

FIXING A BROKEN SYSTEM: RECOMMENDATIONS TO IMPROVE THE POLICIES AND PRACTICES THAT LEAVE MIGRANTS VULNERABLE TO TRAFFICKING

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I. INTRODUCTION

Raymundo was recruited from Mexico to work on a farm in California.¹ He was promised that his work would be legal and that he would be working forty hours a week for \$11.10 per hour.² He was excited to work and send money back to his family in Mexico.³ He had to take out a 10,000 peso loan to pay for his visa, but he was promised that he would make enough to pay his debt back.⁴ When Raymundo arrived, he was forced to share a single room with thirty-four other trafficked men.⁵ He was made to follow strict and unreasonable rules and was threatened with deportation if he spoke up when the inspector came.⁶ Raymundo is just one example of how traffickers may exploit an H2-A visa.

Unfortunately, temporary work visas are only one way in which migrants are exploited and trafficked into the U.S. The first section of this article focuses on the different practices and policies of the current administration and how those policies impact migrants coming through the southern border. These policies and practices include the catch and release of families within seventy-

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¹ *Help Protect Farmworkers Like Me from Modern Slavery*, COAL. TO ABOLISH SLAVERY & TRAFFICKING (May 26, 2020), <https://www.castla.org/help-protect-farmworkers-like-me-from-modern-slavery/> [<https://perma.cc/M5DC-WZ5V>].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

two hours, the issuance of temporary work visas, and the recent crackdown on migration from certain areas.

The second section of this article makes recommendations to the U.S. government regarding trafficking within and through its borders. It emphasizes the need for better ways to monitor industries with high rates of temporary migrant workers to ensure that migrants are being treated humanely. It discusses ways the U.S. can work with Mexico to screen for trafficking in migrants, who are traveling through Mexico into the U.S. Finally, this article addresses ways the U.S. can work with other Latin American countries, specifically the Northern Triangle countries, to mitigate push and pull factors.

A. Americans' Opinion on the Border

The U.S.' southern border has been a source of ongoing debate in politics. Both sides of the political spectrum have different approaches to dealing with border policies and handling immigration. Republicans typically emphasize border security and deporting immigrants, who have entered the country illegally.⁷ Democrats typically focus on paths to legal status for those, who entered the country illegally, especially those who entered as children.⁸

According to data collected by the Pew Research Center in August 2022:

[A]bout three-quarters of Americans (73%) say increasing security along the U.S.-Mexico border to reduce illegal crossings should be a very (44%) or somewhat (29%) important goal of U.S. immigration policy. Nearly all Republicans and Republican-leaning independents (91%) say border security should be an important goal, while a smaller majority of Democrats and Democratic-leaning (59%) say the same⁹

A 2021 study from the Pew Research Center found that:

About two-thirds of U.S. adults (68%) sa[id] that the government is doing a very (33%) or somewhat (35%) bad job of dealing with the increased number of people seeking asylum at the country's southern border, while fewer than half as many

⁷ J. Baxter Oliphant & Andy Cerda, *Republicans and Democrats Have Different Top Priorities for U.S. Immigration Policy*, PEW RSCH. CTR. (Sept. 8, 2022), <https://www.pewresearch.org/fact-tank/2022/09/08/republicans-and-democrats-have-different-top-priorities-for-u-s-immigration-policy/> [<https://perma.cc/D3XC-QFB9>].

⁸ *Id.*

⁹ *Id.*

(29%) sa[id] it is doing a very good or somewhat good job [The majority] of both Republicans and Republican-leaning independents and Democrats and Democratic-leaning sa[id] that it is very important or somewhat important to reduce the number of asylum seekers and to increase staff for border patrols and processing unaccompanied minors [M]ajorities in *both* parties sa[id] the government ha[d] done a bad job of dealing with the influx of asylum seekers at the border: 86% of Republicans rate[d] the government's performance negatively, as d[id] 56% of Democrats.¹⁰

B. Past Policies on Immigration and Human Trafficking

Former President Barack Obama has a mixed immigration legacy.¹¹ Under his administration, deportations rose to record highs, and vulnerable immigrant populations suffered.¹² His administration also expanded family detention centers in an effort to deter the arrival of refugees.¹³ Conversely, his executive actions helped shield around 750,000 unauthorized immigrants, who were brought here as children, from deportation.¹⁴ This Deferred Action for Childhood Arrivals (“DACA”) initiative expanded recipients’ access to post-secondary education and work authorization.¹⁵

Opinions on Obama’s human trafficking policies are also mixed. A 2016 Senate investigation found that the Obama administration failed to protect thousands of Central American children, who had flooded across the U.S. border since 2011, and left them vulnerable to traffickers.¹⁶ The investigation was initiated after several Guatemalan teens were found in a dilapidated trailer park near Marion, Ohio, where they were being held captive by traffickers and forced to work at a local egg farm.¹⁷ These teens were vulnerable to traffickers because “the Office of Refugee Resettlement, an agency of the Department of Health and Human Services, failed to do proper background checks of adults who claimed the children, allowed sponsors to take custody of multiple unrelated children,

¹⁰ *Most Americans Are Critical of Government’s Handling of Situation at U.S.-Mexico Border*, PEW RSCH. CTR. (May 3, 2021), <https://www.pewresearch.org/politics/2021/05/03/most-americans-are-critical-of-governments-handling-of-situation-at-u-s-mexico-border/> [https://perma.cc/QUJ8-NJ5A].

¹¹ American Immigration Council Staff, *President Obama’s Legacy on Immigration*, IMMIGR. IMPACT (Jan. 20, 2017), <https://immigrationimpact.com/2017/01/20/president-obamas-legacy-immigration/> [https://perma.cc/LKA6-38MG].

¹² *Id.*

¹³ *Id.*

¹⁴ Alex Nowrasteh, *Obama’s Mixed Legacy on Immigration*, CATO INST. (Jan. 25, 2017), <https://www.cato.org/publications/commentary/obamas-mixed-legacy-immigration> [https://perma.cc/TP98-CS6Y].

¹⁵ American Immigration Council Staff, *supra* note 11.

¹⁶ Abbie VanSickle, *Obama Administration Placed Children with Human Traffickers, Report Says*, THE WASH. POST (Jan. 28, 2016, 5:18 P.M.), https://www.washingtonpost.com/national/obama-administration-placed-children-with-human-traffickers-report-says/2016/01/28/39465050-c542-11e5-9693-933a4d31bcc8_story.html [https://perma.cc/7GPS-G56A].

