Case No.: 21-7135

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN DOE 1, *et al.*,
Plaintiffs-Appellants,

v.

APPLE INC., *et al.*,
Defendants-Appellees.

On Appeal from the United States District Court for the District of Columbia, Civil Action No. 19-cv-03737 (CJN)

PLAINTIFFS-APPELLANTS' OPENING BRIEF

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	)	
	)	
Defendants-Appellees.	)	
______________________	)	

APPELLANTS' CERTIFICATE AS TO PARTIES,
RULINGS, AND RELATED CASES

Pursuant to this Court's Order of December 2, 2021, Doc. No. 1925027, Appellants hereby submit their Certificate as to Parties, Rulings, and Related Cases:

(A) **Parties and Amici.**

The following is a list of all parties, intervenors, and amici who have appeared before the District Court, and all persons who are parties, intervenors, or amici before this Court:

Plaintiffs-Appellants

1. Jane Doe 1
2. John Doe 1
3. John Doe 2
4. Jenna Roe 3
5. James Doe 4
6. John Doe 5
7. Jenna Doe 6
8. Jane Doe 2
9. Jenna Doe 7
10. Jenna Doe 8
11. John Doe 9
12. Jenna Doe 10
13. Jenna Doe 11
14. Jane Doe 3
15. John Doe 12
16. John Doe 13

Defendant-Appellees

1. Apple Inc.
2. Alphabet Inc.
3. Dell Technologies Inc.
4. Microsoft Inc.
5. Tesla Inc.

Appellants are not aware of any other persons who are parties, intervenors, or amici in this Court or the District Court.

(B) **Rulings Under Review.**

This appeal is from the Order (ECF No. 51; Joint Appendix at 97) and Memorandum Opinion (ECF No. 50; Joint Appendix at 98) of District Court Judge Carl J. Nichols entered on November 2, 2021, dismissing the referenced case with prejudice as a Final Order.

(C) **Related Cases.**

There are no related cases within this Court of Appeals or any other court (whether federal or local) in the District of Columbia.

Respectfully submitted on this 30th day of December 2021,

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I. INTRODUCTION

The Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. § 1595 *et. seq*., is a remedial statute designed to remedy trafficking and forced labor in the global economy. Appellants are eleven children who were severely injured in tunnel collapses while they were forced to perform dangerous work mining cobalt in the Democratic Republic of Congo ("DRC") and legal representatives for five children who were killed while mining cobalt. First Amended Complaint ("FAC") ¶¶ 28-64, Joint Appendix ("JA") 1. As a result of these deaths and injuries, Appellants filed claims for forced labor and trafficking under the TVPRA, and several common law claims.

Appellants brought their claims against Appellees Apple Inc., Alphabet Inc., Microsoft Inc., Dell Technologies Inc., and Tesla Inc. (collectively "Appellees") because they have direct supplier relationships and are in a "venture" with Glencore, Huayou, and Eurasian Resources Group, the three DRC mining companies where the Appellant child miners were forced to work when they were killed or injured. These mining companies supply Appellees with cobalt, an essential element for the lithium-ion rechargeable batteries that power electric vehicles and electronic devices.

In an unprecedented ruling, the District Court ignored the TVPRA's text, remedial purpose, and decisions of numerous federal courts to essentially repeal

the TVPRA. The Court narrowly defined "venture" to require a formal agreement between Appellees and the mining companies. Using this erroneous definition of "venture," the Court found Appellees had no agreement with or direct relationship to their cobalt suppliers despite specific allegations that each of them had a direct supplier relationship with one or more of the mining companies where Appellants were injured. *See* Memorandum Opinion ("MemOp"), JA 109-111, 117-19. The Court also used its narrow definition of "venture" to rule the Appellants lacked standing to sue, finding Appellees had no direct connection to the harm caused to Appellants by the mining companies. The District Court then foreclosed most civil TVPRA claims by becoming the first federal court to rule that section 1596 (a)'s grant of extraterritorial jurisdiction did not apply to civil claims.

Further, the Court ignored well-established precedent and became the first federal court to rule that forced labor claims are determined exclusively by whether Appellants began work voluntarily and regardless of whether they were later coerced to work against their will. Finally, the District Court once again relied on its erroneous definition of "venture" to find that Appellants' common law claims failed because Appellees did not have sufficient connection to the injuries.

The District Court's decision essentially repeals the TVPRA. The decision undermines the uniform consensus that, as a remedial statute, the TVPRA should be broadly construed to combat the transnational crimes of forced labor and human

trafficking, which Congress described as the "dark side of globalization." H.R. REP. NO. 110-430, at 33 (2007). The U.S. Supreme Court has held where, as here, a statute is "remedial," it "should be liberally construed." *Peyton v. Rowe*, 391 U.S. 54, 65 (1968).

As a group of Members of Congress recently emphasized regarding the scope of the TVPRA in filing an amicus brief in the Supreme Court in *Nestle USA, Inc. v. Doe*, 141 S.Ct. 1931 (2021), "***it is not enough to target the traffickers themselves. Effective antitrafficking policy requires disincentives directed toward those who would benefit from trafficking—including corporate actors who knowingly profit from trafficking in their supply chains***."[1] After finding that the Alien Tort Statute, 28 U.S.C. § 1350, did not apply extraterritorially to reach Nestle and Cargill's use of child slaves to harvest cocoa in Cote D'Ivoire, Justice Thomas drew a sharp contrast with the scope of the TVPRA, of which he stated, "***in 2008, Congress created the present private right of action, allowing plaintiffs to sue defendants who are involved indirectly with slavery***." *Nestle USA,* 141 S.Ct. at 1939 (emphasis added).

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[1] Brief of Members of Congress Senator Blumenthal, Representative Smith *et al*., as *Amicus Curiae* in Support of Respondents at 19-20, *Nestle U.S.A., Inc. v. Doe* 141, S. Ct. 1931 (2021) (Nos.19-416, 91-453) (emphasis added). The Brief was filed as Exhibit A to Plaintiffs' Opposition to Motion to Dismiss, ECF No. 38-1.

The TVPRA is a tool to hold those who use supply chain contractors accountable for unlawful conduct by their suppliers: “[I]t is necessary to punish those who knowingly benefit or profit from slavery or use contractors, intermediaries, and others to do their bidding.” 106th Cong. 80 (2000) (statement of William Yeomans, Chief of Staff, Civil Rights Div., U.S. Dep’t. of Justice).

Federal courts have consistently embraced the broad mission of the TVPRA and rejected arguments about the potential economic disruption from global corporate liability. One court noted that “speculative concerns about opening the floodgates for other kinds of corporate liability . . . . is untethered to the [TVPRA] statutory language itself.” *A.C. v. Red Roof Inns, Inc.*, No. 2:19-CV-4965, 2020 WL 3256261, at *4 (S.D. Ohio June 16, 2020).

Appellants’ claims here are well within the text, legislative history, and purpose of the TVPRA, and are consistent with the great weight of federal jurisprudence applying the TVPRA. The District Court’s unprecedented dismissal must be reversed.

II. JURISDICTIONAL STATEMENT

Appellants alleged violations of the TVPRA, 18 U.S.C. § 1595 *et. seq*., creating federal question jurisdiction under 28 U.S.C. § 1331. Appellants' complaint further alleged common law claims based on diversity jurisdiction under 28 U.S.C. § 1332(a)(2). Appellants' common law claims also arise out of the same case or controversy as their federal claims and involve a common nucleus of operative facts, giving the District Court supplemental jurisdiction under 28 U.S.C. § 1367.

The case was dismissed by Final Order on November 2, 2021, JA 97, and Appellants filed a timely Notice of Appeal on November 30, 2021. This Court has jurisdiction of this appeal under 28 U.S.C. § 1291.

III. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues on appeal are:

A. Whether the District Court erred in finding Appellants failed to adequately allege Appellees were in a "venture" with their cobalt suppliers under section 1595(a) of the TVPRA and dismissing the TVPRA claims based on Fed. R. Civ. P 12(b)(6) for failure to state a claim;

B. Whether the District Court erred in finding because Appellees were not in a “venture” with their cobalt suppliers and had no connection to the Appellants injuries, Appellants lacked standing to sue and dismissed all claims based on Fed. R. Civ. P 12(b)(1);

C. Whether the District Court erred in finding that section 1596(a) of the TVPRA does not extend civil claims extraterritorially;

D. Whether the District Court erred in finding that Appellants were not subjected to forced labor under TVPRA section 1589 or trafficking under section 1590;

E. Whether the District Court erred in finding Appellants failed to state a claim for unjust enrichment, negligent supervision, and intentional infliction of emotional distress and dismissing these claims based on Fed. R. Civ. P 12(b)(6).

IV. STATEMENT OF THE CASE

A. Procedural History

Appellants filed their Complaint on December 16, 2019 and filed their First Amended Complaint ("FAC") on June 26, 2020. JA 1.

On August 25, 2020, Appellees filed their Joint Motion to Dismiss (ECF No. 33) with a Memorandum in Support (ECF No. 33-1).[2] On October 26, 2020 Appellants filed their Opposition to Joint Motion to Dismiss ("OppMTD") (ECF No. 38), and on December 18, 2020, Appellees replied (ECF No. 44).

The District Court held oral argument on July 8, 2021and issued a final order dismissing all of Appellants' claims on November 2, 2021. JA 97. Plaintiffs filed their timely Notice of Appeal on November 30, 2021.

