

Justice for Trafficking Survivors: Civil Litigation and Criminal Restitution



Martina E. Vandenberg

Louisville, Kentucky
October 26, 2018



Photo by Eun Creative

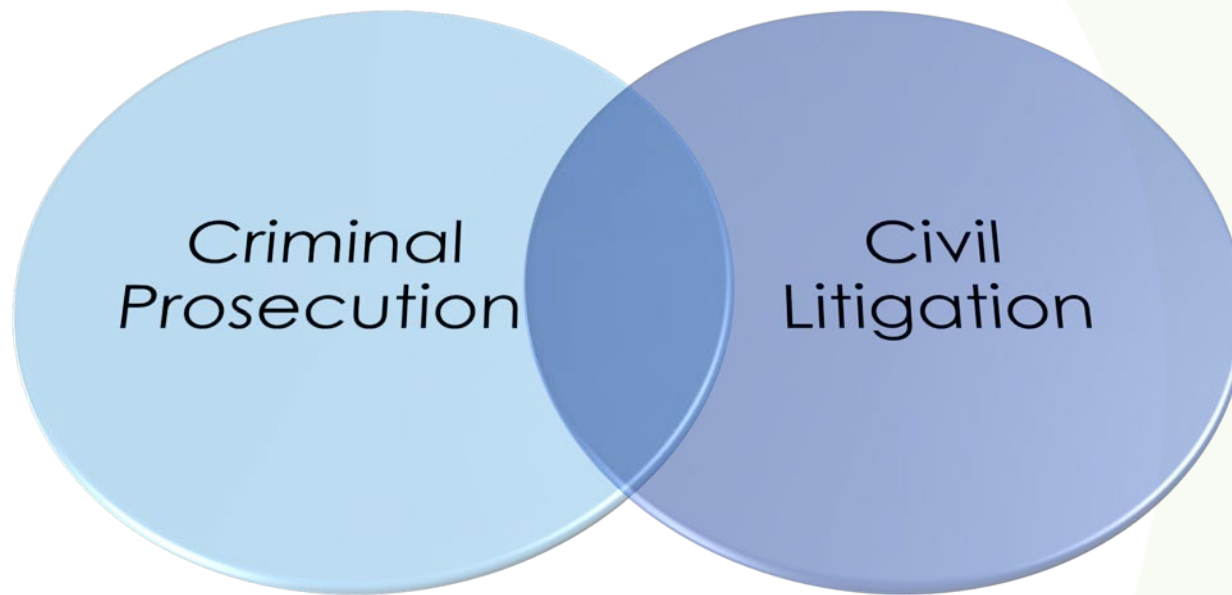
Our Model



Agenda

1. Criminal Restitution
2. Civil Litigation

Criminal Prosecution or Civil Litigation?



Criminal Prosecutions and Mandatory Restitution



Mandatory Restitution: 18 U.S.C. § 1593





Mandatory Restitution: “full amount of the victim’s losses”

- the greater of the gross income or value to the defendant of the victim’s services or labor; or
- the value of the victim’s labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act.



Mandatory Restitution: Earnings

GREATER OF:

1. Fair Labor Standards Act Minimum Wage
2. Defendant's earnings

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Four accused of aiding slave-labor ring on Ohio egg farms

Trillium Farms



By [Holly Zachariah](#)

The Columbus Dispatch • Thursday July 2, 2015 8:06 PM

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A federal indictment unsealed today accuses four people of running or aiding a slave-labor ring that smuggled Guatemalan teenagers as



CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | | | |
|---------------|-------------------|-------------|--------------------|
| | <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
| TOTALS | \$ 5,200.00 ** | \$ 0.00 | \$ 67,232.00 |

The determination of restitution is deferred until _____. An *Amended Judgement in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss*</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|-------------------------|--------------------|----------------------------|-------------------------------|
| Victim 6 Victim 7 | | \$1,250.00 | |
| | | \$3,500.00 | |
| Victim 1 * unpaid wages | | \$3,650.00 | |
| Victim 2 unpaid wages | | \$7,455.00 | |
| Victim 3 unpaid wages | | \$6,461.00 | |

