



# Freedom Network USA

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VIA EMAIL to [tipoutreach@state.gov](mailto:tipoutreach@state.gov)

TIP Ambassador Cindy Dyer  
US Department of State  
Office to Combat and Monitor Trafficking in Persons (JTIP)  
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## **RE: Freedom Network USA's Input for the Public Meeting on Anti-Trafficking Work Using a Racial Equity Lens**

Ambassador Dyer:

Freedom Network USA (FNUSA), established in 2001, is a coalition of 95 non-governmental organizations and individuals that provide services to and advocate for the rights of trafficking survivors in the US. Since the enactment of the Trafficking Victims Protection Act of 2000 (TVPA), FNUSA members have worked to ensure that trafficking survivors receive the full array of legal and social services needed, and that they are engaged in ensuring effective implementation of the law. FNUSA members include survivors who experienced both sex and labor trafficking in the US, prosecutors who have criminally prosecuted sex and labor trafficking cases, civil attorneys who have brought cutting-edge lawsuits against traffickers, criminal attorneys who have represented survivors wrongly charged with a crime, immigration attorneys who have represented hundreds of individuals granted T and U visas, and social service providers who have assisted thousands of survivors—both US citizens and foreign nationals, minors and adults, across the gender spectrum.

FNUSA is encouraged by this public meeting and the previous request for information. FNUSA has been raising issues of racial equity and its impact on human trafficking in the US for many years, and we hope that this process provides the Federal Government with the information and resources needed to dramatically improve the US response to trafficking. Specifically, FNUSA offers the following responses to the questions provided by the Senior Policy Operating Group regarding developing an approach to anti-trafficking work that is rooted in racial equity.

## **Racial equity in the context of human trafficking: generally, law enforcement prevention and prosecution, victim assistance, and prevention strategy**

Human trafficking does not impact all communities equally. Trafficking thrives in the intersection of multiple forms and systems of oppression. US laws and policies continue to uphold systemic marginalization, disproportionately causing abuse and exploitation and reducing access to protection, services, and support for Native people, LGBTQIA individuals, immigrants, people of color, and low-income communities. Without dedicating significant resources to dismantling racist systems that oppress vulnerable communities, exploitation will flourish, and trafficking will remain pervasive. Therefore, a racial equity approach to human trafficking must acknowledge and address these challenges directly.

A racially equitable approach to intersectional anti-trafficking policies and programs involves intentionally analyzing the ways in which current policies harm communities across these forms of discrimination. Once we analyze these systems, we can focus resources and funding on community-based interventions and equitable policies and programs.

Lack of access to safe and affordable housing, child care, living-wage employment, medical and mental health care, effective child and family support, and immigration relief, coupled with ongoing discrimination against people of color, immigrants, and LGBTQIA individuals, are all direct contributors to vulnerability. A significant reduction in human trafficking requires expanded social services and support for those most vulnerable to exploitation and abuse.

The impact of these systemic issues is exacerbated by the COVID-19 pandemic, where gig workers, sex workers, and immigrants have been excluded from relief packages, and Black and Brown people who have been historically excluded from medical care are getting sick and dying at disproportionately high rates and are being vaccinated at disproportionately low rates.<sup>1</sup> As COVID-19 restrictions are lifted, and affordable resources for prevention are no longer offered, these communities will continue to be disproportionately impacted and have even fewer resources to maintain health and safety.

Examining human trafficking through an intersectional lens also contextualizes the unique experiences of Black women and girls who are survivors of trafficking. The TVPA attempts to protect victims; however, it is clear it only has certain victims in mind. Victimhood has been racially coded, and Black women and girls have been historically unprotected. The framing of CSEC (commercial sexual exploitation of children) has yet to engage with race and the impact intersectionality has on victim framing. Legal and advocacy interventions also do not engage with the racialized vulnerabilities victims and potential victims face, as there are particular needs of Black girls in low-income communities.<sup>2</sup>

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<sup>1</sup> 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>

<sup>2</sup> Jasmine Phillips, *UCLA Law Review*, *Black Girls and the (Im)Possibilities of a Victim Trope: The Intersectional Failures of Legal and Advocacy Interventions in the Commercial Sexual Exploitation of Minors in the United States*,

## Racial Discrimination and Anti-Blackness

The development of the US government, economy, and culture was rooted in anti-Blackness. Reliance on chattel slavery enabled the growth of the US economy, notably the agricultural sector and domestic work. US legal systems were developed to protect White power and privilege and to disempower Black, Brown, and Native people. The current conception of the crime of human trafficking has grown from this foundation to exploit primarily Black, Indigenous, and People of Color (BIPOC) communities for financial gain. 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.<sup>3</sup> These industries continue to be rife with abuse and exploitation, including human trafficking. The US Constitution's explicit exclusion of prison labor from the ban on slavery demonstrates the intentional, systemic oppression of Black communities in the criminal legal system.<sup>4</sup>

American Indian and Alaska Native communities have been subject to abuse, internment, displacement, forced sterilization, and attempted genocide by the US Government.<sup>5</sup> These communities continue to experience generational trauma leading to increased rates of violence<sup>6</sup> and substance abuse<sup>7</sup>. 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 that they need to heal and grow, and creates vulnerabilities for AI/AN community members both on and off of reservations.<sup>8</sup>

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2015, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2815168](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2815168)

<sup>3</sup> 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://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1150&context=facpubs>

