

**No. 18-55041**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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KEO RATHA; SEM KOSAL; SOPHEA BUN; YEM BAN; NOL NAKRY;  
PHAN SOPHEA; AND SOK SANG,

*Plaintiffs-Appellants,*

v.

PHATTHANA SEAFOOD CO., LTD.; S.S. FROZEN FOOD CO., LTD.;  
RUBICON RESOURCES, LLC; WALES AND CO. UNIVERSE LTD.,

*Defendants-Appellees.*

On Appeal from the District Court for the Central District of California,  
Honorable John F. Walter Presiding, Case No. 2:16-CV-04271-JFW

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**PLAINTIFF-APPELLANTS' PETITION FOR REHEARING *EN BANC***

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## **I. INTRODUCTION AND RULE 35(B) STATEMENT**

Over the past decade, the United States has been a leader in the global fight against human trafficking and forced labor. As part of that effort, Congress enacted the Trafficking Victims Protection Act, a comprehensive statutory scheme of interlocking and mutually reinforcing provisions that provide both criminal penalties and civil remedies. Congress has consistently reauthorized and expanded the statute to ensure it is expressly extraterritorial in order to reach those who benefit from trafficking-related abuses in supply chains that cross international borders and extend into the United States.

Plaintiffs, rural Cambodian villagers, were subjected to peonage, forced labor, and human trafficking at Defendant Phatthana's shrimp-processing plant so that Defendant Rubicon could sell the shrimp in the United States. Defendants failed to profit only because the ultimate purchaser, Walmart, refused to accept the shrimp because of allegations of forced labor at Phatthana's factory.

The panel held neither defendant was liable under the TVPRA by imposing barriers to relief that Congress did not. The panel opinion will have far reaching impact. It threatens not only to undermine the TVPRA's effectiveness in cases far beyond this one but to hamper both civil litigation and criminal prosecution for a broader universe of transnational crimes.

First, the panel erroneously ruled that a defendant who unsuccessfully

attempts to profit from forced labor may not be held civilly liable. This ruling paradoxically shields from civil liability cases that involve conduct or goods intercepted by law enforcement. The panel's ruling misreads the plain text of the TVPRA and directly conflicts with the First Circuit. *See Ricchio v. McLean*, 853 F.3d 553, 557 (1st Cir. 2017) (Souter, J., by designation). The panel's reading of the TVPRA also departs from a recent decision by the D.C. Circuit. *See Rodriguez v. Pan Am. Health Org.*, \_\_\_ F.4th \_\_\_, 2022 WL 904850, at \*6 (D.C. Cir. Mar. 29, 2022). En banc review is therefore appropriate. *See* F.R.A.P. 35(a)(2) & (b)(1)(B); Circuit Rule 35-1.

Second, although the panel correctly assumed that the TVPRA authorizes civil suits for extraterritorial conduct to the extent that due process permits personal jurisdiction over a defendant, it erred in concluding that Plaintiffs had failed to show personal jurisdiction existed over Phatthana. That issue was not raised below, as Phatthana itself did not contest personal jurisdiction. The panel held specific jurisdiction can only be established in intentional tort claims if the plaintiff is harmed in the forum. This rule directly conflicts with multiple decisions of the U.S. Supreme Court, prior decisions of this court, and other circuits. *See, e.g., Calder v. Jones*, 465 U.S. 783, 788 (1984); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 (1984); *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1356-57 (11th Cir. 2013); *Ballard v. Savage*, 65 F.3d 1495 (9th Cir. 1995); *Sinatra*

*v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1196 (9th Cir. 1988). The panel's rule would reverberate in cases far beyond the TVPRA, effectively depriving courts of jurisdiction in a wide range of statutes enacted to combat serious international crimes. En banc review is therefore appropriate. See F.R.A.P. 35(a)(1), (b)(1), & (b)(2); Circuit Rule 35-1.

## II. BACKGROUND

### A. Facts

Plaintiffs, villagers in rural Cambodia, were recruited for work at factories in Thailand producing seafood for export to the United States. Instead of the good jobs they were promised, they became victims of peonage, forced labor, and human trafficking.<sup>1</sup>

Phatthana faced a worker shortage. AOB5. In response, Phatthana recruited indigent, largely illiterate villagers who had never traveled abroad. AOB5 n.1; AOB6. Phatthana's staff promised Plaintiffs that the workers did not need passports, they would have free accommodation and be paid roughly \$10 per day.

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<sup>1</sup> Defendants contested the claims of three Plaintiffs who were undocumented, AOB52, a category that Congress has recognized is particularly vulnerable to human trafficking. *E.g.*, *U.S. v Dann*, 652 F.3d 1160, 1172 (9th Cir. 2011); Freedom Network Amicus. The panel declined to reach the merits of their claims. Op. at 11. The facts relate to the challenged Plaintiffs. Defendants did not move for summary judgment on the claims that four other Plaintiffs were victims of these abuses. AOB4.

*Id.* Phatthana staff instructed the three Plaintiffs to take out loans to cover the costs of recruitment fees and travel, knowing the men would have to use their homes and farms as collateral. AOB6.

Phatthana transported Plaintiffs to Thailand, a harrowing journey. AOB6-7. When Plaintiffs arrived, Phatthana told them that the wages would be far less than promised, they would be charged for filthy, overcrowded accommodation, and they had to pay unexpected additional fees for work permits—an amount they had to borrow from Phatthana. AOB7. Phatthana informed Plaintiffs that the factory would retain the work permits until they had worked off their debts and that they would be arrested if they left the factory without their work permit. AOB8. It is undisputed that all three Plaintiffs asked to leave repeatedly and asked for their work permits back so they could obtain other jobs or travel without fear of arrest. AOB9. Phatthana refused. AOB9.

Rubicon was established to sell Thai shrimp in the United States. ER948-49; ER1039; ER385. Rubicon coordinated all aspects of the sales, including marketing to large U.S. supermarket chains. AOB11. Rubicon worked closely with Phatthana, including on-site visits to its factories, to ensure Phatthana met U.S. customer audit requirements and to supervise quality control. *Id.* For example, Rubicon arranged for trainings of Phatthana staff by Walmart after poor audit results. ER1276-80. Rubicon also arranged for import into the United States, dealt with U.S. customs

requirements, and served as Phatthana's registered U.S. FDA agent. AOB11-12.

The shrimp produced by Plaintiffs was intended for Walmart. ER1350; SER181. Phatthana shipped the shrimp to Rubicon in the United States. ER954, SER192; SER197. Rubicon knew the workers had been subjected to peonage and forced labor as the abuses at Phatthana had garnered global attention from NGOs, the media, and the United Nations. AOB14-15; AOB18-19; ER1302. Rubicon supplied the shrimp to Walmart, but Walmart rejected it due to concerns about forced labor at Phatthana. AOB14.

## **B. Procedural History**

Plaintiffs filed this case in 2016. ER2152. Defendants conceded personal jurisdiction and filed a motion to dismiss, which was denied. Dkt. 40; ER71. In 2017, Defendants moved for summary judgment, though they all agreed that four of the Plaintiffs had adduced triable evidence that Phatthana trafficked them and forced them to labor. *E.g.*, Dkt. 147 at 9 n.4. No defendant argued that the district court lacked personal jurisdiction over them. *See* Dkt. 145; Dkt. 146; Dkt. 147.

The district court granted Defendants' summary judgment motions. Relevant here, it concluded: (1) Rubicon did not benefit from Plaintiffs' alleged forced labor (ER20) and (2) the court lacked subject matter jurisdiction over the claims against Phatthana because Phatthana was not physically present in the United States (ER24-25).

### **C. The Panel Decision**

The panel affirmed the grant of summary judgment. The panel focused on the fact that Walmart rejected Rubicon’s delivery of the 14 shipments of shrimp produced during Plaintiffs’ servitude, and it held that a defendant who attempts, but fails, to profit from the sale of goods made by forced labor may not be held civilly liable under the TVPRA. Op. at 10, 30.

The panel determined Phatthana could also not be held liable, though it did so on alternative grounds. The panel held that the TVPRA’s extraterritorial reach is a merits, not subject matter jurisdiction, question and assumed that any defendant subject to personal jurisdiction is “present in the United States” for the purposes of the TVPRA, and thus subject to civil liability, rather than adopting the district court’s requirement of physical presence. Op. at 14, 19. But adopting an argument Phatthana never raised, the panel concluded Phatthana was not subject to personal jurisdiction because the harm caused by Phatthana’s TVPRA violations was not suffered in the United States. Op. at 22 n.13.

## **III. ARGUMENT**

### **A. The Panel Opinion Misread the Plain Text of the TVPRA to Shield Defendants Who Unsuccessfully Attempt to Profit from Forced Labor and is in Direct Conflict with Other Courts of Appeal**

Rubicon attempted to sell shipments of shrimp produced with forced and trafficked labor to Walmart. ER1350. Walmart rejected that shrimp due to Walmart’s concerns about the forced labor allegations at the heart of this case.

ER957 (“Q: But the reason Sam Club did not want your product was because of the allegations of forced labor, correct? A: Yes.”); ER1548-49. Rubicon continued its attempts to complete delivery *after* Rubicon knew of the allegations and *after* Walmart refused to accept the shrimp due to concerns about forced labor. ER1284 (Rubicon CEO: “I have been working my best to convince WM to allow us to deliver this product into their system.”).

The panel dismissed Plaintiffs’ claims against Rubicon because it held, in conflict with the First Circuit, that an attempt to benefit is not subject to civil liability under the statute. The panel misread the statute and misread Plaintiffs’ argument, which rests on the plain text of 18 U.S.C. §1594 and §1589(b). AOB 40-43; Reply 17-20.

The panel correctly held that “attempt liability is plainly authorized” by the TVPRA, citing 18 U.S.C. §1594 – General provisions. Op. at 30. The panel then pointed out that civil liability, §1595, is not enumerated in the General Provisions that authorize attempt liability. But §1589 plainly *is* included in §1594. Section 1589(b) – to which the panel concedes “attempt liability is plainly authorized” – includes its own “knowingly benefits” requirement:

Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means ...

18 U.S.C. §1589(b). Plaintiffs are not seeking to add the word “attempt” to §1595. Attempt liability already attaches to §1589(b) by the plain text operation of the General Provisions, §1594, as the panel recognized.

