



Freedom Network USA

January 31, 2018

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

VIA EMAIL

Re: Freedom Network USA's Input for the 2018 Trafficking in Persons Report

Freedom Network USA (FNUSA) applauds the continued commitment of the United States government to improve upon its efforts to address human trafficking, both here and abroad. We are pleased that an assessment of anti-trafficking efforts in the United States will continue to be incorporated into the 2018 Trafficking in Persons (TIP) Report.

FNUSA, established in 2001, is a coalition of 57 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), FNUSA members have worked closely with survivors of human trafficking to ensure that they receive the full array of legal and social services needed and are engaged in ensuring effective implementation of the law. FNUSA members include survivors who experienced both sex and labor trafficking in the US, prosecutors who have criminally prosecuted sex and labor trafficking cases, civil attorneys who have brought cutting-edge lawsuits against traffickers, criminal attorneys who have represented survivors wrongly charged with a crime, immigration attorneys who have represented hundreds of individuals granted T visas and U visas, and social service providers who have assisted thousands of survivors, both US citizens and foreign nationals, minors and adults, across the gender spectrum.

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

I. Highlighting Trends, Overall Issues, and Recommendations

Failure to Systemically Address Labor Trafficking

There remains no systematic effort to identify and address labor trafficking in the US, 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 the EEOC have engaged in small scale operations and provided some training and support for their staff. These agencies are hampered, though, by their limited legal authority and insufficient

funding. We are deeply concerned by the decision to scale back guidance and regulations regarding worker protections, especially around legislation such as the Fair Labor Standards Act, which is the cornerstone of addressing exploitation and trafficking. For example, the minimum wage for exempt workers was scheduled to increase in 2018, but that was retracted in 2017. Local and state law enforcement are uncertain of their authority, and have no existing structure for workplace enforcement through which they can identify labor trafficking. While occasional labor trafficking prosecutions are successful, the US has failed in its efforts to address all forms of trafficking.

Failure to Engage in Meaningful Prevention and Protection Efforts

We also urge the US Government to expand prevention and protection efforts, beyond the criminal justice-focused approach. While law enforcement and prosecution are critical enforcement mechanisms, community education and the creation of positive market forces are equally important in preventing human trafficking and protecting those who experience abuse and exploitation. In a more broadly focused approach, workers learn their rights, are fairly paid, and can report concerns without fear of reprisal. Additionally, employers gain access to committed buyers and can advertise products that are free of slave labor. The US Government's approach to sex trafficking, specifically, has been overly focused on criminal justice interventions, devoting few resources to educating youth and adults and ensuring they have access to fair wages and living conditions. Both youth and adults engaged in consensual sex work need resources and support in avoiding homelessness, protection from abuse, and safe alternatives. FNUSA urges the US Government to more comprehensively address the conditions of vulnerable populations to prevent labor and sex trafficking.

Conflation of Sex Work and Sex Trafficking

Government agencies, at the federal, state and local levels, have mistakenly conflated human trafficking with consensual commercial sex, which does a disservice to all victims of trafficking. Increased policing of the sex trade under the guise of anti-trafficking efforts, including indiscriminate massage parlor raids and john stings, increase violence and marginalization of those trading sex consensually, and further isolate and threaten trafficking victims. This conflation wastes resources, capacity and training and shows no evidence of reducing abuse and exploitation in the sex trade. Additionally, the US Government has begun to conflate viewing of child pornography with sex trafficking, leading to greatly exaggerated data on sex trafficking prosecutions. Federal, state and local governments also include prostitution-related prosecutions, including prosecutions of sex workers, within human trafficking data. Government agencies must clearly disaggregate this data to ensure clear reporting on the number of arrests and prosecutions of those engaged in exploiting others.

Expanded Training and Services to Address Long-Term Needs of Survivors

The US Department of Justice's Office for Victims of Crime has made significant steps to address some persistent challenges for survivors in achieving long-term success, specifically with training and technical assistance grants to expand access to housing and employment for survivors. Additionally, we are encouraged by the recent award of \$16M to the US Department of Housing and Urban Development to address the housing needs of trafficking survivors. We

look forward to ongoing collaboration between federal agencies, trafficking survivors, and service providers in the implementation of these new efforts.

