

# CONVERSATION WITH TWO ANTI-TRAFFICKING ADVOCATES

*Kathleen C. Kim\* and Charles Song\*\**

*Reported by: Srividya Panchalam\*\*\**

I. INTRODUCTION AND INTERVIEWEES' BACKGROUNDS .....	31
II. VICTIM IDENTIFICATION .....	35
III. SOCIAL SERVICES .....	45
IV. IMMIGRATION.....	47
V. CRIMINAL CASE ADVOCACY .....	53
VI. CIVIL LITIGATION .....	58
VII. CONCLUSION .....	62

## I. INTRODUCTION AND INTERVIEWEES' BACKGROUNDS

This article explores cutting edge legal advocacy on behalf of human trafficking victims in the United States. Kathleen Kim (KK) and Charles Song (CS) are two social justice attorneys that have focused their efforts on providing free legal services to human trafficking victims. Kathleen and Charles engage in a frank

---

\* Associate Professor of Law at Loyola Law School, Los Angeles.

\*\* West Coast Pro Bono Manager at Howrey LLP.

\*\*\* J.D. Candidate, May 2009, Loyola Law School, Los Angeles.

© 2009 Kathleen C. Kim, Charles Song, & Srividya Panchalam. The copyright in each article is owned by the respective author. Except as otherwise provided, the author of each article grants permission for copies of that article to be made for classroom use, provided that each copy is distributed at or below cost, the author and the Los Angeles Public Interest Law Journal are identified on each copy, proper notice of copyright is affixed to each copy, and the author and the Journal are notified of the use.

discussion about the strategies and challenges of anti-trafficking lawyering from a human rights perspective. Lawyering within a human rights framework places primacy on the interests and needs of human trafficking victims with the goal of promoting victim empowerment and self-determination.

\*\*\*

*Q: In what capacity have you worked with trafficking victims? What has been the nature of your work?*

**KK:** In 2002, right after law school, I started a Skadden Fellowship at Lawyer's Committee for Civil Rights in San Francisco (LCCR). I implemented a project focused on representing human trafficking victims in civil litigation. When the Trafficking Victim Protection Act<sup>1</sup> (TVPA) was passed, I saw it as an important opportunity to provide civil rights protections to exploited undocumented workers—a category of workers that was previously ineligible for immigration status was now eligible. The TVPA enabled these workers to assert their civil rights in court for tort and employment violations.

*Q: Considering that few individuals were taking on civil cases for human trafficking victims, how did you come up with your project? What inspired you to do it?*

**KK:** A few prominent immigrant workers' rights attorneys served as role models—Julie Su, Michael Rubin, Paul Hoffman, Della Bahan, Mike Wishnie, and Sameer Ashar, among others. Also, during my law school clinical experiences and summers I had addressed legal issues impacting immigrant workers, so I knew that exploitation was a salient issue. Immigrant workers, particularly undocumented workers, are constantly exploited in the workplace. The TVPA, at least in theory, was a tool to provide broad protections to all immigrant workers who experienced coercive and exploitive labor conditions.

---

1. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of 28 U.S.C.).

*Q: How did you come to teach at Loyola Law School?*

**KK:** After practicing at LCCR, I began clinical teaching at Stanford Law School in its Immigrants' Rights Clinic. It was a two year teaching fellowship, and then I decided to pursue an academic career. Now I teach at Loyola, but continue to provide technical assistance and resource materials on trafficking cases. Being in Los Angeles, one of the most vibrant centers for immigrants' rights advocacy, allows me to collaborate with leaders in the immigrants' rights movement.

*Q: Can you tell us about the Anti-Trafficking Litigation Assistance and Support Team project you are developing in conjunction with Loyola?*

**KK:** ATLAST is a litigation assistance project that I launched with Dan Werner, Deputy Director of the Immigrant Justice Project at the Southern Poverty Law Center. With Loyola's library, we are developing a website with a password-protected section that contains pleadings to provide technical assistance to attorneys representing trafficking victims in civil litigation. The website address is <http://library.lls.edu/atlast>.

Dan Werner and I also co-author a manual for practitioners called "Civil Litigation on Behalf of Victims of Human Trafficking." The recently updated manual is available at the ATLAST website.

*Q: How about you Charles? In what capacity did you work with human trafficking victims? What was the nature of your work?*

**CS:** I first heard about human trafficking as an anthropology major in college, when I learned about the "comfort women" that the Japanese government forced to provide sexual services to its military during World War II. At the time, I could not imagine a much worse situation, and the fact that most of the comfort women were Korean really struck a chord with me as a Korean-American because I thought this could have happened to my mother or grandmother. The fact that the "comfort women" issue was never resolved and that similar trafficking activities are still ongoing inspired me to get involved in the fight against trafficking.

I was first exposed to contemporary human trafficking at Global Rights in Washington, D.C., then known as the International Human Rights Law Group (IHRLG). I went there during my first law school summer as a law clerk to work on issues relating to the International Criminal Court. Gaye McDougal, the Executive Director at the time, was also the Special Rapporteur to the United Nations on Military Sexual Slavery. A major reason I wanted to work at Global Rights was because Ms. McDougal was working on a report to the United Nations about the Japanese government's failure to address the "comfort women" situation. It was a fascinating exercise to be able to work on the report.

There was also a very renowned lawyer at Global Rights named Ann Jordan, who was running one of the few human trafficking prevention programs in the country at the time. I ended up working with her on drafts of the TVPA that summer, but it took years before the TVPA was finally passed in 2000. Working on trafficking issues with Global Rights was incredibly inspiring and the next thing I knew, I was working at the White House's President's Inter-Agency Council on Women where I continued to work on TVPA issues.

My first job out of law school was at the Center for Human Rights and Constitutional Law. It was pure coincidence that one of my first cases as a lawyer ended up being a trafficking case. I still remember receiving a fax about a trafficked child, and my bosses not knowing what trafficking was. I had just happened to have worked on trafficking issues for the past few years, and I worked on that child trafficking case for the next three years. From that case, I ended up working with people at the Coalition to Abolish Slavery and Trafficking (CAST).

It just so happened that CAST was thinking about creating a legal program at that time, and they asked me to found the program. As a third year lawyer, I could not pass up the opportunity to start my own legal program. I became the Legal Services Director at CAST in 2002 and founded a comprehensive legal services program for human trafficking victims composed of immigration services, civil remedies, criminal victim witness advocacy, and any other services we could provide them. If we could not provide them

needed services, we would refer them out to other organizations that could.

I spent the next five years at CAST, and now I am the West Coast Pro Bono Manager for Howrey LLP, where I continue my trafficking work.

## II. VICTIM IDENTIFICATION

*Q: How does one identify a trafficking victim? Where do the referrals come from? What demographics do victims come from?*

**CS:** At CAST, most of my victim referrals came from law enforcement, although at times we would read about a case in a newspaper article and then call the police or law enforcement. Our second biggest source was probably non-profits, and then people who had heard about us through TV, newspaper articles, or other media sources. It would be particularly gratifying for us when some of our clients would refer victims to us.

