



Freedom Network USA

February 5, 2022

VIA EMAIL to tipreportUS@state.gov

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US Department of State
Office to Combat and Monitor Trafficking in Persons (JTIP)
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RE: Freedom Network USA's Input for the 2022 Trafficking in Persons Report

Dr. Johnstone:

Freedom Network USA (FNUSA), established in 2001, is a coalition of 91 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.

FNUSA offers the following 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 those about which we have the most information and experience.

A. Underserved Communities

US policy continues to uphold systemic marginalization causing abuse and exploitation, including human trafficking, and reduced access to protection, services, and support for Native people, LGBTQIA individuals, immigrants, people of color, and low-income communities. 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 dismantling racist systems that oppress 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 and family support, 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 Government, under the previous Administration, however, rolled back access to health and mental healthcare that was provided by the Affordable Care Act, removed protections for LGBTQIA individuals, and targeted and scapegoated immigrants. Documented acts of police violence against people of color were met with denials and reprisals against protestors. These changes increased vulnerability to human trafficking and dissuaded victims from reporting their exploitation to law enforcement. The impact of these systemic issues is exacerbated by 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.¹

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, dramatically increase efforts to reform the child welfare system to focus on supporting families, eliminate discrimination, reform policing, and enact comprehensive immigration reform.²

Black and Brown Communities

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.³ These industries continue to be rife with abuse and exploitation, including labor and sex trafficking. The explicit exclusion of prison labor from the US Constitutional ban on slavery demonstrates the intentional, systemic oppression of Black communities in the criminal legal system.⁴ The COVID-19 pandemic has made explicit the impact of systemic racism on Black and Brown communities, who are suffering at much higher

¹ Leonard Egede and Rebekah Walker, *New England Journal of Medicine*, *Structural Racism, Social Risk Factors, and Covid-19 – A Dangerous Convergence for Black Americans*, 9/17/20, <https://www.nejm.org/doi/full/10.1056/NEJMp2023616>

² Freedom Network USA, 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>.

³ 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>

⁴ Harvard University, *Confronting Anti-Black Racism Resource: Criminal Justice*, <https://library.harvard.edu/confronting-anti-black-racism/criminal-justice>; Kica Matos and Jamila Hodge, Vera Institute of Justice, *The Chains of Slavery Still Exist in Mass Incarceration*, 6/17/2021, <https://www.vera.org/blog/the-chains-of-slavery-still-exist-in-mass-incarceration>.

rates of infection, illness, and death.⁵ The recent backlash against teaching students about discrimination in schools, misusing the term Critical Race Theory,⁶ and restrictions on voting rights⁷ are further examples of ongoing, systemic, government supported racism.

Recommendation: FNUSA calls on the US Government to engage in extensive anti-racist policymaking 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, expansion of voting rights protections, and expanded access to affordable healthcare for all.

Immigrant Communities

The US Government's immigration policies have long been rooted in racism.⁸ 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 enacted by the previous Administration at the US-Mexico border, continued detention of unaccompanied children (UACs), and the continuation of the Remain in Mexico program. The trauma caused by family separation and detention puts UACs at an increased risk of human trafficking.⁹ 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 services needed to prepare their immigration cases

⁵ See, e.g., Rohan Khazanchi, Charlesnika Evans, and Jasmine Marcelin, JAMA Network Open, *Racism, Not Race, Drives Inequity Across the COVID-19 Continuum*, 9/25/2020, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2770954>

⁶ Stephen Sawchuk, Education Week, *What is Critical Race Theory, and Why Is It Under Attack?*, 5/18/2021, <https://www.edweek.org/leadership/what-is-critical-race-theory-and-why-is-it-under-attack/2021/05>

⁷ NPR, *A Look Back at Attacks on Voting Rights in 2021 - And What Could be Next*, 12/31/2021, <https://www.npr.org/2021/12/31/1069539008/a-look-back-at-attacks-on-voting-rights-in-2021-and-what-could-be-next>

⁸ Richard Boswell, Journal of Gender, Race & Justice, *Racism and US Immigration Law: Prospects for Reform After "9/11?"*, 2003, https://repository.uchastings.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1057&context=faculty_scholarship

⁹ 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>.

and heal from the trauma they are fleeing.¹⁰ Even after these policies are discontinued, they have caused lasting harm. Immigrants remain fearful of accessing even the services and support from governmental agencies for which they are eligible (including emergency medical care and protection from sexual abuse, domestic violence, and human trafficking), leaving them vulnerable to abuse and exploitation.

Recommendation: FNUSA calls on the US Government to ensure the safety of immigrants and engage in concerted and sustained efforts to rebuild trust with immigrant communities, and immigrant survivors of human trafficking. 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.

LGBTQIA and Two Spirit Communities

Over the past few years, the US Government has taken several actions to remove protections for LGBTQIA individuals¹¹, including attempts by HHS to redefine gender to be based solely on a person's genitalia at birth,¹² roll back of Title IX protections in schools,¹³ removal of references to specialized services for LGBTQIA communities from grant solicitations for housing and human trafficking programs, 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 DOJ's Bureau of Prisons' decision to use sex at birth to determine trans inmate placement decisions.¹⁴ In a study released by the DOJ's Office of Juvenile Justice and Delinquency Prevention on youth trading sex (victims of sex trafficking using the federal definition), over half of the individuals surveyed were LGBTQIA identified.¹⁵ FNUSA has noted for years that LGBTQIA communities are both overrepresented among youth trafficking survivors, and desperately underserved in terms of both resources and

¹⁰ 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.

¹¹ National Center for Transgender Equality, *The Discrimination Administration: Trump's Record of Action Against Transgender People*, <https://transequality.org/the-discrimination-administration>

¹² Erica Green, et al, *New York Times*, 'Transgender' Could be Defined Out of Existence Under Trump Administration, 10/21/2018, <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html?module=inline>.

¹³ Mark Joseph Stern, *Slate*, *Justice Department Withdraws Litigation Over North Carolina's HB2, Citing Fake Repeal*, 4/14/17, http://www.slate.com/blogs/outward/2017/04/14/justice_department_withdraws_from_hb2_litigation.html; Savage, Charlie, *New York Times*, *In Shift, Justice Dept. Says Law Doesn't Bar Transgender Discrimination*, 10/5/17, <https://www.nytimes.com/2017/10/05/us/politics/transgender-civil-rights-act-justice-department-sessions.html>

¹⁴ Julie Moreau, *NBC News*, *Bureau of Prisons Rolls Back Obama-era Transgender Inmate Protections*, 5/14/18, <https://www.nbcnews.com/feature/nbc-out/bureau-prisons-rolls-back-obama-era-transgender-inmate-protections-n873966>

¹⁵ Swaner, et al., *Youth Involvement in the Sex Trade: A National Study*, March 2016, <https://www.courtinnovation.org/publications/youth-involvement-sex-trade>.

protections.¹⁶ Scaling back these limited protections causes further marginalization and increases vulnerability to exploitation and abuse, particularly for LGBTQIA youth who are often pushed out of the homes due to discrimination. Additionally, discrimination by law enforcement agencies against transgender trafficking survivors often results in the refusal of law enforcement to recognize the trafficking of transgender survivors.

Recommendation: *Although the Administration has reinstated some of the protections that were removed, the US Government must engage in a proactive effort to increase services, protection, and support for LGBTQIA and Two Spirit communities and individuals.*¹⁷

LGBTQIA and Two Spirit Immigrants

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,¹⁸ 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, and have no choice but to remain in the relative safety of the US.¹⁹ 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.²⁰ 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.²¹ The US Government's continued closure of the border under Title 42 leaves migrants, including trafficking survivors and asylum-seekers, in unsafe and unhealthy conditions in violation of US and international humanitarian laws. Transgender immigrants detained by the US Government

¹⁶ Freedom Network USA, 2016 Member Report, *Spotlight: Unique Vulnerabilities of LGBTQIAI Community Members*, <https://freedomnetworkusa.org/app/uploads/2016/12/Member-Report-2015-Electronic-Version.pdf>

¹⁷ Center for American Progress, *Improving the Lives and Rights of LGBTQ People in America: A Roadmap for the Biden Administration*, 1/12/21, <https://www.americanprogress.org/article/improving-lives-rights-lgbtq-people-america/>

¹⁸ Sandra Garcia, *New York Times*, *Independent Autopsy of Transgender Asylum Seeker Who Died in ICE Custody Shows Signs of Abuse*, 11/27/18, <https://www.nytimes.com/2018/11/27/us/trans-woman-roxsana-hernandez-ice-autopsy.html>

¹⁹ Rebecca Morin, *USA Today*, *Dangerous Wait for Freedom: Hurdles Abound for Transgender Migrants Seeking Asylum in US*, 12/12/2021, <https://www.usatoday.com/story/news/politics/2021/12/12/transgender-migrants-hit-immigration-hurdles-when-seeking-asylum-us/8641213002/?gnt-cfr=1>

²⁰ Devon Cone, Refugees International, *Exacerbating the Other Epidemic: How COVID-19 is Increasing Violence Against Displaced Women and Girls*, 8/4/2020, <https://www.refugeesinternational.org/reports/2020/7/31/exacerbating-the-other-epidemic-how-covid-19-is-increasing-violence-against-displaced-women-and-girls>

²¹ <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

are held in horrific conditions and denied needed healthcare.²² Service providers report that transgender trafficking survivors are less likely to be released from immigration detention, even after being identified as a trafficking survivor by law enforcement, than cisgender survivors.

