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THE RESURGENCE OF FORCED LABOR: HOW THE SIXTH CIRCUIT'S DECISION IN UNITED STATES V. TOVIAVE ENDORSES THE EXPLOITATION OF CHILDREN

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I. INTRODUCTION

Typically, household chores performed by children in their own homes, under reasonable conditions and under the supervision of family members or caregivers, comprise an important part of family life.[1] However, when the workload becomes excessive or begins to interfere with a child's education it becomes indistinguishable from child labor.[2] Child labor can amount to forced labor under certain conditions.[3] Generally, forced labor involves individuals who are forced against their will to perform work or service under the threat of some form of punishment.[4] The problem of forced labor does not exist solely in underdeveloped countries; rather, in developed economies, including the United States, 1.5 million people are currently subjected to forced labor.[5] After the abolition of slavery, the United States passed the Thirteenth Amendment recognizing the importance in protecting U.S. citizens and residents against involuntary

1. *See Child Labour and Domestic Work*, INT'L LABOUR ORG., http://www.ilo.org/ipec/areas/Childdomesticlabour/lang—en/index.htm (last visited Oct. 6, 2014) (distinguishing between children performing household chores in their own home and children performing domestic work in a third party household).

2. *See id.* (stating that concerns may arise when a child's household workload interferes with the child's education or becomes excessive).

3. *See What are Child Labor and Forced Labor?*, U.S. DEP'T OF LABOUR, http://www.dol.gov/ilab/child-forced-labor/What-are-Child-Labor-and-Forced-Labor.htm (last visited May 5, 2015) (explaining that forced labor applies to both children and adults who perform all types of work or service, including legal and formal employment if performed under menace of penalty and involuntarily).

4. *See What is Forced Labour?*, ANTI-SLAVERY INT'L, http://www.antislavery.org/english/slavery_today/forced_labour.aspx (last visited Oct. 6, 2014) (detailing that forced labor is most commonly found in labor intensive and/or under-regulated industries such as agriculture, manufacturing, and domestic work).

5. *See id.* (explaining that the developed economies of the United States, Canada, Australia, European Union, Japan, and New Zealand constitute seven percent of the world's forced labor).

servitude and forced labor.[6] More recently, in 2008 Congress passed the Federal Forced Labor Statute, which forbade knowingly providing or obtaining labor services through a number of means.[7]

In a move arguably contrary to the Thirteenth Amendment, the court in *United States v. Toviave* sealed the fate of the children residing in the Sixth Circuit when it handed down its judgment reversing Jean Claude Kodjo Toviave's forced labor convictions.[8] In determining whether Toviave's actions constituted forced labor, the Sixth Circuit oversimplified the complex issue of what constitutes forced labor and, in particular, whether common household chores may be considered forced labor.[9] The Sixth Circuit concluded that Toviave's actions did not constitute forced labor, reasoning that: (1) making children do household chores cannot be forced labor without making "responsible American parents and guardians into federal criminals;" (2) using child abuse to compel a child to do chores did not change the nature of the work; and (3) if these actions constituted forced labor it would federalize the state-regulated area of child abuse.[10]

This Comment argues that the Sixth Circuit erred in deciding *Toviave* because it separated the issues of child abuse and forced labor instead of looking at the totality of the situation.[11] Toviave evidently used abuse as a coercive method to make the children under his care perform household chores.[12] Therefore, the Sixth Circuit should have ruled in favor of the United States and affirmed the trial court's conclusion that forced labor was used as a means to control the children.[13] Part II examines the Sixth Circuit's reasoning in *Toviave* and explores the Federal Forced Labor Statue, the Federal Involuntary Servitude Statute, as well as Michigan's

6. *See* U.S. CONST. amend. XIII (stating, in part, that "[n]either slavery nor involuntary servitude . . . shall exist within the United States . . .").

7. *See* 18 U.S.C. § 1589 (2008) (detailing what constitutes forced labor and how it should be punished).

8. *See* United States v. Toviave, 761 F.3d 623, 623 (6th Cir. 2014) (holding that forcing children to do household chores through child abuse did not constitute forced labor under 18 U.S.C. § 1589).

9. *See id.* at 625 (finding that aside from the abuse, the facts described nothing more than household chores).

10. *See id.* (justifying its conclusion that "[a]lthough Toviave's treatment of his children was reprehensible, it did not constitute forced labor").

11. *See id.* (stating that the facts amount merely to household chores barring the consideration of abuse).

12. *See id.* at 624 (asserting that Toviave used child abuse as a means to make the children under his care follow his rules and complete chores).

13. *See infra* Part V (concluding that the Sixth Circuit erred in its reasoning when it overturned the trial court's conviction of forced labor).

current child abuse laws.[14] Part III argues that the Sixth Circuit incorrectly interpreted the Forced Labor Statute and mistakenly compared the Forced Labor Statute with the Involuntary Servitude Statute.[15] Part IV presents a policy argument for applying the Forced Labor Statute in situations of *in loco parentis*.[16] Finally, Part V concludes that the Sixth Circuit should have applied the Federal Forced Labor Statute in *Toviave* which would have led the court to conclude that Toviave was guilty of forced labor.[17]

II. BACKGROUND

A. The Role of the Federal Forced Labor Statute in Toviave and Beyond

The Sixth Circuit in *Toviave* argued that the federal government's interpretation of the Federal Forced Labor Statute would convert the exercise of a parent's right to his or her child's services, as allowed in Michigan law, into a federal crime.[18] In developing its argument, the Sixth Circuit treated the Forced Labor Statute as analogous to the Involuntary Servitude Statute by analyzing case law and precedent.[19] In doing so, the court shifted its attention away from the Forced Labor Statute, which explicitly outlines how extreme the situation would need to be in order for household chores to cross the threshold into forced labor.[20] In particular, the statute details that the accused must have knowingly provided or obtained the labor or services of a person through the following means: (1) force, threat of force, physical restraint, or threat of physical restraint; (2) serious harm or threats of serious harm; (3) abuse or threatened abuse of law or legal process; or (4) mental coercion.[21] The Forced Labor Statute expanded upon the coercive methods in the Involuntary Servitude Statute to incorporate in the definition of "serious harm" nonphysical harms such as psychological, financial, or reputational harm, which under the

14. *See infra* Part II (comparing the Forced Labor Statute with the Involuntary Servitude Statute).

15. *See infra* Part III (arguing that the Sixth Circuit incorrectly used Involuntary Servitude Statute cases as precedent for *Toviave*).

16. *See infra* Part IV (outlining the implications that *Toviave* has for the exploitation of children).

17. *See infra* Part V (concluding that the Sixth Circuit incorrectly applied the law to the facts of the case).

18. *See* United States v. Toviave, 761 F.3d 623, 625 (6th Cir. 2014) (referring to MICH. COMP. LAWS ANN. § 722.2 (West 2014)).

19. *See id.* at 626 (implying that the Forced Labor Statute and Involuntary Servitude Statute are analogous through the court's use of many cases concerning Involuntary Servitude throughout the opinion).

20. *See generally* 18 U.S.C. § 1589(a) (2008).

21. *See id*.

surrounding circumstances would compel a reasonable person to continue performing labor or services in order to avoid incurring harm.[22]

1. Interpreting What Constitutes Forced Labor Under § 1589

The Federal Forced Labor Statute was originally enacted in 2000 as part of the Trafficking Victims Protection Act ("TVPA").[23] The Forced Labor Statute was revised in 2008 to allow for one or any combination of four means to constitute forced labor under the statute, including force or threat of force and serious harms or threats of serious harm.[24] Due to the recent introduction of the Forced Labor Statute, very few courts have had the opportunity to examine and interpret it. The Seventh Circuit in *United States v. Calimlim* examined the revised Forced Labor Statute for one of the first times when addressing the Calimlim's claim that the statute was overly broad and unconstitutionally vague.[25] In *Calimlim*, Irma Martinez traveled to the United States from the Philippines at 19-years-old to work as a housekeeper for the Calimlims.[26] Upon her arrival, the Calimlims confiscated her passport and told her that she had to work to pay off the cost of her plane ticket.[27] Thereafter, the Calimlims confined Martinez to the house and prohibited Martinez from contacting anyone outside the home.[28] The Seventh Circuit affirmed the Calimlims' convictions of forced labor.[29] The Seventh Circuit reasoned that the Calimlims had intentionally manipulated the situation so Martinez would feel compelled to remain by causing her to believe that if she did not perform the work that she would

22. *See* 18 U.S.C. § 1589(c)(2) (2008) (expanding the definition of serious harm from that of involuntary servitude found in 18 U.S.C. § 1584).

