SECTION 4

Addressing Labor Trafficking in Colorado

Introduction

Between 2015 and 2017, state prosecutors filed 129 cases using the new human trafficking statutes. Of those cases, only one constituted labor trafficking. Recognizing the state's lagging efforts to address labor trafficking, the Council dedicated two meetings in 2017 to learning about how it might close this gap. Council members sought information about who is most vulnerable to labor trafficking in Colorado and the current obstacles to successfully detecting and prosecuting the crime.

Who Is Vulnerable to Labor Trafficking in Colorado?

Several populations are at heightened risk for labor trafficking statewide:

- Youth—both U.S. citizens and foreign nationals
- Persons with intellectual and developmental disabilities
- Migrant workers, with or without lawful immigration status

For example, law enforcement officials intercepted Central American minors it suspected were brought to the state to engage in forced drug sales. In 2016, Colorado prosecutors filed labor trafficking charges against a man they allege sexually assaulted and compelled a woman with intellectual disabilities to do household labor by locking her in his home. He ultimately pleaded guilty to other charges.

Additionally, each year thousands of workers arrive in Colorado on temporary visas to work on farms, in private homes, restaurants, hotels, and other service settings. In most cases, both the foreign national workers and their employer abide by immigration and workplace laws, but workers suffer extreme abuse in some instances. A perfect storm of factors predisposes temporary visa holders to abuse. Often a visas holder's immigration status is tied to the employer and/or a family member. Similarly, these workers are often isolated, either by language, geography, a lack of contact with the public, or a combination of those factors.

Obstacles to Holding Labor Traffickers Accountable

The Council heard from various experts in 2017—survivors, law enforcement officials, a prosecutor, a service provider, and two attorneys who defend immigrants' workplace rights— about potential strategies to more effectively tackle labor trafficking and about perceived obstacles. A key theme from these talks was that some lessons needed to be learned from the strides made to address sex trafficking. First, victims of labor trafficking should not be viewed as complicit in their victimization. Like sex trafficking victims, they should be seen as worthy of assistance and justice. Second, there needs to be a shift from reactive identification and intervention approaches to proactive ones. For example, in many communities across Colorado, law enforcement and human service professionals meet monthly to identify youth who are vulnerable to sex trafficking even before they fall prey to the crime. Law enforcement also conducts coordinated proactive sex trafficking stings. During these operations, law enforcement agencies share intelligence and resources to recover victims and arrest those suspected of sex trafficking. An equivalent proactive approach to detect and intervene in situations of labor trafficking is needed.

The Council's Labor Trafficking Task Force and the "Al Capone" Approach

In May 2017, Deputy District Attorney Dan Roisman from Alameda County, CA, described his office's promising model for addressing labor trafficking. His office uses an "Al Capone" approach—named after the infamous mob boss who was brought down using tax evasion charges. His office responds to reports of troublesome employers by investigating workplace crimes, such as workers' compensation insurance fraud, payroll tax fraud, wage theft, and workplace health violations. By widening their investigative net, they can secure vital information that may lead to labor trafficking charges. But as Mr. Roisman explained, he

cannot initiate these proactive investigations without the buy-in and mutual trust of federal and local law enforcement personnel, workplace inspectors, and other community partners. His office convenes the multisector Human Exploitation and Trafficking (H.E.A.T) Watch – Labor team to coordinate resources and build relationships among a wide range of stakeholders—from the U.S. Homeland Security Investigations and federal and state departments of labor to legal aid organizations, regional consulate offices, and leaders from immigrant communities.

Drawing inspiration from Alameda County's strategy, the Council voted to form a Labor Trafficking Task Force (LTTF) in 2018. The Council enlisted members for the task force who have expertise on labor trafficking and workplace violations, including the Director of Colorado Legal Services' Farmworker Division; an attorney from the Equal Employment Opportunity Commission (EEOC); an insurance fraud prosecutor with the Colorado Department of Law; and a Senior Criminal Investigator with Pinnacol Assurance, the largest provider of workers' compensation insurance in Colorado (see p. ix for a full list of LTTF members). The Council instructed the LTTF to begin by comparing the laws that prosecutors in Alameda County use to proactively address labor trafficking with those in Colorado. The goal of this legal comparison was to identify areas where the Council could potentially recommend statutory reform to better support survivors and strengthen the tools available to prosecute labor traffickers and otherwise hold them accountable.

