



Freedom Network USA

February 1, 2023

VIA EMAIL to tipreportUS@state.gov

TIP Ambassador Cindy Dyer
US Department of State
Office to Combat and Monitor Trafficking in Persons (JTIP)
2201 C Street NW, SA-09 Suite NE3054
Washington DC 20520

RE: Freedom Network USA's Input for the 2023 Trafficking in Persons Report

Dear Ambassador Dyer:

Freedom Network USA (FNUSA), established in 2001, is a coalition of 92 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, and 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 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 the systemic marginalization of Native people, LGBTQIA individuals, immigrants, Black and Brown people, and low-income communities. This marginalization causes abuse and exploitation, including human trafficking, and reduced access to protection, services, and support. 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, safe living-wage employment, medical and mental health care, effective child and family support, and immigration relief, coupled with ongoing discrimination against Black and Brown people, immigrants, and LGBTQIA individuals, are all direct contributors to vulnerability. A significant reduction in human trafficking requires significant changes to the systems that have put these communities at risk. It requires expanded social services and support for those most vulnerable to exploitation and abuse. There must be significantly increased access to health and mental healthcare, protections for LGBTQIA individuals, and legal status for immigrants. We must transform systems of accountability to end the ongoing horror of police violence against Black and Brown people. The impact of these systemic issues has been exacerbated by the COVID-19 pandemic, where gig workers, sex workers, and immigrants have been excluded from relief packages, and Black and Brown people have been 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 and providing legal representation for system-involved children, 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 bans on books with protagonists of color or discussing race and racism,⁷ and restrictions on voting rights⁸ 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 Black and Brown people, but also to provide redress for the harm suffered and to invest in communities that have been impoverished and exploited. Specific recommendations include the 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 and mental healthcare for all.

Immigrant Communities

The US Government's immigration policies have long been rooted in racism.⁹ It is incredibly difficult for immigrant survivors of human trafficking to come forward and government-led discrimination and xenophobia¹⁰ 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," family separation, and Remain in Mexico policies enacted by the previous Administration at the US-Mexico border.¹¹ The continuation of the Title 42 exclusions at the southern border leaves

⁵ 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 Jonathan Friedman and Nadine Farid Johnson, PEN America Experts, *Banned in the USA: The Growing Movement to Censor Books in Schools*, 9/19/2022, <https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools/>

⁸ 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>

⁹ 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

¹⁰ Miriam Jordan, *The New York Times*, *GOP Governors Cause Havoc by Busing Migrants to East Coast*, 9/15/22,

<https://www.nytimes.com/2022/08/04/us/migrants-buses-washington-texas.html>

¹¹ Erica Bryant, Vera, *Children Are Still Being Separated from Their Families at the Border*, 6/23/2022,

<https://www.vera.org/news/children-are-still-being-separated-from-their-families-at-the-border>

Aguilera, Jasmine, *TIME*, *The 'Remain in Mexico' Policy Is Officially Over. But Hundreds of Migrants Are Still Stuck in Mexico*, 8/29/2022, <https://time.com/6208555/remain-in-mexico-mpp-program-unwind/>

immigrants subject to inhumane conditions in shanty settlements where they are frequently abused and exploited by gangs, and have limited access to the legal and social services needed to heal from the trauma they are fleeing.¹² Even after these policies are discontinued, they have caused lasting harm. Immigrants registered under the Remain in Mexico program before its winddown faced delays of weeks or months to be removed from the program, facing increased vulnerability to exploitation while waiting for their next court date to be allowed to enter the United States.¹³ Immigrants remain fearful of accessing 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.

FNUSA is also concerned about the impact of Title 42 on asylum seekers expelled from the United States. Over 13,000 reports of acts of violence against asylum seekers who were expelled to Mexico have been reported since the Biden Administration began.¹⁴ Title 42 makes asylum seekers more vulnerable to exploitation by returning them to places where they are likely to experience persecution or violence. Migrants have the right to seek asylum in the United States, and the US has an obligation to prevent further harm to asylum seekers.

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 is 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 immigrants, especially those who are Black, Brown, and LGBTQIA.*

LGBTQIA and Two Spirit Communities

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 protections.¹⁶ Scaling back these limited protections causes further marginalization and increases vulnerability to exploitation and abuse, particularly for LGBTQIA

¹² 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.

¹³ Aguilera, Jasmine, TIME, *The 'Remain in Mexico' Policy Is Officially Over. But Hundreds of Migrants Are Still Stuck in Mexico*, 8/29/2022, <https://time.com/6208555/remain-in-mexico-mpp-program-unwind/>

¹⁴ Human Rights First, *Human Rights Stain, Public Health Farce*, 12/15/2022, <https://humanrightsfirst.org/wp-content/uploads/2022/12/HumanRightsStainPublicHealthFarce-1.pdf>

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

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>

youth, who are often pushed out of their homes due to discrimination. A recent rise in anti-LGBTQIA policies and violence, including banning books with LGBTQIA themes or protagonists,¹⁷ violence and threats of violence directed towards LGBTQIA community gatherings,¹⁸ and proposed legislation to restrict and censor drag shows,¹⁹ present greater threats to the rights of the LGBTQIA community and further marginalization. Additionally, discrimination by law enforcement agencies often results in the inability of law enforcement to recognize the trafficking of transgender survivors.

Recommendation: *The US Government must engage in a proactive effort to increase services, protection, and support for LGBTQIA and Two-Spirit communities and individuals.*²⁰

LGBTQIA and Two Spirit Immigrants

In light of the rollbacks in protection for both immigrants and LGBTQIA individuals, LGBTQIA immigrants are especially 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,²¹ 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.²² 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.²³ 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

¹⁷ Jonathan Friedman and Nadine Farid Johnson, PEN America Experts, Banned in the USA: The Growing Movement to Censor Books in Schools, 9/19/2022, <https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools/>

¹⁸ Trent Brown, Texas Tribune, *Texas drag shows become a right-wing target amid rising extremism*, 10/9/2022, <https://www.texastribune.org/2022/12/09/texas-drag-shows-all-ages-family-friendly/>

¹⁹ Edward Hellmore, The Guardian, *Republican legislators introduce new laws to crack down on drag shows*, 1/21/2023, <https://www.theguardian.com/world/2023/jan/21/anti-drag-show-laws-bans-republican-states>

²⁰ 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/>

²¹ 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>

²² 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>

²³ 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>

the chaos of the pandemic by finding new ways to capitalize on the increased vulnerabilities.²⁴ The US Government's continued closure of the border under Title 42 and related policies into 2023 left migrants, including trafficking survivors and asylum-seekers, in unsafe and unhealthy conditions in violation of US and international humanitarian laws.²⁵

In addition to the already inhumane environment created by US immigration policy, transgender immigrants detained by the US Government are held in horrific conditions and denied needed healthcare.²⁶ 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 the detention of immigrants and close all privately run immigration detention facilities.²⁷ If LGBTQIA immigrants are detained, they must be provided ongoing gender-affirming healthcare and be placed according to their gender identity. 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 and permanently 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 (AI/AN) communities have been subject to abuse, internment, displacement, forced sterilization, and attempted genocide by the US Government.²⁸ These communities continue to experience generational trauma leading to

²⁴ <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

²⁵ Department of Homeland Security, *DHS Continues to Prepare for End of Title 42; Announces New Border Enforcement Measures and Additional Safe and Orderly Processes*, 1/5/2023 <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>

White House, *FACT SHEET: Biden-Harris Administration Announces New Border Enforcement Actions*, 1/5/2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/05/fact-sheet-biden-harris-administration-announces-new-border-enforcement-actions/>

²⁶ 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>

²⁷ 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>

²⁸ 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>

increased violence and substance abuse rates.²⁹ The recent court cases attempting to chip away at the Indian Child Welfare Act threaten the sovereignty of tribes, their ability to self-govern, and legal protections for Native children.³⁰ Sex and labor trafficking of Native people are 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 they need to heal and grow, creating vulnerabilities for AI/AN community members on and off reservations.³¹

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 adults engaged in consensual commercial sex work.³² This puts sex workers in a state of constant vulnerability. They are vulnerable to abuse and exploitation by 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.³³ 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 in law enforcement. Criminal records from multiple prostitution arrests limit the ability of sex workers and trafficking survivors to