23. *See* Claudia G. Catalano, *Validity, Construction, and Application of Section 112 of Trafficking Victims Protection Act of 2000 and Subsequent Reauthorizing Provisions Amending Chapter 77 of Title 18, United States Code*, 75 A.L.R. FED. 2D 467, 21 (2013) (detailing that the Trafficking Victims Protection Act criminalizes and seeks to prevent human trafficking of women and children for the purpose of exploitation).

24. *See id.* (clarifying the scope of 18 U.S.C. § 1589, which permitted "one or any combination of four means: (1) force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (2) serious harm or threats of serious harm to that person or another person; (3) the abuse or threatened abuse of law or legal process; or (4) 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").

25. *See generally* United States v. Calimlim, 538 F.3d 706 (7th Cir. 2008) (finding the forced labor statute provides sufficient notice of what it criminalizes).

26. *Id.* at 708.

27. *Id.*

28. *Id.* at 709.

29. *Id.* at 718.

suffer serious harm.[30]

Similarly, the Fifth Circuit examined the application of the Forced Labor Statute in *United States v. Nnaji*.[31] The Fifth Circuit convicted the Nnajis of one count of forced labor after illegally bringing a Nigerian widow who spoke little English to the United States to look after their child so she could earn money for her own children.[32] Once she arrived, her household responsibilities and the number of children she was to care for increased, the Nnajis did not give her a room, and repeatedly sexually assaulted her.[33] The widow worked for the Nnajis for over eight years without pay.[34] The Fifth Circuit held, that under the Forced Labor Statute, serious harm could include psychological coercion, such as lying to the Nigerian widow in an attempt to coerce her to continue working for the Nnajis.[35] These lies included telling the widow that they deposited money into a bank account and sent money to her children in Nigeria.[36]

B. The Federal Involuntary Servitude Statute

The Sixth Circuit attempted to analogize the Federal Forced Labor Statute with the Federal Involuntary Servitude Statute in its analysis of *Toviave* and, in doing so, cited many cases involving the Involuntary Servitude Statute.[37] The statute holds responsible any person who "knowingly and willfully holds to involuntary servitude . . . any person for any term . . . ."[38] Regarding the supposed analogous nature of the

30. *See id.* at 713 (finding that the Calimlims compelled Martinez to remain by keeping her passport, not admitting their actions violated the law, and not offering to normalize her presence in the United States); *see also* 18 U.S.C. § 1589(a)(4) (2008).

31. *See* United States v. Nnaji, 447 Fed. App'x 558, 560 (5th Cir. 2011) (holding that no manifest miscarriage of justice occurred when the district court found the wife guilty of forced labor and conspiring to commit forced labor).

32. *Id.* at 559.

33. *Id.*

34. *Id.*

35. *See id.* at 560 (finding further evidence of psychological coercion demonstrated by other actions taken by the Nnajis, including prohibiting the victim from making contact with outsiders and accompanying her whenever she left the house).

36. *See id.* (concluding these lies were meant to coerce the Nigerian widow into continuing to work for the Nnajis).

37. *See* United States v. Toviave, 761 F.3d 623, 626 (6th Cir. 2014) (referring to, for example, *United States v. King*, 840 F.2d 1276 (6th Cir. 1988), where a forced-labor sweatshop run by a parent of one of the victims did not immunize the parent from being charged with involuntary servitude).

38. *See* 18 U.S.C.A. § 1584 (West 2014) (defining involuntary servitude and the penalty involved for anyone who violates the statute).

Involuntary Servitude Statute to the Forced Labor Statute, the Sixth Circuit in *Toviave* briefly examined *United States v. Kozminski*.[39] In *Kozminski*, two men with low IQs worked on a dairy farm seven days a week, at first for pay and eventually for no pay.[40] The Defendants, the Kozminksis physically and verbally abused the two men and instructed other workers to do the same.[41] Additionally, the Kozminskis told the two men not to leave the farm and threatened them with institutionalization if they did not do as told.[42] The Supreme Court affirmed the Sixth Circuit Court of Appeals by holding that the compulsion of services by the use or threatened use of legal or physical coercion is a necessary incident of involuntary servitude.[43]

The Sixth Circuit further expanded on its definition of involuntary servitude in the case of *United States v. King*.[44] The case concerned a religious commune in Michigan where the leaders, including defendant King, were accused of holding children in involuntary servitude.[45] The members of the commune were subject to "chastisement" for refusing to do assigned work or violating camp rules.[46] The court found that the leaders of the commune used and threatened to use physical force to make the children perform labor and that the children believed that they had no alternative but to perform that labor.[47] The court further found that the work performed by the children benefited the commune leaders personally.[48] The court determined that the "severity, frequency, and

39. *See Toviave*, 761 F.3d at 626 (raising concerns that the *United States v. Kozminski* decision relating to the Supreme Court's opinion on the Thirteenth Amendment "was not intended to apply to 'exceptional cases' . . . such as 'the right of parents and guardians to the custody of their minor children or wards'").

40. *See* United States v. Kozminski, 487 U.S. 931, 935 (1988).

41. *See id.* (using coercive methods such as denial of pay, subjection to substandard living conditions, and isolation to cause the men to believe they had no alternative but to work on the farm).

42. *See id.* (specifying on one occasion that Kozminski threatened one of the men with institutionalization).

43. *See id.* at 953 (holding further that there is no exception to the use or threatened use of physical or legal coercion where the victim is a minor, an immigrant, or mentally incompetent).

44. *See generally* United States v. King, 840 F.2d 1276, 1281 (6th Cir. 1988).

45. *See id.* at 1279 (describing the camp as having a playground for the children with no fences or barriers around the perimeter).

46. *See id.* (describing that the commune punished those who disobeyed rules and orders by fining members, making them dig large holes, and eventually beating them for transgressions).

47. *See id.* at 1280 (stating that the activities of defendant members of the cult group encompassed parts of the *Kozminski* standard for finding involuntary servitude).

48. *See id.* (detailing that the children cut wood and did farm chores, while the commune leaders would then sell the wood, eggs, milk, and other products of the

widespread nature" of the beatings displayed the specific intent to coerce the children to perform the duties the commune leaders ordered them to do.[49] Thus, the Sixth Circuit affirmed the district court's holding that the leaders willfully held the children in involuntary servitude.[50]

C. Michigan's Laws Regarding Child Abuse, Labor, In Loco Parentis

Michigan's child abuse and labor laws recognize that a person who is not related to the child or who is not their legal guardian act *in loco parentis* and assume parental rights.[51] The status of *in loco parentis* is generally granted to people who are acting in place of a parent to children unrelated to them.[52] The Supreme Court of Wisconsin defined the term *in loco parentis* in *McManus v. Hinney* when analyzing whether two minor plaintiffs could recover against their stepfather for injuries allegedly resulting from their stepfather's negligence while operating an automobile.[53] The court held that the stepfather did not have standing *in loco parentis* at the time of the accident thereby prohibiting recovery against him.[54] In reviewing the meaning of *in loco parentis* the court found that the term refers to "a person who has fully put himself in the situation of a lawful parent by assuming all the obligations incident to the parental relationship and who actually discharges those obligations."[55] The court further specified that the person assuming the status of *in loco parentis* must have "a true interest in the wellbeing and general welfare" of the child with whom they want to establish a parental relationship.[56]

The Michigan Appeals Court in *Hush v. Devilbiss Co.* further examined the status of *in loco parentis*.[57] In *Hush*, Hush's grandchildren came to stay with her for three years and she "virtually served as their mother" during

children's labor back to the community and deposit the money into bank accounts controlled by the leaders for their own benefit).

49. *See id.* at 1281 (leading the children to believe they had no viable alternative but to serve the leaders of the commune).

50. *See id.* at 1283.

51. *See* MICH. COMP. LAWS ANN. § 722.2 (West 2014) (asserting the rights of parents of unemancipated minors).

