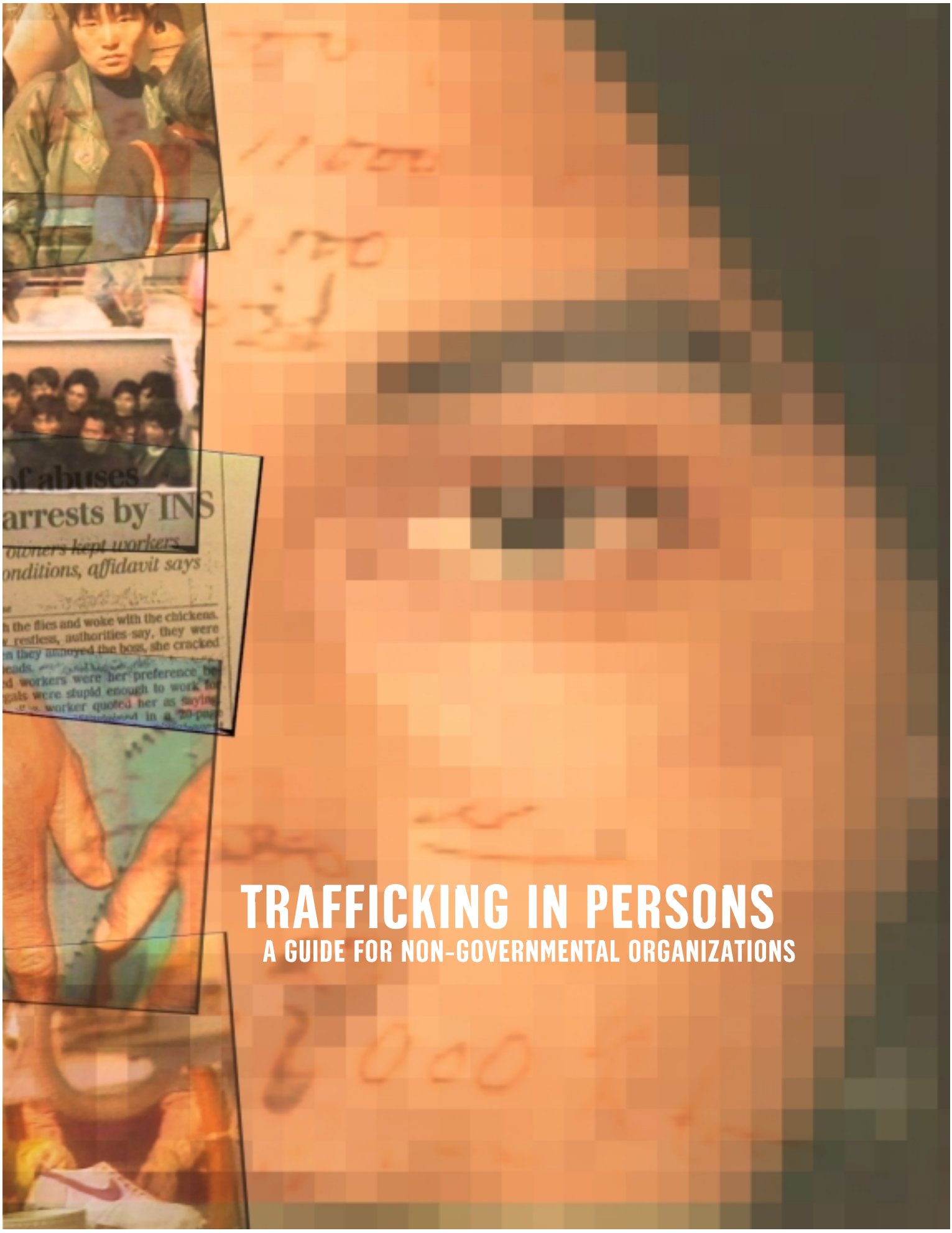
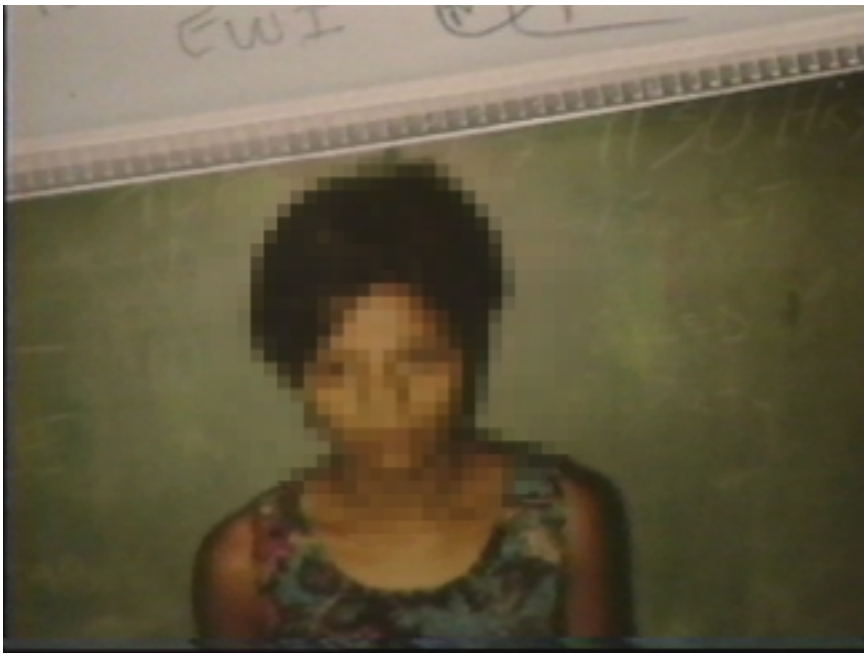


