U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 9, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice (the Department or DOJ) on S. 3061, the "William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008", as introduced by Senators Joseph Biden and Sam Brownback on May 22, 2008. This letter addresses those provisions of the bill that concern DOJ. We defer to other agencies with respect to the impact of the bill on their respective programs.

The fight against human trafficking has been an important priority for this Administration. President Bush has observed that it takes "a special kind of depravity" to exploit the most vulnerable members of society and has noted that the U.S. government has a particular duty to combat this evil because human trafficking is an affront to the defining promise of our country. Since taking office, President Bush has signed into law the Protect Act as well as two reauthorizations of the Trafficking Victims Protection Act of 2000, established by Executive Order a Cabinet-level Interagency Task Force to Monitor and Combat Trafficking in Persons, and highlighted the Administration's commitment in a major speech before the United Nations General Assembly.

The Department appreciates the many important provisions in S. 3061 that will further the current successful anti-trafficking initiatives undertaken by the United States government. These initiatives have contributed to a six-fold increase in the number of human trafficking prosecutions since 2001. We are grateful that S. 3061 maintains the current focus of federal anti-trafficking statutes on civil rights based offenses involving force, fraud, and coercion and child victims while providing new authorities that will enhance our efforts and allow us to further protect victims and bring trafficking offenders to justice.

We do have some drafting suggestions which we believe will strengthen the bill and aid in the fight against human trafficking. Further, we note that while providing increased criminal authority, notification requirements, and expanded jurisdiction, S. 3061 does not authorize additional resources for human trafficking prosecutions.

Finally, we have a major substantive concern with one provision of the bill. As explained in detail below, we believe that Section 221(1) should be struck as it significantly revises the current DOJ system for remission of forfeited assets to victims, both for trafficking crimes *and for all others*. Such a revision would have a major impact on the remission program

in unpredictable and potentially harmful ways. The Department does not believe that this major revision should be accomplished in this bill.

Section by Section Analysis:

TITLE I—COMBATING INTERNATIONAL TRAFFICKING IN PERSONS

Section 107-Research on Domestic and International Trafficking in Persons

Section 107(a)(2) of the bill amends Section 112A of the Trafficking Victims Protection Act of 2000 (22 USC Section 7109a) and establishes an integrated human trafficking database.

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

In addition, this provision as written would not provide sufficient protection for certain data which is to be included in the database. For example, the legislation does not protect data covered by the Privacy Act nor information that would identify victims.

TITLE II—COMBATING TRAFFICKING IN PERSONS IN THE UNITED STATES

Section 201-Protecting Trafficking Victims Against Retaliation

Sections 201(a)(1), as well as section 212(a)(1), provide immigration status to human trafficking victims who cooperate with law enforcement, excepting from cooperation those victims "unlikely or unable to cooperate with a request . . . due to physical or psychological trauma." We offer one technical suggestion: strike the words "unlikely or". The term "unlikely"calls for speculation as to the victim's ability to testify in the future, something that is difficult to define or assess. Furthermore, in our experience investigators and prosecutors can work sensitively with victims to provide them both with the ability to testify and a measure of empowerment from doing so.

Section 203-Domestic Worker Protections

Section 203(b)(2)(B)(vii)(I) compels the inclusion of specific anti-human trafficking hotline information in the overall information to be disseminated to domestic workers to aid in

their protection. Rather than refer to specific hotlines, the section should be revised to generally require the inclusion of information concerning "human trafficking hotlines operated by the federal government," as existing hotlines and hotline programs are, on occasion, revised or added.

Section 203(e) of the bill requires the Department of Homeland Security (DHS) to give immigration status to any worker holding an A-3 or G-5 worker visa who "files a complaint" regarding a violation of the terms of his or her contract, or any violation of law governing the terms of his or her employment or visa. This section does not, however, require a law enforcement assessment that the person is a victim of severe form of trafficking as defined in the statute, as is presently required for a Continued Presence visa in accordance with Section 7105(b) of Title 22 of the U.S. Code. Furthermore, the phrase "files a complaint" is overly broad and vague. The bill should define the term "complaint" in Section 203(a), specifying what constitutes a complaint and with whom the complaint must be filed. Without such specificity, DHS has little guidance on what action would trigger the protections of Section 203(e). That being said, DOJ defers to the expertise of DHS with respect to this particular matter.