52. *See* United States v. Toviave, 761 F.3d 623, 625 (6th Cir. 2014) (stating a person standing *in loco parentis* has the same rights as a parent).

53. *See* McManus v. Hinney, 151 N.W.2d 44, 45 (Wis. 1967).

54. *See id.* at 48 (holding that a reasonable basis existed that the minors' stepfather did not intend to assume the status and obligations of a parent to the minor plaintiffs).

55. *See id.* at 46 (quoting Rutkowski v. Wasko, 143 N.Y.S.2d 1, 5 (1955)).

56. *Id.*

57. *See* Hush v. Devilbliss Co., 259 N.W.2d 170, 173 (Mich. Ct. App. 1982).

that period.[58] The court found a "family unit" easily recognizable when someone genuinely stands *in loco parentis* to a child; specifically noting that the person assuming the status must voluntarily assume parental responsibility and attempt to create a home-like atmosphere for the child.[59]

D. The Sixth Circuit Court Decision in United States v. Toviave

In *United States v. Toviave*, Toviave emigrated from Togo to the United States in 2001 and eventually settled in Michigan.[60] In 2006 he contacted his girlfriend, Helene Adoboe, in Togo and asked her and the four children in her care to come and live with him in the United States.[61] Adoboe and the children entered the United States with false immigration documents and lived with Toviave until their relationship ended and Adoboe and Toviave separated in 2008, leaving the children with Toviave.[62] Toviave demanded obedience from the children, who continued to live with him, and beat them for minor oversights or for breaking arbitrary rules.[63] Toviave beat the children with his hands, plunger sticks, ice scrapers, and broomsticks.[64] The children were responsible for different domestic tasks such as cooking, cleaning, and laundry.[65] Toviave also forced the children to pack up the house when the family moved, serve food to his guests, iron his clothes, clean his van, and babysit.[66]

After the children's teachers reported suspected child abuse an investigation ensued leading to the subsequent charges filed against Toviave.[67] Toviave pled guilty to visa and mail fraud and proceeded to trial on forced labor charges.[68] Toviave appealed his conviction of four

58. *See id.* at 171 (commenting that Hush took care of her grandchildren for three years and performed the day-to-day tasks of taking care of the children during the children's most crucial years in terms of personality development).

59. *See id.* at 173 (stating that a person standing *in loco parentis* is an exception to the abrogation of immunity since they exercise parental authority).

60. United States v. Toviave, 761 F.3d 623, 624 (6th Cir. 2014).

61. *See id.* (explaining that of the four children brought by Adoboe, two are Toviave's cousins with an unknown "degree of consanguinity", one is Toviave's sister, and one is Toviave's nephew).

62. *Id.*

63. *Id.*

64. *See id.* (stating that Toviave hit the children for using loose-leaf paper instead of a notebook to do homework and hit one of the children with a broomstick for throwing a utensil in the sink).

65. *See id.* (listing the household chores the children were responsible for).

66. *See id.* at 624, 626 (stating that Toviave enforced these chores through abusive force).

67. *Id.* at 624-25.

68. *See id.* at 625. (presenting other charges brought against Toviave included

counts of forced labor under the Federal Forced Labor Statute with respect to the four children.[69] On appeal, the Sixth Circuit reversed, finding that Toviave's treatment of the children did not constitute forced labor.[70]

III. ANALYSIS

A. The Sixth Circuit's Three Arguments in Toviave Fail to Distinguish This Case From Those Concerning Forced Labor

The Sixth Circuit uses three arguments in an attempt to distinguish *Toviave* from other cases concerning forced labor.[71] The court explained that Toviave's actions did not constitute forced labor for three reasons: (1) making children do household chores cannot be forced labor without making parents and guardians into federal criminals; (2) using child abuse to compel a child to do housework does not change the nature of the work; and (3) if these actions constitute forced labor, it would federalize the state-regulated area of child abuse.[72] In using these three arguments, the Sixth Circuit unsuccessfully seeks to justify its overall conclusion that the Federal Forced Labor Statute does not apply to the circumstances in *Toviave*.[73] Additionally, the Sixth Circuit argues that the government attempts to overextend the state crime of child abuse and the performance of household chores to the federal crime of forced labor.[74]

1. The Sixth Circuit Incorrectly Argues That Making Children Do Household Chores Cannot Be Forced Labor Without "Making Responsible Parents and Guardians into Federal Criminals"

The Sixth Circuit makes an assumption that the Federal Forced Labor Statute is not specific enough to prevent the "most responsible American parents and guardians" from being convicted for exercising their parental

human trafficking, which the government later dropped).

69. *Id.*

70. *See id.* (reasoning that to treat household chores and homework enforced through child abuse as forced labor would convert the Federal Forced Labor Statute into a federal child abuse statute or convert the requirement of household chores into a federal crime).

71. *See id.* (explaining that Toviave's actions do not constitute forced labor for three reasons).

72. *See id.* (listing the Sixth Circuit's reasons for not convicting Toviave under the Federal Forced Labor Statute).

73. *Id.* at 629.

74. *See id.* at 623-24 ("Only by bootstrapping can this combination of two actions that are not federal crimes — child abuse and requiring children to do household chores — be read as a federal crime.").

rights responsibly.[75] However, under the statute, specific standards must be met in order to support a finding of forced labor, thus demonstrating how grave the situation must be to convert mere afterschool chores into a federal crime.[76] For example, the situation would need to be similar to the situation in *Calimlim*, where the Calimlims restricted Martinez's day-to-day activities and forced her to work for sixteen hours a day, seven days a week.[77] The Calimlims effectively isolated Martinez from others by restricting her interactions.[78] These restrictions included not allowing Martinez to see anyone outside the Calimlims and limiting her contact with her family.[79] This example illustrates the strict standards of the Federal Forced Labor Statute.

In *Toviave* the Sixth Circuit incorrectly drew a generalized distinction between household work and forced labor by focusing solely on the type of work rather than the intensity and severity of the overall situation.[80] However, the Sixth Circuit ignores the fact that the statute is specific enough that it would not automatically condemn a parent or guardian who merely makes a child perform simple chores and punishes them as a reasonable parent or guardian would when they fail to complete those chores.[81] The Seventh Circuit in *Calimlim* rejected this very claim raised by Calimlim that the Forced Labor Statute was vague by finding that the statute gives sufficient notice as to what it criminalizes.[82] In *Calimlim*, the

75. *See id.* at 625 (reiterating that convicting parents and guardians under the Federal Forced Labor Statute regarding household chores would make the "most responsible American parents and guardians into federal criminals").

76. *See* 18 U.S.C. § 1589 (2008) (specifying that the accused must have knowingly provided or obtained the labor or services of a person through the following means: (1) force, threat of force, physical restraint, or threat of physical restraint; (2) serious harm or threats of serious harm; (3) abuse or threatened abuse of law or legal process; or (4) mental coercion).

77. *See* United States v. Calimlim, 538 F.3d 706, 708-09 (7th Cir. 2008) (adding that Martinez had to take care of the household, children, cars, and other properties while being restricted to day-to-day activities).

78. *See id.* at 709 (detailing Martinez could not use the front door of the house, could not play outside with the children, and was not allowed to go to the same church too many times in a row).

79. *See id.* (recounting that Martinez could not seek medical care outside the house, even for special needs, and was only allowed to speak with her family four or five times over the nineteen years she was with the Calimlims).

80. *See Toviave*, 761 F.3d at 625 (separating the issues of abuse from the household chores).

81. *See Calimlim*, 538 F.3d at 710 (addressing the Calimlims argument that the forced labor statute is so vague that it punishes innocent activity).

82. *See id.* (finding that vague statutes pose two primary difficulties: (1) they fail to provide due notice so that ordinary people can understand the prohibited conduct;

Seventh Circuit suggested that even if the Calimlims did not know for certain that their conduct was prohibited under the Forced Labor Statute, the language of the statute would alert them that it was prohibited.[83] While the Seventh Circuit outright rejects the argument that the Forced Labor Statute is vague, the Sixth Circuit nonetheless justifies its argument on this very premise.[84] In particular, the Sixth Circuit asserts that the Federal Forced Labor Statute is not specific enough to preclude the "most responsible American parents and guardians" from being convicted for exercising their parental rights responsibly.[85]

Furthermore, by the Sixth Circuit referring to domestic work as merely "household chores," it diminishes the fact that tasks like cooking, cleaning, and caring for children constitute actual labor.[86] Domestic workers perform tasks that are physically and emotionally demanding and work long hours, which are often longer than a typical work day.[87] Numerous states have ratified or are introducing bills granting domestic workers labor rights that they do not receive under the Fair Labor Standards Act.[88] The introduction of these laws demonstrates the attitude shift towards rightfully viewing domestic work as real employment.[89]

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and (2) they encourage arbitrary and discriminatory enforcement).

