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HEARING ON

Multi-Sector Partnerships to Combat Human Trafficking

Before the Tom Lantos Human Rights Commission

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I. Introduction: Ending Human Trafficking

Chairmen Hultgren and McGovern, and Members of the Commission: thank you so much for the invitation to be here today.

At Human Rights First, our mission is to foster American global leadership on human rights. We believe that standing up for human rights is not only a moral obligation; it is also a vital national interest. Our country is strongest when our actions match our ideals. For nearly forty years, we have worked to ensure that the United States acts as a beacon in a world that needs American leadership.

American leadership is sorely needed on the catastrophe known as human trafficking. Millions around the world are enslaved. The parasitic perpetrators of forced labor and child labor target the most vulnerable among us, violating their most fundamental human rights, including but not limited to freedom from fear and oppression, and denying the rights to free choice of employment and just remuneration. Modern-day slavery is as abhorrent as the bondage throughout human history. We should recognize it as such—and act accordingly.

Our anti-trafficking work at Human Rights First is focused on stemming the massive profits that fuel the perpetrators and on ending the virtual impunity in which they operate. Traffickers make an estimated \$150 billion annually. The International Labor Organization estimates that 20.9 million people are victimized by human trafficking worldwide. Yet only 9,071 convictions of traffickers were secured last year.

We are pressing the U.S. government and business community to lead the fight against human trafficking because American leadership is essential in engaging the international community and in developing essential multilateral and multi-sector partnerships. Our anti-trafficking work is informed by our Campaign Ambassadors, a diverse group of leaders in business, government, military, civil society and academia, who have devoted their expertise to combat this problem. This hearing—and the work of the Lantos Commission in drawing attention to the need for a multi-sector, collaborative effort—aligns perfectly with our approach. We applaud your leadership and appreciate the opportunity to engage in this important discussion.

Congress has taken steps to prevent the United States from supporting slave labor, and has passed legislation to combat human trafficking within our borders and abroad. But without proper enforcement, education, and collaboration by the government, private sector, and civil society, we will see this vicious cycle of profit and crime continue.

Efforts to end the U.S. role in the perpetuation of this crime are critical. We should set an example for other countries by eradicating forced labor from the supply chains of American companies and facilitating the types of collaboration necessary to investigate and convict traffickers for their crimes both at home and abroad.

II. Decreasing Profits for Traffickers by Closing the Market to Slave-made Products

In 2016 Congress took action that has the potential to substantially decrease the market for slave labor globally by closing the “consumptive demand loophole,” as part of the Trade Facilitation and Trade Enforcement Act (TFTEA). This loophole prevented effective enforcement of the U.S. ban on imports made with forced labor in the Smoot-Hawley Tariff Act of 1930 by allowing importation of slave-made goods if demand in the United States exceeded domestic production. But U.S. consumption of most products outpaces domestic production. Because of this loophole, the Tariff Act ban was rendered nearly useless for over 85 years, with only 32 products held by Customs and Border Protection (CBP), the agency tasked with enforcing the ban.

We estimate that the United States imports over \$142 billion worth of products made with forced labor,¹ yet only four shipments were held at the border in the year and a half that followed passage of TFTEA. The last action was over a year ago when peeled garlic from China was banned. Enforcement of this law, closing the U.S. market to slave produced products, could substantially reduce the markets open to slave labor and provide a model to governments worldwide on how to stop enabling labor trafficking.

CBP has added a forced labor-focused working group to their Commercial Customs Operations Advisory Committee (COAC), which advises the Secretaries of the Department of Treasury and the Department of Homeland Security on the commercial operations of CBP, including issues such as trade enforcement. This group includes importers, customs brokers, companies, and, for the first time, NGOs, including Human Rights First. CBP also created a separate working group of civil society organizations to engage with CBP and other relevant agencies to promote public and government agency awareness, and provide input on the forced labor enforcement processes. Human Rights First is also an active participant in this working group.

However, nearly two years after the provision passed, there is little show for it. What’s needed is a strong interagency process headed by the White House. The COAC presented a set of recommendations to CBP at a public meeting last November. It’s been ten months and CBP has yet to provide any feedback on these recommendations.