¹⁷ *Id.*

and regularly placed children in homes without visiting the locations.”¹⁸ The agency reportedly permitted adult sponsors to prevent caseworkers from providing the teens with post-release services once they left federally funded shelters.¹⁹

This alleged failure came a few years after Obama signed an executive order that enacted new requirements for U.S. government contractors and their subcontractors, operating overseas, to protect workers, vulnerable to human trafficking and forced labor.²⁰ Government contractors had reportedly engaged in the trafficking and forced labor of thousands of men and women from low-wage countries, such as, Nepal, India, and the Philippines.²¹ These workers were forced to live and work in unacceptable and unsafe conditions, serving as security personnel, cooks, janitors, cleaners, and construction workers on U.S. military bases and embassies in Afghanistan and Iraq.²² The goal of the executive order was to “ensure that workers who provide valuable services to our troops and embassies are not trafficked or forced into indentured servitude on the taxpayer’s dime.”²³

Former President Donald Trump took a tough stance on illegal immigration both while he was running for office and while he was in office.²⁴ In 2019, the number of migrant apprehensions at the southern border rose to its highest annual level in 12 years.²⁵ The Trump administration made far-reaching changes to asylum procedures to discourage migrants from entering the U.S. along the southern border.²⁶ A highly-criticized policy of the Trump administration was the “zero-tolerance policy,” which resulted in thousands of immigrant children being separated from their families.²⁷ Another prominent change was a policy, known informally as “Remain in Mexico,” under which many asylum seekers at the southern border waited in Mexico while their claims were adjudicated.²⁸

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *President Obama Signs Crucial Executive Order on Human Trafficking*, ACLU (Sept. 25, 2012, 12:00 AM), <https://www.aclu.org/press-releases/president-obama-signs-crucial-executive-order-human-trafficking> [<https://perma.cc/REB5-7NKN>].

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ John Gramlich, *How Border Apprehensions, ICE Arrests and Deportations Have Changed Under Trump*, PEW RSCH. CTR. (Mar. 2, 2020), <https://www.pewresearch.org/fact-tank/2020/03/02/how-border-apprehensions-ice-arrests-and-deportations-have-changed-under-trump/> [<https://perma.cc/46T4-WRZ8>].

²⁵ *Id.*

²⁶ *Id.*

²⁷ Salvador Rizzo, *The Facts about Trump’s Policy of Separating Families at the Border*, THE WASH. POST (June 19, 2018, 3:00 AM), <https://www.washingtonpost.com/news/fact-checker/wp/2018/06/19/the-facts-about-trumps-policy-of-separating-families-at-the-border/> [<https://perma.cc/C9XC-JXES>].

²⁸ Gramlich, *supra* note 24.

This policy caused controversy, as some have argued that it violates asylum seekers right to seek asylum in the U.S.²⁹

As with most of his policies, Trump's human trafficking laws were met with both praise and criticism. For example, in 2018, Trump signed into law the "Stop Enabling Sex Traffickers Act and Allow States and Victims to Fight Online Sex Trafficking Act" ("SESTA-FOSTA").³⁰ This Act clarified that the immunity granted by Section 230 of the Communications Decency Act of 1996, under which websites were not liable for content posted by third parties, did "not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes."³¹ Some praised this Act because, within 24 hours, some of the biggest websites in the country that were hosting these sex ads shut down, and the daily volume of ads went from about 100,000 a day to 20,000 a day within a week.³² Others argued that the Act forced sex trafficking underground, making victims hidden, buried, and exposed to more danger.³³ As a result, prosecutors and companies would need more resources to identify victims.³⁴

On his first day in office, President Joe Biden announced a "welcoming and inclusive vision" for immigration.³⁵ This policy change contributed to a sharp rise in border encounters with migrants that eclipsed the previous annual high recorded in 2000.³⁶ In fiscal year 2022, authorities recorded 2.4 million encounters with migrants crossing the U.S.-Mexico border without authorization—the most ever.³⁷ Two years into office, the Biden administration has yet to carry out many of its ambitious promises regarding immigration, although it has issued 403 immigration-related executive actions.³⁸ Actions at the U.S.-Mexico border have drawn intense media and political attention, and the perception of a chaotic border has been used as a political cudgel through the

²⁹ 'Remain in Mexico', HUM. RTS. WATCH, <https://www.hrw.org/tag/remain-mexico> [<https://perma.cc/3XKP-RB6T>] (last visited Mar. 23, 2023).

³⁰ Ruth Green, *US Anti-Trafficking Law Continues to Court Controversy*, INT'L BAR ASS'N, <https://www.ibanet.org/article/34bb1ebc-782e-4bdc-a5e4-13b738d98831> [<https://perma.cc/6D28-ZBMT>] (last visited Feb. 19, 2023).

³¹ Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253.

³² Green, *supra* note 30.

³³ *Id.*

³⁴ *Id.*

³⁵ *One Year In: The Biden Administration's Promises on Immigration Remain Unfulfilled*, AM. IMMIGR. COUNCIL. (Jan. 19, 2022), <https://www.americanimmigrationcouncil.org/news/one-year-biden-administrations-promises-immigration-remain-unfulfilled> [<https://perma.cc/U9ZJ-4NKB>].

³⁶ John Gramlich & Alissa Scheller, *What's Happening at the U.S.-Mexico Border in 7 Charts*, PEW RSCH. CTR. (Nov. 9, 2021), <https://www.pewresearch.org/short-reads/2021/11/09/whats-happening-at-the-u-s-mexico-border-in-7-charts/> [<https://perma.cc/638Q-PAYR>].

³⁷ Muzaffar Chishti & Kathleen Bush-Joseph, *Biden at the Two-Year Mark: Significant Immigration Actions Eclipsed by Record Border Numbers*, MIGRATION POL'Y INST. (Jan. 26, 2023), <https://www.migrationpolicy.org/article/biden-two-years-immigration-record> [<https://perma.cc/CG6Z-XTQP>].

³⁸ *Id.*

publicized bussing of asylum seekers and other migrants to New York, Washington, D.C., and other cities.³⁹

II. DEFINING HUMAN TRAFFICKING

Statutorily, human trafficking is a term that means an act or practice described in Section 103 of the Trafficking Victims Protection Act of 2000 (“TVPA”).⁴⁰ Those acts or practices include, but are not limited to, coercion, commercial sex acts, debt bondage, involuntary servitude, severe forms of trafficking, and sex trafficking.⁴¹ The TVPA defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”⁴² The definition of severe forms of trafficking in persons includes:

(A) 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 (B) 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.⁴³

Colloquially, human trafficking is “the business of stealing freedom for profit” by using force, fraud, or coercion to obtain some type of labor or commercial sex act.⁴⁴ This “multi-billion dollar criminal industry denies 24.9 million people around the world” their freedom.⁴⁵ Labor trafficking is “a form of modern-day slavery where victims perform labor or services through the use of force, fraud, or coercion.”⁴⁶ Sex trafficking is “a form of modern-day slavery where victims perform commercial sex through the use of force, fraud, or coercion.”⁴⁷

³⁹ *Id.*

⁴⁰ 6 U.S.C.S. § 641(2) (LEXIS through Pub. L. No. 118-13).

⁴¹ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 103, 114 Stat. 1464, 1469-71 (2000) (codified as 22 U.S.C. § 7102).

⁴² *Id.* at § 103(9).

⁴³ *Id.* at § 103(8).

⁴⁴ *Human Trafficking*, NAT’L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/en/human-trafficking> [https://perma.cc/2A2V-VNXP] (last visited Jan. 13, 2023).

⁴⁵ *Id.*

⁴⁶ *Labor Trafficking*, NAT’L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/en/human-trafficking/labor-trafficking> [https://perma.cc/V4FR-W4KQ] (last visited Jan. 13, 2023).

⁴⁷ *Sex Trafficking*, NAT’L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/en/human-trafficking/sex-trafficking> [https://perma.cc/X4EX-9H4T] (last visited Jan. 13, 2023).