A person who violates §1589(a) or (b) (or, by virtue of §1594, attempts to violate) is a perpetrator subject to 20 years imprisonment and to civil liability. *See* 18 U.S.C. §1589(d) (“whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both”); §1595 (“An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator”).<sup>2</sup> As the D.C. Circuit recently recognized, a civil remedy is plainly available for violations of §1589(b). *Rodriguez*, \_\_\_ F.4<sup>th</sup> at \_\_\_, 2022 WL 904850, at \*6 (physicians allege that PAHO committed a financial crime in the U.S. utilizing §1589(b) and press the corresponding civil claim under §1595: the financial benefit that violates §1589(b) is itself the operative wrongful conduct).

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<sup>2</sup> The panel recognized that “Section 1594 speaks to who might be a ‘perpetrator’ of a TVPRA violation” for purposes of civil liability under §1595 by including attempters as perpetrators. *Op.* at 30 n. 16. The belts-and-suspenders addition of additional “knowing beneficiary” liability by Congress in §1595 (which contains a different *mens rea* than §1589(b) and also applies to sections of the TVPRA that do not include their own “knowing beneficiary” liability) does not negate the imposition of liability in §1589(b). “Redundancies across statutes are not unusual.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253 (1992); *see also Barton v. Barr*, 140 S. Ct. 1442, 1453 (2020) (“[R]edundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.”).

The panel’s decision directly conflicts with Justice Souter’s opinion for the First Circuit, in which that Court of Appeals held that civil liability attached to attempts to violate §§1589, 1590, and 1591: “The defendants at the least attempted to violate §§1589, 1590, and 1591 (see Claims 1, 2, and 3), the necessary substantial steps including the harboring of Ricchio and the receipt of benefit.” *Ricchio v. McLean*, 853 F.3d 553, 557 (1st Cir. 2017) (Souter, J., by designation); *see also id.* at 558 (the various TVPRA provisions do not require a showing of success in “establishing a going business in supplying third parties” to state a civil claim because, *inter alia*, §1594 prohibits attempts to violate §1589).<sup>3</sup> The panel’s decision further conflicts with the decision of the district courts to consider this issue. *See Lagasan v. Al-Ghasel*, 92 F.Supp.3d 445, 455 (E.D. Va. 2015) (same analysis for conspiracy liability, which relies on the same code provisions).

The panel opinion reads §1589(b) out of §1594, violating the “cardinal principle of interpretation that courts must give effect, if possible, to every clause and word of a statute.” *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S.Ct.

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<sup>3</sup> Separately, by its express terms, the beneficiary clause does not require that Rubicon realized a *financial* benefit by completing the sale. *Ricchio*, 853 F.3d at 556 (“receiv[ed] something] of value”). Rubicon received shrimp from Phatthana’s Songkhla facility and the shrimp had value.

1881, 1890 (2019) (internal citation omitted); *Inhabitants of Montclair Twp. v. Ramsdell*, 107 U.S. 147, 152 (1883).

The panel holding has grave consequences. The United States government has stepped up enforcement at our nation's borders and is investing increased resources in stopping goods made with forced labor from reaching consumers in the United States. *See* <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>. The panel's decision means that victims of forced labor cannot obtain a remedy under the TVPRA beneficiary clause if law enforcement has effectively identified and impounded the goods made with their forced labor. This paradoxical result is not what Congress intended and merits en banc review.

**B. The Panel Opinion Affirmed Dismissal on a Basis Neither Raised Below nor on Appeal that Establishes a Test for Personal Jurisdiction in Direct Conflict with Decisions of the Supreme Court, This Court, and Other Courts of Appeal**

The panel correctly assumed that 18 U.S.C. §1596(a)(2) allows civil claims for extraterritorial human-trafficking offenses against any defendant subject to personal jurisdiction in the United States. *Op.* at 19. It nevertheless ruled that Defendant Phatthana is entitled to summary judgment because it sua sponte concluded Phatthana lacked sufficient minimum contacts with the United States to satisfy the test for specific jurisdiction, although Phatthana itself had conceded it

was subject to personal jurisdiction at the outset of the litigation.<sup>4</sup> This was improper. As this court has repeatedly held, the court may affirm on alternative grounds only if those grounds were “presented to the district court.” *Facebook, Inc. v. Power Ventures, Inc.*, 844 F.3d 1058, 1064 (9th Cir. 2016); *see also Washington v. Confed. Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 476 n. 20 (1979); *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1226 (9th Cir. 2009). But even if the issue were properly before it, the panel erred.

1. The panel relied on an erroneously narrow view of specific jurisdiction that conflicts with decisions of the U.S. Supreme Court, other panels of this court, and other courts of appeals

Courts may exercise specific jurisdiction over a defendant not physically present when (1) the defendant “purposefully avails himself of the privilege of conducting activities in the forum” or “purposefully direct[s] his activities towards the forum”; (2) the claim “arises out of or relates to the defendant’s forum-related activities”; and (3) the exercise of jurisdiction is reasonable. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). The defendant’s contacts with the forum must meet *either* the so-called purposeful availment test or the purposeful direction test, including in intentional tort cases. *See, e.g., Walden v.*

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<sup>4</sup> Dkt. 40. Below and on appeal, Phatthana argued that §1596(a)(2) requires physical presence. Dkt. 183 at 2-3; RB16-25. Phatthana did not dispute that it was subject to §1596(a)(2) under Plaintiffs’ interpretation of the statute. Dkt. 147; RB16-33.

*Fiore*, 571 U.S. 277, 291 (2014); *Louis Vuitton Malletier*, 736 F.3d at 1356-57; *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc) (first prong may be satisfied by either test “or by some combination thereof”).

Here, the panel applied only the purposeful direction test, which requires the defendant cause harm that the defendant knows is likely to be suffered in the forum state. Op. at 21. And because the Plaintiffs were harmed abroad, the panel concluded that Plaintiffs could not show purposeful direction. The panel did not examine whether Plaintiffs could alternatively meet the purposeful availment test (as Plaintiffs would have argued, given the opportunity). This was error.

The rule the panel adopted—that personal jurisdiction in an intentional tort case requires the plaintiff be injured in the forum—effectively flips the personal jurisdiction analysis on its head by focusing on the *plaintiff’s* instead of the *defendant’s* contact with the forum. The Supreme Court has repeatedly instructed courts that the plaintiffs’ contacts with the forum must not drive the personal jurisdiction analysis—even in intentional tort cases. *See, e.g., Walden*, 571 U.S. at 291 (“proper focus of the ‘minimum contacts’ inquiry in intentional-tort cases is ‘the relationship among the defendant, the forum, and the litigation.’ And it is the defendant, not the plaintiff or third parties, who must create contacts with the

forum State.” (citation omitted) (quoting *Calder*, 465 U.S. at 788));  
*Schwarzenegger*, 374 F.3d at 807.

*Keeton* demonstrates the panel’s error. *See* 465 U.S. at 779. The lower courts had held New Hampshire could not exercise personal jurisdiction because the *plaintiff* had insufficient contacts with the state. *Id.* at 779. The Supreme Court explained that it had “not to date required a plaintiff to have ‘minimum contacts’ with the forum State before permitting that State to assert personal jurisdiction over a nonresident defendant,” and it reversed based on the defendant’s adequate suit-related contacts. *Id.* at 779-80.

The purposeful direction test finds its origins in *Calder*, which was decided the same day as *Keeton*. *Calder* carved out a narrow set of circumstances in which the defendant’s contacts with the plaintiff can give rise to specific jurisdiction in the plaintiffs’ home state. *See* 465 U.S. at 788. In doing so, the Court cited *Keeton* to clarify that “the plaintiff’s lack of ‘contacts’ will not defeat otherwise proper jurisdiction, but they may be so manifold as to permit jurisdiction when it would not exist in their absence.” *Id.* *Calder* does not purport to establish the exclusive test for intentional tort cases.

Although this court “most often” applies the *Calder* purposeful direction test in intentional tort cases, *Schwarzenegger*, 374 F.3d at 802, consistent with *Keeton* and *Calder*, it has also recognized the traditional purposeful availment test remains

available, including in intentional tort cases. *See Ballard*, 65 F.3d at 1498 (applying purposeful availment test in tort case); *Sinatra*, 854 F.2d at 1196 (distinguishing *Calder* and instead applying purposeful availment test in tort case). Indeed, the court has warned against “rigidly applying the *Calder* effects test” in circumstances where it is not well suited. *Freestream Aircraft (Berm.) Ltd. v. Aero Law Grp.*, 905 F.3d 597, 605 (9th Cir. 2018); *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 (1985).

The panel decision additionally creates a circuit split. In *Louis Vuitton*, the Eleventh Circuit held that *Calder* “provides an additional means, unavailable in contract cases, of determining the appropriateness of personal jurisdiction” but “does not supplant the traditional minimum contacts test for purposeful availment applicable in contract and tort cases alike.” 736 F.3d at 1357. Other circuits likewise apply the purposeful availment analysis to intentional tort cases. *E.g.*, *Atchley v. AstraZeneca UK Ltd.*, 22 F.4th 204, 234-35 (D.C. Cir. 2022) (finding specific jurisdiction for torts causing injuries in Iraq).<sup>5</sup>

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<sup>5</sup> To Plaintiffs’ knowledge, only one prior decision from this court suggested the *Calder* purposeful direction test was an exclusive one. *See Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1149 (9th Cir. 2017). *Morrill*, like the panel decision, conflicts with *Keeton*, *Calder*, *Ballard*, and *Sinatra*. Its reasoning rests on a citation to *Ziegler v. Indian River County*, 64 F.3d 470, 473 (9th Cir. 1995), but in *Ziegler* the defendant did not argue that it had purposefully availed itself of California law. Moreover, *Morrill*, unlike the panel here, ruled that the plaintiff could not satisfy the purposeful availment test.

