
In The
Supreme Court of the United States

—◆—
DOYLE RANDALL PAROLINE,

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit**

—◆—
**BRIEF OF AMICI CURIAE THE DOMESTIC
VIOLENCE LEGAL EMPOWERMENT AND
APPEALS PROJECT, LEGAL MOMENTUM,
THE NATIONAL COALITION AGAINST DOMESTIC
VIOLENCE, PROFESSOR MARGARET DREW,
PROFESSOR LEIGH GOODMARK, AND
PROFESSOR MARGARET GARVIN SUPPORTING
RESPONDENT AMY UNKNOWN**

—◆—
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QUESTION PRESENTED

What, if any, causal relationship or nexus between the defendant's conduct and the victim's harm or damages must the government or the victim establish in order to recover restitution under 18 U.S.C. § 2259?

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INTEREST OF AMICI CURIAE¹

Amici include nonprofit organizations as well as law professors committed to preventing and responding to violence against women.

The Domestic Violence Legal Empowerment and Appeals Project (DV LEAP) was founded in 2003 by a leading domestic violence lawyer and scholar. DV LEAP provides a stronger voice for justice by fighting to overturn unjust trial court outcomes, advancing legal protections for victims and their children through expert appellate advocacy, training lawyers, psychologists and judges on best practices, and spearheading domestic violence litigation in the Supreme Court. DV LEAP is committed to ensuring that courts understand the realities of domestic violence and the law when deciding cases with significant implications for domestic violence litigants. DV LEAP has co-authored amicus briefs in numerous state courts and to the United States Supreme Court in *Town of Castle Rock, Colo. v. Gonzalez*; *Davis v. Washington*; *Hammon v. Indiana*; *Giles v. California*; *United States v. Hayes*; *Abbott v. Abbott*; *Florence v. Board of Chosen Freeholders*; and *Robertson v. Watson* (concerning enforcement of protection orders). DV LEAP is a partnership of the George Washington University Law School and

¹ Letters consenting to the filing of this brief have been filed with the Clerk of the Court. No counsel for a party authored this brief in whole or in part, and no person or entity other than Amici, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

a network of participating law firms. Through DV LEAP's work on custody litigation and protective parent advocacy, it has become deeply involved in child abuse and child protection litigation and work, particularly child sexual abuse. Child pornography distribution is a major contributor to child sexual abuse and therefore DV LEAP supports powerful sanctions for the use of such pornography.

Legal Momentum, the Women's Legal Defense and Education Fund, is the nation's oldest legal advocacy organization for women, www.legalmomentum.org. Legal Momentum advances the rights of all women and girls by using the power of the law and creating innovative public policy. Legal Momentum was one of the leading advocates for passage in 1994 of the landmark Violence Against Women Act, as well as its three subsequent reauthorizations, all of which have sought to redress the historical inadequacy of the justice system's response to domestic and sexual violence. Legal Momentum has a deep interest in ensuring that the judicial system adequately protects the rights of victims of sexual and domestic violence and their children. Legal Momentum has represented survivors of domestic and sexual violence, and developed a wide variety of educational materials for judges, court-related personnel, and others on VAWA-related issues. Thus, any case with direct implications for recovery under 18 U.S.C. § 2264, the portion of VAWA that provides for mandatory restitution upon

the commission of interstate acts of domestic violence, stalking, or violation of a protection order, is of great concern to Legal Momentum.

The National Coalition Against Domestic Violence (NCADV), a nonprofit organization founded in 1978 and incorporated in the state of Oregon is a national nonprofit that provides general information and referrals, technical assistance to domestic violence service providers and serves as the primary representative of over 2,000 local programs, battered women, and their children in the public policy arena. NCADV also provides extensive information and resources to the general public through its website at www.ncadv.org, Facebook, and Twitter accounts.

