



Freedom Network USA

July 22, 2022

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RE: Freedom Network USA's Response to OTIP's Request for Information on Forced Labor in Healthcare Supply Chains

Freedom Network USA (FNUSA)¹, 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 effective implementation of the law and that trafficking survivors receive the full array of legal and social services needed. 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.² FNUSA's long and diverse experience with survivors of human trafficking, and ongoing collaboration with survivors, allows us a unique and critical view into how proposed rules will impact survivors.

A. Monitoring Forced Labor in the Procurement of Healthcare Services

As an initial matter, it is important to note that the healthcare services industries are impacted by the same racist, exploitive conditions and systems that impact most labor sectors in the US and internationally. Therefore, many of the recommendations related to reducing, detecting, and enforcing accountability for forced labor in other industries are relevant to the healthcare

¹ More information on FNUSA is available on our website at <https://freedomnetworkusa.org/about-us/>.

² From January 1, 2019 to December 31, 2020, for example, our members worked with over 3,400 survivors. Freedom Network USA 2022 Member Report, available at https://freedomnetworkusa.org/app/uploads/2021/12/FRN_21121-Member-Report-2021_Final.pdf.

services sector. FNUSA has published multiple recommendations on addressing human trafficking, generally, and labor trafficking in particular.³

Specific examples of systemic forced labor in the healthcare services supply chain are related to the common immigrant visas used. Many healthcare workers, including nurses, nurses' aides, and home healthcare workers, are immigrants who have been recruited to enter the US on a visa related to their work. During the recruitment process, most are charged high fees by the home country recruiters which put them at high risk of abuse and exploitation. These debts are further exploited by the common practice of including 'breakage fees' in their contracts- requiring workers to pay the healthcare provider or placement agency an exorbitant fee if they leave their employer before the end of the contract. Contracts also routinely include non-compete clauses that make it prohibitively expensive for workers to leave an exploitive or abusive employer. These debts and contract clauses combine to create debt bondage- a form of forced labor. It is important to note that these contract clauses are generally unique to immigrant workers, an ongoing form of national origin discrimination.

Healthcare workers are often subcontracted from a placement or employment agency. This impedes worker protection. Placement and employment agencies are generally subjected to less oversight than healthcare facilities, allowing abusive agencies to go undetected. Workers may be abused or exploited by the agency and/or the work location. And both entities will assert that the other entity is responsible for addressing the problem, or will deny that the abuse is occurring. Workers are confused about how and where they should seek protection and assistance. Mobile and home healthcare workers, as well as those who work in rural and remote settings, are isolated from services and support. Immigrant workers on temporary visas are at extreme risk in these forms of employment.

Healthcare systems often contract out other vital services, including janitorial services, food service, laundry services, and other non-healthcare labor that is critical. These services are also rife with abuse and exploitation, disproportionately rely on BIPOC and immigrant workers, and dodge oversight. Healthcare systems avoid accountability for the treatment of these workers by hiring subcontractors.

³ Previous recommendations from FNUSA are included in: Freedom Network USA, *Freedom Network USA's Response to the Request for Information on Conducting Anti-Trafficking Work Using a Racial Equity Lens*, 2022, <https://freedomnetworkusa.org/app/uploads/2022/03/FNUSARaceEquityHTInput2022.pdf> ; Freedom Network USA, *Freedom Network USA's Input for the 2022 Trafficking in Persons Report*, 2022, <https://freedomnetworkusa.org/app/uploads/2022/04/FNUSA2022TIPReportInputFinal.pdf> ; Freedom Network USA, *Freedom Network USA's Comments to the UN Special Rapporteur on Labor Trafficking in Agriculture*, 2022, <https://freedomnetworkusa.org/app/uploads/2022/04/FNUSAInputLaborTraffickingAgricultureUNSpecialRapporteur-January2022.pdf> ; Freedom Network USA, *Continued Presence Challenges and Recommendations*, 2021, <https://freedomnetworkusa.org/app/uploads/2021/02/FNUSAContinuedPresenceChallengesRecommendationsFeb2020.pdf> ; Freedom Network USA, HEAL Trafficking, and the National Survivor Network, *Comments to HHS' Office on Trafficking in Persons on Human Trafficking Prevention*, 2019, <https://freedomnetworkusa.org/app/uploads/2020/02/FNUSA-Recommendations-for-HHS-OTIP-Prevention.pdf>