<sup>4</sup> 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>

<sup>5</sup> 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>

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

<sup>7</sup> 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>

<sup>8</sup> 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](https://nhttac.acf.hhs.gov/sites/default/files/2020-11/HTLA%20Class%205%20Recommendations%20Report_508c.pdf)

### **Racism and Immigration**

Black and Brown immigrants face specific, intersectional barriers. Immigration laws in the US began with a preference for white immigrants to be welcomed while viewing Black, Brown, and Asian migrants as disposable and deportable. The Naturalization Act of 1790 extended only to “free white persons,” and the Chinese Exclusion Act (which specifically prohibited the migration of Chinese laborers to the US beginning in 1882 and was only repealed in 1942) provided the groundwork for xenophobic fear of migrant laborers from communities of color for decades to come. Current guestworker programs continue to treat migrants as expendable and are designed to ensure that employers hold power over immigrants. The preference for white migrants is apparent today in the disparate treatment experienced by the disproportionately Black Haitian<sup>9</sup> and Central American<sup>10</sup> families excluded and expelled at the US-Mexico border while restrictions have been lifted on arrivals by air. While Ukrainian refugees received special permissions to enter the US in 2022, new restrictions have been introduced for asylum seekers from Central and South American countries at the Southern US border.<sup>11</sup>

### **Racism and Sexism and Immigration**

Restrictions on, and the criminalization of, sex work have always been motivated by intersections of racism, sexism, and xenophobia. The Page Act of 1875 was the first law to restrict immigration. It banned women from China out of fear that they would engage in sex work in the US. More recently, the Mann Act, also known as the ‘white slave traffic act of 1910’, still bans travel across state lines for sex work. Both laws were rooted in racist and misogynistic fears of interrelationships, the hypersexualization of Black and Asian girls and women, and a desire to protect white women from interracial relationships. Sex work remains unprotected across the US, and those most often targeted by criminalization and violence are Black, brown, and Asian, especially those who are LGBTQIA. The gendered racism towards Asian immigrants, in particular, continues into the present. In a survey of over 2,400 AAPI women from every region of the country, 75% of AAPI women report experiencing racism and/or discrimination over the past twelve months.<sup>12</sup>

### **Racism and Sexism and Immigration and Homophobia and Transphobia**

LGBTQIA and Two-Spirit communities face intersections of stigma, abuse, and exploitation, especially for youth. In a study released by the DOJ’s Office of Juvenile Justice and Delinquency

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<sup>9</sup> Eileen Sullivan, *The New York Times*, *Congressional Democrats Ask Biden to Review Treatment of Black Migrants*, 2/16/22, <https://www.nytimes.com/2022/02/16/us/politics/biden-immigration-haiti.html>

<sup>10</sup> 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](https://supportkind.org/wp-content/uploads/2019/12/KIND_Child-trafficking-at-border-paper-11-18-19-FINAL-1.pdf)

<sup>11</sup> Catherine Shoichet, *As the US rolls out the welcome mat for Ukrainian refugees, some see a double standard at the border*, CNN, 3/29/2022, <https://www.cnn.com/2022/03/29/us/ukrainians-us-mexico-border-cec/index.html>

<sup>12</sup> National Asian Pacific American Women’s Forum, *The State of Safety for Asian American and Pacific Islander Women in the U.S.*, March 2022, <https://www.napawf.org/assets/download/napawf-state-of-safety-report.pdf>

Prevention on youth trading sex (victims of sex trafficking using the federal definition), over half of the individuals surveyed were LGBTQIA identified.<sup>13</sup> 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.<sup>14</sup> The failure of Federal, state, and local governments to protect these communities causes further marginalization and increases vulnerability to exploitation and abuse, particularly for youth who are often pushed out of their homes due to discrimination. Additionally, discrimination by law enforcement often results in the refusal of law enforcement to recognize the trafficking of transgender survivors. LGBTQIA and Two Spirit immigrants are exceptionally vulnerable. The abuses suffered by transgender asylum-seekers at the border, exemplified by the death of transwoman Roxsana Hernandez Rodriguez in ICE custody amid signs of physical assault and abuse,<sup>15</sup> 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.<sup>16</sup> The US Government's refusal to protect LGBTQIA immigrants forces them into underground economies, increasing their vulnerability to future abuse, including human trafficking.

### **Towards a Racial Equity Anti-Trafficking Framework**

The legal structures that have continued to oppress BIPOC communities increase their vulnerability to human trafficking and, in many cases, incentivize trafficking. A race equity approach to human trafficking must dismantle those systems of oppression and focus resources on the communities put at the highest risk. There is, however, no simple framework for racial equity work, even in the context of anti-trafficking work. Racial equity requires the difficult work of looking deeper, acting with humility and in partnership with those most impacted by trafficking, and creating tailored responses to meet the needs of different communities. This requires moving away from general public awareness campaigns that seek to simplify human trafficking into a 30-second ad, ending raids and rescues that are designed to dehumanize and disempower impacted communities and shifting to a non-carceral approach that seeks to empower and strengthen communities most at risk of trafficking and centering their needs beyond their potential trafficking experiences. This framework would shift the focus of human trafficking response away from the criminal legal system to community-based organizations, which are primarily led and staffed by the same communities they serve as the most effective entities to identify human trafficking survivors and support them in escaping and healing from their exploitation.

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<sup>13</sup> Swaner, et al., *Youth Involvement in the Sex Trade: A National Study*, March 2016, <https://www.courtinnovation.org/publications/youth-involvement-sex-trade>.

