



Freedom Network USA

January 15, 2019

VIA EMAIL to TIPreport@state.gov

TIP Ambassador John Cotton Richmond
US Department of State
Office to Combat and Monitor Trafficking in Persons (JTIP)
1800 G Street NW, Suite 2148
Washington DC 20520

RE: Freedom Network USA's Input for the 2019 Trafficking in Persons Report

Dear Ambassador Richmond:

Freedom Network USA (FNUSA) applauds the continued commitment of the US Government to improve upon its efforts to address human trafficking, both here and abroad. FNUSA is pleased that an assessment of anti-trafficking efforts in the US will continue to be incorporated into the 2019 Trafficking in Persons (TIP) Report.

FNUSA, established in 2001, is a coalition of 68 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the US. 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 that they 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 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.

1. Enforcement of Anti-Trafficking Laws and Prosecution Efforts

A. The US Government Must Increase Investigation and Prosecution of Labor Trafficking Cases

As FNUSA has emphasized in previous years, the US Government needs to increase its investigation and prosecution of labor trafficking cases, a concern we reiterate for this year's

report. Although FNUSA commends several recent initiatives to increase the investigation and prosecution of labor trafficking in cases involving employment-based visas, such as increased oversight of the J-1 Visa Exchange Visitor Program, data sharing between Department of Homeland Security (DHS) and the Department of Labor (DOL), as well as publication of H-2B recruiters, FNUSA remains concerned about the low number of investigations and prosecutions involving labor trafficking compared to sex trafficking.

According to the most recent Attorney General's Trafficking in Persons Report, in FY 2017 the Department of Justice (DOJ) "brought 282 human trafficking prosecutions (266 prosecutions involved predominantly sex trafficking and 16 involved predominantly labor trafficking, although some involved both), charged 553 defendants (525 involved predominantly sex trafficking and 28 involved predominantly labor trafficking), and secured federal convictions against 499 traffickers. Of these 499 traffickers, 471 involved predominantly sex trafficking and 28 involved predominantly labor trafficking, although several involved both."¹ Therefore, 94% of DOJ's prosecutions and convictions are for sex trafficking cases, and only 6% are for labor trafficking cases.

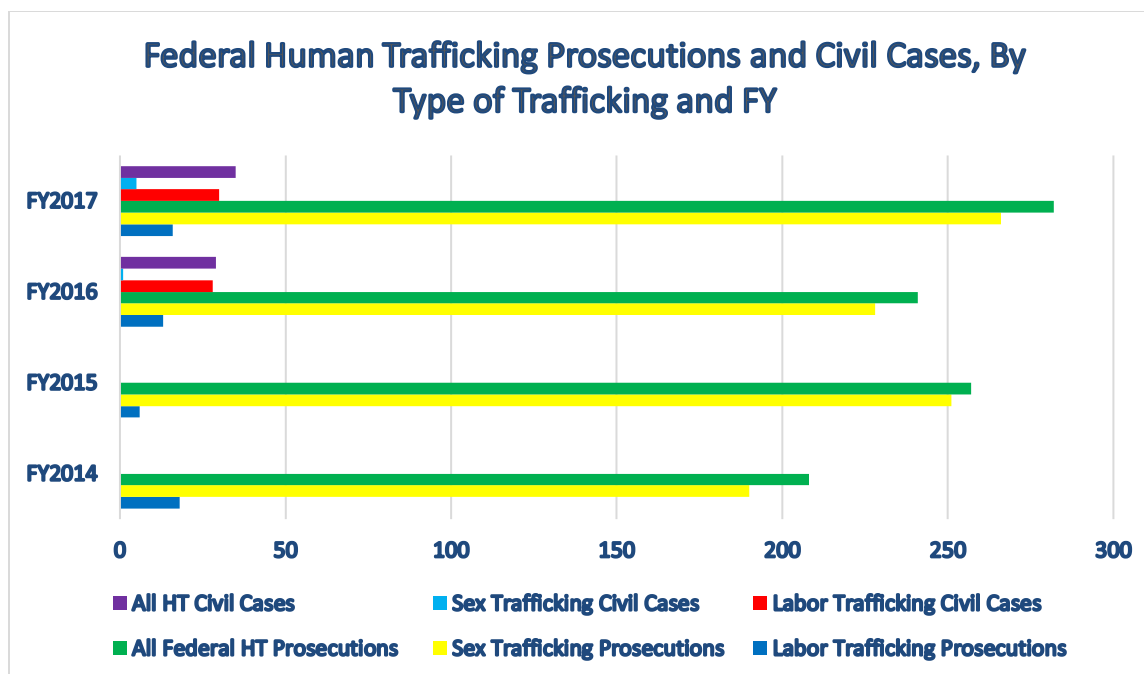
These numbers show a striking imbalance between investigations and prosecutions of labor trafficking as compared to sex trafficking. In contrast, FNUSA members report serving a much more balanced division of cases. FNUSA members reported that 58% of their clients were survivors of sex trafficking, 30% were survivors of labor trafficking, and 9% were survivors of both.² Similarly, DOJ's Office for Victims of Crime (OVC) reported that "approximately 64 percent (5,104) of clients served by OVC grantees were identified as sex trafficking victims, 24 percent (1,895) as labor trafficking victims, and four percent (351) as both labor and sex trafficking."³ Additionally, since 2003, the vast majority of cases brought under the private right of action provided in the TVPRA – more than 91% – allege forced labor.⁴ Based on these numbers, FNUSA is troubled that survivors of forced labor often cannot rely on the US Government to obtain justice and compensation and calls on the US Government to increase investigation and prosecution of cases involving labor trafficking. FNUSA also looks forward to the timely release of the Attorney General's Trafficking in Persons Report for FY 2018 to have more recent data on labor trafficking investigations and prosecutions.

