IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-15081-G

Wilhen Hill Barrientos, Margarito Velazquez Galicia, and Shoaib Ahmed, individually and on behalf of all others similarly situated,

Plaintiffs/Appellees,

v.

CoreCivic, Inc.,

Defendant/Appellant.

On Certified Order from the United States District Court
for the Middle District of Georgia, Columbus Division,
No. 4:18-cv-00070-CDL (Land, J.)

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, the Plaintiffs-Appellees submit their Certificate of Interested Persons and Corporate Disclosure Statement and furnish the following list of individuals and entities having an interest in the outcome of this particular case:

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The undersigned attorney further certifies, pursuant to Federal Rule of Appellate Procedure 26.1, that Plaintiffs-Appellees have no parent corporations and that no corporation directly or indirectly holds 10% or more of the ownership interest in any of the Plaintiffs-Appellees.

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Should the Court decline to vacate the motions panel's order granting Defendant-Appellant CoreCivic Inc.'s ("CoreCivic") Petition for Permission to Appeal pursuant to 28 U.S.C. § 1292(b), *see Drummond Co. v. Conrad & Scherer, LLP*, 885 F.3d 1324, 1328 (11th Cir. 2018), as improvidently granted, Plaintiffs-Appellees request oral argument to clarify fundamental misunderstandings in CoreCivic's appeal.

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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

Plaintiffs-Appellees Wilhen Hill Barrientos, Margarito Velazquez Galicia, and Shoiab Ahmed (collectively "Plaintiffs") agree that the Court has subject matter jurisdiction over this appeal pursuant 28 U.S.C. § 1331. Plaintiffs, however, contend that the motions panel improvidently granted CoreCivic's Petition for Permission to Appeal pursuant to 28 U.S.C. § 1292(b). Accordingly, Plaintiffs respectfully request the Court vacate the motions panel's order providing the basis for appellate jurisdiction and decline to hear this appeal.

STATEMENT OF THE ISSUES

The question certified by the district court for immediate appeal is "[w]hether the [Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. § 1589] applies to work programs in federal immigration detention facilities operated by private for-profit contractors[.]" Doc. 38 at 16. If this Court exercises jurisdiction over this appeal, it should affirm the district court's conclusion that a private prison company operating an immigration detention facility is not *per se* exempt from the TVPA's prohibition on forced labor. CoreCivic asks the Court to reach a much broader question than that certified or raised by Plaintiffs' claims and allegations. Plaintiffs do not contend that work programs in federal immigration detention facilities operated by private for-profit contractors *per se* violate the TVPA. Rather, Plaintiffs

assert that the "Voluntary Work Program" ("VWP") as implemented by CoreCivic at Stewart Detention Center ("Stewart") violates the TVPA.

STATEMENT OF THE CASE

I. Statement of Facts

Plaintiffs are individuals who were detained at Stewart. Plaintiffs allege that CoreCivic operates Stewart in reliance on the nearly free, coerced labor of the immigrants detained there. In order to guarantee the availability of this cheap labor pool, CoreCivic deprives detained immigrants of basic necessities such as food, toilet paper, and soap to coerce them into joining the VWP where they can earn funds to purchase these and other necessary items at CoreCivic's commissary. When detained immigrants refuse to work, CoreCivic obtains their labor through sanctions, up to and including solitary confinement. Solitary confinement at Stewart can be a death sentence.[1] Through this deprivation scheme, CoreCivic avoids employing workers for a living wage, securing itself an economic windfall.

With some 2,000 beds, Stewart is one of the largest civil immigration detention centers in the country. Doc. 1 ¶ 24. It is located in Stewart County, Georgia

[1] Robin Urevich, *Investigation finds ICE detention center cut corners and skirted federal detention rules*, PRI (Mar. 15, 2018), https://www.pri.org/stories/2018-03-15/investigation-finds-ice-detention-center-cuts-corners-and-skirted-federal; Jeremy Redmon, *GBI: ICE detainee hanged himself in S. Georgia immigration detention center*, Atlanta J.-Const. (July 14, 2018), https://www.ajc.com/news/state--regional-govt--politics/gbi-local-sheriff-office-probing-ice-detainee-death-georgia/wAAuPnVBiJZtPBvlfSdVkN/.

("County"). The County has an Intergovernmental Service Agreement ("IGSA") with ICE to house immigrants at Stewart. *Id.* ¶ 13. The County then contracts with CoreCivic to operate the facility. *Id.* Stewart is part of CoreCivic's growing portfolio of properties in immigrant detention, serving ICE as its "primary customer." *Id.* ¶ 22. This market has proven enormously profitable for CoreCivic. *Id.* ¶ 21. Revenues from immigrant detention in 2017 exceeded $444 million, making up a quarter of CoreCivic's total revenue of $1.765 billion. *Id.* ¶¶ 21-22. CoreCivic pocketed approximately $38 million in revenue from Stewart alone in 2016. *Id.* ¶ 25.

Like any for-profit company, CoreCivic maximizes profits by minimizing costs. Unlike many other businesses, though, it is entrusted with the care and safety of human beings and is required to comply with contractual and regulatory standards governing safety, food, housing, hygiene, and labor. *Id.* ¶ 40. The human beings in CoreCivic's care are individuals detained for civil – not criminal – immigration infractions or processing. *Id.* ¶¶ 14-15. CoreCivic shirks its contractual and legal obligations to these individuals by failing to provide them with basic necessities, such as food, toilet paper, soap, and contact with loved ones on the outside. *Id.* ¶¶ 40-43.

CoreCivic runs a detained immigrant work program it calls "voluntary" that "offers" a range of jobs including barber, commissary, kitchen, laundry, library, night floor crew, recreation, and several kinds of porters. *Id.* ¶ 29. These workers

clean all areas of the detention center, wash laundry for its entire population, and cook meals for some 2,000 people three times a day, every day. *Id.* ¶¶ 2, 30, 62, 78, 86. As the breadth of these tasks demonstrates, CoreCivic outsources the lion's share of the labor that sustains Stewart to the detained immigrants. *Id.* ¶ 34.

In exchange for their labor, workers are paid $1 to $4 a day, and for kitchen staff who work 12 hours or more, up to $8 a day. *Id.* ¶ 31. Much of these meager wages are funneled directly back to CoreCivic's coffers at the commissary, where detained workers purchase the necessities – like food and toiletries – that Plaintiffs and the Department of Homeland Security, Office of Inspector General ("OIG") have found CoreCivic fails to provide. *Id.* ¶¶ 37-39, 42-43.

Once a worker is in the program, CoreCivic takes coercive measures to ensure a compliant labor force. *Id.* ¶¶ 48-50. Detained immigrants who complain or refuse to work are put in solitary confinement and/or threatened with sanctions like solitary confinement and loss of safe, sanitary, and private housing. *Id.*

II. Course of Proceedings and Disposition Below

On April 17, 2018, the Plaintiffs and putative class representatives filed suit in the Middle District of Georgia to challenge CoreCivic's implementation of the VWP at Stewart under the TVPA and Georgia unjust enrichment law. Doc. 1.[2]

[2] Plaintiffs' unjust enrichment claim, which also survived CoreCivic's motion to dismiss, is not at issue in this interlocutory appeal.

CoreCivic moved to dismiss Plaintiffs' claims under Federal Rule of Civil Procedure 12(b)(6), arguing with respect to the TVPA claim that 18 U.S.C. § 1589 does not apply to CoreCivic, as a private for-profit contractor for ICE. The crux of CoreCivic's argument is that it is exempt from the TVPA because its detention of immigrants is lawful. The district court correctly denied the motion, "declin[ing] to read an implied exclusion for lawfully confined victims into the statute" and finding "no language in the statute for this broad assertion." Doc. 38 at 9-10.

Still, the district court certified the following question for interlocutory appeal: "Whether the TVPA applies to work programs in federal immigration detention facilities operated by private for-profit contractors." Doc. 38 at 16. CoreCivic filed a Petition for Permission to Appeal pursuant to 28 U.S.C. § 1292(b). Def.'s Pet. for Permission to Appeal docketed 12/12/18 (hereinafter Def.'s Pet.). Though review under §1292(b) is a "rare exception," the Court's motions panel found that review was merited in this occasion and granted CoreCivic's petition. *See McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1264 (11th Cir. 2004).