Professor Margaret Drew has been an advocate for abused women for over thirty years. Professor Drew began her representation of battered women while in private practice in Massachusetts. After twenty five years of private practice Professor Drew transitioned into academia where she continues her advocacy and trains students in the theory and practice of law, with an emphasis on competent representation of battered women. Professor Drew is visiting clinical specialist at Northeastern University School of Law having previously served as Director of Clinics and Experiential Learning at the University of Cincinnati College of Law and Interim Director of the Domestic Violence Clinic at the University of Alabama School of Law. Professor Drew has an interest in seeing that victims of abuse are adequately compensated for the harm done to

them and supports the remedies available under the Violence Against Women Act.

Leigh Goodmark is a Visiting Professor of Law at the University of Maryland School of Law, where she directs the Gender Violence Clinic. Professor Goodmark is the author of numerous articles on domestic violence; her book, *A Troubled Marriage: Domestic Violence and the Legal System* was published by New York University Press in 2012. In that book, Professor Goodmark discusses the problems of economic marginalization of women subjected to abuse and the need for remedies that empower women economically. Professor Goodmark's students in the Gender Violence Clinic regularly litigate domestic violence protective order matters and custody and divorce cases involving intimate partner abuse, and her clients routinely face economic insecurity as a result of their abuse.

Margaret Garvin is a Clinical Professor of Law at Lewis & Clark Law School, where she has directed the Victims' Rights Litigation Clinic for eight years. Attorney Alison Wilkinson works with students researching violence against women issues at the Clinic. Professor Garvin has testified before Congress on victims' rights and has published on the issue of victims' rights. Professor Garvin and Ms. Wilkinson have an interest in protecting all victims' rights to recover full restitution, including the rights of victims of violence against women, and in teaching students how to litigate on behalf of this population.



SUMMARY OF ARGUMENT

In 1994, Congress passed the Violence Against Women Act (VAWA), which represented “an essential step in forging a national consensus that our society will not tolerate violence against women.” S. Rep. No. 103-138, at 41 (1993). The Act was “intended to respond both to the underlying attitude that this violence is somehow less serious than other crime and to the resulting failure of our criminal justice system to address such violence.” *Id.* at 38.

Among the provisions enacted as part of VAWA are sections 18 U.S.C. § 2261 *et seq.*, which define the intentional crimes of federal domestic violence, stalking, and protective order violations. 18 U.S.C. §§ 2261-2262. VAWA provides for mandatory restitution upon the commission of these crimes. 18 U.S.C. § 2264. “This order of restitution addressed the needs articulated by many victims of these crimes beyond punishment of the perpetrator in order to remain safe and to rebuild their lives.” Robin Runge, *The Evolution of a National Response to Violence Against Women*, 24 *Hastings Women’s L.J.* 429, 439 (2013) (commenting on VAWA’s mandate that courts issue orders of restitution).

Concurrent with the passage of this legislation, and as part of the same legislative package, Congress passed 18 U.S.C. § 2259, the legislation that is the subject of this proceeding. The restitution provisions of VAWA and those of § 2259 have virtually identical language, and, as such, courts have viewed them

interchangeably. Accordingly, the Court’s decision regarding the application of a causal nexus to the specifically enumerated categories of loss in § 2259 will impact interstate domestic violence, stalking, and protection order violation victims seeking to recover restitution under the Violence Against Women Act.

This impact is likely to be immediate and severe. It would undercut the history, purpose, and text of VAWA. More pragmatically, it would directly impact domestic violence victims’ ability to obtain their most basic needs in the aftermath of the abuse: the need to find safety and to make the shift from “victim” to “survivor.”

