Nos. 08-1559; 08-1561

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROBERT JOHN FARRELL and ANGELITA MAGAT FARRELL,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
U.S. DISTRICT COURT JUDGE CHARLES B. KORNMANN

BRIEF FOR THE UNITED STATES AS APPELLEE

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SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

The defendants, owners and operators of a hotel in South Dakota, were each convicted of nine counts related to their employment of Filipino nationals. The defendants arranged for the foreign workers to come to the United States and, once here, compelled them to work to discharge a debt. Defendants were each convicted on four counts of peonage, in violation of 18 U.S.C. 1581, one count of conspiracy to commit peonage, in violation of 18 U.S.C. 371, two counts of making false statements, in violation of 18 U.S.C. 1001, one count of visa fraud, in violation of 18 U.S.C. 1546, and one count of document servitude, in violation of 18 U.S.C. 1592.

Defendants appeal their convictions, alleging insufficiency of the evidence to support their peonage, conspiracy, and document servitude convictions. Defendants also challenge the admission of expert testimony.

The United States has no objection to the Court hearing argument in this appeal.

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BRIEF OF THE UNITED STATES AS APPELLEE

JURISDICTIONAL STATEMENT

This is an appeal from the final judgment of a district court in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. The court entered final judgment for both defendants on February 25, 2008. The defendants filed timely notices of appeal on February 29, 2008. This Court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF THE ISSUES AND APPOSITE CASES

1. Whether the government presented sufficient evidence to support the jury's finding that the defendants held their victims in a condition of peonage.

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

United States v. *Veerapol*, 213 F.3d 1128 (9th Cir. 2002)

United States v. *Bibbs*, 564 F.2d 1165 (5th Cir. 1977)

2. Whether the government presented sufficient evidence to support the jury's finding that the defendants conspired to hold their victims in a condition of peonage.

United States v. *Moss*, 591 F.2d 428 (8th Cir. 1979)

United States v. *Pelton*, 578 F.2d 701 (8th Cir. 1978)

3. Whether the government presented sufficient evidence to support the jury's finding that the defendants committed document servitude.

United States v. *Sabhnani*, 539 F. Supp. 2d 617 (E.D.N.Y. 2008)

4. Whether the district court plainly erred by admitting the testimony of the government's expert witness, where the defendants did not object to the admission of the testimony, and where the testimony did not invade the jury's role of weighing evidence and assessing credibility.

United States v. *Eagle*, 515 F.3d 794 (8th Cir. 2008)

United States v. *Feliciano*, 223 F.3d 102 (2d Cir. 2000)

United States v. *Azure*, 801 F.2d 336 (8th Cir. 1986)

STATEMENT OF THE CASE

On September 26, 2007, a federal grand jury returned a 27 count superseding indictment charging Robert John Farrell and his wife, Angelita Magat Farrell, with violating federal law by holding, and conspiring to hold, four Filipino workers, Gina Agulto, Ronilo Pangan, Ruby Pangan, and Grace Pineda, in a condition of peonage by using threats of physical harm, threats of legal coercion, and other coercive means to compel their continued labor to discharge a debt. R. 90.[1] The indictment charged the defendants with (1) conspiracy to commit peonage, in violation of 18 U.S.C. 371 (Count 1); (2) peonage, in violation of 18 U.S.C. 1581 and 2 (Counts 2-5); (3) conspiracy to commit forced labor, in violation of 18 U.S.C. 371 (Count 6); (4) forced labor, in violation of 18 U.S.C. 1589 and 2 (Counts 7-10); (5) making false statements, in violation of 18 U.S.C. 1001 and 2 (Counts 11-12); (6) visa fraud, in violation of 18 U.S.C. 1546 and 2 (Count 13); (7) immigration conspiracy, in violation of 18 U.S.C. 1324 and 3531

[1] Citations to "R. __" refer to documents in the district court record. Citations to "Defs' Br. __" refer to pages in defendants' opening brief. Citations to "GX __" identify by number the government's trial exhibits. Citations to "Tr. __" identify the relevant pages of the consecutively numbered trial transcript filed with the district court.

(Count 14); (8) harboring and bringing in aliens, in violation of 18 U.S.C. 1324 and 2 (Counts 15-25); (9) trafficking into servitude, in violation of 18 U.S.C. 1590 and 2 (Count 26); and, (10) document servitude, in violation of 18 U.S.C. 1592 and 18 U.S.C. 2 (Count 27). R. 90.

The district court dismissed Counts 14-26 because of its concern that the counts were multiplicitous with respect to the other charged counts.[2] See Tr. 1005-1006. Given the court's additional concern that the forced labor and peonage counts were multiplicitous with respect to each other, the court structured the verdict form so that the jury could consider the guilt of defendants as to Count 6 (conspiracy to commit forced labor) only if it found defendants not guilty of Count 1 (conspiracy to commit peonage). R. 126. Similarly, the jury was only to consider the guilt of defendants as to Counts 7-10 (forced labor as to the four victims, respectively) if it found defendants not guilty of Counts 2-5 (peonage as to the four victims, respectively). R. 126; but see R. 108, Gov't's Brief *Distinct Elements of Proof of Charges Under 18 U.S.C. 1581, 1589, 1590* (arguing that the

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[2] The district court made clear that it was striking the counts because it found "that they are multiplicitous, not because there is not necessarily enough evidence to convict on these charges." Tr. 1005. The government objected, arguing that each count required proof of additional elements that the other charges did not. Tr. 1005-1006. The court overruled the objection. Tr. 1006.

crimes of peonage, involuntary servitude and forced labor are distinct and not multiplicitous).

On November 8, 2007, after a six-day trial, the jury found the defendants guilty on nine counts, including conspiracy to commit peonage (Count 1) and the four peonage counts (Counts 2-5) – thus the jury did not consider the remaining conspiracy count (Count 6) or the four forced labor counts (Counts 7-10). R. 126. The jury also found the defendants guilty of making false statements (Counts 11-12), visa fraud (Count 13) and document servitude (Count 27). R. 126. On February 25, 2008, the district court sentenced Robert Farrell to 50 months' imprisonment on all counts, to be served concurrently. R. 153. That same date, the district court sentenced Angelita Farrell to 36 months' imprisonment on all counts, to be served concurrently. R. 154. Both defendants were ordered to pay $15,900 in fines and assessments, and both were sentenced to three years' supervised release. R. 153, 154. These appeals followed. R. 161, 165.

STATEMENT OF FACTS

Viewed in the light most favorable to the government, and making all reasonable inferences in favor of the jury's verdict, *United States* v. *Abfalter*, 340 F.3d 646, 654-655 (8th Cir. 2003), cert. denied, 540 U.S. 1134 (2004), the evidence presented at trial established the following facts.

Defendants Robert and Angelita Farrell own and operate the Comfort Inn & Suites ("hotel"), a small hotel located in Oacoma, South Dakota. Tr. 136-137, 330; GX 47. In the fall of 2005, they arranged for nine Filipino workers (Gina Agulto, Ruby Pangan, Ronilo "Chique" Pangan, Grace Pineda, Princess Javier, Maria Corazon Margallo, May Flor Ambong, Mary Amelie Ambong, and Leo Porras) to come to the United States to work at their hotel as housekeepers. Tr. 152-166. Two of these workers were related to Angelita Farrell (*i.e.*, Princess Javier was Angelita Farrell's niece; Ruby Pangan was her cousin), Tr. 382, 484; some of the workers were related to each other (*i.e.*, Ruby Pangan and Ronilo Pagan were married; May Flor Ambong and Mary Amelie Ambong were sisters-in-law), Tr. 158, 435.

The victims[3] testified that they were looking forward to working in the United States because the Philippines is "a poor country" with a high unemployment rate and "widely" occurring "[g]raft and corruption." Tr. 134. The

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[3] Although the government charged the defendants with holding just four victims (Gina Agulto, Ruby and Ronilo Pangan, and Grace Pineda) in a condition of peonage, much of the evidence supporting the defendants' convictions of peonage is applicable to the other Filipino workers as well. The government will thus use the term "workers" when the evidence can reasonably be inferred to apply to all the Filipino workers; the government will use the term "victim" when reciting evidence specifically pertaining to the four victims identified in the peonage charges.

victims therefore expected to make more money in the United States than would be possible if they remained in the Philippines, and also to make enough money to send some home to their families in the Philippines. For example, Gina Agulto testified that working in the United States "would be a promise of a greener pasture" and would allow her to improve her "children's future." Tr. 137. Grace Pineda also testified that she wanted to come to the United States for "greener pasture[s]." Tr. 587. And Ronilo Pangan testified that, by coming to the United States and working, he and his wife, Ruby, would be able to give their children a "good life." Tr. 482.

The defendants told the workers that, if all went well, they would be making two trips to the United States. Tr. 589-590. That is, the defendants told the workers that they would initially stay in the United States for a short period of time and then return to the Philippines, and the defendants would then bring the workers back to the United States to work for a longer period of time. Tr. 589-590.

