



# Common Hurdles in Distinguishing Domestic Violence and Sexual Assault from Human Trafficking

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This document serves as an illustration of common challenges encountered in the analysis of human trafficking in relation to domestic violence and sexual assault. It is important to note that this document does not provide legal advice; its purpose is solely to offer examples of how to address these issues. Practitioners are strongly encouraged to familiarize themselves with the legal definition of “severe form of trafficking in persons” as outlined in [22 USC §7102\(11\)](#) in order to understand the legal requirements pertaining to human trafficking. Additionally, we recommend that practitioners review CAST’s “[Human Trafficking Defined](#)” training, which provides a comprehensive explanation of the legal definition of trafficking. Furthermore, we encourage practitioners to refer to our [Ends-Means-Process \(EMP\) toolkit](#), which aids in the identification of human trafficking and the development of the legal theory for their clients’ cases.

## Terminology

CAST uses the Ends-Means-Process (EMP) model as shorthand for the legal definition of “severe form of trafficking in persons.” In this document:

- **Ends** or **Purpose** refers to involuntary servitude, debt bondage, peonage, slavery, or sex trafficking.
- **Means** refers to force, fraud, or coercion.
- **Process** refers to recruiting, harboring, transportation, provision, or obtaining.

Additionally, for the purpose of this document, the term “victim” will be utilized instead of “survivor.” It is important to note that the term “victim” carries legal implications within legal systems, referring to an individual who has endured harm as a result of criminal activity. “Victims” also possess specific rights within the legal framework. This choice of terminology is by no means intended to disregard the usage of the term “survivor” in the services field, which acknowledges the strength required to embark on a healing journey following a traumatic experience. Both terms aim to pay tribute to those who have suffered or are currently enduring the consequences of trafficking. However, since this document primarily focuses on the legal analysis of trafficking, the term “victim” or “victimization” will be used throughout.

<b>Hurdle</b>	<b>Why it’s a Hurdle</b>	<b>Additional Explanation</b>	<b>For Human Trafficking Cases</b>
“Forced sex”	Forced sex is also known as rape	Rape is a form of sexual assault that involves the use of force or threats of harm. <sup>1</sup> This aligns with the <b>means</b> described in the	Identify the perpetrator’s ultimate purpose or <b>ends</b> — involuntary servitude or sex trafficking. Alternatively, assess

<sup>1</sup> [10 USC § 920\(a\)\(1\)-\(3\)](#). Rape and sexual assault generally.

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		<p>legal definition of trafficking. When practitioners use the term “forced sex,” it raises the question of what specific <b>ends</b> the perpetrator was trying to accomplish.</p> <p>In cases where the intention is to argue sex trafficking, it is important to remember that the sexual act must have a commercial aspect. This means that something of value must be clearly exchanged for the sex.</p>	<p>whether the rape is the <b>means</b> (force or coercion) to get the victim to perform other services.</p> <p>If attempting to argue sex trafficking, identify the specific “thing of value” exchanged for the sexual act.</p> <p>See below discussion of sex in exchange for housing or food.</p>
Sexual servitude	Hard to distinguish from rape and/or multiple rapes	<p>While certain courts have definitively recognized sex servitude as a type of involuntary servitude, others have encountered difficulties in distinguishing rape, even in cases of multiple incidents, from human trafficking. The lack of a clear legal precedent regarding the differentiation between multiple rapes and sexual servitude is evident.<sup>2</sup> It seems that some decision-makers require a distinct set of circumstances to establish that the sexual assaults reach the threshold of “servitude.”</p>	<p>Identify the facts that demonstrate a clear distinction between egregious sexual assault and whether the <b>purpose</b> of the perpetrator was to have the victim in a condition of sexual servitude.</p> <p>Additionally, consider if there are other <b>means</b> utilized to put the victim in this condition and/or if the sexual assault is methodical.</p>

<sup>2</sup> While some civil and criminal cases suggest that sex servitude falls within the scope of involuntary servitude, these cases often involve additional elements such as domestic servitude or other forms of sex trafficking. Noteworthy cases in this regard include: Matter of N-O-S- (AAO, June 6, 2018), U.S. v. Kaufman, 546 F.3d 1242 (10th Cir. 2008), Ricchio v. McLean, 853 F.3d 533 (3rd Cir. 2017), Doe v. Howard, No. 1:11-cv-1105, 2012 WL 3834867 (E.D. Va. January 21, 2014), United States v. Udeozor, 515 F.3d 260 (4th Cir. 2008), and Stein v. World-Wide Plumbing Supply Inc, 71 F.Supp.3d 320 (E.D.N.Y. December 2, 2014).

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“Made to work in the home”	Intimate partners typically share household duties	Domestic violence and an imbalanced distribution of household duties in the home are fairly common in intimate partnerships. However, their mutual existence does not automatically constitute human trafficking. Rather, in the context of an intimate partner relationship, the focus of the analysis should be looking for work beyond the normal purview of a relationship aiming to demonstrate that the perpetrator intended to put their partner in a condition of servitude. <sup>3</sup> The analysis should extend beyond mere power and control dynamics. The aim should be to establish that the actions undertaken by the perpetrator were specifically intended to transform the intimate partner into a domestic servant.	<p>Determine whether the perpetrator's objective is to place the victim in a condition of servitude, thereby distinguishing the duties from typical household tasks.</p> <p>To provide a different perspective, envision the abusive partner as an employer. Consider the number of hours the victim was required to work within the home, assess whether the workload was unreasonably demanding, and determine if there were any consequences for failing to perform tasks.</p>
Sex in exchange for housing or food as a commercial sex act	Intimate partners typically share housing and food when they enter a relationship	Housing and food, as well as other expenses, are often shared by a couple when they live together. Because this is the norm, it can be difficult to argue that the sexual assault occurring during the relationship is a <i>commercial sex act</i> . For a commercial sex act, the victim has to understand that the sex act is in exchange for something specific.	Identify whether the victim had knowledge that in order to get housing/food/etc., they had to have sex. Look for specific incidents where the perpetrator framed the sex as transactional, for example, if the perpetrator said that in order to live in the house or get food, the victim had to have sex.

<sup>3</sup> The T visa section of the USCIS Policy Manual in Volume 3, Part B, Chapter 2 provides additional examples of when servitude is induced by domestic violence. <https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>.

## Additional Resources

For “severe form of trafficking in persons” analysis:

- [CAST's Human Trafficking Defined](#) free on demand training - Provides a comprehensive explanation of the legal definition of trafficking.
- [CAST's Ends-Means-Process \(EMP\) toolkit](#) – Aids in the identification of human trafficking and the development of the legal theory for their clients' cases

Intimate Partner/Family Violence and Human Trafficking Case Examples:

- [USCIS Administrative Appeals Office \(AAO\) Opinions](#) focused on intimate partner and family violence
- USCIS Policy Manual Volume 3, Part B
  - [Chapter 2.B.4](#) – Labor Trafficking Examples: Conditions of Servitude Induced by Domestic Violence
  - [Appendix: Case Law References for T Visa Adjudications](#)

## Further Questions

If you have additional questions, please submit an individual technical assistance request here:

[https://casttta.nationbuilder.com/individual\\_ta](https://casttta.nationbuilder.com/individual_ta).

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