

2014 SUMMIT



TOGETHER LET'S STOP TRAFFICK



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PRESENTATION TRANSCRIPT

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On Monday you had the opportunity to meet Grace; she was one of the team members on the Attorney General's Anti-Trafficking Special Projects Team. In a moment, you're going to be able -- the opportunity to meet Scott Dyle; he was the other key member on our very small and dedicated unit in California. When we undertook the task of updating the California report, it was a very thorough -- wanted to try to cover all the different aspects of what California was doing 2012.

California was the first state to actually issue a second edition of a statewide report. Human trafficking had been a law at that point for about eight or nine years. The initial report had been published in 2008. We had learned a lot in those years. The initial report had some recommendations as well as some, let's say, concerns of developments that would occur. In our second edition we wanted to really address the previous recommendations, and also address some of the concerns that we had in 2008 to see if those concerns did develop into actual problems, or if what we thought were concerns actually did not turn out to come to fruition.

One aspect that we addressed, because we had had now nine years of data, was a little bit about the T-Visa process. The T-Visa is a temporary nonimmigrant visa that victims of trafficking can apply for from the federal government during the pendency of the criminal trial. This helps the victims stay here in the country during the prosecution and help law enforcement. The T-Visa -- and you'll hear a lot of these statistics later on as well -- is capped at 5,000 per year. It's processed through the Department of Homeland Security.

One of the big issues exactly around the processing was, in order to qualify, you must get a signed certificate from the local law enforcement that the victim has been

cooperative in the criminal investigation. And one of the aspects that talking to service providers is, what if the victim is not unwilling but not capable of helping with law enforcement in some areas of the investigation? Should that prevent them from receiving the certification for their temporary visa? That led our team to kind of discuss, you know, what areas or what types of victimization or injuries may prevent a victim from cooperating with law enforcement. We immediately went to some of the symptoms of mental health and specifically PTSD. We were doing some of our legal research, and we came across some interesting findings.

We're going to talk a little bit today about the T-Visa process, specifically about some of the forms that the victim or the victim advocate fill out and submit to Homeland Security for the T-Visa. I have copies here, so in our presentation we will be referring certain sections. I know that we have provided these forms to the conference organizers, and I'm sure we can either make those available electronically or maybe hard copies or however we can distribute the forms at the end of the conference.

Okay. And so it sounds like we'll have them posted or a link to them on the website. So maybe take some notes or pay attention or talk to us afterwards when we reference certain parts of these forms. And to start our conversation today about some of the research and the forms themselves, Scot Dyle.



Scott
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Scott Dyle

So -- let's see. So Ben actually did a pretty good overview of the presentation, and so I'll just get into it. I probably don't need to go over as -- we did a similar presentation at a conference for mental health professionals, and so we had to go into the background of human trafficking, but I think most of us here know most of the background of it.

So I'd like into the T-Visa a little more than what Ben started with. In 2000, Congress passed the Trafficking Victims Protection Act which was the first comprehensive legal -- legalization -- I mean, legal form for dealing with human trafficking within the United States. It created a number of safeguards for trafficking victims, and this including both the T- and the U-Visa. We will be talking mostly about the T-Visa here, but the U-Visa's also another important one where it's for victims of any major crime; there're enumerated crimes within the T-Visa statute. And one of the forms is -- one of the crimes enumerated is human trafficking. So that is to be remembered. The actual form that one would fill out if they were a victim of human trafficking and

Benjamin Greer & Scott Dyle

were going to apply is the I-914 form which is a nine-page document but it asks a myriad of questions that the victim would have to provide to the government.

The nice thing about it is, filing this fee for -- this is one of the few in immigration visas that doesn't actually require a fee for the applicant, which is nice. But there are other areas where they would have to pay something, but it's nice that the U.S. government has actually done this. The TVPA was reenacted in -- with a VAWA in 2005, the Violence Against Women Act. And initially, when the -- in 2000 it was enacted, and the first T-Visas were given out in 2002 -- or awarded in 2002. It required that every single person aid with the investigation and reasonable law enforcement requests during the investigation and prosecution of their trafficker. But they realized that this might not be possible, and so this is where they created what would then be known as the trauma exception. There we go.

So before we go into that, the trauma exception, I want to go into the main portion of it. So on the I-914 in Section C, there are a number of questions, and this is where it gets into actually what the trafficking victim must prove in order to remain in the United States. And these are the main three because these are by far the hardest ones to prove. And while we're talking about the -- we're focusing on the third one, I just want to take a note to look at the second one because the second one actually is what is one of the biggest things that's standing in the way of human trafficking victims. I mean, it's, "Explain why he or she fears that he or she will suffer extreme hardship involving unusual and severe harm upon removal." This is an extremely high hurdle for victims to meet. There are many cases where to a normal person it would seem like that they would face [inaudible] be financially completely destitute, that they -- that there's potential hardship that would come, that they might experience some kind of violence if they went back home.

