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Chapter 6

Forced Labor in the US Construction Industry



Aaron Halegua and Katherine Chin

6.1 Introduction

Dr. Marty Rohringer was ending a graveyard shift at the lone hospital on Saipan, the exceptionally remote US island, when four Chinese men arrived with a body. The figure they had with them—a middle-aged man, also Chinese, naked but for his underwear—was unresponsive, and had clearly suffered severe trauma. As an orderly lifted him onto a gurney, the four men indicated in broken English that he had fallen from a hotel-room balcony. Rohringer began to evaluate the man under the ER's harsh fluorescent lights. His skin was pallid and turning blue, and it was obvious that he could not be revived. One of the men who'd arrived with the body started to mime chest compressions: Was there really nothing to be done? Rohringer pronounced the man dead just before 8 a.m. on March 22, 2017. Already, the medical staff suspected that the story of his fall was a lie.¹ (Campbell 2018)

The man who died that night was Hu Yuanyou, a construction worker who fell from the scaffolding of the Imperial Pacific casino project in Saipan. Hu was employed by one of the casino's contractors, despite lacking a legal work permit. After his fall, Hu's managers did not call an ambulance, choosing instead to rip off his uniform and drive him to the hospital, where they misled doctors about the cause of his injuries. During the prior year, hospital doctors in Saipan had noticed a worrying number of construction workers with severe injuries. They were also troubled that most workers who arrived at the hospital said very little to the doctors themselves. Instead, they were often accompanied by company representatives who would describe the accident, answer any questions, and sometimes order the patient

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be discharged and sent back to China—even when the doctors recommended otherwise.

Disturbed by this pattern, the doctors compiled a spreadsheet that listed 80 cases of serious injuries from the construction site in 12 months and sent it to the federal agency that oversees workplace safety (De La Torre 2016). This prompted a Hawaii-based investigator to fly over 8 hours to Saipan, inspect the worksite, and issue a few fines, but then construction continued as usual. Things only really changed after Hu fell and died, at which point the Federal Bureau of Investigation (FBI) raided the offices of the casino's contractors, found hundreds of confiscated passports, and discovered that hundreds of the construction workers had entered Saipan as "tourists" and lacked work authorization—uncovering what some experts have called "a pretty classic trafficking and forced labor scenario" (Yan 2018).

The forced labor scheme uncovered at the Imperial Pacific site in Saipan is not unique. The construction industry is notorious for poor working conditions and labor exploitation, including cases of forced labor and human trafficking. The International Labour Organization (ILO) reported that 24.9 million people were subjected to forced labor in 2016, and that the construction industry has the second-highest number of workers in forced labor situations worldwide, exceeded only by domestic work (International Labour Organization and Walk Free Foundation 2017). International media and advocacy groups have exposed some of these abuses. For instance, in 2014, the *Guardian* and Amnesty International reported that stadiums for the 2022 FIFA World Cup in Qatar were built by Nepalese men who worked for low wages under deadly conditions and were not allowed to return home without their employers' permission² (Doward 2014; Amnesty International 2014). Over 400 Nepalese migrant workers were reported to have died on these construction sites (Doward 2014). Around the same time, investigations by *The New York Times* and Human Rights Watch revealed that thousands of workers constructing New York University's campus in Abu Dhabi had incurred debt to pay huge recruitment fees based on what turned-out to be false promises of high salaries and good conditions and were then threatened with deportation if they complained (Kaminer and O'Driscoll 2014; Human Rights Watch 2015).

But this phenomenon is neither new nor limited to these "remote" places. Forced labor schemes pre-date the founding of the United States and then played a critical role in erecting prestigious universities,³ constructing the nation's railroads, and building the country's vital infrastructure over the subsequent two centuries. More recently, in 2015, a settlement was reached to compensate 500 Indian workers

²Only in January 2020, after years of international pressure, did the Qatari government abolish the tenant of the *kafala* ("sponsorship") system requiring migrant workers to obtain their employers' permission in order to leave the country.

³Several universities have launched independent inquiries into their legacies of slavery and the role that slave labor played in their founding. Many found that their endowments were owed to patrons who made their wealth through the slave trade, but a few also revealed direct connections to slave labor in the physical construction of the schools, including the University of Virginia and Brown University.

subjected to forced labor by Signal International, a company that was repairing rigs and ships along the Gulf Coast after Hurricane Katrina (Chen 2015). In 2019, a jury convicted the head of US operations for the China-based Rilin construction firm for operating a forced labor scheme in New York City (US Attorney's Office, E.D.N.Y, Department of Justice 2019).

