No. 21-2846

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

WILLIAM BURRELL JR., ET AL.,

Plaintiffs-Appellants

v.

LACKAWANNA COUNTY RECYCLING CENTER, INC., ET AL.,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY ON THE ISSUE ADDRESSED HEREIN

KRISTEN CLARKE
Assistant Attorney General

ERIN H. FLYNN
KATHERINE E. LAMM
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-2810

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in this appeal, which concerns the interpretation of the forced labor provision of the Trafficking Victims Protection Act (TVPA), 18 U.S.C. 1589. The United States has both criminal and civil enforcement authority for the TVPA. See 18 U.S.C. 1584-1594 (criminalizing forms of peonage, slavery, and trafficking); 18 U.S.C. 1595A (permitting the Attorney General to seek to enjoin conduct that may violate the

TVPA, among other laws). Private parties also may seek to vindicate TVPA rights through the statute's civil remedy provision, 18 U.S.C. 1595, which incorporates the legal standards governing criminal liability. Because of the United States' interest in the proper interpretation of the forced labor provision, the United States offers its views in this brief filed under Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUE

Plaintiffs-appellants are civil contemnors who were imprisoned for failing to pay child support and could be released upon payment of a monetary sum. They were eligible for work release, but only if they first worked for half the term of their detention in a privately-owned county recycling facility for meager pay. They assert that this arrangement constituted forced labor in violation of the TVPA, 18 U.S.C. 1589, which proscribes obtaining labor through particular coercive means including force, physical restraint, serious harm, or the threatened use of such means. We address the following question:

Whether it is fatal to a forced labor claim that the plaintiff, a detainee, can obtain release by paying a sum of money or whether such a claim can proceed if the plaintiff sufficiently alleges that defendants used statutorily prohibited means to procure his labor.[1]

[1] The United States takes no position on any other issue presented in this case.

STATEMENT OF THE CASE

1. Facts Relevant To Plaintiffs' Forced Labor Claims[2]

Plaintiff William Burrell, Jr., is a parent of three children. App. 115 (2d Am. Compl.).[3] He fell behind on child-support payments after a workplace injury left him bedridden. App. 115. Upon holding Burrell in civil contempt, a family court judge in the Lackawanna County Court of Common Pleas sentenced him to two consecutive six-month terms in the Lackawanna County Prison. App. 115. The court's order specified that Burrell could be released from prison upon payment of several thousand dollars, an amount that Burrell claims he did not have. App. 115; see also Br. 7 & n.7. Under the order, Burrell also was immediately eligible for a work-release program—an option that interested him because he could spend time outside of prison and earn money. App. 115-116.

But prison staff told Burrell that unless child-support contemnors paid the court-ordered sum to secure their release, it was the prison's policy for these civil detainees to spend the first half of their sentence working in the Lackawanna

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[2] We take the allegations in the complaint as true, as this Court must do in considering an appeal from a district court order granting a motion to dismiss. See *Marathon Petroleum Corp.* v. *Secretary of Fin. for Del.*, 876 F.3d 481, 485 n.2 (3d Cir. 2017).

[3] "App. __" indicates the page number of the Appendix. "Doc. __, at __" refers to the docket entry and page number of documents filed in the district court that do not appear in the Appendix. "Br. __" indicates the page number of plaintiffs' opening brief.

County Recycling Center before being granted work release. App. 116. Thus, Burrell first had to work at the Recycling Center for six months before he could participate in the work-release program. App. 116. The court in a subsequent order transferred Burrell to the Lackawanna County Prison Community Services Program, stating that he would be eligible for "work release/house arrest status" six months later, provided that he demonstrated a "positive work ethic[]" and abided by the work-release program's terms. App. 116.

Burrell felt he had no option but to work at the Recycling Center so that he could access the work-release program and regain his freedom. App. 117. The prison transported Burrell and other incarcerated individuals to and from the Recycling Center each day, where Burrell worked eight-hour shifts removing recyclables from a conveyor belt of garbage. App. 117. He earned $5 per day, which was deposited into his prison commissary account. App. 117.

Two other civil contemnors, Joshua Huzzard and Dampsey Stuckey, also are named plaintiffs and make factual allegations similar to Burrell's. App. 119-122. The named plaintiffs seek to represent a class of civil child support detainees who were compelled to work at the Recycling Center. App. 123-125.

