

Along the Borderline:

# The Critical Links Between Human Trafficking and U.S.-Mexico Immigration

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## ABSTRACT

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Immigration and human trafficking in the United States are fundamentally interconnected. Trump-era U.S. immigration policies exacerbated human trafficking in America over the course of the past four years. The Biden administration has a powerful opportunity to implement meaningful immigration policies, which will bring significant improvement to the situation of trafficking on the U.S.-Mexico border. It is imperative for the Biden administration to reverse these policies, in order to begin to address the immense challenges at the U.S.-Mexico border. The root causes of trafficking have been largely overlooked in past U.S. anti-trafficking policy, including the significant and unique vulnerabilities faced by immigrants in America. According to the American Civil Liberties Union (ACLU), immigrants in the United States make up the majority of the population at-risk for both sex and labor trafficking. In order to better prevent human trafficking and address these root causes, and the Biden Administration must make significant changes to its immigration policies, including protecting undocumented workers, ending the deportation of migrant and unaccompanied children, and significantly expanding the T-visa program. These policy actions together would provide stronger wrap-around services to protect some of the most vulnerable in America from falling prey to traffickers.

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## **INTRODUCTION**

The Biden administration has a important opportunity to make a significant impact on human trafficking in America and it starts along the U.S.-Mexico border. The former Trump administration’s immigration policies fueled trafficking across the border, intensifying the problem of human trafficking among immigrant men, women, and children. Despite the United States government’s self-assessed “Tier 1” ranking in the U.S. Trafficking in Persons (TIP) Report, signifying full compliance with the Victims of Trafficking and Violence Protection Act (TVPA) minimum standards; in reality, Trump era U.S. immigration policies exacerbated human trafficking over the last four years. It is imperative for the new Biden administration to reverse these policies to begin to address the immense challenges at the U.S.-Mexico border, as well as provide further protections to curb the immense vulnerability to trafficking immigrants experience in the United States.

The United States’ anti-trafficking movement was formed 20 years ago, including the establishment of the Office to Monitor and Combat Human Trafficking (J/TIP) within the U.S. State Department and the first U.S. legislation on trafficking, the Victims of Trafficking and Violence Protection Act (TVPA). The anti-trafficking movement grew rapidly after those early days, yet it is critical to analyze why, after twenty years and billions of dollars invested, the United States government has failed to address the root causes of trafficking. Additionally, it is important to uncover how they have in fact compounded the problem through immigration policies that put men, women, and children at higher risk of being exploited.

Immigrants are among the most vulnerable to trafficking in the United States, yet Trump’s immigration policies made immigrants even more vulnerable to trafficking during the four years of his presidency.<sup>1</sup> For example, such policies benefited traffickers, impeded prevention efforts, minimized survivor’s visibility, and impaired service providers’ trust in federal agencies.<sup>2</sup> In order to ensure those most vulnerable to human trafficking are protected, the Biden Administration must make significant changes to its immigration policies, including expanding special visas for victims of trafficking, ending the deportation of migrant children, and strengthening labor protections for undocumented workers.

## **BACKGROUND: MIGRATION AND HUMAN TRAFFICKING IN AMERICA**

Under the Palermo Protocol, a protocol the United Nations adopted to supplement the 2000 Convention against Transnational Organized Crime, “trafficking in persons” is defined as: “The recruitment, transportation, transfer,

harboring or receipt of persons, 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 or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>3</sup> In contrast, human smuggling is the “procurement, for financial or other material benefit, of illegal entry of a person into a state of which that person is not a national or resident.”<sup>4</sup> Human smuggling, while often undertaken in dangerous or degrading conditions, involves migrants who consented to the smuggling. On the contrary, trafficking victims have either never consented or, if they initially consented, that consent is rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.<sup>5</sup>

