
IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant

v.

BOBBY PAUL EDWARDS,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

BRIEF FOR THE UNITED STATES AS APPELLANT

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No. 19-4903

UNITED STATES OF AMERICA,

Plaintiff-Appellant

v.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

BRIEF FOR THE UNITED STATES AS APPELLANT

STATEMENT OF JURISDICTION

This appeal is from a district court’s final judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. The court entered final judgment against defendant Edwards on November 7, 2019. J.A. 74.¹ The United States filed a timely notice of appeal on December 4, 2019. J.A. 79-80; see also 18 U.S.C. 3742(b). This Court has jurisdiction under 28 U.S.C. 1291.

¹ “J.A. ____” refers to page numbers in the Joint Appendix.

STATEMENT OF THE ISSUE

Whether “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.)” in the Trafficking Victims Protection Act’s mandatory restitution provision, 18 U.S.C. 1593(b)(3), includes liquidated damages in an amount equal to lost wages.

STATEMENT OF THE CASE

1. Factual Background

JCS, an African-American man with cognitive delays and an IQ below 70, began working at the J&J Cafeteria in Conway, South Carolina in 1990, when he was 12 years old.² J.A. 29. The owners paid JCS for his labor. J.A. 19, 29. In 2008, defendant Edwards took over the management of J&J. He stopped paying JCS for his work and moved JCS into an apartment attached to J&J. J.A. 19, 29. From approximately September 2009 through October 2014, Edwards required JCS to work without pay seven days a week, for more than 100 hours per week. J.A. 19, 29-30, 32. Edwards told JCS that he maintained a bank account in JCS’s name, but that was not true. J.A. 19, 32.

Edwards used violence, threats of violence, verbal abuse, and threats of arrest to compel JCS to work at J&J. J.A. 32. Edwards regularly assaulted JCS

² Consistent with the district court’s practice below, this brief refers to the victim by his initials.

for, among other things, working too slowly. J.A. 19, 30, 32. On one occasion, when JCS failed to deliver fried chicken to the buffet as quickly as Edwards wished, Edwards dipped metal tongs into hot grease and placed the tongs against JCS's neck, causing a serious burn. J.A. 19, 30, 32. Edwards also whipped JCS with his belt and beat him with pans and with his fists. J.A. 19, 30, 32. In addition to the physical abuse, Edwards regularly threatened physical harm to JCS, used disparaging language and racial slurs, and refused to allow JCS to have contact with his family. J.A. 20, 31-33.

In October 2014, a relative of a J&J employee alerted authorities to Edwards's abuse of JCS, and the South Carolina Department of Social Services removed JCS from J&J. J.A. 19, 31.

2. *Guilty Plea And Restitution Award*

a. On October 4, 2017, a federal grand jury in the District of South Carolina returned a one-count indictment charging Edwards with forced labor and attempted forced labor in violation of the Trafficking Victims Protection Act (TVPA), 18 U.S.C. 1589(a) and 1594(a). J.A. 4, 12-16. On June 4, 2018, Edwards pleaded guilty to one count of forced labor in violation of 18 U.S.C. 1589(a). J.A. 7, 17-27.

b. Under the TVPA's mandatory restitution provision, 18 U.S.C. 1593, Edwards was required to pay restitution to JCS in "the full amount of the victim's losses" that resulted from Edwards's actions. One method provided in the TVPA

for calculating “the full amount of the victim’s losses” is “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.)” 18 U.S.C. 1593(b)(3). The presentence investigation report (PSR) calculated restitution under this method, concluding that JCS was due \$272,952.96 in back wages. J.A. 95.³ The PSR also stated “that the Court may also order liquidated damages as applicable under” the Fair Labor Standards Act (FLSA). J.A. 111. The PSR did not recommend a specific amount of restitution but stated, incorrectly, that “[t]he [g]overnment will argue that [JCS] is due \$272,952.96.” J.A. 111.

