

**House Financial Services Committee  
Subcommittee on National Security, International Development,  
and Monetary Policy**

**Hearing on**

**Ending Exploitation: How the Financial System can Work  
to Dismantle the Business of Human Trafficking**

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Testimony of Ambassador (ret.) Luis C.deBaca

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Chairman Himes, Ranking Member Hill, and Members of the Committee,

It is an honor to appear before you today as you explore the issue of financial sector solutions to the problem of human trafficking. My name is Luis C.deBaca. I serve as a Senior Fellow at the slavery studies center at Yale University and as Visiting Lecturer in Law and Architecture. I served at U.S. Ambassador to Monitor and Combat Trafficking in Persons under the Obama Administration, and as Director of the Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking in the Obama Administration and in the early days of the Trump Administration. In prior roles, I was the Chief Counsel of the Justice Department’s Human Trafficking Prosecutions Unit, was DOJ’s Involuntary Servitude and Slavery program coordinator, and was Counsel to the House Judiciary Committee, where I was the lead staffer on the 2008 Trafficking Victims Protection Reauthorization Act.

**Scope, Nature, and Definition of Human Trafficking**

The United States defines Trafficking in Persons as manifesting in two market sectors: for commercial sexual activity and for labor. Force, Fraud, and Coercion are the hallmark of both the Forced Labor offense, 18 U.S.C. §1589, and Sex Trafficking of adults, 18 U.S.C. §1591. For children, much as we see in statutory rape and age-of-consent laws, commercial sexual activity is presumed to always be coercive by virtue of the victim being under eighteen years of age. 18 U.S.C. §1591. Despite the casual usage of the term “trafficking,” movement is not required or dispositive; the heart of the offense is the coerced service of the victim.

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<sup>1</sup> For identification purposes only; this testimony is not the official position of Yale University or its affiliates.

When a human trafficking instance does involve recruitment or transportation, it can overlap with other illicit flows, such as drug trafficking, illegal timber harvesting, organ trafficking, or alien smuggling. But unlike these illicit flows, it is critical to remember that human trafficking involves people. A kilogram of cocaine or even an exotic bird is not a rights-holder, and states and institutions do not have responsibilities to them the way we do to people whose core rights have been violated.

So too, trafficking is not a synonym for alien smuggling or harboring, which are separately defined in United States law, *see, e.g.* 8 U.S.C. 1324, and are not part of the regime created by Trafficking Victims Protection Act of 2000 (TVPA) or previous statutory tools based in the Thirteenth Amendment's guarantee of freedom. "Trafficking in Persons" is a relatively new term, supplementing and modernizing the Justice Department's previously named "Involuntary Servitude & Slavery" program. Describing the issue as "modern slavery" is not rhetorical usage, but reflects the underlying right that is being protected through these efforts.

Human Trafficking is also governed by an array of national legislation and international instruments. The international analogue to the Thirteenth Amendment is Article 4 of the Universal Declaration of Rights, which tracks the language of the U.S. Constitutional provision in articulating the underlying right. The concepts are actualized through Conventions and Protocols against Forced Labor, Trafficking in Persons, and other gradations of the phenomenon; while definitions differ slightly, all are rooted in the ultimate exploitation of the person.

As to the scope of the issue, the International Labor Organization (ILO), the International Organization for Migration, and the Walk Free Foundation have partnered to undertake the Global Estimates of Modern Slavery, which is the basis for the Global Slavery Index. Because of the complexity of the undertaking, and COVID, the most recent estimates set forth in the GSI are from the 2018 Report – 24.9 million people are in forced labor or commercial sex, and 15.4 million people are in forced marriage. Seventy-one percent of the victims are female. An ILO study in 2014 estimated human trafficking generated \$150 billion in profits – this study continues to inform our understanding of the financial reach of this crime.

Sadly, criminal investigations and prosecutions have not kept pace with the scope of this scourge. The 2020 Trafficking in Persons Report identified 11,841 prosecutions worldwide, of which only 1,024 were for forced labor; one can only assume that the numbers will be even lower in this COVID year. Financial investigations and Asset Forfeiture/Money Laundering (AML) tools could therefore not only be a means by which to narrow the gap between the dramatic number of victims and lesser state responses, but could also provide structural pressure to prevent trafficking or to make survivors whole through restitution facilitated by asset tracking capabilities.