Weak Social Safety Net Causes Vulnerabilities

We urge the US Government to address the vulnerability to human trafficking created by inadequate social services. Lack of access to safe and affordable housing, living-wage employment, medical care, effective child welfare interventions and immigration relief coupled with ongoing discrimination against people of color, immigrants, and LGBTQ individuals are all direct contributors to vulnerability. A significant reduction in human trafficking requires expanded social services and support for those most vulnerable to exploitation and abuse. The US Government must expand access to social services, but has recently been rolling back protections included in the Affordable Care Act, removing protections for LGBTQ individuals in schools, and increasing indiscriminate immigration enforcement. These changes serve to increase vulnerability to human trafficking and dissuade victims from reporting their exploitation to law enforcement.

Intersections of Illegal Substances and Human Trafficking

The US is experiencing an opioid epidemic. Media, government, and service providers are increasingly aware of the relationship between substance abuse and trafficking, especially the manipulation of withdrawal symptoms by sex traffickers as a mechanism of coercion and force. However, there is limited understanding of the role of labor trafficking in the drug trade. Drug traffickers use various forms of force, fraud, and coercion, including physical violence, threats of violence, and debt bondage to force people to transport or distribute a variety of illegal substances. These labor trafficking victims are often arrested for crimes including possession and drug trafficking, charges which are often left out of vacatur and expungement laws for victims of trafficking, and safe harbor laws for youth. The US Government should provide protection to victims of all forms of trafficking, including those forced to engage in the drug trade. The US Government should provide additional training to law enforcement and service providers in responding to victims forced into drug-related activities, and increase access to substance use services for impacted survivors.

Intersections of Social Media and Human Trafficking

The use of a diverse array of social media as a means of abuse and exploitation, including labor and sex trafficking, is a growing trend. We recommend that the US Government engage with stakeholders including investigators, prosecutors, service providers, vulnerable communities, and industry representatives to develop best practices in identifying and responding to potential human trafficking that is occurring on line. Social media platforms gather significant data that can present opportunities for technology companies to identify potential trafficking situations, present this data to law enforcement, and cooperate with law enforcement investigations of trafficking cases. Protocols must be developed to target these efforts to address situations that present potential trafficking cases, and avoid unintended consequences.

II. Changes in Policies and Laws that Affect Anti-Trafficking Efforts

FNUSA is very disappointed in US Government policy changes in 2017 which have increased vulnerabilities to human trafficking for immigrants, people of color, low income communities, and LGBTQ individuals. We urge the US Government to reverse this trend and to prioritize the protection of communities at risk of abuse and exploitation, including human trafficking.

Removing Protections for LGBTQ Individuals Increases their Vulnerability to Trafficking

The US Government has taken several actions to remove protections for LGBTQ individuals, including youth, including rescinding guidance to schools and removing references to specialized services for LGBTQ communities from grant solicitations for housing and human trafficking programs. In a recent study released by the DOJ and the Office of Juvenile Justice and Delinquency Prevention on youth trading sex, over half of the individuals surveyed were in some way LGBTQ identified.¹ We have noted for years that LGBTQ communities are desperately underserved in terms of both resources and protections, and the scaling back of these limited protections will only cause further marginalization and increase vulnerability to exploitation. Removing the LGBTQ community as a specific population from requests for proposals, not being able to acknowledge affirmative work for that community, determining that transgender individuals are not covered by Title VII protections in the workplace,² and advancing religious exemptions³ are all disturbing changes that are likely to cause increased trafficking and violence against the LGBTQ community. FNUSA strongly condemns these changes.

Indiscriminate Immigration Enforcement and Government Agent Threats to Immigrants Increases their Vulnerability to Trafficking

Traffickers often manipulate, or threaten to manipulate, the immigration status of their victims. Traffickers use various actions and threats including charging exploitive fees and threatening to call immigration authorities or revoke a victim's visa in order to exert control over a victim. In 2017, Federal and state government officials have explicitly threatened immigrants with deportation, and have increased random enforcement activities throughout the US.⁴ Federal immigration agents have even taken immigrants into custody at schools and courthouses, including one notable case involving an immigrant who was seeking court protection.⁵ As a direct result, service providers report that immigrants are less likely to seek protection,

¹ Swaner, et al. "Youth Involvement in the Sex Trade: A National Study," March 2016, available at: <https://www.courtinnovation.org/publications/youth-involvement-sex-trade>.