83. *See id.* at 711 (finding that the language of the Federal Forced Labor Statute clearly prohibits the Calimlims' actions, including telling Martinez that if she did not do everything that they said, the Calimlims would not send money back home and warning Martinez about her immigration status).

84. *Compare Calimlim*, 538 F.3d at 710 (proclaiming that the Federal Forced Labor Statute is not overly broad), *with Toviave*, 761 F.3d at 625 (assuming that the Federal Forced Labor Statute could be read so broadly as to not be able to distinguish between responsible discipline and federally criminal abuse).

85. *See Toviave*, 761 F.3d at 625.

86. *See id.* (stating that the work the children did around the house were merely household chores).

87. *See Domestic Work*, NAT'L DOMESTIC WORKERS ALLIANCE, http://www.domesticworkers.org/domestic-work (last visited Apr. 9, 2015) (detailing the daily work lives of domestic workers).

88. *See Mass. Leads On Protecting Rights For Domestic Workers*, NAT'L DOMESTIC WORKERS ALLIANCE, https://www.domesticworkers.org/news/2015/mass-leads-on-protecting-rights-for-domestic-workers (last visited May 8, 2015); *see* Julia Quinn-Szcesuil, *What Families Need to Know About the Domestic Workers' Bill of Rights*, CARE.COM, https://www.care.com/a/what-families-need-to-know-about-the-domestic-workers-bill-of-rights-1402241514 (last visited May 8, 2015) (recognizing The California Bill of Rights, effective January 1, 2014, and the Massachusetts Domestic Workers Bill of Rights, effective April 1, 2015, which extend similar protections granted to laborers under the Fair Labor Standards Act to domestic workers).

89. *See* NAT'L DOMESTIC WORKERS ALLIANCE, *supra* note 87, at 1.

In an effort to lend support to its argument, the Sixth Circuit crafted a hypothetical in an attempt to analogize and lend support to its overall conclusion in *Toviave*.[90] The court hypothesized a situation where a parent requires their child to make his or her bed and mow the lawn, the child is quarrelsome and occasionally refuses to do his or her chores, and in response, after warning the child, the parent spanks the child.[91] However, the Sixth Circuit incorrectly analogized to its own hypothetical involving a parent-child interaction because the facts in *Toviave* present a significantly different scenario.[92] Specifically, the Sixth Circuit claims that there is no way to distinguish between the hypothetical situation of a parent spanking a child due to disobedience and Toviave beating children under his care with a broomstick or an ice scraper for using the wrong type of paper for their schoolwork.[93] However, the Sixth Circuit undermines its own analogy to this hypothetical by suggesting that Toviave may be prosecuted under Michigan's child abuse laws.[94] By suggesting that Toviave's conduct may amount to child abuse in Michigan, the Sixth Circuit acknowledges that Toviave is not merely enjoying whatever parental rights he has, but rather is using force to ensure that the children under his care complete the tasks given to them.[95] Furthermore, the Forced Labor Statute explicitly states that "serious harm or threats of serious harm" is a means of obtaining forced labor, and a reasonable person would find it difficult to say that a spanking would constitute a serious enough harm to fall under the governance of the forced labor statute.[96] Therefore, based on the statutory language, the Sixth Circuit's argument that applying the Forced Labor Statute to the situation in *Toviave* would make responsible parents and guardians into federal criminals when they reasonably discipline their children is unfounded.[97]

2. Contrary to the Sixth Circuit's Decision, Using Abuse to Compel a Child

90. *See Toviave*, 761 F.3d at 625 (claiming the government's interpretation of the forced labor statute makes a federal crime out of harmless, accepted parental rights).

91. *See id.* at 625-26.

92. *See id.* (oversimplifying the situation and comparing the children in *Toviave* to a merely, "disobedient" child).

93. *See id.* at 626.

94. *See id.* (suggesting that the case could be tried under Michigan's child abuse laws).

95. *See id.* at 625 (stating that Toviave's conduct essentially amounts to child abuse).

96. *See* 18 U.S.C. § 1589(c)(2) (2008) (defining the term "serious harm" as physical or nonphysical that compels a reasonable person of the same background and in the same circumstances to perform the labor or services to avoid harm).

97. *See* § 1589; *Toviave*, 761 F.3d at 625.

to Do Chores Changes the Nature of the Housework

The Sixth Circuit argues that using child abuse to compel a child to do household chores does not change the nature of the work.[98] The Sixth Circuit insists on reading the issues regarding the amount of work Toviave subjected the children to and the coercive nature of child abuse separately, instead of acknowledging that linking them together could amount to forced labor.[99] The Forced Labor Statute details that the use of force or physical threats to obtain the labor or services of another person can constitute forced labor.[100] In the present case, Toviave would beat the children under his care with "his hands, and with plunger sticks, ice scrapers, and broomsticks" for failing to follow his rules or for minor oversights they committed.[101] From these facts, one can infer that the children lived in fear that failure to complete a duty or chore as asked would lead to physical harm or the threat of physical harm.[102] Indeed, this constitutes abuse under the Michigan statute, but it can also amount to physical coercion to perform labor or services under the federal statute.[103] Under the Michigan child abuse statute, child abuse is an injury to the physical condition of a child; similarly, under the Federal Forced Labor Statute this line of reasoning follows as physical harm is used as a means to obtain forced labor.[104] Therefore, it is illogical to separate the issues of forced labor and child abuse in the present case as the Sixth Circuit did.[105] The court interprets the child abuse as a separate issue when it can become,

98. *See Toviave*, 761 F.3d at 625 (postulating that requiring a child to perform household chores by means of child abuse does not change the nature of the work performed).

99. *See id.* ("Apart from the abuse, the facts here amount to nothing more than household chores.").

100. *See* § 1589 (detailing that forced labor can be obtained by means of force or threat of force, serious harm or threats of serious harm, or by any scheme, plan, or pattern).

101. *See Toviave*, 761 F.3d at 624 (cataloging the various ways in which Toviave beat the children under his care for failing to follow his arbitrary rules).

102. *See id.*

103. *Compare* MICH. COMP. LAWS ANN. § 750.136b (West 2012) (stating that a person who knowingly causes a child physical harm commits child abuse), *with* § 1589 (declaring that whoever knowingly obtains labor by means of serious harm or threats of serious harm commits forced labor, serious harm being any harm to compel a person to continue performing the labor to avoid incurring that harm).

104. *See* MICH. COMP. LAWS ANN. § 750.136b (West 2012) (defining "physical harm" in the context of the statute); § 1589 (defining "serious harm" in the context of the statute).

105. *See* § 750.136b.

as in the *Toviave* case, a contributing factor to forced labor.[106]

The Sixth Circuit argues that the government's interpretation of the Forced Labor Statute make "a federal crime out of . . . innocuous, widely accepted parental rights" and presents a hypothetical concerning a child who is "quarrelsome" and refuses to do his chores whom thus receives a spanking.[107] As mentioned above, this hypothetical is not analogous to the facts in this case where instead of a "spanking" the children are beaten with objects and treated much more severely than the hypothetical child.[108] The Sixth Circuit attempts to draw comparisons to this faulty hypothetical because, while it is within a parent or guardian's right to discipline a child, it is not within his or her right to beat his or her children, as evidenced by the existence of child abuse statutes throughout the United States.[109] It is clear that there is a difference between the Sixth Circuit's hypothetical child that receives a warning and a spanking and the children in *Toviave* who were beaten with an ice scraper for failing to do chores.[110] Perhaps most importantly, the two differ because Toviave's use and threat of physical abuse amounts to forced labor.[111]

Furthermore, physical coercion is not the only coercive method of obtaining forced labor.[112] The Fifth Circuit held in *United States v. Nnaji* that under the Forced Labor Statute serious harm could include psychological coercion.[113] In *Nnaji*, the Nnajis lied to the Nigerian widow to coerce her into continuing to work for them.[114] These lies included telling the widow that they deposited her salary into a bank account and sent money to her children in Nigeria.[115] However, the Sixth Circuit

106. *See Toviave*, 761 F.3d at 625 (stating that without the child abuse, the facts of the case would just be household chores).