### **Human Trafficking is a National Security Issue -- and also a Human Rights Crime with Economic/Financial Impacts**

Human Trafficking is not simply a crime or social phenomenon but is a national security threat to the United States. A little over four years ago, the first-ever United Nations Security

Council Resolution on human trafficking was adopted in response to high-profile instances of trafficking “in the context of armed conflict.” UNSCR 2331 (2016). The Resolution harnessed the Financial Action Task Force (FATF) and corresponding regional bodies (the FSRBs) and encouraged States to develop expertise within their Financial Investigative Units (FIUs). The Resolution is rooted in those instances of trafficking in furtherance of terrorist activity, and its adoption was therefore a recognition by the nations of the world that human trafficking is a national and international security threat. Such a characterization is not only factually and legally justified, but brings with it new resources and approaches, such as inclusion in national security strategy planning, increased collection activities in the Intelligence Community, and the ability to harness financial tools developed in the counter-terrorism fight.

However, human trafficking is not only properly criminalized or responded to at the national or international levels because of terrorism. Trafficking in Persons violates core United States interests and values because it directly subverts the guarantee of freedom from Slavery and Servitude set forth in both the Thirteenth Amendment and the Universal Declaration of Rights.

Cleansing the financial system of money tainted by this form of modern slavery should therefore not be seen as a priority only in relation to terrorism but as a stand-alone reason for engagement by regulators, banks, and other stakeholders. Clearly, this is a problem of human insecurity, given the violence and harm suffered by its victims and the destabilization of communities and even states. It is also a problem because such grave human rights violations are a national security threat to the United States and the values that we seek to advance through our global leadership. Our commitment to standing against modern slavery and its effects around the world through the “3P Paradigm” (prioritizing Prevention, Protection, and Prosecution as opposed to merely law enforcement or border security) is an important aspect of national security, through our support and cooperation with other governments as well as the effect on the United States’ reputation in the global community.

### **The Relationship Between the Financial System and Trafficking in Persons**

When money tainted by forced labor, forced prostitution, or commercial sexual exploitation of children enters the financial system -- whether as proceeds of the crime or instrumentalities of the offense -- it is a financial manifestation of a slavery crime that denies people of their freedom, destabilizes labor markets, and keeps vulnerable communities trapped in cycles of debt and poverty.

Traffickers and those who profit from trafficking use the financial system to move money, to collect payments, and to commit additional crimes such as fraud and wage theft against those who they are holding in compelled service.

Unbanked people are vulnerable to traffickers. Lack of access to the financial system leads to self-collateralization, resulting in the onerous up-front debts for recruiting fees or transportation costs that too-often deliver workers to the job-site effectively in peonage before they have worked even a day.

And, financial fraud and identity theft by traffickers further victimizes those upon whom they prey. A financial system in which this crime is poorly understood exacerbates the victimization through credit scoring and other means, just as lack of understanding has kept survivors out of transitional job opportunity because of criminal records or the inability to meet licensing standards for such occupations as cosmetology, massage, or possibly even positions as bank tellers or in mortgage lending.

We have seen several entities step up to the risks and opportunities around trafficking and the financial system. For instance, almost four years ago a convening at Grace Farms in New Canaan, CT, brought NGOs, financial sector representatives, money-laundering experts, and government actors together. This pathbreaking gathering, held in partnership with the Security Council's think tank (U.N. University) and the Government of Lichtenstein, resulted in the 2017 publication "25 Keys to Unlock the Financial Chains of Human Trafficking and Modern Slavery."<sup>2</sup> Subsequent efforts such as the Lichtenstein Initiative Finance Against Slavery and Trafficking (FAST) sharpened the analysis and identified a way forward with a blueprint for mobilization; I highly recommend the work of that commission as pathway for engagement.

### **Risks and Opportunities – the Example of the Construction Industry**

Many of the initial discussions and preliminary responses to financial aspects of human trafficking issue have been around the retail level, and many have been drawn to the issue because of the critical need to confront and disrupt sex trafficking networks. But the risk is much broader and touches on aspects such as commercial banking and construction financing, as I think my fellow panelist Barry Koch will address in his testimony today.

