



January 15, 2020

VIA EMAIL to tipreportUS@state.gov

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

RE: Alliance to End Slavery and Trafficking's Input for the 2020 Trafficking in Persons Report¹

Dear Ambassador Richmond:

The Alliance to End Slavery and Trafficking (ATEST) acknowledges the continued efforts of the US Government to improve upon its commitment to address human trafficking, both here and abroad. ATEST is pleased that an assessment of anti-trafficking efforts in the US will continue to be incorporated into the 2020 Trafficking in Persons (TIP) Report. In recognition of the 20th anniversary of the Trafficking Victims Protection Act (TVPA) and the adoption of the United Nations Palermo Protocol, we would like to reflect on the opportunities that lie ahead.

ATEST is a U.S. based coalition² 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 formed in 2007 and formalized its alliance in 2009, and works as a collective in partnership with civil society, governments, and businesses to create fundamental change of the accepted norms that enable slavery and trafficking to persist around the world – from strengthening laws and business standards to building public will.

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

1. Enforcement of Anti-Trafficking Laws and Prosecution Efforts

A. The US Government Must Increase Transparency Through Regular Reporting

¹ These comments were developed in close collaboration with the Freedom Network USA (FNUSA).

² Current ATEST members include Coalition of Immokalee Workers (CIW), Coalition to Abolish Slavery and Trafficking (CAST), Free the Slaves, Human Trafficking Institute, National Network for Youth (NN4Y), Polaris, Safe Horizon, Solidarity Center, T'ruah: The Rabbinic Call for Human Rights, United Way Worldwide, Verité and Vital Voices Global Partnership.

As noted in the Federal Register Notice Request for Information, the most detailed information on US Government anti-trafficking efforts is included in the annual Attorney General's Report to Congress and Assessment of US Government Activities to Combat Human Trafficking (AG Report) as mandated by the Trafficking Victims Protection Act (TVPA) codified at 22 USC 7103(d)(7).³ However, the US Government has failed to submit this vital report for the past two years. The most recent report available covers FY17.

Recommendation: *The US Government must comply with the law and release the report annually so that governments and civil society have access to the most accurate information about the government's efforts to address human trafficking.*

B. The US Government Must Increase Investigation and Prosecution of Labor Trafficking Cases

As ATEST continues to emphasize, the US Government needs to increase its investigation and prosecution of labor trafficking cases, a concern we reiterate for this year's report. Although ATEST commends several recent initiatives to increase the investigation and prosecution of labor trafficking in cases involving employment-based visas, such as increased oversight of the J-1 Visa Exchange Visitor Program, data sharing between Department of Homeland Security (DHS) and the Department of Labor (DOL), as well as publication of H-2B recruiters, ATEST remains concerned about the low number of investigations and prosecutions involving labor trafficking compared to sex trafficking.

According to the State Department's 2019 Trafficking in Persons Report,⁴ in FY 2018 the Department of Justice (DOJ) brought "a total of 230 federal human trafficking prosecutions ... a significant decrease from 282 in FY 2017, and charged 386 defendants, a significant decrease from 553 in FY 2017." 213 prosecutions (down from 266 in FY17) involved predominantly sex trafficking and 17 involved predominantly labor trafficking. Further details about the defendants and charges are not available from the TIP Report, an example of the need for the US to comply with the law and release the AG Report immediately. However, this data indicates that approximately 94% of DOJ's prosecutions and convictions are for sex trafficking cases, and only 6% are for labor trafficking cases.

Service providers in the US, however, tell a very different tale of human trafficking in the US, identifying far higher percentages of labor trafficking victims. ATEST and FNUSA members report serving a much more balanced division of cases. ATEST and FNUSA members reported that 58% of their clients were survivors of sex trafficking, 30% were survivors of labor trafficking, and 9% were survivors of both.⁵ DOJ's human trafficking services grantees served 8,913 trafficking clients and "reported that 66 percent of clients served were victims of sex

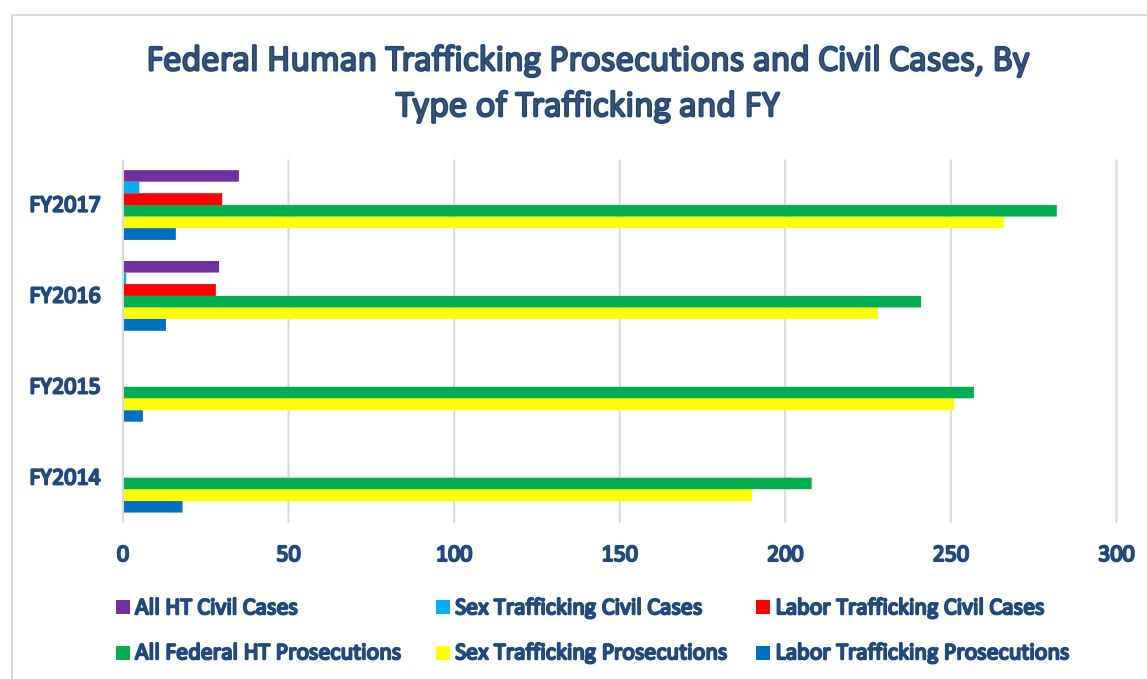
³ Request for Information for the 2020 Trafficking in Persons Report, 84 FR 67505, p67506.

