



U.S. Department of Justice

Office of Intergovernmental and Public Liaison

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November 27, 2007

Ms. Dorchen Leidholdt  
President  
Coalition Against Trafficking in Women-International  
P.O. Box 7427  
New York, NY 10116

Dear Ms. Leidholdt:

Thank you for sharing with us your concerns regarding the Department of Justice's efforts to combat human trafficking as described in your letter of October 5, 2007. We apologize for the delay in responding.

Please be assured that we share your organization's commitment to the fight against modern-day slavery. Ending the plague of human trafficking and eliminating the suffering endured by victims who toil in bondage are priorities for the Department. In fact, in 2007, the Department of Justice has set a record for the number of human traffickers convicted, the fourth such record-breaking year in a row. In addition, over the last six years we have established dozens of anti-trafficking task forces across the Nation and trained thousands of law enforcement officers and others to identify and investigate human trafficking.

Let me address your specific concerns in turn.

The Department's Model Human Trafficking Statute

In your letter, you expressed concern that the Department's model human trafficking law limits state prosecutors to pursuing only cases involving sex trafficking by force, fraud, or coercion. That was not our intention with the model law, and we do not believe that it has resulted in such a situation.

We believe that states should have an array of criminal statutes designed to reach the variety of criminal conduct that takes place within human trafficking organizations. Accordingly, in 2004, the Department drafted a model law on sex and labor trafficking to assist the states in achieving this objective. While most states already had comprehensive laws addressing pimping, pandering, and solicitation at the time of this drafting, many did not yet have effective statutes to combat sex and labor trafficking. Our model law was never designed to supplant pre-existing state laws that target pimping activity, but rather to supplement those laws. To our knowledge, all of the states that have adopted human trafficking laws have done so

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in addition to, and not in place of, existing laws against pimping, pandering, or solicitation. In fact, according to the Bureau of Justice Statistics, there are over 100,000 prostitution-related arrests each year. The Department of Justice believes that this form of exploitation can best be fought by the nearly 3,200 county prosecution offices and 17,000 local police departments. Our model state law does nothing to discourage them from doing so.

The model state law was also drafted to ensure that cases of modern-day slavery involving fraud, force, and coercion are not labeled as "prostitution" offenses. To this end, the model law has been successful in raising awareness about the issue of trafficking. In spring 2005, the Attorney General wrote to the governors and legislative leaders of all 50 states, United States territories, and commonwealths to encourage them to adopt the model law in order to promote enforcement uniformity and as part of a national strategy to combat human trafficking. Prior to April 2005, only five states had criminal anti-trafficking laws. As of this month, however, 33 states have passed laws that contain criminal anti-trafficking provisions. These state laws will help ensure that victims of human trafficking will be treated as victims and not as criminals.

You also expressed concern that, in your view, the model law legalizes the relationship between persons in prostitution and their pimps. This is not the case. The Administration opposes any efforts to legalize prostitution or to re-cast the relationship between a pimp and a prostituted person as a valid form of labor, as we discuss in greater detail below with regard to tax violations. To this end, the Model Law expressly states that commercial sexual activity is not a form of "labor," but is instead a form of "services," a broad term intended to cover any activity that is not "labor." It also explicitly states, "Nothing in this provision should be construed to legitimize or legalize prostitution." See U.S. Department of Justice, *Model State Anti-Trafficking Criminal Statute*, [http://www.usdoj.gov/crt/crim/model\\_state\\_law.pdf](http://www.usdoj.gov/crt/crim/model_state_law.pdf).

#### Proving Force, Fraud, or Coercion

Your letter suggested that requiring proof of force, fraud, or coercion in federal criminal sex trafficking cases is burdensome and dangerous because brutalized and traumatized victims are unable to provide testimonial evidence on this element. To the contrary, our experience establishes that victims' testimony is not only attainable, but also a crucial component of successfully prosecuting human traffickers. As our results over the last six years have demonstrated, we have faced no problems convicting traffickers under the standards requiring proof of force, fraud, or coercion. We have obtained the necessary testimonial evidence from traumatized and brutalized victims by using concerted, victim-centered efforts to gain their trust. While this is often a time-consuming process, it is well worth the effort because it allows us to convict the most serious offenders, stop the cycle of abuse and victimization, and begin the process of helping these victims along the path to recovery.

