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(Updated) Capstone Proposal:

Problem Statement, Research Questions, Introduction

Background, Literature Review

CalOES – The Nexus Between Disaster Response and Labor Exploitation:

How to Build a More Resilient and Humanitarian-Focused System

## **Problem Statement**

Major disasters exacerbate conditions of vulnerability in affected communities, providing the opportunity for human traffickers to take advantage of disaster survivors. Prevailing wage laws, such as the federal Davis-Bacon Act, require federally contracted businesses to provide standardized wages and working conditions, as is often the case for major disaster response and recovery efforts. Implemented as an effort to encourage quicker post-disaster response and recovery, the occasional suspension of these laws by leaders may lead to an increase of labor-related trafficking cases in the affected area. Emergency managers, first responders, and community managers may not be aware of this problem as a study to uncover the nexus between suspending prevailing wage laws and labor exploitation has not yet been conducted. Businesses that procure federal contracts, however, are primed to take advantage of any opportunity available to decrease costs and are incentivized to pay employees below the prevailing wage during these suspension periods. The result of these compounding factors can lead to a complex tapestry of severely exploited workers and broken promises of an expedited recovery for the communities affected.

The goal of this research is to determine the relationship between the suspension of prevailing wage laws following a disaster declaration and the changes in human trafficking patterns, specifically cases of labor exploitation, as they relate to the disaster geography and population. The data compiled in this research will be used to assist in the develop of anti-human trafficking-focused training material for community leaders, disaster management professionals, and first responders.

## **Research Questions**

1. What is the relationship between suspending prevailing wage laws following a disaster and labor exploitation cases in affected areas?
2. Is there an increase in disaster recovery contract procurement when a prevailing wage law is suspended following a disaster?

## **Introduction**

There are many forms of human trafficking (HT), each of which exploit its survivors and victims in dehumanizing and harmful manners. The most common conception of trafficking is the image of people forced into sex work by nefarious strangers in back alleys. Although sex trafficking cases can be perpetrated by strangers, HT perpetrators are often known to the victim such as a neighbor, partner, or even parent (United States Department of Justice, 2017). Additionally, the majority of HT cases worldwide do not involve sex work but rather the exploitation of non-sexual labor and the mistreatment of workers (Boria, 2016). These nuances in definitions and practice contribute to the difficulty in detecting, preventing, and prosecuting HT cases.

Anti-human trafficking agencies and scholars have attempted to consolidate the several iterations of HT definitions. For the purpose of this paper, “HT” will address both sexual and labor exploitation, while the research included in the paper will examine the labor exploitation form of HT. The most common U.S. definition of labor exploitation is as follows:

*The 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. (United States Department of State, 2021, June)*

not "to" - "in"

Human traffickers exploit communities and individuals that are among the most vulnerable **to** society. Through factors such as socio-economic status, citizenship, or agency, vulnerable populations are more susceptible to being exploited by human trafficking (United States Department of State, 2021). When a disaster affects a community, normal social safety systems are threatened, and already vulnerable communities or individuals become more **susceptible** to becoming a victim of HT because of the instability created by the disaster.

maybe start to find a synonym - using this word alot

Unfortunately, the actions of community leaders, however well intentioned, may also contribute to negative outcomes for both individuals and the surrounding communities following a disaster. **maybe change to - "catastrophic events"**

Disaster managers are tasked with responding to **disasters** to save lives and restore communities following a major incident. Their training covers responses to incidents and anticipation of the cascading events that may result from the original incident. Typical disaster management training focuses on how to respond to countless natural cascading events, such as inoperable communication systems after hurricane-related outages or the spread of infectious disease in congregate sheltering. The possible labor exploitation that follows the suspension of prevailing wage laws during a disaster response is a unique man-made cascading event in that an increase in labor exploitation cases may occur as a direct result of well-intentioned actions taken by disaster managers and community leaders. Whatever the intention behind suspending these laws, leaders may not be aware of the devastating harms inflicted on the survivors, victims, and communities as a result.

The most notable occurrence of the suspension of these laws in the United States occurred when George W. Bush suspended the Davis-Bacon Act (DBA), a federal law that mandates contractors receiving federal funds to pay prevailing union wages, after Hurricane Katrina. This suspension was intended to expedite the Hurricane Katrina recovery effort by temporarily reducing the administrative overhead of reviewing minimum worker wages and direct recovery costs of higher worker standards (Hepburn, 2016). This decision seems logical on the surface as the administration was facing an unprecedented challenge in its response to Katrina. The lessons learned from Katrina, and in part the research in this paper, can be used to help develop competent emergency managers and public leaders to effectively respond to crises.

As a nascent field, emergency management is becoming more standardized; however, the training covering the nexus between human trafficking and disasters is either surface level information or has not yet been required consistently across the field. For example, FEMA [is this "required" or offered? I don't know the answer to this](#) employees [are required to take a 30-minute training on human trafficking during disasters](#), which only provides minimal signs of HT and does not discuss the risks of disaster management decisions that can unintentionally affect human trafficking. [excellent point](#) [Who? State and contractors??](#) [Other response agencies may not](#) mandate HT training at all. As a result, many emergency managers may not be aware that the decision to suspend prevailing wage laws can lead to more HT cases as was the result of the DBA suspension after Hurricane Katrina.

Conversely, businesses, in general and especially during a crisis, are incentivized to take advantage of opportunities to decrease their costs, such as no longer being required to pay the prevailing wage. Although some businesses taking advantage of a DBA suspension may not [I would change to "seek"](#) [want](#) to exploit their workers to the level of trafficking, removing the federal prevailing wage requirement removes one more barrier to exploitation for workers in the disaster area. It is in the

interest and creed of the disaster management profession to understand these threats and the greater context of the disaster environment to help prevent additional cases of labor exploitation of vulnerable individuals during the disaster responses they manage.

The research compiled in this paper is designed to discover the relationship between the suspension of the DBA and HT cases in the affected communities and how federally contracted businesses reacted to these suspensions compared to similar disasters without a suspension period. The data compiled as a result of this study is intended to be incorporated into a comprehensive anti-human trafficking training for community leaders, disaster managers, and first responders to prevent more HT cases as a result of suspending prevailing wage laws during a disaster response.

