No. 22-8080

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CARLIE SHERMAN, *et al.*,

Plaintiffs-Appellants

v.

TRINITY TEEN SOLUTIONS, INC., *et al.*,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

THE HONORABLE JUDGE SCOTT W. SKAVDAHL, No. 2:30-CV-00215-SWS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES: **PAGE**

STATUTES:

STATUTES (continued): **PAGE**

LEGISLATIVE HISTORY:

RULES:

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in this appeal, which concerns the interpretation of the forced labor provision of the Trafficking Victims Protection Act (TVPA), 18 U.S.C. 1589. The United States has both criminal and civil enforcement authority for the TVPA. See 18 U.S.C. 1584-1594 (authorizing criminal prosecutions for violations of the TVPA); 18 U.S.C. 1595A (permitting the Attorney General to seek to enjoin conduct that violates the TVPA, among other laws). Private parties also may seek to vindicate TVPA rights

through the statute's civil remedy provision, 18 U.S.C. 1595, which incorporates the legal standards governing criminal liability.

Because of the United States' interest in the proper interpretation of 18 U.S.C. 1589, the United States files this brief under Federal Rule of Appellate Procedure 29(a) to set forth its views. The United States likewise has filed amicus briefs in other TVPA cases involving Section 1589's applicability and scope. See *Burrell* v. *Staff*, No. 21-2846, 2023 WL 1811015 (3d Cir. Feb. 8, 2023); *Barrientos* v. *CoreCivic, Inc.*, 951 F.3d 1269 (11th Cir. 2020) (No. 18-15081).

STATEMENT OF THE ISSUE

Plaintiffs are former participants in a residential program for "troubled teens" who allege they were compelled to work under dire conditions in violation of the TVPA's forced labor provision, 18 U.S.C. 1589. That provision proscribes the procurement of a person's labor or services through force, threats, and certain other statutorily prohibited means. The district court held that plaintiffs could not establish commonality for purposes of class certification under Federal Rule of Civil Procedure 23(a)(2) because the "scope of consent" and expectations of each teen's parent or guardian regarding the program are central issues that must be assessed on an individualized basis. The United States addresses the following question and takes no position on any other issue presented in this appeal:

Whether the district court erred in holding that the scope of parental consent is relevant in analyzing plaintiffs' forced labor claim.

STATEMENT OF THE CASE

1. Relevant Factual Background [1]

Plaintiffs are young women who participated in a residential program for "troubled teens" that defendant Trinity Teen Solutions (TTS) operates at Trinity Ranch in Park County, Wyoming. See App. Vol. I, at 4-6.[2] Plaintiffs allege that TTS and its owners obtained "cheap and easily exploited labor" by inducing parents to send their teenagers to Trinity Ranch for "cutting edge residential treatment, therapy, and continuing education." App. Vol. I, at 6. Once at Trinity Ranch plaintiffs say that TTS restricted their communications with family and held them in rustic dormitories that lacked amenities such as indoor plumbing. App. Vol. I, at 12, 23. Plaintiffs allege that they received inadequate therapy and schooling, and that their days were filled with physically demanding agricultural and ranch-upkeep tasks at Trinity Ranch, as well as physical labor at other ranches, local church facilities, and a coffee shop. App. Vol. I, at 24-27, 36-44. Plaintiffs

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[1] We take the allegations in the complaint as true, as required at the Federal Rule of Civil Procedure 12(b)(6) stage.

[2] "App. Vol. __, at __" refers to the volume and page number of the Appendix. "Doc. __" refers to the document and page number on the district court docket, *Sherman, et al.* v. *Trinity Teen Solutions, Inc., et al.*, No. 2:20-cv-220 (D. Wyo.).

allege that a "typical day" included "ten to twelve hours of labor." App. Vol. I, at 50.

Plaintiffs allege that TTS demanded their obedience in exchange for "slightly" improved living conditions. App. Vol. I, at 23. They say they also had to perform "all chores and ranch duties" in order to progress through and be discharged from the program. App. Vol. I, at 23. Plaintiffs also claim that they were "subjected to or threatened with food and sleep deprivation, physical punishment, emotional abuse, and humiliation," including practices like being leashed to livestock or each other, exercising in dangerous outdoor conditions, and forced silence. App. Vol. I, at 11.