¹ Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2017, hereinafter AG's FY17 TIP Report, p18, <https://www.justice.gov/humantrafficking/page/file/1103081/download>.

² Freedom Network 2018 Member Report, p10, data reflecting services provided from 1/1/15 to 12/31/16, <https://freedomnetworkusa.org/app/uploads/2018/04/FRN-Member-Report-Digital-FINAL.pdf>.

³ AG's FY17 TIP Report, p10.

⁴ <http://www.htlegalcenter.org/wp-content/uploads/Federal-Human-Trafficking-Civil-Litigation.pdf>



B. The US Government Must Order Mandatory Criminal Restitution in All Human Trafficking Cases

FNUSA reiterates a concern voiced in previous years regarding the US Government's failure to order mandatory criminal restitution in human trafficking cases. In 2014, the Human Trafficking Pro Bono Legal Center (now the Human Trafficking Legal Center) and the law firm WilmerHale jointly published a report, entitled "When 'Mandatory' Does Not Mean Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking in the United States," which found that courts awarded mandatory restitution to trafficking victims in just 36% of human trafficking cases brought between 2009 and 2012.⁵ "Data collected and analyzed since the publication of the initial findings provide a disheartening portrait of a continuing failure on the part of United States federal courts to order criminal restitution to trafficking victims. The updated data indicated that the percentage of trafficking cases ending with a mandatory criminal restitution order dropped from 36% in the prior period to just 27% in the current research date range."⁶ FNUSA recommends that the US Government increase and improve training for prosecutors and federal judges about mandatory restitution in human trafficking cases, provide resources to assist prosecutors in presenting their arguments in court, and provide trafficking victims with victim-witness counsel to advocate for restitution and other victims' rights issues before federal courts.

⁵ 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>.

⁶ The Human Trafficking Legal Center and WilmerHale, United States Federal Courts' Continuing Failure to Order Mandatory Criminal Restitution for Human Trafficking Victims, September 2018, p1, available at <http://www.htlegalcenter.org/wp-content/uploads/2018-Mandatory-Restitution-Report.pdf>.

2. Service Provision, Treatment, and Protection of Human Trafficking Survivors

A. DOJ Must Allow Restore Access to the Full Range of Critical Legal Services

Although FNUSA commends the DOJ's increased funding for service provision to human trafficking survivors in FY 2018, FNUSA strongly objects to OVC's decision to disallow grant funding for representation in vacatur and expungement cases for trafficking survivors. This decision will cause wide-ranging harm to trafficking survivors and is the antithesis of victim-centered service provision. Survivors with criminal records often remain excluded from the job and housing markets, ineligible for government programs, and are forced to relive their trauma whenever they are forced to explain their criminal records. These challenges keep survivors from attaining full independence and success, forcing them to remain reliant on government-funded programs for extended periods of time. Survivors also remain stuck in low-wage work, which creates vulnerability to future incidents of human trafficking. A wide range of service providers, survivors, law enforcement officials, legal experts, and prosecutors have called on OVC to reverse this harmful policy, but they have refused to even meet with advocates to discuss a path forward.⁷ FNUSA calls on DOJ to ensure victim-centered services are available for all survivors by immediately reversing this harmful, and ultimately expensive, policy.

B. The US Government Must Strengthen, and Stop Eroding, Protections for Immigrant Survivors of Human Trafficking

Hostility Toward Immigrants Causes Harm

US Government policies are creating a hostile environment for immigrant survivors of human trafficking. The issues and concerns raised by FNUSA in its comments for the 2017 TIP Report have only worsened in 2018. Federal policies, including increased and indiscriminate immigration enforcement, arrests of immigrants at courthouses and other safe places,⁸ threats of punishment against 'sanctuary' jurisdictions, and increased barriers to immigration relief, have had a direct and marked impact on immigrant survivors of human trafficking. The cumulative effects of the US Government's immigration policies and rhetoric have stopped immigrant survivors of human trafficking from seeking protection from law enforcement and accessing legal and social services. It has been reported that victims are likely to remain in trafficking situations longer, as they believe that the US Government will not protect them from harm.⁹

⁷ See FNUSA's blog on this effort and the letters sent to OVC at <https://freedomnetworkusa.org/freedom-network-usa-leads-broad-based-effort-to-protect-legal-representation-for-trafficking-survivors/>.

