

# HUMAN TRAFFICKING AND THE CHURCH OF SCIENTOLOGY: WHY THE LEGISLATURE SHOULD CLARIFY AND EXPAND THE TVPA AND THE IMPACT IT WOULD HAVE ON THE CHURCH

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## I. INTRODUCTION

“Practice what you preach.” The Church of Scientology (hereinafter “Church”) claims to be a champion of the Universal Declaration of Human Rights<sup>2</sup> for more than fifty years by sponsoring “the largest non-governmental information campaign to make the Universal Declaration of Human Rights known the world over.”<sup>3</sup> While the Church attempts to spread awareness of the Universal Declaration of Human Rights across the world,<sup>4</sup> allegations swirl of human rights violations being committed by the Church,<sup>5</sup> causing one

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2. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, <http://www.un.org/en/documents/udhr/history.shtml> (last visited Dec. 12, 2012). The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in December of 1948, guaranteeing the rights of humans all over as a response to the atrocities stemming from World War II. *Id.*

3. SCIENTOLOGY, [http://www.scientology.org/activity/human-rights/human-rights.html?video=hr\\_intro](http://www.scientology.org/activity/human-rights/human-rights.html?video=hr_intro) (last visited Dec. 12, 2012).

4. *Id.* The Church distributes human rights materials to over eighty-two nations. *Id.*

5. LISA MCPHERSON, <http://www.lisamcpherson.org/> (last visited Dec. 12, 2012). Lisa McPherson was admitted to a hospital on November 18, 1995 for psychological care, but was checked out by members of the Church. *Id.* On December 5, 1995, Lisa McPherson arrived at a hospital, but was pronounced dead on arrival. *Id.* The coroner’s report found Lisa McPherson to be underweight and severely dehydrated. *Id.*; Andre Tabayoyon Aff., Aug. 19, 1994, *available at* <http://www.ronthenut.org/tabayoyo.htm>. Andre Tabayoyon, a Vietnam War veteran, provided testimony about the Church of Scientology in a sworn affidavit about members being subjected to psychological techniques meant to drive them insane. *Id.*; Joe Childs and Thomas Tobin, *Ex-Clearwater Scientology Officer Debbie Cook testifies she was put in ‘The Hole,’ abused for weeks*, TAMPA BAY TIMES, Feb. 10, 2012, *available at* <http://www.tampabay.com/news/scientology/ex-clearwater-scientology-officer-says-church-leader-miscavige-ordered/1214690>.

Debbie Cook testified that she was forcibly placed in two doublewide trailers where the windows were covered with bars, the exits were manned by security guards, the floors were infested with ants, and the power was intermit-

to wonder who or what will serve as a champion of human rights against the Church itself. Two former Scientologists, the Headleys, filed a claim<sup>6</sup> against the Church for violating the U.S. Trafficking Victims Protection Act (hereinafter “TVPA” or the “Act”),<sup>7</sup> but were denied their day in court by the Ninth Circuit. The scope of the language in the TVPA needs to be clarified and expanded to allow former members of the Church and others similarly situated to turn towards the courts as their champion of basic human rights.

This article will describe the organizational structure of the Church and the experiences that the Headleys were subjected to while members of the Church. Next, an analysis of the TVPA will be conducted devoting specific attention to the statutory language concerning the Forced Labor Statute included in the Act. Following the analysis of the TVPA, this article will look at how the Ninth Circuit artificially erected requirements in the Act that are not present while failing to consider elements of the Forced Labor Statute that are explicitly written when making the determination that the Headleys did not assert a sufficient claim under the TVPA. Finally, this article will offer suggestions as to how the text of the TVPA should be clarified and expanded to include the experiences of the Headleys and others who are or have been similarly situated within the Church in order for the full intent of the Statute to be realized.

## II. BACKGROUND

### A. *Origins of Scientology and the Sea Organization*

The Church, established in the 1950s<sup>8</sup> has been the subject of numerous controversies over the course of the last half-century.<sup>9</sup>

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tently turned off at peak temperatures throughout the day for a period of seven weeks. *Id.*

6. *Headley v. Church of Scientology Int'l*, 687 F.3d 1173 (9th Cir. 2012). The Headleys “contended that the Church . . . violated the Act by causing them to believe that they could not leave the ministry or that they would face serious harm in doing so.” *Id.* at 1178. The Ninth Circuit held that the Headleys did not offer enough evidence to show that their labor was obtained “by means of” serious harm, threats, or other improper methods to satisfy the statutory language of the Trafficking Victims Protection Act. *Id.* at 1179.

7. Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000).

8. *What is Scientology?*, SCIENTOLOGY, <http://www.scientology.org/what-is-scientology/scientology-background/the-beginning-of-scientology.html> (last visited Dec. 12, 2012).

