



Statement for the Record from:

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**Eradicating Slavery:
Preventing the Abuse, Exploitation and Trafficking
of Domestic Workers by Foreign Diplomats
and Ensuring Diplomat Accountability**

House Foreign Affairs Committee

**Honorable Tom Lantos
Chairman**

**Honorable Ileana Ros-Lehtinen
Ranking Member**

**A Hearing on
“International Trafficking in Persons:
Taking Action to Eliminate Modern Day Slavery”**

**October 18, 2007
2172 Rayburn House Office Building**

On behalf of the American Civil Liberties Union (ACLU), a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals, and its hundreds of thousands of members, activists, and 53 affiliates nationwide, we would like to thank Chairman Lantos and Ranking Member Ros-Lehtinen and the members of this esteemed Committee for the opportunity to submit this written statement for the record of the hearing on **“International Trafficking in Persons: Taking Action to Eliminate Modern Day Slavery.”**

The ACLU applauds the Committee’s investigation of this deeply troubling activity. The United States has led the international community in preventing and eradicating one of the most egregious human rights violations: modern-day slavery and trafficking in persons. We have championed the Trafficking Protocol and adopted robust domestic legislation that implements our international obligations and advances our constitutional commitment to abolishing slavery in all of its manifestations. Prevention, protection and accountability are the hallmarks of these international and domestic efforts.

However, U.S. international obligations to extend immunity to foreign diplomats currently conflict with our efforts to prevent, protect and ensure accountability for trafficking and modern-day slavery. Diplomatic immunity effectively carves out a special exception for the trafficking by diplomats of their domestic workers into the United States.

As Congress moves to reauthorize the **Trafficking Victims Protection Act (TVPA)**, it has the opportunity to close the gap in accountability by ensuring that foreign diplomats entitled to immunity cannot perpetrate trafficking violations in the United States with impunity. The United States is legally and morally obligated to ensure that diplomatic immunity does not sanction modern-day slavery on our shores.

Congress must ensure that no class of traffickers is exempted from punishment and no class of victims remains unprotected. Simple solutions – some modeled on current U.S. laws – exist to prevent the trafficking of domestic workers by diplomats and to protect those who are victimized. Additionally, Congress should provide these individuals with a narrowly tailored and limited remedy by requiring states, as a condition for their diplomats to obtain special visas for their domestic workers, to waive their diplomats’ immunity for civil claims arising from a breach of the employment contract.

Stories of Abuse

These women have had the courage to speak out against trafficking abuses, but none have achieved redress through the courts on account of diplomatic immunity.

Mildrate Yancho, a Cameroonian national on an A-3 visa, worked for eleven months for a diplomat employed by the Cameroonian Embassy. The employers never paid her, never gave her a day off, severely beat her, and confiscated her passport. She won her civil suit against the diplomat in Maryland district court to reclaim her passport from the employers, but the decision was later vacated when the diplomat raised the defense of diplomatic immunity.¹

¹ *Nchang v. Nyamboli*, Civil Case No. 0502-0001-794-2005 (Md. Cir. Ct., Prince George Cty., Nov. 30, 2006).

Vishranthamma Swarna, an Indian national on an A-3 visa, worked eighteen hours each day for four years for a Minister to the Kuwait Mission to the United Nations. He promised her a salary of \$2,000 per month in her employment contract, but paid her \$200. Forbidden from leaving the apartment unaccompanied, her employer subjected her to psychological abuse and regularly raped her.² In her civil suit, the Southern District of New York dismissed her suit after her employer asserted diplomatic immunity. She has a new case pending before the Southern District of New York.

Shamela Begum, a mother of three from Bangladesh moved to the United States with a special visa to work for a diplomat at the Bahraini Mission to the United Nations in New York. The diplomat confiscated Ms. Begum's passport as soon as she arrived, forced her to work seven days a week, and forbade her to leave the apartment alone. Ms. Begum was paid only \$100 per month. She sued her employer in the Southern District of New York. Her case was settled for an undisclosed amount in 2000.³

Mani Kumari Sabbithi, an Indian national on an A-3 visa, was trafficked by a Kuwaiti Attaché to the Embassy of Kuwait and his wife to work in their home in McLean, Virginia. The employers forced her to work sixteen to nineteen hours per day without a day of rest; confiscated her passport; confined her to the house; deprived her of food, rest, and medical care; and severely beat her. The employers paid her family in India approximately \$242 per month, but paid her nothing. Ms. Sabbithi sued the diplomat and his wife in January 2007 for trafficking and forced labor. Her case is pending before the D.C. District Court.⁴

Trafficking at Home: The Problem Posed by the Visa Program and Diplomatic Immunity

The United States gives the employees of foreign missions and international organizations the privilege of bringing household and childcare workers into the U.S. on special A-3 and G-5 visas. Each year, more than 3,000 A-3 and G-5 visas are issued.⁵ Currently, because of a lack of oversight and accountability, the visa program enables diplomats to traffic and exploit these workers.

