No. 15-20225

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RAMCHANDRA 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; BUDDI PRASAD GURUNG,

Plaintiffs-Appellants

v.

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

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HON. KEITH P. ELLISON, CIVIL ACTION NO. 2009-1237

BRIEF OF *AMICI CURIAE* RETIRED MILITARY OFFICERS SUPPORTING PLAINTIFFS-APPELLANTS IN FAVOR OF REVERSAL

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Defendants-Appellees

SUPPLEMENTAL STATEMENT OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 29.2, *amici* provide this Supplemental Statement of Interested Persons to disclose those with an interest in this *amici curiae* brief. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

1. *Amici*, General Charles Krulak, USMC (Ret.), Lieutenant General Robert G. Gard, Jr., USA (Ret.), Lieutenant General Charles Otstott, USA (Ret.), Rear Admiral Don Guter, JAGC, USN (Ret.), Rear Admiral John D. Hutson, JAGC, USN (Ret.), Major General Michael R. Lehnert, USMC (Ret.), Brigadier General John Adams, USA (Ret.), Brigadier General Stephen A. Cheney, USMC (Ret.), Brigadier General David R. Irvine, USA (Ret.), Brigadier General Murray G. Sagsveen, USA (Ret.), and Major General Antonio M. Taguba, USA (Ret.);
2. *Amici's* counsel of record, Thomas M. Flanagan, Andy Dupre, and Camille E. Gauthier of Flanagan Partners LLP;
3. Other individuals who participated in the drafting of this brief but who do not appear as counsel of record, Melissa Hooper of Human Rights First; and Jon Romberg, Jonathan Hafetz, Adino Barbarito, Lemay Diaz, Michelle Ferrare, and Nina Trovato of the Seton Hall University School of Law, Center for Social Justice.

The undersigned counsel of record is aware of no persons or entities, in addition to those listed in the briefs, that have a financial interest in the outcome of this litigation. *Amici* are not financially interested in the outcome of this litigation, and their counsel are listed on the cover of this brief.

No party's counsel has authored any part of this brief or paid any cost associated with its preparation, and no person other than *amici* or their counsel contributed money that was intended to fund preparing or submitting the brief. Fed. R. App. P. 29(c)(5)(A)-(C).

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INTEREST OF *AMICI CURIAE*

Amici curiae are retired generals and admirals of the U.S. Armed Forces who spent their careers in the highest positions of command and staff in the United States and deployed overseas. *Amici* have a unique understanding of the United States' deep and enduring commitment to opposing human trafficking worldwide. *Amici* understand the significant concerns for military safety and security if private contractors—acting under the authority of the United States and its military—are permitted to violate clear prohibitions on human trafficking with impunity. These concerns are heightened if, as here, the trafficking is directed toward an American military base within a region under *de facto* U.S. control. The Supreme Court and this Court have recognized the value of the military's experience and perspective on the application of U.S. laws on territories outside of the fifty states, including places and installations subject to U.S. military control. The identity and background of the *amici* are listed in Appendix A, attached.

All parties have consented to the filing of this brief. No party's counsel has authored this brief in whole or in part, and no person other than *amici*, its members, or its counsel contributed money intended to fund preparing or submitting the brief.

INTRODUCTION

As *amici* explain, the United States and its military had made abundantly clear to their contractors by 2004 that human trafficking was unlawful worldwide, and it would subject them to criminal and civil liability. Moreover, the trafficking in this case was directed at Al Asad Airbase, and occurred within Iraqi territory, over which the United States and the Department of Defense (DoD) exercised practical control.

Amici further contend that the trafficking in this case is actionable in U.S. courts under the Alien Tort Statute (ATS); the Military Extraterritoriality Jurisdiction Act (MEJA); and the Trafficking Victims Protection and Reauthorization Act (TVPRA), as amended in 2008 to clarify its extraterritorial reach.

Defendants' trafficking is actionable under the ATS and TVPRA because no presumption against extraterritoriality applies to territory under U.S. control. Even assuming the presumption were to apply, it is hard to think of an evil that more strongly "touch[es] and concern[s]" U.S. territorial interests, *Kiobel v. Royal Dutch Petroleum*, 133 S. Ct. 1659, 1669 (2013), than this forced movement of enslaved people toward a U.S. military base, by U.S. military contractors, through territory under *de facto* U.S. control, in violation of law and military policy. Moreover, MEJA is expressly extraterritorial, as is the TVPRA—per a clarifying 2008 amendment that applies to this case without impermissible retroactive effect—because its provisions

for liability and damages merely replicate prior law.

Amici are deeply concerned that a determination that defendant U.S. contractors may traffic with impunity—when employed by and accompanying the military, in a territory controlled by the U.S. government—would undermine the interests and operational security of the United States and its military. As Deputy Secretary of Defense Paul Wolfowitz specifically noted, trafficking by contractors "undermines our peacekeeping efforts." Memorandum from Paul Wolfowitz, Deputy Secretary of Defense, to Secretaries of the Military Departments, et al. (Jan. 30, 2004).

While defendant private contractors were exploiting trafficked persons, the military was engaged in an aggressive anti-trafficking campaign.[1] In 2004, DoD Inspector General Joseph E. Schmitz told Congress that human trafficking is, "in a word, un-American," while testifying about DoD's "zero tolerance" policy on human trafficking.[2] The policy, applicable to both the military and its contractors,

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1 *See, e.g.*, Dep't of Defense, Office of the Inspector General, Case No. H03L88433128, Assessment of DoD Efforts to Combat Trafficking in Persons, Phase I—United States Forces in Korea (2003) [hereinafter "DoD Efforts to Combat Trafficking—Phase I"], *available at* https://www.hsdl.org/?view&did=474417; Dep't of Defense, Office of the Inspector General, Case No. H03L88433128, Assessment of DoD Efforts to Combat Trafficking in Persons, Phase II—Bosnia-Herzegovina and Kosovo (2003) [hereinafter "DoD Efforts to Combat Trafficking—Phase II"], *available at* http://www.dodig.mil/foia/ERR/HT-Phase_II.pdf.

2 Joseph E. Schmitz Inspector General of the DoD, Statement Before the House Comm. on Armed Servs. & the Comm'n on Security & Cooperation in Europe on Implementing the

views human trafficking as a form of modern-day slavery.