In terms of demographics, our victims in Los Angeles were primarily Asian and Latino, but we had a wide range of clients. We had minors, a 60-something Filipino college teacher, and some victims that even graduated from college in the United States.

**KK:** San Francisco was very different from what Charles experienced in Los Angeles. When I started my project in 2002, only one other legal services program for trafficking victims existed. That program was at the Asian Pacific Islander Legal Outreach (APILO). We worked in collaboration; they would represent clients in their immigration proceedings, and I would take care of their civil needs.

In Northern California, we did not experience as high of a volume of trafficking victims as in Southern California. And at least in the beginning, we did not experience a large number of law enforcement referrals, because they did not know what human trafficking was. In fact, law enforcement was coming to us for cases because the Bush administration had issued a policy directive to prosecute traffickers.

Our clients were generally referrals from Good Samaritans,<sup>2</sup> self-referrals, or referrals from other social services agencies that encountered victims. I even got clients from doing outreach work. For example, after giving a know your rights presentation at a community-organizing meeting for domestic workers, a woman raised her hand and said in Spanish, “I think what you are talking about happened to me.” Sure enough, the woman had been trafficked to the U.S. and forced to work both as a domestic worker and at various fast food restaurants while her trafficker took all the money from her. It was an egregious case that involved both physical and mental abuse. The case was prosecuted by the Department of Justice, and it was the first trafficking case that the Assistant U.S. Attorney I worked with had ever encountered.

Another referral I remember came from a Good Samaritan who was a Jehovah’s Witness. She had been going door-to-door. She went to one house on several occasions because she noticed a woman who was a domestic worker that appeared to be in servitude and suffering horrible working conditions. She helped the woman escape and brought her to our office. That worker was 47-years old. She had been trafficked from the Philippines to Spain when she was 7-years old and spent a number of years in Spain. She was trafficked from Spain to the United States as an adult, so she did not know how to speak any single language in any kind of competent level of intelligibility. She spoke in a mix of Tagalog, Spanish, and English. It was extremely difficult to communicate with her.

As time progressed, we did get more law enforcement referrals because they were becoming more aware of the issue. As instructed by Ashcroft and Bush, law enforcement focused their efforts on sex trafficking. They would conduct raids of massage parlors and brothels. When they found victims, they would bring in the NGOs to provide social and legal services.

---

2. See MERRIAM-WEBSTER ONLINE DICTIONARY (2009), available at <http://www.merriam-webster.com/dictionary/samaritan> (last visited Apr. 1, 2009) (“Samaritan” is defined as “a person who is generous in helping those in distress”).

*Q: What geographical regions do the victims come from?*

**KK:** Victims come from a diversity of countries: different countries in Asia, including Sri Lanka and Korea; Mexico; various countries in Central America including El Salvador and Guatemala; and a number of African countries, such as Kenya and Cameroon. I also had clients from Ethiopia and Eritrea. They would travel to the Middle East in search of work to escape civil conflict and end up being placed in servitude by high-powered people in the Middle East or by members of the royal family in Saudi Arabia.

*Q: What kinds of industries do you most commonly find victims in?*

**CS:** The type of situation varies by the region quite a bit. For example, in rural parts of Florida, almost all of the cases involve farm workers. Here in Los Angeles, I would say that the majority of cases we have found involve labor trafficking instead of forced prostitution or sexual slavery.

Of the labor trafficking that was found, the highest number of cases we had were domestic worker trafficking cases. A lot of the domestic worker trafficking involved a trafficker and victim of the same ethnicity. For example, someone from Indonesia is more likely to have the language skills and the knowledge about how to find and communicate with a very young, vulnerable person from Indonesia, enslave, and isolate them.

We also had some garment worker cases in Los Angeles. From what I understand, Los Angeles is the garment capital of the world. Shockingly and surprisingly, we have never found many farm worker cases here. While there are few farms in Los Angeles, if you go up North, and a little East of Los Angeles, there are plenty of farms. I did hear, however, that it is mostly in Central California where the migrant farm worker trafficking is occurring. We also found a pretty high number of sex trafficking victims because of the large prostitution industry in Southern California.

**KK:** Trafficking predominates in any kind of informal sector or low-wage industry. Domestic workers comprised the majority of my cases. However, I also had cases of trafficked workers in hotels, restaurants, and brothels which involved many workers in the same trafficking operation.

I would get a lot of different referrals from various resources. Not all of them necessarily turned out to be trafficking. Nonetheless, I would meet with these clients who all had very interesting stories. One client, I remember, said he was forced to work in the defendant's pet shop. I had another client who said he was forced to be someone's gardener.

*Q: Kathleen, you said that not all of your referrals were trafficking victims. What kind of treatment rises to the level of trafficking? What distinguishes, for example, a labor trafficking victim at a hotel or a taqueria from an individual who is suffering egregious wage/hour violations?*

**KK:** Generally, one of the first questions I would have to ask and answer, based on the circumstances of the client's case, is if he/she felt forced or coerced. Even if the victim liberated himself/herself and ultimately left by his/her own free will, was there any point in time that the individual felt like he/she had little choice but to comply with the exploitive conditions? If the employer coerced compliance with threats, intimidation, and other abuse, I would consider that person's situation to be trafficking.

When a trafficker makes specific threats, threatens deportation or harm, or uses actual physical force, there will generally be a clear cut case of trafficking. Where it is more ambiguous is when a trafficker says things to the workers in an intimidating way, implying some kind of harmful consequence if the workers fail to comply with the working conditions. A client might say, for example, "I knew I had to work, because if I did not, I knew the defendant would retaliate against me." The natural question someone would ask that person is, "How do you know?" The client may respond, "He told us a story about how he did that horrible thing to someone else," "A worker told us a story about how he did that horrible thing to someone else," or "The defendant would just look at me in a certain way." I would consider all of those coercive conditions.

Where cases did not rise to the level of trafficking, there was never any kind of intimidation or actual threats. If someone came in, and just said that the employer did not pay them or the employer did not do anything malicious, I would not consider that trafficking.

**CS:** I would agree with everything Kathleen said about exploitation regarding coercion and force. I should note, however, and I do not know if it is something I completely agree with, but the U.S. definition of “trafficking” really amounts to “slavery” in the United States.<sup>3</sup> It has to rise to the level of slavery to be considered trafficking in the United States. What is good about the U.S. definition is that it does not have any kind of transportation requirement. “Trafficking” is a confusing term because it makes it seem like the crime involves the movement of people across borders. That can be part of a trafficking definition, but I do not think it is the most important part, especially under U.S. criminal law. While there is one criminal statute that defines “trafficking” as the actual movement of the person,<sup>4</sup> what I think is more serious is the actual forced labor or the slavery. That is one of the things Kathleen was talking about.

