APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

KEO RATHA; SEM KOSAL; SOPHEA BUN; YEM BAN; NOL NAKRY; PHAN SOPHEA; SOK SANG, *Plaintiffs-Appellants*, v. RUBICON RESOURCES, LLC, *Defendant-Appellee*.	No. 23-55299 D.C. No. 2:16-cv-04271-JFW-AS OPINION

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted En Banc June 24, 2025
Seattle, Washington

Filed February 20, 2026

Before: Mary H. Murguia, Chief Judge, and Susan P. Graber, Ronald M. Gould, Consuelo M. Callahan, Milan D. Smith, Jr., Bridget S. Bade, Daniel A. Bress, Jennifer Sung, Salvador Mendoza, Jr., Anthony D. Johnstone and Ana de Alba, Circuit Judges.

Opinion by Judge Graber;
Dissent by Judge Callahan

SUMMARY*

Trafficking Victims Protection Reauthorization Act

Reversing the district court's order denying plaintiffs' motion under Federal Rule of Civil Procedure 60(b) for relief from summary judgment in favor of defendant Rubicon Resources, LLC, and remanding for further proceedings in a civil action under 18 U.S.C. § 1595(a), the en banc court held that an amendment to the statute, clarifying that defendants are civilly liable when they attempt to benefit, but do not succeed in benefitting, from human trafficking, has retroactive effect.

Plaintiffs were villagers from rural Cambodia who allegedly were forced to work at seafood factories in Thailand. They alleged that Rubicon marketed in the United States seafood products from those factories, thereby participating in a venture that benefited from human trafficking. The district court

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* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

entered summary judgment in favor of Rubicon, holding that Rubicon only attempted to benefit from plaintiffs' forced labor. In "*Ratha I*," a three-judge panel of this court agreed, holding that the civil remedy provision of § 1595(a) did not encompass "attempt" liability. Congress subsequently passed the Abolish Trafficking Reauthorization Act of 2022 ("ATRA"), a bill clarifying that defendants are civilly liable when they attempt to benefit, but do not succeed in benefitting, from human trafficking. Plaintiffs moved for relief under Rule 60(b)(6). The district court denied the motion, holding that Congress did not intend for attempt liability to apply retroactively.

Applying the three-step framework of *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), the en banc court held that Congress intended its clarifying amendment to have retroactive effect. Under *Landgraf*, the court first reads the statutory text to see whether Congress explicitly included a retroactive effective date. If not, at step two, the court determines whether application of the statute would have retroactive effect. If so, the court applies a presumption against retroactivity. At step three, the court decides whether the presumption can be overcome by considering all indicia of intent to determine whether Congress made its intention clear that the statute applies retroactively. If so, the statute applies retroactively. To the extent that this court has held in other cases that clarifying amendments to civil statutes fall outside the *Landgraf* framework, the en banc court overruled those cases as inconsistent with *Landgraf*.

At step one, the en banc court observed that the ATRA contained no explicit retroactive effective date. At step two, the en banc court determined that the ATRA would have retroactive effect and that the presumption against retroactivity applied. At step three, the panel concluded that Congress nevertheless clearly meant for the ATRA to apply retroactively. The panel concluded that four factors, considered together, clearly established the amendment's retroactivity: (a) Congress expressly stated that its enactment was a technical and "clarifying" update; (b) § 1595(a) was ambiguous before the amendment; (c) *Ratha I* created a circuit split concerning the interpretation of § 1595(a); and (d) Congress acted swiftly, and with immediate effect, following the court's decision in *Ratha I*.

The en banc court held that § 1595's retroactivity fatally undermined one of the three grounds on which the district court had premised its grant of summary judgment. The en banc court concluded that the two remaining grounds were not sufficient to justify denial of plaintiffs' Rule 60(b) motion. These grounds were: (1) plaintiffs did not demonstrate that Rubicon knowingly participated in a human trafficking venture; and (2) plaintiffs did not demonstrate that Rubicon knew, or should have known, that human trafficking was occurring at the factory. The en banc court held that the district court erred as a matter of law on the participation element because one can participate in a venture without operating or managing it, and the district court did not view all facts and inferences in favor of plaintiffs. The district court also erred as a matter of law on the knowledge element, and a reasonable jury could have found that Rubicon knew or should have known about the alleged human trafficking. Weighing the relevant factors for relief under Rule 60(b)(6), the en banc court held that plaintiffs were entitled to relief from the district court's final order.

Judge Callahan dissented, joined by Judge M. Smith except as to Part I.A., by Judge Bade in full, by Judge Bress as to Part I only, and by Judge Johnstone in full. In Part I, Judge Callahan wrote that she agreed with the majority that *Landgraf* governs the retroactivity analysis, that prior cases that created an exception for clarifying amendments must be overruled, and that ATRA would have retroactive effect and thus the presumption against retroactivity applied. Judge Callahan's agreement ended there. In Part I.A., she wrote that the four factors cited by the majority did not demonstrate clear congressional intent that the ATRA is retroactive. In Part I.B., Judge Callahan wrote that under a faithful application of *Landgraf*, the en banc court should decline to give the ATRA retroactive effect because there is no clear indication that Congress intended it to be retroactive. In Part II, Judge Callahan wrote that the majority reached beyond the bounds of this appeal by addressing all of the district court's reasons for granting summary judgment.

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OPINION

GRABER, Circuit Judge:

Plaintiffs are villagers from rural Cambodia who allegedly were forced to work at seafood factories in Thailand. They brought a civil action under 18 U.S.C. § 1595(a) against four defendants, including Defendant Rubicon Resources, LLC ("Rubicon"). Plaintiffs allege that Rubicon marketed in the United States seafood products from those factories, thereby participating in a venture that benefited from human trafficking. The district court entered summary judgment in favor of Rubicon, holding that Rubicon only attempted to benefit from Plaintiffs' forced labor. Critically, in the court's view, the civil remedy provision of § 1595(a) did not encompass "attempt" liability. A three-judge panel of this court agreed, *Ratha v. Phatthana Seafood Co.* (*Ratha I*), 35 F.4th

1159 (9th Cir. 2022), creating a rift with two other circuits' interpretation of the statute. Congress disagreed with our interpretation of the statute. Just a few months after this court issued *Ratha I*, and mere days after the Supreme Court denied certiorari, Congress passed a bill clarifying that defendants are civilly liable when they attempt to benefit, but do not succeed in benefitting, from human trafficking.

Plaintiffs quickly moved, under Federal Rule of Civil Procedure 60(b), for relief from the summary judgment entered in Rubicon's favor. The district court denied the motion, holding that Congress did not intend for attempt liability to apply retroactively. We hold that Congress intended its clarifying amendment to have retroactive effect and that the district court legally erred in its alternative grounds for denying Rule 60(b) relief. Accordingly, we reverse and remand for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

Because the district court incorporated into its denial of the Rule 60(b) motion its earlier decision on a summary judgment, we set out the facts in the light most favorable to Plaintiffs. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [their] favor."); *see also Ratha I*, 35 F. 4th at 1180 (applying this standard).

Phatthana Seafood Co., Ltd. ("Phatthana"), a Thai corporation, owned a seafood processing factory in southern Thailand. Phatthana's owner founded

Rubicon—a United States company—so that Phatthana and other seafood producers could sell their goods more easily in the United States. Rubicon neither owned factories nor hired Phatthana's employees, but Rubicon's employees "coordinated sales and marketing, visited and conducted pre-audits of Phatthana's factories, and arranged for import and shipping of Phatthana's product." *Ratha I*, 35 F.4th at 1166. And in its own marketing materials, Rubicon claimed "to control every aspect of production."

Plaintiffs Keo Ratha, Sem Kosal, Sophea Bun, Yem Ban, Nol Nakry, Phan Sophea, and Sok Sang are villagers from rural Cambodia who were recruited from their villages to work at seafood factories, including Phatthana's. *Id.* at 1165-66. Though Plaintiffs were promised competitive pay and free accommodations, they instead "became victims of peonage, forced labor, and involuntary servitude." *Id.* at 1165. Specifically, from 2010 through late 2012, "Plaintiffs were paid less than promised, charged for accommodations, charged for other unexpected expenses, … and subjected to harsh conditions." *Id.* Workers who complained faced threats and retaliation; some were forced to crawl on their hands and knees, without clothing, until bloody. Plaintiffs' passports were confiscated when they arrived at the factories. Plaintiffs could not leave because police officers would arrest them if they left the factories without their passports, "which [Plaintiffs] were told would not be returned until 'recruitment fee[s]' and other amounts were paid." *Id.* Some workers tried to leave anyway and were arrested.

The conditions at Phatthana's factory did not go unnoticed. In October 2011, Rubicon tried to sell fourteen containers of shrimp to Walmart, which rejected the shipment because it had concerns about the factory's working conditions. *Id.* at 1166. In January 2012, Plaintiff Ratha told the Phnom Penh Post that he was subject to forced labor and that hundreds of Cambodians at Phatthana's factory "wanted to leave but were unable to get their passports back." It is undisputed that in February 2012, Rubicon was aware of the Phnom Penh Post's article reporting Ratha's allegations of human trafficking and describing the factory's deplorable working conditions. *See id.* at 1177 ("Rubicon was undisputedly aware of Ratha's whistleblower report."). More articles came out about the workers' allegations of forced labor at the factories, and Rubicon's managers circulated them to one another. Rubicon briefly paused its attempts to sell shrimp to Walmart but, beginning in July 2012, it resumed those efforts. Ultimately, Rubicon failed to sell Phatthana's shrimp in the United States during the time period relevant to this case. *Id.* at 1166.

In June 2016, Plaintiffs sued Rubicon under the civil remedy provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), 18 U.S.C. § 1595(a) (effective December 23, 2008, through January 4, 2023).[1]

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[1] Plaintiffs also named Phatthana; S.S. Frozen Food Co., Limited; and Wales and Co. Universe Limited as defendants. The district court entered summary judgment in favor of those

Plaintiffs alleged that they were victims of peonage, forced labor, involuntary servitude, and human trafficking in violation of 18 U.S.C. §§ 1581, 1584, 1589, 1590, 1592, and 1593A. Plaintiffs alleged that Rubicon "knowingly benefited from participation in a venture which [Rubicon] knew or should have known was engaged in peonage, forced labor, involuntary servitude, unlawful conduct with respect to documents, and human trafficking." They further alleged that Rubicon "provided a market and worked to expand that market," when it knew that Phatthana was engaged in human trafficking and "intend[ed] to benefit from it."

Rubicon moved for summary judgment, which the district court entered in December 2017. The district court ruled that "(1) Plaintiffs failed to demonstrate that Rubicon knowingly participated in a human trafficking venture; (2) Plaintiffs failed to demonstrate that Rubicon knew or should have known that human trafficking existed at Phatthana's Songkhla factory; and (3) there was no evidence that Rubicon benefitted from Phatthana's alleged human trafficking." *Ratha v. Phatthana Seafood Co., Ltd.*, No. CV 16-4271-JFW (ASx), 2023 WL 2762044, at *1 (C.D. Cal. Mar. 3, 2023).

Plaintiffs appealed, and a panel of our court affirmed the district court's judgment. *Ratha I*, 35 F.4th at 1181. We held that (1) Plaintiffs did not show that Rubicon received a benefit and (2) § 1595(a) did

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three companies, but those companies and their associated judgments are not before us.

not extend civil liability to attempts to benefit. *Id*. at 1175-76. We filed that decision on February 25, 2022, and amended that decision and denied rehearing en banc on May 31, 2022; the Supreme Court denied Plaintiffs' petition for a writ of certiorari on December 5, 2022. 143 S. Ct. 491 (2022).

Fifteen days later, on December 20, 2022, Senators Martin Heinrich, John Cornyn, and Amy Klobuchar proposed an amendment to a pending bill entitled the Abolish Trafficking Reauthorization Act of 2022 ("ATRA"). The proposed amendment added wording to 18 U.S.C. § 1595(a), removing any doubt that victims may bring private actions against parties for *attempting* to benefit from human trafficking. The Senate passed the amended bill the same day, and the President signed it into law on January 5, 2023. Pub. L. No. 117-347, 136 Stat. 6199 (2023).

Plaintiffs then filed a motion under Federal Rule of Civil Procedure 60(b)(6), asking the district court to vacate its summary judgment order as to Rubicon. Plaintiffs argued that the ATRA clarified that § 1595(a) included attempt liability and, because the ATRA served only as a clarification, it applied retroactively. The district court disagreed and denied Plaintiffs' motion, holding that (1) the ATRA was not retroactive; and (2) even if it were, the district court premised its summary judgment as to Rubicon on two additional grounds, which were independent of the changes made by the ATRA and which the court incorporated by reference.[2]

Plaintiffs timely appeal. A majority of a three-judge panel affirmed the district court's decision. *Ratha v. Rubicon Res., LLC*, 111 F.4th 946, 969 (9th Cir. 2024). Judge Graber dissented, stating that she would have held that the ATRA was retroactive and would have reversed and remanded for further proceedings. *Id.* at 975-76 (Graber, J., dissenting). A majority of active judges voted to rehear the case en banc, *Ratha v. Rubicon Res., LLC*, 129 F.4th 1212 (9th Cir. 2025) (order), and the en banc court heard oral argument on June 24, 2025.

STANDARDS OF REVIEW

We review for abuse of discretion the denial of a Rule 60(b) motion. *Phelps v. Alameida*, 569 F.3d 1120, 1131 (9th Cir. 2009). A district court abuses its discretion if its denial rests on "an erroneous view of the law." *Id.* (citation and internal quotation marks omitted). We review de novo questions of law. *Bynoe v. Baca*, 966 F.3d 972, 979 (9th Cir. 2020).

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[2] Those grounds are that (1) Plaintiffs failed to demonstrate that Rubicon knowingly participated in a human trafficking venture and (2) Plaintiffs failed to demonstrate that Rubicon knew, or should have known, that human trafficking was occurring at Phatthana's factory.

DISCUSSION

A. The ATRA Applies Retroactively.

1. *Landgraf* Governs the Retroactivity of All Civil Statutes, Including Clarifying Amendments.

Landgraf v. USI Film Products, 511 U.S. 244 (1994), controls the analysis of retroactivity for federal civil legislation. *Landgraf* provides a three-step framework for deciding whether an enactment, such as an amendment to a civil statute, applies retroactively. We first read the statutory text to see whether Congress explicitly included a retroactive effective date. *Id*. at 280. If so, we honor that effective date. *Id*. If not, we determine, at step two, whether application of the statute "would have retroactive effect." *Id*. If the statute would not have retroactive effect—if, for example, it affects only "the propriety of prospective relief," or it changes a procedural rule—then it ordinarily applies retroactively. *Id*. at 273-75. But "[i]f the statute would operate retroactively," courts apply a presumption against statutory retroactivity. *Id*. at 280. That presumption is driven by the concern that it may be unfair to "impose[] new burdens on persons after the fact." *Id*. at 270. But presumptions can be overcome. Accordingly, the final step of the analysis requires us to consider all indicia of intent to determine whether Congress has made its intention *clear* that the statute applies retroactively. *Id*. at 280; *see also Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 304-09 (1994) (elaborating, in *Landgraf*'s companion case, on the analysis of congressional intent). If so, the statute applies retroactively.

Our own cases generally have comported with *Landgraf*'s analysis. *See, e.g., Bahr v. Regan*, 6 F.4th 1059 (9th Cir. 2021). But we pause to clarify two aspects of the retroactivity analysis.

First, we have at times held that "clarifying" amendments are analyzed differently. We have held (a) that such amendments present an *exception* to *Landgraf*'s requirements, *see, e.g., Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1186 (9th Cir. 2016) ("However, no *Landgraf* analysis is required if an amendment merely serves to clarify rather than change the substance of existing law."); and (b) that there is no presumption against retroactivity for "clarifying" amendments, *see, e.g., ABKCO Music, Inc. v. LaVere*, 217 F.3d 684, 689 (9th Cir. 2000) ("[C]larifying legislation is not subject to any presumption against retroactivity ...."). To the extent that we have held in other cases that clarifying amendments to civil statutes fall outside the *Landgraf* framework, we now overrule those cases as inconsistent with *Landgraf*. Nothing in *Landgraf*, or in any other Supreme Court precedent, suggests that *Landgraf*'s general framework applies only in some situations. We must analyze all questions concerning the retroactive effect of amendments to civil statutes under *Landgraf*'s three-step framework.

But we overrule those cases <u>only</u> insofar as they bypass a consideration of congressional intent or establish a contrary presumption regarding retroactivity. To the extent that those cases consider various indicators of congressional intent, they remain valid.[3]

Second, as described above, *Landgraf* clearly contemplates a sequence of three questions. 511 U.S. at 280; *see also Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37-38, 40 (2006) (describing the inquiry as containing three steps). Our cases generally adhere to that understanding. *See, e.g., TwoRivers v. Lewis*, 174 F.3d 987, 993 (9th Cir. 1999) (describing a "three stage analysis"). But occasionally we have described the inquiry as containing only two steps, with the second step encompassing both of the final two stages of the *Landgraf* analysis. *See, e.g., Ditullio v. Boehm*, 662 F.3d 1091, 1099 (9th Cir. 2011) (describing a "two-step analysis"); *Garcia-Ramirez v. Gonzales*, 423 F.3d 935, 939 (9th Cir. 2005) (per curiam) (describing a "two-step approach"). For consistency with the Supreme Court's decisions, we adhere to the Court's description of three distinct inquiries.

We turn, then, to applying *Landgraf*'s framework to the ATRA.

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[3] The dissent mistakenly insists that we must toss out the baby with the bathwater. *See* Dissent at 39 n.2. Although we hold that a "clarifying" amendment is not *presumptively* retroactive, the "clarifying" nature of an amendment remains an indicator of Congress's intent for legislation to operate retroactively. So we may still look to our now-overruled cases for guidance as to whether an amendment is "clarifying."

2. Under the *Landgraf* Framework, the ATRA Applies Retroactively.

Utilizing that framework here, we conclude that the ATRA's changes to 18 U.S.C. § 1595(a) apply retroactively. The legislation contained no explicit retroactive effective date, so we cannot stop at step one of the *Landgraf* framework.

At step two, we determine "whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf*, 511 U.S. at 280. The TVPRA, as interpreted by *Ratha I*, did not provide civil liability for an attempt to benefit from forced labor, and the ATRA unambiguously does so. The ATRA thereby increases Rubicon's liability for its past conduct, so the ATRA would have retroactive effect.[4]

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[4] Here, our analysis of the statute's retroactive effect is straightforward. But it is not always so. As *Landgraf* explained:

> The conclusion that a particular rule operates "retroactively" comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event. Any test of retroactivity will leave room for disagreement in hard cases, and is unlikely to classify the enormous variety of legal changes with perfect philosophical clarity. However, retroactivity is a matter on which judges tend to have "sound instincts,"

Accordingly, the presumption against retroactivity applies.

We therefore ask, at the final step, whether Congress nevertheless clearly meant for the ATRA to apply retroactively. The answer here is "yes." Four factors in this case, considered together, clearly establish the amendment's retroactivity: (a) Congress expressly stated that its enactment was a technical and "clarifying" update; (b) § 1595(a) was ambiguous; (c) *Ratha I* created a circuit split concerning the interpretation of § 1595(a); and (d) Congress acted swiftly, and with immediate effect, following our decision in *Ratha I*. We address those factors in turn.[5]

a. <u>Congress Labeled the Amendment "Technical and Clarifying."</u>

The full text of the relevant amendment states:

SEC. 102. TECHNICAL AND CLARIFYING UPDATE TO CIVIL REMEDY.

> and familiar considerations of fair notice, reasonable reliance, and settled expectations offer sound guidance.

511 U.S. at 270 (alterations adopted) (internal citation omitted); *see also Bahr*, 6 F.4th at 1071-74 (concluding that the administrative rule at issue "did not have an impermissibly retroactive effect").

[5] We emphasize, though, that there is no required set of factors that must be considered when determining congressional intent. Different statutes may present different indicia of retroactive intent.

> Section 1595(a) of title 18, United States Code, is amended by inserting "or attempts or conspires to benefit," after "whoever knowingly benefits."

Pub. L. No. 117-347, 136 Stat. 6199, 6200 (2023).

The section's title—"TECHNICAL AND CLARIFYING UPDATE TO CIVIL REMEDY"—strongly suggests that Congress intended for it to apply retroactively. Although "clarifying" amendments are not exempted from the *Landgraf* analysis, an amendment's "clarifying" nature is evidence that Congress intended the amendment to be retroactive. *See Rivers*, 511 U.S. at 311 (stating that an enactment's "restorative purpose" can be evidence that Congress intended the enactment to apply retroactively).[6] Here, section 102's title

[6] The dissent criticizes our citation of *Rivers*, Dissent at 41-43, primarily because *Rivers* concluded that Congress did not clearly express an intent for the statute in question to apply retroactively. But of course, the Court's conclusion about congressional intent concerning the Civil Rights Act of 1991 does not control our conclusion about congressional intent concerning the ATRA. More importantly, the dissent ignores the portions of *Rivers* in which the Court considered a 1990 civil rights bill's title, which stated the bill's restorative purpose, as evidence of congressional intent to act retroactively. *See* 511 U.S. at 307-08 (contrasting the 1990 bill's use of the word "restoring" with the Civil Rights Act of 1991's use of the word "expanding"); *see also id*. at 311 ("A restorative purpose may be relevant to whether Congress specifically intended a new statute to govern past conduct …."). Finally, the dissent errs by arguing that factors identified in *Rivers* as evidence of retroactive intent, but held to

suggests that, as to civil liability for attempts to knowingly benefit from forced labor under § 1589, Congress intended for the ATRA to "confirm what the law … always meant." *Beverly Cmty. Hosp. Ass'n v. Belshe*, 132 F.3d 1259, 1265 (9th Cir. 1997); *see also Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) ("[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute." (citations and internal quotation marks omitted)).

We must give great weight to the clarifying nature of Congress's amendment. The Supreme Court has stated that rule in cases decided both before and after *Landgraf*. For example, in *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), the Court stated: "Subsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction." *Id*. at 380-81; *see also id*. at 381 n.8 (citing earlier cases). The Court repeated the same principle two years after deciding *Landgraf*. *Loving v. United States*, 517 U.S. 748, 770 (1996). In *Belshe*, we cited those cases and observed: "It has been established law since nearly the beginning of the republic … that congressional legislation that thus expresses the intent of an earlier statute must be

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be insufficient in that instance to determine Congress's intent, should not be considered at all. Put more simply, the dissent posits that if a factor is not dispositive, we must ignore it. *Rivers* suggests no such rule. To the contrary, *Rivers* made clear that Congress's restorative intent was relevant even though Congress's "use of the word 'restore'" did not "necessarily bespeak[] an intent to restore retroactively." *Id*. at 307 n.7.

accorded great weight." 132 F.3d at 1265 (citations omitted); *see also id.* at 1266 ("We therefore honor Congress'[s] 'clarification' label ...."). Other circuits, too, give weight to Congress's clarification label. *See, e.g., Brown v. Thompson*, 374 F.3d 253, 259 (4th Cir. 2004) (giving effect to Congress's label of an amendment as "technical and clarifying"); *Piamba Cortes v. Am. Airlines, Inc.*, 177 F.3d 1272, 1283-84 (11th Cir. 1999) (giving effect to a legislative declaration of an intent to clarify in the face of a prior ambiguity).

Relatedly, we must assume that Congress knew that we long had considered titles with a "clarifying" label to be a strong indicator of retroactive intent. *See United States v. LeCoe*, 936 F.2d 398, 403 (9th Cir. 1991) ("Congress is, of course, presumed to know existing law pertinent to any new legislation it enacts."). By using the term "clarifying" in the title of its amendment, Congress spoke to us in our own language, directing us to apply the amendment retroactively.

It also is worth noting that Congress consciously chose to label the 2023 amendment "clarifying" when it had labeled the previous changes "enhancements." *Compare* Pub. L. No. 117-347, 136 Stat. 6199, 6200 (2023), *with* Pub. L. 108-193, 117 Stat. 2875, 2877 (2003), *and* Pub. L. 110-457, 122 Stat. 5044, 5067 (2008). *See Rivers*, 511 U.S. at 307-08 (considering, as evidence of Congress's retroactive intent, the difference between Congress's stated purpose of "expanding" a law's scope and a prior bill's purpose of "restoring" such scope). "Enhancement" connotes a substantive improvement. *See Enhance*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/enhancement (last visited Nov. 4, 2025) ("[T]o increase or improve in value, quality, desirability, or attractiveness[.]"). By contrast, the "clarifying" label has a settled meaning that does not suggest a substantive change. *See Clarifying, Merriam-Webster*, https://www.merriam-webster.com/dictionary/clarifying (last visited Nov. 4, 2025) ("[M]aking something less confusing or easier to understand[.]").

b. The Statute Was Ambiguous Before the Amendment.

The ATRA was not simply *labeled* "clarifying"; it actually clarified an ambiguous statute. Before the ATRA, the TVPRA was subject to more than one reasonable interpretation. *Ratha I* memorializes one such interpretation. 35 F.4th at 1176 (holding that the TVPRA does not create civil attempt liability); *see also* Dissent at 44-46 (setting forth a similar interpretation of the TVPRA). But we find a different reading—one in which the TVPRA did authorize such liability—to be at least as reasonable. Letting *Ratha I* speak for itself, we now explain a contrary reading of the TVPRA.

We begin with the text of the statute, which we must read in context and with an understanding of the law's purpose. *Asarco LLC v. Atl. Richfield Co.*, 866 F.3d 1108, 1118-21 (9th Cir. 2017).

The Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"), Pub. L. 106-386, 114 Stat. 1464 (2000), made it illegal for a person to knowingly provide or obtain forced labor. *Id.* at § 112(a)(2), 114 Stat. 1464, 1486-87. The VTVPA also included § 1594 (General provisions), *id.* at § 112(a)(2), 114 Stat. 1464, 1489, which functions like a "definitions" section. For example, as relevant here, § 1594(a) provided that "[w]hoever *attempts* to violate section … *1589* shall be punishable in the same manner as a completed violation of that section." *Id.* (emphases added). The VTVPA thus defined an *attempt* to violate § 1589 as a violation of § 1589—without extending attempt liability to every crime listed in the chapter.