Indeed, in recent years, foreign diplomats have perpetrated some of the worst trafficking abuses reported in the United States.⁶ Media reports of severe abuse and exploitation by diplomats of

² Complaint, *Swarna v. Al-Awadi*, 06cv4880 (S.D.N.Y. filed June 2006).

³ See Somini Sengupta, Settlement Reached in Maid's Suit Against Diplomat, N.Y. Times, July 15, 2000.

⁴ Complaint, *Sabbithi, et al. v. State of Kuwait, et al.*, Civil Action No. 0-70115EGS (D.D.C. filed Jan. 18, 2007).

⁵ *Nonimmigrant Visas Issued by Classification: Fiscal Years 2001-2005*, available at:

<http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/Table26D.xls>.

⁶ See, e.g., Frank Langfitt, *Servants: Diplomat Held Us as Suburban 'Slaves,'* NPR, Mar. 1, 2007; Henri Cauvin, *Workers Allege Abuse by Kuwaiti Attache*, Wash. Post, Jan. 18, 2007; Colbert I. King, *The Slaves in Our Midst*, Wash. Post, Dec. 23, 2006, at A21; Lena Sun, "Modern-Day Slavery" Prompts Rescue Efforts: Groups Target Abuse of Foreign Maids, Nannies, Wash. Post, May 3, 2004, at A1 (reporting that a Bangladeshi maid working for a Bahraini diplomat in New York was never paid or allowed to leave the apartment until she was rescued by police; an Indian maid for a diplomat in Potomac, Maryland was paid \$100 for 4,500 hours of work over 11 months and physically and mentally abused; an Indonesian domestic servant employed by a diplomat at the United Arab Emirates Embassy in Washington, D.C. was physically abused, threatened with death, and underpaid); Sandra Evans

their domestic workers in the United States have become increasingly commonplace. Yet, without exception, none of these diplomat traffickers have been brought to justice through criminal prosecutions nor have their domestic workers succeeded in holding them civilly accountable. Diplomatic immunity shields them from criminal or civil jurisdiction in the United States. As a result, their victims are unprotected and unable to seek the restitution and redress provided by the TVPA. The effect of diplomatic immunity is that, under the cover of foreign relations, diplomat employers can enslave their workers with indifference to our constitutional and statutory prohibitions on slavery, without repercussion.

***Diplomats' Impunity Violates Constitutional, Statutory,
and International Prohibitions of Slavery***

In 1865, the United States outlawed slavery and involuntary servitude with the ratification of the Thirteenth Amendment to the U.S. Constitution.⁷ In 1872, the U.S. Supreme Court ruled in the *Slaughter-House Cases* that the Thirteenth Amendment was intended to eliminate “any other kind of slavery, now or hereafter.”⁸ In 2000, with the passage of the TVPA, Congress extended the protection of the Thirteenth Amendment by recognizing trafficking in persons as a form of slavery and providing civil, criminal, and immigration remedies to victims of slavery. We fail to uphold this promise to eliminate slavery in all of its manifestations within the United States if we turn a blind eye to the trafficking abuses occurring behind the closed doors of foreign diplomats’ homes.

Additionally, we are failing to meet our obligations under international law to prohibit and eliminate slavery, forced labor, and trafficking.⁹ The international obligation of the United States to extend immunity to foreign diplomats under the Vienna Convention on Diplomatic Relations currently clashes with our efforts to prevent, protect, and ensure accountability for modern-day slavery. By allowing diplomatic immunity to shield diplomats who perpetrate modern-day slavery on U.S. soil, we are effectively carving out a special exception not only to our Constitution and the TVPA, but also to our treaty obligations, which require a remedy for victims of trafficking.¹⁰

& John Burgess, *Maid Says Saudi Diplomat Withheld Wages, Food*, Wash. Post, Nov. 30, 1988, at D1 (reporting that a Thai domestic worker for a defense attaché to the Saudi Arabian Embassy in Washington, D.C. alleged exploitation after escaping from the diplomat’s home by crawling out a window).

