



Alliance To End Slavery & Trafficking

March 15, 2022

Dr. Kari Johnstone
Acting Director
Office to Monitor and Combat Trafficking in Persons (J/TIP)
U.S. Department of State
Via email: TIPOutreach@state.gov

Re: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

Docket Number: Public Notice: 11648

Dear Dr. Johnstone:

Thank you for this opportunity to provide recommendations to the Senior Policy Operating Group about implementing a racial equity lens in U.S. anti-trafficking programming. The initial recommendations below, in response to your request for comments, are part of a much deeper set of recommendations we are in the process of exploring throughout this year. ATEST stands ready to meet with any federal agency to further discuss our recommendations.

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 forced 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 to Abolish Slavery and Trafficking (CAST), Coalition of Immokalee Workers (CIW), Covenant House, Free the Slaves, HEAL Trafficking, Human Trafficking Institute, Humanity United Action (HUA), McCain Institute for International Leadership, 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.

Response to Question 1: Racial Equity in the Context of Human Trafficking

In labor trafficking, in the U.S. and globally, one easily finds disparate treatment of migrants based on ethnicity or race in terms of amounts they pay in recruitment fees for jobs; housing conditions; job assignments; and general treatment. In a country with many migrant workers, like Malaysia, the treatment of South Asians is markedly different from Southeast Asians. In Gulf States, for instance, treatment of African migrants is often even worse than the deplorable treatment of Asians. USG programming should pay closer attention to these differences in order to design interventions that are tailored to the varied experiences of different groups.

The annual number of federal anti-trafficking prosecutions is repeatedly heavily skewed towards sex trafficking cases, which means that large numbers of foreign national victims of human trafficking must resort to local or state level prosecutions, or pursue redress for wage and hour violations through state or federal Departments of State or via civil actions. Furthermore, given that labor trafficking victims are predominantly foreign nationals of color, these individuals require more significant case management support once they are connected to services. However, those applying for a T visa are not eligible for any public benefits until their T visa is granted, and they also have the legal right to work. Given the increased processing times for T visa adjudication over the past 5-6 years, these foreign national clients remain housing and food insecure, unable to apply for public benefits and legally prohibited from working for longer periods of time. This was especially devastating during the COVID-19 pandemic. Many foreign national victims of human trafficking could not access medical care or public safety nets if they became ill or could not work. Embodying true racial equity in our anti-trafficking responses must include victim-centered approaches to immigrant support. Two immediate ways to lift barriers to services include providing T visa applicants with conditional work permits and eligibility to enroll in public benefits while they await adjudication of their applications. This would significantly reduce the possibility of further exploitation or re-trafficking among this population, and create financial, physical and psychological stability at a much earlier point in time of victim recovery.

Response to Question 3: What are the Federal Barriers?

As noted above, federal anti-trafficking policies that pertain to immigrant survivors of trafficking do not realistically address the needs of victims on the ground. T visa applicants must wait for successful adjudication of their T visas before they can legally work or enroll in public benefit. Simultaneously, domestic victims of sex trafficking, whether people of color or not, can already access the very systems that may prevent exploitation or re-trafficking.

Our criminal legal systems at all levels of government, including the federal level, continue to allow for survivors of human trafficking to be arrested for and convicted of crimes they were forced to commit as a result of their trafficking. While individual states have enacted strong vacatur laws that allow survivors to apply for criminal record relief for those such convictions,

many states have not. There is no enacted federal vacatur bill, though one has been introduced at least once before. The executive branch needs to amplify the message that victims of human trafficking should not be punished for forced criminality. This includes activity related to drug use, weapons trafficking and gang activity, all of which are racially charged in the United States and disproportionately target people of color as perpetrators.

The widespread omission of labor trafficking in federal anti trafficking efforts (research, funding, training) reinforces structural inequities that we have seen through the United States' history in responding to trafficking.

Response to Question 5: What Can SPOG Agencies Do?

In order to reverse the inequities resulting from the pervasive longstanding lack of focus of federal resources on labor trafficking, a larger dedication of federal resources should be allocated toward labor trafficking research, victim assistance, and training of frontline professionals.

A strong proportion of trafficked workers in the agricultural sector are people of color. One intervention that could work to address the situation, and to further implement Executive Order 13627 prohibiting the purchase of products in government contracts of products tainted by trafficking, would be for the SPOG to launch a pilot program pursuant to which all fresh tomatoes purchased by, for, or with funds provided through their respective agencies for domestic use are procured from farms currently participating and in good standing with the Fair Food Program (FFP) as determined by the Fair Food Standards Council (FFSC), the independent third-party monitor that determines FFP compliance. The FFP's proven impact prompted the Obama-Biden administration to award CIW a Presidential Medal in 2015 for its "extraordinary accomplishment" in "effectively eradicate[ing] human trafficking in the farms that participate in their Fair Food Program."¹ And the United Nations' Special Rapporteur on Trafficking in Persons has stated that the FFP "must be considered as an international benchmark" for addressing labor trafficking in corporate supply chains.²

