

# RECOMMENDATIONS FOR THE REAUTHORIZATION OF THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

Presented by



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## **INTRODUCTION**

### **WHO IS ATEST?**

The Alliance to End Slavery and Trafficking (ATEST) is a U.S. based coalition that advocates for solutions to prevent and end all forms of human trafficking and modern slavery around the world. We advocate for lasting solutions to prevent labor and sex trafficking, hold perpetrators accountable, ensure justice for victims and empower survivors with tools for recovery. Our collective experience implementing programs at home and abroad provides our coalition an unparalleled breadth and depth of expertise.

ATEST member organizations include: Coalition of Immokalee Workers (CIW), Coalition to Abolish Slavery & Trafficking (CAST), End Child Prostitution and Trafficking – USA (ECPAT-USA), Free the Slaves, Futures Without Violence, International Justice Mission (IJM), National Domestic Workers Alliance (NDWA), National Network for Youth (NN4Y), Polaris, Safe Horizon, Solidarity Center, Verité, and Vital Voices Global Partnership.

ATEST is supported by Humanity United and Humanity United Action, U.S.-based nonprofits dedicated to bringing new approaches to global problems that have long been considered intractable.

# ATEST RECOMMENDATIONS FOR TVPA REAUTHORIZATION

## PREVENTION of Human Trafficking and Modern-Day Slavery

### DOMESTIC PROPOSALS

#### **TOPIC #1: Strengthen regulation of foreign labor recruiters (in the U.S. and abroad) to prevent trafficking.**

**PURPOSE:** Foreign labor contractors are increasingly relied upon to facilitate the movement of labor from one country to another. While many foreign labor contractors behave ethically and are engaged in lawful conduct, other foreign labor contractors are often complicit with or directly involved in trafficking of workers. Contractors often charge exorbitant fees for their services, forcing workers into debt bondage, falsifying documents, and deceiving workers about their terms and conditions of work, increasing vulnerability to human trafficking. Stricter regulation of labor recruiters is needed to protect workers entering the United States from human trafficking and other abuses, especially in temporary or guest worker programs.

#### **PROPOSED STATUTORY LANGUAGE:**

#### **SEC.. DEFINITIONS.**

(a) IN GENERAL.—Except as otherwise provided by this subtitle, the terms used in this subtitle shall have the same meanings, respectively, as are given those terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(b) OTHER DEFINITIONS.—

(1) FOREIGN LABOR CONTRACTOR.—The term “foreign labor contractor” means any person who performs any foreign labor contracting activity, including any person who performs foreign labor contracting activity wholly outside of the United States, except that the term does not include any entity of the United States Government.

(2) FOREIGN LABOR CONTRACTING ACTIVITY.—The term “foreign labor contracting activity” means recruiting, soliciting, hiring, employing, sponsoring, managing, furnishing, processing visa applications for, transporting, or housing an individual who resides outside of the United States in furtherance of employment in the United States, including when such activity occurs wholly outside of the United States.

(3) PERSON.—The term “person” means any natural person or any corporation, company, firm, partnership, joint stock company or association or other organization or entity (whether organized under law or not), including municipal corporations.

(4) SECRETARY.—The term the “Secretary” means the Secretary of Labor.

(5) WORKER.—the term “worker” means an individual or exchange visitor who is the subject of foreign labor contracting activity.

## SEC. DISCLOSURE.

(a) REQUIREMENT FOR DISCLOSURE.—Any person who engages in foreign labor contracting activity shall ascertain and disclose in writing in English and in the primary language of the worker at the time of the worker’s recruitment, the following information:

(1) The identity and address of the employer and the identity and address of the person conducting the recruiting on behalf of the employer, including any subcontractor or agent involved in such recruiting.

(2) All assurances and terms and conditions of employment, from the prospective employer for whom the worker is being recruited, including the work hours, level of compensation to be paid, the place and period of employment, a description of the type and nature of employment activities, any withholdings or deductions from compensation and any penalties for terminating employment.

(3) A signed copy of the work contract between the worker and the employer.

(4) The type of visa under which the foreign worker is to be employed, the length of time for which the visa will be valid and the terms and conditions under which this visa will be renewed with a clear statement of whether the employer will secure renewal of this visa or if renewal must be obtained by the worker and any expenses associated with securing or renewing the visa.

(5) An itemized list of any costs or expenses to be charged to the worker and any deductions to be taken from wages, including any costs for housing or accommodation, transportation to and from the worksite, meals, health insurance, workers’ compensation, costs of benefits provided, medical examinations, healthcare, tools, or safety equipment costs.

(6) The existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment.

(7) Whether and the extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including work related injuries and death, during the period of employment and, if so, the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

(8) A statement, in a form specified by the Secretary—

(A) stating that—

(i) no foreign labor contractor, agent, or employee of a foreign labor contractor, may lawfully assess any fee (including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs) to a worker for any foreign labor contracting activity; and

(ii) the employer may bear such costs or fees for the foreign labor contractor, but that these fees cannot be passed along to the worker; and

(B) explaining that—

(i) no additional requirements or changes may be made from the terms of the contract originally signed by the worker unless the worker is provided at least 48 hours to review and consider the additional requirements or changes;

(ii) no such additional requirements or changes may be made to the original contract signed by the worker without the specific consent of the worker to each such additional requirement or change; and

(iii) such consent shall be obtained voluntarily and without threat of penalty and if not so obtained will be a violation of law subject to the provisions of section 3611;

(C) describing the protections afforded the worker by this section and by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ([8 U.S.C. 1375b](#)) and any applicable visa program, including—

(i) relevant information about the procedure for filing a complaint provided for in section 3611 and

(ii) the telephone number for the national human trafficking resource center hotline number.

(9) Any education or training to be provided or required, including the nature, timing and cost of such training and the person who will pay such costs, whether the training is a condition of employment, continued employment, or future employment; and whether the worker will be paid or remunerated during the training period, including the rate of pay.

(10) Any other information that the Secretary may require by regulation.

(b) **RELATIONSHIP TO LABOR AND EMPLOYMENT LAWS.**—Nothing in the disclosure required by subsection (a) shall constitute a legal conclusion as to the worker’s status or rights under the labor and employment laws.

(c) **PROHIBITION ON FALSE AND MISLEADING INFORMATION.**—No foreign labor contractor or employer who engages in any foreign labor contracting activity shall knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed under section (a). The disclosure required by this section is a document concerning the proper administration of a matter within the jurisdiction of a department or agency of the United States for the purposes of [section 1519](#) of title 18, United States Code.

## **SEC. PROHIBITION ON DISCRIMINATION.**

(a) **IN GENERAL.**—It shall be unlawful for an employer or a foreign labor contractor to fail or refuse to hire, discharge, intimidate, threaten, restrain, coerce, or blacklist any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, creed, sex, national origin, religion, age, or disability.

(b) **DETERMINATIONS OF DISCRIMINATION.**—For the purposes of determining the existence of unlawful discrimination under subsection (a)—

(1) in the case of a claim of discrimination based on race, color, creed, sex, national origin, or religion, the same legal standards shall apply as are applicable under title VII of the Civil Rights Act of 1964 ([42 U.S.C. 2000e et seq.](#));

(2) in the case of a claim of discrimination based on unlawful discrimination based on age, the same legal standards shall apply as are applicable under the Age Discrimination in Employment Act of 1967 ([29 U.S.C. 621 et seq.](#)); and

(3) in the case of a claim of discrimination based on disability, the same legal standards shall apply as are applicable under title I of the Americans With Disabilities Act of 1990 ([42 U.S.C. 12111 et seq.](#)).

## **SEC. RECRUITMENT FEES.**

No employer, foreign labor contractor, or agent or employee of a foreign labor contractor, shall assess any fee (including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs) to a worker for any foreign labor contracting activity.

## **SEC. REGISTRATION.**

### **(a) REQUIREMENT TO REGISTER.—**

(1) **IN GENERAL.**—Subject to paragraph (2), prior to engaging in any foreign labor contracting activity, any person who is a foreign labor contractor or who, for any money or other valuable consideration paid or promised to be paid, performs a foreign labor contracting activity on behalf of a foreign labor contractor, shall obtain a certificate of registration from the Secretary of Labor pursuant to regulations promulgated by the Secretary under subsection (c).

(2) **EXCEPTION FOR CERTAIN EMPLOYERS.**—An employer, or employee of an employer, who engages in foreign labor contracting activity solely to find employees for that employer's own use, and without the participation of any other foreign labor contractor, shall not be required to register under this section. Notwithstanding the preceding sentence, such an employer shall be subject to the requirements of subsections (a) and (c) of section 3602 and sections 3603 and 3604 and shall be subject to the remedies under section 3610 for all violations stemming from the employer's own foreign labor contracting activity.

### **(b) NOTIFICATION.—**

(1) **ANNUAL EMPLOYER NOTIFICATION.**—Each employer shall notify the Secretary, not less frequently than once every year, of the identity of any foreign labor contractor involved in any foreign labor contracting activity for, or on behalf of, the employer, including at a minimum, the name and address of the foreign labor contractor and a description of the services.

(2) **ANNUAL FOREIGN LABOR CONTRACTOR NOTIFICATION.**—Each foreign labor contractor shall notify the Secretary, not less frequently than once every year, of the identity of any subcontractee, agent, or foreign labor contractor employee involved in any foreign labor contracting activity for, or on behalf of, the foreign labor contractor.

(3) **NONCOMPLIANCE NOTIFICATION.**—An employer shall notify the Secretary of the identity of a foreign labor contractor whose activities do not comply with this subtitle.



(4) AGREEMENT.—Not later than 48 hours after receiving a request from the Secretary, an employer shall provide the Secretary with the identity of any foreign labor contractor with which the employer has a contract or other agreement.

(c) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to establish an efficient electronic process for the timely investigation and approval of an application for a certificate of registration of foreign labor contractors, including—

(1) a declaration, subscribed and sworn to by the applicant, stating the applicant's permanent place of residence, the foreign labor contracting activities for which the certificate is requested, and such other relevant information as the Secretary may require;

(2) a set of fingerprints of the applicant;

(3) an expeditious means to update registrations and renew certificates;

(4) providing for the consent of any foreign labor recruiter to the designation by a court of the Secretary as an agent available to accept service of summons in any action against the applicant, if the applicant has left the jurisdiction in which the action is commenced, otherwise has become unavailable to accept service or is subject to personal jurisdiction in no State;

(5) providing for the consent of any foreign labor recruiter to jurisdiction in the Department of Labor or any state or Federal court of the United States for any action brought by any aggrieved individual or worker;

(6) providing for cooperation in any investigation by the Secretary or other appropriate authorities;

(7) providing for consent to the forfeiture of the bond for failure to cooperate with these provisions;

(8) providing for consent to be liable for violations of this subtitle by any agents or subcontractees of any level in relation to the foreign labor contracting activity of the agent or subcontractee to the same extent as if the foreign labor contractor had committed the violation;

(9) providing for consultation with other appropriate Federal agencies to determine whether any reason exists to deny registration to a foreign labor contractor; and

(10) any other requirements that the Secretary may prescribe.

(d) TERM OF REGISTRATION.—Unless suspended or revoked, a certificate under this section shall be valid for 2 years.

(e) APPLICATION FEE.—

(1) REQUIREMENT FOR FEE.—In addition to any other fees authorized by law, the Secretary shall impose a fee, to be deposited in the general fund of the Treasury, on a foreign labor contractor that submits an application for a certificate of registration under this section.

(2) AMOUNT OF FEE.—The amount of the fee required by paragraph (1) shall be set at a level that the Secretary determines sufficient to cover the full costs of carrying out foreign labor contract registration activities under this subtitle, including worker education and any additional costs associated with the administration of the fees collected.

(f) REFUSAL TO ISSUE; REVOCATION.—In accordance with regulations promulgated by the Secretary, the Secretary shall refuse to issue or renew, or shall revoke and debar from eligibility to obtain a certificate of registration for a period of not greater than 5 years, after notice and an opportunity for a hearing, a certificate of registration under this section if—

(1) the applicant for, or holder of, the certification has knowingly made a material misrepresentation in the application for such certificate;

(2) the applicant for, or holder of, the certification is not the real party in interest in the application or certificate of registration and the real party in interest—

(A) is a person who has been refused issuance or renewal of a certificate;

(B) has had a certificate revoked; or

(C) does not qualify for a certificate under this section;

(3) the applicant for, or holder of, the certification has been convicted within the preceding 5 years of —

(A) any felony under State or Federal law or crime involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally; or

(B) any crime relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any labor contracting activities.

(4) the applicant for, or holder of, the certification has materially failed to comply with this section.

(g) RE-REGISTRATION OF VIOLATORS.—The Secretary shall establish a procedure by which a foreign labor contractor that has had its registration revoked under subsection (f) may seek to re-register under this subsection by demonstrating to the Secretary's satisfaction that the foreign labor contractor has not violated this subtitle in the previous 5 years and that the foreign labor contractor has taken sufficient steps to prevent future violations of this subtitle.

## **SEC. BONDING REQUIREMENT.**

(a) IN GENERAL.—The Secretary shall require a foreign labor contractor to post a bond in an amount sufficient to ensure the ability of the foreign labor contractor to discharge its responsibilities and to ensure protection of workers, including wages.

(b) REGULATIONS.—The Secretary, by regulation, shall establish the conditions under which the bond amount is determined, paid, and forfeited.



(c) RELATIONSHIP TO OTHER REMEDIES.—The bond requirements and forfeiture of the bond under this section shall be in addition to other remedies under 3610 or any other law.

## SEC. MAINTENANCE OF LISTS.

(a) IN GENERAL.—The Secretary shall maintain—

(1) a list of all foreign labor contractors registered under this subsection, including—

(A) the countries from which the contractors recruit;

(B) the employers for whom the contractors recruit;

(C) the visa categories and occupations for which the contractors recruit; and

(D) the States where recruited workers are employed; and

(2) a list of all foreign labor contractors whose certificate of registration the Secretary has revoked.

(b) UPDATES; AVAILABILITY.—The Secretary shall—

(1) update the lists required by subsection (a) on an ongoing basis, not less frequently than every 6 months; and

(2) make such lists publicly available, including through continuous publication on Internet websites and in written form at and on the websites of United States embassies in the official language of that country.

(c) INTER-AGENCY AVAILABILITY.—The Secretary shall share the information described in subsection (a) with the Secretary of State

## SEC. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

Section 214 ([8 U.S.C. 1184](#)) is amended by adding at the end the following:

“(s) A visa shall not be issued under the subparagraph (A)(iii), (B)(i) (but only for domestic servants described in clause (i) or (ii) of [section 274a.12\(c\)\(17\)](#) of title 8, Code of Federal Regulations (as in effect on December 4, 2007)), (G)(v), (H), (J), (L), (Q), (R) or add any new immigration subsections of section 101(a)(15) until the consular officer—

“(1) has provided to and reviewed with the applicant, in the applicant’s language (or a language the applicant understands), a copy of the information and resources pamphlet required by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ([8 U.S.C. 1375b](#)) ; and

“(2) has reviewed and made a part of the visa file the foreign labor recruiter disclosures required by section 3602 of the Border Security, Economic Opportunity, and Immigration Modernization Act, including whether the foreign labor recruiter is registered pursuant to that section.”.

## **SEC. RESPONSIBILITIES OF SECRETARY OF STATE.**

(a) **IN GENERAL.**—The Secretary of State shall ensure that each United States diplomatic mission has a person who shall be responsible for receiving information from any worker who has been subject to violations of this subtitle.

(b) **PROVISION OF INFORMATION.**—The responsible person referred to in subsection (a) shall ensure that the information received is provided to the Department of Justice, the Department of Labor, or any other relevant Federal agency.

(c) **MECHANISMS.**—The Attorney General and the Secretary shall ensure that there is a mechanism for any actions that need to be taken in response to information received under subsection (a).

(d) **ASSISTANCE FROM FOREIGN GOVERNMENT.**—The person designated for receiving information pursuant to this subsection is strongly encouraged to coordinate with governments and civil society organizations in the countries of origin to ensure the worker receives additional support.

(e) **MAINTENANCE AND AVAILABILITY OF INFORMATION.**—The Secretary of State shall ensure that consulates maintain information regarding the identities of foreign labor contractors and the employers to whom the foreign labor contractors supply workers. The Secretary of State shall make such information publically available in written form and on-line, including on the websites of United States embassies in the official language of that country.

(f) **ANNUAL PUBLIC DISCLOSE.**—The Secretary of State shall make publically available on-line, on an annual basis, data disclosing the gender, country of origin and state, if available, date of birth, wage, level of training, and occupation category, disaggregated by job and by visa category.

## **SEC. ENFORCEMENT PROVISIONS.**

(a) **COMPLAINTS AND INVESTIGATIONS.**—The Secretary—

(1) shall establish a process for the receipt, investigation, and disposition of complaints filed by any person, including complaints respecting a foreign labor contractor's compliance with this subtitle; and

(2) either pursuant to the process required by paragraph (1) or otherwise, may investigate employers or foreign labor contractors, including actions occurring in a foreign country, as necessary to determine compliance with this subtitle.

(b) **ADMINISTRATIVE ENFORCEMENT.**—

(1) **IN GENERAL.**—If the Secretary finds, after notice and an opportunity for a hearing, any foreign labor contractor or employer failed to comply with any of the requirements of this subtitle, the Secretary may impose the following against such contractor or employer—

(A) a fine in an amount not more than \$10,000 per violation; and

(B) upon the occasion of a third violation or a failure to comply with representations, a fine of not more than \$25,000 per violation.

(c) **AUTHORITY TO ENSURE COMPLIANCE.**—The Secretary is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief and recovery of damages, as may be necessary to assure compliance with the terms and conditions of this subtitle.

(d) **BONDING.**—Pursuant to the bonding requirement in section 3606, bond liquidation and forfeitures shall be in addition to other remedies under this section or any other law.

(e) **CIVIL ACTION.**—

(1) **IN GENERAL.**—The Secretary or any person aggrieved by a violation of this subtitle may bring a civil action against any foreign labor contractor or employer that does not meet the requirements of section (f)(2) in any court of competent jurisdiction—

(A) to seek remedial action, including injunctive relief;

(B) to recover damages on behalf of any worker harmed by a violation of this subsection; and,

(C) to ensure compliance with requirements of this section.

(2) **ACTIONS BY THE SECRETARY OF LABOR.**—

(A) **SUMS RECOVERED.**—Any sums recovered by the Secretary on behalf of a worker under paragraph (1) or through liquidation of the bond held pursuant to section 3606 shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each worker affected. Any such sums not paid to a worker because of inability to do so within a period of 5 years shall be credited as an offsetting collection to the appropriations account of the Secretary for expenses for the administration of this section and shall remain available to the Secretary until expended or may be used for enforcement of the laws within the jurisdiction of the wage and hour division or may be transferred to the Secretary of Health and Human Services for the purpose of providing support to programs that provide assistance to victims of trafficking in persons or other exploited persons. The Secretary shall work with any attorney or organization representing workers to locate workers owed sums under this section.

(B) **REPRESENTATION.**—Except as provided in [section 518\(a\)](#) of title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this paragraph. All such litigation shall be subject to the direction and control of the Attorney General.

(3) **ACTIONS BY INDIVIDUALS.**—

(A) **AWARD.**—If the court finds in a civil action filed by an individual under this section that the defendant has violated any provision of this subtitle (or any regulation issued pursuant to this subtitle), the court may award—

(i) damages, up to and including an amount equal to the amount of actual damages, and statutory damages of up to \$1,000 per plaintiff per violation, or other equitable relief, except that with respect to statutory damages—

(I) multiple infractions of a single provision of this subtitle (or of a regulation under this subtitles) shall constitute only 1 violation for purposes of section 3602(a) to determine the amount of statutory damages due a plaintiff; and

(II) if such complaint is certified as a class action the court may award—

(aa) damages up to an amount equal to the amount of actual damages; and

(bb) statutory damages of no more than the lesser of up to \$1,000 per class member per violation, or up to \$500,000; and other equitable relief;

(ii) reasonable attorneys' fees and costs; and

(iii) such other and further relief, including declaratory and injunctive relief, as necessary to effectuate the purposes of this subtitle.

(B) CRITERIA.—In determining the amount of statutory damages to be awarded under subparagraph (A), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

(C) BOND.—To satisfy the damages, fees, and costs found owing under this clause, the Secretary shall release as much of the bond held pursuant to section 3606 as necessary.

(D) APPEAL.—Any civil action brought under this section shall be subject to appeal as provided in [chapter 83](#) of title 28, United States Code ([28 U.S.C. 1291 et seq.](#)).

(E) ACCESS TO LEGAL SERVICES CORPORATION.—Notwithstanding any other provision of law, the Legal Services Corporation and recipients of its funding may provide legal assistance on behalf of any alien with respect to any provision of this subtitle.

(f) AGENCY LIABILITY.—

(1) IN GENERAL.—Beginning 180 days after the Secretary of Labor has promulgated regulations pursuant to section 3605(c), an employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under section 3605. An employer who uses a foreign labor contractor who is not registered under section 3605 after such time period, or who uses a foreign labor contractor that has violated any provision of this subsection, shall be subject to the provisions of this subsection for violations committed by such foreign labor contractor to the same extent as if the employer were the foreign labor contractor who had committed the violation.

(2) SAFE HARBOR.—An employer shall not have any liability under this section if the employer hires workers referred by a foreign labor contractor that has a valid registration with the Department of Labor pursuant to section 3605, the employer does not act with reckless disregard of the fact that the foreign labor contractor has violated any provision of this section, and if the employer obtained knowledge of a violation of the provisions of this section, it immediately reported the violation to the Secretary.

(3) **LIABILITY FOR AGENTS.**—Foreign labor contractors shall be subject to the provisions of this section for violations committed by the foreign labor contractor's agents or subcontractees of any level in relation to their foreign labor contracting activity to the same extent as if the foreign labor contractor had committed the violation.

(g) **RETALIATION.**—

(1) **IN GENERAL.**—No person shall intimidate, threaten, restrain, coerce, discharge or in any other manner discriminate or retaliate against any worker or their family members (including a former employee or an applicant for employment) because such worker disclosed information to any person that the worker reasonably believes evidences a violation of this section (or any rule or regulation pertaining to this section), including seeking legal assistance of counsel or cooperating with an investigation or other proceeding concerning compliance with this section (or any rule or regulation pertaining to this section).

(2) **ENFORCEMENT.**—An individual who is subject to any conduct described in paragraph (1) may, in a civil action, recover appropriate relief, including reasonable attorneys' fees and costs, with respect to that violation. Any civil action under this subparagraph shall be stayed during the pendency of any criminal action arising out of the violation.

(h) **WAIVER OF RIGHTS.**—Agreements by employees purporting to waive or to modify their rights under this subtitle shall be void as contrary to public policy.

(i) **PRESENCE DURING PENDENCY OF ACTIONS.**—

(1) **IN GENERAL.**—If other immigration relief is not available, the Attorney General and the Secretary of Homeland Security shall grant advance parole to permit a nonimmigrant to remain legally in the United States for time sufficient to fully and effectively participate in all legal proceedings related to any action taken pursuant to this section.

(2) **REGULATIONS.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out paragraph (1).

## **SEC. RULE OF CONSTRUCTION.**

Nothing in this subtitle shall be construed to preempt or alter any other rights or remedies, including any causes of action, available under any other Federal or State law.

## **SEC. REGULATIONS.**

The Secretary shall prescribe such regulations as may be necessary to carry out this subtitle.

### **EXPLANATION AND SUPPORTING MATERIAL:**

This provision is designed to address the particular vulnerability of migrant/immigrant workers to human trafficking, and the specific role that foreign labor contractors or recruiters play in this. As cases like Signal International have highlighted, labor contractors can play a major role in trafficking of migrant/immigrant workers. They often deceive or coerce workers into accepting jobs that later turn out not to be as promised. They often charge workers exorbitant fees to migrate, which in turn leads to debt bondage, and then use legal threats to maintain control of them, often by manipulating the immigration process.

As noted in a report by Verité, a leading organization that addresses labor practices, it is worthwhile to challenge the assumption that workers who enter a country legally, under programs designed to manage their temporary labor, would be better off than those who are undocumented. Verité's research found that, in the U.S. case, migrants who enter the U.S. through guest worker programs face a range of vulnerabilities to forced labor that are not necessarily faced by their undocumented counterparts.

The House of Representatives passed a version of the 2008 TVPRA that included provisions to regulate foreign labor contractors as a means of preventing human trafficking. We have learned so much more since 2008 about the major role that foreign labor contractors play. In fact, many U.S.-based service providers state that regulating foreign labor contractors is one of the most important initiatives needed to combat human trafficking in the United States.

The provisions proposed would go a long way in preventing what are often the largest cases of human trafficking in our own backyard. The disclosure requirements would help prevent the deception that often leads to vulnerable workers ending up in debt bondage or other situations of forced or coerced labor. The proposed legislation also grants the Department of Labor the power to ensure enforcement of these provisions, through registration of labor contractors, and administrative and civil remedies to hold them accountable. Thus, this legislation creates a well-rounded approach to combating trafficking for labor exploitation in the United States and abroad, by increasing transparency and holding foreign labor contractors accountable, as it seeks to prevent trafficking from occurring, punish traffickers, and protect victims.

**TOPIC #2: Increase transparency to prevent trafficking in supply chains and other business operations.**

**PURPOSE:** To create incentives for businesses to prevent and remediate slavery and human trafficking that exists within their supply chains. Through transparency about their own efforts in this regard, companies will become more accountable to consumers and responsible investors that demand slavery-free goods.

**PROPOSED STATUTORY LANGUAGE:**

(H.R. 3226/S. 1968 from the 114<sup>th</sup> Congress, with a minor technical correction in the definition of “worst forms of child labor,” reflected in the language below)

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Business Supply Chain Transparency on Trafficking and Slavery Act of 2015”.

