



# UNITED STATES

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Common Law Statutory Law	Written	Yes	Federation	Republic

## 1. INTRODUCTION

### 1.1. Modern Slavery and Human Trafficking

The United States plays a leading role in the fight against human trafficking. Its Congress has passed and updated legislation to monitor human trafficking, increase punishment for offenders, and improve services for victims. Federal law applies to the 50 states, the District of Columbia, and U.S. territories, including Guam and Puerto Rico. The United States is a federal democratic republic with 50 states and five major territories. The federal government and the states and territories have their own and overlapping jurisdiction for developing and enforcing anti-human trafficking legislation.

Many federal agencies have joined forces to attack the crime of human trafficking from all angles. In October 2020, the U.S. Executive Office issued the first National Action Plan to Combat Human Trafficking.<sup>1</sup> Then, in December 2021, it issued the second National Action Plan to Combat Human Trafficking.<sup>2</sup> A pervasive crime domestically and globally, in 2021, the United States National Human Trafficking Hotline identified 10,359 situations of human trafficking.<sup>3</sup>

The U.S. State Department also has developed a system of ranking the performance of countries in combating human trafficking. It ranks the United States as a “Tier 1” country.<sup>4</sup> A Tier 1 country meets the minimum standards for the elimination of slavery and human trafficking and demonstrates, year-over-year, sustained progress each year in its efforts to combat these crimes.<sup>5</sup> During the 2022 reporting period, the United States increased the number of victims served by federal grantees, issued “new policies and guidance to improve adjudication of trafficking-specific immigration,” passed new federal laws to protect people in law enforcement custody, and increased its enforcement of import prohibitions of items made with forced labor.<sup>6</sup>

<sup>1</sup> U.S. EXECUTIVE OFFICE, NAT’L ACTION PLAN TO COMBAT HUMAN TRAFFICKING (2020), available at: <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/10/NAP-to-Combat-Human-Trafficking.pdf>.

<sup>2</sup> U.S. EXECUTIVE OFFICE, NAT’L ACTION PLAN TO COMBAT HUMAN TRAFFICKING (2021), available at: <https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf>.

<sup>3</sup> *Myths, Facts, and Statistics*, THE POLARIS PROJECT, available at: <https://polarisproject.org/myths-facts-and-statistics/> (last visited Aug. 9, 2023).

<sup>4</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 1, 515 (2020), (noting that the U.S. Department of State rankings are based on the minimum standards specified in the U.S. Trafficking Victims Protection Act of 2000, “which are generally consistent with the United Nations Palermo Protocol”), available at: <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>.

<sup>5</sup> *Id.* at 39.

<sup>6</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 1 (2022), available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/united-states/>.

the U.S. State Department noted that the United States could improve its anti-trafficking efforts by screening all individuals in immigration detention for trafficking indicators, evaluating current federal law enforcement strategies, and improving access to housing and specialized services for victims.<sup>7</sup> Despite increased enforcement in recent years, many offenses continue to go unreported or undiscovered.

The United States is a destination country due to its promise of freedom and economic opportunity. Victims come from virtually all regions of the world, with Mexico, Honduras, and the United States as the top three countries of origin.<sup>8</sup> In the United States, those particularly vulnerable to in-country trafficking are children in the child welfare or juvenile justice systems, runaway or homeless youth, and individuals seeking asylum.<sup>9</sup> Traffickers exploit these vulnerable individuals to create dependency and exert control via forced employment (including legal and illicit activities). Individuals who have entered the United States with and without legal status have been identified as trafficking victims.<sup>10</sup> Women and girls are more likely to be trafficked for sexual exploitation. However, boys and young men (especially from the LGBTQIA community) are also particularly vulnerable to trafficking.<sup>11</sup>

Many different parts of the Department of Justice are actively engaged in investigating and prosecuting human trafficking offenses.<sup>12</sup> In 2007, the Department of Justice established a special prosecution unit, the Human Trafficking Prosecution Unit (**HTPU**), which focuses exclusively on this crime.<sup>13</sup> The Department of State also monitors and reports human trafficking both domestically and internationally. The Department of Homeland Security and its components have coordinated efforts to combat human trafficking, including increased use of Withhold Release Orders to prevent goods made with forced labor from entering the United States.<sup>14</sup> The Department of Labor combats human trafficking primarily through its Wage and Hour Division, which partners with federal law enforcement agencies to identify and refer potential instances of trafficking based on labor law violations.<sup>15</sup>

## 1.2. United States' Policy and Legal Position

Like many other countries, the United States has initiated a serious and sustained response to modern-day slavery and human trafficking. The United States has created the President's Interagency Task Force to Monitor and Combat Trafficking (**PITF**). Chaired by the Secretary of State, and with the assistance of state and local governments, the PITF consists of 20 federal agencies all working to combat trafficking.<sup>16</sup> The United States has signed and ratified a number of international treaties relating to slavery, slavery-like conditions, and human trafficking. Its international obligations have been codified in domestic legislation that criminalizes certain conduct relating to slavery, slave-like conditions, and human trafficking. This

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> THE POLARIS PROJECT, *supra* note 3.

<sup>12</sup> Human Trafficking Prosecution Unit (**HTPU**), DEP'T OF JUSTICE, available at: <https://www.justice.gov/crt/human-trafficking-prosecution-unit-htpu> (last visited Aug. 9, 2023).

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

<sup>14</sup> See 19 C.F.R. § 12.42 (2017) (granting U.S. Customs and Border Protection authority to withhold goods).

<sup>15</sup> U.S. DEP'T OF LABOR COMMITS TO CONTINUING THE FIGHT AGAINST HUMAN TRAFFICKING THROUGH COLLABORATION, ENFORCEMENT, OUTREACH (Jan. 24, 2022), available at: <https://www.dol.gov/newsroom/releases/whd/whd20220124-0> (last visited Aug. 9, 2023).

<sup>16</sup> See *infra* Section 8.2.

legislation also imposes civil penalties and mandatory restitution against persons who violate these laws.<sup>17</sup> As awareness of the prevalence of these crimes has grown, Congress and federal agencies have developed numerous instruments to fight human trafficking. Each year the Department of State issues a Trafficking in Persons Report. This report aims to be the “world’s most comprehensive resource of governmental anti-trafficking efforts.”<sup>18</sup> In addition, the Department of State provides annual recommendations to the United States on ways to increase the number of investigations and prosecutions of trafficking cases, and it provides guidance on how to improve services and treatment for human trafficking victims.<sup>19</sup>

## 2. OVERVIEW OF UNITED STATES’ LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

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### 2.1. United States’ Regional and International Law Obligations

#### 2.1.1. Fundamental human rights

The United States is a signatory and party to a number of international law treaties and optional protocols.<sup>20</sup> In January 1942, President Franklin D. Roosevelt along with 25 other world leaders signed a document that later became the United Nations Declaration, the first declaration of its kind.<sup>21</sup> The United States was also one of 48 countries to vote in favor of the Universal Declaration of Human Rights in 1948.<sup>22</sup>

Since then, of the 18 International Human Rights Treaties, the United States has fully ratified five: (1) the International Covenant on Civil and Political Rights; (2) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (3) the International Convention on the Elimination of All Forms of Racial Discrimination; (4) the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; and (5) the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.<sup>23</sup> The United States has signed the International Covenant on Economic, Social and Cultural Rights; the Convention on the

<sup>17</sup> 1 U.S.C. § 1 (noting that the words “person” and “whoever” in federal legislation include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals).

<sup>18</sup> U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT, available at: <https://www.state.gov/trafficking-in-persons-report/> (last visited Aug. 9, 2023).

<sup>19</sup> *Prioritized Recommendations*, U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT (2022), available at: <https://www.state.gov/reports/2022-trafficking-in-persons-report/united-states/> (last visited Aug. 9, 2023).

<sup>20</sup> UNITED NATIONS, CHAPTER FOUR: BECOMING A PARTY TO THE CONVENTION AND THE OPTIONAL PROTOCOL – JOINING THE CONVENTION, available at: <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-four-becoming-a-party-to-the-convention-and-the-optional-protocol.html> (last visited Aug. 9, 2023) (a “signatory” is not legally obligated to follow a treaty immediately after signature, but the signing indicates the signatory intends to take steps to be bound by the treaty at a later date. A “party” not only signs the treaty but ratifies the treaty, which legally binds the State to abide by the treaty).

<sup>21</sup> *Model United Nations*, UNITED NATIONS, available at: <https://www.un.org/en/model-united-nations/history-united-nations> (last visited Aug. 9, 2023).

<sup>22</sup> International Bill of Human Rights Universal Declaration of Human Rights: G.A. Res. 217A, UNITED NATIONS DIGITAL LIBR. (1948) available at: <https://digitallibrary.un.org/record/670964?ln=en&p=Resolution+217%28III%29+A> (last visited Aug. 9, 2023).

<sup>23</sup> *Status of Ratification Interactive Dashboard*, UNITED NATIONS HUMAN RIGHTS OFF. OF THE HIGH COMM’R, available at: <https://indicators.ohchr.org/> (last visited Aug. 9, 2023).

Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities – but it has not ratified those treaties.<sup>24</sup>

### 2.1.2. *Modern slavery and trafficking*

The United States is a party to several treaties that are relevant to the fight against human trafficking and smuggling. In 2005, it ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.<sup>25</sup> This treaty supplements existing instruments that address various forms of modern slavery, including the Worst Forms of Child Labour Convention<sup>26</sup> and the Convention against Transnational Organized Crime.<sup>27</sup> Further, in 2005, the United States ratified an additional protocol, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.<sup>28</sup>

### 2.1.3. *Effect under United States' law*

A treaty does not become binding under United States law without the advice and consent of the U.S. Senate.<sup>29</sup> The U.S. Constitution gives the President the “[p]ower, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.”<sup>30</sup> The Senate itself does not ratify the treaties, but rather, it rejects or approves a resolution of the ratification.<sup>31</sup> If the Senate passes the resolution, the ratification occurs when the President and the other signatory nation(s) formally exchange the ratification instruments.<sup>32</sup> A multilateral treaty is ratified when the parties to the treaty deposit the instruments of ratification at a specified location, such as the United Nations.<sup>33</sup> Once ratification occurs, the treaty enters into force with respect to the United States.<sup>34</sup> Some treaties are self-executing, meaning they do not require additional congressional action to take on the force of domestic law.<sup>35</sup> A self-

<sup>24</sup> *Id.*

<sup>25</sup> G.A. Res. 55/25, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2225 U.N.T.S. 375 (Nov. 15, 2000), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons> (last visited Aug. 9, 2023).

<sup>26</sup> Worst Forms of Child Labour Convention, 2133 U.N.T.S. 161 (June 17, 1999), available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182) (last visited Aug. 9, 2023).

<sup>27</sup> G.A. 55/25, Convention against Transnational Organized Crime, 2225 U.N.T.S. 209 (Dec. 13, 2000), available at: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> (last visited Aug. 9, 2023).

<sup>28</sup> G.A. 55/25, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, United Nations Treaty Collections, 2237 U.N.T.S. 319 (Nov. 15, 2000), available at: <https://www.unhcr.org/media/protocol-against-smuggling-migrants-land-sea-and-air-supplementing-united-nations-convention> (last visited Aug. 9, 2023).

<sup>29</sup> *About Treaties*, United States Senate, available at: <https://www.senate.gov/about/powers-procedures/treaties.htm> (last visited Oct. 4, 2023).

<sup>30</sup> U.S. CONST. art. 2, § 2.

<sup>31</sup> *Treaties: A Historical Overview*, see *supra* note 31.

