

FREEDOM NETWORK USA

TO EMPOWER TRAFFICKED AND ENSLAVED PERSONS

January 19, 2016

U.S. Department of State Office to Monitor and Combat Trafficking in Persons
tipreportUS@state.gov

VIA EMAIL

Re: Comments on Impending Release of Department of State 2016 Trafficking in Persons Report

Dear Sir or Madam:

Freedom Network USA applauds the continued commitment of the United States government to improve upon its efforts to address human trafficking here and abroad. We are pleased that an assessment of anti-trafficking efforts in the United States will continued to be incorporated into the 2016 Trafficking in Persons (TIP) Report.

The Freedom Network USA (FN), established in 2001, is a coalition 38 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. Since the enactment of the Trafficking Victims Protection Act of 2000 (TVPA), FN members have worked closely with trafficked people to ensure that they receive the full array of legal and social services needed, and are engaged in ensuring effective implementation of the law. FN members include prosecutors who have criminally prosecuted sex and labor trafficking cases, civil attorneys who have brought cutting-edge civil lawsuits against traffickers, criminal attorneys who have filed *vacatur* petitions for victims, represented victims wrongly charged with a crime, and filed for restitution against traffickers, immigration attorneys who have represented hundreds of individuals granted T and U visas, and social service providers who have assisted hundreds of survivors, both US citizens and foreign nationals, minors and adults, females and males.

We write to offer information about the successes as well as areas of challenges facing the US government in our shared mission to address human trafficking.

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- I. Overall Issues and Recommendations**
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I. OVERALL ISSUES AND RECOMMENDATIONS

FN commends the government for presenting information on key metrics including number of investigations, prosecutions, and convictions in the US Chapter of the TIP Report. Unfortunately, when this data is offered with inconsistent labels, changing parameters, and vague descriptions it is difficult to understand what the data actually represents. For example, the 2015 report does not explain which charges are included in the number of prosecutions and convictions. It is unclear whether all prosecutions and convictions occurred under trafficking-specific laws, or whether the data paints a more accurate picture by including the myriad other non-trafficking-specific statutes such as the Mann Act. Reports from other countries note that they include convictions under non-trafficking-specific laws, as well as trafficking-specific laws. The Canada chapter, for example, states, “Of the...22 convictions [in 2014], eight were achieved under trafficking-specific laws, compared with 25 convictions of which 10 were under trafficking statutes in 2013.” Statistics for the US are not disaggregated in this way, painting a confusing picture as to what the data actually represents. Additionally, the 2015 report does not disaggregate the number of victims provided with services by type of trafficking in all instances.

This confusion is compounded when comparing data from year to year. For example, the 2013 and 2014 reports included the breakdown in number of defendants charged with labor trafficking versus sex trafficking. In the 2015 Report there is no such breakdown. There is, however, a breakdown of number of prosecutions for labor trafficking versus sex trafficking, figures that were not previously reported in 2013 and 2014. Such inconsistencies in data collection and reporting make analysis difficult. We recommend implementing consistent reporting criteria, with defined parameters, whenever possible, to allow for an accurate comparison of data over time. It is important not only to find gaps, but also to accurately highlight successes.

II. TRAFFICKING TRENDS

Freedom Network members report a number of developments related to trafficking. First, they note that there has been an increase in the number of identified cases involving victims with disabilities. Second, some members have seen a stark increase in the number of cases involving the manipulation of the victims’ substance abuse, in particular heroin. One member reports that some traffickers have started grooming kids under the age of 18, but not trafficking them until they turn 18 where there is less emphasis from law enforcement and attention from government agencies, and fewer resources for those in trafficking situations. Additionally, members report an increase in the identification of youth in some states as a result of the ongoing implementation of the Preventing Sex Trafficking and Strengthening Families Act.

III. CHANGES IN POLICIES AND LAWS THAT AFFECT ANTI-TRAFFICKING EFFORTS

JVTA: Improvements to Existing Law

One of the biggest policy milestones in 2015 was the passage of the Justice for Victims of Trafficking Act (JVTA), P.L. 114-22, which included a number of improvements to the US response to human trafficking. The creation of the Advisory Council on Human Trafficking, included in the Survivor of Human Trafficking Empowerment Act, provides a critical mechanism for survivors to advise the US government on human trafficking policies, procedures

and programs. We are pleased to see its inclusion, however, the failure to include funding to staff and support the Advisory Council threatens to undermine its efficacy. We encourage the government to provide this necessary additional support so that the Advisory Council can fulfill its mandate.

Other improvements include: required training for judges and federal prosecutors on mandatory restitution, an incentive for states to pass *vacatur* laws, an expansion of the mandate for Child Advocacy Centers to include victims of human trafficking and child pornography in their services, and a requirement that the Department of Health and Human Services Health Resources and Services Administration (HRSA) develop evidence-based best practices for healthcare professionals. Again, however, Congress failed to include the funding needed for HRSA to complete this work which threatens to undermine HHS's ability to accomplish this laudable goal.

