



Freedom Network USA

February 5, 2021

VIA EMAIL to tipreportUS@state.gov

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Office to Combat and Monitor Trafficking in Persons (JTIP)
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RE: Freedom Network USA's Input for the 2021 Trafficking in Persons Report

Dr. Johnstone:

Freedom Network USA (FNUSA), established in 2001, is a coalition of 81 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, 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 challenges facing the US Government in our shared mission to address human trafficking in the US. Although our comments are not an exhaustive list of all of the US Government efforts that impact human trafficking, we focus on the most salient in this list.

We also note that a new President was sworn into office less than a month before this submission was due. The new Administration has already made many changes and has announced an intention to make many more, often in accordance with the recommendations

included in this submission. FNUSA is hopeful about the impact of these changes. ***However, we note that this submission reflects on the actions of the US Government over the course of the past year, and feel strongly that the State Department must judge the US Government's actions during that time without reference to changes that have occurred since that time.***

1. Tier Ranking Recommendation for US: Tier 2

Overall, we note that the US Government data and efforts show a marked reduction in efforts and impact to prevent human trafficking, protect survivors, and to prosecute traffickers. While previous TIP Reports list outreach, awareness-raising, and training efforts in the prevention section, these actions are not primary prevention activities¹. We note this trend with great concern and dismay, and urge the State Department to carefully consider these trends when considering the Tier ranking for the US for the 2021 TIP Report.

Recommendation: *Due to the continual decline in protection, prosecution, and real prevention efforts over the past few years, FNUSA believes that the US deserves a downgrade to Tier 2.*

2. Recommendations Regarding US Government Enforcement of Anti-Trafficking Laws and Prosecution Efforts

A. US Government Must Enforce, Not Undermine, Trafficking Victims Protection Act

Throughout 2020, the US Government took actions which undermined Trafficking Victim Protection Act (TVPA) protections, severely harmed trafficking survivors, and increased the risk of trafficking. These actions were supposedly brought in the name of public health as a response to COVID, but numerous studies have shown that they only serve to place public health at further risk by leaving many immigrants, including trafficking survivors, extremely vulnerable to crime and overexposure of the virus.²

On March 20, 2020, the Center for Disease Control and Prevention issued an order authorizing the summary expulsion of noncitizens arriving at the border without valid documents, without complying with humanitarian protections including the TVPA.³ Not only did this Order violate the TVPA protections for unaccompanied minors, it also led to an increase in profits for smuggling networks, forcing those seeking protection to repeat border crossing attempts with smugglers who often perpetuate trafficking schemes. The risk of trafficking increases when safe and legal options for migration become more limited, and this expulsion order severely limits legal and safe avenues for protection.⁴ On November 18, 2020, a DC District Court issued an

¹ For more information, see FNUSA, HEAL Trafficking and National Survivor Network's comments submitted to HHS' Office on Trafficking in Persons on Human Trafficking Prevention, <https://freedomnetworkusa.org/app/uploads/2019/11/RevisedFNUSAHealNsNRecsOTIPPrevention-1.pdf>.

² <https://www.hrw.org/news/2020/10/15/cdc-director-doubles-down-endangering-asylum-seekers>

³ <https://www.govinfo.gov/content/pkg/FR-2020-03-26/pdf/2020-06327.pdf>

⁴ <https://www.refugeesinternational.org/reports/2020/7/31/exacerbating-the-other-epidemic-how-covid-19-is-increasing-violence-against-displaced-women-and-girls?rq=trafficking%202020>

order excluding children from the CDC's expulsion order, after it had already expelled at least 13,000 unaccompanied children without due process.⁵

Recommendation: *The US Government must comply with US and international law and ensure that all unaccompanied minors are screened for potential human trafficking as required by the TVPRA. FNUSA notes, with great appreciation, that the US Government has reversed some policies in the past few days, has expressed an intention to reverse others soon, and that the impact of this Order is currently suspended by court order. However, the extreme cruelty and harm of these policies must be considered when determining the appropriate Tier Ranking for the US in this report. Even if all of these harmful policies are reversed, the US deserves a Tier 2 Ranking in this report for the cumulative actions of the past 4 years.*

B. The US Government Must Increase Transparency Through Regular Reporting

The most detailed information on US Government anti-trafficking efforts is included in the Attorney General's Report to Congress and Assessment of US Government Activities to Combat Human Trafficking (AG Report)⁶ as mandated by the TVPA⁷. However, the US Government has failed to submit this vital report for the past two years. The most recent report available covers FY18.⁸ This failure leaves government agencies, nongovernmental organizations, and survivors with incomplete information about the efforts and impact of the US Government.

Recommendation: *The US Government must comply with the law and release the report annually so that governments and civil society have access to the most accurate information about the government's efforts to address human trafficking.*

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

As FNUSA continues to note, the US Government needs to increase its investigation and prosecution of labor trafficking. FNUSA remains concerned about the low number of investigations and prosecutions involving labor trafficking compared to sex trafficking. According to the 2020 Trafficking in Persons Report, "the number of prosecutions decreased for the second year in a row, and the number of convictions decreased."⁹ In FY 2019 the Department of Justice (DOJ) brought "a total of 220 federal human trafficking prosecutions" a decrease from 230 in FY 2018, which was a decrease from 282 in FY 2017.¹⁰ DOJ "charged 343

⁵ Reports of the impact of the court order at <https://supportkind.org/press-releases/ruling-on-border-expulsions-is-a-victory-for-child-refugees-and-u-s-commitment-to-protecting-the-most-vulnerable/> <https://www.aclu.org/cases/pjes-v-wolf>

⁶ Request for Information for the 2021 Trafficking in Persons Report, 85 FR 77482.

⁷ 22 USC 7103(d)(7).

⁸ US Department of Justice, Attorney General's Annual Report to Congress on US Government Activities to Combat Trafficking in Persons, April 28, 2020, <https://www.justice.gov/humantrafficking/page/file/1276166/download>.

⁹ Department of State, Trafficking in Persons Report: 2020, hereinafter 2020 TIP Report, United States Narrative beginning at p515, <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>.