2. Procedural History

a. Burrell filed original and amended complaints *pro se* in the United States District Court for the Middle District of Pennsylvania, raising a host of federal statutory and constitutional claims—including a claim for forced labor under the civil remedy provision of the TVPA, 18 U.S.C. 1595—against state and federal government officials, employees, and the Recycling Center. See Docs. 1, 11. He claimed that defendants unlawfully forced him to work by threatening or leading him to believe that he would experience physical restraint, abuse of legal process, and serious harm if he did not work, and that this was part of a broad scheme among the local courts, government officials, and private parties to secure cheap labor through the manipulation of child-support proceedings. See generally Doc. 11. Because Burrell sought to proceed *in forma pauperis*, the case was referred for screening to a magistrate judge, who recommended that the complaint be dismissed. Doc. 34. The district court adopted the recommendation and dismissed the case. Doc. 44. Burrell appealed. Doc. 46.

In an unpublished per curiam decision, this Court affirmed the district court's dismissal of several of Burrell's claims while vacating and remanding the case with respect to others, including involuntary servitude under the Thirteenth Amendment and forced labor under the TVPA. *Burrell* v. *Loungo*, 750 F. App'x 149 (3d Cir. 2018) (*Burrell I*), cert. denied, 139 S. Ct. 2640 (2019). This Court

explained that involuntary servitude arises under the Thirteenth Amendment where "the victim had no available choice but to work or be subject to legal sanction." *Id.* at 159 (quoting *United States* v. *Kozminski*, 487 U.S. 931, 943 (1988)). The Court stated that Burrell had a "choice"—"either work in the LRC or spend an extra six months in prison"—but declined to hold that the allegations were categorically deficient to state a claim in light of "the dearth of case law in this area." *Ibid.*

Turning to the forced labor claim, this Court explained that the TVPA was designed to address servitude accomplished by "nonviolent coercion, as well as through physical or legal coercion." *Burrell I*, 750 F. App'x at 160 (quoting *Muchira* v. *Al-Rawaf*, 850 F.3d 605, 617 (4th Cir.), cert. denied, 138 S. Ct. 448 (2017)). Again, the Court stated that Burrell may have "had a sufficient 'choice' so that any coercion to work in the LRC did not convert that work into involuntary servitude" but further concluded that "the claim deserves more consideration and should not have been dismissed before service of process." *Ibid.* In a footnote, the Court observed that a civil contemnor like Burrell who would be released upon paying child support might have "the keys of [his] prison in [his] own pockets,"

but left "it to the District Court to consider such an argument." *Id.* at 160 n.7 (brackets in original) (quoting *Turner* v. *Rogers*, 564 U.S. 431, 441-442 (2011)).

b. On remand, Burrell obtained counsel and, along with the two other named plaintiffs, filed a second amended class action complaint against the Recycling Center, the Recycling Center's owners, the Lackawanna County Solid Waste Management Authority, Lackawanna County, and the prison's administrator. App. 112-144. Plaintiffs alleged violations of the TVPA's prohibition on forced labor, the Thirteenth Amendment, federal and state wage laws, and federal racketeering law, and they also claimed unjust enrichment. App. 137-142. They allege that defendants violated the TVPA by compelling their labor through "threats of continued physical restraint" (by withholding access to the work-release program), "abuse of law and/or legal process," and by causing them to believe that, if they did not work, they would "suffer continued physical restraint," all in violation of 18 U.S.C. 1589(a)(1), (3), and (4). App. 137.

Defendants moved to dismiss all claims under Federal Rule of Civil Procedure 12(b)(6). Docs. 99, 101, 102, 103. A magistrate judge recommended that the district court dismiss several of plaintiffs' claims but allow others to proceed to discovery, including, as relevant here, the TVPA and Thirteenth Amendment claims. App. 1-30. The magistrate judge reasoned that these claims—based on "substantively the same factual allegations" that this Court

previously considered in *Burrell I*—must go forward under the law-of-the-case doctrine. App. 14-16. All parties filed objections to the report and recommendation. Docs. 121, 122, 125, 127, 129.

c. The district court dismissed all claims with leave to file an amended complaint. App. 31-86. To start, the court held that to avoid running afoul of the *Rooker-Feldman* doctrine, plaintiffs' forced labor and Thirteenth Amendment claims must be construed not to contest the validity of the state court orders of incarceration absent payment of a monetary "purge," which, as a matter of law, could not exceed plaintiffs' immediate financial means. App. 40-53. Thus, the court proceeded under the assumption that plaintiffs had the means to pay the "purge" amounts at the time the state court entered the orders of incarceration. App. 53. Next, the court rejected the magistrate judge's conclusion that the law of the case dictated that these claims must proceed to discovery. App. 53-58. The court held that plaintiffs' filing of a second amended complaint—which was similar to the original complaint but omitted many defendants and certain claims involving manipulation of child-support proceedings—satisfied the purpose of this Court's remand in *Burrell I* such that consideration anew of the forced labor and Thirteenth Amendment claims was proper. App. 57-58.