TRAFFICKING IN PERSONS

A GUIDE FOR NON-GOVERNMENTAL ORGANIZATIONS



TRAFFICKING IN PERSONS

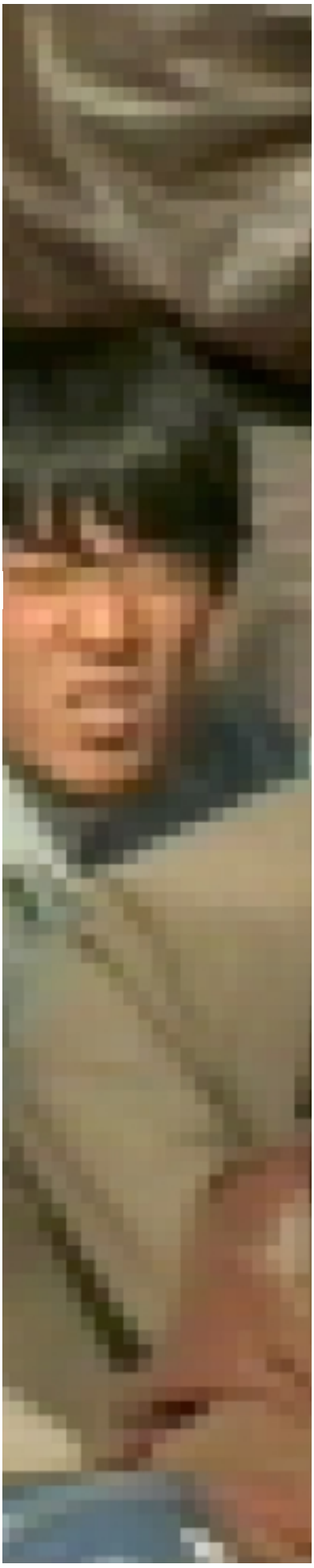
A GUIDE FOR NON-GOVERNMENTAL ORGANIZATIONS

What is trafficking in persons?

Trafficking in persons – also known as "human trafficking" – is a form of modern-day slavery. Traffickers often prey on individuals who are poor, frequently unemployed or under-employed, and who may lack access to social safety nets, predominantly women and children in certain countries. Victims are often lured with false promises of good jobs and better lives, and then forced to work under brutal and inhuman conditions.