<sup>32</sup> *Id.*

<sup>33</sup> *Treaties and Other International Agreements: The Role of the United States Senate*, CONGRESSIONAL RSCH. SERV. 1, 12 (Jan. 2001), available at: <https://www.govinfo.gov/content/pkg/CPRT-106SPRT66922/pdf/CPRT-106SPRT66922.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> Stephen P. Mulligan, *International Law and Agreements: Their Effect upon U.S. Law*, CONGRESSIONAL RSCH. SERV. 1, 20 (Sept. 19, 2018), available at: <https://fas.org/sgp/crs/misc/RL32528.pdf>.

executing treaty imposes obligations directly on the judicial branch of the U.S. government.<sup>36</sup> In contrast, a non–self-executing treaty speaks to other branches of government or requires further clarification through legislation.<sup>37</sup> The Senate may also condition its consent to the treaty on reservations, declarations, and understandings with regard to the treaty’s implementation.<sup>38</sup> If the President ratifies the treaty, they also accept the Senate’s conditions to it.<sup>39</sup> A condition can modify or define the obligations of the United States.<sup>40</sup>

Article IV of the U.S. Constitution provides that federal laws made pursuant to it, and treaty obligations made “under the authority of the United States” are the “supreme law of the land.”<sup>41</sup> In short, the Supremacy Clause requires federal law and treaty obligations to take priority over conflicting state laws.<sup>42</sup> The Supremacy Clause also binds all 50 U.S. states and the U.S. territories to the United States’ treaty obligations.<sup>43</sup>

## 2.2. Human Rights Protections Under United States’ Law

The U.S. Constitution enshrines fundamental human and civil rights into domestic law. The Bill of Rights, comprised of the first 10 amendments to the Constitution, protects a person’s freedom of speech, freedom to assemble, freedom of religion, right to a fair and speedy trial, and other fundamental civil liberties.<sup>44</sup> In addition, the Thirteenth Amendment abolishes slavery and involuntary servitude (except as punishment for a crime), and the Fourteenth Amendment guarantees that no state can “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”<sup>45</sup>

The United States has passed a series of domestic laws supporting basic human rights and equipping it in the fight against human trafficking.<sup>46</sup> The Trafficking Victims Protection Act (TVPA), passed in 2000, focuses on protection, prosecution, and prevention.<sup>47</sup>

Every few years, Congress reauthorizes and amends the TVPA. After amending the TVPA in 2017, the Trafficking Victims Protection Reauthorization Act (TVPRA) now allows a human trafficking victim to sue

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 7.

<sup>40</sup> *Id.*

<sup>41</sup> U.S. CONST. art. IV.

<sup>42</sup> Caleb Nelson & Kermit Roosevelt, *The Supremacy Clause*, NAT’L CONST. CTR., available at: <https://constitutioncenter.org/interactive-constitution/interpretation/article-vi/clauses/31> (last visited Aug. 9, 2023).

<sup>43</sup> *Id.*

<sup>44</sup> U.S. CONST. amends. I–X.

<sup>45</sup> U.S. CONST. amend. XIV.

<sup>46</sup> Key Legislation, DEP’T OF JUSTICE, available at: <https://www.justice.gov/humantrafficking/key-legislation>.

<sup>47</sup> 18 U.S.C. §§ 1589–1594; 22 U.S.C. §§ 215d, 7101–7119; see also *supra* note 48; Organization for Security and Cooperation in Europe, *Compendium of Relevant Reference Materials and Resources on Ethical Sourcing and Prevention of Trafficking in Human Beings for Labour Exploitation in Supply Chains*, 2nd Updated Edition, at pp. 73–74, [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.osce.org/files/f/documents/8/c/450769.pdf](https://efaidnbmnnnibpcajpcglclefindmkaj/https://www.osce.org/files/f/documents/8/c/450769.pdf) (last visited Oct. 9, 2023).

the perpetrator of the crime or anyone else who knowingly benefited from the crime.<sup>48</sup> The United States has also passed the Civil Remedy for Personal Injuries under Sexual Exploitation of Children Act, which allows victims to sue in federal courts for personal injuries.<sup>49</sup>

### 2.3. Criminalization of Modern Slavery

The U.S. Code contains both criminal and civil statutes addressing human trafficking and modern slavery. All of the states and major territories have passed laws regarding human trafficking and modern slavery. Refer to separate chapters on U.S. states and territories of this Compendium.

### 2.4. Supply Chain Reporting

The United States has no federal legislation that imposes disclosure requirements on private businesses to control their supply chain to hinder human trafficking. However, the United States has implemented customs and transparency measures to address forced labor in supply chains.<sup>50</sup>

### 2.5. Investigation, Prosecution, and Enforcement

#### 2.5.1. Investigation and prosecution of criminal offenses

Within the HTPU of the Department of Justice, federal prosecutors oversee the investigation and prosecution of federal anti-human trafficking criminal offenses.<sup>51</sup> The HTPU is a special prosecution unit<sup>52</sup> that works closely with assistant U.S. attorneys within each federal judicial district in the United States to investigate and prosecute human trafficking offenses.<sup>53</sup> Also within the Department of Justice, the Bureau of Justice Assistance has funded over 40 Human Trafficking Task Forces to identify and prosecute human trafficking crimes.<sup>54</sup> Each year, the Department of Justice recognizes Human Trafficking Prevention Month in January to demonstrate its continued commitment to the fight against human trafficking.<sup>55</sup>

Similarly, the Federal Bureau of Investigation (**FBI**) has also created and funded numerous task forces, including the FBI Child Exploitation and Human Trafficking Task Force, the Anti-Trafficking Coordination Team Initiative, and the Enhanced Collaborative Model Human Trafficking Program.<sup>56</sup> Together with federal, state, and local law enforcement partners, these task forces investigate and monitor human trafficking.<sup>57</sup>

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<sup>48</sup> 18 U.S.C. § 1595; *see infra* Section 7.4.1.

<sup>49</sup> 18 U.S.C. § 2255; *see infra* Section 7.4.1.

<sup>50</sup> 19 C.F.R. § 12.42 (2017); *see infra* Section 4; *see also* Uyghur Forced Labor Prevention Act, Pub. L. No: 117-78 (enacted in 2021); for more information on forced labor protections in the United States, *see* Organization for Security and Cooperation in Europe, *supra* note 47.

<sup>51</sup> DEP'T OF JUSTICE, *supra* note 14.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Justice Department Recognizes the 10th Annual Human Trafficking Prevention Month, DEP'T OF JUST. (Jan. 29, 2021), *available at*: <https://www.justice.gov/opa/pr/justice-department-recognizes-10th-annual-human-trafficking-prevention-month> (last visited Aug. 9, 2023).

<sup>56</sup> What We Investigate, FBI, *available at*: <https://www.fbi.gov/investigate/violent-crime/human-trafficking> (last visited Aug. 9, 2023).

<sup>57</sup> *Id.*

Further, the Department of Homeland Security, Immigration and Customs Enforcement, and the Department of State Diplomatic Security each play key roles in investigating forced and child labor in supply chains.<sup>58</sup>

Finally, financial bureaus within the Department of the Treasury, such as the Financial Crimes Enforcement Network (**FinCEN**), play an increased role in combating human trafficking.<sup>59</sup> For example, in June 2021, the Department of the Treasury issued the first federal government-wide priorities for anti-money laundering and countering the financing of terrorism.<sup>60</sup>

### 2.5.2. *Mutual assistance/international cooperation*

The United States is a party to several bilateral agreements regarding forced labor and human trafficking. In May 2019, the Department of the Treasury launched a bilateral anti-corruption initiative with Mexico, which targeted (among other things) human trafficking; this initiative led to the formation of a task force to hold human traffickers and perpetrators of related financial crimes accountable.<sup>61</sup> In 2023, the Treasury Department sanctioned a Mexico-based Transnational Human Smuggling Organization amidst the Biden-Harris administration’s whole-of-government effort to combat human smuggling across the border.<sup>62</sup> The Department of Labor signed bilateral cooperative agreements, similar to the Mexico-Treasury agreement, that require Guatemala and Honduras to create and maintain a registered foreign labor recruiter-monitoring program.<sup>63</sup> Further, the United States-Mexico-Canada Agreement (**USMCA**), the successor of the North Atlantic Free Trade Agreement (**NAFTA**) that entered into force in 2020, strengthens protections against forced labor.<sup>64</sup> According to the Department of Labor, the USMCA represents “the strongest provisions of any trade agreement.”<sup>65</sup> The USMCA requires all parties to prohibit the importation of goods from “sources produced in whole or in part” by forced or child labor.<sup>66</sup>

Also, the Association of Chief Police Officers and the U.K. Human Trafficking Centre entered into an arrangement with the Operations of Immigration and Customs Enforcement of the U.S. Department of Homeland Security. Improving international cooperation, the arrangement enhances the ability of the United States and the United Kingdom to share information and intelligence about criminal organizations engaged in human trafficking.<sup>67</sup>

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<sup>58</sup> Karen Stauss, Senior Policy Counsel, Human Trafficking Prosecution Unit, *Forced Labor in Supply Chains: Addressing Challenges*, 65 U.S. ATTORNEYS’ BULLETIN, 1, 173 (Nov. 2017), available at: <https://web.archive.org/web/20210126050111/https://www.justice.gov/usao/page/file/1008856/download>.

<sup>59</sup> U.S. DEP’T OF STATE, *supra* note 5, at 516; see *infra* Section 8.3.

<sup>60</sup> U.S. DEP’T OF STATE, *supra* note 7.

<sup>61</sup> U.S. DEP’T OF STATE, *supra* note 5, at 516.

<sup>62</sup> *Treasury Sanctions Mexico-based Transnational Human Smuggling Organization*, U.S. DEP’T OF THE TREAS. (June 16, 2023), available at: <https://home.treasury.gov/news/press-releases/jy1545> (last visited Aug. 9, 2023).

<sup>63</sup> U.S. DEP’T OF STATE, *supra* note 5, at 521.

<sup>64</sup> U.S. DEP’T OF LABOR, FINDINGS ON THE WORST FORMS OF CHILD LABOR 1, 15 (2019), available at: [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2019/2019\\_TDA\\_Report\\_Online\\_Final.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2019_TDA_Report_Online_Final.pdf); see also United States-Mexico-Canada Agreement, U.S.-Can.-Mex., Nov. 20, 2018, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

