



Attorney General Eric Holder
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001

May XX, 2009

Dear Attorney General Holder:

We write to urge your early attention to implementing the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“the TVPRA”). This law represents a historic Congressional response to the slavery issue of our time.

On August 16, 2008, then Presidential Candidate Barack Obama stated:

[Human trafficking] has to be a top priority and this is an area where we've already seen bipartisan agreement on this issue. What we have to do is to create better, more effective tools for prosecuting those who are engaging in human trafficking and we have to do that within our country. Sadly, there are thousands who are trapped in various forms of enslavement, here in our country, oftentimes young women who are caught up in prostitution. So we've got to give prosecutors the tools to crack down on these human trafficking networks.... It is a debasement of our common humanity....¹

As such, robust TVPRA enforcement is a high obligation, and presents an exceptional opportunity for significant progress on civil rights and human rights, to which you have expressed deep commitment throughout your career.

This letter outlines the Department’s obligations in the areas of improving its own enforcement of sex trafficking and related laws (Items 1-4, below); providing leadership to the states in combating trafficking (Items 5 and 6); and generating data necessary for effective policymaking (Items 7 and 8).

1. Informing Line Prosecutors About Expanded Prosecutorial Tools

The Human Trafficking Prosecution Unit (HTPU) recently issued preliminary guidelines to prosecutors who may prosecute sex trafficking and forced labor cases. This preliminary guidance rightly alerted federal prosecutors to several updates in the law that will enhance their effectiveness in prosecuting traffickers and those who assist them. However, the guidelines did

¹ Transcript, Saddleback Presidential Candidates Forum, August 16, 2008 available at <http://transcripts.cnn.com/TRANSCRIPTS/0808/16/se.02.html> (visited April 24, 2009).

not cite a number of important areas of clarification that call for clear mention in the final guidance to prosecutors and in the United States Attorneys' Manual:

- We begin by calling on the Department to implement the Chairman's Explanatory Statement, which makes clear that preying on a victim's drug use or addictions (whether pre-existing or created by the traffickers) may, in and of itself, constitute coercion and thus serve as a basis for convicting traffickers. The Explanatory Statement constitutes the Act's legislative history.² The Statement makes clear that it is criminal for traffickers to utilize "nonviolent and psychological coercion" and it will thus significantly enhance the ability to prosecute traffickers who exploit their victims' addictions or use of drugs.
- The Explanatory Statement also makes clear with respect to the "alien harboring" criminal statute, 8 U.S.C. 1324, that sex traffickers of foreign nationals have the same affirmative obligation to check the immigration status of their victims as do lawful employers. In other words, the final guidance and the Manual should make clear that sex traffickers of undocumented persons may be criminally liable unless they can prove that they exercised reasonable due diligence in determining their victims' legal status.
- The Act significantly strengthens the provisions of prior law to ensure that traffickers disgorge financial gains of criminal activities.³ Assets forfeited in trafficking cases will, under the provision, no longer go to the U.S Treasury; instead, they will be paid to trafficking victims through a "restoration and remission" process. The Act also facilitates the ability of victims to obtain civil damages from anyone who knowingly benefits from violation of federal Title 77 peonage, slavery or trafficking in persons crimes. Robust implementation of this provision will result in transfers of trafficker wealth to their victims, and will reduce the incentives for engaging in trafficking.

2. Model Enforcement of Anti-Trafficking and Anti-Pimping Laws in Washington, D.C.

Congress has expressed clear interest in enforcement of the DC Code, by requiring the Attorney General to report on federal enforcement of prostitution-related crimes in the District of Columbia.⁴ As distinguished from current federal law, the DC Code makes all pimping and pandering a serious crime and does not require proof of force, fraud or coercion. The U.S. Attorney's Office for D.C must demonstrate model enforcement strategies that target multiple pimps and brothel owners within a short period of time, aiming for suppression of the commercial sex industry and sex trafficking within the jurisdiction. These investigations and prosecutions must continue to be carried out in a victim-centered manner, providing immediate support to trafficking victims and real options for others wishing to escape the sex industry. This aggressive enforcement strategy will provide a model for other local jurisdictions aiming to become inhospitable to sex traffickers, and may be the most important means available for you to demonstrate leadership to state and local prosecutors across the country in prosecuting sex trafficking. In our view, the Act makes clear that Congress expects to see an intensified level of prosecutions and renewed effort to suppress the commercial sex industry in the District.

3. Ensure Resources to Prosecute All Forms of Human Trafficking

² Congressional Record, December 10, 2008, H10903-H10905.

³ TVPRA, Section 221.

⁴ TVPRA, Section 237(c)(1)(D).

