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Human Trafficking in NYC (Resolution Number 504)

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The Sex Workers Project¹ at the Urban Justice Center thanks you for this opportunity to present our comments to proposed New York State legislation on the issue of trafficking in persons. We applaud the efforts of the New York City Council to address the problem of human trafficking and to encourage the New York State Legislature to address the issue at the state and local level. It is critical that state legislation be **comprehensive** in addressing criminal and civil remedies; **provide services and facilitate immigration and other benefits** for trafficked persons to which they have a right; and be **targeted and effective** in preventing the problem of human trafficking. State legislation must ensure that victims in state-level trafficking cases are able to access the same rights and benefits that are available for victims in federal-level trafficking cases.

¹ The Sex Workers Project (SWP) is the first program in New York City and in the country to focus on the provision of legal services, legal training, documentation, and policy advocacy for sex workers. Using a harm reduction and human rights model, the SWP protects the rights and safety of sex workers who by choice, circumstance, or coercion remain in the industry.

The SWP's program on trafficking in persons advises and represents trafficking victims in legal cases; informs and educates immigrant communities about the issue of trafficking and possible legal options; and trains attorneys on this issue. The SWP also coordinates with various law enforcement agencies to better identify victims of trafficking, and to ensure that trafficked persons who cooperate with law enforcement are protected through the legal process. Finally, we collaborate with other non-governmental organizations to advocate for trafficking-related policies that focus on the human rights of trafficked persons and respect their dignity. The SWP is a member of the national Freedom Network and the NY Anti-Trafficking Network (Co-Chair, Policy & Advocacy Committee; Member, Steering and Legal Committees).

Trafficking in Persons

Many sex workers are immigrant and undocumented persons, and some of them come into the U.S. as a result of global trafficking. The traffickers may threaten victims, take their passports, and limit their contact with the outside world. The U.S. Department of State estimates that 14,500-17,500 people are trafficked into the U.S. every year;² many of them are from Eastern Europe, China and Southeast Asia, and Mexico. With its large immigrant population, New York City and New York State are major destinations and hubs for trafficking in persons. Trafficked persons need a variety of services, particularly housing, mental health, language training, job skills, and legal services. The Trafficking Victims Protection Act³ (TVPA) created the T visa, which offers work authorization and the possibility of adjustment to permanent resident status to “victim[s] of a severe form of trafficking,” most often to victims who assist with prosecutions. Many women who have been trafficked are unaware of their legal rights and are afraid to seek help and assistance for fear they will be harmed, or deported to their country of origin.

Need for Comprehensive New York Legislation Against Trafficking in Persons

While the federal TVPA has allowed for greater assistance for trafficked persons, there also exists a need for comprehensive anti-trafficking legislation in New York State, for the following reasons:

- Current New York State Penal Code does not include sections which properly cover the crime of trafficking in persons, especially with respect to trafficking into sectors such as domestic work, agricultural work, and sweatshop labor. **Trafficking is a crime primarily defined by subtle coercion—a net of innuendo, threats of force, and abuse of legal process—essentially, a climate of fear that clearly informs the victim that harm will befall him or her if he or she leaves the trafficker. This coercion is used against victims who often do not know the language or prevailing social and legal customs in this country;**
- Many trafficking cases are discovered by members of local immigrant communities whose first instinct is to call local police rather than federal law enforcement—in fact, members of these communities will not contact federal law enforcement because of fear of harassment or removal;
- Many trafficking cases are unearthed by local police and law enforcement, who often do not recognize these cases as trafficking and need to receive more training and information in order to properly assist victims; and
- Federal law enforcement does not have the resources to provide certification for all trafficked persons who are willing to come forward and cooperate with law enforcement—without state and local law enforcement being aware of the need for these certifications and being mandated to

² U.S. Department of State, *Trafficking in Persons Report* (2004) at 23. The State Department did not offer updated numbers of persons trafficked into the U.S. in its 2005 or 2006 reports.

³ Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386 Division A, 114 Stat. 1464 (2000) (codified as amended in scattered sections of the U.S.C.) [*hereinafter* TVPA]. The TVPA was amended and reauthorized in December 2003 by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003) (codified as amended in scattered sections of the U.S.C.) [*hereinafter* TVPA Reauthorization].

provide them when appropriate, it is extremely difficult for trafficked persons to obtain the immigration status and benefits to which they have a right under the law.⁴

It is critical that New York State pass comprehensive legislation that includes a broad definition that corresponds with the definitions in the federal TVPA. The TVPA Reauthorization of 2003 specifically allows for state and local law enforcement to provide certification to the U.S. Department of Health and Human Services and the U.S. Bureau of Citizenship and Immigration Services that a trafficked person has cooperated with them regarding a trafficking crime that is defined consistently with the federal definitions. Without corresponding definitions, trafficked persons who cooperate with state and local law enforcement will be unable to pursue their rights to immigration status and benefits as provided for under the TVPA and its Reauthorization.

