

RECOMMENDATIONS FOR PROVISIONS IN COMPREHENSIVE IMMIGRATION REFORM TO PREVENT HUMAN TRAFFICKING

Presented by



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INTRODUCTION

WHO IS ATEST?

The Alliance to End Slavery and Trafficking (ATEST) is a diverse alliance of U.S.-based human rights organizations, acting with a shared agenda to end modern-day slavery and human trafficking around the world. We work together to create fundamental change—from strengthening laws and business standards to building public will—to change the accepted norms that enable the phenomenon to persist around the world. The fact that the enslavement and trade in human beings exists in our modern world as a disturbingly large, highly profitable illicit industry is unacceptable. Legal nowhere but present across the globe, slavery damages our communities, taints the products and services we consume and the profits we earn, and is one of the most pressing human rights challenges of our time. ATEST member organizations include: Coalition to Abolish Slavery and Trafficking (CAST), Coalition of Immokalee Workers (CIW), ECPAT-USA, Free the Slaves, International Justice Mission, Not For Sale Campaign, Polaris Project, Safe Horizon, Solidarity Center, Verité, Vital Voices Global Partnership, World Vision, and one individual member, Julia Ormond, former U.N. Goodwill Ambassador and president and founder of the Alliance to Stop Slavery and End Trafficking (ASSET).

WHY COMPREHENSIVE IMMIGRATION REFORM SHOULD INCLUDE PROVISIONS TO PREVENT HUMAN TRAFFICKING?

The Trafficking Victims Protection Act (TVPA) of 2000, which has been reauthorized in 2003, 2005 and 2008, created a comprehensive framework to combat modern day slavery in the United States. However, current immigration protections for trafficked individuals once identified are inadequate and many victims remain in the shadows too terrified to come forward to seek justice. Moreover, our current immigration practices and policies often result in workers lawfully entering the United States being vulnerable to human trafficking. For example, many U.S. nonimmigrant visa programs have structural flaws that actually increase the vulnerability of immigrant workers to human trafficking in the form of debt bondage, forced labor, involuntary servitude, and other forms of severe labor exploitation. Through the current immigration reform process, Congress and the Administration can fix many of these issues through greater regulation of foreign labor recruiters, whistleblower protections, and immigration relief to better protect human trafficking victims and family members. Comprehensive immigration reform is an opportunity to continue the fight to end human trafficking in our generation.

ATEST members struggle daily to effectively address this issue both here in the United States and abroad. The following recommendations stem from our programmatic work helping survivors in the field and working hand-in-hand with U.S. government and international agencies addressing this issue. We urge the President and the U.S. Congress to enact comprehensive immigration reform and to include these key reforms to better protect trafficked persons.

ATEST RECOMMENDATIONS FOR IMMIGRATION REFORM

PILLAR #1. Create a tough but fair path to citizenship for unauthorized immigrants currently living in the United States that is contingent upon securing our borders and tracking whether legal immigrants have left the country when required

TOPIC #1: Ensuring that individuals trafficked in the United States are eligible for T-visas despite having left the U.S.

PURPOSE: Currently trafficking survivors who have left the United States and returned after their trafficking experience are ineligible for a T-visa. Notably, other crime victims applying for U-visas do not need to show they are in the U.S. on account of those crimes and can apply for U-visas from outside the U.S. A higher standard should not be applied for trafficking victims applying for T-visas; instead these standards should be made uniform.

PROPOSED LANGUAGE:

Sec. __. Applications for Visas Relating to Trafficking.

Section 101(a)(15)(T)(i) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(T)) is amended by deleting subclause (II) and redesignating clauses (III) and (IV) as (II) and (III).

EXPLANATION AND SUPPORTING MATERIAL:

Carmen, a Mexican national, was trafficked in the United States as a child and forced into prostitution. After fleeing her traffickers she returned to Mexico, but returned to the U.S. shortly thereafter to join family members for increased support and protection and fear of her trafficker whose family lived close to her home. After being identified as a human trafficking victim by a service provider she reported her human trafficking case to law enforcement and cooperated with their requests. However, because she left the U.S. after her trafficking occurred she was ineligible to apply for a T-visa.

TOPIC #2: Adjustment of status for U and T-visa holders even after U and T-visa has expired.

PURPOSE: Currently, if a U- or T-visa expires and an individual does not adjust status, the individual is ineligible to adjust status at a later date. The proposed statutory language ensures that U- or T-visa holders can remain in the United States in lawful status to protect their health and safety.

PROPOSED STATUTORY LANGUAGE:

Sec. __. Improvements to Existing Adjustment of Status Provisions.

(a) T-visa. Section 245 of the Immigration and Nationality Act (8 U.S.C. § 1255(l)(1)(C)(iii)) is amended by inserting after “alien lawfully admitted for permanent residence” the following: “regardless of whether or not the nonimmigrant is presently in 101(a)(15)(T) status.”

(b) U-visa. Section 245 of the Immigration and Nationality Act (8 U.S.C. § 1255(m)(1)) is amended by inserting after “alien lawfully admitted for permanent residence” the following: “regardless of whether or not the nonimmigrant is presently in 101(a)(15)(U) status.”

EXPLANATION AND SUPPORTING MATERIAL:

After obtaining a T-visa, many trafficking survivors do not adjust their status to that of legal permanent resident because of lack of resources, lack of understanding about the standards for adjustment of status for T-visa holders in the legal community, or barriers created by the trauma of their trafficking experience. Some case examples are provided below.

Mary, a trafficking survivor, received her T-visa with the help of an attorney. After her T-visa was granted, Mary’s attorney closed her legal case. Four years later her T-visa expired. Because Mary failed to find an attorney to assist her with her adjustment application, she is ineligible to adjust her status to that of lawful permanent resident.

Gina, a sex trafficking survivor, received her T-visa after assisting with a criminal prosecution. Gina’s immigration attorney did not know that Gina had to apply for adjustment of status prior to her T-visa expiring. Because of her attorney’s lack of experience in this area Gina is forever barred from adjusting her status.

PILLAR #2. Reform our legal immigration system to better recognize the importance of characteristics that will help build the American economy and strengthen American family

TOPIC #3: Providing flexibility to victims of human trafficking to cooperate with law enforcement.