STANDARD OF REVIEW

The Eleventh Circuit reviews *de novo* a district judge's decision on a motion to dismiss for failure to state a claim under Rule 12(b)(6), accepts the complaint allegations as true, and construes them most favorably to the plaintiff. *Wiersum v.*

U.S. Bank, N.A., 785 F.3d 483, 485 (11th Cir. 2015). The Court reviews *de novo* a district judge's interpretation of a statute. *Id.*

SUMMARY OF THE ARGUMENT

As a threshold matter, the Court should decline to hear this interlocutory appeal because it does not present a pure question of law suitable for review on an interlocutory basis under § 1292(b). Should the Court decide to entertain the appeal, it should dismiss CoreCivic's attempt to claim an unwritten federal detention contractor exception from the TVPA. The TVPA is a broad, remedial statute that prohibits individuals and corporations from procuring a person's labor through force, physical restraint, threats of serious harm, or abuse of the legal process. The plain language of 18 U.S.C. § 1589 does not include any express exemptions from liability. As a result, courts have repeatedly held that companies operating ICE detention centers – including CoreCivic – can be held liable under the TVPA. Likewise, the plain language does not limit what might be considered "labor or services," and courts have found that the type of labor performed by Plaintiffs fits squarely within the statute's purview. Indeed, courts have held the TVPA is broad enough even to encompass coercive conduct under varying circumstances while providing fair warning of the specific conduct it prohibits. Because the statute's plain language is unambiguous, the Court's jurisprudence requires that the inquiry end there.

Even if it did not, the statute's context and legislative history support the TVPA's application to companies such as CoreCivic. Indeed, the statutory scheme of the TVPA demonstrates that had Congress intended to limit the reach of § 1589, it could have included more restrictive language it embedded in other sections of the statute. Moreover, the TVPA's legislative history reveals that Congress intended to protect victims in a wide array of contexts, including those exploited by government contractors.

Finally, CoreCivic argues that the Thirteenth Amendment's civic duty exception somehow applies to § 1589, a provision that was enacted as a legislative correction to the Supreme Court's narrow interpretation of "involuntary servitude." More farfetched still, CoreCivic argues that, as a private, for-profit contractor to the federal government, it is entitled to benefit from the all-encompassing, coerced labor of detained immigrants. Neither of these assertions square with § 1589's broad prohibition against forced labor. Should it reach the merits, this Court should reject CoreCivic's argument that a company's status as a private immigration detention contractor constitutes *carte blanche* authority to enrich itself on the forced labor of those held in its facilities.

ARGUMENT

I. The Court Should Decline Appellate Jurisdiction Because CoreCivic Does Not Meet the Requirements of 28 U.S.C. § 1292(b).

The Court has an ongoing duty to examine the basis for its jurisdiction over a case at any point in the appellate process. *Wahl v. McIver*, 773 F.2d 1169, 1173 (11th Cir. 1985). Like all motions initially ruled upon by a motions panel, the merits panel may vacate the order granting permission for an interlocutory appeal under 28 U.S.C. § 1292(b) as improvidently granted. *McFarlin*, 381 F.3d at 1253. Review under § 1292(b) is a "rare exception." *Id.* at 1264. The party seeking interlocutory review bears the heavy burden of showing that the question presented for appeal: (1) is a pure question of law; (2) presents substantial grounds for differences of opinion; and (3) would, if resolved, substantially reduce the amount of litigation necessary on remand. *Id.*; *see also* 28 U.S.C. § 1292(b). "Even when all of [the] factors are present, the court of appeals has discretion to turn down a § 1292(b) appeal." *McFarlin*, 381 F.3d at 1259.

CoreCivic's plea to this Court to insulate it from suit under the TVPA should be vacated because the company does not meet its heavy burden under § 1292(b). The question, as CoreCivic presents it, requires the Court to consider fact-driven issues that are not appropriate for a § 1292(b) appeal from a district court's pre-

discovery order denying dismissal. CoreCivic's injection of factual disputes into this appeal is made more evident by CoreCivic's Opening Brief.[3]

Moreover, the unambiguous language of the statute leaves little room for a substantial difference of opinion, as evidenced by the rulings of six other courts, including the district court below, that considered the exact question and declined to exempt private prison companies from the TVPA. Finally, granting this appeal will not further the end of this litigation, as Plaintiffs' class-wide unjust enrichment claim

[3] CoreCivic repeatedly asserts facts in conflict with Plaintiffs' factual allegations, which must be taken as true in a Rule 12 motion. CoreCivic argues it should be exempt from the TVPA because it is a federal contractor that is operating the program on behalf of ICE and pursuant to federal detention standards. Appellant's Br. at 15-16. However, Plaintiffs allege, and OIG confirms, that CoreCivic is not complying with its contractual and regulatory duties imposed by ICE. Doc. 1 at ¶¶ 36, 41-43, 52, 56, 66, 80, 88. Next, CoreCivic conflates its role in operating the work program with engaging in forced labor in order to claim a broad exemption from the TVPA. Appellant's Br. at 17-19. But CoreCivic's liability is rooted in its coercive labor policies, and the existence and extent of those policies is a factual issue to be determined first by the district court. CoreCivic claims that the "communal custody setting" of the detainees, wherein they are "provided (free) basic necessities," insulates Core Civic from liability under the TVPA. Appellant's Br. at 28. But whether CoreCivic is upholding its duty as a custodian to provide for detainees' basic needs is a core factual issue in this case. Indeed, Plaintiffs allege that CoreCivic abrogates that duty by failing to provide them with basic necessities, safety, and care. Doc. 1 ¶¶ 40-47, 56. CoreCivic also claims that "housekeeping duties" performed in a custodial setting can never qualify as forced labor. Appellant's Br. 26-28. Plaintiffs allege that they performed work that goes far beyond housekeeping tasks in their own cell or community living area. *See* Doc. 1 ¶¶ 9-11, 30, 62-63, 78-79, 86-87. The extent of the labor the Plaintiffs performed is yet another factual issue that CoreCivic asks this Court to consider.

will survive regardless of the outcome here. The Court should vacate the motions panel's order as improvidently granted.

II. The Plain Language of § 1589 Does Not Exclude Private Prison Companies, like CoreCivic, From Liability.

The text of § 1589 does not limit who may be held liable for forced labor. Congress was clear about its broad application and the conduct that it prohibits, and courts have consistently found that private, for-profit contractors, like CoreCivic and its competitors, are not exempt from its reach. CoreCivic seeks to circumvent the statute without demonstrating a scintilla of ambiguity in its plain language. Because the plain language of § 1589 is clear and unambiguous, that plain language controls.

The TVPA's forced labor provision, 18 U.S.C. § 1589, provides a cause of action against:

> [w]hoever knowingly provides or obtains the labor or services of a person . . . (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.

To determine the meaning of this statutory provision, the Court "look[s] first to its language, giving the words used their ordinary meaning." *Artis v. District of Columbia*, 138 S. Ct. 594, 603 (2018); *United States v. St. Amour*, 886 F.3d 1009, 1013 (11th Cir.), *cert. denied*, 139 S. Ct. 205 (2018). "The words used in § 1589 are

common words and 'the likelihood that anyone would not understand any of those common words seems quite remote.'" *United States v. Garcia*, No. 02-CR-110S-01, 2003 WL 22956917, at *3 (W.D.N.Y. Dec. 2, 2003) (quoting *Hill v. Colorado*, 530 U.S. 703, 732 (1999)). Because the statute's language is clear, "there is no need to go beyond the statute's plain language into legislative history." *United States v. Noel*, 893 F.3d 1294, 1297 (11th Cir. 2018). Indeed, in these circumstances "[t]he plain language is presumed to express congressional intent and will control the court's interpretation." *United States v. Fisher*, 289 F.3d 1329, 1338 (11th Cir. 2002).

First, "the target of the statute is broad": it applies to "*whoever* knowingly obtains labor or services[.]" *Owino v. CoreCivic, Inc.*, No. 17-CV-1112 JLS (NLS), 2018 WL 2193644, at *4 (S.D. Cal. May 14, 2018) (citing § 1589) (emphasis added)); *see also Novoa v. GEO Grp., Inc.*, No. EDCV 17-2514 JGB (SHKx), 2018 WL 3343494, at *12 (C.D. Cal. June 21, 2018) ("The plain language of § 1589 holds no limitation on who it applies to[.]"); *accord Noble v. Weinstein*, 335 F. Supp. 3d 504, 516 (S.D.N.Y. 2018) (Congress's use of "whoever" in §§ 1591 and 1595 of the TVPA "does not lend itself to restrictive interpretation"). The term "whoever" includes "corporations, companies, associations, firms, partnerships, societies, and

joint stock companies, as well as individuals." 1 U.S.C. § 1.[4] Therefore, § 1589 regulates CoreCivic's corporate conduct.

