

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ORGANIZATION OF AMERICAN STATES**

Petition No. 1418-07

SITI AISAH AND OTHERS

v.

UNITED STATES OF AMERICA

***AMICUS CURIAE* BRIEF OF THE HUMAN TRAFFICKING LEGAL CENTER
IN SUPPORT OF PETITIONERS**

June 4, 2024

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GLOSSARY OF ABBREVIATIONS

Abbreviation	Description
American Convention	American Convention on Human Rights: “Pact of San José, Costa Rica” (Nov. 22, 1969), 1144 U.N.T.S. 143 (1979), https://tinyurl.com/2p8y7acc
American Declaration	American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States, Bogotá, Colombia (1948), https://tinyurl.com/4jrjmkz9
Commission Report on Admissibility	<i>Siti Aisah and Others v. United States of America</i> , Petition No. 1418-07, Inter-Am. Comm’n H.R., Report No. 224/20 (Admissibility), OEA/Ser.L/V/II, Doc. 238 (Aug. 27, 2020), https://tinyurl.com/37wecneh
Final Merits Brief	Petitioners’ Final Observations on the Merits (Mar. 12, 2021)
HT Legal	<i>Amicus Curiae</i> Human Trafficking Legal Center
Inter-Am. Ct. H.R.	Inter-American Court of Human Rights
Inter-Am. Comm’n H.R.	Inter-American Commission on Human Rights
ILO	International Labour Organization
NGO	non-governmental organization
OAS	Organization of American States
OAS Charter	Charter of the Organization of American States (1948, as amended), https://tinyurl.com/2p82zkx2
OSCE	Organization for Security and Co-operation in Europe
Petitioners	Siti Aisah, Hilda Ajasi, Raziah Begum, Mabel González Paredes, Otilia Huayta, and Susana Ocares (individual Petitioners); American Civil Liberties Union Foundation; Global Rights; Immigration/Human Rights Clinic of the University of North Carolina School of Law; Andolan Organizing South Asian Workers; Break the Chain Campaign; and CASA of Maryland, Inc.
TIP	United States’ Trafficking In Persons Reports

Abbreviation	Description
TVPA/TVPRA	Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, Div. A (Oct. 28, 2000), 114 Stat. 1466, https://tinyurl.com/mr33nnp2 ; Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193 (Dec. 19, 2003), 117 Stat. 2875, https://tinyurl.com/2xnuynr7 ; Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 (Dec. 23, 2008), 122 Stat. 5044, https://tinyurl.com/22uckaj2 ; Trafficking Victims Protection Reauthorization Act of 2017, Pub. L. 115-427 (Jan. 9, 2019), 132 Stat. 5503, https://tinyurl.com/23tbp6n8
UN	United Nations
U.S.	United States of America

INTEREST OF *AMICUS* HUMAN TRAFFICKING LEGAL CENTER

1. Since its creation in 2012, the Human Trafficking Legal Center (“**HT Legal**”), a non-profit, non-governmental organization (“**NGO**”), has worked to combat human trafficking in the United States through advocacy and litigation. HT Legal has helped hundreds of trafficking victims seek justice in U.S. courts by pairing them with qualified *pro bono* attorneys across the United States.

2. HT Legal has trained more than 5,000 attorneys to handle civil trafficking cases. The organization has also spearheaded advocacy efforts at local and national levels. Locally, it has educated more than 40,000 community leaders about the rights of trafficking victims. Nationally, HT Legal leads the A-3/G-5 Diplomat Trafficking Working Group, a coalition of more than 40 anti-trafficking NGOs and survivor-leaders working to end labor trafficking by diplomats. This coalition has successfully advocated for key policies to protect foreign domestic workers on A-3/G-5 visas in households of diplomats, consular officials, and international organization staff (collectively, “**mission officials**”).

3. As part of its work on civil trafficking cases and combating trafficking by mission officials, HT Legal closely follows, analyzes, and critiques U.S. policy on human trafficking, both at home and abroad. These efforts focus on the legal frameworks that the United States has established through the Trafficking Victims Protection Act (“**TVPA**”), which demands global compliance with anti-trafficking standards, and the Trafficking Victims Protection Reauthorization Act of 2003 (“**TVPRA**”), which creates a domestic cause of action for civil damages in cases of trafficking.

4. HT Legal regularly reviews and comments on the United States’ Trafficking In Persons (“**TIP**”) Reports. The Department of State issues these reports annually, as mandated by the TVPA, to refine anti-trafficking standards, to develop U.S. anti-trafficking policy at the global

level, and to monitor the compliance of foreign States with anti-trafficking standards and policy. HT Legal regularly evaluates whether those standards and policies are legally adequate and appropriate to address current and emerging threats of human trafficking.

5. In addition, HT Legal actively participates in the development of anti-trafficking law and policy at the international level. HT Legal, for example, contributed to the workshops that led to the Organization for Security and Co-operation's ("OSCE") *Handbook: How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers*.¹ This handbook serves as a key reference for international standards and policy in the fight against human trafficking by diplomats and other mission officials at the global level.

6. In addition to work on standards and policy, HT Legal maintains a database of civil trafficking cases brought under the TVPRA, publishing regular analyses of the data that identify emerging and persistent trends and detect system failures. The database and analyses provide key insight into the effectiveness of the anti-trafficking measures that have been taken within the United States. The data show that domestic workers with A-3/G-5 visas continue to suffer human trafficking and forced labor in the United States.

7. HT Legal submits this *amicus* brief in support of the petitioners in *Siti Aisah et al. v. United States of America*, Petition No. 1418-07. It is accompanied by Annex A describing recent allegations from the civil trafficking cases contained in HT Legal's database.

I. INTRODUCTION

8. On April 20, 2023, the U.S. Government submitted a Supplementary Response to the Inter-American Commission on Human Rights. In that submission, "Domestic Workers

¹ OSCE, *Handbook: How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers* (2014), <https://tinyurl.com/9h9uhywk> ("OSCE Handbook").

Employed by Diplomats: Further Observations of the United States of America,” the U.S. Government argued that actions taken subsequent to the Petitioners’ initial filing effectively mooted the Petition.² We disagree. More needs to be done to combat trafficking by mission officials. Impunity is still the norm.

9. The United States’ A-3/G-5 visa program creates the conditions that enable mission officials to commit human trafficking and other abuses against migrant domestic workers. The United States’ current measures do not exhaust the possible actions that it could take—even by its own standards—to protect against and prevent abuses of A-3/G-5 domestic workers in mission official households. Specifically, three policy changes are most urgently required to prevent these abuses and to provide adequate remedies for domestic workers. *First*, the United States must make A-3/G-5 visas portable from employer to employer, ending restrictions on leaving an abusive job. *Second*, the United States must prosecute more forced labor cases—and particularly forced labor perpetuated by diplomats. And *third*, the United States should follow the lead of the United Kingdom Supreme Court and re-interpret the Vienna Convention on Diplomatic Relations to preclude diplomatic immunity as a defense to civil claims for human trafficking.

10. This *amicus* submission comes at an unusual point in the current proceeding. The Commission found the Petition admissible on 27 August 2020, more than three years ago.³ In its decision, it rejected the United States’ position that Petitioners had not made out a colorable claim

² Domestic Workers Employed by Diplomats: Further Observations of the United States of America (Apr. 20, 2023) (“**U.S. Further Observations**”). This filing was received by petitioners in December 2023 in a transmission from the Commission.

³ *Siti Aisah and Others v. United States of America*, Petition No. 1418-07, Inter-Am. Comm’n H.R., Report No. 224/20 (Admissibility), OEA/Ser.L/V/II, Doc. 238 (Aug. 27, 2020), <https://tinyurl.com/37wecneh> (“**Commission Report on Admissibility**”).

for a violation of the American Declaration of the Rights and Duties of Man⁴ (“**American Declaration**”).⁵ Following the Commission’s decision on admissibility, the Petitioners submitted their Final Observations on the Merits on 12 March 2021, in which they further explained why the United States had violated the American Convention on Human Rights (“**American Convention**”).⁶

11. After the Commission ruled on admissibility and Petitioners filed their Final Observations on the Merits, it was incumbent upon the United States to register its defense to the Petitioners’ allegations. But more than three years after the admissibility decision and almost 17 years after this case commenced, the United States still has not submitted any defense on the merits.

12. Instead, the United States filed its U.S. Further Observations in April 2023, reiterating the contention that its efforts to eliminate human trafficking and other abuses of migrant domestic workers by mission officials are not subject to international scrutiny before the Commission. The United States seeks to avoid international scrutiny on the basis that, in the 17 years since Petitioners initiated the current proceedings, it has resolved any problem that may have previously existed with abuse of migrant domestic workers by mission officials.⁷ But this defense fails. Apart from the fact that the United States should not be permitted to benefit from procedural delays for which it is responsible, the United States’ legal defense is clearly incorrect as a matter

⁴ American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States, Bogotá, Colombia (1948), <https://tinyurl.com/4jrjmkz9>.

⁵ Commission Report on Admissibility, p. 6.

⁶ Petitioners’ Final Observations on the Merits (Mar. 12, 2021) (“**Final Merits Brief**”), Sec. III.

⁷ U.S. Further Observations, pp. 10-19.

of Inter-American human rights law.⁸ Migrant domestic workers continue to suffer abuse at the hands of mission officials, and the United States has not implemented the policies necessary to end impunity for these crimes.

13. Furthermore, the United States' position in these proceedings is inconsistent with its previously stated views. In its filings to this Commission in the present matter, the United States has maintained that it is not subject to any pertinent affirmative obligations of due diligence that would require it to take action to protect against and prevent such abuses.⁹ But, according to the United States' proclaimed standards, all States must take effective action—through measures of prevention, protection, and prosecution—to eliminate human trafficking. Moreover, because migrant domestic workers in particular experience heightened vulnerability to human trafficking and other abuses on account of their social isolation, the United States considers that States must exercise heightened diligence to defend their rights. Far from considering that diplomatic immunity renders such efforts impossible, the United States has set forth clear actions that must be taken to combat such abuses by diplomats in particular.¹⁰

14. *Amicus* HT Legal therefore urges the Inter-American Commission to instruct the United States to make its submission on the merits and, absent a prompt submission, to proceed to issue a decision on the merits. The Commission should take all reasonable steps to prevent the United States from further delaying international accountability and to demand that the United States fully comply with its obligations to prevent, protect against, and remedy abuses of domestic workers at the hands of mission officials.

⁸ Petitioners lay out accurately and in detail why the United States is incorrect as a matter of Inter-American human rights law. *E.g.*, Petition, § VII(A); Final Merits Brief, § III(B). HT Legal will not seek to repeat this exposition. However, it fully endorses the arguments of the Petitioners on these issues.

⁹ *E.g.*, Response of the United States of America (May 4, 2016) (“**U.S. Response Brief**”), p. 46.

¹⁰ *See infra* Section II.

