

In the
Supreme Court of the United States

MEDICAL MARIJUANA, INC., ET AL.,

Petitioners,

v.

DOUGLAS J. HORN,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF OF AMICUS CURIAE
HUMAN TRAFFICKING LEGAL CENTER
IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

| | Page |
|---|------|
| TABLE OF AUTHORITIES | ii |
| INTEREST OF AMICUS CURIAE | 1 |
| INTRODUCTION & SUMMARY OF THE ARGUMENT..... | 1 |
| ARGUMENT | 5 |
| THIS COURT SHOULD REJECT PETITIONERS’ PERSONAL-INJURY BAR TO CIVIL RICO STANDING ... | 5 |
| I. Petitioners’ Rule Could Help Traffickers Evade Civil RICO Liability, Contrary to Congress’s Intent. | 5 |
| II. Prior Trafficking Decisions Counsel Against Petitioners’ Rule..... | 10 |
| III. Petitioners’ Rule Would Disrupt Congress’s Complementary TVPRA-RICO Framework... | 16 |
| IV. Petitioners Disregard the Perverse Implications of Their Rule and Other Relevant Considerations..... | 18 |
| CONCLUSION..... | 21 |

TABLE OF AUTHORITIES

Page

CASES

| | |
|--|---------------------------------|
| <i>Adhikari v. Daoud & Partners</i> , 697 F. Supp. 2d 674 (S.D. Tex. 2009) | 15 |
| <i>Alabado v. French Concepts, Inc.</i> , 2016 WL 5929247 (C.D. Cal. 2016)..... | 13, 14, 15 |
| <i>Catalan v. Vermillion Ranch Ltd. P’ship</i> , 2007 WL 38135 (D. Colo. 2007) | 15 |
| <i>David v. Signal Int’l, LLC</i> , 37 F. Supp. 3d 822 (E.D. La. 2014)..... | 15, 17 |
| <i>Magnifico v. Villanueva</i> , 783 F. Supp. 2d 1217 (S.D. Fla. 2011)..... | 16 |
| <i>Miranda v. Ponce Fed. Bank</i> , 948 F.2d 41 (1st Cir. 1991)..... | 19 |
| <i>Nunag-Tanedo v. E. Baton Rouge Par. Sch. Bd.</i> , 790 F. Supp. 2d 1134 (C.D. Cal. 2011)..... | 16 |
| <i>Oh v. Choi</i> , 2016 WL 11430442 (E.D.N.Y. 2016).... | 10, 11, 12, 13, 15, 18 |
| <i>Oh v. Choi</i> , No. 1:11 Civ. 03764 (E.D.N.Y. 2016) | 12 |
| <i>Rodriguez v. Pan Am. Health Org.</i> , 502 F. Supp. 3d 200 (D.D.C. 2020) | 16 |
| <i>Ross v. Jenkins</i> , 325 F. Supp. 3d 1141 (D. Kan. 2018).... | 12, 13, 15 |
| <i>Schmidt v. Fleet Bank</i> , 16 F. Supp. 2d 340 (S.D.N.Y. 1998)..... | 19 |

TABLE OF AUTHORITIES – Continued

Page

STATUTES

| | |
|--|-------------------------|
| 18 U.S.C. § 1351..... | 7 |
| 18 U.S.C. § 1581..... | 6 |
| 18 U.S.C. § 1584..... | 6 |
| 18 U.S.C. § 1589..... | 6, 7 |
| 18 U.S.C. § 1590..... | 6 |
| 18 U.S.C. § 1591..... | 7 |
| 18 U.S.C. § 1592..... | 7 |
| 18 U.S.C. § 1595(a) | 5, 6, 7, 16 |
| 18 U.S.C. § 1597..... | 7 |
| 18 U.S.C. § 1961(1)(A) | 7 |
| 18 U.S.C. § 1961(5) | 19 |
| 18 U.S.C. § 1962(c)..... | 19 |
| 18 U.S.C. § 1964(c)..... | 2, 6, 7, 13, 16, 19, 20 |
| Pub. L. No. 108–193, 117 Stat. 2875..... | 5, 7 |
| Pub. L. No. 109–164, 119 Stat. 3558..... | 5 |
| Pub. L. No. 109–248, 120 Stat. 587..... | 5 |
| Pub. L. No. 110–457, 122 Stat. 5044..... | 5 |
| Pub. L. No. 113–4, 127 Stat. 54..... | 5, 7 |
| Pub. L. No. 114–22, 129 Stat. 227..... | 5 |
| Pub. L. No. 115–164, 132 Stat. 1253..... | 6 |
| Pub. L. No. 115–267, 132 Stat. 3756..... | 6 |
| Pub. L. No. 115–392, 132 Stat. 5250..... | 6 |