Prior to the passage of the TVPA, there was 18 U.S.C. § 1584, which is the Involuntary Servitude Statute. This was essentially enacted in 1948. Section 1584 specifically dealt with involuntary servitude and a required element was at least physical or legal coercion. What was helpful about the TVPA was the Section 1589 provision, which added the element of “serious harm.”<sup>5</sup> We were finding that traffickers were staying one step ahead of the law by threatening our clients. They would, for example, ask about their children or tell them they knew where their children lived. This behavior of traffickers was brilliant from a criminal defense point of view because traffickers were not directly threatening these people through physical or legal coercion as required by Section 1584. Section 1589 took care of that problem by adding “serious harm” to the equation, and made that enough to convict a trafficker. Section 1589 has the same penalties under Section 1584, but the trafficker does not have to engage in direct threats. He/she can use indirect threats and still be convicted for trafficking.

---

3. 18 U.S.C. §§ 1584, 1589-1592 (2008).

4. 18 U.S.C. § 1590(a) (2008) (“Whoever knowingly . . . transports . . . any person for labor or services . . . shall be fined or imprisoned . . .”).

5. 18 U.S.C. § 1589(c)(2) (2008).

*Q: Are there any other factors that you look for when identifying a trafficking victim other than coercion and threats?*

**KK:** Yes. Since the coercion standard lacks clarity and it is difficult to identify direct, and certainly, indirect threats, we also try to draw out facts related to the work environment to determine the working and living conditions that victims experienced.

With regard to working conditions, one important question we ask is, “What was the pay?” Certainly, people could make minimum wage and be in a trafficking situation, when comparing the actual pay to what the pay they were promised. So elements of fraud may be an indication that the employer had a bad purpose in employing our client. Another important question is, “What were the hours?” Generally, anything approaching over twelve hours per day with no breaks and no overtime pay, and no freedom to limit these working hours is borderline slavery.

With regard to living conditions, we look for circumstances that indicate that the employer is exercising more control than is reasonable over the workers. If the employer supplies substandard housing for the workers and makes unreasonable deductions from pay based on living expenses, it is a violation of the Labor Code.<sup>6</sup> For example, substandard living conditions included twelve workers occupying a single one-bedroom apartment with no furniture, no utilities, and no running water. If the employer is monitoring the workers closely both during working hours and non-working hours, that kind of restriction of movement is an indication of trafficking. A lot of our cases involve the employer implementing a strict set of rules for the workers. If the workers did not abide by them, the employers would threaten to fire them, have them deported, or inflict some other bad consequence. The rules would be inane. Some employers had rules such as, “Do not talk to anyone” or “Do not have girlfriends,” with the penalty of a monetary fine deducted from the worker’s pay.

---

6. Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (2008).

*Q: Other than fear of the employer, are there any identifiable psychological effects of trafficking that are common to victims?*

**KK:** Trafficking victims commonly experience trauma because of psychological abuse, such as insults and humiliation by the employer, which is then internalized by victims. The employer's anger, violent words, or degrading comments may cause the victim to feel worthless, depressed, and victimized, because they come to think they are in the situation out of their own doing, and that it is their fault for getting themselves into this situation, which it is not, of course.

**CS:** Not only are they fearful of the employer or trafficker, they are fearful of everyone, not only because of the trafficking and victimization, but also because the trafficker consistently reinforces in them that they cannot trust anyone other than the trafficker. The trafficker will tell victims that they cannot trust the neighbors or the police, because they will, for example, report them to immigration, rape them, beat them, lock them up, and more. They develop a fear of everyone around them. Thus, one way to look at trafficking or modern-day slavery is really as mental or psychological slavery, which is more effective or more powerful than even locking people up in a room or in chains. The trafficker does not have to worry so much about the victims breaking out because the victims are so scared that they will not leave even if they have the opportunity, or will come back even after escaping.

I have had clients who did escape and found out that they had nowhere to go or were too scared to go anywhere, so they actually went back to their traffickers. I have had clients that were interviewed by law enforcement who refused to tell law enforcement what was going on. Kathleen and I have both had clients who did not tell even us, their attorneys who are on their side, the whole story, because they do not know who we are. To them, we are random attorneys who are telling them to trust us and tell us everything. And they are afraid because that is how they got into their terrible situation in the first place—trusting random strangers.

*Q: How does the psychological trauma that trafficking victims experience compare to domestic abuse or sexual abuse victims?*

**CS:** Sometimes, in domestic violence cases, the abused victim may feel a sense of loyalty to the abusive spouse and return to a situation because of that. Trafficking does not involve loyalty to the trafficker so much as it involves plain old fear of him/her. I have had some cases where the victims feel so stupid and useless, that they tend to lessen how bad they characterize the trafficker's abuse of them. I have had clients say, "They did not treat me that badly. They did bring me here. They did do certain things for me." But again, this seems to arise more out of fear of the trafficker than any sense of loyalty.

There are similarities between victims of domestic violence and sexual assault. I often see symptoms of domestic violence and sexual assault in trafficking. Also, a similar type of control is common to domestic violence and trafficking situations.

*Q: Are there any misconceptions about trafficking victims and the experiences they go through? If so, what are they?*

**CS:** There are a lot of myths about trafficking victims. Many people think, for example, that in order to have been trafficked a person has to be physically trapped in their situation. This is not true. I have had clients with their own apartments, with their own cars, that have keys to the house or to the building. I even had a client once who was an office manager. The thoughts are: She should have escaped. If she had her own apartment, how could she be a slave? Some of my sex trafficking clients made a lot of money every day. Law enforcement would say, "How can they be trafficking victims? How can they be enslaved, when they are making thousands of dollars?"

But slavery is not just about a situation where they lock you up and never let you out. Slavery is about forced labor—overcoming someone's will in a meaningful way to make that person to do things against his/her will. My client, an office manager, felt forced to go to work every day against her will, even though she had a car. Some of the sex trafficking victims had nice cars, nicer cars than I have, but that is irrelevant to whether or not they were trafficked. It is still

a poor situation. If you are getting paid a million dollars, but still being forced to work against your will, that still amounts to trafficking.

*Q: What is different about identifying child trafficking victims versus adult trafficking victims? Are they found in similar or different contexts?*

**KK:** I did not have any clients that were small children. I had teenagers in similar scenarios as adults, mostly as domestic workers, which is pretty common. One case involved a sister and brother from Cameroon. The parents entrusted their children to relatives in the U.S. that promised the family that they would send the kids to school in the U.S. When they arrived, they never went to school. They were forced to be domestic workers and underwent a tremendous amount of physical and mental abuse. In another case, teenage boys were trafficked to work in several taquerias in the Bay Area. The issues in those scenarios are very similar to issues in adult trafficking cases. However, in those cases, it appeared that the traffickers were specifically targeting minors, perhaps because of their vulnerability.