Appellants filed with this Court a Motion to Vacate the District Court's dismissal decision on April 21, 2022 (Doc. No. 1943790) based on 28 U.S.C. § 455 (a) and (b)(4) when they discovered that the District Court held major bond investments in Appellees Apple and Microsoft, and also had major holdings in two tech mutual funds that invested heavily in Apple, Microsoft, Tesla, and Google. Moreover, the District Court substantially increased all of these investments after

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[2] Dell filed a separate Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. 32), which the District Court also granted. MemOpp, JA 113-16. While they disagree with that ruling, Appellants are not appealing it to this Court.

the case was assigned to the Court. *See* Appellants' Reply (Doc. No. 1945948). This Court denied the Motion on June 28, 2022 (Doc. No. 1952836).

B. Factual Background

Appellants include a detailed discussion of the facts within their legal arguments. The key facts are the sixteen Appellants are eleven former child cobalt miners who were severely injured in cobalt mines and legal representatives of five former child miners who were killed in tunnel collapses while mining cobalt. Appellants and their decedents were forced to work for either Glencore, Huayou, or Eurasian Resources, the three major mining companies from which Appellees obtain cobalt for the lithium-ion batteries that their products all require. FAC ¶¶ 5, 7, 30-64. When Appellants were maimed or killed mining cobalt, the mining companies where they worked had direct supplier relationships with one or more of the Appellees. *Id*. ¶¶ 28-64,73,77,80,82, and 85.

The DRC has approximately two thirds of the world's supply of cobalt. *Id*. ¶ 5. In order to lock in a steady source of essential cobalt from the DRC, Appellees established a venture with their cobalt suppliers, along with the refiners and distributers that worked as partners with these companies. *Id*. ¶¶ 6,7,99-110. In doing this, Appellees had knowledge of the horrible conditions in the cobalt mines and that child miners worked in these mines and were regularly killed or maimed in mining accidents. *Id*. ¶¶ 6-11, 16, 113-19. Rather than take steps to protect

cobalt miners, Appellees issued “policies” against child labor assuring consumers and regulators that they had the right to inspect their suppliers’ mines to prevent violations of these “policies.” *Id*. ¶¶ 20, 21, 108-09, 117. Appellees did not act to change the practices in the mines or take any concrete steps to stop their mining companies from using child miners until this case was filed. *See id*. ¶¶ 16-21,88, 106, 110. Recently, Appellees used the control they always had and required Glencore and Huayou to join a newly-formed industry initiative, the Fair Cobalt Alliance.[3] This industry-controlled initiative is merely a corporate public relations program, but it shows Appellees have control over their cobalt suppliers.

V. STANDARD OF REVIEW

All of the issues raised in this appeal involve errors of law by the District Court in interpreting and applying the TVPRA and thus are reviewed by this Court de novo. *See Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559 (2014); *Price v. D.C.*, 792 F.3d 112, 113 (D.C. Cir. 2015).

[3] *See* Henry Sanderson, *Glencore backs cobalt mining pact in DR Congo*, FINANCIAL TIMES (August 24, 2020), https://www.ft.com/content/9194c7ee-9726-4462-ae04-e7c72c0818d4.

VI. SUMMARY OF ARGUMENT

Ignoring the text and purpose of the TVPRA and an extensive body of federal jurisprudence, the District Court erroneously determined that Appellees did not have sufficient "direct connection" with their cobalt mining companies to be in a "venture" under TVPRA section 1595(a). MemOp, JA 109-11, 117-19. ***This was despite the fact that Appellees had direct supplier relationships with their mining companies.*** FAC ¶¶ 28-64,73,77,80,82, and 85. The District Court fundamentally erred in becoming the first court to require a formal contract to establish a "venture," significantly narrowing the scope of the TVPRA. Almost all cases previously decided under the TVPRA involved illicit transactions that would never be memorialized in writing to create evidence of a crime. The District Court's ruling would require that a child who was kidnapped, sold as a slave, and forced to work as a domestic laborer must prove there was a formal agreement between the trafficker and the recipient of the child in order to establish a "venture" under the TVPRA. As Appellants demonstrate below, the District Court's outlier ruling cannot stand in light of the text and purpose of the TVPRA and the numerous cases that have properly found that, at most, the TVPRA requires an "association in fact" or a "tacit agreement" to establish a "venture."

The erroneous "venture" definition was an overarching issue that drove the District Court's decisions that Appellants lacked Article III standing to sue, they

failed to state a TVPRA claim, and Appellees were not liable for the common law claims. MemOp, JA 109-11, 117-19, 128-30. The District Court was also the first to rule that the explicit extension of extraterritorial jurisdiction of the TVPRA in section 1596 (a) does not apply to any civil claims, thus effectively repealing the TVPRA for many if not most civil claimants. *Id*. at 123-27. The Court was also the first to rule that forced labor claims are determined solely by whether a forced labor claimant initially went to work voluntarily and regardless of whether she was subsequently prevented from leaving her employment through coercive tactics. *Id*. at 119-22

Each of the District Court's rulings to support dismissal of Appellants' claims were erroneous as a matter of law and must be reversed to restore the TVPRA's textual integrity and remedial purpose.

VII. ARGUMENT

A. The District Court Erred in Finding Appellees Were Not in a "Venture" Within TVPRA § 1595(a).

The gateway for a civil TVPRA claim is 18 U.S.C. § 1595(a),[4] which allows a claim against any person who "knowingly benefits financially or by receiving anything of value ***from participation in a venture*** which that person knew or

[4] The full text of relevant TVPRA sections is provided in the Addendum at p. 55, *supra*.

should have known has engaged in [trafficking or forced labor]" (emphasis added). This benefit "from participation in a venture" language was originally enacted only in the criminal provision of section 1591 of the TVPRA. Congress omitted it from the civil TVPRA sections out of concern that the provision was too broad; the conferees "agreed not to extend it to persons who benefit financially or otherwise from trafficking out of a concern that such a provision might include within its scope persons, such as stockholders in large companies who have an attenuated financial interest in a legitimate business where a few employees might act in violation of the new statute." H.R. REP. NO. 106-939, at 101-02 (2000) (Conf. Rep.). Eight years later, ***Congress reversed this decision*** and in the 2008 amendments to the TVPRA extended beneficiary liability to civil claims by adding the provision at issue here, section 1595(a). William Wilberforce [TVPRA] of 2008, Pub. L. No. 110-457, 122 Stat. 5044.

Because the District Court defined "venture" entirely from two dictionary definitions, ignoring the TVPRA's text and legislative history, as well as the many federal decisions which used these tools to properly define "venture" within the context of the TVPRA, the decision is an outlier.[5] The District Court then failed to

[5] The only other TVPRA case Appellants are aware of that exclusively utilized a dictionary to define "venture" and ignored the text and legislative history of the statute is *Doe #1 v. Red Roof Inns, Inc.*, 21 F.4th 714 (11th Cir. 2021). While that Court likewise erred in applying a very narrow definition of "venture" based on a dictionary alone, the facts of this case would have met the standard actually

credit Appellants' factual allegations in assessing whether they were in a "venture."[6]

Referencing two different dictionary definitions of "venture," the District Court found "[t]he string tying the two together is the idea of a commercial enterprise." MemOp, JA 117-18. While the concept of a commercial enterprise may be the common thread between the two dictionary definitions, similarities between non-contextual dictionary definitions cannot serve as the definition of venture for section 1595 (a) when the text and legislative history, as well as

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applied there. The *Red Roof Inns* Court repeatedly stressed the plaintiffs "have provided no plausible allegations that the franchisors took part in the common undertaking of sex trafficking." *Id.* at 727. This lack of any connection between the major corporate hotel chains and the actual sex traffickers or others at the specific hotels who were facilitating the sex trafficking, *see id,* doomed the claims in *Red Roof Inns* under any of the possible tests for participation in a venture. Here, in sharp contrast, as demonstrated below, Appellants' allegations establish a direct business relationship between the five Appellees and the cobalt mining companies they source from that use forced child labor to mine cobalt.

[6] The District Court assessed only the definition of a "venture," and finding there was no venture, did not address whether Appellees participated in any venture. *See* MemOp, JA 117-119. The District Court would have required for their "participation" that Appellees actually "employed" the child miners or "owned or operated" the mines where the children were injured. *Id*. at 11. Federal Courts have almost universally agreed that there need not be ***direct*** participation in the unlawful acts of the venture to hold a co-venturer liable because this would void the "should have known" language in the section 1595(a), the TVPRA's civil liability provision. *See, e.g.*, *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 969 (S.D. Ohio 2019).

numerous other federal court decisions, require otherwise. It was within Congress's power to enact this legislation and it is improper for the District Court to ignore their intent in doing so. Further, the District Court's adoption of "commercial enterprise" as the operative definition of "venture," requiring a formal contractual relationship ignores the reality that sex traffickers or forced labor brokers typically have informal agreements with their "beneficiaries" within a venture. Trafficking children and forcing them to work is not a "commercial enterprise"; it is an illegal activity conducted surreptitiously and made unlawful by the TVPRA.

Crucially, the District Court ignored its own admonition that the term "venture" must be defined "by the context of the surrounding statutory text." MemOp, JA 20. The District Court cited *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Assoc.*, 141 S. Ct. 2172 (2021), for this statutory interpretation rule. In *HollyFrontier*, the Supreme Court looked at ***other provisions of the same statutory scheme*** in which the term at issue was used in a search to determine the context of the term. *Id*. at 2176-78. Here, the District Court ignored that numerous other federal courts agree that although section 1595(a) does not define "venture" with respect to civil liability, the corresponding statutory language in a parallel criminal sex trafficking provision specifically defines "venture" as "any group of two or more individuals associated in fact, whether or not a legal entity." 18 U.S.C.

