

January 25, 2017

Ambassador Susan Coppedge
U.S. Department of State Office to Monitor and Combat Trafficking in Persons
1800 G Street, NW, Suite 2148
Washington, DC 20520

Re: Comments on Impending Release of Department of State 2017 Trafficking in Persons Report

Ambassador Coppedge:

Freedom Network USA applauds the continued commitment of the United States government to improve upon its efforts to address human trafficking here and abroad. We are pleased that an assessment of anti-trafficking efforts in the United States will continued to be incorporated into the 2017 Trafficking in Persons (TIP) Report.

The Freedom Network USA (FNUSA), established in 2001, is a coalition of 53 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. Since the enactment of the Trafficking Victims Protection Act of 2000 (TVPA), FNUSA members have worked closely with trafficked people to ensure that they receive the full array of legal and social services needed and are engaged in ensuring effective implementation of the law. FNUSA members include prosecutors who have criminally prosecuted sex and labor trafficking cases, civil attorneys who have brought cutting-edge civil lawsuits against traffickers, criminal attorneys who have filed vacatur petitions for victims, represented victims wrongly charged with a crime, and filed for restitution against traffickers, immigration attorneys who have represented hundreds of individuals granted T visas and U visas, and social service providers who have assisted hundreds of survivors, both US citizens and foreign nationals, minors and adults, females and males.

We write to offer information about the successes as well as challenges facing the US government in our shared mission to address human trafficking.

I. Highlighting Trends, Overall Issues, and Recommendations

Seventeen years after the TVPA became law, there is no systematic effort to identify and address labor trafficking, and no government agencies or institutions that engage in effective outreach, education and investigation of the most egregious forms of labor violations. Agencies such as DOL and the EEOC have engaged in small scale operations and provided some training and support for their staff. These efforts are hampered, though, by their limited legal authority and insufficient funding. Local and state law enforcement are uncertain of their authority, and have no existing structure for workplace enforcement through which they can identify labor trafficking. While occasional labor trafficking prosecutions are successful, the US has failed in its efforts to address all forms of trafficking.

FNUSA member CIW's Fair Food Program (FFP) is a promising practice in addressing labor trafficking. FFP has uncovered labor trafficking, fraud in recruitment, visa fraud and related violations during their routine audits. One case identified at a participating FFP farm was referred to the United States Attorneys Office for the S.D. Florida. Within weeks, a father and

son were arrested and later indicted on forced labor and related charges. Both have pleaded guilty - father to conspiracy to commit forced labor and son to immigration charges, with restitution included¹. The success of the FFP relies on a multipronged approach, in partnerships with NGOs, including education of workers, safe reporting avenues, financial benefits for partnering businesses and audits to ensure compliance. This demonstrates the scope of partnerships that are necessary in order to hold perpetrators accountable. FNUSA recommends that the US Government support the replication of the FFP in additional industries and geographical locations.

The success of the FFP also highlights the limits of a criminal justice system focused solution. While law enforcement and prosecution are critical enforcement mechanisms, community education and the creation of positive market forces are equally important. In FFP fields, workers learn their rights, are fairly paid and can report concerns without fear of reprisal; while employers gain access to committed buyers and can advertise products that are free of slave labor. In contrast, the US Government approach to sex trafficking has been overly focused on criminal justice interventions, few resources have been devoted to educating youth and adults and ensuring they have access to fair wages and living conditions. Where we once believed 100,000-300,000 kids to be lured into the sex trade by traffickers each year, we now know that the number is much smaller and that many of those youth are engaged in commercial sex for reasons more complex than the designs of a trafficker. Both youth and adults engaged in consensual sex work need resources and support in avoiding homelessness, protection from abuse, and safe alternatives. FNUSA urges the US Government to more comprehensively address the conditions of vulnerable populations to prevent labor and sex trafficking.

II. Changes in Policies and Laws that Affect Anti-Trafficking Efforts

FNUSA commends the federal government for making a number of positive changes in laws and policies.

