Legal Aspects of Human Trafficking for Health Care Professionals

November 12, 2018
The American Hospital Association, Jones Day, and HEAL Trafficking come together to support the health care field to combat human trafficking.
ICD-10 HUMAN TRAFFICKING ABUSE CODES

Resources

- ICD-10-CM Coding for Human Trafficking Fact Sheet
- Downloadable Human Trafficking signage
- Webinar Series
  - The Legal Aspects of Human Trafficking
  - The Reality of Labor Trafficking
  - The Intersection of Human Trafficking and the Opioid Crisis
  - Trafficking of Children for Labor and Sex

www.aha.org/combating-human-trafficking
HUMAN TRAFFICKING HAPPENS IN EVERY COMMUNITY.
HOSPITALS IDENTIFY AND HELP VICTIMS EVERY DAY.
HOSPITALS CAN HELP.
LEARN MORE.
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Legal Aspects of Human Trafficking for Health Care Professionals

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Presentation Agenda

• Human Trafficking Case Studies

• Legal Benefits Available to Trafficking Survivors

• Legal Remedies for Criminalized Survivors of Trafficking
Criminal Case Studies:
U.S. Citizen Trafficking Victims
U.S. v. Shelby Lewis
1:09-cr-00213-EGS
District Court for the District of Columbia

S.H. 11 years old
T.S. 13 years old
M.S. 16 years old
A.L. 14 years old
U.S. v. Lewis
1:09-cr-00213-EGS
District Court for the District of Columbia

- Defendant pled guilty to 4 counts of sex trafficking of minors and sentenced to 240 months;
- Judge appointed a pro bono lawyer to represent the children;
- Psychiatric expert calculated restitution for future expenses;
- Prosecution calculated gross earnings to the traffickers;
- Restitution: $3,892,055 for four victims.
South Carolina Man Pleads Guilty to Forced Labor for Compelling Man with Intellectual Disability to Work at Restaurant

The defendant used violence, threats, isolation, and intimidation to compel victim to work seven days a week without pay at restaurant.
U.S. v. Callahan
No. 1:13-cr-00339 (N.D. Ohio)

Victim escapes

Victim trafficked

ER treats victim after defendants smashed her hand w/ a rock

Medical treatment: Victim beaten with a wooden fence post

Medical treatment: victim kicked in hip with a steel-toed boot

Emergency

Victim arrested for shoplifting

Social worker check-ins

Local law enforcement interactions
Case Studies:
Foreign-Born Trafficking Victims
LOLA WAS 18 WHEN MY GRANDFATHER GAVE HER TO MY MOTHER AS A GIFT. WE BROUGHT HER TO AMERICA. FOR 56 YEARS, SHE TOILED IN OUR HOME.
Four accused of aiding slave-labor ring on Ohio egg farms

By Holly Zachariah

A federal indictment unsealed today accuses four people of running or aiding a slave-labor ring that smuggled Guatemalan teenagers as
U.S. v. Kizzy Kalu  
Case No. 1:12-cr-00106 (Colorado)

Trafficked nurses into the United States using a fake “university” to obtain H-1B visas;

Demanded that nurses pay $800 - $1200 per month or face deportation;
Threatened nurses with a $25,000 fine for absconding;
Sentenced to 10 years and 8 months in prison;
Ordered to pay $3.7 million in restitution.
FACT SHEET

HUMAN TRAFFICKING & HEALTH CARE PROVIDERS
Immigration Relief
5,000 T - Visas Available Each Fiscal Year
Application for T Nonimmigrant Status

START HERE - Type or print. Use black ink. See Instructions for information about eligibility and how to complete and file this application.

PART A. Purpose for Filing the Application

Check all that apply:

☐ I am filing an application for T-1 nonimmigrant status, and have not previously filed for such status.

☐ I have a T-1 application pending. EAC #: 

☐ I have received T-1 status.

☐ I am applying to bring family member(s) to the United States.

1. I am or have been a victim of a severe form of trafficking in persons. (Attach evidence to support your claim.) ☐ Yes ☐ No

2. I am submitting a law enforcement agency (LEA) declaration on Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. (If "No," explain why you are not submitting the LEA Certification.) ☐ Yes ☐ No

3. I am physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry, on account of trafficking. (If "Yes," explain in detail and attach evidence and documents supporting this claim.) ☐ Yes ☐ No

4. I fear that I will suffer extreme hardship involving unusual and severe harm upon removal. (If "Yes," explain in detail and attach evidence and documents supporting this claim.) ☐ Yes ☐ No

5. I have reported the crime of which I am claiming to be a victim. (If "Yes," indicate to which law enforcement agency and office you have made the report, the address and phone number of that office, and the case number assigned, if any. If "No," explain the circumstances.) ☐ Yes ☐ No
T-Visas Approved:
FY 2009: 313 T-visas
FY 2010: 447 T-visas
FY 2011: 557 T-visas
FY 2012: 674 T-visas
FY 2013: 848 T-visas
FY 2014: 613 T-visas
FY 2015: 610 T-visas
FY 2016: 750 T-visas
FY 2017: 672 T-visas
Criminal Restitution and Civil Remedies for Trafficking Survivors
United States Federal Courts’ Continuing Failure to Order Mandatory Criminal Restitution for Human Trafficking Victims
Corrie Gillispie, a/k/a "Bigg Tyme", Sentenced To Serve Thirty-Two Years in Prison For Kidnapping and Commercial Sex Trafficking

Judge ordered additional twelve months for contempt
ORDER

e. 2009 Maserati Quattroporte sedan, VIN ZAMFK39A190044339, registered to CORRIE DEANTRE GILLISPIE;

f. 2010 Chevrolet Equinox; VIN 2CNFLCEW6A6225835, registered to CORRIE GILLISPIE; and

g. 2013 Ford Fusion, VIN 3FA6POHR7DR244748.

