




U.S. Immigration
and Customs
Enforcement

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MEMORANDUM FOR: Special Agents in Charge
ICE Attachés

FROM: Marcy M. Forman 
Director
Office of Investigations

SUBJECT: Definitions of "Human Smuggling" and "Human Trafficking"

The purpose of this memorandum is to provide Field Offices with a clearer understanding of the differences between Human Smuggling and Human Trafficking. While both of these crimes share certain elements that may in some cases overlap, they are distinctively different offenses. For the purposes of conducting criminal investigations, tracking those investigations in TECS and presenting cases for prosecution these two terms are not interchangeable. In order to provide some clarification regarding these offenses, their definitions and descriptions are provided below.

- **Human Smuggling** is the importation of people into the United States involving deliberate evasion of immigration laws. This offense includes bringing illegal aliens into the United States, as well as the unlawful transportation and harboring of aliens already in the U.S. The statute governing this range of offenses is Title 8 USC 1324.
- **Human Trafficking** is a modern day form of slavery. Trafficking is the recruitment, harboring, transportation, or obtaining of a person (regardless of citizenship or immigration status) for forced labor or commercial sex. For the purpose of forced labor, the elements of force, fraud, or coercion must be used by the trafficker to subject the victim to involuntary servitude, peonage, debt bondage, or slavery. It should be noted that any child under 18 years of age who is recruited, harbored, or obtained for commercial sex acts is considered a trafficking victim. The statutes governing this offense are contained within Title 18 U.S.C. Sections 1589-1594 and the associated Mann Act statutes of Title 18 U.S.C. 2421-2424.

While agents in the field can expect to encounter human smuggling cases that contain elements of violence to include murder, kidnapping, rape, assault and other crimes, the presence of these aggravating factors alone does not constitute human trafficking. The essential elements of human trafficking are forced labor or sexual exploitation caused by the threat or use of force, fraud or coercion.

Human smuggling investigations conducted by ICE are intended to identify, disrupt and prosecute criminal organizations involved in the bringing in, transporting and harboring of illegal aliens into the United States. Typically, individuals convicted for human smuggling violations may receive sentences of one (1) to five (5) years in prison. Much heavier sentences are possible for repeat offenders or if severe injury or death of an alien occurs during the crime.

Human trafficking investigations seek to prosecute trafficking organizations and, equally as important, to rescue and protect their victims. Trafficking investigations focus on the exploitation of victims by force, fraud or coercion regardless of the person's manner of entry into the United States. Trafficked aliens may have lawfully entered the U.S. only to be subjected to exploitation at a later time. Persons convicted of human trafficking offenses typically receive sentences of between fifteen (15) and twenty (20) years.

Another important distinction between the two offenses lies in the benefits accorded to victims of trafficking in comparison to what may be provided to a smuggled migrant.

- Smuggled migrants are critical to an investigation as material witnesses and there are provisions in place to parole or release those aliens into the United States for short periods. However, when their testimony is completed, smuggled aliens are generally processed for removal from the United States.



The Headquarters Human Smuggling and Trafficking Unit (HSTU) is preparing training and guidance for field offices that handle these types of cases. Programs are also being developed to train state and local law enforcement officials who may become first responders at a smuggling or trafficking crime scene. Effective October 1, 2004, case categories in (b) (7)(E) were realigned and case category (b) (7)(E) was created with separate subcategories for human smuggling and human trafficking investigations. These changes were made to assist the SAC offices in properly identifying and categorizing investigations in TECS. Those changes will also help Headquarters to identify and track the smuggling and trafficking threats throughout the United States.

Any questions regarding human smuggling and trafficking investigations should be referred to (b) (6), (b) (7)(c) Chief, Human Smuggling & Trafficking Unit. Mr. Weber can be reached by e-mail (b) (7)(E) @dhs.gov or by telephone at (202)616-6324. Any questions relating to victims of trafficking should be referred to (b) (6), (b) (7)(c) with the ICE Victim Witness Program at (202)616- (b) (6), (b) (7)(c)