



# Ending Human Trafficking Demands Divesting from the Carceral Approach

## *An FNUSA Position Paper*

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Freedom Network USA (FNUSA) is committed to building a transformative approach to human trafficking that is grounded in anti-racism and anti-oppression. This approach recognizes that complex and interconnected factors, including poverty, racism, xenophobia, misogyny, and weak worker protections, fuel both labor and sex trafficking. FNUSA believes that the most effective way to support survivors and prevent human trafficking is to address the public policies driving these underlying injustices, expand survivors' access to services that respect their dignity and agency, and protect the safety of all workers in every industry.

FNUSA supports shifting investment in addressing human trafficking from carceral approaches to primary and secondary prevention efforts, rooted in equity and anti-oppression. Human trafficking survivors deserve no-strings-attached access to victim services and to be able to choose their own paths to justice and healing. FNUSA has come to this position through years of experience working with criminalized survivors, immigrants, and sex workers who have experienced immense harm from the criminal legal system. This position is informed by the work of anti-oppression movement builders, anti-carceral organizers, and survivors, who have pushed back against the carceral approach for decades.

## *Why this Position*

### The Carceral Approach Harms Survivors

The United States' anti-human trafficking response is deeply rooted in a carceral approach that prioritizes the involvement of law enforcement and the punishment of criminals in addressing human trafficking. This reflects a broader reliance on the criminal legal system to solve social issues and violence. Trafficking is largely viewed as a unique form of violence that requires intense criminal penalties, but in practice, these penalties have done little to deter trafficking. Instead, the criminal

legal system has criminalized Black and Brown, LGBTQ+, and immigrant communities, resulting in increased state violence and incarceration of these communities, perversely increasing vulnerability to trafficking rather than preventing it. The US anti-trafficking response focuses almost entirely on emergency responses to crime and lacks investment in policies that address the root causes of trafficking and long-term support for survivors, making it largely ineffective.

Everyone is made more vulnerable to trafficking when they are criminalized, face social marginalization, or are unable to access a comprehensive social safety net. The historical and present-day racial profiling by law

enforcement, disproportionate incarceration of Black people, expansion of mass incarceration, violence, and disenfranchisement that the US criminal legal system perpetuates result in systemic marginalization and harm to entire communities. Criminalization increases vulnerabilities to trafficking by increasing individuals' exposure to other forms of violence, like poverty, incarceration, and deportation of family and community members. Immigrants and young people, especially Black and Brown and LGBTQ+ youth, face increased criminalization due to profiling and increased contact with law enforcement due to their disproportionate involvement with other systems that are integrated with the criminal legal system, like the child welfare system, immigration system, and the school-to-prison pipeline. Over-policing and disproportionate incarceration both create immense harm in marginalized communities and increase community members' vulnerability to violence and exploitation, including human trafficking.

## Human Trafficking Defined

Under existing human trafficking laws, any form of labor (including commercial sex acts) induced by force, fraud, or coercion, or commercial sex acts done by minors, are crimes at the federal and state levels.

## Causes and Impacts of the Criminalization of Survivors

Survivors of trafficking in the US face increased criminalization and are often charged with crimes related to their trafficking experience. Sometimes they are treated as criminals instead of victims and other times they are charged with crimes despite recognition of their victimization's role in the criminal activity. Survivors face arrests and prosecutions for crimes they were forced to commit by

their trafficker, crimes their traffickers committed in their presence, or for criminal acts they committed in order to survive. Survivors face criminal charges for a wide range of crimes, such as charges of prostitution, theft, drug possession, loitering, trespassing, forgery, assault, and robbery, even when they are recognized as victims of trafficking by law enforcement and prosecutors. Despite the widespread training of law enforcement to recognize trafficking victims, survivors continue to face criminalization across the country. Fear of coming forward to law enforcement is pervasive because survivors cannot afford to face criminalization or violence from the criminal legal system.

In some cases, involvement with law enforcement too early or too visibly can put survivors and their loved ones' lives at risk, so police operations are not always appropriate, especially when survivors are arrested. Survivors also report being arrested by law enforcement in order to force them to access services, saddling them with an unnecessary and damaging criminal record. Some jurisdictions have introduced diversion court systems where survivors are treated as "victim-defendants" who can only have their charges dropped if they complete court-mandated services, leaving survivors with additional criminal records if they are unable to complete the services.