Finally, the phrase "Attorney General" in Section 203(e) should be struck, as the Attorney General has no statutory role in issuing employment documents.

Section 212-Interim Assistance for Child Victims of Trafficking

The Department opposes the change in subsection (a)(1)(A)(ii) which would remove the Attorney General's authority in stating whether a person's presence is necessary in ensuring an effective prosecution. As the agency that prosecutes cases of human trafficking, DOJ's involvement is vitally important. The Department has the same concern with the proposed change in subsection (a)(1)(B).

Section 212(a)(2) authorizes the Department of Health and Human Services (HHS), after consultation with law enforcement and non-governmental organizations (NGOs), to make the final decision of who is a trafficking victim and who, accordingly, is eligible for services. The Administration recognizes the importance of including HHS at the initial stages for the purpose of facilitating prompt delivery of the full range of available benefits and services to trafficking victims.

The Administration suggests several technical changes, however, that would clarify that the HHS determination would affect only the child's eligibility for benefits and would not be a determination of victim status for purposes of a law enforcement assessment that a crime had in fact been committed, which is exclusively the province of law enforcement agencies:

- In the heading of Section 212, replace "child victims of trafficking" with "children";
- In the heading of new section (F), replace "child victims" with "children";
- In subsection (F), replace "person" wherever it appears with "child";

- In subsection (F)(i), replace "has been" with "may have been";
- In subsection (F)(iv), replace "child victims" with "children";
- In subsection (F)(iv)(III), replace "meet" with "cooperate";
- In the heading of subsection (G), replace "child victims" with "children."

Several other provisions also concern us. Subsection (F)(II) requires HHS to consult with, among other entities, "nongovernmental organizations with expertise on victims of severe forms of trafficking" to determine if a minor is eligible for relief. While we always appreciate the views of NGOs, DOJ believes that only governmental agencies should be involved in the determination of whether an individual is the victim of a crime. Further, such a provision would, in fact, delay the process of victim identification by adding another entity with whom HHS must consult.

Section 212(a)(2), in new subsection (F)(ii) requires HHS to notify DOJ and DHS within 48 hours of making an interim eligibility determination only if there is evidence of an ongoing violation. We suggest that 48 hours be changed to 24 and that the phrase "if there is evidence of an ongoing violation" be struck. As DOJ has stated in the past, law enforcement must be notified as soon as there is any evidence that a crime may have been committed. The importance of law enforcement participation in this process cannot be underscored enough in both protecting known victims and locating victims currently held in servitude by a trafficker. These edits would also address concerns the Department has with the proposed new subparagraph (G) in subsection (a)(2), which would require both Federal and State law enforcement officials to inform HHS of the existence of a potential victim, but not require HHS to inform at least Federal law enforcement of such a victim. The notification requirement should be reciprocal with respect to Federal agencies because the Attorney General and the Secretary of DHS bear responsibility for investigating and prosecuting instances of human trafficking at the Federal level.

Section 212(a)(2) also requires a federal official to notify HHS within 24 hours of identifying a potential child victim. This 24 hour requirement should also apply to State and local officials, who currently have 48 hours to make such notifications under the bill. Federal and State officials should have parallel requirements.

Section 213-Ensuring Assistance for All Victims of Trafficking in Persons

Section 213 of the bill authorizes the Attorney General to make grants to assist victims of severe forms of trafficking. While the Department supports grants for the provision of services for crime victims, the Department already has such authority and does so at a level in excess of $250 million a year. Also, the authorization of another grant program runs counter to the Administration's proposal in the 2008 Budget to consolidate DOJ's more than 70 grant programs.

The Department also opposes the mandatory consultation with NGOs regarding the provision of services. This creates a conflict of interest since many of the NGOs will apply for and could receive grants under the program. Finally, any section regarding the provision of victim services should also contain language that includes organizations that provide services to "juveniles subjected to trafficking, as defined in section 203(g) of the Trafficking Victims Protection Reauthorization Act of 2005," which would ensure that the funds authorized to the Attorney General for establishment of grants will go toward the work and development of the Innocence Lost Task Forces.