Recommendation: *FNUSA calls on the US Government to limit detention of immigrants, and close all privately run immigration detention facilities.²³ The US Government should take extra care to protect UACs and provide expanded services and legal counsel to UACs after leaving government care (either immigration detention or HHS custody), so that these children can receive medical, social, mental health and legal services. FNUSA also calls on the US Government to immediately end the Remain in Mexico program and Title 42 border restrictions and allow UACs and asylum seekers to enter the US at border crossings to pursue their claims.*

American Indian/Alaska Native Communities

American Indian and Alaska Native communities have been subject to abuse, internment, displacement, forced sterilization, and attempted genocide by the US Government.²⁴ These communities continue to experience generational trauma leading to increased rates of violence²⁵ and substance abuse²⁶. 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.²⁷

²² Mica Rosenberg and Ted Hesson, *Reuters, Exclusive: Serious Health Care Lapses Found in US Detention Center Housing Transgender Migrants*, 3/2/2020, <https://www.reuters.com/article/us-usa-immigration-transgender-exclusive/exclusive-serious-health-care-lapses-found-in-u-s-detention-center-housing-transgender-migrants-idUSKBN20P1OT>; Sam Levin, *The Guardian, A Trans Woman Detained by ICE for Two Years is Fighting for Freedom: 'I've Been Forgotten'*, 6/9/2021, <https://www.theguardian.com/us-news/2021/jun/09/a-trans-woman-detained-by-ice-for-two-years-is-fighting-for-freedom-ive-been-forgotten>

²³ Joint Letter Calling for Closure of Immigration Detention Facilities, 4/2/2021, <https://freedomnetworkusa.org/app/uploads/2021/04/First-10-to-CNC-Organizational-Letter.pdf>

²⁴ National Geographic, *The United States Government's Relationship with Native Americans*, <https://www.nationalgeographic.org/article/united-states-governments-relationship-native-americans/>; Donald Fixico, *History.com, When Native Americans Were Slaughtered in the Name of 'Civilization'*, 10/25/2021, <https://www.history.com/news/native-americans-genocide-united-states>

²⁵ Graham Lee Brewer, *NBC News, Native American Women Face an Epidemic of Violence. A Legal Loophole Prevents Prosecutions.*, 6/30/2021, <https://www.nbcnews.com/news/us-news/native-american-women-face-epidemic-violence-legal-loophole-prevents-prosecutions-n1272670>

²⁶ Editorial Staff, *American Addiction Centers, Risks of Alcoholism Among Native Americans*, 10/26/2021, <https://americanaddictioncenters.org/alcoholism-treatment/native-americans>; US National Institutes of Health, National Institute on Drug Abuse, *Higher Rate of Substance Use Among Native American Youth on Reservations*, 5/31/2018, <https://nida.nih.gov/news-events/news-releases/2018/05/higher-rate-of-substance-use-among-native-american-youth-on-reservations>

²⁷ HHS Office on Trafficking in Persons, *Human Trafficking Leadership Academy Class 5 Recommendations*, 9/10/2020, https://nhttac.acf.hhs.gov/sites/default/files/2020-11/HTLA%20Class%205%20Recommendations%20Report_508c.pdf

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, and increase opportunities and support for AI/AN community-based and community-led solutions.*

Sex Workers

US law, at the federal and local levels, criminalizes consensual commercial sex work.²⁸ 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.²⁹ Even when the abuse rises to the level of human trafficking, survivors are unlikely to report these crimes to law enforcement, due to the stigma, fear, and lack of trust with law enforcement. Criminal records from multiple prostitution arrests limits the ability of sex workers and trafficking survivors to access education, alternative employment, housing, social services, and respect.³⁰ 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.³¹

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.³² Whereas sex workers were previously

²⁸ Freedom Network USA, *Human Trafficking and Sex Worker Rights*, April 2015,

<https://freedomnetworkusa.org/app/uploads/2018/07/HT-and-Sex-Workers-Rights.pdf>

²⁹ Lou Chibbaro Jr., *Washington Blade*, DC, *PG Cops Investigated for 'Coercing' Trans Sex Worker*, 11/19/18,

<https://www.washingtonblade.com/2018/11/19/d-c-p-g-cops-investigated-for-coercing-trans-sex-worker/>;

Kathleen Deering, et al, *Am J Public Health*, *A Systematic Review of the Correlates of Violence Against Sex Workers*, May 2014, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987574/>;

Sam Levin, *The Guardian*, *Abused then Arrested: Inside California's Crackdown on Sex Work*, 11/28/18, [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2018/nov/28/california-sex-workers-crackdown)

[news/2018/nov/28/california-sex-workers-crackdown](https://www.theguardian.com/us-news/2018/nov/28/california-sex-workers-crackdown);

Robin Scullin, *Johns Hopkins University Hub*, *Police Interactions Linked to Increased Risk of Client Violence for Female Sex Workers*, 11/18/19,

<https://hub.jhu.edu/2019/01/08/violence-against-sex-workers-police/> .

³⁰ *On the Super Bowl, Safety, and Solidarity: Finding Common Ground in a Time of Crisis ... and Beyond...*, 2/2/2021,

<https://freedomnetworkusa.org/app/uploads/2021/02/On-the-Super-Bowl-Safety-and-Solidarity2Feb2021.pdf>

³¹ Freedom Network USA, 2016 Member Report, *Spotlight: Criminalization of Sex Work*,

<https://freedomnetworkusa.org/app/uploads/2016/12/Member-Report-2015-Electronic-Version.pdf>.

³² Freedom Network USA, *Freedom Network Urges Caution in Reforming the CDA*, 2017,

<https://freedomnetworkusa.org/app/uploads/2017/10/FNUSAUrgesCautionCDAREform.pdf>, *Survivors Against*

SESTA, *What Is SESTA/FOSTA*, https://survivorsagainstsesta.files.wordpress.com/2018/09/post-sesta_0917.pdf;

Emily McCombs, *Huffpost Personal*, *'This Bill is Killing Us': 9 Sex Workers on Their Lives in the Wake of FOSTA*,

5/11/18, https://www.huffingtonpost.com/entry/sex-workers-sesta-fosta_us_5ad0d7d0e4b0edca2cb964d9 ;

Siouxie Q, *Rolling Stone*, *The War on Sex Workers Needs to Stop Now*, 4/13/18,

<https://www.rollingstone.com/politics/politics-news/the-war-on-sex-workers-needs-to-stop-now-628335/>; Pimps

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.³³

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.*³⁴

People 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. More training, better screening, and expanded outreach is necessary to properly identify this population.³⁵ Specific services and support are needed to address the unique procedural hurdles faced by immigrants with disabilities, including UACs with disabilities. Programs and services for people with disabilities are often restricted based on immigration status, lack of language access resources, and lack of culturally appropriate services.

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: 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 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, and to provide them with the training*

are Preying on Sex Workers Pushed Off of the Web Because of FOSTA-SESTA, Motherboard, April 30, 2018, https://motherboard.vice.com/en_us/article/bjpvz/fosta-sesta-sex-work-and-trafficking .

³³ Scott Cunningham, Gregory DeAngelo, and John Tripp, Craigslist Reduced Violence Against Women, February 2019, <https://s3.documentcloud.org/documents/5720120/craigslistFOSTA.pdf> (forthcoming publication in *Journal of Human Resources*, <https://www.sunning.com/publications.html>); Alison Bass, *Huffpost*, *Craigslist's Erotic Services Site Appears to Have Reduced Female Homicide Rates by 17 Percent*, https://www.huffpost.com/entry/craigslist-erotic-services-site-appears-to-have-reduced_b_59df8778e4b0cee7b9549e66

³⁴ Freedom Network USA, *Preventing Sex Trafficking Requires the Full Decriminalization of Sex Work*, September 2021, <https://freedomnetworkusa.org/app/uploads/2021/09/FNUSASTatementDecrimSept2021.pdf>; Freedom Network USA, *End Demand Fact Sheet*, 2018, <https://freedomnetworkusa.org/app/uploads/2018/07/End-Demand.pdf>; Beyond Trafficking and Slavery, Open Democracy, *It's Time to Get Off the Fence on Sex Workers' Rights*, 2021, <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-work-on-bts/>; ACLU, *Is Sex Work Decriminalization the Answer? What the Research Tells Us*, 2020, https://www.aclu.org/sites/default/files/field_document/aclu_sex_work_decrim_research_brief.pdf

³⁵ Human Trafficking Legal Center, *Fact Sheet: Trafficking of Persons with Disabilities in the United States*, <http://www.htlegalcenter.org/wp-content/uploads/Trafficking-of-Persons-with-Disabilities-in-the-United-States-Fact-Sheet.pdf>.

and technical assistance to identify and respond to trafficking. 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.

B. Information Relevant to the Minimum Standards

Overview

1. Major Accomplishments

Significant, but insufficient, steps have been taken to reverse the targeting, scapegoating, and denial of services to immigrants seeking to enter the US or to live safely in the US. FNUSA provided recommendations for multiple critical actions in December 2020.³⁶ Multiple reports have documented the reversal of many of the most egregious policies including the ‘Muslim ban’, revisions to public charge, and revocation of the NTA policy.³⁷ It is also notable that the HHS Office of Refugee Resettlement is taking a much less harmful approach to their role in protecting UACs and no longer deny UACs access to comprehensive medical care. However, many harmful policies remain, including under Title 42 and closures of land borders, that continue to put migrants at risk of trafficking and deny protection and services to trafficking victims who are unable to enter the US, or fear coming forward once in the US due to their treatment at the border.³⁸

The establishment of the DHS Center Countering Human Trafficking has led to improved training, policy, and outreach materials on human trafficking and the immigration relief available to support trafficking survivors. The Continued Presence Resource Guide³⁹ along with the improvements in the processing of Continued Presence applications is very helpful. USCIS has also improved transparency and access to immigration protection by reversing harmful policies and practices, publishing more detailed data on the T Visa, and publishing the USCIS Policy Manual chapter on T Visas. USCIS has also committed to re-establishing stakeholder

³⁶ Freedom Network USA, *Human Trafficking Policy Recommendations for Immediate Action From the Biden-Harris Administration*, 12/17/2020,

<https://freedomnetworkusa.org/app/uploads/2020/12/FNUSATransitionMemoBiden17Dec2020.pdf>

³⁷ American Immigration Lawyers Association, *Still Striving- The First Year of the Biden Administration*, 1/19/22, <https://www.aila.org/infonet/biden-administration-immigration-actions-progress>

³⁸ KIND, *The First Year of the Biden Administration’s Policies on Unaccompanied Children*, January 2022, <https://supportkind.org/wp-content/uploads/2022/01/One-year-review-report-1-11-21-FINAL.pdf>

³⁹ US Immigration and Customs Enforcement, Center for Countering Human Trafficking, *Continued Presence Resource Guide*, July 2021, <https://www.ice.gov/doclib/human-trafficking/ccht/continuedPresenceToolkit.pdf>

communication to improve access to protection for survivors, a critical step to improve transparency and improve US Government response to challenges faced by survivors.

2. Greatest Deficiencies

Overall, the US government fails to directly address the systemic factors that enable trafficking. The US response has focused on protection and prosecution, while continuing to support the policies and systems that protect profits over workers, abusers over victims, and economic growth over health and safety. The US must develop a framework for primary prevention and commit to its implementation.

The US Government must also improve its implementation of the protections outlined in the TVPA. Continued Presence remains elusive for most immigrant survivors of human trafficking, leaving them unprotected for years while their T Visas are pending. Sex trafficking survivors continue to be denied restitution, even in federal cases in which restitution is mandatory. Federally funded services continue to be time-limited, focused only on immediate crisis intervention, leaving survivors of all nationalities struggling to fully heal from their experience.