⁴ Department of State, Trafficking in Persons Report: June 2019, hereinafter 2019 TIP Report, p485, <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

⁵ Freedom Network 2018 Member Report, p10, data reflecting services provided from 1/1/15 to 12/31/16, <https://freedomnetworkusa.org/app/uploads/2018/04/FRN-Member-Report-Digital-FINAL.pdf>.

trafficking, 20 percent were victims of labor trafficking, five percent were identified as victims of both sex and labor trafficking, and the form of trafficking for nine percent was unknown.”⁶ HHS issued 412 Certification Letters to adult survivors of human trafficking, and 466 Eligibility Letters to minors in FY18. Of those adults, 69% were survivors of labor trafficking, 22% were survivors of sex trafficking, and 8% were survivors of both sex and labor trafficking. Of the minors, 67% were survivors of labor trafficking, 27% were sex trafficking survivors, and 6% were survivors of both labor and sex trafficking.⁷ Additionally, since 2003, the vast majority of cases brought under the private right of action provided in the TVPRA – more than 91% – allege forced labor.⁸

Recommendation: Based on these numbers, ATEST is troubled that survivors of forced labor often cannot rely on the US Government to obtain justice and compensation and calls on the US Government to increase investigation and prosecution of cases involving labor trafficking. ATEST also looks forward to the timely release of the Attorney General’s Trafficking in Persons Report for FY 2019 to have more detailed data on labor trafficking investigations and prosecutions.



C. The US Government Must Increase Efforts Criminal Restitution in All Human Trafficking Cases

ATEST continues to be concerned about the US Government’s failure to order mandatory criminal restitution in all human trafficking cases, and the woefully low rate of payment of restitution once it is ordered. According to the report, “When ‘Mandatory’ Does Not Mean

⁶ 2019 TIP Report, p486.

⁷ 2019 TIP Report, p487.

⁸ <http://www.htlegalcenter.org/wp-content/uploads/Federal-Human-Trafficking-Civil-Litigation.pdf>

Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking in the United States,” courts awarded mandatory restitution to trafficking victims in just 36% of human trafficking cases brought between 2009 and 2012.⁹ “Data collected and analyzed since the publication of the initial findings provide a disheartening portrait of a continuing failure on the part of United States federal courts to order criminal restitution to trafficking victims. The updated data indicated that the percentage of trafficking cases ending with a mandatory criminal restitution order dropped from 36% in the prior period to just 27% in the current research date range.”¹⁰

Recommendation: ATEST recommends that the US Government increase and improve training for prosecutors and federal judges about mandatory restitution in human trafficking cases, provide resources to assist prosecutors in presenting their arguments in court, and provide trafficking victims with victim-witness counsel to advocate for restitution and other victims’ rights issues before federal courts. ATEST additionally recommends that the US Government use all authorities at their disposal to ensure that restitution is actually paid to survivors, including use of impoundment and forfeiture, as well as the authorities of the State Department and Treasury including sanctions, freezing foreign assets, limitations on diplomatic visas and downgrading TIP Report rankings.

2. Service Provision, Treatment, and Protection of Human Trafficking Survivors

ATEST notes that the US Government provides significant funding and support for human trafficking survivors. Most notably, funding appropriations for victim services grants have continued to increase to over \$100 million annually, and US law provides for significant immigration protections for trafficking survivors including Continued Presence and the T Visa. DHS produced new training resources in 2019 aimed at increasing law enforcement use of Continued Presence, including 3 new videos and 1 new brochure that clarifies that law enforcement **should** file an application for Continued Presence for all trafficking survivors. DHS also added more Victim Assistance Specialists within Homeland Security Investigations, which should provide additional support and protections for survivors while HSI investigates the trafficking case. However, these improvements are not sufficient, and have been accomplished within a general rollback of protections and support for the most vulnerable.

A. DOJ Must Restore Access to the Full Range of Critical Legal Services

ATEST strongly objects to OVC’s decision to disallow grant funding for representation in vacatur and expungement cases for trafficking survivors. This policy continues to cause wide-ranging harm to trafficking survivors, and is the antithesis of victim-centered service provision. Survivors with criminal records often remain excluded from the job and housing markets,

⁹ The Human Trafficking Pro Bono Legal Center and WilmerHale, When “Mandatory” Does Not Mean Mandatory: Failure To Obtain Criminal Restitution in Federal Prosecution of Human Trafficking Cases in the United States, September 2014, available at <http://www.htprobono.org/htprobono-mandatoryrestitution-report-9-2014> .

¹⁰ The Human Trafficking Legal Center and WilmerHale, United States Federal Courts’ Continuing Failure to Order Mandatory Criminal Restitution for Human Trafficking Victims, September 2018, p1, available at <http://www.htlegalcenter.org/wp-content/uploads/2018-Mandatory-Restitution-Report.pdf>.

ineligible for government programs, and are forced to relive their trauma whenever they are forced to explain their criminal records. These challenges keep survivors from attaining full independence and success, forcing them to remain reliant on government-funded programs for extended periods of time and remain stuck in low-wage work, often in the same industries into which they were trafficked, which creates vulnerability to future incidents of human trafficking. A wide range of service providers, survivors, law enforcement officials, legal experts, and prosecutors have called on OVC to reverse this harmful policy, but they have refused to even meet with advocates to discuss a path forward.¹¹

Recommendation: ATEST calls on DOJ to ensure victim-centered services are available for all survivors by immediately reversing this harmful policy.

B. DOJ Must Fully Expend Trafficking Victim Services Appropriations

In 2019, HUD abruptly cancelled a housing grant program for human trafficking survivors, that was to be funded by FY17 appropriations.¹² Although DOJ has since released a similar grant opportunity¹³, all indications are that the new program will be funded with FY20 appropriations. It seems, therefore, that the US Government failed to ensure that over \$13 million of trafficking victim services funds were spent for victim needs while survivors continue to struggle with access to long-term housing.

