

**In the United States Court of Appeals  
for the Fifth Circuit**

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RAMACHANDRA ADHIKARI; DEVAKA ADHIKARI; JIT BAHDUR KHADKA; RADHIKA KHADKA; BINDESHORE SINGH KOIRI; PUKARI DEVI KOIRI; CHITTIJ LIMBU; KAMALA THAPA MAGAR; MAYA THAPA MAGAR; BHAKTI MAYA THAPA MAGAR; TARA SHRESTHA; NISCHAL SHRESTHA; DIL BAHADUR SHRESTHA; GANGA MAYA SHRESTHA; SATYA NARAYAN SHAH; RAM NARYAN THAKUR; SAMUNDRI DEVI THAKUR; JITINI DEVI THAKUR; BHIM BAHADUR THAPA; BISHNU MAYA THAPA; BHUJI THAPA; KUL PRASAD THAPA; AND BUDDI PRASAD GURUNG,

*Plaintiffs-Appellants,*

v.

KELLOGG BROWN & ROOT, INC.; KELLOGG BROWN & ROOT SERVICES, INC.; KBR, INC.; KBR HOLDINGS, L.L.C.; KELLOGG BROWN & ROOT L.L.C.; KBR TECHNICAL SERVICES, INC.; KELLOGG BROWN & ROOT INTERNATIONAL, INC.; SERVICE EMPLOYEES INTERNATIONAL, INC.; OVERSEAS EMPLOYMENT ADMINISTRATION; AND OVERSEAS ADMINISTRATION SERVICES,

*Defendant-Appellees.*

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On Appeal from the United States District Court  
for the Southern District of Texas (The Honorable Keith P. Ellison)

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**BRIEF OF *AMICUS CURIAE* SENATOR RICHARD BLUMENTHAL  
IN SUPPORT OF APPELLANTS AND REVERSAL**

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## **CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of this Court's Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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7. Chittij Limbu, Plaintiff-Appellant
8. Kamala Thapa Magar, Plaintiff-Appellant
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19. Bhim Bahadur Thapa, Plaintiff-Appellant

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22. Kul Prasad Thapa, Plaintiff-Appellant
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24. Kellogg Brown & Root, Incorporated, Defendant-Appellee
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27. KBR Holdings, L.L.C., Defendant-Appellee
28. Kellogg Brown & Root L.L.C, Defendant-Appellee
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30. Kellogg Brown & Root International, Incorporated, Defendant-Appellee
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## **INTRODUCTION AND INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

Amicus Senator Blumenthal, a member of the United States Senate from Connecticut, is a leader in congressional efforts to combat human trafficking. Senator Blumenthal is the Co-Chair of the Senate Caucus to End Human Trafficking, which provides a forum for members to come together to combat human trafficking. Because committees tend to silo various trafficking issues, the caucus is an invaluable tool for engaging members on common policy goals. The caucus leads the Senate charge to eradicate trafficking by promoting awareness, removing demand, supporting prosecution efforts, and ensuring appropriate services are available for survivors.

Senator Blumenthal has also shown leadership on this issue by sponsoring two critical pieces of legislation that would strengthen efforts to stop human trafficking. He introduced the Business Supply Chain Transparency on Trafficking and Slavery Act of 2015 to reduce the presence of modern-day slavery in business supply chains. The legislation is supported by more than 100 investment firms. In July, Senator Blumenthal re-introduced The Human Trafficking Prioritization Act to increase the country's ability to monitor and effectively combat sex and human trafficking across the globe.

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<sup>1</sup> All parties consent to this brief, and no party's counsel authored it in whole or in part. Apart from amicus and his counsel, no person contributed money to fund the brief's preparation or submission.

Senator Blumenthal files this brief to express his concern that the district court's decision in this case, if left in place, will thwart Congress's intent to provide a forum for private civil actions aimed at preventing, deterring, and compensating for the harms of human trafficking committed by U.S. military contractors abroad. *Amicus* believes that the Court would benefit from an understanding of the relevant history and context surrounding the enactment of the Trafficking Victims Protection Act of 2000 (TVPA), its amendments in 2003, 2005, and 2008, and the Military Extraterritorial Jurisdiction Act of 2000 (MEJA).

