



May 24, 2013

U.S. Department of Health and Human Services
ATTN: Karen Fears
901 D Street SW
6th Floor West
Washington, DC 20447
Submitted via email to acf-comments@acf.hhs.gov

Dear Ms. Fears,

On behalf of the International Human Rights Clinic (“IHRC” or “Clinic”) at Santa Clara University School of Law, we would like to thank you for the opportunity to submit public comments on the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States (“Plan”). We appreciate the federal government’s commitment to this critical issue and welcome its emphasis on collaboration. We hope that our comments will be useful in promoting and improving the important work that the federal agencies that comprise the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons do to combat human trafficking and provide services to victims.

The Clinic at Santa Clara University provides students of Santa Clara Law the opportunity to gain unique, practical, and supervised experience working on cases and projects of human rights violations. The Clinic aims to inspire students to become ethical and professional human rights advocates and advance Santa Clara University’s social justice values.

Over the past nine months, the IHRC has engaged in fact-finding and research to investigate local responses to human trafficking in the California Bay Area, focusing on Santa Clara and Alameda Counties. Our research has focused on actors in the three key sectors of legal aid, law enforcement, and victim services agencies. Through this work, we have gained insight into the problem of human trafficking in the Bay Area and how the different actors are working together to combat the problem and serve victims.

This research, which the IHRC will publish later this year as part of a comprehensive report, forms the basis for our comments on the Plan, which reflect the recommendations and expertise gathered through dozens of interviews with local actors who regularly interface with human trafficking victims. Because the Bay Area is a national hotspot for human trafficking



activity¹, we hope that the lessons we have learned from actors here will prove useful on a national level as well.

Comments – General guiding questions

According to the comment submission guidelines, we have aligned our comments to the stated objectives of the Plan and then divided our comments into the four main questions on which the U.S. Department of Health and Human Services requested input. In parenthesis, we have identified whether the comment or recommendation is supported by the legal aid, law enforcement, and victim services agencies we have interviewed in the California Bay Area.

1. What actions should be prioritized?

Local actors in the Bay Area have identified the following five priority actions already recognized in the Plan:

a. Provide more consistent funding that requires collaboration and data collection

Local agencies that work directly with human trafficking victims need more funding that is provided on a more consistent, programmatic basis. In particular, local law enforcement agencies, including police departments that have formed DOJ-funded task forces, need more resources to enable them to confront this complex crime and to work effectively with community partners. All interviewees, including non-profit organizations that serve victims and local government agencies, reported that lack of consistent, sufficient funding was a major barrier to eradicating trafficking and serving victims. (Recommendation from all sectors)

All federal funding should mandate collaboration among sectors and require data collection and reporting. Interviewees also reported that collaboration is critical to confronting human trafficking and that their agencies only collected data when a funder had required them to do so. (Recommendation from all sectors)

¹ *Freedom Denied: Forced Labor in California*, The Human Rights Center, University of California, Berkeley (February 2005), at 10, available at: <http://www.oas.org/atip/country%20specific/Forced%20Labor%20in%20California.pdf>.



These recommendations support objective 6 of the Plan (*build capacity to better identify and serve victims*).

b. Improve coordination between federal and local law enforcement

Federal law enforcement (Federal Bureau of Investigation (FBI) and Homeland Security Investigations (HSI)) needs to support and/or deputize local law enforcement so that trafficking networks cannot evade enforcement by moving between jurisdictions. Human trafficking networks are highly mobile, and to combat this problem, law enforcement capacity needs to become similarly mobile. (Law enforcement recommendation)

This recommendation supports objectives 1 (*coordinate effectively through dedicated commitment at all levels of government*) and 7 (*foster collaborations and partnerships to leverage resources*) of the Plan.

