

TRAFFICKING CULTS:
WHY COURTS SHOULD ADOPT A BROAD READING OF THE
TRAFFICKING VICTIMS PROTECTION ACT TO ENSURE
PROTECTION OF CULT VICTIMS

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INTRODUCTION

America came face to face with the effects of the coercive nature of cults in the 1976 trial of Patty Hearst, when she was put on trial for assisting the Symbionese Liberation Army (SLA) in a bank robbery.¹ In *United States v. Hearst*,² Hearst argued that a terrorist group brainwashed her into helping them commit crimes after they kidnapped, beat, starved, and raped her.³ This trial was one of the first times a defendant argued in court that she had been “brainwashed” by a cult as a defense.⁴ This terminology quickly took root as plaintiffs in cases against cults employed the term “brainwashing” in an attempt to explain why former members stayed involved with a cult in the face of abuse.⁵

With the general controversy surrounding cults and the countless accusations of abuse from former cult members, it is not surprising that these former cult members have sought redress through the courts. Civil actions against cults usually arise under tort law, with plaintiffs alleging the cult “brainwashed” or psychologically coerced

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¹ Robin Boyle Laisure, *Employing Trafficking Laws to Capture Elusive Leaders of Destructive Cults*, 17 OR. REV. INT’L L. 205, 227 (2016).

² *United States v. Hearst*, 466 F. Supp. 1068 (D. Cal. 1978).

³ Laisure, *supra* note 1, at 227; *see also Hearst*, 466 F. Supp. at 1073 (explaining that the SLA was a group of “self-avowed terrorists.”).

⁴ Ida-Gaye Warburton, Article, *The Commandeering of Free Will: Brainwashing as a Legitimate Defense*, 16 CAP. DEF. J. 73, 74 (2003).

⁵ *See id.*

them into staying in the cult.⁶ These tort claims often include intentional infliction of emotional distress, fraud, false imprisonment, wrongful death, and involuntary servitude.⁷ Yet these attempts by cult victims to gain compensation for the injuries caused by cults are not always successful.⁸

The First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” and guarantees that every United States citizen has the right to the free exercise of religion.⁹ Courts have traditionally analyzed claims against alleged cults under the umbrella of the First Amendment, which presumed that the First Amendment shielded cult actions from government scrutiny and caused cult victims to struggle in proving the ongoing abuse they faced.¹⁰ Despite the First Amendment’s protections, cult victims can use the Trafficking Victims Protection Act¹¹ (TVPA) to seek remedy for their suffering.¹²

This Comment will first discuss cases where courts denied legal theories of psychological coercion or an equivalent as an impairment to consent and as a basis for intentional torts. This Comment will continue by discussing the history of and court-interpretation of the TVPA. Next, this Comment will discuss the history of the Free Exercise clause of the Constitution with regards to the Religious Freedom

⁶ James T. Richardson, *Brainwashing Claims and Minority Religions Outside the United States: Cultural Diffusion of a Questionable Concept in the Legal Arena*, 1996 BYU L. REV. 873, 885 (1996).

⁷ See *id.*; see also Ann Penners Wrosch, *Undue Influence, Involuntary Servitude and Brainwashing: A More Consistent, Interests-Based Approach*, 25 LOY. L.A. L. REV. 499, 545 (1992) (describing other tort causes of actions family members of brainwashing victims sue for).

⁸ See *Lewis v. Holy Spirit Asso. for Unification of World Christianity*, 589 F. Supp. 10, 11 (D. Mass. 1983) (holding that there are no torts of brainwashing and indoctrination); *George v. Int’l Soc’y for Krishna Consciousness*, 3 Cal. App. 4th 52, 80 (Cal. Ct. App. 1992) (holding that brainwashing could not be a basis for a false imprisonment claim); *Christofferson v. Church of Scientology*, 644 P.2d 577, 584-85 (Or. Ct. App. 1982) (holding that there was insufficient evidence to award damages for outrageous conduct). *But see Molko v. Holy Spirit Ass’n*, 762 P.2d 46, 55 (Cal. 1988) (holding there was a genuine issue of material fact as to whether the plaintiffs were “brainwashed” by the Unification Church prior to them learning of the Church’s identity).

⁹ U.S. CONST. amend. I.

¹⁰ Jean G. Zorn, *Cults and the Ideology of Individualism in First Amendment Discourse*, 7 J.L. & RELIGION 483, 524-25 (1989) (discussing the courts’ tendency to engage in First Amendment analysis in cases brought by former cult members, even where such analysis was superfluous).

¹¹ Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101-7114 (2018).

¹² This comment will not discuss why human trafficking statutes should be used, but that it is possible under the text of the TVPA. For more information as to why human trafficking statutes should be used, see Laisure, *supra* note 1, at 233-50.

Restoration Act (RFRA). This Comment will then analyze the text of the TVPA and its legislative history to show that not only did Congress intend to include psychological coercion as the basis for a claim under the TVPA, but also that the victims of cults suffer serious harm as defined by the statute. This Comment will then discuss why the holding of *Headley v. Church of Scientology International*¹³—the only case in which a cult victim sued under the TVPA—should not bar future cult victims from utilizing the statute. Additionally, this Comment will refute the argument that psychological coercion claims under the TVPA would infringe upon the First Amendment rights of cults as religious organizations. Finally, this Comment will propose that the courts should allow victims of cults to bring civil actions under the TVPA.

BACKGROUND

To explain the history of cult-related litigation and the TVPA, this Comment will first define the term “cult” and then explain the abusive nature of cults. Next, this Comment will discuss psychological coercion and the courts’ refusal to recognize psychological coercion as an element of tortious activities, and the resulting attempts by victims of cults to bring suits under various tort-based claims. This Comment will then discuss the history of the TVPA and the successful lawsuits that relied on this statute to bring claims of forced labor. Lastly, this Comment will discuss the history of RFRA.

I. ORIGIN AND DESCRIPTION OF A CULT

The modern conception of a cult originates from the field of study revolving around “cult formation” psychology.¹⁴ Dr. Robert J. Lifton, an American psychiatrist, was one of the first to approach this idea in 1981.¹⁵ He argued that there are three characteristics used to identify cults.¹⁶ The first characteristic is “a charismatic leader who

¹³ *Headley v. Church of Scientology Int’l*, 687 F.3d 1173, 1178 (9th Cir. 2012).

¹⁴ Robert J. Lifton, *Cult Formation*, INT’L CULTIC STUD. ASS’N, <https://www.icsahome.com/articles/cult-formation-lifton-csj-8-1-1991> (last visited Mar. 21, 2020).

¹⁵ *Id.* While the most recent edition was published by the International Cultic Studies Association in 1991, Lifton’s “Cult Formation” was first published in the February 1981 edition of the Harvard Mental Health Letter. See Robert J. Lifton, *Cult Formation*, 8 HARV. MENTAL HEALTH LETTER (1981).

¹⁶ *Id.*

increasingly becomes an object of worship as the general principles that may have originally sustained the group lose their power.”¹⁷ This leader is usually someone who can speak and relate to anyone to recruit members for their cult.¹⁸ The second characteristic of a cult is the process of coercive persuasion or thought reform.¹⁹ Thought reform uses pressure and intimidation to force cult members to adhere to the cult leader’s ideology.²⁰ In some instances, cults force their members to stay within the group by employing some or all of the following methods: forced fasting, interrupted sleep or sleep deprivation, forced isolation—sometimes as punishment for disobedience—deprivation of medical treatment, threats of physical abuse, verbal abuse, and humiliation.²¹ The last characteristic is “economic, sexual, and other exploitation of group members by the leader and the ruling coterie.”²² This exploitation prevents the members from leaving by making it financially impossible or by instilling fear in the member through a cycle of abuse.²³ A cult is able to make its members financially dependent on it by requiring them to work for the cult for little or no pay.²⁴ In some instances, cults have required members to work in fields growing food for the cult, do manual labor or domestic work such as cleaning dishes and washing the floors of the facility, recruit new members, take care of other cult members’ children, solicit money, or sell items for the cult.²⁵ Additionally, cults will make former members pay the cult back for expenses incurred while a member lived with the cult, making it even more financially difficult

¹⁷ *Id.*

¹⁸ See Glenn Collins, *The Psychology of the Cult Experience*, N.Y. TIMES (Mar. 15, 1982) (“Consciously and manipulatively . . . cult leaders and their trainers exert a systematic social influence that can produce great behavioral changes.”), <https://www.nytimes.com/1982/03/15/style/the-psychology-of-the-cult-experience.html>.

¹⁹ Robert J. Lifton, *supra* note 14.

²⁰ *Id.*

²¹ See Laura B. Brown, *He Who Controls the Mind Controls the Body: False Imprisonment, Religious Cults, and the Destruction of Volitional Capacity*, 25 VAL. U.L. REV. 407, 408 n.10 (1991); Laisure, *supra* note 1, at 214; Zorn, *supra* note 10, at 484.

²² Lifton, *supra* note 14.

²³ See *id.*

²⁴ See, e.g., *Christofferson v. Church of Scientology*, 644 P.2d 577, 589 (Or. Ct. App. 1982) (discussing how a former member of Scientology did farm work, worked indoors cleaning, and acted as a nanny for a few dollars a week).

²⁵ This is not an exhaustive list of jobs. See *Headley v. Church of Scientology Int’l*, 687 F.3d 1173, 1180-81 (9th Cir. 2012); *Turner v. Unification Church*, 473 F. Supp. 367, 370-71 (D.R.I. 1978); *Katz v. Superior Court*, 73 Cal. App. 3d 952, 974-75 (Cal. Ct. App. 1977); *Christofferson*, 644 P.2d at 589.

for a member to leave the cult.²⁶ To be classified as a cult, under Dr. Lifton's formulation, a group must meet all three of these criteria.²⁷

II. WHAT IS PSYCHOLOGICAL COERCION?

Some courts have defined psychological coercion or "brainwashing" to mean "a forcible indoctrination to induce someone to give up basic political, social, or religious beliefs and attitudes and to accept contrasting regimented ideas."²⁸ Meanwhile, other courts have stated that brainwashing or psychological coercion, in the context of cults, is "fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure, and a clear assertion of authority and dominion."²⁹ Although brainwashing or psychological coercion in the religious context is controversial, it has been recognized by some courts as being a valid basis for a claim by the victim.³⁰ This is a crucial distinction, since many cults have an alleged religious component.³¹

Psychological coercion involves several tactics which force a victim to stay with the perpetrator.³² Specifically, perpetrators using psychological coercion may threaten to harm their victims to enforce compliance.³³ Perpetrators could also place their victims in an environment with subhuman conditions by (1) denying them privacy; (2) depriving them of food, water, sleep, or medical care; (3) depriving them of social contact through forced isolation; or (4) employing tactics such as humiliation and verbal abuse to weaken the mental state of their victims.³⁴ By using these methods, perpetrators psychologi-

²⁶ See *Wollersheim v. Church of Scientology*, 212 Cal. App. 3d 872, 879 (Cal. Ct. App. 1989) (involving a cult that required a member to pay off a "freeloader debt" if he tried to leave, but did not have to pay if he stayed part of the cult).

