



Freedom Network USA

Human Trafficking Policy Recommendations for Immediate Action From the Biden-Harris Administration

Human trafficking has been a critical focus of every administration since the passage of the Trafficking Victims Protection Act in 2000. For sixteen of the past twenty years, the US has charted the path forward by expanding protections and services for survivors, holding traffickers increasingly accountable, and beginning the challenging work of developing a system that prevents trafficking. That progress not only ground to a halt, but moved backwards during the past four years. Therefore, the Biden-Harris Administration will need to double-down on this nation's commitment to ending human trafficking, and they must start immediately.

Freedom Network USA (FNUSA), established in 2001, is a coalition of 71 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 to ensure that trafficking survivors 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, 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.

FNUSA offers these recommendations to guide the Administration in re-establishing America's place as a leader in the fight to end human trafficking:

Across Government

1. Treat all of the severe forms of trafficking in persons (labor trafficking and sex trafficking, of adults and minors, of all gender expressions) as equally important. Disparities abound in training, outreach, investigations, prosecutions, research, and policy efforts. Whenever possible, government efforts should address all forms of human trafficking, unless it would be manifestly improper. Examples include: OJJDP's focus on sex trafficking of girls to the exclusion of the sex trafficking of boys and transgender minors and labor trafficking of all young people; and HHS' required screening of all youth in the child welfare system for sex trafficking only which excludes labor trafficking of youth.
2. Celebrate and protect immigrants instead of demonizing and putting them at high risk of abuse and exploitation. US Government policies are creating a hostile environment for immigrants, increasing their risk of trafficking, and making it more challenging for survivors of human trafficking to access services and support. Federal policies, including increased and indiscriminate immigration enforcement, arrests of immigrants at

courthouses and other safe places¹, threats of punishment against ‘sanctuary’ jurisdictions, and increased barriers to immigration relief, have had a direct and marked impact on immigrant survivors of abuse and exploitation, including human trafficking. The cumulative effects have kept immigrants in trafficking situations, instead of seeking protection from law enforcement and from accessing legal and social services.² FNUSA calls on the US Government to immediately stop using language and statements that dehumanize immigrants or portrays them as dangerous, criminal, or detrimental to the US economy. Further actions to restore protections include reversing changes to HUD’s 2015 Affirmatively Furthering Fair Housing (AFFH), 2013 Disparate Impact, and the pending ‘Mixed Status’ rule.³

3. Stop Conflating Sex Work and Sex Trafficking, Stop Criminalizing Sex Workers. US law, at the federal and local levels, criminalizes consensual commercial sex work.⁴ This puts sex workers in a state of constant vulnerability. They are vulnerable to abuse and exploitation at the hands of third party exploiters, 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.⁵ 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 limit the ability of sex 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.⁶ Adult, consensual commercial sex work is not trafficking. Decriminalization of sex work will prevent human trafficking.⁷
4. Eliminate discrimination against LGBTQIA+ people to stop putting them at high risk of trafficking. LGBTQIA+ communities are both overrepresented among youth trafficking survivors, and desperately underserved in terms of both resources and protections.⁸ Scaling back protections causes further marginalization and increases vulnerability to exploitation and abuse. The government must ensure that federally-funded services and programs do not allow discrimination and that providers are encouraged to provide LGBTQIA+ specific services. Further actions to restore protections include reversing changes to HUD’s 2016 rule to provide Equal Access in Accordance with an Individual’s Gender Identity.⁹ Removing the LGBTQ community as a specific population from requests for proposals, determining that transgender individuals are not covered by Title VII protections in the workplace,¹⁰ the roll back of Title IX protections in schools,¹¹ and advancing religious exemptions¹² are all disturbing changes that are likely to cause increased trafficking and violence against the LGBTQ community.
5. Remove restrictions and reverse policy changes that limit access to asylum. FNUSA members have represented numerous immigrants who were trafficked by family members, gangs, and other private actors outside of the US, 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. Precedent-setting immigration decisions, procedural restrictions, changes to asylum eligibility, and changes at the Southern border put

trafficking survivors seeking protection at high risk of abuse and exploitation in Mexico, and limits their access to the social and legal services they need for protection and healing. Trafficking survivors need time and a safe place to process their trauma sufficiently to be able to provide the information needed by asylum agents to properly assess their claims. DOJ, DHS, and the CDC should all address these barriers to protection.