Three years later, Congress passed the Trafficking Victims Protection Reauthorization Act of 2003. Pub. L. 108-193, 117 Stat. 2875 (2003). That act introduced § 1595—"Civil remedy"—allowing "[a]n individual who is a victim of a violation of section 1589, 1590, or 1591 … [to] bring a civil action against the perpetrator." *Id.* at § 4(a)(4)(A), 117 Stat. 2875, 2878.

Finally, in 2008, Congress passed the TVPRA. Pub. L. 110-457, 122 Stat. 5044 (2008). The TVPRA expanded civil liability to perpetrators of *any* violation under the chapter, not just perpetrators of the crimes listed in §§ 1589, 1590, and 1591:

> An individual who is a victim of *a violation of this chapter* may bring a civil action against the perpetrator (or *whoever knowingly*

> *benefits*, 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 attorneys fees.

18 U.S.C. § 1595 (2008) (emphases added); *see* Pub. L. 110-457, § 221, 122 Stat. 5044, 5067.

Considering §§ 1589, 1594, and 1595 together and in context, three things become clear.

i. <u>An Attempt To Knowingly Benefit from Forced Labor Was a Violation of § 1589.</u>

First, an *attempt* to violate § 1589 was a punishable violation of § 1589. As the Supreme Court explained in *Carcieri v. Salazar*, 555 U.S. 379, 393-95 (2009), a defined term retains its meaning throughout a particular statute. *See Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) ("We … avoid interpretations that would 'attribute different meanings to the same phrase.'" (citation omitted)); *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994) ("A term appearing in several places in a statutory text is generally read the same way each time it appears."). Through § 1594 (General provisions), Congress added "attempt" into the definition of the conduct that violated § 1589 (Forced labor). Pub. L. 110-457, § 222(b)(3), 122 Stat. 5044, 5068 (2008). In other words, reading the two sections together, an attempt to knowingly benefit from forced labor is and was a violation of the TVPRA.

ii. Congress Designed Co-extensive Criminal and Civil Liability.

Second, Congress made clear in the 2008 version of § 1595(a) that *any* violation of the human-trafficking chapter would give rise to civil liability. The 2003 version of § 1595 (Civil remedy) had limited civil liability to only three of several substantive crimes. Pub. L. 108-193, § 4(a)(4)(A), 117 Stat. 2875, 2878. As of 2008, though, the civil remedy applied (if the other requirements were met) to every "act in violation of [the human-trafficking] chapter." Pub. L. 110-457, § 221, 122 Stat. 5044, 5067. That is, Congress intended *every* criminal act to have a civil-remedy counterpart. The intended parallelism is further demonstrated by § 1595(b), which provides that courts must stay any civil action during the pendency of a criminal action involving the same conduct and the same victim. Pub. L. 108-193, § 4(a)(4)(A), 117 Stat. 2875, 2878. Given the purpose of the statute, we can discern no reason why any criminal violation, including an attempt, would fail to give rise to corresponding civil liability.

iii. Congress's Drafting Choice Was a Matter of Efficiency.

Third, Congress made a simple drafting choice, apparently for the sake of clarity and efficiency. Congress chose to define, in § 1594 (General provisions), certain violations to include attempts.

Pub. L. 106-386, § 112(a)(2), 114 Stat. 1464, 1488 (2000). Section 1594 (General provisions) made "attempt" a part of the substantive crime only as to *some* human-trafficking violations, but not as to all of them. *Id.* Had Congress included "attempt" in § 1595(a) (Civil remedy), that wording would have broadened the parallel civil liability beyond what Congress intended in 2008. Thus, the drafting choice improved clarity.

Of course, Congress could have chosen a less efficient course: to revise each substantive section to add attempt, conspiracy, neither, or both. If Congress had selected that path, there could be no doubt that an attempt to benefit from forced labor was a violation of § 1589. But instead, Congress's chosen path gave rise to ambiguity.

Both the above interpretation and the reading adopted in *Ratha I* are plausible. Thus, Congress was clarifying an ambiguity when it passed the ATRA.

The overall circumstances here lend even more weight to Congress's "clarifying" label. The overarching concern in *Landgraf* is the unfairness of imposing *new* burdens on private actors, punishing behavior that once was legal. *Landgraf*, 511 U.S. at 280. That concern is greatly minimized in the precise circumstances here. By passing the ATRA, Congress acted to clarify what the law meant all along—consistent with how that law had been interpreted in other circuits. *See infra* Part A.2.c. Moreover, and specific to the ATRA, no one disputes that pre-ATRA attempts to benefit from forced labor imposed *criminal* liability; the only pre-ATRA dispute concerned whether victims of that crime could recover civilly. Imposing civil liability retroactively on *criminal* conduct does not raise the same fairness concerns that are present in other contexts.

c. <u>The Statute Was the Subject of a Circuit Split.</u>

The ambiguity of the statute is also evidenced by the circuit split that existed before Congress passed the ATRA. Before we decided *Ratha I*, two other circuit courts had implicitly concluded that civil liability attaches for *attempting* to benefit financially, or to receive anything of value, from participation in a venture involving human trafficking.

In *Ricchio v. McLean*, 853 F.3d 553 (1st Cir. 2017), the First Circuit reversed a district court's dismissal of a plaintiff's civil claims under the TVPRA. Among the plaintiff's claims was Claim 6, which alleged that "the defendants at the least *attempted* to violate §§ *1589*, 1590, and 1591." *Id*. at 557 (emphases added). By reversing the dismissal of that claim, the First Circuit necessarily concluded, at least implicitly, that via § 1594(a) the TVPRA gave rise to civil liability for "*attempt* and conspiracy *to violate §§ 1589*, 1590, or 1591." *Id*. at 558 (emphases added). Furthermore, in Claim 1 the plaintiff alleged that the defendants knowingly benefitted from forced labor, in violation of § 1589, even though the defendants did not extract forced labor from the plaintiff directly. *Id*. at 556. Taken together, the First Circuit's analysis of Claims 1 and 6 reinforces that an attempt to benefit from forced labor states a claim under the TVPRA. As the First Circuit concluded, "the objective of forced labor … need not be satisfied for liability to attach." *Id.* at 558.

The dissent attempts to harmonize *Ricchio* and *Ratha I* by drawing a hard line between theories of perpetrator liability and beneficiary liability. Dissent at 48-51. But *Ricchio* does not support that purported distinction. Rather, *Ricchio* recognized that benefitting from forced labor is a violation of § 1589—that is, a defendant who benefits from forced labor is a "perpetrator" for purposes of civil liability under § 1595(a). Moreover, *Ricchio*'s broadly worded holding encompasses the concept that, in the dissent's own words, an "attempt to violate [§] 1589" states a claim for civil liability. Dissent at 50. That holding conflicts with *Ratha I*, which concluded that Congress had not "intended to create civil liability under § 1595 for attempts to benefit." 35 F.4th at 1176. Of equal importance, Plaintiffs here contend that Defendant perpetrated a violation of § 1589. *See* Compl., D. Ct. Dkt. No. 1 ¶¶ 98-99, 123-26, 128-30.

The dissent's only real response to *Ricchio* is that Plaintiffs failed to plead adequately an *attempted* violation of § 1589. Dissent at 47-48, 51 n.5. But, at the summary judgment stage, the parties vigorously litigated the issue of whether an attempt to violate § 1589 states a claim. Indeed, the whole question in this appeal is whether the district court's ruling after considering the parties' arguments on that point—that Congress did not intend for an attempted violation of § 1589 to operate retroactively in favor of Plaintiffs—is legally correct. When the parties litigate an issue and the district court rules on it, the issue is part of the case as if pleaded and, therefore, the issue is preserved for our review. *See* Fed. R. Civ. P. 15(b)(2) ("When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings."); *see also Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1154 (9th Cir. 2014) (holding that even if plaintiffs fail to raise a claim properly in the pleadings, the claim may be raised at summary judgment under Rule 15(b)); *Madeja v. Olympic Packers, LLC*, 310 F.3d 628, 636 (9th Cir. 2002) (holding that a motion to conform a complaint to the evidence is "irrelevant" and unnecessary when the district court considered an unpleaded claim on the merits). Probably for that reason, the district court and *Ratha I* did not rely on the complaint's lack of an express allegation of attempt liability in granting and affirming summary judgment for Defendant. See *Ratha v. Phatthana Seafood Co.*, No. CV 16-4271-JFW (ASx), 2017 WL 8293174, at *6 (C.D. Cal. Dec. 21, 2017) (order) (considering Plaintiffs' theory of attempt liability on the merits at summary judgment, albeit briefly, and finding no "legal support" for it).

Also presumably for the same reason, Defendant's response to Plaintiffs' Rule 60(b)(6) motion did not argue that Plaintiffs failed to plead attempt liability. Defendant argued only that the district court's judgment is "adequately supported by independent grounds … unrelated to Plaintiffs' attempt to benefit theory," that the ATRA does not apply retroactively to Defendant's conduct, and that "there are no 'extraordinary circumstances' justifying vacatur under Rule 60(b)(6).” (capitalization altered). Defendant mentioned that it *had* argued at summary judgment that “Plaintiffs’ attempt to benefit theory had not been pled,” but Defendant did not reassert that argument and thereby failed to preserve it for our review. *See BankAmerica Pension Plan v. McMath*, 206 F.3d 821, 826 (9th Cir. 2000) (refusing to reach an argument that the appellants initially raised, but later abandoned, before the district court). And, regardless of these principles, any pleading deficiency is irrelevant to the question whether the TVPRA provided for civil liability for an attempt to benefit—the point on which *Ricchio* and *Ratha I* disagree.

In *Roe v. Howard*, 917 F.3d 229 (4th Cir. 2019), the Fourth Circuit held that “the text of § 1595 shows that it applies *coextensively* with its [criminal] predicate offenses.” *Id.* at 243 (emphasis added). The Fourth Circuit thus held that Congress intended to authorize civil actions for *all* the same conduct that gives rise to criminal liability. It is undisputed that, beginning in 2008, criminal liability attached to any attempt to knowingly benefit from forced labor. Pub. L. 110-457, § 221, 122 Stat. 5044, 5067 (2008).[7]

After the First Circuit’s decision in 2017, and again after the Fourth Circuit’s decision in 2019,

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[7] Interestingly, each of these two cases reached the same conclusion as our alternative reading above, but by different analytical routes. The fact that there were several ways to understand the text of the 2008 version of the statute underscores the ambiguity that we have identified.

Congress saw no need to act. But we reached the opposite statutory interpretation in *Ratha I*. We held that the lack of the words "or attempts" in § 1595 itself was fatal to Plaintiffs' claims. *Ratha I*, 35 F.4th at 1176. In so doing, we rejected the interpretations of the First and Fourth Circuits, namely, that under the TVPRA criminal liability gives rise to coextensive civil liability, including for *attempted* violations of § 1589. Accordingly, when Congress passed the ATRA, it ended the circuit split created by *Ratha I*.

The dissent is simply wrong when it asserts that the existence of a circuit split is irrelevant to our assessment of retroactivity. Dissent at 48. *See, e.g., ABKCO Music*, 217 F.3d at 690-91 (considering, when deciding whether an amendment was retroactive, whether an ambiguity in the earlier statute created a circuit split before Congress chose one of the competing interpretations); *Callejas v. McMahon*, 750 F.2d 729, 731 (9th Cir. 1984) (noting that "a 'dispute or ambiguity, such as a split in the circuits, [is] an indication that a subsequent amendment is intended to clarify, rather than change, the existing'" meaning of a statute (alteration in original) (citation omitted)); *see also Adhikari v. Kellogg Brown & Root, Inc.*, 845 F.3d 184, 201-02 (5th Cir. 2017) (noting that the existence of a conflict or ambiguity before Congress passes an amendment is a factor that informs whether the amendment merely makes what Congress intended all along even more unmistakably clear, and thus is retroactive, and holding that an amendment to § 1596 of the TVPRA was not retroactive in part because "no circuit split or conflict … 'provoked' Congress to 'enact an amendment to clarify rather than [to] change the law'" (citation omitted)).

d. Congress Acted Swiftly.

Congress also indicated its retroactive intent by acting quickly. Congress's overturning of a court's interpretation of a statute does not—"by itself"—signal retroactivity. *Rivers*, 511 U.S. at 304-05. But "[i]t is the duty of a court in construing a statute to consider time and circumstances surrounding the enactment as well as the object to be accomplished by it." *Callejas v. McMahon*, 750 F.2d 729, 731 (9th Cir. 1984). As we and other circuits have held, a fast-acting legislative body that amends a statute in the face of an ambiguity or a dispute among courts as to the meaning of the statute suggests that the change is a mere clarification, rather than a substantive change in the law. *See, e.g., id.* ("[A] 'dispute or ambiguity, such as a split in the circuits, [is] an indication that a subsequent amendment is intended to clarify, rather than change, the existing law.'" (second brackets in original) (citations omitted)); *McCoy v. Chase Manhattan Bank, USA, Nat'l Ass'n*, 654 F.3d 971, 974 (9th Cir. 2011) ("If the amendment was enacted soon after controversies arose about interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act …." (quoting 1A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction*, § 22.31 (7th ed. 2011))).

We first published *Ratha I* on February 25, 2022. 26 F.4th 1029, *as amended and superseded on denial* *of reh'g en banc*, 35 F.4th 1159 (9th Cir. May 31, 2022). Before *Ratha I*, no other circuit court had interpreted the TVPRA as we had on the issue of civil attempt liability; thus, up to that point, Congress had no reason to act. But, less than seven months after our amended opinion issued in *Ratha I*, and a few days after the Supreme Court denied certiorari,[8] Congress amended the ATRA, adding the precise words that we had held were missing from the statute. *See* All Actions: S.3946—117th Congress (2021-2022), https://www.congress.gov/bill/117th-congress/senate-bill/3946/all-actions (last visited Nov. 4, 2025) (noting that the Senate and the House considered and passed the bill on December 20, 2022, and December 22, 2022, respectively).

That timeline strongly suggests that Congress acted to resolve the disagreement between circuit courts and to correct *Ratha I*'s error. Congress often moves slowly, and we have considered timeframes longer than ten months to be quick enough to weigh in favor of retroactivity. *See, e.g., McCoy*, 654 F.3d at 974-75 (finding legislation passed within fifteen months of an erroneous judicial interpretation to be clarifying). Additionally, lawmakers introduced the relevant amendment on the same day that the Senate

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[8] The dissent correctly notes that Plaintiffs' petition for certiorari did not address their claims against Defendant. Dissent at 52 n.6. But the dissent's speculation about Plaintiffs' strategy does not undermine our conclusion that Congress acted swiftly following our decision in *Ratha I*. And, of course, we do not know whether members of Congress examined the petition for certiorari, as distinct from *Ratha I*, *Ricchio*, and *Roe v. Howard*.

passed it. *See* All Actions: S.3946—117th Congress (2021-2022). Had the ATRA created an entirely new form of liability, one might expect a last-minute amendment to receive at least *some* discussion on the legislative floor. Congress's speed and its minimal discussion strongly suggest that Congress intended to clarify retroactively what the law already meant, not to make a substantive change in the law.

It also is worth noting that the ATRA took effect immediately when the President signed it in January 2023. There was no notation that the ATRA would take effect on a later date, so the general rule that acts take effect immediately, once enacted, applies. *See Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) (stating rule). A later effective date would have suggested that Congress did *not* intend for the ATRA to be applied retroactively. *See Fitzgerald v. Century Park, Inc.*, 642 F.2d 356, 359 (9th Cir. 1981) (interpreting an amendment as not intended to be retroactive when it took effect six months after its enactment, noting that it was "unlikely that Congress would delay the effective date of amendments which are to be applied retroactively").

e. <u>Those Factors, Together, Reflect Congress's Intent.</u>

In sum, Congress intended for the ATRA to have retroactive effect. Congress made its intent clear by clarifying the meaning of an ambiguous statute, by labeling the amendment "technical and clarifying," and by passing its clarification soon after we misinterpreted the statute's meaning. These indicia are similar to those that we have found sufficient in the past to warrant retroactive application of a law. *See, e.g., McCoy*, 654 F.3d at 974 (holding a law to be retroactive because it was enacted soon after courts disagreed as to its original meaning); *Belshe*, 132 F.3d at 1266 (holding a law to be retroactive because it clarified an ambiguity that had led to a "split of authority").

The dissent faults us for considering indicia of congressional intent that are not identified in *Landgraf*. Dissent at 40. But *Landgraf* does not spell out the factors to be considered when determining whether Congress intended to act retroactively. *See* 511 U.S. at 262-63 (considering legislative history and statutory framework). As a general matter, we consider "all available evidence" to determine Congress's intent. *See Carnero v. Bos. Sci. Corp.*, 433 F.3d 1, 8 (1st Cir. 2006) (quoting *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 177 (1993)). Indeed, in *Rivers*, a companion case to *Landgraf*, the Court looked to some of the factors that we consider here: the section's title and whether the statute had a "restorative purpose," meaning the purpose to override a judicial interpretation of the statute at issue. *Rivers*, 511 U.S. at 307-08, 311. And contrary to the dissent's contention, cases decided before *Landgraf* are relevant to the present inquiry. *See, e.g., Fitzgerald*, 642 F.2d at 358-59 (analyzing congressional intent to determine whether an amendment applied retroactively). The same is true of our later cases that we now overrule insofar as they did not apply *Landgraf*. *See, e.g., Belshe*, 132 F.3d at 1265-66. We need not throw out the baby with the bathwater: those decisions remain valid to the extent that they considered indicia of congressional intent.

Finally, the dissent errs by looking at each indicator of congressional intent in isolation. *Cf. United States v. Arvizu*, 534 U.S. 266, 274 (2002) (rejecting a "divide-and-conquer analysis"). We do not suggest that any factor alone is sufficient. *Contra* Dissent at 39-40. For example, the "clarifying" label does not, by itself, indicate Congress's intent. *See Rivers*, 511 U.S. at 311 (discussing the weight accorded to a statute's stated purpose). But considering all of the available evidence together, we conclude that Congress made its intent clear.

B. <u>The District Court Erred by Denying Plaintiffs' Rule 60(b) Motion.</u>

Section 1595's retroactivity fatally undermines one of the three grounds on which the district court had premised its grant of summary judgment. Rubicon argues that, even if § 1595(a) is retroactive, the two remaining grounds are sufficient to justify denial of Plaintiffs' Rule 60(b) motion: (1) Plaintiffs did not demonstrate that Rubicon knowingly participated in a human trafficking venture; and (2) Plaintiffs did not demonstrate that Rubicon knew, or should have known, that human trafficking was occurring at Phatthana's factory. We must now determine whether either of those grounds is legally sound. We may review the district court's reasons for granting summary judgment because the court incorporated them into the decision under review by relying on them to deny Plaintiffs' Rule 60(b) motion.

As the district court stated: "[T]he Court agrees with Rubicon that the Court's decision [on summary judgment] is fully supported by the first and second grounds and the change to Section 1595(a) does not apply to or in any way affect the first and second grounds of the Court's decision. *As a result*, the Court concludes that *because the change to Section 1595(a) would not alter the Court's decision in favor of Rubicon*," the *Phelps* factors cannot avail Plaintiffs. *Ratha*, 2023 WL 2762044, at *4 (emphases added); *see Mitchell v. United States*, 958 F.3d 775, 784 (9th Cir. 2020) (noting that we review de novo "questions of law *underlying* the district court's" denial of a Rule 60(b) motion (emphasis added)).[9] Additionally, we are not bound by any earlier decision of our court with respect to those two issues, as *Ratha I* upheld summary judgment for Rubicon solely on the grounds that Rubicon did not actually benefit and that the statute

[9] The dissent contends that we err by "bring[ing] up the underlying judgment for review" on review of a Rule 60(b) motion. *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 263 n.7 (1978); Dissent at 58-60. Not so. We simply review the district court's reasons for denying Rule 60(b) relief. Here, the district court denied Rule 60(b) relief expressly based, in part, on reasons set forth more fully in its decision granting summary judgment. We therefore review those reasons. *See Lebahn v. Owens*, 813 F.3d 1300, 1305-06 (10th Cir. 2016) (acknowledging as "unexceptional" the notion that "where the district court 'reviews its own mistake of law under Rule 60(b)(1) and that determination is appealed,' a court of appeals 'will reach the substantive legal merits of the underlying judgment'" (quoting 12 James Wm. Moore et al., *Moore's Federal Practice*—Civil § 60.68 (2015))).

did not provide a civil remedy for attempts to benefit. 35 F.4th at 1175-76.

1. The District Court Erred as a Matter of Law on the Participation Element.

The district court made two related errors of law when it held that Plaintiffs did not present evidence that Rubicon participated in a human trafficking venture.

First, the district court applied a legally erroneous definition of "participate," requiring Plaintiffs to show that Rubicon "took some action to operate or manage the venture." *Ratha*, 2017 WL 8293174, at *4-5 (citation omitted). The district court's definition is contrary to the ordinary meaning of "participate," which is "to take part." *Participate*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/participate (last visited Nov. 4, 2025); *see Doe #1 v. Red Roof Inns, Inc.*, 21 F.4th 714, 724-25 (11th Cir. 2021) (defining "participate" as "to take part in or share with others in common in or in association" (citing *Black's Law Dictionary* (11th ed. 2019) (defining "participation" as "The act of taking part in something.") and *Oxford English Dictionary* 268 (2d ed. 1989) (defining "participate" as "[a] taking part, association, or sharing (with others) in some action or matter."))). The ordinary meaning applies because the statute contains no special definition. *See Chacon v. Wilkinson*, 988 F.3d 1131, 1134 (9th Cir. 2021) (holding that we interpret a term according to its ordinary meaning when Congress does not define it). The district court's erroneous definition of "participate" held Plaintiffs to too high a bar; one can participate in a venture without operating or managing it.

Second, the district court did not view all facts and inferences in favor of Plaintiffs. *See Anderson*, 477 U.S. at 255 ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [their] favor."). The district court stated that it did not consider the factual disputes to be "material to the disposition of [the] motion." *Ratha*, 2017 WL 8293174, at *1 n.1. But Rubicon's marketing materials touted that it was in "control [of] every aspect of production," which is material to a consideration of Rubicon's participation.

Applying the proper definition of participation, and viewing the facts in the light most favorable to Plaintiffs, a reasonable jury could find that Rubicon participated in a human trafficking venture. Thus, the district court erred in relying on that ground when it denied Plaintiffs' Rule 60(b)(6) motion.

2. <u>The District Court Erred as a Matter of Law on the Knowledge Element.</u>

The district court again doubly erred in holding that the record does not contain evidence that Rubicon knew or should have known about Phatthana's human trafficking at the time of its attempt to benefit. The district court ignored a holding from *Ratha I* that remained law of the case—that Rubicon had knowledge of Phatthana's alleged human trafficking at least by February 2012. *See*

Ratha I, 35 F.4th at 1177 (stating that "Rubicon was undisputedly aware of Ratha's whistleblower report" beginning on February 23, 2012). Because Rubicon attempted to sell shrimp to Walmart *after* that date, it attempted to benefit with the requisite knowledge.

Even if that holding in *Ratha I* had not been binding, the district court also failed to view the evidence in the light most favorable to Plaintiffs. A reasonable jury could infer that Rubicon should have known about the conditions at the factories as early as October 2011, when Walmart refused to purchase shrimp because it was concerned about the conditions at the factory. *Ratha I*, 35 F.4th at 1166.

Because a reasonable jury could have found that Rubicon knew or should have known about Phatthana's alleged human trafficking, the district court erred in relying on that ground when it denied Plaintiffs' Rule 60(b)(6) motion.

3. The *Phelps* Factors Weigh in Favor of Granting Plaintiffs' Rule 60(b)(6) Motion.

Having found legal error in all three grounds on which the district court relied when denying Plaintiffs' Rule 60(b)(6) motion, we now consider whether the district court's denial of Plaintiffs' motion was, itself, error. We hold that it was.

Plaintiffs sought relief "from a final judgment, order, or proceeding" of the district court under Rule 60(b). Fed. R. Civ. P. 60(b). Rule 60(b)(6) allows a court to grant relief for "any other reason that justifies relief." But relief under the rule is appropriate only when "extraordinary circumstances justify[] reopening the judgment." *Bynoe*, 966 F.3d at 979 (citation and internal quotation marks omitted). A clear and authoritative change in law may constitute such extraordinary circumstances, depending on the consideration of certain factors:

> For Rule 60(b)(6) motions premised on post-judgment changes in law, we have distilled the extraordinary-circumstances requirement into six factors, considered flexibly and in their totality. We examine (1) the nature of the legal change, including whether the change in law resolved an unsettled legal question; (2) whether the movant exercised diligence in pursuing reconsideration of his or her claim; (3) the parties' reliance interests in the finality of the judgment; (4) the delay between the finality of the judgment and the Rule 60(b)(6) motion; (5) the relationship between the change in law and the challenged judgment; and (6) whether there are concerns of comity that would be disturbed by reopening a case.

Id. at 983 (citing *Phelps*, 569 F.3d at 1134-40).

The district court considered the six factors and denied Plaintiffs' Rule 60(b)(6) motion. It determined that the second factor (Plaintiffs' diligence) and the fourth factor (the delay between judgment and motion) weighed in *favor* of granting Plaintiffs' motion, that the third factor (reliance interests) was neutral, and that the sixth factor (comity) was inapplicable. We see no error in the district court's weighing of those four factors, nor do the parties ask us to.

The district court determined that the first factor (the nature of the legal change) and the fifth factor (the relationship between the change in law and the challenged judgment) weighed heavily against granting the motion. But the legal errors described above directly affected the court's assessment of those factors. Thus, the district court abused its discretion by relying on an erroneous view of the law in weighing factors one and five. Moreover, given our legal conclusions above, the first and fifth factors weigh in favor of granting Plaintiffs' motion: the ATRA resolved an ambiguity and had retroactive effect, directly allowing Plaintiff to bring a civil claim for attempt liability. In sum, four factors weigh strongly in favor of granting Plaintiffs' motion, one factor is neutral, and one is inapplicable. Accordingly, Plaintiffs are entitled to relief under Rule 60(b)(6) from the district court's final order.