The purpose of the Church is to “transform individual lives and the world [by creating a] civilization without insanity, without criminals and without war, where the able can prosper and honest beings can have rights, and where man is free to rise to greater heights . . . .”<sup>10</sup> This is accomplished through the teachings of L. Ron Hubbard in his book *Dianetics*,<sup>11</sup> which proposes that there are two distinct parts of the mind.<sup>12</sup> The “reactive” part of the mind records, accurately, all of an individual’s painful memories in the form of mental images.<sup>13</sup> These mental images are known as engrams, and the objective of *Dianetics* is to remove the engrams from a person’s reactive mind, eliminating the reactive part of the mind altogether.<sup>14</sup> Once the reactive part of the mind has been removed, a person is free from the negative effects that the reactive mind can cause achieving a state known as “Clear.”<sup>15</sup> Attaining the state of Clear is not only the goal of Scientology, but also a prerequisite for individuals wishing to be a part of the upper echelon of the Church.<sup>16</sup>

The Sea Organization (hereinafter the “Sea Org”) was established in 1967, and is referred to by the Church as a religious order “composed of the singularly most dedicated Scientologists. . . . [who have been] entrusted to minister the advanced services of

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9. Roger Friedman, *Actor Jason Beghe: Scientology Is ‘Brainwashing’*, FOX NEWS (Apr. 16, 2008), <http://www.foxnews.com/story/0,2933,351426,00.html> (claiming that the purpose of Scientology is to create a “brainwashed, robotic version of you”); Sarah Collerton, *Scientology Insider’s Nightmare Childhood*, ABC NEWS (Mar. 17, 2010), <http://www.abc.net.au/news/2010-03-12/scientology-insiders-nightmare-childhood/362772?section=justin> (documenting former Scientologist’s claim that the Church is guilty of child slavery, forced abortions, and physical violence).

10. Lawrence Wright, *The Apostate: Paul Haggis vs. the Church of Scientology*, THE NEW YORKER, Feb. 14, 2011, available at [http://www.newyorker.com/reporting/2011/02/14/110214fa\\_fact\\_wright?currentPage=all](http://www.newyorker.com/reporting/2011/02/14/110214fa_fact_wright?currentPage=all).

11. L. RON HUBBARD, *DIANETICS: THE EVOLUTION OF A SCIENCE* (Bridge Publications, Inc. 5th ed. 2007).

12. *What is Dianetics?*, SCIENTOLOGY, <http://www.scientology.org/what-is-dianetics/basic-principles-of-scientology/the-parts-of-the-mind.html> (last visited Dec. 12, 2012).

13. *Id.*

14. Wright, *supra* note 10. Engrams are “the source of nightmares, insecurities, irrational fears, and psychosomatic illnesses.” *Id.*

15. *Dianetics*, SCIENTOLOGY, <http://www.scientology.org/what-is-dianetics/basic-principles-of-scientology/the-clear.html> (last visited Dec. 12, 2012). “Becoming Clear strengthens a person’s native individuality and creativity and does not in any way diminish these attributes.” *Id.*

16. Wright, *supra* note 10.

Scientology.”<sup>17</sup> The Sea Org has over six thousand members who each sign billion year contracts promising service to the Church.<sup>18</sup> “The Sea Org demands much of its members, renders strict discipline, imposes stringent ethical and lifestyle constraints, and goes to great efforts to retain clergy and to preserve the integrity of the ministry.”<sup>19</sup> Discipline is seen as critical to “preserving the integrity of Scientology’s ministry.”<sup>20</sup> The Church places several restrictions on Sea Org members: censoring mail, monitoring phone calls, and placing a prohibition on having children.<sup>21</sup> Leaving the Sea Org can be established in one of two ways, routing out or blowing out.<sup>22</sup> Routing out consists of formally withdrawing from the order through a process of filling out a form and attending Scientology ethics programs.<sup>23</sup> A member who chooses to leave the order through the process of routing out is allowed to remain in good standing within the Church, as opposed to a member who chooses to leave the Sea Org by blowing out.<sup>24</sup> Blowing out is a practice where a member chooses not to undertake the formal procedures of leaving the Sea Org, and when this occurs, other members of the Sea Org will attempt to locate the member to persuade him or her to return.<sup>25</sup> Upon return, the member is subject to discipline or excommunication, ceasing all interactions with other members of the Church, including family members.<sup>26</sup>

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17. *Church Management*, SCIENTOLOGY, <http://www.scientology.org/faq/church-management/what-is-the-sea-organization.html> (last visited Dec. 12, 2012). Ministering the advanced services of Scientology consists of helping “enough people to overcome spiritual distress to free the planet of crime, war, and irrationality.” *Headley*, 687 F.3d at 1176.

18. *Wright*, *supra* note 10.