107. *See* 761 F.3d at 625 ("Take a hypothetical parent who requires his child to take out the garbage, make his bed, and mow the lawn. The child is quarrelsome and occasionally refuses to do his chores. In response, the child's parents sternly warn the child, and if the child still refuses, spanks him.").

108. *See id.* at 624 (referencing the severity of Toviave's treatment of the children).

109. *See, e.g.*, *id.* at 627 (referencing MICH. COMP. LAWS ANN. § 750.136b(5) (West 2012), and stating that child abuse is a state crime in all fifty states).

110. *See id.* at 624.

111. *See* MICH. COMP. LAWS ANN. § 750.136 (West 2012).

112. *See* 18 U.S.C. § 1589 (2008) (affirming that serious harm can be physical or nonphysical, including psychological harm).

113. *See* United States v. Nnaji, 447 Fed. App'x 558, 559 (5th Cir. 2011) ("Serious harm can include psychological coercion.").

114. *See Nnaji*, 447 Fed. App'x at 560 (holding that prohibiting the victim from making contact with outsiders and accompanying her whenever she left the house was further evidence of psychological coercion).

115. *See id.* (concluding that lies were meant to coerce the Nigerian widow into

incorrectly ignored this possibility of psychological coercion when addressing the issues in *Toviave*.[116]

What the Sixth Circuit fails to realize is that child abuse has not only physical effects on its victims but it also carries the potential to psychologically harm its victims.[117] Some of the immediate emotional effects of child abuse include feelings of isolation, fear, and an inability to trust as well as psychological consequences such as low self-esteem, depression, and relationship difficulties.[118] Isolating the victim is a reoccurring factor in cases dealing with the Forced Labor Statute.[119] In *Calimlim*, the Calimlims kept Martinez isolated by restricting her daily movement by not allowing her to be seen by anyone outside the family and only allowing her to walk to church, but not allowing her to go to the same church too many times in a row.[120] Similarly, in *Nnaji*, the Nnajis kept their victim isolated by prohibiting her from contacting outsiders and not teaching her how to use the telephone, except in emergency situations, and accompanying her whenever she left the house.[121]

The Sixth Circuit attempts to distinguish the facts in *Toviave* by arguing that because Toviave permitted the children to go to school and participate in soccer that they could not be considered as severely isolated from the rest of society as the victims in *Nnaji* or *Calimlim*.[122] While the Sixth Circuit mentions psychological isolation in its opinion, the court nevertheless fails to examine the potential psychological effects that the

continuing to work for the Nnajis).

116. *See* United States v. Toviave, 761 F.3d 623, 626 (6th Cir. 2014) (addresses the possibility of psychological coercion, but only in paradigmatic forced labor, such as prostitution, sweatshop work, or domestic service).

117. *See* CHILD WELFARE INFO. GATEWAY, LONG-TERM CONSEQUENCES OF CHILD ABUSE AND NEGLECT 4 (2013), *available at* https://www.childwelfare.gov/pubPDFs/long_term_consequences.pdf [hereinafter LONG-TERM CONSEQUENCES] (asserting that the emotional effects of abuse can translate into long-term psychological consequences).

118. *See id*. at 5 (outlining the emotional and psychological effects of physical child abuse).

119. *See Nnaji*, 447 Fed. App'x at 560 (stating that isolation was further evidence of the Nnajis coercing the victim into working for them); *see also* 18 U.S.C. § 1589 (2008).

120. *See* United States v. Calimlim, 538 F.3d 706, 708 (listing the ways in which the Calimlims isolated Martinez from anyone outside of the family).

121. *See Nnaji*, 447 Fed. App'x at 560 (explaining that because the victim also knew little English and was illiterate, it further isolated her from the rest of society).

122. *See* United States v. Toviave, 761 F.3d 621, 630 (6th Cir. 2014) (stating that although the children could not have friends over or freely use the phone, their isolation was not as severe as victims in other forced labor cases because they were allowed to attend school and participate in after-school sports).

children suffered from the abuse.[123] The isolating effect of a victim experiencing child abuse and the physical effect of the abuse in conjunction with household chores could be considered a method of coercion to ensure that the children did their housework.[124] The Sixth Circuit failed to consider the isolating factor that the children were brought to the United States illegally from Togo and then left at Toviave's residence by the woman who brought them into the country.[125] Though the trafficking charges were dropped against Toviave, it does not change the fact that the children came into the country with false documentation and were separated from their former lives and their family in Togo.[126] This is an additional isolating factor that makes *Toviave* more analogous to other cases involving forced labor, such as *Calimlim* and *Nnaji*, where the victims were also brought into the country under false pretenses and documentation and feared that if they left their work there would be legal ramifications.[127] The court overlooked this important factor that often amounts to physical and psychological isolation in cases involving individuals illegally brought to the United States.[128]

3. Federalization of the State-Regulated Area of Child Abuse Would Not Occur if the Facts of Toviave Were to Constitute Forced Labor

The Sixth Circuit claims that if the facts of *Toviave* constituted forced labor, the federalization of the state-regulated area of child abuse would occur.[129] The court argues that if the degree of force is what converts

123. *See id.* at 626-627 (acknowledging that all force is not physical, but can also be psychological, such as isolation or pretend threats to the victim's friends or family).

124. *See generally* 18 U.S.C. § 1589 (2008) (declaring that obtaining the labor of another person by means of physical, serious harm is forced labor).

125. *See Toviave* 761 F.3d at 624 (explaining how the children came to be in the care of Toviave).

126. *See id*. (noting that the children entered the United States with false immigration documents).

127. *See* United States v. Calimlim, 538 F.3d 706, 708 (7th Cir. 2008) (indicating that Martinez entered the United States on a two-year visa and proceeded to stay and work for longer); United States v. Nnaji, 447 Fed. App'x 558, 560 (5th Cir. 2011) (stating that the victim travelled from Nigeria to the United States on a falsified passport).

128. *See* FREE THE SLAVES, SLAVERY STILL EXISTS: AND IT COULD BE IN YOUR BACKYARD (2008) (expressing that extremely limited contact with the outside world isolates many victims, often without any understanding of the language or their location) (removed from the website)(on file with Free the Slaves) (revised factsheet *available at* https://www.freetheslaves.net/wp-content/uploads/2015/01/FTS_factsheet-Nov17.21.pdf).

129. *See Toviave*, 761 F.3d at 625 (postulating that if requiring a child to perform chores by means of child abuse changed the nature of the work, then the forced labor

household chores, which is not normally a federal crime, into federally criminal forced labor then the mere presence of chores in child abuse would convert the crime of child abuse into a federal offense.[130] Child abuse is already a criminally punishable offense in Michigan as well as every other state, though the standards of what constitutes maltreatment vary.[131] Currently, no federal statute or law exists that specifically criminalizes child abuse.[132] The federal government has recognized that the responsibility of child welfare services is a state responsibility.[133] However, the federal government does provide specific requirements and guidelines that each state must follow in order to obtain federal funding for certain child welfare programs.[134] The Federal Child Abuse Prevention and Treatment Act ("CAPTA") provides a minimum standard of what constitutes specific, sexual abuse and special cases of neglect in federal law.[135] CAPTA does not provide for other types of maltreatment of children such as physical abuse, neglect, or emotional abuse.[136]

Although no federal statute detailing and criminalizing physical child abuse exists, one can argue that Toviave's actions against the children he cared for already fell under the federal umbrella of the Thirteenth

statute would federalize the state-regulated area of child abuse).

130. *See id.* at 627 (stating that, traditionally, Congress has been reluctant to criminalize conduct that is denounced as criminal by the states) (citing United States v. Bass, 404 U.S. 336, 349 (1971)).

131. *See id.* (expressing that child abuse is already a state crime in the fifty states and is traditionally local criminal conduct); *see also* MICH. COMP. LAWS ANN. § 750.136 (West 2012).