⁷ U.S. Const. Amend. XIII, § 1. “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

⁸ 83 U.S. 36, 72 (1872).

⁹ See, e.g., Universal Declaration of Human Rights, Dec. 10, 1948, G.A. res. 217A(II), U.N. Doc. A/810 at 71; Slavery, Security, Forced Labor and Similar Institutions and Practices Convention of 1926, art. 1(I), Sept. 25, 1926, 60 L.N.T.S. 253, entered into force for the United States Mar. 21, 1929; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, art. 1, Apr. 30, 1956, 226 U.N.T.S. 3, entered into force for the United States Dec. 6, 1967; Abolition of Forced Labor Convention (ILO No. 105), Jun. 25, 1957, entered into force for the United States Sept. 25, 1991; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, G.A. res. 25, annex II, U.N. Doc. A/45/49, entered into force for the United States Dec. 3, 2005 [hereinafter Trafficking Protocol].

¹⁰ Trafficking Protocol, *supra* note 9.

In addition, slavery is a violation of *jus cogens*.¹¹ As such, slavery is unlike other serious crimes diplomats have been known to commit. It is a human rights violation so heinous that there can be no justification to shield perpetrators from being held accountable as a result of diplomatic immunity or any other special exception.

Diplomatic Immunity Circumvents State Department Efforts to Curb Abuses

Under the Vienna Convention on Diplomatic Relations, diplomats have a clear obligation to abide by U.S. federal and state employment and labor laws in the United States.¹² The U.S. has emphasized this obligation in at least two circular diplomatic notes sent to foreign missions in 1996 and 2000 regarding the employment and treatment of domestic workers by their diplomats and staff. However, the routine disregard by foreign diplomats of basic U.S. employment and labor laws prompted the Department of State to impose stricter requirements for obtaining A-3 and G-5 visas.

The Department of State requires foreign diplomats to sign labor contracts with their domestic employees that fully comport with U.S. law and to guarantee that they will provide their employees with decent and fair working conditions in order for the U.S. to issue an A-3 or G-5 visa to their employees.¹³

However, diplomatic immunity makes these contracts, as well as the obligations of diplomats to respect U.S. laws on trafficking and labor standards, entirely unenforceable. Abusive diplomat employers, knowing that they will not be held accountable because of their immunity, sign these contracts and make fraudulent representations to the U.S. government and their domestic workers that they will provide legal and fair working conditions. Our government issues these special visas and workers agree to their employment in reliance on these false and ultimately unenforceable promises.

Numerous organizations that serve victims of trafficking in the New York and D.C. areas have documented these fraudulent representations by diplomats and they have documented abuses such as physical and sexual abuse, fourteen to nineteen hour work days, complete withholding of wages or wages as little as fifty-eight cents per hour or as little as \$150 per month, deprivation of travel documents and passports, forced imprisonment with no opportunity to leave the home, and restrictions on communications with family. Because these workers, mostly women, work hidden in private homes, they are extremely vulnerable to the exploitation of unscrupulous diplomats because of their sex, immigration status, nationality, and race.

¹¹ *Jus cogens* is a “mandatory or peremptory norm of general international law accepted and recognized by the international community as a norm from which no derogation is permitted.” Black’s Law Dictionary 876 (8th ed. 1999).

¹² Vienna Convention on Diplomatic Relations, art. 41(1), Apr. 18, 1961, 500 U.N.T.S. 95, *entered into force* Apr. 24, 1964 (providing that “it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State”).

¹³ 9 FAM 41.21 N6.2.

Congress Must Act to Protect Victims Trafficked by Diplomats

The ACLU recommends a two-tiered approach to addressing these problems: the implementation of preventative measures and the assurance of a remedy for trafficked domestic workers.

The United States can prevent such rampant abuse, exploitation and trafficking by ensuring that (1) domestic workers are informed of their rights in the U.S and of resources available to them, and (2) that diplomat employers are aware of their obligations under U.S. law as employers and as visa sponsors. In addition, the U.S. government can improve oversight over the visa program.

