UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No.	**CR 20-0228 FMO**	Date	**May 23, 2023**

Present: The Honorable	Fernando M. Olguin, United States District Judge
Interpreter	None Present

Gabriela Garcia	None Present	Not Present
Deputy Clerk	*Court Reporter/Recorder*	*Assistant U.S. Attorney*

U.S.A. v. Defendant(s):	Present	Cust.	Bond	Attorneys for Defendants:	Present	App.	Ret.
MEI XING	NOT	X		Neha Christerna, DFPD	NOT	X	
				Callie Steele, CJA	NOT	X	

Proceeding **(In Chambers) Order Re: Pending Motions in Limine [353 & 354]**

On September 29, 2020, defendant was charged in a First Superseding Indictment with five counts of sex trafficking, in violation of 18 U.S.C. §§ 1591(a)(1), (a)(2), and (b)(1). (See Dkt. 51, First Superseding Indictment ("FSI") at 1-6). Having reviewed and considered the briefing submitted with respect to the government's Motion in Limine to Exclude Defendant's Re-Noticed Immigration Expert, (Dkt. 353, "Immigration Expert Motion") and Motion in Limine to Preclude Defendant's Human Trafficking Expert (Dkt. 354, "Human Trafficking Expert Motion") (together, the "Motions"),[1] and the oral argument presented to the court on February 17, 2023, the court concludes as follows.

LEGAL STANDARD

Motions in limine are procedural devices to obtain an early and preliminary ruling on the admissibility of evidence. Although the Federal Rules of Evidence do not explicitly authorize motions in limine, the Supreme Court has noted that trial judges have developed the practice pursuant to their authority to manage trials. See Luce v. United States, 469 U.S. 38, 41 n. 4, 105 S.Ct. 460, 463 n. 4 (1984). Trial courts have broad discretion when ruling on motions in limine. See Jenkins v. Chrysler Motors Corp., 316 F.3d 663, 664 (7th Cir. 2002); City of Pomona v. SQM N. Am. Corp., 866 F.3d 1060, 1070 (9th Cir. 2017) ("[A] ruling on a motion in limine is essentially a preliminary opinion that falls entirely within the discretion of the district court.") (internal quotation marks omitted). However, a motion in limine should not be used to resolve factual disputes or weigh evidence. See C & E Servs., Inc. v. Ashland Inc., 539 F.Supp.2d 316, 323 (D.D.C. 2008).

In order to ensure expert testimony complies with the restrictions laid out in Federal Rule of

[1] After Rule 16 of the Federal Rules of Criminal Procedure was amended to require more specific expert witness disclosures, the court ordered the parties to file renewed motions in limine concerning expert witnesses. (See Dkt. 352, Court's Order of December 6, 2022).

Evidence 702[2] and the gatekeeping mandate of Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993), "the trial court must assure that the expert testimony 'both rests on a reliable foundation and is relevant to the task at hand.'" Primiano v. Cook, 598 F.3d 558, 564 (9th Cir. 2010) (quoting Daubert, 509 U.S. at 597, 113 S.Ct. at 2799); Kumho Tire Co. v. Carmichael, 526 U.S. 137, 141, 119 S.Ct. 1167, 1171 (1999) (expert testimony "is admissible only if it is both relevant and reliable"). Expert opinion is relevant if it "logically advance[s] a material aspect of the party's case." Cooper v. Brown, 510 F.3d 870, 942 (9th Cir. 2007). While Rule 704(a) provides that expert testimony is not objectionable solely "because it embraces an ultimate issue to be decided by the trier of fact[,] . . . an expert witness cannot give an opinion as to her *legal conclusion*, i.e., an opinion on an ultimate issue of law." Hangarter v. Provident Life & Acc. Ins. Co., 373 F.3d 998, 1016 (9th Cir. 2004); see United States v. Tamman, 782 F.3d 543, 552 (9th Cir. 2015) ("In general, an expert may only testify as to scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or determine a fact in issue; an expert cannot testify to a matter of law amounting to a legal conclusion.") (internal quotation marks omitted) (alteration in original).