19. *Headley*, 687 F.3d at 1176. “Members are required to work long hours without material compensation, to live communally, to adhere to strict ethical standards, and to be subject to firm discipline for ethical transgressions.” *Id.* at 1174-75. In return for this commitment, Sea Org members are provided room and board and a nominal allowance for frivolities. *Id.* at 1175.

20. *Id.* at 1175. The types of discipline can range from verbal warnings and rebukes to loss of privileges, removal from a post, and/or manual labor. *Id.*

21. *Id.* “Because Sea Org life may at any moment require a member indefinitely to serve anywhere in the world, the Church prohibits Sea Org members from having children unless they leave the order.” *Id.*

22. *Id.*

23. *Id.* The process can take weeks or months and members are expected to perform chores during this time period. *Id.*

24. *Headley*, 687 F.3d at 1175.

25. *Id.*

26. *Id.*

*B. The Headleys' Experience as Members of the Sea Org*<sup>27</sup>

Claire Headley's interactions with the Church of Scientology began at the age of four when she was separated from her single mother to be supervised by staff members of the Church for a period of four years.<sup>28</sup> By the time Claire Headley was sixteen years old, she had already signed the billion-year contract with the Sea Org and began working an average of 100 to 150 hours per week for an average of fifty dollars per week.<sup>29</sup> Marc Headley came from a Scientologist family and began participating in training at the age of twelve, culminating in him joining the Sea Org at the age of sixteen.<sup>30</sup> Marc Headley also worked approximately the same number of hours as his wife for the same amount of pay.<sup>31</sup> The Headleys mostly worked at the Church's 500-acre international headquarters known as Gold Base located in Gilman Hot Springs, California.<sup>32</sup> Throughout their time as members of the Sea Org, the Headleys observed and experienced a number of instances of physical abuse at the hands of high-ranking officials within the Church, ranging from shoving to grabbing peoples' heads and banging them against one another.<sup>33</sup> Aside from physical abuse, the Headleys were also subjected to verbal abuse and other forms of degrading punishment.<sup>34</sup> In 2002, Claire Headley was forced to

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27. This article recognizes that the experiences the Headleys put forth in their complaint are allegations. For the purposes of this article, the allegations will be assumed to be true. When reviewing a grant for summary judgment, the court views the record in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Since the Church moved for summary judgment at the lower court, the Headleys are the non-moving party. Additionally, since the Ninth Circuit did not address the applicability of the First Amendment's ministerial exception, this article will do the same.

28. Opening Brief for Appellant at \*9, *Headley v. Church of Scientology*, Int'l, 2011 WL 2191545 (9th Cir. Mar. 10, 2011).

29. *Id.*

30. Brief for Appellee at \*15, *Headley v. Church of Scientology*, Int'l, 2011 WL 3021703 (9th Cir. July 18, 2011).

31. *Headley*, 687 F.3d at 1175.

32. *Id.* at 1176. Marc Headley worked on creating and producing Scientology films, while Claire Headley oversaw the internal operations of the Center. *Id.*

33. Opening Brief for Appellant, at \*9-10, *Headley*, 2011 WL 2191545. A spokesperson for the Church of Scientology admitted under oath that over fifty instances of physical abuse occurred at Gold Base within a three-year period. *Id.* at \*10.

34. *Id.* at \*10 - 11. "[S]taff members were locked up for months at a time, physically beat, hazed with hours of denigration in front of coworkers, placed in labor camps, and forced to work multiple days with no sleep." *Id.* at \*10. During a meeting, a high-ranking member grabbed onto the back of Claire Headley's pants

eat only protein bars and drink water after being denied dining hall privileges for a period of six to eight months causing her to lose close to thirty pounds.<sup>35</sup> Marc Headley was forced to clean dried human excrement by hand from an aeration pond over a two-day period.<sup>36</sup>

Since Sea Org members are prohibited from having children, Claire Headley was twice coerced into having an abortion as opposed to being allowed to leave the Sea Org.<sup>37</sup> The first time Claire Headley became pregnant, she was ordered to have an abortion or face the consequences of heavy manual labor and interrogation.<sup>38</sup> The second time Claire Headley discovered she was pregnant, she was living away from her husband at the time and was denied a request to notify her husband prior to having an abortion.<sup>39</sup> After her abortion, Claire Headley was “interrogated at length to determine if she intentionally became pregnant in an attempt to leave,” causing her to believe that if the Sea Org thought she meant to become pregnant in order to leave, she would “be removed from her position, separated from her husband, and placed on heavy manual labor.”<sup>40</sup>

Any communication expressing a desire to leave the Sea Org was strictly prohibited and carried harsh penalties for transgressors.<sup>41</sup> Claire Headley’s inability to communicate freely coupled with the security measures in place at Gold Base,<sup>42</sup> as well as un-

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and had her drag him across the room as a demonstration that she was his ball and chain. *Id.* at \*11. Claire Headley also “observed coworkers being made to divorce, clean human excrement out of ponds . . . restricted to Gold Base for months at a time, required to sleep at their work stations, and not being allowed to leave to eat or shower. *Id.*

35. *Headley*, 687 F.3d at 1176.

