IMLA INTERNATIONAL COMMITTEE
OCTOBER 30, 2007
NASHVILLE, TENNESSEE

HOT CURRENT ISSUES IN US IMMIGRATION LAW AND POLICY

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I. COSTS AND BENEFITS OF IMMIGRATION IN THE U.S.—WHAT'S REALLY GOING ON?

A. Costs and Benefits

The best review of the financial costs and benefits to state and local governments of current United States immigration policies is found in the work papers submitted by Robert J. Alfton to this conference and to the World Jurist Association's Worldwide Immigration/Migration Issues and the Rule of Law Conference in Los Angeles, California, April 22-26, 2007. See www.worldjurist.org.

His papers identify various sources of economic data and conclude that any final analysis has to be based on policy decisions as to which costs and which benefits matter most.

For example, does immigrant labor really reduce job opportunities for U.S. workers, or for workers in other minority groups? Nationally, the black jobless rate has remained at about twice the white rate for about 45 years, in spite of sharp increases in immigration. Gregory Stanford, "Empathy Needed for Immigrants", *Milwaukee Journal-Sentinel,* August 5, 2007. Immigrants in metropolitan work forces have not reduced the wages of blacks. Fifty-five percent of African-American workers make low wages in the Baltimore area, where only six percent of the work force is immigrant, and also in the New York City area, where 34% of the work force is immigrant. *Id.*

At the same time, unemployment is at or near 4.5 percent in the United States, a figure that is traditionally considered full employment. Kenneth F. Scheve and Matthew J. Slaughter[*], "A New Deal For Globalization", *Foreign Affairs,* July-August, 2007, p.34, 40 (hereafter Scheve and Slaughter). The U.S. Department of Labor reports that the Mountain West region—covering eight states along the Rocky Mountains—has the lowest overall unemployment rate in the nation: an all-time low of 3.4 percent in May 2007. Unemployment rates have been as low as 2 percent in Montana. Matt Gouras,

[*] Kenneth F. Scheve is Professor of Political Science at Yale University. Matthew J. Slaughter is Professor of Economics at the Tuck School of Business at Dartmouth. He served on the White House Council of Economic Advisers from 2005 to 2007.

"Worker Shortage Takes Toll On Western Employers", *Wisconsin State Journal*, August 26, 2007, p.B4, hereafter "Gouras".

Another cost/benefit question: if the value of undocumented immigrants' additions to the U.S. gross domestic product (GDP) should be counted as a benefit, is the GDP lowered when a shortage of workers results in business losses? When that happens, who should be blamed?

Current news reports focus on financial losses suffered by businesses, largely but not entirely agricultural, that cannot find workers. The Sunday, August 5, 2007 *Chicago Tribune* business section reports that, instead of the usual 20 workers picking plums in one orchard in Fresno County, California, there are only 12. Much of the fruit will rot on the trees. According to the *Tribune*, the same thing is happening on other farms in other states.

Farm organizations point out that in Michigan, 20 percent of the asparagus crop was lost because there were no workers. Michigan apple growers say they lost 15 percent of their crop last year for the same reason. In California's San Joaquin Valley, 160,000 peak season workers are expected, but that is 80,000 fewer than last year. Some farmers will buy fruit from Chile, rather than planting crops that may never be harvested. They insist that offering higher wages doesn't bring in more workers.

Should the farmers be forced to mechanize their operations? How feasible is that and how would that affect the economy? See Stephen Franklin, "Farm Workforce Shrivels", *Chicago Tribune*, August 5, 2007, Sec. 5, pp. 1-2.

The *New York Times* reported on August 21, 2007 that apple crops in New York may also be lost because of the shortage of pickers.

Even a South American newspaper has reported on the problem. The July 15, 2007 issue of *El Tiempo*, a Bogota, Colombia daily, carries a story datelined Tifton, Georgia and headlined "U.S. Farmers Face a Crisis in Shortage of Immigrant Workers". The Georgia farmers interviewed complained about the bureaucratic delays and costly paperwork involved in using the H-2A visa system to obtain farm workers. Again, they complain that their produce rots in the field before the legal procedures can be completed. See AP, *El Tiempo*, Bogota, Colombia, July 15, 2007.

But it isn't only agriculture. A McDonald's owner in Sidney, Montana advertised in the local newspaper and raised workers' pay to $10 per hour, but the only calls he got were from annoyed competitors. Gouras, *supra.* Gouras quotes a University of Montana economist as saying, "This is actually the biggest economic story of our time, and we don't quite grasp it because it is 15 years in the making." *Id.* Logging equipment in Idaho sits idle because companies can't find workers. A shortage of lifeguards forced Helena to shorten hours at children-only pools. The local paper has many pages of help wanted ads. *Id.*

Finally, the *New York Times* for May 28, 2006 reported that as many as half of the approximately 5,000 private firefighters hired by state and federal governments to fight summer forest fires are immigrants, mostly from Mexico, and that a significant proportion of those are probably undocumented. How will the U.S. economy be affected if firefighters cannot be hired? See Kirk Johnson, "With Illegal Immigrants Fighting Wildfires, West Faces a Dilemma", *New York Times*,May 28, 2006.

Economists and some employers have been trying to point out that, in the next few years, massive retirements of "baby boomers"[*] will exacerbate the already dangerous shortage of workers. In the Milwaukee, Wisconsin seven-county region, boomers constitute one-third of the region's labor force. Sammis B. White[*], "Ready, Set, Retire! Will Our Region Have Enough Workers As The Boomers Leave The Workplace?" *Milwaukee Journal-Sentinel*, August 26, 2007, p. 1J.

