No. 18-15081-G

IN THE

United States Court of Appeals for the Eleventh Circuit

SHOAIB AHMED, ET AL.,

Plaintiffs-Appellees,

v.

CORECIVIC, INC.,

Defendant-Appellant.

On Certified Order from the United States District Court
for the Middle District of Georgia, Columbus Division
(No. 4:18-CV-00070-CDL)
District Judge Clay D. Land

BRIEF OF AMICI CURIAE HUMAN TRAFFICKING LEGAL CENTER, TAHIRIH JUSTICE CENTER, COALITION TO ABOLISH SLAVERY & TRAFFICKING, AMERICANS FOR IMMIGRANT JUSTICE, AND ASISTA IMMIGRATION ASSISTANCE IN SUPPORT OF APPELLEES

Alvin F. Lindsay
HOGAN LOVELLS US LLP
600 Brickell Ave., Suite 2700
Miami, FL 33131
(305) 459-6633

Counsel for Amici Curiae

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 and this Court's Local Rule 28-1(b), the amici curiae represented herein state the following:

Amicus curiae Human Trafficking 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.

Amicus curiae Tahirih Justice 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.

Amicus curiae Coalition to Abolish Slavery & Trafficking 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.

Amicus curiae Americans for Immigrant Justice 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.

Amicus curiae ASISTA Immigration Assistance 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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INTEREST OF AMICI CURIAE[1]

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

The Human Trafficking Legal Center ("HT Legal") 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 Legal has trained more than 3,800 attorneys at top law firms across the country to handle civil trafficking cases in U.S. federal courts. HT Legal 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 Legal uses this expansive case data to provide extensive technical assistance to pro bono attorneys litigating civil trafficking cases in U.S. federal courts. In addition to training, the organization conducts extensive advocacy on human trafficking issues, providing human trafficking data to policymakers in the United States and abroad. HT Legal staff attorneys have lectured nationally and internationally on human trafficking for forced labor and involuntary servitude.

[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, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), states 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.

HT Legal advocates for justice for all victims of human trafficking and is well-placed to advise on human trafficking laws and policies.

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 and the Trafficking Victims Protection Act. 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.

Established in 1998, Coalition to Abolish Slavery & Trafficking ("CAST") is dedicated exclusively to assisting persons trafficked for the purpose of forced labor and slavery-like practices and to working toward ending all instances of human rights violations. CAST's program areas include intensive case management and comprehensive legal services for trafficking victims, human

rights advocacy and policy reform, research and training, as well as community organizing. CAST operates the California state-wide human trafficking hotline and has provided services to thousands of survivors of trafficking and their family members. In 2017-2018 alone CAST served over 1,300 survivors and their families. CAST collaboratively works with trafficking survivor advocates, law enforcement, community-based organizations, and numerous government agencies to ensure trafficked persons are provided linguistically appropriate, culturally sensitive, and victim-centered legal and social services. Additionally, CAST provides training and technical assistance to legal and social service providers nationally, increasing the understanding of human trafficking, forced-labor schemes, and the protections created pursuant to the Trafficking Victims Protection Act. CAST's ongoing work ensures all trafficking survivors, including labor trafficking survivors, have increased access to comprehensive legal representation to ensure access to justice.

Americans for Immigrant Justice ("AI Justice") is a non-profit law firm that protects and promotes the basic human rights of immigrants through its direct services, impact litigation, and advocacy. In Florida, and on a national level, AI Justice champions the rights of immigrant families and unaccompanied immigrant children; advocates for survivors of trafficking and domestic violence; serves as a watchdog on immigration detention practices and policies; and speaks for

immigrant groups who have particular and compelling claims to justice. AI Justice has served over 120,000 immigrants from all over the world since its founding. AI Justice has a robust Detention Program that provides Know Your Rights presentations, legal screenings, and direct representation to immigrants detained at South Florida's three immigration detention centers. In addition, AI Justice has been recognized nationally and internationally for its work representing immigrant victims of sex trafficking and forced labor. Since 1997, AI Justice has worked closely with law enforcement, including Homeland Security Investigations, to ensure that the rights of labor trafficking victims are protected.

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 in the 1994 Violence Against Women Act (VAWA) and its progeny. ASISTA serves as liaison for the field 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, non-profit, pro bono, and private attorneys working with immigrant crime survivors.