2. The purposeful availment test is easily satisfied here

In the event the court grants Plaintiffs' petition, Plaintiffs request the opportunity to brief the issue of personal jurisdiction, which was not contested below, or, alternatively, to remand to the district court. Regardless, there can be little doubt that Phatthana is subject to specific jurisdiction in the United States under the proper test.<sup>6</sup> Phatthana did not challenge personal jurisdiction in California and, indeed, the evidence shows it systemically did business in the United States by selling shrimp to Rubicon (a U.S. company) and to Walmart and other U.S. retailers, including shrimp from the Songkhla factory during the relevant period. *E.g.*, ER1216-21; ER1319-1320; ER1397-1408; ER1551; ER1870. This sort of targeting of a forum's market is textbook purposeful availment. *See, e.g., Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1230 (9th Cir. 2011); *Sinatra*, 854 F.2d at 1197. Even to the extent Phatthana merely attempted to do business in the United States, this is enough. *See Roth v. Garcia Marquez*, 942 F.2d 617, 622 (9th Cir. 1991). Failed business deals often beget litigation; it would make little sense for personal jurisdiction to depend on whether the defendant realized the profit it hoped to make.

Plaintiffs' claims, including their claims under §1593A and §1589(b),

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<sup>6</sup> Because §1596(a)(2) requires presence "in the United States," the analysis must focus on Phatthana's nationwide contacts.

directly relate to these contacts. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021); *Burger King Corp.*, 471 U.S. at 472. It is enough that part of the benefit Phatthana received and attempted to receive from Plaintiffs' forced labor came from its sales to U.S. customers. Moreover, Phatthana's U.S. connections and the underlying abuses were all in pursuit of the same goal: to earn a profit from the U.S. market. *See, e.g., Atchley*, 22 F.4th at 234-35; *Sinatra*, 854 F.2d at 1197.

3. The panel properly assumed §1596(a)(2) grants jurisdiction concurrent with the extent of personal jurisdiction

“Present In” jurisdiction is used by the United States Congress for a wide range of statutes that codify particularly serious crimes and in particular for meeting the treaty obligations of the United States: bombing public places outside the United States (18 U.S.C. §2332f(b)(2)(C)); financing terrorism outside the United States (18 U.S.C. §2339C(b)(2)(B)); use of child soldiers (18 U.S.C. §2442(c)(3)); *see also* CJA amicus 5; Reply 23.

Federal courts have long held that due process requires a party be “present in” the forum jurisdiction and they have not meant this to mean just “physical presence.” *See, e.g., Barrow S.S. Co. v. Kane*, 170 U.S. 100, 112–13, (1898); *Hutchinson v. Chase & Gilbert*, 45 F.2d 139, 141 (2d Cir. 1930) (Hand, J.) (“When we say, therefore, that a corporation may be sued only where it is ‘present,’ we understand that the word is used, not literally, but as shorthand for something

else.”); *Golden, Belknap & Swartz v. Connersville Wheel Co.*, 252 F. 904, 908 (E.D. Mich. 1918) (“presence of a foreign corporation is manifested only by its carrying on of business there”). Congress is presumed to legislate against this backdrop when it chose the term “present in” to establish the express extraterritorial reach of these statutes. *See, e.g., Cmty. for Creative Nonviolence v. Reid*, 490 U.S. 730, 739 (1989); *Shirk v. U.S. ex. rel. Dep’t of Interior*, 773 F.3d 999, 1004-05 (9th Cir. 2014).

Under Defendants’ reading of the term, “present in” is more limited than even general jurisdiction: a corporation could be sued only where it has a brick-and-mortar presence, but not where it has continuous and systematic contacts that render it at home in the jurisdiction. Under Plaintiffs’ reading, the term means, at least, where a corporate defendant is subject to personal jurisdiction, including specific jurisdiction.<sup>7</sup> Because “present in” jurisdiction is the basis for jurisdiction in dozens of statutes codifying international law crimes, this is a question of exceptional importance.

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<sup>7</sup> In *U.S. v. Yunis*, 924 F.2d 1086 (D.C. Cir. 1991), the defendant had no purposeful contacts with the United States, including at the time of the relevant conduct, which the panel correctly held was the appropriate time for evaluating jurisdictional contacts; personal jurisdiction was based solely on his involuntary presence after his arrest. *Id.* at 1091. Plaintiffs’ reading of ‘present in’ is a far less drastic application of personal jurisdiction than *Yunis*.

#### IV. CONCLUSION

For the above reasons, Plaintiffs respectfully request rehearing en banc.

Dated: April 11, 2022

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**Form 11. Certificate of Compliance for Petitions for Rehearing/Responses**

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P. 32(a)(4)-(6) and **contains the following number of words:** .

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**OR**

In compliance with Fed. R. App. P. 32(a)(4)-(6) and does not exceed 15 pages.

**Signature**

**Date**

*(use "s/[typed name]" to sign electronically-filed documents)*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 11, 2022, I filed the foregoing document **PLAINTIFF-APPELLANTS' PETITION FOR REHEARING EN BANC** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the 9th Circuit electronic filing system ECF.

I hereby certify that all parties are registered and will be served electronically via the Ninth Circuit electronic filing system ECF.

Dated: April 11, 2022

By: *s/ Agnieszka M. Fryszman*  
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# **EXHIBIT 1**

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

KEO RATHA; SEM KOSAL; SOPHEA  
BUN; YEM BAN; NOL NAKRY; PHAN  
SOPHEA; SOK SANG,  
*Plaintiffs-Appellants,*

v.

PHATTHANA SEAFOOD CO., LTD.;  
S.S. FROZEN FOOD CO., LTD.;  
RUBICON RESOURCES, LLC; WALES  
AND CO. UNIVERSE LTD.,  
*Defendants-Appellees.*

No. 18-55041

D.C. No.  
2:16-cv-04271-  
JFW-AS

OPINION

Appeal from the United States District Court  
for the Central District of California  
John F. Walter, District Judge, Presiding

Argued and Submitted September 13, 2019  
Pasadena, California

Filed February 25, 2022

Before: Marsha S. Berzon, Ryan D. Nelson, and  
Bridget S. Bade, Circuit Judges.

Opinion by Judge Bade

**SUMMARY\***

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**Trafficking Victims Protection Reauthorization Act**

The panel affirmed the district court’s grant of summary judgment in favor of defendants in an action brought under the civil remedy provision of the Trafficking Victims Protection Reauthorization Act, 18 U.S.C. § 1595, by Cambodian villagers who alleged that they were trafficked into Thailand and subjected to forced labor at seafood processing factories.

Assuming without deciding that § 1595 may apply extraterritorially, the panel held that plaintiffs did not present a triable issue on the requirements for such application or on the merits of their claims.

18 U.S.C. § 1596 authorizes extraterritorial application of the TVPRA for specific criminal trafficking offenses. The panel assumed without deciding that § 1595 permits a private cause of action for extraterritorial violations of the substantive provisions listed in § 1596 so long as § 1596’s other requirements are satisfied.

As to two foreign company defendants, the panel held that plaintiffs’ claims against Phatthana Seafood Co. Ltd. failed because Phatthana was not “present in the United States” at any time relevant to this lawsuit as § 1596 requires. Because the success of plaintiffs’ claims against S.S. Frozen Food Co. Ltd. depended on the success of their claims against Phatthana, their claims against S.S. Frozen also

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\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

failed. The panel held that even assuming § 1596 requires foreign companies to possess nothing more than minimum contacts with the United States, plaintiffs did not establish that Phatthana or S.S. Frozen had sufficient contacts with the United States to meet that standard. The panel held that the record did not support either specific or general jurisdiction as a basis for finding minimum contacts. The panel rejected plaintiffs' argument that Phatthana and S.S. Frozen were present in the United States through an agency relationship or joint venture with defendant Rubicon Resources LLC, a Delaware limited liability company with its principal place of business in California.

As to defendants Rubicon and Wales and Co. Universe Ltd., a Thai company registered to conduct business in California, the panel held that plaintiffs failed to produce evidence establishing a triable issue of defendants' liability under § 1595 on a theory that they knowingly benefitted from Phatthana's alleged human trafficking and forced labor abuses, financially and by accessing a steady stream of imported seafood. The panel held that no reasonable jury could infer from the evidence that Rubicon benefitted, financially or otherwise, from Phatthana's alleged TVPRA violations. The panel held that plaintiffs did not raise a triable issue on whether Wales knew or should have known that Phatthana was engaged in alleged violations of the TVPRA when it received a benefit from the alleged venture.

The panel further held that the district court did not abuse its discretion by denying plaintiffs' motion for an extension of time to respond to defendants' motions for summary judgment.

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Human Trafficking Clinic at the University of Arkansas School of Law, Civil Litigation and Advocacy Clinic at the University of Arkansas School of Law, Professor Janie Chuang, and Professor David Abramowitz.

Robert A. DeHaan, McLean, Virginia, for Amicus Curiae National Fisheries Institute.

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### OPINION

BADE, Circuit Judge:

Plaintiffs-Appellants are Cambodian villagers who allege that they were trafficked into Thailand and subjected to forced labor at seafood processing factories. Plaintiffs allege that Thai companies perpetrated these offenses, and that companies present in the United States knowingly benefitted from their forced labor. Plaintiffs brought their claims under 18 U.S.C. § 1595,<sup>1</sup> the civil remedy provision of the Trafficking Victims Protection Act (“TVPA”), as reauthorized and amended in the Trafficking Victims Protection Reauthorization Act of 2003 and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.<sup>2</sup>

We are asked to determine the extraterritorial reach of § 1595 and to construe the terms of that provision. We assume without deciding that § 1595 may apply

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<sup>1</sup> Plaintiffs also brought claims under the Alien Tort Statute. The district court dismissed those claims at the pleading stage, and they are not at issue in this appeal.

<sup>2</sup> We refer to the Trafficking Victims Protection Act, as reauthorized and amended, as the TVPRA.

extraterritorially and conclude that Plaintiffs did not present a triable issue on the requirements for such application or on the merits of their claims. Therefore, the district court properly entered summary judgment against Plaintiffs. We also conclude that the district court did not abuse its discretion in denying Plaintiffs’ motion for an extension of time to respond to Defendants’ motions for summary judgment. We affirm.

## I

### A

In 2000, Congress enacted the TVPA “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.’” *Ditullio v. Boehm*, 662 F.3d 1091, 1094 (9th Cir. 2011) (quoting Pub. L. No. 106-386, § 102, 114 Stat. 1464 (2000) (codified as amended at 18 U.S.C. §§ 1589–1592)). By enacting this statute, “Congress created several new federal criminal offenses intended to more comprehensively and effectively combat human trafficking.” *Roe v. Howard*, 917 F.3d 229, 236 (4th Cir. 2019).