Under federal law, the technical term for modern-day slavery or coerced labor is "severe forms of trafficking in persons." "Severe forms of trafficking in persons" is 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 an act is under 18; 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 subjecting that person to involuntary servitude, peonage, debt bondage, or slavery. Many trafficking victims are forced to work in the sex trade. However, trafficking can also take place in labor situations such as domestic servitude, labor in a prison-like factory, or migrant agricultural work. Whether or not an activity falls under the definition of trafficking depends not only on the type of work victims are made to do, but also on the use of force, fraud, or coercion to obtain or maintain that work. There is one exception, however. Trafficking covers the use of minors for commercial sexual activity even if there is no force, fraud, or coercion. Trafficking also covers people who are held against their will to pay off a debt; this is known as peonage. A victim's initial agreement to travel or perform the labor does not allow an employer to later restrict that person's freedom or to use force or threats to obtain repayment.

To report trafficking in persons call (888) 428-7581



What do we know about human trafficking victims in the United States?

The full dimensions of the problem of human trafficking are difficult to measure. We do know, however, that human trafficking is a major source of profit for organized crime syndicates, along with trafficking in drugs and guns. The scope of the problem in the United States is serious: Congress estimates that approximately 50,000 women and children are trafficked into the United States annually.

Victims are often lured into trafficking networks through false promises of good working conditions and high pay as domestic workers, factory and farm workers, nannies, waitresses, sales clerks, or models. Once in this country, many suffer extreme physical and mental abuse, including rape, sexual exploitation, torture, beatings, starvation, death threats, and threats to family members. It is believed that most victims who are trafficked are isolated and remain undetected by the public because 1) the strategies used by the perpetrators isolate victims and prevent them from coming forward, and 2) the public and the victim service providers have only recently become aware of this issue and may not be familiar with how to recognize or respond to trafficking victims.

Are there federal laws that prohibit trafficking in persons?

Yes. The Thirteenth Amendment to the U.S. Constitution outlaws slavery and involuntary servitude (holding another in service through force or threats of force). The Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), Pub. L. No. 106-386, effective October 28, 2000, supplements existing laws that apply to human trafficking including those passed to enforce the Thirteenth Amendment. It also establishes new tools and resources to combat trafficking in persons, and requires an array of services and protections for victims of severe forms of trafficking. Under the VTVPA, federal felony criminal offenses that may apply to trafficking in persons include slavery and peonage, sex trafficking in children and adults, and the unlawful confiscation of a victim's documents. The law applies to victims physically present in the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

In addition to the severe forms of trafficking listed in the VTVPA, there are other existing statutes that may be applicable in particular cases. These include the crimes of 1) human smuggling, 2) kidnapping, 3) transportation for prostitution or any criminal sexual activity, and 4) importation of aliens for unlawful activities, including prostitution, organized crime and racketeering, fraud and false statements, money laundering, and visa fraud.

Traffickers convicted of certain federal offenses under the VTVPA and other statutes may receive prison sentences of up to twenty years for some offenses and up to life for others, may be required to pay substantial fines, and must provide full restitution to victims. They may also be subject to forfeiture of their property.

What are the services and benefits for which victims of severe forms of trafficking may be eligible?

Victims of severe forms of trafficking may be eligible for a number of benefits and services regardless of immigration status. First, the VTVPA allows victims who are not U.S. citizens to be eligible for certain benefits and services to the same extent as refugees. To be eligible to receive this assistance, victims of severe forms of trafficking who are eighteen years or older must be certified by the U.S. Department of Health and Human Services (HHS), after HHS consults with the U.S. Department of Justice. HHS must certify that the victim 1) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons, and 2) has either made a bona-fide application for a T visa with the Immigration and Naturalization Service (INS) or is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons. Victims of severe forms of trafficking who are under eighteen years of age are also eligible for certain benefits to the same extent as refugees but do not need to be certified.

Second, certain government-funded programs, services, and assistance that are necessary for the protection of life and safety, such as crisis counseling and intervention programs for victims of criminal activity, short-term shelter or housing assistance, and mental health assistance necessary to protect life or safety, are available to anyone, regardless of their immigration status.

Victims must be provided reasonable access to translation and interpretation services. In addition, information about *pro bono* and low-cost legal services, including immigration services, is available to victims of severe forms of trafficking.