The government argued in its sentencing memorandum that Edwards should pay restitution to JCS to compensate him for lost wages in the amount of \$272,952.96, plus “an additional equal amount” as liquidated damages as required under Section 216(b) of the FLSA, for a total of \$545,905.92. J.A. 37-38; see also J.A. 45-46. In support of this calculation, the government cited the Second Circuit’s opinion in *United States v. Sabhnani*, 599 F.3d 215, 259 (2d Cir. 2010), cert. denied, 562 U.S. 1194 (2011), which confirmed in a forced-labor case that the

³ The back wages set forth in the PSR were calculated by a Department of Labor Wage and Hour Investigator and were based on the hours Edwards forced JCS to work without pay, as admitted by Edwards in his plea agreement. J.A. 38. This amount was not contested below and is not at issue here.

loss calculation for Section 1593(b)(3) requires liquidated damages in an amount equal to lost wages. J.A. 37-38.

The district court rejected the government's request for liquidated damages. The court stated that it believed liquidated damages were punitive damages and applicable only in civil cases. J.A. 45-47. The court also observed that the Fourth Circuit had never explicitly adopted the *Sabhnani* court's reasoning. J.A. 48. It instead relied on an unpublished Fourth Circuit decision upholding a restitution award in a sex-trafficking case under 18 U.S.C. 1591(a)(1), where liquidated damages were not at issue. J.A. 48-49 (discussing *United States v. Saddler*, Nos. 18-4417 & 18-4891, 2019 WL 5078845 (4th Cir. Oct. 10, 2019)). Thus, the district court sentenced Edwards to ten years' imprisonment and awarded restitution in the amount of \$272,952.96. J.A. 71, 74.

The government filed a timely notice of appeal. J.A. 79.

SUMMARY OF THE ARGUMENT

The district court erred in failing to include liquidated damages in the restitution award. The restitution provision of the TVPA provides that courts "shall order" restitution to victims of forced labor in the "full amount of the victim's losses," and defines those losses to include "the greater of" (1) "the gross income or value to the defendant of the victim's services or labor," or (2) "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.).” 18 U.S.C. 1593(a) and (b)(3). The FLSA, in turn, provides that “[a]ny employer who violates” the minimum wage and overtime standards set forth in Sections 206 and 207 of the Act “shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, *and in an additional equal amount as liquidated damages.*” 29 U.S.C. 216(b) (emphasis added). Thus, under the plain language of the TVPA, which expressly incorporates by reference all of the FLSA’s guarantees with respect to minimum wage and overtime, the district court erred in failing to award liquidated damages in this case.

This conclusion is consistent with the Second Circuit’s decision in *United States v. Sabhnani*, 599 F.3d 215, 259 (2d Cir. 2010), cert. denied, 562 U.S. 1194 (2011). In that case, the Second Circuit analyzed the text of the TVPA and FLSA and concluded that the TVPA’s reference to “the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the [FLSA] * * * includes the liquidated damages mandated by” the FLSA. Instead of relying on *Sabhnani*, the district court relied on *United States v. Saddler*, Nos. 18-4417 & 18-4891, 2019 WL 5078845 (4th Cir. Oct. 10, 2019), a sex-trafficking case. But in *Saddler*, the government requested restitution under the alternative method for calculating restitution under the TVPA—“the gross income or value to

the defendant of the victim's services or labor." 18 U.S.C. 1593(b)(3). The applicability of the FLSA and the availability of liquidated damages thus were not at issue in that appeal and the case has no bearing here.

Finally, the district court's conclusion that liquidated damages under the FLSA are punitive in nature and are appropriate only in civil cases is incorrect. The Supreme Court has held that liquidated damages under the FLSA are compensatory, not punitive, because they are meant to compensate victims for the delay in receiving wages and overtime pay. Further, because they are intended to compensate for the delay in paying wages and overtime, liquidated damages function like prejudgment interest in FLSA cases, and courts, including this one, consistently have held that prejudgment interest is an appropriate component of criminal restitution orders.