²⁹ 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>

³⁰ Rebecca Nagle, *The Nation*, *The Story of Baby O—and the Case That Could Gut Native Sovereignty*, 11/9/2022, <https://www.thenation.com/article/society/icwa-supreme-court-libretti-custody-case/>

³¹ 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

³² Freedom Network USA, *Human Trafficking and Sex Worker Rights*, April 2015, <https://freedomnetworkusa.org/app/uploads/2018/07/HT-and-Sex-Workers-Rights.pdf>

³³ 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-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/>.

access education, alternative employment, housing, social services, and respect.³⁴ While states are increasingly decriminalizing minors engaged in commercial sex work, those over the age of 18 are routinely arrested. Together, these factors put sex workers at high risk of human trafficking.³⁵

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.³⁶ Whereas sex workers previously could use online platforms to work more safely and independently, FOSTA has caused many sex workers to rely on intermediaries, leading to an increased risk of sex trafficking. One study found that Craigslist's 'Erotic Services' section reduced the female homicide rate by over 17 percent.³⁷

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.*³⁸

³⁴ *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>

³⁵ Freedom Network USA, 2016 Member Report, *Spotlight: Criminalization of Sex Work*, <https://freedomnetworkusa.org/app/uploads/2016/12/Member-Report-2015-Electronic-Version.pdf>.

³⁶ 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; Siouxsie 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 are Preying on Sex Workers Pushed Off of the Web Because of FOSTA-SESTA, *Motherboard*, April 30, 2018, https://motherboard.vice.com/en_us/article/bjqqvz/fosta-sesta-sex-work-and-trafficking; COYOTE RI, *Four Years of FOSTA: the Survey*, <https://www.swopbehindbars.org/so/5dOD1Yfon/c?w=kJEovD72L3ryrjlbjlluZbQ7tCK3lyqWxQIE-f8dFxE.eyJ1joiaHR0cHM6Ly9mNmEzZDg4Mi1iN2UwLTQ5M2ItYmNjYy0zMjMzNTc1ZTQ2OWYudXNyZmlsZXMuY29tL3VnZC80YTBlOGNmZzc4NmM3NTM3MjJkNDU5YmI3Y2I0YjhjYWQ0ZTAwMGUucGRmP2RuPUZvdjZJZWYyc09mRm9zdGEucGRmliwicil6ljFjYzU1NDY2LWNmOTMtNDJmMjAwLWZlMGZiOWZlMDIxMCIslm0iOiJtYWlsX2xwliwiYyI6ljQ2MjI4MmYxLTg1ZDYtNDk4OS05NmY2LTNkMzg5N2UxMmEwNSJ9>

³⁷ 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.scutting.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

³⁸ 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

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 are necessary to correctly identify this population.³⁹ 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: *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 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 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 live safely in the US. FNUSA provided recommendations for multiple critical actions in December 2020.⁴⁰ Multiple reports have

³⁹ 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>.

⁴⁰ 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>

documented the reversal of many of the most egregious policies, including the ‘Muslim ban,’ revisions to public charge, and revocation of the NTA policy.⁴¹ It is also notable that the HHS Office of Refugee Resettlement is taking a much less harmful approach to its role in protecting UACs and no longer denies UACs access to comprehensive medical care. However, many harmful policies remain, including under Title 42 and its proposed replacements 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.⁴²

The establishment of the DHS Center for Countering Human Trafficking (CCHT) 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 Guide,⁴³ along with the improvements in the processing of Continued Presence (CP) applications, is very helpful. However, federal law enforcement still rarely requests CP, and local law enforcement agencies do not have the authority to do so independently. The CCHT has created barriers to CP for those who have filed civil trafficking cases, by requiring them to work with their local HSI Office instead of allowing them to apply directly with CCHT. 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. The processing times for T Visas came down to a median of 12.9 months in FY22, after being over 18 months for two years.⁴⁴ The approval rate for T Visas also increased to be more aligned with historical averages, reducing the number of denials. USCIS has also committed to re-establishing stakeholder communication to improve access to protection for survivors, a critical step to improve transparency and improve the US Government’s response to challenges faced by survivors.

The DOJ Office for Victims of Crime (OVC) has improved access to services and protection for trafficking survivors. OVC began to require task forces to have a proactive plan for investigations and state they will not arrest, charge, or prosecute victims of trafficking or require a victim to collaborate with law enforcement in order to receive services. The funding also can not be used to support operations that arrest sex workers in order to screen for sex trafficking victims or do not identify any real victims.⁴⁵ After many years of advocacy from service providers and survivors,⁴⁶ OVC included a grant specifically for serving child survivors of

⁴¹ 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>

⁴² 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>

⁴³ 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>

⁴⁴ USCIS, *Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year*, <https://egov.uscis.gov/processing-times/historic-pt>

⁴⁵ OVC, *OVC FY 2022 Enhanced Collaborative Model Task Force to Combat Human Trafficking*, <https://ovc.ojp.gov/funding/opportunities/o-ovc-2022-171264>

⁴⁶ FNUSA, *FY2022 Human Trafficking Funding Recommendations*, 12/17/2021, <https://freedomnetworkusa.org/app/uploads/2021/12/FY22FNUSAFundingRecs.pdf>

labor trafficking.⁴⁷ This grant represents an important step forward, but more funding needs to become available to serve all survivors of labor trafficking.

The Consumer Financial Protection Bureau finalized its rule, creating a process for survivors of trafficking to request the removal of adverse information resulting from human trafficking to be removed from credit reports.⁴⁸ While the rule presents a new opportunity for survivors to remedy some of the financial harms of trafficking and access previously blocked economic opportunities, there are few resources available to assist survivors in filing the documentation with credit reporting agencies, creating barriers to access for many.⁴⁹

2. Greatest Deficiencies

Overall, the US government fails to directly address the systemic factors that enable trafficking. The US response has focused mostly 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.

In 2022, the US Congress failed to fully reauthorize the TVPA, the critical legislative framework for the US anti-trafficking response. A package of four bills was introduced during the 117th Congress to reauthorize the existing victim services programs and establish new protections for survivors. Unfortunately, Congress failed to pass the full package before the end of the session, passing only two bills and leaving critical provisions out of the law, including reauthorizations for the Department of Justice and Department of Health and Human Services victim services programs.

The US Government must also improve its implementation of the protections outlined in the TVPA. Law enforcement rarely requests Continued Presence for immigrant survivors of human trafficking, leaving them unprotected for years while their T Visas are pending. Survivors who have been granted T Visas face long waits to obtain Social Security Numbers and issues accessing public benefits when SSNs are delayed or not recognized by the appropriate agencies. Sex trafficking survivors continue to be denied restitution, even in federal cases where restitution is mandatory.

⁴⁷ OVC, *OVC FY 2022 Services for Minor Victims of Labor Trafficking*, <https://ovc.ojp.gov/funding/opportunities/o-ovc-2022-171292#:~:text=The%20purpose%20of%20this%20program,they%20were%20under%20age%2018.>

⁴⁸ CFPB, *Final Rule: Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V); Correction*, 6/24/2022, <https://www.consumerfinance.gov/rules-policy/final-rules/prohibition-on-inclusion-of-adverse-information-in-consumer-reporting-in-cases-of-human-trafficking-regulation-v/>

⁴⁹ FNUSA, *Freedom Network USA's Response to Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking*, Docket No. Bureau-2022-0023 or RIN 3170-AB12, 5/9/2022, <https://freedomnetworkusa.org/app/uploads/2022/05/FNUSACommentsCFPBAverseInformationRule9May2022.pdf>

Federally funded services remain time-limited, focused only on immediate crisis intervention, leaving survivors of all nationalities struggling to heal from their experience fully. In addition, a new grant cycle for the Trafficking Victims Assistance Program funded by the Department of Health and Human Services Office on Trafficking in Persons (OTIP) began in October 2022, but the grantee and OTIP failed to transition the program properly. The program ended abruptly at the end of September with little warning for service providers and clients. Survivors served by the program rely on the funding to pay for housing, medical, transportation, and legal costs. When the program ended, clients were left without access to this funding and put into precarious financial situations due to the failure to ensure a transition plan was in place. Only after direct advocacy by FNUSA with OTIP were survivors re-enrolled in the program in November, but not without experiencing distress and loss of trust in the program's providers.⁵⁰ The new version of the grant program is providing significantly less funding for clients in order to reallocate funding for the grantee to set up new offices with social workers available to clients, but these offices are not yet in place and it remains unclear when they will be staffed, how many survivors they will serve, and how effective this new strategy will be.