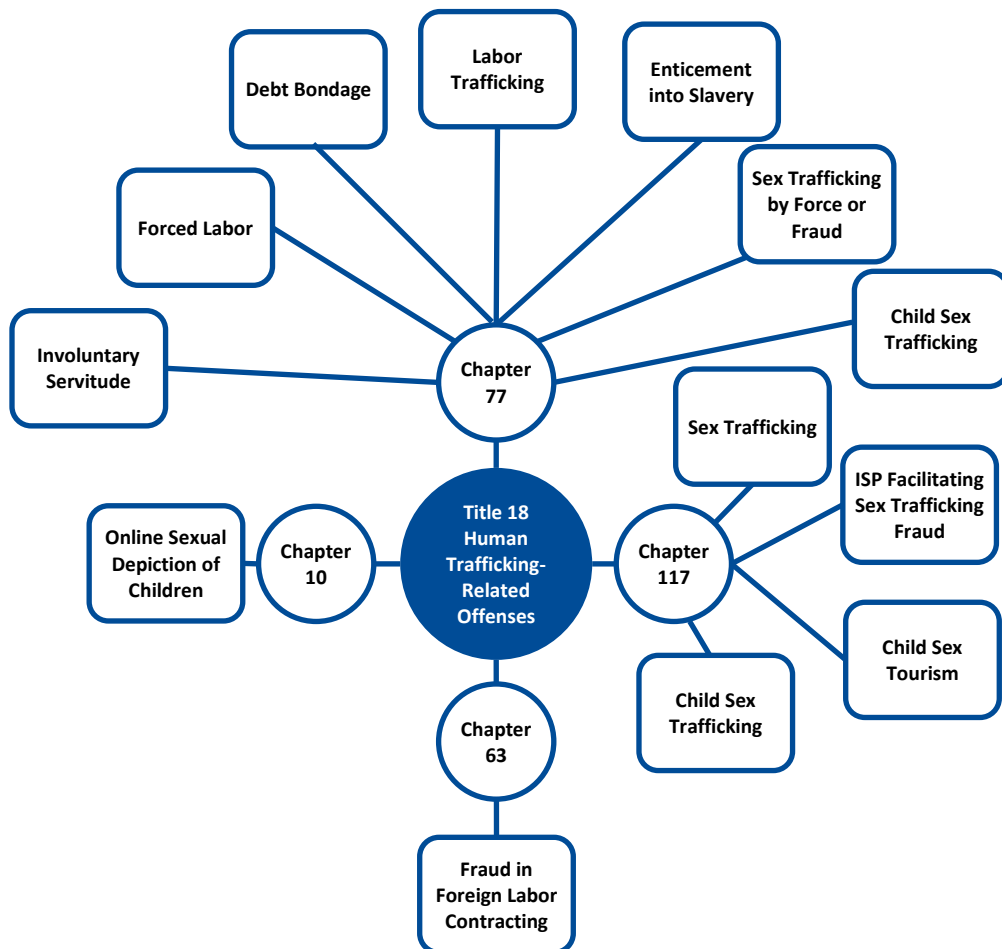
<sup>67</sup> *Bilateral and Multilateral Cooperation Agreements or Arrangements*, INT’L CRIM. JUST. COOP., 1, 168, 174, available at: [https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_4-9.pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_4-9.pdf).



### 3. UNITED STATES’ FEDERAL CRIMINAL OFFENSES RELATING TO MODERN SLAVERY, MODERN SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

#### 3.1. Overview of Criminal Offenses

Federal criminal offenses are found in Title 18 of the U.S. Code.<sup>68</sup> The vast majority of provisions found within Title 18 targeting human trafficking and related offenses are contained in Chapters 77 and 117.<sup>69</sup> There is no statute of limitations for any of these offenses. Other human trafficking criminal offenses can be found in Chapters 63, 110, and 117.<sup>70</sup>



<sup>68</sup> See generally 18 U.S.C. §§ 1–2725 (setting forth criminal offenses).

<sup>69</sup> See generally 18 U.S.C. §§ 1581–1597; §§ 2421–2429 (targeting human trafficking and related offenses).

<sup>70</sup> *Id.*; see 18 U.S.C. § 1351.



### 3.2. Modern Slavery Offenses Under the Criminal Code

#### 3.2.1. General

This chart includes some of the major human trafficking-related criminal offenses found in Title 18 of the U.S. Code.

Human Trafficking Offenses	Maximum Imprisonment for Non-Aggravated Offense	Location Within Title 18
Fraud in Foreign Labor Contracting	5 years	Chapter 63
Sex Trafficking	10 years	Chapter 117
Internet Service Provider Facilitating Sex Trafficking	10 years	Chapter 117
Involuntary Servitude	20 years	Chapter 77
Forced Labor	20 years	Chapter 77
Debt Bondage	20 years	Chapter 77
Labor Trafficking	20 years	Chapter 77
Enticement into Slavery	30 years	Chapter 77
Online Sexual Depiction of Children	30 years	Chapter 110
Child Sex Tourism	30 years	Chapter 117
Sex Trafficking by Force or Fraud	Life sentence	Chapter 77
Child Sex Trafficking	Life sentence	Chapters 77 & 117

Certain provisions for criminal liability and penalties are generally applicable to all of the offenses found in Chapters 77 and 117 of Title 18.

First, Chapter 77 imposes additional criminal liability on defendants if certain conditions met.<sup>71</sup> For example, it is a Chapter 77 crime to destroy, conceal, confiscate, or possess any government document of another person:

1. In the course of violating Chapter 77 provisions against peonage,<sup>72</sup> enticement into slavery, involuntary servitude,<sup>73</sup> labor trafficking, sex trafficking of children, sex trafficking by force or fraud; or

<sup>71</sup> See generally 18 U.S.C. §§ 1581–1597 (imposing additional criminal liability on defendants).

<sup>72</sup> “‘Peonage’ is compulsory service in payment of a debt that can be real or artificially created.” U.S. v. Sabhnani, 599 F.3d 215, 243 (2d Cir. 2010). Compulsory service “is the equivalent of ‘involuntary servitude,’ which the Supreme Court has defined as ‘a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.’” U.S. v. Farrell, 563 F.3d 364, 372 (8th Cir. 2009) (quoting U.S. v. Kozminski, 487 U.S. 931, 952 (1988)).

<sup>73</sup> “Involuntary servitude” is defined as compulsion of services by use or threatened use of physical or legal coercion. Kozminski, 487 U.S. at 948.

2. To prevent or restrict the person’s liberty to travel to maintain the labor of that person, when the person is or has been a victim of a severe form of trafficking.<sup>74</sup>

A defendant convicted of engaging in such conduct faces fines, imprisonment for up to five years, or both.<sup>75</sup>

Likewise, additional criminal liability may be imposed on anyone who knowingly benefits financially from participation in a venture, where the person knows, or recklessly disregards, that the venture has engaged in a Chapter 77 offense.<sup>76</sup> A defendant convicted of engaging in such conduct faces fines, imprisonment in the same manner as a completed violation of such section, or both.<sup>77</sup>

Second, certain criminal penalties apply across Chapters 77 and 117.<sup>78</sup> For example, when sentencing a defendant convicted of a Chapter 77 criminal offense, a court must order forfeiture of the defendant’s:

1. Interest in any property that was involved in or intended to be used to facilitate the offense; and
2. Property constituting, or derived from, proceeds that the defendant obtained as a result of the offense.<sup>79</sup>

Third, if a defendant convicted of a Chapter 117 offense has previously been convicted of a sex crime, the maximum imprisonment time may be tripled.<sup>80</sup>

### 3.2.2. *Extraterritorial application*

When an alleged offender is a U.S. citizen, permanent resident, or is present in the U.S. regardless of their nationality, Chapter 77 authorizes extraterritorial jurisdiction in cases of peonage, enticement into slavery, involuntary servitude, labor trafficking, sex trafficking of children, and sex trafficking by force or fraud.<sup>81</sup>

## 3.3. Modern Slavery-Like Offenses in United States’ Legal Order

### 3.3.1. *Servitude*

Involuntary servitude is a Chapter 77 offense.<sup>82</sup> Criminal liability may be imposed on a person who:

1. Knowingly and willfully holds a person in involuntary servitude;<sup>83</sup>
2. Sells a person into involuntary servitude; or
3. Brings a person held in involuntary servitude into the United States.

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<sup>74</sup> 18 U.S.C. § 1592(a).

<sup>75</sup> *Id.*

<sup>76</sup> 18 U.S.C. § 1593(a).

<sup>77</sup> *Id.*

<sup>78</sup> *See generally* 18 U.S.C. §§ 1581–1597; §§ 2421–2429.

<sup>79</sup> 18 U.S.C. § 1594(d)–(e).

<sup>80</sup> 18 U.S.C. § 2426.

<sup>81</sup> 18 U.S.C. § 1596.

<sup>82</sup> 18 U.S.C. § 1584.

<sup>83</sup> For the definition of “involuntary servitude,” *see supra* note 75.

A defendant convicted of this offense may be fined, imprisoned up to 20 years, or both. If the violation results in a death or includes kidnapping, aggravated sexual abuse, or an attempt to kill, the defendant may be sentenced to life in prison.<sup>84</sup>

### 3.3.2. *Forced labor*

Forced labor is a Chapter 77 offense. Criminal liability may be imposed on persons who knowingly provide or obtain the labor of another by means, or threatened means, of:

1. Force to that person or another person;
2. Serious harm<sup>85</sup> to that person or another person;
3. Abuse of law, or threat of abuse; or
4. Any scheme to cause the person to believe that if they did not perform such labor, they or another person would suffer serious harm.<sup>86</sup>

A defendant convicted of this offense may be fined, imprisoned up to 20 years, or both. If the violation results in a death or includes kidnapping, aggravated sexual abuse, or an attempt to kill, the defendant may be sentenced to life in prison.<sup>87</sup>

### 3.3.3. *Deceptive recruiting for labor or services*

Two provisions in Title 18 address deceptive recruiting for labor or services. First, Chapter 77 imposes criminal liability on persons who induce any person to go to any place with the intent that the person be held as a slave or sold into involuntary servitude.<sup>88</sup> A defendant convicted of this offense may be fined, imprisoned up to 30 years, or both.<sup>89</sup> If the violation results in a death or includes kidnapping, aggravated sexual abuse, or an attempt to kill, the defendant may be sentenced to life in prison.<sup>90</sup>

Second, Chapter 63 criminalizes fraud in foreign labor contracting.<sup>91</sup> Criminal liability may be imposed on persons who knowingly, and with an intent to defraud, recruit or hire a person abroad for employment in the United States by making materially false pretenses.<sup>92</sup> A person who causes another person to violate the statute is also criminally liable.<sup>93</sup> Furthermore, it applies when the labor is to be performed abroad

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<sup>84</sup> 18 U.S.C. § 1584.

<sup>85</sup> “Serious harm” includes “nonphysical ... psychological, financial, or reputational harm[s].” 18 U.S.C. § 1589(c)(2).

<sup>86</sup> 18 U.S.C. § 1589(a).

<sup>87</sup> 18 U.S.C. § 1589(d).

<sup>88</sup> 18 U.S.C. § 1583(a).

<sup>89</sup> *Id.*

<sup>90</sup> 18 U.S.C. § 1583(b).

<sup>91</sup> 18 U.S.C. § 1351(a).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

pursuant to a U.S. government contract.<sup>94</sup> A defendant convicted of this offense faces fines, imprisonment up to five years, or both.<sup>95</sup>

### 3.3.4. *Early and forced marriage*

No federal law makes early or forced marriage a crime, but some U.S. states and territories address it.<sup>96</sup> Additionally, the U.S. Code mandates that the U.S. Secretary of State develop a strategy to prevent child marriage abroad.<sup>97</sup>

### 3.3.5. *Debt bondage*

Debt bondage is a Chapter 77 offense.<sup>98</sup> Criminal liability may be imposed on persons who:

1. Hold or return any person to peonage;<sup>99</sup> or
2. Arrest any person intending to place or return the person to peonage.<sup>100</sup>

A defendant convicted of this offense may be fined, imprisoned up to 20 years, or both. If the violation results in a death or includes kidnapping, aggravated sexual abuse, or an attempt to kill, the defendant may be sentenced to life in prison.<sup>101</sup>

### 3.3.6. *Any other relevant offenses*

The United States has no other relevant modern slavery-like offenses.

### 3.3.7. *Extraterritorial application of the offenses*

Refer to Section 3.2.2.

## 3.4. Human Trafficking/Smuggling-Related Criminal Offenses

### 3.4.1. *International and domestic trafficking/smuggling of people*

Broadly speaking, Title 18 criminalizes (1) labor trafficking, and (2) sex trafficking.<sup>102</sup> First, *labor trafficking* is a Chapter 77 offense.<sup>103</sup> Criminal liability may be imposed on persons who knowingly recruit, harbor, transport, provide, or obtain any person for peonage, involuntary servitude, or forced labor. A defendant

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<sup>94</sup> 18 U.S.C. § 1351(b).