² Savage, Charlie, "In Shift, Justice Dept. Says Law Doesn't Bar Transgender Discrimination," 5 October 2017, available at: <https://www.nytimes.com/2017/10/05/us/politics/transgender-civil-rights-act-justice-department-sessions.html>.

³ Brief for the Department of Justice, *Masterpiece Cakeshop, Ltd. vs. Colorado Civil Rights Commission*, et al, 16-111 (2016)

⁴ Department of Homeland Security, "ICE ERO Immigration Arrests Climb nearly 40%", available at <https://www.ice.gov/features/100-days> (last updated Nov. 2, 2017)

⁵ Gonzalez, Richard; "ICE Detains Alleged Victim Of Domestic Abuse At Texas Courthouse," 16 February 2017, Available at: <https://www.npr.org/sections/thetwo-way/2017/02/16/515685385/ice-detains-a-victim-of-domestic-abuse-at-texas-courthouse>.

services, and support from domestic violence⁶ and human trafficking programs, law enforcement, and courts.⁷ Providers also report that victims are likely to remain in trafficking situations longer, as they do not believe that the US Government will protect them from harm.⁸ These policies are directly increasing abuse and exploitation of immigrants, a striking failure of the US Government to comply with international and US standards for the protection of victims.

The US Government has also implemented new policies to deter migrants from crossing the Southern border, including increased detention and separation of family members.⁹ Immigrants are often detained in facilities that offer limited to no access to legal counsel and medical care.¹⁰ Immigrants at facilities managed by CoreCivic and GEO have filed civil lawsuits alleging forced labor conditions within the immigration detention facilities.¹¹ *These actions suggest that the US Government may be complicit in human trafficking by creating conditions that entrap immigrants and by contracting with detention services that have committed labor rights violations including labor trafficking.* FNUSA strongly condemns these actions and urges the US Government to protect the human rights of all migrants present in the US and at border crossings.

Immigration Enforcement Against Sponsors of Unaccompanied Minors Increases their Vulnerability to Trafficking

US Government agents are reportedly engaged in targeted enforcement activities against immigrants who are serving as sponsors for Unaccompanied Minors.¹² These sponsors are required to provide detailed identity information and undergo background and criminal records checks before minors are released to their care. These sponsors may be immediate or extended family members, or family friends. By targeting sponsors for immigration enforcement, the US

⁶ Asian Pacific Institute on Gender-Based Violence (APIGBV), et al, “2017 Advocate and Legal Service Survey Regarding Immigrant Survivors,” 18 May 2017, available at: https://nnedv.org/latest_update/increased-immigration-enforcement/.

⁷ CAST, Freedom Network USA and Polaris Project, “Immigration Enforcement Survey,” 29 January 2018, available at: <https://freedomnetworkusa.org/app/uploads/2018/01/ImmigrationSurveyReportFinal.pdf>.

⁸ *See id.*

⁹ Executive Order, *Border Security and Immigration Enforcement Improvements*, Jan. 25, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>; Department of Homeland Security Memorandum, *Implementing the President’s Border Security and Immigration Enforcement Improvement Policies*, Feb. 20, 2017, available at: https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf.

¹⁰ *See, e.g.*, Southern Poverty Law Center, *Shadow Prisons: Immigrant Detention in the South* (2016), available at: https://www.splcenter.org/sites/default/files/leg_ijp_shadow_prisons_immigrant_detention_report.pdf.

¹¹ *See, e.g.*, *Gonzalez v. CoreCivic*, No. 3:17-cv-02573-AJB-NLS (S.D. Cal. Dec. 27, 2017); *Novoa v. The GEO Group*, No. 5:17-cv-02514 (C.D. Cal. Dec. 19, 2017); *Chen v. The GEO Group*, No. 3:17-cv-05769-RJB (W.D. Wash. Sept. 26, 2017); *Owino v. CoreCivic*, No. 17-cv-1112-JLS-NLS (S.D. Cal. 2017); *Menocal v. The GEO Group*, 1:14-cv-02887-JLK (D. Colo. 2014).