§ 1591(e)(6). These other federal courts, appropriately examining the statutory text in context of the overall statutory scheme, as the Supreme Court directed in *HollyFrontier*, found this definition of "venture" a useful indicator of the term's scope within the civil context.[7]

Indeed, many corporate defendants have urged adoption of this definition of "venture" from section 1591(e)(6) because it is perceived as narrower than other possible definitions adopted by federal courts interpreting section 1595(a). *See, e.g.*, *S.Y. v. Best Western Int'l., Inc.*, No. 2:20-cv-616-JES-MRN, 2021 WL 2315073, at *4 (M.D. Fla. Jun. 7, 2021) (defendants argued for application of "venture" used in the criminal portion of the statute, 18 U.S.C. § 1591(e)(6)); *C.S. v. Inn of Naples Hotel*, *LLC*, 2021 U.S. Dist. LEXIS 93184, at *13-15, 2021 WL 1966432 (M.D. Fla. May 17, 2021) (same); *S. Y. v. Wyndham Hotels & Resorts, Inc.*, 521 F. Supp. 3d 1173, 1183-1184 (M.D. Fla. 2021) (same); *Doe v. Rickey Patel, LLC*, 2020 U.S. Dist. LEXIS 195811, at *9-14, 2020 WL 6121939 (S.D. Fla. Sept. 29, 2020) (same).

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[7] *See, e.g.*, *Bistline v. Parker*, 918 F.3d 849, 873 (10th Cir. 2019); *Ricchio v. McLean*, 853 F.3d 553, 555-56 (1st Cir. 2017); *United States ex rel. Elgasim Mohamed Fadlalla v. Dyncorp Int'l LLC*, 402 F. Supp. 3d 162, 196 (D. Md 2019); *Gilbert v. United States Olympic Comm.*, 423 F. Supp. 3d 1112, 1138, n.7 (D. Colo. 2019); *Jean-Charles v. Perlitz*, 937 F. Supp. 2d 276, 288, n.11 (D. Conn. 2013); *Gilbert v. USA Taekwando, Inc.*, No. 18-CV-00981-CMA-MEH, 2020 WL 2800748, at *9-10 (D. Colo. May 29, 2020).

Other federal courts have generally found the criminal provisions in the TVPRA are too narrow and instead assess “***[i]n the absence of a direct association***, [whether there was] . . . “a continuous business relationship . . . such that it would appear that the trafficker and the hotels have established a pattern of conduct or could be said to have a tacit agreement.” *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 970 (S.D. Ohio 2019) (emphasis added). Numerous federal courts have applied this standard, often citing *M.A. v. Wyndham Hotels*. *See, e.g.*, *J.C. v. Choice Hotels Int’l, Inc.*, No. 20-CV-00155-WHO, 2020 WL 3035794, at *1 n. 1 (N.D. Cal. June 5, 2020); *H.H v. G6 Hosp., LLC*, 2019 U.S. Dist. LEXIS 211090, at *12, 2019 WL 6682152; *Doe v. Rickey Patel, LLC*, No. 0:20-60683-WPD-CIV, 2020 WL 6121939, at *5 (S.D. Fla. Sept. 30, 2020); *S.Y. v. Marriot Int’l, Inc*., No. 2:20-cv-627-JES-MRM, 2021 WL 2003103, at *4 (M.D. Fla. May 19, 2021); *Doe v. Mindgeek United States*, 2021 U.S. Dist. LEXIS 176833, at *15 (C.D. Cal., 2021); *Doe v. Twitter, Inc.*, 2021 U.S. Dist. LEXIS 157158, at *50 (N.D. Cal., 2021).

In application, the two widely-accepted tests are virtually identical as federal courts applying the “associated in fact” language of section 1591(e)(6) nearly always revert to looking at whether there was a tacit agreement and/or a continuous business relationship. *See, e.g.*, *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 963, 970 (S.D. Ohio 2019) (*Wyndham* itself cites section

1591(e)(6) before articulating the tacit agreement standard); *Doe v. Rickey Patel, LLC*, 2020 U.S. Dist. LEXIS 195811, at *13-14 (S.D. Fla. Sept. 30, 2020) (using section 1591(e)(6) definition and finds there was a "tacit agreement"); *S.Y. v. Best W. Int'l*, *Inc.* 2021 U.S. Dist. LEXIS 106139, at *9, 2021 WL 2315073 (M.D. Fla. June 7, 2021) (applies section 1591(e)(6) definition and finds a "venture" is satisfied by plaintiff's allegations that defendants were "engaging in a pattern of acts and omissions"); and *S. Y. v. Wyndham Hotels & Resorts, Inc.*, 521 F. Supp. 3d 1173, 1183-84 (M.D. Fla. 2021) (applies section 1591(e)(6) definition and finds there was a "tacit agreement"). In short, except for this District Court and the one other outlier decision,[8] all other federal courts are applying a similar standard to define "venture" as a tacit agreement with a continuous business relationship. Plaintiffs' allegations here easily meet this standard.

In fact, Appellants allege more than that Appellees had a tacit agreement with a continuous business with the cobalt suppliers. Indeed, Appellants' allegations should have satisfied the District Court's standard because ***there was an agreement*** between each of the five Appellees and one or more of the three main purveyors of cobalt mined with forced child labor (Glencore, Huayou, and Eurasian Resources Group)[9] to ensure each Appellee a steady supply of cobalt at a

[8] *See supra* note 5.
[9] To be clear, Appellants specifically allege that these are the mining companies that owned or controlled the mines where they were injured or killed. 13

price that reflected the cheap forced labor of child miners. *See* FAC ¶¶ 72-86, 88-89, 99, 100, 107, 110-13. Even though these mining companies have horrible, well-documented records of using forced child labor and abusing workers, local communities, and environmental devastation, *id*. ¶¶ 2,35-37, 74, 77, 80, 85, 92, 100-03, 110, Appellees knowingly formed long-term business relationships with these mining companies. Based on their extensive research, Plaintiffs alleged:

Apple obtains its cobalt from Glencore and Huayou. *Id*. ¶ 73

Alphabet/Google obtains its cobalt from Glencore. *Id*. ¶ 77

Dell obtains its cobalt from Glencore and Huayou. *Id*. ¶ 80

Microsoft obtains its cobalt from Glencore and Huayou. *Id*. ¶ 82

Tesla obtains its cobalt from Glencore and Eurasian Resources Group ¶ 85

Prior to discovery, Appellants do not have copies of the supplier contracts, but they were able to establish that going back to 2016, prior to Appellants' injuries, Appellees were knowingly engaged in supplier relationships with the mining companies using forced child labor despite getting grilled by the press and

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Appellants allege they were injured or killed at a specific, named mine owned and/or operated by Glencore, FAC ¶¶ 30, 32, 34, 38, 41, 43, 45, 47, 49, 53, 55, 58, 61; two Appellants allege they were injured or killed at a specific, named mine owned and/or operated by Huayou, *id*. ¶¶ 37, 40; and one Appellant alleges he was injured at a specific, named mine that was owned and operated by Eurasian Resources Group, *id*. ¶ 64.

Amnesty International about what they were doing to prevent endemic child labor at these mines. *See* FAC ¶¶ 72-86, 88-89, 99, 100, 107, 110-13. In 2019, when Appellants' counsel interviewed the injured child miners, Appellees were still using the same cobalt suppliers they were using in 2016 and before. *See id*. ¶¶ 73,77,80, 82,85.

Thus Appellants have alleged that Appellees have a contract, or at least a tacit agreement and a continuous business relationship, with Glencore, Huayou, and/or Eurasian Resources Group to obtain the cobalt they need for their lithium-ion batteries, while collectively benefiting from and continuing to ignore the well-documented and well-publicized use of forced child labor by their cobalt suppliers. FAC ¶¶ 9,10,12,110,112,114-19. The District Court should have reasonably inferred that these crucial relationships with Appellees' regular and continuous cobalt suppliers, which were secured by explicit or tacit agreements, formed the basis for the alleged venture.[10]

[10] Appellees attempt to muddy the waters of their cobalt supply chain and invent a nonexistent complexity, *see, e.g.,*FAC ¶¶ 103, 107, 109, 112, and the District Court accepted this argument. *See* MemOp, JA 109. However, Appellants' allegations establish that, regardless of the steps between mining and processing the cobalt, Appellees had direct purchasing relationships with Glencore, Huayou, and/or Eurasian Resources Group. The cobalt supply chain relationships are not diffuse or unknown as in other situations, such as purchasing oil on the spot market or soybeans from a broker. Appellants allege that Appellees are among the handful of large tech companies buying cobalt and that each company had a direct relationship with its major cobalt suppliers. *See, e.g.,* FAC ¶¶ 72-86, 88-89, 99, 100, 107, 110-13.

The Appellees themselves have acknowledged that there were formal or tacit agreements between them and their cobalt suppliers. In their Motion to Dismiss, the companies conceded they impose certain requirements on their regular suppliers, stating "***Defendants' policies prohibit*** certain unlawful labor practices, including the use of ***child labor***, ***at any tier of the supply chain and require regular supplier audits to evaluate compliance***.*"* ECF No. 33-1, at 6 (emphasis added). The Complaint alleges the existence of these policies and documents Appellees' claims to have "zero tolerance" policies against child labor and the right to inspect. FAC ¶¶ 20-21, 108, 117, 130.

A reasonable inference to draw from the companies' assertions of their "zero tolerance policies" is they have the right to inspect their suppliers, a right that would generally need to be established by contract. Indeed, as Amnesty International reported after interviewing the major tech companies using DRC cobalt, "[m]any of these companies stated that they have a zero tolerance policy when it comes to child labour in their supply chains. Some of these companies refer to contractual requirements that they impose on direct suppliers to ensure that they adhere to these types of prohibitions." *Id*. ¶ 117.

