

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**KURIAN DAVID, et al.
Plaintiffs**

CIVIL ACTION

VERSUS

No. 08-1220

**SIGNAL INTERNATIONAL, LLC, et al.,
Defendants**

SECTION "E"

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff**

CIVIL ACTION

VERSUS

No. 12-557

**SIGNAL INTERNATIONAL, LLC, et al.,
Defendants**

SECTION "E"

**LAKSHMANAN PONNAYAN ACHARI, et al.,
Plaintiffs**

CIVIL ACTION

VERSUS

**No. 13-6218
(c/w 13-6219, 13-6220,
13-6221, 14-732, 14-
1818)**

**SIGNAL INTERNATIONAL, LLC, et al.,
Defendants**

SECTION "E"

**Applies To:
David (08-1220)**

ORDER

The Court previously ordered Plaintiffs and Signal to submit memoranda addressing the following: (1) whether punitive damages are available under the Trafficking Victim Protection Act ("TVPA");¹ (2) whether the standard for obtaining punitive damages is the same for all causes of action; (3) whether *in pari delicto* is a cognizable affirmative defense under the TVPA, and, if so, whether that defense is appropriate in this case; and (4) whether reputational harm and psychological harm are components of "serious harm" under the pre-amendment version of Section 1589 of the TVPA. The parties submitted their memoranda on January 26, 2015.²

I. Punitive Damages under the TVPA

The TVPA does not explicitly allow punitive damages in civil cases.³ Nonetheless, every court to consider the issue has held that punitive damages are available.⁴ The Court finds these cases persuasive and therefore holds that a plaintiff may recover punitive damages under the TVPA.

II. Punitive Damages for All Causes of Action

The Court will address this issue at the charge conference on January 28, 2015 at 5:30 p.m.

¹ 18 U.S.C. § 1581 *et seq.*

² See R. Docs. 2202, 2204.

³ See 18 U.S.C. § 1595 ("An individual who is a victim of a violation may bring a civil action . . . and may recover damages and reasonable attorneys fees.").

⁴ See, e.g., *Ditullio v. Boehm*, 662 F.3d 1091, 1098 (9th Cir. 2011) ("We . . . hold that punitive damages are available under 18 U.S.C. § 1595."); *Francisvo v. Susano*, 525 F. App'x 828, 835 (10th Cir. 2013) ("We . . . agree with the only other circuit to address the matter and hold punitive damages to be available under § 1595."); *Carazani v. Zegarra*, 972 F. Supp. 2d 1, 26 (D. D.C. 2013) ("Punitive damages are . . . available under the TVPA."); *Doe v. Howard*, No. 1:11-cv-1105, 2012 WL 3834867, at *4 (E.D. Va. Sept. 24, 2012) ("Punitive damages are available under the TVPA . . .").

III. *In Pari Delicto* and the TVPA

In pari delicto is an affirmative defense that bars recovery based on a plaintiff's own misconduct.⁵ As a preliminary matter, the Court's research indicates that no court has ever applied *in pari delicto* to a civil case under the TVPA. Signal thus invites this Court to break new ground.

Whether *in pari delicto* is an available defense to a federal cause of action depends on two factors: "(1) the plaintiffs' active participation in the violation *vel non* and (2) the policy goals of the federal statute."⁶ The first factor requires that the plaintiff bear "substantially equal responsibility for the violations he seeks to redress."⁷ The parties' relative levels of responsibility for any alleged violation of the TVPA is a clearly a question of fact.⁸ The Court does not reach this question, however, because it finds *in pari delicto* squarely at odds with the policy goals of the TPVA.

"The purposes of [the TVPA] are to combat trafficking in persons, to ensure just punishment of traffickers, and to protect their victims."⁹ Allowing a human trafficker to wash its hands with *in pari delicto* accomplishes none of these goals, because "[e]xisting legislation and law enforcement in the United States and other countries are inadequate to deter trafficking[,] . . . bring traffickers to justice[,] [and] . . . protect victims of trafficking."¹⁰

In drafting the TVPA, Congress found that (1) "[t]rafficking in persons . . . involves significant violations of labor, public health, and human rights standards

⁵ *In re Royale Airlines, Inc.*, 98 F.3d 852, 855 (5th Cir. 1996).

⁶ *Rogers v. McDorman*, 521 F.3d 381, 389 (5th Cir. 2008) (quoting *Official Comm. of Unsecured Creditors of PSA, Inc. v. Edwards*, 437 F.3d 1145, 1154 (11th Cir. 2006)).

⁷ *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310–11 (1985); *Rogers*, 521 F.3d at 390.

⁸ See *Packard v. OCA, Inc.*, 624 F.3d 726, 734 (5th Cir. 2010). As the presentation of evidence is still ongoing, this question is not ripe for consideration.

⁹ H.R. Conf. Rep. No. 106–939, at *89 (2000)

¹⁰ *Id.* at *5.

worldwide;" (2) "[t]raffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable;" (3) "[v]ictims are often forced . . . to . . . perform slavery-like labor. . . [through] threats, psychological abuse, and coercion;" (4) "[t]rafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises"); and (5) "[t]rafficking . . . involves violations of other laws, including labor and immigration codes and laws against . . . false imprisonment . . . [and] fraud."¹¹ Some of these findings closely mirror the allegations in the Sixth Amended Complaint. Allowing *in pari delicto* would turn the TVPA on its head. The affirmative defense is not available in this case.

IV. Psychological Harm and Reputational Harm

The pre-amendment version of Section 1589 of the TVPA proscribed the knowing provision of labor by "threats of serious harm to, or physical restraint against, [the victim]."¹² The new version of Section 1589 similarly prohibits the knowing provision of labor by "means of serious harm or threats of serious harm to [the victim]."¹³ Unlike pre-amendment Section 1589, the new version contains a broad definition of "serious harm," which includes "psychological, financial, [and] reputational harm."¹⁴

Signal previously argued the inclusion of "financial harm" in the new version of Section 1589 implies it was not part of the pre-amendment version of Section 1589. The Court has already rejected this argument.¹⁵ Signal now appears to advance the same

¹¹ *Id.* at *4.

¹² 18 U.S.C. § 1589(1) (2000).

¹³ 18 U.S.C. § 1589(a)(1).

¹⁴ 18 U.S.C. § 1589(c)(1).

¹⁵ *See* R. Doc. 2077.

argument with respect to psychological harm and reputational harm.¹⁶ That argument is rejected for the reasons previously stated.¹⁷

CONCLUSION

Punitive damages are available under the TVPA. Signal may not assert *in pari delicto* as an affirmative defense. The Court will charge the jury that "serious harm" under the TVPA includes psychological harm and reputational harm.

New Orleans, Louisiana, this 27th day of January, 2015.



SUSIE MORGAN
UNITED STATES DISTRICT JUDGE

¹⁶ The Court is unable to discern from Signal's brief whether it opposes Plaintiffs' position on psychological and reputation harm, and, if so, the basis for that opposition.

¹⁷ *See id.* Additionally, the Court notes the Fifth Circuit has ruled in an unpublished opinion that "serious harm" under the pre-amendment version of Section 1589 includes "psychological coercion." *See United States v. Nnaji*, 447 F. App'x 558, 559 (5th Cir. 2011). In holding that serious harm includes psychological harm, the court cited the legislative history for the pre-amendment version of Section 1589. *See id.* This confirms the court was indeed applying the pre-amendment version of the statute, rather than the current version.