Since 2000, Congress has sought to combat the international trade in, and exploitation of, human beings. Recognizing human trafficking as “a contemporary manifestation of slavery,” 22 U.S.C. § 7101(a), the TVPA employs a wide array of enforcement tools to disrupt the international flow of forced labor. Of special concern were abuses committed by U.S. military contractors. In 2008, Congress clarified that the TVPA's civil remedies would apply with equal force to abuses committed overseas. Congress understood that this jurisdictional provision would apply to pending cases. Where, as here, the underlying conduct was already unlawful and the amendment is only jurisdictional, the presumption against retroactivity does not control; there were no “*post hoc* changes to legal rules on which parties relied in shaping their primary conduct.” *Rep. of Austria v. Altmann*, 541 U.S. 677, 695 (2004). The district court's contrary ruling should be reversed.

## STATEMENT OF THE CASE

### A. Facts

In August 2004, an unprotected caravan of seventeen vehicles set out from Amman, Jordan towards the Al Asad Air Base in Iraq.<sup>2</sup> The group included twelve young Nepali men, all on their way to perform work for Kellogg Brown & Root (KBR), a U.S. military contractor. But the men had left their homes and families earlier that summer with very different destinations in mind. Some were explicitly promised jobs at a luxury hotel in Amman.<sup>3</sup> All were reassured that they would be working in a safe location abroad. A promised monthly salary of \$500 enticed the men and their families to go into debt to pay substantial brokerage fees for the opportunity.

In Jordan, agents of a local company that worked for KBR instead confiscated the men's passports and took them to a locked compound from which they could not escape. Their real assignment would be a military base in Iraq, at three-quarters of their promised pay. There, they would be assigned to work under

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<sup>2</sup> Except where noted, the following statement of facts is drawn from the district court's opinions. *See Adhikari v. Daoud*, 994 F. Supp. 2d. 831 (S.D. Tex. 2014); *Adhikari v. Daoud*, 697 F. Supp. 2d 674 (S.D. Tex. 2009); *Adhikari v. Daoud*, 2013 WL 4511354 (S.D. Tex. Aug. 23, 2013). Although the district court concluded that the plaintiffs' allegations withstand summary judgment, *Amicus* takes no position on the truth of the underlying allegations.

<sup>3</sup> Cam Simpson, *Desperate for Work, Lured into Danger*, Chicago Tribune, Oct. 9, 2005, at 1.

KBR's contract providing logistical support—serving food, cleaning laundry, and picking up garbage—to the U.S. military. Officials from KBR, who had significant control over the recruitment, transport, and employment of their laborers, were aware that many of their workers, including the Nepalis, were victims of human trafficking. The Nepalis were far from alone. In 2005, KBR's operations in Iraq were staffed by 35,000 foreign workers.<sup>4</sup> On summary judgment, the district court found that the plaintiffs' evidence “shows that each man was deceived about his promised job; each man was promised a hotel related job in Jordan; each man's family took on significant debt in order to pay recruitment fees; when the men arrived in Jordan, they were subject to threats and harm; their passports were confiscated; and the men were locked into a compound and threatened.” *Adhikari v. Daoud*, 2013 WL 4511354 at \*9.

Distressed, two of the men called their families in Nepal. One shared the difficulty of his current conditions, telling his family that he and the other men were being held in a dark room, unable to see all day. Another spoke of his fears about the future and desire to return home. “I am done for,” one 18-year-old said, before the phone line cut off.<sup>5</sup> Locked in a compound with no escape, no passports to

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<sup>4</sup> Cam Simpson, *Iraq War Contractors Ordered to End Abuses*, Chicago Tribune, April 24, 2006, at 1.

<sup>5</sup> Cam Simpson, *Into a War Zone, on a Deadly Road*, Chicago Tribune, October 10, 2005, at 1.

leave with, and huge debts to labor brokers still to be paid off, the men were forced to go into Iraq to work for KBR. But these twelve men never made it to work. As they neared Al Asad, insurgents from the Ansar al-Sunna Army, dressed in Iraqi security forces uniforms, stopped the lead cars and captured the twelve workers.<sup>6</sup>

Over the next several days, the Ansar al-Sunna Army broadcast news of the kidnapping to the world—releasing an online statement, posting photos of the Nepali workers, and sending a video of ten of them to Nepal’s Foreign Ministry. In the video, the men said they had been “kept as captives in Jordan,” and “forced [] to go to Iraq.” One reflected, “I do not know when I will die, today or tomorrow.” At the end of August, the insurgents published a second video of the workers’ deaths. One was beheaded. The other eleven, lying face down in a ditch, were shot in the back of the head—one by one.<sup>7</sup> Some of the surviving family members of these twelve men witnessed the deaths on Nepali television. The bodies were never found.

