

Congress of the United States

Washington, DC 20515

December 17, 2024

The Honorable Xavier Becerra
Secretary of the Department of Health
and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Merrick B. Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Secretary Becerra and Attorney General Garland:

We urge the Department of Health and Human Services (HHS) and the Department of Justice (DOJ) to research the impacts of the *Stop Enabling Sex Traffickers Act* (SESTA) and the *Allow States and Victims to Fight Online Sex Trafficking Act* (FOSTA) (known as “SESTA/FOSTA”). Research to date has been limited, but early findings suggest that SESTA/FOSTA — and the contemporaneous closure of Backpage.com — have undermined the safety and health of sex workers, while stymieing law enforcement investigations into human trafficking.¹ DOJ and HHS should undertake the first-ever robust, national study to better understand the practical impacts of SESTA/FOSTA on individuals engaged in criminalized or non-criminalized forms of sex work, as well as those impacted by sex trafficking.

SESTA/FOSTA, enacted in April 2018, made online platforms criminally and civilly liable for hosting users’ content “with the intent to promote or facilitate the prostitution of another person.”² In other words, if a website user published a post advertising sex, the website itself could be held liable under SESTA/FOSTA’s new exception to platforms’ typical immunity under Section 230 of the *Communications Decency Act*.³ SESTA/FOSTA was designed to crack down on human trafficking by eroding traffickers’ ability to “advertis[e] the sale of unlawful sex acts” online.⁴ The Act was partly inspired by Senate findings that Backpage.com — then the primary website for advertising

¹ Decriminalizing Sex Work, “What is SESTA/FOSTA?,” <https://decriminalizesex.work/advocacy/sesta-fosta/what-is-sesta-fosta/>; WHYY, “FOSTA-SESTA was supposed to thwart sex trafficking. Instead, it’s sparked a movement,” Liz Tung, July 10, 2020, <https://whyy.org/segments/fosta-sesta-was-supposed-to-thwart-sex-trafficking-instead-its-sparked-a-movement/>; U.S. Government Accountability Office, “Sex Trafficking Online Platforms and Federal Prosecutions,” June 2021, <https://www.gao.gov/assets/gao-21-385-highlights.pdf>; Kendra Albert, “Five Reflections from Four Years of FOSTA/SESTA,” *Cardozo Arts & Entertainment Law Journal*, 2022, pp. 1, 15-27, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4095115.

² Allow States and Victims to Fight Online Sex Trafficking Act of 2017, H.R. 1865, <https://www.congress.gov/bill/115th-congress/house-bill/1865/text>; MDPI, “Anti-Trafficking in the Time of FOSTA/SESTA: Networked Moral Gentrification and Sexual Humanitarian Creep,” Jennifer Musto, Anne Fehrenbacher, Heidi Hoefinger, Nicola Mai, P. G. Maciotti, Calum Bennachie, Calogero Giametta, and Kate D’Adamo, February 8, 2021, <https://www.mdpi.com/2076-0760/10/2/58>; Hacking/Hustling, “Erased The Impact of FOSTA-SESTA & the Removal of Backpage,” 2020, https://hackinghustling.org/wp-content/uploads/2020/02/Erased_Updated.pdf.

³ MDPI, “Anti-Trafficking in the Time of FOSTA/SESTA: Networked Moral Gentrification and Sexual Humanitarian Creep,” Jennifer Musto, Anne Fehrenbacher, Heidi Hoefinger, Nicola Mai, P. G. Maciotti, Calum Bennachie, Calogero Giametta, and Kate D’Adamo, February 8, 2021, <https://www.mdpi.com/2076-0760/10/2/58>.

⁴ Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Public Law 115–164.

transactional sex — had been used for child sex trafficking.⁵ DOJ shut down Backpage just days before SESTA/FOSTA was signed into law.⁶

Although SESTA/FOSTA aimed to target “the sale of sex trafficking victims,”⁷ it appears to have had profound implications for individuals who engaged in consensual transactional sex, and even those performing non-criminalized labor in the legal adult industry.⁸ Websites responded to SESTA/FOSTA by closing portions of the sites that frequently hosted sex ads and terminating accounts of sex workers.⁹ Before its passage, many rights advocates warned that the Act could counterproductively compromise the safety of sex workers, while driving sex trafficking further underground.¹⁰

Six years since the passage of SESTA/FOSTA, early findings have confirmed that those warnings were well founded.¹¹ Sex workers broadly report being more financially, physically, and mentally vulnerable than before the Act’s passage.¹² According to a 2024 report that surveyed 440 sex workers, almost 80 percent have had their accounts removed from at least one online platform — including social media sites, dating apps, chat and video call platforms, and payment processors (such as PayPal and Venmo).¹³ Of those whose online accounts were closed, nearly 90 percent saw a decline in their income,¹⁴ and more now experience unstable housing.¹⁵ Sex workers also have less

⁵ United States Senate, Permanent Subcommittee on Investigations, “Backpage.com’s Knowing Facilitation of Online Sex Trafficking,” pp. 16-17, <https://www.courthousenews.com/wp-content/uploads/2017/02/Backpage-Report.pdf>.

