

Volume 26 | Issue 1

---

Winter 2023

## Made for Export: How U.S. and Philippine Policies Commodify and Traffick Filipino Nurses

Emlyn Dy-cok Medalla  
*CUNY School of Law*

Follow this and additional works at: <https://academicworks.cuny.edu/clr>



Part of the [Law Commons](#)

---

### Recommended Citation

Emlyn Medalla, *Made for Export: How U.S. and Philippine Policies Commodify and Traffick Filipino Nurses*, 26 CUNY L. Rev. 139 (2023).

The CUNY Law Review is published by the Office of Library Services at the City University of New York. For more information please contact [cunylr@law.cuny.edu](mailto:cunylr@law.cuny.edu).

---

## Made for Export: How U.S. and Philippine Policies Commodify and Traffick Filipino Nurses

### Acknowledgements

I'd like to express my endless gratitude to Brandon Sasto for his support, kindness, and enthusiasm. This Note has benefited greatly from discussions, feedback, and support from Professor Charisa Smith, Professor Zamir Ben-Dan, Amanda Katapang, Nikki Pagulayan, Jackelyn Mariano, Julia Wang, Misaël Syldor, Fatima Mohammed, Lynn Zhong, Nathalie Chevalier, Kamalpreet Chohan, Noor Sheikh, Samara Johnson, Ayana Tan, Alejandra Collado, Monica Sobrin, Reachelle Ramirez, Emily Seo, Yingyin Zhong, and Courtney Ng. Many thanks to the CUNY Law Review editors for their thoughtful work. This Note is dedicated to Hercules Albuero Medalla, Maria Josefa Dy-cok Medalla, Maria Ascuncion Dy-cok Leuterio, and all my ninangs, who have been my constant inspiration in everything I do.

# MADE FOR EXPORT: HOW U.S. AND PHILIPPINE POLICIES COMMODIFY AND TRAFFICK FILIPINO NURSES

*Emlyn Medalla*<sup>†</sup>

I. INTRODUCTION .....	140
A. <i>Author’s Note on Language</i> .....	141
II. HOW U.S. INTERVENTION FABRICATED A SYSTEM OF NURSE MASS MIGRATION .....	142
A. <i>Cheap Skilled Nurses for the Global Market: A Product of Modern Colonization</i> .....	142
B. <i>The Philippines’ Labor Export Economy: A Product of Continued Subjugation</i> .....	144
i) The Philippines’ “Flag Independence” .....	144
ii) Foreign Debt’s Role in Philippine Domestic Affairs ...	145
iii) Mass Migration by Design: U.S. and Filipino Immigration and Employment Policies.....	146
C. <i>The Supply of Filipino Nurses to Neocolonial Powers</i> .....	150
i) Power Imbalances at Work and at Home.....	150
III. PRESENT-DAY IMPACT: TWO FEDERAL COURT CASES ABOUT THE STRUGGLES OF FILIPINO NURSES IN THE U.S. ....	153
A. <i>Paguirigan v. Prompt Nursing Employment Agency LLC</i> .....	154
B. <i>New York State Nurses Association v. Albany Medical Center</i> .....	157
IV. BEYOND LEGAL REMEDIES: STEPS FORWARD IN THE REALM OF MOVEMENT LAWYERING AND COMMUNITY ORGANIZING....	161
V. CONCLUSION .....	169

---

<sup>†</sup> B.A. 2018, Hunter College at the City University of New York; J.D. 2023, City University of New York School of Law. I’d like to express my endless gratitude to Brandon Sasto for his support, kindness, and enthusiasm. This Note has benefited greatly from discussions, feedback, and support from Professor Charisa Smith, Professor Zamir Ben-Dan, Amanda Katapang, Nikki Pagulayan, Jackelyn Mariano, Julia Wang, Misaël Syldor, Fatima Mohammed, Lynn Zhong, Nathalie Chevalier, Kamalpreet Chohan, Noor Sheikh, Samara Johnson, Ayana Tan, Alejandra Collado, Monica Sobrin, Reachelle Ramirez, Emily Seo, Yingyin Zhong, and Courtney Ng. Many thanks to the CUNY Law Review editors for their thoughtful work. This Note is dedicated to Hercules Albuero Medalla, Maria Josefa Dy-cok Medalla, Maria Ascuncion Dy-cok Leuterio, and all my ninangs, who have been my constant inspiration in everything I do.

## I. INTRODUCTION

At the beginning of the COVID-19 pandemic, New Yorkers clapped from their windows and balconies to recognize health care workers as heroes.<sup>1</sup> Approximately 25% of Filipinos in the New York-New Jersey area were healthcare workers.<sup>2</sup> Filipino healthcare workers, specifically nurses, were disproportionately harmed by the COVID-19 pandemic.<sup>3</sup> A September 2020 study found that while Filipinos make up 4% of registered nurses in the United States, around 31.5% of registered nurses who died of COVID-19 were Filipino.<sup>4</sup> Of all nurses of color who passed away from COVID-19 by September 2020, almost half were Filipino.<sup>5</sup>

Filipino prevalence in the U.S. nursing profession is not coincidental, but a product of U.S. and Philippines policies that were developed to meet the needs in their respective countries: For decades, the United States has relied on the recruitment of Philippines-trained nurses to fill shortages,<sup>6</sup> and the Philippines has relied on foreign workers' remittances to fill economic gaps.<sup>7</sup> Recently, however, federal courts have stepped in and recognized the harmful and coercive practices that rise to the level of human trafficking in recruiting Filipino nurses for American facilities.<sup>8</sup>

---

<sup>1</sup> All Things Considered, *Every Night, New York City Salutes Its Health Care Workers*, NPR (Apr. 10, 2020, 4:08 PM), <https://perma.cc/68WZ-7JFH>.

<sup>2</sup> Nina Martin & Bernice Yeung, "*Similar to Times of War*": *The Staggering Toll of COVID-19 on Filipino Health Care Workers*, PROPUBLICA (May 3, 2020, 5:00 AM), <https://perma.cc/UL3W-4BEX>.

<sup>3</sup> Rosem Morton, *Filipino American Health Workers Reflect on Trauma and Healing on COVID's Frontlines*, NPR, (Nov. 9, 2021, 10:40 AM), <https://perma.cc/6ZWS-5GDH>.

<sup>4</sup> NAT'L NURSES UNITED, *SINS OF OMISSION: HOW GOVERNMENT FAILURES TO TRACK COVID-19 DATA HAVE LED TO MORE THAN 1,700 HEALTH CARE WORKER DEATHS AND JEOPARDIZE PUBLIC HEALTH 12* (2020), <https://perma.cc/XJL3-DAFA>.

<sup>5</sup> *Id.*

<sup>6</sup> S. Jenny Van, *Lost in Translation: The United States-Philippines Nurse Migration Problem Redefined*, 31 U. LA VERNE L. REV. 451-58 (2010).

<sup>7</sup> *See id.* at 461 (citing Labor Code, Pres. Dec. No. 442, as amended, art. 22 (May 1, 1974) (Phil.)), <https://www.officialgazette.gov.ph/1974/05/01/presidential-decree-no-442-s-1974/> (on file with CUNY Law Review) ("It shall be mandatory for all Filipino workers abroad to remit a portion of their foreign exchange earnings to their families, dependents, and/or beneficiaries in the country in accordance with rules and regulations prescribed by the Secretary of Labor and Employment.").

<sup>8</sup> *See, e.g.,* Paguirigan v. Prompt Nursing Emp. Agency LLC, 286 F. Supp. 3d 430 (E.D.N.Y. 2017) (explaining that the nurses had sufficiently alleged coercive practices that forced them into employment); *see also* N.Y. State Nurses Ass'n. v. Albany Med. Ctr., 473 F. Supp. 3d 63 (N.D.N.Y. 2020).

In response to two recent federal-court decisions that make clear the practice of human trafficking in U.S.-Philippine employment relations, a narrative has begun to form suggesting that the courts' characterization of the issue could drastically exacerbate the ongoing nursing shortage in American health care facilities "almost overnight."<sup>9</sup> This narrative ignores the human experience of trafficked nurses in favor of centering the American nursing shortage.<sup>10</sup> The purpose of this Note is to reframe this narrative, which exposes the commodification of Filipino nurses and the harmful expectations put on nonwhite people to meet American needs. To do so, this Note explores (1) how U.S. and Philippine politicians developed the narrative of the health-care hero to support policies that commodify Filipino nurses and justify exploitative conditions that rise to the level of human trafficking and (2) how we can look at other Filipino migrant-worker movements to inform advocacy and movement lawyering for recognition of the full humanity of Filipino health-care workers.

#### A. Author's Note on Language

The U.S. Congress passed the Trafficking Victim's Protection Act ("TVPA") in 2000 to combat trafficking in persons, which describes this phenomenon as a "contemporary manifestation of *slavery* whose victims are predominantly women and children."<sup>11</sup> This Note does not use the word slavery as synonymous with human trafficking unless used within the definition of slavery under the TVPA and in names of organizations. My decision to refrain from likening slavery to human trafficking is informed by the literature on human trafficking and anti-racism, which acknowledges that human trafficking, though a horrific crime, cannot be compared to the experience of slavery from the sixteenth to nineteenth centuries.<sup>12</sup> The United States has yet to engage in real conversations re-

---

<sup>9</sup> Heather McAdams, *Liquidated Damages or Human Trafficking? How a Recent Eastern District of New York Decision Could Impact the Nationwide Nursing Shortage*, 169 U. PA. L. REV. 16 (2020).

<sup>10</sup> Ed Yong, *Why Health-Care Workers Are Quitting in Droves*, ATLANTIC (Nov. 16, 2021), <https://perma.cc/ZF79-DPG7>.

<sup>11</sup> 22 U.S.C. § 7101(a) (emphasis added).

<sup>12</sup> See generally Karen E. Bravo, *The Role of the Transatlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse*, 9 SEATTLE J. SOC. JUST. 555, 585 (2011), <https://perma.cc/4AKY-H5X4> (explaining how the use of the slave trade in the fight against human trafficking has "in a sense, been self-protective of 'modern' humanity as well as the developed world's sense of self and willful innocence"). Slavery was a legal institution in the United States until 1865, while human trafficking is a criminal enterprise, illegal in every country in the world. *Id.*

garding reparations for Black people.<sup>13</sup> In solidarity with Black people harmed every day in the United States, I recognize that non-Black Filipinos are differently impacted by the same systems that uphold white supremacy, racial capitalism, and imperialism.

## II. HOW U.S. INTERVENTION FABRICATED A SYSTEM OF NURSE MASS MIGRATION

### A. *Cheap Skilled Nurses for the Global Market: A Product of Modern Colonization*

The U.S. colonization of the Philippines in 1898, as a product of the Spanish-American War,<sup>14</sup> created a ripe environment for the mass migration of nurses on which the United States and the Philippines currently rely.<sup>15</sup> Under American rule, the U.S. military and missionaries flooded the archipelago<sup>16</sup> and developed systems that would inextricably link Filipino nurse migration to U.S. colonialism.<sup>17</sup> These systems created the preconditions for the mass migration of Filipino nurses, which included establishing English language fluency and teaching and standardizing American nursing training.<sup>18</sup>

Unlike other colonial projects that were conducted in the language of the colonized people,<sup>19</sup> the U.S. colonization of the Philippines stood out for its Anglophone approach. English-language fluency played a large role in what would later become the mass migration of Filipino nurses.<sup>20</sup> U.S. military authorities introduced English to the schools, and it quickly became the only language used in schools for the next 41

---

<sup>13</sup> See Terry Gross, *A Call for Reparations: How America Might Narrow the Racial Gap*, NPR (June 24, 2020 1:57 PM), <https://perma.cc/8S6Z-PHBE> (explaining how conversations about reparations are either not taken seriously or cause the American public to become defensive).