Second, the phrase "obtain the labor or services" is likewise unambiguous. "To obtain" means "to gain or attain usually by planned action or effort."[5] "Labor" is "the expenditure of physical or mental effort especially when fatiguing, difficult, or compulsory." *United States v. Marcus*, 628 F.3d 36, 44 n.10 (2d Cir. 2010) (quoting Merriam–Webster's Third New International Dictionary Unabridged (2002)). And "service" is "the performance of work commanded or paid for by another," *id.*, or "conduct or performance that assists or benefits someone or something," *United States v. Kaufman*, 546 F.3d 1242, 1260-61 (10th Cir. 2008) (refusing to limit "labor or services" to "work in an economic sense"). CoreCivic

[4] CoreCivic cites *Mojsilovic v. Oklahoma ex rel. Bd. Of Regents for the Univ. of Okla.*, 101 F. Supp. 3d 1137 (W.D. Okla. 2015), for the proposition that § 1589 does not apply to the "federal government", but that case involved Eleventh Amendment immunity afforded to states, not private corporations serving as government contractors, like CoreCivic. *Id.* at 1141–42. Indeed, *Mojsilovic* acknowledges that "whoever" includes, *inter alia*, "corporations" and "companies." *Id.* at 1142. *See also Ruppel v. CBS Corp.*, 701 F.3d 1176, 1181 (7th Cir. 2012) (finding that the terms "person" and "whoever" under 1 U.S.C. § 1 includes corporations in finding a statute applied to government contractor). To be sure, the position of the agency tasked with criminally enforcing § 1589 – the U.S. Department of Justice – is that "the TVPA does not contain an implicit exception for private providers of immigration detention services." Brief for the United States as Amicus Curiae in Support of Neither Party at 8 docketed 4/1/19 (hereinafter "Brief for the United States").

[5] *Obtain*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/obtain (last visited Apr. 30, 2019).

attempts to qualify the plain meaning of these words by claiming that, because ICE requires it to make work available to detained immigrants, CoreCivic does not "obtain" that labor. This extratextual reading is not only improper here, where the plain language is clear, it is absurd. Even CoreCivic acknowledges that it benefits from the detained immigrants' work and that the "[e]ssential operations and service" in the detention center "shall be enhanced through detainee productivity." Appellant's Br. at 15-16 (quoting ICE, *Performance-Based National Detention Standards*, 405 (2011) (hereinafter "PBNDS")).

Furthermore, courts have repeatedly recognized that the plain meaning of "labor or services" is broad, applying in a variety of contexts beyond sex work, slavery, and trafficking. *See, e.g.*, *United States v. Kalu*, 791 F.3d 1194, 1211-12 (10th Cir. 2015) (nurses); *United States v. Calimlim*, 538 F.3d 706, 708-10 (7th Cir. 2008) (domestic worker); *Echon v. Sackett*, No. 14-CV-03420-PAB-NYW, 2017 WL 4181417, at *9-16 (D. Colo. Sept. 20, 2017), *report and recommendation adopted*, 2017 WL 5013116 (D. Colo. Nov. 1, 2017) (maintenance workers); *David v. Signal Int'l, LLC*, 37 F. Supp. 3d 822, 824 (E.D. La. 2014) (welders); *Antonatos v. Waraich*, No. 1:12-CV-01905-JMC, 2013 WL 4523792, at *5 (D.S.C. Aug. 27, 2013) (doctors); *Nunag-Tanedo v. E. Baton Rouge Par. Sch. Bd.*, 790 F. Supp. 2d 1134, 1138 (C.D. Cal. 2011) (teachers). The labor and services that make up CoreCivic's work program at Stewart – extensive cooking, cleaning, and laundry,

work as barbers and porters, and work in the commissary, library, night floor crew, and recreation areas – are all well within the ambit of labor that courts have found covered under the statute. *See, e.g., United States v. Callahan*, 801 F.3d 606, 620 (6th Cir. 2015) (affirming a forced labor conviction because the victims were forced to do "household chores" such as "cleaning" and "performing domestic tasks[, which] certainly constitute labor or service under the ordinary meaning of those words"); *United States v. Sabhnani*, 599 F.3d 215, 225 (2d Cir. 2010) (affirming a forced labor conviction where the victim "was responsible for cooking, cleaning, laundry, and other chores"); *Calimlim*, 538 F.3d at 708 (affirming forced labor conviction for coercively obtaining labor or services from live-in housekeeper).

The unambiguous language of § 1589 forecloses the additional, extratextual reading that CoreCivic urges. *See Huff v. DeKalb County*, 516 F.3d 1273, 1280 (11th Cir. 2008) ("[R]eference to legislative history is inappropriate when the text of the statute is unambiguous.") (quoting *HUD v. Rucker*, 535 U.S. 125, 132 (2002)). The district court did exactly what this Court's precedent requires: "begin [its] construction of [the statute] where courts should always begin the process of legislative interpretation, and where they often should end it as well, which is with the words of the statutory provision." *Harris v. Garner*, 216 F.3d 970, 972 (11th Cir. 2000); *see also Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617, 631 (2018). Because the statute's language is unambiguous, the "judicial inquiry is complete."

Villarreal v. R.J. Reynolds Tobacco Co., 839 F.3d 958, 969 (11th Cir. 2016) (en banc) (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992)). Unsurprisingly, given the clarity of the language, every court to address the issue agrees that there is no ambiguity in § 1589 justifying CoreCivic's preferred rewriting. *See Figgs v. GEO Grp., Inc.*, No. 1:18-cv-00089-TWP-MPB, 2019 WL 1428084, at *4-5 (D. Ind. Mar. 29, 2019); *Gonzalez v. CoreCivic, Inc.*, No. 1:18-CV-169-LY, at 4-5 (W.D. Tex. Mar. 1, 2019); *Owino*, 2018 WL 2193644, at *3-6; *Novoa*, 2018 WL 3343494, at *12; *Menocal v. GEO Grp., Inc.*, 113 F. Supp. 3d 1125, 1131-33 (D. Colo. 2015).

III. CoreCivic's Proffered Interpretation Fails Because § 1589 is a Remedial Statute Intended to Broaden the TVPA's Reach.

Only if "the statutory language is not entirely transparent," does the Court "employ traditional canons of construction," and only after employing traditional canons of construction does the Court "revert[] to legislative history[.]" *Shotz v. City of Plantation*, 344 F.3d 1161, 1167 (11th Cir. 2003); *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1225 n.6 (11th Cir. 2001) ("[I]f the plain meaning rule is a canon of construction, it is the largest caliber canon of them all."). Even where "[t]here are contrary indications in the statute's legislative history . . . [the Court] do[es] not resort to legislative history to cloud a statutory text that is clear." *Ratzlaf v. United States*, 510 U.S. 135, 147–48 (1994); *accord Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1205 (11th Cir. 2007) ("[I]t is error to cloud the plain meaning of a

statutory provision with contrary legislative history."). Given the undisputed primacy of plain language among the canons of statutory construction and the clarity in the plain meaning of § 1589, CoreCivic's one-sided, extratextual divination of Congressional intent should not inform this Court's interpretation. *See CBS Inc.*, 245 F.3d at 1225 n.6.

However, even if the Court goes beyond the plain language of the text, CoreCivic's arguments fail because traditional canons of construction, including analysis of the statutory context and the legislative history, demonstrate that the TVPA regulates CoreCivic. Furthermore, to the extent CoreCivic argues that the background legal context in which Congress enacted § 1589 justifies departing from the plain language, CoreCivic's argument lacks merit because at the time, existing law generally prohibited, rather than permitted, forcing civilly detained noncitizens to provide labor or services.

A. Traditional Canons of Statutory Interpretation Support Plaintiffs' Argument that § 1589 Prohibits CoreCivic from Engaging in Forced Labor.

The statutory context confirms what the bare text of § 1589 says: Congress meant the remedial law to have a wide range. CoreCivic glosses over the statutory scheme and instead cites to a number of distinguishable cases to urge the Court to rely on selective, extratextual examples of "context" surrounding the statute's

creation. This sharp departure from the statute's text and scheme is inappropriate here, where there is no ambiguity in § 1589.

CoreCivic erroneously asserts that the express purpose of the TVPA is to combat international human trafficking and thus § 1589 only applies in the context of international human trafficking. However, the TVPA's statutory context makes clear that, unlike other portions of the TVPA that are specifically applicable to transnational crime and trafficking, § 1589 has a "broad reach" beyond the international trafficking context and protects a "broad class of individuals." *Nunag-Tanedo*, 790 F. Supp. 2d at 1147. For example, 18 U.S.C. § 1591 prohibits "[s]ex trafficking of children or by force, fraud, or coercion" and has an explicit interstate or foreign commerce requirement. Further, 18 U.S.C. § 1584 criminalizes "[w]hoever knowingly and willfully holds to involuntary servitude . . . any other person for any term, or *brings within the United States*."[6] In comparison, § 1589 "does [not] contain any language limiting application to those who traffic in persons or transport across national borders." *Owino*, 2018 WL 2193644, at *4. Applying

[6] *See also* 18 U.S.C. § 1590 (criminalizing trafficking for the purpose of forced labor under § 1589, as distinct from the standalone crime of forced labor); *id.* § 1592(a) (criminalizing destroying, concealing, removing, confiscating, or possessing another's immigration or government identification document *either*, *inter alia*, (1) in the course of a violation of § 1589 *or* (2) when the person has been a victim of trafficking and the purpose is to restrict the person's travel to maintain their labor or services—demonstrating that when Congress intends to refer to human trafficking it does so explicitly).

the canons of interpretation that Congress is presumed to know the content of existing, relevant law, and that, "[w]here Congress knows how to say something but chooses not to, its silence is controlling," *In re Griffith*, 206 F.3d 1389, 1394 (11th Cir. 2000), CoreCivic's argument has been squarely rejected by courts addressing the scope of § 1589. *See, e.g.*, *Callahan*, 801 F.3d at 617 (rejecting defendants' argument that the TVPA only applied to international trafficking because "the unqualified term 'a person' is purposefully broad").