c. Recognize the importance of identifying labor trafficking victims

All federal agencies that interface with human trafficking victims need to recognize that sex trafficking (particularly domestic sex trafficking (CSEC)) and labor trafficking (particularly of foreign nationals) are different issues that require very different approaches and that both require significant attention and resources. Federal agencies tasked with enforcing labor laws, such as the Equal Employment Opportunity Commission and the Department of Labor, need to become more involved in assisting with the identification of labor trafficking cases. Local law enforcement agencies consistently reported that although they recognized that labor trafficking is a serious problem in the Bay area, they lacked the resources (funding, manpower) and expertise to identify these cases. These agencies also reported that they therefore focus almost exclusively on sex trafficking, particularly trafficking of domestic minors, because these cases are easier to identify and investigate with the available resources and manpower. In some areas, this focus on sex trafficking has a trickle-down effect to non-profit organizations that would provide services to labor trafficking victims and foreign trafficking victims more generally; our research revealed that some such agencies believe these categories of victims do not exist in their area because police are not uncovering these kinds of cases. Federal agencies, particularly the FBI and HSI have an important role to play in identifying and investigating these cases, and other agencies, including the DOL and DOJ can help local law enforcement agencies develop the expertise and acquire the resources to do so themselves as well. (Recommendation from all sectors)



These recommendations support objectives 3 (*enhance understanding of human trafficking*) and 6 (*build capacity to better identify and serve victims*) of the Plan.

d. Develop a holistic collaborative model with a victim-centered approach

We support the Plan's emphasis on promoting a victim-centered approach that is informed by victims and victim service providers. Nearly all of our interviewees emphasized the importance of this approach and the need to train law enforcement officials in particular to adopt this approach in their investigation and prosecution of trafficking cases. We suggest that the promotion of a victim-centered approach results in concrete action, including, for example, the development of protocols where law enforcement agencies ensure the involvement of victim services agencies throughout an investigation and prosecution so that victims have consistent support and case managers can prevent unnecessary retraumatization. (Recommendation from all sectors)

Similarly, interviewees suggested that agencies should collaborate to implement a program of overall screening for legal remedies. This program would provide a comprehensive approach to victims of trafficking, so that both employment and immigration remedies, for example, can be identified by one legal service provider. This holistic, victim-centered approach would ensure that trafficking victims do not miss out on important remedies. DOJ could play an important role in funding and promoting this type of program. (Legal aid recommendation)

Another collaborative model that operationalizes the victim-centered approach is as follows: when community-based organizations or law enforcement officials identify a trafficking victim, they notify the local coalition/collaboration Point Person, who will contact a legal service provider and a case manager or advocate to ensure that the survivor receives appropriate and timely assistance, including initiating the certification process and applying for state benefits. These service providers will coordinate with law enforcement throughout a prosecution and coordinate with each other to handle any immigration, employment, or public benefits issues that may arise for that victim. The Santa Clara County DOJ-funded task force and South Bay Coalition to End Human Trafficking have developed a model along these lines that might be suitable for replication in other areas. DOJ can play an important role in developing this model further and providing funding and training to local coalitions and task forces to promote its implementation. (Recommendation from all sectors)

These recommendations support objectives 6 (*build capacity to better identify and serve victims*) and 10 (*support survivors in attaining health and independence*) of the Plan.



- e. *Design broad public awareness campaigns aimed at preventing and identifying human trafficking*

Based upon our research, local actors agree that increasing public awareness of human trafficking and how to identify victims is a critical need. Interviewees consistently reported that increased public awareness could have a major impact on efforts to combat human trafficking, mainly by 1) assisting in the identification and reporting of cases, 2) educating potential victims to prevent trafficking before it happens, and 3) helping victims self-identify and seek help. Several interviewees from victim services agencies noted that to accomplish the third purpose of public awareness campaigns, agencies need to reach out into vulnerable communities, not to the public at large, and they need to do so in a culturally appropriate manner. This type of awareness campaign should be targeted to the types of media that are likely to reach the focus population and include translation into appropriate languages and/or materials appropriate for illiterate individuals. The majority of interviewees also indicated that current funding for public awareness campaigns is insufficient and inconsistent. HHS, DOJ, and DHS could each play an important role in developing, funding, and promoting a more consistent and practical approach to public awareness. (Recommendation from all sectors)

This recommendation supports objectives 4 (*improve and expand public awareness*) and 6 (*build capacity to better identify and serve victims*) of the Plan.

