No. 17-1125

IN THE
United States Court of Appeals for the Tenth Circuit

ALEJANDRO MENOCAL, MARCOS BRAMBILA, GRISEL XAHUENTITLA, HUGO HERNANDEZ, LOURDES ARGUETA, JESUS GAYTAN, OLGA ALEXAKLINA, DAGOBERTO VIZGUERRA, and DEMETRIO VALEGRA,
on their own behalf and on behalf of all others similarly situated,
Plaintiffs-Appellees,

v.

THE GEO GROUP, INC.,
Defendant-Appellant.

Appeal from the U.S. District Court for the District of Colorado,
Civil Action No. 1:14-cv-02887-JLK, Judge John L. Kane, Presiding

BRIEF OF AMICI CURIAE HUMAN TRAFFICKING PRO BONO LEGAL CENTER, TAHIRIH JUSTICE CENTER, ASISTA IMMIGRATION ASSISTANCE, FREEDOM NETWORK USA, AND SANCTUARY FOR FAMILIES IN SUPPORT OF PLAINTIFFS-APPELLEES

Andrew C. Lillie
Nathaniel H. Nesbitt
Ann C. Stanton
HOGAN LOVELLS US LLP
1601 Wewatta Street, Suite 900
Denver, CO 80202
(303) 899-7300
andrew.lillie@hoganlovells.com
nathaniel.nesbitt@hoganlovells.com
ann.stanton@hoganlovells.com

Counsel for Amici Curiae

August 11, 2017

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Amicus curiae the Human Trafficking Pro Bono Legal Center is a nonprofit § 501(c)(3) organization. It has no parent corporation and no publicly traded stock. No publicly held corporation owns any part of it.

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Amicus curiae Sanctuary for Families is a nonprofit § 501(c)(3) organization. It has no parent corporation and no publicly traded stock. No publicly held corporation owns any part of it.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

CASES: **Page(s)**

STATUTES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

INTEREST OF AMICI CURIAE[1]

Amici curiae are U.S.-based organizations that advocate for victims of human trafficking, including forced labor.

The Human Trafficking Pro Bono Legal Center ("HT Pro Bono") is a nonprofit organization that empowers trafficking survivors to seek justice by connecting them with highly-skilled pro-bono attorneys. Since its inception in 2012, HT Pro Bono has trained more than 3,000 attorneys at top law firms across the country to handle civil trafficking cases and educated over 14,000 community leaders on trafficking victims' rights. The organization advocates for criminal restitution for trafficking victims and provides extensive technical assistance to pro-bono attorneys litigating civil trafficking civil cases in U.S. federal courts. HT Pro Bono maintains databases of all federal civil and criminal human-trafficking cases filed in the United States, conducting in-depth research on trends in civil litigation and criminal prosecution. HT Pro Bono staff attorneys have lectured nationally and internationally on human trafficking for forced labor and

[1] Amici curiae submit this brief with a motion for leave of the Court under Federal Rule of Appellate Procedure 29(a)(2). Counsel for amici curiae state under Federal Rule of Appellate Procedure 29(a)(4)(E) that no counsel for a party authored this brief in whole or in part, and no person other than amici curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

involuntary servitude. HT Pro Bono advocates for justice for all victims of human trafficking.

The Tahirih Justice Center ("Tahirih") is a pro bono legal-advocacy organization that provides holistic legal and social services as well as public-policy advocacy for immigrant women and girls fleeing gender-based violence. The women that Tahirih serves are often particularly vulnerable to horrific crimes such as human trafficking, domestic abuse, and sexual assault. Tahirih helps its clients obtain the protections available to them under such laws as the Violence Against Women Act ("VAWA") and the Trafficking Victims Protection Act ("TVPA"). It engages in advocacy at the state and local level on behalf of trafficking victims and sits on anti-trafficking coalitions, coordinating with local, state, and federal agencies to improve anti-trafficking and victim-services efforts. Tahirih has an interest in strengthening laws that help trafficking victims to access justice and in preventing erosion of critical protections. As a result of its work, Tahirih is well positioned to address the scope of the TVPA and claims against forced labor.

ASISTA Immigration Assistance ("ASISTA") worked with Congress to create and expand routes to secure immigration status for survivors of domestic violence, sexual assault, and other crimes, which were incorporated into VAWA and its progeny. ASISTA serves as field liaison with Department of Homeland

Security ("DHS") personnel charged with implementing these laws, most notably Citizenship and Immigration Services ("CIS"), Immigration and Customs Enforcement ("ICE"), and DHS's Office for Civil Rights and Civil Liberties. ASISTA also trains and provides technical support to local law-enforcement officials, civil- and criminal-court judges, domestic-violence and sexual-assault advocates, and legal-services, nonprofit, pro-bono, and private attorneys working with immigrant crime survivors.