36. *Id.* While distraught over getting an abortion, Claire Headley “feared that the consequences of not having the abortion were too great.” *Id.*

37. Opening Brief for Appellant at \*18, *Headley*, 2011 WL 2191545.

38. *Id.*

39. *Id.*

40. *Id.* Contrary to the written policy of allowing pregnant women in the Sea Org, “women who became pregnant were placed on heavy manual labor and were interrogated to convince them not to leave, and instead to have abortions.” *Id.*

41. *Id.* at \*12 – 13. If the Church discovered that a member contemplated leaving, the Church would impose heavy manual labor and security watch while separating that member from his or her spouse. *Id.* at \*13.

42. Opening Brief for Appellant at \*14, *Headley*, 2011 WL 2191545. Gold Base is surrounded by a perimeter fence outfitted with security cameras, motion detectors that sound an alarm when members attempt to climb the fence, floodlights, and spikes in certain portions. *Id.* Members who were suspected of being

successful attempts to leave by her coworkers,<sup>43</sup> led her to believe that it would be futile for her to attempt to leave the Sea Org.<sup>44</sup> Furthermore, as “a general rule, anyone who left without permission and was returned, was restricted to the property and assigned manual labor.”<sup>45</sup> The Sea Org initiated a “blow drill”<sup>46</sup> whenever a member left without permission.<sup>47</sup> During a blow drill, dozens of members would be deployed to track the moves of the member who left through a variety of methods, and then once the member was located, “efforts were made to ‘persuade’ them to return [to] Gold Base, which sometimes involved physical coercion.”<sup>48</sup> The fact that Claire Headley’s supervisor told her that members in her position would not be allowed to leave, and would be returned if they tried, further contributed to her belief that even though she had thoughts of leaving, it would be impossible to do so and the consequences of getting caught were too severe.<sup>49</sup>

In 2009, the Headleys separately sued the Church under the TVPA basing their “forced-labor claims on the theory that the Church . . . psychologically coerced them to provide labor,” because they were led to believe that it would be impossible to leave the Sea Org, and they would face serious consequences if they attempted to do so.<sup>50</sup> On appeal of a granting of summary judgment for the Church, the Ninth Circuit examined that language of the TVPA.

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at risk of leaving were always accompanied by an escort when they left Gold Base. *Id.*

43. *Id.* at \*16 – 17. Claire Headley witnessed coworkers being physically restrained and her own passport, birth certificate and marriage certificate were locked up to prevent her and other members from leaving. *Id.* at \*17.

44. *Id.* at \*13 – 14.

45. *Id.* at \*16.

46. *Id.* at \*15. “The purpose of a blow drill was to locate the person who left and get them to return by [a]ny means necessary.” *Id.*

47. Opening Brief for Appellant at \*15, *Headley*, 2011 WL 2191545.

48. *Id.* at \*16. The tracking methods ranged from accessing financial accounts of the members who left to acquiring travel information from travel agencies by impersonating the member who left. *Id.*

49. *Id.* at \*20.

50. *Headley*, 687 F.3d at 1178. “They cited evidence that it was difficult to leave the Base unnoticed, that the Sea Org tries to get blown members to return, and that the Sea Org disciplines those who wish or try to leave.” *Id.* at 1178 – 79.

### III. TRAFFICKING VICTIMS PROTECTION ACT AND THE NINTH CIRCUIT'S MISAPPLICATION OF THE ACT

#### A. *Trafficking Victims Protection Act*

The purpose of the TVPA is to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”<sup>51</sup> While the term “human trafficking” in today’s world brings up connotations of the international sex trade or some sort of sexual exploitation, the scope of the TVPA goes well beyond that.<sup>52</sup> Under the TVPA, a victim may sue a perpetrator for violation of the Forced Labor Statute.<sup>53</sup> “When enacting section 1589, Congress specifically noted that the ‘right to be free from slavery and involuntary servitude,’ is among the ‘unalienable rights’ guaranteed . . .” in the Declaration of Independence.<sup>54</sup> For purposes of this article, the key language in the Forced Labor Statute is the phrase “serious harm.”<sup>55</sup>

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51. Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000).

52. *Id.* § 101(b)(3). “Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.” *Id.* “Trafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market. 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.* § 7101(b)(12).