With estimated profits of \$150 billion USD annually, 40.3 million people globally are trapped in modern slavery, including 24.9 million in forced labor.<sup>6</sup> Profit and capital ultimately propel human trafficking, as traffickers prey on the most vulnerable for financial gain. It is important to acknowledge that forms of slavery and human trafficking are not merely outcomes of, but rather part of the globalization process itself involving the integration of dispersed economic activities. Globalization’s rapidly increasing effects pose significant challenges and opportunities in the global movement to combat trafficking. Growing vulnerabilities such as poverty, inequality, corruption and migration all play a part as fundamental root causes of human trafficking. In an increasingly globalized world, trafficking is one outcome of these vulnerabilities.

In the United States, 72% of trafficking victims are immigrants, and mostly immigrant women.<sup>7</sup> In a study from Harvard Law examining the intersection of migration and human trafficking in America, sex and labor trafficking victims were from the United States, Mexico, Central and South America, and the Caribbean.<sup>8</sup> Now more than ever, victims of such a horrific crime are at significant risk, not just from their traffickers, but also because of other vulnerabilities. According to the ACLU, the average age of trafficking victims in the U.S. is 20 years old. Immigrant women and children are especially vulnerable to trafficking due to their lack of education, inability to speak English, immigration status, and limited understanding of U.S. employment protections. Furthermore, they are vulnerable because they often work in jobs behind closed doors and without government labor protections. We can see these vulnerabilities take shape as economic push and pull factors which exponentially increase migration flows, creating “push/pull” factors, where people are “pushed” out of countries with less economic opportunities and “pulled” into countries where there is greater economic prosperity and demand for cheap labor. Neoliberal laissez-faire market policies create economic competition that

in turn fuels vulnerability to trafficking by increasing migration flows. As a result, open markets, competition, and free trade significantly affected low-skilled laborers as industrial and agricultural wages dropped.

Another challenge inflaming human trafficking in the U.S. is the recruitment of unskilled workers into labor trafficking, driven by globalization and increased economic competition. As such, demand for cheap products and services is fueling activity in factories and service industries, and as companies increase production for less cost, the demand for forced labor is at an all-time high. Most workers made the choice to migrate to the U.S. in the context of increasingly globalized economies in an effort to improve their lives and those of their families. Some are lucky enough to find work at a living wage and eventually obtain immigration status in the U.S.. Others end up in highly exploitative situations that meet the definition of trafficking in persons. Many wind up somewhere in between, in low-wage, backbreaking jobs that offer few labor protections. A criminal justice assumption that people can be easily divided into “victims” and “criminals” underpins immigration raids, however the majority of immigrants to the U.S. are neither intentional criminals nor entirely powerless victims.

Human trafficking is deeply connected to issues of immigration and labor migration in the United States. The United Nations Office of Drugs and Crime explains this connection to immigration and labor migration, stating: “Migrant workers are particularly likely to rely on recruitment agencies to handle the recruitment, owing, for example, to very complex visa procedures, or a general lack of familiarity and connection of the worker with the destination country. Unscrupulous recruiters and recruitment agencies often take advantage of migrant workers’ lack of education, language skills, and information to deceive them and prevent them from leaving their employment.”<sup>9</sup> Trafficking is a symptom of a multitude of systemic vulnerability factors. Safe and informed migration must be at the core of U.S. anti-trafficking policies. In order to effectively begin to address the root causes of this issue, it is imperative that the U.S. government critically analyze how U.S. immigration policies are perpetuating and exacerbating human trafficking in America.

