



Alliance to End Slavery and Trafficking
1700 Pennsylvania Avenue, NW
Suite 520
Washington, DC 20006
www.endslaveryandtrafficking.org

January 11, 2012

Honorable Janet Napolitano
Secretary, Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

RE: DHS's Failure to Issue Regulations for Section 205 of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Expansion of Authority to Permit Continued Presence in the United States

Dear Secretary Napolitano:

Thank you for your August 2, 2011 response to our letter dated August 30, 2010, requesting that the Department of Homeland Security (DHS) promulgate regulations or provide guidance to implement Section 205 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 (TVPRA 2008).¹ We cannot help but be disappointed with the late response to our request and with the ongoing lack of clarity regarding several provisions enacted in the TVPRA of 2008 to protect trafficking survivors and their families. We respectfully request that DHS reconsider our request for further guidance and engage in a timely and constructive dialogue to address our concerns.

According to the DHS letter dated August 2nd, DHS, "does not intend to propose regulations relating to Section 205 of the TVPRA 2008," despite the fact that the law was passed in 2008 and that DHS has had ample time to publish regulations. We respectfully disagree with DHS that ample guidance has been provided in this area and renew our request that, at a minimum, additional policy guidance be provided.

DHS cites regulations that were published **before** the passage of the TVPRA of 2008 to support its contention that no additional guidance is necessary. In fact all the regulations were published prior to 2002. The fact that TVPRA 2008 Section 205 provides for specific new Continued Presence and advance parole provisions supports our position that the existing regulations are insufficient; full implementation requires comprehensive, detailed regulations or guidance that cover the entire statute, particularly novel areas.

Section 205(a)(1) Continued Presence

The DHS response letter dated August 2nd indicates that Homeland Security Investigations (HSI) at U.S. Immigration and Customs Enforcement (ICE) recently issued a protocol memorandum on Continued Presence for all federal law enforcement agencies and outlines the procedures that

¹ Note in DHS's response letter on page 1 a footnote highlights that we were in error in referencing the need for issuing adjustment regulations, when in fact in our request we were thanking DHS for providing guidance in this area and hoping that similar guidance could be provided for Section 205 of TVPRA 2008.

federal, state and local law enforcement agencies are to follow when requesting Continued Presence under Section 205(a)(1). This critical document remains unavailable to the public at large, and there has been no opportunity for those working directly with trafficking survivors to provide input on the development of the protocol or to effectively coordinate with law enforcement to ensure effective implementation.² We respectfully request that victim service providers have access to protocol in order to provide constructive feedback.

We acknowledge that DHS recently issued guidance about Continued Presence that is publically available in a pamphlet referenced in the letter. Although this pamphlet provides valuable information on Continued Presence and has been helpful to practitioners in the field advocating with law enforcement for this relief, this pamphlet fails to address the issue of Continued Presence provided for by the TVPRA of 2008 Section **205(a)(1)** for civil cases. See ICE, Continued Presence: Temporary Immigration Status for Victims of Human Trafficking (Pamphlet) available at http://www.ice.gov/doclib/humantrafficking/pdf/continued_presence.pdf.³

That DHS has not received any requests for Continued Presence under this provision, a fact cited in the August 2nd DHS response letter, demonstrates the need for publicly available guidance on the issuance of Continued Presence as it pertains to relief related to civil cases. Indeed, this fact serves to highlight the need for detailed direction on implementation of this important form of relief. Civil attorneys with pending trafficking cases have limited information on how to effectively petition for or request this relief for their clients.⁴ In March of 2011, DHS announced and posted on its website a clear process by which those eligible under TVPRA 2008 Section 202(c)(1) as G-3/A-3 Visa holders can petition to remain legally in the United States after filing a civil suit.⁵ This type of information, made easily available to practitioners, would also be helpful for Section 205(a)(1) and the process could be quite similar. Thus, ATEST requests that, at a minimum, DHS provide similar guidance as has been provided for G-3/A-3 Visa holders so that trafficking victims with pending civil cases can self-petition to remain lawfully in the United States.