ARGUMENT

I. VICTIMS’ ABILITY TO RECEIVE NEEDED FINANCIAL SERVICES UNDER THE VIOLENCE AGAINST WOMEN ACT WILL BE IMPACTED BY THE COURT’S INTERPRETATION OF 18 U.S.C. § 2259

Every year, approximately 1.3 million people are victims of domestic violence in the United States.²

² Partner violence impacts men as well as women. For instance, in 2000, 1,247 women and 440 men were killed by an intimate partner. Callie Marie Rennison, U.S. Dep’t of Just., NCJ 197838, *Bureau of Justice Statistics Crime Data Brief: Intimate Partner Violence, 1993-2001*, at 1 (2003), available at <http://www.bjs.gov/content/pub/pdf/ipv01.pdf>. Additionally, 15.4% of same-sex cohabitating men reported being raped, physically

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Jennifer Truman *et al.*, U.S. Dep't of Justice, NCJ 243389, *Criminal Victimization, 2012*, at 2-3 (Oct. 2013), *available at* <http://www.bjs.gov/content/pub/pdf/cv12.pdf>. In 2007 alone, 1,640 women were killed by their intimate partners. Shannan Catalano *et al.*, U.S. Dep't of Justice, NCJ 228356, *Female Victims of Violence*, at 2 (Sept. 2009), *available at* <http://www.bjs.gov/content/pub/pdf/fvv.pdf>.

In addition to the immediate, physical harm experienced by victims, this violence “has a profound effect on women’s mental health, and frequently extends to other outcomes including quality of life, social and occupational functioning, and physical health.” Michael Rodríguez *et al.*, *Intimate Partner Violence and Barriers to Mental Health Care for Ethnically Diverse Populations of Women*, 10 *Trauma, Violence, & Abuse* 358, 359 (2009) (internal citations omitted). The consequences of the violence “linger on well after the violence has ended[. These consequences may include] posttraumatic stress disorder (PTSD), depression, substance abuse, and other negative mental health and physical health outcomes.” Kim M. Anderson *et al.*, *Recovery: Resilience*

assaulted, and/or stalked by a male partner. Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Just., NCJ 181867, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*, at 30 (2000), *available at* <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>. While the impact of such violence on men cannot be discounted, this brief focuses on the more prevalent use of violence against women.

and Growth in the Aftermath of Domestic Violence, 18 *Violence Against Women* 1279, 1279-80 (2012) (internal citations omitted).

Despite the impact of domestic violence, there are numerous practical difficulties to leaving such a situation, including financial reasons. Indeed, for many, financial difficulties are among the most significant impediments to leaving the batterer and finding safety. See, e.g., Adrienne E. Adams *et al.*, *Development of the Scale of Economic Abuse*, 14 *Violence Against Women* 563, 568 (2008) (“Studies have consistently identified economic dependence as a critical obstacle for many women who are attempting to leave abusive partners.”); Deborah A. Widiss, *Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy*, 35 *Fla. St. U. L. Rev.* 669, 672 (2008) (“Economic security is one of the most important factors in whether a victim of domestic violence can separate from an abusive partner.”); Shelby A.D. Moore, *Understanding the Connection Between Domestic Violence, Crime, and Poverty: How Welfare Reform May Keep Battered Women from Leaving Abusive Relationships*, 12 *Tex. J. Women & L.* 451, 475 (2003) (“The greatest obstacle to leaving is the victim’s lack of access to money to support herself and her children.”); Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 *U.C. Davis L. Rev.* 1009, 1020-21 (2000) (“[I]nadequate resources are a primary reason why women do not attempt to separate.”).