U.S. CURRENCY

$34,466.00 U.S. Currency seized from a residence located at 13300 Morris Road, Apt. 76, Alpharetta, Georgia on May 26, 2016.
Criminal Prosecution or Civil Litigation?
Woman Trafficked by Cult Is Awarded $8 Million: ‘They Took My Childhood’

The Value Creators publishes teachings on its website and Facebook page. Kendra Ross, a woman who described her forced labor in the group, which was formerly named the United Nation of Islam, has been awarded $8 million.

By Christine Hauser

May 25, 2018
FURTHER ORDERED and ADJUDGED that judgment is entered against Alan and Stella Mzengi, jointly and severally, in the amount of $1,059,348.79, which is allocated in the following manner:

$510,249.21 in treble damages under the Maryland Wage and Hour Law; $45,101.69 in compensatory damages for unjust enrichment; $19,961.64 in compensatory damages for fraudulent inducement; $250,000.00 in compensatory damages for emotional distress; $150,000.00 in punitive damages; and $84,036.25 in attorney’s fees.

SO ORDERED.
<table>
<thead>
<tr>
<th>Year</th>
<th>Sex</th>
<th>Labor</th>
<th>Total</th>
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<tbody>
<tr>
<td>2014</td>
<td>190</td>
<td>18</td>
<td>208</td>
</tr>
<tr>
<td>2015</td>
<td>248</td>
<td>9</td>
<td>257</td>
</tr>
<tr>
<td>2016</td>
<td>228</td>
<td>13</td>
<td>241</td>
</tr>
<tr>
<td>2017</td>
<td>266</td>
<td>16</td>
<td>282</td>
</tr>
</tbody>
</table>
Why Civil Litigation?

Trafficking Criminal Cases

- Sex: 93%
- Forced labor: 7%

Trafficking Civil Cases

- Forced labor: 93%
- Sex: 7%
Why so few sex trafficking civil cases?
When survivors have lawyers, survivors have rights
Criminalization of Human Trafficking Victims
Survivors in the Criminal Legal System

- Victim/Witness
  - Cooperating
  - Involuntary
- Criminally Charged Defendant
National Survivor Network Survey (2016)

- 91% of respondents reported having been arrested
  - Over 50% reported that every arrest on their record was trafficking-related
  - 42% arrested as minors
  - Over 40% reported being arrested over 9 times or more
  - 60% reported being arrested for crimes other than prostitution
Why is Post-Conviction Relief So Important for Survivors?

- Conviction/Arrest Histories Can Prevent Survivors From:
  - Obtaining employment
  - Pursuing education
  - Obtaining public benefits
  - Receiving housing assistance
  - Applying for a loan
  - Family stability
  - Accessing immigration relief or adjusting status
  - Healing from trauma
Why Is Post-Conviction Relief So Important for Survivors?

“I always felt like a criminal. I never felt like a victim at all. Victims don’t do time in jail, they work on the healing process. I was a criminal because I spent time in jail.”

BOTTOM LINE: A criminal record often keeps survivors trapped in the very industries they seek to escape, prevent healing, and make them vulnerable to re-victimization!
**Enter Vacatur of Convictions!**

**Definition:** To *undo* or set aside a court’s judgment

How this different from other forms of post-conviction relief?

- Vacating a conviction means there was an error in the original judgment/conviction
- While all forms of post-conviction relief help people have an easier time getting housing and jobs, vacatur contains the added emotional benefit of acknowledging that the law made a mistake!
“Vacatur Laws” and Human Trafficking

Vacatur Laws for Trafficking Survivors
“Vacatur Laws” and Human Trafficking

Vacatur & Expungement for Trafficking Survivors

- Vacatur or Expungement
- Minors Only
- Sealing Only

Survivor Re-Entry Project
Why are Post-Conviction Laws Important?

- Remedy past injustice
- Empowerment
- Survivor-controlled
- Opportunity to reclaim space/story
- Impact on criminal justice stakeholders (Judges, prosecutors, court personnel)
Best Practices: Vacatur of Convictions

• Expansive list of eligible crimes

• No requirement that survivors provide official documentation of trafficking or cooperation with law enforcement
  • However, there should be a presumption of eligibility if official documentation is provided!

• No requirement that survivors prove they have left the sex industry or have been “rehabilitated”

• Retroactive (inclusive of those with older convictions)
Best Practices: Vacatur of Convictions

- Requires vacatur of conviction(s) if motion is granted by the court
- Does not require consent by the prosecutor’s office prior to the filing of the motion
- Procedures put in place to address the subsequent non-conviction
- Provides for confidentiality of survivor’s identity, moving papers, and courtroom appearances
- Provides a way for survivors to recoup court costs/fees
When Working with a Survivor:

- ALWAYS ask about arrest history
- Identify ways survivor has interacted with criminal legal system
- Explore extent to which criminal history has impacted survivor’s independence & stability
- Share information about post-conviction relief
- Make referrals as needed
Suggested Assessment Questions

Were you ever arrested during the time you were trafficked?

What states were you arrested in?

Do you know what you were arrested for?

Do you have any current criminal court cases or open warrants?

Have you gotten a fingerprint record?
Resources

- Human Trafficking and HIPAA: What the Health Care Professional Needs to Know
- Factsheet: Domestic Violence and Human Trafficking
- Factsheet: Human Trafficking and Health Care Providers – lessons learned from federal criminal indictments and civil trafficking cases
- Factsheet: Trafficking of Persons with Disabilities in the US
- Article – University of Baltimore law students help trafficking victims escape their past, Baltimore Sun
- Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims
- U.S. v. Lewis_D.D.C._2009_Memorandum Opinion
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