²⁷ Lifton, *supra* note 14.

²⁸ See, e.g., *Molko v. Holy Spirit Ass'n*, 762 P.2d 46, 54 (Cal. 1988).

²⁹ See *id.* at 54 (Cal. 1988) (quoting *Peterson v. Sorlien* 299 N.W.2d 123, 126 (Minn. 1981)).

³⁰ See *id.* at 55; *Peterson*, 299 N.W.2d at 136; *Meroni v. Holy Spirit Assn.*, 480 N.Y.S.2d 706, 710 (N.Y. Sup. Ct. 1984).

³¹ Dena S. Davis, *Joining a Cult: Religious Choice or Psychological Aberration*, 11 J.L. & HEALTH 145, 147 (1996-1997).

³² Elizabeth Hopper & Jose Hidalgo, *Invisible Chains: Psychological Coercion of Human Trafficking Victims*, 1 INTERCULTURAL HUM. RTS. L. REV. 185, 188-193 (2006).

³³ *Id.* at 187.

³⁴ *Id.* at 188-89.

cally coerce or brainwash their victims into believing they must submit to the will of the perpetrator.³⁵

III. CASES WHERE COURTS DID NOT RECOGNIZE THEORIES OF PSYCHOLOGICAL COERCION OR “BRAINWASHING”

Over time, victims have brought many claims against different cult groups. One recurring issue in such cases is whether a victim’s experience constitutes an actionable claim against the cult.³⁶ In the past, courts have failed to acknowledge that former cult members experienced some form of psychological coercion or brainwashing as a basis for a claim against the cult.³⁷

A pinnacle case involving cults and psychological coercion is *Christofferson v. Church of Scientology*.³⁸ In this case, Julie Christofferson brought a claim for outrageous conduct and alleged that the Church of Scientology “scheme[d] to gain control of her mind and force her into a life of service.”³⁹ Christofferson claimed that the Church of Scientology intentionally alienated her from her family, coerced her into performing labor without payment, and that “[s]he was held up to ridicule, humiliated, and forced under threat of retribution and physical harm to follow the dictates of the [Church of Scientology].”⁴⁰ Additionally, Christofferson claimed she was afraid she would face severe punishment if she brought a lawsuit against the Church of Scientology.⁴¹ Based on these claims, a jury initially found in favor of Christofferson concerning the outrageous tort claim.⁴² On appeal however, the court stated the outrageous conduct tort had

³⁵ *Id.* at 188-193.

³⁶ See Paul T. Hayden, *Religiously Motivated “Outrageous” Conduct: Intentional Infliction of Emotional Distress as a Weapon Against “Other People’s Faiths”*, 34 WM. & MARY L. REV. 580, 631 (1993) (discussing tort cases that were not actionable against cults).

³⁷ See *Headley v. Church of Scientology*, 687 F.3d 1173, 1181 n.1 (9th Cir. 2012) (holding that the plaintiffs did not properly develop a record that supported a claim of coercion); *Lewis v. Holy Spirit Assoc. for Unification of World Christianity*, 589 F. Supp. 10, 11 (D. Mass. 1983) (holding that there are no torts of brainwashing and indoctrination); *George v. Int’l Soc’y for Krishna Consciousness*, 3 Cal. App. 4th 52, 80 (Cal. Ct. App. 1992) (holding that brain washing could not be a basis for a false imprisonment claim); *Christofferson v. Church of Scientology*, 644 P.2d 577, 584-85 (Or. Ct. App. 1982) (holding that there was insufficient evidence to award damages for outrageous conduct).

³⁸ *Christofferson*, 644 P.2d at 577.

³⁹ *Id.* at 580.

⁴⁰ *Id.* at 584.

⁴¹ *Id.*

⁴² *Id.* at 580.

three elements that was the plaintiff's burden to prove, and Christofferson failed to provide sufficient evidence to prove all three.⁴³ The appeals court mainly focused on the second element and whether the Church of Scientology's actions were "beyond the limits of social toleration."⁴⁴ The court decided these actions were not very different from the actions of similar organizations and, consequently, they could not be considered beyond the limits of social toleration.⁴⁵ The court reasoned that because Christofferson joined the group voluntarily and remained a member, her claim failed.⁴⁶ Finally, the court also noted that the threats and coercion Christofferson faced were not actionable.⁴⁷

Brainwashing and indoctrination were rejected as viable causes of action in tort in *Lewis v. Holy Spirit Association for Unification of World Christianity*.⁴⁸ Robert Lewis sued the Holy Spirit Association for the Unification of World Christianity (Unification Church) after being a member of the Unification Church for about a year.⁴⁹ Lewis argued he was subjected to "brainwashing and indoctrination techniques" by the Unification Church and as a result suffered from "severe psychiatric disorders."⁵⁰ Lewis further alleged that his psychiatric disorders were caused by the negligent and the grossly negligent conduct of the Unification Church.⁵¹ However, the court dismissed both of these claims because "[i]ndoctrination and initiation procedures and conditions of membership in a religious organization are generally not subject to judicial review."⁵² The court further stated that Lewis failed to provide any precedent recognizing brainwashing as a tort, and the court itself found no precedent to support a claim of "brainwashing."⁵³ Consequently, Lewis' claims for brainwashing, indoctrination, and negligence by the Unification Church were dis-

⁴³ *Id.* at 584 (stating that the elements for outrageous conduct were: "intent, conduct which is outrageous or beyond the limits of social toleration, and resultant severe emotional distress").

⁴⁴ Christofferson v. Church of Scientology, 644 P.2d 577, 590 (Or. Ct. App. 1982).

⁴⁵ *Id.* at 590.

⁴⁶ *Id.* at 590-91.

⁴⁷ *Id.*

⁴⁸ Lewis v. Holy Spirit Ass'n for Unification of World Christianity, 589 F. Supp. 10, 12 (D. Mass. 1983).

⁴⁹ *Id.* at 11-12.

⁵⁰ *Id.* at 12.

⁵¹ *Id.*

⁵² *Id.* (citing Turner v. Unification Church, 473 F. Supp. 367, 371 (D.R.I. 1978)).

⁵³ *Id.*

missed for “failure to state a claim upon which relief can be granted.”⁵⁴

In 1988, courts again refused to recognize the significance of psychological coercion or brainwashing in *United States v. Kozminski*, which involved a claim for involuntary servitude.⁵⁵ In this case, two mentally disabled men were found working on a dairy farm in poor health.⁵⁶ The men were forced to work extreme hours and subjected to physical and verbal abuse if their work was incomplete.⁵⁷ Additionally, the men did not receive “adequate nutrition, housing, clothing, or medical care.”⁵⁸ Here, the government argued the defendants used psychological coercion to keep the men from leaving the farm.⁵⁹ Specifically, the government argued that the two men were exposed to “various coercive measures—including denial of pay, subjection to substandard living conditions, and isolation from others—[which] cause[d] the victims to believe they had no alternative but to work on the farm.”⁶⁰ The government characterized the two men as “psychological hostages” and argued they had been brainwashed into working on the farm and thus forced into involuntary servitude.⁶¹

In response, the U.S. Supreme Court held that psychological coercion could not establish the basis for involuntary servitude under 18 U.S.C. § 1584.⁶² The Court reasoned that the government’s interpretation of the statute including psychological coercion as a basis for a claim was too broad and would criminalize “any other type of speech or conduct intentionally employed to persuade a reluctant person to work.”⁶³ While this case did not specifically involve a cult, some scholars argue the *Kozminski* interpretation of the statute to exclude psychological coercion was an attempt by the Supreme Court to prevent cult survivors from bringing claims against cults.⁶⁴

⁵⁴ *Lewis v. Holy Spirit Ass’n for Unification of World Christianity*, 589 F. Supp. 10, 12 (D. Mass. 1983)

⁵⁵ *Kozminski*, 487 U.S. 931, 934 (1988).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 935.

⁵⁹ *Laisure*, *supra* note 1, at 229.

⁶⁰ *Kozminski*, 487 U.S. at 936.

⁶¹ *Id.* at 949.

⁶² *Id.* at 950.

⁶³ *Id.*

⁶⁴ *See Zorn*, *supra* note 10, at 490 n.29.

A few years later in 1992, Robin George and her mother sued the Hare Krishnas under various torts, including the false imprisonment of Robin in *George v. International Society for Krishna Consciousness*.⁶⁵ When Robin was fourteen years old, she discovered the Hare Krishnas and, within a few months, she ran away from home to join them.⁶⁶ The Hare Krishnas helped Robin run away from home on more than one occasion and assisted in hiding Robin from her family.⁶⁷ After two years, Robin returned home, became a vocal advocate against cults, and brought a lawsuit against the organization.⁶⁸ She presented several theories in her lawsuit to support the claim that she was falsely imprisoned by the Hare Krishnas, including that she had been brainwashed and subjected to “mind control” during the time she lived with the Hare Krishnas.⁶⁹ At trial, the jury returned a verdict in favor of Robin and her mother on all causes of action and granted them compensatory and punitive damages.⁷⁰

However, on appeal, the court reversed the award of damages on appeal for Robin’s claim of false imprisonment.⁷¹ The appeals court rejected Robin’s argument “that the ‘force or threat of force’ and ‘lack of consent’ requirements for the tort of false imprisonment may be satisfied by a showing that the plaintiff was subjected to coercive persuasion.”⁷² The court held “that physical force or the threat of it is a necessary element of a false imprisonment cause of action even in the context of a brainwashing claim.”⁷³ The court further reasoned that “[t]ort liability based on dietary restrictions, methods of worship, and communal living arrangements and schedules” would unduly infringe upon the free exercise of religious liberty.⁷⁴ Since Robin failed to present any evidence at trial that her lifestyle as a member of the Hare Krishnas was different from other members, her brainwashing theory

⁶⁵ *George v. Int’l Soc’y for Krishna Consciousness*, 3 Cal. App. 4th 52, 80 (Cal. Ct. App. 1992) (claiming false imprisonment of Robin, intentional infliction of emotional distress to Robin and her mother, libel as to both Robin and her mother, and for the wrongful death of Robin’s father).

