

---

Volume 60

Issue 3 *Issue 3: Innovations in the Fight Against Human Trafficking* & Issue 4: *Select Legal Scholarship from the New York Law School Law Review*

Article 5

---

January 2016

## **Innovation at the Front Lines**

PAMELA K. CHEN

*Federal district court judge in the Eastern District of New York*

Follow this and additional works at: [https://digitalcommons.nyls.edu/nyls\\_law\\_review](https://digitalcommons.nyls.edu/nyls_law_review)



Part of the [Human Rights Law Commons](#)

---

### **Recommended Citation**

PAMELA K. CHEN, *Innovation at the Front Lines*, 60 N.Y.L. SCH. L. REV. (2015-2016).

This Article is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Law Review by an authorized editor of DigitalCommons@NYLS.

PAMELA K. CHEN

## Innovation at the Front Lines

60 N.Y.L. SCH. L. REV. 623 (2015–2016)

ABOUT THE AUTHOR: Pamela Chen is a federal district court judge in the Eastern District of New York. Prior to taking the bench in March 2013, she was an Assistant U.S. Attorney in the Eastern District of New York for fourteen years. During her time at the United States Attorney's Office, Judge Chen served as the Chief of the Civil Rights Section in the Criminal Division, where she supervised the investigation and prosecution of matters involving human trafficking, hate crimes, and official misconduct.

This article is an edited version of Judge Chen's remarks given at the *Innovations in the Fight Against Human Trafficking* symposium held at New York Law School on October 10, 2014.

## INNOVATION AT THE FRONT LINES

For those of you who believe that New York is the center of the universe, this may validate that view. It happens that one of the earliest human trafficking cases anywhere—*United States v. Paoletti-Lemus*—was uncovered here in 1997.<sup>1</sup>

If you lived in New York City and rode the subways in the 1990s, you would likely have been approached by a deaf, mute person selling trinkets such as key chains and little toys. It was eventually discovered that these individuals, immigrants from Mexico, were being forced through threats of violence and actual violence<sup>2</sup> to sell these trinkets by another group of deaf, mute Mexicans.<sup>3</sup> The case was only uncovered after this activity had been going on for years, when a number of brave victims managed to escape and go to the police.<sup>4</sup>

In 1997, there was no federal or state anti-trafficking law. There was no Trafficking Victims Protection Act (TVPA).<sup>5</sup> There was no crime of forced labor; the case had to be charged as extortion.<sup>6</sup> There was no federal funding for the victims' housing, social service needs, or even sign-language translators who knew Mexican sign language.<sup>7</sup> Indeed, the City had to contract with the Lexington School for the Deaf to provide social and translation services for the *Paoletti* victims,<sup>8</sup> as well