2. Relevant Proceedings

Plaintiffs filed the operative complaint in the District of Wyoming on behalf of a class of former TTS participants. See generally App. Vol. I, at 1-69. The complaint contains three counts under the TVPA—which is civilly enforceable against perpetrators or knowing beneficiaries of trafficking ventures, 18 U.S.C. 1595(a)—as well as civil RICO and negligence counts. App. Vol. I, at 59-67. Count 1 alleges, in relevant part, that TTS violated the forced labor provision, 18 U.S.C. 1589(a), by knowingly providing or obtaining plaintiffs' labor by means or threats of force, physical restraint, or serious harm, or by a scheme, plan, or pattern intended to cause plaintiffs to believe that if they did not provide labor, they would

suffer serious harm or physical restraint. App. Vol. I, at 59-60. Count 2 alleges that TTS violated 18 U.S.C. 1589(b) by knowingly (or with reckless disregard) benefitting from a forced labor venture within the meaning of 18 U.S.C. 1589(a). App. Vol. I, at 60-61. Count 3 alleges that TTS knowingly recruited, harbored, transported, provided, or obtained plaintiffs to perform forced labor in violation of 18 U.S.C. 1590(a). App. Vol. I, at 61-62.

TTS moved to dismiss on several grounds, including that plaintiffs failed to state a claim for forced labor. Doc. 123. In relevant part, they argued that plaintiffs' parents "consented to [plaintiffs'] admission to and ongoing treatment at TTS," including exercise and ranch work, and that TTS, standing in the parents' shoes, committed at most abuse (not forced labor) by compelling plaintiffs to perform tasks. Doc. 123, at 28-30. The district court allowed the forced labor claims to proceed, holding that the pleadings permitted an inference that plaintiffs' parents did not consent to labor beyond "good old-fashioned ranch work" or to the use of threats or punishments. Doc. 157, at 10. The court dismissed plaintiffs' RICO and negligence claims. Doc. 157, at 13-25.

Plaintiffs subsequently moved for certification of a class of plaintiffs and similarly situated teenagers who attended TTS and performed manual labor without pay. App. Vol. II, at 137. The district court denied the motion, holding that plaintiffs met the numerosity and adequacy of representation requirements of

Federal Rules of Civil Procedure 23(a)(1) and (a)(4), but failed to establish the commonality or typicality requirements of Rules 23(a)(2) and (a)(3). See generally App. Vol. VI, at 1136-1152.

In particular, the court held that plaintiffs could not establish commonality because their forced labor claims "demand a fact-specific examination" that includes the "core issues" of "the scope of consent given by each parent/guardian and the extent of each parent/guardian's knowledge of what labor/chores would be expected of their child." App. Vol. VI, at 1142 (citing 29 U.S.C. 213(c)(1)(B)-(C) (permitting certain children under the applicable age of legal employment to perform nonhazardous agricultural work outside school hours in limited circumstances)). The court also held that "the need for particularized inquiries" into each class member's "injuries/damages" was an "individualized" issue not capable of common resolution. App. Vol. VI, at 1144-1148. Because the typicality analysis "largely conform[s] to the commonality analysis," the court held that plaintiffs also failed to establish typicality. App. Vol. VI, at 1148-1149. For the same reasons, the court held that plaintiffs failed to meet Rule 23(b)(3)'s requirements that common questions of law or fact "predominate" over individual ones and that a class action be a "superior" method for adjudicating the controversy. App. Vol. VI, at 1150-1151.

Plaintiffs petitioned this Court under Federal Rule of Civil Procedure 23(f) for interlocutory review of the order denying class certification, arguing in relevant part that parental consent is not pertinent to whether a violation of Section 1589 occurred. App. Vol. VI, at 1168-1170. This Court granted the petition, and this appeal followed. App. Vol. VI, at 1205-1206.

SUMMARY OF ARGUMENT

The district court's holding that the scope of parental consent is significant in evaluating plaintiffs' forced labor claim was error because it has no basis in statute, legislative history, or case law. Moreover, this holding contravenes precedent establishing that parental consent is not a defense to otherwise criminal conduct. The correct analysis under Section 1589 focuses on whether a plaintiff has alleged that the defendant used statutorily prohibited means to obtain a victim's labor. The existence of a parent-child, guardian-child, or other legal relationship sometimes may be relevant to answering that question. A parent or guardian does not, for example, violate Section 1589 by requiring a child to perform routine household chores. But beyond establishing that a particular legal relationship exists (such as a guardianship or *in loco parentis* relationship), parental consent has no further relevance under Section 1589. In particular, a parent's consent cannot justify a defendant's use of criminally prohibited means to secure a child's labor or services.