Moreover, victims of severe forms of trafficking may be eligible for other services and benefits that are generally available to federal crime victims. Federal agencies, such as the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (INS), and U.S. Attorneys' offices have victim specialists who assist victims of federal crimes throughout federal criminal investigations and prosecutions. Victim specialists ensure that victims receive information about their rights and referrals to necessary services. Check government listings of your local telephone directory (often the "blue pages") for your local FBI, INS, and U.S. Attorneys' offices.

Federal victim specialists can provide the following assistance to victims of federal crime:

– Information about available protections, especially against threats and intimidation, and available remedies.
– Information about emergency medical and social services.
– Information about shelter options.
– Referrals to public and private programs available to provide counseling, treatment, and other support to victims, such as domestic violence and rape crisis centers.
– Information about a victim's rights and his or her role in the criminal justice process.
– General information about the status of an investigation and notice of important case events.
– Information about how to apply for crime victim compensation through state compensation programs. (These programs reimburse victims for such crime-related expenses as medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support.)
– Information about restitution.
– Information about the right to individual privacy and confidentiality issues.

Is there any immigration relief available for victims of severe forms of trafficking who lack immigration status in the United States?

Yes. The availability of relief will be determined by the individual circumstances surrounding the victimization and the specific eligibility requirements of the type of relief sought. The victim (or someone acting on the victim's behalf) will need to contact the INS to be issued immigration benefits. In order to evaluate individual eligibility for any specific immigration benefit, victims should seek assistance from a qualified immigration law practitioner.

– Continued Presence: In order to effectuate prosecution of traffickers, eligible victims who lack legal status but who are potential witnesses of such trafficking may receive temporary immigration relief under the continued presence provisions of Section 107(c) of the VTVPA. Only a federal law enforcement agency may petition the INS for continued presence. INS has the discretion to utilize one of several statutory and administrative mechanisms to authorize the continued presence of victims of severe forms of trafficking. Some of the mechanisms available to the INS for this purpose include parole, suspension of removal, and deferred action.

– T Visa: T visas may be available to victims of severe forms of trafficking who have complied with any reasonable requests for assistance in the investigation or prosecution of acts of trafficking. However, minors under the age of fifteen do not have to comply with such requests in order to be eligible for a T visa. In addition, a victim of a severe form of trafficking is eligible to receive a T visa only if he or she is physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry on account of such trafficking, and if he or she would suffer extreme hardship involving unusual and severe harm upon removal.

Deaf Mexicans agree to help slave-ring probers

– U Visa: U visas are available to aliens who have suffered substantial physical or mental abuse as a result of being the victims of certain crimes designated by the VTVPA – including trafficking – that violate federal, state, or local laws or have occurred while in the United States (including in Indian country and military installations) or its territories or possessions. To be eligible for a U visa, the victim must possess information concerning the crime and the U visa petition must include a certification from a government official (as listed in the statute) stating that the victim is helping, has helped, or is likely to be helpful in the investigation or prosecution of the crime.

Recipients of both the T and U visas are eligible for employment authorization, and may, after three years adjust their status to that of lawful permanent resident in accordance with federal law and INS regulations. In appropriate circumstances, these visas may be available to family members of the victim. By statute, only 5,000 T visas and 10,000 U visas may be issued to victims annually. These limits do not apply to family members.

Victims may also be sponsored or apply for other immigration benefits for which they may be eligible, such as an S visa or asylum. Victims should consult with a qualified immigration law practitioner for advice concerning the full range of benefits for which they may be eligible. For more information, please contact the INS or the toll-free Trafficking in Persons and Worker Exploitation Task Force complaint line at (888) 428-7581 (voice and TTY) or your local U.S. Attorney's office.

Can victims of severe forms of trafficking legally work in the United States?

Once again, the answer depends upon the victim's individual circumstances. Under the trafficking law, victims of severe forms of trafficking may be eligible to obtain an employment authorization document that allows them to work legally in the United States. Work authorization can only be granted in conjunction with either the continued presence provisions of the VTVPA or other forms of status issued by INS. Because of the complex nature of immigration law, victims should consult with a qualified immigration law practitioner.