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 with varying criminal record relief options.⁵¹ There is no criminal record relief for federal convictions.⁵² FNUSA's Survivor Reentry Project⁵³ is supporting over 113 survivors working to clear criminal records of a total of over 850 charges, including Prostitution (50%), Drug Offenses (10%), Theft/Larceny (9%), Trespass/Loitering (6%), Forgery/false Documents (5%), Assault/Battery (3%), Robbery (2%), and Other (15%).

3. Impact of the COVID-19 Pandemic

As FNUSA has noted in our previous TIP Report submissions, the US Government continued to act to undermine the Trafficking Victim Protection Act (TVPA) protections, severely harm trafficking survivors, and increase the risk of trafficking in 2022 through a xenophobic response to COVID-19 enacted under Title 42 of the Public Health Service Act and its replacement anti-asylum policies. While the US Government claims the policies are needed to protect public health, numerous experts and reports have shown that Title 42, and similar, exclusions place public health at further risk by leaving immigrants, including trafficking survivors, extremely vulnerable to crime and overexposure to the virus.⁵⁴ On March 20, 2020, the Center for Disease

⁵⁰ Freedom Network USA, *Letter to OTIP: Disruptions to TVAP Funding for Human Trafficking Survivors*, 10/26/2022, <http://freedomnetworkusa.org/app/uploads/2022/12/TVAP-Urgent-Letter-to-HHS-Oct2022.pdf>

⁵¹ Freedom Network USA, *Criminal Record Relief Laws for Survivors*, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>

⁵² 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/>

⁵³ Freedom Network USA, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>

⁵⁴ 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,

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.⁵⁵ 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.⁵⁶ In May 2022, the Center for Disease Control attempted to end Title 42 but faced a court order from a federal judge to continue its use. The policy was expanded to expel asylum seekers from Venezuela at the US Southern Border without allowing them to apply for asylum. In November 2022, a federal judge ruled Title 42 unlawful, but the following month, the ruling was put on hold until other issues related to Title 42 are litigated. While the Administration claims to exempt unaccompanied children from the ongoing Title 42 exclusions, they were still unable to enter the US due to continued closures at lawful ports of entry.⁵⁷ Thus trafficked adults and minors are being denied protection from the US Government, violating US and international law, due to the COVID policies. For new immigrants who can enter the US, basic needs like language classes and housing assistance are more difficult to obtain due to the slow rollout of relief funding and service providers with unprecedented waitlists. This means workers are taking more dangerous jobs in order to stay housed despite the ongoing pandemic.

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.⁵⁸ Domestic workers often work excessive hours, have no access to

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, 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-it-s-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>.

⁵⁵ <https://www.govinfo.gov/content/pkg/FR-2020-03-26/pdf/2020-06327.pdf>

⁵⁶ 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>.

⁵⁷ 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/>

⁵⁸ 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*

employer-sponsored health insurance, and must be in close contact with their employers.⁵⁹ There were no programs developed by the US Government to reach out to these workers with information about COVID or personal protective equipment (PPE) 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 to provide workers with temporary assistance while they could not work due to COVID.

The emergence of Monkeypox in the US in 2022 put additional strain on these workers. Domestic workers and sex workers were both at an increased risk of contracting Monkeypox at work and received little to no support in obtaining vaccinations, PPE, or financial support.⁶⁰ Throughout the COVID-19 pandemic and the Monkeypox outbreak, sex workers have had to choose between having enough money to survive and using more dangerous practices.⁶¹ The spread of both viruses has created long-term financial impacts that decrease the safety of workers, resulting in increased vulnerabilities to exploitation.

The decreased availability of services like emergency shelters due to the risks of staying in close confines during the pandemic can incentivize people to avoid seeking shelter assistance and prevent them from obtaining housing, a risk factor for trafficking. Hospitals, which are often the only intervention for survivors outside of law enforcement, are consistently at, or close to, full capacity, preventing survivors from accessing care.

It is also essential to note Long COVID is creating new chronic health problems and disabilities, preventing people from working full-time or at all. Long COVID is not recognized as a qualification for Social Security Disability Insurance benefits, leaving many suffering from this new and confusing illness without access to funds for medical care or basic needs like housing and food. These economic and health strains increase financial precarity and vulnerability.⁶²

Recommendation: *The US Government must comply with US and international law to allow*

its COVID-19 Pandemic Response, 3/28/2021, <https://centerforhealthjournalism.org/fellowships/projects/how-florida-left-farmworkers-out-its-covid-19-pandemic-response>

⁵⁹ National Domestic Workers Alliance, *6 Months in Crisis: The Impact of COVID-19 on Domestic Workers*, October 2020, [https://www.domesticworkers.org/wp-content/uploads/2021/06/6 Months Crisis Impact COVID 19 Domestic Workers NDWA Labs 1030.pdf](https://www.domesticworkers.org/wp-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>

⁶⁰ Alan Nunez, *Al Día*, *8 in 10 Latino Domestic Workers concerned with Monkeypox exposure at work according to new survey*, https://aldianews.com/en/politics/policy/monkeypox-fears?fbclid=IwAR1MDK-wzMZiORLtc3Sj913Ngzls2UIEHibE_EYZ5cZHh16-Jt1PzkDJ-Jg

⁶¹ Steffanie Strathdee, et al., *The Lancet Infectious Diseases*, 10/13/2022, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9556054/>

⁶² Katie Bach, Brookings, *New Data Shows long Covid is keeping as many as 4 million people out of work*, 8/24/2022, <https://www.brookings.edu/research/new-data-shows-long-covid-is-keeping-as-many-as-4-million-people-out-of-work/>

asylum-seekers entry into the US⁶³, 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.⁶⁴ The post-COVID social safety net should be expanded as a form of prevention to include more protections for people with Long COVID and services like housing assistance.

4. Additional Information/Recommendations

FNUSA provided recommendations for immediate actions that the US Government could implement to improve the US response to human trafficking, including recommendations for specific federal agencies as well as whole of government actions.⁶⁵

5. Effective Strategies/Best Practices

Worker-driven social responsibility⁶⁶ shows promise when the government refuses to act. The Coalition of Immokalee Workers Fair Food Program⁶⁷ and Milk with Dignity⁶⁸ are two examples of successful implementation of this approach in agricultural sectors in the US. Additionally, California's Little Hoover Commission has issued a series of reports laying out what should be done at the state level to identify labor trafficking⁶⁹, coordinate a state-wide response⁷⁰, and help victims.⁷¹

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 become more

⁶³ Joint Letter Calling for Restoration of Asylum System, 2/9/2021,

<https://freedomnetworkusa.org/app/uploads/2021/08/LetterBidenExecutiveOrders.2.9.21.pdf>

⁶⁴ 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

⁶⁵ 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>

⁶⁶ Worker-Driven Social Responsibility Network, *What is WSR?*, <https://wsr-network.org/what-is-wsr/>

⁶⁷ 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/>

⁶⁸ Worker-Driven Social Responsibility Network, *Milk with Dignity*, <https://wsr-network.org/success-stories/milk-with-dignity/>

⁶⁹ 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>

⁷⁰ 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>

⁷¹ 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>

challenging to navigate due to COVID, along with extraordinary delays in access to justice.⁷² With limited funding for enforcement by the Department of Labor (DOL) and Equal Employment Opportunity Commission (EEOC), workers, especially low-wage workers, are left with few protections.⁷³

The US Government's immigration policies put immigrants and migrant workers at high risk of labor trafficking. At the same time, the government also fails to invest in the identification and prosecution of labor trafficking.⁷⁴

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 DOL Wage & Hour Investigations department should be expanded to include enough investigators to properly investigate cases and be provided with sufficient funding to fulfill its mandates. 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.*

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.⁷⁵ 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

⁷² 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/>

⁷³ 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/>

⁷⁴ 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>

⁷⁵ 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>

dozen states have chosen to extend their efforts to include child labor trafficking, most have not.⁷⁶

In 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.⁷⁷ Protections for children within the system are also insufficient to prevent trafficking by foster parents and ensure safe placements for all children.

