No. 23-1218

In the United States Court of Appeals for the Seventh Circuit

DARRELL TAYLOR, CHARLES LUCAS, KEVIN LEWIS, DARRELL BURKHART, and LEEVERTIS PAGE,
individually and on behalf of all others similarly situated,
Plaintiffs-Appellants,

v.

THE SALVATION ARMY NATIONAL CORPORATION and SALVATION ARMY, doing business as CENTRAL TERRITORIAL OF THE SALVATION ARMY,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois
Case No. 1:21-cv-06105 (The Hon. John R. Blakey)

OPENING BRIEF OF PLAINTIFFS-APPELLANTS

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Appellate Court No: 23-1218

Short Caption: Taylor v. The Salvation Army National

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Darrell Taylor, Charles Lucas, Kevin Lewis, Darrell Burkhart, Leevertis Page

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

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INTRODUCTION

Although nominally a nonprofit, the Salvation Army makes billions of dollars a year. Much of this revenue comes from its nationwide network of thrift stores, where it sells donated goods to the public. While many Americans are familiar with these thrift stores, most do not know why they are so profitable: Instead of paying employees, the Salvation Army forces those who live at its centers to work for the organization.

The organization promises vulnerable people—those who are unhoused or suffering substance-use disorders or need a stable address to satisfy parole or probation requirements—that they can live at the Salvation Army's "Adult Rehabilitation Centers." Once they arrive, the Salvation Army cuts them off from the outside world by taking their cell phone, prohibiting them from leaving or even communicating with anyone outside the organization, and forcing them to sign over their government benefits. It then threatens them that if they do not work for the Salvation Army full-time without wages, they will be thrown in jail or left without food or shelter. The work of operating a thrift store is difficult, dirty labor: lifting heavy boxes in and out of trucks, sorting clothes in rat-infested warehouses, exterminating and cleaning those warehouses without any safety equipment. But these threats leave Salvation Army residents no choice.

The plaintiffs in this case are people forced to work by the Salvation Army, which threatened them with incarceration or the loss of food and shelter. Federal law prohibits forcing people to work by threatening serious harm. Nevertheless, the district court dismissed the plaintiffs' complaint. In doing so, the court erred twice over.

First, the court misconstrued *Rooker-Feldman*, a narrow doctrine under which lower federal courts lack jurisdiction to hear appeals from final state-court judgments. The doctrine applies only where a plaintiff asks a district court to effectively overturn a state-court order. None of the plaintiffs in this case did so. The plaintiffs do not challenge any state-court order; they challenge the Salvation Army's forced labor practices. No state court has mandated that the Salvation Army force people to work or that the plaintiffs be subjected to forced labor.

Nevertheless, the court held that it lacked jurisdiction over those plaintiffs who stayed at a Salvation Army center while on parole or probation. In doing so, the court confused parole conditions with state-court orders. Parole conditions are imposed by the parole board—an administrative agency, not a court. Thus, even a direct challenge to a parole requirement is not subject to *Rooker-Feldman* because it does not seek to overturn a state-*court* order. More importantly, there is no order of any kind—state-court or otherwise—mandating that any of the plaintiffs perform forced labor. *Rooker-Feldman*, therefore, does not apply.

Second, the district court misapplied the statute prohibiting forced labor—and the basic motion-to-dismiss standard. Federal law prohibits forcing people to labor under threats of serious harm, which it defines as "any harm, whether physical or nonphysical, . . . that is sufficiently serious . . . to compel a reasonable person *of the same background and in the same circumstances* to perform or to continue performing labor." 18 U.S.C. § 1589(c)(2) (emphasis added). Although the statute explicitly requires consideration of the plaintiff's specific background and circumstances, the district court refused to do so. The court also believed that it could, itself, decide whether a reasonable person, subject to the Salvation Army's threats, would feel compelled to work. That, however, is a prototypical jury question.

The district court was thus wrong on jurisdiction and wrong on the merits. This Court should reverse.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. § 1331 because this case arises under the Trafficking Victims Protection Act, 15 U.S.C. § 1595(a). This Court has appellate jurisdiction under 28 U.S.C. § 1291. The district court granted the Salvation Army's motion to dismiss and entered judgment on September 19, 2022. ECF 61 & 62. On January 6, 2023, the district court denied the plaintiffs' motion to alter or amend the judgment and for leave to file a second amended complaint. ECF 72. The notice of appeal was timely filed on February 2, 2023. ECF 73.

STATEMENT OF THE ISSUES

1. Does *Rooker-Feldman*—a narrow jurisdictional doctrine that prevents lower federal courts from exercising direct appellate review over state-court judgments—bar the plaintiffs' claims, which do not seek to overturn (or even modify) any such judgment and solely challenge the Salvation Army's independent misconduct?

2. Did the plaintiffs plausibly allege that the Salvation Army violated the Trafficking Victims Protection Act by cutting them off from the outside world and forcing them to work without pay under threats of incarceration and loss of access to food, clothing, and shelter?

3. Did the district court abuse its discretion when, without considering any proposed amendments, it denied the plaintiffs leave to amend their complaint?

STATEMENT OF THE CASE

I. Factual background

A. The Salvation Army uses its Adult Rehabilitation Centers to force vulnerable people to work in its thrift stores without wages.

Although structured as a nonprofit, the Salvation Army is a multi-billion-dollar enterprise. In 2021, for example, the organization earned nearly $6 billion in revenues and reported almost $19 billion in assets. AA 7; *see also* Salvation Army 2022 Annual Report 8, 10, https://perma.cc/LQ78-M39G ("Annual Rpt."). Much of the Salvation Army's revenue comes from its network of approximately 1,000 thrift stores

throughout the United States, where the organization sells donated clothing, furniture, and other goods. AA 1, 14, 17; Annual Rpt. at 8, 11.[1]

The Salvation Army markets itself as a charitable organization, promising food, shelter, and rehabilitation to the most vulnerable among us: people trying to turn their lives around after struggling with addiction, lack of shelter, poverty, or incarceration. AA 47. Based on this description, many Americans donate the clothing, furniture, and other goods that the Salvation Army then sells for a profit at its thrift stores. AA 50.

While many Americans are familiar with the Salvation Army's thrift stores, most do not know that the organization staffs those thrift stores by forcing people who reside in its "Adult Rehabilitation Center[s]" to work there. AA 2, 11, 17–18. The organization's "Adult Rehabilitation Program" is a 180-day program, which the Salvation Army advertises as providing "spiritual, emotional, and social assistance"—as well as food and housing—for people in need. AA 50. Under the guise of what the Salvation Army has dubbed "work therapy," the organization

[1] Although this factual background draws from both the first and proposed second amended complaint, the discussion of the facts specific to the named plaintiffs is drawn from the first amended complaint unless otherwise indicated. Additionally, for the reader's convenience, we refer to defendants "The Salvation Army National Corporation" and "The Salvation Army d/b/a Central Territorial of the Salvation Army" collectively as the "Salvation Army." Citations to ECF are to the district court docket. Finally, unless otherwise specified, all internal citations, quotation marks, and alterations are omitted from quotations throughout this brief.

requires everyone in its rehabilitation centers to work full-time serving its commercial enterprises. AA 18.

There is nothing therapeutic about this work: It is strenuous, demanding, and often even dangerous. Rehabilitation center residents do everything from loading and unloading donations from Salvation Army trucks to hauling and sorting heavy furniture to cooking food and bussing tables for the Salvation Army's catering and other businesses. AA 26, 32; *see also* AA 28 ("warehouse was dirty and had rats"); AA 68–69 (describing loading and unloading 100-300 pound pallets "by hand" in rat-infested warehouse without training, safety equipment, or even gloves); AA 71 (moving "extremely heavy" furniture without any safety equipment); AA 79 ("exterminating the Salvation Army buildings for bedbugs and working as a landscaper" without "any safety training or equipment").

By relying primarily on rehabilitation center residents to perform its labor, the Salvation Army is able to run its enormous network of thrift stores and donation-collection centers with far fewer costs—and therefore a greater profit. AA 19, 24–25; *see also* AA 50, 89. That's because, although they work full-time on its behalf, the Salvation Army does not pay its rehabilitation center residents any wages (or the government any payroll taxes). AA 19. The organization does give residents small "gratuities," but even at the high end, the gratuity amounts to less than $1 an hour—sometimes it is $1 *a week*. AA 19; *see also* AA 52 (explaining that, at some ARCs, workers

do not actually receive even this much because a "portion of the 'gratuity' . . . comes in the form of 'tokens' that can only be used in the ARC canteens to buy items directly from Salvation Army"). That minimal gratuity is far outweighed by the money the organization receives from its rehabilitation center residents by requiring them to turn over to the organization their government benefits—often worth hundreds of dollars a month per resident. AA 20.

The Salvation Army is able to force its residents to work without wages by threatening them that if they do not do so, they will lose access to food and housing, or even be sent to jail. AA 21–22. To ensure these threats are viable, the organization specifically targets vulnerable people, including those who have substance-use disorders or are unhoused, and then renders them entirely dependent on the Salvation Army. AA 17. When people arrive at a rehabilitation center, they are immediately cut off from the outside world. Rehabilitation center residents are prohibited from leaving—except to work for the Salvation Army—and from communicating with anyone outside the organization for at least thirty days. AA 20. The Salvation Army takes their personal property: their clothes, their cell phones, even sometimes their prescribed medications. AA 20. It requires them to assign their government benefits, such as food assistance or social security, to the organization. AA 19–20. The Salvation Army also prohibits rehabilitation center residents from working anywhere besides the organization. AA 5; *see also* AA 54, 66, 71, 74, 79, 81. By

denying its residents an income, their government benefits, their personal property, and for the first month, any contact with the outside world, the Salvation Army ensures they have no choice but to depend on the organization for their basic needs. AA 17–18, 20.

Having ensured that its residents are dependent on the organization, the Salvation Army routinely threatens them that if they don't work—or if they don't work hard enough or fast enough—they will lose access to the food, clothing, and shelter they depend on. AA 20–21. The organization makes good on these threats: No matter a person's age, physical ability, or health status, if they do not work as required, they are kicked out. AA 18.

These threats are particularly potent for those who reside at a Salvation Army center to satisfy a parole or probation requirement that they maintain housing. AA 21. For these residents, losing housing means violating parole or probation. The Salvation Army explicitly threatens those on parole or probation with reincarceration if they do not work for the organization—or do not do so satisfactorily. AA 22–23. These are not idle threats. The Salvation Army remains "in constant contact" with residents' parole or probation officers and informs them when someone leaves (or is kicked out). *See* AA 4, 29, 31.

B. The Salvation Army forced the plaintiffs to work by threatening them with incarceration and/or the loss of food, clothing, and shelter.

The plaintiffs in this case are ARC residents whom the Salvation Army forced to work by threatening to withdraw food and shelter and, in some cases, threatening reincarceration.

Darrell Taylor and Charles Lucas, for example, lived at the Salvation Army center in Chicago to comply with a parole requirement that they maintain housing. AA 25, 27.[2] Salvation Army employees told both Mr. Taylor and Mr. Lucas that they would have to work full-time if they wanted to stay in the center. AA 26, 28. Mr. Taylor loaded, unloaded, and hauled donations to Salvation Army warehouses and stockrooms, while Mr. Lucas worked in a dirty, rat-infested warehouse to separate clothes and other donations. AA 26, 28. This work was "grueling" and all-encompassing. AA 26, 28. Both men worked at least forty hours a week. AA 26, 28. Still, the Salvation Army did not pay them an actual wage—just a weekly "gratuity" of between $5 and $23. AA 27–28. To keep them working for effectively no money, Salvation Army employees threatened Mr. Taylor and Mr. Lucas that they would

[2] As the proposed second amended complaint explains, no court required Mr. Taylor and Mr. Lucas to stay at the Salvation Army's rehabilitation center, let alone work full-time without wages for the Salvation Army. Instead, their parole conditions required that they find stable housing—and, for both plaintiffs, the only long-term option available at the time was the Salvation Army's Chicago rehabilitation center. AA 63–64, 67.

be cut from the program and sent back to jail if they did not work satisfactorily. AA 27–29. The organization, in fact, ejected Mr. Lucas from the rehabilitation center at which he was staying because he did not have a suit jacket to wear to church. AA 28. The Salvation Army then informed his parole officer, and a warrant was put out for his arrest. AA 29.

Another plaintiff, Darrell Burkhart, stayed at the Salvation Army's Detroit rehabilitation center to satisfy a condition of his probation. AA 30. The Salvation Army, not the state court or his probation officer, mandated that he work full time for the organization. AA 30–31. Like Mr. Taylor and Mr. Lucas, Mr. Burkhart was not paid a wage—just the "gratuity," which in his case was no more than $7 a week. AA 31. The center's staff were in regular contact with Mr. Burkhart's probation officer and told Mr. Burkhart that they would "report him" if he was not working hard or fast enough. AA 31–32. Mr. Burkhart knew that if he was reported or kicked out of the ARC program, he could be re-incarcerated. AA 31.

