

Written Testimony
of
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Hearing on Oversight of Federal Efforts to Combat Human Trafficking
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Good morning and thank you for the invitation to appear before you today. It is an honor to address the question of what the United States should do to improve efforts to combat human trafficking. My name is Martina Vandenberg and I am the president of the Human Trafficking Legal Center. My testimony today covers four policy areas: criminal prosecutions, prevention of human trafficking, survivor leadership, and U.S. Customs and Border Protection's enforcement of Section 307 of the Tariff Act of 1930 and other bans on the importation of goods tainted by forced labor.

The Human Trafficking Legal Center, the organization I lead, provides pro bono legal representation to survivors of human trafficking. We have trained more than 5,000 pro bono attorneys across the U.S. to provide representation to trafficking survivors. Survivors need lawyers, whether they are victim-witnesses in federal criminal cases, potential plaintiffs in federal civil cases under the Trafficking Victims Protection Reauthorization Act, or applicants for immigration relief. With a pro bono lawyer by their side, trafficking survivors can assert their rights.

What are those rights? Let's begin with criminal prosecutions.

Criminal Prosecution Issues

Victims of forced labor rarely see their day in court. In 2020, the last year for which we have official data, the Department of Justice brought just 15 forced labor cases in the entire country. In 2019, that number was 12. And even for victims who do see their cases prosecuted, the outcomes can be harmful. Restitution is mandatory in federal criminal cases under 18 USC §1593. But research undertaken by the Human Trafficking Legal Center revealed that just 27 percent of trafficking cases – both sex and labor – that ended in a conviction included mandatory restitution orders.

Even more troubling than the failure to obtain restitution *orders* for victims in these cases is the U.S. government's failure to *collect* the restitution that is ordered. Evelyn Chumbow, a survivor of child forced labor and my colleague, has testified today that she did receive a \$100,000 restitution order. But federal authorities have collected just a tiny fraction of that amount. And that collection was done only after her pro bono attorneys pressed federal authorities to collect the funds. It is important to note that federal authorities forfeited \$4.1 million in assets from this defendant in a related federal case. And then kept the funds.

Evelyn's case is not an outlier. Jose Alfaro, a survivor of child sex trafficking and a member of our Board of Directors, also received a restitution order in the criminal case against his trafficker. The other three victims in that case did not receive orders. Federal prosecutors in that case, U.S. v. Gandy, forfeited \$250,000 from the defendant. The money went to Treasury, not to any of Gandy's victims. Only years later, after Jose had obtained pro bono counsel, did the federal Treasury finally disgorge the funds to cover restitution and remission. Without tenacious pro bono counsel, it is probable that the victim-witnesses in this case would never have seen any compensation at all.

The Department of Justice recently released two reports to Congress on efforts to combat trafficking.¹ Those reports include appendices that track mandatory restitution in federal criminal trafficking cases. The collection numbers are a cause for significant concern:

Fiscal Year	Total Restitution Orders	Total Restitution Ordered ²	Total Restitution Collected	Percent of Total Restitution Order Amounts Collected
FY2019	89	\$13,250,740.66	\$886,158.40	6.69%
FY2020	105	\$27,198,982.67	\$341,192.31	1.25%

Criminal prosecution can have other troubling consequences, particularly when trafficking victims are prosecuted. Years ago, I met a federal prosecutor who proudly told me that her job was to prosecute “traffickers and bottom girls.” But the women she referred to as “bottom girls” were frequently themselves victims of trafficking. Prosecutions of victims – at the federal and the state level – must stop. Shamere McKenzie, a leader in the anti-trafficking community who is also testifying today, once told a U.S. Attorney on a panel at a conference on restorative justice, “Stop prosecuting trafficking victims.” I can only echo that demand. We are currently working on a federal criminal case in which a victim of forced labor has been charged with a host of federal crimes, including fraud. Prosecutors have refused to acknowledge her status as a victim in the case. Trafficking victims prosecuted by federal authorities face life-long consequences of conviction: they are barred from employment, ineligible for certain professional licenses, unable to rent apartments, unable to chaperone their children’s field trips. The list goes on and on. This is why a federal vacatur statute is needed. Criminal convictions of trafficking victims undermine U.S. human trafficking policy. Those convictions should be wiped clean, just as local convictions of trafficking survivors are being vacated and expunged at the state level across the nation.