¹⁰ Department of State, Trafficking in Persons Report: June 2019, hereinafter 2019 TIP Report, p485, <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

defendants, a decrease from 386 in FY 2018”¹¹ which was a dramatic decrease from 553 in FY 2017.¹² The cases continue to involve predominantly sex trafficking (208 prosecutions), with only 12 prosecutions which involved predominantly labor trafficking.¹³ *Further details about the defendants and charges are not available from the TIP Report, an example of the need for the US to comply with the law and release the FY19 and FY20 AG Reports as soon as possible.* The available data indicates that approximately 94% of DOJ’s prosecutions and convictions are for sex trafficking cases, and only 6% are for labor trafficking cases.

Service providers in the US, however, tell a very different tale of human trafficking in the US, identifying far higher percentages of labor trafficking victims. FNUSA members are serving a much more balanced division of cases, reporting that 58% of their clients were survivors of sex trafficking, 30% were survivors of labor trafficking, and 9% were survivors of both.¹⁴ DOJ’s human trafficking services grantees served 8,375 trafficking clients from July 2018 – June 2019, down from 8,913 trafficking clients in the prior year in spite of increased funding.¹⁵ DOJ reported that “62 percent of clients served were victims of sex trafficking, 22 percent were victims of labor trafficking, seven percent were identified as victims of both sex and labor trafficking, and the form of trafficking for nine percent was unknown.”¹⁶ This distribution was very similar to the previous year. HHS funded service providers reported that the majority of foreign national trafficking survivors they supported were labor trafficking survivors (68% labor, 20% sex trafficking, 12% labor and sex).¹⁷

Recommendation: *Based on these data, FNUSA is troubled that survivors of forced labor cannot rely on the US Government to obtain justice and compensation. We call on the US Government to assess and address the reasons for the lack of investigation of labor trafficking. FNUSA also looks forward to the timely release of the Attorney General’s Trafficking in Persons Reports for FY19 and FY20 to have more detailed data on labor trafficking investigations and prosecutions.*

D. The US Government Must Award Criminal Restitution in All Human Trafficking Cases

FNUSA continues to be concerned about the US Government’s failure to order mandatory criminal restitution in all human trafficking cases, and the woefully low rate of payment of restitution once it is ordered. According to the report, “When ‘Mandatory’ Does Not Mean Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking in the United States,” courts awarded mandatory restitution to trafficking victims in just 36% of

¹¹ 2020 TIP Report, p515-516.

¹² 2019 TIP Report, p485.

¹³ 2020 TIP Report, p516.

¹⁴ 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>.

¹⁵ 2020 Tip Report, p517, and 2019 TIP Report, p486.

¹⁶ 2020 TIP Report, p517.

¹⁷ 2020 TIP Report, p517.

human trafficking cases brought between 2009 and 2012.¹⁸ Even after this disturbing report was provided to the US Government, little improvement has been made. “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.”¹⁹

Recommendation: *FNUSA recommends that the US Government increase and improve training for prosecutors and 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. FNUSA additionally recommends that the US Government use all authorities at their disposal to ensure that restitution is actually paid to survivors, including use of 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.*

E. The US Government Must Implement Required Victim Service Protocols

The Abolish Human Trafficking Act of 2017 requires that the Department of Homeland Security (DHS) establish a victim screening protocol to be used by all DHS personnel involved in human trafficking investigations. The protocol must be developed in consultation with “interagency partners and nongovernmental organizations that specialize in the prevention of human trafficking and support victims of human trafficking and survivors of human trafficking.”²⁰ The Trafficking Victims Protection Act of 2017 requires that the Department of Justice (DOJ) similarly establish a victim screening protocol for use in all DOJ anti-trafficking operations. The protocol must be developed in consultation with “survivors of human trafficking, and nongovernmental organizations that specialize in the identification, prevention, and restoration of victims of human trafficking.”²¹ Neither protocols have been developed in spite of the deadlines included in the legislation.

Recommendation: *FNUSA recommends that DHS and DOJ convene a joint working group of survivors and service providers to provide recommendations on the development of these protocols.*

¹⁸ 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> .

¹⁹ 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>.

²⁰ Pub L 115-392.

²¹ Pub L 115-393.

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

FNUSA notes with gratitude that the US Government provides significant funding for services for human trafficking survivors. Funding appropriations for victim services grants have increased to over \$100 million annually,²² and US law provides for significant immigration protections for trafficking survivors including Continued Presence (CP) and the T and U Visas. However, these investments are not sufficient, and have been undermined by a general rollback of protections and support for those made vulnerable to trafficking and changes in US Government policies and procedures that severely restrict the availability of legal protections for immigrant survivors. The US Government's own data shows that victims no longer willing or able to avail themselves of these protections and the number of survivors supported has been decreasing for the past 2 years.

A. DOJ Must Fully Expend Trafficking Appropriations Appropriately

The DOJ has been provided with increased appropriations for trafficking victim services, but has failed to ensure that they are fully expended each year and that the funds are used as directed by Congress.

1. DOJ Must Fully Expend Appropriations Without Political Interference

In 2019, the US Department of Housing and Urban Development (HUD) abruptly cancelled a housing grant program for human trafficking survivors, that was to be funded by FY17 appropriations.²³ Although DOJ released a similar grant opportunity in 2020,²⁴ all indications are that the new program was funded with FY20 appropriations. It seems, therefore, that the US Government failed to spend over \$13 million of trafficking victim services funds, appropriated by Congress under the authority of the TVPA, for victim needs while survivors continue to struggle with access to long-term housing.

Additionally, press reports indicate that the DOJ engaged in inappropriate grant decision-making. Administration officials reportedly excluded grant reviewers for trafficking program grants, and improperly selected grant recipients, based on political opinions and comments.²⁵

²² Justice Department Awards Nearly \$101 Million to Combat Human Trafficking at

<https://www.justice.gov/opa/pr/justice-department-awards-nearly-101-million-combat-human-trafficking>

²³ Suzy Khimm and Laura Strickler, NBC News, 10/1/19, "Trump admin delays funds for human-trafficking victims that would help non-citizens," <https://www.nbcnews.com/politics/politics-news/trump-admin-delays-funds-human-trafficking-victims-would-help-non-n1060841>; Ellen Wulfhorst, Reuters, 10/2/2019, "Supporters scramble as U.S. anti-trafficking funds are postponed," <https://www.reuters.com/article/us-usa-trafficking-grant/supporters-scramble-as-u-s-anti-trafficking-funds-are-postponed-idUSKBN1WH2MQ>.