Recommendation: The US Government must ensure that all federal appropriations for trafficking victim services are fully expended, as directed by Congress, each year.

C. The US Government Must Strengthen, and Stop Eroding, Protections for Immigrants, Including Immigrant Survivors of Human Trafficking

1. Hostility Toward Immigrants Increases Risk of Trafficking, Barriers to Escape

US Government policies are creating a hostile environment for immigrants, increasing their risk of trafficking and making it more challenging for survivors of human trafficking to access services and support. The issues and concerns raised by FNUSA in its comments for the 2018 and 2019 TIP Reports have only worsened. Federal policies, including increased and indiscriminate immigration enforcement, arrests of immigrants at courthouses and other safe places,¹⁴ threats of punishment against ‘sanctuary’ jurisdictions, and increased barriers to

¹¹ See FNUSA’s blog on this effort and the letters sent to OVC at <https://freedomnetworkusa.org/freedom-network-usa-leads-broad-based-effort-to-protect-legal-representation-for-trafficking-survivors/>.

¹² Suzy Khimm and Laura Strickler, NBC News, 10/1/19, “Trump admin delays funds for human-trafficking victims that would help non-citizens,” <https://www.nbcnews.com/politics/politics-news/trump-admin-delays-funds-human-trafficking-victims-would-help-non-n1060841>; Ellen Wulfhorst, Reuters, 10/2/2019, “Supporters scramble as U.S. anti-trafficking funds are postponed,” <https://www.reuters.com/article/us-usa-trafficking-grant/supporters-scramble-as-u-s-anti-trafficking-funds-are-postponed-idUSKBN1WH2MQ>.

¹³ US DOJ Office for Victims of Crime, Housing Assistance for Victims of Human Trafficking, OVC FY 2020 Competitive Grant Solicitation, <https://www.ovc.gov/grants/pdf/FY-2020-Housing-Assistance-Grants-for-Victims-of-Human-Trafficking.pdf>.

¹⁴ See ICE Memo revising Sensitive Locations Policy, January 10, 2018, <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>, and

immigration relief, have had a direct and marked impact on immigrant survivors of human trafficking. The cumulative effects of the US Government's immigration policies and rhetoric have stopped immigrant survivors of human trafficking from seeking protection from law enforcement and from accessing legal and social services. It has been reported that victims are likely to remain in trafficking situations longer, as they believe that the US Government will not protect them from harm.¹⁵

2. DOJ Limits on Asylum and Immigration Courts Harm Trafficking Survivors

Furthermore, the US Government's limitations on protections for asylum-seekers and immigrants in removal proceedings also harm human trafficking survivors. In *Matter of A-B-*, Former Attorney General Jeff Sessions significantly limited asylum eligibility for victims of domestic violence, gangs, and other private actors. ATEST and FNUSA members have represented numerous immigrants who were trafficked by family members, gangs, and other private actors outside of the US, but then fled to the US for protection. These human trafficking survivors have relied on asylum due to their fear of persecution, or actual retaliation being inflicted upon the victim and/or their family members, from their traffickers. Additionally, other recent immigration decisions, including *Matter of L-A-B-R-*, *Matter of S-O-G- & F-D-B-*, and *Matter of Castro Tum*, and case completion quotas for immigration judges, the US Government has created significant procedural hurdles, restricted the role of immigration judges, and undermined due process in an attempt to streamline removal procedures and use the courts as an immigration enforcement mechanism.¹⁶ The effects of these policies will prevent many human trafficking survivors from attaining legal status by closing off asylum as a potential legal avenue, hindering them from securing counsel due to limited continuances in immigration court (as lawyers must spend more time and effort on each case, they will take fewer cases, and immigrants will be unable to retain a lawyer before their immigration hearings), and precluding them from securing collateral relief from USCIS. Current processing times for T Visas now exceeds 24 months.¹⁷ Survivors who are already in removal proceedings are now at high risk of being removed from the US **before** their T Visa applications are adjudicated. This also

press articles describing courthouse arrests: ICE Making Arrests at Fresno Courthouse, and Attorneys Concerned Over Due Process, July 24, 2018 and updated August 31, 2018, <https://www.fresnobee.com/news/local/crime/article215404565.html>; ICE Arrests Go Too Far, February 7, 2018, <https://www.houstonchronicle.com/opinion/editorials/article/ICE-arrests-12560056.php>; ICE's Arrest Policy at Courthouse Raises Alarm in Connecticut's Legal Community, July 9, 2018, <https://www.law.com/ctlawtribune/2018/07/09/ices-arrest-policy-at-courthouses-raises-alarm-in-connecticuts-legal-community/?slreturn=20190010164917>.

¹⁵ See Cast, Freedom Network USA, and Polaris report, "2017 Social Service, Advocate and Legal Service Survey Regarding Immigrant Survivors of Human Trafficking," <https://freedomnetworkusa.org/app/uploads/2018/01/ImmigrationSurveyReportFinal.pdf>; and "In Trump's America, Bosses are Accused of Weaponizing the ICE Crackdown," December 18, 2018, <https://www.bloomberg.com/news/features/2018-12-18/in-trump-s-america-bosses-are-accused-of-weaponizing-the-ice-crackdown>.

¹⁶ AILA Policy Brief: Restoring Integrity and Independence to America's Immigration Courts, September 28, 2018, available at <https://www.aila.org/File/DownloadEmbeddedFile/77605>.

¹⁷ USCIS provides current case processing time estimates for forms (including the I-914 Application for T Nonimmigrant Status) at <https://egov.uscis.gov/processing-times/> and historical averages at <https://egov.uscis.gov/processing-times/historic-pt>.

limits the ability of survivors to assist in the investigation and prosecution of the traffickers, if they are removed from the US. Thus, these policies, again, protect traffickers instead of trafficking survivors.