6. Reverse the Public Charge policy changes. FNUSA is also strongly opposed to the DHS, DOJ, and State Department changes regarding admissibility on public charge grounds, and is deeply concerned about the immense harm that the rule will have on immigrant survivors of human trafficking, as well as other forms of exploitation and violence.¹³ While some human trafficking survivors, including those with T and U Visas, are exempt from the public charge ground, 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, or choosing not to enroll in, assistance programs that support their basic needs due to fear.
7. Increase oversight of visas known to be routinely used in trafficking schemes. The nation's largest guestworker programs are rife with abuse and incidents of labor trafficking.¹⁴ Overseas recruiters charge excessive fees and perpetrate fraud and abuse, laying the foundation for human trafficking in the US. The structure of the low-wage programs in particular (including 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. FNUSA calls for reform of these guestworker programs by DHS, DOL, and the State Department to guarantee robust protections for workers, including visa portability, robust workers' rights information both pre-departure and upon arrival in the US, and robust enforcement against employers and recruiters who have abused or exploited their workers.¹⁵

Department of Justice

1. Release the Attorney General's Report to Congress on time, every time. The most detailed information on US Government anti-trafficking efforts is included in the annual Attorney General's Report to Congress and Assessment of US Government Activities to Combat Human Trafficking (AG Report) as mandated by the Trafficking Victims Protection Act (TVPA) codified at 22 USC 7103(d)(7).¹⁶ However, the US Government has failed to submit this vital report for the past two years. The most recent report available covers FY18¹⁷. This failure leaves government agencies, nongovernmental organizations, and survivors with incomplete information about the efforts and impact of the US Government.
2. Ensure restitution is awarded and paid in every trafficking case. Restitution, mandatory under federal law, is still not uniformly ordered. The most recent study indicates that 25% of trafficking sentences do not include restitution.¹⁸ DOJ must increase and improve training for prosecutors and judges, provide resources to prosecutors, and provide trafficking victims with victim-witness counsel. DOJ should also use all

authorities to ensure restitution is actually paid to survivors, including impoundment and forfeiture, as well as the authorities of the State Department and Treasury including sanctions, freezing foreign assets, limitations on diplomatic visas and downgrading TIP Report rankings.

3. Ensure access to comprehensive legal services for all trafficking survivors. DOJ's Office for Victims of Crime (OVC) restricted the FY18 and FY19 human trafficking grants to ban the use of grant funds for representation in criminal record relief cases.¹⁹ This restriction must be removed from all current and future grant awards and programs. FNUSA supports Congressional action to bar these restrictions from all future OVW and OJP grants.
4. Ensure human trafficking services appropriations are fully expended in a non-discriminatory way. Press reports indicate that the DOJ has been engaged in inappropriate grant decision-making including selecting peer reviewers and grant recipients based on their political opinions and comments.²⁰ FNUSA calls on DOJ to explain why the FY18 appropriation was not fully expended (several OVC grant categories were not awarded), why the HUD Housing Program was cancelled and what happened to those funds²¹, why lower ranked applications were funded with FY19 funds by OVC²² and report on the status of the whistleblower complaint²³ related to those awards, and what changes will be made in their grantmaking process to ensure that appropriations will be fully and properly expended in the future.
5. Stop ignoring labor trafficked youth. OJJDP's focus on sex trafficking of girls ignores both the sex trafficking of boys and transgender minors and labor trafficking of all young people. At least a dozen states already recognize child labor trafficking as a form of child abuse.²⁴ All courts should receive comprehensive training on both sex and labor trafficking of youth of all gender identities.

Department of Labor

1. Reinstate the policy of requesting liquidated damages as default in all cases²⁵. Employers who engage in abusive labor practices must be held accountable for their abuse and exploitation. This shows workers that they are valued and will be protected, and clearly announces to employers that no abuse of workers will be allowed. Human trafficking exists on a continuum of worker exploitation, preventing human trafficking requires addressing the entire continuum.
2. Increase Wage and Hour Investigations, collaborate with human trafficking task forces. DOL Investigators are critical partners in identifying workplaces that engage in the abuse and exploitation of workers, and referring possible trafficking situations to law enforcement.