²⁴ US DOJ Office for Victims of Crime, Housing Assistance for Victims of Human Trafficking, OVC FY 2020 Competitive Grant Solicitation, <https://www.ovc.gov/grants/pdf/FY-2020-Housing-Assistance-Grants-for-Victims-of-Human-Trafficking.pdf>.

²⁵ Sarah Lynch, Reuters, 9/4/2019, "Union says Trump appointee may be improperly influencing Justice Department crime victim grants," <https://www.reuters.com/article/us-usa-justice-grants/union-says-trump-appointee-may-be-improperly-influencing-justice-department-crime-victim-grants-idUSKCN1VP28C>; and Ted Guest, The Crime Report, 12/27/19, "Federal Crime Victims Chief Departs, No Reason Given," <https://thecrimereport.org/2019/12/27/hutchinson-biehl-out-as-federal-crime-victim-chief/>

Recommendation: *The US Government must ensure that all federal appropriations for trafficking victim services are fully expended and following a nondiscriminatory process, each year. FNUSA calls on DOJ to explain why the FY17 appropriation was not fully expended, why the HUD Housing Program was cancelled, and what changes will be made in their grant-making process to ensure that appropriations will be fully and properly expended in the future.*

2. DOJ Must Not Allow Victim Services Grants to Fund Programs That Harm Survivors

DOJ's Office for Victims of Crime provides funding to Enhanced Collaborative Human Trafficking Task Forces (ECMs) that must be shared by a state or local law enforcement agency and a service provider. For too long, law enforcement agencies have used these funds to support 'raids and rescues' that include arresting sex workers, sometimes even if the workers are identified as sex trafficking survivors²⁶. Task Forces also support 'diversion courts' that rely on arrest to coerce survivors into programs or services²⁷. Some law enforcement agencies use these funds for 'john stings' that are designed to arrest potential sex buyers using decoys, completely unrelated to the identification of sex trafficking survivors. Each dollar spent arresting a sex worker or customer is a dollar taken away from housing, legal services, food, or education for a trafficking survivor.

Recommendation: *FNUSA recommends discontinuing the ECM funding, in order to focus on services for survivors. If the ECM grants continue, DOJ must disallow activities and expenses that criminalize survivors or divert resources away from services for survivors.*²⁸

3. The US Government Should Suspend or Eliminate the 25% Match Requirement

Finally, the government grants for services require nonprofits to document raising and expending non-federal funds for the same programs, a 25% match. This requirement is complex, time-consuming, and does not ensure high quality services are provided to survivors. Due to the pandemic, these requirements are even more challenging, as providers have had to restrict their use of volunteers (a critical source of in-kind match) and cancel fundraising events (a primary source of cash match).

Recommendation: *FNUSA recommends the removal or suspension of the 25% match requirement from trafficking services grants due to the ongoing pandemic. The US Government should reduce the administrative burdens on providers at this time, in order to focus on services*

²⁶ For example, NYPD is part of an ECM Task Force, Joshua Kaplan and Joaquin Sapien, ProPublica, "NYPD Cops Cash in on Sex Trade Arrests with Little Evidence, While Black and Brown New Yorkers Pay the Price," <https://www.propublica.org/article/nypd-cops-cash-in-on-sex-trade-arrests-with-little-evidence-while-black-and-brown-new-yorkers-pay-the-price>

²⁷ Melissa Gira Grant, The Appeal, "Inside NY Courts Where Sex Workers are 'Painted as Victims and Treated as Criminals'," September 21, 2018, <https://theappeal.org/inside-ny-courts-where-sex-workers-are-painted-as-victims-and-treated-as-criminals/>

²⁸ For more recommendations on improving trafficking victim services grants, see FNUSA, "FY2021 Human Trafficking Funding Recommendations for OVC," September 2020, <https://freedomnetworkusa.org/app/uploads/2020/09/FY21FNUSAFundingRecommendationsOVCSept2020.pdf> and FNUSA, "FY2021 Human Trafficking Funding Recommendations for OTIP," September 2020, <https://freedomnetworkusa.org/app/uploads/2020/09/FY21FNUSAFundingRecommendationsOTIPSept2020.pdf>

for survivors.²⁹

B. US Government Must Address Child Labor Trafficking Survivors, Not Just Sex Trafficking Survivors, in the Child Welfare System

The Preventing Sex Trafficking and Strengthening Families Act required data collection, training, and reporting efforts by child welfare agencies, but only for sex (and not labor) trafficking. While at least a dozen states have chosen to extend their efforts to include child labor trafficking, most have not.³⁰ Over the last five years, the US Government has failed to identify all trafficking victims in the child welfare system due to this focus on sex trafficking only. A recent report by Coalition to Abolish Slavery & Trafficking (CAST) highlights the disparate treatment of child labor and sex trafficking victims in the child welfare system in California, which provides an example of what is happening across the US.³¹

Recommendation: 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 and that the survey of 50 states conducted by this Committee include questions on child labor trafficking. States must ensure their child welfare systems prevent, identify, and serve all forms of trafficking victims. Finally, the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) of 2014 and The Justice for Victims of Trafficking Act (P.L. 114-22) of 2015 must be updated to specifically include child labor trafficking.

C. The US Government Must Strengthen, and Stop Eroding, Protections for Immigrants

For the past 4 years, immigrants have been specifically targeted with regulatory and procedural changes that decrease access to health, safety, and success. These actions have caused immigrants to fear the US Government, and pushed them into abusive and exploitive conditions.³²

1. Hostility Toward Immigrants Increases Risk of Trafficking, Barriers to Escape

US Government policies have created 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. The issues and concerns raised by FNUSA in its comments for the 2018, 2019, and 2020 TIP Reports dramatically worsened throughout 2020. Federal policies, including

²⁹ For more recommendations on improving trafficking victim services in light of the pandemic, see FNUSA, “Supporting Human Trafficking Survivors During the Coronavirus Pandemic: Challenges and Solutions,” April 2020, <https://freedomnetworkusa.org/app/uploads/2020/04/FNUSAs-Recommendations-on-Supporting-Human-Trafficking-Survivors-Coronavirus-17April2020.pdf>

³⁰ CAST, October 2019, “Child Labor Trafficking in California,” <https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf>, p22.