<sup>14</sup> Dave Gilson, *A Conflicted Land: Rebellion, Wars, and Insurgencies in the Philippines*, PBS: FRONTLINE WORLD (June 2003), <https://perma.cc/84U4-RUAN>.

<sup>15</sup> CATHERINE CENIZA CHOY, *EMPIRE OF CARE: NURSING AND MIGRATION IN FILIPINO AMERICAN HISTORY* 42 (2003).

<sup>16</sup> Dana R. Herrera, *The Philippines: An Overview of the Colonial Era*, 20 *SE. ASIA HUMANS. & SOC. SCI. CURRICULA* 14, 16 (2020), <https://perma.cc/8AXA-EA7J>.

<sup>17</sup> CHOY, *supra* note 15, at 20.

<sup>18</sup> *Id.*

<sup>19</sup> See Angelica Gutierrez, *Why the Philippines Is the Only Former Spanish Colony That Doesn't Speak Spanish*, *ESQUIRE* (May 15, 2021), <https://perma.cc/S9PU-28E9> (referring to the U.S. seizure of Spanish-controlled colonies like the Philippines after the Spanish-American war in 1899).

<sup>20</sup> See Paulina Cachero, *From AIDS to COVID-19, America's Medical System Has a Long History of Relying on Filipino Nurses to Fight on the Frontlines*, *TIME* (May 30, 2021, 7:00 AM), <https://perma.cc/S4ZS-GHH6> (quoting UC Berkeley ethnic studies professor Catherine Ceniza Choy).

years<sup>21</sup> despite 120 languages existing in the archipelago.<sup>22</sup> Embedded in the nursing curricula, English comprised 5% of the first part of the Philippine board examination for nurses in 1920.<sup>23</sup>

The introduction of nursing and American nursing education in the Philippines were “part of a larger U.S. colonial and medical agenda that racialized Filipinos.”<sup>24</sup> Under this framework, Americans described Filipinos as weak, diseased, and racially inferior<sup>25</sup> and Americans as strong, healthy, and racially superior.<sup>26</sup> U.S. healthcare personnel adopted and spread these racialized narratives in letters, reports, articles, and books that justified the racism used in medical practice.<sup>27</sup>

Filipinos became a medical intervention project that attracted white American women seeking to teach abroad in Americanized professional nursing training programs.<sup>28</sup> Catherine Ceniza Choy outlines how, through this colonial relationship, the U.S. established Americanized professional nursing training first by sending white American female nurses to the Philippines<sup>29</sup> and later through exchange programs that allowed Filipino nurses to study in the United States before returning to the Philippines.<sup>30</sup> These exchange programs resulted in the continuation of Philippine nursing schools’ adoption of American professional nursing trends and incorporated the pattern of American professional nursing to require entrance exams, increase educational standards, and develop the practice and training of public health nurses.<sup>31</sup> Though intending to keep Western-trained nurses in the Philippines, the colonial project unintentionally paved the way for the mass migration of Filipino nurses to the U.S. to supply future shortages.<sup>32</sup>

By 1948, the U.S. established the Exchange Visitor Program (“EVP”), which invited foreigners to obtain J-1 visas “to temporarily study and gain work experience in the U.S.” and “allow[ed] participants to stay in the country for a maximum of two years.”<sup>33</sup> This two-year lim-

---

<sup>21</sup> See BONIFACIO P. SIBAYAN, *THE INTELLECTUALIZATION OF FILIPINO AND OTHER ESSAYS ON EDUCATION AND SOCIOLINGUISTICS* 543 (1999).

<sup>22</sup> *Language Data for the Philippines*, TRANSLATORS WITHOUT BORDERS, <https://perma.cc/3J2Q-A6JP> (last visited Oct. 21, 2022).

<sup>23</sup> CHOY, *supra* note 15, at 43.

<sup>24</sup> *Id.* at 20.

<sup>25</sup> *Id.* at 21.

<sup>26</sup> *Id.* at 21.

<sup>27</sup> *Id.*

<sup>28</sup> CHOY, *supra* note 15, at 23.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 61.

<sup>31</sup> *Id.* at 51-53, 191.

<sup>32</sup> Van, *supra* note 6, at 457.

<sup>33</sup> See Cachero, *supra* note 20.

it “recreated the racialized social, cultural, and intellectual hierarchies of U.S. colonialism in which U.S. institutions were . . . [positioned] as superior to those of the Philippines,” thus perpetuating colonial inequalities.<sup>34</sup> However, facilities used exchange nurses as an inexpensive labor supply to alleviate growing nursing shortages after World War II.<sup>35</sup> Similarly, in 1965, the enactment of the Immigration and Nationality Act (“INA”) gave migrant nurses a legal pathway to settle in the United States as legal permanent residents.<sup>36</sup> The passage of the INA coincided with high unemployment rates in the Philippine archipelago “creating an economic incentive to seek a higher salary abroad.”<sup>37</sup> History repeated itself in the 1980s, when hospitals relied on foreign-born nurses to fill the deficit that U.S.-born nurses had left when refusing to work during the AIDS epidemic.<sup>38</sup> From 1980 to 1990, the Filipino population in the United States nearly doubled from 774,652 to 1,406,770.<sup>39</sup>

*B. The Philippines’ Labor Export Economy: A Product of Continued Subjugation*

i) The Philippines’ “Flag Independence”

A colonial relationship between the Philippines and the United States remains today. Despite granting the Philippines its independence in 1946,<sup>40</sup> the U.S. military maintains a presence in the archipelago through its alliance with the Philippines,<sup>41</sup> and, through its foreign and economic policies, the U.S. continues to hold the Philippines under its neoliberal order. This “flag independence” allows the United States to continue to permeate governance of the Philippines, causing its political instability and economic dependency.<sup>42</sup> All the while, the U.S. benefits by asserting itself in the region, accomplishing its Cold War foreign policy objective.<sup>43</sup>

---

<sup>34</sup> CHOY, *supra* note 15, at 66.

<sup>35</sup> *Id.* at 78.

<sup>36</sup> Cachero, *supra* note 20.

<sup>37</sup> *Id.*

<sup>38</sup> See Isa Cajulis, *Filipinos on the Frontlines: Our Bodies Are Not Disposable*, PLAN A MAG. (May 4, 2020), <https://perma.cc/NN4A-7B6K>.

<sup>39</sup> *Id.*

<sup>40</sup> ROSALINDA PINEDA-OFRENEO, *THE PHILIPPINES DEBT AND POVERTY* 4 (1991).

<sup>41</sup> Sophie Jeong & Brad Lendon, *Philippines Renews Key Military Agreement with the United States*, CNN (July 30, 2021 3:23 AM), <https://perma.cc/C7HM-W6JG>.

<sup>42</sup> PINEDA-OFRENEO, *supra* note 40, at 4 (describing the independence of the Philippines as a “flag independence” because in many ways, especially economically, independence is hollow).

<sup>43</sup> Kristin Rodil, *U.S. Intervention and Corrective Justice Require Open Borders*, 33 GEO. IMMIGR. L.J., 327, 328-29 (2019).



After the Philippines gained independence in 1946, economic development languished and was crippled by cronyism and corruption, causing the Philippine peso to drop in value throughout the mid- to late-twentieth century.<sup>44</sup> As the Filipino people were suffering, then Philippines dictator Ferdinand Marcos saw the demand for Filipino nurses in the U.S. as a “market [the Philippines] should take advantage of.”<sup>45</sup> Marcos exploited Filipino nurses for political gain while the U.S. supported his presidency and reaffirmed the importance of American military bases in the Philippines.<sup>46</sup>

#### ii) Foreign Debt’s Role in Philippine Domestic Affairs

The U.S. caused massive devastation and loss in Manila through the unrestrained and indiscriminate application of overwhelming firepower during World War II.<sup>47</sup> The U.S. had been perfecting its military and counterinsurgency tactics in the Philippines, and these tactics were then practiced in over a century’s worth of wars and covert operations.<sup>48</sup> Under U.S. imperialism, the Philippines has been and continues to be treated as a testing ground, playground, and dumping ground.<sup>49</sup> Filipino leaders seeking to rebuild the country and manage the mass deaths after World War II could not afford to reject rehabilitation assistance from the United States.<sup>50</sup> In exchange, the Philippines handed over its economy through policies such as giving “parity rights” to American businesses to allow them to operate public utilities and exploit the country’s natural resources.<sup>51</sup> These foreign entities’ continued control of the Filipino economy led to the devaluation of the peso in 1961, causing the Philippines to fall into a “debt trap” that has since kept the country in a cycle of permanent dependence on global financial institutions.<sup>52</sup>

---

<sup>44</sup> CHOY, *supra* note 15, at 69-70. .

<sup>45</sup> *Id.* at 115-16.

<sup>46</sup> Gary Hawes, *United States Support for the Marcos Administration and the Pressures That Made for Change*, 8 CONTEMPORARY SE. ASIA 18-36, 22 (1986) <https://www.jstor.org/stable/25797880> (on file with CUNY L. Rev.)

<sup>47</sup> Ricardo C. Morales, *The Americans Destroyed Manila in 1945*, RAPPLER (Feb. 4, 2015 8:00 AM), <https://perma.cc/5LGE-QZT5>.

<sup>48</sup> Jessica Antonio, *The Philippines Is Not America’s Battleground, Testing Ground, Playground or Dumping Ground! Junk the Visiting Forces Agreement Now!*, BAYAN USA, (Feb. 4, 2013), <https://perma.cc/8AXL-QMB5>.

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

<sup>50</sup> PINEDA-OFRENEO, *supra* note 40.

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

<sup>52</sup> *Id.* at 5. The International Monetary Fund’s devaluing of the peso caused Filipino businesses to pay almost double for every dollar’s worth of capital goods they import. *Id.* Accordingly, foreign investors’ dollars were able to buy almost twice as much of Philippine resources than they were used to. *Id.*

iii) Mass Migration by Design: U.S. and Filipino Immigration and Employment Policies

Simultaneous to this process of economic takeover, the EVP established by the U.S. in 1948 with the legislative intent of promoting a better understanding of the U.S. in other countries, and the unofficial intent of promoting Cold War policies,<sup>53</sup> was facilitating the first wave of Filipino nurses mass migration to the U.S.<sup>54</sup> If accepted into the program, a nurse was placed in participating hospitals for education and instructional programs, paid a small stipend, and granted a two-year exchange visa.<sup>55</sup> In response to the EVP's implementation, the Filipino Nurses Association began assisting Filipino nurses with exchange arrangements in 1951, and President Ramon Magsaysay created the Exchange Visitor Program Committee to screen applicants in 1956.<sup>56</sup> Between 1956 and 1969, more than 11,000 nurses participated in the program, marking the beginning of mass migration of Filipino nurses.<sup>57</sup>

In 1965, Ferdinand Marcos was elected as president, and the policies issued under his administration sought to use the migration of nurses to his advantage. In alignment with Marcos's view of nurses as a "market [the Philippines] should take advantage of," the Administration's labor export policy ("LEP") systemized and created an industry of exported Filipino labor.<sup>58</sup> The official purpose was to ease unemployment and raise foreign exchange earnings:<sup>59</sup> "During the long Marcos regime . . . [Marcos] said, 'If America needs thousands of nurses, we will give them more thousands of nurses—we will produce more for them.'"<sup>60</sup>

However, Marcos reaped additional political benefits beyond the LEP's legislative purpose as a temporary response to the unmanageable unemployment rate in the Philippines.<sup>61</sup> Former Prime Minister Cesar

<sup>53</sup> CHOY, *supra* note 15 at 97. ("Although the EVP continued to operate through the 1960s, the U.S. government employed other strategies to maintain its image as leader of the "Free World" and to improve its scientific and technological competitiveness with communist countries, specifically the Soviet Union.")