Freedom Network USA ("FNUSA") is the largest alliance of human-trafficking advocates in the United States. Its 51 members work directly with human-trafficking survivors in over thirty cities and provide comprehensive legal and social services, including representation in civil litigation. Its members serve over 1,000 trafficking survivors per year, over 50% of which are survivors of forced-labor schemes. Through its national efforts, FNUSA increases awareness of human trafficking and provides decision makers, legislators and other stakeholders with the expertise and tools to make a positive and permanent impact in the lives of all survivors. FNUSA provides training and advocacy to increase understanding of the wide array of forced-labor schemes in the United States, and the many forms of force, fraud and coercion used by traffickers. FNUSA has an interest in ensuring that labor-trafficking survivors have increased access to legal representation,

restitution, and comprehensive social services to ensure that all survivors achieve justice and traffickers are deterred from future exploitation.

Sanctuary for Families is New York State's largest dedicated service provider and advocate for survivors of domestic violence, human trafficking, and related forms of gender violence. Each year Sanctuary provides legal, clinical, shelter, and economic-empowerment services to approximately 15,000 survivors and their children. Sanctuary's legal arm, The Center for Battered Women's Legal Services ("The Center"), specializes in providing legal assistance and direct representation to indigent victims, mostly in family-law and humanitarian - immigration matters such as asylum, VAWA Self-Petitions, and petitions for U and T nonimmigrant status. Legal services at the Center are carried out by Center staff through direct representation, in collaboration with volunteers from the private bar, law schools, and New York City's public-interest community. In addition, The Center provides training on domestic violence and trafficking to community advocates, pro-bono attorneys, law students, service providers, and the judiciary, and, in collaboration with a diverse range of local, national, international, private, and community organizations, plays a leading role in advocating for legislative and public-policy changes that further the rights and protections afforded battered women and their children.

INTRODUCTION

Plaintiffs are civil immigrant detainees awaiting hearings or deportation in the for-profit, privately run Aurora Detention Facility. Plaintiffs were forced to clean their living quarters and common areas without pay, under threat of solitary confinement and other punitive measures. Defendant GEO Group, Inc. ("GEO") operates the Aurora Detention Facility under a contract with ICE and enforces a Sanitation Policy that requires this unpaid, forced labor. Plaintiffs brought suit against GEO alleging, *inter alia*, that GEO violated the Trafficking Victims Protection Act (TVPA) when it forced Plaintiffs to provide unpaid labor under threat of serious harm. Plaintiffs' TVPA and unjust-enrichment claims survived GEO's motion to dismiss, and the district court subsequently certified Plaintiffs' class under Federal Rule of Civil Procedure 23(b)(3).

The matter is before this Court on GEO's interlocutory appeal from the district court's class-certification order. Though the question presented is whether the district court properly certified the class, GEO tries to smuggle its motion-to-dismiss arguments into this appeal under the guise of this procedural challenge to the class-certification decision. Amici thus seek to address GEO's substantive assertion that the TVPA does not reach its conduct. *See, e.g.*, Pet. for Permission to Appeal Class Certification 9–13, Mar. 13, 2017, ECF No. 01019778492.

Congress enacted the TVPA "to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims." Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102(a), 114 Stat. 1464, 1466 (2002). Congress has recognized that human trafficking occurs "not only where . . . victims are kept in service through overt beatings, but also where the traffickers use more subtle means." H.R. Rep. No. 106-939, at 101 (2000). Indeed, the TVPA and subsequent Trafficking Victim Protection Reauthorization Acts ("TVPRA") evince an understanding of modern-day slavery as a crime that can occur in a wide range of settings.

Plaintiffs brought this suit under 18 U.S.C. § 1595, alleging that GEO violated § 1589 when it extracted forced labor from Plaintiffs. In passing 18 U.S.C. § 1589, the forced labor statute, Congress specifically "intended to address the increasingly subtle methods of traffickers who place their victims in modern-day slavery, such as where traffickers threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence." H.R. Rep. No. 106-939, at 101. In the nearly fifteen years since Congress first created a civil cause of action for offenses under

Chapter 77 of Title 18,[2] hundreds of plaintiffs have brought suit against their traffickers. These victims have alleged trafficking in a multitude of labor sectors.[3] Most have been successful.[4]

Just as Congress intended, the TVPA and TVPRA have served as a bulwark against more than just physical abuse. The result has been accountability: for corporations that otherwise might have exploited workers without repercussions,[5] and for diplomats who otherwise might have held domestic workers in forced labor with impunity.[6] Yet GEO argues that the protections of the TVPA are not available to civil detainees in a for-profit detention center because the allegations against it "categorically differ from the type of conduct the TVPA was intended to

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[2] Congress first created a private cause of action in 2003, initially limiting the cause of action to violations of 18 U.S.C. §§ 1589, 1590, and 1591. In subsequent Reauthorizations, the civil cause of action was expanded to include all violations of Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4(a)(4)(A), 117 Stat. 2875, (2003), *amended by* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5067, title II, § 221(2) (2008), Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 129 Stat. 247, title I, § 120 (2015).

[3] As of August 1, 2017, at least 251 cases have been filed under 18 U.S.C. § 1595.

[4] Of the 251 cases filed, 131 known cases settled or resulted in judgments for plaintiffs. An additional 53 cases are ongoing. HT Pro Bono Civil Case Litigation Database (available upon request).

[5] *See, e.g.*, Compl., *David v. Signal Int'l*, No. 2:08-cv-01220 (E.D. La. Mar. 7, 2008), ECF No. 1.