25 CENTS

THE POST
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CRUELLA

Feds bust evil slave mistress

Millions of Dollars Worth of Goods Seized in Bust of Slave Mistress in Long Island City, N.Y. Alleged to be the 'Evil Mistress' of 'Slave' and 'Human Trafficking' in 'Evil Slave Mistress' Bust

PAGES 4-5

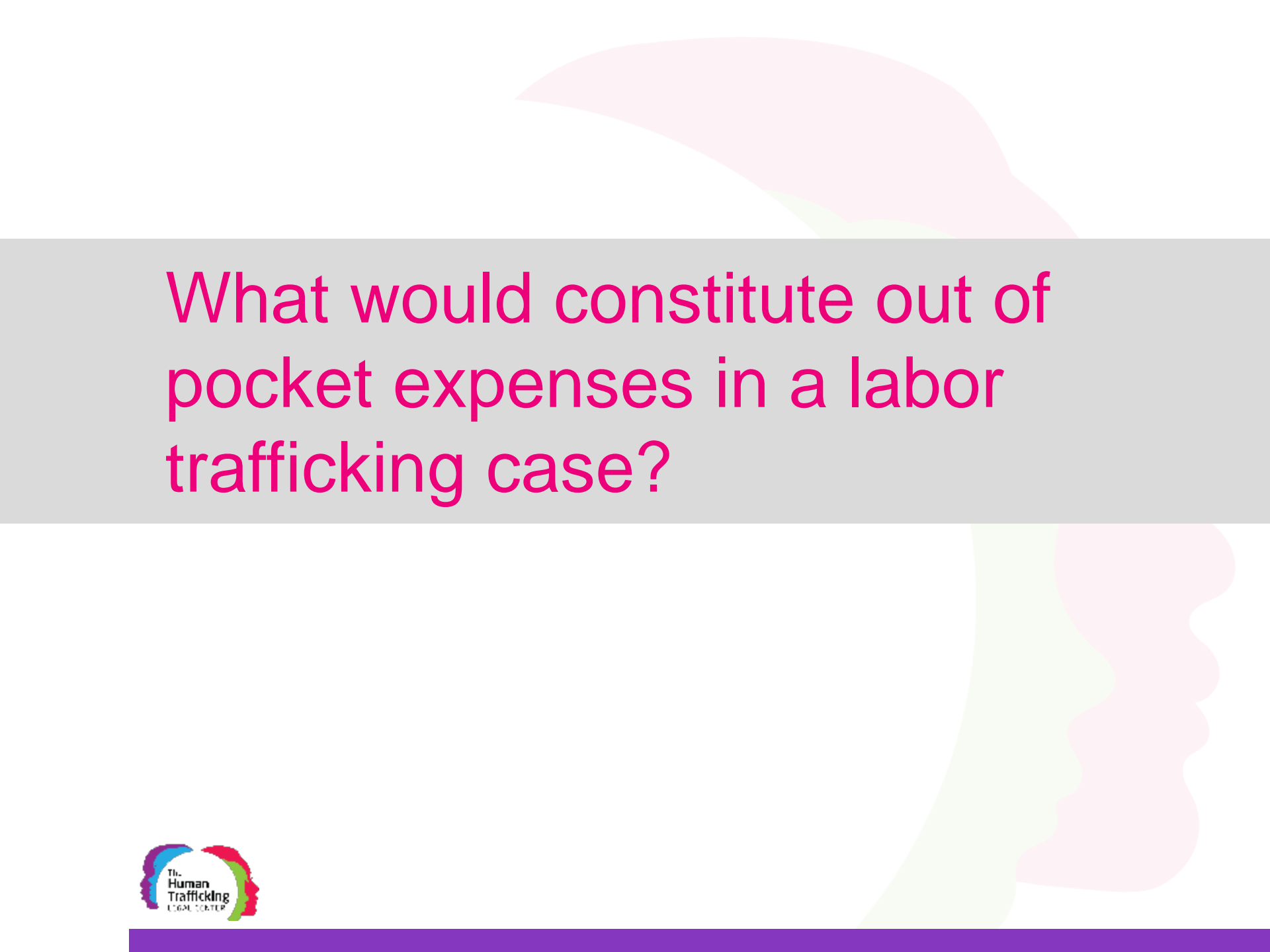
Taxed to death in New York
PAGE 7

U.S. v. Sabhnani

Appellate decision,
599 F.3d 215 (2d Cir. 2010)

Rule: Restitution in a forced labor case should include liquidated damages

Back Wages x 2



What would constitute out of pocket expenses in a labor trafficking case?

