No. 06-11229

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee

v.

SUNG BUM CHANG,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS APPELLEE

WAN J. KIM
Assistant Attorney General

JESSICA DUNSAY SILVER
KAREN L. STEVENS
Attorneys
U.S. Department of Justice
Civil Rights Division
Appellate Section - RFK 3728
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 353-8621

STATEMENT REGARDING ORAL ARGUMENT

The United States does not oppose defendant's request for oral argument.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES: **PAGE**

STATUTES:

STATUTES (continued): **PAGE**

GUIDELINES:

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-11229

UNITED STATES OF AMERICA,

Appellee

v.

SUNG BUM CHANG,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT OF JURISDICTION

This is an appeal from a final judgment of the district court in a criminal case. Chang filed a timely notice of appeal on October 26, 2006. R. 124-125. This Court has jurisdiction under 28 U.S.C. 1291. Chang is in federal custody serving a sentence of 120 months.

STATEMENT OF THE ISSUES

1. Whether the district court committed clear error in finding that Chang qualified for a four-level enhancement as a leader or organizer of an otherwise extensive criminal activity under Section 3B1.1 of the Sentencing Guidelines.

2. Whether the district court committed clear error in finding that Chang

qualified for a two-level upward adjustment because the victims of his offense were vulnerable victims under Section 3A1.1.

STATEMENT OF THE CASE[1]

On May 25, 2005, Sung Bum Chang was charged with a single count of harboring illegal aliens in violation of 8 U.S.C. 1324(a). R. 12-13. In a superseding indictment on September 21, 2005, Chang and his wife, Hyang Kyung Chang, were charged with ten counts: one count of conspiracy to provide or obtain forced labor in violation of 18 U.S.C. 371; five counts of forced labor in violation of 18 U.S.C. 1589; one count of conspiracy to conceal, harbor and shield aliens from detection in violation of 8 U.S.C. 1324(a); one count of harboring illegal aliens for commercial advantage and private financial gain in violation of 8 U.S.C. 1324(a)(1); and two counts outlining forfeiture allegations under 18 U.S.C. 1594(b). R. 29-35. Chang pleaded guilty to two counts on June 12, 2006: Count 1, conspiracy to provide or obtain forced labor in violation of 18 U.S.C. 371; and Count 3, forced labor in violation of 18 U.S.C. 1589(a). R. 105.[2] On October 18, 2006, Chang was sentenced to 120 months imprisonment, three years of supervised release, restitution to his victims of $37,280, and a mandatory special assessment

---

[1] Citations to the Record on Appeal are denoted "R." Citations to the Sentencing Hearing Transcrips are denoted "Tr." Citations to the Presentence Investigation Report are denoted "PSR." Citations to Chang's Brief as Appellant are denoted "Br."

[2] Chang's wife pleaded guilty to one misdemeanor count of a superseding information, employment of unauthorized aliens and aiding and abetting in violation of 8 U.S.C. 1324a and 18 U.S.C. 2.

of $200.00. R. 115-122.

STATEMENT OF THE FACTS

Sung Bum Chang was born in Seoul, South Korea and emigrated to the United States with his parents after he graduated from high school. PSR ¶ 99. Chang owned "Club Wa" in Coppell, Texas. R. 85. Club Wa served food and alcohol and was frequented by Korean businessmen and other Korean nationals. PSR ¶ 27.

From on or about December 13, 2004 until agents raided his home on April 26, 2005, Chang collaborated with his wife, Hyang Kyung Chang, and others to recruit and bring young Korean women from South Korea to Dallas, Texas and to force them to work as hostesses at Club Wa. R. 85. Chang paid the smuggling debts of several Korean women who had been smuggled into the United States. After he paid their debts, the women, who were in the country illegally, were forced to live at Chang's home and to work at Club Wa both to pay off their debt and for Chang's own financial benefit. Chang used several means to compel the women to remain at his home and to work at Club Wa, including physical restraint, using a video surveillance system to monitor their comings and goings, and placing employees at the club's exits. R. 85.