**SEC. 2. FINDINGS AND SENSE OF CONGRESS.**

(a) FINDINGS.—Congress finds the following:

(1) In 2014, the Department of Labor identified 136 goods from 74 countries around the world made by forced labor and child labor.

(2) The United States is the world’s largest importer, and in the 21st century, investors, consumers, and broader civil society increasingly demand information about the human rights impact of products in the United States market.

(3) Courts have ruled that consumers do not have standing to bring a civil action in United States courts for enforcement of a provision in the Smoot Hawley Tariff Act of 1930 prohibiting importation of goods made with forced labor or convict labor, and furthermore, the provision has a broad exception for goods that cannot be produced in the United States in sufficient quantities to meet the demands of American consumers from tainted goods, consequently, there are fewer than 40 enforcement actions on record in the past 80 years.

(4) Mechanisms under Federal law to prevent and punish perpetrators of forced labor, slavery, human trafficking, and the worst forms of child labor in the stream of commerce suffer from problems of limited scope, broad expectations, and lack of available information about goods that are produced along supply chains tainted by these crimes and imported by the United States.

(5) The Trafficking Victims Protection Reauthorization Act of 2003 ([Public Law 108–193](#)) together with the Trafficking Victims Protection Act of 2005 ([Public Law](#) [109–](#)

[164](#)) provide for the termination of Federal contracts where a Federal contractor or subcontractor engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, contract, or cooperative agreement is in effect, or uses forced labor in the performance of the grant, contract, or cooperative agreement. The Trafficking Victims Protection Act of 2005 also provides United States courts with criminal jurisdiction abroad over Federal employees, contractors, or subcontractors who participate in severe forms of trafficking in persons or forced labor.

(6) Executive Order 13126, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, Executive Order 13627, Strengthening Protections Against Trafficking In Persons In Federal Contracts, and title XVII of the National Defense Authorization Act for Fiscal Year 2013 ([Public Law 112–239](#)) have prohibited Federal contractors, subcontractors, and their employees from engaging in the following trafficking-related activities: charging labor recruitment fees; confiscating passports and other identity documents of workers; and using fraudulent recruitment practices, including failing to disclose basic information or making material misrepresentations about the terms and conditions of employment. Such Executive order and Acts also require Federal contractors, subcontractors, and their employees to maintain an anti-trafficking compliance plan that includes, among other elements, a complaint mechanism and procedures to prevent subcontractors at any tier in the supply chain from engaging in trafficking in persons.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) forced labor, slavery, human trafficking, and the worst forms of child labor are among the most egregious forms of abuse that humans commit against each other, for the sake of commercial profit;

(2) the legislative and regulatory framework to prevent goods produced by forced labor, slavery, human trafficking, and the worst forms of child labor from passing into the stream of commerce in the United States is gravely inadequate;

(3) legislation is necessary to provide consumers information on products that are free of child labor, forced labor, slavery, and human trafficking; and

(4) through publicly available disclosures, businesses and consumers can avoid inadvertently promoting or sanctioning these crimes through production and purchase of raw materials, goods and finished products that have been tainted in the supply chains.

**SEC. 3. DISCLOSURE OF INFORMATION RELATING TO EFFORTS TO COMBAT THE USE OF FORCED LABOR, SLAVERY, TRAFFICKING IN PERSONS, OR THE WORST FORMS OF CHILD LABOR.**

Section 13 of the Securities Exchange Act of 1934 ([15 U.S.C. 78m](#)) is amended by adding at the end the following new subsection:

“(s) DISCLOSURES RELATING TO EFFORTS TO COMBAT THE USE OF FORCED LABOR, SLAVERY, TRAFFICKING IN PERSONS, OR THE WORST FORMS OF CHILD LABOR.—

“(1) REGULATIONS.—Not later than 1 year after the date of enactment of the Business Supply Chain Transparency on Trafficking and Slavery Act of 2015, the Commission, in consultation with the Secretary of State, shall promulgate regulations to require that any covered issuer required to file reports with the Commission under this section to include annually in such reports, a disclosure whether the covered issuer has taken any measures during the year for which such reporting is required to identify and address conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within the covered issuer’s supply chain, and a description of such measures taken. Such disclosure shall include, under the heading ‘Policies to Address Forced Labor, Slavery, Human Trafficking, and the Worst Forms of Child Labor’, information describing to what extent, if any, the covered issuer conducts any of the following activities:

“(A) Whether the covered issuer maintains a policy to identify and eliminate the risks of forced labor, slavery, human trafficking, and the worst forms of child labor within the covered issuer’s supply chain (such disclosure to include the text of the policy or substantive description of the elements of the policy), and actions the covered issuer has taken pursuant to or in the absence of such policy.

“(B) Whether the covered issuer maintains a policy prohibiting its employees and employees of entities associated with its supply chain from engaging in commercial sex acts with a minor.

“(C) The efforts of the covered issuer to evaluate and address the risks of forced labor, slavery, human trafficking, and the worst forms of child labor in the product supply chain. If such efforts have been made, such disclosure shall—

“(i) describe any risks identified within the supply chain, and the measures taken toward eliminating those risks;

“(ii) specify whether the evaluation was or was not conducted by a third party;

“(iii) specify whether the process includes consultation with the independent labor organizations (as such term is defined in section 2 of the National Labor Relations Act ([29 U.S.C. 152](#))), workers’ associations, or workers within

workplaces and incorporates the resulting input or written comments from such independent labor organizations, workers' associations, or workers and if so, the disclosure shall describe the entities consulted and specify the method of such consultation; and

“(iv) specify the extent to which the process covers entities within the supply chain, including entities upstream in the product supply chain and entities across lines of products or services throughout the covered issuer’s product manufacturing.

“(D) The efforts of the covered issuer to ensure that audits of suppliers within the supply chain of the covered issuer are conducted to—

“(i) investigate the working conditions and labor practices of such suppliers;

“(ii) verify whether such suppliers have in place appropriate systems to identify risks of forced labor, slavery, human trafficking, and the worst forms of child labor within their own supply chain; and

“(iii) evaluate whether such systems are in compliance with the policies of the covered issuer or efforts in absence of such policies.

“(E) The efforts of the covered issuer to—

“(i) require suppliers in the supply chain to attest that the manufacture of materials incorporated into any product and the recruitment of labor are carried out in compliance with the laws regarding forced labor, slavery, human trafficking, and the worst forms of child labor;

“(ii) maintain internal accountability standards, supply chain management, and procurement systems, and reporting procedures for employees, suppliers, contractors, or other entities within its supply chain failing to meet the covered issuer’s standards regarding forced labor, slavery, human trafficking, and the worst forms of child labor, including a description of such standards, systems, and procedures;

“(iii) train the employees and management who have direct responsibility for supply chain management on issues related to forced labor, slavery, human trafficking, and the worst forms of child labor, particularly with respect to mitigating risks within the supply chains of products; and

“(iv) ensure that labor recruitment practices at all suppliers associated with the supply chain comply with the covered issuer’s policies or efforts in absence of such policies for eliminating exploitive labor practices that contribute to forced labor, slavery, human trafficking, and the worst forms of child labor, including by complying with audits of labor recruiters and disclosing the results of such audits.

“(F) The efforts of the covered issuer in cases where forced labor, slavery, human trafficking, and the worst forms of child labor have been identified within the supply chain, to ensure that remedial action is provided to those who have identified as victims, including support for programs designed to prevent the recurrence of those events within the industry or sector in which they have been identified.

“(2) REQUIREMENTS FOR AVAILABILITY OF INFORMATION.—

“(A) DISCLOSURE ON COMPANY WEBSITE.—The regulations promulgated under paragraph (1) shall require that the required information be disclosed by the covered issuer on the Internet website of the covered issuer through a conspicuous and easily understandable link to the relevant information that shall be labeled ‘Global Supply Chain Transparency’.

“(B) DISCLOSURE ON COMMISSION WEBSITE.—The Commission shall make available to the public in a searchable format on the Commission’s website—

“(i) a list of covered issuers required to disclose any measures taken by the company to identify and address conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within the covered issuer’s supply chain, as required by this subsection; and

“(ii) a compilation of the information submitted under the rules issued under paragraph (1).

“(3) DEFINITIONS.—As used in this subsection—

“(A) the term ‘covered issuer’ means an issuer that has annual worldwide global receipts in excess of \$100,000,000;

“(B) the terms ‘forced labor’, ‘slavery’, and ‘human trafficking’ mean any labor practice or human trafficking activity in violation of national and international standards, including International Labor Organization Convention No. 182, the Trafficking Victims Protection Act of 2000 ([Public Law 106–386](#)), and acts that would violate the criminal provisions related to

slavery and human trafficking under [chapter 77](#) of title 18, United States Code, if they had been committed within the jurisdiction of the United States;

“(C) the term ‘remedial action’ mean the activities or systems that an issuer puts in place to address non-compliance identified through monitoring or verification, and may apply to individuals adversely affected by the non-compliant conduct or address broader systematic processes;

“(D) the term ‘supply chain’, with respect to a covered issuer disclosing the information required under the regulations promulgated under this section, means all labor recruiters, suppliers of products, component parts of products, and raw materials used by such entity in the manufacturing of such entity’s products whether or not such entity has a direct relationship with the supplier; and

“(E) the term ‘the worst forms of child labor’ means child labor in violation of International Labor Organization Convention No. 182.”.

### **EXPLANATION AND SUPPORTING MATERIAL:**

Similar to the new law enacted in California in 2010, this provision would require retail sellers and manufacturers doing business inside the United States to develop, maintain, implement, and publically disclose their policies on eliminating human trafficking and slavery from their supply chains and throughout their business operations.

Unfortunately, slavery is thriving around the world, and many of the products we use each day have been tainted by slave labor. In order for companies to effectively eliminate slavery from their products, they should monitor their products all the way down the supply chain to the products’ raw materials. In the event that forced or slave labor is found, companies should provide remediation to victims. As an important first step, this bill requires companies to be frank with the public and investors about whether they are carrying out or engaging in such remediation.

This bill also requires companies to be transparent about their use of labor recruiters. The increasing number of companies that subcontract labor brokers to recruit and hire migrant workers also plays a role in the rise of human trafficking. The system of labor brokerage is widespread, opaque, and lacking in accountability, despite the fact that brokers often take responsibility for migrant workers’ visas, medical care, travel arrangements, and contract negotiation. In some cases, the labor brokers even act as the workers’ on-site supervisors. While labor recruiters have a legitimate and important function in the operation of global supply chain production, their presence increases migrant workers’ vulnerability to forced labor. Migrant workers may arrive at their destinations to find very different working conditions or employment contracts than they were promised, yet they are coerced into working by the brokers, who have the ability to withhold workers’ immigration documents, pay, or medical care.

Like labor trafficking, sex trafficking is a complex and varied criminal problem that requires a multi-disciplinary, cooperative solution. Companies can play a role in combating the sex trafficking of minors by enacting policies that impose a zero tolerance policy against their employees and the employees of companies within their supply chains purchasing commercial sex acts with minors.

Our proposal empowers the public, including consumers and responsible investors, to pressure companies to improve their policies, without excessive regulation or new federal government responsibilities.

It is also worth noting that, with the momentum created behind the new law in California, advocates in other states are already considering similar state legislation. Passage of a federal law would pre-empt states' passage of additional laws, protecting companies from having to ensure compliance with multiple and likely different state requirements. In the meantime, federal action would prevent a competitive advantage for companies that do not happen to do business in California and, thus, are not subject to the requirements of its law.

**TOPIC #3: Require the creation and testing of a methodology to determine the prevalence of human trafficking in the United States.**

**PURPOSE:** To provide a better sense of the scope of human trafficking in the United States.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. TRAFFICKING PREVELENCE STUDY.

- (a) IN GENERAL.— Not later than June 1, 2021, the National Institute of Justice, in consultation with the Department of Labor, the Department of Health and Human Services, and the Human Smuggling and Trafficking Center, shall provide to Congress a report recommending a comprehensive national methodology to determine the prevalence of human trafficking in the United States. This report shall be posted on the website of the Department of Justice. By this date, the National Institute of Justice is also required to have begun to implement a series of pilot studies to test promising methodologies".
- (b) AUTHORIZATION OF APPROPRIATIONS FOR THE DEVELOPMENT OF AN ANTI-TRAFFICKING PREVALENCE METHODOLOGY AND REPORT: To carry out the purposes described above, there are authorized to be appropriated annually \$2,000,000 to the Attorney General.

**EXPLANATION AND SUPPORTING MATERIAL:**

In order to successfully tackle human trafficking in the United States, we need to know the size and scope of the problem. Not knowing the prevalence of this problem handicaps efforts to fight it and hurts limits the ability to measure progress. While, NIJ has provided some grants to help determine the prevalence of trafficking in specific sectors or among certain populations, there has yet to be a well-funded, comprehensive national prevalence study to try to determine how big the issue is in the United States. Making this a priority will provide both government and nongovernmental organizations better information to direct resources and measure effectiveness.

**TOPIC #4: Ensure youth have access to housing and critical services.**

**PURPOSE:** To protect homeless youth from trafficking through access to vital shelter and services.

**PROPOSED STATUTORY LANGUAGE:**

(Runaway and Homeless Youth and Trafficking Prevention Act, S.262/H.R. 1779 from the 114<sup>th</sup> Congress)

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Runaway and Homeless Youth and Trafficking Prevention Act of 2015”.

**SEC. 2. RUNAWAY AND HOMELESS YOUTH AND TRAFFICKING PREVENTION.**

(a) REFERENCES.—Except as otherwise specifically provided, whenever in this section an amendment or repeal is expressed in terms of an amendment to, or repeal of, a provision, the amendment or repeal shall be considered to be made to a provision of the Runaway and Homeless Youth Act ([42 U.S.C. 5701 et seq.](#)).

(b) FINDINGS.—Section 302 ([42 U.S.C. 5701](#)) is amended—

(1) in paragraph (2), by inserting “age, gender, and culturally and” before “linguistically appropriate”;

(2) in paragraph (4), by striking “outside the welfare system and the law enforcement system” and inserting “, in collaboration with public assistance systems, the law enforcement system, and the child welfare system”;

(3) in paragraph (5)—

(A) by inserting “a safe place to live and” after “youth need”; and

(B) by striking “and” at the end;

(4) in paragraph (6), by striking the period and inserting “; and”; and

(5) by adding at the end the following:

“(7) runaway and homeless youth are at a high risk of becoming victims of sexual exploitation and trafficking in persons.”.

(c) BASIC CENTER GRANT PROGRAM.—

(1) GRANTS FOR CENTERS AND SERVICES.—Section 311(a) ([42 U.S.C. 5711\(a\)](#)) is amended—

(A) in paragraph (1), by striking “services” and all that follows through the period and inserting “safe shelter and services, including trauma-informed services, for runaway and homeless youth and, if appropriate, services for the families of such youth, including (if appropriate) individuals identified by such youth as family.”; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “mental health,”;

(ii) in subparagraph (B)—

(I) in clause (i), by striking “21 days; and” and inserting “30 days;”;

(II) in clause (ii)—

(aa) by inserting “age, gender, and culturally and linguistically appropriate to the extent practicable” before “individual”;

(bb) by inserting “, as appropriate,” after “group”; and

(cc) by striking “as appropriate” and inserting “including (if appropriate) counseling for individuals identified by such youth as family”; and

(III) by adding at the end the following:

“(iii) suicide prevention services; and”; and

(iii) in subparagraph (C)—

(I) in clause (ii), by inserting “age, gender, and culturally and linguistically appropriate to the extent practicable” before “home-based services”;

(II) in clause (iii), by striking “and” at the end;

(III) in clause (iv), by striking “diseases.” and inserting “infections;”; and

(IV) by adding at the end the following:

“(v) trauma-informed and gender-responsive services for runaway or homeless youth, including such youth who are victims of trafficking in persons or sexual exploitation; and

“(vi) an assessment of family engagement in support and reunification (if reunification is appropriate), interventions, and services for parents or legal guardians of such youth, or (if appropriate) individuals identified by such youth as family.”.

(2) ELIGIBILITY; PLAN REQUIREMENTS.—Section 312 ([42 U.S.C. 5712](#)) is amended—

(A) in subsection (b)—

(i) in paragraph (5), by inserting “, or (if appropriate) individuals identified by such youth as family,” after “parents or legal guardians”;

(ii) in paragraph (6), by striking “cultural minority and persons with limited ability to speak English” and inserting “cultural minority, persons with limited ability to speak English, and runaway or homeless youth who are victims of trafficking in persons or sexual exploitation”;

(iii) by striking paragraph (7) and inserting the following:

“(7) shall keep adequate statistical records profiling the youth and family members of such youth whom the applicant serves, including demographic information on and the number of—

“(A) such youth who are not referred to out-of-home shelter services;

“(B) such youth who are members of vulnerable or underserved populations;

“(C) such youth who are victims of trafficking in persons or sexual exploitation, disaggregated by—

“(i) such youth who have been coerced or forced into a commercial sex act, as defined in section 103 of the Trafficking Victims Protection Act of 2000 ([22 U.S.C. 7102](#));

“(ii) such youth who have been coerced or forced into other forms of labor; and

“(iii) such youth who have engaged in a commercial sex act, as so defined, for any reason other than by coercion or force;

“(D) such youth who are pregnant or parenting;

“(E) such youth who have been involved in the child welfare system; and

“(F) such youth who have been involved in the juvenile justice system;”;

(iv) by redesignating paragraphs (8) through (13) as paragraphs (9) through (14);

(v) by inserting after paragraph (7) the following:

“(8) shall ensure that—

“(A) the records described in paragraph (7), on an individual runaway or homeless youth, shall not be disclosed without the consent of the individual youth and of the parent or legal guardian of such youth or (if appropriate) an individual identified by such youth as family, to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth; and

“(B) reports or other documents based on the statistics described in paragraph (7) shall not disclose the identity of any individual runaway or homeless youth;”;

(vi) in paragraph (9), as so redesignated, by striking “statistical summaries” and inserting “statistics”;

(vii) in paragraph (13)(C), as so redesignated—

(I) by striking clause (i) and inserting:

“(i) the number and characteristics of runaway and homeless youth, and youth at risk of family separation, who participate in the project, including such information on—

“(I) such youth (including both types of such participating youth) who are victims of trafficking in persons or sexual exploitation, disaggregated by—

“(aa) such youth who have been coerced or forced into a commercial sex act, as defined in section 103 of the Trafficking Victims Protection Act of 2000 ([22 U.S.C. 7102](#));

“(bb) such youth who have been coerced or forced into other forms of labor; and

“(cc) such youth who have engaged in a commercial sex act, as so defined, for any reason other than by coercion or force;

“(II) such youth who are pregnant or parenting;

“(III) such youth who have been involved in the child welfare system; and

“(IV) such youth who have been involved in the juvenile justice system; and”;  
and

(II) in clause (ii), by striking “and” at the end;

(viii) in paragraph (14), as so redesignated, by striking the period and inserting “for natural disasters, inclement weather, and mental health emergencies;”; and

(ix) by adding at the end the following:

“(15) shall provide age, gender, and culturally and linguistically appropriate services to the extent practicable to runaway and homeless youth; and

“(16) shall assist youth in completing the Free Application for Federal Student Aid described in section 483 of the Higher Education Act of 1965 ([20 U.S.C. 1090](#)).”; and

(B) in subsection (d)—

(i) in paragraph (1)—

(I) by inserting “age, gender, and culturally and linguistically appropriate to the extent practicable” after “provide”;

(II) by striking “families (including unrelated individuals in the family households) of such youth” and inserting “families of such youth (including unrelated individuals in the family households of such youth and, if appropriate, individuals identified by such youth as family)”; and

(III) by inserting “suicide prevention,” after “physical health care,”; and

(ii) in paragraph (4), by inserting “, including training on trauma-informed and youth-centered care” after “home-based services”.

(3) APPROVAL OF APPLICATIONS.—Section 313(b) ([42 U.S.C. 5713\(b\)](#)) is amended—

(A) by striking “priority to” and all that follows through “who” and inserting “priority to eligible applicants who”;

(B) by striking “; and” and inserting a period; and

(C) by striking paragraph (2).

(d) TRANSITIONAL LIVING GRANT PROGRAM.—Section 322(a) ([42 U.S.C. 5714–2\(a\)](#)) is amended—

(1) in paragraph (1)—

(A) by inserting “age, gender, and culturally and linguistically appropriate to the extent practicable” before “information and counseling services”; and

(B) by striking “job attainment skills, and mental and physical health care” and inserting “job attainment skills, mental and physical health care, and suicide prevention services”;

(2) by redesignating paragraphs (3) through (8) and (9) through (16) as paragraphs (5) through (10) and (12) through (19), respectively;

(3) by inserting after paragraph (2) the following:

“(3) to provide counseling to homeless youth and to encourage, if appropriate, the involvement in such counseling of their parents or legal guardians, or (if appropriate) individuals identified by such youth as family;

“(4) to provide aftercare services, if possible, to homeless youth who have received shelter and services from a transitional living youth project, including (to the extent practicable) such youth who, after receiving such shelter and services, relocate to a State other than the State in which such project is located;”;

(4) in paragraph (9), as so redesignated—

(A) by inserting “age, gender, and culturally and linguistically appropriate to the extent practicable” after “referral of homeless youth to”;

(B) by striking “and health care programs” and inserting “mental health service and health care programs, including programs providing wrap-around services to victims of trafficking in persons or sexual exploitation,”; and

(C) by striking “such services for youths;” and inserting “such programs described in this paragraph;”;

(5) by inserting after paragraph (10), as so redesignated, the following:

“(11) to develop a plan to provide age, gender, and culturally and linguistically appropriate services to the extent practicable that address the needs of homeless and street youth;”;

(6) in paragraph (12), as so redesignated, by striking “the applicant and statistical” through “who participate in such project,” and inserting “the applicant, statistical summaries describing the number, the characteristics, and the demographic information of the homeless youth who participate in such project, including the prevalence of trafficking in persons and sexual exploitation of such youth,”; and

(7) in paragraph (19), as so redesignated, by inserting “regarding responses to natural disasters, inclement weather, and mental health emergencies” after “management plan”.

(e) COORDINATING, TRAINING, RESEARCH, AND OTHER ACTIVITIES.—

(1) COORDINATION.—Section 341 ([42 U.S.C. 5714–21](#)) is amended—

(A) in the matter preceding paragraph (1), by inserting “safety, well-being,” after “health,”; and

(B) in paragraph (2), by striking “other Federal entities” and inserting “the Department of Housing and Urban Development, the Department of Education, the Department of Labor, and the Department of Justice”.

(2) GRANTS FOR TECHNICAL ASSISTANCE AND TRAINING.—Section 342 ([42 U.S.C. 5714–22](#)) is amended by inserting “, including onsite and web-based techniques, such as on-demand and online learning,” before “to public and private entities”.

(3) GRANTS FOR RESEARCH, EVALUATION, DEMONSTRATION, AND SERVICE PROJECTS.—Section 343 ([42 U.S.C. 5714–23](#)) is amended—

(A) in subsection (b)—

(i) in paragraph (5)—

(I) in subparagraph (A), by inserting “violence, trauma, and” before “sexual abuse and assault”;

(II) in subparagraph (B), by striking “sexual abuse and assault; and” and inserting “sexual abuse or assault, trafficking in persons, or sexual exploitation.”;

(III) in subparagraph (C), by striking “who have been sexually victimized” and inserting “who are victims of sexual abuse or assault, trafficking in persons, or sexual exploitation”; and

(IV) by adding at the end the following:

“(D) best practices for identifying and providing age, gender, and culturally and linguistically appropriate services to the extent practicable to—

“(i) vulnerable and underserved youth populations; and

“(ii) youth who are victims of trafficking in persons or sexual exploitation; and

“(E) verifying youth as runaway or homeless to complete the Free Application for Federal Student Aid described in section 483 of the Higher Education Act of 1965 ([20 U.S.C. 1090](#));”;

(ii) in paragraph (9), by striking “and” at the end;

(iii) in paragraph (10), by striking the period and inserting “; and”; and

(iv) by adding at the end the following:

“(11) examining the intersection between the runaway and homeless youth populations and trafficking in persons, including noting whether such youth who are victims of trafficking in persons were previously involved in the child welfare or juvenile justice systems.”; and

(B) in subsection (c)(2)(B), by inserting “, including such youth who are victims of trafficking in persons or sexual exploitation” after “runaway or homeless youth”.

(4) PERIODIC ESTIMATE OF INCIDENCE AND PREVALENCE OF YOUTH HOMELESSNESS.—Section 345 ([42 U.S.C. 5714–25](#)) is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) by striking “13” and inserting “12”; and

(II) by striking “and” at the end;

(ii) in paragraph (2), by striking the period and inserting a semicolon; and

(iii) by adding at the end the following:

“(3) that includes demographic information about and characteristics of runaway or homeless youth, including such youth who are victims of trafficking in persons or sexual exploitation; and

“(4) that does not disclose the identity of any runaway or homeless youth.”; and

(B) in subsection (b)(1)—

(i) in the matter preceding subparagraph (A), by striking “13” and inserting “12”;

(ii) in subparagraph (A), by striking “and” at the end;

(iii) by redesignating subparagraph (B) as subparagraph (C);

(iv) by inserting after subparagraph (A) the following:

“(B) incidences, if any, of—

“(i) such individuals who are victims of trafficking in persons; or

“(ii) such individuals who are victims of sexual exploitation; and”;

(v) in subparagraph (C), as so redesignated—

(I) in clause (ii), by striking “; and” and inserting “, including mental health services;”; and

(II) by adding at the end the following:

“(iv) access to education and job training; and”.

(f) **SEXUAL ABUSE PREVENTION PROGRAM.**—Section 351 ([42 U.S.C. 5714–41](#)) is amended—

(1) in subsection (a)—

(A) by inserting “public and” before “nonprofit”; and

(B) by striking “prostitution, or sexual exploitation.” and inserting “violence, trafficking in persons, or sexual exploitation.”; and

(2) by adding at the end the following:

“(c) **ELIGIBILITY REQUIREMENTS.**—To be eligible to receive a grant under subsection (a), an applicant shall certify to the Secretary that such applicant has systems in place to ensure that such applicant can provide age, gender, and culturally and linguistically appropriate services to the extent practicable to all youth described in subsection (a).”.