This chapter seeks to explain the prevalence of forced labor in the construction industry and illustrate the phenomenon through a few case studies, including the casino-builders in Saipan. Readers will be introduced to some features of the construction industry that make workers vulnerable to labor exploitation more generally and factors that make workers susceptible to various tools of force and coercion. Methods of control that employers often use include physically restraining workers, exploiting worker indebtedness, withholding wages, and fostering the workers' dependence on the employer. Such mechanisms were crucial in the use of forced labor to construct railroads in the 1800s and the more recent Saipan case mentioned above. The chapter then traces how strategies of coercion in the construction industry have remained surprisingly consistent over time and explores the extent of the problem in the United States. Finally, the chapter authors offer several recommendations (Sect. 6.4) for preventing and stopping forced labor in the construction sector.

6.2 Discussion

The ILO Convention on forced labor, promulgated in 1930 and ratified by almost every nation, defines forced labor as “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.” (International Labour Organization 1930). The critical feature that turns an abusive work situation into “forced labor” is that the work is not performed voluntarily, but compelled through some form of force, fraud, or coercion. Methods are not limited to physical restraints that prevent the worker from leaving, but also include threatening legal, economic, or psychological harm to the worker. This is reflected in the definition of forced labor in the federal Trafficking Victims Prevention Act (TVPA), passed in 2000: “*any scheme ... intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint*” (18 U.S.C.A. §1589).

In modern forced labor cases, some of the more common coercive tools include fraudulently representing the terms of the job, confiscating workers' identity documents, withholding wages, limiting mobility, threatening deportation, and exploiting workers' indebtedness—which is often incurred to pay exorbitant fees related to obtaining the job. The coercive effect of any particular measure differs based on the context. Therefore, to appreciate how these coercive tools operate in practice, it is important to first understand the underlying conditions and vulnerabilities of workers in that particular sector.

6.2.1 *Exploitation and Forced Labor in the Construction Industry*

Construction workers have many of the same vulnerabilities to employer exploitation as low-wage workers in other sectors. However, there are also certain features of the construction industry that exacerbate these vulnerabilities. This chapter discusses three such characteristics: (1) the project-based and location-specific nature of the work; (2) the prevalence of complex subcontracting arrangements; and (3) the practice of “payment upon completion.”

Construction involves short-term projects that must be performed in a particular location. The short-term nature of the project makes it difficult for workers to develop any form of collective identity or organization that may build worker power, such as a union. Projects may also occur in less-populated areas, where established unions are not present and where government inspectors visit less frequently. As the local workforce is often insufficient to complete big projects, workers are often brought to the project site from other regions. Over half of unskilled construction workers in the United States are immigrants (Siniavskaia 2018). Migration is often expensive, and these costs frequently get passed onto workers through recruitment fees. Upon arrival, workers’ dependence on their employer is often cemented by the requirement of living in company housing. Further, migrant workers generally lack familiarity with their surroundings, let alone the legal system or any social networks, and may not speak the local language. These conditions entrench a relationship of dependence in which the employer has great power over its workers.⁴

Complex subcontracting arrangements are prevalent on most construction projects, since they often involve multiple phases requiring different skills and work schedules (Stanford Law Review 1958). Accordingly, a general contractor may need to engage numerous subcontractors for discrete parts of the project, and contractors prefer to keep a flexible labor supply. Particularly in locations where finding workers is difficult, contractors may hire a subcontractor to recruit, hire, and pay the workers, even though the contractor directs their daily work on the site. These tiered, fluctuating labor systems obfuscate important issues such as who ultimately “employs” the worker or who is responsible for workers’ safety. Government agencies seeking to enforce such standards must first overcome this obstacle of identifying who is in control.

