafficking in California as a felony crime punishable by a maximum of eight years in state prison. It also makes victim restitution mandatory, enables victims to bring civil action against traffickers, and establishes measures to ensure confidentiality and protect information. In addition, this law directs the Attorney General to give priority to human trafficking over other crimes (California Alliance to Combat Trafficking and Slavery, 2007).

In 2006 California also established SB 1569, which enables temporary immediate assistance to victims while they wait to be federally certified as victims of

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human trafficking (which allows them to receive federal benefits, and which can take up to two years). California was the first state in the country to pass such a law (California Alliance to Combat Trafficking and Slavery, 2007).

AB 1278 came into effect in 2008, and makes void any labor contract provision whereby wages are withdrawn to compensate for the movement of a prospective employee into the United States. Also in the same year California enacted AB 2810 which establishes a series of indicators to identify cases of human trafficking, and requires law enforcement agencies to determine whether victims of other crimes could also be victims of human trafficking at the same time (Center for Women Policy Studies, 2010).

In 2009 California enacted AB 17 which mandates, among other stipulations, that money or fines from cases of trafficking of minors for sexual purposes be placed in the Victim-Witness Assistance Fund (Center for Women Policy Studies, 2010).

### *Anti-Trafficking Legislation in Arizona:*

In 2005 SB 1372 established the following acts as felonies: sex trafficking of a minor and attempted sex trafficking of a minor, which constitute first degree felonies (from 25 years up to life in prison); sex trafficking and human trafficking for forced labor or services, which constitute class 2 felonies (5 years in prison); and unlawfully obtaining labor or services, which are level 4 felonies (2.5 years in prison) (Phillips and Associates Law Firm, 2010). Also, this bill requires the Court to mandate restitution (Center for Women Policy Studies, 2010).

In 2009 an amendment to SB 1281 was enacted, broadening the definition of human trafficking to include any “sexually explicit performance” resulting from deception, force, or coercion. Knowledge that the victim will engage in prostitution or sexually-explicit acts is also classified as an offense under this bill. Furthermore, the bill expands the definition of coercion, and adds a series of activities to the definition of forced labor, such as withholding a person’s documents, or intimidating with financial

harm or threats (Center for Women Policy Studies, 2010).

### *Anti-Trafficking Legislation in New Mexico:*

In 2008 New Mexico passed SB 71 which makes human trafficking a felony of the third degree (punishable by 3 years in prison), a second degree felony (punishable by up to 9 years in prison) in cases when trafficking victims are under the age of 16, and a first degree felony (punishable by up to 18 years in prison) if the victim is under 13 years of age. This bill also criminalizes knowingly benefiting from human trafficking, establishes that a victim may not be charged as an accessory to the crime of trafficking in persons, mandates victim restitution, and qualifies victims to receive aid and services from the state regardless of their migratory status (Center for Women Policy Studies, 2010).

### *Anti-Trafficking Legislation in Texas:*

In 2003 Texas enacted HB 2096, which defines human trafficking and establishes it as a second degree felony (punishable by 2 to 20 years in prison) with the option of becoming a first degree felony (punishable by 5 to 99 years in prison) if the victim is younger than 14 years old, and/or if the trafficked person dies as a result of the trafficking act. This law also directs local enforcement agencies to address and investigate potential cases of human trafficking.

In 2007 SB 1288, SB 1287, and HB 1121 were passed by the Texas Legislature with the intent of strengthening the fight against human trafficking and facilitating state level prosecution. Specifically, SB 1288 requires hotel/motel and similar lodging establishments to display information concerning human trafficking, such as an information and victim assistance toll-free telephone number. SB 1287 requires that holders of licenses to sell alcoholic beverages also post information about the crime of human trafficking along with the national human trafficking hotline number (Center for Women Policy Studies, 2010). Among other stipulations, HB 1121 amends the definitions of “forced labor or services”

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and “traffic” in Texas’ Penal Code (Center for Women Policy Studies, 2010).

In 2009 HB 533 took effect, enabling victims of human trafficking to bring civil action against the perpetrator. The bill also allows victims to sue for damages, court costs, and attorney services (Center for Women Policy Studies, 2009).

In 2009 Governor Rick Perry signed HB 4009, which establishes the development of a taskforce to enact policies and measures, including issuing reports on the number of human trafficking victims and convictions, transit routes used by traffickers to move their victims, and demand patterns for human trafficking in Texas (Polaris Project, 2009).