Contractors provide crucial support for the U.S. military and are perceived internationally as an extension of the military. It is vital to military interests and to the safety of military operations that contractors know they cannot traffic human beings with impunity. Congress has provided remedies for these abuses by opening the courts to trafficking victims. To refuse trafficking victims that remedy would not only conflict with the principles our military fights to defend, but could undermine international confidence in the actions of our military and its employees. It is crucial to the national interest of the United States, and of its military, that trafficking victims have access to the remedies to which the law entitles them.

DoD "Zero Tolerance" Policy with Regard to Trafficking in Humans, 5 (Sept. 21, 2004), *available at* http://www.dodig.mil/fo/JES_TIP_ Testimony_092104.pdf.

ARGUMENT

I. The U.S. Military Made Clear to Contractors Before 2004 that Trafficking Is Unlawful, Particularly When, as Here, it Occurs in U.S.-Controlled Territory, by U.S. Citizens, Directed Toward a U.S. Military Base.

A. Military Contractors Were Repeatedly Informed that Trafficking Was Unlawful and Subject to Zero Tolerance.

The U.S. military has long been committed to combating human trafficking. In 2002, President Bush announced that "[t]he United States hereby adopts a 'zero tolerance' policy regarding U.S. Government employees and contractor personnel representing the United States abroad who engage in trafficking in persons." President George W. Bush, National Security Presidential Directive-22 (Dec. 16, 2002), *available at* http://www.combat-trafficking.army.mil/documents/policy/NSPD-22.pdf. The directive, covering both government personnel and contractors, required departments and agencies "to investigate, as appropriate, and to punish, as appropriate, those personnel who engage in Trafficking in Persons." *Id.* at 4.

The policy specifically highlighted the intent to punish traffickers and sought to "[v]igorously enforc[e] the law against all those who traffic in persons, including recruiters, transporters … buyers, and sellers." *Id.* at 2; *see also* Joseph E. Schmitz, Inspector General of the DoD, Suppressing Slavery in the 21st Century: From Legislation to Enforcement (Nov. 17, 2004), *available at* http://www.dodig.mil/archives/speeches/OSCE_Forum_112204K.pdf (describing actions taken by the

military to combat the unlawful practice of trafficking over the prior two and a half years pursuant to the zero-tolerance policy).

Furthermore, by 2004, President Bush, Congress, and agencies including the DoD had established anti-trafficking as a national priority. In a 2003 address to the United Nations, President Bush identified human trafficking as a "special evil" and urged that, "[T]he trade in human beings for any purpose must not be allowed to thrive in our time." President Bush Address to the UN (Sept. 23, 2003). The President's words echoed priorities set by Congress, which had passed the Victims of Trafficking and Violence Protection Act (TVPA) in 2000 and reauthorized it, with a private cause of action for victims, as the TVPRA in 2003.

The TVPA exhibited a strong national commitment to anti-trafficking, stating, "Trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations…. Trafficking in persons is a transnational crime with national implications." 21 U.S.C. § 7101(b)(21), (24).

Before defendants' trafficking, the DoD had taken additional steps to combat trafficking on military bases, including vigorous anti-trafficking investigations. *See, e.g.*, DoD Efforts to Combat Trafficking—Phase I; DoD Efforts to Combat Trafficking—Phase II. These efforts focused on *both* U.S. military personnel and contractors.

These early military investigations into contractor trafficking explicitly identified the practices as "illegal," as the military undertook aggressive enforcement of existing laws. Focusing on enforcement, rather than lawmaking, reflected the widespread understanding that trafficking was unquestionably unlawful at the time. *See, e.g.,* MNF-I FRAGO 06-188 [Trafficking in Persons], General George W. Casey (Apr. 4, 2006) (describing "illegal confiscation" of passports, requiring contracts to incorporate "appropriate language to compel the protection of individual rights . . . [and] promote rule of law," and requiring contractors and subcontractors to comply with all international laws concerning transit, entry, and exit procedures).

After learning that Kellogg Brown and Root (KBR) was implicated in the use of trafficked labor, the DoD undertook monitoring and preventative action. The *Washington Post* published a July 2004 article describing KBR's frequent use of debt bondage in Iraq, and the DoD immediately implemented measures, dated August 30, 2004, requiring contractors to meet minimum compensation levels, create individual employment contracts, keep detailed logs of each employee, and report that information to the employee's embassy. Inspector General Report, Evaluation of Department of Defense Efforts to Combat Trafficking in Persons 47-48 (Nov. 21, 2006).

Allowing defendant contractors to escape the jurisdiction of U.S. courts for human trafficking committed in the course of fulfilling military contracts would un-

dermine these long-established, global anti-trafficking efforts that are a cornerstone of U.S. law and foreign policy.

B. The United States Exercised Practical Control over Occupied Iraq, Where Plaintiffs Were Trafficked and Killed, and at Al Asad Airbase, the Destination of that Trafficking.

The trafficking in this case occurred in U.S.-controlled Iraqi territory and was directed toward Al Asad Airbase in Iraq, territory under exclusive U.S. control. The trafficking was undertaken by military contractors who were subject to exclusive U.S. jurisdiction.

During the U.S. occupation of Iraq, the country was initially governed by the Coalition Provisional Authority (CPA), a DoD entity under the *de facto* sovereign control of the U.S. government. *See* Supplemental Brief of the United States, *U.S. ex rel. DRC, Inc. v. Custer Battles, LLC*, 444 F. Supp. 2d 678 (E.D. Va. 2006) (No. 1:04 cv 199), 2005 WL 1129476 at text surrounding n.1 [hereinafter "Supplemental Brief"] (stating the United States exercised such control over the CPA, which then governed Iraq, and that "[t]he United States believes that the CPA is an instrumentality of the United States"). A subordinate Iraqi Governing Council was established, but its decisions required CPA approval. Kristen A. Stilt, *Islamic Law and the Making and Remaking of the Iraqi Legal System*, 36 Geo. Wash. Int'l L. Rev. 695, 701 (2004). The United States was empowered to enact and enforce any laws it believed would promote the CPA's objectives; the United States had veto power over any

laws enacted by the Iraqi Governing Council; and the territory was not subject to any control or oversight from any other sovereign. Supplemental Brief at text surrounding n.9, 2005 WL 1129476.