ARGUMENT

THE SCOPE OF PARENTAL CONSENT IS NOT RELEVANT TO WHETHER DEFENDANTS VIOLATED SECTION 1589

A. The TVPA's Forced Labor Provision, 18 U.S.C. 1589

The TVPA's forced labor provision criminalizes using any of several statutorily prohibited means in order to "provide[] or obtain[] the labor or services of a person." 18 U.S.C. 1589(a). The statute contains four categories of prohibited means: (1) force, physical restraint, or threats of force or physical restraint; (2) "serious harm" or threats of serious harm; (3) abuse or threatened abuse of legal process; and (4) a "scheme, plan, or pattern intended to cause [some] person to believe" that failing to perform labor will result in serious harm or physical restraint. 18 U.S.C. 1589(a)(1)-(4). Victims may bring civil suit in federal district court against perpetrators and knowing beneficiaries of their labor. 18 U.S.C. 1595.

The forced labor provision was designed to encompass a wide range of coercive conduct. Congress enacted the statute partly in response to the Supreme Court's decision in *United States* v. *Kozminski*, 487 U.S. 931 (1988), which interpreted 18 U.S.C. 1584's prohibition against "involuntary servitude" to encompass only servitude by "physical or legal coercion." 22 U.S.C. 7101(b)(13) (congressional findings supporting the TVPA's passage); see H.R. Rep. No. 939, 106th Cong., 2d Sess. 100-101 (2000) (Conf. Rep.). *Kozminski* explained that

Section 1584's roots included a statute prohibiting the holding and trading of enslaved people and the "[p]adrone statute," which criminalized the practice of sending foreign children—often with at least the purported consent of their parents—to the United States to earn money as street performers or beggars for "padrones," whose service they could not escape. 487 U.S. at 945-948. Upon considering this history, the *Kozminski* Court held that Section 1584's "reach should be limited to cases involving the compulsion of services by the use or threatened use of physical or legal coercion." *Id.* at 948. Absent a specific directive from Congress, the Court declined to adopt a broader construction of "involuntary servitude," *i.e.*, "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." *Id.* at 948-949; see also 22 U.S.C. 7101(b)(13).

When Congress passed Section 1589, it intended to reach "the increasingly subtle methods" of perpetrating "modern-day slavery, such as where traffickers threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence." Conf. Rep. at 101. Section 1589 was designed as a broad tool to "combat severe forms of worker exploitation that do not rise to the level of involuntary servitude as defined in *Kozminski*." *Ibid.*; see also *United States* v. *Kaufman*, 546 F.3d 1242,

1261 (10th Cir. 2008). Like its predecessor Section 1584, however, Section 1589 also was meant to reach scenarios in which vulnerable parents consented or acquiesced to their children's forced labor. See 22 U.S.C. 7101(b)(4) (legislative findings for Section 1589 explaining that targeted trafficking practices included "buy[ing] children from poor families and sell[ing] them" into "various types of forced or bonded labor").

B. The District Court Erroneously Held That The Scope Of Parental Consent Is A "Core Issue" In Assessing Plaintiffs' Forced Labor Claim

In determining whether to certify a plaintiff class in this case, the district court incorrectly held that "the scope of consent given by each parent/guardian and the extent of each parent/guardian's knowledge of what labor/chores would be expected of their child" was a "core issue[]" in the case that required individualized analyses. App. Vol. VI, at 1142. The premise of that holding seems to be that if plaintiffs' parents had authorized defendants to engage in conduct that would otherwise violate Section 1589, that consent would provide a defense. But nothing in Section 1589, its legislative history, or the case law interpreting it suggests that parents can consent to the forced labor of their children, *i.e.*, compelling a child to perform labor or services through force, threats, or other statutorily prohibited means. And that is so despite the fact that, as discussed in Part B.2, *infra*, the existence of a parental relationship (like certain other legal

relationships) may sometimes be relevant to determining whether a violation of Section 1589 has occurred.

1. Section 1589 is broad and clear, plainly reaching "whoever" coerces the "labor or services of a person" by any prohibited means. 18 U.S.C. 1589(a). Congress did not limit Section 1589's applicability to specific classes of perpetrators or victims. See *Barrientos* v. *CoreCivic, Inc.*, 951 F.3d 1269, 1277 (11th Cir. 2020) (holding that term "whoever" is broad and "presumptively" reached the "private, for-profit government contractor" named as a defendant in that case). And the statute "contains no exception for parents or other close relatives." *United States* v. *Toviave*, 761 F.3d 623, 626 (6th Cir. 2014). Thus, even "a parent or guardian can commit forced labor, and is not immunized by that status." *Ibid.* It would defy logic to suggest that a parent could be held liable under the statute for using prohibited means to obtain their child's labor but that a third party, with that same parent's consent, freely could use prohibited means to force the child to work.