(g) **GENERAL PROVISIONS.**—

(1) **REPORTS.**—Section 382(a) ([42 U.S.C. 5715\(a\)](#)) is amended—

(A) in paragraph (1)—

(i) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively; and

(ii) by inserting after subparagraph (A) the following:

“(B) collecting data on trafficking in persons and sexual exploitation of runaway and homeless youth;”; and

(B) in paragraph (2)—

(i) by striking subparagraph (A) and inserting the following:

“(A) the number and characteristics of homeless youth served by such projects, including—

“(i) such youth who are victims of trafficking in persons or sexual exploitation;

“(ii) such youth who are pregnant or parenting;

“(iii) such youth who have been involved in the child welfare system; and

“(iv) such youth who have been involved in the juvenile justice system;”; and

(ii) in subparagraph (F), by striking “intrafamily problems” and inserting “problems within the family, including (if appropriate) individuals identified by such youth as family,”.

(2) **NONDISCRIMINATION.**—Part F is amended by inserting after section 386A ([42 U.S.C. 5732-1](#)) the following:

**“SEC. 386B. NONDISCRIMINATION.**

“(a) **IN GENERAL.**—No person in the United States shall, on the basis of actual or perceived race, color, religion, national origin, sex, gender identity (as defined in section 249(c)(4) of title 18, United States Code), sexual orientation, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

“(b) EXCEPTION.—If sex segregation or sex-specific programming is necessary to the essential operation of a program, nothing in this section shall prevent any such program or activity from consideration of an individual's sex. In such circumstances, grantees may meet the requirements of this section by providing comparable services to individuals who cannot be provided with the sex-segregated or sex-specific programming.

“(c) DISQUALIFICATION.—The authority of the Secretary to enforce this section shall be the same as that provided for with respect to section 654 of the Head Start Act ([42 U.S.C. 9849](#)).

“(d) CONSTRUCTION.—Nothing in this section shall be construed, interpreted, or applied to supplant, displace, preempt, or otherwise limit the responsibilities and liabilities under other Federal or State civil rights laws.”.

(3) DEFINITIONS.—Section 387 ([42 U.S.C. 5732a](#)) is amended—

(A) by redesignating paragraphs (1) through (6), and paragraphs (7) and (8), as paragraphs (2) through (7), and paragraphs (9) and (10), respectively;

(B) by inserting before paragraph (2), as so redesignated, the following:

“(1) CULTURALLY AND LINGUISTICALLY APPROPRIATE.—The term ‘culturally and linguistically appropriate’, with respect to services, has the meaning given the term ‘culturally and linguistically appropriate services’ in the ‘National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care’, issued in April 2013, by the Office of Minority Health of the Department of Health and Human Services.”;

(C) in paragraph (6)(B)(v), as so redesignated—

(i) by redesignating subclauses (II) through (IV) as subclauses (III) through (V), respectively;

(ii) by inserting after subclause (I), the following:

“(II) trafficking in persons;”;

(iii) in subclause (IV), as so redesignated—

(I) by striking “diseases” and inserting “infections”; and

(II) by striking “and” at the end;

(iv) in subclause (V), as so redesignated, by striking the period and inserting “; and”;

(v) by adding at the end the following:

“(VI) suicide.”;

(D) in paragraph (7)(B), as so redesignated, by striking “prostitution,” and inserting “trafficking in persons,”;

(E) by inserting after paragraph (7), as so redesignated, the following:

“(8) **TRAFFICKING IN PERSONS.**—The term ‘trafficking in persons’ has the meaning given the term ‘severe forms of trafficking in persons’ in section 103 of the Trafficking Victims Protection Act of 2000 ([22 U.S.C. 7102](#)).”;

(F) in paragraph (9), as so redesignated—

(i) by inserting “to homeless youth” after “provides”; and

(ii) by inserting “, to establish a stable family or community supports,” after “self-sufficient living”; and

(G) in paragraph (10)(B), as so redesignated—

(i) in clause (ii)—

(I) by inserting “or able” after “willing”; and

(II) by striking “or” at the end;

(ii) in clause (iii), by striking the period and inserting “; or”; and

(iii) by adding at the end the following:

“(iv) who is involved in the child welfare or juvenile justice system, but who is not receiving government-funded housing.”.

(4) AUTHORIZATION OF APPROPRIATIONS.—Section 388(a) ([42 U.S.C. 5751\(a\)](#)) is amended—

(A) in paragraph (1), by striking “\$140,000,000” and all that follows through “2013”, and inserting “such sums as may be necessary for fiscal years 2016 through 2020”;

(B) in paragraph (3)(B), by striking “2009, 2010, 2011, 2012, and 2013” and inserting “2016 through 2020”; and

(C) in paragraph (4), by striking “\$25,000,000” and all that follows through “2013”, and inserting “such sums as may be necessary for fiscal years 2016 through 2020”.

### **SEC. 3. RESPONSE TO MISSING CHILDREN AND VICTIMS OF CHILD SEX TRAFFICKING.**

(a) MISSING CHILDREN'S ASSISTANCE ACT.—Section 404(b)(1)(P)(iii) of the Missing Children's Assistance Act ([42 U.S.C. 5773\(b\)\(1\)\(P\)\(iii\)](#)) is amended by striking “child prostitution” and inserting “child sex trafficking”.

(b) CRIME CONTROL ACT OF 1990.—Section 3702 of the Crime Control Act of 1990 ([42 U.S.C. 5780](#)) is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3)—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(B) by inserting after subparagraph (A) the following:

“(B) a recent photograph of the child, if available;” and

(3) in paragraph (4)—

(A) in subparagraph (A), by striking “60 days” and inserting “30 days”;

(B) in subparagraph (B), by striking “and” at the end;

(C) in subparagraph (C)—

(i) by inserting “State and local child welfare systems and” before “the National Center for Missing and Exploited Children”; and

(ii) by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following:

“(D) grant permission to the National Crime Information Center Terminal Contractor for the State to update the missing person record in the National Crime Information Center computer networks with additional information learned during the investigation relating to the missing person.”.

#### SEC. 4. SHORT TITLE.

This Act may be cited as the “Runaway and Homeless Youth and Trafficking Prevention Act of 2015”.

#### **EXPLANATION AND SUPPORTING MATERIAL:**

School-age children not living with their parents are at the greatest risk for coerced labor exploitation, domestic servitude, or commercial sexual exploitation. The Runaway and Homeless Youth Act (RHYA), originally part of the Juvenile Justice & Delinquency Prevention Act and last reauthorized by the Reconnecting Homeless Youth Act of 2008 (P.L.110-378), provides vital prevention and intervention services to runaway, homeless, and human trafficked youth:

- **Street Outreach**: provides education, treatment, counseling and referrals to vital services
- **Basic Center**: provides temporary shelter, counseling, family reunification services and aftercare services
- **Transitional Living**: provides longer-term housing with supportive services, including Maternity Group Homes

Runaway and homeless youth are more likely to fall victim to sexual exploitation than their peers and 28% of youth living on the street trade sex for basic needs such as food or shelter.<sup>1</sup> One 2013 survey by a New York City service provider found that one in four homeless youth had been a victim of sex trafficking or had engaged in survival sex. Of those, 48% had done so because they did not have a safe place to stay.<sup>2</sup> A survey of youth in a homeless shelter in Salt Lake City found that 50 percent reported having been solicited for sex by an adult.<sup>3</sup> Like female and minority populations, lesbian, gay, bisexual, and transgender (LGBT) youth are at heightened risk for exploitation, in part because of the disproportionate number of LGBT young people experiencing homelessness<sup>4</sup> – and yet many do not seek services due to fear of discrimination.

<sup>1</sup> Jody M. Greene, Susan T. Ennett, & Christopher L. Ringwalt, *Prevalence and Correlates of Survival Sex Among Runaway and Homeless Youth*, 89 Am. J. Pub. Health 1406, 1408 (1999), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1508758/pdf/amjph00009-0102.pdf>.

<sup>2</sup> Covenant House, *Homelessness, Survival Sex and Human Trafficking: As Experienced by the Youth of Covenant House New York* 6 (2013), available at <http://www.covenanthouse.org/sites/default/files/attachments/Covenant-House-trafficking-study.pdf>.

<sup>3</sup> Linda A. Smith, Samantha Healy Vardaman, and Melissa A. Snow, “The National Report on Domestic Minor Sex Trafficking” (Arlington, VA: Shared Hope International, 2009), p. 64, available at [http://sharedhope.org/wp-content/uploads/2012/09/SHI\\_National\\_Report\\_on\\_DMST\\_2009.pdf](http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf).

<sup>4</sup> Chelsea Parsons, Andrew Cray, Malika Saada Saar, & Yasmin Vafa, 3 Key Challenges in Combating the Sex Trafficking of Minors in the United States, (2014), available at <http://cdn.americanprogress.org/wp-content/uploads/2014/04/HumanTrafficking-brief.pdf>.

Homeless youth are often targeted by labor traffickers because they lack access to resources they need to live, such as shelter, food, and personal connections—yet the promises of paid employment are not realized. A survey conducted by the National Network for Youth in 2013 of Runaway and Homeless Youth programs found that runaway and homeless youth had been targeted by door-to-door trafficking sales rings. These youth were lured by the promise of housing, employment and food. What they actually received were impossible sales quotas and no pay for their work, and were placed in overcrowded motel rooms with other labor-trafficked youth. Thankfully, RHYA Street Outreach workers encountered these young people and connected them to the youth-appropriate housing and the help they needed to either go home or become stably housed.

Runaway and Homeless Youth programs are located in communities across the country and are often best positioned to prevent trafficking and commercial exploitation and provide early identification of survivors of these crimes. RHY programs also provide survivors of human trafficking with hope, safety, healing, and opportunities for a new life through: emergency shelters, family reunification work when safe, aftercare, outreach, education and employment, health care, behavioral and mental health, transitional housing, and independent housing options. Because these programs are in a strategic position to prevent trafficking, program resources must be increased in order to adequately protect youth from sex and labor trafficking.

**TOPIC #5: Prevent vulnerability to trafficking of domestic workers on B-1 visas and J-1 au pairs.**

**PURPOSE:** To increase the contractual protections for B-1 domestic workers and J-1 au pairs to match the protections for A-3 and G-5 visa holders and thereby decrease the vulnerability to trafficking of these categories of domestic workers.

**PROPOSED STATUTORY LANGUAGE:**

Section 203(b)(2) is amended by adding subpart (D):

(D) these contract protections shall be extended to any B-1 nonimmigrant accompanying or following to join an employer, or any nonimmigrant visa issued under the au pair category of the (J) section 101 (a)(15) of the Immigration and Nationality Act (8 USC 1101(a)(15))

**EXPLANATION AND SUPPORTING MATERIAL:** B-1 domestic workers do not enjoy protections related to overtime and manner of payment and contract provisions are governed by the Foreign Affairs Manual, so State Department has argued that they have no recourse to enforce contract violations. In addition, J-1 au pairs suffer from lack of monitoring and transparency of au pair agencies.

## INTERNATIONAL

### **TOPIC #6: Direct Department of Labor (DOL) to update the *List of Goods Produced by Child Labor or Forced Labor* report and include further information on certain products.**

**PURPOSE:** To produce a more valuable list of slavery-made products by including products that are made with inputs that are in turn are produced with forced or child labor.

### **PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_ Report on Child-Made and Slavery-Made Goods.

Section 105(b) of the Trafficking Victims Protection Act of 2005 (22 U.S.C. 7112) is amended—

(1) in subsection (b)(2)(C) by striking the semicolon and inserting, “(including, to the extent practicable, goods that are produced with inputs that are produced with forced labor or child labor),” and

(2) by adding at the end the following:

“(3) Transmission to Congress. The lists and information described in paragraph (2)(C) shall be provided no later than December 31, 2016, and every two years thereafter.”

### **EXPLANATION AND SUPPORTING MATERIAL:**

The current list segments the production chain. This is useful insofar as it allows the U.S. government to focus on that part of the production process where child or forced labor is the biggest problem and to address it with whatever technical assistance it may provide.

The list should also be maintained to ensure that products made by forced or child labor are not imported into the United States. For this purpose, however, the segmentation of the production chain is problematic. If, for example, child/forced labor is used for the planting and harvesting of cotton (which is not imported), but is not used in the making of fabric or the sewing of shirts (which are imported), the transformation of the cotton into the shirt would remove any taint of child/forced labor.

The proposed legislative language provides that any good produced with child or forced labor at any point in the production chain be put on the list. The list should further specify where in the production chain the forced or child labor occurred. Otherwise, garment producers could purchase cotton harvested by such labor and avoid an import ban simply because the raw cotton itself is not imported into the U.S. market.

### **PROPOSED REPORT LANGUAGE:**

The report issued by the International Labor Affairs Bureau (ILAB) on goods produced by forced labor and child labor has sparked an important debate regarding supply chains and corporate and governmental responsibilities. However, there is no requirement for an updated version of this report. This section provides that this report be done on a semi-annual basis, in part to determine whether progress is being made on supply chains and to highlight where new abuses might be occurring. In addition, work on eliminating forced or child labor from supply chains would be enhanced if goods made with inputs produced with forced or child labor were included on the list. The amendment recognizes that supply chains are complex, and goods made in one country may use raw materials or finished products that were produced in another country, and such materials and products may have been made with child or

slave labor. As the Department of Labor's expertise and resources build in this area, the Committee believes the Department should develop the capability to identify particular companies or individuals that use forced or child labor in the production of their products anywhere in their supply chains. The current report risks having all companies or individuals involved in such products as being perceived as being involved in improper or unlawful activities. Developing a capacity to identify companies and individuals would allow more targeted efforts to eliminate such abuses.

**TOPIC #7: Ensure goods made with forced or child labor do not enter the United States.**

**PURPOSE:** To conduct an investigation of the obstacles and challenges to enforcement of the Tariff Act of 1930 provision prohibiting the importation of goods made with convict, forced, or indentured labor, including forced or indentured child labor. (19 U.S. Code § 1307, as amended).

**PROPOSED STATUTORY LANGUAGE:**

**SEC. #. GAO REPORT ON THE ENFORCEMENT OF THE TARIFF ACT OF 1930 PROHIBITION ON THE IMPORTATION OF GOODS MADE WITH FORCED LABOR**

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit a public report on the obstacles and challenges to the enforcement of the Tariff Act of 1930 provision, 19 U.S. Code § 1307 as amended, that states that “All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited. `For purposes of this section, the term ‘forced labor or/and indentured labor’ includes forced or indentured child labor”” to the —

(1) Committee on the Judiciary of the Senate;

(2) Committee on Health, Education, Labor, and Pensions of the Senate;

(3) Committee on the Judiciary of the House of Representatives; and

(4) Committee on Education and the Workforce of the House of Representatives.

(b) CONTENTS.—The report under subsection (a) should, to the extent possible—

(1) describe and analyze the regulatory process for implementing this provision of the Tariff Act, including a detailed explanation of which U.S. government agencies are tasked with its enforcement, and the processes each agency follows to enforce this provision of the Tariff Act. Describe the oversight and enforcement mechanisms in Federal departments and agencies charged with enforcing this provision.

(2) identify the number of petitions received and cases initiated (whether by petition or otherwise) or investigated by each federal agency charged with implementing and enforcing the aforementioned provision of the Tariff Act, as well as the dates petitions were received and/or investigations initiated, and their current statuses.

(3) identify any enforcement actions taken as a result of these petitions and investigations by type of action, date of action, commodity, and country of origin in the past 10 years (note that “enforcement actions” here includes, but is not limited to, the issuance of Withhold Release Orders, the detention of shipments, the issuance of civil penalties, and the formal charging with criminal charges relating to the forced labor scheme.

(4) list the specific products, country of origin, manufacturer, importer, end-user or retailer, and outcome of the investigation, and/or any petition filed with any government agency tasked with implementing this provision over the past 10 years.

(5) identify any gaps that may exist in these protections;

(6) recommend possible actions for Federal departments and agencies to more effectively enforce this provision.

(c) REQUIREMENTS.—The report under subsection (a) shall—

- (1) describe the role and practices of employers in the United States in enforcing this provision of the Tariff Act
- (2) describe the role of Federal departments and agencies in overseeing and regulating this provision of the Tariff Act
- (3) describe any efforts or programs undertaken by Federal, State and local government entities to encourage employers, directly or indirectly, to comply with this provision of the Tariff Act; and
- (4) Provide concrete actual case studies or examples of how this provision is enforced.
- (5) based on the information required under paragraphs (1) through (4), identify any regulatory obstacles or challenges to enforcement of this provision of the Tariff Act, and recommendations of actions that could be taken by Federal departments and agencies to overcome these obstacles.

**EXPLANATION AND SUPPORTING MATERIAL:**

As highlighted by the Department of Labor, Bureau of International Labor Affairs, “List of Goods Tainted by Forced Labor and Child labor” and noted by the State Department’s Office to Monitor and Combat Trafficking in Persons, “it is impossible to get dressed, drive to work, talk on the phone, or eat a meal without touching products tainted by forced labor.”

The proposed language would require a GAO report that would provide much needed information to advocates and policymakers about the challenges to enforcing the Smoot-Hawley Tariff Act of 1930, which prohibits importation of goods made with forced, indentured or convict labor, and what changes are needed to make the enforcement of the law more effective.

**TOPIC #8: Provide a mechanism for trafficking victims to find assistance and/or file a complaint about a trafficking experience in the USA from their country of origin.**

**PURPOSE:** To ensure that cases of human trafficking are identified and that future cases of human trafficking are prevented when trafficking victims are returned to their country of origin by establishing point of contacts in U.S. consulates trained to identify and assist with human trafficking cases.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. Enhancing Information on Human Trafficking.

(a) In General.--The Secretary of State shall ensure that each U.S. diplomatic mission has a person who shall be responsible for receiving information from any person who has been subject to a severe form of trafficking in persons while in the United States.

(b) Provision of Information. Information received pursuant to subsection (a) shall provide the information to the Department of Justice, the Department of Labor, or any other relevant federal agency. The Department of Justice and the Department of Labor shall ensure that there is a mechanism for any actions that need to be taken in response to such information.

(c) Assistance from Foreign Government. The person designated for receiving information pursuant to subsection (a) is strongly encouraged to coordinate with governments and/or civil society organizations in the countries of origin to ensure the victim receives additional support.

**EXPLANATION AND SUPPORTING MATERIAL:**

Not all persons who are trafficked remain in the United States. For that reason, it is critical to create mechanisms in the countries of origin so that trafficked persons can find assistance once they have left the United States, otherwise the traffickers will go unpunished and more persons may be victimized. Under this proposal, the Department of State (DOS) will assign a point person in each consulate to receive individual complaints from potential trafficking victims. This person must be trained in identifying trafficking victims and must know what resources are available in the United States. It is also important for the DOS point person to work with local human rights/anti-trafficking organizations so that the person has local support as well. Another method would be to develop an international hotline that workers and/or family members could call with complaints.

This provision would be invaluable in identifying cases of workers entering the United States lawfully and still ending up in a human trafficking situation. A case example of how this provision could increase human trafficking victim identification and prevent future cases of human trafficking in the United States is provided below.

**Pablo's Story**

Armed with a U.S. H-2B guest worker visa, "Pablo" boarded a plane to North Carolina, where he believed he had secured a high-wage job planting pine trees for a U.S. company. Upon his arrival in the United States, however, Pablo was ensnared in a human trafficking scheme.

Without explanation, the contractor forced Pablo and 14 fellow workers into a van and drove them to the northeast. There the contractor confiscated Pablo's passport and warned him not to leave the workers' hovel-like apartment, claiming that the urban streets were dangerous. Scared to leave and not knowing where to turn, Pablo was forced to work for well under the U.S. federal minimum wage.

Pablo begged the employer to let him return to Guatemala. Once home, Pablo was fortunate enough to come into contact with one of the few nonprofit organizations, Global Workers, working on the ground to assist workers returned to their countries of origin but exploited in the United States. Within 48 hours of learning of the case, the NGO assembled a top-level legal team that liberated the remaining workers. Global Workers served as the bridge between the workers who had returned to Guatemala and the U.S. advocates and officials working on the case, to hold the employer liable and recover the unpaid wages.

The proposal would ensure that workers exploited in the United States would have access to direct contacts within the United States government in their countries of origin who could assist more trafficked workers around the world.

**TOPIC #9: Ensuring that the link between human trafficking and GBV is addressed when designing programs and providing services to victims of trafficking.**

**PURPOSE:** To address root causes of human trafficking and ensure greater collaboration between efforts to address gender-based violence (GBV) and human trafficking. Comprehensive efforts to reduce human trafficking must include efforts to prevent and response to GBV given the intertwined relationship of the two crimes. The Strategy to Prevent and Respond to Gender-Based Violence Globally is a key tool to begin addressing these issues collectively.

**PROPOSED STATUTORY LANGUAGE:**

**UNITED STATES STRATEGY TO PREVENT AND RESPOND TO GENDER-BASED VIOLENCE GLOBALLY.**

(a) **GLOBAL STRATEGY REQUIREMENT.**—Not later than 180 days after the date of the enactment of this Act, and annually thereafter for 6 years, the Secretary of State shall develop or update a United States global strategy to prevent and respond to violence against women and girls. The strategy and annual reports on implementation of the strategy shall be transmitted to the appropriate congressional committees and made publicly available on the Internet.

(b) **INITIAL STRATEGY.**—For the purposes of this section, the “United States Strategy to Prevent and Respond to Gender-Based Violence Globally”, issued in August 2012, shall be deemed to fulfill the initial requirement of subsection (a).

(c) **COLLABORATION AND COORDINATION.**—In developing the strategy under subsection (a), the Secretary of State shall consult with—

- (1) the heads of relevant Federal agencies;
- (2) the Senior Policy Operating Group on Trafficking in Persons; and
- (3) representatives of civil society and multi-lateral organizations with demonstrated experience in addressing violence against women and girls or promoting gender equality internationally.

(d) **PRIORITY COUNTRY SELECTION.**—To further the objectives of the strategy described in subsection (a), the Secretary shall identify no less than 4 eligible low income and lower-middle income countries on the Tier 2 or Tier 2 Watch list of the Trafficking in Persons Report, with significant levels of violence against women and girls, including within displaced communities, that have the governmental or nongovernmental organizational capacity to manage and implement gender-based violence prevention and response programs activities, including as relates to the world of work, and should, when possible be geographically, ethnically, and culturally diverse from one another.

(e) **IMPLEMENTATION AND COUNTRY PLANS.**—In each country identified under subsection (d) the Secretary shall develop and implement comprehensive, multisectoral, and holistic individual country plans designed to address and respond to violence against women and girls that include—

- (1) an assessment and description of the current or potential capacity of the government of each identified country and civil society organizations in each such identified country to address and respond to violence against women and girls.

(2) an assessment and description of the incidence and prevalence of gender-based violence in the world of work, defined by the ILO to include paid and unpaid work (including both productive and reproductive work), paid work outside of the public sphere, such as domestic work, street vending and home-based work, and related contexts such as transportation to and from work.

(3) an identification of coordination mechanisms with Federal agencies that—

(A) have existing programs relevant to the strategy;

(B) have existing programs relevant to measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons, measures to establish the identity of local populations, including birth registration, citizenship, and nationality, measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and measures to prevent the use of forced labor or child labor in violation of international standards.

(C) will be involved in new program activities; and

(D) are engaged in broader United States strategies around development;

(4) a description of the monitoring and evaluation mechanisms established for each identified country, and their intended use in assessing overall progress in prevention and response;

(5) a projection of the general levels of resources needed to achieve the stated objectives in each identified country, including an accounting of—

(A) activities and funding already expended by the Department of State, the United States Agency for International Development, other Federal agencies, donor country governments, and multilateral institutions; and

(B) leveraged private sector resources; and

(5) strategies, as appropriate, designed to accommodate the needs of stateless, disabled, internally displaced, refugee, persons trafficked, or religious or ethnic minority women and girls.

(f) **PRIORITY COUNTRY SELECTION REPORT.**— Not more than 90 days after selection of the priority countries required under subsection (d), and annually thereafter, the Secretary of State shall submit to the appropriate congressional committees and make publicly available a report detailing the priority country selection process, the implementation of specific country plans, and include an overview of all programming and specific activities being undertaken, the budget resources requested, and the specific activities to be supported by each Executive agency under the strategy.

#### **EXPLANATION AND SUPPORTING MATERIAL:**

Presently, the ILO estimates that there are approximately 20.9 million men, women and children in modern day slavery around the world, many of whom have faced both trafficking and GBV. According to the United Nations' Global Report on Trafficking in Persons 2014, women and girls are particularly vulnerable to trafficking.

While GBV is often inflicted as a tool to manipulate and control women, children and even men into commercial sex and forced labor across all forms of trafficking, GBV itself is an important *driver* of human trafficking. Many of the factors that make women vulnerable to gender-based violence - gender discrimination, poverty, natural disasters, war, poor education and health infrastructures - are also known as root causes of human trafficking.

The US government recognizes that comprehensive efforts to reduce human trafficking must include efforts to prevent and respond to GBV due to the intertwined relationship of the two crimes. Alongside other efforts, the US government articulated in 2012, through the Administration's Inter-Agency *Strategy to Prevent and Respond to Gender-based Violence Globally*, and again in 2013, through *the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States*, that human trafficking and GBV are interrelated issues and must be tackled together.

To achieve measurable impact, it is important to implement sustainable, multi-dimensional strategies that address the link between human trafficking and GBV.

## **PROTECTION of Victims of Human Trafficking and Modern-Day Slavery**

### **DOMESTIC**

#### **TOPIC #10: Protect individuals currently in the U.S. who were trafficked outside the U.S. or previously in the U.S. by ensuring they are eligible for T-visas.**

**PURPOSE:** Ensure immigration trafficking protections for all trafficking victims in the United States regardless of where or when the trafficking occurred.

