

FREEDOM NETWORK ^{USA}

TO EMPOWER TRAFFICKED AND ENSLAVED PERSONS

Comprehensive Legal Services for Trafficked Persons

Updated April 2015

The United States government reports that between 2008 and 2014, only 3,695 foreign nationals have been granted T nonimmigrant status available to victims of a severe form of trafficking in persons.¹ Further, since civil litigation became an option for human trafficking survivors in 2003, fewer than 150 civil lawsuits have been filed on behalf of trafficked persons.² These low numbers can be attributed to many different obstacles in implementing the Trafficking Victims Protection Act.³ One important obstacle is a lack of meaningful access to legal services.

Although recent federal efforts have established some funding for civil legal services to trafficking survivors, thousands do not receive the legal assistance that is necessary to access federal immigration, civil representation and social service benefits to recover from trauma and rebuild their lives. In the early implementation of the TVPA, very few agencies were funded to provide services to trafficking victims. Those agencies, many of which worked with trafficking victims prior to the TVPA's enactment, developed a distinct expertise in providing a comprehensive model of both legal and social services to the most vulnerable individuals. Since that time, there has been an increase in victim identification and in the number of agencies capable of providing services.

However, funding for anti-trafficking services and particularly legal services remains limited, at best. Consequently, legal services are extremely underfunded despite human trafficking victims' complex legal needs, which span all court systems and include claims for immigration, criminal, and civil relief. In addition, victims benefit greatly from access to an attorney who can advocate for them immediately upon identification as they work with law enforcement to prosecute their trafficker or where victims face criminal or delinquency charges related to their trafficking. Failure to provide adequate legal representation from the first identification leaves victims open to re-victimization by the justice system, through abuse of legal process by traffickers, or through criminal charges against victims.

Legal services for trafficking victims also require a nuanced understanding of local, state, and federal law, including a wide range of practice areas such as juvenile delinquency and adult criminal law, family law, immigration law, administrative law, benefits, civil litigation, post-conviction relief, and the attendant procedures, as well as well-developed working relationships with social service providers, federal and local law enforcement, and government agencies and an understanding of their respective priorities. The complex nature of representing a trafficking

¹ United States Department of Homeland Security, U.S. Citizenship and Immigration Services, *available at* <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-914-application-t-nonimmigrant-status>.

² Source: Human Trafficking Pro Bono Legal Center.

³ *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825 (July 2006) (GAO Report), pp. 3 and 25. The TVPA is contained in the Victims of Trafficking and Violence Prevention Act of 2000, Pub.L.No. 106-386 Division A, 114 Stat. 1464 (2000) (codified as amended in various sections of 22 U.S.C.).

victim is compounded by the length of time an individual case takes, often spanning six or seven years.

Legal representation for foreign nationals includes intensive criminal justice advocacy because cooperation with law enforcement is required for trafficking victims without immigration status to access stabilizing benefits and services. This is a specific and necessary component of legal services for all victims and is required for foreign national human trafficking victims. Criminal justice advocacy should be available until the investigation and prosecution of traffickers is complete, including sentencing, restitution, and the appeals process, where appropriate. When comprehensive legal services are not consistently available during the entire process, human trafficking victims, particularly foreign nationals and all minors, are left vulnerable to further victimization, such as being compelled to participate in the criminal justice process without an advocate, and without understanding the system, and losing access to immigration, criminal and civil legal relief. The current trend to separate legal and social services narrowly interprets the TVPA and fails to comprehend the necessity of both to stabilize trafficking victims.

Current funding for legal services for trafficking victims

The three primary government funding sources for service providers assist trafficking victims have either provided insufficient funds or limited the use of funds for legal representation. Under the current funding structure, limited legal services are available through the U.S. Department of Justice, Office for Victims of Crime (OVC), either through comprehensive services or through specialized legal services grants.⁴ However, recipients of comprehensive services grants must balance numerous competing priorities, resulting in small allocations for legal services. Further, only a handful of organizations have received specialized legal services grants, leaving most states without dedicated funding.

Since 2012, the Department of Health and Human Services, Office of Refugee and Resettlement (ORR), Division of Anti-Trafficking in Persons (ATIP) has allowed recipients of ORR funds to provide some legal services for victims of severe forms of trafficking and certain family members.⁵ Potential services include immigration representation, criminal justice advocacy, family law, and other civil matters. However, as with the OVC comprehensive funding, ATIP funding recipients must balance competing priorities, including urgent social services needs. The practical result is that little funding remains for legal services.