The construction industry often operates on a “payment upon completion” financing structure; moreover, many contracts penalize contractors who do not

⁴This is not to suggest that only migrant workers are subject to abuse. Non-immigrant construction workers in the United States, particularly those who are not union members, also face various forms of exploitation, such as wage theft by their employers or being misclassified as independent contractors. However, based on the research and observations of the authors, many of the worst abuses do seem to involve immigrant workers, which is not surprising in light of their heightened vulnerability. Indeed, this seems to hold true across countries: an ILO report on the global construction industry finds that immigrant workers are more likely to suffer injuries, experience wage theft, be charged fees, and be subjected to forced labor (Buckley et al. 2016).

complete the work on time. Therefore, contractors want to finish projects as quickly as possible and minimize expenses incurred along the way. These incentives discourage investment in workplace safety, training, and equipment, as well as adherence to overtime regulations. The risks inherent to this financing structure also incentivize employers to withhold all or some of workers' wages until the work is complete and they have received payment themselves. Given the subcontracting chains that exist on many projects, it can often take months for payments to filter down from main contractors to the workers at the bottom of the supply chain (Business and Human Rights Resource Centre 2018). Where a contractor only receives partial payment because of unsatisfactory work, it may also try to pass that loss on to the workers.

In these distinct conditions of vulnerability, labor exploitation may develop into forced labor whereby certain "tools of coercion" are employed. Historically and currently, the most commonly-used tools can be generally classified into four categories: (1) physical coercion; (2) debt entrapment; (3) withholding wages; and (4) other measures to increase worker dependence on their employers, such as confiscating identity documents, employer-provided housing, restricting mobility, and threatened abuse of legal processes. The cases below illustrate how these tools operate in practice.

6.2.2 *Historical Examples of Forced Labor in Construction*

Forced labor played a significant role in the early part of the United States' physical and economic development. Prior to the American Revolution, it is estimated that between one half and two-thirds of all White immigrants to the US colonies were indentured servants, obligated to work off a debt to the employer who paid for their passage across the Atlantic—and risking physical punishment or death if they did not (Galenson 1984). As improving conditions in the English labor market made the cost of indentured White servants more expensive, the importation of African slaves began to grow. The legal institution of chattel slavery, which equated African American bodies with property and labor, existed in the United States from its colonial beginnings until the Thirteenth Amendment was passed in 1865⁵ (Snyder 2013). Historians have found that Black slaves even laid the foundations of the White House and the Capitol building (Hannah-Jones 2019).

After slavery was formally abolished, the practice of forced labor continued and was intertwined with major construction and infrastructure projects, such as the

⁵While chattel slavery shares certain similarities with other forms of forced labor, there are also important elements that distinguish that institution. See Beutin, *Black Suffering for/from Anti-Trafficking Advocacy* (Beutin 2017). While the example of enslaving African Americans is most familiar, historians have also documented that Native Americans were enslaved by Spanish colonists as well as by the English and US colonists and settlers. See Reséndez, *The Other Slavery: The Uncovered Story of Indian Enslavement in America* (Reséndez 2016).

Transcontinental Railway and railroad infrastructure in the US South. In the former case, the railroad companies seeking to connect the coasts needed thousands of laborers for their project, but labor shortages led to only 800 applications from free laborers within the United States. The companies thus turned to Chinese merchant associations, who recruited “coolie” indentured laborers from China (Chap. 10).⁶ The terms of their labor were negotiated by the merchant associations, who effectively placed the laborers in an indefinite system of debt bondage by charging high interest on their passage loans and selling their labor for incredibly low wages (Chang 2015). The Chinese workers’ wages were paid directly to the associations, consolidating their continued control over the workers. These laborers—already in a foreign country with few social connections—were confined to living and working in remote sites, apart from non-Chinese workers, thus furthering their isolation. The state facilitated this system of bonded migrant labor; local police were enlisted to catch and punish workers who tried to run away.

The less-populated Southern states adopted similar strategies to fill the large labor needs for constructing railways there. In a period of just 5 months in 1907, one Florida town was reported to have placed hundreds of men in conditions of peonage (Carper 1976). The most notorious case of labor abuse was that of the Florida East Coast Railway (FEC). FEC agents recruited recent immigrants to New York and foreign laborers who came through the *padrone* system.⁷ The company employed a debt entrapment scheme: it paid for the workers’ passage to Florida, but misled them as to the cost involved and then required them to keep working until that debt was repaid. Upon arrival, laborers were placed under armed guard and faced physical punishment, including whipping, if they were unable to accomplish their tasks (Knetsch 1998). The company also withheld wages, promising workers a daily wage of \$4 but paying a mere \$1.25 a day (Carper 1976). Workers were kept in dismal living conditions and forced to purchase items such as blankets, shoes, and overalls for inflated prices that amounted to more than a day’s wages, further ensuring that they would never repay their debt. If they ran away, workers were arrested, at which point they would face the impossible choice of returning to the FEC workforce or serving time in prison—which also leased-out inmates as laborers (Chap. 9) (Carper 1976).