⁸ See ICE Memo revising Sensitive Locations Policy, January 10, 2018, <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>, and press articles describing courthouse arrests: ICE Making Arrests at Fresno Courthouse, and Attorneys Concerned Over Due Process, July 24, 2018 and updated August 31, 2018, <https://www.fresnobee.com/news/local/crime/article215404565.html>; ICE Arrests Go Too Far, February 7, 2018, <https://www.houstonchronicle.com/opinion/editorials/article/ICE-arrests-12560056.php>; ICE's Arrest Policy at Courthouse Raises Alarm in Connecticut's Legal Community, July 9, 2018, <https://www.law.com/ctlawtribune/2018/07/09/ices-arrest-policy-at-courthouses-raises-alarm-in-connecticuts-legal-community/?slreturn=20190010164917>.

⁹ See Cast, Freedom Network USA, and Polaris report, "2017 Social Service, Advocate and Legal Service Survey Regarding Immigrant Survivors of Human Trafficking,

USCIS Policy- Notice to Appear- Targets Trafficking Survivors

These policies are directly increasing abuse and exploitation of immigrants and exhibit a striking failure of the US Government to comply with international and US standards for the protection of victims. One horrifying example of the US Government's failure to protect human trafficking survivors is DHS's recent decision to put immigrants in removal proceedings if their applications for T and U visas and other forms of humanitarian relief are denied.¹⁰ This decision contradicts the intent and spirit of the T and U visa, which were created to encourage immigrant victims of human trafficking and other crimes to come forward and assist in investigations and prosecutions, as well as DHS' *own announcement that this policy would NOT be enforced against humanitarian visas*.¹¹ However, because of this change in policy, FNUSA members report their clients are increasingly afraid of reporting criminal activity and applying for immigration relief. Not only will this policy deter many immigrants from accessing available legal protections, it will also likely lead to a decrease in investigations and prosecutions of human trafficking, as immigrant survivors of human trafficking will be increasingly reluctant to report their traffickers and cooperate with law enforcement. Thus, allowing traffickers to operate with impunity due to the failure of the US government to protect survivors. FNUSA calls on DHS to immediately reverse this policy, and return to the previous practice of only taking enforcement action against humanitarian visa applicants in compelling circumstances.

DOJ Limits on Asylum and Immigration Courts Harm Trafficking Survivors

Furthermore, the US Government's recently announced limitations on protections for asylum-seekers and immigrants in removal proceedings will harm human trafficking survivors. In *Matter of A-B-*, Former Attorney General Jeff Sessions has articulated significantly limited asylum eligibility for victims of domestic violence, gangs, and other private actors. FNUSA members have represented numerous immigrants who were trafficked by family members, gangs, and other private actors outside of the US, but then fled to the US for protection. These human trafficking survivors have relied on asylum due to their fear of persecution, or actual retaliation being inflicted upon the victim and/or their family members, from their traffickers. Additionally, through other recent immigration decisions decided unilaterally by Former Attorney General Sessions, including *Matter of L-A-B-R-*, *Matter of S-O-G- & F-D-B-*, and *Matter of Castro Tum*, and case completion quotas for immigration judges, the US Government has

<https://freedomnetworkusa.org/app/uploads/2018/01/ImmigrationSurveyReportFinal.pdf>; and "In Trump's America, Bosses are Accused of Weaponizing the ICE Crackdown, December 18, 2018, <https://www.bloomberg.com/news/features/2018-12-18/in-trump-s-america-bosses-are-accused-of-weaponizing-the-ice-crackdown>.

¹⁰ See USCIS' June 28, 2018 NTA Memo, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>, and November 8, 2018 notice that the NTA policy would be extended specifically and solely to humanitarian visas <https://www.uscis.gov/news/alerts/uscis-continue-implementing-new-policy-memorandum-notices-appear>

¹¹ See USCIS' guidance on the NTA memo dated September 27, 2018, stating, "We will not implement the June 2018 NTA Policy Memo with respect to ... humanitarian applications and petitions at this time." https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Updated_Policy_Guidance_on_Notice_to_Appear_NTA.pdf

created significant procedural hurdles, restricted the role of immigration judges, and undermined due process in an attempt to streamline removal procedures and use the courts as an immigration enforcement mechanism.¹² The effects of these policies will prevent many human trafficking survivors from securing legal status by closing off asylum as a potential legal avenue, hindering them from securing counsel due to limited continuances in immigration court (as lawyers must spend more time and effort on each case, they will take fewer cases, and immigrants will be unable to retain a lawyer before their immigration hearings), and precluding them from securing collateral relief from USCIS. Current processing times for T Visas now approach 24 months. Survivors who are already in removal proceedings are now at high risk of being removed from the US **before** their T Visa applications are adjudicated. This also limits the ability of survivors to assist in the investigation and prosecution of the traffickers, if they are removed from the US. Thus, these policies, again, protect traffickers instead of trafficking survivors.