2. What areas, gaps, or needs are not sufficiently addressed by the Plan?

Our interviews with local actors in the Bay Area enables us to identify the following nine areas, gaps, or needs that are not sufficiently addressed by the Plan:

- a. *Comprehensive and easily-accessible public benefits programs*

Human trafficking victims often do not meet any eligibility category for public benefits programs that they badly need to restore their lives and prevent revictimization, and existing state and federal programs do not fully cover these gaps in the provision of services and benefits to human trafficking victims. Federal and state benefits programs offer temporary assistance such as cash and medical aid for victims of human trafficking. However, the public benefits available to a human trafficking victim may vary on a case-by-case basis. Due to the complexities in meeting the eligibility requirements for these programs, victims are generally unable to obtain public benefits on their own. Legal aid providers and victim services agencies help trafficking victims access public benefits and meet their basic survival needs, but they



often lack the funding and staff capacity to fully meet this need. The federal inter-agency task force should take the lead in working with federal and state agencies that administer these public benefits in creating a better, more complete and easily accessible benefits programs to help trafficking victims get back on their feet psychologically, physically, and economically.

Concretely, public benefits programs should include health and dental care, ensure that there are no gaps in coverage, and make sure that expiration of benefits is synched with receipt of work permits. Federal legislation should also be amended to include adequate assistance for trafficking victims: the food stamps (SNAP) program should provide an individual with more than the current inadequate amount per month, and non-disabled adults between 18 and 64 without children should be able to obtain cash assistance. (Legal aid and victim services recommendation)

These recommendations support objective 8 of the Plan (*improve access to victim services by removing barriers*).

b. Shelter and transitional housing, particularly for men

Human trafficking victims – particularly men – require better and more consistent shelter and transitional housing opportunities. Because most shelters that house human trafficking victims are also domestic violence shelters, men are rarely eligible for this service, and victim services agencies report exhausting the entire housing budget of multi-year grants in order to provide housing for a few male trafficking victims for only 4-6 months. The Plan does not take this gap into account, but it is a critical need that nongovernmental organizations have been unable to consistently meet with the resources that are currently available to them. HHS, DOJ, and possibly even HUD could provide funding and housing opportunities to meet this critical need. (Victim services recommendation)

This recommendation supports objective 10 of the Plan (*support survivors in attaining health and independence*).

c. Training of immigration officials

Train immigration officials to recognize human trafficking at the border and other points of contact and to facilitate applications for T visas or other immigration statuses available to trafficking victims. These officials could benefit from widespread administrative training within DHS (perhaps in partnership with HHS and DOJ) on how to identify victims and how to administer public benefits for foreign national trafficking victims. Although law enforcement



agencies typically provide basic human trafficking trainings, they often fail to adequately cover administrative issues. Thus, victims fall between the cracks. Increased training would help identify victims early on, which would aid in investigations, avoid premature deportations of immigrant victims, and ensure that victims receive the benefits to which they are entitled. (Legal aid recommendation)

This recommendation supports objectives 6 (*build capacity to better identify and serve victims*) and 7 (*foster collaborations and partnerships to leverage resources*) of the Plan.

d. *Training of officials who administer public benefits*

Officials that process applications for public benefits require training about human trafficking and the categories of public benefits for which trafficking victims are eligible. Legal aid providers reported that foreign national victims of human trafficking frequently encounter wrongful denials of public benefits on the basis of their lack of an immigration status. HHS could take the lead on developing and disseminating a training program for state agencies that provide public benefits to human trafficking victims.

Public benefits officials also require cultural sensitivity training. Interviewees reported multiple instances of trafficking victims encountering degrading treatment at the hands of officials who yelled at victims or otherwise caused them to feel shame for applying for public benefits to which they were legally entitled. (Legal aid recommendation)

These recommendations support objective 8 of the Plan (*improve access to victim services by removing barriers*).

e. *Accessibility of T visas*

T visas need to be made more accessible. This can be achieved by providing adequate funding and by ensuring that organizations know how to properly handle T visa cases. Local legal aid and victim services agencies require training and funding to help victims apply for T visas and public benefits. Our research revealed that even in an area with a strong immigration bar, very few providers have the technical expertise or the resources to help victims file T visa applications. DOJ and DHS could play an important role in filling this gap by providing funding and training for local legal aid providers. (Legal aid recommendation)

This recommendation supports objectives 6 (*build capacity to better identify and serve victims*) and 10 (*support survivors in attaining health and independence*) of the Plan.



