No. 19-10505

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MOHAMED TOURE; DENISE CROS-TOURE,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States does not object to oral argument if the Court believes it would be helpful to resolve this appeal.

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JURISDICTIONAL STATEMENT

This appeal is from the district court's final judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. It entered judgments against defendants-appellants Mohamed Toure and Denise Cros-Toure on April 23, 2019. ROA.619-623, 4056-4060.[1] Defendants-appellants timely appealed on May 2, 2019. ROA.624-625, 4061-4062.

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[1] "ROA.___" refers to page numbers of the Record on Appeal. "Br. ___" refers to page numbers in defendants-appellants' opening brief. The ROA contains

On November 27, 2019, in response to the government's motion, this Court suspended briefing in the appeal and remanded the case to the district court for the limited purpose of entertaining a motion to correct clerical errors in the written judgments. ROA.4608-4609 (11/27/19 Order). The district court granted the government's unopposed motion to correct the judgments and entered amended judgments on December 2, 2019. ROA.4620-4625, 4695-4700. On December 20, 2019, this Court reinstated briefing. This Court has jurisdiction under 18 U.S.C. 3742 and 28 U.S.C. 1291.

STATEMENT OF THE ISSUES

For 16 years, husband and wife Mohamed Toure and Denise Cros-Toure (together, defendants or the Toures) forced D.D., a Guinean national they brought to the United States as a child, to work as their domestic servant. A federal jury convicted defendants of forced labor, conspiracy to harbor an alien for financial gain, and harboring an alien.

The appeal presents the following questions:

1. Whether the district court plainly erred by not *sua sponte* dismissing the forced labor counts brought under 18 U.S.C. 1589 where defendants failed to argue

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two sets of the district court pleadings, one for Mohamed Toure (ROA.29-771, 4600-4625) and one for Denise Cros-Toure (ROA.3429-4202, 4675-4700). Where identical pleadings appear twice in the ROA, we have cited the pleadings from Mohamed Toure's docket.

below—and no court has ever concluded—that Section 1589's definition of "serious harm" is unconstitutionally vague or overbroad.

2. Whether the evidence at trial was sufficient for the jury to convict Mohamed Toure of forced labor under Section 1589.

3. Whether the district court correctly instructed the jury on the two alien harboring counts brought under 8 U.S.C. 1324(a) when it followed this Circuit's Pattern Jury Instruction for those offenses.

4. Whether the district court abused its discretion in imposing a mandatory restitution award in the amount of $288,620.24.[2]

STATEMENT OF THE CASE

1. Factual Background

Viewed in the light most favorable to the government, see *United States* v. *Reed*, 908 F.3d 102, 123, n.82 (5th Cir. 2018), cert. denied, 139 S. Ct. 2655 and 139 S. Ct. 2658 (2019), the evidence at trial established the following facts.

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[2] In their opening brief defendants also challenged the district court's order of restitution pursuant to the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. 3663A. Br. 52-54. On limited remand from this Court, see p. 2, *supra*, the district court issued amended judgments indicating that the Trafficking Victims Protection Act, 18 U.S.C. 1593, was the statutory basis for ordering restitution. ROA.4621-4625, 4696-4700. Defendants agree that the amended judgments resolve their challenge to the statutory authority for ordering restitution, although they continue to challenge the amount of restitution awarded. 11/15/19 Unopposed Mot. for Limited Remand 3.

a. Defendants And Their Family In Guinea Arrange For D.D. To Travel To The United States To Become Defendants' Domestic Servant

Defendants Mohamed Toure and Denise Cros-Toure, a married couple, came to the United States from Guinea, where Toure's father once was president. Br. 2 (citing ROA.1926-1927, 1935); see also ROA.1317-1318. At all relevant times, the Toures lived in the Dallas, Texas suburb of Southlake, where they had five children. See Br. 2 (citing ROA.1078).

D.D., a child who became the Toures' domestic servant for 16 years, was born in Guinea. ROA.1482-1483. There, she lived with her parents and two younger siblings in a village, where she attended a French-language school for two years. ROA.1367, 1482-1483, 1485.

When D.D. was still a little girl, her father agreed to send her to work as the Toures' domestic servant in the United States. ROA.1372-1374, 1817, 2774. D.D.'s mother did not approve of the arrangement and unsuccessfully tried to hide D.D. at a relative's house because she did not "want [D.D.] to become somebody's slave." ROA.1371. Nevertheless, D.D.'s father took her to the home of Denise Cros-Toure's parents, the Croses, in Conakry, Guinea. ROA.1374, 1487. D.D. stopped going to school and instead worked for the Croses, performing tasks such as assisting Denise Cros-Toure's visually impaired sister and giving massages to Cros-Toure's mother. ROA.1488-1489.

In January 2000, the Croses sent D.D. to work in the Toures' Southlake home. Br. 3; ROA.1802. The Croses obtained a passport and tourist visa for D.D. ROA.1490-1491. The passport indicated that D.D. was five years old when she came to the United States (ROA.74, 2692), but it is likely she was closer to age nine or ten (see ROA.1499, 2712). Although the passport allowed D.D. to stay lawfully in the United States for six months, until July 18, 2000 (ROA.1802), defendants kept D.D. as a domestic servant until 2016, through her teen and early adult years. ROA.1496. In a recorded law enforcement interview that was played for the jury at trial, Mohamed Toure explained that D.D.'s father "decided to give—I mean, to let us have" D.D. ROA.1817, 2774.

D.D. flew alone from Guinea to Texas, where Mohamed Toure (whom D.D. had never met) picked her up at the airport. ROA.1493-1496. D.D. was approximately the same age as the oldest of the Toures' children. ROA.1499. With the assistance of Denise Cros-Toure's mother, who was visiting the Toures' home at the time, the Toures trained D.D. and put her to work as a domestic servant. ROA.1500-1503. Although only a child herself, D.D. began providing care for the Toures' two youngest children. ROA.1500. Denise Cros-Toure also showed D.D. around the house and kitchen and, with her mother, taught D.D. how to cook for the family. ROA.1501-1503. Both Cros-Toure and her mother hit or

slapped D.D. in these earliest days of D.D.'s life with the Toures. ROA.1502, 1624.

b. D.D.'s Role As A Servant, Not A Family Member, In The Toures' Home

D.D. performed a wide range of work over her 16 years in the Toures' home. A friend of the Toures generously described D.D. as a "family helper" who tended to the Toures' children, maintained their house, and cooked for the family. ROA.1324-1325. D.D. was always busy and did not have breaks from her work, which typically began at 6:30 or 7 a.m. and stretched until 8 or 9 p.m. each day. ROA.1576, 3035, 3045, 4271. Despite all of the services D.D. provided to the Toures, they never paid her for her labor. See ROA.1639-1640, 1709-1710 (D.D. obtained money only through occasional gifts and babysitting and odd jobs for neighbors).

One of D.D.'s primary duties was cooking the family's meals. ROA.1573-1574. She also cared for the Toures' children during the day before they were school-aged and later walked them to school. ROA.1170-1171, 1536, 1541-1542, 1580. While the children were at school, D.D. made their beds and cleaned the house at Denise Cros-Toure's direction. ROA.1535. D.D. sometimes walked or biked to shop for the Toures at a grocery store about a mile and a half from the Toures' home. ROA.1577. She also fixed household appliances, did yard work, and landscaped. ROA.1175-1176, 1542, 1574. D.D. completed major household

projects, such as remodeling the kitchen with a neighbor, painting the exterior of the home, and painting the room of the Toures' youngest child as a Christmas gift from the Toures. ROA.1512-1513, 1543, 1574, 1761. In the evenings, D.D. massaged Denise Cros-Toure's back and feet. ROA.1575. In addition to all of her work for the Toures, D.D. cooked for and served the Toures' houseguests and looked after their children. ROA.1114-1115, 1256, 1575-1576.

Although D.D. grew to adulthood alongside the Toures' children, the family treated her like a servant rather than a family member. Unlike the Toures' children, D.D. never attended school. ROA.1536, 1580, 2847. And even though defendants did not work outside the home for most of the time D.D. lived with them, they never home-schooled her. ROA.2782. Although D.D. cooked the family's meals, she usually ate at the kitchen counter by herself once the family had finished eating together at the dining table. ROA.1541. Defendants displayed photos of their children and relatives in the home, but never photos of D.D. ROA.1594. They celebrated their children's birthdays, but not D.D.'s. ROA.1584-1585.

D.D. always slept in a room with one of the Toures' daughters, who had their own twin or queen beds with proper bedding. ROA.1506-1513. But D.D. slept on the floor or sometimes on a twin mattress or bed, with a sleeping bag and comforter as bedding. ROA.1506-1513. Although she shared a bathroom with the

Toures' daughters, D.D. stored her hygiene products in a bag under the sink and was not allowed to use the children's products. ROA.1525-1526. Denise Cros-Toure also told D.D. to wash her clothes separately from the laundry she did for the family. ROA.1520.

Defendants provided regular medical care, dental care, and orthodontia for their own children, but not for D.D. ROA.1603, 1606-1607, 2826. D.D. never saw a doctor and only saw a dentist once, despite serious dental problems that cost her three adult teeth. ROA.1603, 1607-1611, 2826. D.D. extracted one of her own front teeth after it was partially dislodged in a fall at the Toures' home. ROA.1607-1608. Later, after one back tooth became infected and untreatable with home remedies, Mohamed Toure took D.D. to a dental clinic (rather than the family dentist) where he paid cash for her tooth to be extracted. ROA.1262-1263, 1610, 2867. When a second back tooth became infected, D.D. removed it herself with pliers. ROA.1611, 2904-2905.

c. The Toures' Physical, Psychological, And Emotional Abuse Of D.D.

