Thank you, Madam Chair.

The United States welcomes this opportunity to participate in the discussion of these two important topics in the fight to prevent, suppress, and punish trafficking in persons: Guidance on the issue of appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked and best practices in joint investigations and specialized prosecutions. We also want to take this opportunity to inform you about the efforts of the United States, domestically and globally, to prevent, suppress, and punish trafficking in persons.

Human trafficking cases are complex, and no two cases are the same. What is consistent, however, is traffickers’ aim to exploit others for their own profit. In most cases, human traffickers use some form of force, fraud, or coercion to compel victims to work or to engage in commercial sex for the traffickers’ profit. In many cases, the activities traffickers compel victims to engage in themselves are unlawful. It is these types of cases that are central to our discussion today.

While the Palermo Protocol does not specifically address the non-criminalization of trafficking victims, Article 2(b) states that one of the Protocol’s purposes is “to protect and assist the victims of such trafficking, with full respect for their human rights.” In addition, the Working Group on Trafficking in Persons, which advises the Conference of the Parties, recommended the following in 2009:

“With regard to ensuring the non-punishment and non-prosecution of trafficked persons, States parties should: (a) Establish appropriate procedures for identifying victims of trafficking in persons and for giving such victims support; (b) Consider, in line with their domestic legislation, not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts …”

Law enforcement, can fail to properly identify victims of human trafficking when they detain and arrest criminal suspects. This can result in re-victimization, where victims are punished for unlawful acts their traffickers caused them to commit. A criminal record can have profoundly negative effects on victims throughout their lives. Even if trafficking victims never face charges, or if charges are dropped, arrest records and stigma remain, affecting the victims’ recovery. Moreover, arrests of victims can play directly into the traffickers’ hands, compounding the victims’ distrust of authorities and intensifying their fear of assisting in law enforcement efforts to bring traffickers to justice.

In our own Department of State 2020 Trafficking in Persons Report, several recommendations for the U.S. government address this issue, including recommendations to increase and prioritize efforts to proactively identify potential victims and encourage state and local authorities to implement policies against prosecuting victims for the unlawful acts their
traffickers compelled them to commit. The United States continues to work toward fully implementing its commitment to identifying and protecting victims while avoiding arresting or charging them for acts their traffickers compelled them to commit and allowing access to remedies if such victims are prosecuted.

In our experience, a victim-centered and trauma-informed approach is key to the effective and timely identification of trafficking victims. Victims of trafficking, especially those compelled to committed unlawful acts, may be more likely to report their victimization and cooperate with law enforcement if they are confident it will not lead to their arrest or prosecution. In turn, this would allow authorities to provide victims with the protection and assistance they are entitled to, as well as investigate and prosecute the traffickers for their crimes, including the unlawful activities they caused their victims to carry out.

Each case requires a nuanced, fact-specific analysis. Authorities must carefully consider the full context and surrounding circumstances when evaluating how to pursue the interest of justice in each instance.

In practice, applying this approach presents significant challenges. Investigators and prosecutors are traditionally trained to increase the numbers of arrests and prosecutions. Senior leadership must therefore take affirmative steps to articulate these non-punishment principles and incorporate them into all aspects of training for investigators and prosecutors. Law enforcement leadership must also re-define measures of success that reward investigators and prosecutors for exercising their discretion to achieve just outcomes for victims who have engaged in unlawful conduct, rather than for maximizing arrests made and charges brought.

Survivors of human trafficking have often endured a degree of trauma significant enough to have lasting psychological and physical effects. To appropriately support survivors, a trauma-informed approach should be incorporated across all anti-trafficking efforts, including during the criminal justice process and while providing victim services. Being trauma-informed requires recognizing symptoms of trauma and designing all interactions with victims of human trafficking in such a way that minimizes the potential for re-traumatization.

Law enforcement officials, prosecutors, service providers, and other allied professionals will likely observe a wide range of reactions related to trauma during the course of their work with survivors. Understanding the reason behind a survivor’s actions will contribute immensely to building rapport and trust, whether preparing a victim-witness for trial or providing appropriate services. Personal safety and the wellbeing of their family are often the focus of the trafficking victim; concerned with basic matters of survival, victims may seem unresponsive or reluctant to engage. Many survivors may not self-identify as victims, and may even make initial statements that seem to protect the offenders, or even flee or avoid law enforcement and service providers who are trying to assist them. Such realities require a greater investment of time, patience, and rapport-building than in traditional cases. Providing investigators and prosecutors training on both victim identification and the impact of trauma on victims can help reduce the likelihood of punishing them for acts their traffickers compelled them to commit.