Buddi Prasad Gurung, the last plaintiff in the case, survived the convoy from Amman to Al Asad. Similarly recruited from Nepal with the promise of safe work abroad, he was assigned to work for KBR at Al Asad’s warehouse. Mr. Gurung soon learned of the fate of the other workers in the convoy and, frightened, asked

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

to return to Nepal. But the contractors in charge of his work refused his request. He worked on the base, where he experienced frequent mortar fire, for fifteen months before the company allowed him to return to Nepal.

## **B. Statutory History**

**1. The Trafficking Victims Protection Act of 2000.** The TVPA, enacted in 2000, was Congress’s “first complete legislation to address the growing practice of international ‘trafficking,’” “one of the largest manifestations of modern-day slavery.” 146 Cong. Rec. 22,044 (2000) (Sen. Brownback). Congress sought to prosecute traffickers, prevent crimes, and protect victims who are “transported across international borders and left defenseless in a foreign country.” *Id.*

At an early hearing on the bill, Senator Sam Brownback explained how he was inspired to work on the legislation by his travels to India, Pakistan, and Nepal, where he met with victims of human trafficking and learned about the elaborate trafficking networks in Burma, Thailand, Nepal, India, and the Middle East. *International Trafficking in Women and Children: Hearing before the Subcomm. on Near Eastern and S. Asian Affairs of the Senate Comm. on Foreign Relations*, 106th Cong. 3 (2000). He described the stories he heard there, of victims who voluntarily left home for what they thought was “a domestic job” or a position in “a carpet factory.” *Id.* at 22. “At

the other end,” he explained, these individuals “end up” “in the most horrible forced slavery situation.” *Id.*

Early congressional hearings on the bill addressed trafficking’s global, diverse, and complex nature. Representatives of the State Department told the Senate Foreign Relations Committee of their efforts to negotiate an international protocol on human trafficking: “Because trafficking is a global problem, the nations of the world are linked as countries of origin, transit, and destination and inevitably will succeed or fail in combatting it together.” *Id.* at 14 (Hon. Frank Loy, Under Sec’y of State for Global Affairs, Dep’t of State). The Committee also heard from the Justice Department, whose representative, William Yeomans, emphasized the diverse forms of coercion that constitute trafficking. Alongside forced prostitution, he discussed the problems of domestic servitude, migrant labor, and sweatshop labor. *Id.* at 77 (William Yeomans, Chief of Staff, Civil Rights Division, Dep’t of Justice). He specifically mentioned a common tactic of traffickers—stripping a victim of identification documents, passport, and immigration papers as a means of control and coercion. *Id.* at 80. And he underlined the need for any legislation to reach both low-level actors in the recruitment chain and those who knowingly obtain and profit from the coerced labor. Stopping trafficking would require breaking the global chain of employers, traffickers, and victims. *Id.* at 78. Through the TVPA, Congress acted to address all of these issues.

Although much of the legislation focused on women and children entangled in the sex trade, Congress also emphasized that “this growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.” Pub. L. No. 106–386, § 102(b)(3), 114 Stat. 1466 (codified at 22 U.S.C. § 7101(b)(3)). The TVPA defined one of the “severe forms of trafficking in persons” as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” *Id.* § 103(8)(b) (codified at 22 U.S.C. § 7102(9)).

The late Senator Paul Wellstone, who introduced the bill in the Senate, explained that the TVPA was intended to protect those who left home under circumstances that closely resembled those of the Nepali workers here: “innocent persons,” who, “seeking financial security,” “are lured by traffickers’ false promises of a better life and lucrative jobs abroad. Seeking this better life, they are lured by local advertisements for good jobs in foreign countries at wages they could never imagine at home. However, when they arrive, these victims are often stripped of their passports, held against their will, some in slave-like conditions, in the year 2000.” 146 Cong. Rec. 22,045 (2000) (Sen. Wellstone).