Physical violence was part of D.D.'s life in the Toure household from her earliest days there, when both Denise Cros-Toure and her mother hit or slapped D.D. soon after her arrival. ROA.1502, 1624. The Toures used their hands, belts, and household items (such as an electrical cord, a bottle, and a spoon) to beat D.D. ROA.1613-1623. Denise Cros-Toure, for example, beat D.D. with a belt when she

failed to clean up the children's toys because she was drawing and then fell asleep. ROA.1613. Mohamed Toure slapped and beat D.D. with a belt when she talked back to his visiting mother, who complained that D.D. had not properly prepared her breakfast. ROA.1616-1617. On another occasion, he sat on D.D.'s back to hold her in place while his wife beat her. ROA.1617.

The attacks physically scarred D.D. and left her permanently disfigured. Once, when D.D.'s work disrupted a sleeping houseguest, Denise Cros-Toure punished D.D. by ripping her earring through her ear, permanently splitting D.D.'s lobe. ROA.1614, 2657. She did nothing to care for D.D.'s bleeding wound. ROA.1615. Cros-Toure later pulled an earring out of D.D.'s other earlobe, as well. ROA.1615-1616. She also pulled out D.D.'s hair, leaving a bald spot. ROA.1623. The beatings left D.D.'s body bleeding, bruised, scabbed, and scarred. ROA.1619-1622, 2659-2662.

The Toures also punished D.D. by banishing her from the home on several occasions, during which she would stay alone in a local park. ROA.1624-1626. Once, the police received a call reporting an unattended child in the park and responded to find D.D. alone on a swing, unable to communicate with the officers in English. ROA.1902-1903. After determining where D.D. lived, the police brought her to the Toures' home. ROA.1903. Mohamed Toure could not provide the officers with a birth certificate or date of birth for D.D., and he was evasive in

explaining her connection to the family. ROA.1904-1905. When the officers left, Denise Cros-Toure reprimanded D.D. for bringing the police to the home. ROA.1631. During a later banishment, D.D. stayed in the park for a week, during which she slept on a bench and used a hand dryer in a public bathroom to keep warm. ROA.1632-1635.

Defendants used humiliation, too, to discipline D.D. Denise Cros-Toure called D.D. "[e]very name you can imagine," including "dog, slave, idiot, worthless, useless." ROA.1612. Once, when she was displeased with how D.D. maintained her hair, Denise Cros-Toure had Mohamed Toure shave D.D.'s head. ROA.1529-1530, 2879. On another occasion, she told D.D. that her body odor smelled and hosed her down in the backyard, remarking to her husband that D.D. was so dirty that the soap would not foam. ROA.1533-1534.

d. The Toures' Isolation, Control, And Concealment Of D.D.

The Toures isolated D.D. and tightly controlled her access to the outside world, taking advantage of her limitations as an uneducated young person who lacked family and legal status in the United States. Denise Cros-Toure took D.D.'s passport and visa after she arrived, and the Toures never obtained new immigration or identification documents for her once these expired. ROA.1490-1491, 1601, 1637-1639, 2828. They also prevented her from learning to read and write. ROA.1133-1134, 1580-1582. Even after a family friend identified a school that

would accept D.D. without identification documents and offered to help transport her there, the Toures failed to enroll D.D. ROA.1115-1119, 1580. When D.D. took a *Hooked on Phonics* book that belonged to the Toures' children, Denise Cros-Toure grew angry and told D.D. to return it. ROA.1581. As of the time of trial, D.D. had to use a voice transcription program to create text messages rather than typing them. ROA.1600.

The Toures limited D.D.'s access to the outside world in other ways. Although D.D. was able to move about the neighborhood, she could do so only with Denise Cros-Toure's permission and never learned to drive, even though Southlake lacked public transportation. ROA.1601, 1684, 2828-2830. The Toures did not teach D.D. to use the family's landline phone when she arrived and did not allow her to call her parents. ROA.1597. D.D. only spoke with her father in a handful of phone calls that Cros-Toure's mother initiated on her visits to Texas, and D.D. believed Cros-Toure monitored these calls. ROA.1598. D.D. never had her own cell phone, and only in her final years in the household was she able to purchase a tablet device with the help of one of the Toure children, using the little money she made from babysitting and odd jobs for other families. ROA.1642, 1710. When the Toures traveled by airplane in 2003 and 2016, when D.D. was in her 20s, they left her behind to stay with another family rather than by herself at the Toures' home. ROA.1592-1593, 1671-1672, 2841-2842.

The Toures also avoided revealing their true relationship with D.D. to their community and to the authorities. In addition to never obtaining identification or immigration documents for D.D. and keeping her out of the education and healthcare systems, see pp. 6-7, *supra*, the Toures never listed D.D. among "[O]ther [C]hildren [L]iving at [H]ome" on their own children's school records (ROA.1465-1466, 2717-2721). They told some people that D.D. was their niece (ROA.1255, 1965, 2013, 2868) and led others to believe she was an orphan (ROA.1278, 1281). As D.D. reached adulthood, the Toures claimed that she had graduated from high school and was contemplating college or a fashion career. ROA.1259, 1582-1583, 2869.

e. D.D.'s Escape From The Toures' Home

Incidents in 2016 prompted D.D. to flee the Toures' home. ROA.1638, 1650-1654. D.D. overheard a visiting family member ask Denise Cros-Toure if she could have D.D. when she was done with her. ROA.1650-1651. Denise Cros-Toure also attacked D.D. when she talked back to Mohamed Toure, who had complained about D.D.'s failure to prepare the family's dinner. ROA.1653-1654. Denise Cros-Toure punched and choked D.D. until her husband and one of their sons intervened. ROA.1654.

After this attack, D.D. fled the house and eventually went to stay with a family friend, Mahshid Golbarani. ROA.1268-1270, 1656-1658. While there,

D.D. revealed how the Toures mistreated her. ROA.1269-1273, 1658-1659. When Golbarani presented her with options such as contacting the authorities, D.D. decided to return to the Toures' home because she feared involving the police and the adverse impact such action would have on the Toures' youngest daughter. ROA.1273, 1659.

Golbarani brought D.D. back to the Toures' home and inquired about her allegations, which the Toures denied. ROA.1273-1275. Once Golbarani left, the Toures immediately confronted D.D. ROA.1661. Denise Cros-Toure demanded that D.D. apologize for leaving and for speaking to Golbarani, berated D.D. with coarse language and insults for being ungrateful, told D.D. to leave the house and stay in the park, and said she did not care what happened to D.D.—even if she were raped or killed. ROA.2935-2950. Denise Cros-Toure dared D.D. to go to the police, saying that she would meet D.D. there and that defendants would have the support of all their neighbors. ROA.2941-2942. Mohamed Toure and one of defendants' sons interjected throughout in Denise Cros-Toure's support. ROA.2935-2949. D.D. asked defendants to send her back to Guinea, but Denise Cros-Toure said she was unwilling to pay for D.D.'s travel. ROA.2939, 2947.[3]

[3] D.D. recorded this conversation, and the recording and a transcript were presented to the jury. ROA.1661, 2682, 2935-2950. Citing D.D.'s trial testimony regarding this incident, defendants claim that D.D. "provoked [Cros-Toure] by spreading garbage in the house and then recorded [her] angry response." Br. 5

The Toures continued to punish D.D. for trying to escape. Some of the children stopped speaking to D.D. and she was no longer allowed to babysit for neighbors. ROA.1666. Denise Cros-Toure insulted and berated D.D. when she left pots and pans on the drying rack, claiming that she went too easy on D.D. ROA.1669. On one occasion, she angrily reminded D.D. that "you need to be working in this house * * * you came here for that," and that "my house needs to be clean" before she would send D.D. back to Guinea. ROA.1667-1668, 2685.

Ultimately, D.D. connected with an acquaintance who had once visited with the Toure family and had been kind to her. ROA.1672. The acquaintance made arrangements for a former neighbor to collect D.D. from the Toures' home. ROA.1674. When D.D. left, she felt sad, nervous, and scared. ROA.1677.

In his law enforcement interview, Mohamed Toure described D.D.'s departure from defendants' home as an "escape," and noted that he did not "turn her in" to authorities when she left. ROA.1820-1821, 2804-2805. He acknowledged that he did not know where D.D. was staying, did not know how to contact her, and had not contacted the police about her disappearance. ROA.1821-1822, 2818.

(citing ROA.1660). There is nothing in the cited trial testimony (or elsewhere in the trial record, other than counsel's assertions at sentencing) to suggest that D.D. deliberately provoked this dispute, or any other, by spreading trash around.

2. Procedural History

a. On September 19, 2018, a federal grand jury returned a five-count indictment against defendants. ROA.74-86. The indictment charged each defendant with one count of conspiracy to commit forced labor under 18 U.S.C. 1594(b) and 1589 (Count 1); one count of forced labor under 18 U.S.C. 1589, 1594(a) and 2 (Count 2); one count of conspiracy to harbor an alien for financial gain under 8 U.S.C. 1324(a)(1)(A)(v)(I) and 1324(a)(1)(B)(i) (Count 3); and one count of harboring an alien for financial gain under 8 U.S.C. 1324(a)(1)(A)(iii), 1324(a)(1)(A)(v)(II), and 1324(a)(1)(B)(ii) (Count 4). ROA.76-81. The indictment also charged Mohamed Toure with one count of making a false statement to a federal agent in violation of 18 U.S.C. 1001(a)(2) (Count 5). ROA.82.

b. The case proceeded to trial. ROA.959-2335. At the close of the government's case, defendants moved for judgments of acquittal based on insufficient evidence. The district court deferred ruling on the motion until after trial. ROA.1909-1910.