The court then addressed the merits of these claims, which, in its view, turned on whether plaintiffs "had the keys to the prison." App. 57, 63, 65. Relying

on this Court's decision in *Burrell I*, the district court asserted that the relevant inquiry in a Thirteenth Amendment claim is whether "the victim had no available choice but to work or be subject to legal sanction." App. 59 (quoting *Burrell I*, 750 F. App'x at 159 (quoting *Kozminski*, 487 U.S. at 943)). The court reasoned that a forced labor claim under the TVPA is "similar," involving the use of prohibited means to procure labor, and that "[t]he sufficiency of the 'choice' Plaintiffs had regarding their work at the Center is central to whether that work was converted to involuntary servitude." App. 59.

Because the court assumed that plaintiffs had the means to pay the "purge" amount—and thereby obtain their release—the court held that it could not deem plausible their assertions that they had no choice but to work at the Recycling Center. App. 60-62. At a minimum, the court explained, plaintiffs needed to plead that they were unable to secure their release because of a change in financial circumstances or an inability to seek a court-ordered modification to their "purge" amount. App. 62-63. In the absence of such allegations, the court held that plaintiffs failed to meet what the district court considered to be the requisite burden of pleading under both the Thirteenth Amendment and the TVPA's forced labor

provision: a showing "that they did not have the keys to the prison." App. 65 (citing *Turner*, 564 U.S. at 441-442).

d. After dismissing plaintiffs' remaining claims (App. 66-83), the court granted plaintiffs' subsequent motion for issuance of final judgment and entered judgment for defendants. App. 87. Plaintiffs timely filed a notice of appeal. App. 88-89.

SUMMARY OF ARGUMENT

The district court applied an incorrect legal standard in holding that plaintiffs did not state a claim under the TVPA's forced labor provision. The forced labor provision makes liable "[w]hoever" uses statutorily defined coercive means to obtain a victim's labor, including, as relevant here, threats of physical restraint or abuse of law or legal process. 18 U.S.C. 1589(a)(1) and (a)(3); 18 U.S.C. 1595. The district court's analysis, however, turned on an element not present in the statutory text: whether plaintiffs had the ability to secure their own release. The court concluded that because plaintiffs had "the keys to the prison," they could not bring a forced labor claim.

The "keys to the prison" inquiry is meant for assessing the propriety of incarceration for civil contempt. It is useful for this purpose but has no bearing on the lawfulness of forcing civil detainees to work. The district court's approach

thus departed from the TVPA's text and also from its purpose of prohibiting a broad range of coercive labor practices across contexts, including civil detention.

ARGUMENT

THE DISTRICT COURT ERRED IN HOLDING THAT CIVIL CONTEMNORS' ABILITY TO OBTAIN RELEASE FROM DETENTION BY PAYING A SUM OF MONEY DOOMED THEIR FORCED LABOR CLAIM

A. The TVPA's Forced Labor Provision, 18 U.S.C. 1589, Broadly Prohibits Coercive Labor Practices

The forced labor provision of the TVPA criminalizes using any of several statutorily prohibited means in order to "provide[] or obtain[] the labor or services of a person." 18 U.S.C. 1589(a). The statute contains four categories of prohibited means: (1) force, physical restraint or threats of force or physical restraint; (2) serious harm or threats of serious harm; (3) abuse or threatened abuse of legal process; and (4) or a "scheme, plan, or pattern intended to cause [some] person to believe" that failing to perform labor will result in serious harm or physical restraint. 18 U.S.C. 1589(a)(1)-(4). Relevant here, the statute defines "abuse or threatened abuse of law or legal process" to mean "the use or threatened use of a law or legal process * * * in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action." 18 U.S.C. 1589(c)(1).

Victims may bring civil suit in federal district court against perpetrators and knowing beneficiaries of their labor. 18 U.S.C. 1595.