II. THE UNITED STATES RECOGNIZES THAT ALL STATES MUST TAKE AFFIRMATIVE MEASURES TO ELIMINATE HUMAN TRAFFICKING AND RELATED ABUSES

15. The United States takes the position in this proceeding that it has no obligation to prevent, protect against, or remedy the violations of the American Declaration and the Charter of the Organization of American States (“OAS Charter”)¹¹ implicated in human trafficking by mission officials,¹² notwithstanding the fact that its issuance of A-3/G-5 visas (including on terms and conditions whereby migrant workers are unable to change employers) makes these abuses possible in the first place. However, the United States itself elsewhere recognizes that all States must take affirmative measures to eliminate human trafficking and related abuses. These obligations recognized by the United States apply equally to itself under international law.

16. The United States is subject to obligations under the American Declaration and the OAS Charter, both of which “are sources of international obligations for all the Member States” of the OAS.¹³ Elaborating on the specific rights that OAS members must protect, the Court has advised:

In the case of migrant workers, there are certain rights that assume a fundamental importance and yet are frequently violated, such as: the prohibition of obligatory or forced labor; . . . special care for women workers, and the rights corresponding to . . . fair wages for work performed, social security, judicial and administrative guarantees, a working day of reasonable length with adequate working conditions (safety and health), rest and compensation. The safeguard of these rights for migrants has great importance based on the principle of the inalienable nature of such rights, which all

¹¹ Charter of the Organization of American States (1948, as amended), <https://tinyurl.com/2p82zkx2>.

¹² *E.g.*, U.S. Response Brief, p. 46 *et seq.*

¹³ Inter-Am. Comm’n H.R., *Compendium on Labor and Trade Union Rights: Inter-American Standards*, OEA/Ser.L/V/II, Doc. 331 (Oct. 30, 2020), <https://tinyurl.com/3kj2w63z>, ¶ 23; *Undocumented Workers v. United States of America*, Inter-Am. Comm’n H.R., Report No. 50/16 (Merits), OEA/Ser.L/V/II.159, Doc. 59, Case 12.834 (Nov. 30, 2016), <https://tinyurl.com/bdzdn5fu>, ¶ 70.

workers possess, irrespective of their migratory status, and also the fundamental principle of human dignity¹⁴

17. The Commission has repeatedly affirmed that the American Declaration requires States to “adopt the legislative, policy, and other measures necessary to guarantee the effective enjoyment” of “fundamental rights and freedoms” assured by the Declaration.¹⁵ As the Commission has also noted, Article 45(b) of the OAS Charter, which establishes the right to work, “further establishes that this right must be observed under ‘proper conditions,’ defined as those that ‘ensure life, health and a decent standard of living for the worker and his family’”¹⁶ The consequence is that the United States is obligated not only to respect rights set forth in the American Declaration and the OAS Charter, but also to affirmatively “protect[] and guarantee these rights.”¹⁷

18. The failure to adopt adequate measures to protect migrant domestic workers from serious harm and abuse by their mission official employers therefore gives rise to the responsibility of the United States for its failure to ensure rights set forth in the American Declaration.

19. Despite the position of the United States in the present case, the affirmative obligations of the United States to eliminate abuses of domestic workers are not in serious doubt, neither as a matter of Inter-American human rights law nor as a matter of international human rights law more generally. The United States’ own practice recognizes that human trafficking and

¹⁴ *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion, Inter-Am. Ct. H.R. (ser. A) No. 18 (Sep. 17, 2003), <https://tinyurl.com/5ebrz78v>, ¶ 157.

¹⁵ *Undocumented Workers*, Commission Report, *supra* n. 13, ¶ 72. See also *Maya Indigenous Community of the Toledo District v. Belize*, Inter-Am. Comm’n H.R., Report No. 40/04 (Merits), OEA/Ser.L/V/II.122, Doc. 5 rev. 1, Case 12.053 (Oct. 12, 2004), <https://tinyurl.com/mtapbax4>, ¶ 162; *Jessica Lenahan (Gonzales) et al. v. United States*, Inter-Am. Comm’n H.R., Report No. 80/11 (Merits), Case 12.626 (July 21, 2011), <https://tinyurl.com/49xm4uzf>, ¶¶ 117–18.

¹⁶ *Undocumented Workers*, Commission Report, *supra* n. 13, ¶ 95. See also *Workers of the Fireworks Factory in Santo Antônio de Jesus and Their Families v. Brazil*, Judgment (Preliminary Objections, Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 4 (July 15, 2020), <https://tinyurl.com/2p99ezkt>, ¶ 155.

¹⁷ *Undocumented Workers*, Commission Report, *supra* n. 13, ¶ 110.

related abuses, including by mission officials, are an international scourge against which all States are required to take effective measures. In light of this practice, the United States should not be heard to deny that it is subject to such obligations as a matter of Inter-American human rights law.

A. The United States Recognizes that All States Must Take Effective Action to Eliminate Human Trafficking and Related Abuses

20. The United States argues in this proceeding that it is not subject to any international obligations of due diligence, based on its assertion that the OAS Charter and the American Declaration do not expressly reference any such obligations.¹⁸ It argues that, as a general principle, “a human rights violation under international law entails state action,” and therefore it has no affirmative obligation of due diligence.¹⁹

21. However, the United States’ own practice—expressly based on international law *including* the American Declaration—demands that every State exercise due diligence to eradicate human trafficking. The United States defines human trafficking broadly to include “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.”²⁰ As the United States has stated, “[w]hat is clear is that governments have an obligation to address *all forms of human trafficking*, those both with and without a transnational element.”²¹

¹⁸ U.S. Response Brief, p. 46 *et seq.* Human rights obligations are traditionally divided into obligations to respect, protect, and fulfill human rights. The United States is, in effect, denying that it has any obligation under the American Declaration or the OAS Charter to protect or fulfill human rights because those instruments do not mention such obligations. However, it must be noted that the American Declaration also contains no mention of an obligation to respect human rights. Therefore, on the United States’ logic, it also lacks such obligations under the American Declaration and the OAS Charter. This logic therefore cannot be correct.

¹⁹ *Id.*, p. 46.

²⁰ U.S. Department of State, *Trafficking In Persons Report* (June 2023), <https://tinyurl.com/28av2utn>, p. 10.

²¹ U.S. Department of State, *Trafficking In Persons Report* (June 2019), <https://tinyurl.com/bdzzffyp>, p. 4 (emphasis added). “A government’s obligation to confront modern slavery is tied to the fact that trafficking in persons is (continued...)”

22. The United States has created an elaborate legislative framework and bureaucracy to ensure that *foreign* States take such positive action to eliminate human trafficking. Since 2000, the United States has established and maintained a legislative framework—based on the Trafficking Victims Protection Act²²—“designed to protect victims of sex and labor trafficking, prosecute traffickers, and prevent human trafficking in the United States and abroad.”²³ Its centerpiece is the delineation of the minimum standards for the elimination of trafficking that the United States considers all foreign States must meet. To demand compliance with these standards, the United States prepares an annual report—the Trafficking in Persons Report—“that ranks governments’ efforts to combat trafficking in persons” and penalizes those foreign States that fall short.²⁴ In adopting and maintaining this framework, the United States recognizes that “trafficking in persons involves grave violations of human rights and is a matter of pressing international concern.”²⁵

23. Because trafficking is a matter of international concern, the United States believes that all States “must recognize that trafficking is a serious offense,” “prescrib[e] appropriate punishment, giving priority to the prosecution of trafficking offenses, and protect[] rather than punish[] the victims of such offenses.”²⁶ Indeed, the United States has enacted legislation codifying this view. These obligations, which the United States considers to be incumbent on all

first and foremost a crime, and only governments can prosecute suspects and incarcerate criminals.” U.S. Department of State, *Trafficking In Persons Report* (June 2014), <https://tinyurl.com/57szsh35>, p. 13. See also U.S. Department of State, *Trafficking In Persons Report* (June 2012), <https://tinyurl.com/2pd3p5wz>, p. 8 (“Like previous editions, the 2012 Trafficking in Persons Report satisfies a statutory mandate to look closely at how governments around the world are fulfilling their obligations to combat this crime.”).

²² The TVPA as referenced here includes its subsequent reauthorizations and amendments.

²³ U.S. Department of State, *Trafficking In Persons Report* (June 2020), <https://tinyurl.com/cr6a744z> (“**2020 TIP Report**”), p. 3.

²⁴ *Id.*, p. 3.

²⁵ TVPA, § 102(b)(23).

²⁶ *Id.*, § 102(b)(24).

States, are expressly grounded in international instruments. As the United States reports, “[t]he international community has repeatedly condemned . . . trafficking[] through declarations, treaties, and United Nations resolutions”²⁷ The United States *specifically* identifies the 1948 American Declaration as one of these key international instruments.²⁸

24. Grounded in such international instruments, including the American Declaration governing the current Petition, the TVPA sets forth the minimum standards for elimination of trafficking that the United States considers to be incumbent on all foreign States. All foreign States “should make serious and sustained efforts to eliminate severe forms of trafficking in persons.”²⁹ The United States considers that the efforts all States should make include, *inter alia*, the following affirmative actions of due diligence:

- Vigorous investigation, prosecution, conviction, sentencing, and incarceration of trafficking perpetrators;³⁰
- Adoption of measures to prevent trafficking and forced labor in violation of international standards;³¹
- Cooperation in the investigation and prosecution of trafficking and conclusion of formal agreements with other States to that end;³²
- Extradition of persons charged with trafficking;³³

²⁷ *Id.*, § 102(b)(23).

²⁸ *Id.*, § 102(b)(23) (providing that the “international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports, including . . . the 1948 American Declaration on the Rights and Duties of Man[.]”).

²⁹ *Id.*, § 108(a)(4).

³⁰ *Id.*, § 108(b)(1).

³¹ *Id.*, § 108(b)(3).

³² *Id.*, § 108(b)(4).

³³ *Id.*, § 108(b)(5).

- Monitoring of immigration and emigration as well as investigation and prosecution of trafficking;³⁴ and
- Vigorous investigation, prosecution, conviction, and sentencing of public officials, *including diplomats*, who participate in trafficking.³⁵

25. In order to demand foreign compliance with these minimum standards, the United States publishes the annual Trafficking in Persons Report grading States on their efforts to eliminate trafficking. Depending on the United States’ assessment of compliance, each State is categorized, from best to worst, into Tier 1, Tier 2, Tier 2 Watch List, or Tier 3.³⁶ As penalties for those States that have not adequately complied with the minimum standards, the United States may withhold nonhumanitarian, nontrade-related assistance to such States.³⁷

26. The Trafficking in Persons Reports confirm that all States must take affirmative actions of due diligence to prosecute, prevent, and protect against human trafficking—known as the “3P” paradigm.³⁸ The Reports commend States when they engage in such efforts—for example, where they “conduct outreach to domestic workers associated with foreign diplomats, without their employers present, on how to report cases of abuse.”³⁹ The Reports also criticize

³⁴ *Id.*, § 108(b)(6).

³⁵ *Id.*, § 108(b)(7).

³⁶ See Trafficking Victims Protection Reauthorization Act of 2017, Pub. L. 115-427 (Jan. 9, 2019), 132 Stat. 5503, <https://tinyurl.com/23tbp6n8>, § 6.