³¹ CAST, October 2019, “Child Labor Trafficking in California,” <https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf>

³² For additional information and recommendations, see FNUSA, “Human Trafficking Recommendations for Immediate Action From the Biden-Harris Administration,” December 2020, <https://freedomnetworkusa.org/app/uploads/2020/12/FNUSATransitionMemoBiden17Dec2020.pdf>

increased and indiscriminate immigration enforcement, arrests of immigrants at courthouses and other safe places,³³ 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 exploitation³⁴, including human trafficking. Additionally, the Administration enacted new policies and rules that specifically restricted access to immigration protection for trafficking survivors. 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 from accessing legal and social services. Victims remain in trafficking situations longer, as they believe that the US Government will not protect them from harm.³⁵ The decreases in investigations and prosecutions of trafficking (see above) are the inevitable result of this fear of law enforcement.

Recommendation: 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. Data shows that immigrants are less likely to commit crime and contribute more to the US economy than similarly situated US born residents. The US Government must honestly and accurately portray the role and position of immigrants in the US, and work to ensure their safety and engage in concerted and sustained efforts to rebuild trust with immigrant communities generally, and immigrant survivors of human trafficking specifically. While rescinding harmful regulations, rules, and procedures are a necessary step, it is not sufficient. The US Government must engage in more comprehensive reforms of immigration, public benefits, employment, and civil rights laws and enforcement to dismantle the systemic racism that harms Black, Brown, immigrant, and LGBTQIAIA communities.

2. US Government’s Limits on Asylum and Immigration Courts Harm Trafficking Survivors

The US Government’s limitations on protections for asylum-seekers and other immigrants also harm human trafficking survivors, who are navigating those systems. FNUSA members have

³³ 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/?sreturn=20190010164917>

³⁴ Immigrant Survivors Fear Reporting Violence, 2019, <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>

³⁵ 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>

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. Former Attorney General Jeff Sessions limited asylum eligibility for victims of domestic violence, gangs, and other private actors.³⁶ A new rule, issued at the end of 2020 and currently enjoined by a California court order,³⁷ is known to advocates as the “Death to Asylum” rule because of the wide range of limitations it includes.³⁸ Specifically impacting trafficking victims is exclusion of those who suffer persecution on account of “resistance to or recruitment or coercion by guerilla, criminal, gang,” even though the US has long acknowledged that labor trafficking includes forced labor by criminal gangs.³⁹ Other restrictions, including *Matter of L-A-B-R*⁴⁰, *Matter of S-O-G- & F-D-B*⁴¹, *Matter of Castro Tum*⁴², *Matter of E-F-H-L*⁴³, *Matter of M-S*⁴⁴, case completion quotas for immigration judges, and countless others⁴⁵ have 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.⁴⁶ Restrictions on the number of immigrants processed at ports of entry, also known as metering, along with the ‘Migrant Protection Protocol’ put trafficking survivors seeking to enter the US for 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.⁴⁷

³⁶ *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019),

³⁷ <https://immigrationimpact.com/2021/01/14/death-to-asylum-rule-blocked/#.YBdrwOhKg2w>

³⁸ Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, Final Rule, (effective January 11, 2021), <https://www.justice.gov/eoir/page/file/1345731/download>, raising the legal standard, excluding asylum based on gender or gang violence, among many other limitations.

³⁹ US Department of State, *The Use of Forced Criminality: Victims Hidden Behind the Crime*, June 2014, <https://2009-2017.state.gov/documents/organization/233938.pdf>.

⁴⁰ *Matter of L-A-B-R*, 27 I&N Dec. 405 (A.G. 2018), limiting Immigration Judges’ discretion to permit continuances for immigrants with applications pending with the USCIS (including T Visas).

⁴¹ *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018), limiting Immigration Judges’ discretion to terminate removal proceedings.

⁴² *Matter of Castro Tum*, 27 I&N Dec. 271 (A.G. 2018), stripping Immigration Judges of their authority to administratively close removal cases, including for immigrants with applications pending with the USCIS (including T Visas).

⁴³ *Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018), allowing Immigration Judges to deny asylum without a full evidentiary hearing.

⁴⁴ *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), which makes certain asylum seekers ineligible for bond and thus trapped in immigration detention until their case is decided.

⁴⁵ For a more comprehensive listing of immigration challenges, see *2021 Immigration Action Plan*, <https://static1.squarespace.com/static/5b60b2381aef1dbe876cd08f/t/600742bb423ea15758f07ac2/1611088608603/FINAL+2020+Immigration+Action+Plan+-+012021.pdf>.

⁴⁶ AILA Policy Brief: Restoring Integrity and Independence to America’s Immigration Courts, September 28, 2018, available at <https://www.aila.org/File/DownloadEmbeddedFile/77605>

⁴⁷ See, for example, Human Rights First, 12/5/2019, “HRF Reports Escalating Human Rights Abuses Against Asylum Seekers Returned to Mexico,” <https://www.humanrightsfirst.org/press-release/hrf-reports-escalating-human-rights-abuses-against-asylum-seekers-returned-mexico>; Jonathan Blitzer, *The New Yorker*, 10/1/2019, “How the U.S. Asylum System is Keeping Migrants at Risk in Mexico,” <https://www.humanrightsfirst.org/press-release/hrf-reports-escalating-human-rights-abuses-against-asylum-seekers-returned-mexico>; Gus Bova, *Texas Observer*, 9/30/2019, “Attacked in Mexico, Returned to Mexico: Trump Policy Ignores Danger to Asylum-Seekers,”

Trafficking survivors, like most trauma 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. These policies prevent human trafficking survivors from attaining 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 exceed 29 months.⁴⁸ 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.⁴⁹ 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.

Recommendation: *FNUSA calls on the US Government to immediately reverse these and other policies that restrict and deny due process to immigrants, especially for immigrants seeking asylum and other humanitarian protections in the US. FNUSA notes, with great appreciation, that the US Government has reversed some of these policies in the past few days, but notes that many others remain in effect or are still in the midst of litigation. The extreme cruelty of these policies must be considered when determining the appropriate Tier Ranking for the US in this report. Even if all of these harmful policies are reversed, the US deserves a Tier 2 Ranking in this report for the cumulative actions of the past 4 years.*

3. USCIS Policy: Notice to Appear- Targeted Trafficking Survivors

DHS policies that restrict access to immigration relief directly increase 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' policy to put immigrants in removal proceedings if their applications for T and U Visas and other forms of humanitarian relief are denied.⁵⁰ This 'Notice to Appear' (NTA) policy 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

<https://www.humanrightsfirst.org/press-release/hrf-reports-escalating-human-rights-abuses-against-asylum-seekers-returned-mexico>

⁴⁸ USCIS provides current case processing time estimates for forms (including the I-914 Application for T Nonimmigrant Status) at <https://egov.uscis.gov/processing-times/> and historical averages at <https://egov.uscis.gov/processing-times/historic-pt>.