## **Background**

To best understand the relationship between suspending prevailing wage laws during a disaster and cases of labor exploitation I studied how disasters are managed within the U.S., the Davis-Bacon Act, and the instances in which the law has been suspended, and human trafficking within the U.S. Previous research is utilized as examples of how to develop this study's research methodology to further develop the conversation regarding disasters and labor exploitation, specifically when prevailing wage laws are suspended during the response.

*U.S. Disaster Management Process*

[reads awkward](#)

The threat of major disasters has always been present in modern society, the capabilities, and responsibilities of the federal and local governments in response to disasters, however, have evolved to better protect the nation. Since its creation in 1979, FEMA has evolved into a

significant force in how the nation responds to incidents, but the agency does not carry all responsibility in managing disasters, contrary to what many may believe. (History of FEMA, 2021). In recent years, FEMA has transformed how the agency collaborates with all stakeholders, public and private, during an incident. Compared to the top-down approach that represented previous iterations of the agency's strategy, FEMA now utilizes a whole community approach to its partnerships.

This approach focuses on building and empowering relationships with state, local, tribal, and territorial communities; private and non-profit entities; and faith-based organizations in an effort to strengthen disaster management capabilities across the nation. With this new approach, disasters are managed at the lowest level first, if at any level of government, the capabilities to respond are insufficient, leaders can call on their superiors to declare an emergency to activate more response measures (FEMA, 2011). For example, as a flood **overwhelms** an affected township, the mayor would ask the governor to declare a state emergency, activating state resources to help respond to the disaster. If those state resources are overwhelmed, the governor can request the President to declare a national emergency under the Stafford **Act of 1988 which** provides direct federal assistance and recovery funds for the affected area (Stafford Act, 1988). This bottom-up approach to disaster management is designed to build ~~more~~ resiliency and core capabilities throughout the nation to better protect US citizens.

Although the federal government is the entity that manages the logistics and strategy of responding to major disasters like Hurricane Katrina, they heavily rely on contracting private companies for their capabilities and expertise during crises. Whether during a disaster or a clear day, there are federal rules and regulations that govern how federal contracts are awarded and monitored to prevent waste, fraud, and abuse of taxpayer dollars. These rules are derived from

the Federal Acquisition Regulation (FAR), a chapter in the Code of Federal Regulations (CFR). There are dozens of sections within the FAR that have multiple subsections each that apply regulations towards topics like protection of privacy and freedom of information, bonds and insurance, quality assurance, and many more. Each section must be adhered to and should be reviewed by any federal contractor for compliance to avoid serious repercussions from the federal government. There are three sections of the FAR, however, that have become significantly important to disaster contract procurement: Competition Requirements (Part 6), Types of Contracts (Part 16), and Subcontracting Policies and Procedures (Part 44). (General Services Administration, 2019)

These three sections are, in part, the focus of intense scrutiny of the Bush Administration's response to Hurricane Katrina, examples of which provided in the literature review of this paper. Part 6 (Competition Requirements) details the process in which federal contracts must be presented to multiple potential contractors to "establish or maintain alternative sources" of contractors (General Services Administration, 2022a). This increases competition for the contract to help avoid cronyism and helps reduce the cost with multiple companies bidding for the contract. As the name suggests, Part 16 (Types of Contracts) outlines the types of contracts that can be used, and more importantly, the types that cannot be used, in federal contracting agreements. Notably, the "cost-plus-percent" type of contract where a percentage of the fixed costs is added to the contract, is prohibited in federal contracting procurements (General Services Administration, 2022b). These contracts have been banned to encourage fiscal responsibility in the contracting process as opposed to companies artificially inflating costs to also receive an additional higher percentage fee. Part 44 (Subcontracting Policies and Procedures) outlines dozens of considerations that contractors must assess before, during, and



after partnering with a subcontractor (or multiple levels of subcontractors) (General Services Administration, 2022c). The regulations of Part 44 are intended as a method of oversight to keep the subcontracting structure organized and functioning according to the contract and federal stipulations. Each of these considerations, along with the dozens of additional regulations cited in the FAR, are all designed to help reduce waste, fraud, and abuse of taxpayer dollars.

Current disaster management principles, workers' rights laws, federal contracting regulations, and anti-human trafficking agencies are all built to provide better conditions for the nation's citizens during chaotic disasters and during normal working days. During times of crisis, however, workers can become vulnerable to labor exploitation when leaders decide to suspend prevailing wage laws. As the field of disaster management grows, the nation develops more methods and tools to combat instances of labor trafficking that may occur as a cascading event of disasters.

### *The Davis-Bacon Act in Brief*

To ensure a livable wage for employees of businesses directly contracted by the government, prevailing wage laws have been enacted by the federal and certain state governments. On the federal level, the DBA provides a standard minimum wage for workers paid through federal contracts. Some states have enacted similar laws to provide further protection when contractors are working under state government contracts. In times of crisis, however, these laws can be suspended ~~for various reasons~~, which can lead to unintended and devastating effects on the contracted workers.

minimum? Livable, honorable,  
sustaining????

The DBA was passed into law to provide a **minimum wage** for employees providing services under federal contracts as a response to unscrupulous business practices. During the post

Great Depression rebuilding era, implemented by President Roosevelt's New Deal, employers capitalized on the opportunity to hire transient, out-of-state laborers for significantly lower rates than local workers (The National Archives, 2016). This manipulated local labor markets into artificially low wage sectors, undercutting the goal of the New Deal which aimed to revitalize the economy. To ~~offset~~ <sup>counteract</sup> this ~~labor~~ market manipulation and provide a standard wage for ~~contractors~~ <sup>workers??</sup> paid through federal contracts, Senator James Davis and Representative Robert Bacon introduced the Davis-Bacon Act. In 1931, the measure was passed into law and after several amendments since, it has provided a procedure to safeguard federally contracted wages for millions of workers across the nation (Whittaker, 2007).