**CS:** I would echo what Kathleen was saying. Labor trafficking is an interesting scenario with regards to children. Child victims of labor trafficking are harder to identify. They have many of the same issues as adults, such as the fear and trauma, but I found that they knew even less about their situation and were even more fearful because they are children. Some of the kids brought to the U.S. that are forced to work in some type of labor situation, or even a prostitution/sex work situation, are not really told what is going to happen to them. They are just moved around and told what to do. A lot of kids I had interviewed that were being brought in by adults had no idea what they were going to do; had no idea about the details regarding, for example, what they were going to do or where they were going to live. Without that information, it was really hard to figure out whether their situations were trafficking situations.

With sex trafficking of minors, identification is somewhat easier. In the U.S. the law does not require any force, fraud, or coercion for the perpetrator to be convicted of trafficking if he/she

places any minors in any kind of sex work.<sup>7</sup> It is similar to statutory rape. If you are placing a child in a sex work or prostitution situation, it is going to be a trafficking situation.

*Q: Is there anything else you would like to add about child trafficking victims?*

**CS:** I do not know the exact statistics, but there have been only fifty child trafficking victims identified since the passage of the TVPA. Who knows what the real or accurate number is, but they estimate that nearly 15,000 people are trafficked into the U.S. every year and they say a pretty high percentage of that are kids. There has to at least be more than fifty per year, and we have identified fifty in eight years. I think that gives you an idea of how hard it is to identify child trafficking victims.

*Q: What are the obstacles to helping a trafficking victim if you are an attorney?*

**KK:** A big obstacle is the role of governmental discretion regarding who counts as a trafficking victim and who does not. Immigration status only comes into effect after a person is determined to be a trafficking victim. Without that determination, there is little legal relief.

At the stage of identification, the government's role is really crucial in providing a sustainable, stable environment for potential victims. For adult victims, you have seen across the board that the government is very arbitrary in its determination of who counts as a victim and who does not. The same goes for child victims. There is a tremendous amount of bias against victims depending on the types of industries they are involved in and also their gender. For example, in the taqueria case that involved boys from Mexico, the FBI agent who did the initial interview with my clients said verbatim, "I feel bad for these guys, I really do. Especially because there are kids involved. But there is nothing we can do." Even with the recognition that these children were involved in a highly exploitive work situation the government was reluctant to do anything.

---

7. 18 U.S.C. § 1591 (2008).

### III. SOCIAL SERVICES

*Q: Once a victim is identified, what are the immediate needs of a trafficking victim?*

**KK:** The first thing trafficking victims need is shelter. The first questions to ask are: Where is the trafficked person living? Is it a safe environment? Then the focus should shift from short-term shelter to long-term shelter. Even if the person is staying somewhere now, for example, with a Good Samaritan, where are they going to continue to stay? In my experience, the Good Samaritan is not always the best person to provide housing to the trafficked person. It is important to find sustainable shelter for the trafficked person.

Second, trafficking victims require psychological and medical attention. After physical safety is secured, psychological and community support are necessary.

**CS:** I agree with Kathleen. Trafficking victims need everything you can possibly imagine. Some have literally come to us with the clothes on their backs and absolutely nothing else. Shelter, food, clothing, and medical check-ups are a huge issue. We have had clients who have never had a proper medical examination. Women and girls forced into sex work, for example, obviously have very serious medical issues. Medical care is always a challenging issue—you have to find good, free medical care for them.

As important as legal services are, social services and legal services really have to go hand in hand. While some of the problem can only be dealt with on the legal level, social services in some ways are even more important to the trafficking victim. The person needs a house, medical care, and psychological services as a baseline, even before legal services come into play. Even if I identified a client, one of the first things I would do is try and set them up with those services. If your client is depressed or has PTSD, for example, he/she is not going to make the best legal client.

Social services are required, not just at the beginning, but also throughout the process. Going through a criminal or civil trial is not easy on a trafficking victim and they constantly need support and supervision. At CAST, I had the good fortune of having a social services staff as part of the same organization. We could provide a

lot of social services in-house. Lawyers do not have the training or the time to engage in these services. It was great for me, as an attorney, to have a social services staff to take care of those needs.

**KK:** When I first started this work, we did not yet have infrastructure in Northern California to take care of the social service needs of clients. There were two legal services projects: APILO and LCCR. Over time, we established a systematic way of providing social services with partner organizations. Without this collaboration among both legal and social service organizations, individual attorneys or advocates may end up as case managers, insufficiently trying their hardest to meet all the diverse needs of trafficked persons. When this happens, burnout is a real possibility—it becomes very easy to internalize all the fears, insecurities, and instabilities of trafficked clients.

*Q: How do attorneys and social workers work together to serve trafficking victims?*

**KK:** Legal practitioners and social service providers are partners on the same team in trafficking work or any kind of work with vulnerable client populations. Lawyers who are not experienced in working with vulnerable populations may discount the importance of social workers, treating them as facilitators of the legal process. Actually, it is the other way around. The lawyer is providing a discrete service and the social worker is the one that is providing a sustainable life for the clients. The lawyer must be sensitive to the mental and physical health needs of the trafficked client and do their best to prevent the re-traumatization of the client.

**CS:** Ultimately, we are trying to make the victims whole. There is no way a lawyer can do that alone; it really has to be a multi-disciplinary team effort. As I was saying before, I often felt like social services were more important than legal services. My work was to support social services. I think the better way to look at it is that we are equal partners here. There are some things that social services can only do and have to do in order for lawyers to be able to do their jobs. But the reverse is true also. Social workers who work without lawyers are also limited. There are certain things they can never do. Getting trafficking victims work permits and visas often

provides them more mental health stability than years of counseling can do. A counselor can counsel them for years, but if they do not have a visa or have a work permit, they are not safe wherever they are and no amount of counseling is going to help them. There are things that both social workers and lawyers can do, and we need each other for the benefit of the client. We are working together on different aspects of the same problem.

#### IV. IMMIGRATION

*Q: What are the immigration concerns of trafficking victims?*

**KK:** Many trafficked persons are undocumented or legally in the U.S. on temporary work visas or tourist visas. Under any scenario, the trafficking victim generally lacks stable immigration status. For example, most temporary work visas do not permit job portability, a major obstacle for temporary workers who wish to leave exploitive employers. Thus, one of the primary concerns of liberated trafficked persons is what kind of immigration relief is available to them.

