Human Trafficking Prosecutions

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Office for Victims of Crime

- Established by the 1984 Victims of Crime Act
- OVC mission: Justice for Victims- Justice for All
- The Crime Victims Fund has supported over $6 billion in resources for victim compensation and assistance
- State victim assistance
- Training and customized TA
- Scholarships for approved training events

www.ovc.gov

www.ovcttac.gov for more information on training and TA
Presentation Overview

- Statutes and stages of prosecution
- Building a prosecution team
- Elements of successful cases
- Helping victims become witnesses
- Immigration relief issues
- Mobilizing resources and services
Trafficking Statutes

- 18 U.S.C. § 1581 (Peonage)
- 18 U.S.C. § 1584 (Involuntary Servitude)
- 18 U.S.C. § 1589 (Forced Labor)
- 18 U.S.C. § 1590 (Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor)
- 18 U.S.C. § 1591 (Sex Trafficking of Children or by Force, Fraud, or Coercion)
- 18 U.S.C. § 1592 (Unlawful Conduct with Respect to Documents in Furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude, or Forced Labor)
- 18 U.S.C. § 1593 (Mandatory Restitution)
- 18 U.S.C. § 1594 (Attempt and Forfeiture)
- 18 U.S.C. § 2423 (Transportation of Minors into Prostitution)
- 18 U.S.C. § 1546 (Visa Fraud)
Statute of Limitations

General Statute for Fed crimes: 5 years
18 U.S.C. § 3281-82

All Human Trafficking crimes: 10 yrs
18 U.S.C. § 3298
Effective January 5, 2006

Sex Trafficking: None
18 U.S.C. § 3299
Effective July 27, 2006
Charge Selection

- Prosecutors should engage in open charge selection and not limit the matter to human trafficking related offenses.
- Deciding what to charge involves rigorous analysis of the facts of each case - charges must be supported by the evidence and each count in the indictment must be justified for a tactical purpose.
- Prosecutors will evaluate what is known as “charge advantage” by looking at whether a charge:
  - Helps to establish admissibility of key evidence
  - Overcomes procedural challenges (e.g., statute of limitations)
  - Supports multiple charges within a single proceeding
  - Ensures at least one felony charge (commonly known as a “safety net” charge that represents a less serious but easier to prove violation)
  - Increases the ultimate sentence of the defendant
Building a Prosecution Team
Victim-Centered but Not Victim-Built

- Successful task forces borrow from a Domestic Violence-Organized Crime approach to prosecutions
- Prosecutions that are evidence based and do not rely too heavily upon the victim and victim testimony
- Trauma-informed, victim-sensitive practices utilized in interviewing
- Heavy utilization of investigative tools to obtain non-testimonial evidence
- Remove the burden from the victim as witness- victims can corroborate the evidence instead of the other way around
Infrastructure

- Successful HT teams are not built on the fly
- Develop a strong infrastructure in advance
- Spell out roles, responsibilities, and expectations in a Memorandum of Understanding or similar document
- Law enforcement representation must be broad and have active federal and local representation
- Consider cross-designation of local prosecutors as Assistant U.S. Attorneys to give options that allow for use of both state and federal laws
- Consider co-locating victim service providers in the prosecutor’s office (Chicago task force)
Stages of Criminal Prosecution
Stages of Criminal Prosecution

- Reporting of the crime (*may or may not have victims id’ed*)
- Case assessment and investigation
- Arrest and other enforcement actions
- Investigation continues
- Complaint filed and Grand Jury
- Indictment and arraignment
- Plea bargaining or trial
- Sentencing
Case Assessment and Investigation

- Investigators and prosecutor engage in proactive case planning
  - Assessment of which investigative tools to utilize
  - Outreach to/involvement of other law enforcement agencies
  - Early coordination with victim service providers
  - Involvement of DOJ Human Trafficking Prosecution Unit (HTPU)

- Investigators deconflict the case with other jurisdictions to identify any other pending matters involving the target(s)

- Establish course of action, plan future enforcement actions, plan for sequence of events

- Build financial investigation- follow the money
Identifying Victims

- Victim identification can occur at any phase in this process - pre-operational planning and the early investigation must contemplate procedures for victim recovery.

- Long-term covert investigations can be challenging - must balance the need for time to develop leads/mount evidence and the importance of acting quickly when a victim is in danger.