PURPOSE: Many protections for victims of human trafficking are linked to showing cooperation with law enforcement. Even when law enforcement is nonresponsive after a human trafficking victim has reported to law enforcement and been willing to cooperate, the burden remains on the victim to establish that he/she cooperated with law enforcement to receive benefits and protection under the law. This provision ensures that human trafficking victims who have taken the brave step to report their case to law enforcement are not penalized for law enforcement's lack of responsiveness.

PROPOSED STATUTORY LANGUAGE:

Sec. __. Demonstrating Cooperation with Law Enforcement.

Section 107(e) of the Trafficking Victims Protection Act of 2000 (8 U.S.C. § 101(a)(15)) is amended by adding at the end of section 107(e)(i)(III)(aa): "For purposes of this subsection, an alien who has made an initial report to federal, state or local law enforcement authorities shall be presumed to have complied with any reasonable request for assistance or . . ."

EXPLANATION AND SUPPORTING MATERIAL:

Oftentimes victims of human trafficking who are willing to cooperate with law enforcement have reported their cases but are never interviewed by law enforcement and experience delays in their applications for T-visas. Government officials processing their applications often ask for additional evidence from victims showing their cooperation with law enforcement. These types of requests can delay a victim's application by six months or more. During this period of time, victims remain undocumented and unable to work lawfully.

TOPIC #4: Inadmissibility standards for U-visas, T-visas, and T-visa adjustments of status.

PURPOSE: Currently those applying for a U-visa can receive a waiver of inadmissibility for immigration purposes if it is in the national or public interest. T-visa applicants have to show that the ground of inadmissibility is linked to the trafficking situation. Trafficking victims would benefit if they could qualify for either of these waiver standards when applying for a T-visa and have a similarly broad waiver as other crime victims. T-visa holders applying for adjustment of status should have a similarly broad waiver.

PROPOSED STATUTORY LANGUAGE:

Sec. __. Harmonization of Standards.

(a) Inadmissibility.--Section 212(d) of the Immigration and Nationality Act (8 U.S.C. § 1182(d)(13)(B)) is amended--

(1) by striking subsection (i);

(2) redesignating subsection (ii) as subsection (i); striking “other” before “provision,” inserting “or” at the end of subsection (i); and

(3) by inserting as subsection (ii) the following new language:

“(ii) application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(T) [8 U.S.C. § 1101(a)(15)(T)], if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

(b) Adjustment of Status. Section 245 of the Immigration and Nationality Act (8 U.S.C. § 1255(l)(2)) is amended--:

(1) by striking subsection (A);

(2) redesignating subsection (B) as subsection (A); striking “other” before “provision,” inserting “or” at the end of subsection (A); and

(3) by inserting as subsection (B) the following:

“(B) application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(T) [8 U.S.C. § 1101(a)(15)(T)], if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

EXPLANATION AND SUPPORTING MATERIAL:

Oftentimes grounds of inadmissibility for human trafficking survivors may occur before or after the trafficking experience. This provision ensures that human trafficking survivors can apply for a T-visa instead of a U-visa if these types of waivers are needed. For example, Eunice, a Korean national, entered the United States on her own without proper documentation. Two years later she was tricked by a trafficker with promises of employment in a restaurant, only to be held in house, beaten every day, and forced into prostitution. Because Eunice originally entered the United States on her own, despite her clear abuse as a trafficking victim, she could be ineligible to apply for a T-visa.

Similarly, T-visa holders will not be barred from adjusting status if grounds of inadmissibility arise after the T-visa is granted that are not related to the trafficking situation.

TOPIC #5: Access to employment authorization for applicants with pending T- and U-visa applications.

PURPOSE: Current adjudication of T- and U-visas can sometimes take more than one year. Early access to work authorization promotes victims' economic security, making them less vulnerable to re-victimization and exploitation. This provision will provide T- and U-visa applicants with a specified date they can apply for work authorization after their applications are pending.

PROPOSED STATUTORY LANGUAGE:

Sec. __. Enhancing Self-Sufficiency of Victims.

(a) T-Visas.--Subsection 214(o) of the Immigration and Nationality Act (8 U.S.C. § 1184(o)) is amended by adding at the end the following paragraph:

“(8) The Secretary shall make prima facie determinations on applications filed under section 101(a)(15)(T) within 45 days of filing. Upon receiving a prima facie determination the applicant shall be granted deferred action status and employment authorization.”

(b) U-Visas.--Subsection 214(p) of the Immigration and Nationality Act (8 U.S.C. § 1184(p)) is amended in Paragraph (6) by striking in the last sentence and inserting the following new sentence:

“The Secretary shall make prima facie determinations on applications filed under section 101(a)(15)(U) within 45 days of filing. Upon receiving a prima facie determination the applicant shall be granted deferred action status and employment authorization.”

EXPLANATION AND SUPPORTING MATERIAL:

Under the current T-visa regulations applicants are supposed to receive a bona fide letter from United States Customs and Immigration Services (USCIS) to allow them to apply for temporary work authorization based on their pending T-visa applications. However, USCIS rarely issues this letter even when it is requested by an attorney-of-record, and this process generally takes 6-9 months or more to receive work authorization. With a better process for when a T-visa applicant can receive deferred action status, victims will be able to work within 3-4 months, thus aiding their recovery process.

U-visa applicants suffer the same barrier. Additionally, U-visa applications often take even longer to process than T-visa applications because more U-visas are issued. In July 2012, U-visa applicants were informed that there were no more visas available. Thus, applicants must wait until visas become available and are oftentimes out of status throughout this whole time period.

PILLAR #4. Establish an improved process for admitting future workers to serve our nation's workforce needs, while simultaneously protecting all workers

TOPIC #6: Strengthen regulation of foreign labor recruiters (in the United States and abroad) to prevent trafficking.

PURPOSE: Foreign labor contractors are increasingly relied upon to facilitate the movement of labor from one country to another. While many foreign labor contractors behave ethically and are engaged in lawful conduct, other foreign labor contractors are often complicit with or directly involved in trafficking of workers. Contractors often charge exorbitant fees for their services, forcing workers into debt bondage, falsifying documents, and deceiving workers about their terms and conditions of work, increasing the vulnerability to human trafficking. Stricter regulation of labor recruiters is needed to protect workers entering the United States from human trafficking and other abuses, especially in temporary or guest worker programs.

PROPOSED STATUTORY LANGUAGE:

Sec.__. PREVENTION OF TRAFFICKING IN PERSONS INVOLVING WORKERS RECRUITED ABROAD.—

(a) FINDINGS.— Congress makes the following findings:

(1) Foreign labor contractors are increasingly relied upon to facilitate the movement of labor from one country to another.

