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# Policy & Legislative Recommendations to Improve Protection and Assistance for Foreign National Victims of Human Trafficking

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As we welcome a new presidential administration in the United States, we too welcome the opportunity for increasing our knowledge, action and responsiveness on human trafficking, particularly for the protection and assistance of victims.

In the United States, the scope of both domestic and foreign-national human trafficking is significant. Although the exact figures are unknown, most estimates converge on tens of thousands to low hundreds of thousands of new cases annually.<sup>1</sup> While most victims are not identified, the small portion who are highlight the magnitude of the crime in the United States: between October 2017 and March 2019, the National Human Trafficking Hotline received 178,911 calls, texts, chats, online tips, and emails, identified 16,862 potential human trafficking cases, and provided 14,419 referrals for services.<sup>2</sup>

The Trafficking Victims Protection Act (TVPA) of 2000 and its subsequent reauthorizations of 2003, 2005, 2008, 2013, and 2017, provide the framework for approaching human trafficking under U.S. law.<sup>3</sup> Under the TVPA, human trafficking occurs when a person is induced to perform labor or a commercial sex act through force, fraud, or coercion. Any person under the age of 18 who performs a commercial sex act is considered a victim of human trafficking, regardless of whether force, fraud, or coercion was present.

Domestic victims of human trafficking are eligible for assistance via the Department of Justice's (DOJ) Office for Victims of Crime (OVC).<sup>4</sup> Foreign national victims of human trafficking are eligible for federal assistance through the Department of Health and Human Services' (HHS) Trafficking Victim Assistance Program (TVAP), which is overseen by USCRI through a network of approximately 200 sub-grantees.<sup>5</sup> TVAP assists victims to pursue a path to long-term self-sufficiency through provision of social services. The program also fills gaps when the adverse effects of trafficking would otherwise render victims ineligible for assistance, such as those who do not have immigration status or fall out of immigration compliance as a result of their traffickers' actions. While in Fiscal Year (FY) 2019, the top countries of origin were the Dominican Republic, El Salvador, Honduras, Guatemala, Mexico, and the Philippines, TVAP participants came from over 80 countries, demonstrating the particularly global impact of this crime.<sup>6</sup>

Given its prevalence in the United States, it is crucial that victims of trafficking receive the best protection and assistance possible. While the United States has a stable framework of protection and assistance, there are gaps that leave many victims vulnerable, and those gaps have become more apparent during the COVID-19 pandemic and will likely persist afterwards. As USCRI's programming focuses on the needs of foreign national victims of trafficking, our recommendations apply to

these particular victims. The recommendations for addressing the challenges of human trafficking follow.

## **Recommendation #1:**

### **Expand the U.S. definition of human trafficking to include diverse forms of exploitation**

#### *Background*

As stated above, the U.S. legal definition of trafficking focuses only on forced labor and commercial sex acts compelled through force, fraud, or coercion.<sup>7</sup> Specifically, in order to meet the statutory requirements under U.S. law, a victim must be exploited sexually in exchange for something of value or subjected to forced labor in the form of involuntary servitude, peonage, debt bondage, or slavery.<sup>8</sup> While these forms of exploitation may seem expansive, they exclude diverse forms of trafficking, thereby barring many victims from receiving protection and assistance.

While some diverse forms of trafficking may be brought under the umbrella of forced labor, such as forced begging and forced criminality, many forms cannot. For example, victims of trafficking for organ removal and for forced marriage often face difficulties in the United States to be defined under U.S. law and thus are excluded from receiving protection and assistance under the TVPA.

The definition of trafficking for the purpose of organ removal is the following:

The recruitment, harboring, transportation, transfer, or receipt of living persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation.<sup>9</sup>

Trafficking for the purpose of organ removal is expressly listed under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime, to which the United States is party.<sup>10</sup>

Moreover, the United States is an outlier internationally, with many of its peers recognizing trafficking for the purpose of forced marriage within their national legislative frameworks.<sup>11</sup>

The definition of trafficking for the purpose of forced marriage is intricate and complex in many countries, but centers around the element of consent. Trafficking for the purpose of forced marriage is distinct from that of early or child marriage. The former centers around the issue of freedom of choice while the latter centers around the age of one or both of the participants.<sup>12</sup> A lack of consent as the means when paired with the codified actions constituting the crime in the context of forced marriage meets the definition of trafficking.

Currently, many survivors of these forms of trafficking easily fit within the proscribed model categories for actions and means. However, when it comes to purpose, the survivor's experience may not fit within the narrow confines of the U.S. definition. As a result, survivors of organ removal and forced marriage trafficking cannot access the services and justice that other survivors of the defined forms of trafficking can. Instead, they must attempt to define themselves as victims of another crime or another form of trafficking in order to receive help, even when they do not fit within such definitions. This means that many survivors never receive the help that they need to escape their trafficking situation, receive social services, and eventually see their trafficker(s) put to justice.<sup>13</sup>

#### *Recommendation*

USCRI recommends that Congress, at a minimum, include trafficking for organ removal and forced marriage in the next reauthorization of the TVPA under the U.S. definition of human trafficking.

