

Ensuring Full Restitution for Trafficking Victims: Case Studies Compel a Call to Action

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I. Full Restitution is Mandated for Every Trafficking Victim

In human trafficking cases, the proper administration of justice requires that the courts and the government comply with the requirements of 18 U.S.C. § 1593, the mandatory restitution statute enacted as part of the Trafficking Victims Protection Act of 2000 (TVPA).¹ Section 1593 is an expansive restitution scheme that requires courts to order defendants to pay to victims not only the actual losses that they have caused the victims to suffer but also the greater of either defendant's ill-gotten gains or the value of the victims' labor.²

Full restitution for crime victims is also mandated by the federal Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, which provides that crime victims have the "right to full and timely restitution as provided in law."³ The CVRA also provides that the federal courts and the government have duties designed to ensure that crime victims are afforded their rights.⁴ These duties, together with the TVPA and other legislation mandating full restitution for crime victims,⁵ should work together to ensure crime victims receive the full restitution to which they are legally entitled.⁶

Unfortunately, a survey of federal trafficking cases reveals that justice often falls short of carrying out the congressional mandate. Case records reveal that entire categories of victims' compensable losses were neither submitted as part of the government's restitution requests nor independently raised or addressed by the courts.⁷ Courts often issue restitution awards that require defendants to pay only a portion of what the TVPA mandates, *e.g.*, awards that include only disgorgement of profits but fail to compensate the victims for actual losses,⁸ or compensate for some of the victims' actual losses, but do not address defendants' ill-gotten gains.⁹ And in some cases, courts inexplicably award no restitution.¹⁰

The case studies in this Bulletin reveal the deficiencies in human trafficking prosecutions and echo the call for judicial and governmental leadership articulated in the CVRA.¹¹ These cases also demonstrate that trafficking victims need to be represented by independent counsel; having a legal advocate who is focused solely on the victims' needs and interests could have obviated many of the unjust results. Only when all victims receive full restitution will we fully achieve the TVPA's goals to "ensure just and effective punishment of traffickers, and to protect their victims."¹²

II. The TVPA Restitution Calculation Has Two Mandatory Components

Consistent with a number of federal statutes providing for mandatory restitution, 18 U.S.C. § 1593(b)(3) provides, in relevant part, that: “As used in this subsection, the term ‘full amount of the victim’s losses’ has the same meaning as provided in section 2259(b)(3)[.]” Section 2259(b)(3), in turn, defines such losses to include

any costs incurred by the victim for (A) medical services relating to physical, psychiatric, or psychological care; (B) physical and occupational therapy or rehabilitation; (C) necessary transportation, temporary housing, and child care expenses; (D) lost income; (E) attorneys’ fees, as well as other costs incurred; and (F) any other losses suffered by the victim as a proximate result of the offense.

But unlike some of the other mandatory restitution statutes, Section 1593 further provides that:

[Restitution orders] *shall in addition include the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor and Standard Act [FLSA] (28 U.S.C. 201 et seq.).*¹³

Thus, Section 1593 requires that all restitution awards must include: (1) the Section 2259(b)(3) value; *plus* (2) *the greater of* either defendant’s ill-gotten gains or value of the victim’s labor under the FLSA.¹⁴

III. Case Examples Where Both Components of the Section 1593 Restitution Calculation Were Requested and Awarded

A. *United States v. Lewis*¹⁵

In *United States v. Lewis*, defendant was charged

with several counts of sex trafficking of children and interstate transportation of minors for the purposes of prostitution.¹⁶ The evidence showed that defendant targeted vulnerable child-victims; enticed them with offers of security, money and drugs; and enforced his control with threats and violence.¹⁷ Following defendant’s guilty plea to four counts of sex trafficking of children, the government requested restitution for the costs of future psychological counseling, medications, tutoring expenses, and the gross income that defendant earned from prostituting each victim.¹⁸ The court granted the restitution request and awarded the four victims \$1,215,000, \$1,151,300, \$845,165, and \$680,590, respectively.¹⁹

B. *United States v. Calimlim*²⁰

In *United States v. Calimlin*, defendants were charged with harboring and conspiring to harbor an alien for private financial gain, and obtaining and conspiring to obtain forced labor.²¹ The victim, brought from the Philippines, worked for defendants as a domestic servant for more than 19 years—working 16-hour-days, seven days a week—and earned approximately \$1,000 a year.²² During that period, the victim was generally kept hidden from non-family members, and she was not allowed to seek medical care outside the house.²³ Defendants also caused the victim to believe that she or her family back in the Philippines would be harmed if she tried to leave.²⁴ After a jury convicted defendants on all four counts,²⁵ the government requested and the court awarded restitution for counseling expenses, back wages, and back social security for a total of \$916,635.²⁶