In order to have a trafficking situation, “force, fraud, or coercion must be present,” and “that force, fraud, or coercion must be the factor that compels the person to remain in the situation.”⁴⁸ But fraud, by itself, is not a trafficking situation.⁴⁹ There must also be some force or coercion present.⁵⁰ Children are the one exception to the force, fraud, or coercion requirement.⁵¹ Minors engaging in commercial sex are considered to be victims of human trafficking, regardless of the use of force, fraud, or coercion.⁵² Under federal law, there is no such thing as a child prostitute.⁵³

Human trafficking is different from migrant smuggling in that it does not require movement.⁵⁴ Migrant smugglers engage in bringing people across international borders through deliberate evasion of immigration laws.⁵⁵ These are distinct crimes, but smuggled individuals may become vulnerable to and victims of human trafficking.⁵⁶

III. RECENT POLICIES AND THEIR EFFECTS

A. *Catch and Release within Seventy-Two Hours*

In early March 2021, the Biden administration pledged to release parents and children into the U.S. within seventy-two hours of their arrival.⁵⁷ This decision was influenced by the significant spike in the number of people arriving at the southern border since President Biden’s election.⁵⁸ Migrants were only to be held “for the time required to schedule court dates, conduct COVID-19 tests, and arrange for them to be transferred to shelters.”⁵⁹

In April 2021, an image of young Ecuadorian girls being dropped over the border wall shocked many Americans but did not shock experts.⁶⁰ These experts claimed that the policy that pressures border agents to release families and unaccompanied minors into the U.S. within seventy-two hours incentivizes vulnerable Latin Americans to send their children up north.⁶¹ Traffickers then

⁴⁸ *Understanding Human Trafficking*, POLARIS PROJECT, <https://polarisproject.org/understanding-human-trafficking/> [https://perma.cc/CP5Y-GJAH] (last visited Feb. 20, 2023).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *About Human Trafficking*, U.S. DEPT. OF STATE, <https://www.state.gov/humantrafficking-about-human-trafficking/> [https://perma.cc/HM2E-9FK3] (last visited Jan. 13, 2023).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Miriam Jordan & Zolan Kanno-Youngs, *Biden Administration Says It Will Shorten Detention of Migrant Families*, THE N.Y. TIMES (Mar. 4, 2021), <https://www.nytimes.com/2021/03/04/us/migrant-families-biden-plan.html> [https://perma.cc/7TU5-ADJX].

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Heather Robinson, *How Biden’s Border Policies Will Increase Sex Trafficking of Children to US*, THE N.Y. POST (Apr. 17, 2021, 12:23 PM), <https://nypost.com/2021/04/17/how-bidens-border-policy-will-increase-child-sex-trafficking-to-us/> [https://perma.cc/DZ9K-5XTD].

⁶¹ *Id.*

“provide” children to unrelated adults so the adults can more easily gain access to the U.S.⁶² Once the adult reaches the U.S., the child is either returned to the trafficker and assigned to another adult to repeat the cycle, or the child ends up in the U.S. sex industry.⁶³

While this policy has the good intention of keeping migrants out of detention facilities, it puts a strain on border agents and leaves the migrants vulnerable to traffickers. Latin American parents, who want better for their children, end up putting their children in danger with the hope of giving them a better life. Unfortunately, traffickers recognize this and use it to their advantage. While the policy may be helpful to many migrant families, it potentially leaves others vulnerable. Effective implementation of the policy requires that this loophole for traffickers be closed.

B. Temporary Work Visas

In July 2022, during a meeting with Mexican President Andrés Manuel López Obrador, President Biden said his administration “set a record” last year in issuing more than 300,000 temporary work visas to Mexicans.⁶⁴ He contended that this is a proven strategy that fuels economic growth and reduces irregular immigration.⁶⁵ These temporary work visa programs, however, often lead to forced labor and other forms of human trafficking.⁶⁶ These visas allow labor trafficking to happen in plain sight across several major industries.⁶⁷

Operation Blooming Onion demonstrates how temporary work visas are abused.⁶⁸ In 2018, the Patricio transnational criminal organization became the subject of a multi-agency investigation.⁶⁹ The conspirators and their associates were found, among other things, to be engaging in international forced labor trafficking.⁷⁰ They fraudulently used the H-2A work visa program to smuggle foreign nationals from Mexico, Guatemala, and Honduras into the U.S. under the pretext of serving as agricultural workers.⁷¹

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Parker Asmann, *US Temporary Work Visas Expose Migrants to Exploitation: Report*, INSIGHT CRIME (July 15, 2022), <https://insightcrime.org/news/temporary-work-visas-exploitation-labor-trafficking/> [<https://perma.cc/9C2L-XQ9K>].

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Human Smuggling, Forced Labor Among Allegations in South Georgia Federal Indictment*, U.S. ATT’Y’S OFF. S.D. OF GA. (Nov. 22, 2021), <https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment> [<https://perma.cc/BQ5Q-E2JJ>].

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

The traffickers illegally withheld the workers' travel and identification documents and forced the workers to perform physically demanding work for little to no pay.⁷² The workers were housed in crowded, unsanitary, and degrading living conditions and were threatened with deportation and violence.⁷³ The traffickers held the workers in cramped, unsanitary quarters in fenced work camps with little or no food, limited plumbing, and without safe water.⁷⁴ The conspirators were accused of raping, kidnapping, and threatening or attempting to kill some of the workers or their families, and in many cases, they sold or traded the workers to other conspirators.⁷⁵ At least two of the workers died as a result of workplace conditions.⁷⁶ The defendants were indicted in 2021.⁷⁷

The problem here is not the workers, who come here on visas, or even the number of visas issued. The problem is the lack of monitoring and regulations regarding these visas. Knowingly issuing a record-high number of these abused work visas without proper monitoring helps sustain labor trafficking networks within the U.S. In 2021, Polaris identified 1,066 cases of labor trafficking in the U.S.⁷⁸ Of those 1,066 cases, 73% of the victims were foreign nationals, and 83% of victims were exploited by their employers.⁷⁹ While there was no data on how many of these foreign nationals held H2-A visas, these statistics provide insight into how foreign nationals are exploited in the labor industry. Administrations should not be issuing record-high numbers of these visas without gaining control of labor trafficking within our own borders.

C. Crackdown on Migration from Certain Areas

In January 2023, the Biden administration announced a major crackdown on illegal border crossings because of record-breaking surges of migration at the southern border.⁸⁰ People from Cuba, Nicaragua, Venezuela, and Haiti will now be denied the chance to apply for asylum if they cross the Mexican border without authorization between official ports of entry.⁸¹ President Biden has tried to make this new policy clear by saying, “[m]y message is this, [i]f you’re trying to leave Cuba, Nicaragua or Haiti, or have agreed to begin a journey to America,

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Polaris Analysis of 2021 Data from the National Human Trafficking Hotline*, POLARIS 3, <https://polarisproject.org/wp-content/uploads/2020/07/Polaris-Analysis-of-2021-Data-from-the-National-Human-Trafficking-Hotline.pdf> [<https://perma.cc/7629-BMDW>].

⁷⁹ *Id.* at 7, 23.

⁸⁰ Michael D. Shear, et al., *Biden Announces Major Crackdown on Illegal Border Crossings*, THE N.Y. TIMES (Jan. 10, 2023), <https://www.nytimes.com/2023/01/05/us/politics/biden-border-crossings.html?login=smartlock&auth=login-smartlock> [<https://perma.cc/YM8G-DYEK>].