<sup>54</sup> CHOY, *supra* note 15, at 64-65.

<sup>55</sup> Barbara Brush, *Exchangees or Employees?: The Exchange Visitor Program and Foreign Nurse Immigration to the United States, 1945-1990*, 1 NURSING HIS., REV. 172, 173 (1993).

<sup>56</sup> CHOY, *supra* note 15, at 208, n.5.

<sup>57</sup> *Id.* at 65.

<sup>58</sup> *Id.* at 115-16.

<sup>59</sup> *Id.* at 116; *see also* Mark Maca, *Education in the 'New Society' and the Philippine Labour Export Policy (1972-1986)*, 7 J. INT'L & COMPAR. EDUC. 1, 5 (2018).

<sup>60</sup> Cachero, *supra* note 20 (quoting Leo-Felix Jurado, professor and department chair of nursing at William Paterson University).

<sup>61</sup> Maca, *supra* note 59, at 5.

Verata noted that the educated, young, urban, and unemployed population became a major problem for Marcos.<sup>62</sup> Two years before the LEP was implemented, 50% of those unemployed were 20 to 24 years old, and another 30% ranged from 25 to 44 years old.<sup>63</sup> That year, activists organized unemployed youth in what is known as the First Quarter Storm to protest the abuses of the Marcos administration from January to March.<sup>64</sup> The First Quarter Storm marked the maturation of the cultural revolution led by young Filipinos toward a people's democratic revolution.<sup>65</sup> Marcos framed the protests as communist subversion and "insurgency"<sup>66</sup> to provide justification for instituting martial law in 1972, which then lasted 14 years.<sup>67</sup> The new Labor Code of the Philippines was officially signed into law on May 1, 1974 and sought to mitigate unemployment and systemize the program for overseas employment.<sup>68</sup> Unofficially, the policy was a calculated tactic to divert growing dissent by finding work for Filipino youth.<sup>69</sup> Even more Filipinos took offers from U.S. programs to escape the country's political instability.<sup>70</sup> The maintenance of political control and the limitation of dissent served as additional benefits of the creation of the "labour export policy."<sup>71</sup>

While Marcos sought to implement policies that diverted dissent and mitigated unemployment, the United States implemented policies and other strategies to maintain its image as leader of the "Free World."<sup>72</sup> The EVP continued to operate and was amended to comply with new U.S. legislation that facilitated the adjustment of exchange visitor's status to that of a legal permanent resident.<sup>73</sup> This move came in response to U.S. institutions utilizing the program as a vehicle of recruitment rather than as a basis for training.<sup>74</sup> Additionally, the implementation of the INA of 1965 increased migration of highly skilled persons to the U.S. to be more competitive with communist countries.<sup>75</sup>

---

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

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

<sup>64</sup> *Id.*; Barbara M. N. Dacanay, *The 7 Deadly Protests of the First Quarter Storm*, ABS-CBN NEWS, (Feb. 24, 2020), <https://perma.cc/H9JM-ZY8G>.

<sup>65</sup> AMAD GUERRERO, *PHILIPPINE SOCIETY AND REVOLUTION* 60 (4th ed. 1970).

<sup>66</sup> William Branigin, *Marcos Vows Intense Campaign to End Communist "Subversion,"* WASH. POST (July 11, 1984), <https://perma.cc/3G9H-HQVP>.

<sup>67</sup> Cachero, *supra* note 20.

<sup>68</sup> Maca, *supra* note 59 at 5.

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

<sup>70</sup> Cachero, *supra* note 20.

<sup>71</sup> Maca, *supra* note 59 at 5.

<sup>72</sup> CHOY, *supra* note 15 at 97.

<sup>73</sup> *Id.* at 98.

<sup>74</sup> *Id.* at 99.

<sup>75</sup> *Id.* at 97.

Following the passage of the INA, Filipino nurses were recruited directly by hospitals specifically as workers.<sup>76</sup> Together, these policies created a new system that commodified Filipinos as sources of cheap labor for direct export to their colonizer.

Marcos and his administration emphasized the nurse's role as hero to the nation as it commodified and mass-produced nurses for an international market.<sup>77</sup> He said it was the Philippines' policy to "encourage th[e] migration [of nurses]."<sup>78</sup> In 1973, Philippine Secretary of Health Dr. Clemente S. Gamaitan contributed to the hero narrative in his address to nurses returning from abroad, saying:

As head of the Health Department, I consider you as "Long-Lost Daughters"—prodigal children so to speak, who have returned temporarily to the fold. Personally, I wish you for good. But on second thought, we in the Health Department are happy that you have elected to stay and work abroad . . . . First of all, you project an excellent image of our country and our people. While in other countries, you give prestige to the Philippines because you are all virtually ambassadors of good will. We receive glowing reports from abroad that Filipina Nurses [*sic*] are preferred to nurses of other nationalities because of inherent sterling qualities that make you ideal members of the Nursing Profession [*sic*], this is an honor for all of you and this, in turn, honors us here at home. For this, we are proud of you. Another benefit that accrues from your work is the precious dollar you earn and send back to your folks at home. In this manner, you help indirectly in the improvement of our economic condition.<sup>79</sup>

This narrative characterized the Filipino—or, as gendered by Gamaitan, "Filipina" nurses—as heroes who honor the nation with their work and, more importantly, their remittances. During the Marcos administration, \$5[.15] billion were accumulated in total remittances.<sup>80</sup> Marcos "was instrumental in Filipino nurses being celebrated as heroes" and even purported in a speech that "[i]f America needs thousands of nurses, [the Philippines] will give them more thousands of nurses . . . ."<sup>81</sup>

---

<sup>76</sup> Brush, *supra* note 55 at 177.

<sup>77</sup> CHOY, *supra* note 15, at 115-116.

<sup>78</sup> *Id.* at 115.

<sup>79</sup> *Id.* at 116-117 (ellipsis in original) (footnote omitted).

<sup>80</sup> MAUJA M.B. ASIS, HOW INTERNATIONAL MIGRATION CAN SUPPORT DEVELOPMENT: A CHALLENGE FOR THE PHILIPPINES 107-08 (2006).

<sup>81</sup> Cachero, *supra* note 20 (quoting Jurado).

On February 25, 1986, Filipinos successfully ousted Ferdinand Marcos in what is known as the EDSA People Power Revolution, but the effects of the Marcos dictatorship continue to be felt today.<sup>82</sup> Under Marcos, the LEP facilitated the export of labor as the Philippines' main business.<sup>83</sup> This continued under the following administration led by Corazon Aquino as she further integrated it into her economic recovery program.<sup>84</sup> Under the Aquino administration, remittances increased by 37% to \$8.2 billion in total.<sup>85</sup> She referred to migrant workers as "Ang Bagong Bayani" or "the new national heroes."<sup>86</sup> The purported economic recovery through the exploitation of remittances sent by Filipino migrant workers abroad continued to be effectuated by administrations that followed. In 1992, the Ramos administration initiated the Medium-Term Philippine Development Program ("MTPDP"), which "practically conscripted migrant Filipinos as commodities or products to be sold and bought at the whim of those who benefit from cheap labor, and did so under the guise of 'Internationally Shared Human Resources.'"<sup>87</sup> The Ramos administration accumulated remittances totaling approximately \$27 billion.<sup>88</sup> In 1999, President Joseph Estrada followed by declaring migrant workers as economic lifesavers.<sup>89</sup> The Estrada administration conducted job fair programs through the Department of Labor and Employment, creating a venue for employers and recruitment agencies to purchase export labor.<sup>90</sup> The Estrada administration accumulated approximately \$23 billion in remittances.<sup>91</sup> On Migrant Workers' Day 2002, President Gloria Macapagal Arroyo during her speech in the Ceremonial Hall of Malacañang praised migrant workers and called them "dakilang manggagawang Pilipino," or "the great Filipino workers."<sup>92</sup> In

---

<sup>82</sup> *A Timeline of the 1986 EDSA People Power Revolution*, GMA NETWORK, (Feb. 24, 2017), <https://perma.cc/BRC3-FKGD> (EDSA stands for Epifanio de los Santos Avenue, the longest highway around the city of Manila).

<sup>83</sup> ROBYN MAGALIT RODRIGUEZ, *MIGRANTS FOR EXPORT: HOW THE PHILIPPINE STATE BROKERS LABOR TO THE WORLD*, at xiii (Univ. of Minn. Press 2010).

<sup>84</sup> MIGRANTE INTERNATIONAL, INITIAL STATEMENT OF MIGRANTE INTERNATIONAL TO THE UNITED NATIONS COMMITTEE ON MIGRANT WORKERS 3 (Apr. 23, 2009), <https://perma.cc/W3WD-GCHB>.

<sup>85</sup> ASIS, *supra* note 80.

<sup>86</sup> Kathleen Weekley, *Filipina Migrants and Popular Capitalism*, in *TRANSNATIONAL MIGRATION AND WORK IN ASIA 200* (2006), <https://perma.cc/HU3Z-TXXY>.

<sup>87</sup> MIGRANTE INTERNATIONAL, *supra* note 84.

<sup>88</sup> ASIS, *supra* note 80.

<sup>89</sup> Joseph Ejercito Estrada, President of the Philippines, Second State of the Nation Address (Jul. 26, 1999), <https://perma.cc/59UT-88CS>.

<sup>90</sup> ASIS, *supra* note 80.

<sup>91</sup> *Id.*

<sup>92</sup> Gloria Macapagal Arroyo, Speech of President Arroyo During the Celebration of Migrant Workers Day (June 7, 2002), <https://perma.cc/5UBV-32XN>.

a visit to the United States in 2003, Arroyo also said, “Not only am I the head of state responsible for a nation of 80 million people. I’m also the CEO of a global Philippine enterprise of 8 million Filipinos who live and work abroad and generate billions of dollars a year in revenue for our country.”<sup>93</sup> The Arroyo administration between 2001 and 2010 accumulated approximately \$137 billion in remittances.<sup>94</sup> By 2010, 2,500 Filipino workers left the country every day under the Benigno Aquino III administration, which accumulated approximately \$164 billion in remittances between 2010 and 2016.<sup>95</sup> In 2017, Rodrigo Duterte’s administration passed the Tax Reform for Acceleration and Inclusion (“TRAIN”) Law, a comprehensive tax reform that increased the price of basic commodities in the Philippines,<sup>96</sup> symbolizing a recent example of the increasing cost of living that Filipinos experience domestically and that may contribute as a reason pushing them to choose migrating over staying in their homeland. In 2019 alone, the annual remittance was \$35.17 billion.<sup>97</sup> Every administration following the Marcos dictatorship has continued to rely on the LEP and the commodification of Filipino workers for an elusive sense of profit, but to the detriment of workers, at home and overseas.

