



# Trafficking in Persons: U.S. Policy and Issues for Congress

**Alison Siskin**

Specialist in Immigration Policy

**Liana Sun Wyler**

Analyst in International Crime and Narcotics

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## Summary

Trafficking in persons (TIP) for the purposes of exploitation is believed to be one of the most prolific areas of international criminal activity and is of significant concern to the United States and the international community. According to U.S. government estimates, roughly 800,000 people are trafficked across borders each year. If trafficking within countries is included in the total world figures, some 2 million to 4 million people may be trafficked annually. As many as 17,500 people are believed to be trafficked into the United States each year, and some have estimated that 100,000 U.S. citizen children are victims of trafficking within the United States. Notably, TIP is a modern form of slavery and does not have to include the movement of a person.

Through the Trafficking Victims Protection Act of 2000 (TVPA, Div. A of P.L. 106-386), and its reauthorizations (TVPRAs), Congress has aimed to eliminate human trafficking by creating grant programs for both victims and law enforcement, appropriating funds, creating new criminal laws, and conducting oversight on the effectiveness and implications of U.S. anti-TIP policy. Most recently, the TVPA was reauthorized through FY2011 in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008, P.L. 110-457).

Two of the bills introduced in the 112<sup>th</sup> Congress to reauthorize the TVPA have received action. S. 1301 was reported by the Senate Judiciary Committee, and H.R. 2830 was ordered reported by the House Foreign Affairs Committee. The bills would make changes to the act and extend authorizations for some current programs. S. 1301 would extend TVPA authorizations through FY2015, and H.R. 2830 through FY2013. As Congress considers reauthorization of the TVPA, the current budget situation has heightened interest in oversight and funding of current efforts to fight TIP. Obligations for global and domestic anti-TIP programs, not including operations and law enforcement investigations, totaled approximately \$109.5 million in FY2010. The TVPRA of 2008 authorized \$191.3 million in global and domestic anti-TIP programs for FY2011.

Overall, issues related to U.S. anti-TIP efforts include the effectiveness of current programs, whether there is duplication among these programs, and whether there is sufficient oversight of monies spent on anti-trafficking activities. Ongoing international policy issues include how to measure the effectiveness of the U.S. and international responses to TIP, the U.S. Department of State's annual country rankings and the use of unilateral sanctions, and how to prevent known sex offenders from engaging in international child sex tourism. Domestic issues include whether there is equal treatment of all victims—both foreign nationals and U.S. citizens, as well as victims of labor and sex trafficking; and whether current law and services are adequate to deal with the emerging issue of domestic child sex trafficking (i.e., the prostitution of children in the United States). Other overarching issues include whether all forms of prostitution (i.e., children and adults) fit the definition of TIP, and whether sufficient efforts are applied to addressing all forms of TIP, including not only sexual exploitation, but also forced labor and child soldiers.

In June 2011, the State Department issued its annual, congressionally mandated TIP Report. In addition to outlining major trends and ongoing challenges in combating TIP, the report provides a country-by-country analysis and ranking, based on what progress countries have made in their efforts to prosecute traffickers, protect victims, and prevent TIP. The report categorizes countries according to the government's efforts to combat trafficking, with the worst-performing countries at risk of losing selected non-humanitarian, nontrade-related U.S. foreign assistance. For FY2012, TIP sanctions were fully imposed on three of the worst-performing countries: Eritrea, Madagascar, and North Korea.

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## Overview

Trafficking in persons (TIP) for the purposes of exploitation is both an international and a domestic crime that involves violations of labor, public health, and human rights standards. As such, the United States and the international community have committed to combating the various manifestations of human trafficking. Anti-TIP efforts have accelerated in the United States since the enactment of the Trafficking Victims Protection Act of 2000 (TVPA, Div. A of P.L. 106-386), and internationally since the passage of the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, adopted in 2000. Congress has been active in enacting anti-TIP laws, appropriating funds, and authorizing and evaluating anti-trafficking programs. Since 2000, Congress reauthorized the TVPA three times, most recently in 2008. The 110<sup>th</sup> Congress passed the William Wilberforce Trafficking Victims Reauthorization Act of 2008 (TVPRA of 2008, P.L. 110-457), which, among other provisions, authorized appropriations for FY2008 through FY2011 and established a requirement for the President to develop a system to evaluate the effectiveness of TIP assistance. The 112<sup>th</sup> Congress has introduced several bills related to human trafficking, including bills to reauthorize the TVPA beyond FY2011.

This report focuses on international and domestic human trafficking and U.S. policy responses, with particular emphasis on the TVPA and its subsequent reauthorizations. The report begins with an overview of the human trafficking problem. It follows with an analysis of the TVPA's primary foreign policy responses to international human trafficking. The report then focuses on responses to trafficking into and within the United States, examining relief for trafficking victims in the United States and discussing U.S. law enforcement efforts to combat domestic trafficking. The report concludes with an overview of current anti-trafficking legislation and an analysis of policy issues. Notably, TIP is a modern form of slavery and does not have to include the movement of a person from one location to another.

## Definitions

The United Nations and the United States generally characterize human trafficking in similar terms. Neither definition of human trafficking requires the movement of a person from one location to another for the situation to qualify as human trafficking. The United Nations defines human trafficking as:

The recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude, or the removal of organs.<sup>1</sup>

Additional examples of human trafficking exploitation suggested by the United Nations include forced involvement in criminal activities; begging, including child begging; forced marriage;

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<sup>1</sup> United Nations, United Nations Convention against Transnational Organized Crime and the Protocols Thereto, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

illicit adoption; and exploitation in the military, including child soldiers and forced participation in armed conflicts.<sup>2</sup>

The TVPA, as amended, does not define human trafficking per se. However, it does define “severe forms of human trafficking” as:

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 ... 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.<sup>3</sup>

In the case of minors, there is general agreement in the United States and much of the international community that the trafficking term applies, regardless of whether a child was recruited, harbored, transported, provided, or obtained by force, fraud, coercion, or voluntarily. Illegal adoptions, however, do not necessarily involve human trafficking, particularly if the children are not taken for the purpose of some form of exploitation. In some, but not all, circumstances, child pornography may involve human trafficking; visual depictions and renderings of pornography appearing to involve children may not be considered human trafficking alone, though the exploitation of a child for a commercial sex act constitutes human trafficking. In both the U.N. and U.S. definitions, there is no distinction between trafficking domestically within the borders of a single country and international or cross-border trafficking. The U.S. definition omits the removal of organs as a severe form of human trafficking and makes a distinction between prostitution and sex trafficking. Notably, transnational trafficking may involve trafficking victims and traffickers crossing political boundaries overtly and covertly, legally and illegally.

Distinctions also exist between human trafficking and human smuggling. Human smuggling typically involves the provision of a service, generally procurement or transport, to people who knowingly consent to that service in order to gain illegal entry into a foreign country. In some instances, an individual who appears to have consented to being smuggled may actually be a trafficked person if, for example, force, fraud, or coercion are found to have played a role.

## **Scope of the Problem**

Human trafficking is widely considered to be one of today’s leading criminal enterprises and is believed to affect virtually all countries around the globe. Data on the nature and severity of the problem, however, are both limited and varied.<sup>4</sup> According to the International Labor Organization (ILO), for example, as many as 12.3 million adults and children around the world may be current victims of forced labor, bonded labor, and forced prostitution.<sup>5</sup> According to the

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<sup>2</sup> United Nations Office on Drugs and Crime (UNODC), *Human Trafficking: An Overview*, 2008.

<sup>3</sup> §103(8) of Div. A of P.L. 106-386.

<sup>4</sup> Note that the accuracy of estimates on the scope of TIP has been questioned. For example, the U.S. Government Accountability Office (GAO) released a report in 2006 casting doubt on the methodology and reliability of official U.S. government figures. It concluded that the “U.S. government has not yet established an effective mechanism for estimating the number of victims or for conducting ongoing analysis of trafficking related data that resides within various government agencies.” See GAO, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825, July 2006.

<sup>5</sup> International Labor Organization (ILO), *ILO Minimum Estimate of Forced Labour in the World*, April 2005.

United Nations, governments reported that from 1996 to 2003, human trafficking victims originated in 127 countries and were exploited in 137 countries.<sup>6</sup> The U.S. government estimates that approximately 600,000 to 800,000 people are trafficked across global borders each year—at least 56% of which involve female victims.<sup>7</sup> If trafficking within countries is included in the total world figures, official U.S. estimates are that 2 million to 4 million people are trafficked annually.

Other organizations also track data associated with human trafficking. The non-profit organization Free the Slaves estimates that there are 27 million “slaves” in the world today.<sup>8</sup> Another estimate suggests that there may be at least 2.4 million persons in the process of being trafficked for forced labor at any given moment and generating profits as high as \$32 billion, according to ILO.<sup>9</sup> In Latin America alone, the International Organization for Migration (IOM) estimates that TIP in women and girls for sexual exploitation may be worth \$16 billion annually. The Federal Bureau of Investigation (FBI) estimated in 2006 that human trafficking generates approximately \$9.5 billion annually for organized crime.<sup>10</sup>

Despite such estimates of the global prevalence of human trafficking, there remain significant gaps in effective responses to the problem. According to the State Department’s 2011 Trafficking in Persons Report (TIP Report), 62 countries have yet to convict a human trafficker under anti-trafficking laws in compliance with international standards.<sup>11</sup>

In most reported instances, TIP involves the movement of victims across national borders. Such international, or cross-border, trafficking may differ in the relative distances from a victim’s country of origin and the location where the victimization takes place. Most international TIP occurs between countries within the same geographic region or between neighboring countries. In other instances, international trafficking involves long-distance flows—across continents or across distinct geographic regions.

International patterns of victim flows also differ in terms of the frequency with which destination country authorities identify victims from a certain region of origin and the breadth of foreign countries in which victims of a certain region of origin are found. For example, East Asians have been reportedly found in more than 20 countries across at least five distinct geographic regions (Europe, the Americas, the Middle East, Central Asia, and Africa). By contrast, victims from West Africa are detected mainly in just a few countries in Europe, but with a greater frequency of detection than East Asians.<sup>12</sup>

Throughout the world, sex trafficking victims have traditionally ended up in large cities, in vacation and tourist areas, or near military bases, where the demand for sex workers is high. In addition to the sex industry, forced labor trafficking victims are subjected to work in seasonal agriculture, manufacturing (particularly the garment industry), construction, and domestic

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<sup>6</sup> United Nations Office on Drugs and Crime (UNODC), *Trafficking in Persons: Global Patterns*, April 2006.

<sup>7</sup> Most recently cited in U.S. Department of State, *Trafficking in Persons Report*, June 2010.

<sup>8</sup> Kevin Bales, President of Free the Slaves, *Disposable People: New Slavery in the Global Economy*, Berkeley: University of California Press, 2004 (revised edition).

<sup>9</sup> International Labor Organization (ILO), *ILO Action against Trafficking in Human Beings*, 2008.

<sup>10</sup> This figure was cited in the U.S. Department of State, *Trafficking in Persons Report*, June 2006.

<sup>11</sup> U.S. Department of State, *Trafficking in Persons Report*, 2011.

<sup>12</sup> United Nations Office on Drugs and Crime (UNODC) and the United Nations Global Initiative to Fight Human Trafficking (UNGIFT), *Global Report on Trafficking in Persons*, February 2009.



service. These global trends may change, however, as traffickers adapt to new or emerging vulnerabilities and opportunities.

A potentially significant but largely undocumented amount of trafficking also occurs within countries. According to the United Nations Office on Drugs and Crime (UNODC), such domestic trafficking occurs in both geographically large and socioeconomically stratified countries, such as India and Brazil, but also among relatively small and wealthy countries, such as those in Europe. Recent research also indicates that domestic trafficking occurs within the United States.<sup>13</sup>

## **Continuing Human Trafficking Challenges**

Human trafficking is not a new phenomenon, and many factors may account for its continued existence. In general, the trafficking business feeds on conditions of vulnerability, including youth; gender; poverty or acute economic crisis; ignorance; social and cultural exclusion; political instability, social upheaval, war, and conflicts; and discriminatory social, cultural, and legal frameworks. Ongoing demand for cheap labor and commercial sex also perpetuates the trafficking industry. The globalization of the world economy has increased the movement of people across borders, legally and illegally, especially from poorer to wealthier countries. International organized crime has taken advantage of the freer flow of people, money, goods, and services to extend its own international reach. Other contributing factors include

- The continuing subordination of women in many societies, as reflected in economic, educational, and employment disparities between men and women.<sup>14</sup> Poverty and a lack of educational and job opportunities in many countries may put children, especially girls, from families with multiple children at risk.
- The hardship and economic or physical dislocation caused by conflict, humanitarian disasters, and vulnerability of people in other situations of political crisis. Refugees, internally displaced persons, and those who are stateless (i.e., lacking identity documents) may also be particularly vulnerable to trafficking.<sup>15</sup>
- The tendency to treat trafficking victims as criminals, which has made many victims reluctant to cooperate with law enforcement.<sup>16</sup>
- The inadequacy of laws and law enforcement capacity in some origin, transit, and destination countries hampers efforts to fight trafficking. Even if countries have specific laws aimed at TIP, enforcement of such laws is sporadic, and penalties for trafficking humans are often relatively minor compared with those for other criminal activities.

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<sup>13</sup> United Nations Office on Drugs and Crime (UNODC) and the United Nations Global Initiative to Fight Human Trafficking (UNGIFT), *Global Report on Trafficking in Persons*, February 2009.

<sup>14</sup> United Nations Development Fund for Women (UNIFEM), “Trafficking in Persons, A Gender & Rights Perspective Briefing Kit,” 2002.

<sup>15</sup> A variety of studies are discussed in Sally Cameron and Edward Newman, “Trafficking in Humans: Structural Factors,” in *Trafficking in Humans: Social Cultural and Political Dimensions*, New York: U.N. University Press, 2008.

<sup>16</sup> Janie Chuang, “Beyond a Snapshot: Preventing Human Trafficking in the Global Economy,” *Indiana Journal of Global Legal Studies*, Vol. 13, No. 1, Winter 2006.

- The disinterest in investigating or prosecuting complex trafficking cases, particularly in which there might be government complicity, according to State Department officials.<sup>17</sup>

## **U.S. Response: Interagency Funding and Coordination**

In response to the ongoing scourge of human trafficking and as part of its international commitments to eradicate the problem globally, the U.S. government supports many types of anti-TIP initiatives overseas and domestically. Most U.S. anti-trafficking activities are authorized by the TVPA, as amended, which also established the interagency coordination framework for U.S. government-wide programs to combat human trafficking.

### **Domestic and Overseas Obligated Funds**

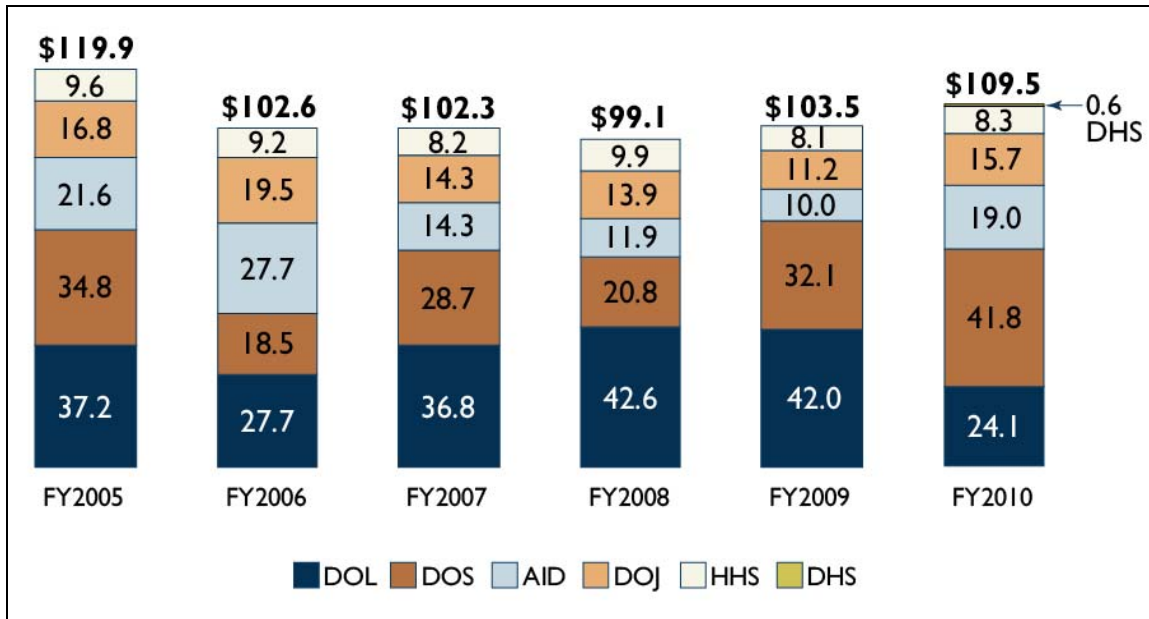
Overall, between FY2001 and FY2010, U.S. agencies have obligated an estimated \$771 million on domestic and international anti-TIP assistance.<sup>18</sup> FY2011 obligations by agency are not yet available for all agencies. In FY2010, the U.S. government obligated an estimated \$85.3 million for international anti-trafficking assistance programs, up from \$83.7 million obligated in FY2009. In FY2010, the U.S. government obligated roughly \$24.2 million for domestic anti-TIP programs, an increase from \$19.7 million obligated in FY2009. The total for domestic obligations does not include the costs of administering TIP operations or TIP-related law enforcement investigations.

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<sup>17</sup> Ambassador Mark P. Lagon, Former Director, State Department Office to Monitor and Combat Trafficking in Persons (G-TIP), Remarks at “Human Trafficking and Freedom Event,” December 3, 2007.

<sup>18</sup> For FY2001 through FY2005, GAO, “Human Trafficking: Monitoring and Evaluation of International Projects Are Limited, but Experts Suggest Improvements,” GAO-07-1034, July 2007; for FY2006 through FY2010, U.S. Department of State, responses to CRS requests. Due to the methodological difficulties involved in calculating TIP appropriations and the fact that TIP programs are supported by foreign aid accounts that can be appropriated to remain available for two years, the State Department calculates TIP program obligations by agency per fiscal year. According to the Office to Monitor and Combat Trafficking in Persons (G/TIP), this generates the best estimate of the amount of funding spent on TIP programs by agency for each fiscal year.

**Figure 1. Anti-TIP Obligations by Agency: FY2005-FY2010**  
(in current U.S. \$ millions)



**Source:** CRS presentation of data from the U.S. Department of State, Office to Monitor and Combat Trafficking in Persons.

**Note:** Numbers may not total due to rounding. Domestic obligations, which are included in this chart, do not include the costs of administering TIP operations or TIP-related law enforcement investigations. DOL’s projects primarily address trafficking as one of the worst forms of child labor. Such projects include standalone TIP projects, but many include multi-faceted projects to address other worst forms of child labor in addition to trafficking. In these projects, the funds cannot be disaggregated.

### Interagency Coordination

As authorized by TVPA, U.S. anti-TIP programs are coordinated at the cabinet level by the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF), which is chaired by the Secretary of State. The PITF’s purpose is to de-conflict and prevent duplication of efforts across agencies involved in anti-TIP programming and ensure compliance with U.S. government policies on combating TIP. The PITF meets annually to coordinate broad U.S. anti-TIP policy, most recently on February 1, 2011.

The TVPA also established the Senior Policy Operating Group (SPOG), another interagency entity that meets quarterly to carry out PITF initiatives and to discuss anti-TIP policy issues. The SPOG, among other activities, facilitates a review by SPOG programming agencies and each other’s grant proposals for anti-trafficking projects. Members of the PITF and SPOG include the Departments of State, Justice, Homeland Security, Labor, Defense, Education, Agriculture, and Health and Human Services; USAID; U.S. Equal Employment Opportunity Commission; the Office of Management and Budget (OMB); the Office of the Director of National Intelligence (O/DNI); the National Security Council; and the Domestic Policy Council.<sup>19</sup>

<sup>19</sup> U.S. Department of State, Office to Combat and Monitor Trafficking in Persons, “U.S. Government Entities Combating Human Trafficking,” June 14, 2010.

## **International Efforts to Combat Trafficking in Persons**

The international community has long condemned TIP and related elements of human trafficking through multilateral, regional, and bilateral declarations, treaties, agreements, or other instruments. Some of the earliest commitments to combating TIP in various forms include the 1921 International Convention for the Suppression of the Traffic in Women and Children, the 1926 Slavery Convention, the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and the 1957 Convention Concerning the Abolition of Forced Labour. Although TIP is not a new phenomenon, it became an increasingly high-priority human rights issue of concern in the 1990s. As the decade progressed, the trafficking of women for sexual exploitation began to be seen as both a form of discrimination against women and as a major human rights violation.<sup>20</sup> Given the international dimension of the problem, TIP also became viewed in the context of a transnational criminal enterprise for which unilateral and domestic anti-TIP efforts would be inadequate for successfully eliminating the threat.

### **U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons**

On November 15, 2000, the United Nations General Assembly adopted the Convention on Transnational Crime and several associated protocols, including the Protocol to Prevent, Suppress, and Punish Trafficking in Persons. The convention and its protocols, formally signed in Palermo, Italy, in December 2000, were designed to enable countries to work together more closely against criminals engaged in cross-border crimes. The Protocol on Trafficking defines trafficking in persons and commits countries to take law enforcement actions against traffickers, to provide some assistance and protection for TIP victims, and to share intelligence and increase border security cooperation with other countries. The United States signed the U.N. Protocol on Trafficking in December 2000 and ratified and became party to the protocol on December 3, 2005, following Senate advice and consent on October 7, 2005.

### **Other Relevant International Agreements**

The United States is party to several other international agreements that have been adopted to address aspects of human trafficking, including the 1999 International Labor Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ratified by the United States in December 1999); the 1957 ILO Convention No. 105 concerning the Abolition of Forced Labor (ratified by the United States in 1991); the Optional Protocol to the U.N. Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography (ratified by the United States in December 2002); and the Optional Protocol to the U.N. Convention on the Rights of the Child on the Rights of the Child in Armed Conflict (ratified by the United States in December 2002).

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<sup>20</sup> United Nations General Assembly, “In-Depth Study on All Forms of Violence Against Women,” July 6, 2006.

## Key U.S. Foreign Policy Responses in the TVPA

The cornerstone legislative vehicle for current U.S. foreign policy on combating international human trafficking is the Trafficking Victims Protection Act of 2000 (TVPA, Division A of P.L. 106-386) and its three reauthorizations in 2003, 2005, and 2008 (TVPRAs). Among its key provisions, the TVPA authorized foreign assistance for preventing trafficking, protecting victims, and prosecuting traffickers (the three “Ps”). It also established an annual requirement for the State Department to publish a report on progress made by the international community to eliminate severe forms of human trafficking. Pursuant to the TVPA, the State Department has issued this report, called the TIP Report, each year since 2001. Countries described by the TIP Report are ranked, based on their efforts to combat TIP. To incentivize foreign countries to adhere to their international anti-TIP obligations, the TVPA established a mechanism whereby a low ranking in the TIP Report can trigger certain restrictions on U.S.-provided foreign assistance.

### Foreign Aid

For FY2008 through FY2011, the William Wilberforce Trafficking Victims Reauthorization Act of 2008 (TVPRA of 2008) authorized the U.S. government to provide anti-trafficking assistance to foreign countries. While current anti-TIP funding breakdowns are not available for all agencies, international anti-TIP foreign assistance data appropriated through the combined Foreign Operations budget for the Department of State and U.S. Agency for International Development (USAID) are available by country and region. According to the State Department, approximately \$37.1 million for FY2012 through the Foreign Operations budget was requested for anti-TIP efforts in 24 countries as well as for programs that are regional or global in scope (see **Table 1**). In FY2011, an estimated \$24 million was provided for anti-TIP efforts through the Foreign Operations budget.