IV. Case Examples Where Incomplete Restitution Was Requested and Awarded²⁷

A. *United States v. Sabhnani*²⁸

In *United States v. Sabhnani*, defendants were charged with a dozen counts, including, *inter alia*, forced labor, harboring aliens, holding a person in a condition of peonage, document servitude, and conspiracy to commit each of these offenses.²⁹ The evidence showed that one victim worked for defendants for more than five years and the other worked for defendants for more than two years.³⁰ During their time of servitude, the victims worked

extremely long hours seven days a week; they were denied food and sleep; and they were denied outside medical care when sick or injured.³¹ One of the victims was also subjected to “extremely harsh physical and psychological treatment” that included, *inter alia*, beatings, having scalding hot water poured on her arm, having her face mutilated by a knife, being forced to eat large quantities of hot chili peppers until she vomited, and being threatened with the death of her children in Indonesia if she resisted in any way.³²

Following a jury trial, defendants were convicted of all counts.³³ The government requested restitution to cover only the victims’ back pay and liquidated damages due under the Fair Labor Standards Act; it did not seek recovery for other recoverable losses, including, *inter alia*, expenses for future psychological and medical treatment of the victims’ trauma and bodily injuries.³⁴ Without inquiring about the omission of the other categories of losses, the trial court granted the government’s request, awarding \$620,774 to the victim who was tortured for more than five years and \$315,802 to the other victim.³⁵

B. *United States v. Palmer*³⁶

In *United States v. Palmer*, defendants—the child-victim’s mother and her boyfriend—were charged with one count of sex trafficking of a child and numerous counts related to the sexual exploitation of a child.³⁷ Defendants trained the child-victim to be a dominatrix when she was 12-years old and later sold her services to customers for in-person sessions as well as Internet sessions (through the use of a webcam).³⁸ As part of those services, the child-victim suffered “bondage, beatings, burnings, and genital mutilations.”³⁹ The record showed that defendants’ exploitation of the victim earned them “as much as \$80,000” in cash,⁴⁰ as well as “a DVD player, cappuccino machine, and other electronics.”⁴¹

Following defendants’ plea of guilty to one count of sex trafficking of a child, the government requested restitution for the cost for future psychotherapy and psychiatric treatment; it did not seek restitution for any other recoverable losses, such as medical treatment for bodily-injuries, future education and vocational retraining expenses, or defendants’

ill-gotten gains.⁴² Without inquiring about the omission of the other recoverable losses from the award calculation, the trial court granted the government’s request only to the extent that it sought \$200,000 for future psychological services, finding there was “no question” that the victim would need future counseling.⁴³

C. *United States v. Cortes-Castro*⁴⁴

In *United States v. Cortes-Castro*, defendants were charged with multiple counts arising from their sex trafficking enterprise.⁴⁵ Defendants smuggled Mexican women into the United States for purposes of prostitution, and controlled the victims through violence, threats of violence, and psychological manipulation.⁴⁶ The women endured regular beatings; one victim testified that she was “beaten so violently on one occasion that she suffered a loss of eyesight and had to undergo surgery”⁴⁷ Over a period of several years, the victims were forced to have sex with up to 40 men a day. The trial court found that defendants’ conduct was “unusually heinous, cruel, brutal and degrading to each of the victims involved.”⁴⁸

After defendants pleaded guilty to conspiracy to commit sex trafficking, the government requested restitution for five of the thirteen identified victims.⁴⁹ The government stated in its brief, without elaboration, that it was unable “to establish losses or damages” for the eight other victims.⁵⁰ On behalf of four victims, the government only requested restitution using defendants’ ill-gotten gains calculation; the government did not seek any restitution for other recoverable losses such as future psychological treatment, medical expense for bodily injuries or testing of sexually transmitted diseases, or vocational retraining.⁵¹ On behalf of the woman who suffered the eye injury, the government also sought the medical expenses that she incurred to treat that specific injury.⁵² Without inquiring about other categories of losses, the trial court granted the government’s request and awarded restitution, payable jointly and severally, to each victim in the amounts of \$153,300, \$310,000, \$154,400, \$299,200, and \$322,300, respectively.⁵³

V. Case Examples Where Courts Awarded No Restitution

A. *United States v. Jennings*⁵⁴

In *United States v. Jennings*, defendant was charged with 13 counts that included, *inter alia*, sex trafficking of children, obtaining children for production of child pornography, and inducing children to engage in sexually explicit conduct.⁵⁵ After defendant pleaded guilty to one count of sex trafficking of children, the government requested restitution only for future counseling costs, seeking \$174,530 for each of the five child-victims.⁵⁶ The trial court awarded the child-victims no restitution on the ground that the government failed to carry its burden of proof.