Any suggestion that testimonial evidence on force, fraud, or coercion is not attainable is inaccurate. Many victims who were extremely reluctant at first have later articulated to our

prosecutors how empowering the process ultimately was for them—to learn that they could speak out and be believed, despite the trafficker’s brainwashing that no one would care about them or believe them, and to learn that they could play an important role in making the trafficker face consequences for what he did to her. As we have learned from prosecuting child sex trafficking cases and Mann Act cases (which do not require proof of force, fraud, or coercion), all prosecutions involving traumatized victims require this patient, persistent, victim-centered approach, whether or not we are seeking to elicit details of force, fraud, or coercion, or merely more basic facts of where the victim has been placed in commercial sex. In most instances, even where no proof of force, fraud, or coercion is necessary, the elements of these crimes cannot be proven beyond a reasonable doubt without victim testimony. Victims must overcome the difficulty in trusting authorities when the trafficker has brainwashed them not to trust anyone but him. This issue of trust is a hurdle that must be overcome to secure even the most basic testimony necessary to prove these crimes, not only testimony involving force, fraud, or coercion.

Furthermore, as discussed below, the Department does use federal criminal laws that do not require proof of force, fraud, or coercion. Several federal laws criminalize providing persons for commercial sexual activities, including the Mann Act and laws criminalizing harboring or importing aliens for illegal sexual activities. The Department uses all of these statutes, and others, to prosecute sex traffickers.

#### Enforcement of the Mann Act

In your letter, you encouraged the Department to utilize the Mann Act (18 U.S.C. § 2421, et seq.) against traffickers, which you labeled a “per se” trafficking statute. You stated that the statute was “recently amended” and imply that we are failing to prosecute a crime that Congress has prioritized. The recent amendment in the Adam Walsh Child Protection and Safety Act of 2006 to which you refer was a useful increase in the statutory maximum sentence for violation of Section 2422, but it did not change the underlying criminal prohibition. And, in fact, contrary to your assertion, the number of Mann Act prosecutions has increased in recent years, showing our commitment to prosecuting defendants who violate the provisions of the Mann Act and to securing substantial sentences for these violations. In Fiscal Year 2002, the Department of Justice filed cases involving 182 defendants charged with violating the Mann Act. In Fiscal Year 2006, the Department of Justice filed cases involving 309 Mann Act defendants. In total, between fiscal years 2002 and 2006, 809 defendants were convicted for violating the Mann Act.

Furthermore, neither the Mann Act nor any law criminalizing commercial sexual activity is a “per se” offense. Indeed, prosecutions for sex trafficking and related offenses using statutes that do not require proof of force, fraud, or coercion are significantly more complex than suggested by the use of the “per se” misnomer. Every charge brought and case tried requires federal prosecutors to thoroughly investigate the crime, develop evidence on each element of the crime, and prepare witnesses for direct and cross examinations. Mann Act cases, like any other victim-intensive case, generally require a cooperating witness to establish the elements of the

crime beyond a reasonable doubt. In Mann Act cases, that cooperating witness is usually the prostituted person. Securing cooperation can be difficult. In cases involving this level of exploitation the victims may have underlying psychological issues or pre-existing trauma that rendered them vulnerable to exploitation in the first instance. They may also have been completely indoctrinated to mistrust law enforcement and to only trust their pimp, boyfriend, "husband," or "daddy." Even in the face of these challenges, it is often the case that once an individual agrees to cooperate with law enforcement, it does not require significantly more effort to uncover the force, fraud, or coercion necessary to make a sex trafficking case.

### Tax Violations

In your letter you indicated that the Department has given human traffickers "effective immunity" from the criminal tax laws. You noted that in previous Congresses, the Senate Finance Committee has considered legislation that was intended to aide the prosecution of individuals engaged in sex trafficking. One of the bills would have converted the existing misdemeanor crime for willful failure to file a tax return to a ten year felony with an accompanying \$50,000 fine where an individual fails to file a tax form, such as Form W-2, and the underlying income or payment is attributable to an activity that is a felony under state or federal law. The bill also sought to establish an office within the Criminal Investigation Division of the IRS to coordinate closely with the DOJ-funded Human Trafficking Task Forces. Congresswoman Mahoney recently introduced similar legislation, H.R. 3424.