JTVA: Gaps Requiring Congressional Attention

The JTVA also contained a number of concerning provisions. While more funding for services is much needed, the creation of the Domestic Trafficking Victims Fund is a confusing and unnecessary step that further silos victims and services instead of supporting increased collaboration and coordination of existing crime victim outreach and services programs. The federal government should, instead, provide additional funding for victim services programs through the existing Crime Victims Fund and require states to provide expanded access to funded services and crime victim compensation for trafficking victims.

It also improperly groups all child pornography in with human trafficking. Although some child pornography does meet the definition of trafficking, the crimes are not synonymous. Treating them as such conflates the two issues, creates confusion among those working to identify and assist victims of both crimes, and risks further degradation of the definition of trafficking.

The Child Human Trafficking Deterrence Block Grant Program is concerning for several reasons. First, it continues to suggest new collaborations are needed instead of improving existing ones such as the DOJ-funded Task Forces, ICAC Task Forces, ACTeams, and Innocence Lost. Even more troubling is the inclusion of support to establish 'problem solving courts' for child trafficking victims that would require arrest and probation in order for children to receive services. This directly contravenes Safe Harbor principles and best practices nationwide. Grants should not be given to develop mandated and court-administered programs for trafficked children and youth, because trafficked children and youth should not be arrested and criminalized. Where minors are already involved in the justice system, funding could be directed to provide additional specialized services to them, transition them out of the justice system, and into services in the community. Funding those same community services would provide more robust services for all minor victims. Those services should meet the real needs of minor victims of trafficking, without regard to their status in the justice system, such as specialized services for survivors of trafficking in all forms and low-barrier housing and services for homeless and at-risk youth. This will decrease youth vulnerability to trafficking, reduce youth contact with the justice system, and provide the same needed support to all vulnerable youth.

Finally, FN is gravely concerned with Congress's focus on sex trafficking, to the exclusion of labor trafficking, as set forth in the JTVA. For example, section 114, the Combat Human Trafficking Act directs the Attorney General to provide training and policies related to

sex trafficking only and the Bureau of Justice Statistics to report on state rates of arrest, prosecution, and conviction for only sex trafficking. Section 802 amends CAPTA to include child sex trafficking as a form of child abuse, but not labor trafficking. Such a narrow focus perpetuates the misconception that sex trafficking is somehow worse or more pervasive than labor trafficking and leaves labor trafficking victims, including children, left out of programs and policies meant to increase identification of and services for survivors. This only serves to undermine the trust we are seeking to build with victims and allows traffickers to operate with impunity. FN recommends that the US government work to include victims of trafficking in all forms of work in all policies, programs and initiatives.

FAR

In 2015, the Federal Government strengthened anti-trafficking provisions in the Federal Acquisition Regulation with a ban on recruitment fees and confiscating passports, as well as a provision that prohibits misleading recruitment. Although these new regulations are a positive step toward preventing trafficking in federal contracts, FN is concerned that the provisions are not being adequately enforced and suggests more transparency. We recommend that the US government provide information on any investigations into abuses by DoD contractors' procurement of civilian labor for overseas bases, or any suspensions, debarments, and other disciplinary action against US government contractors related to enforcement of the Obama Administration's Executive Order 13627, as well as the revised FAR.

H2B Rider

In December 2015, a rider was attached to the Consolidated Appropriations Act, 2016 that made significant and harmful changes to the H2B visa program, a program already acknowledged to be rife with abuses.¹ The new legislation expands the program, while simultaneously reducing wage guarantees, employer accountability for recruiting abuses, transparency, and regulatory oversight. The legislation also frees employers to more easily hire foreign workers without first seeking US workers to fill the same jobs. FN is concerned that this will incentivize employers and unscrupulous international recruiters to scour the globe in search of the most vulnerable, disposable workers they can find. More workers will be defrauded, trafficked, and lured to this country under false pretenses. This change undermines Congressional work to support harsher punishments for traffickers by creating conditions which promote human trafficking in the US.² The US should work to roll back these changes.

Vacatur

In 2015 there was also increased attention on *vacatur* laws. From the inclusion of the incentive provision in the JVTA (Sec. 1002), to several states that either passed legislation or began considering it, many policy makers are listening to survivors and advocates about the harm caused by criminal records and the importance of such laws for a survivor's ability to rebuild their life. FN encourages the US to continue its support for this important tool by enacting a *vacatur* law for federal convictions.

¹ Southern Poverty Law Center (2013), *Close to Slavery*, available at: <https://www.splcenter.org/20130218/close-slavery-guestworker-programs-united-states>

² Bruggeman, Jean and Dan Werner, *Senators seek to further weaken guest worker program*, The Hill, December 10, 2015, available at : <http://thehill.com/blogs/congress-blog/labor/262629-senators-seeks-to-further-weaken-guest-worker-program>

While applauding these important steps, FN members have also raised concerns with other efforts that appear to undermine established *vacatur* laws, such as affirmative defense laws that replace *vacatur*, or those which limit the time period for which criminal records can be vacated. It often takes victims significant time to build the trust with service providers to disclose a trafficking situation within the privacy of a service providers' office, let alone in open court. *Vacatur* remedies need to respond to the traumatic experiences of trafficking victims.