⁶⁶ *Id.* at 67-68.

⁶⁷ *Id.* at 68-79.

⁶⁸ *Id.* at 79.

⁶⁹ *See id.* at 83-89; *see also* James T. Richardson, *supra* note 66, at 60-65 (discussing the expert testimony presented at trial with regards to the “brainwashing” of Robin).

⁷⁰ *George*, 3 Cal. App. 4th at 80.

⁷¹ *Id.* at 125.

⁷² *Id.* at 88.

⁷³ *Id.* (citing *Snyder v. Evangelical Orthodox Church*, 216 Cal. App. 3d 297, 304 (1989)).

⁷⁴ *Id.* at 89.

of false imprisonment could not be sustained and was “an attempt to premise tort liability on religious practices” she found objectionable.⁷⁵

IV. HISTORY OF THE TVPA

Before 2000, the United States did not have a statute that officially defined or explicitly criminalized human trafficking.⁷⁶ Congress’s first attempt to pass human trafficking legislation occurred in 1998, when Senator Paul Wellstone introduced the International Trafficking of Women and Children Victim Protection Act.⁷⁷ This initial legislative attempt was not successful—it died in committee.⁷⁸ One year later, Representative Christopher Smith introduced the Victims of Trafficking and Violence Protection Act of 2000 in the U.S. House of Representatives, while Senator Wellstone introduced similar legislation to the Senate.⁷⁹ The House first passed the bill and then the Senate unanimously passed it in July 2000.⁸⁰ President Clinton signed the Victims of Trafficking and Violence Protection Act of 2000 into law on October 28, 2000.⁸¹

The TVPA was originally intended to fight human trafficking and help its victims, primarily by increasing “criminal penalties for certain acts involving forced labor, sex trafficking, and unlawful conduct with respect to documents such as passports.”⁸² Additionally, the TVPA works to raise public awareness of human trafficking and establishes economic opportunity programs for victims.⁸³ These programs include microcredit programs, education programs, and grants programs which are designed to help trafficking victims reestablish themselves in society.⁸⁴ Further, the TVPA protects victims of human trafficking by allowing them to remain in the United States when they have been trafficked from other countries.⁸⁵ Finally, the TVPA allows those vic-

⁷⁵ *Id.*

⁷⁶ Britta S. Loftus, *Article: Coordinating U.S. Law On Immigration And Human Trafficking: Lifting The Lamp To Victims*, 43 COLUM. HUM. RIGHTS L. REV. 143, 158 (2011).

⁷⁷ International Trafficking of Women and Children Victim Protection Act, S. 600, 106th Cong. (1999).

⁷⁸ Loftus, *supra* note 76, at 158.

⁷⁹ *Id.* at 158-59.

⁸⁰ *Id.* at 159.

⁸¹ *Id.* at 159.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Loftus, *supra* note 76, at 159.

⁸⁵ *Id.*

tims who remain in the United States to “receive public benefits, medical care, employment authorization, and referrals to nonprofit organizations.”⁸⁶

Before enacting the TVPA, Congress made extensive findings about the nature of human trafficking.⁸⁷ Congress found that “[v]ictims are often forced through physical violence to engage in . . . slavery like labor. Such force includes . . . psychological abuse, and coercion.”⁸⁸ Congress also found that “traffickers use more subtle means” to control their victims and do not simply resort to “overt beatings.”⁸⁹ Finally, Congress stated that the TVPA’s forced labor statute could be used to prosecute perpetrators who forced their victims into labor through “extreme nonviolent and psychological coercion (e.g., isolation, denial of sleep, and other punishments).”⁹⁰

Furthermore, Congress wrote the TVPA in response to the Supreme Court’s decision in *Kozminski*.⁹¹ In its initial findings, Congress referenced *Kozminski* and stated that the statute, in that case, was narrowly construed not to include psychological coercion.⁹² Within the report, the Conference Committee stated that since existing law was not sufficient to deter perpetrators, Congress wrote the TVPA to remedy this problem.⁹³ Additionally, Congress reaffirmed its stance with regards to *Kozminski* in the Purpose and Findings of the TVPA.⁹⁴ Consequently, the courts have generally understood the TVPA to overrule *Kozminski* since its enactment.⁹⁵

Congress has reauthorized the TVPA four times since 2000.⁹⁶ In the 2003 reauthorization, Congress included the most important addition to the TVPA when it provided for a civil cause of action under the statute, codified in 18 U.S.C. § 1595.⁹⁷ This addition enabled victims of human trafficking or forced labor to sue the perpetrator

⁸⁶ *Id.* at 160.

⁸⁷ See H.R. REP. NO. 106-939, at 4 (2000).

⁸⁸ *Id.* at 4.

⁸⁹ *Id.* at 101.

⁹⁰ *Id.*

⁹¹ *Id.* at 5.

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See 22 U.S.C. § 7101(b)(13) (2018).

⁹⁵ See, e.g., *United States v. Dann*, 652 F.3d 1160, 1169 (9th Cir. 2011); *United States v. Bradley*, 390 F.3d 145, 150 (1st Cir. 2004).

⁹⁶ Laisure, *supra* note 1, at 236.

⁹⁷ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 3, 117 Stat. 2875 (2003) (codified at 18 U.S.C. § 1595).

directly and receive compensation for the wrongdoings they suffered.⁹⁸ Congress further amended the TVPA again in 2008 to include (1) more methods of forcing a victim to labor; (2) a definition of “serious harm,” and (3) a definition of “abuse or threatened abuse of law or legal process.”⁹⁹ The text of 18 U.S.C. § 1589(a) and (c), the forced labor section of the TVPA, currently reads:

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

- (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
- (2) by means of serious harm or threats of serious harm to that person or another person;
- (3) by means of the abuse or threatened abuse of law or legal process; or
- (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).¹⁰⁰

.....

(c) In this section:

- (1) The term “abuse or threatened abuse of law or legal process” means 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.
- (2) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.¹⁰¹

⁹⁸ *Id.*

⁹⁹ See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 1589, 122 Stat. 5044, 5068 (2008) (codified at 18 U.S.C. § 1589).

¹⁰⁰ 18 U.S.C. § 1589(a) (2018).

¹⁰¹ 18 U.S.C. § 1589(c) (2018).

This addition clearly shows that Congress intended the statute to provide a remedy for several types of harm.

V. CASES INVOLVING THE TVPA FORCED LABOR STATUTE

Since the enactment of the TVPA, courts have understood the statute to indicate Congress's intent to directly overrule the holding in *Kozminski*.¹⁰² Consequently, courts have interpreted the statute to allow psychological coercion or non-physical threats as the basis for forced labor claims.¹⁰³ Taking a more liberal understanding of the elements of forced labor, the remedies available are no longer limited to what was defined in *Kozminski*.¹⁰⁴

One of the first cases involving the TVPA was the First Circuit's decision in *United States v. Bradley*, involving a claim for forced labor and distinguishing *Kozminski*.¹⁰⁵ In *Bradley*, Timothy Bradley and Kathleen O'Dell were convicted of forced labor after the couple used fraud to bring Jamaican laborers to work for them.¹⁰⁶ The couple initially brought the two laborers to work for their tree-removal service and promised them payment and lodging.¹⁰⁷ Instead, the laborers were given far less money than they were promised and were given a trailer without water, heating, or electricity.¹⁰⁸ Additionally, while the laborers worked, they experienced continuous harassment through yells and curses.¹⁰⁹ At one point, one of the laborers ran away, and O'Dell called him and threatened to "kick his ass" and call "the police, the FBI, and the immigration service" if he did not return.¹¹⁰

The court distinguished *Bradley* from *Kozminski*.¹¹¹ Here, the court focused on the enactment of the TVPA, and found that it was intended to include psychological coercion because victims could be threatened without "overt violence."¹¹² The court also discussed what Congress intended when it chose to use the phrase "serious harm" in

¹⁰² See *United States v. Dann*, 652 F.3d 1160, 1169 (9th Cir. 2011).

¹⁰³ See *United States v. Bradley*, 390 F.3d 145, 150 (1st Cir. 2004).

¹⁰⁴ *Laisure*, *supra* note 1, at 237.

¹⁰⁵ *Bradley*, 390 F.3d at 148, 150.

¹⁰⁶ *Id.* at 149-50.

¹⁰⁷ *Id.* at 148.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 150.

¹¹⁰ *Id.*

¹¹¹ *United States v. Bradley*, 390 F.3d 145, 150 (1st Cir. 2004).

¹¹² *Id.*

the statute as opposed to “dire consequences” and acknowledged that Congress intended the term to include “a broad array of harms.”¹¹³ This was the start of the courts’ broad interpretation of the language of the TVPA.¹¹⁴

One of the few TVPA cases that involved a minister suing a religious group under the forced labor provision of TVPA was *Shukla v. Sharma*.¹¹⁵ In this case, Devendra Shukla, a Hindu priest, brought a private cause of action under the TVPA against members of a Hindu group and the Ashram for violating the forced labor section of the TVPA.¹¹⁶ While working at the Hindu temple, Shukla had access to the internet and was free to come and go.¹¹⁷ Yet, if he left the temple, he was either accompanied by a member of the Hindu group or, if he did leave alone, had to be back within three hours.¹¹⁸ When he did leave alone for more than three hours, he would be verbally abused.¹¹⁹ He lived in these conditions for three years and did not tell anyone he felt imprisoned.¹²⁰

In responding to the defendant’s summary judgment motion, the court held that a jury could find psychological persuasion took place and that Shukla was threatened with serious harm.¹²¹ The court reasoned that the forced labor statute clearly covered non-physical and psychological harm.¹²² Moreover, it held that even though Shukla’s claims were “largely based on feelings of fear and psychological coercion,”¹²³ a jury could still consider this, in connection with the rest of the circumstances, to find Shukla had been a victim of forced labor in violation of the statute.¹²⁴

¹¹³ *Id.* at 150-51.