3. USCIS Policy: Notice to Appear- Targets Trafficking Survivors

DHS policies that restrict access to immigration relief are directly increasing abuse and exploitation of immigrants, and exhibit a striking failure of the US Government to comply with international and US standards for the protection of victims. One horrifying example of the US Government's failure to protect human trafficking survivors is DHS' policy to put immigrants in removal proceedings if their applications for T and U visas and other forms of humanitarian relief are denied.¹⁸ This decision contradicts the intent and spirit of the T and U visa, which were created to encourage immigrant victims of human trafficking and other crimes to come forward and assist in investigations and prosecutions, as well as DHS' *own announcement that this policy would NOT be enforced against humanitarian visas*.¹⁹ However, because of this change in policy, FNUSA and ATEST members report their clients are increasingly afraid of reporting criminal activity and applying for immigration relief. Not only has this policy deterred many immigrants from accessing available legal protections, it has also contributed to a decrease in investigations and prosecutions of human trafficking, as immigrant survivors of human trafficking are reluctant to report their traffickers and cooperate with law enforcement. This allows traffickers to operate with impunity due to the failure of the US government to protect survivors. Survivors, meanwhile, remain undocumented in a volatile political environment and are foreclosed from formal employment opportunities, housing and other resources that would prevent their re-victimization.

Recommendation: *ATEST calls on DHS to immediately reverse this policy and return to the previous practice of only taking enforcement action against humanitarian visa applicants in compelling circumstances.*

4. USCIS Practice: Requests for Evidence- Harms Human Trafficking Survivors

ATEST and FNUSA members also report increased barriers to obtaining T Visas in the form of frequent Requests for Evidence (RFEs) and denials that contravene legal standards. Recent RFEs and denials have included victim-blaming language and clear errors of law, in which USCIS adjudicators improperly read and interpret the Immigration and Nationality Act (INA) and the 2016 regulations put out by USCIS itself. For example, adjudicators have sought justification as to why the survivor has not left the US since escaping from the trafficking situation, even

¹⁸ See USCIS' June 28, 2018 NTA Memo, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>, and November 8, 2018 notice that the NTA policy would be extended specifically and solely to humanitarian visas <https://www.uscis.gov/news/alerts/uscis-continue-implementing-new-policy-memorandum-notices-appear>

¹⁹ See USCIS' guidance on the NTA memo dated September 27, 2018, stating, "We will not implement the June 2018 NTA Policy Memo with respect to ... humanitarian applications and petitions at this time." https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Updated_Policy_Guidance_on_Notice_to_Appear_NTA.pdf

though the 2016 regulations expressly removed the language contained in the previous regulations regarding whether the survivor had a “clear chance to leave.”²⁰ Additionally, USCIS has frequently read INA § 212(d)(13) incorrectly, thereby preventing some immigrant survivors from receiving status due to crimes that their traffickers forced them to commit. As each day without status is another day of vulnerability for a victim of trafficking, RFEs are increasing challenges to properly serving survivors and impact survivors’ decision to come forward at all.

Recommendation: ATEST recommends that USCIS provide regular training for USCIS adjudicators that includes detailed guidance on the updated regulations, examples of actual trafficking situations, explanation of the impact of trauma on survivors, instructions on drafting victim-centered RFEs, and which is developed with the input of survivors to ensure that it properly and accurately reflects the lives, fears, and motivations of trafficking victims.

5. USCIS Practice: Fee Waiver Guidance- Harms Human Trafficking Survivors

Another new obstacle to securing immigration relief concerns increased denials of fee waivers and revisions for adjudicating requests for fee waivers.²¹ ATEST strongly opposes the changes to the I-912 fee waiver application and instructions, as well as changes to the USCIS Policy Memorandum PM-602-0011.1.²² Instead, ATEST calls on USCIS to develop policies and procedures that ensure that immigrant survivors of human trafficking and other forms of violence and exploitation have equal access to critical, life-saving protections. The proposed revisions directly conflict with the intent of Congress to provide access to protection without fees for humanitarian visas, violate the evidentiary standard established for these visas, and cause significant burdens on survivors attempting to access protection and support law enforcement.

Recommendation: ATEST recommends that USCIS rescind this policy revision.

6. USCIS Practice: Public Charge- Harms Human Trafficking Survivors

ATEST is also strongly opposed to DHS’s changes regarding inadmissibility on public charge grounds and is deeply concerned about the immense harm that the proposed rule will have on immigrant survivors of human trafficking, as well as other forms of exploitation and violence.²³ While some human trafficking survivors seeking specific forms of immigration status, including the T and U Visas, are exempt from the public charge ground of inadmissibility, most survivors

²⁰ “Removes the current regulatory “opportunity to depart” requirement for those who escaped their traffickers before law enforcement became involved; 8 CFR 214.11(g)(2).” Fed. Reg. Vol. 81 No. 43, December 19, 2016, at 92268.

²¹ USCIS is proposing revisions to existing fee waiver memo located at PM-602-0011.1 “Fee Waiver Guidelines Established by the Final Rule of the USCIS Fee Schedule: Revisions to Adjudicator Field Manual (AFM) Chapter 10.9, AFM Update AD11-26. (March 13, 2011), available at: <http://bit.ly/2011USCISFeeWaiverGuidelines> (hereinafter “Fee Waiver Guidelines”). ATEST also objects to USCIS making such substantive policy changes via form revision.

²² Proposed Revisions at 49121. See FNUSA’s Comments on the Proposed Fee Waiver Changes for a more detailed explanation of FNUSA’s opposition, available at: <https://freedomnetworkusa.org/app/uploads/2018/11/FNUSARevisedFeeWaiversComments.pdf>.

²³ DHS Docket No. USCIS-2010-0012, Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds.

will be unaware or unconvinced of the exemption, leaving them without the very services and protections that Congress has established. ATEST and FNUSA members report that immigrant families are already withdrawing from, or choosing not to enroll in, assistance programs that support their basic needs due to fear, even though the rule has not taken effect. Not only will the rule, if implemented, impose significant human suffering costs on victims of human trafficking and their families, but will also impose long-term economic costs on our communities due to increased injury and health consequences of untreated trauma.²⁴

Recommendation: *ATEST recommends that USCIS rescind this policy revision.*

7. USCIS Practice: Delays in T Visa Adjudications- Harms Human Trafficking Survivors

Adjudication times for T Visa applications is currently 19.5-26.5 months²⁵, a sharp increase from the 6-9 month period that was common only 2-3 years ago²⁶. The prolonged length impacts trafficking survivors who are left out of status for longer periods of time, which also delays their receipt of employment authorization documents (EADs), and leaves them vulnerable to ongoing financial instability, a key risk factor in re-trafficking. Others are stuck in immigration detention, with limited access to the legal, social services, and family support they need to recover from their victimization. Even survivors with Continued Presence are impacted, as many prosecutors urge survivors to wait to file the T Visa application until after the investigation and prosecution is complete. Continued Presence, however, lasts only for 2 years. Once the investigation is closed, the Continued Presence status ends, and survivors are again left in limbo while they wait for their T Visas to be adjudicated.