Abusers often use economic abuse as part of the control dynamic. Abusers will interfere with the victim's ability to obtain resources, such as by preventing the victim from getting a job, or from maintaining employment. *See, e.g., Adams, supra*, at 565 (discussing ways in which an abuser may interfere with a victim's ability to acquire resources); Richard M. Tolman & Hui-Chen Wang, *Domestic Violence and Women's Employment: Fixed Effects Models of Three Waves of Women's Employment Study Data*, 36 *Am. J. of Comm. Psych.* 147, 153 (2005) (“[T]he experience of domestic violence alone reduces a woman's annual work hours by 137 [hours].”). Lacking financial security, victims are unable to obtain the services they need to leave the abuser or to survive after they have left. *See, e.g., Michelle Fugate et al., Barriers to Domestic Violence Help Seeking: Implications for Intervention*, 11 *Violence Against Women* 290, 299 (2005) (stating that external barriers, such as no money, helped make up nearly 20% of women's reasons for not contacting an agency or counselor); Rodríguez et al., *supra*, at 367 (“One of the more apparent barriers to easily accessible mental health care service [for minority victims] is a limit or lack of financial resources.”); Nicole Letourneau et al., *Social Support Needs Identified by Mothers Affected by Intimate Partner Violence*, 28 *J. Interpers. Violence* 2873, 2881 (2013) (discussing lack of financial resources as an impediment to accessing services).

Recognizing the negative impact of such violence and the importance of services in helping victims

survive and leave the batterer, Congress enacted extensive legislation to help prevent and respond to these crimes. *See, e.g.*, Family Violence Prevention and Services Act, 42 U.S.C. § 10401 (assisting states in increasing public awareness about domestic violence, providing shelter and supportive systems, and a national domestic violence hotline, among other initiatives); The Victims of Crime Act, 42 U.S.C. § 10601 (providing funds for services for victims of violence); 42 U.S.C. § 13925 (providing grants for organizations providing services for victims of violence against women).

A critical piece of these legislative efforts is VAWA. One portion of VAWA that was specifically designed to ameliorate the financial impediments and impact of violence against women is 18 U.S.C. § 2664. Section 2264 was enacted along with 18 U.S.C. § 2259, the legislation that is the subject of this proceeding, and 18 U.S.C. § 2248 (collectively, the Mandatory Restitution Statutes), using substantially identical language, and as part of a comprehensive scheme to provide mandatory, full restitution to victims of certain crimes. Because full restitution can allow victims access to needed services, it can be a crucial aspect of their return to safety and their recovery. *See, e.g., United States v. Gordon*, 393 F.3d 1044, 1053 (9th Cir. 2004) (stating that the “primary and overarching goal” of the Mandatory Victims Restitution Act (MVRA) “is to make victims of crime *whole*, to *fully* compensate these victims for their losses and to restore these victims to their original

state of well-being”) (citing *United States v. Simmonds*, 235 F.3d 826, 831 (3d Cir. 2000)); Theodore R. Sangalis, Comment, *Elusive Empowerment: Compensating the Sex Trafficked Person under the Trafficking Victims Protection Act*, 80 Fordham L. Rev. 403, 438 (2011) (“[C]ompensation that seeks to make victims whole can be an important first step in their recovery.”).

As will be discussed further below, because of the virtually identical language in the Mandatory Restitution Statutes, the legislative history surrounding them, and the tendency of courts to view these statutes interchangeably, this Court’s decision regarding the application of a causal nexus to the specifically enumerated categories of loss in § 2259 will have a direct impact on interstate domestic violence, stalking, and protection order violation survivors seeking to recover restitution under § 2264. If this Court interprets § 2259 to have a global proximate cause requirement the Court will have created a nearly insurmountable hurdle for survivors, which will result in those survivors carrying the financial burden of much of their own victimization and, perhaps more importantly, rendering departure from the abuser all the more difficult. This result would be contrary to the plain language of the Violence Against Women Act, public policy, and clear Congressional intent to ensure full financial recovery.

II. READING A PROXIMATE CAUSE REQUIREMENT INTO THE SPECIFICALLY ENUMERATED CATEGORIES OF LOSS IS CONTRARY TO STATUTORY LANGUAGE, CONGRESSIONAL INTENT, AND PUBLIC POLICY