(2) While many foreign labor contractors behave ethically and are engaged in lawful conduct, other foreign labor contractors are often complicit with or directly involved in trafficking of workers.

(3) Contractors often charge exorbitant fees for their services, forcing workers into debt bondage, falsifying documents, and deceiving workers about their terms and conditions of work, increasing vulnerability to human trafficking.

(4) The incidence of known human trafficking cases involving foreign labor recruiters is increasing dramatically in the United States. In 2010, for example, the United State government charged six labor recruiters with conspiracy to commit human trafficking in the largest human trafficking case ever charged, involving 400 workers who entered lawfully but were lured by false promises from fraudulent labor recruiters.

(5) Stricter regulation of labor recruiters is needed to protect workers entering the United States from human trafficking and other abuses. Stronger legal frameworks will ensure the integrity of the American economy, which is undermined when unregulated actors conspire to fraudulently deceive workers about the terms and conditions of work.

(b) DEFINITIONS.— In this section—

(1) the term “foreign labor contractor” means any person who performs any foreign labor contracting activity, including any person who performs foreign labor contracting activity wholly outside of the United States,

except that the term does not include a U.S. governmental entity of the U.S. Government;

(2) the term “foreign labor contracting activity” means recruiting, soliciting, hiring, employing, managing, or furnishing, processing visa applications for, transporting, or housing an individual who resides outside of the United States to be employed in the United States, including when such activity occurs wholly outside of the United States;

(3) the term “person” means any natural person or any corporation, company, firm, partnership, joint stock company or association or other organization or entity (whether organized under law or not), including municipal corporations;

(4) the term the “Secretary” means the Secretary of Labor; and

(5) the term “worker” means an individual who is the subject of foreign labor contracting activity.

(c) DISCLOSURE.— Any person who engages in foreign labor contracting activity shall ascertain and disclose in writing in English and in the language of the worker being recruited, to each worker who is recruited for employment, at the time of the worker’s recruitment, the following information:

(1) The identity of the employer and the identity of the person conducting the recruiting on behalf of the employer, including any subcontractor or agent involved in such recruiting.

(2) A signed copy of the work contract, including all assurances and terms and conditions of employment, from the prospective employer for whom the worker is being recruited, including the level of compensation to be paid, the place and period of employment, a description of the type and nature of employment activities, any withholdings or deductions from compensation and any penalties for terminating employment.

(3) The type of visa under which the foreign worker is to be employed, the length of time the visa is valid and the terms and conditions under which this visa will be renewed with a clear statement of whether the employer will secure renewal of this visa or if renewal must be obtained by the worker and any expenses associated with securing or renewing the visa.

(4) An itemized list of any costs or expenses to be charged to the worker. Including but not limited to: the costs of housing or accommodation, transportation to and from the worksite, meals, medical examinations, healthcare or safety equipment costs, and any other costs, expenses or deductions to be charged the worker.

(5) A statement, in a form specified by the Secretary:

(A) stating that no foreign labor contractor, or agent or employee of a foreign labor contractor, can lawfully assess any fee (including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs) to a worker for any foreign labor contracting activity; and that the employer may bear such costs or fees for the foreign labor contractor, but that these fees cannot be assessed along to the worker;

(B) explaining that –

(i) no additional requirements or changes may be made from the terms of the contract originally signed by the worker unless the worker is provided at least 48 hours to review and consider the additional requirements or changes;

(ii) no such additional requirements or changes

can be made to the original contract signed by the worker without the specific consent of the worker to each such additional requirement or change; and

(iii) such consent must be obtained voluntarily and without threat of penalty or will be viewed as a violation of law subject to the provisions of subsection (i).

(C) describing the protections afforded the worker by this section and by the Trafficking Victims Protection Act of 2000 (Division A of the Public Law 106-486) and any applicable guest worker program, including relevant information about the procedure for filing a complaint provided for in subsection (i) and telephone number for the National Human Trafficking Resource Center hotline number.

(6) Any education or training to be provided or required, including the nature, timing and cost of such training and the person who will pay such costs, whether the training is a condition of employment, continued employment, or future employment; and whether the worker will be paid or remunerated during the training period, including the rate of pay.

(7) Any other information that the Secretary may require by regulation.

(d) RESTRICTION.— No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed under section (c). The disclosure required by this section is a document concerning the proper administration of a matter within the jurisdiction of a department or agency of the United States for the purposes of section 1519 of title 18, United States Code.

(e) RECRUITMENT FEES – No foreign labor contractor, or agent or employee of a foreign labor contractor, shall assess any fee (including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs) to a worker for any foreign labor contracting activity.

(f) REGISTRATION.—

(1) IN GENERAL.— Before engaging in any foreign labor contracting activity, any person who is a foreign labor contractor or who, for any money or other valuable consideration paid or promised to be paid, performs a foreign labor contracting activity on behalf of a foreign labor contractor, shall obtain a certificate of registration from the Secretary of Labor pursuant to regulations promulgated by the Secretary under paragraph (4).

(2) EXCEPTION FOR CERTAIN EMPLOYERS.— An employer, or employee of an employer, who engages in foreign labor contracting activity solely to find workers for the employer's own use, and without the participation of any other foreign labor contractor, shall not be required to register under this section. Notwithstanding the preceding sentence, such an employer shall be subject to the requirements of subsections (c), (d) and (e) and shall be subject to the remedies under subsection (i) for all violations stemming from its own foreign labor contracting activity.

(3) NOTIFICATION.— Not less frequently than once every 2 years, each employer shall notify the Secretary of the identity of any foreign labor contractor involved in any foreign labor contractor activity for, or on behalf of, the employer. Each foreign labor contractor shall notify the Secretary not less frequently than once every 2 years, of the identity of any agent or foreign labor contractor employee involved in any foreign labor contractor activity for, or on behalf of, the foreign labor contractor. The employer shall also notify the Secretary of the identity of such a foreign labor contractor whose activities do not comply with this section.