USCIS Practice- Requests for Evidence- Harm Human Trafficking Survivors

FNUSA members also report increased barriers to obtaining T Visas in the form of frequent Requests for Evidence (RFEs) and denials that contravene legal standards. Recent RFEs and denials have included victim-blaming language and clear errors of law, in which USCIS adjudicators improperly read and interpret the Immigration and Nationality Act (INA) and the 2016 regulations put out by USCIS itself. For example, adjudicators have sought justification as to why the survivor has not left the US since escaping from the trafficking situation, even though the 2016 regulations expressly removed the language contained in the previous regulations regarding whether the survivor had a “clear chance to leave.”¹³ Additionally, USCIS has frequently read INA § 212(d)(13) incorrectly, thereby preventing some immigrant survivors from receiving status due to crimes that their traffickers forced them to commit. As each day without status is another day of vulnerability for a victim of trafficking, RFEs are increasing challenges to properly serving survivors and impact survivors’ decision to come forward at all. FNUSA recommends that USCIS provide regular training for USCIS adjudicators that includes detailed guidance on the updated regulations, examples of actual trafficking situations, explanation of the impact of trauma on survivors, instructions on drafting victim-centered RFEs, and which is developed with the input of survivors to ensure that it properly and accurately reflects the lives, fears, and motivations of trafficking victims.

USCIS Practice- Fee Waiver Guidance- Harms Human Trafficking Survivors

Another new obstacle to securing immigration relief concerns increased denials of fee waivers and proposed revisions for adjudicating requests for fee waivers.¹⁴ FNUSA strongly opposes the

¹² AILA Policy Brief: Restoring Integrity and Independence to America’s Immigration Courts, September 28, 2018, available at <https://www.aila.org/File/DownloadEmbeddedFile/77605>.

¹³ “Removes the current regulatory “opportunity to depart” requirement for those who escaped their traffickers before law enforcement became involved; 8 CFR 214.11(g)(2).” Fed. Reg. Vol. 81 No. 43, December 19, 2016, at 92268.

¹⁴ USCIS is proposing revisions to existing fee waiver memo located at PM-602-0011.1 “Fee Waiver Guidelines Established by the Final Rule of the USCIS Fee Schedule: Revisions to Adjudicator Field Manual (AFM) Chapter 10.9,

proposed changes to the I-912 fee waiver application and instructions, as well as changes to the USCIS Policy Memorandum PM-602-0011.1.¹⁵ Instead, FNUSA calls on USCIS to develop policies and procedures that ensure that immigrant survivors of human trafficking and other forms of violence and exploitation have equal access to critical, life-saving protections. The proposed revisions directly conflict with the will of Congress to provide access to protection without fees for humanitarian visas, violate the evidentiary standard established for these visas, and will cause significant burdens on survivors attempting to access protection and support law enforcement.

USCIS Practice- Public Charge- Harms Human Trafficking Survivors

FNUSA is also strongly opposed to DHS's proposed changes regarding inadmissibility on public charge grounds and is deeply concerned about the immense harm that the proposed rule will have on immigrant survivors of human trafficking, as well as other forms of exploitation and violence.¹⁶ While some human trafficking survivors seeking specific forms of immigration status, including the T and U Visas, are exempt from the public charge ground of inadmissibility, most survivors will be unaware or unconvinced of the exemption, leaving them without the very services and protections that Congress has established. FNUSA members report that immigrant families are already withdrawing from assistance programs that support their basic needs due to fear, even though the proposed rule has not taken effect. Not only will the proposed rule, if implemented, impose significant human suffering costs on victims of human trafficking and their families, but will also impose long-term economic costs on our communities due to increased injury and health consequences of untreated trauma.¹⁷

US Government's Continuing Failure to Provide Continued Presence to Human Trafficking Survivors

Although FNUSA commends DHS's efforts to expand access to Continued Presence through revised guidance, we remain deeply concerned at the low number of Continued Presence grants issued to victims of trafficking. Foreign national survivors rely on this temporary status to access emergency services and support while working to apply for long-term immigration relief, which is increasingly critical as access to the T Visa becomes more limited by DHS policy (see above). Although the number of survivors granted Continued Presence increased in 2017, the number of grants (170) remains low compared to the overall increase in the number of T visas issued in the same time period (672).¹⁸ FNUSA looks forward to the release of 2018 data, and

AFM Update AD11-26. (March 13, 2011), available at: <http://bit.ly/2011USCISFeeWaiverGuidelines> (hereinafter "Fee Waiver Guidelines"). FNUSA also objects to USCIS making such substantive policy changes via form revision.

¹⁵ Proposed Revisions at 49121. See FNUSA's Comments on the Proposed Fee Waiver Changes for a more detailed explanation of FNUSA's opposition, available at:

<https://freedomnetworkusa.org/app/uploads/2018/11/FNUSARevisedFeeWaiversComments.pdf>.