The remaining plaintiffs, Kevin Lewis and Leevertis Page, had similar experiences at the Salvation Army's rehabilitation centers in Waukegan and Detroit. AA 29, 32. The Salvation Army "intentionally cultivated" Mr. Lewis and Mr. Page's dependence on the organization for food and shelter, and it used this dependence to force them to perform full-time, physically demanding labor. AA 29–30, 32–33. Mr. Lewis worked as a janitor, loaded and unloaded Salvation Army trucks, and shoveled

snow—all without being paid a wage. AA 29–30. Mr. Page not only "perform[ed] strenuous work on the docks of a Salvation Army thrift store warehouse," "loading and unloading trucks," he was also forced to cater Salvation Army events. AA 32–33. Mr. Page, too, was not paid a wage for his work. AA 33. Both men, again, received only the miniscule weekly gratuity. AA 33. They had no choice but to keep working, though, because the Salvation Army threatened that if they did not do so, they would lose access to the food and shelter they so desperately needed. AA 29–30, 32–33.

II. Procedural history

This lawsuit and the motion to dismiss. The plaintiffs filed this lawsuit to challenge the Salvation Army's forced-labor practices. They brought claims against both the Salvation Army's national corporation and its Illinois-based affiliate under the Trafficking Victims Protection Act. Despite its name, the statute is not limited to trafficking. Among other things, the Act prohibits "knowingly provid[ing] or obtain[ing] the labor or services of a person" "by means of . . . threats of serious harm to that person" or "threatened abuse of law or legal process." 18 U.S.C. § 1589(a)(2), (3). It also bars "knowingly benefit[ing]" from participating in a venture that obtains labor in this way, *id.* §§ 1589(b), 1595(a); "knowingly recruit[ing]" people to labor in violation of the statute, *id.* §§ 1590(a), 1595(a); conspiring to violate the statute, *id.* §§ 1594(b), 1595(a); and attempting to obtain forced labor (regardless of whether that attempt succeeds), *id.* §§ 1594(a), 1595(a). The plaintiffs alleged that the

Salvation Army violated these prohibitions by threatening its Adult Rehabilitation Center residents with incarceration and withholding of food and shelter unless they worked for the organization. AA 37–40.

The Salvation Army moved to dismiss the plaintiffs' complaint. Consistent with the district court's standing order, instead of filing an opposition to the motion, the plaintiffs chose to file an amended complaint. ECF 30. The Salvation Army then moved to dismiss the amended complaint. ECF 39-1.

The motion focused on the merits.[3] The Salvation Army contended that the work the plaintiffs performed in its thrift stores, warehouses, and trucks somehow did not qualify as "labor or services" within the meaning of the TVPA. *Id.* at 14–15. It argued that threats to take away someone's only source of food and shelter or to send them to jail are not threats of "serious harm." *Id.* at 13–21. And although the complaint explicitly alleged that the Salvation Army "successfully forced" the plaintiffs to work for it, the organization nevertheless argued that the complaint did not allege that its threats "caused" the plaintiffs to work. *Id.* at 21–24.[4]

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[3] The Salvation Army also sought to dismiss the national corporation defendant for lack of personal jurisdiction, which the district court denied. SA 5–8. That ruling is not at issue in this appeal.

[4] The Salvation Army raised its causation argument both as a merits argument and as an Article III standing issue. ECF 39-1 at 21–24. The district court rejected the argument as part of its discussion of standing, holding that the plaintiffs had sufficiently alleged "that Defendants' conduct, through their threats and policies, caused Plaintiffs to provide Defendants with their labor." SA 3.

In a single sentence in a footnote tacked onto its merits discussion, the organization hypothesized that the claims of plaintiffs who resided at an Adult Rehabilitation Center while on probation or parole would also "likely fail[] as a matter of subject matter jurisdiction" under the *Rooker-Feldman* doctrine, *id.* at 20 n.9—a "narrow" doctrine that prevents "lower federal courts . . . from exercising appellate jurisdiction over final state-court judgments," *Lance v. Dennis*, 546 U.S. 459, 463–64 (2006). But it did not identify any state-court judgment requiring any plaintiff to work for the Salvation Army. *See* ECF 39-1 at 20 n.9.

The district court's order. The district court granted the Salvation Army's motion to dismiss. SA 1–11. First, the court held that the *Rooker-Feldman* doctrine barred it from exercising jurisdiction over the claims brought by plaintiffs who resided at the Salvation Army to comply with a parole or probation requirement. SA 3–4. Although neither the complaint nor the Salvation Army identified any state-court judgment requiring any plaintiff to work for the organization, the court believed that it could not "redress Plaintiffs' injuries without overturning" state-court orders. SA 4.

Next, the court held that the remaining plaintiffs—those who stayed at a Salvation Army Adult Rehabilitation Center but did not do so in order to satisfy a parole or probation requirement—failed to state a claim under the TVPA. SA 11. In the court's view, these plaintiffs had failed to plausibly allege that the Salvation Army

subjected them to "serious harm" or "threats of serious harm" if they did not work. SA 11. So the court concluded that they had not sufficiently alleged that they were subjected to "forced labor" within the meaning of the statute. SA 11.

The court provided three reasons for its conclusion. *First*, although the court recognized that a threat to "withhold food and shelter" *can* constitute "serious harm" within the meaning of the TVPA, it nevertheless believed that, in this case, the Salvation Army's threats "would not compel a reasonable person to keep laboring." SA 9. In reaching this conclusion, the court read the complaint as lacking any "allegation that Plaintiffs' access to food, clothing, and shelter could be withheld from them even after they had left the [Adult Rehabilitation Center] or any other allegation indicating that Plaintiffs could not otherwise leave." SA 9. The court did not explain why the plaintiffs' allegations that the organization "cultivated" their reliance on it for food and shelter, and then threatened to withdraw that food and shelter if they stopped working were insufficient. It did, however, emphasize its belief that when someone leaves the Salvation Army, they immediately regain access to their government benefits, which the organization had redirected to itself while the person stayed there. SA 9.

Second, the court held that it didn't matter that the plaintiffs were paid no wages for their work or that, at least for the first 30 days, the Salvation Army prevented them from communicating with anyone outside the organization or leaving except

to perform work for the organization. SA 10. Under the court's view of the facts, a "reasonable person" would simply leave and find "a higher paying job elsewhere"—apparently, despite being cut off from the outside world and dependent on the Salvation Army for food and shelter. SA 10.[5]

Finally, the court declined to consider the plaintiffs' "unique vulnerabilities." SA 10. The complaint alleged that the Salvation Army's rehabilitation centers specifically target people who are unhoused, living in poverty, and have substance use disorders. AA 25, 30. Nevertheless, the district court was unwilling to draw the inference that the plaintiffs here—in particular, Mr. Lewis and Mr. Page—suffered from these same vulnerabilities, merely because the complaint didn't expressly allege that. SA 10. The court also held that, in any event, the application of the TVPA cannot depend on a plaintiff's "unique circumstances." SA 11.

The court refused to give the plaintiffs an opportunity to amend their complaint. SA 1. In the court's view, it did not have to do so because the plaintiffs had already amended once (the initial amendment made as of right, before the court had ruled on a motion to dismiss). SA 1. The court also stated that nothing in the *current* complaint—that is, the complaint the court had just dismissed—suggested the

[5] The court also concluded that the plaintiffs failed to allege that the Salvation Army "intended to cause" them to believe that they would suffer "serious harm" if they did not work to state a claim under section 1589(a)(4). SA 10. That conclusion rested on the court's prior conclusion that they had not plausibly alleged "serious harm" or "threats of serious harm." *Id.*

plaintiffs could "cure the defects" the court believed existed. SA 1. It did not look at any proposed amendments to determine whether they would, in fact, be futile. SA 1.

Motion to alter the judgment and for leave to amend the complaint. Following the district court's order, the plaintiffs moved to alter the judgment and for leave to amend their complaint. ECF 63. They requested that the district court reconsider its dismissal or, at least, allow them to file an amended complaint. *See id.* The plaintiffs attached to this motion a proposed amended complaint, in which they sought to address the district court's perceived deficiencies. AA 47–94. The proposed amendments primarily concerned two key issues:

First, the amendments sought to remedy any confusion about the plaintiffs who stayed at the Salvation Army's Adult Rehabilitation Center while on parole or probation. The proposed amended complaint clarified that no state court mandated that the Salvation Army force any plaintiff to work, nor is there any state-court order requiring any plaintiff to submit to forced labor. AA 64, 67, 70.[6] In fact, Mr. Taylor and Mr. Lucas had no relevant state-court order at all—their parole conditions were set by the state parole board, an executive agency. AA 63, 67.

[6] Although it's highly unlikely that there are any such people, out of an abundance of caution, the proposed second amended complaint also explicitly excludes anyone from the proposed class definition who was ordered to perform forced labor for the Salvation Army.

Second, the proposed amended complaint alleged additional facts to rebut the assumptions upon which the district court relied in concluding that the plaintiffs could not have reasonably felt compelled to provide forced labor. *See* ECF 63 at 6–7. For example, the proposed complaint made clear that when people left the Salvation Army, their government benefits were not immediately restored to them. Instead, the complaint alleged, the Salvation Army either did not return the benefit card at all or had zeroed it out, even though there should have been benefits remaining. AA 64, 66, 68–69, 70, 72–74, 78, 80–81.

The proposed amendments also explained in further detail that the plaintiffs had no alternative to staying at the Salvation Army. AA 63, 67, 69, 73, 77–78, 80–82. So if the Salvation Army kicked them out, they'd be forced out onto the streets—in some cases, in the middle of winter. *Id.* By refusing to pay for its residents' labor, taking their government benefits, and prohibiting them from getting a job elsewhere, the complaint makes clear, the Salvation Army ensured that, no matter how long the plaintiffs worked, they'd never be able to afford to leave. *See id.*

In addition, the proposed amended complaint explicitly alleged what was implicit in the first amended complaint: that Mr. Lewis and Mr. Page suffered from the same vulnerabilities as the other people the Salvation Army targeted. The complaint alleges, for instance, that both men had long been unhoused and suffered from substance-use disorders. AA 80 (describing that Mr. Lewis had been unhoused

for over a year before he went to the ARC and had no other options for long-term housing); AA 73 (describing Mr. Page's long-term experiences being unhoused and dealing with substance-use disorders).[7]

In a single page order, the district court denied the plaintiffs' motion to alter or amend the judgment and for leave to amend the complaint. SA 12. The court declined to revisit its conclusion that *Rooker-Feldman* barred the claims of the plaintiffs on parole or probation. SA 12. And it held that Rule 15's liberal standard for amending a complaint did not apply here. SA 12. In the court's view, the plaintiffs were not entitled to amend their complaint unless they could first show that the court's order dismissing the case should be set aside under Rule 59(e)—which requires "a manifest error of law" or "new evidence." SA 12. Because the court believed its order was correct, it concluded the plaintiffs had not met that standard. *See* SA 12.

The court acknowledged this Court's precedent holding that it is an abuse of discretion to deny post-dismissal leave to amend without at least reviewing the proposed amended complaint. *See* SA 12; *see also* ECF 63 at 5 (plaintiffs' motion citing cases, such as *NewSpin Sports, LLC v. Arrow Elecs., Inc.*, 910 F.3d 293, 310 (7th Cir. 2018)).

[7] The proposed amended complaint also includes additional details about the dangerous working conditions the Salvation Army imposed and its coercive practices—including forcing workers to go hungry and imposing increasingly long blackout periods in which workers were prohibited from communicating with anyone outside the organization. *See, e.g.*, AA 52, 64–66, 68, 71, 74–75.

The court held, however, that this rule does not apply where a plaintiff has previously amended their complaint—even if, as here, that amendment came before the court ever ruled on a motion to dismiss. *Id.*

SUMMARY OF ARGUMENT

I. Contrary to the district court's conclusion, the *Rooker-Feldman* doctrine poses no obstacle to subject-matter jurisdiction here.

A. The *Rooker-Feldman* doctrine serves a single, narrow purpose: It bars lower federal courts from exercising appellate jurisdiction over final state-court judgments. The doctrine, therefore, applies only where a plaintiff asks a district court to effectively overturn a state-court judgment.

B. The plaintiffs here do not seek to overturn any state-court judgment. They allege that the Salvation Army violated federal law by using threats of incarceration, starvation, and the loss of shelter to force them to labor. No state court ordered the Salvation Army to do so—nor did any state court order the plaintiffs to be subjected to this forced labor. So, as multiple courts have held when presented with similar facts, the plaintiffs' claims here are independent from any state-court judgment. *Rooker-Feldman*, therefore, does not apply.