⁴⁹ Yael Schacher, Refugees International, May 2019, <https://www.refugeesinternational.org/reports/2019/5/21/abused-blamed-and-refused-protection-denied-to-women-and-children-trafficked-over-the-us-southern-border>

⁵⁰ 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>

*announcement that this policy would NOT be enforced against humanitarian visas.*⁵¹ After this policy was instituted, FNUSA members reported that their clients were increasingly afraid of reporting criminal activity and applying for immigration relief. Not only has this policy deterred many immigrants from accessing available legal protections, it has also contributed to a decrease in investigations and prosecutions of human trafficking, as immigrant survivors of human trafficking are reluctant to report their traffickers and cooperate with law enforcement.⁵² 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.

Recommendation: *FNUSA notes that this horrific policy was finally rescinded by a recent Executive Order. However, the extreme cruelty of this policy must be considered when determining the appropriate Tier Ranking for the US in this report. The US deserves a Tier 2 Ranking in this report for the cumulative actions of the past 4 years, including this specific attack on trafficking survivors and abrogation of federal laws to protect survivors.*

4. USCIS Practice: Increased Requests for Evidence and Denials in T Visa Cases- Harms Human Trafficking Survivors

FNUSA members and others also report increased barriers to obtaining T Visas in the form of frequent Requests for Evidence (RFEs) and denials that contravene legal standards.⁵³ Recent RFEs and denials have included victim-blaming language and clear errors of law, in which USCIS adjudicators improperly 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.”⁵⁴ Additionally, USCIS has prevented immigrant survivors from receiving status due to crimes that their traffickers forced them to commit, in violation of INA § 212(d)(13). As each day without status is another day of

⁵¹ 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](https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Updated_Policy_Guidance_on_Notice_to_Appeal_NTA.pdf)

⁵² 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>

⁵³ Yael Schacher, Refugees International, May 2019, <https://www.refugeesinternational.org/reports/2019/5/21/abused-blamed-and-refused-protection-denied-to-women-and-children-trafficked-over-the-us-southern-border>

⁵⁴ “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.

vulnerability for a victim of trafficking, RFEs are increasing challenges to properly serving survivors and impact survivors' decision to come forward at all. The increased time that legal service providers are spending responding to the RFE and appealing denials also means that fewer survivors can be assisted. Further, the recently released USCIS T Visa data reveals an increase in denials for T Visas that indicates the danger of these interpretations.⁵⁵

Recommendation: FNUSA recommends that USCIS provide regular training, in partnership with nongovernmental experts, 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. FNUSA also recommends that USCIS re-institute regular consultations with human trafficking service providers to share information about trends and challenges in adjudications.

5. USCIS Practice: Fee Waiver Guidance- Harms Human Trafficking Survivors

Another new obstacle to securing immigration relief concerns increased denials of fee waivers and revisions to the standards for fee waivers.⁵⁶ FNUSA strongly opposes the changes to the I-912 fee waiver application and instructions, as well as changes to the USCIS Policy Memorandum PM-602-0011.1.⁵⁷ 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 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.

Recommendation: FNUSA recommends that USCIS rescind this policy revision.

6. USCIS Practice: Public Charge- Harms Human Trafficking Survivors

FNUSA is also strongly opposed to the DHS, DOJ, and State Department changes regarding admissibility on public charge grounds, all of which are subject to injunctions,⁵⁸ and is deeply

⁵⁵ USCIS T Visa Statistics FY2020,

https://www.uscis.gov/sites/default/files/document/reports/I914t_visastatistics_fy2020_qtr4.pdf

⁵⁶ 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, 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. The policy change is currently subject to a nation-wide injunction. <https://www.uscis.gov/i-912>

⁵⁷ 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> .

⁵⁸ American Immigration Lawyers Association, Featured Issue: Public Charge Changes at USCIS, DOJ, and DOS, <https://www.aila.org/advo-media/issues/all/public-charge-changes-at-uscis-doj-and-dos>; USCIS Public Charge, <https://www.uscis.gov/greencard/public-charge>

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. 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 and an Urban Institute study⁵⁹ note that immigrant families are already withdrawing from, or choosing not to enroll in, assistance programs that support their basic needs due to fear, even though the rule has not taken effect. Not only will the 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.⁶⁰

Recommendation: *FNUSA recommends that DHS, DOJ, and DOS rescind these policy revisions and ensure that all people present in the US have access to the basic food, medicine, and shelter they need to survive.*

7. USCIS Practice: Delays in T Visa Adjudications- Harms Human Trafficking Survivors

Adjudication for T Visa applications is currently averaging 18.5-29 months⁶¹, a sharp increase from the 6-9 month period that was common only a few years ago⁶². The prolonged length impacts trafficking survivors who are left out of status for longer periods of time. This also delays their receipt of employment authorization documents (EADs) and leaves them vulnerable to ongoing financial instability, a key risk factor in re-trafficking. Others are stuck in immigration detention, with limited access to the legal, social services, and family support they need to recover from their victimization. Even survivors with Continued Presence (CP) are impacted, as many prosecutors urge survivors to wait to file the T Visa application until after the investigation and prosecution is complete. CP, however, lasts only for 2 years. Once the investigation is closed, the CP status ends, and survivors are again left in limbo while they wait for another 2 years in unlawful status, and without employment authorization their T Visas to be adjudicated.

Recommendation: *FNUSA recommends that USCIS immediately provide sufficient training, staffing, and supervision and remove any restrictions, unnecessary requirements, or unnecessary reviews in order to adjudicate all immigration applications in a timely manner consistent with past precedent.*

⁵⁹ Urban Institute, One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019, June 2020, <https://www.urban.org/research/publication/one-five-adults-immigrant-families-children-reported-chilling-effects-public-benefit-receipt-2019>

⁶⁰ 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>.