TABLE OF AUTHORITIES – Continued

| | Page |
|--|------|
| Pub. L. No. 115–393, 132 Stat. 5265..... | 6 |
| Pub. L. No. 115–425, 132 Stat. 5472..... | 6 |
| LEGISLATIVE MATERIALS | |
| 149 Cong. Rec. E1383-01, 2003 WL 21485516 (June 27, 2003) | 8 |
| H.R. Rep. No. 108-264 | 8 |
| OTHER AUTHORITIES | |
| Peter J. Henning, <i>RICO Lawsuits Are Tempting, But Tread Lightly</i> , N.Y. TIMES (Jan. 16, 2018), https://tinyurl.com/5n7xss6s | 19 |
| Kathleen Kim & Kusia Hreshchyshyn, <i>Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States</i> , 16 HASTINGS WOMEN’S L.J. 1 (2004)..... | 9 |
| Shannon Lack, <i>Civil Rights for Trafficked Persons: Recommendations for A More Effective Federal Civil Remedy</i> , 26 J.L. & COM. 151 (2007) | 17 |
| Jennifer J. Lee, <i>Private Civil Remedies: A Viable Tool for Guest Worker Empowerment</i> , 46 LOY. L.A. L. REV. 31 (2012)..... | 16 |

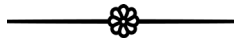
TABLE OF AUTHORITIES – Continued

| | Page |
|--|------|
| Nikko Price, <i>Better Together? The Peril and Promise of Aggregate Litigation for Trafficked Workers</i> , 129 YALE L.J. 1214 (2020)..... | 17 |
| Heidi Stöckl et al., <i>Human Trafficking and Violence: Findings from the Largest Global Dataset of Trafficking Survivors</i> , 4 J. MIGRATION & HEALTH (2021)..... | 9 |
| U.S. Dep’t of Health & Hum. Servs., <i>Economic Empowerment for People Who Have Experienced Human Trafficking: A Guide for Anti-Trafficking Service Providers</i> (Oct. 2023), https://tinyurl.com/ 5banhc88 | 10 |
| U.S. Dep’t of Just., <i>Involuntary Servitude, Forced Labor, and Sex Trafficking Statutes Enforced</i> (Aug. 6, 2015), https://tinyurl.com/ kt86vtcf | 6 |



INTEREST OF AMICUS CURIAE¹

The Human Trafficking Legal Center (“HTLC”) is a non-profit organization that seeks justice for trafficking survivors and accountability for traffickers. The organization provides a bridge between skilled pro bono attorneys and survivors, having trained more than 5,000 pro bono attorneys to handle civil, criminal, and immigration trafficking cases. Petitioners’ interpretation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) could bar trafficking survivors from pursuing RICO claims for economic injuries that flow from personal injuries. Adopting that interpretation would seriously impair Congress’s ongoing efforts to fight human trafficking through both (i) RICO and (ii) the Trafficking Victims Protection Act (“TVPA”) and Trafficking Victims Protection Reauthorization Acts (collectively, “TVPRA”).



INTRODUCTION & SUMMARY OF THE ARGUMENT

Oak-Jin Oh departed South Korea for a job in Toronto to work in a family home. Upon her arrival, she was shipped to New York by boat without any authorization or visa. Thus began twelve years of unpaid fourteen-hour work days. When Oh broached

¹ No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae* or their counsel made a monetary contribution intended to fund the brief’s preparation or submission.

the subject of her compensation, her captors—multiple members of a rapacious family working in concert to keep Oh in a condition of involuntary servitude and forced labor—threatened not only to have her deported, but to hire a hitman to kill her. They stole her passport, denied her the use of a telephone, and prohibited her from seeing a doctor.

Oh is a survivor of human trafficking. After she finally escaped, she brought TVPRA and RICO claims in federal court against her traffickers and prevailed, winning nearly \$1 million in damages. But if the court had applied petitioners’ interpretation of RICO—which the court did not—Oh’s civil RICO claim might have been barred. Although RICO permits “[a]ny person injured in his [or her] business or property by reason of” a pattern of predicate racketeering acts to bring a civil RICO claim, *see* 18 U.S.C. § 1964(c), petitioners argue that economic injuries “resulting from personal injuries” do not qualify. Petr. Br. I. Put differently, according to petitioners, if the “core” of the suit alleges a “classic invasion of bodily autonomy,” then the civil RICO claim is a “non-starter.” *Id.* at 3, 23.

