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BY U.S. MAIL AND EMAIL

Mr. Pedro Nava, Chairman
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RE: *Testimony for the Little Hoover Commission's November 21, 2019 Hearing on Labor Trafficking*

Dear Chairman Nava, Vice Chairman Varner, and members of the Little Hoover Commission ("Commission"):

We are writing on behalf of the Office of the Los Angeles City Attorney Michael N. Feuer in response to the invitation to provide written and oral testimony for the Commission.

Our office appreciates the opportunity to share our work on the seldom seen but all too common occurrence of labor trafficking. We are the two deputy city attorneys assigned to the Sex and Labor Trafficking ("SALT") Unit of the Los Angeles City Attorney's Office, which was created in 2017 at the direction of City Attorney Mike Feuer. The Los Angeles City Attorney's Office comprises more than 500 attorneys, and our jurisdiction extends to an area of more than 500 square miles with an estimated population of over 3.9 million. Los Angeles City ("City") includes major transportation hubs, thriving manufacturing and service industries, and diverse immigrant and non-immigrant populations.

The City is unique in that it is a charter city, and our charter provides for an elected city attorney with powers that include both representing the interests of various city departments, as well as prosecuting criminal misdemeanor offenses. Additionally, not only can our office file civil enforcement actions under certain state public nuisance statutes in the name of the People of the State of California, but as prosecutors in a large, populous city, we are also able to file civil cases under Business and Professions

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Code section 17200 to enjoin unlawful business practices. For these reasons, we can craft a variety of innovative solutions to problems in our City.

As misdemeanor prosecutors, we historically encounter sex trafficking in the enforcement of prostitution laws. However, from its inception, our unit has recognized the importance of including labor trafficking in both its mission and its name. Our partners in the victim services sector advise that roughly half of the cases brought to them involve labor trafficking. Yet this is not translating to appreciable numbers of arrests or prosecutions, in sharp contrast to cases of sex trafficking. To address this disparity, in 2017 we volunteered to chair the Labor Trafficking Subcommittee ("LTS") of the Los Angeles Regional Human Trafficking Task Force ("LARHTTF"). While our testimony details our work with the LTS, please note that we testify herein solely on behalf of the Los Angeles City Attorney's Office.

Introduction to Labor Trafficking Enforcement in California

In California, human trafficking is defined in Penal Code Section 236.1. Labor trafficking is described in subsection (a) of the statute as the deprivation or violation of the personal liberty of another with the intent to obtain forced labor or services. Force labor is further defined as "labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person." (Pen. Code, § 236.1(h)(5).) The penalties for labor trafficking are imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than \$500,000. In contrast, prison time for sex trafficking is 8, 14, or 20 years; and sex trafficking of a minor by means of force, fraud, or coercion can yield a sentence of 15 years to life. This is not to say that sex trafficking is anything less than dehumanizing and reprehensible; however, the statute reflects what we contend is a misconception about the physical, financial, emotional, and psychological harms caused to individuals whose freedom is stolen through forced labor.

Why is Labor Trafficking Hard to Detect?

Human trafficking is a low risk, high reward venture, and nowhere is the risk of detection lower than in the case of labor trafficking. As intimated previously, sex trafficking dominates the conversations of legislators and law enforcement. It is something we see and understand as a society, that police have been called on to prioritize, and that we have some idea of how to attack through existing systems.

Labor trafficking, on the other hand, is hidden from view and obscured by apparently legitimate businesses. A worker in a restaurant, for instance, is unlikely to draw the attention of law enforcement. Nor is an ordinary citizen apt to report another

person's unsafe work conditions, or even be aware of payroll discrepancies, living conditions within the business, or other indicia of trafficking. Multiple layers of subcontractors also serve to obscure labor trafficking in lower levels of supply chains.

Indeed, while there are victims who are undocumented, there are many others who came to the country under recognized temporary worker visa categories. It is this very system that enables employers to exploit the victims.

