

**ARE GOVERNMENT CONTRACTORS EXPLOITING
WORKERS OVERSEAS? EXAMINING ENFORCE-
MENT OF THE TRAFFICKING VICTIMS PROTEC-
TION ACT**

HEARING

BEFORE THE
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION
POLICY, INTERGOVERNMENTAL RELATIONS AND
PROCUREMENT REFORM

OF THE
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ARE GOVERNMENT CONTRACTORS EXPLOITING WORKERS OVERSEAS? EXAMINING ENFORCEMENT OF THE TRAFFICKING VICTIMS PROTECTION ACT

WEDNESDAY, NOVEMBER 2, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY,
INTERGOVERNMENTAL RELATIONS AND PROCUREMENT
REFORM,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2247, Rayburn House Office Building, Hon. James Lankford (chairman of the subcommittee) presiding.

Present: Representatives Lankford, Walberg, Connolly, and Speier.

Staff present: Richard A. Beutel, senior counsel; Molly Boyd, parliamentarian; Gwen D'Luzansky, assistant clerk; Cheyenne Steel, press assistant; Nadia A. Zahran, staff assistant; Richard Burkard, detailee; Jaron Bourke, minority director of administration; Paul Kincaid, minority press secretary; and Cecelia Thomas, minority counsel.

Mr. LANKFORD. We are going to go ahead and get started. Mr. Connolly is on his way; he is in another hearing as well right now, so he will be back and forth a little bit. But we want to go ahead and begin at this time as well.

The committee will come to order.

The Oversight and Government Reform Committee exists to secure two fundamental principles: first, Americans have the right to know that the money Washington takes from them is well spent; second, Americans deserve an efficient, effective Government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold Government accountable to the taxpayers, because taxpayers have a right to know what they get from their Government. We also work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

As a Nation, we have certain values that characterize us. We believe that each person has been endowed by their creator with certain rights, including life, liberty, and the pursuit of happiness. These are not rights given by men or confined to national bound-

ary; they are unique to each person worldwide. That passion for freedom and our national security has taken us across the globe. In the process of doing the right thing, we must also be careful to do it the right way.

At the height of our overseas contingency operations, we had hundreds of thousands of military personnel stationed overseas. While we have our differences of opinion on the current strategy or the way forward, we must remember there are tens of thousands of American men and women stationed abroad, and regardless of whether there are tens or hundreds or thousands of troops abroad, the support personnel required to ensure these military and diplomatic operations are effective continue to remain.

Within the confusing maze of contractors and subcontractors who support our operations, there appear to be less than reputable foreign companies that engage labor brokers who apparently are accountable to no one. They exploit unskilled workers from impoverished backgrounds. We are told that these workers are taken advantage of in their unconscionably low wages, in their work expectations, and in their living conditions.

The purpose of this hearing is to stop, ask the questions that will confirm or deny these accusations. These foreign workers are known as third country nationals [TCNs]. They are the workers who tend to the gardens, wash the dishes, prepare fast food meals, do the laundry for American embassy workers or military personnel stationed in the Middle East, Iraq, and Afghanistan. They come from countries such as India, Nepal, Bosnia, Pakistan, Bangladesh, Sri Lanka, and the Philippines. They provide what the military calls base support operations or they are used by embassies throughout the Middle East to perform the menial labor necessary to support embassy operations.

According to various accounts, some of these workers have been robbed of wages, injured without compensation, subjected to sexual assault, or held in deplorable living resembling indentured servitude by their subcontractor bosses. Many are paid an illegal job broker fee equal to or greater than their final pay.

Reports have suggested they are deceived about their work location or conditions when they are recruited. This can best be characterized as involuntary servitude or even labor bondage for the victimized workers. These unsavory labor practices are collectively called trafficking in persons. It is prohibited by the Trafficking Victims Protection Act of 2000, which establishes minimum standards for eliminating trafficking in persons around the world. In fact, the United States has numerous laws, policies, and contractor regulations already on the books to prevent human trafficking.

The purpose of this hearing is to explore whether the United States, through its unprecedented use of contractors in war zones and contingency environments, has become an enabler of human trafficking or if we have knowingly turned a blind eye to trafficking. We also want to examine the role of contractors and their subcontractors in adopting these abhorrent labor practices. If our Nation is trafficking in persons, we must stop this practice immediately; apply every option with abusive contractors, including suspension, debarment, or prosecution; and take the appropriate steps

to impose the law. This is not a case where clear law is lacking; it seems to be a case where enforcement is lacking.

To examine the facts, we have two panels today. The first panel combines investigative journalists or lawyers specializing in human trafficking concerns, and an expert from Congressional Research Service to describe the problem in more detail.

The second panel consists of representatives from the Inspector General's Offices of the State Department, the Department of Defense, as well as representatives from the Department of Defense Human Trafficking Office and the Army-Air Force Exchange Service to recount their experiences with human trafficking issues and to offer some insight into what they are doing to prevent American taxpayer money from supporting these practices.

I look forward to receiving some clarity and answers on this issue. There is no good explanation of why we would still have contractors using illegal recruiting fees, providing inadequate living conditions for TCNs, or violating a multitude of other clear human dignity values.

With that, I would like to recognize Mr. Connolly for his opening statement.

Mr. CONNOLLY. Thank you, Mr. Chairman, and I agree with you that this is a matter of enforcement. This is a matter of values. There is nothing more abhorrent than taking away human autonomy. Human trafficking is unacceptable under any circumstances. War does not justify it; the mission doesn't justify it. We cannot and will not turn a blind eye to this practice. And as far as I am concerned, and I think eventually this Congress, Federal agencies will be held responsible, prime contractors will be held responsible when and if this practice occurs. It needs to be rooted out, stamped out, and ended. That is as fundamental an American value and a human rights value as exists on this planet.

I am glad you are holding this hearing today, Mr. Chairman, and I look forward to working with you on a bipartisan basis to make sure we end this abhorrent practice.

Mr. LANKFORD. Thank you, Mr. Connolly.

Members may have 7 days to submit opening statements and extraneous materials for the record.

We now welcome our first panel. Ms. Wyler is the Senior Analyst for the Congressional Research Service; Mr. Isenberg is an independent analyst and writer specializing in issues involving wartime contingency operations; Mr. Nick Schwellenbach is the chief investigator of the Project for Government Oversight; and Mr. Sam McCahon is an attorney in private practice and founder of the McCahon Law firm.

Pursuant to committee rules, all witnesses will be sworn in before they testify. Would you please rise and raise your right hands? [Witnesses sworn.]

Mr. LANKFORD. Let the record reflect the witnesses have answered in the affirmative. Thank you. Please be seated.

In order to allow time for discussion, please limit your testimony to 5 minutes. Your entire written statement, of course, will be made part of the record.

Ms. Wyler, you are first up. We would be honored to be able to receive your testimony at this time.

STATEMENTS OF LIANA WYLER, SENIOR ANALYST, CONGRESSIONAL RESEARCH SERVICE; DAVID ISENBERG, INDEPENDENT ANALYST AND WRITER; NICK SCHWELLENBACH, DIRECTOR OF INVESTIGATIONS, PROJECT ON GOVERNMENT OVERSIGHT; AND SAM W. MCCAHERN, FOUNDER, MCCAHERN LAW

STATEMENT OF LIANA WYLER

Ms. WYLER. Thank you. Chairman Lankford, Ranking Member Connolly, and distinguished members of the subcommittee, thank you for the opportunity to appear today before you on behalf of the Congressional Research Service. My testimony will discuss U.S. policies and efforts to combat international human trafficking among contractors working overseas and representing the U.S. Government.

Trafficking in persons has been an issue of concern to the United States and international policy community for its human rights implications and as a prolific form of transnational criminal activity. Despite international commitments to eradicate human trafficking, recent reports suggest that the United States continues to face challenges in preventing it and related violations in the performance of Federal contracts overseas.

These challenges are not new. Since at least the late 1990's, U.S. contractors have been implicated in allegations of human trafficking and related violations in Bosnia, South Korea, Iraq, Afghanistan, and other countries around the world. These allegations have been of concern to policymakers because they risk tarnishing the reputation of the United States as a country that stands for freedom and human rights principles. They may also undermine U.S. diplomatic efforts to galvanize international support to combat human trafficking.

In response to many of the allegations that have surfaced over the years, the U.S. Government has sought to prevent human trafficking in the context of a multi-tiered policy framework. This framework consists of international treaties, Federal statutes, policy directives, implementing regulations, agency-specific policy guidance, and voluntary best practices. In their current form, U.S. anti-trafficking policies provide for a common definition of severe forms of human trafficking and related offenses. As of December 2002, the U.S. Government also established a zero tolerance policy against such trafficking which applies to contractors.

