
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

REPLY BRIEF FOR THE UNITED STATES AS APPELLANT

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TABLE OF CONTENTS

PAGE

ARGUMENT

THE DISTRICT COURT ERRED IN FAILING TO INCLUDE LIQUIDATED DAMAGES IN THE RESTITUTION AWARD.....	4
---	---

A. <i>The FLSA’s “Minimum Wage And Overtime Guarantees” Include Liquidated Damages Under 29 U.S.C. 216(b).....</i>	4
--	---

1. <i>The TVPA’s Plain Text Mandates The Inclusion Of Liquidated Damages In Restitution Awards</i>	4
--	---

2. <i>Liquidated Damages Properly Are Awarded Under Criminal Restitution Statutes Because Such Damages Are Part Of A Victim’s Actual Losses.....</i>	7
--	---

3. <i>Edwards Fails Meaningfully To Distinguish The Award Of Prejudgment Interest In Restitution Cases Under The VWPA And MVRA</i>	9
--	---

4. <i>Including Liquidated Damages In Restitution Would Not Result In A Windfall For The Victim</i>	10
---	----

B. <i>The Only Courts To Consider The Issue Have Held That Liquidated Damages Properly Are Included In TVPA Restitution Awards</i>	12
--	----

CONCLUSION	15
------------------	----

CERTIFICATE OF COMPLIANCE

TABLE OF AUTHORITIES

CASES:	PAGE
<i>Arreguin v. Sanchez</i> , 398 F. Supp. 3d 1314 (S.D. Ga. 2019).....	14
<i>Brooklyn Sav. Bank v. O’Neil</i> , 324 U.S. 697 (1945)	7
<i>Carazani v. Zegarra</i> , 972 F. Supp. 2d 1 (D.D.C. 2013).....	14
<i>Chao v. Barbeque Ventures, LLC</i> , 547 F.3d 938 (8th Cir. 2008).....	7
<i>Doe v. Howard</i> , No. 1:11-cv-1105, 2012 WL 3834867 (E.D. Va. Sept. 4, 2012)	14-15
<i>Hamilton v. 1st Source Bank</i> , 895 F.2d 159 (4th Cir. 1990)	8
<i>Herman v. RSR Sec. Servs. Ltd.</i> , 172 F.3d 132 (2d Cir. 1999).....	13
<i>Lagasan v. Al-Ghasel</i> , 92 F. Supp. 3d 445 (E.D. Va. 2015)	14
<i>Lipenga v. Kambalame</i> , 219 F. Supp. 3d 517 (D. Md. 2016)	14
<i>Roy v. County of Lexington</i> , 141 F.3d 533 (4th Cir. 1998)	7
<i>Smith v. Edwards</i> , No. 4:15-CV-4612 (D.S.C.)	11
<i>United States v. Clark</i> , No. 3:15-cr-00093 (M.D. Fla. Aug. 28, 2018).....	13-14
<i>United States v. Hoyle</i> , 33 F.3d 415 (4th Cir. 1994), cert. denied, 513 U.S. 1133 (1995).....	9
<i>United States v. Kahoe</i> , 134 F.3d 1230 (4th Cir. 1998)	6
<i>United States v. Qurashi</i> , 634 F.3d 699 (2d Cir. 2011).....	8, 10
<i>United States v. Ritchie</i> , 858 F.3d 201 (4th Cir. 2017)	7, 11
<i>United States v. Sabhnani</i> , 599 F.3d 215 (2d Cir. 2010), cert. denied, 562 U.S. 1194 (2011).....	2-3, 12-13

CASES (continued):	PAGE
<i>United States v. Santos</i> , 553 U.S. 507 (2008).....	6
<i>United States v. Simmonds</i> , 235 F.3d 826 (3d Cir. 2000)	6
<i>United States v. Smith</i> , 944 F.2d 618 (9th Cir. 1991), cert. denied, 503 U.S. 951 (1992).....	8
<i>United States v. Toure</i> , No. 4:18-cr-00230 (N.D. Tex. 2018).....	13
 STATUTES:	
Fair Labor Standards Act,	
29 U.S.C. 201.....	2, 4, 6
29 U.S.C. 206.....	5
29 U.S.C. 207.....	5
29 U.S.C. 216(b).....	<i>passim</i>
Mandatory Victims Restitution Act,	
18 U.S.C. 3663A.....	9
18 U.S.C. 3663A(b)(1)	3, 9
Trafficking Victims Protection Act,	
18 U.S.C. 1593.....	1
18 U.S.C. 1593(a)	4
18 U.S.C. 1593(b)(1)	2
18 U.S.C. 1593(b)(2)	11
18 U.S.C. 1593(b)(3)	<i>passim</i>
18 U.S.C. 1595(a)	14
Victim and Witness Protection Act,	
18 U.S.C. 3663-3664	9
18 U.S.C. 3664(j)(2)	11
18 U.S.C. 3664(j)(2)(A).....	11
18 U.S.C. 3664(j)(2)(B).....	11

