

Testimony of
Katherine Kaufka

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Hearing on Legal Options to Stop Human Trafficking March 26, 2007 Statement of Katherine
Kaufka National Immigrant Justice Center

Chairman Durbin and Distinguished Members of the Subcommittee: Thank you for the privilege to testify today on behalf of the survivors of human trafficking, who are victims of some of the most horrific human rights violations that we see today. I am an attorney and have represented dozens of trafficking victims at the National Immigrant Justice Center, a leading national advocate for the protection of human rights of non-citizens. In addition to the countertrafficking project, our comprehensive program affords high quality legal representation to immigrants, refugees, asylum seekers, unaccompanied immigrant children, detained immigrants, and survivors of gender and sexual-orientation-based persecution.

Serving nearly 8,000 individuals each year, the National Immigrant Justice Center, a partner of Heartland Alliance, is a leader in litigation-based advocacy for immigration reform. We have built the largest pro bono network in the nation, with 700 pro bono attorneys handling individual cases and impact litigation in the federal courts. The National Immigrant Justice Center has conducted antihuman trafficking trainings both nationally and internationally to law enforcement authorities and social service providers.

In my testimony today, I will address three areas of the law that fail to provide adequate protections for human trafficking victims. These are (1) the need to provide greater protection for victims and their families; (2) the need to ensure that victims who make an effort to cooperate with law enforcement are adequately protected; and (3) the need to respond to the special needs of children who are victims of human trafficking. For each issue, I will provide examples of victims the National Immigrant Justice Center has represented, and use pseudonyms for clients in order to protect their identities.

The two laws that operate to provide immigration benefits and other protections to victims of trafficking are the Victims of Trafficking and Violence Protection Act (TVPA) and the Trafficking Victims Protection Reauthorization Act (TVPRA). These statutes are consistent with international laws such as the United Nations Convention against Transnational Organized Crime and its Protocols addressing human trafficking and the smuggling of migrants. The statutes address the problem of human trafficking through a human rights framework using a three-pronged approach of protection, prosecution and prevention. The laws create new trafficking crimes, increase sentencing requirements, and provide legal status and protection to trafficked persons who cooperate with law enforcement to investigate and prosecute traffickers.

The two forms of immigration relief available to trafficking victims are "Continued Presence," which allows a non-citizen to remain in the United States in a temporary immigration status while their traffickers are being investigated and prosecuted, and the "T" non immigrant visa, which allows trafficking victims who aided in the prosecution of criminal traffickers to obtain legal status and eventually apply for green cards and citizenship. These two key statutes, the VTVPA and TVPRA, also allow victims to obtain services, witness protection, and the right to mandatory restitution and to file civil actions.

The most recent estimates claim that approximately 14,500-17,500 men, women, and children are trafficked in the United States every year. However, since the passage of the VTVPA seven years ago, approximately 400 trafficking cases have been prosecuted on human trafficking charges and 1,500 T visas have been issued.

While it was the intent of the VTVPA to punish traffickers and protect victims, these statistics show that we have failed to fulfill our goal of identifying victims and tracking down and prosecuting traffickers operating in the United States. We believe that a principal cause of this failure is that the burdens placed upon the victims are too high. Our laws should convey the message to this vulnerable population that they will be protected while their abusers are prosecuted. The statute should guarantee that those who assist or attempt to assist law enforcement will in fact be afforded protection and access to services. As written and implemented, however, the statute demands too much, leaving victims unable to meet the necessary criteria.

I. Providing Greater Protection to Trafficking Victims and Their Families

Many survivors of human trafficking are intimidated by their traffickers with threats against the safety and livelihood of immediate family, most often family members who are outside the United States and whom the trafficking victim feels powerless to warn or protect. The victim's fear of harm to his or her family prevents the victim from reporting the trafficking crime to authorities. If a victim reports the crime, he or she may be frightened away by the threats so that the victim does not fully assist with an investigation or prosecution of a trafficking case.

One client we represent, "Anuja," was trafficked to a suburb of Chicago, called Burr Ridge, IL, from a small Indian village when she was about eleven years old. She was promised an American education, but instead, was forced to cook, clean, and take care of two small boys for an Indian family. Four years later, she managed to escape with the assistance of a "Good Samaritan," and was subsequently referred to the National Immigrant Justice Center. Anuja was interviewed by authorities, who quickly became frustrated with her because she was unwilling to provide information for them to corroborate her story. Finally, in tears, Anuja she confessed that she did not want to tell law enforcement certain details because she was afraid her traffickers were going to hurt her little sisters in India, a threat she heard many times while she lived with her traffickers. At such a young age, Anuja was terrified by the threats to her family. Let me be clear - she was eager to see the traffickers prosecuted. However, Anuja would have been better able to assist law enforcement if she knew her family was safe and if she was able to receive their support during the prosecution of the traffickers.

We recommend that victims of trafficking who cooperate with law enforcement have the option to be united with family to support them through the legal process. Specifically, derivative continued presence status should be granted to immediate family members of trafficking victims. If those family members reside outside the United States, they should be allowed to enter the U.S. temporarily to aid the prosecution's efforts. This change to the law will not only enhance victim protection and rehabilitation, it will simultaneously facilitate cooperation between victims and law enforcement, leading to more successful prosecutions of criminal traffickers.