### C. *The Supply of Filipino Nurses to Neocolonial Powers*

#### i) Power Imbalances at Work and at Home

The continued reliance on export labor and remittances perpetuate weak domestic industries and exploitative employment relations in the Philippines.<sup>98</sup> The level of exploitation of workers at the workplace often rises to the level of human trafficking because recruits are in a vul-

---

<sup>93</sup> Gloria Macapagal Arroyo, Speech of President Arroyo During the Dinner Hosted by the U.S.-ASEAN Business Council (May 20, 2003), <https://perma.cc/X3S2-QLH9>.

<sup>94</sup> The World Bank Grp., Personal Remittances, Received (Current US\$) - Philippines (database updated Nov. 11, 2022) [hereinafter *World Bank Remittances Data*], <https://perma.cc/9N4R-4WM5> (generating annual remittances data estimates for the Philippines and other countries based on the IMF’s Balance of Payments Manual, last updated Nov. 11, 2022, which comprise the sum of personal transfers and the compensation of employees).

<sup>95</sup> *Id.*

<sup>96</sup> *The Tax Reform for Acceleration and Inclusion (Train) Act*, REPUBLIC OF THE PHIL. DEP’T OF FIN. (Dec. 27, 2017), <https://perma.cc/K44P-T3JZ>.

<sup>97</sup> See *World Bank Remittances Data*, *supra* note 94.

<sup>98</sup> See generally FLORIAN A. ALBURO & DANILO I. ABELLA, SKILLED LABOUR MIGRATION FROM DEVELOPING COUNTRIES: STUDY ON THE PHILIPPINES, at v (2002), <https://perma.cc/U9BQ-CD8J> (describing the increased importance of the international migration of skilled persons and how “this demand is largely met by developing countries, triggering an exodus of their skilled personnel[,] . . . which can adversely impact growth and development”).

nerable and desperate position in light of the scant work opportunities and inequitable hiring practices.<sup>99</sup> Thus, the growth of overseas industries and increasing uprooting of workers seeking opportunities abroad indicates that Filipinos do not choose migration freely but rather “are forced out” and, at worst, trafficked.<sup>100</sup> Many employers use third-party agencies to recruit nurses from source countries,<sup>101</sup> but this also hurts Filipino nurses. These recruitment agencies often offer “‘opportunities’ abroad [that] carry a multitude of human rights violations, home-life problems for those left behind, and may reduce the worker’s life to little more than indentured servitude.”<sup>102</sup> Upon arrival to a new country, many foreign-educated health professionals face unfair treatment, including the denial of an opportunity to review contracts with potentially unfair terms.<sup>103</sup> Nurses may experience discrimination and unjust working conditions, including mandatory overtime, because of language barriers and fear of retribution.<sup>104</sup> This undue influence of recruitment agencies on already vulnerable nurses, many of whom desperately seek employment and emigration to a high-resource country, can result in coercion and unethical recruitment practices.<sup>105</sup>

The process for immigrating to the U.S. as a nurse consists of three core components: verification of training credentials; validation of language and nursing competency; and processing of U.S. nursing licenses and work permits or visas.<sup>106</sup> Recruiting for foreign nurses generally occurs in two ways: the “employer-led model,” where U.S. hospitals directly recruit nurses from the sending country’s hospitals, and the “agency-led model,” where the U.S.- or Philippines-based agencies independently contract with U.S. hospitals to set a price per registered nurse (“RN”).<sup>107</sup> On average, hospitals pay recruiting agencies \$5,000 to \$10,000 per nurse, but this number is often drastically underestimated due to the “hidden fees” such as attorneys’ document filing fees, testing expenses, and unrecoverable costs of nurses dropping out in the middle

---

<sup>99</sup> Felicia Stokes & Renata Iskander, *Human Rights and Bioethical Considerations of Global Nurse Migration*, J. BIOETHICAL INQUIRY 429, 435-36 (2021), <https://perma.cc/7S77-GFQU>.

<sup>100</sup> John Enriquez Andres, *The Raiding of the Pearl: The Effects of Trade Liberalization on Philippine Labor Migration, and the Filipino Migrant Worker’s Experience*, 10 RUTGERS RACE & L. REV. 523, 552 (2009).

<sup>101</sup> Stokes & Iskander, *supra* note 99, at 435.

<sup>102</sup> Andres, *supra* note 100, at 552-53.

<sup>103</sup> Stokes & Iskander, *supra* note 99, at 435.

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

<sup>105</sup> *Id.*; Andres, *supra* note 100, at 552.

<sup>106</sup> Van, *supra* note 6, at 458.

<sup>107</sup> *Id.* at 459.

of the process.<sup>108</sup> These agencies facilitate the nurses' placement and salary negotiations and carry them through the immigration process.<sup>109</sup>

Recruitment agencies have little to no regulatory oversight on their business practices, which results in unchecked power to exploit and traffic Filipinos migrating to earn a living.<sup>110</sup> Exploitative practices include charging up to one month's salary for their services and requiring additional fees for supplementary accreditations, health tests, and costs of paperwork, which result in Overseas Filipino Workers ("OFWs") paying more than one month's salary.<sup>111</sup> The coercive nature of this additional fee system is exacerbated when some OFWs take out loans from companies recommended by their recruiters to meet added costs.<sup>112</sup> In some cases, a loan for recruitment has a monthly interest rate of 9% with an annual interest rate of 109%, putting nurses in debt bondage.<sup>113</sup>

In addition to debt bondage by recruitment agencies, nurses seeking employment in destination countries report false promises and working conditions in healthcare facilities that do not match those listed in the recruitment contract.<sup>114</sup> Foreign-educated nurses are frequently sent to hospitals where it is difficult to recruit U.S.-born nurses, including public hospitals in inner cities and healthcare facilities in rural areas that are frequently understaffed and under-resourced.<sup>115</sup> Additionally, a study examining the differences in working conditions between Filipino and white registered nurses in the United States during the COVID-19 pandemic shows that Philippine-trained nurses reported working more frequently in acute in-patient and long-term in-patient care roles;<sup>116</sup> they reported working less frequently in indirect, outpatient, or non-acute roles compared to their white, U.S.-trained colleagues.<sup>117</sup> As a result, Filipino nurses are more frequently exposed to patients with higher acuity illnesses, including patients with comorbidities and exhibit severe symptoms related to COVID-19.<sup>118</sup> The study concludes by recognizing

---

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 459-60.

<sup>110</sup> Josh Eidelson, *Nurses Who Faced Lawsuits for Quitting Are Fighting Back*, BLOOMBERG (Feb. 2, 2022), <https://perma.cc/F34Q-2U92>; see also Van, *supra* note 6, at 477.

<sup>111</sup> Van, *supra* note 6.

<sup>112</sup> Van, *supra* note 6.

<sup>113</sup> Van, *supra* note 6.

<sup>114</sup> Stokes & Iksander, *supra* note 99, at 435.

<sup>115</sup> Cachero, *supra* note 20.

<sup>116</sup> Jennifer Nazareno, et al., *From Imperialism to Inpatient Care: Work Differences of Filipino and White Registered Nurses in the U.S. and Implications for Covid-19 Through an Intersectional Lens*, 28 GENDER, WORK & ORG. 1433-34 (2021).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 1438.



that “[t]he lack of change in the current infrastructure of the U.S. healthcare delivery . . . speaks to the enduring legacy of imperialism.”<sup>119</sup> These systems structure inequality hierarchically in the context of nursing care and place undesirable labor conditions on immigrant women. Instead of structurally addressing the labor conditions that cause nurses to leave the profession and exacerbate the nursing shortage, administrators continue to recruit foreign-trained nurses to fill positions.<sup>120</sup> The study is consistent with the history of U.S. and Philippine policies that were developed toward certain political goals to the detriment of the Filipino people.

### III. PRESENT-DAY IMPACT: TWO FEDERAL COURT CASES ABOUT THE STRUGGLES OF FILIPINO NURSES IN THE U.S.

Since recruitment practices create power imbalances that allow and foster exploitation, it follows that the unregulated business practices that exploit Filipino nurses can rise to the level of human trafficking. In the U.S., the TVPA aims to ensure a “just and effective punishment” for traffickers and to “protect their victims.”<sup>121</sup> The act seeks to combat trafficking in persons by prohibiting knowingly recruiting, harboring, transporting, providing, or obtaining, by any means, any person for labor or services in violation of the chapter, that is, for purposes of peonage, slavery, involuntary servitude, or forced labor.<sup>122</sup> The TVPA also details how traffickers target their victims.<sup>123</sup> Among the crimes the TVPA recognizes are the abuse or threatened abuse of law or legal process; and any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, they or another person would suffer serious harm or physical restraint.<sup>124</sup> The extensive findings of the Act explain that it was enacted to combat trafficking across international borders, detail how traffickers target their victims, and recognize the victims as people disproportionately affected by poverty, chronic unemployment, discrimination, and a lack of economic opportunities in their homelands.<sup>125</sup>

---

<sup>119</sup> *Id.* at 1439.

<sup>120</sup> See generally Amanda Katapang, *This Article Is Considered Terrorism in the Philippines: The Role of People’s Lawyers in Class Struggle*, 26 CUNY L. REV. 171, 178 (Jan. 2023) (discussing the history of colonialism and labor movement from the Philippines to the United States and asserting how the both countries are complicit in labor trafficking).

<sup>121</sup> Victims of Trafficking and Violence Protection Act of 2000, H.R. 3244, 106th Cong. § 102(a) (2000).

<sup>122</sup> *Id.* at 1466-67.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

In the case of Filipino nurses, exploitation has risen to the level of human trafficking<sup>126</sup> when OFWs become stranded and cannot report illegal recruiters or illicit recruitment practices<sup>127</sup> because they cannot afford to contact their families back home, are unable to afford lawyers, and are inadequately represented in Philippine reports, where the government failed to report and investigate labor trafficking crimes and hold erring officials accountable.<sup>128</sup> Survivors of labor trafficking have reported contract violations where they were paid less than what was advertised to them or where the jobs they signed up for were unavailable,<sup>129</sup> forcing them to seek work alternatives after arrival.<sup>130</sup> In other cases, housing situations did not reflect the conditions that recruitment agencies characterized, and the overseas nurses are forced to live in potentially harmful environments.<sup>131</sup> In extreme cases, OFWs are left stranded as recruiters withhold their passports and other forms of identification.<sup>132</sup> OFWs are also threatened with law enforcement and deportation.<sup>133</sup> These conditions leave OFWs with no choice other than to endure employer abuse due to the multiple marginalized identities they hold at the intersections of race, class, and immigration status.<sup>134</sup> This was true for the nurses at Prompt Nursing Employment Agency and Albany Medical Center, as discussed below.

A. *Paguirigan v. Prompt Nursing Employment Agency LLC*

Rose Paguirigan, a citizen of the Philippines, was recruited by defendant Prompt Nursing Employment Agency LLC to work for a nurs-

---

<sup>126</sup> Cachero, *supra* note 20 (“In 2019, 200 Filipino nurses won a human trafficking lawsuit in which they alleged that the owners of a group of New York nursing homes were not paid the wages promised in their contracts and were forced to work in unsafe conditions with inadequate staffing.”).