A. Sections 2259 and 2264 are Substantially Identical in Text and Interpretation.

Facially this case concerns the interpretation and application of 18 U.S.C. § 2259. However, that statute cannot be read in a vacuum. Section 2259 was amended as part of the Mandatory Victims Restitution Act of 1996 (MVRA), which amended the non-mandatory restitution statute 18 U.S.C. § 3663, added the mandatory restitution statute 18 U.S.C. § 3663A, and amended the three then-existing mandatory restitution statutes. These included not only § 2259, but also § 2264 – a portion of the Violence Against Women Act requiring mandatory restitution for victims of violence against women – and § 2248, requiring mandatory restitution for victims of child sexual abuse.³ In keeping with the intent that these

³ This brief focuses on the effect this Court's decision will have on victims of the intentional crimes of interstate stalking, domestic violence, and protection order violations, whose right to mandatory restitution is set forth in § 2264. However, for the same reasons set forth in this brief, victims of the intentional crime of child sexual abuse, whose right to restitution is protected under § 2248, could also see their financial rights eroded by the decision of this Court. Trafficking victims, too, will be

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statutes be read as part of a cohesive whole, the Mandatory Restitution Statutes were revised to read substantially identically. *See* S. Rep. No. 104-179 at 19 (1995) (stating that the Mandatory Restitution Statutes were specifically reevaluated and amended in order “to conform the mandatory and permissive restitution provisions in current law to the provisions of this act”).

Indeed, the only substantive difference is found in comparing §§ 2248(b)(3)(E) and 2264(b)(3)(E) to § 2259(b)(3)(E). Sections 2248(b)(3)(E) and 2264(b)(3)(E) each require that the “full amount of the victim’s losses” include “attorneys’ fees, plus any costs incurred in obtaining a civil protection order,” whereas § 2259(b)(3)(E) has a more general requirement that the “full amount of victim’s losses” include “attorneys’ fees, as well as other costs incurred.”

Given the text of the statutes and the legislative history surrounding them, it is unsurprising that courts generally analyze the statutes interchangeably. *See, e.g., United States v. Kearney*, 672 F.3d 81, 97 n.13 (1st Cir. 2012) (discussing the overlaps in the

impacted by this Court’s decision. The Trafficking Victims Protection Act, 18 U.S.C. § 1593(b)(3), specifically incorporates the definition of the “full amount of the victim’s losses” as set forth in § 2259. 18 U.S.C. § 1593(b)(3) (“As used in this subsection, the term ‘full amount of the victim’s losses’ has the same meaning as provided in section 2259(b)(3). . . .”). A more thorough discussion of the impact on these populations of victims is beyond the scope of this brief.

Mandatory Restitution Statutes); *United States v. Julian*, 242 F.3d 1245, 1247 (10th Cir. 2001) (discussing the duplication in these three statutes and the broad restitution intended under them); *United States v. Hardy*, 707 F. Supp. 2d 597, 609 (W.D. Pa. 2010) (discussing the “cohesive scheme” enacted by the Mandatory Restitution Statutes). Accordingly, any decision from the Court regarding the meaning of the causal requirement in § 2259 is likely to have a direct and immediate impact on courts’ interpretation of § 2264 of the Violence Against Women Act as well.

B. Congress Intentionally Used Broad Language, Indicating An Intent to Forego a Proximate Cause Requirement as to the Specifically Enumerated Categories of Loss.

1. The Term “Victim” in §§ 2259 and 2264 is Intentionally Broad.

As with § 2259, § 2264 defines “victim” as “the individual harmed as a result of a commission of a crime under this chapter. . . .” *Id.* at § 2264(c). Conspicuously missing from either definition of “victim” is a proximate cause requirement. Notably, in 18 U.S.C. §§ 3663 and 3663A, which, as discussed above, were adopted concurrently with § 2264 and as part of the same scheme, “victim” is defined more narrowly as “a person *directly and proximately harmed* as a result of the commission of an offense for which restitution may be ordered. . . .” 18 U.S.C. §§ 3663(a)(2); 3663A(a)(2) (emphasis added). “[I]t is

generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another.” *Chicago v. Envtl. Defense Fund*, 511 U.S. 328, 338 (1994) (internal quotations omitted). Accordingly, Congress knew how to, and could have, included a proximate cause requirement in the definition of “victim” if it so chose; it did not do so in § 2264, which reflects a clear intent not to burden survivors with such causation requirements.

