

**INTERAGENCY MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,
THE DEPARTMENT OF HOMELAND SECURITY,
AND
THE DEPARTMENT OF JUSTICE**

I. Policy:

The Departments of Health and Human Services, Homeland Security and Justice, through the implementation of the Trafficking Victims Protection Act of 2000 ("TVPA"), Public Law 106-386, are committed to identify and assist those adults and minors who have been victims of a severe form of trafficking in persons.

II. Purpose of this Memorandum:

The purpose of this Memorandum of Understanding (MOU) is to set forth the basic functions and interrelationships of the departments as they relate to the certification of victims of a severe form of trafficking in persons by the Secretary of the Department of Health and Human Services ("HHS"), after consultation with the Attorney General of the Department of Justice ("DOJ") or the Secretary of the Department of Homeland Security ("DHS"), as authorized by TVPA § 107(b)(1)(E) and the Homeland Security Act of 2002, Public Law 107-296. This MOU is an internal Federal Government agreement and is not intended to confer any right upon any private person or organization.

III. Authority:

The authority for this MOU is §§ 107(b)(1)(A), (B), and (E) of the TVPA, as codified at 22 U.S.C. §§ 7105(b)(1)(A), (B) and (E), and the Homeland Security Act of 2002, Public Law 107-296.

IV. Roles and Responsibilities of the Individual Departments:

A. The Department of Health and Human Services

1. After consultation with DOJ or DHS, HHS, through the Office of Refugee Resettlement ("ORR"), will issue a certification letter under § 107(b)(1)(E) of the TVPA, to a person 18 years of age or older who:
 - a. has been subjected to a severe form of trafficking in persons as described in § 103(8) of the TVPA; and
 - b. is willing to assist in every reasonable way in the investigation and prosecution of a severe form of trafficking in persons as described in § 107(b)(1)(E)(iii) of the TVPA; and

- c. has made a bona fide application for nonimmigrant status under § 101(a)(15)(T) of the Immigration and Nationality Act ("INA") that has not been denied; or is a person whose continued presence in the United States is needed to effectuate prosecution of traffickers in persons in accordance with § 107(c)(3) of the TVPA.
2. A person who has been subjected to a severe form of trafficking in persons and who has not attained 18 years of age does not need to be certified. See TVPA § 107(b)(1)(C)(ii)(I). ^{Bold} After a recommendation from DOJ or DHS, ORR will issue an eligibility letter to a person who has not attained 18 years of age, stating that the person has been subjected to a severe form of trafficking in persons.
 3. ORR will fulfill its consultation requirement relating to immigration status by confirming with DHS that a person has either made a bona fide application for nonimmigrant status under § 101(a)(15)(T) of the INA, has been granted nonimmigrant status under § 101(a)(15)(T)(i) of the INA, or has been granted continued presence by DHS in accordance with TVPA § 107(c)(3).
 4. ORR will consider DHS's determination that an applicant has submitted a bona fide application for nonimmigrant status under § 101(a)(15)(T), or DHS's granting of nonimmigrant status under § 101(a)(15)(T)(i) of the INA, to mean that the person meets the certification requirements under § 107(b)(1)(E) of the TVPA, because the person has presented prima facie evidence that he or she has been subjected to a severe form of trafficking in persons and has complied with any reasonable request for assistance in the investigation and prosecution of acts of a severe form of trafficking in persons.
 5. ORR will consider the granting of continued presence to mean that a person has been subjected to a severe form of trafficking in persons.
 6. ORR will consider the determination by Federal law enforcement in a separate section of the continued presence form, as discussed in B4, that a person is willing to assist in every reasonable way in the investigation and prosecution of a severe form of trafficking in persons to mean that the person meets the assistance requirement under § 107(b)(1)(E)(i)(I) of the TVPA.
 7. HHS, DOJ, and DHS will devise an alternative process to evaluate whether an individual meets the assistance requirement under section 107(b)(1)(E)(i)(I) of the TVPA in cases in which law enforcement does not indicate on the continued presence form that the person is willing to assist in every reasonable way in the investigation and prosecution of a severe form of trafficking in persons.
 8. ORR, in consultation with DOJ and DHS, will develop procedures that will be used to attempt to bring more trafficking victims to the government's attention.
 9. In situations described in B8, or in situations in which continued presence

status has expired and a bona fide T visa application has not been made or visa issued, or in situations in which Federal law enforcement believes that a person who has been issued a certification letter or an eligibility letter no longer meets the statutory eligibility criteria, ORR will establish a decertification process that provides the requisite notice and appeal procedures to the extent required by law.

ORR will request support from DHS and DOJ in situations in which ORR moves to revoke an individual's certification or letter of eligibility. Such support might include affidavits providing detailed reasons to support the decertification action, copies of any documents issued to the individual, and testimony if required by the HHS Departmental Appeals Board.

10. ORR will send notice of all certification letters, as described in A1, and eligibility letters, as described in A2 at the time of issuance, to DOJ and DHS. ORR will also forward notifications referred to B2 and B8 received from DHS to the Criminal Section of the Civil Rights Division of DOJ.
11. HHS, DOJ, and DHS are committed to preventing immigration and social service benefit fraud and commit to sharing the information necessary to identify fraud and its perpetrators.

B. The Department of Homeland Security

1. Upon DHS presentation of a case that impacts the TVPA to the local U.S. Attorney's Office, DHS investigative agents shall also notify the Criminal Section of the Civil Rights Division. DHS agents will endeavor to make such a presentation upon identification of a potential trafficking victim. This notification shall include at a minimum: (i) the identity of the targets of the investigation; (ii) the factual allegations to be investigated; (iii) the status of any known victims; and (iv) any statutes that may have been violated. It is anticipated that close coordination between investigative personnel and attorney personnel will continue throughout the investigation.
2. DHS will notify ORR within ten business days of occurrence when an application for T-nonimmigrant status under § 101(a)(15)(T) of the INA is determined to be bona fide or is approved, or where continued presence has been granted in accordance with TVPA § 107(c)(3). In cases in which DOJ has filed an I-914B in support of an application for T-nonimmigrant status, or in situations in which DOJ filed the continued presence application, DHS will also notify DOJ within ten business days when an application is determined to be bona fide or is approved.
3. At the time of the notification in B2 and B8, DHS will provide ORR with all available contact information for such individuals and with information on whether Federal law enforcement has indicated on the continued presence form, as described in B4, that the individual is willing to assist in every reasonable way in the investigation and prosecution of a severe form of trafficking in persons for the certification purposes described in A6.

V. Revision or Termination of the MOU:

This MOU shall be in effect until revised in writing by mutual agreement of the parties or terminated by any party, upon thirty (30) days advance notice in writing of intent to terminate, or § 107(b) of the TVPA is repealed or revoked.

Memorandum of Understanding Signatures:

1. <u>James Blaney</u>	Deputy Attorney General
Date: <u>7/19/04</u>	Department of Justice
2. <u>Charles A. Allen</u>	Deputy Secretary
Date: <u>7/19/04</u>	Department of Health and Human Services
3. <u>[Signature]</u>	Deputy Secretary
Date: <u>7/19/04</u>	Department of Homeland Security

End of Agreement