One example further supporting the inference that the tech companies have a contractual right to inspect and have control over their cobalt suppliers is that in

2016, Huayou admitted to the *Washington Post* that it was using child labor in its cobalt mines. *Id.* ¶ 105. When confronted, Apple then claimed it was suspending its relationship with Huayou. *Id.* When it was later discovered in 2018 that Apple had continued its relationship with Huayou, Apple claimed to have conducted a "third party audit" of Huayou, an oversight measure it could have only implemented with a contractual right or some other form of control over Huayou. *See id.* In response to the initial filing of Appellants' lawsuit in 2019, Huayou announced in June 2020 that it would no longer use child labor because its "customers" demanded it. *Id.* ¶ 106.

Another example is that Appellees collaborated between themselves and required Glencore and Huayou to join the Fair Cobalt Alliance, a questionable industry-led program in which the companies monitor themselves in an attempt to create the impression that they and their suppliers were doing something about the horrific conditions facing child cobalt miners.[11] *See* OppMTD at 3-4. The main objective of Appellees in using their control over the cobalt mining companies to create this and other programs is to mislead consumers and regulators to protect their cobalt supply chain venture with its cheap cobalt mined by children. *See, e.g.*,

[11] Henry Sanderson, *Glencore backs cobalt mining pact in DR Congo,* FINANCIAL TIMES (Aug. 24, 2020), https://www.ft.com/content/9194c7ee-9726-4462-ae04-e7c72c0818d4.

FAC ¶¶ 100, 110, 112. As Appellants alleged, Appellees have “the power, resources and ability to make any necessary changes in the operations of cobalt mining in the DRC, but have chosen not to do so in order to avoid any corresponding costs.” *Id.* ¶ 110. Instead, Appellees continue to knowingly benefit from the cobalt prices which are kept particularly low due to their suppliers’ use of forced child labor.

A further example of conduct establishing a venture is that Apple, Dell, Microsoft, and Alphabet collaborated within the venture to fund a bogus model mining project with PACT, a non-profit organization that operates a “model” mine that was supposed to be child labor free and could be shown to the public as a marker of progress. FAC ¶¶ 19,112, 115. This mere attempt to deflect bad press did not result in any changes to mining conditions at Appellees’ suppliers’ cobalt mines. *See, e.g.*, *id.* ¶¶ 110,112.

Appellants’ allegations establish that there is a formal and ongoing business relationship between Appellees and their cobalt mining companies. It is reasonable to infer from these allegations that the relationship is established by contract or tacit agreement which provides Appellees sufficient control to require inspections and require compliance with their claimed “zero tolerance” policies prohibiting child labor in the cobalt mines of their suppliers. These allegations should have satisfied even the “commercial enterprise” test imposed by the District Court, but

the Court's brief assessment of the allegations did not credit the actual allegations, nor did it provide Appellants with the benefit of any reasonable inferences. *See* MemOpp, JA 118-19. The District Court's assertion that Appellants had not even alleged "some form of a business relationship " cannot be squared with the detailed allegations of the long-term supplier relationships between each of the tech companies and their specific cobalt suppliers. *See id*. at 119, n.4.

Likewise, the Court's assertion that "there is not even an allegedly direct connection between Defendants and the source of Plaintiffs' injuries," *id*. at 110, ignores the allegations of direct supplier relationships between Appellees and their cobalt mining companies and fails to acknowledge that the Appellees themselves asserted they had what must reasonably be inferred to have been contractual policies which required their suppliers to comply with "zero tolerance" of child labor in the mines.

The venture alleged in this case is much better-defined than those in virtually any of the cases that found a venture established merely by a tacit understanding. In particular, the decided hotel/sex trafficking cases did not require any formal agreement or creation of a business relationship. Instead, a tacit understanding that the hotels would rent rooms to a sex trafficker and turn a blind eye to the unlawful conduct was sufficient to hold the parent companies liable even though they did not directly conduct business with the traffickers. In none of these

cases was there any explicit agreement forming a sex trafficking venture, which was found to exist based on a mutually beneficial relationship. *See, e.g.*, *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 968-71(S.D. Ohio 2019); *Does S.W. v. Lorain-Elyria Motel, Inc.*, 2020 U.S. Dist. LEXIS 44961, at *16-21 (S.D. Ohio Mar. 16, 2020). In one such case, the First Circuit held that allegations that motel owner defendants rented out a room were sufficient to constitute "participation in a venture" under both section 1591 and section 1589(b), because it could be inferred that "the Patels understood that in receiving money as rent for the quarters where McLean was mistreating Ricchio, they were associating with him." *Ricchio v. McLean,* 853 F.3d 553, 555 (1st Cir. 2017) (Souter, J. by designation). In *Craigslist, Inc.* a venture was found based only on the fact that Craigslist allowed ads that it should have known were placed by sex traffickers to run on its list service in exchange for payment. *M.L. v. Craigslist Inc.* , 2020 U.S. Dist. LEXIS 166334, at *19-20 (W.D. Wash. Sept. 11, 2020). The Court found "craigslist knowingly fostered a business relationship with traffickers to support the venture of trafficking Plaintiff." *Id* at 19. There was no agreement at all, and the association required to form a venture was based only on the existence of a mutually-beneficial relationship. *See id.*

Putting "venture" in its statutory context, based on the TVPRA's text, legislative history, and the many federal cases using these tools to define "venture"

in the TVPRA, Appellants' allegations taken with all reasonable inferences properly allege that Appellees are in a "venture" with their cobalt suppliers.

B. Appellants Had Article III Standing to Sue Since Appellees Were in a "Venture" with their Cobalt Suppliers.

1. Appellants have standing to sue for damages for their undisputed injuries.

Appellees raised as a jurisdictional threshold that Appellants lacked Article III standing to sue and the District Court agreed. MemOp, JA 107-113. There is no dispute that Constitutional standing requires that (1) the plaintiff have suffered an injury in fact, (2) which is fairly traceable to the challenged action of the defendant, and (3) which may be redressed by a favorable court decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Appellees did not dispute nor did the District Court address that Appellants easily satisfied the first and third requirements. Appellants suffered horrible concrete injuries by being killed or maimed in cobalt mining accidents, and these injuries are redressable by compensation to the victims.

Appellants also satisfy the contested second element, the traceability requirement, because they alleged that Appellees are in a "venture" with their mining companies under the TVPRA, a venture whose members are jointly responsible for the injuries suffered by Appellants. However, the District Court based its ruling that Appellants lacked standing entirely on its finding that Appellees were not in a

"venture" with the mining companies that were directly responsible for Appellants' injuries. *Id*. at 109-11. Ignoring Appellants' allegations establishing there was a venture relationship between Appellees and their mining companies, the District Court improperly accepted Appellees' factual argument in the context of a motion to dismiss that they were mere purchasers of cobalt and had no other relationship to the mining companies that supplied their cobalt. *See id*. at 108-09.

There seems to be no disagreement that if Appellees ***were*** in a "venture" with their mining companies, then Appellants ***would*** have standing to sue because Appellees would have legal responsibility for and would be jointly and severally liable for the acts of all participants in the venture. *See, e.g.*, *Faison v. Nationwide Mortg. Corp.*, 839 F.2d 680, 685 (D.C. Cir. 1987) ("In the District of Columbia, the general rule is that joint tortfeasors are jointly and severally liable for compensatory damages . . ."). Appellants establish in section VII A *supra* that they were in a venture with their cobalt suppliers and this is sufficient to satisfy the traceability requirement and confer standing.[12]

2. Appellants have standing to obtain injunctive relief.

The District Court separately found that Plaintiffs lack standing to seek injunctive relief. MemOp, JA 112-13. Once again, the District Court's reasoning

[12] The close relationship between Appellees and their cobalt suppliers is also the foundation for Appellants' common law claims. *See infra*, section VII E.

derives entirely from its erroneous finding that Appellants lacked a sufficient relationship and therefore lacked "control" over their mining companies to require these "third parties" to stop their horrific abuse of child miners. *See id*. However, as noted, Appellants have properly alleged Appellees are in a "venture" with the mining companies, *supra* section VII A, and this would give them joint liability and responsibility for preventing child labor in the mines. Indeed, Appellees themselves have asserted they have the right to prohibit the mining companies from using child labor, *see* FAC ¶¶ 20, 21, 108-09, 117, which, on a motion to dismiss, should foreclose them from contesting factually whether they have sufficient "control" to do so. Further, there is an allegation in the Complaint demonstrating they have this control: after this case was filed Huayou claimed it was going to stop using child labor because its "customers," several of Appellees herein, demanded it. *Id*. ¶ 106.

The issue of standing to sue in this case turns entirely on whether Appellants established Appellees are in a "venture" with their mining companies. They have demonstrated that they have viable claims based on a "venture" and this also provides them standing to sue.

C. The District Court Erred in Being the First Federal Court to Conclude that Section 1596(a) Did Not Extend Civil TVPRA Claims Extraterritorially.

