



Federal Cases Involving Forced Labor of Health Professionals

TO: All stakeholders involved in the hiring of healthcare services

SUBJECT: Federal cases involving forced labor of health professionals

Background

In December 2021, the White House released the National Action Plan to Combat Human Trafficking (“National Action Plan”), which calls on agencies to “strengthen efforts to identify, prevent, and address human trafficking in product supply chains and ventures.” The National Action Plan’s emphasis on supply chains reflects lessons learned from COVID-19, echoing the National Strategy for a Resilient Public Health Supply Chain (“National Strategy”), published by the U.S. Department of Health and Human Services in July 2021. Among other objectives, the National Strategy aims to “ensure equitable labor conditions by promoting best practices and U.S. adherence to child labor and forced labor laws and regulations” in health supply chains.

Federal agencies are working together to respond to the priorities laid out in both the National Action Plan and National Strategy through a coordination framework comprising the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons, particularly the Procurement and Supply Chains Subcommittee of its Senior Policy Operating Group, and the Forced Labor Enforcement Task Force, as well as public-private forums like the Commercial Customs Operations Advisory Committee and the Joint Forced Labor Working Group of the Health and Public Health Sector Partnership.

The goal of this information memorandum (IM) is for all stakeholders in the healthcare and anti-trafficking fields to better understand how the federal government has enforced forced labor laws through criminal prosecution, how health professionals who have experienced trafficking have used civil litigation to seek justice, and how federal courts have handled cases involving forced labor in healthcare settings.

The Offense of Forced Labor

The Trafficking Victims Protection Act of 2000 (TVPA) established the offense of forced labor,¹ which can be found at 18 U.S.C. § 1589. According to this definition, forced labor occurs when someone “knowingly provides or obtains the labor” of another person by means of:

1. force or threats of force (including physical restraint),

¹ The types of conduct covered by the federal offenses described above are sometimes called “labor trafficking,” as distinguished from sex trafficking, which involves exploitation of individuals engaged in commercial sex.

2. serious harm or threats of serious harm,
3. abuse or threatened abuse of the law or legal process, or
4. a plan or pattern designed to cause that person to believe that if they did not provide labor, they (or another person) would suffer “serious harm or physical restraint.”²

Moreover, anyone who knowingly or with reckless disregard benefits (financially or otherwise) from such labor may also be guilty of forced labor under certain circumstances.³

Notably, this definition of the *offense* of forced labor differs slightly from the TVPA’s definition of analogous conduct for purposes of immigration protection, public benefits, and other policy and regulatory frameworks outside of the litigation context. The TVPA at 22 U.S.C. § 7102(11)(b) defines forced labor within the definition of “severe forms of trafficking in persons” as:

[T]he recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

One key difference between these two definitions is that, whereas *fraud* is insufficient means to allege forced labor in a court of law, it *is* sufficient for applying for immigration protection and public benefits for individuals who have experienced trafficking. This IM will include information about allegations of fraud in forced labor cases. Even though it is not an element of the criminal or civil offense of forced labor *per se*, fraud is frequently a part of the fact pattern in forced labor cases. False promises are used to lure individuals to situations where they are then subject to force or coercion. In other words, fraud can be part of a coercive scheme that is the basis of a forced labor offense. Additionally, insights from the cases discussed in this IM can inform settings beyond the justice system (e.g., immigration protections and public benefits).

Criminal Prosecutions vs. Civil Lawsuits

Although there are other possible avenues for anti-forced labor enforcement, the scope of this IM is limited to criminal and civil litigation.

Only the federal government can file a criminal prosecution under 18 U.S.C. § 1589, but Congress provided a way for individuals who have experienced trafficking to sue their traffickers directly for violations of § 1589 and related offenses under the civil provision 18

² 18 U.S.C. § 1589(a).

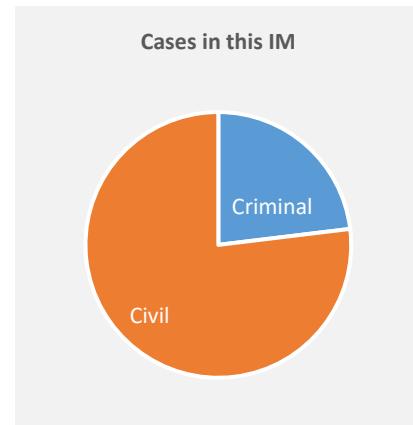
³ 18 U.S.C. § 1589(b). In addition, 18 U.S.C. § 1590 (“Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor”) can be used to prosecute a broader range of individuals or entities associated with forced labor – the statute covers anyone who recruits, harbors, transports, provides or obtains any person for labor or services that would run afoul of the forced labor statute. 18 U.S.C. §§ 1592 and 1597 target individuals who withhold passports or other identity documents of human trafficking victims in the course of a forced labor or human trafficking offense. Although some of the cases in this IM may contain allegations of these forced labor-related offenses, the case search was limited to those alleging § 1589.

U.S.C. § 1595.⁴ Individuals might choose to sue under § 1595 if, for instance, their trafficker is not prosecuted or convicted, or if they need an additional avenue to obtain financial compensation.