<sup>14</sup> 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>

<sup>15</sup> 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>

<sup>16</sup> 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>

### Law Enforcement/Prosecution Response

A racial equity approach requires that we confront the harm caused by the expansion of the prison industrial complex and the development of the modern criminal system as a tool for ensuring low-cost BIPOC and immigrant labor.<sup>17</sup> Similarly, the criminalization of sex work disproportionately impacts BIPOC and LGBTQIA and Two Spirit buyers and sellers of commercial sex, keeping these communities in poverty and out of safety. Law enforcement and prosecution responses should prioritize the safety of survivors and allow each survivor to pursue their own form of justice.

FNUSA is particularly concerned about the Federal Bureau of Investigation's plans to bring back Operation Cross Country (OCC) in the Summer of 2023. Because OCC targets sex trafficking, sex offenders, and missing children, it creates confusion among the general public about what crimes are actually sex trafficking. This creates a conflation of sex trafficking victims with missing children and makes it more difficult to effectively address sex trafficking. The misinformation that stems from raids like OCC establishes more barriers to effectively identifying trafficking, and human trafficking needs to be separated from missing children operations. Operations like OCC also fail to protect victims of sex trafficking, instead, they often result in arrests of sex workers and trafficking victims alike. Survivors who are arrested routinely do not receive social services that help prevent re-exploitation and are left with criminal records that cause harm for decades. These operations rarely result in the identification or prosecution of traffickers. They also do not address the root causes of trafficking and instead create additional harm and trauma for those impacted by the raids.<sup>18</sup> These raids are used as a tool by law enforcement to gain positive press coverage for "rescuing" survivors, but there is rarely follow-up to assess the harms caused by the operation or to alert the public to the survivors and sex workers arrested during the raid, and often all victims identified are misconstrued as trafficking victims.<sup>19</sup> This practice should be discontinued at all levels of law enforcement immediately.

This does not mean, at least in the immediate future, that there is no role for law enforcement and prosecutors. Many survivors want their traffickers to be held criminally responsible for the harm they cause. The key is for law enforcement and prosecutors to respond to survivors in a trauma-informed way and to minimize their retraumatization. Law enforcement and prosecutors must be able to identify trafficking survivors from all backgrounds and the many forms of trafficking in which they are exploited (including sex trafficking of transwomen, labor

<sup>17</sup> Ronnie K. Stevens, Interrogating Justice, *Explainer: The Prison Industrial Complex and Modern Slavery*, 5/8/21, <https://interrogatingjustice.org/prisons/explainer-the-prison-industrial-complex-and-modern-slavery/>

<sup>18</sup> International Human Rights Clinic, *Over-Policing Sex Trafficking: How U.S. Law Enforcement Should Reform Operations*, USC Gould School of Law, 11/15/2021, <https://humanrightsclinic.usc.edu/2021/11/15/over-policing-sex-trafficking-how-u-s-law-enforcement-should-reform-operations/>

<sup>19</sup> See Michael Roppolo, "FBI rescues more than 200 trafficking victims, including 84 children, in "Operation Cross Country," CBS News, 8/16/2022, <https://www.cbsnews.com/news/fbi-sex-trafficking-operation-cross-country/>; and Department of Justice, "FBI Announces Results of Nationwide Sex Trafficking Operation," 8/15/2022, <https://www.justice.gov/opa/pr/fbi-announces-results-nationwide-sex-trafficking-operation>

trafficking of undocumented immigrants, and child labor trafficking). The hallmarks of a successful law enforcement/prosecution response should not be measured in the total number of arrests, but in increases in the perception of safety and access to resources reported by community members. They should count not only the number of people arrested, but the number of survivors identified and the satisfaction of those survivors with the outcome of their involvement with the criminal legal system. Additionally, law enforcement and prosecutors must not be content with catching the 'low-hanging fruit' in a complex trafficking enterprise. They must invest in identifying those who hold the most power and gain the most benefit. They must be empowered to prosecute even diplomats and multinational corporations when the evidence is clear.

A racial equity approach must also undo the damage caused by the systemic harms of the criminal legal system. Trafficking survivors should never be burdened with a criminal record as a result of their victimization. Past or current abuse, trauma, and exploitation must be taken into consideration by law enforcement and prosecutors. Therefore, human trafficking diversion courts should not be supported. If law enforcement, prosecutors, and/or judges recognize that the person before them is a victim, the proper response is to dismiss all charges instead of mandating services under threat of criminal sanctions. Affirmative defenses for abuse survivors should be expanded to ensure that survivors are not punished for their own victimization. Survivors should have access to services, as discussed above, from community-based organizations instead of criminal legal systems. Additionally, there must be an expansion of criminal record relief at the Federal, state, and local levels for all types of offenses, for both trafficking survivors. Survivors should be provided an expedited process for clearing criminal records that result from their exploitation. These miscarriages of justice should be remedied as quickly and easily as possible, which requires the support and partnership of prosecutors in supporting these applications.

However, not all survivors want to interact with the criminal legal system. There should be no penalty for making that choice. All survivors deserve safety and healing, without exception. Engaging with law enforcement and prosecutors should not be required for any benefit, including immigration relief. Survivors should be able to pursue the form of justice, accountability, and healing that is best for them. Survivors should not be coerced or threatened to force their cooperation with law enforcement. They should not be held on material witness warrants or kept in immigration detention during the investigation or trial. They should not be deported before they are able to meet with an immigration attorney, obtain immigration relief, or pursue a civil legal claim.

