

Human Trafficking Forum

Presented by the New York Anti Trafficking Network

May 14, 2009

Goals of Forum

1. Develop understanding of human trafficking
2. Identify a trafficked person
3. Recognize the service needs of a survivor of trafficking
4. Expand knowledge of relevant and available state and federal government benefits for survivors
5. Identify experienced trafficking experts to refer survivors to

The New York Anti-Trafficking Network (NYATN)

A network of service providers in New York City dedicated to:

- bringing together the voices of those who have first-hand experience of the injustices of human trafficking
- working consistently to meet the needs of trafficked persons
- advocating for a more humane and responsive policy towards trafficked persons.

NYATN Guiding Principals

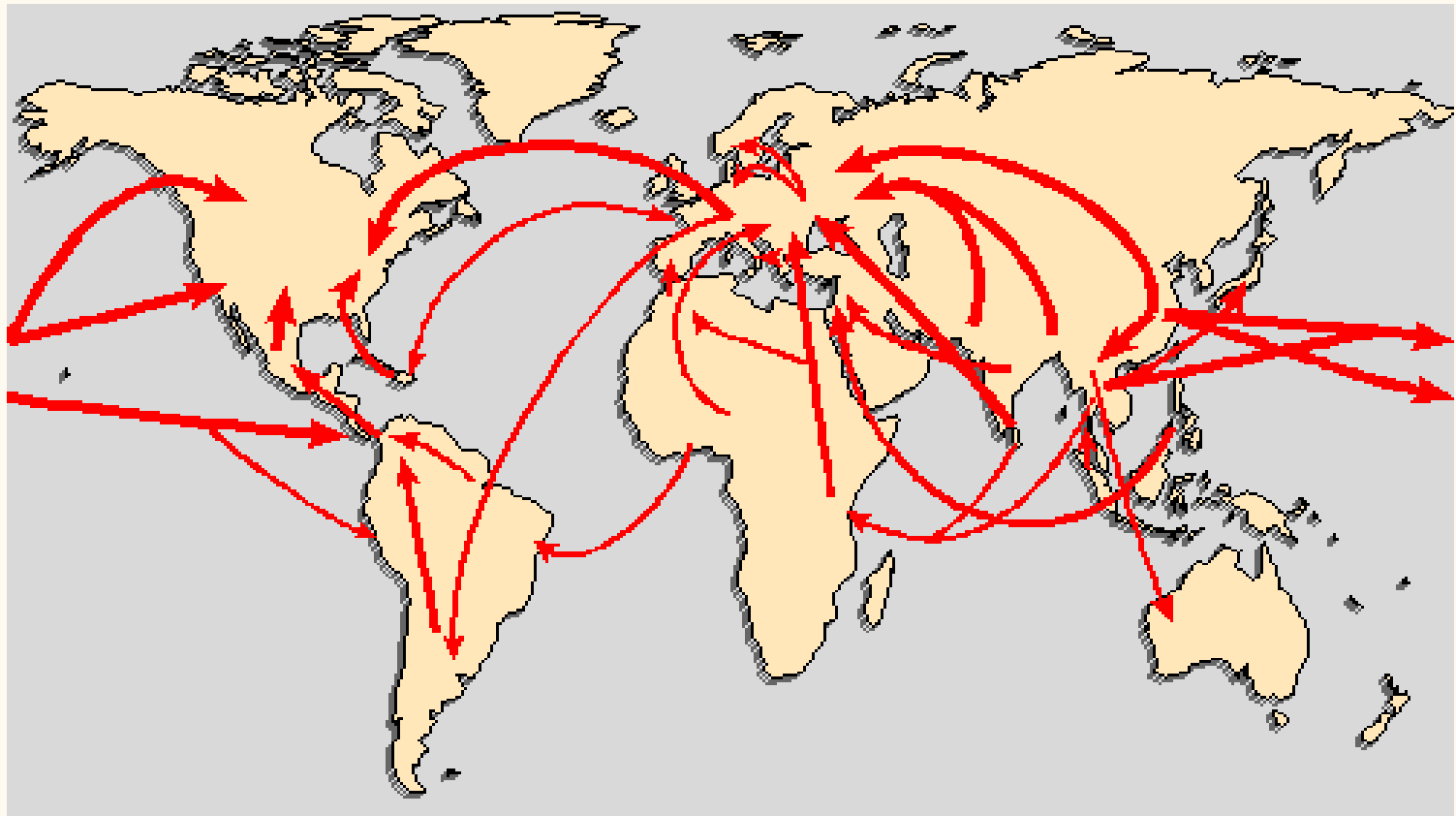
- Recognizing that sustainable change and improved response to trafficked persons requires increased capacity of network partners working in concert to support trafficked persons.
- Developing new ways of working together to deliver services, share information, identify resources, and advocate, is pivotal to an effective response to trafficked persons.
- Educating service providers, law enforcement, governmental entities and the general public is critical to reaching trafficked persons.

