

26-943(L), 26-944 (CON)

United States Court of Appeals *for the* Second Circuit

UNITED STATES OF AMERICA,

Appellee,

— v. —

RACHEL CHERWITZ, NICOLE DAEDONE,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR *AMICUS CURIAE* NEW YORK COUNCIL OF DEFENSE LAWYERS IN SUPPORT OF DEFENDANTS-APPELLANTS RACHEL CHERWITZ & NICOLE DAEDONE

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STATEMENT OF INTEREST OF AMICUS CURIAE¹

New York Council of Defense Lawyers (“NYCDL”) is a non-profit organization of approximately 300 criminal defense practitioners, including former prosecutors and public defenders, whose principal area of practice is criminal defense in the state and federal courts in New York. Its purposes are, among other things, to support the criminal defense function by enhancing the quality of defense representation and to take positions on important defense issues. NYCDL frequently appears as *amicus curiae* to promote clear, administrable criminal rules that provide fair notice and constrain arbitrary enforcement.

NYCDL files this amicus brief in support of the argument of Appellants Nicole Daedone and Rachel Cherwitz that the application here of the federal forced labor statute, 18 U.S.C. § 1589, impermissibly expands its scope.² That statute defines “serious harm” as “any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all

¹ Pursuant to Rule 29.1(b) of this Court’s Local Rules, NYCDL certifies that: (1) this brief was authored entirely by counsel for NYCDL, and not by counsel for any party, in whole or part; (2) no party and no counsel for any party contributed money intended to fund preparing or submitting the brief; and (3) apart from NYCDL and its counsel, no other person contributed money intended to fund preparing or submitting the brief.

² The parties have consented to the filing of this *amicus* brief. Accordingly, this brief may be filed without leave of court, pursuant to Federal Rule of Appellate Procedure 29(a)(2).

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).

If interpreted to cover the prosecution’s theory in this case, “serious harm” would encompass garden-variety negative consequences that might keep employees working in jobs that they would otherwise wish to leave, and § 1589 could criminalize the practices of any number of religious, social, or professional groups engaged in shared labor. Courts have interpreted the statute to avoid such a broad meaning. They have agreed that “serious harm” does not include the legitimate consequences of leaving employment. They also have rejected definitions of “serious harm” that include more nebulous psychological harms, such as shunning, or outlaw the practices of voluntary communities.

Due process requires that the broad reading of Section 1589 urged by the prosecution here should be rejected, to ensure that the statute provides fair notice of the conduct prohibited and to discourage prosecutorial arbitrariness and overreach. Employment relationships—even unconventional ones—that cannot be said to involve “forced labor” should not be criminalized. In this case, the serious harm typically present in cases upholding forced labor convictions is absent.

NYCDL submits this amicus brief to prevent the expansion of the scope of the forced labor statute beyond boundaries set by Congress and the courts, and in a

manner that brings constitutional limits into play. Other recent Supreme Court and Second Circuit appeals in which NYCDL has filed amicus briefs to oppose the government's use of the federal criminal statutes to punish conduct outside the bounds of those statutes include *Ciminelli v. United States*, 598 U.S. 306 (2023) (invalidating right-to-control theory of mail and wire fraud, following government confession of error); *Percoco v. United States*, 598 U.S. 319 (2023) (reversing conviction that impermissibly permitted jury to convict non-government official of honest services fraud); *United States v. Chastain*, 145 F.4th 282 (2d Cir. 2025) (jury instructions erroneously permitted wire fraud conviction based on unethical business dealings even if defendant had not misappropriated an interest traditionally considered property); and *United States v. Connolly*, 24 F.4th 821 (2d Cir. 2022) (reversing convictions based on insufficiency of government's proof of the making of a false statement in bank and wire fraud prosecution).