³⁷ Trafficking Victims Protection Reauthorization Act of 2017, *supra* n. 36 § 6.

³⁸ See, e.g., U.S. Department of State, *Trafficking In Persons Report* (June 2021), <https://tinyurl.com/5erd9x3k> (“**2021 TIP Report**”), p. 26 (containing a list of approaches for states to address domestic servitude in diplomatic households). The United States expects that each State “vigorously investigates, prosecutes, convicts, and sentences public officials, including diplomats . . .” U.S. Department of State, *Trafficking In Persons Report* (July 2022), <https://tinyurl.com/4sddrn98> (“**2022 TIP Report**”), p. 61. This minimum standard is violated when a government fails to “screen proactively for trafficking among vulnerable populations,” or to “allocate adequate financial or human resources to effectively respond to trafficking crimes and provide comprehensive victim support throughout the country.” *Id.*, pp. 184, 268.

³⁹ 2022 TIP Report, p. 411 (Netherlands).

those States that have fallen short of the minimum standards considered to be applicable to all States, including the need to provide adequate procedures for trafficking victims to seek redress.⁴⁰

27. The notion that the United States should not be held accountable for failure to take the due diligence actions required under the American Declaration is flatly inconsistent with its own positions and practice. All that the OAS Charter and the American Declaration require of the United States are affirmative actions of due diligence similar or identical to those that the United States itself demands of all States.

B. The United States Recognizes that Heightened Vulnerability Creates Heightened Obligations

28. The United States' argument in this proceeding that international human rights law, as a general matter, imposes no affirmative obligations on States and may not be breached absent affirmative State action⁴¹ is also out of touch with its own statements and practice regarding migrant domestic workers in particular. In demanding that all States eliminate human trafficking, the United States has repeatedly recognized that States have heightened obligations to migrant domestic workers because of their special vulnerability. As stated in its Trafficking in Persons Reports, “[g]overnments of destination countries for migrant workers have a special obligation to ensure that those workers are not subjected to servitude.”⁴² This is because “[m]igrants are vulnerable to modern slavery.”⁴³

⁴⁰ In the 2022 TIP Report, the United States criticized Ireland for failing to meet obligations since it “did not report awarding restitution or compensation for trafficking to any victims in 2021.” *Id.*, p. 298. It also faulted Italy because “[t]he government did not award restitution from criminal cases or damages from civil suits to any trafficking victims.” *Id.*, pp. 309–10. It criticized Jamaica for failing to meet obligations as “no victims were awarded restitution.” *Id.*, p. 310.

⁴¹ U.S. Response Brief, p. 46 *et seq.*

⁴² U.S. Department of State, *Trafficking In Persons Report* (June 2007), <https://tinyurl.com/y9jdcchx> (“**2007 TIP Report**”), p. 16. “Even when policies are in place to allow for legal labor migration, governments must act to ensure the protection of migrants throughout the process.” U.S. Department of State, *Trafficking In Persons Report* (June 2011), <https://tinyurl.com/23jrdbt7> (“**2011 TIP Report**”), p. 26.

⁴³ 2011 TIP Report, p. 26.

29. The United States’ position closely tracks that of the Inter-American system. The jurisprudence of the Court and Commission similarly establishes that the risks to migrants employed in private homes require the United States to undertake heightened, not diminished, measures of protection.⁴⁴ As the Court has observed, migrants “are generally in a vulnerable situation as subjects of human rights” as a result of their “absence or difference of power” compared to non-migrants.⁴⁵ For this reason, “the international community has recognized the need to adopt special measures to ensure the protection of the human rights of migrants.”⁴⁶

30. Paralleling such international legal principles,⁴⁷ the United States accepts that threats of deportation and confiscation of passports may transform once-voluntary employment relationships into forced labor. It reports that “[t]raffickers often rely on the confiscation of travel documents—passports, identity cards and airline tickets—as a means of gaining and exercising control over a victim.”⁴⁸ This is because, “[w]ithout these vital documents, migrants are vulnerable to arrest, punishment, and/or deportation.”⁴⁹

31. At the same time, the United States accepts that migrant workers are vulnerable to human trafficking because the actual working conditions provided by employers often differ

⁴⁴ As the Court has recognized, “it is essential that [States] adopt positive measures, *determined based on the particular needs for protection of the subjects of law*, due either to their personal condition or to the specific situation in which they find themselves.” *Workers of the Fireworks Factory*, Judgment, *supra* n. 16, ¶ 115 (emphasis added). *See also id.*, ¶ 198; *Undocumented Migrants*, Advisory Op., *supra* n. 14, ¶ 104.

⁴⁵ *Undocumented Migrants*, Advisory Op., *supra* n. 14, ¶ 112. *See also id.*, ¶ 131 (“The vulnerability of migrant workers as compared to national workers must be underscored”).

⁴⁶ *Id.*, ¶ 117 (citation omitted).

⁴⁷ As the ILO recognizes, “menace of penalty” can include “denunciation to . . . immigration [authorities] and deportation” and requiring workers to turn over identity papers.” ILO, *A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights of Work* (2005), <https://tinyurl.com/25ebv2zx>, pp. 5–6.

⁴⁸ 2007 TIP Report, p. 22.

⁴⁹ *Id.*, p. 22.

dramatically from those originally promised in employment contracts.⁵⁰ The United States recognizes the existence of a frequent practice whereby “[s]ome employers make employees sign new contracts at their destination, while others alter contracts without the knowledge or consent of workers.”⁵¹ When subject to these changes of working conditions from what was initially agreed, “an individual’s vulnerability to forced labor increases dramatically.”⁵²

32. As recognized by the United States, the inherent vulnerability of migrant workers to human trafficking—in the form of domestic servitude—is only increased when they engage in domestic work in a private residence.⁵³ This is because domestic workers “are generally isolated from the outside world, preventing them from accessing help or warning others of the dangers of domestic service.”⁵⁴ They are often dependent on their employer for “their access to food, transportation, and housing.”⁵⁵ And the outside world—most notably law enforcement—has limited or no visibility into “[w]hat happens in a private residence,”⁵⁶ absent implementation of special measures.

33. Identifying factors that give rise to involuntary domestic servitude, a form of human trafficking⁵⁷ that occurs in private homes, the United States also notes that “[l]abor officials

⁵⁰ U.S. Department of State, *Trafficking In Persons Report* (June 2010), <https://tinyurl.com/4vccxpp> (“**2010 TIP Report**”), p. 41.

⁵¹ *Id.*

⁵² U.S. Department of State, *Trafficking In Persons Report* (July 2015), <http://tinyurl.com/4r7zn42m>, p. 17.

⁵³ 2010 TIP Report, p. 32 (“Domestic workers are vulnerable to all forms of abuse, though forced labor is one of the most severe. Such abuses often include confinement, confiscation of travel documents, withholding of salary, physical and sexual abuse, and threats of harm, including the threat of arrest and summary deportation as an undocumented migrant.”).

⁵⁴ 2007 TIP Report, p. 13; *id.* (“Domestic workers report being confined to the house and not allowed to speak to neighbors or guests, to make phone calls, or even write letters to their families.”).

⁵⁵ 2021 TIP Report, p. 26.

⁵⁶ *Id.*, p. 26.

⁵⁷ The widely-ratified Palermo Protocol defines human trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, (continued...)

generally do not have the authority to inspect employment conditions in private homes.”⁵⁸ It recognizes that many countries do “not offer protection to domestic workers under prevailing labor laws, perceiving their work as something other than regular employment.”⁵⁹ Indeed, even where these labor laws apply, the United States has acknowledged in the Trafficking in Persons Reports that the “significant underfund[ing]” of government agencies responsible for their enforcement has “inhibited meaningful or systematic enforcement of labor laws and detection of forced labor in industry supply chains.”⁶⁰ The “social isolation and a lack of personal autonomy” of domestic workers in combination with “[t]his lack of legal protections” creates a heightened risk that domestic service may become domestic servitude.⁶¹

34. As the United States underscores in the Trafficking in Persons Reports, “[m]illions of migrant domestic workers around the world – including some employed by diplomats . . . – are particularly vulnerable to forced labor.”⁶² Beyond the inherent risks of domestic service, it explains that foreign domestic workers experience “language and cultural barriers, as well as a lack of community ties,” that increase their susceptibility to human trafficking.⁶³ It reports that many perpetrators take advantage of these vulnerabilities to reduce domestic workers to conditions of forced labor.⁶⁴

of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Nov. 15, 2000), 2237 U.N.T.S. 319 (2005), <https://tinyurl.com/4r3f5dvm>, Art. 3(a).

⁵⁸ U.S. Department of State, What Is Modern Slavery?, <https://tinyurl.com/4pu5x43n>.

⁵⁹ 2010 TIP Report, p. 32.

⁶⁰ 2022 TIP Report, p. 581.

⁶¹ 2010 TIP Report, p. 32.

⁶² *Id.*

⁶³ 2021 TIP Report, p. 26.

⁶⁴ *Id.*

35. The potential for these abuses is heightened when the abusers hold the status of mission officials. As the United States recognizes, “[t]here is a significant power disparity between a diplomat, who is a government official of some standing, and a domestic worker, who likely has a modest background and may have limited education or language skills.”⁶⁵ Such domestic workers are often “aware of the special status of diplomats and may believe that rules of accountability do not apply to their employers and that it is hopeless to seek help.”⁶⁶ Exacerbating their vulnerability, domestic workers “are usually legally resident . . . only by virtue of their employment by the diplomat” and therefore “may remain in exploitative situations because they feel they have no other options.”⁶⁷

36. Migrant domestic workers whose status in the United States derives from employer-sponsored visas face much the same vulnerabilities as workers in other foreign States whose practices have drawn sharp criticism from the U.S. State Department. In the context of reporting on labor practices in the Gulf region, the United States has rightly observed that tying an employee’s legal presence in a country to an employer-sponsored visa “enable[s] abusive employers to use unscrupulous employment practices[.]”⁶⁸ Just as for mission official-sponsored visas, the United States reports that under such systems “migrant workers who leave their place of

⁶⁵ U.S. Department of State, *Trafficking In Persons Report* (June 2018), <https://tinyurl.com/y67acckk> (“**2018 TIP Report**”), p. 26. See also 2010 TIP Report, p. 38 (“They work for government officials who may appear to them to hold exceptional power and/or influence. The resulting invisibility and isolation of such workers raises concerns about the potential for diplomatic employers to ignore the terms of their employment contracts and to restrict their domestic workers’ freedom of movement and subject them to various abuses.”).

⁶⁶ 2018 TIP Report, p. 26.

⁶⁷ *Id.* As the United States also recognizes, “these workers are often isolated from the community beyond the diplomat’s family due to lack of familiarity with the language, institutions, and culture of the country in which they are employed.” *Id.*; 2010 TIP Report, p. 38 (“Domestic workers brought into a country by diplomats face potentially greater isolation than other workers because of language and cultural barriers, ignorance of the law, and sheer distance from family and friends.”).