Immigrant workers are often unfamiliar with the US legal system, workers' rights and mechanisms for enforcement, and available legal services. They may face language barriers, cultural barriers, discrimination, and hostility in the workplace or the community in which they are working. They may fear law enforcement and government systems due to corruption and abuse in their home country. They may be fleeing persecution and exploitation in their home country. They may have extended family in their home country depending on their income for their survival. For these and myriad other reasons, immigrants working in the healthcare sector are at high risk of abuse and exploitation. The immigration system and common contracting practices capitalize on these vulnerabilities to exploit workers with little oversight or accountability.

There have been a variety of cases of forced and exploitive labor cases in healthcare settings. Nurses recruited from the Philippines have subjected to forced labor, visa fraud, and physical abuse. PhD students, reliant on student visas, abused and threatened with deportation while conducting vital healthcare research. Home healthcare workers have been subjected to forced labor in private homes. The Human Trafficking Legal Center maintains a database of all federal civil lawsuits alleging human trafficking in the US. They identified the following 13 cases involving allegations of forced labor in the healthcare sector:

Civil Cases in Healthcare Sector	Case No.	Jurisdiction
<i>Paguirigan v. Prompt Nursing</i>	1:17-cv-01302	E.D.N.Y.
<i>Delos Reyes v. Abundant Nursing</i>	1:19-cv-02596	E.D.N.Y.
<i>New York State Nurses Association v. Albany Medical Center</i>	1:19-cv-01265	N.D.N.Y.
<i>Govico v. Regal Heights Rehabilitation and Health Care Center, Inc. et al</i>	1:21-cv-02042	E.D.N.Y.
<i>Rondina v. Regal Heights Rehabilitation And Health Care Center, Inc. et al</i>	1:21-cv-01843	E.D.N.Y.
<i>Bahian et al v. Care Worldwide Inc. et al</i>	2:21-cv-13337	D.N.J.
<i>Aguirre v. Best Care Agency, Inc.</i>	2:10-cv-5914	E.D.N.Y.
<i>Magtoles et al v. United Staffing Registry, Inc. et al</i>	1:21-cv-01850	E.D.N.Y.
<i>Nowak v. United Staffing Registry, Inc.</i>	1:19-cv-06455	E.D.N.Y.
<i>Lo v. Management Health Systems, Inc.</i>	0:20-cv-61319	S.D.Fla.
<i>Matos Rodriguez v. Pan American Health Organization</i>	1:18-cv-24995	S.D.Fla.
<i>Cruz v. Management Health Systems, LLC</i>	9:19-cv-81601	S.D.Fla.
<i>Carmen v. Health Carousel, LLC</i>	1:20-cv-00313	S.D.Oh.

Policies and procedures, as well as programs provided by the healthcare sector can also put patients at high risk of forced labor. Unhoused patients who are discharged from healthcare centers without a safety plan or housing support placement are vulnerable to recruitment by traffickers. For example, there have been reports of traffickers preying on patients at pain management clinics. There are also substance use treatment centers that have been accused of engaging in forced labor as a form of substance use 'treatment,' including programs that have

been court ordered (therefore the victims are legally coerced into forced labor by the criminal legal system).⁴

FNUSA recommends the following actions to protect workers and thus the US' national interests in a safe and reliable healthcare sector.

1. Conduct targeted outreach and education for low-wage healthcare workers including: home healthcare workers, healthcare aides, and those providing alternative therapies.

Provide federal grant funding to community based, culturally specific organizations to provide know your rights training, information about worker protections and immigration protections, and connection to legal and social service providers. Support community based efforts to identify and support exploited workers, and hold abusers accountable.