The US continues to criminalize victims, including sex and labor trafficking survivors, for the crimes they are forced to commit by their traffickers. Survivors of both sex and labor trafficking are being criminalized for a wide variety of offenses across the US. Survivors are left with charges in multiple jurisdictions which have varying criminal record relief options.⁴⁰ There is no criminal record relief for federal convictions.⁴¹ FNUSA's Survivor Reentry Project⁴² is supporting over 40 survivors working to clear criminal records of a total of over 600 charges including prostitution (52%), Drug Offenses (9%), Theft/Larceny (7%), Trespass/Loitering (7%), Forgery/false Documents (5%), Assault/Battery (3%), Robbery (2%), and Other (15%).

3. Impact of COVID-19 Pandemic

As FNUSA has noted in our previous TIP Report submissions, the US Government continues to act to undermine the Trafficking Victim Protection Act (TVPA) protections, severely harm trafficking survivors, and increase the risk of trafficking through a xenophobic response to COVID-19 enacted under Title 42 of the Public Health Service Act. While the US Government claims the policies are needed to protect public health, numerous experts and reports have shown that Title 42 exclusions place public health at further risk by leaving immigrants, including trafficking survivors, extremely vulnerable to crime and overexposure to the virus.⁴³

⁴⁰ Freedom Network USA, *Criminal Record Relief Laws for Survivors*, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>

⁴¹ KB White, Freedom Network USA, *Impact of Arrest and Conviction Histories on Trafficking Survivors*, 12/6/2021, <https://freedomnetworkusa.org/2021/11/10/impact-of-arrest-and-conviction-histories-on-trafficking-survivors/>

⁴² Freedom Network USA, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>

⁴³ Columbia University Program on Forced Migration and Health, *Epidemiologists and Public Health Experts Reiterate Urgent Call to End Title 42*, January 14, 2022, <https://www.publichealth.columbia.edu/research/program-forced-migration-and-health/epidemiologists-and-public-health-experts-reiterate-urgent-call-end-title-42>; Michael Ulrich and Sondra Crosby, *The Lancet*, *Title 42, asylum, and politicizing public health*, November 17, 2021, [https://www.thelancet.com/journals/lanam/article/PIIS2667-193X\(21\)00120-4/fulltext](https://www.thelancet.com/journals/lanam/article/PIIS2667-193X(21)00120-4/fulltext); Jasmine Aguilera, *Time*, *Biden is Expelling Migrants on COVID-19 Grounds, But Health Experts Say That's All Wrong*, October 21,

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.⁴⁴ 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.⁴⁵ On November 18, 2020, a DC District Court issued an order excluding children from the CDC's expulsion order, after it had already expelled at least 13,000 unaccompanied children without due process.⁴⁶ While the Administration claims to exempt unaccompanied children from the ongoing Title 42 exclusions, they are still unable to enter the US due to continued closures at lawful ports of entry.⁴⁷ Thus trafficked adults and minors are being denied protection from the US Government, in violation of US and international law, due to the COVID policies.

Additionally, farmworkers, domestic workers, sex workers and immigrants have been notably excluded from many parts of the US COVID response. Farmworkers are generally isolated in rural locations, live and work under the control of their employer, are forced to work in crowded, unhygienic conditions, and have limited access to healthcare. The US was slow to acknowledge the specific risks to farmworkers and to ensure their access to protective measures, treatment, and access to vaccines.⁴⁸ Domestic workers often work excessive hours, have no access to employer-sponsored health insurance, and must be in close contact with their employers.⁴⁹ There were no programs developed by the US Government to reach out to

2021, <https://time.com/6105055/biden-title-42-covid-19/>; Human Rights First, *Title 42 is Not About Public Health. It's About Exclusion.*, October 21, 2021, <https://www.humanrightsfirst.org/blog/title-42-not-about-public-health-its-about-exclusion>; The Young Center, *What is Title 42 and How Does It Impact Children and Families*, October 12, 2021, <https://www.theyoungcenter.org/stories/2021/10/12/what-is-title-42-and-how-does-it-impact-children-and-families#:~:text=Under%20title%2042%2C%20asylum%2Dseekers,people%20with%20valid%20travel%20documents.>

⁴⁴ <https://www.govinfo.gov/content/pkg/FR-2020-03-26/pdf/2020-06327.pdf>

⁴⁵ Devon Cone, Refugees International, *Exacerbating the Other Epidemic: How COVID-19 is Increasing Violence against Displaced Women and Girls*, August 4, 2020, <https://www.refugeesinternational.org/reports/2020/7/31/exacerbating-the-other-epidemic-how-covid-19-is-increasing-violence-against-displaced-women-and-girls>.

⁴⁶ ACLU, *Cases: Pjes v. Pekoske*, <https://www.aclu.org/cases/pjes-v-pekoske>

⁴⁷ KIND, *The First Year of the Biden Administration's Policies on Unaccompanied Children*, January 11, 2022, <https://supportkind.org/resources/the-first-year-of-the-biden-administrations-policies-on-unaccompanied-children/>

⁴⁸ Margaret Brown, et al, National Resources Defense Fund, *Food Work & COVID: Farmworker Solutions for an Unjust System*, 8/16/2021, <https://www.nrdc.org/experts/marisa-guerrero/food-work-covid-farmworker-solutions-unjust-system>; National Center for Farmworker Health, *COVID-19 in Rural America: Impact on Farms & Agricultural Workers*, 4/22/2021, http://www.ncfh.org/uploads/3/8/6/8/38685499/msaws_and_covid-19_fact_sheet_april_2021_final.pdf; Environmental Working Group and Farmworker Justice, *Farmworkers are at Heightened Risk of COVID-19*, <https://www.ewg.org/interactive-maps/2020-farmworkers-at-heightened-risk-of-covid-19/map/>; Janine Zeitlin, USC Annenberg Center for Health Journalism, *How Florida Left Farmworkers Out of Its COVID-19 Pandemic Response*, 3/28/2021, <https://centerforhealthjournalism.org/fellowships/projects/how-florida-left-farmworkers-out-its-covid-19-pandemic-response>

⁴⁹ National Domestic Workers Alliance, *6 Months in Crisis: The Impact of COVID-19 on Domestic Workers*, October 2020, <https://www.domesticworkers.org/wp->

these workers with information about COVID or personal protective equipment to keep them safe. All of these workers were generally denied access to financial programs related to COVID. These workers were unlikely to have the documentation required to qualify for extended unemployment insurance or other programs meant to provide workers with temporary assistance while they could not work due to COVID.

Recommendation: *The US Government must comply with US and international law to allow asylum-seekers entry into the US⁵⁰, and ensure that all unaccompanied minors are screened for potential human trafficking as required by the TVPRA. The US must also expand COVID relief eligibility and access to affordable medical and mental health care to ensure that farmworkers, domestic workers, sex workers, and immigrants have access to the prevention and intervention needed to stay healthy.*⁵¹

4. Additional Information/Recommendations

FNUSA provided recommendations for immediate actions that could be implemented by the US Government to improve the US response to human trafficking, including recommendations for specific federal agencies as well as whole of government actions.⁵²

5. Effective Strategies/Best Practices

Worker-driven social responsibility⁵³ shows promise when the government refuses to act. CIW and Fair Food Program⁵⁴ and Milk with Dignity⁵⁵ are two examples of successful implementation of this approach in agricultural sectors in the US. Additionally, California's Little

[content/uploads/2021/06/6_Months_Crisis_Impact_COVID_19_Domestic_Workers_NDWA_Labs_1030.pdf](#);
Rupkatha Bardhan, et al, MDPI, *Safe Return to Work for Domestic Workers in the Time of COVID-19*, 11/5/2021,
<https://www.mdpi.com/2673-8112/1/3/48/pdf>; Kritika Panday, et al, *American Behavioral Scientist, Essential and Expendable: Migrant Domestic Workers and the COVID-19 Pandemic*, 3/17/2021,
<https://journals.sagepub.com/doi/full/10.1177/00027642211000396>

⁵⁰ Joint Letter Calling for Restoration of Asylum System, 2/9/2021,
<https://freedomnetworkusa.org/app/uploads/2021/08/LetterBidenExecutiveOrders.2.9.21.pdf>

⁵¹ Joint Letter Calling for COVID Protections for H-2B Workers, 3/30/2021,
<https://freedomnetworkusa.org/app/uploads/2021/04/2021-FINAL-H2B-COVID-19-Letter.pdf>; Joint Letter Calling for Immigrant Access to COVID Relief, 3/4/2021,
https://freedomnetworkusa.org/app/uploads/2021/09/StopYoungAttacks_SignOn_030421.pdf

⁵² Freedom Network USA, *Human Trafficking Policy Recommendations for Immediate Action From the Biden-Harris Administration*, 12/17/2020,
<https://freedomnetworkusa.org/app/uploads/2020/12/FNUSATransitionMemoBiden17Dec2020.pdf>

⁵³ Worker-Driven Social Responsibility Network, *What is WSR?*, <https://wsr-network.org/what-is-wsr/>

⁵⁴ Worker-Driven Social Responsibility Network, *Fair Food Program*, <https://wsr-network.org/success-stories/fair-food-program/>; Fair Food Program: The Power of Prevention, <https://fairfoodprogram.org/>

⁵⁵ Worker-Driven Social Responsibility Network, *Milk with Dignity*, <https://wsr-network.org/success-stories/milk-with-dignity/>

Hoover Commission has issued a series of reports laying out what should be done at the state level to identify labor trafficking⁵⁶, coordinate a state-wide response⁵⁷, and help victims⁵⁸.