IV. IMPLEMENTATION OF EXISTING LAWS AND PROCEDURES

While the US has passed a host of legislation, policies, and regulations that aim to address all forms of human trafficking, implementation continues to be uneven and lacking in several critical areas. States continue to criminalize trafficking victims including "child prostitutes." Labor laws continue to exempt farm workers, family business and children. Immigration laws continue to create routes for traffickers to control foreign national workers including lack of portability of work-related visas, increasing use of temporary worker visas, and lack of oversight of labor brokers. In addition, FN wishes to highlight the following:

Prosecution of Non-Violent Coercion Cases

The enactment of the Trafficking Victims Protection Act (TVPA) was motivated in large part by the need to prosecute trafficking which involved non-violent coercion and address evolving forms of servitude. Despite this foundation, FN members report a distinct lack of non-violent coercion cases being prosecuted. The Federal Government should use the tools that Congress provided and vigorously investigate and prosecute cases where non-violent means of coercion are used in sex and labor trafficking cases. We recommend that the US government provide an analysis of the types of trafficking cases that are being investigated and prosecuted at the federal, state, tribal and local levels in the annual TIP Report.

Labor Trafficking

The US has failed to systematically address labor trafficking. Fifteen years after the TVPA became law, there is no systematic effort to identify and address labor trafficking, and no government agencies or institutions that engage in effective outreach, education and investigation of the most egregious forms of labor violations. Agencies such as DOL and EEOC have engaged in small scale operations and have provided some training and support for their staff, but their authority is limited and often ambiguous and their funding is insufficient. Local and state law enforcement are uncertain of their authority, and have no existing structure for workplace enforcement through which they could identify labor trafficking.

Restitution

Although the TVPA includes mandatory restitution for victims in federal trafficking prosecutions, restitution remains, at best, an afterthought in most cases. Less than 40% of convictions analyzed in a recent report included restitution.³ The report found that federal prosecutors routinely fail to request restitution. Additional training and support, for both

³ The Human Trafficking Pro Bono Legal Center and WilmerHale, WHEN "MANDATORY" DOES NOT MEAN MANDATORY: FAILURE TO OBTAIN CRIMINAL RESTITUTION IN FEDERAL PROSECUTION OF HUMAN TRAFFICKING CASES IN THE UNITED STATES, September 2014, available at <http://www.htprobono.org/htprobono-mandatoryrestitution-report-9-2014>.

prosecutors and judges, is needed to ensure that restitution is routinely sought in all federal trafficking cases.

Protections for UACs

While the TVPRA of 2008, Public Law 110-457, created robust protections for unaccompanied children entering the US, implementation has been incomplete. ORR is charged with identifying appropriate placement and care for these minors, however they have failed to provide the necessary safeguards to ensure that the minors are not exploited in their new placements. At least one case of labor trafficking has been identified⁴ and FN members report additional cases of individual minors forced to work in the homes and business of the sponsoring families, as well as instances of sexual exploitation and potential sex trafficking of the minors by their sponsors. ORR must implement procedures to monitor the safety of minors placed with sponsors. Additional funding must be provided to ensure ORR has the capacity to carry out these responsibilities and ORR should work with local child protective services agencies to assist with such ongoing monitoring.

Continued Presence for Foreign National Victims

Continued Presence (CP) is a critical tool for the investigation of cases involving foreign nationals, it provides support and employment eligibility to survivors so that they are available to assist in investigations while also finding safe housing and employment. Despite its importance, implementation continues to be woefully inadequate. For example, according to the 2015 TIP report, only 130 survivors received CP in FY 2014, while 565 survivors received HHS certification. Because CP is one of two pathways to HHS certification, this means that less than 25% of eligible survivors received this critical support. This is the fourth consecutive year where the number has fallen, and it stands in stark contrast to increased training for federal agents over the same time period.

Despite this increase in training on trafficking, FN members report a multitude of problems and misconceptions about CP among law enforcement agencies. For example, some agents refuse to request for CP unless trafficking charges are filed or a case is accepted for prosecution. Other federal agents refuse to request CP even while they are scheduling multiple interviews with a survivor regarding his or her trafficking experience. In other instances agents assert that they are not “opening” a case, and thus cannot request CP, despite several interviews with a survivor. Too often the initial paperwork is completed, only to sit on a supervisor’s desk for weeks or more, thereby delaying the process and frustrating future or further investigation.

Additional training, technical assistance, and accountability is needed to ensure that federal agencies are expeditiously requesting CP for all identified foreign national trafficking victims. The TIP Report should include data from each Federal agency on the number of CP requests filed.