These recommendations, compiled with input from companies, other government agencies and NGO representatives, included a request for CBP to map out their process for determining whether or not to investigate a potential allegation, including identifying roles and responsibilities of other partner government agencies. As there are many agencies that work on forced labor, both in terms of prevention and enforcement, there should be one central office in charge of coordinating these efforts. We’ve seen similar challenges in trying to coordinate diverse offices that work on human trafficking,

¹ We arrived at this number by comparing the U.S. Department of Labor’s list of goods produced with forced and child labor with the most recent U.S. trade data on imports.

including both domestic and international facing agencies. The White House National Security Council is ideally situated to facilitate this interagency process and to ensure that the enforcement agencies are meeting the full intention of this statute, have the resources necessary to fully enforce the law, and are doing so in a timely way.

Additionally, CBP has provided limited guidance on what evidentiary standards they are using to respond to allegations or to self-initiate investigations. The law requires only reasonable suspicion for CBP to respond to an allegation, and the burden to prove that the goods are not made with forced labor falls to the importer. Just looking at the Department of Labor list of goods made with forced or child labor and recent news articles, there are numerous imported goods about which CBP should have reasonable suspicion.

This is unfortunately a conversation we have been having for more than 30 years. A hearing before the Senate Finance Committee in 1985 addressed the lack of enforcement of the prohibition on importation of goods produced by forced or convict labor, particularly 36 goods from the Soviet Union that the U.S. government found were reasonably, but not conclusively, made with forced labor. Legally, this evidence met the standard for the U.S. Customs Service (now CBP) to withhold those goods from entry into the United States. The Administration at the time decided to narrow the list down to just five products, but then said they did not have a solid case without ever defining the standard, which was never meant to be “solid.” As one witness said in regards to the Administration’s decision not to ban any of these imports, “But it should not gut the act by administratively imposing preconditions for its enforcement, which preconditions it then declares it to be unattainable.”

Former CBP Commissioner, Gil Kerlikowske, who serves on our Campaign Ambassadors group, spent nine years as the chief of police in Seattle. Based on his time in law enforcement, he said that if someone called the police after their house had been burglarized, you would never ask them to tell you who did it and to guarantee that they would testify before opening an investigation. Similarly, we don’t need absolute proof that a good has been made with forced labor and is sitting on a shelf in a store in the United States in order to justify withholding those goods at our ports of entry.

Additionally, requiring first-person testimony is always complicated in human trafficking cases. Law enforcement investigations strongly rely upon the testimony of trafficked victims to secure evidence against traffickers here in the United States. Trafficking victims have often been traumatized and mistrust authorities, and are therefore frequently reluctant to cooperate with investigators and participate in prosecutions. This is more challenging in cases involving workers in supply chains overseas as victims often reside in countries with weak rule of law, where workers could be under threat from their employer with no local recourse or protection.

Leveraging the Power of U.S. Government Procurement

As the largest single purchaser of goods and services in the world, Congress and the Executive Branch took important action five years ago to ensure the U.S. government is

not relying on goods or services tainted by forced labor. Following President Obama's 2012 executive order, "Strengthening Protections Against Trafficking in Persons in Federal Contracts," Congress passed the *End Trafficking in Government Contracting Act*, as Title XVII of the *National Defense Authorization Act for FY 2013*. This statute resulted in amendments to the Federal Acquisition Regulations, which require U.S. government contractors with contracts exceeding \$500,000 to have compliance plans to prevent forced labor, including prohibiting contractors and all subcontractors or subagents in their supply chain from engaging in practices that leave workers vulnerable to trafficking and forced labor, such as destroying, concealing, confiscating, or otherwise denying access by employees to their identity or immigration documents; using misleading or fraudulent practices during the recruitment of employees; charging employees recruitment fees; failing to provide return transportation upon completion of the contract; and arranging housing that fails to meet the host country housing and safety standards.

These new regulations have been in effect since March 2, 2015, yet according to the annual State Department Trafficking in Persons report, there have been zero enforcement actions. The success of these measures depends on effective implementation and strong enforcement. One challenge is that, while the regulations ban contractors and their subagents from charging workers recruitment fees, the term "recruitment fee" is not clearly defined. Because recruitment fees often leave workers indebted and vulnerable to abuse, determining what constitutes a "recruitment fee" is critical.

The Federal Acquisition Regulatory Council recognizes that the regulations cannot be robustly enforced until term "recruitment fee" is clearly defined. They released a draft definition for comment in July 2016, and we are awaiting the final definition. We recommend that recruitment fees be defined as broadly as possibly to encompass anything of value. Unscrupulous labor recruiters have found ways to circumvent bans on recruitment fees by using another name (e.g., "training fee" or "equipment fee").

