

ABA Commission on Hispanic Legal Rights & Responsibilities

Friday, May 20, 2011

Written Testimony of Michelle Ortiz, Director of Florida Immigrant Advocacy Center's LUCHA Project

Mister Chair and Members of the Commission, thank you for the opportunity to speak with you on the subject of human trafficking.

My name is Michelle Ortiz and I am the Director of Florida Immigrant Advocacy Center's LUCHA Project. Florida Immigrant Advocacy Center (known as FIAC) is a not-for-profit non-governmental organization founded in 1996 to protect and promote the basic human rights of immigrants. Since 1997, FIAC's LUCHA Project has been dedicated to assisting victims of violent crimes including domestic violence, sexual assault, and human trafficking. FIAC has helped hundreds of trafficked persons obtain legal immigration status, and has sought justice for trafficked persons in federal court for violations of labor and wage law, as well as contract, fraud, and other civil trafficking violations. FIAC has played an instrumental role in advocating at the state and federal levels for legislation to better protect victims and improve their access to services.

Florida remains one of the top states for human trafficking or "modern slavery." Florida's large immigrant communities, high number of low wage jobs, thriving commercial sex industry, and its significant agricultural and tourism industries, create an environment in which human trafficking and labor exploitation thrive. Trafficked persons in the State of Florida are trafficked from all over the world, from countries as diverse as Haiti, the Philippines, Mexico, Colombia, Romania, Thailand, and Sri Lanka.

Human trafficking cases in Florida have included many different kinds of trafficking victims, including immigrants and U.S. citizens enslaved in the commercial sex trade, agricultural production, tourism and hospitality services, and domestic servitude.

Human trafficking is defined by the Trafficking Victims Protection Act (TVPA), as the recruitment, harboring, transportation, provision, or obtaining of a person to perform labor or a commercial sex act through force, fraud, or coercion. Any commercial sex act performed by a person under age 18 is considered human trafficking, regardless of whether force, fraud, or coercion is involved.

There is very limited research throughout the nation regarding human trafficking. The Florida State University's Center for the Advancement of Human Rights conducted a study of human trafficking prosecutions and reported incidents between 2004 and 2010 which has identified several trends and needs in the State of Florida with respect to human trafficking.

Sex Trafficking

Sex trafficking remains prevalent throughout Florida. Sex trafficking involves the use of force, fraud, or coercion to compel an individual to work in the commercial sex industry, which includes prostitution, dancing, stripping, and modeling. Most incidents of sex trafficking uncovered in Florida involve forced or coerced prostitution. Women are typically trafficked into the United States under false pretenses with the promise of working as a nanny or a maid. Upon arriving in the United States, they are forced to work in “mobile brothels” and engage in up to 30 commercial sex transactions daily.

The evolution of the mobile brothel, whereby a network of pimps control a group of women who are moved around the state from hotel rooms to private homes and trailers, has made detecting human trafficking even more difficult. These mobile brothels often cross county and state lines, and function like prostitution delivery services. These women, and sometimes children, are kept in one city for short periods of time, and are often rotated and transferred from city to city. Traffickers use threats of deportation as well as threats of and use of actual violence to control these victims’ freedom of movement and compel them to work.

Another difficulty in detecting sex trafficking is due to the criminalization of victims. Because sex workers are traditionally viewed as criminals in this State, sex workers are often arrested without any inquiry into the circumstances of their work. This is particularly problematic for underage sex workers – under the TVPA, any under age sex worker is by definition a victim of human trafficking regardless of the circumstances or “voluntary” nature of the work. She or he is deemed to lack the capacity to consent to such work. However, due to conflicts in state criminal law, teenage sex workers continue to be placed in the juvenile justice system rather than be provided with services that a human trafficking victim is entitled to under the law.

Labor Trafficking

While commercial sex trafficking gains the most media attention, labor trafficking is actually the most prevalent form of human trafficking that occurs in Florida. Labor trafficking takes the form of labor exploitation, forced labor, and indentured servitude. Forced labor is most prevalent in the agricultural industry and the tourism and hospitality industries, but is also found in a wide range of workplaces including private homes, assisted living facilities, t-shirt stores, gas stations, and convenience stores.