United States Federal Courts' Continuing Failure to Order Mandatory Criminal Restitution for Human Trafficking Victims





27%

Percentage of Trafficking Criminal Cases that End
with a Restitution Order

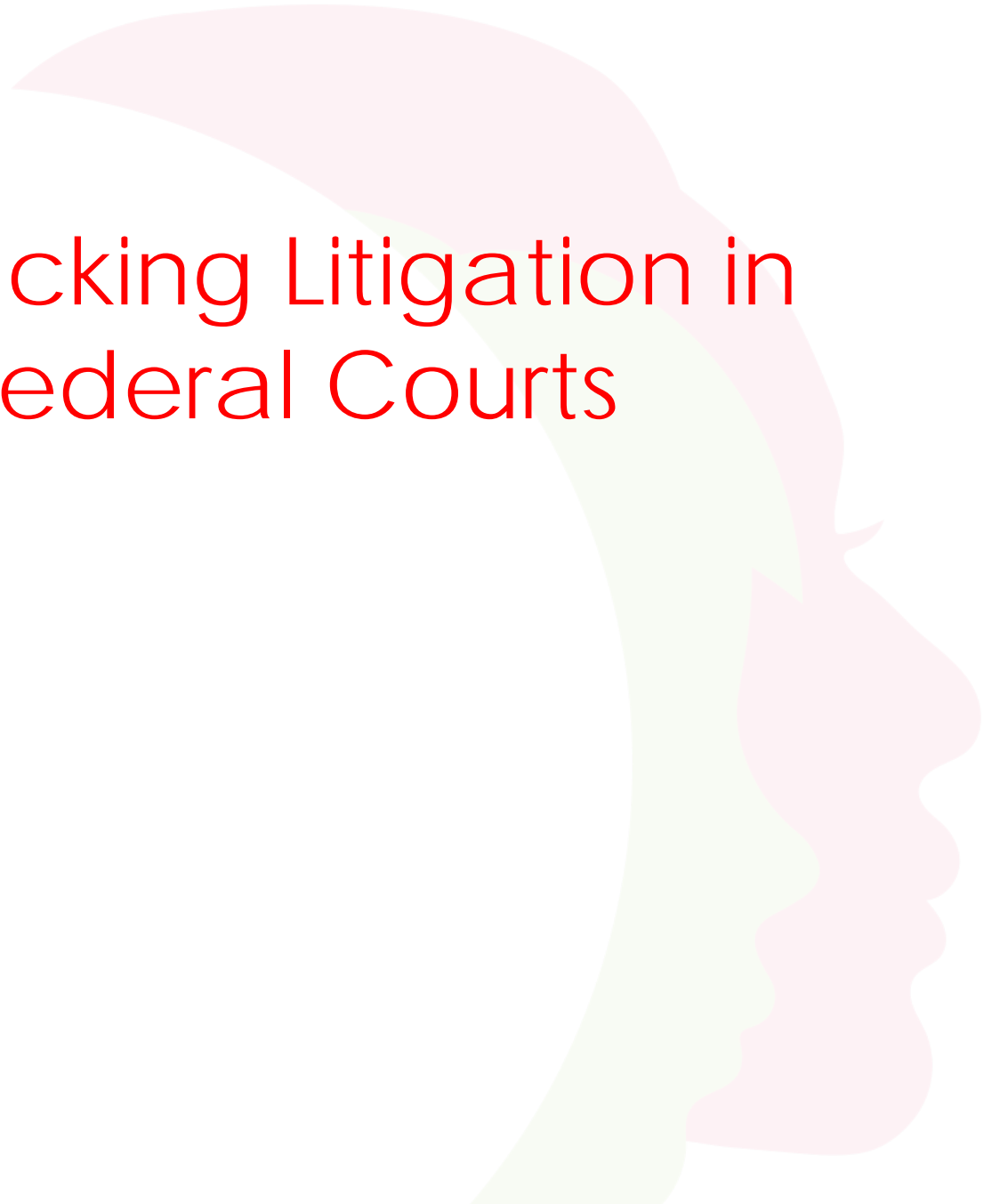




Department of Justice Asset Forfeiture Program

Returning Forfeited Assets to Crime Victims: *An Overview of Remission and Restoration*