White cites a U.S. Department of Labor projection that, despite recent higher levels of immigration, the United States will experience a 10-million worker shortage by 2010. He points out that, just as the world for products and services is now flat, per Thomas Friedman, the work force world is increasingly competitive. *Id*, p. 3J. That means that, for employers, the rules have changed. They will have to seek out mature workers, disabled workers, young workers, and diverse workers of all kinds. States will be in greater and greater competition with one another for workers. *Id.*

Has economic analysis of costs and benefits of immigration in today's global economy taken into account the effects of the increasing worker shortage and the impending competition for workers? Many non-agriculture employers seem not to be aware of what it will be like to compete for workers in the coming decade. Farmers and agribusinesses are very aware of it and have been working hard for immigration laws that would help them compete. Yet one of the nation's most powerful lobbies was unsuccessful in convincing Congress to make the changes it wanted.

B. So What's Really Going On?

If a powerful segment of the U.S. economy cannot convince Congress to allow the entry of desperately needed workers, and if Congressman Tom Tancredo (R. Colo.), whose district contains very few immigrants,[*] is one of the nation's most vociferous opponents of immigration, what's really going on? Perhaps the anger and fear driving this opposition doesn't really have much to do with immigration.

Perhaps it is based on an entirely different economic reality: the fact that real wages for the vast majority of workers in this country are stagnating or actually falling.

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[*] "Baby boomers" are defined as persons aged 43-61.

[*] Sammis B. White is director of the University of Wisconsin-Milwaukee's Workforce Development Center and a professor of urban planning.

[*] Kirk Johnson, "Anxiety In The Land Of The Anti-Immigration Crusader", *New York Times,* June 24, 2007, Week In Review, p. 4

Scheve and Slaughter, *supra,* p. 34. From 2000 to 2005, they report, less than four percent of U.S. workers were in educational groups that enjoyed increases in mean real money earnings; mean real money earnings rose for workers with doctorates and professional graduate degrees. For all other workers, real money earnings actually fell. *Id.*

Is this because of immigration? Globalization? Both? Economists don't know, but the American public isn't waiting for economists to reach a conclusion. They are letting their legislators know that they want protectionist trade policies and they want limits on immigration. The National Conference of State Legislatures reported that 1,100 immigration bills had been introduced in state legislatures, more than double last year's record total. Darrel Fears, "Illegal Immigrants Targeted By States", *Washington Post,* June 25, 2007, p. AO1. Such legislation would limit undocumented immigrants' ability to obtain jobs, find housing, get driver's licenses and receive many government services. As of the date of the article, eighteen states had enacted such laws. *Id.*

A well-organized anti-immigration group, *Numbers USA*, had fewer than 50,000 members at the end of 2004, but now has more than 447,000. Membership increased 83 percent since January 2007. Robert Pear, "Little-Known Group Claims a Win on Immigration" *New York Times*, July 15, 2007, After the defeat of the comprehensive bill, the group claimed " . . . we built a grass-roots army, consumed with passion for a cause, and used the power of the Internet to go around the elites . . ." *Id.*

The "grass roots army" may or may not have been harmed by immigration policies, but it has certainly been harmed by the way in which income growth has been skewed in this country. Scheve and Slaughter report that peoples' opinions about trade and immigration are closely correlated to skill and educational levels. Less skilled workers, who make up the majority of the U.S. labor force, have long led opposition to open borders. Workers with only a high school education are almost twice as likely to support protectionist policies as workers with college educations are. Scheve and Slaughter, p. 39.

This division is based on their wage reality. Income inequality across skill levels has been rising since the mid-1970's and the benefits of productivity gains over this time accrued mainly to higher-skilled workers. *Id.* From 1966 to 2001, the median pretax inflation-adjusted wage and salary income grew just 11 percent, but it grew at 58 percent for incomes in the 90th percentile and 121 percent for those in the 99th percentile. *Id.*

Between 2001 and 2005, only workers with M.B.A., Ph.D., J.D., or M.D. degrees experienced any growth in mean real money earnings. They are only 3.4 percent of the labor force. More than 96 percent of U.S. workers are in educational groups for which average money earnings have fallen. Even college graduates and those with nonprofessional master's degrees—29 percent of workers in 2005—actually suffered declines in mean real money earnings. *Id.*, p. 41.

Relying on tax returns, Scheve and Slaughter point out that the share of national income accounted for by the top one percent of earners reached 21.8 percent in 2005. This level of concentration has not been seen since 1928! In addition, corporate profits are at nearly 50-year highs as a share of national income and these profits accrue mainly to those with high labor earnings. The benefits of strong productivity growth in the past several years have gone largely to a small set of highly skilled, highly compensated workers. *Id.*

No wonder the "grass-roots army" demands control of immigration. Economists may not be able to connect this serious wage inequality to immigration. But the workers who suffer from the inequality can see the immigrants and draw that conclusion.

It may well be that business who are suffering from the present limitations on immigration could build support for the laws they want if they worked to eliminate or attenuate wage inequality.

II. ENGLISH-ONLY RULES,.

A. You Have Hired Documented Immigrant Workers. Can You Make Them Speak English?

You can, sometimes, under certain conditions. See IMLA paper entitled "English-Only Rules: Legal Protections Affecting Municipal Employees", Washington, D.C. April, 2006. The paper sets forth applicable law and regulations, including 42 U.S.C. Sec. 2000e-2 (a) (b) and (c) and 29 CFR Part 1606, Sec. 1606.7, as well as pertinent case law.

This is what the famous Chilean-American novelist Isabel Allende said in an interview with a German newspaper in 2001:[*]

> "Your language is like your blood. It confers a person's identity. When I speak English, I am no longer the same person, because I no longer have the same skill with words or even the same sense of humor . . ."

The EEOC Guidelines recognize this, and some courts have recognized it also. The Guidelines state, in part:

> 29 CFR Part 1606, Sec. 1606.7(a) " . . . The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an

[*] Süddeutsche Zeitung Magazin, #40, May 10, 2001, pp. 6, 12, 13.

atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment . . . "

The Guidelines[*] go on to require that "English-only" work rules be justified by business necessity.