¹¹⁴ *See* Laisure, *supra* note 1, at 236.

¹¹⁵ *Shukla v. Sharma*, No. 07 CV 2972 (CBA), 2009 U.S. Dist. LEXIS 90044, at *1-2 (E.D.N.Y. Aug. 14, 2009).

¹¹⁶ *Id.* The TVPA allows a victim to establish a private right to action under the forced labor statute of the TVPA through under 18 U.S.C. § 1595.

¹¹⁷ *Id.* at *6, *36.

¹¹⁸ *Id.* at *38.

¹¹⁹ *Id.*

¹²⁰ *Id.* at *37.

¹²¹ *Shukla v. Sharma*, No. 07 CV 2972 (CBA), 2009 U.S. Dist. LEXIS 90044, at *41-42 (E.D.N.Y. Aug. 14, 2009).

¹²² *Id.*

¹²³ *Id.* at *38.

¹²⁴ *Id.* at *41-42.

While the TVPA recognizes forced labor as a type of human trafficking, it is not limited to forced manual or nonprofessional labor.¹²⁵ The court in *Tanedo v. East Baton Rouge Parish School Board* recognized that the TVPA covered teachers' forced labor.¹²⁶ In this case, teachers from the Philippines were required to pay multiple recruitment fees to the corporation that recruited them.¹²⁷ After the teachers entered the United States, the corporation informed them that they would have to pay the corporation more fees, and if they could not pay, then the money would be taken from their salaries.¹²⁸ If the teachers opposed the fee arrangement, then the corporation threatened to take legal action against them and have them deported.¹²⁹

Here, the court determined that because the corporation was forcing this fee arrangement onto the teachers, that this constituted serious harm within the meaning of the statute.¹³⁰ By taking large portions of the teachers' salary to pay these supposed recruitment fees, the corporation's actions amounted to financial harm.¹³¹ The court reasoned that the "TVPA not only protects victims from the most heinous human trafficking crimes, but also various additional types of fraud and extortion leading to forced labor."¹³²

As shown, the courts have allowed victims to make claims of forced labor based on non-traditional understandings of human trafficking.¹³³ In *Menocal v. Geo Group, Inc.*, detainees at an immigration detention facility sued the private for-profit operator of the facility under the TVPA.¹³⁴ The detainees alleged that they were forced to do labor without compensation under the threat of being placed in solitary confinement.¹³⁵ Here, the facility argued that the text of the TVPA was not intended to include people who were not

¹²⁵ See *Laisure*, *supra* note 1, at 237-39.

¹²⁶ *Tanedo v. E. Baton Rouge Par. Sch. Bd.*, 790 F. Supp. 2d 1134, 1143 (D. Cal. 2011).

¹²⁷ *Id.*

¹²⁸ *Id.* at 1138.

¹²⁹ *Id.*

¹³⁰ *Id.* at 1139-40.

¹³¹ *Id.*

¹³² *Tannedo v. E. Baton Rouge Par. Sch. Bd.*, 790 F. Supp. 2d 1134, 1145 (D. Cal. 2011).

¹³³ See *Menocal v. Geo Grp., Inc.*, 113 F. Supp. 3d 1125, 1133 (D. Colo. 2015); *Tanedo v. E. Baton Rouge Par. Sch. Bd.*, No. SA CV10-01172 JAK (MLGx), 2012 U.S. Dist. LEXIS 157725, *3-5 (D. Cal. Aug. 27, 2012).

¹³⁴ *Menocal*, 113 F. Supp. 3d at 1128.

¹³⁵ *Id.*

trafficked; instead, it exclusively covered those trafficked for sex or labor.¹³⁶ The court rejected this argument, reasoning that the text of the statute contains broad language that covers any forced labor, not just that of individuals trafficked for the purpose of sex or labor.¹³⁷

While courts have taken a broad reading of the text of the TVPA, the Court of Appeals for the Ninth Circuit adopted a narrow interpretation of the TVPA forced labor statute in *Headley v. Church of Scientology International*.¹³⁸ In this case, Marc and Claire Headley sued the Church of Scientology under the forced labor provision of the TVPA for abuse they faced while they were part of the church.¹³⁹ The couple alleged that while they were members of the Church of Scientology, the church used psychological coercion to force them into labor and keep them from leaving, despite the abuse they suffered.¹⁴⁰ The Headleys claimed that the Church of Scientology subjected them to stringent lifestyle constraints, assigned them to do manual labor, enforced strict discipline policies against them, required them to leave the ministry by routing out,¹⁴¹ and threatened to label them “suppressive persons”¹⁴² if they left the church.¹⁴³

Despite the overt threats made to the Headleys, the court, in granting the Church’s summary judgment motion, found that the Headleys acquiesced to the abuse, because the couple could have left the church at any time despite their fear of repercussions.¹⁴⁴ The court reasoned that the harsh treatment and abuse were merely disciplinary tactics and that these practices were part of the religious tenets of the Church of Scientology.¹⁴⁵ Ultimately, the court found the only repercussion the Headleys faced from leaving the Church of Scientology was the church’s policy of disconnection and this was not “serious

¹³⁶ *Id.* at 1132.

¹³⁷ *Id.* at 1132-33.

¹³⁸ *See* *Headley v. Church of Scientology Int’l*, 687 F.3d 1173, 1178 (9th Cir. 2012).

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 1179.

¹⁴¹ *Id.* at 1175 (“Routing out allows a member to remain a Scientologist in good standing. The process involves filling out a form and normally includes participating in Scientology ethics programs. Routing out can take weeks or months. During that time members are excused from their posts but are expected to continue serving the Church by performing chores.”).

¹⁴² *Id.* (explaining that being declared a “suppressive person” is “akin to being excommunicated or shunned” and causes members declared as such to lose contact with family and friends who are still members of Scientology.).

¹⁴³ *Id.*

¹⁴⁴ *Headley v. Church of Scientology Int’l*, 687 F.3d 1173, 1180-81 (9th Cir. 2012).

¹⁴⁵ *See id.* at 1180.

harm” within the meaning of the forced labor statute of the TVPA.¹⁴⁶ Consequently, the Headleys failed to meet the statutory requirement to establish a claim and, therefore, failed to establish a genuine issue of material fact to survive the church’s summary judgement motion.¹⁴⁷

VI. FIRST AMENDMENT AND THE FREE EXERCISE OF RELIGION

The First Amendment states “Congress shall make no law . . . prohibiting the free exercise [of religion].”¹⁴⁸ This is referred to as the Free Exercise Clause of the First Amendment and it means “the right to believe and profess whatever religious doctrine one desires.”¹⁴⁹ Therefore, the government cannot regulate religious beliefs¹⁵⁰ or “punish the expression of religious doctrines it believes to be false.”¹⁵¹ To determine whether it is appropriate to use the rational-relationship test when a statute is charged with violating the free exercise of a religion by a religious group, courts use the test established by the Supreme Court in *Employment Division v. Smith*.¹⁵² This case involved two Native American church members who were fired from their job for consuming peyote for sacramental purposes and were later denied unemployment benefits because consumption of peyote was a crime.¹⁵³ The two men claimed that their right to the free exercise of religion was violated when their unemployment benefits were denied because of their use of peyote for sacramental purposes.¹⁵⁴ Here, the Supreme Court found that the two Native American church members’ First Amendment rights were not violated when they were denied unemployment benefits for their use of peyote for sacramental

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 1181.

¹⁴⁸ U.S. CONST. amend. I.

¹⁴⁹ *Emp’t Div. v. Smith*, 494 U.S. 872, 877 (1990).

¹⁵⁰ *Sherbert v. Verner*, 374 U.S. 398, 402 (1963).

¹⁵¹ *Smith*, 494 U.S. at 877 (1990) (citing *United States v. Ballard*, 322 U.S. 78, 86-88 (1944)).

¹⁵² *Id.* at 885 (“We conclude today that the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the test inapplicable to such challenges. The government’s ability to enforce generally applicable prohibitions of socially harmful conduct . . . cannot depend on measuring the effects of a governmental action on a religious objector’s spiritual development.” (internal quotation marks omitted)); see also Michael D. Currie, *Scrutiny Mutiny: Why the Iowa Supreme Court Should Reject Employment Division v. Smith and Adopt a Strict Scrutiny Standard for Free-Exercise Claims Arising Under the Iowa Constitution*, 99 IOWA L. REV. 1363, 1365, 1372-73 (March 2014).

¹⁵³ *Smith*, 494 U.S. at 874.

¹⁵⁴ *Id.* at 885.

purposes as the statute in question was neutral on its face and generally applicable.¹⁵⁵ The understood holding of this case is that under the Free Exercise Clause, a statute that was neutral and generally applicable law does not need to be justified by a compelling state interest even if the statute had the effect of burdening a particular religion.¹⁵⁶ Instead, a neutral and general applicable law is only subject to a rational-relationship test.¹⁵⁷

Three years after *Employment Division v. Smith*, the Supreme Court took a closer look at what qualified as a “neutral and general” applicable law in *Church of Lukumi Babalu Aye v. City of Hialeah*.¹⁵⁸ This case involved a city ordinance that banned the slaughter of animals for animal sacrifice in connection with religious ceremonies.¹⁵⁹ The Supreme Court stated that, in determining whether a statute is neutral, the Court must decide “if the object of a law is to infringe upon or restrict practices because of their religious motivation” by looking at the text of the statute.¹⁶⁰ Additionally, the Supreme Court stated that it would not define “general applicability” and that because neutrality and general applicability were “interrelated,” that “failure to satisfy one requirement is a likely indication that the other has not been satisfied.”¹⁶¹ In this case, the Supreme Court found that because the object of the city ordinance was to prevent the religious group from performing animal sacrifice it was not a neutral, generally applicable law.¹⁶²

Employment Division v. Smith established the use of the neutral and generally applicable law test for First Amendment free exercise claims.¹⁶³ Prior to *Smith*, the Supreme Court used the balancing test established in *Sherbert v. Verner*.¹⁶⁴ This balancing test required the court to take “into account whether the challenged action imposed a

¹⁵⁵ *Id.* at 875-76.