Yet for survivors of human trafficking like Oak-Jin Oh, their economic and personal injuries are often coextensive and cannot readily be disaggregated. Perpetrators of forced labor and involuntary servitude profit off and extract economic value from their victims through violence and intimidation; they simultaneously inflict economic and personal harms. Petitioners’ rule could thus hinder trafficking survivors like Oh in their pursuit of justice under civil RICO. With the aid of petitioners’ rule, a trafficking defendant could evade RICO liability by perfunctorily arguing that the trafficking plaintiff’s economic injuries flow from personal

injuries and that the suit, at its core, alleges a classic invasion of bodily autonomy. It is difficult to conceive of a trafficking case where a trafficking defendant would not attempt to weaponize petitioners' rule in this way. After all, trafficking *is* an invasion of bodily autonomy—that is why it is so odious.

That implication of petitioners' rule, however, squarely contravenes the complementary statutory scheme that Congress crafted and that survivors of human trafficking have relied on for decades. Through the TVPRA's private right of action, survivors may recover damages from traffickers and associated actors; and through RICO's private right of action, survivors may recover treble damages to redress economic harms inflicted by the broad network of organized criminals who facilitate trafficking offenses. In fact, in the Trafficking Victims Protection Reauthorization Act of 2003, Congress both (i) created the TVPRA private right of action and (ii) added human-trafficking offenses to the list of RICO predicates so that both law-enforcement agencies *and private plaintiffs* could deploy RICO in the fight against human trafficking. This Court should reject a flawed interpretation of RICO that could undermine survivors' ability to bring civil RICO claims and thereby thwart Congress's will.

Indeed, as illustrated below, petitioners' rule—had it controlled—might have reversed the result in numerous cases where trafficking survivors brought successful civil RICO claims. Petitioners' rule also threatens perverse consequences. By petitioners' logic, if two trafficking survivors allege the same facts against the same trafficking defendant, except that one survivor additionally alleges that her trafficker had beaten or sexually assaulted her, the survivor

who suffered such direct physical harm would have a *lower* chance of prevailing on a civil RICO claim. Armed with both that additional factual allegation of direct physical harm and petitioners' rule, a trafficking defendant could more forcefully urge that the suit's core is a personal-injury action and that the civil RICO action is a nonstarter. "No dice," as petitioners would put it. Petr. Br. 18. This Court should reject an unreasonable interpretation of RICO under which a trafficking survivor who suffered a devastating physical injury would encounter *more* difficulty in pleading and proving a RICO claim than a trafficking survivor who did not suffer such an injury, all else being equal.

To effectuate Congress's complementary TVPRA-RICO framework and ensure that trafficking survivors retain the full set of remedies that Congress has afforded them, this Court should affirm the Second Circuit's decision below.



ARGUMENT

THIS COURT SHOULD REJECT PETITIONERS’ PERSONAL-INJURY BAR TO CIVIL RICO STANDING

I. Petitioners’ Rule Could Help Traffickers Evade Civil RICO Liability, Contrary to Congress’s Intent.

Since enacting the Trafficking Victims Protection Act (“TVPA”) in 2000, Congress has strengthened and broadened the law through several successive reauthorizations.² This series of laws (collectively, the “TVPRA”) imposes criminal and civil liability on individuals, corporations, and other legal persons who engage in, or knowingly benefit from, participation in ventures facilitating sex trafficking, forced labor, involuntary servitude, and other trafficking offenses.³ Congress, through this legislation, not only bolstered the capacity of law-enforcement agencies to hold traffickers accountable—it also opened the courthouse doors to survivors of these egregious practices, empowering them to bring civil actions against their traffickers in federal district court. *See* 18 U.S.C. § 1595(a).⁴

Concurrently, under RICO, “any person injured in his [or her] business or property by reason of” a

² Successive reauthorizations of and amendments to the TVPA include the TVPRA of 2003, Pub. L. No. 108–193, 117 Stat. 2875; the TVPRA of 2005, Pub. L. No. 109–164, 119 Stat. 3558; the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109–248, 120 Stat. 587; the William Wilberforce TVPRA of 2008, Pub. L. No. 110–457, 122 Stat. 5044; the TVPRA of 2013, Pub. L. No. 113–4, 127 Stat. 54; the Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114–22, 129 Stat. 227; the Allow States and

pattern of racketeering activity may bring in federal district court a civil action against a defendant enterprise. *See* 18 U.S.C. § 1964(c). From RICO’s enactment

Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115–164, 132 Stat. 1253; the Abolish Human Trafficking Act of 2017, Pub. L. No. 115–392, 132 Stat. 5250; the TVPA of 2017, Pub. L. No. 115–393, 132 Stat. 5265; the Missing Children’s Assistance Act of 2018, Pub. L. No. 115–267, 132 Stat. 3756; and the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, Pub. L. No. 115–425, 132 Stat. 5472.