11. Ensuring Full Protection for Victims Who Make an Effort to Assist Law Enforcement

The second problem that I want to discuss stems from the fact that a victim's access to protection and services is contingent upon law enforcement's discretion to open a criminal investigation. If law enforcement fails to act, declines to open an investigation or delays the process, the trafficking victim will have no opportunity to assist in the investigation and prosecution of a case. Additionally, the victim will be prohibited from accessing immigration protections and services afforded to victims of human trafficking under our statutes. If law enforcement declines to pursue the case, the trafficking victim is left to battle either a deportation proceeding or possible criminal prosecution against him or herself. This creates a chilling effect on other victims in the community, discouraging them from reporting trafficking crimes, and leaving victims undocumented, underground, and unidentified.

In cases where trafficking victims are able to escape without the assistance of service providers or law enforcement, it often takes time for the victims to learn that they can play a role in the investigation and/or prosecution of their traffickers. Because of the passage of time, these cases often become a low priority for law enforcement. We represent a woman, "Padma" and her two daughters, who were trafficked from India to Countryside, Illinois to work under forced labor conditions in a restaurant in 1998. Padma and her daughters finally escaped in 2001. They lived in hiding and were too frightened to seek assistance until 2005, when a legal advocate at a women's shelter referred them to the National Immigrant Justice Center.

Padma wanted justice for what she and her daughters endured, so we immediately reported the crimes to the Department of Justice and the Chicago FBI office. Padma needed legal status to remain in the United States to seek services and help the federal authorities prosecute the case. It was only after interviews occurred one year later that Padma and her daughters were legally recognized as victims and received the protection and services they needed. Padma's previous attempts to cooperate were not recognized under the law.

In other cases across the nation, victims have struggled to schedule a single interview with authorities, precluding protection for these survivors. We recommend that the survivor of human trafficking who makes a good faith attempt to cooperate with law enforcement should be eligible for T visas under the VTVPA. The current law requires proof that the victim complied with requests for assistance. Where the victim tries to assist authorities, but law enforcement takes no action, the victim should not be denied protection.

111. Recognizing the Special Needs of Children Victims of Human Trafficking

The third recommended revision of law is to enhance protection for victims of human trafficking who are unaccompanied children. These are the most vulnerable of our victim population. Trafficked children are frequently picked up during raids of business establishments suspected of illicit activity or of relying upon the forced labor of trafficking victims. Unfortunately, all too often, law enforcement fails to recognize potential trafficking victims and treats these children as if they are participants in the allegedly criminal activity. Rather than immediately extending protection to these children, authorities have interrogated the victims, further traumatizing children in an already fragile state.

One of our clients from El Salvador, "Sonia" was just fifteen years old when federal law enforcement agents discovered her in a brothel. Officers from the Department of Homeland Security interrogated her for hours. Sonia was ashamed, and fearful of both the traffickers and the federal agents, so she said that "nothing happened" in the brothel. Sonia was held in custody in Chicago, and immediately placed in deportation proceedings.

Sonia's case demonstrates the great sensitivity that must be applied to cases involving children. We recommend that whenever law enforcement authorities encounter a child in an environment that involves forced labor or commercial sex, the officials should assume that the child is a victim of trafficking and refer the child immediately for appropriate services and legal counsel. In Sonia's case, she was transferred to a shelter in Chicago that provides care and custody for unaccompanied minors. An initial legal screening by attorneys with the National Immigrant Justice Center suggested that she was a trafficking victim. Eventually, we were able to transfer Sonia to foster care and obtain a T visa for her.

Rather than leaving the child victims of trafficking in the hands of law enforcement officials who tend to exacerbate their fears, the Department of Health and Human Services (HHS), Administration for Children and Families should have exclusive authority to make prompt determinations of eligibility for assistance for unaccompanied children who may be victims of human trafficking. HHS should be responsible for providing care to these children care while they obtain legal counsel and referrals to the services they require.

Conclusion

In closing, in order to identify victims and effectively prosecute traffickers, we recommend that this issue be approached from the victim's perspective. We need to recognize the burdens encountered by survivors in the course of being identified as a victim of human trafficking, and the obstacles that are faced by these same victims in accessing protection and assisting law enforcement. Providing protection not only to victims, but also to their immediate family members will relieve the fears that prevent many victims from reporting their cases and participating as victim-witnesses in our justice system. We must afford protection to victims who make a good-faith attempt to aid authorities in the investigation and prosecution of human trafficking cases. To deny these victims protection is unjust. Special considerations must be given to the needs of child victims of human trafficking. Furthermore, potential child victims of human trafficking must be immediately referred to HHS, provided appropriate services, and guaranteed access to legal counsel. Finally, as you consider modifications to the law, we urge you to ensure all trafficking victims have access to high quality and affordable legal counsel. In this way, we

can ensure that the rule of law is applied and enforced, and that victims' fundamental human rights are protected.