f. Protection for victim family members in foreign home countries

The federal inter-agency task force needs to take the lead in developing international cooperation to protect victim family members in the home country of foreign national trafficking victims when traffickers threaten them in retaliation for the victim's participation in US prosecution. Interviewees reported that foreign national trafficking victims frequently face threats against family members (or even kidnappings) in their home country by their traffickers when they pursue prosecution in the US. The task force will also need to ensure that prosecutors, victim services agencies, and legal aid providers are aware of the protocol for handling such cases so that they know how to proceed when threats emerge. DHS, DOS, and DOJ could take the lead on developing these protocols and developing the necessary international partnerships to protect victims facing this serious problem. (Legal aid recommendation)

This recommendation supports objective 10 of the Plan (*support survivors in attaining health and independence*).

g. Retraumatization during victim witness interviews

Federal law enforcement agencies must work with victim service providers to coordinate victim witness interviews to minimize the risk of retraumatization. Local law enforcement agencies need to adopt similar policies. Interviewees reported that multiple interviews, particularly those that take place in intimidating spaces such as police stations, have a high potential for retraumatizing human trafficking victims and may result in a victim withdrawing from prosecution of his or her trafficker. On a local level, collaboration between local actors to develop protocols to minimize repetitive interviewing and to hold interviews in less threatening spaces have proved relatively successful at minimizing these risks. This model may be a good one to replicate on the national level. (Victim services and legal aid recommendation)

These recommendations support objectives 1 (*coordinate effectively through dedicated commitment at all levels of government*) and 2 (*build stronger partnerships with key nongovernmental stakeholders*) of the Plan.

h. Standard training for all federal agencies that interact with victims of human trafficking

A standard training must be required for all federal agencies that interact with victims of human trafficking. This training would ideally be given across agencies and used as an



opportunity to introduce federal agents from different agencies that work in the same geographical areas so that they are better able to collaborate when human trafficking cases arise. At a minimum, trainings should include law enforcement, prosecution, and labor enforcement agencies (FBI, HSI, DOL, EEOC, DOJ/US Attorneys). This training must ensure that law enforcement officials can recognize and investigate not only sex trafficking but also labor trafficking cases. Training law enforcement officials serves to raise awareness among law enforcement agents about human trafficking and to help law enforcement agents learn to identify victims of trafficking and respond appropriately. (Law enforcement recommendation)

This recommendation supports objective 6 (*build capacity to better identify and serve victims*) of the Plan.

i. Training of state and federal judges

State and federal judges require training on human trafficking laws and patterns in the United States. Multiple interviewees reported that they encountered challenges when attempting to prosecute human trafficking cases where judges were not sufficiently aware of relevant laws and factual patterns, which often resulted in prosecutors being forced to charge lesser offenses and/or traffickers being able to drag out the case in a way that harmed the victim. DOJ could take the lead on developing these trainings and providing funding to disseminate them. (Law enforcement recommendation)

This recommendation supports objectives 6 (*build capacity to better identify and serve victims*) and 7 (*foster collaborations and partnerships to leverage resources*) of the Plan.

3. What are promising practices that can be continued or emphasized?

In light of the vast experience with human trafficking in the California Bay Area, local actors have identified the following four promising practices that can be continued or emphasized:

a. Training of first responders

First responders need to be trained to recognize human trafficking cases and to provide appropriate support and assistance to victims. Multiple interviewees from all sectors emphasized the need for this type of training among first responders. Several suggested the development of a uniform assessment tool that all first responders can use when interacting with someone who may be a victim of human trafficking. HHS and DOJ could work together to



develop such a tool and provide funding and trainings for first responders to adopt its use. (Recommendation from all sectors)

This recommendation supports objective 6 (*build capacity to better identify and serve victims*) of the Plan.

b. Federally-funded human trafficking task forces

The federal government should continue to fund local human trafficking task forces. This funding should be sufficient and consistent. Under the current funding model, local agencies do not appear to have sufficient resources to address the problem in a holistic, sustainable fashion. There is also an insufficient number of these task forces currently operating nationwide. Based on our research, insufficient funding for task forces appears to have a more severe impact on the identification, investigation, and prosecution of labor trafficking cases, which are more difficult to identify and prosecute than sex trafficking cases, despite being statistically more prevalent worldwide. DOJ could take the lead on providing more funding and support for these task forces and on the creation of more such task forces nationwide. (Recommendation from all sectors)

This recommendation supports objective 1 of the Plan (*coordinate effectively through dedicated commitment at all levels of government*).