There are two key differences between criminal and civil cases. First, in criminal prosecutions, there is a higher standard of proof than in civil lawsuits. Prosecutors need to show evidence that proves the case beyond a reasonable doubt to obtain a criminal conviction, while plaintiffs only need to prove their case by a “preponderance” of the evidence (sometimes called a more-likely-than-not standard) in civil lawsuits. Second, in criminal prosecutions, the possible penalties include both financial penalties and imprisonment, whereas civil lawsuits cannot result in prison sentences.

Methodology & Terminology

The information in this IM comes from 13 federal cases that alleged forced labor of health professionals.⁵ The cases were identified through a search of legal and federal case databases⁶ and represent most of the relevant cases known to the Office on Trafficking in Persons (OTIP) since the enactment of the TVPA.⁷ Three of these cases are criminal prosecutions⁸ and 10 are civil lawsuits.⁹ Finally, four of the civil lawsuits were class actions.¹⁰ Class actions are lawsuits in which one or more individuals file a lawsuit on behalf of a larger group “who have suffered the same wrong at the hands of the



⁴ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 116 Stat. 2878.

⁵ This includes cases in which individuals were promised jobs as healthcare workers but ended up working in non-healthcare contexts. See the Appendix for the case list.

⁶ Data on file with the Human Trafficking Institute, <https://traffickinginstitute.org/>.

⁷ This IM does not discuss *Matos Rodriguez v. Pan Am. Health Org.*, 29 F.4th 706 (D.C. Cir. 2022) because the plaintiffs are foreign nationals accusing an international organization of forced labor abroad, making it a very distinct fact pattern unlike the other cases. This IM also omits potentially relevant cases where not enough facts were available. For example, a respondent to OTIP’s Request for Information on Forced Labor in Healthcare Supply Chains (published June 23, 2022) submitted a list titled “Civil Cases in Healthcare Sector,” which includes several cases that are in this IM in addition to other potentially relevant cases.

⁸ *United States v. Kalu*, 791 F.3d 1194 (10th Cir. 2015); *United States v. Pelayo et al.*, 2009 WL 872819 (C.D.Cal.); *United States v. Morales*, No. 02:10-CR-00385-ABC (C.D. Cal. Feb. 13, 2012).

⁹ *Access Therapies v. Mendoza*, No. 1:13-CV-01317-JMS, 2014 WL 4670888 (S.D. Ind. Sept. 18, 2014); *Antonatos v. Waraich*, No. 1:12-CV-01905-JMC, 2013 WL 4523792 (D.S.C. Aug. 27, 2013); *Dale Carmen v. Health Carousel, LLC*, No. 1:20-CV-313, 2021 WL 2476882 (S.D. Ohio June 17, 2021); *Paguirigan v. Prompt Nursing Emp. Agency LLC*, 286 F. Supp. 3d 430 (E.D.N.Y. 2017); *Magtoles v. United Staffing Registry, Inc.*, No. 21-CV-1850 (KAM) (PK), 2021 WL 6197063 (E.D.N.Y. Dec. 30, 2021); *Estavilla v. Goodman Grp., LLC*, No. CV 21-68-M-KLD, 2022 WL 539192 (D. Mont. Feb. 23, 2022); *Javier v. Beck*, No. 13-CV-2926, 2014 WL 3058456 (S.D.N.Y. July 3, 2014); *Panwar v. Access Therapies, Inc.*, 975 F. Supp. 2d 948 (S.D. Ind. 2013); *Walia v. Veritas Healthcare Sols., L.L.C.*, No. 13-CIV-6935 KPF, 2015 WL 4743542 (S.D.N.Y. Aug. 11, 2015); *New York State Nurses Ass’n v. Albany Med. Ctr.*, 473 F. Supp. 3d 63 (N.D.N.Y. 2020).

¹⁰ *Dale Carmen*, *supra* note 9; *Paguirigan*, *supra* note 9; *Magtoles*, *supra* note 9; *Panwar*, *supra* note 9.

defendant.”¹¹ It is important to note that this IM does not include any cases that may have been filed at the state level. Finally, though the prevalence of forced labor affecting health professionals is unknown it is likely much greater than what is represented by legal cases.

In discussing the 13 federal cases, this IM will use two key terms:

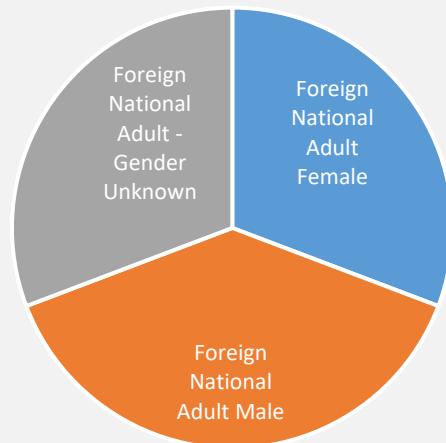
Trafficker or Alleged Trafficker: A “defendant” is an individual or entity who is being prosecuted or sued. The cases in this IM involve individuals convicted or accused of human trafficking conduct, which the IM will refer to as “traffickers” or “alleged traffickers.” It is important to keep in mind that in the U.S. criminal legal system, defendants are innocent until proven guilty. Therefore, this IM will use the terms “alleged” or “allegedly” to describe conduct in cases that are still pending or did not end in a conviction.¹²

