



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

June 7, 2007

The Honorable Richard J. Durbin
Chairman
Subcommittee on Human Rights and the Law
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are the responses for the record of Grace Chung Becker, Deputy Assistant Attorney General for the Civil Rights Division, U.S. Department of Justice, to written questions, dated April 19 and April 30, 2007, following the March 26, 2007, hearing held by the Subcommittee entitled, "Legal Options to Stop Human Trafficking."

We hope this information is helpful to you. If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Hertling".

Richard A. Hertling
Principal Deputy Assistant Attorney General

cc: The Honorable Tom Coburn
Ranking Member

Written Questions from Sen. Dick Durbin
Senate Judiciary Committee Subcommittee on Human Rights and the Law
Hearing: "Legal Options to Stop Human Trafficking"
April 18, 2007
Questions for Grace Chung Becker

1. At the March 26, 2007 hearing, one of the witnesses, Martina Vandenberg, stated that the executive branch had not yet issued regulations that would permit trafficking victims with a T visa to adjust their status and become permanent residents. You testified you were not familiar with the status of the regulations and that the regulations were under the jurisdiction of another federal agency.

Please consult with the appropriate federal agency and provide this subcommittee with a status report of those regulations. Why are the regulations not yet implemented? When do you anticipate they will be implemented? Why has there been such a long delay in the implementation of these important regulations?

Answer: We have been advised by the Department of Homeland Security that the T and U adjustment regulation remains under review, and they anticipate that it will be published in the near future.

2. At the March 26, 2007 hearing, Ms. Vandenberg proposed that victims trafficked by U.S. government contractors or employees abroad be permitted to come to the United States and receive federal benefits such as a T visa. Under current law, such victims are not allowed to receive such benefits. You testified at the hearing that you would like an opportunity to evaluate this proposal.

Please provide this subcommittee with the position of the Justice Department on this proposal to permit trafficking victims who were victimized abroad by U.S. government contractors or employees to come to the United States and receive federal trafficking victim benefits.

Answer: Trafficking victims, identified by U.S. law enforcement in the context of an investigation of a U.S. government contractor or employee, may be admitted to enter the United States to assist law enforcement authorities with a human trafficking investigation or prosecution. In such a case, their presence in the United States would be directly related to their participation in the trafficking investigation or prosecution, and they would then be eligible to apply for a T visa.

The Administration will consider any specific proposals with which we are presented.

3. At the March 26, 2007 hearing, we also discussed Ms. Vandenberg's proposal that the Justice Department include in its annual anti-trafficking report to Congress a section evaluating the Defense Department's efforts to implement its zero tolerance policy on human trafficking. Such an evaluation would include the amount of funding budgeted by the Defense Department for anti-trafficking activities; adverse contracting outcomes related to trafficking; and the Defense Department's anti-trafficking training efforts.

Please provide this subcommittee with the position of the Justice Department on this proposal to require that its annual report to Congress include an evaluation of the Defense Department's anti-trafficking activities.

Answer: The Department of Justice and Department of Defense agree that it would be helpful to Congress for information about DOD's anti-trafficking efforts to be included in the annual report from the Attorney General. The Department of Justice is working with the Department of Defense to determine the best format for including information about DOD's anti-trafficking efforts in the annual report, since DOD's efforts are unique to its structure and mission.

4. At the March 26, 2007 hearing, I asked you about a July 2006 report by the Government Accountability Office (GAO) that was critical of the U.S. government's efforts to fight trafficking overseas. The report, entitled "Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitraficking Efforts Abroad," concluded: "More than 5 years after the passage of the landmark antitraficking law, the U.S. government has not developed a coordinated strategy to combat trafficking in persons abroad, as called for in a presidential directive, or evaluated its programs to determine whether projects are achieving the desired outcomes." You indicated that you were only "vaguely familiar with" this report.

Please review the July 2006 GAO report and provide this subcommittee with a response to the report on behalf of the Justice Department. What specific efforts have been made by the Justice Department, and other relevant federal agencies, to address the concerns raised in this GAO report?

Answer: The Department of Justice has been effective in combating trafficking in persons abroad. Prosecutors from our Civil Rights Division and Criminal Division train foreign prosecutors and law enforcement on best practices for combating TIP and advise legislators on crafting effective anti-TIP legislation. Additionally, the Office of Overseas Prosecutorial Development, Assistance and Training and the International Criminal Investigative Training Assistance Program provide grants and technical assistance to foreign law enforcement, prosecutors, judges, and government officials on effective strategies for combating TIP. The Department of Justice is committed to continuing this assistance and focusing on actionable research that will assist our prosecutors and investigators to find and prosecute traffickers and rescue victims.

