

**TAINTED HARVEST: TRANSBORDER LABOR  
TRAFFICKING AND FORCED SERVITUDE IN  
AGRIBUSINESS**

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“There is a crime here that goes beyond denunciation. There is a sorrow here that weeping cannot symbolize. There is a failure here that topples all our success.”

—John Steinbeck, *The Grapes of Wrath*

**ABSTRACT**

Transborder labor trafficking and forced servitude in the global commercial agriculture sector are serious problems that adversely impact farming communities and labor migration patterns. They also constitute violations of basic human rights with regards to personal liberty, freedom of movement, and the right to work for fair wages. Yet, the farm labor cost savings are a powerful incentive for growers and agribusinesses to engage directly or indirectly through corrupt labor recruiters and brokers in the domestic and transborder trafficking of farm workers. This article addresses farm labor trafficking in the United States and abroad, including a discussion of labor trafficking and forced servitude in the rapidly growing marijuana cultivation industry.

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## INTRODUCTION

In 1999, Anna Rodriguez, a victim advocate with the Collier County Sheriff's Office in Florida, was asked to assist in the interview of a young Guatemalan girl involved in what was initially believed to be a domestic abuse incident. Rodriguez learned from the girl, Maria Choz, that she was brought to Florida from her indigenous village by a man named José Tecum. Tecum coerced her through threat and deceit to have sex with him and turn her payments as a farm worker over to him in order pay off the debt bondage arrangement he had made with her. Tecum was arrested and charged with kidnapping, slavery, immigration violations, fraud, and misuse of visas. *U.S. v. Tecum*<sup>1</sup> became an important federal human trafficking case that raised awareness about labor trafficking and worker abuse in agriculture.<sup>2</sup>

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<sup>1</sup> *United States v. Tecum*, 48 F. App'x 739 (11th Cir. 2002), *aff'd* No. 2:00-cr-00005-JES (M.D. Fla. Feb. 8, 2001). According to court records, José Tecum kidnapped María Choz from her family home in Patachaj, Guatemala, a remote mountain village four hours from Guatemala City. Tecum stalked Choz and threatened to kill her or her family members if she did not go with him. He took personal items from Choz and told her that he would use witchcraft—*brujería*—to ensure that she never left his side. Tecum repeatedly raped Choz and claimed that she was his possession. Tecum then smuggled her into the United States, first forcing her to pick grapes in California and keeping her earnings. Once in Immokolee, Florida, Tecum procured fraudulent identification and immigration documents for Choz and obtained agricultural work for her to repay her “debt” to him. Tecum was subsequently convicted on six criminal counts and sentenced to 108 months, and 60 months concurrently, followed by three years of supervisory release, and fined. *See* Brief for Appellee at 2–4, *United States v. Tecum*, 48 F. App'x 739 (11th Cir. 2002) (No. 01-10822-JJ) (on file with the author).

<sup>2</sup> *Modern-Day Slavery in Collier County*, U.S. DISTRICT COURT, MIDDLE DISTRICT FLA., <https://www.flmd.uscourts.gov/modern-day-slavery-collier-county> [<https://perma.cc/GQD9-FNAF>] (last visited Mar. 13, 2020). The federal prosecutor who tried Tecum, Douglas Molloy, described Immokolee as “ground zero” for human trafficking in the United States. Patrik Jonsson, *Trafficking: In Florida's Tomato Fields, a Fight for Ethical Farm Labor Grows*, CHRISTIAN SCI. MONITOR (Nov. 16, 2015), <https://www.csmonitor.com/World/2015/1116/Trafficking-In-Florida-s-tomato-fields-a-fight-for-ethical-farm-labor-grows> [<https://perma.cc/3826-3Z2T>].

Several developments have occurred since 1999 to combat farm labor trafficking, address the worst forms of labor abuse and forced servitude, and bring traffickers and those who prey on farm workers to justice. Advocates for farm workers' rights, agriculture stakeholders (e.g. consumer groups and agribusiness associations), and non-governmental organizations (NGOs) have compelled commercial agriculture to cooperate with law enforcement, embrace what are referred to as "soft agreements" to combat farm labor trafficking and forced servitude, and support worker efforts to organize themselves to be their own advocates for change. Yet, persistent and emerging challenges indicate that much more needs to be done to stop horrific deprivations that occur daily in commercial fields and farm worker living shelters around the world.

This article focuses primarily on large commercial agriculture operations and companies, collectively referred to as "Big Agro," and also addresses labor trafficking and abuse in the shadowy world of cannabis cultivation. In Part I, we will discuss the scope of labor trafficking and forced servitude using several examples. In Part II, we will look at the international and United States law intended to target labor trafficking in agriculture. Then, in Part III, we will turn to the topic of non-governmental "soft agreements" meant to address labor trafficking and forced servitude in Big Agro. Finally, in Part IV, we will follow up with an overview of some promising non-government and worker-centered initiatives to address and end farm labor trafficking, forced servitude, and the worst forms of labor abuse. We will conclude with an assessment of whether government, criminal justice, and non-government/non-profit efforts are helping, hurting, or prolonging the victimization of the people who grow and process the food we eat and plant-based products we consume in our daily lives.

## **I. SCOPE OF THE PROBLEM**

### **A. OVERVIEW OF LABOR TRAFFICKING**

Farm labor trafficking is one component of the larger problem of human trafficking for labor exploitation and forced servitude. In addition to agribusiness, labor trafficking occurs across several work sectors,

including construction,<sup>3</sup> manufacturing,<sup>4</sup> mineral extraction,<sup>5</sup> lumbering,<sup>6</sup> food and hospitality,<sup>7</sup> personal services (nail salons, massage parlors),<sup>8</sup> the commercial fishing industry,<sup>9</sup> and domestic work in private households.<sup>10</sup> Labor trafficking mirrors a traditional business model of supply and demand in which the supply constitutes workers moving from impoverished source countries to developing and industrialized countries where there is critical demand for cheap labor.<sup>11</sup>

Victims of labor trafficking share several characteristics that render them vulnerable to trafficking and forced servitude:

- they tend to be in the prime of life, with many being very young;

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<sup>3</sup> Rothna Begum, *Dispatches: Trafficking and Forced Labor in the United Arab Emirates*, HUM. RTS. WATCH (June 20, 2014, 2:52 PM), <https://www.hrw.org/news/2014/06/20/dispatches-trafficking-and-forced-labor-united-arab-emirates> [<https://perma.cc/6JJN-C55T>].

<sup>4</sup> David v. Signal Int'l, L.L.C., No. 08-1220, 2012 WL 10759668 1, 5 (E.D. La. Jan. 4, 2012).

<sup>5</sup> Michelle Lillie, *Child Forced Labor Part I: The Mining Industry*, HUM. TRAFFICKING SEARCH (2013), <https://humantraffickingsearch.org/forced-child-labor-in-the-mining-industry/> [<https://perma.cc/B3EA-52F6>]. For example, an estimated 35,000 children are subjected to forced labor in highly hazardous conditions in cobalt mining in the Democratic Republic of Congo, where demand for the mineral for use in electric battery production for vehicles has created a mining boom. James Gordon, *Cobalt: The Dark Side of a Clean Future*, RACONTEUR (June 4, 2019), <https://www.raconteur.net/business-innovation/cobalt-mining-human-rights> [<https://perma.cc/W4VS-XYVE>].

<sup>6</sup> *Illegal Logging, Environmental Crime, and Human Trafficking*, GLOBAL INITIATIVE AGAINST TRANSNAT'L CRIME (Feb. 15, 2018), <https://globalinitiative.net/illegal-logging-environmental-crime-and-human-trafficking/> [<https://perma.cc/XU3D-GYXP>].

<sup>7</sup> *Human Trafficking and the Hospitality Industry*, NAT'L HUM. TRAFFICKING RESOURCE CTR. 1, <https://humantraffickinghotline.org/sites/default/files/Human%20Trafficking%20and%20the%20Hotel%20Industry.pdf> [<https://perma.cc/79TG-P77J>].

<sup>8</sup> See Phillip W.d. Martin, *Nail Salons and Human Trafficking*, HUFFINGTON POST (originally published Aug. 3, 2010, 2:57 PM, last updated Dec. 6, 2017), [https://www.huffpost.com/entry/nail-salons-and-human-tra\\_b\\_669076](https://www.huffpost.com/entry/nail-salons-and-human-tra_b_669076) [<https://perma.cc/7W8T-GJV2>]; Nicholas Kulish, Frances Robles & Patricia Mazzei, *Behind Illicit Massage Parlors Lie a Vast Crime Network and Modern Indentured Servitude*, N.Y. TIMES (Mar. 2, 2019), <https://www.nytimes.com/2019/03/02/us/massage-parlors-human-trafficking.html> [<https://perma.cc/N6LC-9PVK>]; *Human Trafficking in Illicit Massage Businesses*, POLARIS PROJECT 5, 10 (Jan. 1, 2018), <https://polarisproject.org/wp-content/uploads/2019/09/Human-Trafficking-in-Illicit-Massage-Businesses.pdf> [<https://perma.cc/6M9X-QC8F>].

<sup>9</sup> Joan P. Mileski, Cassia Bomer Galvao & Zaida Denise Forester, *Human Trafficking in the Commercial Fishing Industry: A Multiple Case Study Analysis*, MARINE POL'Y 1 (2019), <https://doi.org/10.1016/j.marpol.2019.103616> [<https://perma.cc/7BSS-L5RL>].

<sup>10</sup> *Human Trafficking at Home: Labor Trafficking of Domestic Workers*, POLARIS PROJECT 19 (July 1, 2019), [https://polarisproject.org/wp-content/uploads/2019/09/Human\\_Trafficking\\_at\\_Home\\_Labor\\_Trafficking\\_of\\_Domestic\\_Workers.pdf](https://polarisproject.org/wp-content/uploads/2019/09/Human_Trafficking_at_Home_Labor_Trafficking_of_Domestic_Workers.pdf) [<https://perma.cc/PCX9-HSHQ>].

<sup>11</sup> *Why Modern Slavery Persists in Global Supply Chains*, VERITÉ (Nov. 17, 2016), <https://www.verite.org/why-modern-slavery-persists-in-global-supply-chains/> [<https://perma.cc/5HHP-4BLS>].

- they come from distressed communities where opportunities for work, education, and a sustainable livelihood are scarce;
- some are escaping conflict or natural disasters;
- most are coerced into being trafficked through fraud and deceit; and
- some freely enter into debt bondage arrangements only to discover later that the terms have changed and are so restrictive and overwhelming as to constitute modern day slavery.

Moreover, trafficked workers generally do not understand their rights either before or after being subjected to extreme exploitation and forced servitude. They harbor an inherent distrust of the authorities, which helps their traffickers and abusers maintain control over them. They also fear trying to escape their situations because their families back home may have been threatened, they have nowhere to run, or they have no idea where they are.<sup>12</sup>

Understanding the scope of international labor trafficking is highly problematic. Reliable statistics on labor trafficking, in general, are ephemeral and imprecise due to many factors, mostly involving how labor trafficking gets reported.<sup>13</sup> It is widely accepted that human trafficking and forced servitude, in general, are among the most egregious human rights violations in the modern world, and among the most lucrative criminal enterprises globally after drug trafficking.<sup>14</sup> The International Labor

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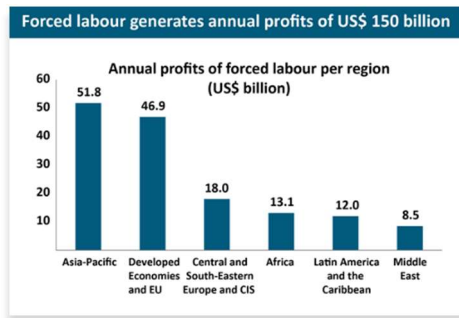
<sup>12</sup> Trying to escape can be a death sentence for many trafficked workers who simply disappear when they are no longer “useable” or become too difficult to control. For workers trafficked into international fishing fleets, for example, there is literally nowhere to go, and many workers die from fishing accidents or are tossed overboard far out to sea when they are no longer able to work. *See generally* Mileski et al., *supra* note 9, at 4.

<sup>13</sup> The United Nations Office on Drugs and Crime stresses that “[t]he question of the magnitude of the problem—that is, how many victims there are—is hotly debated as there is no methodologically sound available estimate.” *Human Trafficking FAQs*, U.N. OFF. ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/human-trafficking/faqs.html> [<https://perma.cc/6ESQ-NYVB>] (last visited Oct. 24, 2019).

<sup>14</sup> *See* President’s Interagency Task Force to Monitor and Combat Trafficking in Pers., Report on U.S. Government Efforts To Combat Trafficked Persons 5 (Oct. 2019), <https://www.state.gov/wp-content/uploads/2019/10/2019-PITF-Report-Web.pdf> [<https://perma.cc/M3PG-ALDZ>] (noting that “as both a grave crime and a human rights abuse . . . [human trafficking] is an affront to human dignity, freedom, and justice”). While statistics ranking transnational crime can be subjective and outdated due to data collection challenges, the research compiled by Global Financial Integrity as of 2017 places the estimated retail value of human trafficking at US\$150.2 billion compared to US\$426 billion to US\$652 billion for drug trafficking. Interestingly, illegal logging is estimated to have somewhat higher annual value than human trafficking, as high as US\$157 billion. *Transnational Crime and the Developing World*, GLOBAL FINANCIAL INTEGRITY xi (2017), [https://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational\\_Crime-final.pdf](https://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational_Crime-final.pdf) [<https://perma.cc/XJ2N-83UR>]. *See also* Michelle Lillie, *When Drug Trafficking Becomes Human*

Organization (ILO) has estimated that 40.3 million souls are subject to modern slavery as of 2016, or about 5.4 victims per 1,000 people in the world.<sup>15</sup> Of this number, about 71 percent are female, and one in four trafficking victims is considered a minor.<sup>16</sup> Approximately 24.9 million people of all ages are victims of forced labor and forced servitude across all labor sectors.<sup>17</sup>

The ILO believes that forced labor generates \$150.2 billion in annual profits for those who engage in labor trafficking and forced servitude.<sup>18</sup> The following bar chart from the ILO breaks down the dispersal of estimated profits from forced labor around the world (as of 2016).



Source: ILO 2016 Global Estimates of Modern Slavery, [https://www.ilo.org/global/topics/forced-labour/statistics/lang—en/index.htm](https://www.ilo.org/global/topics/forced-labour/statistics/lang-en/index.htm)

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*Trafficking*, HUM. TRAFFICKING SEARCH (2014), <https://humantraffickingsearch.org/when-drug-trafficking-becomes-human-trafficking/> [https://perma.cc/DDM8-7YQQ].

- <sup>15</sup> *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, INT'L LAB. OFF. 5 (Sept. 19, 2017), <https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms575479.pdf> [https://perma.cc/N77Z-K4LZ] [hereinafter *Modern Slavery*]. *Accord UNODC Report on Human Trafficking Exposes Modern Form of Slavery*, U.N. OFF. ON DRUGS AND CRIME 11, <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> [https://perma.cc/3US3-GLKM] (last visited Oct. 24, 2019).
- <sup>16</sup> *Modern Slavery*, *supra* note 15, at 5. The estimate for minors is also hotly debated because while the age of majority under international law is eighteen years, many countries consider the age of consent and of majority to be lower. *Legal Ages of Consent by Country*, AGE OF CONSENT, <https://www.ageofconsent.net/world> [https://perma.cc/54SB-YG2B] (last visited Oct. 24, 2019). For an in-depth discussion of human trafficking and the age of consent, see LUZ E. NAGLE, UNDERSTANDING HUMAN TRAFFICKING, CORRUPTION, AND THE OPTICS OF MISCONDUCT IN THE PUBLIC, PRIVATE AND NGO SECTORS: CAUSES, ACTORS, AND SOLUTIONS 35–42 (2017).
- <sup>17</sup> *Modern Slavery*, *supra* note 15, at 9.
- <sup>18</sup> *Profits and Poverty: The Economics of Forced Labour*, INT'L LAB. OFF. 1, 13 (May 20, 2014), [https://www.ilo.org/wcmsp5/groups/public/—ed\\_norm/—declaration/documents/publication/wcms\\_243391.pdf](https://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/publication/wcms_243391.pdf) [https://perma.cc/JM5L-FJR4].

Unfortunately, labor trafficking receives less attention than sex trafficking from the government, law enforcement, news media, and anti-trafficking NGOs.<sup>19</sup> There are many reasons for this. In addition to being less well-detected, labor trafficking is less salacious for raising public awareness and mobilizing resources. The imagery evoked by a farm laborer working in a harsh work environment does not tug at the heart strings of the public like the often-sensationalized image of a young girl tied up and bruised in what is obviously a dingy brothel. More concerning is that labor trafficking, in many instances, is closely linked to businesses and industries that comprise the formal economy and carry a great deal of political clout.<sup>20</sup> Labor trafficking also occurs on private commercial property where access is limited or restricted to outside investigation absent voluntary permission or forced compliance through legal action. For instance, operations using trafficked workers and forced labor may be located in remote areas difficult to access, such as mining operations in the Amazon jungle<sup>21</sup> where armed groups and feudal warlords control vast territory, on Mexican “megafarms” comprising thousands of hectares of land in remote areas difficult for government inspectors to reach,<sup>22</sup> or on cocoa plantations in Western Africa where lack of the rule of law in many areas encourages labor trafficking across borders and abuse of workers, particularly children.<sup>23</sup>

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<sup>19</sup> *The Prevalence of Labor Trafficking in the United States*, NAT'L INST. OF JUST. (Feb. 26, 2013), <https://nij.ojp.gov/topics/articles/prevalence-labor-trafficking-united-states> [<https://perma.cc/PGF4-MZZU>]. See also Leila Miller, *Why Labor Trafficking is So Hard to Track*, PBS (Apr. 24, 2018), <https://www.pbs.org/wgbh/frontline/article/why-labor-trafficking-is-so-hard-to-track/> [<https://perma.cc/ZG22-E6QM>].