Officials raided Chang's home after receiving a complaint from a young Korean woman, HYJ, who escaped from Chang's home through a second story window in February 2005. During the raid, law enforcement officers found six

young Korean women, including JSL and GHH, living at Chang's home and working at Club Wa under conditions of forced labor. PSR ¶¶ 28, 36; R. 85. All of the women were in the country illegally. They spoke little or no English. PSR ¶¶ 28, 50. HYJ and the six women found at Chang's home were interviewed by an agent of the Immigration and Customs Enforcement Service (ICE) and gave similar statements. PSR ¶ 36. The PSR describes the statements of HYJ and JSL in detail.

1. Smuggling Of Victims From South Korea To The United States

HYJ and JSL each stated that a broker in Seoul, South Korea offered to arrange their travel to the United States to work as waitresses or hostesses in a nightclub, serving and pouring drinks like hostesses at a tea house. PSR ¶¶ 19-20, 36. HYJ met with two brokers, Yoon and David. PSR ¶ 19. JSL met with a broker named Park. PSR ¶ 36.

The broker first told each woman that he would obtain United States visas for their travel. Later, the broker told them it would take months to obtain a visa, and offered the alternative of entering the United States illegally through Canada. PSR. ¶¶ 20, 36. The broker charged HYJ $12,000 and JSL $11,000. PSR ¶ 19.

David provided HYJ with a round trip airline ticket to Toronto, Canada. PSR ¶ 21. JSL, who traveled with three other females, received an airline ticket to Vancouver, Canada. PSR ¶ 36. When they arrived in Canada, they were met by representatives from a travel agency. The travel agency representative took JSL's

passport, allegedly for safe keeping. PSR ¶ 36. After a few days, the women were driven several hours towards the United States border, where a guide led them on a walk across the border. Once across the border in the United States, another vehicle picked them up. HYJ and her group were driven to New York City. PSR ¶ 21. JSL and her companions were driven 16 hours to Los Angeles, California. PSR ¶ 36.

2. Victims' Arrival In Dallas, Confiscation Of Passports And Forced Labor

In New York, HYJ was given a ticket to fly to Los Angeles with two other women. On their arrival, they were met and driven to Club Napoli in Los Angeles. The owner of Club Napoli selected one woman to work for him and told HYJ and the third woman they would have to work elsewhere. After a few days in Los Angeles, the women were driven to Chang's residence in Coppell, Texas. PSR ¶ 21. Chang took HYJ's passport and told her she owed him a debt of $13,900. PSR ¶ 22.

JSL's group spent one night at a hotel in Los Angeles, where they met the female manager of a club located in Dallas. The manager drove them in a van to Dallas. PSR ¶ 37. Once in Dallas, the manager arranged for them to work for Chang at Club Wa. The manager told JSL she had given her passport to Chang. PSR ¶ 38.

Both HYJ and JSL signed a contract, which was dictated by Chang and required them to work at Club Wa for six months to pay off their debts. Chang

told JSL that when she completed that contract, he would return her passport. PSR ¶ 38. The contract specified that if HYJ or JSL left to work for somebody else, their debt would double. PSR ¶¶ 40, 22. When HYJ asked why her debt had increased from $12,000, Chang told her that if he had to sell her to another place her debt would rise again. PSR ¶ 22. JSL stated that this type of contract was common in South Korea for illegitimate debts and for maids and bar girls. PSR ¶ 41. When they searched Chang's home in April 2005, agents found nine similar contracts. PSR ¶ 35. Agent Popp testified that GHH stated that Chang told her the contracts were enforceable in the United States. 2 Tr. 105-106.

HYJ contacted David in South Korea to complain and was told she had to pay her smuggling debt by either working for Chang or working at a spa in Dallas, where she would be required to have sex with customers. She threatened to call the police, and was told that would not be a good idea. PSR ¶ 22.