- An immediate response to rescue victims may risk the loss of effective investigative tools, but victims come first.

Prevention Before Prosecution
Operational Stage of Investigation

- Establish relationships of targets and patterns of criminal activity

- Start to evaluate the state of mind of the victim(s) and the trafficker- what elements are coercing the victim?

- Likely to involve use of:
  - Confidential informants
  - Undercover agents
  - Physical surveillance
  - Electronic surveillance
  - Tracking devices
  - Cell phone/internet data
  - Audio and video recordings
Multi-Stage Takedown

- Execution of search warrants

- In cases involving multiple traffickers, planning for simultaneous arrests

- Seizure of criminal proceeds
  - Bank accounts
  - Cash and liquid assets
  - Real estate
  - Vehicles

- Involve Victim Coordinators and NGO victim service providers as early as possible to plan for victim needs during and after the enforcement actions
Interviews

- A strong case does not rest on the back of its victims, but victim testimony is critical for understanding the “why” of the trafficking.

- Only the victim can explain how the trafficker exerted control over him/her and the impact of the traffickers’ actions.

- Know that victims are fearful in their initial encounters with law enforcement and the trafficker’s coercion may still be at play.

- Anticipate that it is common for victims to provide incomplete testimony in early interviews/evolving disclosure.
Interviews

- Key: victim’s reality is your reality - understand the factors and vulnerabilities that influence how a victim acts during the investigation

- Victims may not self-identify as victims

- May be hostile, withdrawn, uncooperative, deceptive

- May protect trafficker

- May come from countries where law enforcement is often in collusion with trafficking activity (or where law enforcement is ineffective)

- May have a history of abuse prior to trafficking
Interviews

- Who should conduct the interview? Minimize people present and select interview location carefully.

- One chance at a first impression: build trust and rapport from day one.

- Treat victims with respect and provide information about the process when able - the ability to anticipate what comes next can be very important for victims.

- Start where the victim is - identify when a victim may be in crisis (or too hungry or tired to be interviewed at the moment).

- Thoroughly vet interpreters and set expectations for their role in the interview.
Corroborate Evidence

- During this phase, law enforcement looks for other evidence and non-victim witnesses

- Seeking evidence that establishes force, fraud, coercion

- Other evidence that demonstrates traffickers’ use of tactics such as isolation, indoctrination, confinement, surveillance, etc.

- When a case involves foreign national victims, investigation will focus on victim’s background, traffickers’ recruitment methods, visa applications, money trail, family members and corroborating witnesses in the home country

- Secondary search warrants may be necessary
Continued Investigation and Trial Prep

- Taking post-arrest statements from subjects
- Forensic exams of computers, cell phones, and other physical evidence
- Preparing discovery for court
- Grand Jury
  - Determine whether probable cause exists to believe that the defendant committed the charged crime(s)
  - The GJ hears the prosecutor’s evidence regarding the crime and determines if the defendant will be indicted
Trial

- This can be among the most stressful times for victims.
- Victims who may have made tremendous progress may experience a recurrence of trauma symptoms at this time.
- Important to continue the service plan during trial prep.
- In a multi-victim case, prosecutor will assess which victims should testify—not all victims will necessarily take the stand.
- Important to give victims a chance to visit and familiarize themselves with the courtroom.
Trial

- Consistency is key - ensure that the support person in the courtroom and in the witness room is someone with whom the victim is familiar and feels comfortable

- Logistical considerations should be worked out well in advance, including transportation of victims to the courthouse (often done by agents)

- Anticipate in advance any practical needs that victims may have in order to testify - clothing, medication they need for daily use, dietary needs,
Sentencing

**Forced Labor (§ 1589)**
- If Death Results: Up to Life
- If Acts Involve Kidnapping, Aggravated Sexual Assault, or Intent to Kill: Up to Life
- No Aggravating Factors: Up to 20 years

**Sex Trafficking (§ 1591)**
- Victim Under 14: 15 yrs to Life
- Victim 14-17: 10 yrs to Life
- Use of Force/Fraud/Coercion: 15 yrs to Life

**Mandatory Restitution**
Federal Crime Victims Rights

- The right to be reasonably protected from the accused
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, [or] sentencing, or any parole proceeding*
Federal Crime Victims Rights (cont’d)

- The reasonable right to confer with the attorney for the government in the case
- The right to full and timely restitution as provided in law
- The right to proceedings free from unreasonable delay
- The right to be treated with fairness and with respect for the victim’s dignity and privacy
Mobilizing Resources and Services
Victims need to be safe and supported to become effective witnesses

- Service provision is critical for victims to rebuild their lives and it is also a vital component to helping them become active participants in the justice process.