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 to include questions on child labor trafficking in the survey of 50 states conducted by this Committee.⁷⁸ States must ensure their child welfare systems prevent, identify, and serve victims of all forms of trafficking. 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 include child labor trafficking specifically.

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. In FY21, the Department of Justice (DOJ) initiated a total of 228 federal human trafficking prosecutions, the first increase after three years of declining prosecutions, which is still lower than the 230 cases in FY18.⁷⁹ DOJ charged 347 defendants in FY21, an increase from 337 in FY20, but a decrease from 386 in FY18, and a dramatic decrease from 553 defendants in FY17.⁸⁰ The cases continue to involve predominantly sex trafficking (221 prosecutions), with only 7 prosecutions involving predominantly labor trafficking, which is less than half of the labor trafficking cases in each of the last four years.⁸¹ ***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 AG Reports as soon as possible.*** The available data indicates that

⁷⁶ CAST, *Child Labor Trafficking in California*, October 2019, <https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf>

⁷⁷ CAST, *Child Labor Trafficking in California*, October 2019, <https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf>

⁷⁸ 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>

⁷⁹ 2022 TIP Report.

⁸⁰ 2022 TIP Report.

⁸¹ 2022 TIP Report.

approximately 97% of DOJ's prosecutions and convictions are for sex trafficking cases, and only 3% are for labor trafficking cases.⁸²

However, service providers 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.⁸³ DOJ's human trafficking services grantees served 10,070 trafficking survivors from July 2020 to June 2021, an increase from 9,854 in the prior year; 61% were victims of sex trafficking, 23% labor trafficking, and 7% both sex and labor trafficking.⁸⁴ This distribution was very similar to the previous year. HHS-funded service providers reported that the majority of foreign national trafficking survivors they supported were labor trafficking survivors (68% labor, 20% sex trafficking, and 9% labor and sex). The distribution of US Citizen and Lawful Permanent Resident survivors included 45% sex trafficking survivors, 4% labor, and 4% both sex and labor trafficking, with 45% unknown.⁸⁵

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

Law enforcement has relied on a set of indicators of potential trafficking to investigate online advertisements for potential human trafficking. These indicators are widespread and have previously not received much study into their efficacy. These indicators have even spread to be used by financial institutions to shut down accounts and prevent sex workers acting legally from accessing their payments. Recently, the DOJ National Criminal Justice Reference Service published a study assessing the likelihood of often-used indicators to point to human trafficking or to consensual sex work. Many of the indicators commonly used to trigger human trafficking investigations were found not to be significant predictors of human trafficking.⁸⁶ The methods used by law enforcement to investigate potential human trafficking should be thoroughly evaluated to ensure resources are not wasted and potential harms to sex workers and trafficking victims are limited.

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 into labor trafficking, and the associated failure to protect immigrant trafficking survivors.*

⁸² 2022 TIP Report.

⁸³ 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.

⁸⁴ 2022 TIP Report.

⁸⁵ 2022 TIP Report.

⁸⁶ Kristina Lugo-Graulich and Leah Meyer, NCJRS, *Law Enforcement Guide on Indicators of Sex Trafficking in Online Escort Ads*, 12/2022, <https://www.ojp.gov/pdffiles1/nij/grants/305699.pdf>

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 and those soliciting and patronizing consensual sex workers.⁸⁷ 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, despite the harm being caused. Arresting those engaged in consensual transactions between adults does not identify traffickers or trafficking victims.⁸⁸ Instead, it traumatizes sex workers and makes it harder for them to engage in harm-reduction tactics, the resulting criminal records, shame and stigma make it harder for sex workers to choose other employment. It also disproportionately impacts BIPOC and immigrant communities, who are more severely harmed by an arrest and less likely to avoid prosecution or conviction.⁸⁹

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 support those who are seeking alternative occupations. The US Government*

⁸⁷ 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”)

⁸⁸ 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

⁸⁹ 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=rregc>

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.

10. Prosecutions to Hold Private Employers or Corporations Accountable for 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. While the US Customs and Border Patrol (CBP) is increasingly using Withhold Release Orders to address the importation of goods made with forced labor, forced labor that occurs within the borders of the US continues with near impunity.⁹⁰

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 into 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 designed to force suspected or confirmed survivors into services under the threat of incarceration, which is not trauma-informed and causes harm to survivors who are criminalized for their victimization.⁹¹ Judges also require more training on safe harbor statutes, criminal record relief, and affirmative defense options for trafficking survivors in states where those remedies are available.

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 government attorneys, provide the government with more flexibility (such as with filing deadlines and continuances), 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*

⁹⁰ 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>

⁹¹ 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>

inclusive of labor and sex trafficking, of US Citizens and foreign nationals, of all ages and gender identities. Training and technical assistance should be expanded to include safe harbor statutes, criminal record relief, and affirmative defense options as those remedies become available. 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 immigrants, and establish an independent immigration court system, including specialized courts for minors⁹², to protect the rights of immigrant trafficking survivors.⁹³

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.⁹⁴ 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 take any action against the corporations involved, shows the US Government’s continued complicity in these acts of human trafficking.⁹⁵ Courts are also ordering defendants to complete sentences in rehabilitation facilities that require participants to work without pay, sometimes in dangerous conditions.⁹⁶

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 during their investigation of the very victimization that the law enforcement

⁹² 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/>

⁹³ 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/>

⁹⁴ 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.

⁹⁵ 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>.

⁹⁶ Shoshana Walter, *Reveal News*, *At hundreds of rehabs, recovery means work without pay*, 7/7/2020, <https://revealnews.org/article/at-hundreds-of-rehabs-recovery-means-work-without-pay/>

agents were committing.⁹⁷ State and local agencies often engage in the same type of abuse during investigations of sex work and massage parlors.

In addition, the US Government is enabling forced labor through a failure to properly screen visa applications for employers who are not attempting to hide their intention to violate federal labor and trafficking laws. In a recent case in New York, nurses from the Philippines working in the US on EB-3 visas experienced forced labor and left their jobs, only to be prosecuted by the US Government for leaving the abusive employer without enough staff to support patients. The US Government approved the employment contracts to grant visas for the nurses despite clauses preventing the workers from leaving despite exploitative working conditions.⁹⁸ These types of contracts are approved in many visa cases despite the intention for harm being visible in the contract language. The US Government is failing to screen potential abusive employers out of the visa pool and, in turn, sanctioning the forced labor occurring under its guestworker visa programs.

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. The US Government should also increase the oversight of visa applications to ensure employers intentionally subjecting workers to abusive employment contracts are held accountable and unable to apply for any foreign worker visas. 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 Efforts to Identify Victims of All Forms of Trafficking

The US Government's 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 ensure 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

⁹⁷ 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>

⁹⁸ Freedom Network USA, *FNUSA and the Human Trafficking Legal Center File Amicus Brief Asserting the Rights of Survivors Who are Unjustly Prosecuted*, 1/12/2023, <https://freedomnetworkusa.org/app/uploads/2023/01/Anilao-Amicus-Brief-As-Filed.pdf>

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.”⁹⁹ The Trafficking Victims Protection Act of 2017 requires the Department of Justice (DOJ) to establish a similar 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.”¹⁰⁰ Neither protocol has been developed despite 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 that might protect them from deportation, especially when they live in rural areas with limited legal services or are held in immigration detention.¹⁰¹

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 required to report their trafficking experience to law enforcement, only 16% submitted the I-914 Supplement B documentation provided by law enforcement.¹⁰² Law enforcement agencies also continue to fail to apply for Continued Presence to provide immediate protection to foreign national trafficking survivors.¹⁰³

Recommendation: *FNUSA recommends that DHS and DOJ jointly convene a working group of survivors and service providers to provide guidance 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 consistently provide support for foreign national survivors in the form of Continued Presence.*

⁹⁹ Pub L 115-392.

¹⁰⁰ Pub L 115-393.