On June 28, 2004, the Iraqi Interim Government assumed nominal control of the government from the CPA, although it initially made "few decisions of its own." Stilt, 36 Geo. Wash. Int'l L. Rev. at 700. In practice, the gradual process of nation-building necessitated significant amounts of continued U.S. control over Iraq. In particular, U.S. officials recognized that "Iraqi forces are not able to maintain security on their own," and thus a U.S.-led military force, MNF-1, succeeded the CPA and exercised significant power over Iraq. Kenneth Katzman & Jennifer Elsea, Congressional Research Services Report for Congress, *Iraq: Transition to Sovereignty*, 5 (July 21, 2004) [hereinafter "Transition to Sovereignty"], *available at* http://fas.org/man/crs/RS21820.pdf. "The *actual* extent of the interim government's sovereignty — or its lawful control over its own territory to the general exclusion of other states — [was] unclear" as of July 2004. *Id.* (emphasis in original).

MNF-1 provided security operations for transitional Iraq and remained under full U.S. command and control. *Nomination of General George W. Casey, Jr., USA, for Reappointment to the Grade of General and to be Commander, Multinational Force-Iraq: Hearing Before the S. Comm. On Armed Servs.*, 108th Cong. (June 24, 2004) (Statement of Gen. George W. Casey, Jr.); *see also* Letter to the President of the Se-

curity Council, U.N. Doc. S/2003/538 (May 8, 2003) (declaring that the United States would act "under existing command and control arrangements through the Commander of Coalition Forces").[3]

As reported in the *Wall Street Journal*, U.S. officials acknowledged that the new Iraqi government would "have little control over its armed forces, lack the ability to make or change laws[,] and be unable to make major decisions within specific ministries without tacit U.S. approval." Yochi J. Dreazen & Christopher Cooper, *Behind the Scenes*, Wall St. J. (May 13, 2004), *available at* http://www.wsj.com/articles/SB108439973419309908. The unelected Interim Government was not designed to make long-term decisions, but instead to run ministries and establish the foundations for a future government. *Id.*

In the absence of a functioning Iraqi sovereign state, the laws put into force by the CPA remained in effect during the transitional period. Transition to Sovereignty at 6. Under UN Security Council Resolution 1546, "some of the CPA's obligations and authority [did] not pass to the interim government, and … remain[ed] instead with the United States as head of the MNF." *Id.* at 5. Crucially, CPA Order No. 17 (Revised), of June 27, 2004, made military contractors subject to the "exclu-

[3] Indeed, the Supreme Court held that given the level of practical control the United States exercised over MNF-I, a detainee held pursuant to MNF-I authority was in U.S. custody for purposes of habeas jurisdiction, despite the participation of other nations in the MNF-I. *Munaf v. Geren*, 553 U.S. 674, 685-86 (2008).

sive jurisdiction" of their sending states during the transition period. Contractors were subject to third-party claims, including those for personal injury or death, according to the laws of their sending countries — meaning that, in this case, the U.S. defendant contractors remained under the exclusive sovereign authority of the United States, and subject to its laws. *Id.* at § 18.

Thus, in August 2004, when the trafficking took place, the United States retained both exclusive control of the Al Asad Airbase to which the trafficking was directed and practical control over Iraqi territory. To the extent that the Interim Government began assuming some governmental responsibilities, the interests of the Interim Government and the United States were fully aligned, and the United States—responsible for security in Iraq through MNF-I—continued to perform many of the functions of a sovereign and exercise effective control of Iraqi territory. Finally, under CPA Order No. 17 (Revised), the United States continued to exercise exclusive jurisdiction over its military contractors.

II. The ATS Applies to 2004 Trafficking in U.S.-Controlled Iraq Directed Toward Al Asad Airbase.

A. Territory Under *de facto* U.S. Control Is Not Subject to a Statutory Presumption Against Extraterritorial Applicability.

Consistent with longstanding precedent, the presumption against extraterritoriality does not apply in this case because U.S.-occupied Iraq—where the trafficking occurred—and Al Asad—where the trafficking was directed—were under *de*

facto U.S. control.

The Supreme Court has repeatedly recognized that the presumption against extraterritoriality does not govern a constitutional or statutory provision's application to a U.S.-controlled region outside the traditional boundaries of the United States. The "presumption against extraterritoriality" applies only to conduct that occurs "beyond places over which the United States has sovereignty *or has some measure of legislative control*." *E.E.O.C. v. Arabian Am. Oil Co.* ("*Aramco*"), 499 U.S. 244, 248 (1991) (emphasis added) (quoting *Foley Bros. v. Filardo*, 336 U.S. 281, 285 (1949)). "'This presumption [against extraterritoriality] 'serves to protect against unintended clashes between our laws and those of other nations which could result in international discord,'" *Kiobel v. Royal Dutch Petroleum*, 133 S. Ct. 1659, 1664 (2013) (quoting *Aramco*, 499 U.S. at 248). *Kiobel* rejected the application of the ATS to a torture claim brought against foreign defendants for conduct within the territory of a foreign sovereign over which the United States had no control. *Id*. *Kiobel* has no application here, where American defendants operated within U.S.-controlled territory and subject to the jurisdiction of no other sovereign.[4]

[4] As a threshold matter, there is strong reason to believe that, in the context of human trafficking, the ATS applies extraterritorially, even assuming the presumption applies. Under the ATS, as plaintiffs explain, human trafficking has long been understood as a form of piracy and slave trading. In *Kiobel*, 133 S. Ct. at 1666-67, the Supreme Court held that *torture* did not present a presumptive basis for extraterritorial application of ATS claims, but recognized that *piracy* did. Human trafficking is a particular form of piracy and the slave trade,

In such territories, rather than apply any presumption against extraterritoriality, the Court looks to the history and purpose of the provision at issue, and the degree of practical control exercised by the United States as weighed against that of any other sovereign whose interests might be undermined by application of the provision. *See Boumediene v. Bush*, 553 U.S. 723 (2008); *Rasul v. Bush*, 542 U.S. 466 (2004); *Vermilya-Brown v. Connell*, 335 U.S. 377 (1948). Because plaintiffs allege trafficking within U.S.-controlled Iraqi territory, directed at Al Asad Airbase, a U.S. military installation, while contractors operated under exclusive U.S. jurisdiction, the question of whether the ATS applies is not subject to the presumption against extraterritoriality.[5]

In *Rasul*, the Court held that aliens detained at Guantanamo could sue under the ATS, rejecting that district court's conclusion that "the privilege of [ATS] litigation does not extend to aliens . . . who have no presence in any territory over which the United States is sovereign." *Id.* at 473 (internal quotations omitted). It remanded the ATS claim without concern for analysis of extraterritoriality because, as it explained in its habeas analysis: "Whatever traction the presumption against

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both actionable extraterritorially under the ATS.