<sup>20</sup> One may imagine that the ownership and stakeholders of some companies profiteering from labor trafficking and forced labor are politically connected, comprise the political and social elites, provide thousands of “regular” jobs and careers in the formal sector, support community and social services through philanthropy and paying taxes, and sustain local, regional, national, and international economies—like, for instance, Big Chocolate, Big Agro, and consumer-based businesses (electronics, Big Box retail, heavy construction and manufacturing). See Neha Misra, *Human Trafficking: A Big Business Built on Forced Labor*, HUFFINGTON POST (Feb. 1, 2013), [https://www.huffpost.com/entry/human-trafficking-a-big-b\\_b\\_2602398](https://www.huffpost.com/entry/human-trafficking-a-big-b_b_2602398) [<https://perma.cc/XN8U-VX8V>]. See also Tracie McMillan, *Beyond Brothels: Farms and Fisheries are Frontier of Human Trafficking*, NPR (July 28, 2015), <https://www.npr.org/section/thesalt/2015/07/28/426888946/beyond-brothels-farms-and-fisheries-are-frontier-of-human-trafficking> [<https://perma.cc/Q8B5-7ZRQ>].

<sup>21</sup> Helen Mittmann, *Forced Labor in Peru's Gold Mines*, AMAZON AID FOUND. (Oct. 10, 2013), <https://amazonaid.org/forced-labor-peru-gold-mines/> [<https://perma.cc/RD5Q-8YGG>].

<sup>22</sup> *Mexican Megafarms Supplying U.S. Market are Rife with Labor Abuses*, NPR (Dec. 10, 2014), <https://www.npr.org/transcripts/369645204> [<https://perma.cc/9TSC-ZH8Q>].

<sup>23</sup> Peter Whoriskey & Rachel Siegel, *Cocoa's Child Laborers*, WASH. POST (June 5, 2019), <https://www.washingtonpost.com/graphics/2019/business/hershey-nestle-mars-chocolate-child-labor-west-africa/> [<https://perma.cc/4CUF-6QAY>].

Labor trafficking is also rife with public and private corruption.<sup>24</sup> Border guards bribed to look the other way as workers are moved across check points, officials falsifying passports and travel documents of workers, and labor contractors exploiting loopholes in itinerant labor laws add additional, extremely complex layers of conduct that are difficult to investigate and prosecute. In addition, the profit earned from using forced labor rather than paid employees, especially among labor recruiters and brokers, is a powerful incentive for keeping things quiet. In labor trafficking and forced labor, the adage that “crime pays” is very much the truth.

## B. FARM LABOR TRAFFICKING

Turning to the root causes of farm labor trafficking and forced labor, commercial agriculture thrives on two forms of supply and demand: the production of safe and affordable food and plant-based products for the consumer market, and the constant supply of cheap labor to keep the industry going and immensely profitable. While the abuse of farm labor is a global problem, much of the world’s agriculture production either ends up in the United States marketplace or is produced in the United States largely by migrant workers from developing countries.<sup>25</sup> The dynamic of farm laborers moving from difficult economic conditions in their home countries to countries offering the opportunity to get ahead in life exposes them to exploitation and allows human trafficking and related criminal conduct to exist in an industry that, due to its sheer immensity, is very hard to monitor.<sup>26</sup>

<sup>24</sup> For an in-depth discussion of the nexus between human trafficking and corruption, see NAGLE, *supra* note 16, at 67–152.

<sup>25</sup> Eduardo González, Jr., *Migrant Farm Workers: Our Nation’s Invisible Population*, EXTENSION DIVERSITY, EQUITY & INCLUSION COMMUNITY OF PRAC. (June 6, 2019), <https://copdei.extension.org/migrant-farm-workers-our-nations-invisible-population/> [<https://perma.cc/5P8X-554X>]. For more information, see the United States Farmworker Factsheet, indicating that as of 2014 (the most recent data available) of the two to three million farmworkers in the United States, 73 percent of all agricultural workers were foreign born, with 68 percent having been born in Mexico. *Agricultural Worker Factsheet*, NATIONAL CENTER FOR FARMER HEALTH, INC., 1 [http://www.ncfh.org/uploads/3/8/6/8/38685499/fs-facts\\_about\\_ag\\_workers\\_2018.pdf](http://www.ncfh.org/uploads/3/8/6/8/38685499/fs-facts_about_ag_workers_2018.pdf) [<https://perma.cc/V2E7-ALX6>] (last visited Apr. 4, 2020).

<sup>26</sup> González, Jr., *supra* note 25. Leila Miller, *Why Labor Trafficking is So Hard to Track*, PBS (April 24, 2018), <https://www.pbs.org/wgbh/frontline/article/why-labor-trafficking-is-so-hard-to-track/> [<https://perma.cc/XP9Z-YYLR>]. See generally, Dominique Roe-Sepowitz et al., *A Four-year Analysis of Labor Trafficking Cases in the United States: Exploring Characteristics and Labor Trafficking Patterns*, ARIZONA STATE UNIV. OFFICE OF SEX TRAFFICKING INTERVENTION RESEARCH ii (Feb. 2018),

Not all migrant workers subjected to forced servitude begin their victimization by being trafficked; many have entered countries on lawful work visas.<sup>27</sup> However, in some cases, farm laborers with valid visas may become victims of labor trafficking at some later date.<sup>28</sup> As with other labor sectors, farm labor trafficking victims face the worst forms of abuse and servitude. Most receive little or no pay due to draconian debt bondage arrangements, work extremely long hours often in dangerous conditions,<sup>29</sup> live in squalor, have little or no access to health care or proper nutrition, have no freedom of movement or their movement is tightly controlled, and experience physical and mental abuse by their handlers, known in agribusiness as “bosses.”<sup>30</sup>

While Big Agro must certainly know that labor trafficking is a problem in the industry,<sup>31</sup> there seems to be indifference to labor practices that result in trafficking and the worst forms of abuse, often at the hands of corrupt labor contractors who supply workers for the lowest competitive bid and resort to criminal acts and human rights violations to increase their profits.

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[https://socialwork.asu.edu/sites/default/files/stir/v9\\_national\\_labor\\_trafficking\\_study.pdf](https://socialwork.asu.edu/sites/default/files/stir/v9_national_labor_trafficking_study.pdf)  
[<https://perma.cc/MM8B-8MQJ>].

<sup>27</sup> COLLEEN OWENS ET AL., *Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States*, URBAN INSTITUTE (2014), [https://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states/view/full\\_report](https://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states/view/full_report) [<https://perma.cc/F2MH-E6XR>].

<sup>28</sup> *Id.*

<sup>29</sup> One may argue that nearly all farm workers are subject to harsh working conditions—a fair observation. The difference is that those who are not trafficked can come and go as they please and are not coerced by fraud or deceit into their work situations.

<sup>30</sup> William Triplett, *Migrant Farmworkers: Is Government Doing Enough to Protect Them?* 14 CQ RESEARCHER 831, 831 (2004), <https://library.cqpress.com/cqresearcher/document.php?id=cqresrre2004100800> [<https://perma.cc/29TQ-CSQD>]. Many agriculture bosses are independent contractors who hire migrants on a temporary basis. Bosses have a notorious reputation for abusing farm labor. See Press Release, U.S. Att’y Office E. Dist. Cal., Sanger Contract Labor Crew Boss Sentenced to over 3 Years in Prison for Unemployment Insurance Fraud Scheme (June 4, 2018), <https://www.justice.gov/usao-edca/pr/sanger-contract-labor-crew-boss-sentenced-over-3-years-prison-unemployment-insurance> [<https://perma.cc/HF9W-QCT6>].

<sup>31</sup> See, e.g., Martha Mendoza, *Nestlé Admits Slavery and Coercion Used in Catching Its Seafood*, CBC NEWS (Nov. 13, 2015), <https://www.cbc.ca/news/business/nestle-seafood-thailand-1.3331127> [<https://perma.cc/8YAU-7KU5>]; Whoriskey & Siegel, *supra* note 23.

## C. SOME CASE STUDIES

1. *African Workers in Italy*

Tomatoes are big business in southern Italy, where much of the harvest is processed into tomato sauce and canned goods exported around the world. Because Italy does not have the domestic workforce to meet the demand for its agriculture products, Italian Big Agro relies on a seemingly endless supply of migrant workers from Africa who are willing to work long hours in the hot Italian climate growing and picking tomato harvests. Estimates indicate that between 400,000 and 430,000 undocumented laborers from African nations work in Italy's large commercial tomato growing operations, and investigations show that most live and work in slave-like conditions.<sup>32</sup> Imagine more than 400,000 workers escaping poverty, natural disasters, armed conflict, and lack of work opportunities, and one can understand that such a supply of available labor is easy fodder for human traffickers and unscrupulous labor contractors. Of that number, more than 100,000 workers "are trapped in situations of extreme exploitation."<sup>33</sup> Nearly the entire African farm labor workforce is kept in makeshift shanty housing throughout southern Italy, and their employment, movement, and compensation are tightly controlled by an Italian Calabrian mafia called 'Ndrangheta, which also has its tentacles in drug trafficking, racketeering, and construction.<sup>34</sup> The Italian government

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<sup>32</sup> 'Fair' tomato sauce offers a taste of better treatment for migrant workers in Italy, FRANCE 24: THE OBSERVERS (Mar. 1, 2018), <https://observers.france24.com/en/20180301-italy-tomato-sauce-treatment-migrant-workers> [<https://perma.cc/J53E-438R>]; *Italy Second Biggest Producer of Tomato*, AGENZIA NAZIONALE STAMPA ASSOCIATA (ANSA) (Oct. 28, 2016), [http://www.ansa.it/english/news/lifestyle/food\\_wine/2016/10/28/italy-second-biggest-producer-of-tomato\\_e3df8b61-9457-4e79-914b-64b93c6e8172.html](http://www.ansa.it/english/news/lifestyle/food_wine/2016/10/28/italy-second-biggest-producer-of-tomato_e3df8b61-9457-4e79-914b-64b93c6e8172.html) [<https://perma.cc/HD2Q-8XQF>]. The number of hectares planted and revenue generated fell slightly in 2018. François-Xavier Branthôme, *ANICAV: "Relaunching the tomato industry,"* TOMATO NEWS (Aug. 3, 2018), [http://www.tomatonews.com/en/anicav-relaunching-the-tomato-industry\\_2\\_449.html](http://www.tomatonews.com/en/anicav-relaunching-the-tomato-industry_2_449.html) [<https://perma.cc/EF5H-UY2N>].

<sup>33</sup> France 24: The Observers, *supra* note 32.

<sup>34</sup> Tobias Jones & Ayo Awokoya, *Are Your Tinned Tomatoes Picked by Slave Labour?* THE GUARDIAN (June 20, 2019), <https://www.theguardian.com/world/2019/jun/20/tomatoes-italy-mafia-migrant-labour-modern-slavery> [<https://perma.cc/8ZPW-P8DC>]. The workers are treated as little more than human chattel, whose lives can be snuffed out in moments by the inhumane way they are forced to live and work. This was the case of a tragedy involving fourteen illegal farm laborers being transported back to their shanties after working twelve-hour shifts in extreme heat near Foggia, Italy in August 2018. According to the news story:

The minibus carrying them was registered in Bulgaria; the driver didn't have a licence or insurance. The seats inside were wooden planks, and it was so crowded that passengers couldn't even see out. The vehicle was travelling at speed when it collided

has taken some steps to criminalize or fine labor exploitation in an effort to confront organized crime and the trafficking of workers from Africa, including potentially confiscating properties where labor abuse is taking place.<sup>35</sup> However, disrupting the growing operations of landowners growers suggest that the authorities should be focusing other crimes and assaults that occur in the farm worker “ghettos” where there is no law enforcement presence.<sup>36</sup> While the government recognizes the hold that organized crime has on the agriculture sector,<sup>37</sup> tomato growing is considered “red gold” and a vitally important source of revenue for the country.<sup>38</sup> One irony is that some of the African farm laborers who have been victims of trafficking and forced servitude are by no means unskilled and helpless. Many are educated and trained in a trade, but the lack of opportunities at home forced them to seek new opportunities in Europe. This is one example of a vulnerable population being coerced by fraud and deceit to become subjected to transborder human trafficking and subsequent forced servitude.

## 2. Mexican Megafarms

Much of the truck farming crops<sup>39</sup> from Mexico are produced on large-scale agriculture operations spanning hundreds of hectares and referred to as “megafarms.” Megafarming provides produce primarily to large retailers like Wal-Mart, Target, and multi-state supermarket chains throughout the United States and Canada. These megafarms are located in

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head-on with a truck loaded with tomatoes . . . Twelve of the 14 labourers died. Only two days before, also in Foggia, four labourers had died in a similar accident: 16 dead in 48 hours.

<sup>35</sup> Lorenzo D’Agostino, ‘Ghettos’ and gangmasters: How Migrants Are Exploited in Italy’s Tomato Fields, CNN (Mar. 21, 2018), <https://www.cnn.com/2017/12/07/europe/italy-migrant-camp-exploitation/index.html> [<https://perma.cc/PFC5-DSHE>].

<sup>36</sup> *Id.*

<sup>37</sup> Paola Totaro, *Calls Mount to Stop Abuse of Migrant Workers in Italy’s ‘Red Gold’: The Tomato Sector*, REUTERS (Mar. 29, 2016), <https://www.reuters.com/article/us-italy-migrants-slavery/calls-mount-to-stop-abuse-of-migrant-workers-in-italys-red-gold-the-tomato-sector-idUSKCN0WV13U> [<https://perma.cc/PGV4-MH8H>].

<sup>38</sup> Paola Totaro, *Calls Mount to Stop Abuse of Migrant Workers in Italy’s ‘Red Gold’: The Tomato Sector*, REUTERS (Mar. 29, 2016), <https://www.reuters.com/article/us-italy-migrants-slavery/calls-mount-to-stop-abuse-of-migrant-workers-in-italys-red-gold-the-tomato-sector-idUSKCN0WV13U> [<https://perma.cc/PGV4-MH8H>].

<sup>39</sup> *Truck Farming*, Webster’s Third New International Dictionary (3rd ed. 2002); Bonnie A. Coblenz, *State truck crops have growing consumer value*, MISS. STATE UNIV. EXTENSION (July 26, 2013), <http://extension.msstate.edu/news/crop-report/2013/state-truck-crops-have-growing-consumer-value> [<https://perma.cc/54X4-K4HP>].

remote areas of western and northwestern Mexico. Some are so remote that labor inspectors often overlook the sites, and the owners do not volunteer the locations. Their size and isolation appears to contribute to the trafficking and forced labor of men, women, and children.<sup>40</sup> The laborers toiling in the fields of these megafarms are referred to by *Los Angeles Times* investigative reporter Richard Marosi as “the invisible people of Mexico, the poorest, the most discriminated.”<sup>41</sup> The workers are recruited from indigenous communities throughout Mexico to work six days a week for eight to twelve dollars per day.<sup>42</sup> While megafarm owners may be aware that labor trafficking and severe forms of labor abuse occur in their operations, they engage in robust public relations activities to protect their image and their profits, including promoting recognition from trade groups for being socially responsible and for holding coveted labor certifications from many retailers and agriculture NGOs in the United States.<sup>43</sup> However, such recognitions are more for food quality and do not account for conditions of the work force.<sup>44</sup> Among his findings, Marosi reported that:

- Many farm laborers are essentially trapped for months at a time in rat-infested camps, often without beds and sometimes without functioning toilets or a reliable water supply;<sup>45</sup>
- some camp supervisors (bosses) illegally withhold wages to prevent workers from leaving during peak harvest periods;<sup>46</sup>
- laborers often go deep in debt paying inflated prices for necessities at company stores. Some are reduced to scavenging for food when their credit is cut off. It is common for laborers to head home penniless at the end of a harvest;<sup>47</sup>
- those who seek to escape their debts and miserable living conditions must contend with guards, barbed-wire fences and sometimes threats of violence from camp bosses;<sup>48</sup> and

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<sup>40</sup> See NPR Staff, *Mexican Megafarms Supplying U.S. Market Are Rife with Labor Abuses*, NPR: THE SALT (Dec. 10, 2014), <https://www.npr.org/sections/thesalt/2014/12/10/369645204/mexican-megafarms-supplying-u-s-market-are-rife-with-labor-abuses> [https://perma.cc/74W9-QWEV].

<sup>41</sup> *Id.*

<sup>42</sup> Richard Marosi, *Hardship on Mexico's Farms, a Bounty for U.S. Tables*, L.A. TIMES (Dec. 7, 2014), <http://graphics.latimes.com/product-of-mexico-camps/> [https://perma.cc/5GWE-9J8V].

<sup>43</sup> *Id.*

<sup>44</sup> NPR Staff, *supra* note 40.

<sup>45</sup> Marosi, *supra* note 42.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

- major U.S. companies have done little to enforce social responsibility guidelines that call for basic worker protections such as clean housing and fair pay practices.<sup>49</sup>

About living conditions specifically, Marosi observed that many workers are housed in twelve-by-twelve foot rooms (or smaller) that are little more than stalls shared by as many as six people (men, women, and children).<sup>50</sup> They sleep on concrete slabs and are subjected to constant noise and theft of food and personal possessions by other workers.<sup>51</sup> While there is awareness, through investigative journalism and the accounts of workers, that the megafarms are rife with worker abuse and slave-like conditions, a former Mexican president awarded two companies with “exporter of the year” accolades in 2014.<sup>52</sup> One could opine that once the story of farm labor trafficking and abuse in these vast operations reached a broad audience in the United States, rather than taking steps to investigate the working, living, and employment conditions of farm laborers, Mexican authorities may have closed ranks to protect the megafarm operators because there are many millions of dollars at stake for Mexico’s export agriculture industry.