Three-Pronged Approach to Labor Trafficking

To inform their efforts, LTTF members reviewed several reports and academic research on labor trafficking, as well as reports that highlight promising practices in enforcing workplace laws in industries prone to labor abuse and human trafficking.[19]

Members also discussed the challenges that potential labor trafficking victims face—from not being viewed as victims of a serious crime to not having the basic resources and protections to rebuild their lives or cooperate in criminal or civil actions against their trafficker(s). Members also recognized a general lack of awareness in Colorado about labor trafficking and the misconceptions that hamper identification efforts and create an empathy gap.

To address these various challenges, LTTF members agreed that their strategy must be multifaceted and employ a three-pronged approach of protections, legal tools, and training and awareness. The Council's 11 recommendations address each of these three areas, the sum of which offer practical guidance on how to: 1) support populations most vulnerable to labor trafficking in Colorado, 2) hold labor traffickers accountable for their crimes, and 3) raise awareness about this form of human trafficking.

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[19] Colleen Owens, Meredith Dank, Amy Farrell, Justin Breaux, Isela Bañuelos, Rebecca Pfeffer, Ryan Heitsmith, Katie Bright, and Jack McDevitt, *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*. (Washington, DC: Urban Institute. 2014). Accessed October 11, 2018. https://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states.
Sheldon Zhang, *Trafficking of Migrant Laborers in San Diego County: Looking for a Hidden Population*. (San Diego, CA: San Diego State University November 2012). Accessed October 16, 2018.
https://www.ncjrs.gov/pdffiles1/nij/grants/240223.pdf.
Andrew Elmore and Muzaffar Chishti, *Strategic Leverage: Use of State and Local Laws to Enforce Labor Standards in Immigrant-Dense Occupations*. (Washington, DC: Migration Policy Institute, 2018). Accessed October 16, 2018.
https://www.migrationpolicy.org/research/strategic-leverage-use-state-and-local-laws-enforce-labor-standards-immigrant.
Towards Justice, University of Denver, and the Southwest Carpenters' Union, *Combatting Wage Theft in Denver: How the City of Denver Can Protect the Safety and Dignity of Workers*. (Denver, Colorado: Towards Justice, 2018). Accessed on October 16, 2018.
https://d3n8a8pro7vhmx.cloudfront.net/towardsjustice/pages/345/attachments/original/1521739712/2018.03.21_Combating_Wage_Theft_White_Paper_FINAL..pdf?1521739712.

	Protections	Certain protections are needed to ensure that victims are safe and secure. A by-product of these protections is a survivor's willingness to participate in a labor trafficking investigation.
	Legal Tools	There are a variety of laws that prosecutors can bring to bear in a labor trafficking case. The Council recommends modifications to Colorado law to aid in prosecution efforts.
	Training and Awareness	Colorado communities must first understand and recognize labor trafficking to address it. Increased training and awareness of labor trafficking are needed in this effort.

Protections

An effective response to labor trafficking requires safeguards that prevent it from happening in the first place. Adequate social and legal supports are also needed to help survivors regain a sense of self-sufficiency and well-being. Natural by-products of improved survivor protections are that survivors are more likely to come forward and report their crime, and are better able to assist prosecutors and workplace investigators in possible actions against their trafficker.