⁶¹ Current processing times are provided by USCIS at <https://egov.uscis.gov/processing-times/>, the processing time for the I-914 is 19.5 to 26.5 months as accessed on 1/6/2020.

⁶² USCIS reports processing times of 6.4 to 9 months for FY 2015 to FY 2017 at <https://egov.uscis.gov/processing-times/historic-pt>.

8. USCIS Failure to Implement Bona Fide Determination Regulation

The Regulations for the implementation of the T Visa set forth a procedure sets forth the process for USCIS to make a bona fide determination for T Visa applications.⁶³ 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.

Recommendation: FNUSA recommends that DHS immediately implement these regulations and begin issuing bona fide determinations for all eligible T Visa applicants. 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.

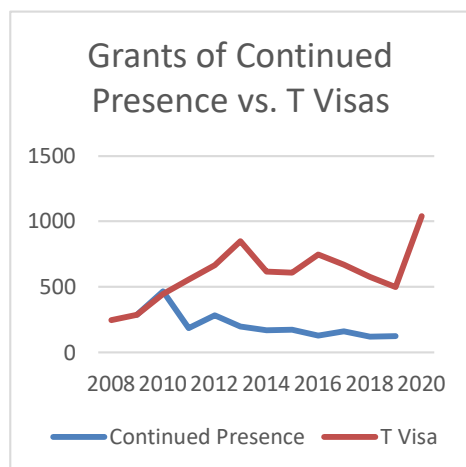
9. DHS Practice: Mass Detention of Immigrants- Harms Human Trafficking Survivors

Trafficking survivors are increasingly held in immigration detention, even when T Visas are pending. T Visa processing, as described above, 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.⁶⁴

Recommendation: FNUSA recommends that DHS eliminate civil detention of immigrants, allowing all immigrants access to legal counsel, healthcare, and reduced exposure to violence, coronavirus, and trauma.

10. US Government's Continuing Failure to Issue Continued Presence

Although FNUSA commends DHS's efforts to expand access to Continued Presence (CP) through



revised guidance and new training materials, we remain deeply concerned at the low number of CP grants issued to victims of trafficking. Foreign national survivors rely on this temporary immigration status to access emergency services and support, while cooperating with law enforcement and 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). While the number of survivors granted CP increased slightly in 2019 (125 grants) compared to 2018

⁶³ 8 CFR 214.11

⁶⁴ See, for example, Von Werthern et al, BMC Psychiatry, 12/6/2019, The Impact of Immigration Detention on Mental Health: A Systemic Review, <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-018-1945-y>; Linton et al, Pediatrics, March 2017, <https://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>

(121 grants),⁶⁵ it represents a continued downward trend since the high in 2011. Additionally, the number of grants remains shocking low compared to the number of T visas issued in 2019 (500, down from 580 in 2018).⁶⁶ This trend is consistent over time, as shown in the chart below.⁶⁷ Furthermore, FNUSA members have reported that survivors of sex trafficking are more likely to obtain CP than survivors of labor trafficking.

Recommendation: FNUSA looks forward to the release of additional data in the AG Reports, and we strongly recommend collaboration between DHS and DOJ to prioritize an increase in the number of federal agents submitting CP applications. FNUSA recommends that DHS and DOJ analyze their own data to find the regions of the US with the highest disparity in numbers of CP grants vs. T Visa grants, and to prioritize those areas for intensive training and support to federal and local law enforcement partners. FNUSA also recommends that federal agencies authorize victim-witness personnel at the FBI, US Attorneys' Offices, DOJ Human Trafficking Prosecution Unit, and DHS' Homeland Security Investigations to prepare and submit CP 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.

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

FNUSA also calls on the government to address its own complicity in labor trafficking in private detention facilities under contract with the US Government. 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.⁶⁸ These lawsuits – involving ICE detention centers run by private prison companies throughout the country – contain well documented allegations of labor trafficking, with immigrant detainees 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 more than 5 years, 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 to take any action against the corporations, show the US Government's continued complicity in these acts of human trafficking.⁶⁹

⁶⁵ 2020 TIP Report, p518.

⁶⁶ 2020 TIP Report, p518.

⁶⁷ CP data is compiled from previous TIP Reports and AG Reports; T Visa data is pulled from USCIS' chart, https://www.uscis.gov/sites/default/files/document/reports/I914t_visastatistics_fy2020_qtr4.pdf

⁶⁸ See, e.g., Ruelas v. County of Alameda, 3:19-cv-07637 (N.D.Cal. Nov. 20, 2019); 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); 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). All detention cases are still ongoing.

⁶⁹ 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>.

Recommendation: FNUSA recommends that the US Government immediately discontinue civil immigration detention. Failing that, the US Government must, at the very least, stop contracting with private corporations for immigration detention, and join the plaintiffs as amici in their lawsuits against the private corporations who have exploited these immigrants.

12. US Guestworker Visa Programs Allow Labor Trafficking to Thrive

The US' guestworker programs continue to be rife with abuse and exploitation, including labor trafficking.⁷⁰ Providers report that overseas recruiters continue to charge excessive fees to workers and to perpetrate fraud and other recruitment abuses, which lay the foundation for human trafficking in the US. In 2020, the US Government issued a rule to restrict wages for H2A workers regardless of market conditions.⁷¹ 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 Departments of State, Labor and Homeland Security – means that law-breaking employers are 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.

Recommendation: FNUSA calls on the federal government to rescind the Adverse Wage Rate Rule, and further reform these guestworker programs to guarantee robust protections for workers, including visa portability for all guestworkers, robust workers' rights information provided to all workers both pre-departure and upon their arrival in the US, and robust enforcement against employers and recruiters who have abused or exploited their workers.⁷²

⁷⁰ For more information about guestworker visas, see Justice in Motion's Visa Pages at <https://www.justiceinmotion.org/visa-pages>, for examples of abuses in these visas, see, e.g., Centro de los Derechos del Migrante's reports Breaking the Shell describing the abuses of H2B workers, <https://cdmigrante.org/breaking-the-shell/>, Ripe for Reform describing abuses of H2A workers, <https://cdmigrante.org/ripe-for-reform/>, and Shining a Light on Summer Workers describing abuses of J1 workers, <https://cdmigrante.org/shining-a-light-on-summer-work/>, and see cases including: 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.).

⁷¹ <https://www.federalregister.gov/documents/2020/11/05/2020-24544/adverse-effect-wage-rate-methodology-for-the-temporary-employment-of-h-2a-nonimmigrants-in-non-range>

⁷² 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>.

