U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 9, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice (the Department or DOJ) on H.R. 3887, the "William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007," as introduced by Congressman Lantos on October 18, 2007. The Department has significant concerns, which are detailed below in a section-by-section analysis. The proposed legislation, as drafted, would eliminate the Department's role in several important steps in the victim identification process, and thereby negatively impact our ability to ensure the safety of victims and their families, rescue additional victims, and apprehend and prosecute human traffickers; it would broaden the criminal statutes regarding prosecution in a manner that detracts from effective enforcement efforts and raises serious federalism implications; and it would unconstitutionally intrude into Executive authority.

1. Section 102

The provision in subsection (e)(2)(B) authorizing the Director of the Office to Monitor and Combat Trafficking in Persons (G/TIP) at the Department of State to interview victims should clarify that the Director is authorized to do so only with the consent of the Attorney General in any case where an ongoing investigation or prosecution may exist. Otherwise, serious issues could arise that would complicate or even scuttle prosecution. For example, any statements made to the Director would presumptively have to be turned over to the defense and any statements that contradict statements made to law enforcement or prosecutors would be required to be turned over to the defense.

2. Section 103

DOJ finds section 103 unnecessary and duplicative of existing efforts and, therefore, opposes its inclusion in the bill. DOJ and other Federal agencies are already offering the types of assistance that are described in the section. Furthermore, the new subsection (a)(i)(3) would require the United States Government to provide "technical assistance to provide legal frameworks and other programs to foreign governments and nongovernmental organizations to

ensure that foreign migrant workers are provided protection equal to nationals of the foreign country." This provision does not differentiate between legal and non-legal migrant workers, nor does it distinguish between forced labor and non-coerced migrant labor. DOJ believes that any international standard that we promote must mirror our domestic standards. Similarly, the new subsection (a)(i)(4) could be read as encouraging countries to loosen their immigration laws, something that the United States Government might not be willing to do.

Subsection (b) amends the Foreign Assistance Act of 1961 (22 U.S.C. § 2151 *et seq*) to provide specific assistance for anti-trafficking investigation and prosecution units in foreign countries. This subsection could be construed as prioritizing sex trafficking over labor trafficking. As stated above, DOJ believes that any international standard that we promote must mirror our domestic standards, which prioritize both sex trafficking and labor trafficking. Further, the amendment to 22 U.S.C. § 2152(d)(a)(2) should include a reference to labor trafficking and should, therefore, read "including investigation of individuals and entities that may be involved in trafficking in persons involving sexual exploitation or forced labor."

3. Section 104

The Department objects to the language in this section that specifies the groups with which the United States Government must consult and coordinate in offering assistance and protection to victims of human trafficking. Such language both places undue restrictions on the United States Government and could limit the Government's ability to deal with some necessary groups. It has been the consistent practice of the Department to consult widely with a range of stake holders and others before designing a program of foreign assistance on human trafficking. Such an additional requirement in the statutory language is unnecessary. We suggest that the language be amended to read, "[i]n cooperation and coordination with organizations which may include the [UNHCR], the International Organization [for] Migration, and other relevant organizations...."

4. Section 105

DOJ recommends that subsection (a) also require that the effectiveness of assistance programs be measured based on best efforts to facilitate cooperation with law enforcement, along with the other criteria.

5. Section 106

DOJ opposes the bar in subsection (b)(1) against including cases in which probation or low sentences are given. Some of the most important cases are the ones against cooperating defendants that result in minimal sentences in exchange for information or testimony. Embassies should have the discretion to take such situations into account when evaluating foreign government efforts to combat trafficking. The Department recommends amending section (b)(1)(B) by striking "shall not be considered to be an" and inserting in its place "shall be considered on a case by case basis to determine if it will be considered an" so that it will give the Secretary of State greater flexibility in evaluating the efforts of other countries.

The Department also objects to the new paragraph (11), which lists as a criterion for ascertaining whether the government in question has made "serious and sustained" efforts to eliminate trafficking "[w]hether the government has made serious and sustained efforts to reduce demand for commercial sex acts and for participation in international sex tourism by nationals of the country." We object to this language because it is vague and will, by implication, require the United States Government to evaluate itself under this "serious and sustained" standard. The Department prefers the language that was added by the 2005 reauthorization of the Trafficking Victims Protection Act, which evaluated whether countries "adopted measures" to reduce demand.

