



Testimony of

Neha Misra

**Global Lead, Migration and Human Trafficking
Solidarity Center**

Before the Committee on Ways and Means Subcommittee on Trade

U.S. House of Representatives

Wednesday, July 21, 2021

Presented at a hearing titled:

***The Global Challenge of Forced Labor in Supply Chains:
Strengthening Enforcement and Protecting Workers***

Chairman Blumenauer, Ranking Member Buchanan and members of the Committee on Ways and Means Subcommittee on Trade, thank you for the opportunity to present the Solidarity Center's perspective on how to strengthen enforcement and protect workers from forced labor in supply chains. We appreciate the continued leadership of members of this committee in ensuring the rights of workers are protected under trade regimes and your consistent work to shine a spotlight on the plight of the most vulnerable and marginalized workers, including those trapped in forced labor in global supply chains. Your continued attention and oversight is critical.

The Solidarity Center is an international nongovernmental organization that promotes and protects worker rights globally, with programs in more than 60 countries. The Solidarity Center, allied with the AFL-CIO, assists workers across the globe as, together, they fight discrimination, exploitation, unsafe workplaces and the systems that entrench poverty—to achieve shared prosperity in the global economy.¹

¹ Portions of this testimony are excerpted, adapted and updated from Testimony of Neha Misra, Senior Specialist, Migration and Human Trafficking, Solidarity Center, Before the Tom Lantos Human Rights Commission U.S. House of Representatives, January 15, 2020, presented at a hearing titled: *The Trafficking Victims Protection Act at 20: A Look Back – and a Look Ahead*, <https://humanrightscommission.house.gov/sites/humanrightscommission.house.gov/files/documents/Testimony%20-%20N%20Misra%20Solidarity%20Center%20-%20Lantos%20Human%20Rights%20Commission%20%28Jan%2015%202020%29%20%28written%20submission%29.pdf>, Testimony of Shawna Bader-Blau Executive Director Solidarity Center, Before the United States Senate Committee on Foreign Relations November 28, 2018, presented at the hearing titled: *The Global Fight to End Modern Slavery*, https://www.solidaritycenter.org/wp-content/uploads/2018/11/Trafficking_SBB-testimony_SFRC_Global-Fight-to-End-Modern-Slavery_11.18.pdf, and Testimony of Neha Misra, Senior Specialist, Migration and Human Trafficking, Solidarity Center, Before the Tom Lantos Human Rights Commission, U.S. House of Representatives, Thursday, July 24, 2014, titled *End Worker Exploitation to End Human Trafficking*, <https://humanrightscommission.house.gov/sites/humanrightscommission.house.gov/files/documents/Lantos%20Hu>

Much attention has been rightfully placed in recent years on the rampant exploitation of workers all along supply chains rising to the level of forced labor. Just last month leaders from the Group of Seven (G7) demonstrated unity around a set of concrete actions to respond to forced labor in global supply chains. The International Labor Organization (ILO) estimates that approximately 25 million people are trapped in forced labor globally: 16 million in the private economy, and 4.1 million in state-sponsored forced labor. Women and girls are disproportionately affected by forced labor, accounting for 58 percent of victims. Children represent 18 percent of those subject to forced labor exploitation. More women than men are affected by privately imposed forced labor, with 9.2 million (57.6 percent) female and 6.8 million (42.4 percent) male. Among cases where the type of work was known, the largest share of adults who were in forced labor were domestic workers (24 percent), followed by construction (18 percent), manufacturing (15 percent), and agriculture and fishing (11 percent) workers. Half of all forced labor imposed by private actors involves debt bondage.

While we do not yet have comprehensive statistics on the effects of climate change on vulnerability to forced labor, we know that as climate change worsens, we can expect millions of people to be pushed into increasingly precarious circumstances or migration. We also anticipate forced labor to increase in the aftermath of COVID-19, which drastically impacted low-wage and precarious workers.² The current reality of forced labor being largely perpetrated by private actors was the reason the ILO updated its 1930 Forced Labor Convention in 2014, with a protocol and accompanying recommendation, recognizing the shift from forced labor being largely perpetrated by states to private actors, who profit from forced labor in a structured global economy.³

With this recognition, we acknowledge that eradicating forced labor in supply chains will require an approach that addresses discriminatory and oppressive systems and structures that are woven into the fabric of the global economy. We will never eliminate forced labor until we deal with structural inequality, starvation wages, worsening climate impacts, lack of decent work and systems that see workers as two dimensional and deprive workers of agency and basic labor rights.