*Q: What types of immigration relief are available to trafficking victims?*

**KK:** The TVPA is the chief law addressing prosecution of traffickers, protection of trafficking victims, and prevention of trafficking. Included within its provisions to protect trafficking victims is a form of immigration relief called the T-Visa, which provides immigration status to trafficking victims if they qualify under certain criteria. There are four factors that a trafficking victim has to meet in order to get a T-Visa. The victim must: (1) be a victim of a severe form of trafficking; (2) be physically present in the United States because of trafficking; (3) comply with all reasonable requests for assistance with the investigation and/or prosecution of the trafficking crime; and (4) show that he/she would suffer severe or extreme hardship if removed from the US.<sup>8</sup> It is a self-petition. If the trafficked person can meet the criteria through corroborating

---

8. 8 U.S.C. §§ 1101(a)(15)(T)(i)(I-IV) (2008).

evidence, the immigration adjudicator will issue a T-Visa. The T-Visa provides legal status,<sup>9</sup> work authorization,<sup>10</sup> and refugee benefits.<sup>11</sup> T-Visa recipients may later apply for adjustment of status to legal permanent residency.<sup>12</sup>

There is another form of limited immigration relief called “continued presence.”<sup>13</sup> This is an interim form of immigration status that trafficked persons may receive via requests to the Department of Homeland Security by federal law enforcement officers if that trafficked person is acting as a victim witness in the investigation or prosecution of the trafficking crime. Continued presence provides work authorization and refugee benefits but it does not provide a pathway to legal permanent resident (LPR) status.

*Q: Are there any other visas besides the T-Visas that can be used to obtain immigration relief for a trafficking victim?*

**KK:** U-Visas<sup>14</sup> were also enacted pursuant to the TVPA. They are provided to immigrant victims of certain kinds of crimes when those immigrant victims are helpful or likely to be helpful in investigation or prosecution of the crime. Trafficking is among those enumerated crimes. A U-Visa provides for work authorization, but no attendant refugee benefits.

*Q: What are the difficulties in obtaining a visa?*

**KK:** There is a lot to say about the difficulties in obtaining immigration status for trafficking victims. Many advocates and scholars have commented on this. The main difficulty is demonstrating that a trafficked person complied with reasonable requests for assistance in the investigation or prosecution of the crime. So that means that they not only have to report what happened to them to law enforcement authorities, but if law enforcement decides to open up a case, the trafficking victim also has

---

9. 8 U.S.C. § 1184(o) (2008).

10. 8 U.S.C. § 1101(i)(2).

11. 22 U.S.C. § 7105 (b)(1)(A) (2008).

12. 8 U.S.C. § 1255(l)(1) (2008).

13. 22 U.S.C. § 7105(b)(1)(E)(II)(bb) (2008).

14. 8 U.S.C. §§ 1101(a)(15)(U)(i) (2008).

to agree to subsequent interviews with law enforcement, as well as assisting with the investigation. This may involve returning to the scenes of crimes, identifying the traffickers, and in the end, testifying against the traffickers in criminal court, or testifying against them in a grand jury proceeding. This can all be very traumatizing to the victims, and puts them at serious risk of retaliation. There is little that law enforcement can do to protect trafficked victims and their families from retaliation. There are significant reasons for trafficking victims not wanting to comply with all requests in the investigation and prosecution of the trafficking, yet, for the most part, they must do so to receive a T-Visa.

There are also some situations where a trafficked person reports the crime and law enforcement does not think it is trafficking, and does not want to investigate or prosecute the case. Or they might think it is trafficking, but they decide not to investigate or prosecute the case. Without law enforcement interest in the case, a trafficked person will have a tough time accumulating enough evidence to convince immigration services that they qualify for a T-Visa.

*Q: How do you counsel trafficking victims who need immigration relief, in light of the aforementioned risks attendant to reporting?*

**KK:** Generally, when I meet with trafficked clients, I try to determine their options for immigration status. This is all assuming that they want to stay in the U.S. and that securing stable immigration status is their primary concern. Then I will determine whether they are eligible for a T-Visa, asylum, VAWA,<sup>15</sup> the U-Visa, or other immigration options. If the T-Visa is the most viable option, I will explain to them what is involved in the entire process from beginning to end. The very beginning of that process is reporting to law enforcement. Without their willingness to do that, the T-Visa is not an option. I will have to explain to them that they could report the crime to no avail. Law enforcement may decide on their own that the case is not trafficking, and therefore, they may have no immigration remedy available to them. I also tell them the opposite outcome, that if law enforcement is very interested in the case, the

---

15. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered sections of 16, 18, and 42 U.S.C).

trafficked person must comply with requests for law enforcement cooperation. Otherwise, their immigration status will be jeopardized. All of that must be explained in detail to move forward with the T-Visa application. More often than not, the trafficked person will want to report, both to end the trafficking operation and in hopes of receiving immigration status.

*Q: As an attorney, is there a way you can protect a trafficking victim from harms like trafficker retaliation and threats if law enforcement decides to investigate?*

**KK:** There is not much that can guarantee the trafficked person protection against those kinds of things. I counsel my clients to let them know that when law enforcement pursues a prosecution, the parameters of the investigation are dictated by the prosecutors' discretion. Prosecutors are not under any kind of mandate to, for instance, stop prosecution if a trafficked person's family members are being threatened. There are certainly case examples of incredible prosecutors taking those kinds of threats very seriously, traveling to countries of origin to protect family members, facilitating transportation of family members to the US, and expediting the process of family members receiving T-Visa derivative status, which provides T-Visas through the principal T-Visa recipient.<sup>16</sup> But there is no 100% guarantee that can prevent someone from harming the trafficking victim. Ethically, however, an attorney should inform the victim of these risks.

*Q: Are there any other immigration remedies available to trafficking victims?*

**KK:** Asylum is another immigration remedy that may be available to trafficking victims. If asylum is an option, it is generally more favored, because it does not have a cooperation requirement like the T-Visa. But in order to be eligible for asylum, the trafficked person has to show a well-founded fear of persecution from the

---

16. 8 U.S.C. § 1158 (2008) (allows derivative admission to the spouse or children of a principal alien; derivatives may be admitted under the same category and in the same position as the principal applicant).

government of their home country.<sup>17</sup> In the case of a trafficking victim, it may be difficult to show that they face future persecution based on one of the five enumerated grounds. There is no recognized ground for trafficking, so the social group category<sup>18</sup> is commonly used. There have been successes with this type of asylum claims. The Center for Gender and Refugee Studies at UC Hastings has done a lot of work on these issues.

*Q: Is naturalization available to trafficking victims? If so, how?*

**KK:** Trafficking victims can theoretically naturalize. After adjusting their T-Visa status to LPR status, they are on the path to becoming citizens.

*Q: How about you, Charles? What are your thoughts on immigration status for trafficking victims?*

**CS:** Kathleen covered continued presence, the T-Visa, and touched on adjustment, so I will just give some thoughts. Regarding continued presence, one of the things that bothers me about continued presence is the fact that it does not include family members. It is something that we have tried to address through legislation for a few years, but thus far, we have been unsuccessful. What we try to do is force the government to use humanitarian parole in place of continued presence. We are hoping that we will have a much better shot at getting continued presence for family member now that Obama is President and the Democrats have taken over both the House and the Senate.

Regarding the T-Visa, I am not happy that there are so many requirements. I would actually like the T-Visa requirements to be very similar to VAWA, in that there is really only one single requirement, and that is to show that you are a victim of a severe form of trafficking. I would change the severe form of trafficking definition to be a little broader. It would also be nice if we did not have to prove the physical presence requirement of the T-Visa requirements. The trafficking victim would not have to be physically present in the U.S. to receive a T-Visa. Obviously, law enforcement

---

17. 8 U.S.C. § 1158(b)(1)(B) (2008).