What are some sources of help for victims of severe forms of trafficking who are looking for work?

For help in finding a job, victims can obtain free services from career centers – called One-Stop Career Centers – in communities all over the United States. Staff at these centers will be able to identify the victim's specific educational, vocational and social service needs that will enable them to become job-ready. To obtain information about the nearest center, call (877) USA-JOBS. The information is also available on-line through America's Service Locator at http://www.servicelocator.org.

If victims are denied jobs because employers will not accept their employment documents, they should contact the Office of Special Counsel for Immigration-Related Unfair Employment Practices' toll-free hotline at (800) 255-7688 / TDD (800) 237-2515. Employers who refuse to accept valid documents may be committing unlawful discrimination.

What are some of the federal laws that protect the wages and working conditions of employees in the United States, including victims of severe forms of trafficking?

The Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration is responsible for the administration and enforcement of a wide range of laws that collectively cover most employment. These labor laws, including the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act, establish minimum standards for wages and working conditions in the United States. These laws carry both civil and criminal penalties.

All of the laws administered by the Wage and Hour Division are applicable without regard to immigration status. These laws cover a range of conditions, including: the minimum wage; overtime; the minimum age of employment; and standards for migrant and seasonal farm workers regarding wages, housing, and transportation. In addition, the field sanitation standard of the Occupational Safety and Health Administration requires that covered employers provide toilets, potable drinking water, and hand-washing facilities to hand laborers in the field.

If workers think their rights under any of the labor laws described above have been violated, how can they file a complaint with the Wage and Hour Division?

They can contact the Wage and Hour Division by dialing a toll-free help line at (866) 487-9243. A customer service representative can refer complaints to appropriate offices for further action. Wage and Hour staff will review the merits of the complaint, and, where appropriate, attempt to resolve the complaint with the employer. Where a violation has been found, remedies available to a worker may include payment of back wages or employment reinstatement. All complaints are confidential, to the extent permitted by law, except when it is necessary to reveal the worker's identity, with his and her permission, to pursue an allegation. It is illegal for an employer to intimidate, threaten, fire, or in any other manner discriminate against a worker for filing a complaint.

How can the U.S. Government help you assist victims of severe forms of trafficking?

If you have helped a trafficking victim escape, or are aware of someone who is a of trafficking, the Trafficking in Persons and Worker Exploitation Task Force can help coordinate the victim protection services set forth in this brochure, while moving to prosecute the traffickers. Call the toll-free Trafficking in Persons and Worker Exploitation Task Force complaint line at (888) 428-7581 (voice and TTY) to report a human trafficking situation. This toll-free line is staffed by personnel who have access to interpreters and can speak with callers in many languages. Complaint line staff handle initial reports of trafficking situations, refer cases to prosecutors and investigators, and direct victims or their advocates to appropriate services and assistance.

The VTVPA authorizes the Justice Department to make grants to states, Indian tribes, units of local government, and nonprofit, non-governmental victim service organizations to develop, expand, or strengthen victim service programs for victims of trafficking. The Department of Justice's Office for Victims of Crime (OVC) and the National Institute of Justice are currently funding programs, using limited grant monies not appropriated under the VTVPA. For example, in October 2000, OVC funded a California-based organization to conduct a demonstration project to work with victims of slavery and trafficking in persons in Los Angeles. Information about grants can be obtained from the Department of Justice's Office of Justice Programs' website (http://www.ojp.usdoj.gov) or the OVC website (http://www.ojp.usdoj.gov/ovc/). Furthermore, you can contact the OVC Resource Center at (800) 627-6872 to find out about publications that may be available to assist you in working with trafficking victims.

The Office of Refugee Resettlement (ORR) at HHS provides victims of severe forms of trafficking certifications (for those eighteen and older) and determinations (for minors) which enable these victims to receive certain benefits and services to the same extent as refugees. ORR also works with state refugee agencies to help victims apply for these benefits and services. You can contact ORR at (202) 401-9246.

The National Domestic Violence Hotline ((800) 799-SAFE) provides information on and access to local services that assist domestic violence victims. (Calls are answered in English and Spanish, and translation is available in 139 languages. Hotline assistance may also be accessed via TTY for the Deaf at (800) 787-3224.)

