



County of Fresno
Office of the District Attorney
Lisa A. Smittcamp, District Attorney

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Chairman Pedro Nava
Little Hoover Commission
925 L Street, Ste. 805
Sacramento, California 95814

Dear Mr. Chairman and members of the Commission,

Thank you for the opportunity to provide written and oral testimony on an issue of major significance in the fight against human trafficking in California. It is an honor to share with you my experiences and challenges in prosecuting a farm labor trafficking case.

Background and History of Case

In 2016, I was the sole prosecutor assigned to the Rural Crimes Unit within the Fresno District Attorney's Office. My caseload consisted largely of property crimes that occurred in the agricultural community and impacted mostly farmers. In April of that year, the Alvarez case was submitted to our office for review. The case was identified by the Fresno Police Department as a human trafficking case and presented to the sexual assault unit as that unit typically handled all human trafficking cases. However, the case did not have a nexus to the unit and was routed to me because it involved farm workers.

At the time, I knew almost nothing about human trafficking. I was curious, however, as to why the complaint listed only 1 count of human trafficking when there were five 5 victims. When I inquired, I was told that the victims had "unclean hands" and got their documents back. I would soon learn that what was initially identified as an evidentiary challenge, were factor that helped support the trafficking charge.

Case Facts

In February of 2016, Carmen and Elena were living in Tijuana and looking for work. Carmen, who had a disabled spouse, a toddler and a newborn, was the only capable wage earner in her home. She was desperate for solid employment. Carmen was hoping to earn a better wage to help fund her daughter's education. Pilar, a woman from the same neighborhood in Tijuana, learned that Carmen and Elena needed work and encouraged them to come to Fresno where she could find them work that paid well and would last for an entire "season." Pilar would even allow them to stay with her and her family for the duration. This was an opportunity they could not pass up, so they utilized their travel visas and boarded a bus to Fresno. When they arrived, they stayed with Pilar and her family of five (5) in a two-bedroom apartment.

Shortly after, Ema and her son Christian arrived. They knew Pilar from their neighborhood as well and were made the same offer, a place to live and good, solid work.

Luigi also arrived at Pilar's. He too was from Tijuana and was looking for work to earn enough money to finish his college education. He heard about Pilar finding people work and contacted her. She offered him too work and a place to stay. Pilar told all of them that the work she referenced would not start until March but that she knew another man who could get them "piece work" until then.¹ The piece work only yielded about \$30/day. After paying for transportation costs and food, they had very little money left and were eager to start the new job in March.

Approximately two weeks after, Pilar told the group that they had to move out. She stated the apartment was too crowded and she could no longer accommodate them. They were now in Fresno, knew no one, had no money, no work and no place to stay. Pilar suggested that they talk to Efrén Alvarez, the man they were supposed to start work with in March. Alvarez arrived at Pilar's apartment and offered to help by finding them a place to live. When they told him they had no money, he offered to loan them the money for the deposit and first month's rent but told them he wanted some collateral. When they told him they had none, he suggested that they give him their documents as collateral. Having no alternative, they accepted and gave their documents to Pilar as directed by Alvarez.² Alvarez took them to their new, unfurnished apartment and informed them that when work started, he would also provide transportation. They continued to do "piece work" until they started working for Alvarez in March.

When work started in March, Alvarez told them they would earn \$10.00 per hour as indicated by Pilar. They worked hard – six (6) days a week, nine (9) hours per day. At the end of the week, Alvarez paid them in cash, however, their pay was less than they expected. When asked, Alvarez responded that he deducted their pay for transportation costs (\$10.00 per day), fees (he would later

¹ "Piece work" is any type of employment in which a worker is paid a fixed piece rate for each unit produced or action performed, regardless of time.

say the fees were kickbacks to persons whose social security numbers he was using); taxes, and check cashing fees, although the victims had never seen a pay check. Right around the same time, they began to experience what they called mistreatment by Alvarez. They reported that he often walked up and down the rows they were working thrashing a branch and making intimidating and sometimes threatening statements. He would insist that they worked faster, or he would deduct their pay; that they always use both hands, or he would cut one off. He would have them move ladders around to make it appear as though someone was working when the ladder was not being used. The victims testified that they were often ridiculed by the other workers, workers who received actual paychecks, were not in the U.S. on Visas and who did not owe Alvarez a debt.