Courts, even those that don't accept the EEOC Guidelines, tend to take a common-sense approach. Most don't seem to think that speaking English is a burden for employees who know how to speak English. See *Garcia et al v Spun Steak*, 13 F. 3d 196, 65 FEP Cases 1162 (9th Cir. 1993) *cert. den.* 512 U.S. 1228 (1994). However, they will find a violation of Title VII if the "English-only" work rule is applied inconsistently or when it is not needed for safety or efficiency (business necessity?) or when the application of the rule is accompanied by teasing and harassment, resulting in a hostile environment. See *Maldonado v City of Altus*, 433 F. 3d 1294 (10th Cir. 2006)[*] and *Rosario v Cacace*, 767 A. 2d 1023, 1026 (N.J. Super. 2001).

The *Maldonado* court noted:

" . . . The less the apparent justification for mandating English, the more reasonable it is to infer hostility toward employees whose ethnic group or nationality favors another language . . . " 433 F. 3d at 1305.

This means that every "English-only" case will depend very specifically on its facts. Municipal managers and elected officials need to make a careful analysis of language problems and other possible solutions before imposing "English-only" work rules. The trouble of defending the rules may exceed the trouble of doing without them.

If thorough analysis supports going ahead with "English-only" work rules, here are some cautions:

1. Be sure that all employees understand safety rules. Do what it takes. Safety comes first.

2. Check your state equal rights laws. They may be more restrictive.

3. Don't rely on "English-only" state laws or constitutional provisions without studying them very carefully. See the 9th Circuit's analysis in *Gutierrez v Municipal Court*, 838 F. 2d 1031, at 1043, 1044. Even though *Gutierrez* has no precedential value because the U.S. Supreme Court vacated the decision as moot,

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[*] The EEOC does not have authority to promulgate regulations that have the force of law. Courts may find EEOC Guidelines persuasive, or they may not. The 9th Circuit has explicitly declined to follow the Guidelines on "English-only" work rules.

[*] In *Maldonado*, the court reversed the district court's grant of summary judgment to the defendants and remanded the case for trial. The case was later settled.

the 9th Circuit's analysis of the California "English-only" constitutional amendment is rational and we might expect it to be followed.

4. Before managers impose the "English-only" work rule, suggest that they examine other means of meeting service and communication goals. Example: Train receptionists and other employees who meet the public to listen to people who speak with an accent. This is a habit that most people can learn.

5. Be sure legal staff thoroughly understand the reasons why managers want to impose the rule and be sure that you verify the facts the managers present. Those managers will be the ones on the witness stand when you are proving your affirmative defense of business necessity. Are there managers that disagree with the rule? What are their reasons for disagreeing?

6. When management has decided to impose an English-only rule, work with supervisors on the details. A far-reaching rule may not be necessary. Make sure the rule doesn't cover non-problems.

7. When the details of the rule are settled, be sure all supervisors understand the application of the rule and are able to teach employees how to follow the rule. Can they answer questions about the rule? Can they explain why it's necessary? Do their explanations match the written rule? Are they consistent?

8. The rule is much more likely to be found to violate employees' rights if it covers breaks, lunch time, personal phone calls, and informal conversations. If it is to be justified by business necessity, there has to be a business reason for each element of the rule's coverage.

9. The rule cannot permissibly cover employees who are not able to speak English.

10. Train supervisors to avoid statements like "This is America!"[*], "The boss doesn't want to hear any Mexican talk!"[*] and other statements with emotional content, as well as outright harassment.

B. "English-Only" Requirements Outside The Work Place.

A number of states and municipalities have passed "English-Only" requirements for ordinary transactions involving members of the public and their government. Those municipal officials and employees who every day experience the frustration of communicating with confused and impatient residents who ARE native speakers of

[*] See *Rosario v Cacace, supra.*
[*] See *Saucedo v Brothers Well Service, Inc.*, 464 F. Sup.919 (S.D. Texas 1979).

English, may not welcome this additional burden. If signs, brochures, and forms can be available in the individual's native language, that saves the time and energy of employees who have to enforce rules, explain procedures, and listen to complaints. Lawmakers who press for "English-Only" laws have probably not spent a lot of time behind a parking complaint counter.

1. General Requirements Of Federal Law.

Nevertheless, while carrying out these state or local "English-Only" requirements, municipalities still have to comply with Executive Order 13166: *Improving Access To Services For Persons With Limited English Proficiency*, 65 Fed. Reg. 59,121, August 11, 2000. This Executive Order applies to services furnished with federal funds or assistance. See, for example, the U.S. Department of Health and Human Services Policy Guidance entitled "Title VI Prohibition Against National Origin Discrimination As It Affects Persons Of Limited English Proficiency", www.hhs.gov.ocr/lep/guide.html

A municipality that has employees who are protected by Title VI of the Civil Rights Act of 1964 should review the U.S. Department of Justice Policy Guidance on National Origin Bias Against Persons With Limited English Proficiency, effective August 11, 2000. See *BNA Fair Employment Practices Manual* 405:271. (Title VI does not apply to employment complaints unless a primary objective of the federal financial assistance is to provide employment. *Maldonado v City of Altus, supra,* citing 42 U.S.C. Sec. 2000d-3.)

2. Elections.

A municipality responsible for conducting elections must comply with the provisions of the federal Voting Rights Act. "English-Only" voting procedures are not permitted. See 42 U.S.C. Sec. 1973b(f). The Act and regulations prescribe the steps that have to be taken to see that citizens eligible to vote are not denied the opportunity because of their limited English proficiency.

3. Courts

A municipality that operates a court system has to ensure that the federal constitutional rights of non-English speakers are not violated.

> " . . . for no situation is more full of anguish than that of an innocent accused who cannot understand what is being testified against him. " 5 John W. Wigmore, *Evidence,* 1393 at 143 (Chadbourn Ref. ed. 1974), cited in Francisco Araiza, "Se Habla Everything: The Right To An Impartial Qualified Interpreter", *Wisconsin Lawyer*, Vol. 70, No. 9, Sept. 1997.