> *Recommendation 1: Colorado should amend its public code to provide a bridge of public benefits, e.g., Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) for pre-certified foreign national victims of human trafficking.*

Legal service providers often pursue immigration relief, such as the T and U visas, for foreign national individuals victimized by human trafficking. Without immigration relief, many victims risk re-victimization in the United States and/or deportation back to countries where their traffickers often have influence and connections. A decision on T and U visas typically takes several months, leaving foreign nationals in the United States ineligible for public benefits during this waiting period—when they are most in need of support. Not only that, but foreign national victims often lack the local social networks most of us count on in times of tragedy.

To remedy this problem, the Council recommends instituting a short-term, state-supported bridge of public benefits for pre-certified foreign national victims of human trafficking.[20] Similar programs already exist in California, New York, and Illinois. The fiscal impact of such a program is minimal, yet the difference it makes in the lives of trafficking survivors is

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[20] Pre-certified refers to those foreign nationals who have disclosed their human trafficking and are awaiting approval of a T, U, or Specialized Immigrant Juvenile Status visa application.

substantial. Without the support of such benefits, it is difficult for survivors to meet their basic needs or to feel a sense of well-being and control over their daily lives; they are also less likely to prioritize their role as a victim witness. The creation of a bridge of public benefits will help stabilize survivors so they can recover from their victimization and assist prosecutors and workplace investigators in possible actions against the trafficker. It also sends a powerful message that Colorado prioritizes and supports survivors of human trafficking.

> *Recommendation 2: The Colorado Department of Labor and Employment should provide information to all incoming temporary, "non-immigrant" visa holders about their rights under state law, and contact information for CDLE's Worker Call Center, the National Human Trafficking Hotline, and the Colorado Network to End Human Trafficking Hotline. This information should be provided in the primary language of the worker.*

According to a 2014 Urban Institute labor trafficking study, 94% of victims knew they were being mistreated but did not self-identify as labor trafficking victims, nor did they know the protections they had under U.S. and state law.[21] Victim service provider members confirmed similar cases of abuse in the populations they serve in Colorado, noting that many they serve were unaware of the places they could go to seek help. Because the CDLE works with employers who sponsor temporary nonimmigrant visa holders, the department is well poised to disseminate information to this worker population.[22] Additionally, by taking this preventative step, CDLE would complement the "Know Your Rights" pamphlet that temporary work visa applicants receive from the U.S. Department of State about their workplace rights under federal law with information about relevant Colorado law and the resources available to them to locally.[23]

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[21] Colleen Owens, et al., *Understanding the Organization*, 111.

[22] A full list of temporary nonimmigrant worker classifications can be found on the U.S. Citizenship and Immigrant Services website at https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers.

[23] The U.S. State Department-issued Know Your Rights pamphlet was authorized by the Trafficking Victims Protection Reauthorization Act of 2008 and is available from the department's website. Accessed on October 16, 2018. https://travel.state.gov/content/dam/visas/LegalRightsandProtections/Wilberforce/Wilberforce-ENG-100116.pdf.

> *Recommendation 3:* **In order to encourage foreign national victims of workplace crimes to come forward, the CDLE should adopt a protocol that allows the agency to provide law enforcement attestation/certification in support of a T and U visa similar to the practice in Illinois, California, and New York state departments of labor.**

As the agency primarily responsible for the investigation and enforcement of employment laws in Colorado, CDLE is uniquely positioned to utilize the T and U visas to further the enforcement of workplace laws while ensuring that investigations are not hampered by a fear of victim deportation.

Concerns about immigration status represent a major problem in efforts to identify human trafficking victims. Foreign national workers here on a temporary work visa, for example, face dual hazards should they find themselves in a labor trafficking situation because their employer is also their immigration sponsor. Undocumented workers similarly fear that coming forward to report crimes might result in their apprehension and deportation by federal immigration officers. This reality keeps victims in dangerous and abusive situations much longer than they might be otherwise. [24]

Coupled with that reality is that relatively few low-wage immigrant workers come forward to CDLE to report workplace issues. A 2009 report surveying 4,387 low-wage workers concluded that foreign-born Latinos experience minimum wage violations at twice the rate of U.S.-born Latinos and nearly six times that of U.S.-born whites, but University of Denver researchers found that only 16.9% of 2016 CDLE claims were Spanish-language claims.[25,26] As these and other studies have shown, if state-level enforcement agencies do not take proactive steps to encourage immigrant workers to safely report workplace abuses, they will not be effective in detecting and responding to crimes like labor trafficking.