[5] In the interest of being non-duplicative with Congressional *amici*, who are better-placed to discuss the text and purpose of the more recently-enacted TVPRA, this brief analyzes the absence of any presumption against extraterritoriality in the territory at issue, but focuses on application of that analysis to the ATS. *Amici* note, however, that the same analysis also applies to the TVPRA.

extraterritoriality might have in other contexts, it *certainly* has *no application*" at Guantanamo, an area over which, as in occupied Iraq and Al Asad, the United States "exercises complete jurisdiction and control." *Id.* at 480 (emphasis added). Considering the history and purpose of the habeas statute, *id.* at 482, and U.S. control over the Guantanamo naval base, the Court held that the statute applied to prisoners detained there, notwithstanding the absence of American *de jure* sovereignty. *Id.* at 475.

In *Boumediene*, 553 U.S. at 764, the Court applied a parallel analysis in deciding whether the Constitution's Suspension Clause protected aliens detained at Guantanamo. As in *Rasul*, the Court acknowledged that Guantanamo is not formally part of the United States, but held that "questions of extraterritoriality turn on objective factors and practical concerns, not formalism." *Id.* Given the extensive practical U.S. control over Guantanamo, application of U.S. law presented no likely actual conflict with the law of Cuba or any other sovereign. *Id.* at 753-55. So, too, under the practical and legal arrangements governing U.S.-controlled Iraq, no other sovereign's laws present any conflict.

Boumediene recognized that declining to extend the protections of American law to aliens detained at a U.S.-controlled military installation would improperly enable the United States to "govern without legal constraint," a consequence inconsistent with the Constitution (a document ratified in 1789, the same year Con-

gress enacted the ATS). *Id.* at 765. Parallel concerns would apply here, with all the more force, if contractors could operate without legal constraint, *contrary* to the directives of the U.S. government and military that employed them. A holding that U.S. law cannot apply to U.S. military contractors violating both international and U.S. law in U.S.-controlled territory, and where they have been granted immunity from Iraqi law in exchange for exclusive jurisdiction of the United States, would establish an un-American lawless zone.

Similar considerations underlay *Vermilya-Brown*, 335 U.S. at 389-90, which held that the Fair Labor Standards Act (FLSA) applied to a U.S. military base located in Bermuda, even though Great Britain maintained formal sovereignty over the base. Instead of applying the presumption against extraterritoriality, the Court stated that whether statutes apply in such areas under U.S. military control outside the United States "depends upon the purpose of the statute," which it found compatible with application in U.S.-controlled areas. *Id.* The Court then examined the nature and extent of control that the United States exercised over the base, finding that although the base "is not territory of the United States in a political sense," *id.* at 380-81, and although Great Britain exercised *de jure* sovereignty, *id.* at 389, 382 n.4, the United States nevertheless exercised sufficient practical control for U.S. law to apply. *Id.* at 389-90. Here, the purpose of an anti-trafficking statute is fully compatible with application to a U.S.-controlled military base over which other sov-

ereigns had *no*, rather than minimal, practical involvement.

Boumediene, *Rasul*, and *Vermilya-Brown* parallel the facts of this case and are easily distinguishable from those cases in which the Supreme Court applied the presumption against extraterritoriality to foreign territory, or to regions in which *neither* the United States nor any other sovereign had practical control. *Kiobel* rejected the contention that every ATS torture claim, as a matter of course, "reach[es] conduct occurring *in the territory of a foreign sovereign*." 133 S. Ct. at 1664 (emphasis added). In other cases, the Court applied the presumption against extraterritoriality to regions in which *neither* the United States nor any other sovereign had practical control. *Smith v. United States*, 507 U.S. 197, 198 & n.5 (1993) (holding that the Federal Tort Claims Act does not apply to claims arising in Antarctica, a "sovereignless region," when the statute's terms do not suggest Congressional intent for extraterritorial application); *Sale v. Haitian Ctrs. Council, Inc.,* 509 U.S. 155, 179 (1993) (assessing application of the law at issue, which was intended to have only domestic application, to a Haitian "alien intercepted on the high seas [who] is in no country at all," rather than in U.S.-controlled territory).

By contrast, here, as in *Rasul*, *Boumediene*, and *Vermilya-Brown,* the presumption against extraterritoriality does not arise in the first instance because, when the alleged trafficking was committed, the United States exercised exclusive control over the Al Asad Airbase and maintained effective control over significant sovereign

functions in Iraq, including exclusive legal control over contractors. The Interim Government was not yet capable of functioning as a sovereign, particularly with respect to legal and practical control of its territories. Finally, to the extent that the Interim Government was established, the United States' interests were perfectly aligned with the very government that it was helping to establish and support, and both U.S. law and Iraqi law prohibited trafficking, creating no potential conflict of sovereigns. Thus, no presumption against extraterritoriality attaches to the human trafficking claims asserted in this case.

B. Applying the Test for the Application of a Statute to a Region Under U.S. Control, the ATS Applies to Iraqi Territory and Al Asad Airbase Within U.S.-Controlled Iraq.

The ATS's text and history show that Congress intended it to apply in regions under effective U.S. control. The ATS provides that "district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. This broad and unqualified statutory language does not limit the ATS to *de jure* sovereign U.S. territory. *See Vermilya-Brown*, 335 U.S. at 388-89 & n.15 (contrasting the broad language of the FLSA with the "narrower" language of the National Labor Relations Act).