1. Immigration Process For The First Trip To The United States

To facilitate the immigration process, on August 17, 2005, the defendants submitted an I-129, Petition for a Nonimmigrant Worker, to the Department of Homeland Security on behalf of the workers. See GX 69. The I-129 indicated

that the workers would be employed as housekeepers at the hotel from October 1, 2005, until January 31, 2006, and each would earn $300/week. GX 69.

The defendants told the workers to execute separate employment contracts that repeated the information on the I-129: the contracts stated that each worker would work as a housekeeper at the hotel for a maximum of eight hours per day, six days a week, and would be paid $6.05/hour. See, *e.g.*, GX 53, 55, 116. The contracts also indicated that they would be paid time and a half for hours worked beyond their regular schedule and double time for holidays and scheduled days off. See, *e.g.*, GX 53, 55, 116. The defendants would also arrange housing for the workers for $150/month each. See, *e.g.*, GX 53, 116. The contracts stated that the defendants would pay for the workers' transportation to and from the United States. See, *e.g.*, GX 53, 55, 116.

In addition to their employment contracts, the workers prepared applications for nonimmigrant visas (forms DS-156 and DS-157) based on Angelita Farrell's instructions. Tr. 147-149; see, *e.g.*, GX 21. Specifically, Angelita Farrell told the workers to write that the defendants would pay for their transportation to the United States, which mirrored the information in the employment contracts. See, *e.g.*, Tr. 147-148; GX 21.

Before traveling to the United States, the workers met with the defendants at

a hotel in Manila to prepare for their upcoming interviews at the consular office. Tr. 153. At this meeting, the defendants explained to the workers the specifics of their employment contracts. Tr. 155. The defendants told the workers that although the contracts stated that the defendants would pay for their transportation to the United States, the workers would have to reimburse the defendants for that expense. Tr. 155. Angelita Farrell further explained to the workers that if they actually told the consular office that they were paying for their own transportation, then they would be denied a visa. Tr. 590-591.

The defendants also told the workers that, contrary to what their employment contracts stated, the workers would not be paid any overtime or holiday pay. Tr. 155-156. Finally, Robert Farrell explained to the workers that they would have to reimburse the defendants for a $1200 INS processing fee.[4] Tr. 169-170. He told the workers that this $1200 fee would be divided among the nine of them. Tr. 169-170.

Thus, before leaving the Philippines, the victims thought they would be working as hotel housekeepers for eight hours a day and making about $6/hour.

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[4] The processing fee includes a filing fee, a fraud prevention fee, and a $1000 fee to expedite the approval process; these amounts are applied per I-129 *form*, not per *worker* listed on the I-129 form. See Tr. 339-340. Thus, regardless of how many workers an employer seeks to bring to the United States, the employer is charged these fees only once. Tr. 340.

They also thought they would owe the defendants only the cost of their transportation to the United States and a small portion (one-ninth) of the $1200 processing fee. For example, Agulto thought that she owed the defendants roughly $1800, Tr. 168; Pineda thought she owed around $1300, Tr. 591-592; see also 481-482 (Ronilo Pangan testifying that he and his wife expected to owe the defendants their transportation costs and a fraction of the processing fee). Despite the debt they would owe the defendants, the victims were still eager to come to the United States because they expected to earn enough money to pay back the defendants and save money for themselves. See, *e.g.*, Tr. 482. Indeed, Ronilo Pangan testified that, based on the wages and work schedule the defendants promised to them, he and his wife expected to be able to pay the defendants back within a month. Tr. 483.

2. First Trip To The United States: November 2005 - February 2006

The workers arrived in the United States in mid-November 2005, Tr. 174-176, and found conditions drastically different from what defendants had promised them in the Philippines.

a. Passports

One day after their arrival, Angelita Farrell demanded that the workers turn over their passports, visas, and other immigration documents to Alma Navarro, the

manager of the hotel. Tr. 176-177. The workers did, even though some were uncomfortable doing so. For example, Gina Agulto testified that she "felt bad" about surrendering her passport because the Philippine Overseas Employment Administration told her before leaving for the United States that "no one should take [her] passport," and that she should always possess her passport outside of the Philippines. Tr. 177. Agulto said she turned over her passport because the Farrells were her employers and, as part of the Filipino culture, she was expected to "honor and respect" her employers. Tr. 178. Moreover, Agulto thought that, because the defendants were employers, "they [knew] better" than she did. Tr. 178. Similarly, Pineda testified that she did not want to turn over her passport because it was her sole means of identification. Tr. 599. Pineda also testified that, at a training session she attended before leaving the Philippines, she was instructed to always carry her passport with her. Tr. 599; see also Tr. 490-491 (Ronilo Pangan testifying that he did not want to turn over his passport but that the defendants took it for what they called "security" reasons).

b. Increased Debts

Shortly thereafter, the defendants told the workers that each was going to be *individually* responsible for the entire $1200 processing fee. Tr. 592; see also Tr. 169. The defendants also told the workers that rather than being paid $6.05/hour,

they were to be paid $3/room cleaned. Tr. 203-204. According to two of the victims, it took around an hour to clean a room to the defendants' standards. Tr. 204, 601. The defendants also began charging the workers for transportation to and from their apartment and their work sites and for transportation to and from other places in the area. Tr. 170, 216, 592-593. The defendants did not tell them before they arrived that they would be charged for transportation. Tr. 170.

Moreover, the defendants charged the workers for food and personal items that the defendants provided but that the workers did not want or ask for. Tr. 170, 289, 432-433. The defendants *did* follow the terms of the contract in one respect: the defendants provided the victims housing for $150/month each. But the "housing" consisted of a two-bedroom apartment shared by seven of the workers (including all four victims) that was leased to Angelita Farrell for $375/month. Tr. 217-221; GX 6.

The defendants required the workers to attend frequent, late-night meetings at the hotel that often lasted into the early morning hours. Tr. 229-230. If a worker was not already at the hotel, then that worker would be summoned to the hotel to attend the meeting - even if that worker was back at the apartment sleeping. Tr. 230. At these meetings, the defendants would discuss the ever-increasing debt each worker owed to the defendants. Tr. 230. Angelita Farrell

maintained specific documents pertaining to each worker's debt in a binder that she brought to the meetings.[5] Tr. 194-195.

The defendants repeatedly told the workers that their priority was to pay their debt – not to send money back to the Philippines. See generally, Tr. 198, 211, 231. In making their demands for repayment of the debt, the defendants emphasized to the workers how much they had done for the workers and how much the workers owed them in return. See, *e.g.*, Tr. 193; GX 36, 39, 45. These general meetings would usually be followed by one-on-one discussions with each worker to discuss his or her debt further. Tr. 231. At these meetings, Angelita Farrell would rely on the documents she maintained in the binder. Tr. 194.

c. Threats

During these meetings, and also while the workers were working at the hotel, Robert Farrell would repeatedly threaten to find them and ship them back to the Philippines in a balikbayan box[6] if any of them ever tried to run away or do

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[5] The binder contained, among other things, each worker's debt contract, see, *e.g.*, GX 1, pp. 17, 48-49, 58, 77, 99, 146, 165, 195, 212, an accounting of how much income the workers expected to receive, GX 1, pp. 40-42, 214, and handwritten documents the workers submitted after Angelita Farrell demanded to know a full accounting of their expected income and anticipated expenses, see, *e.g.*, GX 1, pp. 16, 75, 78, 85-88, 150, 168-169; see also Tr. 194-199.

[6] A balikbayan box is a box used by Filipinos working abroad to send items

(continued...)

something "behind [his] back." Tr. 206, 211, 632. Grace Pineda took this to mean that if she ever left the defendants, they would find her regardless of where she went. Tr. 633. Indeed, the defendants would tell the workers in these meetings that they would find them even if they returned to the Philippines. Tr. 640 ("[T]hey always tell us in the meeting that they will find us, and even if we are in the Philippines, * * * they are going to ask money for payment."). Agulto understood the defendants' repeated threats not to run away and the defendants' constant focus on re-paying their debts to mean that, "[i]f you run away or if you leave [the defendants] in any other way, then there would be no way we can pay them." Tr. 211-212.

Robert Farrell would also yell at the workers and threaten to "call * * * Immigration" and report them if they did not comply with his rules. Tr. 638. Similar statements were actually included in meeting minutes maintained by Angelita Farrell. The minutes for a December 28, 2006, meeting, for example, include the following: "As an owner we went beyond your needs in order to keep you in our facility legal and *illegal/TNT (we will find you)*." GX 1, p. 108 (emphasis added). "TNT" is a Filipino phrase that stands for "tago non tago," and

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[6](...continued)
back to the Philippines. Tr. 228, 632.

is similar to the English phrase "running and hiding." Tr. 265-266.