**Table 1. Anti-TIP Assistance through the Foreign Operations Budget**  
(in current U.S. \$ thousands)

	<b>FY2009 Actual</b>	<b>FY2010 Actual</b>	<b>FY2011 Estimate</b>	<b>FY2012 Request</b>
Africa	900	435	700	1,500
East Asia and Pacific	4,505	2,818	2,900	5,150
Europe and Eurasia	5,894	3,136	—	3,381
Near East	300	—	—	—
South and Central Asia	3,834	4,930	2,505	5,288
Western Hemisphere	1,565	1,150	896	—
USAID’s Bureau for Economic Growth, Agriculture, and Trade	1,567	900	—	1,000
USAID’s Bureau for Democracy, Conflict, and Humanitarian Assistance	—	—	800	—
State Department’s Office to Monitor and Combat Trafficking in Persons	19,380	21,262	16,233	20,808
<b>TOTAL</b>	<b>38,444.7</b>	<b>34,631</b>	<b>24,034</b>	<b>37,127.0</b>

**Source:** U.S. Department of State, Response to CRS Request, December 21, 2011.

The bulk of U.S. anti-trafficking assistance programs abroad is administered by the U.S. Department of State, U.S. Agency for International Development (USAID), and the U.S. Department of Labor (DOL). With regard to foreign assistance administered by the State Department and USAID, anti-TIP aid has been disbursed through four program accounts: Development Assistance (DA); Economic Support Fund (ESF); Assistance for Europe, Eurasia, and Central Asia (AEECA); and International Narcotics Control and Law Enforcement (INCLE).

Within the State Department, multiple bureaus and offices address various aspects of human trafficking issues, including the Office to Monitor and Combat Trafficking in Persons (G/TIP); Bureau of Population, Refugees, and Migration (PRM); Bureau of Democracy, Human Rights and Labor (DRL); Bureau of Diplomatic Security (DS); Office of Global Women's Issues (S/GWI); and Bureau of Education and Cultural Exchanges (ECA). Regional bureaus, such as the Bureau of Europe and Eurasian Affairs (EUR), are also involved in human trafficking issues.

DOL's Bureau of International Labor Affairs (ILAB), particularly its Office of Child Labor, Forced Labor, and Human Trafficking (OCFT), supports programs that focus on providing assistance to child victims of trafficking and preventing trafficking and forced labor through policy and legislative reform, public awareness campaigns, and capacity-building for governments and service providers. Separately, USAID funds international anti-trafficking programs with emphasis on victim protection and trafficking prevention, as well as some training for police and criminal justice personnel. The Department of Homeland Security (DHS) and the Department of Justice's (DOJ's) International Criminal Training Assistance Program (ICITAP) also provide some anti-TIP training to law enforcement and judicial officials overseas. Some U.S. funding supports the anti-TIP efforts of the United Nations and other international organizations.

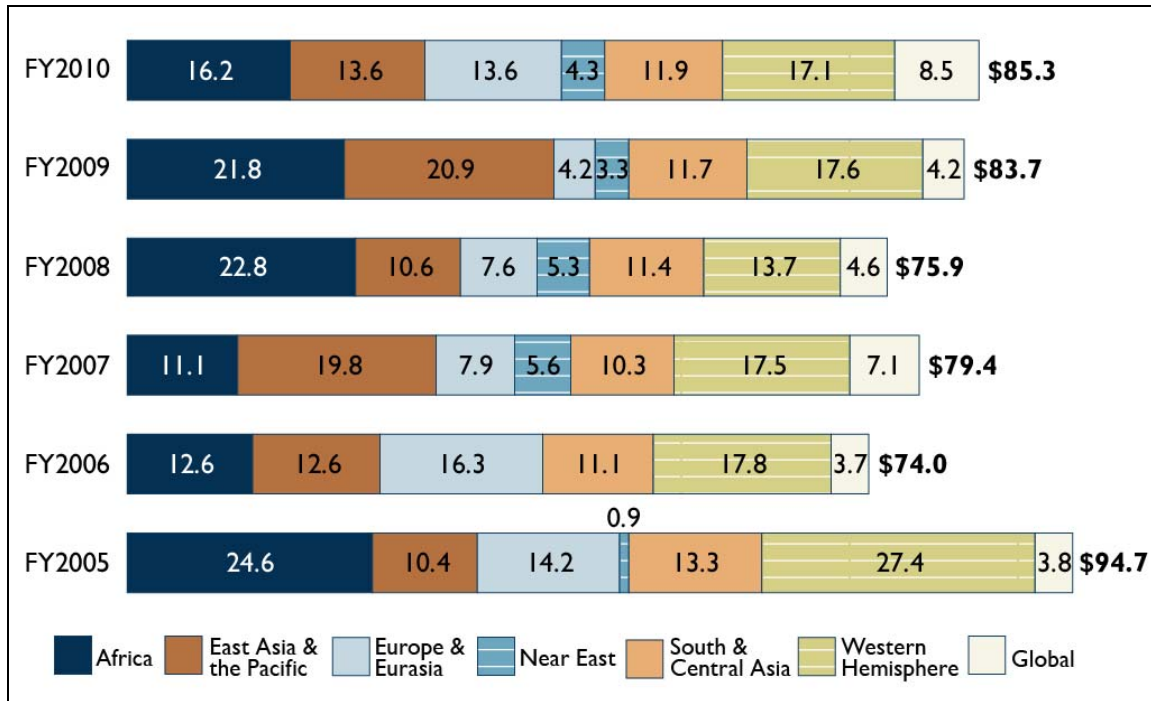
**Figure 2** provides a regional breakdown of U.S. international anti-TIP obligations from FY2005 through FY2010 by geographic region—including not only State Department and USAID contributions, but also assistance provided by DOL, DOJ, and HHS. In FY2010, U.S. funding for global anti-TIP activities supported roughly 175 international anti-trafficking programs in over 80 countries.<sup>21</sup> The majority of international anti-TIP programs supported by the United States are either regional or aimed at helping countries resolve specific challenges they have had in addressing human trafficking.<sup>22</sup>

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<sup>21</sup> U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Fact Sheet: U.S. Government Anti-Trafficking in Persons Project Funding (Fiscal Year 2010)*, June 2011.

<sup>22</sup> The countries with the largest numbers of programs obligated in recent years include several of the countries selected in 2004 by President George W. Bush as eligible to receive a combined total of \$50 million in strategic anti-TIP assistance. The \$50 million consists of projects, the bulk of which were obligated in FY2004 and FY2005, that were approved by an inter-agency Senior Policy Operating Group (SPOG) on human trafficking and the Deputy Secretary of State for each region. Funding for the President's initiative came from channeling funds from existing aid programs to the countries identified to participate in the initiative. The funds came from roughly \$25 million in FY2003 Child Survival and Health monies, \$12.5 million in FY2004 Economic Support Funds, and \$12.5 million in FY2005 Economic Support Funds. The President chose countries based on the severity of their trafficking programs, as well as their willingness to cooperate with U.S. agencies to combat the problem. They included Brazil, Cambodia, India, Indonesia, Mexico, Moldova, Sierra Leone, and Tanzania. As a result of this initiative, U.S. anti-TIP assistance to foreign governments spiked in FY2004 and FY2005, but is now on a downward trajectory.

**Figure 2. International Anti-TIP Obligations by Region: FY2005-FY2010**  
(in current U.S. \$ millions)



**Source:** CRS presentation of data from the U.S. Department of State, Office to Monitor and Combat Trafficking in Persons.

**Note:** Numbers may not total due to rounding. Domestic obligations are not included in this chart. DOL’s projects primarily address trafficking as one of the worst forms of child labor. Such projects include standalone TIP projects, but many include multi-faceted projects to address other worst forms of child labor in addition to trafficking. In these projects, the funds cannot be disaggregated.

### The 2011 TIP Report

On June 27, 2011, the State Department issued its 11<sup>th</sup> annual report on human trafficking, *Trafficking in Persons (TIP) Report, June 2011*, as mandated by the TVPA (P.L. 106-386, as amended). In addition to outlining major trends and ongoing challenges in combating TIP, the report provides a country-by-country analysis and ranking, based on what progress foreign countries have made, from April 2010 through March 2011, in their efforts to prosecute, protect, and prevent TIP. The 2011 TIP Report ranked more countries than any previous year, up from 82 countries in 2001 to 181 countries in 2011, including the United States.<sup>23</sup> In addition to the 181 countries that were ranked, the report discusses trafficking in three “special case” countries—Cote D’Ivoire, Haiti, and Somalia—where sufficient information was not available to provide a ranking.

<sup>23</sup> One reason for the increase in countries in the TIP report, particularly since 2009, is because of a change in the TVPA reporting requirement, as amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (§106(1) of P.L. 110-457). Prior TIP reports were required to include countries that are a point of origin, transit, or destination for “a significant number of” victims of severe forms of trafficking. This was interpreted by the State Department to mean at least 100 cases per year. P.L. 110-457 struck out the phrase “a significant number of,” resulting in a lower threshold requirement for reporting on countries in the 2009 TIP report and thereafter.

The 2011 TIP Report presents a sobering view of the state of U.S. and international campaigns against human trafficking. While acknowledging that significant progress has been made in recent years, particularly in the realm of introducing new or amended legislation in more countries around the world that help prosecute, protect, and prevent TIP, progress in combating TIP globally appears to be mixed.

While the number of prosecutions reported per year worldwide against TIP offenders has improved in the past two years, it has declined on average 3.8% per year since 2003, when the State Department first collected this information globally—from 7,992 prosecutions in 2003 to 6,017 in 2010 (see **Table 2**). A disproportionate minority of reported prosecutions are related to labor trafficking (607 of the 6,017 prosecutions in 2010, or 10.1% of prosecutions). Approximately 60% of all reported trafficking prosecutions in 2010 resulted in convictions.

**Table 2. Global Prosecutions of TIP Offenders, 2003-2010**

Year	Sub-Saharan Africa	Europe	East Asia & the Pacific	Middle East & North Africa	South & Central Asia	Western Hemisphere	Global	Global % change from previous year
2003	50	2,231	1,727	1,004	2,805	175	7,992	—
2004	134	3,270	438	134	2,764	145	6,885	-13.9%
2005	194	2,521	2,580	112	1,041	170	6,618	-3.9%
2006	170	2,950	1,321	295	629	443	5,808	-12.2%
2007	123	2,820	1,047	415	824	426	5,655	-2.6%
2008	109	2,808	1,083	120	644	448	5,212	-7.8%
2009	325	2,208	357	80	1,989	647	5,606	7.1%
2010	272	2,803	427	323	1,460	732	6,017	6.8%

**Source:** CRS presentation of law enforcement data in the State Department’s TIP Reports through 2011.

**Notes:** Global totals are the sum of the reported totals for all six regions. The Western Hemisphere does not include the United States in this analysis.

The 2011 TIP Report also discussed a variety of emerging issues and trends in TIP. Selected topics of interest in the 2011 Report included the recruitment of children in armed conflicts, recent research on local demand for commercial sexual exploitation of minors, techniques of psychological control used by sex traffickers and pimps, and bonded labor on deep sea fishing vessels in Southeast Asia. Other issues discussed in the 2011 TIP Report include recommendations for best practices to prevent labor trafficking, including procurement guidelines and options for improving the regulation of labor recruiters.

### 2011 TIP Report Country Designations and Trends

The centerpiece of the annual TIP Reports is their country-by-country analyses and rankings, which describe progress foreign countries have made in their efforts to prosecute, protect, and prevent human trafficking. Beginning with the 2010 TIP Report, the State Department has also ranked the United States and described U.S. efforts and ongoing challenges in combating human trafficking. In both the 2010 and 2011 TIP Reports, the United States received a “Tier 1” ranking,



signifying that it is among the top-performing countries in the world and that it meets the legislatively defined “minimum standards” for eliminating severe forms of human trafficking.<sup>24</sup>

Pursuant to the TVPA, as amended, the 2011 TIP Report ranked countries in four categories on the basis of their efforts to combat human trafficking, with Tier 1 composed of the best-performing countries and Tier 3 composed of the worst-performing countries. Only Tier 1 countries are compliant with the TVPA’s minimum standards for eliminating trafficking. The rest, totaling approximately 82% of all countries ranked in the 2011 TIP Report, are listed as non-compliant—variously receiving designations as Tier 2, Tier 2 Watch List, or Tier 3, depending on their level of effort in achieving the minimum standards. In total, the number of non-compliant countries described in the 2011 TIP Report has increased slightly in absolute size since 2010, from 143 countries to 149. Tier 2 increased from 74 countries in 2010 to 85 countries in 2011. Tier 2 Watch List decreased from 58 in 2010 to 41 in 2011. Tier 3 increased from 13 in 2010 to 23 in 2011.

**Tier 1** is composed of countries deemed by the State Department as having fully complied with the minimum standards for eliminating trafficking as outlined in the TVPA, as amended. Thirty-two countries, or approximately 17.4% of all countries listed, received a Tier 1 ranking in the 2011 TIP Report. Since last year, three countries improved their rankings from Tier 2 to Tier 1 (Macedonia, Portugal, and the Slovak Republic) and one country dropped from Tier 1 to Tier 2 (the Czech Republic). In general, countries in Western Europe have been among the most consistent top performers. For example, 14 countries have consistently been ranked Tier 1 for every year they have been listed on the TIP Report—and all but four of these countries (Australia, Colombia, New Zealand, United States) are located in Western Europe.<sup>25</sup> See **Table 3**.

**Table 3. Tier 1 Countries in 2011 TIP Report, by Region**

Region	Country Names
East Asia & the Pacific (4 of 29)	Australia, New Zealand, South Korea, and Taiwan
Europe (23 of 47)	Austria, Belgium, Bosnia, Croatia, Denmark, Finland, France, Georgia, Germany, Ireland, Italy, Lithuania, Luxembourg, Macedonia, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom
Middle East & North Africa (0 of 18)	—
South & Central Asia (0 of 12)	—
Sub-Saharan Africa (2 of 46)	Mauritius and Nigeria
Western Hemisphere (3 of 32)	Canada, Colombia, and United States

**Source:** U.S. Department of State, *2011 TIP Report*.

The other three TIP Report categories include countries that are non-compliant with the TVPA’s minimum standards for eliminating trafficking. These categories differ on the basis of perceived

<sup>24</sup> Section 108 of the TVPA, as amended, defines the minimum standards for eliminating severe forms of human trafficking to include prohibiting severe forms of trafficking in persons and punishing such acts; prescribing punishment that is sufficiently stringent to deter future acts and commensurate with punishments for other grave crimes; and evidence of serious and sustained efforts to eliminate severe forms of trafficking in persons.

<sup>25</sup> Those with consistent Tier 1 rankings from Western Europe include Austria, Belgium, Denmark, Germany, Italy, Luxembourg, the Netherlands, Norway, Spain, and United Kingdom.

political effort and political will to become compliant—ranging from countries that are non-compliant, but making significant efforts to improve (Tier 2) to countries that are non-compliant and making no effort to improve (Tier 3). Approximately 82% of all countries ranked in the TIP Report are listed as Tier 2, Tier 2 Watch List, or Tier 3 countries. In total, the number of non-compliant countries described in the 2011 TIP report has increased slightly in absolute size since 2010, from 143 countries to 149. Tier 2 increased from 74 countries in 2010 to 85 countries in 2011. Tier 2 Watch List, composed of countries on the border between Tier 2 and Tier 3, decreased from 58 in 2010 to 41 in 2011. Tier 3, the worst, increased from 13 in 2010 to 23 in 2011.

**Tier 2** includes countries whose governments the State Department views as not fully complying with the minimum standards for eliminating trafficking, but which are seen as making “significant efforts to bring themselves into compliance.” In 2011, 85 countries were listed as Tier 2, representing, as in past years, the largest category of countries. Since last year, 19 countries improved their rankings from Tier 2 Watch List to Tier 2<sup>26</sup> and 10 countries dropped from Tier 2 to Tier 2 Watch List.<sup>27</sup> See **Table 4**.

**Table 4. Tier 2 Countries in the 2011 TIP Report, by Region**

Region	Country Names
East Asia & the Pacific (14 of 29)	Cambodia, Fiji, Hong Kong, Indonesia, Japan, Laos, Macau, Marshall Islands, Mongolia, Palau, Philippines, Singapore, Timor-Leste, and Tonga
Europe (17 of 47)	Albania, Armenia, Aruba, Bulgaria, Czech Republic, Greece, Hungary, Iceland, Kosovo, Latvia, Moldova, Montenegro, Romania, Serbia, Switzerland, Turkey, and the Ukraine
Middle East & North Africa (7 of 18)	Bahrain, Egypt, Israel, Jordan, Morocco, Oman, and the United Arab Emirates
South & Central Asia (7 of 12)	India, Kazakhstan, Kyrgyz Republic, Nepal, Pakistan, Sri Lanka, and Tajikistan
Sub-Saharan Africa (21 of 46)	Benin, Botswana, Burkina Faso, Djibouti, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Togo, Uganda, and Zambia
Western Hemisphere (19 of 32)	Antigua & Barbuda, Argentina, Belize, Bolivia, Brazil, Chile, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, St. Lucia, Suriname, Trinidad & Tobago, and Uruguay

**Source:** U.S. Department of State, 2011 TIP Report.

**Tier 2 Watch List** was first added as a category in the 2004 TIP Report. The 2011 TIP Report included 41 countries in this group, which represents a decline compared to the 58 countries ranked as Tier 2 Watch List in 2010. Since last year, one country improved its ranking from Tier 3 to Tier 2 Watch List (the Dominican Republic) and 11 countries dropped from Tier 2 Watch List to Tier 3.<sup>28</sup> See **Table 5**.

<sup>26</sup> Those countries that improved from Tier 2 Watch List in 2010 to Tier 2 in 2011 include Belize, Fiji, Gabon, Guatemala, Guyana, India, Kazakhstan, Laos, Lesotho, Moldova, Mozambique, Nicaragua, Philippines, Senegal, Singapore, Sri Lanka, Swaziland, Tajikistan, and Trinidad and Tobago.

<sup>27</sup> Those countries that dropped from Tier 2 in 2010 to Tier 2 Watch List in 2011 include Angola, the Bahamas, Belarus, Burundi, Costa Rica, Cyprus, Ecuador, Estonia, the Gambia, and Liberia.

<sup>28</sup> Those countries that dropped from Tier 2 Watch List in 2010 to Tier 3 in 2011 include Algeria, Central African (continued...)

This category is composed of a subset of Tier 2 countries in which at least one of the following conditions apply:

- the absolute number of TIP victims is very significant or is significantly increasing;
- there is no evidence that increasing efforts to combat severe forms of trafficking in persons from the previous year; or
- the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

**Table 5. Tier 2 Watch List Countries in the 2011 TIP Report, by Region**

Region	Country Names
East Asia & the Pacific (7 of 29)	Brunei, China, Kiribati, Malaysia, Solomon Islands, Thailand, and Vietnam
Europe (7 of 47)	Azerbaijan, Belarus, Curacao, Cyprus, Estonia, Malta, and Russia
Middle East & North Africa (4 of 18)	Iraq, Qatar, Syria, and Tunisia
South & Central Asia (4 of 12)	Afghanistan, Bangladesh, Maldives, and Uzbekistan
Sub-Saharan Africa (12 of 46)	Angola, Burundi, Cameroon, Chad, Comoros, Guinea, Liberia, Mali, Niger, Republic of the Congo, Tanzania, and the Gambia
Western Hemisphere (7 of 32)	Barbados, Costa Rica, Dominican Republic, Ecuador, Panama, St. Vincent & the Grenadines, and the Bahamas

**Source:** U.S. Department of State, 2011 TIP Report.

**Tier 3** includes countries whose governments the State Department deems as not fully complying with those standards and not making significant efforts to do so. This group includes a total of 23 countries in 2011, up from 13 in 2010. See **Table 6**. Countries new to Tier 3 in 2011 include Algeria, Central African Republic, Equatorial Guinea, Guinea-Bissau, Lebanon, Libya, Madagascar, Micronesia, Turkmenistan, Venezuela, and Yemen. The TVPA, as amended, subjects to sanctions those countries listed in Tier 3 in the following fiscal year, including termination of non-humanitarian, non-trade-related assistance and loss of U.S. support for loans from international financial institutions. Sanctions are to be imposed if such countries have not improved their performance within 90 days from the release of the TIP Report.

**Table 6. Tier 3 Countries in the 2011 TIP Report, by Region**

Region	Country Names
East Asia & the Pacific (4 of 29)	Burma, Micronesia, North Korea, and Papua New Guinea
Europe (0 of 47)	—
Middle East & North Africa (7 of 18)	Algeria, Iran, Kuwait, Lebanon, Libya, Saudi Arabia, and Yemen

(...continued)

Republic, Equatorial Guinea, Guinea-Bissau, Lebanon, Libya, Madagascar, Micronesia, Turkmenistan, Venezuela, and Yemen.

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Region	Country Names
South & Central Asia (1 of 12)	Turkmenistan
Sub-Saharan Africa (9 of 46)	Central African Republic, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Guinea-Bissau, Madagascar, Mauritania, Sudan, and Zimbabwe
Western Hemisphere (2 of 32)	Cuba and Venezuela

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Source: U.S. Department of State, 2011 TIP Report.

### 2008 Provision: Automatic Downgrade from Tier 2 Watch List

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008, P.L. 110-457) added a new requirement to the TIP country rankings process, in which Tier 2 Watch List countries are automatically downgraded to the Tier 3 category after two consecutive years on the Tier 2 Watch List (unless the President issues a waiver to block the auto-downgrade).<sup>29</sup> The first year in which this new requirement came into effect was the 2009 TIP Report. Those countries on the Tier 2 Watch List countries in 2009 could only remain on the Tier 2 Watch List through the 2010 TIP Report. Subsequent to the 2010 TIP Report, these countries would be required to drop to Tier 3, unless they have improved their efforts to combat TIP or unless the President issues waivers. To this end, 22 countries were at risk in 2011 for an auto-downgrade to Tier 3 because they had been identified as Tier 2 Watch List in both the 2009 and 2010 TIP Reports (see **Table 2**). Of these, 10 countries were downgraded in the 2011 TIP report to Tier 3 while 12 remained listed as Tier 2 Watch List after the Obama Administration issued a waiver to prevent these countries from receiving the automatic downgrade to Tier 3.

According to the 2011 TIP Report, such waivers were issued in cases in which the government in question has a written plan that “would constitute making significant efforts to comply with the TVPA’s minimum standards for the elimination of trafficking,” if implemented, and that there is credible evidence that the government in question is “devoting sufficient resources to implement the plan.” In addition to the 12 countries that remained Tier 2 Watch List in 2011 due to the granting of a waiver, 15 additional countries are at risk of an auto-downgrade in next year’s TIP Report (see **Table 7**). Combined, these 27 countries will have been listed consecutively under the Tier 2 Watch List category in both the 2010 and 2011 TIP Reports.

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<sup>29</sup> Such a waiver permits the President to waive the Tier 3 listing for up to two years. In exercising this waiver authority, the President must determine that such a waiver is justified because the country has a “written plan” to start making “significant efforts” to comply with the TVPA’s minimum standards to combat TIP, and because the country has committed “sufficient resources” to implement the plan.

**Table 7. Countries at Risk of Auto-Downgrade to Tier 3 in the 2011 and 2012 TIP Reports**

2011 TIP Report Results		At Risk of Auto-Downgrade in 2012 TIP Report
Downgraded to Tier 3 After Two Years on Tier 2 Watch List	Remained Tier 2 Watch List Due to a Waiver	(in addition to those that remained Tier 2 Watch List due to a waiver in 2011)
Algeria	Azerbaijan	Afghanistan
Central African Republic	Bangladesh	Barbados
Equatorial Guinea	Cameroon	Brunei
Guinea-Bissau	China	Chad
Lebanon	Guinea	Kiribati
Libya	Iraq	Malaysia
Micronesia	Mali	Maldives
Turkmenistan	Qatar	Malta
Venezuela	Republic of Congo	Niger
Yemen	Russia	Panama
	St. Vincent & the Grenadines	Syria
	Uzbekistan	Tanzania
		Thailand
		Tunisia
		Vietnam

Source: U.S. Department of State, 2011 TIP Report.