IN THE UNITED STATES COURT OF APPEALS
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No. 19-4903

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

REPLY BRIEF FOR THE UNITED STATES AS APPELLANT

In this forced-labor case, defendant-appellee Bobby Paul Edwards enslaved an intellectually disabled African-American man, JCS, for more than five years, requiring him to work without pay in Edwards’s restaurant seven days a week for more than 100 hours per week. As the United States argued in its opening brief, the district court erred in failing to include liquidated damages in the restitution award. The plain text of the restitution provision of the Trafficking Victims Protection Act (TVPA), 18 U.S.C. 1593, provides that restitution includes the “full amount of the victim’s losses,” and as relevant here, defines those losses 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.).” 18 U.S.C. 1593(b)(1) and (3). Section 216(b) of the Fair Labor Standards Act (FLSA) “guarantees” that employers comply with the minimum wage and overtime standards found in Sections 206 and 207 of the Act by requiring employers who violate those provisions to pay “unpaid minimum wages,” “unpaid overtime compensation,” and “an additional equal amount as liquidated damages.” Thus, under the plain language of the TVPA and FLSA, 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, 259-260 (2d Cir. 2010), cert. denied, 562 U.S. 1194 (2011), the only circuit court decision to address this issue, and with the decisions of multiple district courts. Further, including liquidated damages in TVPA restitution awards is appropriate because, like prejudgment interest, liquidated damages are meant to compensate victims for the delay in receiving wages and overtime pay, and this Court and others consistently have held that prejudgment interest is an appropriate component of criminal restitution awards.

Edwards urges the Court to uphold the district court's restitution award. He argues that the liquidated damages provision of Section 216(b) only “applies to civil actions brought by employees against their employers, not to criminal

prosecutions by the government.” Resp. Br. 2.¹ He therefore argues that restitution in criminal forced-labor prosecutions under the TVPA should be based only on the minimum wage and overtime standards set forth in Sections 206 and 207 of the FLSA and that including liquidated damages in the restitution award would compensate JCS for more than his “actual losses.” Resp. Br. 12-13. According to Edwards, the circuit court decisions cited by the government upholding the inclusion of prejudgment interest in criminal restitution awards are inapposite because “they are property loss cases covered by 18 U.S.C. [Section] 3663A(b)(1).” Resp. Br. 17-18. Finally, Edwards argues that the Second Circuit’s *Sabhnani* decision was wrongly decided and that civil actions under the TVPA where liquidated damages were awarded as part of restitution are irrelevant. Resp. Br. 14-17. For the reasons set forth in the government’s opening brief and below, Edwards’s arguments fail.

¹ This brief uses the following abbreviations: “U.S. Br. ___” refers to page numbers in the United States’ opening brief filed with this Court; “Resp. Br. ___” refers to page numbers in Edwards’s opposition brief filed with this Court; and “J.A. ___” refers to page numbers of the Joint Appendix filed with this Court.

ARGUMENT

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

A. The FLSA's "Minimum Wage And Overtime Guarantees" Include Liquidated Damages Under 29 U.S.C. 216(b)

1. The TVPA's Plain Text Mandates The Inclusion Of Liquidated Damages In Restitution Awards

As the government argued in its opening brief (U.S. Br. 8-10), the plain language of the TVPA's restitution provision mandates liquidated damages in this case. Section 1593(b)(3) 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). Accordingly, the plain language of the TVPA and FLSA required that JCS be

awarded liquidated damages in an amount equal to his unpaid minimum wages and overtime.

Edwards argues that this reading is overbroad. Instead, he posits that the relevant “guarantees” of the FLSA include only the minimum wage and overtime standards found in Sections 206 and 207 of the Act. Resp. Br. 12, 16. Relatedly, he argues that such guarantees are *enforceable* only through the FLSA’s criminal and civil enforcement schemes in Section 216, and not through Section 1593 of the TVPA. Resp. Br. 12.