³ The TVPA and its reauthorizations and amendments both supplemented existing law, including 18 U.S.C. §§ 1581 (criminalizing the holding or return of a person in peonage) and 1584 (criminalizing the holding or selling of any person into involuntary servitude), and expanded the range of unlawful acts, including 18 U.S.C. §§ 1589 (criminalizing forced labor, defined as the provision or obtaining of labor or service of a person by force, threat of force, physical restraint, threat of physical restraint, serious harm, threat of serious harm, abuse or threatened abuse of law or legal process, or scheme, plan, or pattern intended to cause a person to believe that, if the person does not perform such labor or services, that person or another will suffer serious harm or physical restraint) and 1590 (criminalizing trafficking, defined as the knowing recruiting, harboring, transporting, providing, or obtaining of any person for labor or services, with respect to peonage, slavery, involuntary servitude, or forced labor). *See also* U.S. Dep’t of Just., *Involuntary Servitude, Forced Labor, and Sex Trafficking Statutes Enforced* (Aug. 6, 2015), <https://tinyurl.com/kt86vtcf>.

⁴ The TVPRA’s civil remedy, codified at 18 U.S.C. § 1595(a), provides that “a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, or attempts or conspires to benefit, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorney’s fees.”

in 1970 to 2003, the statutory list of predicate offenses that qualified as racketeering activity included offenses that overlapped with human-trafficking activity, but the list did not include specific human-trafficking offenses. In the Trafficking Victims Protection Reauthorization Act of 2003, however, Congress added human-trafficking offenses to the list of RICO predicates. *See* TVPRA of 2003, Pub. L. No. 108–193, 117 Stat. 2875 (amending the definitions of “racketeering activity” in 18 U.S.C. § 1961(1)(A) “by striking ‘sections 1581–1588 (relating to peonage and slavery)’ and inserting ‘sections 1581–1591 (relating to peonage, slavery, and trafficking in persons)’”); *see also* 18 U.S.C. §§ 1589–1592, 1597 (adding forced labor; trafficking with respect to peonage, slavery, involuntary servitude, or forced labor; sex trafficking of children or by force, fraud, or coercion; unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor; and fraud in foreign labor contracting).⁵

As reflected in the statutory text and the legislative history, Congress aimed in the 2003 Act to strengthen trafficking survivors’ capacity to seek justice through private remedies. Not only did the Act enhance survivors’ ability to pursue the civil RICO remedy and thereby secure treble damages to redress their economic harms, *see* 18 U.S.C. § 1964(c), but that same Act created the civil TVPRA remedy, *see* 18 U.S.C. § 1595(a) (authorizing damages, but not treble damages). Moreover, the addition of human-trafficking

⁵ In its 2013 reauthorization of the TVPRA, Congress further amended predicate offenses under RICO to include “fraud in foreign labor contracting.” *See* Pub. L. No. 113–4, 127 Stat. 54 (codified at 18 U.S.C. § 1351).

offenses to the list of RICO predicates was not only intended to assist law-enforcement authorities pursuing criminal RICO actions; that addition was also deliberately designed to assist plaintiffs pursuing civil RICO actions. *See* H.R. Rep. No. 108-264, pt. 2 (2003) at 16–19 (U.S. Assistant Attorney General William E. Moschella, U.S. Dep’t of Justice: maintaining that the amendment “would allow civil RICO claims for human trafficking,” and that “adding human trafficking offenses to RICO’s coverage would prove to be beneficial”); *id.* at 48 (Congressman F. James Sensenbrenner Jr., Chair of Judiciary Committee: noting that the Act would “add[] three new predicate crimes to the RICO statute, relating to forced labor, slavery, and the sex trafficking of children,” and that “civil RICO allows the injured person to recover treble damages, costs and attorneys’ fees”); *see also* H.R. Rep. No. 108-264, pt. 1, at 20 (2003) (Congressman Thomas P. Lantos, Ranking Member of the International Relations Committee: recognizing “the well-documented involvement of organized crime networks in the trafficking of persons”); 149 Cong. Rec. E1383-01, 2003 WL 21485516, at *2 (June 27, 2003) (Congressman Lantos: noting that the amendment “enhances prosecution of traffickers by, for example, ensuring that trafficking is treated like the organized crime that it is”).