As a large purveyor of contract work across the country, the federal government, with the passing of laws like the DBA, has the right to enforce standards of payment and working conditions for the ~~workers~~ <sup>employees</sup> under the contracts it provides. The DBA mainly provides a national standard for federal contractors to provide prevailing minimum wages to their workers on contracts over \$2,000. These wages are based on what the Secretary of Labor determines to be the prevailing wage for the classes and types of labor within a given geographical area (Public Buildings, Property, and Works, 2002). Federal contract work now provides a minimum wage of \$10.10 per hour regardless of the locality and position due to Executive Order 13658 signed by President Obama in 2014 (U.S. Department of Labor, 2014).

In addition to standardizing federal contract wages, the DBA also provides several other important worker benefits. To enforce the standard wage requirement, contractors must report weekly updates regarding accrued worker hours while executing the contract. While this requirement does increase the administrative cost of the contractor and federal government, a major point of pain for critics of the act, this requirement is designed to provide safeguards to

workers from nefarious employers who may otherwise report false wages. If employers are found guilty of not adhering to the prevailing wage standard set by the DBA, the contracting federal agency can withhold payment to the contractor and directly pay the workers instead. Contract workers also have the right to civil action if the contractor is found violating the prevailing wage. Non-compliant contractors are blacklisted from government contracts for three years following non-compliance (Public Buildings, Property, and Works, 2002).

In the event of labor exploitation, these certified payrolls also provide detailed information that investigators can use in labor exploitation cases. Employers are required to include the name of the employee, their work classification (the work the employee is performing), rate of pay, hours worked, gross pay, tax deductions, and the net pay for each employee (U.S. Department of Housing and Development, 2012). During an informational interview, Paul Chang, a Regional Anti-Human Trafficking Coordinator at the Department of Labor, stated when the DBA is suspended, the federal requirement to provide certified payrolls is also suspended in addition to removing the prevailing wage requirement. He emphasized that this could create a very difficult environment for trafficking investigators to collect the documentation necessary to build an effective case against an employer engaged in labor exploitation (P. Chang, personal communication, January 4, 2022).

### *Davis-Bacon Act Suspensions*

The protections <sup>of the Davis</sup> ~~the Davis-Bacon Act provides to the nation's workers~~ <sup>are subject to suspension</sup> are able to be suspended at the President's discretion during a national disaster. Unfortunately, the language used in this portion of the act is vague, reading, "the President may suspend the provisions of this subchapter during a national emergency" (Public Buildings, Property, and Works, 2002, §3147).

Although this clause allows the President to define “natural emergency” how they deem appropriate, the act has been suspended only four times since its ~~passing~~ <sup>enactment - (more legally correct)</sup>

The first instance of the act being suspended came only three years after its passing. President Roosevelt suspended the act under the guidance of his Secretary of Labor in order to help facilitate smoother New Deal statute functions. The administration’s definition of “national emergency” was not provided, save for stating the DBA and the National Industrial Recovery Act was causing “administrative confusion and delay.” The act was reinstated only three weeks later with a similar lack of insight into the administration’s decision (Whitaker, 2007, p. 17).

Nearly forty years passed before the act was suspended again by President Nixon in 1971. Similar to the suspension under Roosevelt, the Nixon administration took advantage of the ambiguous language in the suspension clause. Citing “a set of conditions involving the construction industry which, taken together, create an emergency situation,” the administration also called on lower-level governmental entities to take similar action in suspending prevailing wage laws. A little over a month after the suspension, the administration reinstated the act (Whitaker, 2007, p. 18).

<sup>add - suspension period occurred</sup>

The longest DBA suspension occurred under the George H. W. Bush administration from October 1992 to March 1993. This suspension was enacted in certain jurisdictions in Florida, Louisiana, and Hawaii following Hurricanes Andrew and Iniki in those areas. The justification for this suspension was provided under four categories. Although no justifying data was provided, the first justification stated that suspending the DBA “could result in the creation of as many as five to eleven thousand new jobs in the construction industry in these states”. Second, they stated that requiring higher wages would increase the overall costs of rebuilding in the affected areas. Third, they claimed the act “has historically operated to exclude semi-skilled

workers, including many African-Americans, Hispanics, and new immigrants, from work on federal contracting projects”. Lastly, the administration was concerned about the federal deficit, stating the act has added billions to the cost of federal construction (Whittaker, 2007, p.27).

The last, and most recent, instance when the DBA was suspended occurred under the George W. Bush administration after Hurricane Katrina. Faced with pressure from some lawmakers and the immense post-hurricane rebuilding efforts, the President suspended the DBA on September 8, 2005. Critics of the decision voiced their concern for individual workers affected by the suspension and for the long-term recovery of the affected areas. The effects of this suspension are examined in detail in the literature review. The DBA was reinstated on November 8, 2005, two weeks before the reinstatement, the White House Chief of Staff acknowledged that “there appeared to be no savings garnered from suspending the DBA” (Whittaker, 2007, p. 34). Although critics of the suspension were pleased to have the law reinstated, there was one significant caveat to the reinstatement imposed by the administration. President Bush did not reinstate the DBA retroactively, as in any wages under a contract signed during the suspension period did not need to change back to the prevailing wage once the DBA was reinstated. (Corpwatch, 2006). The effects of both the suspension and the non-retroactive reinstatement impacted the region for years to come.

### *Human Trafficking in Brief*

Human trafficking is practiced in many forms including labor exploitation, forced sexual exploitation, and forced marriages. As labor exploitation, and to a degree forced marriage, is not as widely known as forced sexual exploitation, it is easy to equate human trafficking exclusively with images seen in movies like “Taken” or television shows like “Law & Order”. Additionally,

a common myth about trafficking is that it involves transporting someone across borders. While that may be a factor in some cases, the National Human Trafficking Hotline dispels this myth by stating that trafficking does not require traveling and survivors can be trafficked in their own homes (Human Trafficking Hotline, 2019).