The purpose and underlying goals of the ATS also support its application beyond the sovereign borders of the United States. The ATS authorizes suit for fun-

damental violations of the law of nations comparable to those existing when the ATS was enacted. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 720, 725 (2004).[6] The law of nations and U.S. treaties were not historically restricted to regions under *de jure* U.S. sovereignty.

Indeed, as *Kiobel* recognizes, the ATS unquestionably applies to piracy on the high seas, a region outside U.S. sovereignty *or* U.S. control.[7] 133 S. Ct. at 1661. While the ATS's applicability to sovereign-less regions such as the high seas for piracy claims did not require applying the ATS extraterritorially to torture claims *within* sovereign foreign countries, as in *Kiobel*, *id.,* the territory at issue here is starkly different because the United States exercised practical control over the territory where the alleged trafficking took place. Given *Kiobel*'s recognition that the unrestricted text of the ATS applies to piracy on the high seas, *outside* U.S. sovereignty or control, the ATS plainly applies to trafficking violations analogous to piracy in regions *under* U.S. control. *Cf. Sale*, 509 U.S. at 174 (concluding that the specific statutory language at issue "implies an exclusively territorial application," and thus rejecting its application on the high seas).

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6 Trafficking, as alleged in this suit, has been broadly recognized to be actionable under the ATS as comparable to modern-day piracy. *See, e.g., id*. at 724-25 (citing with approval *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980)).

7 This applies not just to piracy, which might be thought *sui generis*, but also to "safe conduct," another recognized ATS violation, also applied "when committed at sea." 4 Blackstone, *Commentaries* 69.

Finally, Congress's primary motivation for enacting the ATS was to provide a reliable federal avenue of redress for aliens to assert violations of the law of nations for which the international community might blame the United States, so as to avoid reprisal from other countries. *See Kiobel*, 133 S. Ct. at 1669 (observing that "diplomatic strife" could result from unremedied violations of fundamental norms of international law); *Sosa*, 542 U.S. at 715. This case—in which American defendants employed by the U.S. military are alleged by foreign plaintiffs to have committed grave violations of the law of nations in an area under practical U.S. control, and where the United States retained "exclusive jurisdiction" over contractor defendants—involves precisely the situation the ATS was intended to redress. *See* John H. Knox, *A Presumption Against Extrajurisdictionality*, 104 Am. J. Int'l L. 351, 380 (2010) ("Failing to extend U.S. laws to places within sole U.S. jurisdiction may result in underregulated zones, … which would create the potential for complaints that the United States is failing to uphold its international legal obligations."). The military takes very seriously the discord that could arise from an international perception that U.S. citizen contractors under ostensible military control may, with impunity, traffic aliens through U.S.-controlled territory, toward a U.S. military base.

C. In the Alternative, the Plaintiffs' Claims Sufficiently Touch and Concern U.S. Territory to Displace any Presumption Against Extraterritoriality.

As explained above, the presumption against extraterritoriality does not apply to this case. Even assuming, however, that the presumption were to apply, plaintiffs' claims "touch and concern the territory of the United States … with sufficient force to displace" that presumption. *Kiobel,* 133 S. Ct. at 1669; *see also Al Shimari v. CACI Premier Tech., Inc.,* 758 F.3d 516, 527 (4th Cir. 2014) (plaintiffs' "'claims,' rather than the alleged tortious conduct, must touch and concern United States territory"). Justice Kennedy, who provided the fifth vote in *Kiobel*, underscored the importance of a case-by-case approach to "human rights abuses committed abroad," allowing for the possibility of redressing "significant violations of international laws" through the ATS in future cases not "covered … by the reasoning and holding of today's case." *Kiobel*, 133 S. Ct. at 1669 (Kennedy, J., concurring).

This case presents precisely the set of circumstances the ATS was enacted to address: trafficking, a fundamental violation of the law of nations, akin to piracy and slavery committed by U.S. citizens, in territory under U.S. control, and directed toward a U.S. military base. Given the purpose of the ATS, and the close connection of the claims to territory under U.S. control, the touch and concern test is readily satisfied. In the absence of a U.S. judicial forum for redress, international confidence in our military could be undermined, sowing grave international discord of

precisely the sort the ATS was enacted to avoid.

III. In 2004, MEJA Expressly Provided for Criminal and Civil Punishment of Military Contractors for Extraterritorial Conduct Violating RICO and the TVPRA, Even Assuming Those Statutes Had Solely Domestic Application.

The Military Extraterritorial Jurisdiction Act (MEJA), 18 U.S.C. § 3261 (2000), grants federal courts jurisdiction to punish extraterritorial conduct by U.S. military contractors that would constitute a serious domestic offense under another, predicate statute. MEJA allows federal courts to impose upon military contractors the "punish[ment] as provided for that offense," *id.,* under the predicate statute—in this case, RICO and the TVPRA.

Even assuming the serious offenses set forth in RICO and the TVPRA had solely domestic application in 2004, MEJA authorized extraterritorial imposition of the punishment provided by those statutes. 18 U.S.C. § 1964. Because RICO and the TVPRA authorize both criminal and civil punishment for predicate trafficking offenses, so too does MEJA. MEJA provides:

> Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States … while employed by or accompanying the Armed Forces outside the United States … shall be punished as provided for that offense.

18 U.S.C. § 3261(a).

There are thus two elements that must be satisfied under MEJA: (1) a serious

predicate domestic offense, punishable by more than a year of imprisonment; that is (2) committed by a civilian employed by or accompanying the military outside the United States. Both elements are plainly satisfied here. MEJA then directs that any person who has engaged in such conduct "shall be punished as provided for that offense," i.e., with the criminal and civil penalties authorized by RICO and the TVPRA.

As to the first element, violation of RICO § 1963 is punishable by imprisonment of twenty years, 18 U.S.C. § 1963(a), qualifying as a predicate serious offense under MEJA. Congress amended RICO in 2003 to include the TVPRA's human trafficking offenses as predicate RICO offenses. TVPRA of 2003 § 5(b); 18 U.S.C. § 1961(c). Thus, defendants' trafficking is punishable by more than one year of imprisonment under RICO and is therefore a predicate offense under MEJA.