<sup>95</sup> *Id.*

<sup>96</sup> There are some states and territories that have passed legislation criminalizing early or forced marriage. *See, e.g.*, 13 Del. C. § 123; N.J. Stat. § 37:1–6; N.Y. Dom. Rel. Law § 7 x (Consol. 2021); 31 L.P.R.A. § 242.

<sup>97</sup> “The Secretary of State shall establish and implement a multi-year, multi-sectoral strategy — (1) to prevent child marriage; ... (4) that targets areas in developing countries with high prevalence of child marriage.” 22 U.S.C. § 7104(j).

<sup>98</sup> 18 U.S.C. § 1581.

<sup>99</sup> For the definition of “peonage,” *see supra* note 74.

<sup>100</sup> 18 U.S.C. § 1581.

<sup>101</sup> 18 U.S.C. § 1581(a).

<sup>102</sup> 18 U.S.C. §§ 1590–1591.

<sup>103</sup> 18 U.S.C. § 1590.

convicted of this offense may be fined, imprisoned up to 20 years, or both. If the violation results in a death or includes kidnapping, aggravated sexual abuse, or an attempt to kill, the defendant may be sentenced to life in prison.<sup>104</sup>

*Sex trafficking* is a criminal offense under both Chapter 77 and Chapter 117.<sup>105</sup> Chapter 77 criminalizes sex trafficking by force or fraud. Criminal liability may be imposed on persons who:

1. Recruit, entice, harbor, transport, provide, obtain, advertise, maintain, patronize, or solicit a person; and
2. Know, or recklessly disregard, that means of force, threats of force, or fraud will be used to cause the person to engage in a commercial sex act.<sup>106</sup>

A defendant convicted of this offense will receive a prison sentence of at least 15 years and a maximum sentence of life in prison.<sup>107</sup>

In cases of sex trafficking without use of force or fraud, Chapter 117 may apply. A provision in that chapter imposes criminal liability on persons who:

1. Knowingly transport a person in interstate commerce, foreign commerce, or any U.S. territory or U.S. possession; and
2. Intend that the person engage in prostitution or sexual activity for which any person can be charged with a criminal offense.<sup>108</sup>

This offense may be punished by a fine, imprisonment for up to 10 years, or both.<sup>109</sup>

Chapter 117 also imposes criminal liability on persons who own, operate, or manage an internet computer service with the intent to promote or facilitate prostitution of another.<sup>110</sup> This offense may be punished by a fine, imprisonment for up to 10 years in non-aggravated cases or 25 years in aggravated cases, or a fine and imprisonment.<sup>111</sup>

### **3.4.2. International and domestic trafficking in children**

Chapters 77 and 117 address child sex trafficking.<sup>112</sup> First, Chapter 77 imposes criminal liability on persons who:

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<sup>104</sup> *Id.*

<sup>105</sup> 18 U.S.C. §§ 1591, 2421(a).

<sup>106</sup> 18 U.S.C. § 1591.

<sup>107</sup> *Id.*

<sup>108</sup> 18 U.S.C. § 2421. The phrase “sexual activity for which any person can be charged with a criminal offense” includes the production of child pornography. 18 U.S.C. § 2427.

<sup>109</sup> 18 U.S.C. § 2421(a).

<sup>110</sup> In 2020, the D.C. Circuit Court reversed a trial court’s grant of the government’s motion to dismiss claims challenging the federal statute. The D.C. Circuit found that two of the plaintiff challengers, a sex workers’ advocate and a massage therapist, suing for violations of their First and Fifth Amendment rights, had sufficient standing to challenge the statute’s liability imposed on interactive computer service providers. *Woodhull Freedom Foundation v. U.S.*, 948 F.3d 363 (D.C. Cir. 2020).

<sup>111</sup> 18 U.S.C. § 2421(a).

<sup>112</sup> 18 U.S.C. §§ 1591, 2423.

1. Recruit, entice, harbor, transport, provide, obtain, advertise, maintain, patronize, or solicit a person; and
2. Know, or recklessly disregard, that the person is a minor<sup>113</sup> and will be caused to engage in a commercial sex act.<sup>114</sup>

If the trafficked minor was between the ages of 14 and 18, a defendant convicted of this offense will receive a minimum prison sentence of 10 years and a maximum sentence of life in prison. If the trafficked minor was under the age of 14, then the defendant will receive a minimum sentence of 15 years and a maximum sentence of life in prison.<sup>115</sup>

Second, Chapter 117 imposes criminal liability on persons who:

1. Knowingly transport a minor in interstate commerce, foreign commerce, or any U.S. territory or U.S. possession; and
2. Intend that the minor engage in prostitution or sexual activity for which any person can be charged with a criminal offense.<sup>116</sup>

This offense may be punished by a fine and imprisonment for a minimum of 10 years.<sup>117</sup>

### 3.4.3. *Victim harboring*

Victim harboring is an offense under federal law. This offense may be punished by a fine, imprisonment, or both.<sup>118</sup>

### 3.4.4. *Extraterritorial application of human trafficking and smuggling offenses*

Chapter 77 authorizes extraterritorial jurisdiction over U.S. citizens or permanent residents in cases of labor trafficking, sex trafficking of children, and sex trafficking by force or fraud.<sup>119</sup> This section allows the federal government to investigate and prosecute foreign nationals in the United States who commit sex trafficking crimes outside of the United States, as well as U.S. nationals and residents who commit sex trafficking crimes in foreign countries.<sup>120</sup>

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<sup>113</sup> In cases where the defendant had a reasonable opportunity to observe the trafficked minor, it will be presumed that the defendant knew, or recklessly disregarded, that the person was a minor. 18 U.S.C. § 1591(c).

<sup>114</sup> 18 U.S.C. § 1591(b).

<sup>115</sup> *Id.*

<sup>116</sup> 18 U.S.C. § 2423(a).

<sup>117</sup> *Id.*

<sup>118</sup> See 18 U.S.C. §§ 1590 (“whoever knowingly ... *harbors* ... any person for labor or services”) (emphasis added); 1591 (“whoever knowingly ... *harbors* ... by any means a person”) (emphasis added).

<sup>119</sup> 18 U.S.C. § 1596.

<sup>120</sup> See CITIZEN’S GUIDE TO THE U.S. FEDERAL LAW ON THE EXTRATERRITORIAL SEXUAL EXPLOITATION OF CHILDREN, *available at*: <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-extraterritorial-sexual-exploitation-children> (last visited Aug. 9, 2023).

### 3.5. Online Exploitation of Children Offenses

Chapter 110 of Title 18 criminalizes actions to create and disseminate visual depictions of minors engaging in sexual acts. It imposes criminal liability on persons who engage in or affect interstate commerce:

1. By employing, using, persuading, inducing, enticing, or coercing any minor to engage in any sexually explicit conduct;
2. For the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct; and
3. When the individual knows, or has reason to know, that the visual depiction will be or has been transmitted by computer.<sup>121</sup>

Additionally, criminal liability may be imposed on any person who has custody or control of a minor and knowingly permits that minor to engage in, or assist with, the production of sexual visual depictions. Also criminalized is the importation of sexual depictions of minors into the United States.<sup>122</sup>

The penalty for violating these offenses shall be a fine and a term of imprisonment between 15 and 30 years. If a defendant convicted of any of these offenses has a prior child sex crime conviction, the term of imprisonment shall be 25 to 50 years; if the defendant has two prior child sex crime convictions, the term of imprisonment shall be 35 years to life; and if the violation resulted in a death, the term of imprisonment shall be at least 30 years, and the defendant may face capital punishment.<sup>123</sup>

### 3.6. Child Sex Tourism Offenses

Chapter 117 criminalizes child sex tourism. Criminal liability may be imposed on U.S. citizens or permanent residents who:

1. Travel in interstate or foreign commerce, with a motivating purpose of engaging in sexual conduct with a minor;
2. Engage in sexual conduct with a minor while abroad; or
3. Facilitate the travel of another, knowing that person is traveling in interstate or foreign commerce with a motivating purpose of engaging in sexual conduct with a minor.<sup>124</sup>

The Tenth Circuit Court of Appeals upheld this statute as constitutional under the Foreign Commerce Clause.<sup>125</sup> Violators of these offenses face fines, imprisonment up to 30 years, or both.<sup>126</sup>

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<sup>121</sup> 18 U.S.C. § 2251(a).

<sup>122</sup> 18 U.S.C. § 2251(b).

<sup>123</sup> 18 U.S.C. § 2251(e).

<sup>124</sup> 18 U.S.C. § 2423(b)–(d).

<sup>125</sup> In *U.S. v. Durham*, the defendant was convicted of traveling in foreign commerce and engaging in illicit sexual conduct with minors under 18 U.S.C. § 2423(c) for his conduct occurring in Kenya. 902 F.3d 1180 (10th Cir. 2018). The defendant argued that the statute exceeded Congress's power under the Foreign Commerce Clause, but the court rejected this argument and upheld the statute, as it was adopted to combat sex tourism and regulate the illicit international sex market and was thus within Congress's power to regulate foreign commerce. *Id.* at 1216.

<sup>126</sup> 18 U.S.C. § 2423(b)–(d).



## 4. UNITED STATES’ SUPPLY CHAIN REPORTING LEGISLATION

The United States enacted several statutes to address the issue of forced labor in supply chains. At the federal level, Congress has introduced legislation to improve transparency in supply chains with the goal of identifying and addressing conditions of forced labor, slavery, and human trafficking; but that legislation was not signed into law.<sup>127</sup> However, some states have enacted such legislation.<sup>128</sup> Under the TVPRA, criminal liability may be imposed on a person who “knowingly benefits, financially or by receiving anything of value, from participation in a venture” that has used forced labor.<sup>129</sup> Persons who benefit from trading in a particular good can be held responsible “if they know those goods were produced with forced labor.”<sup>130</sup> Violators of this section face fines, imprisonment of not more than 20 years, or both.<sup>131</sup>

In 2016, the Trade Facilitation and Trade Enforcement Act (TFTA) was enacted into law.<sup>132</sup> The TFTA amended the original Tariff Act of 1930 and removed the so-called “consumptive demand” exception to the prohibition on importation of goods made with forced labor into the United States.<sup>133</sup> This exception allowed the importation of products made through forced labor so long as the importer could demonstrate that not enough of those goods were made in the United States to meet consumer demand.<sup>134</sup> The provision made it very difficult for the government to exclude goods produced by forced labor.<sup>135</sup> The TFTA also covered any imported merchandise produced with indentured labor, including child labor.<sup>136</sup> As a result of the enactment of the TFTA, the U.S. Customs and Border Protection recently began to issue more Withhold Release Orders and formal findings excluding products made from forced labor from entering the United States.<sup>137</sup>

In addition, the Department of Defense and General Services Administration implemented a final rule pursuant to Executive Order No. 13627 – Strengthening Protections Against Trafficking in Persons in Federal Contracts.<sup>138</sup> This rule prohibits government contractors, subcontractors, and their agents from “[e]ngaging in severe forms of trafficking,”<sup>139</sup> “[p]rocur[ing] commercial sex acts,” and “[u]sing forced labor in the performance of a contract.” Under the rule, a potential contractor or subcontractor must certify that it has

<sup>127</sup> Business Supply Chain Transparency on Trafficking and Slavery Act of 2020, H.R. 6279, 116th Congress (2020).

<sup>128</sup> See e.g., Cal. Civ. Code § 1714.43 (2012) (requiring certain retailers and manufacturers to disclose their efforts to eradicate human trafficking from their supply chains).

<sup>129</sup> 18 U.S.C. §§ 1589(b), 1589(d); see *supra* Section 3.2.1.

<sup>130</sup> Stauss, *supra* note 60, at 169.

<sup>131</sup> 18 U.S.C. § 1589(d).