⁶ U.S. Department of Justice, Office of Public Affairs, “Justice Department Leads Effort to Seize Backpage.Com, the Internet’s Leading Forum for Prostitution Ads, and Obtains 93-Count Federal Indictment,” press release, April 9, 2018, <https://www.justice.gov/opa/pr/justice-department-leads-effort-seize-backpagecom-internet-s-leading-forum-prostitution-ads>; The Washington Post, “Trump signs ‘FOSTA’ bill targeting online sex trafficking, enables states and victims to pursue websites,” Tom Jackman, April 11, 2018, <https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites>.

⁷ Allow States and Victims to Fight Online Sex Trafficking Act of 2017, H.R.1865, <https://www.congress.gov/bill/115th-congress/house-bill/1865/text>.

⁸ MDPI, “Anti-Trafficking in the Time of FOSTA/SESTA: Networked Moral Gentrification and Sexual Humanitarian Creep,” Jennifer Musto, Anne Fehrenbacher, Heidi Hoefinger, Nicola Mai, P. G. Maciotti, Calum Bennachie, Calogero Giametta, and Kate D’Adamo, February 8, 2021, <https://www.mdpi.com/2076-0760/10/2/58>.

⁹ *Id.*; Electronic Frontier Foundation, “With FOSTA Already Leading to Censorship, Plaintiffs Are Seeking Reinstatement Of Their Lawsuit Challenging the Law’s Constitutionality,” Karen Gullo and David Greene, March 1, 2019, <https://www.eff.org/deeplinks/2019/02/fosta-already-leading-censorship-we-are-seeking-reinstatement-our-lawsuit>.

¹⁰ New Republic, “The Real Story of the Bipartisan Anti-Sex Trafficking Bill That Failed Miserably on Its Own Terms,” Melissa Gira Grant, June 23, 2021, <https://newrepublic.com/article/162823/sex-trafficking-sex-work-sesta-fosta>; The Appeal, “Proposed Federal Trafficking Legislation Has Surprising Opponents: Advocates Who Work With Trafficking Victims,” Melissa Gira Grant, January 26, 2018, <https://theappeal.org/proposed-federal-trafficking-legislation-has-surprising-opponents-advocates-who-work-with-bf418c73d5b4>.

¹¹ Reason, “Deplatforming Doesn’t Make Sex Work Safer,” Elizabeth Nolan Brown, September 4, 2024, https://reason.com/2024/09/04/deplatforming-doesnt-make-sex-work-safer/?utm_medium=reason_email&utm_source=sex_and_tech&utm_campaign=reason_brand&utm_content=Deplatforming%20Doesn%27t%20Make%20Sex%20Work%20Safer&utm_term=0035x00003N3IZqAAJ&time=September%204th,%202024&mpid=914300.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Coyote RI, “Four Years of FOSTA: The Survey,” September 2022, p. 8, <https://coyoteri.org/wp/wp-content/uploads/2022/09/FourYearsOfFosta.pdf>; Hacking/Hustling, “Erased The Impact of FOSTA-SESTA & the Removal of Backpage,” 2020, p. 18, https://hackinghustling.org/wp-content/uploads/2020/02/Erased_Updated.pdf.

access to well-established financial technologies and have relied more on cash, risky cryptocurrencies, and less-reputable financial platforms based overseas.¹⁶

Alongside economic insecurity, sex workers face a heightened risk of violence.¹⁷ A 2020 report found that one-third of sex workers have experienced increased violence from clients.¹⁸ A 2022 survey similarly found that, after SESTA/FOSTA’s passage, almost 40 percent of sex workers faced heightened physical and sexual assault, including “being robbed, raped, beaten, and locked into rooms.”¹⁹ Losing access to online platforms has eliminated sex workers’ ability to digitally screen out abusive clients, negotiate with potential clients online, and share information about dangerous clients with virtual networks of sex workers.²⁰ Moving offline has also pushed more people into street-based sex work, which is associated with a higher risk of physical assault and even homicide.²¹ Street work has also exposed sex workers to increased harassment and physical violence by police officers.²²

Furthermore, many sex workers have lost the ability to independently find clients online.²³ Instead, more depend on third-party managers or “pimps” to identify clients and for physical security,²⁴ ironically *increasing* their risk of being trafficked or otherwise exploited. These impacts have reached not only sex workers in the United States but also those in other countries who previously relied on U.S.-based websites for identifying and screening clients.²⁵

