

No. A168069

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION FOUR

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CONFIDENTIAL CRIME VICTIM, H.B.,

*Petitioner,*

v.

SOLANO COUNTY SUPERIOR COURT,

*Respondent;*

LAMAR DESHAWN HALL,

*Real Parties in Interest.*

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Solano County Superior Court, Case No. FCR341808

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**AMICUS BRIEF**

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October 23, 2023

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## INTRODUCTION

For over three years, Defendant Lamar Deshawn Hall forced H.B. and other victims to perform commercial sex acts. Defendant kept the money and used physical violence and threats of violence to keep H.B. and the other victims in line. H.B. once tried to escape by moving out of the area, but the Defendant tracked her down and dragged her back into a life of forced prostitution. Like thousands of human trafficking victims throughout the state, H.B. was forced to work without pay, in dangerous situations, for the financial benefit of her trafficker.

Human trafficking occurs when a person is deprived of their personal liberty and required, through force, fraud or coercion, to provide labor or services. (Pen. Code, § 236.1.) Penal Code section 1202.4, subdivision (p), passed in conjunction with California's Trafficking Victim's Protection Act, recognizes the inherent exploitation at the core of every human trafficking case. Whether a person is forced to pick fruit, harvest marijuana, provide salon services, work as an in-home caretaker or domestic servant, or perform commercial sex acts as was the case here—the victim is stripped of their personal liberty and forced to provide labor or services for someone else's financial gain. In 2005, the Legislature recognized this extreme form of exploitation in passing Assembly Bill 22, which included a specific restitution statute authorizing courts to order restitution to compensate victims of human trafficking for lost wages.

In this case, the superior court misinterpreted the statute, creating an added requirement that the earnings cannot be the product of commercial sex. By definition, victims of sex trafficking are forced to engage in commercial sexual acts at the hands of their exploiter. The superior court's interpretation swallows up the statute and misses its purpose: to allow human trafficking victims such as H.B. a chance to recover from the devastating physical, mental and *financial* harm caused by the defendant. The superior court's interpretation would instead allow those convicted of sex trafficking to keep the money that they derived from financially exploiting victims, rather than justly compensating them.

#### **INTEREST OF THE AMICUS CURIAE**

The Attorney General possesses great interest in the legal issue to be adjudicated in the petition and is able to provide argument and perspective that will assist this court. (See Cal. Rules of Court, rule 8.200(c)(2).) The Attorney General is the state's chief law officer, with a duty "to see that the laws of the State are uniformly and adequately enforced." (Cal. Const., art. V, § 13.) In fulfilling that duty, he seeks to ensure respect for the law, promote fairness and equity in the administration of our criminal justice system, and promote correct interpretations of the choices made by the People and the Legislature in establishing rules to protect public safety and the rights of victims. (See, e.g., Cal. Const., art. I, § 28, subd. (f).) The case presented here could have harmful repercussions in courtrooms across California and grave consequences for victims of sex

trafficking, who already face steep barriers and in many instances risk their lives simply by reporting crimes and participating in the criminal justice system.

### **STATEMENT OF THE CASE AND FACTUAL BACKGROUND**

For over three years, the Defendant forced H.B. to commit acts of prostitution and took the money she earned. He was physically abusive to H.B. and other victims, using violence and threats of violence to force H.B. to continue working for him. The impact of the beatings was so severe that H.B. still needs a hearing aid and cannot wear earrings. (Petitioner's Exh. 6, at p. 7.) The Defendant had complete control over H.B. and her finances. (Petitioner's Exh. 6, at p. 7.) He confiscated all of the money he forced her to earn. The Defendant admitted using the proceeds from H.B.'s commercial sex acts to pay for rent, shopping, and motels. (Petitioner's Exh. 2, at pp. 6-7.)

On September 16, 2022, Defendant Lamar Hall pled no contest to one count of human trafficking (Pen. Code § 236.1, subd. (a)) and one count of pimping (Pen. Code, § 266h, subd. (a)).<sup>1</sup> He received a stipulated prison term of 13 years and 4 months.

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<sup>1</sup> At the time, Defendant was facing several different complaints charging him with additional crimes. Only case number FCR341808, the human trafficking case, is relevant for purposes of this writ.



On December 9, 2022, victim H.B. filed a motion seeking restitution for income the Defendant derived from H.B.’s forced commercial sex acts.