Regarding the distinction between sexual and labor exploitation, the number of people forced into labor exploitation in both the private sector and within state-sponsored exploitation is significantly higher than those forced into sexual exploitation around the world. In 2016, an estimated 20.9 million people were forced into labor exploitation compared to 4.6 million people forced into sexual exploitation (International Labour Office & Walk Free Foundation, 2017). Although anti-human trafficking organizations strive to be as accurate as possible in their reporting of trafficking cases, it is extremely difficult to pinpoint an exact number of people exploited each year for various reasons. The nefarious actions of those who practice in human trafficking and the vulnerabilities of trafficking victims create a problem that is difficult to both define and combat.

Prior to the passing of the Trafficking Victims Protection Act of 2000 (TVPA), there was no federal definition for, or framework to pursue, trafficking cases (ICF International, 2008). As recent as the late 1990s, human trafficking was viewed as smuggling or a type of illegal migration (Laczko, 2002). This lens upon which law enforcement viewed what is now known to be human trafficking placed a criminal stigma upon trafficking survivors and did not provide remedies nor survivor-focused treatment to those trafficked. The “three-pronged” approach provided by the TVPA focuses on prosecution, protection, and prevention as it relates to the pursuit of cases and their survivors. A fourth “prong”, partnership, has been included throughout the anti-human trafficking field’s evolution (National Conference of State Legislatures, 2018).

The TVPA allowed the prosecution of traffickers as organized crime, increased the criminal penalty for offenses from ten to twenty years, and established a commitment to pursue international trafficking cases. A recent shift in mentality to a survivor-focused system was marked by the establishment of the T-Visa for trafficking survivors. Such visas allow foreign trafficking survivors to gain non-citizen status to stay in the U.S. as they cooperate with authorities to assist the prosecution of their case. In addition to prosecuting international trafficking cases, the TVPA also provides funding for foreign trafficking efforts in origin countries to help prevent future cases in the U.S. (Wooditch et al., 2009).

The TVPA bestowed Immigration and Customs Enforcement, the Federal Bureau of Investigation, prosecutors in the Department of Justice's Civil Rights Division, and U.S. Attorney Offices with authority to investigate and prosecute trafficking cases federally. The Department of Justice established a program to fund state and local trafficking law enforcement task forces to provide more widespread coverage throughout the U.S. (Stolz, 2010). Although there are many entities with the authority to engage in anti-trafficking measures, U.S. laws are still exploitable.

Traffickers are often able to exploit a loophole in travel visas of migrant workers to keep the workers in dangerous and low-wage situations. H-2A visas provide employees free housing, legal representation, and medical cost compensation, among other benefits. The H-2B visa, however, is one of the most exploited visas due to low regulation requirements. H-2B visas are employer specific which creates an imbalanced power dynamic that allow employers to exploit their employees. After hurricane Katrina, for example, many migrants working on the recovery efforts under H-2B visas had their travel documents confiscated by their employers. The employers threatened to call immigration services if the employees alerted authorities to the

inhumane working conditions and severely low, and sometimes non-existent wages, they were subjected to. Since the visa was tied to the employer, the employees were left with little leverage, having to either stick with the exploitative employer or attempt to force the employer to give back their travel documents to go home (Hepburn, 2016). Although the H-2B visa exploitation is just one of the ways employees can be trafficked, any method used to exploit labor can leave devastating impacts on those exploited and qualifies as labor trafficking due to the coercion involved.

Each victim of trafficking experiences their exploitation differently, resulting in various reactions to their experience, the majority of which leaves lasting trauma ~~in their victims~~. Although the research into trauma response in trafficking survivors is nascent, especially when focusing on victims of labor exploitation, there have been studies that show various types of mental health developments in survivors. Trafficking survivors often suffer through extreme circumstances while trafficked including threats of violence, physical assaults, deprivation of basic needs, isolation, immigration threats and various other forms of trauma at the hands of their abusers. These traumatic experiences often result in cases of depression and post-traumatic stress disorder (PTSD) that manifest in various ways among survivors. A recent study of labor exploitation survivors has shown that 57% of the participants said they are currently experiencing at least one symptom of PTSD. Many survivors who experience PTSD due to their experience being exploited endorsed urges to physically hurt someone, break or smash things, found themselves becoming frequently argumentative, being easily annoyed or irritated, and having uncontrollable temperamental outbursts. The effects of trafficking are felt among survivors for many years after their experience in trafficking ends (Hopper & Gonzalez, 2018).



## Literature Review

As this study aims to expand on previous research regarding the nexus between disasters and human trafficking, specifically examining the relationship between suspending prevailing wage laws during disasters and labor exploitation, previous research on this topic must also be reviewed to provide additional context to the results. In the following sections, I explore previous research regarding the ineffective management of federal Hurricane Katrina-related contracts, the effects of suspending the DBA following a disaster, the barriers that inhibit the pursuit of labor exploitation cases, and the studies that have started the academic research regarding the nexus between disasters and human trafficking.

### *A Critique of Federal Contract Procurement and Management During Hurricane Katrina*

There are many examples of how the federal government failed to provide an effective response before, during, and after Hurricane Katrina. The federal contract management oversight process, or lack thereof, was one of the failures that garnered the most scrutiny in the months and years after the disaster. Although the previously described federal acquisition regulation was in place to help prevent these failures, governmental agencies such as FEMA and the US Army Corps of Engineers (USACE) monumentally mismanaged government contracts, which led to waste, fraud, and abuse, hindering the recovery process of communities affected by Katrina.

One of the most impactful examples of contract mismanagement was through acquiring no-bid contracts which made little, if any effort to seek the lowest price and benefitted large businesses at the detriment of local, minority owned small businesses, many of which also being cost-plus contracts. Federal law understands the circumstances where competitive bidding for

contracts is not feasible. Understandably, the onset of Hurricane Katrina could have been considered one of those circumstances. As the immediate emergency of Katrina subsided, the percentage of federal contract dollars awarded without an open bidding process actually increased. In September 2005, the percent of no-bid contract dollars awarded by FEMA was 51%, in October that percentage increased to 93% and in late December, FEMA was still awarding 57% of its contract dollars through no-bid contracts (U.S. House of Representatives, 2006). When examining the distribution of FEMA's contract dollars between business types and locales, a report by Corpwatch discovered some glaring concerns. As of August 2006, the month the report was released, only 13% of the total grant dollars awarded by FEMA were given to small businesses of any locale. The Corpwatch report also shows that local small businesses received 16.6% of total contract dollars whereas businesses from just Virginia received more than 30% of grant awards (Corpwatch, 2006).