<sup>132</sup> Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, 130 Stat. 122; see also 19 U.S.C. § 4301 *et seq.*

<sup>133</sup> Stauss, *supra* note 60, at 171.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> 19 U.S.C. § 4453.

<sup>137</sup> See Forced Labor, U.S. Customs and Border Protection, (May 25, 2023) (the U.S. Customs and Border Patrol website lists the current yearly Forced Labor Statistics, including the active and total withhold release orders and Findings issued), *available at*: <https://www.cbp.gov/trade/programs-administration/forced-labor> (last visited Aug. 9, 2023); see also Stauss, *supra* note 60, at 171.

<sup>138</sup> Exec. Order No. 13627, Fed. Reg. 4967-01 (Jan. 29, 2015) (codified at 48 C.F.R. pts. 1, 2, 9, 12, 22, 42, 52).

<sup>139</sup> 48 C.F.R. § 22.1702 (2020). “Severe forms of trafficking” are defined as (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“implemented a compliance plan” to prevent and detect human trafficking and that it has conducted “due diligence” to ensure that its agents and subcontractors are not engaging in this activity. To assist companies in assessing their supply chain compliance, the Department of Labor created a list of goods that it has reason to believe are produced by child labor or forced labor in violation of international standards.

On December 23, 2021, President Biden signed the Uyghur Forced Labor Prevention Act (**UFLPA**) into law. The UFLPA creates a rebuttable presumption that “any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China” (or by an entity included on a list as required by the UFLPA) are prohibited by 19 U.S.C. § 1307 and are not entitled to entry into the United States. To rebut this presumption, the Commissioner of U.S. Customs and Border Protection (**CBP**) must determine “that the importer of record has complied with specified conditions and, by clear and convincing evidence, that the goods, wares, articles, or merchandise were not produced using forced labor.” This rebuttable presumption took effect on June 21, 2022.

## 5. FORCED LABOR: OVERVIEW OF UNITED STATES’ APPLICABLE EMPLOYMENT AND MIGRATION LAWS

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### 5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

U.S. employment law provides ways for victims of forced labor and trafficking to seek civil remedies.

The Department of Labor’s Wage and Hour Division is responsible for the implementation and enforcement of employment laws. Two main employment laws regulate wages and working conditions.

First, the Fair Labor Standards Act (**FLSA**) establishes the standards for wages and working conditions for most employers in the United States. Second, the Migrant and Seasonal Agricultural Worker Protection Act (**MSPA**) focuses on conditions for migrant and agricultural workers in the field.

A violation of either statute can lead to civil or criminal liability.

### 5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

Exploited workers can bring a lawsuit under the FLSA when an employer fails to pay them minimum or overtime wages.<sup>140</sup> The FLSA imposes steep penalties for child labor violations.<sup>141</sup> Further, the FLSA’s anti-retaliation provision prevents an employer from firing or discriminating against an employee who has filed an FLSA complaint or participated in a proceeding against the employer.<sup>142</sup>

The MSPA does not provide a specific remedy for forced labor or trafficking. However, the MSPA does allow an employee to file a lawsuit against an employer that, for example, pays insufficient wages or fails to comply with safety and health standards.<sup>143</sup>

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<sup>141</sup> 29 U.S.C. § 216(e).

<sup>142</sup> 29 U.S.C. § 215(a)(3).

<sup>143</sup> 29 U.S.C. § 1854.

### 5.3. Statutory Rights

Employees have statutory rights that serve as a basis to assess whether a person is the subject of forced labor.<sup>144</sup> Trafficking victims can also use those statutes as a basis for damage claims.<sup>145</sup>

#### 5.3.1. *Rights to minimum wages, entitlements, and other applicable minimum standards*

The FLSA requires employers to pay covered, non-exempt employees at least the federal minimum wage for all hours worked as defined under the FLSA.<sup>146</sup> Deductions from wages are illegal if they are primarily for the benefit or convenience of the employer and the deduction reduces employee earnings below the minimum wage.<sup>147</sup>

The MSPA requires a farm labor contractor or agricultural employer to pay migrant workers their wages owed.<sup>148</sup>

#### 5.3.2. *Claims available in relation to misrepresentations and “sham” arrangements*

U.S. federal employment statutes do not protect employees from misrepresentations and “sham” arrangements. However, a victim of a sham arrangement can bring a common-law claim for contractual misrepresentation. In addition, Executive Order No. 13627 prohibits a federal contractor or subcontractor from using misleading recruitment procedures, including making material misrepresentations about employment.<sup>149</sup>

#### 5.3.3. *Claims available in relation to unlawful deductions, loans, and debt bondage*

In the United States, a person who has been subject to debt bondage can bring a claim under the TVPA.<sup>150</sup> The TVPA states that a person has been subjected to debt bondage if the value of a person’s work is never reasonably applied toward the payment of the debt.<sup>151</sup> Further, a person who has been subject to peonage can bring a civil claim under Chapter 77.<sup>152</sup>

#### 5.3.4. *Remedies*

An employee may sue an employer who violates the FLSA for the amount of the employee’s unpaid minimum wages or unpaid overtime compensation, and for an equal amount of liquidated damages.<sup>153</sup> In such cases, the court must also award reasonable attorneys’ fees and the costs of the action to successful

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<sup>144</sup> 18 U.S.C. § 1589 (defining forced labor).

<sup>145</sup> *Id.*; see also 22 U.S.C. § 7102 (defining various forms of trafficking).

<sup>146</sup> 29 U.S.C. § 206; as of 2023, the federal minimum wage is USD 7.25 per hour. *Id.*

<sup>147</sup> 29 U.S.C. § 215.

<sup>148</sup> 29 U.S.C. §§ 1822, 1832.

<sup>149</sup> Exec. Order No. 13,627, 3 C.F.R. 13.267 (2012).

<sup>150</sup> 22 U.S.C. §§ 7101–7115.

<sup>151</sup> 22 U.S.C. § 7102(7).

<sup>152</sup> 18 U.S.C. § 1595.

<sup>153</sup> 29 U.S.C. § 216(b).

plaintiffs.<sup>154</sup> Criminal penalties further apply against employers for violations of certain provisions of the FLSA.<sup>155</sup>

The MSPA allows workers to sue for statutory violations.<sup>156</sup> If a court finds that the employer violated certain sections of the statute, the court can award “actual damages” or “statutory damages of up to [USD] 500 per plaintiff per violation.”<sup>157</sup>

If a perpetrator of peonage is criminally charged under 18 U.S.C. § 1581 or 18 U.S.C. § 1590, the victim is entitled to mandatory restitution,<sup>158</sup> which covers the “full amount of the victim’s losses.”<sup>159</sup> This includes lost income and the “greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees” of the FLSA.<sup>160</sup>

### 5.3.5. *The well-being of workers: Preventing work-related psychosocial risks*

Congress created the Occupational Safety and Health Administration (**OSHA**) within the Department of Labor to “assure safe and healthful working conditions” for working individuals.<sup>161</sup> OSHA originally focused on agricultural settings, where it established minimum standards for field sanitation; now its regulations are much more expansive.<sup>162</sup> Outside of OSHA regulations, no federal law focuses on preventing work-related psychosocial risks.

### 5.3.6. *The well-being of workers: Promotion of workers’ health*

Under federal law, an employer must provide a safe workplace.<sup>163</sup> Where the employer cannot avoid risks to employees, the employer must provide risk prevention mechanisms, such as appropriate safety and health signs, safety training in a language workers can understand, and safe, properly maintained tools and equipment.<sup>164</sup>

### 5.3.7. *The well-being of workers: Rest time*

The FLSA does not require employers to provide meals or breaks to employees.<sup>165</sup> However, if an employer does provide a break period, the employer must pay employees for shorter non-meal breaks (lasting up to

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*; § 216(a).

<sup>156</sup> 29 U.S.C. § 1854.

<sup>157</sup> 29 U.S.C. § 1854(c)(1).

<sup>158</sup> See 18 U.S.C. § 1593; see *infra* Section 7.2.

<sup>159</sup> See 18 U.S.C. § 1593(b)(1).

<sup>160</sup> See 18 U.S.C. §§ 1593(b)(3), § 2259(c)(2).

<sup>161</sup> 29 U.S.C. § 651.

<sup>162</sup> *Fact Sheet #51: Field Sanitation Standards under the Occupational Safety and Health Act*, U.S. DEP’T OF LABOR (July 2008), available at: <https://www.dol.gov/agencies/whd/fact-sheets/51-osh-act-field-sanitation> (last visited Aug. 9, 2023).

<sup>163</sup> See 29 U.S.C. § 654(a).

<sup>164</sup> *Employer Responsibilities*, U.S. DEP’T OF LABOR, available at: <https://web.archive.org/web/20210225155642/https://www.osha.gov/workers/employer-responsibilities> (last visited Aug. 9, 2023).

<sup>165</sup> *Breaks and Meal Periods*, U.S. DEP’T OF LABOR, available at: <https://www.dol.gov/general/topic/workhours/breaks> (last visited Aug. 9, 2023).

20 minutes).<sup>166</sup> In contrast, a lunch break or meal break of at least 30 minutes is not considered work time and is not compensable.<sup>167</sup>

The FLSA does not require payment for time not worked, such as vacation or holiday time.<sup>168</sup> These benefits are usually a matter of agreement between an employer and employees. The FLSA does not require paid sick leave.<sup>169</sup> However, a company that is subject to the Family and Medical Leave Act is required to provide paid sick leave for up to 12 weeks.<sup>170</sup>

### 5.3.8. *The well-being of workers: Freedom to change jobs and right to leave*

Both federal and state law gives workers the freedom to change jobs. Everyone is free to choose their employment. However, the terms of employment may depend on the provisions of an employment contract or a collective bargaining agreement negotiated by a labor union. A worker can be an at-will or for-cause employee. In the United States, most workers are at-will employees. The employer can terminate at-will employees at any time for any lawful reason; at-will employees similarly can end their employment at any time.<sup>171</sup>

For employees who have an employment contract with for-cause protections or are protected by a collective bargaining agreement, the employer can terminate them only for specific reasons delineated in the contract or agreement. Employees are free to terminate employment at any time; however, they may have to pay the employer for breaching the employment contract. Employment contracts or collective bargaining agreements also may set forth procedures that the employer must follow before terminating employees.

## 5.4. Rights to a Safe Workplace and Compensation Associated with Injuries or Illness

A federal statute regulates occupational safety and health in the workplace.<sup>172</sup> The employer is required to maintain a place of employment that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm” to employees.<sup>173</sup> The Department of Labor may inspect and investigate factories, plants, construction sites, or other workplaces to ensure that the structures, machines, devices, and equipment are properly maintained.<sup>174</sup>

An employer who violates this statute can face civil and criminal penalties.<sup>175</sup> The penalties range from USD 5,000 to USD 70,000 per violation depending on its severity and nature.<sup>176</sup> An employer who willfully

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<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Holiday Pay, DEP’T OF LABOR, available at: <https://www.dol.gov/general/topic/workhours/holidays> (last visited Aug. 9, 2023).

<sup>169</sup> *Id.*

<sup>170</sup> Family and Medical Leave Act of 1993, 29 U.S.C. § 2612.

<sup>171</sup> *At-Will Employment*, NAT’L CONF. OF STATE LEG., available at: <https://www.ncsl.org/labor-and-employment/at-will-employment-overview> (last visited Aug. 9, 2023).

<sup>172</sup> 29 U.S.C. § 651.

<sup>173</sup> 26 U.S.C. § 654.

<sup>174</sup> 26 U.S.C. § 657.

<sup>175</sup> 29 U.S.C. § 666.