Solidarity Center staff from around the globe could tell you story after story of workers we encounter every day who, while simply trying to provide for themselves and their families, end up facing horrific exploitation due to the way governments and businesses structure work and fail to uphold rights. In Bangladesh, we work with women workers like Kohinoor and Mosammat, two of the hundreds of garment workers forced back into Rana Plaza in Bangladesh under threat of their wages being withheld, the day it collapsed. Both survived but say they live in constant pain, which affects their ability to work and feed and educate their children. In Guatemala, 59 percent of women surveyed in non-union banana packing plants say they face sexual harassment and other forms of gender-based violence at work--and do not report the abuse

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² See for example, The Impact of COVID-19 on Modern Slavery, United Nations University, <https://ourworld.unu.edu/en/the-impact-of-covid-19-on-modern-slavery>

³ As of 2021, the ILO Forced Labor Convention (1930) (C. 29) has been ratified by 179 of the 187 ILO members. The United States and China are among the few nations to not ratify the convention.

for fear of being fired.⁴ Then there were the 14 Burmese migrant workers who were charged with criminal defamation for filing a complaint against their employer with the National Human Rights Commission of Thailand. The workers alleged that their employer, a chicken farm, had subjected them to grueling work conditions, including forced labor. Instead of justice, the workers faced retaliation for daring to stand up for their rights.⁵

Workers in factories and farms across the world during the COVID-19 pandemic have had to choose between possible infection and hunger because their employers have provided little to no protective equipment or distancing measures, and governments have few social protection programs to support them if they dare to leave their jobs. In Haiti, garment workers, who do not make a living wage in normal times, received two weeks of half wages from the government then nothing while their factories were closed or functioning at lower capacity. Haitian garment workers reported to the Solidarity Center that after just four weeks, most workers had returned to their jobs sewing apparel for the U.S. market, traveling to work in overcrowded public transportation and, in some cases, sewing fabric masks for U.S. clothing brands while working without adequate safety equipment for themselves. Wage theft, meanwhile, was rampant during the pandemic, increasing the vulnerability of low-wage workers, including migrants and workers in export supply chains.⁶

It is difficult to quantify the extent of forced labor in global supply chains; but in general, as supply chains extend to more and more suppliers in countries where laws protecting workers are lax or unenforced, the likelihood of forced labor and severe forms of exploitation increases. Corporate supply chains are explicitly structured to deny workers agency. Practices that effectively reduce indicators of forced labor⁷ in supply chains are scarce relative to corporate practices that enable abuses to flourish. For example:

- When buyers and multinational corporations demand unrealistically low prices from suppliers, severe labor abuses, including forced labor, often result in supply chains because factories squeeze worker wages and demand excess work hours to meet buyers'

⁴ Anner, Mark. *What Difference Does a Union Make? Banana Plantations in the North and South of Guatemala*, Center for Global Workers' Rights, Pennsylvania State University, January 2021. <https://www.solidaritycenter.org/publication/what-difference-does-a-union-make-banana-plantations-in-the-north-and-south-of-guatemala/>

⁵ While the workers were eventually acquitted of the defamation charges, journalists and migrant workers in Thailand continue to be threatened with criminal charges for reporting abuses. See for example, https://www.washingtonpost.com/opinions/global-opinions/thailands-crude-attempt-to-intimidate-a-journalist/2019/12/31/4462c28e-2b46-11ea-9b60-817cc18cf173_story.html

⁶ See for example, *FIRE, THEN ROBBED: Fashion brands' complicity in wage theft during Covid-19*, Workers Rights Consortium, available at: [https://justiceforwagetheft.org/api/files/16182099513772uzshen8dzt.pdf](https://www.workersrights.org/wp-content/uploads/2021/04/Fired-Then-Robbed.pdf#:~:text=Over%20the%20last%2015%20years,severance%20theft%20at%20garment%20factories.&text=Across%20all%20factories%20in%20our,%24171.5%20million%20to%20severance%20theft; see also, <i>Crying out for Justice: Wage Theft Against Migrant Workers during COVID-19, Volumes I and II</i>, Migrant Forum in Asia available at: <a href=) and <https://justiceforwagetheft.org/api/files/1625067738703x8pn9dg2qgn.pdf>.

⁷ Understanding indicators of forced labor is key to prevention. For more information see, *ILO Indicators of Forced Labor*: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

price requirements. As described in the Solidarity Center’s report, *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.”