How can victims receive assistance if they are not proficient in English?

The toll-free Trafficking in Persons and Worker Exploitation Task Force complaint line, at (888) 428-7581 (voice and TTY), is staffed by personnel who have access to interpreters and can speak with callers in many languages.

How can you assist the U.S. Government in working to eliminate human trafficking?

Qualified non-governmental organizations who are interested in providing *pro bono* or low cost legal services or social services for victims of human trafficking may contact the toll-free Trafficking in Persons and Worker Exploitation Task Force complaint line at (888) 428-7581 (voice and TTY) to be included in the list of service organizations to be provided to victims.

To report trafficking in persons call (888) 428-7581

RESOURCES

Child Exploitation and Obscenity Section / Criminal Division, U.S. Department of Justice
1400 New York Avenue, NW
Washington, DC 20530
(202) 514-5780
www.usdoj.gov/criminal/ceos
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Criminal Section / Civil Rights Division, U.S. Department of Justice
950 Pennsylvania Avenue
Washington, DC 20530
(202) 514-3204
www.usdoj.gov/crt/crim/index.html
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Executive Office for United States Attorneys, U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 2244A
Washington, DC 20530-0001
(202) 514-1023
www.usdoj.gov/usao/eousa/contact/usalist.html

The Executive Office for United States Attorneys can help you identify your local United States Attorney's office.
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Immigration and Naturalization Service, District Offices
www.ins.gov/graphics/fieldoffices/state map.htm
For general information about trafficking, see:
www.ins.gov/graphics/lawenfor/interiorenf/antitraf.htm
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National Domestic Violence Hotline:
(800) 799-SAFE, (800) 799-7233 or
(800) 787-3224 (TTY for the Deaf)
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Office of the Under Secretary for Global Affairs, U.S. Department of State
2201 C Street, NW
Washington, DC 20520
(202) 647-6240
(202) 647-0753 (fax)
***

Office for Victims of Crime, U.S. Department of Justice
810 7th Street, NW
Washington, DC 20531

The OVC Resource Center provides many tools you may find useful. Ask for assistance by calling (800) 627-6872 TTY (877) 712-9279). OVC has an eighteen minute video entitled "Victims of Trafficking: Far From Home and Helpless."
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Office of Refugee Resettlement, U.S. Department of Health and Human Services
370 L'Enfant Promenade, SW
ORR / 6th Floor East
Washington, DC 20447
(202) 401-9246
www.acf.dhhs.gov/programs/orr/
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Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice
P.O. Box 27728
Washington, DC 20038
(800) 255-7688
TDD: (800) 237-2515
www.usdoj.gov/crt/osc
***

Trafficking in Persons and Worker Exploitation Task Force
Toll-free complaint line: (888) 428-7581 with voice and TTY capability.
www.usdoj.gov/crt/crim/tpwetf.htm

This is for information on victim services and to report a crime.
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Violence Against Women Office (VAWO), U.S. Department of Justice
810 7th St., NW
Washington, DC 20531
(202) 307-6026
www.ojp.usdoj.gov/vawo

VAWO can provide information on domestic violence, sexual assault, and stalking issues.
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Wage and Hour Division, U.S. Department of Labor
Toll-free help line: (866) 487-9243
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Women's Bureau, U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210
(800) 827-5335
www.dol.gov/dol/wb