Law enforcement may have a continuing role to play in leading the initial investigation into larger-scale trafficking operations, where there may be multiple survivors, especially where the traffickers may be keeping the survivors isolated. Even in those cases, however, it is critical that law enforcement engage in trauma-informed interviewing techniques, provide immediate referrals to community-based organizations to provide support, and refrain from coercing the participation of survivors.

### Victim Assistance Response

A racially equitable approach to victim assistance starts with a shift from broad scope public outreach and awareness campaigns to targeted campaigns that are culturally and linguistically relevant. They would also reflect the types of trafficking most common in the targeted jurisdiction or community, using the language and references most relevant to that community. The outreach campaigns would also be evaluated for effectiveness and to ensure that they do not cause stereotyping or other unintended harm. There have been numerous examples of trained airline personnel causing harm by accusing interracial families of being engaged in trafficking.<sup>20</sup>

A racially equitable approach to victim assistance would provide customized services to each survivor from community-based organizations that are led and staffed by members of the most impacted communities. Service providers would work collaboratively to ensure the complex intersections of all client identities are supported, including their religious, cultural, gender, and sexuality. Services would be trauma-informed and accessible. Programs would be free of barriers, such as sobriety, immigration status, employment, or mandated services, which disproportionately exclude BIPOC survivors. Services would be culturally and linguistically appropriate to the survivor and ensure that interpreters and translation services are provided as needed. Services would include the chosen families of the survivors. Survivors would be able to engage in the amount or intensity of services that they want and for the length of time that they choose. Services should extend beyond the crisis and support the survivor in developing long-term stability through education, employment, skill-building, medical and mental health care, and legal services. Comprehensive legal services would be available to all survivors, including representation in immigration, employment and civil claims, criminal defense, criminal record relief, and victim rights representation. The same services would also be offered to both US citizen and foreign-born survivors. Currently, the Trafficking Victims Assistance Program relies on a per capita model that does not cover sufficient operating and staffing expenses for providers to build strong programs to serve foreign-born survivors. No programs serving US citizens rely on this model, showing a lack of priority for comprehensive and effective services for immigrant survivors.

It is critical that independent victim rights attorneys, independent from law enforcement and prosecutors, are available to survivors. BIPOC victims and witnesses are not believed in the same manner or degree as their white counterparts. Furthermore, a victim rights attorney is not just essential for the legal issues at hand but also as part of a multifaceted road to recovery. Empirical data suggests that for many survivors, the road to recovery involves “regaining power

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<sup>20</sup> 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>



and control over what occurs in the aftermath of an assault, including the ability to make choices about when, how, and with whom to share their story, and the ability to limit their exposure to situations that may cause flashbacks or retraumatization.”<sup>21</sup>

### **Prevention Strategy**

A racially equitable prevention strategy would include a significant investment in primary prevention, “which involves programs and strategies designed to reduce the factors that put people at risk for experiencing violence.”<sup>22</sup> Primary prevention does not focus on the identification of survivors, but instead strategies that address systemic injustices such as racism, sexism, homophobia, and xenophobia.<sup>23</sup>

An example is focusing on the racial disparity of the school to prison pipeline, especially for disabled youth. For many of the 1,199,743 black students (K-12) with disabilities in America today, the deck is stacked against them. Frequently “invisible disabilities” such as ADHD are not diagnosed and students do not get the supports they need to achieve. Frustrated, they can act out and become suspended. African-American students with disabilities are disproportionately impacted by suspension in schools, with more than one in four boys of color with disabilities — and nearly one in five girls of color with disabilities — receiving an out-of-school suspension.

Engaging in primary prevention strategies also means addressing the social determinants of health—or upstream determinants of health—in order to reduce levels of vulnerability to abuse and exploitation needed for human trafficking to exist. Additionally, the U.S. government should focus on the connection between informal economies and informal labor and communities of color; particularly with LGBTQIA youth and communities of color.

## **Racial injustice, inequity, or unfairness resulting from federal policies and programs**

### **Criminalization of Victims**

The US continues to criminalize victims, including sex and labor trafficking survivors, for the crimes they are forced to commit by their traffickers. Survivors are left with charges in multiple jurisdictions which have varying criminal record relief options.<sup>24</sup> There is no criminal record

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<sup>21</sup> Stefanie Mundhenk Harrelson, *The Appeal, I Was Sexually Assaulted. And I Believe Incarcerating Rapists Doesn't Help Victims Like Me*, July 18, 2019, <https://theappeal.org/i-was-sexually-assaulted-and-i-believe-incarcerating-rapists-doesnt-help-victims-like-me/>

<sup>22</sup> CDC, *Principles of Prevention Guide*, [https://vetoviolence.cdc.gov/apps/pop/assets/pdfs/pop\\_notebook.pdf](https://vetoviolence.cdc.gov/apps/pop/assets/pdfs/pop_notebook.pdf)

<sup>23</sup> 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>

<sup>24</sup> Freedom Network USA, *Criminal Record Relief Laws for Survivors*, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>

relief for federal convictions.<sup>25</sup> FNUSA's Survivor Reentry Project is supporting over 113 survivors working to clear criminal records of a total of over 918 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%).<sup>26</sup>