Section 213(b)(1) requires that the Attorney General and the Secretary of HHS conduct a study to determine the existence or extent of service gaps between foreign and domestic victims within one year of enactment. The Department believes that one year is not sufficient time to complete the contemplated study. For example, most domestic trafficking victims obtain their services from the states and not the federal government; hence, collection of data on services would require significant time and effort to ensure comprehensiveness.

Section 221-Restitution of Forfeited Assets, Enhancement of Civil Action

The Department is significantly concerned that Section 221(1) would disrupt the existing remission process for distribution of forfeited funds to victims. We note that the language of the provision is very broad and does not apply just to victims of trafficking, the subject of S. 3061, but rather to victims *of all crimes* for which restitution may be ordered by a court. The Department currently has a process governed by regulation in which the Attorney General distributes those funds according to a set of well-thought out standards. Such a major revision to the process should be subject to greater discussion between the drafters of the bill and the Department.

Furthermore, the language of the bill itself, if enacted, could create conflicts with the existing system that could have unintended effects. For example, in the proposed Section 1594(c)(3), it is not clear whether remission must be granted in a criminal case in which the court does not order restitution. Further, because the current remission regulations define victims more narrowly than do the restitution statutes, the bill could require forfeited funds to be used for purposes contrary to the remissions regulations and the corresponding restoration policies developed by DOJ. For example, the remission regulations and the restoration policy do not permit forfeited funds to be used as compensation for torts, physical injury, property damage, or lost income arising from the offense underlying the forfeiture, *see* 28 C.F.R. § 9.8(c), while the restitution statutes do. 18 U.S.C. § 3663A(b). The remission regulations define victims as persons who suffer a specific "pecuniary loss" as a result of the crime underlying the forfeiture, 28 C.F.R. § 9.8(a), while restitution can be awarded to anyone "harmed" as a result of the offense. 18 U.S.C. § 3663A(a)(2). Finally, new subsection 1593(b)(4) states that "the distribution of proceeds among multiple victims in an order of restitution under this section shall govern the distribution of forfeited funds through the processes of remission or restoration under this section or any other statute that explicitly authorizes restoration or remission of forfeited

property." This appears to require the Attorney General to distribute funds in accordance with a restitution order in multiple-victims cases, which may distribute funds according to the court's analysis of the harm to each victim. However, the current remission regulations generally require forfeited funds to be distributed pro-rata to multiple victims if there are not enough funds to fully compensate the victims. 28 C.F.R. § 9.8(e).

Section 221(2) creates very broad civil liability for retailers, farmers, and others who knowingly benefit from participation in a venture that engages in a violation of Chapter 77. This would include a retailer who knowingly profits from clothes the retailer bought from a factory that made them, if that factory used slave labor – regardless of whether the retailer knew about the slave labor or not. We suggest that the language be qualified to ensure that only a person who knows of the use of slave labor be subject to liability. This could be accomplished by inserting the words, "he knows or should have known" after "a venture which".

Section 222-Enhancing Trafficking Offenses

Section 222 contains many helpful additions to Title 18 of the U.S. Code that will enable more effective prosecutions and protections for victims. For example, Section 222(a) expands authority to detain pending trial defendants who have been charged with trafficking offenses as a risk of flight or a danger to the community. This will enable us to assuage victims' fears of cooperation that have arisen when traffickers and their enforcers remain at large in their communities. Likewise, Section 222(b) creates new offenses imposing severe penalties on those who obstruct or attempt to obstruct enforcement of anti-trafficking laws. This will assist our efforts to prosecute the "enforcers" used by traffickers to intimidate victims, the families of victims, and other witnesses during the investigation and prosecution. Similarly, Section 222(e) creates new offenses imposing severe penalties on those who knowingly benefit financially from trafficking crimes. These provisions will broaden our ability to prosecute persons who knowingly finance and profit from human trafficking crimes, but do not themselves engage in the trafficking conduct.