⁴ Two Defendants Plead Guilty to Forced Labor Scheme That Exploited Guatemalan Migrants at Ohio Egg Farms, FBI Press Release, August 25, 2015, available at: <https://www.fbi.gov/cleveland/press-releases/2015/two-defendants-plead-guilty-to-forced-labor-scheme-that-exploited-guatemalan-migrants-at-ohio-egg-farms>

Law Enforcement Support for T Visas

Similarly, law enforcement is failing to support foreign national trafficking survivors by providing them with an I-915 Supplement B. A January 2016 DHS OIG⁵ report revealed that less than 25% of approved T visa applications included a Supplement B. FN members report that in some instances law enforcement agencies take several months to provide a Supplement B for a victim, even when that agency is or has been actively involved in investigating the trafficking claim. Such delays have a domino effect on the entire process - delaying the submission and approval of an application, and thereby delaying a survivor's access to Federal benefits and employment authorization. Additional training, technical assistance, and accountability is needed to ensure that federal, tribal, state, and local agencies are expeditiously providing Supplement B's for all identified foreign national trafficking victims. The TIP Report should include data from each Federal agency on the number of Supplement B's provided.

Access to Services

Freedom Network members continue to report that local benefits workers are generally not trained on ORR Certification letters and they often inappropriately deny benefits to survivors and their eligible family members. This forces survivors to wait unnecessarily long periods of time to access benefits, often while supporting newly arrived family members, while eligibility is clarified. FN encourages HHS and tribal, state and local benefits agencies to provide ongoing, mandatory in-service training to local benefits offices on human trafficking and eligibility for survivors.

V. SERVICES FOR SURVIVORS

Services, including legal representation, food, housing, interpretation and translation, medical and mental health care, education and employment, remain a critical gap in terms of both availability and quality nationwide. Availability tends to be concentrated in urban areas, thus the ability of a survivor to access specialized services depends largely on luck of geography and/or relocation, and in many places other victim services continue to provide the bulk of support without additional resources. Even in urban areas, the availability of services varies greatly from region to region based on local funding and availability. Moreover the response for victims is generally short-term and reactionary, which does not address the vulnerabilities and leaves survivors vulnerable to additional exploitation.

Underlying these problems is a lack of investment in addressing root causes, which leads to insufficient resources for responding to victims. Addressing child abuse and child poverty more effectively would reduce vulnerability to trafficking for the life of the person; providing increased protections for workers would reduce all exploitation including labor trafficking.

Funding for Services

Overall, funding for survivor services is woefully inadequate. Only a few states have committed funding for services, and the federal government remains the primary source of funding support for services. On a positive note, several new funding opportunities from the Federal Government debuted in 2015 including TTA for attorneys and Task Forces. DOJ continued to fund support for services, primarily through its Task Force, Comprehensive and Specialized Services grants. DOJ also amended its Task Force grant to allow locations with a

⁵ citation: ICE and USCIS Could Improve Data Quality and Exchange to Help Identify Potential Human Trafficking Cases, DHS Office of Inspector General, January 4, 2016, OIG-16-17

less developed response to have a better chance at receiving funding. HHS continued to fund the NHTVAP program for foreign nationals, and introduced a second round of funding for its Domestic Victims pilot program.

Services Requiring Cooperation with Law Enforcement

Problematically, OVC funding continues to require that victims report to law enforcement in order to access services. This is a significant barrier imposed by a policy decision by OVC and it disproportionately impacts US citizens who are unlikely to benefit from reporting to law enforcement (unlike foreign nationals who might get immigration relief out of the trauma) and are more likely to be arrested for their conduct (sex work). A similar problem exists with access to crime victim's compensation. States restrict access for victims who do not report to law enforcement or can't get a police report (common for those who report crimes to federal agencies), victims who have criminal records, and victims who are immigrants and/or LEP. Restrictions on access to services for victims should be eliminated. All victims deserve support and assistance, regardless of their interest or ability to engage with the criminal justice system. FN members report that once survivors have accessed the services that they need, they are more likely to initiate contact with law enforcement and are more prepared to endure the difficult experience of a criminal investigation and prosecution. Thus, offering these services freely will likely increase the number of reports to law enforcement, and lead to more successful investigations.

Improving Services for Trafficking Survivors: Housing

Many emergency and transitional housing options available to human trafficking survivors are available to female-identified victims only (e.g., many domestic violence shelters), or more specifically to female sex trafficking victims. Finding appropriate short- and long-term housing options for survivors who do not meet the narrow restrictions set by many housing providers remains a challenge. FN recommends that the government prioritize affordable housing programs which meet the diverse and long term needs of all victims.

The housing options for minors who have been trafficked also need to be improved. Minors are often placed in restrictive residential placements along with other minors who have behavioral and conduct disorders. This proves to create situations that mimic the circumstances of living and working for a trafficker, such as being told what to do, what not to do, being watched at all times, restrictions of movements, and greatly limited choices. There is a tendency for many minors with trafficking histories to run away from such settings which may trigger trauma and reminders of their trafficking. Although more success has been found in independent living programs, the options are often limited by age and space. FN recommends that the US government expand independent living programs for trafficked youth which are designed and supervised by experienced and licensed social workers and qualified personnel to ensure the physical and mental safety for the trafficked youth.