[6] *See, e.g.*, Compl., *Sabbithi v. Al-Saleh*, No. 1:07-cv-115 (D.D.C. Jan. 18, 2007), ECF No. 3.

proscribe." Pet. for Permission to Appeal Class Certification 11, Mar. 13, 2017, ECF No. 01019778492. This claim is simply not true.

The text and history of the TVPA—as well as case law applying it—show just the opposite: powerful institutions, no less than petty criminals, are bound by Congress's mandate to avoid human trafficking. Moreover, Congress made it clear that government contractors, such as GEO, should be held to account for human trafficking. *See* H.R. Rep. No. 108-264, at 16 (2003).

The Court should allow Plaintiffs' claims to proceed. The text and legislative history of the TVPA and its reauthorizations show Congress's intent to address forced labor extracted through means such as those used by GEO, and in contexts such as the one at issue here.

ARGUMENT

The TVPA's plain text and legislative history show that Congress's intent to protect victims from forced labor was not limited to a particular context. GEO's coercive means to obtain Plaintiffs' labor—threats of solitary confinement—fall within what Congress contemplated when it enacted the TVPA. Further, contrary to GEO's assertion, the text and legislative history of the TVPA reflect Congress's intent to hold government contractors like GEO liable for trafficking violations.

Holding GEO liable for obtaining forced labor through coercion will further the goals of the TVPA without affecting ICE's ability to operate its detention facilities.

I. CONGRESS INTENDED TO PROTECT VICTIMS WHO, LIKE PLAINTIFFS, WERE FORCED TO PERFORM LABOR AT THREAT OF SIGNIFICANT HARM.

Congress intended the TVPA to protect victims from the kind of forced labor that GEO required in its detention facility. Specifically, the text and legislative history of the TVPA and TVPRA illustrate two key points. First, Congress intended "forced labor" to include the type of labor GEO obtained from Plaintiffs. Second, Congress intended the TVPA and TVPRA to cover the type of coercive behavior that GEO employed.

A. The Legislative History of the TVPA and TVPRA Shows that Congress Contemplated Forced Labor Arising in Many Contexts, Including the Context Presented Here.

GEO argues that it did not violate the law because it engaged in forced labor outside of what it confusingly terms the "trafficking context." Appellant's Br. 18. This argument fails because the legislative history of the TVPA and TVPRA show that there is no single "trafficking context." The labor GEO forced Plaintiffs to provide falls within the range of settings Congress envisioned when it enacted the TVPA.

The legislative history of the TVPA and its reauthorizations clearly show that when Congress legislated against "forced labor," it was targeting a practice that arises in a multitude of settings and labor sectors. Indeed, Congress intended the TVPA to inject "new potency in the Thirteenth Amendment's guarantee of freedom: whether on farms or sweatshops, in domestic service or forced prostitution." 153 Cong. Rec. H14114 (daily ed. Dec. 4, 2007) (statement of Rep. Conyers). The harm that Congress sought to target "manifests itself in many forms: forced and bonded labor, sex slavery, and even militant activity, as has been seen with child soldiers." *Id*. (statement of Rep. Ros-Lehtinen). "Modern-day slavery" includes a wide array of people in virtually innumerable circumstances:

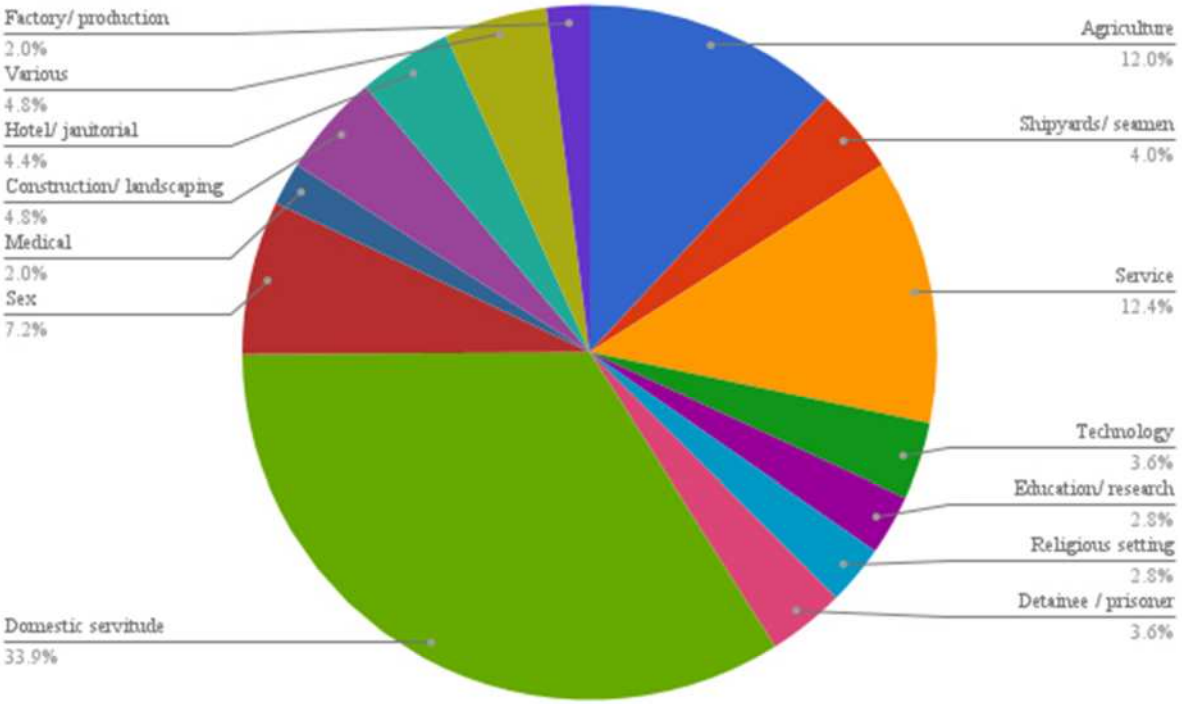
> [w]omen brought to the Bay Area from China with false promises of life in a far-off land, only to be trapped in prostitution[;] Latino men laboring in debt bondage on ranches and farms in inland valleys[;] … Mexican women forced to serve up to 50 men each day in dingy brothels in New York; African teenagers held in servitude as nannies in Washington, D.C.; American women and girls lured onto the streets with promises of love and glamour only to be held in prostitution through coercive force; African-American men laboring in orange groves of Florida trapped by drug addiction and 'company-store' debts; Asian workers trapped in sweatshop garment factories in American Samoa and Saipan; Honduran women forced to drink and dance with clients in dance halls in Texas; and mentally ill white Americans forced to work on a Kansas farm.

