

Proactive Case Identification Strategies and the Challenges of Initiating Labor Trafficking Cases

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I. Introduction

Narratives and incidents of commercial sex trafficking, and particularly the commercial sexual exploitation of children, are common in public life, regularly appearing in national and local news stories, as plot points in movies and television, and on federal and local criminal court dockets—and rightly so. But only a fraction of that attention is paid to labor trafficking, or forced labor. This could be due to a general lack of awareness, limited resources, the relatively hidden nature of labor trafficking, potential underreporting of labor trafficking to law enforcement, or any other number of reasons. The U.S. State Department’s 2017 Trafficking in Persons Report,¹ an annual global resource on anti-trafficking efforts, recommends that the United States increase the investigation and prosecution of labor trafficking cases and cases involving nonviolent forms of coercion. In fiscal year 2016, the Department of Justice (DOJ) initiated 241 human trafficking prosecutions. Of these, only 13 involved labor trafficking. This disparity is consistent with the low number of labor trafficking cases prosecuted, relative to sex trafficking cases, since the passage of the Trafficking Victims Protection Act of 2000 (TVPA).²

This landscape is not new to those who work to combat human trafficking. The call for increased attention to labor trafficking has come from leadership, legislative bodies, survivors, the victim advocate community, and others for several years. In response to that call, and a desire to investigate potential abuses of vulnerable populations, DOJ’s Human Trafficking Prosecution Unit (HTPU) and many USAOs have worked with investigators to look for the labor cases, but this effort has yielded relatively few prosecutable cases compared to sex trafficking. Challenges have included allegations involving historical facts, limited or no corroboration of force or coercion, or facts that do not substantiate a human trafficking charge. In some cases, cultural and foreign language barriers may also limit the ability to identify and investigate forced labor.

The techniques involved in the investigation and prosecution of labor trafficking are often different from those involved in sex trafficking cases. To overcome the challenges attendant to those

¹ U.S. DEP’T OF STATE, OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS, [TRAFFICKING IN PERSONS REPORT \(2017\)](#).

² VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000, [Pub. L. No. 106-386, §114, Stat. 1464, Div. A, Sec. 102](#) (to be codified at 22 U.S.C. § 7101(b)(1), (22)-(23) (2000)).

different techniques and available evidence, new and innovative strategies must be used to identify and prosecute more labor trafficking cases.

II. Traditional Approaches to Sex and Labor Trafficking Investigations

As a general matter, the approaches to finding and investigating sex trafficking and labor trafficking cases differ. The traditional approach for conducting sex trafficking investigations is to work in a task force model, engaging partners already working on law enforcement within the commercial sex industry. These task forces regularly perform operations targeting both sex buyers and sex sellers within the industry. Using a trauma-informed, victim-centered approach, task forces provide services and work to build rapport and identify if those in prostitution are minors, and if, or if, others are using force, fraud, or coercion to cause them to engage in commercial sex acts. Other task forces perform physical and electronic surveillance, use historical data on the commercial sex industry in their area, perform financial investigations, and conduct outreach to groups and individuals who potentially will come in contact with sex workers or children engaged in commercial sex acts.

The traditional approach to labor trafficking cases typically has been much more reactive. Successful cases are more often the result of victims or survivors who have the ability and courage to report abuses to law enforcement on their own, or of reports made on their behalf by an “outcry” witness, like a victim advocate, such as an immigration attorney, a member of the victim’s community, or another third party. Many of the techniques used to target trafficking in the commercial sex industry do not work in labor trafficking. For example, forced labor is not advertised online in an obvious, illicit manner, as is very often the case with prostitution. Additionally, most of the work where forced labor might exist is, as a general matter, lawful. There are many other obstacles to reporting, such as insulated communities, language barriers, mistrust of law enforcement, and fear of immigration consequences, as well as work that simply is not public-facing in nature. Thus, it can be perceived as difficult to investigate labor industries for human trafficking.

III. Where to Look and with Whom to Partner

Finding potential forced labor starts with some basic questions. Task forces trying to identify potential labor trafficking cases should first perform an assessment to identify potential locations, industries, and categories of victims that are susceptible to this type of trafficking. To this end, task forces should ask a series of questions. For example, what industries in our area of responsibility or district have the most labor-intensive, unsafe, and unstable jobs? Which locations have a history of labor, immigration, or safety violations? What are the most insular, isolated, impoverished, and transient local communities in our area, and are they generally associated with certain types of work or locations? Are groups of vulnerable individuals concentrated in specific jobs, industries, or work sites?

Most human trafficking task forces, or other agencies wanting to add forced labor to their dockets, do not possess or have ready access to the answers to these questions. To work toward answers, task forces should bring the right partners to the table beyond the most readily apparent federal, state, and local law enforcement partners.