The centerpiece legislation for the U.S. efforts to combat human trafficking is the Trafficking Victims Protection Act [TVPA] of 2000, as well as its three reauthorizations. The TVPA emphasizes a three-pronged policy approach to anti-trafficking that focuses on preventing human trafficking, protecting trafficking victims, and prosecuting traffickers. The TVPA, as amended, also contains provisions designed to prevent human trafficking in Federal contracts. Specifically, the TVPA's 2003 reauthorization allows contracts and subcontracts to be terminated without penalty under certain conditions. These include situations in which a contractor engages in severe forms of human sex trafficking, procures a commercial sex act during the contract period, or uses forced labor in the performance of the contract.

Implementing regulations require that contractors insert an anti-human trafficking clause into all solicitations and contracts. This clause covers, among other provisions, how to address violations, including the application of suitable remedies such as termination, suspension, and debarment. Additional executive branch regulations apply to certain contracts in Afghanistan and Iraq. For example, the U.S. Central Command's Joint Theater Support Contracting Command mandates additional provisions related to employee passports, recruiting fees, and living conditions, among others.

Yet, despite this multi-tiered policy and implementation framework, allegations of trafficking violations and contracting practices that heighten the risk of trafficking appear to continue to take place. The U.S. Commission on Wartime Contracting has highlighted possible incidents related to human trafficking involving labor brokers, contractors, and subcontractors in U.S. contingency operations overseas. Several reports by U.S. Inspectors General Offices have also, in recent years, identified problematic contracting practices overseas that raise the risk of human trafficking and related violations.

Some observers have begun to wonder why, after decades of strengthening United States and international policy against human trafficking, do such violations continue to occur. Is the existing legal and regulatory framework sufficient? Are there gaps in the oversight and enforcement of existing laws and regulations among overseas contractors? Do contractors and subcontractors, as well as those responsible for monitoring them, understand what actions are prohibited and how such contracts should be monitored? And to what extent are continued trafficking violations in contracts overseas a manifestation of broader challenges associated with managing and relying on a large contractor force to support overseas missions?

These questions may warrant further exploration by policymakers and implementing agencies.

This concludes my testimony. Thank you again for the opportunity to be here today. I look forward to your questions.

[The prepared statement of Ms. Wyler follows:]

Chairman Lankford, Ranking Member Connolly, and distinguished Members of the Subcommittee, thank you for this opportunity to appear before you on behalf of the Congressional Research Service. My testimony today will provide an overview of international and U.S. efforts to combat trafficking in persons, with particular emphasis on U.S. policy to prevent trafficking among contractors representing the United States overseas.

Human Trafficking: Definitions, International Treaties, and U.S. Policies

Trafficking in persons is believed to be one of the most prolific areas of international criminal activity and is of significant concern to the United States and the international community as a human rights issue. According to Department of State estimates, 600,000 to 800,000 people are likely trafficked across borders each year.¹ If trafficking within countries is included in the total world figures, estimates indicate that some 2 to 4 million people are trafficked annually and as many as 12.3 million adults and children are currently subjected to forced labor, bonded labor, and forced prostitution around the world.² Forced labor trafficking, sometimes also called involuntary servitude, is a major form of human trafficking that involves the exploitation of workers through coercion. Despite substantial international commitments to eradicate the scourge of human trafficking internationally, progress to hold traffickers accountable for their crimes has been mixed, particularly progress to combat forced labor trafficking. In 2010, a total of 6,017 trafficking cases were prosecuted globally.³ During the same time frame, only 237 cases resulted in successful prosecutions related to forced labor around the world.

United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children of 2000

The international community, with significant leadership from the United States, has long condemned human trafficking and related forms of exploitation and compelled service through multilateral and regional declaration, treaties, and other instruments. Current multilateral efforts center on the *United Nations (U.N.) Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children* (hereafter *U.N. Protocol*), signed in December 2000 and entered into force in December 2003. The *U.N. Protocol* established the first internationally agreed upon definition of “trafficking in persons” and commits state parties to criminalize such trafficking, facilitate international cooperation for investigating and prosecuting trafficking cases, protect and assist trafficking victims, and prevent and combat future trafficking. The United States signed the *U.N. Protocol* in December 2000 and ratified it in November 2005.

¹ U.S. Department of State, *Trafficking in Persons Report*, June 2008 and June 2010. Notably, this estimate is from 2003 and the U.S. Government Accountability Office (GAO) has called the accuracy of the estimate into question, stating that there remain unexplained “methodological weaknesses, gaps in data, and numerical discrepancies.” See GAO, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, GAO-06-825, July 2006.

² International Labor Organization (ILO), *ILO Minimum Estimate of Forced Labour in the World*, April 2005.

³ U.S. Department of State, *Trafficking in Persons Report*, June 2011.

The *U.N. Protocol* defines “trafficking in persons” as a set of acts (what is done), means (how it is done), and purposes (why it is done), which in combination constitute trafficking. Specifically article 3(a) of the *U.N. Protocol* states that the term “trafficking in persons” covers:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.⁴

International Labor Organization Conventions on Forced and Child Labor

The International Labor Organization (ILO) is a multilateral organization through which 189 international labor conventions have been drafted and variously ratified by its member states. Several of these conventions address forced labor, including the *1930 Forced Labour Convention* (No. 29), the *1957 Abolition of Forced Labour Convention* (No. 105), and the *1999 Worst Forms of Child Labour Convention* (No. 182).⁵ *Convention No. 29* defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” *Convention No. 105* prohibits forced or compulsory labour “(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilizing and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; and (e) as a means of racial, social, national or religious discrimination.” *Convention No. 182* identifies forced or compulsory labour as one of the worst forms of child labor. All three of these conventions have been identified by the ILO’s Governing Body as among eight “fundamental” human rights conventions backing four ILO core labor principles.⁶ The *ILO Declaration on Fundamental Principles and Rights at Work* requires that all ILO members, including the United States, are expected to respect and promote the four core labor principles even if their governments have not ratified the relevant conventions.⁷

Trafficking Victims Protection Act of 2000

The centerpiece legislation for U.S. efforts to combat international human trafficking is the *Trafficking Victims Protection Act of 2000* (TVPA, Division A of P.L. 106-386), and its three reauthorizations. The TVPA emphasizes a three-pronged policy approach to anti-trafficking activities that focuses on *prevention* of human trafficking, *protection* of trafficking victims, and *prosecution* of traffickers. These three policy elements are also mirrored in the *U.N. Protocol*.

⁴ Article 3(c) of the *U.N. Protocol* further clarifies that the act of recruiting, transporting, transferring, harboring, or receiving a child, defined as under 18 years of age, for the purpose of exploitation is considered “trafficking in persons” even if there is no threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving of payments or benefits to achieve control.

⁵ Text of the conventions available at International Labor Organization (ILO), *Database of International Labour Standards*, <http://www.ilo.org/ilolex/english/convdisp1.htm>.

⁶ International Labor Organization (ILO), “Conventions and Recommendations,” <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>.

⁷ The majority of countries have ratified all eight conventions. Although the United States protects all of the conventions through domestic law, it has ratified only two. These two are *Conventions No. 105* and *182*. Congress has not ratified *Convention No. 29* and the five others because of concerns that they might conflict with certain state laws, raising enforcement issues.

Instead of defining “trafficking in persons,” as the *U.N. Protocol* does, the TVPA defines “severe forms of trafficking in persons.” This latter term is defined in Section 103(8) of the TVPA to mean:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) 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.

Other terms defined by the TVPA include: coercion,⁸ commercial sex act,⁹ debt bondage,¹⁰ involuntary servitude,¹¹ sex trafficking,¹² and forced labor.¹³

Although the original TVPA does not include the terms “contractor” and “subcontractor” nor does it address foreign labor contracting specifically, subsequent reauthorizations of the TVPA have introduced new provisions and reporting requirements related U.S. government contracting practices and policies.

- **The Trafficking Victims Protection Reauthorization of 2003** (TVPRA of 2003, P.L. 108-193), amends section 106 of the TVPA to introduce a new provision that permits federal departments or agencies to terminate contracts, without penalty, if (1) the contractor or subcontractor engages in severe forms of trafficking in persons, (2) procures a commercial sex act during the period of time that the contract is in effect, or (3) uses forced labor in the performance of the contract.¹⁴ Although all three of these elements do

⁸ Pursuant to section 103(2) of the TVPA, *coercion* means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

⁹ Pursuant to section 103(3) of the TVPA, *commercial sex act* is defined as any sex act on account of which anything of value is given or received by any person.