ARGUMENT

THE DISTRICT COURT ERRED IN FAILING TO INCLUDE LIQUIDATED DAMAGES IN THE RESTITUTION AWARD

A. Standard Of Review

The Fourth Circuit "review[s] restitution order[s] generally for abuse of discretion, but 'assess[es] de novo any legal questions raised with respect to restitution issues, including matters of statutory interpretation.'" *United States v. Diaz*, 865 F.3d 168, 173 (4th Cir. 2017) (quoting *United States v. Ocasio*, 750 F.3d 399, 412 (4th Cir. 2014)).

B. The TVPA's Plain Text Mandates Liquidated Damages In This Case

1. The forced-labor provision of the TVPA prohibits, among other things, knowingly obtaining the labor or services of a person through threats or use of force, physical restraint, or abuse of law. 18 U.S.C. 1589(a). Section 1593 of the TVPA provides that courts “shall order restitution” to victims of forced labor. 18 U.S.C. 1593(a). Restitution includes “the full amount of the victim’s losses,” which is defined as those losses provided in 18 U.S.C. 2259(c)(2) (*e.g.*, medical expenses and attorney’s fees), “in addition” to “the greater of” (1) “the gross income or value to the defendant of the victim’s services or labor,” (unjust enrichment) or (2) “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.)” (opportunity loss). 18 U.S.C. 1593(b)(3). To compensate JCS for his years of forced labor, the government asked the district court to award restitution based on JCS’s opportunity loss—*i.e.*, “the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act.” *Ibid.*

The FLSA sets forth the minimum wage and overtime standards in Sections 206 and 207 of the Act and the penalties for violating those standards in Section 216 of the Act. Section 216 provides that:

Any employer who violates the provisions of section 206 or section 207 * * * *shall be* liable to the employee or

employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, *and in an additional equal amount as liquidated damages.*

29 U.S.C. 216(b) (emphasis added). The FLSA’s use of the phrase “shall be liable” and the conjunctive “and” renders liquidated damages mandatory. See, *e.g., Mayhew v. Wells*, 125 F.3d 216, 220 (4th Cir. 1997) (“FLSA plainly envisions that liquidated damages in an amount equal to the unpaid overtime compensation are the norm for violations of” the FLSA’s overtime guarantees.).

The TVPA expressly incorporates by reference all of the FLSA’s minimum wage and overtime guarantees, including the liquidated damages provision in Section 216(b). See 18 U.S.C. 1593(b)(3) (citing 29 U.S.C. 201 *et seq.*). While Sections 206 and 207 of the FLSA set forth the relevant minimum wage and overtime standards, it is Section 216(b) that “guarantees” those standards by providing the remedies for noncompliance. Had Congress intended to limit restitution for opportunity loss in the TVPA to only amounts based on the minimum standards set forth in Sections 206 and 207 of the FLSA, it could have done so. Instead, Congress broadly required that the courts order persons found guilty of violating the TVPA to compensate their victims for the value of their labor “as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*)” 18 U.S.C. 1593(b)(3). By explicitly incorporating the FLSA’s minimum wage and overtime guarantees, Section

1593(b)(3) of the TVPA mandates an award of liquidated damages in an amount equal to lost wages. The court thus erred in refusing to award JCS \$272,952.96—“an additional equal amount” to his lost wages—as liquidated damages. 29 U.S.C. 216(b).

2. This conclusion is consistent with the Second Circuit’s decision in *United States v. Sabhnani*, 599 F.3d 215, 225-230 (2d Cir. 2010), cert. denied, 562 U.S. 1194 (2011), the only court of appeals decision to address whether the TVPA’s reference to the “value of the victim’s labor under the minimum wage and overtime guarantees of the Fair Labor Standards Act” in Section 1593(b)(3) includes liquidated damages in an amount equal to lost wages. There, the court considered a restitution award that included liquidated damages to two women forced to work without pay as domestic servants and rejected the defendants’ argument that the FLSA’s liquidated damages provision did not apply to restitution awards under Section 1593. *Id.* at 259.