FACTUAL BACKGROUND OF SECTION 1589, THE FORCED LABOR STATUTE, AND PRECEDENTS AFFECTING ITS ENACTMENT AND TEXT

Prior to the enactment of § 1589 in 2000, prosecutors brought involuntary servitude cases under other criminal statutes—18 U.S.C. § 241 and 18 U.S.C. § 1584—“enacted by Congress to enforce the Thirteenth Amendment.” *United States v. Kozminski*, 487 U.S. 931, 934 (1988). In *Kozminski*, the Supreme Court vacated the convictions of three farmers under those statutes. The government had

charged the farmers with holding two mentally handicapped men in involuntary servitude by using “various coercive measures—including denial of pay, subjection to substandard living conditions, and isolation from others—to cause the victims to believe they had no alternative but to work on the farm.” *Id.* at 936. The Court considered the drafting history of the Thirteenth Amendment and the language of the statutes enacted pursuant to it and found that “‘involuntary servitude’ necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.” *Id.* at 952; *see also id.* at 942 (“intent [of the Thirteenth Amendment was] to prohibit conditions akin to African slavery”) (internal quotation marks omitted). The Court held that the convictions must be reversed because the “District Court’s instruction on involuntary servitude, which encompassed other means of coercion, may have caused the Kozminskis to be convicted for conduct that does not violate either statute.” *Id.* at 953.

Undergirding the Supreme Court’s decision was the concern that the government’s interpretation of the statutes to include non-physical harms not specified in the statute’s text “would appear to criminalize a broad range of day-to-day activity,” including ordinary “speech or conduct intentionally employed to persuade a reluctant person to work.” *Id.* at 949. The Supreme Court presented several hypotheticals illustrating the dangers of an overbroad interpretation,

including that “the Government’s construction would cover a political leader who uses charisma to induce others to work without pay or a religious leader who obtains personal services by means of religious indoctrination.” *Id.* The Court similarly observed that “the Government’s interpretation would delegate to prosecutors and juries the inherently legislative task of determining what type of coercive activities are so morally reprehensible that they should be punished as crimes” and “subject individuals to the risk of arbitrary or discriminatory prosecution and conviction.” *Id.*

While overturning the convictions in *Kozminski*, the Supreme Court recognized Congress’s ability to amend the involuntary servitude statutes to cover non-physical harms amounting to involuntary servitude, so long as it did so within constitutional limits. *Id.* at 952. In 2000, Congress enacted the Trafficking Victims Protection Act (“TVPA”) to combat “trafficking in persons, a contemporary manifestation of slavery,” while citing *Kozminski* as an example of “[e]xisting laws often fail[ing]” to address such trafficking. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 102, 114 Stat. 1466, 1467–68 (2000). Congress identified trafficking victims as “often” being “illegal immigrants in the destination country,” or individuals who were particularly vulnerable as a result of having been trafficked transnationally. *Id.* at 1468. Congress explained:

Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and

because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

Id. at 1468.

The text of § 1589 thus criminalized the conduct at issue in *Kozminski*—conduct Congress called “servitude through nonviolent coercion,” *id.* at 1466, by specifying newly prohibited means of obtaining labor. As originally enacted in 2000, § 1589 provided:

Whoever knowingly provides or obtains the labor or services of a person—

(1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process [shall be subject to criminal penalties.]

Id. at 1486–87. Although this statute covered some forms of psychological harm, the examples Congress gave of the conduct it meant this statute to target made clear that Congress had equally heeded *Kozminski*’s warning not to outlaw a “broad range of day-to-day activity” including ordinary “speech or conduct intentionally employed to persuade a reluctant person to work.” 487 U.S. at 949.

Consistent with Congress’s focus on immigrants and others trafficked into service, those examples of prohibited conduct were: (i) a nanny who is held in a state

of domestic service by being “led to believe that children in her care will be harmed if she leaves the home”; (ii) a foreigner who is induced to work by “intentionally causing the victim to believe that her family will face harms such as banishment, starvation, or bankruptcy in their home country”; (iii) children who “are brought to the United States and face extreme nonviolent and psychological coercion (*e.g.*, isolation, denial of sleep and other punishments)”; and (iv) children placed in a “condition of servitude” by an adult’s false claim of a legal relationship. H.R. Rep. No. 106-939, at 101 (2000).

Because the TVPA did not define “serious harm,” this task initially fell to the courts. An influential case was the First Circuit’s decision in *United States v. Bradley*, 390 F.3d 145 (1st Cir. 2004), *judgment vacated on other grounds*, 545 U.S. 1101 (2005). In *Bradley*, the operators of a tree removal company in New Hampshire were charged with forced labor violations for fraudulently luring workers from Jamaica and then coercing them to stay through, among other things, deception, threats of legal actions, and threats of violence. *Id.* at 148–49. The district court in its jury instructions defined “serious harm” to require consideration of whether a “reasonable person” in the “surrounding circumstances” would be compelled or coerced, in stating that:

The term ‘serious harm’ includes both physical and non-physical types of harm. Therefore, a threat of serious harm includes any threats . . . of any consequences, whether physical or non-physical, that are sufficient under all of the surrounding circumstances to compel or coerce a

reasonable person in the same situation to provide or to continue providing labor or services.

