



Testimony of

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International Human Trafficking and Forced Labor

Thank you to the Tom Lantos Human Rights Commission for the opportunity to present the Solidarity Center's perspective and approach to combating international human trafficking and forced labor. We appreciate the Commission's interest in the issue, and particularly its emphasis on trafficking for the purposes of labor exploitation.

My name is Neha Misra. I am the Senior Specialist for Migration and Human Trafficking at the Solidarity Center. We are an international non-governmental organization (NGO) that promotes and protects worker rights globally, working in over 60 countries through 24 field offices. The Solidarity Center is an allied organization of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), and a member of the Alliance to End Slavery and Trafficking (ATEST). Building upon more than 20 years of experience in the areas of child labor, migrant worker exploitation, and supply chain accountability, the Solidarity Center raises awareness about the prevalence and underlying causes of trafficking for labor exploitation, and implements programs with a variety of partners from a myriad of sectors to combat the problem. These programs include initiatives that address each of the four "Ps" that have become part of the anti-trafficking paradigm: prevention, protection of victims, prosecution (or as we prefer to describe it, "rule of law"), and partnerships. The Solidarity Center has the unique ability to work across borders, in both countries of origin and destination for trafficked workers. We have implemented anti-human trafficking programs in countries such as Thailand, Indonesia, Nepal, India, Sri Lanka, Pakistan, Malaysia, Hong Kong, the Philippines, Bahrain, Qatar, Kuwait, Kenya, Moldova, and the Dominican Republic.

Our anti-trafficking programs have spanned the globe, and while each country we work in has its own set of unique circumstances and problems, we have found a few common themes. Human trafficking for labor exploitation and forced labor has at its core violations of worker rights and lack of labor standards and protections for workers. Whether its low-wage workers in sectors such as domestic work or construction; migrant workers¹ toiling on palm oil plantations; or other marginalized workers such as poor women or child laborers; human trafficking is a worker rights issue because it is linked to various forms of labor exploitation, and it is one of the worst forms of worker abuse.

We have come a long way since the passage of the Trafficking Victims Protection Act (TVPA) in 2000. Our collective understanding in the United States (U.S.) and globally about what encompasses human trafficking has expanded greatly. We are increasingly seeing initiatives that address the whole spectrum of human trafficking - from forms of sexual exploitation, to involuntary servitude, debt bondage, bonded labor, and forced labor. This is important as it presents a more complete picture of modern slavery. At the same time, however, we continue to see the conflation of human trafficking with commercial sexual exploitation, resulting in more attention and resources going to the problem of sex trafficking over labor. There is increasing evidence, however, that the majority of trafficking victims are in forced labor or other forms of severe labor exploitation. The International Labor Organization (ILO) in 2012 came out with a

¹ The term "migrant worker" is the internationally accepted term for a person who migrates for employment, whether temporary, seasonal, or permanent. In the United States, in every day language, "migrant worker" may refer to a seasonal or temporary worker, and "immigrant worker" refers to someone who migrates for work on a more permanent basis, or who has residency rights. I will use both terms in my testimony interchangeably to refer to all workers who migrate for work, regardless of their status or length of stay in the destination country.

new global estimate of forced labor. It raised the number from 12 million in the 2005 estimate to almost 21 million today. This new estimate takes into account all forms of human trafficking – including sex and labor – and has been acknowledged by experts as being much more accurate. The new estimate provides additional evidence of a fact that the Solidarity Center has promoted for more than a decade – trafficking for labor exploitation is more prevalent around the world, than sex trafficking.

And yet, trafficking for labor exploitation often goes undetected and gets much less attention. Immigration officials may categorize immigrant workers who are trafficked as undocumented workers and deport them. Police and labor inspectors may view involuntary servitude or debt bondage in sectors such as agriculture, construction, manual labor and manufacturing as mere worker rights abuses, therefore doing little to remedy these abuses. And as the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (J/TIP) has noted year after year in its annual *Trafficking in Persons Report*, prosecutions for forced labor are far fewer than those for trafficking for sexual exploitation (and even those are low).

The Solidarity Center has said this many times before but it bears repeating. In 2012, a slave may not be in chains or shackles, but they are no freer. Slavery is not simply ownership of one person over another. Modern day slavery is much more subtle. Trafficking victims toil in factories that produce products that are exported to the United States, Europe, and other destinations. Trafficking victims harvest vegetables and process food that ends up on our dining room tables. They pick crops or mine minerals that are raw materials in the products we buy. They make the clothes and shoes we wear. They clean people's homes and take care of the young, elderly and sick. They are enslaved not only through physical restraint, but also through coercion, fear, and intimidation. In today's global economy, workers can be enslaved by threats of deportation, lack of viable alternatives, and especially debt.