¹² Burnett, John, “ICE Has Arrested More Than 400 In Operation Targeting Parents Who Pay Smugglers”, Aug, 18, 2017, available at: <https://www.npr.org/2017/08/18/544523231/arrests-of-undocumented-parents-sparks-debate-between-federal-officials-and-immi>

Government has discouraged potential sponsors from coming forward, and therefore, increased the length of time that Unaccompanied Minors spend in Federal Government custody, generally in halfway houses or youth detention centers. These youth either run away from these facilities, or leave when they turn 18, with no ongoing services or support, making them extremely vulnerable to abuse and exploitation including human trafficking. FNUSA urges the US Government to take all precautions to protect, not endanger, vulnerable immigrant youth.

Detaining Immigrant Crime Victims Undermines Public Safety and Denies their Rights

The US Government has acted to limit access to legal services and support for potential trafficking victims on several documented occasions. In at least 1 case, potential trafficking victims were taken into Federal Government custody as material witnesses immediately upon their escape.¹³ These victims were held in criminal detention facilities, with limited access to their attorneys. Before their civil attorneys were able to determine whether the migrants were victims of trafficking or other crimes, or to apply for any immigration relief for which they were qualified, the US Government deported the victims. If these migrants were trafficking victims, their ability to access services and support from outside of the US is extremely limited, and potentially impossible. The TVPA established clear procedures for providing potential trafficking victims within the US with short term services and support during the course of the investigation, as well as long-term immigration relief for trafficking victims who assist law enforcement with the investigation and/or prosecution of human trafficking. Holding potential victims in detention in order to subvert their access to services and support is a direct contravention of international and federal law. Additionally, these actions undermine public safety by discouraging immigrants and local law enforcement from collaborating with federal agencies to investigate and prosecute the crimes.¹⁴ FNUSA strongly condemns the deportation of potential trafficking victims before their claims for relief are fully adjudicated (including sufficient time and access to legal counsel to prepare and submit applications). FNUSA recommends that the US Government establish protocols and procedures to stay removal actions against potential trafficking victims, including Expedited Removal and all immigration court proceedings.

III. Implementation of Existing Laws and Procedures

Lack of Training and Improper Implementation Undermine Strong US Government Policies

While the US has a host of legislation, policies, and regulations, that aim to address all forms of human trafficking, implementation continues to be uneven, lacking in several critical areas. States continue to criminalize trafficking victims, including “child prostitutes,” which undermine their ability to address sex trafficking and further traumatize these survivors. Even in states that

¹³ Devereaux, Ryan, “Camión De La Muerte,” Oct. 1, 2017, available at: <https://theintercept.com/2017/10/01/immigrants-helped-prosecutors-after-escaping-death-in-a-smugglers-truck-now-theyre-being-deported/>

¹⁴ Devereaux, Ryan, “Texas Police Chief Hands Over Undocumented Smuggling Victims to Local Organizations, Shunning ICE,” Jan. 5, 2018, available at: <https://theintercept.com/2018/01/05/san-antonio-police-immigrant-smuggling-ice/>

have passed ‘safe harbor’ legislation, minors continue to be arrested for prostitution or status offenses in violation of these protective measures. Additionally, policies and procedures across the US rarely include screening for trafficking in any situations outside of arrests for prostitution and loitering for the purposes of prostitution, while trafficking survivors continue to report a history of arrests for a variety of crimes. Labor laws continue to include exemptions for the agricultural sector, family businesses, and children, which undermine efforts to address labor trafficking. 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.¹⁵

Increased Identification of Minors Exploited for Sex, But Not Labor, Trafficking

FNUSA commends the US Federal, state, and local governments for improvements in the identification of trafficking survivors within the child welfare system. The implementation of the Preventing Sex Trafficking and Strengthening Families Act (Pub. L. 113-183) has required child welfare systems to identify potential sex trafficking survivors within their systems, and to report all minors who are missing from care. This has led to increased screening of youth, increased understanding of sex trafficking experienced by abused and neglected youth, and improved access to services and support for sex trafficked minors. In New York State, for example, FNUSA members report that the additional training and implementation has led to an increase in the number of youth identified and referred to services. While these improvements are important, the exclusion of labor trafficking leaves some victims unrecognized and without services and support. FNUSA recommends the expansion of these policies and procedures to include labor and sex trafficking to ensure that the needs of all trafficked youth are met.