Hon. Elsa Lamelas, Milwaukee County Circuit Court Judge, has written:

> "Without competent and honest interpreters, the courts can neither understand, nor be understood by, a significant segment of the community. An inability to communicate compromises the courts' ability to decide cases intelligently and justly. This is not only an affront to justice but also implicates broader societal costs. A court system that is, or appears to be, disinterested in the voice of witnesses and victims who are not fluent in spoken English discourages cooperation with authorities. Wisconsin, still battling a severe crime problem, can ill afford to do this. While it is in everyone's best interest that all who can do so learn to speak English, the work of the courts cannot wait." Hon. Elsa Lamelas, "New Interpreter Code of Ethics", *Wisconsin Lawyer*, Vol. 76, No. 3, March 2003.

4. Schools.

In the 1920's, shortly after World War I, the state of Nebraska passed a law making it a misdemeanor for any teacher, in any school, public or private, to teach in any modern language that was not English, A teacher was arrested and charged with teaching in German. The U.S. Supreme Court struck down the Nebraska statute as a violation of due process of law. *Meyer v State of Nebraska,* 262 U.S. 390 (1923).

Justice McReynolds commented

> " . . . The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict wit the Constitution. A desirable end cannot be promoted by prohibited means. 262 U.S. at 402.

He noted that schools could be required to give instruction in English, but that

> " . . . No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed . . ." 262 U.S. at 403.

Fast forward to 2005. Middle-schooler Zachariah Rubio attended the Turner Unified School District in Kansas. He had been warned not to speak Spanish in school but was caught speaking Spanish at lunch and again a little later outside of class. He was promptly suspended. But when his father complained to the Superintendent, the Superintendent immediately ordered his reinstatement and apologized to Zachariah and his parents. The "No-Spanish" rule was not part of District policy. See *Topeka Capital-Journal*, December 15, 2005.

Nevertheless Zachariah's parents sued the District, alleging a number of statutory and constitutional violations. See *Rubio ex rel. ZR v Turner Unified School District No. 202,* 453 F. Supp.2d 1295, 2006 U.S. Dist LEXIS 71352 (D. Kan. 2006) and 475 F. Supp.2d 1092, U.S. Dist LEXIS 9693 (D. Kan. 2007). A number of claims were struck

down on procedural grounds and there were a number of amended complaints. The court indicated that the "No-Spanish" rule might violate Title VI of the Civil Rights Act of 1964.

5. Safety And Liability Concerns.

There are also common law concerns affecting "English-Only" municipal transactions with persons of limited English proficiency. Any parental permission document, whether for a school or day care field trip, swimming lessons at the municipal pool, playing soccer in a recreational program, treatment at a municipal hospital, or receiving immunizations from municipal public health nurses, will be invalid if the parent signing the document did not understand what he/she was signing. The same is true for permission documents signed by adults for their own treatment or activities. It may be that many such permission documents are superfluous, but most municipal attorneys would be reluctant to abandon them, either just for non-English speakers, or for all users of services.

Certainly, if municipal officers and employees know of any risks or dangers that require a warning, that warning ought to be in languages understood by the majority of frequenters. Public safety always comes before liability concerns or "English-Only" regulations.

III. GLOBALIZATION HAS BROUGHT AN INCREASE IN HUMAN TRAFFICKING (SLAVERY) AND THIS INCREASE AFFECTS MUNICIPALITIES.

A. Since Slavery (Trafficking) Is A Crime, Accurate Figures Are Hard To Find.

Slavery has been abolished throughout the world for over a century. Yet it persists to some degree in all countries, including the United States. Slavery in the 21st century is of a new type. Slaveholders no longer own other human beings. Yet they are able to transport them from their homes, force them to work without pay, buy and sell them, and subject them to physical violence.

Because modern slaveholders almost always transport their victims, and many of the victims are immigrants, the modern terms are "trafficker", "human trafficking" or "trafficking in persons" (TIP). The International Labor Organization (ILO) estimates that there are about 12.3 million slaves working today and that 2.4 million people are victims of human trafficking every year. See "Second Global Report on Forced Labour", International Labour Conference, 93d Session 2005 Report I (B) International Labour Office, Geneva. http://www.ilo.org/declaration

The CIA estimates that 2 million women are trafficked in the world every year. Of those, some 50,000 women and children are trafficked into the United States every year. *CIA Report*, Amy O'Neil Richard, Center for the Study of Intelligence, "International Trafficking In Women To The United States; A Contemporary

Manifestation of Slavery and Organized Crime". (April 2000) at http://www.cia.gov/csi/monograph/women/trafficking.pdf (henceforth *CIA Report*)

Experts often disagree about numbers, for obvious reasons. A Border Patrol officer told the author that, in the course of his duties, he encountered traffickers about twice a week. A Catholic Diocese newspaper in the Kansas City area quotes a State Department estimate that between 100,000 and 300,000 American children are at risk of being trafficked within the United States for commercial sexual exploitation. See *The Catholic Key*, Newspaper of the Diocese of Kansas City-St. Joseph, online edition, July 6, 2007, retrieved August 27, 2007. http://catholickey.org/index.php3?gif=news.gif&mode=view&issue=20070706&article_id=4571.

The Human Rights Center at the University of California-Berkeley estimates that, of trafficked persons in the United States, 46% work in the sex trade, 27% as domestic servants, 10% in agriculture, 5% in sweatshops, and 4% in hotels and restaurants. "Hidden Slaves: Forced Labor in the United States", Free the Slaves and the Human Rights Center, University of California-Berkeley, September 2004.

In the United States, children who are enslaved are most likely to work as domestic servants or in the sex trade.

B. Federal Anti-Trafficking Legislation Was Strengthened in 2000 And Has Been Re-authorized By Congress in 2003 and 2006.

Peonage and forced labor have been federal crimes for many years. See *U.S. v Reynolds*, 235 U.S. 150 (1914) and 18 U.S.C. Sec. 1589. In 2000, Congress amended the peonage statute, creating the Trafficking Victims Protection Act (TVPA), 22 U.S.C. Sec. 7101 *et seq.* The Act created more exact definitions, added penalties for traffickers and those who use forced labor, and authorized assistance for victims. The Act also authorizes funds for local law enforcement training and local victim-witness programs.