Chang required the women to live at his home under a set of strict rules. PSR ¶ 40. Chang's wife worked with Chang at Club Wa and helped supervise the women in their home. PSR ¶¶ 25, 34, 43, 52. JSL said there were approximately 10 women living at the house. PSR ¶ 40. The women were constantly monitored by a security network with seven cameras. PSR ¶ 23. For the first two months, JSL was not allowed to leave the house except to work. After two months, she could leave the house during the day, but only with Chang's permission and for no more than five hours. PSR ¶ 40. Chang charged the women for rent, food, utilities

and transportation, adding these amounts to their debt. PSR ¶¶ 23, 45. Chang also fined the women for violating his rules. PSR ¶¶ 46-47. After one woman returned home late, she and Chang argued, and the woman threatened to quit. Chang struck the woman in front of the others and fined her $500. PSR ¶¶ 46, 49.

Chang's wife stated that approximately 50 or 60 women had lived in their home under similar arrangements since 2003. The women generally lived at the house for four or five months until they paid off their smuggling debts. PSR ¶ 30.

3. Corroborating Testimony About Chang's Role In Conspiracy

Agent Popp, the ICE investigator assigned to Chang's case, testified at the sentencing hearing. Popp testified that two individuals, Ricky Choy and a confidential informant, gave statements regarding Chang's involvement in the conspiracy. 1 Tr. 32. The informant stated that Chang obtained young Korean women by contacting a broker named David in South Korea. David arranged for the women to fly to Canada, where they were smuggled illegally into New York State and then flown or driven to Dallas. PSR ¶ 27. Chang paid David between $8,000 and $30,000 in advance for each Korean female smuggled into the United States. Chang decided which women would be transported to Dallas based on email communications containing pictures from David. Once he selected the women he wanted, Chang paid through Western Union, United States mail or other means. PSR ¶ 27.

Chang's wife stated that people in Los Angeles notified her husband when new Korean females arrived in Los Angeles, and that Chang sometimes flew or drove to Los Angeles to pick them up. PSR ¶¶ 30, 32. Popp testified that Ricky Choy stated he worked as a driver in the scheme to smuggle young women from South Korea to the United States. 1 Tr. 40-41. Choy stated that he met Chang through the owner of Club Napoli in Los Angeles, and that Chang would contact Choy when he needed more women to work in his club. 1 Tr. 40-41.

SUMMARY OF THE ARGUMENT

This appeal involves only defendant Chang's sentence. He challenges adjustments to his offense level for (1) leader or organizer of an extensive criminal activity and (2) vulnerable victims.

The district court's finding that Chang was a leader or organizer within the meaning of Section 3B1.1(a) of the Sentencing Guidelines was not clearly erroneous. The offense conduct in this case is conspiracy to provide and obtain forced labor and forced labor. Chang was responsible for leading and organizing the forced labor of between 50 and 60 women. Chang indisputably controlled the people and activities at Club Wa, the only location where the forced labor at issue took place, and at his home, where the women were confined. Chang planned how the women would be obtained and how they would be coerced into forced labor. He determined when women were needed for Club Wa and selected the women he wanted. He paid in advance and collaborated with the brokers in South Korea and

Los Angeles to recruit and transport the women into the United States and to his club. Applying the criteria outlined in the commentary to Section 3B1.1, it is clear that Chang had "decision making authority," was deeply involved in "the commission of the offense," recruited his wife as an accomplice, was chiefly responsible for "planning" and "organizing the offense," and exercised "control and authority * * * over others." Sentencing Guidelines 3B1.1 comment. (n.4). Chang's claim that only the highest-ranking member with ultimate control over every aspect of a wide-ranging criminal conspiracy is eligible for the enhancement is incorrect. There can be more than one organizer or leader of a conspiracy. The enhancement was properly applied in this case.

Nor did the district court commit clear error in finding that Chang's victims were vulnerable under Section 3A1.1. Chang's victims were unusually susceptible to the crime of forced labor because they were illegal aliens, they had no documents for travel or identification, and they spoke little or no English. Moreover, they were more likely to believe that the coercive contracts Chang made them sign requiring them to work exclusively for him until their debts were paid were enforceable because such contracts were used in South Korea. These factors are specific to Chang's victims and are not accounted for in the offense guidelines for forced labor. Victims of forced labor are not necessarily illegal aliens, and illegal status is not an element of the offense of forced labor.