The *Sabhnani* court reached its conclusion by examining the plain text of the relevant statutory provisions. First, it observed that “[Section] 1593’s reference to [the] FLSA does not limit the minimum wage and overtime guarantees that determine the value of the victim’s labor solely to [Sections] 206 and 207, the specific provisions of FLSA setting out the definitions of minimum wage and overtime and when they apply.” *Sabhnani*, 599 F.3d at 259 (internal quotation

marks omitted). On the contrary, the court noted, Section 1593 refers generally to “the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the [FLSA].” *Ibid.* The court explained that “[t]his suggests that statutory provisions other than [Sections] 206 and 207,” such as the liquidated damages provision in Section 216, “are relevant in determining what FLSA’s minimum wage and overtime guarantees are.” *Ibid.* (internal quotation marks omitted).

Second, the *Sabhnani* court recognized that “[Section] 216(b)’s double damages provision is triggered automatically by a violation of” the minimum wage and overtime provisions, “so that an employer who violates these provisions ‘shall be liable to the employee or employees affected in the amount of their unpaid wages or unpaid overtime compensation . . . and in an additional equal amount as liquidated damages.’” 599 F.3d at 259 (quoting 29 U.S.C. 216(b)). The court stated that “[Section] 216(b) is explicitly and exclusively tied to violations of the minimum wage and overtime rules in [Sections] 206 and 207.” *Ibid.*

Finally, the *Sabhnani* court rejected the contention that “a liquidated damages award is not part of the value of the victim’s labor that FLSA guarantees, but is in the nature of a penalty imposed on some employers for willful

noncompliance.” 599 F.3d at 260.⁴ Rather than being a penalty, the court explained, liquidated damages are “compensation to the employee occasioned by the delay in receiving wages due caused by the employer’s violation of the FLSA.” *Ibid.* (citation omitted). The Second Circuit thus concluded that the “value of the victim’s labor” under Section 1593 “includes the liquidated damages mandated by [Section] 216 of the” FLSA. *Id.* at 259.

3. Instead of adopting the *Sabhnani* court’s reasoning, the district court relied on an unpublished decision of this Court awarding restitution in a sex-trafficking case, where liquidated damages were not at issue. See J.A. 48-49 (discussing *United States v. Saddler*, Nos. 18-4417 & 18-4891, 2019 WL 5078845 (4th Cir. Oct. 10, 2019)). The district court stated that *Saddler* was “the most

⁴ Contrary to the defendants’ argument in *Sabhnani*, liquidated damages under the FLSA are not limited to willful violations. Indeed, the Supreme Court has contrasted the provision of mandatory liquidated damages under the FLSA with the availability of liquidated damages under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 626(b), “in cases of willful violations.” See *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 125 (1985); see also *Commissioner v. Schleier*, 515 U.S. 323, 331 (1995) (“[T]he liquidated damages provisions of the ADEA were a significant departure from those in the FLSA.”). Thus, “[i]n the FLSA, liquidated damages are compensatory in nature, [whereas] the ADEA’s requirement of willfulness for an award of liquidated damages means that they serve a punitive purpose.” *Snapp v. Unlimited Concepts, Inc.*, 208 F.3d 928, 938 (11th Cir. 2000) (internal quotation marks and alteration omitted), cert. denied, 532 U.S. 975 (2001); see also Part C.1., *infra*. This is true even though the ADEA cross references the “unpaid minimum wages or * * * unpaid overtime compensation” provisions of the FLSA, 29 U.S.C. 216(b). See *Thurston*, 469 U.S. at 125.