53. Forced Labor. 18 U.S.C. § 1589 (2008).

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

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

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

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

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

54. Opening Brief for Appellant at \*29, *Headley*, 2011 WL 2191545 (citing H.R. Conf. Rep. 106-939, § 102(b)(22) (Oct. 2000)).

55. Forced Labor. 18 U.S.C. § 1589 (2008). “The term ‘serious harm’ means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same



The purpose of the inclusion of the Forced Labor Statute was to expand upon the “pre-existing ban on ‘involuntary servitude’ in section 1584 [which] prohibit[s] only conduct involving the use or threatened use of *physical* or *legal* coercion.”<sup>56</sup> Whereas section 1584 encompassed only physical violence, the phrase “serious harm” in section 1589 was “intended to encompass not only physical violence, but also more subtle psychological methods of coercion such as where traffickers threaten harm to third persons, restrain their victims without physical violence or injury, or threaten dire consequences by means other than overt violence.”<sup>57</sup>

*B. The Ninth Circuit Should Have Ruled That the Headleys Set Forth a Sufficient Section 1589 Claim*

The Ninth Circuit denied the Headleys’ appeal holding that the Headleys did not produce enough evidence to show that the Sea Org “obtained the Headleys’ labor ‘by means’ of serious harm, threats, or other improper methods.”<sup>58</sup> The Court went on to state that the Headleys were not forced to work for the Sea Org, but voluntarily joined “because they believed that it was the right thing to do, because they enjoyed it, and because they thought that by working they were honoring the commitment that they each made and to which they adhered.”<sup>59</sup> Additionally, the Ninth Circuit added that the Headleys did not make out a sufficient TVPA claim, because the Headleys had a countless number of opportunities to leave the Sea Org, but chose to stay with it instead until they fi-

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circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.” *Id.* § 1589(c)(2).

56. *U.S. v. Bradley*, 390 F.3d 145, 150 (1st Cir. 2004). “The term ‘serious harm’ includes both physical and non-physical types of harm. Therefore, a threat of serious harm includes any threats – includes threats of any consequences, whether physical or non-physical, that are sufficient under all of the surrounding circumstances to compel or coerce a reasonable person in the same situation to provide or to continue providing labor or services.” *Id.*

57. *Id.* (citing H.R. Conf. Rep. 106-939, at § 101). “The term ‘serious harm’ as used in this Act refers to a broad array of harms, including both physical and nonphysical types . . .” *Id.* “Adopted in 2000 as part of a broader set of provisions – the Victims of Trafficking and Violence Protection Act of 2000, - section 1589 was intended to expressly counter *United States v. Kozminski*. In *Kozminski* the Supreme Court had interpreted the pre-existing ban on ‘involuntary servitude’ in section 1584 to prohibit only conduct involving the use of threatened use of physical or legal coercion.” *Bradley*, 390 F.3d at 150 (internal citations omitted).

58. *Headley*, 687 F.3d at 1179.

59. *Id.* at 1179-80.

nally did escape.<sup>60</sup> Finally, the Ninth Circuit noted that the Sea Org did not obtain the Headleys' labor "by means of" the Sea Org lifestyle of discipline, familial limitations, and service, but instead, the Headleys left for those reasons.<sup>61</sup>

The Court seems to suggest that the "serious harm" language in section 1589 has a high threshold that "requires that serious harm befall an employee 'if she did not continue to work' or a threat that 'compel[s] [her] to remain' with the employer."<sup>62</sup> According to the Court, the only adverse consequence that the Headleys faced when contemplating leaving the Sea Org was the potential to be excommunicated from the Church, which does not meet the "serious harm" threshold requirement.<sup>63</sup> Other circuit courts have found claims similar to the ones made by the Headleys to be sufficient reasons to make out a legitimate TVPA claim against the Church, and the Ninth Circuit should have followed suit.

1. The Ninth Circuit artificially erected requirements not in the TVPA when reasoning that because the Headleys voluntarily joined the Sea Org and could physically leave the Sea Org, they were precluded from asserting a viable TVPA claim.

The fact that individuals, such as the Headleys, voluntarily joined an organization or had an opportunity to physically leave an organization should not preclude them from asserting a viable TVPA claim. The Forced Labor Statute does not contain any language stating that an individual has to be forced into a labor relationship or has to be physically restrained from leaving the labor relationship for the Statute to take effect. While the presence of either situation gives rise to a TVPA claim, an individual is not strictly limited to either of these two circumstances to assert a TVPA claim. In *U.S. v. Marcus*, the Second Circuit held that a forced labor claim that began as a consensual relationship did not run contrary to the scope of the Statute.<sup>64</sup> In convicting the defendant for violating the Forced Labor Statute, the *Marcus* Court

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60. *Id.*

61. *Id.* at 1180. Marc Headley left the Sea Org after he was informed that he was facing manual labor as a form of discipline, while Claire Headley left when she was given the ultimatum to divorce her husband or step down from her position due to the restrictive marriage policy. *Id.*

62. *Id.* (citing *U.S. v. Dann*, 652 F.3d 1160, 1170 (9th Cir. 2011)).