In the absence of criminal prosecutions of perpetrators, victims of forced labor have few options. Disappointed by the failure of federal authorities to prosecute their cases, many have turned to civil litigation under the Trafficking Victims Protection Reauthorization Act, 18 U.S.C. §1595, to assert their rights. The Human Trafficking Legal Center maintains a database of every case filed under the federal civil trafficking statute. In 2021, the Human Trafficking Legal Center published a report on all cases filed since 2003, the year Congress authorized these civil suits.³ Our research found that the largest proportion of civil cases filed (24% of all civil cases) were

¹ The Attorney General’s Reports to Congress on Efforts to Combat Trafficking in Persons may be found at <https://www.justice.gov/humantrafficking/attorney-generals-trafficking-persons-report>.

² These restitution numbers may found at Appendix D in each of the annual reports to Congress. Please note that restitution order dollar amounts may be overstated by these numbers, as some cases include joint and several orders to pay restitution among multiple defendants.

³ [Federal Human Trafficking Civil Litigation: 2020 Data Update, https://htlegalcenter.org/wp-content/uploads/Federal-Human-Trafficking-Civil-Litigation-Data-Update-2020_FINAL.pdf](https://htlegalcenter.org/wp-content/uploads/Federal-Human-Trafficking-Civil-Litigation-Data-Update-2020_FINAL.pdf) (July 2021)

filed by domestic workers. Domestic workers have bravely brought suits against their traffickers – many of them diplomats – and have built the jurisprudence over the last nineteen years. In all, as of December 31, 2020, trafficking survivors had received judgments or public settlements totaling \$255,298,933. That number does not include the non-public settlements reached between parties in civil trafficking cases. Trafficking survivors have brought more than 500 civil trafficking cases since 2003. And as of December 2020, 348 of those cases alleged forced labor. Forced labor survivors have pursued justice on their own terms, often devoid of support from federal authorities.

Prevention of Human Trafficking

For the last two decades, U.S. anti-trafficking policy has prioritized prosecution and criminal legal approaches. This must change. The focus must shift to preventing these abuses. In a phrase attributed to (but perhaps never uttered by) Desmond Tutu, “There comes a point when we need to stop just pulling people out of the river. We need to go upstream to find out why they are falling in.” Why are people falling into situations of forced labor and human trafficking? It is not what you might think.

Broken systems exacerbate vulnerability to human trafficking. In our own work, we have seen the damage wrought by a broken immigration system, a broken foster care system, the failure to provide housing for LGBTQ youth, the failure to enforce labor laws robustly, and the near total lack of housing for trafficking survivors who do manage to escape. As one of my colleagues said to me recently as we struggled to find housing for a victim of human trafficking, “Housing is the number one hole in human trafficking services.” Significant investment is needed to build these systems. Trafficking survivors are at significant risk for re-trafficking and exploitation when they do not have housing, access to benefits, or the ability to work.

Over the years, all of my forced labor survivor clients had one thing in common: they all entered the United States on perfectly legal visas. They arrived with contracts and the promise of a good job. Instead, they found themselves trafficked into forced labor, stripped of their identity documents, held in debt bondage, threatened with deportation, and, in some cases, physically and sexually abused. What would prevent violence like this? Reform of the work visa system. My colleagues and I call the work visa system, which ties employees to employers, “kafala lite.” The restrictions are not as draconian as those in the Gulf states, but they do impede trafficking victims’ ability to escape abusive employers. The A-3/G-5 visa program, which allows diplomats and international organization officials to bring domestic workers into the United States, is just one example.