ARGUMENT

I

THE DISTRICT COURT'S FINDING THAT CHANG WAS A LEADER OR ORGANIZER OF AN EXTENSIVE CRIMINAL ACTIVITY IS NOT CLEARLY ERRONEOUS

This Court reverses a district court's factual finding that a defendant was a leader or organizer under Section 3B1.1 only if it is clearly erroneous. *United States* v. *Ayala*, 47 F.3d 688, 690-691 (5th Cir. 2003). "The district court may find that a defendant exercised a leader/organizer role by inference from the available facts." *United States* v. *Cabrera*, 288 F.3d 163, 174 (5th Cir. 2002). Its findings are not clearly erroneous if they are plausible in light of the record as a whole. *United States* v. *Lage*, 183 F.3d 374, 383 (5th Cir. 1999). Reversal is thus appropriate only if this Court is "left with the definite and firm conviction that a mistake has been committed." *Cabrera*, 288 F.3d at 168.

Section 3B1.1 of the Sentencing Guidelines directs the sentencing court to increase a defendant's base offense level by four levels "[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." Sentencing Guidelines § 3B1.1(a). Chang concedes that the criminal activity to which he pled guilty – conspiring and participating with others in the recruitment, smuggling, and forced labor of young Korean women – qualifies as "otherwise extensive" under Section 3B1.1. Br. 9. Nevertheless, he challenges the district court's finding that he was a leader or

organizer of this activity.

The commentary to Section 3B1.1 of the Sentencing Guidelines directs courts determining whether a defendant qualifies as a leader or organizer to consider

> the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

Sentencing Guidelines § 3B1.1 comment. (n.4). "There can * * * be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy." Sentencing Guidelines § 3B1.1 comment. (n.4).

The district court's finding that Chang qualified as a leader or organizer under this standard is not clearly erroneous. The offense conduct in this case was conspiracy to obtain forced labor and forced labor. Chang was responsible for leading and organizing the forced labor of 50 to 60 women. PSR ¶ 30. As the district court noted, Chang had complete control of the people and activities at Club Wa, the locus of the forced labor. 1 Tr. 98. Chang controlled his wife and the club's employees, as well as the women he brought from South Korea to serve as hostesses. Chang planned how the women would be obtained and how they would be coerced into forced labor. He determined when women were needed for Club Wa and selected the women he wanted. PSR ¶¶ 27, 30, 32; 1 Tr. 40-41. He accomplished these things by collaborating with and directing at least two

smuggling brokers in South Korea and others in Los Angeles to transport the women into the country and to his club. R. 85; Tr. 40-41; PSR ¶¶ 27, 32, 36-39.

Applying the criteria outlined in the commentary, it is clear that Chang had "decision making authority," was deeply involved in "the commission of the offense," recruited his wife as an accomplice, was chiefly responsible for "planning" and "organizing the offense," and exercised "control and authority * * * over others." Sentencing Guidelines 3B1.1 comment. (n.4). Accordingly, the district court did not clearly err in finding that Chang was a leader or organizer under Section 3B1.1.

Chang argues that he was not a leader or organizer because he did not directly lead or organize all of the criminal activity. In particular, Chang contends that he was not involved in the smuggling activities. Br. 10-11, 13.

This argument is belied by the record. While Chang may not have told the smugglers how to carry out the smuggling, he clearly collaborated with Korean brokers and others in this country. The PSR stated and Popp testified at the sentencing hearing that Chang initiated requests for women, paid the brokers for women in advance, and controlled which women he would accept. Although Chang claims there is no credible evidence to connect him with the smugglers in South Korea, Br. 10-11, the district court properly relied on the PSR and Popp's testimony at the sentencing hearing. Chang did not introduce any evidence to rebut

these sources[3] and, therefore, the district court was entitled to rely on them. *Cabrera*, 288 F.3d at 173-174; *Ayala*, 47 F.3d at 690 (in absence of rebuttal evidence, sentencing court may properly adopt PSR).