REVERSED and REMANDED for further proceedings consistent with this opinion.

CALLAHAN, Circuit Judge, in which M. SMITH, Circuit Judge, joins except as to Part I.A., BADE, Circuit Judge, joins in full, BRESS, Circuit Judge, joins as to Part I only, and JOHNSTONE, Circuit Judge, joins in full, dissenting:

The facts and procedural history of this case are not in question. For that reason, I do not restate them here. My disagreement lies with the majority's legal reasoning, analysis, and ultimate holding. Therefore, I turn directly to a discussion of the law. This case presents two important issues: (1) the test for determining if a statute is retroactive and (2) the scope of a Federal Rule of Civil Procedure 60(b) appeal. Because the majority errs in addressing both issues, I respectfully dissent.

I.

I agree with the majority that *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994), governs our retroactivity analysis and that under *Landgraf* we will give retroactive effect to a statute (1) if Congress expressly makes the statute retroactive, or (2) if the statute would have retroactive effect and Congress clearly intended that result.[1] *Id.* at 280. I also agree

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[1] The majority describes *Landgraf* as "a three-step framework for deciding whether an enactment … applies retroactively." Maj. Op. at 13. Courts are split on how they describe the *Landgraf* retroactivity test. Some call it a "three-step analysis," *see e.g., Cruz v. Maypa*, 773 F.3d 138, 144 (4th Cir. 2014), while others note that it is a "two-step test," *see e.g., Martinez v. I.N.S.*, 523 F.3d 365, 370 (2d Cir. 2008). Our circuit has generally

that our prior cases that created an exception for clarifying amendments, exempting them from the *Landgraf* framework, are inconsistent with *Landgraf* itself, and thus the majority properly overrules them. And finally, I agree that the Abolish Trafficking Reauthorization Act of 2022 ("ATRA") would have retroactive effect and thus the presumption against retroactivity applies. My agreement ends there.

After purging our precedent of past inconsistent decisions, the majority makes the curious choice to fold the reasoning of these "overruled" cases into its *Landgraf* analysis, reinfecting the law it claims to cleanse.[2] Specifically, in its quest to find retroactive intent the majority continues to focus on whether the ATRA was a "clarification," instead of searching for

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framed *Landgraf* as a two-step test, *see e.g., Valiente v. Swift Transportation Co. of Arizona, LLC*, 54 F.4th 581, 585 (9th Cir. 2022). I believe the *Landgraf* test is best understood as a two-part framework asking three distinct questions (one question at part one, and two questions at part two). Therefore, the analysis which follows applies *Landgraf* using a two-part framework. Nonetheless, whether framed as three parts or two parts, the *Landgraf* test is ultimately the same.

[2] The majority attempts to limit the impact of its opinion on our now overruled decisions, stating that "we overrule those cases *only* insofar as they bypass a consideration of congressional intent or establish a contrary presumption regarding retroactivity." Maj. Op. at 14. But our prior decisions created, relied upon, and applied an exception to *Landgraf*, which we all now agree is inconsistent with *Landgraf* itself. The majority's attempt to salvage the erroneous retroactivity analysis from those cases as support for its opinion is akin to building a new house with rotten wood.

any real indication of clear congressional intent of retroactivity. In other words, the majority is under the mistaken belief that if legislation is clarifying, it automatically demonstrates clear congressional intent of retroactivity. Not so.

A.

The majority cites four factors, which it believes, "considered together, clearly establish the amendment's retroactivity:" (a) Congress expressly stated that its enactment was a technical and "clarifying" update; (b) 18 U.S.C. § 1595(a) was ambiguous; (c) *Ratha v. Phatthana Seafood Co.* (*Ratha I*), 35 F.4th 1159 (9th Cir. 2022), created a circuit split concerning the interpretation of § 1595(a); and (d) Congress acted swiftly, and with immediate effect, following our decision in *Ratha I*. Maj. Op. at 16. These factors are not found in *Landgraf* and find no home in the *Landgraf* progeny. The majority, nonetheless, seems to imply that these factors demonstrate clear congressional intent that the ATRA is retroactive. But a close read of the majority's analysis dispels this conclusion.

1.

The majority's first factor is that "Congress expressly stated that its enactment was a technical and 'clarifying update.'" Maj. Op. 16-17. The majority cites *Beverly Cmty. Hosp. Ass'n v. Belshe*, 132 F.3d 1259 (9th Cir. 1997), to support this factor. Oddly enough, however, *Belshe* never cites *Landgraf* and does not purport to apply the *Landgraf* test. Rather, *Belshe* is among the cases the majority "overruled" just paragraphs before as inconsistent with *Landgraf*. *Belshe* stands for the proposition that if a law is "clarify[ing]" it "state[s] more clearly what the law already was" and thus "has no retroactive effect that might be called into constitutional question." *Belshe*, 132 F.3d at 1265. In other words, *Belshe* holds that if a law is clarifying, it does not require a retroactivity analysis because it simply states what the law always was. As we all agree, this holding is inconsistent with *Landgraf* and the majority's attempt to fold it into its *Landgraf* analysis does not cure that inconsistency; it simply makes its reasoning erroneous.

Looking past the majority's reliance on our now overruled precedent, this factor does not establish clear congressional intent of retroactivity. While it is true that "the title of a statute" is a "'tool[] available for the resolution of a doubt' about the meaning of a statute," that tool is of little use here. *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (quoting T*rainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528-29 (1947)). As discussed in more detail below, the statute at issue here, 18 U.S.C. § 1595(a), was clear prior to the ATRA—there was nothing about the text of the statute for Congress to "clarify." The meaning of the statute was not in doubt. So why then did Congress label the legislation as "clarifying?" Under the majority's view, Congress was using "our own language, directing us to apply the amendment retroactively." Maj. Op. at 19. But if Congress wanted to "direct[] us to apply the amendment retroactively," then Congress would simply state that the statute applies retroactively. Here, it did not. What Congress likely meant is that it recognized that § 1595(a) did not impose liability on those who attempt to benefit from unlawful conduct. Upon realizing that, Congress amended the statute to create such liability, saying nothing of the retroactive effect. Under these circumstances, the word "clarifying" in the title of the ATRA does not show that Congress was expressing its intent, *sub silentio*, for the statute to apply retroactively.

Additionally, the majority relies on *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298 (1994), to bolster its analysis regarding the "clarifying nature of Congress's amendment." Maj. Op. at 17-19. The majority's reliance on *Rivers* is ironic, because *Rivers* is a blueprint outlining precisely why the majority is wrong. In *Rivers*, the Supreme Court determined that § 101 of the Civil Rights Act of 1991 was not retroactive. *Id.* at 300. The Court held that "Congress' decision to alter the rule of law established in [*Patterson v. McLean Credit Union*, 491 U.S. 164 (1989)]—as petitioners put it, to 'legislatively overrul[e]'—does not, by itself, reveal whether Congress intends the 'overruling' statute to apply retroactively." *Id.* at 304 (internal citation omitted). Indeed, as the Court noted "the choice to enact a statute that responds to a judicial decision is quite distinct from the choice to make the responding statute retroactive." *Id.* at 305.

The petitioners in *Rivers* argued "that the structure and legislative history of § 101 indicate that Congress specifically intended to 'restore' prior law even as to parties whose rights would otherwise have been determined according to *Patterson*'s interpretation of § 1981." *Id.* They also pointed "to evidence in the 1991 Act's legislative history indicating legislators' distress with *Patterson*'s construction of § 1981 and their view that [the Court's] decision had narrowed a previously established understanding of that provision." *Id.* at 305-06. Accepting these arguments, the Court *assumed* "that § 101 reflect[ed] congressional disapproval of *Patterson*'s interpretation of § 1981" and also *assumed* "that many or even most legislators believed that *Patterson* was not only incorrectly decided but also represented a departure from the previously prevailing understanding of the reach of § 1981." *Id.* at 306-07. But the Supreme Court held that those assumptions only explain "why Congress might have wanted to legislate retroactively" not whether Congress intended the legislation to be retroactive. *Id.* at 307. The Court held that those assumptions were insufficient to demonstrate clear congressional intent of retroactivity. *Id.* Because there was no clear expression of congressional intent that the statute apply retroactively, the Court declined to apply the statute retroactively. *Id.* at 313.

Applying *Rivers* to the instant case makes quick work of the majority's position. Pursuant to *Rivers* we may assume for purposes of our retroactivity analysis that the ATRA was a clarification, that Congress disapproved of our decision in *Ratha I*, and that "many or even most legislators believed that" *Ratha I* was incorrectly decided, but nonetheless still find that the ATRA does not apply retroactively. That is because, as *Rivers* makes clear, those assumptions do not demonstrate a clear expression of congressional intent that the statute should apply retroactively. For this reason, our role is to determine, outside of these assumptions, if there is a clear expression of congressional intent. As outlined in more detail below, no such clear expression exists here.

"Congress … has the power to amend a statute that it believes [a court has] misconstrued" and even "make such a change retroactive and thereby undo what it perceives to be the undesirable past consequences of a misinterpretation of its work product." *Rivers*, 511 U.S. at 313. But Congress' "intent to reach conduct preceding the 'corrective' amendment must clearly appear." *Id.* Because no clear expression of retroactive intent exists in this case, we should apply the reasoning in *Rivers* and conclude that the ATRA does not apply retroactively.

2.

The majority's second factor is that "the statute was ambiguous." Maj. Op. at 16, 20. The majority cites no case supporting the use of this factor in its *Landgraf* analysis but nonetheless uses this factor as a vehicle to arrive at its desired destination. This is likely because the majority needs the statute to be ambiguous for it to conclude that the ATRA was "clarifying." But again, the question is not whether the ATRA clarified an ambiguity, the question is whether Congress clearly intended it to be retroactive. Indeed, the rationale of *Rivers* applies with equal force to this factor. Congress may have thought that *Ratha I* created an ambiguity and enacted the ATRA in response, but identifying a possible reason for congressional action "does not supply sufficient evidence of clear congressional intent to overcome the presumption against statutory retroactivity." *Rivers*, 511 U.S. at 309. There is simply no evidence that Congress clearly intended the ATRA to reach cases that arose before its enactment.

Even accepting ambiguity as a relevant factor in determining legislative intent, a review of the statute makes clear that it is not, in fact, ambiguous. The majority strives to demonstrate that before the ATRA, the statute was ambiguous. But the statute's pre-amendment clarity is revealed by simply reading its text and understanding Chapter 77's statutory framework.

The statute: At the time Plaintiffs filed suit, the statute at issue, 18 U.S.C. § 1595(a), provided:

> An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, 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 attorneys fees.

18 U.S.C.A. § 1595 (2008). The violations referred to in § 1595(a) are the criminal violations contained in Chapter 77. Thus, a victim of a criminal violation of

Chapter 77 could sue (1) a perpetrator of the violation and (2) a knowing beneficiary of the violation. The statute, however, does not impose civil liability on someone who attempts to benefit from that violation. Therefore, a victim could not sue an "attempted beneficiary."

In general terms, a perpetrator violates Chapter 77 if they (1) engage in peonage or obstruct enforcement against peonage (§ 1581), (2) are involved with a vessel for slave trade (§ 1582), (3) engage in enticement of others into slavery (§ 1583), (4) engage in the sales of others into slavery (§ 1584), (5) engage in the seizure, detention, or transportation of slaves (§ 1585), (6) are involved with service on vessels in slave trade (§ 1586), (7) possess slaves aboard a vessel (§ 1587), (8) transport slaves from the United States (§ 1588), (9) engage in forced labor (§ 1589), (10) engage in trafficking with respect to peonage, slavery, involuntary servitude, or forced labor (§ 1590), (11) engage in sex trafficking of children or sex trafficking by use of force, fraud, or coercion (§ 1591), (12) engage in unlawful conduct regarding documents to further trafficking, peonage, slavery, involuntary servitude, or forced labor (§ 1592), or (13) knowingly benefit financially from peonage, slavery, and trafficking in persons (§ 1593A).

Additionally, a perpetrator can violate Chapter 77 if they *attempt* to (1) engage in peonage or obstruct enforcement against peonage (§ 1581), (2) engage in enticement of others into slavery (§ 1583), (3) engage in the sales of others into slavery (§ 1584), (4) engage in forced labor (§ 1589), (5) engage in sex trafficking with respect to peonage, slavery, involuntary servitude, or forced labor (§ 1590), or (6) engage in sex trafficking of children or sex trafficking by use of force, fraud, or coercion (§ 1591). *See* 18 U.S.C. § 1594 (2008).

How the statute works: Recall that a victim could sue (1) a perpetrator, and (2) a knowing beneficiary. But a victim could not sue an attempted beneficiary. For example, a victim of peonage could sue (1) the person who held the victim in peonage (the perpetrator), and (2) anyone who knowingly benefited from the victim's peonage (the knowing beneficiary). But the victim could not sue someone who attempted to benefit from the victim's peonage (the attempted beneficiary). Similarly, a victim of attempted peonage could sue (1) the person who attempted to hold the victim in peonage (the perpetrator), and (2) anyone who knowingly benefited from that attempt (the knowing beneficiary). But the victim could not sue someone who attempted to benefit from the attempted peonage (the attempted beneficiary).

Majority's confusion: The majority confuses this statutory framework. The majority asserts that there is a parallelism between the criminal violations and civil liability—that for any criminal violation, including attempt, there must be a corresponding civil liability. Maj. Op. at 22-23. This is largely correct and should have led the majority to the unremarkable conclusion that a perpetrator could be held liable for attempted conduct (because attempted conduct could amount to a violation of Chapter 77), but a knowing beneficiary could not. Instead, the majority concluded that this parallelism somehow imposed attempt liability on beneficiaries. It did not.

The majority calls upon § 1589 for support, but § 1589 does not and cannot answer that call. Maj. Op. at 22. Far from supporting the majority's position, § 1589 proves its error. Section 1589 establishes two theories of criminal liability for forced labor: (a) to knowingly provide or obtain forced labor, and (b) to knowingly benefit from forced labor. 18 U.S.C. § 1589(a), (b). If someone violates either subsection (a) or subsection (b) they are a perpetrator for purposes of § 1595(a) liability. Section 1594 makes it a criminal violation to attempt to violate § 1589. *Id.* at § 1594. Accordingly, if someone violates § 1594 by either (a) attempting to provide or obtain forced labor, or (b) attempting to knowingly benefit from forced labor, they too are a perpetrator for purposes of § 1595(a) liability. Here, however, Plaintiffs alleged claims against Rubicon Resources, LLC ("Rubicon") under a knowing beneficiary theory of liability, not a perpetrator theory.

Plaintiffs may have been able to allege a claim against Rubicon as a perpetrator of forced labor under § 1589(b) and § 1594, rather than as a knowing beneficiary. Plaintiffs, however, did not plead such a claim and have never argued that Rubicon was a perpetrator of forced labor under §§ 1589(b) and 1594. Indeed, there are no factual allegations in the complaint that Rubicon attempted to do anything, much less that they attempted to violate § 1589(b). Nonetheless, Plaintiffs' ability to allege such a claim highlights the majority's misunderstanding of the statutory framework while also demonstrating the framework's clarity. Thus, to the extent that ambiguity is relevant to our *Landgraf* analysis, it weighs against retroactivity because the operation of § 1595(a), while perhaps complex, was not ambiguous.

3.

The majority's third factor is that the statute was the subject of a circuit split. Maj. Op. at 16, 24. The majority asserts that our previous decision in *Ratha I* created a circuit split with both *Ricchio v. McLean*, 853 F.3d 553 (1st Cir. 2017), and *Roe v. Howard*, 917 F.3d 229 (4th Cir. 2019). To be clear, whether a circuit split existed does not tell us anything meaningful about whether Congress intended the ATRA to be retroactive. Regardless, the majority is mistaken—there is no circuit split. The majority's misunderstanding here stems largely from its confusion, discussed above, about how the statute works.

In *Ricchio*, a victim sued a series of individuals under a perpetrator theory of liability.[3] *Ricchio*, 853 F.3d at 556-57. The First Circuit reversed the district court's dismissal of the plaintiff's claims, finding that the complaint alleged sufficient facts to sustain a theory of perpetrator liability under the applicable

[3] This is evident by how the claims were pleaded. In *Ricchio* there were six claims, which alleged actual conduct and attempted conduct in violation of Chapter 77. 853 F.3d at 556-57.

statutes. *Id*. at 558. This case did not establish attempt liability for beneficiaries, as the majority would have you believe. Nor could it. *Ricchio* has nothing to do with beneficiary liability; it is a case about perpetrator liability. If anything, *Ricchio* confirms that Plaintiffs here may have been able to bring a claim against Rubicon under a theory of perpetrator liability—but again, they did not. Therefore, *Ricchio* does not stand as a direct contradiction to our decision in *Ratha I*. Indeed, in *Ratha I*, we explicitly stated that "[n]either Rubicon nor Wales are alleged to have perpetrated any [] violations against Plaintiffs." *Ratha I*, 35 F.4th at 1175. Comparing *Ricchio* to *Ratha I* is a classic case of comparing apples (a case about perpetrator liability) to oranges (a case about beneficiary liability).

The majority disagrees with this reading of *Ricchio*. It believes that *Ricchio* did not allege claims of actual and attempted conduct and mistakenly thinks that *Ricchio* is not a case about perpetrator liability. The majority's confusion here is consistent with its confusion about the statutory framework of Chapter 77 as discussed above in the section labeled "Majority's confusion." To once again try to dispel this confusion, I reiterate what I explained above, this time using the claims in *Ricchio* as examples.

Claim One in *Ricchio* alleges a violation of §§ 1589 and 1595(a).[4] The violation of § 1589 provides the Chapter 77 violation which gives rise to civil liability under § 1595(a). A person can violate § 1589 if they knowingly provide or obtain forced labor *or* if they knowingly benefit from forced labor. A person who violates § 1589 is a perpetrator for purposes of § 1595(a). Therefore, Claim One is a claim against an alleged perpetrator who allegedly violated § 1589 by knowingly benefiting from forced labor. *Ricchio*, 853 F.3d. at 556.

At the risk of belaboring the point, I turn to some of the remaining claims in *Riccio* to hammer the explanation home. Claim Two alleges a violation of §§ 1590 and 1595(a). The violation of § 1590 provides the Chapter 77 violation which gives rise to civil liability under § 1595(a). Section 1590 makes it unlawful to, *inter alia*, harbor any person for labor or services in violation of Chapter 77. A person who violates § 1590 is a perpetrator for purposes of § 1595(a). Therefore, Claim Two is a claim against an alleged perpetrator of § 1590. *Id*. Claim Three alleges a violation of §§ 1591 and 1595(a). The violation of § 1591 provides the Chapter 77 violation which gives rise to civil liability under § 1595(a). A person violates § 1591, *inter alia*, if they knowingly benefit, financially or by receiving anything of value, from participation in a venture which has engaged in an

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[4] In discussing the claims in *Ricchio*, § 1595(a) refers to the pre-ATRA version of the statute that was applicable when *Ricchio* was decided and when Plaintiffs in the instant case filed their complaint. *See* 18 U.S.C. § 1595(a) (2008).

act in violation of § 1591(a)(1). A person who violates § 1591 is a perpetrator for purposes of § 1595(a). Therefore, Claim Three is a claim against an alleged perpetrator of § 1591. *Id.*

Claims Five and Six bring in conspiracy and attempt liability. Specifically, Claim Five alleges violations of § 1594(b) and (c), and § 1595(a). The violations of § 1594(b) and (c) provide the Chapter 77 violations which give rise to civil liability under § 1595(a). A person violates § 1594(b) and (c) if they, *inter alia*, conspire with another to violate §§ 1589, 1590, and 1591. A person who violates § 1594(b) and (c) is a perpetrator for purposes of § 1595(a). Therefore, Claim Five is a claim against an alleged perpetrator of § 1594(b) and (c). *Id.* at 556-57. Claim Six alleges a violation of §§ 1594(a) and 1595(a). The violation of § 1594(a) provides the Chapter 77 violation which gives rise to civil liability under § 1595(a). A person violates § 1594(a) if they attempt to violate §§ 1589, 1590, and 1591.[5] Therefore, Claim Six is a claim against an alleged perpetrator of § 1594(a). *Id.* at 557. Thus, *Ricchio* is a case about perpetrator liability, which includes both actual and attempted conduct.

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[5] This is the critical claim that is missing from Plaintiffs' complaint here. Had Plaintiffs in the instant case alleged a violation of §§ 1594(a) and 1595(a), then their complaint could proceed under a theory of perpetrator liability against Rubicon for attempting to benefit from forced labor. But Plaintiffs did not allege such a violation, never sought leave to amend to add such a violation, and never argued that they intended or wanted to allege such a violation.

In *Howard*, a victim brought a case against her employer, Linda Howard, for abuses suffered while in her employment, including sexual assault. *Howard*, 917 F.3d at 237-38. In affirming the judgment against the employer, the Fourth Circuit concluded that "the text of § 1595 shows that it applies coextensively with its predicate offenses …." *Id.* at 243. This is correct and not in dispute. Perpetrators may be held liable both for their conduct and their attempted conduct because both are violations of Chapter 77. It does not follow that attempt liability applies to knowing beneficiaries. *Ratha I* did not reject the notion that § 1595 "applies coextensively with its predicate offenses." *Id.* It simply recognized that there is no attempt liability for beneficiaries. These cases are thus in harmony.

Ricchio and *Howard* are not in tension with our previous decision in *Ratha I*. More importantly though, neither *Ricchio* nor *Howard* support the majority's position on retroactivity. These are two cases from two different circuits that properly understood the statutory framework of Chapter 77. Both cases are demonstrative of a clear functioning statutory scheme, not an ambiguous one, and using them to assert that there was confusion or ambiguity is an affront to their sound reasoning.

4.

The majority's fourth factor is that "Congress acted swiftly." Maj. Op. at 16, 28. To support this factor the majority points to three cases, *Rivers*, 511 U.S. at 304-05, *Callejas v. McMahon*, 750 F.2d 729, 731 (9th Cir. 1984), and *McCoy v. Chase Manhattan Bank, USA, Nat'l Ass'n*, 654 F.3d 971, 974 (9th Cir. 2011). The majority's reliance on *Rivers* continues to perplex. As discussed above, *Rivers* only highlights why the majority is wrong and importantly here, *Rivers* says nothing about the speed of congressional action. *Callejas* was decided pre-*Landgraf* and does not speak to the speed of congressional action, and *McCoy* was decided well after *Landgraf* but declined to apply the *Landgraf* test to its retroactivity analysis. But even putting aside the shortcomings of the majority's authority here, Congress' purportedly "swift" action tells us little about the retroactive effect of its amendment.[6] Here, § 1595(a) simply did not provide for a lawsuit against an attempted beneficiary and Congress acted to change that, creating new liability for attempted beneficiaries. The speed with which Congress created this new form of

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[6] Moreover, the timing of the amendment does not support the majority's argument that Congress acted in response to our decision in *Ratha I*. Instead, Congress amended the statute nearly a year after *Ratha I* was decided. And while Congress acted shortly after the Supreme Court denied Plaintiffs' petition for certiorari in *Ratha I*, that petition raised only issues related to personal jurisdiction and Plaintiffs' perpetrator liability claims against other Defendants; Plaintiffs' petition explicitly stated that they were not challenging the dismissal of their attempted beneficiary claims against Rubicon. Thus, the timing suggests that Plaintiffs did not lobby for an amendment to resurrect their attempted beneficiary claims until their petition for certiorari was denied and their perpetrator liability claims against other Defendants failed. The timing reflects Plaintiffs' litigation strategy and, when that failed, perhaps their lobbying strategy—it does not suggest congressional intent.

liability tells us nothing about whether Congress intended it to be retroactive.

Finally, the majority states that it is "worth noting that the ATRA took effect immediately." Maj. Op. at 30. The majority relies on another pre-*Landgraf* decision to support this factor, *Fitzgerald v. Century Park, Inc.*, 642 F.2d 356, 357 (9th Cir. 1981). In *Fitzgerald* the court noted that "[i]t is unlikely that Congress would delay the effective date of amendments which are to be applied retroactively." *Id.* at 359. Thus, *if* an amendment is retroactive, *then* it is unlikely that its effective date would be delayed. This sheds no light on whether an amendment *is* retroactive, it simply says that if it is, it will likely apply immediately.

5.

Landgraf demands that Congress speak clearly if it wishes for a statute to apply retroactively. *Landgraf*, 511 U.S. at 268. In this case, our role is to search for that clear intent of retroactivity. I do not fault the majority for recognizing this as our duty. I fault the majority for divining clear congressional intent where it does not exist.

The majority opinion is rooted in a misunderstanding of the statutory framework of Chapter 77 and a pervasive confusion that I have been unable to remedy despite my best efforts. Compounding errors is the majority's focus on the alleged clarifying nature of the ATRA, causing it to rely on erroneous reasoning from cases it has itself overruled. The cherry on top, perhaps, is that several of the cases the majority relies upon demonstrate why the majority is wrong. *See Rivers*, 511 U.S. 298; *see also Ricchio*, 853 F.3d 553. These errors undermine the foundation of the majority's analysis, rendering the opinion irreparably flawed.

B.

Far from correcting our precedent to align with *Landgraf*, the majority flees from it, abandoning *Landgraf* as quickly as it claimed to embrace it. The majority's focus on whether the ATRA was "clarifying" an ambiguity blinded it from the real question: whether Congress clearly intended the statute to be retroactive. As discussed below, under a faithful application of *Landgraf* we should decline to give the ATRA retroactive effect because there is no clear indication that Congress intended it to be retroactive.

Landgraf is based on the simple and long-established presumption that legislation does not apply retroactively. *Landgraf*, 511 U.S. at 265 (observing that "the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic"). The Supreme Court has instructed that, "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Id.*

To overcome the presumption against retroactivity, the Supreme Court constructed a two-step framework. At step one, we determine whether Congress expressly provided that the statute be retroactive. *Id.* at 280. If it did, then our analysis ends, and we apply the statute retroactively. If "however, the statute contains no such express command," the court moves to step two. *Id.* At step two, the court must "determine whether the new statute would have retroactive effect," by asking whether the statute "would impair rights a party possessed when [they] acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Id.* If we find that "the statute would operate retroactively, [then] our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result." *Id.* In other words, "[i]f a new statute would 'impair rights a party possessed when [they] acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed,' then courts" should only give retroactive effect to the statute when "clear congressional intent favor[s] such a result." *Talaie v. Wells Fargo Bank, NA*, 808 F.3d 410, 412 (9th Cir. 2015) (quoting *Landgraf*, 511 U.S. at 280).