Id. at H14117 (citing Zoe Lofgren & Dan Lungren, *Reaching Across Party Lines To End Modern-Day Slavery*, Mercury News, Dec. 4, 2007).

Congress's overarching goal when it enacted and reauthorized the TVPA was to eradicate human trafficking in all of its manifestations: "[t]here is *no* place in today's America for slavery." *Id*. at H14114 (emphasis added). The examples enumerated in the course of the Congressional hearings were not meant to be exhaustive, but rather to illustrate the expansive scope of the problem. The protections of the TVPA are available to everyone—these protections are not limited, in other words, to a preconceived "trafficking context." Appellant's Br. 18. People civilly detained in for-profit detention centers, no less than the aforementioned women in the Bay Area, men on ranches, teenagers in D.C., children in bonded labor, and women in dance halls, are entitled to the protections of the Act.

Hundreds of civil cases reveal the wide scope of settings in which human trafficking arises. Since 2003, plaintiffs have alleged human trafficking abuses in agricultural, domestic, educational, medical, religious, detention, and service sectors. Plaintiffs have included adults and children, citizens and immigrants, doctors, domestic workers, construction workers, teachers, and truckers. The chart below depicts the breakdown of settings in which trafficking claims have arisen

under the TVPA since 2003.[7] This history demonstrates that there is no single trafficking context.



Certainly no case or statute excludes Plaintiffs, whose forced labor occurred in a for-profit detention facility, from the protections of this law. At least four cases have been brought against municipalities for jail-related practices,[8] and, since the filing of this suit, additional immigration detainee plaintiffs have brought suit

[7] Data on file with HT Pro Bono.

[8] Compl., *Bell v. City of Jackson*, No. 3:15-cv-00732 (S.D. Miss. Oct. 9, 2015), ECF No. 1; Compl., *Jenkins v. City of Jennings*, No. 4:15-cv-00252 (E.D. Mo. Feb. 8, 2015), ECF No. 1; Compl., *McCullough v. City of Montgomery*, No. 2:15-cv-00463 (M.D. Ala. July 1, 2015) ECF No. 1; Compl., *Mitchell v. City of Montgomery*, No. 2:14-cv-00186 (M.D. Ala. Mar. 18, 2014), ECF No. 1.

in the Southern District of California. Compl., *Owino v. CoreCivic*, No. 3:17-cv-01112-JLS-NLS (S.D. Cal. May 31, 2017), ECF No. 1. Again, as this wide array of cases demonstrates, there is no single trafficking context.

GEO's own brief cites cases that illustrate the expansive nature of § 1589's definition of forced labor. In *David v. Signal*, plaintiffs challenged Signal's scheme of fraudulently inducing immigrant workers to go into debt to obtain temporary work visas under the U.S.'s H-2B visa program by promising fictitious green cards. Sixth Am. Compl., *David*, No. 2:08-cv-1220 (E.D. La. Aug. 5, 2014), ECF No. 1706. Signal then coerced labor by exploiting the workers' fear of the serious harm their families would suffer if they could not repay their debts.[9] *Id*. A federal jury ruled for the *David* plaintiffs, finding that Signal had illegally manipulated the federal immigration system to extract labor from vulnerable migrants. Jury Verdict, *David*, No. 2:08-cv-01220 (E.D. La. Feb. 12, 2015), ECF No. 2268-2.

Contrary to GEO's assertion that the detention context somehow voids Plaintiffs' claim, courts have recognized the legitimacy of—and historical support

[9] Appellants badly mischaracterize *David*'s facts as including "severe beatings or being tortured with egregious forms of physical abuse." Appellant's Br. 42 n.7. In reality, the forced labor claims in *David* challenged psychological coercion grounded in fraudulently-induced debt and did not include claims based on beatings or torture.

for—forced labor claims brought by individuals against detention facilities, jailers, and related actors.