Thus, since 2003, survivors of human trafficking have retained access to a complementary statutory scheme: through the TVPRA, they may recover damages from their traffickers and associated actors; and through civil RICO, they may recover treble damages to redress economic harms inflicted by the broad network of organized criminals who facilitate trafficking offenses.

Petitioners' rule, however, would upend this settled remedial structure. According to petitioners, a plaintiff may not assert a civil RICO claim if the plaintiff's injury to business or property results from an antecedent personal injury. Petr. Br. 11. That is, under petitioners' personal-injury bar, economic harm that flows from a "classic invasion of bodily autonomy" simply does not confer civil RICO standing. *Id.* at 3, 11.

The context of human trafficking underscores the incoherence of and injustice inherent in petitioners' rule. Through reprehensible acts such as forced labor and involuntary servitude, traffickers use force and threats of force against victims to profit off their victims and exploit their victims' economic value. As a result, survivors often suffer harms that are simultaneously economic *and* personal in nature. The economic and personal elements of the harms that they suffer cannot readily be disaggregated. *See, e.g.,* Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN'S L.J. 1, 7 (2004) (describing the wide spectrum of simultaneous injuries that trafficked persons suffer—*e.g.*, "profitable exploitation," "the creation of artificial debts," "forced labor in a 'broad range of contexts, including agriculture, domestic servitude, maid service, sweatshops, begging, and marriage,'" "psychological torture including confinement and seclusion," and "physical abuse such as beatings, starvation, sexual assault, and rape"); Heidi Stöckl et al., *Human Trafficking and Violence: Findings from the Largest Global Dataset of Trafficking Survivors*, 4 J. MIGRATION & HEALTH (2021) (observing that violence is a "hallmark of human trafficking"); U.S. Dep't of

Health & Hum. Servs., *Economic Empowerment for People Who Have Experienced Human Trafficking: A Guide for Anti-Trafficking Service Providers* (Oct. 2023), at 3 (detailing the varied economic consequences of human trafficking).⁶

Trafficking *is* an invasion of bodily autonomy. Under petitioners' rule, then, trafficking defendants could attempt to evade civil RICO liability by arguing, in case after case and in perfunctory terms, that the trafficking plaintiff's economic injuries flow from personal injuries and that the suit, at its core, alleges a classic invasion of bodily autonomy. Petitioners' interpretation of RICO would thus enable trafficking defendants to obstruct the ability of survivors to bring civil RICO claims—despite the survivors having suffered economic injuries by reason of a pattern of predicate racketeering activity, and despite Congress's intent in the 2003 Act to enable plaintiffs to bring civil RICO claims based on human-trafficking predicates. An interpretation that would read human-trafficking predicates out of the RICO statute for civil RICO purposes, in defiance of Congress's deliberate design, should be rejected.

II. Prior Trafficking Decisions Counsel Against Petitioners' Rule.

The harrowing case of *Oh v. Choi*, 2016 WL 11430442 (E.D.N.Y. Feb. 29, 2016), illustrates the deep flaws in petitioners' rule. Oak-Jin Oh, a South Korean woman, discovered an opportunity through an employment agency to perform household work for a family in Toronto. The family offered a competitive salary,

⁶ <https://tinyurl.com/5banhc88>.

which Oh accepted. After uprooting her life to relocate across the globe in 1998, she performed the work, but the family never paid. Within weeks of arriving in Canada, the family abruptly put her on a small boat to New York, where she was not authorized to reside or work. *Id.* at *1.

Now in the United States, Oh continued to keep house, and her responsibilities began to multiply. She was on-call seven days a week, working at least fourteen hours per day. But she still received none of the pay she was promised. Worse still, when she summoned the courage to request compensation, the family not only threatened to report her to U.S. immigration and confiscate her passport—the family threatened to hire a hit man to kill her. The family punctuated those threats with promises that, one day, she would be paid all she was owed. Oh was trapped in this state of involuntary servitude for more than a decade, during which time the family barred her from using the telephone in private, forced her to sleep on a basement floor, and prohibited her from seeing a doctor. *Id.* at *1–3.