Additionally, many of these no-bid and cost-plus contracts were reported to have been awarded to businesses personally or politically connected to FEMA and USACE officials. Kenyon International Emergency Services and the Shaw Group serve as two clear examples among the many reported. To recover the bodies of Katrina's victims in New Orleans, Kenyon was awarded over \$6 million through a no-bid, cost-plus contract. They recovered 535 bodies, a cost of about \$12,500 per body, within the two months they were in New Orleans, leaving authorities and sometimes family members to discover the bodies the company left behind. Black morticians, however, were turned down after they offered to volunteer their services to recover bodies. It is speculated that Kenyon was awarded the contract because it is a subsidiary of

Service Corporation International, the owner being a close Bush family friend and major donor probably gonna need a source for this - I don't think you want these to be just your words :) to President Bush's campaigns. Additionally, the Shaw Group secured contracts totaling \$600

million from FEMA, the Environmental Protection Agency, and USACE. The Shaw Group was a client of lobbyist Joseph Allbough who had previously served as FEMA administrator after managing Bush's presidential campaign (Corpwatch, 2006). There are several more reported cases of no-bid, cost-plus contracts being awarded to politically connected large companies instead of local, minority owned businesses.

Lack of contract oversight during Katrina also provided an opportunity for some contractors to create a multi-level ~~of subcontractors~~ <sup>insert - network after subcontractor</sup> which allow the initial contractors to make significant amounts of money while the employees of the lowest level subcontractors are paid little to nothing. An NBC investigation reported a story that described this exact scenario. The company AshBritt was contracted for \$500 million to collect and remove debris amounting to about \$23 for every cubic yard of debris removed. AshBritt hired C&B Enterprises at \$9 per cubic yard; C&B hired Amlee Transportation at \$8 per cubic yard; Amlee Transportation hired Chris Hessler, Inc. for \$7 cubic yard; Chris Hessler, Inc. hired Les Nirdlinger, a debris hauler from New Jersey, \$3 per cubic yard.

This layered subcontractor scheme is not only structured to pay the lowest subcontractor very little money, but it also creates an inherent delay of payment from one subcontractor to the other. Corpwatch reported that a small volunteer organization had to sue for monies owed to their workers as each subcontractor can't pay the next until it gets paid (Corpwatch, 2006). One example provided by an investigation from the U.S. House of Representatives stated that "the taxpayer paid an average of \$2,480 per roof for a job that should cost under \$300" (U.S. House of Representatives, 2006, p. 5).

On September 20<sup>th</sup>, a few weeks after Hurricane Katrina made landfall, Congressman Henry Waxman introduced a bill to the House of Representatives called the "Hurricane Katrina

Accountability and Contracting Reform Act” to address the reports of waste, fraud, and abuse stemming from Hurricane Katrina contracting practices. The bill aimed to create an “independent commission to prevent fraud and abuse in the response to Hurricane Katrina” and implement an oversight process to ensure transparent contracting methods for Hurricane Katrina related contracts. If enacted, those guilty of “obtaining or giving anyone a competitive advantage in the award of a federal agency procurement contract” would be subject to up to five years in prison, fined, or both (Hurricane Katrina Accountability and Contracting Reform Act, 2005). The measure was not signed into law. The next day, President Bush assured the public that the money used for Hurricane Katrina would be spent “wisely [and] honestly” while the Office of Management and Budget claimed they felt they “have controls in place to prevent abuse and fraud” (U.S. House of Representatives, 2006, p.1).

### *Effects of Suspending the Davis-Bacon Act Following a Disaster*

The Davis-Bacon Act has been a long-standing law to provide a prevailing wage to employees of federal contractors. When providing services to repair a community after a major disaster, it is especially important to provide a livable wage and safe working conditions for the nation’s response and recovery teams. Of note, the suspension of the law doesn’t mean federal contractors must pay less than the prevailing wage but removes the federally mandated prevailing wage pay minimum (The Congressional Research Service, 2006). The instances in which the President has temporarily suspended the DBA have invited scrutiny from labor leaders and scholars, while also being praised by some policymakers and free market advocates. Despite both support and criticism of these suspensions, one consensus is that the act is a critical piece of legislature that should be upheld, especially during a national disaster.

The Roosevelt suspension of the DBA was not met with significant public criticism; however, the short timeframe of the suspension could be a factor as to why. The quick, three-week turnaround to reverse the ruling suggests that the suspension did little to solve the proposed administrative crisis that Roosevelt was aiming to remedy (Whittaker, 2007). A short timeframe from suspension to reinstatement becomes a theme during all of the instances that the law has been suspended.

President Nixon seemed to have suspended the act more out of political ideology than to solve the national emergency his administration used as justification to suspend the law. Stating that the nation was in a wage and labor crisis, the Nixon administration suspended the DBA due to wage rates on Federal projects having “been artificially set by this law rather than by customary market forces” (Whittaker, 2007, 18). In his proclamation declaring the suspension of the act, President Nixon cited many factors that he deemed, in aggregate, constituted a national emergency, including excessive collective bargaining and wage settlements in the construction industry (The American Presidency Project, n.d.). Critics of this suspension quickly declared that the suspension was “punitive against workers” and “an open invitation to unscrupulous employers to exploit workers” (Whittaker, 2007, 19). The seemingly political nature of suspending the DBA also becomes a theme among the remaining instances in which the law was suspended.