Improving Services for Trafficking Survivors: TVAP

In 2015 HHS released a new solicitation for the HHS/ORR National Human Trafficking Victim Assistance Program (NHTVAP), a grant program that offers comprehensive case management to foreign national survivors of human trafficking. This new solicitation was deeply troubling for its inconsistency with other federal efforts and disregard for over ten years' worth of feedback from service providers and survivors. It contains a number of changes that reflect a

move away from the flexibility universally recognized as critical for survivors who have experienced trauma. For example, it imposes new strict and arbitrary timelines on a survivor's enrollment period, allowing just three months for certified survivors to receive case management. It also sets forth a new requirement that survivors meet with law enforcement or an attorney within 4 weeks, an unnecessary and potentially harmful requirement. For further details see Appendix A. Although some of these changes were amended, many remain. FN is troubled by this move away from a victim-centered and trauma-informed approach that is at the core of other programs as well as the Federal Strategic Action Plan (SAP). This disregard for survivor's needs and rights is compounded by the award of funding to USCCB, a program that openly admits to refusing to pay for the full range of legally permissible medical care. ORR/OTIP must eliminate this loophole for providers who deny or limit comprehensive services to victims based on the religious beliefs of the providers- they should not be allowed to impose their religious beliefs on the clients that they serve.

Improving Services for Trafficking Survivors: Education and Workforce Development Opportunities

Services and resources to help trafficking survivors receive continuing education are critical. Trafficking survivors frequently continue to work in the very same industries into which they were trafficked, or other related low-wage industries. For example, migrants who are trafficked into domestic servitude frequently continue to work in similar industries (janitorial services, care industries, nanny work, and domestic work), even if they aspire to work in higher-paid industries or held higher-skilled positions in their home countries. Such employment challenges are often due to immigration status, language barriers, poverty post-trafficking, and an inability to attend college or obtain a GED, which make them uncompetitive in the current job market. FN recommends the US identify current programs that can be expanded to help support trafficking victims in their educational needs.

Improving Services for Trafficking Survivors: LGBTQ

Due to higher rates of poverty and a lack of workplace protections, especially for transgender individuals, LGBTQ individuals are highly vulnerable to trafficking. There is also a disproportionately high LGBTQ runaway and homeless youth population, with 40% of homeless youth identifying as LGBTQ, leading many to trade sex for access to resources such as housing and food. This leads many into situations where exploitation is common in order to meet basic needs. Despite the high risk for trafficking, resources for the LGBTQ community are often few and far between, including trafficking-specific services. LGBTQ clients have reported discrimination related to gender identity from law enforcement and service providers alike, even after being identified as a victim of trafficking. Housing in particular is a constant need for those vulnerable to, experiencing, and those who have left trafficking. LGBTQ clients have reported negative interactions in shelters and with service providers where they were sent after court-involvement to access services. Government agencies should implement procedures to ensure LGBTQ communities are able to access competent and non-discriminatory services. Agencies providing referrals to service providers should ensure that the agency is able to provide culturally appropriate services to LGBTQ individuals before providing the referral.

Improving Services for Trafficking Survivors: Youth

The Preventing Sex Trafficking and Strengthening Families Act requires child welfare agencies to screen for sex trafficking only, which overlooks the needs of child labor trafficking victims. Agencies should engage in routine screening for experiences of trafficking in all industries, including street-based economies such as panhandling or the drug trade. When a youth survivor is identified, support must prioritize autonomy and self-determination, and offer services which meet the needs of those youth. Forcible involvement in systems, especially systems which youth have previously rejected already escaped from in the past, are not effective in meeting the needs. New services and approaches are needed to address the needs of youth who are turning to commercial sex in order to avoid traditional child welfare responses or after being denied access to existing housing, food and medical services. FN recommends significant increases in investment in specialized services for youth who have experienced trafficking and those who might be vulnerable to trafficking.

Improving Services for Trafficking Survivors: Victims with Disabilities

FN members noticed an increase in identification of cases of traffickers preying upon individuals with disabilities, an overlooked, underidentified, and underserved population. The US government should ensure that services for victims with disabilities are improved through proactive engagement and education, internal assessments and improvement to meet the needs of victims with disabilities, ensuring that facilities and materials are accessible, and recruitment of people with disabilities as staff and volunteers. The government should also improve training for law enforcement on working with victims with disabilities, especially those with developmental disabilities, in order to build strong cases and ensure that such victims are not discounted as witnesses. Specialized investigators may be needed to interview victims with profound disabilities.

