

Ensuring Full Restitution for Trafficking Victims: An Overview of Mandatory Restitution Awards Under the Trafficking Victims Protection Act¹

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“Human Trafficking”—commonly referred to as a modern-day form of slavery²—concerns the “recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion.”³ Research indicates that more than 20 million people in the world are being trafficked at any given time.⁴

Congress enacted the Trafficking Victims Protection Act of 2000 (TVPA) to provide a comprehensive set of laws to combat human trafficking on the federal level.⁵ The TVPA has three objectives: (1) prevention of human trafficking; (2) prosecution of traffickers; and (3) protection of the victims.⁶ The TVPA added statutes to the Federal Code that criminalize forced labor;⁷ trafficking with respect to peonage, slavery, involuntary servitude or forced labor;⁸ commercial sex trafficking;⁹ and other similarly exploitative practices.¹⁰

The TVPA also created one of the most expansive mandatory restitution schemes under federal law[,]¹¹ an acknowledgment that:

[Full restitution] is critical to restoring [the trafficking] victim[s]’ dignity, helping them gain power back from their exploiters who took advantage of their hope for a better life. [It] . . . attack[s] the greed of the trafficker and the idea of a human being as a commodity. It is a way to ensure that victims receive access to justice.¹²

I. The Components of Full Restitution for Trafficking Victims

The TVPA’s requirement that traffickers be held financially accountable to their victims¹³ recognizes the need to impress upon offenders the seriousness and cost of human trafficking as well as the importance of helping the victims recover and survive in the aftermath of the crimes.¹⁴ Thus 18 U.S.C. § 1593 requires restitution orders to “direct the defendant to pay the victim . . . *the full amount of the victim’s losses*,”¹⁵ which is generally limited to the victim’s actual past or future losses.¹⁶

Notably, Section 1593 expressly defines the “full amount of the victim’s losses” to *also include* either the offender’s ill-gotten gains or the value of the victim’s labor as guaranteed under the Fair Labor Standards Act (FLSA), *whichever is greater*.¹⁷ Section 1593 therefore provides the courts, government, and victims

with a powerful tool that can truly achieve both the compensatory and correctional aims of criminal restitution—making the victim financially whole¹⁸ and rendering the crime “worthless to the criminal” by “forcing the criminal to yield up to his victim the fruits of the crime[.]”¹⁹ The requirement that a trafficking victim receive in restitution not only their actual losses, but also the greater of the trafficker’s ill-gotten gains or the value of the victim’s labor, can be particularly critical in cases where the entirety of the actual losses incurred by the victim may be difficult or impossible to calculate.²⁰

II. Establishing Full Restitution Under the TVPA

Section 1593 provides, in relevant part, that:

[T]he term “full amount of the victim’s losses” has the same meaning as provided in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the [FLSA] (28 U.S.C. 201 et seq.).²¹

Mandatory restitution under the TVPA should be determined by this formula:

TVPA = Section 2259(b)(3) Value + The greater of Defendant’s Ill-Gotten Gains Value or the FLSA Value of the Victim’s Labor

This formula captures a simple four-step process to determine the correct amount of restitution required to be ordered for

trafficking victims:

- **Step 1:** Determine the value of the full amount of the victim’s losses under Section 2259(b)(3);²²
- **Step 2:** Determine the value of defendant’s ill-gotten gains;²³
- **Step 3:** Determine the value of the victim’s labor under the FLSA;²⁴
- **Step 4:** Take the greater value of Steps 2 and 3, and add it to the value from Step 1.²⁵

*Step 1: Determine the Section 2259(b)(3) Value*²⁶

Under the TVPA, courts must award restitution in an amount that includes the “full amount of the victim’s losses” as that term is defined in 18 U.S.C. § 2259(b)(3).²⁷ Section 2259(b)(3) defines losses broadly, requiring that victims be compensated for a broad range of past, current and future losses:²⁸

[T]he term “full amount of the victim’s losses” includes any costs incurred by the victim for--

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys’ fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.²⁹

Pursuant to Section 2259(b)(3), courts have ordered defendants to pay restitution for losses that include, *inter alia*: medical expenses for bodily injuries, trauma counseling, medication, and testing for sexually transmitted diseases;³⁰ educational expenses (including expenses associated with tutoring, alternative education, private school tuition, and school supplies);³¹ vocational retraining

expenses;³² transportation expenses;³³ lost income;³⁴ attorney's fees;³⁵ and other losses.³⁶