Ignoring all of the federal decisions going the other way and calling it a "close call", the District Court became the first federal court to rule that section 1596(a) does not extend civil claims under the TVPRA extraterritorially. MemOp, JA 127. Every case, post-2008 TVPRA amendment adding section 1596 (a), has held that civil claims for forced labor or trafficking extend extraterritorially. The District Court ignored all of these decisions except *Adhikari v. Kellogg Brown & Root, Inc*., 845 F.3d 184, 200-01 (5th Cir. 2017), which it discounted as dicta. MemOp, JA 126, n.8. The Court's conclusion that "the issue was never before that court," *id*., is incorrect as *Adhikari* squarely found that section 1596(a) "explicitly rebuts the presumption against extraterritoriality" and "Congress amended the TVPRA to provide a civil remedy for extraterritorial violations because it had concluded none previously existed." *Adhikari*, 845 F.3d 184, 200-01 (5th Cir. 2017). The Fifth Circuit elaborated:

> Prior to § 1596, a private party could not maintain a civil cause of action under the TVPRA for forced labor or human trafficking that occurred overseas. Such an action, as noted, would have been barred by the presumption against extraterritoriality. However, by conferring "extra-territorial jurisdiction over any offense . . . under" the TVPRA, § 1596 permits private parties to pursue a civil remedy under the TVPRA for extraterritorial violations.

Id. at 204. This is not dicta. The Court first found that section 1596(a) does extend

civil claims extraterritorially and then, after a lengthy analysis, found that this provision is not retroactive and dismissed the case based on pre-2008 extraterritorial violations. *Id.*[13] All other reported cases either follow *Adhikari* or reach the same conclusion. *See, e.g., Aguilera v. Aegis Commc'ns Grp., LLC*, 72 F. Supp. 3d 975, 978-79 (W.D. Mo. 2014) (rejecting "offense" limits to criminal cases and rejecting the argument that the TVPRA covers only victims trafficked "into" the United States); *Abafita v. Aldukhan*, No. 116CV06072RMBSDA, 2019 U.S. Dist. LEXIS 59316, at *12, 2019 WL 6735148, at *5 (S.D.N.Y. 2019) (following *Adhikari* and finding that section 1596(a) extends extraterritorial jurisdiction to civil violations of TVPRA), *report and recommendation adopted*, *Abafita v. Aldukhan*, 2019 WL 4409472 (S.D.N.Y. Sept. 16, 2019); *Plaintiff A v. Schair*, No. 2:11-CV-00145-WCO, 2014 WL 12495639, at *6-7 (N.D. Ga. Sept. 9, 2014) (concluding that section 1596(a) provides prospective extraterritorial application for civil claims but does not apply retroactively). *See also*, *Ratha v. Phatthana Seafood Co.*, 2022 U.S. App. LEXIS 5116, at *5, 15-16, 26 F.4th 1029 (9th Cir. 2022) (the Ninth Circuit assumed without deciding that section 1596(a) extends civil claims under the TVPRA extraterritorially). None of the courts in

[13] There is no issue of retroactivity in this case, as all of Plaintiffs' injuries occurred after the 2008 enactment of the enactment of section 1596(a).

these civil actions expressed doubt that, from 2008 forward, section 1596 (a) extends civil claims extraterritorially.

Section 1596(a) extends extraterritorial jurisdiction to any "offense" under sections 1589 (forced labor) and 1590 (trafficking), among others, if, as here, members of the venture are (1) U.S. nationals or (2) "present" in the U.S. 18 U.S.C.A. § 1596(a). There is no dispute that the five Appellees are U.S. nationals and "present" in the U.S. FAC ¶¶ 26, 73-86.

The District Court reasoned that the extraterritorial application in section 1596(a) to claims based on sections 1589 (forced labor) and 1590 (trafficking) excludes civil cases because a civil claim is not an "offense." MemOp, JA 125-26. However, there is no indication that the term "offense" was intended to apply only to criminal actions. The term "offense" in section 1596(a) refers to the substantive prohibitions that were extended extraterritorially, and it makes no distinction whether the case is civil or criminal. Any claim, whether civil or criminal, based on "forced labor" must satisfy the substantive elements of the "offense" detailed in section 1589. Likewise, any claim, whether civil or criminal, based on "trafficking" must satisfy the substantive elements of the "offense" detailed in section 1590. The elements of these substantive violations do not change if the case is civil versus criminal, and the nature of the "offense" is identical. The sole distinction the statutory scheme makes between civil and criminal cases is "[a]ny

civil action filed under this section shall be stayed during the pendency of any ***criminal action*** arising out of the same occurrence in which the claimant is the victim." 18 U.S.C. § 1595(b)(1) (emphasis added). Thus, Congress recognized that the criminal and civil "offenses" have identical elements and are based on identical substantive provisions, distinguished the two types of cases with specific descriptors, and gave priority to criminal cases. If Congress was able to make this distinction, it surely would have made the same distinction if it intended only "criminal actions" extended extraterritorially.[14]

The District Court's position requires the interpretive leap that Congress gave access to the same substantive "offenses" for both criminal and civil actions, prioritized "criminal actions," but then, without saying so and having previously demonstrated the ability to distinguish between a "civil action" and a "criminal action," silently did not intend civil actions to be brought for the substantive "offenses" most likely to be brought—those occurring extraterritorially.

The District Court attributes great weight to the fact that section 1595(a) creating a civil cause of action was not included in the list of sections made extraterritorial by section 1596(a). MemOp, JA 124. However, section 1595(a)

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[14] Indeed, speaking of the 2008 amendments, Senators Biden and Brownback stated that "we establish some powerful new legal tools, including increasing the jurisdiction of the courts" to include "***any*** trafficking case . . . even if the conduct occurred in a different country". 154 Cong. Rec. S4799-800 (daily ed. May 22, 2008) (emphasis added).

does not in any way attempt to define what "offenses" can be brought as a civil claim; it merely says a person can bring a civil claim if she "is a victim of a violation of this chapter." Thus, section 1595(a) was merely intended to define who could sue whom, while the substantive "offenses" that can be subject to a civil suit include sections 1589 (forced labor) and 1590 (trafficking), which ***are*** included in the list of offenses that are extended extraterritorially by section 1596(a). Likewise, section 1594(a)-(c) expands who is subject to criminal liability for violations of the same chapter. For example, section 1594(b) provides "[w]hoever conspires with another to violate section 1581, 1583, 1589, 1590, or 1592 shall be punished in the same manner as a completed violation of such section." Section 1594, like 1595, is not listed in section 1596(a) among the sections extended extraterritorially because it is a mechanism for enforcing the substantive provisions, including sections 1589 and 1590, that are extended extraterritorially by section 1596(a). Surely those who conspire with a person committing the direct violation of section 1590 trafficking would not be immune from criminal prosecution in a case requiring extraterritorial application merely because section 1594 is not included within section 1596(a).

The text of section 1596(a) indicates that the TVPRA extends extraterritorially to civil claims, and every court agrees except for the District Court.

In further support of civil claims extending extraterritorially, the Court of Appeals for the Fourth Circuit found that even pre-2008 TVPRA civil claims [pre passage of section 1596] are extraterritorial

> because the TVPA's civil remedy provision directly incorporates a set of predicate offenses "that plainly apply to at least some foreign conduct." *See* [RJR Nabisco, Inc. v. European Cmty., 136 S. Ct. 2090, 2101 (2016)]. More specifically, § 1595 permits "a victim of a violation of this chapter . . . to bring "a civil action against the perpetrator." *See* 18 U.S.C. § 1595. Many of the predicate offenses proscribed by chapter 77 apply extraterritorially, either expressly or by way of other provisions delineating their extraterritorial application. . . Thus, pursuant to *RJR Nabisco*, "Congress's incorporation" of such "extraterritorial predicates" into § 1595 "gives a clear, affirmative indication" that § 1595 provides a civil remedy for the foreign conduct that is prohibited by chapter 77. *See* 136 S. Ct. at 2102. That is, § 1595 applies extraterritorially to the extent that the particular predicate offense supporting a specific claim applies extraterritorially. *See id.* at 2103. Reinforcing that conclusion, the purpose, structure, history, and context of the TVPA all support the extraterritorial application of § 1595 for an appropriate predicate offense. ***The TVPA's stated purpose and accompanying congressional findings demonstrate that Congress enacted it to address the problem of human trafficking "throughout the world."***

Roe v. Howard, 917 F.3d 229, 242 (4th Cir. 2019) (emphasis added).

Because Appellants' claims for forced labor and trafficking extend extraterritorially by the express language of section 1596(a) and through the provisions of the TVPRA that provide for predicate acts that are plainly extraterritorial, the inquiry ends. However, even if this is not clear and we must examine the "focus" of the TVPRA using the analysis of *Morrison v. Nat'l Australia Bank*. *Morrison v. Nat'l Australia Bank*, 561 U.S. 247 (2010), the

TVPRA authorizes suits against persons who benefit in the United States from human trafficking and forced labor, regardless of the location of the forced labor. The focus of the prohibition on "benefitting, financially or by receiving anything of value" is on the benefitting, not on the other conduct. *Id*. at 266 (stating the focus of §10(b) "is not upon the place where the deception originated, but upon purchases and sales of securities" in the U.S.). Appellants would not be applying 18 U.S.C. §§ 1589 and 1590 "extraterritorially" when those provisions are applied to a benefit in the United States.

D. The District Court Erred in Resolving Facts on a Motion to Dismiss and Concluding that Appellants Were Not Subjected to Forced Labor.

The District Court erroneously ruled Appellants failed to state a claim that they were subjected to forced labor in violation of TVPRA section 1589. MemOp, JA119-122. In doing so, the District Court (1) improperly resolved the inherently factual questions of the forced labor standard on a motion to dismiss and (2) applied a legally erroneous definition of "forced labor" and then failed to credit Appellants' factual allegations and provide them with the benefit of all reasonable inferences.

Appellants were children when they were killed or maimed in cobalt mining accidents while performing extremely hazardous work. *See* FAC ¶¶ 30-64.