- When employers refuse to enforce or claim that it is too difficult to monitor adherence to core labor standards in their supply chains, the probability that they will find forced labor, debt bondage and other severe forms of labor exploitation increases. Adherence to core labor standards requires zero-tolerance policies from buyers, something few multinational companies are willing to impose on their suppliers. It also requires long-term relationships with fewer suppliers.
- When corporations and employers subcontract hiring and human resources management to labor brokers or employment agencies, they use legal loopholes to distance themselves from responsibility for worker abuses. Corporations contract out their responsibilities and do not hold suppliers and subcontractors accountable. Governments give businesses immunity from the actions of their suppliers and subcontractors, exacerbating the lack of accountability.

Practices like these systematically deny workers agency over their own conditions of work, contributing to rampant forced labor in supply chains. Low-wage economic sectors such as agriculture, garment manufacturing and seafood/fishing are vastly underregulated and under-monitored. These same sectors are ones in which we find (not by accident) large numbers of women, Black and migrant workers. Workers, especially migrant workers, in such sectors are often explicitly excluded from basic elements of labor law. In other cases, the structure of these sectors makes it extremely difficult for workers to exercise their fundamental labor rights, particularly freedom of association and the rights to organize and collectively bargain. For example, in Malaysia, while migrant workers can join existing unions, their freedom of association rights are basically curtailed as they cannot form their own unions, hold leadership positions or participate in collective bargaining, leaving migrant workers with little recourse when their identification documents are confiscated, wages are withheld or stolen, or they face violence or harassment in the workplace.⁸ When we deny workers agency to have a say in their wages and working conditions, and to report workplace safety violations, exploitation and abuse, and when we deny their access to remedies for such abuse, we allow conditions for forced labor to flourish.

Similarly, the global migration management architecture is purposely designed to promote cheap labor over migrant workers’ rights. It is not an accident that those same low-wage sectors I

⁸ See recent CBP-issued WROs for Malaysia at <https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings>.

described above, which have high incidences of forced labor, are the same sectors where you will find large numbers of migrant workers. And again, migrant workers are systematically denied agency to monitor their own workplaces, exercise their fundamental labor rights and access justice. Migrant workers all along supply chains have a particular vulnerability to forced labor directly as a result of migration management systems, structures and practices. For example, the predominant form of regular migration schemes are now temporary migration programs--often called guestworker or non-immigrant work visa programs. These programs, whether it is the kafala system in the Gulf Cooperation Council states or our alphabet soup of guestworker programs in the United States, have certain commonalities: all legal; all common; all increasing migrant workers' vulnerability to forced labor. Is it really a surprise that migrant workers in the rubber sector face rampant debt bondage when they are forced to pay exorbitant recruitment fees? Could we not predict that workers in palm oil supply chains face rampant wage theft, forced overtime, gender-based violence and harassment (all indicators of forced labor) when their visa is tied to their employer? Is it really unexpected that migrants with H-2B visas on poultry farms in the United States. face indicators of forced labor when their employers legally distance themselves from responsibility for the workers through legal subcontracting mechanisms?

Over the past few decades, the extent of forced labor in global supply chains has become increasingly clear. In response, the United Kingdom and Australia passed transparency laws patterned on the 2010 California Transparency in Supply Chains Act, which calls on enterprises to disclose the policies that may be in place to combat forced labor by subsidiaries and suppliers. A recent report found that “only a handful of leading companies have demonstrated a genuine effort in their reporting to identify vulnerable workers and mitigate modern slavery risks.”⁹ The fact that few enterprises are penalized for failing to stem forced labor in their supply chain likely explains the lack of robust compliance.

Corporate social responsibility (CSR) approaches have largely proved to be bandages or window dressing. Non-binding codes of conduct, certifications schemes and third-party auditing do not work absent worker agency and real worker representation. By contrast, freedom of association and collective bargaining reduce vulnerability to indicators of forced labor. From rubber plantations in Liberia to melon farms in Honduras, the Solidarity Center has seen time and time again how democratic worker organizing and collective bargaining can eliminate forced labor in a workplace.