INTRODUCTION

Plaintiffs are current and former civil immigrant detainees at the for-profit, privately run, Stewart Detention Center. Defendant CoreCivic, Inc. ("CoreCivic") operates the Stewart Detention Center under a contract with Stewart County, Georgia, which maintains an Intergovernmental Service Agreement with ICE to detain immigrants on its behalf.[2] The contract requires CoreCivic to implement a Voluntary Work Program ("VWP") that gives detainees the option of working for nominal pay.[3]

Under the auspices of such a program, CoreCivic forces Plaintiffs and other detainees to work by depriving them of basic necessities, leaving them no choice but to work for the privilege of purchasing these necessities from CoreCivic's commissary. Once it has coerced detainees into enrolling in the program, CoreCivic uses threats of serious harm—including solitary confinement and the initiation of criminal proceedings—to keep detainees from quitting. These practices amount to forced labor in violation of the Trafficking Victims Protection Reauthorization Act ("TVPRA").

Plaintiffs filed this suit against CoreCivic for violating the TVPRA when it forced them to labor under threat of serious harm. The district court denied

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[2] *See* INS National Detention Standards – Voluntary Work Program (Sept. 28, 2000), https://www.ice.gov/doclib/dro/detention-standards/pdf/work.pdf.

[3] *Id*.

CoreCivic's motion to dismiss, and this matter is before the Court on CoreCivic's interlocutory appeal of that district court order.

STATEMENT OF THE ISSUE

The question in this case is whether private, for-profit detention centers are per se exempt from the forced-labor prohibition in the TVPRA, even though Congress designed the TVPRA to eradicate all forms of human trafficking—wherever and however they occur.

SUMMARY OF THE ARGUMENT

The TVPRA applies to private, for-profit detention centers, including CoreCivic. The legislative history of the Act shows that Congress intended the TVPRA to prohibit *all* trafficking-related offenses. Both the context in which CoreCivic extracted forced labor—a detention center—and the means by which CoreCivic extracted it—threats of serious harm, including solitary confinement and the initiation of criminal proceedings—are within what Congress envisioned when it enacted the TVPRA. In particular, the Act was designed to prevent human trafficking by government contractors like CoreCivic. And holding CoreCivic liable under the TVPRA will not interfere with ICE's ability to run its detention centers.

ARGUMENT

Congress passed the Trafficking Victims Protection Act ("TVPA") and its Reauthorizations in order to eradicate forced labor as it manifests in *all* settings and by *all* means. This includes forced labor coerced through threats of physical force or more "subtle methods" such as "threaten[ing] dire consequences by means other than overt violence." H.R. Rep. No. 106-939, at 101 (2000) (Conf. Rep.). The TVPRA's plain text and legislative history stress that forced labor is not acceptable *anywhere*, and that its prohibitions apply to *everyone* – including to government contractors.

Indeed, not only did Congress not intend to *exclude* entities like CoreCivic from the ambit of the TVPRA, the legislative history of the TVPRA indicates that it *specifically intended* for the TVPRA to discipline government contractors, like CoreCivic, that violate the law. Nothing about allowing the TVPRA claims to proceed in this case would impede the operation of detention facilities by private or public entities. The Court should allow Plaintiffs/Appellees' claims to proceed.

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

The text and legislative history of the TVPA and TVPRA illustrate two key points: First, Congress intended for its prohibition on "forced labor" to include forced labor obtained by *entities* like CoreCivic, and, second, that Congress

intended that the TVPA and TVPRA cover the *means* through which CoreCivic obtained that labor.

A. The Text and Legislative History of the TVPRA Show that Congress Contemplated Forced Labor Arising in Many Contexts and Had No Intention of Excluding Forced Labor in Custodial Settings

Nothing in the text or legislative history of the TVPRA suggests that Congress intended to carve out the custodial setting as one in which forced labor is allowed. To the contrary, the statutory text imposes penalties on "*[w]hoever* knowingly provides or obtains," or benefits from, labor by "means of serious harm or threats of serious harm." 18 U.S.C. § 1589(a)(2) & (b) (emphasis added). Congress's expansive view of forced labor suggests that private detention centers fall within the range of settings contemplated by Congress when it enacted this law.

The legislative history of the TVPA and its reauthorizations confirms 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). The victims of "[m]odern-day slavery" include 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 TVPRA are available to everyone—including detainees. People civilly detained in for-profit detention centers, no less than 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.