Appellants had no safety equipment and were forced to work in cobalt mines with fragile tunnels without any structural reinforcements. They worked in constant fear because they knew that miners were routinely killed or maimed in tunnel collapses and every tunnel was likely to collapse at some point, making the daily terror they faced whether it would happen when they were in it. In addition, they worked long hours in filthy conditions, and they were food insecure, often hungry and malnourished. Appellants were also exposed to dangerous chemicals from working in the midst of cobalt dust without protective masks and with poor ventilation. They all were virtually illiterate because they were forced to drop out of school when they could not pay their school fees. Appellants lived in extreme poverty when they started working in the cobalt mines. *Id.* ¶¶ 6, 8, 9, 11, 12, 30-64. The facts regarding Appellants' vulnerability are important in assessing the successful scheme of coercive actions the mining companies used to ensure a steady supply of child labor to perform hazardous work mining cobalt to benefit Appellees' venture.

The starting point is TVPRA section 1589's textual definition of "forced labor":

> **(a)** Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means–[15]
>
> > **(2)** by means of ***serious harm or threats of serious harm*** to that person or another person; [or]

[15] Section 1589(a) provides four distinct types of conduct that satisfy the forced labor standard but Plaintiffs herein rely only on subsections (2) and (4).

(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person ***would suffer serious harm or physical restraint***. 18 U.S.C. § 1589(a) (emphasis added).

Subsection (c)(2) defines "serious harm:"

The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, ***under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm***. 18 U.S.C. § 1589(c)(2). (emphasis added).

1. Whether Appellants, all children, felt coerced by threats of "serious harm" is a question of fact that should not have been resolved by the District Court on a motion to dismiss.

Appellants will demonstrate in the next section their allegations satisfy the definition of "forced labor," but as an initial matter, in assessing the "serious harm" issue, the TVPRA provides in section 1589(c)(2) that all of the victim's surrounding circumstances must be considered to determine whether a "reasonable person" of the same background would feel compelled to perform the labor at issue. One often-cited decision of the Second Circuit explains that this standard is a hybrid: in considering whether the forced labor perpetrator intends the victims to believe they cannot leave, the Court must "consider the particular vulnerabilities of a person in the victim's position," though the victim's "acquiescence must be *objectively reasonable under the circumstances*." *United States v. Rivera*, 799 F.3d 180, 186-187 (2d. Cir. 2015) (emphasis added).

The assessment of Appellants' particularly challenging personal circumstances is inherently factual and applying an objective standard of reasonableness to the facts is a question for the jury. *See, e.g.*, *Robinson v. Washington Metropolitan Area Transit Authority*, 774 F.3d 33, 39 (D.C. Cir. 2014) (suggesting that the applicable standard in negligence cases, to be ascertained by the jury, is the traditional reasonable person standard); *Godfrey v. Iverson*, 559 F.3d 569, 572 (D.C. Cir. 2009); *see also Meyers v. Lamer*, 743 F.3d 908, 912 (4th Cir. 2014) ([I]t is [ordinarily] for the jury to determine whether a plaintiff knew of the danger, appreciated the risk, and acted voluntarily"); *Cousin v. Trans Union Corp.*, 246 F.3d 359 (5th Cir. 2001) ("In the majority of cases, reasonableness is a question for the jury"); *Cahlin v. General Motors Acceptance Corp.*, 936 F.2d 1151, 1156 (11th Cir. 1991) (stating that reasonableness "will be a jury question in the overwhelming majority of cases").

In addition, the question of whether Appellants were ultimately "coerced" to work within the scope of section 1589(a)(2) is a question of fact for the jury. *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973) (holding in the context of the Fourth and Fifth Amendment that "the question whether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances"); *United States v. Hodge*, 19 F.3d 51, 52 (D.C. Cir. 1994) (same; quoting

Schneckloth); *see also United States v. Cash*, 733 F.3d 1264, 1279 (10th Cir. 2013) ("whether police intimidated or threatened a suspect or whether the suspect was particularly susceptible to police coercion" are both factual questions).

Likewise, the assessment required by subsection 1589(a)(4) as to whether there was a "scheme, plan, or pattern intended to cause the person to believe that" serious harm would result if he failed to work is an assessment of a co-venturer's subjective intent, a question reserved for the finder of fact. "The jury must find that the employer intended to cause the victim to believe that she would suffer serious harm — from the vantage point of the victim — if she did not continue to work. While the serious harm need not be effectuated at the defendant's hand, the statute "requires that the plan be intended to cause the victim to believe that that harm will befall her." *United States v. Calimlim*, 538 F.3d 706, 711-12 (7th Cir. 2008). A statement is considered a threat if "a reasonable person would believe that the intended audience would receive it as a threat, regardless of whether the statement was intended to be carried out." *Id.* at 713 (citing *United States v. Hart*, 226 F.3d 602, 607 (7th Cir. 2000)); *see also United States v. Dann*, 652 F.3d 1160, 1170 (9th Cir. 2011) ("The linchpin of the serious harm analysis under §1589 is not just that serious harm was threatened but that the employer intended the victim[s] to believe that such harm would befall" them if they left employment); *Muchira v. Al-Rawaf*, 850 F.3d 605, 618 (4th Cir. 2017) (quoting *Dann*, 652 F.3d at 1170).

These factual issues of intent are essential to a determination as to whether Appellants can satisfy the "forced labor" standard. Resolution of this issue must be reserved for the trier of fact and cannot be resolved on a motion to dismiss. The District Court erred in resolving this issue without even considering whether the foundational questions of intent and reasonableness should be left for the jury.

2. The District Court erred as a matter of law in articulating and applying the standard for "forced labor" under section 1589.

In addition to improperly resolving factual questions, the District Court also erred as a matter of law in limiting the forced labor/coercion assessment to the circumstances under which the child miners ***started*** their employment ***and requiring "physical coercion.***" The District Court found the none of the children were forced to work because "each alleges a decision to engage in cobalt mining because of economic necessity." MemOp, JA 120. The District Court continued:

> Section 1589 (a)(2) does not criminalize the hiring of people desperate for money; it criminalizes **physical coercion** in the act of *soliciting* the work itself. Plaintiffs plead no facts suggesting that they **were physically forced** to seek work in the mines.

Id. at 121 (italicized emphasis in original; bold emphasis added).

The District Court's limitation of "forced labor" to how the children started working in the cobalt mines and requiring physical force is clear legal error. Even if the children could somehow be said to "consent" to taking dangerous mining

jobs with the cobalt venture, it is not a requirement that they were "physically forced" to take the jobs. The aspect of force or coercion does not need to extend to the entire period of labor. *See, e.g., United States v. Dann*, 652 F.3d 1160, 1167 (9th Cir. 2011) (A forced labor charge need not apply to the entire duration of a victim's service and can be applied to a portion of that time); *United States v. Djoumessi*, 538 F.3d 547, 552-53 (6th Cir. 2008) ("Even assuming there were moments during the minor female victim's stay when she had an opportunity to escape . . . a rational trier of fact could conclude that the minor female victim's labor was involuntary for at least ***some*** portion of her stay. And that involuntary portion would suffice to sustain the conviction.")(emphasis in original). This concept is so fundamental that the United States Department of State has recognized that "human trafficking can take place even if the victim initially consented to providing labor."[16]

Indeed, most forced labor cases involve workers accepting employment and ***starting*** to work voluntarily only to find that their hopes for a decent job were dashed and they instead faced coercive conditions of work that prevented them from ***leaving*** their employment. *See, e.g.*, *United States v. Dann*, 652 F3d 1160, 1163-66 (9th Cir. 2011)(Peruvian victim was an acquaintance of defendant, who

[16] U.S. Dep't of State, Office to Monitor and Combat Trafficking in Persons, Understanding Human Trafficking, https://www.state.gov/what-is-trafficking-in-persons/ (Apr. 26, 2022).

invited her to move to the U.S. to babysit her children. The victim arrived voluntarily to take the position, but then defendant prevented victim from leaving and took her passport, refused to pay her, and threatened her in various ways, including with deportation); *United States v.Djoumessi*, 538 F.3d 547, 549–50, 553 (6th Cir. 2008) (plaintiff voluntarily agreed to come from Cameroon to the U.S. to care for defendants' children, but when she arrived and learned of the terrible conditions she faced, she was prevented from leaving due to threats of abuse and criminal prosecution for visa fraud. The Court noted "opportunities for escape mean nothing if [the defendant] gave [the victim] reasons to fear leaving the house"); *United States v. Callahan*, 801 F.3d 606, 619-620 (6th Cir. 2015) (Victim moved in with Defendants voluntarily and began to "perform domestic labor and run errands for Defendants by force, the threat of force, and the threat of abuse of legal process."); *United States v. Rivera*, 799 F.3d 180, 183 (2d Cir. 2015) (defendants brought undocumented aliens to the U.S. with the promise of a decent salary and free transportation to work as waitresses in the defendants' bars, but later subjected them to a "reality [that] was very different"; defendants "threatened the victims with violence and deportation if they spoke to the authorities or quit, forced them to drink alcohol until they were intoxicated, required them to strip, and compelled them to be fondled [and] groped by customers, and to have sex with customers"); and *Javier v. Beck*, 2014 U.S. Dist. LEXIS 95594, at *3-6, *17, 2014

WL 3058456 (S.D. N.Y. 2014) (plaintiff voluntarily signed an employment agreement and started working, but the terms were drastically changed and he was prevented from leaving due to threats of a lawsuit and withdrawal of his visa application). This pattern is typical in modern day forced labor and human trafficking cases, and Congress was aware of this when they passed the TVPRA.