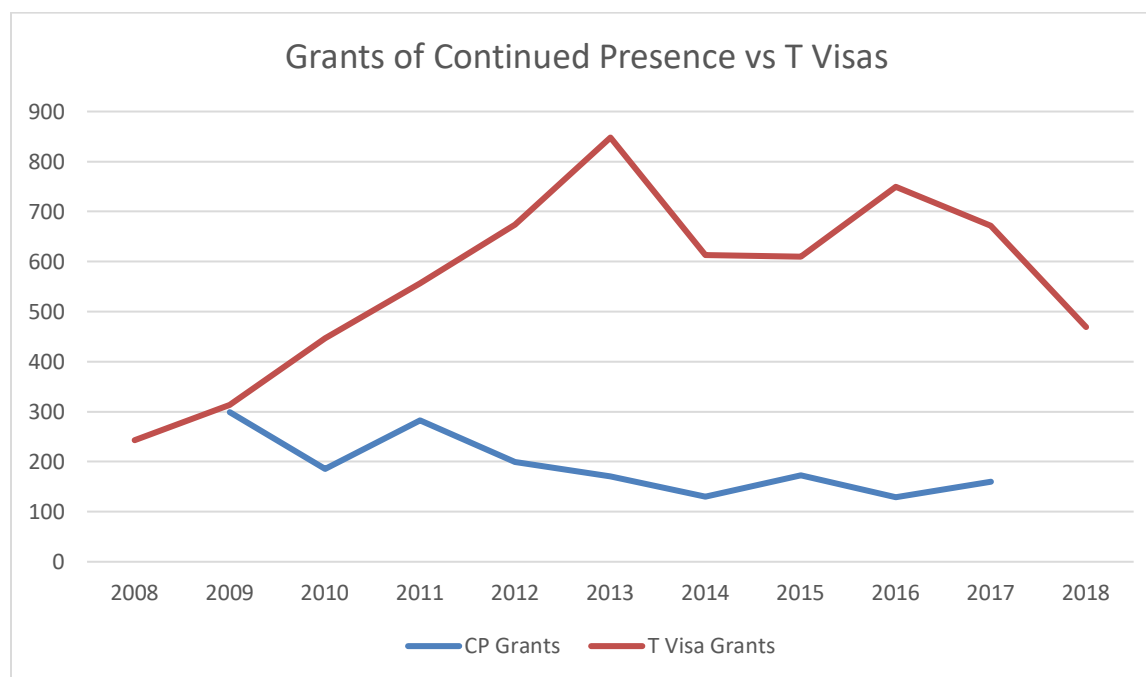
¹⁶ DHS Docket No. USCIS-2010-0012, Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds.

¹⁷ See FNUSA's Comments on the Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds for a more detailed explanation of FNUSA's opposition, available at

<https://freedomnetworkusa.org/app/uploads/2018/12/FNUSAPublicChargeComments2018DecFINAL.pdf>.

¹⁸ See chart below. Data was obtained from relevant TIP Reports and <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-914-application-t-nonimmigrant-status>, including T Visa data for FY18 through Q3.

we strongly recommend collaboration between DHS and DOJ to prioritize an increase in the number of federal agents submitting Continued Presence applications in 2019. FNUSA recommends that DHS and DOJ analyze their own data to find the regions of the US with the highest disparity in numbers of Continued Presence grants vs. T Visa grants, and to prioritize those areas for intensive training and support. FNUSA also recommends that federal agencies authorize victim-witness personnel at the FBI, DOJ US Attorneys Offices, DOJ Human Trafficking Prosecution Unit, and DHS' Homeland Security Investigations to prepare and submit Continued Presence applications. These personnel are most likely to have the relevant identification information about the survivor, the needs of the survivor, and the status of the case.



DHS Remains Complicit in Labor Trafficking of Immigrants in Private Detention Facilities

FNUSA also calls on the government to address its own complicity in human trafficking. At least seven lawsuits have been filed in recent years by immigrant detainees who have alleged violations of the Trafficking Victims Protection Act (TVPA) during their detention.¹⁹ These lawsuits – involving ICE detention centers run by private prison companies throughout the country – contain extremely troubling allegations of labor trafficking, with many immigrant detainees claiming they were forced to work for a dollar a day under the threat of solitary confinement and a climate of fear. These claims have been pending for as long as 5 years now, clearly giving the US Government notice of the conditions at the detention centers. The failure of the US Government to take action to protect these victims, stop these exploitive practices, or

¹⁹ See, e.g., *Barrientos v. CoreCivic*, 4:18-cv-00070-CDL (M.D. Ga. Apr. 17, 2018); *Gonzalez v. CoreCivic*, 1:18-cv-00169 (W.D. Tex. Feb. 22, 2018); *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); *Nwuazar 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).

to take any action against the corporations show the US Government's continued complicity in these acts of human trafficking.²⁰

US Guestworker Visa Programs Designed to Allow Labor Trafficking to Thrive

The nation's largest guest worker programs continue to be rife with abuse and incidents of human trafficking.²¹ Providers report that overseas recruiters continue to charge excessive fees to workers and to perpetrate fraud and other recruitment abuses, which are often catalysts for human trafficking in the US. Additionally, the structure of the low-wage programs in particular (for example, the H-2A, H-2B and J-1 programs), which generally bind a worker's lawful status in the US to the employer who sponsored their visa, makes it almost impossible for a worker to leave an abusive employer without facing deportation or economic ruin. Moreover, the lack of oversight by the regulating agencies – including the Department of State – mean that law-breaking employers are often not held accountable. Despite these issues, Congress and federal agencies continue to support the expansion of these programs without also implementing the necessary reforms to ensure workers are protected. FNUSA calls on the federal government to reform these guest worker programs to guarantee robust protections for international workers who come to the U.S. to contribute to our economy.²²