The new sections would expand the U.S. definition of forms of trafficking to include trafficking for organ removal and forced marriage so that the victims of these forms of trafficking may receive assistance in the United States. First, we propose changes to 22 U.S.C. § 7105(103)(5) to insert a new section "5" defining "organ removal" and a new section "6" defining "forced marriage" under the general definitions provisions. Second, we recommend amending section 103(8) to add a section "C" to include the definition of trafficking for organ removal and a section "D" to include the

definition of trafficking for forced marriage. The new sections would provide for the inclusion of diverse forms of trafficking in the U.S. definition of trafficking in persons.

### **Recommendation #2:**

#### **Remove the law enforcement and immigration requirements from the certification process for victims to receive benefits and services**

##### *Background*

The TVPA allows adult trafficking victims, once certified by HHS, to be eligible for the same benefits accorded to refugees. To receive certification, an adult who meets the definition of a victim of severe form of trafficking must (1) be willing to assist with a prosecution or investigation of traffickers, and (2) either have a bona fide T visa application or receive continued presence.

Since 2010, the number of adults given certification has decreased significantly. At present, most adult victims must wait until they have gone through the entire T visa application process before they receive certification from HHS, delaying their access to benefits. This was not the intention of the original TVPA provisions, which required less than a completed and approved T visa application prior to receiving certification.

Along with administrative delays, restricting access to benefits and services from a victim until they agree to testify against their trafficker is especially egregious—allowing the trafficker to again hold them hostage. It is to get the survivor to do something that may retraumatize them in exchange for the assistance they desperately need.

##### *Recommendation*

USCRI recommends that the immigration and law enforcement requirements (willingness to assist, bona fide T visa, continued presence) of the certification be removed. Instead, social workers from nongovernmental organizations could assess the victim's eligibility based on their trafficking experience, make a recommendation to HHS, and have HHS make the determination on its own. Other funding now provided by Congress could then be used to expand trauma-informed and trauma-specific services and other benefits that address the unique needs of trafficking survivors, rather than to

duplicate services that survivors should already have access to.

### **Recommendation #3:**

#### **Require T visas to be processed in less than one year**

##### *Background*

The process of receiving a T visa is an administrative process. The application is sent to an office to be processed, rather than the individual appearing before a judge in court. Yet, the wait is unreasonably long. The current wait time for a victim of trafficking to receive immigration relief under a T visa is between 17.5 and 34 months. During that time, victims cannot receive employment authorization and must subsist on the support of nongovernmental organizations and limited funding from federal grants under HHS or DOJ.

##### *Recommendation*

USCRI recommends that U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS) be required to process T visas within 364 days of receipt of the application.

While trafficking victims wait to receive status and the ability to work, they are more vulnerable to being exploited and re-trafficked.

### **Recommendation #4:**

#### **Give T visa applicants work authorization within 180 days of submitting their application**

##### *Background*

Trafficking survivors have escaped forced labor or sexual exploitation. Under current law, trafficking victims may receive an employment authorization document (EAD) after the final adjudication of their T visa application. However, as noted above, trafficking victims wait between 17.5 and 34 months to receive a T visa and cannot work during this time. The opportunity to work legitimately for a fair wage is part of the care and recovery for victims, along with mental health services, education, a safe place to live, and other services. Most individuals, particularly survivors of labor trafficking, want

to work and not be dependent on receiving public benefits.

#### *Recommendation*

USCRI recommends that a T visa applicant should be given work authorization prior to the final adjudication of their application. TVPA §107(b)(1) should be changed to insert a new section “D” stipulating that trafficking victims can receive an EAD within 180 days of submitting their T-visa application. The same provision should be added to §107(e).

### **Recommendation #5:**

## **Raise the overall funding to the Trafficking Victim Assistance Program (TVAP)**

#### *Background*

Under the Trafficking Victim Assistance Program (TVAP), victims receive funds to cover basic living expenses including housing, food, and transportation. The amount and time period for assistance are limited by appropriations and HHS policy.

HHS recently increased the enrollment period from one (1) year to three (3) years, but the amount of assistance remains inadequate. Case managers may request more funding on a case-by-case basis after individuals have reached their maximums, but additional funding is uncertain and many case managers do not file the appropriate paperwork.

The current funding is insufficient to meet individuals' needs, particularly for victims who were trafficked to high-cost metropolitan areas. The needs of victims of trafficking are particularly acute because of the COVID-19 crisis, since many victims have large gaps of labor-market experience that confine them to more precarious sectors of the economy. In addition to working in sectors where pay is below the median wage pre-crisis, trafficking victims will be slower to regain employment after the crisis.