Having established that whether Appellants were subjected to "forced labor" applies to the entirety of their employment, not just to how they began their employment, the District Court's requirement that the victim be "physically forced" to work, MemOp, JA 121, is also legal error. The legislative history of section 1589 makes clear that the statute was intended to look broadly at "forced labor" and that "the statute's purpose is to counter the 'increasingly subtle methods of [offenders] who place their victims in modern-day slavery . . . [and] combat severe forms of worker exploitation . . ..'" *Kiwanuka v. Bakilana*, 844 F. Supp. 2d 107, 115 (D.D.C. 2012) (Lamberth, J.) (citing H.R. REP. NO. 106-939, at 101 (2000)). Several courts have agreed that "forced labor" includes non-physical coercion. *See, e.g.*, *Lagayan v. Odeh*, 199 F. Supp. 3d 21, 28 (D.D.C. 2016); *United States* v. *Calimlim*, 538 F.3d 706, 714 (7th Cir. 2008) ("when Congress amended the [TVPRA] it expanded the definition of involuntary servitude to include nonphysical forms of coercion."); *Muchira v. Al-Rawaf*, 850 F.3d 605, 617 (4th Cir. 2017) (citing *Calimlim* with approval).

A key fact in assessing Appellants' vulnerability to coercion is that they were children when they went to work and were directed to crawl into fragile tunnels. The District Court did not consider this in any way, but there is no question that a child is more easily subjected to coercion than an adult. In a leading TVPRA case, the Tenth Circuit stated:

> each of these plaintiffs was a teenager at the time she was purportedly ordered into a sexual relationship . . . "a victim's age or special vulnerability may be relevant in determining whether a particular type or a certain degree of physical or legal coercion is sufficient to hold that person to involuntary servitude." *United States v. Kozminski*, 487 U.S. 931, 948 (1988). In the same way, these plaintiffs' youth and vulnerability, particularly with respect to the parties who were forcing them into this labor, contribute to the plausibility of their allegations under §1589.

Bistline v. Parker, 918 F.3d 849, 873 (10th Cir. 2019). *See also*, *United States v. Djoumessi*, 538 F.3d 547, 552 (6th Cir. 2008) (finding a victim who was "just fourteen years old" when brought to work to be especially vulnerable to threats).

In addition to their youth, objective conditions that made Appellants especially vulnerable to coercion include their physical and mental condition. *See, e.g., United States v. Calimlim*, 538 F.3d 706, 716 (7th Cir. 2008). Other vulnerability factors applicable to Plaintiffs are "squalid or otherwise intolerable living conditions" and "the victim's lack of education." *United States v. Callahan*, 801 F.3d 606, 619 (6th Cir. 2015). *See also Ross v. Jenkins*, 325 F. Supp. 3d 1141, 1164-65 (D. Kan. 2018) (defendants forced plaintiff to work in religious cult

businesses and homes at age 11 and controlled plaintiff's access to food, making her reliant on defendants and fearful of leaving the "safety" of defendants' care).

Here, Appellants allege that their extreme vulnerability as desperate children lacking education and any other options to avoid starvation subjected them both to a "scheme" under section 1589(a)(4) that caused them to fear "serious harm" if they stopped working, and they were individually subjected to threats of "serious harm" under section 1589(a)(2) if they failed to keep working under dangerous conditions.

To establish the section 1589(a)(4) violation, Plaintiffs allege that Glencore, Huayou, and Eurasian Resources, the major mining companies that were in a venture to supply cobalt to Appellees, created a system that relied upon a steady stream of child (and adult) artisanal miners. *See, e.g.*, FAC ¶¶ 2, 5-7, 16. A steady stream was necessary because the lifespan of a child cobalt miner is short; they work until they die or are maimed. *Id.* ¶¶ 2, 6, 10-14, 16. Huayou always admitted that they used child miners, *id.* ¶ 72, but then recently, following Appellants' lawsuit and demands from "customers," Huayou joined the "Fair Cobalt Alliance" to address the "problem" of child labor they had been openly profiting from.[17] Glencore initially lied about using child miners, declaring in a press statement

[17] FAC ¶ 106; Cobalt Mining Pact, available at https://www.ft.com/content/9194c7ee-9726-4462-ae04-e7c72c0818d4

when this lawsuit was filed that they don't use cobalt mined by artisanal miners.[18] Shortly after Tesla bought an interest in Glencore, the company changed course and it too joined the Fair Cobalt Alliance to address the child labor problem that was present after all in its artisanal mining operations.[19] The horrible conditions in the cobalt mines were widely known and obvious in light of frequent deaths and severe injuries to child miners from the communities surrounding the mines. The cobalt co-venturers knew that most families living in the area were desperately poor, that most of the children – like all of the Appellants – had to drop out of school because they could not pay school fees, and that they would do virtually anything if they were paid enough to eat each day. *See id*. ¶¶ 2, 6, 10-14, 16, 30-64. They took advantage of this vulnerability.

The cobalt venture's scheme worked perfectly, for its members, including Appellees. A steady supply of children, including Appellants, arrived to work as planned, and the cobalt venture did not have to incur costs for safety equipment, fair wages, or health and safety measures; the workforce would tolerate virtually any hazard. Once they began working as miners, these extremely vulnerable children, who were highly susceptible to any form of coercion, experienced some

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[18] Dominique Soguel-dit-Picard, *Glencore named in Congo child labour case targeting Big* Tech, SWISSINFO.CH, Dec. 20, 2019, https://www.swissinfo.ch/eng/glencore-congo-cobalt-mining-lawsuit/45446800.
[19] *See supra*, note 13.

relief from starvation when they were paid their paltry wages, after they were cheated by their handlers or the buyers. *See, e.g*, FAC ¶¶ 30-64. The cobalt co-venturers knew that they could pay the child miners bare subsistence wages and expose them to life-threatening conditions, and they would continue working. *Id*. at ¶¶ 2,5-7,10-14,16.

Most significant in establishing "coercion," knowing that the child miners feared starvation and were desperate, agents of the cobalt venture made clear to them that if they did not accept the low pay and extremely dangerous conditions of work, they would be fired, they would be blackballed from working at ***any*** mines in the area, and they would starve. *See, e.g.*, FAC ¶¶ 36, 39, 42, 44, 50, 54, 56, 59, 62, 64. A reasonable inference is that these sorts of threats were systemic in that they were made to gangs of children, and that part of the cobalt venture's scheme was to terrorize the children into working under the threat of starvation and by threatening to further limit any economic opportunity they might have. *See id*. A reasonable jury could find that Appellants were subjected to a scheme to keep them working in violation of section 1589(a)(4), that they–as extremely vulnerable children–subjectively believed the threats of serious harm, and the threat of serious harm would cause "***a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm***." 18 U.S.C. § 1589(c)(2) (emphasis added).

Likewise, when the various agents of the cobalt venture made these threats to the vulnerable children, a jury could find under section 1589(a)(4) that they possessed the subjective intent of coercing the children to keep working. *See United States v. Calimlim*, 538 F.3d 706, 711-12 (7th Cir. 2008). This scheme directed at the Appellants was sufficient to coerce these starving and extremely vulnerable children to keep working under the horrific conditions that ultimately killed or maimed them.

This specific threat of starvation was a much more extreme example of "coercion" than other cases finding forced labor when employers put workers in debt through fee and cost schemes knowing the workers would continue working to pay down their debts, particularly when they had no other options (a common pattern found in modern day forced labor and human trafficking cases known as debt bondage). *See, e.g.*, *United States v. Dann*, 652 F3d 1160, 1173 (9th Cir. 2011) (affirming a forced labor conviction in a case involving a housekeeper made to believe she would suffer serious financial harm if she stopped working); *United States v. Farrell*, 563 F.3d 364, 367-69 (8th Cir. 2009) (finding employers created an atmosphere of coercion by reducing employees' wages upon arrival in the United States, charging them for various fees, and requiring them to work lengthy shifts to make debt payments); *see also United States ex rel. Hawkins v. Mantech Int'l Corp.*, 2020 U.S. Dist. LEXIS 13733, at *48, *53 (D.D.C. Jan. 28, 2020)

(finding coercion properly alleged when plaintiffs feared that if they had left their employment, they would have faced serious harm in the form of high financial penalties or arrest by local authorities).

Having no money or means of support could make individuals susceptible to threats by employers even if "such a threat made to an adult citizen of normal intelligence" might be "too implausible to produce involuntary servitude." *United States v. Djoumessi*, 538 F.3d 547, 552 (6th Cir. 2008); *see also Nunag-Tanedo v. East Baton Rouge Parish School Bd*, 790 F. Supp. 2d 1134, 1146 (C.D. Ca. 2011) (finding defendants coerced plaintiffs by forcing them to take on crushing debt that plaintiffs could not repay absent continued employment by defendants); *Barrientos v. CoreCivic, Inc.*, 951 F.3d 1269, 1274 (11th Cir. 2020) (finding the existence of a scheme when a detention center deprived detainees of basic necessities, made them join a "voluntary" work program to alleviate these conditions, and then threatened or harmed them if they refused to work, thus providing cheap labor to increase profits). Adding to the coercion, many of the Appellants were also financially supporting their families, so any threat to lose their meager wages or their ability to work also threatened their families. *See, e.g*, *United States v. Calimlim* 538 F.3d 706, 712, 714 (7th Cir. 2008) (finding a threat of serious harm when defendants threatened to stop paying victim's poor family members).