C. The US Government Must Strengthen Protections for Survivors with Disabilities

The US Government needs to take more steps to understand the scope and dynamics of trafficking targeting persons with disabilities. In its 2016 Trafficking in Persons Report (TIP), DOS acknowledged that persons with disabilities are especially vulnerable to human trafficking. The National Human Trafficking Hotline has received reports of more than 2,000 cases of trafficking of persons with disabilities between 2015 and 2017 in the US. We think this is the tip of the iceberg and that more training, better screening, and expanded outreach is necessary to properly identify this population.²³

In order to better understand the extent to which anti-trafficking programs are appropriately serving persons with disabilities, FNUSA recommends that the US Government fund research

²⁰ For more information, see The Human Trafficking Legal Center Fact Sheet: Human Trafficking & Forced Labor in For-Profit Detention Facilities, 2018, available at <http://www.htlegalcenter.org/wp-content/uploads/Human-Trafficking-Forced-Labor-in-For-Profit-Detention-Facilities.pdf>.

²¹ See, e.g., Francis et al. v. Apex USA Inc. et al, 5:18-cv-00583 (D. Okla.); Chaidez v. Hemphill, 2:18-cv-01837 (E.D. Pa.); Rosas v. Sarbanand Farms, 2:18-cv-00112 (W.D. Wash.); Bernal v. Coleman, 1:18-cv-00088 (W.D. Ky.).

²² See, e.g., FNUSA's Comments on RIN 1400-AD14, Proposed Rule, "Exchange Visitor Program – Summer Work Travel," February 2017, available at

<https://freedomnetworkusa.org/app/uploads/2016/10/FNUSACommentsRIN1400-AD14.pdf>; FNUSA's Human Trafficking and H-2 Temporary Workers, May 2018, available at

<https://freedomnetworkusa.org/app/uploads/2018/05/Temporary-Workers-H2-May2018.pdf>; FNUSA's Human Trafficking and J-1 Visas for Temporary Workers, May 2018, available at

<https://freedomnetworkusa.org/app/uploads/2018/05/Human-Trafficking-and-J-1-Visas-May2018.pdf>; and

FNUSA's Human Trafficking and Farmworkers, March 2013, available at

<https://freedomnetworkusa.org/app/uploads/2018/07/Farmworkers.pdf>.

²³ For more information, see, The Human Trafficking Legal Center Fact Sheet: Trafficking of Persons with Disabilities in the United States, available at <http://www.htlegalcenter.org/wp-content/uploads/Trafficking-of-Persons-with-Disabilities-in-the-United-States-Fact-Sheet.pdf>.

that will document 1) the extent to which service providers are screening survivors of trafficking for either existing disabilities or those resulting from the abuse suffered during the trafficking experience; and 2) the extent to which trafficking services are fully accessible to survivors with disabilities, including, but not limited to, physical, sensory, developmental, and/or communication. Research is also needed to better document the training and resource needs of community programs serving persons with disabilities.

The US Government should provide training and technical assistance to all human trafficking services grantees to ensure that they are able to both identify survivors of trafficking with disabilities, and to provide survivors with necessary accommodations in accordance with the Americans with Disabilities Act and related laws. Accommodations may include, but are not limited to, interpreters, specialized transportation services, communication devices, and accessible physical spaces. The US Government should provide training and technical assistance to law enforcement and judicial personnel to ensure that they are able to recognize the trafficking of persons with intellectual and/or cognitive disabilities or in cases where theft of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits are involved.

3. The US Government's Failure to Prevent Human Trafficking Among Marginalized Communities

FNUSA is very disappointed in US policy changes that have increased vulnerabilities to human trafficking for immigrants, people of color, low income communities, and LGBTQ individuals.

A. Increased vulnerabilities among LGBTQ individuals

The US Government has taken several actions to remove protections for LGBTQ individuals, including attempts by the Department of Health and Human Services (HHS) to redefine gender to be based solely on a person's genitalia at birth,²⁴ the roll back of Title IX protections in schools,²⁵ the removal of references to specialized services for LGBTQ communities from grant solicitations for housing and human trafficking programs, the DOJ's reversal of policies to protect transgender people from employment discrimination, the Department of Commerce's removal of sexual orientation and gender identity from the proposed 2020 Census survey, and the DOJ's Bureau of Prisons' decision to use sex at birth to determine trans inmate placement decisions.²⁶ In a recent study released by the DOJ and the Office of Juvenile Justice and Delinquency Prevention on youth trading sex (and therefore victims of sex trafficking using the

²⁴ See, e.g., 'Transgender' Could be Defined Out of Existence Under Trump Administration, October 21, 2018, <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html?module=inline>.

²⁵ See, e.g., Justice Department Withdraws Litigation Over North Carolina's HB2, Citing Fake Repeal, April 14, 2017, http://www.slate.com/blogs/outward/2017/04/14/justice_department_withdraws_from_hb2_litigation.html.