Formerly, in order to get a conviction for the crime of forced labor, the government had to prove that the worker was physically injured or threatened with injury. The TVPA changes the definition of forced labor so that it now includes deception and threats of harm to distant families, as well as threats of harm to the victim. New criminal investigations of trafficking in the United States have increased by 325 % since the passage of the Act.

C. Besides Threats And Physical Violence, Trafficking Victims Are Kept in "Debt Bondage".

Debt bondage is the new form of slavery. The TVPA, at 22 U.S. C. Sec. 7102(4) defines "debt bondage" as follows:

(4) The term "debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Trafficking and debt bondage go hand in hand, because the trafficking victim is made to pay the costs of being trafficked. Victims who are trafficked are recruited with promises of good jobs, and then forced to work in agriculture, in sweatshops, and in brothels. Because the victims are usually illegal immigrants, they also have to pay the trafficker a smuggling fee. They are also charged for transportation, food, and lodging, no matter how deficient. They are often assessed with fines for not working hard enough, or not satisfying customers.

This debt will never be repaid, because the trafficker controls the record, if there is one, and the victim will never be free unless she/he escapes or dies. The illegally obtained passport is kept by the trafficker, and the victim is threatened with deportation or worse if she/he tries to escape. Sometimes families in the victim's home country borrow at high interest to pay the trafficker's expenses. Then the trafficker threatens to harm the family if the victim tries to escape.

The first charges under the TVPA were brought in Buffalo, New York in June 2002. Six persons were charged with luring Mexican immigrants from Arizona with promises of well-paid farm work in New York State. They were transported in over-crowded vans without seats or working windows. When they arrived, they were told that each of them owed some $1,000 for the cost of transportation, food, rent and electricity. They received no pay and were guarded to keep them from leaving. They were threatened with violence if they tried to escape, and one worker was told that if he did not work harder, he would be locked in a small truck for a month without food. See "Forced Labour Case Marks A First For US Law, Anti-Slavery; Today's Fight For Tomorrow's Freedom", http://www.antislavery.org/homepage/news/uslabour270602.htm. Retrieved August 29, 2007.

In June, 2004, U.S. authorities raided three houses on Long Island, New York and found 56 Peruvian men, women and children who had been forced to work in as many as three jobs at a time for as long as 16 hours a day for up to four years. They were forced to hand over all of their earnings. Many were told that they owed up to $12,500 for transportation from Peru, but the debts were never reduced. The accused traffickers, a Peruvian family living on Long Island, lured people with promises of visas and good jobs, but when the victims arrived, they were forced to turn over their passports. They were told that their families in Peru would be harmed if they tried to escape. See "U.S. Police Rescue 56 Peruvians Trafficked Into Forced Labour" See http://www.antislavery.org homepage/news/peruvians210604.htm. Retrieved August 29, 2007.

There have been a number of successful prosecutions of trafficking for prostitution in the United States, all based on debt bondage and violence. A Korean couple was charged with luring Korean women to New York City with the usual promises and the usual debt and forced prostitution. See *U.S. Department of Justice Civil Rights Division Anti-Trafficking News Bulletin*, March 2004, p. 4.

In November, 2006, several Ukrainians were charged with smuggling in at least seven immigrants, although authorities believe the operation involved many more immigrants. The defendants helped prepare false visa applications for the immigrants in Eastern Europe. The immigrants were charged between $13,000 and $19,500. Those who failed to repay their smuggling debts were physically threatened. In one instance, a defendant said he would have the wife and daughters of one of the immigrants raped because the immigrant was behind on his debt. *New York Sun*, November 2, 2006.

On August 10, 2007, the *New York Times* reported that a federal grand jury in Los Angeles has returned a 50-count superseding indictment of six members of a Guatemalan family and three associates. The indictment charges sex trafficking of minors, sex trafficking by force, fraud or coercion, violations of the Mann Act, and importing and harboring aliens for purposes of prostitution. Twelve victims were forced to work as prostitutes, including five minors. The Justice Department reported that the investigation was conducted by the FBI, ICE, the U.S. Department of Labor and the Los Angeles Police Department. See http;//losangeles.fbi.gov/dojpressrel/pressrel07/la080907usa.htm

There are many, many more such stories. For regularly updated reports, see http://www.sdssisters.org/slavery/InTheNews.htm and the *Anti-Trafficking News Bulletin*, cited above.

D. Enforcement Of Immigration Laws May Interfere With Prosecution of Traffickers.

Not all smugglers are traffickers, but almost all traffickers smuggle. Many illegal immigrants come willingly. Some come willingly, not knowing that they will be slaves. The fact that a trafficking victim is an illegal alien is the most powerful weapon that the trafficker has over the victim.

Most trafficking victims enter the country by plane, but law enforcement officials and social service agencies have reported women entering the U.S. by boat, car, train, on foot, hidden in a vehicle, and swimming across a river. Most traffickers obtain visas for their victims by providing false information to obtain a visa, which is then "overstayed." [*] They provide false job records, bank statements, and letters of employment to overworked consular officials who don't have time to investigate. See *CIA Report*,

[*] This is often the method of choice for persons who keep domestic slaves. A Milwaukee couple used this technique to keep a Filipino woman enslaved as a domestic worker for 19 years. See *U.S. v Calimlim et al.*, Case No. 2;04-cr-00248-RTR (E.D.Wis.)

supra. at p. 17. They obtain B1 (business) or B2 (tourist) visas and sometimes F1 (student) K1 (fiancee) or P1 and P3 (entertainer) visas. *Id.* Ten-year multiple entry visas have been available in Latvia, the Czech Republic, Poland, Mexico, Thailand and the Philippines. The time length is important because the trafficker can recycle the passports for new recruits. *Id.*

Under the recently re-authorized Visa Waiver Program, citizens of countries found to be U.S. allies in the "war on terror" may obtain a visa without a background check. Opponents of immigration call this the "shoe-bomber visa" because Richard Reid, the British citizen who tried to blow up an airplane by means of a bomb in his shoe, needed no background check to obtain his U.S. entry visa. See Rosemary Jenks, "Close The Shoe-Bomber Loophole", *Wisconsin State Journal,* August 26, 2007. Jenks is the government relations director for *NumbersUSA,* an anti-immigration group cited in Section IB. above. Obviously, the Visa Waiver Program will aid traffickers, probably more than it will aid terrorists.