<sup>127</sup> Cristina Eloisa Baclig, *Illegal Recruiters Know No Pandemic, Continue to Prey on OFWs*, INQUIRER.NET (Nov. 12, 2021, 2:35 PM), <https://perma.cc/UF6D-WCZM>.

<sup>128</sup> Marvin Joseph Ang, *Anti-human Trafficking Report: Philippines Keeps Tier 1, but Lacks Reporting Efforts*, YAHOO NEWS (July 20, 2022), <https://perma.cc/N4MM-3LAK>.

<sup>129</sup> See Baclig, *supra* note 127 (discussing overseas worker abuse and illegal labor and recruitment practices); see also Michelle Abad, *DOLE Adopts Plan to Curb Illegal Recruitment of OFWs*, RAPPLER (Nov. 11, 2021, 8:30 PM), <https://perma.cc/9335-V9CY> (explaining when rights of workers are being violated, these workers should not need to beg recruitment agencies to help them).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*; see *New York State Nurses Ass’n v. Albany Med. Ctr.*, 473 F. Supp. 3d 63, 366(N.D.N.Y. 2020).

<sup>132</sup> *Id.*

<sup>133</sup> See Cachero, *supra* note 20 (threatening nurses with visa cancellations); see also Eidelson, *supra* note 110 (explaining that nurses feared deportation for disobedience).

<sup>134</sup> Christopher Lapinig, *How U.S. Immigration Law Enables Modern Slavery*, ATLANTIC (Oct. 29, 2022 11:16 AM), <https://perma.cc/5H9A-W5PK>.

ing home in New York.<sup>135</sup> Before leaving her country, Paguirigan, like many other nurses, was required to sign a contract.<sup>136</sup> The contract required foreign nurses to pay a \$25,000 fee if they left their employment before the end of their contract.<sup>137</sup> However, after arriving in the United States and working for the agencies and nursing homes, Paguirigan and other nurses realized they were not being paid the wages promised in their recruitment contracts and found themselves working in unsafe conditions with inadequate staffing.<sup>138</sup> When nurses could no longer stand the existing working conditions, they tried to leave their contracts and were met with lawsuits from the agency.<sup>139</sup> Prompt Nursing sued Paguirigan and two other Filipino nurses to enforce the \$25,000 liquidated damages provision in their contracts, \$250,000 from each nurse for tortious interference with contract and prospective business relations, and \$250,000 from each nurse in punitive damages.<sup>140</sup> The Eastern District of New York (“E.D.N.Y.”) judge ruled that the liquidated damages provision was unenforceable, as “any proven breach by the nurses would be easily ascertained at trial.”<sup>141</sup> The court also recognized that the contracts that the nurses signed before coming to work in the U.S. were achieved not through “arm’s length negotiation,” but through a take it or leave it basis.<sup>142</sup> Taken together with evidence of employer intent to use the damages to keep the employees working, the court found that the defendant’s actions constituted forced labor, which is one form of human trafficking prohibited under the TVPA.<sup>143</sup>

Further, the district court noted that the liquidated damages fees had already been deemed unenforceable in a 2006 case, *Sentosa Care, LLC v. Anilao*.<sup>144</sup> The *Paguirigan* court explicitly agreed with the *Anilao* decision in finding the liquidated damages provision unenforceable,<sup>145</sup> highlighting that the \$25,000 damages amount sought by the defendant was consistent with the provision that the damages were “intended to operate as a means to compel performance” because it would have taken

---

<sup>135</sup> See *Paguirigan v. Prompt Nursing Emp. Agency LLC*, No. 17-CV-1302 (NG) (JO), 2019 WL 4647648, at \*1 (E.D.N.Y. Sept. 24, 2019).

<sup>136</sup> See *Paguirigan v. Prompt Nursing Emp. Agency LLC*, 286 F. Supp. 3d 430, 434 (E.D.N.Y. 2017).

<sup>137</sup> *Id.* at 435.

<sup>138</sup> See *Paguirigan*, 2019 WL 4647648, at \*18.

<sup>139</sup> *Id.*, at \*1.

<sup>140</sup> *Id.* at \*3.

<sup>141</sup> *Id.* at \*4.

<sup>142</sup> *Id.* at \*8.

<sup>143</sup> *Id.* at \*11, \*16, \*20-21.

<sup>144</sup> *Paguirigan*, 2019 WL 4647648, at \*8 (citing *Sentosa Care LLC v. Anilao*, Index No. 6079/2006 (N.Y. Sup. Ct. Nassau Cnty. May 20, 2010)).

<sup>145</sup> *Id.* at \*8.

Paguirigan almost nine months to pay off the amount, assuming she had no other expenditures such as food and housing.<sup>146</sup> The judge acknowledged that the record contained admissible evidence of only \$4,435.50 in damages.<sup>147</sup> The combination of the estimated amount of damages and the amount of time it would take to be paid off were inconsistent with “a reasonable proportion to the probable loss” and were thus deemed to be an unenforceable penalty.<sup>148</sup>

In assessing whether Prompt Nursing violated the TVPA, the court found that the liquidated damages provision constituted a threat of sufficiently serious financial harm “to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.”<sup>149</sup> The judge acknowledged three facts: (1) the nurses were all recent arrivals from the Philippines; (2) they were not paid the prevailing wage nor a base salary despite the terms of the contracts; and (3) they were deposed complaining of being overworked, understaffed, and unjustifiably suspended.<sup>150</sup> The court opinion also included a direct quote from Paguirigan that “we were just . . . fed the good side, but they never told us that you’re going to work 16-hour shift, with less staff . . .”<sup>151</sup> In its decision, the *Paguirigan* court recognized the harmful recruitment practices that were still in use despite being deemed unlawful in 2006, identified harmful working conditions, named all the parties that benefited from the coercive practice, and took into account some differences in the power dynamics of the parties.<sup>152</sup>

Notwithstanding the favorable outcome, this judicial recognition that worker exploitation of Filipino nurses was unlawful remains limited in many ways. Though the court identified many people who benefited from the coercive and exploitative practices, the corporate veil was pierced only to reach the actual owner of the agency.<sup>153</sup> The court found that only Berish Rubeinstein, the owner of Prompt Nursing, could be held liable even though it was apparent that Benjamin Landa and Bent Philipson, owners and operators of the nursing home, participated in the scheme.<sup>154</sup> This case is also limited by its jurisdiction and by the limitations of the law itself. Exploitation being found unlawful does not pre-

---

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at \*11.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at \*18; 22 U.S.C. § 1589(c)(2).

<sup>150</sup> *Paguirigan*, 2019 WL 4647648, at \*18.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at \*15-16.

<sup>153</sup> *Id.* at \*15.

<sup>154</sup> *Id.*

vent future exploitation outside the jurisdictions bound by the E.D.N.Y. Moreover, legal relief to those exploited was granted only to Rose Paguirigan and the nurses who took part in the lawsuit, not the rest of the nurses making up a significant portion of the eight million OFWs. Liquidated damages clauses continue among nursing agencies and U.S. healthcare facilities,<sup>155</sup> and the U.S. continues to depend on Filipino nurses to meet its shortages.<sup>156</sup> Preventing future cases of exploitation of Filipino nurses through class action lawsuits, even if they result in favorable decisions for plaintiffs, will not be enough. With the acknowledgment of the historical factors that lead to the abuses sustained by foreign workers like Rose Paguirigan, the root causes of mass Filipino nurse migration will be addressed by mobilizing people, not courts, into mass people action.

*B. New York State Nurses Association v. Albany Medical Center*

Weeks after the 2019 E.D.N.Y. decision, a similar case was brought to the Northern District of New York (“N.D.N.Y.”). A nurses’ union filed an action on behalf of Filipino nurses against their employer, alleging violations of the TVPA in *The New York State Nurses Association v. Albany Medical Center*.<sup>157</sup> Here, the facility directly hired 582 nurses and required them to sign contracts obligating them to pay up to \$20,000 to the facility if they resigned within three years of starting employment.<sup>158</sup> The provision stated that upon breach, Albany Medical Center would aim to enter a judgment against them automatically.<sup>159</sup> Separately, Albany Medical Center intimidated the nurses with deportation if they failed to immediately pay the fees.<sup>160</sup>

During their employment at Albany Medical Center, the plaintiff nurses alleged that they were provided living arrangements in neglected neighborhoods without adequate safety measures or resources.<sup>161</sup> Moreover, the nurses “were placed in medical units that did not correspond with their specialties and experience and were paid less than their American counterparts who had lesser degrees and fewer years of experi-

---

<sup>155</sup> See Caleb Drickey, *Health Care Co. Says Nurses Can’t Prove Forced Labor Claims*, LAW360 (Aug. 25, 2022), <https://www.law360.com/articles/1524591/health-care-co-says-nurses-can-t-prove-forced-labor-claims> (on file with CUNY Law Review).

<sup>156</sup> Amy Taxin, *U.S. Hospitals Seek Foreign Nurses Amid Pandemic Atrain*, PBS NEWS HOUR (Feb. 3, 2022), <https://perma.cc/B8TB-PXPD>.

<sup>157</sup> *N.Y. State Nurses Ass’n v. Albany Med. Ctr.*, 473 F. Supp. 3d 63, 65 (N.D.N.Y. 2020).

<sup>158</sup> *New York State Nurses Ass’n*, 473 F. Supp. 3d at 65.

<sup>159</sup> *Id.*

<sup>160</sup> *See id.* at 66.

<sup>161</sup> *Id.*

ence.”<sup>162</sup> Plaintiff nurses sought a declaration that the liquidated damages provision is unlawful under the TVPA, an injunction preventing Albany Medical Center from enforcing the liquidated damages provision, and an award of costs of the action and reasonable attorney’s fees.<sup>163</sup>

The N.D.N.Y. found that the nurses’ union had associational standing to bring a private cause of action against Albany Medical Center on behalf of the nurses.<sup>164</sup> However, the court also found that the nurses’ union did not have a cause of action under the plain language of the TVPA because the statute does not explicitly include union representatives as parties who can seek civil remedies under the Act.<sup>165</sup> The court dismissed the complaint without prejudice for failure to state a cause of action, providing plaintiff nurses an opportunity to file a motion for leave to file an amended complaint.<sup>166</sup>

The New York State Office of the Attorney General then commenced an investigation of Albany Medical Center pursuant to New York Executive Law § 63(12).<sup>167</sup> Aligned with her commitment to “fighting for all healthcare workers” and holding “employers accountable for their exploitative and unlawful actions,”<sup>168</sup> New York State Attorney General Letitia James affirmed that the COVID-19 crisis showed how “nurses are the backbone of our healthcare system” deserving of the “utmost respect and dignity.”<sup>169</sup> Moreover, AG James also stated that “[b]y forcing its employees to choose between paying outrageous sums to leave their jobs, or facing immigration authorities, Albany Med[ical Center] violated their rights as workers and as individuals.” The AG’s analysis of this case is a helpful first step in demonstrating how an agency might hold employers accountable for the abuse and exploitation exerted on workers.<sup>170</sup>

During the investigation, the AG found that the medical center was profiting off of these nurses through the use of an exaggerated liquidated damages clause. The employment contract contained a mandatory repayment provision requiring nurse recruits to pay \$10,000 to \$20,000 if they resigned or were terminated for cause within the first three years of

---

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> New York State Nurses Ass’n, 473 F. Supp. 3d at 70.