Many of these partners are already within the federal government. For example, the U.S. Department of Labor’s Office of the Inspector General (DOL-OIG) and Wage and Hour Division (DOL-WHD) are essential partners that have technical and practical knowledge related to, among other things: common labor abuses in specific industries (home healthcare, agriculture, etc.); regionally prevalent labor-related problems; the use of labor contractors to recruit, transport, and manage workers; and the use and abuse of specific work-related visas, such as H-2A and H-2B visas, to bring foreign workers into the United States. Similarly, the U.S. State Department’s Diplomatic Security Service (DS) is an invaluable partner in understanding the working and living conditions in foreign workers’ home countries. They

originate and know the types of visas and visa fraud schemes that can be used to bring workers into the United States. Other agencies, like U.S. Citizenship and Immigration Services (USCIS), U.S. Equal Employment Opportunity Commission (EEOC), the U.S. Department of Agriculture's Office of Inspector General, and the Occupational Safety and Health Administration (OSHA), are also valuable in identifying human trafficking and providing insights into the way individuals enter the country and perform work in a given industry.

Beyond the federal government, there are myriad state and local agencies that enforce labor laws, regulate workplaces, or observe workplaces that may be able to partner or consult with a task force. Task forces should consider reaching out to state and local departments, including those that regulate labor, industrial relations, workplace safety, environmental management, fair housing and employment, workplace safety, employment development, and business taxation, to name a few. They go by various names and may regulate different aspects of labor markets, depending on the state. Many state and local agencies already have their own anti-trafficking or anti-exploitation initiatives in place and can be a source of information and a force-multiplier in identifying potential forced labor. In addition, inspectors and regulators with these types of agencies may have an opportunity to observe specific industries and how work is done in them (fire marshals, code inspectors, health inspectors, etc.). Partnering with, or at a minimum, training these inspectors and regulators can lead to increased understanding of industries and referrals and provide them with the tools to identify human trafficking indicators and potential forced labor cases.

As in the sex trafficking context, task forces and investigators should also consider reaching out to first responders and healthcare workers. For example, firefighters, paramedics/EMTs, and county health clinic and emergency room personnel might have occasion to observe workplace injuries, persistent injuries, and other indicators of force or coercion that support a labor trafficking investigation. They might also have practical information about regional industries and recurring health issues in those industries.

Because potential labor trafficking victims often do not self-identify as victims and are often fearful of reporting abuses to law enforcement directly, prosecutors, investigators, and task forces should consider identifying non-governmental organizations that work with vulnerable communities and whose work with these communities place them in a position to observe and report potentially exploitative activity. Non-governmental organizations (NGOs) who provide direct services to trafficking victims, refugees, asylum seekers, and other immigrants are vital. NGOs that serve farm workers or other information sector workers, and unions and other formal and informal worker associations, may also have important insights and information about potential cases. Immigration, labor advocacy, and other specialty attorneys who have clients who may be victims of labor trafficking will also have specific knowledge and contacts needed by the task force. NGOs working in the human trafficking space, and especially those working with foreign nationals, often have a human trafficking service coordinator already knowledgeable about labor trafficking. Task forces can build bridges between law enforcement and these NGOs through, for example, joint participation in the task force, joint trainings with law enforcement and others, and participation in grant-funded activities, such as the U.S. Department of Health and Human Services' (DHHS) funded Rescue & Restore Victims of Human Trafficking campaign, which seeks to identify and serve potential victims of trafficking.

The list of potential task force partners is only limited by the types of industries in a given district and the agencies and people that interact with them. Finding the right mix of partners and consulting sources can take time, but building a network of interested and informed partners can yield increased and timely referrals.

IV. Vulnerable Populations

While all populations can be susceptible to labor trafficking under the right conditions, certain categories of vulnerable populations have specific vulnerabilities that make them more susceptible to traffickers. An understanding of a population's needs, fears, and other vulnerabilities, and the traffickers' exploitation of them, is needed to engage and build trust within those communities and identify additional partners who can assist.

Undocumented workers can be especially vulnerable to labor trafficking. Traffickers and exploitative employers use workers' lack of immigration status, threats of immigration and criminal enforcement, and false threats of what might happen to workers in the world outside of the trafficking relationship, to control them. Additionally, foreign national victims might already have a mistrust of law enforcement given their own prior dealings with abusive law enforcement in their country of origin. Because of these potential fears, as well as possible unfamiliarity with English and broader American culture, it may become critical to engage with NGO-type partners who can act as trusted intermediaries with potential undocumented victims to encourage victims to report and to arrange law enforcement interviews. Unfortunately, involvement of an NGO is no guarantee that potential trafficking will be reported to law enforcement, but NGOs can assist vulnerable persons in understanding their rights and own potential victimization, achieving stabilization, and, hopefully, promptly reporting exploitive employers to law enforcement.