While the per-capita maximum was raised to \$12,000 for an individual and \$16,500 for a family unit, due to an inadequate amount of overall funding to the TVAP program as a whole, it is rare that victims can access these amounts. The current funding amount overall for

TVAP in FY 2021 is \$7.5 million.<sup>14</sup> Meanwhile, in FY 2019, this amount was \$8 million.<sup>15</sup> Yet, during this time of crisis during the COVID-19 pandemic, needs and risk factors for trafficking have increased, not decreased.

Moreover, case managers of trafficking cases funded under TVAP have been presented with complex situations requiring more resources. Case managers are the backbone of TVAP and provide vulnerable victims with the assistance they need in their communities. Additional funding for TVAP should include increased reimbursements for the work of case managers.

#### *Recommendation*

USCRI recommends a raise of overall funding to TVAP from \$7.5 million to \$12 million for the remainder of FY 2021 and a similar increase for FY 2022, when announced. The presidential budget request should include appropriate allocations to HHS for this increase. The remainder of the current formula may be left in place for per-capita assistance, insofar as each survivor has equal access to the entire amount. Therefore, an overall funding increase is necessary to ensure that this is possible, in addition to increased reimbursements for the work of case managers.

### **Conclusion**

The U.S. Committee for Refugees and Immigrants (USCRI) is a non-governmental, international organization that addresses the needs and rights of persons in forced or voluntary migration worldwide. We facilitate and provide direct services to refugees and immigrants, advance fair and humane public policy, and promote the full participation of migrants in community life.

USCRI was established in 1911 to support the growing number of new immigrants coming to the United States seeking a better life. In the more than 100 years of existence, USCRI has worked successfully to initiate short-term and long-term solutions that assist refugees and immigrants in transitioning to a new life and ensure dignity for all.

With these recommendations, USCRI hopes that the new administration and Congress will better protect and assist foreign national victims of human trafficking in the United States so that they may transition to a dignified life.

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<sup>1</sup> Note: Due to both the federal nature of the United States' government system along with the division of prosecution and services, while prosecution and services statistics are available, rough overall estimates established by the government are rare. The latest estimate came in 2004, when the Attorney General of the United States estimated that 14,500 to 17,500 foreign nationals are trafficked into the country annually. See, U.S. Department of Justice, *Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003* (2004).

<sup>2</sup> President's Interagency Taskforce, *Report on U.S. Government Efforts to Combat Trafficking in Persons*, U.S. Department of State (2019) at 11.

<sup>3</sup> 22 U.S.C. § 7101 (2000), et. seq.

<sup>4</sup> Office for Victims of Crime, *Grants and Funding*, U.S. Department of Justice (May 1, 2020), [www.ovc.ojp.gov/program/human-trafficking/grants-funding](http://www.ovc.ojp.gov/program/human-trafficking/grants-funding).

<sup>5</sup> Office on Trafficking in Persons, Office on Trafficking in Persons, U.S. Department of Health and Human Services (2020), [www.acf.hhs.gov/otip/fact-sheet/resource/tvap](http://www.acf.hhs.gov/otip/fact-sheet/resource/tvap).

<sup>6</sup> Administration for Children and Families, *Trafficking Victims Assistance Program, FY 2019*, U.S. Department of Health and Human Services (February 14, 2020), [www.acf.hhs.gov/sites/default/files/documents/otip/tvap\\_infographic\\_fy\\_2019\\_508.pdf](http://www.acf.hhs.gov/sites/default/files/documents/otip/tvap_infographic_fy_2019_508.pdf).

<sup>7</sup> 22 U.S.C. § 7102(9) (2000).

<sup>8</sup> See, 22 U.S.C. § 7102 (2000).

<sup>9</sup> UN General Assembly. 2000. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. A/RES/ 55/25. Art. 3(a).

<sup>10</sup> UN General Assembly. 2000. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. A/RES/ 55/25. Art. 3.

<sup>11</sup> See, Kelly Ann Whelan, *Out of the Cold: Forced Marriage Trafficking Victims Need to Be Included in U.S. Definition*, 2 U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS POLICY PAPERS 1 (2020).

<sup>12</sup> *Id.* at 1.

<sup>13</sup> *Id.* at 1.

<sup>14</sup> U.S. General Services Administration, *Services to Victims of a Severe Form of Trafficking*, U.S. Department of Health and Human Services (2020), [www.beta.sam.gov/fal/1c5a4fc853d74485b2d09721b1ed298d/view](http://www.beta.sam.gov/fal/1c5a4fc853d74485b2d09721b1ed298d/view).

<sup>15</sup> *Id.*