We also call on you to implement the following instructions from the Explanatory Statement:

The Department of Justice should review the relationship between the Criminal Section of the Civil Rights Division and the Child Exploitation and Obscenity Section [(CEOS)] of the Criminal Division and promote a coordinated approach to the trafficking prosecutions that these Sections carry out.⁵

Currently, CEOS is responsible for prosecuting sex trafficking of minors and other child exploitation; other units of the Criminal Division are responsible for prosecuting Mann Act cases (transportation for illegal sexual activity and related crimes); and HTPU is responsible for all other slavery, forced labor and sex trafficking crimes. With HTPU and the DOJ task forces focused largely on foreign national victims, and the CEOS and Innocence Lost initiatives focused on sex trafficking of children, insufficient resources at central DOJ are going to protecting adult U.S. citizen victims of trafficking. Restoring the practice of Innocence Lost task forces attending the annual DOJ conference on human trafficking, as in 2007, would also be wise.

We note in this connection the passage of the PROTECT Our Children Act of 2008. This law requires the Department to create a national strategy to end sex trafficking of minors, online exploitation, and all other forms of sexual exploitation of children.⁶ Failure to coordinate this strategy with efforts to address adult trafficking risks child victims of sex trafficking becoming adult victims of sex trafficking whom states may treat as criminals. Law enforcement sweeps laudably aimed at rescuing children should not inadvertently leave adult victims by the wayside.

Similarly, task forces should overcome structural barriers to identifying forced labor trafficking. The law enforcement arms of DOJ-funded task forces often are housed within state or local vice units, which facilitates identification of trafficking within the commercial sex industry. Task forces should ensure engagement of additional branches of state or local law enforcement that are well-positioned to identify labor trafficking.

4. Federal Leadership in Enforcing Laws Against Sex Tour Operators

To effectively combat trafficking, the Department should bring prosecutions against those who contribute to the demand for sex trafficking and commercial sexual exploitation. This effort should include prosecutions of those who arrange interstate travel for purchasers of commercial sex acts, or “sex tours.” In the past, the Department has argued against the plain meaning of 18 USC 1321, which outlaws interstate transport of a person with intent that the person engage in “any sexual activity for which any person can be charged with a criminal offense.”

Instructions to use this provision against sex tour operators should be included with all information provided to line prosecutors on the TVPRA.

5. DOJ Model State Law

⁵ Congressional Record, December 10, 2008, H10905.

⁶ PL 110-301, Section 101.

The TVPRA has made clear that the federal government has a strong role to play in providing crucial leadership to states – all the more so because of the incomplete and sometimes counterproductive guidance provided to the states by the Bush administration in the form of a flawed and incomplete model state law.

The Department's previous model law emphasized exclusively the creation of new human trafficking crimes that require proof of force, fraud or coercion, except in cases where a victim of sex trafficking was a minor. As experienced federal prosecutors will attest, these cases are highly resource-intensive and depend on effective victim-witness testimony that is often very difficult to produce. The Wilberforce Act calls on DOJ to draft a supplementary model law that clearly and explicitly defines any pimping and pandering as a felony, with the existing model law providing for enhanced punishment of traffickers provably engaged in force, fraud or coercion and trafficking of minors. Thus, in addition to setting out model human trafficking crimes, the model legislation should provide guidelines to strengthen these existing state crimes that have lower evidence requirements. For example, the model legislation could increase the penalties for these alternative crimes, which include pimping crimes and violations of labor standards.

In order to promote coherence and minimize confusion, the new model law for states should be presented as an integral part of the state anti-trafficking legislative framework, rather than being presented separately from the previous anti-trafficking model law.

6. DOJ Leadership to Reform State and Local Law Enforcement Practices

The Department is mandated under the Wilberforce Act to ensure changes to the Uniform Crime Reports (UCR) that disaggregate the reporting of prostitution-related arrests – previously combined into one single class – under three separate categories: those unlawfully assisting or promoting commercial sex acts, i.e. potential traffickers; those unlawfully purchasing commercial sex, i.e. “johns”; and those unlawfully providing the commercial sex acts, i.e., the victims.⁷

The separate reporting of the three crimes aims to mandate a shift in state law enforcement patterns that largely ignore johns and pimps, and whose disproportionate focus on potential victims – primarily female – may constitute a form of sex discrimination. The Department should provide intensive training to state and local law enforcement on proper enforcement priorities and techniques in investigating sex trafficking, including “john” arrests and other forms of demand reduction. For decades, state law enforcement of prostitution-related laws has been primarily targeted against the least empowered person within the triangle of a commercial sex transaction – not the pimp who coerces his victims, and not the “john” with wealth to purchase sexual acts, but the sexually exploited person, who most often is in a position of economic, physical, and psychological/emotional vulnerability. This approach of primarily targeting the woman in prostitution with a punitive criminal justice response is simply not effective in reducing sex trafficking nationwide.