#### **PROPOSED LANGUAGE:**

Sec. \_\_. Applications for Visas Relating to Trafficking.

Section 101(a)(15)(T)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T) is amended by deleting subclause (II) and redesignating clauses (III) and (IV) as (II) and (III).

#### **EXPLANATION AND SUPPORTING MATERIAL:**

Currently trafficking survivors, including children who have fled to the United States after a trafficking experience are generally not eligible for any type of immigration relief in the United States. Usually asylum protections and special immigrant juvenile status protections do not apply despite the survivor facing horrific abuse and a fear of being re-trafficked if they are forced to return to their home countries.

Currently less than 1000 T-visas have been granted to trafficking survivors each year since the enactment of the TVPRA despite 5000 being available annually. Given the dire consequences that trafficking survivors face if they must return to home countries where the trafficking occurred, the US government should change the T-visa standard to protect all trafficking victims in the United States regardless of whether the trafficking occurred in the United States or outside the United States. Notably, other crime victims applying for U-visas do not need to show they are in the U.S. on account of those crimes and can apply for U-visas from outside the United States. A higher standard should not be applied for trafficking victims applying for T-visas; instead these standards should be made uniform.

Pedro, a Guatemalan youth, left his home after a gang threatened to kill his parents if he did not join them. In Mexico he met a man who promised him work. Instead he was locked in a house with armed guards and forced to clean and wash clothes in the house. After two weeks he finally escaped and fled to the United States. He is terrified to return home because he believes he will be forced to work for a gang or his parents will be killed. Although he was identified as a victim of severe form of trafficking by an NGO because of his forced labor in Mexico, he is ineligible for a T-visa because his trafficking did not occur in the United States.

Carmen, a Mexican national, was kidnapped by a Mexican gang at the age of 14 chained to a bed and was forced to engage in prostitution for over 5 years. She had 2 children during this experience, and her traffickers listed their names on her children's birth certificates. Carmen only escaped from this ongoing abuse by burning down the house of her captors and fleeing with her two young children. Once in the United States, She was identified as a victim of severe form of trafficking by an NGO, but because her trafficking experience was in Mexico and not the United States she was ineligible for a T-visa. Carmen continues to live in fear that she will be returned to Mexico and the gang will find her and her children, and they will suffer the same fate she did.

Raul grew up in a poor neighborhood in Guatemala. On his way to school he had to pass a corner where gang members congregated. The gang members would call to Raul and try to convince him to join them. But he refused. One day, gang members asked Raul to deliver a briefcase full of drugs for them. Raul refused, but the gang members showed him their guns and threatened to kill him and his family. Terrified, Raul had no choice but to comply with their demands.

The gang continued to try and force Raul to join them. When he refused, they attacked and beat his father. Terrified, Raul's family went into hiding and Raul fled to the United States for his safety. He was apprehended by border patrol, released to a family friend, and referred to trafficking NGO by his U.S. Committee for Refugees and Immigrants (USCRI) caseworker. Although this NGO identified Raul as a survivor of human trafficking, after extensive immigration screening, they concluded under the current standard for the T-visa and other immigration relief he was not eligible for legal status to remain in the US.

In Guatemala, Pedro (17) witnessed the rape of his nine year old brother at the hands of a neighbor. Although Pedro courageously reported his brother's rape to Guatemalan police, the police did not protect Pedro and his brother. When the neighbor learned that Pedro had reported his crime, the neighbor began to threaten Pedro's entire family, saying that he would kill them and shooting guns near their home. Terrified for his safety, Pedro attempted to travel to the United States where his mother resided. However, instead of bring him to the United States, the coyotes brought him to a house in Mexico where they held him against his will, forced him to cook and clean the house, and forced him to sell drugs to people who came to the home. Pedro did not want to do this work but his captors threatened him with guns and threatened to kill his family. After about a month, Pedro's captors let him leave and he fled to the United States. Now, 18 Pedro's only option to stay in the United States and avoid further harm is to pursue a difficult asylum case as he is not T-visa eligible under the current T standards.

Marco (17), Melisa (15) and Manuel (11) are siblings from Honduras. The children were abandoned by their fathers and lived with their mother. In about 2012, their mother died of what the children believed was breast cancer, leaving the siblings to live with their much older sister Maria. Once they moved in with Maria, she refused to allow Marco and Melisa to attend school. Instead, Marco, then 15, was forced to work two jobs and give his older sister all of the money that she earned. Maria forced Melisa to do all of the cooking and cleaning for the household and to care for Maria's young children. Maria and her husband were also physically violent towards Manuel and Melisa. After about a year, Maria told the children that they could no longer live with her and they moved San Pedro Sula to live with a cousin. There, Marco continued to work to try and support his brother and sister. Gang members approached Marco and tried to force him to serve as a lookout for their illegal activities. When Marco refused, they threatened to kill him and his younger siblings. Knowing that they had no safe place to stay in Honduras, the children fled to the United States where their mother's best friend lives. They are now living with their mother's friend, and Melisa and Marco are attending school for the first time in years. All three children have been referred to therapy and Manuel is receiving critical medical care after receiving a serious diagnosis. Marco is seeking special immigrant juvenile status, but with his 18 birthday fast approaching, it is extremely uncertain if he will be able to obtain the necessary predicate order in time and under the current T-visa standard he is not eligible for this form of relief.

When Jesus was about 10 years old, a group of older students told him that he had to sell drugs for them. The students threatened Jesus with a knife and told him that they would kill him and his siblings if he did not sell the drugs. Terrified, Jesus agreed to sell the drugs. But instead he threw them away and gave the students his spending money. Eventually, he told his grandmother what was happening and she sent him to the United States to reunite with his parents. Jesus's only option to stay in the United States and avoid further harm is to pursue a difficult asylum case as he is not T-visa eligible under the current standards.

**TOPIC #11: Providing flexibility to victims of human trafficking to cooperate with law enforcement.**

**PURPOSE:** Many protections for victims of human trafficking are linked to showing cooperation with law enforcement. Even when law enforcement is nonresponsive after a human trafficking victim has reported to law enforcement and been willing to cooperate, the burden remains on the victim to establish that he/she cooperated with law enforcement to receive benefits and protection under the law. This provision ensures that human trafficking victims who have taken the brave step to report their case to law enforcement are not penalized for law enforcement’s lack of responsiveness.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. Demonstrating Cooperation with Law Enforcement.

Section 107(e) of the Trafficking Victims Protection Act of 2000 (8 USC § 1101(a)(15)) is amended by adding at the end of section 107(e)(i)(III)(aa), “For purposes of this subsection, an alien who has made an initial report to federal, state or local law enforcement authorities shall be presumed to have complied with any reasonable request for assistance or...”

**EXPLANATION AND SUPPORTING MATERIAL:**

Oftentimes victims of human trafficking who are willing to cooperate with law enforcement have reported their cases but are never interviewed by law enforcement and experience delays in their applications for T-visas. Government officials processing their applications often ask for additional evidence from victims showing their cooperation with law enforcement. These types of requests can delay a victim’s application by six months or more. During this period of time, victims remain undocumented and unable to work lawfully.

## **TOPIC #12: Inadmissibility standards for U-visas, T-visas, and T-visa adjustments of status.**

**PURPOSE:** Currently those applying for a U-visa can receive a waiver of inadmissibility for immigration purposes if it is in the national or public interest. T-visa applicants have to show that the ground of inadmissibility is linked to the trafficking. Trafficking victims would benefit if they could qualify for either of these waiver standards when applying for a T-visa and have a similarly broad waiver as other crime victims. T-visa holders applying for adjustment of status should have a similarly broad waiver.

### **PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. Harmonization of Standards.

(a) Inadmissibility.--Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(13)(B)) is amended-

- (1) by striking subsection (i);
- (2) redesignating subsection (ii) as subsection (i); striking “other” before “provision”, inserting “or” at the end of subsection (i); and
- (3) by inserting as subsection (ii) the following new language:

“(ii) application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(T) [8 USCS § 1101(a)(15)(T)], if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

(b) Adjustment of Status. Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255(l)(2) is amended--:

- (1) by striking subsection (A);
- (2) redesignating subsection (B) as subsection (A); striking “other” before “provision, inserting “or” at the end of subsection (A); and
- (3) by inserting as subsection (B) the following:

“(B) application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(T) [8 USCS § 1101(a)(15)(T)], if the Secretary of Homeland Security considers it to be in the public or national interest to do so.

### **EXPLANATION AND SUPPORTING MATERIAL:**

Oftentimes grounds of inadmissibility for human trafficking survivors may occur before or after the trafficking experience. This provision ensures that human trafficking survivors can apply for a T-visa instead of a U-visa if these types of waivers are needed. For example, Eunice, a Korean national, entered the United States on her own without proper documentation. Two years later she was tricked by a trafficker with promises of employment in a restaurant, only to be held in house, beaten every day, and forced into prostitution. Because Eunice originally entered the United States on her own, despite her clear abuse as a trafficking victim, she could be ineligible to apply for a T-visa.

Similarly, T-visa holders will not be barred from adjusting status if grounds of inadmissibility arise after the T-visa is granted that are not related to the trafficking.

### **TOPIC #13: Adjustment of status for U and T-visa holders even after U and T-visa has expired.**

**PURPOSE:** Currently, if a U or T-visa expires and an individual does not adjust status, the individual is ineligible to adjust status at a later date. The proposed statutory language ensures that U or T-visa holders can remain in the United States in lawful status to protect their health and safety.

#### **PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_\_\_ . Improvements to Existing Adjustment of Status Provisions.

(a) T-visa. Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255(l)(1)(C)(iii) is amended by inserting after “alien lawfully admitted for permanent residence” the following: “regardless of whether or not the nonimmigrant is presently in 101(a)(15)(T) status.”

(b) U-visa. Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255(m)(1) is amended by inserting after “alien lawfully admitted for permanent residence” the following: “regardless of whether or not the nonimmigrant is presently in 101(a)(15)(U) status.”

#### **EXPLANATION AND SUPPORTING MATERIAL:**

After obtaining a T-visa, many trafficking survivors do not adjust their status to that of legal permanent resident because of lack of resources, lack of understanding about the standards for adjustment of status for T-visa holders in the legal community, or barriers created by the trauma of their trafficking experience. Some case examples are provided below.

Mary, a trafficking survivor, received her T-visa with the help of an attorney. After her T-visa was granted, Mary’s attorney closed her legal case. Four years later her T-visa expired. Because Mary failed to find an attorney to assist her with her adjustment application, she is ineligible to adjust her status to that of lawful permanent resident.

Gina, a sex trafficking survivor, received her T-visa after assisting with a criminal prosecution. Gina’s immigration attorney did not know that Gina had to apply for adjustment of status prior to her T-visa expiring. Because of her attorney’s lack of experience in this area Gina is forever barred from adjusting her status.

**TOPIC #14: Increasing effectiveness of national human trafficking hotline.**

**PURPOSE:** To ensure that the federal government is maximizing the effectiveness of the national human trafficking hotline in order to provide optimal services for victims.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. STRENGTHENING THE NATIONAL HUMAN TRAFFICKING HOTLINE.

(a) FUNDING

- (1) AUTHORIZATION OF APPROPRIATIONS.— Section 113(b) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7110(b)) is amended by inserting at the end the following:

“(3) AUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL HUMAN TRAFFICKING HOTLINE—To carry out the purposes of section 107(b)(1)(B)(ii), there are authorized to be appropriated annually \$2,500,000 to the Secretary of Health and Human Services.”

(b) USE OF THE HOTLINE BY FEDERAL AGENCIES.

- (1) REPORTING REQUIREMENT.—Section 105(d)(3) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7103(d)(3)) is amended by striking the period after “international trafficking” and inserting the following: “and providing an annual report on the case referrals received from the national human trafficking hotline by federal departments and agencies.”
- (2) HOTLINE INFORMATION.—Section 107(b)(2)(B) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7105(b)(2)(B)) is amended by inserting at the end the following:

“(iii) POSTING OF HOTLINE INFORMATION.—The number of the national human trafficking hotline described in clause (ii) shall be posted in a visible place in all federal buildings.”

**EXPLANATION AND SUPPORTING MATERIAL:**

Having a robust national human trafficking hotline is a critical component in the fight against human trafficking. Providing human trafficking victims and survivors with access to critical support and services to get help and stay safe is a vital component to helping these individuals escape and stay out of their trafficking situations. Keeping the hotline as a victim-centric resource is critical to maintaining its level of trust and effectiveness with victims, and both funding and oversight should come from HHS.

Additionally, the hotline’s costs have generally been around \$2,000,000. Because this is a government-authorized hotline, the authorization level needs to match the cost to actually operate the hotline.

One of the benefits the hotline currently provides is equipping the broader anti-trafficking community with the tools to effectively combat all forms of human trafficking. Many agencies and departments across the federal government utilize data from the hotline. As a way to accurately measure effectiveness, it is important that these agencies and departments report on what data is being

gathered and how it is being used. Furthermore, across the federal government, more should be done to emphasize the hotline and the resources it provides, including posting the number in all federal government facilities.

**TOPIC #15: Allowing for derivatives of T1 visa holders not included in the original T-visa application to adjust to LPR status via the USCIS Form I-929 process.**

**PURPOSE:** To create an efficient and fair process (i.e. on par with options available to U1 visa holders) for derivatives of T1 visa holders not included in the original T-visa application to adjust to LPR status via the USCIS Form I-929 process.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_\_\_.

8 U.S. Code § 1255(m)(3) is amended to add/include the following language: “Upon approval of adjustment of status under paragraph (1) of an alien described in section 1101(a)(15)(T)(i) of this title the Secretary of Homeland Security may adjust the status of, or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 1101(a)(15)(T)(ii) of this title if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

**EXPLANATION AND SUPPORTING MATERIAL:**

With this amendment, the I-929 would include derivatives of T-1 visa holders who were not included in the original T visa application (as is currently possible for similarly situated derivatives of U visa holders). This includes a spouse acquired after the principal’s T visa was approved. The idea of the I-929 is to include people who wouldn’t have been eligible at the time the T visa was filed (e.g., spouses or kids who didn’t exist at the time). With this amendment, the T-1 visa holder could use the I-929 when his/her I-485 (application for LPR status) is pending or once they are already a Lawful Permanent Resident to adjust their derivatives to LPR status. *See*, USCIS Form I-929 instructions, available at <https://www.uscis.gov/sites/default/files/files/form/i-929instr.pdf>

It is important to note, that although any LPR could also technically apply for derivatives through the family-based immigration system, that process has much longer wait times and does not allow for the waivers of inadmissibility that are available to T-visa holders. The family-based immigration system is notoriously laborious and slow. Additionally, if the former T-visa holder/now LPR applied for the derivatives through the family-based system, the LPR would have to prove that they can economically support each and all of their derivatives at the time of the application (a significant hurdle for many victims of human trafficking) which is not a requirement of the I-929 derivative. Many immigrant victims of crime struggle with instability, particularly if their family members are not in a stable condition and they continue to be the sole bread winner or head of household. Making this amendment to the USCIS Form I-929 would help to stabilize the victim’s family in an efficient and fair manner.

**TOPIC #16: A technical amendment to fix 18 U.S.C. 1593A**

**PURPOSE:** Correcting confusing statutory language.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_.

18 USC 1593A is amended by striking “section 1581(a), 1592, or 1595(a)” and inserting “this Chapter”.

**EXPLANATION AND SUPPORTING MATERIAL:**

In reading through the legislative history and case law, it seems that Section 8 USC 1593A as it is currently written is confusing. This is likely a technical issue needing a technical fix as demonstrated by the below listed cases:

- The E.D.N.Y., in *Muchira v. Al\_Rawaf*, notes in one place that "all of [the plaintiff's claims, including 1593A,] depend on Defendants' alleged violations of Sections 1584 or 1589," but then states in a footnote that "Section 1593A requires a violation of 1592 or 1595(a)."
- The E.D.N.Y., in *Stein v. World-Wide Plumbing Supply Inc.*, states that "although 1593A and 1595(a) cross reference each other, I do not read 1593A as creating a distinct civil cause of action. That provision makes it a crime to knowingly benefit from violations of two other provisions, but 1595(a) already creates civil liability for the same thing."
- The E.D.Va., in *Lagasan v. Al-Ghasel*, holds that defendants' actions violated 1593A where "plaintiff show[ed] that defendants knowingly benefitted from their participation in the trafficking venture that violated the TVPRA by receiving plaintiff's labor for meager wages."

**TOPIC #17: Providing early certification for benefits.**

**PURPOSE:** To allow adult trafficking survivors to have early access to federal benefits.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. CERTIFICATION FOR BENEFITS

Section 107(b)(1)(E) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)(1)(E)) is amended-

(a) in subparagraph (aa), by striking “or” after the semicolon;

(b) in subparagraph (bb), by striking the period and inserting “; or”;

(c) by inserting at the end the following:

“(cc) is preparing to file an application for status under Section 1101(a)(15)(T(i) or (ii) of Title 8 of the United States Code.”;

(d) by redesignating subparagraphs (ii), (iii), and (iv) as (iii), (iv), and (v) respectively;

(e) by inserting after subparagraph (i) the following:

“(ii) The Secretary of Health and Human Services, in determining whether an applicant for certification is preparing to file a an application for status under Section 1101(a)(15)(T)(i) or (ii) of Title 8 of the United States Code, shall consider all relevant and credible evidence. A sworn statement by the victim’s legal representative that he or she is in the process of filling a T-nonimmigrant visa shall be sufficient. The Secretary shall adopt regulations, as otherwise necessary, to implement this provisions no later than 180 days after enactment of this Act.”; and

(f) in subparagraph (iii), as redesignated-

(i) After the period, insert the following- “If a visa application has not been filed under Section 1101(a)(15)(T)(i) or (ii) of Title 8 of the United States Code one year from the date of certification for benefits described in this section, the certification will be terminated.”

**EXPLANATION AND SUPPORTING MATERIAL:**

Currently adult trafficking survivors only have access to federal benefits once a T-visa or continued presence has been granted. These processes often take months or even years to accomplish. By providing survivors earlier access to benefits their urgent housing, medical and basic needs can be more easily met.

Felicia was identified as a potential victim of human trafficking while living in a homeless shelter. Felicia was trafficked in other countries as well as the United States as a domestic servant. After meeting with an immigration attorney, Felicia and her attorney decided a T-nonimmigrant Visa would be the best route to take to obtain relief. At this time, Felicia had moved closer to her attorney and was placed in a domestic violence shelter. The shelter had limited language capacity and Felicia’s native language was not a commonly spoken language in the community. The shelter also lacked culturally appropriate food for Felicia. While staying at shelter, Felicia regularly felt unsafe, triggered, and



depressed. Fortunately, Felicia was able to be connected to a therapist who spoke her language to work through and process her feelings and memories related to her trafficking. Still, Felicia's housing directly impacted her well-being and Felicia did not feel safe or ready to report to law enforcement. It took several months to prepare her for this and when she was able to report, it took a few interviews to share her story and get the information across in an articulate, linear way. Seven months after Felicia started working with her attorney and social worker, the t-visa was filed. Continued Presence was not issued leaving Felicia pre-certified. Seven months later, Felicia continues to wait for her legal status and access to benefits. As a result, Felicia has had to rely on the Federally funded TVAP program for her cell phone bill, laundry, and access to basic needs such as food, clothing, and hygiene products. However, this program has service period restrictions. Earlier access to benefits would have allowed Felicia to feel more stable, independent, and safe.

**TOPIC #18: Protections for domestic workers.**

**PURPOSE:** To create protections to prevent the trafficking of domestic workers by increasing monitoring of employers, opportunities for domestic workers to report abuses and to collect information to hold traffickers accountable. Under this provision, the Department of State shall implement post-arrival orientation, in-person monitoring and exit interviews for all visa categories of domestic workers (A-3, G-5, B-1 and J-1 au pairs).

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_\_\_\_. Protections for Domestic Workers.

The following amendments shall be made to Section 203 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

Section 203(b)(4) is amended by adding the following:

B. The Secretary shall share the files of all temporary domestic workers, which shall include a copy of the visa-holder's employment contract and the employer's contact information, with the Department of Labor.

Section 203 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 is amended by re-designating subsection (d) as subsection (f) and inserting the following as subsection (d):

- (1) Oversight Committee.
  - A. The Department of State (DOS) will work with the Department of Labor (DOL) and NGOs to form an Oversight Committee, run by the Department of Labor, to ensure the protection of A-3 and G-5 visa-holders as well as any nonimmigrant visa issued to a personal or domestic servant who is accompanying or following to join an employer, or any nonimmigrant visa issued under the au pair category of the (J) section 101 (a)(15) of the Immigration and Nationality Act (8 USC 1101(a)(15)).
    - a. In developing this Oversight Committee, the Secretary of Labor shall consult with NGOs with expertise working with victims of trafficking in persons, and rights of domestic workers, as well as domestic workers leaders themselves. DOL may contract with NGOs to conduct some of the monitoring responsibilities, including interviewing domestic workers, collecting data, creating reports, and other agreed-upon tasks.
    - b. The Department of State shall maintain responsibility for responding to employers of A-3 and G-5 visa-holders, and their home States, against whom allegations of abusive conduct are made.
- (2) Reporting
  - B. DOS, DOL, and assisting organizations will work together to establish the Oversight Committee the goal of which is to most effectively protect individuals holding an A-3 visa, G-5 visa, as well as any nonimmigrant visa issued to a personal or domestic servant who is accompanying or following to join an employer, or any nonimmigrant visa issued under the au pair category of the (J) section 101 (a)(15) of the Immigration and Nationality Act (8 USC 1101(a)(15)).
  - C. DOL shall submit a report on the new Oversight Committee's progress to the appropriate congressional committees no later than 180 days after the passage of this act, and then every 2 years after that. The report shall include data from interviews of A-3s and G-5s, as well as any nonimmigrant visa issued to a personal or domestic servant who is accompanying or following to join an employer, or any

nonimmigrant visa issued under the au pair category of the (J) section 101 (a)(15) of the Immigration and Nationality Act (8 USC 1101(a)(15)), complaints, and recommendations to DOS in response to findings of abuse by and/or civil damage awards against domestic worker employers.

- D. DOS shall submit a report on the monitoring of employers. The report shall include the details of an employer orientation program (as further described in 203(g)). DOS shall provide this report to the appropriate congressional committees no later than 180 days of the passage of this Act. DOS shall continue to submit reports on monitoring of employers, and the program's successes and needed improvements every [year/two years].

Section 203 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 is amended by re-designating subsection (f) as subsection (h) and inserting the following as subsection (g):

For individuals holding an A-3 visa, G-5 visa, any nonimmigrant visa issued to a personal or domestic servant who is accompanying or following to join an employer, or any nonimmigrant visa issued under the au pair category of the (J) section 101 (a)(15) of the Immigration and Nationality Act (8 USC 1101(a)(15)), the Secretary shall implement, not later than 180 days after the date of the enactment of this Act —

- (1) a worker orientation program that will include distribution of the information pamphlet and video described in 8 USC 1375(b) and education about the protections listed in subsections (a), (b), and (c) of this section and providing a copy of the employment contract to the worker. This program shall be conducted jointly by DOS, DOL and partner NGOS. A list of resources that provide services to workers (NGOs, legal service providers, and social workers) shall be provided to workers. The program shall occur within 60 days of the worker's arrival to the United States.
- (2) an in-person monitoring program that will include follow-up interviews with workers outside the presence of their employers, assurance of confidentiality, re-distribution of the information pamphlet and video described in 8 USC 1375b, re-distribution of the list of resources, education about the protections listed in subsections (a), (b), and (c) of this section, review of the employment contract with the worker, and wage reporting;
- (3) an exit interview program that will include [distribution of the information pamphlet and video described in 8 USC 1375(b) and education about the protections listed in subsections (a), (b), and (c) of this section and providing a copy of the employment contract to the worker.]

The following shall replace Sec. 203(b)(3) –  
Monitoring and Training of A-3 and G-5 visa Employers.

- A. The Department of State shall establish an employer training program for employers of A-3 and G-5 employees which will include an educational video (either in the worker's language, or translated to for the worker) on the laws and fair labor standards in the United States to ensure fair treatment of domestic employees and adherence to the rights set out in the pamphlet. The program will include an explanation of the possible consequences to A-1, A-2, G-1, G-2, and G-3 visa holders of violating these laws which include suspension of A-3 and G-5 visas, request for waiver of immunity, civil damages [, or revocation of or refusal to renew the employer's visa] at the Secretary's discretion.
- B. The Department of State shall require quarterly wage reporting by all employers of A-3 or G-5 visa holders.

**EXPLANATION AND SUPPORTING MATERIAL:** Orientation programs are important opportunities for workers to learn about their rights in the United States. The orientations, which should occur when the worker initially arrives, is a critical time to reach workers but many worker exploitation and trafficking cases do not start as abusive as they end up, underscoring the importance of on-going monitoring. The U.S. government must take a proactive approach after the domestic worker arrives to ensure that information about rights is effectively communicated. The in-person model is not unprecedented, several countries have implemented in-person registration with successful outcomes. The State Department has recently piloted a similar program for A-3 visa holders in Washington, DC. The State Department should also conduct exit interview to screen domestic workers leaving the U.S. at the end of their visa stay. Even as monitoring and labor rights enforcement improves, some workers will not be comfortable sharing the details of their employment conditions until they are safely headed home.

**TOPIC #19: Enhance protections for A-3 and G-5 visa holders.**

**PURPOSE:** TVPRA 2008 set forth important contract protections for A-3 and G-5 visa holders but failed to establish a clear process for domestic workers to report or enforce contract violations, other than through the filing of a civil action – a process for which survivors may have to overcome many barriers to access. This provision would provide a complaint mechanism, under the State Department, for domestic workers when their contracts are violated and allow employers to be held accountable when violations are found.