NYATN Activities

- Steering Committee
- Legal Services Subcommittee
- Social Services Subcommittee
- Quarterly meetings
- Listserve

Introduction to Human Trafficking

Global Human Trafficking Routes



People are vulnerable to trafficking because:

- Economic/employment opportunity
- Conflicts, emergencies, natural disasters
- Gender based violence

People are Trafficked for:

- Agricultural Work
- Domestic Labor
- Commercial Sex Acts
- Construction
- Restaurant Work
- Sex Industry
- Debt Bondage
- Factory Labor



Trafficked Persons are:



Photos: 1. Kay Chernush for the U.S. State Dept , 2. BBC)

People are Recruited by:

- Family
- Employment agencies
- Acquaintances
- Word of mouth
- Abduction
- Front businesses
- Legitimate businesses



Photo: Kay Chernush for U.S.
State Department

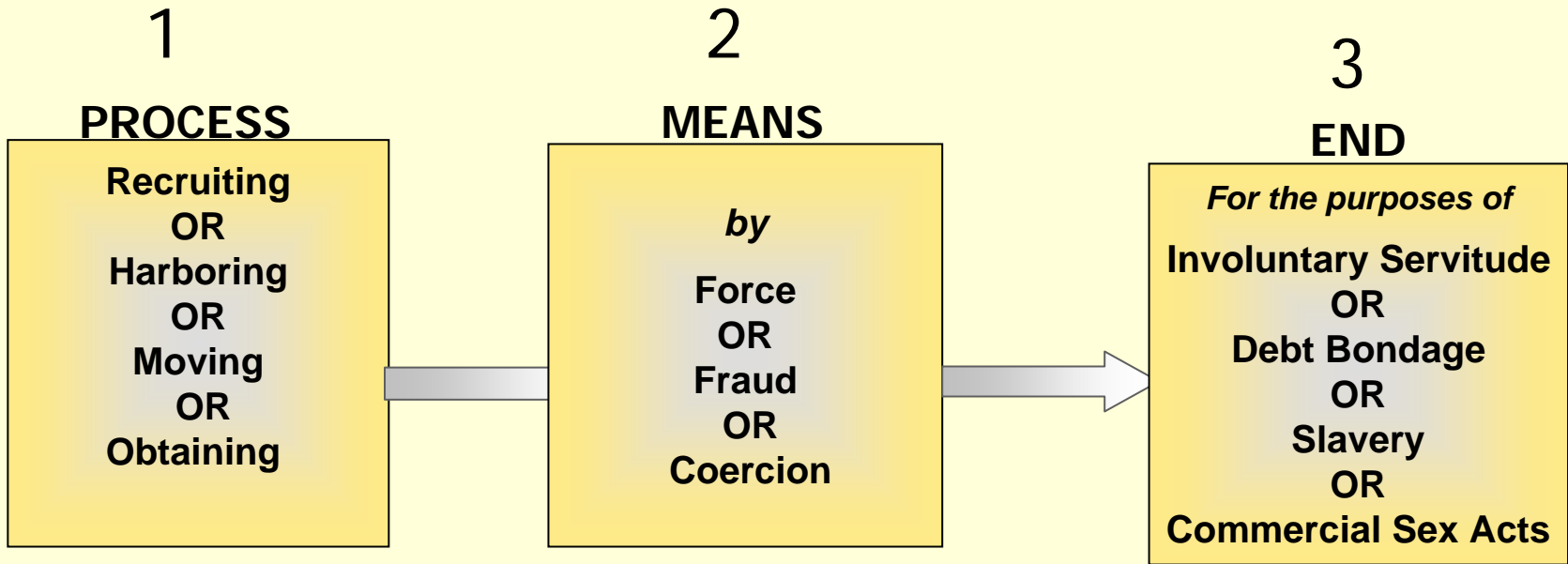
Traffickers are:

- Organized crime
- Neighbors, friends, family, community leaders, returnees
- Business owners
- Diplomats
- Employment recruiter/agency



Photo: Kay Chernush for U.S.
State Department

Elements of Human Trafficking -



Source: Freedom Network
Training Institute

Trafficking vs. Smuggling

TRAFFICKING

- No actual movement is necessary
- Elements of force, fraud, or coercion (Exception: commercial sexual exploitation of children-CSEC)
- Subsequent involuntary servitude

SMUGGLING

- Involves the crossing of an international border
- Person is free to leave and make own decisions after arrival
- Person is free to choose employment, etc.

Sex Trafficking vs. Prostitution

Trafficking

- Elements of force, fraud, or coercion (Exception: CSEC)
- Limited/no freedom of movement
- Limited/no freedom to leave
- Little/no control over earnings

Prostitution

- Elements of consent (Exception: CSEC)
- Freedom of movement
- Freedom to leave
- Control over earnings

Labor Trafficking vs. Labor Exploitation

Trafficking

- Element of force, fraud or coercion
- Limited/no freedom of movement
- Limited/no freedom to leave
- Little/no control over earnings

Exploitation

- Substandard work conditions
- Freedom of movement
- Freedom to leave
- Unfair wages

Myths vs. Facts

Myth or Fact? Survivors of trafficking are always trafficked into informal work.

Myths vs. Facts

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***Myth:* Cases of trafficking have involved people forced to work as teachers, high tech welders, and electricians.**

Myths vs. Facts

Myth or Fact? Women are only trafficked for commercial sex acts.

Myths vs. Facts

Myth or Fact? Women are only trafficked for commercial sex acts.

Myth: Women have also been trafficked to work in a multitude of industries including garment factory laborers, hotel front desk agents, hair braiders in beauty salons, just to name a few.

Myths vs. Facts

Myth or Fact? A trafficked person always enters the U.S. with no legal immigration status.

Myths vs. Facts

Myth or Fact? A trafficked person always enters the U.S. with no legal immigration status.

Myth: A number of trafficked persons entered the U.S. legally through special employment, student and “fiancée” visas, among other types of visas. U.S. citizens can be trafficked.

Myths vs. Facts

Myth or Fact? A person can be smuggled and then trafficked.

Myths vs. Facts

Myth or Fact? A person can be smuggled and then trafficked.

FACT: A person may cross an international border with consent but may be forced or coerced into involuntary servitude upon arrival.

Identifying Trafficked Persons



Photo: Kay Chernush for U.S. State Department

Under Served and Under Identified

- Human trafficking is an underserved population because it is an under-identified population
- The U.S. Government estimates up to 17,500 people are trafficked into the United States annually yet, since 2000, less than 800 survivors have received T-visas.

We do not have a unified definition of human trafficking

- Legal definitions: UN, TVPA, state laws
- Disagreement in the field (e.g. prostitution/sex work)
- Media focus on sensationalized sex trafficking cases
- Service providers and law enforcement are not adequately trained to distinguish between human trafficking and: prostitution, exploitative labor conditions, and smuggling- particularly in undocumented immigrant communities

Human trafficking is a hidden crime

- Trafficked persons lack freedom of movement and freedom of communication
- Coercion and fear are the primary weapons used to keep trafficked workers hidden in plain sight

A trafficked person's victimization is compounded by being foreign-born

- Fear of deportation
- Experience of corrupt law enforcement
- Language barriers
- Lack of social supports
- Cultural considerations