The forced labor provision was designed to encompass a wide range of coercive conduct. Congress enacted the statute partly in response to the Supreme Court's decision in *United States* v. *Kozminski*, 487 U.S. 931 (1988), which interpreted 18 U.S.C. 1584's prohibition against "involuntary servitude" to encompass only servitude by "physical or legal coercion." See 22 U.S.C. 7101(b)(13) (congressional findings supporting the TVPA's passage); H.R. Conf. Rep. No. 939, 106th Cong., 2d Sess. 100-101 (2000) (H.R. Conf. Rep. No. 939). Absent an explicit directive from Congress, the *Kozminski* Court declined to construe "involuntary servitude" to include the coercion of labor "by any means that, from the victim's point of view, either leaves the victim with no tolerable alternative but to serve the defendant or deprives the victim of the power of choice," as this swept beyond the term's historical meaning drawn from the Thirteenth Amendment. *Kozminski*, 487 U.S. at 948-949; see also 22 U.S.C. 7101(b)(13).[4]

[4] The Thirteenth Amendment proscribes "slavery" and "involuntary servitude," "except as a punishment for crime whereof the party shall have been duly convicted." See U.S. Const. Amend. XIII, § 1. This case, which involves only civil contemnors, does not implicate the exception for people convicted of crimes.

Congress intended the forced labor provision "to address the increasingly subtle methods" of perpetrating "modern-day slavery, such as where traffickers threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence." H.R. Conf. Rep. No. 939, at 101. It was designed as a tool to "combat severe forms of worker exploitation that do not rise to the level of involuntary servitude as defined in *Kozminski*." *Ibid.* The law thus captures "cases in which persons are held in a condition of servitude through nonviolent coercion," which might "have the same purpose and effect" of physical or legal coercion. 22 U.S.C. 7101(b)(13).

B. The District Court Erroneously Held That To State A Claim For Forced Labor, A Plaintiff Must Allege That He Does Not "Carry The Keys To The Prison"

1. The District Court Improperly Required Plaintiffs To Plead An Element Not Rooted In Section 1589's Text Or Purpose: The Inability To Secure Their Own Release

In deciding whether plaintiffs' forced labor claim should proceed to discovery, the district court considered whether plaintiffs had plausibly alleged that they lacked a "choice" between work at the Recycling Center and restraint or legal sanction, a question the court equated with whether plaintiffs had "their own keys to the prison." App. 59, 63, 65 (citing *Turner* v. *Rogers*, 564 U.S. 431, 442 (2011)). The resulting analysis, which focused on plaintiffs' ability to avoid work by paying the required "purge" amount rather than on defendants' alleged use of

prohibited means to procure plaintiffs' labor, was incorrect: it departed from the TVPA's language and purpose. The keys-to-the-prison inquiry is useful in understanding whether civil detention is lawful, but it does not shed light on whether or how a civil detainee who is lawfully incarcerated may be compelled to work consistent with the TVPA's forced labor provision.[5]

The plain text of the forced labor provision focuses on a defendant's knowing use (or threatened use) of proscribed means—*i.e.*, force, restraint, abuse of law or process, or serious harm—to procure a person's labor. 18 U.S.C. 1589(a)(1)-(4). Contrary to the district court's reasoning, it is possible for a person to use those prohibited means to coerce labor from a detainee even if the detainee retains the ability to secure release. In concluding otherwise, the district court added the inability to obtain release as an element of a forced labor claim even though no such requirement can be derived from the statutory text.

The court's inquiry into whether plaintiffs had their own "keys to the prison" goes to an altogether different question: whether the order incarcerating them was an appropriate exercise of the civil contempt power (to coerce compliance with

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[5] Importantly, this case involves detainee work for a private entity outside of the prison, not the "general housekeeping responsibilities" within the prison that some courts have held that pretrial and civil detainees may be required to perform. See *Tourscher* v. *McCullough*, 184 F.3d 236, 242 (3d Cir. 1999) (discussing pretrial detainees); see also *Channer* v. *Hall*, 112 F.3d 214, 218-219 (5th Cir. 1997) (discussing immigration detainees in parallel with mental hospital patients).

court-ordered child support obligations), or whether the incarceration instead was a punishment that could be imposed only after a criminal conviction. See *Turner*, 564 U.S. at 442. "When the petitioners carry the keys of their prison in their own pockets, the action is essentially a civil remedy designed for the benefit of other parties and has quite properly been exercised for centuries to secure compliance with judicial decrees." *Shillitani* v. *United States*, 384 U.S. 364, 368 (1966) (internal quotation marks and internal citation omitted).