The victims took these threats seriously. Tr. 229. Two of the victims testified that they believed maintaining an unpaid debt is a jailable offense in the Philippines. Tr. 173, 629-630 ("[I]n the Philippines, if they have proof that you have signed some papers, they can just easily put you [in] jail."), 665-666. And they felt that given the conditions in the Philippines, their safety – and even their lives – would be endangered. Tr. 174 ("In the Philippines if you go to jail, you go to * * * over-populated jails. You can get raped; you can get killed; or if you are lucky and you don't get killed, when you get out, you cannot get a decent job.").

The workers were not getting paid enough from their work at the hotel to cover their debts to the defendants, see Tr. 391, 605-606, so the defendants expected them to get additional jobs at local fast food restaurants and other area businesses, which they did. Tr. 185-188, 487-488, 605-606. The workers, however, were often required to work at the hotel even if they had not slept the night before (given their schedules at their other jobs), see, *e.g.*, Tr. 707 (Q. "How often would you work full days at two jobs without having slept the night before?" A. "Four or five in a week."), if they were sick, Tr. 707, or even if they were injured, Tr. 492. For example, Ronilo Pangan once asked to take a break from working one of his jobs because he was in physical pain; Angelita Farrell asked

him how he expected to pay her if he was not working both jobs. Tr. 492-493.

d. Isolation

Although the defendants expected the workers to work additional jobs outside the hotel, they directed the workers not to talk to other people in the area, not to talk to their co-workers, not to accept rides, and not to go anywhere without the defendants' permission. Tr. 190, 205-206, 210. The defendants did not permit the workers to have American friends. Tr. 609. Three of the workers developed a friendship with a co-worker at Burger King, however, and socialized with her once following a shift at the restaurant. The next day, the defendants summoned the three to the hotel and yelled at them one by one for disobeying their orders. Tr. 206-210. According to Agulto, Angelita Farrell accused her of doing something behind her back and of disobeying the rule "about not going anywhere without asking [the defendants'] permission." Tr. 210. Agulto testified that from this experience, she learned that "whatever it is we do, they will really find out." Tr. 211.

From then on, the defendants took additional steps to isolate the workers. For example, the defendants told the workers not to talk to the non-Filipino workers at the hotel. Tr. 636. Meeting minutes show that the defendants told the workers not to make long distance telephone calls from their apartment. GX 50.

When three of the victims were invited to go bowling with other Burger King employees, Robert Farrell drove them to the bowling alley and remained there, despite the fact that several Burger King employees offered to drive the victims. Tr. 212-213. The defendants also discouraged Agulto and Pineda from joining a church choir group that met for two hours a week. Tr. 214-215. The defendants told them that they did not have time to join the choir because they were in the United States "to work and work." Tr. 214. All of the workers were required to ask the defendants for permission to leave their apartment or the hotel, or to inform the hotel manager if they were leaving – even if they simply needed to go to the drugstore to buy personal items. Tr. 217.

e. Privacy

The defendants also denied the workers a general sense of privacy. For example, although Alma Navarro, the hotel manager, had a key to the workers' apartment, none of the workers staying there received a key – despite asking for one.[7] Tr. 223. The workers, therefore, had to leave their apartment unlocked. Tr. 223-224. Agulto testified that, several times a week, the defendants would come

[7] It is not clear from the transcript how many workers asked for a key. Agulto testified that she asked for a key when she first arrived (and also during the second trip), but "*we* were told you don't need a key because you don't have to lock the apartment." Tr. 223 (emphasis added).

to their apartment unannounced. Tr. 224-225. Angelita Farrell would then look in the workers' rooms and search through their closets, cupboards, and personal items. Tr. 225. Angelita Farrell did not provide any explanation to the workers as to what she was doing there. Tr. 225. And Agulto described two incidents in which the hotel manager insisted on watching her open her personal mail. Tr. 252-253.

f. Debt Contracts

Shortly before the workers were scheduled to return to the Philippines, the defendants presented them with a full accounting of how much each owed. Tr. 168-169; see also GX 1, p. 17 (Jan. 8, 2006, debt contract for Pineda); GX 1, p. 49 (Jan. 8, 2006, debt contract for Ronilo Pangan); GX 1, p. 58 (Jan. 8, 2006, debt contract for Ruby Pangan); GX 58 (Jan. 8, 2006, debt contract for Agulto). These "debt contracts" show that the defendants charged each of the victims for (1) airfare to the United States; (2) the full $1200 processing fee; (3) $150/month rent; (4) food; (5) local transportation/gas; and, (6) a state identification card. The total debts for the victims ranged from $2870.43 to $3352.24. See GX 1, pp. 17, 49; GX 58.

Given the additional charges the defendants imposed on the victims after the victims arrived in the United States, the victims' debt to the Farrells was much

more than each anticipated when they left the Philippines. See, *e.g.*, Tr. 592-593. In fact, the debt was so great that Pineda testified she would not have come to the United States had she known *before* she left the Philippines what her total debt to the defendants was going to be. Tr. 592-593. Agulto similarly testified that had she known her debt was going to increase once she arrived, she would not have come to the United States because "that would mean [she] would just incur more debts," and she would never "earn enough to pay" the defendants. Tr. 170-171.

In a futile effort to pay down their debt, the victims turned over most of their paychecks to the defendants and essentially worked for free. For example, Agulto signed over most of her paychecks to Angelita Farrell. Tr. 199. Ronilo Pangan also turned over most of his and his wife's paychecks to the defendants, Tr. 492-495, and therefore was able to send money home to his family only when he "slip[ped] one" of his paychecks past the defendants, Tr. 492. Pineda explained that the defendants would give her a paycheck for her work at the hotel, but then she would have to endorse it back to them after receiving it. Tr. 595-596.

Around the same time the workers learned the full extent of their debts, the defendants informed the workers that no one was going to be brought back to the United States for the second trip unless he or she submitted a "why I deserve to come back" letter. Tr. 249-250, 309, 621; GX 1, pp. 104-105. The defendants

told the workers that they would review these letters to determine which workers they would permit to come back to the hotel and work. Tr. 249-250. Given the defendants' previous threats to the workers about what would happen to them if they did not pay off their debts, and the victims' fears of being imprisoned in the Philippines if they were unable to pay off their debts, the victims wrote letters asking to come back. For example, Pineda testified that she wrote a letter asking to come back, not because she wanted to work again for the defendants, but because she was afraid of the defendants, particularly Robert Farrell, and was afraid of going to jail in the Philippines if she did not pay her debt. Tr. 621, 630. Pineda did not, however, include any complaints in her letter about her working conditions because she understood that the purpose of the letter was to please her employers; she wrote it so that she could come back and pay off her debts. Tr. 665-666. She testified, however, that had she *not* accumulated the debt to the defendants during the first trip, she would not have returned to the United States. Tr. 630.

Agulto and Ruby Pangan (on behalf of herself and Ronilo) wrote similar letters asking to come back. See Tr. 249-250, 512, 719-720; see, *e.g.*, GX 1, pp. 60, 100. Agulto testified that she did so because she was afraid of what would happen to her in the Philippines if she was unable to pay off her debt to the

defendants. Tr. 173. Ruby Pangan testified that she was afraid to remain in the Philippines because "[the defendants] ask[ed] us to sign an agreement that we're going to * * * pay them." Tr. 701. She explained that, given Robert Farrell's previous threats to "hunt us wherever we go" if they tried to escape and avoid paying the debt, she was afraid she would be "charged * * * because of the contract that I signed and agreed to" and sent to prison in the Philippines. Tr. 701-702. She further testified that she was afraid of the defendants and was afraid for the safety of her children. Tr. 702.

Despite signing their paychecks over to the defendants and even authorizing the defendants to receive their final paychecks from their outside jobs, see Tr. 193-194, the victims were unable to discharge their debts to the defendants. According to the debt contracts Angelita Farrell maintained, on the day they returned to the Philippines, Agulto owed the defendants $2156.27, GX 58; Pineda owed $1886.02, GX 1, p. 17; Ronilo Pangan owed $2659.03, GX 1, p. 49; and, Ruby Pangan owed $2387.93, GX 1, p. 58.

3. Immigration Process For The Second Trip To The United States

In the spring of 2006, the defendants again arranged for a group of Filipino workers (which included the four victims) to come to the United States and work at the hotel. The defendants completed another I-129, Petition for a

Nonimmigrant Worker, GX 68, which indicated that all of the workers would be employed as housekeepers earning $242/week. GX 68.

As they did for their first trip to the United States, the workers were required to complete visa applications (*i.e.*, forms DS-156 and DS-157). Tr. 231. Form DS-157 asks the applicant to list the applicant's last two employers. See, *e.g.*, GX 70. The defendants told the workers *not* to include their prior outside jobs on the application, explaining that the contracts stated each will be working only for the hotel. Tr. 232, 302, 623. Accordingly, none of the workers' applications includes his or her previous employment outside the hotel. Tr. 559-562; see also GX 79-85. Ronilo Pangan testified that the reason the workers were not supposed to include their outside employment was because if they did, their applications may not be approved. Tr. 499. He was correct: a visa adjudicator for the Department of State testified that having engaged in employment not covered by the visa application would have raised "grave concerns" for the State Department during the application process. Tr. 553-555.

