

---

## Failing Trafficking Victims

SEPTEMBER 30, 2014

United States law guarantees trafficking victims mandatory criminal restitution, but a new report shows that the justice system is failing to provide legally required restitution to victims in nearly two-thirds of cases.

Men, women and children who are trafficked in the US suffer horrendous abuses, including forced labor, forced prostitution and the commercial sexual exploitation of minors. These victims are entitled under US law to court-ordered financial compensation.

[The report](#), co-published today by The Human Trafficking Pro Bono Legal Center (HT Pro Bono) and the law firm of Wilmer Cutler Pickering Hale and Dorr LLP (WilmerHale), is the result of more than 2,000 pro bono hours of legal research. It finds that instead of ordering mandatory restitution, in fact, courts order restitution to trafficking victims in just 36 percent of criminal cases that end in guilty pleas or criminal convictions.

"These findings are extremely troubling," said Martina Vandenberg, president of HT Pro Bono. "Anti-trafficking experts have long pointed to anecdotal evidence on the failure to order restitution for victims. But this is the first time that we have hard numbers."

Titled "[When 'Mandatory' Does Not Mean Mandatory: Failure to Obtain Criminal Restitution in Federal Prosecution of Human Trafficking](#)," the report includes in-depth analysis of federal criminal trafficking indictments brought between 2009 and 2012.

The four years of case data revealed significant patterns. The authors found that a key determinant of whether restitution would be ordered was, simply, whether the prosecutor requested it. Also, researchers found major discrepancies between trafficking cases into the sex industry and trafficking into other labor sectors. The average restitution order in sex trafficking cases was just \$46,211.66, while the average restitution order in forced labor cases was \$213,939.21. And, most surprising, victims of labor trafficking were substantially more likely to obtain restitution than those held in sex trafficking.

"The law is crystal clear. Human trafficking victims must receive restitution from the criminal defendants," said Vandenberg. "In the US, mandatory should mean mandatory. Why are our federal

courts allowing traffickers to keep their windfall earnings obtained through exploiting trafficking victims? Trafficking victims desperately need these funds to recover from the ordeal of abuse and exploitation."

The report outlines three model cases in which prosecutors successfully maximized criminal restitution for victims. In each of these cases, excellent, well-trained federal prosecutors vigorously pursued restitution. The victims also had outside pro bono legal counsel who advocated for their clients' rights under the federal restitution statute, 18 USC §1593.

"WilmerHale has been dedicated to anti-human trafficking efforts through pro bono representation of survivors of trafficking in civil litigation and immigration matters," said Christopher Herrling, WilmerHale's pro bono counsel. "The report released today underscores the importance of pro bono representation in obtaining justice for victims." Vandenberg agrees, "The evidence is in. Trafficking victims need pro bono attorneys to assert their rights in federal cases. Relying on prosecutors alone is very often not enough."