Human trafficking thrives in the context of worker exploitation:

- When immigrant workers are forced to pay high fees, often at exorbitant interest rates, to labor recruiters to work in another country, they are vulnerable to debt bondage – one of the most pervasive forms of modern slavery. This is the case for millions of South Asian migrant workers who travel to countries in the Gulf such as Qatar, the United Arab Emirates, and Kuwait to work in construction, domestic work and other parts of the service sector. These workers are often deceived about wages and working conditions, through false contracts and broken promises. They pay hundreds or thousands of dollars to labor recruiters for these jobs, taking out loans at exorbitant interest rates, only to find that the jobs were not as promised. Many get paid much less than promised, not enough to pay back the loan; get paid late, compounding the interest they must pay; or do not get paid at all, resulting in forced labor. These migrant workers are tied to a particular employer through the kafala or sponsorship system, and cannot leave their abusive employers. Millions of other workers – including for example, Moldovan migrant agriculture workers in Spain, Vietnamese workers toiling in factories in Taiwan, and H-2B visa workers in the U.S. – can tell a similar story.
- When buyers pressure suppliers all along supply chains to achieve cutthroat prices for their products, workers are the ones that bear the burden as labor costs are often the first ones to be

cut, increasing workers vulnerability to severe forms of labor exploitation, including human trafficking. This is the case for thousands of Burmese migrant workers who have been subject to forced labor and physical, emotional, and sexual intimidation in seafood-processing factories in Thailand, which export to the United States. The factories rely on trafficked workers to stay within the cost structure set by buyers who are often major retailers in the U.S. and Europe.

- When labor laws and regulations are not implemented, monitored, or enforced — when labor inspection is weak or nonexistent — workers are vulnerable to trafficking for forced labor and other forms of severe labor exploitation. When workers face retaliation for trying to exercise their rights or when workers lack access to avenues to address abuse, workers are vulnerable to human trafficking. This is the case for millions of domestic workers,² agricultural workers, and immigrant workers in the United States and around the world who face extreme conditions of exploitation, including physical and sexual violence, confiscation of passports, illegal confinement, dangerous working conditions, and non-payment of wages. These workers are often explicitly excluded from the protection of labor laws, even when they are citizens or nationals of a country, and their work is often relegated to the informal economy where there is little labor inspection.

While trafficking for labor exploitation has many facets, several major trends in our globalized world increase workers' vulnerability, particularly those most at risk and most in need of protection. In developed economies like in the United States, Europe, and Japan, we are seeing an increase in cases of trafficked immigrant teachers, nurses, construction, and service sector workers – all in these destination countries with valid visas, shining a light on the structural failures within our economic and employment systems that increase immigrant workers' vulnerability to severe forms of labor exploitation. Multinational corporations, employers, businesses, labor recruiters and others exploit these failures.

Images in the media, and still in the public consciousness, of traffickers are of organized criminal syndicates, criminal gangs, or underground criminals who exploit undocumented workers. Today, however, traffickers can also be licensed labor recruiters, employers, or even government officials. We see trafficking for labor exploitation happening in the context of legal structures of employment and business, and through regular, documented visa programs. If we want to end trafficking, forced labor and other forms of modern slavery, we must address these broader underlying root causes, including failures to protect workers and enforce labor standards.

The Particular Vulnerability of Immigrant Workers to Human Trafficking

Immigrant or migrant workers are particularly vulnerable to human trafficking. In our publication *Justice for All: A Guide to Worker Rights in the Global Economy*, the Solidarity Center explains this phenomenon:

Migration and human trafficking . . . are often distinguished from one another by the notion that migration is characterized by choice and trafficking by coercion,

² The term “domestic worker” refers to a person who provides services - such as childcare, cooking, and cleaning - to or within a household.

deception, or force. However, in today's global economy migration and trafficking exist along a continuum. Women, men, and children may start out migrating for the promise of well paid jobs and end up being coerced to work under exploitative conditions such as those commonly found in garment industry sweatshops, agriculture, domestic work, or sex work. Given the large numbers of workers who migrate for work globally, the particular vulnerability of migrant workers to trafficking is significant.³

Unsafe migration processes and the lack of labor and other legal protections for migrant workers make them an easy target for traffickers in the form of unscrupulous labor recruiters and employers. Migrant workers are often explicitly excluded from the protection of labor and other laws – either because of their immigration status or because of the sector they work in (such as domestic work). Traffickers take advantage of this exclusion – and of the failure to enforce and monitor laws when they do exist – increasing the vulnerability of migrant workers to human trafficking.

This is the case for Haitian migrant workers in the Dominican Republic (D.R.). First, poverty and a lack of jobs in Haiti, and then the devastating earthquake, forced Haitian workers to migrate to the Dominican Republic to provide basic needs for themselves and their families. Like many destination country governments, the government of the D.R. fails to provide safe migration processes or systems for these vulnerable migrant workers. From corrupt government officials along the border, to unscrupulous recruiters and employers who act with impunity, Haitian migrant workers often find themselves in conditions of involuntary servitude, debt bondage, and forced labor in sectors such as sugar, construction and domestic work. The Solidarity Center's field office in the D.R. has received reports from workers of police picking up workers on pay day and dropping them at the border so that employers do not have to pay them the wages that they are due, making the police complicit in the forced labor of these migrant workers. Haitian migrant workers often report harassment and forced bribes by D.R. police.