Id. at 150.

While finding no error in that instruction, and affirming the defendants' convictions, the First Circuit cautioned "that the phrase 'serious harm,' as extended to non-physical coercion, creates a potential for jury misunderstanding as to the *nature* of the pressure that is proscribed." *Id.* at 151 (emphasis in original). The First Circuit explained that the statutory "language could be read to encompass conduct such as the employer's 'threat' not to pay for passage home if an employee left early" and "surely such a 'threat' could be a legitimate stance for the employer and not criminal conduct." *Id.* The court further reasoned that, while characteristics of the alleged victim could be considered in determining the severity of the harm at issue, such victim-specific vulnerabilities should be limited to "*known objective conditions* that make the victim especially vulnerable to pressure." *Id.* at 153 (emphasis supplied).

In 2008, Congress amended § 1589 to its current form through the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008). Section 1589(a) now prohibits knowingly providing or obtaining the labor or services of a person, by means of:

(1) [] force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (2) [] serious harm or threats of serious harm to that person or another person; (3) [] abuse or

threatened abuse of law or legal process; or (4) [] any 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.

18 U.S.C. § 1589(a). An additional section, § 1589(b)—under which Daedone and Cherwitz were charged—extended liability to those who knowingly benefit financially from participation in a venture that uses these means, with knowledge or reckless disregard of the venture’s conduct. But the 2008 amendments imposed for the first time, as a matter of statute, the reasonable person standard set out in *Bradley*. As defined in § 1589(c)(2), “serious harm” now included “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) (emphasis supplied).

Despite its amendments, the TVPA has not lost its moorings in the Thirteenth Amendment and remains focused on proscribing conduct that imposes conditions “akin to . . . slavery,” particularly on traditionally vulnerable groups. *Kozminski*, 487 U.S. at 942; 22 U.S.C. § 7101 (“The purposes of this chapter are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children”). Thus, courts have rejected interpretations of “serious harm” that would capture conduct or situations beyond

what Congress intended and raise serious constitutional problems. For instance, following the 2008 amendment of the TVPA, courts have continued to hold that “serious harm” does not include the legitimate consequences of leaving employment or nebulous psychological harms, such as shunning. *See Headley v. Church of Scientology Int’l*, 687 F.3d 1173, 1180 (9th Cir. 2012) (finding shunning was not “serious harm” and stating “[i]n applying the Act, we must distinguish between ‘improper threats or coercion and permissible warnings of adverse but legitimate consequences’”) (quoting *Bradley*, 390 F.3d at 151); *see also, e.g., Taylor v. Salvation Army Nat’l Corp.*, 110 F.4th 1017, 1031 (7th Cir. 2024) (“The Salvation Army is entitled to stop providing food, clothing, and shelter to someone who no longer wishes to participate. It may also remind the participants that leaving the program results in the cessation of the benefits of the program.”). This Court has likewise held that adverse but legitimate consequences do not satisfy the “serious harm” requirement. *United States v. Zhong*, 26 F.4th 536, 550 (2d Cir. 2022) (quoting 18 U.S.C. § 1589(c)(2)).³

³ The *Zhong* Court had no need to give guidance regarding when circumstances reflect legitimate consequences versus serious harm because the facts of that case fell at the heart of the TVPA: the defendant housed the Chinese workers in residences that could be locked from outside, confiscated their passports, withheld nearly all wages until completion of service, tracked workers’ movements outside of work, prohibited contact with local Chinese communities, and threatened family members in China with financial penalties if workers escaped from their servitude. *Id.* at 545–47, 552 (discussing other coercive conduct).

Against this backdrop, the OneTaste prosecution represents an unprecedented application of the TVPA and one that would expand the statute's reach to conduct well beyond what Congress intended and render it unconstitutionally vague.

ARGUMENT

I. Congress Intended “Serious Harm” To Have a Scope That Excludes Shunning, Shaming, and Warnings of Legitimate Consequences of Leaving Work, Where the Laborers Remained Free To Leave

If interpreted to cover the conduct for which Appellants were convicted, § 1589 could impose criminal sanctions on conduct that occurs every day across the country in any number of ordinary employer–employee relationships. Consider the following hypotheticals.