Department of Homeland Security

DHS- Immigration and Customs Enforcement

1. Bar DHS Agents from any sexual contact with victims, witnesses, suspects, and others. Following public reports of ICE agents engaging in sexual contact while investigating possible sex trafficking,²⁶ DHS must adopt a formal policy banning all DHS employees and contractors from engaging in sexual activity while acting in an official capacity or

conducting an investigation, with an individual in their custody, or as part of any other action taken under color of law.

2. End Immigration Detention. Trafficking survivors are increasingly held in immigration detention, even when T Visas are pending. T Visa processing now takes approximately 2 years, leaving traumatized trafficking survivors in unsafe, unsanitary conditions without access to sufficient medical and mental health care or adequate access to their attorneys.²⁷
3. End Labor Trafficking in Immigration Detention. The US Government must address its own complicity in labor trafficking in private detention facilities. At least seven lawsuits have been filed by immigrant detainees for violations of the Trafficking Victims Protection Act (TVPA) during their detention²⁸ where they are forced to work for a dollar a day under the threat of solitary confinement and a climate of fear. The failure of the US Government to take action to protect these victims, stop these exploitive practices, or to take any action against the corporations, show the US Government's continued complicity in these acts of human trafficking.²⁹
4. Reverse Sensitive Locations Memo. Schools, houses of worship, courthouses, childcare centers, hospitals, and other locations that are critical to the health, mental health, and safety of immigrants should be protected from ICE enforcement activities. DHS should revoke the 2018 Civil Immigration Enforcement Actions Inside Courthouses memo.³⁰
5. Protect Trafficked Children at the Border. The Trafficking Victims Protection Reauthorization Act of 2008 requires that all unaccompanied minors at the border be screened for possible trafficking and provided with proper care from HHS. The TVPRA protections must be fully and consistently implemented, and not circumvented with excuses related to health emergencies or 'protection' protocols.

DHS- US Citizenship and Immigration Service

6. Rescind the Notice to Appear (NTA) Memo. The NTA Memo reverses long-standing DHS policy to separate the benefit granting focus of USCIS from the removal authority of ICE, and directs USCIS to issue an NTA to any immigrant denied T and U Visas and other forms of humanitarian relief.³¹ This decision contradicts the intent and spirit of the T and U Visas, 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.³² FNUSA members report their clients are now afraid of reporting criminal activity and applying for immigration relief which has also contributed to a decrease in investigations and prosecutions of human trafficking.³³ This allows traffickers to operate with impunity due to the failure of the US government to protect survivors. Survivors, meanwhile, remain undocumented in a volatile political environment and are foreclosed from formal employment opportunities, housing and other resources that would prevent their re-victimization.
7. Remove restrictions and reverse policy changes that interfere with fair and timely T Visa adjudications. FNUSA members report frequent Requests for Evidence (RFEs) and denials that contravene legal standards.³⁴ 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, especially related to being “physically present on account of” the trafficking incident. Current processing times for T Visas now exceed 24 months.³⁵ This delays receipt of employment authorization documents (EADs) and leaves survivors vulnerable to ongoing financial instability, a key risk factor in re-trafficking. 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.³⁶ Others are stuck in immigration detention, with limited access to the legal, social services, and family support they need to recover from their victimization. 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. USCIS’ T Visa data reveals an increase in denials for T Visas that indicates the danger of these interpretations.³⁷