Prosecution

6. Implementation of Laws, Policies, and Procedures

US law characterizes most employment-related violations as civil, and not criminal, violations. Additionally, labor protections vary by jurisdiction, making it difficult for workers to understand and protect their rights. Court systems that were already complicated have gotten more difficult to navigate due to COVID, along with extraordinary delays in access to justice.⁵⁹ With limited funding for enforcement by the DOL and EEOC, workers, especially low wage workers, are left with few protections.⁶⁰

The US Government's immigration policies put immigrants and migrant workers at high risk of labor trafficking, while the government also fails to invest in the identification and prosecution of labor trafficking.⁶¹

Recommendation: *The US government should provide dedicated funding for DOL and EEOC to develop effective programs to identify and support trafficking survivors within their areas of expertise and existing authorities. The US Government should expand the authorities of DOL and EEOC to better detect, deter, and prosecute labor trafficking. The US Government should reform employment-related immigration categories to ensure that workers have the ability to escape abuse and exploitation without fear of harm. The DOL should release new guidance restoring authority for DOL investigators to file applications for Continued Presence and Supplement B forms for immigrant survivors of human trafficking that they identify in the course of their work, without requiring that they refer the case to another agency.*

⁵⁶ Little Hoover Commission, *Report #251 Labor Trafficking: Strategies to Uncover this Hidden Crime*, September 2020, <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/251/Report251.pdf>

⁵⁷ Little Hoover Commission, *Report #250 Human Trafficking: Coordinating a California Response*, June 2020, <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/250/Report250.pdf>

⁵⁸ Little Hoover Commission, *Report #252 Labor Trafficking: Strategies to Help Victims and Bring Traffickers to Justice*, October 2020, <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/252/Report252.pdf>

⁵⁹ Griff Witte and Mark Berman, *Washington Post*, *Long After the Courts Shut Down for COVID, the Pain of Delayed Justice Lingers*, 12/19/2021, https://www.washingtonpost.com/national/covid-court-backlog-justice-delayed/2021/12/18/212c16bc-5948-11ec-a219-9b4ae96da3b7_story.html; Patrick Szabo, *Loudoun Now*, *Court Cases Still Backed Up: Lawsuits, Trials Face Long Waits*, 5/13/2021, <https://loudounnow.com/2021/05/13/court-cases-still-backed-up-lawsuits-trials-face-long-waits/>

⁶⁰ Elizabeth Warren and Ro Khanna, *CNN Business Perspectives*, *10 Worker Protections that Should be in the US Government's Next Aid Package*, 5/13/2020, <https://www.cnn.com/2020/05/13/perspectives/stimulus-package-worker-protections/index.html>; Celine McNickolas and Margaret Poydock, *Economic Policy Institute Working Economics Blog*, *We Need an Essential Workers Bill of Rights*, 5/5/2020, <https://www.epi.org/blog/congress-must-include-worker-protections-in-the-next-coronavirus-relief-bill-we-need-an-essential-workers-bill-of-rights/>

⁶¹ Freedom Network USA, *Input to UN Special Rapporteur on Forced Labor in Agriculture*, 1/31/2022, <https://freedomnetworkusa.org/app/uploads/2022/02/FNUSAInputLaborTraffickingAgricultureUNSpecialRapporteur-January2022.pdf>

7. Understanding of all Forms of Trafficking

The US Government routinely fails to understand, identify, respond to, and address child labor trafficking, choosing to focus only on the sex trafficking of minors.⁶² 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.⁶³ 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.⁶⁴

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.⁶⁵ 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.

8. Overall Anti-Trafficking Law Enforcement Efforts

As FNUSA continues to note, the US Government needs to increase its investigation and prosecution of labor trafficking. FNUSA remains concerned about the disturbingly low number of investigations and prosecutions involving labor trafficking compared to sex trafficking. According to the US Narrative in the 2021 Trafficking in Persons Report, “the number of prosecutions decreased for the third year in a row, and the number of convictions decreased for the second year in a row.”⁶⁶ In FY20 the Department of Justice (DOJ) initiated a total of 210 federal human trafficking prosecutions, a decrease from 220 in FY19, which was a decrease

⁶² Freedom Network USA, Input to UN Special Rapporteur on Forced Labor in Agriculture, 1/31/2022, <https://freedomnetworkusa.org/app/uploads/2022/02/FNUSAInputLaborTraffickingAgricultureUNSpecialRapporteur-January2022.pdf>; Center for the Human Rights of Children, Loyola University Chicago School of Law, NGO Input to the Special Rapporteur on Contemporary Forms of Slavery, 4/22/2021, <https://freedomnetworkusa.org/app/uploads/2021/10/NGOInputonChildLaborTrafficking.pdf>

⁶³ CAST, *Child Labor Trafficking in California*, October 2019, <https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf>

⁶⁴ CAST, *Child Labor Trafficking in California*, October 2019, <https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf>

⁶⁵ Freedom Network USA, Input on National Advisory Committee on the Sex Trafficking of Children and Youth in the United States Recommendations and State Self-Assessment Survey, 10/30/2020, <https://freedomnetworkusa.org/app/uploads/2020/11/FNUSACommentsStateSurveyOMBOct2020.pdf>

⁶⁶ Department of State, 2021 Trafficking in Persons Report: United States, hereinafter 2021 TIP Report, <https://www.state.gov/reports/2021-trafficking-in-persons-report/united-states/>.

from 230 in FY18.⁶⁷ DOJ charged 337 defendants, a decrease from 343 in FY19, 386 in FY18, and a dramatic decrease from 553 defendants in FY17.⁶⁸ The cases continue to involve predominantly sex trafficking (195 prosecutions), with only 15 prosecutions which involved predominantly labor trafficking.⁶⁹ ***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 FY2019, FY2020, and FY2021 AG Reports as soon as possible.*** The available data indicates that approximately 93% of DOJ's prosecutions and convictions are for sex trafficking cases, and only 7% 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 48% of their clients were survivors of sex trafficking, 43% were survivors of labor trafficking, and 7% were survivors of both.⁷⁰ DOJ's human trafficking services grantees served 9,854 trafficking survivors from July 2019 to June 2020, an increase from 8,375 in the prior year; 62% were victims of sex trafficking, 23% labor trafficking, and 7% both sex and labor trafficking.⁷¹ 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 (66% labor, 22% sex trafficking, 12% labor and sex). Only the distribution of US Citizen and Lawful Permanent Resident survivors mirrors the distribution of prosecutions by DOJ: 96% sex trafficking survivors, .5% labor, and 3% both sex and labor trafficking.⁷²

It is notable that while labor trafficking survivors are primarily foreign nationals, sex trafficking prosecutions are more likely to have USC survivors. The US Government continues to invest, focus, and act only on protecting US nationals and fails to equally protect foreign nationals.

Recommendation: *Based on these data, FNUSA notes that survivors of forced labor, especially immigrants, 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, and the associated failure to protect immigrant trafficking survivors.*

9. Efforts to Investigate/Prosecute Knowingly Soliciting or Patronizing a Sex Trafficking Victim

US law enforcement agencies routinely fail to differentiate between consensual sex work and sex trafficking, falsely using the term "trafficking" to describe arrests of consensual sex workers

⁶⁷ 2021 TIP Report.

⁶⁸ 2021 TIP Report.

⁶⁹ 2021 TIP Report.

⁷⁰ Freedom Network USA 2022 Member Report, data reflecting services provided from 1/1/19 to 12/31/20, https://freedomnetworkusa.org/app/uploads/2021/12/FRN_21121-Member-Report-2021_Final.pdf.

⁷¹ 2021 TIP Report.

⁷² 2021 TIP Report.

and those soliciting and patronizing consensual sex workers.⁷³ Arrests of sex buyers and sex workers do not end in sex trafficking convictions. However, law enforcement agencies generally fail to provide the data needed to understand the impact of most raids, including how many end in conviction and how many lead to false arrests or arrests of victims.

The US Government continues to support this approach, known as the End Demand or Abolitionist approach, in spite of the harms being caused. Arresting those engaged in consensual transactions between adults does not identify traffickers or trafficking victims.⁷⁴ Instead, it traumatizes sex workers and makes it harder for them to engage in harm reduction tactics or to choose other forms of employment, it also has a disproportionate impact on BIPOC and immigrant communities who are more severely harmed by an arrest and less likely to avoid prosecution or conviction.⁷⁵

Recommendation: *The US Government should act to decriminalize sex work at the Federal, State, Local and Tribal levels. Funding and attention should be shifted away from a criminal justice intervention model to, instead, provide resources and support to those engaged in trading sex and to support those who are seeking alternative occupations. The US Government should work to ensure that all work is safe, and respond to all abuse and exploitation in the workplace, on the street, or in the home.*

⁷³ Leila Goldstein, WYSO, *The Ohio AG Says Stings Rescue Trafficking Victims. Often That Means They're Arrested.*, 10/18/2021, <https://www.wyso.org/local-and-statewide-news/2021-10-18/the-ohio-ag-says-stings-rescue-trafficking-victims-often-that-means-theyre-arrested>; Fox News Staff, Fox 13, *Over 100 Arrested in Polk County Undercover Human Trafficking Sting*, 10/28/2021, <https://www.fox13news.com/news/over-100-arrested-in-polk-county-undercover-human-trafficking-sting> (noting that “among those suspects were 36 individuals who offered to commit prostitution” and “62 suspects who solicited prostitutes”); Edhat Santa Barbara, *Sheriff's Detectives Conduct Human Trafficking Sting Operation*, 11/16/2021, <https://www.edhat.com/news/sheriffs-detectives-conduct-human-trafficking-sting-operation> (noting that “a total of 3 women engaged in the sales of sex acts were contacted and 4 sex buyers were arrested”)

⁷⁴ Sebastian Kohn, Open Society Foundations, *The False Promise of “End Demand” Laws*, 6/2/2017, <https://www.opensocietyfoundations.org/voices/false-promise-end-demand-laws>; Bronwyn McBride, et al, *Cult Health Sex*, September 2021, *Harms of Third Party Criminalization Under End-Demand Legislation: Undermining Sex Workers' Safety and Rights*, <https://pubmed.ncbi.nlm.nih.gov/32744171/>; Freedom Network USA, *Preventing Sex Trafficking Requires the Full Decriminalization of Sex Work*, September 2021, <https://freedomnetworkusa.org/app/uploads/2021/09/FNUSASatementDecrimSept2021.pdf>; Freedom Network USA, *End Demand Fact Sheet*, 2018, <https://freedomnetworkusa.org/app/uploads/2018/07/End-Demand.pdf>; Beyond Trafficking and Slavery, Open Democracy, *It's Time to Get Off the Fence on Sex Workers' Rights*, 2021, <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-work-on-bts/>; ACLU, *Is Sex Work Decriminalization the Answer? What the Research Tells Us*, 2020, https://www.aclu.org/sites/default/files/field_document/aclu_sex_work_decrim_research_brief.pdf

⁷⁵ Amnesty International, *From Margin to Center: Sex Work Decriminalization is a Racial Justice Issue*, 12/12/2016, <https://www.amnestyusa.org/from-margin-to-center-sex-work-decriminalization-is-a-racial-justice-issue/>; Linda Anderson, *U Md Journal of Race, Religion, Gender, and Class*, 2021, *Ending the War Against Sex Work: Why It's Time to Decriminalize Prostitution*, <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1358&context=rrgc>

10. Prosecutions to Hold Private Employers or Corporations Accountable Forced Labor in Supply Chains

As noted in Section 8, the US Government fails to hold corporations accountable for forced labor committed by the employers directly, let alone further down in their supply chains. It is notable that CBP is increasingly using Withhold Release Orders to address the importation of goods made with forced labor, but forced labor that occurs within the borders of the US continues with near impunity.⁷⁶

Recommendation: *Based on these data, FNUSA notes 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, and the associated failure to protect immigrant and migrant trafficking survivors.*

11. Judges

As noted in Section 2, judges continue to punish trafficking survivors for forced criminal acts. Judges also continue to support diversion courts that are designed to force suspected or confirmed survivors into services under threat of incarceration, which is not trauma-informed and causes harm to survivors who are criminalized for their victimization.⁷⁷

Service providers report that prosecutors and judges routinely fail to protect victims' rights during trials, including failure to update victims on the status of the case, to protect their privacy, to recognize victim rights counsel, and to order restitution.