In addition, Haitians born in the D.R. are deprived of status, and thus remain vulnerable to exploitation. For example, Domingo Concepcion is 22-year old undocumented Dominican. He is the son of two Haitian parents, and has been seeking his legalization for two years in the Province of Monte Plata, where he resides. Mr. Concepcion recently came to the Solidarity Center office in Santo Domingo seeking legal assistance after being fired without being paid his salary due. "I worked on a farm and had to do all of the farm work. In this kind of job you have to sleep there and it's a double labor in order to get your food. I would have to pay for what I ate at the end of the month and would be left with nothing. When someone wants to quit or as in my case, is fired, they don't want to pay you". When Mr. Concepcion approached the Ministry of Labor for help, he was basically told that since he did not have any papers, he should just take whatever he could he get. While the Solidarity Center and a Dominican union, CNUS, were able to assist Mr. Concepcion through the mediation of lawyers, his case is a common one for workers without legal status, making them vulnerable to labor exploitation often rising to the level of human trafficking.

³ http://www.solidaritycenter.org/files/pubs_jfa2009.pdf

Immigrant Haitian workers who toil along the supply chain for products that are exported from the D.R. to the U.S. are also vulnerable to human trafficking. A few months ago, the Solidarity Center received information from a Dominican Haitian union member in Barahona regarding trafficking and forced labor at a nearby sugar refinery. The witness gave detailed testimony of refinery supervisors making trips to Haiti to buy labor from middlemen at 1,600 pesos a head (about U.S.\$40). The laborers are taken for the harvest season. They are housed under armed guard and taken into town occasionally to shop. Other than that they are not permitted to leave. The Solidarity Center reported the case to the Special Dominican Unit on Trafficking under U.S. Immigration and Customs Enforcement (ICE) leadership in Santo Domingo. A Verité report funded by the U.S. Dept. of Labor, entitled *Research on Indicators of Forced Labor in the Dominican Republic Sugar Sector*, provided further evidence of forced labor in the sugar industry: “Research detected evidence of the presence of the following indicators of lack of consent: physical confinement in the work location, psychological compulsion (i.e. an order to work with a credible threat of penalty for non-compliance), induced indebtedness, deception or false promises about terms of work, withholding and non-payment of wages, and retention of identity documents.” The investigators also found physical violence, loss of employment, exclusion from future employment and deprivation of food and shelter to be credible threats endured by migrant sugar workers and the descendants of migrants.

These examples from the D.R. highlight what is common for migrant workers around the world, including in the U.S. The lack of status, labor protections, or basic rule of law protections by the government that allows employers to exploit migrant workers. Again, these abuse often rise to the level of human trafficking.

Trafficking as an Inherent Vulnerability in Temporary Labor Migration Schemes

Of particular concern in terms of trafficking of migrant workers are temporary labor migration schemes – sometimes referred to as guestworker, sponsorship or circular migration programs – that are increasingly being promoted by governments in every region of the world to fill demand for cheap labor. In practice, these schemes create a legalized system and structure for employers to exploit workers, and increase workers’ vulnerability to human trafficking and other forms of severe labor exploitation, including forced labor. Such programs have been plagued by a long history of abuses ranging from labor violations to visa fraud, debt bondage, involuntary servitude and trafficking for labor exploitation. This includes, among many others, the U.S. H-2 visa guestworker program, seasonal agricultural programs in Canada and Europe, and the “kafala” or sponsorship system in the Gulf Cooperation Council (GCC) countries.

The Alliance to End Slavery and Trafficking or ATEST, of which the Solidarity Center is a member, described the problem in 2011 in a submission to the U.S. Department of Labor as follows⁴:

It is by now beyond dispute that temporary “guestworker” programs have long worked to the detriment both of the U.S. workers who are bypassed in favor of foreign workers, and for the foreign workers who fall prey to unscrupulous

⁴ ATEST Comments on RIN 1205-AB58, Temporary Non-Agricultural Employment of H-2B Aliens in the United States (Employment and Training Administration, 20 CFR Part 655 and Wage and Hour Division, 29 CFR Part 503), May 17, 2011.

employers and their labor contractors.⁵ Of particular concern to our members, key aspects of the program lead to human rights violations such as debt peonage (or debt bondage), trafficking for labor exploitation and involuntary servitude, all forms of modern-day slavery. Guestworkers' vulnerability is greatly increased by the use of labor recruiters or foreign labor contractors who lure impoverished and desperate foreign workers to jobs within the United States described as plentiful and lucrative. The opportunity to work in the U.S. comes with an intolerably high price tag that includes inflated transportation, visa, border crossing and other costs, and "recruitment fees." Often, workers literally mortgage family properties or take out loans from loan sharks at exorbitant rates in order to meet these obligations. Companies within the United States claim no knowledge of their recruiters' actions and escape legal liability on these grounds. The recruiters themselves often remain beyond the reach of the U.S. legal system.

Once guestworkers arrive in the United States, the well-paid jobs that have been offered [often] do not materialize. Workers are left without work at all, or without work for the length of time promised them. Favorable terms and conditions of work offered in the home country are replaced by harsh conditions. Job contractors transfer workers, for a price, to other contractors. Workers who are dissatisfied with the jobs face overwhelming subtle and not-so-subtle pressures to acquiesce. Passports and other immigration and identity documents are confiscated [by employers] to ensure that workers do not run away. Families back home are threatened [by recruiters] with physical violence, as well as family bankruptcy due to loss of their investment in the worker. Workers who dare speak up for their rights face job loss, followed by deportation to their home countries and blacklisting. These factors lead workers to fall into myriad situations that rise to the level of a severe form of human trafficking, most notably coercion through abuse or threatened abuse of the law or legal process.