Under the FFP's worker-driven social responsibility framework, the FFSC carries out monitoring and enforcement with unparalleled rigor compared to social auditors that certify other standards: annual audits where 50 percent of workers present are interviewed, and ongoing investigation and resolution of workers' complaints of violations of the Code on a daily basis, with over half

¹ Secretary of State John Kerry, *Remarks at the White House Forum on Combating Human Trafficking in Supply Chains*, United States Department of State, Jan. 29, 2015, <https://2009-2017.state.gov/secretary/remarks/2015/01/236950.htm>; Amy Bennett Williams, *Coalition of Immokalee Workers gets Presidential Medal*, News-Press, Jan. 30, 2015, <https://www.news-press.com/story/news/local/amy-williams/2015/01/30/coalition-immokalee-workers-gets-presidential-medal/22623915/>.

² Special Rapporteur on Trafficking in Persons Maria Grazia Giammarinaro, *End of visit statement, United States of America (6-16 December 2016)* by Maria Grazia Giammarinaro, *UN Special Rapporteur in Trafficking in Persons, especially Women and Children*, United Nations Human Rights Office of the High Commissioner, Dec. 19, 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21049&LangID=E>.

of complaints resolved within two weeks and 80 percent within one month.³ Those complaints are made by workers to a hotline that is staffed 24/7 by human rights experts who speak the languages that farmworkers speak. Furthermore, to ensure that this complaint system truly transforms the workplace, the CIW conducts worker-to-worker education sessions, held on-the-farm and on-the-clock, focused on workers' rights under the Code, empowering workers to serve as the frontline monitors of their own human rights.

In 2021, following new cases of modern-day slavery documented on Mexican tomato farms by United States Customs and Border Protection (CBP)⁴ and on U.S. farms by the United States Department of Labor (DOL) and other agencies,⁵ both CBP⁶ and DOL⁷ published guidance endorsing the Fair Food Program as the solution to the scourge of forced labor. According to the CBP FAQ:

There is ample evidence-based research that demonstrates social audits, as they are currently administered, are ineffective in identifying and reducing forced labor. Instead, more investment should be made in worker-driven solutions. Examples of how this can be achieved are the Fair Food Program and Bangladesh Accord.

The FFP covers multiple crops, but it has major market penetration in tomatoes, which can be purchased in high quantities from FFP farms year-round. With the U.S. government and others having long agreed that the FFP is uniquely effective in preventing forced labor in the high-risk agriculture industry—one where the vast majority of farmworkers at high risk of forced labor are people of color—the government should lead by example in the procurement space by procuring its tomatoes from FFP farms. This procurement pilot would also allow the government to test the feasibility of more generally purchasing its produce preferentially from farms for which worker-driven social responsibility programs or union-ratified collective bargaining agreements can be shown to prevent forced labor.

³ Fair Food Program, “Fair Food Program 2021 Report,” September 2, 2021, <https://fairfoodprogram.org/wp-content/uploads/2022/02/Attachable-Size-SOTP-2021-Report.pdf>.

⁴ United States Customs and Border Protection, “CBP Issues Withhold Release Order on Tomatoes Produced by Farm in Mexico,” United States Department of Homeland Security, October 21, 2021, <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-tomatoes-produced-farm-mexico>.

⁵ United States Attorney’s Office for the Southern District of Georgia, “Human smuggling, forced labor among allegations in south Georgia federal indictment,” United States Department of Justice, November 22, 2021, <https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment>.

⁶ United States Customs and Border Protection, “Virtual Trade Week: Forced Labor Frequently Asked Questions (FAQs),” United States Department of Homeland Security, August 2021, <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/CBP%202021%20VTW%20FAQs%20%28Forced%20Labor%29.pdf>.

⁷ Jessica Looman, “Exposing the Brutality of Human Trafficking,” United States Department of Labor Blog, January 13, 2022, <https://blog.dol.gov/2022/01/13/exposing-the-brutality-of-human-trafficking>.

Response to Question 8: Stakeholder Engagement?

Because most trafficked individuals are people of color, the involvement of survivors with lived experience is critical in developing racially equitable programs. The U.S. Advisory Council on Human Trafficking has been formed to provide federal agencies with such guidance. Recently passed legislation to compensate Council members as expert consultants is a welcome step. But the scope of USG interventions is far broader than the Council's capacity to provide operational guidance. Agencies should ensure that survivor expertise is integrated at every level, from program design and implementation, to the creation of RFPs and review of bids for federally funded programming.

Further, whether federal agencies are implementing Council recommendations should be a consideration each year in the State Department's annual TIP Report review of the U.S. government's tier status.

Again, our thanks for the opportunity to present these comments. Please contact ATEST Director Terry FitzPatrick: terry.fitzpatrick@ATEST-US.org, cell 571-282-9913, if you have any questions.

Sincerely,

The Alliance to End Slavery and Trafficking