As they did before the first trip, the defendants told the workers to state on their applications that their "employer" would pay for their transportation to the United States. Tr. 499, 622. Accordingly, all of the applicants indicated that the defendants would pay for their transportation costs. Tr. 559; see also GX 79-85.

The workers, however, each had to acknowledge an additional debt of $1200 owed to the defendants. See, *e.g.*, GX 1, pp. 15, 47, 57, 74, 98.

And as they did before the first trip, the defendants met with the group of Filipino workers before their scheduled interviews with the consular office. Tr. 233-234. At this meeting, the defendants told the workers not to discuss their outside jobs with the consular officer. Tr. 234. The defendants gave the workers copies of paychecks that they were to present to the consular officer in the event they were asked how much they earned at the hotel. Tr. 234, 500; see also GX 65. Robert Farrell explained to the workers that the checks were to show the consular officer that the workers had been paid according to the terms of their previous employment contracts. Tr. 234. These checks, however, had never been, and never were, paid to the workers. Tr. 234, 241; see GX 65.

4. Second Trip To The United States: April 2006 - May/June 2006

The workers arrived in the United States in April 2006. Their experiences on this trip were similar to those of the first. Tr. 242. The workers were again housed in an apartment that the defendants rented for $375/month; the defendants again charged each worker $150/month in rent. Tr. 218-220. The workers were also required to turn over their passports to the defendants shortly after their arrival. Tr. 179, 501-502, 599-600. Agulto testified that Angelita Farrell claimed

to want the passport for "safekeeping"; Agulto, however, felt that it was the defendants' way of controlling the workers so that they would not run away. Tr. 179.

The defendants required the workers to sign a second debt contract. Tr. 242. These contracts included the debt each worker incurred on the previous trip to the United States, as well as another $1200 processing fee, air fare, and six months' rent. See GX 1, pp. 14 (Pineda), 50 (Ronilo Pangan), 55 (Ruby Pangan), 95 (Agulto). These contracts also included a schedule of bi-weekly payments that each worker was to make to the defendants. The victims' bi-weekly debt payments ranged from $361.18 to $431.02. GX 1, pp. 14, 50, 55, 95.

Despite working long hours at the hotel, the workers were not making enough to cover their bi-monthly debt payments, so the defendants again expected them to take on additional jobs.[8] See, *e.g.*, 242, 391. The Department of Labor investigator, however, testified that the defendants owed all of the workers either unpaid minimum wage, unpaid overtime, or both for their work at the hotel. Tr.

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[8] A typical day for Gina Agulto was to work at the hotel from midnight to 8 a.m., then work at Burger King from around 9 a.m. to 4 p.m. Tr. 189. Grace Pineda usually worked eight hours a day or longer at the hotel, then another eight hours at Burger King. Tr. 606-607. Ruby Pangan generally worked at the hotel from 8:30 a.m. to 4:30 p.m., and then at Burger King from 5 p.m. until midnight. Tr. 503.

461; GX 126. In fact, the defendants owed the victims between $1816.78 (Agulto) and $3588.16 (Ruby Pangan) in unpaid wages. Tr. 462; GX 126.

In addition to the excessively long workdays, defendants again subjected the workers to late night meetings at the hotel. Tr. 242. And again at these meetings, the defendants would warn the workers not to leave their care or hide from them because Robert Farrell would find them "wherever [they] are, wherever [they] go." Tr. 633; see also Tr. 701. As with the last trip, the workers were restricted as to where they were allowed to go and whom they were allowed to contact. Tr. 242; see also GX 42 (May 2, 2006 meeting minutes stating "Ask permission before calling or talking to people.").

The defendants' method of collecting the debt, however, was different on this trip. In addition to having the workers turn over their paychecks to them, Tr. 505, 521, 602, the defendants had some of the workers write out a series of post-dated checks in the amount of their bi-weekly payment obligation, Tr. 612-614; see GX. 1, pp. 4-12, 62-70, 135-142, 154-161, 177-184. Pineda testified that she did not want to do this because she was afraid of having insufficient money in her account to cover the checks. Tr. 613. When she initially resisted, however, Angelita Farrell became verbally abusive, accused Pineda of not trusting her, and questioned why Pineda would not write the checks when the other workers had

already done so. Tr. 613. Pineda then wrote out the checks because she was "terrified" of what would happen to her if she did not. Tr. 614.

Ronilo and Ruby Pangan refused to write post-dated checks to the defendants; as a result, the defendants called them into a meeting at the hotel around midnight and yelled at them *until 6 a.m*. Tr. 504, 706. Ruby testified that she was "crying and scared" during the meeting. Tr. 706. Ronilo testified that Robert Farrell was also "really angry" at them for sending one of the four paychecks they received that month (*i.e.*, one each from the hotel, one each from a second job) home to their children. Tr. 505-506. The defendants asked the Pangans why they sent money home without asking them first, and they told the Pangans that they (the defendants) were the only ones who could decide how much money they could send home. Tr. 506. Ronilo Pangan further testified that he was afraid to speak at the meeting because he thought Robert Farrell might punch or hit him. Tr. 506. He testified that he did not know what to do because he "[did not] know anything about * * * America," and he was afraid that "something will happen to us." Tr. 507.

Agulto testified that about a month into the second trip, she needed "to come up with a way for [the defendants] to allow me to go home," so she made up a story about needing to return to the Philippines to take care of her mother. Tr.

243. Defendants allowed Agulto to leave on the condition that she would return to the United States. Tr. 243-244. Defendants also told her to sign over part of her final paycheck to the defendants, Tr. 244, 326; she was also required to sign a promissory note in the amount of $4306.27, Tr. 270, see also GX 57. Angelita Farrell returned Agulto's passport to her only just before she checked in at the airport. Tr. 272. Back in the Philippines, Agulto received numerous emails and phone calls from Angelita Farrell asking her when she was going to return to the United States and how she was going to pay the debt she owed the defendants. Tr. 272.

In late June 2006, Ronilo and Ruby Pangan told the defendants they were quitting after Robert Farrell accused Ronilo of failing to turn over a tip to the hotel's front desk and humiliated him in front of the other workers. Tr. 430, 516-517, 522, 524, 707-708. Pineda quit, too. Tr. 637, 640. The defendants drove the Pangans back to the apartment and told them to pack up their belongings – they were going to be taken to the airport. Tr. 525, 709. While the defendants waited in the car, Ruby entered the apartment and attempted to call her manager at Burger King. Tr. 710. Angelita Farrell, however, entered the apartment, pulled the cord out of the phone, and told the Pangans to hurry up because "Immigration is waiting for you." Tr. 710.

The Pangans asked the defendants to call the FBI so that someone could hear "[their] side"; Robert Farrell did, and told the FBI, in front of the victims, that he had two workers who were not in compliance with their visas; the FBI did not come to the apartment. Tr. 711-712. He also called an agent from the Immigration and Customs Enforcement agency and told the agent he wanted two of his employees arrested and deported. Tr. 330. He was "frustrated" when the agent declined to do so. Tr. 331.

Robert Farrell also called the police department; when Chief of Police Joseph Hutmacher arrived, Robert Farrell said that he had fired the victims and that they were required to return to the Philippines. Tr. 737, 741. He wanted Hutmacher to tell the victims that they would be arrested if they did not return to the Philippines. Tr. 741. Hutmacher went into the apartment to speak to the Pangans and Pineda. Tr. 739. Hutmacher testified that the three victims appeared to be "terrified" of the defendants. Tr. 739. He left the apartment, but returned a short time later because he felt that he "had been used to intimidate the workers." Tr. 742.

The next day, Hutmacher called Ann Arnoldy, the Lyman County state's attorney. Tr. 722, 744. Arnoldy and Hutmacher met with the victims and arranged for them to leave their apartment. Tr. 745. Arnoldy testified that it was

"very apparent" that the victims were "living in fear" of the defendants. Tr. 730. Hutmacher and other officers helped the victims pack their belongings in the middle of the night and then took them to the hotel to retrieve their passports. Tr. 744-745. The defendants, however, did not immediately return their passports; rather, Robert Farrell agreed to drop their passports off at Burger King the next day. Tr. 747.

The next day, however, the defendant insisted on returning the passports to the victims in person. Tr. 748. Only after Hutmacher threatened to arrest him did Robert Farrell agree to return the passports. Tr. 749. When he arrived at the Sheriff's Office the next day to do so, he demanded to know where the victims were and again insisted on returning the passports to the victims in person. Tr. 749. Hutmacher noticed that the defendant had some documents that he wanted the victims to sign; according to Hutmacher, these documents appeared to be acknowledgments that the three victims had resigned, were not mistreated, and had been paid all the wages they were due. Tr. 749-750.