Construction financing is particularly worrisome, but is also a potential avenue for leadership. Construction and related industries are routinely identified as sites of forced labor, and extractive efforts in timber and mining often drive sex trafficking in surrounding communities. This last Fall, Grace Farms' "Design for Freedom" report identified a number of at-risk building materials supply inputs in addition to the modern slavery we've see on jobsites from Minneapolis to the Arab Gulf and everywhere in between. The Report sets forth concrete steps that firms can take, and I highly recommend it to your attention. [https://www.designforfreedom.org/wp-content/uploads/2020/11/DesignforFreedom\\_FullReport.pdf](https://www.designforfreedom.org/wp-content/uploads/2020/11/DesignforFreedom_FullReport.pdf)

The work of this subcommittee can take the Design for Freedom ethos even farther, because confining liability and risk only to Architectural, Engineering, and Construction firms would let the financiers of construction projects off the hook. Not incorporating the risk of human trafficking in the built environment into the financial or insurance aspects of a project shifts externalities to workers and vulnerable communities and relegates the issue over to either toothless corporate social responsibility efforts or to overworked law enforcement and service entities.

Confronting trafficking in the construction space through financing or insurance reviews could provide important leverage opportunities for anti-slavery requirements to be built into projects

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<sup>2</sup> I participated in that convening and other Grace Farms efforts as a consultant to their Justice Initiative; my testimony today is not the official position of Grace Farms or its affiliates.

from the beginning. Useful financial intelligence around construction materials and other supply chains could even bring opportunities for disruption, innovation, and profit in both that multi-trillion dollar industry and the financial practices that accompany it.

### **International Financial Institutions and Multilateral Development Banks**

There is an opportunity for leadership in the counter-trafficking fight that goes beyond private financial institutions. The International Financial Institutions (IFIs) have several tools, such as the World Bank's advisory services to countries and stolen asset recovery initiative, which *might* be brought to bear, but the IFIs and the multilateral development banks (MDBs) have not yet taken an active role. There is a useful model that could be applied: the U.S. International Development Finance Corporation (DFC) includes prohibitions against forced and child labor in their project language much as the Federal Acquisition rules prohibit slavery/trafficking in federal contracting. That approach, if incorporated into the IFIs and MDBs practice, could have a transformative effect on the fight against human trafficking, much as incorporation of LEED standards and requirement into federal building projects had a spillover effect on private business and made environmental sustainability an industry norm.

### **Partnerships for Prevention, Protection and Restoration**

The financial sector also has an opportunity to lead in restoration of survivors and in support of the organizations that aid them. Banks and consumer credit rating agencies should aggressively develop methods by which survivors could repair their credit. Partnerships such as the support that PayPal gives Polaris (which operates the national hotline) for their Financial Intelligence Unit can bring NGOs and survivors to the table with institutions that are only starting to engage. Industry associations can develop and disseminate standards and training materials, such as the American Bankers Association's trainings for front-line, compliance, and data analysis staff. Institutions could examine their workforce needs for potential job training and placement programs – trafficking survivors have repeatedly proven to be effective and productive employees.

Such efforts reflect the practice of the interagency and many anti-trafficking groups to supplement the “3P Paradigm” of the TVPA with a “Fourth P” – Partnerships. Partnerships should not be limited to the private sector and NGO community. For instance, the Internal Revenue Service could expand their Taxpayer Advocate Service to incorporate trafficking survivors' experiences, and work with survivor groups and service providers to address tax issues that stem from their time in servitude. The NGO Liberty Shared (founded by members of the banking community) not only conducts important research and provides critical information to law enforcement and customs agencies, but also maintains a Victim Case Management System through which NGOs around the world can manage their caseloads – a project initially seeded by the State Department.

### **Financial Oversight Agency Engagement is an Opportunity for Impact**

There is a need for agency-wide coordination at the Treasury Department. In the late 1990s, the Justice Department and Department of Labor took that approach with the Worker

Exploitation Task Force, which then grew into the Senior Policy Operating Group and the Cabinet-level President's Interagency Task Force on Trafficking. Agencies that have harmonized their authorities have closely examined the industries or sectors for which they are responsible (for instance, Transportation's examination of long-haul trucking and Education's examination of safe schools) and provide a model for the Treasury Department. In the years leading up to the enactment of the TVPA, investigators and prosecutors harnessed tools that were not trafficking-specific to be able to pursue cases, but it took a comprehensive Bill to fully engage the issue and direct the full power of the agencies.