In 2003, Congress reauthorized and amended the TVPRA, adding a civil remedy provision codified at 18 U.S.C. § 1595. *See Ditullio*, 662 F.3d at 1094. Initially, that provision provided civil remedies only for violations of § 1589 (forced labor), § 1590 (trafficking), and § 1591 (sex trafficking of children). *See Trafficking Victims Protection Reauthorization Act of 2003*, Pub. L. No. 108-193, § 4(a)(4)(A), 117 Stat. 2875 (2003). But in 2008, Congress again reauthorized the TVPRA and amended it to expand the civil remedies provision, which now provides:

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An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

18 U.S.C. § 1595(a) (providing a civil remedy for the offenses listed in Title 18, Chapter 77, “Peonage, Slavery, and Trafficking in Persons”); *see Ditullio*, 662 F.3d at 1094 n.1.

The 2008 amendments also added § 1596, which authorizes extraterritorial application for specific sections of the TVPRA. *See* 18 U.S.C. § 1596(a); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 223(a), 122 Stat. 5044 (2008). This provision, entitled “Additional jurisdiction in certain trafficking offenses,” provides:

(a) In general.—In addition to any domestic or extra-territorial jurisdiction otherwise provided by law, the courts of the United States have extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit an offense) under section 1581, 1583, 1584, 1589, 1590, or 1591 if—

(1) an alleged offender is a national of the United States or an alien lawfully admitted

for permanent residence (as those terms are defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)); or

(2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender.

18 U.S.C. § 1596(a). As a result of the 2008 amendments, the TVPRA now extends extraterritorial application to violations of § 1581 (peonage), § 1583 (enticement into slavery), § 1584 (sale into involuntary servitude), § 1589 (forced labor), § 1590 (trafficking), and § 1591 (sex trafficking of children), but only if the alleged offender is a United States citizen, a lawful permanent resident, or is present in the United States. *See id.*

## B

In their complaint, Plaintiffs alleged that they were the victims of peonage, forced labor, involuntary servitude, and human trafficking, in violation of 18 U.S.C. §§ 1581, 1584, 1589, 1590, 1592, and 1593A, and they sought damages under § 1595, the civil remedy provision of the TVPRA. Plaintiffs further alleged that Defendants-Appellees Phatthana Seafood Co., Ltd. (“Phatthana”) and S.S. Frozen Food Co., Ltd. (“S.S. Frozen”) perpetrated these offenses, and that Defendants-Appellees Rubicon Resources, LLC (“Rubicon”) and Wales & Co. Universe Ltd. (“Wales”) knowingly benefitted from Phatthana’s and S.S. Frozen’s unlawful conduct.

Specifically, Plaintiffs say that they were recruited from their villages to work in factories in Thailand producing shrimp and seafood for export to the United States. Plaintiffs were promised well-paying jobs with free accommodations,

but once in Thailand, they became victims of peonage, forced labor, and involuntary servitude. Plaintiffs were paid less than promised, charged for accommodations, charged for other unexpected expenses, unable to leave without their passports, which they were told would not be returned until “recruitment fee[s]” and other amounts were paid, and subjected to harsh conditions. Plaintiffs asserted that these abuses occurred from sometime in 2010 until October 2012. Phatthana’s seafood processing factory in Songkhla province, where six of the seven Plaintiffs worked, began operations in August 2010. The seventh Plaintiff, Keo Ratha, worked at an S.S. Frozen seafood processing factory from October 2011 to January 2012.

Phatthana and S.S. Frozen are foreign companies. Phatthana is a Thai company that owned two seafood processing factories in Thailand, including the factory in Songkhla province.<sup>3</sup> Phatthana does not have an address, employees, factories, or other property in the United States. Phatthana had business relationships with Rubicon and Wales, which we describe in more detail below.

S.S. Frozen is also a Thai company and it owned a seafood processing factory in Songkhla province, next to Phatthana’s Songkhla factory. S.S. Frozen does not have an address or employees in the United States, and it did not sell any seafood in the United States during the period at issue—August 2010 to October 2012. Unlike Phatthana, S.S. Frozen did not have any business relationships with Rubicon or Wales.

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<sup>3</sup> Phatthana’s seafood processing factory in Songkhla province closed in 2013.

Rubicon is a Delaware limited liability company with its principal place of business in California. Rubicon sought to import shrimp from Phatthana's Songkhla seafood processing factory into the United States. Rubicon coordinated sales and marketing, visited and conducted pre-audits of Phatthana's factories, and arranged for import and shipping of Phatthana's product. But Rubicon did not own any factories, and it did not recruit employees for Phatthana.

In October 2011, Rubicon ordered fourteen containers of shrimp from Phatthana's Songkhla factory for distribution to Walmart. Walmart rejected the shipment because it had concerns about working conditions in the factory. Rubicon returned the shrimp to Thailand. It did not successfully sell any shrimp from Phatthana's Songkhla factory in the United States during the period at issue in this case.

Wales is a Thai company registered to conduct business in California. Wales performs quality control, sales, and marketing for seafood processing factories. During the period at issue, Wales inspected the packaging of the fourteen containers of shrimp that Rubicon ordered from (and ultimately returned to) Phatthana before the shipment left Thailand, and it received a commission for these services.

### C

At the outset of this case, the district court denied Defendants' motion to dismiss Plaintiffs' TVPRA claims, under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, because it concluded that § 1596 extends the extraterritorial application of the TVPRA to civil actions brought under § 1595, and that Plaintiffs' complaint sufficiently alleged a claim under that provision. But at the close of discovery, the district court granted Phatthana's and

S.S. Frozen’s motions for summary judgment because it found that Plaintiffs had not established that these foreign companies were “present in” the United States, as required by 18 U.S.C. § 1596(a)(2). The district court therefore concluded that it lacked subject matter jurisdiction over the claims against Phatthana and S.S. Frozen.<sup>4</sup>

The district court also granted Rubicon’s and Wales’s motions for summary judgment because it concluded that Plaintiffs failed to present a triable issue that these companies knowingly benefitted from participating in a venture that they knew or should have known had engaged in TVPRA violations. *See* 18 U.S.C. § 1595(a). Plaintiffs appeal the district court’s grant of summary judgment in Defendants’ favor and the district court’s denial of their motion for an extension of time to respond to Defendants’ summary judgment motions.

## II

We review de novo a district court’s grant of summary judgment. *Nigro v. Sears, Roebuck & Co.*, 784 F.3d 495, 497 (9th Cir. 2015). We may affirm on any ground supported by the record. *Oyama v. Univ. of Haw.*, 813 F.3d 850, 860 (9th Cir. 2015). We review a district court’s denial of a motion for extension of time for abuse of discretion. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258 (9th Cir. 2010).

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<sup>4</sup> The district court also entered summary judgment against Plaintiffs Yem Ban, Nol Nakry, and Sok Sang because it concluded that they failed to present evidence to support their TVPRA claims against Phatthana. Because we resolve the claims against Phatthana and S.S. Frozen on other grounds, we do not address Plaintiffs’ arguments that the district court erred in entering summary judgment on the merits of their claims.

### III

We consider separately Plaintiffs’ claims against the foreign companies, Phatthana and S.S. Frozen, and their claims against the companies present in the United States, Rubicon and Wales.

Plaintiffs, who are Cambodian villagers, allege that Phatthana and S.S. Frozen, both Thai companies, trafficked them into Thailand and then subjected them to peonage, forced labor, and involuntary servitude at their seafood processing factories. Thus, this case involves allegations by foreign Plaintiffs, against foreign Defendants, based on conduct occurring and injuries suffered in a foreign country. We must first consider the extraterritorial reach of § 1595. *See RJR Nabisco, Inc. v. European Cmty.*, 579 U.S. 325, 329 (2016) (explaining that a statute applies extraterritorially, when it applies “to events occurring and injuries suffered outside the United States”).

#### A

“Congress has the authority to enforce its laws beyond the territorial boundaries of the United States.” *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991), *superseded in part by statute*, Civil Rights Act of 1991, Pub. L. 10-166, 105 Stat. 1074, *as recognized in Landgraf v. USI Film Prods.*, 511 U.S. 244, 251 (1994). But “[i]t is a longstanding principle of American law ‘that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.’” *Id.* (quoting *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 285 (1949)). When asked to decide whether a statute applies extraterritorially, we ordinarily apply a two-step framework. *RJR Nabisco*, 579 U.S. at 329, 337. At step one, we “presume that a statute applies only domestically” and “ask

‘whether the statute gives a clear, affirmative indication’ that rebuts this presumption.” *Nestlé USA, Inc. v. Doe*, 141 S. Ct. 1931, 1936 (2021) (quoting *RJR Nabisco*, 579 U.S. at 337). If the statute is not extraterritorial, then we go on to the second step and ask whether the case involves a permissible domestic application of the law. *Id.*

Viewed in isolation, § 1595 is silent as to its extraterritorial application. *See* 18 U.S.C. § 1595. Plaintiffs argue that § 1595 applies extraterritorially because it incorporates the TVPRA’s substantive provisions made extraterritorial by § 1596. Under that argument, § 1595’s extraterritoriality depends on § 1596’s elements being satisfied. In response, Defendants argue that § 1595 “does not state that it applies extraterritorially,” and “it is appropriate *not* to read extraterritoriality into it.” Defendants further argue that § 1596 “does not state it applies to civil actions” and by its terms only applies to criminal prosecutions.

We need not resolve this dispute to decide this case. Instead, we assume without deciding that Plaintiffs are correct and that § 1595 permits a private cause of action for extraterritorial violations of the substantive provisions listed in § 1596 so long as § 1596’s other requirements are satisfied.<sup>5</sup> We take this approach for two reasons.

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<sup>5</sup> Because we assume Plaintiffs are correct that § 1596 contains “a clear, affirmative indication” that the TVPRA’s civil remedy provision applies to foreign conduct, the first step of the two-step test to determine whether a federal statute applies extraterritorially is satisfied. *See Nestlé USA*, 141 S. Ct. at 1936. “[A] finding of extraterritoriality at step one will obviate step two’s ‘focus’ inquiry.” *RJR Nabisco*, 579 U.S. at 338 n.5; *see also id.* at 337–38 (explaining that it is only necessary to consider a statute’s “focus” if the statute does not apply extraterritorially).