**PROPOSED STATUTORY LANGUAGE:**

Section 203 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 is amended by adding subpart (5) at the end of subsection (b) as follows:

(3) ALLEGATIONS OF EMPLOYER ABUSE RECEIVED BY THE DEPARTMENT OF STATE- The Secretary shall establish a mechanism to receive complaints that is accessible. Once complaints are received and allegations are investigated, State will take appropriate action against the employer. DOS will work in coordination with the Oversight Committee created in this section to investigate and respond to complaints.

**EXPLANATION AND SUPPORTING MATERIAL:** Because Section 203 of TVPRA 2008 established a mandatory contract between employers and domestic workers holding A-3 and G-5 visas, it is important to specify how State can enforce contracts once the parties are in the U.S. It is not enough for employers to agree to contract terms merely for the purposes of securing visas for their employees. This provision intends to provide a clear mechanism for State to be informed when contract provisions are violated and encourages State to hold violators accountable.

**TOPIC #20: Expand protection from removal during legal actions against former employers for all domestic worker visa categories**

**PURPOSE:** TVPRA 2008 included an important protection for A-3 and G-5 visa holders, allowing the Secretary of Homeland Security to grant them permission to remain in the US legally and obtain work authorization while pursuing a civil action to enforce employers' contract violations. This proposal would expand this protection across all domestic worker visa categories as well as all individuals who come to the US on employment or education-based visas.

**PROPOSED STATUTORY LANGUAGE:**

Section 203 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 is amended by adding subpart (3) at the end of subsection (c) as follows:

(3) APPLICABILITY TO ANY INDIVIDUALS ISSUED NONIMMIGRANT VISAS TO A PERSONAL OR DOMESTIC SERVANT WHO IS ACCOMPANYING OR FOLLOWING TO JOIN AN EMPLOYER AND ANY INDIVIDUAL WITH AN EMPLOYMENT OR EDUCATION-BASED NONIMMIGRANT VISA - Subparts (1) and (2) of this section shall be applicable to any nonimmigrant visa issued to a personal or domestic servant who is accompanying or following to join an employer and any individual issued a nonimmigrant visa under subparagraph (H) or (J) of section 101(a)(15) of the Immigration and Nationality Act (8 USC 1101(a)(15)).

**EXPLANATION AND SUPPORTING MATERIAL:** Granting domestic workers protection from removal during legal actions against former employers reduces the vulnerability of B1 domestic workers and other temporary guestworkers and increases the likelihood that these workers will be able to come forward and hold traffickers accountable. This protection, which currently exists for A3 and G5 visa-holders has been integral in allowing these workers to pursue important civil claims in furtherance of their rights. By expanding the protection to all temporary guestworkers, more workers in vulnerable positions will be able to seek legal remedies for abuse, exploitation and trafficking.

**TOPIC #21: Requiring a detailed annual report on non-immigrant work visas.**

**PURPOSE:** To ensure greater transparency in the temporary guest worker program in order to make it easier to identify and assist victims of human trafficking.

**PROPOSED STATUTORY LANGUAGE:**

To amend section 214(c)(8) of the Immigration and Nationality Act to modify the data reporting requirements relating to nonimmigrant employees, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Visa Transparency Anti-Trafficking Act of 2016”.

**SEC. 2. ANNUAL REPORT TO CONGRESS ON NONIMMIGRANT VISAS.**

Section 214(c)(8) of the Immigration and Nationality Act ([8 U.S.C. 1184\(c\)\(8\)](#)) is amended to read as follows:

“(8) ANNUAL REPORT.—

“(A) IN GENERAL.—The Secretary of Homeland Security shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that includes the information set forth in subparagraph (B).

“(B) INFORMATION TO BE INCLUDED.—Each report submitted under subparagraph (A) shall include, for the reporting period—

“(i) the number of citizens of nations with Compacts of Free Association with the United States who are authorized by such Compacts to reside permanently in the United States as nonimmigrants and were admitted to the United States;

“(ii) the ports of entry at which the individuals described in clause (i) were admitted; and

“(iii) with respect to each nonimmigrant visa classification under the immigration laws that permits employment, other than subparagraphs (S), (T), (U), and (V) of section

101(a)(15), to the extent such data is collected by any government entity, the following data:

“(I) With respect to each such nonimmigrant visa classification and subclassification that authorizes employment, as applicable—

“(aa) the number of visas that were issued and the number of persons admitted or otherwise granted status under such classification;

“(bb) the number of visas that expired;

“(cc) the number of visas that were revoked;

“(dd) the number of visas that were otherwise terminated;

“(ee) the number of petitions that were filed;

“(ff) the number of petitions that were approved;

“(gg) the number of petitions that were rejected;

“(hh) the number of petitions that were denied;

“(ii) the number of petitions that were withdrawn;

“(jj) the number of petitions awaiting final action;

“(kk) the number of blanket petitions under paragraph (2)(A) that were filed;

“(ll) the number of such blanket petitions that were approved;

“(mm) the number of such blanket petitions that were rejected;

“(nn) the number of such blanket petitions that were denied;

“(oo) the number of such blanket petitions that were withdrawn;

“(pp) the number of such blanket petitions awaiting final action;

“(qq) the number of visa applications and beneficiaries that were approved pursuant to each blanket petition;

“(rr) the number of extensions of stay that were requested;

“(ss) the number of extensions of stay that were approved;

“(tt) the number of extensions of stay that were rejected;

“(uu) the number of extensions of stay that were denied;

“(vv) the number of extension of stay requests that were withdrawn;

“(ww) the number of extension of stay requests awaiting final action;

“(xx) the number of extension of stay requests that were filed for the purpose of switching employers or adding a new, concurrent employer;

“(yy) the percentage of nonimmigrants admitted into the United States who are younger than 18 years of age, between 18 and 30 years of age, between 30 and 40 years of age, between 40 and 50 years of age, between 50 and 60 years of age, or older than 60 years of age, respectively;

“(zz) the percentage of nonimmigrants admitted into the United States of each gender;

“(aaa) the 10 countries of which the most nonimmigrants are nationals;

“(bbb) for the 5 occupations in which the most nonimmigrants in each visa classification or subclassification are employed—

“(AA) the 5 employers that employ the most nonimmigrants in the visa classification;

“(BB) the 2 countries of which the most nonimmigrants are nationals;

“(CC) the age and gender of the nonimmigrants;

“(DD) the average educational levels attained by the nonimmigrants;

“(EE) the average compensation paid to the nonimmigrants; and

“(FF) the source of the data for this subclause;

“(ccc) for each of the 5 employers that employ the most nonimmigrants in the visa classification or subclassification—

“(AA) the number of such nonimmigrants who are nationals of each country;

“(BB) the number of such nonimmigrants who fall within each age range; and

“(CC) the number of such nonimmigrants of each gender; and

“(ddd) the number of petitions denied, disaggregated by age, gender, and country of nationality.

“(II) For each employment-based petition and request for extension of work authorization that was filed—

“(aa) the number of nonimmigrants sought;

“(bb) each beneficiary’s country of origin and local region or state;

“(cc) a description of the occupation in which the beneficiary will be employed;

“(dd) the standard occupational classification code for each occupation;

“(ee) the primary work location and secondary work location, if applicable;

“(ff) the name and address of the employer (unless for individual household employers);

“(gg) whether more than 50 percent of the employer’s United States workforce are nonimmigrants;

“(hh) whether more than 30 percent of the employer’s United States workforce are nonimmigrants;

“(ii) whether the employer conducts outplacement of nonimmigrants;

“(jj) whether the employer was authorized to file blanket petitions under paragraph (2)(A);

“(kk) whether the petition is such a blanket petition;

“(ll) the name and last known domestic and foreign business address of any labor recruiter, agent, or other third party intermediary involved in identifying workers to be petition beneficiaries; and

“(mm) the visa classification and subclassification.

“(III) For each nonimmigrant authorized to work in the United States (include data source)—

“(aa) the visa classification and subclassification;

“(bb) the labor certification form number, if a temporary labor certification application was filed with the Department of Labor;

“(cc) the date on which the temporary labor certification application was filed;

“(dd) the date on which the temporary labor certification application was approved, withdrawn, or rejected;

“(ee) the petition or extension form number, if a petition or extension was filed with the Department of Homeland Security;

“(ff) the date on which a petition was filed;

“(gg) the date on which such petition was approved, withdrawn, or rejected;

“(hh) the date on which an extension was filed;

“(ii) the date on which such extension was approved, withdrawn, or rejected;

“(jj) the nonimmigrant’s country of origin and local region or state;

“(kk) the nonimmigrant’s age;

“(ll) the nonimmigrant’s gender;

“(mm) the occupation (including the standard occupational classification) in which the nonimmigrant will be employed;

“(nn) the amount of compensation to be paid to the nonimmigrant;

“(oo) the highest level of education attained by the nonimmigrant;

“(pp) with respect to nonimmigrant students employed under Optional Practical Training, the nonimmigrant’s major or primary field of study;

“(qq) with respect to nonimmigrant students employed under Optional Practical Training, the institution at which the nonimmigrant obtained his or her education;

“(rr) the primary work location and secondary work location, if applicable, or the zip code and nationality of the household employer if the nonimmigrant is a household employee;

“(ss) the name and address of the nonimmigrant’s employer (unless the employer is an individual household employer);

“(tt) the name and last known domestic and foreign business address of a third party intermediary; and

“(uu) if the nonimmigrant had a permanent status petition filed on his or her behalf, the name of the person or entity that filed the petition and the date on which such petition was filed.

“(IV) The 10 occupations in which the largest number of nonimmigrants are employed in the United States.

“(V) For each of the States—

“(aa) for each of the 5 nonimmigrant visa classifications and subclassifications in which the most nonimmigrants were admitted—

“(AA) the number of nonimmigrants admitted;

“(BB) the number of such nonimmigrants who are nationals of each country;

“(CC) the number of such nonimmigrants who fall within each age range; and

“(DD) the number of such nonimmigrants of each gender.

“(C) PUBLIC WEBSITE.—At the time the Secretary of Homeland Security submits the report to Congress under this paragraph, the Secretary shall post the information set forth in subparagraph (B), along with the corresponding raw data set and a searchable database, to a public website.

“(D) LIMITATION.—The Secretary of Homeland Security shall ensure that the information posted on a public website pursuant to subparagraph (C) does not include information that, alone or in combination, would allow a reasonable person who does not have personal knowledge of the relevant circumstances, to identify a specific person with reasonable certainty.

“(E) USE OF INFORMATION.—Any government official who uses information described in subparagraph (B) shall take reasonable steps to ensure that such use does not enable such information to be manipulated—

“(i) to identify an individual nonimmigrant to whom the information relates; or

“(ii) to disaggregate such information into its component parts.

“(F) DEFINITIONS.—In this paragraph:

“(i) EMPLOYMENT.—The term ‘employment’—

“(I) means employment in the United States; and

“(II) includes cultural exchange, training, or business activities in which the nonimmigrant receives any form of compensation, including a stipend, from any source, whether paid in the United States or in the nonimmigrant’s country of origin.

“(ii) NONIMMIGRANT VISA CLASSIFICATION, STATUS, OR SUBCLASSIFICATION.—The term ‘nonimmigrant visa classification, status, or subclassification’ means any program, level, category, subcategory, or other type of grouping that—

“(I) is part of a nonimmigrant visa classification or status described in section 101(a)(15) or 214(e) or otherwise established under the immigration laws; and

“(II) may be specifically created, delineated, or defined in any Federal statute, regulation, agency guidance, directive memo, or any other source material, including the Code of Federal Regulations, the Foreign Affairs Manual, Department of State cables (classified or unclassified), and any official form, application, or petition used by the Secretary of Homeland Security, the Secretary of State, or the Secretary of Labor.

“(iii) THIRD PARTY INTERMEDIARY.—The term ‘third party intermediary’—

“(I) means any natural person or any corporation, company, firm, partnership, joint stock company or association, or other organization or entity, including municipal corporations that recruit, solicit, or engage in related activities with respect to an individual who resides outside of the United States in furtherance of employment in the United States, including when such activity occurs wholly outside of the United States; and

“(II) includes recruiters, subrecruiters, placement agencies, staffing agencies, labor contractors, and sponsor organizations designated by the Secretary of State, including for-profit and not-for-profit sponsor entities.”.

### **SEC. 3. AUTHORITY TO MODIFY FORMS.**

The Secretary of Homeland Security, the Secretary of State, and the Secretary of Labor shall take such steps as may be necessary to revise any applications, petitions, forms, or databases used to regulate the issuance of visas to nonimmigrants or the granting of nonimmigrant status in order to comply with the reporting requirements set forth in section 214(c)(8) of the Immigration and Nationality Act, as amended by section 2.

### **SEC. 4. INFORMATION SHARING.**

If the Secretary of Homeland Security determines that information collected or maintained by the Secretary of State or the Secretary of Labor is required to make a submission under section 214(c)(8) of the Immigration and Nationality Act, as amended by section 2, the Secretary of State or the Secretary of Labor, as applicable, shall provide such information to the Secretary of Homeland Security upon request.

### **EXPLANATION AND SUPPORTING MATERIAL:**

Although human trafficking spans all demographics, temporary visa holders who have paid large recruitment and travel fees to labor recruiters for the opportunity to work or study in the United States are particularly vulnerable to being victimized. These foreign nationals are often highly indebted, and many temporary work visas restrict the ability to change employers. Traffickers can control and manipulate these individuals who have few options, lack familiarity with U.S. laws and rights, and have significant language and cultural barriers.

Since December 2007, over 30,000 human trafficking and labor exploitation cases have been identified through the National Human Trafficking Hotline trafficking hotline and the BeFree Textline. In approximately 18% of these cases, at least one victim of the situation had a temporary visa.

**TOPIC #22: Establish the Stop, Observe, Ask, and Respond to Health and Wellness Training pilot program.**

**PURPOSE:** To address human trafficking in the health care system.

**PROPOSED STATUTORY LANGUAGE:**

S. 1446, the SOAR to Health and Wellness Act of 2015

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “SOAR to Health and Wellness Act of 2015”.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) HUMAN TRAFFICKING.—The term “human trafficking” has the meaning given the term “severe forms of trafficking in persons” as defined in section 103 of the Trafficking Victims Protection Act of 2000 ([22 U.S.C. 7102](#)).

(2) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

**SEC. 3. PILOT PROGRAM ESTABLISHMENT.**

(a) IN GENERAL.—The Secretary shall establish a pilot program to be known as “Stop, Observe, Ask, and Respond to Health and Wellness Training” (or “SOAR to Health and Wellness Training”) (referred to in this Act as the “pilot program”), to provide training to health care providers and other related providers, at all levels, on human trafficking in accordance with the objectives described in subsection (b).

(b) OBJECTIVES.—The objectives of the pilot program established under subsection (a) shall be to train health care providers and other related providers to enable such providers to—

(1) identify potential human trafficking victims;

(2) implement proper protocols and procedures for working with law enforcement to report, and facilitate communication with such victims, in accordance with all applicable Federal, State, local, and tribal requirements, including legal confidentiality requirements for patients and health care providers;

(3) implement proper protocols and procedures for referring such victims to appropriate social or victims service agencies or organizations;

(4) provide such victims care that is—

(A) coordinated;

(B) victim centered;

(C) culturally relevant;

(D) comprehensive;

(E) evidence based;

(F) gender responsive;

(G) age appropriate, with a focus on care for youth; and

(H) trauma informed; and

(5) consider the potential for integrating the training described in paragraphs (1) through (4) with training programs, in effect on the date of enactment of this Act, for victims of domestic violence, dating violence, sexual assault, stalking, child abuse, child neglect, child maltreatment, and child sexual exploitation.

(c) FUNCTIONS.—

(1) IN GENERAL.—The functions of the pilot program established under subsection (a) shall include the functions of the Stop, Observe, Ask, and Respond to Health and Wellness Training program that was operating on the day before the date of enactment of this Act and the authorized initiatives described in paragraph (2).

(2) AUTHORIZED INITIATIVES.—The authorized initiatives of the pilot program established under subsection (a) shall include—

(A) engaging stakeholders, including victims of human trafficking and any Federal, State, local, or tribal partners, to develop a flexible training module—

(i) for achieving the objectives described in subsection (b); and

(ii) that adapts to changing needs, settings, health care providers, and other related providers;

(B) making grants available to support training in health care sites that represent diversity in—

(i) geography;

(ii) the demographics of the population served;

(iii) the predominate types of human trafficking cases; and

(iv) health care provider profiles;

(C) providing technical assistance for health education programs to implement nationwide health care protocol, or develop continuing education training materials, that assist in achieving the objectives described in subsection (b);

(D) developing a strategy to incentivize the utilization of training materials developed under subparagraph (C) and the implementation of nationwide health care protocol described in such subparagraph, as the Secretary determines appropriate; and

(E) developing a reliable methodology for collecting data, and reporting such data, on the number of human trafficking victims identified and served in health care settings or other related provider settings.

(d) TERMINATION.—The pilot program established under subsection (a) shall terminate on October 1, 2021.

#### **SEC. 4. DATA COLLECTION AND REPORTING REQUIREMENTS.**

(a) DATA COLLECTION.—During each of fiscal years 2016 through 2020, the Secretary shall collect data on each of the following:

(1) The total number of facilities that were operating under the pilot program established under section 3(a)—

(A) during the previous fiscal year;

(B) between the previous fiscal year and the date of enactment of this Act; and

(C) between the date of enactment of this Act and the date of establishment of the Stop, Observe, Ask, and Respond to Health and Wellness Training program that was operating on the day before the date of enactment of this Act.

(2) The total number of health care providers and other related providers trained through the pilot program established under such section—

(A) during the previous fiscal year;

(B) between the previous fiscal year and the date of enactment of this Act; and

(C) between the date of enactment of this Act and the date of establishment of the Stop, Observe, Ask, and Respond to Health and Wellness Training program that was operating on the day before the date of enactment of this Act.

(b) REPORTING.—Not later than 90 days after the first day of each of fiscal years 2016 through 2020, the Secretary shall prepare and submit to Congress a report on the data collected under subsection (a).

## **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated \$3,000,000 for each of fiscal years 2016 through 2020.

### **EXPLANATION AND SUPPORTING MATERIAL:**

Victims and survivors of trafficking can suffer from a wide-range of physical and psychological health issues stemming from inhumane living conditions, inadequate nutrition, brutal physical and emotional attacks, dangerous workplace conditions, severe trauma, and general lack of quality health care. Studies suggest nearly a third of trafficked women saw a health care professional while still in captivity. These professionals are critically positioned to help identify victims of human trafficking, provide appropriate care, and connect them with services and supports.

Recognizing this opportunity for intervention, the Department of Health and Human Services (HHS) created the Stop, Observe, Ask and Respond (SOAR) to Health and Wellness Training as part of a federal strategic action plan to address human trafficking. The objective of the SOAR Training is to equip providers in health care settings to identify potential human trafficking victims or survivors and provide appropriate care. The initial training materials were designed with the input of various stakeholders and federal partners to create a coordinated, victim-centered, culturally relevant, comprehensive, evidence-based, and trauma-

informed model of care. Pilot trainings were conducted in a handful of cities, including Williston and New Town, ND, in September 2014.

**TOPIC #23: Create federal evidentiary privilege for confidential communications between human trafficking victims and their caseworkers.**

**PURPOSE:** The Federal Rules of Evidence currently do not contain an evidentiary privilege for confidential communications between victims of human trafficking and their caseworkers, although several states and other jurisdictions have codified such a privilege. The absence of such a privilege can chill open communication between victim and caseworker, and thereby hamper victims’ access to services and, indirectly, undermine law enforcement in prosecuting human trafficking. This proposal would add such a privilege by statute.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_\_\_\_. AMENDMENT OF FEDERAL RULES OF EVIDENCE TO CREATE A HUMAN TRAFFICKING VICTIM PRIVILEGE.

The Federal Rules of Evidence are hereby amended by adding, after Rule 502, the following new Rule:

**FEDERAL RULES OF EVIDENCE, SECTION 503. TRAFFICKING VICTIM AND CASEWORKER PRIVILEGE.**

(a) “Confidential communication” means information transmitted between the victim and the caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, does not disclose the information to third persons other than those who are present to further the interests of the consultation or those to whom disclosures are reasonably necessary for the transmission of the information.

(b) “Human trafficking caseworker” means a person who is employed by or volunteers with a program serving human trafficking victims, whether financially compensated or not, for the purpose of rendering advice or assistance to human trafficking victims, and who meets any one of the following requirements:

- (1) is a licensed social worker, nurse, physician, psychologist, or psychotherapist;
- (2) holds a bachelor's degree or higher in counseling or a related field;
- (3) has at least one year of counseling experience; or
- (4) has at least 40 hours of training as specified in this paragraph. The training shall include, but need not be limited to, the following areas: history of human trafficking, civil and criminal law as it relates to human trafficking, societal attitudes towards human trafficking, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of victims, referral services available to victims, and privileged communication.

(c) “Human trafficking victim” means a person subject to an act or practice described in 22 U.S.C. § 7102(9) or (10).

(d) “Program serving human trafficking victims” means any refuge, shelter, office, safe house, institution, center, program, or organization that offers assistance to human trafficking victims through crisis intervention, case management, medical, legal or other supportive counseling.

(e) A human trafficking victim, whether or not a party to a legal action, has the privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a human trafficking caseworker.

- (f) Any of the following persons may assert the privilege described in subsection (e):
- (1) the holder of the privilege;
  - (2) a legal guardian who is not accused of the human trafficking offense at issue, on behalf of a holder of the privilege who is a minor or is incapacitated;
  - (3) a person who is authorized to claim the privilege by the holder of the privilege; or
  - (4) the person who was the human trafficking caseworker at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed in writing by one of the persons described in subsections (f)(1)-(3). The human trafficking caseworker who received or made a communication subject to the privilege granted by this article shall claim the privilege whenever he or she is present when the communication is sought to be disclosed and he or she is authorized to claim the privilege under this section.
- (g) Any of the persons described in subsections (f)(1)-(3) may waive the privilege described in subsection (e). A person described in subsection (f)(4) cannot waive the privilege, either affirmatively or by omission, without the written consent of one of the persons described in subsections (f)(1)-(3).
- (h) A human trafficking caseworker shall inform a victim of applicable limitations on confidentiality of communications between the victim and the caseworker.

#### **EXPLANATION AND SUPPORTING MATERIAL:**

This provision is designed to address the lack of a federal evidentiary privilege for confidential communications between victims of human trafficking and caseworkers employed to assist them.

The importance of the caseworker-client relationship—and the need for candid communication within that relationship—in accomplishing Congress’s goals in enacting the TVPA and the TVPRA cannot be overstated. The caseworker has primary responsibility for assessing an individual victim’s logistical, safety, emotional, and legal needs. In order to escape trafficking situations, victims must often escape with limited resources—oftentimes little more than the clothes on their backs. Victims leave behind their homes and any social networks or resources they may have developed. They usually come to aid organizations having experienced deep trauma and must deal with the additional trauma of having to start over again. And victims must navigate complex criminal, civil, and immigration proceedings as well. It is the caseworker who connects the victim with the resources to meet those needs—everything from immediate assistance like food, clothing, hygiene items, and safe housing to more long-term assistance like police protection, psychological counseling, and legal services. The caseworker cannot meet the trafficking victim’s needs unless the victim feels it is safe to communicate openly about his or her situation.

Trafficking victims face a variety of difficulties when it comes to communications about their immediate and past experiences. Victims often face reprisals from their traffickers if it becomes known that they are attempting to escape their situation. Victims may also reasonably fear approaching law enforcement agents: victims have often been exposed to or coerced into participating in illegal activities, and many victims lack proper immigration documentation often because the traffickers have destroyed or seized such documents. Because victims may fear drawing the attention of both criminals and law enforcement, organizations attempting to provide services to victims must be able to offer them resources if there is assurance that the victim’s communications are kept confidential.

This privilege also can aid law enforcement efforts in prosecuting trafficking. First, simply providing safe, confidential services to victims can encourage their escape and undermine the efforts of traffickers. Further, trafficking victims often serve as important witnesses in efforts to prosecute traffickers. But without a safe, confidential point of contact—and the services a caseworker can provide or

facilitate—the opportunity to testify never comes, and the information needed to prosecute traffickers remains unavailable to law enforcement.

For these reasons, several jurisdictions around the country have in recent years adopted an explicit trafficking caseworker privilege designed to protect such confidential communications from disclosure. *See* Cal. Ev. Code 1038(a) (adopted in 2005); Ky. Rev. Stat. Ann. § 422.295 (adopted in 2007); D.C. Code Ann. § 14-311 (adopted in 2010); Mass. Gen. Laws Ann. ch. 233, § 20M (adopted in 2011); 42 Pa. Stat. and Cons. Stat. Ann. § 5945.3 (adopted in 2014); 9 Guam Code Ann. § 26.40. Federal evidence law does not yet recognize such a privilege, but the significant harms of disclosure foreseen by the state legislatures are clearly present in federal proceedings as well. And federal common law already recognizes privileges that are similar in function and rationale, such as the psychotherapist privilege. *See* Fed. Rules Evid. 501; *Jaffee v. Redmond*, 518 U.S. 1 (1996) (recognizing the psychotherapist privilege under Rule 501). Although common law might eventually recognize a trafficking caseworker privilege as well, the urgency of combating trafficking and aiding victims right now makes this privilege an appropriate candidate for congressional action.

**TOPIC #24: Preventing abuse of visa classifications to ensure domestic workers can enjoy trafficking prevention measures enacted in TVPRA 2008.**

**PURPOSE:** This provision will create accountability so that domestic worker employers will be discouraged from misclassifying their domestic workers as A2 visa holders, rather than A3, to avoid worker rights protections that attach with A3 visa holders by including this type of visa abuse as a consideration in suspending countries from issuance of A3 and G5 visas.