CoreCivic relies on several distinguishable cases in which courts used traditional tools of statutory construction to discern the contours of an ambiguous statute's limits. Unlike the courts in CoreCivic's cited cases, CoreCivic engages in no statutory construction, asserts no ambiguity in the terms of § 1589, and does not provide any argument concerning the statute's ambiguity when considered within the context of other TVPA provisions.

First, in *Bond v. United States*, the Supreme Court considered the impact and reach of the Chemical Weapons Implementation Act of 1998, 18 U.S.C. § 229(a)(1) ("Chemical Weapons Act").[7] 572 U.S. 844, 849 (2014). The Court concluded that the Chemical Weapons Act, which is used to prosecute "terrorist plots or the

[7] The Chemical Weapons Act fulfilled the United States' obligations under the Convention on Chemical Weapons. The Chemical Weapons Convention "was conceived as an effort to update the Geneva Protocol's protections and to expand the prohibition on chemical weapons beyond state actors in wartime." *Bond v. United States*, 572 U.S. 844, 849 (2014).

possession of extremely dangerous substances with the potential to cause severe harm to many people," did not criminalize "purely local crime"[8] traditionally and exclusively subject to the police power of the States, and not the federal government. *Id.* at 860, 863. In holding that the Chemical Weapons Act did not reach "common law assault," the Supreme Court held that "precedents make clear that it is appropriate to refer to basic principles of federalism embodied in the Constitution to *resolve ambiguity* in a federal statute." *Id.* at 859 (emphasis added). By insisting on a clear indication from Congress before interpreting the statute in a way that would intrude on the police powers of the States, the Supreme Court explained that "[t]his case is unusual, and our analysis is appropriately limited." *Id.* at 865-66.

Like in *Bond*, the Sixth Circuit in *United States v. Toviave* considered traditional state functions, not at issue here, when interpreting the TVPA. The *Toviave* court declined to criminalize a young man's requirement, while acting *in loco parentis*, that children under his care to perform household chores such as cooking, cleaning, and laundry. 761 F.3d 623, 629 (6th Cir. 2014). Because state law exclusively regulates parental rights and "household child abuse is quintessential criminal activity," the Sixth Circuit was reluctant to assume that Congress intended

[8] The "purely local crime" at issue in *Bond* was "an amateur attempt by a jilted wife to injure her husband's lover," by putting chemical irritants on the victim's door knob, car door, and mail box in the hope of causing a rash. 572 U.S. at 848, 852–53.

to criminalize it through the TVPA. *See id.* at 623-24, 628. The fact that § 1589 did not criminalize the defendant's conduct in *Toviave*, however, did not categorically exempt parents – or household chores – from the ambit of § 1589. *Id.* at 626 ("[A] parent or guardian can commit forced labor, and is not immunized by that status"); *See Callahan*, 801 F.3d at 620 ("In *Toviave*, . . . we did *not* hold that household chores do not constitute labor or services) (emphasis in original). Unlike in *Bond* or *Toviave*, CoreCivic has not demonstrated ambiguity in the TVPA, and holding CoreCivic liable under the TVPA would not conflict or impede on traditionally local powers.

Marinello v. United States is similarly inapplicable. In *Marinello*, the Supreme Court held that 26 U.S.C. § 7212(a), which punished impeding or obstructing "the due administration of [the Internal Revenue Code]," required the Government to show a nexus "between the defendant's conduct and a particular administrative proceeding, such as an investigation, an audit, or other targeted administrative action. That nexus requires a relationship in time, causation, or logic with the [administrative] proceeding." 138 S. Ct. 1101, 1105-06, 1109 (2018). The *Marinello* decision was animated by the concern that interpreting the statute without

a nexus requirement would make it unconstitutionally vague. *Id.* at 1108. Vagueness is not an issue here.[9]

Finally, CoreCivic's reliance on *Yates v. United States* is also unavailing. In that case, the Supreme Court interpreted the term "tangible object" in the Sarbanes–Oxley Act, 18 U.S.C. § 1519 – which polices financial fraud – to mean "only objects one can use to record or preserve information, not all objects in the physical world," like a hard drive or a log book. 135 S. Ct. 1074, 1079, 1081 (2015). Thus, the Court found that a fisherman throwing undersized fish overboard to evade punishment was not destruction of a "tangible object" for purposes of the financial fraud statute. *Id.* at 1078-79. Notably, although the *Yates* Court explained the context in which § 1519 was enacted, its decision turned on the ambiguity in the ordinary meaning of "tangible object." *Id.* at 1081-82. Only then did the Court consider secondary canons of construction and the rule of lenity, noting that "*ambiguity* concerning the ambit of criminal statutes should be resolved in favor of lenity." *Id.* at 1088 (emphasis added).

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[9] It is well settled that the TVPA is not overbroad or void for vagueness. *Calimlim*, 538 F.3d at 710 (rejecting a void for vagueness challenge to the TVPA); *see also United States v. Norris*, No. 1:05-CR-479-JTC/AJB-01, 2007 WL 9655844, at *8 (N.D. Ga. June 27, 2007), *report and recommendation adopted*, No. 1:05-CR-479-JTC, 2007 WL 9657881 (N.D. Ga. Sept. 20, 2007) ("[T]he Court finds that the forced labor statutes are not constitutionally void for vagueness . . . the forced labor statutes provide fair warning."); *United States v. Garcia*, No. 02-CR-110S-01, 2003 WL 22956917, at *3-6 (W.D.N.Y. Dec. 2, 2003) (same).

Thus, CoreCivic's urged reliance on extratextual events to define the limits of the TVPA fails because, even under CoreCivic's cited case law, a court only considers outside context when if first finds ambiguity in the statute. Unlike the financial fraud statute in *Yates*, the "'language at issue [in § 1589] has a plain and unambiguous meaning with regard to the particular dispute in the case,' and 'the statutory scheme is coherent and consistent.'" *Warshauer v. Solis*, 577 F.3d 1330, 1335 (11th Cir. 2009) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)). Therefore, "the inquiry is over." *Id.* "No matter how compelling [the Court] may find [CoreCivic's] arguments as a matter of public policy, [the Court] must apply the 'plain and unambiguous statutory language according to its terms.'" *Estate of Jones v. Live Well Fin., Inc.*, 902 F.3d 1337, 1342 (11th Cir. 2018) (quoting *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010)).

B. The TVPA's Legislative History Bolsters the Plain Meaning of § 1589.

Even though there is no ambiguity in § 1589 that would require an analysis of legislative history, the legislative history of the statute supports Plaintiffs' reading.

The TVPA's Congressional findings explain that "[i]nvoluntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion." Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102(b)(13), 114 Stat 1464 (2000). Congress recognized that "[v]ictims are often forced [to] . . .perform slavery-like

labor [and] such force includes . . . threats, psychological abuse, and coercion." *Id.* "Within the context of slavery, servitude, and labor or services which are obtained or maintained through coercive conduct that amounts to a condition of servitude, victims are subjected to a range of violations." *Id.* § 102(b)(12). Congress understood that factual circumstances leading to trafficking and forced labor were susceptible to "increasingly subtle methods" that placed victims in "modern-day slavery" where perpetrators "threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence." H.R. Rep. No. 106-939, at 101. Congress meant to remedy circumstances where "poor destitute immigrant workers are often duped or coerced to work in intolerable conditions that amount to forced labor." 154 Cong. Rec. S10886-01, S10886 (2008) (statement of Sen. Leahy).