- In January, President Obama signed a bill eliminating the consumptive demand exemption on imports, thereby strengthening US Customs and Border Patrol's ability to prevent goods made with forced labor from entering the country.
- The Department of Homeland Security also responded to feedback from survivors and advocates by updating the rules on Continued Presence to allow for a two year interim status. This move, which reflects the DHS' commitment to a victim-centered approach, will also reduce that administrative burden on Special Agents who will no longer have to complete as many renewal applications in order to ensure a survivor's presence for investigative purposes.
- The Department of Justice's Office for Victims of Crime (OVC) updated its VOCA regulations to encourage and support spending on services for human trafficking victim services.

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Commented [2]: I don't think that putting this in our TIP input will raise flags with DHS leadership. Besides, they are probably going to forbid any CP grants anyway..... sigh.....

¹ Two Mexican Nationals Sentenced to Prison for Participating in Forced Labor Scheme, <https://www.justice.gov/usao-sdfl/pr/two-mexican-nationals-sentenced-prison-participating-forced-labor-scheme-0> [last visited January 24, 2017].

FNUSA notes with encouragement the growing effort to provide remedies to trafficking survivors who have criminal records as a result of their victimization. 36 states now provide some type of relief designed for trafficking victims with criminal convictions². OVC has funded the American Bar Association's Survivor Reentry Project to increase access to these protections. The Trafficking Survivors Relief Act, introduced in 2016, would allow survivors to vacate federal convictions stemming from their trafficking experience. FNUSA urges the federal, state, local and tribal agencies to continue to adopt victim-centered laws and policies that discourage the arrest of victims, increase access to services and reduce vulnerabilities to victimization

States continue to expand their legal protections and resources for trafficking victims. Notably, Illinois passed SB3007, to provide state-funded public assistance (food, healthcare, and cash) to undocumented survivors of trafficking during the critical period between identification and receipt of immigration status. Unfortunately, most states focused solely on child sex trafficking and missed the opportunity to extend protections for child victims of labor trafficking and adult survivors of both sex and labor trafficking. FNUSA urges policy and legal changes to be as broad as possible to address the full spectrum of human trafficking and ensure that all victims have access to services and support.

III. Implementation of Existing Laws and Procedures

While the US has passed and issued a host of legislation, policies, and regulations that aim to address all forms of human trafficking, implementation continues to be uneven, lacking in several critical areas. States continue to criminalize trafficking victims, including "child prostitutes," which undermine their ability to address sex trafficking and further traumatize these survivors. Labor laws continue to include exemptions for the agricultural sector, family businesses, and children which undermine the ability to address labor trafficking. Immigration laws continue to create routes for traffickers to control foreign national workers including lack of portability of work-related visas, increasing use of temporary worker visas, and lack of oversight of labor brokers.

The Preventing Sex Trafficking and Strengthening Families Act implementation has led to improvements and also some concerns. Its mandates regarding improving the ability of foster care and adoption services to identify victims of sex trafficking have resulted in a greater number of referrals of cases involving youth to FNUSA members. However, the Department of Health and Human Services failed to include labor trafficking in the new reporting requirements, leaving labor trafficking unacknowledged and youth victims unsupported.

The implementation of the Justice for Victims of Trafficking Act is also a mix of positive and negative impacts.

In December 2015, President Obama appointed a diverse group of 11 human trafficking survivors to the US Advisory Council on Human Trafficking. The Council provides a critical mechanism for survivors to advise the US Government on human trafficking

² See map of states that provide for vacatur or sealing of trafficking related convictions provided by the ABA's Survivor Reentry Project, http://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/survivor-reentry-project.html [last visited January 24, 2017].

policies, procedures and programs. In 2016 the Council released its first Annual Report³, detailing five recommendations for improving US efforts to combat trafficking. FNUSA applauds the work of the Council, and urges the government to take seriously the recommendations set forth in the report. Unfortunately, this important milestone and the ongoing efficacy and sustainability is at risk due to the failure to include funding to staff and support the Advisory Council, as noted by the Council in its report. FNUSA encourages the government to provide this necessary additional support so that the Council can fulfill its mandate.

The implementation of the Domestic Trafficking Victims' Fund has been less effective. The Fund has failed to grow as projected by its supporters, accruing a total of only \$102,000 as of June 2016. Advocates, including FNUSA, did not support the creation of the Fund. We remain concerned that the creation of crime-specific funds silos victims and services instead of supporting increased collaboration and coordination of existing victim outreach and services programs. While FNUSA applauds Congress's acknowledgement of the need for increased funding for survivors, Congress should, instead, continue to provide additional funding for all victim services programs through the Crime Victims Fund and support OVC's efforts to support states which provide expanded access to services and crime victim compensation for trafficking victims.