Advocates have long called for greater protections for workers in the United States on H-2A visas. Traffickers use and abuse these programs to make enormous profits at the expense of migrant workers. In one case, USA v. Patricio et al., indicted⁴ in October 2021, federal authorities have alleged that more than twenty co-conspirators trafficked thousands of foreign workers into the United States using the H-2A visa program. According to the indictment, the

⁴ CR 521-0009 (S.D. Ga.)(October 5, 2021)

“Patricio transnational criminal organization” falsely petitioned for 71,000 foreign workers to work for an agricultural employer and profited over \$200,000,000 from the illegal scheme. With better oversight and greater protections for these workers, this abuse could have been prevented.

Survivor Leadership

My colleague, Evelyn Chumbow, has spoken today about the need for survivor leadership in the effort to combat human trafficking. I can only echo her words. Survivor leaders are setting the agenda. They are working to combat racism that makes communities of color vulnerable to trafficking. They are taking up leadership positions in the anti-trafficking movement. One of those leaders, Bukola Oriola, a survivor of forced labor from Nigeria who served on the U.S. Advisory Council on Human Trafficking, recently wrote to me and said, “For me, survivor empowerment is key to stopping trafficking. We can only successfully stop it when we involve those who are directly affected.” She emphasized the need to “empower survivors meaningfully without tokenizing them.” Fainess Lipenga, a survivor of labor trafficking and a member of our staff has a motto borrowed from the disability rights community: “Nothing about us, without us.” We agree. And we hasten to add that in order for survivors to participate in this movement, they need jobs. They need money. They need restitution. And they need support.

Forced Labor in Global Supply Chains: Tariff Act Enforcement

Forced labor is a feature, not a bug, in global supply chains. We applaud U.S. Customs and Border Protection’s ramped-up enforcement of the ban on goods made with forced labor under the Tariff Act of 1930. For the first time, this has created a strong economic disincentive for forced labor in global supply chains. Companies that tolerate forced labor now risk financial, legal, and reputational consequences of being denied access to the U.S. market.

CBP set a new record for enforcement in FY2021, detaining 1,469 shipments of goods tainted with forced labor, valued at \$486 million. In FY2022, the agency is on track to shatter that enforcement record: in the first quarter alone, CBP detained 1,120 shipments valued at \$227 million.

But these numbers don’t reveal the full picture.

Reports suggest that hundreds of shipments subject to the U.S. forced labor import are being “turned around” from U.S. ports and re-exported to countries with lax import restrictions. We urge the U.S. government to monitor and report on companies that re-export products made using forced labor to other jurisdictions. As CBP Executive Assistant Commissioner AnneMarie Highsmith recently stated, the goal is not just to stop goods at the U.S. border. The goal is to eradicate forced labor from global supply chains.

There should be no safe harbor for forced labor. DHS-CBP should coordinate closely with Canada and Mexico to ensure that there is no cross-border movement of products made with forced labor. Importation of goods blocked in the United States is in blatant violation of the countries’ USMCA

commitments. The U.S. government should also work with its G7 and G20 allies to a) create global customs transparency and b) support more Tariff Act-style import bans in other countries.

Section 307 of the U.S. Tariff Act and its implementing regulations under 19 C.F.R § 12.42 entrust CBP with the task of determining when a company has successfully remediated forced labor before modifying or removing a Withhold Release Order (WRO). No remediation should be considered complete without factoring in worker agency. Workers, unions, and worker representatives are best positioned to verify and report on successful forced labor remediation. Forced labor remediation must be geared towards targeting the root causes that facilitated forced labor. U.S. policy should focus on fundamental labor rights, freedom of association, and unionization. Holding individual exporters accountable can be a game of whack-a-mole. U.S. policy should also focus on the underlying systemic factors that allow forced labor to flourish.

DHS-CBP should use every tool in its toolbox, including criminal prosecutions and fines against U.S. entities for importing products made using forced labor. To date, we have not seen a single prosecution against a U.S. entity for importing goods in violation of Section 307.