Commercial sex remains unlawful at the local, state, and federal levels throughout the US. Law enforcement continues to arrest those believed to be engaged in sex work, even when they suspect that those being arrested may be sex trafficking survivors. Recent raids in Ohio, framed as anti-trafficking, primarily resulted in the arrest of sex workers, consensual sex buyers, and sex trafficking survivors.<sup>27</sup> 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.<sup>28</sup> In contradiction with the federal statute classifying all minors engaged in commercial sex as victims, states and local governments continue to criminalize these minors. While some jurisdictions use diversion courts or other mechanisms to allow criminalized victims to avoid incarceration, they continue to be traumatized by the arrest and experience of criminalization. This puts sex workers in a state of constant vulnerability. They are vulnerable to abuse and exploitation at the hands of third-party exploiters, customers, and even law enforcement. Sex workers are reluctant to report crimes committed against them because they report that law enforcement rarely acts to protect them and sometimes abuses them. Even when the abuse rises to the level of human trafficking, survivors are unlikely to report these crimes to law enforcement, due to the stigma, fear, and lack of trust with law enforcement. Criminal records from multiple prostitution arrests limits the ability of sex workers and trafficking survivors to access education, alternative employment, housing, social services, and respect. While states are increasingly decriminalizing minors engaged in commercial sex work, those over the age of 18 are routinely arrested. These factors all combine to put sex workers at high risk of human trafficking.

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. Whereas sex workers were previously able to use online platforms to work more safely and independently, FOSTA has caused many sex workers to rely on intermediaries such as pimps, leading to an increased risk of sex

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<sup>25</sup> 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/>

<sup>26</sup> Freedom Network USA, <https://freedomnetworkusa.org/advocacy/survivor-reentry-project/>

<sup>27</sup> 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>

<sup>28</sup> 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>

trafficking. In fact, one study found that Craigslist’s ‘Erotic Services’ section reduced the female homicide rate by over 17 percent.

The criminalization of sex work disproportionately impacts Black, Brown, and Asian sex workers. Asian massage workers are explicitly targeted in several ways, including police raids and complaints made through the National Human Trafficking Hotline.<sup>29</sup> Police often claim that the intention of raids is to “save” victims of sex trafficking, but instead, it criminalizes and dehumanizes primarily Asian workers who are also noncitizens or undocumented. The criminalization of sex work has a uniquely problematic impact on trans women of color, who are regularly profiled and falsely arrested as sex workers or as trafficked based on their gender identity.

FNUSA recommends that the US work to support workers at the margins. Federal, state, and local governments should reduce barriers to employment by BIPOC communities and eliminate the criminalization of poverty that disproportionately impacts BIPOC, LGBTQIA, and Two-Spirit communities. The US must also decriminalize sex work at the Federal, state, and local levels and shift resources to providing services and support to sex trafficking survivors and sex workers who are seeking alternate employment.<sup>30</sup>

### **Enhanced Collaborative Task Fund grants**

DOJ’s Office for Victims of Crime provides funding to Enhanced Collaborative Model Human Trafficking Task Forces (ECMs) that must be shared by a state or local law enforcement agency and a service provider. For too long, law enforcement agencies have used these funds to support ‘raids and rescues’ that include arresting sex workers, sometimes even if the workers are identified as sex trafficking survivors. In NY, for example, reporting has revealed that ECM Task Force member NYPD engaged in routine criminalization of sex workers and possible sex trafficking victims.<sup>31</sup> Task Forces also support ‘diversion courts’ that rely on arrest to coerce

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<sup>29</sup> Red Canary Song, et al, *Un-Licensed: Asian Migrant Massage Licensure and the Racialized Policing of Poverty*, February 2022, [https://static1.squarespace.com/static/5e4835857fcd934d19bd9673/t/6218d9316e93a74b051c9f00/1645795656006/2022\\_Un-Licensed.pdf](https://static1.squarespace.com/static/5e4835857fcd934d19bd9673/t/6218d9316e93a74b051c9f00/1645795656006/2022_Un-Licensed.pdf)

<sup>30</sup> 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](https://www.aclu.org/sites/default/files/field_document/aclu_sex_work_decrim_research_brief.pdf)

<sup>31</sup> 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>

survivors into programs or services.<sup>32</sup> Some law enforcement agencies use these funds for ‘john stings’ that are designed to arrest potential sex buyers using decoys completely unrelated to the identification of sex trafficking survivors. Each dollar spent arresting a sex worker or customer seeking consensual sex with an adult is a dollar taken away from housing, legal services, food, or education for a trafficking survivor.

FNUSA recommends discontinuing the ECM funding in order to focus on services for survivors, including collaborations with culturally-specific community-based organizations. 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.<sup>33</sup>

### **Emphasis on sex trafficking over labor trafficking**

The US government continues to prioritize sex trafficking and not labor trafficking in research, reporting, public education, and investigations. This is despite multiple sources of data indicating that there are more labor than sex trafficking survivors<sup>34</sup>, and highlights a racial bias and inequity. In the US, labor trafficking survivors tend to be non-citizens and from communities of color, while the majority of identified sex trafficking survivors are US citizens. The number of investigations and prosecutions involving labor trafficking compared to sex trafficking is disturbingly low.

FNUSA recommends that the US reform all employment-related visas (including G, H, and J visa categories) include worker protections including visa portability and employment authorization for dependents, to reduce vulnerabilities to abuse and exploitation.<sup>35</sup> FNUSA recommends that 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 investigate labor trafficking. The US Government should reform employment-related immigration categories to ensure that workers have the ability to escape abuse and exploitation without fear of harm. The DOL should release new guidance restoring authority for DOL investigators to file applications for Continued Presence and Supplement B

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<sup>32</sup> 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/>

<sup>33</sup> Freedom Network USA, *FY22 Human Trafficking Funding Recommendations*, December 2021, <https://freedomnetworkusa.org/app/uploads/2021/12/FY22FNUSAFundingRecs.pdf>.