¹⁰¹ 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/>

¹⁰² USCIS, *Characteristics of T Nonimmigrant Status (T Visa) Applicants*, January 2022

¹⁰³ Freedom Network USA, *Continued Presence Challenges and recommendations*, 2/18/2021, <https://freedomnetworkusa.org/app/uploads/2021/02/FNUSAContinuedPresenceChallengesRecommendationsFeb2020.pdf>

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. Survivors may not want to report their cases to law enforcement due to fear of retaliation, deportation, or further trauma from an investigation. They may belong to a community that is subjected to routine over-policing and refuse to engage with law enforcement due to the harms committed in their community. Survivors may have been personally subjected to abuse, exploitation, or false arrests by law enforcement in the past. This conflation of opposite and ethically conflicting duties harms 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.¹⁰⁴

Recommendation: FNUSA recommends that the US Government immediately cease using the National Human Trafficking Hotline as a law enforcement tipline, discontinue 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. FNUSA further recommends the immediate publication of the evaluation study of the National Human Trafficking Hotline.

16. Victim Services

FNUSA notes that the US Government provides significant funding for services for human trafficking survivors. 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 insufficient, 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 its progeny have expired, and the 117th Congress failed to reauthorize them before the session ended. The TVPA funding authorizations also include two harmful restrictions. First, the ‘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 that express opposition to the End Demand framework do not qualify 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 to work in the field, replicating coercive patterns. This clause also explicitly violates the First Amendment in seeking to restrict or compel speech by US Citizens and US corporations. 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.

¹⁰⁴ Freedom Network USA, *Public Comment on the Evaluation of the National Human Trafficking Hotline*, 10/25/2019, <https://freedomnetworkusa.org/app/uploads/2019/11/FNUSAHotlineEvaluatioSurveyComment-1.pdf>

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 matches) and cancel fundraising events (a primary source of cash matches).¹⁰⁵

Across the US, victim and prevention services are funded at significantly lower levels than law enforcement. For example, the foster care system for the state of New York received a 23 times smaller budget than the New York City Police Department.¹⁰⁶ A portion of the DOJ TVPA funding for victim services is carved out for law enforcement task forces. This diverts funds intended to be provided to service providers to law enforcement. This disparity in funding becomes apparent when considering that survivors may need years of service provision, including assistance with housing and medical and mental health care, but only a small portion of survivors receive assistance from law enforcement to leave their trafficking situation.

In addition, many benefits and resources offered to survivors are contingent on cooperation with law enforcement during an investigation, including the T Visa. For survivors who have experienced harm or exploitation by law enforcement agents or fear deportation or harm from law enforcement, these benefits are out of reach. FNUSA member clients have also reported facing criminal charges or being reported to employment licensing agencies while assisting law enforcement in the investigation. These present significant barriers to service access for survivors and may increase fear of harm from law enforcement, making it less likely for survivors to report exploitation.

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 in order to focus on services for survivors.*¹⁰⁷

17. Quality of Victim Care

The US Government has finally begun the process of creating standards of care for providers administering its grants, although the final standards will not be completed for three years. There is little oversight for even federal government-funded service providers, except for recipients of OVC’s Human Trafficking Housing Grants. There are reports of exploitation and

¹⁰⁵ Freedom Network USA, *FY2022 Human Trafficking Funding Recommendations*, 12/17/2021, <https://freedomnetworkusa.org/app/uploads/2021/12/FY22FNUSAFundingRecs.pdf>

¹⁰⁶ New York State, Office of Children and Family Services, *Division of the Budget*, <https://www.budget.ny.gov/pubs/archive/fy20/exec/agencies/appropData/ChildrenandFamilyServicesOfficeof.htm>

New York City Government, *In the Face of an Economic Crisis, Mayor de Blasio Announces Budget that Prioritizes Safety, Police Reform, Youth Services, and Communities of Color*, 6/30/2020, <https://www.nyc.gov/office-of-the-mayor/news/487-20/in-face-an-economic-crisis-mayor-de-blasio-budget-prioritizes-safety-police#:~:text=The%20%2488.19%20billion%20budget%20was,the%20safety%20of%20all%20communities.>

¹⁰⁷ 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>

discrimination by providers, with few options for recourse.¹⁰⁸ HHS funnels all funding for services to foreign nationals through a single grant program that is not victim-centered and does not allow services to be tailored to survivors' needs. 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 leaves survivors at risk of insufficient support depending on the available provider.

Access to many services is still too limited for all survivors to receive necessary services. FNUSA members report there is limited housing overall, both temporary and permanent, which has only been made worse by the affordable housing crisis. Within the limited housing options, transgender survivors, male survivors, people who use substances, and survivors who continue to perform sex work have even fewer options due to restrictive housing services. There are few educational services available for survivors who want to complete various educational phases or seek job training for specific fields.

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. In the aftermath of the Supreme Court's decision to strike down *Roe v. Wade*, many states have established bans on abortion without exceptions for children, rape, or incest, leaving many survivors without reproductive healthcare options.¹⁰⁹ States that require parental consent for minors to access abortion care also put victims of familial trafficking at risk of further harm.

Recommendation: FNUSA recommends that DOJ and HHS work together to ensure 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.¹¹⁰ 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, supports survivors of all forms of trafficking, and is shared with community-based organizations connected to communities most at risk of trafficking.¹¹¹

¹⁰⁸ 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)

¹⁰⁹ New York Times, *Tracking the States Where Abortion Is Now Banned*, 1/6/2023, <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>

¹¹⁰ *Joint Letter Calling for Helms Amendment Repeal*, 12/17/2021, https://freedomnetworkusa.org/app/uploads/2022/01/Helms-Anniversary-Community-Letter_2021.pdf

¹¹¹ 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,

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. Therefore, by continuing to fund these grants, 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.¹¹² As noted above, law enforcement continues to arrest survivors, abuse survivors in the course of 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 connected to communities most at risk of all forms of trafficking.¹¹³

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. Trafficking as a crime revolves around economic gain for the trafficker. Restitution provides one path to survivors regaining some of the financial losses from trafficking, but when it is rarely ordered or paid, this remedy becomes inaccessible to survivors. Courts awarded mandatory restitution to trafficking victims in just 36% of human trafficking cases brought between 2009 and 2012.¹¹⁴ 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."¹¹⁵ The most recent data indicates that in 2021, mandatory restitution

<https://freedomnetworkusa.org/app/uploads/2020/04/FNUSAs-Recommendations-on-Supporting-Human-Trafficking-Survivors-Coronavirus-17April2020.pdf>

¹¹² 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>

¹¹³ Freedom Network USA, *FY2022 Human Trafficking Funding Recommendations*, 12/17/2021, <https://freedomnetworkusa.org/app/uploads/2021/12/FY22FNUSAFundingRecs.pdf>

¹¹⁴ 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>

¹¹⁵ 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>.

was not ordered for 63% of convicted defendants.¹¹⁶ Prosecutors should also be trained to request restitution in the 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 and technical assistance 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 its disposal to ensure that restitution is actually paid to survivors, including the 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 a lack of relocation and living expenses available to victims vulnerable to retaliation. 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.*

21. Immigration Protection for Victims

In recent 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 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. FNUSA has raised the issues and concerns in its comments for the 2018, 2019, 2020, 2021, and 2022 TIP Reports. Federal policies, including increased and indiscriminate immigration enforcement, arrests of immigrants at courthouses and other safe places,¹¹⁷ threats of punishment against 'sanctuary'

¹¹⁶ Lindsey Lane, et al., Human Trafficking Institute, *2021 Federal Human Trafficking Report*, <https://traffickinginstitute.org/federal-human-trafficking-report/>

¹¹⁷ 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

jurisdictions, and increased barriers to immigration relief, have had a direct and marked impact on immigrant survivors of abuse and exploitation¹¹⁸, 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 accessing legal and social services. Victims remain in trafficking situations longer, believing that the US Government will not protect them from harm.¹¹⁹ 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. While many of these policies have been reversed, some remain. The US Government will need to engage in serious and sustained efforts to rebuild trust with immigrant communities in order to successfully address trafficking of immigrants.