There are times when this is not considered unusual and severe harm, and so this is one big problem, and this is the reason why -- we'll talk into one reason why maybe U-Visas are issued a lot more than T-Visas, because U-Visas does not have this

requirement. So but then, also they have to prove that they are a victim of a severe form of trafficking. So once again, you don't have to prove that you're a victim of human trafficking; it has to be a severe form of human trafficking, which is also cumbersome to the applicant. But the main one where we're focusing on today is, explaining why or why not they have complied with all reasonable requests by federal and state investigators and prosecutors.

Okay. So but then, as I stated earlier, they created this trauma exception, and it stated that if you were unable to aid in the investigation and comply with reasonable law enforcement requests -- I keep on saying "reasonable" because for any lawyers out there knows that that's like the key legal word for everything. It's always dealing with reasonableness. And so this will go on to a sliding scale. We've determined that what will -- what is actually considered reasonable might change depending on the victim, what they've gone through, and everything like that. And so -- but if they're not able to comply with reasonable law enforcement requests due to physical or psychological trauma, then they won't actually have to comply with it. And how we've actually kind of looked at that, it would more likely be considered that the request is not reasonable due to the trauma.

We also want to make a note that while it says that it could be due to physical or psychological trauma, in actuality, it will almost always be psychological trauma. If there's massive physical trauma, there'll usually be psychological side effects that will make it impossible or not likely for the victim to be able to comply with the request. There's obviously signs like if a victim was literally unable to communicate or they were in a coma, that would be in the physical sense. But what we've found is, is that it's most likely going to be that due to something such as PTSD or some other form of psychological trauma, that they would not be able to aid in the investigation, such as they wouldn't be able to confront their trafficker in open court or something of that nature.

Proving the trauma exception is also -- is, once again, going to be very difficult because there is actually no set standard to how to prove this. This -- the first bullet point is pretty much taken verbatim from the USCIS, and what -- the United States Custom and Immigration Service -- and what they say for what to submit and how to prove. But there's actually no standard that says, you know, what will get you to that; what will prove that. And so what we're trying to encourage that is was, one, that we want to get to a point where the State Department, USCIS, and everyone else understands that it's extremely hard to prove this. One, are they going to -- are human trafficking victims going to have the ability to get the type of care, and actually, at the [inaudible] level of professions who are going to be able to document this type of trauma.

And so that's going to be one thing. Then also, they don't know how to prove it. So this is that -- so that is exactly what they say. This is verbatim. "Submit an affirmative statement describing the trauma and any other credible evidence." Any other credible evidence. So they give a statement and any other credible evidence, and that's the only examples that the USCIS gives to human trafficking victims. And so what we believe is, is that there are a number of types of proof that you could try to give. Well, none is actually known to be 100 percent guaranteed to aid this, types of ones that we're going to be is, one, we believe that human trafficking victims, as they work with their -- whether it's a psychologist or a therapist or a social worker or someone like that -- they need to be able to work through it and actually put down, you know, on pen and paper what actually happened to them, and pretty much to the fullest extent, because when you're -- just like proving a court case, you want to give the most evidence possible.

So, then, we also believe photographic evidence of bruises and injuries, but then this would also include if you had CT scans or anything like that, anything that can prove that you have had some kind of trauma given to you. Police reports where they will actually document -- you know, during their investigation they'll find out what kind of trauma the victim has experienced. Medical reports and affidavits by witnesses.

Benjamin Greer & Scott Dyle

But just as we noted, there's no common standard; however, Ben might -- will probably go into this a little bit more. The Veteran Affairs has a form right now for veterans to get to the benefits that they need, they have a form to deal with like PTSD and how to prove that they are dealing with trauma, and we believe that this type of form could be also used with human trafficking victims. And now I'm going to turn it over to Ben who will talk more about what types of PTSD we expect to see in trafficking victims.

Benjamin Greer:

When we started with this idea, our first goal was to try to understand what research is already out there in regards to mental health injuries to victims of trafficking. By no means are we clinicians or have any medical training whatsoever.

We are lawyers, and that gets dangerous when lawyers try to be doctors. From the cases that we've read, from a layperson's perspective, it only makes sense that one of the first things that comes to mind is PTSD or some type of similar mental illness. Here is the simplified definition of PTSD. By no means, again, are we clinicians, is this a medical diagnosis in any way. But if you look at some of the elements, and again, the cases that we've read, it seems to be very evident that many if not all victims of trafficking may demonstrate many of these symptoms.

