UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SA CV10-01172 JAK (MLGx)	Date	August 27, 2012
Title	Mairi Nunag Tanedo, et al. v. East Baton Rouge Parish School Board, et al.		

Present: The Honorable

Navarro. UPI recruits teachers from the Philippines to teach in the United States. Defendant PARS International Placement Agency ("PARS") is a Philippine corporation, headed by Defendant Emilio Villarba. Like UPI, PARS recruits teachers from the Philippines to teach in the United States (UPI, Navarro, PARS, and Villarba are collectively the "Recruiter Defendants"). PARS is alleged to be UPI's agent in the Philippines. Defendant Robert Silverman is a California attorney who, with his law firm Silverman & Associates, represented the Louisiana school districts in the recruitment process (Silverman and the firm are collectively the "Attorney Defendants"). Defendant East Baton Rouge Parish School Board ("EBR") and other Louisiana school districts contracted with the Recruiter Defendants and Attorney Defendants to recruit Filipino teachers to work in their districts. Defendant Elizabeth Duran Swinford is the former Associate Superintendent for Human Resources for EBR (Swinford and EBR are collectively the "Employer Defendants").[2]

In 2006, the Recruiter Defendants began advertising their teacher recruiting services to United States school districts. They also advertised teaching opportunities in the Philippines. The Recruiter Defendants interviewed Plaintiffs and class members for teaching positions. Plaintiffs allege that the Recruiter Defendants, after extending them job offers, revealed to Plaintiffs only some of the steps in the recruitment process. At first, the Recruiter Defendants told Plaintiffs only of the need to submit certain documents in support of their visa applications and to pay a recruitment fee ("First Recruitment Fee") of approximately $5,000 per applicant. This First Recruitment Fee included fees that, according to regulations governing H-1B visas, the petitioning United States employers, and not the beneficiary teachers, were required to pay. This First Recruitment Fee was non-refundable.

After paying the First Recruitment Fee, Plaintiffs received job offers to teach in the United States. Plaintiffs interviewed at a United States embassy to obtain their H-1B visas. The Recruiter Defendants instructed Plaintiffs to have embassy officials send Plaintiffs' passports and visas -- when issued -- directly to the office of the Recruiter Defendants in the Philippines, rather than to Plaintiffs. Once the Recruiter Defendants had Plaintiffs' AAates schohand Tw[(Sta 8ehan)5.
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652 F.3d 1160, 1163-66 (9th Cir. 2011). Although *Dann* was decided in 2011, it concerned trafficking that occurred between 2006 and April 2008*, i.e.*, before the December 23, 2008 amendment. In *Dann*, the Ninth Circuit held that there was sufficient evidence of threatened financial harm to constitute serious harm, which was instrumental in obtaining the victim's forced labor. *Id.* at 1171. Although the question whether "serious harm" included financial harm before the December 23, 2008 amendment was not specifically addressed by the Ninth Circuit, the clear implication of the court's analysis is that it did include such harm. In a section titled "Financial Harm," *Dann* analyzed the threats of financial harm that defendant utilized. Further, *Dann* emphasized that the TVPA as enacted in 2000 was designed to overrule the Supreme Court's holding in *United States v. Kozminski*, 487 U.S. 931 952 (1988), which had limited the definition of involuntary servitude to "'physical' or 'legal' coercion." *Dann*, 652 F.3d at 1169. Congress in 2000 "intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion." *Id.* Further, in discussing the scope of serious harm, the Ninth Circuit cited the Seventh Circuit's holding in *United States v. Calimlim*, 538 F.3d 706, 712-14 (7th Cir. 2008), and summarized *Calimlim*'s holding in a parenthetical as "finding threat to stop paying victim's poor family members constitutes serious harm." *Dann*, 652 F.3d at 1169. *Calimlim*, which concerned trafficking that ended in 2004, was decided on August 15, 2008, before the December 23, 2008 amendment. 538 F.3d at 709. In *Calimlim*, the Seventh Circuit dismissed as having "no merit" defendants' argument that there could be no serious harm without threats of physical coercion, because § 1589 "is not written in terms limited to overt physical coercion, and we know that when Congress amended the statute it expanded the definition of involuntary servitude to include nonphysical forms of coercion." *Id.* at 714. Part of defendants' scheme in *Calimlim* to coerce the victim's labor was to cause the victim to "believe that she might be deported and her family seriously harmed because she would no longer be able to send money." *Id.* at 710. These financial threats thus constituted threats of serious harm.[4] *See also United States v. Sou*, No. 09-00345, 2011 WL 3207265, at *3-*5 (D. Haw. July 26, 2011) (holding that serious harm included financial harm under the pre-December 23, 2008 TVPA).