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, inflicted upon the victims and/or their family members from their traffickers. While some restrictions from the previous administration have been overturned or rescinded, significant procedural hurdles remain which undermine due process.¹²⁰ COVID restrictions on ports of entry, along with the reinstatement and slow winddown 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.¹²¹

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>

¹¹⁸ Immigrant Survivors Fear Reporting Violence, 2019, <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>

¹¹⁹ 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>

¹²⁰ 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>

¹²¹ 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>

Aguilera, Jasmine, TIME, *The 'Remain in Mexico' Policy Is Officially Over. But Hundreds of Migrants Are Still Stuck in Mexico*, 8/29/2022, <https://time.com/6208555/remain-in-mexico-mpp-program-unwind/>

Trafficking survivors, like most trauma survivors, need time and a safe place to process their trauma sufficiently to be able to provide the information required by asylum agents to assess their claims properly. 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 16.5 months, which is a significant improvement from previous years, but still presents a long waiting period for survivors to access the benefits of T Visa status, including Social Security Numbers.¹²² Survivors already in removal proceedings are now at high risk of being removed from the US **before** their T Visa applications are adjudicated.¹²³ 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 access to their attorneys.¹²⁴ 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 notes, with great appreciation, that the US Government has reversed some of these policies in the past two years but notes that many others remain in effect or are still in the midst of litigation. FNUSA commends the US Government for reinstating access to fee waivers, rescinding the public charge rule change from the last Administration, 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.¹²⁵ 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.

¹²² 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>

¹²³ 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>

¹²⁴ 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>

¹²⁵ 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

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 in 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.¹²⁶ FNUSA also recommends that the US Government rescind the Title 42 program and replace it with humane asylum policies instead of continuing Title 42's harm in other ways,¹²⁷ 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 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.¹²⁸ Continued Presence is rarely provided to victims, bona fide determinations are rarely made in T Visa cases, and the T Visa adjudications have been applying a more restrictive standard that has denied protection for survivors. The T Visa program is underutilized, and these administrative barriers make it difficult for survivors to access its protections.

Although FNUSA commends DHS's efforts to expand access to Continued Presence (CP) through revised guidance and new training materials, we remain deeply concerned about 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 increased in 2021 (247 grants) compared to 2020 (97 grants),¹²⁹ representing the first year of an increase after a mainly downward trend since the high in 2011. Despite the increase, the number of grants remains shockingly low compared to the number of

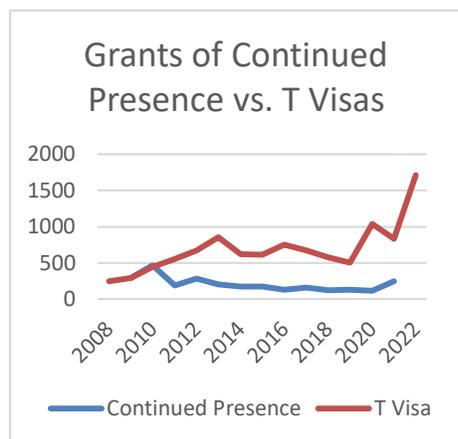
¹²⁶ KIND, *Left in Limbo: Why Special Immigrant Juveniles Need Employment Authorization*, 1/10/2021, <https://supportkind.org/wp-content/uploads/2022/01/SIJS-EAD-Brief-1.10.21-FINAL.pdf>; The Door, "Any Day They Could Deport Me" Over 44,000 Immigrant Children Trapped in SIJS Backlog, November 2021, <https://www.sijsbacklog.com/any-day-they-could-deport-me>

¹²⁷ Joint Letter Calling for the Biden Administration to Reject Efforts to Replace Title 42 with Similar Harmful Policies, <https://freedomnetworkusa.org/app/uploads/2022/11/Joint-Letter-Post-Title-42-112022.pdf>

¹²⁸ 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>

¹²⁹ 2021 TIP Report

T visas issued in 2022 (1715) and 2021 (829).¹³⁰ This trend is consistent over time, as shown in the chart.¹³¹ 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.¹³² 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 regulations put out by USCIS itself. For example, adjudicators have sought justification as to why

the survivor has not left the US since escaping from the trafficking situation, even though the 2016 regulations expressly removed the language contained in the previous regulations regarding whether the survivor had a “clear chance to leave.”¹³³ 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 impacting survivors’ decision to come forward at all. The increased time that legal service providers spend responding to the RFE and appealing denials also means fewer survivors can be assisted.

Adjudication for T Visa applications is currently averaging 16.5 months¹³⁴, still representing an increase from the 6-9 month period that was common only a few years ago despite efforts to reduce the processing times.¹³⁵ 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 CP are impacted, as many prosecutors urge survivors to wait to file the T Visa application until after the investigation and prosecution are complete. CP, however, lasts only for 2 years.

¹³⁰ USCIS T Visa Statistics FY2021,

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

¹³¹ 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

¹³² 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>

¹³³ “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.

¹³⁴ Current processing times are provided by USCIS at <https://egov.uscis.gov/processing-times/>

¹³⁵ 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.>

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 while their T Visas are 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.¹³⁶ 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 publishing the T Visa Chapter of the Policy Manual and revoking 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 CP applications. These personnel are most likely to have the relevant identification information about the survivor, the survivor’s needs, and the case’s status. 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 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, and instructions on drafting victim-centered RFEs. This training should be developed with the input of survivors to ensure that it properly and accurately reflects the lives, fears, and motivations of trafficking victims. USCIS should also issue work authorizations to applicants when T Visa applications are pending for over 180 days to allow survivors to work legally and reduce the harm caused by long processing delays.

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.¹³⁷ Until the process is fully

¹³⁶ 8 CFR 214.11

¹³⁷ 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>

implemented, DHS must act to ensure immigrants are not removed from the US while their T Visa application is pending.¹³⁸ FNUSA also recommends changes to ensure increased access to Continued Presence for survivors.¹³⁹

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 with varying criminal record relief options.¹⁴⁰ There is no criminal record relief for federal convictions.¹⁴¹ FNUSA's Survivor Reentry Project¹⁴² is supporting over 113 survivors working to clear criminal records of a total of over 850 charges, including prostitution (50%), Drug Offenses (10%), Theft/Larceny (9%), Trespass/Loitering (6%), Forgery/false Documents (5%), Assault/Battery (3%), Robbery (2%), and Other (15%).

Commercial sex remains unlawful throughout the US at the local, state, and federal levels. 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.¹⁴³ 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.¹⁴⁴ 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

¹³⁸ See this report for more information on recent T Visa statistics and recommendations: Julie Dahlstrom and Heba Gowayed, Boston University, *Access Denied: Barriers to Legal Protection for Immigrant Survivors of Human Trafficking*, 12/2022, https://www.bu.edu/law/files/2022/12/AccessDenied_Final_120422.pdf

¹³⁹ Freedom Network USA, *Continued Presence Challenges and Recommendations*, 2/18/2021, <https://freedomnetworkusa.org/app/uploads/2021/02/FNUSAContinuedPresenceChallengesRecommendationsFeb2020.pdf>

¹⁴⁰ Freedom Network USA, *Criminal Record Relief Laws for Survivors*, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>

¹⁴¹ 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/>

¹⁴² Freedom Network USA, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>

¹⁴³ 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> ;

¹⁴⁴ 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>.

courts or other mechanisms to allow criminalized victims to avoid incarceration, they continue to be traumatized by the arrest and experience of criminalization.’

Only 27 states and the District of Columbia have non-criminalization Safe Harbor laws that protect child victims of sex trafficking from facing prostitution charges.¹⁴⁵ These laws tend to ignore potential charges or immigration issues that child victims of labor trafficking may face, including drug charges or other criminal charges from crimes victims were forced to commit. The lack of special provisions for this criminal activity results in survivors with criminal records that create significant barriers to access to benefits and services that are essential to healing. In states with Safe Harbor legislation, there are issues with enforcement due to funding or staffing constraints. Washington State, for example, passed its Safe Harbor law in 2020 but has faced significant staffing hurdles in providing services mandated by the law. When youth do face charges related to their trafficking, they are unable to have the charges or arrests cleared from juvenile or family court records. Record sealing can be lifted if someone faces a charge as an adult or turns 18 in some states, and Child Protective Services and law enforcement can access and reference sealed files.¹⁴⁶ These charges can follow people for their entire lives and create significant barriers to obtaining safe work, education, and housing.

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 New York, for example, reporting has revealed that ECM Task Force member NYPD engaged in routine criminalization of sex workers and possible sex trafficking victims.¹⁴⁷ Task Forces also support ‘diversion courts’ that rely on arrest to coerce survivors into programs or services.¹⁴⁸ Some law enforcement agencies use these funds for ‘john stings’ designed to arrest potential sex buyers using decoys completely unrelated to identifying 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.

