



Federal Human Trafficking Civil Litigation:

15 Years of the Private Right of Action



15
YEARS

15
YEARS



Acknowledgements

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Executive Summary

Fifteen years ago, in October 2003, Congress passed a law allowing trafficking victims to recover civil damages for trafficking in federal courts. Trafficking survivors have brought a total of 299 cases under this provision, demanding justice from an array of defendants.¹ This report analyzes a decade and a half of labor and sex trafficking civil litigation in federal courts. What are the trends, challenges, and innovations?

This report provides quantitative and qualitative assessments of the past 15 years of civil litigation under the Trafficking Victims Protection Reauthorization Act of 2003. It tracks the statute's geographical reach, types of cases, victims' countries of origin, methods of entry into the United States, case outcomes, and damages awards. Finally, the report identifies challenges that trafficking survivors continue to face as they fight to hold their traffickers accountable.



¹As of October 2018.

I. Introduction

In 2000, Congress passed the Trafficking Victims Protection Act (TVPA), the first comprehensive law in the United States to penalize the full range of human trafficking offenses.² Congress reauthorized the TVPA in 2003, adding a civil cause of action.³ That provision, codified at 18 U.S.C. § 1595, allowed trafficking victims to sue their traffickers for money damages in federal court.⁴

The new law initially opened the civil courthouse doors to victims of only select violations of the TVPA.⁵ The TVPRA's reauthorization in 2008 expanded the private right of action to encompass the entire list of anti-trafficking offenses.⁶ In its current form, the law provides:

An individual who is a victim of a violation of this chapter [Chapter 77 of Title 18] 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.⁷

**In 2003,
Congress
created a private
right of action to
allow trafficking
victims to
bring civil
cases against
perpetrators**

Congress created the civil provision on the belief “that the additional enforcement activity resulting from private civil actions [would be] worthwhile.”⁸ The past 15 years have vindicated Congress’s prediction. As one scholar noted, “[prosecution] alone is insufficient to address the complex nature of trafficking cases and the overall trafficking industry.”⁹ Civil lawsuits fill gaps in the criminal system. Federal prosecutors overwhelmingly focus on sex trafficking, to the exclusion of forced labor.¹⁰ And even when prosecutors succeed in obtaining

convictions, courts rarely order criminal restitution (compensation) to trafficking victims.¹¹ Indeed, the civil cause of action has proven particularly critical to survivors of forced labor. In labor sectors ranging from agriculture to hospitality to domestic work, trafficking survivors have filed cases to hold their traffickers accountable – and to win compensation.

²See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102(a), 114 Stat. 1464, 1467 (2000), available at <https://www.state.gov/documents/organization/10492.pdf>.

³See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4(a)(4)(A), 117 Stat. 2875, 2878 (2003), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-117/pdf/STATUTE-117-Pg2875.pdf>.

⁴See *id.*

⁵The 2003 TVPRA allowed civil claims for violations of §§1589, 1590, and 1591 only. See *id.*

⁶See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5067, title II, § 221(2) (2008), amended by Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 129 Stat. 247, title I, § 120 (2015). It was also in 2008 that Congress added the provision allowing suit against “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.” See *id.*

⁷18 U.S.C. § 1595(a). The statute of limitations is 10 years, or 10 years after the victim turned 18, if the offense occurred when the victim was a minor. See 18 U.S.C. § 1595(c).

⁸H.R. Rept. 108–264, pt. 2, at 16 (2003), available at <https://www.congress.gov/108/crpt/hrpt264/CRPT-108hrpt264-pt2.pdf>.

⁹Kathleen Kim, “Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States,” 16 *Hastings Women’s L. J.* 1, 4 (2004).

¹⁰For example, in 2017, labor trafficking victims filed 32 civil claims for forced labor in federal court under 18 U.S.C. § 1595. In the same period, federal prosecutors filed only five forced labor criminal prosecutions under federal trafficking laws. (Data on file with authors.)

¹¹See generally “United States Federal Courts’ Continuing Failure to Order Mandatory Criminal Restitution for Human Trafficking Victims,” The Human Trafficking Legal Center, 2018, available at <http://www.htlegalcenter.org/wp-content/uploads/2018-Mandatory-Restitution-Report.pdf>.

II. Legal Background



The Trafficking Victims Protection Act of 2000 criminalized, among other things, the provision of labor by means of “any scheme, plan, or pattern intended to cause [a] person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.”¹² Prior to 2000, a conviction for involuntary servitude required the use of physical force or abuse of law or legal process.¹³ In passing the TVPA, Congress acknowledged that the

modern reality of human trafficking often involves the provision of labor through more subtle forms of coercion.¹⁴

The anti-trafficking statutes, frequently referred to as Chapter 77 of Title 18, cover 17 crimes associated with slavery, peonage, forced labor, and trafficking.¹⁵ Federal prosecutors can indict for these crimes. And, under 18 U.S.C. §1595, trafficking survivors can sue those who perpetrate them.¹⁶

¹²18 U.S.C. § 1589(a)(4) (originally enacted as Victims of Trafficking and Violence Protection Act of (2000), Pub. L. No. 106-386, § 112, 114 Stat. 1464, 1487 (2000), available at <https://www.state.gov/documents/organization/10492.pdf>).

¹³See *United States v. Kozminski*, 487 U.S. 931, 932 (1988).

¹⁴See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102(b)(6), 114 Stat. 1464, 1466 (2000), available at <https://www.state.gov/documents/organization/10492.pdf>.

¹⁵See 18 U.S.C. §§ 1581-1597, available at <https://www.law.cornell.edu/uscode/text/18/part-I/chapter-77>.

¹⁶As noted, the civil provision as originally written only allowed lawsuits for a limited range of trafficking-related crimes. See footnote 5 and accompanying text, *supra*.

Select Chapter 77 Crimes

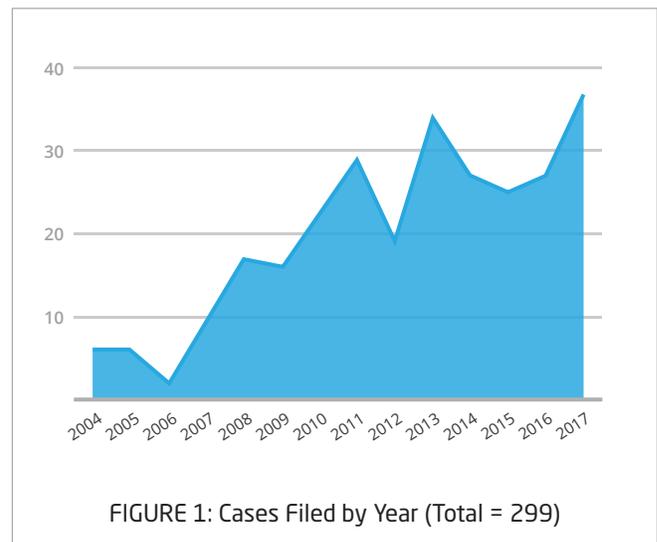
<p>18 U.S. Code § 1584(a) - Sale into involuntary servitude</p>	<p>(a) Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.</p>
<p>18 U.S.C. § 1589(a), (b) - Forced labor</p>	<p>(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means— (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (2) by means of serious harm or threats of serious harm to that person or another person; (3) by means of the abuse or threatened abuse of law or legal process; or (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d). (b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).</p>
<p>18 U.S.C. § 1590(a) - Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor</p>	<p>(a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.</p>
<p>18 U.S.C. § 1591(a) - Sex trafficking of children or by force, fraud, or coercion</p>	<p>(a) Whoever knowingly— (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).</p>

III. Trafficking Civil Litigation: Quantitative Trends



A. Civil Trafficking Cases Filed by Year

The number of federal civil trafficking cases has risen steadily over the past 15 years, with more than six times as many cases filed in 2017 (37) as in 2004 (6).¹⁸ In the majority of these cases, plaintiffs have been represented by *pro bono* counsel at law firms.¹⁹



¹⁸ For a full list of the number of civil cases filed under 18 U.S.C. § 1595 by state, see Appendix A. As of October 9, 2018, 22 cases had been filed in 2018.

¹⁹ Several large law firms have done substantial *pro bono* representation of trafficking survivors in federal civil trafficking cases: Jenner & Block LLP (14 cases); Orrick Herrington & Sutcliffe LLP (7 cases); Dechert LLP (7 cases); Wilmer Cutler Pickering Hale & Dorr LLP (7 cases); Cohen Milstein (5 cases); Latham & Watkins (4 cases); Crowell & Moring LLP (4 cases); Gibson Dunn & Crutcher LLP (4 cases). Several non-profit organizations have led efforts to file federal civil trafficking cases: ACLU (8 cases); Southern Migrant Legal Services (8 cases); Asian American Legal Defense and Education Fund (7 cases); Colorado Legal Services (7 cases); Texas Rio Grande Legal Aid, Inc. (7 cases); Southern Poverty Law Center (6 cases); The Legal Aid Society (6 cases); Equal Justice Center (6 cases); Safe Horizon Anti-Trafficking Program (5 cases); and the Urban Justice Center (5 cases).

B. Civil Trafficking Cases Filed by Type

From 2004 until 2009, all the civil cases filed under 18 U.S.C. § 1595 included only allegations of forced labor. In 2009, a trafficking survivor brought the first federal civil case alleging sex trafficking, filing suit against a defendant who had pled guilty to conspiracy to commit sex trafficking four years earlier.²⁰ Sex trafficking cases remain a small percentage of all civil cases filed under the TVPRA.