The criminalization of immigrant survivors risks their deportation to unsafe conditions in their home country. Survivors who have been deported are no longer available as witnesses for investigations and prosecutions of traffickers. Additionally, immigrant survivors are often compelled to assist law enforcement in order to access basic immigration protections that allow them to live safely in the US, placing them in greater contact with law enforcement who do not always believe they are victims. As law enforcement and immigration enforcement become increasingly intertwined, immigrant survivors are placed in increased danger and are unable to trust any form of law enforcement enough to come forward and seek help.

Criminal records prevent survivors from accessing social services that can help them escape trafficking and seek financial stability and healing after trafficking. Survivors with criminal records often cannot access safe housing, jobs with livable pay and workplace protections, or education, leaving them with few options for safer work and housing stability. For immigrant survivors, these records can prevent them from accessing lifesaving immigration protections and services. Some survivors have been able to clear or seal their criminal records, but record relief options are insufficient to compete with broad-scale criminalization.

## Exclusion of Labor Trafficking Survivors and Consensual Sex Workers

Prosecutorial efforts are hampered by law enforcement's overemphasis on sex trafficking. Law enforcement rarely investigates labor trafficking, and labor trafficking survivors are rarely recognized as victims. Investigations at workplaces are often focused on immigration enforcement, leading to the deportation of victims before they are even interviewed, or narrowly focused on low-level working conditions, resulting in minimal fines that allow exploitative employers to continue to exploit workers. When law enforcement investigates sex trafficking, the confusion between voluntary sex work and sex trafficking results in both survivors and consensual sex workers being arrested on prostitution-related charges. Law enforcement often pursues only cases with what they view as a "perfect victim," usually a minor cisgender girl sex trafficking survivor without a complicated criminal history. Most survivors do not fit this image. Law enforcement and prosecutors drop cases, prosecute survivors as co-conspirators, or string survivors along as leverage against traffickers, when they do not perceive survivors as victims that deserve justice and care.

## State-Perpetuated Forced Labor

The criminal and civil legal systems perpetuate forced labor by forcing or coercing incarcerated people to work for little to no pay. The 13th Amendment of the Constitution abolished slavery and involuntary servitude, except as punishments for crimes. Incarcerated workers participate in the production of goods and food for private companies, as well as operate essential functions of prisons like custodial and food services, with few to no workplace protections. Incarcerated people are routinely threatened with additional punishment if they do not complete this work. These conditions fit the definition of forced labor and mirror the same tactics used by traffickers outside of prisons. Criminalized trafficking survivors who are incarcerated are then re-victimized by forced labor in US prisons and immigration detention centers. The fear of additional exploitation in prisons can prevent survivors from coming forward.

## Survivor Choice in Law Enforcement Interventions

There are situations in which law enforcement interventions are preferable for some survivors. Some victims need or want law enforcement assistance to get out of a trafficking situation. In these cases, they need law enforcement that is trained in survivor-centered approaches and does not criminalize them. They need immediate connection with a victim service provider with no strings attached and no obligation to assist law enforcement in their investigation. Adult survivors should have the choice of whether or not law enforcement intervenes to help them. They should have agency in how they escape trafficking, including deciding whether or not it is safe for law enforcement to be involved.

## What's Missing in the Carceral Approach

The over-emphasis on addressing human trafficking through the criminal legal system has resulted in a lack of funding for prevention and insufficient focus on building comprehensive victim services for survivors. Victim services are almost entirely focused on emergency services, with very little investment in the long-term and holistic services that survivors need to thrive. Service providers are often required to partner with law enforcement in order to receive government funding, which can lead survivors to fear accessing services. Many survivors would benefit from services that support their families and communities as well as themselves. The narrow criminal focus has meant that federal and state governments do not support primary prevention efforts (interventions that help prevent people from becoming vulnerable to trafficking). We have little investment in a social safety net, universal healthcare, strong worker protections, and safe housing for all, which build financial security and help prevent people from being pushed into poverty or housing insecurity, two major risk factors for human trafficking.