⁶The term “coolie” is widely thought to have originated from the Tamil word for wages, or the Chinese word for “bitter labor.” By the mid-nineteenth century in the United States, “coolie” was used to refer to indentured laborers imported from China and India, and became synonymous with Asian servitude (Chang 2015).

⁷The word “padrone” means “boss” or “manager” in Italian. The *padrone* system was a set of migration networks organized by labor contractors in the United States during the late 1800s and early 1900s. The contractors often recruited immigrants of the same national origin, finding them jobs, advancing their cost of migration for a cut of their wages, and providing other services for fees deducted from the immigrants’ wages. These migration networks were typically concentrated in Italy, Greece, Turkey, Hungary, and Bulgaria (Sadowski-Smith 2008).

These early cases highlight how the features of the construction industry create fertile soil for exploitation and coercion. In each case, desperate for large numbers of cheap workers, companies engaged third-parties to recruit these workers from overseas or out-of-state. The cost of their passage became a debt that compelled workers to continue working in order to repay or face dire consequences. Workers were physically isolated and prohibited from leaving, often with the coercive power of the state helping to enforce this confinement.

6.2.3 Modern Manifestations of Forced Labor: The Imperial Pacific Casino in Saipan

Elements of the historical forced labor schemes involving chattel slavery or railroad workers can still be found in pockets of the US construction industry today. The persistent demand for site-specific, temporary, low-wage labor results in the importation of workers from overseas or other parts of the country. These migrant workers often accumulate large debts based on false promises and find themselves held captive to an employer that underpays and abuses them in a foreign land. For this largely migrant workforce, immigration rules have effectively replaced the earlier role of the police as coercive state power wielded by employers to prevent workers from escaping these conditions. Work visas tie these migrants' right to residency to one specific employer, meaning workers must endure their labor conditions or face deportation. Undocumented workers who lack visas may be deported at any time and are thus reluctant to disobey an employer who might notify immigration authorities.

The case of the Imperial Pacific casino project on the island of Saipan illustrates such a forced labor scheme. In 2014, Imperial Pacific obtained the exclusive license to operate a casino in Saipan. Soon thereafter, it hired multiple Chinese companies to do the construction. The Metallurgical Corporation of China (MCC), a state-owned Chinese firm, was hired as the general contractor, responsible for the building's foundation, steel frame, and electrical system. Numerous other companies, including Beilida, Gold Mantis, Grandland, Haitian, Jiangsu Provincial, Sino Great Wall, and CMC Macao, were contracted to handle other parts of the project. Each contractor hired its own workers, almost all of whom were brought into Saipan from China. Many entered Saipan on CNMI-Only Transitional Worker ("CW-1") permits—a guest worker visa specific to the Commonwealth of the Northern Mariana Islands (CNMI) that allows the employee to work for a particular employer for up to 1 year. When the visa quota was reached, however, the contractors hired subcontractors or recruiters that brought in several hundreds of workers to Saipan as "tourists."⁸ These workers were generally promised good jobs in the United States

⁸A special parole program for the CNMI allowed Chinese nationals to enter Saipan without a visa for up to 45 days for the purpose of tourism. Due to abuses of this program, this period has since been shortened to 14 days (Encinares 2019).

on a multi-year project with high wages, overtime pay, and possibly a green card after a few years. Job ads were posted online and circulated through social media, and recruiters visited villages and homes. To pay the steep recruitment fees, most workers borrowed money, often from loan sharks at high interest rates, with their house or farm posted as collateral. It was only after arriving in Saipan and being coached on what to tell the customs agent, or even after starting work, that many realized they had been tricked and lacked the proper work authorization.

The conditions in Saipan were oppressive. The contractors required employees to work 13-hours per day, paid them less than minimum wage (or sometimes nothing at all), refused requests for rest days, and levied excessive fines for minor transgressions. Saipan's infrastructure was not prepared for an influx of thousands of workers, and the men were crammed into unsanitary dorms that sometimes lacked running water and fed meals of insect-infested food. Safety precautions were abysmal, as demonstrated by the case of Mr. Hu, and injuries frequent. Furthermore, the contractors refused to allow the undocumented workers medical treatment even after workers suffered burned legs, scalded hands, or crushed fingers; contractors told such workers that going to the hospital might get them deported.