63. *Headley*, 687 F.3d at 1180.

64. *U.S. v. Marcus*, 628 F.3d 36, 45 (2d Cir. 2010).

took into account that an individual may voluntarily enter into a relationship, but situations may subsequently arise that dramatically change the relationship.<sup>65</sup> The Headleys were in a similar situation where they voluntarily joined the Sea Org, but situations arose that dramatically changed their relationship with the Sea Org, such as being forced to clean dried human excrement from a large pond by hand, being forced to survive on protein bars and water for a period of six to eight months, and being forced to have two abortions.<sup>66</sup> The Ninth Circuit should have taken these circumstances in account and found that even though the Headleys voluntarily joined the Sea Org, the TVPA was still applicable.

Similarly, the Second Circuit upheld a defendant's conviction under the Forced Labor Statute even though the victim could have physically left the labor relationship.<sup>67</sup> The *Marcus* Court took into account that an individual may physically be able to leave a relationship, but nonphysical circumstances may be present preventing the individual from doing so.<sup>68</sup> The Headleys were in a similar situation where they had opportunities to physically leave the Sea Org, but refrained from doing so, "because they believed that doing so would have been difficult or even risky due to the Base's extensive security, the Sea Org's blow drills, and its approach to members who leave or wish to leave."<sup>69</sup> Collectively, these circumstanc-

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65. *Id.* at 39. "From October 1998 through approximately June 1999, Marcus and the complaining witness, Jodi, engaged in a consensual relationship that involved bondage, dominance/discipline, submission/sadism, and masochism. After they met on the Internet, Marcus convinced Jodi to move from her home in the Midwest to Maryland, where she lived in the apartment of a woman named Joanna. Jodi, Joanna, and other women participated in various BDSM activities with Marcus . . . . By October 1999, the nature of this arrangement changed . . . . According to Jodi, she began to feel 'trapped' and 'full of terror.'" *Id.*

66. *Headley*, 687 F.3d at 1176.

67. *Marcus*, 628 F.3d at 45. Here, the victim did not live with the defendant, and at one point, the victim not only lived by herself, but also lived in a different state from the defendant. *Id.* at 40.

68. *Id.* at 40. Once the victim's relationship with the defendant became non-consensual, the victim remained out of fear of the defendant's reaction if she left. The victim testified that "she felt broken, surrounded by fear and terror, and trapped" in the relationship with the defendant, despite the fact that the defendant was living in a different state. *Id.*

69. *Headley*, 687 F.3d at 1177. The Sea Org tracks blown members by sending dozens of other members to locate and persuade the blown members to return. *Id.* The Headleys testified that members of the Church or security personnel were posted outside their house at times along with security cameras to ensure that they would not leave. *Id.* Additionally, there were times when the Head-

es led the Headleys to believe that, even though they could physically leave the Sea Org, they were nonetheless trapped within the organization. The Ninth Circuit should have taken this into account and ruled that, despite the Headleys having opportunities to leave the Sea Org, the TVPA was still applicable. At the same time the Ninth Circuit was artificially creating requirements not present in the TVPA, the Court failed to consider the psychological coercion that the Church inflicted upon the Headleys, which falls within the scope of the “serious harm” language in the Statute.<sup>70</sup>

2. The Ninth Circuit should have considered the psychological coercion that the Church of Scientology inflicted upon the Headleys in making a determination of whether a serious harm existed.

The Ninth Circuit quickly dismissed the Headleys’ TVPA claim on two grounds. First, the Headleys’ attack on the Sea Org lifestyle dealt with reasons as to why they left and not reasons as to how their labor was procured; and second, the adverse consequences for leaving cited by the Headleys did not meet the “serious harm” threshold.<sup>71</sup> The Forced Labor Statute does not confine “serious harm” as a means of obtaining an individual’s labor, but also includes a means of keeping an individual’s labor.<sup>72</sup> Therefore, the Ninth Circuit should have put more consideration into whether the Sea Org used psychological coercion to prevent the Headleys from leaving the organization. The Ninth Circuit’s ruling closes the door for individuals similarly situated to the Headleys to seek relief from the courts against the Sea Org for violations of the TVPA. The Forced Labor Statute should be clarified and even interpreted more broadly, particularly the definition of “serious

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leys were not allowed to leave the Base and were assigned escorts when traveling. *Id.*

70. Forced Labor. 18 U.S.C. § 1589(c)(2) (2008). Serious harm means “any harm, whether physical or nonphysical, including psychological, financial, or reputation harm . . .” *Id.*

71. *Headley*, 687 F.3d at 1180.