First, the extraterritorial reach of § 1595 does not affect this court’s subject matter jurisdiction. Although the parties argue that the viability of Plaintiffs’ claims raises a jurisdictional question, and the district court framed the issue in similar terms, the Supreme Court has explained that whether a statute applies abroad concerns “what conduct” the statute prohibits, “which is a merits question.” *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247, 253–54 (2010). Subject matter jurisdiction, which “refers to a tribunal’s power to hear a case,” “presents an issue quite separate from the question whether the allegations the plaintiff makes entitle him to relief.” *Id.* at 254 (internal quotation marks omitted). Thus, our assumption that § 1595 may reach extraterritorial conduct does not overstep this court’s “adjudicatory domain.” *See Union Pac. R.R. Co. v. Bhd. of Locomotive Eng’rs*, 558 U.S. 67, 81 (2009).

Second, we adhere to the “cardinal principle of judicial restraint,” which instructs that “if it is not necessary to decide more, it is necessary not to decide more.” *Midbrook Flowerbulbs Holland B.V. v. Holland Am. Bulb Farms, Inc.*, 874 F.3d 604, 617 n.13 (9th Cir. 2017) (quoting *PDK Lab ’ys Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment)). In addition to any extraterritorial application otherwise provided by law, § 1596 supplies extraterritorial application to §§ 1581, 1583, 1584, 1589, 1590, and 1591, but only if the alleged offender is a United States citizen, a lawful permanent resident, or is present in the United States. 18 U.S.C. § 1596(a). As explained below, we hold that those

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Therefore, we do not reach the second step of the extraterritoriality framework and consider whether the case involves a permissible domestic application of § 1595.

requirements are not met with respect to Phatthana and S.S. Frozen.<sup>6</sup>

We therefore decline to decide whether § 1595 applies to foreign conduct because whether it does or not, we are left with the same result: we must affirm the district court’s judgment in favor of Phatthana and S.S. Frozen. We will assume in this case that § 1595 applies extraterritorially and leave for another day the question of whether that assumption is correct. *Cf. Whitehouse v. Ill. Cent. R.R. Co.*, 349 U.S. 366, 372–73 (1955) (“These are perplexing questions. Their difficulty admonishes us to observe the wise limitations on our function and to confine ourselves to deciding only what is necessary to the disposition of the immediate case.”).

B

We turn now to Plaintiffs’ claims that Phatthana and S.S. Frozen trafficked them into Thailand and subjected them to peonage, forced labor, and involuntary servitude at their seafood processing factories. The question here is whether Plaintiffs’ claims satisfy § 1596’s requirements for extraterritorial application. We hold that Plaintiffs’ claims against Phatthana fail because Phatthana was not “present in the United States” at any time relevant to this lawsuit as § 1596 requires. Because the success of Plaintiffs’ claims against S.S. Frozen depends on the success of their claims

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<sup>6</sup> Defendants do not dispute that Rubicon and Wales were “present in” the United States for purposes of the TVPRA but instead, as we discuss later, argue that Plaintiffs failed to raise triable issues on the merits of their § 1595 claims against these Defendants.

against Phatthana, Plaintiffs' claims against S.S. Frozen also fail.<sup>7</sup>

The TVPRA, in § 1596, provides for extraterritorial jurisdiction over §§ 1581, 1583, 1584, 1589, 1590, and 1591, when “an alleged offender is *present in* the United States, irrespective of the nationality of the alleged offender.” 18 U.S.C. § 1596(a)(2) (emphasis added). What it means for “an alleged offender” to be “present in the United States” is a question of statutory construction. Therefore, we “begin by analyzing the statutory language, ‘assum[ing] that the ordinary meaning of that language accurately expresses the legislative purpose.’” *Hardt v. Reliance Standard Life Ins.*, 560 U.S. 242, 251 (2010) (alteration in original) (quoting *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009)).

The plain meaning of the adjective “present” is “in a particular place.” New Oxford American Dictionary 1381 (3d ed. 2010). Phatthana and S.S. Frozen are both Thai companies. Neither had any address, employees, or physical presence in the United States during the period at issue in this case. Nonetheless, Plaintiffs argue that Phatthana and S.S. Frozen were “present in” the United States for purposes of § 1596 on three separate grounds. We find none of these arguments persuasive.

1

Plaintiffs first maintain that we should construe the phrase “present in,” as used in § 1596, to not require physical

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<sup>7</sup> Plaintiffs argue that S.S. Frozen was “present in” the United States because S.S. Frozen and Phatthana were “alter egos” engaged in an “integrated enterprise.” Plaintiffs' claims against S.S. Frozen are therefore dependent on their claims against Phatthana.

presence. Plaintiffs argue that this term is broad and “is understood to mean universal jurisdiction.”<sup>8</sup> They assert that, even though “universal jurisdiction does not require physical presence,” the Due Process Clause “imposes some limits on the ability of the United States to exercise universal jurisdiction.” Thus, Plaintiffs say, a foreign corporate defendant is “present in” the United States so long as it has the “minimum contacts” necessary to allow personal jurisdiction under the Due Process Clause.<sup>9</sup> See *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

To support their position, Plaintiffs rely primarily on *United States v. Yunis*, 924 F.2d 1086 (D.C. Cir. 1991), but that case hurts more than helps their argument. As relevant here, the defendant in *Yunis* challenged his conviction under the Hostage Taking Act, 18 U.S.C. § 1203, and argued that

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<sup>8</sup> “Universal jurisdiction” applies to “certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism.” Restatement (Third) of the Foreign Relations Law of the United States § 404 (1987).

<sup>9</sup> We do not decide whether Plaintiffs’ argument rests on a sound premise. “The Due Process Clause requires that a defendant prosecuted in the United States ‘should reasonably anticipate being haled into court in this country.’” *United States v. Shi*, 525 F.3d 709, 722 (9th Cir. 2008) (quoting *United States v. Moreno-Morillo*, 334 F.3d 819, 827 (9th Cir. 2003)). In contrast, “[u]niversal jurisdiction is based on the premise that offenses against all states may be punished by any state where the offender *is found*.” *Id.* (emphasis added). Thus, “[d]ue process does not require a nexus between such an offender and the United States because the universal condemnation of the offender’s conduct puts him on notice that his acts will be prosecuted by any state *where he is found*.” *Id.* at 723 (emphasis added). Plaintiffs present no authority to support their argument that the *International Shoe* definition of presence—i.e., minimum contacts—should be grafted into “universal jurisdiction,” and then applied here to define “present in” for purposes of § 1596.

the statute did not authorize jurisdiction over him because he was not “found in” the United States. *Id.* at 1090; *see also* 18 U.S.C. § 1203(b)(1) (limiting extraterritorial application of the Hostage Taking Act to three scenarios, one of which being when “the offender is found in the United States”). The D.C. Circuit rejected the defendant’s argument because the Hostage Taking Act provided an independent basis for jurisdiction. *Id.*

*Yunis* discussed the “universal principle” theory of international law, which authorizes states to prosecute certain offenses that “the community of nations” recognizes are of “universal concern,” including the slave trade, “even absent any special connection between the state and the offense.” *Id.* at 1091 (citing Restatement (Third) of the Foreign Relations Law of the United States §§ 404, 423 (1987)). But *Yunis* considered the “universal principle” in a context that differs from the one presently before this court. *See id.* at 1090 (explaining the Hostage Taking Act covered an offender’s conduct when “the offender is *found in* the United States” (emphasis added) (quoting 18 U.S.C. § 1203)). The defendant in *Yunis* did not contend that the statute’s use of the term “found in” indicated that physical presence in the United States was not required; he instead argued that he was not “found in” the United States because he was brought here “by force.” *Id.*

Contrary to Plaintiffs’ suggestion that *Yunis* supports an interpretation of the term “present in” that does not require physical presence, the court later analyzed a different statute requiring an offender to be “present in” a specific territory, and it concluded that the term “present in” has a parallel meaning to the term “found in.” *Id.* at 1091–92. Thus, the court held, the defendant was “present in” the United States “once in the United States” physically. *Id.* at 1092. If

anything, then, *Yunis* supports the conclusion that § 1596’s use of the term “present in” requires physical presence, not merely the types of minimum contacts that satisfy due process.

Even assuming § 1596(a)(2) requires foreign companies to possess nothing more than minimum contacts with the United States, Plaintiffs have not established that Phatthana or S.S. Frozen have sufficient contacts with the United States to satisfy that standard.<sup>10</sup> “For a court to exercise personal jurisdiction over a nonresident defendant” in a manner consistent with the Due Process Clause, “that defendant must have at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (quoting *Int’l Shoe Co.*, 326 U.S. at 316). In the Ninth Circuit, we measure the extent of a defendant’s contacts with a forum “at the time of the events underlying the dispute.” *Steel v. United States*, 813 F.2d 1545, 1549 (9th Cir. 1987); accord *Farmers Ins. Exch. v. Portage La Prairie Mut. Ins.*, 907 F.2d 911, 913 (9th Cir. 1990). “The strength of [the] contacts required depends on which of the two categories of personal jurisdiction a litigant invokes: specific jurisdiction or general jurisdiction.” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015).

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<sup>10</sup> To be clear, we engage in this analysis not to determine whether we have personal jurisdiction over Phatthana and S.S. Frozen, but because Plaintiffs argue that “present in,” as used in § 1596, “is limited to a corporation’s place of incorporation, principal place of business, or where it is subject to specific jurisdiction.”