Recommendation: *ATEST recommends that USCIS immediately provide sufficient training, staffing, and supervision and remove any restrictions, unnecessary requirements, or unnecessary reviews in order to adjudicate all immigration applications in a timely manner.*

8. DHS Practice: Mass Detention of Immigrants- Harms Human Trafficking Survivors

Trafficking survivors are increasingly held in immigration detention, even when T Visas are pending. T Visa processing, as described above, now takes approximately 2 years, leaving traumatized trafficking survivors in unsafe, unsanitary conditions without access to sufficient medical and mental health care or adequate access to their attorneys.

Recommendation: *ATEST recommends that DHS revert to previous policy guidance limiting detention of immigrants to cases that present a threat to the community, allowing all immigrants increased access to legal counsel, healthcare, and reduced exposure to violence and trauma.*

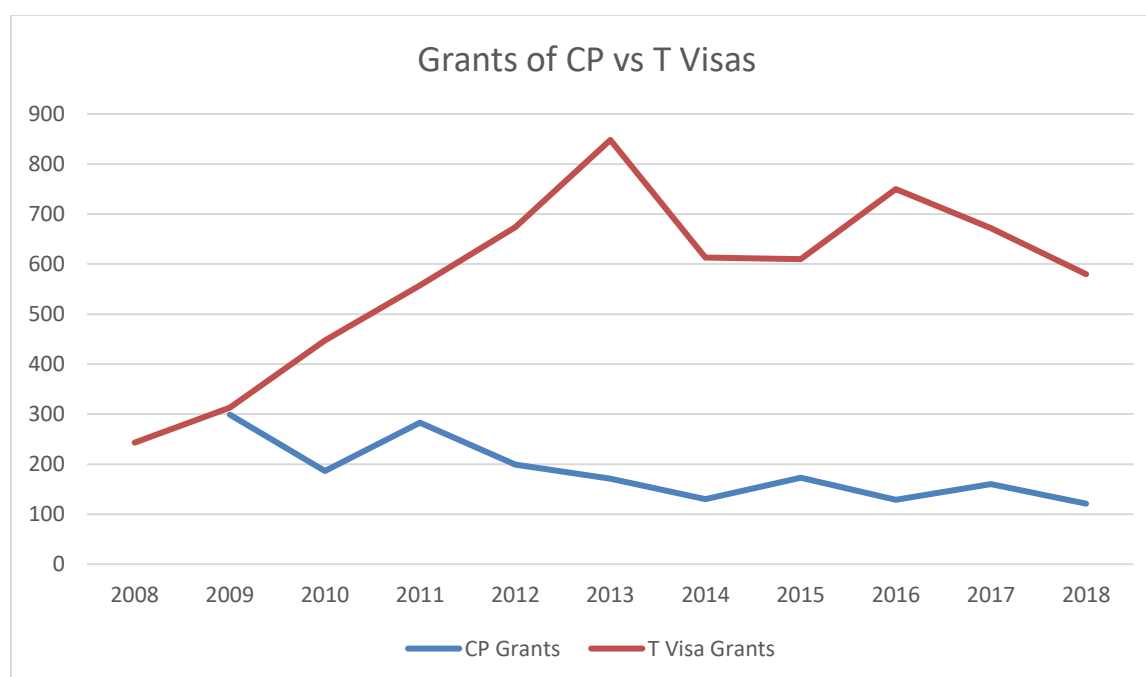
²⁴ See FNUSA's Comments on the Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds for a more detailed explanation of FNUSA's opposition, available at <https://freedomnetworkusa.org/app/uploads/2018/12/FNUSAPublicChargeComments2018DecFINAL.pdf> .

²⁵ Current processing times are provided by USCIS at <https://egov.uscis.gov/processing-times/>, the processing time for the I-914 is 19.5 to 26.5 months as accessed on 1/6/2020.

²⁶ USCIS reports processing times of 6.4 to 9 months for FY 2015 to FY 2017 at <https://egov.uscis.gov/processing-times/historic-pt>.

9. US Government's Continuing Failure to Provide Continued Presence to Human Trafficking Survivors

Although ATEST commends DHS's efforts to expand access to Continued Presence through revised guidance and new training materials including a new brochure and three new videos, we remain deeply concerned at the low number of Continued Presence grants issued to victims of trafficking. Foreign national survivors rely on this temporary immigration status to access emergency services and support, while cooperating with law enforcement and working to apply for long-term immigration relief, which is increasingly critical as access to the T Visa becomes more limited by DHS policy (see above). The number of survivors granted Continued Presence decreased again in 2018. "In FY 2018, DHS issued Continued Presence to 121 trafficking victims ... a significant decrease from 160 in FY 2017."²⁷ The number of grants remains shocking low compared to the number of T visas issued in the same time period (580).²⁸ Furthermore, ATEST and FNUSA members have reported that survivors of sex trafficking are more likely to obtain Continued Presence than survivors of labor trafficking. Another example of the US Government's failure to address labor trafficking.



Recommendations: ATEST looks forward to the release of additional data in the 2018 and 2019 AG Reports, and we strongly recommend collaboration between DHS and DOJ to prioritize an increase in the number of federal agents submitting Continued Presence applications in 2020. ATEST recommends that DHS and DOJ analyze their own data to find the regions of the US with the highest disparity in numbers of Continued Presence grants vs. T Visa grants, and to prioritize those areas for intensive training and support to federal and local law enforcement partners.

²⁷ 2019 TIP Report, p487.

²⁸ 2019 TIP Report, p487.