At the outset, let me emphasize that the Department does regularly consult IRS agents and other financial crimes experts when pursuing human trafficking cases. IRS involvement in these cases has led to the filing of money laundering, asset forfeiture, and other financial crime counts in addition to trafficking counts.

We do not believe, however, that revisions to the tax law are either necessary or appropriate to fighting trafficking. First, misdemeanor prosecutions of traffickers under current law for willful failure to file employment tax returns (Internal Revenue Code section 7203) would not result in meaningful sentences and would have no deterrent effect in relation or comparison to our prosecutions under the trafficking statutes.

Second, the proposed legislation that would make willful failure to file a tax return a felony would not be a short-cut to criminal prosecution under the trafficking statutes. Under established principles of tax law, such a prosecution would require the Department to prove a knowing violation of a legal duty to file a tax form. That would require evidence that the pimp met the legal definition of "employer" of the women he prostituted. In accordance with National Security Presidential Directive-22, the Department will not take a position that could be seen as legitimizing prostitution as form of work. Furthermore, the financial records needed for tax prosecutions are rarely maintained in the context of illicit conduct such as prostitution. Uncovering such records (if they exist) and establishing their relevance would require significant extra investigation and evidence-gathering. Since the proposed felony tax charge would, in any

event, require proving the underlying felony violation of the trafficking statutes, we believe the most efficient prosecution strategy is to focus on that criminal activity in the first place.

### Treatment of Victims

Your letter expressed concerns about the Department's treatment of victims on several fronts. First, let me assure you that in all of our cases, we utilize a victim-centered approach to trafficking precisely because we must all always put the victims' needs first. To stop this vicious cycle of brutalization, we must focus our law enforcement efforts on cases involving the most vulnerable victims—adult victims who were subjected to force, fraud, or coercion and children. We believe in the victims in our cases, and we applaud those survivors who are engaging in outreach and education. We are committed to putting an end to the heinous crime of trafficking and welcome assistance from others engaged in this fight, including non-governmental organizations, citizens, and victim advocacy groups, to name just a few.

Second, the Department fully investigates and, if substantiated, prosecutes all credible allegations of human trafficking, without regard to whether the victim is a United States citizen or an alien. Similarly, while many benefits and services are provided to alien victims under the TVPA, these same or similar benefits are provided through different channels to United States citizens who are trafficking victims. For example, as the attached charts (prepared by the Department of Health and Human Services and distributed at Department of Justice conferences on trafficking) demonstrate, both citizen and alien victims are eligible for the same food, medical, and housing benefits. In fact, the goal behind the TVPA's benefit structure was to ensure that alien victims were eligible to receive the same programs or services available to American citizen victims under existing crime victim and social welfare legislation.

Third, you stated that during a televised training session, the Human Trafficking Prosecution Unit Director said victims are "not...ready" to conduct outreach, and you relayed that you and members of the anti-trafficking community are dismayed by his comment. You also stated that the program did not explain that any juvenile being maintained in prostitution is a human trafficking victim.

A review of the broadcast reveals that the Unit Director did not make the assertions to which you refer, and your letter did not accurately describe what was in fact said during the program. In response to an audience question about the role of victims in outreach, a victim service provider (a non-governmental representative—not the Department's Unit Director) answered that before doing so, one must consider a victim's safety and privacy concerns, and that "maybe some victims are not ready" due to possible re-traumatization. This was clearly stated out of concern for victims, not in antagonism to them. She then went on to state that several organizations have included victims, such as women who had been prostituted, in outreach programs. Further, at several points during the program, the panelists fully explain that no force, fraud, or coercion is required to prove a case of sex trafficking of a juvenile.

Fourth, you stated your concern that the Department's grants under the Violence Against Women Act ("VAWA") do not support programs for trafficking survivors. Under the statutory requirements of VAWA, the Department's grants can only be used to support services for victims of sexual assault, domestic violence, dating violence, and stalking. Although our grantees could serve a trafficking victim or prostituted woman who has been the victim of one of these crimes, through VAWA funds we cannot support programs that target trafficking victims or prostituted women exclusively. That being said, trafficking victims and other prostituted women may seek services from our grantees and sub-grantees individually, and we therefore have funded a number of technical assistance projects to train them to identify and respond when such women have been subjected to sexual assault, domestic violence, dating violence, and stalking.