² Since August 2011, ATEST has informally requested a copy of this protocol for review, and although we have been informed that this request is being considered, we have received a definitive response. We are concerned that Continued Presence is being significantly underutilized. The 2011 State Department Trafficking in Persons Report highlighted that in FY 2010 Continued Presence was only issued to 186 potential victims, a decrease from 299 in 2009.

³ Advocates have found the published pamphlet on Continued Presence extremely helpful in educating law enforcement about the purpose of Continued Presence. The utility of this pamphlet further highlights the need for additional guidance to be provided for advocates that specifically references the provisions in TVPRA 2008 Section 205.

⁴ DHS has indicated that only federal law enforcement officials can petition for a continuation of Continued Presence on the basis of Section 205(a)(1). This appears to be an overly narrow reading of the statute which indicates that this form of relief is available **after** federal law enforcement has filed a petition for Continued Presence, but does not indicate that it is federal law enforcement that must file for the continuation. Instead the statute indicates that the, "Secretary shall permit an alien described in clause (i) who has filed a civil action under 1595 of Title 18 United States Code, to remain in the United States....." 22 USC 7105(c)(3). For this reason practitioners must be given guidance on how to self-petition.

⁵ See:
<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=6e7bf0a4017ae210VgnVCM10000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

Section 205(b) Parole for Relatives of Trafficking Victims

Section 205(b) allows specifically for certain categories of family members to be provided advance parole under provisions of the TVPRA of 2008. Again, DHS's response to ATEST's request to issue guidance or regulations for Section 205(b) of TVPRA 2008 indicates that no additional guidance is needed. However, the only regulations cited and published in this area were written prior to the TVPRA of 2008 leaving important areas under the TVPRA of 2008 unaddressed. Additionally, as noted in our August 2010 letter, although DHS issued a policy memorandum dated June 1, 2010, providing guidance on other TVPRA 2008 provisions, Section 205(b) was not mentioned. Further, the pamphlet cited in the August 2nd DHS letter does not mention any of the factors that make family members eligible. Practitioners will remain ill informed until information about these requirements and further guidance is provided.

According to the August 2nd DHS letter, the TVPRA of 2008 did not establish, "a new parole standard," rather it provided factors which, if met, could provide parole for trafficking victims' family members...." Nonetheless, the TVPRA of 2008 does include several new and complex factors to be taken into account. These factors deserve further clarification as many practitioners in the field are unaware of them and need further guidance from DHS on which cases to advocate with law enforcement in seeking parole for relatives at risk. Given the confusing standard in this area, ATEST respectfully renews its request that DHS issue a more comprehensive description of this important provision, whether in the form of a policy memorandum or an additional pamphlet.

Conclusion

Thank you for the leadership DHS has shown with the launch of the Blue Campaign to identify and prosecute human trafficking cases. We look forward to a prompt response to these continued requests, and await guidance and proper implementation of these statutorily required provisions, which were enacted for the benefit of human trafficking survivors in the United States. If you have any questions or need additional information, please do not hesitate to contact Cory Smith, ATEST Senior Policy Advisor, at (202) 361-1442.

Sincerely,

Coalition to Abolish Slavery and Trafficking (CAST)

Coalition of Immokalee Workers (CIW)

ECPAT-USA

Free the Slaves

International Justice Mission

Polaris Project

Safe Horizon

Verité

Vital Voices Global Partnership

cc: John Morton, Director, U.S. Immigration and Customs Enforcement
James Dinkins, Executive Associate Director, Homeland Security Investigations
Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services
David Aguilar, Acting Commissioner, U.S. Customs and Border Protection

ATEST is a diverse alliance of U.S.-based human rights organizations, acting with a shared agenda to end all forms of modern-day slavery and human trafficking domestically and globally. ATEST member organizations include: Coalition to Abolish Slavery and Trafficking (CAST), Coalition of Immokalee Workers (CIW), ECPAT-USA, Free the Slaves, International Justice Mission, Not For Sale Campaign, Polaris Project, Safe Horizon, Solidarity Center, Verité, Vital Voices Global Partnership, World Vision, and one individual member, Julia Ormond, former U.N. Goodwill Ambassador and president and founder of the Alliance to Stop Slavery and End Trafficking (ASSET).