There are also barriers to victims reporting to law enforcement. In our work with the LTS of the LARHTTF, we have explored the discrepancy between the number of forced labor clients that our victim service provider partners are seeing, on one hand, and the low level of forced labor referrals to law enforcement for investigations, on the other. In a large number of these cases, victims of labor trafficking are foreign nationals. Many face language and cultural barriers that hinder their knowledge of, and access to, services available to them. They may fear being returned to worse conditions and poverty in their home countries, or that their families will be harmed if they escape their traffickers. Without access to legal service, they remain largely unaware of T visas and other mechanisms to remain in the United States. And even when victims are able to connect with victim service providers, this does not automatically translate to a criminal referral due to fear of immigration consequences.¹ Combined, these forces result in a victim population that is notoriously reluctant to report to law enforcement.

Why Isn't Fighting Labor Trafficking Given Higher Priority?

As we have noted above, the penalties under the Penal Code for sex trafficking are heavier than those for labor trafficking. Structurally, law enforcement has been more incentivized to focus on sex trafficking rather than labor trafficking, and this comports with our experience. Police departments appear to devote considerable resources to arresting and prosecuting sex traffickers, particularly when juveniles are the victims. While this is a positive step away from the system we saw not so long ago—where police mainly arrested women for street level prostitution, and pimps and panderers went largely unpunished—this more refined vice approach is not geared towards investigations of forced labor. Moreover, reliance on an expanded vice model means resources do not have to be directed to creating new approaches to anti-trafficking efforts. As long as something is being done—even though predominantly sex trafficking—this counts towards work on the broader umbrella of human trafficking, so little incentive exists to focus on labor trafficking, which is more difficult and time consuming to detect.

¹ While perhaps beyond the scope of this discussion pertaining to the State of California, victim service providers have expressed concern about unusual delays in the processing of federal T visas by U.S. Citizenship and Immigration Services (USCIS), which further discourage victims from coming forward.

A number of other factors prevent police and prosecutors from consistently enforcing laws against labor trafficking. Aside from the fact that labor trafficking already is difficult to detect, there is no systematic mechanism in place to assist with detection. Currently, law enforcement relies on reluctant and fearful victims reporting their traffickers. When one compares the number of cases handled by service providers with the number of arrests made by law enforcement, it is easy to see that the vast majority of cases go unreported. This contrasts sharply with sex trafficking, which can be found through well-established vice operations.

Law enforcement is largely driven by citizen complaints and crime statistics. Open air prostitution draws the attention of both police and residents. Labor trafficking, on the other hand, draws few complaints from anyone, and even fewer complaints from the general public. Labor trafficking investigations also can be complex. Few police officers are trained to analyze business records and financial transactions, and surveillance operations are costly and time-consuming. The end result is limited funding, less training, less experience, and lower overall prioritization.

What is Justice for the Victim?

Another aspect of labor trafficking with enormous implications is the question of what is justice for the victim? The traditional model is to successfully prosecute the traffickers. However, given the numerous barriers we have identified to victims reporting to law enforcement and concerns about immigration consequences, victims are often seeking something other than jail time for their traffickers. Perhaps, they only seek some financial compensation for their time so they can go on with their lives. This victim-centered approach has broad policy implications. If we insist on continuing to use the numbers of labor trafficking criminal prosecutions as a benchmark for measuring our efforts, then we are missing other vital parts of the spectrum. We must look at also capturing the administrative remedies that can be obtained through the US Department of Labor, the State Department of Industrial Relations, and their county and city counterparts. We must also capture the results of civil enforcement actions that cover wage theft and labor code violations, not just criminal prosecutions for labor trafficking.