Health Professionals: This IM will use the term “health professionals” to refer to the individuals whom the government has formally identified as a victim in a criminal prosecution or the individuals bringing civil legal action against their alleged traffickers. More specific reference to a health professional’s occupation (e.g., nurse, physical therapist) will be used if known. For purposes of the IM, “health professionals” is limited to individuals providing care, rather than other professionals in the health sector, like janitorial, administrative, or food service staff at the hospital.

Health Professional Demographics

When looking at gender and age of health professionals in the 13 cases, about half of all federal forced labor cases that identified a

Cases by Health Professional Demographics



¹¹ Legal Information Institute. (n.d.). *Class action*. Retrieved October 27, 2022, from https://www.law.cornell.edu/wex/class_action.

¹² In the cases discussed in this IM, the defendant is almost always the trafficker or alleged trafficker, with the exception being *Access Therapies, Inc. v. Mendoza* (supra note 9), in which the defendant is the physical therapist who was initially sued by the alleged trafficker for violations of his employment contract.

health professional's gender¹³ involved adult males¹⁴ and half involved adult females.¹⁵ None of the cases alleged forced labor of children. Health professionals' occupations broke down along gender lines; male victims were doctors, physical therapists, and clinical research assistants, and all females were nurses or care providers in eldercare facilities.

Every case involved foreign national health professionals rather than U.S. citizens or lawful permanent residents. Most cases involved health professionals from the Philippines,¹⁶ and others from India¹⁷ and Panama.¹⁸ That health professionals in federal forced labor cases are overwhelmingly foreign nationals highlights the increased vulnerability of this population compared to U.S. citizens or lawful permanent residents; however, it is important to note that any health professional—not just foreign nationals—can experience forced labor.

Recruitment Models

The traffickers or alleged traffickers in the 13 federal cases were staffing agencies, recruiters, or hospitals or nursing homes that utilize staffing agencies. There are three main recruitment models for foreign national health professionals: direct recruitment, staffing, and placement.¹⁹

Direct Recruitment Model

Direct recruitment occurs when a healthcare organization recruits and employs a foreign national directly. Under this model, the healthcare organization often bears the financial burden of the foreign nationals' migration to the United States. Several cases discussed in this IM involve the use of direct recruitment.²⁰ For example, in *United States v. Pelayo*, owners of several nursing homes recruited and employed a health professional from the Philippines.²¹

Staffing Model

More than half of federal cases filed under § 1589 involved the staffing model, in which a staffing agency, rather than the healthcare organization, acts as both recruiter and employer. Foreign nationals recruited through this model are employed by the agency but will work at healthcare organizations, often as "agency nurses," "traveling nurses," or "temporary"

¹³ There were four cases involving care providers whose gender/sex is unknown.

¹⁴ *Access Therapies*, *supra* note 9; *Javier*, *supra* note 9; *Walia*, *supra* note 9; *Panwar*, *supra* note 9; *Antonatos*, *supra* note 9.

¹⁵ *Paguirigan*, *supra* note 9; *Dale Carmen*, *supra* note 9; *Magtoles*, *supra* note 9; *Estavilla*, *supra* note 9.

¹⁶ *Access Therapies*, *supra* note 9; *Javier*, *supra* note 9; *Paguirigan*, *supra* note 9; *Dale Carmen*, *supra* note 9; *Estavilla*, *supra* note 9; *Magtoles*, *supra* note 9; *Kalu*, *supra* note 8; *New York State Nurses Ass'n*, *supra* note 9; *Pelayo*, *supra* note 8; *Morales*, *supra* note 8.

¹⁷ *Walia*, *supra* note 9; *Panwar*, *supra* note 9.

¹⁸ *Antonatos*, *supra* note 9.

¹⁹ Pittman, P., Folsom, A., Bass, E., & Leonhardy, K. (2007). (rep.). *U.S.-Based International Nurse Recruitment: Structure and Practices of a Burgeoning Industry* (pp. 12–14). Washington, D.C.: AcademyHealth.

²⁰ *Antonatos*, *supra* note 9; *Javier*, *supra* note 8; *Paguirigan*, *supra* note 9; *Access Therapies*, *supra* note 9; *Walia*, *supra* note 9; *New York State Nurses Ass'n*, *supra* note 9; *Estavilla*, *supra* note 9; *Pelayo*, *supra* note 8.