¹⁵⁶ *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531 (1993).

¹⁵⁷ *Emp’t Div. v. Smith*, 494 U.S. 872, 890 (1990). A rational-relationship test is when “the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate governmental objective.” *Rational-Basis Test*, BLACK’S LAW DICTIONARY (11th ed. 2019).

¹⁵⁸ *Id.* at 531-32.

¹⁵⁹ *Id.* at 526.

¹⁶⁰ *Id.* at 533; *see also id.* at 558-59 (Scalia, J., concurring) (discussing why analysis of a statute’s neutrality and general application should only focus on the text of the statute and not the legislative motive).

¹⁶¹ *Id.* at 531 (majority opinion).

¹⁶² *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 545 (1993).

¹⁶³ *Emp’t Div. v. Smith*, 494 U.S. 872, 877 (1990).

¹⁶⁴ *Sherbert v. Verner*, 374 U.S. 398 (1963).

substantial burden on the practice of religion, and if it did, whether it was needed to serve a compelling government interest.”¹⁶⁵ In *Smith*, the Supreme Court did not outright dismiss the *Sherbert* test, but stated it was only applicable in denial unemployment compensation cases.¹⁶⁶

However, in direct response to the Supreme Court’s holding in *Smith*, Congress enacted RFRA in 1993.¹⁶⁷ In enacting RFRA, Congress found that even neutral laws “may burden religious exercise as surely as laws intended to interfere with religious exercise.”¹⁶⁸ The applicable text of RFRA reads as follows:

- (a) In general. Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).
- (b) Exception. Government may substantially burden a person’s exercise of religion only if it demonstrates that application of the burden to the person—
 - (1) is in furtherance of a compelling governmental interest; and
 - (2) is the least restrictive means of furthering that compelling governmental interest.¹⁶⁹

Effectively, Congress was able to reestablish the *Sherbert* test as the test to analyze claims of violation of the right to free exercise of religion through the RFRA. Now, the government is required to show that the statute or law in question is “in furtherance of a compelling governmental interest” and that it does so through the least restrictive means.¹⁷⁰ While the RFRA was intended to apply to both state and

¹⁶⁵ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693-96 (2014) (discussing the characterization of the *Sherbert* test); *Sherbert*, 374 U.S. at 402-03.

¹⁶⁶ *Emp’t Div. v. Smith*, 494 U.S. 872, 883-84 (1990) (stating that in the past the *Sherbert* test was applied only in the denial of unemployment compensation cases and that the Court was not inclined to extend it).

¹⁶⁷ *Cutter v. Wilkinson*, 544 U.S. 709, 714-15 (2005) (“Responding to *Smith*, Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA).”).

¹⁶⁸ 42 U.S.C. § 2000bb(a)(2) (2018).

¹⁶⁹ 42 U.S.C.S. §§ 2000bb-1(a)-(b) (2018).

¹⁷⁰ *Id.*

federal laws,¹⁷¹ the Supreme Court found it could only constitutionally apply to federal laws.¹⁷²

The Supreme Court has identified several different compelling government interests throughout the years. For example, government interests include: stopping the flow of contraband and facilitating prison identification,¹⁷³ implementing a system of compulsory education,¹⁷⁴ enforcing state child labor laws,¹⁷⁵ protecting the health and safety of persons,¹⁷⁶ maintaining a tax system,¹⁷⁷ maintaining participation and contribution to the social security system,¹⁷⁸ and preventing welfare fraud.¹⁷⁹ However, the government always bears the burden of proving that its interest is compelling, that the statute or law furthers this interest, and that the interest is furthered by that statute or law in question as applied to the specific person or group bringing suit.¹⁸⁰ The government also has the burden of proving it used the least restrictive means by showing “it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties in these cases.”¹⁸¹

ANALYSIS

Since Congress passed the TVPA in 2000, courts have repeatedly interpreted the statute broadly.¹⁸² Based on these interpretations, it is possible for cult victims to bring a successful claim under the TVPA’s forced labor statute against the cults they once were a part of.¹⁸³

¹⁷¹ See Religious Freedom Restoration Act, Pub. L. No. 103-141, § 5, 107 Stat. 1488 (1993) (codified at 42 U.S.C. § 2000bb-2) (defining “government” to include both the United States and individual state governments).

¹⁷² *City of Boerne v. Flores*, 521 U.S. 507, 532-536 (1997).

¹⁷³ *Holt v. Hobbs*, 574 U.S. 352, 356 (2015).

¹⁷⁴ *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

¹⁷⁵ *Prince v. Massachusetts*, 321 U.S. 158, 168-698 (1944).

¹⁷⁶ *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905).

¹⁷⁷ *Hernandez v. Commissioner*, 490 U.S. 680, 699-700 (1989).

¹⁷⁸ *United States v. Lee*, 455 U.S. 252, 258-59 (1982).

¹⁷⁹ *Bowen v. Roy*, 476 U.S. 693, 709 (1986).

¹⁸⁰ *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429-30 (2006).

¹⁸¹ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014).

¹⁸² See *United States v. Bradley*, 390 F.3d 145, 150 (1st Cir. 2004); *Menocal v. Geo Grp., Inc.*, 113 F. Supp. 3d 1125, 1132-33 (D. Colo. 2015); *Tanedo v. E. Baton Rouge Par. Sch. Bd.*, No. SA CV10-01172 JAK (MLGx), 2012 U.S. Dist. LEXIS 157725 (D. Cal. Aug. 27, 2012).

¹⁸³ See, e.g., *Bradley*, 390 F.3d at 150.

I. THE PLAIN TEXT OF THE STATUTE

The TVPA's forced labor provision was originally a criminal statute, and three years after its initial enactment, Congress established a civil remedy for the original statute.¹⁸⁴ Therefore, the text of the criminal statute is the same text used for the civil remedy. To determine the proper method of application of a statute, courts start by interpreting the text of the statute.¹⁸⁵ The text of 18 U.S.C. § 1589(a), the forced labor section of the TVPA, reads:

- (a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—
 - (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
 - (2) by means of serious harm or threats of serious harm to that person or another person;
 - (3) by means of the abuse or threatened abuse of law or legal process; or
 - (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).¹⁸⁶

This section of the statute shows that there are four possible ways a perpetrator can force a victim to do labor in violation of the statute.

The forced labor statute first requires that the perpetrator must *knowingly* provide or obtain the forced labor.¹⁸⁷ This is a critical factor in determining whether one can bring a claim against a perpetrator for forced labor. If the alleged perpetrator is not knowingly forcing a victim to stay, then the victim cannot establish a claim under the statute.¹⁸⁸

¹⁸⁴ 18 U.S.C.S. § 1595 (2018).

¹⁸⁵ *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 454 (1989).

¹⁸⁶ 18 U.S.C.S. § 1589 (a) (2018).

¹⁸⁷ *Id.*

¹⁸⁸ *See, e.g., Muchira v. Al-Rawaf*, 850 F.3d 605, 618-22 (4th Cir. 2017) (holding that sufficient evidence needed to be presented to establish that the defendant knowingly coerced the plaintiff into forced labor to state a claim under the forced labor statute of the TVPA).

The first three methods of forced labor enumerated include the physical action as well as *threats* of physical action.¹⁸⁹ The first method includes the physical action of force, or physical restraint, or the threat of either.¹⁹⁰ The second and third methods follow in a similar fashion and include the physical action of serious harm, or abuse of law, or the threat of either.¹⁹¹

Clearly, Congress wrote this statute with the intent to recognize not just a perpetrator's physical acts, but also a perpetrator's non-physical acts to force a victim into labor. Threats are non-physical acts that are generally understood to as "a declaration of an intention to inflict pain, injury, damage, or other punishment in retribution for something done or not done."¹⁹² A declaration of an intention is not a physical act in that it does not require that a perpetrator carry out any physical activity, but only that he make an expression that was intended to convey to a victim that the he would carry out this action if the a victim did not act in the requested manner. Therefore, is it clear, based on the plain text of the statute, that Congress intended a variety of non-physical actions or threats to be the basis for a claim of forced labor.

While the first three methods listed are similar in structure, the last method is different as it is not divided into groups of physical acts or threats of physical acts.¹⁹³ Instead, it deals with a methodology employed over time.¹⁹⁴ Specifically, the statute references a "scheme, plan, or pattern" used to force a victim into labor.¹⁹⁵ The inclusion of these terms shows that Congress not only intended to cover overt actions like the aforementioned physical acts and threats but also non-overt actions used by perpetrators.

In its entirety, of the plain text of the forced labor statute shows that Congress intended for psychological coercion to be a viable basis for a claim under the statute. As mentioned, psychological coercion can be achieved by placing an individual in an environment with sub-human conditions by (1) denying them privacy; (2) depriving them of

¹⁸⁹ 18 U.S.C.S. §§ 1589(a)(1)-(3) (2018).

¹⁹⁰ *Id.* at § 1589(a)(1).

¹⁹¹ *Id.* at §§ 1589(a)(2)-(3).

¹⁹² OXFORD UNIVERSITY PRESS, THE NEW SHORTER OXFORD ENGLISH DICTIONARY II 3290 (Lesley Brown ed., 1993).

¹⁹³ 18 U.S.C.S. § 1589(a)(4) (2018).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

food, water, sleep, or medical care; (3) depriving them of social contact through forced isolation; or (4) employing tactics such as humiliation and verbal abuse to weaken the mental state of their victims.¹⁹⁶ By using these methods, perpetrators are able to psychologically coerce their victims into forced labor by creating a scheme or pattern of psychological abuse that forces their victims to believe that they are unable to leave and must work for their perpetrator. Therefore, it is clear based on the plain text of the statute that it encompasses psychological coercion.