### Aid Restrictions to Tier 3 Countries for FY2012

Pursuant to the TVPA, it is the policy of the U.S. government to deny nonhumanitarian, nontrade-related foreign assistance—including both bilateral and multilateral assistance—to any foreign government that does not comply with the minimum standards for the elimination of trafficking and is not making significant efforts to bring itself into compliance with such standards. Each year, the President is required to make a determination on whether to impose such aid restrictions on the Tier 3 countries annually identified by the State Department for the subsequent fiscal year. If Tier 3 countries did not receive nonhumanitarian, nontrade-related foreign assistance from the U.S. government in the prior fiscal year, then future U.S. funding for participation of non-compliant country government officials in educational and cultural exchange programs may be denied. Pursuant to the TVPA, the President reserves the discretion to waive part or all of the aid and funding restrictions on the basis of national interest reasons.

On September 30, 2011, President Obama issued his determination on whether to impose aid restrictions during FY2012 on the 23 listed Tier 3 countries from the 2011 TIP Report.<sup>30</sup> For FY2012 the President determined that sanctions would be *fully* imposed on three countries: Eritrea, Madagascar, and North Korea. None of these three countries, however, received nonhumanitarian, nontrade-related foreign assistance in FY2011. As a result, the President determined to withhold U.S. funding for participation by officials or employees of these three governments in educational and cultural exchange programs for FY2012. Seven countries were granted by the President *partial waivers* from the aid prohibitions: Burma, Cuba, the Democratic Republic of Congo (DRC), Equatorial Guinea, Iran, Venezuela, and Zimbabwe.

<sup>30</sup> President Obama, “Presidential Determination With Respect To Foreign Governments’ Efforts Regarding Trafficking In Persons,” *Presidential Determination 2011-18*, September 30, 2011.

Thirteen countries—Algeria, the Central Africa Republic (CAR), Guinea-Bissau, Kuwait, Lebanon, Libya, Mauritania, Micronesia, Papua New Guinea, Saudi Arabia, Sudan, Turkmenistan, and Yemen—were granted *full waivers* from the aid prohibitions. The President determined that continued U.S. support in FY2012 to these 13 countries would be in the U.S. national interest.

Among the most notable changes in FY2012 with respect to TIP-related aid restrictions is the full restriction on nonhumanitarian, nontrade-related aid to Madagascar. Madagascar received its first Tier 3 country ranking in the State Department's June 2011 TIP Report.<sup>31</sup> FY2012 will also be the first fiscal year in which the country is subject to the full TIP aid restrictions.

### **List of Countries Involved in Recruiting and Using Child Soldiers**

While not directly connected to the TIP Report country tier rankings and related aid restrictions, the Child Soldiers Prevention Act of 2008 (CSPA, Title IV of P.L. 110-457) requires, beginning with the 2010 TIP Report, that the TIP Report annually publish a list of countries that recruit or use child soldiers in their armed forces, or that host non-government armed forces that recruit or use child soldiers.

Child soldiers are defined as individuals who are under 18 years of age and who (1) have taken direct part in hostilities as a member of a government's armed forces, (2) were recruited or used in hostilities by non-governmental armed forces, or (3) were compulsorily recruited to join a government's armed forces. Individuals who are under 15 years of age and who were voluntarily recruited to join a government's armed forces are also defined as child soldiers. Additionally, those who meet the above conditions but have not taken direct part in hostilities, instead serving in a support role for an armed group, such as a cook, porter, messenger, medic, guard, or sex slave, are also defined as child soldiers according to the CSPA.

Following these guidelines, the 2011 TIP Report identified six countries involved in recruiting and using child soldiers, whether directly in the government's armed forces or indirectly in non-governmental armed forces: Burma, Chad, Democratic Republic of Congo (DRC), Somalia, Sudan, and Yemen.<sup>32</sup> These six are the same six identified by the 2010 TIP Report.

Unless the President issues waivers, identified countries would be subject to foreign assistance restrictions in FY2012, including prohibitions on assistance for international military education and training (IMET); foreign military financing (FMF); excess defense articles; assistance provided pursuant to Section 1206 of the National Defense Authorization Act of FY2006, as amended and extended; and the issuance for direct commercial sales of military equipment. Pursuant to the CSPA, the President may also allow for the reinstatement of barred assistance if he certifies to Congress that such countries have taken the necessary steps to prevent and prohibit future use of child soldiers.

On October 25, 2010, President Obama waived sanctions for four of the six listed countries in the 2010 TIP report: Chad, DRC, Sudan, and Yemen. The other two, Burma and Somalia, were subject to sanctions in FY2011 pursuant to the CSPA.

On October 4, 2011, President Obama certified that Chad has taken necessary steps to allow for the reinstatement of barred assistance. He fully waived the sanctions for Yemen and partially waived the sanctions for DRC. The other three, Burma, Somalia, and Sudan, are subject to sanctions in FY2012 pursuant to the CSPA.

## **Trafficking in the United States**

The United States is a source, transit, and destination country for men, women, and children subject to trafficking in persons.<sup>33</sup> Human trafficking happens in the United States to both U.S.

<sup>31</sup> The first year in which Madagascar was rated in the State Department's annual TIP Report was 2004. Since then, it has variously received designations as a Tier 1, Tier 2, and Tier 2 Watch List country.

<sup>32</sup> U.S. Department of State, *TIP Report*, June 2011.

<sup>33</sup> U.S. Department of State, *Trafficking in Persons Report*, June 2010, p. 338.

citizens and noncitizens, and occurs in every state.<sup>34</sup> As many as 17,500 people are trafficked to the United States each year, according to U.S. government estimates.<sup>35</sup> The trafficking of individuals within U.S. borders is commonly referred to as domestic or “internal” human trafficking. Domestic human trafficking occurs primarily for labor and most commonly in domestic servitude, agriculture, manufacturing, janitorial services, hotel services, construction, health and elder care, hair and nail salons, and strip club dancing. However, more investigations and prosecutions have taken place for sex trafficking offenses than for labor trafficking offenses.<sup>36</sup>

Noncitizens are more susceptible than U.S. citizens to labor trafficking,<sup>37</sup> and more foreign victims<sup>38</sup> are found in labor trafficking than in sex trafficking. Conversely, although labor trafficking can happen to U.S. citizens, more adult and child U.S. citizens are found in sex trafficking than in labor trafficking.<sup>39</sup> Research indicates that most of the victims of sex trafficking into and within the United States are women and children. In addition, migrant labor camps tend to be common settings for labor exploitation and domestic trafficking.<sup>40</sup>

Before 2000, U.S. laws were widely believed to be inadequate to deal with trafficking in women and children or to protect and assist victims. Anti-trafficking legislation and programs have been implemented with the hope of improving the situation.

## **Sex Trafficking of Children in the United States**

Domestic sex trafficking of children is sex trafficking within the United States involving a commercial sex act in which the person induced to perform such act has not attained 18 years of age.<sup>41</sup> Most of the victims are U.S. citizens and Legal Permanent Residents (LPRs).<sup>42</sup>

As discussed above the TVPA does not define sex trafficking or human trafficking per se. However, it does define “severe forms of human trafficking” as:

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<sup>34</sup> Human Smuggling and Trafficking Center, *Domestic Human Trafficking: An Internal Issue*, Washington, DC, December 2008, p. 2, <http://www.state.gov/documents/organization/113612.pdf>.

<sup>35</sup> For more on these estimates see the section of this report entitled, “Official Estimates of Human Trafficking into the United States.” Department of Justice, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security, and U.S. Agency of International Development, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons*, June 2004, p. 4.

<sup>36</sup> U.S. Department of State, *Trafficking in Persons Report*, June 2010, p. 338.

<sup>37</sup> Human Smuggling and Trafficking Center, *Domestic Human Trafficking: An Internal Issue*, Washington, DC, December 2008, pp. 3-6, <http://www.state.gov/documents/organization/113612.pdf>.

<sup>38</sup> Foreign victims do not include Legal Permanent Residents (LPRs). For the purposes of discussing trafficking victims in the United States, LPRs are grouped with U.S. citizens.

<sup>39</sup> U.S. Department of State, *Trafficking in Persons Report*, June 2010, p. 338.

<sup>40</sup> Internal human trafficking of migrant labor is primarily occurring in the Southeast and Central regions of the United States, although such conduct has been identified in other places. Human Smuggling and Trafficking Center, *Domestic Human Trafficking: An Internal Issue*, Washington, DC, December 2008, pp. 3-6, <http://www.state.gov/documents/organization/113612.pdf>.

<sup>41</sup> For more information on sex trafficking of children in the United States, see CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin M. Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin.

<sup>42</sup> Linda A. Smith, Samantha Headly Vardaman, and Melissa A. Snow, *The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children*, Shared Hope International, Arlington, VA, May 2009, [http://www.sharedhope.org/files/SHI\\_National\\_Report\\_on\\_DMST\\_2009.pdf](http://www.sharedhope.org/files/SHI_National_Report_on_DMST_2009.pdf).

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 ... 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.

In the case of minors, there is general agreement that the severe form of trafficking term applies whether the child's actions were forced or voluntary. Under the TVPA, the term "commercial sex act" means "any sex act, on account of which anything of value is given to or received by any person." There appears to be a consensus that prostitution by minors fits the definition of "severe forms of human trafficking" as defined under the TVPA.

## **Official Estimates of Human Trafficking in the United States**

Due to the nature of human trafficking, it is difficult to estimate the number of trafficking victims in the United States.<sup>43</sup> U.S. governmental estimates of trafficking victims focus on the number of foreign victims who are trafficked into the United States, while two other studies have focused on the number of minor victims of sex trafficking or foreign victims in specific geographic areas.

### **Estimates Into the United States**

For FY2005, the Department of Justice (DOJ) estimated that there were between 14,500 and 17,500 victims trafficked into the United States each year.<sup>44</sup> As of January 2011, this remains the most recent U.S. government estimate of trafficking victims.<sup>45</sup> This estimate of 14,500 to 17,500 victims first appeared in the 2004 report, *Assessment of U.S. Government Activities to Combat Trafficking in Persons*,<sup>46</sup> and subsequent reports have not included estimates of the number of trafficking victims.<sup>47</sup> The *Attorney General's Report on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006*<sup>48</sup> stated that this estimate may be "overstated," and

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<sup>43</sup> Despite mandates in the TVPA, uniform data collection for trafficking crimes or number of victims by federal, state, and local law enforcement agencies is not occurring. U.S. Department of State, *Trafficking in Persons Report*, June 2010, p. 340.

<sup>44</sup> Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2005*, June 2006. (Hereafter DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2005*.)

<sup>45</sup> The number of U.S. citizen trafficking victims in the United States is unknown. In addition, there does not seem to be a clear definition of what it means to be a U.S. citizen trafficked within the United States. For example, some would argue that all prostitutes who have pimps are victims of trafficking. In addition, Dr. Louise Shelly, the Director of the Terrorism, Transnational Crime, and Corruption Center at George Mason University, argues that the largest number of trafficking victims in the United States are U.S. citizen children, and estimates the number of these victims to be between 100,000 and 300,000. Conference, *The Profits of Pimping: Abolishing Sex Trafficking in the United States*, at the Hudson Institute, Washington D.C., July 10, 2008.

<sup>46</sup> Department of Justice, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security, and U.S. Agency of International Development, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons*, June 2004, p. 4.

<sup>47</sup> Notably, the Attorney General's Report for FY2008, released in June 2009, does not contain an estimate of the number of victims trafficked into the United States annually. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2008*, June 2009.

<sup>48</sup> DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2005*.



asserted that “[f]urther research is underway to determine a more accurate figure based on more advanced methodologies and more complete understanding of the nature of trafficking.”

Notably, previous reports by the Central Intelligence Agency’s Center for the Study of Intelligence and the Department of Justice produced higher estimates of the number of trafficking victims in the United States. In November 1999, a report issued by the Center for the Study of Intelligence estimated that 45,000 to 50,000 women and children are trafficked annually to the United States.<sup>49</sup> In addition, the August 2003 version of the report, *Assessment of U.S. Government Activities to Combat Trafficking in Persons*, estimated that between 18,000 and 20,000 people are trafficked into the United States annually. Some researchers contend that the government estimates of human trafficking do not provide a full description of the data and methodologies used to arrive at the estimates. As a result, they argue that the lack of methodological information makes it difficult, if not impossible, to recreate, assess the validity of, or improve upon the estimates.<sup>50</sup>

### **Estimates of Sex Trafficking of Children in the United States**

Comprehensive research on the number of children in the United States who are victims of sex trafficking does not exist, but there have been two recent studies that attempt to measure the problem in specific geographic areas.<sup>51</sup>

#### ***Shared Hope International***

In 2006, Shared Hope International began working with 10 of the Department of Justice-funded human trafficking task forces to assess the scope of sex trafficking of children in the United States.<sup>52</sup> The study uses the term “Domestic Minor Sex Trafficking” (DMST) and defines DMST as the commercial exploitation of U.S. citizens and LPR children with U.S. borders. As part of their study, the researchers noted that an accurate count of the number of victims was not available due to many factors, including a lack of tracking protocols and misidentification of the

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<sup>49</sup> Amy O’Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, Center for the Study of Intelligence, November 1999, p. iii.

<sup>50</sup> Free the Slaves and the Human Rights Center, *Hidden Slaves: Forced Labor in the United States*, September 2004, available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1007&context=forcedlabor>.

<sup>51</sup> P.L. 109-164 (§201) requires biennial reporting on human trafficking, using available data from state and local authorities. In response to this requirement, DOJ funded the creation of the Human Trafficking Reporting System (HTRS). The data in the HTRS come from investigations opened by approximately 40 federally funded human trafficking task forces, and do not represent all incidences of human trafficking nationwide. In January 2008, the task forces began entering data into HTRS. Between January 1, 2007 and September 30, 2008, the task forces reported 34 confirmed cases of sex trafficking of children in the United States and 341 cases where a determination was pending or that there was not enough information to confirm the trafficking. Tracey Kyckelhahn, Allen J. Beck, and Thomas Cohen, *Characteristics of Suspected Human Trafficking Incidents, 2007-08*, Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Special Report, Washington, DC, January 2009, pp. 1-2, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti08.pdf>.

<sup>52</sup> There are 42 task forces in total. The Department of Justice makes awards to law enforcement agencies to form victim centered human trafficking task forces. Department of Justice, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, June 2010, p. 95. Testimony of Mary Lou Leary, Principle Deputy Assistant Attorney General, Department of Justice, at U.S. Congress, Senate Committee on the Judiciary, *The Trafficking Victims Protection Reauthorization Act: Renewing the Commitment to Victims of Human Trafficking*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., September 14, 2011.

victims. **Table 8** presents the findings from the 10 study sites. Notably, the data collected are not uniform and represent different time periods.

**Table 8. Number of Suspected Domestic Minor Sex Trafficking Victims by Location**  
Shared Hope International Study

Research Site	State/Territory	Number of Suspected DMST Victims	Time Period
Dallas	Texas	150	2007
San Antonio/Bexar County	Texas	3-4	2005-2008
Fort Worth/Tarrant County	Texas	29	2000-2008
Las Vegas	Nevada	5,122	1994-2007
Independence/Kansas City Area	Missouri	227	2000-2008
Baton Rouge/New Orleans Area	Louisiana	105	2000-2007
Saipan/Rota/Tinian	Northern Mariana Islands	1	2008
Salt Lake City	Utah	83	1996-2008
Buffalo/Erie County	New York	74-84	2000-2008
Clearwater/Tampa Bay Area	Florida	36	2000-2008

**Source:** Linda A. Smith, Samantha Healy Vardaman, and Melissa A. Snow, “The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children,” Shared Hope International, May 2009, p. 11.

**Notes:** Due to a lack of formal tracking protocols, some victims may be duplicated within a city and some may not have been included in the counts. These numbers were obtained through an interview process in addition to official government records.

### *Ohio Trafficking in Persons Study Commission*

Former Ohio Attorney General Richard Cordray tasked the Ohio Trafficking in Persons Study Commission to explore the scope of human trafficking within Ohio. Using methodologies developed in other studies, the commission estimated that of the American-born youth in Ohio, 2,879 are at risk for sex trafficking, and another 1,078 have been victims of sex trafficking over the course of a year.<sup>53</sup> The researchers also estimated that 3,437 foreign-born persons (adults and juveniles) in Ohio may be at risk for sex or labor trafficking, of which 783 are estimated to be trafficking victims.<sup>54</sup> Importantly, the report states, “due to the very nature of human trafficking, it is virtually impossible to determine the exact number of victims in Ohio at any given time and with any degree of certainty.”<sup>55</sup>

<sup>53</sup> Celia Williamson, Sharvari Karandikar-Chheda, and Jeff Barrows, et al., *Report on the Prevalence of Human Trafficking in Ohio To Attorney General Richard Cordray*, Ohio Trafficking in Persons Study Commission, Research and Analysis Sub-Committee, Toledo, OH, February 10, 2010, <http://www.ohioattorneygeneral.gov/TraffickingReport>.

<sup>54</sup> The researchers identified four factors that may increase the risk of becoming a minor victim of sex trafficking: (1) Ohio’s weak response to minor trafficking victims; (2) evidence that first responders to sex trafficking incidents involving minors in Ohio are unaware and unprepared; (3) customers who purchase youth receive minimal charges and are rarely prosecuted, while traffickers suffer minimal consequences; and (4) the high rates of vulnerable youth in Ohio. *Ibid.*, p. 5.

<sup>55</sup> *Ibid.*, p. 7.

## Response to Trafficking within the United States

The response to human trafficking within the United States has focused on (1) assistance to victims of trafficking and (2) law enforcement efforts to arrest and prosecute traffickers, and identify victims.

### Immigration Relief for Trafficking Victims

Some of the trafficking victims in the United States are aliens (noncitizens) who are illegally present (i.e., unauthorized/illegal aliens). Some of these aliens entered legally, but overstayed their length of legal admittance. Other aliens were smuggled into or illegally entered the United States, and then became trafficking victims. In addition, some aliens have had their immigration documents confiscated by the traffickers as a form of control. The lack of immigration status may prevent victims from seeking help, and may interfere with the ability of the victim to provide testimony during a criminal trial. As such, under law, there are certain protections from removal (deportation) available to noncitizen victims of trafficking.

### T Nonimmigrant Status

The Victims of Trafficking and Violence Protection Act of 2000 (TVPA) created a new nonimmigrant category, known as T status or T-visa, for aliens who are victims of severe forms of TIP.<sup>56</sup> Aliens who received T status are eligible to remain in the United States for four years and may apply for lawful permanent residence status (LPR) after being continually present in the United States for three years.

To qualify for the “T” category, in addition to being a victim of a severe form of TIP,<sup>57</sup> the alien must

- be physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or a U.S. port of entry because of such trafficking including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;<sup>58</sup>

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<sup>56</sup> Section 107 of Division A of P.L. 106-386. “T” refers to the letter denoting the subsection of the Immigration and Nationality Act (INA) that provides the authority for the alien’s admission into the United States (i.e., INA §101(a)(15)(T)). Although T nonimmigrant status is often referred to as the T-visa, it is not technically a visa if it is given to aliens present in the United States because status is conferred by the Department of Homeland Security (DHS) who does not have the authority to issue visas. Only the Department of State (DOS) through consular offices may issue visas. Thus, only aliens present outside of the United States can receive T visas while aliens present in the United States receive T status. For more information on nonimmigrant visa issuance see CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions*, by Ruth Ellen Wasem.

<sup>57</sup> As discussed previously, TVPA defines a “severe form of trafficking in persons” as either: (1) 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 (2) 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. It is the applicant’s responsibility to demonstrate both elements of a severe form of trafficking in persons.

<sup>58</sup> Prior to P.L. 110-457, this was interpreted in the regulations to apply to those aliens who (1) are present because they (continued...)

- have complied with any reasonable request for assistance to law enforcement<sup>59</sup> in the investigation or prosecution of acts of trafficking unless unable to do so due to physical or psychological trauma,<sup>60</sup> or be under the age of 18;<sup>61</sup> and
- be likely to suffer extreme hardship involving unusual and severe harm upon removal.

To receive T status, the alien must also be admissible to the United States or obtain a waiver of inadmissibility. A waiver of inadmissibility is available for health related grounds, public charge grounds, or criminal grounds if the activities rendering the alien inadmissible were caused by or were incident to the alien's victimization.<sup>62</sup> Waivers are not automatically granted, and there is no appeal if the inadmissibility waiver is denied. This waiver is especially important for those involved in sexual trafficking since prostitution is one of the grounds of inadmissibility specified in the Immigration and Nationality Act (INA).<sup>63</sup> Additionally, aliens who are present without being admitted or paroled<sup>64</sup> into the United States are inadmissible and would need to obtain a waiver to be eligible for T status. For example, an alien who paid a smuggler to enter the country illegally and then was held in servitude would need to get an inadmissibility waiver to be eligible for T status.

T status is limited to 5,000 principal aliens each fiscal year. Additionally, the spouse, children, or parents of an alien under age 21, in order to avoid extreme hardship, may be given derivative T status which is not counted against the numerical limit.<sup>65</sup> Individuals who are eligible for T status may be granted work authorization.<sup>66</sup> T status is valid for four years, and may be extended if a federal, state, or local law enforcement official, prosecutor, judge, or other authority investigating

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(...continued)

are being held in some sort of severe form of trafficking situation; (2) were recently liberated from a severe form of trafficking; or (3) were subject to a severe form of trafficking in the past and remain present in the United States for reasons directly related to the original trafficking. P.L. 110-457 expanded the definition of physical presence to include trafficking victims admitted to the United States for trafficking investigations and legal proceedings.

<sup>59</sup> Applicants for T status may submit a Law Enforcement Agency (LEA) Enforcement to prove that they are complying with the investigation. The regulations require that the LEA enforcement come from a federal law enforcement agency since severe forms of trafficking in person are federal crimes under TVPA; however, the TVPRA of 2003 amended the law to allow state and local law enforcement to certify that the trafficking victim is aiding law enforcement.

<sup>60</sup> Although to be eligible for T status, most aliens must comply with reasonable requests for assistance from law enforcement, it is not necessary for the alien to be sponsored for status from a law enforcement agency as is required by those applying for S nonimmigrant status for alien witnesses and informants.

<sup>61</sup> Children under the age of 18 at the time that the application for T status is filed, are exempt from the requirement to comply with law enforcement requests for assistance. In the original law (TVPA of 2000) the age of mandatory compliance was under 15 years, but the TVPRA of 2003 increased the age of mandatory compliance to 18 years.

<sup>62</sup> INA §212(d)(13).

<sup>63</sup> INA §212(a)(2)(D).

<sup>64</sup> "Parole" is a term in immigration law which means that the alien has been granted temporary permission to be in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

<sup>65</sup> In some cases, immediate family members of trafficking victims may receive a T visa to join the victim in the United States. This may be necessary if the traffickers are threatening the victim's family.

<sup>66</sup> From the perspective of trafficking victims' advocates, work authorization is viewed as an important tool in helping the victims become self sufficient and retake control of their lives.

or prosecuting activity relating to human trafficking certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of TIP.<sup>67</sup>

Under law, aliens who have bona fide T applications<sup>68</sup> are eligible to receive certain public benefits to the same extent as refugees.<sup>69</sup> Aliens who receive derivative T status (i.e., the family members of trafficking victims) are also eligible for benefits. In addition, regulations require that federal officials provide trafficking victims with specific information regarding their rights and services such as

- immigration benefits;
- federal and state benefits and services (e.g., certification by the Department of Health and Human Services [HHS] and assistance through HHS's Office of Refugee Resettlement [ORR]);
- medical services;
- pro-bono and low cost legal services;
- victim service organizations;
- victims compensation (trafficked aliens are often eligible for compensation from state and federal crime victims programs);<sup>70</sup>
- the right to restitution; and
- the rights of privacy and confidentiality.<sup>71</sup>

### *T Visas Issued*

As **Table 9.** shows, between FY2002 and FY2011, there were 4,317 applications for T-1 status (i.e., trafficking victims), and 2,595 of these applications were approved. During the same period, there were 3,406 applications for derivative T status (i.e., family members of trafficking victims), and 2,544 applications were approved. Of the adjudicated applications for T-1 status, 68% were approved. In addition, of the adjudicated applications for derivative T status, 82% were approved.