### 3. *United States Big Agro*

Proper oversight of farm labor practices is also a concerning problem in the United States, particularly in the Midwest where Big Agro has overtaken the traditional family farms and transformed the way crops and farm products are produced. In Ohio during 2015, Aroldo Rigoberto Castillo-Serrano (and co-conspirators), a Guatemalan farm labor contractor illegally in the United States for more than a decade, was prosecuted in federal court in Cleveland<sup>53</sup> for running a smuggling pipeline for farm laborers brought into the country from Guatemala.<sup>54</sup> Castillo-Serrano was quite skilled at exploiting loopholes in farm labor laws and

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> NPR Staff, *supra* note 40.

<sup>53</sup> Associated Press, *People Smuggler Forced Teen Migrants from Guatemala into Egg Farm Work*, THE GUARDIAN (Aug. 24, 2015), <https://www.theguardian.com/us-news/2015/aug/25/people-smuggler-forced-teen-migrants-from-guatemala-into-egg-farm-work> [<https://perma.cc/DBM7-ZWP6>].

<sup>54</sup> *Id.*; Press Release, U.S. Att’y’s Office N. Dist. Ohio, Another defendant pleads guilty in connection with labor trafficking of minors at Ohio egg farm (Sept. 18, 2018), <https://www.justice.gov/usao-ndoh/pr/another-defendant-pleads-guilty-connection-labor-trafficking-minors-ohio-egg-farm> [<https://perma.cc/53ME-2MB7>].

immigration policies, so much so that he managed to get three Guatemalan minors released from federal immigration custody.<sup>55</sup> He then trafficked and forced them to work on egg farms outside Columbus. Following a modus operandi that is typical of forced farm labor practices run by unscrupulous farm labor contractors and work bosses around the world, Castillo-Serrano took the teens and other smuggled workers in a van before dawn each day to large corporate farms where they worked until long after dark.<sup>56</sup> The contractor asserted control over his workers through threats of physical violence, housed them in rundown trailers that added to the workers' misery and sense of helplessness, took their pay, and in some cases, forced family members back in Guatemala to sign over deeds for their property as payment for transporting and employing the boys (an example of debt bondage).<sup>57</sup>

Castillo-Serrano's trafficking operation unraveled after he assigned the three teens to work at Trillium Farms, which relied on Castillo-Serrano to recruit and hire farm workers.<sup>58</sup> Trillium produces more than two billion eggs per year at various farms around central Ohio.<sup>59</sup> Castillo-Serrano and his co-conspirators pleaded guilty to various charges and were sentenced to lengthy prison terms.<sup>60</sup> The plea agreement, however, raises some key questions about whether the government is being too lenient with labor traffickers by allowing them to plead to lesser charges and evade the full force of human trafficking laws. For example, the charges against Castillo-Serrano for aiding and abetting the trafficking and harboring of aliens<sup>61</sup> were dismissed, as well as two out of three charges of forced labor<sup>62</sup> and attempted forced labor.<sup>63</sup> This left him with just four counts of forced labor,<sup>64</sup> witness tampering, and encouraging illegal entry<sup>65</sup> to be served concurrently over fifteen years.

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<sup>55</sup> Associated Press, *supra* note 53.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Press Release, U.S. Dep't of Justice, Leader of Human Trafficking Organization Sentenced to Over 15 Years for Exploiting Guatemalan Migrants at Ohio Egg Farms (June 27, 2016), <https://www.justice.gov/opa/pr/leader-human-trafficking-organization-sentenced-over-15-years-exploiting-guatemalan-migrants> [https://perma.cc/BAR2-H56L].

<sup>61</sup> Docket Report, *United States v. Castillo-Serrano et al.*, No. 3:15-cr-00024-JGC (N.D. Ohio July 6, 2016) (on file with author).

<sup>62</sup> *Id.* at 2.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* See also Press Release, *supra* note 54.

<sup>65</sup> Docket Report, *supra* note 61, at 2. See also Press Release, *supra* note 54.

In spring 2019, federal prosecutors in Wisconsin charged five family members of a farm labor contractor, Garcia & Sons, with multiple counts related to labor trafficking, including: forced labor, trafficking in peonage, slavery involving servitude and forced labor, unlawful conduct with respect to documents in furtherance of trafficking, peonage, attempt and conspiracy to commit mail fraud, bringing in and harboring aliens, identity fraud, and witness/informant tampering, among other criminal acts.<sup>66</sup> According to the indictment, the Garcia's conspiracy to traffic in farm laborers began in Georgia, where they transported farm workers legally into the United States on H-2A work visas to Wisconsin to work illegally and in slave-like conditions on Borzynski Farms, which grows cabbage, sweet corn, leafy greens, and green beans across four states—Wisconsin, Texas, Illinois, and Georgia.<sup>67</sup> Included in the allegations is that the Garcias set down strict “ground rules.”<sup>68</sup> They allegedly confiscated the workers’ passports and forced them to accept and use false identities. They were prohibited from speaking to anyone not on the worksite and they lost all freedom of movement other than travel to and from the fields.<sup>69</sup> During their work shifts, the workers were subjected to extreme physical hardship, emotional abuse, harassment, and denial of medical care when someone became ill.<sup>70</sup> They were also subjected to serious debt bondage; in one case the Garcias forced a worker to “pay a fee and turn over the deed to his parents’ property to an intermediary in Mexico as security for his continued work in the United States.”<sup>71</sup>

The case came to light due to the actions of an NGO, United Migrant Opportunity Services (UMOS) Latina Resource Center,<sup>72</sup> which

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<sup>66</sup> *Id.*

<sup>67</sup> Alexandra Hall & Sarah Whites-Koditschek, *Fainting and Freezing in the Fields: Alleged Labor Trafficking Victims Tells of Mistreatment in Wisconsin, Georgia*, WISCONSIN PUBLIC RADIO (Sept. 9, 2019, 5:30 AM), <https://www.wpr.org/fainting-and-freezing-fields-alleged-labor-trafficking-victim-tells-mistreatment-wisconsin-georgia> [<https://perma.cc/9N5U-YMCM>]. See also Sophie Carson, *Five people charged with forced labor of 14 Mexican workers on Wisconsin farms*, MILWAUKEE JOURNAL SENTINEL (last updated May 22, 2019, 8:47 PM), <https://www.jsonline.com/story/news/crime/2019/05/22/five-people-charged-georgia-wisconsin-farm-labor-trafficking/1199616001/> [<https://perma.cc/5HD2-YUMB>].

<sup>68</sup> Alexandra Hall & Sarah Whites-Koditschek, *Company Charged with Forced Labor of Mexicans*, URBAN MILWAUKEE (Sep. 22, 2019), <https://urbanmilwaukee.com/2019/09/22/company-charged-with-forced-labor-of-mexicans/> [<https://perma.cc/M25Z-WBSX>].

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Founded in Wisconsin fifty years ago, UMOS is “a non-profit advocacy organization” that “provides programs and services which improve the employment, educational, health and housing opportunities of under-served populations.” Their services and programs extend across Wisconsin,

notified Wisconsin's Department of Workforce Development (DWD) after receiving a tip that workers were being kept like prisoners at the farm.<sup>73</sup> The DWD performed what appears to have been only a cursory investigation in 2016, including interviewing each worker at the farm, but took no action because the investigators were unable to substantiate any allegations. The DWD did, however, "issue a warning to Saul Garcia for preventing workers from cooperating with efforts to investigate the working conditions."<sup>74</sup> Federal agents were concurrently conducting their own investigation.<sup>75</sup>

When informed of what had occurred at one of their commercial farms, the owners of Borzynski Farms claimed they knew nothing of the abuses taking place in its fields and among its migrant workers, stating through their attorney: "Borzynski Farms is disheartened that its fields and facilities *may have been used* by Garcia & Sons to exploit or cause harm to any worker."<sup>76</sup> This statement, similar to claims made by Trillium Farms, is all too typical of what large commercial farm operators around the world claim when confronted with labor trafficking and forced labor occurring in their operations. It is all too easy to plead ignorance of what their contracted labor brokers do with and to the workers. This constitutes a degree of separation and "plausible deniability" that one might argue sustains labor trafficking and forced labor in Big Agro and raises two questions: at what point should the farm owners be held responsible for their labor contractors? And where does agency extend to holding the business owners accountable for what their labor contractors and sub-contractors are doing?

This case also calls into question the capacity, ability, and even willingness of state officials to monitor large farming operations and be vigilant about enforcing state labor laws. The DWD does appear to have taken some responsibility for not investigating the labor trafficking and abuse more meticulously, releasing a statement that the DWD was "evaluating our current programs and providing educational awareness to our employees" to better detect labor trafficking.<sup>77</sup> The Garcia's farm laborer case should serve as a "teachable moment" for improving future

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Florida, Minnesota, Missouri, and Texas. See UMOs, <https://www.umos.org/index.html> [https://perma.cc/8J5M-27ST].

<sup>73</sup> Hall, *supra* note 68.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* (emphasis added).

<sup>77</sup> *Id.*

investigative procedures. One wonders, however, whether the formidable economic power and political influence of Big Agro in states where agriculture is vitally important encourages a dynamic that inadvertently influences the investigative zeal of state law enforcement agencies responsible for the welfare of the farm labor workforce.

#### 4. Cannabis Cultivation

While labor trafficking and forced servitude are a known problem in the formal agribusiness sector, the marijuana cultivation industry that supplies legal and illegal product to consumers throughout the United States and Europe appears to rely heavily on workers who are trafficked or are tricked into conditions of forced labor, false imprisonment, and serious physical and emotional abuse. Early in the last decade, British authorities raiding indoor cultivation operations in the Midlands district of central England discovered children from Vietnam tending to the plants in the harshest of conditions.<sup>78</sup> Investigators determined that an organized crime syndicate was engaged in trafficking the children through the Czech Republic into England and Ireland specifically to tend the illicit crops. Among dozens of children rescued, one thirteen-year-old boy, who left Vietnam in order to pay off a family debt, was found virtually “imprisoned” behind padlocked shutters, beaten and subjected to mental abuse, and often left alone twenty-four hours a day tending to cannabis plants.<sup>79</sup> Young boys are particularly sought after for indoor grow operations because:

- the costs to traffic minors across international borders are relatively low;
- they are physically small and can move among the plants in highly constricted spaces without damaging them;
- they have small hands that are better for grooming the plants to achieve optimum potency;

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<sup>78</sup> George Arbuthnott, Sunday Times, *Beaten. Raped. Starved. The Teenage ‘Ghosts’ behind British Cannabis Trade*, CLEAR (Aug. 25, 2013), <https://www.clear-uk.org/beaten-raped-starved-the-teenage-ghosts-behind-british-cannabis-trade/> [https://perma.cc/7JM4-RDFD]; see also Annie Kelly, *Enslaved on a British cannabis farm: ‘The plants were more valuable than my life’*, THE GUARDIAN (July 26, 2019), <https://www.theguardian.com/news/2019/jul/26/vietnamese-cannabis-farms-children-enslaved> [https://perma.cc/KC8G-YYCU].

<sup>79</sup> Arbuthnott, *supra* note 78, at 2. By 2013 the illegal cannabis industry in England was believed to supply 75% of Britain’s marijuana consumption. *Id.*

- they do not eat much or require any special care;
- they are defenseless, relatively compliant, and easily manipulated by threats of violence, acts of violence, or simple rewards for performance; and
- they are easily “reconstituted” for some other form of servitude/exploitation (such as street begging or thievery) when they are no longer “serviceable” for cultivating cannabis.<sup>80</sup>

In the United States, the rapid expansion of legalized marijuana use in several states<sup>81</sup> has encouraged a thriving agribusiness in which both long-time clandestine marijuana farmers and transborder criminal organizations grow marijuana under the shroud of legal cultivation to supply cannabis dispensaries or transport product to states where marijuana use is still illegal, or both.<sup>82</sup> With legalization and decriminalization, Chinese, Cuban, Mexican, and Russian criminal organizations, among others, have moved production into the United States to take advantage of legalization and cut the costs and risks of transborder smuggling.<sup>83</sup> Profits quickly soar from the domestic operations as criminal groups can move product into legal dispensaries for around \$800 or net much higher earnings of around \$3000 per pound in a black market. If anything, the black market has become more lucrative since legalization came into vogue.<sup>84</sup>

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<sup>80</sup> Luz E. Nagle, *Transborder Labor Trafficking and Forced Servitude in Marijuana Growing Operations*, 35 INT’L ENFORCEMENT L. REP. 400, 400 (2019). Children locked up in grow houses face serious, potentially deadly health risks from constant exposure to chemicals in poorly ventilated rooms, malnutrition, constant illness, and the looming threat of fires and electrocution. Kelly, *supra* note 78.

<sup>81</sup> Colorado and Washington became the first two states to legalize recreational marijuana use in 2012, with the passage of Colorado State Amendment 64, and Washington State Initiative 502, respectively. Keith Speights, *Timeline for Marijuana Legalization in the United States: How the Dominoes Are Falling*, THE MOTLEY FOOL (June 5, 2019), <https://www.fool.com/investing/timeline-for-marijuana-legalization-in-the-united.aspx> [<https://perma.cc/GZX6-KLGW>]. Since then the growth of black-market marijuana has been a regulatory nightmare for authorities and continues to have an adverse impact on law and order. See Hunter Haines, *Illicit Marijuana Grows with Colorado Legalization*, in 2 PERSPECTIVES ON BLACK MARKETS (Indiana University, 2018).

<sup>82</sup> Dennis Romero et al., *Foreign Cartels Embrace Home-Grown Marijuana in Pot-Legal States*, NBC NEWS (May 29, 2018), <https://www.nbcnews.com/news/us-news/foreign-cartels-embrace-home-grown-marijuana-pot-legal-states-n875666> [<https://perma.cc/XZ7S-JN72>].

<sup>83</sup> Nagle, *supra* note 80.

<sup>84</sup> In states where marijuana can be commercially grown, a producer can sell a pound to a legal dispensary for about \$800 or move the product into the black market at around \$3000 per pound. Sam Tabachnik & Kirk Mitchell, *Federal and Local Authorities Raid Marijuana Grow Houses in Huge Black Market Roundup*, DENVER POST (May 22, 2019),

Organized crime grow operations are typically concealed by shell companies<sup>85</sup> and hidden in places one might never suspect, like upscale suburban neighborhoods or in industrial parks.<sup>86</sup> A 2019 U.S. Attorney's Office press release describes the following characteristics of illegal growing operations targeted in a large raid near Denver:

The Grows were found in the basements of newer houses in fairly upscale neighborhoods. The grow areas are generally in sealed basement rooms. Large commercial charcoal air filters are often used to remove marijuana odor. Some growers vent air late at night to prevent investigators and neighbors from detecting the odor.

Five percent of the grow locations involved the bypass of the electrical meter, which greatly decreases the amount of electricity for which a marijuana grow home is billed, making it more difficult for law enforcement to identify the grow homes by reviewing electrical use data, but increasing the public safety risk.<sup>87</sup>

Most grow houses fly under the radar until someone notices out-of-the-ordinary activity in a home or strong chemical odors emanating from the property.<sup>88</sup> Electrical fires or excessively high utilities bills can also lead to investigations.<sup>89</sup> In the past, law enforcement deployed aerial infrared surveillance to scan neighborhoods for possible grow house heat signatures, until the U.S. Supreme Court ruled such searches are unconstitutional absent a search warrant.<sup>90</sup>

Several years ago, police raids on indoor grows in Central California uncovered human trafficking involving Chinese farmers

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<https://www.denverpost.com/2019/05/22/marijuana-raid-federal-colorado/>  
[<https://perma.cc/R2HZ-VZGW>].

<sup>85</sup> Some organized crime groups use nondescript individuals to acquire properties. Nagle, *supra* note 80, at 401.

<sup>86</sup> In Colorado, multi-agency authorities in suburban Denver disrupted a grow house operation comprised of at least eighteen warehouses and storage units and thirty-three residential properties that had been set up by Chinese organized crime to cultivate and ship marijuana from Colorado to Texas. The homes are often "gutted and trashed" to maximize growing space. Romero, *supra* note 82.

<sup>87</sup> See Press Release, U.S. Dep't of Justice, *Forty-two Individuals Arrested in One of The Largest Black Market Marijuana Takedowns in Colorado History* (May 24, 2019), <https://www.justice.gov/usao-co/pr/forty-two-individuals-arrested-one-largest-black-market-marijuana-takedowns-colorado> [<https://perma.cc/2REH-2J6W>].

<sup>88</sup> *Id.*

<sup>89</sup> John J. Fialka, *Coloradans feel the heat from indoor marijuana growing*, E&E NEWS (Apr. 26, 2016), <https://www.eenews.net/stories/1060036221> [<https://perma.cc/SKM5-5TVS>].

<sup>90</sup> John Metcalfe, *This Heat-Sensing Helicopter Can Find Your Illicit Marijuana-Grow House*, CITYLAB (Oct. 16, 2013), [<https://perma.cc/65K5-TQ4E>]. The United States Supreme Court, in *Kyllo v. United States*, 533 U.S. 27, 40 (2001), ruled that authorities must first obtain a search warrant to use heat sensing devices in drug search operations.

brought into the United States legally and illegally to grow marijuana.<sup>91</sup> Some claimed to have been misled, believing they were working in legal operations.<sup>92</sup> Their movement into the United States mirrors other labor trafficking victims from Asia that enter from Mexico and request asylum, only to disappear upon release. While some believe they are going to the United States for opportunity, many are believed to be locked into indentured servitude or debt bondage, which entails working in conditions of forced servitude while trying futilely to pay off their transportation and maintenance expenses to the transborder gangs.<sup>93</sup>

While organized crime has established clandestine networks of indoor grow houses throughout the western United States, the coastal counties of northern California have for decades been a haven for large-scale marijuana cultivation. Known as the Emerald Triangle, comprising the counties of Humboldt, Mendocino, and Trinity, these grow operations have become a vital source of commerce and income for residents and sustainable revenue streams for local services and infrastructure.<sup>94</sup> The growers are by no means a monochromatic bunch of underworld gangs and violent drug traffickers.<sup>95</sup> Because they represent an eclectic mix of family farmers, black market profiteers, well-educated entrepreneurs, and counter-culturalists living together in tight-knit communities in remote rural areas, local authorities have interpersonal relationships with many of the growers that complicate enforcement and have created a laissez-faire attitude toward marijuana cultivation.<sup>96</sup>

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<sup>91</sup> Stuart Leavenworth & Brad Branan, *Raids on Marijuana Grow Houses Often Find Chinese 'Farmers' Inside*, SACRAMENTO BEE (Oct. 17, 2017), <https://www.sacbee.com/news/california/california-weed/article179293106.html> [<https://perma.cc/4YRA-Z8KF>].