IV. Services for Survivors

Services Funding Needs to be More Strategically Invested

FNUSA commends the US Government for increased spending on services for survivors of human trafficking. As very few states have dedicated services funding for victims of human trafficking, the federal government provides the vast majority of this funding. However, we believe that the funds need to be spent more strategically to ensure equitable distribution of services funding across the US, provide capacity building support to newer and smaller organizations, provide specialized support to communities that are just developing their response to human trafficking, and ensure equal access to services for all victims of human trafficking (regardless of their nationality, gender identity, sexual orientation, age and abilities).¹⁶

¹⁵ See, e.g., *Casilao, et al. v. Hotelmacher, LLC, et al.*, 5:17-CV-00800-M (W.D. Okla. filed July 26, 2017) (class of H-2B workers from the Philippines alleging U.S. employers defrauded and trafficked them through recruitment scheme, excessive fees, and threats).

¹⁶ Freedom Network USA’s 2017 Human Trafficking Funding Recommendations, submitted to DOJ OVC and HHS’ OTIP, Aug. 4, 2017, available at: <https://freedomnetworkusa.org/app/uploads/2017/10/FY18FNUSAFundingRecsFINAL.pdf>

Law Enforcement Cooperation Requirement for Immigration Relief Remains a Barrier

Access to immigration relief for trafficking survivors requires that they cooperate with law enforcement. Out of status victims may fear deportation, retribution against their family members, or threats of harm by the traffickers in retaliation for reporting the crime to law enforcement. As anti-immigration policies and rhetoric have exploded in the last year, fewer victims are coming forward to report crimes and access much needed resources. As we know from other forms of crime, involvement in cases can be a long, re-traumatizing process as they are asked to retell their experience, often in stressful situations. For those who have been trafficked by networks, the threat of violence against family members is a barrier to cooperation, and many would prioritize the safety of their community. FNUSA recommends removing the law enforcement cooperation requirement for immigration relief, especially in circumstances where it poses a threat to the safety of victims and their family to encourage survivors to come forward for services and support.

US Government Must not Allow Restrictions on Access to Reproductive Health Care for Survivors

Human trafficking survivors must have access to comprehensive care, including reproductive health care, no matter which agency provides them with care. Denying access to birth control and legal abortions for survivors of trauma and violence is unacceptable. Properly serving victims means respecting their bodily autonomy and providing them access to non-stigmatizing care in every way they seek to be served. Barring access to reproductive care means that service providers become the next individual in line to restrict their bodies and choices, furthering the experience of control. For survivors who have experienced sexual assault or rape, these restrictions are even more offensive and damaging. FNUSA strongly urges to the US Government to require all federally funded service providers to provide equal access to all forms of medical care for all survivors, regardless of the religious or cultural beliefs of the providers.

Specialty or Intervention Courts Must Identify and Follow Best Practices

At the state and local level, the development of specialty or intervention courts has expanded, such as the Human Trafficking Intervention Court in New York state. While well-intentioned, there are a number of potential risks associated with these approaches, including a lack of basic standards or requirements for how to best serve clients. In these courts, victims are treated as criminals (by definition they only appear in these courts because they are criminal defendants), and still experience the same trauma of arrest and vulnerability of policing. These courts also generally fail to offer effective training to the extensive number of service providers and court staff needed to respond to all of the defendants involved. Additionally, courts often refer individuals to services with such high requirements and barriers that “success” may be near impossible and increase the burden of already strapped service providers. Extensive research, including funding needs, the relationship to policing, and rights-based best practices, need to be explored before these interventions are expand or recommended.

V. Enforcement of Anti-Trafficking Laws and Prosecution Efforts

FNUSA believes that effective criminal enforcement is a critical component of the US Government's comprehensive approach to human trafficking. FNUSA believes that law enforcement actions are most effective when they are implemented in partnership with local service providers to ensure that victims are provided with comprehensive, independent support. While the US has made great progress in implementing a collaborative approach, there are many gaps that remain, which undercut the effectiveness of the law enforcement response.

Enforcement Actions Must Include Integrated Services for Survivors

FNUSA notes that many federal, state and local law enforcement agencies partner with service providers to plan and execute enforcement actions and investigations. When law enforcement agencies include service providers in the planning, the providers are able to ensure appropriate staff (including legal providers, social service providers and interpreters) and services (including emergency housing, medical care, clothing, food and child care) are available immediately to survivors. When partners are not included in law enforcement actions, survivors are further traumatized by apprehension by law enforcement and law enforcement agents are diverted from critical investigative tasks to respond to the needs of victims. This increased trauma often reinforces the distrust of law enforcement that traffickers have instilled in their victims, making it less likely that the victims will be willing and able to disclose the full extent of their victimization and participate actively in the investigation and prosecution of the traffickers. Ineffective enforcement actions fail to identify and protect victims, and embolden traffickers who are not convicted of their crimes.

