

TESTIMONY OF
BARRY M. KOCH, ESQ., CAMS, CFCS
BEFORE THE HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON NATIONAL SECURITY, INTERNATIONAL DEVELOPMENT
AND MONETARY POLICY
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Chairwoman Waters, Ranking Member McHenry, members of the Committee, thank you for today's invitation.

My name is Barry Koch. I'm a law professor and a private attorney with a consulting practice in which I provide expert witness and regulatory advisory services in money laundering cases and financial crimes risk management. I'm also a co-founder of the United States and European Bankers Alliances Against Human Trafficking, a former Commissioner on the Financial Sector Commission on Modern Slavery and Human Trafficking (the Liechtenstein Initiative), and I was one of a team of Compliance professionals that developed the first quantitative model in the banking industry to monitor transactional activity for "red flags" indicative of labor trafficking and sex trafficking.

There are many stakeholders in the universe of people and organizations committed to combatting modern slavery and human trafficking. There's law enforcement, which is focused on investigations and arrests as well as prosecutions and forfeitures of the traffickers' criminal proceeds; there are the victims' service providers and mental health professionals who provide services to survivors—safe houses, counseling, medical care, all of which provide remedy and reduce the risk of re-victimization; there are legislators who work on enacting legal and statutory relief for victims; and there are NGOs who deal with important policy issues affecting victims and anti-trafficking efforts—

But among these many stakeholders, it is the financial sector that finds itself in the unique position of being able to move global economies; the financial sector can and does impact global markets and can and does affect decision making by sovereign governments. So, the financial sector is in a special place when it comes to joining the fight to eradicate trafficking in human beings, and most of my remarks today will be from that perspective, having spent much of my career working in large, complex global financial institutions.

One last comment before I offer five concrete recommendations for the Committee to consider—

We are all in emphatic agreement about the moral imperative to end human trafficking—slavery destroys lives and human potential, and trafficking is a phenomenon where the world's worst people are exploiting the world's most vulnerable—but I'd like to offer an additional, practical reason for increasing our anti-trafficking efforts, which is that trafficking on a macro level is economically inefficient. **Trafficking depresses innovation, it fuels corruption and the flow of illicit funds in the financial system, it deprives governments of tax revenues, and it disrupts the efficient deployment of human capital.** It privatizes criminal profits while socializing the

costs. One compelling statistic that I recently read reported that in the UK, for example, the annual cost to the government of each trafficking case (law enforcement, medical and social services, lost tax revenues, etc.) was approximately GBP 330,000, with an annual cost to the government of between GBP 3.3-4.3 billion. Simply stated, trafficking in the long run creates a significant drag on the global economy and capital markets.

Trafficking in persons is a crime that is unlike most others, in that it is not committed for revenge, and it is not committed to make a political statement, and it is not committed because of blackmail or coercion. Rather, human trafficking is exclusively about greed and all about the money. And there are concrete steps that can be taken to make it more difficult for the traffickers to access the financial system; concrete steps to strengthen the industry's controls to prevent their products and services from being used to facilitate labor and sex trafficking, and to assist law enforcement in its efforts to disrupt and dismantle the traffickers' business.

So, here are my five recommendations—

1. **Increase the use of financial records and financial data to initiate and strengthen prosecutions.** Using financial records and financial data has been effective in identifying victims and perpetrators, in proving coercion—a required element in a criminal charge—in corroborating witness testimony (or supporting allegations when a witness does not recall specific dates or transactions), and in serving as the basis for asset forfeitures (that is, seizing the properties—the expensive homes and cars and other assets—of the traffickers).

Further, if witnesses are reluctant to testify—because of a threat of violence against them or family members, or the risk of being deported, or even because of the fear of being prosecuted themselves—financial records can be used to pursue other criminal charges that may not require testimony.

For example, prosecutors may bring a case against a trafficker for tax evasion, structuring and money laundering, where the trafficker's tax returns report minimal income and assets, yet the financial records refute those tax returns by illustrating a lavish lifestyle.

Serious crimes that may be related to trafficking, such as bank fraud, kidnapping, extortion, identity theft and immigration fraud can also form the basis for asset forfeiture, which is a powerful tool to disrupt a trafficking business.

Assets subject to forfeiture can include real property (houses, restaurants, stores, hotels, farms, and office parks); tangible personal property (cash, jewelry, art, boats, airplanes, and cars); and intangible personal property (professional licenses like medical, pharmacy and liquor licenses); as well as bank and investment accounts, business entities and business permits, website domain names, stocks, lien interests, and virtual currency.

2. **Strengthen the use of sanctions regimes.** There is already a precedent for the United States to use economic sanctions to designate and punish human rights violators and to deny them access to the US financial system. Executive Orders have, in the past, identified

serious and flagrant human rights abuses as threats to the national security, foreign policy and the economy of the US, and in this context the government has previously sanctioned transnational criminal organizations, companies and individuals for migrant smuggling, human trafficking and child prostitution.

The United Nations Security Council, of which the US is a permanent member, has also imposed sanctions on individuals accused of human trafficking.