- 
1. No. 1:97-cr-00768-NG-1 (E.D.N.Y 1998); see also Joseph P. Fried, 2 *Sentenced in Mexican Peddling Ring*, N.Y. TIMES (May 8, 1998), <http://www.nytimes.com/1998/05/08/nyregion/2-sentenced-in-mexican-peddling-ring.html>.
  2. The victims, who numbered over sixty, were beaten, tasered, and hit with electrical cords, among other forms of violence. See generally Ian Fisher, *U.S. Indictment Describes Abuses of Deaf Mexican Trinket Sellers*, N.Y. TIMES (Aug. 21, 1997), <http://www.nytimes.com/1997/08/21/nyregion/us-indictment-describes-abuses-of-deaf-mexican-trinket-sellers.html>; Fried, *supra* note 1.
  3. Ron Soodalter, *A Blight on the Nation: Slavery in Today's America*, 25 CONN. J. INT'L L. 37, 43 (2009).
  4. With the help of a couple they met at Newark Airport, the victims were able to write a letter, which they then brought to the 115th Precinct in Queens. Deborah Sontag, *7 Arrested in Abuse of Deaf Immigrants*, N.Y. TIMES (July 21, 1997), <http://www.nytimes.com/1997/07/21/nyregion/7-arrested-in-abuse-of-deaf-immigrants.html?pagewanted=all>.
  5. The TVPA was reauthorized as the Trafficking Victims Protection Reauthorization Act of 2003. It was established in an effort to combat modern-day slavery. Pub. L. No. 108-193, 117 Stat. 2875 (2003) (codified as amended in scattered sections of 22 U.S.C.). The TVPA has (among other things) provided resources for human trafficking survivors, encouraged closer relationships between foreign countries with regard to anti-trafficking efforts, and implemented new ways for collecting data about human trafficking. *Current Federal Laws*, POLARIS PROJECT, <https://polarisproject.org/current-federal-laws> (last visited Apr. 20, 2016).
  6. ALICIA W. PETERS, *RESPONDING TO HUMAN TRAFFICKING: SEX, GENDER, AND CULTURE IN THE LAW* 58 (2015) (noting that the *Paoletti* case “revealed...the need for a legal conception of psychological coercion”).
  7. There are many dialects of sign language, even for the same spoken language. For example, there are distinct Spanish, Mexican, Chilean, Colombian, Costa Rican, Dominican, Ecuadorian, Guatemalan, Honduran, Nicaraguan, and Peruvian sign languages. See *Sign Language*, WORLD FED'N DEAF, <http://wfdeaf.org/our-work/focus-areas/sign-language> (last visited Apr. 20, 2016). For an extensive listing of sign languages, see *Sign Language Search Results*, GLOTTOLOG, <http://glottolog.org/glottolog?search=sign+language#2/20.4.146.7> (last visited Apr. 20, 2016).
  8. Press Release, Mayor's Press Office, Mayor Giuliani to Visit with Students at Lexington School for the Deaf (Sept. 21, 2000).

as find the resources to pay for everything else, which included a year's stay for the victims in a motel and the eventual clearing out of a homeless shelter in Brooklyn to house them.<sup>9</sup> There was also no statutory mechanism for providing the victims with legal immigration status during, or after, the case. There was no victim certification, Continued Presence, or T visa.<sup>10</sup> The *Paoletti* victims' immigration status had to be addressed through an ineffective vehicle known as an S visa.<sup>11</sup>

Fast forward to 2003, six years after *Paoletti* and three years after the TVPA was passed. In my then-role as an Assistant U.S. Attorney, I worked on one of the first large-scale sex trafficking cases, *United States v. Carreto*.<sup>12</sup> The way the case began illustrates how far we had come in investigating human trafficking crimes over those six years. The investigation was the result of a telephone call to the Immigration and Naturalization Service (now part of Immigration and Customs Enforcement (ICE)) from a mother in Mexico who claimed that a man named Josue Carreto had kidnapped her daughter. All that the mother had was a telephone number and a photograph of her daughter.

After tracing the telephone number to an apartment in Queens, ICE agents sat outside the building to watch for the victim. Fortunately, she emerged within a short time. The ICE agents detained her and asked if she was legally in the United States and what she was doing for work. She admitted to being in the country illegally and working as a prostitute but said that she was doing so in order to make money and return to Mexico with her husband, Josue, to take care of their children.

Because the victim was over eighteen, and because we did not have any direct evidence of force, fraud, or coercion, we could not arrest anyone. But we believed, based on the telephone call from the victim's mother, that we had to investigate further and that we needed more time to talk to the victim. The ICE agents ended

---

9. Mirta Ojito, *U.S. Permits Deaf Mexicans, Forced to Peddle, to Remain*, N.Y. TIMES (June 20, 1998), <http://www.nytimes.com/1998/06/20/nyregion/us-permits-deaf-mexicans-forced-to-peddle-to-remain.html>.

10. Victim certification of adult trafficking victims who are not U.S. citizens or lawful permanent residents enables these victims to receive benefits and services under any federal or state program to the same extent as refugees. A grant of Continued Presence by the Department of Homeland Security Immigration and Customs Enforcement (ICE), based on a federal law enforcement official's request, allows a human trafficking victim to remain in the United States, and obtain work authorization, for one year during the course of an investigation or prosecution of a trafficking case. *Fact Sheet: Certification for Adult Victims of Trafficking* (Aug. 8, 2012), [http://www.acf.hhs.gov/sites/default/files/ort/fact\\_sheet\\_certification\\_for\\_adult\\_victims\\_of\\_trafficking.pdf](http://www.acf.hhs.gov/sites/default/files/ort/fact_sheet_certification_for_adult_victims_of_trafficking.pdf). T visas are specifically designated for victims of human trafficking. *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status> (last visited Apr. 20, 2016).