After both parties rested, the court held a jury charge conference. The court largely adopted the parties' agreed jury charge and generally resolved disputes in defendants' favor. ROA.317-383, 525-545. As relevant here, the court rejected one clause of defendants' proposed additional language regarding what constitutes

harboring an alien, but included the remainder of their proposal in the harboring instruction. ROA.539-541, 2235-2236.

Before announcing the jury's verdict, the court denied defendants' motions for judgment of acquittal. ROA.2314. The jury found both defendants guilty of forced labor (Count 2); conspiracy to harbor an alien for financial gain (Count 3); and harboring an alien, a lesser included offense of harboring an alien for financial gain (Count 4). ROA.548-550. The jury acquitted defendants of all other counts. ROA.548-550.

c. The United States Probation Office prepared substantially similar presentence investigation reports (PSRs) for each defendant. ROA.2964-2987, 4204-4227. The PSRs arrived at total offense levels of 37 and recommended sentences of 210-262 months' imprisonment. ROA.2984, 4224. As relevant here, the PSRs also recommended that defendants pay restitution to D.D. in the amount of $440,446.68 pursuant to the Mandatory Victims Restitution Act of 1996 (MVRA), 18 U.S.C. 3663A. ROA.2974, 2984, 4214, 4226.

In an objection to the PSR, the government argued that the mandatory restitution provision of the Trafficking Victims Protection Act (TVPA), 18 U.S.C. 1593, and not the MVRA, provided the statutory basis for restitution for defendants' forced labor convictions under 18 U.S.C. 1589. ROA.2988-2989, 4228-4229. The government also asserted that the restitution amount should be

doubled pursuant to the liquidated damages provision of the Fair Labor Standards Act (FLSA), which supplies the basis for assessing lost wages under the TVPA. ROA.2988-2989, 4228-4229. Defendants also objected, challenging the reliability of the evidence supporting the restitution award. ROA.3005-3006, 4243-4245. The Probation Office rejected defendants' objections but accepted the government's objections, adopting the government's proposed method of calculating restitution under the TVPA and a total restitution amount of $880,893.36 (*i.e.*, double the amount originally calculated). ROA.3034-3035, 4271-4272.

d. At the sentencing hearing, the district court imposed a below-Guidelines sentence of 84 months' imprisonment on each defendant, to be followed by three years of supervised release. ROA.2421. The court also entered an order of forfeiture with respect to defendants' Southlake home. ROA.622, 4059.

The court agreed that the restitution amount should be doubled pursuant to the liquidated damages provision of the FLSA, but reduced the number of hours D.D. worked to generate a significantly lower award than the one the government and Probation Office had proposed. ROA.2362-2363. As a result, the court made each defendant jointly and severally liable for a restitution award of $288,620.24. ROA.622, 4059.

Defendants timely appealed. ROA.624-625, 4061-4062.

e. On November 15, 2019, after defendants had filed their opening brief but before the government's answering brief was due, the government submitted to this Court an unopposed motion seeking a remand for the limited purpose of allowing the district court to entertain a motion to correct three clerical errors in the judgments. As relevant here, one of the perceived errors the government sought to correct was the district court's citation in the judgment to the MVRA, and not the TVPA, as the statutory basis for restitution. 11/15/19 Unopposed Mot. for Limited Remand 2. This Court granted the motion and remanded the case to the district court. 11/27/19 Order. The government filed its unopposed motion to correct clerical errors in the judgments, which the district court granted. ROA.4610-4618, 4620. The district court entered amended judgments on December 2, 2019 (ROA.4621-4625, 4696-4700), after which this Court reasserted appellate jurisdiction.

SUMMARY OF ARGUMENT

1. Defendants argue that their forced labor convictions under 18 U.S.C. 1589 should be vacated because Section 1589's definition of "serious harm" is unconstitutionally vague and overbroad. Because defendants did not raise this argument below, it is reviewed for plain error. Plain error must be "clear or obvious" to the district court under "current law." Defendants cannot establish plain error because no court has ever held that the definition at issue is

unconstitutionally vague or overbroad. Rather, every court that has opined on the issue has reached the opposite conclusion.

Even if this Court were to consider the merits of defendants' arguments, which it need not and should not do, they would fail. Section 1589 provides fair notice of the prohibited means of obtaining another person's labor and squarely proscribes defendants' conduct: forcing D.D., from childhood through early adulthood, to work as a domestic servant through physical and emotional abuse, isolation, and manipulation of her illiteracy and undocumented status. The statute also raises no overbreadth concerns because the vast majority of its applications, if not all, reach conduct that is not constitutionally protected. Accordingly, the district court did not err, let alone plainly err, in declining to consider *sua sponte* the constitutionality of the statute.

2. Ample evidence supported Mohamed Toure's forced labor conviction under Section 1589. The evidence established that defendants obtained D.D.'s labor or services by threats of serious harm, or by a scheme, plan, or pattern designed to lead D.D. to believe that she would face serious harm unless she worked for them. Mohamed Toure was personally involved in and responsible for committing acts that caused or contributed to serious harm to D.D., such as beating and humiliating her, maintaining and exploiting her undocumented status, preventing her from learning to read or write, and limiting her access to the outside

world. By virtue of his actions and ongoing presence in the home, Mohamed Toure knew that his conduct and the conditions he and his wife created for D.D. caused her to work as their domestic servant. Based on the entirety of the evidence presented, a reasonable jury could convict him of forced labor beyond a reasonable doubt.

3. The district court did not abuse its discretion in instructing the jury on the alien harboring offenses where it used this Circuit's Criminal Pattern Jury Instruction 2.01C as a model and largely adopted the language defendants proposed adding to the instruction. When a district court uses the pattern instruction, the only question this Court must answer is whether that instruction was a correct statement of the law. Here, it was, because the instruction properly captured the meaning of "harboring" under the law of this Circuit. Under such circumstances, a district court has no obligation to provide additional language to the jury. Accordingly, defendants' challenge to the jury instructions fails.

4. The district court did not abuse its discretion in setting the amount of the restitution award. The court made adequate findings to support the award. Specifically, the court made clear that it had adopted the statutory and factual bases for the Probation Office's restitution calculation except for the number of weekly hours D.D. worked, which the district court more than halved based on defendants' arguments and the court's view of the evidence. The resultant award was premised

on an assumption that D.D. worked 40-hour weeks for the Toures for the better part of 16 years, and that she must be compensated at the applicable minimum wage rate and provided liquidated damages under the FLSA. Even if the court's findings had been deficient, the trial and sentencing records amply supported a finding that D.D. is entitled to compensation for at least 40 hours of work per week.

ARGUMENT

I

THE DISTRICT COURT DID NOT PLAINLY ERR BY NOT CONSIDERING *SUA SPONTE* THE CONSTITUTIONALITY OF 18 U.S.C. 1589 WHERE NO COURT HAS EVER HELD THAT THE STATUTE'S DEFINITION OF "SERIOUS HARM" IS UNCONSTITUTIONALLY VAGUE OR OVERBROAD

A. Standard Of Review

Defendants raise for the first time on appeal vagueness and overbreadth challenges to Section 1589's definition of "serious harm." This Court reviews for plain error a constitutional challenge to a statute raised for the first time on appeal. See, *e.g.*, *United States* v. *Rojas*, 812 F.3d 382, 390-391 (5th Cir.), cert. denied, 136 S. Ct. 2421, 136 S. Ct. 2423, and 136 S. Ct. 2420 (2016); *United States* v. *Lankford*, 196 F.3d 563, 570 (5th Cir. 1999), cert. denied, 529 U.S. 1119 (2000). When reviewing for plain error, this Court "will reverse only if '(1) there is an error, (2) that is clear or obvious, and (3) that affects [the defendant's] substantial

rights.'" *Rojas*, 812 F.3d at 391 (quoting *United States* v. *Ferguson*, 211 F.3d 878, 886 (5th Cir. 2000)). An error is "clear" or "obvious" only if it is clear "under current law." *United States* v. *Escalante-Reyes*, 689 F.3d 415, 418-419 (5th Cir. 2012) (quoting *United States* v. *Olano*, 507 U.S. 725, 734 (1993)). When these first three conditions are satisfied the Court should correct the error if it "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Rosales-Mireles* v. *United States*, 138 S. Ct. 1897, 1905 (2018) (quoting *Molina-Martinez* v. *United States*, 136 S. Ct. 1338, 1343 (2016)).