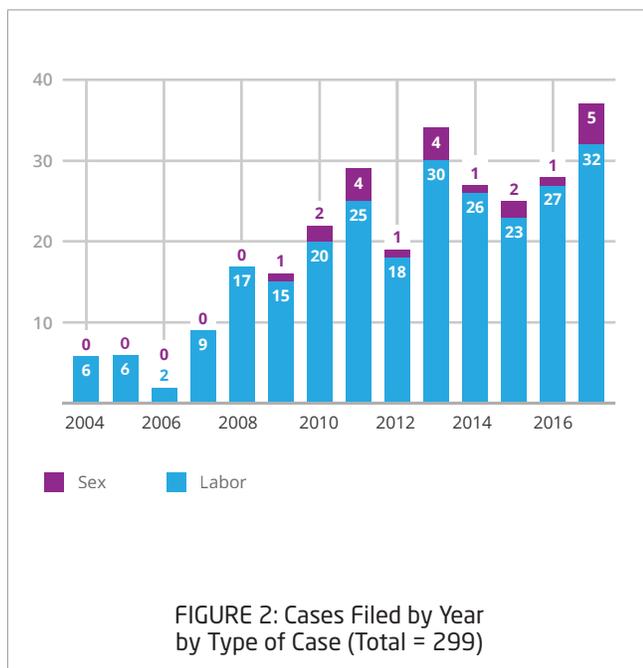


FIGURE 2: Cases Filed by Year by Type of Case (Total = 299)

C. Civil Trafficking Cases Filed by Location

Plaintiffs have filed federal civil human trafficking cases in 42 states and territories, with the highest numbers of cases brought in New York (62), California (26), and Texas (18).²¹ Zero civil cases have been filed in each of the following states and territories: Delaware, Iowa, Maine, Montana, Nebraska, Nevada, New Hampshire, New Mexico, Puerto Rico, Vermont, the Virgin Islands, and West Virginia. (Figure 3)

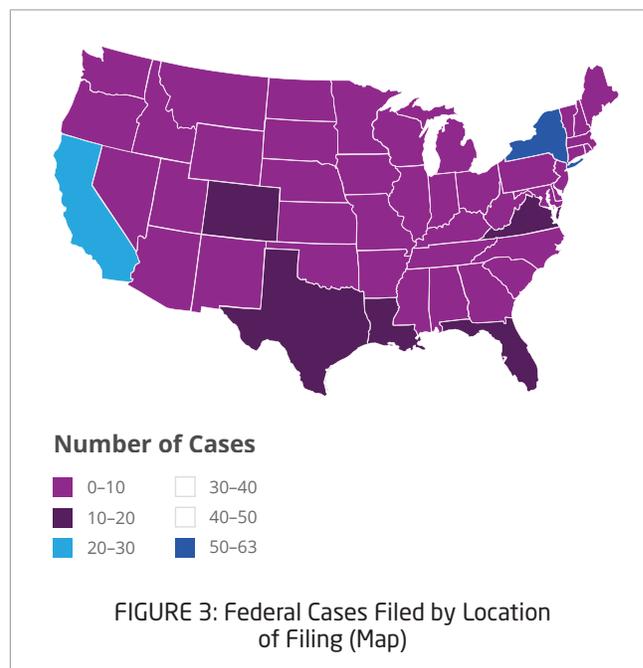


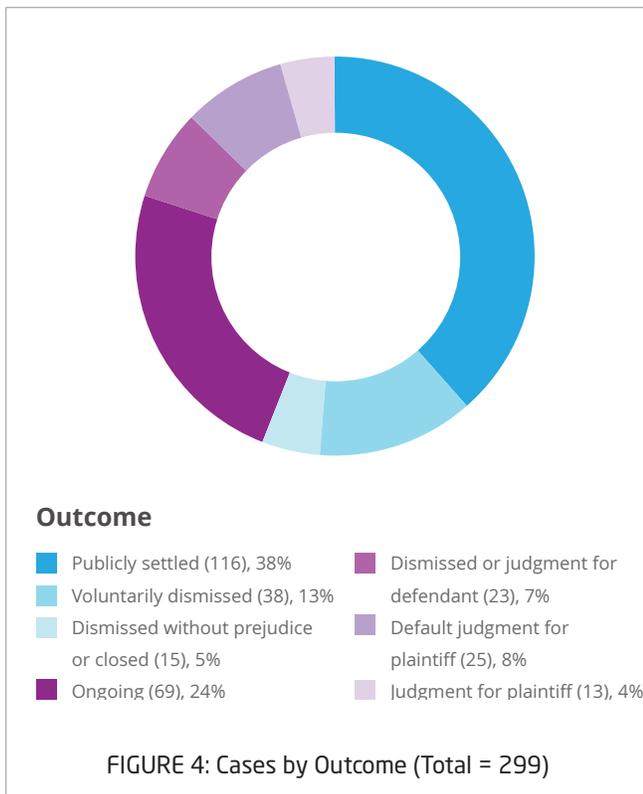
FIGURE 3: Federal Cases Filed by Location of Filing (Map)

²⁰See generally Complaint, *Ditullio v. Boehm*, 3:09-cv-00113 (D.Ak. June 1, 2009). Boehm, the defendant, pled guilty in the federal criminal case brought against him. See *Ditullio v. Boehm*, 662 F.3d 1091, 1093 (9th Cir. 2011). The civil case settled for \$400,000. See Minutes of Proceedings, *Ditullio v. Boehm*, 3:09-cv-00113 (D.Ak. Sept. 18, 2012).

²¹The data discussed in this report reflect only case filings made in federal courts. As of 2015, 40 states and the District of Columbia had statutory provisions allowing victims to sue their traffickers in state courts. See "Human Trafficking Issue Brief: Civil Remedy," The Polaris Project (Fall 2015), available at <https://polarisproject.org/sites/default/files/2015%20Civil%20Remedy%20Issue%20Brief.pdf>. In California, for example, trafficking survivors have filed a significant number of civil cases in state courts, in addition to 26 cases in federal courts in the state.

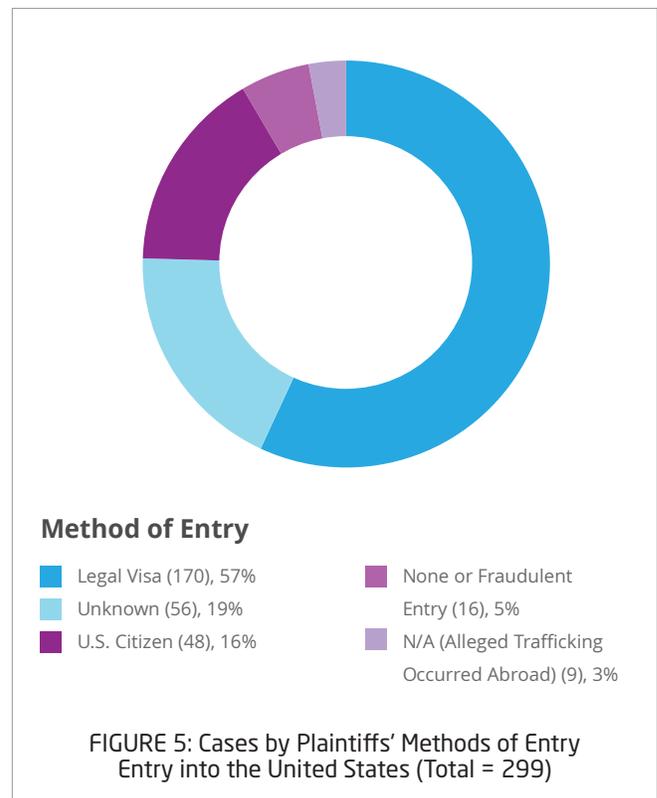
D. Outcomes in Federal Civil Trafficking Cases

As of October 2018, more than 23% of cases are ongoing (69). Slightly more than half (52%) of the cases have resulted in judgments for plaintiffs (38) or public settlements (116); 13% have been voluntarily dismissed (38); 13% have been voluntarily dismissed (38); and approximately 5% have been closed or dismissed without prejudice (15). Fewer than 8% of cases (23) have ended with involuntary dismissals or judgments for defendants.



E. Immigration and Visa Status of Trafficking Plaintiffs

Nearly 57% (170) of civil trafficking cases filed since 2003 have been brought by foreign-born plaintiffs with legal visas. Visa status is irrelevant in less than a quarter of cases (57), either because the plaintiff is a U.S. citizen (48), or because the alleged offenses occurred abroad (9).²² In roughly 19% of cases (56), the plaintiff's immigration status is unknown. Only 5% (16) of cases are known to involve plaintiffs who came to the United States without valid documentation.



²²Under 18 U.S.C. § 1596, cases may be brought under the trafficking statutes for crimes committed abroad.

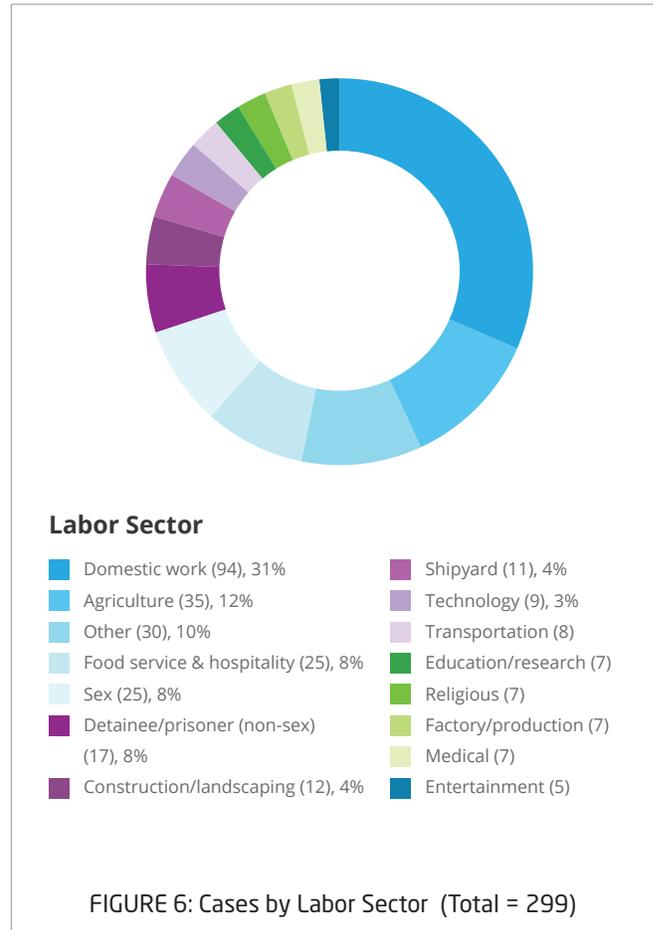
IV. Trafficking Civil Litigation: Case Types

Since 2003, plaintiffs have filed 299 cases under the federal civil trafficking provision of the TVPRA.²³ The vast majority of these cases – more than 91% (274) – allege forced labor. Fewer than 9% (25) of the cases focus on claims of sex trafficking alone.²⁴ Federal criminal human trafficking prosecutions present a mirror image of the civil trafficking case data; on the criminal side, virtually all federal human trafficking cases involve sex trafficking.²⁵ On the civil side, nearly all of the cases are labor trafficking.

A. Trafficking Civil Cases by Labor Sector

Almost one third (94) of all federal civil trafficking cases filed have been brought by domestic workers alleging that they were held in forced labor and domestic servitude. In domestic servitude cases, traffickers hold their victims in forced labor in the home, requiring them to cook, clean, and, in some cases, to care for children or elderly members of the household. Plaintiffs alleging domestic servitude often describe being subjected to inhumane living conditions and forced to work around the clock for little or no pay.²⁶

Approximately 60% (180) of federal civil human trafficking cases involve allegations of abuses in contexts other than domestic servitude or the commercial sex industry. The most common



is agriculture (35), followed by the food and hospitality industries (25). In 17 cases, plaintiffs alleged forced labor related to detention or prison.²⁷

²³As of October, 2018. This number does not include lawsuits that courts dismissed as frivolous, or cases consolidated soon after filing.

²⁴Cases that primarily focus on other forms of servitude may also include claims of sexual abuse. See *infra* at 21.