Traffickers have even used the H2B visa, supposedly reserved for workers whose skills are in short supply in the United States. In *Roy Abraham, et al. v B.J. Singh, et al,* Case No. 05-30860 (Fifth Cir. February 26, 2007) the plaintiffs had been recruited in India to travel to the United States to work for Falcon Steel Structures of Louisiana. They allege that they were promised full-time employment for at least two years and permanent resident status. They claim that they borrowed money at high interest in India to pay between $7,000 and $20,000 required by defendants for their transportation. When they arrived in Louisiana, there were no jobs, their passports were confiscated and they were housed in poor conditions with little food. They were threatened with punishment if they complained. They were "farmed out" to other employers (a violation of the H2B visa conditions), their wages were skimmed, and they were charged arbitrary fees.

The district court dismissed all aspects of the plaintiffs' racketeering claims, but the Fifth Circuit reversed, holding that the complaint sufficiently alleged some racketeering violations.

U.S. consular officials have been so short of resources that they have outsourced some visa work to travel agencies whose performance is never reviewed. Traffickers have regularly made use of such agencies. *CIA Report, supra.* Traffickers have also bribed local employees of U.S. embassies to provide visas based on fake documents. *Id.,*p.18.

In 1998 there were over 200 mail order bride agencies in the United States. They were bringing in 4,000-6,000 women a year from the Philippines and Eastern Europe. In Russia, matchmakers are linked to organized crime. *Id.*, pp. 21,37. The INS (now ICE) does not have resources to track overstays or investigate marriage fraud. *Id.* at p. 46. As recently as February 2007, a woman and her daughters managed to escape from a trafficker in Baltimore, Maryland. The woman told a reporter that she and her two daughters had been brought from Asia so that she could marry a Baltimore man. When

they arrived, he made them his personal servants. He beat them and fed them only once a day. He took their passports and forced the woman to work outside the home for no money while her children did the household chores. They were able to escape when one of them found the passports and they went to the police. See WJZ News, February 21, 2007. The fact that they did not try to escape until they found their passports demonstrates the illegal immigrant's fear of immigration violations and illustrates why traffickers always confiscate their victims' passports.

Traffickers may insert their victims into tour groups or hire "jockeys" who escort them on their flights. LAX,JFK, O'Hare, San Francisco, and Miami are the U.S. airports most often used by traffickers and which have the highest rates of visa fraud.

There is an inherent conflict between immigration law, which requires that illegal aliens be deported immediately and the TVPA and other laws prohibiting trafficking. There can be no prosecution of traffickers without the testimony of their victims. They can't give that testimony if they have already been deported. At least one writer believes that increased enforcement of immigration laws makes life easier for the traffickers because their threats of jail and deportation become more realistic and believable to their victims. See Tiefenbrun, Susan, "The Saga of Susannah. A U.S. Remedy For Sex Trafficking In Women: The Victims of Trafficking and Violence Protection Act of 2000", *2002 Utah Law Review* 107.

Some cities and counties in the United States have passed "sanctuary" ordinances. These ordinances usually forbid local officials to inquire about immigration status of citizens they contact in the course of their duties except when such inquiry is required by federal law. One police officer thought that would prohibit him from reporting indications than an individual is a trafficking victim. See Janice G. Raymond and Donna M. Hughes, "Sex Trafficking of Women in the United States", *Coalition Against Trafficking in Women*, March 2001, p. 55, hereafter Raymond and Hughes. Since the TVPA is a federal law, that fear is not well grounded and police training ought to contain that information.

E. Human Trafficking Affects Local Government And Local Governments Can Fight Trafficking And Help Its Victims.

Local police sometimes tend not to pay much attention to prostitution unless the neighbors complain. Recently, in Madison, Wisconsin, there was a murder in a motel with a "transient population." This brought public attention to the motel and one citizen claimed there are "van-loads of hookers dropped off every day". The police responded that at a budget motel, with a typically transient population, "it's not a charm school, but neither is it much worse than it's been." Karen Rivedal, "No Extra Enforcement At Motel", *Wisconsin State Journal*, August 25, 2007, p. B1, B2.

Yet "van-loads of hookers" is a sign of trafficking. These "hookers" may be slaves. One legal aid lawyer has said, "Awareness of trafficking is where awareness of domestic violence was 30 years ago." See Cynthia L. Cooper, "Trafficking Victims:

Helping to Stop Abuse", *Equal Justice Magazine*, Winter 2005, Vol.4, No.2, http://www.ejm.lsc.gov/EJMissue10/feature_T40_R4.php, Retrieved August 26, 2007.

In the United States, trafficked prostitutes are constantly moved from city to city. There are three reasons for that. First, customers always want new women, and second, the trafficker does not want the women to establish any contacts with customers. Finally, traffickers want to change their location before they are detected by law enforcement. For example, numerous Asian trafficked prostitutes speak Spanish because they were forced to work in South America before crossing the border into the United States. See . Raymond and Hughes, *supra*, p. 54.

Neither the police nor the public have much sympathy for prostitutes, whether they are immigrants or whether they are U.S. citizens. Many are drug addicts because traffickers rely heavily on drugs to keep the victims under control. Immigrant prostitutes don't make good trial witnesses because don't know English well. Most of them have been treated brutally and they have been threatened repeatedly. They know what they do is against the law and they are terrified of police.

Raymond and Hughes report that, in the interviews they conducted, law enforcement officials reported a much lower incidence of violence against women in the sex industry than did the women themselves and the social service providers who work with those women. Less than half of the officers interviewed said they were aware of violence against women in the sex industry. Two officials even said that they had never known women in the sex industry to be physically abused. This lack of awareness, say Raymond and Hughes, prevents law enforcement officials from recognizing acts violence against women in the sex industry. As a result, women are overlooked for assistance and perpetrators are not prosecuted. Raymond and Hughes, *supra*, p.61.