<sup>176</sup> *Id.*

violates this section and causes an employee’s death can be subject to imprisonment, a fine of up to USD 10,000, or both.<sup>177</sup> Employees who believe that their workplace is unsafe can file a complaint with OSHA and request an inspection.<sup>178</sup> However, the statute does not allow workers to sue for damages.<sup>179</sup> Workers who are injured on the job have to seek worker’s compensation from their employers to cover losses resulting from injuries sustained on the job.

## 5.5. Access to Justice and Practical Issues Associated with Enforcing Social Legislation

Victims face significant practical barriers when using the U.S. legal system. In 2019, the federal government increased the number of human trafficking investigations; however, the number of prosecutions and convictions decreased for the second year in a row.<sup>180</sup> There are many reasons for this trend.

First, most victims do not know about the available resources and services that can help them file a claim.<sup>181</sup> Second, victims may fear law enforcement or immigration officers.<sup>182</sup> Third, cultural or language barriers prevent victims from reporting.<sup>183</sup> Fourth, victims fear retaliation from perpetrators and do not trust criminal justice institutions.<sup>184</sup>

The United States has identified potential areas for improvement, including increasing access to victims’ services for men, boys, and LGBTQIA individuals; reducing obstacles for victims in obtaining trafficking-specific immigration options; and increasing the input of human trafficking survivors in developing and implementing legislation and policies.<sup>185</sup>

The U.S. Supreme Court recently limited the ability of victims of human rights abuses abroad to seek justice for violations facilitated by U.S. companies. The Court held that relief under the Alien Tort Statute, an 18th-century law permitting foreigners to bring lawsuits in the United States for serious violations of international law, may be granted only if the conduct in question occurred in the United States.<sup>186</sup>

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<sup>177</sup> 29 U.S.C. § 666(e).

<sup>178</sup> *OSHA Frequently Asked Questions*, UNITED STATES DEP’T OF LABOR, available at: <https://www.osha.gov/faq#v-nav-infoworkers> (last visited Aug. 9, 2023).

<sup>179</sup> See *Pedraza v. Shell Oil Co.*, 942 F.2d 48, 52 (5th Cir. 1991) (“Thus, every court faced with the issue has held that OSHA creates no private right of action.”); see also *Pratico v. Portland Terminal Co.*, 783 F.2d 255, 266 (1st Cir. 1985) (“The legislative history of § 653(b)(4) shows that the intent of the provision was merely to ensure that OSHA was not read to create a private right of action for injured workers which would allow them to bypass the otherwise exclusive remedy of workers’ compensation.”).

<sup>180</sup> U.S. DEP’T OF STATE, *supra* note 5, at 515.

<sup>181</sup> OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, *Human Trafficking Into and Within the United States: A Review of the Literature* 18, DEP’T OF HEALTH AND HUM. SERVICES (2009), available at: <https://aspe.hhs.gov/reports/human-trafficking-within-united-states-review-literature> (last visited Aug. 9, 2023).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 19.

<sup>184</sup> *Id.*

<sup>185</sup> U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* 1, 45 (2023), available at: <https://www.state.gov/reports/2023-trafficking-in-persons-report/>.

<sup>186</sup> In *Nestlé USA, Inc. v. Doe*, six individuals from Mali alleged human rights violations against Nestlé USA and Cargill, two U.S.-based companies, for providing cocoa farms that enslaved them as children with fertilizer, tools, cash, and training. 141 S.Ct. 1931 (2021). The Court ruled the Alien Tort Statute, which gives federal courts jurisdiction to hear certain civil actions by aliens, did not apply here, as the violation in question occurred extraterritorially. The “mere corporate presence” of the defendants in

## 5.6. Interaction Between Employment Law and Migration

### 5.6.1. *Employment rights affected where employment is unlawful under migration law*

In the United States, victims of forced labor or trafficking can bring a claim under employment laws even if they have violated immigration law or visa conditions. The FLSA and MSPA are administered without regard to immigration status.<sup>187</sup>

In addition, victims of forced labor or human trafficking are entitled to immigration relief and will typically not face criminal sanctions under immigration law.<sup>188</sup> To facilitate reporting and victim cooperation, the Department of Homeland Security offers three types of immigration relief to human trafficking victims: continued presence, T visa, and U visa.<sup>189</sup> The type of visa offered depends on the specific circumstances of the case.<sup>190</sup> Recipients of a U or T visa can work in the United States and after three years adjust their status to lawful permanent resident.<sup>191</sup> A U visa is available to victims who have suffered physical or mental abuse because of a TVPA crime, but the victim must also provide assistance to law enforcement in the investigation or prosecution of the crime.<sup>192</sup> Similarly, victims of severe human trafficking may be eligible for a T visa if they assist law enforcement in the investigation or prosecution of the perpetrator.<sup>193</sup>

### 5.6.2. *Rights/remedies available under applicable migration law and regulations*

Refer to Section 7.

## 5.7. Employment Laws and Child Labor

The FLSA was enacted to ensure that young people could work without “jeopardiz[ing] their health, well-being or educational opportunities.”<sup>194</sup> The FLSA’s provisions are designed to ensure that children remain in school and avoid employment that is “detrimental to their health and safety.”<sup>195</sup> For nonagricultural jobs, a minor must be at least 14 years of age to seek employment.<sup>196</sup> A minor who is either 14 or 15 years old can work in nonhazardous jobs for no more than three hours on a school day or 23 hours in a school week.<sup>197</sup> A minor between 16 and 17 years of age can perform only nonhazardous jobs, but there is no federal age-

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the United States did not allow a claim under the Alien Tort Statute when the conduct that aided and abetted the forced labor — providing training, fertilizer, tools, and cash — occurred overseas. *Id.* at 1937.

<sup>187</sup> See 29 U.S.C. § 203; see also 29 U.S.C. § 1802.

<sup>188</sup> *Information for Law Enforcement Officials: Immigration Relief for Victims of Human Trafficking and Other Crimes*, U.S. DEP’T OF HOMELAND SECURITY, [available at: https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf](https://www.dhs.gov/xlibrary/assets/blue-campaign/ht-information-for-law-enforcement-officials-immigration-relief-for-victims-of-human-trafficking.pdf) (Immigration Relief for Victims).

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Child Labor*, U.S. DEP’T OF LABOR, [available at: https://www.dol.gov/agencies/whd/child-labor](https://www.dol.gov/agencies/whd/child-labor) (last visited Aug. 9, 2023).

<sup>195</sup> U.S. DEP’T OF LABOR, *supra* note 66, at 36.

<sup>196</sup> *Handy Reference Guide to the Fair Labor Standards Act*, U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION, [available at: https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa](https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa) (last visited Aug. 9, 2023)

<sup>197</sup> *Id.*



related limitation on hours.<sup>198</sup> Once minors turn 18 years of age, they can perform any job, including hazardous work, with no hours limitations.<sup>199</sup>

However, the FLSA contains exceptions for agricultural work. First, the FLSA does not restrict the type of work that 16- and 17-year-olds may do in agricultural employment.<sup>200</sup> Second, the FLSA permits minors under the age of 14 to work in non-hazardous agricultural employment outside school hours with parental approval.<sup>201</sup>

In addition, the TVPA requires the U.S. Secretaries of State and Labor to monitor governments' compliance with the minimum standards for eliminating forced and child labor.<sup>202</sup>

Overall, the rate of child labor in the United States is significantly lower than in some other countries. However, 850 investigations by the Department of Labor's Wage and Hours Division found child labor violations in 2019, and 240 of those investigations involved children working in hazardous occupations.<sup>203</sup> In addition, there were nine occupational deaths among youth ages 16 to 17, and 13 occupational deaths among children below age 16 in the United States.<sup>204</sup>

## 6. GOVERNMENT PROCUREMENT RULES

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### 6.1. Overview

Federal statutes and regulations combat human trafficking in government procurement. The Federal Acquisition Regulation (**FAR**) is the principal set of government-wide rules applying to the federal government's acquisition of goods and services through third-party contracts.<sup>205</sup> Some agencies supplement the FAR rules with their own anti-human trafficking procurement measures.

### 6.2. Federal Government Procurement Statutory Rules and Action Plan

Section 7104(g) of the United States Code targets human trafficking.<sup>206</sup> This statute requires that the federal government include in all contracts, grants, and cooperative agreements a clause authorizing termination if the recipient or its agents engage in:

1. Severe forms of human trafficking;
2. The procurement of a commercial sex act while the grant, contract, or cooperative agreement is in effect;
3. The use of forced labor to perform the grant, contract, or cooperative agreement;

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<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> U.S. DEP'T OF LABOR, *supra* note 66, at 36.

<sup>201</sup> *Id.*

<sup>202</sup> 22 U.S.C. § 7112(a)–(b); *See infra* section 8.2. for further details on compliance requirements.

<sup>203</sup> U.S. DEP'T OF LABOR, *supra* note 66, at 37.

<sup>204</sup> *Id.*

<sup>205</sup> 48 C.F.R. § 1.000 *et seq.*

<sup>206</sup> 22 U.S.C. § 7104(g).

4. The destruction, concealment, removal, confiscation, or denial of an employee’s access to their identity or immigration documents;
5. The failure to provide return transportation or pay for return transportation to the country from which an employee was recruited;
6. Recruitment for labor under false pretenses;
7. The charging of placement or recruitment fees; or
8. The failure to provide housing that meets local standards.<sup>207</sup>

Additionally, before any federal agency can award a contract, grant, or cooperative agreement for greater than USD 500,000 for services to be performed outside of the United States, the recipient must conduct due diligence and develop a plan to certify that it and its agents are not engaging and will not engage in any prohibited conduct. This plan and due diligence must be recertified annually.<sup>208</sup>

Furthermore, Section 7104c requires any federal agency that receives credible information of a contract, grant, or cooperative agreement recipient engaging in any prohibited conduct to forward that information to its inspector general for investigation.<sup>209</sup> If the investigation yields results of prohibited conduct, the statute contemplates a number of consequences, including:

1. Requiring the recipient to remove an employee from performing work under the grant, contract, or cooperative agreement;
2. Requiring termination of a subcontract or subgrant;
3. Suspension of payments pending appropriate remedial action;
4. Loss of award fee during a period of non-compliance;
5. Declining available options under the contract;
6. Termination of the contract for default or cause pursuant to the termination clause of the contract.<sup>210</sup>

Finally, Section 7104 mandates that all contract, grant, and cooperative agreement recipients forward to the government any credible information they receive of a trafficking violation. They must also commit to cooperating fully with federal agencies working to combat trafficking.<sup>211</sup>

### 6.3. Federal Procurement Regulatory Rules

There are two levels of anti-human trafficking government procurement rules: (1) government-wide regulation and (2) agency-specific regulation.

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<sup>207</sup> 22 U.S.C. § 7104(g).

<sup>208</sup> 22 U.S.C. § 7104a(a).

<sup>209</sup> 22 U.S.C. § 7104c.

<sup>210</sup> 22 U.S.C. § 7104b(c)(1)(A)–(F).

<sup>211</sup> 22 U.S.C. §§ 7104b, 7104c.