After a short period of time, Alvarez told the victims they would have to relocate from the apartment to a house. When they asked why, he said that he had other workers coming from Mexico and he needed the apartment for them. When they expressed their reluctance to move because of the cost, he told them they had no choice and shouldn't worry because he would front them the cost. This increased their debt to him. IN addition to the debt, the victims felt they had little control over their lives. Alvarez controlled when they worked, how long they worked, how they got there, where they lived and even what they did in the hours they were not working. The victim's believed defendant had them under surveillance. He would randomly find them when they were out in public, order them into his vehicle and return them home. On one occasion, he came to the house late at night, intoxicated and entered the home, demanding payment. He told them that he could do whatever he wanted because he found them the house in the first place. Another time they awoke to him outside, throwing rocks at the door and calling them names. Alvarez told them that if they worked for him, they must take the transportation he provided and live in the house he provided and conversely, if they lived in the house he provided, they had to work for him.

At one point, Carmen learned that her spouse had been injured and she wanted to return to Tijuana to see him. She asked Alvarez for her documents back and he refused, stating that he did not trust her to return and pay him what she owed. Eventually, he relented and gave them to her. He told her she must return in two days or he would report her to immigration as he had retained photocopies of her documents. Carmen visited her husband and returned as ordered. She kept possession of her documents.

Alvarez told them that after they paid their loans back, they were free to work wherever they wanted but he did not mean it. Luigi, who put every cent he earned towards paying off the loan was the first to quit. The next morning when Alvarez arrived to transport them to work and Luigi was not there, he was infuriated. He stormed into the home looking for him, demanding to know where Luigi was. When he was told Luigi found work elsewhere, he threatened all the workers in the van. Alvarez told them that they had better get Luigi to return or they would have to do his share of the work. He told that that if any of them thought they were going to stop working for him, he would

² Elena's son-in-law, Alfonso, was also going to take part in the loan, however, he was a U.S. citizen. He offered Alvarez a photocopy of his driver's license as collateral which Alvarez rejected. Alfonso took part in the loan but provided no collateral.

report them to immigration because he had copies of all their documents. This was not a new threat, however, Alvarez anger was heightened, so much so that Luigi and Carmen decided to seek help. The others remained in the house to afraid to cross Alvarez. Carmen and Luigi contacted a former co-worker who then contacted the United Farm Workers. Ultimately, the police were called. Fresno Police Department's Vice Unit, armed assistance from the Federal Bureau of Investigation and advocates from the Central Valley Against Human Trafficking (CVAHT),³ immediately effected an "extraction" and rescued all five (5) victims.

Investigation and Prosecution

At the time the Fresno Police Department's ("FPD") Vice Unit extracted the victims, they were participating a newly established Task Force lead by the Fresno County District Attorney's Office. Members of the task force included local members of the Federal Bureau of Investigation, Fresno County Sheriff's Department, NGO Partners and the U.S. Department of Labor. The task force would meet informally and discuss pending investigations involving trafficking.

FPD was designated the lead investigating agency in this case. Unbeknownst to FPD, the U.S. Department of Labor began a parallel investigation for wage and transportation violations. Longoria first learned of this when he contacted CalVans,⁴ the agency that leased a van to Alvarez to transport workers. CalVans had already suspended Alvarez' contract because of DOL's investigation.

Longoria later learned that DOL had already interviewed Alvarez and several other field workers so by the time he was able to contact them, they told a story that contradicted statements made by the victims and favored Alvarez. Because there was no Memorandum of Understanding (MOU) between the U.S. DOL and the Fresno County DA's office or the Fresno Police Department in existence, the statements could not be obtained for use at trial.⁵

Longoria learned that Alvarez himself was not a farm labor contractor but was a crew supervisor employed by J.A.G. Harvest Inc., a Farm Labor Contractor ("FLC") out of Dinuba, CA. The owner of J.A.G. Harvest, Jose Gonzalez, cooperated with the investigation by providing copies of the endorsed paychecks and year-end payroll records for each victim. The pay-checks issued in the victim's names were endorsed, but not endorsed by the victims and the weekly salary was significantly less than what was paid to the victim's by Alvarez in cash. When we attempted to obtain the DE-4⁶ and I-9⁷ forms from J.A.G. Harvest, Gonzalez said he could not find them and could not recall exactly where from he obtained the social security numbers listed for each victim.

³ <http://www.fresnoeoc.org/cvaht>

⁴ <https://calvans.org/>

⁵ U.S. DOL offered to provide the District Attorney's Office with the statements if the office would sign an agreement promising not to share or use the information.

⁶ https://www.edd.ca.gov/pdf_pub_ctr/de4.pdf; <https://www.uscis.gov/i-9>

He also stated that Alvarez, as crew supervisor, was the person responsible for getting workers and providing the FLC with the necessary information for salaries.