6. Section 107

Section 107(a) of the Act raises separation of powers and *Chadha* concerns. Section 107(a) would add a new 22 U.S.C. § 7107(b)(3)(D), which would limit the amount of time that a country could remain on the Tier II Watch List to two years, "unless the Secretary of State provides to the appropriate congressional committees credible evidence that" the country had taken certain steps to make significant efforts to counter trafficking. That provision further requires that "[s]uch credible evidence" shall be provided to Congress in a report.

To the extent that section 107(a) purports to give congressional committees authority to determine whether the Secretary's decision to exempt a country from the watch list is based on sufficiently "credible evidence," the provision would give the committees a role in executing the law that the Constitution does not allow. "[O]nce Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of its enactment only indirectly—by passing new legislation"—that complies with the bicameralism and presentment requirements of Article I. *Bowsher v. Synar*, 478 U.S. 714, 733-34 (1986); *see also INS v. Chadha*, 462 U.S. 919, 951-52, 958 (1983). To avoid this concern, we recommend replacing "provides to the appropriate congressional committees credible evidence" with "determines;" and replacing "Such credible evidence" with "Such determination."

7. Section 108

DOJ opposes the requirement in section 108 to create a database "combining all applicable data collected by each Federal department and agency represented on the Interagency Task Force to Monitor and Combat Trafficking." The database would contain law enforcement sensitive information, which would prevent the data from being accessible to non-law enforcement agencies, many of which are a part of the interagency task force. Furthermore, such a database would be difficult to create, particularly within the timeframe provided in the statute, because it would require information from multiple agencies that collect data in varying forms and levels of specificity.

8. Section 109

This section authorizes the President to establish an award for efforts against trafficking and directs him to establish procedures for selecting recipients of the award. DOJ opposes this provision, as it interferes with the President's policy-making authority.

9. Section 110

The Department opposes the statutory language in subsection 110(a)(1)(B) that specifically mentions the U.S. Government sponsored hotlines for reporting instances of trafficking in persons. Statutorily providing for the names of the hotlines would interfere with the President's policy-making authority to change the hotline structure at a later date. Furthermore, the Act, as written, misnames the hotlines.

10. Section 201

In section 201, the Department objects to the new subsection "(bb)." To the extent that such a subsection is necessary, a question that we defer to the Department of Homeland Security (DHS), the decision regarding cooperation should include the Attorney General in addition to the Secretary of the Department of Homeland Security, as it does in Section 201(b).

DOJ defers to DHS in regard to subsection (a)(1)(E), although we would note that by removing the "unusual and severe harm" standard, victims will be eligible for a T-visa upon a lower showing of "extreme hardship."

The Department also defers to DHS in regard to subsection (a)(2), which would extend T-visas to parents and siblings of trafficking victims. As a factual matter, however, the provision should be amended to strike any reference to "as a result of the alien's cooperation with law enforcement." Traffickers threaten victims to intimidate them into compliance with traffickers' demands and to retaliate for victims' escape, not because of law enforcement cooperation. It is counter-factual to describe the pattern of threats and retaliation as linked to law enforcement cooperation, and disregards the fact that threats often only subside when law enforcement takes measures to secure the family or punish the traffickers and their associates who threaten victims' families. Furthermore, it is unclear whether the reference to siblings encompasses both minor and adult siblings, and whether spouses and children of adult siblings would be eligible for a T-visa.

In subsection (b), DOJ opposes the new subsection (8)(B), which grants sole authority to the Secretary of DHS to consider whether "extreme hardship" exists. The new section, however, also requires consultation with "prosecutors," which presumably refers to prosecutors at DOJ, since DOJ is the lead prosecutorial agency for cases involving human trafficking. Since these prosecutors are under the Attorney General's authority, the consultation requirement should include consultation with the Attorney General.