²⁵Between 2009 and 2017, approximately 95% of federal indictments for human trafficking included charges of sex trafficking. (Data on file with authors.)

²⁶See e.g. Report and Recommendation at 8, 9, *Lagasan v. Al-Ghasel*, 1:14-cv-01035 (E.D. Va. Feb. 18, 2015) (plaintiff forced to work up to 19 hours per day, seven days per week, cleaning, cooking, laundering, and caring for defendants’ children, denied access to medical care, isolated from the outside world, and forced to sleep on a closet floor).

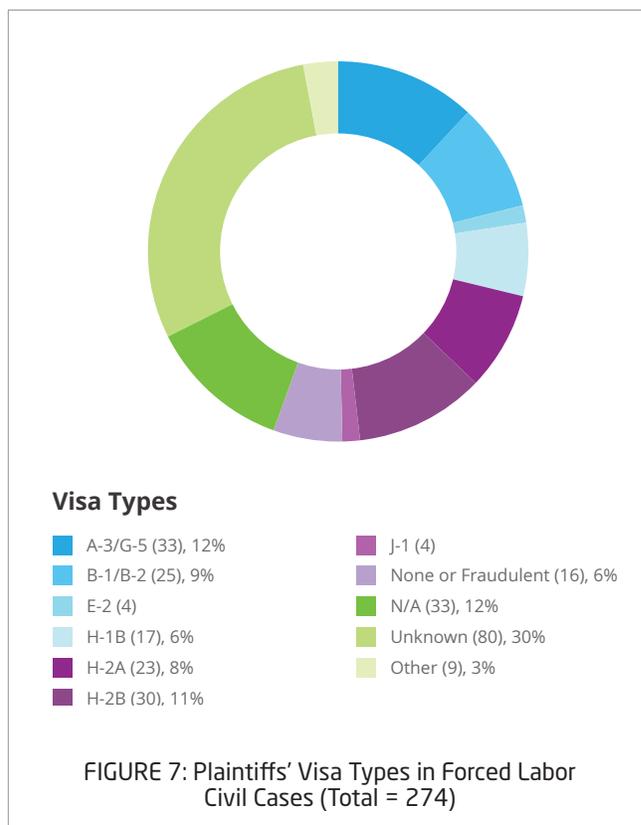
²⁷For further information on civil trafficking allegations brought by detainees in various contexts, see Alexandra Levy “Fact Sheet: Human Trafficking & Forced Labor in For-Profit Detention Facilities,” The Human Trafficking Legal Center; 2018, available at <http://www.htlegalcenter.org/wp-content/uploads/Human-Trafficking-Forced-Labor-in-For-Profit-Detention-Facilities.pdf>.

B. Visas and Immigration in Forced Labor Civil Cases

In nearly 30% (80) of trafficking cases primarily alleging non-sex trafficking offenses, available documents do not indicate what documentation, if any, the plaintiff(s) used to enter the United States. Roughly one in eight cases (33) involve plaintiffs who are United States citizens or abuses that were allegedly committed outside the United States.²⁸ A similar proportion of cases (33) involve plaintiffs who entered the United States on A-3 or G-5 visas as non-immigrant employees of diplomats or international organization officials.²⁹

Approximately one quarter (70) of non-sex trafficking cases involve plaintiffs entering the United States on H-2B, H-2A, or H-1B visas. These visa categories provide work authorization for temporary non-agricultural, agricultural, and highly-skilled specialized work, respectively.³⁰ Another 9% (25) involve entry with B-1/ B-2 visas, which include visas reserved for domestic workers employed by individuals temporarily living in the United States.³¹ Fewer than 6% (16) of forced labor claims were brought by people known to have entered without documentation or with fraudulent papers.³²

Visa Types	
Type	Recipients
A-3/ G-5	Domestic workers of foreign diplomats or employees of international organizations
B-1/ B-2	Visitors for business or tourism and domestic workers
E-2	Investors in U.S. businesses
H-1B	Highly-skilled specialized workers
H-2A	Seasonal agricultural workers
H-2B	Temporary non-agricultural workers



²⁸It does not appear that any plaintiff whose primary allegation is trafficking into domestic servitude has been a U.S. citizen.

²⁹A-3 and G-5 visas are available, respectively, to employees of diplomats and foreign government officials, and to international non-governmental organizations. See U.S. Dept. of State, Bureau of Consular Affairs, Visas for Diplomats and Foreign Government Officials, <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-diplomats.html#a3>. U.S. Dept. of State, Bureau of Consular Affairs, Visas for Employees of International Organizations and NATO, <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visa-employees-nato.html#personalemployees>.

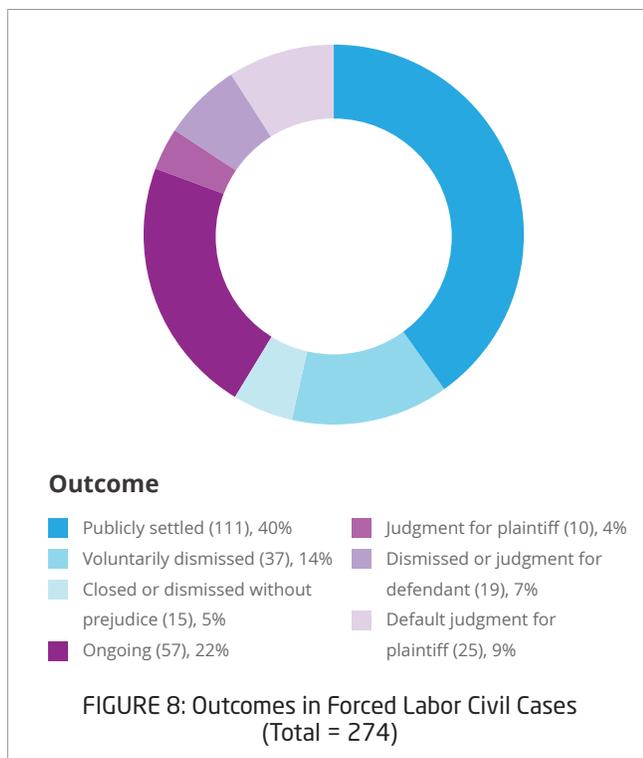
³⁰See U.S. Citizenship and Immigration Services, Temporary (Nonimmigrant) Worker Classification, <https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers>.

³¹See 9 FAM 402.2-3 (describing categories of B Visas), 9 FAM 402.2-5(D) (describing domestic worker visas as subsets of B Visas), <https://fam.state.gov/FAM/09FAM/09FAM040202.html>.

³²Sophisticated traffickers routinely make use of visa requirements to manipulate their victims. See section V.A. *infra*.

C. Outcomes in Forced Labor Civil Cases

As of October, 2018, more than half of forced labor civil cases had resulted in judgments for plaintiffs (35) or public settlements (111), and nearly 14% (37) had been voluntarily dismissed.³³ Fewer than 7% (19) of cases have ended with involuntary dismissals or judgments for defendants; 5% of cases have been dismissed without prejudice, allowing plaintiffs to refile. Fifty seven cases are ongoing.



D. Outcomes in Sex Trafficking Civil Cases

Just over 8% of federal civil human trafficking cases focus on claims of sex trafficking (25). Visa types are either not known, or not applicable, in any of the 25 civil sex trafficking cases.³⁴ More than a quarter (8) of the 25 federal civil sex trafficking cases have resulted in public settlements or judgments for plaintiffs. Nearly one in six (4) has been involuntarily dismissed or ended in a judgment for the defendant; one was voluntarily dismissed, and the remaining 12 cases are ongoing.

As noted, while nearly all federal trafficking prosecutions in criminal court concern sex trafficking, sex-related cases make up only a small portion of federal trafficking cases brought in *civil* court. One possible explanation for the inverse proportion is simply that the civil system operates as a substitute for the criminal one. Because sex trafficking victims are more likely to see their cases prosecuted, they are less likely to file civil cases.³⁵

Under the law, trafficking victims are entitled to mandatory criminal restitution.³⁶ In theory, therefore, criminal convictions should provide victims with compensation, reducing or eliminating their incentives to file civil claims. However, the reality is more complex. A recent report published by the Human Trafficking Legal Center revealed that just 27% of trafficking cases end with restitution orders, despite the fact that all victims in cases that end in conviction are legally entitled to restitution³⁷ To the extent that criminal restitution may obviate the need for civil cases,³⁸ therefore, it

³³There are many reasons why cases may be voluntarily dismissed, but voluntary dismissal often indicates that the parties reached a settlement.

³⁴In 21 cases, the plaintiffs appear to be from the United States; the remaining four cases involve offenses allegedly committed abroad.

³⁵Only two of the 25 sex cases involve defendants known to have been prosecuted for trafficking in federal court. Eleven others involve state or federal trafficking-related claims; however, several of these cases were filed against the same defendants, and it is unclear whether the criminal charges pertained to alleged offenses against the civil plaintiffs. Multiple cases also involve pseudonymous (i.e. "John Doe") defendants, making it impossible to discern whether criminal charges were filed against the same individuals.

³⁶See 18 U.S.C. § 1593.

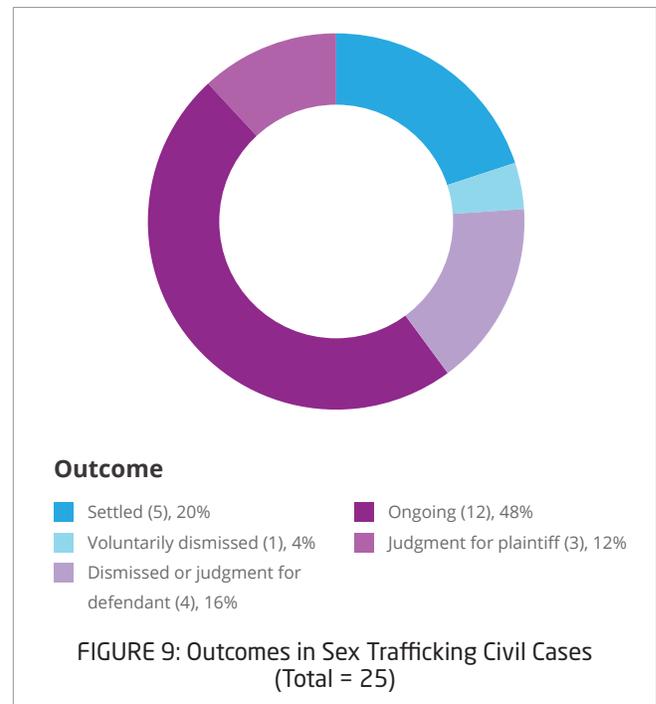
³⁷See "United States Federal Courts' Continuing Failure to Order Mandatory Criminal Restitution for Human Trafficking Victims," The Human Trafficking Legal Center, 2018, *supra* note 11 at 1. These are criminal restitution orders that are *entered*, but not necessarily *collected*. Collection of criminal restitution orders is rare. See *id.* at 24.