The superior court acknowledged the merit in H.B.’s argument, specifically that awarding full restitution could “meet important policy goals” by “provid[ing] some real benefits to the victims and deterrents to the victimizers[.]” (April 21, 2023 Restitution Hrng. TX., p. 9, lines 23-27). However, the superior court ultimately did not order the requested restitution for income H.B. derived from acts of prostitution because the court believed it did not have the authority to order restitution for economic loss where the underlying conduct was illegal.

In June 2023, H.B. filed a petition for writ of mandate with the First District Court of Appeal. On September 1, 2023, this Court issued an Order to Show Cause. On October 9, 2023, Real Party in Interest filed a return. On October 16, 2023, Petitioner filed a reply.

## **ARGUMENT**

### **I. CALIFORNIA’S CONSTITUTION AND STATUTES ESTABLISH VICTIMS’ RIGHTS TO FULL RESTITUTION**

In California, the Constitution and statutory law are “unequivocal” in their requirement that every crime victim receive full restitution. The law is clear that “[r]estitution is ‘intended to make the victim whole.’” (*People v. Marrero* (2021) 60 Cal.App.5th 896, 906, quoting *People v. Grundfor* (2019) 39 Cal.App.5th 22, 30.)

In 1982, voters passed The Victims’ Bill of Rights, which “established the right of crime victims to receive restitution

directly ‘from the persons convicted of the crimes for losses they suffer.’” (*People v. Giordano* (2007) 42 Cal.4th 644, 652, quoting Cal. Const., art. I, § 28, subd. (b).)

The 2008 Victims’ Bill of Rights Act, known as Marsy’s law, then amended Section 28 of Article I of the California Constitution and Penal Code section 1202.4 to further strengthen and expand victims’ rights, including those to restitution. (See *People v. Gross* (2015) 238 Cal.App.4th 1313, 1317 [“Marsy’s Law, provides for a broad spectrum of victims’ rights, including restitution”].) Marsy’s Law was “inspired by hundreds of thousands of victims of crime who have experienced the additional pain and frustration of a criminal justice system that too often fails to afford victims even the most basic of rights.” (*In re Vicks* (2013) 56 Cal.4th 272, 282, citation and quotations omitted.)

The purpose of Marsy’s Law is to ensure that, throughout the criminal justice system, victims are afforded justice and due process, kept informed, treated with fairness and respect, and heard in various prosecutorial and judicial decisions. (*Vicks, supra*, 56 Cal.4th at pp. 282-283, 309-310; Cal. Const. art. I, § 28, subs. (a)-(b).) Marsy’s Law’s “broader shared collective rights” are enforceable “through good-faith efforts and actions of California’s elected, appointed, and publicly employed officials.” (Cal. Const., art. I, § 28, subd. (a)(4).) Under the California Constitution, “all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they

suffer.” (Cal. Const., art. I, § 28, subd. (b)(13)(A).) It further requires that “[r]estitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.” (Cal. Const., art. 1, § 28, subd. (b)(13)(B).) These rights are “personally held and enforceable” and may be enforced by the victim, the victim’s attorney or lawful representative, or prosecutors. (Cal. Const., art. 1, § 28, subds. (a)(3), (c)(1).)

Penal Code section 1202.4 implements these constitutional mandates. The Legislature spelled out its intent for Penal Code section 1202.4, subdivision (f), by stating “in every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order[.]” (Accord, *People v. Phu* (2009) 179 Cal.App.4th 280, 283; *People v. Martinez* (2017) 10 Cal.App.5th 686, 720; *People v. Mearns* (2002) 97 Cal.App.4th 493, 500.) Also, “[a] victim’s restitution right is to be broadly and liberally construed.” (*Martinez, supra*, at p. 720, citation omitted.) “Marsy’s Law clearly demands a broad interpretation of protective victims’ rights.” (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 418.) “The only limitation the Legislature placed on victim restitution is that the loss must be an ‘economic loss’ incurred as a result of the defendant’s criminal conduct.” (*People v. Martinez* (2017) 2 Cal.5th 1093, 1101, quoting *People v. Williams* (2010) 184 Cal.App.4th 142, 147.)