recent [Fourth Circuit] opinion discussing Section 1593 and it doesn't suggest that liquidated damages would be included in the full amount of losses." J.A. 48-49. But in sex-trafficking cases like *Saddler*, the government typically seeks restitution based on unjust enrichment, rather than opportunity loss. See, e.g., *United States v. Williams*, 319 F. Supp. 3d 812, 817 (E.D. Va. 2018) (awarding damages using the unjust enrichment calculation of \$119,300 because it was higher than the opportunity loss calculation of \$6102 under the FLSA), aff'd in relevant part, 783 F. App'x 269, 277 (4th Cir. 2019). Consistent with that practice, the government in *Saddler* did not seek restitution for opportunity loss. Accordingly, the applicability of the FLSA and the availability of liquidated damages were not at issue in that appeal and that case has no bearing here.

The district court's decision not to award liquidated damages appears to be an outlier. Although no other circuit court has directly addressed the issue, district courts across the country, including in the Fourth Circuit, have followed the *Sabhnani* court's reasoning and awarded liquidated damages in an amount equal to lost wages in forced-labor prosecutions brought by the United States. See, e.g., *United States v. Toure*, No. 4:18-cr-00230 (N.D. Tex.), Doc. 204, at 27. Additionally, multiple district courts have awarded liquidated damages equal to the amount of lost wages in privately filed forced-labor cases brought under the TVPA's civil provision, 18 U.S.C. 1595(a). See, e.g., *Arreguin v. Sanchez*, 398 F.

Supp. 3d 1314, 1327 (S.D. Ga. 2019) (“Plaintiffs are also entitled to liquidated damages, which are double the amounts” for unpaid expenses, unpaid wages, and overtime.); *Carazani v. Zegarra*, 972 F. Supp. 2d 1, 23-24 (D.D.C. 2013) (following *Sabhnani* to hold that “[t]he FLSA liquidated damages provision applies to restitution awards under the TVPA” and awarding liquidated damages in an amount “equal to unpaid minimum wages and unpaid overtime compensation”); *Lipenga v. Kambalame*, 219 F. Supp. 3d 517, 531 (D. Md. 2016) (awarding restitution equal to lost wages and “an additional equal amount as liquidated damages”) (internal quotation marks omitted). The district court’s decision in this case should be reversed.

C. The District Court Was Incorrect In Stating That Liquidated Damages Under The FLSA Are Punitive In Nature And Apply Only In Civil Cases

The district court appears to have based its denial of liquidated damages in part on an erroneous belief that liquidated damages under the FLSA are punitive in nature and apply only in civil cases. J.A. 45, 47. But as set forth below, the Supreme Court has long held that liquidated damages under the FLSA are compensatory, not punitive, because they are meant to compensate victims for the delay in receiving the wages and overtime pay owed to them. Moreover, courts routinely include prejudgment interest—which, like FLSA liquidated damages, are intended to compensate victims for the delay in receiving funds—under other restitution statutes. Those decisions support the conclusion that liquidated

damages are part of “the full amount of the victim’s losses,” including “the value of the victim’s labor” under Section 1593.

1. *Liquidated Damages Under The FLSA Are Compensatory, Not Punitive*

It has long been established that liquidated damages under the FLSA are compensatory, rather than punitive, in nature. The Supreme Court held nearly eight decades ago that “liquidated damages for failure to pay the minimum wages under sections [206 and 207 of the FLSA] are compensation, not a penalty or punishment by the [g]overnment.” *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572, 583 (1942); see also *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 707 (1945) (The FLSA liquidated damages provision “constitutes a Congressional recognition * * * that double payment must be made in the event of delay in order to insure restoration of the worker to [a] minimum standard of well-being.”).