⁸¹ *Id.*

do not, do not just show up at the border.”⁸² This crackdown comes after a human trafficking ring, originating in Cuba, was busted in October 2022.⁸³

In October 2022, a man and a woman were arrested in connection with a human trafficking case that began in Cuba.⁸⁴ The two arrested were part of a plot that charged women \$60,000 each to be transported out of Cuba and across the southern border.⁸⁵ The women were then threatened with harm to themselves and their families if they did not become sex workers to pay off their debt.⁸⁶ Multiple women, ranging in age from 18 to 24, were held in two small rooms and forced into stripping and prostitution.⁸⁷ They were only allowed out of these rooms for their sex work.⁸⁸ Ashley Moody, Florida’s Attorney General, remarked that it was one of the worst trafficking cases she had seen.⁸⁹

The policy regarding Cuba, Nicaragua, Venezuela, and Haiti sends mixed signals because President Biden ran on a platform that professed openness to migrants. President Biden kept this stance for the first half of his presidency. This harsh stance on immigration, from the mentioned countries, has a high risk of making human trafficking worse. This is especially relevant because the women, mentioned above, took extreme measures to get into the U.S., while President Biden was still maintaining a more open policy on immigration. People, who are in danger in their home countries, may now take even more extreme measures to get into the U.S.

IV. COMBATTING HUMAN TRAFFICKING AT THE SOUTHERN BORDER: CAUSES AND RECOMMENDATIONS

Combating human trafficking at the southern border will not happen by sealing the border to keep illegal immigrants out or by opening the border to allow just anyone in. An extreme anti-immigrant response will not solve any problems and will likely make trafficking worse for those vulnerable to it.⁹⁰

⁸² *Id.*

⁸³ Landon Mion, *Multiple Women Rescued from Human Trafficking Scheme after Paying to Cross Southern Border into US; 2 Arrested*, FOX NEWS (Oct. 25, 2022, 4:14 A.M.), <https://www.foxnews.com/us/multiple-women-rescued-human-trafficking-scheme-after-paying-cross-southern-border-into-us-2-arrested> [https://perma.cc/9V6B-9NS4].

⁸⁴ *Id.*; see also *Florida Officers Break Up Sex Trafficking Ring Allegedly Stemming from Illegal Border Crossings*, DAILYFLY (Nov. 1, 2022), <https://dailyfly.com/florida-officers-break-up-sex-trafficking-ring-allegedly-stemming-from-illegal-border-crossings/> [https://perma.cc/GD7B-J53L] (detailing the trafficking of the Cuban women).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Hailey York, *U.S. Immigration Policy and Human Trafficking: Two Sides of the Same Coin*, HUM. TRAFFICKING INST. (Aug. 11, 2022), <https://traffickinginstitute.org/u-s-immigration-policy-and-human-trafficking-two-sides-of-the-same-coin/> [https://perma.cc/94K9-GSWW].

There is a fine line between being too harsh and too lax on immigration, and U.S. policymakers need to find that balance. Those in power within the U.S. should work to eradicate human trafficking within our own borders and work with the countries the migrants are coming from to control human trafficking outside our borders.

The next two sections will detail some of the factors contributing to trafficking that originates inside and outside our borders, respectively, and provide recommendations for addressing those problems.

A. *Inside the U.S.*

Each year, the U.S. State Department submits a Trafficking in Persons (“TIP”) Report to Congress.⁹¹ The report evaluates every nation’s efforts to eliminate human trafficking in their respective country in accordance with the standards set forth by the TVPA.⁹² The countries are placed in one of four tiers; their placement is determined by the government’s effort to meet the minimum standards for the elimination of human trafficking set by the TVPA.⁹³ The TVPA has four minimum standards:

- 1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.
- 2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.
- 3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.
- 4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.⁹⁴

⁹¹ Rocio Garza, *Addressing Human Trafficking Along the United States-Mexico Border: The Need for a Bilateral Partnership*, 19 CARDOZO J. INT’L & COMP. L. 413, 433 (2011).

⁹² *Id.* at 433–34.

⁹³ U.S. Dep’t of State, Off. to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report*, 52 (2022) [hereinafter *2022 TIP Report*].

⁹⁴ *Id.* at 58.

Tier 1 is the highest rank and indicates that the government has made efforts to address the problem that meet the TVPA's minimum standards.⁹⁵ To maintain a Tier 1 ranking, governments need to demonstrate appreciable progress each year in combating trafficking.⁹⁶

While the U.S. itself has met the minimum standards to be ranked in Tier 1 in 2022, there are still areas where the U.S. can improve how it handles human trafficking.⁹⁷ Trafficking victims continue to be arrested for unlawful acts their traffickers coerced them into committing.⁹⁸ Many victim-witnesses do not receive necessary protections throughout the course of their cases.⁹⁹ There continues to be a lack of progress in addressing labor trafficking, including efforts to identify victims, provide them with specialized services, and hold labor traffickers accountable.¹⁰⁰ Additionally, human trafficking screening, for all foreign national adults in immigration detention or custody, remains unmandated.¹⁰¹ The government also does not screen for trafficking indicators among the people it removed.¹⁰² Some of these issues, including worker safety, migrant fear of seeking help, and corruption, are addressed below.

1. Worker Safety and Monitoring Employers: Issues, Progress, and Recommendations

Industries with high rates of labor law violations need to be closely monitored. The 2022 TIP Report specifically recommends that the U.S. prioritizes and increases efforts to address labor trafficking comprehensively.¹⁰³ Industries, such as domestic work and agricultural labor, attract many migrant workers but afford limited labor protection.¹⁰⁴ Labor trafficking victims often come into the country because of the promise of well-paying jobs but are instead met with abuse and wage theft.¹⁰⁵

Data from the U.S. National Human Trafficking Hotline showed that labor trafficking disproportionately affected victims who were in the country legally

⁹⁵ *Id.* at 52.

⁹⁶ *Id.*

⁹⁷ *Id.* at 574.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *How Reform of U.S. Immigration Policies Would Significantly Improve its Human Trafficking Situation*, FREEDOM COLLABORATIVE: GLOB. NEWSLTR. (Nov. 2, 2021), <https://freedomcollaborative.org/newsletter-archive/how-reform-of-us-immigration-policies-would-significantly-improve-its-human-trafficking-situation> [<https://perma.cc/9LHC-KBEK>].

¹⁰⁵ *Big Fight on Labor Trafficking*, POLARIS, <https://polarisproject.org/big-fight-on-labor-trafficking/> [<https://perma.cc/4L94-PMVG>].

on temporary work visas.¹⁰⁶ These visas are supposed to be regulated by the U.S. government to make sure that the rights of migrant workers are protected.¹⁰⁷ Instead, according to Polaris, this temporary work visa program is so badly designed and infrequently enforced that the National Human Trafficking Hotline routinely hears from workers, who are here legally but are still trafficked and exploited.¹⁰⁸ This is demonstrated in Operation Blooming Onion, where temporary work visas were used fraudulently at the peril of Latin American workers in an agricultural setting.¹⁰⁹

The Employment and Training Administration and Wage and Hour Division of the Department of Labor published a final rule, which became effective on November 14, 2022, that is supposed to improve the minimum standards and conditions of employment that employers must offer to workers.¹¹⁰ It also intends to expand the Department's authority to use enforcement tools, such as program debarment for substantial violations of program requirements.¹¹¹ Under this rule, the housing for workers must meet applicable local, state, or federal standards addressing certain health or safety concerns.¹¹² The employer has to submit, in writing, that their accommodations meet these standards and have an appropriate number of beds and rooms.¹¹³

This is a step in the right direction in codifying standards that employers must meet in order to be able to sponsor temporary workers. What remains to be seen is if the state and federal governments check on these employers to confirm that they are meeting these standards and use their newly-expanded enforcement abilities when an employer is not meeting these standards.