Additionally, it is important that criminal justice responses permit victims access to legal remedies, such as expungement or vacatur provisions, which not only allow victims (both adults and children) to correct past injustices but also help them reclaim and rebuild their lives. In the
United States, state laws form the basis of most criminal actions. Forty-five states have laws allowing survivors to seek a court order vacating, expunging, or sealing criminal convictions entered against them that resulted from unlawful acts traffickers compelled them to commit. These laws increase a survivor’s ability to find work, reducing their economic vulnerabilities and the risk of becoming a victim again. Without such remedies, human trafficking victims with criminal records are condemned to being perpetually viewed as former criminals.

The U.S. government continues to provide and fund training to federal, state, local, and tribal officials, as well as to NGO service providers and health and human service providers, to encourage more consistent application of victim-centered and trauma-informed approaches in all phases of victim identification, assistance, recovery, and participation in the criminal justice process.

Successful identification, investigation, and prosecution of human trafficking crimes requires substantial specialized expertise to include: 1) detecting trafficking indicators, 2) stabilizing and protecting victims, taking into account their unique needs, 3) investigating conduct that may span both domestic jurisdictions and international borders, 4) undertaking parallel financial investigations to identify and disrupt financial flows derived from human trafficking operations, and 5) familiarity with the spectrum of tactics used by human traffickers.

Additionally, there should be collaboration with the public and private financial sector when undertaking proactive parallel financial investigations with a view to tracing, freezing and confiscating proceeds acquired through this crime. Dedicated prosecution units, with training in the victim-centered and trauma-informed approach, build partnerships with victim service providers and advocates, and ensure victims are offered access to protection and services. These units are key in comprehensive anti-trafficking efforts and play an important role in coordinating the variety of stakeholders across government who are needed to prosecute successfully the full range of human trafficking crimes.

Effective human trafficking prosecution units focus on internal as well as transnational cases. They help ensure consistency in responses and victim-centered and trauma-informed practices, by including dedicated and trained personnel with advanced expertise to focus on identifying, investigating, and prosecuting both labor and sex trafficking cases and prioritize efficiency to reduce the time needed to complete cases.

Through the U.S.-Mexico Bilateral Human Trafficking Enforcement Initiative the United States has continued to advance bilateral investigations and prosecutions of transnational trafficking enterprises operating across the U.S.-Mexico border and facilitated exchanges of leads, intelligence analytics, and case mentoring between U.S. and Mexican anti-trafficking authorities. Throughout 2019 and 2020, the Department of Justice increased its engagement with Mexican state-level human trafficking investigative units as well as continuing to advance high-impact bilateral prosecutions, including securing six convictions in United States v. Granados-Corona in November 2019 and another five convictions in United States v. Melendez-Rojas in March 2020. Both cases marked the culmination of extensive coordination between U.S. and Mexican authorities to apprehend associated traffickers on both sides of the border.

Multidisciplinary cooperation is essential, whether at the national level, cross-border, regionally, or inter-ministerially: Cooperation and intelligence sharing between State entities,
including judicial institutions, consular officers, financial entities, and immigration officials, and with victims of trafficking as well as various members of the private sector and civil society.

In closing, the United States remains fully committed to the implementation of the UNTOC and the Protocol. The United States is grateful to our foreign law enforcement counterparts who work together with us to prevent and suppress human trafficking. We look forward to a rigorous discussion of the substantive agenda items and to the adoption of recommendations that will maximize international cooperation.

**U.S. Recommendations TIP Working Group 2020**

- States Parties should provide, in line with their domestic law, that victims of human trafficking are not punished or prosecuted for acts that traffickers compelled them to commit and encourage access to remedies if they are punished or prosecuted for such acts, such as assistance in clearing their criminal records through expungement or vacatur or shielding relevant records, and, accordingly, establish domestic laws, guidelines and policies that clearly espouse these principles.

- States Parties should ensure that investigators and prosecutors are trained in the trauma-informed approach to minimize re-traumatization of victims and ensure an understanding of the impact of trauma on the individual to enable them to participate effectively in prosecutions of their perpetrators.

- States Parties should ensure the proactive and timely identification of victims of trafficking in persons so they receive the assistance they are entitled to, as well as the effective prosecution of the perpetrators of the crime.

- States Parties should encourage relevant regional and international organizations to promote a victim-centered and trauma informed approach, including the proactive and timely identification of human trafficking victims, and the non-penalization of these victims for unlawful acts the traffickers compelled them to commit.

- States Parties should strengthen their justice system response to human trafficking by creating dedicated prosecution units to consolidate and disseminate specialized anti-trafficking subject matter expertise by partnering with local prosecutors, and providing specialized training for judges, prosecutors, and law enforcement.

- States Parties should strengthen their collaboration with other State partners to more effectively combat cross-border human trafficking by going beyond
the formal mutual legal assistance treaties to develop coordinated trans-border investigations and prosecutions.

• States Parties are invited to encourage relevant regional and international organizations to promote specialized prosecution units, coordinated cross-border investigations, and regional collaboration.