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[24] Colleen Owens, et al., *Understanding the Organization*, 26.

[25] Annette Bernhardt, Ruth Milkman, Nik Theodore, Douglas Heckathorn, Mirabai Auer, James DeFilippis, Ana Luz González, Victor Narro, Jason Perselshteyn, Diana Polson, and Michael Spiller, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities.* (New York: National Employment Law Project, 2009), 43. Accessed on October 16, 2018. https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf and Towards Justice, et al., *Combatting Wage Theft in Denver*, 12.

[26] While not all Spanish-speaking CDLE claimants are necessarily low-wage immigrant workers, they nonetheless serve as a useful proxy for Colorado's foreign-born Latino workforce. Additionally, the reporting practices of Spanish-speaking workers is instructive, since Latinos represent the largest minority group in Colorado, according to the 2016 U.S. Census data.

To address these obstacles and to signal that fears about immigration status should not be a reason for immigrant workers to stay silent about serious workplace abuses commonly associated with human trafficking, CDLE should designate an officer to certify and provide attestation for T and U visas. It should likewise develop an official T/U Visa protocol, as Illinois, New York, and California have done.

> _Recommendation 4_: *Federal law requires that everyone benefiting from federal funding is required to comply with Title VI, 42 U.S.C. § 2000d et seq. (U.S. Civil Rights Act) regarding the use of professional interpreters. Due to the dangers of using unofficial interpreters who could be a trafficker, an agent of the trafficker, or who could otherwise cause harm or hinder the disclosure of human trafficking, Colorado first responders and 911/dispatchers should use professional interpreters who strictly follow the Colorado Association of Professional Interpreters' (CAPI) Code of Ethics when bilingual staff are not available. Interpreters should have the ability to ask the individual being interpreted for if they are under duress and about their safety and well-being.*

First responders sometimes use unofficial interpreters (e.g., family members, friends, co-workers, or worksite supervisors) in circumstances in which a professional interpreter is not only more appropriate but essential. In labor trafficking situations, an unofficial interpreter could be the trafficker or an agent of the trafficker. This recommendation helps ensure that communication between a potential trafficking victim and a first responder or dispatcher takes place through an impartial third party. This recommendation also recognizes that interpreters can potentially aid in victim identification, and empowers interpreters to take an active role in victim identification in appropriate circumstances. It should be noted that this recommendation only applies in those situations in which bilingual staff members are unavailable or do not speak the language required.

> _Recommendation 5_: *Healthcare providers should only contract with individuals who work in a professional capacity as an interpreter and who strictly follow the CAPI Code of Ethics to more readily identify and respond to disclosures of human trafficking. Interpreters should have the ability to ask the individual being interpreted for if they are under duress and about their safety and well-being.*

A 2016 health policy study of human trafficking survivors found that the majority of those surveyed were seen by a healthcare provider while they were being trafficked.[27] For this reason, it is vital that health care providers use reliable third-party interpreters when engaging with a potential victim. Like Recommendation 4, this recommendation empowers interpreters to take an active role in victim identification in appropriate circumstances. And as with Recommendation 4, the current recommendation only applies when bilingual healthcare staff are unavailable or do not speak the language required.

Legal Tools

Through its comparison of the laws that Alameda County, CA, uses to tackle labor trafficking and applicable Colorado laws, the Council identified two areas where Colorado can strengthen its laws to better address the criminal conduct of labor traffickers.