Civil Trafficking Litigation in U.S. Federal Courts





Trafficking victims have a
private right of action
to sue their traffickers for damages in
U.S. federal courts.

Private Right of Action: 18 U.S.C. §1595

(a) An individual who is a victim of a violation of [Chapter 77 of Title 18] may bring a civil action against the perpetrator (or whoever knowingly benefits)...and may recover damages and reasonable attorneys fees.

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

****New amendments extend SOL for child victims to 10 years after 18th birthday.



Why Civil Litigation?

Federal Criminal Trafficking Cases

| FY | 2014 | 2015 | 2016 |
|-------|------|------|------|
| Total | 208 | 257 | 241 |
| Sex | 190 | 248 | 228 |
| Labor | 18 | 9 | 13 |

Global Law Enforcement Data

| YEAR | PROSECUTIONS | CONVICTIONS | VICTIMS IDENTIFIED |
|------|----------------|-------------|--------------------|
| 2011 | 7,909 (456) | 3,969 (278) | 42,291 (15,205) |
| 2012 | 7,705 (1,153) | 4,746 (518) | 46,570 (17,368) |
| 2013 | 9,460 (1,199) | 5,776 (470) | 44,758 (10,603) |
| 2014 | 10,051 (418) | 4,443 (216) | 44,462 (11,438) |
| 2015 | 19,127 (857) | 6,615 (456) | 77,823 (14,262) |
| 2016 | 14,939 (1,038) | 9,072 (717) | 68,453 (17,465) |
| 2017 | 17,880 (869) | 7,045 (332) | 100,409 (23,906) |