Subsection (c)(1), which creates the new subsection (3)(A)(i) in section 107(c) of the Trafficking Victims Protection Act (TVPA), should limit applications for continued presence to those being made by "Federal" law enforcement officials. Limiting the applications to those submitted by Federal law enforcement assists in the victim identification process. The Department has established a memorandum of understanding with DHS that ensures that the Department's prosecutors are informed when investigators apply for continued presence. Furthermore, limiting the applications to those submitted by Federal law enforcement ensures the uniformity of standards in making the determination as to whether an individual is a victim of a

severe form of trafficking in persons and eligible for continued presence. Finally, Federal law enforcement involvement in the process allows Federal prosecutors the ability to identify patterns of human trafficking activity that might span multiple local law enforcement jurisdictions. For these same reasons, the new subsection (3)(B) should add "Federal" before "law enforcement" to limit the authority to request parole for relatives to Federal law enforcement officials.

The new subsection (c)(3)(A)(ii) should add "endeavor to" after "shall" so that a legally actionable obligation is not created as to Federal law enforcement's role in protecting the safety of trafficking victims and family members. While the U.S. Government makes every effort to protect trafficking victims, the statutory language, as written, could be construed to create a legally cognizable right and could lead to litigation.

In the new subsection (c)(3)(A)(iii), DOJ opposes extending continued presence for the duration of a civil suit. It also raises the potential for abuse because of the lengthy and plaintiff/victim-controlled delays in conducting civil litigation. Furthermore, physical presence in the United States is not necessary for the successful maintenance of a civil action. Victims have other options to obtain status in the United States, such as T- and U-visas.

DOJ notes a technical change to subsection (d), which currently has two subsection (2)s. DOJ recommends striking the second "(2)" and replacing it with a "(3)."

11. Section 202

The Department opposes the language in section (a) that legislates the existence of a specific task force, such as the Trafficking in Persons and Worker Exploitation Task Force. DOJ recommends deletion of this reference and the replacement of the named task force with "the Attorney General."

DOJ also opposes the 120 day deadline in subsection (f) as unreasonable due to language barriers and translation needs.

12. Section 203

In subsections (a), (b)(1-2), and (c), DOJ opposes the language removing the Attorney General's role in determining whether the relevant applicant has complied with reasonable requests for assistance, an important factor in the decisions regarding T-visas, and that the investigation or prosecution is complete. Because the Department is involved in its prosecutorial as well as its investigative roles, DOJ participation is critical in assessing assistance with law enforcement, and it is well-situated to assess whether a victim has complied with reasonable requests for assistance that went through investigative agencies outside DHS, such as cases investigated by FBI or DOL. Therefore, a joint determination is appropriate because of the number of different law enforcement agencies that may be involved in a particular matter.

13. Section 205

DOJ opposes the addition of the new subsection 240A(b)(6)(A) of the Immigration and Nationality 21 Act (8 U.S.C. 1229b(b)) unless the word "Federal" is added before "law enforcement official." The same proposed subsection currently states that the Secretary of the Department of Homeland Security "shall grant parole" to the relatives of trafficking victims. DOJ recommends changing this language to read "may grant parole" so the Secretary has the latitude to make an appropriate decision. There may be reasons pertaining to the circumstances of the relatives of the trafficking victim for which the Secretary should have discretion to deny parole. Further, DOJ finds it necessary to strike any reference to "as a result of the alien's cooperation with law enforcement" for the reasons noted above.

In subsection, (6)(B)(ii)(II), DOJ opposes a statutory requirement that parole be extended during pending civil actions. As indicated above, this action would create a potential for abuse because of the lengthy and plaintiff/victim-controlled delays in conducting civil litigation.

14. Section 211

The Department opposes the change of the "and" in subsection (1)(A) to an "or." Both the Attorney General and the Secretary of DHS need to be involved in the certification process. The current certification process is well-established and needs no statutory revisions. DOJ also opposes the change in subsection (1)(B), which would remove the Attorney General's authority in stating whether a person's presence is necessary in ensuring an effective prosecution. As the agency that prosecutes cases of human trafficking, DOJ's involvement is vitally important. The Department has the same concern with the proposed change in subsection (2).