FNUSA’s members report that clients in the US experience administrative punishments that prevent survivors from performing legal and safe work related to their expertise and interests. These administrative hurdles can also increase vulnerability to trafficking for both people with

¹⁴⁵ Shared Hope, *Safe Harbor Map*, <https://reportcards.sharedhope.org/safeharbormap/?location=wa>

¹⁴⁶ Andrea Coleman, OJJDP, *Expunging Juvenile Records: Misconceptions, Collateral Consequences, and Emerging Practices*, 12/2020, <https://ojjdp.ojp.gov/publications/expunging-juvenile-records.pdf>

¹⁴⁷ 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>

¹⁴⁸ 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/>

lived experience and without. In some cases, the loss of these administrative rights is tied to existing criminal charges. There are few opportunities for second-chance employment for people with felony records.¹⁴⁹ Many jobs that require licenses in order to perform work legally, like social work, teaching, law, medical care, and massage, often do not allow people with criminal records to hold licenses, even if they have completed the necessary training.¹⁵⁰ Other service trades like firefighting also exclude people with records, even if they have received the necessary training as part of service their sentence. In other cases, administrative rights are removed without criminal charges, creating a need to find a new form of safe work or operate without a license.

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.¹⁵¹ 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 seeking alternate employment.¹⁵² The US should expand opportunities for second-chance employment, remove hurdles to obtaining work licenses for survivors with criminal records, and legislate federal criminal record relief for both adult and juvenile records to help survivors obtain safe, living wage employment. Reforms to the criminal legal system should be extended to include immigration consequences. The Biden Administration has excluded immigrants from reforms like record expungement, resulting in deportation and imprisonment for immigrants with charges US citizens can clear. FNUSA urges the US Government to study the effects of forced criminalization as part of labor trafficking. Existing research has primarily focused on prostitution charges for sex trafficking survivors but not on other charges like drug charges from survivors forced to work in the drug trade.

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. The lack of affordable access to basic needs like

¹⁴⁹ Sabra Boyd, Vice, *What It's Like to Look For a Job After Prison*, 4/11/2022, <https://www.vice.com/en/article/pkp4xm/second-chance-employment-prison>

¹⁵⁰ Don Thompson, KQED, *'An Untapped Pool of Talent': Why Isn't California Hiring More Formerly Incarcerated Firefighters?*, 8/22/2022, <https://www.kqed.org/news/11923117/an-untapped-pool-of-talent-why-isnt-california-hiring-more-formerly-incarcerated-firefighters>

¹⁵¹ Freedom Network USA, *FY22 Human Trafficking Funding Recommendations*, December 2021, <https://freedomnetworkusa.org/app/uploads/2021/12/FY22FNUSAFundingRecs.pdf>.

¹⁵² 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

housing, food, healthcare, mental healthcare, childcare, education, and transportation, as well as the actively harmful immigration and carceral systems, create and increase vulnerabilities to exploitation. Systemic reforms to labor, immigration, social safety net support, the child welfare system, education, family support, the juvenile and criminal justice systems, community education, and the creation of positive market forces (through programs such as the Coalition of Immokalee Workers' Fair Food Program¹⁵³) 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, 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 for avoiding homelessness, protection from abuse, and accessing 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 in the first place.¹⁵⁴ Extensive mandatory screening for trafficking throughout the juvenile justice, immigration, criminal justice, and child welfare systems should be instituted.

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 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 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 left with limited options and power. There are also awareness campaigns at airports and other places of

¹⁵³ For more information, see <http://ciw-online.org/>.

¹⁵⁴ 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>.

transportation and accommodation. There has 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 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.¹⁵⁵

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 of trafficking survivors.

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 the 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

¹⁵⁵ 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>

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.*¹⁵⁶

29. International Coordination on Recruitment

FNUSA has no comment on this issue.

30. Migration/Trade Policies and Trafficking

The US guestworker and student visa programs continue to be rife with abuse and exploitation, including labor trafficking.¹⁵⁷ Providers report that overseas recruiters continue to charge excessive fees to workers and 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.¹⁵⁸ Additionally, the structure of the low-wage programs in particular (for example, the H-2A¹⁵⁹, H-2B¹⁶⁰, and J-1¹⁶¹ 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

¹⁵⁶ 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>

¹⁵⁷ 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.).

¹⁵⁸ <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>

¹⁵⁹ 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>;

¹⁶⁰ 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/>;

¹⁶¹ 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>

employer without facing deportation or economic ruin.¹⁶² 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)¹⁶³, ongoing investigation of around 200 religious workers exploited by a temple¹⁶⁴, Utah AG indictment of a carnival for abusing H-2B visas to exploit workers¹⁶⁵, and a recent indictment for labor trafficking of seasonal workers in South Carolina.¹⁶⁶

The US has failed to provide assistance and information for workers on visas tied to their employers who are laid off if they work in lower-wage fields. In early January 2023, when major technology companies laid off thousands of workers, the government quickly created listening sessions and materials to help high-income workers know their rights while searching for new positions. The US Government chooses only to provide these resources to high-income workers when they could have helped reduce vulnerability for low-income workers fired throughout the COVID pandemic.

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, safeguards against exploitative employment contracts being approved with visas, and robust enforcement against employers and recruiters who have abused or exploited their workers or benefited from the actions of recruitment agencies that they directly or indirectly engaged.*¹⁶⁷

¹⁶² See this report for extensive information on the H-2B Visa program: Justice in Motion, *Visa Pages: U.S. Temporary Foreign Worker Visas: H-2B Visa*, 10/2022, https://www.justiceinmotion.org/files/ugd/64f95e_6df196b8539949209a16e97ab6571bd4.pdf

¹⁶³ 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>

¹⁶⁴ 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>

¹⁶⁵ 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/>

¹⁶⁶ 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>

¹⁶⁷ Freedom Network USA, Input to UN Special Rapporteur on Forced Labor in Agriculture, 1/31/2022, <https://freedomnetworkusa.org/app/uploads/2022/02/FNUSAInputLaborTraffickingAgricultureUNSpecialRapporte>

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. The US fails to ensure that workers always have the full right to organize for better working conditions, a vital component of preventing forced labor. A 2021 Supreme Court decision eroded the rights of migrant workers to organize by barring farmworker union organizers from speaking about the union with workers on farm property, even during non-working hours.¹⁶⁸ Amazon, the second largest company in the US by revenue, actively violated labor protections for organizing workers throughout 2022 during elections and organizing campaigns by firing workers, using intimidation tactics, and surveillance of worker organizing to suppress organizing efforts.¹⁶⁹ Similar tactics were used by Starbucks and other major corporations attempting to shut down worker-organizing efforts.¹⁷⁰ These were the high-profile cases of 2022, but these efforts span the entire labor market and are most often used to target workers seen as the most vulnerable: immigrant, BIPOC, and disabled workers.

Significant cases of child labor trafficking were reported in US-based factories in 2022, including at least 50 children identified working in slaughterhouses on overnight shifts and cleaning the killing floors and dangerous machinery, with at least three children suffering chemical burns.¹⁷¹ The US also loses out on large manufacturing contracts with international companies due to child labor complaints. A Hyundai subsidiary employed around 50 underage workers, violating

[ur-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>

¹⁶⁸ Nina Totenberg, NPR, *Supreme Court Hands Farmworkers Union A Major Loss*, 6/24/2022, <https://www.npr.org/2021/06/23/1000129827/in-a-narrow-ruling-supreme-court-hands-farmworkers-union-a-loss>

¹⁶⁹ Julia Love and Daniel Wiessner, Reuters, *Amazon accused of violating U.S. labor law after union supporters' arrests*, 2/24/2022, <https://www.reuters.com/world/us/amazon-accused-violating-us-labor-law-after-union-supporters-arrests-2022-02-25/>

Noam Scheiber, New York Times, *Regulators Accuse Amazon of Singling Out Union Organizers for Discipline*, 9/21/2022, <https://www.nytimes.com/2022/09/21/business/economy/amazon-labor-union-nlr.html>

Annie Palmer, CNBC, *Amazon CEO Andy Jassy violated labor laws with union remarks, federal agency alleges*, 10/27/2022, <https://www.cnbc.com/2022/10/27/nlr-says-amazon-ceo-andy-jassy-violated-labor-laws.html>

Caroline O'Donovan, Washington Post, *Amazon calls cops, fires workers in attempts to stop unionization nationwide*, 6/13/2022, <https://www.washingtonpost.com/technology/2022/06/13/amazon-union-retaliation-allegations/>

¹⁷⁰ Reuters, *US senators ask Starbucks to disclose details on 'union-busting tactics,'* 10/5/2022, <https://www.theguardian.com/business/2022/oct/05/starbucks-union-busting-democrat-senators-letter-shultz>

¹⁷¹ Laura Strickler and Julianne McShane, *The company accused of employing dozens of minors in slaughterhouses on the graveyard shift reaches agreement with the feds*, 12/6/2022, <https://www.nbcnews.com/news/us-news/company-accused-employing-dozens-minors-slaughterhouses-graveyard-shif-rcna60355>

child labor laws and Alabama law requiring children under 17 to be enrolled in school.¹⁷² Hyundai dropped contracts with two US suppliers over the use of child labor in the facilities, moving production elsewhere.¹⁷³ The lack of protection of labor rights and the low investment in investigations of labor violations means similar cases throughout the US are not being identified.