11. See Mirta Ojito, *Out of Servitude, Deaf Mexicans Languish in Limbo*, N.Y. TIMES (Mar. 22, 1998). S visas are temporary green cards granted to immigrants who are acting as informants or witnesses for a law enforcement agency. See *Green Card for an Informant (S Nonimmigrant)*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov/green-card/other-ways-get-green-card/green-card-informant-s-nonimmigrant> (last visited Apr. 20, 2016).

12. 583 F.3d 152 (2d Cir. 2009).

up administratively arresting<sup>13</sup> her and Josue Carreto on immigration charges. The same day, we also discovered and administratively arrested seven other suspected victims and their male companions. Both the victims and the suspects were placed into immigration custody to be processed for deportation.

It is pretty much “Anti-trafficking 101” that the worst way to start a trafficking investigation is to lock up your victim. This confirms the victim’s worst fear: that you are the enemy. It took many weeks of tearful sessions with the victims before we finally earned their trust and convinced them that we actually wanted to help them. At that time, we did not think to bring in any service providers or victim advocates to assist in that initial interviewing process. As they say, experience is the best teacher.

Although the *Carreto* case concluded successfully—with the two lead defendants, Josue Carreto and his brother, pleading guilty to multiple trafficking offenses and being sentenced to fifty-year terms of imprisonment each<sup>14</sup>—we learned two important lessons about how to improve our investigation and prosecution of these cases: (1) partnerships and collaborations between law enforcement and non-governmental service providers are essential not only to identify victims and ensure their ability to participate in the criminal justice process, but also to achieve justice and recovery for both victims and their families; and (2) cooperative relationships with foreign countries, such as Mexico, are essential, as these are the source countries for our victims. During the next ten years, from 2003 until 2013 when I left the U.S. Attorney’s Office, there were significant innovations on both of those fronts.

*A. Task Forces, a Victim-Centered Approach, and Collaborations between Law Enforcement and the Service Provider Community*

Led by the U.S. Department of Justice (DOJ), there was a massive, nationwide effort to create anti-trafficking task forces comprised of federal, state, and local government agencies as well as law enforcement, non-governmental service providers, and advocacy organizations. These task forces are still operating, and beyond facilitating cooperation on specific matters, are also working on prevention and awareness-raising campaigns.<sup>15</sup> One of the most dramatic and effective innovations that came out of the task force model was the victim-centered approach, which means, in practical terms, that law enforcement authorities must work hand-in-glove with victims’ legal and social service representatives.<sup>16</sup>

13. “An administrative arrest refers to the arrest of an alien who is charged with an immigration violation.” U.S. DEP’T OF HOMELAND SEC., IMMIGRATION ENFORCEMENT ACTIONS: 2008, at 3 n.5 (2009), [www.dhs.gov/xlibrary/assets/statistics/publications/enforcement\\_ar\\_08.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_08.pdf). Administrative arrests generally lead to deportation proceedings before an immigration judge instead of criminal prosecution in federal district court. *See id.* at 2–3.

14. *Carreto*, 583 F.3d at 157.

15. *See* U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, OFFICE FOR VICTIMS OF CRIME, BUREAU OF JUSTICE ASSISTANCE, FY 2015 ENHANCED COLLABORATIVE MODEL TO COMBAT HUMAN TRAFFICKING COMPETITIVE SOLICITATION 9–11 (2015), [http://ojp.gov/ovc/grants/pdftxt/FY15\\_ECM\\_Competitive\\_Solicitation-508.pdf](http://ojp.gov/ovc/grants/pdftxt/FY15_ECM_Competitive_Solicitation-508.pdf).