Defendants also meet the second MEJA element, "employ[ment] by … the Armed Forces outside the United States." *See* 18 U.S.C. § 3267(a)(1)(A)(ii). Thus, because both prongs of MEJA are satisfied, MEJA mandates imposition of the "punish[ment] as provided for the offense" in the underlying statute. The underlying statute—RICO—provides, in turn, for both criminal and civil punishment: criminal punishment in the form of imprisonment, and a civil cause of action imposing treble damages. 18 U.S.C. § 1964(c). As this Court has recognized, civil claims under RICO constitute punishment. *See Abell v. Potomac Ins. Co.,* 858 F.2d

1104, 1141 (5th Cir. 1988) (holding that "the portion of RICO damages in excess of actual damages is penal … denot[ing] punishment"). When, as here, the underlying serious offense imposes both criminal and civil penalties, MEJA creates jurisdiction to impose those punishments upon military contractors for extraterritorial conduct.

This reading is consistent with MEJA's legislative history, which shows that Congress intended that the punishment for extraterritorial offenses be the same as "the punishment that could have been imposed under current law had the crime been committed in the United States." Military Extraterritorial Jurisdiction Act of 2000, Rept. 106–778, 10 (July 20, 2000) [hereinafter "MEJA Report"]; *see also* Rep. Bobby Scott, Congressional Record H6930 at 2100 (1999) ("[A] United States citizen attached to military bases abroad who commits serious criminal offenses while living on a military base should be held no less accountable than they would if they had committed such an offense in the United States."). Allowing defendants to escape the civil penalties they would incur for trafficking in or directed toward U.S. territory would contradict Congress' intentions in enacting MEJA.

Moreover, this is precisely the kind of serious civilian misconduct that carries the strong potential for international embarrassment that Congress sought to avoid in enacting MEJA. *See* MEJA Report at 1, 10, 22 (observing that the "inability of U.S. authorities to adequately respond to serious misconduct within the civilian component of the U.S. Armed Forces … presents the strong potential for embar-

rassment in the international community"). The full scope of punishment under the domestic predicate statute must be available extraterritorially under MEJA to avoid endangering the dignity and safety of U.S. servicemembers abroad, or undermining the military's mission. Accordingly, this Court should read "punishment" as it was intended by Congress, holding defendants fully accountable for their serious offenses against plaintiffs and against the reputation of the U.S. Armed Forces.

IV. As the Military Made Clear Before 2004, Trafficking by Contractors Was Unlawful, Thus § 1596 Authorizes a TVPRA Claim for Extraterritorial Human Trafficking Without Impermissible Retroactive Effect.

A. Provisions Such as § 1596 Have No Impermissible Retroactive Effect if They Impose No Additional Liability or Remedies Beyond Previously Applicable Law.

Section 1596 of the TVPRA, 18 U.S.C. § 1596, enacted in 2008, expressly provides extraterritorial jurisdiction over TVPRA trafficking offenses. Even assuming the TVPRA did not apply extraterritorially to defendants' trafficking in 2004, § 1596 provides for extraterritorial jurisdiction here. Statutory amendments do not operate with impermissible retroactive effect when applied to pre-enactment conduct if, as here, existing law already provided the same plaintiffs a claim for the same liability and relief against the same defendants. *Gordon v. Pete's Auto Serv. of Denbigh, Inc.*, 637 F.3d 454 (4th Cir. 2011); *accord Bradley v. Sch. Bd. of Richmond*, 416 U.S. 696, 721 (1974). The TVPRA, as amended by § 1596, imposes no new lia-

bility on and creates no new remedies against defendants because that conduct was already unlawful, and subject to the same liability and remedies, under previously applicable laws of Texas, the United States, and Iraq.

In *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), the Supreme Court held that, in the absence of explicit Congressional guidance, a court may not apply a statute retroactively if it affects the "substantive rights, liabilities, or duties to conduct arising before their enactment." *Id.* at 278; *accord Bradley*, 416 U.S. at 721. *Landgraf* held that a Title VII amendment authorizing compensatory and punitive damages could not permissibly apply retroactively because it created a "novel prospect of damages liability for … employers." 511 U.S. at 283.

The Fourth Circuit applied this principle in *Pete's Auto*, holding that a federal amendment "pose[d] no retroactivity problem" because the new federal "right … was already enforceable in a Virginia [state law] action." 637 F.3d at 454, 459. There, a member of the U.S. Navy sought damages against a towing company for improper lien foreclosure under an amendment to the Servicemembers Civil Relief Act (SCRA) that post-dated the defendant's conduct, an amendment the court assumed was necessary for liability and relief under the SCRA. *Id.* at 457. The court held that the amendment did not have an impermissible retroactive effect because the "right of non-foreclosure was already enforceable in a Virginia [state law] conversion action," *id.* at 459, and thus "d[id] not alter the rights, liabilities, or duties

of" the parties, *id.* at 461. Instead, the SCRA amendment "[in] essence [provided] a jurisdictional change" by authorizing a parallel federal forum and claim duplicating existing state law. *Id.*

The Fourth Circuit's holding adopted the position of *amicus* the U.S. Department of Justice. *See* Supplemental Brief for the United States as *Amicus Curiae*, *Pete's Auto*, 637 F.3d. 454 (No. 09-2393), 2010 WL 4851302, at *8.

This approach is directly supported by *Bradley*, 416 U.S. 696, and *Landgraf*, 511 U.S. 244. *Bradley* upheld the retroactive application of § 718 of the Education Amendments Act of 1972, authorizing attorneys' fees. 416 U.S at 713. The attorneys' fee provision "did not have genuinely 'retroactive' effect" because it was "collateral to the main cause of action." *Landgraf*, 511 U.S. at 277 (citation omitted). Moreover, since "under different theories [of existing law] the Board could have been required to pay attorneys' fees," § 718 merely created "an additional basis or source for the Board's potential obligation to pay attorney's fees. It [did] not impose an additional or unforeseeable obligation," and was therefore not impermissibly retroactive. *Bradley*, 416 U.S. at 721; *accord Landgraf*, 511 U.S. at 278.

B. Defendants' Trafficking was Already Unlawful and Subject to a Damages Claim in 2004, Thus § 1596 Permissibly Applies Retroactively to Cover That Conduct.

Section 1596 makes the TVPRA applicable extraterritorially, without impermissible retroactive effect, because defendants' trafficking was already actionable

under federal, Texas, and Iraqi law.