The amount of losses for restitution purposes need not be established with “mathematical precision;”³⁷ courts “need only make a ‘reasonable estimate’ of the victim’s losses.”³⁸ Also, the fact that a third party may have already compensated the victim for certain losses (by, for example, providing medical and counseling services) does not reduce defendant’s obligation to pay for the losses caused by his or her criminal conduct.³⁹

Step 2: Calculating the Value of Defendant’s Ill-Gotten Gains

Under the TVPA, courts must also award restitution to the victim in the amount of the greater of defendants’ ill-gotten gains—*i.e.*, “the gross income or value to the defendant of the victim’s services or labor”⁴⁰—or the value of the victim’s labor under the FLSA. Including a defendant’s ill-gotten gains as part of restitution most commonly occurs in cases involving commercial sex trafficking where the value of the victims’ labor may be difficult to determine under the FLSA.⁴¹ This value is often calculated as follows:

Multiply the gross income that the victims earned for defendant’s benefit on a daily/weekly basis by the number of days/weeks the victims were exploited by defendant.⁴²

As with the Section 2259(b)(3) values, the figures used in these calculations need not be precise; the awards may be based on average or estimated amounts.⁴³

Step 3: Calculating the Value of the Victim’s Labor Under the FLSA

As noted above, under the TVPA courts must examine the “value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. [§§] 201 et seq.)” and compare it to defendant’s ill-gotten gains value.⁴⁴ Courts construe the FLSA “liberally to apply to the furthest reaches consistent with congressional direction’ to accomplish the FLSA’s purposes,”⁴⁵ which include the protection of workers from substandard

conditions and the “fair-minded” employer from unfair competition.⁴⁶

The FLSA prohibits certain child labor, guarantees a minimum wage, and requires overtime pay for certain positions.⁴⁷ Under the FLSA, employers who violate its provisions are liable to the employee not only for the amount of back wages owed but also for liquidated damages in an amount that equals *double* the amount of back wages owed.⁴⁸

Thus, the value of the victim’s labor under the FLSA is calculated as follows:

- (1) Multiply the number of hours worked by the applicable minimum (or prevailing) wage rate in effect for the relevant period;⁴⁹
- (2) Add overtime pay, if applicable;⁵⁰
- (3) Subtract amounts actually paid to the victim;⁵¹ and
- (4) Add liquidated damages in an amount equal to double the amount of back wages owed.⁵²

As with other restitution calculations, the figures used in determining the value of the victim’s labor under the FLSA may be based on reasonable estimates.⁵³

III. Conclusion

The TVPA created a comprehensive set of laws to strengthen efforts to combat human trafficking and protect the victims. Restitution under 18 U.S.C. § 1593 furthers these objectives as well as the traditional penological purposes of criminal restitution. Section 1593 is designed to ensure that trafficking victims are made financially whole *and* that the crimes are not profitable for the offenders by requiring that all restitution orders include two mandatory components: (1) actual past or future losses caused by the criminal conduct; and (2) the greater of either defendant’s ill-gotten gains or the value of the victims’ labor. Complying with the mandates of Section 1593 is a critical part of ensuring justice for trafficking victims.

*NCVLI is actively working to ensure the consistent

enforcement of trafficking victims' rights, including as part of its work under the Legal Assistance for Crime Victims: An OVC Capacity Building Initiative. Through that Initiative, OVC TTAC and NCVLI are working collaboratively to expand the availability of pro bono and no-cost legal assistance for victims of crime nationally and to provide resources designed to give attorneys the tools needed to increase their knowledge base about crime victims' rights and related issues. For additional information about the Initiative, please visit NCVLI's website or <https://www.ovcttac.gov/>. Research originally conducted under that Initiative informed the drafting of this Bulletin; however, the opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily represent the official position or policies of the Office for Victims of Crime or OVC TTAC.

¹ For a companion Bulletin, which includes case studies demonstrating the hurdles trafficking victims face in being accorded full restitution as required by law, see *Ensuring Full Restitution for Trafficking Victims: Case Studies Compel a Call to Action*, NCVLI Victim Law Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), Nov. 2013.

² U.S. Dep't of State, *The 2013 Trafficking in Persons Rep.* 7 (June 2013) [hereinafter 2013 TIP Rep.], available at <http://www.state.gov/documents/organization/210737.pdf>; Int'l Labour Org., *ILO 2012 Global Estimate of Forced Labour Executive Summary* 1 [hereinafter ILO Rep.], available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_181953.pdf.