Finally, legal services programs receiving funding from the Legal Services Corporation (LSC) may represent victims of trafficking in civil legal matters, regardless of immigration status. In 2014, LSC updated its regulations and issued a program letter that clarified the eligibility of victims of trafficking and other crimes.⁶ Although this LSC guidance instructs recipients of LSC funds that victims of trafficking generally are eligible for services, many recipients of LSC funds still do not regularly represent survivors of trafficking. For example, a recent Attorney General report to Congress⁷ found that only fifteen LSC grantees had represented trafficked

⁴ See, e.g., <http://ovc.ncjrs.gov/humantrafficking/traffickingmatrix.html> for a list of OVC grantees.

⁵ ORR State Letter #12-04, Aug. 28, 2012, available at <http://www.acf.hhs.gov/programs/orr/resource/state-letter-12-04>.

⁶ 45 CFR Part 1626 (April 18, 2014); Program Letter 14-3, Oct. 29, 2014, available at http://grants.lsc.gov/sites/lsc.gov/files/Grants/RIN/Grantee_Guidance/Program-Letters/ProgramLetter14-3.pdf.

⁷ Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, July, 2014, available at <http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/10/28/agreporthumantrafficking2012.pdf>.

clients, out of some 134 total grantees.⁸ While human trafficking representation requires particular expertise that the average legal aid attorney may lack, educational resources are available to train these advocates. At the same time, however, as with most other funding, there are competing priorities and the allocation of LSC funding to serve trafficked clients that would necessarily come at the expense of other legal services. Further, victims of labor exploitation that do not meet the definition of human trafficking or other relevant crimes often remain ineligible for legal services due to their immigration status.

Recommendations for comprehensive legal service funding for trafficking victims

- 1. ORR's State Letter #12-04 is helpful in allowing for legal services, but current funding levels still limit the ability to provide adequate and effective legal services.** State Letter #12-04 is helpful in allowing the use of ORR program funds to provide legal assistance to trafficking victims and certain family members. Current funding amounts, however, preclude most recipients from providing meaningful legal services due to other urgent needs. Overall funding needs to be increased so that meaningful, adequate, and effective funding is available for legal services.
- 2. Enact legislation to extend free legal services to all immigrant workers to reduce their vulnerability to exploitation, forced-labor, and slavery.** Free legal services should be available to provide access to legal services to all low income workers, regardless of immigration status, not just trafficking victims and certain other crimes.
- 3. Expand OVC's dedicated "specialized services" funding to allow grants to more legal services providers.** The recent expansion of the OVC grant program to include funding for specialized legal services is promising, but has been limited to only a few sites. This program should be expanded to allow for dedicated legal services funding to more sites across the country.
- 4. LSC should take leadership to encourage grantees to serve victims of trafficking.** While LSC's 2014 guidance was helpful in clarifying trafficked clients' eligibility for legal services regardless of immigration status, LSC must go further. Since only a small fraction of grantees actually serve trafficked persons, LSC should encourage grantees to provide these services and serve as a clearinghouse for educational information to improve grantees' ability to serve trafficked persons.
- 5. Expand funding to allow legal services providers to address all legal needs of victims, recognizing that many victims are criminalized or may have an unrelated criminal past which makes them ineligible for services through certain funding.** Victims are often criminalized for acts which are related to their trafficking. Victims may also have a criminal past that simultaneously makes them vulnerable and ineligible for services through certain funding streams, such as some victims of crime funds.
- 6. Require identifying agencies to inform victims that they may have legal assistance and fund programs that provide legal advocacy and services to victims immediately upon identification.** When victims receive legal services immediately upon identification, it gives them meaningful access to the rights to which they are entitled in a multiple contexts. Legal assistance can bridge gaps between services and among agencies and reduce re-traumatization of victims as they move through the legal, medical, and social services systems. Legal assistance can assist agencies, including crisis services, medical services, law enforcement, prosecutors, and other services, to work more effectively with victims by

⁸ LSC Grants, available at <http://www.grants.lsc.gov>.

advocating for reduced or consolidated victim interviews, documenting essential information to access benefits and services such as ORR benefits, T-visa applications, restitution, and trauma-focused mental and medical health assessments and services.