18. 8 U.S.C. § 1158(a)(2)(A).

cooperation is something that we disagree with and we try to address that requirement through legislation. We were able to get an exception to the law enforcement cooperation requirement if you can demonstrate exceptional circumstances.<sup>19</sup> However, it will be adjudicated by USCIS, probably in consultation with DOJ. I do not know anyone who has actually successfully used that exception. Do you know anyone Kathleen?

**KK:** No.

**CS:** Many trafficked persons may be too scared to attempt to use the exception because it is going to be the government deciding whether you meet the exceptional circumstances requirement for cooperating with the government.

*Q: Any other comments regarding the T-Visa?*

**CS:** The last requirement, extreme hardship involving severe and unusual harm,<sup>20</sup> is completely unnecessary. In practice, this requirement has not been too much of a problem in getting a T-Visa, but I think it is ridiculous to require trafficked persons to show hardship, and such a high standard of hardship. The fact that they are victims of a severe form of trafficking should be enough evidence of hardship, or at the very least, provide a presumption that they would suffer severe harm.

The lack of adjustment regulations for the T-Visa is also a major problem. DHS refuses to process or adjudicate T-Visa holders' green card applications because there are no regulations to govern the process.

*Q: What does "adjustment" mean?*

**CS:** Since 2005, T-Visa holders who technically are in T-non-immigrant status have a temporary visa for four years.<sup>21</sup> They can apply to "adjust" to LPR status after their criminal case is over or they have had their T-Visa for three years, whichever is sooner.<sup>22</sup>

---

19. 22 U.S.C. § 7105(b)(1)(E)(i)(I) (2008) (exception from cooperating with law enforcement request due to physical or psychological trauma).

20. 8 U.S.C. § 1101(a)(15)(T)(i)(IV) (2008).

21. 8 U.S.C. § 1184 (o)(7)(A) (2008).

22. 8 U.S.C. § 1255 (l)(1)(A) (2008).

They do not have to wait for four years before they can apply to “adjust.” After five years of LPR status, they can naturalize and become citizens of the US, providing they do not get into any trouble in the meantime.<sup>23</sup>

## V. CRIMINAL CASE ADVOCACY

*Q: Can you give me a brief overview of criminal case advocacy? When and how does a trafficked person’s attorney intervene in the criminal process?*

**KK:** One of the requirements of receiving immigration status, whether it is continued presence or T-Visa, is that the trafficked person agrees to cooperate with the law enforcement agency investigating or prosecuting the trafficking crime. In effect, that means to receive immigration relief, the trafficked person has to report what happened to them to law enforcement, whether it is state, local, or federal. Generally, the trafficked person reports to federal law enforcement, because most trafficking crimes are investigated by federal law enforcement. The attorney represents the trafficked client in reporting this crime, and continues to represent them if the law enforcement agency wants to investigate or prosecute. In representing the trafficked client, the attorney has to be by the trafficked person’s side in any kind of interview conducted by federal law enforcement agencies, investigation of the places in which the trafficking occurred, or during identification of the actual perpetrators of the trafficking crimes. The attorney has to be present to ensure that the federal law enforcement agency does not overstep boundaries.

**CS:** One thing I would like to add to what Kathleen said is that on certain occasions, law enforcement may challenge a victim’s right to have his/her attorney present at an interview or meeting. My belief is that trafficking victims have a constitutional right to an attorney. I am aware of certain cases where law enforcement did prevent a trafficking victim’s attorney from being present in the interview, but I believe it was primarily because the attorneys did not

---

23. 8 U.S.C. § 1427 (2008).

know what the victim's rights were and basically agreed not to participate in the interview.

*Q: What are the reasons for not allowing the trafficking victim an attorney during the interview?*

**CS:** They have not really directly told us, but I think what they are concerned about is that attorneys might “coach” their clients.

**KK:** Law enforcement and federal prosecutors have a way of interviewing key witnesses that tends to be more aggressive. However, this approach is not conducive to eliciting information from trafficked individuals who are vulnerable because they are crime victims, and also because they are immigrants from an entirely different culture and unfamiliar with the legal system here. The trafficked person's attorney protects the client from inappropriate questioning that might be overly aggressive or intrusive. This may be perceived by law enforcement as obstructive. So at times, prosecutors and NGO attorneys may be representing different interests in tension.

**CS:** What is ironic about some law enforcement officials' concern about victims' attorneys is that victims' attorneys actually help the investigative process. Clients are a lot more comfortable meeting with law enforcement officials when their attorneys are present. Many of them would not even show up if their attorneys were not with them.

*Q: Do law enforcement and federal prosecutors have special interviewing guidelines for victims to help them act appropriately?*

**KK:** There may be guidelines. However, law enforcement must enforce the law, and therefore, their primary goal is the successful prosecution of criminals. They have the freedom to utilize whatever tactic they think is effective to extract the most information. Some investigating officers or prosecutors are incredibly empathetic and approach the questioning of trafficking victims very mildly and therapeutically. Many law enforcement agents do not share this approach—perhaps it is seen as more work-intensive and unnecessary. It takes much longer to build trust with a witness to

gain information, but in the end, it is worth it, because the information that is obtained is often more comprehensive.

**CS:** Maybe law enforcement has even been taught and given guidelines on how to treat victims, but I think some of them just do not have much practice. They have a lot of experience interrogating people and going after them, but they do not have much experience working with victims.

*Q: How should a trafficked person's attorney prepare to interact with investigating officers?*

**KK:** Attorneys should go into interviews with investigating officers with a plan, and be able to anticipate their questions. It might go swimmingly, but in the event that it does not, the attorney has to have a response to avoid backing down and jeopardizing the rights of the client. In the heat of the moment, there can be a sense of urgency. The trafficked person's attorney may feel a lot of pressure to assist law enforcement to get the trafficked person to answer certain questions. However, that is not the role of the trafficked person's attorney. The trafficked person's attorney must protect and represent the interests of his/her client.

*Q: How can a trafficked persons' attorney prepare to interact with defense counsel?*

**CS:** Attorneys representing trafficking victims need to be aware of criminal defense attorneys and what they are doing. They may be conducting investigations about the victims in their home countries and the U.S.

*Q: Can sexual history of trafficking victims be excluded on the same grounds as it is for domestic victims?*

**CS:** That is a great question—one we are litigating right now in a criminal case involving sex trafficking. The Rape Shield<sup>24</sup> laws specifically deal with sexual assault, so we definitely have that. But it is not clear from the language of the Rape Shield laws that they would apply to trafficking victims and sex traffickers. Obviously,

---

24. FED R. EVID. 412.

the defense attorneys are saying these cases do not involve the type of sexual assault that the Rape Shield laws were designed to protect. We, of course, are arguing the exact opposite, saying that this exactly the type of sexual assault and the type of crime that the Rape Shield laws were designed for. Forced prostitution is forced commercial sexual assault. In a case I am currently involved in, the minors were also sexually assaulted outside of the forced prostitution setting.