As noted in a recent ILO report, these conditions create a program that is ripe for human rights violations. Human trafficking abuses involving H-2B visas have been documented with frequency in recent media.

While the description above refers to the U.S. temporary guestworker program, the same scenario repeats itself around the world – for example, in Canada, Europe, the GCC, and around Asia (Malaysia, Singapore, Taiwan, Japan, etc.). In many countries in the GCC for example, migrant workers make up the majority of the private sector workforce. Yet, almost all of these workers are denied any sort of residency status, and live and work in Kuwait, Qatar, and the U.A.E. for example on temporary visas. The J/TIP annual report consistently highlights cases of

⁵ Southern Poverty Law Center, 2007. "Close to Slavery: Guestworker Programs in the United States," <http://www.splcenter.org/pdf/static/SPLCguestworker.pdf>; Closed and Criminal Cases Illustrate Instances of H-2B Workers Being Targets of Fraud and Abuse, GAO 10-1053; testimony submitted by members of the Guestworker Alliance for Dignity to the House Committee on Oversight and Governmental Reform Domestic Policy Subcommittee, "The H-2B Program and Improving the Department of Labor's Enforcement of the Rights of Guestworkers," April 9, 2009; The Costs of Coercion: Global Report under the Follow Up to the ILO Declaration of the Fundamental Principles and Rights at Work, International Labor Organization, International Labor Conference, 98th Sess. 2009 Report I(B), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_106230.pdf.

trafficking of these migrant workers in the GCC, and yet the majority of these trafficked workers are fully documented and possess valid visas, use licensed recruiters and work for valid employers.

The common element in all of these temporary guestworker programs around the world is that these workers are trafficked within legal visa systems, fully documented, and that structural flaws within these programs allow workers to be trafficked.

Two other major common themes emerge:

1. The role of foreign labor recruiters in taking advantage of the lack of labor rights and inherent structural failures in these programs to exploit immigrant workers, especially through debt bondage; and,
2. The need to provide greater protections to workers and opportunities for them to report abuses and advocate for their own rights.

The Role of Labor Recruiters in Promoting Human Trafficking

Employers, businesses, and multi-national corporations increasingly rely on foreign labor recruiters to facilitate the movement of workers from one country to another. While many labor recruiters behave ethically and are engaged in lawful conduct, other recruiters are often complicit with or directly involved in trafficking of workers. Recruiters often charge exorbitant fees for their services, forcing workers into debt bondage, falsifying documents, and deceiving workers about their terms and conditions of work, increasing their vulnerability to human trafficking.

The incidence of known human trafficking cases involving foreign labor recruiters is growing dramatically in the United States and around the world. Many U.S.-based service providers state that regulating labor recruiters is one of the most important initiatives needed to combat human trafficking – both labor recruiters based in the U.S. and abroad. Employers rely on labor recruiters who have operations both in the U.S. and in foreign countries – as they use a system of subcontracting to find workers. The operations of such recruiters need to be regulated on both ends of the spectrum.

Stricter regulation of labor recruiters is especially needed to protect workers entering the U.S. from human trafficking and other abuses such as wage theft. Stronger legal frameworks will help to prevent unregulated actors from conspiring to fraudulently deceive workers about the terms and conditions of work.

To that end, ATEST has made a series of recommendations to include regulation of labor recruiters/foreign labor contractors in the Reauthorization of the Trafficking Victim Protection Act (TVPRA) that is currently before Congress. Similar provisions were passed in the 2008 House of Representatives version of the TVPRA. We have learned even more since 2008 about the need for greater regulation of foreign labor recruiters. As such, ATEST recommends, with

the support of a number of worker and immigrant rights groups in the U.S. and around the world, the following for inclusion in the TVPRA:

- 1. Elimination of Fees:** No foreign labor contractor, or agent or employee of a foreign labor contractor, should be allowed to assess any fee (including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs) to a worker for any foreign labor contracting activity. Such costs or fees may be borne by the employer, but these fees cannot be passed along to the worker. This is one of the most crucial elements to eliminate debt bondage for immigrant workers.
- 2. Disclosure:** Foreign labor contractors and employers must be required to fully disclose to the worker in writing in English and in the language of the worker being recruited, all of the terms and conditions of their work. This includes:
 - The identity of the employer and the identity of the person conducting the recruiting on behalf of the employer, including any subcontractor or agent involved in such recruiting.
 - A signed copy of the work contract, including all assurances and terms and conditions of employment, from the prospective employer for whom the worker is being recruited, including the level of compensation to be paid, the place and period of employment, a description of the type and nature of employment activities, any withholdings or deductions from compensation and any penalties for terminating employment.
 - The type of visa under which the foreign worker is to be employed, the length of time the visa is valid and the terms and conditions under which this visa will be renewed with a clear statement of whether the employer will secure renewal of this visa or if renewal must be obtained by the worker and any expenses associated with securing or renewing the visa.
 - An itemized list of any costs or expenses to be charged to the worker. Including but not limited to: the costs of housing or accommodation, transportation to and from the worksite, meals, medical examinations, healthcare or safety equipment costs, and any other costs, expenses or deductions to be charged the worker.
 - A statement describing the protections afforded the worker by U.S laws and regulations, including protections in the Trafficking Victims Protection Act of 2000 (Division A of the Public Law 106486), as well as relevant information about the procedure for filing a complaint and the telephone numbers for the Department of Labor hotline and the National Human Trafficking Resource Center hotline number.
- 3. Registration:** A Department of Labor administered process for foreign labor contractors to obtain a certificate of registration. Employers must be required to use only foreign labor contractors who are properly registered under this system.