Immigration judges fail to protect trafficking survivors when they deny relief including asylum and other forms of protection. Immigration judges often defer to prosecutors, provide prosecutors with more flexibility, and deny applications on discretionary grounds.

Recommendation: *Comprehensive training and technical assistance must be provided to judges so that they are able to identify and respond appropriately to trafficking survivors who appear before them as victims, witnesses, defendants, or parties to a civil case. The training must be inclusive of labor and sex trafficking, of US Citizens and foreign nationals, of all ages and gender identities. Diversion courts must not be allowed to coerce trafficking survivors into unwanted services with the threat of prosecution. The US should provide legal representation to all*

⁷⁶ Freedom Network USA, Input to UN Special Rapporteur on Forced Labor in Agriculture, 1/31/2022, <https://freedomnetworkusa.org/app/uploads/2022/02/FNUSAInputLaborTraffickingAgricultureUNSpecialRapporteur-January2022.pdf>

⁷⁷ Becca Kendis, Case Western Reserve Law Review, 2019, *Human Trafficking and Prostitution Courts: Problem Solving or Problematic?*, <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=4815&context=caselrev>; Melissa Cook, et al, Health Justice, 2021, *A Longitudinal Study of Justice Characteristics Among Girls Participating in a Sex Trafficking Court Program*, <https://rdcu.be/cGnut>

immigrants, and establish an independent immigration court system, including specialized courts for minors⁷⁸, to protect the rights of immigrant trafficking survivors.⁷⁹

12. Official Complicity

FNUSA calls on the US 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.⁸⁰ 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 as long as 8 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.⁸¹

The US Government has also been complicit in the abuse and exploitation of sex trafficking survivors. Law enforcement agents have knowingly engaged in sex abuse of suspected sex trafficking victims in the course of their investigation of the very victimization that the law enforcement agents were committing.⁸² State and local agencies often engage in the same type of abuse, during investigations of sex work and massage parlors.

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.*

⁷⁸ KIND, *For the Rule of Law, An Independent Immigration Court*, 1/19/2022,

<https://supportkind.org/resources/statement-for-record-for-the-rule-of-law-an-independent-immigration-court/>

⁷⁹ American immigration Lawyers Association, *AILA Policy Brief: Restoring Integrity and Independence to America’s Immigration Courts*, 1/24/2020, <https://www.aila.org/advo-media/aila-policy-briefs/aila-calls-for-independent-immigration-courts>; American Bar Association, *ABA Testifies in Favor of Independent Immigration Court System*, 1/20/2022, <https://www.americanbar.org/news/abanews/aba-news-archives/2022/01/aba-testifies-in-favor-of-independent-immigration-court-system/>

⁸⁰ 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.

⁸¹ Human Trafficking Legal Center, *Fact Sheet: Human Trafficking & Forced Labor in For-Profit Detention Facilities*, 2018, <http://www.htlegalcenter.org/wp-content/uploads/Human-Trafficking-Forced-Labor-in-For-Profit-Detention-Facilities.pdf>.

⁸² Mackensie Shulman, et al, AP News, *Documents: Federal Agents Engaged in Sex Acts with Victims*, 5/11/2020, <https://apnews.com/article/nv-state-wire-police-us-news-az-state-wire-ca-state-wire-1c86224532d2ab314fe0f245bdce62b9>

FNUSA also recommends that the US Government immediately ban all law enforcement agents from engaging in sex acts as part of any investigation, prosecution, or other law enforcement activities.

13. Evidence of Trafficking by Nationals Deployed Abroad

FNUSA has no comments on this issue.

Protection

14. Coordinated Government Effort to Identify Victims of All Forms of Trafficking

The US Government efforts to identify victims of human trafficking remain disjointed, uncoordinated, and opaque. There are few published protocols, policies, or procedures for federal agencies to follow when they encounter potential survivors of human trafficking. There is little coordination and accountability within or among federal agencies to make sure that survivors are provided with appropriate services and support.

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.”⁸³ 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.”⁸⁴ Neither protocols have been developed in spite of the deadlines included in the legislation.

The US Government fails to screen for trafficking when conducting immigration enforcement actions such as plant raids and smuggling investigations, but instead arrests immigrants and seeks their immediate deportation. Immigrants struggle to access legal representation than might protect them from deportation, especially when they live in rural areas with limited legal services or are held in immigration detention.⁸⁵

Service providers report that law enforcement agencies fail to respond to reports of trafficking made by service providers. Law enforcement is least likely to respond when the survivor has already left the trafficking experience, the survivor experienced labor trafficking, the survivor was smuggled into the US, or in cases of trafficking by a family member. This disparity can be inferred from the data provided by USCIS showing that although all T Visa applicants are

⁸³ Pub L 115-392.

⁸⁴ Pub L 115-393.

⁸⁵ Alissa Zhu and Maria Clark, *Mississippi Clarion Ledger*, *A Year After Mississippi ICE Raids, Chicken Plants Face Few Penalties as Families Suffer*, 8/7/2020, <https://www.clarionledger.com/in-depth/news/2020/08/07/mississippi-ice-raids-immigrants-struggle-few-penalties-chicken-plants/5407320002/>

required to report their trafficking experience to law enforcement, only 16% submitted the I-914 Supplement B documentation provided by law enforcement.⁸⁶ Law enforcement agencies also continue to fail to apply for Continued Presence to provide immediate protection to foreign national trafficking survivors.⁸⁷

Recommendation: FNUSA recommends that DHS and DOJ jointly convene a working group of survivors and service providers to provide recommendations on the development of these protocols. FNUSA also recommends that DOL participate in this working group to specifically address the context of labor trafficking. FNUSA recommends that DHS require screening of all foreign nationals encountered during immigration enforcement activities for humanitarian protection, and err on the side of protection. FNUSA further recommends that law enforcement be held accountable for their failure to respond to reports of all forms of trafficking, and provide support for foreign national survivors in the form of Continued Presence.

15. Government Hotline Operations

The US Government supports a national human trafficking hotline, but requires it to operate as a law enforcement tipline as well as a hotline for survivors. This conflation of opposite and ethically conflicting duties is harmful to survivors who may not trust this dual resource, may not understand that their information may be shared with law enforcement, and serves to divert limited resources away from survivors into investigation.⁸⁸

Recommendation: FNUSA recommends that the US Government immediately cease using the National Human Trafficking Hotline as a law enforcement tipline, cease using any outreach or education materials that present it as such, cease requiring the hotline to report on the number of cases referred to law enforcement, and ensure that all hotline resources are dedicated to connecting survivors with services and not in gathering unnecessary data or providing tips to law enforcement.

16. Victim Services

FNUSA notes that the US Government provides significant funding for services for human trafficking survivors. Funding appropriations for victim services and training grants have increased to over \$100 million annually, 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, especially in light of the challenges presented by COVID-19 and the general rollback of protections and support for those made vulnerable to trafficking during the previous Administration.

FNUSA notes with concern that the Congressional funding authorizations under the TVPA and

⁸⁶ USCIS, *Characteristics of T Nonimmigrant Status (T Visa) Applicants*, January 2022

⁸⁷ Freedom Network USA, *Continued Presence Challenges and recommendations*, 2/18/2021, <https://freedomnetworkusa.org/app/uploads/2021/02/FNUSAContinuedPresenceChallengesRecommendationsFeb2020.pdf>

⁸⁸ Freedom Network USA, *Public Comment on the Evaluation of the National Human Trafficking Hotline*, 10/25/2019, <https://freedomnetworkusa.org/app/uploads/2019/11/FNUSAHotlineEvaluationSurveyComment-1.pdf>

its progeny have expired. The TVPA funding authorizations also include two harmful restrictions. First, ‘prostitution pledge’ suggests that service providers who provide supportive services to trafficking survivors who are engaged in sex work are not eligible for services, and that agencies which express opposition to the End Demand framework are not eligible for funding. This clause limits harm reduction efforts and increases vulnerability to trafficking in the sex trades. This clause also limits survivors’ self-determined agency by forcing them to frame their experiences in government-sanctioned ways in order to work in the field, which replicates coercive patterns. Second, the funding requires that providers 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).⁸⁹

Recommendation: FNUSA urges the US Government to immediately reauthorize the TVPA funding including the removal of the ‘prostitution pledge’ and 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 for survivors.⁹⁰

17. Quality of Victim Care

The US Government has failed to establish minimum standards of care for human trafficking survivors. There is little oversight provided for even federal government funded service providers, except for recipients of Human Trafficking Housing Grants from OVC. There are reports of exploitation and discrimination by providers, with few options for recourse.⁹¹ HHS funnels all funding for services to foreign nationals through a single grant program which is not victim-centered and does not allow services to be tailored to the needs of the survivor. The services are time-limited using a single standard for all survivors, and limit support for dependent family members of the survivor. This disparity in the various funding programs leave survivors at risk of insufficient support depending on which provider is available to them.

Recent attacks on access to comprehensive medical care for those who can get pregnant are reducing access to needed reproductive health care for human trafficking survivors. Sexual assault is a common form of abuse perpetrated against labor and sex trafficking survivors and it is critical that survivors have access to comprehensive reproductive health care without restrictions.