Guest workers and others lawfully in the United States through a visa program face many of the same vulnerabilities as the undocumented population. Guest worker's visas are not "portable," i.e. they require working for one designated employer, so they may also have fears about immigration enforcement if they leave an undesirable work situation. These populations can include, for example, non-immigrants on H-2A seasonal agricultural worker visas or H-2B temporary non-agriculture visas used to bring in workers for a specific employer for a specific time period. These workers may have been recruited under a set of fraudulent promises or agreements and then exploited during their travel to, and work in, the United States. In addition, many do not have an accurate understanding of their rights while working in the United States. The different rules and regulations governing the various visa programs for guest workers (H1A, H2B, J1, etc.) and those related to tourists, students, and others (B1/B2, F1, etc.) are complex and require partners who work with these programs on a daily basis. Both governmental and non-governmental partners with expertise about this population, while abroad and in the United States—such as DS, DOL-OIG, and certain NGOs—are vital to the investigation and prosecution of labor trafficking of this population.

A subset of this group are nonimmigrant domestic workers employed by diplomats, military officials, and other foreign governments in the United States on a temporary basis (A3, G5, etc.). These cases involving diplomats and other foreign government officials are highly sensitive and require specific expertise. Task forces with potential cases involving this population should immediately consult with the DOJ Human Trafficking Prosecution Unit, which can offer guidance and help coordinate with the Department of State when necessary.

Recent reports of labor trafficking involving refugees, asylum seekers, and unaccompanied minors show many similar vulnerabilities to those of the undocumented and guest worker populations. The power dynamics experienced by these population and the dependence on others make these populations vulnerable to labor trafficking. The Department of Health and Human Services' Administration for Children and Families regional staff should be added to task forces, or consulted in a given investigation, for their knowledge and relationships with these populations.³ Last, task forces

³ See [22 U.S.C. § 7105 \(2016\)](#) (The TVPA requires federal, state, or local officials to notify HHS within 24 hours after discovering credible evidence that a foreign national child under the age of 18 is a victim of sex or labor trafficking).

should also engage those investigating the fraud and theft of social benefits that these populations may be eligible to receive, as recent reports indicate that theft and fraud surrounding these specific benefits are commonly coincident with labor trafficking.

Another population to remember when identifying labor trafficking cases is workers living with a disability. One landmark human trafficking case, which led to current statutes and case law, involved the trafficking of this population.⁴ People living with a physical or cognitive disability inherently have a dependency on others in their life in some way. This role is normally held by family members, professional caregivers, and others who do this work and, thankfully, have a sense of devotion as part of their profession. Unfortunately, others see this type of relationship as an opportunity to control another person for their own financial benefit. Investigators who work on health care and similar types of fraud should be engaged in looking for trafficking among this population. Task forces should engage members of the National Disability Rights Network and other similar organizations that work with, advocate for, and serve this population, in order to draw on their expertise and long-standing relationships among this group.

These examples of vulnerable populations are not all inclusive, and other specific populations (runaway/homeless youth, people living with drug dependencies, tribal members, etc.) should be identified and engaged within each task force's area of responsibility.

V. Targeted Outreach

As described above, one of the key ways to find additional labor trafficking referrals is to raise the awareness to others. But the first outreach to be done is internal. This should begin with those in the organization already working on investigations and prosecutions and who have an opportunity to observe labor trafficking. Given the potential breadth of contexts in which forced labor can occur, this "inreach" should include, among others, those investigating or prosecuting gangs, organized crime, drug trafficking, healthcare fraud, environmental crimes, Indian country cases, and national security and financial crimes. And despite the existence of strong anti-trafficking statutes in some states, training state and local law enforcement patrol officers and detectives is crucial because not all officers have had specific labor trafficking training. In addition, professional staff who do outreach to the community (Law Enforcement Coordinating Committee Chiefs (LECCs), Community Outreach Specialists, Victim-Witness Coordinators, etc.) should also be provided with, or be part of, awareness training.

We should also be incorporating human trafficking education as part of other DOJ/USAO initiatives that foster outreach to specific communities (tribal, Arab-Muslim, refugee, LGBTQ, etc.). Other partners in your organization can use their existing relationships and networks to raise awareness and to provide additional avenues for reporting potential labor trafficking cases. For example, if your district conducts civil rights/hate crimes outreach, include awareness training on labor trafficking. Groups interested in more commonly discussed civil rights issues, such as bias-motivated crimes, will also typically be interested in learning more about forced labor once they have been introduced to the issue.