³ 2013 TIP Rep., *supra* note 2, at 29; accord United Nations Convention against Transnational Organized Crime, *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, art. 3(a), available at <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (defining "Trafficking in Persons" as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs").

⁴ 2013 TIP Rep., *supra* note 2, at 7; ILO Rep., *supra* note 2, at 1 (estimating that there are currently 20.9 million victims of forced labor and sexual servitude

around the world).

⁵ The TVPA has been reauthorized and amended through the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 2005, and 2008. See Pub. L. N. 108-193, 117 Stat. 2875 (2003); Pub. L. No. 109-164, 119 Stat. 3558 (2005); Pub. L. No. 110-457, 122 Stat. 5044 (2008). All references to the TVPA shall refer to the TVPA as amended by the TVPRA of 2003, 2005, and 2008.

⁶ See Pub. L. No. 106-386, § 102(a), 114 Stat. 1488 (2000), codified as amended in 22 U.S.C. § 7101(a) ("The purposes of [the TVPA] are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominately women and children, to ensure just and effective punishment of traffickers, and to protect their victims."); H.R. Rep. No. 108-264(I), at 8 (2003) (reauthorizing appropriations for the TVPA and amending it to "enhanc[e] provisions on prevention of trafficking, protection of victims of trafficking, and prosecution of traffickers").

⁷ 18 U.S.C. § 1589.

⁸ 18 U.S.C. § 1590.

⁹ 18 U.S.C. § 1591.

¹⁰ See, e.g., 18 U.S.C. § 1592 (unlawful conduct with regard to documents in furtherance of peonage, slavery, involuntary servitude or forced labor trafficking).

¹¹ The TVPA also created a civil cause of action, allowing trafficking victims to recover compensatory and punitive damages against the traffickers and anyone else who benefited from the traffickers' actions. See 18 U.S.C. § 1595(a) ("An individual who is a victim of a violation 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 . . . and may recover damages and reasonable attorneys fees"); see also *Ditullio v. Boehm*, 662 F.3d 1091, 1096 (9th Cir. 2011) (concluding that punitive damages were available under the TVPA because Section 1595 creates a claim that "sounds in tort"); *Francisco v. Susano*, No. 12-1376, 2013 WL 2302691, at *4-6 (10th Cir. May 28, 2013) (concluding that Section 1595 allows trafficking victims to recover compensatory and punitive damages).

A full discussion of civil recovery under the TVPA and a comparison of civil recovery and criminal restitution are outside the scope of this Bulletin. As a matter of sound practice, attorneys working with trafficking victims should always consider requesting the maximum amount of restitution that the victims are entitled to receive under the TVPA, even if the victims are also

contemplating filing a civil suit. Among other benefits of criminal restitution, mandatory restitution payments under 18 U.S.C. § 1593 “are excluded from gross income for federal income tax purposes.” IRS Notice 2012-12, at 2, *available at* <http://www.irs.gov/pub/irs-drop/n-12-12.pdf>.

¹² *United States v. Sabhnani*, 599 F.3d 215, 259-60 (2d Cir. 2010).

¹³ Section 1593 defines “victim” as “the *individual harmed as a result of a crime under* [Chapter 77], including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim’s estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.” 18 U.S.C. § 1583(c) (emphasis added). Chapter 77 crimes include, *inter alia*: peonage; enticement into slavery; sale into involuntary servitude; trafficking with respect to peonage, slavery, involuntary servitude; commercial sex trafficking; and unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor. *See* 18 U.S.C. §§ 1581-92. Identifying trafficking victims remains a challenging and critical step in combating human trafficking. *See* 2013 TIP Rep., *supra* note 2, at 7-26 (describing “victim identification as a top priority in the global movement to combat trafficking in persons”).

¹⁴ *See generally Ensuring Full Restitution for Crime Victims: Polyvictims as a Case Study in Overcoming Causation Challenges*, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), July 2013, *available at* <http://law.lclark.edu/live/files/15101-ensuring-full-restitution-for-crime-victims>; *see also* U.S. Dep’t of State, The 2009 Trafficking in Persons Rep. 18 [hereinafter 2009 TIP Rep.], *available at* <http://www.state.gov/documents/organization/123357.pdf> (describing victim restitution as “the key to justice” as it allows the victims to cover expenses needed for survival and avoid re-victimization, restores a victim’s dignity, and “attack[s] the greed of the trafficker and the idea of a human being as a commodity”).

