

Why U.S. Companies Cannot Ignore Forced Labor in Supply Chains

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U.S. law has long prohibited the “importation of goods mined, produced or manufactured in whole or in part with forced labor.” *Initiation of Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure to Impose and effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor*, 91 Fed. Reg. 12,884 (March 17, 2026). Yet, the practice of receiving work or services from people under the “menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily” persists. *Id.* The International Labour Organization estimates that more than twenty-seven million individuals work under conditions of forced labor worldwide. These individuals work in industries that feed, clothe, and power the consumer economy in the United States. For U.S. companies operating in high-risk sectors, addressing forced labor risk is both a matter of corporate social responsibility and a compliance obligation.

U.S. government interest in forced labor enforcement is intensifying on multiple fronts. For example, the Uyghur Forced Labor Prevention Act creates a presumption that goods originating from the Xinjiang region of China are made with forced labor, and companies can face detention of shipments, civil fines, and sanctions if they cannot rebut that presumption. The law thus places the burden squarely on the U.S. importer to demonstrate that forced labor is not found in their supply chains. Most recently, the Trump administration launched forced labor investigations into dozens of countries as part of its expanded enforcement posture, signaling that exposure is no longer confined to any single geographic region or industry.

Against that backdrop, plaintiffs’ lawyers have increasingly used the Trafficking Victims Protection Reauthorization Act (TVPRA), codified at 18 U.S.C. § 1595, to bring civil claims against persons or entities for their participation in, or benefit from, forced labor and human trafficking that occurs anywhere in their supply chains. Although certain industries such as textiles, critical minerals, and agriculture are particularly at risk, companies across industries can face meaningful exposure under the statute. U.S. courts have found that the TVPRA does not confine liability to those who directly

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participate in a violation but extends it to any commercial actor that benefited from a venture the actor “knew or should have known” was violating the law. Because plaintiffs frequently bring TVPRA claims against multiple defendants and often pursue their claims as class actions, a single lawsuit can expose a company to significant damage claims, attendant litigation costs, and reputational harm. Thus, companies should establish appropriate mechanisms to identify, address, and confirm the absence of forced labor in their supply chains.

Background: 18 U.S.C. § 1595.

The TVPRA extends civil liability beyond those who directly commit the offenses. Specifically, liability reaches any person or entity that (1) knowingly benefits, financially or otherwise, (2) from participation in a venture (3) that the person knew or should have known was engaged in forced labor, human trafficking, or other conduct prohibited by the statute. 18 U.S.C. § 1595.

Knowledge.

Courts have drawn a firm line between general awareness that a sector or region has a forced-labor problem and actual or constructive knowledge that a particular supplier or a particular facility has engaged in specific violations. The former, standing alone, does not suffice to establish knowledge of the prohibited activity. How specific that knowledge must be, however, is a question courts have answered differently. Some courts have required that defendants be shown to have constructive knowledge tied to the specific individual bringing the claim. *Doe v. Red Roof Inns, Inc.*, 21 F.4th 714, 725 (11th Cir. 2021). Other courts have found that constructive knowledge of the venture’s general pattern of violations is sufficient. *G.G. v. Salesforce.com, Inc.*, 76 F.4th 544, 558 (7th Cir. 2023).

Participation in a Venture.

Whether a company has “participated in a venture” turns on the nature and depth of its relationship with the offending entity, not just whether a commercial relationship existed. For courts to find that an entity is a venture, the offending entity does not need to be a trafficking or forced labor enterprise; a legitimate business whose operations have engaged in conduct that violates the statute can qualify as a venture. However, not every commercial relationship rises to the level of participation. For example, a company that purchases goods through a supply chain without exercising meaningful operational involvement in or control over its suppliers’ conduct has not crossed the “participation in a venture” threshold.