¹⁰ Pursuant to section 103(4) of the TVPA, *debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

¹¹ Pursuant to section 103(5) of the TVPA, *involuntary servitude* includes a condition of servitude induced by means of—(A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or (B) the abuse or threatened abuse of the legal process.

¹² Pursuant to section 103(9) of the TVPA, *sex trafficking* is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

¹³ Section 112 of the TVPA amends Title 18 of the United States Code to define *forced labor* as the knowing provision or obtaining of labor or services of a person by coercion, as defined in section 103(2) of the TVPA.

¹⁴ H.Rept. 108-264, Part I, September 5, 2003. The House Committee on International Relations’ report of the TVPRA of 2003 discusses the rationale behind introducing the contracting provision:

During an April 2002 hearing, the Committee heard testimony describing the involvement by some employees or agents of DynCorp International—a recipient of a U.S. Government contract for police work in Bosnia-Herzegovina—in prostitution, human trafficking, and sexual misconduct and of DynCorp’s retaliation against those who endeavored to bring such misconduct to light. The Committee intends for the Department of State and all other relevant government agencies to take necessary action to control the activities of such contractors who are essentially serving as representatives of the United States and often are perceived as such. It is the view of the Committee that contractors, their employees and agents, must be held accountable to a code of conduct with associated consequences for unethical or improper personal conduct while under U.S. Government contracts. This need is made all the more essential when such contractors are operating in areas where they are unlikely to be held accountable under local laws.

not constitute human trafficking as defined by either the *U.N. Protocol* or the TVPA, U.S. contracting policy has since included the procurement of commercial sex acts as part of its anti-human trafficking programming regime.

- **The Trafficking Victims Protection Reauthorization of 2005** (TVPRA of 2005, P.L. 109-164) states as one of its introductory findings that the involvement of employees and contractors of the U.S. government in trafficking in persons is “inconsistent” with U.S. laws and policies and “undermines the credibility and mission” of U.S. efforts in post-conflict settings. Section 2 of the TVPRA of 2005 further states that additional anti-trafficking measures are required to ensure that U.S. government personnel and contractors are “held accountable.”¹⁵ Additionally, Section 103(a) of the TVPRA of 2005 amends the U.S. Criminal Code to expand extraterritorial jurisdiction of certain trafficking in persons offenses to encompass persons employed by the federal government outside the United States, including federal contractors and employees of federal contractors, as well as subcontractors.
- **The William Wilberforce Trafficking Victims Protection Reauthorization of 2008** (TVPRA of 2008, P.L. 110-457) mandates two additional reporting requirements. The first requirement amends Section 105(d)(7) of the TVPA to require the U.S. Department of Justice (DOJ) to report to Congress on activities conducted by the U.S. Department of Defense (DOD) to combat human trafficking, including efforts to ensure that U.S. government contractors and their employees, including subcontractors, do not engage in trafficking in persons. The second requirement mandates the inspector generals for DOD, the U.S. Department of State, and U.S. Agency for International Development (USAID), to investigate in each of the fiscal years 2010 through 2012 a sample of contracts for evidence of severe forms of human trafficking, procurement of commercial sex acts, and use of forced labor in the contracts’ performance. Section 232 of the TVPRA of 2008 further mandates that the inspector generals investigate activities that may heighten the risk of a contractor engaging, knowingly or unknowingly, in acts related to trafficking in persons, such as confiscation of an employee’s passport, restriction on an employee’s mobility, abrupt or evasive repatriation of an employee, or deception of an employee regarding the work destination.

¹⁵ The House Committee on International Relations’ report on the TVPRA of 2005 (H.Rept. 109-317, Part I) further elaborates on the rationale for inclusion of this provision. Specifically it states:

The Committee has long been concerned about the involvement of Federal contractors in human trafficking and other misconduct. At an April 2002 hearing, the Committee received testimony regarding the involvement by some employees or agents of a Federal contractor operating in Bosnia-Herzegovina in prostitution, human trafficking, and sexual misconduct. Both Department of Defense and non-Department of Defense contractors were involved, however, under U.S. law at that time, only Department of Defense contractors could be prosecuted in U.S. courts. Based on consultations with the Committee on the Judiciary, which has subject matter jurisdiction over the courts, that Committee’s view is that 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. This need is made all the more essential when such contractors are operating in areas where they are unlikely to be held accountable under local laws.

Additionally, the TVPRA of 2005 amends Section 110 of the TVPA to require the U.S. Department of State to discuss, in its annual report to Congress on *Trafficking in Persons*, measures taken by the United Nations and other multilateral organizations in which the United States participates to prevent the involvement of its employees, contractor personnel, and peacekeeping forces in trafficking in persons. The TVPRA of 2005 also mandates that, prior to voting for a new or reauthorized multilateral peacekeeping mission, the Secretary of State submit to specified congressional committees a report that describes and evaluates measures taken to prevent its employees, contractor personnel, and peacekeeping forces from engaging in acts of human trafficking.

National Security Presidential Directive 22

On December 16, 2002, the White House issued National Security Presidential Directive 22 (NSPD-22), which established as a policy goal the abolition of trafficking in persons.¹⁶ It states that it is the “policy of the United States to attack vigorously the worldwide problem of trafficking in persons, using law enforcement efforts, diplomacy, and all other appropriate tools.” Prostitution and any related activity, including pimping, pandering, or maintaining brothels, is viewed as “contributing to the phenomenon of trafficking in persons” and thus should be opposed as a matter of U.S. government policy pursuant to NSPD-22. The *Presidential Directive* also establishes a “zero tolerance” policy toward all U.S. government and contractor personnel overseas who engage in human trafficking violations. Specifically, it states:

The United States hereby adopts a “zero tolerance” policy regarding United States Government employees and contractor personnel representing the United States abroad who engage in trafficking in persons. Departments and agencies shall adopt policies and procedures to educate, as appropriate, personnel and contract employees on assignment of official travel abroad about trafficking in persons, to investigate, as appropriate, any allegations of involvement in trafficking by such personnel, and to punish, as appropriate, those personnel who engage in trafficking in persons. To the extent permitted by law, punishment may include disciplinary actions for United States Government personnel, and civil remedies such as debarment and suspension procedures for United States Government contractors engaged in trafficking.

Selected Anti-Human Trafficking Provisions in Federal Contract Regulations and Related Guidance

U.S. policy on combating human trafficking has sought to respond to such allegations and strengthen efforts to monitor and enforce a “zero tolerance” policy against human trafficking that prohibits government employees and contracted personnel from engaging in severe forms of human trafficking, forced labor, and the procurement of commercial sex acts. The following section outlines several key regulations and policies related to contractors and contracting that implement the underlying U.S. legal framework to combat human trafficking.

Federal Acquisition Regulation

The Federal Acquisition Regulation (FAR) regulates how agencies use appropriated funds to buy goods and services. FAR Subpart 22.17, *Combating Trafficking in Persons*, implements Sec. 106 of the TVPA, as amended, on the prevention of human trafficking.¹⁷ FAR Subpart 22.17 mandates that this subpart

¹⁶ The White House, President George W. Bush, National Security Presidential Directive 22 (NSPD-22), *Combating Trafficking in Persons*, December 16, 2002, partially declassified for publication as “Appendix C” in U.S. Department of Defense (DOD), Office of the Inspector General (OIG), *Inspections and Evaluations: Evaluation of DOD Efforts to Combat Trafficking in Persons*, Report No. IE-2007-002, November 21, 2006.

¹⁷ FAR Subpart 22.17 is available at <https://www.acquisition.gov/far/html/Subpart%2022.17.html>. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) agreed in January 2009 on a final rule on combating trafficking in persons, amending the Federal Acquisition Regulation (FAR) at Subpart 22.17 with an associated FAR Clause at 52.222-50. This final rule became effective on February 17, 2009. The FAR final rule notice is available in the Federal Register at 74 FR 2741. FAR Subpart 22.17 and FAR Clause 52.222-50 had already been previously incorporated into Federal contracts since April 2006, when the Councils agreed upon an interim rule on combating trafficking in persons (see 71 FR (continued...))

apply to all acquisitions subject to the FAR, defines terms related to human trafficking pursuant to the TVPA, and reiterates the U.S. government's zero tolerance policy regarding trafficking in persons. FAR Subpart 22.17 further requires that government contractors and subcontractors notify employees of the prohibited activities and the actions that may be taken against them for trafficking violations, and impose suitable remedies, including termination and up to suspension and debarment. FAR Subpart 22.17 also requires that FAR Clause 52.222-50, *Combating Trafficking in Persons*, be inserted into all solicitations and contracts.¹⁸ In addition to the provisions outlined in FAR Subpart 22.17, FAR Clause 52.222-50 requires that the contractor inform the Contracting Officer (CO) immediately of any information it receives from any source that alleges misconduct in violation of U.S. anti-human trafficking policy and any actions taken by the contractor against its employees and subcontractors.