ATEST also recommends that federal agencies authorize victim-witness personnel at the FBI, US Attorneys Offices, DOJ Human Trafficking Prosecution Unit, and DHS' Homeland Security Investigations to prepare and submit Continued Presence applications. These personnel are most likely to have the relevant identification information about the survivor, the needs of the survivor, and the status of the case.

10. DHS Remains Complicit in Labor Trafficking of Immigrants in Private Detention Facilities

ATEST also calls on the government to address its own complicity in labor trafficking in private detention facilities under contract with the US Government. At least seven lawsuits have been filed in recent years by immigrant detainees who have alleged violations of the Trafficking Victims Protection Act (TVPA) during their detention.²⁹ These lawsuits – involving ICE detention centers run by private prison companies throughout the country – contain well documented allegations of labor trafficking, with immigrant detainees forced to work for a dollar a day under the threat of solitary confinement and a climate of fear. These claims have been pending for more than 5 years, clearly giving the US Government notice of the conditions at the detention centers. The failure of the US Government to take action to protect these victims, stop these exploitive practices, or to take any action against the corporations, show the US Government's continued complicity in these acts of human trafficking.³⁰

Recommendation: *ATEST recommends that the US Government immediately discontinue contracting with private corporations for all immigration detention, and join the plaintiffs as amici in their lawsuits against the private corporations who have exploited these immigrants. Further, ATEST recommends that the US discontinue the egregious practice of widespread immigrant detention, and revert to the former practice of detaining only those immigrants which pose a specific threat to the community.*

11. US Guest worker Visa Programs Designed to Allow Labor Trafficking to Thrive

The nation's largest guest worker programs continue to be rife with abuse and incidents of labor trafficking.³¹ Providers report that overseas recruiters continue to charge excessive fees to workers and to perpetrate fraud and other recruitment abuses, which lay the foundation for human trafficking in the US. Additionally, the structure of the low-wage programs in particular (for example, the H-2A, H-2B and J-1 programs), which generally bind a worker's lawful status in

²⁹ See, e.g., *Barrientos v. CoreCivic*, 4:18-cv-00070-CDL (M.D. Ga. Apr. 17, 2018); *Gonzalez v. CoreCivic*, 1:18-cv-00169 (W.D. Tex. Feb. 22, 2018); *Gonzalez v. CoreCivic*, No. 3:17-cv-02573-AJB-NLS (S.D. Cal. Dec. 27, 2017); *Novoa v. The GEO Group*, No. 5:17-cv-02514 (C.D. Cal. Dec. 19, 2017); *Nwuazar v. The GEO Group*, No. 3:17-cv-05769-RJB (W.D. Wash. Sept. 26, 2017); *Owino v. CoreCivic*, No. 17-cv-1112-JLS-NLS (S.D. Cal. 2017); *Menocal v. The GEO Group*, 1:14-cv-02887-JLK (D. Colo. 2014).

³⁰ For more information, see The Human Trafficking Legal Center Fact Sheet: Human Trafficking & Forced Labor in For-Profit Detention Facilities, 2018, available at <http://www.htlegalcenter.org/wp-content/uploads/Human-Trafficking-Forced-Labor-in-For-Profit-Detention-Facilities.pdf>.

³¹ See, e.g., *Francis et al. v. Apex USA Inc. et al*, 5:18-cv-00583 (D. Okla.); *Chaidez v. Hemphill*, 2:18-cv-01837 (E.D. Pa.); *Rosas v. Sarbanand Farms*, 2:18-cv-00112 (W.D. Wash.); *Bernal v. Coleman*, 1:18-cv-00088 (W.D. Ky.).

the US to the employer who sponsored their visa, makes it almost impossible for a worker to leave an abusive employer without facing deportation or economic ruin. Moreover, the lack of oversight by the regulating agencies – including the Departments of State, Labor and Homeland Security – means that law-breaking employers are not held accountable. Despite these issues, Congress and federal agencies continue to support the expansion of these programs without also implementing the necessary reforms to ensure workers are protected.

Recommendation: ATEST calls on the federal government to reform these guest worker programs to guarantee robust protections for international workers who come to the US to contribute to our economy, including visa portability for all guestworkers, robust workers' rights information provided to all workers both pre-departure and upon their arrival in the US, and robust enforcement against employers and recruiters who have abused or exploited their workers.³²

D. The US Government Must Strengthen Protections for Survivors with Disabilities

The US Government needs to take more steps to understand the scope and dynamics of trafficking targeting persons with disabilities. In its 2016 Trafficking in Persons Report (TIP), DOS acknowledged that persons with disabilities are especially vulnerable to human trafficking. The National Human Trafficking Hotline has received reports of more than 2,000 cases of trafficking of persons with disabilities between 2015 and 2017 in the US. We think this is the tip of the iceberg and that more training, better screening, and expanded outreach is necessary to properly identify this population.³³

Recommendations: In order to better understand the extent to which anti-trafficking programs are appropriately serving persons with disabilities, ATEST recommends that the US Government fund research that will document 1) the extent to which service providers are screening survivors of trafficking for either existing disabilities or those resulting from the abuse suffered during the trafficking experience; and 2) the extent to which trafficking services are fully accessible to survivors with disabilities, including, but not limited to, physical, sensory, developmental, and/or communication. Research is also needed to better document the training and resource needs of community programs serving persons with disabilities. The US Government should provide training and technical assistance to all human trafficking services grantees to ensure that they are able to both identify survivors of trafficking with disabilities, and to provide survivors with

³² See, e.g., FNUSA's Comments on RIN 1400-AD14, Proposed Rule, "Exchange Visitor Program – Summer Work Travel," February 2017, available at <https://freedomnetworkusa.org/app/uploads/2016/10/FNUSACommentsRIN1400-AD14.pdf>; FNUSA's Human Trafficking and H-2 Temporary Workers, May 2018, available at <https://freedomnetworkusa.org/app/uploads/2018/05/Temporary-Workers-H2-May2018.pdf>; FNUSA's Human Trafficking and J-1 Visas for Temporary Workers, May 2018, available at <https://freedomnetworkusa.org/app/uploads/2018/05/Human-Trafficking-and-J-1-Visas-May2018.pdf>; and FNUSA's Human Trafficking and Farmworkers, March 2013, available at <https://freedomnetworkusa.org/app/uploads/2018/07/Farmworkers.pdf>.