Over the next week, the defendants called the Immigration and Customs Enforcement agency 7-10 more times in an effort to have the three victims arrested and deported. Tr. 331-332. In early July, Angelita Farrell called Arnoldy and asked her to prosecute Pineda for passing bad checks. Tr. 723. The checks were

made out to the Comfort Inn and were each written for $361.18 – the amount of Pineda's bi-monthly debt payments. Tr. 727; GX 1, p. 14; GX 73. Arnoldy testified that the defendant became "upset" when Arnoldy told her that she did not think a prosecutable crime had been committed. Tr. 735.

5. Government's Expert Witness[9]

At trial, the government introduced the testimony of Joy Zarembka, an expert in the field of human trafficking and worker exploitation. Tr. 69-73; see also R. 107. Zarembka testified about a "climate of fear" that often exists in modern-day human trafficking cases. See generally Tr. 73-83. This climate of fear, she testified, is a form of psychological coercion that results from certain tactics and conditions that human traffickers use or exploit. See generally Tr. 73-83. Zarembka testified that these tactics include: (1) using deception (*i.e.*, where a victim is lured to the United States with promises of a particular job, hours, and pay that go unfulfilled), Tr. 74; (2) exploiting class differences, such that a victim defers to the authority of someone of a higher class, Tr. 75-76; (3) exploiting a

[9] Although the government filed a Notice of Intent to Use Expert Witness, see R. 107, and asked the witness to provide her expert opinion for the jury without objection, see Tr. 83, the government did not formally move for the witness to be identified as an expert. The government asked and received an instruction for the jury concerning expert witnesses, to which the defense objected. Tr. 1006-1007. The court overruled the objection. Tr. 1007. The defendants are not challenging the witness's status as an expert in this appeal.

victim's sense of cultural indebtedness, such that a victim feels obligated to reciprocate toward an employer who has brought him or her into the country, Tr. 76; (4) exploiting a financial debt or using "debt bondage" to control certain aspects of a victim's life, Tr. 77-78; (5) confiscating a victim's passport to limit his or her movement, Tr. 78-79; (6) isolating a victim from others to limit outside communication and contact, Tr. 79-80; (7) intimidating or humiliating a victim to keep him or her "in * * * place," Tr. 80; and, (8) threatening physical violence, threatening to call the police or immigration officials, or threatening to deport the victim, all as a means of inducing fear in the victim, Tr. 80-82. Zarembka testified that, in her expert opinion, the victims in this case were held in just such a "climate of fear." Tr. 83. The jury was later provided a standard instruction regarding expert testimony. R. 118 ("Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves.").

SUMMARY OF ARGUMENT

1. The jury found the defendants guilty of holding the victims in a condition of peonage based on ample evidence that the defendants compelled the victims to work for them in order to satisfy a debt. The jury heard testimony that, after the victims arrived in the United States, the defendants cut their promised

wages in half and added numerous, previously undisclosed charges to the debts the victims were told they already owed the defendants. The jury heard testimony that Robert Farrell then repeatedly threatened the victims with physical harm and threatened to call immigration officials if any left the defendants' employ or did not comply with the defendants' rules. The jury heard evidence that the victims continued to work for the defendants because they were afraid of what would happen to them if they did not pay off their debts. The jury also heard ample evidence that the defendants created and maintained a climate of fear that, when combined with the defendants' threats of force and legal coercion, compelled the victims to work for the defendants to discharge their debts. This evidence was more than sufficient to support the jury's finding that the defendants held the victims in a condition of peonage.

2. The jury found the defendants guilty of conspiracy based on ample evidence from which the jury could infer that the defendants agreed to hold the victims in a condition of peonage. The jury heard evidence that the defendants jointly instructed the victims to include false information on their immigration documents and to present false information to immigration officials. The jury also heard evidence that the defendants maintained detailed records of the victims' debt and repeatedly discussed these debts at hotel meetings. The jury also heard

evidence that, at these meetings, with Angelita Farrell present, Robert Farrell threatened the victims with physical harm and with legal coercion if they left the defendants' employ and defaulted on their debts. The jury also heard evidence that the defendants confiscated the victims' passports and that Robert Farrell returned three of them only after a police officer threatened to arrest him. The jury also heard evidence that the defendants took efforts to cover up their illegal activity. This evidence was more than sufficient to permit a reasonable juror to find that the defendants agreed to hold the victims in a condition of peonage.

3. The jury found the defendants guilty of document servitude based on ample evidence that they intentionally withheld the workers' passports as a means to coerce the victims' labor through threats of force and abuse of the law or legal process. The jury heard abundant evidence that the defendants confiscated the victims' passports shortly after they arrived in the United States and that they did so against the victims' wishes. The jury also heard testimony that the defendants returned one of the victim's passports only after that victim was compelled to make up a story in order to leave the United States and return to the Philippines. The jury also heard evidence that Robert Farrell initially refused to return the remaining victims' passports even when requested to do so by the local police and that he returned their passports only after the police threatened to arrest him. This

evidence is more than sufficient to support their convictions under 18 U.S.C. 1592.

4. The district court did not plainly err when it admitted testimony by the government's expert witness. The witness described, without objection, the "climate of fear" that often exists in human trafficking cases. She also identified certain behaviors that contribute to this climate. Although the witness testified that, in her expert opinion, a climate of fear existed in this case, the witness did not testify to any ultimate issue that the jury was to decide. As such, her testimony did not invade the province of the jury, and the district court did not plainly err in admitting it. Even if it was error to admit some portions of her testimony, the jury heard ample evidence from the victims and other witnesses about specific actions of the defendants from which the jury could easily conclude that the defendants created and maintained a climate of fear. For this reason, admitting the expert's testimony did not seriously affect the defendants' rights or the fairness, integrity, or reputation of the judicial proceedings.

In order for this Court to consider a defendant's challenge to the sufficiency of the evidence supporting a criminal conviction, the defendant must have moved for a judgment of acquittal at the close of all the evidence. *United States* v. *Londondio*, 420 F.3d 777, 786 (8th Cir. 2005). Here, the defendants moved for a judgment of acquittal at the close of the government's case, Tr. 760, and at the close of the government's rebuttal evidence, Tr. 1029-1030; the district court denied these motions, Tr. 769, 1030. Defendants, however, then moved to re-open the defense case to present additional evidence. Tr. 1031. The district court granted the motion, and defendants introduced additional evidence. Tr. 1031-1032. Defendants did not renew their motion for judgments of acquittal following the introduction of this evidence, see Tr. 1031-1033, nor did they do so in a post-judgment motion. Failing to the renew the motion at the close of *all* the evidence generally constitutes a waiver of the motion. *Myers* v. *United States*, 337 F.2d 22, 23 (8th Cir. 1964). This Court, however, may review the record for plain errors affecting substantial justice.[10] *Ibid.*; see also *United States* v. *Wadena*, 152 F.3d

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[10] Although technically this Court should review the defendants' challenge to their convictions for plain errors affecting substantial evidence, *Myers*, 337 F.2d at 23; *Wadena*, 152 F.3d at 853, the government is not relying on this standard, as the evidence was more than sufficient for any reasonable juror to find the defendants guilty beyond a reasonable doubt. *Vazquez-Garcia*, 340 F.3d at 636.

831, 853 (8th Cir. 1998), cert. denied, 562 U.S. 1050 (1999); *Londondio*, 420 F.3d at 786.

B. Sufficient Evidence Supports The Defendants' Convictions For Holding Persons In A Condition Of Peonage

The jury's verdict was supported by ample evidence that the defendants held their victims in a condition of peonage.

Section 1581 of Title 18 prohibits, among other things, holding a person to a condition of peonage. 18 U.S.C. 1581. Peonage is "a status or condition of compulsory service" based upon a real or alleged indebtedness. *Bailey* v. *Alabama*, 219 U.S. 219, 242 (1911) (quoting *Clyatt* v. *United States*, 197 U.S. 207, 215 (1905)); *Pierce* v. *United States*, 146 F.2d 84, 86 (5th Cir. 1944). The amount of the debt, or the means and methods of coercion, are largely irrelevant. *Pierce*, 146 F.2d at 86. Nor does it matter whether the debtor contracted to perform the labor for the creditor. *Bailey*, 219 U.S. at 242 ("The full intent of the constitutional provision could be defeated with obvious facility if, through the guise of contracts under which advances had been made, debtors could be held to compulsory service."). "It is sufficient to allege and prove that a person is held against his will and made to work to pay a debt." *Pierce*, 146 F.2d at 86; *Bernal* v. *United States*, 241 F. 339 (5th Cir. 1917), cert. denied, 245 U.S. 672 (1918).

Proving a violation of 18 U.S.C. 1581 (peonage), is similar to proving a violation of 18 U.S.C. 1584 (involuntary servitude), as both require the government to show that an employer coerced an individual to work against his will. In proving peonage, the government is also required to show that the coerced work was to discharge a debt. *Bailey*, 219 U.S. at 242.