The overall coordination of trafficking strategy between U.S. government agencies is done through the Senior Policy Operating Group (SPOG) meetings, a policy coordination working group, which is chaired by the Ambassador-at-Large in the State Department Office to Monitor and Combat Trafficking in Persons. The President's Interagency Task Force on Trafficking in Persons (PITF), chaired by Secretary of State Rice and consisting of Cabinet-level members, designates senior officials as representatives to the SPOG and oversees the activities of the SPOG. These interagency task forces increase coordination between the relevant federal agencies on TIP-related issues. Fighting trafficking in

persons overseas falls within the mandate of the Department of State; however, the Department of Justice contributes resources, as noted above.

The SPOG, chaired by the Office to Monitor and Combat Trafficking in Persons (G/TIP), creates an active forum where interagency representatives work together to identify strengths and weaknesses of the U.S. approach to combat trafficking in real time. SPOG quarterly meetings and the annual Assessment of U.S. Government Activities to Combat Trafficking in Persons drafted by the Department of Justice are used as tools to help identify where the U.S. government needs to focus its energies to improve its efforts abroad to combat modern-day slavery.

We are advised by the Department of State (DOS) that it acknowledges the need cited in the GAO report for better performance measures and notes that efforts to develop measurement tools have been under way for the past few years. For example, in 2003, DOS's Bureau of Population, Refugees, and Migration (PRM) initiated discussions with the International Organization for Migration (IOM) and provided funds in 2004 to develop a performance indicators module to assess the impact of anti-trafficking programs. Since FY 2005, all PRM-funded anti-trafficking projects have been required to include performance indicators in project proposals and to report against them in quarterly progress reports. In addition, the U.S. government is looking for a coordinated way to measure the results of the President's Anti-Trafficking Initiative. G/TIP has developed a list of program indicators for assessing measurable outcomes of G/TIP-funded projects, including activities related to public awareness and prevention, protection and assistance to victims, investigation and prosecution, and training of professionals. G/TIP shared this list with PRM and the IOM and has begun applying the indicators to new grant projects. Further, G/TIP has set aside FY 2006 funds for projects to support establishing a foundation for evaluation of G/TIP-funded programs. Embassy personnel also play an important role in guiding project activities, ensuring accountability, and observing project activities first-hand. (Source: Combination of June 2006 Department of State comments to the GAO report referenced and the September 2006 Assessment of U.S. Government Activities to Combat Trafficking in Persons.)

In addition to the information above on DOS, the September 2006 Assessment of U.S. Government of Activities to Combat Trafficking in Persons in Fiscal Year 2005 addresses how the Department of Labor and USAID have instituted measurement tools.

5. What changes, if any, would the Department of Justice advocate making to the Trafficking Victims Protection Act if Congress were to reauthorize this law in 2007?

Answer: The efforts taken to enforce the TVPA consume enormous resources. One complex, multiple-victim case alone can require thousands of hours of attorney time. That is why the President, in his proposed budget for fiscal year 2008, has asked Congress for an additional thirteen positions (including eight attorney positions) and \$1,713,000 to address current case demands and to further enhance the Civil Rights Division's anti-trafficking program. These additional resources will enable us to

continue to build our human trafficking program – to identify and prosecute human trafficking crimes where they occur, and to restore the victims of this terrible crime.

**Additional Written Questions from Sen. Dick Durbin
Senate Judiciary Committee Subcommittee on Human Rights and the Law
Hearing: "Legal Options to Stop Human Trafficking"**

April 30, 2007

Questions for Grace Chung Becker

1. At the March 26, 2007 hearing, you suggested that the Department of Justice was successful in prosecuting a trafficker entitled to diplomatic immunity in the case of a Saudi woman, Hana Al Jader, who enslaved two domestic workers in her Winchester, Massachusetts home. Reports of this case, however, do not indicate that diplomatic immunity was at issue in this case.

- A. Please clarify for the record whether Al Jader was entitled to diplomatic immunity and, if so, what occurred in that case to enable the prosecution to proceed despite that immunity.**

Answer: Al-Jader traveled on a diplomatic passport but did not have formal diplomatic immunity because she was not posted to an Embassy or other protected office. Thus, diplomatic immunity did not bar prosecution.