16. *Id.* at 5–6.

This may not sound revolutionary, but it was, and still is, when it comes to law enforcement. This new paradigm means that: (1) law enforcement must rely heavily on service providers to bring forward potential victims; (2) victims' lawyers and case managers usually sit in on victim interviews; (3) victims' lawyers and case managers accompany victims in assisting with investigative measures, such as surveillance or identifying locations; and (4) law enforcement works proactively with victims and their service providers on family reunification and security issues.

### 1. *Criminal Justice Programs*

Consistent with the victim-centered approach,<sup>17</sup> a number of state and local criminal justice programs have been developed over the last ten years in which judges, court administrators, prosecutors, and law enforcement seek to identify potential trafficking victims among defendants arrested for prostitution and other crimes.<sup>18</sup> In addition, a number of states, including New York, have passed "safe harbor laws," which seek to ensure that minors who are exploited by sex traffickers are treated as victims, not criminals.<sup>19</sup>

### 2. *Technological Innovations*

The *Paoletti* and *Carreto* cases began by chance, one with a few victims escaping and luckily finding help, and the other with a victim's mother calling in a report and ICE agents locating the victim. Now, with the advent of technology and the means to mine electronic data, law enforcement can proactively search for victims and perpetrators. These means include tracking cellphone usage and GPS data; collecting and identifying significant patterns in wire transfer data; collecting video footage from security cameras that are in so many public places; mining travel records such as EZ Pass and subway records; and searching Internet websites and databases such as Facebook, Twitter, and Instagram.

---

17. The victim-centered approach often involves viewing individuals who have traditionally been seen as "criminals" as "victims." Larry Alvarez & Jocelyn Cañas-Moreira, *A Victim-Centered Approach to Sex Trafficking Cases*, FBI L. ENFORCEMENT BULLETIN (Nov. 9, 2015), <https://leb.fbi.gov/2015/november/a-victim-centered-approach-to-sex-trafficking-cases>.

18. In 2013, New York Chief Judge Jonathan Lippman announced the creation of eleven Human Trafficking Intervention Courts in a statewide effort to combat human trafficking. These eleven court parts were partially based on pilot programs in Nassau and New York County. William K. Rashbaum, *With Special Courts, State Aims to Steer Women Away from Sex Trade*, N.Y. TIMES (Sept. 25, 2013), <http://www.nytimes.com/2013/09/26/nyregion/special-courts-for-human-trafficking-and-prostitution-cases-are-planned-in-new-york.html>.

19. See POLARIS PROJECT, 2014 STATE RATINGS ON HUMAN TRAFFICKING LAWS (2014), <https://polarisproject.org/sites/default/files/2014-State-Ratings.pdf>; see also POLARIS PROJECT, HUMAN TRAFFICKING ISSUE BRIEF: SAFE HARBOR (2015), <https://polarisproject.org/sites/default/files/2015%20Safe%20Harbor%20Issue%20Brief.pdf> (noting that Safe Harbor Laws have been passed in 34 states).

*B. Cooperation with Foreign Countries*

Relationships with source countries, through the efforts of the U.S. Department of State, DOJ, and non-governmental service provider organizations, have vastly improved over the last several years.<sup>20</sup> These improved relationships have resulted in bilateral investigations, prosecutions, arrests, and seizures of assets and property.<sup>21</sup> Additionally, they have enabled the expeditious recovery of victims' children in foreign countries and the reunification of families.<sup>22</sup>