<sup>92</sup> Nagle, *supra* note 80, at 401.

<sup>93</sup> For a detailed discussion of trafficking conditions in forced labor, see INT'L LABOUR OFFICE, *TRAFFICKING FOR FORCED LABOUR: HOW TO MONITOR THE RECRUITMENT OF MIGRANT WORKERS* 12 (2005) (defining debt bondage at page five of the report).

<sup>94</sup> *Why Is Everyone Obsessed with California's Emerald Triangle?*, A PROPER HIGH (Jan. 15, 2019), <https://aproperhigh.com/articles/why-is-everyone-obsessed-with-california-s-emerald-triangle> [<https://perma.cc/EK4V-U93T>].

<sup>95</sup> This is not to say that organized crime is not present. Criminal syndicates from around the world have found opportunities in the Emerald Triangle, including even a criminal gang from Bulgaria. See Kim L. Pasqualini, *The Mystery of Humboldt County's Missing Women*, OWLICATION (Nov. 2, 2017), <https://owlcation.com/social-sciences/Missing-Women-Humboldt-Five> [<https://perma.cc/Q27T-PZHZ>].

<sup>96</sup> Emily Witt, *How Legalization Changed Humboldt County Marijuana*, THE NEW YORKER (May 20, 2019), <https://www.newyorker.com/news/dispatch/how-legalization-changed-humboldt-county-weed> [<https://perma.cc/8B4G-KYSS>].

When California voters legalized commercial cultivation in 2016, marijuana growing immediately became big business.<sup>97</sup> Traditional growers, once having a monopoly on black market supply, now faced new competition from Big Agro setting up greenhouse operations in Central California.<sup>98</sup> According to one report published in *Rolling Stone*, “[c]ounty and state taxes, state permit applications and consultants can total hundreds of thousands of dollars a year, forcing mom and pop growers to either close their businesses or remain in the black market.”<sup>99</sup> Consequently, many small growers opted to continue working in the black market.

Marijuana growing, even in small-scale grows, is labor intensive because finely trimmed “buds” fetch the highest prices. Each growing season, the Emerald Triangle attracts transient young people from around the world<sup>100</sup> and throughout the United States seeking to work as independent contractors “grooming” high quality pot prior to distribution.<sup>101</sup> These temporary workers are known as “trimmigrants,” and from June to November they can earn good pay for untaxed work,

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<sup>97</sup> Brad Branon & Monica Vaughan, *Forget the Emerald Triangle. The Central Coast is Becoming California's Weed Hotspot*, SACRAMENTO BEE (Apr. 11, 2018), <https://www.sacbee.com/news/california/california-weed/article208499009.html> [<https://perma.cc/E3L2-KK7W>]. According to the Sacramento Bee report,

Proposition 64, also known as the Adult Use of Marijuana Act, promised that the “marijuana industry in California will be built around small- and medium-sized businesses by prohibiting large-scale cultivation licenses for the first five years.” The law would limit the number of licenses growers could receive and said individual licenses for farms over an acre would not be available until 2023.

*Id.*

<sup>98</sup> Nagle, *supra* note 80, at 402. The initial legislation had been intended to protect the livelihoods of small growers in the north of the state. As of April 2018, the California Department of Food and Agriculture had issued licenses to more than 2,100 marijuana growers in just seven counties alone, which when combined account for more than two-thirds of cultivation statewide. More than 1,100 licenses were issued for Central Coast counties of Santa Barbara, San Luis Obispo, Monterey and Santa Cruz. Unlike the northern counties that are mountainous and remote, the Central California counties have a long history of large agriculture. “The Central Coast has great advantages for big growers: a well-established agricultural community with an extensive labor pool, flat land and an abundance of greenhouses.” Branon & Vaughan, *supra* note 97.

<sup>99</sup> Katie MacBride, *‘Murder Mountain’: New Series Explores Missing Persons in Weed’s Emerald Triangle*, ROLLING STONE (Jan. 19, 2019), <https://www.rollingstone.com/culture/culture-features/murder-mountain-marijuana-netflix-humboldt-county-776733/> [<https://perma.cc/DLJ3-DM89>].

<sup>100</sup> Shoshana Walter, *In Secretive Marijuana Industry, Whispers of Abuse and Trafficking*, KQED (Oct. 14, 2016), <https://www.kqed.org/news/11129842/in-secretive-marijuana-industry-whispers-of-abuse-and-trafficking> [<https://perma.cc/B7YD-4PKW>] (showing a captioned photo of two individuals from London and Germany looking for work as trimmers).

<sup>101</sup> Nagle, *supra* note 80, at 402.

have free housing and enjoy access to copious amounts of drugs.<sup>102</sup> Like the growers, the trimmigrants comprise an eclectic group of wanderers and free spirits, global trekkers, and college students.<sup>103</sup> Their work grooming buds is arduous, with long hours spent in cramped “trimming shacks.” They earn about \$200 for each pound of buds processed.<sup>104</sup>

While such work seems ideal for aspiring trimmigrants, in fact, many soon find themselves in serious trouble in places where law enforcement has little presence.<sup>105</sup> In 2016, one journalist, Shoshana Walter, investigated reported instances of forced labor and labor abuse, sex trafficking and sexual assault, and unsolved disappearances of transient workers over a five-year period.<sup>106</sup> Walter’s findings presented strong evidence that young women are particularly susceptible to labor trafficking and sexual abuse for the following reasons:

- marijuana grows tend to be male-dominated operations, which creates a power imbalance with female workers;
- the grows tend to be in remote areas where the growers spend a great deal of time alone and the growers seek female company;
- female trimmigrants in remote areas may feel helpless when their circumstances become abusive and exploitative;
- the growers say that female trimmers are better at the job because they have small hands and are more dexterous;
- because trimming jobs are so coveted, females get hired over males, again because of the power imbalance;
- the growers seem to hire the more attractive females who appear to be “willing” to have a good time or are susceptible to coercion;
- the transient status of the female workers puts them at risk because they have little familiarity with their surroundings and no roots in the communities;
- the female (and male) trimmigrants know that they are engaged in illegal activities and working “under the table” and may be fearful of

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<sup>102</sup> Walter, *supra* note 100.

<sup>103</sup> Shoshana Walter, *Hidden Horrors on the Pot Farms of California*, COSMOPOLITAN (Sept. 8, 2016), <https://www.cosmopolitan.com/politics/a63560/marijuana-industry-sexual-abuse-rape/> [https://perma.cc/M5WV-6PWZ].

<sup>104</sup> *Id.*

<sup>105</sup> Nagle, *supra* note 80, at 400.

<sup>106</sup> *See* Walter, *supra* note 100.

being treated as criminals instead of as victims if they report abuse to the authorities; and

- the drug use among the trimmigrants renders them vulnerable to abuse and to being trafficked among male growers.<sup>107</sup>

Walter reported several instances of female trimmigrants being repeatedly sexually assaulted and subjected to serious forms of labor abuse, including “being forced to give their bosses blowjobs to get paid or asked to trim topless for wage increases.”<sup>108</sup>

One documented case involved a Mexican woman who traveled to Mendocino County in 2014, believing she was going there to work in a restaurant. A violent marijuana grower named Baldemar Alvarez subjected her to forced labor, cooking and cleaning his house and sexually assaulting her.<sup>109</sup> When she reported her victimization to the county sheriff, she was treated as a criminal and accused of making up her story in order to get a special visa that is available to foreign nationals who are victims of human trafficking.<sup>110</sup> Despite other Mexican women coming

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<sup>107</sup> Nagle, *supra* note 80, at 403.

<sup>108</sup> Shoshana Walter, *For Some Female “Trimmigrants,” Working in Marijuana Fields Comes with Abuse*, L.A. WEEKLY (Sept. 9, 2016), <https://www.laweekly.com/for-some-female-trimmigrants-working-in-marijuana-fields-comes-with-abuse/> [<https://perma.cc/EL9R-GBWM>].

<sup>109</sup> *Id.*

<sup>110</sup> The visas are the T-visa or U-Visa. Only certain types of crimes will qualify the victim for a T-visa or a U-visa, but both T and U visas include the qualifying crime of human trafficking. According to the Department of Homeland Security, “The T visa is an immigration benefit for victims of human trafficking who meet certain eligibility requirements.” These are:

- Is or was a victim of a severe forms of trafficking persons (which may include sex or labor trafficking), as defined by federal law;
- Is in the United States . . . or at a U.S. port of entry due to trafficking;
- Has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and
- Would suffer extreme hardship involving unusual and severe harm if removed from the United States.

In addition, the victim must be admissible (based on a review of criminal history, immigration violations, and other factors) to the United States. If inadmissible, the individual may apply for a waiver of inadmissibility for which he or she may be eligible.

The U visa may apply if trafficking victim:

- Is the direct or indirect victim of qualifying criminal activity;
- Has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity;
- Has information about the criminal activity; and

forward to attest to Alvarez's involvement in human trafficking, labor, and sexual abuse, he was never charged with human trafficking. Instead, he was taken into custody by sheriff deputies and charged only with felony marijuana cultivation, his third arrest in three years.<sup>111</sup> He made bail quickly and the prosecutor never pursued the case, according to Walter.<sup>112</sup> In yet another case of human trafficking, forced labor and sexual assault, Walter recounted what happened after the victim came forward:

In 2013, federal prosecutors said two growers picked up a 15-year-old runaway in Hollywood and took her to their farm in Lake County, near Humboldt. They directed her to trim marijuana and have sex with them, sometimes while chained to a metal rack.

In interviews with police after a raid of the farm, the girl described the sex with one of the men as consensual. Sex with the other grower was "not as consensual."

But she was not free to leave: To keep her from fleeing, the men put her inside an oversized metal toolbox with breathing holes for several days, according to court records, using a garden hose to clean out her waste. The men also shocked the girl with a cattle prod and told her she would be shot by neighbors if she attempted to leave, an employee later told police.

Local prosecutors charged the men with human trafficking, the first case of its kind in the county. But when federal authorities took over the case, the trafficking charge was dropped. The men are expected to plead guilty later this year on charges of illegal marijuana cultivation and employing a minor in a drug operation.<sup>113</sup>

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- Was helpful, is being helpful, or is likely to be helpful to law enforcement, prosecutors, judges, or other officials in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity.

Additionally, the victim must be admissible to the United States based on a review of criminal history, immigration violations, and other factors. If found inadmissible, an individual may apply for a waiver of inadmissibility for which he or she may be eligible. U.S. DEP'T OF HOMELAND SEC., U AND T VISA LAW ENFORCEMENT GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES, AND OTHER GOVERNMENT AGENCIES, 4, 9 [https://www.dhs.gov/sites/default/files/publications/PM\\_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf](https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf) [https://perma.cc/U8X7-CGED] (last visited June 24, 2020).

<sup>111</sup> Mendocino County Sheriff's Office, Case Report #2014-00023156 (Aug. 28, 2014), <https://assets.documentcloud.org/documents/3036030/Redacted-Report.pdf> [https://perma.cc/T5RD-BXSH].

Shasta County Sheriff's Office, Arrest Report of Boldemar Etal Alvarez (May 2, 2014), <https://assets.documentcloud.org/documents/3036025/Reveal-Media-14-15437.pdf> [https://perma.cc/2F6F-TUHM].

<sup>112</sup> Walter, *supra* note 100.

<sup>113</sup> *Id.*

Arrests and convictions for labor abuse and labor trafficking have occurred in the Emerald Triangle, but local or state authorities may mishandle some investigations. In addition, Walter's investigation in the Emerald Triangle suggests that *federal* prosecutors dropped the ball.<sup>114</sup> Walter also seems to suggest that there may be reticence by some local law enforcement to prosecute and jail serious trafficking and sexual assault crimes by growers they have known all their lives and may even be family members.<sup>115</sup> Enforcing the law on behalf of transient victims may also upset the social fabric and cohesion of small rural communities that depend on marijuana cultivation, and elected sheriffs and prosecutors may decide the potential upheaval in the community is not worth it. On the other hand, the *Rolling Stone* investigation points out that local law enforcement in the Emerald Triangle insists that their agencies are under-resourced for patrolling such large, rural areas and that they need more than "hearsay" from local residents to effect arrests and prosecute cases.<sup>116</sup> Humboldt County's human trafficking committee chairperson suggests that while local government and law enforcement are working with other stakeholders to address human trafficking, a lack of understanding and coordination between the groups may be hindering an effective ground game in prosecuting traffickers and helping victims.<sup>117</sup> There is also a problematic dynamic between local law enforcement that recognizes California state law and federal law enforcement that does not recognize marijuana legalization. This division creates significant stress in the region and prevents many growers from coming out of the shadows, choosing to remain black market growers. Moreover, some growers have criminal records that may prevent them from becoming licensed by the state.

Community-based groups in the Emerald Triangle appear to be responding to the presence of human trafficking and forced labor in their communities. Humboldt county established an agency called Domestic Violence Services (HDVS) to conduct outreach for potential trafficking and forced labor victims, with some promising results. Reported incidents of suspected human trafficking rose from 209 in 2015-16, to at least 618

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<sup>114</sup> *Id.*

<sup>115</sup> *See id.*

<sup>116</sup> MacBride, *supra* note 99.

<sup>117</sup> Will Houston, *Humboldt County Officials Seek Unified Approach to Human Trafficking as Reports Rise*, *TIMES STANDARD* (Aug. 29, 2018, 12:00AM), <https://www.times-standard.com/2018/08/26/humboldt-county-officials-seek-unified-approach-to-human-trafficking-as-reports-rise/> [<https://perma.cc/FU2C-XRF2>].

in 2017-18.<sup>118</sup> Through its outreach efforts, HDVS identified important characteristics about the backgrounds of trafficking victims in the Triangle:

- they tend to be college students, mainly from Humboldt State University;
- many trimmers are subjected to violent and abusive work situations;
- women from foreign countries are trafficked into the Triangle for labor and sex servitude; and
- their victims are laborers seeking job opportunities, and children “born and raised in California.”<sup>119</sup>

HDVS director, Brenda Bishop, has also collected reports “of people being trafficked out of the Sacramento region to work on cannabis farms without pay and then used for sex trafficking during the offseason, even at local festivals.”<sup>120</sup> Similarly, Humboldt County Human Rights Commissioner Lelehnia DuBois has described women coming to her after being “stuck on the mountain for two weeks and stun-gunned if they didn’t take their clothes off.”<sup>121</sup>

Humboldt County government is taking more proactive steps to contend with human trafficking related to marijuana growing. In February 2019, the County Board of Supervisors and the Humboldt County Human Rights Commission entered into a partnership to release significant funding to support human trafficking awareness, outreach, and advocacy,<sup>122</sup> although one County Board Supervisor criticized such efforts, suggesting “a lack of understanding between groups of what is happening on the ground and a lack of a unified approach to addressing the issue.”<sup>123</sup>

Officials across the three counties of the Emerald Triangle were initially hopeful that legalization of cultivation will result in more compliance with labor laws, that law enforcement will become more

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Press Release, Kelley Lincoln, Humboldt County Human Rights Commission, Statement on Human Trafficking Funding (Feb. 3, 2019), <https://kymkemp.com/2019/02/03/human-trafficking-fund-to-disperse-20000-for-outreach/> [<https://perma.cc/7LT7-QCG7>].

<sup>123</sup> Houston, *supra* note 117. See also Dylan Brown, *Humboldt Area Foundation Partners with Board of Supervisors to Fight Human Trafficking*, KRCR NEWS (Sept. 28, 2018), <https://krctrv.com/north-coast-news/eureka-local-news/humboldt-area-foundation-partners-with-board-of-supervisors-to-fight-human-trafficking> [<https://perma.cc/XL77-HX99>].

vigilant, and that legalization and the costs to do business under licensing regimes will drive out black market and organized crime growers. But there is growing concern that legalization may actually compel some growers to go deeper into the black market where there will always be demand, especially outside California or outside the highly-regulated dispensary supply chain, and that those growers will move deeper into remote areas and continue trafficking in workers and subject them to labor servitude and sexual abuse.<sup>124</sup>

## II. INTERNATIONAL LAW AND US DOMESTIC LAW INTENDED TO PROTECT FARM WORKERS

Substantial resources are available to address the international and domestic laws in place to prevent human and labor trafficking, prosecute traffickers and labor abusers, and protect workers from trafficking and the worst forms of labor abuse. To avoid going too far into the weeds of international law and domestic legislation, we note briefly just a few relevant international instruments and United States law.

### A. INTERNATIONAL LAW

Forced labor has been a recognized human rights violation since the early part of the twentieth century and is defined in Article 2 of the International Labour Organization (ILO) *Convention Concerning Forced or Compulsory Labour* (known as the *Forced Labour Convention*)<sup>125</sup> as

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<sup>124</sup> Patrick McGreevy, *Two Years in, California's Legal Marijuana Industry Is Stuck. Should Voters Step in?*, LA TIMES (Dec. 24, 2019, 5:00 AM), <https://www.latimes.com/california/story/2019-12-24/two-years-california-legal-marijuana-industry-is-stuck> [<https://perma.cc/G9XP-SQJG>]. See also Mark Binelli, *MarijuanaAmerica: Inside America's Last Growth Industry*, ROLLING STONE (Apr. 1, 2010, 8:20PM), <https://www.rollingstone.com/culture/culture-news/marijuanamerica-inside-americas-last-growth-industry-95482/> [<https://perma.cc/HUJ7-WYTX>] (noting that if taxes and other government regulations become too imposing or prices fall too low for marijuana growers to make a decent living producing licensed crops, they could revert to the black market economy).