Improving Services for Trafficking Survivors: Indigenous Communities

Increased support is needed for tribes and insular US territories combatting human trafficking. Due to the historical disenfranchisement of American Indians, Alaska Natives, and indigenous peoples in US insular territories, the needs are diverse, historically situated, culturally rooted and systemic. Some reports describe the vulnerability for American Indians moving from rural to urban environments. A 2011 report, *The Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota*, describes the sex trafficking of native women in rural areas linked to drug trafficking. We have also heard allegations of the trafficking of immigrants on tribal lands, especially along the US-Mexico border. US territories, including Puerto Rico, the Virgin Islands, Guam and Saipan have reported labor and sex trafficking cases. However, legal protections are weak, law enforcement is untrained, and services are extremely limited.

Few resources have been dedicated to understanding and responding to the trafficking of American Indians and Alaska Natives. In contrast, the Office for Violence Against Women has funded over 700 projects since 2008 to address violence against American Indian and Alaska Native women, alone. While we commend OVC for including American tribal governments in its calls for competitive grants and HHS and DOJ for holding listening sessions to better understand the issues, we recommend that the federal government offer separate competitive grants to tribal organizations and governments to form comprehensive, culturally appropriate responses to human trafficking in their communities. Additionally, we recommend adding a

separate category within the US Chapter of the TIP Report that specifically addresses insular and tribal lands.

Collaboration Between Service Providers and Law Enforcement

Cooperation between law enforcement agencies and service providers is a systemic challenge. Efforts such as the OVC-BJA Human Trafficking Task Force grants that provide training, technical assistance, and reporting requirements that require collaboration can assist in bridging the gaps. Efforts such as the ACTeams, ICAC and Innocence Lost Initiative that do not include service providers serve to institutionalize the divisions. The US government should require that all government initiatives to address human trafficking include multi-disciplinary teams to effectively address this issue.

V. ENFORCEMENT OF ANTI-TRAFFICKING LAWS AND PROSECUTION EFFORTS

Law enforcement and prosecutors continue to pursue cases, and expand efforts to identify traffickers and methods of coercion and complicity. For example, in 2015 a hotel owner was prosecuted for knowingly benefitting from sex trafficking, and law enforcement and prosecutors also targeted those traffickers that manipulate drug addiction as a form of coercion. Law enforcement has also increased its efforts to engage with technology companies and banks in order to identify traffickers through financial records. FN notes that this is a positive step toward alleviating the need to depend solely on victims as witnesses. Additionally, FN would like to highlight the following issues:

Targeting Sex Workers in Order to Identify Trafficking

FN members note the increased use of standing laws against prostitution being used in a misguided attempt to address sex trafficking. We note the use of raids on brothels, hotels, massage businesses and neighborhoods - often without screening in advance for trafficking - leading to arrests of both sex workers and customers in an attempt to identify the trafficking victims and traffickers among them. During the annual Operation Cross Country, hundreds of sex workers and buyers are arrested and charged with prostitution-related crimes which have no link to trafficking. With the increasing training of hotel staff to identify trafficking, such as the recent collaboration between DHS and Denver area hotels, often staff are being trained to profile and report prostitution, instead of trafficking. Additionally, FN also notes the continued focus on large events such as the Superbowl, and the repetition by government officials and law enforcement of the myth that such events are magnets for human traffickers.

These tactics shift resources away from long-term investigations, clogs courts with low level offenses and increases criminalization of the poor and marginalized. They lead to misconceptions among the public, which in turn lead to ineffective policies. Most importantly, evidence shows that not only do such efforts not reduce trafficking, they actually create harm for victims and put more individuals at risk for being trafficked. They lead to increased marginalization of sex workers, including trafficking victims, through criminal records that eliminate their eligibility for housing, education and employment. They lead to imprisonment and stigma, and prevent sex workers from working together for basic safety measures. These efforts result in many arrests for prostitution, but few are identified as trafficking victims or offered services and support. Sex workers, including those experiencing a trafficking situation, are thus more fearful and less likely to seek assistance from law enforcement or service

providers, especially youth who have expressed more fear of the child welfare system than of commercial sex work.

Targeting Buyers as a Means of Reducing Sex Trafficking

US state and federal laws criminalize those who knowingly solicit or patronize a trafficking victim to perform a commercial sex act, and generally the prescribed penalties track other penalties associated with trafficking. This focus on the buyer side of the crime has been building for awhile, and although previously captured by “obtain”, in 2015 the JVTVA clarified the reach of the TVPA by adding patronizing and soliciting. Although it is important to identify and punish those that knowingly solicit trafficking victims, actual implementation is rarely so targeted. Instead law enforcement agencies are using existing vice units, practices, and policies designed to reduce prostitution by arresting all sex workers and sex buyers, without regard to force, fraud or coercion in an attempt to find those who would buy sex from a minor or adult trafficking victim.

Despite the fact that the blanket targeting of buyers of sex is often described as a method that protects victims by not arresting them, evidence shows that such efforts can heighten the risks victims face and increase sex worker vulnerability to trafficking. Where buyers are targeted, sex workers and trafficking victims have less leverage to screen clients and negotiate safe practices. Also, where sex workers have established harm reduction strategies such as working together, they face the risk of arrest for facilitating trafficking.