Here, Congress did not expressly state that the ATRA was retroactive. Accordingly, we move to step two. Before the ATRA, § 1595(a) allowed a victim of a criminal violation of Chapter 77 to sue (1) a perpetrator and (2) a knowing beneficiary, but not an attempted beneficiary. The ATRA changed this statutory framework by adding the word "attempt" to § 1595(a). Specifically, it changed § 1595(a) from:

> An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, 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 attorneys fees,

(18 U.S.C. § 1595(a) (2008)), to

> An individual who is 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 attorneys fees.

(18 U.S.C. § 1595(a) (2023) (emphasis added)). This change created an entirely new form of liability. Following the ATRA, § 1595(a) allows a victim of a criminal violation of Chapter 77 to sue (1) a perpetrator, (2) a knowing beneficiary, **and** (3) an attempted beneficiary. This substantively changed

§ 1595 and more importantly increased the liability for beneficiaries of unlawful conduct. Because the ATRA increases a party's liability, here an alleged beneficiary of the statutory violation, we give it retroactive effect only if there is clear congressional intent favoring retroactivity. *Landgraf*, 511 U.S. at 280.

There is no indication from the text of the ATRA or from the legislative history of the ATRA that it was intended to apply retroactively. The majority clings to the word "clarifying" in the title of the amendment—noting throughout the opinion that the ATRA was a clarification—as if that is somehow a clear indication of congressional intent on retroactivity. As discussed above, it is not. Because we have properly washed away our precedent exempting "clarifications" from the *Landgraf* analysis, we must look beyond musing about clarifications to find "clear congressional intent." *See id.*. Here, there is none.

What Congress did is quite simple, it changed § 1595(a) to impose attempt liability on beneficiaries. It is unclear exactly why Congress did so. Perhaps because Congress decided such liability should exist; perhaps Congress thought it had created such liability but realized that it had not; or perhaps Congress simply found something its members could all agree upon and passed the ATRA in a display of unity. What is clear, however, is that there is no evidence that Congress intended to impose this new form of liability retroactively, much less *clear* evidence of that intent. For these reasons, I would find that the ATRA does not apply retroactively and affirm the district court.[7]

II.

The majority creates a novel rule for Rule 60(b) appeals. It holds that in an appeal from the denial of a Rule 60(b) motion we can "review the district court's reasons for granting summary judgment because the court incorporated them into the [Rule 60(b) order] under review …." Maj. Op. at 32-33. Let us pause to take stock of what the majority has done. The majority has reached beyond the boundaries of this appeal, grabbed the district court's summary judgment order and hoisted it upon the back of the district court's Rule 60(b) order currently under review. How, one may ask, does the majority justify this? It cites no authority but rather posits a theory of incorporation by reference. Although the idea of such a piggyback appeal may be attractive to some, it runs counter to well-established law, and I cannot endorse it.

In 1978, the Supreme Court held that "an appeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review." *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 263 n.7 (1978). Understanding this, we have held that although "[w]e review an appeal from the denial of Rule 60(b) relief for an abuse of discretion in denying the motion; the

[7] That the ATRA does not apply retroactively is sufficient to resolve this appeal. In light of that, Judge Bress joins Part I of this dissent, but not Part II.

appeal does not bring the entire underlying judgment up for review." *Harman v. Harper*, 7 F.3d 1455, 1458 (9th Cir. 1993). Indeed, every circuit in the country has recognized this rule. *See Frew v. Young*, 992 F.3d 391, 397 n.11 (5th Cir. 2021) ("[An] [a]ppeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review" (quoting *Browder*, 434 U.S. at 263 n.7)); *United States v. Hassebrock*, 21 F.4th 494, 497 (7th Cir. 2021) ("Indeed, an appeal from the denial of a Rule 60(b) motion does not allow us to review the underlying decision."); *Crawford v. United States*, 611 F. App'x 47, 48 (3d Cir. 2015) ("Our review is limited to the denial of Rule 60(b) relief and does not extend to the District Court's underlying order dismissing Crawford's habeas petition because 'an appeal from the denial of Rule 60(b) relief does not bring up the underlying judgment for review.'" (quoting *Browder*, 434 U.S. at 263 n.7)); *Perry v. United States*, 558 F. App'x 1004, 1007 (Fed. Cir. 2014) ("Mr. Perry's Rule 60(b)(6) Motion cannot reopen this court's prior jurisdictional decision for review." (citing *Browder*, 434 U.S. 263 n. 7)); *Aikens v. Ingram*, 652 F.3d 496, 501 (4th Cir. 2011) ("'[A]n appeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review.'" (quoting *Browder*, 434 U.S. at 263 n.7)); *United States v. Zorrilla-Echevarria*, 671 F.3d 1, 9 (1st Cir. 2011) ("[A]ppeal from order denying request for relief from judgment does not resurrect appellants' expired right to contest the merits of the underlying judgment, nor bring the judgment itself before us for review." (citation and quotation omitted)); *Chambers v. City of Fordyce*, 508 F.3d 878, 881 (8th Cir. 2007) ("An appeal from the denial of a Rule 60(b) motion does not raise the underlying judgment for our review but only the question of whether the district court abused its discretion in ruling on the Rule 60(b) motion." (citation and quotation omitted)); *St. Fleur v. City of Fort Lauderdale*, 149 F. App'x 849, 851-52 (11th Cir. 2005) ("The scope of an appeal of a ruling on a Rule 60(b) motion is narrow: the appeal addresses only the propriety of the denial or grant of Rule 60(b) relief and does not raise issues in the underlying judgment for review." (citation modified)); *Johnson v. Unknown Dellatifa*, 357 F.3d 539, 543 (6th Cir. 2004) ("An appeal from an order denying a Rule 60(b) motion does not bring up for review the underlying judgment disposing of the complaint."); *Smith v. Mallick*, 10 F. App'x 1, 1 (D.C. Cir. 2001) ("[A]n appeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review." (quoting *Browder*, 434 U.S. at 263 n.7)); *S.E.C. v. McNulty*, 137 F.3d 732, 741 (2d Cir. 1998) ("The appeal from the denial of a motion to vacate pursuant to Rule 60(b) brings up for review only the validity of that denial, not the merits of the underlying judgment itself."); *United States v. 31.63 Acres of Land*, 840 F.2d 760, 761 (10th Cir. 1988) ("When a party appeals from an order denying a Rule 60(b) motion, the appeal 'does not bring up the underlying judgment for review.'" (quoting *Browder*, 434 U.S. at 263 n.7)).

Here, the majority has taken the unprecedented step of departing from this long-standing rule, placing us at odds with every other circuit in the country and with the Supreme Court. Instead of limiting its review to the denial of Plaintiffs' Rule 60(b) motion, the majority chose to review both the district court's order denying Plaintiffs' Rule 60(b) motion *and* the merits of the underlying judgment. This error cannot be overstated.

Recognizing the gravity of its error, the majority attempts to reframe its analysis, asserting that "the district court denied Rule 60(b) relief based, in part, on reasons set forth more fully in its decision granting summary judgment." Maj. Op at 33 n.9. While clever, this reframing is a fallacy. Should a case arise where a district court truly relied upon a previous order, granting summary judgment or otherwise, to deny a party Rule 60(b) relief, this court should determine whether that previous order is sufficiently intertwined with the Rule 60(b) denial to make it reviewable. But that is not this case.

Here, the district court referenced its previous summary judgment order only when discussing the first and fifth factors of the *Phelps v. Almeida*, 569 F.3d 1120, 1134-40 (9th Cir. 2009) test used to analyze Rule 60(b) relief. *See Bynoe v. Baca*, 966 F.3d 972, 980-86 (9th Cir. 2020) (noting that the first factor is the nature of the intervening law, and the fifth factor is the relationship between the change in law and the challenged judgment). Specifically, the district court referenced its previous summary judgment order only to show that even if the ATRA was retroactive, Plaintiffs would not be entitled to relief because such retroactivity would only affect one of the three independent bases on which the district court rested its summary judgment order. *Ratha v. Phatthana Seafood Co.*, No. CV 16-4271-JFW, 2023 WL 2762044, at *4 (C.D. Cal. Mar. 3, 2023). This reference to the summary judgment order occurs once in a single paragraph of the district court's Rule 60(b) order.[8] Critically, the district court never adopted the

[8] The district court's single reference to its previous summary judgment order was, in full:

> In this case, the Court granted summary judgment on Plaintiffs' TVPRA claim to Rubicon on three grounds: (1) there was no evidence demonstrating that Rubicon knowingly participated in a human trafficking venture; (2) there was no evidence that Rubicon knew or should have known about Phatthana's alleged human trafficking; and (3) there was no evidence that Rubicon benefitted from Phatthana's alleged human trafficking. Indeed, the Court specifically concluded that "Plaintiffs have failed to demonstrate that Rubicon or Wales knew or should have known that human trafficking existed at Phatthana's Songkhla factory."

Id. The reference was immediately followed by this analysis:

> Although the change to Section 1595(a) might potentially apply to the third ground of the Court's decision granting summary judgment, the Court agrees with Rubicon that the Court's decision is fully supported by the first and second grounds and the change to Section 1595(a) does not apply to or in any way affect the first and second grounds of the Court's decision. As a result, the Court concludes that because the change to Section 1595(a) would not alter the Court's decision in favor of Rubicon, the first and fifth factors weigh heavily against granting relief pursuant to Rule 60(b)(6).

Id.

reasoning of the summary judgment order as a basis for the denial of Rule 60(b) relief.

In reviewing the fifth factor regarding the relationship between the change in law and the challenged judgment, of course a district court will reference the underlying order related to the judgment. Simply referencing the underlying order, however, cannot be enough to pull that underlying judgment up for review on a Rule 60(b) appeal. But the majority's decision here says that it can. Following this decision, it is hard to see how a district court could meaningfully apply the *Phelps* factors without opening the door for appellate review of both the Rule 60(b) order and the underlying judgment.

We should have treated this appeal like every other appeal from a denial of a Rule 60(b) motion and confined our review to the district court's order on that motion. Had the majority done so, it would have come to the inevitable conclusion that the district court did not abuse its discretion.

Here, the district court appropriately applied the *Phelps* factors to find that Plaintiffs are not entitled to relief from judgment. Indeed, the only error the majority identifies in the district court's order denying Rule 60(b) relief is that the ATRA was retroactive. But we know from our discussion above that the ATRA is not, in fact, retroactive. Therefore, the district court did not err in so finding. Because the district court did not err in finding that the ATRA is not retroactive, it did not abuse its discretion in denying Plaintiffs' Rule 60(b) motion. Our review should have ended there.

But, even if the ATRA was retroactive, we cannot say that the district court abused its discretion in denying Rule 60(b) relief. This is because, as noted above, the district court's order granting Rubicon's motion for summary judgment rested on three independent and sufficient grounds, only one of which related to the change made by the ATRA. In other words, even if the district court agreed that the ATRA applied to Plaintiffs' claims, the underlying judgment would remain unchanged. Indeed, the district court noted this in its order denying Rule 60(b) relief, stating that even if the ATRA was retroactive "the change to Section 1595(a) would not alter the Court's decision in favor of Rubicon." This determination supported the district court's conclusion that the first and fifth *Phelps* factors weighed against granting Rule 60(b) relief. That is precisely the kind of analysis a district court should engage in when deciding a Rule 60(b) motion.

The majority, however, cannot accept that the district court did not abuse its discretion here, so it searches for error. Finding insufficient error in the district court's Rule 60(b) order, the majority makes the extraordinary decision to review the underlying judgment, breaking a rule established by the Supreme Court over four decades ago, and departing from all twelve of our sister circuits. It is hard to make an error more striking than this. Ultimately, the district court did not abuse its discretion in denying

Plaintiffs' Rule 60(b) motion and the majority's holding otherwise is error.

Because I cannot stand idly by while our court makes such errors, I respectfully dissent.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

KEO RATHA; SEM KOSAL; SOPHEA BUN; YEM BAN; NOL NAKRY; PHAN SOPHEA; SOK SANG, *Plaintiffs-Appellants*, v. RUBICON RESOURCES, LLC, *Defendant-Appellee.*	No. 23-55299 D.C. No. 2:16-cv-04271-JFW-AS OPINION

Appeal from the United States District Court for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted March 27, 2024
Pasadena, California

Filed July 31, 2024

Before: Susan P. Graber, Sandra S. Ikuta, and Danielle J. Forrest, Circuit Judges.

Opinion by Judge Ikuta;
Dissent by Judge Graber

SUMMARY*

Trafficking Victims Protection Reauthorization Act

The panel affirmed the district court's denial of plaintiffs' motion under Federal Rule of Civil Procedure 60(b)(6) for relief from judgment in an action under the Trafficking Victims Protection Reauthorization Act (TVPRA).

In granting summary judgment in favor of defendant Rubicon Resources, LLC, a United States company, the district court held that plaintiffs, alleged victims of human trafficking, failed to adduce evidence that Rubicon knowingly benefitted from participation in a venture that it knew or should have known was engaged in various acts that violated the TVPRA. This court affirmed, holding in part that the phrase "knowingly benefits" as used in 18 U.S.C. § 1595(a) could not be read to extend to an attempt to knowingly benefit from a perpetrator's TVPRA violation. *Ratha v. Phatthana Seafood Co.*, 35 F.4th 1159 (9th Cir. 2022) (*Ratha I*), *modifying* 26 F.4th 1029 (9th Cir. 2022).

Congress subsequently enacted the Abolish Trafficking Reauthorization Act, or ATRA, new legislation amending § 1595(a) to impose liability on

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

a defendant who knowingly "attempts or conspires to benefit" from participation in a venture that it knew or should have known was engaged in acts that violated the TVPRA. The district court denied plaintiffs' Rule 60(b)(6) motion to reopen the final judgment and apply the new legislation, partially on the ground that ATRA did not apply to events that preceded its enactment.

The panel declined to address the novel question whether a court may reopen a final judgment under Rule 60(b)(6) based on a legislative change in law, rather than a judicial change in law. Instead, the panel held that ATRA does not apply to events that occurred before its enactment. The lack of an express statutory command to apply the statute retroactively gave rise to a presumption that ATRA should not be applied retroactively. This presumption was not overcome because ATRA did not clarify what § 1595(a) meant all along. The panel reasoned that prior to the amendment, § 1595(a) was not ambiguous and did not generate inconsistent judicial decisions. In addition, no other circumstances, such as textual indicators or timing, showed that ATRA declared what the TVPRA meant at the time it was enacted. The panel concluded that a label designating ATRA as a "clarifying update" suggested a forward-looking change. Because ATRA would not apply to the conduct that was the basis of plaintiffs' claims, the district court did not err in declining to reopen the final judgment.

Dissenting, Judge Graber wrote that she would reverse and remand for further proceedings because the amendment in question has retroactive effect. She wrote that the TVPRA was ambiguous because Congress intended to make the criminal and civil provisions coextensive, but, in one place, the civil provision omitted a phrase regarding "attempt." Two other circuits implicitly concluded that this omission was an oversight, ruling that an attempt to benefit from human trafficking creates civil liability. This court disagreed in *Ratha I*, creating a circuit split. As soon as the Supreme Court declined to grant certiorari in *Ratha I*, Congress acted immediately to resolve the ambiguity and correct this court's error, and it did so with the label "technical and clarifying." In addition, Congress made the amendment effective immediately.

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OPINION

IKUTA, Circuit Judge:

This appeal raises the question whether the district court erred in declining to reopen a final judgment under Rule 60(b)(6) of the Federal Rules of Civil Procedure. In granting summary judgment in favor of the defendant, the district court held that plaintiffs, alleged victims of human trafficking, failed to adduce evidence that the defendant had "knowingly benefitted from participation in a venture that [the defendant] knew or should have known was engaged in" various acts that violated the Trafficking Victims Protection Reauthorization Act (TVPRA), 18

U.S.C. § 1595(a). We upheld this ruling on appeal. *Ratha v. Phatthana Seafood Co.*, 35 F.4th 1159, 1164 (9th Cir. 2022) (*Ratha I*), *modifying* 26 F.4th 1029 (9th Cir. 2022). Congress subsequently enacted new legislation amending the TVPRA to impose liability on a defendant who knowingly "attempted to benefit" from such a violation. The district court denied plaintiffs' Rule 60(b)(6) motion to reopen the final judgment and apply the new legislation, partially on the ground that it did not apply to events that preceded its enactment. Arguing that the new legislation merely clarified what § 1595(a) had meant all along, plaintiffs now appeal the denial of their Rule 60(b)(6) motion.

I

A

In 2000, Congress passed the Trafficking Victims Protection Act (TVPA). Pub. L. No. 106-386, div. A, 114 Stat. 1466 (2000) (codified as amended at 18 U.S.C. §§ 1589-1594). The TVPA created and expanded criminal penalties in order "to combat trafficking in persons, … to ensure just and effective punishment of traffickers, and to protect their victims." § 102(a). The TVPA enhanced the penalties for the existing crimes of peonage, 18 U.S.C. § 1581, enticement into slavery, § 1583, and sale into involuntary servitude, § 1584. It also created the new offenses of providing or obtaining forced labor under specified circumstances, § 1589, "[t]rafficking with respect to peonage, slavery, involuntary servitude, or forced labor," § 1590, and "[s]ex trafficking of children or by force, fraud, or coercion," § 1591. Attempted violations of these provisions were also criminalized, as § 1594 provided that "[w]hoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section." 18 U.S.C. § 1594(a).

In 2003, Congress amended the TVPA by enacting the TVPRA. Pub. L. No. 108-193, 117 Stat. 2875 (2003). Among other things, the TVPRA added a civil remedy provision, codified at 18 U.S.C. § 1595, that provided in pertinent part:

> An individual who is a victim of a violation of section 1589, 1590, or 1591 of this chapter may bring a civil action against the perpetrator in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

TVPRA § 4(a)(4)(A), 117 Stat. at 2878. The provision created "a civil cause of action that permits victims of trafficking to recover compensatory and punitive damages from individuals who violate the TVPA." *Ditullio v. Boehm*, 662 F.3d 1091, 1100 (9th Cir. 2011).

In 2008, Congress amended § 1595 to expand the TVPRA's civil remedies. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 221, 122 Stat. 5044, 5067. As amended, § 1595(a) provided a civil remedy for any violation of the TVPRA, and allowed victims to bring an action not only against perpetrators of a violation of the TVPRA, but also against anyone who "knowingly benefits, 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." 18 U.S.C. § 1595(a) (2008). As amended, the civil remedy provision provided:

> An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, 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 attorneys' fees.

18 U.S.C. § 1595(a) (2022).[1]

B

Keo Ratha, Sem Kosal, Sophea Bun, Yem Ban, Nol Nakry, Phan Sophea, and Sok Sang (collectively, "plaintiffs") are villagers from rural Cambodia who worked at seafood processing factories in Thailand's

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[1] Between 2008 and 2023, Congress amended § 1595 two other times to adjust the statute of limitations, *see* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, § 120, 129 Stat. 227, 247, and to give state attorneys general a cause of action in certain circumstances, *see* Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, § 6, 132 Stat. 1253, 1255. Neither amendment is relevant to this case.

Songkhla province. Plaintiffs claimed they suffered abuse while working at these factories, in that they "were paid less than promised, charged for accommodations, charged for other unexpected expenses, unable to leave without their passports, which they were told would not be returned until recruitment fees and other amounts were paid, and subjected to harsh conditions," during the period "from sometime in 2010 until October 2012." *Ratha I*, 35 F.4th at 1165 (cleaned up). At the time plaintiffs worked there, the factories were owned by Phatthana Seafood Co., Ltd. ("Phatthana") and S.S. Frozen Food Co., Ltd. ("S.S. Frozen"), both Thai corporations that are not parties to this appeal.

Rubicon Resources, LLP ("Rubicon") is a United States company that was formed in 1999 as a joint venture to market and sell Thai seafood in the United States. The owners of Phatthana owned a stake in the Rubicon venture.[2]

In October 2011, Rubicon ordered 14 containers of shrimp from Phatthana's Songkhla factory, intending to sell those containers to Walmart for resale to consumers in the United States.

In January 2012, Ratha, who was employed by S.S. Frozen in its Songkhla factory, complained about his working conditions to the Phnom Penh Post, a Cambodian news organization. The Post published an

[2] Wales & Co. Universe Ltd., a Thai corporation registered to do business in California, was also a member of the Rubicon venture. Wales is not a party to this appeal.

article with Ratha's allegations. Following the publication of this article, Rubicon stopped its attempts to sell the Phatthana shrimp and hired a consultant to review conditions at Phatthana. In the months that followed, the Thai and Cambodian governments conducted investigations into Phatthana. Although the Thai government "concluded that no crimes ha[d] been committed," it did identify "violations of the labor protection law" and "intervened to address unlawful practices on the part of [Phatthana]."

After the results of the Thai and Cambodian investigations, Rubicon resumed its attempts to sell the Phatthana shrimp to Walmart but was unsuccessful due to Walmart's concerns about working conditions in Phatthana's Songkhla factory. The shrimp was eventually returned to Thailand and destroyed.

C

In June 2016, plaintiffs sued Phatthana, S.S. Frozen, Rubicon, and Wales under the civil remedy provision of the TVPRA, 18 U.S.C. § 1595(a) (effective December 23, 2008 through January 4, 2023).

Plaintiffs alleged that they were the "victims of peonage, forced labor, involuntary servitude and human trafficking, in violation of 18 U.S.C. §§ 1581, 1584, 1589, 1590, 1592, and 1593A." They alleged that Phatthana and S.S. Frozen were the perpetrators of these offenses, and that Rubicon and Wales knowingly benefitted from Phatthana's and S.S.

Frozen's unlawful conduct. The complaint alleged that Rubicon "provided a market and worked to expand that market … knowing the conduct would continue, benefitting from it, and intending to benefit from it."

All defendants moved for summary judgment. The district court concluded that it lacked extraterritorial jurisdiction over Phatthana and S.S. Frozen because plaintiffs had not established that those companies were "present in the United States," for purposes of 18 U.S.C. § 1596(a)(2). The court therefore granted the companies' motions for summary judgment. The district court also granted summary judgment in favor of Rubicon and Wales on three alternative grounds. The district court based its ruling on its interpretation of § 1595(a), which at the time imposed liability on "the perpetrator (or whoever knowingly benefits, 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)." 18 U.S.C. § 1595(a) (2022).

The district court first held that plaintiffs presented no evidence that Rubicon or Wales knowingly participated in a human trafficking venture with Phatthana and S.S. Frozen. The district court defined "participate" to mean taking "some action to operate or manage the venture, such as directing or participating in Phatthana's labor recruitment, Phatthana's employment practices, or the working conditions at Phatthana's Songkhla factory." Second, the district court held that there was no evidence that Rubicon or Wales "knew or should have known" that Phatthana violated the TVPRA. Third, the district court held that there was no evidence that Rubicon benefitted from Phatthana's alleged TVPRA violations, given that it was undisputed that Rubicon never sold any products processed at Phatthana's Songkhla factory during the relevant time period. As part of this holding, the district court rejected plaintiffs' alternate theory—that Rubicon was liable under § 1595(a) because it had attempted to benefit from the sale of product processed at Phatthana's Songkhla factor—as lacking factual or legal support.

We affirmed the district court's grant of summary judgment. *Ratha I*, 35 F.4th at 1164. The focus of our opinion was on the extraterritorial reach of § 1595. *Id.* at 1167-72. Assuming without deciding that § 1595's civil remedy provision could be applied extraterritorially so long as the requirements of § 1596 were met, we concluded that plaintiffs' claims against Phatthana and S.S. Frozen did not "involve a permissible extraterritorial application of the TVPRA," because neither company was "'present in the United States' as required by 18 U.S.C. § 1596(a)(2)." *Id.* at 1175. We affirmed summary judgment in those defendants' favor on that basis. *Id.*

With respect to plaintiffs' claims against Rubicon, we first held that plaintiffs failed to raise a triable issue of material fact that Rubicon benefitted from Phatthana's TVPRA violations. *Id.* at 1175-76. We rejected plaintiffs' argument that Rubicon benefitted from marketing the shrimp produced by Phatthana and that Rubicon obtained a competitive advantage through its association with Phatthana, because neither claim was supported by probative evidence. *Id.* at 1175.

Turning to plaintiffs' claim "that an *attempt* to benefit satisfies § 1595(a)'s 'knowingly benefits' requirement," *id.* at 1176, we construed the statutory text, which provides that "[a]n individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (*or whoever knowingly benefits*, 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)." 18 U.S.C. § 1595(a) (2022) (emphasis added). We first noted that the text "does not extend liability to those who *attempt* to benefit from a perpetrator's TVPRA violation." *Ratha I*, 35 F.4th at 1176. We held that "we cannot read the word 'attempt' into the 'knowingly benefits' portion of § 1595 without violating 'a fundamental principle of statutory interpretation' that 'absent provision[s] cannot be supplied by the courts.'" *Id.* (quoting *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019)) (alteration in original).

We then considered the text in the context of the TVPRA as a whole. We noted that § 1594(a) included attempt liability, by providing that "[w]hoever attempts to violate [specified sections] shall be punishable in the same manner as a completed violation of that section." *Id.* We thought it significant that Congress authorized attempt liability in § 1594(a), but not in § 1595(b). *Id.* As we explained, "[w]hen 'Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally.'" *Id.* (quoting *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012)). We stated that "[h]ad Congress intended to create civil liability under § 1595 for attempts to benefit, we can reasonably conclude that it would have done so in express terms." *Id.*

We noted a possible textual argument that could weigh against this conclusion. *Id.* at 1176 n.16. The argument proceeded in several steps. First, § 1595(a) allows a civil action against a "perpetrator" of a violation of the TVPRA. *Id.* Second, under § 1594(a), the attempted violation of specified TVPRA provisions is itself a violation of the TVPRA. *Id.* Therefore "the term 'perpetrator,' as used in § 1595(a), could be read to include those who had only attempted to violate the TVPRA." *Id.*

We concluded this argument did not help plaintiffs. *Id.* As noted above, § 1595(a) gives a victim: (1) an action against a "perpetrator" and (2) a separate action against a person who "knowingly benefits" from participation in a venture that violated the TVPRA. *Id.* While § 1595(a) could be read to provide an action against a person who attempted to violate the TVPRA and was therefore a perpetrator, plaintiffs invoked the portion of § 1595(a) that provides a separate action against a person who "knowingly benefits" from a TVPRA violation. We held that the phrase "knowingly benefits" as used in § 1595(a) could not be read to extend to "an attempt to knowingly benefit from a perpetrator's TVPRA violation," *id.*, and plaintiffs' argument therefore failed, *id.* at 1176.