<sup>125</sup> Int'l Labour Org. [ILO], *Convention concerning Forced or Compulsory Labour* (Conv. 29) (June 28, 1930), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029) [<https://perma.cc/DMF8-C3QD>]. The Forced Labour Convention was reaffirmed by the Protocol of 2014 to the Forced Labour Convention, which entered into force in November 2016. Int'l Labour Org. [ILO], *Protocol of 2014 to the Forced Labour Convention* (Po29) (June 11, 2014), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P029](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029) [<https://perma.cc/ST87-VCUX>].

“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” The ILO defines the meaning of this statement as:

1. Work or service refers to all types of work occurring in any activity, industry or sector including in the informal economy.
2. Menace of any penalty refers to a wide range of penalties used to compel someone to work.
3. Involuntariness: The terms “offered voluntarily” refer to the free and informed consent of a worker to take a job and his or her freedom to leave at any time. This is not the case for example when an employer or recruiter makes false promises so that a worker takes a job he or she would not otherwise have accepted.<sup>126</sup>

The element of voluntariness is especially important for establishing the predicate offense of labor trafficking, because while many workers may voluntarily enter into a work situation, any loss of freedom of movement converts a voluntary work arrangement into forced labor and labor trafficking. The object and purpose of the *ILO Convention* is to suppress the use of forced labor in all of its forms, irrespective of the nature of the work or the sector of activity in which it may be performed.<sup>127</sup> In addition to the *ILO Forced Labour Convention*, the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons* (known as the *Palermo Protocol*), includes forced labor in its definition of human trafficking:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>128</sup>

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<sup>126</sup> *What is forced labour, modern slavery and human trafficking*, ILO, <http://www.ilo.org/global/topics/forced-labour/definition/lang-en/index.htm> [<https://perma.cc/3U3C-TGRX>] (last visited Mar. 21, 2020).

<sup>127</sup> *International labour standards on forced labor*, HUMAN RESOURCES WITHOUT BORDERS (2018), <http://www.rhsansfrontieres.org/en/understand/forced-labor/313-international-labour-standards-on-forced-labor> [<https://perma.cc/3QWK-3HDG>].

<sup>128</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Dec. 25,

The *Palermo Protocol* supplements the *United Nations Convention Against Transnational Organized Crime*, and it established the first common international definition of “trafficking in persons.”<sup>129</sup> The standardization of terminology, laws, and practices of the countries practicing the *Protocol* allows for a balance between crime-control measures and measures aimed at supporting and protecting victims of trafficking.<sup>130</sup>

These international instruments form a vital corpus of agreements, guidelines, and standards of conduct for nations to combat international labor trafficking and labor abuse. They are key to effective, consistent enforcement and transnational cooperation to stop trafficking in source countries, rescue and recover victims in destination countries, and punish the traffickers and shut down trafficking operations.

## B. UNITED STATES LAW

The United States recognizes labor trafficking as a form of trafficking in persons resulting in conditions of forced servitude or terms of employment that are so skewed against the worker as to constitute conditions of de facto slavery, like for example, a debt bondage arrangement. Under federal law, labor trafficking is included in the landmark *Trafficking Victims Protection Act of 2000* (TVPA), and its

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2003, 2237 U.N.T.S. 319 [hereinafter “Palermo Protocol”]. See also United Nations Office on Drugs and Crime, *Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal*, UNODC (Oct. 10, 2019), [https://www.unodc.org/documents/human-trafficking/2015/UNODC\\_Assessment\\_Toolkit\\_TIP\\_for\\_the\\_Purpose\\_of\\_Organ\\_Removal.pdf](https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf) [<https://perma.cc/PM7P-YUFB>].

<sup>129</sup> Palermo Protocol, *supra* note 128, at 1.

<sup>130</sup> *Id.* Specifically, ILO Convention No. 182 aims at preventing and eliminating the most severe forms of child labor and sets forth the characteristics that comprise the worst forms of child labour in Article 3. Worst Forms of Child Labour Convention (No. 182), art. 3, June 17, 1999, 2133 U.N.T.S. 161. Additionally, ILO Convention No. 138 establishes that “[t]he minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years,” but allows for some national accommodation under the conditions that

national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Minimum Age Convention (No. 138), art. 3, June 26, 1973, 1015 U.N.T.S. 297.

subsequent legislation,<sup>131</sup> which reflects Article 3(a) of the *Palermo Protocol*, and defines the severe forms of trafficking in person through acts of “recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>132</sup> The TVPA also sets forth that “[i]t is not necessary to demonstrate the use of force, fraud and coercion when a minor is induced into commercial sex.”<sup>133</sup>

### I. U.S. Farm Labor Provisions

Several procedures for mitigating human trafficking in farm labor contracting have been articulated by the executive branch of the United States.<sup>134</sup> These procedures are common sense recommendations with universal application and include:<sup>135</sup>

- keeping meticulous records regarding the employment of migrant workers and certifying the contractual arrangements made with labor recruiters/brokers. Whenever possible, subjecting labor recruiters/brokers to some formal vetting process;
- preparing and certifying annual reports confirming compliance with federal labor laws regarding migrant labor employment;
- monitoring employees throughout the management and supervisory chain to mitigate any trafficking-related conduct;
- developing a compliance plan with legal counsel;

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<sup>131</sup> Victims of Trafficking and Violence Protection Act of 2000, sec. 103(8)(B), Pub. L. No. 106-386, 114 Stat. 1464, 1470 (codified as amended at 22 U.S.C. § 7102 (2019)). *See generally*, *Policy & Legislation*, POLARIS PROJECT (last visited Mar. 6, 2020), <https://polarisproject.org/policy-and-legislation/> [https://perma.cc/2Z4A-XHTF].

<sup>132</sup> 22 U.S.C. § 7102(11)(B) (2018).

<sup>133</sup> *See Understanding the Definition of Human Trafficking: The Action-Means-Purpose Model*, POLARIS PROJECT (last visited Mar. 6, 2020), <https://traffickingresourcecenter.org/sites/default/files/AMP%20Model.pdf> [https://perma.cc/4C5G-5ZPU].

<sup>134</sup> *See, e.g.*, Exec. Order No. 13627, 77 Fed. Reg. 60029 (Oct. 2, 2012).

<sup>135</sup> *See id.* *See generally* T. Mark Funk, *Human Trafficking Compliance Means Certify, Prevent, Plan, and Report*, FCPA BLOG (Oct. 1, 2012), <http://www.fcpcb.com/blog/2012/10/1/human-trafficking-compliance-means-certify-prevent-plan-and.html> [https://perma.cc/5C5B-BP9C].

- self-reporting concerns, evidence, activities that are inconsistent with human trafficking law; and
- encouraging employees to be stakeholders: “If you see something, say something.”

In addition, federal managers and supervisors should also take proactive steps to monitor the following illegal activities and promptly report them, including the following:<sup>136</sup>

- using misleading or fraudulent recruitment practices during the recruitment of employees, such as failing to disclose basic information or making material misrepresentations about key terms and conditions of employment, including wages and fringe benefits, the location of work, living conditions and housing (if employer-provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work;
- charging employees recruitment fees; [and]
- destroying, concealing, confiscating, or otherwise denying access by an employee to the employee’s identity documents, such as passports or drivers’ licenses.<sup>137</sup>

Transnational agribusinesses, particularly those engaged as government contractors, should also be aware of laws and regulations that prohibit goods produced by forced labor from entering the United States.<sup>138</sup> Such restrictions are intended to (1) discourage, expose, and prevent importation and consumption of products connected to forced labor and (2) compel government contractors to implement compliance plans and file annual reports to the United States Customs Service (as mandated by Section 307 of the Tariff Act of 1930).<sup>139</sup> Federal

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<sup>136</sup> Exec. Order No. 13,627, *supra* note 134, at sec. 2(a)(1)(A)(i)–(iii).

<sup>137</sup> *Id.*

<sup>138</sup> See 19 U.S.C. § 1307 (2018) (“All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by . . . forced labor or/and indentured labor . . . shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited . . .”); see also 19 C.F.R. § 12.42 (2017) (setting forth the steps the Commissioner of Customs and Border Patrol must follow when investigating imported products suspected of having been produced by forced or indentured labor, including publishing the Commissioner’s findings in the Customs Bulletin and in the Federal Register and making the findings available to the importer so as to allow the importer to present “satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding”); see also FAR 22.1703 (2020).

<sup>139</sup> 19 U.S.C. § 1307 (2018). See generally CHRISTOPHER A. CASEY, CATHLEEN D. CIMINO-ISAACS, & KATARINA C. O’REGAN, CONG. RESEARCH SERV., IF11360, SECTION 307 AND IMPORTS PRODUCED BY FORCED LABOR (2020).

Acquisitions Regulation (FAR) Subpart 22.1703 specifically prohibits contractors, contractor employees, subcontractors, subcontractor employees, and their agents from engaging in severe forms of human trafficking or use of forced labor in performance of a government contract.<sup>140</sup>

### III. SOFT AGREEMENTS: PAPER TIGERS?

Soft laws or soft agreements are aspirational “rules, guidelines, policy declarations or codes of conduct which set standards of conduct” but are non-binding and unenforceable.<sup>141</sup> They are used to fill gaps and loopholes where international instruments and legislation fall short in changing conducts and policies, as well as to nudge companies or individuals toward voluntary compliance with legal norms or legal instruments without imposing a legal obligation to comply.<sup>142</sup> Soft agreements have been employed in an effort to compel agribusinesses to commit to curtailing labor trafficking and forced labor in their operations and labor supply chain. Yet, the success of using soft agreements depends on an honest cooperation of all stakeholders to achieve intended results. Words that comprise soft agreements may be only words, and it all comes down to what companies claim to do, what inspectors and monitors claim to find, and what remains intentionally or unintentionally hidden from view.

With regard to agriculture labor, even if we try to be socially aware consumers, many food products are produced at some level by forced labor, regardless of how items are labeled or promoted as being “fair trade” or “slavery-free.”<sup>143</sup> For example, a substantial portion of the cocoa the world consumes is grown and harvested on plantations in western Africa.<sup>144</sup> Unfortunately, much of the farm labor is comprised of

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<sup>140</sup> FAR 22.1703(a)(1), (3) (2020).

<sup>141</sup> *Soft Law Law and Legal Definition*, USLEGAL (last visited Mar. 7, 2020), <https://definitions.uslegal.com/s/soft-law> [<https://perma.cc/V4GT-729U>].

<sup>142</sup> See Teresa Fajardo, *Soft Law*, OXFORD BIBLIOGRAPHIES (last modified Jan 30, 2014), <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0040.xml?rskey=Zs9AXz&result=1&q=soft+law#firstMatch> [<https://perma.cc/GTU3-JJGA>].

<sup>143</sup> NPR Staff, *supra* note 40. Marosi, *supra* 42.

<sup>144</sup> *Cocoa Production in a Nutshell: Where Does Cocoa Come From?*, CAMPAIGN FOR FAIR CHOCOLATE (last visited Mar. 7, 2020), <https://makechocolatefair.org/issues/cocoa-production-nutshell> [<https://perma.cc/C58Z-EPCQ>] (“70% of the world’s cocoa beans come from four West African countries: Ivory Coast, Ghana, Nigeria, and Cameroon”).

young men and boys trafficked across international borders and into forced servitude on those plantations; some never again see their homelands.<sup>145</sup>

Slavery on African cocoa plantations came to broad international attention in 2000 when the British Broadcasting Corporation (BBC) produced a documentary, *Slavery: A Global Investigation*, which uncovered modern slavery in various parts of the world, including India, the Ivory Coast, and even Washington, D.C.<sup>146</sup> Nine years later, two independent filmmakers, Miki Mistrati and U. Roberto Romano, investigated the trafficking of children from Mali into the Ivory Coast to work on plantations that supply cocoa beans (also called cacao) primarily to Nestlé S.A., a Swiss-based multinational corporation.<sup>147</sup> Their documentary, *The Dark Side of Chocolate*,<sup>148</sup> exposed the trafficking, government corruption, and corporate indifference, and remains one of the most important exposés on child trafficking and child labor available for raising consumer awareness. What Mistrati and his team discovered, and reaffirmed in the follow-up documentaries *Shady Chocolate* (2012)<sup>149</sup> and

<sup>145</sup> Whoriskey & Sigel, *supra* note 23.

<sup>146</sup> *Slavery: A Global Investigation* (British Broadcasting Corp. 2000). Inspired by KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* (1st ed. 1999).

<sup>147</sup> Nestlé S.A. is headquartered in Vevey, Vaud, Switzerland with subsidiaries worldwide. *Nestlé Worldwide*, NESTLÉ (last visited Mar. 7, 2020), <https://www.nestle.com/aboutus/globalpresence> [<https://perma.cc/KC7Q-ECCK>]. See Tanner Ballengee, *'The Dark Side of Chocolate' brings out strong message*, *The Washburn Review* (Oct. 21, 2011) [http://www.washburnreview.org/news/the-dark-side-of-chocolate-brings-out-strong-message/article\\_58b82cd8-b9ec-544f-a868-1b8c7407b094.html](http://www.washburnreview.org/news/the-dark-side-of-chocolate-brings-out-strong-message/article_58b82cd8-b9ec-544f-a868-1b8c7407b094.html) [<https://perma.cc/2XCF-7H3N>]. Besides cocoa production, Nestlé is major buyer of coffee beans from Brazil, where child labor and forced labor is a major concern. Brazil produces one third of the world's coffee and a significant portion of the beans are picked by child workers of all ages, receiving as little as \$2 per day for their labor, or in many cases, no payment at all. Nestlé and another major coffee company, Jacobs Douwe Egberts, which together control nearly 40 percent of the world's coffee market, acknowledge that child slavery may be present in their coffee supply chains, particularly in Brazil. Bahar Parsei & Tess Nord, *Who is Really Making Your Coffee*, *SIMPLE BOOKLET* (last visited Mar. 7, 2020), <https://simplebooklet.com/childlabourcoffee#page=0> [<https://perma.cc/C8NF-V2NL>]. Likewise, Mexico appears to be in violation of its international labor obligations involving its own coffee bean farming in the southern state of Chiapas, where children, many of them from Guatemala, labor on coffee plantations despite labor law prohibiting children under age fifteen from working. Again, Nestlé is a major buyer of Chiapas-sourced coffee bean. MARCUS STERN, *THE SOURCE: THE HUMAN COST HIDDEN WITHIN A CUP OF COFFEE*, (2017), <https://features.weather.com/thefsource/> [<https://perma.cc/GPJ5-HXRQ>].

<sup>148</sup> *THE DARK SIDE OF CHOCOLATE* (Bastard Film & TV 2010); see also Tonya Teichert, *The Easter Bunny is a Slave?*, *FED'N AMERICAN WOMEN'S CLUBS OVERSEAS* (Feb. 13, 2017), <https://www.fawco.org/global-issues/human-rights/ending-violence-against-women-a-children/3008-the-dark-side-of-chocolate-child-labor-in-the-chocolate-industry> [<https://perma.cc/J28K-DAJZ>].

<sup>149</sup> *SHADY CHOCOLATE* (Helle Faber 2012).

*Hunting for Child Slaves* (2013),<sup>150</sup> belies Nestlé USA's corporate statement: "[e]nhancing quality of life and contributing to a healthier future."<sup>151</sup>

The unwelcome attention and notoriety about labor trafficking and subhuman conditions on cocoa plantations resulted in pressure being brought by the United States Congress to take some action. Back in the summer of 2001, Representative Eliot Engel (D-NY) introduced legislation that would have mandated the Food and Drug Administration (FDA) "to develop labeling requirements indicating that no child slave was used in the growing and harvesting of cocoa" used in chocolate products sold and distributed in the United States.<sup>152</sup> Senator Tom Harkin (D-IA) took up the cause and strongly urged multinational chocolate companies (Big Chocolate) to address the worst forms of child labor in cocoa agriculture or risk stronger senate action in the form of additional legislation.<sup>153</sup> Senator Tom Harkin and Representative Eliot Engel (D-NY) introduced legislation that eventually became the *Protocol for the Growing and Processing of Cocoa Beans and Their Derivative Products in a Manner that Complies with ILO Convention 182 Concerning Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor* (known as the *Harkin-Engel Protocol*).<sup>154</sup> The goal of the

<sup>150</sup> HUNTING FOR CHILD SLAVES (SnapDocs 2013).

<sup>151</sup> *About Us*, NESTLÉ (last visited Mar. 7, 2020), <https://www.nestle.com/aboutus> [<https://perma.cc/UN8U-EJUS>].

<sup>152</sup> 147 CONG. REC. H12269 (June 28, 2001) (statement of Rep. Engel). Congressman Engel's legislation was an amendment to H.R. 2330 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002, H.Amdt.142, 147 CONG. REC. H3781 (daily ed. June 28, 2001). The amendment was never included in final legislation, which became P.L. No. 107-76.

<sup>153</sup> 148 CONG. REC. S224 (daily ed. Jan. 29, 2002) (statement of Sen. Harkin). See also Peter Whoriskey, *Senators call for crackdown on cocoa imports made with forced child labor*, WASH. POST (July 16, 2019), <https://www.washingtonpost.com/business/2019/07/16/senators-call-dhs-crack-down-cocoa-imports-made-with-forced-child-labor/> [<https://perma.cc/K4P8-HKJU>]. For extensive background on labor issues in cocoa farming, see Knowledge Hub, INT'L COCOA INITIATIVE (last visited Mar. 8, 2020), <https://cocoainitiative.org/knowledge-hub/> [<https://perma.cc/J4L5-MGMD>].