²⁶ See, e.g., Bureau of Prisons Rolls Back Obama-era Transgender Inmate Protections, May 14, 2018, <https://www.nbcnews.com/feature/nbc-out/bureau-prisons-rolls-back-obama-era-transgender-inmate-protections-n873966>.

federal definition), over half of the individuals surveyed were LGBTQ identified.²⁷ FNUSA has noted for years that LGBTQ communities are both overrepresented among youth trafficking survivors, and desperately underserved in terms of both resources and protections.²⁸ Scaling back these limited protections will only cause further marginalization and increase vulnerability to exploitation and abuse, particularly for LGBTQ youth. 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,²⁹ and advancing religious exemptions³⁰ are all disturbing changes that are likely to cause increased trafficking and violence against the LGBTQ community. FNUSA strongly condemns these changes.

B. Increased vulnerabilities of immigrants, particularly UACs and LGBTQ immigrants

As discussed above, recent changes in the US Government’s immigration policies make it increasingly difficult for immigrant survivors of human trafficking to come forward, and also make immigrants, particularly immigrant children and LGBTQ immigrants, increasingly vulnerable to human trafficking.

In particular, FNUSA is deeply concerned about the long-term effects of President Trump’s “zero tolerance” and family separation policies at the US-Mexico border, as well as the increased detention of unaccompanied alien children (UACs). The trauma caused by family separation and detention puts UACs at an increased risk of human trafficking.³¹ FNUSA calls on the US Government to limit detention of UACs and to, instead, provide expanded services and legal counsel to UACs after leaving detention, so that these children can receive medical, social, mental health and legal services. FNUSA also calls on DHS and HHS to stop using information obtained from potential UAC sponsors and their household members for immigration enforcement purposes. This policy reduces the ability of friends and family members to provide safe and appropriate housing and care for UACs, leading to increased abuse and exploitation of UACs in harmful detention settings.³²

In light of the rollbacks in protection for both immigrants and LGBTQ individuals, LGBTQ immigrants are exceptionally vulnerable. The abuses suffered by transgender asylum-seekers at

²⁷ 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>.

²⁸ See, “Spotlight: Unique Vulnerabilities of LGBTQI Community Members”, FNUSA 2016 Member Report, p5, <https://freedomnetworkusa.org/app/uploads/2016/12/Member-Report-2015-Electronic-Version.pdf>.

²⁹ Savage, Charlie, “In Shift, Justice Dept. Says Law Doesn’t Bar Transgender Discrimination,” 5 October 017, available at: <https://www.nytimes.com/2017/10/05/us/politics/transgender-civil-rights-act-justice-department-sessions.html>.

³⁰ Brief for the Department of Justice, Masterpiece Cakeshop, Ltd. vs. Colorado Civil Rights Commission, et al, 16-111 (2016).

³¹ For more detail on the harm to human trafficking victims that is posed by family separation and detention, see FNUSA’s Comments on the Proposed Flores Regulations, available at: <https://freedomnetworkusa.org/app/uploads/2018/11/FNUSACommentsProposedFloresRegulation.pdf>.

³² For more detail on FNUSA’s concerns, see comments submitted by FNUSA and 111 other civil rights organizations, available at: <https://freedomnetworkusa.org/app/uploads/2018/11/DHS-HHS-Letter-Final.pdf>.

the border, exemplified by the death of trans woman Roxsana Hernandez Rodriguez in ICE custody amid signs of physical assault and abuse,³³ cause increased fear of the US government among LGBTQ immigrants. However, LGBTQ immigrants have come to the US because they are fleeing violence and prejudice in their home countries,³⁴ and have no choice but to remain in the relative safety of the US. The US Government's refusal to protect LGBTQ immigrants forces them into underground economies, increasing their vulnerability to future abuse including human trafficking.

Additionally, FNUSA is concerned about the long-term effects of the US Government's decision to end Temporary Protected Status (TPS) for several countries and Deferred Action for Childhood Arrivals (DACA). As a result of these policies, tens of thousands of immigrants will be excluded from the labor market and will enter employment situations that are ripe for human trafficking, particularly in light of increased fear among immigrants to report employers.

C. US Law Creates Increased Vulnerabilities Among Sex Workers

FNUSA calls on the US to decriminalize sex work in the US, in order to prevent human trafficking.³⁵ US law, at the federal and local levels, criminalizes consensual commercial sex work.³⁶ This puts sex workers in a state of constant vulnerability. They are vulnerable to abuse and exploitation at the hands of pimps, customers, and even law enforcement. Sex workers are reluctant to report crimes committed against them, because they report that law enforcement rarely acts to protect them and sometimes abuses them.³⁷ Even when the abuse rises to the level of human trafficking, survivors are unlikely to come forward to report these abuses to law enforcement. Criminal records from multiple prostitution arrests, limits the ability of sex

³³ See Independent Autopsy of Transgender Asylum Seeker Who Died in ICE Custody Shows Signs of Abuse, November 27, 28, <https://www.nytimes.com/2018/11/27/us/trans-woman-roxsana-hernandez-ice-autopsy.html> ; Transgender Asylum Seeker Was Beaten Before Her Death, According to New Autopsy, November 26, 2018, https://www.washingtonpost.com/nation/2018/11/27/transgender-asylum-seeker-was-beaten-before-her-death-according-new-autopsy/?utm_term=.52e2078cae8e .