Congress's 2008 amendment to the TVPA gave "serious harm" a definition.¹⁹⁷ The text of this portion of the statute, as codified in 18 U.S.C. § 1589(c)(2), reads:

- (2) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.¹⁹⁸

The plain text of this section of the forced labor statute clearly shows that psychological coercion can be the basis of a claim under the TVPA's forced labor statute. Here, Congress clarified that for harm to be considered "serious" under the statute, it need not be physical harm, but can be "psychological, financial, or reputational" harm.¹⁹⁹ When a perpetrator makes use of psychological coercion to force a victim into labor, he does not necessarily physically harm a victim.²⁰⁰ Instead, a perpetrator harms a victim in non-physical ways; specifically, a perpetrator harms a victim psychologically, rendering the victim unable to leave the perpetrator.²⁰¹ Therefore, under a plain text reading of this section of the statute, psychological coercion can render serious harm that is covered by the statute.

¹⁹⁶ *Id.* at 188-89.

¹⁹⁷ See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 1589, 122 Stat. 5044, 5068 (2008) (codified at 18 U.S.C. § 1589). 18 U.S.C.S. § 1589.

¹⁹⁸ 18 U.S.C. § 1589(c)(2) (2018).

¹⁹⁹ *Id.*

²⁰⁰ See Hopper & Hidalgo, *supra* note 32, at 188-193 (discussing how psychological coercion can be used without physical harm).

²⁰¹ See *id.*

II. LEGISLATIVE HISTORY AND INTENT SUPPORTS PLAIN TEXT OF STATUTE

While the plain text of the TVPA's forced labor statute allows psychological coercion to be the basis for a claim, the legislative history of the TVPA also gives explicit support for this theory. The Conference Report for the Act shows that Congress meant to cover psychological coercion with this statute.²⁰² As mentioned, Congress found that "[v]ictims are often forced through physical violence to engage in . . . slavery like labor. Such force includes . . . psychological abuse, and coercion."²⁰³ This finding by Congress makes it clear that Congress was aware of psychological coercion, and that there are perpetrators that make use of it to force victims into labor. Additionally, Congress concluded that "traffickers use more subtle means" to control their victims and do not simply resort to "overt beatings."²⁰⁴ Congress also concluded that in some instances the TVPA's forced labor statute would be used to prosecute perpetrators who forced their victims into labor through "extreme nonviolent and psychological coercion (e.g., isolation, denial of sleep, and other punishments)."²⁰⁵ Not only did Congress recognize that perpetrators use psychological coercion, but it also acknowledged that it can be the basis for a violation of the forced labor statute.

III. APPLYING THE FORCED LABOR STATUTE OF THE TVPA TO CULT CASES

As previously mentioned, victims have struggled in the past to establish a claim against cults for the transgressions they faced. The main struggle for victims is establishing a claim for an intentional tort because there is no recognized "brainwashing" tort.²⁰⁶ Therefore, victims are forced to rely on existing torts but often fail when courts find that psychological coercion or brainwashing cannot be the basis for a claim.²⁰⁷ Additionally, since the Supreme Court's ruling in *Kozminski*

²⁰² See H.R. REP. NO. 106-939, at 101 (2000).

²⁰³ *Id.* at 4.

²⁰⁴ *Id.* at 101.

²⁰⁵ *Id.*

²⁰⁶ See Zorn, *supra* note 10, at 489 (explaining that psychological coercion on its own is not an actionable harm).

²⁰⁷ See *Lewis v. Holy Spirit Ass'n for Unification of World Christianity*, 589 F. Supp. 10, 11 (D. Mass. 1983) (holding that there are no torts of brainwashing and indoctrination); *George v.*

and the cases following, victims have found it more difficult to establish a claim, because courts have been hesitant to criminalize what could be considered everyday actions of religious groups.²⁰⁸ Therefore, instead of asserting a claim under unreliable tort law, victims of cults should make use of the TVPA's forced labor statute.

A. *Application of the Statute to Cult Cases*

The text of the TVPA allows for claims of forced labor obtained through a variety of methods, including psychological coercion.²⁰⁹ The legislative history not only shows that Congress was aware of perpetrators' use of psychological coercion, but that Congress also intended psychological coercion to be actionable under the TVPA's forced labor statute.²¹⁰ To establish a claim under the forced labor statute, a victim must show that the perpetrator knowingly provided or obtained labor through one or a combination of the four previously discussed methods.²¹¹

Victims of cults are able to establish a claim under this statute because cults use different methods to keep members from leaving and force them into labor.²¹² Cults often force members to stay and work through forced fasting, interrupted sleep or sleep deprivation, forced isolation, deprivation of medical treatment, threats of physical

Int'l Soc'y for Krishna Consciousness, 3 Cal. App. 4th 52, 80 (Cal. Ct. App. 1992) (holding that brainwashing could not be a basis for a false imprisonment claim); *Christofferson v. Church of Scientology*, 644 P.2d 577, 584-85 (Or. Ct. App. 1982) (holding that there was insufficient evidence to award damages for outrageous conduct).

²⁰⁸ See, e.g., *United States v. King*, 840 F.2d 1276, 1278 (6th Cir. 1988) (quoting *United States v. Kozminski*, 821 F.2d 1186, 1193 (6th Cir. 1987)).

²⁰⁹ 18 U.S.C. § 1589 (2018).

²¹⁰ See H.R. REP. NO. 106-939, at 6-7 (2000) (expanding the definition of "coercion").

²¹¹ The text of the 18 U.S.C. § 1589(a), the forced labor section of the TVPA reads:

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

- (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
- (2) by means of serious harm or threats of serious harm to that person or another person;
- (3) by means of the abuse or threatened abuse of law or legal process; or
- (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).

18 U.S.C. § 1589(a) (2018).

²¹² See *Brown*, *supra* note 21, at 408 n.10; *Laisure*, *supra* note 1, at 214; See *Zorn*, *supra* note 10, at 484.

abuse, verbal abuse, and humiliation.²¹³ Since these methods are non-physical ways to control an individual, these methods are generally accepted as methods used to psychologically coerce an individual into forced labor.²¹⁴ Therefore, if a cult victim brought a claim under the TVPA's forced labor statute, he would be able to do so under one or more of the methods listed therein.

The first statutory method requires that an individual coerced the victim into labor "by means of force, threats of force, physical restraint, or threats of physical restraint."²¹⁵ As previously stated, cults have used forced isolation to keep members from leaving.²¹⁶ By utilizing forced isolation, cults instill a fear of punishment among its members, as they know that they could be placed in isolation for failing to perform their jobs or if they express a desire to leave the cult. Therefore, the threat of forced isolation is always implicitly there. Consequently, cults force victims to stay within the cult and work because of the risk of being placed in isolation. This would meet the requirement of the first method listed in the statute to state a claim because isolation is a physical restraint of the person as it prevents the person from free exercise of movement and engagement with other individuals.²¹⁷ If a cult forced victims into labor by placing them in isolation or if forced isolation is a well-known practice within the cult, then victims can establish a claim under the statute by means of physical isolation or the threat of physical isolation as forced isolation is a form of physical restraint.

The second method requires a showing that a victim was forced into labor "by means of serious harm or threats of serious harm to that person or another person."²¹⁸ The definition of serious harm is also provided within the statute to state that a "serious harm" can be "physical or nonphysical, including psychological, financial, or reputational harm" that would force a reasonable person with the same background in similar circumstances into labor.²¹⁹ One method cults

²¹³ This is not an exhaustive list of methods used by cults to force its members to work for them. See Brown, *supra* note 21, at 408 n.10; Laisure, *supra* note 1, at 214; See Zorn, *supra* note 10, at 484.

²¹⁴ See Hopper & Hidalgo, *supra* note 32, at 188-89.

²¹⁵ 18 U.S.C. § 1589(a)(1) (2018).

²¹⁶ See Brown, *supra* note 21, at 408 n.10; Laisure, *supra* note 1, at 214; See Zorn, *supra* note 10, at 484.

²¹⁷ 18 U.S.C. § 1589(a)(1) (2020).

²¹⁸ *Id.* at § 1589(a)(2).

²¹⁹ *Id.* at § 1589(c)(2).

use to force its members into labor is the threat of physical abuse and actual physical abuse.²²⁰ If a victim can show that he has been forced to perform labor under the threat of physical abuse or after experiencing physical abuse, this would clearly fall within the statute. Therefore, a victim would be able to establish a claim under the statute. Additionally, under this method, a victim need not show that the serious harm he experienced was physical harm, as this would encompass non-physical psychological harm as stated in the plain text of the statute. Consequently, a victim could establish a claim under this statute if he could show that the harm that he experienced from the conditions he was subjected to by the cult was psychological harm.²²¹

The third method that a victim could use to establish a claim under the statute requires the victim show that he was forced into labor “by means of the abuse or threatened abuse of law or legal process.”²²² The phrase “abuse or threatened abuse of law or legal process” is defined 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.”²²³ In some instances, cults have threatened to sue a victim for unpaid debts when he tried to leave the cult, but if he remained a member of the church the debt need not be paid.²²⁴ In a situation like this, the victim is placed in a position where he has to continue to work and stay within the cult or face legal action to enforce an unpaid debt that he supposedly incurred by merely being a member of the cult. The threat of legal action here is enough to force a victim to remain within and continue to work for the cult, because the victim has no financial means to pay off the debt as he has become financially dependent on the cult and has no external means of earning money. This clearly meets the elements required under the statute to state a claim as the cult’s threats of suing for unpaid debts are used to pressure the victim to remain in the cult.

²²⁰ See *Headley v. Church of Scientology Int’l*, 687 F.3d 1173, 1178 (9th Cir. 2012); *Brown*, *supra* note 21, at 408 n.10; *Laisure*, *supra* note 1, at 214; *Zorn*, *supra* note 10, at 484.

²²¹ See *Brown*, *supra* note 21, at 410 (“ . . . [S]ome ex-cultists have suffered severe psychological trauma and dysfunction as a result of cult practices”).

²²² 18 U.S.C. § 1589(a)(3) (2018).

²²³ 18 U.S.C. § 1589(c)(1) (2018).

²²⁴ See *Wollersheim v. Church of Scientology*, 212 Cal. App. 3d 872, 879 (Cal. Ct. App. 1989) (involving a cult that required a member to pay off a “freeloader debt” if he tried to leave, but did not have to pay if he stayed part of the cult).