8. Rescind the Blank Space Policy. Without any formal rulemaking or notice, USCIS posted notices on their website that they would reject otherwise properly filed T and U Visa and asylum applications if there were spaces on the form that were not filled in, even if there was no responsive information (such as leaving the space for a middle name blank for a person without a middle name)³⁸. This is a ridiculous and expensive waste of government and private resources which frustrates the intent of Congress, and has even resulted in rejections for applicants who faced deadlines.
9. Implement Bona Fide Determination for T Visas. 8 CFR 214.11 sets forth the process for USCIS to make a bona fide determination for T Visa applications. This determination should include a grant of Deferred Action, enabling the applicant to obtain legal employment, and an automatic stay of removal for applicants in proceedings. USCIS has, to date, failed to implement these regulations, leaving trafficking victims in immigration detention, without employment authorization, and at risk of re-trafficking or worse removal from the US which makes them ineligible for a T Visa. Until the process is fully implemented, DHS must act to ensure immigrants are not removed from the US while their T Visa application is pending.
10. Reverse the new Fee Waiver Policy. FNUSA strongly opposes the changes to the I-912 fee waiver application and instructions, as well as changes to the USCIS Policy Memorandum PM-602-0011.1.³⁹ 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 revisions directly conflict with the intent of Congress to provide access to protection without fees for humanitarian visas, violate the evidentiary standard established for these visas, and cause significant burdens on survivors attempting to access protection and support law enforcement.

US Department of Health and Human Services (HHS)

1. Eliminate discrimination against labor trafficking survivors from HHS programs and policies. FNUSA calls on the US Government to immediately include all forms of child trafficking in their data collection, victim identification, training, and service provision efforts. Additionally, FNUSA calls on HHS to expand the National Advisory Committee on the Sex Trafficking of Children and Youth to include both sex and labor trafficking. States

must ensure their child welfare systems prevent, identify, and serve all forms of trafficking victims. At least 13 states have already added labor trafficking to their definitions of child abuse.⁴⁰

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- ² Immigrant Survivors Fear Reporting Violence, 2019, <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>; Cast, Freedom Network USA, and Polaris, “2017 Social Service, Advocate and Legal Service Survey Regarding Immigrant Survivors of Human Trafficking,” <https://freedomnetworkusa.org/app/uploads/2018/01/ImmigrationSurveyReportFinal.pdf>; “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>
- ³ Opportunities to End Homelessness and Achieve Housing Justice in a Biden Administration, National Low Income Housing Coalition, November 8, 2020, p20-21, https://nlihc.org/sites/default/files/NLIHC_Biden-Transition-Memo.pdf.
- ⁴ 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>.
- ⁵ 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/>.
- ⁶ FNUSA 2016 Member Report at 10.
- ⁷ 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>; Human Rights Watch, 8/7/2019, Why Sex Work Should be Decriminalized, <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>; Open Society Foundations, Ten Reasons to Decriminalize Sex Work, April 2015, <https://www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work>
- ⁸ 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>.
- ⁹ Opportunities to End Homelessness and Achieve Housing Justice in a Biden Administration, National Low Income Housing Coalition, November 8, 2020, p 20-21, https://nlihc.org/sites/default/files/NLIHC_Biden-Transition-Memo.pdf.
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- ¹¹ 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.
- ¹² Brief for the Department of Justice, Masterpiece Cakeshop, Ltd. vs. Colorado Civil Rights Commission, et al, 16-111 (2016).
- ¹³ 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>.

¹⁴ 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.).

¹⁵ 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

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¹⁸ The Human Trafficking Legal Center and WilmerHale, "United States Federal Courts' Continuing Failure to Order Mandatory Criminal Restitution for Human Trafficking Victims," September 2018,

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¹⁹ The Guardian, "Outcry as Trump restricts funding for sex-trafficking survivors," July 6, 2018,

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²⁰ Sarah Lynch, Reuters, 9/4/2019, "Union says Trump appointee may be improperly influencing Justice

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²¹ Suzy Khimm and Laura Stickler, NBC News, "Trump admin delays funds for human trafficking victims that would help non-citizens," October 1, 2019, <https://www.nbcnews.com/politics/politics-news/trump-admin-delays-funds-human-trafficking-victims-would-help-non-n1060841>;

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<https://thecrimereport.org/2020/02/14/ex-cruz-aide-hart-now-heads-doj-crime-victims-agency/>

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²⁹ 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>.

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³¹ 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>

³² 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

³³ See Cast, Freedom Network USA, and Polaris report, "2017 Social Service, Advocate and Legal Service Survey Regarding Immigrant Survivors of Human Trafficking," <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>

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