Recommendation: FNUSA calls on the US Government to dedicate resources to evaluating US supply chains for forced labor, ensuring companies have transparency efforts to track where goods come from, and holding companies accountable for forced labor throughout their supply chains. The US Government should also commit more resources to the expansion of Wage & Hour investigations teams and the National Labor Relations Board to ensure all labor violations are thoroughly investigated and workers can act on their right to collectively bargain. As mentioned earlier in these comments, the expansion of efforts to ensure both US citizen and noncitizen workers know their rights is essential to prevent forced labor in the US.

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.¹⁷⁴ 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.¹⁷⁵

Recommendation: FNUSA calls on the US Government to limit the 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 complete the winddown of the Remain in Mexico program, end all Title 42, and similar, 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

¹⁷² Joshua Schneyer, et al., Reuters, *Exclusive: Hyundai subsidiary has used child labor at Alabama factory*, <https://www.reuters.com/world/us/exclusive-hyundai-subsidiary-has-used-child-labor-alabama-factory-2022-07-22/>

¹⁷³ Evan Mealins, USA Today, *Hyundai to drop two US suppliers facing child labor violations 'as soon as possible,'* 10/24/2022, <https://www.usatoday.com/story/money/2022/10/24/hyundai-to-drop-alabama-suppliers-child-labor/10587977002/>

¹⁷⁴ Joanna York, Migration Data Portal, *How Covid-19 has made life more dangerous for migrant workers*, 4/19/2022, <https://www.migrationdataportal.org/blog/how-covid-19-has-made-life-more-dangerous-migrant-workers>

¹⁷⁵ Aguilera, Jasmine, TIME, *The 'Remain in Mexico' Policy Is Officially Over. But Hundreds of Migrants Are Still Stuck in Mexico*, 8/29/2022, <https://time.com/6208555/remain-in-mexico-mpp-program-unwind/>

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.

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)¹⁷⁶ as mandated by the TVPA.¹⁷⁷ However, the US Government has failed to submit this vital report for the past three years. The most recent report available covers FY18.¹⁷⁸ 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 can access 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.

39. Risks, Trends, and Vulnerabilities from Climate Change and Climate Disasters

The US Government has done little to prepare for the effects of climate change on human trafficking. In the wake of natural disasters and climate-related disasters, the government

¹⁷⁶ Request for Information for the 2021 Trafficking in Persons Report, 85 FR 77482.

¹⁷⁷ 22 USC 7103(d)(7).

¹⁷⁸ 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>.

response has exacerbated vulnerabilities to trafficking and exploitation. Post-disasters, both residents of the area experiencing the disaster and the disaster relief workers can face increased vulnerability to all forms of human trafficking.

Disasters can result in the internal displacement of communities, including sudden losses of homes, livelihoods, and support networks.¹⁷⁹ With the US already facing an affordable housing crisis¹⁸⁰, climate crises put further pressure on the accessibility of affordable housing. Extreme weather also prevents service providers from serving existing clients and people newly needing services. During the major winter storm that shut down most of Texas' power grid in 2021, multiple domestic violence shelters lost power and faced structural damage that closed the shelters for weeks.¹⁸¹ In addition, the US disaster response through the Federal Emergency Management Agency (FEMA) is not designed to ensure that everyone affected by a disaster is able to access shelter and services. FEMA does not provide cash assistance or Disaster Unemployment Assistance to people who are undocumented and does not coordinate with other federal agencies to work with noncitizens.¹⁸² Federal government websites with information on evacuation orders, safety protocols, and FEMA aid applications are often inaccessible for the first 36 hours after a disaster, making it extremely difficult for anyone in the area to apply for aid. In southern states, where FEMA has often been deployed in coordination with the military, the agency is viewed as a heavily militarized force, resulting in residents' fear of mistreatment and an unwillingness to approach representatives.¹⁸³ Prisons and jails rarely evacuate in the case of extreme weather. They often do not have thorough evacuation plans in place, leaving thousands of incarcerated people in unsafe and unsanitary conditions during climate disasters.¹⁸⁴ In the aftermath of climate disasters, the US has shown it is unprepared and unwilling to provide comprehensive and effective aid that would mitigate increased vulnerability to human trafficking.

Disaster relief workers are part of a unique mobile labor force brought to sites of climate disasters to assist with debris cleanup, construction, hospitality, and maid services. These jobs are often dangerous and performed by a majority of undocumented workers. These workers

¹⁷⁹ Sunita Jain Anti-Trafficking Initiative and Leanne McCallum Desselle, Public Comments On Federal Disaster Preparedness And Relief And Community Resilience With An Anti-Trafficking Lens, 6/3/2022, <https://www.regulations.gov/comment/EPA-HQ-OA-2022-0050-0062>

¹⁸⁰ National Low Income Housing Coalition, *The Gap: A Shortage of Affordable Homes*, 4/2022, <https://nlihc.org/gap>

¹⁸¹ Lorena O'Neil, Marie Claire, They Fled Domestic Violence in a Pandemic. Then Came the Winter Storm. 10/4/2021, <https://www.marieclaire.com/health-fitness/a35584601/genesis-womens-shelter-dallas-texas-winter-storm/>

¹⁸² Sunita Jain Anti-Trafficking Initiative and Leanne McCallum Desselle, Public Comments On Federal Disaster Preparedness And Relief And Community Resilience With An Anti-Trafficking Lens, 6/3/2022, <https://www.regulations.gov/comment/EPA-HQ-OA-2022-0050-0062>

¹⁸³ Sunita Jain Anti-Trafficking Initiative and Leanne McCallum Desselle, Public Comments On Federal Disaster Preparedness And Relief And Community Resilience With An Anti-Trafficking Lens, 6/3/2022, <https://www.regulations.gov/comment/EPA-HQ-OA-2022-0050-0062>

¹⁸⁴ N'dea Yancey-Bragg, USA Today, *Hurricane Ian brings renewed focus to 'life and death' struggle for prisoners during a disaster*, 10/14/2022, <https://www.usatoday.com/story/news/nation/2022/10/14/hurricane-ian-jails-prisons-florida/8189762001/>

are in uniquely vulnerable positions because they are isolated from support systems, non-English speaking, do not know the area well, rely on their employer for basic needs, and are seeking economic security. In the aftermath of Hurricanes Katrina and Michael, DHS deployed agents to arrest and deport undocumented migrant workers, but employers were not held accountable for purposefully seeking out cheap labor and breaking labor and immigration laws.¹⁸⁵ Employers use the fear of law enforcement and immigration enforcement to coerce undocumented workers into staying in their jobs and not reporting victimization.

Recommendations: FNUSA calls on the US Government to extend its federal disaster relief efforts to all residents, regardless of immigration status, and to improve the resources available to residents to find housing when they are displaced. The government should also increase protections for migrant workers who perform the majority of the labor necessary to rebuild after climate disasters in the US. The recommendations provided by the Sunita Jain Initiative and Leanne McCallum Desselle to the White House Environmental Justice Advisory Council should be consulted in the process of improving federal disaster preparedness efforts.

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

¹⁸⁵ Sunita Jain Anti-Trafficking Initiative and Leanne McCallum Desselle, Public Comments On Federal Disaster Preparedness And Relief And Community Resilience With An Anti-Trafficking Lens, 6/3/2022, <https://www.regulations.gov/comment/EPA-HQ-OA-2022-0050-0062>