⁷ See TVPRA, Section 237(a).

A paradigm shift in the approach of law enforcement to potential sex trafficking victims is necessary, on the scale of what has been achieved with respect to victims of sexual assault and domestic violence in recent decades.

7. Meeting the Mandate to Understand the Criminal Industry of Commercial Sexual Exploitation

The TVPRA requires DOJ to report within 90 days on the status and projected completion of its study and on the commercial sex industry,⁸ first mandated by the TVPRA of 2005.⁹ The U.S. government has no adequate assessment of the reach of the multi-billion dollar commercial sex industry in the United States, and of the prevalence of sex trafficking and the average profits made by sex traffickers.

We wish to make clear that recent reports released by the Department of Justice do not fulfill the DOJ's statutory mandate. (See in this regard "NORC Final Report: Finding Victims of Human Trafficking," presented to the National Institute of Justice, NIJ, in September 2008; and Bureau of Justice Statistics, "Characteristics of Suspected Human Trafficking Incidents, 2007-08".)

We also note with concern certain highly troubling recommendations contained in those reports. For example, the NORC report discourages the investigation of human trafficking within pimp-controlled street prostitution.¹⁰ We know that the tactics used by street pimps are violent and abusive and typically amount to sex trafficking. Rather than discouraging such investigations and consigning the victims to continual abuse, DOJ has a responsibility to provide better guidance and promising practices to investigate and prosecute all types of human trafficking.

8. Ensuring Timely Reporting and Effective Responses to New Report Requirements

We emphasize the importance of the Department's new reporting requirements,¹¹ in addition to the mandated report regarding the Department's enforcement of the DC Code discussed above. The inclusion of reporting requirements in the TVPRA aims to monitor the use of investigative and prosecutorial tools against traffickers, and to promote their more frequent use.

Thus, the final instructions to line prosecutors should also include information about the new requirements to report on:

- Activities to enforce criminal statutes against human traffickers that do not require proof of force, fraud or coercion, including:

⁸ TVPRA, Section 237(c)(3).

⁹ See PL 109-164, Section 201(a)(1)(B)(ii).

¹⁰ NORC, Page ix.

¹¹ See TVPRA, Section 237(c).

- Mann Act crimes, relating to transportation across state lines to engage in commercial sex acts.
- Sex trafficking of minors, including in cases where the victim has reached the age of majority at the time she/he is encountered by law enforcement.
- Racketeering / RICO laws.
- The use of restitution and forfeiture provisions in human trafficking cases.
- The use of investigations and prosecution against multiple defendants in one case, i.e., simultaneous targeting of an entire local trafficking network.
- We are committed to supporting necessary appropriations to carry out two additional studies, as provided for in the TVPRA,¹² and we call on the Department and the Obama Administration to budget appropriately for comprehensive studies on:
 - Application of state human trafficking statutes, including statutes based on the previous DOJ Model Law.
 - Internet-based crimes in the sex industry, and best practices to investigate and prosecute those crimes.

Conclusion

We have taken President Obama's words, with which this letter opens, as guidelines for the ideas contained in this letter. A paradigm shift is now needed in the way we approach criminal enforcement activities against the commercial sex industry in order to reduce sex trafficking. We must recognize buyers of commercial sex as the demand that generates the profit incentive of sex traffickers. We must crack down on sex traffickers with a range of federal, state, and local prosecutorial strategies. Those exploited by the industry are among the most vulnerable members of our society. They need protections from their exploiters and assistance in rebuilding their lives. We must not unconsciously hurt the victims ourselves, by treating them as criminals or as removable aliens when they are victims of human trafficking. We are confident that you will accord to this problem the attention it merits at the top of the list of grave civil rights problems afflicting our nation and the world.

By this letter, we also seek to meet with you at your earliest convenience to discuss the matters described. Please contact Ambassador Mark Lagon, Executive Director of Polaris Project, at 202-745-1001 ext. 111, mlagon@polarisproject.org, to set up a meeting with representatives of the signers of this letter at a convenient date and time. Thank you very much for your attention to the matters described in this letter.

Signed:

[TO SIGN ON TO THIS LETTER, PLEASE CONTACT:

Kristin Fortin
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 202-745-1001 ext. 132

¹² See TVPRA, Section 237(c)(2).

WITH YOUR NAME, TITLE, ORGANIZATION (indicating whether for representation or identification purposes) AND EMAIL ADDRESS.

THANKS!]