The H2-A visa program "allows employers to import temporary foreign workers for agricultural work."¹¹⁴ Workers are bound to the employer, who hired them for the duration of their contract, because the visas are only valid while the worker is employed by the sponsoring employer.¹¹⁵ The H2-A visa program imposes certain requirements on the employer, but these requirements are scarcely enforced because the program relies on the fiction that all employers will comply with the requirements.¹¹⁶ Many growers outsource recruiting and hiring to farm labor contractors ("FLCs"), which allows farmers to avoid liability for unscrupulous, illegal, and violent practices.¹¹⁷ This creates a captive

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ U.S. ATT'Y'S OFF. S.D. OF GA., *supra* note 68.

¹¹⁰ 20 C.F.R. § 655.100(a)(1)(i) (2023).

¹¹¹ 20 C.F.R. § 655.180(b); 29 C.F.R. § 501.1(c)-(d) (2023).

¹¹² 20 C.F.R. § 655.122(d)(1)(ii) (2023).

¹¹³ 20 C.F.R. § 655.122(d)(6)(iii) (2023).

¹¹⁴ Solimar Mercado-Spencer, *The Guests Who Feed Us*, A.B.A. (June 10, 2022), https://www.americanbar.org/groups/labor_law/publications/labor_employment_law_news/spring-2022/the-guests-who-feed-us/ [<https://perma.cc/J8JV-2BTR>].

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

labor force that is unable to complain, leave, or ask for help because they are scared of being deported and being unable to pay off their debts.¹¹⁸

One way to protect temporary workers would be to allow workers to switch employers without affecting their visas. Workers should not be bound to an abusive employer, and they should not have to fear invalidating their visa and getting deported because they left the abusive employer. A system needs to be put in place where temporary workers can report an abusive employer and get switched to another employer without affecting their visas status.

In December 2020, the U.S. Citizenship and Immigration Services extended a temporary provision that allowed certain foreign workers to change employers.¹¹⁹ This provision was not made with the interest of the worker in mind and expired in June 2021.¹²⁰ Instead, it was made to ensure that agricultural employers had a steady flow of legal foreign workers, which protected the integrity of the nation's food supply.¹²¹ This shows that the U.S. can and has passed provisions where workers can switch employers. Now, policymakers need to pass a provision that also protects the interests of workers.

2. Migrants' Fear of Seeking Help

Many migrants fear that if they seek the help of law enforcement, regarding a human trafficking situation, that they will be deported.¹²² Abusive employers often threaten migrants with deportation if they ask for help or confiscate the paperwork of those, who are here legally, to keep them in the trafficking situation.¹²³ This fear can be addressed and hopefully alleviated by informing migrants of what rights they have, which also might make them more likely to report human trafficking and assist in the prosecution of the traffickers.¹²⁴ This would benefit both the migrant and the state, as the migrant would be helped out of the trafficking situation and the state could bring charges against the traffickers.

The U.S. should reconsider its decision to not ratify or become a signatory to the International Convention on the Protection of the Rights of All Migrant

¹¹⁸ *Id.*

¹¹⁹ Temporary Changes to Requirements Affecting H-2A Nonimmigrants due to the COVID-19 National Emergency: Extension of Certain Flexibilities, 85 Fed. Reg. 82291, 82291 (Dec. 18, 2020) (to be codified at 8 C.F.R. pts. 214, 274).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² FREEDOM COLLABORATIVE: GLOB. NEWSLTR., *supra* note 104.

¹²³ Carter Quinley, *Along the Borderline: The Critical Links Between Human Trafficking and U.S.-Mexico Immigration*, THE INT'L AFFS. REV. (July 12, 2021), <https://www.iar-gwu.org/print-archive/ikjtfxf3nmqgd0np1ht10mvkfron6n-bykaf-ey3hc-rfbxp-dpte8> [<https://perma.cc/2TXH-JR3K>].

¹²⁴ York, *supra* note 90.

Workers and Members of Their Families (“CMW”).¹²⁵ Article 10 of the CMW mandates that “[n]o migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹²⁶ Article 11 bans slavery for migrant workers and also bans forced or compulsory labor.¹²⁷ If the U.S. ratified or became a signatory to the CMW, migrants, who are in trafficking situations, might feel more comfortable approaching law enforcement for help.

Further, the U.S. needs to work to make migrants, who are here both legally and illegally, aware that there are protections in place for trafficking victims that will keep them from being deported. The TVPA created a process designed specifically to protect immigrant trafficking victims, including the issuance of T-Visas, which allow victims of human trafficking to remain in the U.S. to assist authorities with an investigation.¹²⁸ The U.S. Immigration and Customs Enforcement agency (“ICE”) asserts that it is “a leader in the global fight against human trafficking, proactively identifying, disrupting and dismantling cross-border human trafficking organizations and minimizing the risk they pose to national security and public safety.”¹²⁹ As of 2021, ICE no longer took civil immigration enforcement action, like issuing deportation or detention orders against known trafficking victims, including those that have applications pending for T-Visas or other forms of immigration benefits.¹³⁰ ICE officers and agents were also directed to proactively look for evidence that someone was a victim of a crime, even if they have not yet applied for benefits.¹³¹

Other ways to make trafficking victims aware of their rights would be to mandate that employers give their workers this information in their native language through pamphlets and posters. Customs and immigration officials, with whom migrants have contact, should routinely provide the same information as part of a mandatory screening program for trafficking victims. Inspectors could also sit down with the workers, without the employer present, to screen for trafficking and exploitation periodically and regularly. The 2022 TIP Report specifically recommended that the U.S. needs improved screening procedures.¹³²

¹²⁵ U.N. HUM. RTS. OFF. OF THE HIGH COMM’R *Ratification Status for U.S.*, U.N. TREATY BODY DATABASE, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN [https://perma.cc/8F7U-FCCU].

¹²⁶ International Convention on the Protected Rights of All Migrant Workers and Members of Their Families, Gen. Assemb. Resol. 45/158, Art. 10 (Dec. 18, 1990).

¹²⁷ *Id.* at Art. 11 §§ 1-2.

¹²⁸ Protecting Trafficking Victims: ICE’s New Policy Directive, POLARIS (Aug. 23, 2021) <https://polarisproject.org/blog/2021/08/protecting-trafficking-victims-ices-new-policy-directive/> [https://perma.cc/8XUW-5DYN].

¹²⁹ *Role of ICE*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/features/human-trafficking> [https://perma.cc/FXX6-TLVT] (last visited Aug. 23, 2023).

¹³⁰ POLARIS, *supra* note 128.

¹³¹ *Id.*

¹³² 2022 TIP Report, *supra* note 93, at 574.