B. The Forced Labor Statute And Its Definition Of "Serious Harm"

In 2000, Congress enacted the forced labor statute to punish "[w]hoever knowingly provides or obtains the labor or services of a person" through one or more of several prohibited means. 18 U.S.C. 1589; see Victims of Trafficking and Violence Protection Act (TVPA), Pub. L. No. 106-386, § 112, 114 Stat. 1464. As amended in 2008, these means include, in relevant part, "serious harm or threats of serious harm to that person or another person," 18 U.S.C. 1589(a)(2), or a "scheme, plan, or pattern" intended to make the person believe that she or someone else will "suffer serious harm or physical restraint" unless she performs the desired labor or services, 18 U.S.C. 1589(a)(4). See William Wilberforce Trafficking Victims Protections Reauthorization Act, Pub. L. No. 110-457, § 222(b)(3), 122 Stat. 5044. The 2008 amendment defined "serious harm" as:

> any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

18 U.S.C. 1589(c)(2).

As defendants note in their opening brief (Br. 16-18), Congress enacted Section 1589 in response to the Supreme Court's decision in *United States* v. *Kozminski*, 487 U.S. 931, 942 (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). Specifically, absent an explicit directive from Congress, the *Kozminski* Court declined to construe "involuntary servitude" to include "the compulsion of services 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." 487 U.S. at 948-949; see also 22 U.S.C. 7101(b)(13).

The TVPA, therefore, expressly addressed "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). Section 1589 was designed "to address the increasingly subtle methods" traffickers

use to "place their victims in modern-day slavery" in order to "combat severe forms of worker exploitation that do not rise to the level of involuntary servitude as defined in *Kozminski*." H.R. Conf. Rep. No. 939, at 101. Congress intended the term "serious harm" to refer to "a broad array of harms * * * both physical and nonphysical," that are assessed based on a victim's individual background and circumstances. *Ibid.* As Congress clarified by adding the definition of "serious harm" in 2008, these harms are not assessed subjectively—a key concern in *Kozminski*—but instead from the perspective of a "reasonable person." See 18 U.S.C. 1589(c)(2).

C. Because No Court Has Held That Section 1589's Definition Of "Serious Harm" Is Unconstitutionally Vague Or Overbroad, The District Court Did Not Plainly Err By Not Considering Sua Sponte *The Statute's Constitutionality*

For the first time on appeal, defendants challenge Section 1589's definition of "serious harm" as unconstitutionally vague and overbroad. Br. 10-36. In particular, they argue that a forced labor conviction based on Section 1589(c)(2)'s definition of "serious harm" violates their Fifth Amendment due process rights because the definition is facially vague, fails to provide a person of ordinary intelligence fair notice of what it prohibits, and encourages arbitrary enforcement. Br. 10-11, 20-28. They also assert that the definition of "serious harm" intrudes on the First Amendment right of free association and should be subject to a more stringent vagueness test. Br. 11. Finally, they argue that the definition is

unconstitutionally overbroad because it criminalizes a substantial amount of protected conduct and associations in relation to the statute's plainly legitimate sweep. Br. 28-31.

This Court need not, and should not, reach the merits of defendants' arguments because the district court did not plainly err by not considering *sua sponte* Section 1589's constitutionality. Defendants identify no authority holding that under *current law*—the standard they must meet on plain error review—Section 1589's definition of "serious harm" is unconstitutionally vague or overbroad. Nor does such support exist. No court ever has held Section 1589's definition of "serious harm" to be unconstitutional. To the contrary, the courts across the country that have addressed whether Section 1589 is impermissibly vague or overbroad have held the statute to be constitutional. See *United States* v. *Calimlim*, 538 F.3d 706, 710-713 (7th Cir. 2008), cert. denied, 555 U.S. 1102 (2009) (holding that Section 1589 is not unconstitutionally vague or overbroad); *United States* v. *Wiggins*, No. EP-11-CR-2420-FM, 2013 WL 12196743, at *2 (W.D. Tex. Mar. 5, 2013) (holding that Section 1589 is not unconstitutionally vague); *United States* v. *Sou*, No. 09-00345, 2011 WL 3207265, at *5-8 (D. Haw. July 26, 2011); *United States* v. *Askarkhodjaev*, No. 09-00143-01-CR-W-ODS, 2010 WL 4038783, at *2-6 (W.D. Mo. Sept. 23, 2010), *report and recommendation adopted*, 2010 WL 4038745 (W.D. Mo. Oct. 4, 2010); *United*

States v. *Garcia*, No. 02-CR-110S-01, 2003 WL 22956917, at *2-6 (W.D.N.Y. Dec. 2, 2003).

Thus, this Court can straightforwardly dispose of defendants' belated constitutional challenge. Given the absence of authority holding that Section 1589's definition of "serious harm" is void for vagueness or overbroad, the district court cannot have plainly erred in permitting the government to proceed against defendants on the forced labor counts. See, *e.g.*, *United States* v. *Parsons*, 134 F. App'x 743, 743 (5th Cir. 2005) ("Given the lack of controlling authority on this particular vagueness issue, any error on the part of the district court was not clear or obvious and could not have been plain error."); *United States* v. *Rollins*, 83 F. App'x 611, 612 (5th Cir. 2003) (same).

D. Although This Court Need Not Address The Merits Of Defendants' Constitutional Challenges, Section 1589's Definition Of "Serious Harm" Is Not Unconstitutionally Vague Or Overbroad

Even if it were necessary for this Court to address defendants' constitutional arguments on their merits, those arguments would fail. Section 1589's definition of "serious harm" is sufficiently precise and appropriately limited in scope to comport with constitutional requirements, and therefore is neither void for vagueness nor overbroad.

1. *Vagueness*. Defendants' argument that Section 1589's definition of "serious harm" is unconstitutionally vague fails on its merits. "[T]he void-for-

vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender* v. *Lawson*, 461 U.S. 352, 357 (1983). Section 1589 provides ample notice to potential wrongdoers of the prohibited means for obtaining another person's labor and the statute squarely proscribes the Toures' conduct.

Although a vagueness challenge normally must be considered as applied to the facts at hand, defendants incorrectly construe their challenge as facial because, in their view, it implicates First Amendment rights. See Br. 18-28. As the Seventh Circuit explained in *Calimlim*, however, the conduct Section 1589 criminalizes (*i.e.*, knowingly providing or obtaining the labor or services of a person through prohibited means) is "sufficiently removed from anything" the First Amendment protects that defendants' challenge may only be as-applied. 538 F.3d at 710-711. Moreover, as defendants acknowledge (Br. 11), "[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others," even where First Amendment rights are implicated. *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 20 (2010) (alteration in original; citation omitted); see also *United States* v. *McRae*, 702 F.3d 806, 837-838 (5th Cir. 2012) (same). Whatever the outer bounds of the statute,

there can be no question that Section 1589 clearly proscribed defendants' cruel treatment of D.D.: they used serious physical, psychological, and emotional harm, and threats of the same, to compel a non-family member to work for them for years without compensation. Accordingly, defendants cannot invoke inapposite situations involving everyday familial and employment relationships (Br. 20-28)—only some of which, in any event, are the sorts of intimate associations that the First Amendment protects—to support their vagueness challenge.

The Seventh Circuit's decision rejecting a vagueness challenge to an earlier version of Section 1589 demonstrates why defendants' challenge here also must fail. The defendants in *Calimlim* were convicted of forced labor for keeping a young Filipina woman as a domestic servant for 19 years without meaningful earnings, access to the outside world, medical care, or valid immigration documents. 538 F.3d at 709. The defendants told the woman that if anyone discovered her, she would be arrested and deported, and that the defendants no longer would send money to her family. *Ibid.* The comparison to the Toures' crimes is striking. Indeed, even defendants concede that the facts of *Calimlim* are "superficially similar" to their case. Br. 18.

On appeal, the Seventh Circuit rejected the defendants' arguments that Section 1589's terms "serious harm" and "threatened abuse of the law or the legal process" were vague (and also overbroad) to the extent they touched on an

employer's ability to explain true legal consequences—of undocumented status, for example—to their employees. *Calimlim*, 538 F.3d at 710. The court held that as applied to the defendants, Section 1589 provided sufficient notice that their conduct was illegal because it specified the prohibited means for obtaining labor and included a *scienter* requirement of knowledge that those coercive circumstances existed. *Id.* at 711. Further, the court held that the statute was not arbitrarily enforced against the defendants where its language prohibited coercive labor practices, the precise basis on which they were indicted. *Id.* at 711-712.

Here, too, the Toures cannot successfully assert that they lacked sufficient notice that their conduct was illegal where Section 1589 expressly prohibited defendants from knowingly using sufficiently serious "physical or nonphysical" harm, including psychological harm, to compel another person's labor. Indeed, the government indicted the Toures for causing D.D. physical and nonphysical harm, or threatening to do so, to compel her to work—a straightforward and non-arbitrary application of the statute. Moreover, any vagueness challenge to Section 1589 is necessarily weaker now than when *Calimlim* was decided in 2008. Congress further clarified Section 1589's reach later that year by adding a definition for "serious harm" in Section 1589(c)(2), which specifies the types of serious harm the statute prohibits and that they must be assessed from the perspective of a reasonable person of the victim's same background and circumstances.

2. *Overbreadth*. Defendants' overbreadth challenge fares no better. The Court may invalidate a law as overbroad only if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Washington State Grange* v. *Washington State Republican Party*, 552 U.S. 442, 449 n.6 (2008) (internal quotation marks omitted) (quoting *New York* v. *Ferber*, 458 U.S. 747, 769-771 (1982)). Defendants' burden in mounting this challenge is a demanding one, as "the mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge." *Members of the City Council of the City of L.A.* v. *Taxpayers for Vincent*, 466 U.S. 789, 800 (1984).