Source: Department of State Trafficking in Persons Report, 2018

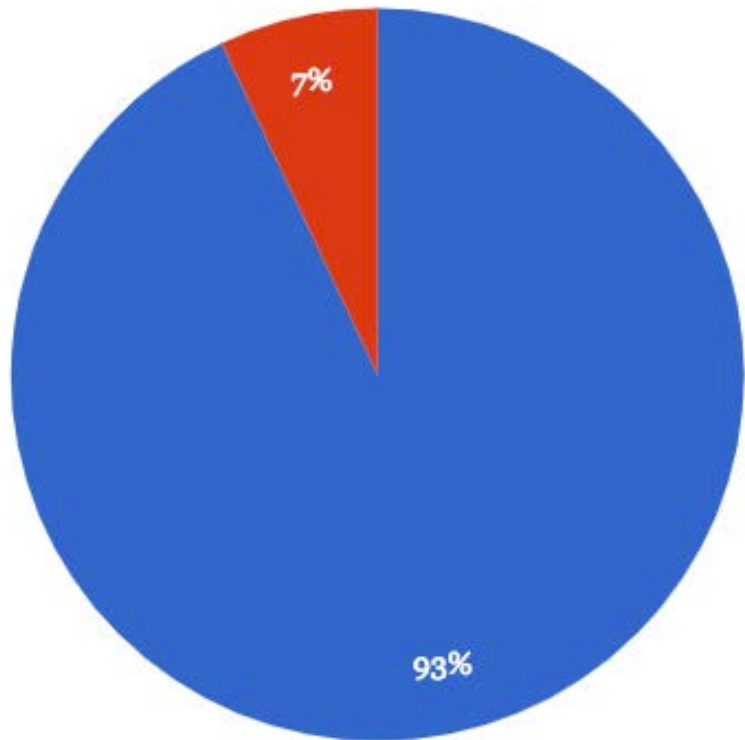


Private Right of Action: 18 U.S.C. § 1595

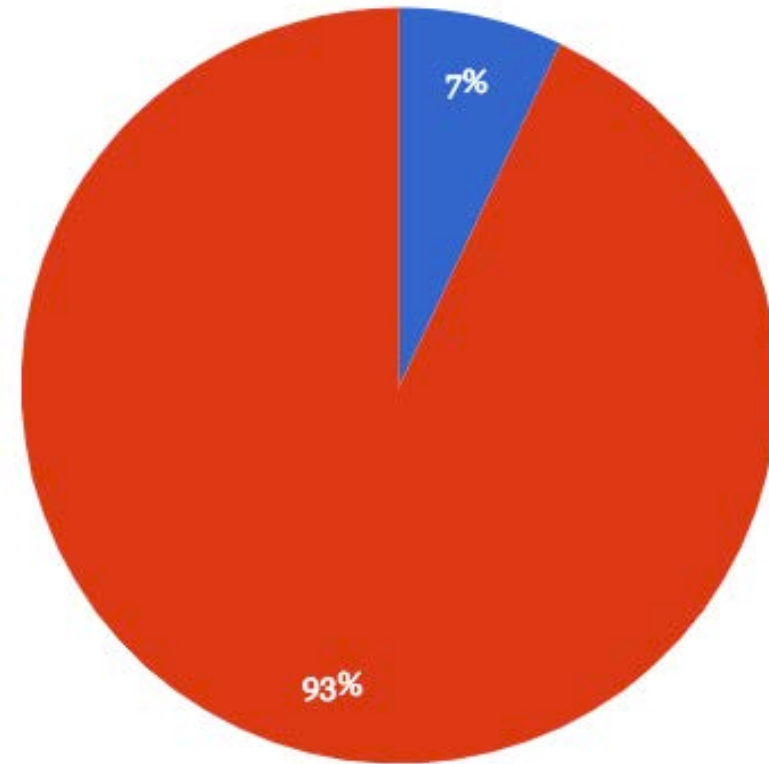
299 cases since 2003

Why Civil Litigation?