⁸⁹ Freedom Network USA, *FY2022 Human Trafficking Funding Recommendations*, 12/17/2021, <https://freedomnetworkusa.org/app/uploads/2021/12/FY22FNUSAFundingRecs.pdf>

⁹⁰ Freedom Network USA, *FNUSA’s Priorities for 2021 Reauthorization of the Trafficking Victims Protection Act*, May 2021, <https://freedomnetworkusa.org/app/uploads/2021/05/FNUSAs-Priorities-for-TVPA-Reauthorization-2021.pdf>

⁹¹ Sarah Lynch, Reuters, *Exclusive: Justice Department anti-human trafficking grants prompt whistleblower complaint*, 2/10/2020, <https://www.reuters.com/article/us-usa-justice-grants-exclusive-idUSKBN20425G> (noting an OVC grant recipient is alleged to require survivors to participate in religious programs)

Recommendation: FNUSA recommends DOJ and HHS work together to ensure that survivors have access to voluntary, non-discriminatory, and trauma-informed services. FNUSA recommends that the US Government take immediate action to protect access to comprehensive reproductive health care, including abortion, throughout the US.⁹² FNUSA recommends the development of a field-driven national resource center to provide training and technical assistance to providers, and hold federal grantees accountable. FNUSA further recommends making changes to the grant awards to ensure that funding is proportionate to the number of survivors supported and is shared with community-based organizations that are connected to communities most at risk of trafficking.⁹³

18. Cooperation Between Law Enforcement and Victim Services

In most cases, law enforcement and victim services do not work together to support survivors. DOJ has tried to incentivize cooperation through the Enhanced Collaborative Model Task Force Grants (ECM) for over 10 years, but they have failed to achieve this goal. By continuing to fund these grants, therefore, DOJ is diverting victim services funds to law enforcement operations that often harm survivors. Evaluations conducted by DOJ have found that the law enforcement and service provider partners are identifying completely different survivors, and the grants do not result in increased law enforcement support of survivors identified by service providers.⁹⁴ As noted above, law enforcement continues to arrest survivors, abuse survivors in the course of law enforcement investigations into suspected human trafficking, and fails to provide documentation to support immigration protection for immigrant survivors.

Recommendation: FNUSA recommends that DOJ discontinue diverting victim services funds to law enforcement agencies by replacing the law enforcement partners in the ECM grants with community-based organizations that are connected to communities most at risk of all forms of trafficking.⁹⁵

19. Restitution

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. Courts awarded mandatory restitution to trafficking victims in just

⁹² Joint Letter Calling for Helms Amendment Repeal, 12/17/2021, https://freedomnetworkusa.org/app/uploads/2022/01/Helms-Anniversary-Community-Letter_2021.pdf

⁹³ Freedom Network USA, *FY2022 Human Trafficking Funding Recommendations*, 12/17/2021, <https://freedomnetworkusa.org/app/uploads/2021/12/FY22FNUSAFundingRecs.pdf>; Freedom Network USA, *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>

⁹⁴ William Adams, et al, Urban Institute, *Evaluation of the Enhanced Collaborative Model to Combat Human Trafficking, Technical Report*, May 2021, <https://www.ojp.gov/pdffiles1/nij/grants/300863.pdf>

⁹⁵ Freedom Network USA, *FY2022 Human Trafficking Funding Recommendations*, 12/17/2021, <https://freedomnetworkusa.org/app/uploads/2021/12/FY22FNUSAFundingRecs.pdf>

36% of human trafficking cases brought between 2009 and 2012.⁹⁶ 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.”⁹⁷ The most recent data indicates that in 2020, restitution was awarded in only 50% of federal convictions.⁹⁸ Prosecutors should also be trained to request restitution in prosecution of similar and lesser offenses, such as visa fraud or smuggling when victims have suffered abuse or exploitation.

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.

20. Protection and Encouragement of Victim-Witnesses

The US Government provides insufficient funding and support for trafficking victims and witnesses including relocation and living expenses for victims vulnerable to retaliation from traffickers. Service providers report that prosecutors threaten to bring charges against survivors if they do not assist with the prosecution of the traffickers, and in fact do prosecute victims for crimes they were forced to commit by traffickers. Providers also report that prosecutors do not uniformly protect victims’ rights during trial, as mentioned in Section 11.

Recommendation: FNUSA recommends that the US Government increase and improve training for prosecutors and judges about victims’ rights, ensure adequate financial support to victims and witnesses cooperating with the prosecution, and stop prosecuting survivors for the crimes they were forced to commit by their traffickers.

⁹⁶ Human Trafficking 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, <https://htlegalcenter.org/wp-content/uploads/HTProBono-Trafficking-Restitution-Report.pdf>

⁹⁷ Human Trafficking Legal Center and WilmerHale, *United States Federal Courts’ Continuing Failure to Order Mandatory Criminal Restitution for Human Trafficking Victims*, September 2018, <https://htlegalcenter.org/wp-content/uploads/2018-Mandatory-Restitution-Report.pdf>.

⁹⁸ Feehs & Currier Wheeler, Human Trafficking Institute, *2020 Federal Human Trafficking Report*, 2021, <https://traffickinginstitute.org/wp-content/uploads/2022/01/2020-Federal-Human-Trafficking-Report-Low-Res.pdf>.

21. Immigration Protection for Victims

For the past 5 years, immigrants, including immigrant survivors of human trafficking, 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 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 have been raised by FNUSA in its comments for the 2018, 2019, 2020, and 2021 TIP Reports. Federal policies, including increased and indiscriminate immigration enforcement, arrests of immigrants at courthouses and other safe places,⁹⁹ 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 exploitation¹⁰⁰, including human trafficking. The cumulative effects of the US Government’s immigration policies and rhetoric have stopped immigrant survivors of human trafficking from seeking protection from law enforcement and 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.¹⁰¹ The decreases in investigations and prosecutions of trafficking, as noted in the 2021 TIP Report, are the inevitable result of this fear of law enforcement.

Non-trafficking Specific Protections

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 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. A new rule, issued at the end of 2020 and currently enjoined by a California court order,¹⁰² is known to advocates

⁹⁹ 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>

¹⁰⁰ Immigrant Survivors Fear Reporting Violence, 2019, <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>

¹⁰¹ 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>

¹⁰² <https://immigrationimpact.com/2021/01/14/death-to-asylum-rule-blocked/#.YBdrwOhKg2w>

as the “Death to Asylum” rule because of the wide range of limitations it includes.¹⁰³ 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.¹⁰⁴ While some restrictions have been overturned or rescinded, significant procedural hurdles remain which undermine due process.¹⁰⁵ COVID restrictions on ports of entry, along with the reinstatement of 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.¹⁰⁶

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 36 months.¹⁰⁷ 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.¹⁰⁸ Trafficking survivors are increasingly held in immigration detention, even when T Visas are pending, leaving traumatized trafficking survivors in unsafe, unsanitary conditions without access to sufficient medical and mental health care or adequate

¹⁰³ 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.

¹⁰⁴ 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>.

¹⁰⁵ American Immigration Lawyers Association, *Still Striving- The First Year of the Biden Administration*, 1/19/22, <https://www.aila.org/infonet/biden-administration-immigration-actions-progress>

¹⁰⁶ 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,” <https://www.humanrightsfirst.org/press-release/hrf-reports-escalating-human-rights-abuses-against-asylum-seekers-returned-mexico>

¹⁰⁷ 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>

¹⁰⁸ 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>

access to their attorneys.¹⁰⁹ 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 commends the US Government for halting the changes to the USCIS Fee Rule, reinstating access to fee waivers, rescinding the public charge rule change, and rescinding the 'blank spaces' policy. FNUSA calls on the US Government to immediately reverse other policies that restrict and deny due process to immigrants, especially for immigrants seeking asylum and other humanitarian protections in the US.¹¹⁰ FNUSA notes, with great appreciation, that the US Government has reversed some of these policies in the past year, but notes that many others remain in effect or are still in the midst of litigation. 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.

Protections for Unaccompanied Minors

Unaccompanied minors are at high risk of trafficking. The TVPA contains specific provisions to ensure that they are appropriately screened for trafficking, and then provided with age-appropriate services and protections. However, the US Government has failed to fully implement these protections, especially at border areas, and has failed to provide comprehensive legal and social services once the minors are released from HHS custody.

Recommendation: FNUSA recommends that the US Government provide employment authorization to unaccompanied minors with approved Special Immigrant Juvenile petitions to ensure that they have access to employment, education, and healthcare.¹¹¹ FNUSA also recommends that the US Government rescind the Title 42 and MPP programs¹¹² and re-establish regular processing and screening of immigrants at all border crossings to provide UACs with access to safety and protection in the US. FNUSA also recommends that the US Government provide post-release services, including case management and legal representation, to all UACs

¹⁰⁹ Von Werthern et al, BMC Psychiatry, *The Impact of Immigration Detention on Mental Health: A Systemic Review*, 12/6/2019, <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>

¹¹⁰ Alliance for Immigrant Survivors, Comment on Interim Final Rule, DOS Public Charge, 1/18/2022, https://freedomnetworkusa.org/app/uploads/2022/02/AIS_DOS-Sign-on-Comment-Final-Jan-18_2022.pdf; Coalition for Humane Immigrant Rights, Collaborative Letter in Support of Immigrant Protections in Build Back Better, 1/7/2022, https://freedomnetworkusa.org/app/uploads/2022/01/FINAL-Imm-Serving-Orgs_-_Call-on-Senate-Leadership-and-VP-Harris-Can-and-Should-Disregard-the-Parliamentarians-Advisory-Opinion-on-Immigration.pdf; Joint Letter Calling for Termination of Title 42 and MPP, 1/17/2021, https://freedomnetworkusa.org/app/uploads/2022/01/Joint-Letter-in-response-to-Remain-in-Mexico-2.0-and-Title-42-continuation_12172021.pdf

¹¹¹ KIND, *Left in Limbo: Why Special Immigrant Juveniles Need Employment Authorization*, 1/10/2021, <https://supportkind.org/wp-content/uploads/2022/01/SIJS-EAD-Brief-1.10.21-FINAL.pdf>; The Door, "Any Day They Could Deport Me" Over 44,000 Immigrant Children Trapped in SIJS Backlog, November 2021, <https://www.sijsbacklog.com/any-day-they-could-deport-me>

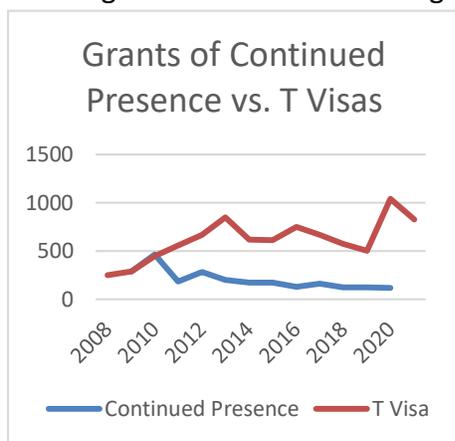
¹¹² Joint Letter Calling for Ending Title 42, 2/2/2021, https://freedomnetworkusa.org/app/uploads/2021/02/LetterBidenAdminTitle42_2.2.21.pdf

upon their release from either ORR or DHS custody, even if they are over the age of 18 at the time of their release.