II. The district court also erred in dismissing the plaintiffs' TVPA claims for failure to state a claim under Rule 12(b)(6).

A. The TVPA's forced-labor provision, 18 U.S.C. § 1589, was specifically enacted to punish a more expansive range of coercive labor practices than were prohibited under previous law. To encompass more subtle forms of psychological and nonviolent coercion, section 1589 broadly defines the types of threats and harms that are actionable under the statute. The statute requires courts to evaluate the seriousness of the harm from the perspective of the victim, in light of their particular circumstances and vulnerabilities.

B. The plaintiffs here plausibly alleged that the Salvation Army violated section 1589 by forcing them to work without pay under threat of incarceration and withholding of food and shelter. Both threats are "sufficiently serious" to "compel a reasonable person of the same background and in the same circumstances" to work "to avoid incurring that harm." 18 U.S.C. § 1589(c)(2). And the threats of incarceration and other criminal consequences also qualify as "threatened abuse[s] of law or legal process." *Id.* § 1589(a)(3). Indeed, the Salvation Army magnified the impact of these threats by making the plaintiffs entirely reliant on the organization for basic life necessities, and even cutting off their communications and interactions with the outside world. These allegations were more than sufficient under Rule 12(b)(6) to state forced-labor claims against the Salvation Army.

In ruling to the contrary, the district court misapplied both section 1589 and basic pleading standards. The court refused to consider the plaintiffs' particular

vulnerabilities—as required by section 1589's text—when analyzing whether they had alleged serious harm and threats of serious harm. Instead, it independently decided for itself that a "reasonable person" would not feel compelled by the Salvation Army's threats. And to reach that conclusion, the court erroneously disregarded the complaint's allegations and drew inferences in favor of the Salvation Army, not the plaintiffs.

III. The district court also abused its discretion in denying leave to amend the complaint. The proposed amendments cured all supposed deficiencies identified by the court. It made clear (1) that no state court ever ordered the plaintiffs to work for the Salvation Army, and (2) that the plaintiffs' individual circumstances made them especially vulnerable to the threats of harm. Yet the district court decided the plaintiffs had lost their chance because they had amended their complaint as of right before the court had even ruled—and because nothing in the *operative* complaint demonstrated that an *amended* complaint would cure the court's concerns. That was wrong. As this Court's precedent makes clear, a court cannot deny leave to amend just because a plaintiff has voluntarily amended before a motion to dismiss was even decided. Nor may court decide that proposed amendments would be futile without even reviewing them. This Court should reverse.

STANDARD OF REVIEW

This Court "review[s] *de novo* the district court's decision that it lacks subject-matter jurisdiction under the *Rooker-Feldman* doctrine." *Andrade v. City of Hammond*, 9 F.4th 947, 949 (7th Cir. 2021). It also "review[s] *de novo* a grant of a motion to dismiss, construing the complaint in the light most favorable to the plaintiff, accepting as true all well-pleaded facts alleged, and drawing all possible inferences in its favor." *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 454 (7th Cir. 2020).

Although this Court reviews a district court's denial of leave to amend the complaint for abuse of discretion, its review is "*de novo*" when the "legal basis" for the denial is "futility." *Kap Holdings, LLC v. Mar-Cone Appliance Parts Co.*, 55 F.4th 517, 529 (7th Cir. 2022) (holding that, when "evaluating" whether the denial is "based on futility," the Court applies "the legal sufficiency standard of Rule 12(b)(6) to determine whether the proposed amended complaint fails to state a claim").

ARGUMENT

I. The district court had jurisdiction over the plaintiffs' claims.

Based on a single sentence in a footnote in the Salvation Army's motion to dismiss, the district court ruled that the *Rooker-Feldman* doctrine foreclosed subject-matter jurisdiction over the plaintiffs who stayed at the Salvation Army's centers while on probation or parole. But that doctrine simply does not apply here.

Rooker-Feldman has one, narrow function: It bars lower federal courts from exercising appellate jurisdiction over final state court judgments. The plaintiffs here

aren't seeking to overturn or modify any state-court judgment. They're challenging the Salvation Army's practice of threatening vulnerable people with serious harm to force them to labor. No state court ordered this practice or required that the plaintiffs be subjected to it. *Rooker-Feldman*, therefore, does not apply.

A. The *Rooker-Feldman* doctrine is a narrow jurisdictional rule that prevents the lower federal courts from exercising direct appellate review of state-court judgments.

Under "what has come to be known as the *Rooker-Feldman* doctrine, lower federal courts" may not exercise "appellate jurisdiction over final state-court judgments." *Lance*, 546 U.S. at 463. The doctrine "takes its name from the only two cases in which" the Supreme Court has ever "applied" it. *Id.* (citing *D.C. Ct. App. v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 416 (1923)). "In both cases, the losing party in state court filed suit" in federal district court seeking to "overturn" the state-court judgment. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292–93 (2005); *accord Skinner v. Switzer*, 562 U.S. 521, 531 (2011). The Supreme Court held that they could not do so because Congress, by statute, has vested appellate jurisdiction over state-court judgments in the Supreme Court. *Exxon*, 544 U.S. at 292 (citing 28 U.S.C. § 1257, which provides that "[f]inal judgments or decrees rendered by the highest court of the State . . . may be reviewed by the Supreme Court"). Therefore, the Court concluded, lower federal courts lack such appellate jurisdiction. *See id.*

"[T]he *Rooker–Feldman* jurisdictional bar is not grounded in respect for state courts or other comity or federalism interests." *Andrade*, 9 F.4th at 951 (Sykes, J., concurring); *see Exxon*, 544 U.S. at 292–93; *Lance*, 546 U.S. at 466. Other doctrines like abstention and preclusion safeguard these interests. *See Lance*, 546 U.S. at 466. *Rooker-Feldman* is instead grounded in statutory interpretation: Because Congress said "the Supreme Court can review 'final judgments' from state courts of last resort," the Court has drawn the "negative inference" that "lower federal courts can't." *RLR Invs., LLC v. City of Pigeon Forge*, 4 F.4th 380, 385 (6th Cir. 2021); *see Exxon Mobil*, 544 U.S. at 292–93.

The Court has emphasized that this inference is "limited." *Lance*, 546 U.S. at 466. It does not support "a wide-reaching bar on the jurisdiction of lower federal courts." *Id.* at 464. Rather, it is "confined to cases" in which "a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court." *Id.* at 464, 466. So, for example, the Court has held that *Rooker-Feldman* does not "stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court." *Exxon Mobil*, 544 U.S. at 293; *see also Skinner*, 562 U.S. at 532 (where a state court denied a criminal defendant the right to DNA testing, *Rooker-Feldman* did not bar a federal district court from considering the same defendant's challenge to the constitutionality of the state law upon which the decision was based); *Reed v. Goertz*, 143 S. Ct. 955, 960–

61 (2023) (same); *Dookeran v. Cnty. of Cook, Ill.*, 719 F.3d 570, 575 (7th Cir. 2013) (*Rooker-Feldman* did not apply to a federal plaintiff's employment discrimination claim even though a state court had affirmed a decision denying the plaintiff reappointment for a nondiscriminatory reason).

It does not even prevent a federal plaintiff from "den[ying] a legal conclusion that a state court has reached in a case to which he was a party" or presenting "the same or related question" that was raised in state court. *Exxon Mobil*, 544 U.S. at 292–93; *see Skinner*, 562 U.S. at 532. *Rooker-Feldman* applies only where a plaintiff is trying to actually reverse a state-court judgment. Of course, a plaintiff's attempt to revisit a legal issue raised in state court might run afoul of collateral estoppel or res judicata or some other preclusion defense. *See Exxon Mobil*, 544 U.S. at 292–93. Unless a federal plaintiff is seeking to "overturn" a state-court order, however, the Supreme Court has made clear that "there is jurisdiction." *Id.* The Court has repeatedly warned lower courts not to expand the *Rooker-Feldman* doctrine beyond this "narrow ground." *Id.* at 284, 291; *see Lance*, 546 U.S. at 466 (explaining that expanding the *Rooker-Feldman* doctrine would interfere with Congress's statutory command that federal courts look to state law to determine the preclusive effect of state-court judgments); *Andrade*, 9 F.4th at 950 (recognizing that *Rooker-Feldman*'s bar covers "[o]nly a narrow segment of cases").

To determine whether *Rooker-Feldman* applies, this Court uses "a two-step analysis." *Id.* First, it "consider[s] whether a plaintiff's federal claims are 'independent'" of a state-court judgment. *Id.* If so, "the *Rooker-Feldman* doctrine does not preclude federal courts from exercising jurisdiction over them." *Id.* If, on the other hand, the plaintiff's claims do "'directly' challenge or are 'inextricably intertwined' with a state-court judgment, then [the Court] move[s] on to step two." *Id.* "At step two, [the Court] determine[s] whether the plaintiff had a reasonable opportunity to raise the issue in state court proceedings." *Id.* "Only if the plaintiff did have such an opportunity does *Rooker-Feldman* strip federal courts of jurisdiction." *Id.* The district court's analysis founders at both steps.

B. *Rooker-Feldman* does not bar the plaintiffs' claims because they do not seek to overturn or modify any state-court judgment.

1. The district court's *Rooker-Feldman* analysis fails from the start: The plaintiffs' claims neither "directly challenge" nor are "inextricably intertwined with a state-court judgment." *Andrade*, 9 F.4th at 950.[8] As this Court has explained, a plaintiff's

[8] As Judge Sykes recently explained, the "inextricably intertwined" portion of this test is in significant tension with the Supreme Court's recent *Rooker-Feldman* cases—and is the subject of intracircuit conflict in this Court. *See Andrade*, 9 F.4th at 954 (Sykes, J., concurring); *see also, e.g.*, *Richardson v. Koch L. Firm, P.C.*, 768 F.3d 732, 734 (7th Cir. 2014); *Graff v. Aberdeen Enterprizes, II, Inc.*, 65 F.4th 500, 516 n. 18 (10th Cir. 2023) (noting that "use of the term 'inextricably intertwined' is, after . . . *Exxon Mobil*, not helpful in analyzing the applicability of *Rooker-Feldman*"). The Court need not address that debate here because the plaintiffs' claims are not "inextricably intertwined" with any state-court order.

claims are "independent" of any state-court judgment—and thus outside of *Rooker-Feldman*'s bar—so long as the district court is not "essentially being called upon to review [a] state court decision." *Hadzi-Tanovic v. Johnson*, 62 F.4th 394, 399 (7th Cir. 2023). That's precisely the case here. There are three plaintiffs who resided at the Salvation Army while on parole or probation: Mr. Taylor, Mr. Lucas, and Mr. Burkhart. No state court ordered that any of them be subjected to forced labor.

a. Start with Mr. Taylor and Mr. Lucas, who stayed at the Salvation Army's center in Chicago to comply with parole conditions generally requiring them to find stable housing. AA 25, 27; *see also* AA 63–64, 67. The parole board is not a court; it's an *administrative* body. *See Hanrahan v. Williams*, 673 N.E.2d 251, 254 (Ill. 1996) (explaining that "[t]he Illinois Prisoner Review Board is an administrative agency created by the legislature" that "grants parole as an exercise of grace and executive discretion"). The Supreme Court has squarely held that *Rooker-Feldman* applies only to *court* orders, not agency action. *See Verizon Md. Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 644 n.3 (2002); *accord Hemmer v. Ind. State Bd. of Animal Health*, 532 F.3d 610, 614 (7th Cir. 2008). So even if Mr. Taylor and Mr. Lucas sought to overturn their parole conditions, *Rooker-Feldman* still would not apply. *See Singletary v. District of Columbia*, 766 F.3d 66, 72 (D.C. Cir. 2014) (rejecting *Rooker-Feldman* challenge to federal lawsuit seeking to overturn parole board decision). Necessarily, then, the doctrine doesn't

bar their actual claims, which challenge only the Salvation Army's unlawful forced-labor practices—something the parole board, of course, never ordered.

b. As for Mr. Burkhart, his probation officer told him to stay at the Salvation Army's center in Detroit for several months to comply with the terms of his probation. AA 30–31; *see also* AA 70. Again, however, it was the Salvation Army itself—not a state court or even his probation officer—that coerced him to work for the organization for no wages. *See id.*

Like the other plaintiffs, then, Mr. Burkhart does not "seek to disturb" any state court "judgment." *Johnson v. Pushpin Holdings, LLC*, 748 F.3d 769, 773 (7th Cir. 2014); *see Milchtein v. Chisholm*, 880 F.3d 895, 898 (7th Cir. 2018) (noting that "[t]he vital question" for applying the doctrine is "whether the federal plaintiff seeks the alteration of a state court's judgment"). He instead seeks "to obtain damages for" the Salvation Army's independently "unlawful conduct." *See Johnson*, 748 F.3d at 773; *see also Bielenberg v. Griffiths*, 61 F. App'x 293, 295 (7th Cir. 2003) (where the plaintiffs "want damages for acts that occurred outside the courthouse . . . the *Rooker-Feldman* doctrine is beside the point"). This Court has repeatedly held that such claims are not barred by *Rooker-Feldman*. *See, e.g.*, *id.*; *Andrade*, 9 F.4th at 950–51; *Johnson*, 748 F.3d at 773; *Iqbal v. Patel*, 780 F.3d 728, 730 (7th Cir. 2015); *Arnold v. KJD Real Est., LLC*, 752 F.3d 700, 705 (7th Cir. 2014); *Burke v. Johnston*, 452 F.3d 665, 668–69 (7th Cir. 2006).