Nor is parental consent relevant to the other principal element of Section 1589, which focuses on a defendant's knowing use (or threatened use) of proscribed means—*i.e.*, force, restraint, abuse of law or process, or serious harm—to procure a person's labor. 18 U.S.C. 1589(a)(1)-(4); see also *Menocal* v. *GEO Grp., Inc.*, 882 F.3d 905, 917-918 (10th Cir.) (TVPA claims require consideration

of whether defendants knowingly obtained labor "by means of" prohibited methods), cert. denied, 139 S. Ct. 143 (2018). As relevant here, the statute prohibits the procurement of a person's labor or services by means of "force, threats of force, physical restraint, or threats of physical restraint." 18 U.S.C. 1589(a)(1). It also prohibits procurement of a person's labor by means of "serious harm or threats of serious harm," or a "scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint." The statute defines "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). Parental consent is not a defense where a defendant (even if that defendant is the parent, see *Toviave*, 761 F.3d at 626) has used one of these prohibited means—force, physical restraint, serious harm, or threats of the same—to cause a child to perform labor or services within the statute's reach. Parental consent, therefore, is not an element of a plaintiff's showing, nor is it a statutory defense.[3]

[3] The district court's citation to specific child labor exemptions in the Fair Labor Standards Act, 29 U.S.C. 213(c)(1)(B)-(C), does not counsel otherwise. The

Indeed, it would make little sense if parental consent could defeat a forced labor claim. As described in Part A, *supra*, Congress enacted the forced labor provision post-*Kozminski* to broaden the scope of coercive practices proscribed in the involuntary servitude provision, Section 1584—a statute that itself captured situations where parents relinquished their children to third parties who held them in servitude. Recognizing parental consent as a defense to a forced labor claim would conflict with Congress's observation in enacting the TVPA that one of the trafficking practices it sought to address was the buying and selling of children into forced labor. 22 U.S.C. 7101(b)(4).

2. No court of appeals has squarely addressed whether parental consent is a defense to a forced labor claim under Section 1589, but the Sixth Circuit answered this question in the negative as to involuntary servitude under Section 1584. In *United States* v. *King*, the Sixth Circuit considered such charges against leaders of a religious commune who required members' children to work through beatings and fear. 840 F.2d 1276 (6th Cir.), cert. denied, 488 U.S. 894 (1988). The court rejected the defendants' claim that parental consent shielded them from

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cited provisions permit certain minors under the lawful age of employment to perform non-hazardous agricultural work outside of school hours—if, for example, they have parental consent—without running afoul of the general prohibition on child labor. But they say nothing about whether a child may be caused to work by statutorily prohibited means. The mere fact that a child (or adult) may work in a certain context does not mean that they may be forced to do so through a defendant's unlawful acts.

prosecution, citing in relevant part the legislative history and purpose of Section 1584. *Id*. at 1282-1283. Invoking the Thirteenth Amendment, the court also reasoned that "[t]he Western legal tradition prohibits contracts consenting in advance to suffer assaults and other criminal wrongs." *Id.* at 1283. Further, "[o]ur law views the child as an individual with the dignity and humanity of other individuals," and "the parent-child relationship as one of reciprocal obligation and mutual respect," in which "bondage by parental consent" has no place. *Ibid.*

The Sixth Circuit relied on similar reasoning in *United States* v. *Djoumessi* to reject defendants' arguments that they were insulated from criminal liability because their young victim, whom they held as a domestic servant, came to them through a Cameroonian tradition in which poor families entrust their children to wealthier ones. 538 F.3d 547, 553 (6th Cir. 2008), cert. denied, 555 U.S. 1119 (2009). Although *King* and *Djoumessi* did not address the forced labor provision specifically, their logic rests in the linked histories of Sections 1584 and 1589 and in principles of consent and familial relations that apply to both statutes.

3. To be sure, the fact that parental consent to a child's forced labor is not a defense to a forced labor claim does not mean that the existence of a parent-child or guardian-child relationship has no bearing on the analysis whatsoever. The existence of those or other legal relationships may be relevant to aspects of the Section 1589 analysis, especially whether the relevant activity qualifies as "labor

or services" within the scope of the statute. The Sixth Circuit's decision in *Toviave* illustrates the point. There, the court reversed the forced labor conviction of a defendant who 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 chores," such as doing the laundry and serving food to guests. *Toviave*, 761 F.3d at 624.