This is true even though the FLSA’s liquidated damages provision includes an affirmative defense for good faith. In the Portal-to-Portal Act of 1947, Congress amended the FLSA to permit courts to deny liquidated damages when “the employer shows to the satisfaction of the court that the act or omission giving rise to [the] action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation [of the FLSA].” 29 U.S.C. 260. But the Portal-to-Portal Act was merely Congress’s attempt “to provide courts with flexibility when an award of liquidated damages would be unfair to the

employer,” and “[n]othing in the statutory history of the Portal[-to-Portal] Act suggests that Congress was dissatisfied with the determination that liquidated damages were compensatory.” *Thompson v. Sawyer*, 678 F.2d 257, 281 (D.C. Cir. 1982). Indeed, since the Portal-to-Portal Act was passed, courts have continued to hold that liquidated damages under the FLSA are compensatory in nature. See, e.g., *Roy v. County of Lexington*, 141 F.3d 533, 548 (4th Cir. 1998) (“Liquidated damages [under the FLSA] are considered compensatory rather than punitive in nature.”) (internal quotation marks and citation omitted); *Chao v. Barbeque Ventures, LLC*, 547 F.3d 938, 941 (8th Cir. 2008) (“Liquidated damages are not considered punitive, but are intended in part to compensate employees for the delay in payment of wages owed under the FLSA.”) (internal quotation marks and citation omitted); *Snapp v. Unlimited Concepts, Inc.*, 208 F.3d 928, 938 (11th Cir. 2000) (“In the FLSA, liquidated damages are compensatory in nature.”).

Like plaintiffs in FLSA actions, victims of forced labor suffer additional damages arising from the employer’s delay in paying them the wages they are due. See *Sabhnani*, 599 F.3d at 260. Excluding liquidated damages—an essential part of compensation—from the restitution calculation in forced labor cases would deprive victims of being made whole.

2. *Liquidated Damages Are Appropriate In Criminal Restitution Awards*

Contrary to the district court's conclusion, liquidated damages are appropriate in criminal restitution orders. Because they are intended to compensate for the delay in paying wages and overtime, liquidated damages under the FLSA are akin to, and stand in the place of, prejudgment interest. See *Hamilton v. 1st Source Bank*, 895 F.2d 159, 166 (4th Cir. 1990) ("FLSA's liquidated damages [a]re provided in lieu of calculating the costs of delay—which is the function of prejudgment interest."). Recognizing that liquidated damages under the FLSA and prejudgment interest serve similar purposes, courts typically award one or the other, but not both. See *Brooklyn Sav. Bank*, 324 U.S. at 715-716 ("Since Congress has seen fit to fix the sums recoverable for delay" in payment of wages in FLSA cases by providing for liquidated damages, it is inappropriate to also award prejudgment interest in such cases); see also *Hamilton*, 895 F.2d at 166; *Uphoff v. Elegant Bath, Ltd.*, 176 F.3d 399, 406 (7th Cir. 1999); *Department of Labor v. City of Sapulpa*, 30 F.3d 1285, 1290 (10th Cir. 1994); cf. *Calderon v. GEICO General Ins. Co.*, 809 F.3d 111, 133 (4th Cir. 2015) (where court denied liquidated damages in an FLSA case because defendant acted in good faith, prejudgment interest was necessary to make the plaintiff whole), cert. denied, 137 S. Ct. 53 (2016).

Because liquidated damages and prejudgment interest serve similar functions, it is appropriate to look to cases analyzing whether prejudgment interest is properly included in restitution awards under federal criminal statutes. Courts consistently have held that prejudgment interest may be included in restitution awards under the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. 3663A, and the Victim and Witness Protection Act (VWPA), 18 U.S.C. 3663-3664—the primary restitution statutes for federal crimes. See *United States v. Hoyle*, 33 F.3d 415, 420 (4th Cir. 1994) (upholding the inclusion of interest in a restitution award under the VWPA), cert. denied, 513 U.S. 1133 (1995).⁵

For example, in *United States v. Qurashi*, 634 F.3d 699, 700 (2d Cir. 2011), a defendant convicted of insurance fraud argued that the district court had erred by including prejudgment interest in its restitution award. He argued that inclusion of interest “compensate[d] [the victims] for more than their actual losses.” *Id.* at 701. The court disagreed and affirmed the restitution award. *Id.* at 706. The court