³⁴ See, for example, Equality to Brutality: Global Trends in LGBT Rights, Human Rights Watch, January 7, 2016, <https://www.hrw.org/news/2016/01/07/equality-brutality-global-trends-lgbt-rights> ; Trans Murder Monitoring Trans Day of Remembrance 2018 Press Release: 369 reported murders of trans and gender-diverse people in the last year, Trans Respect Versus Transphobia Worldwide, November 12, 2018, <https://transrespect.org/en/tmm-update-trans-day-of-remembrance-2018/> ; 7 Discriminatory (or Deadly) Countries for LGBT People, Amnesty International, <https://www.amnestyusa.org/7-discriminatory-or-deadly-countries-for-lgbt-people/> .

³⁵ For more information, see End Demand Fact Sheet, FNUSA 2018, <https://freedomnetworkusa.org/app/uploads/2018/07/End-Demand.pdf>, Freedom Network Stands in Support of Amnesty International Policy and Report Release, May 2016, <https://freedomnetworkusa.org/app/uploads/2017/01/Amnesty-International-Statement-05262016.pdf> .

³⁶ For an overview of the intersections of human trafficking and sex work, see Human Trafficking and Sex Worker Rights, April 2015, <https://freedomnetworkusa.org/app/uploads/2018/07/HT-and-Sex-Workers-Rights.pdf>.

³⁷ See, for example, DC, PG Cops Investigated for 'Coercing' Trans Sex Worker, November 19, 2018, <https://www.washingtonblade.com/2018/11/19/d-c-p-g-cops-investigated-for-coercing-trans-sex-worker/>, A Systematic Review of the Correlates of Violence Against Sex Workers, Am J Public Health, May 2014, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987574/>, Abused then Arrested: Inside California's Crackdown on Sex Work, Guardian, November 28, 2018, <https://www.theguardian.com/us-news/2018/nov/28/california-sex-workers-crackdown>, Police Interactions Linked to Increased Risk of Client Violence for Female Sex Workers, January 18, 2019, <https://hub.jhu.edu/2019/01/08/violence-against-sex-workers-police/> .

workers to access education, alternative employment, housing, social services, and respect. While states are increasingly decriminalizing minors engaged in commercial sex work, those over the age of 18 are routinely arrested. These factors all combine to put sex workers at high risk of human trafficking.³⁸

In the wake of the enactment of Public Law 115-164, the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (FOSTA), many sex workers have reported more unsafe work environments and increased vulnerability to traffickers.³⁹ Whereas sex workers were previously able to use online platforms to work more safely and independently, FOSTA has caused many sex workers to rely on intermediaries such as pimps, leading to increased risk of sex trafficking. In fact, one study found that Craigslist's 'Erotic Services' section reduced the female homicide rate by over 17 percent.⁴⁰

D. Weak Social Safety Net Causes Vulnerabilities

FNUSA calls on the federal government to effectively address the root causes of trafficking and exploitation: poverty, insecure housing, discrimination, and a broken immigration system. FNUSA is especially concerned that the current administration's immigration enforcement efforts will cause survivors to fear seeking protection and will enable traffickers to thrive. Federal efforts must shift to tackling the issues that make populations vulnerable to exploitation in the first place. Without dedicating significant resources to uplifting vulnerable communities, exploitation will flourish and trafficking will remain pervasive. Lack of access to safe and affordable housing, child care, 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, however, has recently been rolling back protections included in the Affordable Care Act, removing protections for LGBTQ individuals, and increasing indiscriminate immigration enforcement. These changes serve to increase vulnerability to human trafficking and dissuade victims from reporting their exploitation to law enforcement.

³⁸ FNUSA 2016 Member Report at 10.

³⁹ See, for example, Freedom Network Urges Caution in Reforming the CDA, 2017, <https://freedomnetworkusa.org/app/uploads/2017/10/FNUSAUrgesCautionCDAREform.pdf>, What Is SESTA/FOSTA factsheet from Survivors Against SESTA, https://survivorsagainstsesta.files.wordpress.com/2018/09/post-sesta_0917.pdf; 'This Bill is Killing Us': 9 Sex Workers on Their Lives in the Wake of FOSTA, Huffpost, May 11, 2018, https://www.huffingtonpost.com/entry/sex-workers-sesta-fosta_us_5ad0d7d0e4b0edca2cb964d9; The War on Sex Workers Needs to Stop Now, Rolling Stone, April 13, 2018, <https://www.rollingstone.com/politics/politics-news/the-war-on-sex-workers-needs-to-stop-now-628335/>; Pimps are Preying on Sex Workers Pushed Off of the Web Because of FOSTA-SESTA, Motherboard, April 30, 2018, https://motherboard.vice.com/en_us/article/bjpvz/fosta-sesta-sex-work-and-trafficking.

⁴⁰ Scott Cunningham, Gregory DeAngelo, and John Tripp, Craigslist's Effect on Violence Against Women, November 2017, available at <http://gregorydeangelo.com/workingpapers/Craigslist5.0.pdf>.

E. Prevention beyond criminal justice-focused approach

FNUSA also urges the US Government to expand prevention 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.

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 fluid and cursive, with a long horizontal flourish extending to the right.

Jean Bruggeman
Executive Director
Freedom Network USA