- Investigators and prosecutors rely on you as victim service providers to help victims plan for safety, assess immediate and long-term needs, and provide consistent support to victims.

- For undocumented victims, obtaining immigration relief is part of stabilizing the victim. Ensure that your service provider team includes a member with expertise in the area of immigration law.
Immigration relief can help law enforcement counter these forms of control

- Threat of exposure
- Use and threat of reprisals against loved ones
- Debt bondage
- Isolation
## Short Term Immigration Relief

### Continued Presence (CP)
- For all victims of trafficking that are potential witnesses
- One year (can be renewed)
- Requested by law enforcement
- Cooperation is **not** a requirement
- Work authorization issued **and** access to public benefits if also cooperating with law enforcement (no fees)

### Significant Public Benefit Parole (SPBP)
- For anyone needed for the case (e.g., non-victim witnesses)
- Length of time varies - requested by LE
- Cooperation is required
- Work permit only upon request, NO access to public benefits (fee associated with permit)
# Long Term Immigration Relief

## T-Visa

**Eligibility:**
1. A victim of trafficking as defined by TVPA
2. Present in U.S. on account of the trafficking
3. Complied with reasonable requests for assistance in the investigation or prosecution (or is under 18 years old or extreme trauma)
4. Would suffer extreme hardship upon removal

Self-petitioning by the victim

Work authorization and access to public benefits

Family derivatives eligible

## U-visa

**Eligibility:**
1. A victim of crime (28 types)
2. Has complied with reasonable requests for assistance in the investigation or prosecution (or is under 18 years old)
3. Would suffer extreme hardship upon removal

Self-petitioning by the victim

Provides work authorization but NO access to public benefits

Family derivatives eligible
Important Roles for Service Providers

- Continually build rapport
- Help victim anticipate what comes next in the process
- Identify and continually reassess victim needs
- Reaffirm that the victim is not to blame
- Normalize reactions the victim may be having
- Develop a plan of action for support
- Coordinate closely with law enforcement Victim-Witness personnel
- Ongoing victim identification
Federal Victim Assistance Specialists

- Operational planning and assistance for law enforcement actions
- On-site emergency response
- Mobilization of community, NGO, and agency resources
- Assistance in building trust, rapport, and relationship with victims
- Immigration relief coordination
- Follow-up and information throughout case
Federal Emergency Assistance Funds

- Emergency housing, food, transportation to victim assistance services
- Emergency medical care or mental health assessments
- Payment of bill for sexual assault forensic exams
- Administered by HSI, FBI, DOJ HT Prosecution Unit, or EOUSA victim assistance programs

Federal Emergency Witness Assistance Program

- Safety issues, family relocation
- Transportation for case related needs
- Administered by U.S. Attorney’s Offices
- Intended to address short term, immediate safety needs
Training and Technical Assistance Resources

- Customized training and technical assistance
  - In-person conferences and trainings
  - Webinars and conference calls
  - Peer to peer mentoring
  - Phone/email consultation


- Many other new resources and training partnerships in development [www.ovctttac.gov](http://www.ovctttac.gov)
Training and Technical Assistance Resources

- HSI Victim Assistance Program
- FBI Office for Victim Assistance
- DOJ Civil Rights Division, Human Trafficking and Prosecution Unit
- Local Child Advocacy Center
- Local Sexual Assault Response Team
- National Children’s Advocacy Center
  - [www.nationalcac.org](http://www.nationalcac.org)
DOJ Human Trafficking Prosecution Unit

- Created in 2007
- Mission is to streamline fast-moving trafficking investigations, ensure consistent application of trafficking statutes, and identify multijurisdictional trafficking networks
- Team of federal prosecutors within DOJ’s Civil Rights Division in Washington, DC
- Try cases in federal court, often in conjunction with an AUSA from the US Attorney’s Office in the local district
- Case consultation, legal guidance, and support
- 10 prosecutors, 1 investigator, 1 Victim-Witness Coordinator, 1 Program Manager
Questions

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