Trafficking Criminal Cases

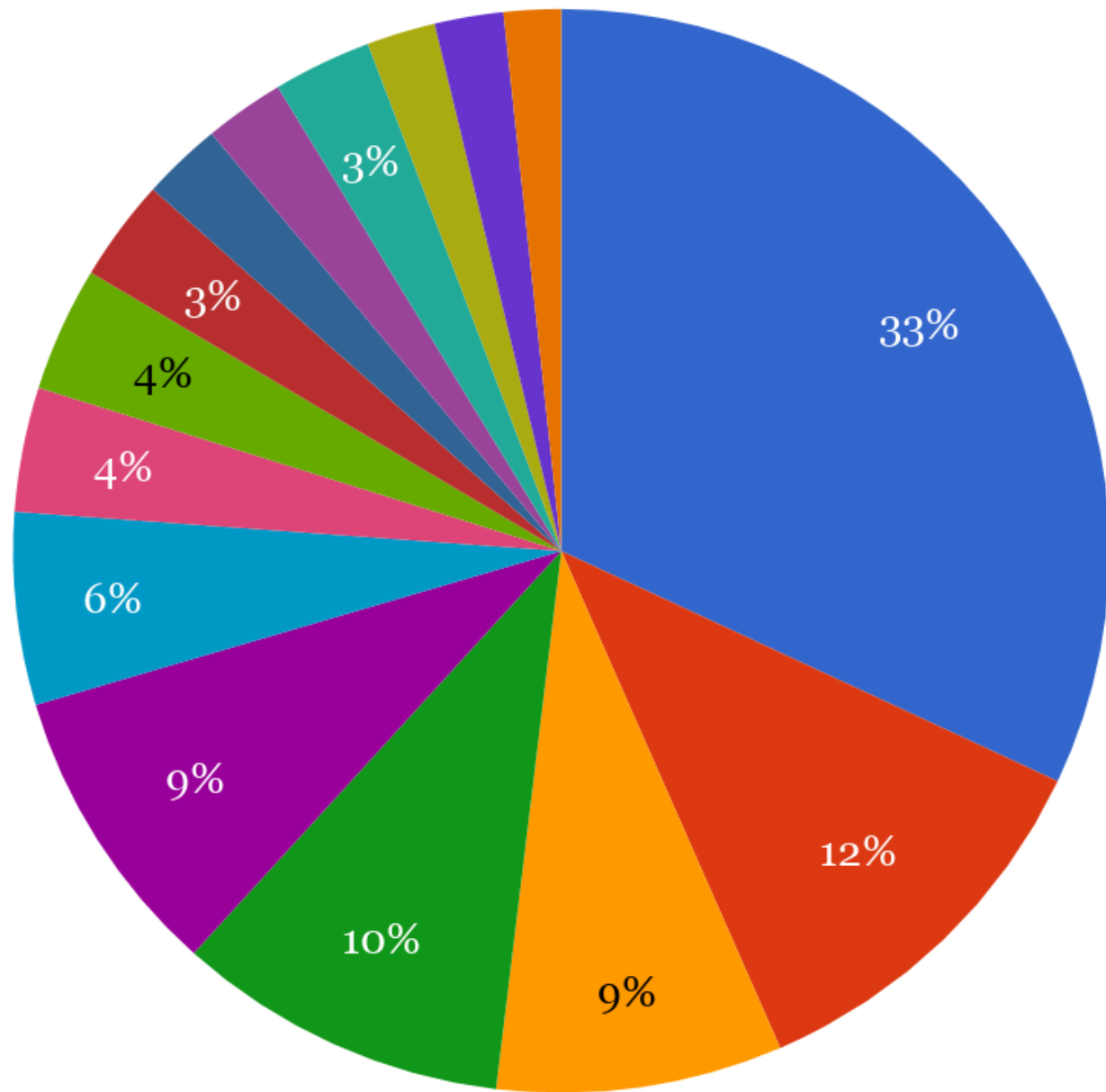


Trafficking Civil Cases





What type of forced labor has the most civil cases filed across the United States?



- Domestic servitude (94)
- Agriculture (35)
- Food service & hospitality (25)
- Other (30)
- Sex (25)
- Detainee/ prisoner (non-sex) (17)
- Construction/ landscaping (12)
- Shipyard (11)
- Technology (9)
- Education/ research (7)
- Religious (7)
- Transportation (8)
- Factory/ production (7)
- Medical (7)
- Entertainment (5)

David v. Signal, et al.