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<sup>67</sup> The four year period of validity for T-visas was codified by The Violence Against Women and Department of Justice Reauthorization Act of 2006 (P.L. 109-162, §821). Prior to P.L. 109-162, the validity period was three years and was specified, not by statute, but by regulation (8 *C.F.R.* 214.11).

<sup>68</sup> Bona fide application means an application for T status which after initial review has been determined that the application is complete, there is no evidence of fraud, and presents prima facie evidence of eligibility for T status including admissibility.

<sup>69</sup> Refugees are generally eligible for federal, state and local public benefits. In addition, refugees are eligible for Food Stamps and Supplemental Security Income (SSI) for seven years after entry, and for Medicaid and Temporary Assistance for Needy Families for seven years after entrance and then at state option. CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

<sup>70</sup> Victims may also be repatriated to their home country if they desire with assistance from the Department of State, government of their country of origin, or nongovernmental organizations. The United States Conference of Catholic Bishops *et al.*, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*, prepared with a grant from the Department of Health and Human Services, Office of Refugee Resettlement, November 2004, p. Appendix 1-3. (Hereafter cited as Catholic Bishops, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*.)

<sup>71</sup> 28 C.F.R. §1100.3-§1100.33.

**Table 9. T-visas Issued: FY2002 through FY2011**

	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	Total
<b>Principal Aliens (Victims)</b>											
Applied	163	587	352	229	346	230	394	475	574	967	4,317
Approved	17	285	156	112	182	279	247	313	447	557	2,595
Denied	12	72	303	213	46	70	64	77	138	223	1,218
<b>Derivative Aliens (Family)</b>											
Applied	234	456	359	124	301	149	290	235	463	795	3,406
Approved	9	268	271	114	106	261	171	273	349	722	2,544
Denied	4	56	58	18	39	52	19	54	105	137	542

**Source:** Department of Homeland Security data provided to CRS.

**Notes:** Some approvals are from prior fiscal year(s) filings. Also, some applicants were denied more than once (e.g., filed once, denied, and filed again). For FY2004 and FY2005, 170 of the denials stemmed from one case where the applicants did not qualify as victims of trafficking under TVPA.

Since FY2007, the number of applications for T-1 status has increased, and in FY2011 there was a historically high number of applicants (967). In the past three years, there has been an increase in the number of aliens granted T-status (i.e., approved applications) but the increase is a function of the increase in applicants, not in the approval rate.<sup>72</sup>

### *Adjustment to Lawful Permanent Residence*

T status, which is originally valid for four years, is not renewable after the alien’s presence in the United States is not necessary to assist in the investigation or prosecution of TIP. Nonetheless, after three years, aliens with T status may petition for legal permanent residence (LPR) status (i.e., green card or immigrant status). To adjust to LPR status an alien must

- be admissible (i.e., that the alien is not ineligible for a visa or status adjustment under the so-called “grounds for inadmissibility” of the INA, which include having a criminal history, being a terrorist, and being a security risk to the United States);
- have been physically present in the United States for either (1) a continuous period of at least three years since the date of admission under T status, or (2) a continuous period during the investigation or prosecution of the acts of trafficking, provided that the Attorney General has certified that the investigation or prosecution is complete;
- since being granted T status, has been a person of good moral character; and

<sup>72</sup> Between FY2006 and FY2009 the approval rate for T-1 status was approximately 80% and then declined slightly in FY2010 (76%) and FY2011 (71%). CRS analysis of unpublished data from DHS.

- establish that (1) they have complied with reasonable requests of assistance in the investigation or prosecution of acts of trafficking, or (2) that they would suffer extreme hardship upon removal from the United States.<sup>73</sup>

The regulations concerning adjustment to LPR status from T status were released on December 12, 2008, and became effective on January 12, 2009.<sup>74</sup> Under statute, 5,000 aliens in T-1 status can adjust to LPR status in a fiscal year. The cap does not apply to family members (e.g., T-2 visa holders).

## **Continued Presence**

Federal law enforcement officials who encounter victims of severe forms of TIP and are potential witnesses to that trafficking may request that DHS grant the continued presence of the alien in the United States. Historically, the Attorney General has had the discretionary authority to use a variety of statutory and administrative mechanisms to ensure the alien's continued presence.<sup>75</sup> Most of the statutory and administrative mechanisms for continued presence required that the alien depart from the United States once her presence for the criminal investigation or prosecution is no longer required. In most cases, victims granted continued presence are eligible for work authorization.<sup>76</sup> Requests for continued presence are handled by the Law Enforcement Parole Branch of DHS's Immigration and Customs Enforcement (ICE).

In some cases, law enforcement prefer giving the alien continued presence rather than T status to prevent the appearance during the prosecution of the traffickers that the alien's testimony was "bought." In FY2010, continued presence was granted to 186 potential trafficking victims, a decrease from 299 in FY2009.<sup>77</sup>

## **U Nonimmigrant Status**

Some victims of trafficking are eligible for U nonimmigrant status. The Violence Against Women Act of 2000, Division B of TVPA, created the U nonimmigrant status, often called the U-visa, for victims of physical or mental abuse.<sup>78</sup> To qualify for U status, the alien must file a petition and establish that

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<sup>73</sup> INA §245(l)

<sup>74</sup> Department of Homeland Security, "Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status," *73 Federal Register* 75540-75564, December 12, 2008.

<sup>75</sup> 28 *C.F.R.* Part 1000.35. The mechanisms for continued presence may include parole, voluntary departure, stay of final removal orders, or any other authorized form of continued presence in the United States, including adjustment to an applicable nonimmigrant status. Some of these authorities were transferred to the Secretary of DHS in the Homeland Security Act of 2002 (P.L. 107-296). Others remain with or are shared by the Attorney General.

<sup>76</sup> Viet D. Dinh, Department of Justice. Testimony before the Senate Subcommittee on Near Eastern and South Asian Affairs concerning Monitoring and Combating Trafficking in Persons: How Are We Doing?, March 7, 2002.

<sup>77</sup> In FY2009, there were 301 requests for continued presence relating to human trafficking cases; 299 were approved while 2 were withdrawn by the law enforcement agency due to insufficient evidence. In addition, there were 148 requests for extensions of existing continued presence grants, all of which were approved. In FY2009, aliens from 35 countries were granted continued presence due to human trafficking. Most victims were from Thailand, the Philippines, Haiti, and Mexico. In addition, Honolulu, Chicago, Miami and Tampa were the cites with the most requests for continued presence. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, July 2010: pp. 35-36.

<sup>78</sup> INA 101(a)(15)(U).

- he/she suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activities;<sup>79</sup>
- as certified by a law enforcement or immigration official, he/she (or if the alien is a child under age 16, the child’s parent, guardian or friend) possesses information about the criminal activity involved;
- he/she has been, is being or is likely to be helpful in the investigation and prosecution of the criminal activity by federal, state or local law enforcement authorities; and
- the criminal activity violated the laws of the United States or occurred in the United States.

The U category is limited to 10,000 principal aliens per fiscal year.<sup>80</sup> After three years, those in U status may apply for LPR status.<sup>81</sup> The number of aliens granted U status because of trafficking is unknown. Unlike aliens with T status, those with U status are not eligible for assistance through the Office of Refugee Resettlement or for federal public benefits. Those who receive U status may be eligible for programs to assist crime victims though the Department of Justice’s Office for Victims of Crime.

**Table 10. U Visas Issued 2009-2011**

Fiscal Year	Principal Aliens (Victims)			Derivative Aliens (Family)		
	Applied	Approved	Denied	Applied	Approved	Denied
2009	6,835	5,825	688	4,102	2,838	158
2010	10,742	10,073	4,347	6,418	9,315	2,576
2011	16,768	10,088	2,929	10,033	7,602	1,645
<b>Total</b>	<b>34,345</b>	<b>25,986</b>	<b>7,964</b>	<b>20,553</b>	<b>19,755</b>	<b>4,379</b>

**Source:** CRS presentation of unpublished data from the Department of Homeland Security (DHS).

From October 2008 through September 2011, there were 34,345 applications for U-1 status, and 25,986 were approved.<sup>82</sup> During the same time period, there were 20,553 applications for derivative U status, and 19,755 were approved. Of the adjudicated applications for U-1 status,

<sup>79</sup> Certain criminal activity refers to one or more of the following or any similar activity in violation of federal or state criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter, murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

<sup>80</sup> INA §214(o)(2). Although the interim final regulations on U status were released in September 2007, prior to that aliens who met the criteria for U status were given immigration benefits similar to U status. In 2005, for example, 287 aliens were given “quasi-U” status. Unpublished data from DHS.

<sup>81</sup> Department of Homeland Security, “Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,” 73 *Federal Register* 75540-75564, December 12, 2008.

<sup>82</sup> On July 15, 2010, the 10,000 application for U-1 status of approved for FY2010. Department of Homeland Security, U.S. Citizenship and Immigration Services, “USCIS Reaches Milestone: 10,000 U Visas Approved in Fiscal Year 2010: U Visa Protects Victims of Crime and Strengthens Law Enforcement Efforts,” press release, July 15, 2010.



approximately 76% were approved, while almost 82% of the derivative U adjudicated applications were approved.

### ***The 10,000 Cap for U Status***

As discussed above, the U category is statutorily limited to 10,000 principal aliens per fiscal year.<sup>83</sup> The statutory cap of 10,000 was reached in both FY2010 and FY2011. Although the statutory cap was been reached, USCIS continued to accept and process new petitions for U status and issued a Notice of Conditional Approval to petitioners who were found eligible for but were unable to receive U status because the cap has been reached.<sup>84</sup>

### **Aid Available to Victims of Trafficking in the United States**

Under the TVPA, the Departments of Justice (DOJ), Health and Human Services (HHS), and Labor (DOL) have programs or administer grants to other entities to provide services to trafficking victims. In From July 1, 2009, to June 30, 2010, at least 1,472 potential victims (foreign nationals and U.S. citizens) received services from non-governmental organizations (NGOs) supported by HHS and DOJ.<sup>85</sup> In addition, the Legal Services Corporation<sup>86</sup> has instructed its lawyers to provide legal assistance to trafficking victims.<sup>87</sup>

There is confusion over whether U.S. citizens, as well as noncitizens, are eligible for services under all the anti-trafficking grant programs in TVPA, and whether Congress has provided funding for programs that target U.S. citizen and LPR victims.<sup>88</sup> Notably, the *FY2009 Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons* states, "the funds provided under the TVPA by the federal government for direct services to victims are dedicated to assist non-U.S. citizen victims and may not currently be used to assist U.S. citizen victims."<sup>89</sup> Nonetheless, each year since FY2008, Congress has appropriated approximately \$10 million<sup>90</sup> to HHS to "carry out the Trafficking Victims Protection Act of

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<sup>83</sup> P.L. 106-386, §1513(c). 8 U.S.C. 1184(o)(2).

<sup>84</sup> U.S. Citizenship and Immigration Services, "Questions and Answers, USCIS Reaches Milestone: 10,000 U Visas Approved in Fiscal Year 2010," press release, July 15, 2010; and U.S. Citizenship and Immigration Services, "Relief Provided to Thousands of Victims of Crimes, USCIS Achieves Significant Milestone—Approves 10,000 U-Visa Petitions for Second Straight Year," press release. September 19, 2011.

<sup>85</sup> The number of victims was more than double the number served during the previous year. U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 375.

<sup>86</sup> The Legal Services Corporation (LSC), established by Congress, is a private, nonprofit, federally funded corporation that helps provide legal assistance to low-income people in civil (i.e., non-criminal) matters.

<sup>87</sup> In FY2009, seven LSC grantees assisted 92 trafficking victims. DOJ, *Assessment of U.S. Activities to Combat Trafficking in Persons: FY2009*, p.34.

<sup>88</sup> Under the TVPA, "noncitizen victims" refer to victims of human trafficking in the United States who are either on temporary visas or are illegally present (i.e., unauthorized aliens). It does not include LPRs, i.e., aliens who are in the United States permanently, often referred to as immigrants. References to U.S. citizen trafficking victims include LPR victims.

<sup>89</sup> Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, July 2010: p. 75. (Hereafter DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*.)

<sup>90</sup> FY2010 appropriations were \$12.5 million.

2000.”<sup>91</sup> Thus, it appears likely that the funding would be available for benefits and programs specifically for U.S. citizens that were authorized under the reauthorization acts.

Regardless of funding, there seems to be disagreement over whether U.S. citizen and noncitizen victims of trafficking are eligible for each of the programs discussed below. Certification by HHS appears to be a necessary condition of receiving trafficking victims’ services from HHS, DOL, and the Legal Services Corporation, under the programs created in the Victims of Trafficking and Violence Protection Act (P.L. 106-386, §107(b)(1), 22 U.S.C. §7105(b)(1)), as enacted in 2000.<sup>92</sup> Certification is a process that enables noncitizen trafficking victims to be classified as such, and therefore eligible for services. U.S. citizen and LPR trafficking victims are not required to be certified by HHS, and indeed would not meet the criteria to be certified because certification applies only to foreign nationals who need an immigration status (e.g., T status or continued presence) to remain in the United States. Nonetheless, a 2007 report by the Senior Policy Operating Group on Trafficking in Persons (SPOG) states that “there are not many differences in trafficking victims’ eligibility for the services we reviewed when one looks at the relevant statutes.” However, the report does note that U.S. citizen victims may have less intensive case management services compared to noncitizens.<sup>93</sup> In addition, only noncitizen trafficking victims are eligible for refugee-specific programs.<sup>94</sup>

## **Health and Human Services Grants**

The TVPA required HHS to expand benefits and services to victims of severe forms of trafficking in the United States, without regard to the immigration status of such victims.<sup>95</sup> Under the law, to receive these benefits and services, victims of severe forms of trafficking who are at least 18 years of age must be certified by the Secretary of Health and Human Services, after consultation with the Secretary of Homeland Security,<sup>96</sup> as willing to assist in every reasonable way in the

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<sup>91</sup> (P.L. 111-117, P.L. 111-8, P.L. 110-161). For FY2005 through FY2007, money was appropriated to “carry out the Trafficking Victims Protection Act of 2003 (P.L. 108-193)” (P.L. 110-5, P.L. 109-149, P.L. 108-447).

<sup>92</sup> “[in] the case of nonentitlement programs, subject to the availability of appropriations, the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other Federal agencies shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, . . . without regard to the immigration status of such victims. . . . For the purposes of this paragraph, the term “victim of a severe form of trafficking in persons” means only a person—(i) who has been subjected to an act or practice described in section 103(8) as in effect on the date of the enactment of this Act; and (ii)(I) who has not attained 18 years of age; or (II) who is the subject of a certification. . . . [C]ertification. . . is a certification by the Secretary of Health and Human Services. . . that the person. . . (I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons or is unable to cooperate with such a request due to physical or psychological trauma; and (II)(aa) has made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act. . . that has not been denied; or (bb) is a person whose continued presence in the United States the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons.”

<sup>93</sup> Senior Policy Operating Group on Trafficking in Persons: Subcommittee on Domestic Trafficking, *Final Report and Recommendations*, Washington, DC, August 2007, <http://www.acf.hhs.gov/trafficking/SPOGReport-Final9-5-07.pdf>.

<sup>94</sup> Personal conversation with the Department of Health and Human Services, Administration for Children and Families, Congressional Affairs, April 2, 2007.

<sup>95</sup> TVPA §107(b)(1)(B); 22 U.S.C. §7105(b)(1)(B). The act also created a grant program in DOJ for state, local, tribal governments, and nonprofit victims’ service organizations to develop, strengthen, or expand service programs for trafficking victims. (22 U.S.C. §7105(b)(2)).

<sup>96</sup> The Homeland Security Act of 2002 (HSA; P.L. 107-296) abolished the Immigration and Naturalization Service (INS) and transferred most of its functions to various bureaus in the new Department of Homeland Security (DHS) effective March 1, 2003. In addition, due to HSA, much of the Attorney General’s authority in immigration law is (continued. . .)

investigation and prosecution of severe forms of trafficking, having made a bona fide application for a T-visa that has not been denied, and being granted continued presence in the United States by the Secretary of Homeland Security to effectuate the prosecution of traffickers in persons.<sup>97</sup> Under the law, trafficking victims under the age of 18 do not have to be certified to receive benefits and services, but it is HHS policy to issue eligibility letters to such victims.<sup>98</sup> Although the law does not differentiate between U.S. citizen and noncitizen trafficking victims, according to HHS, U.S. citizen trafficking victims also do not have to be certified to receive services.<sup>99</sup> HHS's Office of Refugee Resettlement (ORR) provides certification and eligibility letters for victims.

From FY2001 through FY2009, HHS certified 2,076 people; 212 (9.6%) of the victims were minors.<sup>100</sup> In addition, in FY2010, 449 adult victims received certifications, and 92 children received eligibility letters. The certified victims represented 47 different countries; however, the countries with the largest percentage of certified victims were Thailand, India, Mexico, Honduras, Philippines, Haiti, El Salvador, and the Dominican Republic.<sup>101</sup>

ORR funds and facilitates a variety of programs to help refugees "economic and social self-sufficiency in their new homes in the United States," and noncitizen victims of severe forms of trafficking are eligible for these programs.<sup>102</sup> ORR-funded activities include cash and medical assistance, social services to help refugees become socially and economically self-sufficient, and targeted assistance for impacted areas. Special refugee cash assistance (RCA) and refugee medical assistance (RMA) are the heart of the refugee program. RCA and RMA, which are administered by the states, are intended to help needy refugees who are ineligible to receive benefits from mainstream federal assistance programs. In addition, minor noncitizen victims can participate in DHS's Unaccompanied Refugee Minor Program.<sup>103</sup> TVPA and the subsequent reauthorization acts, authorize funds for ORR to provide similar assistance to trafficking victims.

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currently vested in or shared with the Secretary of Homeland Security. For more information on the role of the Attorney General and Secretary of Homeland Security over immigration law, see CRS Report RL31997, *Authority to Enforce the Immigration and Nationality Act (INA) in the Wake of the Homeland Security Act: Legal Issues*.

<sup>97</sup> If the alien pursues long-term immigration relief other than T status, services under the HHS programs are discontinued. TVPA §107(b)(1)(E); 22 U.S.C. §7105(b)(1)(E). U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 375.

<sup>98</sup> HHS has the exclusive authority to determine if a child is eligible on an interim basis (up to 120 days) for assistance. During the interim period, the Secretary of HHS consults with the AG, Secretary of HHS and NGOs to determine the child's eligibility for long-term assistance. DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, pp 18-19.

<sup>99</sup> Personal conversation with the Department of Health and Human Services, Administration for Children and Families, Congressional Affairs, April 2, 2007.

<sup>100</sup> Certification letters are for adult victims, while minor victims receive eligibility letters since, under law, they do not have to be certified as trafficking victims for services.

<sup>101</sup> Fifty-five percent of adult victims certified in FY2010 were victims of labor trafficking. U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 375.

<sup>102</sup> P.L. 106-386, §107(b)(1)(A). The eligibility of noncitizens for public assistance programs is based on a complex set of rules that are determined largely by the type of noncitizen in question and the nature of services being offered. For example, refugees are eligible for Medicaid for five years after entry/grant of status, then made ineligible (unless they became citizens or qualified under another status). For a discussion of the eligibility of trafficking victims for state and federal means tested benefits see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

<sup>103</sup> P.L. 110-457, §235(b)(2).

While both U.S. citizen and noncitizen trafficking victims are eligible for the general federal public benefits, only noncitizen trafficking victims are eligible for the benefits specifically designed for refugees.<sup>104</sup>

ORR also provides grants to organizations that render assistance specific to the needs of victims of trafficking, such as temporary housing, independent living skills, cultural orientation, transportation needs, access to appropriate educational programs, and legal assistance and referrals. It is unclear whether these services are available to U.S. citizen trafficking victims. ORR may also supply trafficking victims with intensive case management programs to help the victim find housing and employment, and provide mental health counseling and specialized foster care programs for children. ORR performs outreach to inform victims of services and educate the public about trafficking.<sup>105</sup>

In addition, HHS conducts outreach to inform victims of services and to educate the public about trafficking. HHS has established the Rescue and Restore Victims of Human Trafficking public awareness campaign, which promotes public awareness about trafficking and the protections available for trafficking victims. The goal of the campaign is to help communities identify and serve victims of trafficking, supporting them in coming forward to receive services and aid law enforcement. In addition to promoting public awareness about trafficking, HHS through the Rescue and Restore campaign has established anti-trafficking coalitions in 25 areas.<sup>106</sup> Another component of the campaign is the creation of a toll-free National Human Trafficking Resource Center available for advice 24 hours a day.<sup>107</sup> (For a discussion of authorizations and appropriations for the HHS grant program, see **Appendix B** and **Appendix C**.)

## **Department of Justice, Office for Victims of Crime**

The TVPA created a grant program administered by the Attorney General to provide grants to states, Indian tribes, local governments, and nonprofit victims services organizations to develop, expand, or strengthen victims service programs for trafficking victims.<sup>108</sup> This grant program is administered through DOJ's Office for Victims of Crime (OVC) and provides emergency services, including temporary housing, medical care, crisis counseling and legal assistance, to victims as soon as they have been encountered, until certification by HHS (discussed above). The program also provides grants to build community capacity in addressing the needs of trafficking victims by enhancing interagency collaboration and supporting coordinated victim responses.<sup>109</sup> According

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<sup>104</sup> For additional information on programs for refugees see CRS Report R41570, *U.S. Refugee Resettlement Assistance*, by Andorra Bruno.

<sup>105</sup> Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2007*, May 2008: p. 10.

<sup>106</sup> These areas are: Houston, Texas; Las Vegas, Nevada; New York, New York; Milwaukee, Wisconsin; Newark, New Jersey; Philadelphia, Pennsylvania; Phoenix, Arizona; Portland, Oregon; St. Louis, Missouri; San Francisco, California; Sacramento, California; Louisville, Kentucky; Nashville, Tennessee; Columbus, Ohio; Cincinnati, Ohio; San Diego, Los Angeles, and Orange Counties in California; and statewide in Colorado, Idaho, Florida, Georgia, Illinois, Minnesota, and North Carolina. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2008*, June 2009: p. 14.

<sup>107</sup> Department of Health and Human Services, "About Human Trafficking," available at <http://www.acf.hhs.gov/trafficking/about/index.html#wwd>.

<sup>108</sup> P.L. 106-386, §107(b)(2).

<sup>109</sup> From the inception of the program in January 2003 through June 30, 2009, OVC provided services to 2,699 pre-certified potential victims of trafficking. In all but one reporting period during that time (January to June 2006) grantees (continued...)

to DOJ, OVC awards grants to non-governmental organizations to provide trafficking victims with comprehensive or specialized services, and training and technical assistance to grantees for program support and enhancement.<sup>110</sup> (For a discussion of authorizations and appropriations for this program, see **Appendix B** and **Appendix C**.)

## **Department of Labor**

DOL's Employment and Training Administration (ETA) One-Stop Career Centers<sup>111</sup> provide job search assistance, career counseling, and occupational skills training to trafficking victims.<sup>112</sup> These services are provided directly by state and local grantees to trafficking victims. The ETA does not collect information on the extent to which such services are used by trafficking victims.<sup>113</sup>

In addition, victims between the ages of 16 and 24—both U.S. citizen victims and noncitizen victims who have work authorization—may be eligible to participate in Job Corps.<sup>114</sup> Job Corps does not collect information on the extent to which these services are offered to or utilized by trafficking victims.<sup>115</sup> (For program authorizations, see **Appendix B**.)