The Sixth Circuit in *Toviave* observed that if making children do household chores constituted forced labor, then "most responsible American parents and guardians" would be guilty because "[a]n American parent has always had the right to make his child perform household chores." 761 F.3d at 625. The court declined to 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 so holding, however, the court observed (as noted above—see pp. 5-6, *supra*) that parents or guardians nevertheless fall within Section 1589's reach and may be held criminally liable where their conduct violates the statute's plain text, offering the example of a parent who puts their child to work in "[a] forced-labor sweatshop." *Id.* at 626. For this proposition the court relied on *King*'s holding that "parental acquiescence did not immunize [defendants] from liability" under Section 1584. *Ibid.* *Toviave* thus confirms that the forced labor provision otherwise applies to parents and guardians vis-à-vis their children, but that this

relationship may affect whether the performance of work falls within the statute's scope or instead constitutes everyday household chores that a parent or guardian can require from a child. And *Toviave* implicitly rejects any argument that parental consent is a cognizable defense to a Section 1589 claim.

At bottom, therefore, *Toviave* instructs courts to consider the context and nature of the work at issue in determining whether a child has performed labor or services that fall within Section 1589's reach or whether, instead, they are performing ordinary household duties that a parent or guardian can demand from their child. Other legal relationships may likewise be relevant to the Section 1589 analysis. Cf. *Barrientos*, 951 F.3d at 1278 (holding that the forced labor provision applies to immigration detainees' work to facilitate operation of private detention facility but that this does not disturb "longstanding requirements that detainees or inmates be required to perform basic housekeeping tasks"). But *Toviave* also confirms—and this Court also should make clear—that where a victim has been forced to provide labor or services that fall within the statute's scope through statutorily prohibited means, parental consent to that forced labor is not a defense.

4. In this case, plaintiffs allege that their parents or guardians sent them to defendants' residential treatment facility. That created the sort of legal relationship that may in some circumstances be relevant to the Section 1589 analysis. Defendants would not, for example, have violated Section 1589 by compelling

plaintiffs to perform ordinary chores of the sort that *Toviave* recognized can be required by a parent or someone acting *in loco parentis*. But requiring such routine chores—in the context of an *in loco parentis* relationship of the sort present here—would not have violated Section 1589 even if defendants had failed to secure specific parental consent for those chores or the forms of discipline used to require them. Such conduct might violate the facility's contracts with the parents or give rise to other legal liability, but it would not constitute forced labor.

Conversely, if defendants used statutorily proscribed means to compel plaintiffs to engage in work that exceeded the scope of such chores and instead constituted labor or services within the meaning of Section 1589—by, for example, using threats of serious harm to induce plaintiffs to work 10-to-12-hour days under the conditions plaintiffs have alleged here—then parental consent would provide no defense. Accordingly, the district court erred in concluding that resolving plaintiffs' claims will require an inquiry into "the scope of consent given by each parent/guardian" and "the extent of each parent/guardian's knowledge of what labor/chores would be expected of their child." App. Vol. VI, at 1142.

CONCLUSION

The United States respectfully urges this Court to hold that the district court incorrectly held that the scope of parental consent is relevant to analyzing plaintiffs' forced labor claim.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g):

(1) This brief complies with Federal Rule of Appellate Procedure 29 and with Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), it contains 3,891 words according to the word processing program used to prepare the brief.

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

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

Date: March 7, 2023

CERTIFICATE OF DIGITAL SUBMISSION

I certify that the electronic version of the foregoing BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY, prepared for submission via ECF, complies with the following requirements:

(1) all required privacy redactions have been made under Federal Rule of Appellate Procedure 25(a)(5) and Tenth Circuit Rule 25.5;

(2) with the exception of any redactions, every document submitted in digital form or scanned PDF format is an exact copy of the written document filed with the clerk; and

(3) the ECF submission has been scanned for viruses with the most recent version of Windows Defender (Version 1.2.3412.0) and is virus-free according to that program.

s/ Katherine E. Lamm
KATHERINE E. LAMM
Attorney

Date: March 7, 2023

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2023, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY with the United States Court of Appeals for the Tenth Circuit via this Court's CM/ECF system, which will send notice to all counsel of record by electronic mail. All participants in this case are registered CM/ECF users. Pursuant to Tenth Circuit Rule 31.5, the United States will mail seven (7) paper copies of this filing within five business days following receipt of notice that the electronic filing is compliant.

s/ Katherine E. Lamm
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