It is unclear if the JVTAs requirement to provide increased training for judges and federal prosecutors on the TVPA's mandatory restitution has been fully implemented. Although the Attorney General's Annual Trafficking in Persons Report for FY2015⁴ (the most recent available report) includes a list of all federal human trafficking restitution orders, but many of the federal cases described elsewhere in the report are not included and there is no list of cases in which restitution was not ordered. Therefore, it seems that many sentences continue to lack restitution orders.

The implementation of the Trafficking Victims Protection Act (TVPA) continues to improve, but some gaps remain.

The TVPA expanded federal criminal law to enable the prosecution of trafficking which involved non-violent coercion and to address evolving forms of servitude, particularly in labor trafficking cases. Despite this foundation, FNUSA members report a distinct lack in prosecutions of non-violent coercion cases. The US Department of Justice (DOJ) should use the tools provided by Congress and vigorously investigate and prosecute cases where non-violent means of coercion are used in sex and labor trafficking cases. We recommend that the US government provide an analysis of the types of trafficking cases that are being investigated and prosecuted at the federal, state, tribal and local levels in the 2017 TIP Report.

Commented [3]: Do we want to note anything about the ACA matching funds? Are we assuming that repeal of the ACA will include that as well?

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³ US Advisory Council on Human Trafficking Annual Report 2016, <https://www.state.gov/documents/organization/263434.pdf> [last visited January 24, 2017].

⁴ Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons FY 2015, <https://www.justice.gov/ag/file/870826/download> [last visited January 24, 2017].

Updated regulations for the T Visa were finally published by US Citizen and Immigration Services (USCIS) on December 19, 2016.⁵ This Interim Rule updates the regulations published in January 2002, and includes critical changes made to the TVPA through various reauthorizations. FNUSA commends USCIS for publishing this long overdue update and urges USCIS to carefully consider the comments that they receive in response to ensure that the regulations are clear, accurate, and fully reflect Congress' intent to provide protection and support to survivors of human trafficking.

IV. Services for Survivors

FNUSA commends the US Government for increased spending on services for survivors of human trafficking. However, we believe that the funds need to be spent more strategically to ensure equitable distribution of services funding across the US, provide capacity building support to newer and smaller organizations, provide community capacity building support to communities that are just developing their response to human trafficking, and ensure equal access to services for all victims of human trafficking (regardless of their nationality, gender identity, sexual orientation, age and abilities). FNUSA provided the attached recommendations to OVC and the Department of Health and Human Services Office of Trafficking in Persons (OTIP) in 2016.

FNUSA is encouraged by the increased level of communication between OVC and OTIP, the federal agencies that oversee the primary sources of federal funding for human trafficking survivors in the US. FNUSA believes that increased partnership can assist OVC and OTIP in helping to improve access for survivors by designing complementary grant programs, including funding for direct services, training and technical assistance, and capacity building to address underserved communities and localities.

FNUSA commends the Department of Housing and Urban Development (HUD) and the Administration for Children and Families (ACF) for developing a new partnership and pilot program with the Chicago Housing Authority.⁶ This pilot will test the use of a Housing First model for survivors of human trafficking, offering vouchers for 60 individuals over the next three years. This seeks to address the lack of housing options for survivors who often face housing instability upon leaving their trafficking situation, or see housing as a barrier to leaving at all.

FNUSA commends OVC's new grant programs to provide training and technical assistance related to legal services for survivors of human trafficking. In FY16, FNUSA member Coalition to Abolish Slavery and Trafficking received a grant to provide training and technical assistance to lawyers providing a variety of civil legal services to survivors. Additionally, OVC has funded the ABA's Survivor Reentry Project to provide training and technical assistance to increase access to remedies for survivors with criminal records resulting from their victimization.

⁵ Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-29900.pdf> [last visited January 24, 2017].

⁶ CHA Launches Program for Survivors of Human Trafficking, <https://www.wbez.org/shows/wbez-news/cha-launches-program-for-survivors-of-human-trafficking/197b8e1e-0f69-4428-acda-071c21795073> [last visited January 24, 2017].