3. Addressing Corruption

The 2022 TIP Report also recommends that the U.S. mitigate vulnerabilities in employment-based U.S. visa programs by holding non-compliant employers and labor contractors, along with their agents, accountable.¹³³ This is easier said than done, especially when employees within a state's Department of Labor are involved in a trafficking scheme. After Operation Blooming Onion's indictment was unsealed, it was revealed that Georgia's Department of Labor had employed officials with ties to the case.¹³⁴ Two men, who had connections to the trafficking ring, had responsibilities directly tied to protecting H2-A workers.¹³⁵ This is a gross conflict of interest, as someone cannot protect a group of people that they are actively exploiting.

In the wake of Blooming Onion, three different petitions were launched, calling on the Biden administration to increase oversight of the H2-A visa program.¹³⁶ This is something the federal government and state governments need to take very seriously. Each state needs to do an in-depth check into its labor department to weed out anyone who is corrupt and has connections to entities that they should not. This could be done through internal investigations and more rigorous background checks. Similarly, U.S. Customs and Border Protection ("CBP") needs to continue to investigate its ranks because it is a crucial agency in combatting human trafficking at the border.¹³⁷ CBP is uniquely situated, regarding trafficking across our borders, because it has more than 42,000 frontline CBP officers and Border Patrol Agents protecting nearly 7,000 miles of land border and 328 ports of entry.¹³⁸ These migrant workers are vital to the U.S. economy, and the government should not allow migrant workers within our borders to be mistreated and abused.

4. Additional Recommendations for Trafficking within the U.S.

H2-A visa recipients are very often abused and exploited. The federal and state governments need to monitor temporary workers to ensure that they are

¹³³ *Id.*

¹³⁴ Abraham Kenmore, et al., *Farm Labor Advocates, Leaders Concerned After Reported Human Trafficking, Ties to Georgia Officials*, THE AUGUSTA CHRON. (May 3, 2022, 5:30 A.M.), <https://www.augustachronicle.com/story/news/2022/05/03/human-trafficking-georgia-farmworkers-operation-blooming-onion-h-2-a-visa/9554179002/> [<https://perma.cc/24RB-AR52>].

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See *Report on Internal Investigations and Employee Accountability FY2020*, U.S. CUSTOMS AND BORDER PROTECTION (Nov. 18, 2021), <https://www.cbp.gov/document/report/report-internal-investigations-and-employee-accountability-fy2020> [<https://perma.cc/2NCS-2AM9>] (detailing the intake, investigative activity, and discipline taken against CBP employees for the time period from Oct. 1, 2019, through Sept. 30, 2020).

¹³⁸ *Human Trafficking*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/border-security/human-trafficking> [<https://perma.cc/6QRA-48TK>] (last visited Aug. 23, 2023).

treated humanely. Employers, who do not meet the requirements, need to be barred from sponsoring visas. Finally, the government needs to ensure that its own employees are not exploiting vulnerable groups and that they are doing their jobs effectively.

The vast number of encounters at the border makes it difficult for Border Patrol Agents to determine who may be a victim of trafficking and who is being smuggled across the border.¹³⁹ As of January 2023, monthly encounters between Border Patrol and migrants at the U.S.-Mexico border remain at levels not seen in more than two decades.¹⁴⁰ Identification is further complicated by the fact that some migrants may start by falling under the smuggling category, but then shift to being trafficked.¹⁴¹ This shift can create confusion for the agents, who apprehend migrants, and can contribute to victims being treated like criminals.¹⁴² Difficulty distinguishing between who is being trafficked and who is being smuggled causes some victims of trafficking to be deported and sent back into the hands of their traffickers instead of receiving help.¹⁴³

To aid border authorities in distinguishing, who is participating in illegal smuggling and who is a victim of human trafficking, more resources and training are needed. Criminalizing victims and sending them back to their abusers is a severe injustice to trafficking victims. Instead, the victims need to be identified so authorities can work to bring charges against the traffickers, and the victims can be given the resources they need to recover and find safety. Because smuggling and trafficking can be closely linked, smuggled persons should be carefully screened to decipher whether they are trafficking victims. Children, both accompanied and unaccompanied, need to be closely examined to decipher whether they are in a safe situation. While trafficking and smuggling are different, both trafficked and smuggled individuals may have a well-founded fear of persecution in their home country and should be afforded the opportunity to apply for asylum.

b. Outside the U.S.

1. Mexico

Mexico serves as a source, transit point, and destination for human trafficking.¹⁴⁴ It is a source country for trafficking Mexican immigrants and a transit country for immigrants traveling from Central and South America on their way to the U.S.¹⁴⁵ Mexico also becomes a destination country for many of

¹³⁹ Garza, *supra* note 91, at 426.

¹⁴⁰ John Gramlich, *Monthly Encounters with Migrants at U.S.-Mexico Border Remain Near Record Highs*, PEW RSCH. CTR. (Jan. 13, 2023), <https://www.pewresearch.org/facttank/2023/01/13/monthly-encounters-with-migrants-at-u-s-mexico-border-remain-near-record-highs/> [https://perma.cc/ZX23-H3HV].

¹⁴¹ See Jordan & Kanno-Youngs, *supra* note 57.

¹⁴² Garza, *supra* note 91, at 426.

¹⁴³ *Id.* at 424.

¹⁴⁴ *Id.* at 426.

¹⁴⁵ *Id.*

the Central and South American immigrants, who are not granted entry into the U.S.¹⁴⁶ Mexican states along the U.S.-Mexican border serve as hotspots for human trafficking.¹⁴⁷ Baja California, Chihuahua, and Nuevo León accounted for one-quarter of all human trafficking victims identified in 2022.¹⁴⁸ Border cities, Tijuana and Ciudad Juárez, are known hubs for sexual and labor exploitation, and Monterrey has been a long-time operational base for human traffickers.¹⁴⁹

The Mexican government has struggled to devise strategies that enhance victim identification and prevent exploitation.¹⁵⁰ Mexico is ranked in Tier 2 in the 2022 TIP Report.¹⁵¹ This means the Mexican government does not fully meet the TVPA's minimum standards but is making significant efforts to bring itself into compliance with those standards.¹⁵² The TIP Report recognizes that Mexico made a significant effort to eliminate trafficking in persons.¹⁵³ In 2022, Mexico prosecuted and convicted more traffickers, identified more victims, and arrested two former public officials for allegedly running a sex trafficking operation.¹⁵⁴ The Mexican courts convicted more labor traffickers, which included some who exploited children by forcing them to transport illegal substances.¹⁵⁵ Still, Mexico stayed in Tier 2.¹⁵⁶

The 2022 TIP Report details why Mexico stayed in Tier 2. First, the Mexican government failed to allocate funds to a legally required victim assistance fund, and services for victims were inadequate.¹⁵⁷ Additionally, the government did not improve efforts to screen for indicators of trafficking among vulnerable populations or refer possible victims to service providers.¹⁵⁸ Lastly, fraudulent recruitment practices continued to be widespread, and the government failed to take steps to hold recruiters or labor agents accountable.¹⁵⁹

It is not at all impossible for Mexico to become a Tier 1 country. From 2019 to 2021, Germany was ranked in Tier 2.¹⁶⁰ In 2021, the German government did

¹⁴⁶ *Id.*

¹⁴⁷ Parker Asmann, *Human Trafficking Victims Grow as Mexico Government Strategy Falters*, INSIGHT CRIME (Aug. 5, 2022), <https://insightcrime.org/news/human-trafficking-victims-grow-mexico/> [https://perma.cc/LHL9-T2K7].