<sup>34</sup> Department of State, 2021 Trafficking in Persons Report: United States, <https://www.state.gov/reports/2021-trafficking-in-persons-report/united-states/>

<sup>35</sup> 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> ; Freedom Network USA, 2022 TIP Report Input, 2/5/2022, <https://freedomnetworkusa.org/app/uploads/2022/02/FNUSA2022TIPReportInputFinal.pdf>

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.<sup>36</sup>

### **Failure of law enforcement to effectively screen non-citizens for trafficking**

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. US government border enforcement policies and closures have forced migrants seeking safety in the US to make increasingly dangerous crossings or wait in unsafe and unsanitary conditions in Mexico. As detailed extensively in our input for the 2022<sup>37</sup> and 2023<sup>38</sup> Trafficking in Persons Reports, 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. Even once these policies are discontinued, they caused lasting harm. Immigrants remain fearful of accessing even the services and support from governmental agencies for which they are eligible (including emergency medical care and protection from sexual abuse, domestic violence, and human trafficking), leaving them vulnerable to abuse and exploitation. 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.

FNUSA recommends reconsidering the proposed rule to reinstate an asylum ban and instead increase access to safe migration routes for asylum-seekers, unaccompanied migrants, and those fleeing harm. FNUSA recommends the screening of all foreign nationals encountered during immigration enforcement activities for humanitarian protection and that officials always err on the side of protection. FNUSA recommends that law enforcement be held accountable for their failure to respond to reports of all forms of trafficking and provide support for foreign national survivors in the form of Continued Presence.

### **Failure of law enforcement to respond to reports of trafficking made by service providers**

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

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<sup>36</sup> 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> ; Freedom Network USA, 2022 TIP Report Input, 2/5/2022, <https://freedomnetworkusa.org/app/uploads/2022/02/FNUSA2022TIPReportInputFinal.pdf>

<sup>37</sup> FNUSA, Freedom Network USA's Input for the 2022 Trafficking in Persons Report, 2/5/2022, <https://freedomnetworkusa.org/app/uploads/2022/04/FNUSA2022TIPReportInputFinal.pdf>

<sup>38</sup> FNUSA, Freedom Network USA's Input for the 2023 Trafficking in Persons Report, 2/1/2023, <https://freedomnetworkusa.org/app/uploads/2023/02/FNUSA-2023-TIP-Report-Input.pdf>

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. Law enforcement agencies also continue to fail to apply for Continued Presence to provide immediate protection to foreign national trafficking survivors.

FNUSA recommends that DHS and DOJ require that all HSI and FBI Field Offices report data on all reports of human trafficking that are received, the actions taken in response to the report, and the outcome of any investigation. They should include the race, gender identity, and citizenship status of all potential victims who report their victimization, the type of trafficking experienced, and what actions they took to connect the survivors to services and protection.<sup>39</sup>

### **Law enforcement agencies fail to protect immigrant trafficking survivors**

Federal policies, including increased barriers to immigration relief, have had a direct and marked impact on immigrant survivors of abuse and exploitation, including human trafficking. The general downward trend in investigations and prosecutions of trafficking in recent years, as noted in the 2022 TIP Report and low numbers of labor trafficking prosecutions, is the inevitable result of this fear of law enforcement.<sup>40</sup> The situation is only exacerbated for survivors in removal proceedings. Survivors who are already in removal proceedings are now at high risk of being removed from the US **before** their T Visa applications are adjudicated. This also limits the ability of survivors to assist in the investigation and prosecution of the traffickers if they are removed from the US. Although the TVPA created extensive protections for immigrant survivors of human trafficking, implementation has not lived up to the legal promise.<sup>41</sup> DHS has failed to fully implement the bona fide determination process for T Visa applicants, leaving them at risk of deportation while they wait for adjudication of their T Visa.

Continued Presence remains elusive for most immigrant survivors of human trafficking, leaving them unprotected for years while their T Visas are pending. Federally funded services continue to be time-limited, focused only on immediate crisis intervention, leaving survivors of all nationalities struggling to fully heal from their experience. The impact of this places even more worry on immigrant survivors of color, who tend to experience the worst treatment in the immigration system.

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

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<sup>39</sup> Freedom Network USA, *Continued Presence Challenges and Recommendations*, 2/18/21, <https://freedomnetworkusa.org/app/uploads/2021/02/FNUSAContinuedPresenceChallengesRecommendationsFeb2020.pdf>

<sup>40</sup> US Department of State, *2022 Trafficking in Persons Report*, <https://www.state.gov/reports/2022-trafficking-in-persons-report/>

<sup>41</sup> *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>

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 working to apply for long-term immigration relief. The number of survivors granted CP increased in 2021 (247 grants) compared to 2020 (97 grants), 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 T visas issued in 2022 (1715) and 2021 (829).<sup>42</sup> Furthermore, FNUSA members have reported that survivors of sex trafficking are more likely to obtain CP than survivors of labor trafficking.

FNUSA recommends that DHS immediately adopt procedures to issue bona fide determinations for properly filed T Visa applications and a more realistic process for state and local law enforcement agencies to file Continued Presence applications.