U.S. Department of State

The U.S. Department of State's guidance for administering contracts is based on the FAR, the Department of State Acquisition Regulations (DOSAR), the Foreign Affairs Manual (FAM), the Foreign Affairs Handbook (FAM), periodic Procurement Information Bulletins (PIBs), cables, and other notices.¹⁹ On March 24, 2011, the U.S. Department of State's Office of the Procurement Executive issued PIB No. 2011-09 on *Combating Trafficking in Persons*. PIB No. 2011-09 provides guidance for Contracting Officers (COs) and Contracting Officer's Representatives (CORs) on how to monitor domestic and overseas contracts and contracting activities for compliance with U.S. policy on combating human trafficking.

Key stated CO and COR responsibilities include ensuring that all solicitations and contracts over the micro-purchase threshold, currently \$3,000, and including all contract options contain the FAR clause on *Combating Trafficking in Persons*. In cases where there is potential for employer-provided housing, including in cases of employer-provided housing for third country nationals, the PIB requires that COs include in the solicitation a requirement for a housing plan as part of the contractor's quote or proposal. The PIB also provides guidance on how COs and CORs should structure a monitoring program to ensure anti-human trafficking policy compliance in contracts.

To this end, the State Department's March 2011 PIB includes an annex with "suggested actions" that COs and CORs can take to minimize the risk of human trafficking violations in the performance of their contracts. PIB No. 2011-09 directs COs and CORs to structure a contract monitoring program "using as many of these suggestions as feasible." At the pre-solicitation phase, the PIB recommends conducting a trafficking in persons risk assessment, a local labor law assessment, and an evaluation of plans for contractor-provided housing. At the post-award orientation phase, the PIB recommends discussing with the contractor the importance of preventing human trafficking and the U.S. zero tolerance policy. The PIB also recommends discussing with the contractor the importance of briefing its employees and subcontractors on U.S. trafficking policy, including prohibitions on procuring commercial sex while on

(...continued)

20301). In August 2007, the Councils agreed upon a revised interim rule on combating trafficking in persons, which resulted in a revised FAR Subpart 22.17 and FAR Clause 52.222-50 (see 72 FR 46337).

¹⁸ In cases when the contract is performed outside the United States and where the contracting officer has been notified of specific U.S. anti-trafficking directives or notices that apply to contractor employees at the contract place of performance, FAR Subpart 22.17 stipulates that the basic FAR Clause 52.222-50 is to be used with its Alternate I.

¹⁹ From U.S. Department of State and the Board of Broadcasting Governors (BBG), Office of Inspector General (OIG), Memorandum Report, *Performance Evaluation of Department of State Contracts to Monitor Vulnerability to Trafficking in Persons Violations in the Levant*, Report No. MERO-I-11-07, March 2011.

contract and withholding employee passports or visas, and the need to observe local labor laws and to provide clear explanations for salary deductions from employee wages. At the contractor monitoring stage, the PIB recommends key activities to verify during the course of the contract's performance to determine whether trafficking violations are taking place.

U.S. Department of Defense

Originally issued on February 16, 2007 and subsequently re-issued on September 15, 2010, DOD Instruction 2200.01 (DODI 2200.01), *Combating Trafficking in Persons (CTIP)*, establishes as DOD policy the goal of opposing "prostitution, forced labor, and any related activities... that may contribute to the phenomenon of TIP as inherently harmful and dehumanizing." Further DODI 2200.01 requires that any activities by "DOD Service members, civilian members, indirect hires, contract personnel, and command-sponsored dependents that would facilitate or support TIP, domestically and overseas," be deterred.²⁰

Subpart 222.17 of the Defense Federal Acquisition Regulation Supplement (DFARS) and Procedures, Guidance, and Information (PGI) on *Combating Trafficking in Persons* summarizes DOD's zero tolerance policy on human trafficking committed by DOD contractors and subcontractors in support of DOD operations.²¹ Subpart 222.17 also requires that contracting officers (COs) immediately notify the regionally relevant Combatant Commander with information indicating that a contractor or subcontractor has failed to comply with U.S. anti-trafficking policies.

DOD published in June 2010 a *Defense Contingency Contracting Handbook* that provides further guidance to DOD Contingency Contracting Officers (CCOs) on challenges they may face, including situations of alleged trafficking in persons and related violations.²² The Handbook references U.S. policies on anti-trafficking and CCO responsibilities under the FAR and the DFARS/PGI.

In August 2011, DOD also released a "Worker Bill of Rights" for employees supporting U.S. installations abroad, which specifies that workers "have a right to hold their own passport, receive agreed upon wages on time, take lunch- and work-breaks, leave the place of employment at any time, identify grievances without fear of reprisal, have a copy of their employment contract, be paid wages not below legal in-country minimum wage, [and] if housing is provided, live in habitable space that is comparable to others on the U.S. base."²³

²⁰ The policy guidance issued by DODI 2200.01 applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the DOD Office of the Inspector General, the Defense Agencies, the DOD Field Activities, and all other DOD organizational entities. "Enclosure 2" of DODI 2200.01 further states that heads of DOD components are mandated with the responsibility to conduct annual awareness training on human trafficking for all component members, place offending establishments involved in TIP "off-limits" to DOD personnel, and support host country authorities to combat human trafficking. "Enclosure 3" of DODI 2200.01 specifies, however, that contractors "are not required to train their personnel" on anti-human trafficking.

²¹ DFARS, in conjunction with the FAR, regulates DOD-specific purchases and contracts. See DFARS Subpart 201.104, revised, September 20, 2011.

²² DOD, "Combat Trafficking in Persons (CTIP)," *Contingency Contracting Handbook*, June 2010, http://www.acq.osd.mil/dpap/ccap/ccjchb/Files/DVD/ch_1.pdf.

²³ DOD, "Trafficking in Persons," *Fair Treatment for all Workers: Supporting U.S. Installations Abroad*, version 1.1, August 2011. Note that this DOD "Worker Bill of Rights" for employees supporting U.S. installations abroad was based in large part on the one initially developed by the Army and Air Force Exchange Service (AAFES) in March 2009, discussed below.

U.S. Central Command

Subpart 22.17, *Combating Trafficking in Persons*, of the U.S. Central Command (CENTCOM) Joint Theater Support Contracting Command's (C-JTSCC) Acquisition Instruction (AI) requires that all services or construction contracts requiring performance in Iraq or Afghanistan include C-JTSCC/AI Clause 952.222-0001, *Prohibition Against Human Trafficking, Inhumane Living Conditions, and Withholding of Employee Passports*, as well as FAR Clause 52.222-50, *Combating Trafficking in Persons*, with its Alternate I, as applicable.²⁴

C-JTSCC/AI Clause 952.222-0001 requires that contractors (1) only hold passports and other identifying documents for the shortest period of time reasonable for administrative processing purposes; (2) provide all employees with a signed copy of their employment contract, in English as well as in the employees' native language, that defines the terms of their employment and compensation; (3) not utilize recruiting firms or firms that charge illegal recruiting fees; (4) provide adequate living conditions (sanitation, health, safety, living space) for their employees;²⁵ (5) incorporate checks of life support areas into their Quality Control program to ensure compliance with U.S. policies on anti-trafficking; and (6) comply with international and host nation laws regarding transit/exit/entry procedures and the requirements for visas and work permits.

Army and Air Force Exchange Service

The Army and Air Force Exchange Service (AAFES) is a joint military activity that provides merchandise and services at more than 3,100 facilities worldwide in more than 30 countries, including in Afghanistan and Iraq. As a DOD non-appropriated fund instrumentality (NAFI) activity, the FAR does not govern AAFES contracts. The lack of FAR applicability to AAFES contracts has been raised a potential loophole to the existing anti-trafficking regulatory framework. Nevertheless, AAFES has voluntarily aligned several of its contractor clauses with FAR provisions related to human trafficking. AAFES includes human trafficking clauses modeled on FAR Clause 52.222-50 in all their Manpower Agency employee and concessionaire contracts. For contracts involving Iraq and Afghanistan, AAFES additionally includes anti-human trafficking provisions modeled on the C-JTSCC/AI Clause 952.222-0001.