¹⁵ 18 U.S.C. § 1593(b)(1) (emphasis added). Other federal mandatory restitution statutes have the same requirement. *Compare id. with* 18 U.S.C. § 2248(b)(1) (mandatory restitution for sexual abuse crimes) (“The order of restitution under this section shall direct the defendant to pay to the victim . . . the full amount of the victim’s losses as determined by the court. . . .”), and 18 U.S.C. § 2259(b)(1) (mandatory restitution for sexual exploitation of children) (“The order of restitution under this section shall direct the defendant to pay the victim . . .

. . . the full amount of the victim’s losses as determined by the court. . . .”), and 18 U.S.C. § 2327(b)(1) (mandatory restitution for telemarketing fraud) (“The order of restitution under this section shall direct the defendant to pay to the victim . . . the full amount of the victim’s losses as determined by the court. . . .”).

¹⁶ *See, e.g., In re Amy Unknown*, 701 F.3d 749, 772 (5th Cir. 2012), *cert. granted in part on other grounds*, 133 S. Ct. 2886 (2013) (addressing restitution under 18 U.S.C. § 2259 and observing that restitution is generally tied to the victim’s actual losses rather than defendant’s gains); *United States v. Frazier*, 651 F.3d 899, 903-04 (8th Cir. 2011) (emphasis in original) (explaining that “[t]he amount of loss suffered by the victims of an offense, and in turn the amount of restitution a district court can order [under the Mandatory Victim Restitution Act (MVRA), 18 U.S.C. § 3663A], ‘must be based on the amount of loss *actually* caused by the defendant’s offense.”); *United States v. Bussell*, 504 F.3d 956, 964-65 (9th Cir. 2007) (explaining that restitution under the Victim and Witness Protection Act (VWPA), 18 U.S.C. § 3663, is limited to the victim’s actual losses).

¹⁷ 18 U.S.C. § 1593(b)(3). Section 1593 is the only federal mandatory restitution statute that includes this component in the restitution calculation.

¹⁸ *See* Nat’l Crime Victim Law Inst., *supra* note 14, at 1-2 & n. 6.

¹⁹ *United States v. Fountain*, 768 F.2d 790, 800, *opinion supplemented on denial of reh’g*, 777 F.2d 345 (7th Cir. 1985) (Posner, J.) (“As the word implies and history confirms, the original conception [of restitution] is that of forcing the criminal to yield up to his victim the fruits of the crime. The crime is thereby made worthless to the criminal. This form of criminal restitution is sanctioned not only by history but also by its close relationship to the retributive and deterrent purposes of criminal punishment.”).

²⁰ The fact that mandatory restitution under Section 1593 applies in a given case does not foreclose a court from the application of discretionary restitution under 18 U.S.C. § 3663 (VWPA) or mandatory restitution under 18 U.S.C. § 3663A (MVRA) where necessary to ensure “full” restitution for trafficking victims. *See United States v. Calimlim*, No. 04-CR-248, 2007 WL 527481 (E.D. Wis. Feb. 14, 2007) (declining to decide whether the scope of restitution under Section 1593 covers the time period charged in both the substantive forced labor offense and the conspiracy to violate the substantive offense; and concluding that both discretionary restitution under Section 3663 and Section 1593 applied to cover the entire period of time encompassed by the two counts); *cf. United States v. Palmer*, 653 F.3d 1060, 1066 (8th Cir. 2011) (explaining that with respect to

the sex trafficking of a child-victim, “[r]estitution is mandatory under the [TVPA], 18 U.S.C. § 1593, the Mandatory Victims Restitution Act of 1996, as amended (MVRA), 18 U.S.C. §§ 3663A-3664, and the parties’ plea agreements”).

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

²² See *id.* (providing that “the term ‘full amount of the victim’s losses’ has the same meaning as provided in section 2259(b)(3)”).

²³ See *id.* (emphasis added) (providing that “the term ‘full amount of the victim’s losses’ . . . shall in addition include the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the [FLSA]”).

²⁴ See *id.* (emphasis added) (providing that “the term ‘full amount of the victim’s losses’ . . . shall in addition include the greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the [FLSA]”).

²⁵ Once the full restitution amount has been calculated, the restitution order “shall be issued and enforced in accordance with section 3664 in the same manner as an order under § 3663A.” 18 U.S.C. § 1593(b)(2).