Indeed, every circuit presented with similar circumstances has rejected the applicability of *Rooker-Feldman*. *See, e.g.*, *Copeland v. C.A.A.I.R.*, 2023 WL 3166345, at *4–8 (10th Cir. May 1, 2023); *Burrell v. Staff*, 60 F.4th 25, 33 (3d Cir. 2023); *Fochtman v. Hendren Plastics, Inc.*, 47 F.4th 638, 642–44 (8th Cir. 2022); *Brown v. Taylor*, 677 F. App'x 924, 927–29 (5th Cir. 2017). Take, for example, the Tenth Circuit's recent decision in *Copeland*, which reversed one of the primary cases on which the district court here relied, *see* SA 5. The plaintiffs in *Copeland* had been ordered by state sentencing courts to complete a drug and alcohol treatment program administered by Christian Alcoholics and Addicts in Recovery, or CAAIR. *Copeland*, 2023 WL 3166345, at *2. Participants in this program were forced to perform labor for CAAIR's for-profit partners, which the plaintiffs alleged violated the TVPA and federal and state minimum-wage laws. *Id.* at *3. Like the district court here, the district court in *Copeland* ruled that *Rooker-Feldman* barred these claims because they "attempted to reverse the state-court orders requiring them to complete CAAIR's treatment program" and because "the state-court orders caused the injuries for which the plaintiffs sought redress." *See id.* at *1.

The Tenth Circuit disagreed, holding "that the state-court judgments did not cause the injuries Plaintiffs allege under either the wage-related or forced-labor claims." *Id.* at *8. Critical to the court's analysis was the fact that the plaintiffs' claims would have been "identical even had there been no state-court judgment." *Id.* at *10.

That's because no state court had required CAAIR to pay less than minimum wage or force the plaintiffs to work under threat of serious harm. As the Tenth Circuit explained: "Nothing in the orders directed CAAIR or Simmons to threaten imprisonment if Plaintiffs refused to work while injured. Nor did the orders authorize CAAIR or Simmons officials to threaten imprisonment for failing to satisfy any performance standard the officials happened to adopt." *Id.* at *13. The plaintiffs' forced-labor claims, in other words, " turn[ed] not on the threat of imprisonment by itself, but rather on the exploitation by CAAIR . . . of that threat to impose working conditions that the state courts did not require." *Id.* at *14. For that reason, the injuries the plaintiffs sought to "redress under their forced-labor claims extend[ed] beyond any requirement emanating from the state-court orders." *Id.* at *12. *Rooker-Feldman*, therefore, did not apply. *See id.*

So too here. As in *Copeland*, Mr. Burkhart alleges that the Salvation Army forced him to work under threats of incarceration and loss of food, clothing, and shelter—none of which was contemplated by any state-court judgment. Likewise, the injuries that he seeks to redress result not from any state-court orders, but from the Salvation Army's "exploitation" of his probation status "to impose working conditions that the state courts did not require." *Copeland*, 2023 WL 3166345, at *14. Under the longstanding precedent of this Court and the Supreme Court, *Rooker-Feldman* does not apply. *See Exxon Mobil*, 544 U.S. at 293; *Andrade*, 9 F.4th at 950.

c. In holding otherwise, the district court relied on the mistaken belief that it could not "redress Plaintiffs' injuries without overturning" state court orders. SA 4–5. Nothing in the complaint says that, nor did the Salvation Army contend otherwise in its motion to dismiss. And it's just not true. To the extent the court was confused by the phrasing of the first amended complaint, the proposed second amended complaint explicitly clarifies that no state court ordered any plaintiff to be subjected to forced labor. To nevertheless apply *Rooker-Feldman* here would be to do exactly what the Supreme Court has prohibited: "extend" the doctrine "far beyond [its] contours." *See Exxon Mobil*, 544 U.S. at 283. This Court should not do so.

2. *Rooker-Feldman* doesn't apply for an additional reason: The plaintiffs never had an opportunity to raise their forced-labor claims in state court. *See Andrade*, 9 F.4th at 950 ("Only if the plaintiff did have such an opportunity does *Rooker-Feldman* strip federal courts of jurisdiction."). The district court did not even address this second step of this Court's *Rooker-Feldman* test. SA 4–5. Nor did the Salvation Army contest below that the plaintiffs had no such opportunity. ECF 69 at 9–13. For good reason: When the state courts entered judgments against the plaintiffs in their criminal cases, the plaintiffs would have had no idea that they would later end up staying at the Salvation Army's centers or that the Salvation Army would force them to work under threats of serious harm. It therefore would have been impossible for the plaintiffs to have raised their TVPA claims in the state-court proceedings. Thus,

on this basis too, the district court erred in finding no jurisdiction. *See Andrade*, 9 F.4th at 950 ("Only if the plaintiff did have such an opportunity does *Rooker-Feldman* strip federal courts of jurisdiction.").

II. The plaintiffs properly stated claims under the TVPA.

A. The TVPA's forced-labor provision, 18 U.S.C. § 1589, was specifically enacted to prohibit a broad range of nonviolent and psychological coercion.

Forced labor has long been illegal in the United States. The Thirteenth Amendment, of course, prohibits both "slavery" and "involuntary servitude." U.S. Const., amend. XIII, § 1. And, nearly a century ago, Congress revised the federal criminal code to make it unlawful to "knowingly and willfully hold[] to involuntary servitude or sell[] into any condition of involuntary servitude any other person for any term." 18 U.S.C. § 1584(a); *see United States v. Kozminski*, 487 U.S. 931, 946 (1988). Federal prosecutors had for years understood this prohibition to encompass "the compulsion of services by *any* means that, from the victim's point of view, either leaves the victim with no tolerable alternative but to serve the defendant or deprives the victim of the power of choice." *Id.* at 949 (emphasis added). But in 1988, the Supreme Court held in *Kozminski* that section 1584's scope was "limited to cases involving the compulsion of services by the use or threatened use of physical or legal coercion" only. *Id.* at 948.

Congress soon recognized that *Kozminski*'s limited conception of involuntary servitude was insufficient to deal with the myriad exploitative labor practices developing in the modern economy. The existing prohibitions, Congress explained, failed to "to address the increasingly subtle methods" of coercing labor from vulnerable groups, "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." H.R. Rep. No. 106-939, at 101 (2000).

Congress therefore decided to expressly prohibit such practices by enacting section 1589 as part of the Trafficking Victims Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464. The new law was intended "to combat severe forms of worker exploitation that do not rise to the level of involuntary servitude as defined" under existing law. H.R. Rep. No. 106-939, at 101; *see, e.g.*, *United States v. Callahan*, 801 F.3d 606, 618 (6th Cir. 2015) (noting that "Congress enacted § 1589 in response to *Kozminski* to expand the forms of coercion that could result in forced labor"). Several years later, Congress enacted the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875, which provided victims with a private cause of action to sue defendants for violating the TVPA, including section 1589's prohibition on forced labor. *See* 18 U.S.C. § 1595(a).

As relevant here, section 1589 makes it unlawful to "knowingly provide[] or obtain[] the labor or services of a person" by one or "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.

18 U.S.C. § 1589(a). The statute also punishes anyone who "knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means." *Id.* § 1589(b).

In accordance with Congress's intent, the statute "define[s] broadly" the types of harms and threats that qualify under the statute. *United States v. Law*, 990 F.3d 1058, 1064 (7th Cir. 2021); *see also, e.g.*, *Burrell*, 60 F.4th at 36. The term "serious harm," for example, includes "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." 18 U.S.C. § 1589(c)(2). Congress also broadly defined "threatened abuse[s] of law or legal process" as "the use or threatened use of a law or legal process, whether administrative, civil, or criminal, *in any manner or for any purpose* for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action." 18 U.S.C. § 1589(a)(3), (c)(1) (emphasis added).

These capacious definitions reflect that the statute "was enacted to encompass more subtle forms of psychological abuse and nonviolent coercion than those previously required to hold perpetrators accountable." *Bistline v. Parker*, 918 F.3d 849, 871 (10th Cir. 2019). As this Court has observed, "[s]ection 1589 is not written in terms limited to overt physical coercion, and we know that when Congress amended the statute it expanded the definition of involuntary servitude to include nonphysical forms of coercion"—such as by threatening "financial," "psychological," or "reputation[al]" harm. *United States v. Calimlim*, 538 F.3d 706, 714 (7th Cir. 2008); *United States v. Dann*, 652 F.3d 1160, 1170 (9th Cir. 2011).

The statute's standard for assessing harm also reflects Congress's intent that section 1589's protections be construed broadly. As the legislative history explains, the statute's "terms and provisions are intended to be construed with respect to the

individual circumstances of victims that are relevant in determining whether a particular type or certain degree of harm or coercion is sufficient to maintain or obtain a victim's labor or services, including the age and background of the victims." H.R. Rep. No. 106-939, at 101. Courts have thus held that, for purposes of section 1589, "the threat" of "serious harm" must be "considered from the vantage point of a reasonable person in the place of the victim." *Dann*, 652 F.3d at 1170. This standard, in other words, is "a hybrid: it permits the jury to consider the particular vulnerabilities of a person in the victim's position but also requires that her acquiescence be objectively reasonable under the circumstances." *United States v. Rivera*, 799 F.3d 180, 186–87 (2d Cir. 2015).

B. The plaintiffs plausibly alleged that the Salvation Army violated section 1589 by cutting them off from the outside world and threatening them with incarceration and the loss of food, clothing, and shelter unless they worked for the Salvation Army.

To state a claim that the Salvation Army violated the TVPA's forced-labor prohibition, the plaintiffs had to plausibly allege that the organization subjected them to harms or threatened harms that were "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." 18 U.S.C. § 1589(c)(2).

They did so—in spades. The plaintiffs alleged that the Salvation Army routinely threatened them with the loss of food, clothing, and shelter unless they worked grueling jobs without pay. It magnified those threats by doing everything possible to make the plaintiffs fully dependent on the Salvation Army for basic life necessities—from imposing "blackout" periods on communication with the outside world to taking away their government benefits. And, for those who stayed at the centers while on parole or probation, the Salvation Army consistently used the threat of re-incarceration to force them to work to the organization's satisfaction. These allegations more than plausibly established under Rule 12(b)(6) that the Salvation Army violated the TVPA's prohibitions on forced labor.

1. As alleged in the complaint, the Salvation Army seeks out low-income, food-insecure, and unhoused people for its rehabilitation centers. AA 17. Those who enter a rehabilitation center must hand over their personal property, including their cell phones, and assign their social-security or food-assistance benefits to the organization. AA 19–20. For at least the first 30 days (and sometimes longer), the Salvation Army prohibits residents from leaving their center or meeting or communicating with anyone outside the organization—what are known as "blackout" periods. AA 20. And the organization prohibits residents from working elsewhere, making it impossible for them to earn money. AA 5. It is no surprise, then,

that these individuals become "fully reliant on the [Adult Rehabilitation Center] program for food, clothing, and housing." AA 4, 18.

Fully aware of this fact, the Salvation Army "exploit[s]" rehabilitation center residents to perform labor for the organization "to avoid losing access to basic necessities." AA 18. The Salvation Army's paid staff consistently threatened "workers with loss of access to food and shelter if they did not work or follow work instructions." AA 20–21, 30, 33. These were not empty threats: Rehabilitation center residents were sometimes "abruptly kicked out of the program . . . , often with no other place to live." AA 21.