---

20. For example, in 2014, Mexican “[a]uthorities maintained strong law enforcement cooperation with U.S. officials, partnering on at least 15 joint law enforcement operations, one of which resulted in a victim being reunited with her two children.” U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT: JULY 2015*, at 245 (2015) [hereinafter *TIP REPORT 2015*]; see also *About Us*, U.S. DEP’T ST., <http://state.gov/tip/about/index.htm> (last visited Apr. 20, 2016) (mentioning that the number of countries in the State Department’s TIP Report has more than doubled since 2001 and that “the *Report* has prompted legislation, national action plans, implementation of policies, and programs and protection mechanisms that complement prosecution efforts”). Though the Department of State, the DOJ, and non-governmental service provider organizations have been essential to building stronger relationships with source countries, the coercive aspect of the TVPA must also be considered. The TVPA partially conditions the giving of foreign aid by the United States to other countries. See *TIP REPORT 2015*, *supra*, at 48. These conditions include the country’s vigorously investigating and prosecuting human trafficking conduct, convicting and sentencing individuals responsible for trafficking, protecting trafficking victims, adopting measures to prevent trafficking, extraditing traffickers, and making “serious and sustained efforts to reduce the demand for . . . commercial sex acts; and . . . participation in international sex tourism by nationals of the country.” *Id.* at 45, 49–50.

21. *TIP REPORT 2015*, *supra* note 20, at 245.

These latest extraditions and the reunification of a victim with her child are the culmination of a sustained and committed effort by the United States government and its partners in Mexico to work together, and to work with their partners in the community, to identify, prosecute and punish sex traffickers and to restore the dignity and lives of survivors of this heinous crime.

Press Release, U.S. Attorney’s Office for the Eastern District of New York, United States Attorney Loretta E. Lynch Announces Extradition of Mexican Sex Traffickers as Part of Comprehensive Program to Combat Trafficking and Reunify Victims and Families (Dec. 10, 2012), <http://www.justice.gov/archive/usao/nye/pr/2012/2012dec10.html>; see also Michael Daly, *New Attorney General Lynch is Sex Traffickers’ Worst Nightmare*, *DAILY BEAST* (Apr. 24, 2015, 5:25 AM), <http://www.thedailybeast.com/articles/2015/04/24/new-attorney-general-loretta-lynch-is-sex-traffickers-worst-nightmare.html>; Press Release, Immigration and Customs Enf’t, Human Trafficking Fugitive on ICE’s Top 10 List Extradited to US from Mexico (Oct. 21, 2015), <https://www.ice.gov/news/releases/human-trafficking-fugitive-ices-top-10-list-extradited-us-mexico>. As explained in the U.S. Attorney’s Office’s December 10, 2012 press release:

Since 2009, the Departments of Justice and Homeland Security have collaborated with Mexican law enforcement counterparts in the Procuraduría General de la República (PGR), the Secretaría de Seguridad Pública (SSP), Procuraduría Social de Atención a las Víctimas de Delitos (PROVICTIMA), and non-governmental partners in the United States and Mexico in a Bilateral Human Trafficking Enforcement Initiative. Through this Initiative, the United States and Mexico have collaborated to bring high-impact prosecutions under both U.S. and Mexican law to more effectively dismantle human trafficking networks operating across the U.S.-Mexico border, prosecute human traffickers, rescue human trafficking victims, and reunite victims with their families.

U.S. Attorney’s Office for the Eastern District of New York, *supra*.

22. U.S. Attorney’s Office for the Eastern District of New York, *supra* note 21.

The impact of these changes is easily seen by comparing *Carreto* to the current capabilities of law enforcement to reunite victims and their children. In *Carreto*, the DOJ had to hire a family lawyer in Mexico to help the victims obtain legal custody over their own children and to get legal authorization to remove the children from the traffickers' families.<sup>23</sup> That took several years. Mexican authorities now provide an unprecedented level of cooperation in removing victims' children from the traffickers' homes in Mexico and reuniting the children with their parents in the United States.<sup>24</sup>

Since the TVPA's passage sixteen years ago, there has been a dramatic improvement not only in how human trafficking cases are handled by federal and state government and law enforcement, but also in how they are viewed and understood by the public. The combined and coordinated work of government, law enforcement, service providers, and community groups has raised awareness here and abroad, led to the creation of multi-disciplinary task forces dedicated to combatting trafficking, and improved international collaboration in anti-trafficking efforts. While there is, and will always be, more to be done, publications like this edition of the *New York Law School Law Review* light the pathway to innovation in the ongoing fight against human trafficking.

---

23. *See id.*

24. *Id.*; *see also* TIP REPORT 2015, *supra* note 20, at 245.