Consistent with Congress's vision of protecting victims of all kinds of forced labor, plaintiffs from a wide variety of settings have filed suit under the civil provision of the TVPRA.[4] Indeed, in the fifteen years since Congress first created a civil cause of action for offenses under the TVPRA, civil plaintiffs have filed at least 317 cases alleging trafficking and related abuses in the agricultural, domestic, educational, medical, religious, detention, and service sectors.[5] These 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.

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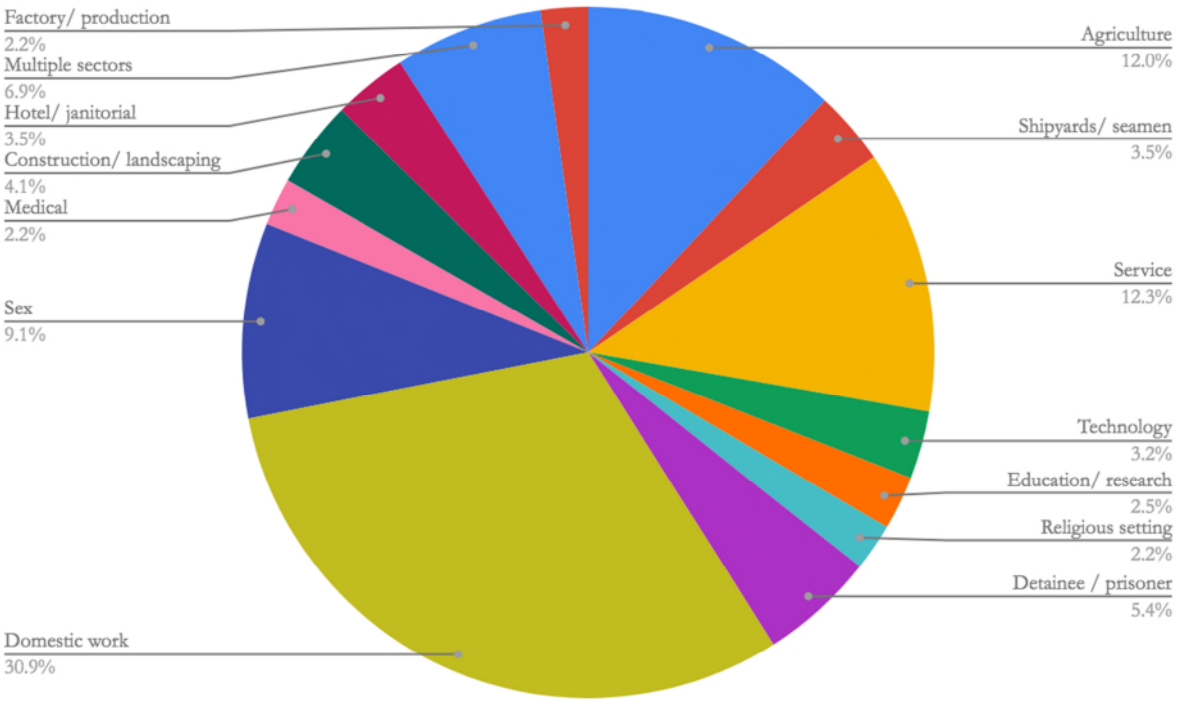
[4] Congress first created a private cause of action in 2003, initially limiting the cause of action to violations of 18 U.S.C. §§ 1589, 1590, and 1591. In subsequent Reauthorizations, the civil cause of action was expanded to include all violations of Trafficking Victims Protection Reauthorization Act 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).

[5] HT Legal Civil Case Litigation Database (available upon request).



These plaintiffs have largely succeeded in obtaining relief. Of the 317 cases filed, 87 remain ongoing, and the majority of the resolved cases—154—have resulted in judgments for the plaintiffs. This history demonstrates that there is no single "trafficking context." Appellant's Br. at 25.

B. The TVPRA Bars Forced Labor By Government Contractors

The plain language of the TVPA shows that it applies to all federal contractors, including CoreCivic. Nothing about a corporation's status as a contractor removes it from the "[w]hoever" in § 1589.

To the contrary, Congress amended the TVPA in 2003 to clarify 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). As of 2006, *all* federal contracts in which a "Federal department or agency" provides funds to a private entity must include this provision – including those involving only domestic affairs. 22 U.S.C. § 7104(g); *see also* 48 C.F.R. § 22.1705; 48 C.F.R. § 52.222-50(b)(3).