First, there can be no question that Section 1589's "serious harm" provision applies to a substantial amount of conduct that in no way implicates the First Amendment's free association protections. The statute's "plainly legitimate sweep" criminalizes exploitative labor practices akin to the conditions of slavery and involuntary servitude proscribed by the Thirteenth Amendment. See 18 U.S.C. 1589(a)(2), (a)(4), and (c)(2); 22 U.S.C. 7101(b)(13). Specifically, Section 1589 prohibits the knowing use of harm—such as "psychological, financial, or reputational harm"—that is "serious" to a reasonable person of the victim's background under the circumstances. 18 U.S.C. 1589(a)(2), (a)(4), and (c)(2). The First Amendment affords no protections to these modern-day conditions of slavery.

Moreover, the statute's plain terms do not prohibit the procurement of labor through everyday pressures and demands, as defendants suggest (Br. 23-27, 31).

Second, there can be no serious claim that a "substantial number" Section 1589's applications are unconstitutional in relation to the statute's legitimate criminalization of obtaining or providing labor by means of serious harm. Relying solely on hypothetical situations, defendants assert that Section 1589 interferes with a "huge variety of constitutionally protected conduct associated with the raising of children, the supervision of employees, the education of children or adults, the rehabilitation of prisoners, the training of aspiring soldiers, etc." Br. 31. But this Court has explained that "[t]he Constitution does not include a 'generalized right of social association.'" *Wallace* v. *Texas Tech Univ.*, 80 F.3d 1042, 1051 (5th Cir. 1996) (internal quotation marks omitted) (quoting *City of Dallas* v. *Stanglin*, 490 U.S. 19, 25 (1989)). Rather, the First Amendment protects, in relevant part, "certain intimate or private relationships" that generally involve "deep attachments and commitments" within a "special community of thoughts, experiences, and beliefs," including, for example, marriage, bearing and raising children, and living with relatives. *Board of Directors of Rotary Int'l* v. *Rotary Club of Duarte*, 481 U.S. 537, 544-546 (1987) (quoting *Roberts* v. *United States Jaycees*, 468 U.S. 609, 619-620 (1984)) (also noting that the First Amendment

protects the freedom to associate for purposes of protected speech or religious activities).

Of the relationships that defendants claim Section 1589 might interrupt—citing no actual prosecutions in these contexts—only the connection between parent and child would fall within the realm of First Amendment-protected associations. Defendants' hypothetical, however, regarding a parent asking a child to put away Legos or otherwise not be allowed to play with the Legos for three days (Br. 23) does not fall within the statute's plain ambit. It can hardly be said that this scenario involves either "labor or services" or a parent's "knowing" use of "serious harm" against his or her child, even when judged from the perspective of a "reasonable" child. See 18 U.S.C. 1589(a)(2) and (c)(2).

Further, one court has limited the statute's outer reach to avoid intruding on the normal role of lawful caregivers, which state, not federal, law may properly regulate. In *United States* v. *Toviave*, 761 F.3d 623 (6th Cir. 2014), the Sixth Circuit found the evidence insufficient to support the forced labor conviction of a defendant who had brought young relatives to live with him in the United States, where he educated and treated them as family but also disciplined them harshly and required them to provide household help. *Id.* at 624. The Sixth Circuit held that in order to avoid intruding on parental rights and disrupting the constitutional balance of federal and state powers, the court would not construe Section 1589 to

"make[] it a crime for a person *in loco parentis* to require household chores, or make[] child abuse a federal crime." *Id.* at 629. In determining that the statute was not properly applied to the defendant, the court gave great weight to the fact that he "had an almost single-minded fixation on making sure the children got an education" and let them participate fully in school, family, and community life. *Ibid*. The court explained that its decision did not "undermine[] the reasoning of the forced labor decisions of * * * our sister circuits[,]" such as *Calimlim* and *United States* v. *Nnaji*, 447 F. App'x 558 (5th Cir. 2011), cert. denied, 565 U.S. 1269 and 565 U.S. 1270 (2012), in which defendants did not educate their victims and used "more extreme isolation" to compel their labor. See *Toviave*, 761 F.3d at 629-630. Here, just as in *Calimlim* and *Nnaji* but in stark contrast with *Toviave*, defendants' exploitation of D.D.—a non-relative brought from abroad to work, from childhood through adulthood, under conditions of physical and emotional abuse and isolation, without education or healthcare—falls within Section 1589's "plainly legitimate sweep."

In sum, this Court easily can dispose of defendants' vagueness and overbreadth challenges to Section 1589 on plain error review. Even if this Court were to entertain defendants' arguments, which it need not and should not do, the arguments would fail.

II

THE EVIDENCE WAS SUFFICIENT TO CONVICT MOHAMED TOURE OF FORCED LABOR UNDER 18 U.S.C. 1589

A. Standard Of Review

This Court reviews de novo a district court's denial of a motion for judgment of acquittal based on insufficient evidence. *United States* v. *Reed*, 908 F.3d 102, 123 (5th Cir. 2018), cert. denied, 139 S. Ct. 2655, and 139 S. Ct. 2658 (2019). The Court evaluates such challenges, however, "with substantial deference to the jury verdict." *United States* v. *Evans*, 892 F.3d 692, 702 (5th Cir. 2018) (quoting *United States* v. *Delgado*, 672 F.3d 320, 330 (5th Cir. 2012) (en banc)). The Court therefore must affirm the jury's verdict "if a reasonable trier of fact could conclude from the evidence that the elements of the offense were established beyond a reasonable doubt." *Reed*, 908 F.3d at 123 & n.82 (quoting *United States* v. *Ragsdale*, 426 F.3d 765, 770-771 (5th Cir. 2005)). In making this assessment, the Court "view[s] the evidence in the light most favorable to the verdict and draw[s] all reasonable inferences from the evidence to support the verdict." *Ibid*.

B. Forced Labor In Violation Of 18 U.S.C. 1589(a)(2), (a)(4), & (c)(2)

Mohamed Toure—but not Denise Cros-Toure—argues that insufficient evidence supported his conviction on Count 2. Br. 37-41. To establish that he violated Section 1589(a)(2) or (a)(4), as charged, the government was required to prove beyond a reasonable doubt that Mohamed Toure: (1) "provided or obtained

the labor or services of [D.D.]"; (2) did so by "threats of serious harm" or "a scheme, plan, or pattern intended to cause [D.D.] to believe that, if [D.D.] did not perform such labor or services, [D.D.] would suffer serious harm"; and (3) did so "knowingly." ROA.2229, 3975-3976; 18 U.S.C. 1589(a)(2) and (a)(4). Mohamed Toure does not contest the first element—*i.e.*, that he obtained D.D.'s labor or services. Rather, he contests only the second and third elements—*i.e.*, that he did not knowingly do so by prohibited means. Br. 37-38. As explained further in Part II.C, *infra*, each of his arguments fails.

Section 1589 defines "serious harm" as harm that is "physical or nonphysical, including psychological, financial, or reputational harm," the seriousness of which is viewed "under all the surrounding circumstances" in light of the effect a defendant's actions might have on a "reasonable person of the same background and in the same circumstances" as the victim. 18 U.S.C. 1589(c)(2). "Serious harm" includes a broad—but not unbounded, see pp. 26-30, *supra*—range of coercive conduct. See, *e.g.*, *United States* v. *Callahan*, 801 F.3d 606, 618 (6th Cir. 2015), cert. denied, 136 S. Ct. 1477 (2016); *United States* v. *Dann*, 652 F.3d 1160, 1169-1170 (9th Cir. 2011); *United States* v. *Kaufman*, 546 F.3d 1242, 1261 (10th Cir. 2008); *United States* v. *Calimlim*, 538 F.3d 706, 714 (7th Cir. 2008); *United States* v. *Bradley*, 390 F.3d 145, 150 (1st Cir. 2004), vacated on other grounds, 546 U.S. 1101 (2005).

In determining whether conduct rises to the level of "serious harm," Section 1589(c)(2) requires the fact-finder to consider the victim's special vulnerabilities, such as age, immigration status, education, socioeconomic status, and power imbalances between victim and defendant. See, *e.g.*, *Bistline* v. *Parker*, 918 F.3d 849, 873 (10th Cir. 2019); *Bradley*, 390 F.3d at 152-153. A defendant may be found to have obtained labor through "serious harm" or "threats of serious harm" by, for example, manipulating a victim's undocumented status, isolating her from the outside world, exerting control over her life, and threatening or punishing her with physical abuse. See *Bistline*, 918 F.3d at 871; *United States* v. *Afolabi*, 508 F. App'x 111, 119 (3d Cir. 2013); *United States* v. *Nnaji*, 447 F. App'x 558, 560 (5th Cir. 2011); *Dann*, 652 F.3d at 1170-1173; *United States* v. *Sabhnani*, 599 F.3d 215, 241-242 (2d Cir. 2010), cert. denied, 562 U.S. 1194 (2011); *Calimlim*, 538 F.3d at 713; *United States* v. *Paulin*, 329 F. App'x 232, 233-234 (11th Cir. 2009).

A defendant acts "knowingly" if he acts voluntarily and intentionally, rather than mistakenly or accidentally. See *United States* v. *Aggarwal*, 17 F.3d 737, 744 (5th Cir. 1994) (explaining that Fifth Circuit Pattern Jury Instruction 1.37 correctly defines "knowingly" to mean "that the act was done voluntarily and intentionally, not because of mistake or accident"). Jurors may rely on their "common sense and experience" in determining whether a defendant "knowingly" procured another's

labor through use of one of Section 1589's prohibited means. See *Sabhnani*, 599 F.3d at 241-242 (citation omitted).