Moreover, Chang's argument fails as a matter of law. As the district court properly noted, a defendant need not "have ultimate authority over the whole enterprise" to qualify for the enhancement, but rather, may qualify if he is "a leader or organizer over some discrete part" of a criminal activity. *United States* v. *Ventura*, 353 F.3d 84 (1st Cir. 2003).

The object of the conspiracy in this case was to provide and use women in forced labor. It is undisputed that Chang was responsible for holding 50 to 60 women in forced labor – not the recruiters and brokers in Korea or the guides and drivers who delivered the women.

If Chang is not a leader and organizer, it is difficult to see who would fit the definition in this case. After all, the smugglers had no control over the forced labor itself. By defendant's reasoning, there would be no leader or organizer of this criminal activity because the activity is comprised of several discrete parts and no individual has direct control over all of the parts. That reading of the guideline would mean that in large, far-flung operations, those most responsible would escape adequate punishment because no one individual could be identified as the

---

[3] Chang did not specifically rebut the statements of the informant or claim that he did not engage in email contacts with brokers in South Korea. He merely asserted that the informant's statements were not credible. Br. 6.

leader of the whole operation. This reading not only defies common sense, but is also inconsistent with the guideline itself, which specifically provides that more than one person may qualify as the leader or organizer of a criminal conspiracy.

In *Ventura*, the First Circuit rejected an argument similar to the one made by Chang. There, the defendant, a mid-level drug dealer, pled guilty to conspiring to possess with intent to distribute at least 50 grams of crack cocaine. The defendant directed the activities of four co-defendants, orchestrated their drug ring, controlled the flow of drugs in its sphere of influence, handled negotiations for amounts and prices, and oversaw the stash house. 353 F.3d at 89. The court concluded that "[n]either the fact that there may have been other dealers who exercised a modicum of authority over loosely related drug-trafficking operations nor the fact that a supplier may have had ultimate authority over the entire enterprise undercuts the district court's finding that the appellant functioned as an organizer or leader of a discrete part of the organization." 353 F.3d at 90.

Similarly, in *United States* v. *Hare*, 150 F.3d 419 (1990),[4] this Court upheld a leader/organizer enhancement for a drug dealer who argued that he sometimes took orders from others and therefore was not a leader or organizer. 150 F.3d at 425. Quoting the guideline commentary, this Court stated: "there can, of course, be more than one person who qualifies as the leader or organizer of a criminal

[4] Overruled on other grounds, *United States* v. *Doggett*, 230 F.3d 160 (5th Cir. 2000) (quantity of drugs must be stated in indictment and proven beyond a reasonable doubt under *Apprendi*).

association or conspiracy." 150 F.3d at 425. Hare's activities in his own realm, which included recruiting accomplices, setting prices, controlling couriers, and paying for travel expenses of his employees "provided more than adequate support" for the finding that he was a leader, notwithstanding testimony that he sometimes took orders from others. 150 F.3d at 425. There is no evidence in this case that Chang took orders from anyone. If one who takes orders can be considered a leader or organizer, surely Chang's activities bring him comfortably within the reach of the guideline.

Chang's reliance on the Ninth Circuit's decision in *United States* v. *Mares-Molina,* 913 F.2d 770 (9th Cir. 1990), is unwarranted. Br. 12. The defendant in *Mares-Molina* allowed a participant in a drug ring to store vehicles containing drugs for short periods in a warehouse that the defendant leased for his trucking business. Mares-Molina was not a source of the drugs, a distributor, or a purchaser. Analogizing to the smuggling network in this case, Mares-Molina might be akin to an owner of a safe house in Canada who merely allowed women en route from South Korea to stay on his property and had no role in recruiting, smuggling, transporting or employing them. That, of course, is very different from Chang's role here.

Accordingly, the district court's finding that Chang was a leader or organizer under Section 3B1.1(a) of the Sentencing Guidelines was not clearly erroneous.