The court acknowledged that “[r]estitution is mandatory in this case pursuant to 18 U.S.C. §§ 1593, 3663A, and 2259[.]” and that “Section 1593 mandates that the court order the defendant to pay the full amount of a commercial sex trafficking victim’s losses[.]” but limited its discussion to losses incurred for psychiatric or psychological services.⁵⁷ The court did not address its own obligation to order restitution for any other types of losses, including the TVPA’s requirement that a court order the greater of either defendant’s ill-gotten gains or the value of the victims’ labor under the FLSA. Instead, in a short opinion, the court concluded that the government’s expert’s conclusion regarding the cost of future psychological treatment for the victims was speculative because the expert did not personally interview the victims, despite the fact that the expert watched videotaped interviews with two of the victims and concluded “this was one of the worse cases he had ever seen.”⁵⁸ The court noted that the record established that most of the victims had not sought treatment in the past and that the record “gives no indication that they are likely to seek such treatment in the future.”⁵⁹ The court also concluded that the government had failed to meet its burden of proof in establishing what proportion of their trauma was caused by defendant as most of the victims had engaged in prostitution before.⁶⁰ The government did not appeal this decision.⁶¹

B. *United States v. Norris*⁶²

In *United States v. Norris*, defendant was charged with multiple counts that included, *inter alia*, holding the victims in a condition of peonage involving aggravated sexual abuse, forced labor involving aggravated sexual abuse, trafficking for peonage and forced labor, sex trafficking, and conspiracy to commit the substantive offenses.⁶³ Defendant was a former professional wrestler who “ran a forced prostitution ring in which women were sexually assaulted, held in debt, and forced to work and perform sex acts against their will.”⁶⁴ Defendant was convicted of these counts after a jury trial and sentenced to 35 years in prison.⁶⁵ The record is unclear as to whether the government requested restitution;⁶⁶ the record indicates that the court did not award any restitution.⁶⁷

C. *United States v. Farrell*⁶⁸

In *United States v. Farrell*, defendants—the owners and operators of a hotel—were charged with multiple counts that included, *inter alia*, holding the victims in a condition of peonage, conspiracy to commit peonage, and document servitude. During their time of servitude, defendants forced the victims—all Philippine nationals—to work 16-to 18-hour days with no overtime pay using threats of harm. Defendants also forced the victims to endorse/return all paychecks to defendants under the guise of paying off ever-increasing “debts” owed to defendants for bringing them to the United States, rent, local transportation, and food. The record is unclear as to whether the government requested restitution;⁶⁹ the record indicates that the court did not award any restitution.⁷⁰

VI. A Call to Action

As is demonstrated by the sampling of cases above, there are cases in which the government has requested, and courts have ordered, the full restitution to which trafficking victims are entitled. But there are many cases in which the government is failing to ask for, and courts are failing to order, the full restitution mandated by the TVPA. Even more troubling is the fact that there are cases in which the courts awarded *no* restitution. None of

us should condone the system failures that exist in current practice. Now is the time to examine the steps that the government and the courts take to ensure compliance with the law's requirement that victims be awarded full restitution; key among these steps is legal representation for the victims. Here are some basic and yet critical steps for system actors that can lead to significant change.

A. *The Government's Checklist*

- Calculate and request from the court the TVPA's two required loss components: (1) the victim's actual losses (past and future); and (2) the greater of either defendant's ill-gotten gains or the value of the victim's labor.⁷¹
- In calculating losses, broadly construe actual losses by identifying every category that can be included in each restitution request. Among the categories of losses that must be included are costs associated with: present and future psychological treatment; medical treatment for bodily injuries including sexually transmitted diseases; educational programs and/or vocational retraining; transportation; relocation expenses; temporary housing; and lost income.⁷²
- Use experts to explain losses that courts may view as unique or unusual in kind or scope.⁷³
- Remind the victim that he/she has a right to secure independent counsel. Refer the victim to an attorney or request the court to appoint counsel for the victim in cases where the government's interests diverge from the victims' interests.⁷⁴

B. *The Court's Checklist*

- Review each restitution request to confirm two required components are present: (1) the victim's actual losses (past and future); and (2) the greater of either defendant's ill-gotten gains or the value of the victim's labor.
- Remember that the court has an independent statutory duty⁷⁵ to ensure

that all victims receive the full restitution mandated by the TVPA. This obligation cannot be circumvented by the acts or omission of others; it requires the court to ensure that no victim should be prejudiced by, and suffer additional harm as a result of, the negligence of government agents.⁷⁶