³⁸Some types of damages are available in civil court that are not provided for in the criminal restitution statute. See generally *Samirah v. Sabhnani*, 772 F.Supp.2d 437 (2011).



only does so in a small minority of cases. However, criminal proceedings may impact the incidence of civil proceedings in other ways. Sex traffickers are often sentenced to decades in prison, making them judgment-proof. Appearing in court as a victim-witness can be traumatic, and victims may not want to repeat the experience after a criminal trial. Sex trafficking victims may also have faced criminal prosecution themselves, undermining their faith in the justice system.

Cases like *Ricchio v. McLean*, discussed below, are breaking new ground, and showing how survivors can make innovative use of the civil system by suing people and entities that benefit financially from trafficking. For further discussion of third-party cases against parties financially benefiting from trafficking, see section V.D., *infra*.



E. Plaintiffs in Civil Trafficking Cases

The majority of civil trafficking cases are brought by foreign plaintiffs. In 29 cases, the plaintiffs' countries of origin are unknown; the remaining plaintiffs' nationalities are listed in the table below. Many cases involve plaintiffs from multiple countries.

Trafficking Plaintiffs' Countries of Origin³⁹

Figure 10

Country of Origin of Plaintiff(s)	# of cases	Country of Origin of Plaintiff(s)	# of cases	Country of Origin of Plaintiff(s)	# of cases	Country of Origin of Plaintiff(s)	# of cases
Bangladesh	2	France	1	Mexico	42	South Africa	2
Belarus	1	Guatemala	10	Moldova	1	Sri Lanka	2
Bolivia	2	Guinea	1	Morocco	2	Sudan	1
Brazil	3	Haiti	3	Nepal	4	Swaziland	1
Burkina Faso	2	Honduras	3	New Zealand	1	Syria	1
Cambodia	2	Hungary	1	Nicaragua	2	Tanzania	2
Cameroon	4	India	29	Nigeria	2	Thailand	3
Chile	3	Indonesia	10	Pakistan	1	Turkey	1
China	4	Jamaica	2	Panama	1	Uganda	1
Congo	1	Kenya	2	Paraguay	1	Ukraine	1
Croatia	1	Korea	3	Peru	9	United States	48
Dominican Republic	1	Laos	1	Philippines	45	Vietnam	2
Ecuador	2	Liberia	1	Romania	1	Zambia	1
El Salvador	1	Malawi	1	Russia	1	Zimbabwe	1
Eritrea	1	Malaysia	1	Slovenia	1	Unknown	29
Ethiopia	5	Mali	1	Serbia	1		

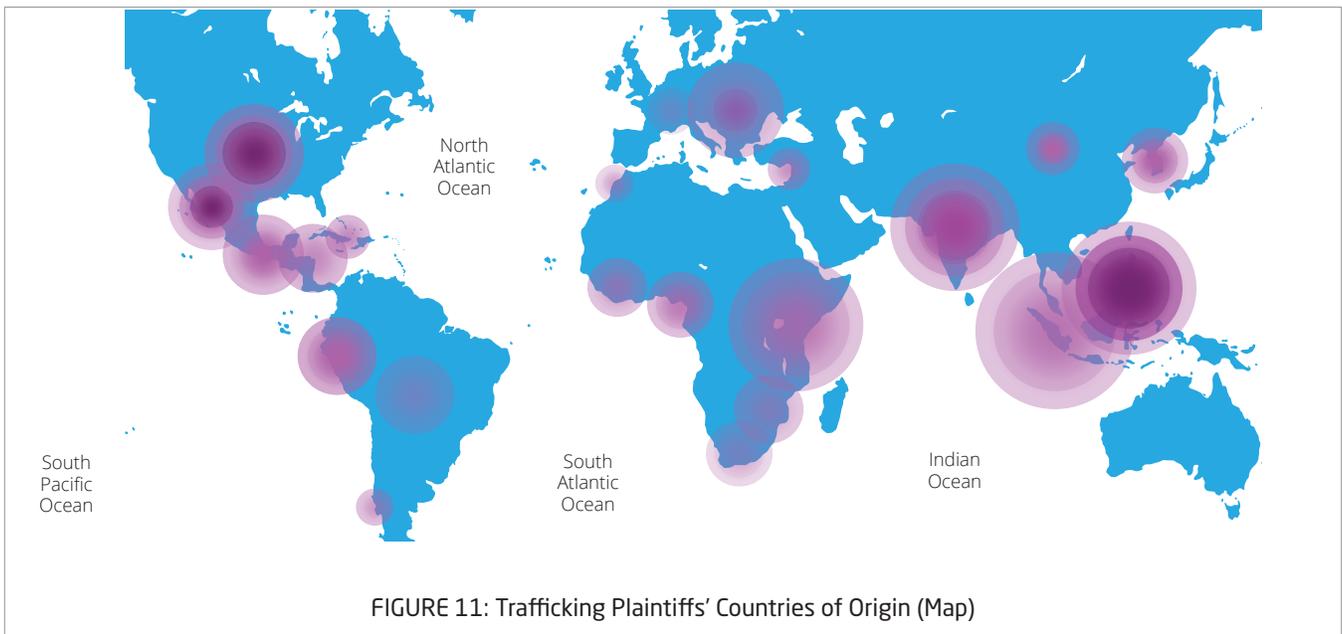


FIGURE 11: Trafficking Plaintiffs' Countries of Origin (Map)

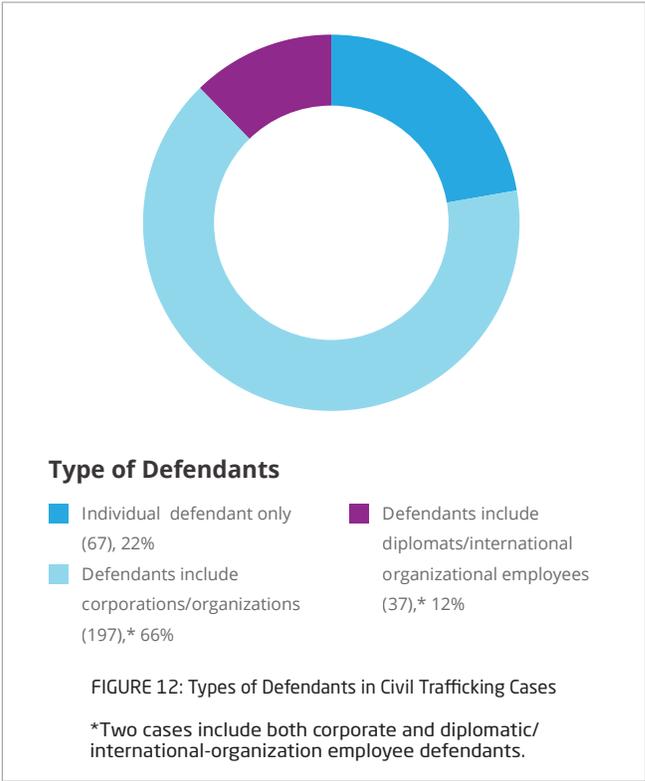
³⁹The chart here counts cases and not numbers of plaintiffs; some cases involve plaintiffs from multiple countries and/or plaintiffs with unspecified countries of origin. The number of plaintiffs varies widely. See *e.g.* Amended Complaint at 1, *David v. Signal International, LLC*, 2:08-cv-01220 (E.D. La. Apr. 29, 2008) (suit brought on behalf of over 500 Indian workers), Second Amended Complaint at 8, *Nunag-Tanedo v. East Baton Rouge Parish School Board*, 8:10-cv-01172 (C.D. Cal. June 2, 2011) (suit brought on behalf of over 350 Filipino teachers). The District Court of Colorado recently certified a class of up to 60,000 plaintiffs in a forced labor case brought against the private detention corporation GEO Group. See Order Granting Motion for Class Certification Under Rule 23(b)(3) and Appointment of Class Counsel Under Rule 23(g) at 6, *Menocal v. The GEO Group, Inc.*, 1:14-cv-02887 (D. Colo Feb. 27, 2017), *aff'd*, No. 17-1125 (10th Cir. Feb. 9, 2018).



Hotels and motels are most often associated with sex trafficking. But these can also be sites for labor trafficking, with housekeeping staff held in forced labor.

F. Defendants in Civil Trafficking Cases

Approximately two thirds of cases (197) have included at least one corporate organizational defendant. Although many such defendants are labor recruiters or companies, the case data also include religious organizations, municipalities, private detention facilities, and other corporate entities as defendants.



V. Trafficking Civil Case Law: Qualitative Developments

A. Use of Legal Visas to Traffic Workers into Forced Labor⁴⁰

The stereotypical trafficking case – popularized in Hollywood films such as “Taken” – involves a victim kidnapped and smuggled illegally across an international border. But the reality is much different. Traffickers skillfully manipulate the existing visa systems more often than they circumvent immigration laws. As shown in Figure 7, *supra* at 14, civil trafficking cases have been brought by trafficking victims who entered the United States on A-3, G-5, B-1, B-2, H-1B, H-2A, H-2B, E-2, and J-1 visas.

In *Baricuatro v. Industrial Personnel*, for example, welders, pipefitters, and other skilled craftsmen from the Philippines brought suit against multiple recruitment agencies in both the Philippines and the U.S.⁴¹ They also sued the U.S. entity for which they worked directly, Grand Isle Shipyard.⁴² Plaintiffs alleged that defendants created the U.S.-based recruitment agencies to exploit the E-2 “Treaty Investor” visa.⁴³ Under that visa regime, certain U.S.-based companies owned or controlled by foreign nationals may recruit employees of the same nationality as the foreign investor.⁴⁴ By ensuring that the Filipino investors maintained at least a 50% stake in the recruitment company, defendants were able to recruit directly from the Philippines.⁴⁵ The defendants worked with Philippines-based

recruiters to place ads on Philippine radio stations and in local newspapers, helping to spread the word about the jobs.⁴⁶ Then, the U.S.-based recruiting agencies shepherded plaintiffs through the process of applying for visas and signing employment contracts.⁴⁷

When plaintiffs eventually arrived in the U.S., the shipyard defendants allegedly forced them to work grueling hours while living in prison-like conditions, sometimes for less than minimum wage. If the workers complained, they were threatened with deportation. The case settled in December 2014 for an undisclosed amount.

In *Alabado v. French Concepts Bakery*, the defendants secured E-2 visas for plaintiffs.⁴⁸ But instead of serving in executive or supervisory positions, as required under the terms of the visa, the defendants forced the workers to perform manual labor at the defendants’ personal residence, and then to work extremely long hours at the bakery for virtually no pay.⁴⁹ The court entered a default judgment in the amount of \$15,252,297 apportioned among 11 plaintiffs, including \$3,728,400 in compensatory damages under the TVPRA, \$1,012,741 in statutory damages for violations of state whistleblower and retaliation laws, and \$1,266,083 in treble damages under the Racketeer Influenced and Corrupt Organizations Act (RICO).⁵⁰

⁴⁰For a general discussion of visas, see Section IV.B., *supra*.