Threatening people with the loss of food, clothing, and shelter unless they perform labor falls comfortably within the TVPA's definition of "serious harm." 18 U.S.C. § 1589(a)(2); *see id.* § 1589(c)(2) ("The term 'serious harm' means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm[.]"). As the Third Circuit has observed, "serious harm" includes "withholding basic necessities like food if they did not work efficiently enough." *Burrell*, 60 F.4th at 38; *see also Bistline*, 918 F.3d at 871 (noting that "the loss of all shelter, food, medical care, cash, livelihood, and other essential support mechanisms" are "tangible losses . . . sufficient to plead violations of § 1589(a)"). Indeed, even the district court recognized that, at least in some, unspecified "other instances," "the threat to

withhold food and shelter . . . would be a serious harm as defined under the statute." SA 9.

These threats are even more coercive in light of the "the particular vulnerabilities" of the plaintiffs here. *See Rivera*, 799 F.3d at 186–87. Like most rehabilitation center residents, the plaintiffs here lack the means to afford adequate food and shelter; they suffer from housing and food insecurity and substance-use disorders. *See supra* pages 7–11. So they are particularly vulnerable to the Salvation Army's threats to revoke access to food, clothing, and housing—and thus more likely to find those threats "sufficiently serious" such that they are compelled to labor for the organization. 18 U.S.C. § 1589(c)(2).

But not just that: Through numerous practices and policies, including mandated separation from the outside world and requiring residents to surrender their cell phones, personal property, and government benefits, the Salvation Army *itself* forces residents to become fully reliant on the organization for basic life necessities. *See supra* pages 7–11. By doing so, the organization ensures that its threats are more likely to succeed in coercing the ARC residents to work without pay and under difficult conditions. *Cf. David v. Signal Int'l, LLC*, 2012 WL 10759668, at *20 (E.D. La. Jan. 4, 2012) (noting that, "with more subtle types of coercion, particularly psychological coercion, the vulnerabilities and characteristics of the specific victim

become extremely important because one individual could be impervious to some types of coercion that cause another to acquiesce in providing forced labor").

"Knowledge of objective conditions that make the victim especially vulnerable . . . bear on whether the employee's labor was obtained by forbidden means." *Rivera*, 799 F.3d at 189. Here, the objective vulnerabilities of the plaintiffs and the other Salvation Army residents were not just "known" to the Salvation Army—the organization itself *created* and *enhanced* some of those vulnerabilities. That only bolsters the plaintiffs' allegations that the Salvation Army violated section 1589 by subjecting them to serious harm and threats of serious harm.

2. The plaintiffs who stayed at the Salvation Army's centers to comply with parole and probation conditions alleged that they faced an additional threat of serious harm: incarceration. AA 21–23. Because the district court dismissed their claims for lack of jurisdiction under *Rooker-Feldman*, it did not consider these allegations. Threatening to send residents to jail and report them for parole or probation violations if they didn't work satisfactorily also violates section 1589.

To start, for obvious reasons, threats of incarceration constitute "threats of serious harm" within the meaning of section 1589(a)(2). Any reasonable person would find the prospect of jail-time to be "sufficiently serious" such that they would be compelled to provide labor "to avoid incurring that harm." 18 U.S.C. § 1589(c)(2).

Threats of incarceration or to report the plaintiffs to their probation or parole officers are also "threatened abuse[s] of law or legal process" under section 1589(a)(3). *See, e.g.*, *Burrell*, 60 F.4th at 37 ("Defendants' conditioning of plaintiffs' access to the work release program (which plaintiffs allege they needed to free themselves) on a period of nearly free, grueling labor at the Recycling Center, is an abuse of law or legal process under the TVPA."). According to the complaint, the Salvation Army "exploit[ed]" the plaintiffs by "impos[ing] working conditions" that were not required by their parole or probation. *Copeland*, 2023 WL 3166345, at *14. By using the plaintiffs' vulnerable status as parolees and probationers "to pressure plaintiffs to work," the Salvation Army abused the law and legal process. *See Burrell*, 60 F.4th at 37; *see also Calimlim*, 538 F.3d at 713 (holding that threats "directed to an end different from those envisioned by the law [are] an abuse of the legal process"). For these reasons, too, the plaintiffs sufficiently alleged that the Salvation Army violated section 1589.[9]

3. In finding that the plaintiffs failed to plausibly allege "serious harm" and "threats of serious harm," the district court committed multiple legal errors—each of which independently warrants reversal.

[9] As explained above, the district court dismissed for lack of jurisdiction the claims of all plaintiffs who stayed at the Salvation Army's centers to comply with parole or probation conditions. So it didn't consider at all whether those plaintiffs stated forced-labor claims based on the organization's threats of incarceration.

To start, the district court expressly declined to consider the "unique vulnerabilities" of the plaintiffs and other rehabilitation center workers when determining whether they reasonably felt compelled to work by the Salvation Army's threats to withhold food, clothing, and shelter. *See* SA 10–11. As explained above, section 1589's "hybrid" standard requires courts to consider the victims' personal background and circumstances when evaluating whether the harms and threats alleged are "sufficiently serious." *See Rivera*, 799 F.3d at 186–87; 18 U.S.C. § 1589(c)(2). Congress specifically highlighted this aspect of the inquiry when it enacted the statute: Section 1589's "terms and provisions are intended to be construed with respect to the *individual circumstances of victims* . . . in determining whether a particular type or certain degree of harm or coercion is sufficient to maintain or obtain a victim's labor." H.R. Rep. No. 106-939, at 101 (emphasis added).

Yet the district court didn't even try to evaluate the plaintiffs' individual circumstances here. It justified this refusal on its belief that the complaint "include[d] no allegations concerning the [plaintiffs'] unique vulnerabilities." SA 10. That was incorrect. The complaint alleged, for example, that the Salvation Army targets individuals—including the plaintiffs—who have "substance use disorders; are unhoused; are food-insecure; [and] are experiencing poverty[.]" AA 17; *see also* AA 4–5. It further alleged that, because of their vulnerabilities, the plaintiffs (including Mr. Lewis and Mr. Page) were fully "relian[t] on the ARC for necessities, including

food and shelter." AA 30, 33, 39. Drawing all inferences in the plaintiffs' favor, as Rule 12(b)(6) requires, the court should have understood that the plaintiffs shared these particular alleged vulnerabilities—and the court accordingly should have considered them when conducting its "serious harm" analysis under section 1589.[10]

Next, the district court improperly determined—based on its own interpretation of the facts—that the Salvation Army's threats would not "compel a reasonable person to keep laboring in the ARC program." SA 9. That was "impermissible factfinding." *Podolsky v. Alma Energy Corp.*, 143 F.3d 364, 370 (7th Cir. 1998); *see Johnson v. Revenue Mgmt. Corp.*, 169 F.3d 1057, 1059 (7th Cir. 1999) ("assessing factual support for a suit is not the office of Rule 12(b)(6)"). Because evaluating whether a threat is "sufficiently serious" under section 1589 requires consideration of the victim's background and circumstances, the inquiry ordinarily involves "a factual determination." *Dinsay v. RN Staff Inc.*, 2021 WL 2042097, at *5 (S.D. Ind. May 21, 2021). For that reason, multiple courts have concluded that a jury should decide whether it was reasonable for a plaintiff to feel compelled to labor by threats of serious harm—even in cases where they were "technically" free to leave.[11]

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[10] Moreover, to the extent the court's ruling was predicated on the absence of more particularized allegations of the plaintiffs' particular vulnerabilities, the proposed amendments fully resolved those concerns. *See* AA 48, 63–82.

[11] *See, e.g.*, *Elat v. Ngoubene*, 993 F. Supp. 2d 497, 529–30 (D. Md. 2014) (reasoning that "[a]lthough the record is replete with evidence that Plaintiff left the Ngoubene home on various occasions and returned, this evidence must be considered under

Here, however, the district court assumed the factfinding role for itself. It held that *no* reasonable jury could find that the complaint plausibly alleged threats of serious harm, even while it acknowledged that in "*other* instances," "the threat to withhold food and shelter . . . *would* be a serious harm as defined under the statute." SA 9 (emphasis added). Instead, the court hypothesized, a "reasonable person" would just "leave the [rehabilitation center] and obtain a higher paying job elsewhere." SA 10. This speculation disregards numerous allegations that the Salvation Army cultivated the plaintiffs' reliance on the organization for basic life necessities through "sustained and targeted financial coercion," which results in "their inability to leave the program." AA 4, 17, 25, 30, 33, 39, 41; *see also Firestone Fin. Corp. v. Meyer*, 796 F.3d 822, 827 (7th Cir. 2015) (noting that "the plausibility standard does not allow a court to question or otherwise disregard nonconclusory factual allegations simply because they seem unlikely" to the judge).

The district court's error can be partially explained by its categorical refusal to consider the plaintiffs' individual circumstances. But it also flowed from the court's

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the totality of the circumstances" and finding dispute of material facts as to whether the plaintiff understood that she had other options); *Treadway v. Otero*, 2020 WL 7090702, at *5–6 (S.D. Tex. Sept. 4, 2020) (finding question of material fact as to whether an objectively reasonable person with the same background as the plaintiff and under her circumstances would feel compelled to continue working for the defendants as a domestic servant; while the plaintiff could come and go from the defendants' house, there were genuine issues of material fact left for the jury to determine whether the plaintiff understood that she had any other option but to work).

misapplication of the standard on a motion to dismiss—itself an independent basis for reversal. When considering a Rule 12(b)(6) motion to dismiss, courts must "accept as true all well-pleaded factual allegations and draw all reasonable inferences in favor of the plaintiff." *Johnson v. Enhanced Recovery Co.*, 961 F.3d 975, 980 (7th Cir. 2020). Yet, time and again, the district court here declined to accept the plaintiffs' allegations and even drew factual inferences in *the Salvation Army's* favor.

For example, as already explained, the court dismissed the reasonable inference that the plaintiffs, like other ARC residents, suffered from "substance use disorders," lack of shelter, "food-insecur[ity]," and "poverty." AA 17. The district court also refused to credit the plaintiffs' allegations that the Salvation Army used blackout periods and forced separation from the outside world as a form of "psychological coercion." AA 5, 20, 27–28, 30–31, 33; *see* SA 10–11. And the court heavily shaded the allegations in the Salvation Army's favor to find that the organization only used the government benefits it took from its residents to pay for their food—and then gave the remaining benefits to individuals when they left the centers. SA 9. Neither is true.[12]

[12] As the proposed amended complaint makes clear, the district court's interpretation of the facts is wrong: The Salvation Army either did not return the plaintiffs' benefit cards at all or had zeroed them out, even though there should have been benefits remaining. AA 64, 66, 68–69, 70, 72–74, 78, 80.

In sum, the district court declined to evaluate the plaintiffs' particular vulnerabilities when evaluating the Salvation Army's threats of serious harm—contrary to section 1589's text, history, and purpose. It then compounded its error by refusing to credit the complaint's allegations and drawing factual inferences against the plaintiffs. As a result, the court held—at the pleading stage—that the Salvation Army's threats to withhold food, clothing, and shelter were not "sufficiently serious" to coerce the plaintiffs to work for the organization. Nothing supports that approach, which could allow defendants to easily circumvent and undermine the TVPA's broad protections. This Court should reverse.

C. This Court should reverse the district court's dismissal of the plaintiffs' other TVPA claims.

In addition to their forced-labor claim under section 1589(a), the plaintiffs brought four other TVPA claims against the Salvation Army. *See* AA 38–44 (alleging claims under §§ 1589(b) (joint-venture liability), 1590(a) (recruitment of forced labor), 1594(a) (attempted forced labor), and 1594(b) (conspiracy to commit forced labor)). The district court dismissed all these claims solely based on its conclusion that the plaintiffs failed "to plausibly allege that they were subject to forced labor." SA 11. Because that conclusion was wrong, for all the reasons above, the district court's dismissal of the plaintiffs' other TVPA claims should be reversed.

Furthermore, even if the complaint had not plausibly alleged that the Salvation Army succeeded in forcing the plaintiffs' labor (and it did), the district court

erred in dismissing the section 1594(a) claim. That's because section 1594 makes it unlawful for a person to *attempt* to violate the TVPA's forced-labor prohibition. *See* 18 U.S.C. § 1594(a) ("Whoever attempts to violate section . . . 1589 . . . shall be punishable in the same manner as a completed violation of that section."). Here, there can be no dispute that, at the very least, the plaintiffs have alleged that the Salvation Army *tried* to compel their labor by threatening them with incarceration and the loss of food and shelter. AA 3–5, 16–18, 20–23, 25–33. Reversal is thus independently warranted on this ground.

III. The district court abused its discretion in denying the plaintiffs leave to amend their complaint.

The district court's refusal to allow the plaintiffs to amend their complaint was doubly wrong. Thus, regardless of whether this Court reverses the district court's order granting the motion to dismiss, it should reverse the court's denial of leave to amend.