¹⁶ *Id.*, pp. 29-30; Wired, “Sex Workers Took Refuge in Crypto. Now It’s Failing Them,” Joel Khalili, August 8, 2023, <https://www.wired.com/story/sex-workers-crypto-failing-them>; Mashable, “How sex workers bank their money, since Mastercard abandoned them,” Faima Bakar, August 30, 2022, https://mashable.com/article/sex-workers-banking-money?test_uuid=01iI2GpryXngy77uIpA3Y4B&test_variant=a; New York Times, “Sex Workers Have Been Shunned by Banks, Even When Their Work Is Legal,” Tara Siegel Bernard, November 18, 2023, <https://www.nytimes.com/2023/11/18/business/sex-workers-bank-accounts.html>; KQED, “When Banks Turned Their Backs on Them, Some Adult Entertainment Workers Turned to Cryptocurrency,” Adhiti Bandlamudi, December 23, 2021, <https://www.kqed.org/news/11899955/when-banks-turned-their-backs-on-them-some-adult-entertainment-workers-turned-to-cryptocurrency>.

¹⁷ Hacking//Hustling, “Erased The Impact of FOSTA-SESTA & the Removal of Backpage,” 2020, p. 17-19, https://hackinghustling.org/wp-content/uploads/2020/02/Erased_Updated.pdf.

¹⁸ *Id.*

¹⁹ Coyote RI, “Four Years of FOSTA: The Survey,” September 2022, p. 11, <https://coyoteri.org/wp/wp-content/uploads/2022/09/FourYearsOfFosta.pdf>.

²⁰ Columbia Human Rights Law Review, “FOSTA In Legal Context,” Kendra Albert, et al., 2021, pp. 1090, 1146, https://hrlr.law.columbia.edu/files/2021/04/1084_Albert.pdf; Decriminalizing Sex Work, “What is SESTA/FOSTA,” <https://decriminalizesex.work/advocacy/sesta-fosta/what-is-sesta-fosta/>; Hacking//Hustling, “Erased The Impact of FOSTA-SESTA & the Removal of Backpage,” 2020, p. 3, https://hackinghustling.org/wp-content/uploads/2020/02/Erased_Updated.pdf.

²¹ Coyote RI, “Craigslist’s Effect on Violence Against Women,” Scott Cunningham et al., November 2017, https://coyoteri.org/wp/wp-content/uploads/2019/01/13575_paper_QZNF9dHi-1.pdf.

²² Hacking//Hustling, “Erased The Impact of FOSTA-SESTA & the Removal of Backpage,” Danielle Blunt and Ariel Wolf, 2020, p. 24, https://hackinghustling.org/wp-content/uploads/2020/02/Erased_Updated.pdf.

²³ Columbia Human Rights Law Review, “FOSTA In Legal Context,” Kendra Albert, et al., 2021, p. 1090, https://hrlr.law.columbia.edu/files/2021/04/1084_Albert.pdf.

²⁴ *Id.*; Hacking//Hustling, “Erased The Impact of FOSTA-SESTA & the Removal of Backpage,” Danielle Blunt and Ariel Wolf, 2020, p. 19, https://hackinghustling.org/wp-content/uploads/2020/02/Erased_Updated.pdf; Coyote RI, “Four Years of FOSTA: The Survey,” Tara Burns and Allie Benz, September 2022, p. 10, <https://coyoteri.org/wp/wp-content/uploads/2022/09/FourYearsOfFosta.pdf>.

²⁵ Anti-trafficking Review, “‘I’ve Never Been So Exploited’: The consequences of FOSTA-SESTA in Aotearoa New Zealand,” Erin Tichenor, 2020, <https://www.antitraffickingreview.org/index.php/atrjournal/article/view/447/361>.

Beyond its implications for sex workers, SESTA/FOSTA has presented new risks for trafficking victims. A 2021 Government Accountability Office (GAO) study found that the Act undermined law enforcement’s ability to investigate trafficking cases.²⁶ SESTA/FOSTA pushed websites used for commercial sex to move overseas and underground, hindering law enforcement’s ability to track online posts advertising sex.²⁷ According to some law enforcement officials, the Act “removed one of the best tools police had for finding trafficking cases.”²⁸ Meanwhile, the benefits of SESTA/FOSTA have been questionable; the GAO study found that the Act has rarely been used to prosecute online platforms, given the availability of other statutes to hold platforms accountable.²⁹

Thus far, research into the impacts of SESTA/FOSTA has been valuable, but notably limited. Studies have relied on small sample sizes, limited funding, and anecdotal reports.³⁰ A rigorous, national study is critical for better understanding the full range of effects SESTA/FOSTA has had for sex workers and sex trafficking victims, particularly the most vulnerable, hard-to-reach groups.