²¹ *Pelayo*, *supra* note 8.

employees.²² Staffing agencies handle immigration procedures and cover the foreign nationals' visa and travel costs. For example, in *Dale Carmen v. Health Carousel*, a staffing agency recruited and employed several nurses from the Philippines.²³ The staffing agency assigned one of the nurses to work at a hospital, but she was still an employee of the staffing agency.²⁴ Her employment contract stated that her housing and medical benefits would only last while she was employed with the staffing agency.²⁵ Finally, the staffing agency sponsored the nurse's work visa and paid all related costs (e.g., airfare to the United States, filing, and attorney's fees).²⁶ Notably, the staffing model is more lucrative for recruiters than the placement model.²⁷

Placement Model

Finally, under the placement model, a recruitment agency recruits foreign nationals and places them with healthcare organizations that employ the health professional directly. Under this model, foreign nationals will often first sign a temporary initial contract with the recruitment agency and then, upon placement, sign another contract with the employer healthcare organization. As with the staffing model, the recruitment agency often handles the immigration procedures. In *United States v. Kalu*, the owner of a staffing agency held his corporation out as using the placement model, leading nurses to believe that a university would employ them directly.²⁸ Ultimately, however, he forced them to sign contracts with his agency, and they worked as contract nurses.²⁹

Recruitment Methods

Court documents described various methods traffickers or alleged traffickers used to recruit health professionals into forced labor, such as promises of high paying positions or visa sponsorships. This section will examine details of recruitment, including how traffickers or alleged traffickers initially connected with health professionals and the terms of employment they offered.

²² *Access Therapies*, *supra* note 9; Pittman, *supra* note 19.

²³ *Dale Carmen*, *supra* note 9.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Pittman, *supra* note 19.

²⁸ *Kalu*, *supra* note 8.

²⁹ *Id.*

Initial Contact

In many cases, health professionals initially connected with traffickers or alleged traffickers when they responded to or inquired about an advertisement for a trafficker's or alleged trafficker's work program that would enable them to work in the United States and eventually earn permanent immigration status. For example, in *Dale Carmen*, a nurse allegedly contacted the staffing agency about its "Passport USA" program, through which the agency sponsored and subsidized foreign nurses' migration and stay in the United States in exchange for the nurses' employment.³⁰ Similarly, in *Antonatos v. Waraich*, a foreign physician allegedly responded to the alleged trafficker's written advertisement for an open position at the alleged trafficker's private medical practice in the United States.³¹

Terms of Employment

All 13 cases involved allegations that traffickers or alleged traffickers made false promises regarding terms of employment to health professionals, including jobs as physicians, physical therapists, and registered nurses. Another common fact pattern was traffickers or alleged traffickers promising to sponsor the health professionals' U.S. visas. Specifically, several alleged traffickers promised sponsorship of H-1B visas, which are temporary visas granted to nonimmigrant individuals working in "specialty occupations" in the United States.³² "Specialty occupations" are those that require "the application of a body of highly specialized knowledge," and the purpose of H-1B visas is to help employers who cannot otherwise obtain needed skills from the U.S. workforce.³³

The cases also involved allegations that traffickers or alleged traffickers made false promises regarding pay and benefits. For example, several health professionals were allegedly falsely promised pay that was in accordance with the prevailing wage determined by the U.S. Department of Labor.³⁴ Moreover, some alleged traffickers promised to provide health professionals free or subsidized housing, pay for all fees associated with the visa process, and provide health insurance, life insurance, and medical benefits.³⁵

Fraud

According to allegations of health professionals and prosecutors, many of the promises traffickers or alleged traffickers made during recruitment were false, including the type of employment. For example, in *Kalu*, the owner of a staffing agency hired several nurses to work as nurse instructors and supervisors for a university but, upon arrival, the trafficker forced them

³⁰ *Dale Carmen*, *supra* note 9.

³¹ *Antonatos*, *supra* note 9.

³² *H-1B program*. United States Department of Labor. (n.d.). Retrieved October 27, 2022, from <https://dol.gov/agencies/whd/immigration/h1b>.

³³ *Id.*

³⁴ *E.g.*, *Paguirigan*, *supra* note 9.

³⁵ *E.g.*, *Dale Carmen*, *supra* note 9.

to work for his staffing agency as “unspecialized laborers” and “ordinary nurses” in various nursing homes.³⁶

Traffickers made false representations about the type of employment during the visa application process as well. One notable example is *Pelayo*, in which owners of several nursing homes used an entirely fraudulent visa to facilitate the care provider’s migration to the United States.³⁷ Specifically, the visa that the nursing homeowners obtained for the care provider was issued for the purpose of attending martial arts competitions.³⁸ In fact, however, the traffickers intended to bring the care provider to the United States to work in the traffickers’ nursing homes.³⁹

Health professionals also accused alleged traffickers of using other types of fraud to obtain visas. In *Access Therapies v. Mendoza*, a physical therapist alleged that a staffing agency represented on the visa application that the physical therapist would be paid \$32 per hour.⁴⁰ However, the staffing agency and the physical therapist had privately contracted for a lower amount (\$29 per hour), and the staffing agency allegedly instructed the physical therapist not to make any statements to the U.S. Consular Officer that might suggest that the staffing agency had engaged in fraudulent behavior.⁴¹ Further, in *Paguirigan v. Prompt Nursing Emp. Agency LLC*, nursing homes paid nurses significantly less than the prevailing wage they were promised by the staffing agency.⁴² Another case involves accusations that the alleged trafficker forged signatures and misrepresented the health professionals’ intended purpose in the United States.⁴³ Finally, health professionals commonly accused alleged traffickers of requiring them to work significantly more hours and perform far more duties than were initially promised.⁴⁴

Although, as mentioned above, fraud alone is not an element of forced labor in criminal prosecutions or civil lawsuits, these false representations can render the visas invalid and thus, the health professionals’ presence in the United States technically unlawful.⁴⁵ The traffickers

³⁶ *Kalu*, *supra* note 8.