(4) ISSUANCE.— Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to establish an efficient electronic process for the timely investigation and approval of an application for a certificate of registration of foreign labor contractors, including—

(A) requirements under paragraphs (1), (4), and (5) of section 102 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1812);

(B) an expeditious means to update registrations and renew certificates;

(C) providing for the consent of any foreign labor recruiter to the designation by a court of the Secretary as an agent available to accept service of summons in any action against the applicant, if the applicant has left the jurisdiction in which the action is commenced otherwise has become unavailable to accept service or is subject to personal jurisdiction in no state;

(D) providing for consultation with other appropriate federal agencies to determine whether any reason exists to deny registration to a foreign labor contractor; and

(E) any other requirements that the Secretary may prescribe.

(5) TERM OF REGISTRATION.— Unless suspended or revoked, a certificate under this subparagraph shall be valid for two years.

(6) APPLICATION FEE.— In addition to any other fees authorized by law, the Secretary shall impose a fee, to be deposited in the Treasury, on a foreign labor contractor that submits an application for a certificate of registration under this section on or after the date that is 30 days after the effective date of the regulations promulgated under this section. Fees shall be set at a level the Secretary determines will cover the full costs of carrying out foreign labor contract registration activities under this section and any additional costs associated with the administration of the fees collected.

(7) REFUSAL TO ISSUE; REVOCATION.— In accordance with regulations promulgated by the Secretary of Labor, the Secretary shall refuse to issue or renew, or shall revoke and debar from eligibility to obtain a certificate of registration for a period of not greater than five years, after notice and an opportunity for a hearing, a certificate of registration under this subparagraph if—

(A) the applicant for, or holder of, the certification has knowingly made a material misrepresentation in the application for such certificate;

(B) the applicant for, or holder of, the certification is not the real party in interest in the application or certificate of registration and the real party in interest—

(i) is a person who has been refused issuance or renewal of a certificate;

(ii) has had a certificate revoked; or

(iii) does not qualify for a certificate under this subsection;

(C) the applicant for, or holder of, the certification has been convicted within the preceding five years of any crime described in subparagraph (A) or (B) of section 103(a)(5) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. § 1813(a)(5)); or

(D) the applicant for, or holder of, the certification has materially failed to comply with this subsection.

(8) MAINTENANCE OF LISTS.—

(A) IN GENERAL.— The Secretary shall maintain —

(i) a list of all foreign labor contractors registered under this subsection, including the countries from which they recruit, the employers for whom they recruit, and the States where recruited workers are employed; and

(ii) a list of all foreign labor contractors whose certificate of registration the Secretary has revoked.

(B) PUBLIC AVAILABILITY.— Not less than every six months, the Secretary shall regularly update the list described in this paragraph and make the list publicly available including through continuous publication on the Internet and in written form at and on the websites of U.S. embassies in the official language of that country.

(9) RE-REGISTRATION OF VIOLATORS.— The Secretary shall establish a procedure by which a foreign labor contractor that has had its registration revoked may seek to re-register under this paragraph by demonstrating to the Secretary's satisfaction that the foreign labor contractor has not violated this subsection in the previous five years and that the foreign labor contractor has taken sufficient steps to prevent future violations of this subsection.

(g) AMENDMENT TO IMMIGRATION AND NATIONALITY ACT.— Section 214 of the Immigration and Nationality Act is amended by adding at the end the following:

“(s) A visa shall not be issued under the subparagraph (A)(iii), (B)(i) (but only for domestic servants described in clause (i) or (ii) of section 274a.12(c)(17) of title 8, Code of Federal Regulations (as in effect on December 4, 2007)), (G)(v), (H), (J), (L), (Q), or (R) of section 101(a)(15) until the consular officer —

“(1) has provided to and reviewed with the applicant, in the applicant's language (or a language the applicant understands), a copy of the information and resources pamphlet required by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007; and

“(2) has reviewed and made a part of the visa file the foreign labor recruiter disclosures required by section __ of the Trafficking Victims Protection Reauthorization Act of 2011, including whether the foreign labor recruiter is registered pursuant to that section.”

(h) Responsibilities of Secretary of State¹.—

(1) In General.— The Secretary of State shall ensure that each U.S. diplomatic mission has a person who shall be responsible for receiving information from any worker who has been subject to violations of this Act.

(2) Provision of Information. The responsible person shall ensure that the information received is provided to the Department of Justice, the Department of Labor, or any other relevant federal agency. The Department of Justice and the Department of Labor shall ensure that there is a mechanism for any actions that need to be taken in response to such information.

(3) Assistance from Foreign Government. The person designated for receiving information pursuant to this subsection is strongly encouraged to coordinate with governments and/or civil society organizations in the countries of origin to ensure the worker receives additional support.

(i) ENFORCEMENT PROVISIONS.—

(1) COMPLAINTS AND INVESTIGATIONS.— The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints filed by any person, including complaints respecting a foreign labor contractor’s compliance with this section. The Secretary, either pursuant to the complaint process or otherwise, may investigate employers or foreign labor contractors as necessary to determine such compliance.

(2) ADMINISTRATIVE ENFORCEMENT.—

(A) In General. – If the Secretary finds, after notice and an opportunity for a hearing, any foreign labor contractor failed to comply with the requirements of this section, the Secretary may impose the following against such contractor—

(i) a fine in an amount not more than \$10,000 per violation; and

(ii) upon the occasion of a third violation or a failure to comply with representations, a fine of not more than \$25,000 per violation.

(B) Authority to Ensure Compliance.— The Secretary is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief and recovery of damages, as may be necessary to assure compliance with the terms and conditions of this section.

¹ This provision is parallel to the provision relating to the Secretary of State’s responsibilities with respect to victims of severe forms of trafficking in persons. See page 17 of ATEST TVPRA Recommendations. As an alternative, that provision could be modified to include reference to this section.

(C) Bonding Requirement.— The Secretary may require a foreign labor contractor to post a bond in the amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor.

(3) CIVIL ACTION.—

(A) IN GENERAL.— The Secretary of Labor or any person aggrieved by a violation of this section (or regulations issued under this section) may bring a civil action against any foreign labor contractor in any court of competent jurisdiction—

(I) to seek remedial action, including injunctive relief;

(II) to recover damages on behalf of any worker harmed by a violation of this subsection; and

(III) to ensure compliance with requirements of this subsection.

(B) Actions by the Department of Labor.—

(I) SUMS RECOVERED.— Any sums recovered by the Secretary on behalf of a worker under clause (i) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each worker affected. Any such sums not paid to a worker because of inability to do so within a period of five years shall be credited as an offsetting collection to the appropriations account of the Secretary for expenses for the administration of this section and shall remain available to the Secretary until expended or may be transferred to the Secretary of Health and Human Services for the purpose of providing support to programs that provide assistance to victims of trafficking in persons or other exploited persons.