Within the context of the TVPA as a broad legislative enactment, Congress enacted § 1589 to make it clear beyond any doubt that the TVPA punishes labor coerced by psychological as well as physical threats or injury, as a corrective rebuttal to Supreme Court's decision in *United States v. Kozminski*, 487 U.S. 931, 949, 952-53 (1988). The broad reading of the terms in § 1589 fits with Congress's purpose in enacting it: to prohibit a broader swath of conduct than the Thirteenth Amendment. *See Kaufman*, 546 F.3d at 1261 (citing H.R. Rep. No. 106-939, at 101 (2000) (Conf. Rep.)) (explaining that § 1589 was an explicit response to, and in disagreement with,

the relatively narrow definition of "involuntary servitude" set out in *Kozminksi*). *Kozminski* was not limited to the context of international trafficking, so it would make little sense to limit Congress's response to *Kozminski* to the international trafficking context, as CoreCivic urges.

Likewise, the legislative history demonstrates that Congress anticipated varied circumstances where § 1589 would come into play. CoreCivic argues that the "sole" purpose of the TVPA is to address international trafficking of women and children. Appellant's Br. at 21, 24. While Congress did provide examples of women and children subject to forced labor, H.R. Rep. No. 106-939, at 101, no legislative history cited by CoreCivic states that the TVPA applies only to crimes against women and children and not to men. Similarly, no legislative history limits the TVPA to the trafficking of people across borders. There is simply nothing in CoreCivic's cited example, the statute's text, or the legislative record that supports such a confined reading of § 1589.[10] Appellant's Br. at 23-24.

Notably, every court that has considered whether the TVPA's legislative history limits its application to international human trafficking has held that § 1589 "contains no limitation that the people who are victims of forced labor be taken

[10] ICE itself acknowledges that perpetrators "profit[] off forced labor" from victims such as "men, women and children of all ages and can include U.S. citizens and foreign nationals." *Human Trafficking*, Ice.gov, https://www.Ice.gov/features/human-trafficking (last updated Nov. 2, 2017).

across international borders in order for the section to apply." *United States v. Dickey*, No. 16 CR 475, 2019 WL 423376, at *3 (N.D. Ill. Feb. 4, 2019); *see also Callahan*, 801 F.3d at 617-18; *Figgs*, 2019 WL 1428084, at *4 (explaining that although the "TVPA was [e]nacted largely 'to combat' the 'transnational crime' of 'trafficking in persons,'" the court rejected the "invitation to follow the intent, rather than the plain language, of § 1589 [as] unpersuasive"); *Novoa*, 2018 WL 3343494, at *12 ("The legislative history of the TVPA notes that trafficking also 'involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment . . . .' The statute merely proscribes knowingly providing or obtaining labor through defined means."); *Owino*, 2018 WL 2193644, at *4 ("Had Congress intended to limit § 1589 to trafficking or transnational crime it could have done so; indeed, other sections of the TVPA contain the limiting language Defendant urges the Court read into § 1589."); *Nunag-Tanedo*, 790 F. Supp. 2d at 1145 (analyzing the TVPA's legislative history to find that "the TVPA not only protects victims from the most heinous human trafficking crimes, but also various additional types of fraud and extortion leading to forced labor").

Furthermore, Congress knew and addressed that federal contractors might engage in unlawful activities under the TVPA. Congress first grew concerned of contractors' conduct abroad stating "that contractors, their employees and agents,

must be held accountable to a code of conduct with associated consequences for unethical or improper personal conduct while under U.S. Government contracts." H.R. Rep. No. 108-264, pt. 1, at 13 (2003). In the Trafficking Victims Protection Reauthorization Act of 2003, Congress required the U.S. Government to include in all contracts a provision giving it permission to terminate the contract, without penalty, where the contractor "uses forced labor in the performance of the grant, contract, or cooperative agreement." Trafficking Victims Protection Reauthorization Act of 2003, § 3(b), 22 U.S.C. § 7104(g).

During discussions for reauthorization of the TVPA it was clear that Congress sought "to ensure that U.S. Government personnel and contractors are held accountable for involvement with acts of trafficking in persons while abroad on behalf of the U.S. Government." 151 Cong. Rec. E399-03, E400 (2005) (statement of Rep. Smith). Congress recognized that the involvement of "contractors of the United States Government . . . in trafficking persons, facilitating the trafficking in persons, or exploiting the victims of trafficking in persons is inconsistent with United States laws and policies and undermines the credibility and mission of the United States Government[.]" H.R. Rep. No. 109-317, pt. 1, at 3 (2005). Ultimately, Congress confirmed that these requirements applied "to grants, contracts and cooperative agreements entered into by the Federal Government for services to be provided within the United States," as well as abroad. *Id.* at 24.

CoreCivic is a government contractor largely dependent upon the federal government for its revenues. Doc. 1 ¶¶ 21-22, 25. Congress simply did not contemplate excluding a federal government contractor like CoreCivic from the TVPA's reach, as evidenced by the statute's terms, its intent, and its history. A contractor like CoreCivic that systematically deprives detained immigrants of basic necessities and then threatens them with solitary confinement if they do not work, is no less liable than an international trafficker who threatens "isolation, denial of sleep and punishments, or prey[s] on mental illness, infirmity, drug use or addictions." 154 Cong. Rec. H10888-01, H10904 (2008). Congress sought to treat both offenders in the same way. It understood, in enacting § 1589, that all who are culpable should be liable for coercing labor or services from any person.

Lastly, even if Congress did not envision that § 1589 would be applied to privately-run immigration detention facilities—which Plaintiffs do not concede—the plain language's clear applicability to CoreCivic *still* controls. In *Pennsylvania Department of Corrections v. Yeskey*, a unanimous Supreme Court interpreted the broad statutory definition of "public entity" in the Americans with Disabilities Act (ADA) (defined in the statute as "any department, agency, special purpose district, or other instrumentality of a State or states or local government"), to conclude that the term includes state correctional facilities. 524 U.S. 206 (1998). The Supreme Court concluded that the term "public entity" unambiguously included such facilities

because there was no textual indication in the ADA indicating otherwise. *Id.* at 208-10. The Pennsylvania Department of Corrections argued, like CoreCivic does here, that the legislative history, in their view, did not demonstrate an intent for the ADA to apply to state prisons. The Supreme Court questioned the correctness of that assertion, but explained that *even if* Congress had not envisioned that the ADA would regulate the conduct of state prisons, "in the context of an unambiguous statutory text that is irrelevant. As we have said before, the fact that a statute can be 'applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.'" *Id.* as 211-12 (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1985)).

Similar to *Yeskey*, even if the Court assumes that Congress did not envision the TVPA to apply in the immigrant detention context, the unambiguous plain language of § 1589 controls. *Id.*; *accord Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1347 (11th Cir. 2014) (citing *Yeskey*, and also citing *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998), for the proposition that "statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed"); *Myers v. TooJay's Mgmt. Corp.*, 640 F.3d 1278, 1286-87 (11th Cir. 2011) (declining to engage in "purpose-driven statutory interpretation" at the expense of the plain text of a statute); *Gonzalez v. Reno*, 212

F.3d 1338, 1347 (11th Cir. 2000) (applying *Yeskey* to conclude that the broad term "any" is "neither vague nor ambiguous"). Therefore, in addition to being incorrect, CoreCivic's arguments about legislative history are also irrelevant.[11]

C. The Legislative Backdrop is Further Evidence that Congress Did Not Intend to Exempt CoreCivic from § 1589.

CoreCivic argues that when Congress enacted the TVPA, it did so "'against the backdrop' of [an] unexpressed presumption[]" that often, people in immigration detention work, and therefore, under CoreCivic's logic, Congress did not intend for the TVPA to apply in immigration detention. Appellant's Br. at 18 (quoting *Bond*, 572 U.S. at 857). CoreCivic's argument fails for several reasons.

First, Plaintiffs do not argue it is unlawful for people in immigration detention to work; they simply argue that such work cannot be *forced*. When enacting the TVPA, there was no "backdrop" legal framework allowing forced labor in civil detention. To the contrary, it was long-established constitutional law that in general, forcing civil detainees to work is impermissible punishment. *Wong Wing v. United States*, 163 U.S. 228, 237-38 (1896) (explaining that the Fifth and Sixth Amendments prohibit sentencing a detained immigrant awaiting removal to hard labor without a trial); *see also INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984)

[11] *Yeskey* also demonstrates that there is nothing special about the custodial context; Congress need not explicitly state that a generally applicable statute applies in the custodial context in order for that context to be covered based on the broad, inclusive meaning of the terms in the statute.

("A deportation proceeding is a purely civil action to determine eligibility to remain in this country, not to punish an unlawful entry . . . ."); *Fong Yue Ting v. United States*, 149 U.S. 698, 728-30 (1893) (observing that deportation proceedings have "all the elements of a civil case" and are "in no proper sense a trial and sentence for a crime or offense").