**PROPOSED STATUTORY LANGUAGE:**

Section 203 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 is amended by adding at the end of subpart (2) of subsection (b):

The Secretary shall also suspend, for such period as the Secretary determines necessary, the issuance of A-3 and G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that 1 or more employees of such mission have sought to classify an A-3 visa holder as an A-2 visa holder or a G-5 visa holder as a G-1 visa holder to avoid the protections of this section.

**EXPLANATION OF SUPPORTING MATERIAL:**

A troubling trend has recently emerged of the deliberate visa misclassification to avoid compliance with worker rights laws in the U.S. Unlike an A-3 visa which is intended for private domestic workers of diplomats and consular officials, an A-2 visa is intended for general embassy employees and confers few rights upon the recipient. The law permits A-3 and G-5 visa holders to remain in the US to sue their employers for abuse. In contrast, A-2 visas, usually reserved for technical and administrative staff, include no such protections. The Vienna Convention explicitly delineates between services staff of embassies and private domestic workers. The Department of State needs to implement a monitoring and accountability system to ensure domestic workers are not misclassified under less-protected visas in order to avoid worker protections. Countries who intentionally misclassify workers should be suspended from visa privileges.

**TOPIC #25: Ensure that the child welfare system protects and serves all trafficked children.**

**PURPOSE:** To strengthen the Preventing Sex Trafficking and Strengthening Families Act of 2014 to ensure the child welfare system collects data and provides specialized services to all child victims of human trafficking—both sex and labor.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_\_\_ . IDENTIFYING, DOCUMENTING, AND DETERMINING SERVICES FOR CHILDREN AND YOUTH AT RISK OF HUMAN TRAFFICKING

(a) IN GENERAL.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended—

- (1) in subparagraph (9)(C)(i)(I) by striking “sex trafficking victim” and inserting “human trafficking victim (as defined by section 675(9) of this title)”;
- (2) in subparagraph (34)(A) by striking “sex trafficking victim” and inserting “human trafficking victim (as defined by section 675(9) of this title)”;
- (3) in subparagraph (34)(B) by striking “sex trafficking victim” and inserting “human trafficking victim (as defined by section 675(9) of this title)”;
- (4) in subparagraph (35)(A)(iii) by striking “sex trafficking victim” and inserting “human trafficking victim (as defined by section 675(9) of this title)”.

(b) DEFINITIONS. —Section 475 of the Social Security Act (42 U.S.C. 675) is amended—

- (1) in the undesignated portion of paragraph (9) by striking “sex trafficking victim” and inserting “human trafficking victim”; and
- (2) in subparagraph (9)(B) by adding “or 7102(9)(B)” directly after “7102(9)(A)”.

Sec. \_\_\_\_ . COLLECTION OF DATA ON TRAFFICKING VICTIMS IN FOSTER CARE.

(a) IN GENERAL.—Sec. 479(c)(3)(E) of the Social Security Act (42 U.S.C. 679(c)(3)(E)) is amended by striking “sex trafficking victims—“ and inserting “human trafficking victims—“.

Sec. \_\_\_\_ . EXPANDING THE NATIONAL ADVISORY COMMITTEE.

(a) Section 42 U.S.C 1314b is amended—

By delating in this section the word “sex” anytime it appears in front of the word “trafficking” or in front of the word “trafficked” and inserting in its place “human”.

**EXPLANATION AND SUPPORTING MATERIAL:**

In 2014, Congress passed the Preventing Sex Trafficking and Strengthening Families Act. This act created important new provisions to address the issue of child sex trafficking in the child welfare system, including requiring states to engage in data collection and reporting on the specialized services for sex trafficked children. Unfortunately, labor trafficked children were excluded from these provisions. Since the TVPA’s inception the U.S. has looked at the commercial exploitation of individuals for both sex and labor trafficking and these suggested amendments to this act will ensure that the U.S. continues to look at the commercial exploitation of all children in the U.S.

**Child labor trafficking must be included in efforts to support the child welfare system to better address all forms of commercial exploitation against children in the United States.**

- **Like child sex trafficking victims, child labor trafficking victims are abused, neglected, and often sexually assaulted children.**
  - A recent report by Covenant house that looked at both the dynamics of sex and labor trafficked children concluded-*“the dynamics of labor trafficking appeared very similar to those of sex trafficking, with traffickers exploiting vulnerable people’s desperation and isolation.”*<sup>5</sup>
- **Child labor trafficking impacts not just foreign national children but U.S. citizen children too. These children are being identified all around the United States.**
  - A study interviewed 174 youth receiving services from a social service provider in New York City, all US citizens, and found that many of these youth had experienced sex trafficking and/or labor trafficking.
  - The National Human Trafficking Resource Center Hotline Reports:
    - **314 cases of child trafficking that involved children and the child welfare system. 76% of these cases were sex trafficking; 11% were labor trafficking; 2% were both.**
    - **4470 total child trafficking cases reported to the hotline. 605 or 13% were child labor trafficking cases.**
    - *Runaway and Homeless Youth programs that ask questions about child labor trafficking are identifying them. One organization identified as many as 150 labor trafficked youth, the majority of whom were U.S. citizens, in the last three years. Another had identified 122 labor trafficked youth during this same time period.*
- **Better data collection is needed for all forms of child trafficking. If data is only collected by child welfare systems about child sex trafficking and not child labor trafficking, we will never understand the dynamics of this issue in our child welfare systems.**
  - A May 2013 Covenant House study, entitled *Homelessness, Survival Sex and Human Trafficking: As Experienced by the Youth of Covenant House New York*, identified both sex and labor trafficked youth among the youth they served. Notably, the study demonstrates that identification of sex and labor trafficking cases can occur using a single questionnaire and training.
- **It’s far more cost effective to include all child trafficking victims, both sex and labor, in any reforms made to the child welfare system to deal with child commercial exploitation issues.**
  - *Many of the changes needed in the child welfare system start with data collection and training. Development of these materials and resources is a one-time cost and including all forms of child trafficking will not make it more costly. It will be more costly if these materials need to be developed again in the future.*
  - *Child sex and labor trafficking victims need very similar specialized services that understand the dynamics of human trafficking- including access to shelter, basic necessities, mental health and medical care, case management, and legal services.*

### **Case Examples of U.S. Citizen Child Labor Trafficking Victims and the Child Welfare System**

- **Jessica** was 17 when she was recruited to sell magazines in the southern United States. She was forcibly transported and made to work in various locations in the United States and finally escaped in California. She went to a police department for help. The police department considered her homeless and did not identify this as a labor trafficking case.

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<sup>5</sup> Covenant House, *Homelessness, Survival Sex and Human Trafficking: As Experienced by the Youth of Covenant House New York*, 13 (May 2013).

- **Liz and Marty**, two American youth were homeless after their families kicked them out of their homes and answered a website ad for au pair services. Once they were flown to the host family's home in California, they were forced to work every day and sexually assaulted by the father of the household, who used drugs to sedate them.
- **Nathan**, a 13 year old youth from Las Vegas Nevada was convinced by a family from his boy scout troop to run away from his family. However, once he went to their home he was subjected to constant emotional abuse, in addition to being statutorily raped, and physically beaten by the "new" parent. During this time, he also began performing work at the request of the "parent" who abused him. For two years, he washed dishes, scrubbed the floors, vacuumed the home, cooked for the family, and cared for the children while being raped, belittled, and emotionally abused. He was a domestic servant trapped by psychological and emotional attachment to a trafficker.
- **Mary** was recruited to join a cult at the age of 17. While with the cult she was forced to work making movie effects at a compound outside of Los Angeles. If she refused to work she was locked in a room. She was never paid despite working 18 hours or more a day.
- **Lin** was 16 year old girl from Arkansas. Her mother forced her to sell prescription drugs and took the money. She fled the home and stayed in a runaway and homeless youth shelter until she returned to her mother after 4 to 5 months.
- **Dan** was forced to work in a restaurant as an ice cream seller. He had to pay for his housing and food through this work. The trafficker was a family member.
- **Stacey** was 17 years old when she was kicked out of her home in Oregon. She spent time at a shelter. She self-identified as a lesbian. After leaving the shelter, she moved in with a family and provided child care. She was kicked out of the home when she refused to have sexual relations with the parents together. She was not paid for the child care she provided. The parents kept her belongings from her, including her social security and health insurance cards.
- In Massachusetts a man recruited US citizen children age 8 to 15, who were forced to sell candy and flowers at intersections and at railway stations, sometimes until as late as 11 at night.
- In New York City multiple children have been identified as being recruited to sell drugs by gangs. They are told they have a debt, and know what happens to people who argue with the gang. They think they can pay back the debt in a couple of weeks, but the debt never reduces and they are afraid what will happen if they try to stop.
- In *US v. Callahan* a federal jury convicted an Ashland Ohio couple of engaging in a labor trafficking conspiracy and other crimes related to holding a U.S. Citizen child and her mother against their will and forcing them to perform manual labor. One of the many threats used against the mother and child by the traffickers included having Ashland County Job and Family Services take the child away. Other tactics included beatings, threats of beatings, taunting and threatening the victims with pit bulls and snakes. Callahan also forced the mother to hit her child while they recorded a video, and threatened to inflict much greater physical harm on them if they did not comply. He then repeatedly threatened to have the child taken away by showing the videos to authorities.

### Media Stories about US citizen child labor trafficking

*Pot Farmer Confessed To Kidnapping Teen Girl, Keeping Her In A Box, Say*

*Feds*



[http://www.huffingtonpost.com/2013/08/02/pot-farmer-kidnapped-teen-girl\\_n\\_3695793.html](http://www.huffingtonpost.com/2013/08/02/pot-farmer-kidnapped-teen-girl_n_3695793.html)

Child runs away from foster home in California, kidnapped and kept in metal box, sexually assaulted and forced to pick marijuana in northern California.

***Two men arrested in case of Orlando kids selling items door-to-door in Palm Bay***

<http://www.floridatoday.com/article/20131029/NEWS01/310290024/children-human-trafficking>

October 2013, an agent with Florida Department of Children and Families reported to Palm Bay police observations that uncovered a child labor trafficking scheme in which 24 US citizen children were forced to sell items door-to-door for ten hours per day. Police arrested two men in connection with this operation for labor trafficking.

***Magazine Crew - Human trafficking may have knocked at your door.***

<http://www.denvervoice.org/featuresnews/2009/11/1/freature-magazine-crew-human-trafficking-may-have-knocked-at.html>

An organization in Colorado has helped a number of children who were trapped in magazine crews. In one case a boy who refused to leave an elementary school, ran away from a magazine crew and had no idea what state he was in; he just wanted to go home.

**TOPIC #26: Preventing retaliation against human trafficking victims and their families.**

**PURPOSE:** Add anti-retaliation protections covering participation in a criminal or civil action involving allegations of human trafficking. The language of the protections would mirror the language in remedial employment statutes.

**PROPOSED STATUTORY LANGUAGE:**

Chapter 77 of title 18, United States Code, is amended by adding at the end the following:

**“§ 1598. Discrimination prohibited**

- “(a) It shall be unlawful to discriminate against any person because such person has:
- (1) Instituted, caused to be instituted, assisted with, testified or is about to testify in, or participated in any manner in any complaint, investigation, proceeding, or hearing under or related to this chapter; or
  - (2) Opposed any practice made unlawful by this chapter.
- (b) In this section, the term “discriminate against any person” means any action that a reasonable person of the same background and in the same circumstances would find materially adverse, including any action directed at a person other than the person who has engaged in one of the activities set forth in subsections (1) or (2).

**EXPLANATION AND SUPPORTING MATERIAL:**

The strongest impediment to human trafficking victims cooperating with law enforcement and participating in civil litigation is fear of retaliation against themselves and their loved ones. Congress has recognized the importance of strong anti-retaliation protections in remedial employment laws such as the Fair Labor Standards Act and Title VII. Yet, someone who believes she has been trafficked into commercial sex or labor and wants to report her situation to law enforcement has no such protections. As a result, she is potentially left with no remedy if a trafficker threatens her or, as is tragically common, threatens her family.

**TOPIC #27: Providing for the vacating of certain convictions of victims of human trafficking.**

**PURPOSE:** To allow courts to vacate the federal criminal convictions of trafficking victims for non-violent crimes their traffickers forced them to commit.

**PROPOSED STATUTORY LANGUAGE:**

To provide for the vacating of certain convictions and expungement of certain arrests of victims of human trafficking.

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Trafficking Survivors Relief Act of 2017”.

**SEC. 2. FEDERAL EXPUNGEMENT FOR VICTIMS OF TRAFFICKING.**

(a) IN GENERAL.—[Chapter 237](#) of title 18, United States Code, is amended by adding at the end the following:

**“§ 3772. Motion to vacate; expungement; mitigating factors**

“(a) DEFINITIONS.—In this section—

“(1) the term ‘child’ means an individual who has not attained 18 years of age;

“(2) the term ‘covered offense’—

“(A) means a Federal offense that is not—

“(i) a violent crime; or

“(ii) an offense of which a child was a victim; and

“(B) includes—

“(i) a conspiracy to commit an offense described in subparagraph (A)(i) of which a child was not a victim; and

“(ii) a conspiracy to commit an offense described in subparagraph (A)(ii) that is not a violent crime;

“(3) the term ‘covered prisoner’ means an individual who—

“(A) was convicted of a noncovered offense before the date of enactment of this section;

“(B) was sentenced to a term of imprisonment for the noncovered offense; and

“(C) is imprisoned under such term of imprisonment;

“(4) the term ‘eligible entity’ includes—

“(A) a legal aid society or legal services organization that provides indigent legal services;

“(B) a nonprofit organization that provides legal services to victims of trafficking; and

“(C) a public defender's office;

“(5) the terms ‘employee’ and ‘officer’ have the meanings given the terms in section 2105 of title 5;

“(6) the term ‘Federal offense’ means an offense that is punishable under Federal law or the laws of the District of Columbia;

“(7) the term ‘noncovered offense’—

“(A) means a Federal offense that is a violent crime;

“(B) does not include a Federal offense that is a violent crime of which a child was a victim; and

“(C) includes a conspiracy to commit an offense described in subparagraph (B);

“(8) the term ‘victim of trafficking’ has the meaning given that term in section 103 of the Trafficking Victims Protection Act of 2000 ([22 U.S.C. 7102](#)); and

“(9) term ‘violent crime’ has the meaning given that term in section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 ([42 U.S.C. 5603](#)).

“(b) MOTIONS TO VACATE CONVICTIONS OR EXPUNGE ARRESTS.—

“(1) IN GENERAL.—

“(A) CONVICTIONS OF COVERED OFFENSES.—A person convicted of any covered offense (or an eligible entity representing such a person) may move the court which imposed the sentence for the covered offense to vacate the judgment of conviction if the covered offense was committed as a direct result of the person having been a victim of trafficking.

“(B) ARRESTS FOR COVERED OFFENSES.—A person arrested for any covered offense (or an eligible entity representing such a person) may move the district court for the district and division embracing the place where the person was arrested to expunge all records of the arrest if the conduct or alleged conduct of the person which resulted in the arrest was directly related to the person having been a victim of trafficking.

“(C) ARRESTS FOR NONCOVERED OFFENSES.—A person arrested for any noncovered offense (or an eligible entity representing such a person) may move the district court for the district and division embracing the place where the person was arrested to expunge all records of the arrest if—

“(i) the conduct or alleged conduct of the person which resulted in the arrest was directly related to the person having been a victim of trafficking; and

“(ii)(I) the person is acquitted of the noncovered offense;

“(II) the Government does not pursue or dismisses criminal charges against the person for the noncovered offense; or

“(III)(aa) the charges against the person for the noncovered offense are reduced to an offense that is a covered offense; and

“(bb) the person is acquitted of the covered offense, the Government does not pursue or dismisses criminal charges against the person for the covered offense, or any subsequent conviction of the covered offense is vacated.

“(2) CONTENTS OF MOTION.—A motion described in paragraph (1) shall—

“(A) be in writing;

“(B) describe any supporting evidence;

“(C) state the offense; and

“(D) include copies of any documents showing that the movant is entitled to relief under this section.

“(3) HEARING.—

“(A) MANDATORY HEARING.—

“(i) MOTION IN OPPOSITION.—Not later than 30 days after the date on which a motion is filed under paragraph (1), the Government may file a motion in opposition of the motion filed under paragraph (1).

“(ii) MANDATORY HEARING.—If the Government files a motion described in clause (i), not later than 15 days after the date on which the motion is filed, the court shall hold a hearing on the motion.

“(B) DISCRETIONARY HEARING.—If the Government does not file a motion described in subparagraph (A)(i), the court may hold a hearing on the motion not later than 45 days after the date on which a motion is filed under paragraph (1).

“(4) FACTORS.—

“(A) VACATING CONVICTIONS OF COVERED OFFENSES.—The court may grant a motion under paragraph (1)(A) if, after notice to the Government and an opportunity to be heard, the court finds, by clear and convincing evidence, that—

“(i) the movant was convicted of a covered offense; and

“(ii) the participation in the covered offense by the movant was a direct result of the movant having been a victim of trafficking.

“(B) EXPUNGING ARRESTS FOR COVERED OFFENSES.—The court may grant a motion under paragraph (1)(B) if, after notice to the Government and an opportunity to be heard, the court finds, by clear and convincing evidence, that—

“(i) the movant was arrested for a covered offense; and

“(ii) the conduct or alleged conduct which resulted in the arrest was directly related to the movant having been a victim of trafficking.

“(C) EXPUNGING ARRESTS FOR NONCOVERED OFFENSES.—The court may grant a motion under paragraph (1)(C) if, after notice to the Government and an opportunity to be heard, the court finds, by clear and convincing evidence, that—

“(i) the movant was arrested for a noncovered offense and the conduct or alleged conduct which resulted in the arrest was directly related to the movant having been a victim of trafficking; and

“(ii)(I) the person is acquitted of the noncovered offense;

“(II) the Government does not pursue or dismisses criminal charges against the person for the covered offense; or

“(III)(aa) the charges against the person for the noncovered offense are reduced to a covered offense; and

“(bb) the person is acquitted of the covered offense, the Government does not pursue or dismissed criminal charges against the person for the covered offense, or any subsequent conviction of that covered offense is vacated.

“(5) SUPPORTING EVIDENCE.—

“(A) REBUTTABLE PRESUMPTION.—For purposes of this section, there shall be a rebuttable presumption that the movant is a victim of trafficking if the movant includes in the motion—

“(i) a copy of an official record, certification, or eligibility letter from a Federal, State, tribal, or local proceeding, including an approval notice or an enforcement certification generated from a Federal immigration proceeding, that shows that the movant was a victim of trafficking, including a victim of a trafficker charged with a violation of chapter 77; or

“(ii) an affidavit or sworn testimony from a trained professional staff member of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the movant has sought assistance in addressing the trauma associated with being a victim of trafficking.

“(B) OTHER EVIDENCE.—

“(i) IN GENERAL.—For purposes of this section, in determining whether the movant is a victim of trafficking, the court may consider any other evidence the court determines is of sufficient credibility and probative value, including an affidavit or sworn testimony of the movant.

“(ii) AFFIDAVIT OR SWORN TESTIMONY OF MOVANT SUFFICIENT EVIDENCE.—The affidavit or sworn testimony of the movant described in clause (i) shall be sufficient evidence to vacate a conviction or expunge an arrest under this section if the court determines that—

“(I) the affidavit or sworn testimony is credible; and

“(II) no other evidence is readily available.

“(6) CONVICTION OR ARREST OF OTHER PERSONS NOT REQUIRED.—It shall not be necessary that any person other than the movant be convicted of or arrested for a covered offense before the movant may file a motion under paragraph (1).

“(7) DENIAL OF MOTION.—

“(A) IN GENERAL.—If the court denies a motion filed under paragraph (1), the denial shall be without prejudice.

“(B) REASONS FOR DENIAL.—If the court denies a motion filed under paragraph (1), the court shall state the reasons for the denial in writing.

“(C) REASONABLE TIME TO CURE DEFICIENCIES IN MOTION.—If the motion was denied due to a curable deficiency in the motion, the court shall allow the movant sufficient time for the movant to cure the deficiency.

“(8) APPEAL.—An order granting or denying a motion under this section may be appealed in accordance with section 1291 of title 28 and section 3731 of this title.

“(c) VACATUR OF CONVICTIONS.—

“(1) IN GENERAL.—If the court grants a motion to vacate a conviction under subsection (b), the court shall immediately vacate the conviction for cause, set aside the verdict and enter a judgment of acquittal, and enter an expungement order that directs that there be expunged from all official records all references to—

“(A) the arrest of the person for the covered offense;

“(B) the institution of criminal proceedings against the person relating to the covered offense; and

“(C) the results of the proceedings.

“(2) EFFECT.—If a conviction is vacated under an order entered under paragraph (1)—

“(A) the conviction shall not be regarded as a conviction under Federal law and the person for whom the conviction was vacated shall be considered to have the status occupied by the person before the arrest or the institution of the criminal proceedings related to such conviction; and

“(B) no alien may be removed, determined to be inadmissible, or lose any immigration benefit because of such conviction, arrest, or institution of criminal proceedings.

“(d) EXPUNGEMENT OF ARRESTS.—

“(1) IN GENERAL.—If the court grants a motion to expunge an arrest under subsection (b), the court shall immediately enter an expungement order that directs that there be expunged from all official records all references to—

“(A) the arrest of the person for the covered offense;

“(B) the institution of any criminal proceedings against the person relating to the covered offense; and

“(C) the results of the proceedings, if any.

“(2) EFFECT.—If an arrest is expunged under an order entered under paragraph (1)—

“(A) the arrest shall not be regarded as an arrest under Federal law and the person for whom the arrest is expunged shall be considered to have the status occupied by the person before the arrest or the institution of the criminal proceedings related to such arrest, if any; and

“(B) no alien may be removed, determined to be inadmissible, or lose any immigration benefit because of arrest or institution of criminal proceedings, if any.

“(e) MITIGATING FACTORS.—

“(1) IN GENERAL.—The court which imposed sentence for a noncovered offense upon a covered prisoner may reduce the term of imprisonment for the noncovered offense—

“(A) upon motion by a covered prisoner, the Director of the Bureau of Prisons, or the court's own motion;

“(B) after notice to the Government;

“(C) after considering—

“(i) the factors set forth in section 3553(a);

“(ii) the nature and seriousness of the danger to any person; and

“(iii) the community, or any crime victims; and

“(D) if the court finds, by clear and convincing evidence, that the covered prisoner committed the noncovered offense as a direct result of the covered prisoner having been a victim of trafficking.

“(2) REBUTTABLE PRESUMPTION.—For the purposes of this subsection, there shall be a rebuttable presumption that a covered prisoner is a victim of trafficking if the covered prisoner provides—

“(A) a copy of an official record, certification, or eligibility letter from a Federal, State, tribal, or local proceeding, including an approval notice or an enforcement certification generated from a Federal immigration proceeding, that shows that the covered prisoner was a victim of trafficking, including a victim of a trafficker charged with a violation of chapter 77; or

“(B) an affidavit or sworn testimony from a trained professional staff member of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the covered prisoner has sought assistance in addressing the trauma associated with being a victim of trafficking.

“(3) REQUIREMENT.—Any proceeding under this subsection shall be subject to section 3771.

“(4) PARTICULARIZED INQUIRY.—For any motion under paragraph (1), the Government shall conduct a particularized inquiry of the facts and circumstances of the original sentencing of the covered prisoner in order to assess whether a reduction in sentence would be consistent with this section.

“(f) ADDITIONAL ACTIONS BY COURT.—The court may, upon granting a motion under this section take such additional action as the court determines is appropriate.

“(g) CONFIDENTIALITY OF MOVANT.—

“(1) IN GENERAL.—A motion under this section and any documents, pleadings, or orders relating to the motion shall be filed under seal.

“(2) INFORMATION NOT AVAILABLE FOR PUBLIC INSPECTION.—No officer or employee may make any report, paper, picture, photograph, court file or other document, in the custody or possession of the officer or employee, that identifies the movant available for public inspection.

“(h) APPLICABILITY.—This section shall apply to any conviction or arrest occurring before, on, or after the date of enactment of this section.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections of [chapter 237](#) of title 18, United States Code, is amended by adding at the end the following:

[“3772. Motion to vacate; expungement; mitigating factors.”](#).

**EXPLANATION AND SUPPORTING MATERIAL:**

Convictions, and even an arrest record, can cause a lifetime of limited access to opportunities such as jobs, loans, education, housing, or visas. Traffickers will sometimes force their victims to commit crimes as a way to further victimize them. Our justice system needs to provide trafficking victims with the tools required to help them rebuild their lives. This provision recognizes that trafficking victims are in fact victims, and particularly when non-violent crimes are the issue, they should receive protection and support, not punishment. It serves both as a real opportunity to clear a victim’s federal record, and as a model for the states who have yet to pass a bill allowing for the vacating of convictions for trafficking victims.

## INTERNATIONAL

### TOPIC #28: TIP Report: Clarifying existing language in TVPA on the elevation of watch list countries to Tier 2.

**PURPOSE:** This provision is to clarify that tier rankings can only be based on concrete actions taken by the country during the TIP report's reporting period.

#### PROPOSED STATUTORY LANGUAGE:

Sec. \_\_. Requirement for Concrete Action.

Section 110 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7106) is amended –

(1) in subsection (b)(2)(A)(iii) –

(A) in subclause (I) by inserting “or” after “increasing;”; and

(B) in subclause (II) by striking “officials;” and the rest of the clause and inserting “officials.”; and

(2) by adding the following at the end:

“(g) Concrete Actions. In determining whether to list a country pursuant to paragraph (1)(A) The Secretary of State may list a country pursuant to paragraph (1)(A) or (1)(B) based only on concrete actions taken by the country during that year.”

#### EXPLANATION OF SUPPORTING MATERIAL:

Under section 110, countries that are on Tier 2 are placed on the Tier 2 Watch List if they meet certain criteria, including that their placement on Tier 2 is based on commitments by the country to take additional future steps over the next year. This was based on the idea that there may be times where a country has not been able to take action, but has committed to do so. As such, a country that was on Tier 2 should be given special attention, and therefore should be on the Tier 2 Watch List.