After finally fleeing from the family in 2010, Oh sued them in federal court, alleging TVPRA and RICO claims, among others. Her RICO claim hinged on predicate acts of forced labor, involuntary servitude, and labor trafficking, with members of the family collectively operating as an “association-in-fact for the common purpose of trafficking plaintiff into this country and keeping her in a condition of involuntary servitude or forced labor over a substantial period of time”—a scheme that started when she was fraudulently induced to accept a job offer, and that was furthered via a pattern of coercion and confinement over

the subsequent twelve years. *Id.* at *8–9. Oh’s TVPRA counts centered on the same conduct: the family members’ trafficking her from South Korea to Canada to the United States; their benefitting from forcing her to work, including by threats of physical harm and deportation; and their confiscating her passport to trap her in these conditions. *Id.* at *6–7. She prevailed after a default judgment, winning a total of nearly \$1 million in damages. *Id.* at *17.

As for Oh’s economic standing to bring a civil RICO claim, the magistrate judge reasoned that the defendants’ actions (as proven via default judgment) had proximately caused Oh’s economic injuries, even though the “RICO claim [was] premised on the defendants having trafficked her into this country and extracted her labor through force and intimidation.” *Id.* at *9. The district court adopted the magistrate’s well-founded report and recommendation. *See* Order Adopting R. & R., *Oh v. Choi*, No. 1:11 Civ. 03764 (E.D.N.Y. Mar. 29, 2016), Doc. 154. Under petitioners’ personal-injury bar, however, Oh would have been at risk of failing to satisfy the threshold for civil RICO standing. If her captors could have availed themselves of petitioners’ rule, they could have urged the court to construe the core of Oh’s suit as a personal-injury action alleging a classic invasion of bodily autonomy, and to dismiss Oh’s civil RICO claim on that basis. *See* Petr. Br. 23. It is unclear how Oh could establish, to petitioners’ satisfaction, an economic harm that was sufficiently untethered from the invasion of her bodily autonomy.

Equally instructive is *Ross v. Jenkins*, 325 F. Supp. 3d 1141 (D. Kan. 2018). Kendra Ross was two years old when her mother joined the United Nation

of Islam (“UNOI”), a quasi-religious offshoot of the Nation of Islam. *Id.* at 1156. From age eleven until her escape at age twenty-one, UNOI forced Ross to work eighteen-hour days, seven days a week without pay. *Id.* at 1158–61. She worked in bakeries, in restaurants, and as a domestic servant to the family that ran the organization. *Id.* After escaping her traffickers, Ross sued them in federal court, bringing TVPRA and RICO claims, among others. With respect to the TVPRA, Ross argued that UNOI and its members were liable for recruiting Ross to join and remain in the organization, and for transporting Ross across multiple states—Kansas, Georgia, New Jersey, Ohio—to work without pay. *Id.* at 1164–65. With respect to RICO, Ross argued that UNOI and its members had orchestrated and otherwise participated in “an ongoing enterprise engaged in the pattern and practice of human trafficking and forced labor,” in the commission of which they “regularly moved goods and people across state lines.” *Id.* at 1169. Ross proved her claims and won an \$8 million judgment. *Id.* at 1183.

And notably for our purposes, the court—as in *Oh*—determined that Ross had satisfied the economic-injury prerequisite for civil RICO standing: “Here, defendants trafficked plaintiff from the age of 11 through age 21 and forced her to perform labor and services without compensation. Plaintiff thus has standing to sue under 18 U.S.C. § 1964(c).” *Id.* at 1169. In an analogous case governed by petitioners’ rule, however, the trafficking defendant might have pointed to its own invasion of the trafficking plaintiff’s bodily autonomy as a defense to civil RICO liability.

The case of *Alabado v. French Concepts, Inc.*, 2016 WL 5929247 (C.D. Cal. May 2, 2016), further rein-

forces the point. There, several workers at a French bakery chain in the Philippines were recruited by the chain's owners to work in the United States, where the owners were setting up a new bakery. The owners advertised the U.S.-based work as high-skilled labor, but the work was anything but. Before the bakery opened, the Filipino nationals were forced to perform months of day-long manual labor at the owners' personal residence, receiving roughly two dollars an hour, and were directed to sleep on the floor of a small laundry room. After the bakery opened, the owners forced the workers to work no fewer than thirteen hours a day, seven days a week, earning about three dollars an hour. Over a three-year period, the owners subjected the workers to verbal and psychological abuse, isolation, and threats regarding their visas, and harassed and intimidated them into helping conceal the owners' wage and hour violations. To guarantee the workers' compliance, the owners even threatened to ruin the lives of the workers' families in the Philippines. *Id.* at *2–3.