15. Section 213

We strongly oppose the language in this section that inappropriately removes law enforcement from any initial determination of victim status or benefits eligibility. DOJ and DHS play a critical role in protecting the safety of victims and service providers. Any failure to involve Federal law enforcement immediately upon suspicion that a crime has been committed could threaten the safety of the victim, impeded efforts to promptly rescue victims still in jeopardy, and possibly man that the offenders avoid apprehension. DOJ recognizes the important of including HHS at the initial stages for the purpose of facilitating prompt delivery of the full range of available benefits and services to trafficking victims. DOJ will continue to work with DHS and HHS to ensure that interagency procedures afford victims of trafficking prompt protection and access to these services.

The Department further objects to the provision set forth in paragraph (G), which would require both Federal and state law enforcement officials to inform the Department of Health and Human Services (HHS) of the existence of a potential victim, but does not require HHS, other Government officials, or non-governmental service providers to inform Federal or state law enforcement of such a victim. To the extent that such a notification procedure must exist, it must also include notification to the Attorney General and the Secretary of DHS, who bear responsibility for prosecuting and investigating instances of human trafficking.

DOJ also opposes subsection (b). Since the passage of the TVPA, DOJ has been one of the principal agencies conducting trainings for a multitude of audiences, including task forces and Federal, state, and local law enforcement, on the issue of trafficking in persons. The Department also has experience in conducting training on juvenile victims through the Innocence Lost National Initiative. Effective efforts to combat trafficking must mobilize the expertise of HHS, DHS, and DOJ.

DOJ also notes a misspelling in the new subsection (F)(ii)— "edibility" instead of "eligibility".

16. Section 214

Section 214 of the bill authorizes the Attorney General to make grants to assist victims of severe forms of trafficking up to $2.5 million in 2008, increasing to $15 million in 2011. The Department of Justice already has authority to make grants for the provision of services for crime victims and does so at a level in excess of $250 million a year. Also, the authorization of yet another grant program runs counter to the Administration's proposal in the 2008 Budget to consolidate DOJ's more than 70 grant programs.

Moreover, any provision purporting to expand or alter definitions of individuals of qualifying for victim benefits must include the requirement that a Federal law enforcement agent must declare the individual to be a victim of a severe form of trafficking in persons, and that the victim agree to cooperate in the investigation and prosecution, or that the victim be under the age of 18.

DOJ opposes the consultation requirement in subsection (a)(1) with the Secretary of State for establishing programs to serve domestic, U.S. citizen trafficking victims. Such domestic authority falls outside of the mission and expertise of the Department of State. DOJ also opposes the mandatory consultation with non-government organizations (NGOs) regarding the provision of services. This creates a conflict of interest since many of the NGOs will apply for and could receive grants under the program. Finally, any section regarding the provision of victim services must also contain language that includes organizations that provide services to "juveniles subjected to trafficking, as defined in section 203(g) of the Trafficking Victims Protection Reauthorization Act of 2005," which would ensure that the funds authorized to the Attorney General for establishment of grants will go toward the work and development of the Innocence Lost Task Forces.

DOJ opposes subsection (b) because it provides Victims of Crime Act of 1984 funds to prostitutes implicated in violations of the Mann Act (criminalizing transportation of prostitutes in interstate commerce). Such persons do not meet the legal definition of "victim" as that term is defined in the law, unless the person prostituted is under the age of 18 at the time the crime was committed or the person, through the application of another Federal statute or regulation, satisfies the legal definition of a victim. Such persons are already eligible under the Crime Victims Fund Act to receive benefits.

DOJ opposes section 214(d), as it could be construed to require the Attorney General and the Secretary of Health and Human Services to make legislative recommendations to Congress in violation of the Recommendations Clause. To avoid this concern, we recommend inserting ", if any," after "recommendations" in section 214(d)(2)(E). Further, DOJ finds subsection (d) redundant. A thorough study of services available to domestic and foreign victims was conducted by the Senior Policy Operating Group in 2005-2006 and found few statutory differences between the treatment of domestic and foreign victims.

Subsection (d)(2)(C) contains a redundant statement. Victims of sex trafficking are victims of severe forms of trafficking in persons.