132. *See* CHILD WELFARE INFO. GATEWAY, MAJOR FEDERAL LEGISLATION CONCERNED WITH CHILD PROTECTION, CHILD WELFARE, AND ADOPTION 1 (2012), *available at* https://www.childwelfare.gov/pubs/otherpubs/majorfedlegis.pdf [hereinafter, MAJOR FEDERAL LEGISLATION] (providing that each state has its own legal and administrative structures and programs that address the needs of children).

133. *Id.*

134. *See id.* at 2 (proclaiming that federal legislation concerning child protection and child welfare services prompt responses at the state level, including enactment of state legislation, revision of state policy and regulation, and implementation of new programs).

135. *See* 42 U.S.C.A. § 5106(g) (West 2010) (stating that child abuse and neglect is failure on the part of the parent or caregiver which results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm).

136. *See Definitions of Child Abuse and Neglect in Federal Law*, CHILD WELFARE INFO. GATEWAY, https://www.childwelfare.gov/can/defining/federal.cfm (last visited Nov. 5, 2014) [hereinafter *Definitions of Child Abuse*] (asserting that Federal legislation provides minimum standards of maltreatment for states that accept CAPTA funding).

Amendment.[137] If Toviave's actions already fall under the umbrella of the Thirteenth Amendment, then the Sixth Circuit need not consider the federalization of child abuse statutes.[138] Toviave used abuse to compel the children under his care to do their work around the house and punish them when they failed to do so; therefore, Toviave's actions may constitute corporal punishment because while his actions were abusive, they were meant to correct the actions and behavior of the children.[139] The government, in bringing the charges against Toviave, did not raise the issue of child abuse; yet still, the Sixth Circuit chose to characterize Toviave's actions as child abuse in an attempt to limit its assessment of *Toviave*.[140]

The Sixth Circuit determined in *Toviave* that the Supreme Court recognized that the Thirteenth Amendment was not intended to apply to cases well established in the common law, such as the right of parents and guardians to the custody and punishment of their children or wards.[141] Using the Thirteenth Amendment to address the use of corporal punishment or child abuse would not undermine the parent-child relationship and parental rights as the Sixth Circuit has suggested; instead, it would transform it into a tool to reinforce family integrity and values.[142] If the Thirteenth Amendment addresses corporal punishment, then it follows that the use of abusive force, arguably more severe than corporal punishment, would be addressed by the Amendment as well.

Although the Sixth Circuit fears that recognizing the facts in *Toviave* as forced labor as defined under federal law would make child abuse a federal crime, this fear is ill founded.[143] The Forced Labor Statute, as

137. *See* U.S. CONST. amend. XIII, § 1 ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.").

138. *See* United States v. Toviave, 761 F.3d 623, 625 (6th Cir. 2014).

139. *See* Susan H. Bitensky, *An Analytical Ode to Personhood: The Unconstitutionality of Corporal Punishment of Children Under the Thirteenth Amendment*, 53 SANTA CLARA L. REV. 1, 6-7 (2013) (defining corporal punishment as the use of physical force upon a child's body with the intention of causing the child to experience bodily pain so as to correct or punish the child's behavior).

140. *See* United States v. Toviave, 761 F.3d 623, 625 (6th Cir. 2014) (referring to a juror in the trial court asking why the case was not tried under Michigan's child abuse laws).

141. *See id.* at 626 (stating that the Thirteenth Amendment and the Forced Labor Statute were not meant to overturn longstanding parental rights).

142. *See* Bitensky, *supra* note 139, at 42 (arguing that the Thirteenth Amendment has regulated families for over a century without undermining parental authority).

143. *See Toviave*, 761 F.3d at 623-24 (asserting that treating household chores and required homework as forced labor because it was enforced by abuse would turn the Forced Labor Statute into a federal child abuse statute).

implementing legislation for the Thirteenth Amendment, is so narrowly defined that it remains unlikely that a parent or guardian who is merely abusive and requires chores would be prosecuted for forced labor.[144] Another way to address the Sixth Circuit's concerns over a parent or guardian's potential for prosecution for forced labor is to create a federal child abuse statute or a federal standard that defines physical child abuse.[145] A federal standard would strengthen current state child abuse laws as states could still determine the maximum, but the federal standard would institute a national minimum concerning child abuse.[146]

B. The Sixth Circuit's Use of 18 U.S.C. § 1584 as an Analogy to the Forced Labor Statute Was Incorrect

The Sixth Circuit, in its assessment of the facts, attempted to use the Federal Involuntary Servitude Statute and several cases pertaining to it, including *Kozminski* and *King*, as an analogy to the Federal Forced Labor Statute.[147] The revised Federal Forced Labor Statute allows for one or any combination of four means to constitute forced labor, including force or the threat of force and serious harms or threats of serious harm.[148] In contrast, the Federal Involuntary Servitude Statute specifically deals with those who knowingly and willfully hold someone in involuntary servitude or who sells someone into any condition of involuntary servitude.[149] Involuntary servitude is not limited to "chattel slavery-like" conditions, but as intended under the Thirteenth Amendment, involuntary servitude is meant to cover situations where an employee is physically restrained by guards, or where

144. *But see id.* at 625 (misconstruing the Forced Labor Statute as being overly broad).

145. *See Definitions of Child Abuse*, *supra* note 136, at 2 (presenting that although there are federal child welfare standards, there is no federal law dictating what constitutes as child abuse).

146. *See id.* (indicating that new federal legislation prompts states to enact legislation and revise current state agency policy and regulations).

147. *See Toviave*, 761 F.3d at 626 (stating that the two statutes were analogous when giving the example of *United States v. Kozminski*).

148. *See* Catalano, *supra* note 23 at 467 (clarifying the scope of 18 U.S.C. § 1589 which permitted "one or any combination of four means: (1) force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (2) serious harm or threats of serious harm to that person or another person; (3) the abuse or threatened abuse of law or legal process; or (4) 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.").

149. *See* 18 U.S.C. § 1584 (2008) (stating that whoever willfully holds another person in involuntary servitude or sells them into any condition of involuntary servitude or brings someone so held into the United States will be subject to penalties).

the servitude is created by a credible threat of imprisonment.[150] Both statutes are contained in Chapter 77 of Title 18, however the Forced Labor Statute was introduced in the TVPA, which was enacted to provide new tools to combat human trafficking in the United States.[151] The addition of the Forced Labor Statute indicates that Congress felt the need to specifically define the term "forced labor" in law.[152] The mere existence of a separate statute dealing with forced labor should have alerted the Sixth Circuit that analogizing *Toviave* to a case concerning involuntary servitude was not sufficient.[153] The Forced Labor Statute was enacted as a response to *United States v. Kozminski*, a case the Sixth Circuit relied on in its analysis, which interpreted the Involuntary Servitude Statute to require the use or threatened use of physical or legal coercion in cases of involuntary servitude.[154] The Forced Labor Statute is a result of the Supreme Court's interpretation of *Kozminksi* and expands upon the Involuntary Servitude Statute's definition of the types of coercion that might result in forced labor, a factor the Sixth Circuit failed to consider.[155] Under the Forced Labor Statute, coercive methods were expanded to include in the definition of "serious harm" nonphysical harms such as psychological, financial, or reputational harm.[156] The Sixth Circuit's heavy reliance on involuntary servitude cases like *Kozminski* severely limited its ability to identify the type of serious harm present in *Toviave*, such as the severe psychological effects and feelings of isolation caused by abusive force.[157] In fact, the

150. *See* Ann K. Wooster, Annotation, *Application of Section 1 of the 13th Amendment to United States Constitution, U.S. Const. Amend. XIII, § 1, Prohibiting Slavery and Involuntary Servitude—Labor Required by Law or Force Not as Punishment for Crime*, 88 A.L.R.6th 203, 1 (2013) (discussing involuntary servitude and how the Thirteenth Amendment was passed in response to American slavery yet extends to every race and individual).

151. *See Involuntary Servitude, Forced Labor, and Sex Trafficking Statutes Enforced*, U.S. DEP'T JUST., http://www.justice.gov/crt/about/crm/1581fin.php (last visited Apr. 9, 2015) [hereinafter *Involuntary Servitude*] (providing a brief background of the Trafficking Victims Protection Act).