Section 222(c) creates a conspiracy statute for chapter 77 offenses with penalties equal to the underlying substantive offenses. This will allow the government to fully prosecute and punish all persons who planned and participated in the human trafficking operation and subject them to the same penalties as currently provided for the underlying crimes. Under the current scheme, conspiracy can only be charged under the general conspiracy provision for all federal crimes, 18 U.S.C. § 371, which provides for just five years' imprisonment as the maximum punishment.

However, DOJ has several suggested changes to improve some provisions of Section 222 as they are currently drafted:

Section 222 (b)(4) amends 18 U.S.C. § 1591(d) by adding new paragraph (1) and adds proposed Section 1589(c)(1). Both of these subparagraphs expand the definition of "abuse or

threatened abuse of law or legal process", which will improve our ability to secure convictions. We recommend that the definition of the term "abuse or threatened abuse of law or legal process" be modified in Section 222(b)(4) to mean "the use or threatened use of a law or legal process, whether administrative, civil or criminal, in any manner or for any purpose for which the law was not intended, in order to exert pressure on another person to cause that person to take, or refrain from taking, some action."

Section 222(d) amends Chapter 77, Section 1589 (Forced Labor) of Title 18 by also punishing financial gain. It appears that the amendment has inadvertently dropped the phrase "or life" following the term "any term of years" in subsection 1589(d) as it presently exists in the law.

Section 222(e) also proposes to insert a new section 1593 to Chapter 77 of Title 18 and re-designating existing subsections. The Department suggests that the new section be added at the end of Chapter 77, rather than the middle, and not change the numbering of the existing statutes. The insertion of an entirely new section in the middle of Chapter 77 will generate confusion considering existing reported cases, training materials, and other documents which refer to existing citations.

In Section 222(b) and (c) – Proposed Section 1591(d)(4) and Proposed Section 1589(c)(2) – the definition of "serious harm" is amended to mean "physical or non-physical" harm. This is a useful change to cover all forms of harm to victims. However, for clarity's sake, we suggest that the definition of "physical or non-physical harm" also include "physical or non-physical harm, including, but not limited to, psychological, financial, or reputational harm...."

Section 222(g) proposes to add to Title 18 a new section 2429–Sex Tourism. The Department supports the goals of this section, and offers two technical suggestions. First, we would add the word "criminal" before the word "offense" to make the scope of the statute clear. Second, the crime does not have any *mens rea* requirement. That is, it does not require that the defendant acted knowingly. We suggest the insertion of the word "knowingly" before "arranges, induces, or procures".

Finally, in order to make the proposed new crimes, 18 U.S.C. §§ 1593 and 2429, money laundering predicates, we suggest they be added to the money laundering statute, 18 U.S.C. § 1961(1). They are both financially based crimes, so money laundering charges would also be appropriate. This can be accomplished by adding the following language to the bill:

> "Chapter 96 of title 18, United States Code, is amended in section 1961(1):
>
> "by striking 'sections 1581-1592' and inserting 'sections 1581-1593'; and,
> "by adding 'section 2429 (sex tourism),' after 'sections 2421-24 (relating to white slave traffic),'".

Section 233-Senior Policy Operating Group

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

Section 235-Enhancing Efforts to Prevent the Trafficking of Children

Section 235 contains many provisions intended to help unaccompanied alien children. DOJ has a number of concerns, however, in the language used. To better address issues involving unaccompanied alien children (UACs), we strongly recommend that section 235 be withdrawn from the bill. We will work with Congress to develop an appropriate approach to the care and custody of UACs.

First, DOJ recommends that Section 235 include a provision so that DHS and HHS can concentrate their efforts on caring for children rather than litigating aspects of the amended statute. Accordingly, DOJ recommends that Section 235 include a provision such that decisions to implement the section are made solely in the discretion of the Secretaries of Homeland Security and Health and Human Services and are therefore not subject to court review.