D

Our opinion in *Ratha I* was filed on February 25, 2022. 26 F.4th 1029 (9th Cir.), *amended by* 35 F.4th 1159 (9th Cir. 2022). In March 2022, Senators Cornyn and Klobuchar introduced a bill to reauthorize the TVPRA. Abolish Trafficking Reauthorization Act of 2022 (ATRA), S. 3946, 117th Cong. (2022) (enacted); *see* 168 Cong. Rec. S1832 (Mar. 29, 2022). Although the bill was introduced after our opinion in *Ratha I* had been published, the bill did not contain any amendments to § 1595(a). *See* S. 3946, 117th Cong. (as introduced, Mar. 29, 2022) (available at https://www.congress.gov/117/bills/s3946/BILLS-117s3946es.pdf).

In April 2022, plaintiffs filed a petition for rehearing en banc. We denied the petition and issued an amended opinion on May 31, 2022. 35 F.4th at 1163-64. The mandate issued in June 2022.

Some time after we denied plaintiffs' petition for rehearing en banc, various advocacy organizations lobbied Congress to amend § 1595. Martina E. Vandenberg & Maggie Lee, *Congress Amends the TVPRA to Correct Ninth Circuit's Erroneous Ruling in Ratha*, Transnational Litigation Blog (Aug. 1, 2023), https://tlblog.org/congress-amends-the-tvpra-to-correct-ninth-circuits-erroneous-ruling-in-ratha/ (last visited July 17, 2024). Plaintiffs also sought

Supreme Court review of our decision by filing a petition for writ of certiorari in October 2022. The petition was denied on December 5, 2022. 143 S. Ct. 491 (2022).

After the Supreme Court had denied certiorari, on December 20, 2022, Senators Heinrich, Cornyn, and Klobuchar proposed an amendment to S. 3946, *see* 168 Cong. Rec. S9610 (Dec. 20, 2022), which contained language modifying § 1595(a), S. Amend. 6581, 117th Cong., 168 Cong. Rec. S9658, S9658-59 (Dec. 20, 2022) (available at https://www.congress.gov/117/crec/2022/12/20/168/198/CREC-2022-12-20-pt3-PgS9658.pdf). The Senate adopted the amendment and passed the bill by consent. 168 Cong. Rec. S9610 (Dec. 20, 2022). On January 5, 2023, ATRA was signed into law. Pub. L. No. 117-347, 136 Stat. 6199 (2023).

Section 102 of ATRA provides:

> SEC. 102. TECHNICAL AND CLARIFYING UPDATE TO CIVIL REMEDY.
>
> Section 1595(a) of title 18, United States Code, is amended by inserting "or attempts or conspires to benefit," after "whoever knowingly benefits."

§ 102, 136 Stat. at 6200. Following this amendment, § 1595(a) now provides:

> An individual who is 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 attorneys fees.

18 U.S.C. § 1595(a) (2023) (emphasis added).

On January 26, 2023, plaintiffs filed a motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure,[3] urging the district court to vacate its order granting summary judgment to Rubicon. Plaintiffs argued that ATRA retroactively clarified that § 1595(a) authorizes suit against those who attempt to benefit from TVPRA violations. They argued that because ATRA was a clarifying amendment, the statute applied to events that occurred before ATRA was passed. In other words, plaintiffs contended that § 1595(a) had always allowed plaintiffs to bring an action against persons who *attempted* to benefit from a TVPRA violation. According to plaintiffs, the enactment of ATRA

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[3] Rule 60(b)(6) of the Federal Rules of Civil Procedure provides:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:…
>
> (6) any other reason that justifies relief.

constituted extraordinary circumstances warranting relief under Rule 60(b)(6) from the final judgment dismissing their claim against Rubicon. The district court denied the Rule 60(b)(6) motion. This appeal followed.

We have jurisdiction to review an order denying a Rule 60 motion as an appealable final order. 28 U.S.C. § 1291; *Plotkin v. Pac. Tel. & Tel. Co.*, 688 F.2d 1291, 1292 (9th Cir. 1982). We review the district court's denial of the Rule 60 motion for abuse of discretion. *Bynoe v. Baca*, 966 F.3d 972, 979 (9th Cir. 2020). A district court abuses its discretion if its denial "rested upon an erroneous view of the law." *Phelps v. Alameida*, 569 F.3d 1120, 1131 (9th Cir. 2009). We review legal issues de novo. *Bynoe*, 966 F.3d at 979.

II

A

Rule 60(b) permits a court to "relieve a party or its legal representative from a final judgment, order, or proceeding." This rule "codifies various writs used to seek relief from a judgment at any time after the [term of court's] expiration—even after an appeal had (long since) concluded." *Banister v. Davis*, 590 U.S. 504, 518 (2020); *see also Matter of Brown*, 68 F.R.D. 172, 174 (D.D.C. 1975) (Rule 60(b) "was intended merely to codify and simplify common law methods of gaining equitable relief from unfair judgments after the time for appeal has expired."). In addition to codifying five common-law grounds for relieving a party from a final judgment, the rule added a catchall provision permitting reopening for "any other reason that justifies relief." Fed. R. Civ. P. 60(b).

"[T]he catchall provision of Rule 60(b) has been used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *United States v. Washington*, 593 F.3d 790, 797 (9th Cir. 2010) (cleaned up). We have held that "[a] 'clear and authoritative' change in the law governing the judgment in a [party's] case may present extraordinary circumstances." *Bynoe*, 966 F.3d at 983 (citation omitted). We generally evaluate whether the context of the change and its consequences are sufficiently extraordinary by considering six factors "flexibly and in their totality." *Id.* The six factors are "(1) the nature of the legal change, including whether the change in law resolved an unsettled legal question; (2) whether the movant exercised diligence in pursuing reconsideration of his or her claim; (3) the parties' reliance interests in the finality of the judgment; (4) the delay between the finality of the judgment and the Rule 60(b)(6) motion; (5) the relationship between the change in law and the challenged judgment; and (6) whether there are concerns of comity that would be disturbed by reopening a case." *Id.*

In denying the Rule 60(b)(6) motion in this case, the district court concluded that the first factor, the nature of the legal change, and the fifth factor, the relationship between the change in law and the judgment, weighed heavily against granting relief pursuant to Rule 60(b)(6). The district court concluded that ATRA did not apply to events occurring before its enactment, because it did not have an effective date or any statement indicating that it applied retroactively, and because the law expanded defendants' liability and attached new legal consequences to past actions. The court also concluded that the change in the law would not alter the challenged judgment, because the court's summary judgment order was based on two additional grounds that were not affected by the amendment to the TVPRA.

On appeal, plaintiffs argue that ATRA is a clarifying amendment and therefore is applicable to events that occurred before its enactment. Plaintiffs also argue that the district court's other grounds for summary judgment were erroneous.

B

Plaintiffs argue that the district court should have reopened the final judgment under Rule 60(b)(6) due to the enactment of ATRA, and ask us to address what appears to be a question of first impression: whether a court may reopen a final judgment under Rule 60(b)(6) based on a *legislative* change in law, rather than a *judicial* change in law. The cases cited and relied on by plaintiffs primarily involved a change in law caused by new judicial opinions. *See, e.g., Bynoe*, 966 F.3d 972 (reopening a final judgment under Rule 60(b)(6) due to a new judicial opinion resolving a procedural issue in habeas law); *Henson v. Fid. Nat'l Fin., Inc.*, 943 F.3d 434, 447 (9th Cir. 2019) (reversing denial of Rule 60(b)(6) motion in light of intervening Supreme Court decision that overturned caselaw on which plaintiffs had relied). The only case cited by plaintiffs regarding the application of a new statute is not on point: in *United States v. Wyle (In re Pacific Far East Lines, Inc.)*, we did not consider reopening a case that was already final, but rather held that a new legislative enactment could be applied to a *pending* case. 889 F.2d 242, 243-44 (9th Cir. 1989).[4]

Applying our Rule 60(b)(6) jurisprudence in the context of a legislative change in law would raise a number of thorny issues. First, our standard for concluding there are "extraordinary circumstances" requires the existence of a "clear and authoritative change" in law. *Bynoe*, 966 F.3d at 983 (citation omitted). But if new legislation merely clarifies what the law had always been, as plaintiffs argue is the case here, it is unclear how such legislation would also qualify as a clear and authoritative change. Moreover, if the legislation at issue did constitute an authoritative change in law, a court could not apply

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[4] The analysis may be different if a party seeks relief under Rule 60(b)(6) from ongoing compliance with a permanent injunction. *See McGrath v. Potash*, 199 F.2d 166, 167 (D.C. Cir. 1952) (vacating injunction where "[t]he statutory basis for [it] ha[d] been removed by Congress"); *cf. Agostini v. Felton*, 521 U.S. 203, 237-40 (1997) (vacating a permanent injunction pursuant to Rule 60(b)(5) given a change in Establishment Clause caselaw); *Assoc. Builders & Contractors v. Mich. Dep't of Lab. & Econ. Growth*, 543 F.3d 275, 278-79 (6th Cir. 2008) (revisiting an injunction pursuant to Rule 60(b)(5) after a change in ERISA caselaw). But those circumstances are not present here.

the legislation to pre-enactment conduct without first using the Supreme Court's framework for determining whether new legislation can be applied retroactively. *See infra* at 21-22 (explaining *Landgraf v. USI Film Prod.*, 511 U.S. 244 (1994)).

Second, assuming the above difficulties could be overcome, it is not clear that a court may reopen a final judgment for the purpose of applying new legislation. Typically, a court applies new legislation only to a case pending on appeal, and we are not aware of a case where this court or the Supreme Court has reopened a final judgment to apply a new enactment. *See supra* at 18-19 and n.4. There are some warning signs against doing so. The Supreme Court has indicated that Congress can require an appellate court to apply legislation retroactively "in reviewing judgments *still on appeal* that were rendered before the law was enacted," but Congress cannot require federal courts to reopen final judgments to do so, because this would violate separation-of-powers principles. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 226 (1995) (emphasis added). *Plaut* is not directly on point here, because Rule 60(b)(6) is not a "legislative mandate" that requires a court to reopen a particular case. *Id.* at 233; *see also Taylor v. United States*, 181 F.3d 1017, 1022 (9th Cir. 1999). But *Plaut* weighs against creating precedent that would give Congress the ability to "declare by retroactive legislation that the law applicable to [a final judgment] was something other than what the courts said it was." 514 U.S. at 227. For instance, if we held that courts should reopen a final judgment under Rule 60(b)(6) whenever Congress referred to a new enactment as a "clarification," we would risk running afoul of *Plaut*. *See Pope v. Shalala*, 998 F.2d 473, 483 (7th Cir. 1993) (warning that if the stated intent of the later enacting body were given dispositive weight, it "could make a substantive change merely by referring to a new interpretation as a 'clarification'"), *overruled in part on other grounds by Johnson v. Apfel*, 189 F.3d 561 (7th Cir. 1999).

We need not resolve the novel question whether Rule 60(b)(6) may be applied on the basis of changes in legislation, however. For the reasons explained below, we conclude that ATRA did not clarify what § 1595(a) in the TVPRA meant all along, and therefore does not apply to events that occurred before the enactment of ATRA. Because ATRA would not apply to the conduct that is the basis of plaintiffs' claims, the district court did not err in declining to reopen the final judgment here.[5]

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[5] In focusing solely on whether ATRA was a clarifying amendment, the dissent ignores the question whether a final judgment can be reopened under Rule 60(b)(6) based on a legislative change in the law. But we cannot "reverse and remand for further proceedings," Dissent at 56, without holding that the district court abused its discretion. The dissent does not explain how declining to reopen the judgment under Rule 60(b)(6) here constituted an abuse of discretion given the lack of precedent supporting reopening on the basis of legislative changes, the absence of extraordinary circumstances as our precedent defines them, and the separation of powers issue identified in *Plaut*.

III

We turn to plaintiffs' central argument: that ATRA is a clarification of the TVPRA and therefore applies to events that occurred before Congress enacted ATRA.

A

We start by providing the general framework for determining whether legislation applies retroactively, meaning that it applies to events that occurred before its enactment. In making this determination, courts generally apply a two-step analysis. *Ditullio*, 662 F.3d at 1099. There is "a time honored presumption that unless Congress has clearly manifested its intent to the contrary, the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place." *Id.* (cleaned up). Thus, a "court's first task is to determine whether Congress has expressly prescribed the statute's proper reach." *Landgraf*, 511 U.S. at 280. If Congress expressly indicates that a statute applies to pre-enactment conduct, "the statute applies retroactively unless it runs afoul of the constitution." *Ditullo*, 662 F.3d at 1099. If the statute contains no "express command" as to its applicability to pre-enactment conduct, a court's second task is to determine whether its application would "impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf*, 511 U.S. at 280. If the statute has such effects, we apply a presumption against retroactive application "absent clear congressional intent favoring such a result." *Id.*; *see also Rivers v. Roadway Exp., Inc.,* 511 U.S. 298, 308-09 (1994) (noting the need for "sufficient evidence of a clear congressional intent to overcome the presumption against statutory retroactivity"). If the presumption is rebutted, we apply the statute retroactively unless such application would violate constitutional commands. *Landgraf*, 511 U.S. at 280.

In arguing that ATRA applies to pre-enactment conduct, plaintiffs rely on an exception we have carved out from the *Landgraf* framework. When a statute is so ambiguous or unclear that it leads to inconsistent judicial rulings, we have held that a subsequent Congress can enact legislation to clarify the intent of an earlier Congress. In this context, Congress's "power to clarify the law" is the power "to confirm what the law has always meant." *Beverly Cmty. Hosp. Ass'n v. Belshe*, 132 F.3d 1259, 1265 (9th Cir. 1997). Because such an enactment "merely clarifies what [the federal law] was originally intended to mean" and "state[s] more clearly what the law already was," it "has no retroactive effect that might be called into constitutional question." *Id*. Therefore "no *Landgraf* analysis is required." *Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1186 (9th Cir. 2016). Nor is there any presumption against retroactivity: given that the presumption "is based, in part, on a hesitancy to reverse settled expectations," it does not apply when Congress clarifies the law to "resolve[] a problem of unsettled expectations" such as those that may arise from a circuit split. *ABKCO Music, Inc. v. LaVere*, 217 F.3d 684, 691-92 (9th Cir.

2000). And because "clarifying legislation is not subject to any presumption against retroactivity," it "is applied to all cases pending as of the date of its enactment." *Id.* at 689.[6]

We apply this exception narrowly. As a general rule, "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 118 (1980) (quoting *United States v. Price*, 361 U.S. 304, 313 (1960)). Moreover, we have recognized that "Congress' decision to 'legislatively overrule' earlier interpretations of a statute does not necessarily imply that these earlier interpretations were inconsistent with congressional intent at the time or even 'wrongly decided.'" *Beaver*, 816 F.3d at 1187 (quoting *Rivers*, 511 U.S. at 304-05). Indeed, "Congress frequently 'responds' to judicial decisions construing statutes, and does so for a variety of reasons," *Rivers*, 511 U.S. at 305 n.5; and "'[a]ltering statutory definitions, or adding new definitions of terms previously undefined, is a common way of amending statutes' so that Congress can refine and sharpen old statutory meanings," *Beaver*, 816 F.3d at 1187 (quoting *Rivers*, 511 U.S. at 308). Therefore, in discerning Congress's intent, "[i]t is the duty of a court in construing a statute to consider the time and circumstances surrounding the enactment as well as the object to be accomplished by it." *Bedoni v. Navajo-Hopi Indian*

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[6] We have not held that clarifying legislation may be applied to cases once they are no longer pending on appeal. *See supra* at 19-21.

Relocation Comm'n, 878 F.2d 1119, 1120 (9th Cir. 1989).

In considering the time and circumstances surrounding a new enactment to determine if Congress intended to confirm what a prior enactment has always meant, *id.*, we primarily focus on whether the prior enactment was ambiguous and generated inconsistent judicial opinions. We also consider textual indications that Congress intended to clarify the ambiguity. We discuss these considerations in turn.[7]

First, we give significant weight to indicia of judicial confusion regarding how a statutory provision should be interpreted, because such confusion suggests that Congress's enactment was for the purpose of correcting the ambiguity and establishing the originally intended meaning. *ABKCO Music*, for instance, involved a circuit split over the definition of the word "publication" in the Copyright Act of 1909. 217 F.3d at 688. Under the 1909 Act, if a work was published and the owner of the work did not comply

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[7] Although we also consider legislative history, our approach to this factor has been inconsistent. In *Belshe*, we indicated that "less formal types of subsequent legislative history, particularly Senate and House Committee Reports" were not a useful basis for inferring the intent of an earlier Congress. 132 F.3d at 1265. And in *Beaver*, we stated that "we place little value on the statements of individual legislators in connection with the enactment of a bill," but "we nevertheless consider them in our analysis." 816 F.3d at 1186. However, in *ABKCO Music*, we gave significant weight to a House Report and statements by members of Congress. 217 F.3d at 690-91.

with the 1909 Act's requirements, the work would enter into the public domain. *Id.* In 1976, the Second Circuit determined that the sale of phonorecords did not constitute "publication" of the underlying composition for purposes of the 1909 Act, *see Rosette v. Rainbo Record Mfg. Corp.*, 546 F.2d 461 (2d Cir. 1976) (per curiam), but we reached the opposite conclusion in 1995, *see La Cienega Music Co. v. ZZ Top*, 53 F.3d 950 (9th Cir. 1995). In *ABKCO Music*, a music company sought a ruling that under *La Cienega*, the distribution of a phonorecord in the late 1930s was a publication that caused the underlying work to enter the public domain. *Id.* at 686. While the case was pending, Congress amended the Copyright Act to resolve the circuit split, adopting the Second Circuit's interpretation. *See* Pub. L. No. 105-80, § 11, 111 Stat. 1529, 1534 (Nov. 13, 1997). The amendment included language making the new law retroactively applicable to conduct taking place before January 1, 1978 (the effective date of the Copyright Act of 1976). *ABKCO Music*, 217 F.3d at 690.

In considering whether Congress's new enactment merely clarified the 1909 Act, and so did not trigger a retroactivity analysis, we first noted that "[a]n amendment in the face of an ambiguous statute or a dispute among the courts as to its meaning indicates that Congress is clarifying, rather than changing the law." *Id.* at 691. We also read the legislative history as showing that Congress intended the act to be clarifying.[8] Based on these considerations, we concluded that the amendment "simply clarifie[d] what the meaning of the 1909 Act was all along," and merely "intended to restore the law to what it was before" our decision in *La Cienega*. *Id*. at 690.

Second, we consider other indications of Congress's intent regarding retroactivity. One textual indicator is Congress's decision to title an enactment a "clarification." However, "titles of acts are not part of the law," *Belshe*, 132 F.3d at 1266 n.6, and Congress does not necessarily use the term "clarification" to indicate that a law should apply to conduct predating its enactment. *See, e.g.*, Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 2303(c)-(d), 124 Stat. 119, 296 (2010) (codified at 42 U.S.C. § 1396u-7(b)(7)) (referring to an amendment as a "clarification of coverage of family planning services and supplies" but indicating that the new definition "shall apply to items and services furnished on or after" the effective date of the statute (capitalization altered)); *cf. Rivers*, 511 U.S. at 304 n.7 (stating that the phrase "'to restore' might sensibly be

[8] We further relied on the fact that the new enactment "would make no sense if applied solely prospectively because it explicitly applie[d] to [the distribution of phonorecords] occurring before January 1, 1978." 217 F.3d at 691. Although a statute's express concern with pre-enactment conduct may demonstrate "clear congressional intent favoring" its retroactive application, *Landgraf*, 511 U.S. at 280, that ground for retroactive application is distinct from the question whether an enactment constitutes a clarification of existing law, *see Belshe*, 132 F.3d at 1264-65.

read as meaning 'to correct, from now on,'" and does "not … necessarily bespeak[] an intent to restore *retroactively*"). Therefore, we do not give an enactment's title dispositive weight, but consider it in a larger context, as indicated in *Belshe* and *Beaver*.

In *Belshe*, disputes arose over the interpretation of a section of the Medicaid Act that provided payment rules for states. California interpreted this section as allowing it to limit certain payments. 132 F.3d at 1263. Some courts agreed with this interpretation, while others rejected it, and even those courts that reached the same result did so for different reasons. *See id.* at 1263 n.4. After appellate briefing was completed, Congress amended the relevant section of the Medicaid Act in an act captioned "Clarification Regarding State Liability for Medicare Cost-Sharing." *Id.* at 1263. We held this new statute was a clarification of the prior payment rules and could be applied to cases pending on appeal in part because it "expressly (and formally) stated as [Congress's] intention that the new provision … was a 'clarification' of the payment rules contained" in the prior statute. *Id.*

But we did not rely on the title of the statute alone. In rejecting the argument that the new statute "effected such a substantial change in federal law … that it cannot be treated as simply clarifying," we noted the "split of authority construing" the Medicaid provision and the fact that the payment rules were "baffling" and "particularly resistant to a single simple interpretation." *Id.* at 1266. We concluded that "[g]iven the extraordinary difficulty that the courts have found in divining the intent of the original Congress, a decision by the current Congress to intervene by expressly clarifying the meaning of [the statute] is worthy of real deference." *Id.* Because a "clearly established meaning" of the payment rules "simply did not exist before [the amendment] was adopted," we honored Congress's "'clarification' label" and accepted the amendment as a statement of what the law had meant all along. *Id.*

In *Beaver*, plaintiffs alleged that defendants failed to make certain disclosures in connection with the sale of condominiums, thus violating the Interstate Land Sales Full Disclosure Act. 816 F.3d at 1174-75. While the suit was pending, Congress amended the act to exempt condominium sales from its disclosure requirements. *Id.* at 1184-85. Although Congress labeled the new law as "[a]n act to amend the … Disclosure Act to clarify how the Act applies to condominiums," *id.* at 1187, we concluded that such "[p]ost-hoc labeling as a 'clarification' by bill supporters of what otherwise appears to be a change" was not controlling, *id.* at 1186. We noted that courts and the implementing agency had not "found extraordinary difficulty … in divining the intent of the original Congress," *id.* (alteration in original) (quoting *Belshe*, 132 F.3d at 1266), and gave more weight to indicia that Congress was effecting a change in the law rather than merely clarifying it. For instance, we noted that the amendment was silent on the issue of retroactivity. We also considered that the amendment's effective date was 180 days after enactment. *Id.* at 1187. Both of these considerations undermined the view that the law applied to pending cases. We therefore concluded that Congress had "adopted a substantive change in the law by discarding an old application" of the law. *Id.*

We have also considered whether the timing of a congressional enactment indicates an intent to correct an ambiguity. In *McCoy v. Chase Manhattan Bank, USA, National Ass'n*, we considered a plaintiff's claims that an increase in his credit card interest rates violated a Delaware statute. 654 F.3d 971, 972 (9th Cir. 2011). We interpreted the statute as not allowing discretionary increases to rates, and therefore held that the plaintiff had stated a claim for a violation of the statute. *Id.* at 972-73. But while the appeal was pending before the Supreme Court, the Seventh Circuit and the First Circuit expressly disagreed with our interpretation of the statute. *Id.* at 973-74. In response to this circuit split, the Delaware legislature enacted a clarifying amendment agreeing with the First and Seventh Circuits. *Id.* at 974. On remand by the Supreme Court, we applied the new amendment to the pending case. *Id.* In response to the plaintiff's argument that the Delaware amendment should not be applied retroactively, we reasoned that "the amendment here does not alter the meaning of [the Delaware statute] but merely clarifies the meaning of the prior language, to the extent the former provision was ambiguous and leading to conflicting results in the courts." *Id.* (emphasis omitted). In reaching this conclusion, we noted a treatise's statement that "[i]f the amendment was enacted soon after controversies arose about interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act," *id.* (quoting 1A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction*, § 22.31 (7th ed. 2011)), and that under Delaware law, "[w]here the legislature passes an amendment shortly after a controversy arises as to the meaning of the original statute, the amendment may be construed as a clarification of prior law," *id.* (quoting *Walls v. Dept. of Corr.*, 663 A.2d 488 (table), 1995 WL 420801, at *1 (Del. July 3, 1995) (unpublished)).

In sum, in determining whether new legislation merely declares what a statutory provision meant when it was enacted, we have focused primarily on whether the prior enactment was ambiguous and generated inconsistent judicial opinions. An amendment enacted shortly after such inconsistent interpretations of a statute arose may be deemed to be clarification of a statute, rather than a substantive change. We gave weight to Congress's decision to label a new enactment as a clarification only where indicia of ambiguity were also present.

B

We now apply this legal framework. First, ATRA contains no "express command" to apply the statute retroactively to events that occurred before its enactment. If it were so applied, ATRA would "increase a party's liability for past conduct," *Landgraf*, 511 U.S. at 280, because it allows a civil penalty to be assessed on a new class of defendants: those who attempt or conspire to benefit from a TVPRA violation. This gives rise to a presumption that ATRA should not be applied retroactively.[9] *Id.* In arguing that this presumption does not apply, plaintiffs raise only one argument: that ATRA merely clarified the intent of the Congress that originally enacted § 1595(a), and therefore "has no retroactive effect that might be called into constitutional question." *ABKCO Music*, 217 F.3d at 689 (quoting *Belshe*, 132 F.3d at 1265).