- A woman receives medical benefits through her employer that cover treatments for her cancer. Her employer tells her that unless she begins paying part of the premiums, she will no longer receive those benefits. *See United States v. Calimlim*, 538 F.3d 706, 712 (7th Cir. 2008) (stating that in such a scenario there is no violation of the forced labor statute because the employee “could quit and change jobs”).
- A college graduate secures a highly coveted job at a Silicon Valley technology company. The work is “cutting edge,” but the boss publicly calls on his employees to have a “hardcore” “24/7” commitment, so that the demanding but exciting goals of the company can be met. The college graduate believes strongly in the company's mission and is highly devoted to carrying it out. The boss states that the company can and may monitor any company devices used by employees for work to ensure that its employees are making this “24/7” commitment.

- A journalism student secures a coveted summer internship with a prestigious magazine publisher, who does not typically hire from the student's university. When the intern voices concern about the demanding hours he has worked halfway through the internship, the publisher informs him that, if he quits, the publisher will not serve as a reference for him and will communicate its dissatisfaction with the student to the university dean.
- A residential drug recovery program conditions the providing of housing on participation in performing chores and maintaining sobriety, warning that noncompliance will lead to discharge from the program and the cessation of housing. *Cf. Taylor*, 110 F.4th at 1031.
- Members of a commune isolate themselves from "material" society and follow strict rules regarding abstinence, diet, and asceticism. These members derive a sense of meaning and self-worth from living in the commune. The rules of the commune dictate that members must participate in at least 10 hours of labor on the commune's farm each day or leave the commune and be deemed "unworthy."

Under the government's theory in this case, these hypotheticals would fall into each category of serious harm specified in § 1589(c)(2): physical, psychological, financial, and reputational. For example, a member of the commune would suffer psychological and reputational harm by leaving the commune, which formed the central part of their life and community. The journalism intern likely may be deterred from quitting a grueling job due to concern about impact to his career and reputation. In each case, under the government's theory here, it is at least arguable that the circumstances would "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). And in each case, under the government’s theory, it is equally arguable that the employer is obtaining labor “by means of serious harm or threats of serious harm.” *Id.* § 1589(a)(2).

Yet if § 1589 were construed to reach such cases, it would “criminalize a broad range of day-to-day activity,” as the Supreme Court in *Kozminski* feared could happen with an overly broad interpretation of the involuntary servitude statutes. 487 U.S. at 949. As discussed above, Congress never intended the definition of “serious harm” to include shunning, ostracism, or “brainwashing” of educated, U.S. citizen adults of means and normal intelligence who remained free to leave their workplace (*i.e.*, the types of conduct OneTaste is accused to have employed). Nor is there anything in the statute, legislative history, or case law indicating that Congress meant to criminalize ordinary employment relationships in which reasonable workers continue working or work longer hours than they otherwise might have to avoid psychological, financial, or reputational harm, or voluntarily accept lower pay than they could receive through other jobs.

The case law decided since the TVPA was enacted and amended supports cabinining the “serious harm” definition to clearly coercive behavior designed to exploit and restrict the freedom of vulnerable populations like foreign workers to leave. *See, e.g., United States v. Chaudhri*, 134 F.4th 166 (4th Cir. 2025) (defendants seized victim’s “notebook containing contact information for her family and friends

in Pakistan” and “identification and immigration documents,” confined her to annex in garage with limited food, and subjected her to repeated physical abuse); *United States v. Nnaji*, 447 F. App’x 558 (5th Cir. 2011) (defendants seized the travel papers of indigent, illiterate Nigerian widow who spoke virtually no English and falsely informed her that her salary was being sent to her children in Nigeria); *United States v. Dann*, 652 F.3d 1160 (9th Cir. 2011) (defendant seized passport of vulnerable Peruvian housekeeper on fraudulently obtained visa and told her that, if she tried to leave, she would be deported and defendant would falsely accuse her of wrongdoing); *United States v. Paulin*, 329 F. App’x 232 (11th Cir. 2009) (defendant physically abused indigent immigrant victim and threatened to “send her back to Haiti” when she complained of treatment); *Calimlim*, 538 F.3d 706 (defendant confiscated passport of poor teenager from the Philippines and told her she was in the United States illegally and could face legal consequences if discovered). In other cases, non-immigrant victims had other objective vulnerabilities and suffered egregious mistreatment that resembles the circumstances of *Kozminski*. *See, e.g., United States v. Callahan*, 801 F.3d 606, 613 (6th Cir. 2015) (defendants “held in subhuman conditions” a “developmentally-disabled young woman, and her minor daughter”).