## **U.S. ANTI-TRAFFICKING POLICY AND LEGAL FRAMEWORKS**

The primary policy and legal mechanisms for combating trafficking in the United States are the TVPA and the Department of State’s TIP Report. The passage of the TVPA in 2000 created a legal framework for the prosecution of the crime of “trafficking in persons,” and provided for assistance to trafficked persons identified or “certified” as such by law enforcement or another government agency. Victims of trafficking can receive compensation, or

restitution, and their traffickers can be subject to fines and/or imprisonment as a result of criminal prosecution under the TVPA. The TVPA criminalizes trafficking, including forced labor, involuntary servitude, peonage, and slavery. The TVPA also makes it a criminal offense to confiscate a victim's documents in furtherance of a trafficking crime.<sup>10</sup>

The J/TIP office publishes the annual TIP Report, which attempts to measure and rate governments across the world based on their efforts to combat trafficking. The first report was produced in 2001, and it continues to be developed each year as a means for the U.S. government to lead efforts and collaborate with other governments on human trafficking issues, specifically with regards to human rights and law enforcement.<sup>11</sup>

## **POLICY RECOMMENDATIONS**

To protect immigrant men, women, and children from human trafficking in the United States, it is imperative that the Biden administration implement the following changes to rectify previous U.S. and especially Trump era immigration policies. While the U.S. has pre-Trump era legislation that punishes traffickers and provides assistance and services to victims, human trafficking continues to exist in the United States at especially high rates in migrant populations.<sup>12</sup> The Biden administration must enact legal reform and enforce current labor and employment protections in order to bolster existing efforts to address trafficking.

### ***A. PROTECT UNDOCUMENTED IMMIGRANTS FROM TRAFFICKING***

As an initial action step, the Biden administration must protect the rights of undocumented immigrants in America. Migrants seeking job opportunities are far more vulnerable to trafficking due to legal immigration barriers created by restrictive immigration policies. According to the ACLU, “undocumented immigrants are extremely vulnerable to trafficking because of fear of law enforcement and deportation. Current laws extend most labor and employment protections to undocumented immigrants. Unfortunately, unaware of their rights and often fearful of the consequences of attempting to seek assistance, these workers remain extremely vulnerable and isolated. Increased outreach to vulnerable communities, enforcement of current protections and reform extending all labor and employment protections to this group will greatly reduce their vulnerability to trafficking and other forms of exploitation.”<sup>13</sup> Once in the U.S., migrants' undocumented immigration status is often exploited by traffickers and used as instrument for further coercion. Anti-immigrant sentiment and policies further deter victims of trafficking from asking for help from law enforcement.

Human rights organizations have called for immigration policies which better protect undocumented immigrants, as aggressive immigration enforcement further harms trafficking victims by instilling a fear that leaving their traffickers would guarantee their deportation. Particularly in the case of undocumented victims, traffickers often coerce their victims, who may have been promised legal status when they accepted the job, and threaten victims with deportation if they escape. Even among victims who do have legal status, this can be, for example if they have had their legal paperwork confiscated by their traffickers. Instead, relevant U.S. government agencies, such as U.S. Customs and Border Patrol and U.S. Citizenship and Immigration Services, should protect undocumented migrants and grant protections to those most at risk.

At the beginning of his presidency, Biden took swift action and signed several executive orders related to immigration, such as family reunification, end to Trump-era travel bans, protections for refugees, and improved migrant integration and inclusion efforts.<sup>14</sup> However, in the longer term, the Biden administration should focus on increasing pathways for legal migration. Restricted opportunities for legal migration create situations where there is an increase in vulnerability to trafficking and abusive migrant labor conditions. Intensified, stringent, and often abusive immigration enforcement only bolsters the power of traffickers.

Additionally, labor laws must be vigorously enforced, in order to protect those most at-risk. Trafficking occurs in industries with high rates of labor violations and or limited labor protections such as domestic work and agricultural labor. The Urban Justice Center explains this further, stating: “trafficking often implicates violations of labor laws through wage and hour violations, withholding wages, non-payment of minimum wage, and debt bondage. Expanded coverage and heightened and widespread enforcement of labor laws is one promising alternative approach to trafficking in persons which would have the added benefit of increased workplace protections for all workers.”<sup>15</sup> Such enforcement can address one key vulnerability to trafficking.