In addition, AAFES developed and implemented in March 2009 a Manpower Agency employee basic rights document, or "Bill of Rights." AAFES also developed the concessionaire basic rights document and third country national (TCN) repatriation clause in October 2010. Further, the Commander of AAFES Europe also implemented in November 2009 an employee passport possession policy to ensure that contractors do not withhold the passports of TCNs and to require supervisors at all levels to conduct monthly physical passport inspections of contract employees.

²⁴ C-JTSCC is DOD's Executive Agent (EA) for contracting in Afghanistan and Iraq.

²⁵ Pursuant to C-JTSCC Clause 952.222-0001, the minimum acceptable square footage of living space per employee is 50 square feet. Contracting Officers (COs) may grant a waiver in writing in cases where the living space is within 20% of the minimum square footage and where overall living conditions are determined by the COs to be acceptable.

Human Trafficking and Contractor Misconduct: A Review of Recent Allegations

Despite ongoing efforts to combat human trafficking associated with government contractors, recent annual reports on trafficking in persons by the U.S. Department of State acknowledge that government contractors and subcontractors continue to be implicated in allegations of forced labor and sex trafficking.²⁶ The U.S. Department of State's 2010 *Trafficking in Persons Report*, for example, states that "too often it is reported that workers—particularly in combat zones—have been misinformed about their contracts, are poorly housed, have their passports confiscated, and are required to pay back large recruitment fees."²⁷ The 2011 *Trafficking in Persons Report* emphasizes the heightened vulnerability of TCNs to human trafficking, describing such workers as "more susceptible to exploitation due to distance and isolation, language barriers, and dependence on the employer for visas or work permits, among other factors."²⁸

On June 6, 2011, *The New Yorker* published an investigative story by journalist Sarah Stillman on TCN workers, mainly hired by subcontractors to U.S. military contractors, in Iraq and Afghanistan.²⁹ Stillman's article focused in particular on a case from 2007-2008 involving beauticians from Fiji who worked in Iraq at a beauty salon located on a U.S. military base and operated by the Army and Air Force Exchange Service (AAFES). Although an inquiry conducted by the AAFES inspector general in March 2008 ultimately did not substantiate the human trafficking allegations, *The New Yorker* article alleges that the Fijian beauticians were misled in the recruitment process—believing that they would be working in the United Arab Emirates (UAE) for a hotel in Dubai rather than in Iraq for the U.S. military—and underpaid. The article also alleges that one of the Fijian beauticians was sexually assaulted by a supervisor while in Iraq and that the beauticians' passports were withheld for more than a month in 2008 before they could return home to Fiji, a possible indicator of bonded labor.

The August 2011 final report to Congress by U.S. Commission on Wartime Contracting further highlighted possible incidents of recent human trafficking involving labor brokers, contractors, and subcontractors in U.S. contingency operations overseas. The report details observations made by the U.S. Commission on Wartime Contracting in trips to Iraq and Afghanistan in 2009 and 2010 and concludes that the continued high demand to fill low-skills jobs through contracts in support of U.S. contingency operations has resulted in situations of mistreatment and exploitation that are indicative of human trafficking. The August 2011 final report warns that such contractor practices "bring discredit to the United States and act as a barrier to building good diplomatic relations."³⁰

Pursuant to Section 232 of the TVPRA of 2008, the Offices of the Inspector General (OIGs) for the U.S. Department of State, DOD, and USAID have, since January 2010, published a series of reports that evaluate selected contracts and subcontracts for heightened vulnerability to human trafficking risks.

²⁶ U.S. Department of State, *Trafficking in Persons Report*, annually published, most recently in June 2011.

²⁷ U.S. Department of State, *Trafficking in Persons Report*, June 2010.

²⁸ The 2011 *Trafficking in Persons Report* also reports that allegations of defense contractor violations were investigated and ultimately resulted in the dismissal of one employee by a DOD contractor. See U.S. Department of State, *Trafficking in Persons Report*, country narrative for the United States, June 2011.

²⁹ Sarah Stillman, "The Invisible Army: For Foreign Workers on U.S. Bases in Iraq and Afghanistan, War Can Be Hell," *The New Yorker*, June 6, 2011.

³⁰ U.S. Commission on Wartime Contracting, Final Report to Congress, *Transforming Wartime Contracting: Controlling Costs, Reducing Risks*, August 2011.

Although the OIG reports collectively documented few instances of likely contractor involvement in severe forms of human trafficking, solicitation of commercial sex acts, sex trafficking, or involuntary servitude,³¹ several of them identified contractor management practices that increased the risk of human trafficking and related violations. The State Department's OIG, for example, found instances of contractor coercion at recruitment and destination points and exploitative conditions at work, including frequent instances in which workers paid recruiters brokerage fees, regular confiscation of employee passports, withheld wages, confusing calculations of earnings, unsafe or unsanitary living conditions, and deceptive recruitment practices that exploit workers' lack of language, education, and information.³² The DOD's OIG evaluated selected contracts in the U.S. Pacific Command and U.S. Central Command areas of responsibility and revealed problems with ensuring that contracts had the appropriate anti-trafficking clauses.³³

For decades, U.S. contractors have been implicated in allegations of human trafficking violations at various locations overseas, including in Bosnia, South Korea, Iraq, Afghanistan, and other countries.

- **Bosnia and Herzegovina:** In the late-1990s through the early 2000s, multiple allegations surfaced regarding U.S. defense contractors engaged in trafficking of women and girls for sexual exploitation in Bosnia and Herzegovina. Employees of DynCorp Aerospace Technology U.K., Ltd. (DynCorp) were specifically implicated in sex slavery schemes involving the purchase and sale of underage girls for sex and domestic servitude. The DOD OIG concluded that the specific findings involving DynCorp employees were indicative of a broader problem of defense contractor involvement in human trafficking.³⁴

³¹ A State Department OIG inspection of U.S. Embassy Riyadh reportedly "yielded anecdotal evidence of some behavior that could be classified as labor trafficking (e.g., withholding passports, garnishing wages, and summary dismissal)." The State Department's OIG also identified one contract in its inspection of U.S. missions in the Levant region that involved exploitative conditions or work, including long work hours and payment issues. As reported by the OIG, the relevant U.S. embassy learned of the contractor's misconduct around the time when the contract was up for renewal; as a result, it disqualified the contractor from issuing a proposal for the new contract. Additionally, while the OIG team was conducting field work in Amman, Jordan, inspectors learned of another contract, one that was outside the scope of its 10 contract evaluation, that involved a trafficking violation. In that case, the existing contract was terminated and the contractor disqualified from subsequent contracts. See U.S. Department of State and the BBG, OIG, *Performance Evaluation of Department of State Contracts to Assess the Risk of Trafficking in Persons Violations in the Levant*, Report No. MERO-I-11-07, March 2011; *Report to the House Committee on Foreign Relations*, January 15, 2010; and Report of Inspection, *Embassy Riyadh and Constituent Posts, Saudi Arabia*, Report No. ISP-I-10-19A, March 2010.

³² U.S. Department of State and the BBG, OIG, *Performance Evaluation of Department of State Contracts to Assess the Risk of Trafficking in Persons Violations in Four States in the Cooperation Council for the Arab States of the Gulf*, Report No. MERO-I-11-06, January 2011; *Report to the House Committee on Foreign Relations*, January 15, 2010; and Performance Audit, *The Bureau of Diplomatic Security Baghdad Embassy Security Force*, Report No. MERO-A-10-05, March 2010.

³³ In January 2010, for example, DOD's OIG reported on its evaluation of 99 selected construction and service contracts awarded in FY2009 in South Korea, Japan, and Guam. The OIG found that half of the contracts sampled either did not contain the requisite contracting clause on combating trafficking in persons or had been modified shortly before the inspectors visited. DOD's OIG report from January 2011 conducted an evaluation of 368 selected contracts in Iraq, Afghanistan, Kuwait, Qatar, and Bahrain, all of which were within U.S. Central Command's area of responsibility. The OIG found that although 79% of contracts reviewed contained some variant of the requisite anti-human trafficking contracting clauses, 47% of contracts were "missing, or included an outdated or incorrect version of the FAR Clause on combating trafficking in persons." See DOD, OIG, *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons*, Report No. IE-2010-001, January 2010; and *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command*, Report No. IE-SPO-2011-002, January 18, 2011.

³⁴ DOD, OIG, *Assessment of DOD Efforts to Combat Trafficking in Persons: Phase II: Bosnia-Herzegovina and Kosovo*, Case Number H03L88433128, prepared by the Directorate for Investigations of Senior Officials, Office of the Deputy Inspector General for Investigations, December 8, 2003.