The last method that a victim could use to establish a claim for forced labor under the statute requires that the victim show that he had been subjected to a “scheme, plan, or pattern” intended to force him to perform labor under the belief that he would suffer serious harm or physical restraint if he did not comply.²²⁵ The previously mentioned methods²²⁶ used by cults to prevent its members from leaving, viewed all together, could be considered a “scheme, plan, or pattern” of psychological coercion intended to psychologically harm its victims.²²⁷ Psychological harm is considered a “serious harm” under the statute,²²⁸ and the methods employed by cults are equivalent to those methods used to coerce an individual psychologically.²²⁹ In addition, victims of cults in that past “have suffered severe psychological trauma and dysfunction as a result of cult practices.”²³⁰ Consequently, a victim subjected to these methods over a period of time, which forced him to do labor, would be able to establish a claim under the statute.

B. *Application of the Case Law to Cult Cases*

While it is clear that a cult victim can establish a claim under the text of the TVPA’s forced labor statute, the courts’ broad interpretation of the statute lends even more support to permitting the establishment of a claim. Since the enactment of the TVPA, courts have generally accepted the forced labor statute was intended to cover psychological coercion, because a victim could be threatened without overt violence.²³¹ The courts’ broad interpretation of the statute gives victims of cults an avenue to seek justice.

Furthermore, some courts have interpreted the TVPA’s forced labor statute to not only apply those who have been trafficked for labor, but to any individual who forced into labor.²³² Therefore, it

²²⁵ 18 U.S.C. § 1589(a)(4) (2018).

²²⁶ These methods include but are not limited to: forced fasting; interrupted sleep or sleep deprivation; forced isolation; deprivation of medical treatment; threats of physical abuse; verbal abuse and humiliation. See Brown, *supra* note 21, at 408 n.10; Laisure, *supra* note 1, at 214; See Zorn, *supra* note 10, at 484.

²²⁷ 18 U.S.C. § 1589(a)(4) (2018).

²²⁸ *Id.* at § 1589(c)(2).

²²⁹ See Hopper & Hidalgo, *supra* note 32, at 188-193 (discussing different tactics of psychological coercion in cults).

²³⁰ Brown, *supra* note 21, at 410.

²³¹ *United States v. Bradley*, 390 F.3d 145, 150 (1st Cir. 2004).

²³² *Menocal v. Geo Grp., Inc.*, 113 F. Supp. 3d 1125, 1132 (D. Colo. 2015).

should be irrelevant whether a cult victim has been trafficked or not. In most instances, the cult does not kidnap individuals and force them to join.²³³ Rather, cult victims are either born into the cult or join willingly and are forced to stay through psychological coercion.²³⁴ It is only necessary to establish the victim was forced into labor against their will, not whether they have been trafficked. The fact that victims of cults are not trafficked does not act as a bar from establishing a claim.

Additionally, the type of labor an individual is forced to perform need not be manual labor.²³⁵ As shown in *Tanedo*, the court allowed a claim to be brought under the TVPA that was not a claim of forced manual or non-professional labor, but was a claim of forced labor by a group of teachers.²³⁶ Victims of cults are often forced to work in various capacities. In some instances, victims are required to do manual labor, and in others, they are required to do professional work—like recruiting or sales to raise money.²³⁷ While some of these jobs do not fall within traditional ideas of forced labor, victims are still forced to work.

One of the biggest obstacles cult victims face when trying to establish a claim for forced labor is the issue of consent. The argument is that because a victim had opportunities to leave the cult earlier than what they did, the victim was not forced into performing the labor but rather consented to do so.²³⁸ Yet, in *Shukla*, the court allowed a claim to be brought under the TVPA's forced labor statute when it was alleged that the plaintiff had opportunities to leave the

²³³ Laisure, *supra* note 1, at 241.

²³⁴ *Id.*

²³⁵ See *Tanedo v. E. Baton Rouge Par. Sch. Bd.*, No. SA CV10-01172 JAK (MLGx), 2012 U.S. Dist. LEXIS 157725, at *8-14 (D. Cal. Aug. 27, 2012) (upholding a claim under the TVPA for being forced into being a teacher).

²³⁶ *Id.* at *28-29.

²³⁷ A few types of jobs that a victim of a cult is forced to do: work in fields growing food for the cult, manual labor, domestic work such as cleaning dishes and washing the floors of the facility, recruit new members, take care of children of other members of the cult, solicit money and sell items for the cult. See *Headley v. Church of Scientology Int'l*, 687 F.3d 1173, 1180-81 (9th Cir. 2012); *Turner v. Unification Church*, 473 F. Supp. 367, 370-71 (D.R.I. 1978); *Katz v. Superior Court*, 73 Cal. App. 3d 952, 974-75 (Cal. Ct. App. 1977); *Christofferson v. Church of Scientology*, 644 P.2d 577, 589 (Or. Ct. App. 1982).

²³⁸ See *Headley*, 687 F.3d at 1180-81 (finding the fact that the Headley's had opportunities to leave the Church of Scientology meant that the Headley's were not forced to stay against their will).

religious group he was a part of and chose not to.²³⁹ The court stated that this case, like previous cases involving a claims under the TVPA's forced labor statute, dealt with the victim's "feelings of fear and psychological coercion."²⁴⁰ Therefore, it was a question for the jury to determine if the psychological coercion experienced by the plaintiff would violate the TVPA.²⁴¹ Courts stay true to the statute's intended purpose by acknowledging that psychological coercion and threats are used to prevent victims from leaving their perpetrator out of fear.²⁴² Victims of cults may have opportunities to escape, but believe they cannot because they fear that the cult will find them, force them to return, and punish them.²⁴³ This fear is a powerful force which causes the victims to stay. Therefore, courts should adopt this understanding of the forced labor statute in the TVPA to ensure that victims of cults do have the ability to bring a claim under the statute to obtain justice when they escape.

C. *Headley is Not a Bar to Future Litigants*

Since the enactment of the TVPA, *Headley* is the only case that involved victims of a cult suing the cult under the TVPA's forced labor statute.²⁴⁴ The decision in this case has created concern that future courts will deny any former member of any religious group the ability to establish a claim under this statute, because the *Headley* court held the plaintiffs could not establish a claim under the forced labor statute.²⁴⁵ Some scholars even argue that the Ninth Circuit incorrectly

²³⁹ *Shukla v. Sharma*, No. 07 CV 2972 (CBA), 2009 U.S. Dist. LEXIS 90044, *38 (E.D.N.Y. Aug. 14, 2009) (discussing at length how the plaintiff had opportunities to leave the Ashram and that it was a question for the jury if he had experienced psychological coercion that prevented him from leaving).

²⁴⁰ *Id.* at *35-36.

²⁴¹ *Id.* at *41-42.

²⁴² See H.R. REP. NO. 106-939, at 101 (2000) ("Section 1589 is intended to address the increasingly subtle methods of traffickers who. . .threaten their victims without physical violence or injury, or threaten dire consequences by means other than overt violence.").

²⁴³ See *Headley v. Church of Scientology Int'l*, 687 F.3d 1173, 1181 (9th Cir. 2012) (discussing the opportunities available to the plaintiffs to escape).

²⁴⁴ *Id.*

²⁴⁵ See Jeffrey W. Tye, *Ninth Circuit Rules against Scientology Ministers' Forced-Labor Claims in Headley v. Church of Scientology International*, 43 GOLDEN GATE U. L. REV. 135, 145-46 (2013).

applied the forced labor statute to the facts of the case.²⁴⁶ Regardless, the holding of *Headley* does not implicitly act as a bar to future victims from establishing a claim under the forced labor statute of the TVPA.

The holding of *Headley* was decided on very narrow grounds and was not revolutionary.²⁴⁷ The court held that a church warning its members “that it will stop associating with members who do not act in accordance with church doctrine” is not “serious harm” within the forced labor statute’s meaning.²⁴⁸ This is not a novel concept, as courts have previously upheld similar practices—such as shunning—are protected under the First Amendment.²⁴⁹ Therefore, the *Headley* court is correct in holding that threats of disassociation by a church or cult do not amount to serious harm within the meaning of the statute because, under the First Amendment, churches do have the right to choose with whom to associate. However, this does not prevent victims of cults from establishing a claim under the forced labor statute. As shown above, if a victim of a cult can show the threats he faced were more than just shunning, he may still meet the other elements required by the statute to establish a claim. Therefore, the holding from *Headley* does not act as a complete bar to victims of cults establishing a claim under the TVPA.

IV. THE TVPA DOES NOT INFRINGE ON THE RIGHTS OF THE CULTS AS “RELIGIONS” UNDER THE FIRST AMENDMENT

One of the most common defenses employed by cults when a victim brings an action against them is that the cult’s actions are protected under the First Amendment as a religious group.²⁵⁰ The argument follows that the religious practices of cults are protected under the First Amendment from any scrutiny of the government and that any claims brought against them stem from distrust of the cult’s

²⁴⁶ John S. Yi, *Human Trafficking and the Church of Scientology: Why the Legislature Should Clarify and Expand the TVPA and the Impact It Would Have on the Church*, 14 RUTGERS J. L. & RELIGION 249, 257-261 (2012).

²⁴⁷ *Headley*, 687 F.3d at 1180-81.

²⁴⁸ *Id.*

²⁴⁹ *Paul v. Watchtower Bible & Tract Soc’y*, 819 F.2d 875, 883 (9th Cir. 1987) (upholding the practice of shunning of Jehovah’s Witnesses as protected under the First Amendment).

²⁵⁰ See Dick Anthony & Thomas Robbins, *Negligence, Coercion, and the Protection of Religious Belief*, 37 J. CHURCH & ST. 509 (1995).

religion and a belief that their teachings are false.²⁵¹ Therefore, because these cases typically stem from a belief that a cults' religious teachings are false, the claims are beyond the purview of the courts as the courts cannot make rulings on the truth or falsity of religion.²⁵²

Although the First Amendment does guarantee the freedom to believe in a particular religion, it does not guarantee an absolute freedom to practice religion.²⁵³ When religious practices threaten evil consequences, the government can curtail these practices in the interest of the individual without violating the right to free exercise of religion.²⁵⁴ Therefore, an application of the TVPA forced labor statute against cults would not violate its free exercise of religion.²⁵⁵

²⁵¹ See, e.g., *Paul*, 819 F.2d at 880 (“The Jehovah’s Witnesses argue that their right to exercise their religion freely entitles them to engage in the practice of shunning.”); *Headley v. Church of Scientology Int’l*, 687 F.3d 1173, 1179 (9th Cir. 2012) (explaining that the church raised the ministerial defense, which provides religious employers with an affirmative defense to a claim by a minister when adjudicating the claim would infringe an employer’s religious liberty or would improperly entangle a court in religious matters); *Christofferson v. Church of Scientology*, 644 P.2d 577, 597-603 (Or. Ct. App. 1982) (explaining the Church of Scientology’s First Amendment Free Exercise defense); *Turner v. Unification Church*, 473 F. Supp. 367, 370 (D.R.I. 1978) (Unification Church assert that the claims against them are barred by the First Amendment).