4. **Enforcement:** A Department of Labor established administrative process for receiving, investigating, and adjudicating complaints against the compliance of either employers or foreign labor contractors. Criminal and civil rights of action for workers themselves are also key to preventing trafficking.
5. **Accountability:** Workers must be protected from retaliation and employers must be held accountable for the actions of foreign labor contractors that they hire.

The reauthorization of the TVPRA is currently stalled in both Houses of Congress. For the first time since its original passage, the TVPRA is being held up for partisan reasons. Moreover, while the House version of the TVPRA in 2011, originally included the above mentioned provisions to regulate labor recruiters, it was stripped in Committee. And while the Senate version of the TVPRA calls for an important U.S. Government Accountability Office (GAO) study on the role of labor recruiters in promoting trafficking of migrant workers, it does not include the other important measures described above.

A TEST, the Solidarity Center, and other immigrant and worker rights groups also support the passage of a stand alone bill on the regulation of foreign labor recruiters. By passing such a bill, the U.S. can promote much needed change around the world. If the U.S. is to continue as a leader in the fight to end human trafficking, we need to start with our own government policies.

A TEST and the Solidarity Center commend the U.S. Dept. of Labor for issuing new rules to regulate labor recruiters in the H-2B visa program. While implementation of these rules is being held up in the appropriations process, and in litigation, the rules are a step in the right direction in preventing the trafficking of migrant workers through nonimmigrant visa programs.

The imposition of recruitment fees on workers is explicitly prohibited by international law (including ILO Convention 181) and the laws of many countries around the world; and yet, recruiter and employers continue to impose such fees with impunity. In September of this year, President Obama also took an important step to combat the abuses committed by recruiters and subcontractors by signing the Executive Order (EO) 13627 entitled *Strengthening Protections Against Trafficking in Persons in Federal Contracts*. The EO “expressly prohibits federal contractors, subcontractors, and their employees from engaging in certain trafficking-related practices..., including charging employees recruitment fees.”⁶ This is an important acknowledgment of the role of debt bondage in enslaving workers around the world.

The Solidarity Center also commends Senators Blumenthal and Portman for the introduction of the *Ending Trafficking in Government Contracting Act*. This bill is important and goes further than the EO in many key ways. It however also has one major flaw. While the bill prohibits contractors from “charging recruited employees exorbitant placement fees,” it still allows for these fees.⁷ The Solidarity Center has seen in its work in the places such as Indonesia, Nepal,

⁶ <http://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-executive-order-strengthening-protections-against-trafficking>

⁷ <http://thomas.loc.gov/cgi-bin/query/z?c112:S.2234>:

Guatemala and Kenya that charging any fees to workers makes them vulnerable to human trafficking. We urge Congress to strictly prohibit fees in the final bill.

While much of the above discussed the role of foreign labor recruiters in the U.S., the exact same scenario plays out in origin and destination countries for migrant workers around the world. Indonesia is a perfect example. Millions of Indonesian workers migrate internally and abroad to countries such as Malaysia, Singapore and the GCC countries. Labor recruiters play a major role in facilitating this migration. As Dewi Hariyanti, a 20 year old Indonesian migrant domestic worker to Singapore described to Human Rights Watch, labor recruiters are complicit in debt bondage:

I paid 500,000 rupiah [(approximately U.S.\$52)] and then they sent me to the shelter [agency]. The [agent] told me it would be a seven-month deduction, but when I arrived, I found out it was ten months. So I had no other choice but to carry on. If we return [to Indonesia early] we have to pay ten months salary. The agent in Malang told me this. If we didn't pay, they would abuse us and send us to Batam [an area notorious for sex trafficking]. A lot of friends [other domestic workers] who are unsuccessful with their employers, they go to Batam and face abuse from the agent. Some girls got hit, they could not go out.

As my colleague Jamie Davis further describes in the Solidarity Center publication *When They Were Sold*:

[F]or nearly all Indonesians who migrate for work, the costs associated with migration represent a significant investment and economic risk. Many will be put under intense pressure to make enough money to pay back debts that accumulate during the migration process and, perhaps, debts that existed before they left home to work.