c. Training of law enforcement officials on immigration status assistance

Because foreign national human trafficking victims seeking immigration status must obtain certification from local law enforcement officials as a prerequisite, these officials have a huge impact on the ability of victims to restore their lives. However, interviewees report that a lack of awareness on the part of these officials can have a negative impact on victims. Local law enforcement officials need to be provided with clear guidance on the role they play in assisting foreign national trafficking victims to obtain immigration status (Continued Presence, T visas, or U visas). At present, local law enforcement practices appear to be inconsistent, creating barriers for victims to pass this key threshold to achieve eligibility for public benefits and other important services. Law enforcement officials in a position to provide endorsement or certification for a human trafficking victim must be adequately trained on human trafficking and related immigration laws and policies. Local law enforcement agencies need to adopt consistent practices on the provision of certification for immigration statuses, with input from legal aid and victim service providers, as well as victims themselves. DHS and DOJ could take the lead in facilitating the development of 'best practices' and trainings for local law



enforcement to follow on this matter. Input from HHS would also be helpful, since immigration status is a prerequisite to eligibility for many public benefits programs available to trafficking victims. (Victim services and legal aid recommendation)

This recommendation supports objective 3 of the Plan (*enhance understanding of human trafficking*).

d. Data collection and statistics

As the plan recognizes, adequate data collection and statistics on human trafficking in the US are urgently needed. Multiple interviewees reported that they mistrust available data on trafficking and that the lack of adequate statistics and data on the types of trafficking cases causes the proliferation of misleading information. The federal government may need to undertake data collection itself, or provide separate funding that is dedicated solely to this purpose, in order to rectify the problem. (Recommendation from all sectors)

This recommendation supports objective 5 of the Plan (*improve understanding of human trafficking through research*).

4. What additional partnerships or collaborative efforts are needed?

Local actors in the California Bay Area have identified the following three additional partnerships or collaborative efforts that are needed to adequately address human trafficking:

a. Communication, cooperation, and coordination between federal inter-agency task force and local agencies

Based on our research, local agencies have not heard of the President's Interagency Task Force, which means they are unlikely to be interacting with it, sharing intelligence, or coordinating in their services to victims. As a first step towards more meaningful collaboration between local and federal agencies, the President's Interagency Task Force needs to raise awareness about its mandate and resources and develop relationships with local actors. (Law enforcement recommendation)

This recommendation supports objectives 1 (*coordinate effectively through dedicated commitment at all levels of government*) and 2 (*build stronger partnerships with key nongovernmental stakeholders*) of the Plan.



b. Communication, cooperation, and coordination among federal agencies and between federal, state, and local agencies

Collaboration among federal agencies and between federal and state/local agencies, including intelligence sharing and coordinated provision of services to victims, needs to be improved. According to experienced local law enforcement officials, vigorous enforcement of human trafficking laws in a single area will only displace the trafficking activity into other areas with less enforcement. Law enforcement officials need the resources and the authorization to follow highly mobile human trafficking networks in order to fully eradicate the problem. Interviewees also reported that officials from different federal agencies operating in the same geographic area and investigating similar cases do not communicate with each other; this is a major communication and collaboration gap that needs to be bridged to combat human trafficking in the US. DOJ, DHS/HSI, and FBI need to take the lead here. (Law enforcement recommendation)

This recommendation supports objectives 1 (*coordinate effectively through dedicated commitment at all levels of government*) and 7 (*foster collaborations and partnerships to leverage resources*) of the Plan.

c. Communication, cooperation, and coordination between legal aid providers, law enforcement agencies, and victim services providers

Every interviewee recommended continued and increased communication, cooperation, and coordination between legal aid providers, law enforcement agencies, and victim services providers to meet the needs of human trafficking victims. Many interviewees expressed the view that this model of collaboration is the only successful means to combat human trafficking and meet victims' needs in a victim-centered way. (Recommendation from all sectors)

This recommendation supports objectives 1 (*coordinate effectively through dedicated commitment at all levels of government*) and 2 (*build stronger partnerships with key nongovernmental stakeholders*) of the Plan.

Conclusion

Again, we thank you for the opportunity to submit comments on this important plan. The IHRC and the broader Santa Clara University community remain committed to this issue, and we



hope that more opportunities to provide useful input into federal initiatives in this area will arise in the future.

In solidarity,

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