While many trafficking victims are illegal immigrants, many are runaways, both boys and girls, and U.S. citizens who have been abducted or lured into debt bondage. *The Catholic Key*, *supra*, at pp. 7-9, tells the story of a runaway girl who at 13 exchanged rides for sex with truck drivers. She was soon controlled by a pimp who beat her up and gave her drugs. When she tried to escape, she was arrested and returned to her parents. She immediately ran away again. A pimp drugged her and her travels began. She was trafficked all over the West coast, up and down the California coast line, up north to Alaska, southeast to Denver and then to Kansas City and back to Des Moines and then west again. She was finally able to leave "the life" and founded an organization to help runaway girls.

In February 2006, ABC News reported the experiences of two U.S. teenagers who were not runaways. One was kidnapped at her own residence and one was lured from her job at a mall. Both were held at gunpoint, raped, beaten, and forced into prostitution. One was kept in a dog cage for more than 40 days before being rescued. See http://abcnews.go.com/Primetime/Story?id-1596778&page=4

Under the TVPA, the U.S. Justice Department and Department of Health and Human Services have provided assistance to local governments and to non-governmental

organizations in recognizing the crime of trafficking and in assisting the victims. In 2006, approximately $28 million were appropriated for domestic programs to aid anti-trafficking law enforcement efforts, identify and protect victims, and raise awareness of trafficking. *The Catholic Key, supra*, p. 5. The Justice Department has also created a model state anti-trafficking criminal statute. See http://www.usdoj.gov/crt/crim/appendices.pdf. As of July 6, 2007, 27 states had passed such legislation. *The Catholic Key, supra,* p. 6.

Justice Department funding is available for the creation of anti-trafficking task forces to publicize the dangers of human trafficking in local communities and help with training for law enforcement and social services. The State of Connecticut created an Interagency Task Force on Trafficking in Persons by Special Act in 2004. The Task Force includes elected officials, law enforcement officials, leaders of state agencies and community-based advocates and providers of services to victims. The job of the Task Force is to research the extent of trafficking in Connecticut as well as determine what services are available to victims and how well equipped Connecticut law enforcement agencies are to deal with the problem. Meetings of the Task Force are open to the public and it has a web site: http://www.cga.ct.gov/pcsw/Trafficking/traffickinghome.htm. The Task Force was created under the auspices of Connecticut's Permanent Commission on the Status of Women.

The Arizona League to End Regional Trafficking (ALERT) has created a web site that contains a hot line number to report potential cases and a lengthy list of internet resources for information about trafficking. It has a good fact sheet with current information about trafficking, and includes law enforcement in its membership. See www.traffickingaz.org.

New York's anti-human trafficking legislation, approved in 2007, makes trafficking a felony and provides assistance to victims even if they are not citizens. It establishes an interagency task force to coordinate implementation of the new law, to collect data on trafficking, and recommend best practices for training and community outreach to help law enforcement, social service providers, prosecutors, defense attorneys and the general public to recognize trafficking situations. Training for prosecutors and law enforcement agencies has already begun..

The New York statute also makes the facilitation by travel services of "prostitution tourism" a felony and increases the penalty for patronizing a prostitute. See http://www.ny.gov/governor/press/0516072.html. Retrieved August 28, 2007.

In 2006, by 299A.7955, Minnesota Statutes 2006, the Minnesota Legislature required Minnesota's Office of Justice Programs to establish a Human Trafficking Task Force. The statute is very specific as to what is required of the Task Force and its work has already begun. It must collect, share, and compile trafficking data to assess the nature and extent of trafficking in Minnesota and analyze the collected data to develop a plan to address and prevent human trafficking. This must include training law

enforcement, prosecution and social services, increasing public awareness, and reviewing existing services for victims. See http://www.dps.state.mn.us/OJP/cj/httf/about.htm

The Minnesota Task Force was barely under way when 25 persons were arrested in an "international sex slave bust" in the Twin Cities, reported May 22, 2007 by the *St. Paul Pioneer-Press*, p. A1. Federal authorities reported that the ring operated 8 brothels in 4 cities in Minnesota.

In May 2007, the U.S. Justice Department announced that the Independence, Missouri police department, working with a battered women's shelter, received a 3-year grant of $450,000 each as part of the national Human Trafficking Rescue Project initiative to combat human trafficking. *The Catholic Key*, *supra*, p.6. The money will be used to provide rescue and investigative services to victims, as well as victim certification of eligibility for the T visa. Under TVPA, this certification allows survivors to receive medical treatment, food and shelter. *Id.*

In El Paso, Texas, the job of creating a Human Trafficking Task Force was assigned to the El Paso Police Department. The Task Force provides useful information as part of the City of El Paso web site, including a number to call with reports, a good explanation of the relation between smuggling and trafficking, how victims are trafficked, where they might be found, clues to look for, and informative web sites. See http://www.elpasotexas.gov/police/human_trafficking.asp.

In Las Vegas, Nevada, the Metro Police Department sought and received several hundred thousand dollars from the federal government to help fight human trafficking. Metro has also created the new task force, known as the Anti-Trafficking League Against Slavery or ATLAS. See Channel 8, Las Vegas Now, Eyewitness News, January 29, 2007. http://www.klas-tv.com/Global/story.asp?S=6006935. Earlier, in 2005, Las Vegas officials began looking at ways to stop trafficking. They created a hot line for tips, created public service announcements in English and Spanish, and organized volunteer groups to help victims. http://www.klas-tv.com/Global/story.asp?S=3082166.

In Toledo, Ohio, the effort is just getting started. The August 20, 2007 issue of the *Toledo Blade* reports that a volunteer group will sponsor a roundtable discussion to try to build interest in the problem of trafficking. The Salvation Army liaison for the abolition of sexual trafficking states that Toledo is identified as a human trafficking zone. The group urges the creation of a task force to look at the problem. http://www.toledoblade.com/apps/pbcs.dil/article?AID=/20070820/NEWS16/708200338.