(II) REPRESENTATION.— Except as provided in section 518(a) of Title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this paragraph. All such litigation shall be subject to the direction and control of the Attorney General.

(C) Actions by Individuals.—

(I) AWARD.— If the court finds in a civil action filed by an individual under this subsection that the defendant has violated any provision of this section (or any regulation under this section), it may award—

(I) damages up to and including an amount equal to the amount of actual damages, or statutory damages of up to \$1,000 per plaintiff per violation, or other equitable relief, except that with respect to statutory damages—

(aa) multiple infractions of a single provision of this section (or of a regulation under this section) shall constitute only one violation for purposes of determining the amount of damages due a plaintiff; and

(bb) if such complaint is certified as a class action, the court may award damages up to an amount equal to the amount of actual damages, statutory damages of no more than the lesser of up to \$1,000 per violation, or up to \$500,000, or other equitable relief; and

(cc) reasonable attorneys fees and costs.

(II) CRITERIA.— In determining the amount of statutory damages to be awarded under paragraph (1), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

(III) APPEAL.— Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of Title 28, United States Code (28 U.S.C. 1291 et seq.).

(IV) ACCESS TO LEGAL SERVICES CORPORATION.— Notwithstanding any other provision of law, the Legal Services Corporation and recipients of its funding may provide legal services on behalf of an alien who brings a civil action under this paragraph.

(4) AGENCY LIABILITY.—

(A) In General.— Beginning 180 days after the Secretary of Labor has promulgated regulations pursuant to subsection (f)(4), an employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under subsection (f). An employer who uses a foreign labor contractor who is not registered under subsection (f) after such time period, or who uses a foreign labor contractor that has violated any provision of this subsection, shall be subject to the provisions of this subsection for violations committed by such foreign labor contractor to the same extent as if the employer were the foreign labor contractor who had committed the violation.

(B) Safe Harbor.— An employer shall not have any liability under this subsection if the employer hires workers referred by a foreign labor contractor that has a valid registration with the Department of Labor pursuant to subsection (f), the employer does not act with deliberate disregard of the fact that the foreign labor contractor has violated any provision of this section, and if the employer obtained knowledge of a violation of the provisions of this section, it immediately reported the violation to the Secretary.

(5) RETALIATION.—

(A) In General.— No person shall intimidate, threaten, restrain, coerce, discharge or in any other manner discriminate or retaliate against any worker or their family members (including a former employee or an applicant for employment) because such worker disclosed information to any person that the worker reasonably believes evidences a violation of this section (or any rule or regulation pertaining to this section), including seeking legal assistance of counsel or

cooperating with an investigation or other proceeding concerning compliance with this section (or any rule or regulation pertaining to this section).

(B) Enforcement. An individual who is subject to any conduct described in subparagraph (A) may, in a civil action, recover appropriate relief (including reasonable attorneys' fees) with respect to that violation. Any civil action under this subparagraph shall be stayed during the pendency of any criminal action arising out of the violation.

(6) PRESENCE DURING PENDENCY OF ACTIONS. The Attorney General and the Secretary of Homeland Security shall grant advanced parole to the nonimmigrant to remain legally in the United States for time sufficient to fully and effectively participate in all legal proceedings related to any action taken pursuant to this subsection. Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out this provision.

(7) RULE OF CONSTRUCTION.— Nothing in this section shall be construed to preempt or alter any other rights or remedies, including any causes of action, available under any other Federal or State law.

EXPLANATION AND SUPPORTING MATERIAL:

This provision is designed to address the particular vulnerability of migrant/immigrant workers to human trafficking, and the specific role that foreign labor contractors or recruiters play. As the recent U.S. Department of Justice indictment of Global Horizons has highlighted – a case involving over 400 human trafficking victims in the agricultural industry who all initially entered the United States lawfully through the H-2 guest worker visa program – labor contractors play a major role in trafficking of migrant/immigrant workers. They often deceive or coerce workers into accepting jobs that later turn out not to be as promised. They often charge workers exorbitant fees to migrate, which in turn leads to debt bondage, and then use legal threats to maintain control of them, often by manipulating the immigration process.

As noted in a report by Verité, a leading organization that addresses labor practices, it is worthwhile to challenge the assumption that workers who enter a country legally, under programs designed to manage their temporary labor, would be better off than those who are undocumented. Verité's research found that, in the U.S. case, migrants who enter the U.S. through guest worker programs face a range of vulnerabilities to forced labor that are not necessarily faced by their undocumented counterparts.

The House of Representatives passed a version of the 2008 TVPRA that included provisions to regulate foreign labor contractors as a means of preventing human trafficking. We have learned so much more since 2008 about the major role that foreign labor contractors play. In fact, many U.S.-based service providers state that regulating foreign labor contractors is one of the most important initiatives needed to combat human trafficking in the United States.

The provisions proposed would go a long way in preventing what are often the largest cases of human trafficking in our own backyard. The disclosure requirements would help prevent the deception that often leads to vulnerable workers ending up in debt bondage or other situations of forced or coerced labor. The proposed legislation also grants the Department of Labor the power to ensure enforcement of these provisions, through registration of labor contractors, and administrative and civil remedies to hold them accountable. Thus, this

legislation creates a well-rounded approach to combating trafficking for labor exploitation in the United States and abroad, by increasing transparency and holding foreign labor contractors accountable, as it seeks to prevent trafficking from occurring, punish traffickers, and protect victims.

TOPIC #7: Increase access to educational materials available for workers lawfully entering the United States, including pre-departure education, informational pamphlets, and video resources.

PURPOSE: Reduce the likelihood of human trafficking by increasing pre-departure education.

PROPOSED STATUTORY LANGUAGE:

Sec. __. Ensuring Enhanced Education to Prevent Trafficking.

(a) Coordination of Pre-departure Education.—

(1) In General.--The Secretary of State, acting through the Assistant Secretary of Consular Affairs, is strongly encouraged to coordinate pre-departure education sessions for holders of U.S. non-immigrant visas with governments in the country of origins or relevant civil society organizations, or both, such as the information described in section 202(b) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

(2) Verification.--A consular officer shall verify that each non-immigrant visa applicant has attended a pre-departure education session, including any pre-departure video viewed during the process of obtaining a non-immigrant visa, and shall record such data in the Department of State's report on non-immigrant visas.