³³ For more information, see, The Human Trafficking Legal Center Fact Sheet: Trafficking of Persons with Disabilities in the United States, available at <http://www.htlegalcenter.org/wp-content/uploads/Trafficking-of-Persons-with-Disabilities-in-the-United-States-Fact-Sheet.pdf>.

necessary accommodations in accordance with the Americans with Disabilities Act and related laws. Accommodations may include, but are not limited to, interpreters, specialized transportation services, communication devices, and accessible physical spaces. The US Government should provide training and technical assistance to law enforcement and judicial personnel to ensure that they are able to recognize the trafficking of persons with intellectual and/or cognitive disabilities or in cases where theft of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits are involved.

3. The US Government's Failure to Prevent Human Trafficking

A TEST is distressed by the extent to which US policy changes have increased vulnerabilities to human trafficking and reduced access to protection, services, and support for immigrants, people of color, low income communities, and LGBTQ individuals.

A. Increased Vulnerabilities Among LGBTQ Individuals

The US Government has taken several actions to remove protections for LGBTQ individuals, including attempts by the Department of Health and Human Services (HHS) to redefine gender to be based solely on a person's genitalia at birth,³⁴ the roll back of Title IX protections in schools,³⁵ the removal of references to specialized services for LGBTQ communities from grant solicitations for housing and human trafficking programs, the DOJ's reversal of policies to protect transgender people from employment discrimination, the Department of Commerce's removal of sexual orientation and gender identity from the proposed 2020 Census survey, and the DOJ's Bureau of Prisons' decision to use sex at birth to determine trans inmate placement decisions.³⁶ In a recent study released by the DOJ and the Office of Juvenile Justice and Delinquency Prevention on youth trading sex (and therefore victims of sex trafficking using the federal definition), over half of the individuals surveyed were LGBTQ identified.³⁷ A TEST and FNUSA have noted for years that LGBTQ communities are both overrepresented among youth trafficking survivors, and desperately underserved in terms of both resources and protections.³⁸ Scaling back these limited protections will only cause further marginalization and increase vulnerability to exploitation and abuse, particularly for LGBTQ youth. Removing the LGBTQ community as a specific population from requests for proposals, not being able to acknowledge affirmative work for that community, determining that transgender individuals are not covered

³⁴ See, e.g., 'Transgender' Could be Defined Out of Existence Under Trump Administration, October 21, 2018, <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html?module=inline>.

³⁵ See, e.g., Justice Department Withdraws Litigation Over North Carolina's HB2, Citing Fake Repeal, April 14, 2017, http://www.slate.com/blogs/outward/2017/04/14/justice_department_withdraws_from_hb2_litigation.html.

³⁶ See, e.g., Bureau of Prisons Rolls Back Obama-era Transgender Inmate Protections, May 14, 2018, <https://www.nbcnews.com/feature/nbc-out/bureau-prisons-rolls-back-obama-era-transgender-inmate-protections-n873966>.

³⁷ Swaner, et al. "Youth Involvement in the Sex Trade: A National Study," March 2016, available at: <https://www.courtinnovation.org/publications/youth-involvement-sex-trade>.

³⁸ See, "Spotlight: Unique Vulnerabilities of LGBTQI Community Members", FNUSA 2016 Member Report, p5, <https://freedomnetworkusa.org/app/uploads/2016/12/Member-Report-2015-Electronic-Version.pdf>.

by Title VII protections in the workplace,³⁹ and advancing religious exemptions⁴⁰ are all disturbing changes that are likely to cause increased trafficking and violence against the LGBTQ community.

Recommendation: ATEST strongly condemns these changes and urges the US Government to immediately reinstate protections that have been removed and to, instead, increase services, protection, and support for LGBTQ communities and individuals.

B. Increased Vulnerabilities of Immigrants, Particularly UACs and LGBTQ Immigrants

As discussed above, recent changes in the US Government's immigration policies make it increasingly difficult for immigrant survivors of human trafficking to come forward, and also make immigrants, particularly immigrant children and LGBTQ immigrants, increasingly vulnerable to human trafficking.

In particular, ATEST is deeply concerned about the long-term effects of President Trump's "zero tolerance" and family separation policies at the US-Mexico border, increased detention of unaccompanied alien children (UACs), and the Remain in Mexico program. The trauma caused by family separation and detention puts UACs at an increased risk of human trafficking.⁴¹ Immigrants subject to the Remain in Mexico program are subjected to inhumane conditions in shanty settlements, are frequently abused and exploited by gangs, and have limited access to the legal and social services needed to prepare their immigration cases and heal from the trauma they are fleeing.⁴²

In light of the rollbacks in protection for both immigrants and LGBTQ individuals, LGBTQ immigrants are exceptionally vulnerable. The abuses suffered by transgender asylum-seekers at the border, exemplified by the death of trans woman Roxsana Hernandez Rodriguez in ICE custody amid signs of physical assault and abuse,⁴³ cause increased fear of the US government among LGBTQ immigrants. However, LGBTQ immigrants have come to the US because they are

³⁹ Savage, Charlie, "In Shift, Justice Dept. Says Law Doesn't Bar Transgender Discrimination," 5 October 2017, available at: <https://www.nytimes.com/2017/10/05/us/politics/transgender-civil-rights-act-justice-department-sessions.html>.

⁴⁰ Brief for the Department of Justice, Masterpiece Cakeshop, Ltd. vs. Colorado Civil Rights Commission, et al, 16-111 (2016).

⁴¹ For more detail on the harm to human trafficking victims that is posed by family separation and detention, see FNUSA's Comments on the Proposed Flores Regulations, available at: <https://freedomnetworkusa.org/app/uploads/2018/11/FNUSACommentsProposedFloresRegulation.pdf>.

⁴² See KIND, The Border, Trafficking, and Risks to Unaccompanied Children: Understanding the Impact of US Policy on Children's Safety, https://supportkind.org/wp-content/uploads/2019/12/KIND_Child-trafficking-at-border-paper-11-18-19-FINAL-1.pdf.