The Treasury Department currently is in a similar situation as we were in 25 years ago at DOJ: dedicated career staff are thinking broadly about what tools could be used (and are moving the needle) but the authorities, corresponding offices, and leadership of the agency are aligned toward terrorism threats and anti-corruption goals. Imagine the results if the relatively informal engagement and energy within the component offices and bureaus of the Office of Terrorism and Financial Intelligence could be solidified with Secretarial prioritization and trafficking-specific authorities, work responsibilities, and budgets -- not to mention relationships with organized labor, human rights groups, service providers, and survivors themselves.

Human trafficking is a multi-faceted phenomenon, which sometimes results in it falling through the cracks of agency authorities that were created before the TVPA or for other purposes. That gap has been filled over time through the periodic reauthorization Acts, such as by adding the slavery/trafficking offenses as predicates for RICO and money laundering statutes. Strangely, one persistent gap is that while this is a critical human rights issue, it is sometimes dealt with outside of human rights responses. The Human Rights and democracy summit that President Biden promised during the campaign will be a good opportunity to ensure that this important rights issue is addressed within the human rights context, rather than only through carceral or security lenses; the planning for the Summit should include trafficking and forced labor issues and bring in stakeholders working in the field.

While trafficking-specific programs are always critical, important human rights tools should also incorporate human trafficking. To that end, it is my understanding that the Global Magnitsky Act by and large hasn't been used to address forced labor but that the Department has instead used sanctions authorities such as the DPRK, Transnational Organized Crime, and Drug Trafficking authorities. Reauthorization of that statute should make it clear that trafficking/slavery is included as one of the "serious human rights abuses" for the Global Magnitsky Act. The United Kingdom includes human trafficking in their human rights sanction program, and I understand that the European Union is in the process of standing up human rights sanctions authority that will include human trafficking; we risk being unaligned with our allies and partners if this remains unaddressed. This week's joint effort in response to the Chinese government's systematic abuse of the Uygher population shows how powerful coordinated action can be in this arena.

But sanctions and other tools should of not course be only applied to persons or entities involved in crises that are as high-profile as the situation in Xinjiang and that involve state action. Just as with organized crime and drug trafficking, aggressive sanctions against persons

and companies who participate or profit from sex trafficking or forced labor would be an important financial tool.

Sanctions, import restrictions, and Withhold Release Orders are becoming an important part of the countertrafficking toolkit – especially important in light of the dearth of prosecutions. Make no mistake, the paucity of prosecutions, especially for forced labor, not only leaves the rights of victims unvindicated, but removes an important incentive for self-regulation and compliance on the part of firms that profit from the practice, persist in willful blindness and reckless disregard, or risk discovering slavery-tainted supply chains or accounts only after it is too late. While intensifying criminal responses is critically important, carceral approaches are no longer the only regulatory option open to the government. But to use these tools requires good information. Financial intelligence collection and dissemination should be a higher priority for the federal government, especially as a way to supplement current investigation-by-investigation practice with trend analysis, risk notification, and target identification.

Such intelligence requires partnerships with the NGO community, especially those who combine knowledge of vulnerable populations with the ability to analyze financial and commercial flows. Those groups and individuals must be able to do their work without retaliation. We have seen that this week in China's response to the Uygher sanctions by sanctioning human rights researchers. We saw that over the last decade, as human rights expert Andy Hall had to go all the way to the Supreme Court of Thailand to clear his name after a large fruit exporter accused him of criminal defamation. Just in the last few weeks we saw an attempt by a Malaysian palm oil company to intimidate the leadership of Liberty Shared; while their lawsuit was withdrawn after an uproar by stakeholders, it was a troubling situation.