#### Our Coordinated Response to Human Trafficking

You stated in your letter that there is an "apparent lack of coordination within the Department of its anti-trafficking activities." To the contrary, the results of our investigations and prosecutions over the last six years demonstrate the exact opposite—that our coordinated strategy and implementation of it are working very well. The Attorney General and the management of the Department routinely coordinate the law enforcement activities of the Department, whether they are taking place in the Civil Rights Division's Criminal Section, the Criminal Division's Child Exploitation and Obscenity Section, or the Federal Bureau of Investigation. We also regularly coordinate our enforcement operations with other agencies, non-governmental organizations, and individuals who are partners in our efforts to investigate and prosecute human trafficking crimes. For example, we have designed and successfully implemented a proactive task force model that includes regular collaboration among task force representatives, including the Department of Justice, the Federal Bureau of Investigation, the Bureau of Immigration and Customs Enforcement, the Department of State, the Department of Labor, the Internal Revenue Service, state law enforcement, and non-governmental organizations, among others.

#### Other Issues

First, you inquired about "sex tourism" cases. Investigations and prosecutions under federal sex tourism laws, which specifically target those who travel abroad to sexually exploit children, are uniquely challenging and resource-intensive because they require gathering of evidence abroad. Nevertheless, the passage of the PROTECT Act in April 2003 facilitated the prosecution of such cases. Among other things, the PROTECT Act enhanced the ability to prosecute child sex tourism by broadening the statute's coverage to include persons coming to the United States to engage in illicit sexual activity, persons who operate child sex tours, and persons who engage in illicit sexual conduct while traveling in foreign commerce, regardless of whether that was their intended purpose of travel. Under these enhanced authorities, the Department has obtained dozens of convictions in child sex tourism cases since 2003. Just this year a convicted defendant was sentenced to forty years in prison after being convicted of taking

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trips to Cambodia and paying children to appear in sexually explicit photographs, and another defendant was sentenced to over 20 years in prison for conspiring to arrange trips to Honduras where the travelers would pay to have sex with minors. The Department also investigates and prosecutes cases of sex tourism involving adults under other statutes when appropriate.

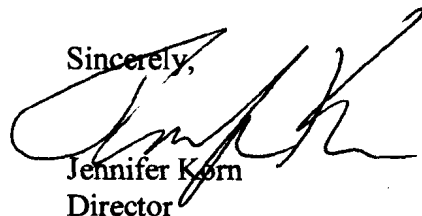
Second, you asked about the Department's research regarding the commercial sex industry, as authorized to be conducted under the Trafficking Victims Protection Reauthorization Act of 2005. The Department is actively engaged in this research, for which \$800,000 has been budgeted. The Department's Bureau of Justice Statistics and National Institute of Justice are jointly preparing a rigorous analysis of (1) the estimated number and demographic characteristics of persons engaged in acts of severe forms of trafficking in persons; (2) the number of investigations, arrests, prosecutions, and incarcerations of persons engaged in severe forms of trafficking in persons, by states and their political subdivisions; and (3) the number of investigations, arrests, prosecutions, and incarcerations of persons engaged in sex trafficking and unlawful commercial sex acts, including purchasers of commercial sex acts by states and their political subdivisions of states. Using the data gathered, the Department will estimate the value in dollars of the commercial sex economy and describe the differences in the enforcement of laws related to unlawful commercial sex acts in jurisdictions across the United States. Preliminary results of this research are expected in the spring of 2008 and final results in January 2009.

Third, your letter encourages the Department to utilize D.C. Criminal Code § 22-2707, the District of Columbia's criminal prohibition on arranging for, causing, or receiving payment for another person's commercial sex act. That provision of the D.C. Code, which applies only in Washington, D.C., is indeed being utilized extensively by the U.S. Attorney's Office for the District of Columbia, particularly in cases involving prostituted youth.

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I trust that this response addresses the concerns raised in your letter. Attached are a number of items regarding the Department's anti-trafficking efforts that may also be of interest to you. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,



Jennifer Korn  
Director

Attachments