“Specific jurisdiction exists when a case ‘aris[es] out of or relate[s] to the defendant’s contacts with the forum.’” *Id.* (alterations in original) (quoting *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)). It therefore “depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum [ ] and is therefore subject to the [forum’s] regulation.” *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

General jurisdiction is not limited to claims arising out of or relating to the forum but rather “permits a court to hear ‘any and all claims’ against a defendant, whether or not the conduct at issue has any connection to the forum.” *Id.* (quoting *Goodyear*, 564 U.S. at 919). Because the scope of general jurisdiction, once established, is broader than the scope for specific jurisdiction, “a plaintiff invoking general jurisdiction must meet an ‘exacting standard’ for the minimum contacts required.” *Id.* at 1069 (quoting *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1074 (9th Cir. 2011)). Courts may exercise general jurisdiction over a defendant only if the defendant’s connections to the forum state “are so ‘continuous and systematic’ as to render [it] essentially at home” in the forum. *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017) (alteration in original) (quoting *Goodyear*, 564 U.S. at 919). The paradigmatic examples of such connections are when the defendant is incorporated or has its principal place of business in the forum. *Id.*

The evidence in the record here does not support either specific or general jurisdiction as a basis for finding minimum contacts. To establish specific jurisdiction, three requirements must be satisfied. *Axiom Foods, Inc. v.*

*Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017). First, “the defendant must either ‘purposefully direct his activities’ toward the forum or ‘purposefully avail[ ] himself of the privileges of conducting activities in the forum.’” *Id.* (quoting *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)). Second, “the claim must be one which arises out of or relates to the defendant’s forum-related activities.” *Id.* (quoting *Dole Food*, 303 F.3d at 1111). And third, “the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.” *Id.* (quoting *Dole Food*, 303 F.3d at 1111). We will consider only the first element of specific jurisdiction because it presents the dispositive issue.

Because the TVPRA’s “civil remedy provision creates a cause of action that sounds in tort,” *Ditullio*, 662 F.3d at 1096, “we employ the purposeful direction test” derived from *Calder v. Jones*, 465 U.S. 783 (1984), see *Axiom Foods*, 874 F.3d at 1069. To satisfy the purposeful direction test, the defendant must have “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Schwarzenegger*, 374 F.3d at 805 (quoting *Dole Food*, 303 F.3d at 1111).<sup>11</sup>

Here, Plaintiffs have not satisfied the purposeful direction prong of the minimum contacts analysis. They primarily point to Rubicon’s order of fourteen containers of shrimp from Phatthana’s Songkhla factory for distribution in

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<sup>11</sup> Although the third prong of the purposeful direction inquiry and the “arise out of or relate to” inquiry are two different steps in the minimum contacts analysis, they are closely related. Satisfying the purposeful direction analysis will often satisfy the “arise out of or relate to” requirement as well. See *Dole Food*, 303 F.3d at 1114.

the United States to Walmart. Walmart ultimately rejected that shipment because it had concerns about working conditions in the Thai factory, and Rubicon returned the shrimp to Thailand. Plaintiffs also point to deposition testimony, emails, and a public database to suggest Phatthana sold shrimp to buyers in the United States through importers other than Rubicon, but those documents generally do not specify any particular sales, the dates of such sales, or the factories of origin.<sup>12</sup>

Assuming Phatthana's attempt to sell shrimp to Walmart, and some other sales to entities in the United States, constituted intentional acts expressly aimed at the United States, Plaintiffs have produced no evidence suggesting that those sales caused "harm that [Phatthana] [knew was] likely to be suffered in the" United States. *Schwarzenegger*, 374 F.3d at 805 (quoting *Dole Food*, 303 F.3d at 1111). Plaintiffs' evidence thus does not show that Phatthana or S.S. Frozen purposefully directed their activities to the United States in the sense required to establish specific personal jurisdiction over a personal injury claim.<sup>13</sup>

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<sup>12</sup> The only document that provides dates and origins of shrimp shipments is an excerpt from a Human Rights Watch report containing a screenshot of an online database. This screenshot does not include any shipments from Phatthana's Songkhla factory during the relevant period.

<sup>13</sup> This conclusion still follows even if Phatthana's sales to the United States were more extensive than Plaintiffs' evidence suggests because a larger sales footprint in the United States would not change the fact that the harm caused by Defendants' alleged TVPRA violations was not suffered in the United States. See *Schwarzenegger*, 374 F.3d at 805.

As for Plaintiffs’ general jurisdiction argument, Phatthana and S.S. Frozen are not incorporated in the United States, and Plaintiffs have not shown—much less argued—that the United States is their principal place of business, or that their contacts “are so ‘continuous and systematic’ as to render them essentially at home in the” United States. *Goodyear*, 564 U.S. at 919 (quoting *Int’l Shoe Co.*, 326 U.S. at 317). Thus, even assuming the phrase “present in,” as used in § 1596, requires only minimum contacts with the United States, Plaintiffs have not demonstrated that Phatthana and S.S. Frozen have the contacts needed to satisfy that standard.

2

We next consider Plaintiffs’ second argument—that Phatthana and S.S. Frozen were present in the United States through an agency relationship or joint venture with Rubicon—and conclude it is unconvincing.

Plaintiffs assert that Phatthana is “present in” the United States for purposes of § 1596 because Rubicon, which *is* present in the United States acted as Phatthana’s agent. The district court properly rejected this argument. An agent under California law is “one who represents another, called the principal, in dealings with third persons.” Cal. Civ. Code § 2295. “Agency requires that the principal maintain control over the agent’s actions,” *Murphy v. DirecTV, Inc.*, 724 F.3d 1218, 1232 (9th Cir. 2013), and generally, “[a] purchaser is not ‘acting on behalf of’ a supplier in a distribution relationship in which goods are purchased from the supplier for resale,” *id.* (quoting Restatement (Third) of Agency § 1.01 cmt. g (2006)).

Plaintiffs contend that Rubicon’s marketing activities, on-site visits to Phatthana’s factories, management of the

importation and shipping of Phatthana products, and management of customer relations establish an agency relationship between Rubicon and Phatthana. But none of the evidence in the record supports the inference that Phatthana exercised control over Rubicon's purchasing, marketing, sales, and customer-relations activities, or that Phatthana's relationship with Rubicon was anything more than a purchaser-supplier relationship. While it is true that Rubicon was registered as Phatthana's "agent" with the Food and Drug Administration ("FDA"), such an agent acts merely "as a communications link between FDA and the foreign facility for both emergency and routine communications." 21 C.F.R. § 1.227. This narrowly delineated relationship under federal regulations does not show that Phatthana exercised the control over Rubicon necessary to establish a general agency relationship. Plaintiffs' agency-based argument therefore fails.

Plaintiffs further maintain that Phatthana was present in the United States because it and Rubicon were engaged in a joint venture to market and sell shrimp in the United States. This argument fails largely for the same reasons Plaintiffs' agency argument fails.

To establish a joint venture under California law, Plaintiffs must show "an agreement between the parties under which they have a community of interest, that is, a joint interest, in a common business undertaking, an understanding as to the sharing of profits and losses, and a right of joint control." *Connor v. Great W. Sav. & Loan Ass'n*, 447 P.2d 609, 615 (Cal. 1968) (quoting *Holtz v. United Plumbing & Heating Co.*, 319 P.2d 617, 620 (Cal. 1957)); accord *Ramirez v. Long Branch Unified Sch. Dist.*, 129 Cal. Rptr. 2d 128, 137 (Cal. Ct. App. 2002). To support their joint venture argument, Plaintiffs rely on the same

evidence they cited to support their agency-based claim. As explained, that evidence establishes only that Rubicon and Phatthana were engaged in a purchaser-supplier relationship; it does not create a triable issue that Rubicon and Phatthana would share profits and losses or would be subject to joint control.

To the contrary, the limited liability company agreement creating Rubicon states that Rubicon was formed as a joint venture between Brian Wynn (the CEO and manager of Rubicon), Wales, Thailand Fishery Cold Storage Public Co. (whose share in Rubicon was later transferred to another company), and P&M Holding Co.; that those four entities would share in Rubicon’s net income and losses; and that Wynn had “exclusive authority to manage the operations and affairs of” Rubicon. Neither the original agreement nor its subsequent amendments identifies Phatthana as a member of the joint venture.

Plaintiffs rely on filings by “Rubicon Group” submitted to the Commerce Department as part of an antidumping proceeding.<sup>14</sup> The “Rubicon Group” is not synonymous with Rubicon Resources, LLC, but rather is the term used in a Commerce Department antidumping proceeding to describe a collection of “affiliated firms, collapsed for [antidumping] analysis pursuant to 19 C.F.R. § 351.401(f).” See *Pakfood Pub. Co. v. United States*, 724 F. Supp. 2d 1327, 1333 n.3 (Ct. Int’l Trade 2010). Plaintiffs asserts that those

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<sup>14</sup> Antidumping laws “address harm to domestic manufacturing from foreign goods sold at an unfair price” by imposing a duty on imports. *United States v. Eurodif S. A.*, 555 U.S. 305, 310–11 (2009). Antidumping proceedings, like the one referred to here, involve the government’s determination of the duty rates for certain kinds of imports. See *Certain Frozen Warmwater Shrimp from Thailand*, 74 Fed. Reg. 47,551-02, 47,551 (Sept. 16, 2009).

Commerce Department filings show that Phatthana, as well as other Thai shrimp companies, were “subgroup” members of the Thailand Fishery Cold Storage group, which in turn was a member of the Rubicon Group. The filings state that “a company within each Rubicon subgroup,” including the signatories to the Rubicon joint venture agreement, “is a Member (or partner) of Rubicon Resources, and holds a [ ]% interest in the company,” and that “each Rubicon subgroup encompasses the individual Rubicon Group companies,” including Phatthana, which is thereby “integrated into the Rubicon Group business structure.”

At most, these filings confirm that there is a joint venture relationship between the entities named as members of Rubicon Resources in the Rubicon joint venture agreement and that there is some relationship between at least one of those entities and Phatthana. But neither these filings nor Plaintiffs’ briefs explain what it means for Phatthana to be “integrated” into the overall Rubicon Group business structure, or what it means that a Rubicon subgroup “encompasses” a sub-subgroup such as Phatthana. Plaintiffs offers no evidence of any direct agreement between Rubicon and Phatthana regarding the sharing of profits and losses or a joint right of control. In light of the existence of a Rubicon joint venture agreement that does *not* include Phatthana, as well as the evidence that Rubicon and Phatthana’s relationship was that of a purchaser and a supplier, these Commerce Department filings alone cannot support the inference that Phatthana and Rubicon were engaged in a joint venture.