Think creatively in crafting outreach initiatives, and consider direct outreach to potentially vulnerable populations. For example, some states house migrant workers lawfully in the United States for seasonal work, and housing authorities may be amenable to a visit from an AUSA or investigator to talk about labor exploitation and trafficking. Consider contacting foreign consulates in the district, as those consulates are charged with protecting their nationals who are in the United States and have an interest in preventing labor abuses. Consulates may also be able to foster direct outreach to vulnerable populations or those who interact with such populations.

Most task forces have a limited bandwidth with which to do their own outreach to the community at large or to specific organizations, so this work should be targeted and organized to yield the best

⁴ [United States v. Kozminski](#), 487 U.S. 931 (1988).

results. In examining who the right partners are, and evaluating the industries and populations vulnerable to trafficking, task forces should identify those governmental and non-governmental organizations with the greatest opportunity to observe potential trafficking; the groups and agencies identified above provide a starting place for this identification process. Leadership of these organizations should be engaged to schedule training sessions for their staff. If they are willing and able, workers themselves, and formal and informal workers' associations and other types of grassroots associations, will be able to design the best outreach strategies into their own communities. If they have been identified, survivors of human trafficking in relevant industries or geographic areas may be a resource as well.

In addition to providing awareness training to organizations and agencies, trainers should suggest that the organizations also establish protocols to report potential trafficking when observed, as well as procedures to direct their members to make such reports. Many prosecutors and investigators who do this training and outreach ask attendees to call them directly with tips they may receive in the future. This works well in many cases because referrals are made directly to an investigator or prosecutor with experience and a knowledge of the referring party's opportunity to observe the conduct. However, the changing of task force personnel through promotions, retirements, transfers, role changes, and other attrition does not always allow the presenter to be available to receive the referral in the future. Other task forces have considered encouraging attendees to use the National Human Trafficking hotline, as it is available 24 hours, 7 days a week, is available by phone and text message (1-888-373-7888 or text 233733 (BEFREE)), can take calls in approximately 200 languages, and the tip can be referred to the appropriate task force.⁵

Finally, when conducting outreach, consider the positive impact of providing repeated training or refresher trainings and providing feedback to tipsters after an investigation/prosecution. While maintaining confidentiality requirements during an investigation/prosecution, task force members should consider keeping the referring party informed when possible and in an appropriate manner. This will lead to more substantive referrals in the future, while not taking this step may discourage future referrals from this source and others from the same organization.

VI. Leveraging Data and Intelligence

Traditionally, task forces have utilized existing relationships, new partnerships, and targeted outreach to identify persons and populations susceptible to forced labor. Building this network of informed eyes and ears in various communities and industries has been effective in learning more about specific vulnerabilities. But it has only led to reactive—even if more timely—labor trafficking cases.

To develop purely proactive investigations, task forces should consider leveraging existing data sources to perform intelligence analysis of potential labor trafficking cases in their area of responsibility. This analysis can include assessments of various types of data, such as previously issued visas and prior investigations into visa abuses, debarment lists, prior safety or labor/wage violations and investigations, civil complaints and administrative actions against employers and labor contractors, and financial records and reporting. Accessing and comparing some of this data will require selecting partners who have access to it, while other data are open-source on various government and other web sites (U.S. DOL, U.S. State Department, USCIS, etc.).

Threat assessments should be performed among partners, using all available data to identify the industries in their area with a likelihood of labor trafficking occurring, and to locate high concentrations of vulnerable workers. Last, look at past exploitative practices (debt bondage, quotas, wage kickbacks, restricted access to earnings and/or documents, changing housing costs, safety violations, etc.) which have the potential to create a coercive environment for workers. These assessments will either give task forces a path to develop specific cases or guide their continued outreach and source development efforts.

⁵ NATIONAL HUMAN TRAFFICKING HOTLINE, <https://polarisproject.org/national-human-trafficking-hotline> (last visited September 18, 2017).

Steps to develop cases, once targets are identified, are outside the scope of this article, but agents and prosecutors are encouraged to contact the HTPU for support.

In addition, task forces should engage the intelligence analysts and others in their districts who have existing resources and tradecraft utilized in the investigation and prosecution of organized crime, drug trafficking, and national security and other similar cases. These skills and resources should be utilized once the available data sources are identified and intelligence personnel are trained on the signs of labor trafficking. These additional efforts can make threat assessments and follow-up investigations more thorough, which will result in the identification of more potential cases as well as successful prosecutions.

VII. Conclusion

Proactive techniques are needed to find more and better labor trafficking cases. Each task force needs a concerted strategy to identify potential trafficking in its area of responsibility. This can be accomplished by educating your team and your partners; ensuring the right partners are at the table; adapting traditional case identification strategies to the human trafficking context; looking outside of traditional channels; leveraging data and intelligence; and conducting effective threat assessments through sector-specific strategies of targeting and focused outreach.

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