The legislative history confirms that Congress intended the TVPRA to reach government contractors. Indeed, trafficking by U.S. contractors overseas prompted Congress to expressly "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.* Congress was particularly concerned with "contractors who are essentially serving as representatives of the United States and often are perceived as such." H.R. Rep. No. 108-264, pt. 1, at 16 (2003). 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 the text and legislative history, a 2012 Executive Order also shows that the TVPRA 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)(3)((b), 77 Fed. Reg. at 60,031. The Executive Order thus directed resources to combat trafficking specifically among domestic federal contractors, in furtherance of the TVPRA.

Federal laws outside the TVPRA further confirm Congress's intention to hold government contractors accountable for human trafficking. Government contractors are not only liable for human trafficking crimes committed in the United States; in the TVPRA, Congress created explicit *extraterritorial* jurisdiction for those crimes as well. Specifically, 18 U.S.C. § 3271 states:

> **§3271. Trafficking in persons offenses committed by persons employed by or accompanying the Federal Government outside the United States**
>
> (a) Whoever, while employed by or accompanying the Federal Government outside the United States, engages in conduct outside the United States that would constitute an offense under chapter 77 or 117 of this title if the conduct had been engaged in within the United States or within the special maritime and territorial jurisdiction of the United States shall be punished as provided for that offense.

Under 18 U.S.C. § 3272(a)(1), the term "employed by the Federal Government outside the United States" includes those who are "employed . . . as a Federal contractor (including a subcontractor at any tier)." Thus, contrary to CoreCivic's

suggestion, the federal government has held federal contractors accountable for human trafficking crimes committed in the United States as well as those committed abroad.

CoreCivic's operation of the Stewart Detention Center falls squarely within the scope of domestic federal-contractor services covered by the TVPRA. CoreCivic operates the Stewart Detention Center under a contract with ICE and is responsible for the security and detention of immigrants. CoreCivic 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).[6]

Congress's 2008 extension of civil liability to those who benefit from trafficking offenses likewise applies to government contractors. 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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[6] In fact, CoreCivic's contract with the United States expressly prohibits the use of forced labor. 48 C.F.R. 52.222-50, which 48 C.F.R. § 22.1705 directs be inserted "in all solicitations and contracts," 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 (Dec. 23, 2008). 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 provides 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 impunity 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 the motion filed by KBR, a government contractor and co-defendant, to dismiss TVPRA claims. 697 F. Supp. 2d 674, 684 (S.D. Tex. 2009). The plaintiffs in *Adhikari* alleged that the contractor's co-defendant misled and deceived them, took their passports, transported them against their will to perform labor, and that the contractor was put

on notice of all this by 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.

CoreCivic's profit from its detainees' forced labor is precisely the sort of knowing benefit that the 2008 amendment is designed to capture. By benefiting from detainees' nearly free labor, extracted under threat of serious harm, CoreCivic can avoid paying additional costs for sanitation services. CoreCivic's forced-labor venture undoubtedly permits it to underbid law-abiding contractors who would pay those costs. CoreCivic 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.

C. The TVPRA's Prohibition of Forced Labor Applies to the Operators of For-Profit Detention Centers

The TVPRA does not exempt a government contractor from the forced-labor prohibition in § 1589 simply because the contractor is engaged in the detention business. The government acknowledges as much in its *amicus* brief (U.S. Br. 6-8), and numerous courts have reached the same conclusion. In fact, two other district courts have held, like the district court in this case, that § 1589 applies to CoreCivic's treatment of civil immigration detainees. *See Owino v. CoreCivic*,

Inc., No. 17-CV-1112 JLS (NLS), 2018 WL 2193644, at *4 (S.D. Cal. May 14, 2018); *Gonzalez v. CoreCivic, Inc.*, No. 1:18-cv-169 (W.D. Tex. Feb. 22, 2018), ECF No. 29 (Order Denying Motion to Dismiss), at 4-5. Two additional district courts have held that § 1589 applies to another operator of immigration detention facilities. *Novoa v. GEO Grp., Inc.*, EDCV 17-2514 (SHKx), 2018 WL 3343494 (C.D. Cal. June 21, 2018); *Menocal v. Geo Grp., Inc.*, 113 F. Supp. 3d 1125, 1131-33 (D. Colo. 2015). And still another court has held that for-profit contractors who operate facilities housing federal prisoners are likewise subject to the TVPA's forced-labor prohibitions. *See Figgs v. GEO Grp., Inc.*, No. 1:18-cv-00089-TWP-MPB, 2019 WL 1428084 (S.D. Ind. Mar. 29, 2019).