²⁶ Only losses caused by a defendant’s criminal conduct are recoverable in restitution. See Nat’l Crime Victim Law Inst., *supra* note 14, at 2. The United States Supreme Court recently granted review to address the issue of whether “proximate cause” is a legal requirement for all of the category of losses in Section 2259(b)(3). See *Paroline v. United States*, 133 S. Ct. 2886 (2013) (granting petition for writ of certiorari to address “[w]hat, if any, casual relationship or nexus between the defendant’s conduct and the victim’s harm or damages must the government or the victim establish in order to recover restitution under 18 U.S.C. § 2259”). For more information about the restitution causation analysis under Section 2259 in federal cases involving child-abuse images, see *Securing Restitution for Victims of the Viewing, Possession, and Distribution of Child Abuse Images*, NCVLI Violence Against Women Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Sept. 2011, available at <https://law.lclark.edu/live/files/11773-securing-restitution-for-victims-of-the-viewing>.

²⁷ 18 U.S.C. § 1593(b)(3) (“As used in this subsection, the term ‘full amount of the victim’s losses’ has the same meaning as provided in section 2259(b)(3)”).

²⁸ See, e.g., *United States v. Doe*, 488 F.3d 1154, 1159 (9th Cir. 2007) (quoting *United States v. Laney*, 189 F.3d 954, 966 (9th Cir. 1999)) (recognizing that Section 2259

is “phrased in generous terms[] in order to compensate the victims . . . for the care required to address the long term effects of their abuse”); *United States v. Pearson*, 570 F.3d 480, 486 (2d Cir. 2009) (per curiam) (holding that “§ 2259 authorizes compensation for future counseling expenses”); *United States v. Danser*, 270 F.3d 451, 455 (7th Cir. 2001) (same); *United States v. Julian*, 242 F.3d 1245, 1247 (10th Cir. 2001) (same).

²⁹ 18 U.S.C. § 2259(b)(3).

³⁰ See, e.g., *Doe*, 488 F.3d at 1158, 1161 (affirming award of costs associated with future psychological and medical expenses and to test for sexually transmitted diseases); *In re Sealed Case*, 702 F.3d 59, 62, 66-67 (D.C. Cir. 2012) (affirming award of costs associated with future mental health treatment); *United States v. Baker*, 672 F. Supp. 2d 771, 777 (E.D. Tex. 2009) (awarding costs associated with past and future mental health treatment).

³¹ See, e.g., *Doe*, 488 F.3d at 1161-62 (affirming award of costs associated with an alternative education program); *United States v. Esler*, --- Fed. App’x. ---, No. 11-30479, 2013 WL 3185779, at *3 (5th Cir. June 24, 2013) (affirming award of costs associated with private school tuition).

³² See, e.g., *Doe*, 488 F.3d at 1161.

³³ See, e.g., *United States v. Searle*, 65 F. App’x 343, 345-46 (2d Cir. 2003) (affirming award of half the cost of a Chevrolet Blazer to enable the child-victims’ guardians to transport the children to and from the guardian’s mountain home); *United States v. Estep*, 378 F. Supp. 2d 763, 772 (E.D. Ky. 2005) (awarding costs associated with transporting the child victim to a new school).

³⁴ See, e.g., *United States v. Evers*, 669 F.3d 645, 659 (6th Cir. 2012) (affirming award of the child-victim’s guardian’s lost income that was “directly attributable to his attendance at various stages of the investigation and trial”).

³⁵ See, e.g., *Baker*, 672 F. Supp. 2d at 780 (awarding reasonable attorney’s fees for services performed in the criminal case); *Estep*, 378 F. Supp. 2d at 771 (awarding divorce attorney’s fees to defendant’s spouse and mother of one of defendant’s victims).

³⁶ See, e.g., *Doe*, 488 F.3d at 1162 (affirming award of private foundation case management fee for social worker to work with the child-victims in their home country); *Searle*, at 345-46 (affirming award of home remodeling expenses incurred to enable the child-victims’ guardians to provide a bedroom for each child-victim); *Estep*, 378 F. Supp. at 772 (awarding costs associated with temporary housing); cf. *United States v. Malpeso*, 126 F.3d 92, 94-95 (2d Cir. 1997) (affirming

award of relocation expenses under the VWPA where the victim and his family had to move as a result of defendant's credible threats of harm).

³⁷ *Doe*, 488 F.3d at 1160; *see also United States v. Burgess*, 684 F.3d 445, 460 (4th Cir. 2012) (“[T]he district court is not required to justify any award with absolute precision . . .”).