⁶⁸ 2021 TIP Report, p. 42. The United States’ position reflects that of international authorities. See also ILO, *Employer-Migrant Relationships in the Middle East: Exploring Scope for Internal Labour Market Mobility and Fair Migration* (White Paper, Mar. 2017), <https://tinyurl.com/5etvc3vc>, p. viii.

employment without permission from their employer forfeit their legal status”⁶⁹ As a result, victims “are coerced either to remain in an exploitative position or leave their sponsor and face arrest, detention, or deportation for immigration offenses, or even punishment”⁷⁰

37. The United States has recognized both the inherent vulnerability of migrant domestic workers and the heightened obligations incumbent on all States to eliminate abuses against them—especially when employed by mission officials. The OAS Charter and the American Declaration impose precisely such obligations upon the United States.

C. The United States Recognizes that All States Must Take Effective Action, even against Abuses by Mission Officials

38. The United States has argued in this proceeding that the content of any applicable due diligence obligation is unclear and, in any event, trumped by diplomatic immunity principles.⁷¹ The United States assumes that court proceedings are the primary action it could take against human trafficking and other abuses by diplomats and, if diplomatic immunity precludes such proceedings, there is little that the United States could be called upon to do.⁷²

39. This overly narrow conception of its possible obligations does not withstand scrutiny. The United States’ practice—grounded in the American Declaration as well as other international instruments⁷³—specifies an ample set of affirmative actions of due diligence that all

⁶⁹ 2021 TIP Report, p. 42.

⁷⁰ *Id.* The United States’ position is in line with that of international experts. In the words of a UN Special Rapporteur on contemporary forms of slavery, a live-in migrant domestic worker in these states “who is dismissed can find herself from one moment to the next in the street with no income, legal residence status, family support network, return air ticket or right to seek another job.” U.N. General Assembly, Human Rights Council, Report of the Special Rapporteur on Contemporary Forms of Slavery, including Its Causes and Consequences, Gulnara Shahinian, U.N. Doc. A/HRC/15/20 (June 18, 2010), <https://tinyurl.com/jtfaau4>, ¶ 54.

⁷¹ U.S. Response Brief, pp. 11, 46.

⁷² U.S. Response Brief, p. 11. In support, the United States cites, among other things, a law review article from 1990 analyzing “cases decided by international tribunals” *Id.*, p. 52 (citing Dinah L. Shelton, *Private Violence, Public Wrongs, and the Responsibility of States*, 13 FORDHAM INT’L L.J. 1, 22-23 (1990)).

⁷³ TVPA, § 102(b)(23).

States must take to eliminate human trafficking by diplomats, notwithstanding diplomatic immunity. These same actions would apply, even more so, to eliminate human trafficking by non-diplomat mission officials, as they do not enjoy the same immunities. As the United States emphasizes in the Trafficking in Persons Report, “diplomats should be held accountable for exploitation of domestic workers.”⁷⁴ The United States bases this demand for accountability on the fact that, “[w]orldwide, domestic workers employed by diplomats suffer abuses ranging from wage exploitation to trafficking offenses.”⁷⁵

40. The United States accepts that there are numerous affirmative actions of due diligence that can and should be taken to prevent, protect, and prosecute trafficking crimes by diplomats and, all the more so, by other mission officials. These actions may even have punitive effects on the perpetrators of human trafficking and other abuses.⁷⁶ In identifying these affirmative actions, the United States categorizes them based on its 3P paradigm for combating trafficking—prevention, protection, and prosecution—reflected in, among other places, its Trafficking in Person Reports.⁷⁷

41. *First*, the United States specifies that the following measures may prevent diplomats from trafficking and abusing domestic workers:

- Requiring written contracts that specify wages, hours, holidays, medical care in a language the foreign domestic worker understands;

⁷⁴ 2018 TIP Report, p. 26.

⁷⁵ 2010 TIP Report, p. 38.

⁷⁶ 2007 TIP Report, p. 15 (“While diplomatic immunity can block traditional law enforcement responses to trafficking crimes, there are alternatives to prosecution that can have a punitive effect on offenders.”).

⁷⁷ 2018 TIP Report, pp. 26–27. The United States also endorses the OSCE Handbook. U.S. Department of State, *Trafficking In Persons Report* (June 2015), <https://tinyurl.com/4xxdvp75>, p. 21. The United States also expressly commends the 2013 Addendum to the OSCE Action Plan (OSCE, Decision No. 1107 (Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later), PC.DEC/1107/Corr.1 (Dec. 6, 2013), <https://tinyurl.com/zxs286ap>). 2018 TIP Report, p. 30.

- Prohibiting employers from holding identity and travel documents;
- Requiring in-person registration by the domestic worker with the host government without employer present;
- Requiring payment of wages through direct deposit into a bank account held solely by the domestic worker;
- Establishing minimum wages and limiting deductions from salary for food and lodging; and
- Limiting the number of domestic workers that may be employed by any one diplomat and prohibiting family members from accompanying those workers.⁷⁸

42. *Second*, according to the United States, the following are measures to protect domestic workers employed by diplomats:

- Raising allegations of exploitation with the ambassador and requesting a timely response;
- Limiting any further visas for domestic workers by employees of diplomatic mission until the allegations are satisfactorily resolved;
- Engaging with foreign governments to encourage their diplomats to settle and/or pay any court judgments in civil suits;
- Encouraging diplomats to address any allegations against them and provide compensation to the domestic worker; and
- Establishing alternative dispute resolution mechanisms to address disputes between domestic workers and diplomat employers.⁷⁹

43. *Third*, the United States also recognizes that States may take “serious action to hold diplomats accountable.”⁸⁰ For most mission officials, specifically those without full diplomatic immunity, there is no legal barrier to immediate accountability. And criminal prosecution of diplomats is possible in cases where the sending State is asked and agrees to waive diplomatic

⁷⁸ 2018 TIP Report, pp. 26–27.

⁷⁹ *Id.*, p. 27.

⁸⁰ *Id.*

immunity, or after the end of the diplomat’s posting, at which point diplomatic immunity extends only to official actions.⁸¹ The United States therefore endorses the following actions in the

Trafficking in Persons Reports:

- Requesting the sending State to waive diplomatic immunity to allow for prosecution;
- Requiring the diplomat and family members to depart if a waiver is not granted;
- Conducting domestic investigation of abuse through domestic law enforcement; and
- Issuing INTERPOL “red notices” regarding the diplomat and/or family members.⁸²

44. The United States’ Trafficking in Persons Reports also suggest that a number of additional measures are available to the United States to combat human trafficking and abuses by diplomats, including:

- Requiring a waiver of immunity from human trafficking and related charges as a condition for issuing A-3/G-5 visas;⁸³
- Investigating and prosecuting all human trafficking and related abuses by diplomats following the end of diplomatic postings;⁸⁴

⁸¹ The 2018 TIP Report notes that:

[I]t is increasingly understood that there is a temporal limit to the immunity enjoyed by diplomats and their family members. The Vienna Convention on Diplomatic Relations provides that, after a diplomat leaves his or her position, the diplomat enjoys a limited form of immunity that extends only to the diplomat’s “official acts” while he or she was accredited. Employment of a domestic worker is widely recognized not to be an official act, thus domestic workers have successfully sued diplomats (and their spouses) *after* diplomatic status has been terminated for abuses alleged to have occurred while the diplomats were accredited.

Id., p. 26 (emphasis in original).

⁸² *Id.*, p. 27.

⁸³ *See id.* (recommending a *post facto* request for immunity waiver).

⁸⁴ 2020 TIP Report, p. 211 (France) (commending the government for convicting “a former Burundian diplomat and his spouse for labor trafficking and the exploitation of a domestic worker for 10 years; courts suspended both sentences but issued a fine.”).

- Allowing A-3/G-5 visa holders to change their “employer voluntarily and without prior sponsor permission, fees, penalties, or loss of residency status”;⁸⁵ and
- Suspending or ending the A-3/G-5 visa program in its entirety in the event that other measures prove inadequate.⁸⁶

45. In line with its positions on combating trafficking, the United States has regularly commended foreign States in its Trafficking in Persons Reports for overcoming the obstacle of diplomatic immunity in seeking accountability for foreign diplomats.⁸⁷ Even where a State considered itself limited by the doctrine of diplomatic immunity, the United States has praised various foreign States for finding alternative solutions to direct criminal prosecution, such as conducting criminal investigations and pressuring diplomats suspected of trafficking to leave the country.⁸⁸ In particular, it made a positive note of the United Kingdom Supreme Court’s holding

⁸⁵ 2021 TIP Report, p. 43.

⁸⁶ 2020 TIP Report, p. 184 (Czech Republic) (commending the fact that “[t]he government temporarily stopped issuing authorizations for domestic employees of accredited diplomatic personnel in November 2018 because several diplomatic households violated their contracts with their domestic employees.”).

⁸⁷ *See id.*, p. 513 (United Kingdom) (commending the UK’s prosecution efforts with regard to human trafficking offenses, which included “the Employment Tribunal rul[ing] that claiming diplomatic immunity did not protect against trafficking charges.”).

⁸⁸ For example, the U.S. State Department commended Austria in 2012 (well in advance of the Government’s Response) for meeting its obligations to combat human trafficking. It noted that:

The government reported that several diplomats left the country in 2011 due to pressure from the Austrian government, which included requiring diplomats suspected of trafficking to renew their diplomatic identification cards every three months.

U.S. Department of State, *Trafficking In Persons Report* (June 2012) (Country Narrative), <https://tinyurl.com/4jjmy47f>, p. 75 (Austria). In the same report, the United States commended Belgium for meeting its obligations. It noted that:

The government aggressively investigated alleged forced labor involving the diplomatic community, despite immunity challenges posed by these specific offenders. . . . Even though a trafficking perpetrator enjoying diplomatic immunity could not be subject to criminal prosecution, the government reported that launching a criminal investigation . . . will render the victims eligible for government protection . . . [the victims] can still file a civil court claim for compensation for damages; [and] . . . the Ministry of Foreign Affairs can use the investigation as a basis for action to prevent future cases.

Id., pp. 86–87 (Belgium).

that a “foreign diplomat will not have immunity from civil jurisdiction in UK courts” when the actions of that diplomat constitute human trafficking.⁸⁹

46. Thus, far from it being impossible to combat human trafficking and related abuses by diplomats or other mission officials, or it being unclear what actions could be taken, the United States has identified and endorsed many affirmative actions of due diligence that can and must be taken.

III. THE UNITED STATES HAS NOT TAKEN SUFFICIENT MEASURES TO ELIMINATE ABUSES BY MISSION OFFICIALS, DESPITE SOME PROGRESS

47. In its Responses to Petitioners and in its Further Observations brief, the United States touts the measures it implemented in 2008, 2009, and post-2016, arguing that these steps rectify the circumstances of domestic workers under A-3/G-5 visas that led to these instances of abuse.⁹⁰ But those measures have proven insufficient to bring abuses of domestic workers at the hands of mission officials under control.⁹¹ Moreover, the very fact that the United States implemented such measures in 2008, 2009, and post-2016 confirms that it had not taken all reasonable measures at the time the Petitioners suffered abuses at the hands of diplomats—all of which occurred prior to the 2008-2009 policy changes.