152. *See id.* (stating that the provisions introduced in TVPA were meant to primarily supplement the Involuntary Servitude Statute).

153. *But see* United States v. Toviave, 761 F.3d 623, 626 (6th Cir. 2014) (claiming that the Forced Labor Statute is closely analogous to the Involuntary Servitude Statute).

154. *See Involuntary Servitude*, *supra* note 151 (stating that a conviction under § 1584 requires the victim be held against his or her will by actual force, threats of force, or threats of legal coercion sufficient enough to compel a person to service against a person's will).

155. *See id*. (providing a brief history of the Forced Labor Statute).

156. *See* 18 U.S.C. § 1589(c)(2) (2008) (expanding the definition of serious harm from that of involuntary servitude found in 18 U.S.C. § 1584).

157. *See generally* United States v. Toviave, 761 F.3d 623, 626 (6th Cir. 2014)

Supreme Court in *Kozminski*, when presented with the issue of psychological harm as a method of compulsion of services, refused to apply it to the situation because it feared that it would criminalize "a broad range of day-to-day activity."[158] By continuing to use the Supreme Court's opinion in *Kozminksi*, the Sixth Circuit is applying an outdated version of the law, because *Kozminski* was decided before the Forced Labor Statute was enacted, and failing to look to the expanded definition of coercion as presented in the Forced Labor Statute.[159]

However, even if a court finds the Involuntary Servitude Statute is analogous to the Forced Labor Statute then the Sixth Circuit should more closely examine *United States v. King* in this situation instead of *Kozminski*.[160] The facts of *King* are relatively similar to those in *Toviave* as it involves disobedient children subjected to "chastisement," including severe beatings, for their refusal to do assigned work, or violation of the camp rules.[161] In *King*, the parents of the children consented, orally and in writing, to commune leaders beating and using physical threats against their children to force them to work.[162] The Sixth Circuit in *King* stated that the severity, frequency, and widespread nature of the beatings demonstrated that the commune leaders had the intent to subjugate the will of the children.[163] The work the children performed also benefitted the commune leaders personally, as well as the community members.[164] The

(referring to numerous involuntary servitude cases as support, such as *United States v. Kozminski* and *United States v. King*, as precedent for the present case).

158. *See* United States v. Kozminski, 487 U.S. 931, 949 (1988) (using the example that under the Government's interpretation of psychological coercion, § 1584 could be used to punish a parent who coerced his or her child to work in the family business by threatening to withdraw affection).

159. *See Toviave*, 761 F.3d at 626 (using the language found in *Kozminski* as support to the Sixth Circuit's argument that the Thirteenth Amendment was not intended to apply to the rights of parents and guardians over their minor children).

160. United States v. King, 840 F.2d 1276, 1277 (6th Cir. 1988).

161. *See id.* at 1279 (stating that the implementation of the new whipping policy was meant to instill fear in both the adults and children of the commune).

162. *See id.* at 1278 (referring to the commune leaders' claims that because the children's parents consented to the beatings and physical threats, the commune leaders were insulated from criminal liability because they shared the parents' immunity under the Thirteenth Amendment).

163. *See id.* at 1280 (finding that the District Court made alternative findings to the "brainwashing" standard found in *United States v. Mussry*, and correctly applied the *Kozminski* test).

164. *See id.* (detailing that the children would cut wood and do farm chores such as collecting eggs and milk, which was then sold by the commune leaders and the proceeds from which were placed in bank accounts controlled by the commune leaders for their personal benefit).

situation of the children in *King* is extremely similar to that of *Toviave*, because in both cases parents and guardians used abusive force, or allowed others to use abusive force, such as physical beatings, to compel the children to complete tasks.[165] In *Toviave*, these tasks also included work performed by the children for the benefit of Toviave, who, according to the Sixth Circuit, by virtue of Adoboe leaving the children with him, acted *in loco parentis*.[166] The children in *Toviave* cleaned the house, babysat for Toviave's girlfriend, cooked him food, and many other things that personally benefited Toviave.[167] The Sixth Circuit in *Toviave* even acknowledged that the duties assigned to the children by Toviave are "labor" in the economic sense of the word.[168] Similarly, just as the Sixth Circuit argues that the children in *Toviave* were not significantly isolated because they were allowed to attend school and afterschool sports, a comparable argument could be made in *King* where the commune had no fences or barriers to force the children to stay and a playground was available for recreation.[169] Furthermore, the possible psychological consequences of the abuse the children in *Toviave* and *King* suffered effectively isolated them from the outside world and psychologically compelled them to feel they have no choice but to remain in their situation.[170]

Also, the plight of the children in *Toviave* reflects the conditions that the *restavek* children in Haiti face.[171] *Restavek* children are usually children

165. *Compare* United States v. Toviave, 761 F.3d 623, 624 (6th Cir. 2014) (stating that Toviave would beat the children in his care if they misbehaved or failed to follow the rules), *with King*, 840 F.2d at 1280 (evidencing that the commune leaders used and threatened the use of physical force to make the children perform labor).

166. *See Toviave*, 761 F.3d at 624, 626 (according to the Sixth Circuit, by taking responsibility for the children after his girlfriend left, Toviave was acting *in loco parentis*).

167. *See id.* at 625 (listing household tasks undertaken by the children, including washing the floors, windows, and bathrooms, doing the dishes, preparing food, and doing laundry).

168. *See id.* at 626 (acknowledging that domestic tasks were labor in the economic sense because people often pay employees to perform that type of work).

169. *See id.* at 624 (detailing that Toviave bought the children sports equipment and took them on family trips); *see also King*, 840 F.2d at 1279 (specifying that the camp had an area for swings and other playground equipment for the children and a lack of fences or barriers around the perimeter of the camp).

170. *See* LONG-TERM CONSEQUENCES, *supra* note 117, at 4 (addressing how physical abuse carries the potential to psychologically harm the victim and result in long-term psychological consequences).

171. *See Toviave*, 761 F.3d at 625 (describing the conditions the children lived in); *see also Restavek*, RESTAVEK FREEDOM, http://www.restavekfreedom.org/the-issue/restavek (last visited Apr. 9, 2015) (describing the conditions of *restavek*

born in poor rural areas, who are brought into the homes of strangers or family members in urban areas to perform domestic work, typically in exchange for receiving an education.[172] The majority of *restaveks* are never sent to school and forced to work day and night; *restaveks* who do go to school are expected to return immediately after and work late into the night.[173] Like the children in *Toviave*, some *restavek* children get the opportunity to earn an education, but the conditions to which they are expected to return are recognized by the Global Slavery Index as conditions of forced labor.[174] The *restaveks* are expected to cook, wash dishes and laundry, shop for groceries, and care for small children, the same tasks that Toviave expected from the children under his care, subjecting them to the constant threat of physical, psychological, and sexual abuse.[175] Federal bodies, such as the Department of State, recognize the plight of the *restavek* as an issue of forced labor; therefore, logically, children living in similar conditions of forced labor in the United States should be afforded the protection of the Forced Labor Statute.[176]

C. Toviave Did Not Possess Parental Rights Over the Children

The Sixth Circuit in *King* found the theory that a parents' right to discipline their children could shield the commune leaders, a third party, as an unacceptable defense.[177] This point brings into question Toviave's relation to the children and whether he stood *in loco parentis* to the children.[178] The Sixth Circuit acknowledges that Toviave was neither the

children).

172. *See Restavek*, *supra* note 171 (defining the Creole term *restavek* and giving the English translation, which is "to stay with").

173. *See Restaveks: Haitian Slave Children*, END SLAVERY NOW, http://endslaverynow.org/learn/photos/restaveks-haitian-slave-children (last visited Apr. 9, 2015) (offering insight on the daily lives of *restaveks*).

174. *See* Elisabeth Braw, *Global Slavery Index Catalogues Forced Labour Around the World*, GUARDIAN (Oct. 17, 2013, 12:29 PM), http://www.theguardian.com/sustainable-business/global-slavery-index-forced-labour-world (exploring the problem of forced domestic labor around the world).

175. *See Restavek*, *supra* note 171.

176. *See* TRAFFICKING IN PERSONS REPORT, 2014 U.S. DEP'T OF STATE 1, 195-97, *available at* http://www.state.gov/documents/organization/226846.pdf (recognizing *restaveks* as forced laborers).