As Senator Wellstone said on the Senate Floor at the bill's introduction: "This measure enhances our existing legal structures, criminalizing all forms of trafficking in persons and establishing punishment which is commensurate with the heinous nature of this crime." 146 Cong. Rec. 5,402 (2000). Congress stressed the global nature of human-trafficking crime, framing the United States' response as both a domestic and international effort. "This egregious human rights violation," Senator Wellstone explained, "is a worldwide problem that must be confronted in domestic legislation as we continue to fight it on the international front." 146 Cong. Rec. 5,401 (2000). The TVPA was therefore "designed to ensure that our government uses its influence around the world to stop this abominable trafficking in human beings." 146 Cong. Rec. 7,291 (2000) (Rep. Gilman).

**2. The Military Extraterritorial Jurisdiction Act of 2000.** Just a month after the TVPA's passage, Congress enacted separate legislation targeted at wrongdoing by federal contractors and subcontractors abroad. The Military Extraterritorial Jurisdiction Act (MEJA) amended Title 18 of the United States Code to "establish Federal jurisdiction over offenses committed outside the United States by persons employed by or accompanying the Armed Forces." Pub. L. No. 106-523, 114 Stat. 2488. Included in this extension of jurisdiction were "Department of Defense contractor[s] (including a subcontractor at any tier)" and "employee[s] of a Department of Defense contractor (including a subcontractor at

any tier).” 18 U.S.C. § 3267.

The statute allows prosecution of dependents, employees, and contractors who commit an offense abroad that, had it occurred in the United States, would be punishable by imprisonment for more than one year. Under MEJA, these individuals “shall be punished as provided for that offense.” 18 U.S.C. § 3261(a)(2). Thus, through MEJA, Congress brought federal defense contractors under the scope of U.S. laws—which, at the time, forbade human trafficking.

**3. The 2003, 2005, and 2008 Reauthorization Acts.** Between the years 2000 and 2008, Congress reauthorized and amended the Trafficking Victims Protection Act three times.

***a. Trafficking Victims Protection Reauthorization Act of 2003.***

When Congress first reauthorized the TVPA, in 2003, it amended the statute to incorporate what the TVPA’s lead sponsor, Representative Chris Smith, called “lessons learned since the first law was enacted.” 149 Cong. Rec. H10285 (2003) (statement of Rep. Smith). One of these amendments added a private civil action, which enabled victims of trafficking to sue their traffickers for damages in U.S. courts. As codified, 18 U.S.C. § 1595(a) allows “an individual who is a victim of a violation of section 1589, 1590, or 1591 of this chapter” to “bring a civil action against the perpetrator in an appropriate district court of the United States.” Pub. L. No. 108–193, 117 Stat. 2878 (codified at 18 U.S.C. § 1595(a)).

The addition of the civil remedy in 2003 was just one part of the comprehensive framework of Congress’s anti-trafficking scheme. In the original criminal sections of the TVPA, Congress demonstrated its understanding that trafficking involves a network of actors, each of whom participates in and benefits from the underlying crime. Congress then incorporated TVPA’s criminal provisions directly into the language of its new civil remedy—extending the right to sue for damages to any individual “who is a victim of a violation” of the TVPA. *Id.* Those who are directly or indirectly responsible for human trafficking were thus intended to be civilly liable, just as they could be held criminally responsible.

As the TVPA has come up for reauthorization, several amendments have sought to clarify the breadth of its jurisdiction. One area of particular interest to Congress has been offenses committed by federal contractors or subcontractors employed in other countries. The 2003 reauthorization required all federal contracts to include a provision allowing for the immediate termination of the contract if the contractor, or any subcontractor, “engages in severe forms of trafficking.” Pub. L. No. 108–193, 117 Stat. 2876-7 (codified at 22 U.S.C. § 7104).

In a 2004 hearing on U.S. military enforcement of trafficking policies, the TVPA’s lead sponsor, Representative Smith, expressed his intent that such TVPA provisions “will be applicable to contracts already in force,” including conduct before “the date of the legislation,” because Congress “want[ed] to cover as many

people as possible.” *Enforcing U.S. Policies in Trafficking in Persons: How is the U.S. Military Doing?: Hearing Before the Comm’n on Security and Cooperation in Europe and the H. Armed Servs. Comm.*, 108th Cong. 15 (2004) (statement of Rep. Chris Smith).