D. 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, the State Department noted 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.⁷³

Recommendation: *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 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.*

E. HUD and the Departments of Labor and Education Must Receive Human Trafficking Specific Resources

Human trafficking survivor report that access to safe, affordable housing is one of the most significant barriers to their long-term safety. Workers in a wide range of industries continue to report abuse and exploitation, including labor trafficking, in workplaces that are subject to federal and state regulation. And reports show that young people experience trafficking while they continue to attend public and private schools. And yet HUD, the Department of Labor (DOL) and the Department of Education (ED) have limited to no appropriated funds and legal directives to engage in human trafficking prevention, identification, and protection.

Recommendation: The US government should provide dedicated funding for HUD, DOL, and ED to develop effective programs to identify and support trafficking survivors within their areas of expertise and existing authorities.

⁷³ 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>.

4. The US Government's Failure to Prevent Human Trafficking

FNUSA is distressed by the extent to which US policy continues systemic marginalization causing abuse and exploitation, including human trafficking, and reduced access to protection, services, and support for Native people, LGBTQIAIA individuals, immigrants, people of color, and low income communities.

A. US Government Must Address Systemic Oppression of American Indian and Alaskan Native Communities

Sex and labor trafficking of native people is not comprehensively addressed in US policy, practice, funding, or training. The lack of resources, support, and understanding leave AI/AN survivors with limited support, and create programs that are not designed to meet the needs of AI/AN survivors. Persistent, systemic oppression has left AI/AN communities without the resources and respect that they need to heal and grow, and creates vulnerabilities for AI/AN community members both on and off of reservations.⁷⁴

Recommendation: *The US Government must increase investments and support of AI/AN communities so that they may heal from generational trauma and deprivation caused by decades of US Government policies. The US Government must also provide increased training for social and legal service programs, law enforcement, and court systems on trauma-informed cultural humility so that these mainstream systems are able to respond more appropriately to the needs of AI/AN community members.*⁷⁵

B. US Government Must Address Systemic Oppression of LGBTQIA Individuals

The US Government has taken several actions to remove protections for LGBTQIA individuals, including attempts by HHS to redefine gender to be based solely on a person's genitalia at birth,⁷⁶ the roll back of Title IX protections in schools,⁷⁷ the removal of references to specialized services for LGBTQIA 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.⁷⁸ In a recent study released by the DOJ and the Office of Juvenile Justice and Delinquency Prevention on youth trading sex

⁷⁴ For a more detailed discussion, see, "Human Trafficking Leadership Academy Class 5 Recommendations." September 10, 2020, https://nhttac.acf.hhs.gov/sites/default/files/2020-11/HTLA%20Class%205%20Recommendations%20Report_508c.pdf

⁷⁵ For more specific recommendations, see Id.

⁷⁶ 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>.

⁷⁷ 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.

⁷⁸ 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>.

(victims of sex trafficking using the federal definition), over half of the individuals surveyed were LGBTQIA identified.⁷⁹ FNUSA has noted for years that LGBTQIA communities are both overrepresented among youth trafficking survivors, and desperately underserved in terms of both resources and protections.⁸⁰ Scaling back these limited protections will only cause further marginalization and increase vulnerability to exploitation and abuse, particularly for LGBTQIA youth. Removing the LGBTQIA 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,⁸¹ and advancing religious exemptions⁸² are all disturbing changes that are likely to cause increased trafficking and violence against the LGBTQIA community.

Recommendation: *FNUSA strongly condemns these changes and urges the US Government to immediately reinstate protections that have been removed and to, instead, increase services, protection, and support for LGBTQIA communities and individuals.*

C. US Government Must Address Systemic Oppression of Immigrants, Particularly UACs and LGBTQIA Immigrants

The US Government's immigration policies have long been rooted in racist policies⁸³, and recent changes make it increasingly difficult for immigrant survivors of human trafficking to come forward, and make immigrants, particularly immigrant children and LGBTQIA immigrants, increasingly vulnerable to human trafficking.

FNUSA is deeply concerned about the long-term effects of the "zero tolerance" and family separation policies at the US-Mexico border, increased detention of unaccompanied children (UACs), and the Remain in Mexico program. The trauma caused by family separation and detention puts UACs at an increased risk of human trafficking.⁸⁴ Immigrants subject to the Remain in Mexico program are subjected to inhumane conditions in shanty settlements, are frequently abused and exploited by gangs, and have limited access to the legal and social

⁷⁹ 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>.

⁸⁰ See, "Spotlight: Unique Vulnerabilities of LGBTQIAI Community Members", FNUSA 2016 Member Report, p5, <https://freedomnetworkusa.org/app/uploads/2016/12/Member-Report-2015-Electronic-Version.pdf>.

⁸¹ 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>.

⁸² Brief for the Department of Justice, Masterpiece Cakeshop, Ltd. vs. Colorado Civil Rights Commission, et al, 16-111 (2016).

⁸³ See, e.g., Richard Boswell, Racism and US Immigration Law: Prospects for Reform After "9/11?", Journal of Gender, Race & Justice, 2003, https://repository.uchastings.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1057&context=faculty_scholarship

⁸⁴ 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>.

services needed to prepare their immigration cases and heal from the trauma they are fleeing.⁸⁵

In light of the rollbacks in protection for both immigrants and LGBTQIA individuals, LGBTQIA immigrants are exceptionally vulnerable. The abuses suffered by transgender asylum-seekers at the border, exemplified by the death of trans woman Roxsana Hernandez Rodriguez in ICE custody amid signs of physical assault and abuse,⁸⁶ cause increased fear of the US government among LGBTQIA immigrants. However, LGBTQIA immigrants have come to the US because they are fleeing violence and prejudice in their home countries,⁸⁷ and have no choice but to remain in the relative safety of the US. The US Government's refusal to protect LGBTQIA immigrants forces them into underground economies, increasing their vulnerability to future abuse including human trafficking.