⁵ The VWPA, passed in 1982, provided federal courts the ability to order restitution to victims when sentencing individuals convicted of federal crimes. In 1994 Congress passed the MVRA, 18 U.S.C. 3663A, which applies in the majority of federal crimes for which there is an identifiable victim, including crimes of violence and property crimes. Other than covering separate categories of crimes, the only substantive differences between the VWPA and the MVRA are that (1) the VWPA requires courts to consider the defendant’s economic status in ordering restitution while the MVRA does not; and (2) under the VWPA restitution is discretionary, while under the MVRA it is mandatory. See *United States v. Gordon*, 393 F.3d 1044, 1048 (9th Cir. 2004) (comparing 18 U.S.C. 3663 with 18 U.S.C. 3663A), cert. denied, 546 U.S. 957 (2005).

explained that the “purpose of restitution is essentially compensatory: to restore a victim, to the extent money can do so, to the position he occupied before sustaining injury.” *Id.* at 703 (citation omitted). The court found it “significant that the statute mandates that courts ‘order restitution to each victim in the *full amount* of each victim’s losses.’” *Ibid.* (quoting 18 U.S.C. 3644(f)(1)(A)).

Like the MVRA and VWPA, Section 1593 of the TVPA directs courts to order restitution in the “full amount of the victim’s losses,” language that “is designed to ensure that * * * victims are fully compensated for their actual loss, which includes the loss of the ability to put their money to productive use.”

Qurashi, 634 F.3d at 705.⁶ Because liquidated damages take the place of

⁶ See also *United States v. Fumo*, 655 F.3d 288, 320 (3d Cir. 2011) (“[T]he inclusion of prejudgment interest in restitution under the [MVRA] was proper because * * * [MVRA] awards are designed to compensate victims for their losses, rather than to serve retributive or deterrent purposes.”) (citation and alteration omitted); *Gordon*, 393 F.3d at 1059 (upholding inclusion of prejudgment interest in restitution award because “[p]rejudgment interest reflects the victim’s loss due to his inability to use the money for a *productive* purpose, and is therefore necessary to make the victim whole”) (citation omitted); *United States v. Shepard*, 269 F.3d 884 (7th Cir. 2001) (“Restitution [under the MVRA] should include interest to make up for the loss of the funds’ capacity to grow.”); *Government of the Virgin Islands v. Davis*, 43 F.3d 41, 47 (2d Cir. 1994), cert. denied, 515 U.S. 1123 (1995) (under the VWPA, prejudgment interest is “an aspect of the victim’s actual loss which must be accounted for in the calculation of restitution in order to effect full compensation”); *United States v. Patty*, 992 F.2d 1045, 1050 (1993) (same); *United States v. Smith*, 944 F.2d 618, 626 (9th Cir. 1991), cert. denied, 503 U.S. 951 (1992) (same); *United States v. Rochester*, 898 F.2d 971, 983 (5th Cir.), reh’g denied, 903 F.2d 826 (1990) (same).

prejudgment interest in FLSA cases, and because courts consistently have held that prejudgment interest should be included in criminal restitution orders to fully compensate victims for their losses, it follows that liquidated damages appropriately are included in restitution orders under the TVPA. The district court therefore was incorrect in stating that liquidated damages are punitive and appropriate only in civil cases.

CONCLUSION

For the reasons stated, this Court should reverse the district court's restitution award and remand with instructions to issue a new restitution award that includes liquidated damages in an amount equal to lost wages.

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Although the United States believes that this appeal can be resolved on the briefs, particularly given that the issue on appeal is straightforward and the district court's restitution error is clear, the United States will appear for oral argument if the Court deems argument would be helpful.

CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE UNITED STATES AS APPELLANT does not exceed the type-volume limitation imposed by Federal Rule of Appellate Procedure 32(a)(7)(B). The brief was prepared using Microsoft Office Word 2019 and contains 4648 words of proportionally spaced text. The typeface is 14-point Times New Roman font.

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