The Solidarity Center and others have been advocating for years for governments to use trade restrictions, import bans and other penalties on products made with forced labor. The removal by Congress in 2016 of the “consumptive demand” loophole in the 1930 Tariff Act is a definite sign of progress. We now see greater enforcement of the Tariff Act through withhold and release orders (WROs) on imported products made with forced labor, including the crucial WRO issued by Customs and Border Protection (CBP) this past June on some silica-based products made in Xinjiang, China. While the increased number of enforcement actions under the Tariff Act are a

⁹ “FTSE 100 and the UK Modern Slavery Act: From Disclosure to Action,” Business and Human Rights Resource Center, 2018. <https://www.business-humanrights.org/en/ftse-100-the-uk-modern-slavery-act-from-disclosure-to-action>

step in the right direction, CBP must do more to ensure that products made, wholly or in part with forced labor, are not imported into the United States.

Conclusion and Recommendations

We cannot eliminate forced labor without fundamentally changing how companies do business and how governments monitor and enforce human and workers rights, how labor migration is managed globally, and without creating systems and structures that promote worker agency.

Recommendations:

- Expand foreign assistance programs that address the root causes of forced labor vulnerability—including poverty alleviation, climate change mitigation and adaptation, workforce development, trade capacity, research, ending gender-based violence and providing support to marginalized communities, such as migrant or disabled workers: USAID (especially the democracy and governance programs, including the global labor program, that address underlying root causes such as worker exploitation), the State Department’s Bureau of Democracy, Human Rights and Labor (DRL), and the Labor Department’s Bureau of International Labor Affairs (ILAB) forced labor and trade initiatives, especially its technical assistance programming. Increase technical assistance to governments that are committed to improving worker rights enforcement and provide diplomatic support by assigning expert labor attachés to U.S. embassies in countries where forced labor is prevalent.
- Use trade leverage to eliminate forced labor in supply chains. The U.S. government needs to continue to use tools, including trade agreements and trade preference programs, to pressure governments and companies to eliminate forced labor in supply chains. These tools should be updated to reflect a renewed focus on labor rights and trafficking for labor exploitation, especially provisions that would protect migrant workers from these abuses.
- The closing of the consumptive demand loophole was a good first step. Now, we urge Congress to insist that the Administration promulgate regulations that facilitate the effective enforcement of Tariff Act prohibitions on the importation of goods made with forced labor. Such regulations should make it easier to bring complaints and shift the burden of proof to companies and importers when a product is on the Department of Labor’s List of Goods Made with Forced or Child Labor. Goods on that list should not be imported unless the importer can demonstrate that such goods were made free of forced or child labor. We support legislative action to suspend certain trade benefits for countries that do not take steps to combat forced labor in supply chains. Further, legislation like the Uyghur Forced Labor Prevention Act is critically important to further disincentivize the state-sponsored forced labor of the Uyghur people in multiple global supply chains..
- CBP must do more to ensure that products made, wholly or in part with forced labor, are not being imported into the United States. CBP should place more emphasis on self-initiated actions by the agency itself; issue more WROs related to other countries and sectors; train staff on identifying indicators of forced labor; and focus on worker remediation measures and

ensuring working agency in enforcement. CBP must also develop mechanisms to deal with the impacts of increased enforcement, including the temporary loss of jobs for workers. As described by the Tariff Act Advisory Group (TAAG), a coalition of organizations, including the Solidarity Center, united to press for greater enforcement of the Tariff Act, workers harmed due to a U.S. Tariff Act action should receive direct cash payments from a Tariff Act Worker Emergency Fund. These cash payments should not supplant remediation payments to workers directly from the company targeted by a WRO. Companies should be required to reimburse recruitment fees (including liquidated damages), back wages and other amounts owed to workers. The Tariff Act Worker Emergency Fund would serve to temporarily cushion the financial blow to workers caused by a WRO against their employer. The fund would be financed in part by fines levied against corporations that have violated the prohibition on importation of goods made with forced labor. CBP's enforcement actions under the U.S. Tariff Act and related laws provide the statutory basis for these fines.

- The U.S.-Mexico-Canada Agreement (USMCA) commits the respective government parties to the agreement to prohibit imports produced by forced labor and to cooperate over identifying such goods. CBP, DOL and other relevant agencies should do more to ensure the sharing of data and information about enforcement actions to ensure that forced-labor-made products that are turned away at the U.S. border do not just end up in Canadian or Mexican markets. Such trade provisions, like this one in the USMCA, should be expanded to other trade agreements. And the U.S. should encourage other governments to pass legislation similar to section 307 of the Tariff Act.
- Congress and other governments should strictly regulate labor recruiters and employment agencies, and eliminate worker recruitment fees and shift costs back to the employer. Workers should not be required to pay fees associated with recruitment, the migration process or placement. Employers must be held liable for the abuses of the labor recruiters or subcontractors they hire. In addition, workers must have a way to ensure that a recruiter is legitimate and licensed.