(b) Authorization of Appropriations. Of the amounts authorized to be appropriated under section 113(c)(1), there are authorized to be appropriated such sums as may be necessary to carry out the provisions of section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, including the further development and distribution of the pamphlet described in section 202(a) and any pre-departure video presentation created to meet or further the requirements of section 202(e) and this section.

EXPLANATION AND SUPPORTING MATERIAL:

As an anti-trafficking measure, U.S. consulates should strongly encourage country of origin governments and human rights organizations to establish pre-departure education sessions for persons going to work in the United States on non-immigrant visas to ensure that workers know their rights and the resources available to them. Money should also be allocated for development and distribution of pamphlets required by the TVPRA 2008. Additionally a "Know Your Rights" video should be developed and funded to play continually in the local languages while individuals are waiting in line at the consulate.

Currently, H-2 guest workers receive little information as to their rights under their contracts or other U.S. laws or where to seek assistance in the United States before they depart from their home countries. This results in vulnerable workers who are easily exploited and/or trafficked. Currently, the Department of State, as required by the TVPRA of 2008, provides a pamphlet to all non-immigrant visa applicants, which is an important step forward. However, sometimes written materials are confiscated by recruiters and/or difficult to understand if a worker has limited education. Mandatory pre-departure education programs coordinated between the U.S. consulates, appropriate home country government entities, and/or local human rights organizations will empower H-2 workers.

If it is not feasible for the U.S. consulates to offer these trainings themselves, the U.S. consulates should be strongly encouraged to work with foreign governments and/or

foreign human rights organizations to coordinate these trainings. This would include the U.S. consulate informing the petitioners (i.e., U.S. employers) that the trainings are available and strongly encouraging the employers to inform the workers. During the visa interview, the U.S. consulate officials should inquire where and when the worker attended the training and if there are any questions.

At a minimum, funding should be authorized for more widespread distribution of information pamphlets and an informational video in local languages.

TOPIC #8: Provide a mechanism for non-immigrant visa holders to find assistance and/or file a complaint about a trafficking experience in the United States from their country of origin.

PURPOSE: To ensure that cases of human trafficking are identified and that future cases of human trafficking are prevented when trafficking victims are returned to their country of origin by establishing points of contact in U.S. consulates trained to identify and assist with human trafficking cases.

PROPOSED STATUTORY LANGUAGE:

Sec. __. Enhancing Information on Human Trafficking.

(a) In General.--The Secretary of State shall ensure that each U.S. diplomatic mission has a person who shall be responsible for receiving information from any person [who is holding or has held a non-immigrant visa and] who has been subject to a severe form of trafficking in persons while in the United States.

(b) Provision of Information. Information received pursuant to subsection (a) shall provide the information to the Department of Justice, the Department of Labor, or any other relevant federal agency. The Department of Justice and the Department of Labor shall ensure that there is a mechanism for any actions that need to be taken in response to such information.

(c) Assistance from Foreign Government. The person designated for receiving information pursuant to subsection (c) is strongly encouraged to coordinate with governments and/or civil society organizations in the countries of origin to ensure the victim receives additional support.

EXPLANATION AND SUPPORTING MATERIAL:

Not all persons who are trafficked remain in the United States. For that reason, it is critical to create mechanisms in the countries of origin so that trafficked persons can find assistance in the United States, otherwise the traffickers will go unpunished and more persons may be victimized. Under this proposal, the Department of State (DOS) will assign a point person in each consulate to receive individual complaints from potential trafficking victims. This person must be trained in identifying trafficking victims and must know what resources are available in the United States. It is also important for the DOS point person to work with local human rights/anti-trafficking organizations so that the person has local support as well. Another method would be to develop an international hotline that workers and/or family members could call with complaints.

This provision would be invaluable in identifying cases of workers entering the United States lawfully and still ending up in a human trafficking situation. A case example of how this provision could increase human trafficking victim identification and prevent future cases of human trafficking in the United States is provided below.

Pablo's Story

Armed with a U.S. H-2B guest worker visa, "Pablo" boarded a plane to North Carolina, where he believed he had secured a high-wage job planting pine trees for a U.S. company. Upon his arrival in the United States, however, Pablo was ensnared in a human trafficking scheme.

Without explanation, the contractor forced Pablo and 14 fellow workers into a van and drove them to the northeast. There the contractor confiscated Pablo's passport and warned him not to leave the workers' hovel-like apartment, claiming that the urban streets were dangerous. Scared to leave and not knowing where to turn, Pablo was forced to work for well under the U.S. federal minimum wage.

Pablo begged the employer to let him return to Guatemala. Once home, Pablo was fortunate enough to come into contact with one of the few nonprofit organizations, Global Workers, working on the ground to assist workers returned to their countries of origin but exploited in the United States. Within 48 hours of learning of the case, the NGO assembled a top-level legal team that liberated the remaining workers. Global Workers served as the bridge between the workers, who have returned to Guatemala and the U.S. advocates and officials working on the case, to hold the employer criminally liable and recover the unpaid wages.

The proposal would ensure that workers exploited in the United States would have access to direct contacts within the United States government in their countries of origin who could assist more trafficked workers around the world.

TOPIC #9: Enhancing prosecution of trafficking offenses by providing whistleblower protections to trafficked workers.

PURPOSE: To encourage workers to report abusive employers, protect them from the threat of deportation by employers who are angry that they have complained about abuse, prevent exploitation and abuse in the workplace, and ensure that trafficking victims are not deported from the United States prior to their identification as victims of this crime.

PROPOSED STATUTORY LANGUAGE:

Sec. __. Victims of Serious Labor and Employment Violations or Crime.