Congress’s intent to ensure broad inclusion in the definition of “victim” is made even clearer by earlier versions of the definition of “victim” in § 2264, which did contain proximate cause language. *See* S. 2754, 101st Cong. § 2263(c) (as introduced in Senate); S. 2754, 101st Cong. § 2264(e) (as reported in Senate) (defining “victim” as “any person who has suffered *direct* physical, emotional, or pecuniary harm as a result of a commission of a crime under this chapter. . . .”) (emphasis added). Thus, Congress clearly knew how to integrate proximate cause if it intended; the absence of such language evinces Congress’s intent to keep the definition of victim broader as to victims of the categories of crime covered by the Mandatory Restitution Statutes.

2. The History of § 2264 Reveals an Intent to Broaden the Scope of Restitution, Not Narrow It.

Once the individual harmed meets the definition of “victim,” § 2264 mandates broad recovery for losses. Section 2264 states that courts “shall direct the defendant to pay the victim . . . the *full amount* of the victim’s losses. . . .” 18 U.S.C. § 2264(b)(1) (emphasis added). Included among the items for which the victim is entitled to “full” restitution are medical services, physical therapy, temporary housing, transportation, and child care expenses, lost income, and attorneys’ fees plus any costs incurred in obtaining a civil protection order. 18 U.S.C. § 2264(b)(3)(A)-(E). There is no causal language appended to any of these categories of expenses. Notably, Congress did include a sixth category of loss for which there is a proximate cause requirement. *See* 18 U.S.C. § 2264(b)(3)(F) (stating that the full amount of the victim’s losses can also include “any other losses suffered by the victim *as a proximate result of the offense*”) (emphasis added).

In addition to the language being plain, the history of § 2264 provides further strong support that this proximate cause requirement attaches only to the final category of loss. The 1990 versions of the bill introduced and reported in the Senate affixed the “proximate result” language not only to the catch-all provision of the bill, but to another category of loss as well: that for “any income lost by the victim.” S. 2754, 101st Cong. § 2263(a)(2)(C) (as introduced in Senate);

S. 2754, 101st Cong. § 2264(a)(2)(C) (as reported in Senate) (stating that the “full amount of the victim’s losses” includes “any income lost by the victim as a proximate result of the offense”). The other categories of loss contained no such language. *Id.*

Under the series qualifier principle of statutory construction, as set forth in *Porto Rico Railway*, “[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.” *Porto Rico Ry. Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920). To read the final nexus requirement in the 1990 version of the Act as “applicable as much to the first and other words as to the last,” such that it would apply to the lost income requirement, would be to read a redundancy into the statute. Congress is presumed not to create redundancies in statutes. *See Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 837 (1988) (“[W]e are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.”). Thus it is clear that in the 1990 version of the Act, Congress did not intend a nexus requirement as to the categories of loss to which no explicit nexus requirement applied: medical services; physical and occupational therapy and rehabilitation; attorneys’ fees; and costs incurred in obtaining a civil protection order. S. 2754, 101st Cong. § 2264(a)(2) (as reported in Senate).

In 1991, Congress deleted the proximate cause requirement from the lost income provision, which carried through to subsequent versions of the Act. S. 15, 102nd Cong. § 2264(b)(2)(C) (as introduced in Senate). By so doing, Congress furthered its aim of allowing survivors of interstate domestic violence, stalking, and protection order violations to obtain “full” restitution. It strains credulity to argue that by deleting the proximate cause requirement from the lost income category, Congress actually intended to keep a proximate cause requirement. The strain deepens when arguing that by broadening the language of the statute, Congress actually intended to narrow the statute by affirmatively adding a proximate causation requirement to every other category of loss enumerated – categories to which Congress certainly did not intend to extend a nexus requirement in the 1990 version of the Act. The deletion of the proximate cause requirement from the lost income subcategory should be taken for what it is – a decision by Congress to contain the nexus requirement in § 2264(b)(1) to the final, catch-all provision. *See Russello v. United States*, 464 U.S. 16, 23-24 (1983) (“Where Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended.”).