The facts of each of those cases reflect that Congress limited the scope of the TVPA to “contemporary manifestation[s] of slavery.” Pub. L. No. 106-386, § 102,

114 Stat. at 1466. They stand in stark contrast to the types of supposed harms the government seeks to address in the OneTaste prosecution, *i.e.*, shunning, shaming, or emotional manipulation allegedly conducted on members of a voluntary community consisting of educated, adult U.S. citizens of means, who could depart OneTaste at any time (and did depart). Courts have found that conduct more comparable to the Appellants' conduct here did not establish a violation of § 1589 as a matter of law, even in civil cases in which they were applying the less rigorous preponderance-of-the-evidence standard.⁴ *See Taylor*, 110 F.4th at 1031 (affirming dismissal with prejudice where plaintiffs “voluntarily joined the program” and alleged “serious harm” was discontinuation of benefits of program); *Muchira v. Al-Rawaf*, 850 F.3d 605, 625 (4th Cir. 2017) (affirming grant of summary judgment to defendants, as “the forced labor provisions of the TVPA are not intended to redress every bad employment relationship involving immigrants”); *Headley*, 687 F.3d at 1181 (affirming grant of summary judgment to defendants, given “[w]hatever bad acts the defendants (or others) may have committed, the record does not allow the conclusion [defendants] violated the Trafficking Victims Protection Act”).

⁴ Under 18 U.S.C. § 1595, a plaintiff can bring a civil action against a “perpetrator” under § 1589. The elements of proving the civil case are the same as in a criminal case, but with a lower burden of proof. *Cf. United States v. Larracuente*, 952 F.2d 672, 673 (2d Cir. 1992) (finding burdens of proof differ but elements are the same for civil and criminal copyright infringement).

Congress' enactments, and the caselaw interpreting the forced labor statute, demonstrate the interpretation of the forced labor statute on which the prosecution relied here to be both erroneous and impermissibly vague.

II. The Constitutional Avoidance Doctrine Should Be Applied To Enforce an Interpretation of the TVPA Consistent With the Requirements of Due Process

When faced with competing statutory interpretations, courts follow the “reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts.” *Clark v. Martinez*, 543 U.S. 371, 381 (2005); *see also Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (“‘[I]t is a cardinal principle’ of statutory interpretation . . . that when an Act of Congress raises ‘a serious doubt’ as to its constitutionality, ‘this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.’”) (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)).

Here, the vagueness of the interpretation of § 1589 urged by the government squarely implicates the Due Process Clause of the Fifth Amendment. *See Johnson v. United States*, 576 U.S. 591, 595 (2015) (“Our cases establish that the Government violates [the Due Process Clause] by taking away someone’s life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes”). In addition to “contraven[ing] the first essential of due process of law that statutes must give people of common intelligence fair notice of

what the law demands of them,” *United States v. Davis*, 588 U.S. 445, 451 (2019) (internal quotation marks omitted), vague laws place “great power in the hands of the prosecutor,” which risks “arbitrary prosecution” that undermines “necessary confidence in the criminal justice system,” *Marinello v. United States*, 584 U.S. 1, 11 (2018). *See also Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (vagueness doctrine is addressed to the “standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections”). The Supreme Court has cautioned against “constru[ing] a criminal statute on the assumption that the government will ‘use it responsibly.’” *Marinello*, 584 U.S. at 11 (quoting *McDonnell v. United States*, 579 U.S. 550, 576 (2016)).⁵