***b. Trafficking Victims Protection Reauthorization Act of 2005.***

Consistent with Congress’s longstanding “concern[] about the involvement of Federal contractors in human trafficking and other misconduct,” H.R. Rep. No 109-317, pt. 1, at 19 (2004), Congress extended the TVPA to all federal contractors—not just those of the Department of Defense. In 2000, MEJA had already extended jurisdiction extraterritorially to defense contractors for offenses committed while “accompanying” the U.S. Armed Forces, and a 2004 MEJA amendment extended this jurisdiction to contractors and employees from other federal agencies working to support a defense mission. Pub. L. No. 108–375, § 1088, 118 Stat. 2066 (codified at 18 U.S.C. § 3267(1)(A)). In the 2005 TVPA amendment, Congress expressed its intent to clarify that TVPA jurisdiction also extends to all federal contractors abroad. It was “the Committee’s view” that *all* “contractors, and their employees and agents, must be held to the same standards of conduct required under United States laws while under U.S. Government contracts abroad.” H.R. Rep. No 109-317, pt. 1, at 19-20 (2004).

Over the next several years, members of Congress continued to focus on the involvement of federal contractors in trafficking. At a House hearing on the subject,

Representative Smith mentioned a number of specific cases. He inquired about the alleged trafficking of women and children in Bosnia in 1999, and introduced to the record media coverage of the recruitment, trafficking, and killing of the very Nepali workers whose families are the plaintiffs in this case. *Trafficking in Persons: Joint Hearing Before the Military Personnel Subcomm. of the Comm. On Armed Servs. and the Africa, Global Human Rights, and International Operations Subcomm. of the Comm. on International Relations*, 109th Cong. 4 (2006). These “decisive articles,” he said, “speak to the exploitation of a labor workforce” and “put many of these people at grave risk.” *Id.* at 15. He opined that the government should do more to prevent trafficking by contractors, and punish and those who commit offenses: “The law is very explicit,” he said. “You have the power.” *Id.*

***c. Trafficking Victims Protection Reauthorization Act of 2008.***

Building on the 2005 expansion and Congress’s longstanding interest in the role of contractors in trafficking, the portions of the 2008 reauthorization of the TVPA relevant to this case clarified the power of U.S. courts to hear private suits over the kind of extraterritorial trafficking conduct that has been prohibited since the TVPA was first enacted in 2000. The statute clarifies that, if an alleged offender is a U.S. national or permanent resident, or is merely “present in the United States,” then “[in] addition to any domestic or extra-territorial jurisdiction otherwise provided by law, the courts of the United States have extra-territorial jurisdiction over any

offense (or any attempt or conspiracy to commit an offense) under section 1581, 1583, 1584, 1589, 1590, or 1591.” Pub. L. No. 110–457, 122 Stat. 5071 (codified at 18 U.S.C. § 1596).

### **C. Proceedings Below**

The families of the twelve executed men, along with Mr. Gurung, sued KBR for establishing a human-trafficking scheme designed to “procure laborers from third world countries” and send them to Iraq. 994 F. Supp. 2d at 833. Among other things, the plaintiffs brought claims under the Trafficking Victims Protection Act (TVPA). The district court rebuffed KBR’s efforts to dismiss the TVPA claims three separate times, holding that the TVPA’s extraterritorial-jurisdictional provision applied because it “did not affect substantive rights” and KBR never had the “right to traffic human beings at home or abroad.” 697 F. Supp. 2d at 682, 683.

Shortly thereafter, though, the district court reversed itself. The district court reassessed the TVPA and determined that the extraterritorial provision “increased the potential liability of defendants for past conduct” and therefore “affect[ed] the substantive rights of the parties.” 994 F. Supp. 2d at 832, 838. The district court agreed that nothing in the TVPA’s extraterritorial provision “change[d] the lawfulness of human trafficking.” *Id.* at 839. But the district court held that “the conferral of extraterritorial jurisdiction affects more than mere procedure.” *Id.*