The criminal legal system has long been the only option provided for survivors to seek justice, but it provides a narrow, inaccessible form of justice that is not right for all survivors. Because many survivors have faced harm from the criminal legal system, either through criminal charges or from being part of an over-policed community, some do not see participating in an investigation or prosecution as the right path to justice. Survivors who do not fit into the “perfect victim” narrative are often unable to access the benefits of protection from the criminal legal system, and instead, face

harm from law enforcement, prosecutors, and judges. Survivors who testify have to relive their trauma and fear retaliation from their trafficker. It is not always safe for them to assist law enforcement. Instead, survivors should have the option to choose their own paths to justice. For some, this may be through the criminal legal system, but for many, this will be something different, like pursuing restorative justice practices, filing a civil lawsuit, going back to school, finding safe long-term housing, or bringing safety to themselves and their loved ones. Survivors deserve the opportunity to decide what justice is for them and pursue whichever paths they need.

## ***FNUSA's Position***

FNUSA does not support the expansion of criminalization for trafficking and related crimes, because survivors are disproportionately harmed by increased criminal penalties, and they do not prevent trafficking. The criminal legal system is not designed to help survivors. Through our work with survivors, we see the criminal legal system treating survivors as criminals, punishing them for actions caused by their trafficking experiences and difficult choices made to survive, and increasing their vulnerabilities to exploitation. We also see the disproportionate impacts of criminalization and harm on Black, Brown, LGBTQ+, and immigrant communities, leading to increased vulnerability to trafficking. FNUSA opposes human trafficking being used as a wrongful justification for expanding the carceral system.

FNUSA will always support survivors' rights to pursue justice through the criminal legal system or involve law enforcement to escape trafficking. However, we do not support requiring or pressuring survivors to engage with the criminal legal system. We oppose systems that predicate services or legal protections for survivors on participation in the criminal legal system, through threats or criminalization, or require participation in an investigation to access immigration benefits or other services. When law enforcement intervention is appropriate, survivors deserve victim-centered interventions where their needs are prioritized. Policies FNUSA will not support include diversion court systems, forced participation in an investigation to access services, arrest-to-services models, increased criminal penalties for survivors or for crimes survivors are regularly charged with, expansion of incarceration or the punishment apparatus, forced labor in immigration or criminal detention, or the criminalization of sex work.

Instead, FNUSA supports efforts to prevent trafficking and make communities safer by addressing the root causes of violence. We support worker-led efforts to increase safety in all industries and

community-led efforts to build community safety and health. We support initiatives that provide survivors with alternatives to the criminal legal system. We support survivors' right to choose what justice and safety look like for themselves and their families. We support survivors' rights to access lifesaving services without requiring law enforcement interactions. We support survivors' ability to seek immigration relief and protections without law enforcement reporting requirements. We support policies that provide survivors with options to clear their criminal records, so they can be free of barriers to accessing housing, education, jobs with livable pay and significant workplace protections, and support for themselves and their loved ones.

Until the US no longer relies on carceral approaches to addressing human trafficking, FNUSA acknowledges that service providers may have to make difficult decisions to accept funding that requires the provider's assistance to law enforcement. Until victim services funding is divested entirely from carceral approaches, there may be no other options for service providers to ensure survivors in their communities have access to comprehensive services. We support service providers who may have to accept joint funding with law enforcement and who are working to reduce the harm caused by the criminal legal system through the partnership. However, we encourage service providers to explore alternative avenues to support survivors that do not rely on law enforcement partnerships. FNUSA works toward separating funding for law enforcement from victim services funding so survivors have full agency to choose if and when they engage with the criminal legal system. We seek to separate immigration relief from the criminal legal system, so survivors are not required to report to law enforcement to access lifesaving services. FNUSA supports service providers working to reduce harm from the criminal legal system when a client chooses to report to law enforcement or has to report to seek immigration relief.

*An anti-trafficking movement that is predicated on punishing marginalized communities will never truly address human trafficking. FNUSA believes divesting from the carceral approach is the only way to ensure our efforts to end trafficking help all survivors and build up all communities.*