In *United States* v. *Kozminski*, 487 U.S. 931, 952 (1988), the Supreme Court clarified that involuntary servitude requires evidence that "the victim [was] forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use of coercion through law or the legal process." Once that requirement is met, the jury determines "whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve." *Ibid.* In making this determination, the jury may consider such factors as "evidence of other means of coercion, or of poor working conditions, or of the victim's special vulnerabilities." *Ibid.*; see also *United States* v. *Veerapol*, 312 F.3d 1128, 1132 (9th Cir. 2002), cert. denied, 538 U.S. 981 (2003). Involuntary servitude thus exists where "the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion." *Kozminski*, 487 U.S. at 952.

1. Threats Of Physical Injury And Legal Coercion

The record contains ample evidence to support the jury's finding that the defendants obtained, and maintained, the victims' labor through threats of both physical injury and legal coercion. The jury heard testimony that, throughout the victims' stay in the United States, defendant Robert Farrell repeatedly threatened to hunt them down and ship them back to the Philippines "in a * * * box" if they ever did something behind his back, left his employ, ran away, or failed to pay their debts. Tr. 206, 211, 266, 632-633, 640, 701. Clearly, threatening to send someone home "in a * * * box" constitutes a threat of physical injury. See, *e.g.*, *Local Union No. 12004, United Steelworkers of America* v. *Massachusetts*, 377 F.3d 64, 70 (1st Cir. 2004) (reciting "dangerous and threatening conduct" that included the threat "[w]e will put you in a box").

The jury also heard testimony that Robert Farrell repeatedly threatened to call immigration officials and report the victims if they did not comply with his and Angelita Farrell's demands. Tr. 638. If the defendants did, in fact, call immigration officials, the victims could be both arrested and deported for violating the conditions of their visas (*i.e.*, working at outside jobs). See Tr. 352. Indeed, the victims knew that their visas were dependent upon them *not* having outside jobs. Tr. 499. As the Supreme Court explained in *Kozminski*, "threatening * * *

an immigrant with deportation [may] constitute the threat of legal coercion that induces involuntary servitude, even though such a threat made to an adult citizen of normal intelligence would be too implausible to produce involuntary servitude." 487 U.S. at 948; see also *Veerapol*, 213 F.3d at 1132.

The jury also heard evidence that the defendants threatened to find the victims in the Philippines and demand payment from them if they left the defendants' employ without fulfilling their debt requirements. Tr. 640, 701. Minutes of a meeting Angelita Farrell kept actually reflect these threats: "As an owner we went beyond your needs in order to keep you in our facility legal and illegal/TNT (we will find you)." GX 1, p. 108. The victims knew that the defendants maintained detailed records of the debts that each owed the defendants. Tr. 194-199. According to the victims, they feared being imprisoned in the Philippines for maintaining an unpaid debt. Tr. 173, 629-630, 701-702. Indeed, the victims testified that because the defendants had proof of their debt (*i.e.*, the signed debt contracts), they could "easily" be jailed in the Philippines. Tr. 630; see also Tr. 173, 701-702.

Taken together, this evidence supports the jury's verdict that the defendants intentionally used repeated threats of physical injury and legal coercion to coerce the victims into providing their labor. That evidence is more than sufficient to

satisfy *Kozminski*'s first requirement that a defendant intend to coerce his victim's labor by threats of force or legal coercion. See 487 U.S. at 952 (involuntary servitude requires evidence that "the victim [was] forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process").

2. *Compelled Labor*

The record contains ample evidence to support the jury's conclusion that the defendants' threats and coercion, as detailed above, compelled the victims' labor. *Kozminski*, 487 U.S. at 952 (explaining that a jury must determine whether the defendant's threats or coercion "could plausibly have compelled the victim[s] to serve"). Many courts have recognized that defendants often maintain a "climate of fear" in order to intimidate victims and prevent them from leaving the defendants' employ. See, *e.g.*, *United States* v. *Warren*, 772 F.2d 827, 833-835 (11th Cir. 1985), cert. denied, 475 U.S. 1022 (1986); *United States* v. *Bibbs*, 564 F.2d 1165, 1167-1168 (5th Cir. 1977), cert. denied, 435 U.S. 1007 (1978); see also *United States* v. *Harris*, 701 F.2d 1095, 1098 (4th Cir.), cert. denied, 463 U.S. 1214 (1983); *United States* v. *Booker*, 655 F.2d 562, 563 (4th Cir. 1981). Here, the record established that the defendants created and maintained just such a climate of fear that, when combined with the threats of physical force and threats to abuse

the legal process, compelled the victims to work for the defendants' benefit against their will.

The jury heard evidence that, after the victims arrived in the United States, the defendants began to control almost every aspect of the victims' lives. For example, the defendants confiscated the victims' passports and visas. Tr. 176-179, 490-491, 502, 599. The defendants told the victims where to live. Tr. 217-218, 287. They told the victims with whom they could and could not speak. Tr. 205-206, 609, 636. When opportunities arose for the victims to socialize with people outside the hotel, the defendants either refused to allow them to participate, or accompanied them to prevent their socialization. Tr. 212-215. When the defendants learned that two of the victims had socialized with people outside the hotel without their knowledge or permission, the defendants called those victims into the hotel and yelled at them for breaking the rules. Tr. 206-211. The defendants afforded the victims absolutely no privacy. The defendants did not provide the victims with a key to their apartment; made numerous unannounced visits to their apartment; and, searched through the victims' personal belongings. Tr. 223-225, 252-253. All the while, the defendants exploited the victims' sense of obligation to the defendants by telling the victims how much the defendants had done for them and how much the victims owed them in return. Tr. 193; GX 36,

39, 45; see also Tr. 76-77.

The defendants then burdened the victims with an inflated debt that the victims had no possibility of ever paying off. The defendants charged the victims for previously undisclosed fees, unwanted food and personal items, and transportation to and from work. Tr. 169-170, 216, 592-593. The defendants also paid the victims less than half of what they promised, Tr. 203-204, so the victims were expected to work additional jobs just to have a chance of paying their debts, Tr. 185-188, 391, 487-488, 492.

The defendants expected the victims to work when they were tired, Tr. 707, sick, Tr. 707, or injured, Tr. 492. The defendants took nearly all of the victims' earnings by having them either sign over their paychecks or write out post-dated checks in pre-determined amounts. Tr. 199, 492-493, 505, 521, 595-596, 602, 612-614; GX 1, pp. 4-12, 62-70. When two of the victims refused to give post-dated checks to the defendants and were discovered to have "slip[ped]," Tr. 505, one of their paychecks home to their family, the defendants subjected the victims to a *six hour meeting*, during which one victim was "crying and scared," Tr. 706, and the other was afraid of being physically assaulted, Tr. 504-506.

The "climate of fear" that the defendants created was so extensive that it was obvious even to outsiders that the victims were "terrified" of the defendants

and "liv[ed] in fear" of them. Tr. 730, 739. This climate made the defendants' threats of physical force and threats to abuse the legal process all the more powerful and the victims' fear of the defendants all the more reasonable. Indeed, as detailed *infra*, the jury heard ample testimony that the victims were afraid of the defendants, Tr. 506, 630, 702, and that they continued to work for the defendants as a means to pay off their debts because they were afraid of the physical and legal consequences if they did not.

The victims testified that they were afraid to return to the Philippines with an outstanding debt because of the defendants' threats to hunt them down and find them wherever they went and of what could happen to them if they did so. Tr. 173, 229, 621, 630, 633, 701-702. The victims testified that, given all the documents they had signed acknowledging their debts, they were afraid of being jailed in the Philippines if they did not pay back the defendants. Tr. 173-174 ("[I]f you owe anyone money and you cannot pay, they can go to court and sue you, and you can go to jail for that."), 629-630 ("[I]n the Philippines, if they have proof [of your debt], they can just easily put you [in] jail."), 665-666, 701-702 ("I will be charged * * * because of the contract that I signed and agreed to, and I'm afraid I will be put in prison."). One witness even testified that, given the conditions in the Philippines, a person could be raped or even killed in jail. Tr. 174. And the

victims' fear of the defendants pursuing them for their unpaid debts was certainly reasonable: Agulto testified that after she returned to the Philippines, Angelita Farrell "constantly" emailed her and called her regarding her debt, Tr. 272, and soon after Pineda stopped working for the defendants, Angelita Farrell called the county attorney and tried to have her prosecuted for defaulting on her debt, Tr. 723.

The victims' fears of being deported were equally reasonable. The jury heard testimony that the victims could be arrested and deported for violating the conditions of their visas (*i.e.*, working at outside jobs). See Tr. 352. And the victims knew they were in violation of their visas. Tr. 499. Moreover, the jury learned that shortly after the Pangans and Pineda quit, Robert Farrell contacted various law enforcement agencies in an attempt to have them arrested and deported. Tr. 330, 738.