The Middle District of Alabama's recent decision in *McCullough v. City of Montgomery* provides a clear example of a forced-labor claim in the detention-facility context. In 2015, ten plaintiffs sued a city on behalf of a putative class, alleging that they "were coerced with threats of even longer unlawful jail terms by City officials if they did not 'volunteer' to labor in the City jail under onerous conditions." Compl. at 49, *McCullough v. City of Montgomery*, No. 2:15-cv-463 (M.D. Ala. July 1, 2015), ECF No. 1. The court denied the defendants' motion to dismiss and rejected their argument that the plaintiffs' labor was voluntary when performed to avoid a longer jail sentence. "Under defendants' understanding wherein the choice between work and continued incarceration is voluntary," the court stated, "it is not clear what would be involuntary." *McCullough*, No. 2:15-cv-463, 2017 WL 956362, at *12 (M.D. Ala. Mar. 10, 2017), *appeal docketed*, No. 17-11554 (11th Cir. Apr. 7, 2017). The court noted that over a century of case law supported the proposition "that the threat of jail to coerce labor is unlawful," and that this was no less "true [where] *plaintiffs were incarcerated already*." *Id.* (emphasis added).

In other words, the fact that the defendants were detaining plaintiffs did not preclude the possibility that the defendants were also forcing them to perform labor. To the contrary, the terms of the incarceration were the very levers defendants used to manipulate plaintiffs and coerce them to work. *Id*.

GEO's practices are indistinguishable. As the court noted in *McCullough*, a "choice" between working and staying in jail is not a choice at all. *Id*. Likewise, the "choice" GEO presents to its detainees— between working on the one hand, or being subjected to criminal proceedings or solitary confinement on the other—is not a choice at all. It is a means of procuring forced labor.

B. The Legislative History of the TVPA and TVPRA Show that Congress Intended to Cover the Coercive Means GEO Used in Its Facilities.

Congress created § 1589 partly "to address issues raised by the decision of the United States Supreme Court in *United States v. Kozminski*." H.R. Rep. No. 106-939, at 100 (2000). In *Kozminski*, the Court held that 18 U.S.C. § 1584, the involuntary-servitude provision, should be read as "limited to cases involving the compulsion of services by the use or threatened use of physical or legal coercion." 487 U.S. 931, 932 (1988). Congress responded by enacting Section 1589.

> The term 'serious harm' as used in this Act refers to a broad array of harms, including both physical and nonphysical, and section 1589's terms and provisions are intended to be construed with respect to the individual circumstances of victims that are relevant in determining

> whether a particular type or certain degree of harm or coercion is sufficient to maintain or obtain a victim's labor or services, including the age and background of the victims.

H.R. Rep. No. 106-939, at 101 (2000).

More specifically, "Section 1589 is intended to address the increasingly subtle methods of traffickers who place their victims in modern-day slavery, such as where traffickers threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence." *Id*. Simply put, Congress passed § 1589 to address forms of trafficking and forced labor obtained through far more subtle means of coercion than the whips and chains associated with chattel slavery.

Both civil and criminal cases brought under the TVPRA demonstrate that a wide range of threats—both physical and non-physical—are actionable under the statute. In the civil context, courts have allowed claims to proceed where labor was induced based on threats of immigration consequences or deportation, injury to reputation, and incarceration, among others. *See, e.g.*, Decision and Order, *Martinez v. Calimlim*, No. 08-cv-00810 (E.D. Wis. Aug. 26, 2009), ECF No. 131 (denying defendants' motion to dismiss where plaintiff alleged threats of deportation in Complaint, *Martinez*, No. 08-cv-00810 (E.D. Wis. Sept. 25, 2008), ECF No. 1; *Samirah v. Sabhnani*, 772 F. Supp. 2d 437 (E.D.N.Y. 2011) (holding

defendants collaterally estopped from contesting civil claims for forced labor based on criminal conviction in *United States v. Sabhnani*, 599 F.3d 215 (2d Cir. 2010), discussed below); *McCullough*, 2017 WL 956362, at *12.

Criminal convictions have been obtained based on labor procured by a wide array of means, including forced confinement and psychological manipulation. In *United States v. Kaufman*, for example, a jury convicted owners of a residential home for mentally ill individuals on several counts, including two counts of forced labor under 18 U.S.C. § 1589. 546 F. 3d 1242, 1246, 1248 (10th Cir. 2008). The defendants procured labor using a variety of methods, including forced nudity, "substantial restrictions on . . . daily activities," and "a seclusion room." *Id*. at 1250. In *United States v. Sabhnani*, a jury found the defendants guilty of forced labor under § 1589 where they extracted the victim's labor by, among other means, threatening to inform the victim's family that she was a thief. 599 F.3d at 225–26.

Here, the District Court found that Plaintiffs were required to perform duties under threat of "the initiation of criminal proceedings . . . and up to 72 hours in disciplinary segregation." App. vol. 5, at 809 (citing GEO Detainee Handbook Local Supplement). In short, both the threat of criminal proceedings and the threat of solitary confinement are within the category of threats that Congress intended to punish (and that courts have punished) under the TVPA.