(a) Protection for Victims of Labor and Employment Violations- Section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(U)) is amended--

(1) in clause (i)--

(A) by amending subclause (I) to read as follows:

“(I) the alien--

“(aa) has suffered substantial abuse or harm as a result of having been a victim of criminal activity described in clause (iii);

“(bb) has suffered substantial abuse or harm related to a violation described in clause (iv);

“(cc) is a victim of criminal activity described in clause (iii) and would suffer extreme hardship upon removal; or

“(dd) has suffered a violation described in clause (iv) and would suffer extreme hardship upon removal;”

(B) in subclause (II), by inserting “, or a labor or employment violation resulting in a workplace claim described in clause (iv)” before the semicolon at the end;

(C) in subclause (III)--

(i) by striking “or State judge, to the Service” and inserting “, State, or local judge, to the Department of Homeland Security, to the Equal Employment Opportunity Commission, to the Department of Labor, to the National Labor Relations Board;” and

(ii) by inserting “, or investigating, prosecuting, or seeking civil remedies for a labor or employment violation related to a workplace claim described in clause (iv)” before the semicolon at the end; and

(D) in subclause (IV)--

(i) by inserting “(aa)” after “(IV)” and

(ii) by adding at the end the following: “or

“(bb) a workplace claim described in clause (iv) resulted from a labor or employment violation;”

(2) in clause (ii)(II), by striking “and” at the end;

(3) in clause (iii), by striking “or” at the end and inserting “and;” and

(4) by adding at the end the following:

“(iv) in the labor or employment violation related to a workplace claim, the alien--

“(I) has filed, is a material witness in, or is likely to be helpful in the investigation of, a workplace claim (as defined in section 274A(e)(10)(C)(iii)(II)); and

“(II) reasonably fears, has been threatened with, or has been the victim of, an action involving force, physical restraint, retaliation, or abuse of the immigration or other legal process against the alien or another person by the employer in relation to acts underlying the workplace claim or related to the filing of the workplace claim; or.”

(b) Temporary Protection for Victims of Crime, Labor, and Employment Violations - Notwithstanding any other provision of law, the Secretary of Homeland Security may permit an alien to temporarily remain in deferred action status in the United States and grant the alien employment authorization if the Secretary determines that the alien--

(1) has filed for relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(U)); or

(2)(A) has filed, or is a material witness to, a bona fide workplace claim (as defined in section 274A(e)(10)(B)(iii)(II) of such Act, as added by section 3(b)); and

(B) has been helpful, is being helpful, or is likely to be helpful to--

(i) a Federal, State, or local law enforcement official;

(ii) a Federal, State, or local prosecutor;

(iii) a Federal, State, or local judge;

(iv) the Department of Homeland Security;

(v) the Equal Employment Opportunity Commission;

(vi) the Department of Labor;

(vii) the National Labor Relations Board; or

(viii) other Federal, State, or local authorities investigating, prosecuting, or seeking civil remedies related to the workplace claim.

(c) Conforming Amendments- Section 214(p) of the Immigration and Nationality Act (8 U.S.C. § 1184(p)) is amended--

(1) in paragraph (1), by inserting “or investigating, prosecuting, or seeking civil remedies for workplace claims described in section 101(a)(15)(U)(iv)” after “section 101(a)(15)(U)(iii)” each place such term appears;

(2) in paragraph (2)(A), by striking “10,000” and inserting “20,000;” and

(3) in paragraph (6)--

(A) by inserting “or workplace claims described in section 101(a)(15)(U)(iv)” after “described in section 101(a)(15)(U)(iii);” and

(B) by inserting “or workplace claim” after “prosecution of such criminal activity.”

(d) Adjustment of Status for Victims of Crimes- Section 245(m)(1) of the Immigration and Nationality Act (8 U.S.C. § 1255(m)(1)) is amended by inserting “or an investigation or prosecution regarding a workplace claim” after “prosecution.”

(e) Change of Nonimmigrant Classification- Section 384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. § 1367(a)(1)) is amended--

(1) in subparagraph (E), by striking “physical or mental abuse and the criminal activity” and inserting “abuse and the criminal activity or workplace claim;”

(2) in subparagraph (F), by adding “or” at the end; and

(3) by inserting after subparagraph (F) the following:

“(G) the alien's employer.”

SEC. __. Labor Enforcement Actions.

(a) Removal Proceedings- Section 239(e) of the Immigration and Nationality Act (8 U.S.C. § 1229(e)) is amended--

(1) in paragraph (1)--

(A) by striking “In cases where” and inserting “If;” and

(B) by inserting “or as a result of information provided to the Department of Homeland Security in retaliation against



individuals for exercising or attempting to exercise their employment rights or other legal rights” after “paragraph (2);” and
(2) in paragraph (2), by adding at the end the following:

“(C) At a facility about which a workplace claim has been filed or is contemporaneously filed.”

(b) Unlawful Employment of Aliens- Section 274A(e) of the Immigration and Nationality Act (8 U.S.C. § 1324a(e)) is amended by adding at the end the following:

“(10) CONDUCT IN ENFORCEMENT ACTIONS-

“(A) ENFORCEMENT ACTION- If the Department of Homeland Security undertakes an enforcement action at a facility about which a workplace claim has been filed or is contemporaneously filed, or as a result of information provided to the Department in retaliation against employees for exercising their rights related to a workplace claim, the Department shall ensure that--

“(i) any aliens arrested or detained who are necessary for the investigation or prosecution of workplace claim violations or criminal activity (as described in subparagraph (T) or (U) of section 101(a)(15)) are not removed from the United States until after the Department--

“(I) notifies the appropriate law enforcement agency with jurisdiction over such violations or criminal activity; and

“(II) provides such agency with the opportunity to interview such aliens; and

“(ii) no aliens entitled to a stay of removal or abeyance of removal proceedings under this section are removed.

“(B) PROTECTIONS FOR VICTIMS OF CRIME, LABOR, AND EMPLOYMENT VIOLATIONS-

“(i) STAY OF REMOVAL OR ABEYANCE OF REMOVAL PROCEEDINGS- An alien against whom removal proceedings have been initiated under chapter 4 of title II, who has filed a workplace claim, who is a material witness in any pending or anticipated proceeding involving a workplace claim, or who has filed for relief under section 101(a)(15)(U), shall be entitled to a stay of removal or an abeyance of removal proceedings and to employment authorization until the resolution of the workplace claim or the denial of relief under section 101(a)(15)(U) after exhaustion of administrative appeals, whichever is later, unless the Department establishes, by a preponderance of the evidence in proceedings before the immigration judge presiding over that alien's removal hearing, that--

“(I) the Department initiated the alien's removal proceeding for wholly independent reasons and not based on, or as a result of, any information provided to, or obtained by, the Department--

“(aa) from the alien's employer;

“(bb) from any outside source, including any anonymous source or any individual described in subparagraphs (A) through (G) of section 1384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. § 1367(a)(1)); or

“(cc) during the prosecution or investigation of the workplace claim; and

“(II) the workplace claim was filed in a bad faith with the intent to delay or avoid the alien's removal.

