



**U.S. Immigration
and Customs
Enforcement**

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MEMORADUM FOR: Assistant Directors
All Deputy Assistant Directors
All Special Agents in Charge

FROM: James Dinkins *J. A. M. Dinkins*
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SUBJECT: Office of Investigation Field Guidance for the William Wilberforce
Trafficking Victims Protection Reauthorization Act of 2008

On December 23, 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) was signed into law. The TVPRA contains numerous sections regarding prevention and prosecution of traffickers in foreign countries, strengthens and enhances trafficking-related criminal statutes, expands eligibility for immigration status for family members of victims, provides information about workers' rights for foreign applicants who are seeking to come to the United States to work, and provides for new provisions for unaccompanied alien children (UAC). Effective immediately, all field offices shall implement the procedures found in Sections 205, 212, and 235 of the TVPRA.

Section 205- Expansion of Authority to Permit Continued Presence in the United States

The TVPRA establishes that federal law enforcement officials "shall make reasonable efforts" to protect the safety of trafficking victims and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates. The TVPRA does not indicate whether family members must be in the United States.

Office of Investigation (OI) field offices shall make "reasonable" efforts to protect the safety of trafficking victims and their family members. If appropriate, victims and their family members may be considered for the ICE Exigent Security for Witnesses Program.

Section 212- Interim Assistance For Children

Prior to the passage of the TVPRA, a juvenile was not considered eligible for public services and benefits from the Department of Health and Human Services (HHS) until a law enforcement determination of trafficking was made. The TVPRA now gives the Secretary of HHS the exclusive authority to make interim eligibility determinations for juvenile victims of trafficking.

The TVPRA, however, requires that the Secretary of HHS notify the Secretary of DHS and the Attorney General within 24 hours after interim eligibility determinations have been made. Interim assistance may be provided by HHS to juvenile victims for up to 120 days. While the TVPRA does not state explicitly that longer term services for juveniles are contingent upon a law enforcement determination of trafficking, it states that assistance beyond the interim period requires “consultation” with the Secretary of DHS, the Attorney General, and nongovernmental organizations with expertise in trafficking.

The TVPRA also requires all law enforcement agencies to notify the Secretary of HHS within 24 hours upon discovery that a person under 18 years of age “may be a victim of a severe form of trafficking in persons.” The Trafficking Victim Protection Act of 2000 (22 U.S.C. § 7102) defines a severe form of trafficking in persons as:

- (A) sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

OI field offices that determine a child may be a “victim of a severe form of trafficking in persons” shall contact HHS by e-mail at (b) (7)(E)@acf.hhs.gov or phone at (202) 205(b) (7)(E) within 24 hours, to facilitate interim public services and benefits for the child. The following information shall be provided: name of child, alien number, age and sex of child, country of origin, and a field office point of contact. Field offices shall also email information about the juvenile to the HQ Victim Assistance Program at (b) (7)(E)@dhs.gov.

Section 235- Enhancing Efforts To Combat The Trafficking Of Children

The TVPRA requires DHS to develop policies and procedures to ensure UAC in the U.S. are safely repatriated to their country of nationality or of last habitual residence. The term “UAC” is defined by Section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)) as a child who:

- (A) has no lawful immigration status in the United States;
- (B) has not attained 18 years of age; and
- (C) with respect to whom –
 - (i) there is no parent or legal guardian in the United States; or
 - (ii) no parent or legal guardian in the United States is available to provide care and physical custody

The TVPRA requires any UAC sought to be removed by DHS to be placed into removal proceedings under Section 240 of the Immigration and Nationality Act (INA). However, the TVPRA provides a special rule for the return of certain UAC from contiguous countries, who are apprehended at a land border or point of entry, and who: (1) have not been victims of human trafficking, and have no credible evidence of being at the risk of human trafficking upon return;

(2) have no credible fear of persecution; and, (3) are able to make an independent decision to withdraw their applications for admission to the United States. Such UAC are allowed to return to their contiguous country within 48 hours of apprehension. If they are not returned within the 48 hours period, they must be transferred into the care and custody of HHS.

With the exception of the special rule for certain UAC from contiguous countries, all other UAC encountered by the federal government must be transferred to HHS. The care and custody of UAC, including responsibility of their detention, where appropriate, shall be the responsibility of the Secretary of HHS. HHS shall be notified within 48 hours by all federal and state agencies upon any apprehension or discovery of an UAC or any claim or suspicion that an alien in custody is under 18 years of age. Unless exceptional circumstances exist, any UAC in the custody of DHS shall be transferred to HHS no later than 72 hours after determining that such child is an UAC.

OI field offices shall notify HHS, the Office of Refugee Resettlement (ORR), the Division of Unaccompanied Children's Services (DUCS) within 48 hours upon: (1) the apprehension or discovery of an UAC; or (2) any claim or suspicion an alien is under 18 years of age. Thus, upon encountering any UAC in these two categories, OI field offices shall contact the DRO field office juvenile coordinator within their AOR, as well as, the 24-hour DUCS Intakes Hotline at (202) 401-(b) (7)(E) and (b) (7)(E) @acf.hhs.gov with the information about the UAC. Such UAC shall be transferred into the care and custody of HHS within 72 hours and, if removal of the UAC is sought, removal proceedings shall be initiated under Section 240 of the INA.

However, if UAC encountered are determined to be victims of human trafficking, OI field offices shall treat such UAC as crime victims and notify HHS/ORR's Unaccompanied Refugee Minors (URM) Program and HQ within 24 hours of making a preliminary determination as required under Section 212 of the TVPRA, as discussed above. DHS will not seek to remove such crime victims of human trafficking. Such crime victims will not be placed in removal proceedings under Section 240 of the INA unless further investigation indicates the juvenile is not a trafficking victim and removal of the UAC is sought. Upon placement with URM, arrangements should be made with local Victim-Witness Coordinators to have the child victim/witness paroled into the United States under significant public benefit parole or continued presence. *See* 8 U.S.C. § 1182(d)(5); 22 U.S.C. § 7105(c)(3).

In cases where it cannot be determined, within the 72 hour period, the UAC is a crime victim, OI field offices shall contact the DRO field office juvenile coordinator within their AOR, as well as, the 24-hour DUCS Intakes Hotline at (202) 401-(b) (7)(E) or (b) (7)(E) @acf.hhs.gov with the information about the UAC. Such UAC shall be transferred into the care and custody of HHS/ORR's DUCS Program within 72 hours and, if removal of the UAC is sought, removal proceedings shall be initiated under Section 240 of the INA. OI field offices shall continue to investigate whether or not the UAC is a crime victim. If the UAC is later identified as a crime victim, OI field offices shall notify HHS/ORR's URM Program; their local Office of Chief Counsel; and HQ within 24 hours of making a preliminary determination, as required under Section 212 of the TVPRA, as discussed above.

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Please contact (b)(6) (7)(C) Acting Section Chief, ICE Victim Assistance Program, at (b)(6) (7)(C)@dhs.gov or by calling 202-732-(b)(7)(E) if there are any questions regarding the new statute or OI responsibilities.