17. Section 221

In subsection (a), DOJ opposes the proposed change of removing the knowledge of an age requirement for violations of the juvenile provision in 18 U.S.C. § 1591(a). This runs counter to the criminal law goal of punishing culpable states of mind. This change of law would create a strict liability crime, similar to 18 U.S.C. § 2423(a), with a similarly severe 10 year mandatory minimum sentence. However, unlike section 2423(a), subsection (a) is exceedingly harsh in that it fails to set forth an affirmative defense. Therefore, the suggested subsection (a) would create a rare circumstance wherein there is a substantial mandatory minimum sentence for an already unusual strict liability crime. Accordingly, this provision is likely to face significant legal challenges.

DOJ opposes subsection (b) in its entirety. The proposed language is both over-inclusive and under-inclusive of human trafficking activities, and the language is vague. Moreover, the provision is unnecessary because section 1589 already prohibits many of these activities when they result in "serious harm," whether physical or emotional, to the victim.

The Department opposes subsection (f)(1), which would expand the Mann Act to include cases "affecting" interstate commerce. The Department does not require any additional statutory authority or expanded jurisdiction in order to continue its successful prosecution of human trafficking cases and related criminal conduct. Federal law prioritizes crimes in which victims have been trafficked as a result of force, fraud, or coercion, including the sex trafficking of children in which coercion is presumed, i.e., crimes that fall under the Thirteenth Amendment's prohibition on slavery and involuntary servitude, and commercial sex involving transportation in interstate commerce. The Department's record during the last six years demonstrates its success in investigating and prosecuting trafficking and related crimes and in convicting and securing appropriate sentences for traffickers.

At the same time, pandering, pimping, and prostitution-related offenses have historically been prosecuted at the state or local level. This allocation between state and Federal enforcement authority does not imply that these crimes are less serious, but rather reflects important structural allocations of responsibility between state and Federal governments. The federalization of these crimes would treat them differently than other serious crimes such as murder and rape, which are prosecuted at the state level. Kidnapping, similarly, is a Federal crime only when it involves transportation "in" interstate commerce. Furthermore, the

Department is not aware of any reasons why state and local authorities are not currently able to pursue prostitution-related crimes such that Federal jurisdiction is necessary. Finally, due to the high volume of prostitution-related crimes, the Federal government lacks the necessary resources and capacity to prosecute these offenses.

Therefore, to the extent that this expansion of the Mann Act would federalize the criminal prosecution of pandering, pimping, and prostitution-related offenses, it is unnecessary and a diversion from Federal law enforcement's core anti-trafficking mission.

DOJ also opposes subsection (g), which would expand the sex tourism offenses to include those who travel for purposes of illicit sexual activity with adults. The Department's current efforts with regard to extraterritorial offenses focus on child sex tourism, which are very demanding and resource-intensive cases, requiring gathering evidence abroad, bringing victims to the United States to testify, and coordination with foreign law enforcement agencies and foreign governments generally, among other matters. Any expansion of authority would be a distraction from those priority cases and would exacerbate existing burdens on investigation and prosecution.

The Department believes that the addition of 18 U.S.C. § 2423A is unnecessary and that 18 U.S.C. § 2423 does not need to be amended.

Should Congress create 18 U.S.C. § 2423A, DOJ believes that language should be retained in 18 U.S.C. § 2423(e) that allows the Government to charge attempt or conspiracy for 18 U.S.C. § 2423(a) crimes. Finally, DOJ notes that the definition of illicit sexual conduct needs to be updated to include production of child pornography.

18. Section 222

As a general matter, the Department opposes the expansion of jurisdiction over offenses involving non-American offenders or victims that are committed outside the United States. The expansion of jurisdiction in this section would place an enormous strain on available resources. In addition, this new section's jurisdiction description overlaps with 18 U.S.C. § 3271. Should the choice be made to keep the jurisdictional provisions provided for in this section, perhaps it would be more effective to expand section 3271.

19. Section 223

These provisions are not directly related to trafficking. As this section is related to aliens brought into the country for the purposes of prostitution, without a showing of force, fraud, or coercion, and the International Marriage Brokers Act (IMBRA), this bill is not the vehicle for this language. Furthermore, subsection (a)(1) removes the requirement from section 278 of the Immigration and Nationality Act that such conduct be done in furtherance of the importation of the alien. By removing this requirement, the bill extends the statute to cover all instances of "pimping" an alien.