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ 2022 TIP Report, *supra* note 93, at 69.

¹⁵² *Id.* at 383.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ U.S. Department of State, Bureau of Democracy, H.R. and Lab., *Trafficking in Persons Report* 250 (2021) [hereinafter 2021 TIP Report].

not meet the minimum requirements set by the TVPA because of lenient sentencing and a failure to hold traffickers accountable (72% of traffickers received fully suspended sentences or fines), sparse investigations of suspected traffickers, the reporting of incomplete data on victims provided with care, and low labor trafficking law enforcement efforts.¹⁶¹ In 2022, Germany was promoted to Tier 1.¹⁶² Germany achieved this promotion because, among other efforts, it prosecuted and convicted more traffickers (although judges still issued lenient sentences), increased law enforcement efforts on labor trafficking, and increased funding for victims' services.¹⁶³

2. Recommendations for the U.S. and Mexico

The trafficking of persons through the shared Mexican-American border is a joint problem for the U.S. and Mexico. As discussed above, Mexico is a source and transit country for migrants being trafficked through the U.S.' southern border.¹⁶⁴ It also becomes a destination country for migrants, who are not granted entry into the U.S.¹⁶⁵ Accordingly, the two countries need to work together to combat this prevalent issue.

One way to improve Mexico's screening issue would be to create a shared screening system between the U.S. and Mexico. If a vulnerable migrant on their way to the U.S. is screened multiple times, both in Mexico and in the U.S., this creates multiple opportunities to identify if they are being trafficked. A database, where Mexico could flag a migrant whom they may believe is being trafficked, but, for whatever reason, cannot intervene, could be beneficial. Communication between the two countries, especially along the Mexican border states that are known hotspots for trafficking, is a constructive way to identify trafficking victims. Multiple screening points would also benefit migrants, who start their journey as a smuggled person, but then become a trafficked person.

3. The Northern Triangle Countries

Push and *Pull* factors cause people to migrate. Push factors, such as unemployment and natural disaster, force a person to migrate.¹⁶⁶ Pull factors, such as job opportunities, draw immigrants to other countries.¹⁶⁷ Pull factors can also be created when migrants in the U.S. form communities and draw in relatives from their native country who are seeking better opportunities.¹⁶⁸ The largest population of people migrating from Latin America to the U.S. come

¹⁶¹ *Id.*

¹⁶² 2022 TIP Report, *supra* note 93, at 245.

¹⁶³ *Id.*

¹⁶⁴ Garza, *supra* note 91, at 426.

¹⁶⁵ *Id.*

¹⁶⁶ *Facts about Human Trafficking in the US*, DELIVERFUND (Apr. 17, 2020), <https://deliverfund.org/facts-about-human-trafficking-in-the-us/> [https://perma.cc/U8TW-UB64].

¹⁶⁷ *Id.*

¹⁶⁸ Christopher Sabatini & Jon Wallace, *Migration in Latin America*, CHATHAM HOUSE (Oct. 6, 2021), <https://www.chathamhouse.org/2021/10/migration-latin-america>. [https://perma.cc/88FV-9DJB].

from Mexico and Central America.¹⁶⁹ The majority of Central American migrants come from the Northern Triangle countries: Honduras, Guatemala, and El Salvador.¹⁷⁰ Specific push factors in these countries are failing states, limited or loss of economic opportunity, crime, and violence.¹⁷¹

Push and pull factors are important when considering human trafficking because traffickers seek to exploit their victim's desire to move toward better opportunities.¹⁷² Victims are usually fleeing from a dangerous situation (push factor) and are falsely promised opportunities that will improve their way of life (pull factor).¹⁷³

In 2018, all three of the Northern Triangle countries were ranked among the most violent countries in the world.¹⁷⁴ In 2022, countries across Latin America continued to experience high murder rates.¹⁷⁵

Table 4-1: Murders Per Capita

	2018 ¹⁷⁶	2020 ¹⁷⁷	2022 ¹⁷⁸
Honduras	40.0 per 100,000	37.6 per 100,000	35.8 per 100,000
Guatemala	22.4 per 100,000	15.3 per 100,000	17.3 per 100,000
El Salvador	51.0 per 100,000	19.7 per 100,000	7.8 per 100,000

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Andrew Yang, *Factors that Lead to Human Trafficking*, THE BORGEN PROJECT (Sept. 24, 2019), <https://borgenproject.org/factors-that-lead-to-human-trafficking/> [<https://perma.cc/A8VU-PRAZ>].

¹⁷³ *Id.*

¹⁷⁴ *Push or Pull Factors: What Drives Central American Migrants to the U.S.?*, NAT'L IMMIGR. F. (July 23, 2019), https://immigrationforum.org/article/push-or-pull-factors-what-drives-central-american-migrants-to-the-u-s/#_ftn13 [<https://perma.cc/4RKf-D855>].

¹⁷⁵ Peter Appleby, Chris Dalby, Sean Doherty, Scott Mistler-Ferguson & Henry Shuldiner, *InSight Crime's 2022 Homicide Round-Up*, INSIGHT CRIME (Feb. 8, 2023), <https://insightcrime.org/news/insight-crime-2022-homicide-round-up/> [<https://perma.cc/F5MU-G7BN>].

¹⁷⁶ Chris Dalby & Camilo Carranza, *InSight Crime's 2018 Homicide Round-Up*, INSIGHT CRIME (Jan. 22, 2019), <https://insightcrime.org/news/analysis/insight-crime-2018-homicide-roundup/> [<https://perma.cc/6S5D-VAHP>].

¹⁷⁷ Parker Asmann & Katie Jones, *InSight Crime's 2020 Homicide Round-Up*, INSIGHT CRIME (Jan. 29, 2021), <https://insightcrime.org/news/analysis/2020-homicide-round-up/> [<https://perma.cc/43DE-J4GC>].

¹⁷⁸ Appleby, Dalby, Doherty, Mistler-Ferguson & Shuldiner, *supra* note 175.

As of 2022, Honduras remained the deadliest country in Central America.¹⁷⁹ Most of the violent deaths were attributed to gangs known for drug trafficking and extortion.¹⁸⁰ In Guatemala, there was a jump in murder victims, who showed signs of torture.¹⁸¹ In El Salvador, homicide rates dropped after the most brutal anti-gang crackdown seen in Latin America.¹⁸² This crackdown was a response to a gang murder rampage in March 2022 but may have come at the cost of alleged human rights abuses.¹⁸³

The Northern Triangle's high crime rates, pervasive gang violence, extreme poverty, and corruption are all crucial push factors for migrants.¹⁸⁴ The gangs target small businesses and poor neighborhoods by collecting payments for "protection," threatening, and harming people, who do not comply with their demands.¹⁸⁵ Innocent people are forced to live under a constant threat of violence.¹⁸⁶ Further, gangs use people's socioeconomic vulnerability to manipulate them and target them for recruitment and extortion.¹⁸⁷

Honduras is one of the poorest countries in the Western Hemisphere.¹⁸⁸ In 2020, almost half of the country's population lived in poverty, with 57.7 percent of those people living in extreme poverty.¹⁸⁹ While Guatemala has been experiencing stable economic growth, poverty and inequality are among the highest in Latin American and the Caribbean.¹⁹⁰ In fact, it has the tenth highest rate of chronic malnutrition in the world, with rural and indigenous populations being disproportionately affected.¹⁹¹ El Salvador, in recent decades, has been experiencing modest economic growth.¹⁹² Still, the rate of people in extreme poverty has increased from 2019 to 2022.¹⁹³

4. Recommendations for Addressing Push Factors

Violence and poverty in these Northern Triangle countries are crucial push factors for many migrants. Traffickers recognize this and use it to their advantage. In a perfect world, these push factors would be addressed with an end to excessive violence and poverty. The people, who were affected, would

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ NAT'L IMMIGR. F., *supra* note 174.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *The World Bank in Honduras*, THE WORLD BANK, <https://www.worldbank.org/en/country/honduras/overview> [https://perma.cc/A3W8-W7S4] (last updated Oct. 4, 2023).