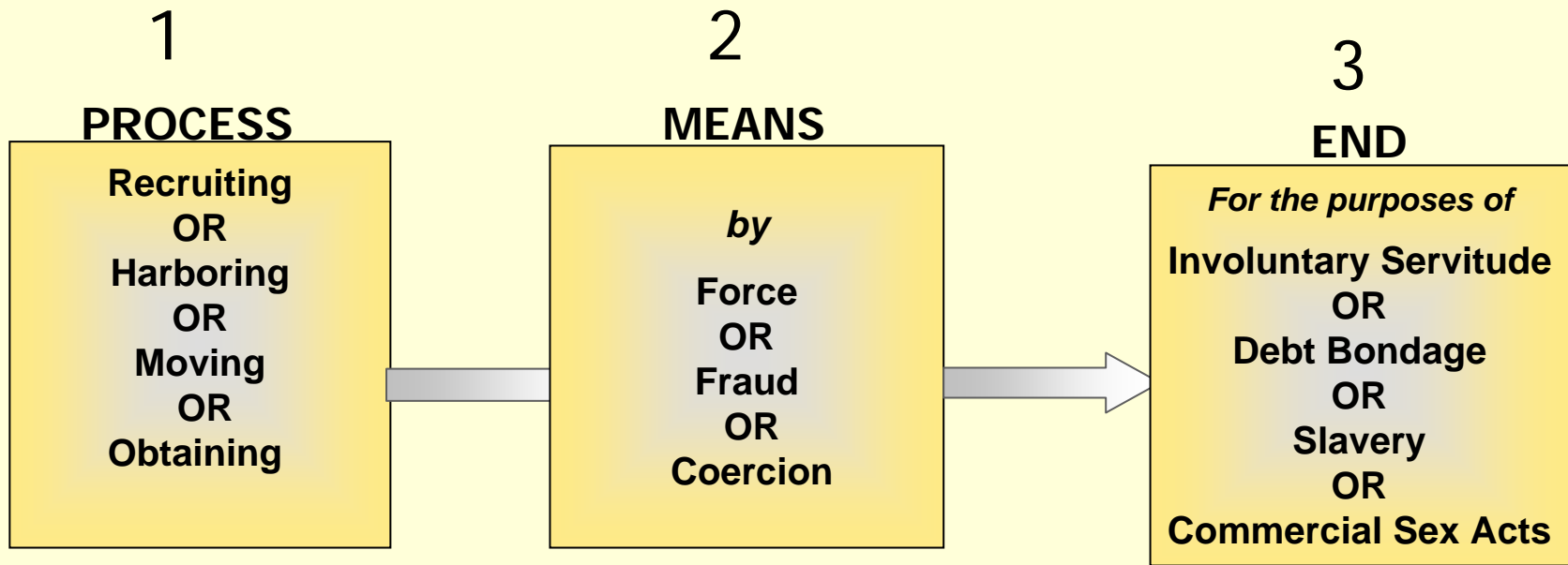
Trafficked persons are under-identified because of the way they are coerced into the situation:

- Identification with the trafficker
- Debt bondage
- Threats to family members
- Loss of confidence in their own decision-making capacity

How are Trafficked Persons Identified

- Law enforcement agents
- Attorneys (prosecutors, immigration, criminal defense)
- Victim service providers
- Ethnic or immigrant community organizations
- Good Samaritans
- Current/former clients
- Faith based entities
- Health care facilities

Assessment of Trafficking



Source: Freedom Network
Training Institute

Assessment of Trafficking

- Recruitment or Transportation (Process)
- Working Conditions (Means)
- Force, fraud or coercion present (Means)
- Compelled to work against will/could not leave the situation (End)
- Details of Escape

Indicators of Human Trafficking May Include:

- Heavy levels of security on site
- Person lives and works on the premises
- Person is not allowed to leave location unaccompanied
- Verbal, psychological, sexual and/or physical abuse
- Malnourishment
- Poor personal hygiene
- Limited or no social interaction
- Does not have access to identity documents
- Is paid very little or not at all
- Works long hours with minimal or no breaks

Red Flags of Human Trafficking

- Person has gaps in her story or is reluctant to discuss very basic things like: what kind of work she does, where she lives, how/when she came to the U.S.
- Person seems scared of consequences to a degree greater than the situation warrants (e.g. she is terrified of missing work when she has a court date)
- Person is dependent on “friend” or co-worker to answer any question

Red Flags for Minors

- Person is a minor without a cohesive story of where her parents are
- Person is a minor living with distant relatives, not attending school, falling asleep in school, being treated differently than other kids in the home, with a lot of household chores, malnourished, and/or socially isolated.
- Any Minor involved in any sex industry

“Have I been trafficked?”

Group Exercise



- ✓ If yes, what are the elements of trafficking? At what point did it become trafficking?
- ✓ If no, why not? What elements are missing?
- ✓ What additional information is needed? What questions need to be asked?