## ***B. PUT AN END TO THE PRACTICE OF DEPORTING MIGRANT CHILDREN***

At the beginning of 2020, the coronavirus pandemic resulted in the Trump administration’s most stringent border restrictions. The administration rapidly expelled thousands of migrant children back to their home countries after crossing the U.S. border, a deeply troubling policy decision.<sup>16</sup> This was a significant shift away from years of established practice. Previously, children traveling without parental guardians entered the U.S. government shelter system, where assigned caseworkers connected them with sponsors while the



child's case for asylum was considered.

In the past, child migrants who arrived at the border without adult guardians received shelter, education, medical care and a lengthy administrative process that granted them the ability to make a case for staying in the United States.<sup>17</sup> Deported children returned home only after the government established that they had a safe home to which they could return.<sup>18</sup> However, the Trump administration began implementing a policy where the government deported some child migrants within hours of setting foot in the United States without guaranteeing safe return.<sup>19</sup> The U.S. government deported others residing in shelters without any notification to their families, and forcibly placed them on planes out of the U.S..

This practice made these children highly susceptible to human traffickers upon arrival back in their home countries and should immediately be put to an end, especially given that many human rights organizations have spoken out against it. Lawyers for the ACLU are challenging the practice of expelling migrant children in federal court, arguing that it violates child welfare laws, such as the TVPA Trafficking Victims Protection Act, as well as national immigration laws, which require special protections for migrant children traveling alone.<sup>20</sup> While the Biden administration has already pledged to reunify families, it must also repeal this policy and associated practices as soon as possible.<sup>21</sup>

### *C. EXPAND T-VISAS AND END DEPORTATION OF VICTIMS OF TRAFFICKING*

Currently, only 5,000 T-visas are available to victims every year, and yet far fewer T-visas are actually granted. A report by Harvard Law analyzed the gaps and pitfalls of the T-visa, stating, “[5,000] would seem promising, but it is a significantly under-utilized process. According to the United States Citizenship and Immigration statistics, only around 500 – 600 of these visas are granted each year. In addition, the burden of proof can be on the trafficked victim and there are a number of requirements to qualify. This often includes testifying against their trafficker, something that can be terrifying for these individuals. [T-visas] are also temporary, only lasting for four years. Although individuals can apply for a green card after the third year, that process is also under-utilized and slow.”<sup>22</sup> The report goes on to explain that the fear of deportation is one of the significant barriers to victims of trafficking self-identifying as victims and using the T-visa process.<sup>23</sup>

In 2019, the U.S. government significantly decreased protection efforts for victims of trafficking, including granting the fewest number of victims T-visa status. The government also granted less Certification Letters, which provide benefits and services to foreign national adult victims of trafficking.

This must be immediately reversed, and it is imperative that not only more T-visas be granted, but that the T-visa becomes a vehicle for more victims to apply for long-term asylum in the United States through the Green Card process. Victims should also be granted T-visas without strings attached, including without needing to testify against their traffickers in court, which can be emotionally and mentally traumatizing.<sup>24</sup> The Biden administration must strengthen the legal protections for victims, starting with granting the full number of 5,000 T-visas granted per year.

## CONCLUSION

In order to significantly improve the situation of trafficking in the United States, the Biden administration must address the vulnerabilities immigrants face. Since the beginning of the anti-trafficking movement, a criminal justice approach has been at the forefront of U.S. government strategy in mitigating this horrendous crime. However, the root causes of the issue are largely overlooked, including the significant and unique vulnerabilities immigrants in America face. Immigrants in the United States make up the majority of the population at-risk for both sex and labor trafficking. In order to better prevent human trafficking and address these root causes, the Biden administration must protect undocumented workers, end the deportation of migrant and unaccompanied children, and significantly expand the T-visa program. These policy actions together would provide stronger wrap-around services to protect some of the most vulnerable in America from falling prey to traffickers.

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