Many of the symptoms could be seen by law enforcement, less nuanced or undereducated law enforcement, on this types of victims service issues as noncompliance, and we want to make sure that is not seen as noncompliance, a willful noncompliance. It's a non-willful incident that should not be used against the applicant when they're seeking temporary Visa status. All right, when we did our research, we found that there was very, very little if any research within the United States when it comes to the types of injuries the trafficking victims suffer. A vast majority of the research originates from Europe, this is equally Eastern Europe in

Benjamin Greer & Scott Dyle

Moldova. There's a number of studies. The studies were smaller in size, 100 or so victims, but the statistical data that came out of those studies is absolutely ridiculously off the charts as the types of assaults that these victims went through that are very likely to induce PTSD-like after effects.

I'm going to let you read a little bit about a case. Again, we're not doctors, but reading these cases, it became evident to us that here are some examples where PTSD wasn't addressed in the victim but are very common or likely to be an outcome of the case. This case is from Michigan. The victim was from Cameroon. She was tortured, enslaved, kept in the basement, you know, denied basic life items and very much psychologically damaged by the type of victimization.

This is another one that, as grotesque and is explicit as the summary that I've given you here, believe me when I say if you read the actual case, it's a hundred times worse. This victim was 16 years old. She was developmentally challenged. The trafficker snagged her as she went out to the grocery store to get some groceries for her and her family. She was induced, or tricked into signing a slave contract. She was branded, tattooed with bar codes and tattooed with an S for slave. She was tortured every imaginable way that you can think of. Waterboarded, a number of things. The trafficker started an online website where people could pay him to torture her, and they would view it online and pay him for this access. Even to one point were the trafficker flew the victim out to California where she posed for the cover of Hustler Magazine for a special issue on sex slaves.

If these types of actions don't induce PTSD or similar other types of injuries, I don't know what does. So as we were looking at the T-Visa process, now granted, those two victims were domestic victims, so they would not necessarily be T-Visa applicants, but I think, for our purposes, we were trying to illustrate the connections between the types of victimization and the aftereffects of the mental health barriers that may present themselves.

So again, those two cases weren't necessarily applicants. The woman from Cameroon very well could have been, but the second case, most likely, wasn't. I believe she was already an American citizen, so would not necessarily be a T-Visa applicant. As Scott had mentioned, there's no common standard. So when you don't have a common standard, you find yourself kind of at the mercy of the whim of the person processing the T-Visa. You know, one person processing the T-Visa that comes across their desk, that person may really like photographic evidence.

So that person, you know, puts a lot more weight in that type of supporting documents, but maybe your applicant comes to the office on a Wednesday, and there's a different processor, and that person really likes medical charts, and when there's no common standard you're at that kind of capricious vulnerability, again, of having your application correctly evaluated and given its full weight. As Scott had mentioned, one of the first things, and as I talked to the people in the audience in the last few days, one thing I keep stressing is human trafficking is a very new legal construct.

It's only been a crime 14 years federally in the United States, and in California, it's only really been a state crime or a felony for, like, nine years now, but that doesn't mean that we necessarily have to create all new wheels when we design our criminal justice system and our restorative justice systems to respond to trafficking, and so I wanted to look to other areas where the government is already dealing with PTSD to see if there's a process there that we can borrow or duplicate and then bring it over into the human trafficking space or realm. I immediately thought that a number of our military veterans receive disability compensation for PTSD, and there is actually a six-page form. There's two forms. One's a two-page form, very, very basic contact information.

The other is a six-page form that the veteran takes into their doctor, and so when they're being evaluated, the doctor just goes through and fills it out, the clinician, and then this is submitted to the VA as the applicant's information. In our viewpoint,

it would be very easy to take this form and modify it slightly, if at all, for a human trafficking context. I think that would help standardize the types of information that Homeland Security is going to be dealing with, so that, one, they can better train the people who process the T-Visas on the types of information that they're going to be viewing, so you're not at the mercy of whoever the processor is that day or whoever gets assigned your application packet.

Second of all, the victim and victim advocates know what they need to do to be best situated to obtain a T-Visa. It seems like it would be a pretty easy fix. I understand getting governmental documents approved, you know, has a process. I understand that, but at least when it comes to the substantive part of the process, it seems like most of the work's already done.

Another big take away that we want to impress upon the anti-trafficking community is that there's so little research within the United States when it comes to the after effects of trafficking. I understand that we're early on in the whole anti-trafficking process, so not only are we examining and gathering data when it comes to investigations, prosecutions, but one area that has been solely neglected, unfortunately, is the research of the victim in the aftermath, and we would love to work with all of the partners in this room and partners that come out of these summits to see how we can work with the medical community to get a larger information base so that our policymakers and legislators can better understand exactly why some of these changes need to take effect. Thank you very much.