Efforts in Los Angeles:

Trafficking Investigations and Civil Actions

Although labor trafficking is a felony offense, we as City prosecutors still have tools available to us to fight trafficking. One such tool is civil enforcement. The Los Angeles City Attorney's Office is empowered to file both civil nuisance abatement lawsuits and actions against unlawful business practices in the name of the People of

the State of California. These lawsuits not only can yield large civil penalties, they also can result in restitution for victims and meaningful injunctive relief. For example, our office has filed numerous civil enforcement actions against hotels for various illegal activities, including human trafficking. We obtained court orders requiring the hotel and property owners to change their business practices in order to curtail the illegal activity (e.g., hiring security guards, installing video surveillance cameras, changing guest registration procedures, controlling access to the parking lot, among others). Where the evidence did not rise to the level of human trafficking, our office has also filed civil enforcement actions for wage theft and labor code violations.² Some other advantages of these civil enforcement actions include the lower civil preponderance of evidence standard, civil discovery procedures, and the treatment of these civil proceedings as separate from any other criminal proceedings that other prosecutorial agencies may pursue.

As mentioned previously, the SALT Unit also chairs the LTS of the LARHTTF. The LTS comprises members of federal, state, and local law enforcement; prosecutors; regulatory agencies; academics and economists; social and legal service providers; and representatives of private industries. Together we are taking great strides toward fighting labor trafficking in new and innovative ways.

LTS projects can be divided into two large categories: (1) expanding the eyes and ears network to detect labor trafficking; and (2) using data to systematically detect labor trafficking.

Expanding Eyes and Ears Network

Expanding eyes and ears encompasses both coalition-building and ensuring that those in the best position to see signs of trafficking know what to look for and how to report it. For example, regulators and code inspectors routinely access businesses and their records, and some even interact with employees. Our office and other LTS members strategically conduct regular training to ensure that these particular individuals are trained properly to recognize the signs of trafficking. Service providers ensure that all training is victim-centered and trauma-informed.

Our office has also engaged in a broader expanding eyes and ears effort through a hotline posting outreach project. Originally enacted through Senate Bill 1193 and codified as Civil Code section 52.6, this legislation requires certain establishments to post human trafficking hotline information, which our victim service provider partners such as the Coalition to Abolish Slavery & Trafficking (“CAST”) have reported as effectively increasing calls to their hotline numbers. Our office has worked closely with

² The Los Angeles City Attorney's Office's Affirmative Litigation section handles these types of wage theft cases, including those involving car washes and home health aides.

CAST, the National Council of Jewish Women-Los Angeles as well as Journey Out in order to train volunteers to conduct onsite outreach efforts to distribute the hotline posters. Our office has sent thousands of letters to advise establishments of the requirement to post. We are also members of the Asian Pacific Islander Human Trafficking Task Force, where we have conducted outreach to Asian-owned businesses. And most recently, our office has also been working closely with the Los Angeles City Council to strengthen enforcement of these hotline posting requirements at the local level, where Councilwoman Nury Martinez successfully introduced a motion to draft a new Los Angeles Municipal Code section.

Systematic Detection of Labor Trafficking

The second prong of the LTS projects concern the use of data. Victim service providers collect data during their intake processes, but few have the capacity to compile that data into usable information about where people are being recruited into forced labor, what industries are most prevalent, what types of force or coercion are employed, and the like. We were fortunate to have economists in the LTS who were able to execute data sharing agreements, strip intake data of personal identifiers, and break down factors relevant to understanding how and where labor trafficking occurs. This project between NERA Economic Consulting and CAST is still developing, but it already has led to our discovery of patterns that validate and add to our understanding of the criminal enterprises involved in labor trafficking.

Lastly, another significant development coming out of the work of the LTS is the development of a labor trafficking enterprise model. Increasingly, what was initially seen as an isolated incident is now suspected to be connected to a larger criminal enterprise comprised of a host of individuals playing different roles. Especially evident in international cases, the model maps out the different stages from when a victim is first recruited in the home country, then brought into the country, then subsequently transported, housed and placed in businesses. The map allows members of the LTS to explore at what stage their respective agency or organization can play a role in detecting labor trafficking, disrupting operations or rescuing potential victims.

