

**Public Hearing Before the
United States Sentencing Commission**

Panel Two

“William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008”

Tuesday, March 17, 2009

3:45 p.m. – 4:45 p.m.

Federal Judicial Center

Washington, D.C.

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Testimony of Charles Song

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Mr. Chairman and Distinguished Members of the Commission:

Thank you very much for the privilege to testify today on behalf of the hundreds of survivors of trafficking and their families I have had the honor of directly serving since 2000. I would also like to thank the Commission for considering whether the guidelines should be amended in light of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457 (“Act”), signed December 23, 2008.

In response to the estimated 14,500 to 50,000 men, women, and children being trafficked into the United States each year, Congress passed the Trafficking Victims Protection Act of 2000 (TVPA) and subsequent amendments to provide comprehensive federal legislation to address the problem of human trafficking through a holistic, three-pronged approach of protection, prosecution, and prevention. This legislation dramatically improved the ability of prosecutors to punish traffickers while providing the critical protections survivors needed to cooperate with law enforcement. By creating new trafficking crimes and increasing sentences, these laws ensured that traffickers are punished for the full panoply of offenses associated with trafficking and given appropriately severe sentences.

Furthermore, the TVPA, recognizing that effective prosecution of human traffickers requires survivors to risk their lives and their family’s lives to cooperate with law enforcement agencies, provides greater protections for trafficked persons by creating two new immigration benefits: T Nonimmigrant status and continued presence. It also guarantees victims specific services and enumerates legal rights that include: the right to social services and benefits available to refugees; the right to appropriate shelter not incompatible with their status as victims of a crime; the right to receive medical care; the right to witness protection; the right to access information about legal and translation services; and the right to mandatory restitution and civil action.

Because survivors of trafficking risk their lives and their family’s lives to assist in the investigation and prosecution of their former captors, they deserve and need the benefits and protections of the TVPA and its amendments. However, with so much at stake for survivors when they cooperate with a criminal prosecution, they also need reassurances that, if convicted, their traffickers will be incarcerated and not be able to directly harm them, their families, or other potential victims for a reasonable period of time. Fortunately, concerned Commissioners, such as yourselves, are asking whether the guidelines adequately address the crimes associated with human trafficking and considering whether the guidelines should be amended to adequately address trafficking

crimes. On behalf of the thousands of men, women, and children who are enslaved in the United States today and will hopefully be free someday to assist in the prosecution of their traffickers, I urge you to continue reviewing the adequacy of the guidelines to address trafficking crimes and to amend the guidelines accordingly.

1. Directive to the Commission

§ 222(g) of the Act directs the Commission to

review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of alien harboring to ensure conformity with the sentencing guidelines applicable to persons convicted of promoting a commercial sex act if

(1) the harboring was committed in furtherance of prostitution; and

(2) the defendant to be sentenced is an organizer, leader, manager, or supervisor of the criminal activity.

Public Law 110-457, § 222(g).

The Commission should amend the guidelines to ensure conformity between §2L1.1, the guidelines applicable to persons convicted of alien harboring, and §§2G1.1 and 2G1.3, the guidelines applicable to persons convicted of promoting a commercial sex act, if the conditions specified in the directive are present in the alien harboring. Specifically, where a defendant has been convicted of alien harboring under 8 U.S.C. § 1324(a), if the alien harboring was committed in furtherance of prostitution and the defendant to be sentenced is an organizer, leader, manager, or supervisor of the criminal activity, the Commission should provide a cross-reference in §2L1.1, the guidelines applicable to persons convicted of alien harboring, to §§2G1.1 and 2G1.3, the guidelines applicable to persons convicted of promoting a commercial sex act. Providing a cross-reference in §2L1.1 to §§2G1.1 and 2G1.3 will help ensure that defendants who at best exploit and at worst enslave immigrants receive appropriate sentences and also help ensure conformity between the guidelines.

2. 18 U.S.C. § 1593A. Benefiting financially from peonage, slavery, and trafficking in persons

§222(d) of the Act amended Chapter 77 of title 18 United States Code to create the new crime of benefiting financially from peonage, slavery, and trafficking in persons:

Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act in violation of section 1581(a), 1592, or 1595(a), knowing or in reckless disregard of the fact that the venture has engaged in such violation, shall be fined under this title or imprisoned in the same manner as a completed violation of such section.

18 U.S.C. § 1593A.

The Commission should amend Appendix A to refer offenses under 18 U.S.C. § 1593A to §2H4.1, the guidelines applicable to persons convicted of Peonage, Involuntary Servitude, and Slave Trade. As 18 U.S.C. § 1593A clearly states that persons who knowingly benefit from peonage, slavery, and trafficking in persons are to be "imprisoned in the same manner as a completed violation of such section" there should little debate that offenses under 18 U.S.C. § 1593A to §2H4.1, the guidelines applicable to persons convicted of Peonage, Involuntary Servitude, and Slave Trade.

3. 18 U.S.C. § 1351. Fraud in foreign labor contracting

§222(e) of the Act amended Chapter 63 of title 18 United States Code to create the new crime of Fraud in foreign labor contracting:

Whoever knowingly and with intent to defraud recruits, solicits or hires a person outside the United States for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be fined under this title or imprisoned for not more than 5 years, or both.

18 U.S.C. § 1351

The Commission should amend Appendix A to refer offenses under 18 U.S.C. § 1351 to §2B1.1, the guidelines applicable to persons convicted of Theft, Embezzlement, Receipt of Stolen Property, Property Destruction, and Offenses Involving Fraud or Deceit or, in the alternative, to §2H1.1, the guidelines applicable to Offenses Involving Individual Rights. §2B1.1, the guidelines applicable to persons convicted of Theft, Embezzlement, Receipt of Stolen Property, Property Destruction, and Offenses Involving Fraud or Deceit, appears to be the most appropriate guidelines

for offenses under 18 U.S.C. § 1593A because of the detailed specific offense characteristics included in the guidelines. However, it may be necessary to amend §2B1.1 to include additional specific offense characteristics and definitions in order to address issues specific to 18 U.S.C. § 1351.

4. Other Modifications to Chapter 77

Subtitle C of title II of the Act amended various provisions in Chapter 77 of title 18, United States Code, including 18 U.S.C. § 1583 (enticement into slavery), 18 U.S.C. § 1584 (sale into involuntary servitude), 18 U.S.C. § 1589 (forced labor), 18 U.S.C. § 1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), 18 U.S.C. § 1591 (sex trafficking of children or by force, fraud, or coercion), 18 U.S.C. § 1592 (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor). The guidelines appear to be adequate as they apply to these amended offenses, offenses involving obstruction, offenses involving conspiracy, and offenses involving financial benefit from trafficking. However, one amendment the Commission should make to the guidelines is including threats to trafficking victims' family members as an aggravating circumstance.

I look forward to continuing to work with the Commission to amend the guidelines. I am confident that, with your support, the guidelines can be amended to more fully realize the goals and intentions of American people when they passed the TVPA and its amendments.

Thank you for your attention and for the invitation to appear here today. I look forward to your questions.