Specifically, victims are entitled to restitution for economic

losses, which includes not only “[w]ages or profits loss” (Pen. Code § 1202.4, subd. (f)(3)(D)), but also “any [other] economic loss which is proved to be the direct result of the defendant’s criminal behavior . . .” (*Williams, supra*, 184 Cal.App.4th at p. 147, citation omitted; see *ibid.* “[t]he term ‘economic losses’ is . . . accorded an expansive interpretation”). “In determining the amount of restitution, all that is required is that the trial court ‘use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.’” (*People v. Akins* (2005) 128 Cal.App.4th 1376, 1382, citation omitted; accord, *People v. Lehman* (2016) 247 Cal.App.4th 795, 801.)

“[A] prima facie case for restitution is made by the People based in part on a victim’s testimony on, or other claim or statement of, the amount of his or her economic loss.” (*Lehman, supra*, 247 Cal.App.4th at p. 801, citation and italics omitted.) Once a victim makes a prima facie showing of economic losses, the burden shifts to the defendant to disprove the amount of claimed losses, which “is invariably a dollars and cents dispute.” (*People v. Weatherton* (2015) 238 Cal.App.4th 676, 684; *People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543.) “The standard of proof at a restitution hearing is a preponderance of the evidence, not proof beyond a reasonable doubt.” (*People v. Lehman* (2016) 247 Cal.App.4th 795, 801, quotations and citation omitted.)

There are “two essential requirements for awarding restitution: (1) the victim must have suffered a loss ‘as a result of the commission of a crime;’ and (2) the amount of the loss must

be ‘determined’ by the court.” (*People v. Ortiz* (1997) 53 Cal.App.4th 791, 797, citations omitted.) Restitution has three general goals: “economic compensation for the victim or victims of a defendant’s crime, rehabilitation of the defendant, and the deterrence of the defendant and others from committing future offenses.” (*People v. Dehle* (2008) 166 Cal.App.4th 1380, 1386, citation omitted.) A restitution order is a required part of a defendant’s sentence, and without it, the sentence is invalid. (*People v. Smalling* (2019) 36 Cal.App.5th Supp. 1, 5-6, 6 [“[V]ictim restitution is mandatory and a sentence without such an award is invalid”].)

## **II. THE PLAIN LANGUAGE OF PENAL CODE SECTION 1202.4, SUBDIVISION (P) REQUIRES RESTITUTION FOR VICTIMS OF SEX TRAFFICKING.**

Penal Code section 1202.4, subdivision (p) applies specifically and exclusively to victims of human trafficking. In 2005, California passed its landmark human trafficking statute, Assembly Bill 22, which mirrored the federal Trafficking Victims Protection Act. (Assem. Bill No. 22 (2005-2006 Reg. Sess.)) A victims’ right to full financial recovery and specifically to lost wages as a result of being trafficked is a cornerstone of the law. That right is enumerated in Penal Code section 1202.4, subdivision (p), which Assembly Bill 22 added to the penal code.

Subdivision (p) governs restitution when a defendant is convicted of human trafficking under Penal Code section 236.1. In the case of such a conviction:

“the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the

victim in a case where the victim has suffered economic loss as a result of the defendant's conduct. In determining restitution, pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim's labor as guaranteed under California law, or the actual income derived by the defendant from the victims' labor services or any other appropriate means to provide reparations to the victim."

(Pen. Code, § 1202.4, subd. (p)).

As the word "shall" indicates, the restitution provision is mandatory. There is nothing in the language of the statute or in the legislative history that would render this statute only applicable in human trafficking cases that do not involve commercial sex. Section 1202.4, subdivision (p) requires restitution for violations of Penal Code 236.1, which in turn defines human trafficking to include both sex and labor trafficking:

"Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to obtain forced labor or services, is guilty of human trafficking."

(Pen. Code, § 236.1)

Further, the plain language of Penal Code sections 266h

and 266i includes acts of prostitution as elements of the offenses. Thus, the statutory scheme demonstrates that the Legislature was aware that restitution may be based upon commercial sex acts.

The intent of the Legislature to include such acts is also supported by legislative history. In addition to criminalizing the conduct of human trafficking to reflect what the author described as “modern day slavery,” the bill sought to “make victims of human trafficking eligible for restitution both from the state crime victims’ restitution fund and by requiring courts in criminal cases to order the defendant to pay restitution to the victims and making such orders enforceable by the victim as a civil judgment.” (Assem. Public Safety analysis April 26, 2005, Assem. Bill No. 22 (2005-2006 Reg. Sess.), [AB 22 Assembly Bill - Bill Analysis \(ca.gov\)](#)). This broad language clearly indicates the Legislature’s intent that restitution be available to victims of labor trafficking and sex trafficking alike.