Most families do not have the economic means to pay up front for all of the costs associated with migration. At some point, the worker is likely to enter into a debt in which it is understood that future earnings will be deducted to pay back the "loan". Throughout the migration process the pressure to make money from the upcoming work will intensify as costs multiply. For some, extension of "credit" will begin immediately as they cannot pay the recruiter or broker in the village for costs associated with the first stages of migration. For others, the debt to middlemen involved in the migration process may begin once arriving in a place of transit or upon arriving at the place of work. The families of these workers may have sold or pawned a cow, a rice field, or what little gold they have to immediately pay the village broker for initial costs upon recruitment. Some may pay up front by taking out a loan from a village moneylender at exorbitant interest rates, risking their homes or rice fields used as collateral. Even others may actually receive a cash advance from the village broker in addition to the credit to cover initial migration costs. By the time the migrant reaches the destination of work, whether this is in another part of Indonesia or abroad, she/he will likely understand that all or part of the earnings made in the first several months of work

will be used to pay these middlemen. It is well-documented that many of the charges and fees passed on to workers by middlemen (such as brokers, labor export agencies and foreign placement agencies) are inflated and illegal.

Nonetheless, the worker and family must wait until these debts are paid off before they can see any income - some of which may be desperately needed to pay back debts to lenders in the village.⁸

While there is a clear connection between temporary immigration programs, foreign labor recruiters, and the trafficking of immigrant workers, it is difficult in the U.S. and abroad to get lawmakers to take action through legislation to regulate the recruiters, eliminate the fees that result in debt bondage, and reform the temporary immigration programs that create the vulnerability. Lawmakers in the U.S. and abroad continue to link regulation of recruiters only with comprehensive immigration reform, and as such, little has been accomplished to protect vulnerable workers from this underlying cause of human trafficking. To overcome this, we urge the Congress to enact standalone legislation to regulate labor recruiters, or include the important provisions in the TVPRA.

Worker Rights as a Means to Prevent Trafficking for Labor Exploitation

As described earlier, immigrant workers must be included fully in the protection of labor laws and have access to mechanisms to exercise their rights and report abuses to reduce their vulnerability to trafficking. Threats of retaliation, deportation, and visas being tied to a particular employer all increase the incidence of trafficking for labor exploitation. For this reason, ATEST and the Solidarity Center also recommend a provision for the TVPRA that provides temporary immigration relief to workers who are whistleblowers of severe labor exploitation. There have been a number of human trafficking cases recently in the United States where workers who raised the alarm about severe abuse by employers have initially been threatened with deportation as a way to keep them quiet. These workers have had to remain in the United States in an undocumented status in order to pursue their cases against the abusive employers. After many years, these same workers were certified as trafficking victims and received “T” visas, but had to struggle for many years without status, unable to work. Examples of this include the Global Horizons case and a group of Indian workers known in the media as the Signal Workers. ATEST recommends that a provision be included in the TVPRA to give trafficked workers like these access to temporary immigration relief in the United States while they pursue claims here, even if they are not initially identified as trafficking victims.

Trafficking in Supply Chains

Another major trend in the global economy is the use of trafficking, forced labor, and slavery victims all along supply chains. It is difficult to quantify the exact number of trafficking victims who work in global supply chains but, as those supply chains reach down to smaller and smaller suppliers, the chances increase that the labor force includes trafficked people.

⁸ http://www.solidaritycenter.org/files/when_they_were_sold_chapter4.pdf, page 319.

- When employers (buyers and multinational corporations (MNCs)) demand cheap or unrealistic pricing structures, they should not be surprised to find severe labor abuses, including slavery, in their supply chains.
- Similarly, when employers contract out or hire unregulated subcontracted suppliers, they should not be surprised to find that they have trafficking victims in their production lines
- When employers refuse to enforce or claim that it is too difficult to monitor adherence to core labor standards in their supply chains, they will find forced labor, debt bondage, and other severe forms of labor exploitation there.

The pricing structure as a cause of human trafficking cannot be overemphasized, as this is an underlying factor that employers, business, corporations and consumers can all address. My Solidarity Center colleague John Hosinski describes this phenomenon in our publication *The True Cost of Shrimp*:

As a commodity, the price of shrimp fluctuates according to supply and demand, and price pressure is significant all along the supply chain. Retailers, sensitive to the risk involved with importing fresh food, press import companies for faster distribution, acceptable quality, and the lowest prices. Importers, aware that market fluctuations can affect prices, leverage their bulk purchasing power to demand speedy delivery from producers. Trapped between producers and importers are labor-intensive shrimp factories. Often, the factories' response to price pressure is to squeeze wages, neglect workplace health and safety regulations, and cut other corners that leave shrimp workers bearing the social cost of affordable shrimp.⁹

While our report was published in 2007, media and NGO reports continue about forced labor, debt bondage and other forms of modern slavery in the Thai shrimp industry. And yet, Thai shrimp continues to be found in major U.S. retail markets.

The Solidarity Center believes that the most effective way to eliminate forced labor, debt bondage and other forms of slavery in supply chains is by empowering workers to have a voice in their workplace, and supporting their right to organize and join unions. We believe that governments, MNCs, employers, labor recruiters and others must adhere to core labor standards and respect workers' human and labor rights in order to affect change in practices all along supply chains.