Providing Services and Facilitating Coordination of Immigration Status and Benefits

We believe that enacting a Penal Code Section relating to trafficking, **without also enacting funding** for services; funding for training; public assistance for trafficked persons; and coordination between state and federal governments to assure necessary immigration benefits, **is essentially useless.**

- New State Anti-Trafficking Legislation must include provisions for appropriations for services and those services should not be tied to cooperation with law enforcement or hinge on immigration status:

Currently, in order to obtain continued presence and the T visa, we have several clients who are willing to cooperate with law enforcement in the investigation and prosecution of their traffickers. Yet, although we have alerted federal law enforcement to our clients presence law enforcement has been unable to meet with our clients, follow-up on the investigation or begin a prosecution due to lack of resources - to no fault of our clients. Unfortunately, due to the requirement that victims of trafficking cooperate with law enforcement and that law enforcement facilitate Continued Presence and T visa certification, our clients are sitting around without immigration status and thus are suffering indefinitely from lack of benefits and services at the state and federal level. It is imperative that New York State Anti-Trafficking legislation provide mechanisms to allow victims of trafficking obtain necessary state benefits immediately upon identifying them as victims.

- New York Anti-Trafficking Legislation must include provisions for appropriations for trainings of law enforcement, first responders, health services and other service providers:

Through a caseworker at another agency, we at the SWP were alerted to a victim of trafficking who was a minor, “**Alisa**”⁵, who was arrested for prostitution and immediately sent with the NYC Administration for Children’s Services (ACS) to foster homes because service providers in the court room recognized her as a minor and a possible victim of trafficking.

⁴ See TVPA Reauthorization § 4(a)(3) (“In making the certification...with respect to the assistance to investigation or prosecution...the Secretary of Health and Human Services shall consider statements from State and local law enforcement officials that the person...has been willing to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes...”); TVPA Reauthorization § 4(b)(2)(B) (“In making a determination...statements from State and local law enforcement officials that the alien has complied with any reasonable request for assistance in the investigation or prosecution of crimes...where severe forms of trafficking in persons (as defined in section 103 of the Trafficking Victims Protection Act of 2000) appear to have been involved, shall be considered.”)

⁵ All names used in this testimony are aliases.

Although ACS's immediate action in taking Alisa out of her situation was correct, ACS was not properly trained in providing Alisa with appropriate services or legal representation regarding her trafficking situation. In fact, ACS initially blocked any contact between Alisa and local service providers expertly trained in advocating and servicing minor victims of trafficking, and to an attorney, due to their lack of familiarity with established best practices; local trafficking organizations; and the unique needs, immigration and law enforcement ramifications surrounding trafficked persons. In addition, ACS allowed and encouraged Alisa to meet with local prosecutors in the prosecutor's office regarding her traumatic situation, which according to the TVPA is not required for minor victims. Before we as trafficking experts could meet with Alisa, she had already testified before a grand jury in the prosecution of an accomplice of her trafficker without legal representation and information as to her rights.

However, after a significant amount of intervention and advocacy by the SWP and the other agency, both ACS and the prosecutor's office were extremely receptive to our presence and cognizant of Alisa's needs stemming from the fact that she had been trafficked. However, if both ACS and the local prosecutor's office were trained effectively prior to this scenario, we could have avoided unnecessary discomfort to our client and provided much needed legal, medical, and counseling services to allow her to be better prepared.

- New York Anti-Trafficking Legislation must provide for the coordination between federal and state governments to ensure necessary immigration benefits:

"Carmen"⁶ and **"Victoria"** were 17 and 19 year-old girls from Mexico who came to the U.S. with a trafficker named Daniel. After a few months, Carmen and Victoria did escape from Daniel, with the assistance of a man who worked in the brothel and recognized that they were working against their will and needed help. As happens many times, Carmen and Victoria contacted the local police, who arrested Daniel with their assistance. A local prosecutor was interested in prosecuting the case. In fact, a federal prosecutor was interested also, but the local prosecutor was already invested in the case and decided to keep it.