⁴¹See generally Complaint, *Baricuatro v. Industrial Personnel*, 2:11-cv-02777 (E.D.La. Nov. 8, 2011).

⁴²See *id.*

⁴³See *id.* at 29.

⁴⁴See generally U.S. Citizenship and Immigration Services, E-2 Treaty Investors, available at <https://www.uscis.gov/working-united-states/temporary-workers/e-2-treaty-investors>.

⁴⁵See Complaint at 29, *Baricuatro*, *supra* note 41.

⁴⁶See *id.* at 35.

⁴⁷See *id.* at 38-41

⁴⁸See Second Amended Complaint at 4, *Alabado v. French Concepts*, 2:15-cv-02830 (C.D. Cal. July 8, 2015).

⁴⁹See *id.*

⁵⁰See Order Re: Motion for Default Judgment at 38, *Alabado v. French Concepts*, 2:15-cv-02830 (C.D. Cal. May 2, 2016).

B. Diplomats and International Organization Employees as Defendants

In 33 federal civil trafficking cases, plaintiffs had visas reserved for domestic employees of diplomats and foreign government officials (A-3) or international non-governmental organizations (G-5).⁵¹ Cases against diplomats present special challenges. Under the 1961 Vienna Convention on Diplomatic Relations (VCDR), diplomats are almost completely immune from civil lawsuits in their receiving countries.⁵² But that immunity is not permanent, as the State Department's intervention in two trafficking cases filed by domestic workers against diplomats has illustrated.⁵³ In *Baoanan v. Baja*, the State Department asserted that while *sitting* diplomats were indeed immune from suits filed by domestic workers, that immunity did not extend to *former* diplomats. Once a diplomatic post is terminated, immunity can no longer protect a diplomat from civil litigation brought by a trafficked domestic worker.⁵⁴

Perhaps more than any other type of trafficking cases, federal civil human trafficking cases

against diplomats play a critical role in promoting accountability and securing compensation for trafficking victims. Indeed, diplomatic norms and foreign policy goals may stand in the way of criminal prosecutions of diplomats, leaving civil suits as these victims' only option for obtaining justice.⁵⁵

That said, diplomats frequently depart the United States, refusing to pay the judgments ordered against them. Fortunately, Congress has passed legislation to remedy this injustice. The 2008

Cases against diplomats present special challenges

Wilberforce Act included explicit protections for domestic workers trafficked by international officials; appropriations language included in the State Department appropriations bill each year also states that "the Secretary [of State] should assist in obtaining payment of final court judgments awarded to A-3 and G-5 visa holders, including encouraging the sending states to provide compensation directly to victims."⁵⁶ With State Department support, the diplomats' sending states make payments directly from the foreign governments to victims, called *ex gratia* payments.

⁵¹See U.S. Dept. of State, Bureau of Consular Affairs, Visas for Diplomats and Foreign Government Officials, <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-diplomats.html#a3>; U.S. Dept. of State, Bureau of Consular Affairs, Visas for Employees of International Organizations and NATO, <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visa-employees-nato.html#personalemployees>.

⁵²See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95, Article 31. The Vienna Convention on Consular Relations provides more limited immunity, covering only official acts. See Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 3227, 500 U.N.T.S. 95, Article 43. For further discussion of diplomatic and consular immunity in trafficking and trafficking-related lawsuits, see generally Martina E. Vandenberg & Sarah Bessell, *Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States*, 26 Duke Journal of Comparative & International Law 595-633 (2016), Martina E. Vandenberg & Alexandra Levy, *Human Trafficking and Diplomatic Immunity: Impunity No More?*, 7 Intercultural Hum. Rts. L. Rev (2012).

⁵³See *Baoanan v. Baja*, 627 F. Supp. 2d 155 (S.D.N.Y. 2009); *Swarna v. Al Awadi*, 607 F. Supp. 2d 509 (S.D.N.Y. 2009), *aff'd in part, vacated in part, and remanded*, 622 F.3d 123 (2d Cir. 2010). Though *Swarna* did not include claims under 18 U.S.C. § 1595, the allegations were akin to those in most domestic servitude trafficking cases. See *Swarna*, 607 F. Supp.2d 509, 512-514.

⁵⁴See Statement of Interest of the United States of America at 3, *Baoanan v. Baja*, 08-cv-05692 (S.D.N.Y. Apr. 28, 2009). The State Department advanced substantially the same argument in *Swarna*. See Brief for the United States of America as *Amicus Curiae* in Support of Affirmance at 3, 28, *Swarna v. Al-Awadi*, 09-2525-cv (L), 09-3615-cv (XAP) (2d Cir., June 2, 2010).

⁵⁵See Vandenberg & Bessell, *supra* note 52 at 599. As of 2016, only four diplomatic defendants in civil trafficking suits had faced any kind of criminal prosecution for trafficking-related acts. See *id.* at 596.

⁵⁶See 8 U.S.C. § 1375c(c), Protections and remedies for employees of diplomatic missions and international organizations. Department of State, Foreign Operations, and Related Programs Appropriations Act of 2015, Pub. Law No. 113-235, § 7034(k) (2015).

C. Non-Commercial Sexual Servitude Charged as Involuntary Servitude and Forced Labor

To qualify as sex trafficking under 18 U.S.C. § 1591, the sex at issue in the case must be “commercial.”⁵⁷ But forced sexual services of a non-commercial nature can be charged under other provisions of the federal trafficking law. Justice Souter, sitting by designation on the First Circuit Court of Appeals, held in a recent civil trafficking case that keeping a woman in a hotel room and repeatedly raping her over the course of several days qualified as obtaining forced sexual labor or services under the forced labor statute, 18 U.S.C. § 1589.⁵⁸

Federal district courts have likewise ruled that forced, non-commercial sex may violate anti-trafficking statutes. For example, in *Doe v. Howard*, the District Court for the Eastern District of Virginia held that an American diplomat who subjected her housekeeper to forced sexual servitude was liable under the involuntary servitude statute, 18 U.S.C. § 1584.⁵⁹ The court based its judgment on findings that the defendant’s husband “raped Mrs. Doe four times, forced her to perform oral sex on him

approximately ten times, and sexually assaulted her.”⁶⁰ The Fourth Circuit and Tenth Circuit Courts of Appeals have similarly held in federal criminal cases that sexual servitude may be charged as involuntary servitude and forced labor.⁶¹

In *United States v. Yannai*, a jury convicted the defendant of forced labor in the Eastern District of New York after he “used the Internet to lure young women to the United States with offers of employment as his assistant at his home,” choosing them “based on their photographs and their willingness to live in his house,” and eventually “limit[ing] their contact with the outside world and abus[ing] them sexually.”⁶² The victims alleged that, once they arrived, Yannai “proceeded to effectively imprison them in his house, sexually abuse them, and demand unpaid domestic services.”⁶³ They also alleged that Yannai forced them to clean his home, care for his pets, bathe him, and engage in sex acts with him.⁶⁴ The court in the Eastern District of New York sentenced Yannai to 132 months in prison, and ordered him to pay restitution to his victims in the amount of \$6,762.25.⁶⁵ The victims filed a civil case in federal court, which they voluntarily dismissed.⁶⁶

Forced sexual services of a non-commercial nature can be charged under the forced labor provisions of the federal trafficking law

⁵⁷18 U.S.C. § 1591(a).

⁵⁸See *Ricchio v. McLean*, 853 F.3d 553 (1st Cir., Apr. 5, 2017).

⁵⁹See *Doe v. Howard* at 2, 2012 WL 3834867 (E.D.Va. Sept. 4, 2012).

⁶⁰*Id.*

⁶¹See *United States v. Kaufman*, 546 F.3d 1242, 1262 (10th Cir. 2008) (noting that “if an antebellum slave was relieved of the responsibility for harvesting cotton, brought into his master’s house, directed to disrobe and then engage in the various acts performed by the [victims] (e.g., masturbation and genital shaving), his or her condition could still be fairly described as one of involuntary servitude and forced labor”); *United States v. Udeozor*, 515 F.3d 260, 266 (4th Cir. 2008) (describing sexual abuse as “a badge and incident of servitude which is distressingly common, not just historically, but for young women who find themselves in coercive circumstances today”).

⁶²*United States v. Yannai*, 791 F.3d 226, 230 (2d Cir. 2015).

⁶³*Lunkes v. Yannai*, 882 F. Supp. 2d 545, 547 (S.D.N.Y. 2012).

⁶⁴See Complaint at 11-13, *Lunkes v. Yannai*, 1:12-cv-00630 (S.D.N.Y. Jan. 25, 2012).

⁶⁵See Restitution Order at 1, *United States v. Yannai*, 1:10-cr-00594 (E.D.N.Y. Nov. 5, 2013). The restitution was specifically apportioned among four victims. See *id.*

⁶⁶See Stipulation of Dismissal at 1, *Lunkes v. Yannai*, 1:12-cv-00630 (S.D.N.Y. Jan. 2, 2014).

D. Lawsuits Against Third Parties Alleged to have Knowingly Benefited from Trafficking

In 2008, Congress amended the civil provision of the TVPRA to allow lawsuits against “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 [Chapter 77 of Title 18, federal laws prohibiting peonage, slavery, forced labor, and trafficking].”⁶⁷ As a result, trafficking victims may recover damages not only from their traffickers, but also from third parties who knowingly benefit from the trafficking. This has expanded the range of possible trafficking defendants to include motel owners, doctors, labor recruiters, and others.⁶⁸

The “knowingly benefiting from” provision has given trafficking victims a way to seek damages from the venues at which they are abused. One trafficking survivor, for example, used it to sue the owners of the motel in which her trafficker held her captive. In *Ricchio v. McLean*, the plaintiff alleged that the motel-owner defendants knowingly benefited from her trafficking, ignoring her clear signs of desperation

The amendment in 2008 vastly expanded the range of possible trafficking defendants

and requests for help.⁶⁹ After the case was initially dismissed by the District Court for the District of Massachusetts, the Court of Appeals for the First Circuit reversed, allowing the claims to proceed.⁷⁰ The court noted that defendants were aware of the plaintiff’s physical deterioration, had likely witnessed her being physically assaulted, and, overall, plausibly “understood that in receiving money as rent for the quarters where [the trafficker] McLean was mistreating Ricchio, they were associating with him in an effort to force Ricchio to serve their business objective.”⁷¹ As of October 2018, the case was ongoing.