Unscrupulous labor recruiters often require prospective workers to pay a fee—either as a general requirement to obtain a job, or under the guise of costs such as training or equipment needed for the job, travel to or from the job location, visas and medical examinations required for travel, or other related fees. Recruiters often disguise these fees as a wide range of seemingly valid costs. Workers pay these fees on the promise of lucrative jobs overseas, but they often find themselves in much lower paying positions and in locations (e.g., a combat zone) that make it difficult to leave. Since many have depleted their family's savings or leveraged their family home as collateral to take out a loan to pay the recruitment fees, they have little choice but to stay and complete the contract. Meanwhile, the labor recruiter profits enormously and often provides kickbacks to the subcontractor or subagent who hired their services.

RECOMMENDATIONS TO CLOSE THE U.S. MARKET TO SLAVE LABOR

- Press CBP to self-initiate investigations when there is reasonable suspicion that imported goods are made with forced labor and ask CBP to clarify their evidentiary standards required to open an investigation
- Designate the White House National Security Council to lead the interagency process to coordinate efforts to enforce the Tariff Act ban on imports made with forced labor
- Per Section 132 of H.R. 2200, *The Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2017*, require CBP to report to Congress on the details of any enforcement actions taken over the past ten years
- Encourage other governments to adopt similar laws to ban imports produced with slave labor
- Press OMB to release a final definition of recruitment fees to effectively enforce federal regulations preventing trafficking on government contracts
- Per Section 113 of H.R. 2200, *The Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2017*, require relevant agencies to submit reports to Congress identifying who is responsible for enforcing these federal regulations, as well as information about the number of allegations received and investigations opened during the previous fiscal year

III. Increasing the Risk for Traffickers and Securing Justice for Victims

In 2016, there were 9,071 trafficking convictions in the world and 439 in the United States. Both numbers marked improvement over the previous year's numbers of 6,615 and 297, but still represented a drop in the bucket when we consider the estimated 20.9 million individuals suffering at the hands of traffickers annually. We must do better. If traffickers continue to operate with impunity we will never eradicate this inhumane practice. To ensure that every victim who escapes trafficking is not replaced with a new victim tomorrow, we must put those enslaving and exploiting others for financial gain out of business. We must make sure they pay for their crimes and choke off the estimated \$150 billion dollars in profits that drive them. To do this, we need cooperation across law enforcement, government, and national borders and engagement by government, civil society, victim-service providers, and the private sector.

Trafficking cases can be difficult to identify, investigate, and prosecute. In the United States, prosecutors are overwhelmed by the caseload and are often unable to prioritize trafficking cases, particularly more complex cases. Labor trafficking cases tend to be especially challenging because they are often hidden in legitimate businesses, requiring more coordination with agencies at the federal and local levels to gain the access and expertise necessary to investigate. The Human Trafficking Prosecution Unit (HTPU), within DOJ's Civil Rights Division, houses the country's top human trafficking prosecutors and provides expertise and training on trafficking cases to prosecutors across the country. Unfortunately this Unit has been flat-funded since FY 2010 at just \$5.3

million despite a 62 percent increase in cases filed in the last five years (FY 2011-2015) over the previous five years (FY 2006-2010).

For the past five years, HTPU has also helped to build a collaborative model to increase trafficking prosecutions. This has been highly successful and could be expanded here at home, replicated abroad, and applied in cases requiring cross-border cooperation. DOJ initiated Anti-trafficking Coordination teams (ACTeams), which comprise representatives from the U.S. Department of Labor, U.S. Department of Homeland Security, and DOJ including the FBI. These teams prioritize coordination between these three agencies to streamline resources needed to identify, investigate, and prosecute human trafficking cases. The ACTeams were piloted in six districts from 2012 to 2013. Districts with ACTeams saw a 119 percent increase in cases filed, compared to only an 18 percent increase outside of ACTeams districts. Similarly, convictions of human trafficking defendants increased by 86 percent in ACTeams districts compared to only a 14 percent increase outside of ACTeams districts. Building on these teams' success, DOJ, DHS, and DOL launched an additional six teams in December 2015. One reason these teams have been so impactful is that they are specifically trained to handle human trafficking cases and are able to build relationships and share best practices within the agencies on their team as well as with other ACTeams across the country. The increased capacity allows these teams to develop a pipeline of cases. They have also emphasized a victim-centered approach and collaboration with government victim advocates, which have helped them work with victims to build cases.