- If the record is insufficient to establish the victim's losses, continue the restitution proceeding and: (1) direct the prosecutor to provide additional evidence;⁷⁷ (2) appoint an expert to provide additional evidence;⁷⁸ and/or (3) appoint independent counsel to represent the victim.⁷⁹

VII. Conclusion

Full restitution for trafficking victims—as with all crime victims—is a “key to justice.”⁸⁰ Under the TVPA, the law clearly requires restitution orders to include the actual losses that defendants have caused the victims to suffer and also *the greater of* either defendant's ill-gotten gains or the value of the victim's labor. The law has been structured to compel system actors to help ensure full restitution by requiring the government to request, and the courts to award, full restitution. But as the cases discussed in this Bulletin reveal, more may be required to make full restitution a reality for all trafficking victims. Perhaps it is time for the justice system to contemplate: (1) mandatory notification to all trafficking victims of their right to have independent counsel; and (2) mandatory appointment of counsel where the victims are indigent.⁸¹ Crime victims must be afforded their rights, including their right to full restitution, if we are to be true to the mandate of the law and to basic notions of fairness and justice.

*NCVLI is actively working to ensure the consistent enforcement of trafficking victims' rights, including as part of its work under the Legal Assistance for Crime Victims: An OVC Capacity Building Initiative. Through that Initiative, OVC TTAC and NCVLI are working collaboratively to expand the availability of pro bono and no-cost legal assistance for victims of crime nationally and to provide resources designed to give

attorneys the tools needed to increase their knowledge base about crime victims' rights and related issues. For additional information about the Initiative, please visit NCVLI's website or <https://www.ovcttac.gov/>. Research originally conducted under that Initiative informed the drafting of this Bulletin; however, the opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily represent the official position or policies of the Office for Victims of Crime or OVC TTAC.

¹ See 18 U.S.C. § 1593(b)(1) (emphasis added) (stating that “[t]he order of restitution under this section *shall direct* defendant to pay the victim . . . the full amount of the victim’s losses”); 18 U.S.C. § 3664 (incorporated by reference by 18 U.S.C. § 1593(b)(2)) (providing that “[t]he burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government”); see generally *Ensuring Full Restitution for Trafficking Victims: An Overview of Mandatory Restitution Awards Under the Trafficking Victims Protection Act*, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Nov. 2013.

² See 18 U.S.C. § 1593(b)(3); see also Nat’l Crime Victim Law Inst., *supra* note 1, at 1-3.

³ 18 U.S.C. § 3771(a)(6).

⁴ See, e.g., 18 U.S.C. § 3771(b)(1) (emphasis added) (providing that “[i]n any court proceeding involving an offense against a crime victim, *the court shall ensure* that the crime victim is afforded the rights” set forth in 18 U.S.C. § 3771(a)); 18 U.S.C. § 3771(c)(1) (emphasis added) (providing that “[o]fficers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime *shall make their best efforts* to see that crime victims are . . . accorded the[ir] rights . . .”).

⁵ See, e.g., 18 U.S.C. § 2248 (mandatory restitution for sex crimes); 18 U.S.C. § 2259 (mandatory restitution for sexual exploitation of children); 18 U.S.C. § 2327 (mandatory restitution for telemarketing fraud); 18 U.S.C. § 3664A (Mandatory Victim Restitution Act (MVRA)) (mandatory restitution for crimes of violence, certain property crimes, and other designated offenses).

⁶ See *United States v. Palmer*, 643 F.3d 1060, 1067 (8th Cir. 2011) (reversing the trial court’s issuance of a special condition in its restitution order that required the child sex trafficking victim to incur out-of-pocket counseling costs and then seek reimbursement from a restitution fund, on the ground that order “manifestly violates the law” and observing that its ruling is