First, defendants' conduct was already actionable under Texas common law. State transitory common law tort claims cover trafficking wherever it occurs. The Department of Justice embraced this view in responding to Congress's proposed inclusion of a civil TVPRA remedy in 2003: it suggested a private cause of action was unnecessary because "[t]he entire range of trafficking behaviors is already captured under State tort law, under which a victim may already recover." *See* TVPRA of 2003, H.R. Rep. No. 108-264, pt. 2, at 16 (Letter from William Moschella, Ass't Att'y Gen., Office of Legis. Affairs, U.S. Dep't of Justice).

Under Texas law, defendants' conduct gave rise in 2004 to claims for false imprisonment, fraud, and negligent hiring and supervision. *See Wal-Mart Stores, Inc. v. Rodriguez*, 92 S.W.3d 502, 506 (Tex. 2002) (false imprisonment); *Ernst & Young, L.L.P. v. Pac.Mut. Life Ins. Co.,* 51 S.W.3d 573, 577 (Tex. 2001) (fraud); *D. Houston, Inc. v. Love*, 92 S.W.3d 450, 454 (Tex. 2002) (negligence).

Second, defendants' conduct violated Iraqi law. The Law of Administration for the Transitional Period outlawed "slavery, the slave trade, forced labor, and involuntary servitude with or without pay." Art. 13, Law of Admin. for the State of Iraq for the Transitional Period (Mar. 8, 2004). The Iraqi Penal Code also outlawed trafficking and provided civil liability for injuries to victims. Iraqi Civil Code Art. 202 (liability for wrongful acts that cause injury); Art. 204 (liability for all other

wrongful acts that cause harm); Criminal Procedure Code 23 of 1971, Art. 10 (remedy to those who suffer damage from criminal offenses). Thus, defendants were already liable to plaintiffs for damages under Iraqi law.

Defendants can be held liable for violations of Texas and Iraqi law in a U.S. court if personal jurisdiction exists. Federal courts recognize claims based on tortious conduct occurring abroad. *See, e.g., McGee v. Arkel Int'l, LLC*, 671 F.3d 542, 550 (5th Cir. 2012) (plaintiffs' claims against military contractor can proceed under Iraqi law); *Linder v. Portocarrero*, 963 F.2d 332 (11th Cir. 1992) (plaintiffs may bring tort claims against Florida residents under Florida law for torture and murder occurring in Nicaragua); *Filartiga v. Pena-Irala*, 630 F.2d 876, 885 (2d Cir. 1980) ("Common law courts of general jurisdiction regularly adjudicate transitory tort claims between individuals over whom they exercise personal jurisdiction, wherever the tort occurred."). Defendants have not contested that they are subject to personal jurisdiction in the Southern District of Texas.[8]

Finally, defendants' conduct was already actionable under federal law under RICO, MEJA, and the TVPRA. RICO imposes both criminal and civil punishment for violation of certain predicate offenses. 18 U.S.C. § 1964(c). "RICO applies ex-

[8] Choice-of-law issues in claims raised in a particular forum may ultimately channel any lawsuit, including this one, to make only certain claims applicable, but that of course has no bearing on whether retroactive application of § 1596 would impose any obligations that were additional or unforeseeable to defendants at the time of their primary conduct.

traterritorially if … liability or guilt could attach to extraterritorial conduct under the relevant RICO predicate." *European Cmty. v. RJR Nabisco, Inc.*, 783 F.3d 123, 136 (2d Cir. 2015). Because some RICO predicate acts apply to extraterritorial conduct, as plaintiffs have explained, RICO applied extraterritorially. MEJA also provides for extraterritorial jurisdiction over RICO and TVPRA offenses, even assuming those statutes were not themselves extraterritorial.

Defendants were also subject to a judicial proceeding under the TVPRA itself in 2004 in which they would be obligated to compensate victims for any loss and to pay attorneys' fees—the remedies plaintiffs seek here—if found criminally liable for a TVPRA offense. (Those offenses included §§ 1583 and 1584, which applied extraterritorially under their plain language, but were not yet directly actionable civilly until the 2008 amendments). Under § 1593, "in addition to any other civil or criminal penalties authorized by law," defendants found liable for TVPRA trafficking were required to pay restitution to victims "(through the appropriate court mechanism) [for] the full amount of the victim's losses," 18 U.S.C. § 1593(a), (b)(1), defined by incorporation under 18 U.S.C. § 2259(b)(3) to include "any … losses suffered by the victim as a proximate result of the offense," and "attorneys' fees, as well as other costs incurred." Thus, the TVPRA itself already established a legal mechanism by which criminally liable defendants were obligated to compensate trafficking victims and to pay attorneys' fees. The scope of this remedy encom-

passes an entirely foreseeable obligation to pay the full scope of damages and attorneys' fees later authorized by direct civil action under § 1596.

In sum, state, Iraqi and federal laws already permitted plaintiffs to sue defendants for trafficking, and recover damages, in 2004.[9] Section 1596 imposes no new or unforeseeable liability and creates no new remedy for defendants' trafficking, and thus applies to this case, mandating the TVPRA's extraterritorial application.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's order dismissing plaintiffs' claims.

[9] The attorneys' fees authorized by § 1596 are not impermissibly retroactive because they are "collateral to the main cause of action." *Landgraf*, 511 U.S. at 277; *Bennett v. New Jersey*, 470 U.S. 632 (1985). Moreover, they were previously authorized under the TVPRA, and under the court's inherent equitable powers, as in *Bradley*. *See Acosta v. Tri State Mortg. Co.*, 322 S.W.3d 794, 803 (Tex. App. 2010) (attorneys' fees authorized "under equity"); *G.R.A.V.I.T.Y. Enters., Inc. v. Reece Supply Co.,* 177 S.W.3d 537, 547 (Tex. App. 2005) (attorneys' fees available as sanction for bad faith).

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[10] The Seton Hall Law School Center for Social Justice gratefully acknowledges the work of law students Adino Barbarito, Lemay Diaz, Michelle Ferrare, and Nina Trovato, who contributed significantly to the drafting of this brief.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because this brief contains 6,963 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 with 14 point, Equity Text A font.