C. Ample Evidence Demonstrated That Mohamed Toure Knowingly Obtained D.D.'s Labor By Prohibited Means

Defendants argue that the evidence did not show that Mohamed Toure "ever used any of the means prohibited in the statute to secure labor or service[s] from D.D.," or that he knowingly obtained D.D.'s services by these means. Br. 38. The record, including portions defendants highlight in their brief, makes clear that the evidence was more than sufficient for a reasonable jury to conclude both elements were established beyond a reasonable doubt.

1. Mohamed Toure Used Serious Harm And Threats Of Serious Harm To Compel D.D.'s Labor, And Also Contributed To A Pattern Of Such Conduct With His Wife

The jury had an ample basis to find Mohamed Toure committed forced labor through "threats of serious harm" to D.D. or a "scheme, plan, or pattern intended to cause" D.D. to believe that if she did not work, she would suffer "serious harm or physical restraint." 18 U.S.C. 1589(a)(2) and (a)(4); see pp. 4-14, *supra*.

a. The evidence showed that Mohamed Toure, individually and in concert with his wife, obtained D.D.'s labor through prohibited means. Although defendants argue that Mohamed Toure had a limited role in causing D.D. to work (Br. 38-39), in fact he took measures to secure her compliance throughout her 16 years with the family. For example, he retrieved D.D. from the airport when she

first arrived in the United States alone, as a child, on a six-month tourist visa that the Toures allowed to expire, leaving D.D. undocumented. ROA.1490-1496, 1802-1803, 2691-2694. He beat or helped to beat her when she failed to perform her work satisfactorily. ROA.1616-1618. He also complained and berated her about her work performance and disobedience. ROA.1616, 1653-1654, 2939-2947. Mohamed Toure himself took steps to isolate and hide D.D., evading questions from the police when they found a young D.D. banished in the park (ROA.1903-1905) and paying cash to have her tooth extracted at a dental clinic rather than taking her to the family dentist (ROA.1610, 2867).

Moreover, the Toures together created conditions of isolation, deprivation, and abuse that forced D.D. to remain as their servant. They did not legitimize D.D.'s status in the United States or provide her identification documents. ROA.1601, 2778-2780, 2828. They did not enroll D.D. in school or educate her at home, even though Mohamed Toure never worked outside the home in the United States and Denise Cros-Toure rarely did so. ROA.1536, 1580-1581, 2782, 2847. D.D. had no independent means of leaving the neighborhood—she could not drive or access public transportation, and her savings consisted only of occasional gifts and money from babysitting and odd jobs for neighbors. ROA.1600-1601, 1639-1641, 1684, 1710. And, although D.D. grew up alongside their children, defendants provided D.D. conspicuously separate and inferior treatment with

respect to schooling, eating, sleeping, clothing, and medical and dental care. ROA.1506-1527, 1541, 1603-1611.

Further, the Toures engaged in a pattern of cruelty and violence toward D.D. Defendants physically attacked D.D. when she failed to perform her work satisfactorily or defied their demands. ROA.1613-1624. Denise Cros-Toure did so with particular ferocity, using household implements as weapons and ripping an earring through D.D.'s earlobe. ROA.1613-1624. She verbally abused D.D. frequently, sometimes in Mohamed Toure's presence and with his support, and reminded D.D. that her role in the house was to work and that the Toures would not send her back to Guinea until the house was clean. ROA.1612, 1667-1668, 2685, 2935-2950. Even when D.D. was a young child, the Toures banished her from their home and left her to stay alone in a park for periods that extended up to a week as she grew older. ROA.1624-1626, 1632.

b. Ignoring this mass of evidence, defendants cite three instances of Mohamed Toure's conduct—shaving D.D.'s head, beating D.D. for talking back to his mother, and restraining D.D. during a beating from his wife—as insufficient to allow a jury to find beyond a reasonable doubt that he committed forced labor. Br. 38-39. But these acts powerfully support an inference that Mohamed Toure's conduct caused D.D. to remain with defendants because she faced threats of serious harm, or reasonably believed she would face serious harm, if she did not

provide them with childcare and household help. In shaving D.D.'s head when his wife was dissatisfied with her hairstyle, Mohamed Toure contributed to the pattern of dehumanizing and emotionally abusive behavior by which the Toures secured D.D.'s compliance. In beating and helping to beat D.D., Mohamed Toure personally employed violence as a consequence for D.D.'s non-compliance with the family's demands. Indeed, D.D. testified that it was her failure to prepare breakfast for Mohamed Toure's mother that led him to beat her—a clear example of the serious physical harm that D.D. suffered if she did not work. ROA.1616-1617.

Taking into account D.D.'s special vulnerabilities (*i.e.*, her age, illiteracy, and lack of legal status or family in the United States), there can be no question that Mohamed Toure—individually or as part of a scheme, pattern, or plan with his wife—obtained D.D.'s labor through means or threats of serious harm in violation of Sections 1589(a)(2), (a)(4), and (c)(2). Indeed, this case is similar to *United States* v. *Nnaji*, in which this Court affirmed the forced labor conviction of a woman who, along with her husband, forced an illiterate Nigerian woman to work for eight years tending to the household and caring for their children. 447 F. App'x 558 (5th Cir. 2011). There, this Court held that the defendant "individually and in concert with her husband took advantage of the victim's vulnerabilities and coerced her into performing work for the family." *Id.* at 560. The evidence

supporting the conviction included that the defendant was present when her husband took the victim's travel documents (evincing the defendants' intent to keep the victim from leaving), and that defendants isolated the victim, limited her access to the phone, and prevented her from contacting the outside world. *Ibid*. The same is true here.[4]

2. Ample Evidence Showed That Mohamed Toure Acted Knowingly In Obtaining D.D.'s Labor Through Prohibited Means

Defendants next argue that Mohamed Toure lacked the required mental state to support a conviction for forced labor—*i.e.*, *knowledge* that he obtained D.D.'s services by means or threats of serious harm. But Mohamed Toure was personally involved in procuring D.D.'s services as child, cutting her off from the outside world, and committing or aiding specific acts of physical and psychological brutality that caused D.D. to remain in the Toures' home. His conduct provided an ample basis from which the jury reasonably could infer that he knew that he and his wife caused D.D. to work via prohibited means.

As an initial matter, Mohamed Toure's intent to use prohibited means to obtain D.D.'s labor is apparent from his own words in his recorded law

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[4] Other circuit courts also have found that similar facts were sufficient to support forced labor convictions. See, *e.g.*, *Afolabi*, 508 F. App'x at 119 (victims separated from their families and identification documents, threatened with deportation, and beaten); *Paulin*, 329 F. App'x at 233-234 (defendant brought teenager to work in the United States, provided no schooling, treated her as a servant, and beat her).

enforcement interview. He said that D.D.'s father "gave" or "let [the Toures] have" D.D., and he described D.D.'s departure from the Toures' home as an "escape," implicitly acknowledging that she had no say in joining defendants' home and remained there against her will. ROA.1817, 1820-1821, 2768, 2774, 2804-2805. These statements, taken along with the withholding of D.D.'s immigration documents and failure to assist her in obtaining new ones, permitted a reasonable jury to infer Mohamed Toure's knowledge and intent to force D.D. to work by prohibited means. See *Dann*, 652 F.3d at 1172 (sufficient evidence established Section 1589's scienter requirement in part because the defendant described the victim's departure as an "escape" and withheld the victim's immigration and identification documents).

Further, the record clearly contradicts defendants' claim that Mohamed Toure's "involvement with D.D. and the family was episodic" and he therefore lacked knowledge of the means used to obtain D.D.'s labor. Br. 40. To the contrary, Toure was personally involved in violent episodes that were directly connected with D.D.'s labor, such as attacking D.D. for failing to prepare his mother's breakfast, restraining D.D. while his wife beat her, and prompting his wife to beat D.D. by complaining about D.D.'s failure to make dinner. ROA.1616-1617, 1654. Moreover, D.D. slept under defendants' roof for 16 years, excluding the brief periods when the Toures traveled without D.D. or banished her to the

park. ROA.1496, 1592-1593, 1624-1626, 1632-1635, 1671-1672, 2064. Although Mohamed Toure took lengthy trips abroad, he never worked outside of the home in the United States. ROA.2782. When he was at home, Mohamed Toure benefited from D.D.'s cooking, cleaning, and childcare services. Indeed, his presence in the household over so many years and his direct involvement in D.D.'s abuse permitted a reasonable jury to infer that he knew his family obtained D.D.'s labor through a pattern of physical, psychological, and emotional harm. See *Sabhnani*, 599 F.3d at 241-242 (jury's common sense and experience allowed reasonable inference that husband knew maltreatment caused his family's maids to work where he observed and contributed to his wife's abusive tactics).

Accordingly, this Court should affirm Mohamed Toure's forced labor conviction.

III

THE DISTRICT COURT CORRECTLY INSTRUCTED THE JURY ON CONSPIRACY TO HARBOR AN ALIEN FOR FINANCIAL GAIN AND HARBORING AN ALIEN

A. Standard Of Review

This Court affords trial courts "substantial latitude in describing the law to the jurors," and so reviews a challenge to jury instructions for abuse of discretion. *United States* v. *Daniel*, 933 F.3d 370, 379 (5th Cir. 2019) (quoting *United States* v. *Ortiz-Mendez*, 634 F.3d 837, 839 (5th Cir. 2011)). The Court considers

"whether the charge, as a whole, was a correct statement of the law and whether it clearly instructed the jurors as to the principles of the law applicable to the factual issues confronting them." *Ibid.* (citation omitted). A district court's refusal to give a defendant's proposed instruction is only reversible error where (1) the instruction sought is "substantially correct"; (2) "the requested issue is not substantially covered in the charge"; and (3) "the instruction concerns an important point in the trial" such that its absence "seriously impaired the defendant's ability to effectively present a given defense." *Ibid.* (citation omitted).