The decision in *Doe v. Apple Inc.*, 96 F.4th 403 (D.C. Cir. 2024) illustrates how courts have drawn the line between participation and non-participation in an offending enterprise. In that case, plaintiffs claimed that major technology companies such as Apple, Alphabet, Dell Technologies, and others were liable under the TVPRA for purchasing cobalt that was sourced by their suppliers through mining companies that used forced labor in the Democratic Republic of the Congo. The U.S. Court of Appeals

for the District of Columbia Circuit affirmed the lower court's dismissal of the case. On the venture element, the appeals court held that end-purchasers who had no direct relationship with, or operational involvement in, the mining operations where the abuses occurred had not participated in a venture within the meaning of the statute finding that they had merely bought a product at arm's length. *Apple Inc.*, 96 F.4th at 415–16. The appeals court went further, finding that certain facts that plaintiff relied upon to establish the defendant's "control," including the commercial pressure held by defendants over the supplier and the contractual rights to inspect and conduct third-party audits of supplier facilities, were insufficient to transform a commercial relationship into venture-level participation. *Id.* at 416.

Companies can draw two primary lessons from *Apple Inc.* First, the case confirms that downstream purchasers who lack operational entanglement with their suppliers are not, by virtue of that commercial relationship alone, participants in a venture under the TVPRA. Second, *Apple Inc.* signals that companies investing in robust supplier audit programs should not fear that those efforts will be turned against them as evidence of control. The court made clear that having the contractual right to audit differs from exercising the kind of operational control that transforms a buyer into a participant. Therefore, companies should not let fear of exposure to TVPRA liability deter them from proactively building a robust compliance program. On the contrary, as explained in the section below, requiring supplier compliance with U.S. law is an integral part of any successful compliance program, as it both reduces the likelihood of forced labor occurring in the supply chain and preserves a company's ability to defend itself against a TVRPA claim.

Framework for Reducing Exposure.

Companies with different supply chain structures, vendor relationships, and operating models face different risk profiles. But the doctrinal picture that emerges from the TVPRA case law demonstrates that courts rely heavily on the facts of a case to determine liability. Therefore, companies would be wise to be proactive when building their compliance programs to ensure they are conducting necessary due diligence and implementing safeguards to prevent exposure. To achieve that objective, companies may wish to consider the following guiding principles:

1. Understand the Supply Chain

Meaningful supply chain visibility, meaning beyond Tier 1, is the best way for companies with multi layered supply chains to identify weaknesses or areas of potential risk. Knowing not just who your suppliers are, but how they operate, who they engage with, and where risk concentrates allows companies to direct due diligence resources where they matter most and to intervene before a compliance problem becomes a legal one.

2. Conduct Supplier or Vendor Due Diligence

Before engaging with a new supplier or affiliate, companies should screen such potential vendors against restricted government entity and sanctions lists, review publicly available

information about the supplier's labor history or working conditions, ask the supplier directly for documentation of its compliance programs, and retain that information. Both the Department of Homeland Security and the Department of Labor have resources outlining goods, industries, and countries where the U.S. agencies suspect forced labor to be prevalent. Companies should create a record that demonstrates its diligence efforts and outlines the reasons why they did or did not proceed with the engagement.

3. Implement Strong Internal Policies, Monitor, and Enforce

Companies should operationalize their supplier codes of conduct and anti-forced labor policies through defined procedures, consistent monitoring of supplier conduct, and clear consequences for suppliers that fail to meet the company's stated standards. Training for procurement and sourcing personnel should equip employees with specific "red flag" indicators of forced labor and establish a clear path for raising concerns to the appropriate personnel.

4. Include Enforceable Standards Into Vendor or Supplier Contracts

Contractual provisions requiring suppliers to comply with applicable labor laws, prohibiting forced labor and granting company audit rights, serve two functions: they reduce the risk of forced labor occurring and they establish, for litigation purposes, that the company did not simply acquiesce or turn a blind eye to its suppliers' practices. A company with a documented history of detailing and enforcing these obligations is better positioned to argue that it lacked the actual or constructive knowledge of specific violations that the statute requires.

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