The Women's Bureau's mission is to formulate standards and policies which promote the welfare of wage-earning women, improve their working conditions, increase their efficiency, and advance their opportunities for profitable employment.
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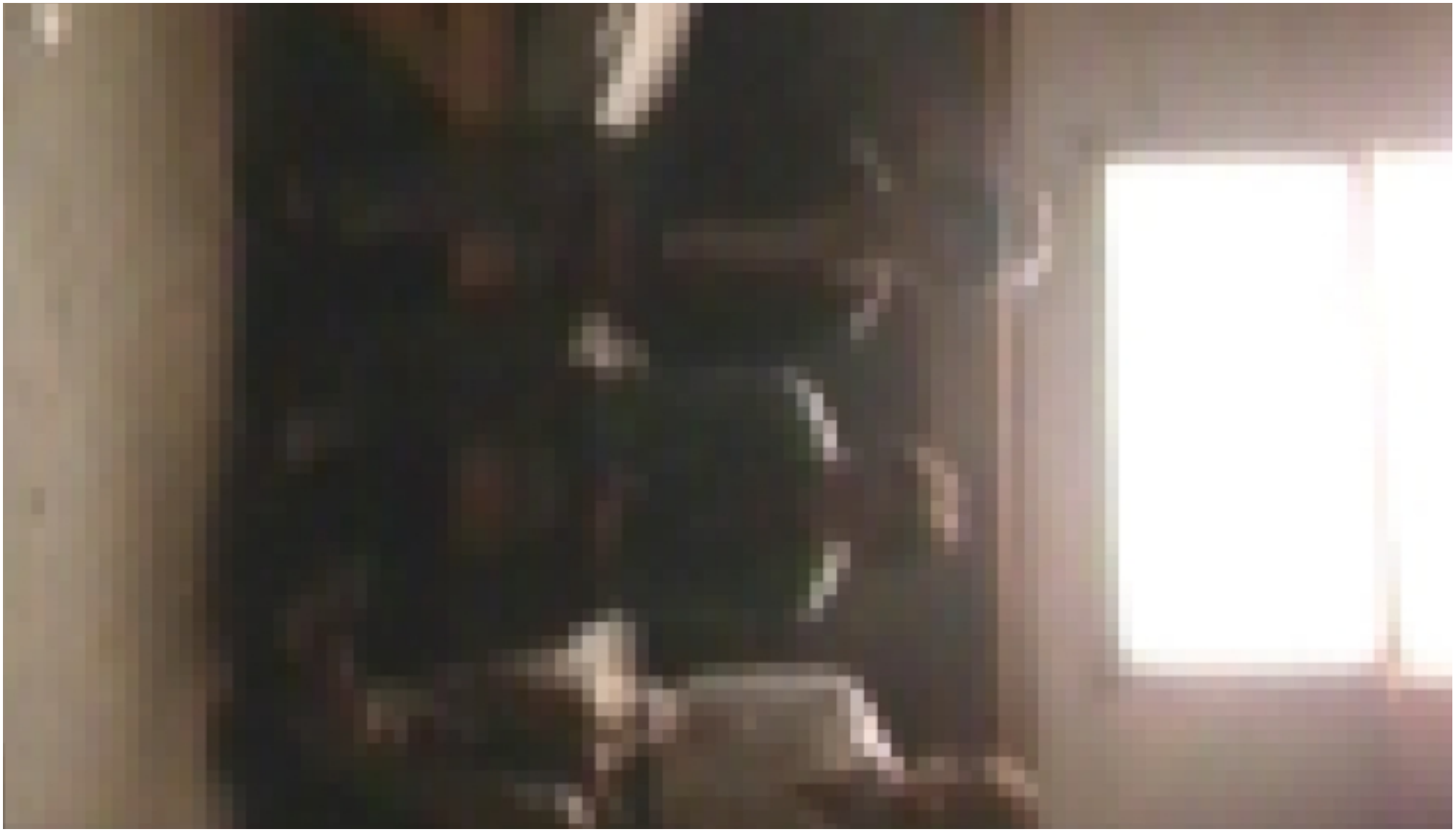

Trafficking victims can be foreign nationals. They can also be native U.S. citizens, especially those who are particularly vulnerable, such as juvenile runaways or the homeless.

This publication was prepared by the Women's Bureau of the U.S. Department of Labor in collaboration with the U.S. Departments of Justice, Health and Human Services, and State. Specific components at the Justice Department include the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Violence Against Women Office, the Office for Victims of Crime, the Executive Office for United States Attorneys, the Civil Rights Division, the Criminal Division, and the Office of Legal Policy. The Office of Refugee Resettlement, a component of the U.S. Department of Health and Human Services, and the Office of International Narcotics and Law Enforcement of the U.S. Department of State also collaborated on this brochure. Published in 2001.

By David Kelly