A district court does not err when it gives a charge that tracks this Circuit's Pattern Jury Instructions and correctly states the law. See, *e.g.*, *United States* v. *Cessa*, 856 F.3d 370, 376 (5th Cir. 2017); *United States* v. *Sheridan*, 838 F.3d 671, 673 (5th Cir. 2016). Under such circumstances, the only question this Court must consider is whether the pattern instruction is a correct statement of the law. *Ibid.*

B. The District Court's Harboring Instruction

Defendants challenge the district court's refusal to adopt additional language they sought to include in the otherwise agreed-upon harboring instruction the district court gave on Counts 3 and 4 (the conspiracy to harbor an alien for financial gain and substantive harboring counts, respectively). Br. 42-50.

The parties' jointly proposed instruction provided that to find a defendant guilty of harboring an alien, the jury must find that the government had proved the following elements beyond a reasonable doubt:

> *First*: That D.D. was an alien who entered, came to, or remained in the United States in violation of law;
>
> *Second*: That the defendant concealed, harbored, or shielded from detection D.D. within the United States;
>
> *Third*: That the defendant knew or acted in reckless disregard of that [sic] fact that D.D. entered, came to, or remained in the United States in violation of law; and
>
> *Fourth*: That the defendant's conduct tended to substantially facilitate D.D. entering, coming to, or remaining in the United States illegally.[5]

ROA.372. The proposed charge also explained several of the terms used in the elements:

> An alien is any person who is not a natural-born or naturalized citizen of the United States. An alien is unlawfully in the United States if he remained in the United States for a time longer than permitted.
>
> A person acts with "reckless disregard" when he is aware of, and consciously disregards, facts and circumstances indicating that the person concealed, harbored, or shielded from detection was an alien who entered, came to, or remained in the United States in violation of law.
>
> To "substantially facilitate" means to make an alien's illegal presence in the United States substantially easier or less difficult.

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[5] Although not relevant to this appeal, the proposed charge also asked the jury to consider a fifth element if the first four were satisfied—that is, whether the defendant harbored the alien for private financial gain. ROA.372. See 8 U.S.C. 1324(a)(1)(B)(i) (increasing the maximum penalty from five to ten years' imprisonment where this element is proven).

ROA.373. These elements and definitions are modeled on Fifth Circuit Criminal Pattern Jury Instruction 2.01C (concealing or harboring aliens) (ROA.317, 372-374), and incorporate the parties' jointly proposed phrase, "[a]n alien is unlawfully in the United States if he remained in the United States for a time longer than permitted."

At the end of the charge, defendants proposed adding the following sentence:

> The mere act of providing shelter to an alien, when done without intention to help prevent the alien's detection by immigration authorities or police, is not an offense and is not, alone, sufficient to prove beyond a reasonable doubt that the defendant unlawfully harbored an alien as alleged in the indictment.

ROA. 373. Defendants argued that this language explains that concealing, harboring, or shielding means hiding something from detection, consistent with Congress's intent to proscribe knowing or willful conduct that substantially facilitates an alien's unlawful presence. ROA.373-374 (citing *Villas at Parkside Partners* v. *City of Farmers Branch*, 726 F.3d 524, 529 (5th Cir. 2013) (en banc), cert. denied, 571 U.S. 1237 (2014). During the jury charge conference at the close of trial, the government argued that it was unnecessary and inadvisable to add this language because it was not included in the Fifth Circuit's Pattern Jury Instruction and was not drawn from the criminal case law. ROA.2206-2207.

The court ultimately adopted the parties' agreed-upon harboring charge and most, but not all, of defendants' proposed additional language. ROA.539-541, 2235-2236. In relevant part, the court instructed the jury that, "[t]he mere act of providing shelter to an alien is not, alone, sufficient to prove beyond a reasonable doubt that the defendant unlawfully harbored an alien." ROA.540-541, 2236. The court did not include defendants' suggested clause, "when done without intention to help prevent the alien's detection by immigration authorities or police."

C. The Court Did Not Abuse Its Discretion By Giving This Circuit's Pattern Jury Instruction For Alien Harboring And By Not Adopting All Of Defendants' Additional Proposed Language

The district court acted well within its discretion by using Fifth Circuit Criminal Pattern Jury Instruction 2.01C and adopting most, but not all, of defendants' additional proposed language on the meaning of "harboring." Because the district court's instruction was modeled on the Pattern Jury Instruction on alien harboring, the only question for this Court to consider is whether that Pattern Jury Instruction correctly states the law. See *Cessa*, 856 F.3d at 376; *Sheridan*, 838 F.3d at 673. A district court is not required to adopt additional proposed language—even if it accurately states the law—and does not abuse its discretion in declining to do so. See *Cessa*, 856 F.3d at 376.

Defendants make no argument and identify no authority that undercuts the correctness of the Pattern Jury Instruction, which is based on well-established Fifth

Circuit precedent. See Fifth Circuit Criminal Pattern Jury Instr. 2.01C (2015) (citing, *inter alia*, *United States* v. *Shum*, 496 F.3d 390 (5th Cir. 2007); *United States* v. *De Jesus-Batres*, 410 F.3d 154 (5th Cir. 2005), cert. denied, 546 U.S. 1097 (2006); *United States* v. *Varkonyi*, 645 F.2d 453 (5th Cir. 1981)). Indeed, the elements of harboring in the Pattern Jury Instruction and in the district court's instruction closely track this Court's description in *Shum* and *De Jesus-Batres* of the elements of the crime. See *Shum*, 496 F.3d at 391-392; *De Jesus-Batres*, 410 F.3d at 160. The explanation of the term "substantially facilitate" in the Pattern Jury Instruction and in the district court's instruction also comes directly from the Court's holding in *Shum*. See 496 F.3d at 391-392 (quoting *United States* v. *Dixon*, 132 F.3d 192, 200 (5th Cir. 1997)).

Instead, defendants rely on two of this Court's opinions in civil cases to argue that the district court's harboring instruction was too "tepid" to capture the notion that criminal harboring under 8 U.S.C. 1324(a)(1)(A)(iii) means that "something is being hidden from detection." Br. 46-47 (quoting *Cruz* v. *Abbott*, 849 F.3d 594, 600 (5th Cir. 2017) and *City of Farmers Branch*, 726 F.3d at 529). This argument disregards important aspects of the instruction given and misreads the cases on which it relies.

First, the district court's harboring instruction clearly captured the notion that harboring entails concealing D.D.'s unlawful presence from detection. The

second element of the instruction required that a defendant have "concealed, harbored, or shielded *from detection* D.D." ROA.540-541, 2236, 3981-3982 (emphasis added). The fourth element of the instruction required that "the defendant's conduct tended to substantially facilitate D.D.['s]" illegal presence in the country, and the court further instructed the jury that the term "substantially facilitate" meant making D.D.'s illegal presence "substantially easier or less difficult." ROA.540-541, 2236, 3981-3982. On top of all this, the court also included, at defendants' request, that sheltering an alien was not alone sufficient to convict. ROA.540-541, 2236, 3981-3982. Therefore, defendants cannot reasonably argue that the district court's instruction failed to fully capture the notion that harboring entails concealment from detection, and not merely providing shelter.

Second, defendants misstate the import of *Cruz* and *City of Farmers Branch*, two civil matters in which the Court did not squarely address the elements of a criminal violation under Section 1324(a)(1)(A)(iii), much less undermine the validity of Fifth Circuit Criminal Pattern Jury Instruction 2.01C. In *Cruz*, the source of defendants' proposed harboring language, this Court looked to its discussion of the terms "harbor, shield, or conceal" in Section 1324(a)(1)(A)(iii) to interpret similar language in a state human smuggling statute. 849 F.3d at 600 (quoting *Varkonyi*, 645 F.2d at 456). The language that the Toures proposed here

(specifically, the phrase "when done without intention to help prevent the alien's detection by immigration authorities or police") comes from a footnote collecting—but not adopting—*other* circuit courts' decisions interpreting "similar language." *Id.* at 600 & n.13 (citing, *inter alia*, *United States* v. *Vargas-Cordon*, 733 F.3d 366, 382 (2d Cir. 2013)). In *City of Farmers Branch*, this Court discussed the federal alien harboring statute in the context of assessing whether federal law preempted a local ordinance that restricted the leasing of homes to non-citizens. 726 F.3d at 530. In explaining that Section 1324(a)(1)(A)(iii)'s text implies hiding something from detection, see *id.* at 529-530, the Court cited *Varkonyi*, one of the cases expressly referenced as a source for this Circuit's Pattern Jury Instruction on alien harboring. The Court, therefore, did not adopt a new formulation for Section 1324(a)(1)(A)(iii) in *Cruz* or in *City of Farmers Branch*. Accordingly, the district court was well within its discretion to reject defendants' proposed additional language purportedly drawn from those cases.