²⁵² See *United States v. Ballard*, 322 U.S. 78, 86 (1944) (“But on whichever basis that court rested its action, we do not agree that the truth or verity of respondents’ religious doctrines or beliefs should have been submitted to the jury. Whatever this particular indictment might require, the First Amendment precludes such a course.”); *Anthony & Robbins*, *supra* note 250, at 534 (discussing how some cases inevitably involve value judgments on the truth of religious beliefs).

²⁵³ See *Reynolds v. United States*, 98 U.S. 145, 168 (1878) (upholding federal law criminalizing polygamy even though it was a religious practice).

²⁵⁴ *Id.*

²⁵⁵ While there is an argument that cults are not religious groups as there is debate as to what qualifies as “religion,” this Comment will concede that cults are religious groups to prove that its right to free exercise of religion would not be violated by an application of the TVPA forced labor statute. See *Davis v. Beason*, 133 U.S. 333, 342 (1890) (defining religion as “one’s views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will” and stating that the First Amendment was “was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society); *United States v. Ballard*, 322 U.S. 78, 86 (1944) (“Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others.”); *Thomas v. Review Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 714 (1981) (“The determination of what is a ‘religious’ belief or practice is more often than not a difficult and delicate task. . . the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.”); *Frazee v. Ill. Dep’t of Emp’t Sec.*, 489 U.S. 829, 834 (1989) (“Undoubtedly, membership in an organized religious denomination, especially one with a spe-

A. *The TVPA Forced Labor Statute is a Neutral and Generally Applicable Law*

Simply by looking at the plain text of the statute, it is clear the TVPA forced labor statute is neutral on its face and generally applicable. The statute applies to “[w]hoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means”²⁵⁶ The statute makes no reference to any religious group or uses any words that have a religious connotation.²⁵⁷ Additionally, the statute does not provide for any exceptions and is applicable to anyone who forces another person into labor. Based on the face of the statute, its object is to prevent anyone who forces another into labor. Therefore, the application of the TVPA forced labor statute against a member of a religious group or cult is subject to a rational relationship test.²⁵⁸ It is obvious on the face of the statute that the TVPA forced labor statute is reasonably related to the government’s interests in stopping forced labor and that this statute is a rational means of curbing and stopping forced labor.²⁵⁹

cific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but the United States Supreme Court rejects the notion that to claim the protection of the Free Exercise Clause, U.S. Const. amend. I, one must be responding to the commands of a particular religious organization”); *Africa v. Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1982) (“First a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion can often be recognized by the presence of formal and external signs.”). The IRS has also compiled a list of criteria that it uses as a guide to define a “church,” which are as follows: (1) Distinct legal existence; (2) Recognized creed and form of worship; (3) Definite and distinct ecclesiastical government; (4) Formal code of doctrine and discipline; (5) Distinct religious history; (6) Membership not associated with any other church or denomination; (7) Organization of ordained ministers; (8) Ordained ministers selected after completing prescribed courses of study; (9) Literature of its own; (10) Established places of worship; (11) Regular congregations; (12) Regular religious services; (13) Sunday schools for the religious instruction of the young; (14) Schools for the preparation of its members. U.S. INTERNAL REVENUE SERV., PUB. 1828 (REV. 8-2015), TAX GUIDE FOR CHURCHES AND RELIGIONS 33.

²⁵⁶ 18 U.S.C. § 1589(a) (2018).

²⁵⁷ *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533-34 (1993) (discussing whether the city ordinance makes use of any words with religious connotations to determine its neutrality).

²⁵⁸ *Emp’t Div. v. Smith*, 494 U.S. 872, 890 (1990) (holding that a neutral and general applicable law is not subject to a compelling state interest test, but a rational-relationship test).

²⁵⁹ A rational-relationship test is when “the court will uphold a law if it bears a reasonable relationship to the attainment of a legitimate governmental objective.” *Rational-Basis Test*, BLACK’S LAW DICTIONARY (11th ed. 2019).

B. *A Claim Brought Under the TVPA Forced Labor Statute Against a Cult Could Survive RFRA Counterclaim*

As previously mentioned, a cult may argue its First Amendment rights are violated when a cult victim brings a cause of action against it based on the premise that cults are religious groups. As religious groups, cults have an affirmative defense under the RFRA when faced with a lawsuit about the cult's actions.²⁶⁰ However, even if a cult were to raise an affirmative defense under RFRA, an action under the TVPA forced labor statute could still survive.

The purpose of the TVPA, as stated by Congress, is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”²⁶¹ It is clear that the government interests here generally are in protecting the health and safety of its people. More specifically, the government's interests, as derived from the purpose of that statute, are in (1) stopping forced labor, (2) punishing violators of the act, and (3) protecting victims of forced labor. If a victim were to bring a cause of action under the forced labor statute against a cult, then the statute would work in furthering the government's compelling interests since a civil cause of action would act as a form of punishment to the perpetrator, while protecting victims and providing them with the ability to enforce their rights. Whether the perpetrator is an individual person or a cult, it does not change the TVPA's forced labor statute's ability to further the government's compelling interests through a civil cause of action.

It is not enough, however, to show that the application of the TVPA forced labor statute as a civil cause of action serves a compelling interest, but it must be “demonstrate[d] that the compelling interest test is satisfied through application of the challenged law [to] . . . the particular claimant whose sincere exercise of religion is being substantially burdened.”²⁶² As discussed, cults use various methods²⁶³ to

²⁶⁰ Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (2018).

²⁶¹ 22 U.S.C. § 7101(a) (2018).

²⁶² *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31 (2006).

²⁶³ These methods include, but are not limited to: forced fasting; interrupted sleep or sleep deprivation; forced isolation ; deprivation of medical treatment; threats of physical abuse; verbal

force their members to stay and work for the cult.²⁶⁴ However, these methods meet the statutory requirements to be considered forced labor under the statute. Consequently, the government would achieve its compelling interests by providing cult members an avenue to assert their right not to be forced into labor—a civil cause of action under the TVPA forced labor statute. Through a civil cause of action, victims of cults can protect themselves from being forced into labor and, in turn, ensure their health and safety. Additionally, a civil cause of action against a cult would work as a form of punishment against the cult by requiring it to pay civil damages for the harm it caused by forcing a victim into labor. By having the cult pay damages to its victim, it sends a message to other cults that the coercive techniques used to psychologically coerce members to stay and work for the cult are not tolerated. Therefore, the government’s compelling interest is furthered through a civil cause of action under the TVPA forced labor statute as applied to cults.

The last prong to be satisfied under RFRA is the least restrictive means necessary.²⁶⁵ The government must show that “it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties in these cases.”²⁶⁶ A civil cause of action is the least restrictive means to further the government’s compelling interests in punishing violators of the TVPA forced labor statute and protecting victims. A judgment in a civil cause of action against a cult only allows for monetary damages, which is less restrictive than if the statute had allowed for an injunction or other remedy against the cult.²⁶⁷ Additionally, an enforcement of the TVPA forced labor statute through a civil cause of action would not require that courts to analyze the religious beliefs of the cult or require the cult to change any of its religious beliefs. Instead, it only requires an analysis of specific conduct resulting in the psychological coercion of the cult victim to determine if the victim was forced into labor.

There is no other way for Congress to write this forced labor statute without impairing the government’s interests in stopping human

abuse and humiliation. See Brown, *supra* note 21, at 408 n.10; Laisure, *supra* note 1, at 214; see Zorn, *supra* note 10, at 484.

²⁶⁴ See *infra* Section (II) of this Comment for this discussion.

²⁶⁵ 42 U.S.C.S. § 2000bb-1(b) (2018).

²⁶⁶ Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 728 (2014).

²⁶⁷ 18 U.S.C.S. § 1595(a) (2020).

trafficking, punishing violators, and protecting victims. Congress recognizes that perpetrators use various methods to coerce individuals, including psychological coercion.²⁶⁸ If the statute was drafted to not to include all the methods found by Congress to coerce an individual into labor, then there would be countless victims of human trafficking unable to protect themselves. In addition, if the statute were to be drafted in another manner, then there would be victims who were forced into labor by cults unable to protect themselves. Therefore, a civil cause of action under the TVPA forced labor statute is instrumental in furthering the government's compelling interests and does so through the least restrictive means possible. Consequently, a civil cause of action under the TVPA could survive a counterclaim under the RFRA.

CONCLUSION

Since courts have been unable to consistently provide an appropriate remedy to cult victims under traditional tort law, the forced labor statute of the TVPA is the best solution to this problem. Not only does the text of the statute allow a victim to establish a claim based on psychological coercion, but the legislative history also provides support to the belief that Congress intended for claims of psychological coercion to be actionable under the statute. Similarly, courts have generally interpreted the forced labor statute of the TVPA broadly; allowing victims to bring claims of forced labor absent a human trafficking element, based on forced non-manual labor, and where the victim did not immediately escape when given the opportunity. As shown, the application of the statute, coupled with the courts' overall broad interpretations of the statute, allows victims an avenue to seek recompense for the wrongs they have suffered. Victims of cults are subjected to varying types of psychological coercion that force them to work for the cult out of fear. Moreover, without the TVPA, these individuals have no feasible civil cause of action. Therefore, courts must recognize the claims brought by victims of cults under the forced labor statute of the TVPA to ensure that these victims are able to seek justice for the abuse they suffered as cult mem-

²⁶⁸ H.R. REP. NO. 106-939, at 4 (2000) ("Victims are often forced through physical violence to engage in . . . slavery like labor. Such force includes . . . psychological abuse, and coercion.").

bers. Further, if a cult were to raise an affirmative defense under the RFRA, it cannot overcome the government's compelling interests to stop forced labor, punish violators of the TVPA, and protect victims.