At the time, there were no requirements for contractors to report allegations against their employees regarding their involvement in human trafficking.

- **South Korea:** In March 2002, Fox News reported that U.S. military officials patronizing establishments near a U.S. military base in South Korea where the owners of the establishments apparently confiscated the passports of foreign female employees and required that they practice prostitution as a means to “earn their freedom” and “buy back” their passports. Further, the report implied U.S. military complicity with these establishments, since U.S. non-commissioned officers were officially assigned on “courtesy patrol” of these establishments.³⁵ In a DOD OIG report investigating the allegations, defense officials did not deny the allegations and responded by taking several actions to combat and prevent human trafficking in the future.³⁶ These included implementing education and training programs, identifying and placing offending establishments “off-limits” to military personnel, and enhancing cooperation with South Korean authorities on human trafficking issues.
- **Iraq:** Beginning in 2004, news reports by *The Washington Post*, *Chicago Tribune*, and others alleged that the DOD contractor Kellogg, Brown, and Root (KBR) and several of its subcontractors were engaged in deceptive recruitment practices and illegal confiscations of TCN passports.³⁷ TCNs were reportedly subject to excessive recruitment fees and substandard living conditions. One of KBR’s subcontractors, First Kuwaiti, has also been implicated in other allegations involving reported threats to leave TCNs in Kuwait City, without passports and financial means to return home, if they refused to travel to Iraq.³⁸ Allegations were further fueled by news of 12 Nepalese men who were kidnapped and murdered by insurgents in Iraq in August 2004.³⁹ Subsequent reports alleged that they were recruited by a KBR subcontractor, Daoud & Partners, and its affiliated recruiting and brokerage companies as part of a broader scheme of trafficking Nepalese laborers to work in Iraq.⁴⁰ Multiple investigations ensued. By May 2006, KBR project and operations managers had been officially reminded that all KBR personnel in-theater were required to complete human trafficking awareness training.⁴¹ Also by May 2006, the Defense Department required that certain defense contracts be modified to

³⁵ According to the DOD OIG, “courtesy patrols” in the context of U.S. Forces Korea (USFK) consisted of “noncommissioned officers from individual company-sized units detailed to patrol off-post locations to ensure the safety and proper comportment of soldiers assigned to their units while off-duty.” See DOD, OIG, *Assessment of DOD Efforts to Combat Trafficking in Persons: Phase I: United States Forces Korea*, Case Number H03L88433128, prepared by the Program Integrity Directorate, Office of the Deputy Inspector General for Investigations, July 10, 2003.

³⁶ DOD, OIG, *Assessment of DOD Efforts to Combat Trafficking in Persons: Phase I: United States Forces Korea*, Case Number H03L88433128, prepared by the Program Integrity Directorate, Office of the Deputy Inspector General for Investigations, July 10, 2003.

³⁷ See for example Ariana Eun Jung Cha, “Iraq: Many Foreign Laborers Receive Inferior Pay, Food and Shelter,” *The Washington Post*, July 1, 2004.

³⁸ See U.S. Commission on Wartime Contracting, hearing on “Subcontracting: Who’s Minding the Store?” July 26, 2010.

³⁹ “12 Nepalese Hostages ‘Executed in Iraq,’” *Associated Press*, August 31, 2004.

⁴⁰ Cam Simpson, “Desperate for Work, Lured into Danger,” *Chicago Tribune*, October 9, 2005 (first in a series of articles on the subject); Dana Hedgpeth, “KBR, Partner in Iraq Contract Sued in Human Trafficking Case,” *Washington Post*, August 28, 2008. See also Complaint Ramchandra Adhikari et al v. Daoud & Partners et al, U.S. District Court, Central District of California, August 27, 2008, http://www.contractormisconduct.org/ass/contractors/29/cases/1008/1369/halliburton-human-trafficking_complaint.pdf.

⁴¹ DOD, Memorandum from Paul Wilkinson, Training Center Manager, Theater Training Center, to KBR Project Managers, Deputy Project Managers, and Operations Managers ME/CA, “Trafficking in Persons Awareness Training,” April 13, 2006.

incorporate new contract clause language that specifically prohibited human trafficking and mandated reporting and remedies in cases of violations.⁴²

- **Afghanistan:** According to news articles, employees of Armor Group North America Inc. (AGNA), hired in 2007 by the U.S. State Department's embassy in Kabul, Afghanistan, to provide armed guard services were reportedly patronizing brothels disguised as Chinese restaurants with possible sex trafficking victims.⁴³ In July 2011, The U.S. Department of Justice (DOJ) announced that AGNA and its affiliates paid the U.S. government \$7.5 million to resolve claims that its employees visited brothels in Kabul in violation of the TVPA, among others.⁴⁴

Conclusion: Remaining Questions

Current U.S. efforts to prevent human trafficking among contractors representing the United States overseas fit into a multi-tiered framework composed of international treaties, federal statutes, a national security directive, implementing regulations, agency-specific policy guidance, and voluntary best practices. This anti-trafficking policy framework has evolved and been informed by whistleblowers, non-governmental investigative reporting, congressional oversight, and inspector general evaluations. In its current form, anti-trafficking policies provide for a common definition of severe forms of human trafficking and related offenses, and a government-wide zero tolerance policy on such trafficking, including among contractors.

Specifically intended to prevent human trafficking violations in federal contracts, the TVPA, as amended, authorizes such contracts to be terminated without penalty if a contractor is found to be engaging in severe forms of human trafficking, procuring a commercial sex act during the contract period, or using forced labor in the performance of the contract. Implementing acquisition regulations require that contractors and subcontractors notify their employees of prohibited trafficking activities as well as notify the Contracting Officer (CO) immediately of any information received that alleges trafficking-related misconduct. Pursuant to congressional mandate, the OIGs for the State Department, DOD, and USAID have conducted several recent investigations and have begun to incorporate human trafficking objectives into their auditing practices. Additionally, numerous examples show that specific agencies and offices have sought to proactively implement a range of supplemental guidance and additional best practices.

For instance, recent OIG reports have highlighted several best practices in place to detect and deter trafficking in persons. The State Department OIG, for example, commended U.S. missions abroad where

⁴² In November 2006, the DOD OIG released a report summarizing its evaluation of DOD's efforts to combat human trafficking. See DOD, OIG, *Inspections and Evaluations: Evaluation of DOD Efforts to Combat Trafficking in Persons*, Report No. IE-2007-002, November 21, 2006.

⁴³ Nick Schwellenbach and Carol Leonnig, "U.S. Policy A Paper Tiger Against Sex Trade in War Zones," *The Washington Post*, July 18, 2010. The country narrative for Afghanistan in the State Department's 2010 *Trafficking in Persons Report* stated that women and girls from China and other countries may be forced into prostitution in Afghanistan and that "some international security contractors may have been involved in the sex trafficking of these women."

⁴⁴ U.S. Department of Justice (DOJ), Office of Public Affairs, "Armor Group North America and Its Affiliates Pay \$7.5 Million to Resolve False Claims Act Allegations," July 7, 2011. In a Wackenhut Services, Inc., press release about the \$7.5 million settlement, the company argues that AGNA, as a matter of company policy, "at all times... prohibited any form of human trafficking, and did not tolerate violations." The press release further states that the one AGNA employee confirmed to have frequented prostitutes was fired by AGNA "in normal course when his conduct became known." See Wackenhut Services, Inc., "Armor Group North America Reaches Settlement with Dept. of Justice Resolving Former Employee's Allegations," July 7, 2011.

Contracting Officer Representatives (CORs) ensured that contract workers either kept their passports on hand or signed a release that allowed their employers to hold them in a secure location; U.S. Embassy management and political section staffs collaborated to ensure that CORs were familiar with local labor laws; locally employed staff and bilingual staff regularly engaged TCNs to informally monitor contractor compliance with anti-trafficking policies; and the embassy required that contractors present proof of labor law compliance.⁴⁵ Additionally, it appears that, in the wake of recent allegations of human trafficking violations in AAFES contracts, AAFES has reformed its internal policies to become, what some are describing as, a model to replicate in other parts of DOD. Praising AAFES, the DOD OIG stated in a January 2011 report that investigators “observed several excellent examples” of anti-trafficking awareness and contract quality assurance among AAFES contracting practices that “merit being considered for replication.”⁴⁶

Despite the existence of this multi-tiered policy and implementation framework, which has been incrementally amended and improved upon for more than a decade, allegations of trafficking violations and contracting practices that heighten the risk of trafficking continue to surface in investigative media reports, congressional hearings, and inspector general reports. There is a risk that such allegations could tarnish perceptions abroad of U.S. anti-trafficking and human rights principles, as well as undermine U.S. diplomatic efforts to galvanize international support to combat human trafficking. An area that may warrant further exploration may include whether there is a disconnect between existing policies and their implementation among contractors overseas.