Diversion Courts

Diversion courts are increasingly seen as opportunities to both identify victims of sex trafficking and intervene with vulnerable populations to prevent sex trafficking. Such courts operate by mandating services for individuals arrested for prostitution-related offenses in lieu of prosecution. While premised on the laudable goals of removing people from criminal justice involvement and avoiding incarceration, FN opposes the use of these courts as their reliance on the criminal justice system perpetuates stigma, harm, and trauma among trafficking survivors and other marginalized populations. These courts seek to justify the traumatization of trafficking victims - through policing, arrest and incarceration prior to arraignment - as a means to grant them access to services. When victims are unable or unwilling to follow the service plan mandated by the courts, they risk receiving a criminal conviction as a result of their victimization. Moreover, with the extra cost of law enforcement operations and administering the court program, this reliance on the criminal justice system multiplies the costs associated with connecting and providing support for survivors and vulnerable individuals. This results in a net decrease in the availability of resources for victims and vulnerable populations.

Survivors of trafficking should not have to experience arrest in order to receive services, and programs designed to connect survivors with services must be carefully developed in ways that do not criminalize their victimization. FN strongly opposes this approach to service provision and recommends that the US government support low-barrier services that are survivor-centered and accessible to victims whenever and wherever they seek assistance.

Government Prosecution of Both Sex and Labor Trafficking

The government at all levels - federal, tribal, state, and local - does not vigorously prosecute labor trafficking. This is evidenced by the sheer disparity between DOJ cases each year, as well as the direct experience of Freedom Network members. In FY2014 18 of 208,

roughly 8.6%, of prosecutions were for labor trafficking. This is in stark contrast to the fact that 74% of individuals receiving HHS certification were victims of labor trafficking.⁶

Inconsistent Enforcement

One of the most challenging issues confronting the field is a lack of consistency in government efforts, especially in terms of law enforcement and prosecutions. Across the country, at local, state, and the federal level, there is a wide diversity in what law enforcement and prosecutors will pursue in terms of human trafficking. In some places both labor and sex are prosecuted. The lack of consistency extends to survivor support as well, with a wide difference in the involvement and support of Victim Witness Coordinators and Specialists.

Misconceptions About Human Trafficking

One of the biggest areas of misconception has to do with the very definition and nature of trafficking. For example, FN members report a continued misperception among law enforcement and prosecutors that a situation is not trafficking when an individual has freedom of movement. Although freedom of movement may in some situations be a factual defense it is not a legal defense to trafficking. Another example is continued confusion of forced labor vs. labor exploitation, which also serves to illustrate the continued disregard of labor trafficking on the part of investigators and prosecutors. FN members report that in too many cases law enforcement overlooks or does not devote the time to uncovering more subtle methods of coercion, instead chalking situations up to “bad bosses” or simple unhappiness with working conditions.

Misconception about sex trafficking are in the reverse - with many circumstances that involve sex or commercial sex being labeled as trafficking when they lack any force, fraud, or coercion or the involvement of someone under 18. The danger in labeling everything as trafficking is the misallocation of resources and a failure to truly identify needs of survivors.

Misconceptions About Youth

Levels of knowledge with respect to youth are similarly diverse and troubling. States continue to prosecute youth for prostitution, and there is still a widespread misconception that a trafficked youth is ultimately culpable for their victimization. This causes re-traumatization, and impacts youth’s ability to access appropriate services.

Misconceptions About Continued Presence

Confusion over Continued Presence, and law enforcement’s hesitancy to request it on behalf of survivors is an issue that attorneys and service providers have raised repeatedly, yet the number of survivors receiving this important support continues to decline. The government must be more deliberate in educating law enforcement and prosecutors on the eligibility requirements and the purpose of CP.

Misconceptions of Judges

A handful of judges are perhaps knowledgeable and sensitized to trafficking cases, but most are not. Judges need increased access to education about human trafficking, including

⁶ U.S. Department of Justice, Attorney General’s Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, 2014, p. 30; U.S. Department of State Trafficking in Persons Report, 2015, p. 353

family and juvenile court judges, to assist them in identifying trafficking victims appearing before them as defendants. Judges need education about restitution and diplomatic immunity.

Impact of Turnover

Contributing to the lack of knowledge is the high rate of turnover within government agencies. New agents do not necessarily receive training on trafficking before or after joining a unit, and are thus left to learn as they go. Given the complexity of human trafficking cases this is an untenable situation that wastes time and resources, and creates challenges for service providers working with law enforcement. Moreover, it directly impacts survivors and presents a high risk for retraumatization or a significant disruption in the trust building process. FN recommends that all federal agents receive a basic training on human trafficking, and that those assigned to units that investigate trafficking receive a specific onboarding training that includes an introduction to working with service providers.

Efforts to Investigate and Prosecute Suspects for Knowingly Soliciting or Patronizing a Sex Trafficking Victim to Perform a Commercial Sex Act

Much of the efforts to investigate and prosecute suspects for knowingly soliciting or patronizing a sex trafficking victim to perform a commercial sex act stem from “reverse stings” - where law enforcement poses as a sex worker, often times a minor, and posts advertisements online to solicit “clients.” The fact that the person in the advertisement is a minor is not usually part of the ad itself, rather it usually comes up during phone or text conversations with the potential john after he or she has responded to the ad. In this manner, the stings target those who were not originally seeking commercial sex with a minor.