³⁷ *Pelayo*, *supra* note 8.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Access Therapies*, *supra* note 9.

⁴¹ *Id.*

⁴² *Paguirigan*, *supra* note 9 (the court found that the trafficker did, in fact, pay the nurses less than they were initially promised).

⁴³ *Javier*, *supra* note 9 (accusing the alleged trafficker of forging her husband’s signature on a petition certifying that the plaintiff would work full time as a physical therapy rehab manager and would receive a pay of \$35.53 per hour, even though there was no actual physical therapy rehab manager position and the alleged traffickers paid Javier much less than the stated wage); *Pelayo*, *supra* note 8 (finding that the traffickers falsely stated on visa application that the care provider would be in the United States for the purpose of attending a martial arts competition, when in reality, the care provider was put to work at the traffickers’ nursing homes).

⁴⁴ *E.g.*, *Antonatos*, *supra* note 9.

⁴⁵ *E.g.*, *Kalu*, *supra* note 8.

then leverage health professionals' undocumented status to make them keep working (e.g., by threatening to report them to immigration authorities if they do not work).⁴⁶

Debt Bondage

Traffickers or alleged traffickers used unfair contract terms and debt as a method of coercion. Sometimes, these methods amounted to debt bondage, which is when a person in debt pledges their services as a security for that debt, but the person to whom the debt is owed does not apply the value of those services to pay down the debt or "the length and nature of those services are not respectively limited and defined."⁴⁷

Breach Fees

Some of the most common contract terms (also known as "clauses") appearing in health professionals' employment contracts were steep financial penalties for terminating employment before the end of the contract ("breach fees"). Breach fees often took the form of liquidated damages provisions in employment contracts, but alleged traffickers also imposed financial penalties for terminating employment in other ways, such as forcing or coercing health professionals to sign promissory notes or confessions of judgment.

Liquidated Damages Provisions

One relevant type of contract clause is a "liquidated damages provision." This clause says that if the health professional leaves their employment before the end of the contract term (or otherwise violates their employment contract in any way), they will pay to cover the "damages" caused to the employer.⁴⁸ In *Magtoles v. United Staffing Registry, Inc.*, a staffing agency allegedly required each nurse to sign an employment contract containing a "liquidated damages" provision, which stated that if the nurse left employment before completing at least 6,000 hours of work over the course of 3 years, she would be required to pay \$15 for every hour not worked of the 6,000-hour requirement.⁴⁹ For instance, if a nurse left employment after completing 2,000 hours of work over the course of a year, they would owe their trafficker \$60,000 for the 4,000 remaining hours. The court made clear that the TVPA encompasses both violent *and nonviolent* coercion.⁵⁰ Specifically, the threat of financial harm, if coercive enough, can sustain a claim under the TVPA.⁵¹

⁴⁶ *Id.* Because most employment-based visas are dependent on sponsorship by a specific employer, it is possible for employers to threaten even documented workers with unlawful status if the workers would choose to leave the employment situation.

⁴⁷ 22 U.S.C. § 7102(7).

⁴⁸ *Magtoles, supra* note 9.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

Promissory Notes

The promissory note is another mechanism that sometimes leads to debt bondage. A promissory note is a promise to pay a specific amount of money to someone at a future date.⁵² For example, in *Access Therapies*, a physical therapist alleged he was required by the alleged trafficker to sign eight promissory notes, with several of them ranging from \$200 to \$2,000 and two of them valued at \$15,000 and \$20,000.⁵³ He would have to pay the \$20,000 promissory note if he did not fulfill the 3-year term of his employment contract.⁵⁴ The case is currently ongoing, but the court found that if the physical therapist's allegations are true, he could have reasonably felt coerced to continue working until the end of his 3-year contract in order to avoid enforcement of the \$20,000 promissory note.⁵⁵

Confessions of Judgment

Traffickers or alleged traffickers also required health professionals to sign confessions of judgment as a condition of employment. Confessions of judgment purport to allow a creditor to obtain an automatic judgment against a debtor upon the nonoccurrence of a payment.⁵⁶ In other words, if the health professional does not pay the fee required by the contract upon violating or terminating their contract, a court could automatically require the health professional to pay their employer a specified amount of money, often without advance notice or a chance for the health professional to defend themselves in court.⁵⁷ For example, in *Paguirigan*, the staffing agency required each nurse to sign a \$25,000 confession of judgment before leaving the Philippines for employment in the United States.⁵⁸ The court ruled that the confession of judgement could have reasonably coerced the nurses to continue working for the trafficker out of fear of incurring extreme financial obligations.⁵⁹

⁵² Legal Information Institute. (n.d.). *Promissory note*. Retrieved October 27, 2022, from https://www.law.cornell.edu/wex/promissory_note.