II. CONGRESS INTENDED THE TVPA AND TVPRA TO APPLY TO U.S. CONTRACTORS ENGAGING IN HUMAN TRAFFICKING, AND HOLDING GEO ACCOUNTABLE WILL NOT INTERFERE WITH ICE'S ABILITY TO OPERATE ITS DETENTION CENTERS.

The text and legislative history of the TVPA and TVPRA reflect Congress's intent to hold domestic federal contractors accountable for human trafficking violations. And contrary to GEO's assertion that "any change to its programs on account of the Plaintiffs' claims could land it in trouble with the government," Pet. for Permission to Appeal Class Certification 4, GEO's demands on civil detainees far exceed ICE's approved housekeeping requirements. GEO's profit-motive distinguishes it from ICE, and holding GEO liable as a contractor will not interfere with ICE's ability to run detention centers in accordance with its federal mandate and agency policies.

A. The Text and Legislative History of the TVPA and TVPRA Show that Congress Intended to Prevent Contractors from Engaging in Trafficking or Knowingly Benefiting from Trafficking.

The TVPA and TVPRA seek to protect victims from trafficking at the hands of federal contractors and to prevent federal contractors from engaging in trafficking. Congress's objectives include preventing contractors from profiting from trafficking, including forced labor.

1. The TVPA and TVPRA apply to federal contractors operating in the United States.

The plain language of the TVPA shows that it applies to federal contractors such as GEO. Congress amended the TVPA in 2003 to make clear that it covered trafficking by U.S. contractors. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193 § 3, 117 Stat. 2875 (2003); 22 U.S.C. § 7104 (2003) ("TVPRA of 2003"). The TVPRA of 2003 specifically required federal contracts to include a condition authorizing the federal department or agency to terminate the agreement without penalty if the contractor uses ". . . forced labor in the performance of the grant, contract or cooperative agreement." 22 U.S.C. § 7104 (g)(3) (2003). A 2006 amendment struck language that had limited this provision to contracts related to international affairs. *Compare* Pub. L. No. 108-193 § 3, 117 Stat. 2875 (2003) (stating that the funds governed by this provision "are funds made available to carry out any program, project, or activity abroad funded under major functional budget category 150 (relating to international affairs)") *with* Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164 § 201(b), 119 Stat. 3558 (2006); 22 U.S.C. § 7104 (2006) (striking the paragraph limiting governed funds to those relating to international affairs and earlier references to it).

The legislative history confirms that Congress intended the TVPA to reach government contractors. Indeed, trafficking by U.S. contractors overseas prompted Congress expressly to "address[] the complicity of U.S. Government contractors with trafficking-in-persons offenses." H.R. Rep. No. 108-264, pt. 1, at 16 (2003). Congress enacted these amendments because "contractors, their employees and agents, must be held accountable to a code of conduct with associated consequences for unethical or improper personal conduct while under U.S. Government contracts." *Id*. And noting that "[n]ew strategies and attention are needed to prevent the victimization of U.S. persons through domestic trafficking," Congress confirmed several years later that it intended to extend its earlier requirement "to grants, contracts and cooperative agreements entered into by the Federal Government for services to be provided within the United States." H.R. Rep. No. 109-317, pt. 1, at 23–24 (2005).

Beyond text and legislative history, a 2012 Executive Order also shows that the TVPA applies to government contractors operating both internationally and domestically. The Executive Order confirmed and clarified existing trafficking policy in the United States applicable to federal contractors. It recognized that "[t]he United States has long had a zero-tolerance policy regarding Government employees and contractor personnel engaging in any form of this criminal

behavior," and it "provid[ed] additional clarity to Government contractors and subcontractors on the steps necessary to fully comply with that policy." Exec. Order No. 13,627, § 1, 77 Fed. Reg. 60,029 (Sept. 25, 2012). The Executive Order directed, for example, a task force to "establish a process for evaluating and identifying, for Federal contracts and subcontracts performed substantially within the United States, whether there are industries or sectors with a history (or where there is current evidence) of trafficking-related or forced labor activities described in section 106(g) of the TVPA." *Id*. § 2(b), 77 Fed. Reg. at 60,031. The Order thus directed resources to combat trafficking specifically among domestic federal contractors, in furtherance of the TVPRA.

GEO's operation of the Aurora Detention Facility falls squarely within the scope of domestic federal contractor services covered by the TVPRA. GEO operates the Aurora Detention Facility under a contract with ICE and is responsible for the security and detention of immigrants. GEO is precisely the sort of federal contractor that the TVPRA covers, namely a"contractor[] who [is] essentially serving as [a] representative[] of the United States and often [is] perceived as such." H.R. Rep. No. 108-264, pt. 1, at 16 (2003).[10]

[10] Moreover, GEO's contract with the United States expressly incorporates by reference the Federal Acquisition Regulation that relates to Combating Trafficking

That GEO's operation is domestic and unrelated to overseas aid is irrelevant. Text, legislative history, the Federal Acquisition Regulations, and the Executive Order all show that the TVPA and TVPRA apply to trafficking by federal contractors, GEO included.