Edwards is incorrect on both points. As explained in the government’s opening brief (U.S. Br. 9), while Sections 206 and 207 of the FLSA set forth the relevant minimum wage and overtime standards, Section 216(b) *guarantees* those standards by providing what amount is owed where, as here, an employer initially fails to comply with those standards. Edwards cites no authority for his contention that the FLSA’s minimum wage and overtime “guarantees” include only the amounts owed under Sections 206 and 207. As explained in the government’s opening brief, if Congress had intended to limit restitution under the TVPA to the standards set forth in Sections 206 and 207 of the FLSA, it could have done so. U.S. Br. 9. Instead, Congress broadly required that 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 expressly incorporating the FLSA’s “minimum wage and overtime guarantees” into Section 1593(b)(3) of the TVPA, Congress sought to ensure that victims of forced labor would be able to obtain the same relief as employees suing under the FLSA’s civil provisions.

Edwards references (Resp. Br. 10, 13) the “rule of lenity,” a canon of statutory construction providing that ambiguous criminal statutes generally should be construed in favor of the defendant. See *United States v. Santos*, 553 U.S. 507, 514 (2008). But the rule of lenity does not apply unless a “grievous ambiguity or uncertainty * * * remains even after” the court has “looked to the language, structure, and legislative history of the statute.” *United States v. Kahoe*, 134 F.3d 1230, 1234 (4th Cir. 1998) (internal quotation marks and citations omitted). As discussed *supra*, the text of the TVPA unambiguously provides that restitution under Section 1593(b)(3) includes liquidated damages in an amount equal to unpaid minimum wages and overtime. Because the statutory text is unambiguous, the “rule of lenity” does not apply. See *United States v. Simmonds*, 235 F.3d 826, 833 (3d Cir. 2000) (declining to apply the rule of lenity to a criminal restitution statute where “[b]oth the statutory language and the legislative history of the [statute] clearly indicate Congress’s intent to make victims of crime whole, to fully

compensate these victims for their losses, and to restore these victims to their original state of well-being”).

2. *Liquidated Damages Properly Are Awarded Under Criminal Restitution Statutes Because Such Damages Are Part Of A Victim’s Actual Losses*

Edwards argues that he is not required to pay restitution in an amount greater than “the actual losses [that] he caused.” Resp. Br. 13 (quoting *United States v. Ritchie*, 858 F.3d 201, 215 (4th Cir. 2017)). He argues that these “actual losses” include only JCS’s lost minimum wages and overtime pay but do not include liquidated damages. Resp. Br. 13.

This argument fails to recognize that liquidated damages under the TVPA and FLSA are compensatory in nature, and therefore are part of the victim’s “actual losses.” See *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). As set forth in the government’s opening brief (U.S. Br. 17), under the TVPA and FLSA, liquidated damages take the place of prejudgment interest. See *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 715 (1945) (“[Section

216(b)] authorizes the recovery of liquidated damages as compensation for delay in payment of sums due under the [FLSA].”); *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.”). And courts repeatedly have held that, with respect to criminal restitution statutes, “[f]oregone interest is one aspect of the victim’s *actual loss*.” *United States v. Smith*, 944 F.2d 618, 626 (9th Cir. 1991) (emphasis added), cert. denied, 503 U.S. 951 (1992); see also *United States v. Qurashi*, 634 F.3d 699, 705 (2d Cir. 2011) (“[P]rejudgment interest award * * * 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.”) (emphasis added).

For more than five years, from approximately September 2009 to October 2014, Edwards forced JCS to work without pay seven days a week, for more than 100 hours per week. J.A. 19, 29-30, 32. Basing restitution only on the wages JCS would have earned had he been paid in a timely manner years ago would fail to compensate him for his “actual losses” because it would not account for the significant delay in payment. By incorporating into the TVPA the FLSA’s minimum wage and overtime guarantees, including Section 216(b)’s requirement that employers who timely fail to pay the amounts due under Sections 206 and 207 also pay liquidated damages, Congress sought to make victims of forced labor

whole by ensuring that they receive compensation for their losses caused by the delay in payments.