The Department opposes section 235(c)(2) as too narrowly construed. There are numerous reasons, outside of the child proving to be a danger to himself or others, that require children to be kept in a secure facility, including the safety of the child from danger that is not self-imposed. In addition, the standard for placing minors in "secure" care is too strict. It requires the "least restrictive setting that is in the best interest of the child." In Fiscal Year 2008, HHS has placed 3.2 percent of minors in its care into a "secure" custody arrangement and 4.1 percent into "staff secure facilities", which are used for children who have criminal backgrounds involving less serious offenses or have behavioral conduct issues. This could mean that minors who need this arrangement would instead be housed with children who have no history of violence or criminal behavior. HHS needs more flexibility and should not, therefore, be required to make an "independent finding" of the child's danger to self or others. The Department opposes the language of subsection (c)(3)(C) that would afford HHS access to law enforcement sensitive databases.

Section 235(c)(4) provides that the Secretary of Health and Human Services shall cooperate with Executive Office for Immigration Review (EOIR) to ensure that UAC custodians receive legal orientation presentations through EOIR's Legal Orientation Program (LOP). EOIR currently operates the LOP at 12 detention facilities for adult aliens. Expansion to cover UACs and their custodians would require additional resources to deal with issues specific to UACs and would require offering the LOP at additional facilities. This would result in significant additional

costs. We note that those costs would not be reflected in, and are inconsistent with, the President's Budget.

Furthermore, the Department recommends revising Section 235(c)(5) so that it is not interpreted to make HHS responsible for the actions of counsel for minors or to engender litigation of the meaning of the term "competent". Finally, DOJ is concerned about preempting immigration judge jurisdiction over cases where alien minors file applications for asylum.

Section 235(c)(6) authorizes HHS to appoint child advocates for child trafficking victims. We have three concerns with this subsection. First, this subsection states that a child advocate "shall be provided" with materials necessary to advocate for the best interests if the child. This should be limited to exclude law enforcement sensitive information, grand jury materials protected by Rule 6(e) of the Federal Rules of Criminal Procedure, and other materials protected by privilege. Second, "the child advocate shall not be compelled to testify...." This language creates a testimonial privilege. It would be prudent to consult with the United States Judicial Conference Advisory Committees on Practice, Procedure and Evidence before creating a new testimonial privilege. This provision could create a denial of due process that may result in the reversal of a conviction if, for example, the victim-child told the advocate exculpatory information. Further study of this and other possible issues is warranted. Finally, establishment of a guardian ad litem program is also unnecessary in that 18 U.S.C. § 3509(h) already sets forth detailed procedures which provide for court appointed guardians ad litem for children who are victims of or witnesses to crimes involving abuse or exploitation.

Section 235 (c)(7) may result in unintended consequences due to this confidentiality section. To effectively combat trafficking, relevant information must be transmitted to law enforcement. Law enforcement is well-equipped to preserve confidentiality.

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

Section 235(d)(7)(B) vests initial jurisdiction for any asylum application filed by an unaccompanied alien child with U.S. Citizenship and Immigration Services. Because an alien may also file an asylum application in removal proceedings, DOJ suggests adding the following language to the end of Section 235(d)(7)(B), after "unaccompanied alien child": "unless the unaccompanied alien child is in removal proceedings, in which case the application may be filed before the Immigration Judge."

Section 235(d)(8) requires the drafting of regulations on how to handle applications for asylum and other forms of relief from removal in which a child is the principal applicant. This subsection would create some practical implementation issues that are not necessary to achieve the apparent intentions of this legislation. DOJ's EOIR has issued its own guidelines for unaccompanied alien children appearing in the immigration courts, and continues to encourage and support the continued implementation of these guidelines. A concern is that the section would require regulations holding children to a different standard of proof for establishing

eligibility for relief, leading to the unintended consequence of inviting equal protection or similar challenges not only to the new regulations but also the child-friendly practices already in place. Another concern is that the bill does not address what happens to applications governed by the special regulations once the principal applicant is no longer a child or unaccompanied. In addition, it is unclear how the special needs of children would be determined. The Department is also concerned by the broad language of the section. As currently drafted, the special regulations would apply to all children, not just "unaccompanied alien children." The Department suggests modifying the section by replacing "child" with "unaccompanied alien child", and defining "principal applicant".