While there are many competing interests that would need to be balanced to protect NGOs and researchers in sharing information and data, there are existing protections that could be looked to. For instance, exemptions could be created akin to the information-sharing protections of Section 314(b) of the Patriot Act. Criminal obstruction investigations, financial sanctions, or import restrictions could be part of a suite of responses against those who might retaliate against community-based organizations, non-governmental organizations or others who are giving information to the intelligence community, regulators, or financial institutions.

### **Recommendations and Potential Legislation**

I have set forth several recommendations for action in this testimony while setting out the situation broadly. There are many opportunities for engagement and we have seen an openness on the part of financial institutions and the U.S. Government to confront the vulnerabilities of the financial system to human trafficking, and the impact on victims of inequities in the financial system.

To that end, I am very enthusiastic about the recommendations for action set forth in the recent money-laundering Report to Congress, transmitted on October 7, 2020.

<https://www.state.gov/report-to-congress-on-an-analysis-of-anti-money-laundering-efforts-related-to-human-trafficking/>.

It is my understanding that the process of developing those recommendations not only reflects the kind of interagency consensus that is often difficult to obtain but was undertaken in consultation with community-based organizations and the survivors of sex and labor trafficking with whom they work. This effort is the exact type of policy development around a shared American value that can not only survive a Presidential transition across party lines, but can also serve as the basis for bipartisan action in the Legislative Branch.

Rather than restating them, I sincerely draw the Subcommittee's attention to the Report's recommendations, especially those that involve:

- Stepped-up financial intelligence gathering and dissemination;
- Expansion and intensification of efforts by the Department of Treasury;
- Harnessing the power of the IFIs and MDBs;
- Innovative partnerships in support of survivors as well as the integrity of the financial system;
- Credit repair and restoration; and
- The need for mechanisms to facilitate the ability of NGOs and service providers to share information with financial institutions, financial regulators, and law enforcement.

There are a number of Bills that have either been introduced or are in drafting and discussion stages that would have a real impact on human trafficking, many of which speak directly to the recommendations set forth in the October Report. They represent a starting point for engagement, and I hope that some of you will take on some of the Bills that are still under development as your own. The reach of the potential legislation is domestic and international, and their scope is impressive:

- They would intensify and formalize agency efforts by incorporating the Treasury Department into the President's interagency anti-trafficking task force (**H.R. 808, Fitzpatrick/Maloney**) and creating a Human Trafficking coordinator position in the Office of the Secretary (**H.R. \_\_\_\_**).
- They would be inclusive of out Tribal and Territorial jurisdictions by including them in the national money laundering and related financial crimes strategy (**H.R. \_\_\_\_**) – an issue I care very deeply about from my time in the DOJ Sex Offender office, where we were able to similarly extend FBI and other federal information-sharing mechanisms to tribal partners.
- They would confront Uyghur forced labor through import bans (**H.R. 1155, McGovern**) and disclosure requirements (**H.R. \_\_\_\_, Wexton/Sherman**), and provide guidance for those with SARs responsibilities around the related issue of organ trafficking (**H.R. \_\_\_\_**).



- And, they would help restore trafficking survivors through a mechanism to remove adverse information from their consumer reports – closing a critical gap in current restorative efforts which are focused on criminal records expungement alone. (**H.R. \_\_\_\_, Tlaib**).

There is one more potential statute under discussion that I would like to call to your attention. The bipartisan Foreign Corrupt Practices Act (FCPA) has changed global norms on bribery, but no such mechanisms exist for even the gravest of human rights abuses. In a globalized world, the profits from modern slavery and other forms of abuse flow through companies' balance sheets and supply chains; so too should accountability and responsibility. It is my understanding that draft legislation has been circulating in both the House and Senate, with support of human rights actors and business interests alike. Such a statute would be a strong counter-trafficking tool that would build on U.S. leadership and success with the FCPA throughout the years.

### **Conclusion**

Any of these recommended activities and potential laws would add to our ability to investigate and prosecute traffickers, protect and restore their victims, and prevent this grave human rights crime from happening in the United States and around the world.

Such efforts would facilitate partnerships with the financial system, allied nations, and most importantly the communities and people most vulnerable and most affected.

And, they would harness the power of the financial system and regulatory bodies alike in service to that most American of ideals -- the promise of freedom.

Thank you for the opportunity to testify before you today; I welcome any questions.