⁵³ *Access Therapies*, *supra* note 9.

⁵⁴ *Id.* The case does not specify when the other promissory notes would have to be paid, but the physical therapist alleges that these promissory notes demand payment for (1) items that the alleged trafficker had no legal right to require him to pay, (2) items for which the alleged trafficker had promised to pay, or (3) items that the alleged trafficker promised not to charge him for.

⁵⁵ *Id.*

⁵⁶ Legal Information Institute. (n.d.). *Confession of judgment*. Retrieved October 27, 2022, from https://www.law.cornell.edu/wex/confession_of_judgment. Confessions of judgment are not enforceable in every state and, in states where they are valid, there may be additional requirements for them to be enforceable. However, workers often do not fully understand their rights, so the mere existence of the confession of judgment clause in the contract can be sufficiently coercive, whether or not it is actually valid.

⁵⁷ *Id.*

⁵⁸ *Paguirigan*, *supra* note 9.

⁵⁹ *Id.* (finding that the trafficker's threat of enforcing the \$25,000 contract termination fee is more than three times the amount threatened in *United States v. Dann*, 652 F.3d 1160 (9th Cir. 2011), a previous case in which the court found a violation of the TVPA and is thus sufficiently high enough to establish "serious harm" within the meaning of the TVPA).

Enforceable Breach Fees

Notably, breach fees are not always unenforceable. For example, in *Estavilla v. Goodman Grp., LLC*, the court found acceptable an “advanced amount” clause, which operated similarly to a liquidated damages provision.⁶⁰ Specifically, a nursing home agreed to cover a nurse’s meals, housing, and utilities for the first 3 months of employment as well as the costs associated with her travel to the United States (this was the “advanced amount”).⁶¹ The advanced amount clause stated that one half of this cost would be forgiven after 2 years of employment at the nursing home, and the remainder would be forgiven if the nurse remained employed at the nursing home for 3 years.⁶² However, because the nursing home terminated the nurse after 18 months, the nursing home demanded that the nurse repay the advanced amount in full.⁶³ The court noted that unlike *Paguirigan*, in which the breach fee of \$25,000 bore no reasonable relation to the staffing agency’s likely loss, here, the advanced amount was based on actual expenses documented by the nursing home.⁶⁴

Smuggling Debt

A final way in which health professionals fell into debt bondage was through “smuggling debt[s].”⁶⁵ For example, in *Pelayo*, nursing homeowners paid a smuggler \$6,000 to bring a care provider from the Philippines to the United States.⁶⁶ The traffickers then lied to the care provider, telling her they paid the smuggler \$12,000 and that she was required to work at the traffickers’ nursing homes to repay that smuggling debt.⁶⁷ The traffickers withheld \$300 of the \$600 to \$800 the care provider made each month as payment towards her smuggling debt.⁶⁸

Other Methods of Coercion

In addition to debt bondage, the 13 cases contained allegations of other methods of coercion, including non-compete clauses and threatened abuse of legal process, among others.

Non-compete Clauses

A common clause appearing in employment contracts were “non-compete” clauses. Generally, non-compete clauses prohibit employees from seeking employment with a competing employer after their employment period is over.⁶⁹ In *Dale Carmen*, each employment contract allegedly contained a non-compete clause prohibiting nurses from seeking employment with any other healthcare provider within 50 miles of the alleged trafficker’s client facilities for one

⁶⁰ *Estavilla*, *supra* note 9.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Pelayo*, *supra* note 8.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Legal Information Institute. (n.d.). *Covenant not to compete*. Retrieved October 27, 2022, from https://www.law.cornell.edu/wex/covenant_not_to_compete

year after the nurse left employment.⁷⁰ This clause would be triggered if a nurse left employment before the end of their contract term.⁷¹ Such a limitation on employment options could have a coercive effect, particularly for health professionals whose visas restrict them to a certain type of work.

Similarly, in *Magtoles*, the non-compete clause allegedly stated that if a nurse left employment before completing 6,000 hours of work over the course of 3 years, the nurse would be prohibited from working as a nurse or physician's assistant or participating in any business competing with the staffing agency in the United States for a period of 3 years.⁷² Because these clauses effectively precluded the nurses from working elsewhere in the United States for a prolonged period of time if they broke their contract, the court found that the nurses could have felt compelled to continue working for staffing agency.⁷³

Threatened Abuse of Legal Process

Threatened abuse of the law or legal process was another common alleged method of coercion among the 13 cases. For example, in *Paguirigan*, the staffing agency threatened nurses with the enforcement of the liquidated damage clause for \$25,000 that was contained in their employment contracts.⁷⁴ Further, the staffing agency actually commenced lawsuits against several nurses to enforce this costly breach fee.⁷⁵ In one of these lawsuits, the staffing agency also sought an additional \$250,000 in damages from a nurse for alleged "interference with contract and prospective business relations."⁷⁶ Finally, the traffickers informed other nurses who still worked in their nursing homes of the lawsuits they commenced against nurses who terminated employment.⁷⁷ According to the court, the lawsuits against nurses who quit before completing their contracts and the announcement of these lawsuits to nurses who still worked for the traffickers "were designed not to recover actual losses, but rather to send a message to all foreign nurses that they would face" similar lawsuits and incur steep attorneys' fees if they stopped working for the traffickers.⁷⁸