We hope to see the agency levy more financial penalties against U.S. importers for unlawful importation under related laws. So far, CBP has exercised this authority only once – in 2020 against U.S. entity for importing stevia manufactured using Chinese prison labor. We recommend that the agency issue more fines against other U.S. importers and for higher amounts. These fines serve as an important deterrent for companies.

Lastly and most importantly, we ask Congress to fund CBP adequately to carry out its forced labor mandate as effectively as possible. With implementation of the Uyghur Forced Labor Prevention Act (UFLPA) set to commence in June 2022, we are worried that the agency is facing a resource and personnel crunch. We are concerned that the strain of UFLPA enforcement may limit CBP's ability to enforce Section 307 of the U.S. Tariff Act rigorously. In 2022, we have already witnessed a troubling decline in the number of Withhold Release Orders. The last WRO issued in January 2022. CBP needs resources to continue this enforcement.

Recommendations:

Criminal Prosecution and Compensation Issues:

- Pass legislation to permit vacatur of federal criminal convictions of trafficking victims. This is an important initiative to permit trafficking survivors to rebuild their lives without criminal records that undermine their recovery.
- Ensure that every trafficking survivor who wants a lawyer gets representation. Legal representation for trafficking survivors is a game-changer. With lawyers by their side, trafficking survivors can obtain and collect restitution, bring civil cases, avoid criminal prosecution for crimes their traffickers forced them to commit, and gain immigration relief.
- Pass statutes to protect civil damages and criminal restitution from taxation. Trafficking survivors rarely receive compensation. When they do, it is extremely difficult for them to

navigate the tax system. Mandatory restitution is currently exempt from federal income taxes based on a U.S. Treasury notice (Notice 2012-12). But civil damages are not automatically exempt in all cases. Congress should pass legislation making all civil judgments and civil settlements in trafficking cases exempt from federal income tax.

- Make civil damages in trafficking cases non-dischargeable in bankruptcy. Traffickers often exploit the bankruptcy system to thwart justice and avoid payment of civil damages. Legislation making trafficking civil damages non-dischargeable in bankruptcy would end this practice.
- Prosecute forced labor cases, including extraterritorial cases. The number of forced labor prosecutions in the United States each year does not accurately reflect the number of cases. The U.S. Department of Justice should bring forced labor prosecutions against U.S. persons and corporations, including cases invoking extraterritorial jurisdiction under 18 U.S.C. §1596, for forced labor in global supply chains.

Prevention Issues:

- Invest in housing for vulnerable populations, including trafficking survivors.
- Increase funding to the Department of Labor Wage & Hour Division for robust enforcement of labor laws, including prohibitions on wage theft and child labor.

Survivor Leadership Issues:

- Compensate survivors for their work. The U.S. Advisory Council on Human Trafficking began with an unpaid membership. But trafficking survivors cannot afford to do volunteer work for the federal government. There have been periodic efforts to compensate members, but this should be made a permanent change to the Council charter.

Tariff Act Enforcement:

- Fund CBP's forced labor program. In the CBP's FY23 budget overview, the agency estimated that it would need an additional \$70.3 million to enforce the UFLPA. This budget request included additional enforcement personnel, technology, training, strategy, and outreach. We urge Congress to ensure that the agency receives this amount so that CBP can effectively enforce UFLPA without compromising robust enforcement of the U.S. Tariff Act.
- Federal authorities should pursue fines civil and criminal prosecutions against U.S. importers. U.S. companies must be held accountable for their role in facilitating forced labor in global supply chains. We urge DHS-CBP to impose more civil fines against U.S. importers. Additionally, the Department of Justice should initiate criminal prosecutions against U.S. companies that import products made using forced labor.
- Federal authorities should work with Canada, Mexico, and G7 allies to eradicate forced labor: Transshipment of products made using forced labor undercuts Tariff Act enforcement. Products subject to U.S. import bans should not find safe harbor, especially not in Mexico or Canada. DHS-CBP should work with counterparts to ensure that goods tainted with forced labor do not find alternative markets.