The district court seemingly employed the wrong inquiry because it placed undue weight on a passing remark made in the final footnote of this Court's decision in *Burrell I*. There, in concluding that plaintiffs' Thirteenth Amendment and forced labor claims should proceed to discovery, this Court stated that it left it to the district court to "consider" the "argument" that a civil contemnor "carries the keys to his prison in his own pocket." *Burrell* v. *Loungo*, 750 F. App'x 149, 160 n.7 (3d Cir. 2018) (*Burrell I*) (quoting *Turner*, 564 U.S. at 441-442) (cleaned up), cert. denied, 139 S. Ct. 2640 (2019). But this Court did not hold, or even suggest, that this was the dispositive question for federal statutory claims under the TVPA.

Not surprisingly—and for good reason—no other case uses the "carries the keys to his prison" formulation as the standard for assessing a forced labor claim. The forced labor provision applies broadly to "whoever" procures the "labor or services of a person," without regard to the person's status as a lawful civil

detainee. Although the footnote in *Burrell I* may support considering the circumstances of plaintiffs' civil detention as a factor in deciding whether defendants used prohibited means to procure labor, the district court erred in construing this dictum to articulate a new legal standard for stating a TVPA claim by focusing solely on a victim's choice.

Instead, the district court should have undertaken to determine whether plaintiffs' allegations were sufficient to state a claim of forced labor based on threats of continued restraint or of abuse of law or process—means expressly prohibited by the statutory text. Specifically, plaintiffs alleged that, by conditioning their eligibility for work release on first performing labor at the Recycling Center, defendants threatened child-support debtors with "continued physical restraint" and "abuse of law or legal process," and also caused them to believe that they would suffer "physical restraint" if they did not work, thereby violating 18 U.S.C. 1589(a)(1), (3), and (4). App. 137. Section 1589 does not define "physical restraint." By statute, however, plaintiffs' allegation of "abuse of law or legal process" required the district court to consider whether plaintiffs plausibly alleged that defendants used a "law or legal process * * * in any manner or for any purpose for which the law was not designed, in order to exert pressure on [plaintiffs] to cause [them] to take some action or refrain from taking some action." 18 U.S.C. 1589(a)(3) and (c)(1); see *Adia* v. *Grandeur Mgmt., Inc.*,

933 F.3d 89, 93 (2d Cir. 2019) (citing *United States* v. *Calimlim*, 538 F.3d 706, 713 (7th Cir. 2008), cert. denied, 555 U.S. 1102 (2009)) (explaining that threat of withdrawal of visa sponsorship might constitute abuse of legal process). The court should have performed the straightforward statutory inquiry rather than effectively probing whether plaintiffs were lawfully confined in the first place.

2. The District Court's Analysis Conflicts With A Growing Body Of Authority That Applies The Forced Labor Provision To Detainees Who Have Not Been Convicted Of Crimes

The district court's analysis, which treated as dispositive whether the detainee has "the keys to his prison," conflicts with the language and purpose of the TVPA's forced labor provision and could arbitrarily remove detained individuals who are not convicted of crimes from the statute's broad protections. This is so because many pretrial and civil detainees have the ability (at least in theory) to procure their own release. As discussed previously, a sentence of incarceration for civil contempt comports with fundamental due process considerations only where the contemnor can procure release by compliance with a court order. A civil immigration detainee, too, might secure release from custody pending final adjudication of their immigration status by posting bond, if eligible, or by voluntary removal from the United States. Even in the criminal context, many pretrial detainees potentially could secure their release by paying bail or posting a bond. In each of these contexts, therefore, these non-convicted detainees

might be said in one sense to "hold the keys to the prison." But it does not follow that such detainees therefore can be required to work by statutorily prohibited means for the benefit of the government or a private business.

The district court's analysis making "holding the keys to the prison" preclusive of any TVPA claim conflicts with a growing body of case law recognizing the broad applicability of the TVPA's forced labor provision. Under the district court's approach, any of the above-described individuals might lack a claim under the forced labor provision because it is within their power to obtain release, and thus to use "their own keys to the prison" to avoid coerced labor while detained or incarcerated.