<sup>154</sup> 148 CONG. REC. S224-S227 (daily ed. Jan. 29, 2002) (statement of Sen. Harkin & Exhibit 1). The Harkin-Engel Protocol resulted from proposed legislation introduced in the House of the 107<sup>th</sup> Congress which was intended to allocate \$250,000 to the Food and Drug Administration to "develop labeling requirements indicating that no child slave labor was used in the growing and harvesting of cocoa." H.R. amend. 142, 107<sup>th</sup> Cong. (2001). The Senate never took up a companion amendment, but Senators Harkin and Engel moved forward with conducting meetings and negotiations to draft a soft agreement that the chocolate industry would agree to sign. Protocol for the Growing and Processing of Cocoa Beans and the Derivative Products in a Manner that Complies with the ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, Sept. 2001, [hereinafter Harkin-Engel Protocol].

*Protocol* was to create a framework by which cocoa growing practices would comply with *ILO Convention 182* concerning “the prohibition and immediate action for the elimination of the worst forms of child labor.”<sup>155</sup> The *Protocol* addressed cocoa growing in western Africa but aspired to eventually encompass wherever in the world cocoa is grown and processed.<sup>156</sup>

The two primary chocolate trade organizations, the Chocolate Manufacturers Association of the United States (CMA)<sup>157</sup> and the World Cocoa Foundation,<sup>158</sup> became intermediaries between the Congressional co-sponsors and Big Chocolate, and several labor advocacy organizations also expressed a strong interest in being stakeholders in the *Protocol*.<sup>159</sup> The backstory of the *Harkin-Engel Protocol* speaks volumes about the initial and persistent reticence of Big Chocolate to commit fully to changing forced labor and the worst forms of labor abuse on cocoa plantations. Initially, Big Chocolate and the CMA came out in strong opposition to the proposed legislation and hired two powerful Washington insiders, former Senators George Mitchell and Bob Dole, to lobby against its passage.<sup>160</sup> But bad press and mounting consumer anger compelled the lobbyists instead to urge the CMA to cut a deal in which Big Chocolate and the CMA would sign the Protocol *only if it did not become legislation*.<sup>161</sup>

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<sup>155</sup> 151 CONG. REC. 16,217 (2005) (statement of Sen. Harkin) [hereinafter “Statement of Sen. Harkin”].

<sup>156</sup> Harkin-Engel Protocol, *supra* note 154.

<sup>157</sup> The CMA is now called the National Confectioners Association. *Our Mission*, NAT’L CONFECTIONERS ASS’N (last visited Mar. 8, 2020), <https://www.candyusa.com/who-we-are/> [<https://perma.cc/4A94-DXH2>]. For a comprehensive list of cocoa associations, see *Associations*, INT’L COCOA ORG. (last visited Mar. 8, 2020), <https://www.icco.org/component/weblinks/category/20-associations.html> [<https://perma.cc/8D7G-VZGE>].

<sup>158</sup> The World Cocoa Foundation is a non-profit, international membership organization whose members represent over 80 percent of the global cocoa and chocolate market. Their mission is to create “a thriving and sustainable cocoa sector, where farmers prosper, communities are empowered, and the planet is healthy.” *Vision & Mission*, WORLD COCOA FOUND. (last visited Mar. 8, 2020), <https://www.worldcocoafoundation.org/about-wcf/vision-mission/> [<https://perma.cc/NNU5-JM9V>].

<sup>159</sup> ELLIOT J. SCHRAGE, PROMOTING INTERNATIONAL WORKER RIGHTS THROUGH PRIVATE VOLUNTARY INITIATIVES: PUBLIC RELATIONS OR PUBLIC POLICY?, U. IOWA CTR. HUM. RTS. 11 (2004).

<sup>160</sup> Sumana Chatterjee, *Chocolate Industry Mount Campaign Over ‘Slave Free’ Labeling*, MCLATCHY NEWSPAPERS (Aug. 1, 2001), <https://www.mcclatchydc.com/news/nation-world/world/article24592945.html> [<https://perma.cc/GM4N-6GE6>].

<sup>161</sup> Leila Kazemi, *The Harkin-Engel Protocol: Ten Years On*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE (June 1, 2011), <https://www.business->

Senator Harkin and Congressman Engel acquiesced in the spirit of moving forward, and despite being something of a pyrrhic victory in the long term, the *Harkin-Engel Protocol* was transitioned into a soft agreement and signed by a unique assemblage of stakeholders on September 19, 2001, becoming known as the *Cocoa Protocol*, or *Cocoa Initiative* and appearing officially under the banner of the CMA.<sup>162</sup>

While the *Cocoa Protocol* addressed cocoa production in western Africa, it is instructive to reflect on the list of witnesses and signatories to the *Cocoa Protocol*, in the footnote below, so as to appreciate the stakeholders in agribusiness, government, and NGOs that were and continue to be involved in forming policy with regard to labor abuses in agriculture production.<sup>163</sup> As a soft agreement, the *Cocoa Protocol*

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humanrights.org/sites/default/files/media/documents/kazemi-re-harkin-engel-jun-2011.doc  
[<https://perma.cc/7W8F-2MPJ>].

<sup>162</sup> *Harkin Engel Protocol*, INTERNATIONAL COCOA INITIATIVE FOUNDATION (Oct. 4, 2001), <https://cocoainitiative.org/knowledge-centre-post/harkin-engel-protocol/> [<https://perma.cc/RXF6-TP2M>].

<sup>163</sup> Harkin-Engel Protocol, *supra* note 154. The Protocol was signed by the following:

Witnesses:

- Sen. Tom Harkin of Iowa
- Sen. Herbert Kohl of Wisconsin
- Congressman Eliot Engel of New York
- Ambassador Youssoufou Bamba, Ivory Coast
- Larry Graham, President, Chocolate Manufacturer's Association
- William Guyton, President, World Cocoa Foundation
- Frans Roselaers, Director, International Programme on the Elimination of Child Labor (IPEC) and the International Labor Organization
- Ron Oswald, General Secretary, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF)
- Kevin Bales, Executive Director, Free the Slaves
- Linda Golodner, President, National Consumers League
- Darlene Adkins, National Coordinator, The Child Labor Coalition

Signatories:

- Guy Guittard, President, Guittard Chocolate Company
- Paul Michaels, President, M&M/Mars, Inc.
- Edmond Opler, Jr., President, World's Finest Chocolate, Inc.
- G. Allen Andreas, Chairman and CEO, Archer Daniels Midland Company
- Bradley Alford, President, Nestlé Chocolate & Confections USA
- Henry Blommer, Jr., Chairman, Blommer Chocolate Company
- Richard H. Lenny, President and CEO, Hershey Food Corporation

embodies the complex and intricate interaction between and among individuals and organizations with a global reach. Such entities have the power and influence to impact and be impacted by severe labor conditions when compelled by public opinion and international comity.

On its face, the agreement committed Big Chocolate to change labor practices on supplier plantations and implement a public certification regime industry-wide by 2005. Looking back on the goals of the 2001 *Harkin-Engel Protocol* in his 2005 testimony before the Senate, Senator Harkin stated:

The Harkin-Engel protocol marked an important first—an entire industry, including companies from the United States, Europe, and the United Kingdom, taking responsibility for addressing the worst forms of child labor and forced labor in its supply chain. Today the protocol stands as a framework for progress in west Africa, bringing together industry, west African governments, organized labor, nongovernmental organizations, farmers groups, and experts in a concerted effort to eliminate the worst forms of child labor and forced labor from the growing and processing of cocoa.

Since the Harkin-Engel protocol was signed, a number of positive steps have been taken to address the worst forms of child labor in cocoa growing. These include the creation of the International Cocoa Initiative Foundation, which is now beginning to form partnerships with nongovernmental organizations to provide social protection programs in west Africa.

Going forward, the industry has pledged to dedicate more than \$5 million annually to support the full implementation of a certification system for cocoa growing farming practices and for programs to improve the well-being of the more than 1.5 million farm families growing cocoa in west Africa, including efforts to eliminate the worst forms of child labor and forced labor.<sup>164</sup>

Unfortunately, many critics feel that the *Cocoa Protocol* was not robust enough and not well-executed, chiefly because target dates for compliance continued to be pushed back beyond 2005.<sup>165</sup> Even as some signatories reaffirmed their pledges to eradicate child labor on supplier

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- Andreas Schmid, Chairman and CEO, Barry Callebaut AG

<sup>164</sup> Statement of Sen. Harkin, *supra* note 155, at 16,216-17.

<sup>165</sup> See Kemi Mustapha, *Taste of Child Labor Not So Sweet: A Critique of Regulatory Approaches to Combating Child Labor Abuses by the U.S. Chocolate Industry*, 87 WASH. U. L. REV. 1163, 1182-83 (2010); Brian O'Keefe, *Bitter Sweets*, FORTUNE, (Mar. 1, 2016), <https://fortune.com/longform/big-chocolate-child-labor/> [<https://perma.cc/WUZ4-8TB2>].

cocoa plantations completely by 2020,<sup>166</sup> the delays led many groups to conclude that Big Chocolate was not serious in meeting its commitments or enforcing social corporate responsibility among its world-wide suppliers. One organization, Slave Free Chocolate, points out that

[f]rom the outset, the Protocol has suffered from some serious design flaws. While industry has specifically addressed the worst forms of child labor under ILO Convention No. 182 and forced labor under ILO Convention 29, it has not addressed other core labor rights in the agreement or in its activities, such as minimum age of employment under ILO Convention No. 138. Further, the industry-led initiative fails to call for concrete steps to ensure that farmers are getting a fair price for their product, which significantly impacts the use of child labor, as farmers are forced to reduce production costs and rely on the cheap labor of children.<sup>167</sup>

Soft agreements will likely continue to form a corpus of arrangements, aspirational goals, and principles to address international labor trafficking. Yet, while many large corporations and business/trade organizations develop specific policies and guidelines to mitigate labor trafficking abuses and the exploitation of vulnerable people, smaller businesses may be less aware of their obligations under federal and international law or industry soft agreements that impact their businesses. This could imply that smaller agribusiness may be more at risk of severe forms of abuse occurring in their labor force.

#### IV. PROMISING NGO AND GOVERNMENT INITIATIVES

NGOs play a key role in bringing pressure on Big Agro to reform farm labor practices. Like the ILO, the United Nations (UN) has long been at the forefront of efforts to address labor abuses and make recommendations for change. On June 16, 2011, the UN Office of the High Commissioner for Human Rights and the Human Rights Council endorsed Resolution 17/4, the *United Nations Guiding Principles on Business and Human Rights (Guiding Principles)*, which sets forth obligations of States

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<sup>166</sup> In 2009, Mars joined the Rainforest Alliance to combat child labor in agriculture, while Cadbury joined the Fairtrade Foundation. Eliza Barclay, *Mars Candy Commits to Sustainable Cocoa Sources*, TREE HUGGER (Apr. 10, 2009), <https://www.treehugger.com/green-food/mars-candy-commits-to-sustainable-cocoa-sources.html> [<https://perma.cc/RK6S-WKE8>].

<sup>167</sup> *The Cocoa Protocol (Harkin-Engel Protocol)*, SLAVE FREE CHOCOLATE (Feb. 16, 2015), <http://www.slavefreechocolate.org/news/2015/2/16/the-cocoa-protocol-harkin-engel-protocol> [<https://perma.cc/245Z-38EM>].

and *all* businesses to comply with human rights standards.<sup>168</sup> The *Guiding Principles* specifically emphasize the obligation of States to enforce labor laws and business enterprises to “comply with all applicable laws and to respect human rights.”<sup>169</sup> The foundation of the *Guiding Principles* is three-fold:

- a. States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.<sup>170</sup>

Reflecting the leadership of the UN *Guiding Principles*, in 2014, the American Bar Association drafted its *Model Business and Supplier Policies on Labor Trafficking and Child Labor*.<sup>171</sup> This instrument introduced four Principles<sup>172</sup> intended to mitigate the proliferation of human trafficking in the labor supply chain. While aspirational, these benchmarks are intended for businesses and labor suppliers to come into compliance with United States federal labor law and adopt best practices for avoiding labor trafficking and child labor:

1. The business/supplier will prohibit labor trafficking and child labor in its operations.
2. The business/supplier will assess the risk of labor trafficking and child labor and continually monitor the implementation of this policy.
3. The business/supplier should: (i) train relevant employees; (ii) engage in continuous improvement, and (iii) maintain effective communications mechanisms with its suppliers.

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<sup>168</sup> Human Rights Council Res. 17/4, HR/PUB/11/04 (June 16, 2011), available at [https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr\\_eN.pdf](https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf) [<https://perma.cc/8N3M-CGYF>].

<sup>169</sup> *Id.* at 1.

<sup>170</sup> *Id.*

<sup>171</sup> *ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor*, A.B.A., [https://www.americanbar.org/groups/business\\_law/initiatives\\_awards/child\\_labor/](https://www.americanbar.org/groups/business_law/initiatives_awards/child_labor/) [<https://perma.cc/LEA8-QD28>] (last visited Mar. 16, 2020).

<sup>172</sup> *The Principles*, A.B.A. (Jan. 14, 2019), [https://www.americanbar.org/groups/business\\_law/initiatives\\_awards/child\\_labor/principles/](https://www.americanbar.org/groups/business_law/initiatives_awards/child_labor/principles/) [<https://perma.cc/D6JL-LUF2>].

4. The business/supplier will devise a remediation policy and plan that addresses remediation for labor trafficking or child labor in its operation.<sup>173</sup>

Among many non-profit organizations advocating for labor rights and combating human trafficking, Verité is a prominent organization with a stellar record of advocacy, research, and technical capacity.<sup>174</sup> Founded in 1995 in Amherst, Massachusetts, Verité has a global reach, with consultancies and experts working in over seventy countries to achieve its stated goals:

- to provide businesses with tools that help to eliminate labor abuses;
- to empower workers to advocate for their rights;
- to create publicly-shared resources that enlighten and drive action; and
- to contribute our expertise to government labor and human rights policy.<sup>175</sup>

Verité’s researchers and investigators pursue four primary activities: (1) investigating risks along supply chains and developing an operations plan for companies; (2) producing accurate reports and analysis for broad dissemination; (3) recommending strategies and solutions for companies to improve working conditions along the supply chain; and (4) influencing, educating, and creating “capacity building programs to enhance the skills of managers, workers, auditors, and social responsibility decision-makers.”<sup>176</sup>

Verité also advocates that companies throughout their supply chains adopt the following measures:

- Effectively implement procedures to monitor and prioritize specific forced labor-related risk indicators in a company’s supply chains;
- Review the risk assessments a company has carried out across all business areas, in its operations, and throughout its supply chain;

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<sup>173</sup> *Id.*

<sup>174</sup> *About Verité*, VERITÉ, <https://www.verite.org/about/> [<https://perma.cc/YP9N-9MFS>] (last visited Mar. 16, 2020).

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

- Understand operational controls for mitigating identified risks;
- Utilize models of ongoing challenges and follow the company's plan to 'stay the course.'<sup>177</sup>

Where Verité represents a global effort to commit all stakeholders to ending labor trafficking and abuse, particularly in agribusiness, grassroots organizations targeting local problems are also key to improving the conditions of farm workers. For example, the Council of Immokalee Workers (CIW) in Southwest Florida developed the Fair Food Program as a consumer-awareness mechanism to address the worst forms of farm labor abuse and labor trafficking in Big Agro.<sup>178</sup> The Fair Food Program is in place in Florida, Georgia, Maryland, New Jersey, North Carolina, South Carolina, and Virginia, and is “designed, monitored, and enforced by the very workers whose rights it is intended to protect.”<sup>179</sup> The Program is described as a “unique partnership among farmers, farmworkers, and retail food companies that ensures humane wages and working conditions,” and harnesses the power of consumer demand to effect change.<sup>180</sup>

The Program has received national attention for its innovative approach to protecting the human rights of workers and improving the partnership between Big Agro and its labor force.<sup>181</sup> CIW also established a robust public awareness platform called the Fair Food Council, and is, at present, “the only dedicated third-party monitoring organization of its kind in agriculture in the United States of America.”<sup>182</sup> The Council established the Fair Food Code of Conduct,<sup>183</sup> which has been fortified by binding agreements between CIW and many of the largest buyers of tomatoes in the world, including Walmart, Whole Foods, Taco Bell, and McDonald's,

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<sup>177</sup> *Best Practices in Credible Forced Labor Disclosures*, VERITÉ (Oct. 18, 2017), <https://www.verite.org/best-practices-credible-forced-labor-disclosures/> [<https://perma.cc/5GN5-S8CJ>].

<sup>178</sup> *See* THE FAIR FOOD PROGRAM, <https://www.fairfoodprogram.org/> [<https://perma.cc/WF3D-ALMX>] (last visited Mar. 16, 2020).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Results*, FAIR FOOD PROGRAM, <https://www.fairfoodprogram.org/results/> [<https://perma.cc/NEX6-SPRL>] (last visited Mar. 16, 2020).

<sup>182</sup> THE FAIR FOOD PROGRAM, *supra* note 178.

<sup>183</sup> *See Fair Food Code of Conduct*, FAIR FOOD STANDARDS COUNCIL, <http://www.fairfoodstandards.org/resources/fair-food-code-of-conduct/> [<https://perma.cc/95VG-LUTU>] (last visited Mar. 16, 2020).

to name just a few.<sup>184</sup> In addition to forging partnerships with large retail chains, CIW has achieved some success in getting growers to agree to regular third-party inspections of their farms.<sup>185</sup> During those visits, a team of auditors speaks confidentially with “over half a company’s workforce” to ensure their rights are respected.<sup>186</sup>

The Fair Food Code of Conduct also addresses forced labor under Part II: Violations, specifically addressing such acts as:

- Use or threat of physical violence . . . by or at the direction of supervisor(s) . . .
- Use or display of weapons of any kind (including firearms, knives bats, etc.) at any point for the explicit or implicit purpose of intimidation
- Sexual harassment that involves physical contact . . .
- Systemic failure to pay all wages earned . . .
- Non-systemic use of illegal child labor as defined by any applicable law;
- Retaliation for defending or asserting any protections.<sup>187</sup>

Among the benchmarks achieved by the CIW Fair Food Program since 2011 are that more than 250,000 farm workers have been educated about their rights; nearly \$275,000 of lost or withheld wages have been recovered; more than 2,200 complaints have been resolved without retaliation; forced labor, sexual assault, and physical violence have been all but eliminated in partner farming operations; and very importantly, zero

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<sup>184</sup> *Participating Buyers*, FAIR FOOD STANDARDS COUNCIL, <http://www.fairfoodstandards.org/resources/participating-buyers/> [https://perma.cc/46BD-XTKD] (last visited Mar. 16, 2020).