> *Recommendation 6: Colorado law should include language that it is a crime for an employer to intentionally induce, or attempt to induce, through threats, bribery, or intimidation, an injured worker to withdraw or not pursue a claim for insurance benefits.*
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> *Additionally, Colorado should amend Colorado's Insurance Fraud statute, C.R.S. § 18-5-211 to have stricter penalties for insurance application fraud.*

As Alameda County District Attorney prosecutors noted in presentations to the Council, individuals who commit human trafficking offenses often violate other workplace laws (see pp. 28–30 of the *2017 Annual Report* for a discussion of the workplace violations that often accompany labor trafficking). As the prosecutors explained, investigations of insurance fraud have led to the discovery of labor trafficking conduct and aided in their efforts to collect valuable evidence, including forensic evidence of workers' compensation violations, wage theft, and debt bondage.

In Colorado, Council and LTTF members similarly found that human traffickers break a number of workplace laws to conceal their conduct and to exercise control over their victims. One service provider on the LTTF recalled a trafficker who discouraged victims from seeking medical care for worksite injuries. In another case, a trafficker exploited the workers'

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[27] Makini Chisolm-Straker, Susie Baldwin, Bertille Gaïgbé-Togbé and Nneka Ndukwe, "Health Care and Human Trafficking: We are Seeing the Unseen." *Journal of Health Care for the Poor and Underserved* 27, no. 3 (Baltimore: John Hopkins University Press, 2016), 1220–1233. Accessed on October 16, 2018. http://muse.jhu.edu/article/628131.

compensation claims process to learn about the victim's whereabouts after he fled the trafficking situation. This recommendation seeks to make employers criminally liable for preventing their workers from accessing their rights under the law. It also prevents traffickers from abusing the workers' compensation process in Colorado to control or coerce trafficking victims.

Additionally, enforcement of stricter penalties for insurance application fraud affords prosecutors new tools to investigate potential traffickers and to hold them accountable for conduct associated with a labor trafficking scheme. In this way, it also levels the playing field for law-abiding employers by enacting stricter penalties for those who seek to undercut competitors by flouting Colorado insurance and payroll laws.

> _Recommendation 7_: _Amend Colorado's Theft statute, C.R.S. § 18-4-401, to explicitly include "labor" as a thing of value that can be subject to theft._

Under Colorado statute, a person commits theft when he or she "knowingly obtains, retains, or exercise[s] control over anything of value." This language leaves doubt as to whether labor qualifies as a thing of value that can be controlled by another under the statute. The recommendation for statutory reform put forth by the Council clarifies that labor indeed constitutes a thing of value that may be stolen from another. Labor is explicitly enumerated under California penal code, which allows state prosecutors to use the theft statute to make labor traffickers liable for a range of criminal conduct associated with the trafficking scheme, not unlike how Colorado prosecutors hold sex traffickers accountable using a variety of statutes ancillary to sexual servitude.

Training and Awareness

> _Recommendation 8_: _The Colorado Human Trafficking Council's public awareness campaign collateral should include an immigrant/foreign worker scenario to build empathy for this vulnerable yet misunderstood population._

While not all labor trafficking victims are foreign nationals, immigrants constitute a population particularly vulnerable to labor abuse and labor trafficking.[28] The societal stigma surrounding a person's immigration status is a significant barrier to overcome in exiting a labor trafficking

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[28] Sheldon Zhang, _Trafficking of Migrant Laborers in San Diego County,_ 90.

situation. To effectively impact labor trafficking, Colorado communities need to view this victim population with compassion and understanding. To help overcome misconceptions, such as "all immigrants are law breakers" or "foreign national trafficking victims are always undocumented," the Council's public awareness campaign should feature campaign collateral that better reflects the realities of foreign workers in the United States and engenders empathy for a victim population that, more often than not, follows immigration and workplace laws only to be preyed upon by traffickers who seek to exploit their vulnerable status.