<sup>165</sup> *Id.* at 72.

<sup>166</sup> *Id.*

<sup>167</sup> Att’y Gen. of the State of N.Y., AOD No. 21-040, *In re Investigation of Albany Med. Health System* (June 11, 2021), ¶ 1.

<sup>168</sup> Press Release, Att’y Gen. of the State of N.Y., James Recovers Over \$90,000 in Restitution for Albany Nurses Subject to Illegal Fines by Employer (June 17, 2021) (on file with CUNY Law Review).

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

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

employment.<sup>171</sup> The same clause provided for legal action to be taken (such as reporting to immigration authorities) upon noncompliance if Albany Medical Center concluded that the nurse's failure to tender the fees constituted fraud.<sup>172</sup> The AG also found that since 2011, Albany Medical Center has received "repayment" fees from seven formerly employed nurses totalling \$82,000 due to incompleteness of their three-year commitment.<sup>173</sup> Based on these findings, the AG concluded that Albany Medical Center engaged in persistent and repeated violations of Executive Law § 63(12) and § 1589 of the TVPA, which requires a showing that the defendants knowingly provided or obtained labor or services by means of "serious harm or threats of serious harm," "the abuse or threatened abuse of law or legal process," or "any scheme, plan or pattern intended to cause [the nurses] to believe that, if [they] did not perform such labor or services, that [they] or another person would suffer serious harm or physical restraint."<sup>174</sup> Albany Medical Center did not admit to this determination but agreed to the terms of an "Assurance of Discontinuance" to avoid the costs of future litigation.<sup>175</sup> The AG's investigation ultimately granted relief for nurses at Albany Medical Center because this agreement put an end to contractual repayment fees for § he Center's international nurse recruits.<sup>176</sup>

While the AG's investigation granted the nurses some relief, the court's dismissal of the complaint was a missed opportunity for a federal court to recognize the coercive labor practice of threatening immigration law enforcement against Filipino nurses whose employment status is inextricably linked to their immigration status. The AG's findings did not include a response to the nurses' assertion that Albany Medical Center threatened to report the nurses to immigration authorities and subject them to deportation if they broke their contracts.<sup>177</sup> Similarly, the court avoided addressing this issue because it found that unions fell outside the "congressionally-created list of those who can civilly enforce the

---

<sup>171</sup> Att'y Gen. of the State of N.Y., AOD No. 21-040, *In re Investigation of Albany Med Health System* (June 11, 2021), ¶ 4 [hereinafter *Assurance of Discontinuance*].

<sup>172</sup> *Assurance of Discontinuance*, *supra* note 171, at ¶ 4.

<sup>173</sup> *Id.* ¶ 5.

<sup>174</sup> *Assurance of Discontinuance*, *supra* note 171, ¶ 6; *Paguirigan v. Prompt Nursing Emp. Agency LLC*, 286 F. Supp. 3d 430, 437 (E.D.N.Y. 2017).

<sup>175</sup> *Assurance of Discontinuance*, *supra* note 171, ¶ 8.

<sup>176</sup> See Michael Hill, *Albany Med Ends Fees for Filipino Nurses Who Leave Job Early*, U.S. NEWS & WORLD REP. (June 17, 2021, 2:09 PM), <https://www.usnews.com/news/best-states/new-york/articles/2021-06-17/albany-med-ends-fees-for-filipino-nurses-who-leave-job-early>.

<sup>177</sup> See generally *Assurance of Discontinuance*, *supra* note 171.

TVPA.”<sup>178</sup> If the union had been allowed to civilly enforce the TVPA in this federal proceeding, the court’s opinion could have addressed this issue underlying employers’ practice of coercing immigrant nurses into an employment agreement that threatens them with deportation for their lack of compliance with exploitative terms. This coercive labor practice of threatening employees with immigration law enforcement, is well-documented<sup>179</sup> and aligns with the history of using law enforcement agencies in the U.S. as a tool to protect property, capital, and businesses’ interests by subjugating and surveilling Black people.<sup>180</sup> Moreover, the threat of being reported to immigration authorities and the possibility of deportation function under facially neutral policies that facilitate the commodification of Filipino nurses.<sup>181</sup> In *Albany Medical Center*, it was clear that this coercive practice of threatening employees with law enforcement functioned to protect businesses at the expense of exploited workers and facilitated the commodification of vulnerable workers. Once the workers do not comply with their contractual duties, the law and those who enforce it treat them as disposable and allow the facility to hire a new batch of foreign recruits.

Similar facts have recently come to light in a complaint filed in Ohio in 2021.<sup>182</sup> In the Ohio complaint, Novie Dale Carmen, who was recruited from the Philippines and placed in a nursing job near Philadelphia, said she had to pay \$20,000 to quit.<sup>183</sup> The contract she signed required her to complete 6,240 hours before quitting, but she said the company kept adding reasons not to count hours.<sup>184</sup> The company re-

---

<sup>178</sup> *New York State Nurses Ass’n v. Albany Med. Ctr.*, 473 F. Supp. 3d 65, 71-72 (N.D.N.Y. 2020).

<sup>179</sup> See ACLU Statement on Workforce Enforcement, ACLU, <https://perma.cc/X9NM-2GK4> (last visited Nov. 12, 2022).

<sup>180</sup> Marissa J. Sow, *Protect and Serve*, 110 CAL. L. REV. 102, 145-146 (2022) (“Law enforcement in the United States was established to support the development of racial capitalism and to protect and enforce the commercial contracts effectuating the purchases and sales of kidnapped and enslaved Africans.”).

<sup>181</sup> Cf. Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2152, 2198 (2013). Leong defines racial capitalism as “the process of deriving social and economic value from the racial identity of another person.” *Id.* at 2152. Moreover, “while the production of commodities is a prerequisite for capitalism, the process of capitalism reinforces both the commodification of individual labor and the exploitative social relations made possible by that commodification.” *Id.* at 2198.

<sup>182</sup> See Eidelson, *supra* note 110 (describing penalties as “‘manifestly unreasonable and disproportionate’; that it isolates nurses and shields itself from scrutiny via secrecy rules; that it implies nurses will suffer bad immigration consequences if it fires them; and that it is ‘overly litigious’”).

<sup>183</sup> Kaitlin Schroeder, *Southwest Ohio Health Staffing Company Accused of Labor Trafficking in Lawsuit*, DAYTON DAILY NEWS (Feb. 14, 2022), <https://perma.cc/NS6H-N9RF>.

<sup>184</sup> *Id.*



fused to count the first three months because they were considered orientation, and it refused to count overtime because she was not permitted to decline overtime.<sup>185</sup>

According to the U.S. Department of Labor, more than 500,000 workers in healthcare and related fields quit in December 2021 alone (that number does not account for legions of employees who are contractually restricted from resigning).<sup>186</sup> The impact of the systems created by U.S. and Philippine policies that created a stream of export labor for foreign businesses to benefit from and where Filipino workers suffer is visible through the legal actions that reach courthouses. Yet, the struggles of nurses who will never get their cases reviewed by a judge are left unresolved. The similarity in the facts of these cases and their repetitiveness suggests that the systemic issues that caused and reinforce the mass migration of Filipino nurses into exploitative environments require a big-tent approach to redress the power imbalances caused by “dependent capitalism”<sup>187</sup> found at a macro level in U.S.-Philippine foreign relations, and at a micro level in domestic employer-employee relations in both countries. An undertaking to redress the various scales of exploitation of a people requires a larger, grassroots movement, where the law is but an auxiliary to building people power toward healing and recognition of their humanity.<sup>188</sup>

#### IV. BEYOND LEGAL REMEDIES: STEPS FORWARD IN THE REALM OF MOVEMENT LAWYERING AND COMMUNITY ORGANIZING

Since legal remedies are purposefully limited in scope as a tool to protect the interests of the “powerful, white, and the rich,”<sup>189</sup> this Note advocates for alternative forms of remedy outside the courtroom, such as building movements that center the Filipino experience through advocacy and education to achieve justice and healing for Filipino nurses, migrant workers, and trafficking survivors.

---

<sup>185</sup> *Id.*

<sup>186</sup> Eidelson, *supra* note 110.

<sup>187</sup> *Cf.* Raymond D. Duvall & John R. Freeman, *The State and Dependent Capitalism*, 25 INT’L STUD. Q. 99, 101-02 (1981) (defining dependent capitalism as a type of capitalism that exists in world peripheries and is marked by the prominence of a few industries, which were originally created by foreign capitalism and continue to be controlled by international capital).

<sup>188</sup> *See* Jennifer Ching et al., *A Few Interventions and Offerings from Five Movement Lawyers to the Access to Justice Movement*, 87 FORDHAM L. REV. 186, 187 (2018).

<sup>189</sup> *Id.*

To center the Filipino experience, I look to Filipino organizers like Nikki Pagulayan,<sup>190</sup> Amanda Katapang,<sup>191</sup> and Jackelyn “Jackie” Mariano<sup>192</sup> to highlight the work of grassroots organizations such as Anakbayan,<sup>193</sup> GABRIELA,<sup>194</sup> Malaya,<sup>195</sup> and Mission to End Modern Slavery (“MEMS”).<sup>196</sup> I was fortunate to speak with Jackie (in her capacity as an organizer and a lawyer) about her experiences using the law to achieve justice and healing for Filipino migrants in the United

---

<sup>190</sup> Nikki Pagulayan is a community organizer for Anakbayan New York (“ABNY”), a local chapter of Anakbayan-USA, an alliance of progressive Filipino youth and student organizations that campaign for the rights and welfare of Filipinos across the diaspora. Pagulayan also serves as the BAYAN-USA Coordinator for New York and New Jersey, where she works to unite Filipinos on issues that impact them locally and back home, in the Philippines.

<sup>191</sup> Amanda Katapang is a Filipino organizer, educator, and artist based in Queens, New York. As a founding organizer of Anakbayan-Manhattan, she fights for national democracy in the Philippines and the rights and welfare of Filipinos abroad. As Legal Coordinator of Mission to End Modern Slavery, Amanda utilizes her legal and organizing knowledge to empower, educate, and serve migrant workers and trafficking survivors.

<sup>192</sup> Jackelyn Mariano is an adjunct professor at CUNY Hunter College’s Asian American Studies Program and CUNY Law’s CLEAR Clinic. She is passionate about international human rights and has engaged in campaigns to hold governments in the Philippines and around the world accountable for human rights violations.

<sup>193</sup> ANAKBAYAN-USA, <https://perma.cc/8WYL-6DCV> (Last visited Aug. 28, 2022). Anakbayan-USA is the comprehensive national democratic mass organization of Filipino youth and students in the U.S. Kabataang Makabayan, Anakbayan, all of whom believe that Philippine society today is neither truly free nor democratic due to the control of U.S imperialism, along with local landlords, big capitalists, and corrupt government officials. The National Democratic Struggle seeks to realize true national liberation for the country and the realization of the democratic rights of the people.