Sanctions can be designed to be limited and “surgical” (as opposed to the much broader country designations) and can also be used to target industries that are notorious for using child labor and trafficked labor in their supply chains, or whose exported products are used to fund armed conflict.

In evaluating this recommendation, it is important to note that the US financial sector already has a well-developed operational infrastructure to ensure immediate and sustainable compliance.

3. **Strengthen the risk assessment process** employed by financial institutions **as a critical element of their anti-money laundering compliance programs**. There are material weaknesses in the current regulatory and operational framework, and practical ways to address them:

First, **require that the risk of human trafficking be specifically included in annual anti-money laundering risk assessments**. Very few large banks—and virtually none of the mid-size and small banks, or credit unions, money transmitters and check cashers—include the risk of human trafficking as part of their annual AML risk assessment. And the few institutions that do, limit their evaluations to their retail lines of business. So, while they have controls in place to identify trafficking-related crimes like identity theft, credit card fraud and cash structuring, they are missing the much bigger risk that their corporate and investment banking lines of business may be indirectly providing financial services to large corporate borrowers who have trafficked labor in their supply chains.

Second, **require financial institutions to evaluate human trafficking as a funding source for terrorist organizations**. Although the current regulatory scheme treats human trafficking as a reportable predicate crime for money laundering, few if any financial institutions evaluate the risk of human trafficking as a funding source for terrorist organizations. Many national governments, including our own, have also overlooked the issue, focusing only on the money laundering risks. Published case studies report instances where the Islamic State conducted on-line slave auctions in territories that it controlled, and there are more recent cases involving Boko Haram’s multiple kidnappings of school children, some of whom are ransomed, while others are forced into marrying their captors, while still others are conscripted into serving as child soldiers. The next US National Money Laundering and Counter-Terrorism Strategy should include an

evaluation of the risks associated with human trafficking as a funding source for terrorism.

Third, **encourage financial institutions to assess their exposure to involuntarily enabling or facilitating modern slavery or human trafficking in their own operations**. This type of risk assessment can look at factors such as whether the institution relies heavily on high-risk labor or recruitment operations or operates in a market or value chain with high-risk factors.¹

Reference to the United Nations-backed *Principles for Responsible Investment*, with more than three-thousand global investor signatories with assets under management in excess of \$100 trillion, and to the FAST Blueprint provides a strong and logical basis for endorsing this approach.

Finally, I would encourage this Committee to discuss with the Treasury Department whether this type of approach can be incorporated into the Financial Action Task Force's country risk assessments and mutual evaluation process.

4. **Public-private-partnerships**, sharing trafficking-related intelligence and investigative best practices is an important and effective component of an overall anti-trafficking strategy. FinCEN deserves credit for taking a lead role in bringing law enforcement and AML compliance teams together for this purpose, and I am personally involved with several not-for-profit organizations that are conducting cutting-edge work in cryptocurrency pattern analysis and data scraping of the Dark Web. These organizations are also establishing data-sharing protocols and investigative tools which are valuable assets for training financial crimes investigators and customer-facing personnel. These partnerships can also be extremely valuable in providing investigative and technology resources to mid-size and smaller financial institutions that do not currently have adequate resources to prevent, detect and report trafficking.
5. My fifth and final recommendation is not finance-industry specific. Rather, it is a recommendation to **deploy a more victim-centric approach** to our collective efforts to combat trafficking. Here are several ways to do that:

Expand existing consumer protection laws to make it easier for survivors to repair their personal credit histories which have often been hijacked by their traffickers, thus making it more difficult for survivors to open a bank account, rent an apartment, secure employment, all of which makes them more vulnerable to re-victimization.

¹ An excellent resource for developing such an assessment can be found in the FAST (Finance Against Slavery and Trafficking) Blueprint <https://www.fastinitiative.org/risk-mapping/>, which provides an interactive and user-friendly Connection Diagnostic and Risk Mapping tool. The Blueprint also provides a practical framework for institutions to develop and implement an enterprise-wide anti-trafficking program, including a global compendium of transactional and behavioral "red flags" that can be used to enhance investigations and employee training.

Expand the use of Human Trafficking Intervention Courts. Evaluate how best to build on lessons learned in Drug Treatment Courts, Domestic Violence Courts, and Mental Health Courts to bring “trauma-informed responses” to the unique needs of this vulnerable population (e.g., explore and develop more effective ways to disposition arrests for prostitution, especially when involving a minor). Many states, as well as the federal government, have pre-trial diversion programs, which can offer a more humane and effective way to help survivors. Expanding the use of these courts in appropriate cases can also lead to significant long-term benefits for the criminal justice system.

Provide immigration relief to confirmed victims whose immigration status creates a fear of deportation. This will have the added benefit of encouraging more victims to testify at trials, will enhance the relationships between victims and law enforcement, and is a more humane way to treat survivors.

Thank you again for inviting me to speak today and for your attention to this important issue. I’d be happy to respond to questions and to continuing my discussions with the Committee members and staff.

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