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As explained above, prior to the enactment of ATRA, § 1595(a) provided that a plaintiff could bring a civil action against any person who "knowingly benefits … from participation in a venture which that person knew or should have known has engaged in an act in violation" of the TVPRA. The 2023 amendment allows a plaintiff to bring a civil action against any person who "knowingly benefits *or attempts or conspires to benefit*" from such a violation of the TVPRA. Congress labeled this amendment a "Technical and Clarifying Update to Civil Remedy." 136 Stat. at 6200.

To determine whether this amendment clarified what the TVPRA had meant all along, we first consider whether, prior to the amendment, § 1595(a)

[9] We reached the same conclusion in considering whether the civil remedy provided by § 1595 could apply to pre-enactment conduct. *See Ditullio*, 663 F.3d at 1099. *Ditullio* held that because § 1595 "changed substantive law and attached new legal burdens to violations of the TVPA," it could not "apply retroactively to conduct that occurred before its effective date" under *Landgraf*. *Id.*

was ambiguous and generated inconsistent judicial decisions. We have not discerned any such ambiguity or inconsistency. Before *Ratha I*, no circuit court opinion addressed the question whether § 1595(a) permitted a plaintiff to bring a civil action against a person who "attempts or conspires to benefit" from a TVPRA violation. Rather, one court noted that it had "little difficulty in deciding what 'knowingly benefits' [in § 1595] means." *Doe #1 v. Red Roof Inns, Inc.*, 21 F.4th 714, 723-24 (11th Cir. 2021) (interpreting "knowingly benefit" as requiring a plaintiff to "allege that the defendant knew it was receiving some value from participating in the alleged venture").

Plaintiffs argue that *Ricchio v. McLean*, 853 F.3d 553 (1st Cir. 2017), is an example of the unsettled state of the law. We disagree. In *Ricchio*, an alleged trafficking victim sued the man she alleged trafficked her, motel operators who rented to the trafficker, and the motel owner. *Id.* at 555. The district court dismissed the action against the motel operators and owner for failure to state a claim. *Id.* The First Circuit reversed. According to the court, the complaint alleged that the motel operators had prior commercial dealings with the trafficker and intended to reinstate these dealings for profit "in circumstances in which [the trafficker's] coercive and abusive treatment of [the victim] as a sex slave had become apparent" to the motel operators—namely, the motel operators ignored the victim's plea for help in escaping from the trafficker and showed indifference to the victim's "obvious physical deterioration." *Id.* The court held that "[i]n these circumstances, it was a plausible understanding that [the trafficker] was forcing sex in the motel room where he held [the victim] hostage, and fairly inferable that the gainful business that [the motel operator] spoke of had been and would be in supplying sexual gratification." *Id.* Further, it was inferable that the motel operators "understood that in receiving money as rent for the quarters where [the trafficker] was mistreating [the victim], they were associating with him in an effort to force [the victim] to serve their business objective." *Id.* The court concluded that "these allegations and inferences suffice as plausible support for pleading statutory violations [of the TVPRA] by the [motel-operator] defendants *in their own right*." *Id.* at 555-56 (emphasis added).

The First Circuit then considered whether plaintiffs' allegations were sufficient to support the statutory claims in the complaint. Because the plaintiff in *Ricchio* sought damages pursuant to § 1595(a), each of the claims in the suit invoked both that section and a section corresponding to a substantive violation. One claim invoked § 1594(a), which prohibits attempts to violate the TVPRA. *Id.* at 557. Regarding this claim, the First Circuit held that the complaint adequately alleged that the motel operators "at the least attempted to violate §§ 1589, 1590, and 1591," which respectively prohibit knowingly benefitting from participating in a forced-labor venture, engaging in labor trafficking by harboring a victim, and knowingly benefitting from participating in a sex-trafficking venture. *Id.* This means that the complaint plausibly alleged that each defendant was the "perpetrator" of a violation of the TVPRA, *see* § 1595(a), which includes a person who "attempts to violate" §§ 1589, 1590 and 1591, *see* § 1594.

Ricchio's reference to § 1595(a) does not indicate that the First Circuit interpreted that section to permit a civil action against any person who "attempts or conspires to benefit" from a violation of the TVPRA. Rather, the First Circuit referred to an attempt *to violate* various statutory provisions, not an attempt *to benefit from* another's violation.[10] We adopted a similar reading of § 1594(a) and § 1595 in *Ratha I*, *see supra* at 12, where we explained that "the term 'perpetrator,' as used in § 1595(a), could be read to include those who have only attempted to violate the TVPRA," pursuant to § 1594. *Ratha I*, 35 F.4th at 1176 n.16. But as we explained, this "possibility does not suggest that an attempt to knowingly benefit from a perpetrator's TVPRA violation would establish liability under § 1595(a)." *Id.* Neither *Ricchio* nor *Ratha I* addressed the theory plaintiffs now advance,

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[10] The dissent points to the passage in *Ricchio* stating that "[t]he defendants at the least attempted to violate §§ 1589, 1590, and 1591 (see Claims 1, 2, and 3), the necessary substantial steps including the harboring of Ricchio and the receipt of benefit." 853 F.3d at 557. According to the dissent, this means that *Ricchio* "concluded that *attempting* to benefit from human trafficking as proscribed by the TVPRA, in and of itself, gave rise to civil liability." Dissent at 47. But *Ricchio*'s language merely states that the defendants took substantial steps (such as harboring Ricchio and receiving benefits) towards completing a violation of §§ 1589, 1590, and 1591, and therefore could be liable for an *attempted violation* of those TVPRA provisions. It does not indicate that an *attempt to benefit* from another's TVPRA violation is itself civilly actionable under § 1595(a).

and the two cases do not evidence any judicial difficulty interpreting the TVPRA.[11]

Nor did the Fourth Circuit interpret § 1595(a)'s "knowingly benefit" provision as including an "attempt to benefit" in *Roe v. Howard*, 917 F.3d 229 (4th Cir. 2019), also decided before *Ratha I*. In *Howard*, the Fourth Circuit considered whether the civil remedy provisions of the TVPRA applied to violations that took place extraterritorially. *Id.* at 233. The court applied the extraterritoriality framework set forth in *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325 (2016). *RJR Nabisco* held that RICO applies to extraterritorial criminal conduct, *id.* at 326, but that its civil remedy provisions do not apply to extraterritorial conduct, *id.* at 346, because "[n]othing in [the relevant provision] provides a clear indication that Congress intended to create a private right of action for injuries suffered outside of the United States," *id.* at 349.

[11] The dissent argues that a court could read § 1589(b) (which makes it a violation of the TVPRA to knowingly benefit from participation in a forced labor venture) together with § 1594 (which provides that "[w]hoever attempts to violate section … 1589" commits a TVPRA violation) and conclude that a person who attempts to knowingly benefit from participation in a forced labor venture is a perpetrator who is subject to suit under § 1595(a). Dissent at 48-49. Because neither *Ricchio* nor any other court has offered such an interpretation of § 1595(a), the dissent's interpretation does not provide evidence of judicial confusion or ambiguity that a clarifying amendment would resolve.

In holding that the TVPA's civil remedy provision did apply extraterritorially, the Fourth Circuit distinguished *RJR Nabisco* on several grounds, including that "§ 1595 expressly and directly incorporates the TVPA's criminal predicates, many of which manifestly apply to foreign conduct," and that it "applies coextensively with its predicate offenses, omitting any qualifying or modifying language." *Howard*, 917 F.3d at 243. Applying this reasoning, the Fourth Circuit concluded that the defendant's extraterritorial violations of TVPA could be the subject of a civil action under § 1595, because the TVPA authorized "civil suits by 'a victim of a violation of this chapter [chapter 77]' against the perpetrator or 'whoever knowingly benefits' from that violation.'" *Id.* at 243. This analysis does not address the legal question at issue in *Ratha I*. Although the Fourth Circuit indicated that § 1595 "applies coextensively with its predicate offenses," *id.*, this statement is too general to indicate that the Fourth Circuit interpreted "knowingly benefits" in § 1595 as including an "attempt to benefit." Indeed, the opinion includes no textual analysis of § 1595(a) whatsoever, an observation the dissent does not dispute. Dissent at 49.

After these circuit decisions, we decided *Ratha I*, which was the first case to address whether a defendant's attempt to benefit from TVPRA violations satisfied § 1595(a)'s "knowingly benefits" requirement. *Ratha I* did not indicate that any prior opinion shed light on this issue. We cited *Roe v. Howard* only for its statement that "Congress created several new federal criminal offenses intended to more comprehensively and effectively combat human trafficking," *Ratha I*, 35 F.4th at 1164 (quoting *Howard*, 917 F.3d at 236), and did not attempt to distinguish it in any way, suggesting we did not detect any conflict. Nor did we have "extraordinary difficulty" interpreting the statute. *Belshe*, 132 F.3d at 1266. There was no missing or undefined term we struggled to interpret. Rather, we engaged in a straightforward statutory analysis and concluded that we could not read § 1595(a) in the extra-textual manner urged by plaintiffs. We concluded that § 1595(a) was unambiguous, given that "[t]he text of § 1595 does not extend liability to those who attempt to benefit from a perpetrator's TVPRA violation," *Ratha I*, 35 F.4th at 1176, and stated that "we cannot read the word 'attempt' into the 'knowingly benefits' portion of § 1595 without violating 'a fundamental principle of statutory interpretation that "absent provision[s] cannot be supplied by the courts."'" *Id.* at 1176 (quoting *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (alteration in original)). We are bound by our prior decision that there was no ambiguity.

Judicial opinions issued after our decision in *Ratha I* have not shown § 1595 "to be particularly resistant to a single simple interpretation" or to be "particularly in need of clarification." *Belshe*, 132 F.3d at 1266. We have found nothing to suggest a "split of authority construing the statute." *Id.* No circuit court decision following *Ratha I* has disagreed with our interpretation. Plaintiffs cite a D.C. Circuit decision applying the TVPRA, but it does not discuss civil attempt-to-benefit liability under § 1595—or attempt liability at all. *See Rodriguez v. Pan Am. Health Org.*, 29 F.4th 706, 716 (D.C. Cir. 2022). The opinion merely indicates in passing that a defendant who violates the TVPRA is subject to civil liability as a perpetrator. *Id.* at 716. This statement does not conflict with *Ratha I*.

Nor do district court cases cited by plaintiffs indicate that § 1595(a) was ambiguous regarding whether it allowed a suit against a person who "attempt[ed] to benefit" from a TVPRA violation. In *Paguirigan v. Prompt Nursing Employment Agency LLC*, 286 F. Supp. 3d 430, 439-40 (E.D.N.Y. 2017), for instance, the district court denied a motion to dismiss a claim under § 1595(a) and § 1594 for the attempted violation of § 1589 and § 1590. This ruling again echoes the textual analysis in *Ricchio* and *Ratha I*: because § 1595(a) allows a plaintiff to bring an action against the perpetrator of a violation of the TVPRA, and because § 1594 indicates that a perpetrator includes a person who attempts to violate § 1589 and § 1590, the plaintiff could bring an action under § 1595(a) for an attempted violation of § 1589 and § 1590. The decision did not address the distinct question whether § 1595(a) allowed an action against a person who attempted *to benefit from* a violation of TVPRA. The other cases cited by plaintiffs likewise address an attempted violation (as opposed to an attempt to benefit), *see, e.g., Saraswat v. Selva Jayaraman, Bus. Integra*, No. 15-CV-4680, 2016 WL 5408115, at *3-6 & n.7 (E.D.N.Y Sept. 28, 2016) (holding that the plaintiff's allegations were "sufficient to state a claim for *attempted* forced labor" under § 1594), or they fail to address the issue entirely.[12]

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Given the lack of any indication that the courts were in disarray on the question whether § 1595(a) authorized a claim for an attempt to benefit from a TVPRA violation, we consider whether other "circumstances" show that ATRA declared what the TVPRA meant at the time it was enacted. *Bedoni*, 878 F.2d at 1120.

First, we consider textual indications that could illuminate Congress's intent. Here, the only textual indicator of this sort is the label Congress used for the pertinent section of ATRA: a "Technical and Clarifying Update to Civil Remedy." § 102, 136 Stat. at 6200. We conclude that this label does little to establish that Congress intended to clarify the intent of the prior Congress that enacted the TVPRA. Congress did not describe the enactment as a "clarification" of § 1595, but rather as a "clarifying update" to the TVPRA. The noun "update" means "an up-to-date version," *Update*, Merriam-Webster's Collegiate Dictionary (11th ed. 2020), while the act of updating involves improving or enhancing an out-of-

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[12] *See Norambuena v. W. Iowa Tech Cmty. Coll.*, No. C20-4054, 2022 WL 987946 (N.D. Iowa Mar. 31, 2022); *Sherman v. Trinity Teen Sols.*, No. 20-CV-215, 2021 WL 7286424 (D. Wyo. Nov. 30, 2021); *Gilbert v. U.S. Olympic Comm.*, 423 F. Supp. 3d 1112 (D. Colo. 2019); *Ross v. Jenkins*, 325 F. Supp. 3d 1141 (D. Kan. 2018); *A.B. v. Marriott Int'l, Inc.*, 455 F. Supp. 3d 171 (E.D. Pa. 2020).

date version by incorporating new information or features. When software is updated, for example, it is modified to make the new version run more smoothly going forward. Similarly, updating a policy involves adapting it to new circumstances or fixing deficiencies going forward. The primary connotation of "update," therefore, is one of forward-looking improvement. *Cf. Rivers*, 511 U.S. at 304 n.7 (stating that "the phrase 'to restore' might sensibly be read as meaning 'to correct, from now on'"). The use of the term "update" in the label Congress placed on ATRA distinguishes it from the label in *Belshe*, "Clarification Regarding State Liability for Medicare Cost-Sharing," 132 F.3d at 1263-64, and the label in *Beaver*, "An act to amend the [Act] to clarify how the Act applies to condominiums," 816 F.3d at 1187. We did not give dispositive weight to the label of "clarification" in those cases, and have even less reason to do so here. Rather, there is reason to read the "clarifying update to civil remedy" label as indicating a forward-looking amendment to the statute in light of new circumstances. Other than the reference to the amendment as a "clarifying update" in the title, there are no other textual indications from Congress that it intended to restore the language of § 1595(a) as enacted in the TVPRA to what the statute had always meant.

The dissent contends that a "clarifying update" is like a "clarifying change," and is applied retroactively. Dissent at 54-55. We disagree that "update" and "change" are synonymous. But even if they were, when we apply congressional amendments retroactively under our exception to *Landgraf*, we generally distinguish between amendments that clarify and those that change existing law. *See, e.g.*, *Beaver*, 816 F.3d at 1186 ("[N]o *Landgraf* analysis is required if an amendment merely serves to clarify rather than change the substance of existing law."); *ABKCO Music*, 217 F.3d at 691 ("An amendment in the face of an ambiguous statute or a dispute among the courts as to its meaning indicates that Congress is clarifying, rather than changing, the law."); *Bedoni*, 878 F.2d at 1121 ("Where, as here, an act is ambiguous, an amendment thereto is an indication that it is intended to clarify, rather than change, the existing law." (cleaned up)); *Callejas v. McMahon*, 750 F.2d 729, 730 (9th Cir. 1984) (noting that "a dispute or ambiguity, such as a split in the circuits, is an indication that a subsequent amendment is intended to clarify, rather than change, the existing law" (cleaned up)). In arguing to the contrary, the dissent cites *ABKCO Music* as an example of how "we have frequently described a clarifying 'change' in the law as having retroactive effect." Dissent at 54. But even the dissent's quotation from *ABKCO Music* fails to support this claim, since it merely states that "*when* an amendment is deemed clarifying rather than substantive, it is applied retroactively." 217 F.3d at 689 (emphasis added) (quoting *United States v. Donaghe*, 50 F.3d 608, 612 (9th Cir. 1994)). Rather, *ABKCO Music* expressly differentiated between a clarifying amendment, which "[n]ormally" is applied retroactively, *id.*, and a change in law, which would "pose a series of potential constitutional problems" if applied retroactively, *id.* (quoting *Belshe*, 132 F.3d at 1265).[13]

Second, aside from textual indicators, we consider whether there are any other factors indicative of Congress's intent. Unlike *ABKCO Music*, there is no contemporaneous legislative history regarding the enactment of ATRA. There are no House or Senate Committee Reports, or even statements of legislators on the House or Senate floor at the time of the bill's enactment. *See ABKCO Music*, 217 F.3d at 690. Rather, plaintiffs rely on an amicus brief representing the views of six legislators. We accord little weight to such post-enactment amicus briefs, which "represent only the personal views of the[] legislators." *Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 132 (1974) (citation omitted). Even if the legislators' comments had been made on the floor during the legislative process, we "place little value on the statements of individual legislators in connection with the enactment of a bill." *Beaver*, 816 F.3d at 1186. Plaintiffs also rely on a blog post written by

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[13] The dissent also relies on *United States v. Donaghe*, 50 F.3d 608 (9th Cir. 1994), which considered an amendment to the sentencing guidelines. *See* Dissent at 54. This reliance is misplaced, because the retroactive application of the Guidelines is subject to its own legal framework. *See* 18 U.S.C. § 3582(c)(2) (authorizing courts to modify sentences based on a retroactive application of the sentencing guidelines); *see also* U.S.S.G. § 1B1.11(b)(2) (explaining circumstances where "the court shall consider subsequent amendments, to the extent that such amendments are clarifying rather than substantive changes"); *id.* § 1B1.10(d) (listing a number of "[c]overed [a]mendments" for which retroactivity is presumed).

advocates from the Human Trafficking Legal Center regarding their efforts to lobby Congress to enact ATRA. Such an advocacy piece does not shed light on whether Congress intended to confirm what TVPRA had always meant.

Finally, we consider whether the timing of ATRA indicates that it was a response to *Ratha I*. As we noted in *McCoy*, when Congress enacts an amendment "soon after controversies arose about interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act." 654 F.3d at 974 (quoting Singer & Singer, *supra*, § 22.31). But here, there were no controversies among the circuits regarding the interpretation of § 1595(a). Prior to our decision in *Ratha I*, no circuit court had addressed the question whether § 1595(a)'s "knowingly benefits" requirement could be satisfied by evidence of an *attempt to benefit* from a TVPRA violation. Nor did any circuit court consider this issue after *Ratha I* was decided, and before the congressional enactment. Therefore, the logical inference described in *McCoy* does not arise. Nor does it appear that Congress's enactment was an effort to make a quick correction to an errant ruling, given that Congress enacted ATRA five years after the district court's final judgment and almost a year after our opinion in *Ratha I*. Indeed, Congress did not enact ATRA until after the Supreme Court denied plaintiffs' petition for certiorari. Congress's amendment in ATRA, which extended liability to those who attempted to benefit from a TVPRA violation, is thus better understood as effecting a substantive change.[14]

In short, there is no persuasive evidence that Congress intended ATRA to declare what § 1595(a) meant when it was enacted. There is no evidence of a circuit split or judicial difficulty in interpreting the phrase "whoever knowingly benefits" in § 1595(a). The label designating ATRA as a "clarifying update" suggests a forward-looking change. Moreover, we have held that the mere use of the word "clarification" in the title of an amendment is not controlling. *Beaver*, 816 F.3d at 1186. We conclude that the requirements for applying our narrow exception to the *Landgraf* framework are not present here.

* * *

Because we reject the argument that ATRA "merely clarifies what [§ 1595(a)] was originally intended to mean," *Belshe*, 132 F.3d at 1265, and plaintiffs raise no other basis for ATRA to apply retroactively, we conclude that ATRA does not apply to pre-enactment conduct, including the conduct that is the basis of plaintiffs' claims. Therefore, the district court did not abuse its discretion in denying plaintiffs' motion to reopen the final judgment under Rule 60(b)(6). We affirm the denial of the Rule 60(b)(6)

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[14] Contrary to the dissent, neither the fact that the statute took immediate effect, Dissent at 55, nor that Congress enacted ATRA unanimously, Dissent at 52, has any bearing on the question whether Congress intended the enactment to merely clarify existing law.

motion on that basis. Because we need not examine the relationship between the change in law and the challenged judgment, we do not review the district court's alternative bases for summary judgment.

AFFIRMED.

GRABER, Circuit Judge, dissenting:

I respectfully dissent.

A later Congress has the power to enact legislation that is meant to "clarify" the intent of an earlier Congress and to "confirm what the law has always meant." *Beverly Cmty. Hosp. Ass'n v. Belshe*, 132 F.3d 1259, 1265 (9th Cir. 1997) (emphasis omitted). When Congress does so, we give its enactment retroactive effect. *Id.* In determining whether an amendment is clarifying, we first consider whether the prior enactment was ambiguous and whether it generated inconsistent judicial decisions. Op. at 22-25; *Callejas v. McMahon*, 750 F.2d 729, 731 (9th Cir. 1984). If so, no presumption against retroactivity applies, and we next consider textual and other indications as to whether Congress intended to clarify the ambiguity. Op. at 24, 26-28; *Bedoni v. Navajo-Hopi Indian Relocation Comm'n*, 878 F.2d 1119, 1120-21 (9th Cir. 1989).

Proper application of those principles here demonstrates that the amendment in question has retroactive effect. When Congress enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), it clearly intended to make the criminal and civil provisions coextensive. But the statute was ambiguous because, in one place, the civil provision omitted a phrase regarding "attempt." Two other circuit courts implicitly concluded that this omission was an oversight, ruling that an attempt to benefit from human trafficking creates civil liability. *See Roe v.*

Howard, 917 F.3d 229 (4th Cir. 2019); *Ricchio v. McLean*, 853 F.3d 553 (1st Cir. 2017). Our court disagreed in *Ratha v. Phatthana Seafood Co. (Ratha I)*, 35 F.4th 1159, 1176 (9th Cir. 2022), generating a circuit split. As soon as the Supreme Court declined to grant certiorari in *Ratha I*, Congress acted immediately—within two weeks—to resolve the ambiguity and to correct our error. It did so with the label "technical and clarifying," a label that is entitled to great weight. In addition, Congress made the amendment effective immediately, so there is no uncertainty about Congress's intent concerning retroactivity.

The majority opinion reaches the opposite result only by making a series of key errors: it fails to give effect to the intended parallel between the civil and criminal provisions; it declines to recognize the ambiguity created thereby and misconstrues the cases from other circuits demonstrating that Congress stepped in to resolve the ambiguity; it improperly ignores the context and timing of the amendment's passage; it wrongly discounts Congress's intentional labeling of the amendment as "technical and clarifying" only; it sidesteps the distinctions between this case and *Beaver v. Tarsadia Hotels*, 816 F.3d 1170 (9th Cir. 2016); and it engages in questionable semantic juggling. I would reverse and remand for further proceedings.

A. Congress's 2008 Amendment to the TVPRA Was Ambiguous

In 2000, Congress enacted the Trafficking Victims Protection Act ("TVPA") "to 'combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.'" *Ditullio v. Boehm*, 662 F.3d 1091, 1094 (9th Cir. 2011) (quoting Pub. L. No. 106-386, § 102, 114 Stat. 1464 (2000) (codified as amended at 18 U.S.C. §§ 1589-92)). "By enacting [the] statute, 'Congress created several new federal criminal offenses intended to more comprehensively and effectively combat human trafficking.'" *Ratha I*, 35 F.4th at 1164 (quoting *Howard*, 917 F.3d at 236). Congress amended the TVPA several times, each time extending the extraterritorial reach of the statute. *See generally Howard*, 917 F.3d at 235-37 (describing the history). By 2008, the TVPA contained a series of criminal provisions, codified at 18 U.S.C. §§ 1581-94, and civil enforcement provisions, codified at 18 U.S.C. § 1595.

In 2008, Congress enacted a reauthorized and amended TVPRA.[1] Pub. L. No. 110-457, 122 Stat. 5044 (2008). The TVPRA amended the civil remedy provision codified at 18 U.S.C. § 1595 to state:

> An individual who is a victim of a violation of this chapter may bring a civil action against

[1] I refer to the TVPA, as reauthorized and amended in 2008, as the TVPRA.

> the perpetrator (*or whoever knowingly benefits, 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 attorneys fees.

Pub. L. No. 110-457, § 221, 122 Stat. at 5067 (emphasis added). The TVPRA further expanded the extraterritorial reach of the statute by providing:

> In addition to any domestic or extra-territorial jurisdiction otherwise provided by law, the courts of the United States have extra-territorial jurisdiction over any offense (*or any attempt or conspiracy to commit an offense*) under section … 1589, 1590, or 1591 if—
>
> (1) an alleged offender is a national of the United States ….

See id., § 223, 122 Stat. at 5071 (codified at 18 U.S.C. § 1596) (emphasis added).

The inclusion of the phrase "attempt" in § 1596 but its exclusion in § 1595 created an obvious ambiguity as to whether civil liability attached to attempted violations. As the First Circuit correctly held in *Howard*, Congress intended the civil and criminal provisions to apply coextensively. *Howard*, 917 F.3d at 243. But that principle makes sense only if Congress intended to attach civil liability to *all* violations—not only to some violations. We held otherwise in *Ratha I*. *See* 35 F.4th at 1176 ("The text of § 1595 does not extend liability to those who *attempt* to benefit from a perpetrator's TVPRA violation." (citing 18 U.S.C. § 1595(a))).

B. The 2008 Amendment Led to Inconsistent Judicial Decisions

Two other circuit courts concluded that civil liability attaches for attempting to benefit financially, or for receiving anything of value, from participation in a venture involving human trafficking: *Ricchio*, 853 F.3d at 557, and *Howard*, 917 F.3d at 237, 239. As noted, our court in *Ratha I* reached the opposite conclusion. 35 F.4th at 1176.