The existence of MNC codes of conduct have failed to curtail trafficking practices in any number of sectors including garment/textile, electronics, agriculture, and seafood processing. Third party or "independent" auditing on its own has also been shown to be a failure.¹⁰ There is no easy

⁹ http://www.solidaritycenter.org/files/pubs_True_Cost_of_Shrimp.pdf, page 11.

¹⁰ See for example, "Inspectors Certified Pakistani Factory as Safe Before Disaster," http://www.nytimes.com/2012/09/20/world/asia/pakistan-factory-passed-inspection-before-fire.html?pagewanted=all&_r=0; See also, "Foxconn said to use forced student labor to make iPhones,"

solution to this problem, but we know that a key deterrent is the ability of unions and labor rights organizations to shine a light on these practices through on-the-ground investigations. We believe it is important that the Congress and Administration support such monitoring efforts, and the efforts of workers to monitor their own workplaces. Ultimately, workers and trade unions must be empowered to monitor supply chains because history shows that abuses in the workplace only end when workers have the power to ensure that their rights in both ILO conventions and national laws are respected.

There have been some promising examples of worker agency and representation as a successful model of supply chain monitoring. The Firestone Agricultural Workers Union of Liberia (FAWUL) and the Coalition of Immokalee Workers (CIW) in the U.S. are just two of these. FAWUL workers went on strike to demand a real democratic union in their workplace – one of the largest rubber plantations in the world. And through collective bargaining, FAWUL is now making great strides in eliminating forced and child labor at the plantation. After years of struggle and a major campaign targeting retail buyers of tomatoes, CIW now has an enforceable code that is monitored through among other tools, a worker grievance mechanism, helping to end slavery in the tomato industry in Florida.

And yet, unenforceable company codes of conduct and social auditing firms continue to be the solution pushed by multinational corporations and governments. While it may not be popular to talk about freedom of association as a way to end trafficking in supply chains, it is one of the only solutions that may work.

Governments must also play a major role in eliminating slavery in supply chains. Examples abound of governments around the world reluctant to hold employers accountable for trafficking in their workplaces. Even when trafficking for labor exploitation is addressed, the labor recruiter is blamed and not the employer who perpetrates the exploitation. This lack of political will translates into ridiculously few cases of human trafficking for forced labor or other forms of severe labor exploitation from being prosecuted around the world. When cases are prosecuted, they often result in small fines and no jail time for the perpetrators — barely a deterrent for exploitative employers.

The U.S. government, however, must do more to ensure that U.S. corporations are held accountable for their practices abroad. We must increase government scrutiny of imports and exports to ensure goods made by slave labor are not allowed in the U.S. marketplace. To this end, the State Department needs to put more emphasis on site visits overseas to suspect industries. To do this, it must expand the number of labor officers and attachés in the field, something that the Congress has called for generally but which the Department has yet to act upon.

In addition, the Department of Homeland Security must review and rework the role of Immigration and Customs Enforcement (ICE) in overseas inspections. Currently, ICE must notify foreign governments of their intent to inspect workplaces that export products to the U.S. Such notification results in the “cleansing” of these workplaces to remove any signs of

trafficking or forced labor. U.S. law does not allow evidence collected by unions or non-governmental sources to be the basis for restricting the importation of products made by trafficked or forced labor. This must be reformed.

The Role of Organized Labor in Combating Trafficking

Organized labor has a long history of fighting on a global scale a range of worker rights abuses, including forced labor, debt bondage, and involuntary servitude, which are the end result of trafficking in persons. As trafficking for labor exploitation is clearly a worker rights issue, trade unions and labor support organizations have an important role to play in combating it. To that end, the Solidarity Center conducts programs around the world with such partner organizations to find practical, sustainable solutions. Examples of our work include:

- In Indonesia, we trained government labor inspectors on the danger signs of human trafficking for labor exploitation, and focused on the importance of inspecting and monitoring migrant worker holding centers.
- In Kenya, we built the capacity of the Kenyan Union of Domestic, Hotel, Educational Institution, Hospital and Allied Workers (KUDHEIHA) in the high- tourist coastal areas to train their members in the tourist sector to recognize trafficking for sexual exploitation in their hotels, and establish a referral network to rescue victims.
- In Indonesia, Hong Kong, Kenya, and the Dominican Republic, the Solidarity Center is helping to empower domestic workers to fight for their rights and reduce their vulnerability to forced labor and human trafficking. This includes organizing domestic workers and advocacy to include them within domestic labor laws. The Solidarity Center also worked with domestic worker partners around the world to negotiate and pass the new ILO Convention on Decent Work for Domestic Workers (Convention 189). Convention 189 is seen as a prevention tool against the trafficking of domestic workers.
- In the Dominican Republic, the Solidarity Center built the capacity of a Dominican construction sector union to overcome xenophobia and racism in the sector by organizing and fighting for the rights of Haitian immigrant construction workers.
- In Moldova, the Solidarity Center is working with a global union federation in the agriculture sector to provide legal aid and other support to vulnerable Moldovan migrant workers who travel to Spain, Italy and other parts of Western Europe to work on local farms. These migrant workers are vulnerable to debt bondage, involuntary servitude, and forced labor.
- Our Asia and Middle East offices are working together on a cross regional program – bringing together activists in countries of origin and countries of destination to ensure that migrant workers are educated regarding their rights, the prevention of trafficking, and by providing them with protection services such as legal aid.