When Congress reenacted the TVPRA in 2018, it did so against a backdrop of cases brought against jails and detention facilities. What CoreCivic attempts to deride as a series of "copycat lawsuits" against private detention facilities is actually a rising tide of viable cases aiming to hold these actors to account for their criminal behavior. Multiple courts have now recognized that, far from frivolous, these cases are entirely viable.

Further, "Congress is presumed to be aware of . . . [a] judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978); *see also Pierce v. Underwood*, 487 U.S. 552, 567 (1988). If failing to exempt for-profit detention

centers from the requirement to abstain from human trafficking were truly absurd, or thwarted the will of Congress, Congress would have said so in its most recent reauthorization of the TVPRA. Instead, it reenacted the TVPRA without any relevant changes, presumptively adopting the judicial interpretation that the TVPRA applies to detention centers.

D. CoreCivic's Relationship With ICE Does Not Remove it From the Ambit of the TVPRA

CoreCivic tries to evade liability under the TVPRA by arguing that it is "obligated [by ICE] to run a VWP for detainees." Appellant's Br. 15. That may be true, but what is at issue here is a work program that is voluntary in name only. ICE does not obligate CoreCivic to *force* detainees to work—to the contrary, ICE standards require that detainees be allowed to stop participating in a voluntary work program at any time. Appellant's Br. 4. CoreCivic cannot transform forced labor into voluntary work simply by retitling its program. A "Voluntary Work Program" where participation is coerced, no matter its name, is not a voluntary work program at all. Thus, as Congress, the district courts, other courts, and the government have all correctly concluded, CoreCivic is subject to the TVPA, including its prohibition on forced labor in § 1589.

II. THE TVPRA PROHIBITS CORECIVIC'S COERCIVE MEANS OF EXTRACTING FORCED LABOR

Section 1589 also bars CoreCivic's practices as alleged in the Plaintiffs/Appellees' complaint.[7] Congress created § 1589 partly "to address issues raised by the decision of the United States Supreme Court in *United States v. Kozminski*," 487 U.S. 931 (1988). H.R. Rep. No. 106-939, at 100 (2000). *Kozminski* interpreted the involuntary-servitude prohibition in 18 U.S.C. § 1584 as "limited to cases involving the compulsion of services by the use or threatened use of physical or legal coercion." 487 U.S. at 932. Congress rejected that limitation, instead enacting a provision that prohibited procuring labor "by means of serious harm or threats of serious harm." 18 U.S.C. § 1589(a)(2). That prohibition is much broader:

> 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).

[7] Amici agree with Plaintiffs/Appellees' view (*see* Appellees' Br. 5, 8-9 & n.3) that this appeal is limited to, at most, review of the district court's rejection of CoreCivic's argument that the TVPRA is categorically inapplicable to operators of private, for-profit detention centers. We include this argument only to show that these allegations, once proved, will provide a basis for holding CoreCivic liable.

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 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, (*Martinez v. Calimlim*, 651 F. Supp. 2d 852, 865 (E.D. Wis. 2009); *Shukla v. Sharma*, No. 07-CV-2972, 2009 WL 10690810, at *11 (E.D.N.Y. Sept. 29, 2009); *Ramos v. Hoyle*, No. 08-21809-CIV, 2008 WL 5381821, at *5 (S.D. Fla. Dec. 19, 2008); *Catalan v. Vermillion Ranch Ltd. P'ship*, No. 06-CV-01043-WYD-MJW, 2007 WL 38135, at *8 (D. Colo. Jan. 4, 2007); *Nunag-Tanedo v. E. Baton Rouge Parish Sch. Bd.*, 790 F. Supp. 2d 1134, 1144 (C.D. Cal. 2011)), injury to reputation (*Samirah v. Sabhnani*, 772 F. Supp. 2d 437, 444 (E.D.N.Y. 2011)), and threats of incarceration (*Magnifico v. Villanueva*, No. 10-CV-80771, 2012 WL 5395026, at *1 (S.D. Fla. Nov. 2, 2012)).