The First Circuit in *Ricchio* reversed the district court's dismissal of the plaintiff's claims under §§ 1594(a) and 1595(a). In her complaint, the plaintiff alleged that the motel defendants "*attempted to violate* 18 U.S.C. §§ 1589, 1590 and/or 1591 by *attempting to obtain or provide* [] Ricchio's forced labor and sexual services in violation of 18 U.S.C. § 1589 …." *Ricchio v. Bijal, Inc.*, 424 F. Supp. 3d 182, 194 (D. Mass. 2019) (brackets in original) (emphases added). In reversing the district court, the First Circuit in *Ricchio* held that the plaintiff's allegations sufficed to state a claim for relief. *See Ricchio*, 853 F.3d at 555-57 (noting that the plaintiff stated a cognizable claim under Claim 6, which plausibly gave rise to civil liability under § 1595). The First Circuit explained that, although the motel defendants were interrupted before they could benefit fully, there was a plausible claim under §§ 1594(a) and 1595(a) because the defendants "*at the least attempted* to violate §§ 1589, 1590, and 1591." *Id*. at 557 (emphasis added); *see also id*. ("While 'mere preparation' does not constitute a substantial step [for the purposes of attempt], a defendant 'does not have to get very far along the line toward ultimate commission of the object crime in order to commit the attempt offense.'" (quoting *United States v. Turner*, 501 F.3d 59, 68 (1st Cir. 2007))). That holding makes sense only if the First Circuit concluded that *attempting* to benefit from human trafficking as proscribed by the TVPRA, in and of itself, gave rise to civil liability.

Two years later, the Fourth Circuit in *Howard* also addressed attempts in the context of § 1595 liability. The court held that "§ 1595 expressly and directly incorporates the TVP[R]A's criminal predicates" and that "the text of § 1595 shows that it applies coextensively with its predicate offenses." *Howard*, 917 F.3d at 243; *see also id*. at 237 (noting that the courts have "extra-territorial jurisdiction over any offense (*or any attempt or conspiracy to commit an offense*) under section … 1589, 1590, or 1591" (quoting Pub. L. No. 110-457, § 223) (emphasis added)).

But in *Ratha I*, we disagreed. *See, e.g.*, 35 F.4th at 1176 ("Congress's decision to impose civil liability on those who 'benefit' but not those who 'attempt to benefit' is significant because attempt liability is plainly authorized elsewhere in the TVPRA."). We held that attempting to benefit financially did *not* give rise to civil liability. *Id*. Our decision, therefore, diverged from *Ricchio* and *Howard*, which had held the opposite, creating a circuit split.

Thus, the majority opinion mistakenly asserts that, "[b]efore *Ratha I*, no circuit court opinion addressed the question whether § 1595(a) permitted a plaintiff to bring a civil action against a person who 'attempts or conspires to benefit' from a TVPRA violation." Op. at 31. The majority opinion engages in an extensive analysis aimed at distinguishing an "attempt to *benefit*" from an "attempt to *violate*," by characterizing a party who engages in the former as a mere beneficiary and one who engages in the latter as a "perpetrator." Op. at 12-13, 33-37 (emphases added). But applying the opinion's own definition of a "perpetrator," which the opinion agrees "includes a person who 'attempts to violate' §§ 1589, 1590 and 1591," Op. at 32-33, 37, the plain statutory text of § 1589(b) requires that we deem persons who *knowingly benefit* from TVPRA violations to be "perpetrators" themselves. Knowingly benefiting from a TVPRA violation is, *in and of itself*, a violation of the TVPRA. *See* § 1589(b) ("Whoever knowingly benefits, financially or by receiving anything of value … shall be punished as provided in subsection (d)."); *see also Rodriguez v. Pan Am. Health Org.*, 29 F.4th 706, 716 (D.C. Cir. 2022) ("The 'financial benefit' that violates § 1589(b) is itself 'wrongful conduct.'"); *Bistline v. Parker*, 918 F.3d 849, 871 (10th Cir. 2019) ("*One can violate* [§ 1589] either *as a primary offender or simply by benefiting financially* from participation in a 'venture' with the primary offender." (emphasis added)). The majority opinion's analysis of *Ricchio* is, therefore, flawed.

Even leaving *Ricchio* aside, the Fourth Circuit in *Howard* ruled that an attempt to benefit from human trafficking creates civil liability under § 1595 when it expressly held that the criminal and civil provisions are coextensive. *Howard*, 917 F.3d at 243.

In short, Congress acted in response to the TVPRA's ambiguity and the conflicting judicial determinations in *Ricchio*, *Howard*, and *Ratha I*. Therefore, we next must examine Congress's enactment of the Abolish Trafficking Reauthorization Act ("ATRA") to determine whether it intended for its legislation to have retroactive effect.

C. Congress Intended a Retroactive Amendment

Mere weeks after the Supreme Court denied certiorari in *Ratha I*, Congress passed the ATRA and included the following amendment to § 1595(a):

> SEC. 102. TECHNICAL AND CLARIFYING UPDATE TO CIVIL REMEDY.
>
> Section 1595(a) of title 18, United States Code, is amended by inserting "or attempts or conspires to benefit," after "whoever knowingly benefits."

Pub. L. No. 117-347, 136 Stat. 6199, 6200 (2023).

Three factors, which we have deemed relevant in determining whether an amendment is clarifying, establish the ATRA's retroactivity: (1) Congress acted swiftly following our decision in *Ratha I*; (2) Congress expressly stated that its enactment was intended only as a technical and clarifying update; and (3) Congress made the change effective immediately.

1. Congress Acted Swiftly

We first published *Ratha I* on February 25, 2022. *See* 26 F.4th 1029, 1045 ("The text of § 1595 does not extend liability to those who *attempt* to benefit from a venture.").[2] The ATRA was introduced in the Senate about five weeks later, on March 29, 2022. *See* All Actions: S.3946—117th Congress (2021-2022), *available at* https://www.congress.gov/bill/117th-congress/senate-bill/3946/all-actions (noting that the ATRA was first introduced, "[r]ead twice[,] and referred to the Committee on the Judiciary" on March 29, 2022). And the amendment to § 1595(a) was proposed on December 20, 2022. S. Amend. 6581, 117th Cong., 168 Cong. Rec. S9658, S9658-59 (Dec. 20, 2022), *available at* https://www.congress.gov/117/crec/2022/12/20/168/198/CREC-2022-12-20-pt3-PgS9658.pdf. Before *Ratha I*, no other court had interpreted the TVPRA in the same manner on the issue of civil attempt liability. Thus, until then, there was no reason for Congress to act. But only months after *Ratha I*, very shortly after the Supreme Court denied certiorari in *Ratha I*, Congress passed the ATRA. *See* All Actions: S.3946—117th Congress (2021-2022) (noting that the bill was considered and passed by the Senate and House on

[2] *As amended and superseded on denial of reh'g en banc*, 35 F.4th 1159, 1176 (9th Cir. May 31, 2022) ("The text of § 1595 does not extend liability to those who *attempt* to benefit from a perpetrator's TVPRA violation").

December 20, 2022, and December 22, 2022, respectively); *see also Ratha I*, 35 F.4th 1159, *cert. denied*, 143 S. Ct. 491 (Dec. 5, 2022). Congress acted immediately to resolve the ambiguity and to correct our error.

The majority opinion erroneously measures the timing of the amendment from the entry of the district court's judgment and from our initial opinion in *Ratha I*. Op. at 41. But the key, as the majority opinion acknowledges, Op. at 14-15, is that the Supreme Court denied certiorari with respect to *Ratha I* on December 5, 2022, and the amendment to § 1595(a) was introduced only about two weeks later. Until *Ratha I*'s erroneous interpretation of the statute was final, Congress had no pressing need to correct our error.

"It is the duty of a court in construing a statute to consider time and circumstances surrounding the enactment as well as the object to be accomplished by it." *Callejas*, 750 F.2d at 731. As we and other circuits have held, a fast-acting legislative body that amends a statute in the face of an ambiguity or a dispute among courts as to the meaning of the statute suggests that Congress's change is a mere clarification, rather than a substantive change in the law. *See, e.g., id.* ("[A] 'dispute or ambiguity, such as a split in the circuits, [is] an indication that a subsequent amendment is intended to clarify, rather than change, the existing law.'" (quoting *Brown v. Marquette Sav. & Loan Ass'n*, 686 F.2d 608, 615 (7th Cir. 1982) (second alteration in original))); *ABKCO Music, Inc. v. LaVere*, 217 F.3d 684, 689-90 (9th Cir.

2000) ("An amendment in the face of an ambiguous statute or a dispute among the courts as to its meaning indicates that Congress is clarifying, rather than changing, the law." (citing *Bedoni*, 878 F.2d at 1121 and *Callejas*, 750 F.2d at 731)); *McCoy v. Chase Manhattan Bank, USA, Nat'l Ass'n*, 654 F.3d 971, 974 (9th Cir. 2011) ("If the amendment was enacted soon after controversies arose about interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act …." (quoting 1A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction*, § 22.31 (7th ed. 2011))); *Liquilux Gas Corp., v. Martin Gas Sales*, 979 F.2d 887, 890 (1st Cir. 1992) (finding that, despite the court's decision ten days before the enactment of the amendment, "the amendment was not a change at all, but a clarification that did not alter the law, and merely explicated it").

Although the ATRA's legislative history is not extensive, Congress enacted the amendment quickly and unanimously. In my view, Congress's speed and its minimal discussion on this topic in Committee and on the House and Senate floors strongly suggest that the amendment is clarifying only, and not a substantive change in the law.

2. <u>Congress Used the Label "Technical and Clarifying," a Label That Is Entitled to Great Weight</u>

Congress added the term "attempt" to § 1595(a), the very term that we held was missing and that foreclosed Plaintiffs' claims from proceeding as cognizable. *Ratha I*, 35 F.4th at 1176. In addition, the amendment's title provides that it is a "*Technical* and *Clarifying* Update." Pub. L. No. 117-347, § 102, 136 Stat. at 6200 (emphasis added). We consistently have ruled that such phrasing suffices to demonstrate that an amendment is clarifying. *See Belshe*, 132 F.3d at 1266-67, 1266 n.6 (noting that titles of acts, while not part of the law, may be used to "*resolve* ambiguity" in a statute so long as they do not contradict the text and holding that the amendment at issue was a clarification because, among other indicators, "clarification" was in the title of the Act (emphasis added)). Thus, the amendment title's notation in Section 102—that the change to § 1595(a) was intended as a technical and clarifying update—must be given considerable weight. *See id*. at 1265 ("It has been established law since nearly the beginning of the republic … that congressional legislation that thus expresses the intent of an earlier statute must be accorded great weight" (citing *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 381-82 (1969) and *Loving v. United States*, 517 U.S. 748, 770 (1996))); *see also id*. at 1266 ("We therefore honor Congress'[s] 'clarification' label ….").

Of course, a label or title alone, stating that an amendment serves only to "clarify," does not *necessarily* demonstrate an amendment's retroactive effect. *See, e.g., Or. Pub. Util. Comm'n v. ICC*, 979 F.2d 778, 780 (9th Cir. 1992) ("The title of a statute can be used to resolve[] ambiguity, but the title cannot control the plain meaning of a statute."). But when considered with other relevant factors, a label or title can be a strong indicator of intended retroactivity. Those circumstances exist here.

In addressing the amendment's label, the majority opinion misreads *Beaver v. Tarsadia Hotels*, 816 F.3d 1170 (9th Cir. 2016). In *Beaver*, we did not hold that heavy reliance on an act's title is *never* sufficient when determining whether an amendment should be construed as a retroactive technical clarification. Rather, we explained that the defendant's heavy reliance was "misplaced" given the *other* factors that were at play, *id*. at 1187—factors not at play in the present case. Specifically, the "lapse between the enactment of the bill and the bill's effective date (180 days), coupled with the bill's silence on the issue of retroactivity" suggested to the panel that the amendment "was actually a change in the law." *Id*.; *see id*. (noting that "the 180-day delay in the bill's effective date suggests that the amendment ought to be applied prospectively, so that actors may adjust their behavior to conform to the new legislation"); *see also* Pub. L. No. 113-167, 128 Stat. 1882, 1882 (Interstate Land Sales Full Disclosure Act ("ILSA")) (stating that "[t]he amendments made by [the ILSA] shall take effect 180 days after the date of the enactment of [ILSA]").

The majority opinion asserts that the label's inclusion of the term "update" suggests a "forward-looking change." Op. at 37-38, 42. That assertion construes the term "update" in too cramped a manner. In ordinary speech we use the word "update" to refer to current information about a past—not a future—event. I may tell a friend that my high school senior has been accepted at two of five colleges applied to. In a later communication titled "update" I might say: "Just to clarify, the two colleges we've heard from are the University of Oregon and the University of Washington." To reiterate, the majority opinion places undue and inaccurate weight on the word "update."

Moreover, we frequently have described a clarifying "change" in the law as having retroactive effect. *See ABKCO Music*, 217 F.3d at 689-90 ("Normally, when an amendment is deemed clarifying rather than substantive, it is applied retroactively." (quoting *United States v. Donaghe*, 50 F.3d 608, 612 (9th Cir. 1994))); *see also Donaghe*, 50 F.3d at 612 (explaining in the Sentencing Guideline context that an amendment that "has been designated a *clarifying change*" is normally applied retroactively when it "is *deemed clarifying* rather than substantive" (emphases added)).[3] The word "update" is no more forward-looking than the word "change." *See, e.g.*, *Change*, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/change (last visited July 11, 2024) ("change" means "the act, process, or result of changing: such as (a) alteration, (b) transformation, [or] (c) substitution"); *Update*, Britannica.com Dictionary, https://www.britannica.com/dictionary/update (last visited July 22, 2024) ("update" means "to change

[3] The majority opinion dismisses my reliance on *Donaghe* because it was a sentencing guidelines case. Op. at 40 n.13. But *ABCKO Music*, a copyright case, adopted the formulation of the test from *Donaghe*.

(something) by including the most recent information [as in] I need to update my address book").[4] Just as we have recognized that a "change" can be clarifying, so too can an update be clarifying. Therefore, I strongly disagree with the majority opinion's suggestion that the title to Section 102 of the amendment suggests a "forward-looking change." Op. at 42.

3. The ATRA Took Immediate Effect

Finally, as noted above, the ATRA took immediate effect when the President signed it in January 2023. There was no notation that the ATRA would take effect on a later date, so the general rule that acts take effect immediately once enacted applies. *See Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) ("It is well established that, absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment."). Despite the amendment's silence on the issue of retroactivity, there was *no delay* between the ATRA's enactment and its "effective date," as was the circumstance in *Beaver*. *See Beaver*, 816 F.3d at 1187 (noting 180-day lapse between enactment and effective date).

In sum, considering the time and circumstances of the ATRA's enactment, Congress clearly enacted

[4] As another practical example, I may "update" my address book with numerous entries that have languished on my desk for months; they may be new to the address book, but they are not "forward-looking." In other words, the "update" can simply confirm or compile information already possessed.

the amendment in response to, and to correct our understanding of, the TVPRA. That clarifying intent gives the ATRA retroactive effect. *ABKCO Music*, 217 F.3d at 689-90. Accordingly, I would reverse and remand for further proceedings.[5] I therefore respectfully dissent.

[5] The district court held, in the alternative, that Plaintiffs' claims failed on the merits. I would reverse those holdings, too. The district court failed to view all facts and inferences in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [their] favor."). Viewing the facts in the light most favorable to Plaintiffs, a reasonable jury could conclude that: (1) Rubicon participated in a venture and benefitted from human trafficking, and (2) Rubicon knew or should have known of the human trafficking and forced labor.

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CLOSED

CIVIL MINUTES -- GENERAL

Case No. **CV 16-4271-JFW (ASx)** Date: March 3, 2023

Title: Keo Ratha, et al. *-v-* Phatthana Seafood Co., Ltd., et al.

Present:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:
None

ATTORNEYS PRESENT FOR DEFENDANTS:
None

PROCEEDINGS (IN CHAMBERS) **ORDER DENYING PLAINTIFFS' MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO FRCP 60(b)(6) [filed 1/26/23; Docket No. 245]**

On January 26, 2023, Plaintiffs Keo Ratha, Sem Kosal, Sophea Bu, Yem Ban, Nol Nakry, Phan Sophea, and Sok Sang (collectively, "Plaintiffs") filed a Motion for Relief from Judgment Pursuant to FRCP 60(b)(6) ("Motion"). On February 6, 2023, Defendant Rubicon Resource, LLC ("Rubicon") filed it Opposition. On February 13, 2023, Plaintiffs filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's February 27, 2023 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. Factual and Procedural Background[1]

Plaintiffs are seven villagers from rural Cambodia who allege they were recruited to work at factories in Thailand to produce seafood for export to the United States. Plaintiffs also allege that they were subjected to debt bondage, forced labor, and other abuses at those factories. Rubicon, the only Defendant that is the subject of this Motion, did not recruit or employ Plaintiffs. Instead, Plaintiffs allege that Rubicon benefitted from Plaintiffs' labor. Rubicon, a Delaware limited liability company with

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[1] The factual and procedural background of this action is well known to the parties and the Court. As a result, the Court will briefly summarize only the factual and procedural history relevant to this Motion.

its principal place of business in Culver City, California, was formed in 1999 as a joint venture to market and sell seafood to customers in the United States.

On June 15, 2016, Plaintiffs filed a Complaint against Defendants Rubicon, Wales & Co. Universe, Ltd. ("Wales"), Phatthana Seafood Co., Ltd. ("Phatthana"), and S.S. Frozen Food Co., Ltd. ("SSF") (collectively, "Defendants"), alleging claims for: (1) violation of the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. § 1595; and (2) violation of the Alien Tort Statue ("ATS").[2] Plaintiffs alleged they were forced to work for Phatthana or SSF beginning no later than 2012. Rubicon was not alleged to be a "perpetrator," but a person who "knowingly benefits … from participation in a venture which that person knew or should have known has engaged in an act in violation" of the TVPRA.

After extensive discovery, including depositions in Thailand, Cambodia, and the United States, Defendants moved for summary judgment. On December 21, 2017, the Court issued three Orders granting summary judgment to all Defendants. *See* Docket Nos. 225, 226, and 227. With respect to Rubicon, the Court ruled that: (1) Plaintiffs failed to demonstrate that Rubicon knowingly participated in a human trafficking venture; (2) Plaintiffs failed to

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[2] On November 9, 2016, the Court granted Defendants' Motion to Dismiss with respect to Plaintiffs' ATS claim. *See* Docket No. 56.

demonstrate that Rubicon knew or should have known that human trafficking existed at Phatthana's Songkhla factory; and (3) there was no evidence that Rubicon benefitted from Phatthana's alleged human trafficking. On January 4, 2018, a Judgment was entered in favor of Defendants, which Plaintiffs appealed. *See* Docket Nos. 230 and 231.

On February 25, 2022, the Ninth Circuit affirmed the Court's Judgment. *See* Docket No. 240. On May 31, 2022, the Ninth Circuit denied Plaintiffs' petition for rehearing en banc and issued an amended Opinion. *See* Docket No. 242; *see also Ratha v. Phatthana Seafood Co., Ltd.*, 35 F.4th 1159 (9th Cir. 2022). On June 8, 2022, the Ninth Circuit's Mandate issued. Docket No. 243. On October 28, 2022, Plaintiffs filed a petition for writ of certiorari in the Supreme Court. The only issue presented in the petition for writ of certiorari involved personal jurisdiction as to Phatthana and SSF; Plaintiffs did not challenge the Court's "dismissal" of Plaintiffs' claims against Rubicon. On December 5, 2022, the Supreme Court denied Plaintiffs' petition for writ of certiorari.

On January 5, 2023, the Abolish Trafficking Reauthorization Act of 2022 ("ATRA") was signed, amending the TVPRA's civil remedy provision, Section 1595, to make the "attempt" to benefit from human trafficking actionable. Specifically, Section 102 of the ATRA provides:

SEC. 102. TECHNICAL AND CLARIFYING UPDATE TO CIVIL REMEDY.

> Section 1595(a) of title 18, United States Code, is amended by inserting "or attempts or conspires to benefit," after "whoever knowingly benefits,".

As a result, Section 1595(a) of the TVPRA now reads:

> An individual who is 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 attorneys' fees.

II. Legal Standard

Federal Rule of Civil Procedure 60(b) provides for reconsideration of a final judgment or order where one or more of the following is shown: (1) "mistake, inadvertence, surprise or excusable neglect"; (2) "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)"; (3) "fraud … , misrepresentation, or misconduct by an opposing party"; (4) "the judgment is void"; (5) "the judgment has been satisfied, released, or discharged"; (6) "any other reason that justifies relief." Fed. R. Civ. P. 60(b).

In exercising its discretion in determining whether Rule 60(b) applies, courts should be mindful that there is a compelling interest in finality of judgments and final judgments should not be disturbed lightly. *See Matton Steamboat Co. v. Murphy*, 319 U.S. 412, 415 (1943) ("The purpose of statutes limiting the period for appeal is to set a definite point of time when litigation shall be at an end, unless within that time the prescribed application has been made; and if it has not, to advise prospective appellees that they are freed of the appellant's demands"); *Paddington Partners v. Bouchard*, 34 F.3d 1132, 1144 (2d Cir. 1994) (Rule 60 "preserves a balance between serving the ends of justice and ensuring that litigation reached an end within a finite period of time"). Thus, "[r]econsideration for any of the reasons set forth in Rule 60(b) is an 'extraordinary remedy that works against the interest of finality and should be applied only in exceptional circumstances.'" *Audionics Sys., Inc. v. AAMP of Fla., Inc.*, 2015 WL 11201243, at *7 (C.D. Cal. Nov. 4, 2015) (citations omitted). "Motions for relief from judgment pursuant to Rule 60(b) are addressed to the sound discretion of the district court and will not be reversed absent an abuse of discretion." *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004).

III. Discussion

In their Motion, Plaintiffs move pursuant to Rule 60(b)(6) for relief from the Judgment entered in favor of Rubicon on the grounds that extraordinary circumstances exist. Specifically, Plaintiffs argue that extraordinary circumstances exist because the ATRA signed into law by President Biden on January 5, 2023, retroactively clarifies that 18 U.S.C. § 1595(a) authorizes suit against those who attempt to benefit from participation in a venture that engages in forced labor and that clarification abrogates the Ninth Circuit's opinion affirming summary judgment and, as a result, calls into question this Court's Judgment. In its Opposition, Rubicon argues that there are no extraordinary circumstances that justify vacating the Judgment in favor of Rubicon. Rubicon argues that the Judgment is adequately supported by independent grounds based on a fully developed factual record, unrelated to Plaintiffs' "attempt to benefit" theory. Rubicon also argues that the amendment to 18 U.S.C. § 1595(a) cannot apply to pre-enactment conduct because it substantively changes the law and Congress's intent on retroactivity is not clear. In addition, Rubicon argues that the amendment does not apply because this case was no longer pending at the time of its enactment.

A. Legal Standard for "Extraordinary Circumstances" Under Rule 60(b)(6)

"A movant seeking relief under Rule 60(b)(6) must show '"extraordinary circumstances" justifying the reopening of a final judgment.'" *Henson v. Fidelity National Financial, Inc.*, 943 F.3d 434, 443-44 (9th Cir. 2019) (*quoting Jones v. Ryan*, 733 F.3d 825, 833 (9th Cir. 2013)). However, a change in law alone is not an extraordinary circumstance. *See Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005) ("It is hardly extraordinary that subsequently, after petitioner's case was no longer pending, this Court arrived at a different interpretation [of the relevant statute]"); *Bynoe v. Baca*, 966 F.3d 972, 980 (9th Cir. 2020) ("A clear and authoritative change in the law governing the judgment in a petitioner's case ***may*** present extraordinary circumstances") (emphasis added).

For Rule 60(b)(6) motions premised on post-judgment changes in law, the Ninth Circuit analyzes the "extraordinary circumstances" requirement in six non-exhaustive factors in the context of habeas petitions: (1) the nature of the legal change, including whether the change in law resolved an unsettled legal question; (2) whether the movant exercised diligence in pursuing reconsideration of his or her claim; (3) the parties' reliance interests in the finality of the judgment; (4) the delay between the finality of the judgment and the Rule 60(b)(6) motion; (5) the relationship between the change in law and the challenged judgment; and (6) whether there are concerns of comity that would be disturbed by reopening a case. *Bynoe,* 966 F.3d at 983 (*citing Phelps v. Alamedia*, 569 F.3d 1120, 1134-40 (9th Cir. 2009)). In *Henson*, the Ninth Circuit extended the factors initially considered in *Phelps* and *Bynoe* beyond the habeas context. *Henson v. Fidelity National Financial, Inc.*, 943 F.3d 434 (9th Cir. 2019) ("While we conclude that many of the *Phelps* factors are relevant to the Rule 60(b)(6) analysis in the [non-habeas] context, we reemphasize that courts must consider all of the relevant circumstances surrounding the specific motion before the court in order to ensure that justice be done in light of all the facts"). However, the Ninth Circuit emphasized that these factors were "not intended to be a rigid or exhaustive list," and the Court's "ultimate charge in evaluating a Rule 60(b)(6) motion remains to 'intensively balance' all the relevant factors, 'including the competing policies of the finality of judgments and the incessant command of the court's conscience that justice be done in light of all the facts.'" *Henson*, 943 F.3d at 446 (*quoting Phelps*, 569 F.3d at 1133, 1135).

B. The Applicable Factors Weigh Against Granting Plaintiffs' Motion

In considering whether there are extraordinary circumstances justifying reopening the Judgement entered in favor of Rubicon based on a change in the law, the Court concludes that the applicable factors weigh heavily against granting Plaintiffs' Motion for the reasons discussed below.[3]

1. The Nature of the Legal Change, Its Connection to the Challenged Judgment, and the Ninth Circuit's Treatment of Past Amendments to

[3] The sixth factor relating to concerns of comity does not apply to this case. *See Henson*, 943 F.3d at 452 ("[C]onsiderations of comity 'between independently sovereign state and federal judiciaries' that we discussed in *Phelps* do not apply here at all, because this case does not involve a federal habeas petition that challenges a state conviction").

the TVPRA Weigh Heavily in Favor of Rubicon

The first and fifth factors relate to the nature of the legal change and its connection to the challenged judgment. In this case, the Court granted summary judgment on Plaintiffs' TVPRA claim to Rubicon on three grounds: (1) there was no evidence demonstrating that Rubicon knowingly participated in a human trafficking venture; (2) there was no evidence that Rubicon knew or should have known about Phatthana's alleged human trafficking; and (3) there was no evidence that Rubicon benefitted from Phatthana's alleged human trafficking. Indeed, the Court specifically concluded that "Plaintiffs have failed to demonstrate that Rubicon or Wales knew or should have known that human trafficking existed at Phatthana's Songkhla factory." Order Granting Defendants Rubicon Resources, LLC and Wales & Co. Universe, Ltd.'s Motion for Summary Judgment ("Rubicon Summary Judgment Order") (filed December 21, 2017; Docket No. 226), p. 7. Although the change to Section 1595(a) might potentially apply to the third ground of the Court's decision granting summary judgment, the Court agrees with Rubicon that the Court's decision is fully supported by the first and second grounds and the change to Section 1595(a) does not apply to or in any way affect the first and second grounds of the Court's decision. As a result, the Court concludes that because the change to Section 1595(a) would not alter the Court's decision in favor of Rubicon, the first and fifth factors weigh heavily against granting relief pursuant to Rule 60(b)(6). *See Jones v. Ryan*, 733 F.3d 825, 840 (9th Cir.