## **Domestic Investigations of Trafficking Offenses**

Human trafficking investigations are often complicated by language and humanitarian issues (e.g., the victim has been traumatized and is unable to aid in the investigation), as well as logistical challenges and difficulties (e.g., transporting, housing, and processing the victims, especially alien victims). In addition, certain types of investigative techniques, such as controlled

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served more labor trafficking victims than sex trafficking victims. Notably, in some cases, services may be stopped if the victim refuses to work with law enforcement. U.S. Department of State, *Trafficking in Persons Report*, June 2010, p. 341, and Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, July 2010: pp. 26-30. (Hereafter DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*.)

<sup>110</sup> DOJ, *Assessment of U.S. Activities to Combat Trafficking in Persons: FY2008*, p.6.

<sup>111</sup> For more information on One-Stop Career Centers, see CRS Report RL34251, *Federal Programs Available to Unemployed Workers*, coordinated by Katelin P. Isaacs.

<sup>112</sup> These services are provided in accordance with the Training and Employment Guidance Letter No. 19-01, change 1, which was reissued by DOL's Employment and Training Administration (ETA) in 2008. In addition to informing the state and local workforce systems about federal resources for victims of trafficking, the guidance letter notes that services may not be denied to victims of severe forms of trafficking because of their immigration status. DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, p. 32.

<sup>113</sup> DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, pp. 32-33.

<sup>114</sup> The Job Corps program is carried out by the Office of Job Corps within the Office of the DOL Secretary, and consists of residential centers throughout the country. The purpose of the program is to provide disadvantaged youth with the skills needed to obtain and hold a job, enter the Armed Forces, or enroll in advanced training or higher education. In addition to receiving academic and employment training, youth also engage in social and other services to promote their overall well-being. For more information on Job Corps, see CRS Report R40929, *Vulnerable Youth: Employment and Job Training Programs*, by Adrienne L. Fernandes-Alcantara.

<sup>115</sup> Catholic Bishops, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*, p. Appendix 1-6. DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, p. 33.

delivery operations,<sup>116</sup> cannot be used. Moreover, unlike drug trafficking cases where the contraband itself is proof of the illegal activity, the successful prosecution of trafficking cases relies on the availability of witnesses who may refuse to testify because of fear of retribution against themselves or their families.<sup>117</sup>

Within the United States, the Departments of Justice (DOJ), Homeland Security (DHS), and Labor (DOL) have primary responsibility for investigating and prosecuting traffickers.<sup>118</sup> The majority of the cases are investigated by agents in DOJ's Federal Bureau of Investigation (FBI) and DHS's U.S. Immigration and Customs Enforcement (ICE), who coordinate as appropriate,<sup>119</sup> and are prosecuted by DOJ.<sup>120</sup> Agents in the FBI's Civil Rights Unit (CRU) investigate trafficking in the United States. In addition, under the FBI's Human Trafficking Initiative, FBI field offices use threat assessment to determine the existence and scope of trafficking in their region, participate in the anti-trafficking task force, conduct investigations, and report significant case developments to the CRU. In FY2010, federal law enforcement charged 181 individuals, and obtained 141 convictions in 103 human trafficking prosecutions.<sup>121</sup>

In addition, DOJ funds 39 anti-trafficking task forces nationwide. These task forces are composed of federal, state, and local law enforcement investigators and prosecutors, labor enforcement and NGO victims service providers. These task forces coordinate cases as well as conduct law enforcement training on the identification, investigation, and prosecution of human trafficking cases. Reportedly, research has shown that locales with task forces are more likely to identify and prosecute trafficking cases.<sup>122</sup> These taskforces reported 750 trafficking investigations during FY2010.<sup>123</sup>

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<sup>116</sup> Controlled delivery is an investigative technique in which law enforcement knowingly allows a shipment to travel to its destination so that law enforcement can learn more about a criminal enterprise and the people involved.

<sup>117</sup> U.S. Government Accountability Office, *Combating Alien Smuggling, Opportunities Exist to Improve the Federal Response*, GAO-05-305, May 2005, p. 10. (Hereafter cited as GAO, *Combating Alien Smuggling, Opportunities Exist to Improve the Federal Response*.)

<sup>118</sup> This section is based on the information in Department of Justice, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security, and U.S. Agency of International Development, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons*, September 2007.

<sup>119</sup> The division of responsibilities between these two agencies is not clearly delineated which may lead to a lack of coordination between the agencies as well as possibly some duplicative efforts. In addition, according to an ICE Office of Investigations (OI) official, the Border Patrol only has a minor role in alien smuggling and trafficking investigations and is required to coordinate with OI before initiating anti-smuggling investigations. GAO, *Immigration Enforcement: DHS Has Incorporated Immigration Enforcement Objectives and Is Addressing Future Planning Requirements (2004)*, p. 9.

<sup>120</sup> Both agencies also provide training to federal and state law enforcement on trafficking victim identification. U.S. Department of State, *Trafficking in Persons Report*, June 2010, p. 339, and U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 374.

<sup>121</sup> Of the cases, 32 were for labor trafficking and 71 were for sex trafficking. Note that these numbers do not reflect cases involving the commercial sexual exploitation of children that were brought under states other than TVPA's sex trafficking provisions. U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 373.

<sup>122</sup> The number of investigations and prosecutions among the task forces varies widely. More investigations are for sex trafficking than labor trafficking, which may be a result of law enforcement being able to rely upon pre-existing vice units devoted to prosecution enforcement. There are no comparable preexisting structures for involuntary servitude in the labor sector. Reportedly, DOJ is aware of these critiques and is implementing measures to address them. U.S. Department of State, *Trafficking in Persons Report*, June 2010, p. 340; and U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 373.

<sup>123</sup> As of the end of FY2009, the task-forces had identified 3,687 potential trafficking victims. U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 373, and DOJ, *AG's Annual Report to Congress on U.S.* (continued...)

ICE uses a global enforcement strategy to disrupt and dismantle domestic and international criminal organizations that engage in human trafficking. In FY2009, ICE opened 566 cases with a nexus to human trafficking<sup>124</sup> In addition, DOL is involved in cases of trafficking through enforcement of labor standards laws such as the Fair Labor Standards Act<sup>125</sup> and the Migrant and Seasonal Agricultural Worker Protection Act.<sup>126</sup>

## **Human Smuggling and Trafficking Center**

In July 2004, the Secretaries of DOS and DHS and the Attorney General signed a charter to establish the Human Smuggling and Trafficking Center (HSTC), and The Intelligence Reform and Terrorism Protection Act of 2004 (P.L. 108-458, §7202), signed into law on December 17, 2004, formalized the HSTC. The HSTC serves as the federal government's information clearinghouse and intelligence fusion center for all federal agencies addressing human smuggling, human trafficking, and the potential use of smuggling routes by terrorists. Specifically, the HSTC is tasked with

- serving as the focal point for interagency efforts to address terrorist travel;
- serving as a clearinghouse with respect to all relevant information from all federal agencies in support of the United States strategy to prevent clandestine terrorist travel, migrant smuggling, and trafficking of persons;
- ensuring cooperation among all relevant policy, law enforcement, diplomatic, and intelligence agencies of the federal government to improve effectiveness and to convert all information relating to clandestine terrorist travel, the facilitation of migrant smuggling, and trafficking of persons into tactical, operational, and strategic intelligence that can be used to combat such illegal activities; and
- submitting to Congress, on an annual basis, a strategic assessment regarding vulnerabilities that may be exploited by international terrorists, human smugglers, and traffickers.

The HSTC has had issues with cooperation between the different agencies and departments, related to funding, staffing, and information sharing.<sup>127</sup> In The Implementing the 9/11 Commission Recommendations Act of 2007 (P.L. 110-53, discussed in **Appendix A**), Congress attempted to address these issues.

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*Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, p. 36.

<sup>124</sup> DOJ, *AG's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2007*, p. 23; DOJ, *AG's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2008*, p. 36; and DOJ, *AG's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, p. 44 .

<sup>125</sup> 29 U.S.C. §§201-219.

<sup>126</sup> 29 U.S.C. Chapter 20.

<sup>127</sup> U.S. Congress, House Committee on Homeland Security, Subcommittee on Management, Integration, and Oversight, *9/11 Reform Act: Examining the Implementation of the Human Smuggling and Trafficking Center*, hearings, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 8, 2006.

## **TVPA Reauthorization Activity in the 112<sup>th</sup> Congress**

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457) reauthorized the TVPA through FY2011. There have been bills introduced in the 112<sup>th</sup> Congress to reauthorize the TVPA, possibly making changes to the act and extending authorizations for some current programs. In addition, there have been several other bills introduced in the 112<sup>th</sup> Congress that contain provisions related to human trafficking.

Two bills that would reauthorize the TVPA have received action. S. 1301<sup>128</sup> was reported by the Senate Judiciary Committee on October 13, 2011, and H.R. 2830<sup>129</sup> was ordered reported by the House Foreign Affairs Committee on October 5, 2011. The reported versions of both bills, due in part to the current state of the economy,<sup>130</sup> are less expansive than the introduced versions of the bills.

### **H.R. 2830 as reported by the House Foreign Affairs Committee: The Trafficking Victims Protection Reauthorization Act of 2011<sup>131</sup>**

H.R. 2830 would authorize the Secretary of State to limit the time that a U.S. passport issued to a sex offender is valid, and to revoke the passport of an individual convicted in a foreign country of a sex offense. The revocation would not prevent the U.S. citizen from reentering the United States, and the citizen could reapply for a passport at any time after he returned to the United States (§101). The bill would also change the title of the State Department's Office to Monitor and Combat Human Trafficking to the Office to Monitor and Combat Modern Slavery and Other Forms of Human Trafficking (§102).

Section 103 of H.R. 2830 would expand existing authorities to provide economic alternatives to human trafficking, including public-private partnerships for youth employment opportunities. Section 103 identifies specific vulnerable populations for which to prioritize trafficking prevention efforts and would also authorize the State Department to provide assistance specifically in post-conflict and humanitarian emergencies. Section 104 would require the Department of State in its annual TIP Report to include sections on (1) best practices in slavery eradication; (2) the connection between refugees and human trafficking; and (3) an assessment of actions by the Departments of State and Justice to investigate allegations of trafficking or abuse of aliens holding A-3 or G-5 visas.<sup>132</sup> Section 105 of the House bill would also extend the

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<sup>128</sup> S. 1301 was introduced on June 29, 2011 by Senator Patrick J. Leahy, Chairman of the Judiciary Committee. Senator Leahy offered an amendment in the nature of a substitute during the mark-up of S. 1301. The amendment was agreed to by voice-vote.

<sup>129</sup> H.R. 2830 was introduced on August 30, 2011 by Representative Christopher H. Smith. Representative Smith offered an amendment in the nature of a substitute during the mark-up of H.R. 2830, and the amendment was agreed to by voice-vote. For more information on the mark-up see Joanna Anderson, "House Panel Approves U.N. Population Fund, Anti-Trafficking Measures," *CQ.Com*, October 5, 2011, <http://www.cq.com/doc/committees-2011100500291818?wr=Nng4dW84NzhVdzBsRIJZSTIQZUVkUQ>.

<sup>130</sup> U.S. Congress, House Foreign Affairs, *Mark-Up of H.R. 2830*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., October 5, 2011. U.S. Congress, Senate Judiciary Committee, *Mark-Up of S. 1301*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., October 13, 2011. U.S. Congress, Senate Judiciary Committee, *Trafficking Victims Protection Reauthorization Act of 2011*, report to accompany S. 1301, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., November 17, 2011, S.Rept. 112-96.

<sup>131</sup> U.S. Congress, House Foreign Affairs, *Mark-Up of H.R. 2830*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., October 5, 2011.

<sup>132</sup> A-3 visa holders refer to workers admitted under INA §101(a)(15)(A)(iii), who are the attendants, servants or (continued...)



additional \$1 issuance fee for machine-readable visas till September 30, 2015. The Department of Labor would be mandated to monitor and report on forced and child labor practices in foreign countries as well as the United States (§106).

H.R. 2830 would expand the existing federal prohibition, which forbids U.S. citizens and LPRs from traveling in the foreign commerce of the United States and engaging in such sexual contact with a child as would be unlawful had it occurred in U.S. territorial jurisdiction, to include travel that affects the U.S. foreign commerce and to make it clear that the proscription applies to those who reside overseas and regardless of the fact the contact may be generally accepted or even lawful under the laws of the place where it occurs (§107).

In addition, Section 201 of H.R. 2830 would require the annual reports to Congress on U.S. anti-trafficking activities to include expanded data collection on U.S. contractors or subcontractors engaging in trafficking in persons. The report would also have to include information from each DOJ human trafficking task-force on T and U visa certifications requested and granted, and requests and grants of continued presence. It would also require information on such trafficking victims such as age, gender, citizenship, type of trafficking (i.e., labor or sex). The bill would also require that requests for continued presence made to federal law enforcement officers be responded to no later than 15 days after the request was made to whether the official filed an application with the DHS Secretary, and if not, when or if the official expects to do so. The DHS Secretary would have to approve or deny the application within one month (§202). Section 203 would mandate the State Department to report in its annual TIP Report to Congress on the efforts of the U.S. government to comply with minimum standards for the elimination of trafficking, which the State Department has been doing for the past two years.

In the introduced version of H.R. 2830, Title II included a provision to establish a Director of Anti-Trafficking Policies within the Office of the Secretary of Defense with a rank of Assistant Secretary. The Director would be responsible for overseeing Defense Department policies on combating human trafficking, including the enforcement of contractor requirements to prevent human trafficking in the performance of defense contracts, both in the United States and at overseas installations. In the House Foreign Affairs Committee mark-up session, this language was removed, reportedly due to concerns related to cost.<sup>133</sup>

Section 214 of H.R. 2830 would make it a criminal offense to knowingly destroy, or for a period of more than 48 hours, conceal, remove, confiscate, or possess another person's passport or immigration or personal identification documents in the course of committing or attempting to commit the offense of fraud in foreign labor contracting or alien smuggling. It would also be a criminal offense to destroy, conceal, remove, confiscate, or possess such documents in order to unlawfully maintain, prevent, or restrict the labor or services of the individual. Violators would be subject to a fine and/or imprisonment of not more than one year. The bill would also add foreign labor contracting fraud (18 U.S.C. 1351) to the list of racketeering (RICO) predicate offenses with the additional result that such fraud would automatically become a money laundering

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(...continued)

personal employees of Ambassadors, public ministers, career diplomats, consuls, other foreign government officials and employees or the immediate family of such workers. G-5 visa holders (admitted under INA §101(a)(15)(G)(v)) are the attendants, servants, or personal employees and their immediate family of foreign government representatives or foreign employees of international organizations.

<sup>133</sup> Joanna Anderson, "House Panel Approves U.N. Population Fund, Anti-Trafficking Measures," *Congressional Quarterly*, October 5, 2011.

predicate offense as well; foreign labor contracting fraud is a 5-year felony; RICO and money laundering are 20-year felonies, and both trigger asset forfeiture provisions (§215).

The House bill (§221) would also require the Secretary of Homeland Security, in consultation with the Secretaries of the Departments of Health and Human Services and State, to report annually to Congress on alien children encountered and screened for being trafficking victims by CPB, including the outcomes of the screenings. H.R. 2830 would also lower from 48 hours to 24 hours the required time that a federal agency must notify HHS when they encountered an unaccompanied alien child. Would make several changes to the provisions related to the custody and care of unaccompanied alien children (these provisions were included in P.L. 110-457, §235) including specifying that the Secretary of DHS should release or place in the least restrictive setting unaccompanied alien children who are not a danger to the community or a flight risk, and any unaccompanied alien child who turns 18 while in custody. H.R. 2830 would also amend the law so that a home study is not necessary before placing an unaccompanied minor with his/her parents unless there were past allegation of abuse or neglect.

In addition, H.R. 2830 would require states as part of their plans for adoption and foster care assistance to include information on existing practices and future plans to prevent and provide victim assistance to foreign, U.S. citizen, and LPR victims children who are victims of human trafficking (§222). The House bill (§223) also contains provisions that would attempt to increase public awareness of the National Human Trafficking Resource Center hotline, by among other requirements, mandating that posters advertising the hotline be posted in certain establishments (e.g., massage parlors, train stations, strip clubs).

H.R. 2830 would reauthorize appropriations for grant programs in the TVPA of 2000, as amended, and the TVPRA of 2005 for FY2012 and FY2013 (§§301-302). The House bill would maintain most programs at current authorization levels.<sup>134</sup> (See **Table 11** for a detailed list of authorization levels.) Section 303 of H.R. 2830 would also require a report to Congress on the amount of appropriations each department or agency received and a list of activities funded by the appropriations and the appropriations account from which they were funded. H.R. 2830 would also require the Senior Policy Operating Group in coordination with the Department of State to submit a report to Congress on internet-facilitated human trafficking.

The House Foreign Affairs Committee adopted, en bloc, four amendments to H.R. 2830. Representative Fortenberry offered an amendment that would prohibit foreign assistance from the peacekeeping operations account to countries that the Secretary of State annually designates as conscripting or harboring child soldiers in armed conflict. Representative Murphy offered an amendment that would require the Secretary of State to encourage to any publicly traded or private entity with worldwide receipts in excess of \$100 million to disclose on an annual basis on the company's website and to the Secretary of State any efforts that have been taken to identify and address human trafficking within the supply chains. Representative Royce offered an amendment that described the Sense of Congress on human trafficking in Cambodia, stating that it should be designated a Tier 3 country. And Representative Bass offered an amendment to require the Senior Policy Operating Group to submit a report to Congress on internet-facilitated human trafficking.

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<sup>134</sup> The authorization levels would be reduced for three grant programs that have yet to receive funding: HHS grants for U.S. citizen and LPR victims; grants for a pilot program for residential treatment for juvenile trafficking victims; and grants to local/state law enforcement for anti-trafficking activities.

## **S. 1301 as reported by the Senate Judiciary Committee: The Trafficking Victims Protection Reauthorization Act of 2011<sup>135</sup>**

Sections 101 and 102 of the Senate bill (S. 1301) would require the State Department's regional bureaus to create bilateral plans and objectives for combating trafficking and would authorize the appointment of anti-trafficking officers to promote anti-trafficking diplomacy and initiatives. The bill would also attempt to promote partnerships among the U.S. government, foreign governments, and private sector entities to ensure that U.S. citizens do not use items produced by victims of trafficking and that the entities do not contribute to trafficking in persons (§103). Section 103 would mandate the President and the Secretary of State to establish additional anti-trafficking assistance programs, including programs related to anti-labor trafficking, human trafficking in emergency situations, and child trafficking. Section 104 of S. 1301 would direct DOJ anti-trafficking taskforces to make all reasonable efforts to distribute information to enable government agencies to publicize the Nation Human Trafficking Resource Center Hotline. The bill would also require the State Department's TIP Report to include a section on best practices in the eradication of human trafficking (§106). Section 105 would update the criteria used to determine whether governments are achieving congressionally designated "minimum standards for the elimination of trafficking."

Section 107 of S. 1301 would require that a video to be shown in consular waiting rooms to provide information on the rights and responsibilities of the employee under U.S. immigration, labor, and employment law. The video would have to be developed and available within one year after enactment. The Senate bill would also require the Secretary of State to develop a multi-year, multi-sectoral strategy to prevent child marriage, and the Secretary of State would be required to report on countries where child marriage is prevalent (§108). Section 109 would prohibit, except in certain circumstances, foreign assistance from the peacekeeping operations account to countries that the Secretary of State annually designates as conscripting or harboring child soldiers in armed conflict. Section 110 would create a presidential award for technological innovations to combat trafficking in persons. The Senate bill would create additional requirements to provide oversight that contractors and subcontractors were not engaging in human trafficking (§111). Section 112 of S. 1301 would require that all known trafficking in persons cases are reported to the Under Secretary of Defense for Personnel and Readiness (U.S. defense personnel) or the Under Secretary of Defense for Acquisition of Technology and Logistics (contractors).

As with H.R. 2830, S. 1301 (§202) would make it a criminal offense to knowingly destroy, or for a period of more than 48 hours, conceal, remove, confiscate, or possess another person's passport, or immigration or personal identification documents in the course of committing or attempting to commit the offense of fraud in foreign labor contracting or alien smuggling. It would also be a criminal offense to destroy, conceal, remove, confiscate, or possess such documents in order to unlawfully maintain, prevent, or restrict the labor or services of the individual. Violators would be subject to a fine and/or imprisonment of not more than one year. Moreover, S. 1301 would allow for civil remedies for personal injuries caused during the commission of most criminal trafficking offenses (§202).

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<sup>135</sup> U.S. Congress, Senate Judiciary Committee, *Mark-Up of S. 1301*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., October 13, 2011. U.S. Congress, Senate Judiciary Committee, *Trafficking Victims Protection Reauthorization Act of 2011*, report to accompany S. 1301, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., November 17, 2011, S.Rept. 112-96.

S. 1301 (§221) would require that additional information be included in the AG's report on anti-trafficking activities such as information on the number of persons who have applied for, been granted, and been denied T and U status; the mean time it takes to adjudicate an application; efforts being taken to reduce adjudication time; activities taken by federal agencies to train state, tribal, and local governments and law enforcement officials to identify trafficking victims and prosecute trafficking offenses, including the number of victims; and activities taken by DOJ and HHS to meet the needs of minor victims of domestic trafficking. The Senate bill (§222) would also require the Secretary of Labor to report to Congress biennially goods from countries that the Bureau of International Labor Affairs has reason to believe are produced by forced labor or child labor in violation of international standards. The bill would also require the Secretary of State to provide the Secretary of Labor with information on the use of child and forced labor in the production of goods (§223). The Senate bill would also require GAO to produce a report on the use of foreign labor contractors and abuses by such contractors. Section 226 of the Senate bill would require that all DOJ grants awarded under the TVPA be subject to audits, and would bar grantees from receiving grants for two years if violations were found. The bill would also require non-federal grantees to secure a 25% non-federal match of funds before the federal funds could be expended. S. 1301 would also set procedures and prohibitions related to using grant monies for administrative expenses, conferences, and lobbying.

Section 231 of S. 1301 would replace the HHS grant program for states, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations to provide assistance programs for U.S. citizens or LPR trafficking victims created in P.L. 109-164, Section 202, with a new grant program for child sex trafficking victims. The new grant program would authorize the Assistant Attorney General for DOJ's Office of Justice Programs, in consultation with the Assistant Secretary for Children and Families in HHS, to award one-year grants to six eligible to combat sex trafficking of children in the United States. Each grant could range from \$2 million to \$2.5 million. Of the grant amounts, at least 67% would have to be allocated to non-governmental organizations (NGOs) to provide counseling, legal services, shelter, clothing, and other social services to victims, while not less than 10% would have to be allocated provide services to victims or training for service providers on sex trafficking of children. Funds could also be used for training for law enforcement; investigative and prosecution expenses; case management; salaries for law enforcement officers and state and local prosecutors; and outreach, education, and treatment programs.<sup>136</sup>

In addition, S. 1301 would specify that the model state anti-trafficking laws created by the AG should include safe harbor provisions that treat an individual under 18 years of age who has been arrested for prostitution as a victim of a severe form of trafficking, prohibit the prosecution of such as person, and refer them to the service providers who provide assistance to victims of commercial sexual exploitation (§233). The Senate bill would reauthorize appropriations for the Trafficking Victims Protection Act of 2000 for FY2012 through FY2015, decreasing some authorization levels and increasing others.<sup>137</sup> (See **Table 11** for a detailed list of authorization levels.)

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<sup>136</sup> The proposed grant program is identical to S. 596 in the 112<sup>th</sup> Congress, and S. 2925 in the 111<sup>th</sup> Congress.