“consistent with [its] solemn statutory duty [under the CVRA] to safeguard the child’s ‘right to full and timely restitution as provided in law’”); see also *United States v. Adetiloye*, 716 F.3d 1030, 1040-41 (8th Cir. 2013) (declining to affirm the trial court’s order awarding restitution to only three out of sixty-five victims on the grounds that the government “could have” submitted additional evidence and the trial court “should have [sua sponte] postponed the restitution proceedings to allow for the gathering and presentation of additional evidence[,]” and vacating and remanding the restitution orders to allow the parties to present additional evidence regarding the victims’ losses because to do otherwise would “defeat[] the basic purpose of the [MVRA] . . . by allowing the overwhelming majority of the victims, who bear no responsibility for the government’s failure to compile the necessary documentation, to go unremunerated”); *United States v. Williams*, 612 F.3d 500, 513-14 (6th Cir. 2010) (emphasis in original) (rejecting defendant’s argument that the government and the trial court were estopped from claiming that the victims suffered a greater amount of loss than what was stated in the plea deal reached with a co-conspirator, and concluding instead that “the mandatory language of the [MVRA] trumps the equitable policies underlying the discretionary doctrines of collateral estoppel and judicial estoppel[,]” and observing that “the government . . . had a *mandatory* obligation under the MVRA to seek the full remaining amount of the conspiracy victims’ losses” and that the trial court has an “independent duty under the MVRA to obtain information from the Probation Office about the victims’ losses so that it may order appropriate restitution”); *United States v. Johnson*, 378 F.3d 230, 244 (2d Cir. 2004) (concluding that the trial court “may—indeed, must—impose orders of restitution on defendants convicted of crimes identified in the MVRA even if their victims decline restitution” because “[t]o hold otherwise would be inconsistent with the MVRA’s statutory scheme of mandatory restitution, and it would undermine the power of the criminal justice system to punish defendants, where appropriate, through orders of restitution”); cf. *R.T. Vanderbilt Co. v. Babbitt*, 113 F.3d 1061, 1065 (9th Cir. 1997) (finding that “where [a] statute’s language is unambiguous, the agency, like the courts, must follow Congress’s express will”).

⁷ See, e.g., cases discussed *infra* pp. 2-4.

⁸ See *id.*

⁹ See *id.*

¹⁰ See, e.g., cases discussed *infra* p. 4.

¹¹ See generally *A Call for Judicial Leadership in the Victims’ Rights Movement*, Victim Law Article (Nat’l

Crime Victim Law Inst., Portland, Or.), Fall/Winter 2006 (on file with author) (describing the need for courts to exercise leadership with regard to crime victims' individually enforceable participatory rights in the criminal justice system).

¹² Pub.L. No. 106-386, § 102(a), 114 Stat. 1488 (2000), codified as amended in 22 U.S.C. § 7101(a) ("The purposes of [the TVPA] are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominately women and children, to ensure just and effective punishment of traffickers, and to protect their victims."); see H.R.Rep. No. 108-264(I), at 8 (2003) (reauthorizing appropriations for the TVPA and amending it to "enhanc[e] provisions on prevention of trafficking, protection of victims of trafficking, and prosecution of traffickers"). As a federal appellate court recently cautioned:

[W]e must not lose sight of the purpose of [the mandatory restitution law]. . . . [It] is intended "to assure that victims of a crime receive full restitution." . . . "[T]he intended beneficiaries . . . are the victims, not the victimizers." . . . [The courts'] interpretation [and application] of the statute must be guided by this substantive purpose[] and must "conform to the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided." . . . [To do otherwise] "defeat[s] the basic purpose of [the TVPA]," . . . by allowing the overwhelming majority of the victims, who bear no responsibility for the government's failure to compile the necessary documentation, to go unremunerated. We cannot permit this outcome.

Adetiloye, 716 F.3d 1030 at 1040-41 (internal citations omitted) (discussing the government's and the court's responsibility to award full restitution under the MVRA).

¹³ 18 U.S.C. § 1593(b)(3) (emphasis added).

¹⁴ Requiring defendants to compensate the victims for all of their actual losses forces defendants to confront the seriousness of human trafficking and take full

responsibility for the harms that they caused. See Nat'l Crime Victim Law Inst., *supra* note 1, at 2-3. It "meets the practical needs of survivors," allowing them to "pay for basic necessities, such as housing, food and transportation, which can prevent their re-trafficking," and compensate "third parties, such as medical and social service providers, who [provided or] paid for services required as a result of the crime." U.S. Dep't of State, The 2009 Trafficking in Persons Rep. 18 [hereinafter 2009 TIP Rep.], available at <http://www.state.gov/documents/organization/123357.pdf>. Cf. 18 U.S.C. § 3664(j)(1) (incorporated by reference by 18 U.S.C. § 1593(b)(2)) ("If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation."). Equally important in fully compensating the victims, "[p]roviding the victim[s] with their traffickers' ill-gotten gains" or the value of the victims' labor, whichever is greater, "is critical to restoring [the] victim[s]' dignity, helping them gain power back from their exploiters who took advantage of their hope for a better life [and] attack the greed of the trafficker[s] and the idea of a human being as a commodity." *Id.*

¹⁵ 791 F. Supp. 2d 81 (D.D.C. 2011), *aff'd*, *In re Sealed Case*, 702 F.3d 59, 66-67 (D.C. Cir. 2012).

¹⁶ *Id.* at 81.

¹⁷ *Id.* at 82-86.