3. Adding a Nexus Requirement into the Enumerated Categories of Loss in § 2264 Would Undermine the Violence Against Women Act and Harm Survivors.

Case law interpreting the proximate cause requirement in § 2264 is limited. In one of the few cases to directly address the proximate cause portion of § 2264, the Second Circuit grappled with defendant's argument that he should not be required to pay restitution for one of the specific categories of loss enumerated in § 2264 – the costs incurred in obtaining a civil protection order – because “[t]he losses incurred in acquiring a protection order clearly predate the occurrence of the specific conduct that [defendant] argues underlies the offense of conviction . . . namely, the crossing of state lines . . . to violate the protection orders.” *United States v. Hayes*, 135 F.3d 133, 137 (2d Cir. 1998). Although not clear from the opinion, the defendant appeared to be arguing that proximate cause requires both a causal nexus between the offense and the harm, and that the harm stem from the offense of conviction. This definition is consistent with many jurisdictions' interpretation of proximate cause in the context of § 2259. *See, e.g., United States v. Aumais*, 656 F.3d 147, 153 (2d Cir. 2011) (stating that § 2259 requires that “a victim's losses . . . be proximately caused by the defendant's offense”); *United States v. Laney*, 189 F.3d 954, 965 (9th Cir. 1999) (stating that § 2259 requires a “causal connection between the offense of conviction and the

victim's harm"); *United States v. Woods*, 689 F. Supp. 2d 1102, 1108 (N.D. Iowa 2010) (citing with approval § 2259 case law requiring a causal connection between the offense of conviction and the victim's harm); *United States v. Berk*, 666 F. Supp. 2d 182, 187-88 (D. Me. 2009) (“[N]early every court to have [interpreted § 2259] has found that it requires the victim’s loss to have been proximately caused by the offense of conviction”) (collecting cases); *United States v. Church*, 701 F. Supp. 2d 814, 830 (W.D. Va. 2010) (“[T]he Court holds that § 2259 requires that a victim’s losses be proximately caused by the offense for which the Defendant was convicted to be recoverable in restitution.”).

In finding that defendant was required to pay restitution for the losses incurred in acquiring the protection order, the court found that Congress read into categories A through E a *de facto* finding of proximate cause, stating:

Reading Section 2264(b)(3)(E) together with Section 2264(b)(3)(F), attorneys’ fees and costs of obtaining a protection order *are among the “losses suffered by the victim as a proximate result of the offense.”* That those costs, which date back to the acquisition of the protection orders, *were considered by Congress to be among the losses that are proximately caused by the offense* strongly suggests that Congress did not intend the other costs enumerated as among those that proximately result from the offense, including costs for child care, housing, and lost

income, to be limited to amounts incurred only after the interstate activity.

Hayes, 135 F.3d at 138 (emphases added and citations omitted).⁴

By finding that Congress read a proximate result into certain categories of expenses, the court determined that recovery of the enumerated expenses is automatic once it has been ascertained that the