A. When the district court granted the Salvation Army's motion to dismiss, it should have allowed leave to amend as a matter of course. Rule 15 provides that a court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). Accordingly, "[t]he usual standard in civil cases is to allow defective pleadings to be corrected, especially in early stages, at least where amendment would not be futile." *Abu-Shawish v. United States*, 898 F.3d 726, 738 (7th Cir. 2018). In other words, as this Court has repeatedly held, "[u]nless it is *certain* from the face of the complaint

that any amendment would be futile or otherwise unwarranted, the district court should grant leave to amend after granting a motion to dismiss." *O'Boyle v. Real Time Resols., Inc.*, 910 F.3d 338, 347 (7th Cir. 2018) (emphasis added); *see Barry Aviation Inc. v. Land O'Lakes Mun. Airport Comm'n*, 377 F.3d 682, 687 (7th Cir. 2004).

That high standard was not met here—and the plaintiffs' proposed second amended complaint proves it. To the contrary, the proposed amendments cured *all* of the supposed deficiencies that the district court identified in its order. For starters, the amended complaint made clear that no state court ordered any plaintiff to be subjected to forced labor. AA 63–64, 67, 70. So the premise for the court's *Rooker-Feldman* ruling—that it could not "redress Plaintiffs' injuries without overturning the state court's orders"—was fully erased. SA 4.

Furthermore, the proposed amendments further established that the plaintiffs (and many other rehabilitation center residents) had no reasonable alternative for food and housing other than the Salvation Army, and that the plaintiffs did not immediately regain access to their benefits upon leaving the Salvation Army. AA 63–64, 66, 68–69, 70, 72–74, 77–82. These allegations refuted the central belief underlying the district court's serious-harm analysis: that a "reasonable person" in the plaintiffs' circumstances could just "leave," "regain[] access to the[ir] benefits," and "obtain a higher paying job elsewhere." SA 9–10.

The district court didn't consider any of this when it granted the Salvation Army's motion to dismiss without giving the plaintiffs leave to amend. It denied leave to amend without even reviewing the proposed amended complaint. The court seems to have been motivated by its (erroneous) view that the plaintiffs had already had their chance by electing to amend their complaint in response to the Salvation Army's initial motion to dismiss. SA 1. But that voluntary, pre-adjudication amendment doesn't mean that the typical liberal amendment standard doesn't apply. This Court's cases make that clear: "[L]eave to file a second amended complaint should be granted liberally." *Dubicz v. Commonwealth Edison Co.*, 377 F.3d 787, 792 (7th Cir. 2004). "Unless it is certain from the face of the complaint that any amendment would be futile . . . , the district court should grant leave to amend *after granting a motion to dismiss*." *Barry Aviation*, 377 F.3d at 687 (emphasis added); *see also, e.g.*, *Bausch v. Stryker Corp.*, 630 F.3d 546, 562 (7th Cir. 2010) ("Generally, *if a district court dismisses* for failure to state a claim, the court should give the party one opportunity to try to cure the problem, even if the court is skeptical about the prospects for success." (emphasis added)).

In other words, the court's *ruling* on the motion to dismiss is the key event—not the plaintiffs' early pre-decision amendment. *See Pension Tr. Fund for Operating Eng'rs v. Kohl's Corp.*, 895 F.3d 933, 941 (7th Cir. 2018) ("In the usual case, we look only to decisions of the court to determine whether the plaintiffs knew of faults with their

complaint."). Because the district court here confused that basic distinction, reversal is warranted.

B. The district court compounded its error when it denied the plaintiffs' post-judgment motion to amend the complaint. The court entered final judgment at the same time that it granted the motion to dismiss. So the plaintiffs never had an opportunity before judgment to demonstrate that their proposed amendments would sufficiently address the concerns it had identified. They therefore filed a motion to alter the judgment and for leave to amend their complaint, which attached their proposed second amended complaint. ECF 63.

Not only did the district court refuse to reconsider its dismissal, but it also denied leave to amend. SA 12. Even though it now had the opportunity to review the amended allegations, it said nothing about whether they cured the deficiencies that had formed the basis for its ruling on the motion to dismiss. Instead, it held that, because judgment had already been entered, Rule 59(e)'s stringent standard applied over Rule 15's more liberal standard. *Id.*[13] It therefore denied leave to amend without even considering the proposed amendments.

That was wrong. This Court has squarely held that Rule 15's standard applies to "situations, like this one, where a district court enters judgment at the same time

[13] Rule 59(e) requires a "movant [to] demonstrate a manifest error of law or fact or present newly discovered evidence." *Vesely v. Armslist LLC*, 762 F.3d 661, 666 (7th Cir. 2014).

it first dismisses a case." *NewSpin*, 910 F.3d at 310; *see Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 520–21 (7th Cir. 2015) (noting that, "[w]hen the district court has taken the unusual step of entering judgment at the same time it dismisses the complaint, the court . . . must still apply the liberal standard for amending pleadings under Rule 15(a)(2)"). To hold otherwise would "in essence" allow "one error by the district court (prematurely entering a final judgment on the basis of futility) [to] insulate another error (erroneously denying leave to amend on the basis of futility) from proper appellate review." *Runnion*, 786 F.3d at 521; *see also, e.g.*, *Bausch*, 630 F.3d at 561–62; *Foster v. DeLuca*, 545 F.3d 582, 584–85 (7th Cir. 2008).

In sum, as this Court has explained, "a district court cannot nullify the liberal right to amend under Rule 15(a)(2) by entering judgment prematurely at the same time it dismisses the complaint that would be amended." *Runnion*, 786 F.3d at 522. By doing exactly that here, the district court abused its discretion. Thus, at the very least, this Court should reverse the district court's order denying the plaintiffs leave to amend their complaint.

CONCLUSION

The district court's order granting the Salvation Army's motion to dismiss should be reversed.

June 5, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Circuit Rule 32(c) because this brief contains 12,754 words excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Baskerville font.

/s/ Jennifer D. Bennett
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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2023, I electronically filed the foregoing brief and short appendix with the Clerk of the Court for the U.S. Court of Appeals for the Seventh Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Jennifer D. Bennett
Jennifer D. Bennett

CIRCUIT RULE 30(d) STATEMENT

This brief and appendix comply with Circuit Rule 30(d) because all materials required by Cir. R. 30(a) and (b) are included in the appendix.

/s/ Jennifer D. Bennett
Jennifer D. Bennett

No. 23-1218

In the United States Court of Appeals for the Seventh Circuit

DARRELL TAYLOR, CHARLES LUCAS, KEVIN LEWIS, DARRELL BURKHART, and LEEVERTIS PAGE,
individually and on behalf of all others similarly situated,
Plaintiffs-Appellants,

v.

THE SALVATION ARMY NATIONAL CORPORATION and SALVATION ARMY, doing business as CENTRAL TERRITORIAL OF THE SALVATION ARMY,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois
Case No. 1:21-cv-06105 (The Hon. John R. Blakey)

SHORT APPENDIX

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DARRELL TAYLOR, et al,	)	
	)	
Plaintiffs,	)	
	)	Case No. 21-CV-6105
v.	)	
	)	Judge John Robert Blakey
THE SALVATION ARMY NATIONAL CORPORATION, et al.,	)	
	)	
Defendants.	)	

ORDER

The Court grants Plaintiffs' request for judicial notice [56], and motion for leave to respond [59], grants Defendants' motion to dismiss [39], and denies as moot Defendants' motion for a protective order [35]. As explained more fully in this order, the claims brought by Plaintiffs Darrell Taylor, Charles Lucas, Darrell Burkhart, and are dismissed without prejudice for lack of jurisdiction. The claims brought by the remaining Plaintiffs, Kevin Lewis and Leevertis Page, are dismissed for failure to state a claim. As Plaintiffs have already amended their complaint and because nothing in the amended complaint suggests that the Plaintiffs can amend to cure the defects identified below, the Court denies leave to amend. Civil case terminated.

STATEMENT

I. Background

Plaintiffs Darrell Taylor, Charles Lucas, Kevin Lewis, Darrell Burkhart, and Leevertis Page participated in the Adult Rehabilitation Center ("ARC") programs, which, in Illinois and Michigan, are administered by Defendant The Salvation Army Central Territory ("SA Central") in accordance with policies promulgated by Defendant The Salvation Army National Corporation ("SA National."). [30] ¶ 48, 49. Under the guise of "work therapy" for substance abuse disorders, the ARC program requires its participants to work in The Salvation Army's commercial programs such as its thrift stores. [30] ¶¶ 4, 5, 6. To participate in the ARC program—and to receive the benefit of the shelter, clothing, and food provided under the program—individuals must work in The Salvation Army's commercial operations. [30] ¶ 11. Plaintiffs Taylor, Lucas, and Burkhart (the "justice-referred Plaintiffs") allege that they were required to participate in the ARC program as a condition of their probation and parole. [30] ¶¶ 8, 180, 199, 231. Plaintiff Lewis and Page (the "walk-in Plaintiffs") were not required to participate in the ARC program but were solicited by Defendants to participate on account of the walk-in Plaintiffs' economic vulnerabilities. [30] ¶¶

9, 10, 215, 245. Participants in the ARC program who do not work, or who otherwise violate the rules of the ARC program, may get kicked out of the ARC program, thus losing access to the food and shelter provided under the program. [30] ¶ 16. Additionally, justice-referred Plaintiffs who are kicked out of the ARC program may be reincarcerated for violating the terms of their probation or parole. [30] ¶ 14.

In their first amended complaint ("FAC"), Plaintiffs, on behalf of a putative class, bring five claims under the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. 1589 *et seq*. Plaintiffs claim that SA Central obtained trafficked labor in violation of 18 U.S.C. § 1589(a) (Count I), [30] ¶¶ 276–85. They claim both Defendants benefited from trafficked labor in violation of 18 U.S.C. § 1589(b) (Count II), [30] ¶¶ 286–99; recruited trafficked labor in violation of 18 U.S.C. § 1590(a) (Count III), [30] ¶¶ 300–04; conspired to recruit, obtain, and benefit from trafficked labor in violation of 18 U.S.C. § 1594(b) (Count IV), [30] ¶¶ 305–11; and attempted trafficking in violation of 18 U.S.C. § 1594(a) (Count V), [30] ¶¶ 312–16.

Defendants move to dismiss, [39], and they also move for a protective order barring jurisdictional discovery, [35]. Plaintiffs also filed a request for judicial notice [56], and a motion to respond to Defendants' authority [59], which the Court grants.

II. Discussion & Analysis

Defendants move to dismiss for lack of standing, for lack of personal and subject matter jurisdiction, and for failure to state a claim. The Court considers each argument below.

A. Standing

Defendants first argue that Plaintiffs lack standing under Article III as the FAC fails to allege that they participated in the ARCs because of Defendants' alleged threats. [39-1] at 30. Although fashioned as a challenge to the Court's subject-matter jurisdiction, Defendants' argument really is a challenge to the sufficiency of Plaintiff's complaint to state a claim for relief under the TVPRA. But in keeping with the Court's independent obligation to ensure it has subject matter jurisdiction over the parties' dispute, *Crosby v. Cooper B-Line, Inc.*, 725 F.3d 795, 800 (7th Cir. 2013) (quoting *Ne. Rural Elec. Membership Corp. v. Wabash Valley Power Ass'n, Inc.*, 707 F.3d 883, 890 (7th Cir. 2013)), the Court nonetheless considers standing under Article III.

A motion to dismiss under Rule 12(b)(1) challenges the Court's subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). If a defendant challenges the facial sufficiency of the allegations regarding subject matter jurisdiction, the Court must accept as true all well-pled factual allegations and draw all reasonable inferences in the plaintiff's favor. *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443–44 (7th Cir. 2009). To meet the "irreducible constitutional minimum of standing" under Article III of the Constitution, Plaintiffs must show that they "(1) suffered an injury in fact; (2) that is fairly traceable to the challenged conduct of the defendant; and (3) that is

likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 334 (2016) (citing *Lujan*, 504 U.S. at 560–61)). The burden of establishing standing rests with the party invoking federal jurisdiction and, at the pleading stage, that party must "clearly . . . allege facts demonstrating each element." *Id.* at 338 (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)). Relevant here, the "fairly traceable" element requires a "causal connection between the injury and the conduct complained of—the injury has to be 'fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560-61 (quoting *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41–42 (1976)). This inquiry does not require that a defendant "be the most immediate cause, or even a proximate cause of the plaintiffs' injuries; it requires only that those injuries be 'fairly traceable' to the defendant," *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 n.6 (2014), and is a "relatively modest" burden to meet at the pleading stage, *Bennet v. Spear*, 520 U.S. 154, 171 (1997).