HHS and DOJ can fill that gap by studying the practical impacts of SESTA/FOSTA. We ask HHS to study the law’s impact on the health and safety of sex workers, including their exposure to violence by clients and exploitation by third parties. Additionally, we ask DOJ to research SESTA/FOSTA’s impact on human trafficking investigations and prosecutions. HHS and DOJ should do so in close coordination with community-based organizations serving sex workers, especially those led by sex workers and survivors of trafficking. While the *SAFE SEX Workers Study Act* would require your departments to complete these studies,³¹ we encourage HHS and DOJ to pursue this research voluntarily as part of your respective missions to protect the health and safety of all Americans, including sex workers, and to investigate human trafficking.

Given the need for additional research into the practical impacts of SESTA/FOSTA, we request that you provide the following information by January 7, 2025:

1. Has your agency studied or made plans to study the impacts of SESTA/FOSTA and the closure of Backpage.com on sex workers, including their:
 - a. Physical and mental health and wellbeing;
 - b. Financial security, access to economic resources such as housing, and access to access to banking and financial technology tools;

²⁶ U.S. Government Accountability Office, “Sex Trafficking Online Platforms and Federal Prosecutions,” June 2021, <https://www.gao.gov/assets/gao-21-385-highlights.pdf>.

²⁷ U.S. Government Accountability Office, “Sex Trafficking Online Platforms and Federal Prosecutions,” June 2021, pp. 20-21, <https://www.gao.gov/assets/gao-21-385.pdf>; The Nation, “How Anti-Sex Work Legislation Is About to Get Worse,” Sascha Cohen, September 25, 2023, <https://www.thenation.com/article/society/fosta-sesta-avs-bills-sex-work>.

²⁸ WRTV, “Running Blind: IMPD arrests first suspected pimp in 7 months,” Jordan Fischer, December 12, 2018, <https://www.wrtv.com/longform/running-blind-impd-arrests-first-suspected-pimp-in-7-months>.

²⁹ U.S. Government Accountability Office, “Sex Trafficking Online Platforms and Federal Prosecutions,” June 2021, <https://www.gao.gov/assets/gao-21-385-highlights.pdf>.


³⁰ Coyote RI, “Four Years of FOSTA: The Survey,” September 2022, <https://coyoteri.org/wp/wp-content/uploads/2022/09/FourYearsOfFosta.pdf>; Hacking//Hustling, “Erased The Impact of FOSTA-SESTA & the Removal of Backpage,” Danielle Blunt and Ariel Wolf, 2020, https://hackinghustling.org/wp-content/uploads/2020/02/Erased_Updated.pdf; MDPI, “Anti-Trafficking in the Time of FOSTA/SESTA: Networked Moral Gentrification and Sexual Humanitarian Creep,” Jennifer Musto, Anne Fehrenbacher, Heidi Hoefinger, Nicola Mai, P. G. Maciotti, Calum Bennachie, Calogero Giametta, and Kate D’Adamo, February 8, 2021, <https://www.mdpi.com/2076-0760/10/2/58>.

³¹ SAFE SEX Workers Study Act, S.3758, <https://www.congress.gov/bill/117th-congress/senate-bill/3758>.


- c. Exposure to violence perpetrated by third parties and managers, clients, and intimate partners and family members;
 - d. Interactions with law enforcement, including changes in police surveillance, stops, and arrests;
 - e. Changes in access to technology-related harm reduction services, including social media services;
 - f. Ability to negotiate terms with potential clients;
 - g. Relationship to and reliance on third parties;
 - h. Experiences of exploitation and trafficking;
 - i. Vulnerability to the transmission of HIV and other sexually transmitted infections; and
 - j. Changes in participation in other criminalized behavior.
2. If so, has your agency studied disparities in the effects described above on key populations typically underserved by service providers (including LGBTQIA+ individuals, people living in rural areas, racial and ethnic minorities, Tribal communities, people experiencing exploitation and trafficking, and undocumented and documented foreign nationals)?
 3. Has your agency studied or made plans to study the impacts of SESTA/FOSTA and the closure of Backpage.com on sex trafficking victims, including on:
 - a. Trafficking investigations, including websites' willingness to cooperate with law enforcement to assist trafficking investigations; and
 - b. The impact of the online transactional sex advertising market moving overseas and underground.
 4. The 2021 GAO report found: "prosecutors have not brought more cases with charges under section 3 of FOSTA because the law is relatively new and prosecutors have had success using other criminal statutes." In the years since this report, has DOJ brought more charges using SESTA or FOSTA?
 - a. If so, what have been the results?
 - b. If not, why has the DOJ declined to use the law as a tool for prosecutions more often?

Thank you for your attention to this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Ro Khanna
Member of Congress

Ron Wyden

Ron Wyden
United States Senator

Eleanor H. Norton

Eleanor Holmes Norton
Member of Congress

Bonnie Watson Coleman

Bonnie Watson Coleman
Member of Congress

Barbara Lee

Barbara Lee
Member of Congress