¹⁸ *Id.* at 92-94. The record does not reveal a government request, although one could have been made, for recovery of other losses, such as the cost of medical services to test for sexually transmitted diseases and any related treatment. See, e.g., *United States v. Doe*, 488 F.3d 1154, 1161 (9th Cir. 2007) (upholding the trial court's award of expenses to test the victims for sexually transmitted diseases as part of restitution under 18 U.S.C. § 2259(b)(3)); cf. Pub. L. No. 106-386, § 102(b)(11), 114 Stat. 1464, codified as amended in 22 U.S.C. § 7101(b)(11) (Congressional findings in support of the TVPA) ("Trafficking exposes victims to serious health risks. Women and children trafficked in the sex industry are exposed to deadly diseases, including HIV and AIDS.").

¹⁹ 791 F. Supp. 2d at 92-94. The appellate opinion affirming the trial court's restitution order omits references to the tutoring expenses; however, the total

sums described match the amounts the trial court awarded for both psychological treatment and tutoring. *Compare Lewis*, 791 F. Supp. 2d at 92-94 with *In re Sealed Case*, 702 F.3d at 62.

²⁰ No. 04-CR-248, 2007 WL 527481 (E.D. Wis. Feb. 14, 2007).

²¹ *United States v. Calimlim*, 538 F.3d 706, 709 (7th Cir. 2008).

²² *See id.* at 708-09.

²³ *Id.*

²⁴ *Id.* at 709, 713.

²⁵ *Id.* at 709.

²⁶ *Calimlim*, 2007 WL 527481, at *1.

²⁷ For other cases in which the court awarded incomplete restitution to the victims, see *United States v. Robinson*, 508 Fed. App'x 867, 871 (11th Cir. 2013) (affirming the restitution award for a child sex trafficking victim that is based solely on the defendant's ill-gotten gains); *United States v. Webster*, Nos. 08-30311, 09-30182, 2011 WL 8478276 (9th Cir. Nov. 28, 2011) (describing a sex trafficking enterprise whereby defendant controlled the girls and women using violence, threats of violence, and psychological manipulation; defendant was convicted of two counts of sex trafficking of children and nine counts of sex trafficking of adults; and the restitution award was based solely on defendant's ill-gotten gains); *United States v. Mammedov*, 304 Fed. App'x 922, 926 (2d Cir. 2008) (rejecting sex trafficking defendant's argument that the restitution award—based solely on the moneys the victim earned on defendant's behalf—was improper because the earnings were “the result of illegal conduct”).

²⁸ 566 F. Supp. 2d 139 (E.D. N.Y. Jul. 19, 2008), *aff'd in part & vacated in part*, 599 F.3d 215 (2d Cir. 2010).

²⁹ *Id.* at 141.

³⁰ *Sabhnani*, 599 F.3d at 225, 228.

³¹ *Id.* at 225-29.

³² *Id.* at 226.

³³ *Sabhnani*, 566 F. Supp. 2d at 141.

³⁴ *See id.* at 144, 147.

³⁵ On appeal, the United States Court of Appeals for the Second Circuit concluded that the trial court erred in awarding the victims overtime pay, at the rate of one and one-half time the regular rate, because the FLSA exempts domestic workers who reside in the household from its overtime provisions. *Sabhnani*, 599 F.3d at

255-57. The court vacated the restitution award and remanded to the trial court to recalculate the back pay due. *See id.* at 255.

³⁶ *Palmer*, 643 F.3d at 1062.

³⁷ *See Br. for the United States, United States v. Palmer*, Nos. 10-2272, 10-2724, 2011 WL 201910, at *4 (8th Cir. Jan. 10, 2011).

³⁸ 643 F.3d at 1063.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Br. for the United States, *supra* note 37, at *8.

⁴² *See id.*; *see also* Nat'l Crime Victim Law Inst., *supra* note 1, at 2.

⁴³ 643 F.3d at 1065. The trial court imposed a special condition on the \$200,000 restitution award, ordering the victim to pay for the counseling services out-of-pocket and seek reimbursement from a fund. *Id.* The trial court also issued an alternative restitution order whereby he concluded that he would not award any amount of money in restitution if its restitution order (requiring the victim to seek reimbursement) is determined to be improper on appeal. *See id.* On appeal, the United States Court of Appeals for the Eighth Circuit reversed, holding that the trial court erred in imposing the special condition on the restitution award. In reaching its conclusion, the court cited the CVRA and explained that its ruling is “consistent with [its] solemn statutory duty to safeguard the child's ‘right to full and timely restitution as provided in law.’” *Id.* at 1067. The court also vacated the trial court's alternative restitution order on the ground that “the denial of *all* restitution to this child, who suffered untold sexual abuse, humiliation, and torture, would be contrary to law,” as “restitution is required by law” in this case. *Id.* (emphasis in original).