> *Recommendation 9: The Council's public awareness campaign collateral should highlight the toll that human trafficking takes on victims and the negative impact that labor trafficking has on the community in terms of lost local and state revenue and the burden on enforcement and social service resources.*

When traffickers compel a person's labor, they simultaneously take advantage of the individual *and* steal from the community. Employers who commit labor trafficking undercut others in the marketplace by providing cheaper services than legitimate businesses can afford. Traffickers also tax local social service and law enforcement resources through the harm they inflict on victims. Despite this reality, many members of the public do not recognize how labor trafficking affects them personally or how our collective failure to hold labor traffickers accountable deprives the Colorado community of state and local revenue. With the current recommendation, the Council seeks to educate the public that labor trafficking is a matter of public safety and is costly to the community.

> *Recommendation 10: In order to promote greater awareness of human trafficking among marginalized populations, the Council should partner with community experts and culturally responsive professionals to translate and adapt the Council's introductory human trafficking curriculum as is culturally and linguistically appropriate (including the train-the-trainer program) into languages other than English.*

Community-based organizations are the eyes and ears of their communities and because of their position and authority, these organizations are well-positioned to educate their constituents on human trafficking issues in a way that is culturally and linguistically appropriate. By translating the Council's introductory human trafficking curriculum into other languages, the Council seeks to expand the reach of its training materials to residents of multiple cultural and language backgrounds.

> _Recommendation 11_: _Colorado governmental agencies (law enforcement, district attorney's offices, and the state departments of Law, Labor and Employment, Human Services, Regulatory Affairs and Public Health & the Environment) should partner with community-based organizations to educate their staff and the broader community about labor trafficking and the potential remedies available to address the crime._

Conscientious planning and effective communication between stakeholders are essential for a proactive response to labor trafficking that both supports victims and punishes traffickers. Community-based organizations have better inroads into communities that are more susceptible to labor exploitation (e.g., immigrant/refugee communities, day laborer organizations, homeless populations, etc.). Systems-based agencies should partner with these groups to encourage more labor trafficking survivors to come forward to report their abuse. One of the main reasons jurisdictions like Alameda County, CA, are able to effectively pursue labor trafficking investigations is the trust and reciprocity they have built with community-based organizations. In Colorado, the Denver District Attorney's Office has taken a similar approach.

Denver Takes Aim at Labor Trafficking

The Denver District Attorney's (DDA) Office has taken significant strides to address labor trafficking in the Denver community.

In late 2017, DDA Beth McCann established the Human Trafficking Unit (HTU). From the onset, the HTU staff wanted to ensure that their work took a victim-centered and trauma-responsive approach. To achieve this goal, they regularly meet with trusted community-based organizations with strong ties to the communities they serve. By going out into the community, the HTU staff learn firsthand about the challenges and vulnerabilities different populations face throughout Denver county. In turn, the unit can better respond to community needs, is more aware of available NGO resources, and has established relationships for when and if a labor trafficking case emerges.

Aside from community outreach, the HTU embraces an economic crimes prosecution model to pursue labor trafficking cases. By tracking financial records, the office is able to uncover a wide variety of illegal practices in a labor trafficking case. When appropriate, the office collaborates with colleagues from the DDA Economic Crimes Unit to identify and build cases involving financial offenses.

Using a multi-faceted approach that takes into account the needs and priorities of victims, encourages community partnerships, and relies on financial forensics, DDA's Human Trafficking Unit strives to identify and pursue more labor trafficking cases going forward.

Source: Interview with Denver Anti-Trafficking Alliance Program Director Elise Reifschneider on October 9, 2018.

Conclusion

The Council's labor trafficking framework encompasses protections for labor trafficking survivors, effective legal tools to prosecute traffickers, and a keen awareness of labor trafficking and its costs. If instituted, the 11 recommendations put forth by the Council will help Colorado better respond to labor trafficking issues and solidify gaps in Colorado's current anti-trafficking framework. However, one year of work on labor trafficking issues is insufficient to properly address this problem. If the Council continues the LTTF in 2019, its members have expressed interest in exploring additional measures, including expanding the requirements for foreign labor recruiters operating in Colorado. The Council's current recommendations represent a set of initial steps toward holding labor traffickers accountable and lifting up those affected by this form of human trafficking.