⁴³ See Independent Autopsy of Transgender Asylum Seeker Who Died in ICE Custody Shows Signs of Abuse, November 27, 28, <https://www.nytimes.com/2018/11/27/us/trans-woman-roxsana-hernandez-ice-autopsy.html>; Transgender Asylum Seeker Was Beaten Before Her Death, According to New Autopsy, November 26, 2018, https://www.washingtonpost.com/nation/2018/11/27/transgender-asylum-seeker-was-beaten-before-her-death-according-new-autopsy/?utm_term=.52e2078cae8e.

fleeing violence and prejudice in their home countries,⁴⁴ and have no choice but to remain in the relative safety of the US. The US Government's refusal to protect LGBTQ immigrants forces them into underground economies, increasing their vulnerability to future abuse including human trafficking.

Additionally, ATEST is concerned about the long-term effects of the US Government's decision to end Temporary Protected Status (TPS) for several countries and Deferred Action for Childhood Arrivals (DACA). As a result of these policies, tens of thousands of immigrants will be excluded from the labor market and will enter employment situations that are ripe for human trafficking, particularly in light of increased fear among immigrants to report employers.

Recommendations: ATEST calls on the US Government to limit detention of UACs and to, instead, provide expanded services and legal counsel to UACs after leaving detention, so that these children can receive medical, social, mental health and legal services. ATEST also calls on DHS and HHS to stop using information obtained from potential UAC sponsors and their household members for immigration enforcement purposes. This policy reduces the ability of friends and family members to provide safe and appropriate housing and care for UACs, leading to increased abuse and exploitation of UACs in harmful detention settings.⁴⁵ ATEST calls on the US Government to immediately repudiate the Remain in Mexico program and revert to the well-established policy of allowing asylum seekers to enter the US to pursue their claims. ATEST also calls on the US Government to ensure that TPS and DACA recipients are provided a safe path forward in the US.

C. Weak Social Safety Net Causes Vulnerabilities

ATEST is concerned that the current administration's immigration enforcement efforts will cause survivors to fear seeking protection and will enable traffickers to thrive. Federal efforts must shift to tackling the issues that make populations vulnerable to exploitation in the first place. Without dedicating significant resources to uplifting vulnerable communities, exploitation will flourish and trafficking will remain pervasive. Lack of access to safe and affordable housing, child care, living-wage employment, medical and mental health care, effective child welfare interventions, and immigration relief, coupled with ongoing discrimination against people of color, immigrants, and LGBTQ individuals are all direct contributors to vulnerability. A significant reduction in human trafficking requires expanded social services and support for those most vulnerable to exploitation and abuse. The US Government, however, has recently been rolling back protections included in the Affordable Care Act, removing protections for LGBTQ individuals, and increasing indiscriminate

⁴⁴ See, for example, Equality to Brutality: Global Trends in LGBT Rights, Human Rights Watch, January 7, 2016, <https://www.hrw.org/news/2016/01/07/equality-brutality-global-trends-lgbt-rights> ; Trans Murder Monitoring Trans Day of Remembrance 2018 Press Release: 369 reported murders of trans and gender-diverse people in the last year, Trans Respect Versus Transphobia Worldwide, November 12, 2018, <https://transrespect.org/en/tmm-update-trans-day-of-remembrance-2018/> ; 7 Discriminatory (or Deadly) Countries for LGBT People, Amnesty International, <https://www.amnestyusa.org/7-discriminatory-or-deadly-countries-for-lgbt-people/> .

⁴⁵ For more detail on FNUSA's concerns, see comments submitted by FNUSA and 111 other civil rights organizations, available at: <https://freedomnetworkusa.org/app/uploads/2018/11/DHS-HHS-Letter-Final.pdf>.

immigration enforcement. These changes serve to increase vulnerability to human trafficking and dissuade victims from reporting their exploitation to law enforcement.

Recommendation: *ATEST calls on the federal government to effectively address the root causes of trafficking and exploitation: poverty, insecure housing, discrimination, and a broken immigration system. The US Government must ensure that affordable housing, medical and mental health care, childcare, and education are available to all, and dramatically increase efforts to reform the child welfare system to focus on supporting families, eliminate discrimination and enact comprehensive immigration reform.*⁴⁶

D. Prevention Beyond Criminal Justice-Focused Approach

ATEST also urges the US Government to expand prevention beyond the criminal justice-focused approach. While law enforcement and prosecution are critical enforcement mechanisms, community education and the creation of positive market forces are equally important in preventing human trafficking and protecting those who experience abuse and exploitation. In a more broadly focused approach, workers learn their rights, are fairly paid, and can report concerns without fear of reprisal. Additionally, employers gain access to committed buyers and can advertise products that are free of slave labor. The US Government's approach to sex trafficking, specifically, has been overly focused on criminal justice interventions, devoting few resources to educating youth and adults and ensuring they have access to fair wages and living conditions. Both youth and adults need resources and support in avoiding homelessness, protection from abuse, and safe alternatives.

Recommendation: *ATEST urges the US Government to more comprehensively address the conditions of vulnerable populations to prevent labor and sex trafficking. By taking a strong public health approach to trafficking the US can move beyond prosecution and into holistic prevention approaches to prevent trafficking from happening.*⁴⁷

Thank you for your time and attention to these matters. Please contact the ATEST co-chairs (Anita Teekah, Anita.Teekah@safehorizon.org and Terry Fitzpatrick, terry@freetheslaves.net) if you have any questions or need further information.

Sincerely,

The Alliance to End Slavery and Trafficking

⁴⁶ For more information, see FNUSA, HEAL Trafficking and National Survivor Network's comments submitted to HHS' Office on Trafficking in Persons on Human Trafficking Prevention, <https://freedomnetworkusa.org/app/uploads/2019/11/RevisedFNUSAHealNsNRecsOTIPPrevention-1.pdf>.

⁴⁷ For more information, see FNUSA, HEAL Trafficking and National Survivor Network's comments submitted to HHS' Office on Trafficking in Persons on Human Trafficking Prevention, <https://freedomnetworkusa.org/app/uploads/2019/11/RevisedFNUSAHealNsNRecsOTIPPrevention-1.pdf>.