V. Enforcement of Anti-Trafficking Laws and Prosecution Efforts

- FN members reported a shift in some jurisdictions where law enforcement and prosecutors have been less likely to identify a case as trafficking, or the victim as a victim of trafficking, unless that person is ready to cooperate and actively engaged in the investigation and prosecution. This is concerning given what we know - and share during law enforcement trainings - about trauma and the impact of trafficking on victims.

FNUSA believes that effective criminal enforcement is a critical component of the US Government's comprehensive approach to human trafficking. FNUSA believes that law enforcement actions are most effective when they are implemented in partnership with local service providers to ensure that victims are provided with comprehensive, independent support. While the US has made great progress in implementing a collaborative approach, there are many gaps that remain, which undercut the effectiveness of the law enforcement response.

FNUSA notes that many federal, state and local law enforcement agencies partner with service providers to plan and execute enforcement actions such as stings and raids. When law enforcement agencies include service providers in the planning, the providers are able to ensure appropriate staff (including legal providers, social service providers and interpreters) and services (including emergency housing, medical care, clothing, food and child care) are available immediately to survivors. When partners are not included in law enforcement actions, survivors are further traumatized by apprehension by law enforcement and law enforcement agents are diverted from critical investigative tasks to respond to the needs of victims. This increased trauma often reinforces the distrust of law enforcement that traffickers have instilled in their victims, making it less likely that the victims will be willing and able to disclose the full extent of their victimization and participate actively in the investigation and prosecution of the traffickers. Ineffective enforcement actions fail to identify and protect victims, and embolden traffickers who are not convicted of their crimes.

FNUSA notes that Operation Cross Country (OCC), the annual enforcement action organized by the FBI in order to identify victims of child sex trafficking⁷, is an example of a law enforcement operation that fails to fully implement an effective strategy to protect victims and apprehend traffickers. On its own website, the FBI conflates the issue of sex trafficking and prostitution. "Operation Cross Country, a nationwide law enforcement action that took place last week and focused on underage victims of prostitution, has concluded with the recovery of 149 sexually exploited children and the arrests of more than 150 pimps and other individuals."⁸ Advocates note that OCC actually results in the arrest of far more sex workers than either pimps or johns.⁹ FNUSA notes that adult sex trafficking victims may well be caught up in those sex worker

⁷ <https://www.fbi.gov/news/stories/operation-cross-country> [last visited January 25, 2017].

⁸ <https://www.fbi.gov/news/stories/operation-cross-country> [last visited January 25, 2017].

⁹ Operation Cross Country X: Everything You Need to Know About the FBI's Annual 'Underage Human Trafficking Sting in One Chart' <http://reason.com/blog/2016/10/25/operation-cross-country-x-in-one-chart> [last visited January 25, 2017]. Is Operation Cross Country the Best Way to Fight Child Sex Trafficking? http://www.huffingtonpost.com/katherine-koster/is-operation-cross-country-the-best-way-to-fight-child-sex-trafficking_b_8307634.html [last visited January 25, 2017].

arrests, but that arresting them is unlikely to assist them in accessing services, support or protection from service providers or law enforcement. Instead, the criminal record will certainly leave them ineligible for many forms of public benefits including financial aid for higher education and unable to pass the background checks required by many public and private employers and landlords. Without access to support, protection, education, housing or legal employment, these men and women are even more vulnerable to exploitation and trafficking.

Additionally, while FNUSA supports the FBI's inclusion of, "[m]ore than 100 victim specialists" in the operation and that, "[a]ll of the recovered U.S. minors were offered services."¹⁰ We highly recommend that all FBI offices partner with local social service providers *in advance* of any law enforcement actions. FNUSA's members are located throughout the US¹¹ and report that while some FBI Field Offices partner with local providers, others do not. The FBI's Office for Victim Assistance is not designed to provide long term, comprehensive social and legal services for crime victims, nor should it be. Crime victims need, and deserve, to work with an independent service provider whose sole interest is in supporting the victim. Additionally, it is concerning that the FBI seems to be limiting victim services to minors (although the data shows that many adult sex workers were also identified) and perhaps even to U.S. citizen minors (it is unclear if foreign national minors were identified and, if so, what services and support they were offered).