72. Forced Labor. 18 U.S.C. § 1589(c)(2) (2008). “The term ‘serious harm’ means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to *continue* performing labor or services in order to avoid incurring that harm.” *Id.* (emphasis added).

harm” to not only open the door back up for victims of human rights violations within the Church, but to leave it open as well.

#### IV. THE LEGISLATURE SHOULD CLARIFY AND EXPAND THE “SERIOUS HARM” LANGUAGE IN THE TVPA

To bring about a level of consistency for the courts as they interpret the TVPA and to ensure that the basic human right of being free from involuntary servitude is protected for the Headleys and those similarly situated, the legislature should clarify the “serious harm” language in the Forced Labor Statute and expand upon its scope. Part of the Ninth Circuit’s rationale for finding against the Headleys was because they both joined the Sea Org voluntarily.<sup>73</sup> While it is questionable that either of the Headleys voluntarily joined the Sea Org since both were exposed to the Church at an early age and both were minors when they signed their billion-year contracts,<sup>74</sup> policy reasons dictate that the Statute should not close the door on plaintiffs who “voluntarily” entered into labor with defendants. There are circumstances where a victim can voluntarily enter into a labor relationship only to find that he or she is unable to leave due to serious harm or the threat of serious harm.<sup>75</sup> The Forced Labor Statute should be expanded to account for these instances where a victim may enter into a relationship voluntarily, but the relationship evolves into one where the individual would be compelled to “perform or to continue performing labor or services in order to avoid incurring that harm.”<sup>76</sup> In the case of the Headleys, both Marc Headley and Claire Headley “contend that they did not leave the Sea Org because they believed that doing so would have been difficult or even risky due to the Base’s extensive security, the Sea Org’s blow drills, and its approach to members who leave or wish to leave.”<sup>77</sup>

Another reason the Ninth Circuit offered for its denial of the Headleys’ appeal is the fact that the Headleys had a “multitude of opportunities to leave . . . whatever their commitments and whatever they may have been told regarding the permissibility of

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73. *Headley*, 687 F.3d at 1179-80.

74. *Id.* at 1175.

75. *See* United States v. Marcus, 487 F.Supp. 2d 289 (E.D.N.Y. 2007), *aff’d in relevant part* (convicting the defendant of forced labor after finding the plaintiff willingly entered into a relationship with the defendant, but was unable to leave the relationship out of fear).

76. Forced Labor. 18 U.S.C. § 1589(c)(2) (2008).

77. *Headley*, 687 F.3d at 1177.

leaving.”<sup>78</sup> By suggesting that the Headleys could have left the Sea Org at any time, because they were not physically restrained from doing so (which is arguable considering the security cameras that were installed on the roof of their residence and the security measures put in place around the perimeter of Gold Base), goes against the very purpose of section 1589. Section 1589 was enacted to supplement section 1584, which only applies to conduct involving the use of threats or use of physical or legal coercion. Section 1589 was intended to apply to physical and nonphysical conduct including psychological coercion.<sup>79</sup> While the Headleys may have had opportunities to physically leave the Sea Org, they did not seize an opportunity out of fear of the possible repercussions. Courts have held that the Forced Labor Statute applies even if there is an absence of physical restraint.<sup>80</sup> Section 1589 was purposefully enacted for situations such as this, because even though the Headleys were free to travel, Claire Headley “was told that it was a ‘high crime’ to call the police, observed coworkers being prevented from leaving, and was told that if she attempted to leave, she would be brought back and face hard manual labor as discipline.”<sup>81</sup> The language of the TVPA should be amended to clarify the scope of nonphysical conduct and psychological coercion. More specifically, defendants should not be able to create a climate of fear, so the fact that a worker can physically leave the situation is of no consequence, because they will feel like they do not have a meaningful choice.<sup>82</sup> This climate of fear should not only be proven to exist through threats and acts of violence levied against the individual, but also should be allowed to be proven through observed acts of threats and violence against others at the hands of the de-

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78. *Id.* at 1180. Marc Headley left the Sea Org while on a trip to New York with an escort for the organization and Claire Headley left the Sea Org while on a trip to an optometrist with an escort for the organization. *Id.* The Ninth Circuit argued that if the Headleys were able to leave under the circumstances that they did, they should have been able to leave long before. *Id.*

79. See Forced Labor, 18 U.S.C. § 1589(c)(2) (2008).

80. In *Marcus*, “the defendant was convicted of forced labor even though his victim did not live with him, and for a period of time actually lived in a different state, such that she had the physical opportunity to escape and seek the help of others.” Opening Brief for Appellant at \*51, *Headley*, 2011 WL 2191545. (citing *Marcus*, 487 F.Supp. 2d at 292 – 97, 311).