Trafficking-specific Immigration Protections

Although the TVPA created extensive protections for immigrant survivors of human trafficking, implementation has not lived up to the legal promise.¹¹³ Continued Presence is rarely provided to victims, bona fide determinations are almost never made in T Visa cases, and the T Visa adjudications have been applying a more restrictive standard that has denied protection for survivors.

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. The number of survivors granted CP decreased in 2020 (117 grants) compared to 2019 (125 grants),¹¹⁴ continuing a mainly downward trend since the high in 2011. Additionally, the number of grants remains shocking low compared to the number of T visas issued in 2021 (829) and 2020 (1040).¹¹⁵ This trend is consistent over time, as shown in the chart.¹¹⁶

Furthermore, FNUSA members have reported that survivors of sex trafficking are more likely to obtain CP than survivors of labor trafficking.

FNUSA members and others report barriers to obtaining T Visas in the form of frequent Requests for Evidence (RFEs) and denials that contravene legal standards.¹¹⁷ 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

¹¹³ Joint Comment in Response to Request for Public Input: Identifying Barriers Across USCIS Benefits and Services, 5/19/2021, <https://freedomnetworkusa.org/app/uploads/2021/05/Joint-Comment-on-Barriers-to-Services-and-Benefits-5.19.2021.pdf>

¹¹⁴ 2021 TIP Report

¹¹⁵ USCIS T Visa Statistics FY2021,

https://www.uscis.gov/sites/default/files/document/data/I914t_visastatistics_fy2021_qtr4.pdf

¹¹⁶ 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

¹¹⁷ 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>

regarding whether the survivor had a “clear chance to leave.”¹¹⁸ 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 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.¹¹⁹

Adjudication for T Visa applications is currently averaging 16-33.5 months¹²⁰, a sharp increase from the 6-9 month period that was common only a few years ago¹²¹. 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.

The Regulations for the implementation of the T Visa sets forth the process for USCIS to make a bona fide determination for T Visa applications.¹²² 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 commends USCIS on the publication of the T Visa Chapter of the Policy Manual and revocation of the ‘Notice to Appear’ memo. 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

¹¹⁸ “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.

¹¹⁹ USCIS T Visa Statistics FY2021,

https://www.uscis.gov/sites/default/files/document/data/1914t_visastatistics_fy2021_qtr4.pdf

¹²⁰ Current processing times are provided by USCIS at <https://egov.uscis.gov/processing-times/>

¹²¹ USCIS reports processing times of 6.8 to 9.6 months for FY 2012 to FY 2017, <https://egov.uscis.gov/processing-times/historic-pt>.

¹²² 8 CFR 214.11

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. Additionally, the US Government must expand the list of entities eligible to file CP applications to include, at least, law enforcement agencies at the State, Local, and Tribal levels.

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. 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.

FNUSA recommends that the US Government implement significant changes to the T Visa regulations to fully implement the bona fide determination process and use an accurate adjudication standard that recognizes all forms of human trafficking.¹²³ 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. FNUSA also recommends changes to ensure increases access to Continued Presence for survivors.¹²⁴

22. Protection for Nationals Trafficked Abroad

FNUSA has no comment on this issue.

23. Criminalization of Victims

As noted in Section 2, the US continues to criminalize victims, including sex and labor trafficking survivors, for the crimes they are forced to commit by their traffickers. Survivors are left with charges in multiple jurisdictions which have varying criminal record relief options.¹²⁵ There is no criminal record relief for federal convictions.¹²⁶ FNUSA's Survivor Reentry Project¹²⁷ is supporting over 40 survivors working to clear criminal records of a total of over 600 charges

¹²³ Freedom Network USA's public comments on T Visa regulations, 9/13/2021, <https://freedomnetworkusa.org/app/uploads/2021/09/FNUSACommentsTReg13Sept2021.pdf>; Freedom Network USA, *Human Trafficking Recommendations for Immediate Action From the Biden-Harris Administration*, December 2020, <https://freedomnetworkusa.org/app/uploads/2020/12/FNUSATransitionMemoBiden17Dec2020.pdf>

¹²⁴ Freedom Network USA, *Continued Presence Challenges and Recommendations*, 2/18/2021, <https://freedomnetworkusa.org/app/uploads/2021/02/FNUSAContinuedPresenceChallengesRecommendationsFeb2020.pdf>

¹²⁵ Freedom Network USA, *Criminal Record Relief Laws for Survivors*, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>

¹²⁶ KB White, Freedom Network USA, *Impact of Arrest and Conviction Histories on Trafficking Survivors*, 12/6/2021, <https://freedomnetworkusa.org/2021/11/10/impact-of-arrest-and-conviction-histories-on-trafficking-survivors/>

¹²⁷ Freedom Network USA, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>

including prostitution (52%), Drug Offenses (9%), Theft/Larceny (7%), Trespass/Loitering (7%), Forgery/false Documents (5%), Assault/Battery (3%), Robbery (2%), and Other (15%).

Commercial sex remains unlawful at the local, state, and federal levels throughout the US. Law enforcement continues to arrest those believed to be engaged in sex work, even when they suspect that those being arrested may be sex trafficking survivors. Recent raids in Ohio, framed as anti-trafficking, primarily resulted in the arrest of sex workers, consensual sex buyers, and sex trafficking survivors.¹²⁸ The Ohio Attorney General's press release on the raid detailed the arrest of 158 people seeking consensual paid sex with an adult, 50 sex workers, and law enforcement detained 51 potential sex trafficking survivors.¹²⁹ In contradiction with the federal statute classifying all minors engaged in commercial sex as victims, states and local governments continue to criminalize these minors. While some jurisdictions use diversion courts or other mechanisms to allow criminalized victims to avoid incarceration, they continue to be traumatized by the arrest and experience of criminalization.

DOJ's Office for Victims of Crime provides funding to Enhanced Collaborative Model 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 survivors. In NY, for example, reporting has revealed that ECM Task Force member NYPD engaged in routine criminalization of sex workers and possible sex trafficking victims¹³⁰. Task Forces also support 'diversion courts' that rely on arrest to coerce survivors into programs or services¹³¹. 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 seeking consensual sex with an adult is a dollar taken away from housing, legal services, food, or education for a trafficking survivor.

¹²⁸ Leila Goldstein, WYSO, *The Ohio AG says stings rescue trafficking victims. Often that means they're arrested.*, October 18, 2021, <https://www.wyso.org/local-and-statewide-news/2021-10-18/the-ohio-ag-says-stings-rescue-trafficking-victims-often-that-means-theyre-arrested>; Leila Goldstein, WCBE News, *"Rescued" Trafficking Victims In Ohio Often Arrested As Well*, October 19, 2020, <https://www.wcbe.org/news/2021-10-19/rescued-trafficking-victims-in-ohio-often-arrested-as-well> ;

¹²⁹ Ohio Attorney General, *Attorney General Dave Yost Announces Success of Statewide Anti-Human Trafficking Sting: Operation 'Ohio Knows' Nets 161 Seeking to Buy Sex*, October 4, 2021, <https://www.ohioattorneygeneral.gov/Media/News-Releases/October-2021/Attorney-General-Dave-Yost-Announces-Success-of-St>.

¹³⁰ 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>

¹³¹ 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/>

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 and urge a greater allocation of funding for the service provider arm of the Task Force.¹³² The US must also decriminalize sex work at the Federal, state, and local levels and shift resources to providing services and support to sex trafficking survivors and sex workers who are seeking alternate employment.¹³³

Prevention

24. Prevention Efforts

The US Government has failed to engage in primary prevention efforts to change the conditions that allow trafficking to thrive in the US. Systemic reforms to labor, immigration, social safety net support, education, and family support, community education and the creation of positive market forces (through programs such as the Coalition of Immokalee Workers' Fair Food Program¹³⁴) are more important in preventing human trafficking than billboard campaigns and interventions after the fact. 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 ensuring youth and adults 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 public health approach to trafficking the US can move beyond prosecution and into holistic prevention approaches to prevent trafficking from happening.¹³⁵

25. National Action Plan

While the US Government has released a National Action Plan, it lacks sufficient detail and commitments to substantial change to have a significant impact. It also continues to support

¹³² Freedom Network USA, *FY22 Human Trafficking Funding Recommendations*, December 2021, <https://freedomnetworkusa.org/app/uploads/2021/12/FY22FNUSAFundingRecs.pdf>.

¹³³ Freedom Network USA, *Preventing Sex Trafficking Requires the Full Decriminalization of Sex Work*, September 2021, <https://freedomnetworkusa.org/app/uploads/2021/09/FNUSAStatementDecrimSept2021.pdf>; Freedom Network USA, *End Demand Fact Sheet*, 2018, <https://freedomnetworkusa.org/app/uploads/2018/07/End-Demand.pdf>; Beyond Trafficking and Slavery, *Open Democracy, It's Time to Get Off the Fence on Sex Workers' Rights*, 2021, <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-work-on-bts/>; ACLU, *Is Sex Work Decriminalization the Answer? What the Research Tells Us*, 2020, https://www.aclu.org/sites/default/files/field_document/aclu_sex_work_decrim_research_brief.pdf

¹³⁴ For more information, see <http://ciw-online.org/>.

¹³⁵ 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>.

End Demand strategies that cause harm. There was no meaningful opportunity for NGOs to engage in the development of the original Plan or the revised Plan. There is no clear mechanism for accountability in the implementation of the Plan.

Recommendation: FNUSA urges the US Government to provide further detail and accountability measures to make the National Action Plan meaningful. FNUSA further recommends that the National Action Plan reject End Demand policies and implement the reforms recommended by FNUSA throughout this document.

26. Government-funded Anti-Trafficking Information/Education Campaigns

The US Government does provide a useful Know Your Rights pamphlets and information at the Embassies. However, the information is insufficient to counter the threats of traffickers and systematic ways in which workers, especially BIPOC and immigrant workers, are put left with limited options and power. There are also awareness campaigns at airports and other places of transportation and accommodation. There have been a proliferation of education campaigns targeting schools and students. However, there have been limited or no evaluations to ensure that the campaigns are effective in any respect, and to ensure that the campaigns do not cause harm. In fact, there have been numerous examples of trained airline personnel causing harm by accusing interracial families of being engaged in trafficking.¹³⁶

Recommendation: FNUSA urges the US Government to conduct a rigorous evaluation of the effectiveness of human trafficking training before it is recommended for widespread implementation in industries. The evaluation should determine if the training increases the ability to accurately identify potential trafficking victims without racial profiling, victim blaming, or resulting in misinformation. Training materials used in schools should use a harm reduction, sex positive approach that helps students to learn about the importance of sharing consent and establishing healthy relationships.