Also common were threats of deportation if workers did not comply with the trafficker's requirements. In *Kalu*, the owner of a staffing agency repeatedly threatened the nurses with deportation and revocation of their visas if they did not continue working as "unspecialized laborers" in his nursing homes, despite having been originally promised jobs as nurses at a university.⁷⁹ According to the nurses, these threats compelled them to continue to work.⁸⁰

⁷⁰ *Dale Carmen*, *supra* note 9.

⁷¹ *Id.*

⁷² *Magtoles*, *supra* note 9.

⁷³ *Id.*

⁷⁴ *Paguirigan*, *supra* note 9.

⁷⁵ *Id.*

⁷⁶ *Id* at 435.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Kalu*, *supra* note 8.

⁸⁰ *Id.*

It is important to note that the mere mention in a contract of possible legal consequences for employment contract violations may not rise to the level of coercion required by the TVPA. In *Estavilla*, the nurse's employment contracts contained a clause stating that "failure to...meet any of your obligations under the terms of this letter would be reported to the Department of Labor, Immigration and Naturalization Service and/or Immigration and Customs Enforcement Agency under applicable immigration fraud statutes."⁸¹ However, the nurse did not allege that the nursing home ever threatened to report her to immigration or that she felt coerced to continue working because of this clause.⁸² The court thus ruled that the mere presence of this clause in the employment contract was not enough to substantiate a claim under the TVPA.⁸³

Other Methods of Coercion

Other, less common methods of coercion alleged in the 13 cases included threats of assault or death, excessive work hours, inadequate pay, poor living conditions, and isolation from the outside world. For example, in *Antonatos*, the foreign national physician alleged that the owner of the private medical practice who recruited and employed him threatened to kill him and his family in India if he told anyone that the medical practice was fraudulent or if he refused to continue working.⁸⁴ In *Javier v. Beck*, a physical therapy rehabilitation manager alleged that he was not paid minimum wage or overtime.⁸⁵ In *United States v. Morales*, the owner of several nursing homes admitted that they forced foreign nurses to live in the care facilities at which they worked.⁸⁶ The nurses slept in closets, on sofas, or in an unheated garage.⁸⁷ Some of the nurses were also forced to work alone in 24-hour shifts.⁸⁸

Case Outcomes

In at least 4 of the 13 cases, the court found for the plaintiffs, and the traffickers were penalized accordingly with fines or imprisonment. There are only two cases in which the courts found no violations of the TVPA.

Pending Cases

Some federal cases that have been filed under the TVPA for forced labor in healthcare settings may still be pending.⁸⁹ In each of these cases, the court found that the health professionals have sufficiently stated a claim under the TVPA, which means that if the health professionals'

⁸¹ *Estavilla*, *supra* note 9 at 1.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Antonatos*, *supra* note 9.

⁸⁵ *Javier*, *supra* note 9.

⁸⁶ *Morales*, *supra* note 8.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Access Therapies*, *supra* note 9; *Antonatos*, *supra* note 9; *Javier*, *supra* note 9; *Magtoles*, *supra* note 9; *Panwar*, *supra* note 9; *Walia*, *supra* note 9; *Dale Carmen*, *supra* note 9. It can be difficult to know the outcome in some civil cases due to private settlements.

claims are true, the alleged traffickers' actions amount to forced labor.⁹⁰ As one example, in *Access Therapies*, the court denied the alleged trafficker's motion to dismiss the physical therapist's complaint.⁹¹ The court found that the health professional stated enough facts that, if true, they would be a violation of the TVPA.⁹²

Convictions

Several cases have resulted in favorable outcomes for health professionals who have experienced trafficking.⁹³ In civil and criminal cases, courts have found for the health professionals or convicted traffickers of forced labor and ordered the traffickers to pay restitution or damages to the health professionals who have experienced trafficking. The largest award was in *Kalu*, in which the owner of a staffing agency and nursing homes was convicted and ordered to pay the nurses \$3,790,338.55 in restitution.⁹⁴ Also, in *Paguirigan*, the court found for the plaintiffs and ordered the traffickers to pay the nurses \$1,559,099.79 in civil damages.⁹⁵

In all three of the federal forced labor prosecutions discussed in this IM, the traffickers were convicted of forced labor under the TVPA and sentenced to prison for some length of time. Terms of imprisonment ranged from 18 months to 11 years.⁹⁶

Non-Convictions

There are only two cases that had favorable outcomes for the alleged traffickers.⁹⁷ In *Estavilla*, the court found that neither the "advance amount" clause nor the clause mentioning possible legal or immigration consequences in the event of employment contract violations rose to the level of harm or coercion required by the TVPA.⁹⁸ This was largely because, according to the court, the alleged trafficker did not leverage either clause to coerce the nurse to continue working.