⁵ The Supreme Court repeatedly rejects interpretations of broadly worded criminal statutes that would give prosecutors vast discretion in when and how to enforce them. In *Bond v. United States*, the Court refused to interpret the Chemical Weapons Convention Implementation Act of 1988 to cover “a jilted wife’s [attempt] to injure her husband’s lover” by placing lab chemicals on a doorknob. 572 U.S. 844, 848 (2014). The following year, in *Yates v. United States*, the Court rejected the government’s argument that a fish constituted a “tangible object” when it prosecuted the defendant for throwing an undersized fish overboard to avoid detection. 574 U.S. 528, 532 (2015). In *Van Buren v. United States*, the Court rejected an interpretation of the Computer Fraud and Abuse Act of 1986 that would render “millions of otherwise law-abiding citizens . . . criminals” and “inject arbitrariness into the assessment of criminal liability.” 593 U.S. 374, 394–95 (2021). And in *Kelly v. United States*, the Court rejected the government’s novel theory that traffic lanes constituted “property” of the Port Authority of New York and New Jersey for purposes of the federal wire fraud statute. 590 U.S. 391 (2020) (overturning conviction of New Jersey Governor’s Deputy Chief of Staff and others for scheme to re-align traffic lanes of George Washington Bridge as political retaliation against local mayor).

In this case, the Court should apply the constitutional avoidance doctrine and interpret “serious harm” in line with Congress’s intent to target traffickers, or their equivalent, who prey on objectively vulnerable, often immigrant, populations. Congress did not intend to target the practices of a voluntary community of consenting, educated, U.S.-citizen adults. Holding otherwise would mean falling headlong into precisely the dangers the Supreme Court identified in *Kozminski* of criminalizing ordinary activity.

Headley, where the Ninth Circuit construed the TVPA to avoid the constitutional problems risked by extending the reach of the TVPA to the practices of a voluntary community, is directly on point. The plaintiffs in *Headley* were lifelong members of the Church of Scientology, where, since 2005, they had been part of the Sea Org, an elite sect within the church that requires its members “to work long hours without material compensation, to live communally, to adhere to strict ethical standards, and to be subject to firm discipline for ethical transgressions.” 687 F.3d at 1174–75. They sued under the TVPA, claiming that the Sea Org’s methods for coercing members to stay (which effectively amounted to excommunication and shunning by the community) amounted to forced labor. *Id.* at 1180 (noting the “one adverse consequence the Headleys could have faced” was to be shunned by the Church of Scientology and thus lose “contact with family, friends, or each other”). The court held that shunning was not “serious harm” under the TVPA and further

explained that it is a “legitimate consequence” for a church to “stop associating with someone who abandons it.” *Id.*

The forms of coercion in *Headley* were more serious than in this case. Both cases involved communal living as part of organizations that demanded deep commitments from their members. Both cases involved working long hours with little compensation. *Id.* at 1176 (“[Plaintiffs] each worked more than 100 hours a week, while the Church paid their living expenses and provided them each with a \$50 weekly stipend”). Both cases involved attempts to influence employees’ personal relationships and sexual activity. *Id.* (discussing the “restrictive marriage policy” and the abortions plaintiff had pursuant to Sea Org’s policy against employees having children). Both the *Headley* plaintiffs and the OneTaste employees had “many opportunities . . . to leave” their employment but claimed not to have done so because they feared losing “contact with” their fellow community members. *Id.* at 1180.

But in *Headley*, the two plaintiffs were subject to extensive security measures, including motion detectors, escorts, and a perimeter fence. *Id.* at 1177. Phone calls and mail of the members of the order were monitored, and even discussing leaving led to discipline. *Id.* at 1175. In OneTaste, by contrast, the employees were not subject to systemic monitoring and surveillance and were expressly told they could leave whenever they wanted. Tr. 3988.

Even more so than in *Headley*, the facts of this case fall outside the ambit of a “statute enacted ‘to combat’ the ‘transnational crime’ of ‘trafficking in persons’—particularly defenseless, vulnerable immigrant women and children.” 687 F.3d at 1181 (quoting 22 U.S.C. § 7101, the “purposes and findings” section of the TVPA). The statute thus should be construed, as it was in *Headley*, not to apply to the conduct at issue here.

The OneTaste prosecution represents an unprecedented, and dangerous, extension of the TVPA to territory that Congress never intended. The government’s interpretation of the forced labor statute also cannot be squared with constitutional due process requirements and risks turning the TVPA into a tool that prosecutors can use to criminalize voluntary arrangements that the government finds unorthodox or objectionable. The avoidance doctrine should be applied to give the forced labor statute only the meaning that the legislature intended.

CONCLUSION

For the foregoing reasons, the Court should reverse Daedone’s and Cherwitz’s convictions and direct the entry of a judgment of acquittal.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5), 32(a)(7)(B) and Local Rule 32.1, because it contains 4,947 words, calculated by the word processing system used in its preparation, and excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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