DISCUSSION[3]

Under Rule 702, "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case." Fed. R. Evid. 702; see United States v. Finley, 301 F.3d 1000, 1007 (9th Cir. 2002) ("Federal Rule of Evidence 702 governs the admissibility of expert opinion testimony. The rule consists of three distinct but related requirements: (1) the subject matter at issue must be beyond the common knowledge of the average layman; (2) the witness must have sufficient expertise; and (3) the state of the pertinent art or scientific knowledge permits the assertion of a reasonable opinion.").

As an initial matter, based on the parties' extensive motion in limine briefing and the oral argument presented to the court, the court is persuaded, under the circumstances of this case, that a Daubert hearing is not necessary. See United States v. Alatorre, 222 F.3d 1098, 1100 (9th Cir. 2000) ("[W]e conclude that trial courts are not compelled to conduct pretrial hearings in order to discharge the gatekeeping function.").

I. GOVERNMENT'S MIL RE: DEFENDANT'S IMMIGRATION EXPERT.

Defendant seeks to introduce expert testimony of attorney Sonia Figueroa ("Ms. Figueroa") that will, among other things, "explain the T visa process, advantages that can be gained by applying for a T visa versus other visas, and reasons why someone might choose to apply for a T visa[.]" (See Dkt. 353-2, Immigration Expert Motion, Exh. B, Expert Report at 5). The government argues that Ms. Figueroa is not qualified to testify about T-Visas because she did not handle T-Visa applications while

[2] Unless otherwise indicated, all "Rule" references are to the Federal Rules of Evidence.

[3] Capitalization, quotation and alteration marks, and emphasis in record citations may be altered without notation.

working at the United States Citizenship and Immigration Service ("USCIS") and her eight years in private immigration practice do not provide her "the necessary specialized knowledge to testify about the internal USCIS T-Visa processes[.]" (Dkt. 353, Immigration Expert Motion at 5-6).

Ms. Figueroa has been an attorney since 2010. (Dkt. 353-1, Immigration Expert Motion, Supplemental Expert Disclosure ("Supp. Discl.") at ECF 2802). From April 2014 to the present, she has had her own practice maintaining "a caseload that has been almost entirely immigration law." (Id.). "As an immigration attorney, she has worked on over five hundred cases, spanning from petitions for immigrant visas to applications for United States citizenship." (Id.). "A significant part of her practice has been working with victims of crimes, including applicants for trafficking visas (T visas)."[4] (Id.) "She has prepared and filed numerous T visa applications that are often concurrently filed with waiver applications." (Id.). "She has also worked on several complicated cases that involve questions concerning the validity of trafficking claims and whether the case rises to the level that warrants a grant of the T visa." (Id.).

In addition to her experience in private practice, Ms. Figueroa worked for one year as an Immigration Service Officer for USCIS, where she "ma[d]e final determinations on non-sensitive, routine or complex immigration benefits and issues through interviews and . . . research of legal resources[,]" and "reviewed many applications for legal permanent residency" and for "waivers and motions to reopen." (Dkt. 353-1, Immigration Expert Motion, Supp. Discl. at ECF 2802, 2806). She also received "train[ing] on T-Visas while at the USCIS[.]" (Dkt. 359, Opposition to Government's Motion in Limine to Preclude Defendant's Immigration Expert ("Opp. to Immigration Expert Motion") at 9). She has had numerous speaking engagements on immigration law, (see Dkt. 353-1, Immigration Expert Motion, Supp. Discl. at ECF 2807), and has served as an expert witness in at least three criminal and civil cases. (See id. at ECF 2803); (Dkt. 359, Opp. to Immigration Expert Motion at 4). In total, Ms. Figueroa has over a decade of experience either directly representing clients in immigration cases, or working for USCIS adjudicating applications for immigration benefits. (See id. at ECF 2802, 2806).

An expert may be qualified to give expert testimony by "knowledge, skill, experience, training or education, which need only exceed the common knowledge of the average layperson[.]" United States v. Holguin, 51 F.4th 841, 854 (9th Cir. 2022) (internal citation and quotation marks omitted). This is a liberal standard. Id.; see Rogers v. Raymark Indus., Inc., 922 F.2d 1426, 1429 (9th Cir. 1991) ("A witness can qualify as an expert through practical experience in a particular field, not just through academic training."). "Rule 702 does not demand distinction in a particular field. Many people who have received the same training and experience will have the same specialized knowledge beyond the jury's common knowledge of a topic." Holguin, 51 F.4d at 854.