Section 235(e) states that the Secretaries of State, Homeland Security, and Health and Human Services, along with the Attorney General shall provide specialized training to all federal personnel, and state and local personnel upon request, who come into contact with unaccompanied alien children. The Department appreciates the need for sensitivity to children's issues. This section appears well-intentioned; however, it would create some practical implementation issues that are not necessary to achieve the apparent intentions of this legislation. The Department recommends that specialized training be limited to personnel with substantive contact with children. The Department also recommends that the legislation ensure that DOJ can train its own people, and that DOS, DHS, and HHS train their own people so that the programs are more appropriately suited for the context in which the training will be used. In addition, DOJ is concerned that the legislation will require additional training resources, which is problematic in light of the current funding situation for EOIR

Section 235(g) defines "unaccompanied alien child" as the meaning given in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)). The Immigration and Nationality Act (INA) is not amended to include the definition of "unaccompanied alien child" (as given in section 462(g) of the Homeland Security Act) or "unaccompanied refugee children". To help minimize any future differences between DHS and EOIR over the applicable definition and its interpretation, DOJ recommends that the definition of unaccompanied alien child/unaccompanied refugee children be included in the INA.

TITLE III—AUTHORIZATIONS OF APPROPRIATIONS

Section 301- Trafficking Victims Protection Act of 2000

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

"Paragraph 107(b)(2)(B) of Pub. L. 106-386 is amended by:

"(1) inserting 'and' after the first semicolon;

"(2) striking '(ii)' through ';and'; and

"(3) striking '(iii)'and inserting 'ii).'"

Section 302- Trafficking Victims Protection Reauthorization Act of 2005

Section 302 re-authorizes the $5,000,000 appropriation for the Pilot Program that was first authorized by Section 203 of the 2005 Act. Both DOJ and DHS should be consulted in the development of this program. The Departments' knowledge about these victims, their behaviors, and the potential dangers in providing shelter and services to them would be instrumental to ensuring the success of the pilot program. This section should also amend subsection 203(a) of the 2005 reauthorization to include after "Secretary of Health and Human Services", ", in consultation with the Attorney General and the Secretary of Homeland Security," Subsection 203(c) should be likewise amended.

TITLE IV—CHILD SOLDIERS PREVENTION AND ACCOUNTABILITY

Section 406- Accountability for the Recruitment and Use of Child Soldiers

Section 406(a)(1), proposes a new 18 U.S.C. § 2442, "Recruitment or Use of Child Soldiers". Although DOJ believes that individuals who recruit child soldiers should be held fully accountable, DOJ believes that the penalty section of this new crime should be more graduated. Furthermore, DOJ believes the "if death results" language is too vague. The Department suggests that there be a base maximum sentence of 15 years in prison; a maximum of 25 years if the offense resulted in the serious injury or sexual abuse of the child, caused the child to injure another, or involved a child aged 12 or younger; and a maximum of life in prison if the offense resulted in the death of the child, or caused the child to kill another.

These changes could be accomplished with the following language:

(1) In Section 2442(a)(1), by replacing "20" with "15" and striking "and";

(2) By replacing section (a)(2) with the following language:

"(2) if the offense results in the serious injury or sexual abuse of the child, or causes the child to injure another, or involves a child aged 12 or younger, shall be fined under this title, imprisoned not more than 25 years, or both; or"; and,

(3) By creating new Section 2442(a)(3), with the following language:

"(3) if the offense results in the death of the child or causes the child to kill another, shall be fined under this title and imprisoned for any term of years or for life."

General Comment:

To minimize litigation possibilities, DOJ recommends the phrase "in the Secretary's unreviewable discretion" should be inserted after "Secretary of Homeland Security" in the following provisions of the legislation:

Section 201(b)(1),
Section 201(c),
Section 201(b),
Section 204,
Section 205(a)(1),
Section 205(b),
Section 201(c),
Section 201(b),
Section 204,
Section 205(a)(1),
Section 205(b).

Conclusion

We appreciate the Committee's work on S. 3061. The Department looks forward to working with Congress to enhance the efforts of law enforcement to continue the fight against human trafficking. The Office of Management and Budget advises that there is no objection to the presentation of this letter from the standpoint of the Administration's program.

Sincerely,

Keith B. Nelson
Principal Deputy Assistant Attorney General

Cc: The Honorable Arlen Specter
Ranking Member