<sup>137</sup> The authorization levels would be reduced for three grant programs that have yet to receive funding: HHS grants for U.S. citizen and LPR victims; grants for a pilot program for residential treatment for juvenile trafficking victims; and grants to local/state law enforcement for anti-trafficking activities.

As in H.R. 2830, S. 1301 contains provisions dealing with the care and custody of unaccompanied alien children. The provisions in the Senate bill are similar but not identical. As in H.R. 2830, Section 401 would specify that the DHS Secretary should release or place in the least restrictive setting any unaccompanied alien child who turns 18 while in custody. Unlike H.R. 2830, the Senate bill (§402) would require the DHS Secretary to create a pilot program in three states to provide independent child advocates at immigration detention sites for child trafficking victims and other vulnerable unaccompanied alien children. In addition, the Senate bill would specify that children who receive U status and are in the custody of HHS are eligible for programs and services to the same extent as refugees, and the federal government will reimburse states for foster care provided these children (§403), and would require GAO to do a study on the effectiveness of CBP screening of children to determine if they are or are at risk for becoming victims of trafficking (§404).

**Table 11. H.R. 2830 and S. 1301: Comparison of Authorizations of Appropriations**  
(in \$ U.S. millions)

Authorized Programs	FY11	FY12		FY13		FY14		FY15	
	P.L. 110-457	H.R. 2830	S. 1301	H.R. 2830	S. 1301	H.R. 2830	S. 1301	H.R. 2830	S. 1301
<b>International Programs</b>									
<b>U.S. Agency for International Development (USAID)</b>									
USAID: Pilot Program for Rehabilitation Facilities (22 U.S.C. 7105 note)	\$2.5	\$1.5	Struck	\$1.5	Struck	—	Struck	—	Struck
<b>U.S. Department of State (DOS)</b>									
DOS: Interagency Task Force (22 U.S.C. 7110(a))	\$5.5	\$5.5	\$2.0	\$5.5	\$2.0	—	\$2.0	—	\$2.0
DOS: Interagency Task Force: Reception Expenses (22 U.S.C. 7110(a))	\$.003	\$.003	Struck	\$.003	Struck	—	Struck	—	Struck
DOS: Interagency Task Force: Additional Personnel (22 U.S.C. 7110(a))	\$1.5	\$1.5	N/A	\$1.5	N/A	—	N/A	—	N/A
DOS: Prevention (22 U.S.C. 7110(c)(1)(A))	\$10.0	\$10.0	\$10.0	\$10.0	\$10.0	—	\$10.0	—	\$10.0
DOS: Protection (22 U.S.C. 7110(c)(1)(B))	\$10.0	\$10.0	\$10.0	\$10.0	\$10.0	—	\$10.0	—	\$10.0
DOS: Prosecution and Meeting Minimum Standards (22 U.S.C. 7110(c)(1)(C))	\$10.0	\$10.0	\$10.0	\$10.0	\$10.0	—	\$10.0	—	\$10.0
DOS: Refugees and Internally Displaced Persons (22 U.S.C. 7110(c)(1)(B))	\$1.0	\$1.0	\$1.0	\$1.0	\$1.0	—	\$1.0	—	\$1.0
<b>President</b>									

Authorized Programs	FY11	FY12		FY13		FY14		FY15	
	P.L. 110-457	H.R. 2830	S. 1301	H.R. 2830	S. 1301	H.R. 2830	S. 1301	H.R. 2830	S. 1301
President: Foreign Assistance for Law Enforcement Training (22 U.S.C. 7110(d)(B))	\$0.25	\$0.25	N/A	\$0.25	N/A	—	N/A	—	N/A
President: Foreign Victim Assistance (22 U.S.C. 7110(e)(1))	\$15.0	\$15.0	\$7.5	\$15.0	\$7.5	—	\$7.5	—	\$7.5
President: Foreign Assistance to Meet Minimum Standards (22 U.S.C. 7110(e)(2))	\$15.0	\$15.0	\$7.5	\$15.0	\$7.5	—	\$7.5	—	\$7.5
President: Research (22 U.S.C. 7110(e)(3))	\$2.0	\$2.0	N/A	\$2.0	N/A	—	N/A	—	N/A
President: Award for Extraordinary Efforts (22 U.S.C. 7109b(d))	— <sup>a</sup>	\$0.5	N/A	\$0.5	N/A	—	N/A	—	N/A
<b>Domestic Programs</b>									
<b>U.S. Department of Health and Human Services (HHS)</b>									
HHS: Assistance for Trafficking Victims (22 U.S.C. 7110(b)(1))	12.5	12.5	14.5	12.5	14.5	—	14.5	—	14.5
HHS: Assistance for U.S. Citizens (USCs) and Legal Permanent Residents (LPRs) (22 U.S.C. 7110(b)(2))	7.0	7.0	7.0	7.0	7.0	—	7.0	—	7.0
HHS: Local Grant for USC/LPR Sex Trafficking Victims (42 U.S.C. 14044a(d))	8.0	8.0	8.0	8.0	8.0	—	8.0	—	8.0
HHS: Pilot Program for Juveniles (42 U.S.C. 14044b(g))	5.0	3.0	—	3.0	—	—	—	—	—
HHS: Child Advocates for Unaccompanied Minors	—	—	1.0	—	1.0	—	2.0	—	2.0
<b>U.S. Department of Homeland Security (DHS)</b>									
DHS: Immigration and Customs Enforcement (ICE) Investigations (22 U.S.C. 7110(i))	18.0	18.0	10.0	18.0	10.0	—	10.0	—	10.0
DHS: Human Smuggling and Trafficking Center (HSTC) (22 U.S.C. 7109a(b)(4))	2.0	2.0	1.0	1.0	1.0	—	1.0	—	1.0
<b>U.S. Department of Justice (DOJ)</b>									
DOJ: Assistance for Tracking Victims (22 U.S.C. 7110(d)(A))	10.0	10.0	11.0	10.0	11.0	—	11.0	—	11.0

Authorized Programs	FY11	FY12		FY13		FY14		FY15	
	P.L. 110-457	H.R. 2830	S. 1301	H.R. 2830	S. 1301	H.R. 2830	S. 1301	H.R. 2830	S. 1301
DOJ: Assistance for USCs and LPRs (22 U.S.C. 7110(d)(C))	7.0	7.0	8.0	7.0	8.0	—	8.0	—	8.0
DOJ: Prevent Domestic Sex Trafficking (DST)—Study on Trafficking (42 U.S.C. 14044(c)(1))	1.5	1.5	1.5	1.5	1.5	—	1.5	—	1.5
DOJ: Prevent DST—Study on Sex Trafficking (42 U.S.C. 14044(c)(1))	1.5	1.5	1.5	1.5	1.5	—	1.5	—	1.5
DOJ: Prevent DST—Conference (42 U.S.C. 14044(c)(2))	1.0	1.0	1.0	1.0	1.0	—	1.0	—	1.0
DOJ: Local Grant for Law Enforcement (42 U.S.C. 14044(c)(d))	20.0	10.0	11.0	10.0	11.0	—	11.0	—	11.0
DOJ: Federal Bureau of Investigation (FBI) (22 U.S.C. 7110(h))	15.0	15.0	15.0	15.0	15.0	—	15.0	—	15.0
<b>U.S. Department of Labor (DOL)</b>									
DOL: Assistance for Trafficking Victims (22 U.S.C. 7110(f))	10.0	10.0	5.0	10.0	5.0	—	5.0	—	5.0

**Source:** CRS analysis of P.L. 106-386, P.L. 108-193, P.L. 109-164, P.L. 110-457, H.R. 2830, as ordered reported by the House Foreign Affairs Committee, and S. 1301, as reported by the Senate Judiciary Committee.

**Notes:** N/A = Authorized program not referenced in bill. Struck = the program would be struck from law by the bill. H.R. 2830 seeks to reauthorize TVPA programs through FY2013, whereas S. 1301 seeks to reauthorize TVPA programs through FY2015. The TVPA and its subsequent reauthorizations include several additional provisions without specific funding amounts. Such provisions include §107A(f) of P.L. 106-386, as amended (22 U.S.C. 7104a), which authorizes not more than 5% of the amounts made available to carry out the TVPA, as amended, in each fiscal year 2008 through 2011 to the President to evaluate anti-trafficking programs and projects. §114(c)(2) of P.L. 106-386, as amended (22 U.S.C. 7110(c)(2)), also authorizes such sums as may be necessary for each fiscal year 2008 through 2011 to the Department of State for the preparation of congressionally mandated human rights reports with reference to human trafficking issues. Note also that additional funding outside the scope of the TVPA and its reauthorizations has been authorized in separate legislative vehicles. See for example, §111 of P.L. 109-162, which authorizes \$10 million for each fiscal year 2008 through 2011 to the Department of Justice for state and local law enforcement grants for human trafficking victim identification.

- a. With respect to the presidential award for extraordinary efforts to combat trafficking in persons, §112B of P.L. 106-386, as amended (22 U.S.C. 7109b(d)), authorizes to be appropriated for fiscal years 2008 through 2011 “such sums as may be necessary to carry out this section.”

## Policy Issues

A broad consensus appears to be shared in Congress and the policy community on the need for decisive action to curb human trafficking. However, there are some fundamental questions related

to how broadly human trafficking should be defined. In addition, questions have been raised about the effective implementation of anti-trafficking programs.

## **Credibility of TIP Rankings**

Many analysts have asserted that the overall impact of the TIP report and sanctions process depends upon the credibility of the State Department's annual country TIP rankings. Some would argue that, although the TIP reports have improved with each year, "inconsistent application of the minimum standards [mandated by TVPA] and superficial country assessments have compromised their credibility."<sup>138</sup> Some argue that it is difficult to determine what standards make a country eligible for Tier 1. They assert that the Tier 2 and Tier 2 Watch List have become "catch-all" categories that include countries which should really be placed on Tier 3. According to the GAO, in addition to a lack of clarity in the tier ranking process, the TIP report's "incomplete narratives reduce the report's utility." The State Department, while acknowledging the need to continue to increase the comprehensiveness of the report, has stated that "keeping the report concise is paramount."<sup>139</sup>

## **U.S. Sanctions: A Useful Tool?**

Most agree that extensive international cooperation is required in order to stop international trafficking and that both "carrots" and "sticks" may be needed to influence the policies of other governments, including financial and technical assistance, as well as the threat of sanctions. Some assert that unilateral sanctions, when designed in accordance with international norms, can incite countries to internalize those norms.<sup>140</sup> Sanctions seem to be most effective when they are clearly defined and evenly applied, criteria which some say U.S. trafficking sanctions have not yet met.<sup>141</sup> Some argue that sanctions will probably only be applied to countries already subject to other sanctions—such as Burma and North Korea—and that threatening other countries with sanctions may actually encourage them to become less open to working with the United States. Others argue that while that may be true in a few cases, most countries depend on good political and economic relations with the United States and fear the public humiliation that comes with a Tier 3 designation as much as actual sanctions.

## **Equal Focus on all Types of Trafficking?**

Although the TVPA defines trafficking broadly to include problems such as forced labor, sex slavery, and domestic servitude, and although the U.S. government funds programs to combat all types of TIP, some argue that U.S. government anti-trafficking efforts disproportionately focus on sexual exploitation at the expense of other forms of trafficking. They argue that too high a percentage of the U.S. anti-trafficking budget has been directed to NGOs focused on rescuing women and children from the commercial sex industry. Inventories of U.S. anti-trafficking programs since 2004 appear to counter these claims as they show U.S. support for a wide variety

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<sup>138</sup> Chuang, 2006.

<sup>139</sup> GAO, July 2006, p. 3. (GAO-06-825).

<sup>140</sup> Sarah H. Cleveland, "Norm Internationalization and U.S. Economic Sanctions," *Yale Journal of International Law*, 2001, 1, 31.

<sup>141</sup> Chuang, 2006.



of NGOs that strive to protect victims and prosecute traffickers engaged in all types of human trafficking.<sup>142</sup>

## **Forced Labor: A Growing TIP Problem?**

Research suggests that while TIP for sexual exploitation is both a highly prevalent and particularly visible form of human trafficking, TIP for forced labor exploitation may account for a large, often unreported, and possibly growing share of TIP globally. According to the UNODC, sexual exploitation is by far the most commonly reported form of human trafficking, accounting for 79% of incidents globally. Forced labor, however, follows as the second-most reported form of human trafficking, at 18%.<sup>143</sup> Other groups arrive at different estimates of the prevalence of various forms of human trafficking. The ILO, for example, found that 43% of all trafficking victims were trafficked into sexual exploitation, 32% into labor exploitation, and 25% a combination of both forced labor and sexual exploitation.<sup>144</sup> Recent interest in forced labor as a form of TIP has sparked calls for greater research in analyzing the prevalence of forced labor, increased international efforts to combat this form of TIP, and more awareness to prevent and educate potential victims. The State Department's TIP reports since 2005 have placed an added emphasis on evaluating country efforts to combat trafficking for forced labor, and several other programmatic efforts to combat TIP for forced labor are underway at the State Department. Other international groups, particularly the ILO, also play a large role in efforts to combat forced labor.

## **Debates Regarding Prostitution and Sex Trafficking**

The current U.N. definition of TIP assumes that there are at least two different types of prostitution, one of which is the result of free choice to participate in the prostitution business while the other is the result of coercion, vulnerability, deception, or other pressures. Of these, only the latter type is considered TIP under the U.N. definition. Based on the TVPA, as amended, sex trafficking is not considered a "severe form of TIP" unless it is associated with commercial sex acts induced by force, fraud, or coercion, or in which the person induced to perform such acts is a minor.<sup>145</sup>

Several groups in the United States have sought to redefine TIP to include all prostitution, but many countries have thus far rejected those attempts. Proponents of this broader definition of TIP argue that prostitution is "not 'sex work,' it is violence against women [that] exists because ... men are given social, moral and legal permission to buy women on demand."<sup>146</sup> Countries such as

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<sup>142</sup> Jennifer Block, "Sex Trafficking: Why the Faith Trade is Interested in the Sex Trade," *Conscience*, Summer/Autumn 2004; Debbie Nathan, "Oversexed," *The Nation*, August 29 - September 5, 2005, vol. 281; Janie Chuang, Winter 2006, 13, 1, G-TIP Fact Sheets, Available at <http://www.state.gov/g/tip/rls/fs/index.htm>.

<sup>143</sup> The study authors contend that using reported incidences creates a bias and most likely does not represent the actual frequency of different types of trafficking (e.g. sex versus labor trafficking). They note that the exploitation of women tends to be visible, in city centers, or along highways. Thus, because it is more frequently reported, sexual exploitation has become the most documented type of trafficking in aggregate statistics. They argue that in comparison, other forms of exploitation are under-reported: forced or bonded labor; domestic servitude and forced marriage; and the exploitation of children in begging, the sex trade, and warfare. UNODC and UNGIFT, *Global Report on Trafficking in Persons*, February 2009.

<sup>144</sup> International Labor Organization (ILO), *ILO Action against Trafficking in Human Beings*, 2008.

<sup>145</sup> §103 (8-9) of P.L. 106-386, as amended.

<sup>146</sup> Janice G. Raymond, "Sex Trafficking is Not 'Sex Work,'" *Conscience*, Spring 2005.

Germany, the Netherlands, Austria, France, and Italy, which have legal or government-regulated prostitution, reject such a definitional change and argue that this broader definition would impede the capacity of the international community to achieve consensus and work together to combat trafficking.<sup>147</sup>

The U.S. State Department asserts that prostitution and TIP are inextricably linked. In the 2008 TIP Report to Congress, for example, the State Department states that “sex trafficking would not exist without the demand for commercial sex flourishing around the world” and that prostitution and any related activities “should not be regulated as a legitimate form of work for any human being.”<sup>148</sup> The Trafficking Victims Protection Reauthorization Act of 2003 (P.L. 108-193) restricts anti-trafficking funds to groups that oppose prostitution. Critics have argued that this policy excludes the people who are most able to report and combat abuses within the sex industry—prostitutes themselves—and may hinder the success of well-established anti-TIP programs. They believe that giving prostitutes some measure of legitimacy short of legalization reduces the risk that they will be exposed to the dangers of trafficking.<sup>149</sup>

## **Distinctions Between Trafficking and Alien Smuggling**

The concept of and responses to TIP are often confused with those of alien or human smuggling, irregular migration, and the movement of asylum seekers. In 2000, the United Nations drafted two protocols, known as the Palermo Protocols, to address TIP and human smuggling.<sup>150</sup> According to the U.N. Trafficking Protocol, people who have been *trafficked* are considered “victims” and are entitled to government protection and a broad range of social services. In contrast, the U.N. Protocol against the Smuggling of Migrants by Land, Sea, and Air considers people who have been *smuggled* as willing participants in a criminal activity who should be given “humane treatment and full protection of their rights” while being returned to their country of origin.<sup>151</sup>

Some observers contend that smuggling is a “crime against the state” and that smuggled migrants should be immediately deported, while trafficking is a “crime against a person” whose victims deserve to be given government assistance and protection.<sup>152</sup> Others maintain that there are few clear-cut distinctions between trafficking and smuggling and that many people who are considered “smuggled” should actually be viewed as trafficking victims, and, at times, vice versa. Some argue that as immigration and border restrictions have tightened, smuggling costs have increased and migration routes have become more dangerous, putting migrants at a high risk of trafficking. In some cases, smugglers have sold undocumented migrants into situations of forced labor or prostitution in order to recover their costs or obtain greater profits.<sup>153</sup> Despite the U.N.

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<sup>147</sup> Notably, some European countries, including Sweden, Norway, and Iceland, have sought to address this policy debate by criminalizing the purchase of sex, while leaving prostitution as legal. See for example, “Norway Set to Make Buying Sex Illegal,” *The Guardian*, April 23, 2007.

<sup>148</sup> U.S. Department of State, 2008 TIP Report.

<sup>149</sup> U.S. Department of State website, <http://www.state.gov/g/tip/index.htm>; Feingold, September/October 2005.

<sup>150</sup> The United Nations Convention Against Organized Crime and Its Protocols, available at [http://www.unodc.org/unodc/en/crime\\_cicp\\_convention.html](http://www.unodc.org/unodc/en/crime_cicp_convention.html).

<sup>151</sup> *Ibid.*

<sup>152</sup> Statement by Claire Antonelli of Global Rights, Center for Strategic and International Studies Event on Human Trafficking in Latin America, July 9, 2004.

<sup>153</sup> Kinsey Aldan Dinan, “Globalization and National Sovereignty: From Migration to Trafficking,” In *Trafficking in* (continued...)

protocols on trafficking and smuggling, many countries in practice conflate the two differing, but sometimes overlapping, phenomena. As a result, some observers argue that TIP policies can directly or indirectly shape migration (and vice versa) in both countries of origin and destination.<sup>154</sup>

## **How to Measure the Effectiveness of Global Anti-TIP Programs**

It is often difficult to evaluate the impact of U.S. anti-trafficking efforts on curbing TIP. So far, few reliable indicators have been identified. For example, the new estimates of numbers of trafficking victims in the United States seem considerably lower than some of the previous high-end estimates. Whether these figures reflect the success of U.S. policies and programs or more accurate data gathering is unclear. Hard evidence with regard to the results of the more vigorous international campaign against trafficking is also lacking. Information is often anecdotal. Worldwide estimates of the numbers of victims seemingly have not changed much, when cross-border trafficking and trafficking within countries are taken together. A 2006 GAO study seriously questions the adequacy of any of the estimates.<sup>155</sup>

## **Issues Concerning Immigration Relief for Trafficking Victims**

Most of the trafficking victims' advocacy community and groups working to end trafficking are supportive of the T status. Nonetheless, these groups have raised concerns about aspects of the application process that may impede victims from applying for T status or create difficulties for the victims to meet the standards of T status.<sup>156</sup> Some advocacy groups have questioned whether the T status protects the victims or is primarily a tool for law enforcement.

The opponents to the creation of the T status, on the other hand, contend that the status rewards criminal behavior. Immigrant benefits are scarce and some argued that there are more meritorious people who deserve the benefits such as those who have been waiting to come into the country through legal methods. Some argue that there is a need to protect the victims, but that they are being given more access to public benefits than are relatives of United States citizens. Additionally, others expressed concern about the possibility of abuse of T status. For example, some aliens who had knowingly and willfully violated the law, may claim that they were coerced after they were arrested by DHS.

As discussed above, between FY2002 and FY2011, DHS approved 2,595 applications for T-1 status, while it is estimated that at least 14,500 aliens are trafficked into the United States each year. The comparatively small number of T visas issued relative to the estimates of trafficking into the United States raises some questions. Is the number of noncitizen trafficking victims in the

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*Humans: Social, Cultural, and Political Dimensions*, Sally Cameron and Edward Newman, eds. New York: U.N. University Press, 2008. "Mexico-U.S.-Caribbean: Tighter Borders Spur People Traffickers," *Latin America Weekly Report*, April 11, 2006.

<sup>154</sup> UNODC and UNGIFT, *An Introduction to Human Trafficking: Vulnerability, Impact, and Action*, 2008, p. 88.

<sup>155</sup> GAO, July 2006, p. 3. (GAO-06-825).

<sup>156</sup> Some of these concerns were also raised in the minority views expressed in the House Judiciary Committee Report on H.R. 3244 which became the TVPA. See, U.S. Congress, House Committee on the Judiciary, *Trafficking Victims Protection Act of 2000*, Report to accompany H.R. 3244, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 13, 2000, H.Rept. 106-487.

United States overestimated? Is the United States government doing a poor job locating and identifying victims?<sup>157</sup> Indeed, DOS's 2010 Trafficking in Persons Report states: "[v]ictim identification, given the amount of resources put into the effort, is considered to be low."<sup>158</sup>

## **Stringency of T Determination**

The regulations state that "In view of the annual limit imposed by Congress for T-1 status, and the standard of extreme hardship involving unusual and severe harm, [DHS] acknowledges that the T-1 status will not be an appropriate response with respect to many cases involving aliens who are victims of severe forms of trafficking."<sup>159</sup> Some contend that the extreme hardship threshold makes it difficult for victims to receive T status.<sup>160</sup> Nonetheless, some in law enforcement have raised concerns that advocacy organizations are able to ask ICE headquarters without the input of the local ICE agents to have an alien certified as a trafficking victim, contending that some of these aliens are not truly trafficking victims.<sup>161</sup>

## **Tool of Law Enforcement or Aid to Victims**

According to the policy memorandum on T status, "the T classification provides an immigration mechanism for cooperating victims to remain temporarily in the United States to assist in investigations and prosecutions and provide humanitarian protection to the victims." Some are concerned that the emphasis on aiding law enforcement is more important than aiding the victims, and note that a controversial aspect of the continued presence provision is that federal agents may supersede a victim's wishes and require the victim to remain in the United States, if the victim's "departure is deemed prejudicial to the interests of the United States."<sup>162</sup> NGOs have reported isolated incidents of law enforcement officers telling victims that they risk losing their benefits if they do not cooperate, and note that it is challenging getting law enforcement to recognize reluctant victims for protection purposes.<sup>163</sup> Others argue, however, that the only mechanism for ending trafficking is by encouraging the victims' cooperation in the prosecution and investigation.

## **Victims' Safety**

Some victims' service providers who aid trafficking victims have also expressed concerns that outside of federal protective custody, there are few safe housing options for victims of trafficking. Shelters in many areas are full or inaccessible, and domestic violence shelters are ill-equipped to meet the safety needs of trafficking victims.<sup>164</sup> In addition, according to the DOS report, law

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<sup>157</sup> These issues are discussed in detail in: Jerry Markon, "Human Trafficking Evokes Outrage, Little Evidence; U.S. Estimates Thousands of Victims, But Efforts to Find Them Fall Short," *Washington Post*, September 23, 2007.

<sup>158</sup> U.S. Department of State, *Trafficking in Persons Report*, June 2010, p. 338.

<sup>159</sup> *Federal Register* vol. 67, no. 21: p. 4785. January 31, 2002.