If there is such a disconnect, several questions arise. Is the existing legal or regulatory framework too weak or fragmented and does it need to be enhanced or streamlined? Do competing implementing regulations, agency-specific policy guidance, and voluntary best practices permit for a nuanced, tailored approach to preventing trafficking violations in contracts? Does such a varied policy environment sow confusion among contractors and subcontractors, as well as among those responsible for monitoring contractors, with regard to what actions are prohibited and how contracts should be monitored? To what extent are there gaps in the oversight and enforcement of existing laws and regulations among overseas contractors and what is required to overcome such challenges? Are the inspector general offices, COs, and CORs adequately authorized and trained to monitor and detect human trafficking violations? To what extent are continued trafficking violations in contracts overseas a manifestation of broader challenges associated with managing and relying upon a large contractor force in overseas contingency operations?⁴⁷ Do our overseas contracting policies create an environment that serves as a catalyst for fraud, trafficking in persons, and other criminal and unethical behavior by bad actors?

Thank you again for the opportunity to testify today. I look forward to your questions.

⁴⁵ U.S. Department of State and the BBG, OIG, *Performance Evaluation of Department of State Contracts to Assess the Risk of Trafficking in Persons Violations in Four States in the Cooperation Council for the Arab States of the Gulf*, Report No. MERO-I-11-06, January 2011.

⁴⁶ DOD, OIG, *Evaluation of DOD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command*, Report No. IE-SPO-2011-002, January 18, 2011. Specifically, the report highlights AAFES’ issuance of the worker “Bill of Rights” document—available in English and eight other languages and posted visibly in employee common areas—that summarizes employee rights. The OIG report also lauded the Commander of AAFES Europe for implementing in November 2009 an employee passport possession policy that sought to ensure that contractors do not withhold the passports of TCNs and that requires supervisors at all levels to conduct monthly physical passport inspections of contract employees.

⁴⁷ From September 2007 to December 2010, a period of more than three years, there were more than 170,000 contractors working for the U.S. government in Iraq and Afghanistan. The number of government contractors exceeded 200,000 in 2008.

Mr. LANKFORD. Thank you, Ms. Wyler.
Mr. Isenberg.

STATEMENT OF DAVID ISENBERG

Mr. ISENBERG. Chairman Lankford, Ranking Member Connolly, other distinguished members of the subcommittee, thank you for the opportunity to testify here today.

I commend you for examining the issue of whether Government contractors exploit workers overseas. It is unquestionably a problem. Though it has come up elsewhere, it has not yet received the sustained attention it merits. The Commission on Wartime Contracting in Iraq and Afghanistan noted in its final report: U.S. contingency contractors, opportunistic labor brokers, and international criminal organizations have taken advantage of the easy flow of people, money, goods, and services to capitalize on the sources of revenue and profit. Their actions bring discredit to the United States and act as a barrier to building good diplomatic relations.

This subject also means you have to look at the relationship between prime contractors and their subcontractors, which is another linked problem. "It is often," to cite Winston Churchill, "a riddle, wrapped in a mystery, inside an enigma." As proof of this, you don't have to look any further than last week, when the International Stability Operations Association, a major trade association for an industry, held their annual summit. One of their workshops was entitled Performance and Pitfalls of Subcontract Management.

I am pleased to be here to discuss The Najlaa Episode Revisited report that I coauthored with my colleague, Nick Schwellenbach of POGO, which came out earlier this year. In the interest of full disclosure, I should mention, though I fully commend POGO for allowing me to come to them with the information and publishing the report, I don't speak for POGO.

First, let me address why is this important. For years, industry advocates have been claiming that thanks to private military and security contractors, U.S. military forces have the best supplied military in any military operation in history. It is true that PMCs are now so intertwined and critical that the U.S. military simply can't operate without them. But it is not an unmitigated benefit. Many PMCs have problems implementing contracts. Some have committed outright fraud, as you know, thus wasting U.S. taxpayers' moneys and indirectly negatively affecting U.S. military operations.

Second, our report documented various violations of the law and irregularities with regard to third country nationals. Some people may say this is unfortunate, but since nobody was wounded or killed, what is the big deal? The answer is twofold.

First, as any competent military commander will tell you, wars are not fought and won by machine and tools; they are fought and won by people. Given how tightly integrated private military contractors are with regular military forces, treating people badly on the private side can adversely impact people on the public side.

Second, there is a cost when contractors are improperly used and treated, and I am not talking about money. Although it is not widely recognized, the use of private contractors among the complex of national defense, security and foreign policy departments and agen-

cies is so widespread and so wide in scope that their impact can be strategic, as opposed to merely operational and tactical.

If you think I am exaggerating, consider the recent news that the United States is withdrawing its military forces from Iraq by the end of the year. This was not done because the Obama administration wanted to do so; it was done because it could not work out a deal regarding immunity for U.S. military forces. But given the events of September 2007, when Blackwater security contractors shot and killed 17 Iraqi civilians, no Iraqi government was ever going to be able to grant an immunity deal. Now, like it or not, that is strategic impact. In other words, there is a reputational cost when contractors do bad things or are treated badly.

Third, while industry officials and advocates say they often welcome regulation, it often comes with the caveat that it should not be intrusive or burdensome. They note they already comply with existing law laws. While it is true that existing regulation could interfere with the proper functioning of the private sector, it is equally true that the unconstrained activities of the marketplace, especially in the chaos of battlefields and war zones, is a recipe for problems. In truth, free market and regulation can go together.

Finally, contractor advocates also point to their own efforts to ensure ethical conduct, notably through codes of conduct. While this is commendable, and perhaps some day even useful, it is hardly sufficient. At the present time, their mechanisms for enforcement are largely theoretical and not resourced, and there are no people or money put behind them. Right now they operate on the Joe Isuzu principle, which is to trust us. My response is that we should heed the words of Ronald Reagan and trust, but verify.

Finally, even if a company does have high standards for ensuring ethical conduct, it all falls apart when it comes to subcontractors. KBR has an extensive code of conduct, has a lot of resources it puts into implementing behavior for its employees, but when it came to dealing with its own subcontractor, it failed miserably.

Thank you.

[The prepared statement of Mr. Isenberg follows:]

Testimony of David Isenberg
 Publisher, *PMSC Observer* and Author, *Shadow Force: Private Security Contractors in Iraq*,
 before the House Committee on Oversight and Government Reform,
 Subcommittee on Technology, Information Policy,
 Intergovernmental Relations and Procurement Reform, on
**“Are government contractors exploiting workers overseas?
 Examining enforcement of the Trafficking Victims Protection Act”**
 November 2, 2011

Chairman Lankford, Ranking Member Connolly, other Members of the Subcommittee,

Thank you for the opportunity to testify at this hearing.

I commend you for examining the issue of whether government contractors exploit workers overseas. It is unquestionably a problem. Though it has come up elsewhere it has not yet received the sustained attention it merits. As the Commission on Wartime Contracting in Iraq and Afghanistan noted in its final report:

U.S. contingency contractors, opportunistic labor brokers, and international criminal organizations have taken advantage of the easy flow of people, money, goods, and services to capitalize on this source of revenue and profit. Their actions bring discredit to the United States and act as a barrier to building good diplomatic relations.¹

The subject also means you have to look at the relationship between prime contractors and their subcontractors, which is another problem. It is often, to cite Winston Churchill, a riddle, wrapped in a mystery, inside an enigma.

I am pleased to be here to discuss the *The Najlala Episode Revisited* report that I co-authored, which was published by the Project on Government Oversight this past June. I have a prepared statement which I ask be included in the hearing record in its entirety, along with the POGO report. In the interest of time I will just summarize some of the main points.

But first, let me outline where I stand on the ongoing debate over the outsourcing and privatization of functions that used to be considered inherently governmental. I am not and opponent of private military and security contractors. Nor am I am a fervent supporter. Over the years I have documented problems with the claims of both sides. Personally, I think most contractors, especially those operating in the field, are decent, honorably men and women, doing necessary, even vital work, under harsh and demanding conditions. Some of them, I believe, especially on the security side, are underpaid. But in the end I am simply an interested observer and chronicler, who, like the Mr Spock character on the Star Trek television series, finds it a “fascinating” phenomenon worthy of continued study and analysis.