When President George H.W. Bush suspended the act in late 1992, a precedent had been set by two previous presidents, and among his administration earlier in the year. In early 1992 reports started circulating that the administration was considering suspending the act, but it wasn't until October that year that the administration suspended the law. Although the precedent had already been set by the Nixon administration, the administration stated that it did not want to

“seek to suspend the Davis-Bacon Act by declaring an economic emergency, believing that it would establish a precedent [it] did not want to set” (McCallion et al., 1993, p. 6).

In late 1992, Hurricanes Andrew and Iniki prompted the administration to suspend the act in certain jurisdictions affected by the hurricane. Some portions of the construction industry welcomed the suspension and suggested that the act be suspended nation-wide. Organized labor, however, admonished the President and suggested that the administration suspended the act looking to gain favor with business leaders in electorally strong Florida. The president of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) stated that the hurricane survivors would be “victimized again” as “unqualified contractors” insert themselves into the recovery process. Additionally, democratic leaders voiced their dissent of the suspension. Representative William Ford accused the President of suspending the law to “please his U.S. Chamber of Commerce campaign contributors” and Senator Daniel Inouye asked the President to remove any references of Hawaii from the suspension proclamation, directly challenging the notion that suspending the law would help those affected on the island (Whittaker, 2007, pp. 27-28). The administration, however, argued that the DBA suspension would allow the federal recovery dollar to stretch farther and would increase employment in the affected areas (McCallion et al., 1993). This rationale would become the prevailing reasoning for the suspension of the act after Hurricane Katrina and could remain a top reason for a suspension of the act in the future.

The last, and most impactful, suspension of the DBA occurred in response to the devastation of Hurricane Katrina in 2005. Similar to his father’s administration, President Bush seemed to have the desire to suspend, if not repeal, the DBA before disaster struck. According to Representative George Miller, the republican party had attempted to “erase” the law “year after

year” but did not have the supporting votes in Congress to make it happen (Whittaker, 2007, p. 32). This desire became a reality when Katrina hit the gulf coast. Urging the President to suspend the act, republican policymakers claimed that the prevailing wage requirements under the DBA would “raise total construction costs by 38%” and urged to suspend the act in the face of the “massive rebuilding challenges again.” (Whittaker, 2007, p. 32). The President ultimately decided to suspend the DBA just a little over a week after the hurricane made landfall (Whittaker, 2007).

The suspension was both quickly praised and admonished, the divide coming mostly from political divides. Supporters of the suspension such as Representative Tom Feeney (R-FL) praised believed that the act would make it harder for the government to finance the reconstruction (Olam and Stamper, 2006). One republican lawmaker stated the market without the DBA will set the wage for “lots of people in Louisiana willing to go to work tomorrow”. Representative Jeff Flake (R-AZ) even proposed a bill, the Cleanup and Reconstruction Enhancement Act (CARE Act), that proposed an automatic suspension of the DBA for one year in the affected jurisdiction(s) after a major disaster. Similar to the desire to suspend the DBA before a disaster, the “CARE Act” was proposed the day before President suspended the DBA (Whittaker, 2005, p. 33).

Critics of the suspension mostly resided in organized labor and democratic lawmakers. Again, the president of the AFL-CIO criticized the move stating, “employees are all too eager to exploit workers” and condemned this suspension as a way to make that exploitation easier. The New York Times asserted that this suspension was unacceptable “by any standard of human decency” as it “condemn[ed] many already poor and now bereft people to sub-par wages, thus perpetuating their poverty.” In response to the suspension, democratic lawmakers introduced a

handful of bills to overturn the suspension, one of which included a provision to prioritize employment to those displaced by the hurricane (Whittaker, 2007). The disparity of these responses further exemplifies the political divide that surrounds the DBA, especially when it is suspended following a disaster.

One study provides evidence to support DBA suspension critics, stating that the suspension may negatively impact the communities it intended to help recover. In the study, researchers modeled how employers may adjust, and even anticipate, the effects of suspending the DBA as it effects their labor costs. Within the model's study, the research suggested that employers will increase the hiring of lower wage workers and attempt to complete the job within the suspension period whenever possible to maximize profits and minimize labor costs (Miller, 2007,). Additionally, the study found some contractors exerted their "monopsony of power" to the tune of up to 1700% difference between a job's actual price and the contractor's payment, the excess of which lining the contractor's pockets. (Miller, 2007, pp. 229 & 241).

The aftermath of Hurricane Katrina provides ample case studies into how the suspension of the DBA in the hurricane's wake led to sometimes extreme cases of labor exploitation. As several scholars write, the chaos and lack of federal regulations created an environment in which contractors would easily exploit migrant workers brought in to help with recovery efforts. In Olam and Stamper's article, they detail a "survival of the fittest" scenario where migrant workers are forced to share a damp motel room that does not have any furniture due to flooding, some not receiving their wages after enduring abusive work schedules (Olam & Stamper, 2006, p. 19). Miller recounts that day laborers would regularly earn around \$200 - \$300 per day, after the suspension of the DBA post-Katrina, that rate fell to around \$200 - \$300 per week (Miller, 2007). Hepburn examined the ways in which migrant workers were forced to pay thousands in



recruitment fees as a promised pathways to citizenship only to have their visas and passports detained by their employer and be placed in to work camps with substandard housing conditions (Hepburn, 2016). These case studies are only a fraction of the ways in which employers exploited their workers in the wake of Hurricane Katrina and the suspension of the DBA.

Existing labor market features, such as migrant worker visas and exigent hiring demands, enabled payment loopholes that allowed a subsequent watershed of abuse by federal contractors against migrant workers in the wake of Hurricane Katrina. One problematic stipulation of H-2B visas was the dependence of new workers' legal status on the approval of one single employee which greatly diminishes individual workers' autonomy to disengage from coercion (McCallum, 2020). The lack of wage protections incentivized bosses to undercut and victimize the local lower-income communities against each other. This resulted in numerous Louisiana entities sowing distrust among domestic and foreign workers by providing migrant workers with inhumane working/living conditions, fraudulently hiring recruits with unlivable wages, and threatening the legal status of workers who came to aid in the relief efforts.