<sup>194</sup> GABRIELA NAT’L ALL. OF WOMEN, <https://perma.cc/BQ9T-8LQ5> (last visited Aug. 28, 2022). GABRIELA National Alliance of Women is a grassroots-based alliance of more than 200 organizations, institutions, desks, and programs of women all over the Philippines and abroad seeking to wage a struggle for the liberation of all oppressed Filipino women and the rest of our people. GABRIELA is at the forefront of national and international economic and political issues that affect women.

<sup>195</sup> MALAYA MOVEMENT, <https://perma.cc/QH2H-27U4> (last visited Aug. 28, 2022). Malaya Movement, is a broad movement of individuals, organizations, and various formations united under objectives to defend human rights, democracy, and sovereignty in the Philippines while binding together to denounce the practice of political dynasties, use of wealth to gain an unfair advantage, to condemn and work to end extrajudicial killings, and all forms of human rights violations, as well as unequal military and economic agreements that exploit the Filipino people.

<sup>196</sup> MISSION TO END MOD. SLAVERY, <https://perma.cc/W5WU-KYLA> (last visited Aug. 28, 2022). MEMS empowers victims of human trafficking and mobilizes communities to end modern slavery through survivor-led movements toward social and economic justice. Based in Queens, New York, MEMS works with community partners to provide a safe and healing space for survivors to share their stories, dismantle shame, reclaim their dignity, and foster movement-building for racial and economic justice.

States.<sup>197</sup> Jackie employs this lawyering approach for the service of Filipino trafficking survivors and provides an example of how lawyers can support communities in creating their own solutions. While these experiences are unique to Jackie and her community, they offer insight into how impacted people can utilize lawyers to achieve some form of relief. This section discusses how Jackie's lived experience and trauma-informed practices facilitated her work with survivors and community members to build community empowerment and education toward a revolutionary vision.

Even though she did not label her work as such, Jackie's experiences as a self-identified product of the LEP and as a lawyer amount to movement lawyering because she works collaboratively and obediently with impacted communities and clients to effectuate social change.<sup>198</sup> The last thing a formerly trafficked client needs is a formalist lawyer who perpetuates a subordinating relationship, the very dynamic that clients seek to combat.<sup>199</sup> Instead, movement lawyering as a model for legal practice has taken hold most strongly among lawyers for "irregular migrant communities."<sup>200</sup>

One key element that makes movement lawyering effective is centering the client's lived experience.<sup>201</sup> Jackie centers the lived experience of survivors she works with. Upon discussing our families' similar migration stories and our experiences as Filipinos in the U.S., we shared how our experiences led us to question why we are here and why so many Filipinos feel compelled to move here. Our eyes turned to seeking out the history of Filipino migration to the U.S. and the powers at play. This firsthand knowledge guides Jackie's work with the various organizations that she is involved in and the clients that she serves.<sup>202</sup>

According to Jackie, trauma-informed care is not only an important tool both for lawyers' resilience and effective client communication, but

---

<sup>197</sup> Telephone Interview with Jackelyn Mariano, Adjunct Professor, CUNY Hunter College's Asian American Studies Program, CUNY Law's CLEAR Clinic (May 11, 2022) [hereinafter Mariano Interview] (discussing how successfully assisting survivors of human trafficking to apply for T visas achieves justice and healing for their past trauma).

<sup>198</sup> See Christine Cimini & Doug Smith, *An Innovative Approach to Movement Lawyering: An Immigrant Rights Case Study*, 35 GEO. IMMIGR. L.J. 431, 452 (2021) (defining movement lawyering).

<sup>199</sup> See *id.* at 450-51.

<sup>200</sup> *Id.* at 452.

<sup>201</sup> See Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 CLINICAL L. REV. 663, 669 (2017) (explaining that rebellious lawyering involves centering those directly impacted, building a framework and "praxis" or skill of intersectionality even when the practice is not commonplace).

<sup>202</sup> See Mariano Interview, *supra* note 197 (discussing how being a product of LEP guided Mariano to focus on assisting Filipino victims of human trafficking).

also one of the ways she confronts issues that impact her and the Filipino community. Jackie refines this skill by applying lived experience to practice: she studies the LEP; she teaches the policy and its effects for the Asian American Studies program at the City University of New York, Hunter College; and she works with survivors of trafficking and the LEP, organizing with groups like Anakbayan, Malaya, and MEMS. Actively working against the systems that have negatively impacted her personally is both Jackie's personal healing practice and service to her community, both of which require a client-centered approach in a way that traditional lawyering does not. For example, Jackie's work with MEMS, which involves the fabrication of sustainable systems of community care, shows one way legal professionals can contribute to the communal healing and empowerment of community members.<sup>203</sup> Due to the lack of legal professionals who are culturally competent and well versed in the niche area of trafficking within immigration law, Jackie's law firm, in collaboration with MEMS, found limitations in its capacity to provide trauma-informed legal services to a large number of trafficked teachers.

In the immigration context, Jackie's firm and MEMS bridged the gap by developing community-informed solutions such as conducting grassroots outreach and providing community education workshops about pro se T visa applications.<sup>204</sup> Persons who have endured human trafficking and are seeking legal remedy do not have to wait until immigration lawyers become available to take their case.<sup>205</sup> Instead, if people are eligible to file pro se T visa applications, lawyers who are unable to take on a client can inform the client about the option to file pro se and educate them on this option to demystify the common belief that access to a justice and legal relief requires a lawyer. Moreover, lawyers can offer pro se litigants support by walking through the application and revising errors. A lawyer's supervision throughout an intimidating process such as pro se litigation can make a difference.<sup>206</sup>

Another community-informed solution was to create self-sustaining systems of support and care by empowering survivors to build a survivor-led movement. In empowering impacted survivors to become the leaders of their own movements, these leaders have the opportunity to

---

<sup>203</sup> See *id.*

<sup>204</sup> See *id.* at 6.

<sup>205</sup> See generally *Victims of Human Trafficking: T Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://perma.cc/VBB7-NDQH> (last visited Aug. 29, 2022) (illustrating application process and instructions on the USCIS website).

<sup>206</sup> See Mariano Interview, *supra* note 197, at 6-7 (discussing how supervising victims of human trafficking apply pro se for T visas can create teachers that assist other victims in their applications).

develop a vision to dismantle harmful policies and systems.<sup>207</sup> For example, Jackie witnessed how the support T visa recipients provided for T visa applicants presented them all with an opportunity to heal: both recipients and applicants shared their stories and support with each other, thereby developing a sense of camaraderie, empathy, and unison. The bonds between people who have endured similar circumstances seem to create a sense of community through the generosity of survivors in passing down knowledge to future survivors. Solidarity, in turn, has the potential to build a strong foundation for a larger movement by facilitating the creation of a grassroots advocacy group where those affected are at the forefront of the decision-making and direction.<sup>208</sup>

Survivor-led movements transform the culture of a community and a society because they foster belonging among people experiencing the same grievances. The result is a liberatory space for inner healing, impactful grassroots organizing, and the dismantling of systems of oppression.<sup>209</sup> Empowered by community support, survivors are more likely to be motivated to partake in campaigns that seek to eradicate the root causes of human trafficking both to cope with their trauma and regain their agency and autonomy.<sup>210</sup>

Conventional lawyering that seeks closure through a favorable judicial determination can be helpful, as seen in the previous section. However, rather than a condensed series of legal reforms, the vision of eradicating the human trafficking of Filipinos requires collective, revolutionary action.<sup>211</sup> Beyond the legal remedy, survivors benefit from grounding themselves in their communities and using shared histories toward building power against the policies that failed them.<sup>212</sup> As a

---

<sup>207</sup> See *id.* at 7.

<sup>208</sup> See *id.* at 7-8 (explaining how support from other survivors “empowered the teachers to also take on what the other teacher survivor did for them” which then led them to form an organization and advocate for themselves through sharing their experience with the public).

<sup>209</sup> See *Transforming Culture in Solidarity with Survivor-Led Efforts: Healing and Advocacy*, EMERSON COLL., <https://perma.cc/2BYJ-BEP7> (last visited Nov. 7, 2022) (providing examples of such survivor-led movements).

<sup>210</sup> See Mariano Interview, *supra* note 197, at 6-7 (discussing how trafficked teachers in Texas were “empowered” to organize themselves). In Texas, the impacted teachers reached out to media outlets as a part of their advocacy efforts. *Id.* at 8. See also Cheryl Piccio, *Pinoy Teachers Scammed by Texas School Official Seek Help from PH Gov’t*, ABS-CBN NEWS (July 20, 2019, 3:21 PM), <https://news.abs-cbn.com/overseas/07/20/19/pinoy-teachers-scammed-by-texas-school-official-seek-help-from-ph-govt> (on file with CUNY Law Review).

<sup>211</sup> See ACTIVIST STUDY – ARLING AKTIBISTA (ARAK) 109 (Foreign Languages Press 2020) [hereinafter ARAK], (ebook) (predicting “a revolutionary change in Philippine society, fundamental changes in the politics, economy and culture of the people”).

<sup>212</sup> This experience aligns generally with the very definition of movement lawyering, and specifically with lawyers at MEMS who participate in the creation of a survivor-led move-

community grounds itself in shared history, political education by way of revolutionary study serves as a form of activism and healing beyond individual impact.<sup>213</sup> To build resistance within movements, Jackie encourages survivors to study oppressive systems, specifically, the rise of neoliberalism and the labor export policy.<sup>214</sup> This aligns with Professor Karen Bravo's proposition that the full personhood of an individual is "a right, not a privilege" and that "[t]o address human trafficking, we must deploy not just the rhetoric of equality, but the operation and implementation of policies and mechanisms that prevent vulnerability to exploitation."<sup>215</sup> When analysis recognizes full humanity, it allows us to expand our understanding beyond individual experiences to systemic harms and organize toward liberation. The ability to navigate the roots of systemic oppression gives us the opportunity to develop more targeted solutions.<sup>216</sup>

Recent political events show the currentness and importance of refining people's historical education to elevate their political consciousness. On June 30, 2022, Ferdinand Marcos Jr. (also known as Bongbong Marcos or "BBM") was inaugurated as the 17th President of the Philippines, despite claims of massive fraud in the Philippines elections.<sup>217</sup> The inconsistencies of the election, including reports of vote buying,

---

ment with a goal to address the root of the problem. See MISSION TO END MOD. SLAVERY, *supra* note 196.

<sup>213</sup> See ARAK, *supra* note 211, at 83-86 (discussing the importance of revolutionary study and the study of Philippine history for "guidance in our understanding and solving the problems of [Filipino] political struggle").

<sup>214</sup> See Mariano Interview, *supra* note 197, at 3 (discussing Mariano's own background in labor export policy and the importance of providing survivors with knowledge of their legal rights, and enabling them to educate fellow survivors); see, e.g., Critical Filipina/o/x Studies Collective & Bulosan Center for Filipino Studies, *Anti-Martial Law Syllabus*, 2 ALON: J. FOR FILIPINX AM. & DIASPORIC STUDS. 199, 199-207 (2022) ("creating a space for political education to combat disinformation and commune in solidarity").

<sup>215</sup> Karen E. Bravo, *On Making Persons: Legal Constructions of Personhood and Their Nexus with Human Trafficking*, 31 N. ILL. U. L. REV. 467, 499 (2011) (emphasis in original).