The defendants attempt (Defs' Br. 22-23) to downplay the coercive nature of their actions by claiming that the victims were all in the United States voluntarily and could leave at any time. True, the victims initially came to the United States willingly and with an understanding that they would work to pay off a debt to the defendants. But far from "begg[ing]" to come back a second time (Defs' Br. 10), the victims testified that they returned to the United States because

it was their only option to pay off their debt and they were afraid of what would happen to them if they did not. Tr. 173, 621, 630, 701-702. In fact, one of the victims – Grace Pineda – testified that had she not incurred the debt on the first trip, she would never have returned. Tr. 630.

Moreover, the fact that the victims did not "escape" (Defs' Br. 25) from the defendants earlier is not evidence that they provided their labor voluntarily. The fact that a victim may have had a physical opportunity to escape does not matter; what matters is whether the defendant placed the victim in such fear that he or she was afraid to leave. *Bibbs*, 564 F.2d at 1167-1168. As the defendants repeatedly threatened to find them and ship them home "in a * * * box" if they ever left, Tr. 206, 211, 228-229, 632, the victims' fear of leaving with an unpaid debt was certainly reasonable, Tr. 173, 621, 630, 701-702.

The defendants also attempt (Defs' Br. 25) to downplay the coercive nature of the environment they created by noting that the victims were well-educated adults, and therefore not vulnerable to such coercive tactics. But the defendants ignore the fact that once the victims were in the United States, they were entirely dependent upon the defendants – they had no passports, little money, no transportation, and no privacy.

While it is true that the victims may not have been as vulnerable as those

identified in other cases, see, *e.g.*, *Kozminski*, 487 U.S. 931; *United States* v. *Alzanki*, 54 F.3d 994 (1st Cir. 1995), cert. denied, 516 U.S. 1111 (1996); *United States* v. *King*, 840 F.2d 1276 (6th Cir.), cert. denied, 488 U.S. 894 (1988), a more sophisticated victim simply requires a more sophisticated form of coercion. Here, the jury heard testimony that, given the culture in the Philippines, the victims deferred to the defendants, Tr. 178, 507, and felt obligated to reciprocate for the efforts the defendants made in bringing them into the country, Tr. 76-77. The jury also heard evidence that the victims were afraid of being imprisoned if they returned to the Philippines with an outstanding debt. Tr. 173-174, 629-630, 702.

Thus, rather than repeated instances of actual physical abuse, see, *e.g.*, *King*, 840 F.2d at 1280, the evidence here depicts repeated threats not only of physical violence, but also those that prey on the victims' sense of cultural and financial indebtedness to the defendants, and their very real fear of being arrested or deported for violating the terms of their visas. These types of threats are no less coercive than physical abuse directed at more vulnerable victims. See *Kozminski*, 487 U.S. at 948 (explaining that a victim's "special vulnerability may be relevant in determining whether a particular type or a certain degree of physical or legal coercion is sufficient"); see also *Alzanki*, 54 F.3d at 994 (explaining that a jury may consider the victim's background and experience in assessing whether the

victim's fears were reasonable).

Other attempts by the defendants to minimize the coercive environment they created are simply without merit. Yes, Agulto was provided with cash at the airport when she returned to the Philippines. Defs' Br. 23. But the money was taken from her own paycheck – the rest of which she was required to sign over to the defendants. Tr. 321-322, 325-326. And yes, the defendants called law enforcement authorities when the victims requested them to do so, Defs' Br 23, but the defendants then asked the authorities to arrest the victims. Tr. 330.

3. Real Or Alleged Indebtedness

The jury also heard ample evidence that the victims were compelled to work for the defendants (or for the defendants' benefit) to discharge the debt each owed to the defendants. The record includes more than sufficient evidence to show that the defendants' threatening and coercive behavior was almost entirely related to forcing repayment of the victims' debts. For example, the victims testified that the defendants typically threatened them during late-night meetings at which the defendants would discuss the amount of money each worker owed. Tr. 230-231. These late-night meetings were then followed by one-on-one meetings that focused on the victim's debt. Tr. 231. Moreover, the defendants routinely told the victims that they were in the United States to work for them and that their priority

was to pay their debts. Tr. 198, 211, 231.

The record also includes ample evidence of the debt contracts and payment schedules that the victims were required to sign and follow. See, *e.g.*, GX 1, pp. 14, 17, 49, 50, 55, 58, 95; GX 58. And the record includes ample evidence of the victims' having to sign over their paychecks to the defendants or prepare post-dated checks to pay down their debts. Tr. 199, 492-495, 505, 521, 595-596, 602, 612-614; GX 1, pp. 4-12, 62-70. Taken together, this evidence was more than sufficient to support the jury's finding that the victims were compelled to work for the defendants to discharge a debt.

C. Sufficient Evidence Supports The Defendants' Convictions For Conspiring To Hold A Person In A Condition Of Peonage

The essence of conspiracy is an agreement between two or more individuals to commit a crime. *Iannelli* v. *United States*, 420 U.S. 770, 777 (1975); *United States* v. *Kelley*, 545 F.2d 619, 624 (8th Cir. 1976), cert. denied, 430 U.S. 933 (1977). The agreement, however, does not need to be formal or express. *United States* v. *Moss*, 591 F.2d 428, 435 (8th Cir. 1979). Conspiracy is seldom proved by direct evidence of a written or verbal agreement; rather, a jury may properly adduce a conspiracy from the conduct of the alleged conspirators and the attending circumstances. *Ibid.*; see also *United States* v. *Pelton*, 578 F.2d 701, 712 (8th

Cir.), cert. denied, 439 U.S. 964 (1978).

Defendants argue (Defs' Br. 27-29) primarily that the evidence was insufficient to support the jury's finding that they conspired to hold victims in a condition of peonage because there was insufficient evidence to support a finding that they did, in fact, commit peonage. As outlined *supra*, Part I.B., however, the evidence was more than sufficient to support the jury's finding that they committed peonage.

Moreover, the record contains ample evidence that the defendants conspired to hold the victims in a condition of peonage. A brief outline of the defendants' "conduct" and the "attending circumstances" is all that is necessary to establish the existence of a conspiracy in this case. *Moss*, 591 F.2d at 435. First, the defendants worked together to bring the victims into the United States to labor for them at the hotel. In doing so, both of the defendants instructed the victims to include or present false information to government authorities in order for the victims to obtain visas. For example, the victims testified that Angelita Farrell instructed them before both trips to the United States on how to complete the necessary immigration documents, Tr. 146-148, 232, 302, 499, 622-623, and that before their second trip, Robert Farrell provided them with copies of bogus checks to present to the consular office as proof that the victims were being paid

according to their employment contracts, Tr. 234, 500.

Once in the United States, both of the defendants required the victims to attend numerous meetings at which the terms and conditions of their employment – many of them new or different from what was promised in the Philippines – were discussed. Tr. 229-230. These "terms and conditions" included reduced pay, Tr. 203-204, previously undisclosed fees and charges, Tr. 169-170, 216, 289, 432-433, 592-593, and repeated demands to make payments on their ever-increasing debts, Tr. 198, 211, 231, 230. Angelita Farrell maintained detailed accountings of each victim's debts, Tr. 194-199, and Robert Farrell repeatedly threatened the victims with the consequences of what would happen if they did not pay these debts, Tr. 206, 211, 266, 632, 638, 640; GX 1, p. 108. Moreover, Angelita Farrell confiscated the victims' passports and visa documents, Tr. 176-177, 179, 502, 599, and Robert Farrell initially resisted a law enforcement officer's demands to return them to the victims, Tr. 744-750. This evidence is more than sufficient to support the jury's finding that the defendants conspired to hold the victims in a condition of peonage.

The jury's verdict is further supported by evidence of the considerable efforts the defendants took to try to cover up their conspiracy. First, after creating and maintaining a climate of fear in which the victims felt compelled to work for

the defendants to pay off their debts, the defendants actually required the victims to write letters explaining in benign terms why each wanted to return to the United States to work under the same conditions. Tr. 249, 309, 621. And second, when Robert Farrell finally agreed to return the victims' passports and visa documents at the police station, he intended to have them sign the letters he brought with him asserting that they had been well-treated and well-paid. Tr. 749-750. The jury may have reasonably viewed defendants' actions to cover up their illegal activity as consciousness of their guilt. Cf. *United States* v. *Garrison*, 168 F.3d 1089, (8th Cir. 1999) (identifying as probative certain evidence of "the length to which the conspirators would go to conceal the existence of the conspiracy"); *United States* v. *Branham*, 515 F.3d 1268, 1274 (D.C. Cir. 2008) (explaining that a defendant's efforts to conceal a piece of evidence may suggest knowledge of its illegal contents). As previously noted, a conspiracy is seldom proved by direct evidence, but a jury may find that defendants have engaged in a conspiracy based on the defendants' conduct and the attending circumstances. *Moss*, 591 F.2d at 435. Here, the defendants' actions and the attending circumstances provide more than sufficient evidence to support the jury's verdict that the defendants conspired to hold the victims in a condition of peonage.