Gonzalez also provided Longoria with “Daily” and “Weekly” logs for the relevant time period and stated that they were routinely created and maintained by the crew supervisor, in this case, Alvarez. The logs, he explained are created to identify who worked in the field that day and how many workers were on scene, doing the job. At the end of the week, a representative from the farm would review the logs and authorize payment which would be made by the FLC following the submission of the logs. Gonzalez could not explain why the total number of hours worked per day and week by each victim was considerably greater than the number of hours reflected on each paycheck. We began to speculate that the FLC was intentionally underreporting wages.

A close examination of the handwritten logs was even more revealing. Although the victim’s names were reflected in the logs, many other names appeared to be duplications or variations on a legal name creating the appearance of more workers. This helped explain the statements made by the victims regarding moving ladders around. In one log, Pilar’s family members, including her 7-year-old son’s name appeared even though some of them were never seen working by the victim’s. In some instances, relatives of Alvarez’ names were handwritten in and paychecks were then issued, however, that person never actually worked.

Longoria and I spent a considerable amount of time attempting to parse out the information we had, determine what other crimes occurred and who all was involved. We made efforts to obtain information and assistance from EDD and the California Franchise Tax Board to no avail. The participating FBI agent also attempted to learn to whom the SSN’s set forth on the victim’s payroll records belonged to so we could interview them and received no help.

We learned that the FLC was paying Alvarez in the name of “Ramiro Alvarez” when his legal name was Efren Alvarez. The FLC owner stated that “Ramiro” was the only name he knew defendant by. Detective Longoria obtained the lease and accompanying documents for the apartment the victim’s first lived in. The lease reflected the lessee as Efren Alvarez and wife Rosa. Unemployment insurance claim receipts were attached to the lease as proof of income. I later learned that unemployment insurance fraud is common in the ag industry.

Longoria located hundreds of check stubs for other individuals issued by other FLCs, and daily and weekly logs dating back years at Alvarez’ home. Among them were those in the true names of our victims. He also found photocopies of social security cards, California Identification Cards, and Driver’s licenses. Thinking that Alvarez might be involved in identity theft, he contacted the persons who’s CDLs and social security cards were found at Alvarez residence. Everyone contacted claimed that Alvarez helped them with various forms and stated it was ok for him to have that information. Although we could not match any of the identifying information found to that

reflected on the victim's payroll records, we believed that those persons were likely receiving a kick-back as told to the victims by Alvarez.

Pilar's home in Fresno was also searched. In her purse, they located five (5) passports belonging to the individuals living in the apartment vacated by our victims. Longoria had spoken to them after the victims were rescued. They told him that they had provided their documents to Alvarez and Pilar for "safekeeping" and were not mistreated in any way by Alvarez. They returned to Mexico shortly thereafter.

Although it was clear to us that a larger, more organized scam involving multiple persons/entities was occurring, neither Longoria or I had the expertise in the type of activity we believed was occurring and could not get the assistance to help prove it.

Fearing the wrath of Alvarez, Ema and Christian returned to Mexico and refused to cooperate, even if the face of obtaining a "T" Visa. The remaining victims feared for the safety of their families in Mexico as all of them had received reports of strangers visiting family and asking about their whereabouts. Pilar was removed to Mexico shortly after and both she and Alvarez were seen in Tijuana by the victim's family members.

I amended the complaint and added one count of human trafficking in violation of Penal Code § 236.1(a) for each of the three remaining victims, and one count each of extortion in violation of Penal Code §§ 518/520.⁸

Jury Trial

Detective Longoria located two possible witnesses for our case in chief, Joaquin who was employed by Alvarez shortly before the victims reported and had heard Alvarez admit to threatening the victims; and Raul, who was located living at Pilar's and had just arrived in Fresno the week before under the same circumstances as our victims. Raul informed Longoria that shortly after his arrival, Pilar attempted to get hold of his documents to "keep them safe." He declined to turn them over but noticed later that they were not where he kept them, as though someone had moved them from one location to another. He speculated that Pilar had photocopied them. We chose not to use Raul at trial due to some misinformation that was relayed to him about the "T" Visa process and his testimony.

Ultimately, we were not able to secure their testimony. Although our FBI Agent was able to secure a pass for Joaquin to travel to the U.S. to testify, Joaquin refused out of fear of retribution.