<sup>216</sup> See, e.g., Philippine Human Rights Act, H.R. 3884, 117th Cong. (2021) (aiming "[t]o suspend the provision of security assistance from the United States to the Philippines until the Government of the Philippines has made certain reforms to the military and police forces, and for other purposes"). The proposed reform recognizes the U.S.'s role in providing aid to regimes under whose power "[t]he Philippines has been deemed one of the deadliest countries in the world for land defenders, journalists, and trade unionists." See *Who We Are*, COAL. FOR THE PHIL. HUM. RTS. ACT, <https://perma.cc/ET5V-UPCV> (last visited Nov. 9, 2022).

<sup>217</sup> See Hana Bordey, *Kontra Daya Claims Fraud in Eleksyon 2022*, GMA NEWS (last updated May 19, 2022, 11:58 PM) <https://perma.cc/WKT8-DMGP>.

misinformation, and other tactics,<sup>218</sup> underscore the importance of education about the region's history of imperialism and propaganda.<sup>219</sup> Thirty-six years after his family was ousted in the EDSA People Power Revolution, Bongbong Marcos was inaugurated with former President Rodrigo Duterte's daughter Sara Duterte as his Vice President, continuing the pattern of political dynasties in the Philippines.<sup>220</sup> Alternative media outlets and disappointed youth in the Philippines reacted on Twitter with responses ranging from feeling compelled to leave the country for survival to staying to force another Marcos out of the country.<sup>221</sup> My own family members continue to weigh their options of taking requisite exams for recruitment agencies while others are forced to remember trauma they experienced during Martial Law even now as they live oceans away.

In what movement leaders viewed as a sign of human rights violations to come under the Marcos regime, the Philippine National Police

---

<sup>218</sup> See *Status Report*, VOTEREPORTPH, <https://perma.cc/T4P9-NA6X> (last visited Nov. 22, 2022); see also Cristina Eloisa Baclig, *Faulty VCMs: More Than Just a Hiccup in 2022 Polls*, INQUIRER.NET (May 10, 2022, 9:25PM) <https://perma.cc/8ZT6-MTVT>.

<sup>219</sup> See Sofia Tomacruz, *Bongbong Marcos Asked Cambridge Analytica to 'Rebrand' Family Image*, RAPPLER (July 15, 2020, 4:29 PM), <https://perma.cc/EY83-ML86> (Cambridge Analytica employee whistleblower, Brittany Kaiser discussing "disinformation tactics" and "describ[ing] the Marcos's efforts to rebrand their family as historical revisionism fueled by the use of online data."); see also Sui-Lee Wee, *Marcos Win Prompts Protests in the Philippines*, N.Y. TIMES (May 10, 2022), <https://www.nytimes.com/2022/05/10/world/asia/philippines-election-protests.html> (on file with Cuny L. Rev.) (describing how protester Paula Santos "had supported the younger Mr. Marcos when he ran against Ms. Robredo for the vice presidency in 2016 'because of the beautifully crafted posts and infographics I saw on YouTube,'" but Ms. Santos changed to support Marcos's opponent after doing her own research). See generally ANAKBAYAN-USA, *supra* note 193 (organizing around "the cause of national democracy" in the Philippines, and self-named after a "pre-Martial law organization").

<sup>220</sup> See Wee, *supra* note 219; see also Pia Ranada, *Duterte on EDSA 36: Honor Those Who Fought for Democracy*, RAPPLER (Feb. 26, 2022, 11:43 AM), <https://perma.cc/L9CF-RYWZ>.

<sup>221</sup> See AlterMidya (@altermidya), TWITTER (May 9, 2022, 10:01 PM), <https://perma.cc/4CTU-6NE8> (quoting Pido Gonzales, who survived the Martial Law era: "Ngayon, nagbabalik ang mga magnanakaw, mga pasista, mamamatay tao [ ] magbabalik din ang mga aktibista noong panahon," which roughly translates to: "Today, the thieves are returning, the fascists, the murderers, the activists of that time will return too"); see also Summer Claus f/k/a The Ghost of Summer (@summersky915), TWITTER (May 9, 2022, 4:59 AM), <https://perma.cc/2NMN-JAXB> ("Voted with my heart in my throat and dread filling my stomach. I don't want to leave this place, but by all that is holy I am going to jump off this ship the very moment BBM wins. Pilipinas, bakit ang hirap-hirap mong mahalina????") This last sentence translates to: "Philippines, why is it so difficult to love you?"); c-j (@allweknowiscj), TWITTER (May 9, 2022, 8:53 AM), <https://perma.cc/AV4K-TQES> ("anong aalis sa pilipinas????? kita-kita sa edsa dapat," which roughly translates to: "What about leaving the Philippines? We should be seeing each other in EDSA").

(“PNP”), declared a “‘no-rally’ zone” in advance of Marcos’ first Philippine State of the Nation Address (“SONA”).<sup>222</sup> The “‘no permit, no rally’ policy” restricted protest marches along Commonwealth Avenue where SONA is traditionally held, and more than <sup>223</sup> 20,000 security personnel were mobilized in preparation for the event.<sup>224</sup> Malaya Movement released a statement “echo[ing] the position of people’s organizations in the Philippines that SONA rally is well within the rights of the people, with or without a permit.”<sup>225</sup> Despite the efforts to quell dissent, activists and grassroots organizations such as Malaya continue to organize and urge people to join them in rejecting the Marcos-Duterte regime:

This is a clear sign of what to expect under the new regime: further curtailment of human rights and civil liberties amidst a worsening economic crisis. In light of this, this is all the more reason for all democratic forces and freedom loving citizens and allies to join us in the streets for the SONA and beyond - in the movement to advance human rights, genuine democracy and sovereignty in the Philippines.<sup>226</sup>

It is difficult to believe that Marcos’s win is a coincidence in the geopolitical climate of Western countries struggling to overcome the labor shortages that the COVID-19 pandemic exacerbated.<sup>227</sup> In New York, Governor Kathy Hochul suggested expediting the foreign recruitment process for nurses in the Philippines as the number of nurses in New York was expected to plummet following the enforcement of vaccination requirements for healthcare workers.<sup>228</sup> Recognizing foreign need, Philippine agencies similarly seek to take advantage of these circumstances, as the Department of Labor and Employment offered to export more Filipino healthcare workers in exchange for COVID-19 vac-

---

<sup>222</sup> See *Expose the Truth! Reject the Lies!: Statement from Malaya Movement USA on the Marcos Jr.’s First State of the Nation Address*, MALAYA MOVEMENT (July 22, 2022) [hereinafter *Malaya Statement*] <https://perma.cc/2VJV-BU4S>.

<sup>223</sup> Joviland Rita, *Commonwealth Avenue a ‘No Rally Zone’ During Marcos’ SONA — PNP*, GMA NEWS (July 19, 2022), <https://perma.cc/PU5X-NZCY>.

<sup>224</sup> *Id.*

<sup>225</sup> *Malaya Statement*, *supra* note 222.

<sup>226</sup> *Id.*

<sup>227</sup> See Kate Hooper, *Labor Shortages During the Pandemic and Beyond: What Role Can Immigration Policy Play?*, MIGRATION POL’Y INST.: COMMENTARIES (Oct. 2021), <https://perma.cc/4C7Z-B5MP> (discussing “acute labor shortage[s] in a variety of sectors” across Europe and North America).

<sup>228</sup> See Chaunie Brusie, *Hospitals Are Turning to Foreign-Educated Nurses Fix the U.S. Staffing Crisis*, NURSE.ORG (Feb. 16, 2022), <https://perma.cc/MM5K-T6YJ>.



cines from the United Kingdom and Germany.<sup>229</sup> The U.S. and China were among the first to congratulate Ferdinand Marcos Jr. on his win,<sup>230</sup> reinforcing the foreign interest in making sure that the Philippines remains unstable, and that Filipinos remain dependent on foreign job opportunities.

#### V. CONCLUSION

It is important now more than ever to study the source of this reliance as rooted in U.S. imperialism and the creation of the LEP under the Marcos regime. Only through this recognition can we fight systems aimed at spreading misinformation and begin to recognize the full humanity of those most impacted by these systems. Organizing grassroots movements such as Anakbayan, Malaya, Kabataan Alliance, Gabriela, and MEMS and survivor-led activism can lead to true healing for Filipinos as a nation and a diaspora.

The recent federal trafficking cases recognizing labor trafficking in the foreign recruitment of nurses from the Philippines come as products of U.S. and Philippine policies that created the export economy to achieve political goals to the detriment of Filipinos. The labor export economy creates power dynamics that not only allow for exploitation that rises to the level of human trafficking, but also allow countries receiving Filipino laborers to profit and thrive from the commodification of human beings.

While federal courts are beginning to evaluate these exploitative practices as legitimate violations under the TVPA, legal remedies fail to target the root causes. While legal remedies offer some relief, they do not create preventive practices or overhaul the systems currently in place that would need to be dismantled to prevent the exploitation of more Filipino nurses. Because the issue of human trafficking of nurses and other workers is systemic, the law must be but an auxiliary tool supporting the work of survivor leaders.<sup>231</sup> Whether it is learning from their stories, acknowledging their demands, or adopting the blueprints of their organiza-

---

<sup>229</sup> See Ritche Mendiola, *Backlash Ensues After PH Offers Nurses in Exchange for COVID Vaccines from UK, Germany*, ASIAN J. (Feb. 25, 2021), <https://perma.cc/VG3D-VVJV>.

<sup>230</sup> See Biden, *Xi Congratulate Marcos Jr on Philippine Presidential Win*, AL JAZEERA (May 12, 2022), <https://perma.cc/HBV2-WXTQ>.

<sup>231</sup> See Katapang, *supra* note 120, at 222 (positing that when the law rejects political arguments, labor trafficking survivors can become conditioned to not use personal narratives for revolutionary change). “However, when drafting their own affidavits, survivors are conditioned to frame their stories in terms of the law, potentially watering down the political framework in which they were trafficked. Since the law is inaccessible to workers to begin with, they may become distracted or even obsessed with the law once they grasp it.” *Id.*

tions, using the law to advocate for Filipino nurses looks like enabling survivor-led movements because their leadership and solutions are the guide toward the healing of Filipino nurses and achieving the justice they need and deserve.

In a sociopolitical environment that ignores the role of neocolonial U.S. intervention in the Philippines and martial law, and seeks to re-brand the Marcos family as heroes by erasing their involvement in creating the very systems subjugating Filipino nurses and the Filipino people to a dependent-capitalist order, the goal of looking beyond legal remedies is all the more pressing. Now is not the time to erase the suffering and neglect the unjust deaths of Filipinos in the Philippines and abroad.<sup>232</sup>

---

<sup>232</sup> See, e.g., Bob Drogin, *Seattle Case Focuses on Agents of Marcos: Relatives of 2 Slain Unionists Contend U.S. Knew of Covert Operations*, L.A. TIMES (Apr. 20, 1986, 12:00 AM), <https://perma.cc/RL2K-KBV7> (detailing the widespread belief that Ferdinand Marcos's government surveilled, intimidated, and harassed opponents living in the U.S., including by ordering the shooting of two activists in Seattle); Euan McKirdy et al., *Former Philippines Dictator Ferdinand Marcos Buried in Heroes' Cemetery*, CNN (Nov. 18, 2016, 4:17 AM), <https://perma.cc/79TK-STTG> (reporting on the revisionism of Duterte's government moving Ferdinand Marcos's remains to the National Heroes' Cemetery 27 years after death).