

# Combating Demand:

## *The Harmful Impact of Decriminalization on Anti-Trafficking Policies*

Demand is a significant driving force of human trafficking, but some organizations and individuals continue to advocate for decriminalization laws that remove criminal liability for anyone involved in the commercial sex trade, including sex buyers. Studies have shown that wherever prostitution is legalized or tacitly legitimized, there is an increase in sex trafficking. Legalizing demand normalizes the sex trade, causing it to explode. Men who do not buy sex when it is illegal become new clients and to satisfy the increase in demand, the sex trade must lure in more vulnerable people. The most vulnerable and in demand are the children and youth.

## National Efforts Prioritizing the Eradication of Human Trafficking

### National Security Presidential Directive ("NSPD-22") (2002)

Clarified, “Our policy is based on an abolitionist approach to trafficking in persons, and our efforts must involve a comprehensive attack on such trafficking, which is a modern-day form of slavery. In this regard, the United States Government opposes prostitution and any related activities, including pimping, pandering, or maintaining brothels, as contributing to the phenomenon of trafficking in persons. These activities are inherently harmful and dehumanizing. The United States Government’s position is that these activities should not be regulated as a legitimate form of work for any human being.” (NSPD-22 p. 2-3)

*Re-affirmed by subsequent presidency; bipartisan support*

### Amendment to the Trafficking Victims Protection Act (2003)

Amended the TVPA to include a requirement that any recipient of U.S. funds to counter trafficking and provide services must sign a pledge stating, “No funds . . . may be used to promote, support, or advocate the legalization or practice of prostitution” and that “No funds . . . may be used to implement any program . . . through any organization that has not stated in either a grant application, a grant agreement, or both, that it does not promote, support, or advocate the legalization or practice of prostitution.”

### Justice for Victims of Trafficking Act (2015)

Amended the federal trafficking law, 18 U.S.C. § 1591, by adding the terms “patronize” and “solicit” to the list of prohibited conduct and clarified that the change was meant to “mak[e] absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders . . . .”

## Overtuning the Anti-Prostitution Pledge

In 2013, the U.S. Supreme Court overturned the 2003 anti-prostitution pledge requirement, holding that requiring American organizations to adopt a policy expressly condemning prostitution and sex trafficking in order to receive federal funding unconstitutionally restricted freedom of speech. (*USAID v. Alliance Open Society [I]*, 570 U.S. 205). Notably, in 2020, the Court upheld the pledge requirement’s application to foreign affiliates of U.S.-based organizations, which are not protected under the U.S. Constitution. (*USAID v Alliance for Open Society [II]*, No. 19-177). While the 2020 decision represents an important step for combating decriminalization abroad, the 2013 decision continues to hinder our government’s ability to fight sex trafficking within our own borders.

## Take Action

As decriminalization advocacy efforts continue, this is a pivotal moment for enforcing the U.S.'s position on combating all forms of sex trafficking, including the crime of purchasing sex acts with a trafficked person, and for preventing collateral damage from the 2013 and 2020 Supreme Court decisions. Strong and decisive action will not only support a cultural shift away from the notion that a person can be bought or sold for sex, but also debunk the myth that prostitution is a legitimate, non-exploitative form of work.

### What can be done:

- ❖ *At the Presidential-level:* Issue an executive order directing federal agencies to enforce any and all laws and policies addressing the crime of buying sex with trafficking victims, thereby directing funding away from groups who support legalization of prostitution.
- ❖ *For those administering grants/anti-trafficking funds:* Ensure funds are not used to support decriminalization efforts by directing funding to organizations that focus on survivor restoration and do not advocate for the legalization of prostitution.
- ❖ *For advocates:* Challenge each other to change the systems that lead to involvement in the commercial sex industry and provide real alternatives to commercial sex by addressing the underlying factors that limit the choices of individuals in the sex trade.



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