FNUSA is strongly opposed to the practice of arresting sex workers in the name of addressing sex trafficking. Arrest is traumatizing and even well intentioned law enforcement officers are unable to determine the exact circumstances of sex workers in the context of a raid. FNUSA knows from our direct services experience that sex trafficking victims are adults and minors, U.S. citizens and foreign nationals, of all gender identities. As noted above, these criminal records create additional barriers for consensual sex workers as well as trafficking victims, creating increased vulnerability to trafficking instead of reducing trafficking. Some jurisdictions go so far as to publish the names and mugshots of sex workers arrested, creating additional barriers of shame and decreasing their options for finding safe housing and employment. Those who are escaping domestic violence or past human trafficking are at increased risk of being found and further abused. FNUSA recommends that the US Government immediately ban the use of these dangerous and ineffective practices by all federal law enforcement agencies and special conditions should be added to all grants to bar the use of federal funds for the arrest of potential trafficking victims.

FNUSA notes a related practice of indiscriminate raids on sexually oriented businesses in the name of addressing sex trafficking. Lately, many FNUSA members note that local law enforcement are targeting massage business, mainly those with owners and workers of Asian descent. These efforts are based on assumptions and conflations, and not based in evidence of actual trafficking. While FNUSA acknowledges that trafficking occurs within massage businesses, as it does in many industries, not all of those engaged in commercial sex at such establishments are trafficking victims. In New York City, for example, FNUSA members report

¹⁰ <https://www.fbi.gov/news/stories/operation-cross-country> [last visited January 25, 2017].

¹¹ A complete list of current FNUSA members is available at <https://freedomnetworkusa.org/current-members/>.

that out of over 100 raids, only a very small number of trafficking victims have been identified. Instead, the workers have been arrested and many have fled to another state or been driven further underground. As described above, this only increases the likelihood of future exploitation. Law enforcement should, instead, focus their valuable resources towards victim-initiated investigations to identify where trafficking is occurring rather than engaging in widespread raids.

Continued Presence (CP) is a critical tool for supporting trafficking survivors during the investigation of cases involving foreign nationals. CP provides temporary legal status and employment authorization, as well as access to federally-funded services, so that trafficking survivors are available to assist in investigations and begin to rebuild their lives without becoming vulnerable to being re-trafficked. However, implementation continues to be woefully inadequate. Some FNUSA members report that it is often easier to obtain CP for a sex trafficking survivor than from a labor trafficking survivor from specific law enforcement partners, even when the traffickers use nearly identical methods to obtain and maintain control over the victims. This inconsistency is of great concern for FNUSA members, who also report that access to CP seems to depend largely on the individual agent involved. Other members report long delays in the application process, and in some circumstances law enforcement pursuing Deferred Action in lieu of CP “because it’s faster.” This is in direct contravention of DHS policy. FNUSA urges federal law enforcement agencies to request CP for all survivors at the outset of a human trafficking investigation. This ensures that survivors will have immediate access to lawful employment and benefits programs, such as access to ongoing medical care, food, and housing, as they assist with law enforcement investigations. Stable and safe survivors are essential to a robust investigation and proper prosecution. FNUSA commends the Blue Campaigns efforts to identify and address challenges in access CP in 2016, but urges DHS to continue and expand these efforts until the number of CP grants more closely resembles the number of T Visa grants.

VI. Evaluating US Government Efforts

Research:

Members highlighted a number of positive efforts addressing prevention and awareness. In June of 2016 a DOJ funded report, “Youth Involvement in the Sex Trade: A National Study” was published that details important insights into youth engaged in commercial sex, many of which contradict current assumptions and talking points often used in media and many human trafficking awareness efforts.¹² These series of studies, spanning six different cities across the country, detailed the experiences of youth who are engaged in survival sex, highlighting needs and health experiences, interactions with law enforcement, and making important recommendations to best serve this vulnerable population. FNUSA encourages

Commented [5]: Kate- Can you add any detail here? And why that is important- can we recommend policy changes to reflect this research or something?

¹² <https://drive.google.com/drive/folders/0BzDR1Y-BJ0-CMXd0TIVuQXVUR1k>