### **End Demand/ Nordic Model**

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. Arrests of sex buyers and sex workers do not end in sex trafficking convictions.<sup>43</sup> 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. End Demand stings labeled as sex trafficking rings disproportionately harm Black, Brown, and Asian customers and sex workers; white customers are more likely to plead out or are referred to diversion programs.<sup>44</sup>

FNUSA recommends that the government stop arresting sex buyers and sex workers, as well as those who assist them. The government should not conflate consensual sex work by adults with sex trafficking and should clearly distinguish between those very different concepts in all

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<sup>42</sup> FNUSA, *Freedom Network USA’s Input for the 2023 Trafficking in Persons Report*, 2/1/2023  
<https://freedomnetworkusa.org/app/uploads/2023/02/FNUSA-2023-TIP-Report-Input.pdf>

<sup>43</sup> 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/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](https://www.aclu.org/sites/default/files/field_document/aclu_sex_work_decrim_research_brief.pdf)

<sup>44</sup> 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=rreg>

training, outreach and report materials, as well as in policies and programs. The US should work to decriminalize sex work to increase safety for sex workers.

### **National Human Trafficking Hotline**

The National Human Trafficking Hotline (NHTH) currently operates as a law enforcement tipline as well as a hotline for survivors. This conflation of opposite and ethically conflicting duties is harmful to survivors who may not trust this dual resource (especially BIPOC survivors), may not understand that their information may be shared with law enforcement but may not understand how to prevent that disclosure, and serves to divert limited resources away from survivors into an investigation. Also, there is no data available on who is being reported, the charges, and the effectiveness of identification.

FNUSA recommends that the NHTH immediately cease functioning as a law enforcement tipline, and HHS immediately stop requiring the NHTH to report any data on referrals to law enforcement. Survivors should not be forced, coerced, or tricked into engaging with law enforcement. BIPOC survivors are most likely to be wary of the criminal legal system, and operating a services hotline as a law enforcement tipline will disproportionately impact BIPOC survivors. The NHTH should exclusively focus on quickly and appropriately responding to calls from trafficking survivors and connecting them with the services and support that they request.<sup>45</sup>

### **Funding for survivors**

The TVPA funding authorizations 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 which express opposition to the End Demand framework are not eligible for funding. This clause limits harm reduction efforts and increases vulnerability to trafficking in the sex trades. As described above, BIPOC and LGBTQIA and Two Spirit sex workers are made vulnerable by this exclusion from services paired with their criminalization. This clause also limits survivors' self-determined agency by forcing them to frame their experiences in government-sanctioned ways in order to work in the field, which replicates coercive patterns. Second, the funding requires that providers document raising and expending non-federal funds for the same programs, a 25% match. This requirement is complex, time-consuming, and does not ensure high quality services are provided to survivors. Due to the pandemic, these requirements are even more challenging, as providers have had to restrict their use of volunteers (a critical source of in-kind match) and cancel fundraising events (a primary source of cash match).

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<sup>45</sup> Freedom Network USA, *Comments on the Evaluation of the National Human Trafficking Hotline*, 10/25/19, <https://freedomnetworkusa.org/app/uploads/2019/11/FNUSAHotlineEvaluationSurveyComment-1.pdf>



FNUSA recommends that the DOJ publish an opinion about the constitutionality of the ‘prostitution pledge’ restrictions and that the US Congress remove both requirements from the law.

### **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. The most recent data indicates that in 2021, restitution was ordered for only 37% of convicted defendants.<sup>46</sup> BIPOC survivors are more likely to have been excluded from generational wealth and support, due to systemic racism, and are thus more impacted by the failure to order or collect restitution. Sex trafficking survivors, especially, continue to be denied restitution, even in federal cases in which restitution is mandatory.

FNUSA recommends that the DOJ increase and improve training for prosecutors and judges about mandatory restitution in human trafficking cases, provide resources to assist prosecutors in presenting their arguments in court, and provide trafficking victims with victim-witness counsel to advocate for restitution and other victims’ rights issues before federal courts. FNUSA additionally recommends that the US Government use all authorities at 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.

### **Failure to address child labor 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.<sup>47</sup> The Preventing Sex Trafficking and Strengthening Families Act required data collection, training, and reporting efforts by child welfare agencies, but only for sex (and not labor) trafficking. While at least a dozen states have chosen to extend their efforts to include child labor trafficking, most have not.<sup>48</sup> Over the last five years, the US Government has failed to identify all trafficking victims in the child welfare system due to this focus on sex trafficking only. A recent report by Coalition to Abolish Slavery & Trafficking (CAST) highlights the disparate treatment of child labor and sex trafficking victims in the child welfare system in California, which provides an example of what

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<sup>46</sup> FNUSA, *Freedom Network USA’s Input for the 2023 Trafficking in Persons Report*, 2/1/2023

<https://freedomnetworkusa.org/app/uploads/2023/02/FNUSA-2023-TIP-Report-Input.pdf>

<sup>47</sup> Freedom Network USA, *Input to UN Special Rapporteur on Forced Labor in Agriculture*, January 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>

<sup>48</sup> CAST, *Child Labor Trafficking in California*, October 2019, <https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf>

is happening across the US.<sup>49</sup> Reports indicate that while child sex trafficking victims in the US are predominately US Citizens, child labor trafficking survivors are predominately BIPOC migrants, including unaccompanied minors. Recent reporting and DOL investigations have revealed the abuse of migrant children and unaccompanied minors for child labor in violation of federal and state labor laws. The harmful immigration policies of the US make it necessary for children to work to support themselves and their families and make them more vulnerable to labor exploitation and trafficking.<sup>50</sup>

FNUSA calls on the US Government to immediately include all forms of child trafficking in their data collection, victim identification, training, and service provision efforts. Additionally, FNUSA calls on HHS to expand the National Advisory Committee on the Sex Trafficking of Children and Youth to include both sex and labor trafficking and that the survey of 50 states conducted by this Committee include questions on child labor trafficking.<sup>51</sup> States must ensure their child welfare systems prevent, identify, and serve all forms of trafficking victims. Finally, the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) of 2014 and The Justice for Victims of Trafficking Act (P.L. 114-22) of 2015 must be updated to specifically include child labor trafficking.