3. *Edwards Fails Meaningfully To Distinguish The Award Of Prejudgment Interest In Restitution Cases Under The VWPA And MVRA*

In its opening brief, the government explained that courts regularly order prejudgment interest as part of criminal restitution orders under the Victim and Witness Protection Act (VWPA), 18 U.S.C. 3663-3664, and the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. 3663A. See U.S. Br. 18-20. The government cited cases from seven circuits, including this one, where courts have awarded prejudgment interest under these criminal restitution statutes. See U.S. Br. 18-19 & n.6 (citing, among other cases, this Court’s decision in *United States v. Hoyle*, 33 F.3d 415 (4th Cir. 1994), cert. denied, 513 U.S. 1133 (1995)).

Because liquidated damages stand in the place of prejudgment interest in TVPA forced-labor cases (U.S. Br. 17; see also section A.2, *supra*), these cases demonstrate that it is appropriate to include liquidated damages in TVPA restitution awards.

Edwards asserts that these cases are “inapposite” because they “are property loss cases covered by 18 U.S.C. [Section] 3663A(b)(1).” Resp. Br. 17-18. But Edwards fails to explain why this distinction should matter. In several of these cases, the “property” at issue was cash. See, *e.g.*, *Hoyle*, 33 F.3d at 420 (defendant

falsified loan applications to obtain low-interest student loans); *Qurashi*, 634 F.3d at 700 (defendant faked brother's death to obtain millions of dollars in life insurance proceeds). Edwards does not explain why Congress would have chosen to include compensation for delay in payment in restitution for victims of crimes covered under the VWPA and MVRA but not for victims of forced labor. The fact that courts regularly include interest in criminal restitution awards undermines Edwards's argument that Congress did not intend that liquidated damages be included in restitution awards under the TVPA.

4. *Including Liquidated Damages In Restitution Would Not Result In A Windfall For The Victim*

Nor is Edwards correct that awarding liquidated damages in this case would permit JCS to obtain a "windfall." Resp. Br. 14. By incorporating the minimum wage and overtime guarantees of the FLSA into Section 1593(b)(3), Congress provided a specific formula for courts to use in determining restitution for forced-labor victims who did not receive—sometimes for years—wages that were due to them. Edwards does not dispute that an employee suing under Section 216(b) of the FLSA would be entitled to back pay and an additional equal amount as liquidated damages. Edwards fails to explain why Congress would intend for FLSA claimants to recover liquidated damages, but the same kind of damages would constitute a "windfall" for victims of forced labor. In any case, if liquidated damages are a "windfall," they are one that Congress has mandated.

Edwards references the victim's civil suit, *Smith v. Edwards*, No. 4:15-CV-4612, pending in the District of South Carolina. Resp. Br. 12. Edwards fails to note that he has been dismissed as a defendant in that case, and it remains pending only against Edwards's brother, Ernest Edwards, and Half Moon Foods, Inc., the corporation that owned the J&J Cafeteria. See *Smith v. Edwards*, Doc. 16; see also J.A. 46-47 (Sentencing Tr.).

Though Edwards does not expressly raise in his brief the possibility of JCS recovering all of his losses in the form of restitution in this case and then again in his civil action, the government notes that such double recovery would be foreclosed by statute. The TVPA mandates that “[a]n order of restitution under [the TVPA] shall be issued and enforced in accordance with [18 U.S.C.] 3664.” 18 U.S.C. 1593(b)(2). Section 3664 in turn provides for an offset of restitution for any amount that the victim recovers as compensatory damages for the same loss in federal or state civil proceedings. 18 U.S.C. 3664(j)(2)(A) and (B). Thus, if JCS recovers some of his losses in his civil lawsuit, his restitution award would be offset by the amount of that recovery. See *Ritchie*, 858 F.3d at 215-216.²

² At sentencing, Edwards's attorney argued that “if [JCS is] going to recover [in the civil suit], he really can't double dip over on this side.” J.A. 47. As noted above, such “double dipping” is foreclosed under 18 U.S.C. 3664(j)(2).

B. The Only Courts To Consider The Issue Have Held That Liquidated Damages Properly Are Included In TVPA Restitution Awards

As set forth in the government’s opening brief (U.S. Br. 10-12), the only court of appeals to address the issue held that the TVPA’s reference to the “value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act,” 18 U.S.C. 1593(b)(3), includes liquidated damages under Section 216(b). In *United States v. Sabhnani*, 599 F.3d 215, 225-230 (2d Cir. 2010), cert. denied, 562 U.S. 1194 (2011), the Second Circuit considered a restitution award that included liquidated damages to two women forced to work without pay as domestic servants. Relying on the statute’s plain text and the fact that liquidated damages are compensatory in nature, the court rejected the defendants’ argument that the FLSA’s liquidated damages provision did not apply to restitution awards in TVPA forced-labor cases. *Id.* at 259-260.