Based on the language of the statute and the legislative intent behind it, the superior court should have awarded H.B. restitution for the earnings that the defendant took from her forced commercial sex acts. By finding that H.B. could not receive restitution for illicit funds, the superior court created a legal requirement that the Legislature never intended.

### **III. THERE IS NO REASON FOR DENYING RESTITUTION TO VICTIMS OF SEX TRAFFICKING**

Real Party in Interest’s argument is essentially that “ill-gotten gains” are not recoverable under California law. (Real Party In Interest’s Return to Order to Show Cause (“Return”), at

pp. 6-7.). “That Hall appropriated H.B.’s ill-gotten earnings does not confer on Petitioner the right to recover this as restitution.” (Return at p. 9.) In effect, that reasoning would entitle a trafficker to keep “ill-gotten gains,” while depriving the victim of payment for her forced labor. To favor the trafficker over the person who was forced to commit commercial sex acts would be severely inequitable. It would also cause further damage to vulnerable victims, who suffer a well-documented series of harms long after the trafficker is convicted.

Moreover, it is simply wrong to insinuate that the human trafficking victim is responsible for illegal conduct. A human trafficking victim is, by definition, a victim who was subjected to force, fraud or coercion. The crime of human trafficking includes the deprivation of personal liberty. (Pen. Code, § 236.1.) This is not a situation where a person engages in voluntary criminal conduct. In this case, sex trafficker Hall used violence and threats of violence to force H.B. to sell her body for commercial sex. He beat her so badly that he caused permanent damage. Hall controlled every aspect of her life and finances. (Petitioner’s Exh. 6, at p. 7.) As she stated in her impact statement at Hall’s sentencing hearing, “Not only does [Hall’s] physical, mental and emotional abuse continue to stick with me, his financial abuse impacts my life every day.” (Petitioner’s Exh. 6, at p. 7.) She is not a co-conspirator or an aider and abettor. She is a victim and not the defendant being charged for the commission of a crime. Denying her restitution because of the “work” she was forced to perform implies that she is at fault or otherwise unworthy of



being made whole. Research has shown that such victim-blaming causes further harm to victims.

(<https://polarisproject.org/blog/2023/04/the-impact-of-victim-blaming-on-human-trafficking-survivors/>.) Instead of depriving the victim of restitution because of Hall’s illegal conduct, the Court should allow the victim her right to financial recovery.

Moreover, the statute itself trumps any concerns that these commercial sex earnings are in a separate “illicit” category, unworthy of restitution. The statute makes no such distinction and both commercial sex and forced labor are included in the definition of human trafficking. Since Penal Code section 1202.4, subdivision (p) specifically grants the right of human trafficking victims to recover lost wages, the superior court erred in concluding that it was prohibited from doing so.

Survivors of human trafficking face challenges in court due to misconceptions regarding their victimization. Human trafficking often goes unreported due to fear and stigma that the victims face. To create a rule where trafficking victims cannot recover restitution for income earned while they were forced to commit sex acts reinforces the stigma surrounding their victimization—a stigma it appears the Legislature sought to avoid by allowing all victims of human trafficking to recover restitution for their earnings, regardless of the type of trafficking they were subjected to.

## CONCLUSION

For the reasons set forth above, Amicus respectfully requests that this Court issue a writ of mandate directing Respondent to

enter a restitution order which includes full restitution for the actual income the Defendant derived from trafficking H.B.

Respectfully submitted,

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*/s/ Maggy Krell*

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October 23, 2023

## CERTIFICATE OF COMPLIANCE

I certify that the attached AMICUS BRIEF uses a 13 point Century Schoolbook font and contains 3,456 words.

ROB BONTA

*Attorney General of California*

*/s/ Maggy Krell*

MAGGY KRELL

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October 23, 2023

SA2023305329

**DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S.  
MAIL**

Case Name: Confidential Crime Victim H.B. v. Solano County Superior Court  
No.: A168069

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On October 23, 2023, I electronically served the attached **AMICUS BRIEF** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on October 23, 2023, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

The Honorable William J. Pendergast III  
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*Respondent*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 23, 2023, at Sacramento, California.

Carolyn Gatkin

Declarant

/s/ Carolyn Gatkin

Signature

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