The contractors coerced workers through various means. During daily meetings, managers would threaten workers that if they did not work hard, or if they disobeyed orders, they would be fired and deported back to China. Sometimes managers would ridicule workers about the large debts they incurred to get their jobs. The contractors also made the workers believe that complaining was futile. They said that no authorities would listen to the workers because they were working illegally. The contractors hid the workers from the authorities by telling them to stay in the dormitories when the worksite was being inspected. Most contractors also confiscated the workers' passports and threatened to fire any worker that refused. As one trafficking expert described the situation, "You have people with these debts. They're in the middle of the ocean. The isolation of the location is ripe for exploitation"⁹ (Yan 2018).

The wages promised by the contractors often fell below the federal minimum wage and overtime pay requirements. Nonetheless, many contractors failed to pay even that amount: some workers labored for 3 or 4 months without any pay at all. The contractors often deflected complaints by stating that they too had not yet been paid by the developer, but everybody would be paid in full. The common practice of the companies was to be in arrears, or owing workers 2 to 4 weeks of wages at any given point. This meant that if a worker quit, they would effectively be forfeiting that money. When wages were dispersed, they were often sent to the workers' accounts in China, meaning the workers were generally cashless and thus dependent on their employers while in Saipan.

Government authorities did eventually crack down on the scheme. The FBI raided the offices of some of Imperial Pacific's contractors—although only after Hu's death—and found the confiscated passports and lists of "*heigong*" (a Chinese

⁹ Copyrighted 2018. Associated Press. 2182900:1220PF. Used with permission.

term for individuals working illegally). Several project managers for the contractors were arrested and eventually pleaded guilty to illegally employing unauthorized aliens and served prison sentences. The federal Occupational Safety and Health Administration (OSHA) charged the Chinese firms with dozens of “serious violations” of the workplace safety code and issued over \$200,000 in fines. Imperial Pacific received no fines for the safety violations nor any criminal punishment.

The workers also received compensation through settlements reached between the US Department of Labor (USDOL) and four of the Chinese construction firms—totaling \$13.9 million for over 2,400 employees. Quite significantly, that sum included not only compensation for owed wages, but also reimbursement for the recruitment fees paid by workers in China, which were often \$6,000 or more. It is quite rare for workers to recover these fees because of the complex chain of brokers between the worker and the ultimate employer, and since it is often difficult to locate the recruiter after the worker returns home years later.

It is worth noting that neither the casino nor the contractors were criminally charged for trafficking or forced labor under the TVPA. The precise reason for this is unknown; however, one factor may be the difficulty in proving the elements of such crimes, such as coercion, whereas proving the employment of a worker lacking proper authorization is quite straightforward. A private lawsuit on behalf of some of the Chinese workers injured on the site—many of them received no medical attention, let alone compensation—was amended in 2019 to add a forced labor claim under the TVPA. In addition to suing the contractors for engaging in the forced labor scheme, the litigation alleges that Imperial Pacific either participated in the scheme or, at a minimum, “knowingly benefitted” from it and therefore should also be liable. The case was still pending in the US federal court in Saipan at the time of writing.¹⁰

6.3 Conclusion

Worker exploitation and forced labor have been interwoven into the United States’ construction industry since its inception and continues today. While these problems are not unique to the construction sector, certain characteristics of the industry, as demonstrated by the case studies, make it particularly ripe for such abuses; most notably: (1) the project-based and location-specific nature of the work, demanding large quantities of short-term, cheap labor be brought from other locations; (2) the reliance on subcontracting and the diffusion of accountability across subcontracting chains; and (3) the financing structure of the construction industry and the prevalent practice of paying subcontractors only upon completion of the work.

These conditions create a fertile environment for forced labor, and the mechanisms used by employers to effectuate such schemes have been remarkably consistent. First, physical restrictions on leaving the job were enforced by the police in the

¹⁰Chapter author Aaron Halegua is an attorney representing the workers in that litigation.

early railroad cases, but are more subtly effectuated today through the confiscation of passports, the threat of deportation, or the guarded supervision of worker residences. Second, construction firms continue exploiting worker indebtedness to maintain a compliant labor force: Chinese indentured workers' payments to merchant associations as passage loans look very similar to the high recruitment fees that workers paid for passage to Saipan to work on the casino project. Third, low pay and wage arrears remain a popular tool for making sure that workers stay indebted to their employers and thus stuck in their oppressive employment. The FEC only paid workers a quarter of their promised salary; in Saipan, contractors withheld several weeks of salary, paid below minimum wage, and sometimes paid no wages at all.