D. Sufficient Evidence Supports The Defendants' Convictions For Committing Document Servitude

The record contains ample evidence to support the jury's verdict that the defendants committed document servitude. To sustain a conviction for document servitude, the government must prove that the defendants (1) concealed, removed, confiscated, or possessed an actual passport, visa, or other immigration documents from the victims; (2) did these acts in the course of a violation of 18 U.S.C. 1581 (peonage) or 1589 (forced labor), with the intent to violate those statutes; and (3) acted knowingly and intentionally. See *United States* v. *Sabhnani*, 539 F. Supp. 2d 617, 629 (E.D.N.Y. 2008); see also Jury Instructions, R. 118.

Here, there was considerable evidence provided by the victims (and even the Chief of Police) that the defendants concealed, removed, confiscated and possessed the victims' passports and other immigration documents. See Tr. 176-179, 490-491, 502, 599, 744-750. Indeed, the defendants do not argue to the contrary; rather, they argue that they did not do so in the course of violating any of the involuntary servitude statutes. Defs' Br. 29-30. But as detailed *supra*, Part I.B., there was more than sufficient evidence to support the jury's verdict that the defendants committed peonage and intended to do so. There was also sufficient evidence that the defendants acted knowingly and intentionally. See, *e.g.*, Part

ARGUMENT

I

THE EVIDENCE WAS MORE THAN SUFFICIENT TO SUPPORT THE DEFENDANTS' CONVICTIONS FOR HOLDING A PERSON IN A CONDITION OF PEONAGE, CONSPIRING TO HOLD A PERSON IN A CONDITION OF PEONAGE, AND COMMITTING DOCUMENT SERVITUDE

A. Standard Of Review

When reviewing the denial of a motion for judgment of acquittal based upon insufficient evidence, this Court "must view the evidence 'in the light most favorable to the government, resolving evidentiary conflicts in favor of the government, and accepting all reasonable inferences drawn from the evidence that support the jury's verdict.'" *United States* v. *Abfalter*, 340 F.3d 646, 654-655 (8th Cir. 2003) (quoting *United States* v. *Erdman*, 953 F.2d 387, 389 (8th Cir.), cert. denied, 505 U.S. 1211 (1992)), cert. denied, 540 U.S. 1134 (2004). "Th[is] standard of review is * * * a strict one, and a jury's verdict will not be lightly overturned." *United States* v. *Parker*, 364 F.3d 934, 943 (8th Cir. 2004). This Court will reverse a conviction "only if *no reasonable jury* could have found the defendant guilty beyond a reasonable doubt." *United States* v. *Vazquez-Garcia*, 340 F.3d 632, 636 (8th Cir. 2003) (emphasis added), cert. denied, 540 U.S. 1168 (2004).

I.B.; Tr. 179; see also Tr. 746-750 (Hutmacher's testimony explaining the difficulty he had in retrieving the victims' passports from the defendants); *Sabhnani*, 539 F. Supp. at 631. The defendants' argument that the evidence was insufficient to support the jury's verdict on this count is simply meritless.

II

THE DISTRICT COURT DID NOT PLAINLY ERR WHEN IT PERMITTED THE GOVERNMENT'S EXPERT WITNESS TO TESTIFY ABOUT A "CLIMATE OF FEAR" THAT EXISTS IN MANY HUMAN TRAFFICKING CASES

A. Standard Of Review

Rule 702 of the Federal Rules of Evidence permits an expert to give an opinion when her specialized knowledge "will assist the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702. An expert witness, however, may not go so far as to usurp the exclusive function of the jury to weigh evidence and determine credibility. *United States* v. *Azure*, 801 F.2d 336, 339-340 (8th Cir. 1986); see also *Westcott* v. *Crinklaw*, 68 F.3d 1073, 1077 (8th Cir. 1995). Whether an expert's testimony is admissible is ordinarily a decision that lies within the discretion of the trial court. *Azure*, 801 F.2d at 339-340. But in cases like this, where a defendant does not object to the admission of evidence at trial, this Court reviews for plain error. *United States* v. *Eagle*, 515

F.3d 794, 801 (8th Cir. 2008). Under plain error review, the defendant must prove that there was "(1) error, (2) that was plain, and (3) that affected substantial rights." *Ibid.* If the defendant proves all three, then this Court may notice the error, but "only if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Ibid.*

B. The District Court Did Not Plainly Err In Admitting The Expert's Testimony Because Her Testimony Did Not Invade The Province Of The Jury

The district court did not err, plainly or otherwise, in admitting the expert's testimony. The expert testified about certain tactics and conditions that human trafficking defendants use and exploit to create a climate of fear among their victims. See generally Tr. 73-83. When explaining this concept to the jury, the expert identified certain tactics and conditions that were used and exploited in this case. Referring to the victims and workers in this case, the expert testified that she saw examples of cultural and financial indebtedness, Tr. 76-78, and noted that "[i]t seems as though the [victim's] passports were not on the person who [sic] it was issued to," Tr. 79. The expert explained other tactics and conditions by which employers create a climate of fear, however, without identifying specific examples present in this case. Tr. 74-82.

The expert then gave her opinion as to whether the victims were held in a

climate of fear. Tr. 83. By providing this opinion and identifying some of the evidence in support of it, the expert was able to help the jury "understand the evidence" and "determine a fact in issue." Fed. R. Evid. 702. The expert did not provide an opinion – nor was the expert asked to provide one – on the ultimate issue in the case; that is, whether the defendants held the victims in a condition of peonage, conspired to do so, or engaged in document servitude. Even if the expert had offered her opinion, however, it would have been permissible to do so. See Fed. R. Evid. 704(a) (otherwise admissible opinion testimony is not objectionable simply "because it embraces an ultimate issue to be decided by the trier of fact").

Contrary to defendants' assertions (Defs' Br. 30-31), the expert did *not* offer any legal conclusions. Cf. *United States* v. *Duncan*, 42 F.3d 97, 101 (2d Cir. 1994) (holding that expert testimony that states a legal conclusion must be excluded). The expert *did* discuss the defendants' exploitation of the victims' financial indebtedness and explained that "the control of money" in this case was "much stronger" than in some other cases. Tr. 78. But the expert specifically limited her testimony to the defendants' tactics to control the victims' finances. Tr. 78. This testimony was not objectionable merely because it pertained to the issue of whether the defendants engaged in the crimes with which they were charged. See *United States* v. *Feliciano*, 223 F.3d 102 (2d Cir. 2000), cert. denied,

532 U.S. 943 (2001). Moreover, at no point did the expert assert that the defendants' control of the victims' money was sufficient to satisfy the legal standard of holding a person in a condition of involuntary servitude to discharge a debt. For these reasons, the district court did not plainly err in admitting the testimony. See Fed. R. Evid. 702.

Even if the district court plainly erred in admitting portions of the expert's testimony (and the government in no way concedes that it did), the error did not affect the defendants' substantial rights or "seriously affect[] the fairness, integrity, or public reputation" of the judicial proceedings. *Eagle*, 515 F.3d at 801. As outlined *supra*, Parts I.B., C. and D., the evidence of the defendants' guilt was readily established by the victims' testimony and the documentary evidence. Moreover, the victims themselves provided specific examples of the defendants' behavior which, when taken together, supported the expert's testimony that a climate of fear existed in this case. See, *e.g.*, Tr. 169-170, 179-180, 592 (deception); Tr. 178, 507 (class differences); Tr. 193; GX 36, 39, 45 (cultural indebtedness); GX 1, pp. 14, 17, 49, 50, 55, 58, 95; GX 58; (financial debt); Tr. 176-179, 490-491, 502, 599, 744-750 (passport servitude); Tr. 205-218, 242, 609, 636; GX 42 (isolation); Tr. 633, 637-639 (intimidation and humiliation); Tr. 638 (threat of police and immigration); Tr. 638 (threat of deportation). Thus, the

defendants cannot show how the district court's decision to admit the expert's testimony – absent any objection from the defendants and accompanied by a standard instruction to the jury – seriously affected their substantial rights or the fairness, integrity, or reputation of the proceedings.

CONCLUSION

The appellants' convictions should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation required by Fed. R. App. P. 32(a)(7)(B). This brief was prepared using WordPerfect 12.0 and contains no more than 13,832 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

I also certify that an electronic version of this brief, which has been sent to the Court by overnight delivery on a compact disc, has been scanned with the most recent version of Trend Micro Office Scan (version 8.0) and is virus-free.

/s/ Angela M. Miller
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Date: August 6, 2008

CERTIFICATE OF SERVICE

I certify that on August 6, 2008, the original and 10 hard copies of the Brief For The United States As Appellee, along with a disc containing an electronic copy of the same brief, were sent by first-class mail, postage prepaid, to the Clerk of the United States Court of Appeals for the Eighth Circuit.

I further certify that two copies of the foregoing, along with a disc containing an electronic copy of the same, were sent by first-class mail, postage prepaid, to the following counsel of record:

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