¹⁸⁹ *Id.*

¹⁹⁰ *The World Bank in Guatemala*, THE WORLD BANK, <https://www.worldbank.org/en/country/guatemala/overview> [https://perma.cc/Z4PJ-V3R7] (last updated Oct. 4, 2023).

¹⁹¹ *Id.*

¹⁹² *The World Bank in El Salvador*, THE WORLD BANK, <https://www.worldbank.org/en/country/elsalvador/overview> [https://perma.cc/7259-CGLQ] (last updated Oct. 4, 2023).

¹⁹³ *Id.*

no longer be vulnerable, and traffickers would not be able to take advantage of their fears and aspirations for a better life. Realistically though, those are very difficult problems to solve.

U.S. involvement in developing countries is a sensitive topic with significant history. In 2019, former National Security Advisor John Bolton commented that the “Monroe Doctrine was alive and well.”¹⁹⁴ It was made during a speech where Bolton pledged to topple the dictatorships in Venezuela and Cuba.¹⁹⁵ This comment was made in direct contrast to Obama’s Secretary of State John Kerry, who said: “The era of the Monroe Doctrine is over.”¹⁹⁶ Bolton’s comment spotlighted the outdated mindset that the U.S. has a right to lead in Latin America.¹⁹⁷

In 1823, President James Monroe articulated the U.S.’ policy on the new political order developing in the rest of the Americas and the role of Europe in the Western Hemisphere—this is known as the Monroe Doctrine.¹⁹⁸ The main concepts of the Monroe Doctrine were separate spheres of influence for the Americas and Europe, non-colonization, and non-intervention.¹⁹⁹ Eventually, the doctrine morphed, with the help of the concept of Manifest Destiny, to provide precedent and support for U.S. expansion on the American continent.²⁰⁰ Theodore Roosevelt’s corollary further expanded the Monroe Doctrine and inverted the original meaning to justify unilateral U.S. intervention in Latin America.²⁰¹

After the announcement of the Monroe Doctrine, the U.S. involved itself in many of Latin America’s affairs.²⁰² This involvement petered out after the Cold War, although there are accusations that the U.S. provided at least tacit backing to coups in Venezuela (2002) and Honduras (2009).²⁰³ The U.S. resumed a more assertive role in Latin American affairs when the Trump administration

¹⁹⁴ Ambassador P. Michael McKinley, *Beyond the Summit of the Americas: Resetting U.S. Policy in Latin America*, U.S. INST. OF PEACE (May 25, 2022), <https://www.usip.org/publications/2022/05/beyond-summit-americas-resetting-us-policy-latin-america> [https://perma.cc/6UKK-LH5E].

¹⁹⁵ *The Return of the Monroe Doctrine: A Defeat for a Weak and Divided Latin America*, THE ECONOMIST (Sept. 17, 2020), <https://www.economist.com/the-americas/2020/09/17/the-return-of-the-monroe-doctrine> [https://perma.cc/AX34-5WYP].

¹⁹⁶ *Id.*

¹⁹⁷ McKinley, *supra* note 194.

¹⁹⁸ Monroe Doctrine, 1823, U.S. DEPT. OF STATE OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1801-1829/monroe> [https://perma.cc/N3C5-9T5X].

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Associated Press, *Before Venezuela, US Had Long Involvement in Latin America*, THE ASSOCIATED PRESS (Jan. 25, 2019), <https://apnews.com/article/north-america-caribbean-ap-top-news-venezuela-honduras-2ded14659982426c9b2552827734be83> [https://perma.cc/E5FX-T6LB] (outlining the U.S.’s most notable interventions Latin America).

²⁰³ *Id.*

recognized Juan Guaidó as the interim president of Venezuela.²⁰⁴ Then, in 2019, Venezuelan President Nicolas Maduro accused the U.S. of trying to orchestrate a coup against him.²⁰⁵

These examples show the sensitivity concerning U.S. intervention in Latin America. Thus, the U.S. should not just intervene in the Northern Triangle countries. This is a difficult position to be in because the people in these countries are in situations where they lack many basic human rights. It is reasonable to want to fix this problem, but it is not reasonable to assume a misguided authority over the country and its government. If the government of a country asks for the U.S.' help, the U.S. might provide assistance, as long as the U.S. has the means to do so, and that assistance furthers, in this case, human rights.

5. Recommendations for Addressing Pull Factors

The U.S. should try to control the narrative around pull factors. Many smugglers, or coyotes, knowingly provide false information about the U.S. immigration system to those vulnerable to migration.²⁰⁶ The coyotes orchestrate a "campaign of rumors" that exaggerates the system's navigability and the likelihood of being granted asylum.²⁰⁷ A study of migrants from the Northern Triangle showed that most migrants do not possess any knowledge of the U.S. immigration system.²⁰⁸ This lack of knowledge makes it very easy for the coyotes to orchestrate their disinformation campaign.

The U.S. can try to combat this by coordinating its own campaign of truth. The challenge, though, is how to get this correct information to vulnerable migrants. The coyotes use the "word of mouth" phenomenon to spread their rumors.²⁰⁹ The U.S. should try to establish its own word-of-mouth truth campaign. It could also try to publish brochures and posters with the correct information. This is a problem area where it will likely be very difficult to have a positive impact. Still, the U.S. should work with Mexico and the Northern Triangle countries to broadcast correct information to migrants.

V. CONCLUSION

Both domestically and internationally, human trafficking is challenging to combat. Still, the U.S. can improve how it handles human trafficking within and through its borders. First, the U.S. needs to enhance worker safety by committing to monitoring industries with high rates of migrant workers. This type of monitoring will help protect the workers from being labor trafficked by their employment sponsors. Issuing H-2A visas without monitoring them is not fair to the migrants, who come here for a better life. Workers should also be

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ NAT'L IMMIGR. F., *supra* note 174.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

able to switch employers if they are being exploited and should be made aware of their rights if they are in a trafficking situation. Entities that are responsible for monitoring these industries with migrant workers need to be fully screened for any ties to organizations that exploit the workers. Border and other law enforcement agents need more training and resources to ensure that trafficking victims are spotted and receive help and support.

Together, the U.S. and Mexico should create an effective screening process to identify migrants who are being trafficked as they travel through Mexico and up to the U.S. The U.S. and Mexico share a border where a lot of trafficking takes place, and there needs to be a joint effort to combat this joint problem. Lastly, the U.S. can work with other countries, specifically the Northern Triangle countries, to mitigate push factors and counter misinformation regarding pull factors.