2. Improve oversight for employment visas to eliminate common methods of financial abuse.

The federal government should review all contracts prior to issuing temporary worker visas to ensure that they do not include recruitment or placement fees, 'breakage fees' for workers who leave their employers, forced arbitration, or non-compete clauses. The justification for employment based visas is to meet a need that cannot be met by the US labor force. Therefore, they should be held to a higher standard than when hiring workers already present in the US. Currently, they are allowed to treat immigrant workers worse than US workers with fees and penalties that apply only to immigrants. These provisions are designed to create an exploitable workforce and should not be tolerated. Any employer that tolerates these provisions, either in their own contracts or via contractors, should be barred from sponsoring any further immigrant visas and should be investigated for possible forced labor.

3. Eliminate the use of forced labor from criminal legal system.

Court systems receiving federal funds should be barred from using forced labor disguised as treatment, including substance use, housing, and other programs. Forced and coerced labor should also be eliminated from all institutions used for detaining people in the US, including jails, prisons, and immigration detention centers.

4. Coordinate with current oversight authorities to identify and investigation forced labor.

Provide training to current mechanisms for oversight including state and local code and labor enforcement agencies, certification bodies, and workplace safety inspectors. Ensure that these agencies are trained to identify signs of abuse and exploitation and to report concerns to local authorities for investigation.

5. Reform employment based visas to ensure worker safety.

All employment based visas should provide protection to workers including visa portability, in-person know your rights education for all immigrants both at the time the visas are issued and upon the workers' arrival in the US (similar to the interviews conducted for A3/G5 workers), and require all federal agencies to improve coordination in barring known exploiters from sponsoring additional visas.

⁴ Jack Karp, *Law 360*, *All Work and No Pay: How Rehab Can Mean Forced Labor*, 2020, <https://www.law360.com/articles/1311467/all-work-and-no-pay-how-rehab-can-mean-forced-labor>; D. Michael Hancock and Joseph M. Sellers, *NBC News*, *Drug and alcohol rehab programs promise recovery through work – but deliver slave labor*, 2020, <https://www.nbcnews.com/think/opinion/drug-alcohol-rehab-programs-promise-recovery-through-work-deliver-slave-ncna1248861>; Reveal, "All Work. No Pay." 2021, <https://revealnews.org/topic/all-work-no-pay/>

6. Increase oversight of home healthcare workers and healthcare aides, and the certification, recruitment, and placement agencies that abuse and exploit them.

These workers are among the lowest paid, most likely to be contractors, and most isolated and remote workers. They are disproportionately BIPOC and immigrant workers. Alternative therapies, such as massage, acupuncture, and holistic care, are a growing sector of the healthcare industry but are subject to less oversight than traditional medical practices like hospitals and health clinics. These workers and the agencies and providers that employ them, are subject to minimal regulations and oversight, allowing for abuse and exploitation to flourish. They are paid substandard wages, while agencies often advertise false and deceptive claims that workers will be able to gain the skills and accreditation needed to move into higher paid positions. Increased oversight is needed to ensure that workers are provided with accurate information about their rights, are being paid minimum wage, and are being provided a safe workplace.

B. Monitoring Forced Labor in the Procurement of Healthcare Products

Forced labor is found throughout the supply chain. The healthcare sector is reliant on a variety of products that are known to be produced with forced labor including uniforms and bandages made of cotton grown, harvested, and processed with forced labor to medical equipment made with metals and precious stones mined and processed with forced labor. Healthcare facilities serve food including bananas, beef, coffee, beef, fish, and rice that have been grown, harvested, and processed with forced labor.⁵ Forced labor occurs throughout the supply chain, both outside of the US and also within the US. For example, there have been multiple reports of forced labor in the growth and harvesting of cannabis in the US.⁶

FNUSA recommends the following actions to protect workers throughout the supply chain and thus the US' national interests in a safe and reliable healthcare sector.

1. The FDA and other regulatory agencies involved with healthcare products must require certification of a supply chain free of forced labor.

Many healthcare products including medications, medical equipment, and medical products are subjected to oversight by the federal government to ensure that they are safe and effective. Additional requirements should be added to ensure that they are produced free of forced labor. Manufacturers, suppliers, and others should be required to trace and verify their supply chain, starting with items that include products that are known to the US government to be routinely produced by forced labor. Cannabis should be legalized in the US to allow federal oversight and protection of workers involved in the production of cannabis.