The workers sought recourse in federal court, suing the owners for TVPRA and civil RICO violations. The workers argued that the owners had violated the TVPRA by inducing them to relocate to the United States through misrepresentations about pay and working conditions, and by compelling them to continue their jobs through threats of serious harm and deportation. *Id.* at *4–6. Under civil RICO, the workers argued that the owners and their corporate entities were an association-in-fact enterprise that had engaged in racketeering through a pattern of labor trafficking, forced labor, visa fraud, and fraud in foreign labor contracting. *Id.* at *6–7. The workers ultimately

prevailed, and the court awarded them individual money judgments ranging from \$400,000 to nearly \$2 million. *Id.* at *14.

Like the courts in *Oh* and *Ross*, the *Alabado* court determined that the workers had adequately pleaded and established injuries to their business or property. *Id.* at *6. The court awarded the workers treble damages under civil RICO—three times the amount of each worker’s unpaid wages. *Id.* at *14. This just result might have been barred by petitioners’ rule, under which the court might have characterized the plaintiffs’ economic harms as inadequate to support civil RICO standing simply because they flowed from personal harms.

Petitioners’ rule would undermine numerous other uses of the dual TVPRA-and-RICO deterrent, as well. Without having to face the deterrent of trebled damages, for example, trafficking defendants could more easily force laborers to work in dangerous warzones. *But see Adhikari v. Daoud & Partners*, 697 F. Supp. 2d 674 (S.D. Tex. 2009) (denying motion to dismiss civil RICO and TVPRA claims by Nepali citizens against U.S. military contractor and its subsidiaries). They could more freely exploit migrant workers and abuse the visa process. *But see Catalan v. Vermillion Ranch Ltd. P’ship*, 2007 WL 38135 (D. Colo. Jan. 4, 2007) (denying motion to dismiss civil RICO and TVPRA claims by migrant cattle herders against ranching partnership and individuals). And they would have broader rein to induce foreign citizens to expend high sums to relocate to the United States for the chance at a green card, only to house them in deplorable conditions and compel them to work. *But see David v. Signal Int’l, LLC*, 37 F. Supp. 3d 822

(E.D. La. 2014) (denying motion to dismiss civil RICO and TVPRA claims by Indian citizens against company and attorney).⁷

III. Petitioners' Rule Would Disrupt Congress's Complementary TVPRA-RICO Framework.

Petitioners' rule would disrupt the complementary operation of the RICO and TVPRA private causes of action. To receive full and just compensation for their injuries, survivors of human trafficking need access to both mechanisms. While civil RICO enables survivors of human trafficking to seek treble damages for business or property injuries that trafficking enterprises have caused them, *see* 18 U.S.C. § 1964(c), the TVPRA enables plaintiffs to pursue damages—including nonpecuniary damages—from their traffickers, *see* 18 U.S.C. § 1595(a). Denying survivors of human trafficking access to the treble damages authorized under civil RICO would amount to a drastic depletion of their arsenal of remedies. *See, e.g.*, Jennifer J. Lee, *Private Civil Remedies: A Viable Tool for Guest Worker Empowerment*, 46 LOY. L.A. L. REV. 31, 62 (2012) (noting that, through civil RICO, “guest workers can statutorily seek treble damages to reach the illicit profits made by employers from their exploitation”);

⁷ *See also Rodriguez v. Pan Am. Health Org.*, 502 F. Supp. 3d 200 (D.D.C. 2020), *aff'd*, 29 F.4th 706 (D.C. Cir. 2022) (denying motion to dismiss civil RICO and TVPRA claims by Cuban physicians against international organization); *Nunag-Tanedo v. E. Baton Rouge Par. Sch. Bd.*, 790 F. Supp. 2d 1134 (C.D. Cal. 2011) (denying motion to dismiss civil RICO and TVPRA claims by H-1B visa-holders against recruiting company and its officers); *Magnifico v. Villanueva*, 783 F. Supp. 2d 1217 (S.D. Fla. 2011) (denying motion to dismiss civil RICO and TVPRA claims by Filipino workers against company).

Shannon Lack, *Civil Rights for Trafficked Persons: Recommendations for A More Effective Federal Civil Remedy*, 26 J.L. & COM. 151, 169 (2007) (arguing that civil RICO’s provision for treble damages serves as a “financial incentive” to “encourage victims to enforce anti-trafficking policy through private litigation,” and serves as a “financial deterrent against traffickers”); Nikko Price, *Better Together? The Peril and Promise of Aggregate Litigation for Trafficked Workers*, 129 YALE L.J. 1214, 1231 (2020) (“Civil RICO claims might be particularly well suited for use against labor traffickers because employers often make false promises to workers”).