FBI's Annual Operation Cross Country Fails to Identify, Protect, and Serve Trafficking Survivors

FNUSA notes that Operation Cross Country (OCC), the annual enforcement action purportedly organized by the FBI in order to identify victims of child sex trafficking¹⁷, is an example of a law enforcement operation that fails to fully implement an effective strategy to protect victims and apprehend traffickers. On its own website, the FBI conflates the issue of sex trafficking and prostitution. "Operation Cross Country, a nationwide law enforcement action that took place last week and focused on underage victims of prostitution, has concluded with the recovery of 149 sexually exploited children and the arrests of more than 150 pimps and other individuals."¹⁸ Advocates note that OCC actually results in the arrest of far more sex workers than either pimps or patrons of sexual services.¹⁹ FNUSA notes that adult sex trafficking victims may well be caught up in those sex worker arrests, but that arresting them is unlikely to assist them in accessing services, support or protection from service providers or law enforcement. Instead, the criminal record will certainly leave them ineligible for many forms of public

¹⁷ <https://www.fbi.gov/news/stories/operation-cross-country> [last visited January 25, 2017].

¹⁸ <https://www.fbi.gov/news/stories/operation-cross-country> [last visited January 25, 2017].

¹⁹ Operation Cross Country X: Everything You Need to Know About the FBI's Annual 'Underage Human Trafficking Sting in One Chart' <http://reason.com/blog/2016/10/25/operation-cross-country-x-in-one-chart> [last visited January 25, 2017]. Is Operation Cross Country the Best Way to Fight Child Sex Trafficking? http://www.huffingtonpost.com/katherine-koster/is-operation-cross-country-the-best-way-to-fight-child-sex-trafficking_b_8307634.html [last visited January 25, 2017].

benefits including financial aid for higher education and unable to pass the background checks required by many public and private employers and landlords. Without access to support, protection, education, housing or legal employment, these men and women are even more vulnerable to exploitation and trafficking.

Additionally, while FNUSA supports the FBI's inclusion of, "[m]ore than 100 victim specialists" in the operation and that, "[a]ll of the recovered U.S. minors were offered services."²⁰ We highly recommend that all FBI offices partner with local social service providers *in advance* of any law enforcement actions. FNUSA's members are located throughout the US²¹ and report that while some FBI Field Offices partner with local providers, others do not. The FBI's Office for Victim Assistance is not designed to provide long term, comprehensive social and legal services for crime victims, nor should it be. Crime victims need, and deserve, to work with an independent service provider whose sole interest is in supporting the victim. Additionally, it is concerning that the FBI seems to be limiting victim services to minors (although the data shows that many adult sex workers were also identified) and perhaps even to U.S. citizen minors (it is unclear if foreign national minors were identified and, if so, what services and support they were offered).

US Law Enforcement Must Stop Arresting Sex Workers

FNUSA is strongly opposed to the practice of arresting sex workers in the name of addressing sex trafficking. Arrest is traumatizing and even well-intentioned law enforcement officers are unable to determine the exact circumstances of sex workers in the context of a raid. FNUSA knows from our direct services experience that sex trafficking victims are adults and minors, U.S. citizens and foreign nationals, of all gender identities. As noted above, these criminal records create additional barriers for consensual sex workers as well as trafficking victims, creating increased vulnerability to trafficking instead of reducing trafficking. Some jurisdictions go so far as to publish the names, mugshots, HIV status²² and transgender identity²³ of sex workers arrested, creating additional barriers of shame and decreasing their options for finding safe housing and employment. Those who are escaping domestic violence or past human trafficking are at increased risk of being found and further abused. FNUSA recommends that the US Government immediately ban the use of these dangerous and ineffective practices by all federal law enforcement agencies and special conditions should be added to all grants to bar the use of federal funds for the arrest of potential trafficking victims.

²⁰ <https://www.fbi.gov/news/stories/operation-cross-country> [last visited January 25, 2017].