In another civil case, *David v. Signal International, LLC*, the plaintiffs challenged an employer's scheme of fraudulently inducing immigrant workers to go into debt to obtain temporary work visas under the federal H-2B visa program by promising fictitious green cards. Sixth Am. Compl., *David v. Signal*, No. 2:08-cv-1220 (E.D. La. Aug. 5, 2014), ECF No. 1706. Signal coerced labor by exploiting the workers' fear of the serious harm their families would suffer if they could not repay their debts. *Id.* A jury ruled for the plaintiffs, finding that Signal had illegally manipulated the federal immigration system to extract labor from vulnerable migrants. Jury Verdict, *David v. Signal*, No. 2:08-cv-01220 (E.D. La. Feb. 12, 2015), ECF No. 2268-2.

The government, meanwhile, has obtained criminal convictions based on labor procured by a wide array of means, including threats of deportation, forced confinement, and psychological manipulation. This Court affirmed a forced-labor conviction where the coercion included threats to return the plaintiff to Haiti. *United States v. Paulin*, 329 F. App'x 232, 233-34 (11th Cir. 2009). The First Circuit has held that yelling and cursing, threatened beatings, and threats to call immigration services will suffice. *United States v. Bradley*, 390 F.3d 145, 149 (1st Cir. 2004), *vac'd on other grounds*, 545 U.S. 1101 (2005). Other courts have held that criminal convictions for forced labor can be premised on threats of deportation (*United States v. Garcia*, No. 02-CR-110S-01, 2003 WL 22956917, at *4

(W.D.N.Y. Dec. 2, 2003)) and threats to inform the victim's family that she was a thief (*United States v. Sabhnani*, 599 F.3d 215, 225-26 (2d Cir. 2010)).

Recent cases have made clear that the actions alleged here state a claim for a violation of § 1589. Two of those cases involve other immigration detention centers run by CoreCivic. In *Gonzalez v. CoreCivic, Inc.*, No. 1:18-cv-169 (W.D. Tex. Feb. 22, 2018), a group of civil immigration detainees alleged that CoreCivic forced them to scrub bathrooms, clean floors, maintain the on-site medical facility, wash and dry detainee laundry, prepare and serve meals, perform clerical work, and landscape the exterior of the facility. *Gonzalez*, Compl. at 5-6, ECF No. 1. The plaintiffs further alleged that CoreCivic maintained this forced labor through threats of confinement, physical restraint, substantial restrictions, denial of personal hygiene products, and solitary confinement if the plaintiffs refused to work. *Id.* at 6-8. In denying CoreCivic's motion to dismiss, the court in *Gonzalez* emphasized that threats of solitary confinement standing alone would sufficiently allege a prohibited means of obtaining labor under the TVPRA. *Id.* at 5.

Similarly, in *Owino v. CoreCivic, Inc.*, 2018 WL 2193644 (S.D. Cal. May 14, 2018), civil immigration detainees alleged that CoreCivic forced them to scrub bathrooms, showers, toilets, and windows; provide barber services to detainees; and perform clerical work. *See id.* at *1. The plaintiffs also alleged that CoreCivic threatened to punish them by means of confinement, restraint, substantial

restrictions, and solitary confinement if they refused to work. *Id.* The court held that these allegations stated a claim under the TVPRA. *Id*. at *6.

Three cases involving a different operator of for-profit detention centers are to the same effect. The courts in *Novoa* and *Menocal* held that civil immigration detainees at a detention center run by the Geo Group stated a claim under § 1589 by alleging that they were forced to clean and perform other tasks in order to earn money for food, water, and personal hygiene products, and to avoid solitary confinement. *Novoa*, 2018 WL 3343494, at *2; *Menocal*, 113 F. Supp. 3d at 1128, 1131-1132. And the court in *Figgs* likewise held that prison inmates stated a claim under § 1589 by alleging that GEO Group threatened them with long hours of solitary confinement if they refused to complete tasks such as cleaning, filling out reports, and assisting employees in maintenance work. *Figgs*, 2019 WL 148084, at *1.