³⁸ *United States v. Lundquist*, --- F.3d ---, No. 11-5379-CR, 2013 WL 4779644, at *12 (2d Cir. Sept. 9, 2013); *accord Doe*, 488 F.3d at 1160 (“We will uphold an award of restitution under Section 2259 if the district court is able to estimate, based upon facts in the record, the amount of [the] victim’s loss with some reasonable certainty.”).

³⁹ *See* 18 U.S.C. § 3664(f)(1)(B) (“In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.”). The third party that provided such compensation is entitled to reimbursement under the restitution order. *See* 18 U.S.C. § 3664(j)(1) (“If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.”).

⁴⁰ 18 U.S.C. § 1593(b)(3); *see, e.g., In re Sealed Case*, 702 F.3d at 62 n.2, 66 (describing this figure as representing the trafficking defendant’s “ill-gotten gains”); *United States v. Webster*, No. 08-30311, 2011 WL 8478276, at *3 (9th Cir. Nov. 28, 2011) (same).

⁴¹ *See, e.g., U.S. v. Robinson*, 508 Fed. Appx. 867, 871 (11th Cir. 2013) (discussing a restitution award for a child sex trafficking victim); *In re Sealed Case*, 702 F.3d at 62, 66 (same); *Webster*, 2011 WL 8478276, at *3 (discussing the restitution awards for adult and child sex trafficking victims).

⁴² *See, e.g., Webster*, 2011 WL 8478276, at *3.

⁴³ *See, e.g., id.* (affirming the trial court’s calculation of defendant’s ill-gotten earnings value notwithstanding “some uncertainty” concerning the exact amount of money each victim made per “date”).

⁴⁴ 18 U.S.C. § 1593(b)(3).

⁴⁵ *Velez v. Sanchez*, 693 F.3d 308, 325 (2d Cir. 2012) (internal citation and quotation omitted) (concluding that genuine issues of material facts exist as to whether defendant was a domestic employee under the FLSA to preclude summary judgment for defendant).

⁴⁶ *Id.*

⁴⁷ *Id.* (citing 29 U.S.C. §§ 203, 206, 207).

⁴⁸ *See* 29 U.S.C. § 216(b) (emphasis added) (“Any employer who violates the provisions of section 206 [regarding minimum wage] or section 207 [regarding overtime] shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, *and in an additional equal amount as liquidated damages.*”). The FLSA’s liquidated damages provision “counts as part of the ‘value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the [FLSA]’” under 18 U.S.C. § 1593. *United States v. Sabhnani*, 599 F.3d 215, 259-605-57 (2d Cir. 2010) (explaining that the liquidated damages represent “compensation to the employee occasioned by the delay in receiving wages due caused by the employer’s violation of the FLSA” and affirming the trial court’s inclusion of the FLSA liquidated damages amount in the restitution award to the human trafficking victim).

⁴⁹ In certain cases, the FLSA value may be based on a higher “prevailing wage rate” as opposed to the minimum wage rate. *See, e.g., Calimlim*, 2007 WL 527481, at *1 (agreeing with the government’s argument that the trafficking victim was “entitled to the prevailing wage rate under the Foreign Labor Certification Program” for purposes of calculating the FLSA value to determine the amount of the restitution award); *see also Gov’s Reply to Defs’ Sentencing Mem. in Calimlin*, 2006 WL 4729555, at II.B. (filed Dec. 11, 2006) (arguing that the victim “is entitled to the prevailing wage as restitution because that is what [the Department of Labor] would have required had the defendants properly certified her before her arrival”).

⁵⁰ *But see Sabhnani*, 599 F.3d at 255-57 (concluding that the FLSA’s overtime provisions exempts persons who “reside” in the same household in which they are employed in domestic service).

⁵¹ *See* 29 U.S.C. § 216(b) (emphasis added) (“Any employer who violates the [minimum wage and overtime] provisions . . . shall be liable to the employee . . . in the amount of their *unpaid* minimum wages, or their *unpaid* overtime compensation . . .”).

⁵² *See Sabhnani*, 599 F.3d at 259-60.

⁵³ *See, e.g., Calimlim*, 2007 WL 527481, at *1 (determining the value of the victim’s labor under the FLSA and finding the 15-hour work day to be a “reasonable calculation” where “the victim testified that she was on call from 6:00 A.M. to 11:00 P.M.” and the evidence also shows that “not all of the hours between were working hours”).



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