Here, there is no doubt that the nuances and intricacies of immigration law – especially as they relate to T-Visas – are beyond a juror's common knowledge. Other courts have found that individuals with similar education and experience as Ms. Figueroa are qualified to testify as an expert about

[4] Because Ms. Figueroa "assists clients at different stages of the T-Visa process[,]" defendant states that "it is difficult to answer exactly how many T-Visas she has worked on for clients." (Dkt. 359, Opp. to Immigration Expert Motion at 9). Nonetheless, Ms. Figueroa has "opened about 12 T-Visas[,]" re-opened additional T-Visa applications, and worked on T-Visa applications that have been "challenged at the adjustment stage[.]" (Id.).

immigration law and/or specific immigration visas, and other immigration-related benefits. See, e.g., S.R. v. A.H., 2019 WL 2122730, *1 (D.S.C. 2019) (denying motion to preclude or limit testimony of expert in immigration law and processing, and noting that the proffered expert "has worked as an immigration attorney for over ten years and has held positions with the American Immigration Lawyers Association and as a former liaison to the Charleston Field Office of the [USCIS]"); United States v. Pulido-Avina, 562 F.Supp.3d 795, 798-99 (C.D. Cal. 2022) (finding witness with "11 years of experience and on-the-job training as a deportation officer" qualified to testify as an expert about deportation issues, "although he did not receive formal training other than annual 'refresher' courses when he transitioned from one assignment to another" and "shadowed and was trained by more senior officers for two months"); United States v. Ilegbameh, 2013 WL 12171602, *1-2 (C.D. Cal. 2013) (finding that expert witness's "knowledge and experience as a USCIS officer" qualified him "to provide background information about the USCIS, immigration-related terminology, adjustment of status procedures, and material information considered by USCIS in processing adjustment of status applications"); United States v. Murra, 2016 WL 10954316, *2 (N.D. Tex. 2016) (finding expert witness qualified to testify "to the overall immigration process for trafficking victims" where he had attended two years of law school, "spent nearly the entirety of his career since 1981 in the various United States immigration agencies[,]" and then formed "a private consulting company" where he "represented over 75 individuals and testified in numerous cases" involving various types of immigration fraud). Under the circumstances, the court is persuaded that Ms. Figueroa is qualified to testify about immigration law and T-Visas in particular.

With respect to the reliability of the expert's "principles and methods," see Holguin, 51 F.4th at 854 ("A district court must distinguish an expert's qualifications from the reliability of the expert's principles and methods.") (emphasis in original), the government does not really challenge the reliability of Ms. Figueroa's "principles and methods" as to her proposed testimony about immigration law or T-Visas, except as applied to the complaining witnesses' applications, (see, generally, Dkt. 353, Immigration Expert Motion at 5-7), which the court will exclude. The reliability inquiry "focuses not on what the experts say, or their qualifications, but what basis they have for saying it." Holguin, 51 F.4th at 854 (internal quotation marks omitted). Here, the court is persuaded that Ms. Figueroa proposed testimony about immigration law, including T-Visas, is sufficiently reliable.[5] See Primiano, 598 F.3d at 565 (Expert opinion testimony "is reliable if the knowledge underlying it has a reliable basis in the knowledge and experience of the relevant discipline."); see, e.g., Ilegbameh, 2013 WL 12171602, at *2 (finding that expert witness's proposed testimony was "grounded in a reliable basis" because it was "based on his knowledge and experience as a USCIS officer").