First, the FAR contains an anti-human trafficking clause (codified at 42 C.F.R. § 52,222–50) that implements the applicable provisions of § 7104, while similar regulations exist for grants and cooperative agreements.<sup>212</sup>

The FAR clause details minimum requirements that anti-trafficking compliance plans must satisfy to be certified under 22 U.S.C. § 7104a. That certification is required to receive and maintain contract awards to be performed outside of the United States with an estimated value greater than USD 550,000.<sup>213</sup> At a minimum, those plans must include five points:

1. A training and awareness program;
2. A procedure for employees to report suspected violations to the Global Human Trafficking Hotline without fear of repercussions;
3. A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees, and ensures that wages meet host-country minimum requirements;
4. A housing plan (where applicable) that meets host-country housing and safety standards;
5. Procedures to prevent agents from engaging in trafficking activities, including a plan to monitor and terminate agents who have engaged in trafficking.<sup>214</sup>

Noncompliance with the FAR clause, or a false certification of compliance, subjects contractors to liability under the False Claims Act.<sup>215</sup>

Second, federal contractors may also be subject to agency-specific anti-trafficking obligations. For example, the United States Agency for International Development (**USAID**) has adopted model language that contracting officers must use to effectuate compliance with 22 U.S.C. § 7104 and the FAR clause.<sup>216</sup> Likewise, the General Services Administration’s contracts with domestic air carriers require them to report annually on trafficking prevention efforts, such as personnel training and the number of trafficking victim alerts they received.<sup>217</sup>

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<sup>212</sup> See *e.g.*, 2 C.F.R. § 175.20 (requiring that “an agency official should inform the agency’s suspending or debaring official if he or she terminates an award based on a violation of a prohibition contained in the award term under § 175.15”).

<sup>213</sup> 48 C.F.R. § 2.101(b); 48 C.F.R. § 52.222-50(h)(1)(i)(ii) (The clause does not require compliance plans for “commercially available off-the-shelf items,” which are items sold in substantial quantities that are customarily used by the general public and offered to the government in the same form as the commercial marketplace).

<sup>214</sup> 48 C.F.R. § 52.222-50(h)(3)(i)–(v).

<sup>215</sup> See *generally* 31 U.S.C. § 3729 *et seq.*; see also *United States ex rel. Fadlalla v. DynCorp Int’l, LLC*, 402 F. Supp. 3d 162 (D. Md. 2019) (holding that complaint stated plausible forced labor claim).

<sup>216</sup> *Standard Provisions for Non-U.S. Nongovernmental Organizations*, USAID (2022), available at: <https://www.usaid.gov/sites/default/agency-policy/303mab.pdf>.

<sup>217</sup> 49 U.S.C. § 40118(g).

## 7. RESTITUTION AND VICTIM COMPENSATION

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### 7.1. Overview

U.S. law authorizes restitution, civil lawsuits, and other rights for trafficking victims. Some of these statutes are specific to the human trafficking context, while others apply more generally.

### 7.2. Mandatory Restitution

#### 7.2.1. Provisions for trafficking victims

The portions of Title 18 that contain the bulk of the human trafficking offenses (Chapters 77, 110, and 117) also mandate restitution to victims. Those provisions require a defendant convicted of any such offense to pay the full amount of the victim's losses.<sup>218</sup>

Additionally, a defendant convicted of a Chapter 77 offense must pay the victim the greater of:

1. The gross income or value to the defendant of the victim's labor; or
2. The value of the victim's labor as guaranteed under the federal minimum wage and overtime standards.<sup>219</sup>

A defendant convicted of a Chapter 110 child pornography offense must pay a restitution amount that reflects the victim's losses and is at least USD 3,000.<sup>220</sup> Finally, if the defendant was convicted of a Chapter 117 offense and the victim's labor included commercial sex acts, then the defendant must pay the victim the greater of:

1. The gross income of the victim's labor; or
2. The value to the defendant of the victim's labor.<sup>221</sup>

#### 7.2.2. Provisions for crime victims generally

Title 18 has a general provision mandating restitution for victims of crimes of violence<sup>222</sup> or crimes in which the victim has suffered a physical or monetary injury. When a victim suffers a bodily injury as a result of the offense, the restitution award must include medical and therapeutic expenses, funeral expenses, lost

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<sup>218</sup> The phrase "full amount of the victim's losses" covers all of the victim's incurred and projected costs resulting from the defendant's conduct. This includes (1) physical and psychiatric medical services; (2) physical and occupational therapy; (3) transportation, temporary housing, and child care expenses; (4) lost income; (5) reasonable attorneys' fees; and (6) any other relevant losses. 18 U.S.C. § 2259(c)(2).

<sup>219</sup> 18 U.S.C. § 1593(b)(3).

<sup>220</sup> 18 U.S.C. § 2259(b)(2)(B).

<sup>221</sup> 18 U.S.C. § 2429(b).

<sup>222</sup> A "crime of violence" is either (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. 18 U.S.C. § 16.

income, and all childcare and transportation expenses incurred because of the victim’s participation in the criminal proceedings.<sup>223</sup>

### 7.3. Victims’ Rights

Multiple federal statutes protecting victims’ rights may apply in cases of human trafficking, including Title 18, Title 34, and Title 22.

#### 7.3.1. Title 18

Chapters 237 and 238 of Title 18 contain victims’ rights provisions. Chapter 237 applies to all crime victims. Chapter 238 applies only to sexual assault survivors.

Chapter 237 protects victims’ rights to:

1. Be reasonably protected from the accused;
2. Receive notice of any public court or parole proceeding involving the crime, or of the accused’s release or escape;
3. Be allowed to attend any public court proceeding, unless the court determines that the victim’s testimony would materially change if the victim heard other testimony at that proceeding;
4. Be reasonably heard at any public district court proceeding involving release, plea, sentencing, or parole;
5. Reasonably confer with the government prosecutor;
6. Receive full and timely restitution as provided by law;
7. Have proceedings free from unreasonable delay;
8. Be treated with fairness, respect, dignity, and privacy;
9. Be timely informed of any plea bargain or deferred prosecution agreement; and
10. Be informed of the rights under Chapter 237.<sup>224</sup>

Chapter 238 safeguards sexual assault<sup>225</sup> victims’ rights to:

1. Receive a free medical forensic examination;
2. Have a sexual assault evidence collection kit or its contents preserved without charge for the duration of the maximum applicable statute of limitations or 20 years, whichever is shorter;
3. Be informed of any result of a kit, if disclosure would not impede an investigation;
4. Be informed in writing of policies governing the collection and preservation of a kit;

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<sup>223</sup> 18 U.S.C. § 3663A(b)(2)–(4).

<sup>224</sup> 18 U.S.C. § 3771.

<sup>225</sup> In this section, “sexual assault” means any nonconsensual sexual act prohibited by federal, tribal, or state law. “Nonconsensual” encompasses acts where the victim lacks capacity to consent. 18 U.S.C. § 3772(c).

5. Be informed of the status and location of a sexual assault evidence kit;
6. Upon written request, receive written notification at least 60 days before the kit will be disposed of and, if desired, be granted further preservation of the kit or its contents; and
7. Be informed of the rights under Chapter 238.<sup>226</sup>

### 7.3.2. Title 34

Chapter 201 of Title 34 includes a victims' rights statute that lists services the federal government must provide to crime victims.<sup>227</sup> This statute requires that a government official:

1. Inform victims of where they may receive emergency medical care and social services, and assist them in contacting those providers;
2. Inform victims of any restitution or other relief to which they may be legally entitled, and connect them to persons who can help them obtain such relief;
3. Inform victims of public and private programs that are available to provide counseling, treatment, and other support to the victim, and connect them to persons who can help them obtain such support;
4. Arrange protection for victims from persons acting in concert with the suspected offender;
5. Provide victims with general information regarding the corrections process, including information about work release, furlough, and probation;
6. Ensure that at each court proceeding the victims attend they have a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses;
7. As early as possible, inform victims of the offender's arrest, detention status, charges, plea, trial verdict, sentence, parole eligibility date, parole hearing date, escape, release, and death (if the offender dies while in custody);
8. Ensure that any property of a victim held for evidentiary purposes be maintained in good condition and returned as soon as it is no longer needed; and
9. In cases of sexual assault, pay for two STD tests and a medical appointment to discuss the results of the tests and risk of STD transmission from the assault.<sup>228</sup>

Chapter 201 also provides for the Crime Victims Fund to compensate victims.<sup>229</sup>

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<sup>226</sup> 18 U.S.C. § 3772.

<sup>227</sup> "Victim" means a person who has suffered direct physical, emotional, or financial harm as a result of a crime. When the victim is a minor, incapacitated, or deceased, one of the following (in order of preference) is entitled to the listed victims' rights: a spouse, a legal guardian, a parent, a child, a sibling, another family member, or another person designated by the court. 34 U.S.C. § 20141(e)(2).

<sup>228</sup> 34 U.S.C. § 20141.

<sup>229</sup> 34 U.S.C. § 20101 *et seq.*

### 7.3.3. Title 22

Chapter 78 of Title 22 mandates that aliens who are victims of severe forms of trafficking are entitled to receive benefits and services, irrespective of their immigration status.<sup>230</sup> Additionally, Chapter 78 requires that victims of severe forms of trafficking in federal custody receive necessary medical care and not be held in facilities inappropriate to their status as crime victims.<sup>231</sup>

## 7.4. Civil Claims

### 7.4.1. Title 18

Chapters 77 and 110 of Title 18 grant victims of certain human trafficking offenses the right to bring civil lawsuits.

First, Chapter 77 authorizes victims of any violation included in the chapter to sue for damages any person who knowingly benefited financially from participating in a venture that the person knew or should have known was engaged in the violation. The lawsuit shall be stayed until the conclusion of any criminal proceeding arising out of the same occurrence in which the claimant is a victim. The statute of limitations to bring the lawsuit is 10 years, but the statute of limitations is tolled until victims who are minors reach the age of 18. Chapter 77 also authorizes a state attorney general to sue persons who allegedly engaged in sex trafficking of children or sex trafficking by force or fraud.<sup>232</sup> Additionally, the Department of Homeland Security must allow an alien who is a victim of a severe form of trafficking and has filed a civil lawsuit under Chapter 77 to remain in the United States until the lawsuit concludes.<sup>233</sup>

Second, Chapter 110 allows individuals who were minors at the time they were victimized and were injured as a result of the offenses to file a lawsuit. This right to file a lawsuit applies to various offenses set forth in Title 18, including forced labor, labor and sex trafficking, sexual abuse, and pornography.<sup>234</sup> Plaintiffs may seek either actual damages or liquidated damages of USD 150,000. Additionally, courts are authorized to award punitive damages, attorneys' fees, and equitable relief. There is no statute of limitations for a plaintiff to file a complaint commencing an action under this section.<sup>235</sup>

### 7.4.2. Non-applicability of the Communications Decency Act's § 230 liability shield

When defending against civil lawsuits, internet service providers often invoke § 230 of the Communications Decency Act, which contains a liability shield. However, Congress clarified that the shield has “[n]o effect

<sup>230</sup> While Chapter 78 does not specifically define “alien,” alien is defined in other chapters of the U.S. Code as “any person not a citizen or national of the United States.” See, e.g., 8 U.S.C. § 1101(a)(3).

<sup>231</sup> “Severe forms of trafficking” means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such acts has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 U.S.C. § 7102(11); see also 22 U.S.C. § 7105(b)–(c).

<sup>232</sup> 18 U.S.C. § 1595(d).

<sup>233</sup> 22 U.S.C. § 7105(c)(3). Illustrative of a Chapter 77 lawsuit is a case in which foreign workers were brought to the United States to work at an automobile manufacturer’s plant. They alleged they were paid below minimum wage, forced to work an extreme number of hours, and threatened in the workplace. The court held that they adequately pled a Chapter 77 claim by alleging that the manufacturer and contractor who hired them received a “financial benefit” from the work they performed. *Lesnik v. Eisenmann SE*, 374 F. Supp. 3d 923 (N.D. Cal. 2019).

<sup>234</sup> The specific offenses are 18 U.S.C. §§ 1589, 1590, 1591, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, and 2423.