There are certain constitutional exceptions, however, to the Rape Shield laws. If the defendants need to ask questions to find out otherwise protected information to defend themselves under the rights they have under the Constitution, information like sexual history may be included. We are still fighting over that, but at least thus far, the judge has agreed that the Rape Shield laws do apply to a case like this.

*Q: Does a judge examine whether the Rape Shield laws apply on a case-by-case basis?*

**CS:** I am unsure. We do not know of any other case where this has been an issue, so we do not have any other case law to go by. The judge is examining the issue right now in the present case. I am sure that the defendants will probably try to argue this on appeal if they end up getting convicted in this case. If we lose, we actually have a right to immediate appeal under the Crime Victims' Rights Act,<sup>25</sup> so we probably would appeal if we lost. We will see what happens. I think it is very fact-intensive unless you can establish that the Rape Shield laws apply to trafficking victims, particularly in sex trafficking cases. But the exceptions are so fact-intensive that it is going to be difficult.

*Q: Is there any other behavior, besides actively trying to get damaging evidence on victims, that you have seen criminal defense attorneys exhibit?*

**CS:** They want to know who their family members are, where their family members live, where they live now, where they work now, where they go to school now, and more. Our view is that none

---

25. 18 U.S.C. §3771(d)(3) (2009).

of that information is really necessary to defend themselves in court and should remain confidential because of safety concerns.

*Q: How do you protect your client against these types of tactics?*

**CS:** The best way to protect names and identities is to file protective order motions. And then you provide alternative information to defense counsel so that they cannot argue that their clients cannot defend themselves without this information. If you do not give them your clients' names, then you may have to give them access to your clients in terms of information. Still, they do not need to disclose any of this information publicly. Defendants do need to know who the victim witnesses are, but they do not need to know where victim witnesses work, where they go to school, or any other information that may lead to their whereabouts.

*Q: How does a trafficked person's attorney participate in the criminal proceedings?*

**CS:** What is strange is that I think the victims' attorneys do have clear standing under the law, but the courts are not used to having victims' attorneys defend their clients in court. For example, if you go to court, there are only seats for the defendants and the plaintiffs. There is no seat for the attorney of the victims. I think there is clear law that the victims have a right to an attorney, but nobody is used to it. We are not third parties or interveners. We are non-parties. It is a strange position to be in, but you have to interject yourself where you can, where it is possible, but that depends on the judge and whether the judge wants to let you in and hear what you have to say.

*Q: What kinds of remedies are available to trafficking victims through the criminal process?*

**KK:** If the case is successfully prosecuted, then trafficking victims are entitled to criminal restitution from the traffickers for harm done to them. They get actual economic damages that can amount to a lot of money. The trafficking attorney can highlight the need for restitution to the prosecutor and provide some strategy assistance for obtaining restitution.

*Q: How does criminal restitution differ from monetary damages available through the civil process?*

**KK:** Restitution is money owed to the victim because of the crime committed against the victim. Civil damages, pursued through the civil justice process, may be greater than restitution because it may include punitive damages in addition to compensatory damages.

**CS:** In some trafficking cases, the court orders criminal restitution for wage/hour claims. Someone from the Department of Labor will be contacted to calculate what backwages are owed to the victim, and hopefully, the court will include a restitution order in the sentencing.

## VI. CIVIL LITIGATION

*Q: When and how does an attorney enter the civil litigation process on behalf of a trafficking victim?*

**KK:** Civil litigation ideally would come in after the trafficked person has received immigration status, a stable and supportive living environment, and any criminal proceedings have concluded. Civil litigation can be extensive and stressful for the trafficked client, so it is important for them to have strong mental health at the time. Oftentimes, civil litigation happens without any of those things in place. The trafficked person may be undocumented, the traffickers are still at large, and there is no criminal prosecution—actually, this is more typical of civil cases. Nonetheless, a trafficked person may still choose to pursue a civil case for the important reason that he or she is owed a tremendous amount of money from the trafficker. The nature of trafficking, however, makes civil litigation difficult for many trafficking victims. Traffickers may be judgment proof, without locatable assets or the traffickers may not be in the U.S.

*Q: What types of trafficking cases come up for civil litigation?*

**KK:** Since 2003, when the TVPA was amended to include a trafficking-specific private right of action,<sup>26</sup> there have been about twenty-five civil cases. Most of these have been domestic worker

---

26. Trafficking Victims Protection Reauthorization Act of 2003, 18 U.S.C. § 1595 (2007).

cases, or cases on behalf of agricultural workers, other service industry workers, or other low wage industry workers. Civil cases on behalf of sex workers have been rare.

*Q: Why are civil cases for sex workers rare?*

**KK:** Sex trafficking civil cases may be particularly difficult to litigate. Traffickers may be part of a larger criminal organized network, which is good at hiding assets. Moreover, the traffickers may be very good at hiding themselves. There may also be an ongoing criminal investigation and prosecution. This may re-traumatize and stigmatize sex trafficking victims. As a result, involvement in civil litigation is their lowest priority. Finally, the threat of retaliation may be more salient for sex trafficking victims who were, more often than not, trafficked by very dangerous and violent criminals. There are sound reasons to not push civil litigation on behalf of sex workers. Most clients that were victims of sex trafficking rejected the notion of suing their traffickers. Plus, since many sex trafficking cases are prosecuted, those victims may be able to obtain criminal restitution.

*Q: Does the risk to sex trafficking victims outweigh the benefits in the civil litigation process?*

**CS:** Often, yes. Just think about the types of defendants that are involved in a sex trafficking case versus a domestic worker case. Many of these traffickers are professional criminals. Many of them have ties to organized crime. In a domestic worker situation, defendants are also criminals, but most of them have regular jobs or businesses. Certainly, there is a retaliation risk with defendants in those types of labor cases as well, but they are not as serious as going after organized criminals in sex trafficking cases. If you think about how many civil lawsuits have been filed against the mafia, it gives you an idea of how many have been filed against sex traffickers.

*Q: Is civil litigation the best option for non-sex worker clients?*

**CS:** I see civil litigation almost as the best thing and the worst thing a victim can do. In a good sense, the civil process is incredibly empowering. It is the most empowering thing I have seen a

trafficking victim do because they have total control of the lawsuit. The ones that enjoyed it, and have been really been empowered by it, really loved the fact that they have total control of the lawsuit. In the criminal lawsuit, the scenario is not quite victim against defendant. It is the U.S. government or the People of the State of California versus the defendant.

In a civil prosecution, trafficked persons are much more in control and any money they receive from the case can have such a tremendous life-changing impact, not just on them, but their family members as well, because a lot of victims use this money to help their family members back home.