Freedom Network does not condone the solicitation of minors for commercial sex, whether it be purposeful or whether it occurs as an act of opportunistic impulse. Nonetheless, the rise in the number of such stings raises concerns because they do not identify actual victims, and there is no proof that they act as a deterrent. Such tactics do, however, push all of those in the sex trade into more vulnerable spaces and experiences. This leads to both increases in vulnerability to violence and trafficking, and reduced access to services and resources. Anti-trafficking work must center on victims, their needs, and their support, and these stings are often taking resources from doing that, with no intention of finding victims or crimes occurring.

VI. U.S. GOVERNMENT TREATMENT OF SURVIVORS

Coordinated Efforts to Identify Victims

Coordination exists, and is improving in some places, but is best characterized as inconsistent. More often than not there is no discernible coordination across federal agencies. For example, DOJ and HHS continue to be the primary sources of funding for victim services, but there is little consistency in their programming. Even where coordination across agencies exists, there is still inconsistency in referring to and working with service providers. While the DOJ Enhanced Collaborative Task Forces have increased the interaction with service providers, ACTeams are comprised only of law enforcement and prosecutors, with no independent victim services component, leaving victims underserved when identified.

One standout example of a lack of coordination and screening is the response to the refugee crisis in Central America. DHS conducts minimal screening at the border and detention facilities, leaving migrants vulnerable to abuse and trafficking. Unaccompanied minors are then

released to HHS ORR custody. ORR works to place these minors with family members, friends or sponsors as an alternative to ongoing detention, but fails to provide adequate oversight post release. FN members report identifying cases of youth being trafficked by these sponsors to work in family businesses, in homes, and in commercial sex. In Ohio, for example, 2 men recently pled guilty to charges including forced labor. Part of their scheme involved recruiting individuals from Guatemala, some as young as 14 or 15 years old, who were instructed to cross the border and surrender themselves into federal custody. The perpetrators then submitted false paperwork posing as family or friends. The youth were released into their custody and taken to a farm in Ohio where they lived in dilapidated trailers and were forced “to work at physically demanding jobs...for up to 12 hours a day for minimal amounts of money. ... The [perpetrators] threatened workers with physical harm and withheld their paychecks in order to compel them to work.”⁷

It is critical that the US government agencies increase their inter- and intra-agency coordination to address the diverse challenges presented by human trafficking. Efforts to screen and identify trafficking victims should be collaborative and consistent. Training and technical assistance for government workers should be standard, required, and tailored to the job requirements of the individual. Eligibility assessments and service provision should be comprehensive and victim-centered to ensure that all needs are met through referrals to other programs where needed. Investigations and prosecutions should be coordinated and focused on identifying trafficking victims and traffickers in all sectors of work.

Government Support for Victims Returning to Home Countries

Overall, the US government provides the critical support needed for trafficking survivors who choose to return to their home countries. The International Organization for Migration project supports trafficking survivors in traveling and resettling in their home countries. IOM also assists family members traveling to the US to reunify with trafficking survivors who choose to remain in the US, to navigate the often complex administrative requirements for obtaining a passport and travel documents. Generally, the US government does not forcibly repatriate victims once they have self-identified as a trafficking victim. However, the US government does not sufficiently screen migrants in detention facilities and does not provide legal representation to all migrants prior to their deportation, thus not all victims are identified prior to deportation or refusal of entry.

Government Detention and Imprisonment of Trafficking Victims

Freedom Network members have noted a troubling phenomenon in the United States: a significant tendency to prosecute so-called “bottom girls” and other peers as traffickers or co-conspirators. While a case-by-case review is required to determine the appropriateness of charging particular women in these cases, it is important to note that many “bottom girls” were themselves trafficked. Many of these women face violence and brutality from the traffickers. In at least one instance, a trafficking victim violently forced into prostitution found herself prosecuted. After taking a plea deal, she learned that she was now required to register as a sex offender. The prosecution of trafficking victims raises significant human rights concerns. FN

⁷ Two Defendants Plead Guilty to Forced Labor Scheme That Exploited Guatemalan Migrants at Ohio Egg Farms, FBI Press Release, August 25, 2015, available at: <https://www.fbi.gov/cleveland/press-releases/2015/two-defendants-plead-guilty-to-forced-labor-scheme-that-exploited-guatemalan-migrants-at-ohio-egg-farms>

suggests that the US government investigate this issue and provide guidance to U.S. Attorney's Offices nationwide.

Thank you for your time and attention to these matters.

Sincerely,

A handwritten signature in black ink that reads "Jean Bruggeman". The signature is written in a cursive style with a long, sweeping horizontal line at the end.

Jean Bruggeman
Executive Director
Freedom Network USA