When prevention fails, and the diplomat employer violates the terms of the employment contract with the domestic worker, he or she must be held accountable. A narrowly tailored and limited remedy, premised on a voluntary waiver of immunity, is appropriate and necessary.

The ACLU has developed model legislation that addresses both issues in detail. Some features of that bill are described below.

A. Preventative Measures

The TVPA should include several provisions that will help prevent abuse, exploitation and trafficking. Specifically, Congress should:

- (1) Require the State Department to develop and disseminate, in consultation with nonprofit, nongovernmental organizations, a pamphlet in multiple languages with information about the following:
 - a. The visa process and the terms of a domestic worker's immigration status in the United States;
 - b. The legal rights of domestic workers under U.S. immigration, labor and employment laws;
 - c. The illegality of human trafficking, sexual harassment and sexual and physical violence in the United States;
 - d. The employment contract (already required by the State Department) between the employer and the domestic worker including an explanation that the contract is legally binding and enforceable, and an explanation of the rights and protections included in the contract;
 - e. Contact information for community organizations, legal service providers and victims' advocacy organizations that provide services to domestic workers and victims of human trafficking, labor exploitation and sexual and physical assault.
 - f. Emergency contact numbers for the police, the national human trafficking hotline number operated by the Department of Health and Human Services, and other relevant toll free numbers;
 - g. Contact information for the Embassies and Consulates of the countries of citizenship of A-3 and G-5 visa recipients.

- (2) Require the State Department to develop a detailed model employment contract containing uniform provisions that provide the terms and conditions of the employment relationship between the employer and the A-3 or G-5 visa recipient as well as liability for violation of the terms of the contract.

- (3) Require the State Department to hold mandatory consular interviews with the domestic workers as follows:
 - a. At the first interview—held prior to issuing the A-3 or G-5 nonimmigrant visa, outside the presence of any third party and in a language the worker understands—the consular official must ensure the existence of a signed employment contract, provide the worker with the information pamphlet described above, and inform her of her rights and available resources.
 - b. Within 90 days of arrival of the A-3 or G-5 domestic worker in the US, a representative of the Department of State should meet with the worker, away from home and not in the presence of the diplomat employer to ascertain that the worker has all required documents (such as the contract, pamphlet, copy of her passport, etc.) and understands that she will be subject to and protected by U.S law while in the United States.
 - c. Hold at least two periodic, in-person check-ins annually with the workers, outside the presence of any third party but, if appropriate, with the assistance and participation of local service and nongovernmental organizations, to ensure that the employers are meeting their obligations.
- (4) Require the Department of State to provide appropriate consular officials with comprehensive training on fair labor standards, the widespread problem of human trafficking in persons, the common problems of labor abuse experienced by domestic workers of diplomats. The Secretary of State should ensure that consular officials understand and are aware of their own duty to educate and inform both the diplomat and domestic worker of their rights and obligations under U.S. law.
- (5) Require the State Department to maintain information about the presence of A-3 and G-5 domestic workers in the United States, including a copy of the employment contract, and other contact information.
- (6) Require the State Department to mail, within 30 days of the issuance of the visas, a copy of the employment contract and a notice informing employers of their obligations and responsibilities under the contract and under the laws of the United States.

B. Ensuring a Remedy: Contractual Waiver of Immunity

Congress should require that if the employer is entitled to diplomatic immunity, the mandatory contract shall contain a clause waiving that employer's immunity from the jurisdiction of U.S. courts for the purposes of any legal action arising out of violations of the domestic worker's rights set forth in the employment contract. A representative of the diplomat's country authorized to make decisions binding on his or her government must sign each employment contract. This signature will act as the formal waiver of the diplomat employer's civil immunity for any legal

action arising from the violations of the employment contract and federal, state and local laws governing the employment relationship between the employer and the domestic worker.

The signature required above from a representative of the diplomat's country will act as an agreement that the country shall take all reasonable steps to ensure that the diplomat pays any judgment issued by a court as a result of his or her violation of the employment contract, including all applicable U.S. federal, state and local laws, with the domestic worker. Steps taken by the diplomat's country should include appropriate disciplinary measures and garnishment of wages towards payment of the judgment.

Conclusion

Without measures to prevent abuse and to provide an avenue for redress for victims, the United States will unwittingly continue to facilitate patterns of labor abuse and trafficking.

Congress must ensure that no class of traffickers is exempted from punishment and no class of victims remains unprotected.