In sum, because the district court's instruction was a correct statement of the law, it had no obligation to provide any further instruction on alien harboring—even if the proposed language also were legally correct.[6] See *Cessa*, 856 F.3d at

[6] Although defendants portray their proposed instruction as defining the term "harboring," the omitted portion ("when done *without intention* to help prevent the alien's detection by immigration authorities or police") pertains more closely to the element of intent. Moreover, this language indicates that a defendant

375-377. The court acted well within its discretion in using this Circuit's Pattern Jury Instruction and declining to adopt all of defendants' proposed additional language. Accordingly, the Court should affirm defendants' convictions on Counts 3 and 4.

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must specifically intend to facilitate a federal immigration violation rather than act knowingly or with reckless disregard of an alien's unlawful status, as 8 U.S.C. 1324(a)(1)(A)(iii) and Criminal Pattern Jury Instruction 2.01C require. This Court has declined to adopt a specific intent requirement for the offense of alien harboring. See *De Jesus-Batres*, 410 F.3d at 162 (citing *United States* v. *Valerio-Santibanez*, 81 F. App'x 836 (5th Cir. 2003), cert. denied, 542 U.S. 915 (2004)).

Moreover, even assuming it were error for the district court to exclude the language at issue from the jury instruction, such error would be harmless because this Court can conclude on the basis of the trial record that the jury would have reached the same verdict. See *United States* v. *Martinez*, 921 F.3d 452, 481 (5th Cir. 2019). The court's harboring instruction was correct, so there is no reason to believe that the jury's verdict would have differed if the jury had been instructed with the proposed additional language. This is especially so given the ample evidence that defendants sought to conceal the nature of their relationship with D.D. and her undocumented status in the United States from detection, including by the police. See pp. 8-9, *supra*.

IV

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ORDERING DEFENDANTS TO PAY $288,620.24 IN RESTITUTION[7]

A. Standard Of Review

This Court reviews for abuse of discretion the amount of a district court's restitution award. See, *e.g.*, *United States* v. *Halverson*, 897 F.3d 645, 653 (5th Cir. 2018).

B. The District Court's Restitution Award

1. Prior to sentencing, the Probation Office produced PSRs that recommended ordering both defendants to pay restitution to D.D. pursuant to the Mandatory Victims Restitution Act of 1996 (MVRA), 18 U.S.C. 3663A. The Probation Office determined that D.D. performed 96.25 hours of uncompensated work per week for the Toures over 851 weeks in a 16-year period. ROA.2974, 4214. Using applicable federal minimum wage rates and applying a credit for D.D.'s lodging, the Probation Office arrived at a restitution figure of $440,446. ROA.2974, 4214.

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[7] Defendants' opening brief also argues that the district court should have ordered restitution under the TVPA rather than the MVRA. Br. 52-54. This question is no longer at issue because the district court, on limited remand from this Court, amended the judgments to reflect that restitution was ordered under the TVPA. See p. 18, *supra*.

Defendants and the United States objected to the PSRs' restitution calculation. Defendants argued that the PSRs contained facts suggesting that D.D. worked fewer than 96.25 hours each week for defendants (*e.g.*, that D.D. sometimes babysat for neighbors or was banished to the park). ROA.3005-3006, 3014-3015, 4243-4245, 4252-4254. The government asserted that restitution should be awarded under the TVPA, 18 U.S.C. 1593, which provides mandatory restitution for a conviction under Section 1589, rather than under the MVRA. ROA.2988, 4228. Pursuant to 18 U.S.C. 1593(b)(3), a restitution order must include the "full amount of the victim's losses" as defined in 18 U.S.C. 2259(c)(2) as well as the "value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.)." ROA.2988, 4228. The government explained that an award under the FLSA must include back pay plus "an additional equal amount" as liquidated damages, doubling the restitution amount from $440,446.68 to $880,893.36. ROA.2989, 4229 (quoting 29 U.S.C. 216(b)).

In Addendums to the PSRs, the Probation Office accepted the United States' objections regarding restitution and rejected defendants' objections. ROA.3034-3035, 3044-3045, 3048, 4270-4271, 4280, 4283. The Probation Office revised the PSRs to indicate that restitution should be awarded pursuant to the TVPA and

FLSA, and that the back-wage amount should be doubled to $880,893.36. ROA.3034-3035, 3048, 4270-4271, 4283.

In responding to defendants' objections, the Probation Office explained that it based its factual conclusions on evidence of D.D.'s work for the Toures, which neighbors and friends observed. ROA.3045, 4271. The back-wage calculation itself relied on information from a U.S. Department of State Special Agent that D.D. typically worked from 6:30 or 7 a.m. until 8 or 9 p.m., averaging 13.75-hour work days. ROA.3035, 3045, 4271. The calculation excluded 13 weeks from D.D.'s 16 years in the household (ROA.3045, 4271), presumably to account for instances when the Toures traveled and left D.D. in Texas. See also ROA.3347, 3396 (U.S. Sentencing Memorandum and attached worksheet prepared by a U.S. Department of Labor Investigator, based on information provided by the State Department Special Agent).

2. At defendants' sentencing hearing, the district court adopted the PSRs and PSR Addendums with respect to the restitution award calculation methodology but not the restitution amount. ROA.2362-2363. The court reduced the number of hours D.D. worked per week from 96.25 to 40, "given the arguments" at the sentencing hearing "as to DD's daily life experience." ROA.2362. The court adopted "everything else" that went into the Probation Office's revised calculation of D.D.'s lost wages—"the minimum wage numbers, the weeks worked numbers,

and the lodging credit number." ROA.2362. The court calculated the amount of restitution to be $144,310.12 and doubled it to arrive at a total of $288,620.24. ROA.2362, 2421-2422, 2435.

In the amended judgments, the district court ordered that, pursuant to the TVPA, each defendant was jointly and severally liable for $288,620.24 in restitution. See p. 18, *supra*.

C. The District Court's Explanation, Along With The Trial And Sentencing Records, Sufficiently Supports The Amount Of Restitution Ordered

Although the district court more than halved the number of hours D.D. worked per week from 96.25 to 40 in its restitution calculation, defendants nevertheless argue that this Court should vacate the restitution order because the district court failed to explain the basis for using a 40-hour work week. Br. 54. Although the United States maintains that the record better supports a finding that D.D. worked 96.25 hours per week and a significantly higher restitution amount, defendants' argument that the district court abused its discretion by largely adopting their position below is incorrect.

A restitution order under the TVPA must be issued "in accordance with [18 U.S.C.] 3664 in the same manner as an order under [18 U.S.C.] 3663A." 18 U.S.C. 1593(b)(2). Thus, the court must order restitution in "the full amount of [the] victim's losses * * * without consideration of the economic circumstances of the defendant." 18 U.S.C. 3664(f)(1)(A). The court must consider the relevant

factors under the statute that provides for restitution, but "need not make specific findings * * * if the record provides an adequate basis to support the restitution order." *United States* v. *Blocker*, 104 F.3d 720, 737 (5th Cir. 1997) (citing *United States* v. *St. Gelais*, 952 F.2d 90, 97 (5th Cir. 1992)).

Although a court must resolve disputes about the amount of restitution using a preponderance of the evidence standard, 18 U.S.C. 3664(e), the restitution amount need not be "proven with exactitude," particularly because assessing a victim's losses usually requires approximation. *In re Sealed Case*, 702 F.3d 59, 66 (D.C. Cir. 2012). The necessity of approximation is all the more apparent when the employer, like defendants here, did not maintain payroll records from which to determine D.D.'s exact hours of work—a fact that should not accrue to defendants' benefit. Cf. *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-688 (1946); *Pettway* v. *American Cast Iron Pipe Co.*, 494 F.2d 211, 260-261 (5th Cir. 1974).

The court sufficiently explained the basis for its restitution order and the record amply supported it. At the sentencing hearing, the court adopted Probation's revised method for assessing restitution. ROA.2362-2363. The court also made clear that, based on its view of the evidence and on the parties' arguments, it was adopting the factual basis of the PSRs' restitution calculation apart from reducing the number of hours D.D. worked per week. ROA.2362-2363.

It was not an abuse of discretion for the court, at defendants' urging, to determine that D.D. typically worked 40 hours per week rather than 96.25.

Even if the court's express findings were deficient, the record supported the use of at least a 40-hour work week. See *Blocker*, 104 F.3d at 737. The evidence showed that D.D. began working in the Toures' home immediately upon arriving in the United States. ROA.1500-1503. The Toures always kept her busy and she rarely had breaks. ROA.1576. She cared for the youngest children at home for years before later walking them to school in the morning and completing household tasks throughout the day. ROA.1324-1325. She cooked the family's daily meals and served the family's houseguests. ROA.1114-1115, 1256, 1573-1576. She performed all manners of house and yardwork. ROA.1175-1176, 1512-1513, 1542-1543, 1574, 1761. Consistent with these constant duties, D.D. never attended school and only occasionally worked outside the home for neighbors. ROA.1536, 1580, 1641, 1684, 2847. The PSRs and PSR Addendums on which the district court relied, along with the government's sentencing exhibits, provided additional details that supported use of at least a 40-hour work week. ROA.3347, 3396-3397. Accordingly, the district court's restitution award of $288,620.24 did not constitute an abuse of discretion.

CONCLUSION

For the foregoing reasons, this Court should affirm defendants' convictions and sentences.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 21, 2020, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the Clerk of the Court for the United States Court of Appeals for the Fifth 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

CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE UNITED STATES AS APPELLEE:

(1) complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,998 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f); and

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s/ Katherine E. Lamm
KATHERINE E. LAMM
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Date: January 21, 2020