48. As the United States avers, the U.S. Government has taken steps to combat the abuse of workers in mission official households.⁹² HT Legal would be remiss not to acknowledge these improvements. HT Legal works closely with the State Department on cases involving trafficking by mission officials. Over the last eight years, HT Legal has observed and praised these

⁸⁹ U.S. Department of State, *Trafficking In Persons Report* (June 2023) (Country Narrative), <https://tinyurl.com/tt7m4sem> (United Kingdom).

⁹⁰ U.S. Response Brief, pp. 34–41 and U.S. Further Observations, pp. 10–19.

⁹¹ U.S. Response Brief, pp. 35–45.

⁹² U.S. Further Observations, pp. 10–19.

policy developments. In some instances, HT Legal has advocated with Congress to mandate these policy changes, including the suspension program that resulted in the suspension of Malawi, Cameroon, and Morocco from the A-3/G-5 domestic worker program. To its credit, the United States has taken certain positive actions, including the following:

- (a) Instituting mandatory Domestic Worker Program requirements regarding minimum wages, overtime, and back wages;⁹³
- (b) Expanding annual in-person registration requirements to cover a broader range of mission officials;⁹⁴
- (c) Engaging directly with foreign mission leadership regarding domestic worker rights and accountability for violations;⁹⁵
- (d) Requesting waivers of diplomatic immunity to allow for criminal prosecutions;⁹⁶
- (e) Indicting mission officials for human trafficking and related crimes—with at least five indictments currently open—and issuing Red Notices in certain cases; and
- (f) In one case, revoking the lawful nonimmigrant status of a World Bank employee who was found to have underpaid and overworked a domestic worker.⁹⁷

49. These actions, while laudable, have proven to be insufficient to end the abuses that mission officials have frequently committed in the United States. The vulnerabilities of domestic workers in mission official households continue to be exploited. Abusive mission officials continue to find a multitude of ways to evade the checks established by the U.S. Government. These abusive officials also continue to thwart abused employees' access to the tools the United States has put into place to protect these domestic workers. The Annex to this *Amicus* brief

⁹³ *Id.*, pp. 10–11.

⁹⁴ *Id.*

⁹⁵ *Id.*, pp. 14–15.

⁹⁶ *Id.*, p. 15.

⁹⁷ *Id.* (citing *Nkrumah v. Pompeo*, Case No. 1:20-cv-01892, 2020 WL 9173032 (D.D.C. Sep. 15, 2020)).

includes a list of sample A-3/G-5 domestic worker federal trafficking cases from HT Legal’s database. The allegations in these cases exhibit similar practices of exploitation, demonstrating a troubling pattern.

50. The A-3/G-5 visa framework thus continues to enable a range of abuses against domestic workers employed in mission official households. Despite this, the United States has failed to end the system of linking A-3/G-5 visas to employment with specific mission official employers (**Section A**), fails to investigate and prosecute the vast majority of abuses (**Section B**), and unnecessarily restricts access to civil remedies for the victims (**Section C**).

A. The United States Has Failed to Make A-3/G-5 Domestic Worker Visas Portable

51. Despite the progress touted in the April 2023 U.S. Further Observations, the A-3/G-5 visas that the United States issues for domestic workers in mission official households continue to chain A-3/G-5 domestic workers to their employers. The visa status is tied to specific employers, allowing those employers to threaten domestic workers with deportation and harm. The fundamentally flawed nature of these visas, despite other progress the United States has made since 2016, traps domestic workers in servitude in the homes of diplomats.⁹⁸ The problem persists. If anything, the issue of non-portability of visas has become worse. In prior years, G-5 visa-holders were able to transfer to new international organization employers. But G-5 visas became non-transferable after the United States amended the Foreign Affairs Manual.⁹⁹

52. As a result, the United States, with its A-3/G-5 visa program, maintains a system similar to the oft-condemned migrant labor system in place in Gulf states. As the United States

⁹⁸ 9 Foreign Affairs Manual 402.3, <https://tinyurl.com/ysb7bkrm> (“FAM”), § 402.3-4(H)(7)(a) (the domestic worker’s visa “must be annotated with the name of the employer . . .”).

⁹⁹ The current Foreign Affairs Manual states, “[a]pplicants in the United States in A-3, G-5 . . . nonimmigrant status cannot renew their visas in the United States . . .” *Id.*, § 402.3-4(I)(3). The Foreign Affairs Manual further states that all A-3 and G-5 visa applicants must apply for their visa at a U.S. consulate abroad. *Id.*, § 402.3-4(I)(5).

has described that system, it “is a sponsorship-based visa category that gives employers full control over the migrant workers’ residency permits, movements in and out of the country, and ability to change employers.”¹⁰⁰ In much the same way, the A-3/G-5 visa system permits migrant domestic workers entry into the United States conditional on employer sponsorship,¹⁰¹ does not allow those workers to change employers while remaining in the United States,¹⁰² and makes their continued legal presence in the United States dependent on retaining employment with the sponsoring employer.¹⁰³ As a result, migrant domestic workers in such sponsorship-based employment systems “who leave their place of employment without permission from their employer forfeit their legal status”¹⁰⁴

53. The risks for human trafficking and related abuses arising from such restrictions on migrant domestic workers are notorious. This is because, per the United States’ own reporting, “trafficking victims have little or no recourse; they are coerced either to remain in an exploitative position or leave their sponsor and face arrest, detention, or deportation for immigration offenses.”¹⁰⁵ The results of the restrictions are predictable. As the United States reports in reference to the system in Gulf states, these restrictions “enable abusive employers’ to use

¹⁰⁰ 2021 TIP Report, p. 42.

¹⁰¹ As noted above, the employer’s name must be included on the A-3 or G-5 domestic worker’s visa, along with the place of work. FAM, § 402.3-4(H)(7).

¹⁰² Each A-3/G-5 domestic worker is required to have a contract. *Id.*, § 402.3-9(B)(3)(c). One required provision in the contract must state that the domestic worker is not permitted to work for any other employer. *Id.*, § 402.3-9(B)(3)(c)(5)(b). The World Bank website confirms this treatment for G-5 visa domestic workers, stating, “[t]he U.S. State Department does not support the transfer of G-5 employees from one employer to another. . . . All G-5 visas, new hires or transfer to new employers, must be requested at a U.S. Embassy outside the U.S.” The World Bank, Human Resources, Request G5 Visa at a U.S. Embassy, <https://tinyurl.com/mszrarbx>.

¹⁰³ Under the Foreign Affairs Manual, A-3 and G-5 visas may only be issued for a maximum period that does not exceed the validity of the relevant visa held by the employer. FAM, § 402.3-9(B)(7).

¹⁰⁴ 2021 TIP Report, p. 42; *see also* 2015 TIP Report, p. 18 and 2013 TIP Report, p. 45. *See also* U.S. Department of State, Bureau of Consular Affairs, Visa for Employees of International Organizations and NATO, <https://tinyurl.com/nd3jthft> (stating that “the Department of State will not endorse changes into, within, between, or out for anyone currently on A-3, G-5, and NATO-7 status.”).

¹⁰⁵ 2021 TIP Report, p. 42.

unscrupulous employment practices that can constitute forced labor; including excessive work hours; retention of passports and travel documents by the employer; non-payment of wages; and physical, psychological, and sexual abuse or threats of abuse.”¹⁰⁶ These are precisely the consequences that repeatedly and regularly arise—including in the Petitioners’ case—from the United States’ A-3/G-5 visa system.¹⁰⁷

54. There is a clear solution for risks of human trafficking arising from binding migrant domestic workers to their employers through the A-3/G-5 visa system: decouple A-3/G-5 visas from specific employers. This is neither controversial nor difficult to implement. As the United States has expressly recognized: “[a]llowing migrant workers to have full freedom of movement and to switch employers without penalty would help prevent human trafficking.”¹⁰⁸ The United States has therefore called upon States “to allow all workers to have full freedom of movement and to change their sponsor or employer voluntarily and without prior sponsor permission, fees, penalties, or loss of residency status.”¹⁰⁹ Indeed, it has trumpeted the positive results of such changes for States that have implemented them. The United States reports that these States have reduced “the power imbalance between employer and employee inherent in the . . . sponsorship-based employment system”¹¹⁰ and that migrant workers could therefore work “with any chosen employer . . . and were able to directly negotiate wages and working hours.”¹¹¹

¹⁰⁶ *Id.*

¹⁰⁷ See Annex A (Overview of Allegations in Civil Cases) attached hereto.

¹⁰⁸ 2021 TIP Report, p. 42.

¹⁰⁹ *Id.*, p. 43. In the event of abuses, it has called upon States to provide “temporary or permanent residency status to foreign victims” and also give “them the option to remain in the country and switch employers or return to their home country, or a third country for those who cannot return home.” *Id.*

¹¹⁰ 2022 TIP Report, p. 107.

¹¹¹ *Id.*

B. The United States Has Failed to Prosecute Abuses of Domestic Workers by Mission Officials, Including Forced Labor and Human Trafficking

55. Although the United States is subject to an international obligation to provide effective legal remedies for victims through its criminal justice system, it has exhibited numerous failures with regard to its efforts to investigate, prosecute, and punish the perpetrators of these common forms of abuse and illegal treatment. While the United States recognizes that investigation, prosecution, and punishment are critical to address abuses committed by mission officials,¹¹² it has not consistently pursued them in such cases. This failure stretches far beyond diplomatic cases: at the federal level, the United States brought just *seven* forced labor criminal cases in 2021 in the entire country. Similarly, in 2022, the United States brought just seven forced labor cases nationwide.¹¹³ In light of the United States' dismal failure to prosecute forced labor cases more generally, it is perhaps little surprise that mission officials continue to enjoy impunity for these crimes.

1. The United States Has Failed to Investigate and Prosecute Mission Official for Abuse of Domestic Workers

56. The United States has conducted criminal investigations and prosecutions for alleged abuses by mission officials of domestic workers in only the rarest of cases. HT Legal's federal civil case database includes 42 civil complaints brought by domestic workers with A-3/G-5 visas against 106 different defendants since 2010.¹¹⁴ But HT Legal's research has identified

¹¹² See *supra* Section II.C.

¹¹³ U.S. Department of State, *Trafficking In Persons Report* (June 2023) (Country Narrative), <https://tinyurl.com/mv8ab8x5> (United States) (“Of these FY 2022 prosecutions, 155 involved predominantly sex trafficking and seven involved predominantly labor trafficking, compared with 221 and seven in FY 2021, respectively.”).

¹¹⁴ Data on file. See also HTLC, “Using Civil Litigation to Combat Human Trafficking: 2022 Data Update” (2023), <https://tinyurl.com/mjs34hd6>.

only 13 federal criminal cases against 20 individuals in the same period.¹¹⁵ Of the 13 federal criminal cases, only four cases include allegations of forced labor. The remaining cases charge lesser crimes, such as alien harboring or false statements. Moreover, the United States more often prosecutes consular officials without full immunity, and only rarely indicts fully accredited diplomats, who enjoy total immunity while in their post under current U.S. law.¹¹⁶

57. Despite its frequent inaction, the United States has in fact recognized that criminal investigations, even without criminal prosecutions, may serve a key role in combating abuse. For example, in 2012 the United States commended Belgium’s pursuit of this exact use of criminal

¹¹⁵ *United States v. Alhunaif et al.*, Case No. 1:22-cr-00538 (JSR), Indictment, ECF No. 1 (S.D.N.Y., Oct. 11, 2022) (forced labor, conspiracy to commit fraud in labor trafficking and visa fraud); *United States v. Estrella Jaidi et al.*, Case No. 7:19-cr-890 (CS), Indictment, ECF No. 22 (S.D.N.Y., Dec. 12, 2019) (conspiracy to defraud the United States and conspiracy to induce aliens to enter the United States illegally); *United States v. Rashid*, No. 1:17-MJ-04658 (UA), Compl., ECF No. 1 (S.D.N.Y., June 19, 2017) (visa fraud, aggravated identity theft, fraud in foreign labor contracting); *United States v. Prakoso*, Case No. 8:17-cr-00213 (GJH), Indictment, ECF No. 1 (D. Md., Apr. 19, 2017) (alien harboring); *United States v. Al Homoud*, Case No. 5:15-cr-00391 (OLG), Indictment, ECF No. 12 (W.D. Tex., Jun. 3, 2015) (forced labor); *United States v. Khobragade*, Case No. 1:14-cr-176 (WHP), Indictment, ECF No. 1 (S.D.N.Y., Mar. 14, 2014) (visa fraud and false statements); *United States v. Amal*, Case No. 1:14-cr-00151 (CMH), Compl., ECF No. 1 (E.D. Va., Mar. 4, 2014) (alien harboring); *United States v. Soborun*, Case No. 2:12-MJ-03121 (PS), Information, ECF No. 1 (D.N.J., Sep. 7, 2012) (failure to pay minimum wage); *United States v. Penzato*, Case No. 3:12-cr-00089 (EMC), Indictment, ECF No. 36 (N.D. Cal., Feb. 9, 2012) (forced labor conspiracy and attempted forced labor); *United States v. Tolan*, Case No. 1:11-cr-00526 (CMH), Indictment, ECF No. 1 (E.D. Va., Nov. 23, 2011) (conspiracy to commit forced labor and visa fraud, forced labor, attempted forced labor, visa fraud, unlawful conduct with respect to documents in furtherance of forced labor, conspiracy to harbor and conceal an alien and to encourage an alien to come to the United States, alien harboring and false statements); *United States v. Liu*, Case No. 4:11-cr-00284 (GK), Compl., ECF No. 1 (W.D. Mo., Nov. 18, 2011) (fraud in foreign labor contracting); *United States v. Al-Ali*, Case No. 1:11-cr-00051 (ML), Indictment, ECF No. 1 (D.R.I., Mar. 30, 2011) (fraud in foreign labor contracting); and *United States v. Bakilana*, Case No. 1:10-cr-00093 (LMB), Information, ECF No. 3 (E.D. Va., Mar. 29, 2010) (false statements).

¹¹⁶ See Martina E. Vandenberg and Sarah Bessell, “Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States,” 26(3) *Duke J. Compar. & Int’l L.* 595 (2016), <https://tinyurl.com/2psj3f4j>, 598–99 (“Criminal cases are most frequently brought against officials with lesser degrees of immunity, such as consular immunity.”) (citing, e.g., *United States v. Al-Homoud*, Case No. 5:15-cr-00391 (OLG) (W.D. Tex., June 1, 2015) (military official); *United States v. Khobragade*, Case No. 1:14-cr-00176 (WHP) (S.D.N.Y., Mar. 14, 2014) (consulate official then diplomat); *United States v. Amal*, Case Nos. 1:14-cr-00151 (CMH) & 1:14-cr-00152 (CMH) (E.D. Va., Mar. 4, 2014) (former diplomat with residual immunity for official acts); *United States v. Penzato*, Case No. 3:12-cr-00089 (EMC) (N.D. Cal., Feb. 9, 2012) (consular official); *United States v. Soborun*, Case No. 2:12-mj-03121 (PS) (D.N.J., Sep. 7, 2012) (diplomat); *United States v. Liu*, Case No. 4:11-cr-00284 (DGK) (W.D. Mo., Nov. 18, 2011) (international official); *United States v. Al-Ali*, Case No. 1:11-cr-00051 (ML-LDA) (D.R.I., Mar. 30, 2011) (military official); *United States v. Tolan*, Case No. 1:11-cr-00536 (CMH) (E.D. Va., Nov. 23, 2011) (embassy employee—diplomatic status unknown); *United States v. Bakilana*, Case No. 1:10-cr-00093 (LMB) (E.D. Va., Mar. 29, 2010) (World Bank employee)).

investigations.¹¹⁷ When allegations emerged that a Sierra Leonean had subjected “three domestic workers to forced labor and torture,” Belgium launched a criminal investigation even though diplomatic immunity would have precluded actual prosecution. Belgium nevertheless considered that criminal investigation could: (1) make “the victims eligible for government protection,” (2) support the filing of a civil claim, (3) provide a basis to prevent future cases, and (4) buttress suspension of privileges for the Sierra Leonean mission.¹¹⁸

58. Indeed, the United States also explicitly states in its own policy statements that a criminal investigation is critical even where the subject may have immunity. In its official document *Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities*, the United States explains that such an investigation is necessary prior to requiring the departure of the offending individual from the United States, may support an indictment and prosecution when the individual no longer holds immunity, and allows the entry of an arrest warrant in the records of the National Crime Information Center and thereby bars the individual from subsequently obtaining a U.S. visa.¹¹⁹ And, to the degree that immunity is a barrier to criminal prosecution, the United States has only in exceptional cases sought waivers of immunity from sending States.¹²⁰

¹¹⁷ U.S. Department of State, *Trafficking In Persons Report* (June 2012) (Country Narrative), <https://tinyurl.com/4jjmy47f>, p. 86 (Belgium).

¹¹⁸ *Id.*

¹¹⁹ U.S. Department of State, Office of Foreign Missions, *Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities* (Aug. 2018), <http://tinyurl.com/2azn6d38>, pp. 22–23.

¹²⁰ The United States requested a waiver of immunity in the 2012 case against the then-Ambassador of Mauritius to the UN for wage theft—*United States v. Soborun*. Mauritius waived Soborun’s immunity, resulting in a guilty plea and the requirement that he pay the US\$24,153.04 in wages owed, plus a US\$5,000 fine. *United States v. Soborun*, No. 2:12-mj-03121-PS, Judgment (D.N.J., Nov. 29, 2012), p. 2.

2. Even When Mission Officials Are Prosecuted, the United States Has Failed to Bring Appropriate Charges

59. On the rare occasions when mission officials have been formally charged with crimes relating to their abuse of domestic workers, they generally have been indicted for relatively minor offenses that do not reflect the severe abuse inflicted on the victims they trafficked or abused.

60. In *U.S. v. Khobragade*, the defendant—an employee at the Consulate of India in New York City—was charged only with visa fraud and making false statements to the government.¹²¹ These charges do not in any way reflect the extent of the abuse that Ms. Khobragade allegedly inflicted on her domestic worker.¹²² Lured to the United States with false promises, on arrival, the victim was allegedly forced to work 16 or 17 hours a day, with few breaks and very few days off, for pay that was substantially below minimum wage—and below the amount guaranteed in the fraudulent contract submitted to U.S. authorities to obtain the victim’s visa.¹²³ The victim alleged she was also forcibly isolated, with her passport confiscated. She alleged that she was forced to ask for permission if she wanted to leave the apartment for any reason, even to visit the doctor.¹²⁴ In fact, the victim was allegedly often denied medical treatment, even when she was seriously ill; on one occasion, the victim cut her finger and was bleeding heavily; she was simply told to “be more careful next time.”¹²⁵

¹²¹ *United States v. Khobragade*, Case No. 13-mj-02870 (UA), Criminal Compl., ECF No. 1 (S.D.N.Y., Dec. 11, 2013), p. 1 *et seq.*

¹²² *See Doe v. Khobragade*, Case No. 1:18-cv-11134 (VEC), Compl., ECF No. 1 (S.D.N.Y., Nov. 29, 2018), pp. 3–12. The alleged abuse even continued after the victim escaped, with Ms. Khobragade allegedly arranging for the victim’s family in India to be harassed and questioned several times by police regarding the victim’s whereabouts. Ms. Khobragade also allegedly procured the issuing of an arrest warrant in India, falsely charging the victim with extortion, cheating, and participating in a conspiracy. *Id.*, pp. 10–12.

¹²³ *Id.*, p. 8.

¹²⁴ *Id.*

¹²⁵ *Id.*, p. 9.

61. Similarly, in *U.S. v. Alhunaif*, the defendants—a diplomatic attaché assigned to the Permanent Mission of Kuwait to the UN and his wife—were charged with conspiracy to commit fraud in foreign labor contracting, conspiracy to commit visa fraud, forced labor, fraud in foreign labor contracting, and visa fraud. The abuse allegedly perpetrated by the defendants against their three victim domestic worker employees included confiscation of the victims’ passports and refusal to allow them outside the residence unaccompanied. The defendants also allegedly denied the domestic workers basic medical care; one employee was not allowed to seek medical treatment for several weeks after developing a urinary tract infection.¹²⁶ The defendants also allegedly abused their victims both verbally and physically, including threats to at least one of the domestic workers that she would be falsely reported to law enforcement for stealing from them or mistreating their children.¹²⁷

62. In the few remaining cases where charges were brought, the mission officials were charged only with relatively minor offenses or misdemeanors: *U.S. v. Prakoso* (harboring an alien for private financial gain);¹²⁸ *U.S. v. Amal* (harboring an alien for private financial gain);¹²⁹ *U.S. v. Bakilana* (making false statements to federal authorities);¹³⁰ and *U.S. v. Al-Ali* (fraud in foreign labor contracting and making false statements to federal authorities).¹³¹

¹²⁶ *United States v. Alhunaif*, Case No. 22-cr-00538 (JSR), Indictment (S.D.N.Y., Oct. 11, 2022), <https://tinyurl.com/y66kv2xm>, pp. 6, 7.

¹²⁷ *Id.*, pp. 2, 7.

¹²⁸ *United States v. Prakoso*, Case No. 8:17-cr-00213 (GJH), Indictment, ECF No. 1 (D. Md., Apr. 19, 2017), p. 1.

¹²⁹ *United States v. Amal*, Case No. 1:14-cr-00151 (CMH), Criminal Compl., ECF No. 1 (E.D. Va., Mar. 4, 2014), p. 1.

¹³⁰ *United States v. Bakilana*, Case No. 1:10-cr-00093 (LMB), Criminal Information, ECF No. 1 (E.D. Va., Mar. 29, 2010), pp. 1–2.

¹³¹ *United States v. Al-Ali*, Case No. 1:11-cr-00051, Indictment, ECF No. 1 (D.R.I., Mar. 30, 2011), pp. 1–2.

3. Following the Very Few Successful Prosecutions, There Is a Failure to Punish

63. Where criminal cases do come to a resolution, such cases often involve a plea to a lesser crime,¹³² and result in little or no actual prison time.¹³³ For example, in *U.S. v. Penzato*, an exceptionally rare case where charges of forced labor were brought, the defendants pled guilty to a misdemeanor charge of conspiring to possess an illegal identification document and were sentenced to five years' probation and ordered to pay US\$13,000 in restitution.¹³⁴ In *U.S. v. Al-Homoud*, the other case where charges of forced labor were brought, the first defendant pled guilty to visa fraud, and the second to failing to report knowledge of a felony. The defendants received sentences of five- and three-years' probation respectively and were ordered to pay US\$120,000 in restitution. Both defendants departed the United States the day after their sentencing hearing, on February 10, 2016, avoiding any prison time.¹³⁵ In almost all cases, defendants with full immunity are simply allowed to leave the United States after an indictment, with few, if any, repercussions.

¹³² Vandenberg & Bessell, *supra* n. 116, pp. 603–04 (citing *United States v. Penzato*, Case No. 3:12-cr-00089 (EMC), Plea Agreement (N.D. Cal., Apr. 18, 2013); *United States v. Soborun*, No. 2:12-mj-03121-PS, Plea Agreement (D.N.J., Sep. 7, 2012); *United States v. Liu*, Case No. 4:11-cr-00284 (DGK), Plea Agreement (W.D. Mo., Nov. 18, 2011); *United States v. Bakilana*, Case No. 1:10-cr-00093 (LMB), Plea Agreement (E.D. Va., Mar. 29, 2010)).

¹³³ *Id.* Compare *United States v. Liu*, Case No. 4:11-cr-00284 (DGK), Judgment, ECF No. 29 (W.D. Mo., Jan. 27, 2012) (in which the defendant Hsien Hsien Liu “spent some time in prison and was ordered to reimburse the government for the costs of her time served.” (Vandenberg & Bessell, pp. 609–10)) with *United States v. Al-Homoud*, Case No. 5:15-cr-00391 (OLG), Judgment, ECF No. 79 (W.D. Tex., Feb. 10, 2016) (in which Qatari military official Hassan Salem Al-Homoud was sentenced to five years' probation for his abuse of two domestic workers, but whose case concluded with his immediate removal from the United States and does not appear to have served time in Qatar. (Vandenberg & Bessell, p. 609)).

¹³⁴ *United States v. Penzato*, Case No. 3:12-cr-00089 (EMC), Judgment, ECF No. 94 (N.D. Cal., May 24, 2013), pp. 1–2, 4.

¹³⁵ *United States v. Al-Homoud*, Case No. 5:15-cr-00391 (OLG), Judgment, ECF No. 77 (W.D. Tex., Feb. 10, 2016), pp. 1–2, 5.

C. The United States Has Failed to Afford Victims an Effective Civil Remedy Against Sitting Diplomats and Other Mission Officials

64. With the passage of the 2003 TVPRA, trafficking survivors won the ability to bring civil suits against their abusers. That law has made available some form of legal redress, but this, too, remains insufficient. The immunity of diplomatic employers from legal process¹³⁶ frequently deprives these victims of even the theoretical possibility of recourse to U.S. courts to ensure respect for their rights.¹³⁷ Active diplomats in the United States enjoy absolute immunity from civil suit, with only three exceptions (immovable property, succession of property, and professional or commercial activities), which the United States has opined do not apply to cases of domestic worker abuse.¹³⁸

65. In 2008, the U.S. State Department intervened in the cases of *Baoanan v. Baja* and *Swarna v. Al-Awadi* and argued that, under Article 39(2) of the Vienna Convention on Diplomatic Relations, full diplomatic immunity concludes once a diplomat has left their post, after which residual immunity covers only official acts.¹³⁹ Crucially, the State Department took the position that mistreatment of a domestic worker is not an official act and thus is not subject to residual

¹³⁶ See, e.g., Vienna Convention on Diplomatic Relations (Apr. 18, 1961), 500 U.N.T.S. 95 (1965), <https://tinyurl.com/3ru9maj2>, Art. 31; Convention on the Privileges and Immunities of the United Nations (Feb. 13, 1946), 1 U.N.T.S. 15 (1946–1947), <https://tinyurl.com/stb5j2hn>, Sec. 11; United Nations and United States of America Agreement regarding the Headquarters of the United Nations (June 26, 1947), 11 U.N.T.S. 11 (1947), <https://tinyurl.com/5xndtt4p>, Sec. 15.

¹³⁷ Thus, several of the petitioners in this case did not attempt to vindicate their rights in U.S. courts because they were aware of their employers' diplomatic immunity. In principle, domestic workers who suffer exploitation at the hands of diplomats can bring legal actions against them once their diplomatic status comes to an end. See *Swarna v. Al-Awadi*, 622 F.3d 123 (2d Cir. 2010). Employers possessing diplomatic status can also be prosecuted if the sending country waives their immunity. But HT Legal is aware of only one case, *United States v. Soborum*, No. 2:12-mj-03121, in which this has happened.

¹³⁸ Vienna Convention on Diplomatic Relations, *supra* n. 136, Art. 31; Convention on the Privileges and Immunities of the United Nations, *supra* n. 136, Secs. 11, 17; United Nations-United States Headquarters Agreement, *supra* n. 136, Sec. 15.

¹³⁹ See *Baoanan v. Baja*, 627 F. Supp. 2d 155, 160 (S.D.N.Y. 2009); *Swarna v. Al-Awadi*, 622 F.3d 123, 134–40 (2d Cir. 2010).

immunity.¹⁴⁰ The court accepted the State Department’s position.¹⁴¹ The majority of cases brought against *former* diplomats for mistreatment of domestic workers since the *Swarna/Baoanan* decisions have avoided dismissal at the jurisdictional stage.¹⁴²

66. While allowing for civil suit once diplomats have left their post is an improvement on prohibiting suit altogether, it remains a wholly inadequate remedy for victims of human trafficking and related abuses. With lawsuits blocked against sitting diplomats, victims are often unable to pursue civil relief against their abusers until years later. And, because civil relief is available only once the diplomat has left the post and departed the United States, it is nearly impossible to enforce a judgment. The United States has maintained this state of affairs, not out of legal obligation, but as a matter of choice and unilateral treaty interpretation.

1. The United States’ Interpretation of the Vienna Convention Thwarts Victims’ Efforts to Pursue Civil Remedies against Sitting Diplomats

67. To pursue a civil remedy against a diplomatic abuser, the victim must wait until the perpetrator no longer holds a diplomatic position in the United States, potentially for many years, at which time the perpetrator is no longer located in the United States.¹⁴³ This is because the United States’ current interpretation of diplomatic immunity prevents domestic workers from

¹⁴⁰ *Swarna*, 622 F.3d at 135–36.

¹⁴¹ *Id.* at 139–40.

¹⁴² As of at least 2016. See Vandenberg & Bessell, *supra* n. 116, pp. 613–14. Historically, lawsuits against diplomats were futile as they would almost inevitably be dismissed at the immunity stage, particularly as various exceptions to immunity were considered inapplicable. See *Tabion v. Mufti*, 73 F.3d 535, 538–39 (4th Cir. 1996) (removing the commercial activity exception as a possible way to get around diplomatic immunity); see also *Paredes v. Vila*, Case No. 1:06-cv-00089 (PLF), Op., ECF No. 27 (D.D.C., Mar. 29, 2007), p. 9 (“When diplomats enter into contractual relationships for personal goods or services incidental to residing in the host country, including the employment of domestic workers, they are not engaging in ‘commercial activity.’” (quoting Statement of Interest of the United States, p. 14)).

¹⁴³ In 2008, Congress enacted the Trafficking Victims Protection Reauthorization Act, 8 USC § 1375c(c)), which permitted holders of A-3/G-5 special visas to remain in the United States in order to pursue cases against their abusive employers. Trafficking Victims Protection Act of 2000 (as amended), Pub. L. No. 110-457 (Dec. 23, 2008), 122 Stat. 5044, <https://tinyurl.com/22uckaj2>, § 203(c)(1)(A).

pursuing legal remedies against their abusers *at the time of their abuse* and, often for years after, so long as the abuser remains in his or her post.

68. In one such example, *Ravelombonji v. Zinsou*, Mr. Ravelombonji worked in alleged abusive conditions from late 2012 to 2016, escaping only with the aid of a nonprofit dedicated to assisting the victims of human trafficking.¹⁴⁴ Since former Ambassador Zinsou’s post concluded in September 2016, Mr. Ravelombonji was able to bring suit against him only after his departure. The U.S. District Court for the Southern District of New York subsequently denied the former Ambassador’s claim to residual immunity.¹⁴⁵ However, diplomatic immunity would have rendered it functionally impossible for Mr. Ravelombonji to seek legal recourse in U.S. courts for Mr. Zinsou’s abuses at any point during the *four years* the ambassador was in his official post and allegedly subjecting Mr. Ravelombonji to physical and mental abuse.

69. This case illustrates the challenges resulting from this delay in access to a civil remedy. Nonprofit organizations must sustain escaped migrant domestic workers in the United States for years while they build their cases. Forcing domestic workers to wait to sue their traffickers until after the diplomat has left the United States requires victims to put their life on hold, living in economic precarity in the interim. Thus, the United States’ small improvement in the form of adopting the view that residual immunity does not cover trafficking suits does not provide an adequate civil remedy for victims.

¹⁴⁴ *Ravelombonji v. Zinsou-Fatimabay*, 632 F. Supp. 3d 239, 247 (S.D.N.Y. 2022) (“[T]he United States Mission to the United Nations denied the G-1 visa application on the grounds that Ravelombonji needed to return to Madagascar first if he wished to change his visa,” meanwhile when he asked his employer for even *one day off* after a seven-day workweek, he was “warned . . . to stop making such requests” or the employer would terminate him.).

¹⁴⁵ *Ravelombonji v. Zinsou-Fatimabay*, 632 F. Supp. 3d 239, 255–56 (S.D.N.Y. 2022).

2. Even When a Victim Succeeds in Court, the Judgment Is Rarely Enforceable

70. Because a civil remedy is available in the United States only after a diplomat has left his or her post, any civil judgment that the victim might then obtain is rendered effectively unenforceable. Residual immunity, which the United States characterizes an approach that provides remedies to trafficked domestic workers, requires that the diplomat leave the United States before civil litigation commences. But once the diplomat departs, there is a strong likelihood that the plaintiff will never actually receive the money they are owed in damages. In this instance, justice deferred (until the diplomat's departure) is justice denied.

71. As the United States' April 2023 Further Observations filing concedes, civil judgments against mission officials are frequently unenforceable. That filing specifically mentions the *Lipenga v. Kambalame* case,¹⁴⁶ in which the employer, a diplomat at the Embassy of Malawi in Washington, D.C., left the United States.¹⁴⁷ As the United States concedes, the domestic worker has been unable to enforce the \$1.1 million default judgment in that case. In fact, the diplomat returned to Malawi and was promoted, serving as the Malawian ambassador to Zimbabwe and Botswana.

72. Such an outcome is the common result of the United States' residual immunity approach to the Vienna Convention on Diplomatic Relations. In many instances, the accused diplomats do not respond to the lawsuit, having left the United States, resulting in the entry of a default judgment by the court. In such instances, the court may require the payment of compensatory and punitive damages to the victim. Yet, testimonials provided by the legal aid attorneys for various nonprofits observe that "default judgments are more of a paper victory"; they

¹⁴⁶ U.S. Further Observations, p. 6.

¹⁴⁷ *Lipenga v. Kambalame*, 219 F. Supp. 3d 517, 523 (D. Md. 2016).

“can be almost impossible to enforce against a diplomat because the diplomats go home or they go to another posting.”¹⁴⁸ For example, in the case of *Gurung v. Malhotra*, Ms. Gurung was allegedly the victim of abuse and wage theft for over three years (2006–2009) during her time as a domestic worker for an Indian consular official in New York City.¹⁴⁹ While the court granted her default judgment against the Malhotra defendants in 2011¹⁵⁰ and awarded her US\$1.5 million in damages, this sum remains unpaid.¹⁵¹

73. Too often, domestic worker plaintiffs’ only option for enforcement is to seek payment from the diplomat’s sending State *ex gratia*.¹⁵² However, even in these instances, domestic worker plaintiffs often must wait years after the default to receive payment on such a request. Diplomats’ sending States, if they pay at all, frequently seek to cover only a small portion of the judgment, rather than the full judgment.

3. The Ineffectiveness of Civil Remedies Is a Matter of the United States’ Choice, Not a Matter of Diplomatic Law

74. Here, too, the United States has maintained this state of affairs not out of legal necessity, but as a matter of choice. While diplomatic immunity is required under the Vienna Convention on Diplomatic Relations,¹⁵³ there is a considerable margin left to States in determining the scope of this immunity. The United States has chosen a particularly wide scope of immunity

¹⁴⁸ Pulitzer Center, “How Diplomats Who Traffick, Exploit Domestic Workers Get Away, County: Philippines” (Aug. 30, 2023), <https://tinyurl.com/4ryfn54e>.

¹⁴⁹ *Gurung v. Malhotra*, Case No. 1:10-cv-5086 (VM), Compl., ECF 1 (S.D.N.Y., July 1, 2010), ¶¶ 18, 37, 42; “How Diplomats Who Traffick, Exploit Domestic Workers Get Away,” *supra* n. 148.

¹⁵⁰ *Gurung v. Malhotra*, 279 F.R.D. 215, 221 (S.D.N.Y. 2011).

¹⁵¹ “How Diplomats Who Traffick, Exploit Domestic Workers Get Away,” *supra* n. 148.

¹⁵² See, e.g., *Mazengo v. Mzengi*, Case No. 1:07-cv-00756 (RMC), Mem. Op., ECF No. 36 (Apr. 10, 2008); U.S. Senator Marco Rubio, Press Release: Rubio Comments on 2013 Trafficking In Persons Report (June 19, 2013), <https://tinyurl.com/mmywxhcf> (stating the plaintiff had obtained a payment *ex gratia* from the Government of Tanzania to settle a case against a Tanzania diplomat five years after the court entered a default judgment).

¹⁵³ Vienna Convention on Diplomatic Relations, *supra* n. 136, Art. 31.

for diplomats that denies victims an adequate civil remedy. But other leading legal systems recognized that diplomatic immunity need not be a barrier to civil remedies for victims of human trafficking and related abuses to comply with the Vienna Convention.

75. The Supreme Court of the United Kingdom, a leading apex court with widely recognized expertise in international law, recently held in *Basfar v. Wong* that human trafficking of migrant domestic workers is a commercial activity for personal profit and therefore claims related to it are not subject to diplomatic immunity.¹⁵⁴ The UK Supreme Court drafted an exceptionally close analysis, following two days of hearings on this issue, that extended over 107 paragraphs and 37 pages. In its analysis, it considered, among other things, the ordinary meaning of the Vienna Convention on Diplomatic Relations, the *travaux préparatoires* to that Treaty, and, critically, the key United States court decision that adopted the opposite conclusion. In light of the UK Supreme Court's decision, the United States can no longer reasonably maintain that such an interpretation is clearly contrary to the international law of diplomatic immunity.

76. More specifically, in *Basfar v. Wong*, the UK Supreme Court held that the ordinary meaning of the words in the Vienna Convention on Diplomatic Relations did not require the application of diplomatic immunity to cases of human trafficking of domestic workers.¹⁵⁵ Instead, it held that, “[a]s a matter of ordinary language, buying goods and services could be described as the exercise of a commercial activity, irrespective of the purpose for which they are purchased” and that “[t]he same could be said of entering into a contract of employment as an employer (or employee) and receiving (or supplying) personal services under such a contract.”¹⁵⁶ The UK Supreme Court also considered, but rejected, the key United States precedent on the matter (*Tabion*

¹⁵⁴ *Basfar v. Wong* [2022] UKSC 20 (U.K. S. Ct., July 6, 2022), <https://tinyurl.com/msc45j79>, ¶¶ 52, 104, 107.

¹⁵⁵ *Id.*, ¶ 28.

¹⁵⁶ *Id.*, ¶ 29.

v. Mufti, 73 F.3d 535 (4th Cir. 1996)). Among other things, it noted that the Fourth Circuit unduly narrowed the commercial activities exception to diplomatic immunity based on the intervention of the U.S. State Department.¹⁵⁷ Following this close analysis, the UK Supreme Court concluded that the commercial activities exception to immunity, based on the ordinary meaning of Vienna Convention, could—and in fact did—extend to encompass cases of modern slavery.¹⁵⁸

77. In light of the UK Supreme Court’s reasoning and conclusions, the United States should not be heard to argue that the Vienna Convention on Diplomatic Relations compels it to immunize diplomats from civil claims of human trafficking and related abuses. This is a choice, not a necessity. Other reasonable States have reached different interpretations. And, in fact, the United States itself made positive note of the United Kingdom’s efforts to combat domestic worker abuse in light of the UK Supreme Court’s holding in *Basfar v. Wong*.¹⁵⁹

IV. THE INTER-AMERICAN COMMISSION SHOULD INSTRUCT THE UNITED STATES TO TAKE FURTHER MEASURES TO ELIMINATE ABUSES

78. As explained above, the United States continues to tolerate ongoing and serious abuses of domestic workers at the hands of mission officials. The United States must take additional measures at its disposal to prevent, protect against, and remedy these abuses. *Amicus* HT Legal therefore requests that the Commission find the United States in violation of Inter-American human rights law, and to instruct the United States to undertake appropriate remedial action.

¹⁵⁷ *Id.*, ¶ 36.

¹⁵⁸ *Id.*, ¶¶ 57, 72, 107.

¹⁵⁹ U.S. Department of State, *Trafficking In Persons Report* (June 2023) (Country Narrative), <https://tinyurl.com/tt7m4sem> (United Kingdom) (“In July 2022, the Supreme Court granted the appeal in a 2019 ruling by the Employment Tribunal that diplomatic immunity did not protect against trafficking charges; the Court concluded that if the facts alleged by the complainant are proven, the foreign diplomat will not have immunity from civil jurisdiction in UK courts.”).

79. In particular, the United States has failed to implement certain critical measures to combat human trafficking and related abuses by mission officials. The Inter-American Commission should therefore direct the United States to implement the following *new* measures at a national level:

- Allow A-3/G-5 visa holders to change their “employer voluntarily and without prior sponsor permission, fees, penalties, or loss of residency status.”¹⁶⁰
- Investigate and prosecute all human trafficking and related abuses by mission officials at the earliest possible opportunity;¹⁶¹
- Require a waiver of immunity for human trafficking and related criminal charges as a condition for issuing A-3/G-5 visas;¹⁶² and
- Adopt a domestic legal interpretation of diplomatic immunity that permits civil remedies against sitting diplomats.¹⁶³

80. To its credit, the United States has indeed implemented many other measures that it has demanded of other states in the annual Trafficking in Persons Report. However, these measures have generally been implemented at the level of policy or regulation, and not law, and are therefore readily reversed. To encourage the United States to consolidate its advances, the Inter-American Commission should therefore direct the United States to maintain these measures.

81. In particular, the Inter-American Commission should direct the United States to *continue* implementing the following measures of *prevention* at a national level:

- Require written contracts that specify wages, hours, holidays, and medical care in a language the foreign domestic worker understands;

¹⁶⁰ 2021 TIP Report, p. 43.

¹⁶¹ 2020 TIP Report, p. 211 (France) (commending the government for convicting “a former Burundian diplomat and his spouse for labor trafficking and the exploitation of a domestic worker for 10 years; courts suspended both sentences but issued a fine.”).

¹⁶² See 2018 TIP Report, p. 27 (recommending a *post facto* request for immunity waiver).

¹⁶³ See U.S. Department of State, *Trafficking In Persons Report* (June 2023) (Country Narrative), <https://tinyurl.com/t7m4sem> (United Kingdom).

- Prohibit employers from taking and holding the identity and travel documents of domestic workers;
- Require in-person registration by the domestic worker without the employer present;
- Require payment of wages through direct deposit into a bank account held solely by the domestic worker; and
- Establish minimum wages and prohibit deductions from salary for food and lodging.¹⁶⁴

82. The Inter-American Commission should also direct the United States to *continue* implementing the following measures of *protection* at a national level:

- Raise allegations of exploitation with the mission official's sending State ambassador and request a timely response;
- Limit any further visas for domestic workers by employees of a mission until allegations of abuse are satisfactorily resolved;
- Engage with foreign governments to encourage their mission officials to settle and/or pay any court judgments in civil suits; and
- Encourage mission officials to address any allegations filed against them and provide compensation to the domestic worker.¹⁶⁵

83. Finally, the Inter-American Commission should direct the United States to *continue* taking the following measures to ensure *accountability* at the national level:

- Request that diplomats' sending States waive diplomatic immunity to allow for prosecution;
- Require the diplomat and family members to depart if a waiver of immunity is not granted;
- Conduct thorough investigations of abuse through domestic law enforcement;
- Prosecute diplomats and mission officials who engage in forced labor and related abuses; and

¹⁶⁴ 2018 TIP Report, pp. 26–27.

¹⁶⁵ *Id.*, p. 27.

- Issue INTERPOL “red notices” for mission officials and/or family members indicted for criminal abuses when they have left the United States.¹⁶⁶

84. Since the filing of this case nearly two decades ago, the United States has taken some steps to eradicate and punish trafficking of domestic workers by mission officials. Sadly, 17 years later, these efforts continue to fall short. More must be done to protect the rights of migrant domestic workers—and to end impunity for the mission officials who abuse them.

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Respectfully submitted,

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¹⁶⁶ *Id.*