The flip side is that the civil process is the hardest thing I have seen a trafficking victim go through, more difficult than the immigration process, even more difficult than the criminal process. Civil discovery is so intensive and so permissive in the US that victims have a difficult time dealing with it.

**KK:** The attorney taking on a civil case should be fully aware of how stressful it can be for clients. Educating clients on the pros and cons of civil litigation is a must. Clients must provide their fully informed consent to move forward with a civil case. This means that clients should be aware of the entire civil litigation process. This includes the role of discovery and all the different tactics that defendants may use to gain personal information about clients, family, friends, and other witnesses; the length of civil litigation, which can last years in some cases; and the risk of losing in the end. The duration of a civil case may be prolonged if there is a criminal prosecution, which stays the civil case. However, a successful criminal prosecution may then benefit the civil case due to collateral estoppel and discovery during the criminal case. Of course, at times, a civil case may also settle relatively quickly.

*Q: When is settlement a good option?*

**CS:** Settlement in my experience has been so much more important in these cases for a number of reasons. First, even if defendants have assets at the time you file your lawsuit, there is no guarantee that they are going to have those same assets at the end of the litigation, and it is very hard to prevent them from alienating a lot

or all of their assets before the case is over. Second, even if you are able to get a judgment against defendants, it could and probably will take you a really long time to actually collect the money, if you ever collect the money at all. I have had the defendants say “I would rather give all my money away to poor people and charity than give the victim a penny.” These are the types of people you are dealing with. That is why it is great to get them to pay through criminal restitution or get them to settle these cases.

In many ways, settling is the best thing for the trafficking victim. Most of them who do this are willing to go through discovery, trial and more, but it is not necessarily the best for them. Civil litigation is pretty traumatic. I have had clients get depressed or suicidal, or just have a terribly difficult time getting through civil litigation.

*Q: Is there an advantage to bringing state law claims over federal claims, e.g., under the California anti-trafficking statute?<sup>27</sup>*

**KK:** Many claims can be brought in trafficking lawsuits. In addition to the federal TVPA, California has an anti-trafficking law that includes a broad civil remedy provision.<sup>28</sup> Charles and I collaborated with state legislators and other NGOs to draft the bill. The bill was a huge accomplishment, very victim-focused and comprehensive, including criminal, civil, and social service provisions.

The civil provision has been utilized in a couple recent California cases. In addition to those trafficking-specific claims, there are numerous other causes of action, such as the federal Racketeering and Corrupt Organizations Act,<sup>29</sup> the Alien Tort Claims Act,<sup>30</sup> the 13th Amendment,<sup>31</sup> Title VII,<sup>32</sup> Section 1981,<sup>33</sup> Section

---

27. California Trafficking Victims Protection Act, 2005 Cal. Legis. Serv. page no. 240 (West).

28. CAL. CIV. CODE § 52.5(a) (West 2006).

29. 18 U.S.C. §§ 1961-1968 (2007).

30. 28 U.S.C. § 1350 (2007).

31. U.S. CONST. amend. XIII.

32. 42 U.S.C. §§ 2000e-e-4 (2007).

33. 42 U.S.C. § 1981 (2007).

1985,<sup>34</sup> the Fair Labor Standards Act,<sup>35</sup> common law torts, and contract claims. These claims, as well as civil litigation strategies in the trafficking context, are described in depth in a manual co-authored by myself and Dan Werner called *Civil Litigation on Behalf of Victims of Human Trafficking*.<sup>36</sup> The manual is downloadable from the ATLAST website.

## VII. CONCLUSION

*Q: What are the most urgent priorities on the human trafficking agenda?*

**KK:** Since the date of the TVPA's enactment in 2001, through fiscal year 2007, only 998 T-Visas have been approved at an approximately 50% approval rate.<sup>37</sup> However, the estimates of the number of persons trafficked into the U.S. annually range from 14,500-17,500. The anti-trafficking movement must constructively address this disparity and determine the reasons for the low number of T-Visas allocated.

I, as well as other advocates, believe that trafficked persons experience in obtaining the T-Visa; chief among them is the requirement that the T-Visa applicant cooperate with any reasonable request from law enforcement to assist in the investigation and/or prosecution of the trafficking crime. This requirement tends to be emphasized in the determination of a trafficked person's eligibility for a T-Visa, and in some cases, seems to make a trafficked person's receipt of a T-Visa contingent on a law enforcement agency declaration that the applicant is indeed a victim of trafficking. However, necessary cooperation with law enforcement is frightening and re-traumatizing for trafficking victims and, at times, can pose a

---

34. 42 U.S.C. § 1985 (2007).

35. 29 U.S.C. §§ 201-219 (2007).

36. DANIEL WERNER & KATHLEEN KIM, CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING (3d ed. 2008), available at [http://library.ils.edu/atlast/HumanTraffickingManual\\_web.pdf](http://library.ils.edu/atlast/HumanTraffickingManual_web.pdf).

37. Based on statistics from U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF THE U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FISCAL YEAR 2007 (2008), available at <http://www.usdoj.gov/ag/annualreports/tr2007/agreporthumantrafficking2007.pdf>.

significant obstacle to receiving immigration and social service benefits. Thus, I believe that eligibility for immigration relief for trafficking victims can be adjudicated without the law enforcement cooperation requirement. This would fulfill a more human rights centered approach to trafficking, ensuring protection to a broader category of exploited migrant workers.

After guaranteeing protection to all trafficked persons and their family members, then we as advocates should think constructively about how to effectively work with law enforcement in a way that holds traffickers accountable, while maximizing the rights of trafficking victims to remain in the U.S. and to access the civil justice process. Finally, the anti-trafficking agenda should work to collaborate with and engage labor and immigrants' rights groups. Trafficking is a form of migrant worker exploitation. By working with labor and immigrants' rights groups, anti-trafficking advocates can concentrate more efforts on reforming the weak labor laws and restrictive immigration policies that facilitate trafficking.

*Q: What can I do to get involved in protecting and defending the human rights of trafficking victims?*

**KK:** Students can begin by familiarizing themselves with the issues impacting this population. Take classes on immigration, immigrants' rights, employment and labor law, and international human rights law. Also take classes on civil rights litigation and social justice lawyering in order to develop the types of practical lawyering skills that are specific to vulnerable populations. Then, work at public interest legal organizations actually working on behalf of immigrant workers and trafficking victims. Los Angeles has some of the most prominent organizations in these areas, with leading attorneys that have served the immigrant community for years. These organizations include the Coalition to Abolish Slavery and Trafficking, Asian Pacific American Legal Center, National Immigration Law Center, Public Counsel, Bet Tzedek, Legal Aid Foundation of Los Angeles, the American Civil Liberties Union and many others. Finally, just remember that trafficking victims are immigrant workers, many of whom are undocumented. These workers have rights and are deserving of protection under our

nation's civil and constitutional laws to be free from slavery, discrimination and exploitation.