It is important to note how the state's coercive mechanisms are exploited to further coerce vulnerable workers. In earlier cases, the role was blatant and clear: police arrested workers who ran away. In modern times, immigration laws and the structure of guest worker programs have a comparable impact. Generally, a guest worker, whether under the H-2B or CW-1 program, may only work for the employer that sponsored them. Thus, whether undocumented or on a legal work visa, an indebted worker abused by their employer may only leave their employment at the risk of being deported.¹¹ This leaves workers essentially trapped and afraid to complain—a fact that employers readily exploit.

But how prevalent is this problem in the United States? While precise numbers are obviously difficult to obtain, Polaris has found that construction is one of the top 15 industries that contribute to human trafficking in the United States, identifying 144 human trafficking cases and 405 labor exploitation cases from 2007 to 2016 in that sector (Polaris 2017). Most of the workers involved were on H-2B visas or undocumented. However, this is likely only the tip of the iceberg. Polaris only classified 55% of the cases about which it was contacted because it lacked sufficient information regarding the others (Polaris 2017). Presumably, many exploited workers never reach out for help at all due to limited knowledge about their legal rights, skepticism that complaining will result in any positive outcome, and fear of retaliation or deportation (Halegua 2016).

Part of the problem is insufficient enforcement of the laws prohibiting labor exploitation or forced labor. The above-referenced settlement with Signal or the back-paid wages in the Saipan case may give the impression that traffickers are often held accountable and the workers receive some modicum of justice. However, of the cases brought to the government or private lawyers, only the most "winnable" may get prosecuted. It is not necessarily the most egregious cases or reprehensible violations that result in legal action, but those where the perpetrator can be located, the aggrieved are not too intimidated to testify, and the evidence is strong. Furthermore, the more "successful" trafficking schemes may never be detected by law enforcement. Most forced labor victims in the United States never receive any

¹¹The CW-1 program does make some provision for a worker to switch employers, but only if the new employer files a petition to hire that individual as a guest worker within 30 days of their prior employment ending. *See* 8 CFR § 214.2(w)(7).

remedy, and construction is likely no exception. While Polaris alone identified 10,949 human trafficking cases in 2018, the Department of Justice only initiated 230 human trafficking prosecutions that year (Polaris 2018; The United States Department of Justice 2019). As for private lawsuits, only 299 cases were brought from 2003 to 2018 (The Human Trafficking Legal Center 2018). This is insufficient either to deter traffickers or to encourage abused workers to come forward.

So what else can be done to fight forced labor? This chapter primarily discussed instances of forced labor where the legal violations and the exercise of coercion were fairly clear. However, the workers in these case studies represent a narrow sliver of a much larger group of individuals working precarious jobs for low pay across industries, and who face differing degrees and forms of exploitation. Reducing these opportunities for worker abuse requires thinking not only about more robust government enforcement, but also considering more broadly how immigration law, employment regulations, and collective bargaining rights interact to shape labor markets and the power dynamics between employers and employees. In this regard, for instance, strategies to organize workers and increase unionization are crucially important to reducing their vulnerability. In the case of migrant workers, removing employers' ability to exercise total control over whether a worker can remain in the country (Chap. 3) would also decrease those firms' ability to coerce employees. These broader strategies to reduce the exploitation of all workers form an important piece of any effort to fight forced labor.

6.4 Recommendations

The recommendations offered here are more specifically focused on combatting forced labor in the construction industry, although they may still be applicable to other sectors.

1. *Hold property owners and developers at the “top of the chain” accountable for forced labor on their construction site by enforcing the “knowingly benefits” provision of the TVPA.*

It has long been recognized that combatting the effects of subcontracting requires holding the “top of the chain” accountable for abuses. These larger firms are often the only ones with the means to provide workers a remedy and the economic leverage to shape industry practices. In the construction context, this means holding the developer and general contractor responsible for the practices of any subcontractors or recruiters. In the United States, there are already mechanisms in the construction industry designed for this purpose, such as mechanics liens available under state law. These liens allow unpaid workers to claim an interest in any property that they helped to construct (NOLO 1958). Another accountability mechanism is OSHA's recognition of liability for parties exerting control over a property (as opposed to just control over the workers). So how can developers or construction firms be held accountable for forced labor?