Plaintiffs/Appellees in this case have alleged practices that are indistinguishable for TVPRA purposes from the practices at issue in *Gonzalez*, *Owino*, *Menocal*, and *Figgs*. Specifically, the Plaintiffs/Appellees allege that, under CoreCivic's "voluntary" work program, they were required to clean the entire detention center, cook, and do laundry in order to receive food, toilet paper, soap, and other toiletries. *See* Compl. at 10. And CoreCivic's own documents confirm this allegation: Its handbook states that it requires civil immigration

detainees to clean, cook, do laundry, and complete other assignments in common areas throughout the facility. CoreCivic, Detainee Orientation Handbook, Stewart Detention Center 14 (2016).

Plaintiffs/Appellees further allege that CoreCivic obtained their labor through threats of solitary confinement, threatening to initiate criminal proceedings, restricting contact with loved ones, and barring access to the detention center's commissary. *See* Compl. 12; App. 59. As the district court in this case, and the courts in *Gonzalez*, *Owino*, *Menocal*, and *Figgs* all held, those harms are covered by § 1589: Just as a "choice" between working and staying in jail is not a choice at all,[8] the "choice" CoreCivic gives its detainees—work or suffer a host of severe deprivations including solitary confinement—is not a choice either. It is a means of procuring forced labor.

It is, for CoreCivic, also a means of benefitting from forced labor in violation of Congress's 2008 amendment to § 1595. By forcing detainees to work, CoreCivic guarantees itself a constant stream of nearly free labor. And by using

[8] *See United States v. Reynolds*, 235 U.S. 133, 146, 150 (1914) (holding that "[c]ompulsion of . . . service by the constant fear of imprisonment under the criminal laws" violated "rights intended to be secured by the 13th Amendment"); *Kozminski*, 487 U.S. at 944 ("[O]ur precedents clearly define a Thirteenth Amendment prohibition of involuntary servitude enforced by the use or threatened use of physical or legal coercion."); *Pierce v. United States*, 146 F.2d 84, 86 (5th Cir. 1944) ("Peonage is a status or condition of compulsory service or involuntary servitude based upon a real or alleged indebtedness.").

that forced labor to perform cooking, cleaning, and similar activities, CoreCivic saves itself the cost of paying employees to perform those activities. CoreCivic also likely receives indirect benefits: By saving on labor costs, it can submit lower bids to the government and increase the likelihood that it receives additional contracts. Indeed, CoreCivic is engaged in the precise behavior Congress sought to eradicate when it passed and reauthorized the TVPA.

Finally, contrary to CoreCivic's arguments, it is neither "engaged in [a] statutorily mandated duty" nor "performing a federal function" "on behalf of ICE" when it coerces participation in the Voluntary Work Program by withholding basic necessities and threatening detainees with housing downgrades and solitary confinement. Appellant's Br. 24-25. On the contrary, CoreCivic's behavior violates both the TVPRA and ICE standards.

Nor can CoreCivic hide behind ICE's Personal Housekeeping Requirement. Under the Performance-Based National Detention Standards, ICE requires civil immigration detainees to clean their personal living quarters.[9] But CoreCivic requires detainees to clean, cook, do laundry and complete other assignments in common areas throughout the facility, all under the guise of its "voluntary" work program. CoreCivic, Detainee Orientation Handbook, Stewart Detention Center

[9] 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.

14 (2016). And 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*."[10] CoreCivic does not, as it claims, simply administer ICE programs or federal policy. Instead, CoreCivic knowingly benefits from forced labor when it forces civil detainees to participate in the Voluntary Work Program, in violation of the TVPRA.

Holding CoreCivic liable in this case would not interfere with ICE's Voluntary Work Program. When properly administered, such a program does not involve forced labor. Extending liability under the TVPRA to CoreCivic simply ensures that they will not be able to procure, or benefit from, the forced labor of civil immigration detainees.

CONCLUSION

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

[10] 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 (emphases added).

Respectfully submitted on May 8, 2019.

/s/ Alvin F. Lindsay
Alvin F. Lindsay
Florida Bar No. 939056
HOGAN LOVELLS US LLP
600 Brickell Avenue Suite 2700
Miami, FL 33131
(305) 459-6633

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32(a)(7)(B) as the brief contains 6,103 words, excluding those parts exempted by Fed. R. App. 32(7)(f) and 11th Cir. Local R. 32-4.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) as this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

/s/ Alvin F. Lindsay
Alvin F. Lindsay

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2019, I filed the foregoing document electronically via the Court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

Respectfully submitted,

/s/ Alvin F. Lindsay
Alvin F. Lindsay