The SWP immediately tried to get three things for our clients:

1. A grant of Continued Presence, which is a temporary lawful immigration status conferred upon trafficked persons when requested by a federal agent;
2. A Law Enforcement Certification (Form I-914B), which certifies in an application for a T visa that a victim has been willing to cooperate with reasonable requests from law enforcement; and
3. A Certification Letter from the U.S. Department of Health and Human Services, certifying that Carmen and Victoria were trafficked persons who should receive federal benefits and assistance that would help them re-build their lives.

We found that, despite the fact that no less than 10 different people within the federal government were aware of our clients' case and situation, and that all of these people believed that our clients had been trafficked and were cooperative, thus making them eligible for benefits, not one of these people in

⁶ The names "Carmen" and "Victoria" are aliases.

the federal government could provide us with the necessary documentation because there was no specific federal agent assigned to the case who could formally identify Carmen and Victoria as trafficked and request Continued Presence or a Certification Letter, or fill out an I-914B. This also left us without any options to pursue benefits at the state level.

The U.S. Department of Justice got involved and after many months of advocacy, we were able to secure the necessary assistance by finding a federal agent who was willing to sign for the case, even though it was not officially her case, or a case in which the federal government was officially involved.

However, in the intervening months, our clients had no way to work legally, and we cobbled together housing, services including medical and counseling, as well as cash for them by contacting Good Samaritans and agencies willing to assist without reimbursement, and by raising money ourselves and operating a clothing drive to obtain coats and gloves for Carmen and Victoria during the winter months.

Therefore, even though Carmen and Victoria were trafficked persons who had enthusiastically cooperated with law enforcement, their ability to receive even minimal assistance was hampered by the fact that, through no decisions of their own, this was treated as a state case rather than a federal one.

If we had New York State anti-trafficking legislation at the time,

1. As service providers we could have applied for public assistance and benefits for Carmen and Victoria, to help them create some stability in their lives.
2. We also could have pushed local law enforcement to make requests for Continued Presence or a Certification Letter, and to fill out an I-914B, because the state law would recognize trafficking as a crime and would provide for state benefits.
3. Furthermore, state and federal law would be fully coordinated in a way that they were not at the time that we worked on this case.

It is critical, for these reasons, that New York State pass comprehensive legislation that provides for access to state benefits and facilitates coordination of immigration status and benefits for trafficked persons who cooperate with state and local law enforcement.

Targeted and Effective in Preventing the Problem of Trafficking in Persons

It is critical that all efforts at the state level be effective and mindful of safe and appropriate law enforcement interventions. Early versions of anti-trafficking legislation introduced in the past legislative session included a section titled: *Patronizing a trafficking victim*, creating harsher penalties for anyone who patronizes a person who is subjected to sexual servitude. This section created strict liability for anyone who patronizes a sex worker but who does not know that this person has been trafficked into sex work.

In the coming State legislative session this section on patronizing a trafficking victim should again not stand as demand for sexual labor or services does not drive trafficking in persons. Instead, poverty and economic desperation drive people to migrate in order to support their families. Therefore, law enforcement efforts that do not address the traffickers themselves are inappropriate and ineffective:

- Such strict liability standards that target demand for sex work have not proven to be effective in preventing trafficking in persons, since trafficking occurs in **all** low-wage industries that use cheap

immigrant labor, not just in sex work. Instead, increased awareness and education of the public and of law enforcement do effectively address human trafficking;

- Many customers in these trafficking situations do not know that the worker has been trafficked, and will be dissuaded from reporting on any victims of trafficking or assisting any they encounter as they do now, if they fear additional criminal consequences; and
- Perpetuating the idea that it is instantly easy to see whether a person is trafficked or not falsely promotes the notion that trafficking has to do with people literally in chains, rather than the subtle forms of coercion and abuse of process mentioned above.
- Patronizing a prostitute is already criminalized in the penal code and does not belong in any New York State human trafficking bill as it is not effective in preventing trafficking in persons.

It is critical, for these reasons, that New York State pass legislation that is effective in preventing trafficking in persons, such as increasing community awareness and training law enforcement, rather than increasing criminal penalties for persons who are not likely to know that they are accessing the services of a trafficked person.

Thank you for offering advocates such as the Sex Workers Project an opportunity to share our experiences and concerns with you as you encourage the New York State Legislature to pass these important pieces of legislation. We look forward to working with the New York City Council and New York State Legislature on comprehensive, targeted, and effective New York State legislation against trafficking in persons.