Additionally, the COVID-19 pandemic has increased the vulnerability of trafficking survivors by displacing already vulnerable communities, increasing the chances of being trafficked.⁸⁸ The United Nations Office for Drugs and Crime, the International Organization for Migration, and the US State Department have all expressed concern that traffickers are taking advantage of the chaos of the pandemic by finding new ways to capitalize on the increased vulnerabilities.⁸⁹

Recommendation: FNUSA calls on the US Government to limit detention of immigrants, especially 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

⁸⁵ See KIND, The Border, Trafficking, and Risks to Unaccompanied Children: Understanding the Impact of US Policy on Children's Safety, https://supportkind.org/wp-content/uploads/2019/12/KIND_Child-trafficking-at-border-paper-11-18-19-FINAL-1.pdf.

⁸⁶ 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 .

⁸⁷ 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/> .

⁸⁸ <https://www.refugeesinternational.org/reports/2020/7/31/exacerbating-the-other-epidemic-how-covid-19-is-increasing-violence-against-displaced-women-and-girls?rq=trafficking%202020>

⁸⁹ <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

settings.⁹⁰ FNUSA also calls on the US Government to immediately repudiate the Remain in Mexico program and allow asylum seekers to enter the US to pursue their claims.

D. US Government Must Address Systemic Oppression of People of Color

US history is replete with systemic and individual acts of abuse and exploitation of Black and Brown people. The development of US legal protections for workers was explicitly racist, excluding agriculture and domestic work, sectors filled with formerly enslaved people, from seminal labor rights legislation.⁹¹ These industries continue to be rife with abuse and exploitation, including labor trafficking. The COVID-19 pandemic has made explicit the impact of systemic racism on Black and Brown communities, who are suffering at much higher rates of infection, illness, and death.⁹²

Recommendation: FNUSA calls on the US Government to engage in extensive anti-racist work to address the systemic abuse and exploitation of Black and Brown people in the US.

Comprehensive action is needed to not only remove barriers and protect the rights of people of color, but also to provide redress for the harm suffered, and to invest in communities that have been impoverished and exploited. Specific recommendations include adoption of labor protections for domestic workers and agricultural workers, redirecting funding from law enforcement to community development organizations that are rooted in Black and Brown communities, increased funding and support for public schools, expansion of affordable housing, and expanded access to affordable healthcare for all.

E. US Government Must Address Systemic Abuse and Exploitation of Sex Workers

US law, at the federal and local levels, criminalizes consensual commercial sex work.⁹³ 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.⁹⁴ Even when the abuse rises to the

⁹⁰ 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>.

⁹¹ See, e.g., Juan Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 2011,

<https://lawcommons.luc.edu/cgi/viewcontent.cgi?article=1150&context=facpubs>

⁹² See, e.g., Rohan Khazanchi, Charlesnika Evans, and Jasmine Marcelin, JAMA Network Open, "Racism, Not Race, Drives Inequity Across the COVID-19 Continuum," September 25, 2020,

<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2770954>

⁹³ 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>.

⁹⁴ 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/>.

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 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.⁹⁵

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.⁹⁶ 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.⁹⁷

Recommendation: FNUSA calls on the US to decriminalize sex work in the US, at the federal, state, and local levels, in order to prevent human trafficking.⁹⁸

F. US Government Must Address Systemic Abuse Caused by Lack of Public Investment

US Government efforts must shift to tackling the issues that make populations vulnerable to abuse and 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 and mental health care, effective child welfare interventions, and immigration relief, coupled with ongoing discrimination against people of color, immigrants, and LGBTQIA 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

⁹⁵ FNUSA 2016 Member Report at 10.

⁹⁶ 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/bjqqvz/fosta-sesta-sex-work-and-trafficking.

⁹⁷ Scott Cunningham, Gregory DeAngelo, and John Tripp, Craigslist's Effect on Violence Against Women, November 2017, available at <http://designittogether.com/greg/wp-content/uploads/2019/07/Craigslist5.0.pdf>.

⁹⁸ 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>; 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>

Government, however, has recently been rolling back protections included in the Affordable Care Act, removing protections for LGBTQIA 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. The impact of these systemic issues is particularly apparent during the COVID-19 pandemic, where gig workers, sex workers and immigrants are excluded from relief packages, and Black and Brown people who are historically excluded from medical care are getting sick and dying at disproportionately high rates and are being vaccinated at disproportionately low rates.⁹⁹

Recommendation: *FNUSA calls on the US Government to effectively address the root causes of trafficking and exploitation: racism, poverty, insecure housing, discrimination, and a broken immigration system. The US Government must ensure that affordable housing, medical and mental health care, childcare, and education are available to all, and dramatically increase efforts to reform the child welfare system to focus on supporting families, eliminate discrimination and enact comprehensive immigration reform.*¹⁰⁰

G. 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 (through programs such as the Coalition of Immokalee Workers' Fair Food Program¹⁰¹) are more important in preventing human trafficking and protecting those who experience abuse and exploitation. In a more broadly focused approach, workers are free from discrimination, learn their rights, are fairly paid, have access to safe and affordable housing, health care, and education, and can report concerns without fear of reprisal. Additionally, employers gain access to committed buyers and can advertise products that are free of labor trafficking. 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 need resources and support in avoiding homelessness, protection from abuse, and safe alternatives.

Recommendation: *FNUSA urges the US Government to more comprehensively address the conditions of vulnerable populations to prevent labor and sex trafficking. By taking a strong*

⁹⁹ See, e.g., Leonard Egede and Rebekah Walker, New England Journal of Medicine, September 17, 2020, "Structural Racism, Social Risk Factors, and Covid-19 – A Dangerous Convergence for Black Americans," <https://www.nejm.org/doi/full/10.1056/NEJMp2023616>

¹⁰⁰ For more information, see FNUSA, HEAL Trafficking and National Survivor Network's comments submitted to HHS' Office on Trafficking in Persons on Human Trafficking Prevention, <https://freedomnetworkusa.org/app/uploads/2019/11/RevisedFNUSAHealNsNRecsOTIPPrevention-1.pdf>.

¹⁰¹ For more information, see <http://ciw-online.org/>.

*public health approach to trafficking the US can move beyond prosecution and into holistic prevention approaches to prevent trafficking from happening.*¹⁰²

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,



Jean Bruggeman
Executive Director
Freedom Network USA

¹⁰² For more information, see FNUSA, HEAL Trafficking and National Survivor Network's comments submitted to HHS' Office on Trafficking in Persons on Human Trafficking Prevention, <https://freedomnetworkusa.org/app/uploads/2019/11/RevisedFNUSAHealNsNRecsOTIPPrevention-1.pdf>.