Edwards states that the *Sabhnani* decision “fails to recognize the difference between the guarantees contained in [Sections] 206 and 207 [of the FLSA] and the damages that an employee can pursue in a civil action brought under [Section] 216(b).” Resp. Br. 16. But the *Sabhnani* court squarely addressed this argument, explaining that Section 1593 of the TVPA refers generally to “the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the [FLSA].” *Sabhnani*, 599 F.3d at 259. 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).³

Edwards states that the government cited only one TVPA criminal case other than *Sabhnani* where a court has awarded liquidated damages as part of restitution, and takes issue with the government not having provided a “string citation” to other such criminal cases. Resp. Br. 14-15 (referring to the government’s citation of *United States v. Toure*, No. 4:18-cr-00230 (N.D. Tex. 2018)).⁴ In most of the forced-labor cases the Department has prosecuted, restitution has not been contested, and therefore there is no written order reflecting how restitution was calculated. Even so, where liquidated damages have been challenged, courts have awarded liquidated damages under Section 216(b). See, e.g., *United States v.*

³ Edwards also states that the *Sabhnani* court erred by relying on *Herman v. RSR Sec. Servs. Ltd.*, 172 F.3d 132, 142 (2d Cir. 1999), a civil case, to hold that liquidated damages are intended to compensate for the delay in receiving wages caused by an employer’s violation of the FLSA. Resp. Br. 16. But Edwards *admits* in his brief that FLSA liquidated damages are compensatory in nature. See, e.g., Resp. Br. 13. Because they are compensatory, they are part of the “actual damage [Edwards] caused.” Resp. Br. 16. See section A.2, *supra*.

⁴ Edwards notes that the *Toure* decision currently is on appeal to the Fifth Circuit. Resp. Br. n.4. But the issue in this case—whether restitution under the TVPA includes liquidated damages under 29 U.S.C. 216(b)—is not at issue in that appeal. See *United States v. Toure*, No. 19-10505 (5th Cir.).

Clark, No. 3:15-cr-00093, Doc. 144, at 4 (M.D. Fla. Aug. 28, 2018). Indeed, the government is unaware of any court other than the district court in this case that has held that the TVPA's reference to "the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act" does *not* include liquidated damages under Section 216(b).

As the government detailed in its opening brief (U.S. Br. 13-14), multiple district courts also 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). Edwards attempts to discount the relevance of these cases, arguing that "the fact that an individual has the right to bring a civil lawsuit and collect damages has little bearing on the criminal penalty of restitution." Resp. Br. 17. But the TVPA does not define restitution one way for criminal cases and another way for civil cases. Rather, the district courts that have awarded liquidated damages in civil TVPA cases have relied on the same provisions of the TVPA and FLSA that the government relies on here. See *Arreguin v. Sanchez*, 398 F. Supp. 3d 1314, 1326-1327 (S.D. Ga. 2019) (relying on 18 U.S.C. 1593(b)(3) and 29 U.S.C. 216(b) to award liquidated damages to victim of forced labor); *Lipenga v. Kambalame*, 219 F. Supp. 3d 517, 530-531 (D. Md. 2016) (same); *Lagasan v. Al-Ghasel*, 92 F. Supp. 3d 445, 457 (E.D. Va. 2015) (same); *Carazani v. Zegarra*, 972 F. Supp. 2d 1, 23 (D.D.C. 2013) (same); *Doe v. Howard*, No. 1:11-cv-1105, 2012

WL 3834867, at *5-6 (E.D. Va. Sept. 4, 2012) (same). These courts correctly found that the TVPA's plain language incorporates *all* of the minimum wage and overtime guarantees of the FLSA, including the liquidated damages provision in Section 216(b). There simply is no text-based justification for calculating restitution in criminal prosecutions differently from restitution in civil actions.

CONCLUSION

For the reasons stated in this brief and in the government's opening brief, 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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CERTIFICATE OF COMPLIANCE

I certify that the attached REPLY 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 3,330 words of proportionally spaced text. The typeface is 14-point Times New Roman font.

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