⁴⁴ 511 Fed. App'x 942 (11th Cir. 2013).

⁴⁵ *Id.* at 944.

⁴⁶ *See id.* at 944-45.

⁴⁷ *Id.* at 945.

⁴⁸ *Id.* at 946.

⁴⁹ *Id.*

⁵⁰ Br. for the United States, *United States v. Cortes-Morales*, Nos. 11-15539-DD, 11-15892-DD, 11-15682-DD, 2012 WL 3638391, at *24 (11th Cir. Aug. 16, 2012).

⁵¹ *See id.* at *24-25.

⁵² *Id.* at *24.

⁵³ See 511 Fed. App'x at 946; Br. for the United States, *supra* note 50, at *25-26, 34-35.

⁵⁴ No. 09-00050-01-CR-W-DGK, 2010 WL 4236643 (W.D. Mo. Oct. 14, 2010).

⁵⁵ *United States v. Jennings*, 662 F.3d 988, 990 (8th Cir. 2011).

⁵⁶ 2010 WL 4236643, at *1.

⁵⁷ *Id.*

⁵⁸ *Id.* But see *In re Sealed Case*, 702 F.3d at 62, 67 (affirming the restitution awards for four sex trafficking victims where the government's expert's conclusions concerning future mental health expenses were based on his review of each victims' mental health records, grand jury testimony, and interviews with only two of the four victims).

⁵⁹ *Id.* at *2. But see *In re Sealed Case*, 702 F.3d at 67 (rejecting defendant's argument that the trial court "erred by failing to find that the victims were in fact interested in seeking [the expert's] recommended treatment" and explaining that "[w]e compensate a victim with restitution, that is, money—whether she chooses to use the money in a particular way is up to her").

⁶⁰ *Id.* But see *In re Sealed Case*, 702 F.3d at 66-67 (holding that where defendant pleaded guilty to four counts of sex trafficking of children, defendant was the proximate cause of the victims' losses even though the child-victims had been involved in prostitution and experienced other traumatic events before they met defendant, as defendant's abuse was the proximate or most significant cause, the treatment recommended by the expert would be necessary even if the victims had no previous trauma, and the victims were entitled to the costs associated with such treatment as well as defendant's "ill-gotten gains").

⁶¹ See Br. for the United States, *United States v. Jennings*, No. 10-3365, 2011 WL 1461527, at *8 (8th Cir. Apr. 4, 2011) (discussing the procedural history in its response to defendant's appeal on other grounds and noting that the government had "filed notice of its intent to appeal the restitution order" but "subsequently filed a motion to dismiss its notice of appeal").

⁶² See Press Release, United States Dep't of Justice, *Former Wrestler Sentenced on Sex Trafficking and Forced Labor Charges* (Apr. 1, 2008) [hereinafter DOJ Press Release re Norris], http://www.justice.gov/opa/pr/2008/April/08_crt_259.html; see also Press Release, United States Dep't of Justice, *Co-Defendants Sentenced for Roles in Former Wrestler's Sex Trafficking Ring* (Mar. 13, 2008), <http://www.justice.gov/opa/pr/2008/>

[March/08_crt_206.html](http://www.justice.gov/opa/pr/2008/March/08_crt_206.html).

⁶³ *United States v. Norris*, 188 Fed. App'x 822, 824 (11th Cir. 2006).

⁶⁴ DOJ Press Release re Norris, *supra* note 62.

⁶⁵ *United States v. Norris*, 453 Fed. App'x 861, 862 (11th Cir. 2011).

⁶⁶ A review of the trial court docket in Pacer revealed no sentencing briefs or orders that addressed restitution.

⁶⁷ See Judgment, *United States v. Norris*, No. 1:05-CR-479-01-JTC (N.D. Ga. Apr. 2, 2008) (indicating defendant was originally sentenced to life imprisonment and ordered to pay a \$2,400 special assessment without any reference to restitution); see also DOJ Press Release re Norris, *supra* note 62 (mentioning the \$2,400 special assessment and making no mention of restitution); Amended Judgment and Commitment, *United States v. Norris*, No. 1:05-CR-479-01-JTC (N.D. Ga. Dec. 15, 2010) (indicating defendant was resentenced to 35 years imprisonment without any reference to restitution).

⁶⁸ See Press Release, United States Dep't of Justice, *South Dakota Hotel Owners Sentenced for Involuntary Servitude Offenses* (Feb. 25, 2008) [hereinafter DOJ Press Release re Farrell], http://www.justice.gov/opa/pr/2008/February/08_crt_139.html.