27. Survivor Input

The US Government does seek input from the all-survivor US Advisory Council. Notably, payment for the members of the Council has finally been authorized. However, the US Government provides limited support to ensure that the Council has the information and expertise, either within the members or provided by consultants, to develop the most effective recommendations and information. The members of the Council are chosen through a secretive political process, with no accountability to ensure that the Council members are representative of the wide variety of experiences and perspectives.

¹³⁶ Julian Mark, Washington Post, *A Southwest Flight Attendant Suspected Human Trafficking. It was Just a Mixed-Race Family Flying to a Funeral.*, 11/8/2021, <https://www.washingtonpost.com/nation/2021/11/08/southwest-human-trafficking-suspicions-mary-maccarthy/>; Sweenie Saint-Vil, Revolt, *Frontier Airlines Accuses Black Woman of Human Trafficking for Traveling with Adoptive White Sister*, 7/26/2021, <https://www.revolt.tv/article/2021-07-26/48377/frontier-airlines-accuses-black-woman-of-human-trafficking-for-traveling-with-adoptive-white-sister/>; KTNV Las Vegas, *Lawsuit: Airline Accused White Man of Trafficking Black Son*, 9/6/2019, <https://www.ktnv.com/news/lawsuit-airline-accused-white-man-of-trafficking-black-son>

Recommendation: FNUSA urges the US Government to invest directly in improving the effectiveness and outcomes of survivor engagement. The US Government should provide survivor advocates with training and technical assistance, through a survivor-led NGO effort. The US Government should also improve the impact of the US Advisory Council by providing the Council with expert consultants to provide in-depth expertise on the systems and challenges that the Council identifies. The US Government should also provide a response to the Council's recommendations, including whether they recommendations are accepted or rejected, and the status of implementation for all accepted recommendations.

28. Labor Recruitment

The US Government has failed to sufficiently address the widespread abuses of labor recruiters that lead directly to the abuse and exploitation of immigrant workers. Although some regulations have been enacted, they have been insufficiently implemented and US businesses are not held responsible for the labor recruitment abuses from which they benefit. Most migrant workers are trapped by visa restrictions that tie them to their employer, or require the employer's permission to change jobs.

Recommendation: FNUSA urges the US Government to expand protections for all workers and hold employers accountable for any abuses committed in the process of obtaining workers for employment in the US. The US Government must also increase transparency about employer sanctions, ensure abusive employers are barred from all forms of employment-based visas, and engage in reforms of employment-based visas to ensure that workers are empowered to leave and report abusive employers without harm.¹³⁷

29. International Coordination on Recruitment

FNUSA has no comment on this issue.

30. Migration/Trade Policies and Trafficking

The US' guestworker programs continue to be rife with abuse and exploitation, including labor trafficking.¹³⁸ 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.¹³⁹ Additionally, the structure of the low-wage

¹³⁷ Freedom Network USA, Input to UN Special Rapporteur on Forced Labor in Agriculture, 1/31/2022, <https://freedomnetworkusa.org/app/uploads/2022/02/FNUSAInputLaborTraffickingAgricultureUNSpecialRapporteur-January2022.pdf>

¹³⁸ Justice in Motion's Visa Pages, <https://www.justiceinmotion.org/visa-pages>; and see cases including: USA v. Patricio, et al. (<https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment>); 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.).

¹³⁹ <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>

programs in particular (for example, the H-2A¹⁴⁰, H-2B¹⁴¹ and J-1¹⁴² programs) and even religious worker visas, 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. There have been several recent investigations and indictments in guestworker cases, such as 'Operation Blooming Onion' (extensive multi-year exploitation of H-2A visas that led to the deaths of at least 2 workers)¹⁴³, ongoing investigation of around 200 religious workers exploited by a temple¹⁴⁴, Utah AG indictment of a carnival for abusing H-2B visas to exploit workers¹⁴⁵, and a recent indictment for labor trafficking of seasonal workers in South Carolina.¹⁴⁶ 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 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*

¹⁴⁰ Freedom Network USA, *Human Trafficking and H-2 Temporary Workers*, May 2018, <https://freedomnetworkusa.org/app/uploads/2018/05/Temporary-Workers-H2-May2018.pdf>; Colorado Legal Services, *Overworked and Underpaid: H-2A Herders in Colorado*, 1/14/2010, <https://humantraffickinghotline.org/sites/default/files/Overworked%20and%20Underpaid%20-%20CLS.pdf>; Centro de los Derechos Del Migrante, Inc., *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program*, April 2020, <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf>;

¹⁴¹ Centro de los Derechos Del Migrante, Inc., *Breaking the Shell: How Maryland's Migrant Crab Pickers Continue to be "Picked Apart"*, 09/2020, <https://cdmigrante.org/breaking-the-shell/>;

¹⁴² Freedom Network USA, *Human Trafficking and J-1 Visas for Temporary Workers*, May 2018, <https://freedomnetworkusa.org/app/uploads/2018/05/Human-Trafficking-and-J-1-Visas-May2018.pdf>; International Labor Recruitment Working Group, *Shining a Light on Summer Work: A First Look at the Employers Using the J-1 Summer Work Travel Visa*, 2019, <https://cdmigrante.org/wp-content/uploads/2019/07/Report-Shining-A-Light-on-Summer-Work.pdf>; International Labor Recruitment Working Group, *Shortchanged: The big Business Behind the Low Wage J-1 Au Pair Program*, 2018, <https://cdmigrante.org/wp-content/uploads/2018/08/Shortchanged.pdf>

¹⁴³ US Attorney's Office, Southern District of Georgia, Press Release, *Human smuggling, forced labor among allegations in south Georgia federal indictment*, <https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment>

¹⁴⁴ Joe Atmonavage, NJ.com, *Lawsuit accusing NJ temple of human trafficking on hold as criminal investigation continues*, <https://www.nj.com/news/2021/12/lawsuit-accusing-nj-temple-of-human-trafficking-on-hold-as-criminal-investigation-continues.html>

¹⁴⁵ Utah Attorney General's Office, Press Release, *Labor Trafficking Arrest: Mexican Nationals Held Against Their Will, H2B Visas Withheld, Forced into Horrendous Working & Living Conditions*, <https://attorneygeneral.utah.gov/11317-2/>

¹⁴⁶ US Attorney's Office, District of South Carolina, Press Release, *Multi-Count Federal Indictment Returned for Labor Trafficking Violations*, <https://www.justice.gov/usao-sc/pr/multi-count-federal-indictment-returned-labor-trafficking-violations>

have abused or exploited their workers or benefited from the actions of recruitment agencies that they directly or indirectly engaged.¹⁴⁷

31. Prevention of Forced Labor in Supply Chains

As discussed in multiple sections of this document, while there have been some investigations and prosecutions into labor trafficking in the US, the US has failed to enact needed reforms in immigration and labor laws or invest sufficient resources in agencies with expertise in employment violations (DOL and EEOC) to effectively prevent forced labor.

32. Government's Response to COVID-19 Impact on Migrant Workers

As discussed in Sections A, 3, 6, and 16, the US Government failed to address the specific needs of migrant workers. Migrant workers have been left out of medical care, vaccine efforts, access to PPE, worker protections such as paid leave and expanded unemployment benefits, and have been forced to continue working as 'essential workers' even when other workers were asked to stay at home. Travel restrictions have made it impossible for workers to visit family or return to their homes. And border policies have led to family separations and forced migrants to stay in unsafe camps outside of the US.

Recommendation: *FNUSA calls on the US Government to limit detention of immigrants, and close all privately run immigration detention facilities. The US Government should take extra care to protect UACs and provide expanded services and legal counsel to UACs after leaving government care (either immigration detention or HHS custody), so that these children can receive medical, social, mental health and legal services. FNUSA also calls on the US Government to immediately end the Remain in Mexico program and Title 42 border restrictions and allow UACs and asylum seekers to enter the US at border crossings to pursue their claims. The US must also expand COVID relief eligibility and access to affordable medical and mental health care to ensure that farmworkers, domestic workers, sex workers, and immigrants have access to the prevention and intervention needed to stay healthy.*

33. Impact of Bilateral, Multilateral, or Regional Anti-Trafficking Arrangements

FNUSA has no input on this issue.

34. International Governmental Assistance

FNUSA has no input on this issue.

35. Reduce Country Nationals in International and Domestic Child Sex Tourism

FNUSA has no input on this issue.

¹⁴⁷ Freedom Network USA, Input to UN Special Rapporteur on Forced Labor in Agriculture, 1/31/2022, <https://freedomnetworkusa.org/app/uploads/2022/02/FNUSAInputLaborTraffickingAgricultureUNSpecialRapporteur-January2022.pdf>; Joint Comments on J-1 Au Pair Program Rulemaking, 11/4/2021, <https://freedomnetworkusa.org/app/uploads/2021/11/Au-Pair-Rule-Sign-On-Letter-FINAL.pdf>; FNUSA's Comments on RIN 1400-AD14, Proposed Rule, "Exchange Visitor Program – Summer Work Travel," February 2017, <https://freedomnetworkusa.org/app/uploads/2016/10/FNUSACommentsRIN1400-AD14.pdf>

Territories and Semi-Autonomous Regions

36. Non-sovereign Territories and Semi-Autonomous Regions

FNUSA has no comment on this issue.

Trafficking Profile

37. Trafficking Situation

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)¹⁴⁸ as mandated by the TVPA¹⁴⁹. However, the US Government has failed to submit this vital report for the past three years. The most recent report available covers FY18.¹⁵⁰ 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, using comparable data so that governments and civil society have access to the most accurate information about the government's efforts to address human trafficking. The government should not change the data presented without good reason. The agencies should provide additional data, detail, explanation, or disaggregation; while still providing comparable data to allow an analysis of the progress made.*

38. Chinese/Cuban/North Korean Workers

FNUSA has no comment on this issue.

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

¹⁴⁸ Request for Information for the 2021 Trafficking in Persons Report, 85 FR 77482.

¹⁴⁹ 22 USC 7103(d)(7).

¹⁵⁰ 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>.