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October 1, 2015

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon all counsel of record this 1st day of Ocotber, 2015, by e-filing same into the CM/ECF system and by U.S. mail, postage prepaid and properly addressed to:

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Appendix A
List of Amici Curiae

General Charles Krulak, USMC (Ret.)

General Krulak served as the 31st Commandant of the Marine Corps from July 1995 to June 1999. He is a graduate of the U.S. Naval Academy; the Amphibious Warfare School; the Army Command and General Staff College; and the National War College. He also holds a master's degree in labor relations from George Washington University. General Krulak has held a variety of command and staff positions including Commanding Officer of a platoon and two rifle companies during two tours of duty in Vietnam. He was also assigned duty as the Deputy Director of the White House Military Office in September 1987, and he commanded the 6th Marine Expeditionary Brigade and 2d FSSG during the Gulf War.

Lieutenant General Robert G. Gard, Jr., USA (Ret.)

General Gard currently serves as a consultant on international security and education and serves as senior military fellow at the Center for Arms Control and Non-Proliferation. He was president of the Monterey Institute of International Studies and director of the Johns Hopkins University Bologna (Italy) Center. He retired from the U.S. Army as a lieutenant general in 1981; assignments during his 31-year military career included Assistant to the Secretary of Defense and president of the National Defense University. He earned a PhD in Political Economy and Government from Harvard University (1962).

Lieutenant General Charles Otstott, USA (Ret.)

General Otstott served 32 years in the Army. As an Infantryman, he commanded at every echelon including command of the 25th Infantry Division (Light) from 1988-1990. His service included two combat tours in Vietnam. He completed his service in uniform as Deputy Chairman, NATO Military Committee, 1990-1992.

Rear Admiral Don Guter, JAGC, USN (Ret.)

Admiral Guter served in the U.S. Navy for 32 years, concluding his career as the Navy's Judge Advocate General from 2000 to 2002. Admiral Guter currently

serves as President and Dean of the South Texas College of Law in Houston, Texas.

Rear Admiral John D. Hutson, JAGC, USN (Ret.)

Rear Admiral John D. Hutson, JAGC, USN (Ret.) Rear Admiral John D. Hutson served in the U.S. Navy from 1973 to 2000. He was the Navy's Judge Advocate General from 1997 to 2000. Admiral Hutson is Dean Emeritus & Philosopher in Residence at the University of New Hampshire School of Law in Concord, New Hampshire.

Major General Michael R. Lehnert, USMC (Ret.)

General Lehnert served as Commanding General, Marine Corps Installations West and graduated from Central Michigan University with an undergraduate degree in History, the U.S. Army Advanced Engineer School at Fort Belvoir, Virginia, the Armed Forces Staff College, and the Naval War College. He has served as commander of Joint Task Group Bulkeley (JTF 160) at Guantanamo Bay, Marine Wing Support Group 27 at Cherry Point, North Carolina, and Joint Task Force 160 at Guantanamo Bay. During this tour, JTF 160 constructed and operated the detention facilities for Taliban and Al Qaeda detainees. General Lehnert subsequently served as Commander, Marine Logistics Command for Operation Iraqi Freedom, and was assigned as Chief of Staff, U.S. Southern Command, followed by command of Marine Corps Base Camp Pendleton, and Marine Corps Installations West.

Brigadier General John Adams, USA (Ret.)

John Adams retired from the U.S. Army in 2007 following more than thirty years on active duty, in a variety of command and staff assignments worldwide, culminating in assignment as Deputy United States Military Representative to the NATO Military Committee from 2005 to 2007. As an Army Foreign Area Officer, intelligence officer, and aviator, he has more than a decade of senior-level political-military experience working with foreign military forces and governments in Europe, Asia, and Africa, and two assignments in the Pentagon (Army Staff and Office of the Secretary of Defense). A graduate of North Carolina State University and a former faculty member at the U.S. Military Academy at West Point, John also holds graduate degrees in international relations from Boston University, Eng-

lish from the University of Massachusetts, and strategic studies from the U.S. Army War College.

Brigadier General Stephen A. Cheney, USMC (Ret.)

Brigadier General Steve Cheney served nine years on the Marine Corps' two Recruit Depots, including a tour as the commanding general at Parris Island. He was also the inspector general for the Marine Corps. Brigadier General Cheney retired in 2001; he is now the president of the Marine Military Academy in Harlingen, Texas, and is on the board of directors for the American Security Project.

Brigadier General David R. Irvine, USA (Ret.)

Brigadier General Irvine enlisted in the 96th Infantry Division, United States Army Reserve, in 1962. He received a direct commission in 1967 as a strategic intelligence officer. He maintained a faculty assignment for 18 years with the Sixth U.S. Army Intelligence School, and taught prisoner of war interrogation and military law for several hundred soldiers, Marines, and airmen. He retired in 2002, and his last assignment was Deputy Commander for the 96th Regional Readiness Command. General Irvine is an attorney, and practices law in Salt Lake City, Utah. He served four terms as a Republican legislator in the Utah House of Representatives, has served as a congressional chief of staff, and served as a commissioner on the Utah Public Utilities Commission.

Brigadier General Murray G. Sagsveen, USA (Ret.)

Brigadier General Sagsveen entered the U.S. Army in 1968, with initial service in the Republic of Korea. He later joined the North Dakota Army National Guard, where his assignments included Staff Judge Advocate for the State Area Command, Special Assistant to the National Guard Bureau Judge Advocate, and Army National Guard Special Assistant to the Judge Advocate General of the Army (the senior judge advocate position in the Army National Guard).

Major General Antonio M. Taguba, USA (Ret.)

Major General, Antonio "Tony" M. Taguba, USA (Ret.) served 34 years on active duty until his retirement on January 1, 2007. He has served in numerous leadership and staff positions most recently as Deputy Commanding General,

Combined Forces Land Component Command during Operations Iraqi Freedom in Kuwait and Iraq, as Deputy Assistant Secretary of Defense for Reserve Affairs, and as Deputy Commanding General for Transformation, U.S. Army Reserve Command. Born in Manila, Philippines in 1950, he graduated from Idaho State University in 1972 with a BA degree in History. He holds MA degrees from Webster University in Public Administration, Salve Regina University in International Relations, and U.S. Naval War College in National Security and Strategic Studies.