The Appellants also directly received "threats of serious harm" that, given their particular circumstances as uneducated, impoverished, and desperate children, coerced them to continue working in their dangerous mining jobs for virtually no pay under hazardous conditions in violation of section 1589(a)(2). John Doe 7 was "recruited" to work in a Glencore mine by armed Presidential Guards who supervised the work of a gang of boys including John Doe 7. FAC ¶¶ 45-46. The Guards kept most of the money the boys earned and gave them a small portion that barely covered subsistence costs. When John Doe 7 attempted to negotiate with the guards to improve his terms and conditions of employment, one of the Guards shot and seriously injured him. *Id*. ¶ 46. It would be hard to imagine a more coercive way to keep the child miners working than to be ordered to work for specific terms by the armed, brutal Presidential Guards.

John Doe 3 was recruited by a labor broker to work in a cobalt mine operated by Huayou. *Id*. ¶ 37. The mine he worked was also guarded by the Presidential Guard who had a "reputation for brutality and operated in the DRC with complete impunity." *Id*. The labor broker who recruited John Doe 3 was "an influential person," and the Guards appeared to work at his direction. John Doe 3 understood from what was told to him that he had to work for the broker or he would not be able to earn any money to eat. *Id*. James Doe 1 was killed when a

mine collapsed after the other child miners scattered at the arrival of soldiers who must have been overseeing the miners. *Id.* ¶ 31.

At least seven of the Appellants or their decedents worked for "Ismail," a mine boss who had control over several Glencore cobalt mining areas. John Doe 4 (*id.* ¶ 39), John Doe 6 (*id.* ¶ 42), and John Doe 9 (*id.* ¶ 50) were severely injured following the orders of Ismail to work under dangerous conditions, and James Doe 2 ((*id.* ¶ 36), Joshua Doe 2 (*id.* ¶ 44), James Doe 3 (*id.* ¶ 59) were killed in mine collapses while performing extremely dangerous work while following Ismail's orders. The boys were "terrified" of Ismail and did whatever he told them, however dangerous. *See, e.g.*, *id.* ¶¶ 44, 50, 59. Ismail cheated the boys and also deducted money for food and miscellaneous costs from what little he did pay them so that sometimes they were paid nothing. *Id.* ¶ 42. Ismail threatened the boys that if they did not work properly for him, he would blackball them so they could never get another job in the mining sector and they would starve. *See, e.g.*, *id.* ¶¶ 44,59. A jury could easily find that these vulnerable children reasonably believed they had to continue working for Ismail based on his threats and treatment of them, and a reasonable person experiencing their particular circumstances would have continued working.

The other child miners experienced various similar sources of coercion to keep them working in the extremely dangerous cobalt mines. A man connected to

Glencore, "John," recruited John Doe 11 and directed his work. *Id.* ¶ 56. John Doe 10 was recruited to work by "Jean-Pi," who directed him where to work and dictated the conditions of work. John Doe 10 feared that if he did not follow Jean-Pi's directions, he would be fired and would not be able to work to help feed his family. *Id.* ¶ 54. John Doe 13 worked for Ahmed and Aza who purchased his cobalt for the venture. *Id.* ¶ 54. John Doe 1 worked as a human mule hauling cobalt at the direction of three adult miners. *Id.* ¶ 33. A reasonable jury could find that these boys likewise were coerced to keep working by the adults who directed their work, as well as by the daily difficult circumstances they endured.

A reasonable inference is that Appellants and their decedents were working under adult male figures whom they feared and obeyed blindly while ultimately working under such dangerous conditions that they were killed or maimed. A jury must determine whether these child miners reasonably believed they had no choice but to work as directed and that a reasonable person in their circumstances would have reached that conclusion as well.

E. The District Court Erred in Concluding that Appellants Failed to State a Claim for Trafficking.

The District Court virtually ignores Appellants' trafficking claim. *See* MemOp, JA 123. As an initial matter, the District Court errs as a matter of law in asserting without legal support that the section 1590 trafficking claim fails if there

is not also a forced labor claim. *Id*. Section 1590(a) of the TVPRA states there is a violation if a person is "knowingly recruit[ing]" for "forced labor." While Appellants demonstrated in the preceding section they ***do*** have a forced labor claim, a trafficking claim can proceed if there is recruitment with intent to violate section 1589 even if the victim ultimately is not subjected to forced labor. *See, e.g.*, *Ricchio v. McClean*, 853 F.3d 553, 558 (1st Cir. 2017).

In addition, the District Court erred in asserting that Appellants "threadbare" allegations on trafficking consisted of a single conclusory paragraph 121. MemOp, JA 123. This is incorrect. Appellants allege in detail that they were trafficked by the cobalt venture when they were recruited to work in the cobalt mines. FAC ¶¶ 120-123. Based on specific facts available at this time, the following 11 Appellants alleged that they were recruited for forced labor by someone within the cobalt venture: James Doe 2 (¶ 36), John Doe 3 (¶ 37), John Doe 4 (¶ 39), John Doe 6 (¶ 42), Joshua Doe 2 (¶ 44), John Doe 7 (¶ 46), John Doe 9 (¶ 50), John Doe 10 (¶ 54), John Doe 11 (¶ 56), James Doe 3 (¶ 59), and James Doe 12 (¶ 62).

Based on these specific allegations, which the District Court does not discuss, at least these 11 Appellants have stated a claim for trafficking. The District Court's finding as a matter of law that none of the Appellants stated a claim for trafficking should be reversed.

F. The District Court Erred in Dismissing Appellants' Claims for Unjust Enrichment, Negligent Supervision, and Intentional Infliction of Emotional Distress Based on the Court's Erroneous Finding that Appellees Were Not in a "Venture" With Their Cobalt Suppliers.

Appellants thoroughly alleged the elements of their common law claims for unjust enrichment (FAC ¶¶ 124-26; Pls Opp MTD, ECF No. 38, at 37-39), negligent supervision (FAC ¶¶ 127-32; Pls Opp MTD at 39-41), and intentional infliction of emotional distress (FAC ¶¶ 133-37; Pls Opp MTD at 41-42). The District Court dismissed these claims solely based on the Court's erroneous conclusion that Appellees were not in a "venture" with their cobalt suppliers and therefore had no legal connection to or responsibility for Appellants' injuries incurred while mining cobalt. MemOp, JA 128-30.

The District Court dismissed the unjust enrichment claim by finding "the Amended Complaint fails to adequately allege that the Defendants had *any* relationship with Plaintiffs." MemOp, JA 128. The Court likewise dismissed the negligent supervision claim by finding "no Defendant employed any Plaintiff, nor any of the people who oversaw them." *Id*. at 129. The Court found the emotional distress claim failed because "Plaintiffs have failed to plead any nonconclusory facts showing that [Appellees were in a venture]." *Id*. at 129-30. The dismissal of these common law claims based on the District Court's erroneous finding that Appellees were not in a venture must be reversed if this Court agrees that Appellees were in a "venture" with their cobalt suppliers, as Appellants established

above, *supra* VII A. Being in a venture would give Appellees sufficient connection to the cobalt mines that supply them to be jointly and severally liable for any torts the suppliers committed that injured Appellants. Co-venturers facing TVPRA liability are jointly and severally liable. *See, e.g.*, *United States v. Williams*, 319 F. Supp. 3d 812, 817-18 (E.D. Va. 2018), *aff'd*, 783 F. App'x 269 (4th Cir. 2019). This is merely applying hornbook joint venture law that co-venturers are jointly and severally liable for the acts of each other. *See, e.g.*, *Faison v. Nationwide Mortgage Corp.*, 839 F.2d 680, 686 (D.C. Cir. 1987).

VIII. CONCLUSION

The District Court's rulings effectively repeal the TVPRA. Appellants respectively request that this Court consider the TVPRA's text, legislative history, remedial purpose, and the great weight of federal authority and reverse the unprecedented decision. This will restore the TVPRA to its clear place as an essential remedy for Appellants and other victims of trafficking and forced labor.

Respectfully submitted on this 8th day of August 2022,

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ADDENDUM

ADDENDUM

Full Text of Relevant Sections of the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. § 1589, 1590, 1595, and 1596.

§ 1589 - Forced labor

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—

(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;

(2) by means of serious harm or threats of serious harm to that person or another person;

(3) by means of the abuse or threatened abuse of law or legal process; or

(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).

(b) Whoever 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).

(c) In this section: (1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the

same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

(d) Whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnaping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

§ 1590 - Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor

(a) Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

(b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a).

§ 1595 - Civil remedy

(a) 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.

(b) (1) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.

(2) In this subsection, a "criminal action" includes investigation and prosecution and is pending until final adjudication in the trial court.

(c) No action may be maintained under this section unless it is commenced not later than 10 years after the cause of action arose.

§ 1596 - Additional jurisdiction in certain trafficking offenses

(a) In General.— 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 1581, 1583, 1584, 1589, 1590, or 1591 if—

(1) an alleged offender is a national of the United States or an alien lawfully admitted for permanent residence (as those terms are defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)); or

(2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender.

CERTIFICATE OF COMPLIANCE FOR APPELLANTS' OPENING BRIEF

Pursuant to Federal Rule of Appellate Procedure 32 (a)(7)(B)(i), I certify that Plaintiffs-Appellants' Opening Brief complies with applicable page and word limits in that it has a text typeface of 14 points and contains 12,976 words, less than the 13,000 words permitted.

Dated: August 8, 2022

Respectfully submitted:

/s/ Terrence Collingsworth

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CERTIFICATE OF SERVICE

I hereby certify that, on August 7, 2022, I electronically filed the foregoing with the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system, which will send a notice of filing to all registered users, including counsel for all parties.

Date: August 7, 2022

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