Providing Services to Survivors of Trafficking



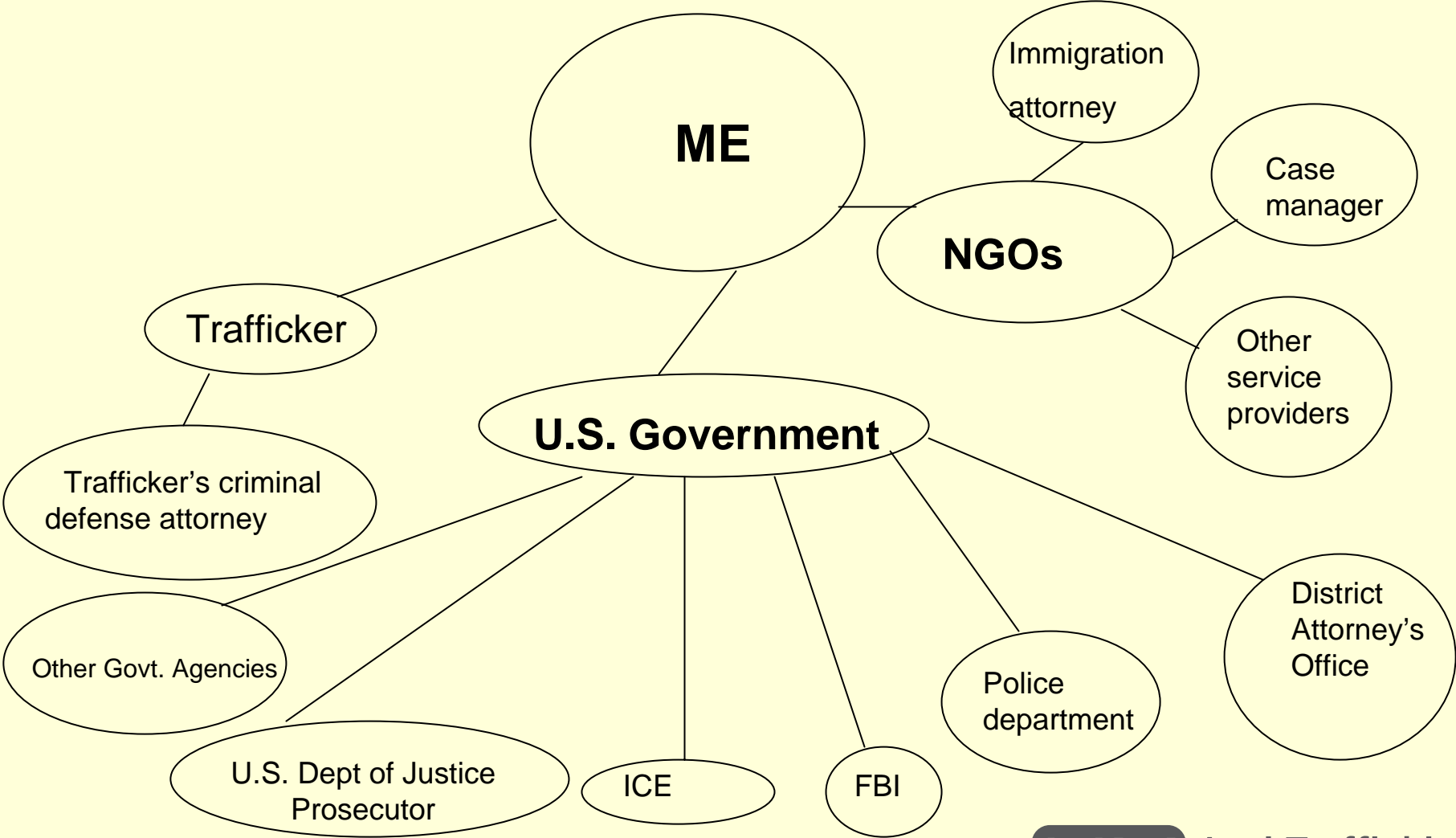
Role of Social Service Provider

- Advocate for client
- Provide case management
- Offer supportive counseling
- Coordinate services

Role of Legal Service Provider

- Provide legal representation
- Assist clients to secure immigration relief including filing for visas
- Advocate through criminal justice process
- Support during any legal processes including civil, criminal and immigration

Client-centered Relationship Chart



Assessment of Service Needs

- Immediate needs
- Information and Options
- Safety planning
- Housing
- Legal
- Mental health
- Health care
- Life skills
- Employment
- Family Reunification
- Repatriation

Immediate Needs

- Information and Options
- Interpretation
- Health care
- Shelter
- Food
- Clothing