### **Survivor consultation**

The survivor consultants of the US Advisory 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 shared by trafficking survivors. 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.

FNUSA also recommends that the SPOG coordinate a new data collection and analysis effort to better inform Federal efforts to address racial equity in anti-trafficking efforts. Federal agencies, and all recipients of federal funds, should report the race, citizenship status, gender identity, and sexual orientation of all identified survivors as well as any criminal records related to their victimization. Law enforcement agencies should report the race, citizenship status, gender identity, and sexual orientation of everyone arrested in relation to a trafficking

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<sup>49</sup> CAST, *Child Labor Trafficking in California*, October 2019, <https://www.castla.org/wp-content/uploads/2019/11/ChildLaborTraffickinginCANov2019final.pdf>

<sup>50</sup> FNUSA, *Freedom Network USA's Additional Input for the 2023 Trafficking in Persons Report*, February 2023, <https://freedomnetworkusa.org/app/uploads/2023/02/FNUSA-Additional-Input-on-Child-Labor-2023-TIP-Report.pdf>

<sup>51</sup> 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>

investigation, whether they are identified as a trafficker or a victim (including data about all reports of potential trafficking survivors received from survivors or their advocates/representatives) and what services and support were provided to all potential trafficking victims (including whether Continued Presence was provided for all immigrant survivors). Aggregated data and analysis should be publicly available.

### Promising Practices

Worker-driven social responsibility<sup>52</sup> shows promise that includes elements of both primary prevention and secondary and tertiary prevention/response to human trafficking. CIW and the Fair Food Program<sup>53</sup> and Milk with Dignity<sup>54</sup> 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 trafficking<sup>55</sup>, coordinate a state-wide response<sup>56</sup>, and help victims<sup>57</sup>.

### Restorative Justice

Restorative justice programs include the offender's acknowledgment of causing harm and validation of the victim's suffering, a reckoning with the offending behavior that involves reflection and insight, a commitment not to re-offend, and an agreed-upon means of holding the person accountable. Restorative justice programs have shown promise in both addressing the needs of victims and reducing racial equity problems of the criminal legal system. Again, FNUSA recommends the decriminalization of adult consensual sex work. However, we recommend the consideration of restorative justice approaches to sex and labor trafficking cases as an alternative approach to justice that has fewer racial equity problems.

RESTORE, a federally funded pilot program in Pima County, Arizona operated from 2004-2007 to address sexual assault cases<sup>58</sup>. In all, 22 misdemeanor and felony sexual assault cases were referred by prosecutors to the program. Repeat sexual offenders were excluded as were those accused of domestic violence. The percentage of victims suffering from PTSD dropped from

<sup>52</sup> Worker-Driven Social Responsibility Network, *What is WSR?*, <https://wsr-network.org/what-is-wsr/>

<sup>53</sup> 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/>

<sup>54</sup> Worker-Driven Social Responsibility Network, *Milk with Dignity*, <https://wsr-network.org/success-stories/milk-with-dignity/>

<sup>55</sup> 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>

<sup>56</sup> 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>

<sup>57</sup> 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>

<sup>58</sup> Mary P. Koss, *The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes*, 29 J. INTERPERSONAL VIOLENCE 10-12 (2013), <https://publichealth.arizona.edu/sites/publichealth.arizona.edu/files/14%2004%2024%20RESTORE%20On-line%20published.pdf>

82% to 66% after completing the program. The percentage of participants who “felt safe, listened to, supported, treated fairly, treated with respect, and not expected to do more than they anticipated” exceeded ninety percent. Koss's peer-reviewed published report analyzing RESTORE's data found that two-thirds of felony-referred defendants and 91 percent of misdemeanor-referred defendants successfully completed the program and that 90 percent of all participants believed that “justice was done.”

Common Justice, <https://www.commonjustice.org/>, is an alternative to incarceration for participants who have committed extremely serious crimes including shootings, stabbings, and other violent assaults. If, and only if, the victims agree to participate, they will come together--or use a surrogate to represent them--with the perpetrator “and family and community members with a stake in the outcome.” The victims are free to reject the Common Justice alternative, in which case the offenders will go through the court process, and if convicted, serve prison sentences. Ninety percent of victims choose the program over the traditional criminal justice process even though offenders will not be sent to prison and will have their felony conviction removed following successful completion of the program. By 2018, the number of offenders who engaged in her program had a recidivism rate of only six percent. From 2012-2018, Common Justice expelled only one person from the program for committing a new crime.

I hope that you find this information helpful in your work. Please contact me ([jean@freedomnetworkusa.org](mailto:jean@freedomnetworkusa.org)) if you have any questions or need further information.

Sincerely,

A handwritten signature in cursive script that reads "Jean Bruggeman".

Jean Bruggeman  
Executive Director  
Freedom Network USA