20. Section 224

This section misunderstands the purpose and effect of the model law and should be deleted. The Department's model law was never designed to supplant pre-existing state laws which target pimping, pandering, or prostitution, but rather to supplement those laws. At the time that the Department's model law was issued, most states had comprehensive laws addressing prostitution, pimping, and pandering. However, most states did not have laws focused on human trafficking. The Department's law was designed to raise awareness of the issue of trafficking and to encourage states to closely examine cases to ensure that cases involving fraud, force, and coercion are not labeled as prostitution offenses. The Department believes the law has been successful in accomplishing this goal.

21. Section 231

The Department opposes any statutory changes to the annual report. The change in subsection (1) is unnecessary as this language is currently included in the annual report. The information requested in the new subsection (I) would be excessively burdensome to gather.

22. Section 232

DOJ opposes this addition as unnecessary. Human trafficking laws that do not require the proof of force, fraud, or coercion, namely laws that concern minor victims of severe forms of human trafficking, are already discussed at the annual conferences. To the extent that this provision would require the Department to discuss human trafficking laws pertaining to adult victims that do not require the showing of force, fraud, or coercion, such laws would not fall under the definition of human trafficking and the annual conference would be an inappropriate venue for the discussion of such laws. However, DOJ trafficking prosecutors utilize a wide range of statutes in addition to Chapter 77 offenses to address all criminal conduct associated with human trafficking. This includes the Mann Act, money laundering, visa fraud, immigration offenses, criminal labor violations, and extortion, in addition to other criminal statutes. Accordingly, DOJ training at annual conferences, the National Advocacy Center, the National Center for Missing and Exploited Children, and field training with the Department of Justice funded Human Trafficking Task Forces and provided through the Innocence Lost National Initiative include discussion on the importance of using all available criminal statutes as essential tools in charging decisions. Thus, this section is unnecessary.

23. Section 233

DOJ opposes the change to section 206 of the Trafficking Victims Protection Reauthorization Act of 2005, which would remove the discretion of agencies in informing the Senior Policy Operating Group (SPOG) of grants. Such a change could be read as giving the SPOG oversight authority over grants. It also fails to take into consideration situations where grant-making agencies may be unable to notify the SPOG of the grant.

24. Section 234

The Department opposes subsection (a) as an excessively burdensome and unnecessary creation of a new layer of bureaucracy within our agency. The Department does not believe that there is currently any lack of coordination, and a new position could lead to duplication of efforts. Furthermore, subsection (a)(2)(A) incorrectly lists the Civil Division and not the Civil Rights Division.

25. Section 236

In subsection (a), DOJ questions the reliability of the congressional findings, especially with respect to the estimated number of victims and the inference that the lack of child victims is directly related to a lack of education individuals who may come into contact with human trafficking victims. Such findings, without a full body of evidence, are counter-productive.

The Department also opposes subsection (b). The Attorney General should be involved in any program that focuses on combating child trafficking at the border. We propose that section (b)(1) is amended to read "The Secretary of Homeland Security, in conjunction with the Secretary of State, Attorney General, and the Secretary of Health and Human Services." Further, most of the children interdicted at the border are used for smuggling and are not trafficking victims. In subsection (b)(5)(D), DOJ believes that the proceedings for removal to non-contiguous countries are problematic because DHS needs more flexibility to handle gang members, terrorists, repeat offenders, and state offenders. Furthermore, the terrorism exception provided is too narrow to protect the national security interests of the country.

We oppose subsection (c)(1) to the extent that it limits the Administration's ability to determine the best arrangement for custody or various classes of UACs. The administration will work with DHS, DOJ, and HHS to refine and modify current detention practices where necessary. The interagency process is the best forum to consider the various interests of unaccompanied minors and law enforcement and to develop and adapt policies that, among other things, provide for the safety of all concerned. We look forward to discussing these developments with Congress in the future.