The jury came back with a guilty verdict on one count of human trafficking and all counts of extortion and the Alvarez was sentenced to 8 years in state prison. At sentencing, the court stated

that it chose the of 8 years instead of 12 because the defendant *did not* use physical force or violence.

Conclusion and thoughts for improvement:

Having a detective that understood that a deprivation of liberty, as set forth in the penal code, could occur through non-physical force. Detective Longoria has 23 years of experience and informed me that the only training he ever had, was in sex trafficking. He was designated lead investigating officer because he spoke Spanish. It just so happened that he also had personal experience doing field work. Longoria knew in advance of meeting the victims that if they were undocumented, they would have great fear of law enforcement and he would have to earn their trust. He did this by ensuring that he had an NGO with him that understood the victims; He was “trauma informed.” I firmly believe that his critical first step is what helped guarantee that our victims followed through with the prosecution of the case.

Unlike most criminal cases I have prosecuted, I spent an inordinate amount of time learning things I never had to know about in my 12 years as a prosecutor. For example, I had to learn and understand how farm labor contractors functioned in the ag industry. I learned about employment law and how some laws differed for farm workers than in other types of employees. I became knowledgeable about unemployment compensation fraud, tax fraud, workers compensation premium fraud, and identity theft even though I had never prosecuted any of those crimes.

Funding made prosecuting this case more challenging. Although I was able to secure the testimony of two experts, they reduced their fees because the type of case we were litigating was new. I did not have a dedicated investigator to help locate witnesses, conduct interviews, obtain or examine documents. I did not have the assistance of an analyst who might have been able to help me better understand payroll and employment taxes. Having a collaborative relationship with agencies that function in those areas and already have dedicated investigators on board would have been tremendously helpful to me.

I believe that the reason we got no assistance from agencies like EDD, or the FTC is because employees in those agencies don't know or understand what role *they* might play in a human trafficking investigation. The parallel investigation conducted by the U.S. Department of Labor is a good example of this. They believed that their role was to conduct a wage or misuse of transportation investigation and did not realize that those violations might be a form of exploitation that would support a trafficking case. We know that prosecutors and police officers need training on labor trafficking, but our efforts cannot stop there. Trafficking cases are complex and when you are dealing with what we term is a “labor trafficking” case, the complexity increases. Labor trafficking touches a variety of industries, industries prosecutors and police might not ever have any contact or familiarity with.

⁸ Our theory was that defendant extorted (by threats to report them to immigration) both property (labor) and money

Grant funding specifically designated towards investigating and prosecuting labor trafficking would be ideal. There are numerous grants available for “human trafficking” but the type of work that is typically done in those grants tends to focus on sex trafficking. Sex trafficking is more easily identifiable. A grant funded labor trafficking task force could pull together state and federal agencies like the State and Federal Departments of labor, EDD, FTC, etc.

Labor trafficking cases are complex and can take a significant amount of time to develop and prosecute. As a result, the measure of success of any grant should not be based solely on the number of investigations, cases or convictions. The Alvarez case took nearly two years after the rescue of our victims to get to jury trial. We made every effort we could to locate out of country witnesses and develop evidence to support other crimes as we knew it would be challenging to prove our victims suffered a deprivation of liberty without physical force.

Outreach should be a requirement of any labor trafficking grant and should include educating those other agencies that might become involved in a labor trafficking case. Public education about both sex and labor trafficking should be required. I recently spoke to a local high school class about trafficking and intentionally included a segment on labor trafficking, after all, Fresno County is home to 1.88 million acres of farmland.⁹ I took some swag from the DA’s office and some Blue Campaign key tag cards I got in the mail from DHS.¹⁰ At the end of the presentation, many students ask for extra key-tags to pass out to their family members that work in the field. One student asked me whether I thought sex trafficking *was* labor trafficking because a victim recruited to work in the sex industry was doing “work.” The more I thought about it, the more I came to agree. The victimization is the same, it’s the industry that might change.

Even our Penal Code makes such a distinction. In California if a person is convicted of labor trafficking under Section 236.1(a), you might receive a sentence of 5, 8 or 12 years. However, if he/she commits sex trafficking he/she could receive a sentence of 8, 14, or 20 years. If the victim is a minor and the offense involves force, fear, threat, etc., the potential prison sentence increases to 15 years to life.

Thank you for the opportunity to share with you my experience. I look forward to answering any questions you might have.

Lynette Gonzales,
Deputy District Attorney
Fresno County District Attorneys Office

(loan) from each victim.

⁹ <http://www.fcfb.org/Fresno-Ag/Fresno-Ag.php>

¹⁰ Department of Homeland Security