In 2015, Under Secretary Sewall testified that in effect, this provision has been interpreted to be a direction by Congress that if commitments to take future steps were made, this justified listing a country on Tier 2 (as opposed to being a criteria for listing a country on the Tier 2 Watch List). This seems to be inconsistent with the structure of the statute, although the current statutory scheme does seem to envision that a country that only made commitments to take future steps could be on Tier 2 (although on the Watch List). This is certainly the basis for U/S Sewall's testimony.

Review of this section calls into question the use of this criteria altogether. While the logic of relying on commitments to take future action may have been justified when the Watch List was created in 2005, twelve years later, the time for basing rankings on future promises has past. Therefore, this proposal eliminates the criteria based on commitments made, and provides that a rating may only be based on concrete actions taken during the reporting year.

**TOPIC #29: Direct Department of State to place governments involved in trafficking in persons in Tier 3 in the Trafficking in Persons Report.**

**PURPOSE:** To produce a more accurate report of anti-human trafficking efforts, by placing governments that direct trafficking in persons and/or support it through government policy in the category reserved for governments that are not compliant and not making significant efforts to bring themselves into compliance with the minimum standards of the Trafficking Victims Protection Act as set forth in the annual U.S. Department of State TIP Report.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_\_\_ . Government Sponsored Forced Labor

(a) Section 108 of the Trafficking Victims Protection Act of 2000 is amended—

(1) in subsection (b) by adding at the end the following:

“(8) Whether the government of the country sponsors or otherwise facilitates forced labor or has policies that provide incentives for or otherwise support officials at any level of government to participate in or facilitate forced labor.”

(b) Section Section 110 of the Trafficking Victims Protection Act of 2000 is amended—

(1) in subsection (b) (1) by adding at the end the following:

“..., including all countries whose central government officials participate in or facilitate forced labor or whose central government maintains policies that provide incentives for or otherwise support officials at any level of government to participate in or facilitate forced labor.”

(2) in subsection (b) (3) Significant Efforts by adding at the end the following::

“(D) whether central government officials participate in or facilitate forced labor or whether the central government maintains policies that provide incentives for or otherwise support officials at any level of government to participate in or facilitate forced labor.”

**EXPLANATION AND SUPPORTING MATERIAL:**

The United States has demonstrated international leadership in combating human trafficking and slavery through the enactment of the Trafficking Victims Protection Act and annual issuance of the Trafficking in Persons Report. Placements in one of four tiers in the TIP report is the single most compelling statement made by the report, yet the tier placements fail to distinguish governments that are involved in human trafficking from others. No action undermines efforts to eradicate human trafficking more than government involvement in trafficking in persons. Placement in Tier 3 and Tier 2 Watch list depends on the determination whether a country is making significant efforts to bring itself into compliance with minimum standards, and involvement in human trafficking or failure to effectively rid the country of the vestiges of prior government involvement is in diametric opposition to significant efforts to comply with the TVPA minimum standards.

The proposed language would remove inconsistencies from the annual Trafficking in Persons Report. In multiple years, the TIP Report has included country reports that determine the country’s central government is involved in trafficking in persons and placed the same

government in tiers reserved for governments making significant efforts to eradicate human trafficking. These cases have included both governmental direction of human trafficking and governmental support for human trafficking through its policies.

The proposed language would also prevent the perverse outcome that governments involved in and in some cases benefitting from human trafficking face no consequences. Trafficking in persons is a crime under international and U.S. law. Therefore, determination that a government is not in compliance with the TVPA minimum standards and not making significant efforts to bring itself into compliance has appropriate consequences, over which the U.S. President has exercise of waiver authority. These consequences include that the government concerned is ineligible for select U.S. foreign assistance, U.S. support for multilateral assistance, and its officials ineligible to participate in U.S. educational and cultural exchange programs. Historically, these consequences have been waived in most cases, yet the credible threat of their application has encouraged government progress towards compliance with the TVPA minimum standards. The credibility of the threat of consequences depends on its rational application, first to curb direct involvement in human trafficking and second to catalyze inactive governments into action.

**TOPIC #30: Strengthen influence of J/TIP by elevating Ambassador position to Assistant Secretary.**

**PURPOSE:** Strengthen the ability of the TIP Office to have impact within the Department of State.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. Strengthening Trafficking in Persons Efforts at the Department of State

Section 105(e)(1) is amended in the second sentence by striking the period and inserting, "and shall be deemed to be equivalent to an Assistant Secretary of State."

**EXPLANATION OF SUPPORTING MATERIAL:**

As the TIP Report has gained additional prominence, tier ratings of countries have become more controversial. This is particularly true given that there is now a mechanism for Tier 2 Watch List countries to become Tier 3 countries. Since we understand that the head of the TIP office is considered by some State Department officials "an office director" while many decisions are made at the Assistant Secretary level, this change in status will help achieve parity between the bureaus and offices addressing trafficking issues. Such parity will lead to better decisions by the Department that will ultimately assist in the protection of more trafficking victims.

## **TOPIC #31: CTIP integration in U.S. Foreign Assistance**

**PURPOSE:** To better integrate a Counter-Trafficking in Persons (C-TIP) perspective and programming in U.S. foreign assistance, and to promote the effective implementation of the existing USAID C-TIP Policy throughout the Agency, with a particular focus on institutionalization and implementation in USAID Missions.

### **PROPOSED STATUTORY LANGUAGE:**

#### **SEC X. RESPONSIBILITIES OF ADMINISTRATOR OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.**

- (a) **IN GENERAL.**— In order to provide greater visibility on efforts to integrate C-TIP elements into broader assistance programming, the Administrator of the United States Agency for International Development shall:
- (i) determine a reasonable definition for the term “C-TIP Integrated Development Programs,” which shall include, though not be limited to, any programming to address health, food security, economic development, education, democracy and governance, and humanitarian assistance that includes a sufficient Counter-Trafficking in Persons element integrated in the program design and/or delivery (as determined by the Administrator of the United States Agency for International Development).
  - (ii) Furthermore, the Administrator shall:
    - A. assign a budget tracking number for C-TIP Integrated Development Programs, and
    - B. within six months after the enactment of this Act, and annually thereafter, submit to the House Foreign Affairs and Senate Foreign Relations Committees a report detailing the total dollar value allocated to C-TIP Integrated Development Programs, as well as a narrative description of the criteria by which a program was determined to qualify as having sufficient C-TIP integration, and how C-TIP elements were integrated in those programs, broken down by lines of effort.
  - (iii) Furthermore, the Administrator shall ensure that each USAID Mission in countries that have been listed on the Department of State Trafficking in Persons Report’s Tier 2, Tier 2 Watch List, or Tier 3 issued within the preceding two calendar years (and any other country the Administrator deems to have significant conditions of vulnerability to Trafficking in Persons) shall:
    - A. integrate a counter-trafficking in persons perspective and specific actionable component into development programs, project design, and methods for program monitoring and evaluation when addressing a range of development issues, including but not limited to: health, food security, economic development, education, democracy and governance, and humanitarian assistance;
    - B. implement robust training and disseminate tools around the integration of a counter-trafficking perspective and awareness in the day-to-day work of development professionals;
    - C. ensure that subsequent Country Development Cooperation Strategies (CDCS) for said countries include a Counter-trafficking in persons analytic component to guide future project design and promote the inclusion of C-TIP elements

D. in project design, implementation, monitoring and evaluation; require the inclusion of a Trafficking in Persons assessment as a standalone analysis or, if there is a reason such an analysis is not deemed feasible, as an element of any other required analysis that is conducted to inform design and implementation of programs described in item (i) above.

(b) **REPORTING TO CONGRESS** – The Administrator of the United States Agency for International Development shall publicly report to the House Foreign Affairs and Senate Foreign Relations Committees within six months of this statute’s enactment, and every two years thereafter, on progress in implementing Section (a).

#### SEC. AMENDING USC TITLE 22 TO INCLUDE A C-TIP POLICY PERSPECTIVE IN DEVELOPMENT WORK

- (a) 22 U.S. Code § 2151 (a)(3) is amended by inserting “, including but not limited to the right to be free from trafficking in persons,” after the phrase “individual civil and economic rights”.
- (b) 22 U.S. Code § 2151-1 is amended by striking “.” and inserting “;” at the end of (b)(4)(G) and inserting a new clause (b)(4)(H) with the following text: “Effective counter-trafficking in persons policies and programs.”
- (c) 22 U.S. Code § 2292 (d) [specific direction] is amended by inserting “The President shall also, to the greatest extent possible, ensure that carrying out these provisions does not create or contribute to conditions that can be reasonably expected to lead to an increase in the trafficking in persons of potential victims who are in conditions of heightened vulnerability as a result of natural and manmade disasters; and, where feasible, shall seek to integrate remedies for this vulnerability into the execution of these provisions.” after the phrase “as a result of natural and manmade disasters.”

#### **EXPLANATION AND SUPPORTING MATERIALS:**

It is important that the USG leverage the full range of its foreign policy impact in preventing and ending human trafficking overseas, and in protecting and supporting victims of this crime. In that context, US foreign assistance represents a pivotal and underutilized avenue for potential USG impact. Effective integration of a robust C-TIP Policy across the range of assistance programs, issue areas, Bureaus and Missions is of critical importance. Such integration can (a) ensure that foreign assistance efforts do not inadvertently leave vulnerable community members behind, or even increase their vulnerability, (b) generate new avenues and opportunities to maximize the impact on trafficking issues of US interventions, budgetary investment and activities, and enhance the impact of existing interventions, and c) help reinforce and support broader development objectives. For example, post-earthquake assistance in Haiti benefited from a critical understanding of locally prevalent forms of human trafficking, which allowed the proper identification of child victims who may otherwise have been returned to situations of extreme vulnerability and abuse.

For these reasons, C-TIP activities should be integrated into other development programs, project design, and methods for program evaluation, and a C-TIP analytical perspective should be incorporated into forthcoming Country Development Cooperation Strategies and into Guidance for future CDCS’s. This integration should extend, at a minimum, to health, food security, economic development, education, democracy and governance, conflict and humanitarian assistance. In the context of humanitarian assistance in particular, steps should be taken to ensure that US Foreign assistance is not unintentionally contributing

to conditions of vulnerability to human trafficking and that aid workers do not engage in human trafficking.

Although we commend USAID for developing and beginning to implement the 2012 C-TIP Policy, and for issuing a Trafficking in Persons Field Guide in 2013, much remains to be done to effectively disseminate, institutionalize, and operationalize the policy, and in particular there has been little documented progress on implementing Programming Objective 1, which calls for C-TIP efforts to be integrated over time into relevant Agency initiatives and programs, and which specifically notes that “Integrated and leveraged investments have greater potential than stand-alone projects to advance prevention and protection”.<sup>6</sup> We note also that a 2013 USAID Office of the Inspector General report specifically recommended providing tools on integrating programs and evaluating programs.<sup>7</sup> The report found that a nine out of sixteen mission coordinators interviewed had no experience with program integration, eight out of the sixteen indicated they would like additional training on this, and seven of the sixteen were not even aware that the field guide existed at that time.<sup>8</sup>

The legislative language we propose calls for USAID to develop training and tools around implementation of the policy and the integration of a counter-trafficking perspective in the day-to-day work of development professionals. By the end of FY 2018 all Missions operating in Tier 2, Tier 2 Watch list or Tier 3 countries (as listed in previous two years of TIP reports, as well as other missions that the USAID Administrator deems to have significant conditions of vulnerability to Trafficking in Persons) should: 1) receive in-depth training, and report on this to Congress, 2) report to Congress on the progress of integrating C-TIP into their programming work, through C-TIP specific language and core components in Requests for Proposals, as well as in future CDCS documents and in gender or other required analyses that are conducted to inform design and implementation of assistance programs.

In addition, the proposed language requires the USAID Administrator to define a new category of assistance programs, “C-TIP Integrated Development Programs” to encompass the broader range of development programming where C-TIP integration has taken place to some degree. The Administrator will also be required to assign this category a budget tracking number, and report out on how C-TIP elements are integrated in this category of programs. This will allow greater visibility on the integration of C-TIP efforts into broader development programming and begin to incentivize further integration of C-TIP components in these programs.

Lastly, the proposed language modifies existing US Law (Title 22) codifying foreign assistance policy to include appropriate mention of Trafficking in Persons issues and considerations.

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<sup>6</sup> USAID C-TIP Policy, Page 8. Accessed at: [http://pdf.usaid.gov/pdf\\_docs/Pdact111.pdf](http://pdf.usaid.gov/pdf_docs/Pdact111.pdf)

<sup>7</sup> OIG Report dated November 27, 2013. See Recommendation 4, page 8. Accessed at: <https://oig.usaid.gov/sites/default/files/audit-reports/9-000-14-001-s.pdf>

<sup>8</sup> Ibid, Page 7.

## **PROSECUTION of Cases of Human Trafficking and Modern-Day Slavery**

### **DOMESTIC**

#### **TOPIC #32: Prohibit employers from holding workers' identification and immigration documents.**

**PURPOSE:** Currently, one of the many forms of coercion used to control trafficking victims is through taking identification documents and visa paperwork. Although taking someone's documents is currently federally criminally punishable as document servitude, to prevent human trafficking, employers must understand that holding an individual's papers, even for a short period of time, is unacceptable as it can make someone incredibly vulnerable to exploitation.

#### **PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. Prosecuting Illegal Retention of Passports.

Chapter 77 of title 18, United States Code, is amended by inserting after section 1592 the following:

“§ 1592A. Unlawful conduct with respect to a passport, visa, or identification documents

“(a) Whoever knowingly conceals, removes, confiscates, or possesses any actual or purported passport, visa or identification document of another person for more than 48 hours shall be fined under this title or imprisoned for not more than one year, or both.

“(b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000 [22 USC § 7102], if that conduct is caused by, or incident to, that trafficking.

“(c) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties described in subsection (a).”

#### **EXPLANATION AND SUPPORTING MATERIAL:**

This clarification in federal criminal law will ensure that employers understand the criminal liability of holding an employee's passport, which often can make an individual vulnerable to human trafficking. Employers will no longer be able to use the excuse that they are holding an employee's documents for safekeeping when in fact they are holding a document to ensure someone keeps working despite exploitative conditions.

**TOPIC #33: Enhancing prosecution of trafficking offenses by providing whistleblower protections to immigrant workers.**

**PURPOSE:** To encourage workers to report abusive employers, protect them from the threat of deportation by employers who are angry that they have complained about abuse, prevent exploitation and abuse in the work place, and ensure that immigrant workers subject to exploitation or trafficking are not deported from the United States prior to their identification as victims of this crime.

**PROPOSED STATUTORY LANGUAGE:**

To protect victims of crime or serious labor violations from deportation during Department of Homeland Security enforcement actions, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Protect Our Workers from Exploitation and Retaliation Act' or the 'POWER Act'.

**SEC. 2. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT VIOLATIONS OR CRIME.**

Protection for Victims of Labor and Employment Violations- Section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)) is amended--

(1) in clause (i)--

(A) by amending subclause (I) to read as follows:

`(I) the alien--

`(aa) has suffered substantial abuse or harm as a result of having been a victim of criminal activity described in clause (iii);

`(bb) has suffered substantial abuse or harm related to a violation described in clause (iv);

`(cc) is a victim of criminal activity described in clause (iii) and would suffer extreme hardship upon removal; or

`(dd) has suffered a violation described in clause (iv) and would suffer extreme hardship upon removal;';

(B) in subclause (II), by inserting `, or a labor or employment violation resulting in a workplace claim described in clause (iv)' before the semicolon at the end;

(C) in subclause (III)--

(i) by striking `or State judge, to the Service' and inserting `, State, or local judge, to the Department of Homeland Security, to the Equal Employment Opportunity Commission, to the Department of



Labor, to the National Labor Relations Board'; and

(ii) by inserting `, or investigating, prosecuting, or seeking civil remedies for a labor or employment violation related to a workplace claim described in clause (iv)' before the semicolon at the end; and

(D) in subclause (IV)--

(i) by inserting `(aa)' after `(IV)' and

(ii) by adding at the end the following: `or

`(bb) a workplace claim described in clause (iv) resulted from a labor or employment violation;';

(2) in clause (ii)(II), by striking `and' at the end;

(3) in clause (iii), by striking `or' at the end and inserting `and'; and

(4) by adding at the end the following:

`(iv) in the labor or employment violation related to a workplace claim, the alien--

`(I) has filed, is a material witness in, or is likely to be helpful in the investigation of, a bona fide workplace claim (as defined in section 274A(e)(10)(C)(iii)(II)); and

`(II) reasonably fears, has been threatened with, or has been the victim of, an action involving force, physical restraint, retaliation, or abuse of the immigration or other legal process against the alien or another person by the employer in relation to acts underlying the workplace claim or related to the filing of the workplace claim; or'.

(b) Temporary Protection for Victims of Crime, Labor, and Employment Violations- Notwithstanding any other provision of law, the Secretary of Homeland Security may permit an alien to temporarily remain in the United States and grant the alien employment authorization if the Secretary determines that the alien--

(1) has filed for relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or

(2)(A) has filed, or is a material witness to, a bona fide workplace claim (as defined in section 274A(e)(10)(B)(iii)(II) of such Act, as added by section 3(b)); and

(B) has been helpful, is being helpful, or is likely to be helpful to--

(i) a Federal, State, or local law enforcement official;

(ii) a Federal, State, or local prosecutor;

(iii) a Federal, State, or local judge;

- (iv) the Department of Homeland Security;
- (v) the Equal Employment Opportunity Commission;
- (vi) the Department of Labor;
- (vii) the National Labor Relations Board; or
- (viii) other Federal, State, or local authorities investigating, prosecuting, or seeking civil remedies related to the workplace claim.

(c) Conforming Amendments- Section 214(p) of the Immigration and Nationality Act (8 U.S.C. 1184(p)) is amended--

(1) in paragraph (1), by inserting `or investigating, prosecuting, or seeking civil remedies for workplace claims described in section 101(a)(15)(U)(iv)' after `section 101(a)(15)(U)(iii)' each place such term appears;

(2) in paragraph (2)(A), by striking `10,000' and inserting `30,000'; and

(3) in paragraph (6)--

(A) by inserting `or workplace claims described in section 101(a)(15)(U)(iv)' after `described in section 101(a)(15)(U)(iii)'; and

(B) by inserting `or workplace claim' after `prosecution of such criminal activity'.

(d) Adjustment of Status for Victims of Crimes- Section 245(m)(1) of the Immigration and Nationality Act (8 U.S.C. 1255(m)(1)) is amended by inserting `or an investigation or prosecution regarding a workplace claim' after `prosecution'.

(e) Change of Nonimmigrant Classification- Section 384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(a)(1)) is amended--

(1) in subparagraph (E), by striking `physical or mental abuse and the criminal activity' and inserting `abuse and the criminal activity or workplace claim';

(2) in subparagraph (F), by adding `or' at the end; and

(3) by inserting after subparagraph (F) the following:

`(G) the alien's employer,'.

### **SEC. 3. LABOR ENFORCEMENT ACTIONS.**

(a) Removal Proceedings- Section 239(e) of the Immigration and Nationality Act (8 U.S.C. 1229(e)) is amended--

(1) in paragraph (1)--

(A) by striking `In cases where' and inserting `If'; and

(B) by inserting `or as a result of information provided to the Department of Homeland Security in retaliation against individuals for exercising or attempting to exercise their employment rights or other legal rights' after `paragraph (2)'; and

(2) in paragraph (2), by adding at the end the following:

`(C) At a facility about which a workplace claim has been filed or is contemporaneously filed.'

(b) Unlawful Employment of Aliens- Section 274A(e) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)) is amended by adding at the end the following:

`(10) CONDUCT IN ENFORCEMENT ACTIONS-

`(A) ENFORCEMENT ACTION- If the Department of Homeland Security undertakes an enforcement action at a facility about which a workplace claim has been filed or is contemporaneously filed, or as a result of information provided to the Department in retaliation against employees for exercising their rights related to a workplace claim, the Department shall ensure that--

`(i) any aliens arrested or detained who are necessary for the investigation or prosecution of workplace claim violations or criminal activity (as described in subparagraph (T) or (U) of section 101(a)(15)) are not removed from the United States until after the Department--

`(I) notifies the appropriate law enforcement agency with jurisdiction over such violations or criminal activity; and

`(II) provides such agency with the opportunity to interview such aliens; and

`(ii) no aliens entitled to a stay of removal or abeyance of removal proceedings under this section are removed.

`(B) PROTECTIONS FOR VICTIMS OF CRIME, LABOR, AND EMPLOYMENT VIOLATIONS-

`(i) STAY OF REMOVAL OR ABEYANCE OF REMOVAL PROCEEDINGS- An alien against whom removal proceedings have been initiated under chapter 4 of title II, who has filed a workplace claim, who is a material witness in any pending or anticipated proceeding involving a bona fide workplace claim, or who has filed for relief under section 101(a)(15)(U), shall be entitled to a stay of removal or an abeyance of removal proceedings and to employment authorization until the resolution of the workplace claim or the denial of relief under section 101(a)(15)(U) after exhaustion of administrative appeals, whichever is later, unless the Department establishes, by a preponderance of the evidence in proceedings before the immigration judge presiding over that alien's removal hearing, that--

`(I) the alien has been convicted of a felony; or

`(II) the workplace claim was filed in bad



faith

with the intent to delay or avoid the alien's removal.

`(ii) DURATION- Any stay of removal or abeyance of removal proceedings and employment authorization issued pursuant to clause (i) shall remain valid until the resolution of the workplace claim or the denial of relief under section 101(a)(15)(U) after the exhaustion of administrative appeals, and shall be extended by the Secretary of Homeland Security for a period of not longer than 3 additional years upon determining that--

`(I) such relief would enable the alien asserting a workplace claim to pursue the claim to resolution;

`(II) the deterrent goals of any statute underlying a workplace claim would be served; or

`(III) such extension would otherwise further the interests of justice.

`(iii) DEFINITIONS- In this paragraph:

`(I) MATERIAL WITNESS- Notwithstanding any other provision of law, the term 'material witness' means an individual who presents a declaration from an attorney investigating, prosecuting, or defending the workplace claim or from the presiding officer overseeing the workplace claim attesting that, to the best of the declarant's knowledge and belief, reasonable cause exists to believe that the testimony of the individual will be relevant to the outcome of the workplace claim.

`(II) WORKPLACE CLAIM- The term 'workplace claim' means any written or oral claim, charge, complaint, or grievance filed with, communicated to, or submitted to the employer, a Federal, State, or local agency or court, or an employee representative related to the violation of applicable Federal, State, and local labor laws, including laws concerning wages and hours, labor relations, family and medical leave, occupational health and safety, civil rights, or nondiscrimination.'

#### **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out this Act and the amendments made by this Act.

#### **EXPLANATION AND SUPPORTING MATERIAL:**

This provision is designed to provide immigration relief to workers who are whistleblowers of severe labor exploitation. There have been a number of human trafficking cases recently in the United States where workers who raised the alarm about severe abuse by employers have initially been threatened with deportation as a way to keep them quiet. These workers have had to remain in the United States in an undocumented status in order to stay in the country to pursue their cases against the abusive employers. After many years, these same workers have been certified as trafficking victims and receive "T" visas, but had to struggle for many years without status. Examples of this include a group



Indian workers known in the media as the Signal Workers. This provision would give trafficked workers like these access to immigration relief in the United States while they pursue claims here, even if they are not initially identified as trafficking victims.

**TOPIC #34: Tax law enforcement against traffickers.**

**PURPOSE:** To authorize appropriations for the purpose of establishing an office within the Internal Revenue Service to focus on violations of the internal revenue laws by persons who are under investigation for conduct relating to human trafficking or the promotion of commercial sex acts, and to increase the criminal monetary penalty limitations for the underpayment or overpayment of tax due to fraud.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. Authorization of Appropriations for Tax Law Enforcement Relating to Human Trafficking and Related Crimes.

(a) Authorization of Appropriations-

(1) In General- There is authorized to be appropriated \$4,000,000 for fiscal year 2012 for the purpose of establishing an office within the Internal Revenue Service to investigate and prosecute violations of the internal revenue laws by persons that appear to be engaged in conduct in violation of section 1589, 1590, 1591(a), 1592, section 2421, section 2422, subsection (a), (d), or (e) of section 2423, or section 1952 of title 18, United States Code, or comparable laws of any State or territory that prohibit human trafficking (as such term is defined in section 1702(8) of title 22, United States Code) or the promotion of prostitution or any commercial sex act (as such term is defined in section 1591(e)(3) of title 18, United States Code).

(2) Availability- Any amounts appropriated pursuant to the authority of paragraph (1) shall remain available for fiscal year 2013.

(b) Additional Funding for Operations of Office- Unless specifically appropriated otherwise, there is authorized to be appropriated and is appropriated to the office established under subsection (a)(1) for fiscal years 2017 and 2018 for the administration of such office an amount equal to the amount of any tax under chapter 1 of the Internal Revenue Code of 1986 (including any interest) collected during such fiscal years as the result of the actions of such office, plus any civil or criminal monetary penalties imposed under such Code relating to such tax and so collected.

(c) Report- Not later than one year after the date of the enactment of this Act, the Secretary of the Treasury shall report to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the enforcement activities of the office established under subsection (a)(1) and shall include any recommendations for statutory changes to assist in future prosecutions under this section.

(d) Applicability of Whistleblower Awards to Victims of Human Trafficking- For purposes of making an award under paragraph (1) or (2) of section 7623(b) of the Internal Revenue Code of 1986 with respect to information provided by victims of any person convicted of violating section 1589, 1590, 1591(a), 1592, section 2421, section 2422, subsection (a), (d), or (e) of section 2423, or section 1952 of title 18, United States Code, or comparable laws of any State or territory that prohibit human trafficking (as such term is defined in section 1702(8) of title 22, United States Code) or the promotion of prostitution or any commercial sex act (as such term is defined in section 1591(e)(3) of title 18, United States Code), the determination of whether such person is described in such paragraph shall be made without regard to paragraph (3) of section 7623(b) of such Code.