The Department opposes subsection (d)(2) as too narrowly construed. There are numerous reasons, outside of the child proving to be a danger to himself or others, that require children to be kept in a secure facility, including the safety of the child from danger that is not self-imposed. In addition, the standard for placing minors in "secure" care is too strict. It requires the "least restrictive setting that is in the best interest of the child." HHS only places 1.4 percent of minors in its care into a "secure" custody arrangement. This could mean that minors who need this arrangement would instead be housed with children who have no history of violence or criminal behavior. HHS needs more flexibility and there should not, therefore, be required to make an "independent finding" of the child's danger to self or others.

DOJ opposes the language of subsection (d)(3)(c) that would afford HHS access to law enforcement sensitive databases.

The language of subsection (d)(5) must be changed from "shall ensure." This implies a legal obligation on the Federal government to provide counsel and a concomitant right on behalf of victims to government-funded counsel, which is inappropriate and would subject the government to litigation over the nature and scope of the purported obligation and right.

The Department also opposes subsection (d)(6), which creates a guardian ad litem program. Such program raises serious conflict of interest concerns, and DOJ has opposed similar language in the past. Establishment of a guardian ad litem program is also unnecessary in that 18 U.S.C. §3509(h) already sets forth detailed procedures which provide for court appointed guardians ad litem for children who are victims of or witnesses to crimes involving abuse or exploitation.

Subsection (d)(7) may result in unintended consequences due to this confidentiality section. To effectively combat trafficking, relevant information must be transmitted to law enforcement. Law enforcement is well-equipped to preserve confidentiality concerns.

The Department believes that subsection (e) undermines the 1997 Special Immigrant Juvenile reforms and opposes turning this back over to the states, where it was inherently flawed.

In section 236(j), the effect of the apparent retroactivity of the general applicability of these amendments to "all aliens in the United States before, on, or after the date of enactment of this Act" raises serious concerns about the provision of benefits and services and has the potential to create serious problems for the Department in its implementation of the programs described in this section.

26. Section 301

DOJ recommends striking the 2 percent cap on funding for training and technical assistance that is in 22 U.S.C. 7105(b)(2)(B). The unique complexity of the trafficking issue and the level of coordination necessary to effectively serve trafficking victims requires much more training and technical assistance than a typical OJP program. Striking the cap on training and technical assistance will allow OJP to better allocate the trafficking funds it receives. The change could be implemented by the following statutory language:

"Paragraph 107(b)(2)(B)of Pub. L. 106-386 is amended by:
"(1) inserting 'and' after the first semicolon;
"(2) striking '(ii)' through ';and'; and
"(3) striking '(iii)' and inserting '(ii).'"

27. Section 302

Section 302 re-authorizes the $5,000,000 appropriation for the Pilot Program that was first authorized by Section 203 of the 2005 version of this Act. The 2007 version, therefore, should add language amending section 203 of the 2005 version to provide that HHS does not have the exclusive authority for development of the pilot program. DOJ and DHS must be included in the development of this program to ensure that the ability of Federal prosecutors and

law enforcement to gain access to these victims is not negatively impacted. Moreover, the Departments' knowledge about these victims, their behaviors, and the dangers that are inherent in providing shelter and services to them would be instrumental to ensuring the success of the pilot program. This section should also amend subsection 203(a) of the 2005 reauthorization to include after "Secretary of Health and Human Services", "in collaboration with the Attorney General and the Secretary of Homeland Security," Subsection 203(c) should be likewise amended.

The Office of Management and Budget has advised that there is no objection to the presentation of this letter from the standpoint of the Administration's programs.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: The Honorable Lamar S. Smith, Ranking Member, House Committee on the Judiciary
The Honorable Tom Lantos, Chairman, House Committee on Foreign Affairs
The Honorable Ileana Ros-Lehtinen, Ranking Member, House Committee on Foreign Affairs
The Honorable Patrick J. Leahy, Chairman, Senate Committee on the Judiciary
The Honorable Arlen Specter, Ranking Member, Senate Committee on the Judiciary
The Honorable Edward M. Kennedy, Chairman, Senate Committee on Health, Education, Labor, and Pensions
The Honorable Michael B. Enzi, Ranking Member, Senate Committee on Health, Education, Labor, and Pensions
The Honorable Joseph Biden, Chairman, Senate Committee on Foreign Relations
The Honorable Richard Lugar, Ranking Member, Senate Committee on Foreign Relations