177. *See King*, 840 F.2d at 1281-82 (referring to a Justice Department finding that parental consent cannot shield third parties from liability after examining the legislative history of the predecessor § 1584, which was meant to prevent the exploitation of Italian children under the "Padrone" system).

178. *See Toviave*, 761 F.3d at 625 (asserting that Toviave was not the parent or legal guardian of any of the children).

legal parent nor guardian of any of the children he lived with and that Toviave's ex-girlfriend, who brought the children with her from Togo, had left.[179] An adult acting *in loco parentis* to a child is charged with a parent's rights, duties, and responsibilities and is entitled to custody and control of a child.[180] It is arguable that even though Toviave cared for the children in the sense of providing them with shelter and sending them to school, the abusive force he rendered upon them violated parental responsibility and stripped him of his parental rights.[181] Child abuse is a felony criminal charge and generally results in the parent losing custody of his or her children.[182] Following this reasoning, Toviave cannot rely on the argument that it is within his rights as a parent or guardian to the services of the children as he has lost his rights through the abuse he inflicted upon them.[183] Therefore, if it was appropriate for the Sixth Circuit to use the Involuntary Servitude Statute as an analogy to the Forced Labor Statute, it should have used *United States v. King* as an analogy to *Toviave*, based on the similarity of the facts; it would only follow that Toviave would be found guilty under the Federal Forced Labor Statute.

IV. POLICY RECOMMENDATION

There are grave implications of the Sixth Circuit's decision in *United States v. Toviave*, especially at a time when there are an estimated 60,000 children that will cross the border from Mexico and Central America into the United States.[184] Oftentimes, these children journey across the border alone and unaccompanied to escape violence, persecution, and poverty in their home countries.[185] With the influx of unaccompanied children into

179. *See id.* at 624-25 (identifying that of the four children brought from Togo, one was Toviave's sister, two were distant cousins, and one was his nephew).

180. *See id.* at 625 (referencing Hush v. Devilbiss Co., 259 N.W.2d 170 (Mich. Ct. App. 1982)).

181. *See* Hush v. Devilbliss Co., 259 N.W.2d 170, 173 (Mich. Ct. App. 1982) (noting specifically that the person assuming the status of *in loco parentis* must voluntarily assume parental responsibility and attempt to create a home-like atmosphere for the child).

182. *See* MICH. COMP. LAWS ANN. § 750.136b (West 2014) (providing definitions of child abuse and the penalties involved).

183. *See* United States v. King, 840 F.2d 1276, 1282 (6th Cir. 1988) (finding that parental consent cannot shield third parties from liability).

184. *See Unaccompanied Minors: Humanitarian Situation at US Border*, UNHCR: THE UN REFUGEE AGENCY, http://unhcrwashington.org/children (last visited Nov. 19, 2014) [hereinafter *Unaccompanied Minors*].

185. *See id.* (stating that crime and violence has recently increased dramatically in Mexico and Central America and so have the number of asylum-seekers, increasing 712% from 2008 to 2013).

the United States, the possibility of them being exploited also rises, especially with the *Toviave* decision.

Because these children are coming across the border unaccompanied, it is inevitable that cases similar to *Toviave* will arise; therefore, there is a pressing need for the courts to recognize that the combination of abuse and household chores can constitute forced labor if the situation falls under the Forced Labor Statute.[186] The facts presented in *Toviave* could easily apply to any child who comes to the United States without documentation and makes them vulnerable to exploitation.[187] The migrant children, due to their circumstances, are easily isolated from the rest of society by anyone who potentially takes them in and intends to force them to perform services.[188] Furthermore, like in *Toviave*, the unaccompanied children are away from their home country and any familiar surroundings; in many cases, language can be another isolating factor as well as the legal ramifications of being in the United States without proper documentation, such as detention and deportation if the Sixth Circuit decision stands.[189] By assuming the status of *in loco parentis*, like Toviave, whoever takes these children in can potentially use physical abuse to compel them into performing household chores and would not face federal penalties so long as they allow the children to go to school and participate in after school activities.[190]

V. CONCLUSION

As Susan H. Bitensky stated in an article shortly after the decision in *United States v. Toviave*, the Sixth Circuit's holding in *Toviave* is, "an extraordinary and unnecessary soul-murder of the innocents."[191] Due to the lack of caselaw addressing the connection between child abuse, household chores, and forced labor, the courts must reexamine this issue with more scrutiny. The Sixth Circuit attempted to use three faulty arguments to

186. *See* 18 U.S.C. § 1589 (2008).

187. *See* United States v. Toviave, 761 F.3d 623, 624 (6th Cir. 2014) (detailing the children's legal status in the United States and the manner in which they were brought to the United States).

188. *See id.*

189. *The U.S. Child Migrant Influx*, COUNCIL ON FOREIGN REL., http://www.cfr.org/immigration/us-child-migrant-influx/p33380 (last visited Dec. 4, 2014) (detailing what occurs once migrants are apprehended).

190. *See generally* United States v. Toviave, 761 F.3d 623, 624 (6th Cir. 2014).

191. *See* Susan H. Bitensky, *A Bungling Barbarism: Court Baselessly Holds That Child Abuse, Used to Get Kids to Do Chores, Cannot Be Forced Labor*, JURIST, http://jurist.org/forum/2014/08/susan-bitensky-abuse-labor.php (last visited Nov. 7, 2014).

distinguish *Toviave* from other cases concerning forced labor.[192] The first of these three arguments suggested that household chores could not be forced labor without "making responsible parents and guardians into federal criminals."[193] This statement implies that the standards of the Federal Forced Labor Statute were so broad that responsible parents would be held as federal criminals for having their children do reasonable amounts of housework.[194] Through examining another forced labor case from the Seventh Circuit, *United States v. Calimlim*, from the Seventh Circuit it becomes clear that the Federal Forced Labor Statute sufficiently outlines the conduct it prohibited.[195]

The Sixth Circuit further argued that using child abuse to compel a child to do household chores did not change the nature of the work.[196] The court went so far as to separate the issues of abuse and chores, and ignore the language of the Federal Forced Labor Statute, which clearly states that forced labor can be obtained by means of force or threat of force and serious harm or threats of serious harm.[197] In addition to the physical coercion that Toviave employed to force the children under his care to do work, the court ignored the psychological coercion that resulted from the child abuse.[198] The court seemed to disregard the element of psychological coercion in forced labor even though it is listed as an element of the Forced Labor Statute.[199] The Sixth Circuit also failed to take into account the fact that the children were illegally brought into the United States and then left with Toviave by the person who accompanied them from Togo, isolating them from familiar surroundings.[200]

The Sixth Circuit finally argued that allowing the government to address the situation in *Toviave* as forced labor would federalize the state-regulated area of child abuse.[201] The Sixth Circuit's fear of federalization is

192. *See Toviave*, 761 F.3d at625.

193. *Id.*

194. *Id.*

195. *See* United States v. Calimlim, 538 F.3d 706, 711 (7th Cir. 2008) (finding that the language of the Federal Forced Labor Statute clearly prohibits certain actions).

196. *See Toviave*, 761 F.3d at 625 (suggesting that using child abuse to compel a child to do chores does not change the nature of the work).

197. 18 U.S.C. § 1589 (2008); *Toviave*, 761 F.3d at 625.

198. LONG-TERM CONSEQUENCES, *supra* note 117, at 4.

199. *See* § 1589(c)(2) (affirming that serious harm can be psychological harm); *see also* United States v. Nnaji, 447 Fed.Appx. 558, 560 (holding that isolating the victim from outside contact was evidence of psychological coercion).

200. *Toviave*, 761 F.3d at 630.

201. *See id.* at 625.

unfounded.[202] The Federal Forced Labor Statute is so narrowly defined, it is unlikely that a parent or guardian who is merely abusive and requires chores would be prosecuted under the statute.[203] Through careful examination of the case law the Sixth Circuit referred to in *Toviave*, it is clear that the issue of child abuse and forced labor in the context of forced labor needs to be examined again.

202. *See supra* Part III(A)(3).

203. *See* United States v. Calimlim, 538 F.3d 706, 711 (7th Cir. 2008).