Implementing a Victim-Centered Approach

While our office has not been asked to comment directly on our work on sex trafficking, nonetheless, some of our projects may also be applicable to labor trafficking, especially with regards to how to approach victims. For instance, one of the oft-cited barriers for victims and survivors of human trafficking is their records of arrests and convictions for prostitution and other related violations. Senate Bill 823 ("SB823"), codified in Penal Code section 236.14, and effective January 1, 2017, gives victims their lives back by eliminating the barriers to employment, housing, and schooling that these

prior arrests and convictions cause. The SALT Unit has been on the fore-front of how best to address the issues surrounding the implementation of SB823 vacatur petitions by educating other prosecutorial agencies, and conferring with victims service providers and petitioners' counsel. We have convened a working group of prosecutors, public defenders, other legal service providers, and court administrators. While the vacatur petitions to date are almost exclusively based on prostitution-related violations, we fully anticipate to see other types of violations presented when partner agencies and the courts increase their capacity to handle these petitions.

Similarly, the SALT Unit recently launched a pre-filing diversion pilot project, entitled "Project Beacon", which utilizes victim assistance grant funds to allow Journey Out, a victim services provider, to: (1) screen for victims of human trafficking and to get them appropriate services, including legal services to handle SB823 petitions to vacate prior arrest and convictions for those violations they were forced to commit while being trafficked; and (2) provide an earlier opportunity for intervention, education and empowerment for those who are involved in commercial sex but do not immediately identify as victims. This latter prong, if successful, should also ease the burdens on the court, our City Attorney branch operations in having to file prostitution-related cases, as well as hopefully reduce the need for our office's post-filing Prostitution Diversion Program. A Journey Out Eligibility Case Manager is assigned to follow up and support those who accept Project Beacon to get to and to complete the 8 classes within 60 days of arrest in order to avoid court. The grant allows funds to be used for items such as bus tokens, childcare, and certain job-seeking expenses to assist in addressing barriers to completion of the classes.

To further strengthen the path for recovery and re-entry started by Project Beacon, the SALT Unit has spearheaded Project Sustain, which is a Career and Education Program for victims of human trafficking, including commercial sexual exploitation. The Unit coordinated with the City's Economic and Workforce Development Department on how best to collaborate with Journey Out to ensure that participants in Project Beacon have viable, stable, sustainable employment opportunities. As a result, Journey Out now has a direct handoff for its participants to meet with specific agency points of contact. The focus is not on temporary minimum wage jobs, but rather career counseling and placement in stable, long term jobs with staff who are trauma-informed.

Again, while SB823 Vacatur Petitions, Project Beacon and Project Sustain currently involve potential victims of sex trafficking, we anticipate that these programs can be expanded to also include victims of labor trafficking.

Areas for Further Exploration

Our work has revealed a number of crucial gaps in regulatory and law enforcement systems that deserve closer scrutiny. For instance, job recruitment centers or organizations serving these functions appear to be largely unregulated. They are undefined. And yet they appear to be the entry point for many victims of labor trafficking, especially for those from abroad. The ability to scrutinize methods of recruitment and hiring practices would go far towards enabling regulatory agencies to detect signs of trafficking.

Second, there must be resources to develop systematic methods of detecting labor trafficking by law enforcement. Without reliable methodologies and effective training, labor trafficking will continue to appear to be invisible and mysterious.

Third, it is vital for there to be support to aid in the formation, maintenance, and collaboration between human trafficking task forces within the State, particularly those with a focus on labor trafficking, to help ensure that progress continues to be made and that efforts to date are not lost. Facilitating information sharing among the task forces would be enormously valuable, including respective best practices, ongoing investigations, effective protocols, research, and training.

Finally, an increased focus on supply chains could perhaps lead to greater detection of labor trafficking by subcontractors. While large corporations currently must publish their efforts to prevent human trafficking in their supply chains, this does not apply to all businesses nor require any actions on their part to actually prevent labor trafficking. Attention should also be given to which agencies should be permitted to enforce such regulations. This would lead to more universal application, and compel greater monitoring and best practices by businesses that employ subcontractors.

Conclusion

We are very grateful to be part of the discussion of how to further the fight against labor trafficking, and we appreciate your consideration of our experiences and ideas as prosecutors for the City of Los Angeles. We further welcome any questions you may have.

Sincerely,



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Supervising Deputy City Attorney



Rena Shahandeh,
Deputy City Attorney