2013) (holding that doubt about whether a change in law would impact the original opinion weighs "heavily" against Rule 60(b) relief); *see also Bynoe*, 966 F.3d at 986 ("Where a court rested its judgment on a basis only marginally altered by later changes in relevant law, reopening a judgment is disfavored"); *Beaver v. Tarsadia Hotels*, 29 F.Supp. 3d 1294, 1301-02 (S.D. Cal. 2014) ("A motion for reconsideration cannot be used to ask the Court to rethink what the Court has already thought through merely because a party disagrees with the Court's decision") (internal citations omitted).

In addition, although Plaintiffs argue that granting their Motion would allow the Court to reconsider all three grounds of the Court's decision granting summary judgment to Rubicon, the Court finds those arguments unpersuasive. Plaintiffs suggest that if their Motion is granted, Rubicon would be "entitled to move again for summary judgment," which would "allow the Court to reassess these issues in light of the ATRA, any guidance that can be gleaned from the Ninth Circuit's opinion, and other relevant legal updates." Motion, 16: 12-15. However, as Rubicon argues, there is nothing to "reassess." The only issue affected by the change to Section 1595(a) is Plaintiffs' "attempt to benefit" argument and the Ninth Circuit did not provide any "guidance" on the other two grounds of the Court's decision. Moreover, whether there may have been "other relevant legal updates" in the over five years since the Judgment was entered is not a basis to relitigate, and, more importantly, Plaintiffs have failed to demonstrate that there are any other potential "relevant legal updates" that would qualify as "extraordinary circumstances" for purposes of Rule 60(b)(6). Although Plaintiffs speculate that the Ninth Circuit's decision affirming the Court's Judgment was solely based on the straightforward ground of statutory interpretation as to one of three independent elements, rather than an assessment of the voluminous factual record, "signals at least some doubt about whether this Court ruled correctly" on the "knew or should have known" element as to Rubicon, such speculation does not support vacating the Judgment pursuant to Rule 60(b)(6).

Moreover, Plaintiffs' Motion is based on their assumption that the changes to Section 1595(a) apply retroactively because the changes represent only a clarifying amendment rather than a substantive change of law.[4] *See, e.g., United States v. Donaghe*, 50 F.3d 608, 612 (9th Cir. 1994) ("Normally, when an amendment is deemed clarifying rather than substantive, it is applied retroactively"). Despite Plaintiffs' argument to the contrary, Plaintiffs'

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[4] Even if the amendment to Section 1595 is merely a clarification and not a change in substantive law, the amended Section 1595 would only apply to cases "pending as of the date of its enactment." *AKCO Music, Inc. v. LaVere*, 217 F.3d 684, 689 (9th Cir. 2000). It is undisputed that this case was no longer pending when the ATRA was signed into law. *See Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) ("Having achieved finality, however, a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the courts said it was").

assumption that the change to Section 1595(a) is merely a clarification is seemingly based on the tile of Section 102 of the AFTA – "**TECHNICAL AND CLARIFYING UPDATE TO CIVIL REMEDY.**" However, the Ninth Circuit has explained that the title of a statutory amendment is not sufficient to make it merely clarifying, rather than a substantive change of law. *See, e.g., Beaver v. Tarsadia Hotels,* 816 F.3d 1170, 1187 (9th Cir. 2016) (holding that a bill can be "silen[t] on the issue of retroactivity" even with the word "clarify" in the title). In this case, the ATRA states neither an effective date nor that it applies retroactively to pending cases. In addition, the Ninth Circuit previously ruled that when Section 1595 was enacted in 2003 to provide a civil remedy, it could not be applied retroactively because "[i]t changed substantive law and attached new legal burdens to violations of the TVPA." *Ditullio v. Boehm*, 662 F.3d 1091, 1100 (9th Cir. 2011). Furthermore, several district courts have held that when Section 1595 was amended in 2008 to add the beneficiary liability provision, it could not be applied retroactively because it created new legal consequences. *See, e.g., Owino v. CoreCivic, Inc.*, 2018 WL 2193644, at *38-*39 (S.D. Cal. May 14, 2018) (holding that because the "'financial benefit' element cause of action did not exist" prior to the 2008 amendments, the 2008 amendments "create new legal consequences" and therefore "do not apply retroactively barring Congress's clear intent to do so"); *St. Louis v. Perlitz,* 2016 WL 1408076, at *3 (D. Conn. Apr. 8, 2016) ("Because the amended version of §1595 has the effect of increasing defendants' liability for past conduct, it cannot be applied retroactively in the absence of a clear statement from Congress, which the statute lacks"); *see also T.P. v. Wyndham Hotels & Resorts, Inc.*, 2022 WL 17363234, at *4-*5 (S.D. Ohio Dec. 1, 2022); *H.G. v. Inter-Continental Hotels Corp.*, 489 F. Supp. 3d 697, 710 (E.D. Mich. 2020); *Griffin v. Alamo*, 2016 WL 7391046, at *4 (W.D. Ark. Dec. 21, 2016). Similarly, because the most recent amendment to Section 1595 expands civil liability to attempts to benefit and appears to be the first federal statute imposing civil liability for such attempts, the Court concludes that this latest amendment to Section 1595 represents a change in substantive law and attaches new legal burdens to violations of the TVPRA. As a result, the Court concludes that the amendment cannot be applied retroactively in the absence of a clear statement from Congress, which it lacks. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 267 (1994) (holding that because Congress "has the authority to enact retroactive statutes, courts ordinarily do not apply statutes retroactively unless a statute evidences congressional intent to apply retroactively").

After carefully considering the nature of the legal change, its connection to the challenged judgment, how similar changes to the TVRPA (and TVPA) have been treated by the Ninth Circuit and other courts in the past, and the general rules regarding the retroactive application of both substantive and clarifying changes to statutory law, the Court concludes that these factors weigh heavily in favor of Rubicon.

2. Although Some Other Factors May Weigh In Favor of Plaintiffs, They Are Not Sufficient to Tip the Balance of the Factors in Favor of Granting Plaintiffs' Motion.

The third factor relates to the parties' reliance interest in the finality of the judgment. In this case, Plaintiffs fully exercised their rights to appeal the Court's Judgment by not only appealing to the Ninth Circuit, but by also filing a petition for rehearing en banc after the Ninth Circuit affirmed the Court's Order. *See, e.g., Calderon v. Thompson*, 523 U.S. 538, 557 (1998) ("The prisoner has already had extensive review of his claims in federal and state courts … the State's interests in actual finality outweigh the prisoner's interest in obtaining yet another opportunity for review"); *Federal Trade Commission v. Ivy Capital, Inc.*, 340 F.R.D. 602 (D. Nev. 2022) ("The parties are entitled to rely on court judgments and move on with their affairs. Reopening this case would be unfair to the FTC and contrary to the goal of finality of judgments."). The Judgment in this case did not cause any reliance interest such as when "a judgment conveys land from one party to another and the prevailing party enters upon the land and installs pipes and appurtenances." *Henson*, 943 F.3d at 450. As a result, the Court concludes that the third factor is, at best, neutral. The Court concludes that the second factor–whether Plaintiffs exercised diligence in pursuing reconsideration of their claim and the fourth factor–the delay between the finality of the judgment and the Rule 60(b)(6) motion–weigh in favor of Plaintiffs.

Accordingly, after careful consideration of the relevant factors and the circumstances of this case, the Court concludes that the required balancing of all relevant factors mandates the denial of Rule 60(b)(6) relief. Granting Plaintiffs' Motion would not promote justice, especially in light of the fact that the Court relied on multiple grounds for granting summary judgment in favor of Rubicon, and only one of those grounds would be potentially affected by the amendment to Section 1595.

IV. Conclusion

For all the foregoing reasons, Plaintiffs' Motion is **DENIED**.

IT IS SO ORDERED.

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 16-4271-JFW (ASx)** Date: December 21, 2017

Title Keo Ratha, et al. *-v-* Phatthana Seafood Co., Ltd., et al.

Present:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:
None

ATTORNEYS PRESENT FOR DEFENDANTS:
None

PROCEEDINGS (IN CHAMBERS) **ORDER GRANTING DEFENDANTS RUBICON RESOURCES, LLC AND WALES & CO. UNIVERSE, LTD.'S MOTION FOR SUMMARY JUDGMENT [filed 11/20/17; Docket No. 146]**

On November 20, 2017, Rubicon Resources, LLC ("Rubicon") and Wales & Co. Universe, Ltd. ("Wales") filed a Motion for Summary Judgment ("Motion"). On November 27, 2017, Plaintiffs Keo Ratha ("Ratha"), Sem Kosal ("Kosal"), Sophea Bun ("Bun"), Yem Ban ("Ban"), Nol Nakry ("Nakry"), Phan Sophea ("Sophea"), and Sok Sang ("Sang") (collectively, "Plaintiffs") filed their Opposition. On December 4, 2017, Rubicon and Wales filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's December 18, 2017 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. Factual and Procedural Background[1]

A. Factual Background

In their Complaint, Plaintiffs bring claims under the Trafficking Victims Protection Reauthorization Act ("TVPRA") against Rubicon, Wales, Phatthana Seafood Co., Ltd. ("Phatthana"), and S.S. Frozen Food Co., Ltd. ("SSF") (collectively, "Defendants").

[1] To the extent any of these facts are disputed, they are not material to the disposition of this motion. In addition, to the extent that the Court has relied on evidence to which the parties have objected, the Court has considered and overruled those objections. As to the remaining objections, the Court finds that it is unnecessary to rule on those objections because the disputed evidence was not relied on by the Court.

Plaintiffs are rural Cambodian villagers who allege they were victims of human trafficking as a result of their recruitment and employment at seafood processing factories in Songkhla, Thailand. SSF, a family-owned Thai corporation, and Phatthana, a Thai corporation, own the factories at which Plaintiffs worked. In the Spring of 2012, the media reported on worker complaints at Phatthana's Songkhla factory, prompting investigations by the Thai and Cambodian governments. The Thai and Cambodian governments ultimately concluded that no crimes had been committed under the Thai Anti-Trafficking Act and that workers had not been exploited.

Rubicon and Wales, which have addresses in the United States, did not recruit or employ Plaintiffs, but are alleged to have benefitted from their labor. Rubicon, a Delaware limited liability company with its principal place of business in Culver City, California, was formed in 1999 as a joint venture to market and sell seafood to customers in the United States. Wales, a Thai corporation registered to do business in California, is a member of Rubicon.[2] Wales has never had an ownership interest in SSF or Phatthana. Rubicon has never had an ownership interest in any of the other Defendants (SSF, Phatthana, or Wales).

Rubicon and Wales never had a business relationship with SSF. Although Rubicon had a business relationship with Phatthana, it was limited

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[2] Although there are other members of Rubicon, they are not Defendants in this action.

to ordering seafood products from Phatthana's Songkhla factory. Wales's involvement was limited to inspecting finished product ordered by Rubicon to ensure that product met Rubicon's customers' packaging specifications. With respect to working conditions and worker safety at all of the factories that Rubicon used as a source for its products, Rubicon relied on industry and government audits and certifications as well as customer visits, to ensure that the factories, including Phatthana's Songkla factory, operated in compliance with all applicable standards, including those pertaining to worker safety and welfare as well as compliance with labor laws. Wales relied on Rubicon to ensure that those factories did not exploit workers.

B. Procedural Background

On June 15, 2016, Plaintiffs filed a Complaint against Defendants, alleging claims for: (1) violation of the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. § 1595, against Phatthana and SSF and Rubicon and Wales; and (2) violation of the Alien Tort Statue ("ATS") against all Defendants. Specifically, Plaintiffs allege in Count 1 that they were victims of peonage, forced labor, involuntary servitude, and human trafficking by Phatthana and SSF in violation of Sections 1581 (peonage), 1584 (sale into involuntary servitude), 1589 (forced labor), 1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), 1592 (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor), and 1593A (benefitting financially from peonage, slavery, and trafficking in persons). Plaintiffs allege in Count 2 that Rubicon and Wales knowingly benefitted from participation in a venture that they knew or should have known was engaged in peonage, forced labor, involuntary servitude, unlawful conduct with respect to documents, and human trafficking. Plaintiffs allege in Count 3 that they were the victims of the torts of trafficking in persons, involuntary servitude, and forced labor. On November 7, 2016, the Court granted in part and denied in part Defendants' Motion to Dismiss Complaint. In the November 7, 2016 Order, the Court granted Defendants' Motion to Dismiss Complaint with respect to Plaintiff's ATS claims and dismissed the ATS claim without leave to amend, and denied Defendants' Motion to Dismiss Complaint with respect to Plaintiffs' TVPRA claims. On November 23, 2016, Defendants filed their Answers. On December 14, 2016, Defendants filed Amended Answers. All Defendants have now filed motions for summary judgment.

II. Legal Standard

Summary judgment is proper where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Once the moving party meets its burden, a party opposing a properly made and supported motion for summary judgment may not rest upon mere denials but must set out specific facts showing a genuine issue for trial. *Id.* at 250; Fed. R. Civ. P. 56(c), (e); *see also Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) ("A summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data."). In particular, when the non-moving party bears the burden of proving an element essential to its case, that party must make a showing sufficient to establish a genuine issue of material fact with respect to the existence of that element or be subject to summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "An issue of fact is not enough to defeat summary judgment; there must be a genuine issue of material fact, a dispute capable of affecting the outcome of the case." *American International Group, Inc. v. American International Bank*, 926 F.2d 829, 833 (9th Cir. 1991) (Kozinski, dissenting).

An issue is genuine if evidence is produced that would allow a rational trier of fact to reach a verdict in favor of the non-moving party. *Anderson*, 477 U.S. at 248. "This requires evidence, not speculation." *Meade v. Cedarapids, Inc.*, 164 F.3d 1218, 1225 (9th Cir. 1999). The Court must assume the truth of direct evidence set forth by the opposing party. *See Hanon v. Dataproducts Corp.*, 976 F.2d 497, 507 (9th Cir. 1992). However, where circumstantial evidence is presented, the Court may consider the plausibility and reasonableness of inferences arising therefrom. *See Anderson*, 477 U.S. at 249-50; *TW Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 631-32 (9th Cir. 1987). Although the party opposing summary judgment is entitled to the benefit of all reasonable inferences, "inferences cannot be drawn from thin air; they must be based on evidence which, if believed, would be sufficient to support a judgment for the nonmoving party." *American International Group*, 926 F.2d at 836-37. In that regard, "a mere 'scintilla' of evidence will not be sufficient to defeat a properly supported motion for summary judgment; rather, the nonmoving party must introduce some 'significant probative evidence tending to support the complaint.'" *Summers v. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997).

III. Discussion

In their Motion, Rubicon and Wales seek summary judgment on the only claim alleged against it–violation of the TVPRA–on the grounds that Rubicon and Wales did not knowingly participate in a human trafficking venture and did not knowingly benefit from such participation.[3]

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[3] Rubicon and Wales also move for summary judgment on the grounds that none of the Defendants are alter egos of one another, Rubicon and Wales are not in an agency relationship with Phatthana and SSF, and Rubicon and Wales are not in a joint venture with Phatthana and SSF. *See* Motion, 8:1-10:25. To the extent Plaintiffs have not otherwise addressed these issues, the Court concludes that they have been conceded. *See Ramirez v. Ghilotti Bros. Inc.*, 941 F.Supp. 2d 1197 (N.D. Cal. 2013) (deeming argument was conceded where the defendant failed to address it in its opposition); *see also, Qureshi v. Countrywide Home Loans, Inc.*, 2010 WL 841669, *6 n. 2 (N.D. Cal. Mar. 10, 2010) (deeming plaintiff's failure to address in opposition brief claims challenged in a motion to dismiss, an "abandonment of those claims") (*citing Jenkins v. County of Riverside*, 398 F.3d 1093, 1095 n. 4 (9th Cir. 2005)).

A. The TVPRA

The TVPRA was enacted to address the serious problem of human trafficking into and from the United States. Although it is primarily a criminal statute, it also contains a civil remedy provision:

> An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, 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.

18 U.S.C. §1595(a). The "knowingly benefits" language contained in Section 1595(a) is also used in Section 1593A of the TVPRA: "[w]hoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act in violation of section 1581(a), 1592, or 1595(a), knowing or in reckless disregard of the fact that the venture has engaged in such violation, shall be fined under this title or imprisoned in the same manner as a completed violation of such section." In addition, "knowingly benefits" is used in subsection 1589(b) of the TVPRA: "[w]hoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in

reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d)."

B. Wales and Rubicon Did Not Knowingly Participate in or Benefit from a Human Trafficking Venture.

In its Order granting in part and denying in part Defendants' Motion to Dismiss Complaint, the Court held that, at the pleading stage, Plaintiffs had sufficiently alleged violations of the TVPRA. In their Motion, Rubicon and Wales now argue that Plaintiffs do not have any facts to prove their allegations that Rubicon and Wales knowingly participated in a human trafficking venture and knowingly benefitted from that participation.

1. There are No Facts Demonstrating that Rubicon and Wales Knowingly Participated in a Human Trafficking Venture.

A defendant who "knowingly benefits … from participation in a venture which has engaged in any act in violation of section 1581(a), 1592, or 1595(a)" can be liable under the TVPRA. Plaintiffs argue that Rubicon and Wales have satisfied the requirement of participation in a human trafficking venture by merely purchasing seafood from Phatthana and undertaking to jointly market and sell that seafood in the United States. Opposition, 7:10-12. In support of their argument, Plaintiffs contend that it is not necessary for a defendant to have any direct role in the illegal activities of the venture because the TVPRA criminalizes merely "passive" beneficiaries. However, Plaintiffs' argument relies on the definition of "venture" in the TVPRA that expressly relates solely to sex trafficking–"any group of two or more individuals associated in fact, whether or not a legal entity"–and, thus, is not applicable in this case. In addition, the relevant case law requires more than receipt of a passive benefit to satisfy the TVPRA's participation in a venture element. For example, in *Bistline v. Jeffs*, 2017 WL 108039 (D. Utah Jan. 11, 2017), the court held that:

> Regardless of whether Defendants knowingly benefitted from alleged forced labor, Plaintiffs have failed to adequately plead that Defendants "participat[ed] in a venture" to provide or obtain that labor. The term "venture" is defined [in *Black's Law Dictionary*] as "an undertaking that involves risk," and is typically associated with "a speculative commercial enterprise." Neither "participation" nor "venture" has been defined in the context of 18 U.S.C. § 1589(b). In the RICO context, however, courts have rejected the idea that providing professional services equates to "participating" in an enterprise. In RICO cases, a party is deemed to have participated only if they took part in the operation and management of the enterprise. This requires more than associating with or assisting an enterprise, even when assistance

> is given with the knowledge of an enterprise's illicit nature.

In dismissing Plaintiffs' TVPRA claim, the court held that:

> Defendants' alleged actions do not equate to participation in [the non-moving defendant's] alleged venture to profit from forced labor. Without some indication that Defendants took some action to operate or manage the venture, the fact that [the non-moving defendant] allegedly misused Trust property as leverage to compel forced labor is not enough to make Defendants liable under Section 1589(b). Therefore, even if the money … was obtained by [the non-moving defendant] in a way that violated Section 1589(a), Plaintiffs have inadequately pleaded that [Defendants] participated in that venture, and this claim is therefore dismissed.

Id.; see also U.S. v. Afyare, 632 Fed. App'x 272, 286 (6th Cir. 2016) (holding that a defendant must "actually participate and commit some 'overt act' that furthers" the criminal "aspect of the venture" and that the TVPRA "did not criminalize" any lesser conduct). Thus, even assuming arguendo that Phatthana and SSF were engaged in a human trafficking venture, Plaintiffs have presented no evidence that Rubicon and Wales "took some action to operate or manage the venture," such as directing or participating in Phatthana's labor recruitment, Phatthana's employment practices, or the working conditions at Phatthana's Songkhla factory.[4]

Accordingly, Plaintiffs have failed to demonstrate that Rubicon or Wales knowingly participated in a human trafficking venture.

2. There is No Evidence that Rubicon or Wales Knew or Should Have Known About Phatthana's Alleged Human Trafficking.

Even if Rubicon and Wales could somehow be characterized as participants in a human trafficking venture with Phatthana, Plaintiffs have failed to present any evidence that Rubicon or Wales knew or should have known that human trafficking was occurring. *See* 18 U.S.C. § 1595(a) ("whoever knowingly benefits, 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"). To the contrary, the evidence demonstrates that Rubicon and Wales actively sought to source product from

[4] Rubicon and Wales did not have a business relationship with SSF and, thus, clearly could not have participated in any alleged human trafficking venture with SSF. In the absence of any business relationship with SSF, it is also clear that Rubicon and Wales could not have benefitted from any alleged human trafficking conducted by SSF and they would not have known or had any reason to know about any alleged human trafficking conducted by SSF. Accordingly, the Court concludes that Rubicon and Wales are entitled to summary judgment on any claims based on SSF's violations of the TVPRA.

companies that did not exploit their workers. In addition, there is no evidence that Rubicon and Wales directed or participated in Phatthana's labor recruitment, Phatthana's employment practices, or that they were involved in establishing the working conditions at Phatthana's Songkhla factory. Instead, Rubicon reasonably relied on industry and government audits and certifications to ensure that Phatthana's Songkhla factory met industry standards relating to worker safety and welfare and was in compliance with the labor laws.[5] Moreover, Rubicon returned the product it had purchased from Phatthana's factory after the allegations of worker exploitation were made public. Deposition of Rubicon Resources, LLC by Brian Wynn, 19:8-18. Rubicon did not place any additional orders with Phatthana until after the Thai and Cambodian governments investigated the allegations and announced that the workers at Phatthana's Songkhla factory were not victims of human trafficking. *Id.*

Plaintiffs argue that Rubicon and Wales knew or should have known that Phatthana allegedly engaged in force labor based on general reports about human trafficking in Thailand and reports and letters by advocacy groups–such as Human Rights Watch and the Community Legal Education Center–during the April to December 2012 time period specifically criticizing the working conditions at Phatthana's

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[5] Although Wales did not conduct an independent investigation, it is undisputed that Wales relied on Rubicon to ensure that the seafood was purchased from companies that did not exploit workers.

Songkhla factory. However, Rubicon's and Wales's knowledge of forced labor–at a factory that they did not own, operate, or have any control over–cannot be based solely on conflicting and sometime unsubstantiated general reports.[6] *See, e.g., Doe I. V. Nestle USA, Inc.*, 766 F.3d 1013, 1017 n.1 (9th Cir. 2014) ("The defendants are well aware of the child slavery problem in the Ivory Coast. They acquired this knowledge firsthand through their numerous visits to Ivorian farms."); *Adhikari v. Daoud & Partners*, 697 F.Supp. 2d 674, 684 (S.D. Tex. 2009) (alleging that the defendant knew forced labor and trafficking was occurring "through statements and complaints made by laborers" to the defendant).

Accordingly, Plaintiffs have failed to demonstrate that Rubicon or Wales knew or should have known that human trafficking existed at Phatthana's Songkhla factory.

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[6] In addition, Plaintiffs argue that "[i]t is undisputed that Rubicon employees regularly visited the factories in Thailand, including the Songkhla factories, and had the opportunity to observe workers." Opposition, 4:24-28. However, there is no evidence demonstrating what any Rubicon employee may have seen or heard while at Phatthana's factory. Moreover, the methods of coercion alleged–deducting advances from workers' wages, holding workers' passports, and oral misrepresentations made by alleged Phatthana "agents" in rural Cambodian villages–were either impossible to detect or unlikely to be detected by merely visiting the factory to review operations.

3. There is No Evidence that Rubicon Benefitted From Phatthana's Alleged Human Trafficking.

It is undisputed that Rubicon never sold any product processed at Phatthana's Songkhla factory during the time that any of the Plaintiffs were employed there. As a result, Plaintiffs advance a number of novel theories–such as Rubicon's *attempt* to benefit from the sale of product processed at Phatthana's Songkhla factory–without any factual or legal support for these theories. For example, Plaintiffs argue that Rubicon benefitted from Phatthana's alleged human trafficking because Plaintiffs' labor at the Songkhla factory in 2010 until 2012 was somehow responsible for Rubicon's ability to attract Walmart and others as customers. However, Walmart was a customer of Rubicon well before Phatthana's Songkhla factory even began its operations. Plaintiffs also argue that Rubicon benefitted from Phatthana's alleged human trafficking because Phatthana's Songkhla factory was the "primary source of supply" for Rubicon. However, Rubicon had been selling seafood since 1999, and during the relevant time period was selling approximately 35 million pounds of seafood per year. Accordingly, the 14 containers of seafood purchased and ultimately returned during the same time period hardly qualifies as a "primary source of supply."

Although the Court has considered each of Plaintiffs' novel arguments, the Court concludes that they do not support Plaintiffs' benefit theory of liability.

IV. Conclusion

For all the foregoing reasons, Rubicon's and Wales's Motion is **GRANTED** in its entirety.

IT IS SO ORDERED.

APPENDIX E

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED

MAR 4 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KEO RATHA; SEM KOSAL; SOPHEA BUN; YEM BAN; NOL NAKRY; PHAN SOPHEA; SOK SANG, Plaintiffs-Appellants, v. RUBICON RESOURCES, LLC, Defendant-Appellee.	No. 23-55299 D.C. No. 2:16-cv-04271-JFW-AS Central District of California, Los Angeles **ORDER**

MURGUIA, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 40(c) and Circuit Rule 40-3. The three-judge panel opinion is vacated.