These teams have also worked transnationally. Since 2009, DOJ has led a bilateral enforcement initiative with Mexico to combat trans-border trafficking. Similar to the ACTeam structure, DOJ, DHS, and Mexican authorities collaborate to streamline investigations and to dismantle key trafficking networks that operate between Mexico and the United States. Additionally, they collaborate to share best practices and to promote a victim-centered approach to enforcement. Since 2009, over 170 defendants have been prosecuted in the United States, and 30 associated defendants were prosecuted in Mexico as a result of this partnership.

Partnering with the private sector has also been an important addition to efforts to combat trafficking. There have been successful initiatives involving the travel and hospitality sector whose workforce, if properly trained, can report suspicious activity to the authorities. A number of initiatives—including some you will likely hear about during the hearing, from the Electronics Industry Citizenship Coalition and the State Department—involve tools that businesses can apply to some of the most at-risk sectors to ensure that unethical labor recruiters and practices are not utilized by their companies and suppliers, and that they are able to minimize slave and forced labor in their supply chains.

One important private sector partnership that has increased identification of trafficking cases in the United States is the Bankers' Alliance Against Trafficking. The Alliance was established in 2013 through a partnership between the Manhattan District Attorney's

office, the Thomson Reuters Foundation, and a group of the largest banks in the country. Collaborating with law enforcement and NGOs, nine financial institutions developed twenty-seven indicators that, when taken together, can help identify transactions that are highly at risk for trafficking. Not only does this data help law enforcement identify cases that might otherwise have gone unnoticed, but it can also help prosecutors build cases against traffickers without having to rely as heavily on victim testimony.

Earlier this year, Senators Rubio and Warren and Representatives Royce and Maloney introduced the *End Banking for Human Traffickers Act of 2017*, which would add the Department of Treasury to the President's Interagency Task Force to Monitor and Combat Trafficking (PITF) and integrate financial institutions in the fight against trafficking by increasing collaboration between financial experts and law enforcement to utilize financial intelligence regarding anti-money laundering programs. From this strengthened position, the Department of Treasury could make recommendations and develop strategic ways to target human trafficking using anti-money laundering investigations. Financial intelligence, effective reporting on best practices for using money trails to track traffickers, and the dissemination of successful procedural policies to financial institutions across the globe could help stop traffickers from taking advantage of financial systems and institutions to hide their illicit profits.

Human traffickers operate without regard to borders. To combat these criminal networks, we need interagency partnerships and multi-lateral engagement initiatives to enhance investigations, as well as the sharing of information on best practices.

RECOMMENDATIONS TO INCREASE U.S. LEADERSHIP

- The United States must lead by example by increasing accountability for traffickers through those strategies that have been most successful: emphasizing a victim-centered approach in the prosecution phase; fostering cooperation between all stakeholders including government, law enforcement, victim services providers, and the private sector; and ensuring there are adequate staff that have both the expertise and the time to engage in partnerships and collaboration that have a proven track record of success
- Increase funding for HTPU to allow for an increased capacity within the office and provide support through training and expertise to prosecutors across the country and expand the ACTeams initiative
- Expand ACTeam international collaboration and work with international partners to replicate the success of the ACTeam model abroad
- Pass H.R. 3304, the *Human Trafficking Accountability Act*, which designates a human trafficking prosecutor in every U.S. Attorney's office across the country to increase capacity to investigate and prosecute complex human trafficking cases. (Note this provision is also included in Section 17 of H.R. 2803, the *Abolish Human Trafficking Act* and passed as Section 122 of H.R. 2200, *The Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2017*)

- Pass the *End Banking for Human Traffickers Act of 2017* to formally engage the U.S. Department of Treasury in the interagency coordination of anti-trafficking efforts and to identify ways for the U.S. government and financial industry to partner to identify and prosecute human trafficking cases

IV. Conclusion

At its core, slavery is about the dehumanization of people vulnerable to those who take advantage of them for personal gain. The rise of modern slavery is one of the tragic consequences of intractable problems like poverty, lack of educational opportunities, war, and the absence of the rule of law. It is also a problem that this Congress can do something about.

This committee has taken an important step in shining a light on the essential need for collective action. The scope of this problem demands that we tackle it in every sector, and Congress should help lead the way by both pressing the private sector to act aggressively to root out slave labor in their own supply chains and creating a level playing field for responsible businesses; ensuring that all levels of government and law enforcement have sufficient resources and are working collaboratively; engaging the civil society activists who are on the front lines of this fight and victim survivors who bring essential expertise in identifying where and why trafficking is thriving and how best to fight it; and continuing to raise the bar on our own leadership as a nation, while pressing others countries to do their part.

Thank you.