Recommendations for Initiatives to Combat Trafficking for Labor Exploitation and Forced Labor

As the International Labor Organization (ILO) has noted, “Where labor standards are rigorously adhered to, workers are well unionized and labor laws are monitored and enforced – for all workers, indigenous or migrant – the demand for trafficked people and services is likely to be low.” The Solidarity Center could not agree more.

Key initiatives to combat trafficking for labor exploitation therefore include:

1. Many stakeholders in the anti-human trafficking field refer to the four Ps: prevention, protection of victims, prosecution of traffickers, and partnership as a key framework to combat the problem. The Solidarity Center believes that the third “P”, “prosecution” should actually be broadened to an “R” – the “Rule of Law.” An approach to trafficking that encompasses the rule of law broadens the scope of efforts.

Rule of law creates an enabling environment that allows for initiatives that include preventive measures that may address the underlying causes of forced labor. These initiatives may include:

- a. Reforming labor and other laws to include and protect immigrant and domestic workers. All workers – whether national or foreign, documented or undocumented – must have equal protection under the law, and receive full protection of the laws. In addition, governments and employers must recognize and enforce all ILO core labor standards, including the freedom of association and right to organize.
- b. As domestic workers are particularly vulnerable to human trafficking, the U.S. government must continue to support, and advocate to other governments to support and ratify, ILO Convention 189 on Decent Work for Domestic Workers.
- c. Equal attention must be paid not only to passing better laws, but also implementing, monitoring, and enforcing those laws. To that end, governments must enhance the role of labor inspectors. Labor inspectors must be engaged in and be an integral part of law enforcement initiatives to combat human trafficking. In particular, labor inspectors must be given special training to recognize the signs of human trafficking in a workplace. Governments must also ensure that there are sufficient numbers of labor inspectors.
- d. Providing compensation to victims, including payment of withheld or back wages.
- e. Penalizing abusive workplaces. Strengthening enforcement and penalties against employers who are found to have trafficked workers or to companies who have bought products made by slave labor. Employers must be held accountable for the abuses of their subcontractors, including labor recruiters, and for abuses in their supply chains.

2. Emphasis must be placed on safer migration processes for workers. This includes pre- and post-departure training for workers on their rights in the countries of destination. Governments have a crucial role to play in educating workers about their rights. Enforcement of labor standards depends on workers being able to report violations; they therefore have to be able to recognize violations. In addition, immigration policies should emphasize ways to make workers safer during the migration process, and reflect economic reality.
3. Increasing scrutiny of imports and exports to ensure goods made by trafficked or forced labor are not allowed in the marketplace. This includes reviewing and re-working the role of ICE in overseas inspections. Currently, ICE must notify governments of their intent to inspect workplaces that export products to the U.S. – such notification results in the “cleansing” of these workplaces to remove any signs of trafficking or forced labor.

U.S. law does not allow evidence collected by unions or non-governmental sources to be the basis for restricting the importation of products made by trafficked or slave labor. This must be reformed.

4. Increasing pressure on companies to map their supply chains and make such information public. Companies argue that it is too difficult or expensive to completely map their supply chains. If NGOs can do it though, companies can too. There needs to be a change in business practices.
5. Promoting the freedom of association and right to organize, worker agency and worker representation, over codes of conduct and third party monitoring, as an effective way to monitor supply chains for trafficking and forced labor.
6. Strict regulation of labor recruiters and employment agencies. Specifically, the elimination of recruitment fees to workers, shifting costs back to the employer. Workers should not be required to pay any fees associated with recruitment, the migration process, or placement PERIOD. Employers must be held liable for the abuses of labor recruiters that they hire. In addition, workers must have a way to ensure that a recruiter is legitimate and licensed. Congress should include foreign labor recruiter regulation provisions in the TVPRA or pass a standalone bill.
7. Extending meaningful whistleblower protections to trafficked workers, which allow workers and their representatives to sue to enforce all state and federal labor and employment laws as well as the conditions in workers’ contracts without having to face deportation or removal. Ensure confidentiality so that victims can access public services as mandated by the TVPA without fear that their traffickers or another entity may find out and seek retribution. Other governments must also consider whistleblower protections for trafficked workers, and companies should ensure that there are such protections in company policy all along the supply chain, and advocate to governments for such protections for workers.
8. Increasing pressure and monitoring on nations to include trafficking for labor exploitation into anti-trafficking laws and regulations, and increasing prosecutions of labor traffickers, including employers, as perpetrators of human trafficking

9. The U.S. government should provide support to countries of origin, especially developing countries, to negotiate multilateral agreements with more powerful destination countries to level the playing field for migrant workers. Because of unequal bargaining power, and the desire of developing origin countries for remittances and employment abroad for their citizens, bilateral agreements are often weak, and provide few worker rights protections. Multilateral agreements may provide more avenues for labor standards.

10. Pass the TVPRA now!

Thank you, again, for the opportunity to testify and for your help in combating global trafficking and supporting the rights of workers everywhere. I welcome your questions.