SEC. \_\_. Increase in Criminal Monetary Penalty Limitation for the Underpayment or Overpayment of Tax due to Fraud.

(a) In General-

(1) ATTEMPT TO EVADE OR DEFEAT TAX- Section 7201 (relating to attempt to evade or defeat tax) is amended--

(A) by striking '\$100,000 (\$500,000' and inserting '\$500,000 (\$1,000,000', and

(B) by striking '5 years' and inserting '10 years'.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX-

(A) IN GENERAL- Section 7203 (relating to willful failure to file return, supply information, or pay tax) is amended--

(i) in the first sentence--

(I) by striking 'Any person' and inserting the following:

(a) In General- Any person', and

(II) by striking '\$25,000' and inserting '\$50,000',

(ii) in the third sentence, by striking 'section' and inserting 'subsection', and

(iii) by adding at the end the following new subsection:

(b) Aggravated Failure to File-

(1) IN GENERAL- In the case of any failure described in paragraph (2), the first sentence of subsection (a) shall be applied by substituting--

(A) 'felony' for 'misdemeanor',

(B) '\$500,000 (\$1,000,000' for '\$50,000 (\$100,000', and

(C) '10 years' for '1 year'.

(2) FAILURE DESCRIBED- A failure described in this paragraph is--

(A) a failure to make a return described in subsection (a) for a period of 3 or more consecutive taxable years if the aggregate tax liability for such period is not less than \$100,000, or

(B) a failure to make a return if the tax liability giving rise to the requirement to make such return is attributable to an activity which is a felony under any State or Federal law.'

(B) PENALTY MAY BE APPLIED IN ADDITION TO OTHER PENALTIES- Section 7204 (relating to fraudulent statement or failure to make statement to employees) is amended by striking 'the penalty provided in section 6674' and inserting 'the penalties provided in sections 6674 and 7203'.

(3) FRAUD AND FALSE STATEMENTS- Section 7206 (relating to fraud and false statements) is amended--

(A) by striking '\$100,000 (\$500,000' and inserting '\$500,000 (\$1,000,000', and

(B) by striking '3 years' and inserting '5 years'.

(b) Increase in Monetary Limitation for Underpayment or Overpayment of Tax Due to Fraud- Section 7206 (relating to fraud and false statements), as amended by subsection (a)(3), is amended-

(1) by striking 'Any person who--' and inserting '(a) In General- Any person who--', and

(2) by adding at the end the following new subsection:

(b) Increase in Monetary Limitation for Underpayment or Overpayment of Tax Due to Fraud- If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.'

(c) Effective Date- The amendments made by this section shall apply to actions, and failures to act, occurring after the date of the enactment of this Act.

### **EXPLANATION AND SUPPORTING MATERIAL:**

The IRS Human Trafficking and Fraud Act would accomplish three main objectives: 1) establish an office within the Internal Revenue Service to investigate and prosecute tax law violations by persons under investigation for human trafficking or the promotion of prostitution; 2) increase the criminal monetary penalties for underpayment or overpayment of tax due to fraud; and 3) expand the eligibility for whistleblower awards.

The language in the bill has expanded the original idea to include all human traffickers, but is based on the language in <http://www.govtrack.us/congress/billtext.xpd?bill=h110-3424>.

Representative Carolyn Maloney introduced this legislation in a previous Congress (H.R. 6491, 111<sup>th</sup> Congress), and Senator Chuck Grassley has supported similar legislation in the past (e.g, section 320, S. 1321, 109<sup>th</sup> Congress, as reported out by the Senate Finance Committee).

**TOPIC #35: Civil damages awarded under 18 U.S.C. § 1595 not subject to income tax. (treated the same as criminal restitution)**

**PURPOSE:** To exclude civil damages awarded under 18 U.S.C. § 1595 from “income taxes” as defined under the Internal Revenue Code so survivors of trafficking and modern-day slavery may rely on the entirety of funds recovered from their traffickers to rebuild their lives.

**PROPOSED STATUTORY LANGUAGE:**

18 USC 1595 is amended by inserting:

“No funds recovered under this section by victims as described in paragraph (a) shall be subject to any federal income taxes.”

**EXPLANATION AND SUPPORTING MATERIAL:**

In a number of recent cases, victims of human trafficking and modern-day slavery have been awarded civil damages under 18 U.S.C. § 1595. Courts have been correct in compensating human trafficking victims: their lives and labor were stolen, and their criminal traffickers and slaveholders should pay them back. Yet, due to the state of our current tax laws, these survivors of human trafficking and modern-day slavery may become liable for large tax bills on these damages, no matter that these victims are destitute and are struggling to rebuild their lives.

### **TOPIC #36: Trafficking in persons training for DOL and EEOC personnel.**

**PURPOSE:** Training appropriate DOL and EEOC personnel in identifying and protecting victims of severe forms of trafficking in persons.

#### **PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_ Trafficking in Persons Training for USDOL and EEOC Personnel.

Section § 1100.37 (a) is amended by inserting after “The TVPA requires that appropriate...” the following: “DOL, EEOC,”

Section 107(c)(4) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105) is amended—

- (1). In the first sentence by striking “Services,” and inserting “Services, the U.S. Department of Labor, the Equal Employment Opportunity Commission”;
- (2). In the first sentence by striking “Attorney General” and inserting “Attorney General, the Secretary of Labor, EEOC Chair and ”

Section 107(c)(3)(A)(i) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. section 7105(c)(3)(A)(i)) is amended by inserting after “If a federal law enforcement official” the following: “or Department of Labor or Equal Employment Opportunity Commission official”

Authorization of appropriations. Section 113(f) is amended –

- (1) by striking “section 107(b)” and inserting “section 107(b) and section 107(c);” and
- (2) by striking “2012 through 2014” and inserting “2017 through [2019].”

#### **EXPLANATION AND SUPPORTING MATERIAL:**

§ 1100.37 (a) of the TVPA currently requires that appropriate DOJ and DOS personnel be trained in identifying victims of severe forms of trafficking in persons and providing for the protection of such victims. These federal personnel receive training on how to recognize victims and provide services and protections, as appropriate, in accordance with the TVPA, [42 U.S.C. 10606](#) and [10607](#), and other applicable victim-assistance laws. This amendment proposes that similar training be extended to the U.S. Department of Labor and the Equal Employment Opportunity Commission as these agencies are frequently (and increasingly it seems) coming into contact with victims of trafficking and forced labor.

Department of Labor officials, specifically Wage and Hour Inspectors, have a particularly important role in combating trafficking. Often, labor inspectors have greater access to workplaces where vulnerable workers toil. With DOL's new regulatory role in the H2 visa programs, it is more important than ever that labor inspectors receive proper training on how to identify and find victims of trafficking in the workplace. The Signal Workers case highlight that trafficking for labor exploitation may be found in formal workplaces in the United States. As such, labor inspectors must be part of the law enforcement effort to combat trafficking in persons. As labor inspectors are separated from immigration enforcement, they may be more strategically placed than DHS officials for example, to identify trafficking victims. Such inspectors need training on the types of questions to ask, danger signs to look for, and other indications of a trafficking victim. This provision also provides that Department of Labor officials can request Continued Presence for trafficking victims, thereby securing temporary immigrant relief for victims of trafficking cooperating in Department of Labor investigations.

**TOPIC #37: Clarify that corporations and municipal governments cannot escape accountability for trafficking crimes.**

**PURPOSE:** To ensure that corporations and municipal governments that have committed an offense under the Trafficking Victims Protection Act can be held accountable.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_\_ Clarification of Perpetrators of Traffickers.

Section 1595 of Title 18, United States Code, is amended by adding the following at the end:

“(e) For the purposes of this section, “perpetrator” includes corporations, companies, associations, firms, partnerships, joint stock companies, and state, local and municipal corporations, as well as individuals.

**EXPLANATION AND SUPPORTING MATERIAL:**

Private corporations and individuals are not the only ones who commit offenses under the TVPA. One example in Maryland demonstrates this. The Prince George’s County School District hired Filipino teachers who were forced to pay \$1,000 in visa fees. The Department of Labor ordered Prince George’s to pay more than \$5 million in back wages and fines. This does not appear to be an isolated case. The Baltimore Sun reported that Filipino leaders say the city school district used the same practices.

Legal Service providers in the field have also experienced other examples of municipalities or government entities engaging in offenses under the TVPA and attempting to escape liability arguing that because they are not covered by the TVPRA. For example, In 2011, a U.S. District Court judge, dismissed the TVPRA claims against the East Baton Rouge Parish School District that employed over 300 Filipino teachers who were victims of a fraudulent labor recruitment scheme. The judge ruled that while the TVPRA allows liability against “whoever knowingly benefits” from a violation, the words “person” and “whoever” does not include government entities.

The law should be unequivocally clear that parties such as corporations, companies, associations, firms, partnerships, joint stock companies, and municipal corporations can be prosecuted and can be held liable under the TVPA.

**TOPIC #38: Enhanced protections and legal remedies for victims of severe forms of trafficking in persons not covered by FLSA.**

**PURPOSE:** To provide enhanced protections and legal remedies to workers particularly vulnerable to severe forms of trafficking in persons and who are exempt from the FLSA protections and remedies.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. A party who prevails in a private right of action for claims of Trafficking With Respect to Peonage, Slavery, Involuntary Servitude or Forced Labor in Violation of 18 U.S.C § 1590 perpetrated against them shall be awarded “liquidated damages” as defined by 29 U.S.C. § 216(b) and reasonable attorneys’ fees and costs to be paid by the defendant as described in 29 U.S.C. § 216(b) regardless of whether or not the prevailing party would otherwise be deemed “exempt” from protections and remedies provided by the Fair Labor Standards Act.

**EXPLANATION AND SUPPORTING MATERIAL:**

Under the Fair Labor Standards Act of 1938, as amended (*See* 29 U.S.C. 201, et seq.), an employer who violates the Act is liable to the employee for the unpaid wages *and* an additional equal amount as “liquidated damages.” *See* 29 U.S.C. § 216(b). Additionally, a prevailing plaintiff/worker who bring a claim in court for unpaid wages under FLSA must be awarded reasonable attorneys’ fees and costs to be paid by the defendant. *See* 29 U.S.C. § 216(b). FLSA also provides for both civil and criminal penalties. Civil penalties can amount to \$1,000 per violation. *See* 29 U.S.C. § 216(e). Criminal penalties for willful violations can be up to six months in jail and up to a \$10,000 fine. *Id.* at § 216(a).

Unfortunately, however, some groups of workers who have been found to be particularly vulnerable to severe forms of trafficking in persons, such as travelling sales crews (i.e. “outside salespersons” under the FLSA) are not covered by FLSA. *See* Polaris, *Knocking at Your Door: Labor Trafficking on Traveling Sales Crews*, July 2015, available at <https://polarisproject.org/sites/default/files/Knocking-on-Your-Door-Sales-Crews.pdf>. As an “exempt” category under FLSA, these highly vulnerable workers do not have access to any of the legal remedies stated above, and as a result face many obstacles in reporting the crimes perpetrated against them and in accessing justice.

The FLSA describes “outside salespersons” as persons regularly performing sales work away from the employer’s place of business and must be primarily working making sales for which a customer or client will pay. In addition to traveling sales crews/ outside salespersons, other types of workers who are exempted from the FLSA’s minimum wage and overtime requirements, include:

- Certain workers in the fishing and seafood processing industries (29 U.S.C. § 213(a)(5))
- Certain agricultural workers (29 U.S.C. § 213(a)(6))
- Local delivery drivers paid by “trip rates” (29 C.F.R. § 551)
- Employees of small, local newspapers (29 U.S.C. § 213(a)(8))
- Seamen employed on vessels other than American vessels (29 U.S.C. § 213(12))
- Casual babysitters and domestic workers, caregivers, and companions for the aged and infirm (29 U.S.C. § 213(a)(15))

**TOPIC #39: Preventing obstruction of forced labor investigations and prosecutions.**

**PURPOSE:** Add an obstruction provision to Forced Labor section of Chapter 77.

**PROPOSED STATUTORY LANGUAGE:**

Section 1589 of title 18, United States Code, is amended by adding at the end the following:

“(e) Any person who knowingly obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties described in subsection (d).”

**EXPLANATION AND SUPPORTING MATERIAL:**

Currently, most of the Chapter 77 (Peonage, Slavery, and Trafficking in Persons) crimes also provide that obstructing, attempting to obstruct, or interfering with or preventing enforcement is subject to the same penalties as someone who commits the crime itself. See 18 U.S.C. §§ 1581(b) (Peonage), 1583(a)(3) (Enticement into Slavery), 1584(b) (Sale into Involuntary Servitude), 1590(b) (Trafficking with Respect to Slavery, Involuntary Servitude, or Forced Labor), 1591(d) (Sex Trafficking of Children or by Force, Fraud or Coercion), 1592(c) (Unlawful Conduct with Respect to Documents in Furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude, or Forced Labor), and 1597(c) (Unlawful Conduct with Respect to Immigration Documents). However, there currently is no obstruction provision associated with the crime of Forced Labor. See 18 U.S.C. § 1589.

The absence of an obstruction provision in the Forced Labor crime strips law enforcement of a critical tool to curtail interference with investigations. This tool exists to aid the investigation and prosecution of all other frequently-used human trafficking-related crimes.

**TOPIC #40: Exemption to discharge in bankruptcy for trafficking-related debts.**

**PURPOSE:** Add human trafficking-related debts to the bankruptcy code’s exemptions to discharge.

**PROPOSED STATUTORY LANGUAGE:**

Section 523(a) of title 11, United States Code, is amended by adding at the end the following:

“(20) that is for forced labor, sex trafficking of children or by force, fraud, or coercion, or that is for any other violation of Chapter 77, Title 18 of the United States Code or any state law equivalent.”

**EXPLANATION AND SUPPORTING MATERIAL:**

On multiple occasions, traffickers have attempted to shield their assets from trafficking victims by seeking bankruptcy protection. Debts for fraud or willful and malicious injuries already are exempted from discharge in bankruptcy. *See* 11 U.S.C. §§ 523(a)(4) and (6). However, it is not clear whether a court would consider a trafficker’s debt to a trafficking victim as a non-dischargeable debt. Therefore, it is important that to specify that a trafficker’s debts to a trafficking victim for the harm the victim suffered cannot be excused by filing for bankruptcy.

## **PARTNERSHIP and Increased Capacity to Combat Human Trafficking and Modern-Day Slavery**

### **DOMESTIC**

#### **TOPIC #41: Add US Trade Representative to the President’s Interagency Task Force.**

**PURPOSE:** To ensure that human trafficking is a priority consideration in trade relations.

#### **PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_\_\_\_. Increasing the Role of the US Trade Representative in Combating Human Trafficking.

- (a) USTR as a Member of the President’s Interagency Task Force to Monitor and Combat Trafficking.— Section 105(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7103(b)) is amended by inserting “the United States Trade Representative,” after “the Secretary of Education,”.

#### **EXPLANATION AND SUPPORTING MATERIAL:**

In light of the controversy surrounding the 2015 TIP Report rankings and the subsequent insertion of anti-trafficking requirements in recent legislation related to the proposed Trans Pacific Partnership, it is evident that trade relations and human trafficking are becoming increasingly intertwined. It is also increasingly recognized by advocates, business leaders, and policy makers that labor provisions in existing free trade agreements and trade benefits programs – such as AGOA and the Generalized System of Preferences (GSP), which involve developing countries – are mechanisms by which trafficking can and should be addressed. Growing attention to trafficking in the supply chains of a wide range of business sectors also will lead to more engagement with trade officials and experts about how US government commercial and trade policy can and should be focused on preventing trafficking rather than facilitating it. Therefore, it is imperative that the USTR Ambassador become a part of the PITF so that the USTR can learn from and more closely engage with colleagues from other federal agencies. Participation in the PITF can also facilitate better alignment by USTR with the concerns and efforts of other government agencies around trafficking and build the capacity of USTR to be more engaged globally on how to use trade policy and practices to prevent rather than facilitate trafficking.

## INTERNATIONAL

### **TOPIC #42: DELETED**

This proposal originally contained the legislative text of S. 553, the End Modern Slavery Initiative Act of 2015, introduced in February 2015. S. 553 authorized resources for the establishment of the End Modern Slavery Initiative Foundation to work with the U.S. government, the private sector, civil society organizations, and other countries to marshal resources to combat human trafficking around the world. While S. 553 was not enacted in its entirety, the National Defense Authorization Act (NDAA) of 2017, which was signed into law in December 2016, authorized funding for a new global anti-trafficking initiative. Consequently, the original proposal is moot. ATEST will continue advocating for the funds authorized under the NDAA to be appropriated.

## AUTHORIZATION OF APPROPRIATIONS

### **TOPIC #43: Increase authorizations of appropriations for federal programs to combat human trafficking in the United States and internationally.**

**PURPOSE:** Amounts authorized for federal programs to combat human trafficking both in the United States and internationally should be increased significantly. Calls requesting assistance and services to the National Human Trafficking Hotline have increased exponentially over the past three years. Additionally, service providers and law enforcement regularly report the lack of services for human trafficking victims identified in the United States. Meanwhile, U.S. efforts to combat trafficking have reached a critical stage in developing partnerships with countries that are showing increasing commitment to eradicate trafficking and modern-day slavery. Additional resources to expand those potential partnerships can have a potentially dramatic impact on reducing this scourge. The TVPRA of 2017 should increase authorizations in a graduated way over the duration of the authorization to keep pace with the increased needs in the United States and the increased opportunities abroad.

### **PROPOSED INCREASE AND JUSTIFICATION:**

Although ATEST is prepared to make recommendations based on the basis of a needs assessment, ATEST believes that baselines established after the completion of the FY2016 appropriations process and the release of the President's budget for FY2017 must be evaluated before it can make serious funding proposals. After analysis of these key benchmarks, ATEST will provide further information regarding proposed authorization levels.

**TOPIC #44: Create a stream of funding to support the United States Advisory Council on Human Trafficking**

**PURPOSE:** In May 2015, the President signed into law the Survivors of Human Trafficking Empowerment Act (Sec. 115 of Public Law 114-22), which established this Council to provide advice and recommendations to the Senior Policy Operating Group and the President's Interagency Task Force to Monitor and Combat Trafficking. Human trafficking survivors are in the best position to speak to policies that have the greatest impact and will effect real change. To be the most effective the council needs funding to support the ongoing work of survivors. Additionally, the language creating the council currently provides explicit language under Section 115(f)(2) that survivors who are members of the council cannot be compensated for their services. Given that this creates financial hardship for current and future members of the council, this problematic provision needs to be clarified so that in addition to receiving travel expense and per diem, survivor council members can receive compensation for their services to the council.

**PROPOSED STATUTORY LANGUAGE:**

Sec. 115 of the Justice for Victims of Trafficking Act of 2015 (P.L. 114-22) is amended:

- (a) In subsection (f)(2) by striking the existing text and inserting the following— “shall receive compensation, including reimbursement of travel expenses and per diem allowance.”
- (b) By redesignating subsection (h) as subsection (i), and by inserting—

“(h) —Authorization of appropriations in support of the United States Advisory Council on Human Trafficking—There is authorized to be appropriated to the State Department’s Office to Monitor and Combat Trafficking in Persons to carry out the purposes of section 115 of the Justice for Victims of Trafficking Act of 2015 (P.L. 114-22) \$750,000 for each of the fiscal years 2017 through 2020. These funds may be used to provide compensation to Advisory Council members.”

**EXPLANATION AND SUPPORTING MATERIAL:**

The U.S Government must work with survivors, not only on their behalf. Survivors of human trafficking are more than just their stories—they have a deep understanding of the problem and what is needed to combat it and support survivors. As the Administration has made 11 Council appointments, ATEST strongly recommends the additional funding necessary to provide ongoing support to a Council that reflects the diverse backgrounds of survivors of trafficking — including foreign national and U.S. citizen survivors of sex and labor trafficking.

The authorization would fund at least one full-time FTE to support: the ongoing work of the council; the organizing and convening of Council meetings; Council members travel and incidental expenses; compensation for Council members; production of the annual report required under the act; mental health support for council members; creation of a structure to ensure other survivors outside the Council have a mechanism for providing recommendations to the US government; and other activities authorized by the Act.

Other U.S. advisory councils of a similar size and nature have between .8 and 1 FTE. This level of dedicated staff support should be provided to this Council if the United States wants to demonstrate its commitment to listening and implementing Survivor recommendations.

**TOPIC #45: Legal services for human trafficking victims.**

**PURPOSE:** Human trafficking victims have complex immigration, criminal and civil legal needs. Attorneys are needed who specialize in assisting human trafficking cases so that victims can seek justice, compensation, and protection in the United States for the crimes committed against them.

**PROPOSED STATUTORY LANGUAGE:**

Sec. \_\_. Obtaining Services for Cooperating Trafficking Victims.

(a) Additional Use of Funds.— Sec. 107(b)(2) of the Trafficking Victims Protection Act of 2000 (22 USC 7105(b)(2)) is amended by striking the period and inserting “, including providing legal services to assist them in obtaining immigration benefits, file civil suits, and provide assistance with criminal victim-witness advocacy.”

(b) Authorization.—

(1) Department of Health and Human Services.— Sec. 113(b) is amended by inserting at the end “(3) To carry out the purposes of section 107(b)[22 USCS 7105(b)] and 107(f)[22 USCS 7105(f)] there are authorized 5,000,000 to provide legal services for trafficking victims.”

(2) Department of Justice.— Sec. 113(d) is amended by inserting at the end the following: “(D) To carry out the purposes of section 107(b)[22 USCS 7105(b)] and 107(f)[22 USCS 7105(f)] there are authorized 5,000,000 to provide legal services for trafficking victim.”

**EXPLANATION AND SUPPORTING MATERIAL:**

Funding for legal services is virtually nonexistent. Under the current funding structure, limited legal services are available through the Office of Victims of Crime (OVC) for pre-certified victims only. Since OVC’s reduction in funding in 2005, grant levels available generally do not allow for the support of even one full-time staff member qualified to provide legal services. Additionally, there is no funding available for U.S. citizen victims and the Office of Refugee Resettlement (ORR) has prohibited the use of its funds for legal representation to certified victims and pre-certified victims not being served by OVC grantees. Additionally, the limited funds available are generally used solely for immigration services, when trafficking victims often need assistance accessing the civil court system as well as criminal victim-witnesses advocacy. Human trafficking victims routinely report that legal services are their top priority. However, because of lack of legal services funding in this relatively new field, there are few to no attorney who currently specialize in this complex service area. If victims are fortunate enough to be able to access attorneys they usually have to receive legal services from multiple advocates further complicating a difficult process.

**TOPIC #46: Authorize funding for ILAB.**

**PURPOSE:**

To authorize the appropriation of funds to continue to support the effective operation of a critically important agency, the International Labor Affairs Bureau (ILAB) within the Department of Labor.

**PROPOSED STATUTORY LANGUAGE:**

Title: To establish the Bureau of International Labor Affairs within the Department of Labor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Bureau of International Labor Affairs Authorization Act of 2014”.

**SEC. 2. ESTABLISHMENT OF THE BUREAU OF INTERNATIONAL LABOR AFFAIRS.**

(a) Establishment.—

(1) IN GENERAL.—There is established within the Department of Labor a Bureau of International Labor Affairs (referred to in this Act as the “Bureau”).

(2) STRUCTURE.—At a minimum, the Bureau shall include offices to carry out functions or activities related to—

- (A) international relations and economic affairs;
- (B) child labor, forced labor, and human trafficking; and
- (C) trade and labor affairs.

(3) DEPUTY UNDERSECRETARY.—

(A) IN GENERAL.—The Secretary of Labor shall appoint a Deputy Undersecretary for International Affairs to head the Bureau.

(B) DUTIES.—The Deputy Undersecretary for International Affairs shall carry out all duties carried out by the Deputy Undersecretary for International Affairs as of the day before the date of enactment of this Act.

(b) Functions.—The functions of the Bureau on and after the date of enactment of this Act shall include the functions of the Bureau on the day before the date of enactment of this Act, including all of its personnel, assets, authorities, and liabilities.

(c) Mission.—The mission of the Bureau shall be to—

(1) lead the efforts of the Department of Labor to ensure that workers around the world are treated fairly and able to share in the benefits of the global economy; and

(2) help improve working conditions, raise living standards, protect the ability of workers to exercise their rights, and address the exploitation of children and other vulnerable populations in the workplace.

### SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

#### **EXPLANATION OF SUPPORTING MATERIAL:**

ILAB plays a crucial role in the USG counter-trafficking mission through highly respected research, grantmaking, and policy development work. ILAB's mandates include vital work that is trafficking specific, but also encompasses a range of related policy areas that touch on key elements of partnership, prevention, protection and prosecution, such as child labor, international labor diplomacy and international economic affairs, and labor-related trade policy. The existence of a robust and expertly staffed entity within the USG foreign policy establishment that sits outside of the diplomatic constraints of the State Department and focuses particularly on worker rights is of inestimable value to the USG's ability to tackle both human trafficking and related underlying structural causes and key areas of vulnerability. The agency's reporting on goods made with forced labor, child labor, and forced or indentured child labor, along with its annual report on the worst forms of child labor, represent a well-regarded body of knowledge for other USG agencies, civil society and the general public. These are vital tools that must be maintained and strengthened.

ILAB's key accomplishments in recent years include: shaping important labor-related provisions in free trade negotiations and enforcement actions, while supporting trade-related capacity building projects in overseas trade partners; funding vital projects to combat child labor and forced labor, thereby preventing many cases of forced labor and child labor; leading a G20 labor and employment ministerial process that has championed USG priorities, engaging in bilateral labor diplomacy efforts that promote employment policies and support inclusive global economic development.

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