Housing

- Emergency shelter options
- Transitional housing
- Long term housing

Mental Health

- Supportive counseling model
- Signs and symptoms of trauma, anxiety, depression
- Referrals to mental health professionals
- Culturally relevant services
- Support groups

Health Care Needs

- General medical care
- Prescriptions
- Eye-sight testing
- Dental services
- Nutritional
- Immunizations
- Gynecological

Life Skills

- Cultural and social issues
- Educational background
- Life skills
 - Financial literacy
 - Interpersonal
 - Parenting skills
 - Technology
 - Transportation



Employment

- Barriers to Legal Work
- Employment Plan
- Labor Rights

Legal

- Assessment of immigration status
- Help with navigating the criminal justice system
- Advocacy on behalf of client with law enforcement
- Identification of appropriate immigration remedies and assistance with application process
- Support during any legal processes including civil, criminal and immigration

Legal Options for Survivors of Trafficking

Victims of Trafficking and Violence Protection Act (TVPA)

- Makes it illegal for people – **traffickers** – to conscribe others and force them to work against their will
- Offers services to **trafficking survivors**
- Allows trafficking survivors, who cooperate with law enforcement, to stay in the US and gives them permission to work

Trafficking as Defined by the Law

“Severe forms of trafficking in persons”

- 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
- 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

22 U.S.C. § 7102(8) (2008).

Realities

- Prostitution is Not Trafficking
- Domestic Trafficking
- Women as Traffickers

T Visa

- Identifies victim as a trafficked person
- 5,000 mandated per year.
- Grants legal status for up to 4 years or until the close of the criminal investigation (whichever is shorter), upon which trafficked person can apply for LPR status.
- Provides work authorization, federal and state benefits

T Visa - Requirements

- **Physically Present** in the U.S. on Account of Trafficking
- Suffered a **Severe Form of Trafficking**
- **Cooperation** with Law Enforcement, unless under 18 or s/he receives a waiver due to physical/psychological trauma*
- Will suffer **Extreme Hardship**

* Provision added with the passage of the TVPRA of 2005.

8 U.S.C. § 1101(a)(15)(T) (2008); *see* 8 C.F.R. § 214.11(b) (2008).

Physically Present in US

- “Physical Presence”
 - Present because she was trafficked,
 - Present because she recently escaped from a trafficking scheme, or
 - Continues to be present in the US directly because she was trafficked in the past
- Opportunity to Depart
- US includes American Samoa and Northern Mariana Islands

8 U.S.C. § 1101(a)(15)(T)(i)(II) (2008); 8 C.F.R. § 214.11(g) (2008).

Severe Form of Trafficking

- See definition
- Involuntary Servitude. 22 U.S.C. § 7102(5) (2008); see 18 U.S.C. § 1584.
- Peonage. See 18 U.S.C. § 1581.
- Debt Bondage. 22 U.S.C. § 7102(4).
- Slavery. See 18 U.S.C. § 1583.
- Forced Labor. See 18 U.S.C. § 1589.
- Forced Commercial Sex Act. 22 U.S.C. §7102(8)(a).

Cf. 18 U.S.C. §§1590 *et seq.*

Cooperation

- I-914 Supplement B – primary evidence to satisfy requirements that 1. person is a victim of a severe form of trafficking in persons, and 2. has cooperated with “reasonable requests” for assistance to law enforcement
- Examples of Cooperation
 - Interviews
 - Fingerprinted
 - Car with Tinted Windows
 - Testifying
- Children and Trauma Exceptions

Exceptions to Cooperation

- Child/Youth
 - Clients who are under 18 years old are not required to cooperate to qualify for a T Visa. 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb) (2008).
- Trauma
 - It is considered an “unreasonable” request to require cooperation from clients who have suffered from psychological or physical trauma. 8 U.S.C. § 1101(a)(15)(T)(iii) (2008).

Extreme Hardship

- Age and Personal Circumstances
- Physical or Mental Illness
- Trafficking-Related Physical or Psychological Consequences
- Loss of Courts
- Laws, Social Practices, or Customs of Home Country
- Risk to Physical Safety
- Risk of Being Re-Trafficked
- Cannot travel outside of U.S. after escape
- Economic Hardship Not Sufficient

8 C.F.R. § 214.11(i) (2008).

Continued Presence

- Temporary immigration relief for trafficking survivors
- Only government agencies can apply for CP.