One trafficking survivor used this provision to recover damages from medical personnel. In *Doe v. Dabbagh*, the plaintiff sued a psychiatrist, alleging that the doctor knowingly provided her trafficker with access to

medications that the trafficker then used to subdue her.⁷² The victim’s trafficker, Mark White, initially approached her while she was working as a masseuse.⁷³ White forced Doe to have sex with hundreds of men, securing her compliance through physical violence and threats – as well as through the forced use of prescription drugs, which he allegedly procured from the defendant, Dr. Mamoun Dabbagh.⁷⁴

⁶⁷18 U.S.C. § 1595(a). See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, available at <https://www.state.gov/j/tip/laws/113178.htm>. Before the adoption of this amendment, plaintiffs used the Racketeer Influenced and Corrupt Organizations Act (RICO) to hold co-conspirators accountable. The third-party beneficiary provisions of 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 greatly streamlined this litigation.

⁶⁸In April, 2018, Congress passed the Allow Victims to Fight Online Sex Trafficking Act (FOSTA), which makes it easier for plaintiffs to file suit against websites and online intermediaries that host sex trafficking advertisements created by third parties. See Allow States and Victims to Fight Online Sex Trafficking Act of 2017, H.R. 1865, 115th Cong. (2018). Previously, such lawsuits had been barred under Section 230 of the Communications Decency Act, which generally shields online intermediaries from liability for content they publish but do not create. See 47 U.S.C. § 230(c), *Doe v. Backpage.com, LLC*, 817 F.3d 12, 21 (1st Cir. 2016) (affirming dismissal of case in which plaintiffs sought to hold Backpage liable for “choices about what content can appear on the website and in what form...choices that fall within the purview of traditional publisher functions”). Critically, however, Section 230 immunity at no point shielded websites from liability for content they created, including trafficking advertisements. See, e.g. Order on Motion to Dismiss at 2, *Jane Doe No. 1 et al v. Backpage.com*, 1:17-cv-11069 (D.Mass. Mar. 29, 2018) (denying motion to dismiss on grounds that the “allegation...that ‘Backpage...redrafted the advertisement [of Jane Doe No. 3] to suggest she was an adult’ suffices to allow the complaint by Jane Doe No. 3 to proceed in the face of the CDA’s statutory immunity”).

⁶⁹See Complaint at 2, 7-9, *Ricchio v. McLean*, 1:15-cv-13519 (D.Mass. Oct. 7, 2015).

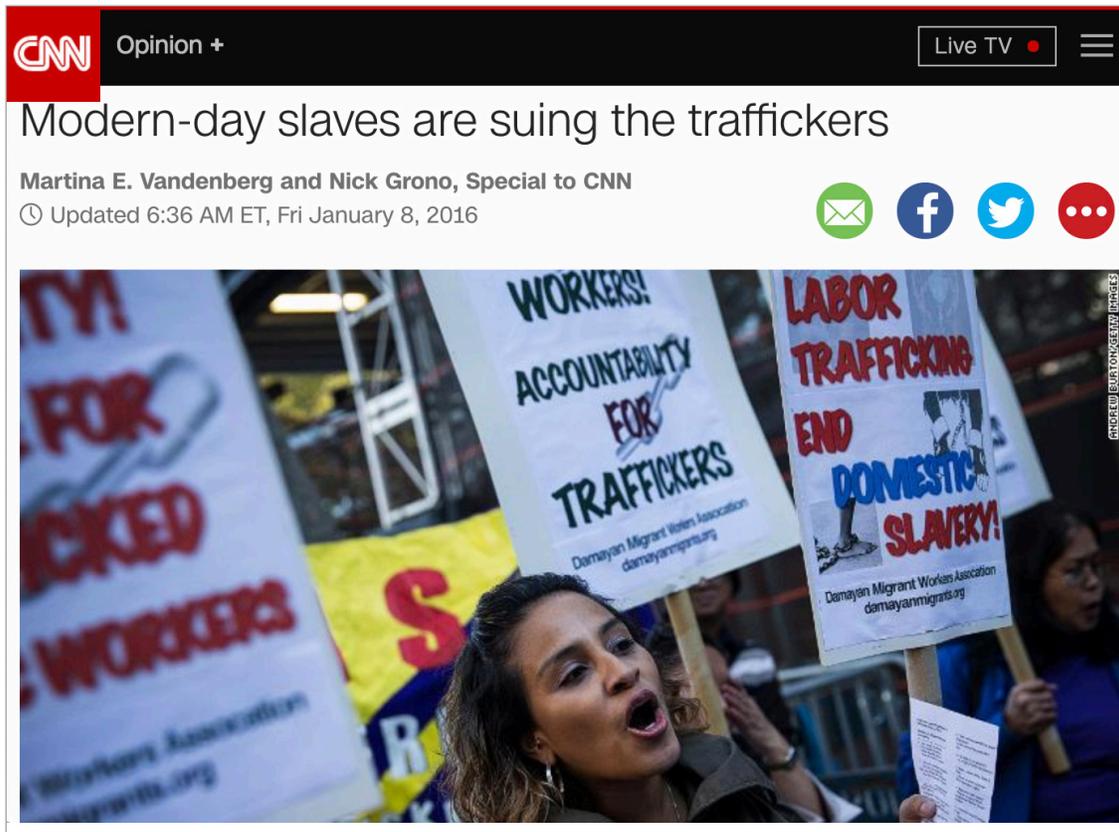
⁷⁰See generally *Ricchio v. McLean*, 853 F.3d 553 (1st Cir., Apr. 5, 2017).

⁷¹*Id.* at 555.

⁷²See Complaint at 9, *Doe v. Dabbagh*, 2:15-cv-10724 (E.D.Mich. Feb. 26, 2015).

Jane Doe eventually escaped from her trafficker and contacted law enforcement.⁷⁵ When law enforcement officials showed up to execute a search warrant, White, the trafficker, committed suicide.⁷⁶ Doe then sued the psychiatrist, Dabbagh, alleging that he had prescribed the drugs knowing that they would be used to hold her in forced prostitution.⁷⁷ The court awarded a default judgment in the amount of \$578,840 (\$250,000 in compensatory damages; \$250,000 in punitive damages, and \$78,840 in fees and costs).⁷⁸

Finally, and most promisingly for supply chain forced labor cases, this provision also provides a pathway for plaintiffs to sue labor recruiters. In *Pattaiso v. Alahmad*, the plaintiff filed claims against several individuals, including a person who allegedly recruited her and who, over a period of years, had brokered her (forced) labor to a hotel, a factory, a chicken packaging business, and a cereal company, and multiple individuals, for periods of between one week and seven months.⁷⁹ The plaintiff settled with at least two of the defendants, and voluntarily dismissed the case.⁸⁰



⁷³See *id.* at 3.

⁷⁴See *id.* at 3-4.

⁷⁵See *id.* at 9.

⁷⁶See *id.* at 10.

⁷⁷See *id.* at 10-13.

⁷⁸See Judgment at 1, *Doe v. Dabbagh*, 2:15-cv-10724 (E.D.Mich. Sept. 20, 2016).

⁷⁹See generally Complaint, *Pattaiso v. Alahmad*, 1:14-cv-00041 (M.D.Pa. Jan 10, 2014).

⁸⁰See Plaintiff's Status Report at 2, 3, *Pattaiso v. Alahmad*, 1:14-cv-00041 (M.D. Pa. Feb. 27, 2015), Exhibit settlement agreement at 1, In Re: *Ziadeh*, 1:14-ap-00130-MDF (M.D. Pa. Jan. 29, 2015).

E. Significant Damages Awards in Jury and Bench Verdicts

The TVPRA permits both compensatory and punitive damages. Plaintiffs frequently file other claims alongside 18 U.S.C. § 1595, including, most commonly, claims under the Fair Labor Standards Act, state wage and hour laws, common-law theories of intentional infliction of emotional distress, false imprisonment, conversion, and breach of contract.⁸¹ While many settlement amounts are undisclosed, known settlement and damage awards since 2003 total \$108,657,807.75.⁸²

1. Punitive Damages under 18 U.S.C. § 1595

Ditullio v. Boehm laid the groundwork for punitive damages under the TVPRA; in that case, the Ninth Circuit held that “[b]ecause the TVPA civil remedy provision creates a cause of action that sounds in tort ...punitive damages are available.”⁸³ The defendant in that case was prosecuted and pled guilty to conspiracy to commit sex trafficking in 2005.⁸⁴ He was sentenced to 135 months in prison.

Ditullio filed a federal civil trafficking case in 2009.⁸⁵ The case settled for \$400,000.⁸⁶

The Tenth Circuit Court of Appeals echoed this holding in 2013. In *Francisco v. Susano*, the Tenth Circuit held that “the TVPA addresses tortious conduct—indeed, conduct so reprehensible Congress made it criminal even before adding the civil remedy in 2003.”⁸⁷ Under settled principles of tort law, “punitive damages are...specifically warranted for conduct involving some element of outrage similar to that usually found in crime.”⁸⁸ After remand to the District Court for a recalculation of damages, the case ended in a default judgment in the amount of \$1,237,058.60, including \$1,220,000 in punitive damages.⁸⁹

Courts commonly award punitive damages in an amount equal to compensatory damages

Punitive damage awards vary by jurisdiction. Courts commonly award punitive damages in an amount equal to compensatory damages.⁹⁰ However, some courts have awarded far more.⁹¹ In *David v. Signal International, LLC*, a forced labor case, the court instructed the jury to award punitive damages if the

⁸¹(FLSA, 29 U.S.C. §201, et seq.) For a full list of claims asserted in federal civil human trafficking cases, see Appendix B.

⁸²For a list of known award amounts by year, see Appendix C.

⁸³*Ditullio v. Boehm*, 662 F.3d 1091, 1096 (9th Cir. Nov. 7, 2011).

⁸⁴See *id.* at 1093.

⁸⁵See Complaint, *Ditullio v. Boehm*, 3:09-cv-00113 (D. Ak. June 1, 2009).

⁸⁶See Settlement Order, *Ditullio v. Boehm*, 3:09-cv-00113 (D.Ak. Sept. 18, 2012).

⁸⁷*Francisco v. Susano*, 525 F. App'x 828, 833-834 (10th Cir. May 28, 2013).

⁸⁸*Id.* (internal citation omitted).

⁸⁹See Order Entering Default Judgment Against Defendants at 7, 8, *Francisco v. Susano*, 10-cv-00332 (D.Colo. Sept. 10, 2013).

⁹⁰See e.g. Award Order at 12-13, *Rana v. Islam*, 1:14-cv-01993 (S.D.N.Y. Sept. 26, 2016) (noting that a “punitive damages set at the 1:1 ratio to compensatory damages...is consistent with several awards in forced domestic servitude cases with similar facts”); Memorandum Opinion at 20, *Lipenga v. Kambalame*, 8:14-cv-03980 (D.Md. Nov. 9, 2016) (noting that “[i]n TVPRA cases, courts have found that a 1:1 ratio of compensatory to punitive damages under the TVPRA is appropriate”); *Lagasan v. Al-Ghasel*, 92 F. Supp. 3d 445, 458 (E.D.Va. 2015) (awarding \$369,606 in compensatory damages and \$369,606 in punitive damages); *Carazani v. Zegarra*, 972 F. Supp. 2d 1, 26-27 (awarding \$543,041.28 in compensatory damages and \$543,041.28 in punitive damages); Judgment, *Dabbagh supra* note 78 at 1 (awarding \$250,000 in compensatory damages and \$250,000 in punitive damages).