<sup>160</sup> Testimony of Derek J. Marsh, Co-Director Orange County Human Trafficking Task Force, in U.S. Congress, House Committee on Homeland Security, *Crossing the Border: Immigrants in Detention and Victims of Trafficking, Part II*, 110<sup>th</sup> Cong., 1 sess., March 20, 2007.

<sup>161</sup> Personal communication with ICE special agents in Los Angeles, California, August 16, 2005.

<sup>162</sup> Raffonelli, "INS Final Rule to Assist Victims of Trafficking." p.4.

<sup>163</sup> U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 375.

<sup>164</sup> Lisa Raffonelli. "INS Final Rule to Assist Victims of Trafficking." *Refugee Reports*, vol. 23, no. 3 (April 2002): p.9. Hereafter referred to as Raffonelli, "INS Final Rule to Assist Victims of Trafficking." U.S. Department of State, (continued...)

officials are sometimes untrained or unwilling to undertake victim protection measures.<sup>165</sup> Other advocacy groups such as the Collation to Abolish Slavery and Trafficking (CAST) contend that forcing victims to aid in the investigation and prosecution of traffickers may endanger the victims' families who remain in the home country especially when the trafficker is deported back to the country. They argue that there needs to be some mechanism to either ensure the victims' families' safety in their home country or reunite the families with the victims in the United States.<sup>166</sup> Dianne Post, an attorney for the Arizona Coalition Against Domestic Violence, argues that the TVPA may create problems for victims, because victims can not receive services and benefits until they apply for T status, and if they do not speak English, they can not fill out the application without help. Often they will need to turn to the local immigrant community, and the traffickers may have ties in the same community.<sup>167</sup>

## **Funding and Authority to Assist U.S. Citizen and LPR Victims of Trafficking**

An overriding issue is the extent to which the agencies can provide services to U.S. citizen and LPR trafficking victims who do not receive certification.<sup>168</sup> As discussed above, a 2007 report by the Senior Policy Operating Group on Trafficking in Persons (SPOG) states that “there are not many differences in trafficking victims' eligibility for the services we reviewed when one looks at the relevant statutes.” However, the report does note that U.S. citizen victims may have less intensive case management services compared to noncitizens.<sup>169</sup> Conversely, the AG's FY2009 report on anti-trafficking efforts states, “the funds provided under the TVPA by the federal government for direct services to victims are dedicated to assist non-U.S. citizen victims and may not currently be used to assist U.S. citizen victims.”<sup>170</sup> More recently, ORR has stated that they do not provide services to U.S. citizen trafficking victims.<sup>171</sup> Nonetheless, the language in the appropriation acts may give the HHS the authority to provide some services to U.S. citizen trafficking victims. The appropriation acts since FY2008 state that the money appropriated to HHS is to “carry out the Trafficking Victims Protection Act of 2000.”<sup>172</sup>

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*Trafficking in Persons Report*, June 2010, p. 340.

<sup>165</sup> U.S. Department of State, *Trafficking in Persons Report*, June 2010, p. 338.

<sup>166</sup> Testimony of Cho. Testimony of Wendy Patten, U.S. Advocacy Director, Human Rights Watch, in U.S. Congress, Senate Committee on Judiciary, Subcommittee on Constitution, Civil Rights and Property Rights, *Examining U.S. Efforts to Combat Human Trafficking and Slavery*, hearings, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., (July 7, 2004). (Hereafter, Testimony Wendy Patten.)

<sup>167</sup> Raffonelli, “INS Final Rule to Assist Victims of Trafficking.” p. 9.

<sup>168</sup> Recommendation in the FY2009 *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons* include “examine and enhance the efficacy and parity of services provided to U.S. citizen, LPR, and foreign national victims of trafficking.” DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, p. 15.

<sup>169</sup> Senior Policy Operating Group on Trafficking in Persons: Subcommittee on Domestic Trafficking, *Final Report and Recommendations*, Washington, DC, August 2007, <http://www.acf.hhs.gov/trafficking/SPOGReport-Final9-5-07.pdf>.

<sup>170</sup> DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, p. 17.

<sup>171</sup> Personal Communication with U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Director, Anti-Trafficking in Persons Division, April 14, 2010.

<sup>172</sup> P.L. 111-117, P.L. 111-8, P.L. 110-161.

In addition, as discussed above, beginning in FY2009, OVC is funding a grant, Services for Domestic Minor Victims of Human Trafficking, that includes U.S. citizen and LPR victims.<sup>173</sup> According to DOJ, this grant is authorized under 22 U.S.C Section 7105(b)(2)(A), which was included in the TVPA as enacted in 2000.<sup>174</sup> The authorizing language of this grant program does not appear to differentiate between U.S. citizen and noncitizen victims. 22 U.S.C Section 7105(b)(2)(A) states:

IN GENERAL.—Subject to the availability of appropriations, the Attorney General may make grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations to develop, expand, or strengthen victim service programs for victims of trafficking.<sup>175</sup>

Additionally, in 2010, DOJ provided grant funding to six NGO service providers to assist U.S. citizen and lawful permanent resident victims, and released a new funding opportunity that included a focus on adult U.S. citizen victims, including Native Americans.<sup>176</sup> The funding of these grants appears to be inconsistent with the statement in the FY2009 AG's report that the funds appropriated under TVPA can be used only for noncitizen victims. Thus, it appears that there is ongoing confusion over the authority and funding available under TVPA to provide services to U.S. citizen trafficking victims.

## **Resources for Trafficking Victims' Services**

A corollary issue is the overall amount of funding for victim services, especially as the focus on sex trafficking is broadening to include minor sex trafficking victims in the United States who are U.S. citizens. In FY2011, Congress appropriated approximately \$20 million for services to trafficking victims. Since FY2009, HHS has spent all of its appropriated money on services for trafficking victims before the end of the fiscal year. In addition, there is no targeted federal funding to support state child welfare agencies anti-trafficking efforts.<sup>177</sup>

It is estimated that there are approximately 14,500 noncitizens trafficked into the United States each year.<sup>178</sup> Some have estimated that the number of minor sex trafficking victims could be in the hundreds of thousands.<sup>179</sup> This raises several questions: Are the resources for trafficking victims, both citizen and noncitizens, adequate? If funds were allocated based on estimated citizen populations and noncitizen populations, would certain victims have more trouble getting

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<sup>173</sup> The grant is authorized under 22 U.S.C 7105(b)(2)(A), pertaining to grants made by the Attorney General to develop, expand or strengthen victim service programs for victims of trafficking in the United States. It is a program that was in TVPA as enacted in 2000. U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, "Announcing the Awardees from OVC's Services for Domestic Minor Victims," press release, 2009.

<sup>174</sup> The funding for this grant was also awarded using funding from the American Recovery and Reinvestment Act of 2009 (P.L. 111-5 ). DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, p. 7.

<sup>175</sup> 22 U.S.C §7105(b)(2)(A).

<sup>176</sup> U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 375.

<sup>177</sup> U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 375.

<sup>178</sup> Department of Justice, Department of Health and Human Services, Department of State, Department of Labor, Department of Homeland Security, and U.S. Agency of International Development, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons*, June 2004, p. 4.

<sup>179</sup> For a full discussion of these estimates, see CRS Report R41878, *Sex Trafficking of Children in the United States: Overview and Issues for Congress*, by Kristin M. Finklea, Adrienne L. Fernandes-Alcantara, and Alison Siskin.

services? To what extent are the needs of U.S. citizen and noncitizen victims similar and to what extent do they differ? For example, are noncitizen victims more likely than U.S. citizen victims to identify themselves as victims?<sup>180</sup> Are there other public benefit entitlement programs that noncitizen victims are ineligible for that could serve the needs of U.S. citizen trafficking victims?<sup>181</sup>

## Oversight of Domestic Grants

In the current economic situation, Congress has been actively questioning whether there is effective and efficient management of the grants under TVPA.<sup>182</sup> Notably, one of the roles of the Senior Policy Operating Group (SPOG, discussed above) is to coordinate the work of multiple agencies to make sure that there is not a duplication of efforts. There has been one published report, a 2008 report from the DOJ Inspector General (IG), that provides oversight of DOJ's victims service and anti-trafficking task-forces grant recipients. The report found systemic weakness in DOJ's grant implementation,<sup>183</sup> and noted that while the agency has built significant capacities to serve victims, they had not been effective at identifying and serving a significant number of victims.<sup>184</sup>

More recently, a 2011 IG report that examined grant management by DOJ noted that since 2007 the agency had made significant improvement in the monitoring and oversight of grant recipients.<sup>185</sup> However, this report did not specifically examine grants awarded under the TVPA.

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<sup>180</sup> Victims of domestic sex trafficking often do not self-identify as victims due to fear of the physical and psychological abuse inflicted by the trafficker, or due to the trauma bonds developed through the victimization process. Smith, Vardaman, and Snow, *Domestic Minor Sex Trafficking: America's Prostituted Children*, p. 41.

<sup>181</sup> The programs in TVPA for noncitizen victims were created in part because under the law noncitizen victims are statutorily ineligible for many public benefits (e.g., Medicaid, housing assistance). Nonetheless, while U.S. citizen victims are eligible for federal crime victims benefits and public benefit entitlement programs, there is little data to assess the extent to which U.S. citizen trafficking victims are accessing these benefits. DOJ, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009*, pp. 17-18. For a discussion of noncitizen eligibility for public benefits, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by Ruth Ellen Wasem.

<sup>182</sup> At a recent hearing on the TVPA reauthorization, the ranking member of the Senate Judiciary Committee, Senator Charles Grassley stated: "[I] feel that the bill ought to be reauthorized. But I make a point of saying that we have a terrible budget situation and it requires that we take a close look at how some of this money is spent..." U.S. Congress, Senate Committee on the Judiciary, *The Trafficking Victims Protection Reauthorization Act: Renewing the Commitment to Victims of Human Trafficking*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., September 14, 2011.

<sup>183</sup> The audits found weaknesses in the areas of the established goals and accomplishments for grantees, grant reporting, fund drawdowns, local matching funds, expenditures, indirect costs, and monitoring of subrecipients. Department of Justice, Office of the Inspector General, *Management of the Office of Justice Programs' Grant Programs for Trafficking Victims*, Audit Report 08-26, Washington, DC, July 2008, <http://www.justice.gov/oig/reports/OJP/a0826/final.pdf>.

<sup>184</sup> *Ibid.*

<sup>185</sup> This report did not specifically examine the grants under TVPA, but concluded that OJP's management of grants in general had improved. Department of Justice, Office of the Inspector General, *Audit of the Office of Justice Programs' Monitoring and Oversight of Recovery Act and Non-Recovery Act Grants*, Audit Report 11-19, Washington, DC, March 2011, <http://www.justice.gov/oig/reports/OJP/a1119.pdf>.

## Appendix A. Anti-Trafficking Administrative Directives and Legislation

The human trafficking problem has gained increased attention in the United States and worldwide since the late 1990s. It has been addressed as a priority by Congress, as well as the Clinton, Bush, and Obama Administrations. As part of former President Clinton's announced International Crime Control Strategy, an interagency working group was set up to address international crime implications of trafficking. On March 11, 1998, President Clinton issued a directive establishing a government-wide anti-trafficking strategy of (1) prevention, (2) protection and support for victims, and (3) prosecution of traffickers.<sup>186</sup> The strategy, as announced, had strong domestic and international policy components:

- In the area of prevention, the Administration outlined the need for programs to increase economic opportunities for potential victims and dissemination of information in other countries to increase public awareness of trafficking dangers and funding for more research on trafficking.
- In terms of victim protection and assistance, the Administration argued for legislation to provide shelter and support services to victims who are in the country unlawfully and therefore presently ineligible for assistance. It pressed for the creation of a humanitarian, non-immigrant visa classification to allow victims to receive temporary resident status so they could receive assistance and help to prosecute traffickers. Also, support was sought for developing countries to protect and reintegrate trafficking victims once they were returned.
- As far as prosecution and enforcement, the Administration pressed for laws to more effectively go after traffickers and increase the penalties they can face. In addition, restitution for trafficked victims was sought in part by creating the possibility of bringing private civil lawsuits against traffickers. The Department of Justice (DOJ) called for laws that would expand the definition of involuntary servitude, criminalize a broader range of actions constituting involuntary servitude, and increase the penalties for placing people in involuntary servitude. Justice Department spokesmen also urged that prosecutors be given the capability to go after those who profit from trafficking, not just those directly involved in trafficking.<sup>187</sup> They also called for amending immigration statutes to punish traffickers who entrap victims by taking their passports and identification from them.

On the domestic side, a Workers' Exploitation Task Force, chaired by DOJ's Civil Rights Division and the Solicitor's Office in the Department of Labor (DOL), was charged with investigating and prosecuting cases of exploitation and trafficking. In addition, DOJ reviewed existing U.S. criminal laws and their enforcement to see if they adequately dealt with the crime of trafficking.

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<sup>186</sup> For a discussion of this directive, see Department of State, Office of the Historian, *History of the Department of State During the Clinton Presidency (1993-2001)*, available at <http://www.state.gov/r/pa/ho/pubs/8523.htm>.

<sup>187</sup> Testimony of William R. Yeomans, Chief of Staff of the Civil Rights Division, Department of Justice, before the Subcommittee on Near Eastern and South Asian Affairs, Senate Foreign Relations Committee, April 4, 2000.



On the international front, the State Department sponsored the creation of a database on U.S. and international legislation on trafficking. An Interagency Council on Women formed by the Clinton Administration established a senior governmental working group on trafficking. The Administration urged the enactment of legislation to encourage and support strong action by foreign governments and help the work of non-governmental organizations (NGOs) in this area.

## **Victims of Trafficking and Violence Protection Act of 2000**

Several bills were introduced in the 106<sup>th</sup> Congress on human trafficking. In conference, the bills were combined with the Violence against Women Act of 2000 and repackaged as the Victims of Trafficking and Violence Protection Act of 2000, along with miscellaneous anti-crime and anti-terrorism provisions. President Clinton signed the bill into law on October 28, 2000 (P.L. 106-386). The act's key provisions on human trafficking:

- Directed the Secretary of State to provide an annual report by June 1, listing countries that do and do not comply with minimum standards for the elimination of trafficking, and to provide information on the nature and extent of severe forms of trafficking in persons (TIP) in each country and an assessment of the efforts by each government to combat trafficking in the State Department's annual human rights report;
- Called for establishing an Interagency Task Force to Monitor and Combat Trafficking, chaired by the Secretary of State, and authorized the Secretary to establish within the Department of State an Office to Monitor and Combat Trafficking to assist the Task Force;
- Called for measures to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking, to increase public awareness, particularly among potential victims, of the dangers of trafficking and the protections that are available for victims, and for the government to work with NGOs to combat trafficking;
- Established programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement of victims of trafficking and their children, as well as programs to provide assistance to victims of severe forms of TIP within the United States, without regard to such victims' immigration status and to make such victims eligible for any benefits that are otherwise available under the Crime Victims Fund;<sup>188</sup>
- Provided protection and assistance for victims of severe forms of trafficking while in the United States;
- Amended the Federal Criminal code to make funds derived from the sale of assets seized from and forfeited by traffickers available for victims assistance programs under this act;
- Amended the Immigration and Nationality Act (INA) to allow the Attorney General to grant up to 5,000 nonimmigrant visas (T visas) per year to certain

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<sup>188</sup> For more information on the Crime Victims Fund, see CRS Report RL32579, *Victims of Crime Compensation and Assistance: Background and Funding*, by Celinda Franco.

victims of severe forms of trafficking who are in the United States and who would face unusual and severe harm if they were removed from the United States. In addition, amended the INA to allow up to 5,000 T visas holders per year to adjust to lawful permanent resident status if the aliens have been in the United States continuously for three years since admission, have remained of good moral character, have not unreasonably refused to assist in trafficking investigations or prosecutions, and would suffer extreme hardship if removed from the United States;

- Established minimum standards to combat human trafficking applicable to countries that have a significant trafficking problem. Urged such countries to prohibit severe forms of TIP, to punish such acts, and to make serious and sustained efforts to eliminate such trafficking;
- Provided for assistance to foreign countries for programs and activities designed to meet the minimum international standards for the elimination of trafficking;
- Called for the United States to withhold non-humanitarian assistance and instructed the U.S. executive director of each multilateral development bank and the International Monetary Fund to vote against non-humanitarian assistance to such countries that do not meet minimum standards against trafficking and are not making efforts to meet minimum standards, unless continued assistance is deemed to be in the U.S. national interest;
- Encouraged the President to compile and publish a list of foreign persons who play a significant role in a severe form of TIP. Also encouraged the President to impose sanctions under the International Emergency Economic Powers Act, including the freezing of assets located in the United States, and to exclude significant traffickers, and those who knowingly assist them, from entry into the United States; and
- Amended the Federal Criminal Code (18 U.S.C.) to double the current maximum penalties for peonage, enticement into slavery, and sale into involuntary servitude from 10 years to 20 years imprisonment and to add the possibility of life imprisonment for such violations resulting in death or involving kidnapping, aggravated sexual abuse, or an attempt to kill.

The Bush Administration, as well as Congress, continued the anti-trafficking effort. Then-Attorney General John Ashcroft announced in March 2001 that the fight against trafficking would be a top priority for the Administration and that U.S. law enforcement agencies, including the Federal Bureau of Investigation (FBI), the former Immigration and Naturalization Service, and the Justice Department's Civil Rights Division would cooperate closely to upgrade their efforts to combat trafficking. The Justice Department also announced new guidelines for federal prosecutors to pursue trafficking cases.<sup>189</sup> The State Department issued its first congressionally mandated report on worldwide trafficking in July 2001.

On January 24, 2002, Ashcroft announced the implementation of a special "T" visa, as called for in P.L. 106-386, for victims of trafficking in the United States who cooperate with law enforcement officials. Under the statute, victims who cooperate with law enforcement against

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<sup>189</sup> Attorney General John Ashcroft's news conference on March 27, 2001.

their traffickers and would be likely to suffer severe harm if returned to their home countries may be granted permission to stay in the United States. After three years in T status, the victims are eligible to apply for permanent residency and for non-immigrant status for their spouses and children.<sup>190</sup>

On February 13, 2002, President Bush signed an Executive Order establishing an Interagency Task Force to Monitor and Combat TIP. The Task Force, mandated by the Trafficking Victims Protection Act of 2000 (P.L. 106-386), includes the Secretary of State, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services (HHS), the Director of the Central Intelligence Agency, the Administrator of the Agency for International Development, the Director of the Office of Management and Budget, and Office of the National Security Advisor. The Task Force is charged with strengthening coordination among key agencies by identifying what more needs to be done to protect potential victims, to punish traffickers, and to prevent future trafficking. The State Department Office to Monitor and Combat Trafficking in Persons (G-TIP) was tasked with assisting the Interagency Task Force in implementing P.L. 106-386 and Task Force initiatives.

### **The Foreign Relations Authorization Act of 2003**

In 2002, Congress amended the Victims of Trafficking and Violence Protection Act of 2000 in Section 682 of the Foreign Relations Authorization Act, FY2003 (P.L. 107-228) to provide

- support for local in-country nongovernmental organization to operated hotlines, culturally and linguistically appropriate protective shelters, and regional and international nongovernmental organizational networks and databases on trafficking;
- support for nongovernmental organizations and advocates to provide legal, social, and other services and assistance to trafficked individuals, particularly those individuals in detention;
- education and training for trafficked women and girls;
- the safe integration or reintegration of trafficked individuals into an appropriate community or family, while respecting the wishes, dignity, and safety of the trafficked individual; and
- support for developing or increasing programs to assist families of victims in locating, repatriating, and treating their trafficked family members.

The amendment also authorized an increase in appropriations for FY2003 to fund such programs.

### **Trafficking Victims Protection Reauthorization Act of 2003**

In 2003, Congress approved the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003. The President signed the act into law on December 19, 2003 (P.L. 108-193). The act authorized substantial increases in funding for anti-trafficking programs in FY2004 and FY2005 (over \$100 million for each fiscal year). P.L. 108-193 refined and expanded the Minimum

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<sup>190</sup> U.S. Department of State, Washington File, January 24, 2002.

standards for the elimination of trafficking that governments must meet and placed on such governments the responsibility to provide the information and data by which their compliance with the standards could be judged. The legislation created a “special watch list” of countries that the Secretary of State determined were to get special scrutiny in the coming year. The list was to include countries where (1) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; (2) there is a failure to provide evidence of increasing efforts to combat severe forms of TIP from the previous year; or (3) the determination that a country is making significant efforts to bring itself into compliance with minimum standards is based on its commitments to take additional steps over the next year. In the case of such countries, not later than February 1 of each year, the Secretary of State is to provide to the appropriate congressional committees an assessment of the progress that the country had made since the last annual report.

## **Intelligence Reform and Terrorism Protection Act of 2004**

In December 2004, Congress approved the Intelligence Reform and Terrorism Protection Act of 2004, signed into law on December 17, 2004 (P.L. 108-458). The law established a Human Smuggling and Trafficking Center (HSTC) to be jointly operated by the Department of Homeland Security (DHS), the State Department, and DOJ. It required that the Center serve as a clearinghouse for Federal agency information in support of U.S. efforts to combat terrorist travel, migrant smuggling, and human trafficking.

## **Trafficking Victims Protection Reauthorization Act of 2005**

On February 17, 2005, Representative Christopher Smith and nine co-sponsors introduced the Trafficking Victims Protection Reauthorization Act of 2005 to authorize appropriations for FY2006 and FY2007 and close loopholes in previous anti-trafficking legislation. The bill was signed into law by the President on January 10, 2006 (P.L. 109-164). Among other things, the legislation had provisions to increase U.S. assistance to foreign trafficking victims in the United States, including access to legal counsel and better information on programs to aid victims. It attempted to address the special needs of child victims, as well as the plight of Americans trafficked within the United States. It directed relevant U.S. government agencies to develop anti-trafficking strategies for post-conflict situations and humanitarian emergencies abroad. It sought to extend U.S. criminal jurisdiction over government personnel and contractors who are involved in acts of trafficking abroad while doing work for the government. It addressed the problem of peacekeepers and aid workers who are complicit in trafficking.

## **The Implementing the 9/11 Commission Recommendations Act of 2007**

The Implementing the 9/11 Commission Recommendations Act of 2007, P.L. 110-53 (H.R. 1), signed into law on August 3, 2007, directs the Secretary of Homeland Security (Secretary of DHS) to provide specified funding and administrative support to strengthen the HSTC. The act directs the Secretary of DHS to nominate a U.S. government employee to direct the HSTC, and specifies that the HSTC be staffed by at least 40 full-time staff, including detailees.<sup>191</sup> In addition,

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<sup>191</sup> The act specifies a number of agencies from which, as appropriate, staff may be detailed to the HSTC, including but (continued...)

the act mandates the hiring of not less than 40 full-time equivalent staff for the HSTC, and would specify the agencies and departments from which the personnel should be detailed (e.g., Transportation and Security Administration, U.S. Coast Guard, ICE, Central Intelligence Agency), and their areas of expertise (e.g., consular affairs, counter terrorism). It also directs the Secretary of DHS to provide the administrative support and funding for the HSTC.

## **William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008**

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008, P.L. 110-457; H.R. 7311) was signed into law on December 23, 2008.<sup>192</sup> The act authorizes appropriations for FY2008 through FY2011 for the TVPA as amended and establishes a system to monitor and evaluate all assistance under the act. P.L. 110-457 requires the establishment of an integrated database to be used by U.S. government departments and agencies to collect data for analysis on TIP. In addition, the act creates a Presidential award for extraordinary efforts to combat TIP.

### **Measures to Address Human Trafficking in Foreign Countries**

P.L. 110-457 increases the technical assistance and other support to help foreign governments inspect locations where forced labor occurs, register vulnerable populations, and provide more protection to foreign migrant workers. The act requires that specific actions be taken against governments of countries that have been on the Tier 2 Watch-List for two consecutive years. P.L. 110-457 also requires U.S. Department of State to translate the TIP Report into the principal languages of as many countries as possible. In addition, among other measures to address the issue of child soldiers, the act prohibits military assistance to foreign governments that recruit and use child soldiers.