To that end, over the past decade, both the House of Representatives and the Senate have introduced bills to regulate labor recruitment in U.S. non-immigrant visa programs. If passed, these bills would be a significant step toward addressing forced labor and debt bondage. Congress should make efforts at the earliest possible time to pass such legislation to end fraud in our non-immigrant visa programs and prevent trafficking in the labor recruitment system. Not only will such a law help to protect migrant workers in the United States, it will also serve as a powerful model for other countries, which need to pass and enforce similar laws and policies, and impact corporate practices in supply chains.

- The U.S. Congress and executive branch (J/TIP, DRL, DOL, DOJ), along with other governments, should emphasize safer migration processes for workers. This means ending operations that result in mass deportations of undocumented migrant workers without first implementing effective measures to identify and support exploited workers, including allowing such workers to stay in the United States to pursue remedies for wage theft and other workplace violations. Finally, governments should amend their laws and policies to allow migrant workers full workplace rights and create systems that promote migrant worker

agency and eliminate the structures, like tied visas, recruitment fees and temporary migration schemes that are inherently exploitative. Migrant workers regardless of status, sector or gender must be afforded the right to organize and collectively bargain.

- The U.S. government should increase the number of prosecutions and convictions for forced labor. This means training police and prosecutors to better investigate and prosecute forced labor cases, and protecting workers and the organizations that represent them from retaliation by powerful employers, business owners or high-level government officials for bringing cases forward. Law enforcement officials should be trained on the indicators of forced labor.
- The U.S. government should prosecute forced labor committed by U.S. persons abroad, including corporations. In 2008, Congress created extraterritorial jurisdiction under 18 USC 1596 to prosecute these crimes. But the U.S. Department of Justice has never prosecuted a single case of forced labor under the extraterritorial provisions of the Trafficking Victims Protection Reauthorization Act. The U.S. government has the tools to enforce the prohibition on forced labor, but has failed to do so. This must change.
- The U.S. government should significantly increase fines against importers of goods made with forced or prison labor into the United States. Current enforcement priorities, including WROs, punish foreign factories and can harm workers abroad subject to the orders. The U.S. government should punish U.S. companies that import goods made with forced labor. U.S. companies that knowingly import goods made in whole or part with forced labor currently enjoy impunity. This must end.
- The U.S. government also should penalize abusive workplaces by strengthening enforcement and penalties against employers who are found to have workers in forced labor or who have bought products or raw materials made by forced labor. This means prosecuting employers and imposing stiff penalties. Employers must be held accountable for the abuses of their subcontractors, including labor recruiters, and for abuses in their supply chains.
- Congress, the executive branch, other governments and multinational corporations should ensure freedom of association—the right to organize, join trade unions and collectively bargain for all workers—regardless of status or nationality, in both origin and destination countries. Freedom of association must be assured in practice and not just law. This means strict penalties for employers who fire, blacklist, retaliate against or collude with government officials to deport migrant workers who try to organize; and reform of laws that prohibit migrant workers from joining or holding leadership positions in unions, and from participating in collective bargaining.
- The U.S. and other governments should reform labor and other laws to include and protect migrant and domestic workers. All workers—whether national or foreign, documented or undocumented—must have equal and full protection of the law. In addition, governments and employers must recognize and enforce all ILO core labor standards, including the freedom of association and right to organize.

- Congress, the executive branch and other governments should give equal attention not only to passing better laws, but also to implementing, monitoring and enforcing those laws. To do so, 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 labor abuses and forced labor. In particular, labor inspectors must be given special training to recognize the indicators of forced labor in a workplace, including debt bondage and gender-based violence and harassment (GBVH), and to identify victims. Governments must also ensure that there are sufficient numbers of labor inspectors, and that they have the responsibility to inspect all workplaces—including those with high percentages of migrant workers.
- Congress and other governments must pass national whistleblower protection laws regarding trafficked workers. Also, 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.

Now is the time for the United States to take stronger action to hold corporations to account for protecting the rights of all workers--regardless of their employment or migration status--in their supply chains, and to take measures that support workers' right to organize and bargain collectively.

Thank you again for the opportunity to testify and for your continued leadership in ensuring the rights of workers are protected under trade regimes and to address worker exploitation in supply chains. I am encouraged by your commitment to finding solutions and welcome your questions.