<sup>185</sup> *Fair Food Code of Conduct*, *supra* note 184; *About CIW*, Coalition of Immokalee Workers, <http://ciw-online.org/about/> [https://perma.cc/Q79R-ZATW] (last visited Mar. 29, 2020). According to the Council,

The Fair Food Standards Council is the dedicated third-party monitoring organization for the Fair Food Program. One of its principal tasks is to conduct in-depth audits on Participating Growers’ farms. With access to company records at the farm office level and access to the fields to observe harvesting operations and talk to workers first-hand, FFSC auditors are able to bring an unprecedented level of transparency to participating farms.

About the Fair Food Program, window on Audits, <https://www.fairfoodprogram.org/about-the-fair-food-program/>.

<sup>186</sup> *About The Fair Food Program – Audits*, FAIR FOOD STANDARDS COUNCIL, <https://www.fairfoodprogram.org/about-the-fair-food-program/> [https://perma.cc/QDW8-KM69] (last visited Apr. 5, 2020).

<sup>187</sup> *Fair Food Code of Conduct*, *supra* note 183. The complete set of violations may be found in Part II of the Code of Conduct.

class action lawsuits have been filed with the United States Department of Labor or the Equal Employment Opportunity Commission.<sup>188</sup>

Another noteworthy worker-centered approach has emerged in the tomato growing region of Nardò, Italy, where a project called SfruttaZero (Zero Exploitation) has begun to mobilize the migrant work force to overcome the worst forms of labor trafficking and labor abuses.<sup>189</sup> SfruttaZero's mission is to ethically employ workers to harvest tomatoes and receive fair pay and benefits.<sup>190</sup> The tomatoes harvested are then processed into sauce by a local cooperative.<sup>191</sup> Arranging the worker contracts directly between the growers and the migrant workers effectively cuts out the corrupt field bosses and labor contractors who are primarily responsible for fomenting labor servitude and labor trafficking.<sup>192</sup> Some of the workers have made enough money to pursue jobs they were trained to do in their home countries, thereby leaving the fields behind to become more productive migrants with a stronger stake in Italian society.<sup>193</sup>

Labor advocacy organizations are also building stronger coalitions through partnerships with each other to pool resources, reach a greater number of people, and bring more pressure on Big Agro and farm labor stakeholders to reform legislation, policy, enforcement, public outreach, and community development, strategic planning, and international relations.

One such organization that has partnered with Verité is KnowTheChain (KTC),<sup>194</sup> an offshoot of NGO Humanity United, based in San Francisco, California and Washington, D.C.<sup>195</sup> KTC focuses on

<sup>188</sup> *Results, supra* note 181.

<sup>189</sup> 'Fair' Tomato Sauce Offers a Taste of Better Treatment for Migrant Workers in Italy, *supra* note 32.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *See id.* One former field worker who succeeded through the SfruttaZero program stated:

I no longer work in the fields—I now live in the city of Parma where I found a job working in a factory. I am finally able to work as a mechanic, which I am trained to do. Many migrants like me have a profession, but are unable to exercise it here.

*Id.*

<sup>194</sup> *About Us*, KNOWTHECHAIN, <https://knowthechain.org/about-us/> [<https://perma.cc/ZJ8A-ZMPH>] (last visited Mar. 16, 2020); KNOWTHECHAIN, <https://knowthechain.org/> [<https://perma.cc/PK27-SKYZ>] (last visited Mar. 16, 2020) ("Through benchmarking current corporate practices and providing practical resources that enable companies to operate more transparently and responsibly, KTC drives corporate action while also informing investor decisions. KTC is committed to helping companies make an impact in their efforts to address forced labor").

<sup>195</sup> HUMANITY UNITED, <https://humanityunited.org/> [<https://perma.cc/MS6A-PYUE>] (last visited Mar. 16, 2020).

outreach to and analysis for companies interested in improving human rights and labor practices along their global supply chains. KTC targets three business sectors: Information and Communications Technology, Apparel and Footwear, and Food and Beverage (which includes Big Agro). The organization's project analysts assess companies within each category and have created a scoring regimen to help clarify whether companies are meeting commitments they have made in the form of soft agreements and codes of conduct within their business sector.<sup>196</sup> While KTC recognizes that companies in the Food and Beverage sector have tried to improve labor conditions in order to comply with "international standards prohibiting forced labor," it found that "company engagement with stakeholders such as policy makers, worker rights organizations, or local NGOs on the issue of forced labor is low, especially in local supply chain contexts."<sup>197</sup> In order to help Food and Beverage companies focus on improving their corporate social responsibility efforts and reduce labor trafficking and abuses, KTC categorizes specific performance measures into: commitment and governance, traceability and risk assessment, purchasing practices, recruitment, worker voice, monitoring, and remedy.

Educating consumers is crucial to confronting labor trafficking and forced servitude in agriculture, and one promising means to do so is through the development of social justice apps for smartphones and tablets. This is one venue by which the power of the government can be particularly effective. The United States Department of Labor (USDOL) launched a well-regarded app called *Sweat & Toil: Child Labor, Forced Labor, and Human Trafficking Around the World* that documents child

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<sup>196</sup> *Themes Key Findings for Food and Beverage*, KNOWTHECHAIN, <https://knowthechain.org/themes/29/> [<https://perma.cc/BP7F-AXR8>] (last visited Mar. 14, 2020); *2018 Food & Beverage Benchmark*, KNOWTHECHAIN, <https://knowthechain.org/benchmarks/> [<https://perma.cc/NNY9-43V9>] (last visited Mar. 14, 2020). KTC looked at thirty-eight Food and Beverage companies in 2018 and scored them on several benchmarks to gain a better understanding of how the sector is addressing labor trafficking and forced labor. The methodology was crafted as follows:

The 38 Food and Beverage companies were assessed across the benchmark's seven themes, which were developed to capture the key areas where companies need to take action to eradicate forced labor from their supply chains: commitment and governance; traceability and risk assessment; purchasing practices; recruitment; worker voice; monitoring; and remedy. There are a total of 23 indicators across the seven themes. Each theme is weighted equally and determines the company's overall benchmark score on a scale from 0 to 100.

<sup>197</sup> *Themes Key Findings for 2018 Food & Beverage: Commitment and Governance – Summary of Results*, KNOWTHECHAIN, <https://knowthechain.org/themes/29/> [<https://perma.cc/3NQL-2R6Q>] (last visited Mar. 14, 2020).

labor and forced labor worldwide.<sup>198</sup> According to the app developer at USDOL, *Sweat & Toil* takes data from the Department's three flagship reports: Findings on the Worst Forms of Child Labor; List of Goods Produced by Child Labor or Forced Labor; and List of Products Produced by Forced and Indentured Child Labor, and "fits these three information-packed reports the size of a phone book in the palm of your hand."<sup>199</sup> The app allows the user to check countries' efforts to eliminate child labor, find child labor data, browse goods produced with child labor and forced labor, review laws and ratifications, and see what governments can do to end child labor.

The goal is to be a "starting point to empower [oneself] with knowledge about child labor or forced labor around the world. Anyone with an interest in these issues—governments, businesses, academics, civil society, consumers—can use it as a source of information to begin asking questions, taking action, and demanding change."<sup>200</sup>

Another USDOL app available for download is Comply Chain, which is intended for businesses to improve their labor compliance in global supply chains and mitigate risks. The app targets companies and industry groups seeking to develop robust social compliance systems for their global production.<sup>201</sup> Comply Chain provides practical, step-by-step guidance on eight critical elements of social compliance, and is designed by companies that do not have a social compliance system in place or need to strengthen their existing systems.<sup>202</sup> USDOL succinctly identifies the elements needed for an integrated social compliance system: engaging stakeholders and partners; assessing risks and impacts; developing a code of conduct; communicating and training across the supply chain; monitoring compliance; remediating violations; and reviewing and reporting performance independently.<sup>203</sup>

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<sup>198</sup> *Sweat & Toil: Child Labor, Forced Labor, and Human Trafficking Around the World*, U.S. DEP'T OF LABOR, <https://www.dol.gov/general/apps/ilab> [<https://perma.cc/L4GA-TZFQ>] (last visited Mar. 29, 2020).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Comply Chain: Business Tools for Labor Compliance in Global Supply Chains*, U.S. DEP'T OF LABOR, <https://www.dol.gov/general/apps/ilab-comply-chain> [<https://perma.cc/Z5LJ-DDNE>] (last visited Mar. 29, 2020).

<sup>202</sup> *Id.*

<sup>203</sup> *Comply Chain*, ILAB, <https://www.dol.gov/ilab/complychain/> [<https://perma.cc/8GDY-B4Q9>] (last visited Mar. 29, 2020). The app "contains many examples of specific good practices that companies, industry groups, and multi-stakeholder initiatives have put in place in these eight areas." *Comply Chain: Business Tools for Labor Compliance in Global Supply Chains*, *supra* note 201.

These and other emerging apps may prove somewhat ephemeral over time, and may degrade in relevancy, timeliness, and authority depending on how they are maintained and updated. Nevertheless, they demonstrate a proof of concept, show an exceptional attempt to step beyond the boundaries of traditional means of disseminating information, serve an important purpose of bringing profound social justice awareness to one's cell phone, encourage people to be more discerning consumers, and put businesses on notice to take steps to advance their social justice and labor supply chain compliance footprint.

## V. CONCLUSIONS

Big Agro can no longer plead ignorance about labor trafficking and forced labor in the workplace. Media reports and investigations have now become so widespread and well-known that excuses such as “we didn't know” no longer hold water. There is no escaping the simple fact that human trafficking in the farm labor supply chain is widespread and that the demand for cheap and itinerant labor drives unethical recruiters, brokers, contractors, sub-contractors, and corporate management to conspire in deceiving vulnerable men, women, and children to travel to unfamiliar cultures around the world where they will work without payment or be underpaid and fall victim to harsh working conditions and loss of personal freedom.

Big Agro must become cognizant of several universal risk factors attached to labor trafficking and forced labor that have coalesced over the last decade.<sup>204</sup> Looking to United States federal law, the first most prominent risk factor is that trafficking in human beings for farm labor is *illegal*.<sup>205</sup> Agribusinesses engaging directly or indirectly in labor exploitation and trafficking may face criminal prosecution and civil liability,<sup>206</sup> including sanctions, fines, imprisonment, asset forfeiture,<sup>207</sup> and providing mandatory restitution to victims.<sup>208</sup> Criminal liability may

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<sup>204</sup> *Understanding the Role of Labor Recruiters in the Human Trafficking and Forced Labor of Migrant Workers*, VERITÉ, <https://helpwanted.verite.org/node/696/lightbox2> [<https://perma.cc/2HV4-E6RF>] (last visited Mar. 14, 2020).

<sup>205</sup> See 22 U.S.C. § 7102(9) (2018) (defining labor trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”)

<sup>206</sup> 18 U.S.C. § 1595 (2018).

<sup>207</sup> 18 U.S.C. § 1594(b) (2018).

<sup>208</sup> 18 U.S.C. § 1593 (2018).

also be imposed when obtaining labor or services in reckless disregard of the fact that the workers are trafficking victims.<sup>209</sup>

The second risk factor involves the impact on *investment and finance* if an agribusiness is found to be engaging in labor trafficking.<sup>210</sup> Public funding, export credits, lucrative government contracts, and even market share in agribusiness and supply chains can disappear if a business is essentially “blacklisted” for engaging in labor trafficking.<sup>211</sup>

*Reputation and value* constitute the third risk, especially if a business relies on consumer loyalty and branding.<sup>212</sup> A tenacious awareness campaign launched in the court of public opinion by an anti-human trafficking NGO can do significant harm to a business that is involved or suspected of being engaged in labor trafficking. Finally, companies involved in *trade* may be banned from selling their products in some countries when those products are determined to have been produced by trafficked laborers.<sup>213</sup>

Because of these risks, common standards and best practices are emerging to help businesses. While many large corporations and business/trade organizations have developed specific policies and guidelines to mitigate labor trafficking abuses and exploitation of vulnerable people, smaller businesses may be less aware of their obligations under federal and even international law (subsequently, smaller agribusinesses may be more at risk of severe forms of abuse occurring in their labor force). The *United Nations Guiding Principles on Business and Human Rights (Guiding Principles)* should help small agribusinesses to comply with human rights standards.<sup>214</sup>

What can be done for the more than forty million people the ILO estimates are victims of labor trafficking worldwide?<sup>215</sup> Several factors

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<sup>209</sup> 18 U.S.C. § 1589(b) (2018). This statute states that

Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).

*Id.*

<sup>210</sup> See Verité, *supra* note 177.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> Human Rights Council Res. 17/4, HR/PUB/11/04, *supra* note 168.

<sup>215</sup> *Forced Labour, Modern Slavery, and Human Trafficking*, INT’L LABOUR ORG., <https://www.ilo.org/global/topics/forced-labour/lang-en/index.htm> [https://perma.cc/84DT-CP6C] (last visited Mar. 14, 2020).

impede enforcement. Inspectors cannot be everywhere abuses in agribusiness occur, corruption disrupts the delivery of justice, public resources are prioritized for other forms of human trafficking—primarily sex trafficking (which captures more public interest and elicits outrage), and prosecutions often fail to bring the full weight of the law against traffickers and those committing the worst forms of labor abuse in agriculture. When these factors are compounded, the populations impacted by labor trafficking in agriculture do not have much political power to make changes.

Just as agribusiness can no longer hide behind the excuse of “we didn’t know,” law enforcement, especially at the local level, may find it more difficult to cite being overwhelmed and under-resourced as reasons for not investigating and bringing farm labor trafficking and abuse to justice. A 2018 statistical analysis done by Arizona State University’s (ASU) Office of Sex Trafficking Intervention Research<sup>216</sup> suggests that law enforcement has yet to muster the capacity and resources to become more aggressive in investigating and making arrests of labor trafficking. The report published three findings that should be of concern, not only for the United States, but for every country looking to combat all forms of labor trafficking, including farm labor trafficking. First, of the fifty states reviewed, only twenty states documented labor trafficking arrests from 2016 through 2018,<sup>217</sup> and several states that we consider America’s heartland were conspicuously absent, such as Indiana, Iowa, Nebraska, Oklahoma, and the Dakotas. Second, during the three years studied, only 125 persons were arrested for labor trafficking, although how many were farm workers is not indicated.<sup>218</sup> These numbers may seem low in a nation where so many migrant farm laborers come to work. However, the ASU research recognizes the challenge of gathering meaningful data on labor trafficking in general, noting that “due to the covert nature of labor trafficking activities, creating reliable statistics on prevalence, frequency, geography, and particulars of labor trafficking have been difficult to develop.”<sup>219</sup> Finally, and this should be a statistic of international concern, the study found that 76 percent of labor trafficking cases reported in the United States “included transportation across national borders from

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<sup>216</sup> See Dominique Roe-Sepowitz et al., *supra* note 26.

<sup>217</sup> Those states are California, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin. *Id.* at iii.

<sup>218</sup> *Id.* at ii.

<sup>219</sup> *Id.*

sixteen different countries. Almost one in three victims originated from Mexico.”<sup>220</sup>

There also needs to be greater discussion about punishment and deterrence for cases of farm labor trafficking specifically. A search through several years of federal and state court dockets raises some concerns as to whether the consequences farm labor traffickers face for their illegal acts are punitive enough to be a deterrent. The following table, Appendix A, compares several farm labor trafficking cases with sentences for defendants to a sample of sex trafficking convictions and sentences. Understanding that there are many underlying reasons for the duration of sentences handed down, we notice that (1) sentences do not appear to be consistent in each category, and (2) the length of sentences for sex trafficking cases are significantly longer than sentences for farm labor trafficking cases. This is even though many of the charges under federal law are the same for both farm labor and sex trafficking, such as conspiracy charges and charges of forced labor. Some may point out that sex trafficking carries heavier sentences because extreme violence and torture may be involved. Yet, there is evidence of brutality in farm labor trafficking as well. As this provokes further discussion, we need to look closely at how crime and punishment attach to farm labor trafficking in contrast to other forms of human trafficking. We also should look more closely at the impact plea bargaining has on bringing convictions for human traffickers and how that may dilute the severity of punishment for human trafficking crimes. The examples in Appendix A allude to this.

Dealing with the pernicious crimes of farm labor trafficking demands an “all hands on deck” response by all stakeholders responsible for hiring the work force, monitoring job site and worker well-being, vetting labor contractors, prosecuting abuses, and protecting farm workers from further abuse. Likewise, legislators and policymakers, academics,<sup>221</sup> and labor and human rights NGOs need to find common cause with agribusiness and the trade associations that represent them to address farm labor trafficking in a holistic manner, with everyone involved and bringing to the table what each does best.

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<sup>220</sup> *Id.* at iv.

<sup>221</sup> Could we not mobilize more academics and policymakers and encourage some of the high endowment colleges to fund centers and advocacy organizations specifically to address farm labor trafficking labor abuse? We have Latin American studies, Black studies, and Asian studies departments. Why not Human Trafficking studies departments that take a multi-disciplinary approach to the subject? Likewise, law schools should develop programs or add a human trafficking law course to their curriculums and link them to certifications and specializations in legal studies.