### **Preventing Trafficking to the United States**

TVPRA 2008 requires pamphlets on the rights and responsibilities of the employee to be produced and given to employment-based and educational-based nonimmigrants,<sup>193</sup> P.L. 110-457

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(...continued)

not limited to U.S. Customs and Border Protection, Transportation Security Administration, Coast Guard, Central Intelligence Agency, National Security Agency, and the Departments of Defense, Justice, and State. The act also specifies that the detailees include an adequate number with specified expertise, and that agencies shall create policies and incentives for the detailees to serve terms of at least two years.

<sup>192</sup> The House and the Senate had each taken up their own versions of the 2008 reauthorization bill. H.R. 3887, The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2007 (Lantos), was passed by the House under suspension of the rules on December 4, 2007. The vote was 405-2. S. 3061, The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Biden/Brownback), was reported by the Senate Judiciary Committee on September 8, 2008. H.R. 3887 and S. 3061 included many identical provisions, and most of the differences between the two bills were from provisions that existed in only one of the bills rather than substantial differences between similar provisions in both bills. For a more detailed discussion of the differences between the two bills, see CRS Congressional Distribution Memorandum, *Select Differences Between S. 3061 as Reported, and H.R. 3887 as Passed by the House*, by Alison Siskin and Clare Ribando Seelke, available from the authors.

<sup>193</sup> Nonimmigrant visas are commonly referred to by the letter and numeral that denotes their subsection in the Immigration and Nationality Act (INA) §101(a)(15). Nonimmigrant visas are commonly referred to by the letter and (continued...)

also requires consular officers to make sure that certain aliens interviewing for nonimmigrant visas have received, read, and understood the pamphlet. During the interview, the consular officer is also required to discuss the alien's legal rights under U.S. immigration, labor and employment law. The act contains several provisions aimed to protect A-3 and G-5 visas holders<sup>194</sup> including directing the Secretary of State to deny A-3 and G-5 visas to aliens who would be working at a diplomatic mission or international institution where an alien had been subject to trafficking or exploitation at the mission or institution. In addition, the Secretary of State has maintained records on the presence of A-3 and G-5 visa holders in the United States, including information regarding any allegations of abuse.

## **Measures to Address Trafficking in the United States**

P.L. 110-457 amends the requirements for the T visa, so that an alien would be eligible for a T visa if the alien was unable to comply with requests for assistance in the investigation and prosecution of acts of trafficking due to physical or psychological trauma. TVPRA 2008 also requires when determining whether the alien meets the extreme hardship requirement for T status that the Secretary of DHS consider whether the country to which the alien would be removed can adequately address the alien's security and mental and physical health needs. In addition, P.L. 110-457 amends the requirements for the T visa so that an alien would be eligible if she was present in the United States after being allowed entry to aid in the prosecution of traffickers. The act also broadens the requirements for an alien to receive continued presence in the United States, and makes it easier for families of trafficking victims to be paroled into the United States. In addition, P.L. 110-457 amends the law to allow the Secretary of DHS to waive the good moral character requirement for those adjusting from T to LPR status, and allows the Secretary of DHS to provide a stay of removal for aliens with pending T applications (with a prima facie case for approval), until the application has been adjudicated. The act also makes aliens with pending applications for T status eligible for public benefits, and makes T visa holders, including derivatives, eligible for public benefits.<sup>195</sup> Furthermore, P.L. 110-457 requires the Secretary of HHS to make a prompt determination of eligibility for assistance for child trafficking victims.

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(...continued)

numeral that denotes their subsection in the Immigration and Nationality Act (INA) §101(a)(15). Under the act, employment-based and educational-based visas refer to: A-3 visa holders (admitted under INA §101(a)(15)(A)(iii)), who are the attendants, servants or personal employees of Ambassadors, public ministers, career diplomats, consuls, other foreign government officials and employees or the immediate family of such workers; G-5 visa holders (admitted under INA §101(a)(15)(G)(v)) are the attendants, servants, or personal employees and their immediate family of foreign government representatives or foreign employees of international organizations; H visa holders (admitted under INA §101(a)(15)(H)) which is the main category for different types of temporary workers; and J visa holders (admitted under INA §101(a)(15)(J)) which are foreign exchange visitors and include diverse occupations as au pairs, foreign physicians, camp counselors, professors and teachers.

<sup>194</sup> A-3 visa holders refer to workers admitted under INA §101(a)(15)(A)(iii), who are the attendants, servants or personal employees of Ambassadors, public ministers, career diplomats, consuls, other foreign government officials and employees or the immediate family of such workers. G-5 visa holders (admitted under INA §101(a)(15)(G)(v)) are the attendants, servants, or personal employees and their immediate family of foreign government representatives or foreign employees of international organizations.

<sup>195</sup> Previously, T visa holders and their derivative were eligible for public benefits because of a provision in Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) stating for the purpose of benefits T visa holders are eligible to receive certain public benefits to the same extent as refugees. TVPRA 2008 amends the Personal Responsibility and Work Opportunity Act (P.L. 104-193, PWORA also known as Welfare Reform) to make T visa holders and their derivatives "qualified aliens" (i.e., eligible for public benefits under PWORA).

TVPRA 2008 has provisions relating to enhancing protections for child victims of trafficking. Among these provision include requiring the United States to enter into agreements with contiguous countries regarding the return of unaccompanied minors designed to protect children from severe forms of TIP,<sup>196</sup> and specifying screening procedures for children suspected of being trafficking victims. In addition, the act directs the Secretary of HHS to the extent possible to provide legal counsel and appoint child advocates to child trafficking victims and other vulnerable unaccompanied alien children.

Moreover, P.L. 110-457 creates new grant programs for U.S. citizen victims of severe forms of trafficking and authorizes appropriations for such programs. The act also requires the Secretary of HHS and the Attorney General, within one year of enactment, to submit a report to Congress identifying any gaps between services provided to U.S. citizen and noncitizen victims of trafficking. It also prohibits DOS from issuing passports to those convicted of sex tourism until the person has completed their sentence. Furthermore, the act creates new criminal offenses related to human trafficking, including criminalizing retaliation in foreign labor contracting. P.L. 110-457 creates additional jurisdiction in U.S. courts for trafficking offenses occurring in other countries if the alleged offender is present in the United States.

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<sup>196</sup> Unaccompanied minors are aliens who are in the United States without a parent or guardian.

## Appendix B. Trafficking Funding Issues

The U.S. government supports many types of anti-trafficking (anti-TIP) activities overseas and domestically. U.S. anti-trafficking activities are authorized by the Trafficking Victims Protection Act (TVPA) of 2000 (P.L. 106-386), as amended. **Table B-1** lists trafficking authorization levels for FY2008-FY2011. Those authorizations are for TIP operations (including law enforcement investigations) and TIP programs.

Since many U.S. government agencies do not have a line item in their budget requests for trafficking programs and/or TIP-related operations, it is often difficult to calculate the exact level of funding that Congress appropriated for trafficking activities (programs and operations/law enforcement activities) by agency. Despite the challenges, the Office of Management and Budget (OMB) tracks estimated TIP appropriations levels by gathering agency estimations of TIP-related spending for each fiscal year. See **Table B-2** for TIP authorizations versus appropriations for FY2001-FY2011. According to OMB, funding for TVPA programs comes from appropriations to a number of U.S. departments and agencies, including the Department of State (Economic Support Fund, Migration and Refugee Assistance, International Narcotics Control and Law Enforcement (INCLE) Assistance); the Department of Justice (Victims of Trafficking Grants, Criminal and Civil Rights programs, and the Federal Bureau of Investigations); the Department of Labor (Bureau of International Labor Affairs); the Department of Health and Human Services; and the Department of Homeland Security (Immigration and Customs Enforcement).

**Table B-1. Current Authorizations to Implement Victims of Trafficking Act**  
(in \$ U.S. millions)

Authorized Programs	Original Authorizing Source	FY08	FY09	FY10	FY11
<b>International Programs</b>					
<b>U.S. Agency for International Development (USAID)</b>					
USAID: Pilot Program for Rehabilitation Facilities	P.L. 109-164, §102(b)(7)	\$2.5	\$2.5	\$2.5	\$2.5
<b>U.S. Department of State (DOS)</b>					
DOS: Interagency Task Force	P.L. 106-386, §§104, 105(e), 105(f), 110	\$5.5	\$5.5	\$5.5	\$5.5
DOS: Interagency Task Force: Reception Expenses	P.L. 109-164, §301	\$0.03	\$0.03	\$0.03	\$0.03
DOS: Interagency Task Force: Additional Personnel	P.L. 110-457, §301(1)(B)(i)	\$1.5	\$1.5	\$1.5	\$1.5
DOS: Prevention	P.L. 106-386 §106	\$10.0	\$10.0	\$10.0	\$10.0
DOS: Protection	P.L. 106-386 §107(a)	\$10.0	\$10.0	\$10.0	\$10.0
DOS: Prosecution and Meeting Minimum Standards	P.L. 106-386 §§108-109	\$10.0	\$10.0	\$10.0	\$10.0
DOS: Refugees and Internally Displaced Persons	P.L. 110-457, §104	\$1.0	\$1.0	\$1.0	\$1.0
<b>President</b>					
President: Foreign Assistance for Law Enforcement Training	P.L. 106-386, §109	\$0.25	\$0.25	\$0.25	\$0.25



Authorized Programs	Original Authorizing Source	FY08	FY09	FY10	FY11
President: Foreign Victim Assistance	P.L. 106-386, §106	\$15.0	\$15.0	\$15.0	\$15.0
President: Foreign Assistance to Meet Minimum Standards	P.L. 106-386, §109	\$15.0	\$15.0	\$15.0	\$15.0
President: Research	P.L. 108-193, §7(5)(B)	\$2.0	\$2.0	\$2.0	\$2.0
<b>Domestic Programs</b>					
<b>Department of Health and Human Services (HHS)</b>					
HHS: Victims' assistance	P.L. 106-386, §107(b)(1)	\$12.5	\$12.5	\$12.5	\$12.5
HHS: Grants to U.S. citizen and LPR victims of trafficking within U.S.	P.L. 109-164, §202	\$8.0	\$8.0	\$8.0	\$8.0
HHS: Pilot program residential treatment facilities juvenile victims in U.S.	P.L. 109-164, §203	\$5.0	\$5.0	\$5.0	\$5.0
HHS: Victims assistance for U.S. citizens and Legal Permanent Residents (LPRs)	P.L. 110-457, §213	\$2.5	\$5.0	\$7.0	\$7.0
<b>Department of Homeland Security (DHS)</b>					
DHS (Immigration and Customs Enforcement): trafficking investigations	P.L. 109-164, §301(h)	\$18.0	\$18.0	\$18.0	\$18.0
DHS: Human Smuggling and Trafficking Center	P.L. 110-457, §108(a)(2)	\$2.0	\$2.0	\$2.0	\$2.0
<b>Department of Justice (DOJ)</b>					
DOJ: Grants to strengthen victims services	P.L. 106-386, §107(b)(2)	\$10.0	\$10.0	\$10.0	\$10.0
DOJ: Study on severe forms of trafficking in persons in U.S.	P.L. 109-164, §201(a)(1)(B)(i)	\$1.5	\$1.5	\$1.5	\$1.5
DOJ: Study on sex trafficking in U.S.	P.L. 109-164, §201(a)(1)(B)(ii)	\$1.5	\$1.5	\$1.5	\$1.5
DOJ: Annual trafficking conference	P.L. 109-164, §201(a)(2)	\$1.0	\$1.0	\$1.0	\$1.0
DOJ: grants to state and local law enforcement for anti-trafficking programs	P.L. 109-164, §204	\$20.0	\$20.0	\$20.0	\$20.0
DOJ Federal Bureau of Investigation: trafficking investigations	P.L. 109-164, §301(h)	\$15.0	\$15.0	\$15.0	\$15.0
DOJ: Victims assistance for U.S. citizens and Legal Permanent Residents (LPRs)	P.L. 110-457, §213	\$2.5	\$5.0	\$7.0	\$7.0
<b>Department of Labor (DOL)</b>					
DOL: Expand services to trafficking victims	P.L. 106-386, §107(b)(1)(B)	\$10.0	\$10.0	\$10.0	\$10.0

**Source:** CRS analysis of P.L. 106-386, P.L. 108-193, P.L. 109-164, and P.L. 110-457.

**Note:** The TVPA and its subsequent reauthorizations include several additional provisions without specific funding amounts. Such provisions include §107A(f) of P.L. 106-386, as amended, which authorizes not more than 5% of the amounts made available to carry out the TVPA, as amended, in each fiscal year 2008 through 2011 to the President to evaluate anti-trafficking programs and projects. §112B of P.L. 106-386, as amended, authorizes such sums as may be necessary for each fiscal year 2008 through 2011 to the President to provide an award for "Extraordinary Efforts to Combat Trafficking in Persons." §114(c)(2) of P.L. 106-386, as amended, also authorizes such sums as may be necessary for each fiscal year 2008 through 2011 to the Department of State for the preparation of congressionally mandated human rights reports with reference to human trafficking issues. Note also that additional funding outside the scope of the TVPA and its reauthorizations has been authorized in separate legislative vehicles. See for example, §111 of P.L. 109-162, which authorizes \$10 million for each fiscal

year 2008 through 2011 to the Department of Justice for state and local law enforcement grants for human trafficking victim identification.

**Table B-2. Trafficking Victims Protection Act (TVPA) of 2000, as Amended  
Authorizations and Appropriations, FY2001-2011**  
(in \$ U.S. millions)

Fiscal Year	Authorizing Public Law	Title	Authorizations (Millions \$)	Appropriations (Millions \$)
2001	P.L. 106-386 (Part A)	Victims of Trafficking and Violence Protection Act of 2000	\$31.8	N/A
2002	P.L. 106-386 (Part A)	Victims of Trafficking and Violence Protection Act of 2000	\$63.3	N/A
2003	P.L. 106-386 (Part A) <sup>a</sup>	Victims of Trafficking and Violence Protection Act of 2000	\$48.3	N/A
2004	P.L. 108-193	Trafficking Victims Protection Reauthorization Act of 2003	\$105.6	\$109.8
2005			\$105.6	\$109.6
2006	P.L. 109-164	Trafficking Victims Protection Reauthorization Act of 2005	\$177.3	\$152.4
2007			\$162.3	\$153.1
2008	P.L. 110-457	William Wilberforce Trafficking Victims Reauthorization Act of 2008	\$182.3	\$167.4
2009			\$187.3	\$182.7
2010			\$191.3	\$162.2
2011			\$191.3	N/A

**Source:** Estimated appropriations levels as calculated by the Office of Management and Budget (multiple responses to CRS, most recently on May 17, 2011). Estimates not collected prior to FY2004. Authorizations estimates are rounded to the first decimal and do not include provisions without specific dollar amounts authorized.

a. As amended by Section 682 of the Foreign Assistance Act for FY2003 (P.L. 107-228).

## Appendix C. Appropriations for Grant Programs for Domestic TIP Victims

Domestic anti-TIP activities include both services to victims, as well as law enforcement operations. Investigations into human trafficking are complex and as a result often require significant resources. See **Table C-1** for authorizations and appropriations for grant programs to assist trafficking victims in the United States for FY2001-FY2010.

**Table C-1. Authorizations and Appropriations for Grant Programs to Assist Victims of Trafficking in the United States: FY2001-FY2012**

(\$ in millions)

Fiscal Year	Victims Services—DOJ		Office of Refugee Resettlement <sup>a</sup>	
	Authorized	Appropriated	Authorized	Appropriated
FY2001	\$5	\$0	\$5	\$5
FY2002	\$10	\$10	\$10	\$10
FY2003	N.A.	\$10	N.A.	\$9.9
FY2004	\$15	\$10	\$15	\$9.9
FY2005	\$15	\$10	\$15	\$9.9
FY2006	\$15	\$9.9	\$15	\$9.8
FY2007	\$15	\$9.9	\$15	\$9.8
FY2008	\$10 <sup>b</sup>	\$9.4 <sup>c</sup>	\$12.5 <sup>b</sup>	\$10 <sup>d</sup>
FY2009	\$10	\$10	\$12.5	\$9.8 <sup>d</sup>
FY2010	\$10	\$12.5 <sup>c</sup>	\$12.5	\$9.8 <sup>d</sup>
FY2011	\$10	\$10.4 <sup>ce</sup>	\$12.5	\$9.8 <sup>d</sup>
FY2012	N.A.	\$10.5	N.A.	\$9.8

**Sources:** P.L. 106-386, P.L. 108-193, P.L. 109-164, P.L. 107-77, P.L. 107-116, P.L. 108-7, P.L. 108-90, P.L. 108-199, P.L. 108-334, P.L. 108-447, P.L. 109-90, P.L. 109-149, P.L. 109-164, P.L. 110-5, P.L. 110-161, P.L. 110-457, P.L. 111-8, P.L. 111-117, P.L. 112-10.

- a. This only includes authorizations for the HHS grant program, authorized originally in P.L. 106-386, to provide assistance to victims. Three other HHS victims service programs have been authorized but according to HHS none have received appropriations. For a listing of these programs, see **Table B-1**.
- b. Authorizations for FY2008 were enacted during FY2009.
- c. This includes funding for victims services programs under The Victims of Trafficking Act of 2000 (P.L. 106-386) and DOJ programs authorized under Trafficking Victims Protection Reauthorization Act of 2005 (P.L. 109-164).
- d. The language in act states that the money should be available to carry out The Victims of Trafficking Act of 2000.
- e. On April 15, 2011, President Obama signed into law the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10). P.L. 112-10 required a reduction in funding to be applied proportionately to each program funded under the account which contains this appropriation in FY2010. Thus, CRS calculates that each grant program funded under this account will be reduced 17.0% and from that amount the 0.2% across-the-board rescission is applied. For more on this reduction, see CRS Report

R41161, *Commerce, Justice, Science, and Related Agencies: FY2011 Appropriations*, coordinated by Nathan James, Oscar R. Gonzales, and Jennifer D. Williams.

## **Appendix D. Legislation in the 111<sup>th</sup> Congress**

Several bills were introduced in the 111<sup>th</sup> Congress that would have addressed issues related to human trafficking. The discussion in the following section is limited to legislation in the 111<sup>th</sup> Congress (excluding appropriations) that received congressional action. Notably, none of the bills were passed by Congress.

### **S. 2925: Domestic Minor Sex Trafficking Deterrence and Victims Support Act of 2010**

The Senate passed S. 2925 on December 13, 2010, and the House passed an amended but similar version of S. 2925 on December 21, 2010.<sup>197</sup> The House and Senate versions of the bill would have authorized the Assistant Attorney General for DOJ's Office of Justice Programs, in consultation with the Assistant Secretary for Children and Families in HHS, to award one-year grants to six eligible entities<sup>198</sup> in different regions of the United States to combat domestic minor sex trafficking (DMST). At least one of the grants would have to have been awarded to a state with a population less than 5 million people. The grants would have been renewable twice, for one year for each renewal (for a total grant length of three years). Each grant could have ranged from \$2 million to \$2.5 million.

Under the House and Senate versions of the bill, at least 67% of the grants would have to have been allocated to non-governmental organizations (NGOs) to provide counseling, legal services, shelter, clothing, and other social services to victims of DMST. Not less than 10% of the funds would have been allocated by the eligible entity to NGOs to provide services to DMST victims or training for service providers on DMST. Funds could have also been used for training for law enforcement; investigative and prosecution expenses; case management; salaries for law enforcement officers and state and local prosecutors; and outreach, education, and treatment programs, all related to cases of DMST. The House and Senate versions of S. 2925 would have authorized \$15 million each year, for FY2012 through FY2014, for this program. The grantees would have been required to match at least 25% of the grant in the first year, 40% in the second year, and 50% in the third year.<sup>199</sup>

### **H.R. 5138: International Megan's Law of 2010**

H.R. 5138 was introduced on April 26, 2010, and passed the House on July 27, 2010. The bill's stated purpose was to protect children from sexual exploitation by preventing or monitoring the

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<sup>197</sup> S. 2925 was introduced by Senator Wyden on December 22, 2009, and ordered reported, amended, by the Senate Judiciary Committee on August 5, 2010. A similar bill, H.R. 5575, was introduced by Representative Maloney on June 23, 2010.

<sup>198</sup> An eligible entity is a state or local government that (1) has significant criminal activity involving DMST; (2) has demonstrated cooperation between state, local, and tribal law enforcement agencies (if applicable), prosecutors, and social service providers in addressing DMST; (3) has developed a workable, multidisciplinary plan to combat DMST; and (4) provides assurances that DMST victims would not be required to collaborate with law enforcement to have access to shelters or services.

<sup>199</sup> The main difference between the House and Senate versions of S. 2925 was that House-passed S. 2925 contained a provision prohibiting any of the monies from being used for medical care (as defined in 42 U.S.C. §300gg-91). This provision was not included in Senate-passed S. 2925.

international travel of sex traffickers and other sex offenders who pose a risk of committing a sex offense against a minor while traveling abroad. Among other provisions, H.R. 5138 would have amended the TVPA to expand criteria that determine whether foreign countries were meeting the minimum standards for the elimination of severe forms of trafficking in persons to include whether a country was investigating and prosecuting nationals suspected of engaging in severe forms of trafficking in persons abroad. The bill would have required that the Secretary of State, in consultation with the Attorney General, submit a report to Congress on international mechanisms related to traveling child sex offenders. The bill also would have encouraged the President to use existing foreign assistance authorities for combating trafficking in persons to additionally provide assistance to strengthen foreign country efforts to target child sex offenders.

### **H.R. 2410 and S. 2971: Foreign Relations Authorization Act, Fiscal Years 2010 and 2011**

H.R. 2410 was introduced on May 14, 2009, and passed the House on June 10, 2009. Among other provisions unrelated to trafficking in persons, Section 1016 of Title X would have required that the Secretary of State report to Congress on the best use of U.S. foreign assistance to reduce smuggling and trafficking in persons.

S. 2971, a corresponding but separate Senate bill with the same title, was introduced on January 29, 2010, and was reported out of the Senate Foreign Relations Committee on September 23, 2010, with an amendment in the nature of a substitute. The bill as reported included a provision to amend Section 660 of the Foreign Assistance Act of 1961 (FAA, 22 U.S.C. 2420), which generally prohibits training of foreign police forces. Section 402 of Title IV of S. 2971 would have made an exception to Section 660 of the FAA and would have authorized foreign police assistance for combating trafficking in persons.

### **S. 3184: Child Protection Compact Act of 2010**

S. 3184 was introduced on March 25, 2010, and was reported out of the Senate Foreign Relations Committee on September 28, 2010, without amendment. According to the committee report, S.Rept. 111-337, the purpose of S. 3184 was to “provide incentives to protect and rescue children subjected to severe forms of trafficking in persons or sexual exploitation through the establishment of Child Protection Compacts between the United States and select, eligible countries.” Related to S. 3184 is H.R. 2737, the Child Protection Compact Act of 2009. H.R. 2737 was referred to the House Foreign Affairs Committee on June 4, 2009, and did not receive action.

S. 3184 would have authorized each Compact to provide up to \$15 million in assistance and would have recommended that appropriators provide the State Department up to \$30 million for FY2011 through FY2013 for the Compacts. As part of a Compact, eligible countries would have to have committed to a three-year plan to improve efforts to combat child trafficking. To be eligible to receive a Compact, a country would have to have been on the Tier II or Tier II Watch List and would have to have been low-income and eligible for assistance from the International Development Association. In addition, countries must not have been ineligible to receive U.S. economic assistance under part I of the FAA (22 U.S.C. 2151 et seq.).

## **Author Contact Information**

Alison Siskin  
Specialist in Immigration Policy  
asiskin@crs.loc.gov, 7-0260

Liana Sun Wyler  
Analyst in International Crime and Narcotics  
lwylr@crs.loc.gov, 7-6177

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