2. The TVPRA's 2008 amendment added "knowingly benefits" language that further demonstrates Congress's intent to expand liability for those profiting from forced labor.

GEO knowingly benefits from its detainees' forced labor at the Aurora Detention Facility. And a federal contractor that knowingly benefits from forced labor violates the TVPRA and may be liable for civil damages to its victims.

The TVPRA's 2008 amendment added the following language to 18 U.S.C. § 1595:

> An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator *(or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter)* in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

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in Persons. App. vol. 1, at 86, 242 (citing 48 C.F.R. 52.222-50, which 48 C.F.R. § 22.1705 directs be inserted "in all solicitations and contracts."). The regulation provides that "[c]ontractors, contractor employees, and their agents shall not . . . [u]se forced labor in the performance of the contract." 48 C.F.R. § 52.222-50(a)(b)(3).

William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 221, 122 Stat. 5044, 5067. The amendment was meant to "enhance[] the civil action by providing that an action is also available against any person who knowingly benefits from trafficking." H.R. Rep. No. 110-430, at 55 (2007).

This provision applies to private actors and federal contractors alike. Neither the text nor the legislative history provide any indication that this provision does *not* apply to contractors. On the contrary, allowing a victim to bring a civil action against one who "knowingly benefits" from trafficking is consistent with Congress's previously stated desire to "address[] the complicity of U.S. Government contractors with trafficking-in-persons offenses." H.R. Rep. No. 108-264, pt. 1, at 16 (2003). Permitting contractors to profit from trafficking ventures with no private civil remedy for victims would be inconsistent with Congress's clear intention to hold contractors accountable for conduct that violates the Act.

Case law also supports the application of this provision to federal contractors. In *Adhikari v. Daoud & Partners*, the court denied a contractor's motion to dismiss TVPRA claims. 697 F. Supp. 2d 674, 684 (S.D. Tex. 2009). Plaintiffs' allegations in *Adhikari* included that the contractor's co-defendant misled and deceived the plaintiffs, took their passports, transported them against

their will to perform labor, and that the contractor was on notice of all this through statements and complaints made by laborers as well as previously publicized complaints against the co-defendant. The court held that these allegations were sufficient to support the claim that the contractor had "knowingly benefited from a venture that involved forced labor and trafficking." *Id*. at 684.

That GEO profits from its detainees' forced labor is precisely the sort of knowing benefit that the 2008 amendment is designed to capture. By benefiting from its detainees' unpaid labor, extracted under threat of solitary confinement, GEO can avoid paying additional costs for sanitation services. GEO's forced-labor venture undoubtedly permits it to outbid law-abiding contractors who would pay those costs. GEO thus profits from its forced-labor venture, and it should not be permitted to continue knowingly benefiting from activities that contravene the plain language and intended purpose of the TVPA and TVPRA.

B. GEO's Profit Motive Distinguishes It from ICE, and Ruling Against GEO Will Not Interfere with ICE's Ability to Run Its Detention Centers Because GEO Administers a Sanitation Policy That Violates ICE Standards and Federal Law.

Profit—not adherence to ICE policy—motivates GEO to implement and maintain a Sanitation Policy that ensures it obtains free labor from its detainees. And holding GEO liable in this case does not "land it in trouble with the government." Pet. for Permission to Appeal Class Certification 4. To the contrary,

GEO administers its Sanitation Policy in violation of both the TVPA and ICE standards. The Sanitation Policy improperly requires detainees to clean not only personal living spaces but entire common areas used by the detention-center community. They must do so without pay and under threat of solitary confinement. Plaintiffs' TVPA claim does not interfere with ICE's ability to create and implement effective standards to run its detention centers as it sees fit, including enforcing its policy that detainees maintain neat and orderly living spaces. Plaintiffs challenge GEO's policies and practices, not ICE's.

Specifically, GEO incorrectly conflates its local Sanitation Policy with ICE's Personal Housekeeping Requirement. GEO, not ICE, developed the Sanitation Policy at issue in this case. GEO claims that the policy is an ICE program that it is contractually obligated to administer. *Id*. at 5 ("ICE requires all detainees to participate in this sanitation program."). In fact, the ICE standard for housekeeping details specific *personal* housekeeping duties, not a general requirement to keep the entire facility in a sanitary condition:

> *Detainees are required to maintain their immediate living areas in a neat and orderly manner by:*
> 1. *making their bunk beds daily;*
> 2. *stacking loose papers;*
> 3. *keeping the floor free of debris and dividers free of clutter; and*
> 4. *refraining from hanging/draping clothing, pictures, keepsakes, or other objects from beds, overhead lighting fixtures or other furniture.*

U.S. Immigrations & Customs Enf't, Dep't of Homeland Sec., *Performance-Based National Detention Standards 2011*, at 406–07 (2011), https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf [hereinafter "PBNDS"].