In our experience, most victims of labor trafficking forced to work in the agricultural industry in Florida are from Mexico, Guatemala, and other Central American countries. Many of these workers are trafficked into the United States through the abuse of the H-2A and H-2B worker visas, which facilitate human trafficking. H-2A and H-2B policies must be revised to ensure the freedom of immigrant agricultural, tourism, and hospitality workers. Significantly, an H-2A or H-2B visa holder is legally bound to his or her employer. The visas are sponsored by the employer and require that the employee work for that employer. These workers, by federal statute, are prohibited from finding employment with a different employer. Therefore, the nature of these visas in and of themselves create a framework for human trafficking. The workers know that they must work for the employer if they want to remain in the United States.

Traffickers therefore use threats of deportation along with threats of and actual violence, which can include beatings, stabbings, shootings, and locking workers in trailers. Many of these workers also have costs of housing, food, clothing, and even the use of showers and restrooms deducted from their wages. Such deductions can leave a worker with no pay at all, or even indebted to the trafficker. In most cases, workers are forced to live in unsanitary conditions – with ten to twenty laborers sleeping on the floor of one room, often with no bathroom.

Labor trafficking has been complicated by the increasing use of temporary employment agencies by major farms, hotels, and resorts. These agencies routinely violate wage and hour law, use physical force and coercion to compel employees to work, and refuse to pay for injuries to workers.

Because they are for the most part unlicensed, these labor leasing companies in Florida are not subject to regulatory investigations or sanctions. The Florida Labor Pool Act (Chapter 448, Florida Statutes) addresses day laborers, but does not cover seasonal workers. A similar gap exists in Florida Migrant Labor laws—Chapter 450, Florida Statutes addresses temporary agricultural laborers but there is no corresponding Florida law to protect temporary workers in the hospitality industry. These gaps are an invitation for exploitative labor practices, and need to be redressed immediately by legislative and regulatory responses. Hundreds of victims are estimated to be exploited annually in this manner throughout Florida.

LEGAL REPRESENTATION:

Finally, one of the greatest needs of a trafficked person is legal representation. Clients who are trafficked often need representation over the long term and they rarely, if ever, can pay for legal fees. There are very few attorneys offering free or even low-cost services to trafficked persons in Florida. Funding to provide these services is extremely limited and very few persons are trained to represent human trafficking victims. The legal services and legal aid organizations, like FIAC, that typically provide services to trafficked persons are underfunded and understaffed.

Legal counsel for trafficked persons must understand the civil, criminal, and immigration implications of their client's case. Representing a victim of human trafficking goes well beyond filling out an immigration form for a T-visa and filing for immigration relief. While immigration attorneys can represent clients eligible for T, U, and Special Immigrant Juvenile status visas and asylum, legal representation in this area usually includes evaluation for potential civil remedies. For example, if an individual was trafficked for labor, he or she may be entitled to back wages and other labor law remedies, matters where a civil attorney with this kind of expertise could provide needed representation. In addition, the attorney usually assists the client with all aspects of a criminal case, including meeting with law enforcement and prosecuting attorneys. The attorney may also assist in ensuring that the client receive the public benefits they are entitled to under the TVPA.

Due to the specific issues involved in representing a victim of human trafficking as well as the lack of awareness of the issue, finding pro bono counsel to assist non-profit attorneys has been

extremely difficult. Moreover, non-profit legal services organizations have not had the resources necessary to effectively reach out, train, and mentor private attorneys.

In order to tackle the large number of unrepresented victims of human trafficking, non-profit law firms such as FIAC are in great need of assistance in the form of funds and pro bono attorneys to help with the increasing number of human trafficking victims throughout the State and the nation.

Thank you again for your important work and continued support in this area. On behalf of hundreds of trafficked persons that my organization represents, I thank you for the opportunity to speak today.