Additional considerations confirm that financial harm constituted serious harm before the December 23, 2008 amendment.[5] The pre-amendment version of § 1589 referred to "threats of serious harm to, or physical restraint against, that person," and "serious harm or physical restraint." 18 U.S.C. § 1589 (2003). That § 1589 distinguishes between serious harm and physical restraint indicates that, prior to 2008, Congress intended that serious harm not be limited to physical harm, and instead include at least some non-physical harm, *e.g.*, financial harm. This is consistent with the House Conference Report from 2000. It stated that the TVPA "refers to a broad array of harms, including both physical and

[4] In their reply, Defendants argue that *Dann* and *Calimlim* are distinguishable because the facts of those cases presented financial threats more severe than those of the instant case. However, that the financial harm in those cases may have been greater than in the present case does not affect whether before the December 23, 2008 amendment, financial harm was cognizable as serious harm.

[5] Plaintiffs argue that the December 23, 2008 amendment is best read as a clarification of, and not an alteration to, existing law, and thus the amendment's express definition of "serious harm" would apply to pre-amendment conduct. *See United States v. Sanders*, 67 F.3d 855, 856 (9th Cir. 1995) ("The Ninth Circuit has consistently stated that when an amendment is a clarification, rather than an alteration, of existing law, then it should be used in interpreting the provision in question retroactively."). However, the *Sanders* rule applies only when an amendment is labeled or designated a clarification. *Id.* Plaintiffs have provided no indication that the December 23, 2008 amendment was labeled as such.

nonphysical," and would apply "where the traffickers use more subtle means designed to cause their victims to believe that serious harm will result to themselves or others if they leave," such as threats of families' "bankruptcy in their home country." H.R. Conf. Rep. No. 106-939, at 101 (2000).[6]

Defendants next argue that Plaintiffs have failed to present evidence of their "real wealth." Thus, Defendants contend that, because an analysis of "serious harm" requires a determination whether harm "is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm," 18 U.S.C. § 1589(c)(2), there must be evidence of Plaintiffs' background and circumstances and this requires evidence of "real wealth." Defendants cite no authority for the proposition that evidence of such wealth or assets is required to establish whether harm would be sufficiently serious to compel someone of a particular background to be coerced to perform labor. But, even if this were part of the statutory standard, Defendant Navarro admitted that she was aware that the sum of the Second Recruitment Fee and airfare was more than the teachers could pay on their own. Navarro Depo., p.404:20-24, Pl. Exh. F, Dkt. 289-22. As a result, Plaintiffs incurred debt, with such debt among the reasons they felt compelled to work.[7] Further, Plaintiff Donnabel Escuadra declared that she is from a poor family, Escuadra Decl. ¶ 14, Pl. Exh. C, Dkt. 134-3, and that she continued working because of the loans she obtained, the nonrefundable deposits, the successive fees, and threats of lawsuits, *id.* at ¶¶ 10-13, 20. Plaintiff Mairi Nunag Tanedo testified that, because of

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rose to the level of a sham); *In re Nichols*, 82 Cal. App. 73, 76 (1927) (extortion claim predicated on threat to sue requires allegation that threatened suit was objectively baseless).

In denying Defendants' motion to dismiss, the Court already rejected Defendants' legal theory:

> "Extortion has been characterized as a paradoxical crime in that it criminalizes the making of threats that, in and of themselves, may not be illegal." *Flatley v. Mauro*, 39