⁴ The interpretation of *Hayes* found in dicta in *United States v. Fast*, 709 F.3d 712, 721 (8th Cir. 2013) is strained and out of context. There the court stated that the *Hayes* court merely noted that Congress “authorize[d]” restitution for the categories of loss enumerated in subsections A through E, but that causation still must be proved in each case. *Id.* (citing *Hayes*, 135 F.3d at 138). This interpretation is flawed. First, the full context of the *Hayes* court’s interpretation of § 2264 is that “[a] straightforward reading of Section 2264 . . . authorizes restitution for more than merely those losses occurring after a defendant has crossed state lines to violate a protection order.” *Hayes*, 135 F.3d at 138 (emphasis added). The use of the word “authorizes” here is in keeping with the court’s larger holding: namely, that it is erroneous to find that Congress intended to limit restitution to costs incurred after the offense of conviction. By using the word “authorizes,” the *Hayes* court recognized that Congress intended to allow restitution for costs occurring before the offense of conviction. Additionally, the *Fast* interpretation would require that a superfluous requirement of causation be read into the enumerated costs. The *Fast* court acknowledges that the *Hayes* court found that the enumerated costs are “among the losses that are proximately caused by the offense.” *Fast*, 709 F.3d at 721 (citing *Hayes*, 135 F.3d at 138). However, it went on to conclude that because recovery for these proximate losses are only “authorized” by Congress, causation must still be proven. Because Congress has already stated that there is causation, the further causation requirement is duplicative.

survivor meets the statutory definition of “victim.” In other words, Congress determined that expenses such as for relocating and mental health care are so common and so frequently stem from stalking and domestic violence that the victim need not make any additional causal claim of proof. While Amici argue the better articulation is that Congress intended there to be no proximate cause requirement at all as to categories A through E, rather than that proximate result is presumed as to those categories of expense, the end result is the same: neither the victim nor the government need prove proximate cause in order for a victim to be able to recover for losses sustained in the categories enumerated in subsections A through E.

Although *Hayes* focused on the costs incurred in obtaining a protective order, every other loss could – and often would – occur prior to the violation of the offense of conviction. For instance, in a typical case of interstate domestic violence, the survivor will move across state lines to escape her abuser. Associated with this move will be temporary housing and necessary transportation expenses, as specifically provided for in 18 U.S.C. § 2264(b)(3)(C). Only *after* this move across state lines could defendant be convicted of interstate domestic violence – if the domestic violence act occurs within the state, there is no federal offense.

As another example, if a proximate cause requirement were read into the enumerated categories of loss, victims may be unable to recover fully expenses for counseling. Beyond even the temporal issue of when the victim began counseling, if § 2264 were read to require that restitution for counseling be

proximately caused by the offense of conviction, the victim would have to parse the portion of restitution expenses that followed from the violence related to the crossing of state lines from the original abuse requiring her to flee. Such a limited reading of the statute would undermine victims' access to counseling, which may be crucial to recovery. Kim M. Anderson *et al.*, *supra*, at 1292-93 (finding that the vast majority of women studied who sought mental health counseling found it to be helpful in processing their trauma and managing their PTSD symptoms); Judy L. Postmus, *Women's Experiences of Violence and Seeking Help*, 15 *Violence Against Women* 852, 852 (2009) (“[M]ost researchers agree that disclosing abuse and seeking help from informal and formal support networks will lessen the long-term impact of abuse.”).

Such a limited reading of the Violence Against Women Act is in conflict with the clear language of the statute and the intent of Congress and therefore cannot stand. *See United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (“It is our duty ‘to give effect, if possible, to every clause and word of a statute.’”) (quoting *Inhabitants of Montclair Tp. v. Ramsdell*, 107 U.S. 147, 152 (1883)); *New York State Dept. of Social Services v. Dublino*, 413 U.S. 405, 419-20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).



CONCLUSION

Because it is contrary to the language of the statute and Congressional intent to read a proximate cause requirement into § 2264, the same analysis must by necessity apply to § 2259. *See generally* Section II.A, *infra*. As a corollary, if the Court were to read a proximate cause requirement into §2259, courts would likely interpret § 2264 as requiring a proximate cause requirement as well, thus severely limiting victims' ability to recover the full restitution intended by Congress under the mandatory restitution provisions of the Violence Against Women Act. Such a limited reading would undercut the history, purpose, and language of VAWA, and the ability of victims of stalking, domestic violence, and protective order violations to find safety and begin rebuilding their lives.

Respectfully submitted,

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