There already exist legal instruments, though imperfect, for establishing the accountability of firms higher up the chain. For instance, under the TVPA, any enterprise that “knowingly benefits” from a forced labor venture may be liable for damages to the trafficked workers or face criminal prosecution. However, most litigation focuses on the actors that directly carry out the forced labor scheme. More cases, as in the case in Saipan discussed above, should be brought against those who knowingly benefit from the scheme.

2. *Ban entities that engage in or knowingly benefit from forced labor from bidding on future government projects.*

Regulations concerning federal contractors or grant recipients increasingly require that these entities implement compliance plans and procedures to monitor, detect, and terminate any employee, subcontractor, or subgrantee that engages in forced labor or human trafficking (E.O. 13627 § 2(a); H.R. 4310 § 1703). Further, if investigations reveal substantiated engagement in trafficking-related activities, that information will be recorded in the Federal Awardee Performance and Integrity Information System, which contracting officers must review prior to issuing any awards over \$150,000 (H.R. 4310 § 1704; 2 C.F.R. § 200.205). Local governments and private developers should follow this approach of punishing firms found to benefit from forced labor and ban them from bidding on future projects.

3. *Deny guest worker visas to companies that engage in or knowingly benefit from forced labor.*

Developers or general contractors who engage companies found to use forced labor should also be prohibited from recruiting guest workers in the future. For instance, after the Saipan incident, the CW-1 program was modified to prohibit any business that “knowingly benefited” from trafficking from participating in that program (115 H.R. 5956). However, the government must *actually* exercise this authority and act against such companies in order for it to have the desired deterrent effect.

4. *Eliminate recruitment fees by making developers and employers liable for reimbursing any fees paid by workers on their site.*

The goal should be to eliminate the payment of recruitment fees by workers prior to migration, as they put already-vulnerable workers into deeper debt and thus make them more susceptible to coercion. Indeed, many advocates have called for “zero-fee” or “employer pays” systems, and this is the formal rule in some US guest worker programs.¹² However, enforcement is difficult. At a minimum, all actors along the migration chain, including the ultimate employer, should be liable if a worker is found to have paid an illegal fee. For instance, in the Saipan case, although many of the recruitment fees were paid in China, the USDOL settlement required

¹²The regulations for the H-2A and H-2B programs both prohibit collecting recruitment or job placement fees from workers, and require employers to prohibit any foreign labor contractors or agents recruiting on their behalf from collecting any fees. *See* 20 C.F.R. § 655.135(j), (k) (relevant H-2A provisions); 20 C.F.R. § 655.20(o), (p) (relevant H-2B provisions).

the contractors in Saipan to repay this money. This should incentivize employers to take steps necessary to stop the practice of charging fees, including bearing more expenses themselves, vetting the recruiters that they engage, and training workers while they are still in their home country ([United Nations Global Compact](#)).

5. *Require developers to establish independent, private monitoring and complaint mechanisms to fill the gaps left by inadequate government enforcement.*

Even if developers or general contractors could be held liable for forced labor in their supply chains, government enforcement alone will always be insufficient to detect the vast majority of cases. This point is starkly made by examining OSHA's enforcement of workplace safety in the United States: at current rates, it would take over 165 years for OSHA to inspect each of the country's eight million workplaces just once ([Berkowitz](#)). This is even more problematic in construction where the "worksites" may only exist for a number of months.

Developers must therefore establish their own mechanisms to prevent and detect forced labor practices. These schemes should address recruitment, worker training, worker safety, and wages and hours, and should be monitored by an independent third-party. If no union is in place, a complaint mechanism should also be established and workers offered a means of organizing. A crucial element is the "independent" aspect—meaning that even if the developer or employer is funding the mechanism, there must be ways to ensure the monitor is not influenced by that party's demands. Some progressive construction firms established the "Building Responsibly" coalition, adopting principles along these lines ([Building Responsibly 2018](#)). Monitoring schemes have also been tried at the Imperial Pacific site in Saipan, as part of a USDOL settlement (United States Department of Labor [2019](#)). These types of coalitions are a necessary complement to more traditional, top-down government enforcement.

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