⁶⁹ A review of the trial court docket in Pacer revealed no sentencing briefs or orders that addressed restitution.

⁷⁰ Judgment, *United States v. Farrell*, No. 3:07CR30019-001 (D.S.D. Feb. 25, 2008) (indicating defendant Farrell was sentenced to 50-months imprisonment and ordered to pay \$900 in assessments and \$15,000 in fines and the space under "Restitution" was left blank); see also DOJ Press Release re Farrell, *supra* note 68 (mentioning the \$15,000 fine and making no reference to restitution); Br. for the United States, *United States v. Farrell*, Nos. 08-1559, 08-1561, 2008 WL 3977143, at *4 (8th Cir. Aug. 11, 2008) (discussing the procedural history in response to defendants' appeal on other grounds and noting defendants were each ordered to pay a total of "\$15,900 in fines and assessments" without mentioning restitution).

⁷¹ See *Lewis*, 791 F. Supp. 2d 81.

⁷² Nat'l Crime Victim Law Inst., *supra* note 1, at 2, nn. 30-36 (describing court opinions approving of awards of restitution for such losses).

⁷³ See *Lewis*, 791 F. Supp. 2d at 89, *aff'd*, *In re Sealed Case*, 702 F. 3d at 67.

⁷⁴ If victims have their own attorneys help them with the restitution proceedings, attorneys' fees should be

included as part of the restitution award. *See, e.g.*, 18 U.S.C. § 2259(b)(3) (incorporated by reference by 18 U.S.C. § 1593(b)(3)) (providing that attorney’s fees and costs are included in victims’ loss calculations); *see also United States v. Baker*, 672 F. Supp. 2d 771, 780 (E.D. Tex. 2009) (awarding, as part of restitution under Section 2259, reasonable attorney’s fees for services performed in the criminal case); *United States v. Estep*, 378 F. Supp. 2d 763, 771 (E.D. Ky. 2005) (awarding, as part of restitution under Section 2259, divorce attorney’s fees to defendant’s spouse and mother of one of defendant’s victims). Among other resources, NCVLI offers a referral service for crime victims who are seeking a victims’ rights attorney as well as technical assistance for victims’ rights attorneys, prosecutors, advocates, and the courts. For more information, please visit www.ncvli.org.

⁷⁵ *See* 18 U.S.C. § 3771(b)(1) (emphasis added) (providing that “[i]n any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights” set forth in 18 U.S.C. § 3771(a)); *see also* 18 U.S.C. § 1593(a) (emphasis added) (providing that “[n]otwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter”), (b)(1) (emphasis added) (requiring that “[t]he order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses, as determined by the court under paragraph (3) of this subsection”).

⁷⁶ *Adetiloye*, 716 F.3d 1030 at 1040-41 (internal citations and quotations omitted) (discussing the government’s and the court’s responsibility to award full restitution under the MVRA and cautioning courts to remember “the great principle of public policy, applicable to all governments alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided”).

⁷⁷ *See id.* (citing 18 U.S.C. § 3664(d)(4) and concluding that “despite the government’s failure to produce documentation with the required specificity and reliability, the district court should have postponed the restitution proceedings to allow for the gathering and presentation of additional evidence”); *see also* 18 U.S.C. § 3664(d)(4) (incorporated by reference by 18 U.S.C. § 1593(b)(2)) (providing that “[a]fter reviewing the report of the probation officer, the court may require additional documentation or hear testimony”); *United States v. Serawop*, 505 F.3d 1112, 1114 (10th Cir. 2007) (affirming the trial court’s award of restitution for

the homicide child-victim’s future lost income under the MVRA where the trial court, “citing its power to ‘require additional documentation or hear testimony[]’ [under] 18 U.S.C. § 3664(d)(4), sua sponte appointed [an] economist” to calculate lost income).

⁷⁸ *See* Fed. R. Evid. 706(a) (“On a party’s motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing.”); *see also Serawop*, 505 F.3d at 1114.

⁷⁹ *See, e.g., United States v. Kaczynski*, 416 F.3d 971, 977 (9th Cir. 2005) (finding “the government flout[ed] the VWPA by electing to squander property it possesses pursuant to a restitution order rather than selling it to bring in as much money as possible for these victims” and deciding to “appoint separate pro bono counsel to serve as amicus curiae in support of the[] [victims’] interests”); *cf. Lewis*, 791 F. Supp. 2d at 86 (noting that it had “appointed a guardian ad litem . . . to represent the four minor [sex trafficking] victims in all subsequent restitution proceedings”).

⁸⁰ 2009 TIP Rep., *supra* note 14, at 18.

⁸¹ *See Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963) (finding in the context of criminal defendants’ rights that precedent and “reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.”).

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