

COALITION TO ABOLISH SLAVERY & TRAFFICKING

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THE FEDERAL TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008, H.R. 7311, PUBLIC LAW 110-457

After a lengthy debate, the Trafficking Victims Protection Reauthorization Act (TVPTA) of 2008 was finally signed into law on December 26th 2008. This far reaching act is the most comprehensive reform of the Trafficking Victims Protection Act (TVPA) since the enactment of the law in 2000. It includes significant increased protections for survivors of trafficking in the following areas:

Immigration Relief

- **The Department of Homeland Security (DHS) is empowered to provide Continued Presence (CP) not just to victims already present in the United States but to family members so they can enter the country more quickly and be reunited with family sooner. Section 205.**
- **DHS is empowered to provide CP to family members being threatened in the home country because of cooperation with law enforcement. Section 205.**
- **Victims who have filed a civil action based on trafficking claims can receive authorization to remain in the country during the course of their trial. Section 205.**
- **Makes formerly ineligible parents or unmarried siblings under the age of 18 of an adult trafficking victim eligible for T-visas if the individual is in danger of retaliation as a result of cooperation with law enforcement. Section 201(a).**
- **Expands the T-visa requirement of “physical presence in the United States...on account of trafficking” to include victims who are physically present in the U.S. for the purposes of participating in the investigation or prosecution of trafficking. Section 201(a).**
- **Provides for the extensions of T-visas. Section 201(b).**
- **Fees that were associated with the T-visa application that could mean that some applicants and their families had to pay thousands of dollars to be eligible for a T-visa and/or a green card can now be waived. Section 201(d).**

Protections for Immigrant Workers

- **Provision of information at consulate offices about legal rights when entering the United States on domestic worker and nonimmigrant visas (employment and education-based visas). Section 202.**
- **Interviews at consular offices that confirm that the applicant understands his or her legal rights. Section 202.**
- **Enhanced reporting and protective measures provided to those who enter to work for a diplomat or an international organization including:**
 - **Suspending visas issued to diplomatic missions or international organization where there is evidence of abuse.**
 - **No longer issuing or renewing visas without an employment contract.**
 - **Conducting a personal interview with the application outside the presence of the employer and providing the information pamphlet described above. Section 203.**

Protections for Immigrant Children

- **Upon receiving credible information that a child may have been subjected to a severe form of trafficking in persons, the Secretary of Health and Human Services shall determine if the child is eligible for interim assistance as a trafficking victim. Section 212.**
- **Within 24 hours, a Federal, State, or local official that discovers a person under 18 years of age who may be a victim of a severe form of trafficking in persons must notify the Secretary of Health and Human Services to facilitate the provision of interim assistance. Section 212.**
- **The Attorney General and the Secretary of Health and Human Services must develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence. Section 235.**
- **Clarifies eligibility for Special Immigrant Juvenile Status for unaccompanied immigrant children. Section 235.**

Prosecution

- **Clarification of definition of coercion to ensure it encompasses all forms of modern-day slavery.**
 - The Forced Labor (§ 1589) and Sex Trafficking (§ 1591) statutes now include in the definition of coercion a clarification that “serious harm” means any harm, including psychological, financial, or reputational harm, that would compel a reasonable person with the victim’s background and in the victim’s circumstances to perform labor, services, or commercial sex acts to avoid that harm. Section 222.
- **Expands Crime of Sex Trafficking.**
 - New language broadens the crime of sex trafficking by force, fraud or coercion by expanding the *mens rea* requirement to include “reckless disregard” so that the government now need prove either actual knowledge OR reckless disregard that force, fraud, or coercion caused a person to engage in a commercial sex act. Section 222
 - Eliminates the requirement that an alleged trafficker must know a minor sex trafficking victim’s age and provides that if the defendants had a reasonable opportunity to observe the minor, knowledge of minor age need not be proven. Section 222
- **Creates a new crime codified at 18 U.S.C. Section 1251, prohibiting fraud in foreign labor contracting.**
 - Imposes criminal liability on those who, knowingly and with intent to defraud, recruit workers outside the United States for employment in the United States by means of materially false or fraudulent representations. Section 222
- **Expands authority for detention of defendants charged with trafficking offenses pending trial. Section 224.**
- **Creates new crimes for obstructing human trafficking enforcement and trafficking-specific conspiracy that severely penalizes perpetrators. Section 222.**
- **Expands extra-territorial jurisdiction to trafficking crimes committed outside the United States where the offenders is a U.S. national or lawful permanent resident. Section 223.**

Prevention

- **Increases effectiveness of anti-trafficking programs by ensuring grants are awarded through a public process open to full competition. Section 105.**
- **Creates an integrated data base within the Human Smuggling and Trafficking Center. Section 108.**
- **Mandates the Department of Labor (DOL) submit a report detailing a public list of goods the DOL has reasons to believe are produced by forced labor or child labor. Section 110.**
- **Creates funds for specialized programs to assist United State Citizen and Legal Permanent Resident Victims. Section 213.**