⁵ US Department of Labor, *List of Goods Produced by Child Labor or Forced Labor*, <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods-print>

⁶ Erin Brady, *Newsweek*, *Immigrants Working for Lucrative Illegal Pot Farms Cheated Out of Pay, Fear for Their Lives*, 2021, <https://www.newsweek.com/immigrants-working-lucrative-illegal-pot-farms-cheated-out-pay-fear-their-lives-1646139>; David Cooper and Sebastian Martinez Hickey, Economic Policy Institute, *Ensuring the High Road in Cannabis: Legalization Offers a Change to Make the Cannabis Industry a Model of Good Jobs- If Workers Are Given a Voice*, 2021, <https://www.epi.org/publication/ensuring-the-high-road-in-cannabis-jobs/>

2. Include certification of materials free of forced labor in the certification of healthcare institutions.

Similarly, institutions such as hospitals and clinics should be required to trace and verify they supply chain for the materials used in their facilities to ensure that they are free of forced labor.

C. Training and Public Awareness on Forced Labor in Healthcare Supply Chains

Healthcare executives, procurement officers, and regulators need to understand the common indicators of forced labor, and the most common examples that are likely to impact their part of the healthcare system. They must understand their role in identifying and responding to forced labor, and the risks and penalties for failing to act. And they must be held accountable for their reliance on forced labor for goods and services.

FNUSA recommends the following actions to ensure awareness of forced labor in healthcare supply chains.

1. The federal government should produce training materials for healthcare executives and procurement officials.

Federal agencies have already produced, either directly or through contractors and grantees, extensive training and educational materials on identifying forced labor in supply chains for procurement professionals. These materials should be localized for specific healthcare sectors to be relevant and useful for immediate implementation. Training should be provided for healthcare administrators at relevant conferences.

2. The Department of Labor should produce a report on goods produced by forced labor that are in common use in the healthcare supply chain.

DOL already produces a general list, they should refine the list and demonstrate the finished products used by the healthcare sector that are produced with forced labor. The list should be provided to healthcare systems in coordination with training and outreach on eliminating forced labor from the healthcare sector.

D. Research and Data on Forced Labor in Healthcare Supply Chains

Research and data on forced labor is needed, especially research specific to forced labor that occurs within the US. Much of the current research, including the DOL List of Goods Produced with Child Labor or Forced Labor, exclusively focus outside of the US.

Research already shows us that immigrants in the healthcare sector are routinely subjected to abuse and exploitation, including forced labor.⁷ Additional reports show how workers across employment visa categories are similarly abused and exploited and demonstrate the need for comprehensive reform of the US immigration system to address forced labor.⁸

⁷ Pittman and Pulver, New England Journal of Medicine, “Unethical International Nurse-Staffing Agencies – The Need for Legislative Action,” 2020, <https://www.nejm.org/doi/10.1056/NEJMp1913727>;

⁸ Centro de los Derechos Del Migrante, Inc., *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program*, 2020, <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf>; Colorado Legal Services, *Overworked and Underpaid: H-2A Herders in Colorado*, 2010, <https://humantraffickinghotline.org/sites/default/files/Overworked%20and%20Underpaid%20-%20CLS.pdf>; International Labor Recruitment Working Group, *Shining a Light on Summer Work: A First Look at the Employers*

Geo mapping of data on temporary worker visas for healthcare related work and workplace violations can identify workers at high risk of forced labor. This approach has been used by NGOs to identify agricultural workers at high risk, and to focus outreach, education, and resources to those workers. Similarly, this could prioritize locations for culturally specific outreach, education, and services for healthcare workers. It can also be used to focus additional investigation and oversight by government agencies.

Additional research should be conducted to understand the racial equity implications of the disproportionate employment of BIPOC and immigrants in low-wage occupations within the healthcare sector, and to identify the barriers to upward mobility into higher paid occupations. Additional resources, training, financial support, or changes to admissions requirements that are needed to overcome this systemic racism must be identified and provided to eliminate the ongoing discrimination.

I hope that you find this information helpful. Please contact me (jean@freedomnetworkusa.org) if you have any questions or need further information.

Sincerely,



Jean Bruggeman
Executive Director
Freedom Network USA

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>