Kentucky has passed legislation making human trafficking a felony, but a recent study by the University of Kentucky points out that much more needs to be done. Professor T.K. Logan surveyed rape crisis centers, shelters for the homeless, and victims of domestic violence, as well as law enforcement officials, victims' advocates, legal advisers and other professionals. Peter Smith, "Human Trafficking Documented In Kentucky", *Louisville Courier-Journal*, August 23, 2007, http://www.courier-journal.com/apps/pbcs.dil/article?AID=200770823056.

Prof. Logan found 69 cases of human trafficking. Witnesses told of Asian and Mexican immigrant women forced into sex work at massage parlors and other settings, of domestic workers forced to work long hours with little outside contact, and workers at farms and restaurants earning no money—or a small amount—to pay off huge debts to those who brought them to the United States.

As of July, 2007, 42 state and local anti-trafficking task forces had been created. *The Catholic Key, supra,* p.6. Many other instances of local government anti-trafficking activity could be cited. We have seen that many local governments have passed restrictive ordinances relating to immigrants, but local governments are also working to abate a crime that victimizes illegal immigrants.

F. What Should First Responders Look For?

In one Texas city, paramedics were called to a sidewalk fall. They found that the badly injured Chinese woman could not speak English, but bystanders said she had fallen out of a second-story window. Police officers dug deeper and found that she was a trafficking victim and fell out of the window while she was being raped by the pimp or his enforcer. But trafficking victims rarely report what is happening to them. One of the main functions of anti-trafficking enforcement training for first responders is to look for clues to this kind of abuse.

Community policing now encourages snoopy neighbors. Neighbors are urged to let the neighborhood officer know which house has a constant stream of visitors 24 hours a day. They are told it's up to them to help the police clear criminal elements out of the neighborhood. The same is true for trafficking. Many of the task forces have lists of clues that police officers, postal employees, building inspectors, sanitation workers, emergency room staff, and snoopy neighbors can identify.

> In Las Vegas, an experienced Salvation Army worker suggests looking for people " . . . who are often times secluded, people you would only see occasionally who are almost kept under guard, who are never alone, who always have escorts or people who seem abused physically or mentally. Those are certain signs that there's an issue and a deeper problem including sexual trafficking." Channel 8, Las Vegas Now, *op.cit.*
>
> The El Paso Police Department has more definite suggestions:
>
> " Evidence of being controlled or "managed" by third parties (particularly individuals who insist on answering questions or interpreting on a potential victim's behalf)
>
> Having no English language ability
>
> Inability to leave a job or residence

Physical signs of battering

Tearfulness or signs of depression

Being a recent arrival in the United States from Eastern Europe, Asia, Latin America, Canada, Africa or India

Lacking passport, immigration, or other identification documents

Inability to articulate where they are living or remember addresses" http://www.elpasotexas.gov/police/human_trafficking.asp, p.3.

The planners for the City of Toledo roundtable discussion quote a list of questions that health care workers might ask someone they suspect may be a trafficking victim. The list was furnished by the U.S. Department of Health and Human Services:[*]

What type of work do you do? Are you being paid?

Can you leave your job if you want to? Can you come and go as you please?

Have you or your family been threatened?

What are your working and living conditions?

Where do you sleep and eat? Do you have to ask permission to eat, sleep or to go to the bathroom?

The Legal Services Corporation points out that without trained intake screeners, trafficking victims can be turned away as undocumented immigrants. Before the TVPA, victims had no protection from deportation. Now TVPA-assisted programs can help victims apply for a T visa, which will allow them to stay in the country while they are receiving assistance and eventually apply for legal residence. See Cynthia L. Cooper, *Equal Justice Magazine, supra. The Catholic Key* cites a similar problem. When trafficked children or adolescents are brought to the police, courts often discharge them right back to the pimp, or to the family they ran away from. In some countries, this would be because of police and court corruption. In the United States, it is much more likely to be the result of carelessness, shortage of staff and insufficient training.

IV. CONCLUSION: MUCH MORE INFORMATION IS NEEDED ABOUT IMMIGRATION AND ITS EFFECTS. LOCAL GOVERNMENT CAN HELP AND NEEDS TO BE INVOLVED.

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[*] The HHS Department distributes a number of Fact Sheets on the TVPA. Its Trafficking Information and Referral Hotline is 1-888-3737-888. More HHS information is available at http://www.acf.hhs,gov/trafficking.

Local government may not be able to do much to alleviate the wage gap in this country. There are things local government can do to help immigrants learn English, and to make sure that our communities are safe, even for those who have not yet learned it. Local government can deter trafficking by being alert to clues of trafficking in strip clubs, massage parlors, and other "adult" businesses. It can also deter the customers of prostitutes.

Can human trafficking be eliminated in the United States? That would be unlikely because the profits are so immense. The Campus Coalition against Trafficking says that pimps can earn up to $632,000 per year if they control just four young women or children.[*] *The Catholic Key, supra*, p. 4.

Worldwide, human trafficking is either the second or third highest-earning criminal enterprise, depending on which expert you read. All agree that the drug traffic is first. Whether human trafficking or weapons trafficking is second is in dispute. Human trafficking thrives because it remains a low risk-high reward enterprise for organized crime. See Gergana Danailova-Trainor and Patrick Belser, "Globalization and the Illicit Market For Human Trafficking: An Empirical Analysis of Supply and Demand", December 2006, http://www.ilo.org/declarationweb.pdf, page 6. The ILO estimates that the total annual profit from human trafficking worldwide is some $27.8 billion. *Id.*, p. 21.

However, the United States is doing more than most other countries to eliminate human trafficking. And more and more, local government is contributing to the effort. Local government officials and employees have the best opportunity to observe trafficking and its effects first hand and to take the first steps needed to arrest the perpetrators and help the victims.

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[*] The sex trade, through market demand, is enslaving younger and younger children. The little girls don't get pregnant, and both girls and boys are less likely to be infected with diseases.