II

THE DISTRICT COURT DID NOT CLEARLY ERR IN FINDING CHANG ELIGIBLE FOR THE ENHANCEMENT FOR VULNERABLE VICTIMS

This court reviews the district court's interpretations of the guidelines *de novo* and its factual finding of victim vulnerability for clear error. *United States* v. *Angeles-Mendoza*, 407 F.3d 742, 747 (5th Cir. 2005).

Section 3A1.1 instructs a sentencing court to increase a defendant's offense level by two levels "[i]f the defendant knew or should have known that a victim of the offense was a vulnerable victim." Sentencing Guidelines § 3A1.1(b)(1); *United States* v. *Dock*, 426 F.3d 269, 272 (5th Cir. 2005). The application notes define "vulnerable victim" to mean "a person (A) who is a victim of the offense of conviction * * * ; and (B) who is unusually vulnerable due to age, physical or mental condition or who is otherwise particularly susceptible to the criminal conduct." Sentencing Guidelines § 3A1.1 comment. (n.2).

The district court based the adjustment for vulnerable victim on the PSR and the testimony of Popp, who had interviewed HYJ and interviewed or reviewed notes of interviews for the six other victims found at Chang's home at the time of the raid. The court found that all of these victims were in the United States illegally, had no documents for travel and identification, and spoke little or no English. The district court found that an individual in a foreign country, with little or no ability to speak the language and whose passport has been seized, is in a

vulnerable position. The court also found that because the victims knew they were subject to deportation, they were less likely to go to the authorities. In addition, the victims were more likely to believe that the coercive contracts they signed were legally enforceable because such contracts were used in South Korea for illegitimate debts and for bar girls and waitresses. PSR ¶ 41. At sentencing, defense counsel stated that, in South Korea, a person who does not pay a debt can be sent to debtor's prison. Thus, the victims were particularly susceptible to Chang's criminal conduct because of their circumstances. The court properly concluded that the women had the requisite level of vulnerability to support an enhancement for vulnerable victims. Tr. 208-210.

Chang argues that this finding is clear error. He argues that (1) there is no credible evidence that he knew or should have known his victims were vulnerable; (2) the particular vulnerability criteria found here are already incorporated in the guidelines; and (3) the conditions cited by the court do not demonstrate unusual vulnerability because they are conditions inherent in forced labor, and because the victims were no more vulnerable than any other victim smuggled into the United States. Br. 20-21. None of these claims has merit.

1. Chang's bare assertion that there is no credible evidence he knew or should have known of the victims' vulnerable characteristics is easily dismissed. First, Chang did not specifically rebut any of the district court's findings about his knowledge or about the facts underlying those conclusions. Chang clearly knew

the women were in the country illegally, knew they spoke little or no English, knew they had no access to their passports, and knew they were likely to believe the contracts he made them sign would be enforceable because such contracts were commonly used for illegitimate debts in South Korea. PSR ¶ 41. As discussed *supra*, the district court was entitled to rely on the facts in the PSR and the testimony of Popp. Contrary to Chang's contention, (Br. 20), that some of the women voluntarily entered the United States illegally does not negate any of the findings about their vulnerability to Chang's illegal forced labor scheme. The women did not volunteer to enter into the conditions of their forced labor; they were coerced by Chang. Consequently, the district court's finding that Chang's victims were vulnerable under Section 3A1.1 was not clearly erroneous.

2. Second, the vulnerabilities that the district court relied on are not incorporated into the guidelines for the offense of forced labor. The sentencing guidelines instruct courts not to impose the vulnerable victim adjustment "if the factor that makes the person a vulnerable victim is incorporated in the offense guideline." Sentencing Guidelines § 3A1.1 comment. (n.2). Chang argues that applying the enhancement in this case violated this instruction, (Br. 20-21), but he is incorrect.