## **ARGUMENT**

Through the enactment of the TVPA and subsequent amendments, Congress intended that individuals and organizations engaged in the international trade of human beings would face both civil and criminal liability. Congress repeatedly expressed particular concern for the well-publicized abuses committed by U.S. military contractors—which threatened to undermine U.S. foreign policy and jeopardize military efforts—and acted to ensure that those responsible would be held criminally liable. The 2003 addition of a civil remedy, which explicitly tied together criminal and civil liability in an integrated scheme, therefore applied to contractors like KBR. In 2008, Congress clarified the jurisdictional reach of the TVPA’s civil provisions to include extraterritorial abuses. Given that the inherently international nature of human trafficking has been at the heart of Congress’ statutory scheme since 2000, that amendment should be read as clarifying and jurisdictional in nature. Against the backdrop of well-established Supreme Court precedent, Congress understood that the jurisdictional provision would apply to pending cases—including this one.

### **I. The TVPA’s Legislative History Demonstrates that Congress Intended to Hold U.S. Military Contractors Liable for Overseas Human Trafficking that Occurred Prior to 2008**

Congress understood from the TVPA’s inception that human trafficking is an inherently international phenomenon. As Senator Sam Brownback reflected,

“[W]e believe it’s time to challenge this evil slavery practice known as trafficking”—“the largest manifestation of slavery in the world today.” 146 Cong. Rec. 5,776 (2000). To that end, Congress took a “tough approach toward traffickers,” working, in the words of Representative Chris Smith, to “put[] the fight against the international slave trade at the top of our foreign policy agenda where it belongs.” Markup of H.R. 3244, at 3 (statement of Rep. Smith). Expressing his support for the enacted legislation, Representative Neal Abercrombie reflected that “[t]rafficking is global in scope, fed by poverty, lawlessness, dictatorship and indifference.” 146 Cong. Rec. 7,295 (2000).

Congress also acted specifically to address abuses committed by U.S. military contractors like KBR. Shortly after the trafficking legislation’s enactment, Congress, through MEJA, extended criminal liability for trafficking to military contractors, including KBR. Over the next several years, Congress continued to focus its human trafficking discussions on prevention, enforcement, and punishment for all federal contractors overseas. In the prefatory findings of its 2005 reauthorization, Congress acknowledged the role that government contractors play in human trafficking networks worldwide. This involvement, Congress concluded, “is inconsistent with United States laws and policies and undermines the credibility and mission of United States Government programs in post-conflict regions.” Pub. L. No. 109–164, 119 Stat. 3559. Congress therefore included additional measures



to ensure that contractors would be “held accountable.” *Id.*

Congress continued to work to protect victims from exactly the type of abuses at issue in this case, holding a number of hearings between 2000 and 2008 to examine the problem of trafficking by military contractors. At a 2007 hearing before the Senate Judiciary Committee, Senator Dick Durbin brought up the experiences of these Nepali workers when questioning a representative from the Justice Department. He demanded to know “why the U.S. Government hasn’t done more to punish U.S. contractors in Iraq and other foreign countries who engage in human trafficking[.]” *Legal Options to Stop Human Trafficking: Hearing Before the Subcomm. on Human Rights and the Law of the S. Comm. on the Judiciary*, 109th Cong. 21 (2007). Noting that financial penalties could help tip the scales to discourage trafficking, he expressed his “hope that some” prosecutions “will take place.” *Id.* As Senator Durbin’s question demonstrates, the present case was one of a handful of notorious and well-documented examples of trafficking of which Congress was acutely aware when it clarified the jurisdictional reach of the TVPA.

And when Congress introduced a civil remedy to the TVPA in 2003, it tied together civil and criminal enforcement power and thus clearly extended the ability to bring a civil action to *any* individual, including the plaintiffs in this case, who had suffered harm as a result of a human trafficking offense. In its 2003 amendment, Congress extended the right to sue for damages to any individual “who is a victim

of a violation” of the TVPA’s forced labor, trafficking for peonage, or sex trafficking statutes. Pub. L. No. 108–193, 117 Stat. 2878 (codified at 18 U.S.C. § 1595(a)). Taken together, the TVPA’s legislative history demonstrates that Congress intended to both protect and provide civil redress for those who suffered in precisely the manner that the Nepali workers did.