Here, Plaintiffs have standing under Article III. Plaintiffs have adequately alleged an injury in fact because the FAC alleges that the Plaintiffs were forced to labor for Defendants. *See* [30] ¶¶ 196, 214, 228, 244, 262. As it relates to the "fairly traceable" requirement, the FAC alleges generally that Defendants' conduct, through their threats and policies, caused Plaintiffs to provide Defendants with their labor. [30] ¶¶ 13, 15, 20. Specific to the named Plaintiffs, the FAC also alleges that Defendants obtained their labor through allegedly unlawful conduct such as threats of imposing further incarceration for the justice-referred Plaintiffs, *see id.* ¶¶ 195, 213, 243, or threats to withhold food and shelter from the walk-in Plaintiffs, s*ee id.* ¶¶ 227, 261. These allegations plausibly suggest that Plaintiffs' injuries are "fairly traceable" to Defendants' conduct and are not the result of an independent third party not before the Court. Finally, Plaintiffs' alleged injuries are redressable by a favorable decision by the Court because Plaintiffs seek to recover damages from Defendants under the TVPRA, which purportedly prohibits Defendants' conduct, *see* [30] ¶¶ 284, 298, 303, 310, 315; 18 U.S.C. §§ 1589, 1590, 1594.

B. Rooker-Feldman

Next, in a footnote, Defendants argue that the *Rooker-Feldman* doctrine bars the claims brought by the justice-referred Plaintiffs. [39-1] at 27 n.9. The Court finds this argument more persuasive. *Rooker-Feldman* divests lower federal courts of subject matter jurisdiction to hear "cases brought by state-court losers complaining of injuries caused by state-court judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). *Rooker-Feldman* also bars claims "inextricably intertwined with a state court judgment." *Sykes v. Cook County Circuit Court Probate Div.*, 873 F.3d 736, 742 (7th Cir. 2016). In determining whether a claim is "inextricably intertwined" with a state court judgment, a court must determine "whether the federal claim alleges that the injury was caused by the state court

judgment, or alternatively, whether the federal claim alleges an independent prior injury that the state court failed to remedy." *Id.* But if the injury "is executed through a court order, there is no conceivable way to redress the wrong without overturning the order of a state court." *Id.* at 473.

Here, the TVPRA claims brought by the justice-referred Plaintiffs are barred under *Rooker-Feldman*. The justice-referred Plaintiffs claim they are referred to the ARC program by court order or as a condition of probation or parole and are generally required to complete the entire 180-day ARC program as a condition of their release; if they fail to comply, they may be subject to further incarceration. [30] ¶¶ 145, 150, 151. The justice-referred Plaintiffs further allege that they "do not have a choice about whether they work" and "they *must* report to and participate in the ARC program or they risk violating their terms of parole or probation and reincarceration." [30] ¶ 8. Specific to the named Plaintiffs, the complaint also alleges that Defendants' purported threats of serious harm and abuse of legal processes occurred pursuant to their parole and/or probation requirements. *See* [30] ¶¶ 180 ("Taylor entered the ARC workforce to comply with aspects of his parole requirements."); 199 ("Lucas entered the ARC workforce to comply with aspects of his parole requirements."); 200 ("Lucas's parole officer told him that staying at the ARC program was mandatory for at least three months."); 231 ("Burkhart was mandated to stay at the ARC for 12 months as part of his probation."); 232 ("Burkhart understood that he would violate his conditions of release, and risk reincarceration, if he left the ARC at any time before the end of the 12 month period."). Plaintiffs' claims in this regard constitute a collateral attack on those state orders because the Court cannot redress Plaintiffs' injuries without overturning the state court's orders that required them to participate in the ARC program in the first place. *See Homola v. McNamara*, 59 F.3d 647, 651 (7th Cir. 1995) ("[I]f a suit seeking damages for the execution of a judicial order is just a way to contest the order itself, then the *Rooker-Feldman* doctrine is in play.")

Plaintiffs argue that *Rooker-Feldman* does not apply because their claims arise from Defendants' independent misconduct in violating the TVPRA and not any order or judgment of a state court. [44] at 32 n.4.[1] Not so. The justice-referred Plaintiffs

[1] In support of its argument, Plaintiffs cite to *Burrell v. Lackawanna Recycling Ctr., Inc.*, where a Pennsylvania district court found that *Rooker-Feldman* did not bar TVPRA claims brought by plaintiffs forced to labor for a recycling center in lieu of incarceration after state courts found them in civil contempt for failure to pay child support. No. 3:14-cv-1891, 2021 WL 3476140, at *10 (M.D. Pa. Aug. 6, 2021). But the *Burrell* court's reasoning depended upon the "unusual facts" in the case because Pennsylvania law allows state courts to modify child support payment orders if a party demonstrates changed circumstances. *Id.* at *14; 23 Pa. C.S. § 4532. The *Burrell* court reasoned that if plaintiffs had alleged such changed circumstances following the entry of contempt by the state court, then plaintiffs' claims would not be an attack on a state court's contempt order because their injuries would have occurred *after* the entry of the state court judgment. *Burrell*, 2021 WL 3476140, at *10. The *Burrell* court later concluded that plaintiffs' failure to allege any such changed circumstances doomed their TVPRA claims and noted that if it accepted as true plaintiff's conclusory allegations that they had no choice to work at the recycling center, then their TVPRA claims would have been "an attack on

participated in the ARC program because a state court order compelled them to do so—they allege that they were directed to the ARC program by court order and were required to participate in the ARC program or risk violating the terms of their parole or probation. [30] at ¶ 8. Their claims are thus "inextricably intertwined" with the state court's judgment. *See Sykes*, 837 F.3d at 742 ("In other words, there must be no way for the injury complained of by a plaintiff to be separated from a state court judgment."); *Holt v. Lake Cty. Bd. of Comm'rs*, 408 F.3d 335, 336 (7th Cir. 2005) ("[A]bsent the state court's judgment evicting him from his property, [plaintiff] would not have the injury he now seeks to redress."); *see also Copeland v. C.A.A.I.R., Inc.*, No. 17-cv-564-TCK-JFJ, 2020 WL 7265847, at *9 (N.D. Okla. Dec. 10, 2020) (holding *Rooker-Feldman* barred TVPRA claims brought by plaintiffs who were ordered to defendant's rehabilitation center by a court and rejecting plaintiffs' argument that their claims challenge only defendant's requirement that they work without compensation because "[d]efendants did not require Plaintiffs to attend [the rehabilitation center]—an Oklahoma state court did.").

The Court thus finds that the claims brought by Plaintiffs Darrell Taylor, Charles Lucas, Darrell Burkhart, and Kevin Lewis (to the extent Lewis' claims arise from his participation in the ARC as a justice-referred worker in 2019, [30] ¶ 215) are barred by *Rooker-Feldman* and dismisses them without prejudice for lack of jurisdiction.

C. Personal Jurisdiction

Next, Defendants move to dismiss Plaintiffs' claims against SA National under Rule 12(b)(2), arguing that the Court lacks personal jurisdiction over it. [39-1] at 12-18. Under Rule 12(b)(2), a complaint need not include facts alleging personal jurisdiction; but once the defendant moves to dismiss the complaint under Rule 12(b)(2), the plaintiff bears the burden of demonstrating the existence of jurisdiction. *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003). Where, as here, the Court rules on a Rule 12(b)(2) motion without an evidentiary hearing, Plaintiffs need only establish a prima facie case of personal jurisdiction. *Curry v. Revolution Labs., LLC*, 949 F.3d 385, 392–93 (7th Cir. 2020); *GCIU-Employer Ret. Fund v. Goldfarb Corp.*, 565 F.3d 1018, 1023 (7th Cir. 2009). Where the defendant "has submitted affidavits or other evidence in opposition to the exercise of jurisdiction," however, "the plaintiff must go beyond the pleadings and submit affirmative evidence supporting the exercise of jurisdiction." *Purdue Research Found.*, 338 F.3d at 783. The Court accepts as true any facts in affidavits that do not conflict with the complaint or Plaintiff's submissions, *Curry*, 949 F.3d at 393, but the Court must resolve any disputes concerning the relevant facts in Plaintiff's favor. *Purdue Research Found.*, 338 F.3d at 782–83.

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the state court contempt judgments which is precluded by *Rooker-Feldman*." *Id.* at *14. *Burrell* thus does not help Plaintiffs.

As this case arises under this Court's federal question jurisdiction, personal jurisdiction exists "if either federal law or the state in which the court sits authorizes service of process to that defendant." *Curry*, 949 F.3d at 393 (quoting *Mobile Anesthesiologists Chi. LLC v. Anesthesia Assocs. of Houston Metroplex, P.A.*, 623 F.3d 440, 443 (7th Cir. 2010)). The TVPRA does not provide for nationwide service of process. *See* 18 U.S.C. § 1595; *see also C.T. v. Red Roof Inns, Inc.*, No. 2:19-CV-5384, 2021 WL 2942483, *10 (S. D. Ohio July 1, 2021) ("Taken together, the plain text of the TVPRA's extraterritorial jurisdiction provision does not contemplate nationwide service of process."). Thus, personal jurisdiction over SA National is proper "only if authorized both by Illinois law and the United States Constitution." *Curry*, 949 F.3d at 393 (quoting *be2 LLC v. Ivanov*, 642 F.3d 555, 558 (7th Cir. 2011)).

Illinois' long arm statute provides that "[a] court may also exercise jurisdiction on any basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." 735 ILCS 5/2-209(c). Because the Seventh Circuit has found no "operative difference" between the two constitutional limits, this Court can limit its analysis to whether exercising jurisdiction over SA National comports with the Due Process Clause of the Fourteenth Amendment. *Illinois v. Hemi Group LLC*, 622 F.3d 754, 756–57 (7th Cir. 2010). Under well-established law, this Court may exercise personal jurisdiction over nonresidents only when they have "minimum contacts" with Illinois such that litigating the case here "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). There are two types of personal jurisdiction, general jurisdiction and specific jurisdiction.

Here, Plaintiffs have not shown that this Court may exercise general jurisdiction over SA National; rather, Plaintiffs allege that SA National is a New Jersey corporation with its principal place of business in Virginia, [30] ¶ 27, and that SA National has no property or employees in Illinois. [39-3] ¶¶ 13, 14. SA National thus lacks the "continuous and systematic contacts as to render it essentially home" in Illinois, *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014) (cleaned up); *see also* [39-2]; [39-3].[2] General personal jurisdiction does not exist.

The next type of personal jurisdiction, specific jurisdiction, depends upon the facts of the case and exists when a defendant has "purposefully directed his activities at residents of the forum" and "the litigation results from alleged injuries that arise out of or relate to those activities." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–73 (1985) (internal quotation marks omitted). In support of its Rule 12(b)(2) motion to dismiss, Defendants submitted the declaration of Randall Polsley, the Commander of the ARCs SA Central operates in the Central Territory, [39-2], as well as the declaration of Kenneth O. Johnson Jr., the National Chief Secretary of The

[2] The parties submitted extrinsic evidence relevant to the Court's exercise of jurisdiction over SA National, which the Court considers solely for Defendants' Rule 12(b)(2) motion to dismiss. *See Purdue Research Found.*, 338 F.3d at 782; *Curry*, 949 F.3d at 393.

Salvation Army and Vice President of SA National, [39-3]. Although these declarations establish that SA National is not involved in the day-to-day operations of the ARCs in the Central Territory (which are operated solely by SA Central), they do not refute the allegations in the FAC that SA National crafts and formulates the policies from which Plaintiffs' TVPRA claims stem. *See, e.g.*, [30] ¶ 51 ("SA National dictates national policy for all Salvation Army Territories."); ¶ 56 ("All Territories, including SA Central Territory, operate under the same broad, overall policies, including those dictated by the Commissioners' Conference under the Leadership of the National Commander."); ¶ 57 ("There is an agreement by and between SA National and SA Central Territory that SA Central Territory will operate under The Salvation Army's policies and procedures, including those implemented by SA National, and will carry out The Salvation Army's programs within the Central Territory, including in Illinois."); ¶ 63 ("By controlling the structure and essential terms and conditions of the ARC program in the Central Territory, including in Illinois, SA National intentionally created a situation in which ARC workers would feel compelled to remain in the program."); ¶ 274 ("The core principles governing Defendants' forced labor 'work therapy' program emanate from national policy and are uniform across the Classes.").