The gist of the government's argument is that Ms. Figueroa's testimony is unnecessary because "[w]hat is relevant is what the victims know about their role in the process, the benefits they believed they will receive, and whether that creates a bias." (Dkt. 353, Immigration Expert Motion at 9); (see id. at 8) ("[T]he only relevance of the T-Visas is the Victims' personal understanding of those records and whether they affected their motivation to report defendant to the police or testify for the government."). However,

[5] The government's argument that Ms. Figueroa did not evaluate T-Visa applications while at USCIS, (see Dkt. 353, Motion at 6), goes to the weight of the evidence. "[T]he Government may, of course, attempt to discredit [Ms. Figueroa's] testimony through vigorous cross-examination and presentation of contrary evidence, which are the appropriate means of attacking disputed evidence relied upon by experts." Murra, 2016 WL 10954316, at *4 (cleaned up).

there is no dispute that immigration law is a complex area of law beyond the common knowledge of the average layperson. Without a witness who can explain the meaning of T-Visas and other types of visas, how they operate, and where they fit within the overall immigration scheme adopted by Congress, the jury has no way of understanding and evaluating the meaning and significance of the alleged victims' "personal understanding" of their T-Visas.

In Murra, the court similarly considered whether to allow the defendant's immigration expert to testify about T-Visas in a sex trafficking case. 2016 WL 10954316 at *4. There, the court found that "testimony including an overview of the subtleties of the immigration system, particularly in regards to options available to illegal immigrants alleging they are trafficking victims, would be relevant and helpful to the jury." Id.; see id. at 2 (noting that the government "concede[d] that a straight-forward explanation, through a competent expert, of the immigration benefits that an alien may apply for based on being a trafficking victim may be relevant in this case to show bias"). As in Murra, the court is persuaded that Ms. Figueroa's proposed testimony about immigration law and T-Visas would be relevant and helpful to the jury.

However, as to whether Ms. Figueroa may "apply [her] experience and relevant factors to indicate whether the evidence presented as to the alleged victims in this case is consistent with fraud[,]" the court is persuaded that such testimony "impermissibly amounts to telling the jury what conclusion to reach." Murra, 2016 WL 10954316 at *6 (internal quotation marks omitted). Issues of credibility are solely within the province of the jury. See United States v. Ramirez-Rodriquez, 552 F.2d 883, 884 (9th Cir. 1977) (per curiam) ("[I]t is the exclusive function of the jury to weigh the credibility of witnesses, resolve evidentiary conflicts and draw reasonable inferences from proven facts[.]"). Finally, although Ms. Figueroa may not testify as to her views on the complaining witnesses' credibility, defense counsel may question the complaining witnesses' about prior inconsistent statements – including inconsistencies in any immigration applications or documents completed or submitted by the witnesses – for purposes of impeachment. See Fed. R. Evid. 613(b) (allowing impeachment by "[e]xtrinsic evidence of a witness's prior inconsistent statement"); United States v. Tory, 52 F.3d 207, 210 (9th Cir. 1995) ("Inconsistent statements are admissible under Fed. R. Evid. 613 for the purpose of impeaching a witness's testimony.").

II. GOVERNMENT'S MIL RE: DEFENDANT'S HUMAN TRAFFICKING EXPERT.

Defendant seeks to introduce testimony by Dr. Kimberly Mehlman-Orozco as a rebuttal expert to Detective David Fries "in the areas of sex trafficking and prostitution." (Dkt. 354-1, Human Trafficking Expert Motion, Supplemental Expert Disclosure at 1). The government agrees that Dr. Mehlman-Orozco is qualified to testify on many topics relating to human trafficking. (See Dkt 354, Human Trafficking Expert Motion at 3). However, the government seeks to limit Dr. Mehlman-Orozco's testimony to certain topics that it deems relevant and preclude all other testimony. (See id. at 5-11). As the court indicated during the February 17, 2023, hearing, it is not prepared to impose any limitations on Dr. Mehlman-Orozco's testimony until it considers the evidence and testimony put forth at trial, including the government's human trafficking expert testimony. Accordingly, the motion is denied, although the government may raise objections regarding the scope of Dr. Mehlman-Orozco's testimony at trial.

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CRIMINAL MINUTES - GENERAL

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. The government's Motion in Limine to Exclude Defendant's Re-Noticed Immigration Expert (**Document No. 353**) is **granted in part and denied in part**. Ms. Figueroa shall not testify as to her views of the complaining witnesses' credibility.

2. The government's Motion in Limine to Preclude Defendant's Human Trafficking Expert (**Document No. 354**) is **denied**.

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