In addition to the federal and state legal measures enacted in the United States to fight against human trafficking, several inter-agencies, involving various government agencies, have surfaced in the last ten years to address the rapidly growing number of human trafficking cases in the country. One such inter-agency is The Human Smuggling and Trafficking Center, which was created in 2004 and which collects intelligence and develops strategic assessments, refers such information to pertinent organizations or agencies within the organization, and implements anti-trafficking initiatives (U.S. Department of State, 2009). On a state level, cooperation between the federal government, state governments and civil society has taken the form of regional task forces, such as the Los Angeles Metropolitan Area Task Force on Human Trafficking, which was formed to advance victim identification and rescue tactics, prosecute traffickers, and assist victims. The Task Force comprises the United States Attorney General's Office, the Coalition to Abolish Slavery and Trafficking (CAST), the Legal Aid Foundation of Los Angeles (LAFLA), the Federal Bureau of Investigation, the Los Angeles Police Department, and the United States Department of Labor's Office of Inspector General (Department of Justice, 2005).

The Arizona League to End Regional Trafficking (ALERT) is another example of a regional task force which seeks to educate the public on the realities of human trafficking, provide aid to victims of human trafficking through various services (medical care,

legal assistance, language interpretation, food and shelter), and establish an anti-trafficking network throughout the state. ALERT is a coalition of partnerships with law enforcement agencies, faith-based organizations, such as Catholic Charities, non-profit organizations, Arizona's Attorney General's Office, and concerned citizens (Arizona League to End Regional Trafficking, 2009).

### **Federal and State Legal Efforts to Combat Human Trafficking in Mexico**

Although the United Nations’ Global Report on Trafficking in Persons (2009) has placed Mexico among the countries where sexual exploitation and forced labor is criminalized, the latest research conducted by the U.S. Department of State (Trafficking in Persons’ Report, 2009), places Mexico as a tier 2 country, signifying that the Mexican Government has not entirely met the minimum standards in eradicating Human Trafficking (as established in the Trafficking Victims Protection Act). However, this same report mentions Mexico’s current “significant efforts to bring (it) self into compliance with those standards” (U.S. Department of State, 2009).

Human trafficking in Mexico falls under federal jurisdiction when cases involve at least three individuals, when the act of trafficking has been repeated, or when the crime is of international dimensions. All other cases of human trafficking fall under state jurisdiction.

In 2007 the Mexican Congress passed the Law to Prevent and Penalize Trafficking in Persons, which establishes that all forms of trafficking, as stated in Article 3 of the UN’s Protocol to Suppress and Prevent Human Trafficking, constitute crimes. Specifically, human trafficking can be punishable by 6 to 12 years in prison, and by 9 to 18 years if the victim is a minor or a mentally disabled person. Penalties are to increase by one half when the person prosecuted is a public official (U.S. Department of State, 2009). This law also aids victims by creating a federal commission led by the Ministry of Interior, which has authority to request funds and put the new law into practice, and by developing a national program directed towards preventing human

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trafficking (United Nations Office on Drugs and Crime, 2009, p. 134).

In 2009, the Mexican Government enacted a series of accompanying regulations to the Law to Prevent and Penalize Trafficking in Persons which included guiding principles concerning the application of this law, and specifically mandated that the national anti-trafficking program be published by May 2010 (American Bar Association, 2005).

However, despite current legislation, several shortcomings in Mexico's efforts to address human trafficking have been identified. For instance, victims are required to press charges against traffickers before they are considered actual victims of human trafficking; until such time they are ineligible to receive aid and assistance (U.S. Department of State, 2009). Regrettably, this condition discourages victims from identifying captors or reporting abuses, due to fear of retaliatory action inflicted on them or their family members by trafficking gangs. Also, the 2009 regulations to the Law to Prevent and Penalize Trafficking in Persons fail to address the right of foreign victims to request refugee status within Mexico, do not address and implement systems to identify and protect foreign children, and exclude NGOs from the Interior Ministry commission mentioned above (American Bar Association, 2005).

Although no prosecutions or convictions of human trafficking were reported in 2008, the Mexican Government has made significant progress in the effective prevention and prosecution of human trafficking, with 24 open investigations recorded in the same year (11 involving forced labor and 13 involving commercial sexual exploitation) (U.S. Department of State, 2009). Since then, the National Migration Institute has identified 106 possible victims of human trafficking within the country, as reported by the Comisión Especial de Lucha contra la Trata de Personas (Special Commission against Human Trafficking) in February 2010. Although the Commission did not provide specific information concerning investigation and/or prosecution efforts regarding these victims, the National Migration Institute did identify 57% to be victims of labor exploitation, and 38% to be victims of sexual exploitation, with one case of organ extraction (A favor de las victimas de trata de personas, 2010).