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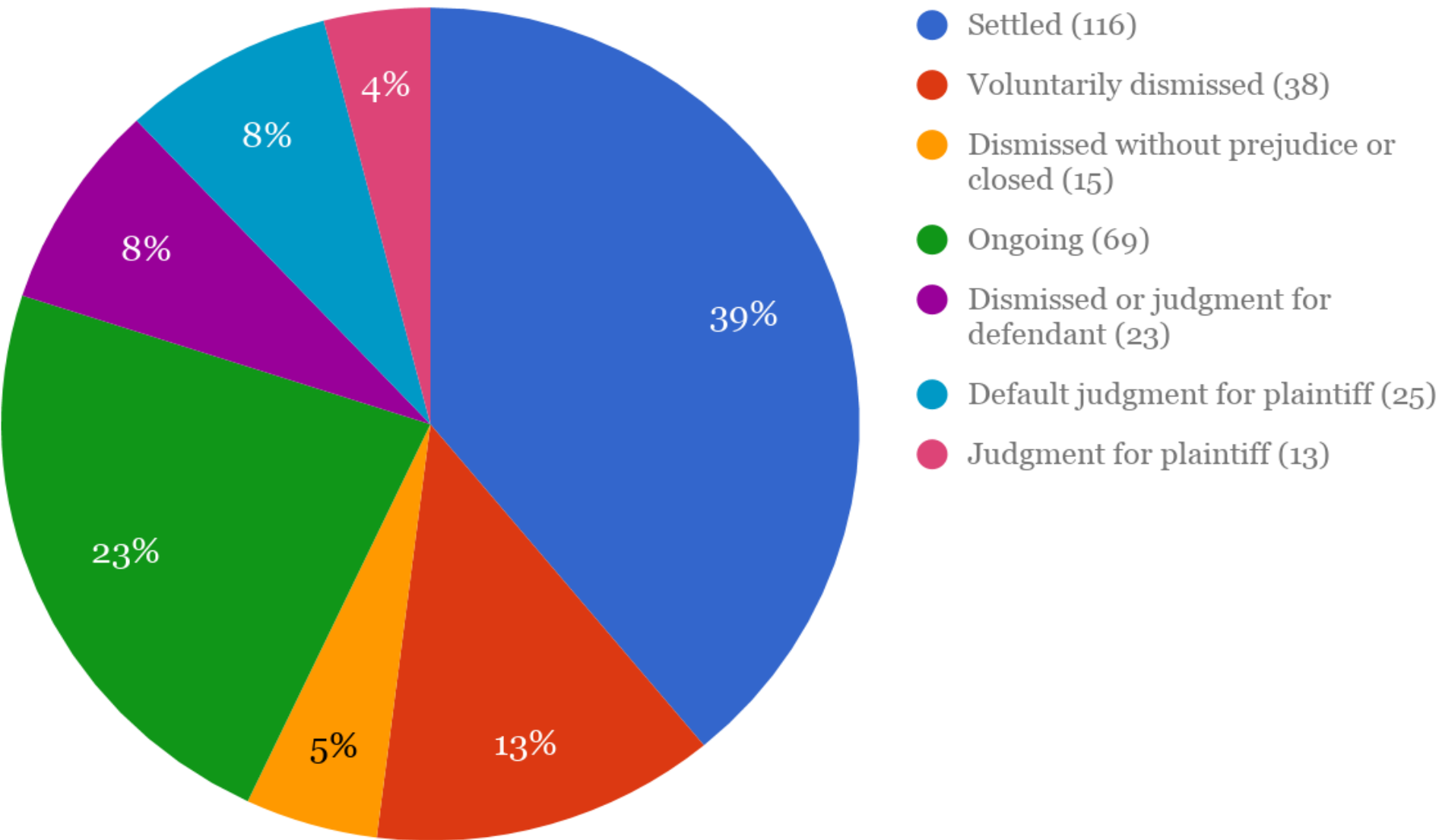
NEWS



\$20 million settlement agreement reached in labor trafficking cases coordinated by SPLC on behalf of exploited Indian guest workers



Civil Case Outcomes



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division



JANE DOE,

Plaintiff,

v.

LINDA HOWARD, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)

Civil Action No.: 1:11-cv-1105

OPINION

Woman Trafficked by Cult Is Awarded \$8 Million: 'They Took My Childhood'



The Value Creators publishes teachings on its website and Facebook page. Kendra Ross, a woman who described her forced labor in the group, which was formerly named the United Nation of Islam, has been awarded \$8 million.

The Value Creators website and profile image on social media.

By Christine Hauser

May 25, 2018



ALL WORK. NO PAY.

**ALL WORK.
NO PAY.**



They thought they were going to rehab. They ended up in chicken plants

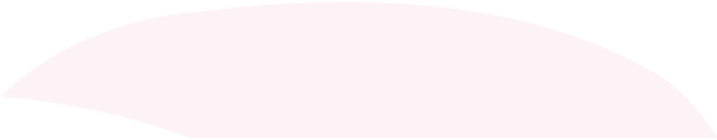
“It was a slave camp. I can’t believe the court sent me there.”



Smith v. Edwards

No. 15-cv-4612 (D.S.C)

- A man with mild cognitive impairment alleged that he was forced to work in a restaurant cafeteria for five years without pay.
- The manager allegedly physically abused him.
- Victim alleged that he was forced to live in a dirty, cockroach-infested apartment.
- A concerned citizen called the authorities.
- Civil case ongoing; federal criminal case filed.



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FOR IMMEDIATE RELEASE

Wednesday, June 6, 2018

South Carolina Man Pleads Guilty to Forced Labor for Compelling Man with Intellectual Disability to Work at Restaurant

**The defendant used violence, threats, isolation, and intimidation to compel victim to
work seven days a week without pay at restaurant**





How we can help:

1. Pro Bono Attorney Referrals
2. Civil Litigation Listserv
3. Technical Assistance
4. Training for Attorneys
5. Monthly Civil Litigation Calls
6. Civil Case Database
7. Jurisdictional Data Pulls



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