In addition, by combining civil RICO and the TVPRA, survivors can reach not only traffickers but also the broader criminal enterprises and range of actors that enable human trafficking: financiers, recruiters, and other individuals and entities that assist traffickers and help cover their tracks. *See, e.g., Signal Int’l*, 37 F. Supp. 3d at 833 (denying motion to dismiss RICO claim against attorney who allegedly assisted in recruitment and falsely advertised green cards and permanent residency).

The two statutes therefore operate in tandem, each with its own domain of redressable injuries. Together, they maximally deter human trafficking and exploitation by holding culpable individuals and enterprises civilly accountable, while simultaneously providing survivors heightened relief for having suffered the defendants’ sinister conduct. The statutory framework—two private causes of action working in mutual reinforcement—ensures that survivors of human trafficking retain access to meaningful remedies for the harms they have endured.

IV. Petitioners Disregard the Perverse Implications of Their Rule and Other Relevant Considerations.

Petitioners' rule invites absurd outcomes and creates perverse incentives. Even if petitioners conceded that the RICO claim in *Oh*, for example, were sufficiently economic in nature to confer civil RICO standing (a dubious interpretation of their own rule), consider the result if *Oh*'s RICO claim had included the additional allegation that her captors had physically injured her. Everything else being equal, adding that one factual allegation would significantly increase the risk that a court applying petitioners' rule would have dismissed the RICO count as a "classic personal-injury claim," *see* Petr. Br. 12. The defendants, armed with that one additional allegation, could more easily characterize the injuries as personal rather than economic at their "core," *see id.* at 23, and thereby point to their own physical violence as a reason to defeat the civil RICO claim. They could more easily argue that the plaintiff experienced the economic injury of lost wages as a proximate result of a physical injury, not as a proximate result of a pattern of human trafficking activity. This Court should reject an interpretation of civil RICO standing under which a human trafficker who strikes and physically injures his victim is more likely to escape liability than a human trafficker who does not, all other things remaining constant.

For survivors of human trafficking, present and future, it is petitioners' rule that could render the civil-RICO mechanism a "dead letter," Petr. Br. 3. The slippery slope that petitioners identify—opening the "floodgates" to "innumerable" artfully pleaded state law claims, *id.* at 14—blinks reality. It is exceedingly

difficult for survivors to prevail on a civil RICO claim. Survivors must allege seven specific elements of a “pattern of racketeering activity.” 18 U.S.C. § 1962(c). They must prove the existence of an enterprise engaged in that activity, *id.*, which itself must comprise at least two predicate acts, *see id.* § 1961(5). As for the “enterprise,” survivors must demonstrate that the defendants themselves played an active or managerial role. *Id.* § 1962(c). Then they must establish that they sustained business or property injuries, and that the pattern of racketeering activity proximately caused those injuries. *Id.* § 1964(c). And if the statutory terms themselves were not difficult enough to satisfy, judges generally view civil RICO claims with skepticism—a thumb on the scale against their success. *See, e.g., Schmidt v. Fleet Bank*, 16 F. Supp. 2d 340, 346 (S.D.N.Y. 1998) (referring to civil RICO as “the litigation equivalent of a thermonuclear device”) (quoting *Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 44 (1st Cir. 1991)); Peter J. Henning, *RICO Lawsuits Are Tempting, But Tread Lightly*, N.Y. TIMES (Jan. 16, 2018) (“Judges take a dim view of efforts to turn what look like ordinary state law claims into federal cases by claiming a RICO violation. For that reason, RICO cases often don’t survive the pleading stage.”).⁸

Further, petitioners’ suggestion that plaintiffs with personal injuries can and should avail themselves of state tort law rather than civil RICO (Petr. Br. 29) is particularly unpersuasive in the human-trafficking context. Human trafficking is a national and international social ill that demands a federal legislative solution, and Congress answered the call. State tort

⁸ <https://tinyurl.com/5n7xss6s>.

law is no substitute for Congress's comprehensive and complementary TVPRA-RICO framework.

At bottom, if petitioners' rule reigns, trafficking survivors who have endured a similar plight to that of Oh and Ross might not receive due compensation for their economic injuries. Their captors and others like them could perpetrate trafficking and racketeering activities without having to face the deterrent of trebled damages. Since the survivors' economic injuries flow from invasions of bodily autonomy, "[n]o dice," according to petitioners. Petr. Br. 18. This Court should reject a flawed interpretation of 18 U.S.C. § 1964(c) that would impede survivors' access to the remedy of civil RICO, an essential weapon in the fight against trafficking.



CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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