These unrefuted allegations demonstrate that SA National "purposefully directed" its conduct towards Illinois through its role in formulating the policies by which the ARCs in the Central Territory operate, notwithstanding the fact that the day-to-day operation of the ARCs in the Central Territory are under the sole purview of SA Central. *See Felland v. Clifton*, 682 F.3d 665, 674–75 (7th Cir. 2012) (noting a defendant's conduct is "purposefully directed" to the forum state if the conduct was: (1) intentional; (2) expressly aimed at the forum state; and (3) with defendant's knowledge that the plaintiff would be injured there). Moreover, Plaintiffs' claims "arise out of or relate to" SA National's contacts with Illinois because Plaintiffs allege that their injuries arose from their very participation in the ARCs that were governed by the policies SA National had a role in promulgating. Thus, the Court finds that there is a strong "'relationship among the defendant, the forum, and the litigation,'—the 'essential foundation' of specific jurisdiction." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1028 (2021) (quoting *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

Finally, the Court must also determine whether asserting jurisdiction over SA National offends "traditional notions of fair play and substantial justice," *Int'l Shoe Co.*, 326 U.S. at 316, and must consider factors such as "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of [the underlying dispute], and the shared interest of the several States in furthering fundamental substantive social policies." *Purdue Research Found.*, 338 F.3d at 781 (internal quotation omitted). SA National presents no argument concerning the unfairness of subjecting it to jurisdiction here

and, as the Seventh Circuit has noted, "as long as the plaintiff has made a threshold showing of minimum contacts, that showing is generally defeated only where the defendant presents 'a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'" *Curry*, 949 F.3d at 402 (quoting *Burger King*, 471 U.S. at 477). Accordingly, the Court finds that Plaintiffs' complaint has made a *prima facie* showing of specific personal jurisdiction over SA National and denies as moot Defendant SA National's claim for a protective order on jurisdictional discovery, [35].

D. The Sufficiency of Plaintiffs' Allegations

Defendants next move to dismiss pursuant to Rule 12(b)(6), raising various challenges to the sufficiency of Plaintiffs' complaint, including that Plaintiffs have failed to allege that Defendants obtained their labor through threats of serious harm as defined under the TVPRA. *See* [39-1] at 19. The Court agrees.

A motion under Rule 12(b)(6) tests the sufficiency of the complaint under the plausibility standard, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007), not the merits of the suit, *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). To meet the plausibility standard, the complaint must supply enough facts to raise a "'reasonable expectation that discovery will reveal evidence' supporting the plaintiff's allegations." *Indep. Trust Corp. v. Stewart Info. Servs. Corp.*, 665 F.3d 930, 935 (7th Cir. 2012) (quoting *Twombly*, 550 U.S. at 556). In deciding a Rule 12(b)(6) motion, this Court must accept as true all well-pleaded facts in a plaintiff's complaint and must draw all reasonable inferences in his favor. *Burke v. 401 N. Wabash Venture, LLC*, 714 F.3d 501, 504 (7th Cir. 2013).

The Trafficking Victim Protection Reauthorization Act ("TVPRA") provides a private right of action to persons who have been subjected to forced labor. 18 U.S.C. § 1595(a). A defendant is liable under the TVPRA when it "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.

18 U.S.C. § 1589(a).

Under the TVPRA, "serious harm" is defined as "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." 18 U.S.C. § 1589(c)(2) (emphasis added). To state a plausible claim for relief, Plaintiffs must therefore allege sufficient facts in their complaint that Defendants' threats of harm would cause a reasonable person in Plaintiffs' position to continue laboring for Defendants. *See United States v. Dann*, 652 F.3d 1160, 1170 (9th Cir. 2011) ("In other words, someone is guilty of forced labor if he intends to cause a person in his employ to believe that if she does not continue to work, she will suffer the type of serious harm . . . that would compel someone in her circumstances to continue working to avoid that harm.").

Here, Plaintiffs fail to allege in their complaint that Defendants obtained their labor through threats of serious harm or through Defendants' schemes, plans, or pattens intended to cause them to believe that they would be subject to serious harm. First, the threats to remove workers from the ARC program and consequently preventing access to ARC-provided food and shelter would not compel a reasonable person to keep laboring in the ARC program. Although the threat to withhold food and shelter in other instances would be a serious harm as defined under the statute, the TVPRA requires that the harm be "sufficiently serious" under "all the surrounding circumstances." 18 U.S.C. § 1589(c)(2). Plaintiffs allege that the ARC program was approximately 180 days long, that the food, clothing, and shelter were provided to workers as a condition of their participation in the ARC program, [30] ¶ 105, and that they had to work in order to remain in the ARC program, [30] ¶ 121. For the walk-in Plaintiffs, participation in the ARC program was voluntary and the work requirement was communicated to the Plaintiffs as part of the intake process. [30] ¶¶ 165, 217, 247. Critically, there is no allegation that Plaintiffs' access to food, clothing, and shelter could be withheld from them even after they had left the ARC program or any other allegation indicating that Plaintiffs could not otherwise leave the ARC program.

For instance, Plaintiffs allege that they were required to hand over their government benefits such as their Supplemental Nutritional Assistance Program ("SNAP") benefits to Defendants while participating in the ARC program, which they allege "impedes" their ability to flee the program. [30] ¶¶ 131. But the complaint also alleges that Defendants use these benefits to purchase food for the workers while they are in the ARC program, [30] ¶ 139 ("The Territories, including SA Central Territory, then obtain forced labor by threatening to strip the ARC workforce of the food (donated by members of the public or purchased with the ARC workforce's forfeited governmental support benefits and/or vouchers."), and that workers regained access to these benefits upon leaving the ARC program, [30] ¶ 131. And although Plaintiffs allege that SA National requires the ARCs to abide by "strict

confidentiality procedures and protocols" concerning the ARC workers, [30] ¶¶ 60, 61, the complaint contains no other allegations explaining how these policies are intended to cause the ARC workers to believe that they would suffer serious harm if they did not work in the ARC program. Without any other factual allegations, this allegation seems entirely consistent with the stated purpose of the ARCs as providing substance abuse treatment for its participants, as alleged in the complaint. *See* [30] ¶¶ 5, 6. Plaintiffs also allege that Defendants' policies prevented them from building their savings and achieving financial independence by paying ARC workers weekly gratuities of $1.00 to $25.00 per week, [30] ¶ 125, 223, 256, and, presumably, preventing them from finding alternative employment by limiting their freedom of movement and communications for the first 30 days of the ARC program, [30] ¶¶ 137, 222, 257. But these are not serious harms under the TVPRA. A reasonable person in the Plaintiffs' position would leave the ARC program and obtain a higher paying job elsewhere if the ARC's gratuity policy prevented them from building their savings.

Third, the TVPRA provides liability for those who "*knowingly* . . . obtain[] the labor or services of a person" through serious harm or threats of serious harm as well as a "scheme, plan, or pattern *intended* to cause the person to believe" that he or she would suffer "serious harm" if they did not provide their labor. 18 U.S.C. § 1589(a)(4). This scienter requirement requires Plaintiffs to allege facts that would allow the Court to infer that Defendants intended that their policies would be perceived by the Plaintiffs in a way to unlawfully obtain their labors. *See United States v. Calimlim*, 538 F.3d 706, 712 (7th Cir. 2008) ("Because of the *scienter* requirement, any speech involved must be a threat or else intended to achieve an end prohibited by law."); *Dann*, 652 F.3d at 1170 ("The linchpin of the serious harm analysis under § 1589 is not just that serious harm was threatened but that the employer intended the victim to believe that such harm would befall her."). Plaintiffs allege in a conclusory fashion that Defendants intended that their policies would cause Plaintiffs and other ARC workers to believe they had no choice but to remain working for Defendants, *see* [30] ¶ 177 ("Through the design, policies, procedures, and threats inherent in the ARC program and other similar programs, Defendants intentionally created circumstances in which reasonable walk-in and justice-referred participants, because of their shared vulnerable backgrounds, believed they had no choice but to remain laboring."), but the complaint is devoid of any allegation indicating that the policies and other parameters of the ARC program were intended to obtain Plaintiffs' labor through threats of serious harm.

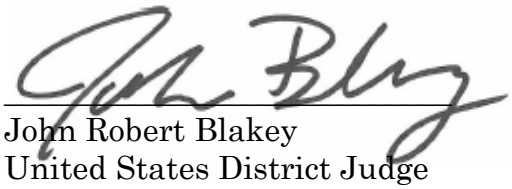
Rather, Plaintiffs argue that the purpose behind Defendants' policies and practices were to "create a culture of coercion and isolation" and were "perceived" by ARC workers to be threats of serious harm. [44] at 29–30. Plaintiffs urge the Court to consider the "unique vulnerabilities" of the ARC workers that made them "highly susceptible" to Defendants' implicit threats. [44] at 23. But Plaintiffs include no allegations concerning the unique vulnerabilities specific to walk-in Plaintiffs Lewis and Page. And even if Plaintiffs had so alleged, the definition of "serious harm" under

the TVPRA also requires consideration of "*all* of the surrounding circumstances," 18 U.S.C. § 1589(a), and requires an evaluation of the purported harm from the vantage point of a reasonable person as well. *See id.* As discussed above, a reasonable person would not feel compelled to continue working in the temporary ARC program when leaving the program would provide them with access to the government benefits allegedly confiscated by the Defendants or otherwise allow them to avoid the negative financial impacts caused by their continued participation in the ARC program (assuming those negatives outweighed the benefits of participation in the program). The unique circumstances of the walk-in Plaintiffs, standing alone, does not compel a different result. *See Konstantinova v. Garbuzov*, 2:21-cv-12795 (WJM), 2022 WL 2128799, at *3 (D.N.J. Jun. 14, 2022) (dismissing forced labor claim where plaintiff only alleged that she "had no other source of income (and thus entirely financially reliant on Defendants) and had no contacts or family in the United States" to be "circumstances that do not necessarily evidence violations of anti-trafficking laws.").

As Plaintiffs cannot allege that they were subjected to serious harm, threats of serious harm, or a scheme, plan, or pattern intended to cause them to believe they would be subject to serious harm, Plaintiffs fail to allege that they were subjected to forced labor as defined under the TVPRA. *See* 18 U.S.C. ¶ 1589. And because all five of Plaintiffs' TVPRA claims require Plaintiffs to plausibly allege that they were subject to forced labor, all five of Plaintiffs' TVPRA claims fail. *See* 18 U.S.C. §§ 1589(a), 1589(b), 1590(a), 1594(b), 1594(a). *See, e.g.*, *Konstantinova*, 2021 WL 5881670, at *6 (D.N.J. Dec. 13, 2021) ("Claims that Myasnikov attempted and conspired to violate §§ 1584, 1589, 1590, or 1595 cannot succeed as a matter of law given the Court's determination that Plaintiff has not stated a claim for violation of the predicate charges.").

Dated: September 19, 2022

Entered:



John Robert Blakey
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF NextGen 1.6.3
Eastern Division

Darrell Taylor, et al.

Plaintiff,

v.

Case No.: 1:21−cv−06105
Honorable John Robert Blakey

The Salvation Army National Corporation, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, January 6, 2023:

MINUTE entry before the Honorable John Robert Blakey: On 9/19/22, this Court granted Defendants' motion to dismiss and dismissed the case. [61], [62]. Plaintiffs moved to alter or amend under Rule 59(e), arguing that the Court erred in holding that any claims were barred by Rooker−Feldman and that they should be given leave to amend. The Court declines to revisit its application of Rooker−Feldman, as Plaintiff does not offer any new evidence or demonstrate a manifest error. See, e.g., Vesely v. Armslist LLC, 762 F.3d 661, 666 (7th Cir. 2014) (to win on a Rule 59(e), "a movant must demonstrate a manifest error of law or fact or present newly discovered evidence."). Plaintiff argued in response to the motion to dismiss that Rooker−Feldman did not apply, and this Court rejected that argument; Plaintiffs may not "rehash" it via Rule 59. Vesely, 762 F.3d at 666. Additionally, as Defendants correctly note, Plaintiffs' request for leave to amend puts the cart before the horse: "after a final judgment, a plaintiff may amend a complaint under Rule 15(a) only with leave of court after a motion under Rule 59(e) or Rule 60(b) has been made and the judgment has been set aside or vacated." Vesely, 762 F.3d at 66667; see also Figgie Int'l Inc. v. Miller, 966 F.2d 1178, 1180 (7th Cir. 1992) (even where a Rule 59(e) motion also seeks leave to amend, the motion "may only be granted if there has been a mistake of law or fact or new evidence has been discovered that is material and could not have been discovered previously."). Plaintiffs argue that the Court's dismissal without leave to amend violates precedent. To be sure, the Seventh Circuit has repeatedly instructed that &quo;t;a plaintiff whose original complaint has been dismissed under Rule 12(b)(6) should be given at least one opportunity to try to amend her complaint before the entire action is dismissed." Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago & Nw. Indiana, 786 F.3d 510, 519 (7th Cir. 2015). But Plaintiffs had already amended their complaintat the Court's invitation−−in response to a prior motion to dismiss, see [28], [30]. The Court denies Plaintiffs' Rule 59(e) motion [63]. Mailed notice(gel,)

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