81. Opening Brief for Appellant at \*51-52, *Headley*, 2011 WL 2191545.

82. The Eleventh Circuit in *U.S. v. Warren* reasoned “[t]hat the worker had the opportunity to escape is of no moment, if the defendant has placed him in such fear of physical harm that he is afraid to leave.” 772 F.2d 827, 834 (11th Cir. 1985) (citing *U.S. v. Bibb*, 564 F.2d 1165, 1168 (5th Cir. 1977)).

fendant. If a victim observes an individual similarly situated being subjected to threats and acts of violence for leaving, the natural presumption would be that the individual would experience like treatment if they did the same, thus creating a climate of fear.

While the language of “serious harm” is intended to encompass “any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious under *all the surrounding circumstances*, to compel a reasonable person of the same background . . . . to continue performing . . . . to avoid incurring that harm,”<sup>83</sup> the Statute appears to signal that the term is evaluated on a case-by-case basis. However, language should be explicitly included in the Statute to account for specific vulnerabilities that could lead to greater susceptibility of coercion into forced labor to give guidance to the courts when making a determination of whether “serious harm” is actually present.<sup>84</sup> While age or competency may be obvious inclusions,<sup>85</sup> the Statute should also include language concerning religious connections. An individual with religious ties to an organization may be more susceptible to coercion than an individual who does not have the same religious ties. In the case of the Headleys, they were both raised in the Church of Scientology at a very young age and they “made the commitment” to join the Sea Org while they were still teenagers, albeit with the permission of their parents who introduced them to the Church. Their exposure to the religion at such an early age could have been an attributing factor as to why they stayed within the Church for as long as they did and were reluctant to leave even after taking in consideration the way that they and others within the Church were treated.

The legislature should be charged with the task of providing clarification, as well as expanding language to the definition of forced labor under 18 U.S.C. § 1589(a) to ensure that individuals like the Headleys will not turn to the courts to seek relief under

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83. 18 U.S.C.A. § 1589(c)(2) (2008) (emphasis added).

84. The U.S. Supreme Court in *U.S. v. Kozminski* opined that Congress viewed “that a victim’s age or special vulnerability may be relevant in determining whether a particular type or certain degree of physical or legal coercion is sufficient to hold that person to involuntary servitude.” 487 U.S. 931, 948 (1988). With the enactment of § 1589, this view should be extended towards nonphysical coercion as well.

85. *Id.* “[A] child who is told he can go home late at night in the dark through a strange area may be subject to physical coercion that results in his staying, although a competent adult plainly would not be.” *Id.*

the TVPA only to discover that the door has been judicially closed on them.

## V. CONCLUSION

“Practice what you preach.” On the outside, the Church of Scientology claims to be an advocate of human rights across the globe, but yet, within the organization, individuals like the Headleys are victims of human rights violations at the hands of the Church. The very document the Church tries to spread global awareness of condemns the treatment that the Headleys were subjected to by the Church.<sup>86</sup> Inspired by the Declaration of Independence,<sup>87</sup> the TVPA was enacted to protect individuals like the Headleys. It appears that the courts have not interpreted the TVPA in a consistent fashion, meaning if the Headleys had been able to have their case heard in another circuit, a more favorable verdict may have come about. To remedy this, legislative action should be taken to clarify and expand the language of the Forced Labor Statute to effectuate the full intent of the TVPA. Language should be included in the TVPA that explicitly states that individuals who voluntarily enter into a labor relationship with a defendant are not precluded from asserting a TVPA claim against the defendant. Similarly, language in the TVPA should also be included so that individuals who have a physical opportunity to leave a labor relationship are not precluded from asserting a viable TVPA claim if there are circumstances surrounding their situation that prevent them from doing so. Such circumstances should include, but should not be limited to, acts of psychological coercion. While the Forced Labor Statute was meant to encompass different methods of nonviolent coercion including psychological coercion, the legislature should provide more clarity as to what constitutes nonviolent coercion, expanding the scope if necessary, to take account of certain vulnerabilities that would cause an individual to be more susceptible to psychological coercion. These vulnerabilities could entail, but should not

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86. Purposes and Findings. 22 U.S.C.A. § 7101(b)(23) (2000). “The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports, including the Universal Declaration of Human Rights . . .” *Id.*

87. *Id.* at § 7101(b)(22). The Declaration of Independence “states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights.” *Id.*



be limited to, susceptibility as a result of age, religious affiliation, and fear stemming from indirect threats of violence. The result of the legislature enacting these changes would be greater consistency amongst the courts in determining whether a legitimate TVPA claim has been asserted as well as opening the door back up for the Headleys and all those similarly situated who have been deprived of the basic human rights of living a life free from involuntary servitude.