<sup>235</sup> 18 U.S.C. § 2255(b).



on sex trafficking law,” and that it cannot be used in Chapter 77 civil lawsuits alleging sex trafficking of minors or sex trafficking by force or fraud.<sup>236</sup>

## 8. UNITED STATES’ MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

### 8.1. Overview

The particulars of inter- and intra-governmental cooperation to combat trafficking vary by Presidential administration.<sup>237</sup> Both President Trump and President Biden developed National Action Plans that seek to implement a whole-of-government approach to anti-trafficking efforts. In compliance with the Justice for Victims of Trafficking Act of 2015, the Attorney General also is required to “implement and maintain a National Strategy for Combating Human Trafficking” (**National Strategy**).<sup>238</sup> The U.S. Department of Justice (**DOJ**) issued its first National Strategy to Combat Human Trafficking in 2017.<sup>239</sup> In January 2022, the DOJ issued its most recent National Strategy.<sup>240</sup> Additionally, the Department of Homeland Security (**DHS**) established the Center for Countering Human Trafficking (**CCHT**) “to advance counter human trafficking law enforcement operations, protect victims, and enhance prevention efforts by aligning DHS’ capabilities and expertise. ... The CCHT is the first unified, inter-component coordination center for countering human trafficking and the importation of goods produced with forced labor.”<sup>241</sup> Several statutes and binding legal instruments ensure the federal government takes a multi-disciplinary approach.

### 8.2. Title 22

Key provisions mandating multi-disciplinary cooperation to combat human trafficking are contained in the TVPA, codified in Chapter 78 of Title 22. This chapter establishes the President’s Interagency Task Force to Monitor and Combat Trafficking (**PITF**). The PITF is a cabinet-level entity consisting of 20 federal agencies and is responsible for coordinating U.S. government-wide efforts to combat trafficking in persons. The Secretary of State chairs the PITF. Its high-level responsibilities include:

<sup>236</sup> 47 U.S.C. § 230(e)(5); *see also* G.G. and Deanna Rose v. Salesforce.com, 2023 WL 4944015, at \*16 (7th Cir. 2023) (holding that in an action brought under the TVPRA, defendant software provider which aided the growth of a sex-trafficking website was not entitled to a § 230 defense because the plaintiff’s claims did not depend on the defendant being a publisher or speaker of content); *but see* Does 1–6 v. Reddit, Inc. 51 F.4th 1137, 1144 (9th Cir. 2022) (holding that a defendant-website’s own conduct must violate 18 § U.S.C. 1591 to lose § 230 immunity).

<sup>237</sup> *Compare* U.S. EXECUTIVE OFFICE, NAT’L ACTION PLAN TO COMBAT HUMAN TRAFFICKING (2020), *available at*: <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/10/NAP-to-Combat-Human-Trafficking.pdf> and U.S. EXECUTIVE OFFICE, NAT’L ACTION PLAN TO COMBAT HUMAN TRAFFICKING (2021), *available at*: <https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf>.

<sup>238</sup> 34 U.S.C. § 20711(a).

<sup>239</sup> U.S. DEPT. OF JUSTICE, NAT’L STRATEGY TO COMBAT HUMAN TRAFFICKING (2017), *available at*: <https://www.justice.gov/humantrafficking/page/file/922791/download>.

<sup>240</sup> U.S. DEPT. OF JUSTICE, NAT’L STRATEGY TO COMBAT HUMAN TRAFFICKING (2022), *available at*: <https://www.justice.gov/opa/press-release/file/1467431/download#:~:text=The%20Justice%20Department’s%20new%20National,and%20survivors%3B%20and%20partnership%20at>.

<sup>241</sup> U.S. DEPT. OF HOMELAND SECURITY, DHS CENTER FOR COUNTERING HUMAN TRAFFICKING, *available at*: <https://www.dhs.gov/dhs-center-countering-human-trafficking>; U.S. DEPT. OF HOMELAND SECURITY, DHS CENTER FOR COUNTERING HUMAN TRAFFICKING OBSERVES WORLD DAY AGAINST TRAFFICKING IN PERSONS, *available at*: <https://www.dhs.gov/news/2022/07/29/dhs-center-countering-human-trafficking-observes-world-day-against-trafficking> (last visited Aug. 9, 2023).

1. Enforcing anti-human trafficking laws;
2. Providing victim-centered identification and trauma-informed assistance;
3. Innovating in data gathering and research;
4. Engaging in education and public awareness activities; and
5. Ensuring synchronization of strategically-linked foreign assistance and diplomatic engagement.

Chapter 78 also establishes the Department of State’s Office to Monitor and Combat Trafficking in Persons, which is charged with supporting the PITF. The Office is headed by a presidentially appointed and senate-confirmed Director. The Director chairs the Senior Policy Operating Group (**SPOG**), which consists of senior officials from all of the PITF agencies. The SPOG helps coordinate day-to-day anti-trafficking government activities and policies.<sup>242</sup> Advising the PITF and SPOG is the U.S. Advisory Council on Human Trafficking. The Council consists of at least eight presidentially appointed trafficking survivors.<sup>243</sup>

All of these bodies are charged with working to implement relevant sections of Chapter 78, including those requiring:

1. That programs be established to enhance economic opportunity for potential victims of trafficking, to raise awareness about the dangers of trafficking and sex tourism, to prevent trafficking at border-crossings and in post-conflict humanitarian settings, and to provide technical anti-trafficking assistance to foreign governments and organizations;<sup>244</sup>
2. That every Department of State installation abroad designate an employee to work with local governments and organizations to aid trafficking victims and receive information concerning a person who was a victim of severe human trafficking while in the United States. That employee must share such information with relevant U.S. agencies;<sup>245</sup>
3. That programs be established abroad to resettle trafficking victims, to fund the national human trafficking hotline and domestic trafficking victim service programs, to train government personnel in identifying and providing protection to trafficking victims, and to facilitate coordination between providers of services to domestic victims of trafficking;<sup>246</sup>
4. That actions be taken against foreign governments failing to meet minimum anti-human trafficking standards, including the withholding of non-humanitarian, nontrade foreign assistance;<sup>247</sup>

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<sup>242</sup> 22 U.S.C. § 7103.

<sup>243</sup> Justice for Victims of Trafficking Act, Pub. L. No. 114–22, 129 Stat. 227, 243 (2015) (reauthorized through 2021 by the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, Pub. L. No. 115-425, §§ 114, 132 Stat. 5472, 5477 (2019)).

<sup>244</sup> 22 U.S.C. § 7104.

<sup>245</sup> 22 U.S.C. § 7104e.

<sup>246</sup> 22 U.S.C. §§ 7105, 7105b.

<sup>247</sup> 22 U.S.C. §§ 7106, 7107. Note that Chapter 32 authorizes foreign aid to help countries meet anti-human trafficking minimum standards. 22 U.S.C. § 2152d.

5. That sanctions be placed on foreign persons playing a significant role in trafficking persons in the United States;<sup>248</sup>
6. That government and nongovernmental organizations through federal grants research human trafficking;<sup>249</sup>
7. That the Department of State submit a report to Congress about a multilateral organization’s measures to prevent its employees from engaging in or benefiting from human trafficking before Congress votes on a new or reauthorized peacekeeping mission by that organization;<sup>250</sup> and
8. That the Departments of State and Labor collaborate to address forced labor and child labor abroad.<sup>251</sup>

### 8.3. Other Relevant Statutory Provisions

Title 42 establishes the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States. The Committee advises the Department of Justice and Department of Health and Human Services on the United States’ response to child sex trafficking, with an emphasis on how to increase collaboration across levels of government and industry sectors. The Committee also promulgates guidance for states on how to best combat child sex trafficking. Unless it is reauthorized, the Committee will terminate in 2022 – five years after it was established.<sup>252</sup>

Title 8 establishes the Human Smuggling and Trafficking Center (**Center**). The Departments of State, Homeland Security, and Justice operate the Center jointly. Among its various responsibilities, the Center ensures cooperation across the federal government in converting information on human trafficking into actionable intelligence.<sup>253</sup> The Center also researches the interrelationship between human trafficking and terrorism, and maintains an integrated database quantifying the number of human trafficking victims.<sup>254</sup>

Title 34 establishes the National Internet Crimes Against Children Task Force Program under the authority of the Department of Justice. The Program is a network of state and local law enforcement task forces that are dedicated to developing effective responses to online child predators and child pornography.<sup>255</sup>

Under the Bank Secrecy Act (**BSA**), financial institutions are required to monitor and report suspected illegal activity, including human trafficking, based on financial records.<sup>256</sup> In 2020, FinCEN collaborated with law enforcement to compile 20 indicators of labor and sex trafficking based on financial data collected under the BSA, releasing its findings in an advisory to assist financial institutions in this anti-trafficking endeavor.<sup>257</sup>

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<sup>248</sup> 22 U.S.C. § 7108.

<sup>249</sup> 22 U.S.C. § 7109a.

<sup>250</sup> 22 U.S.C. § 7111.

<sup>251</sup> 22 U.S.C. § 7112.

<sup>252</sup> 42 U.S.C. § 1314b.

<sup>253</sup> 8 U.S.C. § 1777.

<sup>254</sup> 22 U.S.C. § 7109a (b)(1).

<sup>255</sup> 34 U.S.C. § 21112.

<sup>256</sup> U.S. DEP’T OF STATE, *supra* note 5, at 516.

<sup>257</sup> U.S. TREASURY FIN. CRIMES ENF’T NETWORK, FIN-2020-A008, SUPPLEMENTAL ADVISORY ON IDENTIFYING AND REPORTING HUMAN TRAFFICKING AND RELATED ACTIVITY (2020).

## 8.4. Regulatory Documents

Numerous regulatory documents outline the United States’ multi-disciplinary approach to fighting human trafficking. A particularly noteworthy executive order required that:

1. The Domestic Policy Council dedicate an employee to work on human trafficking issues;
2. The PITF publish online a list of the federal government’s anti-human trafficking resources;
3. The Departments of State, Justice, Labor, Homeland Security, and Health and Human Services collaborate to improve empirical measurements of human trafficking and anti-human trafficking efforts;
4. Law enforcement agencies improve coordination to combat human traffickers, eliminate child pornography, and locate missing children;
5. The Department of Health and Human Services and the Department of Housing and Urban Development establish a working group to expand housing options for human trafficking victims; and
6. Federal agencies fund human trafficking and child exploitation prevention programs in schools.<sup>258</sup>

Illustrative of agency-level anti-trafficking documents, the Treasury Department’s Financial Crimes Enforcement Network issued a formal advisory to the private sector on how to recognize activities that may be associated with human trafficking.<sup>259</sup> In 2020, the Department of Homeland Security published its “Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation.” This first-of-its-kind document articulates the Department of Homeland Security’s long-term, multi-disciplinary approach to combat trafficking by supporting the PITF’s efforts.<sup>260</sup>

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<sup>258</sup> Exec. Order No. 13903, 85 Fed. Reg. 6,721 (Jan. 31, 2020).

<sup>259</sup> U.S. TREASURY FIN. CRIMES ENF’T NETWORK, FIN-2014-A008, GUIDANCE ON RECOGNIZING ACTIVITY THAT MAY BE ASSOCIATED WITH HUMAN SMUGGLING AND HUMAN TRAFFICKING – FINANCIAL RED FLAGS (Sept. 11, 2014).

<sup>260</sup> U.S. DEPT. OF HOMELAND SECURITY, STRATEGY TO COMBAT HUMAN TRAFFICKING, THE IMPORTATION OF GOODS PRODUCED WITH FORCED LABOR, AND CHILD SEXUAL EXPLOITATION (2020), available at: [https://www.dhs.gov/sites/default/files/publications/20\\_0115\\_plcy\\_human-trafficking-forced-labor-child-exploit-strategy.pdf](https://www.dhs.gov/sites/default/files/publications/20_0115_plcy_human-trafficking-forced-labor-child-exploit-strategy.pdf).