“(ii) DURATION- Any stay of removal or abeyance of removal proceedings and employment authorization issued pursuant to clause (i) shall remain valid until the resolution of the workplace claim or the denial of relief under section 101(a)(15)(U) after the exhaustion of administrative appeals, and shall be extended by the Secretary of Homeland Security for a period of not longer than 3 additional years upon determining that--

“(I) such relief would enable the alien asserting a workplace claim to pursue the claim to resolution;

“(II) the deterrent goals of any statute underlying a workplace claim would be served; or

“(III) such extension would otherwise further the interests of justice.

“(iii) DEFINITIONS- In this section:

“(I) MATERIAL WITNESS- Notwithstanding any other provision of law, the term ‘material witness’ means an individual who presents a declaration from an attorney investigating, prosecuting, or defending the workplace claim or from the presiding officer overseeing the workplace claim attesting that, to the best of the declarant's knowledge and belief, reasonable cause exists to believe that the testimony of the individual will be relevant to the outcome of the workplace claim.

“(II) WORKPLACE CLAIM- The term ‘workplace claim’ means any written or oral claim, charge, complaint, or grievance filed with, communicated to, or submitted to the employer, a Federal, State, or local agency or court, or an employee representative related to the violation of applicable Federal, State, and local labor laws, including laws concerning wages and hours, labor relations, family and medical leave, occupational health and safety, or nondiscrimination.”

SEC. __ Authorization of Appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out sec. __ and sec. __.

EXPLANATION AND SUPPORTING MATERIAL:

This provision is designed to provide immigration relief to workers who are whistleblowers of severe labor exploitation. There have been a number of human trafficking cases recently in the United States where workers who raised the alarm about severe abuse by employers have initially been threatened with deportation as a way to keep them quiet. These workers have had to remain in the United States in an undocumented status in order to stay in the country to pursue their cases against the abusive employers. After many years, these same workers have been certified as trafficking victims and receive “T” visas, but had to struggle for many years without status. Examples of this include Global Horizons, the largest forced labor case in U.S. history involving over 400 victims, and a group of Indian workers known in the media as the Signal Workers. This provision would give trafficked workers like these access to immigration relief in the United States while they pursue claims here, even if they are not initially identified as trafficking victims.

TOPIC #10: Human Trafficking Emergency Fund.

PURPOSE: Create emergency funds available for the unexpected needs of human trafficking survivors occurring in the United States which can be tapped by service providers and law enforcement to meet emergency needs such as shelter, interpretation, legal services, medical care, and the specialized needs of trafficked children, so that survivors have access to basic protections and service providers and law enforcement are not overwhelmed by unexpected costs or needs, especially those that arise in larger cases.

PROPOSED STATUTORY LANGUAGE:

Sec. __. Emergency Assistance for Trafficking Victims.

(a) In General. – The Department of Health and Human Services is authorized to provide assistance to meet the unexpected, urgent needs of victims of severe forms of trafficking.

(b) Response to Requests. Upon request from a human trafficking service provider, a human trafficking taskforce funded by the Bureau of Justice Assistance, any victim witness coordinator or investigating agent from the Department of Justice, Department of Homeland Security, Department of Labor, or the Equal Opportunity Employment Commission, or any representative from the Department of Health and Human Services, the Department of Health and Human Services, shall assess the request and within 72 hours or less grant the request or provide reasons for the denial of the request.

(c) Promulgation of Regulations. Not later than 60 days after the enactment of this Act, the Department of Health and Human Services shall establish a procedure for making such a request, which shall not be unduly burdensome.

(d) Authorization of Appropriations. There is authorized to be appropriated to the Department of Health and Human Services \$10,000,000 for fiscal years 2012, 2013, and 2014. Amounts appropriated pursuant to this section are authorized to be available until expended.

EXPLANATION AND SUPPORTING MATERIAL:

Recently large cases of human trafficking victims have surfaced in the United States and no service provider or law enforcement agency can plan in advance to meet the needs of these cases which can appear at any time or place in the country. For example, the Global Horizon case recently brought to light in Hawaii involved over 400 potential victims, and a case out of Kansas involved over 70 victims.

TOPIC #11: Legal services for human trafficking victims.

PURPOSE: Human trafficking victims have complex immigration, criminal and civil legal needs. Attorneys are needed who specialize in assisting human trafficking cases so that victims can seek justice, compensation, and protection in the United States for the crimes committed against them.

PROPOSED STATUTORY LANGUAGE:

Sec. __. Obtaining Services for Cooperating Trafficking Victims.

(a) Additional Use of Funds.— Sec. 107(b)(2) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7105(b)(2)) is amended by striking the period and inserting “, including providing legal services to assist them in obtaining immigration benefits, file civil suits, and provide assistance with criminal victim-witness advocacy.”

(b) Authorization.—

(1) Department of Health and Human Services.— Sec. 113(b) is amended by inserting at the end “(3) To carry out the purposes of section 107(b)[22 U.S.C. § 7105(b)] and 107(f)[22 U.S.C. § 7105(f)] there are authorized 5,000,000 to provide legal services for trafficking victims.”

(2) Department of Justice.— Sec. 113(d) is amended by inserting at the end the following: “(D) To carry out the purposes of section 107(b)[22 U.S.C. § 7105(b)] and 107(f)[22 U.S.C. § 7105(f)] there are authorized 5,000,000 to provide legal services for trafficking victim.”

EXPLANATION AND SUPPORTING MATERIAL:

Funding for legal services is virtually nonexistent. Under the current funding structure, limited legal services are available through the Office of Victims of Crime (OVC) for pre-certified victims only. Since OVC’s reduction in funding in 2005, grant levels available generally do not allow for the support of even one full-time staff member qualified to provide legal services. Additionally, there is no funding available for U.S. citizen victims, and the Office of Refugee Resettlement (ORR) has prohibited the use of its funds for legal representation to certified victims and pre-certified victims not being served by OVC grantees. Additionally, the limited funds available are generally used solely for immigration services, when trafficking victims often need assistance accessing the civil court system as well as criminal victim-witnesses advocacy. Human trafficking victims routinely report that legal services are their top priority. However, because of lack of legal services funding in this relatively new field, there are few-to-no attorneys who currently specialize in this complex service area. If victims are fortunate enough to be able to access attorneys they usually have to receive legal services from multiple advocates further complicating a difficult process.

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