²¹ A complete list of current FNUSA members is available at <https://freedomnetworkusa.org/current-members/>.

²² Grimwood, Harrison, "Police warn of potential need for HIV testing after prostitution arrests at Broken Arrow massage parlor." 28 November 2017, Available at: http://www.tulsaworld.com/news/crimewatch/police-warn-of-potential-need-for-hiv-testing-after-prostitution/article_4a2f6b5a-99be-50cd-9e14-5bbb9e7216a4.html

²³ Cifredo, Joanna, "Florida sheriff outs and endangers trans women arrested for sex work," 4 January 2016, Available at: <https://transequality.org/blog/florida-sheriff-outs-and-endangers-trans-women-arrested-for-sex-work>

Indiscriminate Raids Puts Trafficking Victims at Increased Risk

FNUSA notes a related practice of indiscriminate raids on sexually oriented businesses in the name of addressing sex trafficking. Lately, many FNUSA members note that local law enforcement are targeting massage business, mainly those with owners and workers of Asian descent. These efforts are based on assumptions and conflation, and not based in evidence of actual trafficking. While FNUSA acknowledges that trafficking occurs within massage businesses, as it does in many industries, not all of those engaged in commercial sex at such establishments are trafficking victims. In New York City, for example, FNUSA members report that out of over 100 raids, only a very small number of trafficking victims have been identified. Instead, the workers have been arrested and many have fled to another state or been driven further underground. As described above, this only increases the likelihood of future exploitation. Law enforcement should, instead, focus their valuable resources towards victim-initiated investigations to identify where trafficking is occurring rather than engaging in widespread raids.

US Government Must Expand Grants of Continued Presence

Continued Presence (CP) is a critical tool for supporting trafficking survivors during the investigation of cases involving foreign nationals. CP provides temporary legal status and employment authorization, as well as access to federally-funded services, so that trafficking survivors are available to assist in investigations and begin to rebuild their lives without becoming vulnerable to being re-trafficked. However, implementation continues to be woefully inadequate. Some FNUSA members report that it is often easier to obtain CP for a sex trafficking survivor than from a labor trafficking survivor, even when the traffickers use nearly identical methods to obtain and maintain control over the victims. This inconsistency is of great concern for FNUSA members, who also report that access to CP seems to depend largely on the individual agent involved. Other members report long delays in the application process, and in some circumstances law enforcement pursuing Deferred Action in lieu of CP “because it’s faster.” This is in direct contravention of DHS policy. FNUSA urges federal law enforcement agencies to request CP for all survivors at the outset of a human trafficking investigation. This ensures that survivors will have immediate access to lawful employment and benefits programs, such as access to ongoing medical care, food, and housing, as they assist with law enforcement investigations. Stable and safe survivors are essential to a robust investigation and proper prosecution. FNUSA commends the Blue Campaigns efforts to identify and address challenges in access CP in 2016, but urges DHS to continue and expand these efforts until the number of CP grants more closely resembles the number of T Visa grants.

US Government Must Uphold TVPA in T Visa Adjudications

FNUSA members also report increased barriers to obtaining a T Visa. Members report increasingly receiving Requests for Evidence that contravene legal standards. Recent requests have included language that attacks the credibility of the victim. Adjudicators have questioned whether smuggling situations can turn into trafficking (which is an incredibly common pattern). Adjudicators have also sought justification for any delay between the survivor’s escape from the trafficking situation and the report to law enforcement, also a common occurrence for survivors who may not be aware of protection for trafficking survivors, have limited access to

services and support, or have a reasonable fear of law enforcement due to past experiences. Some adjudicators are referring to outdated regulations or selectively referring to limited sections of the regulations, suggesting that victims are not eligible under that specific section instead of referring to the full regulations. As each day without status is another day of vulnerability for a victim of trafficking, RFEs are increasing challenges to properly serving victims and survivors, and impact the decision to come forward at all. We recommend improvements in training for adjudicators which explores some of these nuances of trafficking situations and provides a trauma-informed lens to the process.

Thank you for your time and attention to these matters. Please contact me (jean@freedomnetworkusa.org) if you have any questions or need further information.

Sincerely,

A handwritten signature in black ink that reads "Jean Bruggeman". The signature is written in a cursive, flowing style.

Jean Bruggeman
Executive Director
Freedom Network USA