## **II. The 2008 Amendment Is Jurisdictional and Applies to All Pending Cases, Including Those Involving Conduct Preceding Its Enactment.**

The plain language of the TVPA’s 2008 amendment itself demonstrates that Congress intended extraterritorial jurisdiction to apply to all pending cases. It makes clear, in the present tense, that “the courts of the United States *have* extraterritorial jurisdiction over *any* offense” committed under the relevant sections of the chapter. Pub. L. No. 110–457, 122 Stat. 5071 (codified at 18 U.S.C. § 1596) (emphasis added).

That straightforward reading of the text is aided by a simple rule of statutory construction against which Congress legislated: Jurisdictional statutes, the Supreme Court has consistently held, apply upon enactment to pending cases. *See Republic of Austria v. Altmann*, 541 U.S. 677 (2004); *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994). Where a law “addresses only matters of procedure,” the Court has explained, it “may be applied to all pending cases regardless of when the underlying conduct has occurred.” *Altmann*, 541 U.S. at 694. Intervening statutes

“conferring” jurisdiction apply “whether or not jurisdiction lay when the underlying conduct occurred or when the suit was filed.” *Landgraf*, 511 U.S. at 274.

Here, the 2008 TVPA amendment qualifies as a jurisdiction-conferring statute that applies to pre-enactment conduct. Rather than create substantive rights, it clarified that civil extraterritorial jurisdiction applied to conduct already outlawed in 2000. The acts alleged in this case were plainly illegal under the TVPA at the time they were committed. *See* 18 U.S.C. § 3261. Were there any question as to the applicability of those standards of conduct to KBR’s overseas actions, MEJA put those doubts to rest in 2000. Thus, the 2008 amendment was fundamentally jurisdictional in nature—even if it “creat[ed] a forum where none existed.” *Altmann*, 541 U.S. at 703 (Scalia, J., concurring).

Indeed, Congress not only intended the 2008 amendment to be jurisdictional in nature but also specifically intended and understood that it would apply to any pending cases. “Congress expects its statutes to be read in conformity with [the Supreme] Court’s precedents,” *United States v. Wells*, 519 U.S. 482, 495 (1997), and here Congress understood that the 2008 amendment was a wholly jurisdictional provision applicable to pending cases in accordance with *Altmann* and *Landgraf*. “[T]he antiretroactivity presumption is just that—a presumption, rather than a constitutional command,” *Altmann*, 541 U.S. at 692–93, and Congress’s intent that

extraterritorial jurisdiction extend to pending cases is manifest in the structure, text, and purpose of the 2008 amendment.

*First*, Congress chose to place the 2008 amendment in a section titled “jurisdiction.” *Second*, as noted above, the 2008 amendment states that “[i]n addition to any domestic or extra-territorial jurisdiction otherwise provided by law, the courts of the United States *have* extra-territorial jurisdiction over *any* offense [in contravention of the TVPA].” 18 U.S.C. § 1596 (emphasis added). The use of the present tense “have” combined with “in addition” and “any” confirms that Congress considered the amendment to function as essentially a clarifying statement with respect to jurisdiction and to apply to all cases, regardless of when the underlying conduct occurred. *Cf. Altmann*, 541 U.S. at 679. *Third*, that reading is bolstered by evidence that at the same time the extraterritorial jurisdictional amendment was under consideration, members of Congress expressed concern about pending cases, including this one. *Supra* at 14-15.

Finally, extraterritorial jurisdiction for abuses that were already unlawful under the TVPA is consistent with the statute’s fundamental purpose to combat “this growing *transnational* crime [that] includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.” 22 U.S.C. § 7101(b)(3)) (emphasis added).

## CONCLUSION

*Amicus* respectfully urges the Court to reverse the district court's judgment and remand for further proceedings.

Respectfully submitted,

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October 1, 2015

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## **CERTIFICATE OF SERVICE**

I hereby certify that on October 1, 2015, I electronically filed the foregoing brief with the Clerk of the Court of the U.S. Court of Appeals for the Fifth Circuit by using the Appellate CM/ECF system. All participants are registered CM/ECF users, and will be served by the Appellate CM/ECF system.

/s/ Deepak Gupta  
Deepak Gupta

**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)**

I hereby certify that my word processing program, Microsoft Word, counted 4,657 words in the foregoing brief, exclusive of the portions excluded by Rule 32(a)(7)(B)(iii).

October 1, 2015

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