⁹⁰ In all of the pending cases, the courts were deciding on pre-trial motions, which are requests that the parties make before a trial takes place (e.g., motion to dismiss plaintiff's complaint). Whether the plaintiff's allegations are factual or not is decided at trial, either by a judge or a jury. Therefore, pre-trial motions such as motions to dismiss are either granted or denied on the basis of whether the allegations, *if true*, could sustain a conviction under the TVPA.

⁹¹ *Access Therapies*, *supra* note 9.

⁹² *Id.*

⁹³ *Paguirigan*, *supra* note 9; *Kalu*, *supra* note 8; *Pelayo*, *supra* note 8; *Morales*, *supra* note 8.

⁹⁴ *Kalu*, *supra* note 8.

⁹⁵ *Paguirigan*, *supra* note 9. Note, this figure is only for the nurses' breach of contract claims. The court has yet to determine punitive damages. Punitive damages are an order from the court to the defendant to pay plaintiff a specified amount of money. Punitive damages are considered punishment and are typically awarded when the defendant's behavior is found to be especially harmful. Legal Information Institute. (n.d.). Punitive damages. Retrieved October 27, 2022, from https://www.law.cornell.edu/wex/punitive_damages.

⁹⁶ E.g., *Kalu*, *supra* note 9; *Morales*, *supra* note 8.

⁹⁷ *Estavilla*, *supra* note 9; *New York State Nurses Ass'n*, *supra* note 9.

⁹⁸ *Estavilla*, *supra* note 9.

The other case was dismissed on technical grounds. In *New York State Nurses Association*, a union filed a civil lawsuit under the TVPA on behalf of several nurses who alleged they had been trafficked.⁹⁹ However, the court held that only victims of human trafficking or the attorney general may file a civil suit for TVPA violations,¹⁰⁰ not unions on behalf of those who have experienced trafficking.¹⁰¹ Thus, the court dismissed the suit but did so “without prejudice,” meaning that the nurses have an opportunity to refile the case themselves.¹⁰²

Conclusion

The amount of federal litigation alleging forced labor of health professionals is relatively small; nonetheless, these cases reveal important trends regarding forced labor of health professionals. For example, foreign national health professionals are particularly vulnerable to forced labor tactics, like debt bondage or unfair contract terms. Further, though convictions for this category of crimes under the TVPA are sparse, they tend to result in substantial restitution orders and imprisonment.

/s/
Katherine Chon
Director

⁹⁹ *New York State Nurses Ass'n*, *supra* note 9.

¹⁰⁰ *Id* at 67.

¹⁰¹ *Id.*

¹⁰² *Id* at 72.

Appendix

Case Name, Location, Year	Alleged Trafficker(s)	Healthcare Professional	Healthcare Setting
<i>Access Therapies, Inc. v. Mendoza</i> (S.D. Ind. 2014)	Healthcare recruiting and staffing company	Physical therapist	Nursing homes
<i>Antonatos v. Waraich</i> , (D.S.C. 2013)	Owner of private medical practice	Physician	Private medical practice
<i>Dale Carmen v. Health Carousel</i> , (S.D. Ohio 2021)	Healthcare recruiting and staffing company	Nurses	Various healthcare settings including hospitals
<i>Estavilla v. Goodman Grp., LLC</i> (D. Mont. 2022)	Nursing home	Nurse	Nursing home
<i>Javier v. Beck</i> (S.D.N.Y. 2014)	Owner of healthcare recruiting and staffing agency, as well as owners of other businesses, such as restaurants	Physical therapist	Initially promised: various healthcare and non-healthcare settings
<i>Magtoles v. United Staffing Registry, Inc.</i> , (E.D.N.Y. 2021)	Healthcare recruiting and staffing company	Nurses	Various healthcare settings
<i>New York State Nurses Ass'n v. Albany Med Ctr.</i> (N.D.N.Y. 2020)	Medical center/hospital	Nurses	Medical center/hospital
<i>Paguirigan v. Prompt Nursing Emp. Agency LLC</i> (E.D.N.Y. 2017)	Healthcare recruiting and staffing company, nursing homes, and the owners thereof	Nurses	Nursing homes
<i>Panwar v. Access Therapies, Inc.</i> (S.D. Ind. 2013)	Healthcare recruiting and staffing company	Physical therapist	Various healthcare settings
<i>United States v. Kalu</i> (10th Cir. 2015)	Owner of healthcare recruiting and staffing company	Nurses	Nursing homes
<i>United States v. Pelayo, et al.</i> (C.D. Cal. 2009)	Owners of nursing homes	Unspecified care provider	Nursing homes
<i>United States v. Morales</i> (C.D. Cal. 2012)	Owner of nursing homes	Nurses	Nursing homes
<i>Walia v. Veritas Healthcare Sols.</i> (S.D.N.Y. 2015)	Healthcare recruiting and staffing company	Clinical research professional	Unspecified