One area that needs improvement concerns the application of soft agreements to address human trafficking and labor abuse in the absence of law enforcement. We see in the example of the *Cocoa Protocol* that soft agreements are only as good as the will of all parties to live up to their commitments. In fact, as this article is being written, Miki Mistrati, the documentary filmmaker of the *Dark Side of Chocolate* is tweeting about footage from his new documentary, *The Chocolate War*, in which his team follows the trafficking of very young children from Burkina Faso to harvest cocoa on a plantation in the Ivory Coast in March 2019. Also at this time, a distinguished American lawyer is representing eight Malian boys trying to hold Nestlé and Cargill accountable for slavery and trafficking before the United States Supreme Court.<sup>222</sup>

We must also remember the potential power of the markets. Consumers and shareholders of Big Agro increasingly expect due diligence and corporate social responsibility in protecting vulnerable workers and mitigating loss of reputation, legal exposure, and financial risks. There is also an ethical and moral obligation arising from the social justice and social compliance movement that compels executives to become aware and proactive in policing their labor practices along the entire farm labor supply chain, especially targeting farm labor subcontractors and middlemen who traffic and exploit farm workers.

The food and agriculture products the world grows and consumes should not be the result of harvests tainted by blood, misery, tears, hopelessness, criminal acts, and loss of a human being's most basic human rights. This is not an incurable disease, but a problem that can be solved with collective will and compassion.

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<sup>222</sup> Tina Bellon, *U.S. appeals court revives Nestle child slavery lawsuit*, REUTERS (Oct. 23, 2018), [https://www.reuters.com/article/us-usa-court-nestle/u-s-appeals-court-revives-nestle-child-slavery-lawsuit-idUSKCN1MX2UM?feedType=RSS& \[https://perma.cc/RYL9-EECZ\]](https://www.reuters.com/article/us-usa-court-nestle/u-s-appeals-court-revives-nestle-child-slavery-lawsuit-idUSKCN1MX2UM?feedType=RSS&[https://perma.cc/RYL9-EECZ]).

APPENDIX A

Labor Trafficking Pleas/Sentences	Sex Trafficking Pleas/Sentences
<p>California v. Efren Alvarez, No. F16902732 (Sup. Ct. Fresno Cnty, May 2, 2016)</p> <p>Def.</p> <ul style="list-style-type: none"> <li>Sentenced to <b>96 mos</b> for one felony count of human labor trafficking and three felony counts of extortion under California Penal Code</li> </ul>	<p>United States v. Kettles, No. 3:16-CR-00163 (M.D. Tenn. Aug. 10, 2016)</p> <p>Def. 1:</p> <ul style="list-style-type: none"> <li><u>Jury verdict</u> on two counts, aiding and abetting to recruit, entice, harbor, transport, provide, obtain and maintain a person under the age of 14 to engage in a commercial sex act (18 U.S.C. § 1594)</li> <li>Sentenced to <b>180 mos</b>; 5 yrs supervised release</li> </ul> <p><u>Other charges involving sex trafficking were dismissed or terminated</u></p> <p>Def. 2:</p> <ul style="list-style-type: none"> <li><u>Plea agreement</u> relating to conspiracy to recruit, entice, harbor, transport, provide, obtain and maintain a person under the age of 18 to engage in a commercial sex act (18 U.S.C. § 1594(c)) and aiding and abetting to recruit, entice, harbor, transport, provide, obtain and maintain a person under the age of 14 to engage in a commercial sex act (18 U.S.C. § 1591(b)(1) and 18 U.S.C. § 2).</li> </ul> <p><u>Awaiting sentencing</u></p>
<p>United States v. Mendez, No. 1:16-CR-20170 (S.D. Fla. Mar. 17, 2016)</p> <p>Guilty pleas:</p> <p>Def. 1:</p> <ul style="list-style-type: none"> <li>Sentenced to <b>72 mos</b> for conspiracy to provide or</li> </ul>	<p>United States v. Gum, No.5:15-CR-01126 (W.D. Ok. June 16, 2015)</p> <p>Def. 1:</p> <ul style="list-style-type: none"> <li>Sentenced to <b>48 mos</b>; 3 yrs supervised release for conspiracy to sex traffic a child (18 U.S.C. § 1594)</li> </ul> <p><u>Other charges dismissed</u></p>

<p>obtain forced labor (18 U.S.C. § 1594(b))</p> <p>Def. 2:</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>12 mos</b> for conspiracy to encourage and induce illegal aliens to reside in the United States (18 U.S.C. § 1324).</li> </ul>	<p>Def. 2:</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>48 mos</b>; 5 yrs supervised release for conspiracy to sex traffic a child (18 U.S.C. § 1594)</li> </ul> <p><u>Other charges dismissed</u></p> <p>Def. 3:</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>24 mos</b>; 5 yrs supervised release for conspiracy to sex traffic a child (18 U.S.C. § 1594)</li> </ul> <p><u>Other charges dismissed</u></p> <p>Def. 4</p> <p><u>All charges dismissed</u></p> <p>Def. 5:</p> <ul style="list-style-type: none"> <li>• <u>Plea agreement</u> to counts 1 and 4 and criminal forfeiture</li> <li>• Sentenced to <b>120 mos</b>; 5 yrs supervised release</li> </ul> <p><u>Other charges dismissed</u></p> <p>Other <u>defendants awaiting sentencing.</u></p>
<p>United States v. Afolabi, No. 2:07-CR-00785 (D.N.J. Oct. 4, 2007)</p> <p>Def. convicted of:</p> <ul style="list-style-type: none"> <li>• Conspiracy to commit visa fraud (18 U.S.C. § 371)</li> <li>• Smuggling illegal aliens (8 U.S.C. § 1324)</li> <li>• Conspiracy to commit forced labor, trafficking with respect to forced labor, and document servitude (18 U.S.C. § 371)</li> <li>• Forced labor (18 U.S.C. § 1589)</li> <li>• Trafficking with respect to forced labor (18 U.S.C. § 1590)</li> <li>• Conspiracy to harbor aliens (8 U.S.C. § 1324)</li> </ul> <p><u>Awaiting sentencing</u></p>	<p>United States v. Castro, No. 2:15-CR-00011 (D.N.J. June 9, 2015)</p> <p><u>Plea Agreement</u> relating to interstate stalking (18 U.S.C. § 1594), sentenced to <u>time served</u> and 3 yrs supervised release</p> <p><u>Dismissed:</u></p> <ul style="list-style-type: none"> <li>• Attempt to establish peonage, slavery, involuntary servitude, human trafficking (18 U.S.C. § 1594)</li> <li>• Attempted sex trafficking (18 U.S.C. § 1594)</li> <li>• Attempted kidnapping (18 U.S.C. § 1201)</li> </ul>

<p><u>Plea Agreement</u> as to Lassissi Afolabi</p> <ul style="list-style-type: none"> <li>• Conspiracy to commit forced labor, trafficking with respect to forced labor, and document servitude (18 U.S.C. § 371)</li> <li>• Forced labor (18 U.S.C. § 1589)</li> <li>• Transportation of minor with intent to engage in criminal sexual activity (18 U.S.C. § 2423)</li> <li>• Sentenced to <b>292 mos.</b> counts to run concurrently</li> </ul> <p><u>Five other counts for forced labor dismissed</u></p> <p><u>Plea Agreement</u> as to Dereck Hounakey</p> <ul style="list-style-type: none"> <li>• Conspiracy to commit forced labor, trafficking with respect to forced labor, and document servitude (18 U.S.C. § 371)</li> <li>• Sentenced to <b>55 mos.</b>; 3 yrs supervised release</li> <li>• Restitution of \$3,949,140.80</li> </ul> <p><u>Three other charges dismissed</u></p> <p>Fourth Def.:</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>25 mos.</b>; 3 yrs supervised release for two charges of visa fraud</li> </ul>	
<p>United States v. Farrell et al, No. 3:07-CR-30019 (D.S.D. Mar. 15, 2007)</p> <p>Found guilty by jury of:</p> <ul style="list-style-type: none"> <li>• Conspiracy and aiding abetting in peonage (18 U.S.C § 2)</li> <li>• False statements</li> <li>• Visa fraud</li> </ul>	<p>United States v. Law, No. 2:14-CR-00004 (N.D. Ind. Jan. 15, 2014)</p> <p>Def. 1:</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>360 mos</b> on multiple counts concurrently related to sex trafficking (18 U.S.C. § 1590; 18 U.S.C. § 2421; 18 U.S.C. § 1952)</li> </ul> <p>Def. 2:</p> <ul style="list-style-type: none"> <li>• <u>Plea agreement</u></li> </ul>

<ul style="list-style-type: none"> <li>• Document servitude</li> </ul> <p>Sentenced to <b><u>36 mos</u></b> to be served concurrently; 3 yrs supervised release</p>	<ul style="list-style-type: none"> <li>• Sentenced to <b><u>time served</u></b> for Transport for Prostitution (18 U.S.C. § 2421) and Aiding and Abetting (18 U.S.C. § 2)</li> </ul> <p>Def. 3:</p> <ul style="list-style-type: none"> <li>• Sentenced to <b><u>24 mos</u></b> for use of an interstate facility to promote prostitution (18 U.S.C. § 1952(a)(3)) and aiding and abetting (18 U.S.C. § 2)</li> </ul>
	<p>United States v. Wiggins, No. 3:11-CR-02420 (W.D. Tex. Oct. 5, 2011)</p> <p>Plea agreements on ALL Defendants</p> <p>Def. Wiggins</p> <ul style="list-style-type: none"> <li>• Sentenced to <b><u>120 mos</u></b>; 3 yrs supervised release for Transporting/Mann Act (18 U.S.C. § 2421)</li> <li>• Sentenced to <b><u>212 mos</u></b>; 10 yrs supervised release</li> <li>• Restitution \$24,879.83 for conspiracy to commit sex trafficking of children by force, fraud, or coercion (18 U.S.C. § 1594)</li> </ul> <p><u>17 other serious felony charges involving human trafficking and related crimes dismissed</u></p> <p>Def. Smith</p> <ul style="list-style-type: none"> <li>• Sentenced to <b><u>168 mos</u></b>; 60 mos supervised release, and forfeiture for conspiracy/trafficking in persons (18 U.S.C. § 1594)</li> </ul> <p><u>8 serious charges related to sex trafficking dismissed</u></p> <p>Def. Thompson</p> <ul style="list-style-type: none"> <li>• Sentenced to <b><u>186 mos</u></b>; 60 mos supervised release, and forfeiture</li> </ul>

	<p>for conspiracy/trafficking in persons (18 U.S.C. § 1594)  <u>8 serious charges related to sex trafficking dismissed</u></p> <p>Def. Williams</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>180 mos</b>; 60 mos supervised release, and forfeiture for conspiracy/trafficking in persons (18 U.S.C. § 1594)  <u>8 serious charges related to sex trafficking dismissed</u></li> </ul> <p>Def. Jackson</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>90 mos</b>; 60 months supervised release, and forfeiture for conspiracy/trafficking in persons (18 U.S.C. § 1594)  <u>8 serious charges related to sex trafficking dismissed</u></li> </ul> <p>Def. SN Smith</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>time served</b>; 2 yrs supervised release, and forfeiture for conspiracy/trafficking in persons (18 U.S.C. § 1594)</li> <li>• Also sentenced to drug treatment program no fees, abstain from drug and alcohol, stars program, workforce program, mental health eval/prog, 180 days in halfway house, parenting classes, save 50% of paycheck, no contact w/male co-defts.</li> </ul> <p><u>7 serious charged related to sex trafficking and forced labor dismissed</u></p> <p>Def. Mitchell</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>time served</b>; 2 yrs supervised release, and forfeiture for conspiracy/trafficking in persons (18 U.S.C. § 1594)</li> <li>• Also sentenced to drug treatment program no fees, abstain from drug and alcohol, stars program,</li> </ul>
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	<p>workforce program, mental health eval/prog, 180 days in halfway house, parenting classes, save 50% of paycheck, no contact w/male co-defts.</p> <p><u>7 serious charged related to sex trafficking and forced labor dismissed</u></p> <p>Def. Darbonne</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>time served</b>; 3 yrs supervised release, and forfeiture for conspiracy/trafficking in persons (18 U.S.C. § 1594)</li> </ul> <p><u>7 serious charged related to sex trafficking and forced labor dismissed</u></p> <p>Def. Reemer</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>3 yrs probation</b> for withholding information of a crime (18 U.S.C. § 4)</li> </ul> <p><u>8 serious charges related to sex trafficking dismissed</u></p> <p>Def. Minnich</p> <ul style="list-style-type: none"> <li>• Prosecution on three trafficking counts <b>deferred for 18 mos</b></li> </ul> <p><u>5 counts related to sex trafficking and forced labor dismissed</u></p>
<p>United States v. Zavala, No. 2:04-CR-00962 (E.D.N.Y. Nov. 2, 2004)</p> <p>Def. 1:</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>60 mos, 120 mos, 180 mos</b> concurrently; varying years supervised release on charges of forced labor (18 U.S.C. § 1589); bringing in and harboring Aliens (8 U.S.C. § 1324); collection of credit by extortion (18 U.S.C. § 8949A); fraud with</li> </ul>	<p>United States v. Clark, No. 1:09-CR-00336 (M.D.N.C. Sept. 29, 2009)</p> <p>Plea agreement:</p> <ul style="list-style-type: none"> <li>• Sentenced <b>240 mos</b> and <b>240 mos</b>; 3 yrs supervised release, served concurrently on multiple counts of trafficking for labor and services (18 U.S.C. § 1590);</li> <li>• Sentenced <b>260 mos</b> and <b>260 mos</b> on multiple counts; 25 yrs supervised release, served concurrently with trafficking in minors under the age of 18 to engage in a commercial sex act (18 U.S.C. § 1591)</li> </ul>

<p>identification documents (18 U.S.C. § 1028)</p> <p>Def. 1:</p> <ul style="list-style-type: none"> <li>Sentenced to <b>135 mos</b> concurrently and varying years of supervised release on charges of conspiracy to defraud the United States (18 U.S.C. §§ 371 and 2551); bringing in and harboring aliens (8 U.S.C. § 1324) and other related charges; collection of credit by extortion (18 U.S.C. § 8949(a)); fraud with identification documents (18 U.S.C. § 1028)</li> </ul>	<p><u>Dismissed:</u></p> <ul style="list-style-type: none"> <li>Felon in possession of ammunition multiple counts</li> <li>Trafficking for labor and services</li> <li>Trafficking children for sex</li> </ul>
<p>United States v. Garcia, 1:02CR00110 (D.N.J. June 18, 2002)</p> <p>Five Defs made <u>Plea Agreements</u></p> <p>Def. 1</p> <ul style="list-style-type: none"> <li>Sentenced to <b>46 mos</b>; 3 yrs supervised release for forced labor (18 U.S.C. § 1594)</li> </ul> <p><u>More serious charges of human trafficking, peonage, bringing in and harboring aliens, social security and visa fraud were dismissed or disposed</u></p> <p>Def. 2</p> <ul style="list-style-type: none"> <li>Sentenced to <b>37 mos</b>; 3 yrs supervised release for conspiracy to defraud the United States (18 U.S.C. § 371)</li> </ul> <p><u>More serious charges for human trafficking and labor trafficking disposed or dismissed</u></p>	<p>United States v. Norris, No. 1:05-CR-00479 (N.D. Ga. Oct. 12, 2005)</p> <p>Def. 1.:</p> <ul style="list-style-type: none"> <li>Sentenced to <b>Life</b>; later amended to <b>60 mos</b> and 7 yrs supervised release (12/15/10) for conspiracy to defraud the United States (18 U.S.C. § 371)</li> <li>Sentenced to <b>Life</b>; later amended to <b>25 years</b> and 7 yrs supervised release (12/15/10) on multiple counts for peonage and obstructing enforcement (18 U.S.C. § 1581)</li> <li>Sentenced to <b>Life</b>; later amended to <b>25 years</b> and 7 yrs supervised release (12/15/10) for forced labor (18 U.S.C. § 1589)</li> <li>Sentenced to <b>Life</b>; later amended to <b>25 years</b> and 7 yrs supervised release (12/15/10) for multiple counts of trafficking in peonage, slavery, involuntary servitude (18 U.S.C. § 1590)</li> <li>Sentenced to <b>Life</b>; later amended to <b>25 years</b> and 7 yrs supervised</li> </ul>

<p>Def. 3</p> <ul style="list-style-type: none"> <li>• Pleaded to bringing in and harboring aliens, sentenced to <b>14 mos</b> and 2 yrs supervised release (8 U.S.C. § 1324)</li> </ul> <p><u>More serious charges of human trafficking and forced labor charges disposed or dismissed</u></p> <p>Def. 4</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>12 mos</b> probation for bringing in and harboring aliens (8 U.S.C. § 1324)</li> </ul> <p><u>More serious charges human trafficking and forced labor charges disposed or dismissed</u></p> <p>Def. 5</p> <ul style="list-style-type: none"> <li>• All charges were terminated</li> </ul> <p><b>Note:</b> Court accepted plea agreement. Statement issued from the bench. Court granted the government's motion for an additional level downward departure for <u>acceptance of responsibility</u>.</p>	<p>release (12/15/10) for multiple counts of sex trafficking of children or by force, fraud, or coercion (18 U.S.C. § 1591)</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>Life</b>; later amended to <b>10 years</b> and 7 yrs supervised release (12/15/10) for intimidation or force against a witness (18 U.S.C. § 1512)</li> <li>• Sentenced to <b>Life</b>; later amended to <b>10 years</b> and 7 yrs supervised release (12/15/10) for peonage and obstructing enforcement (18 U.S.C. § 1581)</li> </ul> <p>Def. 2:</p> <ul style="list-style-type: none"> <li>• Sentenced to <b>34 mos</b>; 3 yrs supervised release for conspiracy to defraud the United States (18 U.S.C. § 371).</li> </ul> <p><u>All other charges dismissed on government's motion</u></p>
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