At present, 22 out of Mexico's 31 states have enacted laws or reforms that criminalize some or all forms of human trafficking. However, only 5 of these Mexican states, namely Guerrero, Zacatecas, Sonora, Chihuahua, and the State of Mexico, have adopted complete anti-trafficking laws in accordance with the definition of human trafficking as stated in the UN Trafficking Protocol; 14 other states have enacted anti-trafficking laws which only address the element of prostitution involved in the trafficking of persons, and thus are not fully in line with the UN's Protocol; and 4 states have adopted reforms to their penal codes concerning human trafficking; the implementation of such reforms is still pending (United Nations Office on Drugs and Crime, 2009, p.134).

Among the six Mexican states on the U.S.-Mexican border, only Baja California, Sonora, Chihuahua and Coahuila, have criminalized human trafficking in accordance with the U.N. Protocol. Specifically, Chihuahua's anti-trafficking legislation makes consent irrelevant when any of the types of trafficking are present. As of March of 2010, neither Tamaulipas nor Nuevo León had made mention of the crime of human trafficking in their penal codes. However, officials in Nuevo León were reportedly working on drafting anti-trafficking legislation to address the annual 2,000 human trafficking cases in their state (Informador.com.mx, 2010).

In Mexico, the principal federal initiatives to battle human trafficking include the Federal Special Prosecutor for Crimes of Violence against Women and Trafficking of Persons (FEVIMTRA), The National Migration Institute (INM), and the Department for Integral Development of the Family (DIF). Various NGOs (non-governmental organizations) and IGOs (inter-governmental organizations), such as Amnesty International and the Centro de Investigación en Desarrollo y Asistencia Social (CEIDAS) are also active in the country, fighting human trafficking, aiding its victims, and raising public awareness with campaigns and seminars.

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### The Fight against Human Trafficking: Everyone's Battle

Human trafficking is a rapidly expanding and extremely complex crime to combat. The hidden nature of this horrific criminal activity is its principal strength and what makes it so difficult to successfully defeat. Indeed, the majority of human trafficking victims remain secluded in their prisons, out of sight, and thus difficult to expose. It is for this reason that official estimates are difficult to obtain, and numbers and figures are approximate but never precise. Also, due to its link with other criminal activities, such as prostitution or smuggling, human trafficking may unfortunately go unnoticed before the untrained eye. For this reason, law enforcement agencies must adequately train their agents to understand the nature and scope of human trafficking, and thus recognize a case of human trafficking behind what could, in appearance, be a simple case of prostitution or smuggling. A victim-centered approach has also been acknowledged as necessary in the fight against human trafficking, as many victims are foreign nationals with little to no education and endure extreme fear and emotional paralysis from the severe abuse inflicted on them by traffickers.

In their fight against human trafficking, the Governments of both the United States and Mexico have recognized these essential needs along with the fact that, as experience has shown, cooperation with civil society, in the form of Churches and relief organizations, has maximized successful prosecutions

of traffickers and assistance to victims. Furthermore, civil society's role in combating human trafficking is fundamental, since it has a better chance of understanding street life in urban communities, while providing basic social services such as food and shelter.

As neighboring countries that share a highly volatile border with high rates of human trafficking, smuggling, and drug trafficking, Mexico and the U.S. have also acknowledged that transnational cooperation between them is essential. For this reason, in 2005 the United States and Mexico launched the OASISS bi-national program (Operation against Smugglers Initiative on Safety and Security), which has successfully aided in the prosecution of traffickers and in the dismantling of smuggling and trafficking networks (Department of Homeland Security, 2005). In 2007, the Mérida Initiative was also established to assist Mexico and Central America in battling organized crime, including their human trafficking operations (U.S. Department of State, 2009; Arizona Attorney General, 2009). Additionally, state-level initiatives along the U.S.-Mexico border continue to play a critical role in effectively tackling the complex issue of human trafficking. However, the United States and Mexico still have a long way to go in the fight against human trafficking, as both countries uncover the hidden nature and wide scope of the crime and strengthen their cooperation mechanisms so as to increase the number of prosecutions and rescued victims.

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**Maria Tena** teaches Journalism and Speech at Maranatha Christian School. She holds a B.A. in Political Science from Whitworth University, and an M.A. in Government and Politics from St. John's University. Maria hopes to contribute to raising awareness of the realities of human trafficking through her research and writing.