Plaintiffs’ third argument also falls short. Focusing on the phrase “an alleged offender” as used in § 1596, Plaintiffs contend that § 1596 is satisfied so long as *one* of the

defendants involved in the case meets the statutory criteria. But even if this novel interpretation is sound (and we doubt that it is), we conclude below that the district court correctly entered summary judgment on Plaintiffs' claims against Rubicon and Wales. Consequently, there are no other defendants besides Phatthana and S.S. Frozen left to satisfy § 1596's requirements, and as we have explained, neither of those Defendants meet § 1596's demands.<sup>15</sup>

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Plaintiffs have not raised a triable issue that Phatthana and S.S. Frozen were "present in the United States," as required by 18 U.S.C. § 1596(a)(2), and thus they have not established that their § 1595 claims against these Defendants involve a permissible extraterritorial application of the TVPRA. We therefore affirm the district court's entry of summary judgment in favor of Phatthana and S.S. Frozen.

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<sup>15</sup> Plaintiffs also contend that they assert a "wholly domestic basis for subject matter jurisdiction" based on a "domestic benefit" arising from Phatthana's alleged sales to customers in the United States other than through Rubicon. To support this theory, Plaintiffs rely on cases in which defendants residing in the United States benefitted from illegal conduct that took place abroad. *See Steele v. Bulova Watch Co.*, 344 U.S. 280, 281, 285–86 (1952) (trademark infringement and unfair competition "consummated in a foreign country by a citizen and resident of the United States"); *Vaughan v. Aegis Commc'ns Grp.*, 49 F. Supp. 3d 613, 616, 623 (W.D. Mo. 2014) (corporate defendants based in the United States "benefited in the U.S." from forced labor "performed in India"). But as explained, Phatthana and S.S. Frozen were in no way present in the United States, and thus they did not "benefit in the United States." Further, Plaintiffs seek to apply § 1595 "to events occurring and injuries suffered outside the United States." *RJR Nabisco*, 579 U.S. at 329. Therefore, absent any domestic presence or domestic benefit, their claims fall squarely within the Supreme Court's definition of extraterritoriality. *See id.*

C

We next consider Plaintiffs' claims against Rubicon and Wales. Plaintiffs allege that Rubicon and Wales knowingly benefitted from Phatthana's alleged human trafficking and forced labor abuses, financially and by accessing a steady stream of imported seafood. We conclude that summary judgment for these Defendants was appropriate because Plaintiffs failed to produce evidence establishing a triable issue of Rubicon's or Wales's liability under § 1595.

In § 1595, Congress extended a private right of action to victims of substantive violations of the TVPRA, allowing them to sue the direct perpetrator and anyone who "knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of" the TVPRA. 18 U.S.C. § 1595(a). Neither Rubicon nor Wales are alleged to have perpetrated any TVPRA violations against Plaintiffs. Thus, to withstand Defendants' motions for summary judgment, Plaintiffs needed to present evidence creating a triable issue on whether Rubicon or Wales: (1) knowingly benefitted, (2) from participation in a venture (in this case with Phatthana), (3) which they knew or should have known was engaged in conduct that violated the TVPRA. *Id.* If Plaintiffs failed to raise a triable issue on any of these elements, we need not consider the rest.

We separately address the claims against Rubicon and the claims against Wales. We first explain why no reasonable jury could infer from the evidence that Rubicon benefitted, financially or otherwise, from Phatthana's alleged TVPRA violations. We then explain why Plaintiffs have not raised a triable issue on whether Wales knew or should have known that Phatthana was engaged in alleged

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violations of the TVPRA when it received a benefit from the alleged venture.

1

Plaintiffs assert that there is “sufficient evidence” that Rubicon benefitted from Phatthana’s alleged TVPRA violations. They point to three distinct benefits that Rubicon allegedly obtained from its relationship with Phatthana. But none of those allegations presents a triable issue of material fact.

Plaintiffs first argue that Rubicon “benefitted from marketing the shrimp produced by Phatthana.” They point to materials stating that “Rubicon has 13 factories,” including Phatthana’s Songkhla factory, “that are 100% owned and captive to Rubicon Resources.” But the page touting Rubicon’s production capabilities and a “Factory Index” that includes the Songkhla factory are undated. And Plaintiffs have offered no evidence or explanation of the purpose of these materials, when they were produced, or when (or even whether) they were distributed to potential customers. Moreover, Plaintiffs’ argument rests on Rubicon’s marketing role, not on any ownership or production role. We thus find these materials insufficient for a reasonable jury to infer that Rubicon benefitted from its alleged marketing of Phatthana’s products.

We reject Plaintiffs’ second argument—that Rubicon obtained a “competitive advantage” through its association with Phatthana—for a similar reason. Plaintiffs point to “[d]eclarations from Louisiana shrimpers attest[ing] to the competitive advantage and the impact on American industry” of the Thai shrimp industry. But these general statements from American shrimpers about international market conditions do not suggest that Rubicon benefitted

from its alleged venture with Phatthana. Therefore, we find the declarations insufficient to present a genuine dispute of material fact.

Perhaps realizing these deficiencies, Plaintiffs advance a third argument: that an *attempt* to benefit satisfies § 1595(a)’s “knowingly benefits” requirement. We disagree. The text of § 1595 does not extend liability to those who *attempt* to benefit from a venture. *See* 18 U.S.C. § 1595(a). And we cannot read the word “attempt” into § 1595 without violating “a fundamental principle of statutory interpretation that ‘absent provision[s] cannot be supplied by the courts.’” *Rotkiske v. Klemm*, 140 S. Ct. 355, 360–61 (2019) (alteration in original) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 94 (2012)).

Moreover, Congress’s decision to impose civil liability on those who “benefit” but not those who “attempt to benefit” is significant because attempt liability is plainly authorized elsewhere in the TVPRA. *See, e.g.*, 18 U.S.C. § 1594(a) (“Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.”).<sup>16</sup> When “Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012). Had Congress intended to create civil liability under § 1595 for attempts to benefit,

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<sup>16</sup> We find Plaintiffs’ citation to § 1594, without explanation, unconvincing. Section 1594 speaks to who might be a “perpetrator” of a TVPRA violation under § 1595(a). But it does not suggest that an attempt to benefit from a perpetrator’s TVPRA violation would establish liability under § 1595(a).

we can reasonably conclude that it would have done so in express terms. We therefore hold that the phrase “knowingly benefits” as used in § 1595(a) does not encompass attempts to benefit. Consequently, Plaintiffs’ assertion that “[i]t is undisputed that Rubicon *attempted* to sell” fourteen containers of Phatthana shrimp fails to raise a triable issue of material fact. We therefore affirm the district court’s grant of summary judgment in Rubicon’s favor.

2

Turning to Plaintiffs’ claims against Wales, we conclude that Plaintiffs failed to present evidence to support a reasonable inference that Wales knew or should have known that Phatthana was engaged in conduct violating the TVPRA when it received a benefit from the alleged venture. Wales admits that on February 23, 2012, it became aware of a news article published in the Phnom Penh Post detailing allegations from Plaintiff Ratha’s whistleblower report.<sup>17</sup> In light of this admission, we bifurcate our analysis into the periods before and after February 23, 2012. We first conclude that Plaintiffs have not presented a triable issue on whether Wales knew or should have known of Phatthana’s alleged TVPRA violations before February 23, 2012. We then conclude that Plaintiffs have not presented a triable issue on whether Wales benefitted from the alleged venture on or after February 23, 2012.

a

We first consider whether a reasonable factfinder could infer from the evidence that Wales knew or should have

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<sup>17</sup> We assume without deciding that Wales possessed actual knowledge of the alleged violations on and after February 23, 2012.

known of the alleged labor abuses at Phatthana’s Songkhla factory between August 2010 (when the factory started operating) and February 22, 2012 (the day before Rubicon was undisputedly aware of Ratha’s whistleblower report). Plaintiffs argue that Wales “received industry-specific, country-specific, and Defendant-specific information sufficient to put any reasonable party on notice” that labor abuses were occurring at the Songkhla factory “well before” the allegations in Ratha’s whistleblower report were published in February 2012. They point to reports and articles about labor abuses generally in Thailand, as well as their retained experts’ reports, to substantiate their claims.

As we explain in the following sections, this evidence falls short of creating a genuine dispute of material fact on whether Wales knew or should have known of Phatthana’s alleged TVPRA violations before February 2012. “[T]he phrase ‘knew or should have known’ usually connotes negligence.” *Mayview Corp. v. Rodstein*, 620 F.2d 1347, 1358 (9th Cir. 1980). And “[n]egligence is a less culpable mental state than actual knowledge . . . or recklessness.” *Erickson Prods., Inc. v. Kast*, 921 F.3d 822, 833 (9th Cir. 2019). Assuming § 1595 imposes a negligence standard, Plaintiffs’ evidence suggests, at most, that Wales should have known of labor abuses in the Thai shrimp industry *generally*. Sweeping generalities about the Thai shrimp industry are too attenuated to support an inference that Wales knew or should have known of the specifically alleged TVPRA violations at the Songkhla factory between 2010 and 2012.

Plaintiffs first point to evidence generally establishing that abusive labor practices were common in Thailand, particularly in the shrimp industry. They rely upon the 2009

edition of *The Department of Labor's List of Goods Produced by Child Labor or Forced Labor*, which identified the Thai shrimp industry on a list of 58 countries and 122 goods having a “significant incidence of child labor and forced labor in the production of certain goods.” But as this report itself cautions, “a listing of any particular good and country does not indicate that all production of the good in that country involves forced labor or child labor, but rather that there is a significant incidence” of such conduct in that country’s industry. And the report makes clear that identifying “specific firms or individuals using child labor or forced labor” is beyond its mandate. The identification of child labor and forced labor as a general problem in the Thai shrimp industry, before the relevant time period, sheds little light on whether labor abuses were occurring at Phatthana’s Songkhla factory, let alone whether Wales knew or should have known of such abuses.