Services and Benefits

- Trafficking survivors may be eligible for benefits to the same extent as refugees
 - Must be certified by the Office of Refugee Resettlement (ORR), unless under 18
 - Currently, a suit challenging informal policy of requiring youth to cooperate with law enforcement in order to obtain benefits
- Benefits include:
 - Employment authorization
 - Public assistance (i.e. TANF, SSI)*
 - Medical assistance (i.e. Medicaid)
 - Food stamps
 - Housing
 - Transportation passes
 - Voluntary repatriation

Drawbacks of T Visa

- Focuses on prosecution instead of utilizing victim-centered approach.
 - Requires applicants to cooperate with law enforcement in exchange for legal status and work authorization, except for T visa applicants who are under 18.*
 - Lengthy process that may add to trauma
- If an application is denied, the Department of Homeland Security can use the information in the application against the applicant (e.g. undocumented applicants are subject to removal).

Derivative Status

- Immediate family members of T¹ recipients may be eligible to accompany or follow recipients.
 - Principals 21 or OVER can bring their spouses and any unmarried children under the age of 21.
 - Principals UNDER 21 can bring their parents, spouses, children, and siblings under the age of 18.
- Holders of “**Derivative T or U Visas**” may also be eligible for work authorization – period of eligibility dependent upon length Principal’s eligibility.
- If outside of U.S., Derivative will have to get fingerprinted and interviewed at home country consulate.
- The annual cap for both visas does **not** apply to derivative visa holders.
- IOM facilitates travel and travel documents free of charge.

Timeline for T Visa

- 6 Months to 1 Year
 - Affidavit – Varies upon trafficked person emotional status
 - Trafficked Person Cooperation
- Fingerprint Notice and Appointment
- VSC Interim Response
 - RFEs: I-192s, No LEA, Physically Present
 - NOIDS
- Decision
- Work Authorization (EAD)
- Certification Letter and Case Management

T Visa Forms

- G-28
- Fee Waiver
- I-914
- I-914 Supplement A: Derivatives
- I-914 Supplement B: Law Enforcement Endorsement
- I-192*

T Visa Exhibits

- Affidavit by Client
- Memorandum of Law
- Birth Certificate, Passport, IDs
- Evidence of CP: I-94, Certification Letter from ORR
- Witness Statements
- Psychological Evaluation, Medical Documents
- Country Condition Reports to Prove Extreme Hardship
- Derivatives: Marriage Certs, Birth Certs, IDs

Collaborating Agencies

- Legal Services/Immigration Attorney
- Civil Litigation Attorney
- Criminal Defense Attorney
- Social Services/Case Manager
 - e.g. Safe Horizon; New York Association for New Americans; New York Asian Women's Center
- Federal Prosecutor
 - US Department of Justice; US Attorney
- Federal Law Enforcement
 - e.g. FBI; Immigration and Customs Enforcement (ICE)
- Local/State Law Enforcement
- Interpreters
- International Organization for Migration (IOM)
- Psychologists
 - Project Reach, Doctors of the World

Other Civil Remedies

- VAWA (Violence Against Women Act) and International Marriage Broker Regulation Act (IMBRA)*
- Special Immigrant Juvenile Status (SIJS), 8 USC sec 1101 (27)(j)
- S Visa
- Fair Labor Standards Act and state labor laws (e.g. wage & hour claim)
- Workers' Compensation
- Asylum/Convention Against Torture
- Torture Victims Protection Act, 28 U.S.C. section 1350
- Refugee claim (for those applying outside the US)
- School enrollment and social services for youth
- Equal Employment Opportunity Commission (EEOC) complaint
- Tort action, including Alien Tort Claims Act, 28 U.S.C. section 1350
- Contract claim

* Reauthorized as VAWA III: bars deportation of **immigrant** DV survivors, provides them work authorization, and requires IMBs to provide criminal background info on American male petitioners.

Miscellaneous Issues

- Derivative/Family Reunification
- Adjustment of Status
- EAD Renewal

New York Anti-Trafficking Law

- Effective November 1, 2007
- Labor Trafficking. N.Y. Penal Law § 135.35.
 - Class D Felony
- Sex Trafficking. N.Y. Penal Law § 230.34.
 - Class B Felony
- To access state services for survivors:
Attorney → Law Enforcement → Office of
Temporary and Disability Assistance

Success Stories