Consistent with this historical understanding, no source cited by CoreCivic demonstrates that *forced* labor of civil immigrant detainees was required or authorized by law when Congress enacted § 1589. *See* 8 U.S.C. § 1555(d) (authorizing appropriations to pay people in immigration detention for "work performed," but not authorizing forced work); DOJ Appropriation Act, Pub. L. No. 95-86, 91 Stat. 419, 426 (1977) (appropriating funds pursuant to § 1555(d), but not authorizing forced work); *Guevara v. INS*, 954 F.2d 733, *2 (Fed. Cir. 1993) (unpublished table opinion) (noting Congress's awareness of "the practice of . . . *asking for volunteers* to undertake work projects at [immigration] detention centers," but not authorizing forced work) (emphasis added)). And the fact that ICE contractors run *voluntary* work programs and require detained people to maintain minimal personal tidiness in their own living quarters[12] is not proof that Congress intended to exempt private immigration detention facilities from § 1589.

[12] *See* PBNDS at 406 (explaining that work assignments other than "personal housekeeping" as defined in this section are *voluntary* under the VWP). Because the PBNDS's required "personal housekeeping" tasks are not part of the VWP

Second, *Bond*'s discussion of "certain unexpressed assumptions" that operate in the background during statutory interpretation does not give CoreCivic a blank slate to write itself out of the statute. *Bond* referred to a short, established list of fundamental legal principles, such as the common law understanding that criminal statutes usually require a culpable mental state, the presumption against extraterritoriality, and certain federalism-based presumptions that preserve traditional areas of state power. 572 U.S. at 857-58. None of these fundamental principles applies here.[13] That is, there is no background legal presumption that

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these tasks are not implicated by Plaintiffs' TVPA claims and are irrelevant to this case. Under this exceedingly narrow set of requirements, people in ICE detention must make their own beds and keep their "immediate living areas in a neat and orderly manner" by storing loose papers in stacks, not allowing debris or clutter to accumulate, and not hanging items from light fixtures or furniture. *Id.* While it is undisputed that housekeeping can constitute "labor or services" under the TVPA, *Callahan*, 801 F.3d at 620, the term "housekeeping" in the PBNDS is something of a misnomer—the items comprising "personal housekeeping" simply amount to regulation of the ways in which detained people may store items and bedding in their living areas. *Cf. A.M. ex rel. Youngers v. N.M. Dep't of Health*, 108 F. Supp. 3d 963, 1015-16 (D.N.M. 2015) (distinguishing between truly "personal" chores like making one's bed, brushing one's teeth, and cleaning up after oneself, from other types of labor – including housekeeping duties to help maintain a facility – which cannot be lawfully compelled).

[13] Contrary to CoreCivic's assertions, *see* Appellant's Br. at 30, incarceration is not a traditionally *exclusive* state function, nor are Plaintiffs in state custody, and therefore this case does not present the federalism concerns animating *Bond* and *Toviave*. The federal government has a long history of both incarcerating people and regulating the treatment of people in state custody. *See See Medberry v. Crosby*, 351 F.3d 1049, 1055, 1059 (11th Cir. 2003) (acknowledging that there were "federal prisoners" at the time Congress enacted the Judiciary Act of 1789, and noting that right to seek a writ of habeas corpus was extended by federal statute to cover state prisoners in 1867); *see also Yeskey*, 524 U.S. 206 (holding

civilly detained immigrants may be forced to perform the tasks set forth in Plaintiffs' complaint.

Third, the concept of preemption of federal over state law is not a meaningful lens for discerning the TVPA's limits. *See* U.S. Const., Art. VI, cl. 2 (establishing the supremacy of federal over state law). Federal statutes cannot preempt other federal statutes, and agency practices, like incorporating the PBNDS into ICE detention contracts, cannot preempt or displace federal statutes.[14] Instead, the relevant question for the Court is whether Congress enacted a more-specific statutory provision exempting private prison companies from the TVPA. *See United States v. Couch*, 906 F.3d 1223, 1228 (11th Cir. 2018) (applying the "commonplace canon of statutory construction that the specific governs the general") (citation omitted). The answer to that question is a resounding "no."

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that Title II of the ADA regulates state prisons); *Robinson v. California*, 370 U.S. 660, 667 (1962) (acknowledging that the Eighth Amendment prohibition on cruel and unusual punishment applies to states).

[14] Even if the PBNDS is largely consistent with the TVPA, the TVPA (not the PBNDS) provides the relevant legal standard for the Court, since the question presented in this narrow interlocutory appeal is whether § 1589 prohibits CoreCivic from engaging in forced labor at Stewart. For these reasons, the Court should decline the Department of Justice's implicit suggestion that the terms of the PBNDS writ large do not run afoul of the TVPA. Brief for the United States at 8-13.

IV. Plaintiffs Have No Overarching Duty to Enrich a Private, For-Profit Corporation, to Do the Work to Make Stewart Operate, or to Defray Costs of the Detention Scheme.

CoreCivic cites to non-TVPA cases for the unsupported notion that detained people are "expected" to perform some labor, services or minimal personal housekeeping in detention, and therefore the TVPA does not prohibit CoreCivic from engaging in forced labor. CoreCivic's argument fails because the Thirteenth Amendment's "civic duty exception" does not apply in this instance. The fact that Plaintiffs are in custody does not mean they can be compelled to do the work necessary for Stewart to operate; and minimal personal housekeeping is not at issue in this case.

A. Plaintiffs Have No "Civic Duty" to Enrich CoreCivic.

CoreCivic relies on an out-of-circuit case, *Channer v. Hall*, which was decided under the "civic duty exception" to the Thirteenth Amendment. 112 F.3d 214 (5th Cir. 1997). In *Channer*, a *pro se* plaintiff detained by the Immigration and Naturalization Service ("INS") sued the warden of a federal Bureau of Prisons facility and other federal officials for allegedly failing to deport him expeditiously and reducing him to involuntary servitude by compelling him to work under threat of solitary confinement. *Id.* at 215. The *Channer* court relied on Thirteenth Amendment caselaw regarding "civic duties" that the federal government may compel to hold that the government may require a "communal contribution" from

an INS detainee and not violate the Thirteenth Amendment's prohibition on involuntary servitude. *Id.* at 218-19.

"Civic duties" historically excepted from the Thirteenth Amendment are traditional markers of citizenship owed to a sovereign, such as jury duty and military service, that were recognized as such at the time of the Thirteenth Amendment's ratification in 1865. *Butler v. Perry*, 240 U.S. 328, 333 (1916) ("[The Thirteenth Amendment] was not intended to interdict enforcement of those duties which individuals owe to the state, such as services in the army, militia, on the jury, etc."); *Robertson v. Baldwin*, 165 U.S. 275, 281-86 (1897) (recognizing the Thirteenth Amendment does not prohibit the exacting of duties recognized under English common law); *Figgs*, 2019 WL 1428084,*5 ("The civic duty exception was conceived of as a recognition that the government occasionally requires citizens to perform public tasks like jury duty or military service that benefit the country at large."). The Thirteenth Amendment implicitly preserved the government's "right to exact by law public service from all to meet the public need." *Heflin v. Sanford*, 142 F.2d 798, 800 (5th Cir. 1944).

There is no "civic duty exception" to the TVPA. In discussing the civic duty exception, the *Channer* court "expressly limited its holding to Thirteenth Amendment cases." *Figgs*, 2019 WL 1428084, at *5; *see also Menocal*, 113 F. Supp. 3d at 1132-33 (rejecting the application of the civic duty exception to a § 1589 claim

against a private company running an immigration detention facility and explaining that "[b]oth *Kozminksi* and *Channer* interpreted the term 'involuntary servitude' (in § 1584 and in the Thirteenth Amendment, respectively), whereas § 1589 reaches 'whoever . . . obtains the labor or services of a person by . . . threats of physical restraint.' The language at issue [in § 1589] is thus broader than the language at issue in *Kozminski* and *Channer*, and intentionally so.").

Even if the TVPA contained an implied civic duty exception—which it does not – the exception is inapplicable to for-profit, private prison companies like CoreCivic. *See, e.g,. Figgs*, 2019 WL 1428084, at *5; *Novoa*, 2018 WL 3343494, at *13; *Menocal*, 113 F. Supp. 3d at 1133; *cf. A.M. ex rel. Youngers v. N.M. Dep't of Health*, 108 F. Supp. 3d 963, 1011 (D.N.M. 2015) (explaining that the civic duty exception did not shield an adult care facility from a claim of involuntary servitude because the facility was private rather than public). The Supreme Court has repeatedly accepted arguments from private prison corporations that they do not become federal actors subject to liability as a result of contracting with the federal government. *See Minneci v. Pollard*, 565 U.S. 118, 126-27 (2012) (rejecting the proposition that a private prison-management firm is a federal agent like a federal employee); *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 63, 66 (2001) (refusing to imply a *Bivens* remedy against a private corporation and its employees running a facility under a Bureau of Prisons contract); *Richardson v. McKnight*, 521 U.S. 399,

408-12 (1997) (denying qualified immunity to guards employed by CoreCivic, formerly known as Corrections Corporation of America, because the guards do not "work directly for the government"). The forced labor that Plaintiffs allege occurred at Stewart, unlike the federally-run facility in *Channer*, does not inure to the benefit of the federal government, but rather, directly to CoreCivic—a "firm [that] is systematically organized to perform a major administrative task for profit." *Richardson*, 521 U.S. at 409.