Plaintiffs’ reliance on a January 2008 report from the AFL-CIO’s Solidarity Center, *The Degradation of Work: The True Cost of Shrimp*, is likewise insufficient to overcome their burden at summary judgment. The only reference to Phatthana in this forty-page report appears in a section addressing whether Thai seafood workers earned minimum wage (191 baht per day, as an industry source estimated). The report includes the following statement based on information from a 2005 interview with a worker at a different Phatthana factory: “[A] pay stub from a worker at the Pattana [sic] Seafood Company in Samut Sakhon showed a reported pay of 191 baht per day, but daily take-home pay was closer to 160 baht after deductions for equipment and permits.” But Plaintiffs offer no argument or evidence that would allow a reasonable jury to conclude that this reference to one worker’s statement, concerning wages at an entirely different processing facility, long before the

time period at issue, should have put Wales on notice that it was working with entities engaged in TVPRA violations.<sup>18</sup>

Plaintiffs assert that news reports referencing the Solidarity Center Report, published between April and June 2008, “identif[ied] Rubicon’s customers as the consumers” of shrimp produced in Thailand. Plaintiffs are correct that one of these articles identified “nine big U.S. supermarket chains” that “sell[ ] Thai shrimp in the U.S.,” including Walmart, one of Rubicon’s customers. Another article identified Walmart as a retailer that imports shrimp from Thailand. This article, however, also stated that the Solidarity Center report “makes clear not all shrimp imports into the United States from Thailand and Bangladesh come from problem plants.” These articles do not identify any Thai companies, much less Phatthana, as a bad actor engaged in labor abuses, and they do not state that Walmart or any of the other U.S. supermarket chains were selling shrimp produced by forced labor. Therefore, these articles establish nothing more than reported labor abuses in Thailand in 2008 and that some U.S. supermarkets were selling shrimp produced in Thailand. This evidence cannot support a reasonable inference of Wales’s knowledge of

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<sup>18</sup> Plaintiffs point to an April 2008 article in the Bangkok Post as evidence that Wales knew of the Solidarity Center report because its CEO, who was quoted in the article in his role as President of the Thai Frozen Foods Association, said “the accusations in the report were based on old information and lack of evidence.” But this article establishes only that in 2008, two years before the Phatthana factory in Songkhla opened, Wales and other members of the Thai Frozen Foods Association knew that there were labor abuses in the Thai seafood industry. It does not support a reasonable inference that Wales knew of alleged labor abuses years later at the Phatthana factory in Songkhla.

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alleged labor abuses at the Songkhla factory between 2010 and 2012.

Finally, Plaintiffs cite pages excerpted from the 2010, 2011, and 2012 editions of the *U.S. Department of State's Trafficking in Persons Report*. These reports also fail to include any company-specific information and do not mention Phatthana. Instead, they include Thailand on the Tier Two Watch List and contain general statements about labor abuses in Thailand and the Thai government's response to those problems. The reports thus do not support a reasonable inference of Wales's knowledge of labor abuses at the Songkhla factory from 2010 to 2012.

We conclude that the reports and articles Plaintiffs have identified are insufficient to create a triable issue of fact on Wales's knowledge of Phatthana's alleged labor abuses before February 2012.

ii

Plaintiffs further argue that a reasonable factfinder could infer that Wales negligently failed to investigate whether Phatthana was engaging in labor abuses at the Songkhla factory given the prevalence of labor abuses in the Thai seafood industry. To support this argument, Plaintiffs rely on reports from their retained experts, Luis DeBaca, Marc Bendick, and Samir Goswami.<sup>19</sup> We consider these reports in turn.

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<sup>19</sup> Although the expert reports focus primarily on what Rubicon knew or should have known about the alleged labor abuses, Plaintiffs assert, and at least one report acknowledges, that Rubicon and Wales had intertwined ownership. Because we must construe the evidence in the light most favorable to Plaintiffs and draw all justifiable inferences in

We find the DeBaca report to be irrelevant to the period before February 23, 2012, because it addresses the adequacy of investigations *after* February 23, 2012, and it only opines in generalities about the 2010 to 2012 timeframe. For example, the report concludes that Wales was “on notice in 2010 . . . that . . . the seafood industry in Thailand was considered a ‘hot spot’ for human trafficking in all its forms.” But these are the “type[s] of conclusory allegation[s]” we have “found insufficient to withstand [a] motion for summary judgment.” *Broussard v. Univ. of Cal., at Berkeley*, 192 F.3d 1252, 1259 (9th Cir. 1999).

The Bendick and Goswami reports do opine on the issue at hand, but they are not helpful because they rely on the same generalized evidence of country conditions that we have already determined is insufficient to create a triable issue of material fact. Although the Bendick report explicitly focuses on the 2010–2012 period, its conclusions are generalities based on unsupported assumptions. It states, for example, that Rubicon’s senior management “can be assumed to have been fully aware of how prevalent were labor practices such as are alleged at Songkhla,” and that Phatthana would have “routinely shared information with Rubicon on production issues [and] labor matters including those involving migrant workers would inevitably be part of that information.” The report also lists several ways in which audits of the Songkhla factory in 2011 and 2012 did not meet certain standards, but never opines that such audits were even necessary under the circumstances or that a business’s failure to conduct such audits would be negligent.

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their favor, we consider these reports to assess whether there is a triable issue that Wales knew or should have known about Phatthana’s alleged TVPRA violations.

Similarly, the Goswami report states, without identifying any time period, that the lack of “provisions on forced labor” in purchase orders from Rubicon and Wales “fell short of industry standards at the time” and that Rubicon “did not meet industry standards” in its audits and investigations. But the report does not offer any factual basis for its conclusory statements about “industry standards.” It therefore fails to raise a genuine issue of material fact. *See Walton v. U.S. Marshals Serv.*, 492 F.3d 998, 1008 (9th Cir. 2007) (holding that an expert affidavit failed to create a factual dispute because the expert did “not state a factual basis for his opinion”); *see also Broussard*, 192 F.3d at 1259.

In sum, Plaintiffs’ expert reports fail to bridge the gap between their generalized evidence of labor conditions in the Thai shrimp industry and the specific allegations that Wales knew or should have known of the alleged labor abuses at Phatthana’s Songkhla factory before February 23, 2012.<sup>20</sup> We therefore affirm the district court’s entry of summary judgment in favor of Wales on Plaintiffs’ claims predating February 23, 2012.

b

We now turn to Plaintiffs’ claims against Wales to the extent they arise from conduct occurring after February 23, 2012. As previously noted, we assume here that the evidence supports a finding that Wales knew of the

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<sup>20</sup> Although “[i]t is undisputed that Rubicon engaged Wales to inspect Phatthana’s facilities,” the record nowhere indicates whether or when Wales inspected any of Phatthana’s factories, let alone the Songkhla factory. Rather, Wales maintains, and the evidence in the record suggests, that Wales’s actual role was limited to inspecting products Phatthana shipped to the United States, not the factory conditions where Phatthana’s products were processed.

complained-of TVPRA violations at the Phatthana factory after February 23, 2012, when Wales admits it received a copy of the article describing Ratha’s allegations. Therefore, we must ask whether, construing the evidence in the light most favorable to Plaintiffs, there is a triable issue that Wales “knowingly benefit[ted] . . . from participation in” its alleged venture with Phatthana after February 23, 2012. *See* 18 U.S.C. § 1595(a). We conclude there is not.

The only benefit Wales obtained from its alleged venture with Phatthana is a commission “for product inspection services rendered in connection with shrimp ordered by Rubicon and processed at Phatthana’s Songkhla factory.” The purchase orders for those containers of shrimp are dated October 13, 14, and 31, 2011, and include shipping dates ranging from October 2011 to December 2011. Thus, Wales’s inspection of shrimp “destined for the U.S.” apparently occurred before the product left Thailand, and therefore before February 23, 2012.

Plaintiffs point to no facts that would support a reasonable inference that Wales inspected those shipments on or after February 23, 2012, or that Wales otherwise benefitted from the alleged venture after it became aware of Ratha’s allegations. To be sure, Wales’s president declared that the inspection services took place “in late 2011–early 2012.” Although that statement may be consistent with the *possibility* that Wales knowingly benefitted from the alleged venture after it learned of Ratha’s allegations, we find the statement, without more, to be “insufficient to allow a reasonable juror to conclude that [Plaintiffs’] position more likely than not is true.” *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 596 (1993); *see also Brit. Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (“A mere scintilla of evidence will not do, for a jury is permitted to

draw only those inferences of which the evidence is reasonably susceptible; it may not resort to speculation.”).

Because the payment for inspection services is the only benefit Plaintiffs allege Wales received during the relevant time period, and the evidence is insufficient to create a triable issue that this occurred after February 23, 2012, we affirm the district court’s summary judgment in favor of Wales.

#### IV

Finally, we consider whether the district court abused its discretion by denying Plaintiffs’ motion for an extension of time to respond to Defendants’ motions for summary judgment. Relying on *Ahanchian*, 624 F.3d at 1257–60, Plaintiffs argue that the district court abused its discretion by denying their motion because the Thanksgiving holiday effectively reduced their limited response time to three business days and Defendants’ motions were accompanied by hundreds of pages of documents. But the circumstances here are significantly different from those presented in *Ahanchian* and do not support Plaintiffs’ claims of prejudice.

In *Ahanchian*, the plaintiff filed his opposition to a motion for summary judgment three days after the filing deadline with a motion for the court to accept the late filing. *Id.* at 1257. The district court denied the plaintiff’s motion to file his opposition. *Id.* It then granted the defendant’s motion for summary judgment after “review[ing] only the defense evidence, even though it knew the opposition papers were already filed,” *id.* at 1258, and awarded significant attorney’s fees to defense counsel, *id.* at 1255, 1257–58. We concluded that the district court abused its discretion and “effectively flouted” Ninth Circuit precedent, which “bars

. . . granting summary judgment simply because a party fails to file an opposition or violates a local rule.” *Id.* at 1258.

Here, in contrast to the circumstances in *Ahanchian*, Plaintiffs have not shown that the district court flouted precedent or that they were prejudiced by the district court’s order denying their motion for an extension. Plaintiffs argue that they were prejudiced because they were rushed in preparing their responses and omitted exhibits from their separate statement of facts. But Plaintiffs stipulated to the motion deadline. And Plaintiffs filed a notice of errata and supplemented their separate statement of facts with additional exhibits they had inadvertently omitted. Critically, unlike in *Ahanchian*, Plaintiffs do not assert that the district court refused to consider any evidence or arguments they submitted in their opposition to summary judgment. Thus, notwithstanding any stringent case management deadlines the Central District of California may impose in accordance with its local rules, the district court’s order denying Plaintiffs’ motion for an extension was not an abuse of discretion.

V

The district court did not err by entering summary judgment for Defendants. And the district court did not abuse its discretion by denying Plaintiffs’ motion for an extension of time.<sup>21</sup>

**AFFIRMED.**

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<sup>21</sup> Defendants’ Motion to Take Judicial Notice is **DENIED**.