- B. Also, please indicate the sentence that Al Jader received.**

Answer: On December 21, 2006, the defendant was sentenced to two years' probation to include a six-month term of home detention and 100 hours of community service. She was also ordered to pay \$206,972 restitution and a \$40,000 fine and to forfeit real property in Virginia.

2. As recent reports indicate, diplomatic immunity challenges the ability of the Department of Justice to combat trafficking in persons fully and effectively under the Trafficking Victims Protection Act.

- A. Please indicate the number of human trafficking investigations that the Department of Justice has conducted of foreign diplomats with immunity under the Vienna Convention on Diplomatic Relations, including investigations for crimes of trafficking, forced labor, involuntary servitude, assault and battery.**
- B. In how many of those investigations did the Department of Justice ask the Department of State to request a waiver of immunity from the foreign mission of the diplomat?**

- C. In how many of those investigations was the diplomat's immunity actually waived, allowing a prosecution to proceed?**
- D. In how many of those investigations was the diplomat designated a *persona non grata* by the Department of State?**
- E. Has the Department of State cooperated in investigations of diplomats alleged to have engaged in trafficking in persons?**
- F. What investigative measures has the Department of State permitted, and which measures has the Department of State blocked?**
- G. What other specific challenges does diplomatic immunity pose to the investigative tools and mechanisms typically used by the Department of Justice to investigate traffickers?**

Answer: The following applies to subquestions A-G: The Department of Justice does not maintain data specifically tracking the number of investigations implicating foreign diplomats with immunity, the number of requests for waivers of immunity, or the results of any such requests. The Department of Justice, in consultation with the Department of State, investigates trafficking allegations even in cases with diplomatic immunity issues and, in appropriate felony cases, refers the results of investigations to the Department of State for a request that a waiver of any immunity be sought to permit prosecution. The Department of State follows a policy of requesting waivers to permit prosecution and, if a waiver is denied in a felony case, requiring the diplomat and his/her family to leave the United States or imposing a *persona non grata* designation upon the diplomat. However, there is no systematic data maintained within the Department of Justice on the imposition of *persona non grata* designation. Where diplomatic immunity issues may be implicated, the Department of Justice and the Department of State engage in a deliberative process to determine whether there are any relevant immunities and, if so, the investigative measures that may appropriately be utilized in a particular investigation. We understand that these are areas of great concern and will work with the Department of State to see about improving the system where it has to do with gathering more data.

3. Under 18 U.S.C. § 1593, restitution is mandatory in trafficking and forced labor cases. However, in many instances trafficking victims are not receiving restitution.

- A. In total, how much money has the Department of Justice succeeded in obtaining for trafficking victims through restitution orders mandated by the courts?**

Answer: The Department does not maintain a formal system for tracking data on restitution awards by particular offense.

B. How much money (as a percentage, and in raw dollar figures) have trafficking victims collected under these mandatory restitution orders?

Answer: The Department does not maintain a formal system for tracking data on restitution awards by particular offense.

C. Please explain any discrepancy between the amount awarded and the amount collected.

Answer: Please see response to subquestion B above.

4. Under the 2003 Trafficking Victims Protection Act reauthorization, trafficking victims were given the right to seek civil remedies against their traffickers. I am concerned about the low number of such cases that have been brought.

A. Does the Department of Justice have any tally (official or unofficial) of the number of civil cases brought by trafficking victims under 18 U.S.C. § 1595? If so, how many cases total have been brought? If available, please provide a list of these cases, and their outcomes.

Answer: The Department of Justice prosecutes criminal violations of the Trafficking Victims Protection Act (TVPA) but is not a party to civil TVPA cases, and civil litigants are under no obligation to notify the Department of the filing of civil actions. The Department, therefore, does not maintain data on the number of civil TVPA cases.

B. Regardless of whether this data about 18 U.S.C. § 1595 civil actions is available to you at this time, would the Department of Justice be willing to collect and provide this data to Congress in the Attorney General's annual report on trafficking in persons?

Answer: The Department of Justice prosecutes criminal violations of the TVPA but is not a party to civil TVPA cases, and civil litigants are under no obligation to notify the Department of the filing of civil actions. Accordingly, it would not be feasible or appropriate for the Justice Department to accurately monitor all private civil litigation that may be brought under the TVPA.