



## What Is and Is Not Human Trafficking?<sup>1</sup>

January 2025

This Human Trafficking Awareness Month, ASISTA is reflecting back on the basics. How many of us are aware of what is and is not human trafficking? Especially where the new presidential administration intends to impose maximum penalties for both human trafficking *and* human smuggling cases, it is important to know the difference between how the acts are perpetrated and why the legal ramifications for them should not always be the same. Consider the various definitions and ramifications below.

The **plain language definition** of **human trafficking** by the U.S. Department of Justice is, “a crime involving the exploitation of a person for labor, services, or commercial sex.”<sup>2</sup> By incorporating the concept of “exploitation,” this definition centers on activity where the perpetrator is “meanly or unfairly” making use of their victim’s labor, services, or commercial sex, for the perpetrator’s own advantage.<sup>3</sup> It is characterized by the perpetrator causing the victim to do labor or sex work they would not ordinarily agree to do.

The **federal legal definition** of **human trafficking** is split into two offenses, which largely accord with the plain language understanding. It is either “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,” or it is “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.”<sup>4</sup> These definitions focus sharply on the victim’s lack of consent. Either the perpetrator is forcing, defrauding, or coercing the victim into performing the commercial sex or labor, or the perpetrator is victimizing a minor, who lacks the legal capacity to give consent. The criminal penalty for sex trafficking by force, fraud or coercion is 15 years to life in prison. An immigrant who has committed the act is generally barred from immigration relief.<sup>5</sup>

By contrast, the **plain language definition** of **human smuggling** is the “provision of a service—typically, transportation or fraudulent documents—to an individual who voluntarily seeks to gain illegal entry into a foreign country.”<sup>6</sup> It is characterized by the perpetrator

---

<sup>1</sup> Copyright 2025, ASISTA Immigration Assistance.

<sup>2</sup> U.S. Dept. of Justice, “Human Trafficking,” <https://www.justice.gov/humantrafficking> (last visited Jan. 23, 2025).

<sup>3</sup> Merriam-Webster Dict., “exploit,” available at <https://www.merriam-webster.com/dictionary/exploit> (last visited Jan. 23, 2025).

<sup>4</sup> 22 USC § 7102(8). See also 18 USC 1591(a).

<sup>5</sup> See, e.g., INA § 214(o)(1); INA § 212(a)(2)(A)(i)(I); INA §§ 101(a)(43)(A), (F), (I), (K), (N).

<sup>6</sup> ICE, The Cornerstone Report, “Human Trafficking vs Human Smuggling,” <https://www.ice.gov/sites/default/files/documents/Report/2017/CSReport-13-1.pdf> (last visited Jan. 23, 2025).

facilitating a crime against the state, by enabling a willing participant to avoid consequences for entering that state without legal authorization. It does not require the perpetrator to have personally gained from the act, nor to have had any bad intentions or acted against another's consent.

The **criminal law definition of human smuggling** similarly focuses on knowingly “bring[ing]” a noncitizen to the U.S., “in any manner whatsoever,” “at a place other than a designated port of entry . . . .”<sup>7</sup> It concerns itself primarily with the perpetrator enabling a noncitizen to cross a border away from an official inspection site. It is a crime even when the perpetrator has not personally gained from the action, and even when the noncitizen has wholly consented to be smuggled and has not been harmed, defrauded, or coerced at any point. The criminal penalty where there is no injury or financial gain involved is a fine or a maximum of five years in prison. A noncitizen who commits smuggling may be barred from some immigration benefits, but, if they are a survivor, they can generally seek a waiver to overcome the bar, especially where the smuggled person was a spouse, parent, son, or daughter.<sup>8</sup>

**In our work, ASISTA regularly encounters cases of both human trafficking and human smuggling.** Immigrants are frequently victims of human trafficking because unscrupulous employers take advantage of undocumented migrants' unfamiliarity with U.S. labor rights and fear of contacting law enforcement when they are being harmed or threatened to work (or to engage in commercial sex). The stories these survivors tell are of extreme violence, extreme fear, and extreme dehumanization. ASISTA counsels its members to seek T-visa protections for these survivors, and to work in trauma-informed ways with law enforcement to try to prevent the perpetrator from victimizing anyone else.

Meanwhile, the stories immigrant survivors tell that match the human smuggling definition are frequently ones of desperation, but also “love, charity, or kindness.”<sup>9</sup> An immigrant survivor who endured years of domestic abuse by her husband takes the unlawful but understandable step of paying for her sister's hotels near the border as she makes a similar voluntary, if unauthorized, trek to safety. A mother and her children flee together across the desert to escape threats of death. ASISTA counsels its members to seek waivers of inadmissibility for these survivors, and they have historically been granted at high rates.

While ASISTA does not encourage, enable, or condone unlawful activity of any kind, our awareness of what human trafficking really is helps us understand that it must not be equated with human smuggling. We will be watching vigilantly as this incoming administration carries out policies it declares to be anti-trafficking. We will be fighting to preserve the distinction between the harmful, degrading, immoral act of trafficking and the regulatory act of smuggling which is so often, for survivors, an act of moral good or neutrality.

---

<sup>7</sup> 8 USC 1324(a)(1)(A)(i).

<sup>8</sup> INA §§ 212(d)(3), (11), (13), (14); INA § 101(a)(43)(N); INA § 237(a)(1)(E).

<sup>9</sup> *Matter of Tiwari*, 19 I&N Dec. 875, 880-83 (BIA 1989) (quoting *Gallegos v. Hoy*, 262 F.2d 665 (9<sup>th</sup> Cir. 1958)).