Cases discussing civic duties hold that such duties are only owed to government entities. *See, e.g.*, *Kozminski*, 487 U.S. at 943-44 ("[T]he Court has recognized that the prohibition against involuntary servitude does not prevent the *State or Federal Governments* from compelling their *citizens*, by threat of criminal sanction, to perform certain civic duties.") (emphasis added). There is not, and has never been, a recognized civic duty to enrich a private prison company.[15]

[15] CoreCivic cites multiple out-of-circuit cases that, like *Channer*, all involve alleged involuntary servitude (as opposed to forced labor under § 1589) at *government*-run facilities. Thus, like *Channer*, these cases are inapposite. *See Martinez v. Turner*, 977 F.2d 421, 423 (8th Cir. 1992) (pretrial detainee in a federal facility); *Bijeol v. Nelson*, 579 F.2d 423, 424 (7th Cir. 1978) (same); *Owuor v. Courville*, No. 2:11-cv-926, 2013 WL 7877306 (W.D La. Aug. 7, 2013) (applying *Channer* to a Thirteenth Amendment claim against a federal facility); *Hutchinson v. Reese*, No. 5:07cv181-DCB-MTP, 2008 WL 4857449 (S.D Miss. Nov. 7, 2008) (same); *Mendez v. Haugen*, No. 14-4792 ADM/BRT, 2015 WL 5718967 (D. Minn. Sept. 29, 2015) (pretrial detainee in a federal facility).

Additionally, given the finite historic list of "civic duties" recognized at the time of the Thirteenth Amendment's ratification, *Channer* was wrongly decided. The *Channer* court did not explain why exacting labor from civilly detained noncitizens is analogous to exacting jury duty or military service from citizens; recognizing such an exception swallows the Thirteenth Amendment and runs directly contrary to *Wong* and *Fong Yue Ting*. The only case *Channer* cited to support the idea that civil detainee work is a "civic duty" was *Bayh v. Sonnenburg*. *See Channer* 112 F.3d at 218-19 (citing *Bayh v. Sonnenburg*, 573 N.E.2d 398, 412 (Ind. 1991)). *Bayh* is a poorly reasoned state court case that concluded, without a logical explanation, that "[w]e think the facts of this case [addressing work performed by patients in Indiana state mental hospitals] fits squarely within the 'civic duty' exception." 573 N.E.2d at 411.[16]

Furthermore, the Court should reject CoreCivic's "civic duty" argument because it runs afoul of the constitutional ban on peonage. CoreCivic argues, and

[16] *Bayh* relied on a Georgia state court case from 1906, *Kennedy v. Meara*, 56 S.E. 243 (Ga. 1906). *See Bayh*, 573 N.E.2d at 411 n.14 (explaining, as support for its conclusion that the civic duty exception applied, that "the Supreme Court of Georgia[, in *Kennedy*,] refused to apply the thirteenth amendment to persons who performed work while under the care of that state's 'benevolent institutions.'"). *Kennedy* upheld a Georgia statute from 1895 permitting the indentured servitude of children. *Kennedy*, 56 S.E. at 244, 246, 248. *Channer* relied directly on *Bayh*. *See Channer*, 112 F.3d at 218-19. Unlike the apparent situation in 1906, there is no question today that committing children to indentured servitude would be unconstitutional.

Channer and *Bayh* relied on, the notion that forcing civil detainees to work is permissible because, in CoreCivic's view, they should defray the costs of their detention. Appellant's Br. at 28. CoreCivic effectively argues that Plaintiffs owe them a debt that it can compel them to repay with their labor. However, it is "beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service." *Pollock v. Williams*, 322 U.S. 4, 18 (1944). The court should reject that the "civic duty" exception to the Thirteenth Amendment could ever encompass a duty to engage in compulsory work in order to pay back the costs of civil detention; holding otherwise would eviscerate the constitutional ban on peonage. U.S. Const., amend. XIII (banning involuntary servitude "except as a punishment for crime whereof the party shall have been duly convicted"); *Bailey v. Alabama*, 219 U.S. 219, 242 (1911) (defining "peonage" as "compulsory service in payment of a debt"); *Pollock*, 322 U.S. at 7-9 (explaining that peonage is a type of involuntary servitude and therefore prohibited by the Thirteenth Amendment, as well as its implementing legislation). Similarly, the Court should not interpret § 1589 in a manner that would sanction modern-day peonage, as CoreCivic invites. *See Pine v. City of W. Palm Beach*, 762 F.3d 1262, 1270 (11th Cir. 2014) (explaining the canon of constitutional avoidance).

B. The TVPA Applies Even When There Is a Custodial Relationship.

CoreCivic argues that because the overarching fact of Plaintiffs' detention is legal, and because it is subject to a contract that incorporates the PBNDS,[17] anything that happens within Stewart's walls *per se* cannot amount to any of the coercive conduct prohibited by § 1589. The logical conclusion is that CoreCivic believes it retains blanket power to compel detained people to work by inflicting or threatening "force," "physical restraint," "serious harm," or "abuse of law or legal process," without running afoul of § 1589.[18] CoreCivic does not pinpoint any language in the

[17] CoreCivic argues that the mere inclusion of the terms of the PBNDS in its contract with ICE exempts it from § 1589 as a matter of statutory interpretation. The terms of a contract should be interpreted as consistent with federal law, and not the other way around. *See Everglades Ecolodge at Big Cypress, LLC v. Seminole Tribe of Fla.*, 836 F. Supp. 2d 1296, 1304 (S.D. Fla. 2011) (explaining that statutes control over contract provisions). Additionally, the mere existence of the PBNDS means little when it is well-documented that ICE fails to enforce them. Doc. 1 ¶¶ 41-43; U.S. Dep't of Homeland Sec., Office of the Inspector Gen., OIG-19-18, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards (2018), https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf. If anything, Plaintiffs' factual allegations, when substantiated, will prove that CoreCivic is in violation of both § 1589 and the PBNDS.

[18] The district court concluded that Plaintiffs' well-pled allegations were sufficient to state a claim for forced work under threat of abuse of the legal process. Doc. 38 at 13. CoreCivic did not move to dismiss based on the sufficiency of Plaintiffs' allegations as to any other type of harm or threatened harm. *Id.* at 12 n.2. Plaintiffs' allegations, which the Court must take as true, clearly rise to the level of actual or threatened "serious harm" and "physical restraint" in violation of § 1589. Doc. 1 ¶¶ 40-43, 48-59; *see, e.g.*, *Callahan*, 801 F.3d at 614 (affirming a § 1589 conviction when the defendants locked the victim in a room and did not permit her to leave unless she agreed to do the defendants' bidding).

statute or any other source of law that could justify opening such a gaping loophole in the statute.

CoreCivic further argues that the existence of a custodial relationship, in which a private prison company provides basic necessities to detained people, means that it is fair and lawful for the prison company to compel those detained to do nearly all of the work needed to make the prison operate. CoreCivic relies primarily on a Fair Labor Standards Act (FLSA) case to support this argument, but FLSA cases, like *Villarreal v. Woodham*, 113 F.3d 202, 207 (11th Cir. 1997), are a particularly bad match to the TVPA: The central question under the FLSA is whether there is an employer-employee relationship entitling the worker to the minimum wage. But Congress did not limit § 1589 to "employees," and FLSA coverage is not a precursor to liability under the TVPA.

In *Villarreal*, the court asked whether there was a "traditional, free-market employment relationship" between the purported employer and the purported employee, such that the worker could "walk off the job site at the end of the day." *Villarreal*, 113 F.3d at 207 (citation omitted). The *Villarreal* court concluded that because, *inter alia*, the purported employee was in custody and not on the free market, there was no traditional employment relationship and therefore FLSA did not apply. *Id.* The employer-employee relationship test applied in *Villarreal* is wholly irrelevant to § 1589. Labor that is "forced" and therefore unlawful under

§ 1589 does not resemble free-market employment because it is not freely given. Thus, *Villarreal*'s conclusion that a pretrial detainee who provided "translation services . . . for the benefit of the correctional institution" was not an "employee" of that institution, *id.*, does not mean that compelling these services in immigration detention could never violate the TVPA. Indeed, *Villarreal* was decided before § 1589's enactment, and the case explicitly did not address whether the requested translation services violated the Thirteenth Amendment bar on involuntary servitude because that issue was not raised in the district court. *Id.* at 208 n.4.