The guidelines offer the following example of what it means to incorporate a victim's vulnerability into the offense guideline: "if the offense guideline provides an enhancement for the age of the victim, this subsection would not be applied

unless the victim was unusually vulnerable for reasons unrelated to age." Sentencing Guidelines § 3A1.1 comment. (n.2). The guideline governing the offense of forced labor – Sentencing Guidelines § 2H4.1 – does not provide for any enhancements due to victim vulnerabilities. Indeed, all of the enhancements in Section 2H4.1 are focused on the defendant's conduct rather than any characteristic of the victim.

The Ninth Circuit rejected this argument in an involuntary servitude case involving the same guideline. The Ninth Circuit ruled that Section 2H4.1 does not "provide an adjustment for victim characteristics such as [the victim's] immigrant status and the linguistic, educational, and cultural barriers that contributed to her remaining in involuntary servitude." *United States* v. *Veerapol*, 312 F.3d 1128, 1132-1133 (9th Cir. 2002), cert. denied, 538 U.S. 981 (2003). As a result, considering these characteristics was not double-counting and it was permissible for the district court to enhance the defendant's sentence for vulnerable victims.

3. Finally, the vulnerabilities that the district court relied on are not inherent in a conviction for forced labor. Anyone can be a victim of forced labor. As the district court noted here, not all victims of forced labor are illegal aliens, nor do they all fear confinement in a debtor's prison for failure to pay off a debt. 2 Tr. 211; see *United States* v. *Garza*, 429 F.3d 165, 173 (5th Cir. 2005) (enhancement for vulnerable victims based on undocumented status valid where offense of mail fraud and impersonating a federal employee did not necessarily involve

undocumented aliens), cert. denied, 126 S. Ct. 1444 (2006).

Chang cites two cases from this Circuit that overturned enhancements for vulnerable victims where the defendants were convicted of offenses specifically involving illegal aliens. Br. 21. These cases are clearly distinguishable. *United States* v. *Angeles-Mendoza* and *United States* v. *Medina-Argueta* involved convictions under 8 U.S.C. 1324 for conspiring to smuggle, transport and harbor illegal aliens. That provision applies only to actions involving illegal aliens. This Court held that in that circumstance, the victim's illegal status is a prerequisite of the crime and a district court may not find *unusual* vulnerability based solely on that illegal status. *Medina-Argueta,* 454 F.3d 479, 482 (5th Cir. 2006); *Angeles-Mendoza*, 407 F.3d at 747. Here, as in *Garza*, "none of the offenses at issue * * * necessarily involve undocumented aliens." 429 F.3d at 173. Applying the enhancement for a vulnerable victim here thus requires only a showing that at least one of the victims had an "unusual vulnerability which is present in only some victims" of forced labor. 407 F.3d at 747. As discussed *supra*, the district court clearly made this showing. *Angeles-Mendoza* is distinguishable for another reason, as well. In that case, the district court applied the enhancement based on a generalization that illegal aliens are inherently vulnerable. Here, as in *Garza*, the district court based the enhancement on the "specific vulnerabilities of individual victims." 429 F.3d at 173.

Accordingly, the district court did not clearly err in finding Chang eligible

for the vulnerable victim enhancement.

CONCLUSION

This Court should affirm the judgment of the district court.

Respectfully submitted,

WAN J. KIM
Assistant Attorney General

JESSICA DUNSAY SILVER
KAREN L. STEVENS
Attorneys
U.S. Department of Justice
Civil Rights Division
Appellate Section – RFK 3728
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 353-8621

CERTIFICATE OF SERVICE

I certify that on May 4, 2007, two copies of the above BRIEF FOR THE UNITED STATES AS APPELLEE and an electronic version of the brief on a diskette were served by overnight mail on the following counsel of record:

Danny Clancy, Esq.
3131 McKinney Ave., Suite 800
Dallas, TX 75204
214-740-9955

_____
KAREN L. STEVENS
Attorney

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type volume limitation imposed by Fed. R. App. 32(a)(7)(B). The brief was prepared using WordPerfect 12.0 and contains 5,059 words of proportionally spaced text. The typeface is Times New Roman, 14-point font.

DATE: May 4, 2007

KAREN L. STEVENS
Attorney