⁹¹See Default Judgment Order at 2, *Pichardo v. Francisco*, 1:13-cv-04300 (S.D.N.Y. Nov. 12, 2013) (awarding punitive damages in triple the amount of compensatory damages).



Kendra Ross and her pro bono attorney, Elizabeth Hutson, sit for an interview with the TODAY show in 2018. Ms. Ross won \$8 million in a civil case against her traffickers.

defendant acted with “malice or reckless indifference to one or more of the plaintiffs’ rights to be free from forced labor or trafficking for forced labor.”⁹² The jury awarded a total of \$14,100,000 (apportioned among five plaintiffs), with punitive damages roughly tracking compensatory ones.⁹³ In *Roe v. Howard*, the court instructed the jury to award punitive damages “if Plaintiff proves by a preponderance of evidence that the Defendant’s conduct was malicious and reckless, not merely unreasonable.”⁹⁴ The jury awarded punitive damages in double the amount of compensatory damages, for a total award of \$3,000,000.⁹⁵ *Ross v. Jenkins*, a forced labor case involving the abuse of a child in a cult, established the highest verdict in a single victim case, \$8,000,000, including nearly \$4,000,000 in punitive damages.⁹⁶

2. Damages Calculated under the Fair Labor Standards Act (FLSA)

Courts regularly use the framework of the FLSA to calculate damages in forced labor and involuntary servitude cases brought under 18 U.S.C. § 1595.⁹⁷ Indeed, the “FLSA establishes the ‘standard methodology under which to calculate damages for forced labor...[in] the TVPA framework.’”⁹⁸ Under the FLSA, employers are liable for unpaid wages and overtime, as well as liquidated damages in the same amount (unless the employer demonstrates that his actions were in good faith).⁹⁹ The FLSA only applies in situations in which there is an employment relationship between the plaintiff and defendant.¹⁰⁰ In multiple cases, courts have included liquidated damages in this calculation.¹⁰¹

⁹²Jury Instructions at 21-22, *David v. Signal International*, 2:08-cv-01220 (E.D. La. Feb. 10, 2015).

⁹³See generally Jury Verdict Form--Stage 2, *David v. Signal International*, 2:08-cv-01220 (E.D.La. Feb. 18, 2015).

⁹⁴Jury Instructions at 41, *Roe v. Howard*, 1:16-cv-00562 (E.D. Va. July 31, 2017).

⁹⁵See Judgment at 1, *Roe v. Howard*, 1:16-cv-00562 (E.D. Va. Oct 26, 2017).

⁹⁶See Opinion at 45-46, 57 *Ross v. Jenkins*, 2:17-cv-02547 (D. Kan. May 23, 2018).

⁹⁷See e.g. *Samirah v. Sabhnani*, 599 F.3d 215 (2010).

⁹⁸See *Doe v. Howard*, 2012 WL 3834867, *supra* note 59 at 6.

⁹⁹29 U.S.C. § 216(b). See also *D’Camera v. Dist. of Columbia*, 722 F. Supp. 799, 800 (D.C. Cir. 1989).

¹⁰⁰See e.g. Order Granting in Part and Denying in Part Motion to Dismiss at 7, *Shuvalova v. Cunningham*, 3:10-cv-02159-RS (N.D.Cal.) (finding that household members did not have employer-employee relationship).

¹⁰¹See e.g. *Carazani v. Zegarra*, 972 F. Supp. 2d at 23 (explaining that “[t]he FLSA liquidated damages provision applies to restitution awards under the TVPA.”).

3. Damages for Intentional Infliction of Emotional Distress

In order to calculate emotional distress damages, courts have looked to “the duration and intensity of the emotional distress” as well as to “awards in similar cases.”¹⁰² Awards have varied widely, ranging from \$171 to \$800 per day of servitude.¹⁰³ Other courts have opted for lump sums.¹⁰⁴ One court combined both approaches, awarding a lump sum of \$1,250,000 for emotional distress suffered due to forced sexual servitude, and also \$500 per day for emotional distress due to forced domestic servitude.¹⁰⁵

Civil cases may call for remedies beyond money damages to plaintiffs

F. Injunctive Relief

Finally, civil cases may call for remedies beyond money damages to plaintiffs. In at least two cases, defendants have agreed as part of settlements to improve their labor practices. In *Sorihin v. Nguyen*, defendants, who had allegedly trafficked plaintiffs on fishing vessels, agreed to a number of reforms, including that they would provide employees with information about their rights.¹⁰⁶ Likewise, in *Mitchell v. City of Montgomery*, the settlement included a series of sweeping changes to the city’s bail practices.¹⁰⁷



Forced labor in the global fishing industry is a prime target for human trafficking litigation brought under the extraterritorial provisions of the federal trafficking law. The law firm of Cohen Milstein has brought two civil trafficking cases alleging forced labor in the seafood sector.

¹⁰²*Id.* at 24.

¹⁰³See *Doe v. Howard*, *supra* note 59 at 3 (discussing damage awards ranging from \$415 to \$800 per day), Report and Recommendation at 14, *Belvis v. Colamussi*, 2:16-cv-00544 (E.D.N.Y., Feb. 20, 2018) (awarding damages in the amount of \$171 per day).

¹⁰⁴See Report and Recommendation at 18-19, *Gurung v. Malhotra*, 1:10-cv-05086 (S.D.N.Y., Feb. 22, 2012).

¹⁰⁵See *Doe v. Howard*, *supra* note 59 at 3-4.

¹⁰⁶See generally Settlement, *Sorihin v. Nguyen*, 3:16-cv-05422 (N.D.Cal. Sept. 22, 2016).

¹⁰⁷See Judgment Granting Final Declaratory and Injunctive Relief, *Mitchell v. City of Montgomery*, 2:14-cv-00186 (M.D.Ala. Nov. 17, 2014).

G. Collectability of Judgments

Trafficking survivors seeking to hold perpetrators accountable confront an array of challenges. One of the most fundamental is collectability of judgments. Indeed, this is a factor in the large number of cases that settle out of court; pursuing collection on a judgment can take years. It is not possible to discern from court dockets whether the plaintiffs ever collected the full amount of a jury verdict, bench verdict, or default judgment. Collection can be particularly difficult when the defendants depart the United States, a common problem in cases involving diplomats and international organization employees.

Because *pro bono* attorneys filed so many of the civil trafficking cases litigated in the last 15 years, it is likely that collectability did not play a prominent role in the initial decision to file the case. Since *pro bono* attorneys do not anticipate collecting fees, they are often willing to file cases where there may be uncertainty about collectability. For survivors, the decision to file a civil case is often about more than money – it is about accountability. In the words of one trafficking survivor, “It is not just the money. I got my justice.”¹⁰⁸

Collectability concerns can make settlement a more promising option for trafficking survivor litigants. In

some instances, civil trafficking cases that include negligence claims may trigger insurance coverage, making collection more likely. And occasionally, civil litigation can also serve as a tool to enforce existing criminal restitution orders that remain unpaid years after the conviction.

H. Extraterritorial Litigation

Congress legislated an explicit grant of extraterritorial jurisdiction in trafficking cases, amending Chapter 77 of Title 18 with a new provision, 18 U.S.C. §1596. That provision allows trafficking survivors to bring civil trafficking cases

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against defendants who are U.S. citizens, permanent residents, or present in the United States, in cases where some of all of the trafficking crimes occurred abroad. Trafficking survivors have brought 14 federal civil cases alleging human trafficking abroad. Nine of the cases allege forced labor and/or involuntary servitude; four cases allege sex trafficking; and one case alleges both.¹⁰⁹ While the number of civil trafficking cases that invoke extraterritorial jurisdiction

remains small, this provision holds great promise for advocates and trafficking survivors seeking to hold corporations responsible for forced labor in their supply chains.¹¹⁰ Perhaps because of this potential, defendants have aggressively

¹⁰⁸Fainess Lipenga, Remarks to University of Arkansas School of Law Forced Labor Conference, February 10, 2018.

¹⁰⁹See *Adhikari v. Daoud & Partners*, 4:09-cv-01237 (S.D. Tex. 2009) (forced labor), *Adhikari v. KBR*, 4:16-cv-02478 (S.D. Tex. 2016) (forced labor), *Doe v. Nestle*, 2:05-cv-05133 (C.D. Cal. 2005) (forced labor), *Doe v. Howard*, 1:11-cv-1105 (E.D. Va. 2011) (forced labor/involuntary sexual servitude), *Jean-Charles v. Perlitz*, 3:11-cv-00614 (D. Conn. 2011) (sex trafficking), *Plaintiffs v. Schair*, 2:11-cv-00145 (N.D. Ga. 2011) (sex trafficking), *Ratha v. Phatthana Seafood Co., Ltd.*, 2:16-cv-04271 (C.D. Cal. 2016) (forced labor), *Roes v. Bridgestone Corp.*, 2:05-cv-8168 (C.D. Cal. 2005) (forced labor), *Sorihin v. Nguyen*, 3:16-cv-05422 (N.D. Cal. 2016) (forced labor), *Roe v. Howard*, 1:16-cv-00562 (E.D. Va. 2016) (forced labor/involuntary sexual servitude/sex trafficking), *St. Louis v. Perlitz*, 3:13-cv-01132 (D. Conn. 2013) (sex trafficking), *Vang v. Prattaya*, 0:12-cv-1847 (D. Minn. 2012) (sex trafficking in U.S. and Laos), *Abafita v. Aldukhan*, 1:16-cv-06072 (S.D.N.Y. 2016) (forced labor/involuntary servitude), *Sulaiman v. Laram*, 1:16-cv-08182 (S.D.N.Y. 2016) (forced labor/involuntary servitude). Federal criminal cases brought under this provision include *United States v. Boston*, 1:13-cr-20914 (S.D. Fla. 2013) and *United States v. Glenn*, 1:15-cr-20632 (S.D. Fla. 2015).

¹¹⁰For a discussion of extraterritorial jurisdiction and strategic litigation to combat forced labor, see The Human Trafficking Legal Center and the Freedom Fund, “Ending Impunity, Securing Justice: Using Strategic Litigation to Combat Modern Day Slavery and Human Trafficking” (2015), available at <http://www.htlegalcenter.org/wp-content/uploads/Ending-impunity-securing-justice.pdf>.



attacked the provision. As of October 2018, two significant cases invoking 18 U.S.C. §1596 were on appeal, one in the Ninth Circuit Court of Appeals and a second case in the Fourth Circuit Court of Appeals.¹¹¹ These cases, closely watched by anti-trafficking advocates, will play a part in determining the future of the extraterritorial provision in these jurisdictions.