In response to these case studies, four alternatives to DBA suspension have been proposed in the context of the most recent Katrina retrospective analyses. They include complete felony designation for the trafficked worker, suspension with increased three-step migration and labor protections enforcement, migrant worker-specific visa reform, and six-step vulnerability reduction among the broader regional labor population (Olam & Stamper, 2006). Though no replicable research has been produced about these proposals' efficacy and applicability across different cases of emergency response, the field of disaster response management is looking forward to researching the effects of such implemented solutions toward labor trafficking prevention in future scenarios.

Some policymakers still echo some talking points of the Nixon and both Bush administrations in their desire to amend or repeal the DBA. The republican Senator Mike Lee from Utah introduced a bill to repeal the DBA as he claims repealing the DBA would "...remove these government-imposed obstacles to economic opportunity facing low-skilled workers and return wasted taxpayer dollars back into the hands of the American people". According to Senator Lee's Press release, the bill was cosponsored by Senators Ted Cruz (R-Texas), Jim Inhofe (R-Okla.), Marsha Blackburn (R-Tenn.), John Cornyn (R-Texas), Ron Johnson (R-Wisc.), and Tim Scott (R-S.C.). The press release for Senator Lee's bill includes praise from Greg Mourad, Vice President of the National Right to Work Committee, who classifies the DBA as a "Jim Crowe relic" (Lee, 2021).

These talking points, among others, have been feature talking points when attempting to amend or repeal the DBA over the past couple decades. The Cato Institute, a libertarian think tank (The Cato Institute, n.d.), included these talking points in their 1993 brief "The Davis-Bacon Act: Let's Bring Jim Crow to an End" (The Cato Institute, 1993) and in their 2012 presentation "The Case Against the Davis-Bacon Act: 54 Reasons to Repeal" (The Cato Institute, 2012). These claims have been refuted by the AFL-CIO in a detailed report analyzing each of their talking points and with a powerful ending to their report stating, "Thus, the only opportunity that The Cato Institute wants to open up for minority construction workers is the "opportunity" to be substandard and inequitable wages and benefits by unscrupulous contractors" (AFL-CIO, 2012).

Despite the controversies surrounding the DBA and its suspensions during an emergency, the act has become a seminal piece of legislature for almost 100 years. The fact that the bill has remained for this long suggests that the prevailing wage laws it provides government contractors

is an effective tool for compensation despite its criticisms. Additionally, when the act is suspended during a hurricane, the suspension is usually quickly reversed. In each incident of suspension, the suspending administration contended that the suspension did not achieve the accomplished goals of reducing administrative bureaucracy, saving money, or expediting a disaster recovery. In addition, these justifications to suspend the law seem to be a guise to act upon the desire to suspend the law long before a disaster occurs. Overall, the previous research on this topic suggests that the suspension of the DBA following a disaster may not provide the intended results of expediting recovery efforts and while causing serious harm to the communities affected by the disaster.

#### *Barriers to the Identification, Investigation, and Prosecution of Labor Exploitation Cases*

There are several barriers survivors and the legal system face in the pursuit of prosecuting cases of labor exploitation. As a result, a self-fulfilling prophecy of low resource availability to the prosecutors lowers their success rate of HT prosecution, which then justifies minimal funding to the training toward better awareness and prosecution, and so on. The factors detailed below have been reviewed from literature that examines these issues with a lens outside of a disaster response; in that the articles were not presented as having a disaster place more burdens upon the institutions tasked with identifying, investigating, and prosecuting cases of labor exploitation.

#### Barriers to Identifying Cases of Labor Exploitation

The first step of prosecuting labor trafficking cases, and building the capacity to prevent cases from occurring, is the identification of potential cases. As stated earlier, the ambiguous

nature of labor trafficking creates situations where it is difficult for law enforcement and first responders to identify potential victims as they perform their duties and emboldens a climate where it is even more difficult for victims to self-identify.

One study that interviewed law enforcement officers on their role as it pertains to HT cases stated that many respondents believed they were not able to proactively look for cases. The officers also felt that they were relegated to waiting for victims to self-identify or wait for other non-governmental advocate agencies to provide tips (Farrell et al., 2012). Unfortunately, victims often do not even know they are victims and many often believe they are criminals. When they do recognize their status as a victim, there are many external forces that prevent them from self-identifying. A major factor that prevents victims from self-identifying is distrust of law enforcement. On study revealed that “roughly 30% of labor trafficking victims studied were arrested along with their traffickers, mostly in the context of ICE raids” (Smith, 2021, p. 506). Although law enforcement may find resistance in victims to self-identify as labor exploitation victims, there are also factors within law enforcement agencies that create a barrier to identify potential cases.

Law enforcement agencies also face internal barriers to identifying potential labor exploitation cases. According to an article in the American Journal of International Law, of the 9,360 prosecutions that were brought to trial in 2013, only 1,199 were pursued as labor exploitation cases even though the ILO estimates that nonsexual forced labor consists of 68% of the 20.9 million estimated cases of all human trafficking worldwide (Chuang, 2014, p. 643). The focus and resources of law enforcement agencies are directed in part by the priorities and opinions of the communities they serve. Some law agencies site that their communities don’t see HT as a large enough problem to pursue as most cases don’t include graphic narratives such

as “sex slaves being shipped over from some foreign country and held at gunpoint” (Farrell et al., 2012, p. 91). This mismatched perception of what constitutes HT results in the deprioritization of pursuing HT cases, leading to lower funds and resources to train officers to effectively identify potential cases.

As an aggregate, officers stated that the lack of training provided to their officers is one of the most impactful barriers to pursuing trafficking cases. Many agencies within the study lacked federal funds to pursue trafficking training programs and resorted to less than an hour of training when this type of training was prioritized. Agencies that did have funding did not provide training to the front-line officers who are believed to have the most opportunities to identify HT indicators (Ferrell et al., 2012). Even when officers do recognize a potential trafficking case, there are structural barriers in place that inhibit the investigation of those cases, many of those barriers being similar to the ones inhibiting the identification of victims.