Furthermore, *Villarreal* concluded that the plaintiff was not entitled to FLSA minimum wages because FLSA is meant to protect the standard of living for American workers, but the plaintiff was in custody and therefore the level of wages paid would not determine his standard of living. *Id.* at 207. In contrast with the FLSA context, work can be unlawful "forced labor" whether the worker is paid or not and regardless of whether he is paid the minimum wage. *See Lipenga v. Kambalame*, 219 F. Supp. 3d 517, 525-26, 530-31 (D. Md. 2016) (awarding compensatory damages for a violation of § 1589 despite victim being paid some wages for forced labor); *Cruz-Cruz v. Conley-Morgan Law Grp., PLLC*, No. 5:15-CV-157-REW, 2017 WL 2112637, at *4 (E.D. Ky. May 15, 2017); *Cf. Heflin*, 142 F.2d at 799 (explaining that whether a worker was paid is not determinative of whether her labor was forced in violation of the Thirteenth Amendment). Similarly, work can be

unlawful "forced labor" even if the worker receives basic food, clothing and shelter. Thus, the focus on whether wages determine the worker's standard of living in FLSA cases is irrelevant to § 1589 analysis.

CoreCivic's reliance on *Villarreal* is misplaced for the additional reason that the case simply does not say that pretrial detainees may be compelled, under threat of punishment, to provide labor or services for a jail's benefit. Any language in the case suggesting the contrary is dicta,[19] since the plaintiff in *Villarreal* was not compelled to work at all. *Villarreal*, 113 F.3d at 204, 208 (describing the work assignment in *Villarreal* as a "request" that was not "punitive in nature," but was allegedly premised on a false promise that Villarreal would be paid).

Even if the Court agrees with CoreCivic that the existence of a custodial relationship is relevant to the question of the TVPA's applicability, dismissal on this basis is premature under Rule 12 because Plaintiffs allege that CoreCivic has abrogated its custodial duties to provide minimally adequate food, clothing, and shelter. Doc. 1 ¶¶ 40-47, 58.[20]

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[19] *Villarreal* incidentally quotes *Danneskjold v. Hausrath*, 82 F.3d 37 (2d Cir. 1996), for the idea that a correctional institution may "compel [convicted] inmate*s* to perform services for the institution without paying the minimum wage." *Villarreal*, 113 F.2d at 207. *Danneskjold*'s holding hinged on the fact of conviction, and thus it is inapplicable to civil detention. 82 F.3d at 43-44. (explaining that both forced and voluntary labor by convicted prisoners inside a prison is not subject to the FLSA because it serves "penal functions").

[20] The OIG has also found CoreCivic does not fulfill its custodial obligations at Stewart. *See* U.S. Dep't of Homeland Sec., Office of the Inspector Gen., OIG-18-

C. Even If Required, Minimal Personal Housekeeping Is Permissible, Dismissal Is Improper Under the Rule 12 Standard of Review.

Even if the Court finds there is a "personal housekeeping" exception to § 1589, this conclusion should not result in dismissal of Plaintiffs' claims because Plaintiffs' allegations involve the compelled performance of work that is far outside the bounds of personal housekeeping. Plaintiffs do not allege that CoreCivic cannot compel them to perform the discrete tasks excluded from the VWP by the PBNDS. Consequently, the legality of compelled personal housekeeping in civil detention is not before this Court. Plaintiffs' challenge to the VWP at Stewart – which is distinct from personal housekeeping, *see* PBNDS 405-409 – would not prevent such personal housekeeping tasks in civil or pre-trial detention writ large. Notably, the cases CoreCivic's relies on to support the proposition that Plaintiffs can be required to perform personal housekeeping chores are cases where the labor at issue was truly minimal, wholly unlike the force labor alleged in this case. *See, e.g.*, *Hause v. Vaught*, 993 F.2d 1079, 1085 (4th Cir. 1993) (noting the distinction between personal housekeeping and other work and dismissing a pretrial detainee's Thirteenth Amendment claim when he "did not specify what work he was required

32, Concerns about ICE Detainee Treatment and Care at Detention Facilities (2017), https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf.

to do"); *Bijeol v. Nelson*, 579 F.2d 423, 424-25 (7th Cir. 1978) (explaining that a pretrial detainee may be required to do *simple* housekeeping tasks that are not "overly burdensome in the time or labor required"); *Mendez v. Haugen*, No. CV 14-4792 ADM/BRT, 2015 WL 5718967, at *1 (D. Minn. Sept. 29, 2015) (relying on the distinction between limited personal housekeeping and other types of labor). CoreCivic posits that Plaintiffs must only make their own food, clean the place where they live, and wash their own clothes. Appellant's Br. at 28. Plaintiffs' actual allegations are that they had to make food for others, clean parts of the facility where they do not live, and wash clothes for others, in addition to various other duties – Plaintiffs were forced to perform the many tasks needed to operate a 2,000-bed prison. Doc. 1 ¶¶ 9-11, 30, 62-63, 78-79, 86-88. These allegations far exceed mere housekeeping tasks in one's own cell or living area.

Finally, the Court should reject CoreCivic's argument that there is no meaningful distinction between personally-related chores and other types of labor that benefit a facility's operations as a whole. Appellant's Br. at 29. Courts routinely make such a distinction. *See, e.g.*, *McGarry v. Pallito*, 687 F.3d 505, 514 (2d Cir. 2012) ("[A] pretrial detainee's compelled work in a laundry for up to 14 hours a day for three days a week doing other inmates' laundry cannot reasonably be construed as personally related housekeeping chores . . . ."); *Martinez v. Turner*, 977 F.2d 421, 423 (8th Cir. 1992) (distinguishing between "requiring a pretrial detainee to work"

and requiring housekeeping chores); *Jobson v. Henne*, 355 F.2d 129, 131-32 & n.3 (2d Cir. 1966) (distinguishing between chores related to an inmate's personal needs and other tasks); *A.M. ex rel. Youngers*, 108 F. Supp. 3d at 1015-16 (same).[21]

V. The Rule of Lenity is Inapplicable Where CoreCivic Has Not Demonstrated Any Ambiguity.

CoreCivic's plea for lenity is also unconvincing. The rule of lenity is considered only if after applying ordinary tools of statutory construction, "there remains a 'grievous ambiguity or uncertainty in the statute,' such that the Court must simply 'guess as to what Congress intended.'" *Barber v. Thomas*, 560 U.S. 474, 488 (2010) (citations omitted); *accord Shaw v. United States*, 137 S. Ct. 462, 469 (2016). Any appeal to the rule of lenity where the proponent has not shown a grievous ambiguity or uncertainty that would trigger the rule must be rejected. *Salman v. United States*, 137 S. Ct. 420, 429 (2016).

The very purpose of § 1589 is to set the bounds of unlawful conduct in the obtaining of labor or services; the plain language of the statute gives CoreCivic fair warning of what conduct is unlawful. CoreCivic "relies upon no language in the statute" to claim ambiguity, "[i]t simply points to legislative history outlining the motivation for the enactment of the statute." Doc. 38 at 10-11. But CoreCivic ignores

[21] The PBNDS also makes such a distinction. *See supra* note 12 (analyzing the PBNDS's distinction between narrowly defined "personal housekeeping" and all other work).

that "legislative intent should be divined first and foremost from the plain language of the statute." *Callahan*, 801 F.3d at 617-18 (citation omitted).

CoreCivic also contends that the Court should exercise restraint in its application of § 1589 to the allegations in dispute because private detention facilities have never been criminally charged with violating the statute.[22] Appellant's Br. at 3. The Government's choice of targets for § 1589 prosecutions has never limited its application to new and different circumstances, and the Court should reject CoreCivic's request to read such a limit into the statute here. *See Callahan*, 801 F.3d at 618 (rejecting the defendants' argument "that because § 1589 prosecutions typically target those who exploit the unique vulnerabilities of foreign-born victims, the statute does not apply to those who exploit persons with other vulnerabilities" because "[t]hat restriction is not present in the statute").

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court dismiss this appeal for lack of appellate jurisdiction. Alternatively, the Court should affirm the district court's order.

[22] Indeed, the U.S. Department of Justice agrees that the TVPA applies to federal contractors, including those operating immigration detention facilities. Brief for the United States at 6-8.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a), I certify that this brief complies with the length limitations set forth in Federal Rule of Appellate Procedure 32(a)(7) because it contains 11,676 words, as counted by Microsoft Word, excluding the items that may be excluded under Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

I further certify that this brief was filed in electronic format through the Court's CM/ECF system on the 1st day of May, 2019.

/s/ Bryan Lopez

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CERTIFICATE OF SERVICE

I certify that on May 1, 2019, I served the foregoing Brief of Appellees upon all counsel of record by and through the Court's CM/ECF system.

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