But two courts of appeals have rejected arguments that the forced labor provision provides no protection to civil immigration detainees. *Gonzalez* v. *CoreCivic, Inc.*, 986 F.3d 536 (5th Cir. 2021); *Barrientos* v. *CoreCivic, Inc.*, 951 F.3d 1269 (11th Cir. 2020). In both cases, plaintiffs alleged that a private detention contractor coerced their labor by imposing inferior living conditions (such as crowded, uncomfortable living quarters and denial of access to hygiene products) and solitary confinement if they failed to work. *Gonzalez*, 986 F.3d at 537; *Barrientos*, 951 F.3d at 1271. In holding that civil immigration detainees could seek relief for violations of Section 1589, both courts emphasized that the statute "limits liability only by reference to the actions taken by a would-be

violator." *Barrientos*, 951 F.3d at 1276-1277 ("The use of the general terms '[w]hoever' and 'person' evinces no intent on the part of Congress to restrict the application of the statute to particular actors or particular victims.") (brackets in original) (quoting 18 U.S.C. 1589(a)); see *Gonzalez*, 986 F.3d at 538 (similar). In neither case did the court treat the fact that the plaintiffs might have a means of obtaining release from detention as a barrier to their TVPA claims.

Moreover, district courts have recognized in several contexts that the issue of whether detainees' confinement was lawful is distinct from the question whether the defendants used prohibited means to coerce the detainees' labor during their period of detention. *Owino* v. *CoreCivic, Inc.*, No. 17-CV-1112, 2018 WL 2193644, at *6 (S.D. Cal. May 14, 2018) ("Lawful detention, by itself, is not a shield against illegal conduct against those held in detention."); *Novoa* v. *GEO Grp., Inc.*, No. EDCV 17-2514, 2018 WL 4057814, at *6 (C.D. Cal. Aug. 22, 2018) (observing that a private detention facility operator's lack of involvement in orchestrating plaintiffs' detention was of no moment where plaintiffs alleged that the operator created conditions to obtain forced labor). Thus, these courts and several others have denied motions to dismiss civil and pretrial detainees' forced labor claims against government and private entities that allegedly used means such as threats of solitary confinement, denials of personal necessities, and other coercive means to compel the detainees to work. See *ibid.*; see also, *e.g.*, *Ruelas* v.

County of Alameda, 519 F. Supp. 3d 636, 658 (N.D. Cal. 2021); *Menocal* v. *GEO Grp., Inc.*, 113 F. Supp. 3d 1125 (D. Colo. 2015). None of these courts considered whether the detainees "carried the keys to the prison" in evaluating whether they had plausibly alleged a TVPA claim.

Indeed, adopting the district court's "choice"-centered approach to pleading forced labor claims could produce bizarre results that would contradict the statute's plain terms, which prohibit any defendant from obtaining any person's labor through prohibited coercive means. For example, the district court's reasoning could allow a private detention facility to compel immigration detainees to manufacture auto parts by threatening to deprive them of food if they did not work. Under the district court's logic, the forced labor provision might not apply because detainees who could be released if they consented to removal would hold the "keys to the prison." Similarly, officials at a county jail who forced pretrial detainees to perform road work by threatening false criminal charges against their family members could evade liability under the TVPA if the detainees had the option to pay bail. This cannot be right, given Congress's purpose to combat "severe forms of worker exploitation." H.R. Conf. Rep. No. 939, at 101.

Even if it applies only to civil contempt, the district court's analysis is wrong. It still undermines Congress's stated intent to prohibit coercive and exploitative labor practices. Congress did not limit the forced labor statute by

excluding the labor of detained civil contemnors from its coverage. The district court was incorrect to limit the statute's reach to this context by grafting on a statutory requirement that does not exist.

CONCLUSION

For the foregoing reasons, this Court should vacate the district court's order of dismissal with respect to plaintiffs' forced labor claim under the TVPA and remand for further proceedings consistent with the legal standard set forth in 18 U.S.C. 1589.

Respectfully submitted,

KRISTEN CLARKE
Assistant Attorney General

s/ Katherine E. Lamm
ERIN H. FLYNN
KATHERINE E. LAMM
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-2810

CERTIFICATE OF BAR MEMBERSHIP

Pursuant to Local Rules 28.3(d) and 46.1(a), I hereby certify that I am exempt from the Third Circuit's bar admission requirement as counsel representing the United States.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

Date: January 13, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY ON THE ISSUE ADDRESSED HEREIN:

(1) complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 4642 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f);

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word 2019, in 14-point Times New Roman font; and

(3) complies with the requirements of Local Rule 31.1(c) that the text of the electronic brief is identical to the text in any paper copies of this brief that are submitted to the Court, and that the electronic version of this brief, prepared for submission via ECF, has been scanned with the most recent version of Windows Defender (Version 1.2.3412.0) and is virus-free according to that program.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

Date: January 13, 2022

CERTIFICATE OF SERVICE

I certify that on January 13, 2022, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY ON THE ISSUE ADDRESSED HEREIN with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney