LABOR TRAFFICKING AMONG LOW-WAGE WORKERS

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A TRAFFICKING STORY: Esteban
WHAT IS HUMAN TRAFFICKING?

- Smuggling v. trafficking
- Popular imagination v. reality
- Employers use many tactics that, in combination, can amount to trafficking
- Common Industries for labor trafficking—
  - Landscaping
  - Forestry
  - Carnivals
  - Construction
  - Domestic Work
  - Restaurants
  - Agriculture
  - Hotels
  - Health and Beauty
  - Factories
  - Traveling sales crews
  - Recreational facilities
  - Laundry
WHO HAS FOF REPRESENTED?

- Adults, mostly men
- Immigrants from Mexico and Central America
- Both undocumented and seasonal (H-2B) workers
  - Approx. 80/20
- Individuals with low literacy and few years of formal education
- Individuals with additional vulnerabilities/pressure points
  - Caseload/expertise arose out of existing client base
  - Unique service model with extensive outreach, holistic services
  - Employment law expertise and language competency
<table>
<thead>
<tr>
<th>ACTION</th>
<th>MEANS</th>
<th>PURPOSE</th>
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<tbody>
<tr>
<td>Recruitment</td>
<td>Force, Fraud, or Coercion</td>
<td>Involuntary Servitude</td>
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<td>Harboring</td>
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<td>Peonage</td>
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<td>Transportation</td>
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<td>Debt Bondage</td>
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<td>Provision</td>
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<td>Slavery</td>
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<td>Obtaining</td>
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<td>No exception for minors</td>
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</table>
(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of the legal process.
Any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.
HOW TO TRAFFICK A VISA WORKER

- These schemes cut across nationality, visa type, and skills
- COMMON SCENARIO:
  - Employer or recruiter promises job with good pay and favorable conditions
  - Employee incurs debt to obtain visa/travel
  - Employee arrives in U.S., and situation is not what was promised
  - The immigration status of a visa employee is tied to the employer
  - Threats of status loss (implicit or explicit) condition the employee’s continued work
HOW TO TRAFFICK AN UNDOCUMENTED WORKER

- Threats to call immigration or police
- False promises of future immigration status
- Withholding pay
- Long hours & social isolation
- Violent or hostile work environment
- Verbal abuse & humiliation
- Sexual harassment/sexual assault
- Blacklisting
- Incurring other debts
RED FLAGS / IDENTIFYING VICTIMS

- Clients will not self-identify as victims
- Client’s passport or other ID documents are being held
- Client is afraid to take legal action against an employer
- Client believes employer can have him or her deported
- Client believes employer is helping him or her to obtain legal status
- Client is in debt to employer
- Client accepts pay or working conditions that a reasonable person in his/her position would not accept
- Client has untreated injuries
- Client must live in employer-provided housing
  - Imagination vs. reality
Eligibility:

- Victim of a severe form of human trafficking
  - Sex Trafficking
  - Labor Trafficking

- Is in U.S. on account of trafficking

- Reports trafficking to law enforcement agency, and complies with reasonable requests for assistance from LEA

- Would suffer hardship involving extreme and unusual circumstances if removed from U.S.

- Very generous waiver of grounds of inadmissibility
LAW ENFORCEMENT REPORTING

- No Certification Needed !!!!
- Must report *trafficking*, request certification, be available as requested
- Law Enforcement Avenues
  - Department of Labor
  - Equal Employment Opportunity Commission
  - FBI
  - Homeland Security Investigations
  - Local Police
TRAFFICKING VISA APPLICATION

- Annual cap of 5K
- Any credible evidence
  - Client story is the key piece of evidence
- Approximately 1 year to process
- Pursue other avenues of relief simultaneously
  - Maintain consistency in story between immigration, civil, and criminal cases
- Route to permanent residency and family reunification
- Some other temporary benefits
• Coalition Against Slavery & Trafficking
  ○ http://www.castla.org/
• Human Trafficking Pro Bono Legal Center
  ○ http://www.htprobono.org/resources-publications-library/
• Friends of Farmworkers
  ○ https://www.friendsfw.org/