### Barriers to Investigating Cases of Labor Exploitation

Once identification barriers are surmounted, limitations in actionable authorities of law enforcement exist in the investigation of labor exploitation cases. Structural procedures within law enforcement departments were identified as a particular barrier officers faced. When an officer is able to identify a potential labor exploitation case, officers reported that few formal mechanisms exist to report the potential case to investigators (Ferrell et al., 2012). In other instances, officer relationships with investigators and local labor regulators were lacking or even non-existent (Farrell et al., 2019). The combination of factors present on both the law enforcement and victim sides of the investigation worsen the likelihood of starting a case.

Once a case is brought to an investigator, similar barriers exist for the investigators such as specialized personnel, lack of proper interview techniques and challenges in the investigation process. Many labor exploitation cases involve foreign nationals that do not speak English proficiently, if at all (Buckley, n.d.). Some investigators lack the resources of a proper interpreter for their interviews and rely on using the victim's employer as the interpreter which heavily skews the results of the interview in the perpetrator's favor (Farrell et al., 2012). Other interview mistakes, such as lack of cultural and trauma awareness within the interview process, prevented victims from receiving adequate advocacy services, creating yet another barrier in the investigation process. Some victims also feel that the interview process is not worth their time as the limited prospect of a potential case may not outweigh the victim's perception that staying trafficked is their only viable option of survival (ICF International, 2008). These investigations take a significant amount of time and any delay in the process, especially those caused by interviewer mistakes, hinders the corroboration of evidence, weakening an already small chance to prosecute the case properly.

### Barriers to Prosecuting Cases of Labor Exploitation

If a case pushes through the barriers and challenges facing the identification and investigation of a labor exploitation case, there are challenges that prosecutors who attempt to try these cases in court also encounter. In line with the identification and investigation stages, the prosecution stage also suffers from a lack of training in how to properly prosecute HT cases. Even in jurisdictions that benefit from human trafficking funding and training, the general community understands sex trafficking much more saliently and therefore labor trafficking cases are prioritized under the pursuit of sex trafficking cases (Farrell et al., 2019).

In some cases, arguments have been made that question the credibility of foreign national victims as they are accused of being coached by the investigators and prosecutors to help the victim obtain a visa and stay in the country longer (Farrell et al., 2012). When they aren't being accused of being coached, the credibility of some victims is also in question as their state of trauma which can cause self-blame, guilt, and depression can contribute to an inability to recall certain facts of the case (Farrell et al., 2012). Although there are understandable reasons for those involved in a case to be questioned for credibility, these factors are pervasive in the already ambiguous field of labor exploitation, ultimately leading to more delays and barriers to the successful prosecution of an HT case.

Agencies may also recognize all of these inhibitors and barriers to a successful case and opt to pursue an easier case to secure a guilty verdict. Prosecutors have mentioned that they will not pursue cases that they know, or at least assume, will not be prosecuted, and will replace the human trafficking charge with a kidnapping charge as that charge has a lower bar for a conviction (Farrell, et al., 2012). Some agencies have demonstrated that they only bring a human trafficking charge to an attorney general (AG) once they have a “slam dunk” or “smoking gun” case as they believe it will not be accepted by the AG otherwise (Farrell et al., 2012, p. 130). All of these factors create a perfect storm for first responders, criminal investigators, and prosecutors to miss the mark as it pertains to the identification of possible labor exploitation victims, and the investigation and prosecution of their cases.

### *The Nexus Between Disasters and Human Trafficking*

As the field of emergency management continues to grow as a professional area of study and practice, so too does the academic field grow in its understanding of trends and lessons

learned that can be applied to future disasters. Especially after Hurricane Katrina, there have been scholarly articles examining instances of human trafficking as a result of disasters. Articles from Miller, Olam & Stamper, McCallum, and Hepburn that have been referenced within this paper have all contributed to the acknowledgement in the disaster management field of this relationship. Recently, however, there has been a number of articles that have scientifically examined the relationship between disasters and human trafficking.

In her empirical analysis between human trafficking and natural disasters, Maria Boria finds that there is a positive correlation between the two phenomena. Her study measures trafficking patterns based on the 2012 Trafficking in Persons report, disasters using data in the emergency events database, and per capita data provided by the World Bank. These data are used in two sets of regressions that estimate the effect of the incidents of the disaster indicator variable on trafficking and the intensity of disasters on trafficking. The results of the study show that disasters in trafficking source countries (countries in which trafficking victims enter the trafficking process) positively correlate with trafficking outflows with their effects having an impact over time. Additionally, she finds that an increase in the intensity of the physical harm caused by the disaster increases the likelihood of the effected country becoming a source of trafficking victims (Boria, 2016).

This conclusion was aligned with another study that approached the topic by examining the open-source advertisements for services such as backpage.com posted after Hurricane Matthew and Typhoon Goni. The researchers focused their study on discovering travel patterns of the advertised services, which were assumed to be created by the trafficker for services performed by the person trafficked. The data exhibited that post-incident, there was evidence of an increase in the relative number of advertisements mentioning ethnicities from disaster-



effected areas. With this conclusion, they add evidence suggesting that there is a positive correlation between disasters and an increase in human trafficking cases (Tomkins et al., 2018).

The notion that an increase in human trafficking may be a result of natural disasters has become established to the point that one researcher makes this nexus an assumption in their methodology to compare the frequency of this nexus between nations. In her study, researcher Samantha Stout examined the trafficking reports following two major disasters: Hurricane Isaac in Louisiana and the Indian Ocean earthquake and tsunami in Indonesia. In particular, the change in human trafficking reports received by the Human Trafficking Hotline in Louisiana was compared to the change in human trafficking victims reported to the police in Indonesia following their respective incidents. The study found that both data sets were statistically significant with Indonesia's data being slightly more significant than the data from Louisiana (Stout, 2018). There are limitations to this study such as the general public's general misunderstanding of HT as a whole could prevent someone from making a report that they would have submitted if they were better informed. However, the fact that this nexus is now being assumed in research shows the growth in the disaster management field.

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