Trafficking survivors may also file class action cases on behalf of all those similarly situated

I. Class Certification

Trafficking victims may also file cases on behalf of not only themselves, but all those similarly situated. In order to gain class certification, plaintiffs must meet certain threshold requirements – namely,

they must show that the class of individuals they seek to represent is numerous; that their claims are common and typical, and that the class is adequately represented by counsel.¹¹² Three cases highlight particular challenges of getting class certification in trafficking cases.

In *Nunag-Tanedo v. East Baton Rouge Parish School Board*, a District Court in the Central District of California granted certification to a class of approximately 350 Filipino nationals recruited to work as teachers in the Louisiana public school system; the court held that the TVPRA claims in the case turned on “a reasonable person’s perceptions of...

¹¹¹See generally *Ratha v. Phatthana Seafood Co., Ltd.*, 18-55041 (9th Cir. 2018) and *Roe v. Howard*, 17-2338 (4th Cir. 2017).

¹¹²See Fed. R. Civ. P. 23.

threats [and therefore would] not turn on, or require, individualized determinations.”¹¹³ The class members’ common attributes allowed “the fact-finder to use a common ‘reasonable person’ standard for all class members,” making class-wide resolution appropriate.¹¹⁴

In contrast, a District Court in the Eastern District of Louisiana refused to certify a class in *David et al v. Signal International, LLC*; there, the court held that “one cannot determine whether the defendant’s actions coerced or forced the victim to provide labor without looking to the specific victim involved.”¹¹⁵ Given the TVPRA’s acknowledgement of “more subtle types of coercion, particularly psychological coercion,” the court held that “the vulnerabilities and characteristics of the specific victim become extremely important because one individual could be impervious to some types of coercion that cause another to acquiesce in providing forced labor.”¹¹⁶ The court denied class certification.

In 2017, a federal district court in Colorado granted class certification to plaintiffs in *Menocal v. GEO Group*, a case brought by immigrant detainees. While the *Menocal* court agreed with the *Signal* court’s determination that a forced labor analysis involves both objective and subjective components, the *Menocal* court stated that the subjective component could “be satisfied by inferring from class wide proof that the putative class members labored because of [defendants’] improper means of coercion.”¹¹⁷ Despite plaintiffs’ diverse backgrounds, “their circumstances [were] uniquely suited for a class

action” since they “share[d] the experience of having been detained” in the same facility and were “subjected to uniform policies that purposefully eliminate nonconformity.”¹¹⁸ The “climate in which [plaintiffs] were detained” permitted “an inference of causation...even despite some class members’ purported willingness to work for reasons other than [defendants’] improper means of coercion.”¹¹⁹ The Tenth Circuit Court of Appeals affirmed the class certification, and the Supreme Court denied *certiorari*, leaving the District Court’s ruling intact.¹²⁰



¹¹³*Mairi Nunag Tanedo, et al. v. East Baton Rouge Parish School Board, et al.*, 2011 WL 7095434 at 8, (C.D. Cal. Dec. 12, 2011).

¹¹⁴*Id.*

¹¹⁵Order Denying Class Certification at 54, *David v. Signal*, 2:08-cv-01220 (E.D. La. Jan 3, 2012).

¹¹⁶*Id.*

¹¹⁷Order Granting Class Certification at 13, *Menocal v. GEO Group*, 1:14-cv-02887 (D. Colo. Feb. 27, 2017).

¹¹⁸*Id.* at 2.

¹¹⁹*Id.* at 13.

¹²⁰See *Menocal v. The GEO Group*, 17-1125 (10th Cir. Feb 9, 2018).

VI. Conclusion

In the past 15 years, the civil provision of the TVPRA, 18 U.S.C. § 1595, has become a potent and essential weapon in the fight against human trafficking. The civil cause of action has permitted trafficking survivors to hold traffickers accountable who would otherwise have enjoyed total impunity. The number of civil trafficking cases filed has quadrupled since mid-2010, and continues to increase each year. Additionally, civil litigation has provided victims of forced labor, who almost never see their traffickers criminally prosecuted, the opportunity to have their day in court.

Over the next 15 years, the Human Trafficking Legal Center anticipates continuing growth in civil litigation, including extraterritorial litigation, to combat human trafficking. In addition, it is likely

Trafficking survivors' civil cases have the power to hold traffickers accountable

that the number of sex trafficking civil cases will surge, as attorneys become more sophisticated in attacking third-party beneficiaries. Finally, survivors' attorneys will continue to find creative strategies to hold traffickers accountable and to deter future traffickers. Strategic litigation, class actions, and extraterritorial cases have all increased significantly over the last 15 years. Attorneys representing trafficking survivors are developing ever more ambitious strategies to hold the traffickers accountable. Most importantly, the courage and resilience of trafficking survivors continues to inspire bold strategies to combat trafficking, including through civil litigation. As trafficking survivors move into leadership positions in the anti-trafficking movement, their courageous acts to hold traffickers accountable will pave the way for others to secure justice.



Fainess Lipenga, a survivor-leader in the anti-trafficking movement, with staff from the Human Trafficking Legal Center. Ms. Lipenga won a \$1.1 million verdict in her civil trafficking case against a diplomat from Malawi.

APPENDIX A

Number of Civil Cases Filed Under 18 U. S. C. § 1595 by State

State	#	State	#
Alabama	5	Montana	0
Alaska	1	Nebraska	0
Arizona	2	Nevada	0
Arkansas	4	New Hampshire	0
California	26	New Jersey	6
Colorado	12	New Mexico	0
Connecticut	6	New York	62
DC	13	North Carolina	4
Delaware	0	North Dakota	1
Florida	14	Ohio	1
Georgia	9	Oklahoma	6
Guam & Mariana Islands	1	Oregon	8
Hawaii	1	Pennsylvania	4
Idaho	1	Puerto Rico	0
Illinois	6	Rhode Island	1
Indiana	6	South Carolina	4
Iowa	0	South Dakota	2
Kansas	1	Tennessee	6
Kentucky	7	Texas	18
Louisiana	10	Utah	2
Maine	0	Vermont	0
Maryland	9	Virgin Islands	0
Massachusetts	4	Virginia	15
Michigan	5	Washington	2
Minnesota	3	West Virginia	0
Mississippi	3	Wisconsin	1
Missouri	6	Wyoming	1

APPENDIX B

Claims Asserted in Human Trafficking Civil Cases in Addition to 18 U.S.C. § 1595

Plaintiffs have asserted thirty-five (35) different claims (and subclaims) in the context of human trafficking cases. These include:

1. Trafficking Victims Protection Act or TVPA (enticement into slavery; slavery; forced labor; trafficking; benefiting financially from trafficking persons; involuntary servitude; peonage; unlawful conduct with respect to immigration documents; torture; conspiracy);
2. Fair Labor Standards Act or FLSA (minimum wage; overtime; retaliation; recordkeeping);
3. Alien Tort Statute or ATS (involuntary servitude; forced labor; human trafficking; cruel, inhuman, or degrading treatment; torture);
4. State laws and codes (including violations of minimum wage, overtime, spread of hours pay, timely wages, meal and rest periods, wage statements and recordkeeping; trafficking prevention/labor trafficking; worker's compensation retaliation; whistleblower retaliation; landlord/tenant and housing codes; tort claims; business and professions codes);
5. Breach of contract;
6. Breach of implied warranties and warranties of fitness;
7. Breach of implied covenant of good faith and fair dealing;
8. Negligent infliction of emotional distress (NIED);
9. Intentional infliction of emotional distress (IIED);
10. False imprisonment;
11. Fraud; fraudulent inducement; fraudulent misrepresentation; fraudulent transfer;
12. Negligence; negligence per se; negligent hiring, retention, direction, and supervision;
13. Negligent misrepresentation;
14. Intentional misrepresentation;
15. Unjust enrichment;
16. Quantum meruit;
17. Vicarious liability; respondeat superior;
18. Racketeer Influenced and Corrupt Organizations Act or RICO (predicate crimes: money laundering; fraud in visa process/immigration documentation; immigration violations, travel act violations; Hobbs Act Extortion; making false and fraudulent representations; interstate mail and wire fraud; trafficking with respect to forced labor; conspiracy to violate RICO);
19. Racial discrimination;
20. Legal Immigration Family Equity Act or the LIFE Act;
21. Assault and battery;
22. Hostile work environment;
23. Slavery pursuant to Thirteenth Amendment (and other equal protection violations);
24. Trespass to chattel;
25. Conversion of property;
26. Ku Klux Klan Act;
27. Personal injury;
28. Unfair competition;
29. Fair Debt Collection Practices Act or FDCPA (false representations; unconscionable means to collect debt);
30. Seaman's wages act (and maritime law);
31. Sexual trafficking of a minor; distribution of a controlled substance to a minor; sexual assault of a minor; travel with the intent to engage in illicit sexual contact;
32. Migrant and Seasonal Agricultural Worker Protection Act (AWPA or MSPA);
33. Civil conspiracy;
34. Wrongful discharge; and
35. Concealment.

APPENDIX C

Since 2003, courts have awarded plaintiffs at least \$108,657,807.75 in damages as part of judgments or public settlements. This amount does not include confidential settlements.

Total Damages in Trafficking Federal Civil Cases		
Year cases closed	Total damages awarded*	Number of cases resolved with known damages
2006	\$68,318.00	1
2007	\$15,000.00	1
2008	\$8,770,374.05	2
2009	\$9,619,779.40	4
2010	\$500,000.00	1
2011	\$2,458,335.00	2
2012	\$19,539,838.93	7
2013	\$11,286,935.29	10
2014	\$732,562.24	2
2015	\$15,357,351.00	5
2016	\$18,237,926.38	9
2017	\$12,417,689.81	6
2018	\$9,653,697.65	7
Total	\$108,657,807.75	56

*In judgments and non-confidential settlements

APPENDIX D

Federal Trafficking Civil Cases Filed by Year by Type of Case

Year	Labor	Sex	Total
2004	6	0	6
2005	6	0	6
2006	2	0	2
2007	9	0	9
2008	17	0	17
2009	15	1	16
2010	20	2	22
2011	25	4	29
2012	18	1	19
2013	30	4	34
2014	26	1	27
2015	23	2	25
2016	27	1	28
2017	32	5	37



10
YEARS



About The Human Trafficking Legal Center

The Human Trafficking Legal Center is a not-for-profit, national legal clearinghouse for survivors of human trafficking. HT Legal creates a bridge between trafficking survivors and highly-skilled *pro bono* legal representation. Standing with trafficking survivors, HT Legal partners with *pro bono* law firms nationwide to hold traffickers accountable for their crimes. *Pro bono* litigators trained by HT Legal win compensation for survivors. With these recoveries, trafficking survivors can reclaim their lives. Since 2012, HT Legal has trained more than 3,600 *pro bono* attorneys and placed more than 280 trafficking-related matters at top law firms.

www.htlegalcenter.org