GEO's local Sanitation Policy is not an ICE standard or policy. ICE requires facilities to distribute the ICE National Detainee Handbook to detainees upon admission. *Id*. at 410. The ICE National Detainee Handbook, in line with the ICE Personal Housekeeping Requirement, requires detainees to keep clean immediate areas that they personally use. *See* U.S. Immigrations & Customs Enf't, Dep't of Homeland Sec., *Enforcement and Removal Operations: National Detainee Handbook, Custody Management* 12 (2016), https://ice.gov/sites/default/files/documents/Document/2017/detainee-handbook.PDF.[11] ICE also requires facilities to develop and provide site-specific versions of the Handbook. PBNDS at 410. ICE's model handbook for contract detention facilities does not include any requirements to clean "all common areas." *Compare INS Detention Standard: Detainee Handbook*, https://ice.gov/doclib/dro/detention-standards/pdf/handbk.pdf *with* Pet. for

[11] Notably, the second page of the National Detainee Handbook includes a warning about human trafficking, gives the example of forced labor, and provides phone numbers for an ICE tip line and nonprofit resource center hotline. *Id*. at 2.

Permission to Appeal Class Certification 5. Rather, the Sanitation Policy that GEO implements originates from GEO's local supplement to the National Detainee Handbook.

Moreover, in administering the Sanitation Policy it developed for its local facility, GEO is not "carrying out federal law and federally-approved policy to which it is bound as a federal contractor." Appellant's Br. 1. In fact, in requiring certain detainees to "perform additional cleanup of the common areas each day," GEO violates ICE standards. App. vol. 5, at 815 n.3. The DHS Office of Inspector General recently found that "requiring detainees to clean common areas used by all detainees *is in violation of ICE standards*, as detainees are only required to clean their immediate living area." Office of Inspector Gen., Dep't of Homeland Sec., OIG-17-43-MA, *Management Alert on Issues Requiring Immediate Action at the Theo Lacy Facility in Orange, California* 6 (2017), https://oig.dhs.gov/sites/default/files/assets/Mga/2017/oig-mga-030617.pdf (emphasis added).

GEO does not, as it claims, simply administer ICE programs or federal policy. Instead, GEO knowingly benefits when it administers its own Sanitation Policy to obtain unpaid, forced labor from civil detainees. Obtaining free labor is profit-motivated by its very nature. Indeed, GEO's substantial profits may depend

in some part on its detainees' forced, unpaid labor, given that it pays only one janitor for a facility that holds thousands of detainees each year. App. vol. 2, at 471 (49:8–50:3), 484 (101:6–8).

Plaintiffs indeed have not, as GEO points out, taken any steps to change ICE policy. *See* Appellant's Br. 4. That is because there is a difference between GEO's requirement of additional cleaning duties or "chores" and ICE's standard that detainees maintain neat and orderly living spaces. GEO benefits from the forced labor it receives in requiring detainees to take on additional cleaning duties, in violation of ICE policy.

Holding GEO liable in this case would not interfere with ICE's ability to create and implement standards, including its Performance-Based National Detention Standards, or to operate its detention centers as it sees fit. ICE may continue to require detainees to keep their beds made and their immediate living areas free of clutter and safety hazards. A holding against GEO simply would ensure that ICE's profit-motivated contractors not benefit from forced labor. Allowing GEO to force detainees to engage in unpaid labor, under threat of solitary confinement, simply cuts the contractor's costs and allows it to benefit from human trafficking.

CONCLUSION

For the foregoing reasons, amici curiae respectfully request that this Court affirm the ruling of the District Court.

Respectfully submitted,

___s/ Andrew C. Lillie____

Andrew C. Lillie
Nathaniel H. Nesbitt
Ann C. Stanton
HOGAN LOVELLS US LLP
1601 Wewatta Street, Suite 900
Denver, CO 80202
(303) 899-7300
andrew.lillie@hoganlovells.com
nathaniel.nesbitt@hoganlovells.com
ann.stanton@hoganlovells.com

August 11, 2017

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C) and Circuit Rule 32(a), I hereby certify that the foregoing brief was produced using Times New Roman 14-point font and contains 6,056 words.

s/ Ann C. Stanton

Andrew C. Lillie
Nathaniel H. Nesbitt
Ann C. Stanton
HOGAN LOVELLS US LLP
1601 Wewatta Street, Suite 900
Denver, CO 80202
(303) 899-7300
andrew.lillie@hoganlovells.com
nathaniel.nesbitt@hoganlovells.com
ann.stanton@hoganlovells.com

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s/ Ann C. Stanton

Andrew C. Lillie
Nathaniel H. Nesbitt
Ann C. Stanton
HOGAN LOVELLS US LLP
1601 Wewatta Street, Suite 900
Denver, CO 80202
(303) 899-7300
andrew.lillie@hoganlovells.com
nathaniel.nesbitt@hoganlovells.com
ann.stanton@hoganlovells.com

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I hereby certify that, on the 11th day of August 2017, the foregoing brief was filed electronically with the Clerk of Court for the United States Court of Appeals for the Tenth Circuit using the CM/ECF system. Notice of this filing and its viewing and downloading are thereby provided to all counsel of record by cooperation of the CM/ECF system.

s/ Ann C. Stanton

Andrew C. Lillie
Nathaniel H. Nesbitt
Ann C. Stanton
HOGAN LOVELLS US LLP
1601 Wewatta Street, Suite 900
Denver, CO 80202
(303) 899-7300
andrew.lillie@hoganlovells.com
nathaniel.nesbitt@hoganlovells.com
ann.stanton@hoganlovells.com