Speaking of science fiction we might note that the use of private actors in war and conflict is something that sc-fi writers have long written about, as in Gordon Dickinson's Dorsai novels.² So, in one sense, the subject of today hearing is an example of life imitating fiction.

First, let me address why this is important. For years industry advocates have been claiming that thanks to private military contractors (PMC) U.S. military forces have the best supported, supplied military in any military operation in history. It is inarguably true that PMC are now so intertwined and critical that the U.S. military simply can't operate without them.

But that is not an unmitigated benefit. Many PMC have had problems implementing contracts. Some have committed outright fraud, thus wasting U.S. taxpayer's money, and indirectly, negatively affecting U.S. military operations.

While the seven plus years has seen increased attention paid to the oversight of and accountability of PMC most of that attention has been at the level of prime contractors. Only now is government beginning to turn to the issue of subcontractors. This attention is long overdue. As the Center for Public Integrity noted last year:

Subcontracting is among the most challenging parts of the U.S. government's widespread outsourcing of war-related tasks. It works like this: A government agency - most likely the Defense Department, State Department, or U.S. Agency for International Development - will award work to a "prime" contractor. That prime contractor, usually a large American company like Kellogg, Brown and Root (KBR) or DynCorp International, will often subcontract some or even a majority of its work to other companies, including foreign-owned firms. Those subcontractors sometimes then turn around and subcontract part of the work, and so on.

... But in footing the bill for all this work by a network of companies, the U.S. government often doesn't know who it is ultimately paying. And that can lead to fraud, shoddy work, or even taxpayer funds ending up in the hands of enemy fighters.

... Prosecutions often rely on whistleblowers inside a company to report suspected fraud. But whistleblower protections typically do not extend to subcontractors' employees. Furthermore, many foreign subcontractors do not feel the need to cooperate with U.S. law enforcement or auditors.³

Our report documented various violations of the law and irregularities with regard to third country nationals. Some may say that is unfortunate but since nobody was killed or wounded what is the big deal? The answer is two-fold.

First, as any competent military commander will tell you, wars not fought and won by machines and tools. They are fought and won by people. Given how tightly integrated

private military contractors are with regular military forces treating people badly on the private side can adversely impact people on the public side.

Second, there is a cost when contractors are improperly used and treated and I'm not talking about money. Although it is not widely recognized the use of private contractors among the complex of national defense, security and foreign policy departments and agencies is so widespread and so wide in scope that their impact can be strategic, as opposed to the merely operational and tactical. If you think I am exaggerating consider the recent news that the United States will be withdrawing all its military forces from Iraq by the end of the year. This was not done because the Obama administration wanted to do so. It was done because it could not work out a deal regarding immunity for U.S. military forces. But given the events of September 16, 2007 at Nisoor Square in Baghdad when Blackwater security contractors shot and killed 17 Iraqi civilians,⁴ no Iraqi government was ever going to be able to grant an immunity deal. Now, like it or not, that is strategic impact.

In other words, there is a reputational cost when contractors do bad things or are treated badly. As retired Marine Corps Colonel T.X. Hammes wrote:

To start, three inherent characteristics of contractors create problems for the government. First, the government does not control the quality of the personnel that the contractor hires. Second, unless it provides a government officer or noncommissioned officer for each construction project, convoy, personal security detail, or facilities-protection unit, the government does not control, or even know about, their daily interactions with the local population. Finally, the population holds the government responsible for everything that the contractors do or fail to do. Since insurgency is essentially a competition for legitimacy between the government and insurgents, this factor elevates the issue of quality and tactical control to the strategic level.

...

Since the government neither recruits nor trains individual armed contractors, it essentially has to trust the contractor to provide quality personnel. In this case, the subcontractor took shortcuts despite the obvious risk to the personnel manning the recruiting stations. Even if the government hires enough contracting officers, how can it determine the combat qualifications of individuals and teams of armed personnel? The U.S. military dedicates large facilities, major exercises, expensive simulations, and combat-experienced staffs to determine if U.S. units are properly trained. Contractors do not. We need to acknowledge that contracting officers have no truly effective control over the quality of the personnel the contractors hire. The quality control problems are greatly exacerbated when the contractor uses subcontractors to provide services. These personnel are at least one layer removed from the contracting officer and thus subject to even less scrutiny.⁵

Although he is referring to security contractors in the above quote his point applies equally well to the unarmed, food service workers we wrote about in our report.

I'd also note that shabby recruiting and labor practices aren't just a problem for logistics workers. As I wrote in my book *Shadow Force*:

Triple Canopy recruited men from El Salvador to be guards, paying them a minimum of U.S. \$1,700 a month. The problem is that not everyone recruited had a military or even security background. One person recruited in El Salvador used to be a mason's assistant.

...

In September 2006 it was reported that about three dozen former Colombian soldiers were engaged in a pay dispute with Blackwater USA, saying their salaries for security work in Iraq turned out to be one-quarter what they had been promised by recruiters in Bogota. The Colombians alleged that recruiters had promised them salaries of \$4,000 a month. They said it was only when they were given their contracts barely hours before leaving Bogota that they learned they would be paid \$34 a day, or about \$1,000 a month.⁶

Third, while industry officials and advocates often say that they welcome regulation, it often comes with the caveat that it should not be intrusive or burdensome. They note that they already comply with all existing national and international laws and regulations and best practices.

While it is true that government regulation could unnecessarily interfere with the proper functioning of the private sector it is equally true that the unconstrained activities of the marketplace, especially in the chaos of battlefields and warzones, is a surefire recipe for problems. In truth, the free market and regulation can go together. As professor of economics Lester C. Thurow wrote in his 1996 book *The Future of Capitalism*, "History also teaches us that the survival-of-the-fittest versions of capitalism do not work. The free market economies that existed in the 1920s imploded during the Great Depression and had to be reconstructed by government. Maybe survival-of-the-fittest capitalism can be made to work, but no one has yet done so."⁷

Fourth, contractor advocates also point to their own efforts to ensure ethical conduct, notably through company, trade association, or international codes of conducts. While this is commendable and even necessary it is hardly sufficient. Some codes have mechanisms, at least theoretically, for ensuring effective oversight. For example, the International Code of Conduct for Private Security Service Providers⁸ has a section

- a) Establish objective and measurable standards for providing Security Services based upon this Code, with the objective of realizing common and internationally-recognized operational and business practice standards; and*
- b) Establish external independent mechanisms for effective governance and oversight, which will include Certification of Signatory Companies' compliance with the Code's principles and the standards derived from the Code, beginning*

with adequate policies and procedures, Auditing and Monitoring of their work in the field, including Reporting, and execution of a mechanism to address alleged violations of the Code's principles or the standards derived from the Code.

But most codes do not. Perhaps some day they will. But for now they are more likely to operate on the Joe Isuzu model, i.e., just trust us. My view is that we should, to cite the words of President Ronald Reagan, trust, but verify.⁹

A 2008 paper¹⁰ by the Geneva Center for the Democratic Control of Armed Forces, which examined the mission statements and web sites of 235 private military contractors, found that a mere 72 of them -- less than a third -- profess their compliance with normative and ethical values. Only nine companies -- less than 4 percent -- expressly advocate the recognition of human rights, and one dozen -- or just about 5 percent -- acknowledge the necessity of their activities being regulated.

Only 44 companies, or fewer than one in five, were prepared to formulate their adherence to values in a code of conduct or in terms of internally binding principles.

While I am not opposed to codes of conduct, per se, I believe that in order to make it really work some other things need to go along with it.¹¹ It is necessary to remember that the groups which have promulgated codes of conduct are not regulatory agencies and do not exercise regulatory functions. Thus, they have no power to ensure proper conduct. A company may very well decide that violating a code's provision is just another cost of business and a worthwhile one at that.

As Amnesty International USA noted in an analysis of a past version of the International Peace Operations Association Code of Conduct (renamed the International Stability Operations Association): one of the larger PMSC trade associations.

If the IPOA code is to evolve into more than a set of aspirational standards, there must be some means of independent, preferably third-party, oversight to regularly assess member companies on their efforts to implement the Code and to remediate instances of non-compliance. Companies should also have internal systems in place to monitor their in-house efforts to put Code standards into practice. Creating mechanisms for personnel to internally report suspected breaches of the Code is a positive step, but cannot substitute for regularized and comprehensive systems for measuring compliance with standards.¹²

A paper published in September 2010¹³ examined the regulation of private warfare through the framework of Global Administrative Law (GAL). Note that GAL is actually sympathetic to industry efforts. But consider, for example, what the author writes about the Code of Conduct of IPOA.

Through IPOA's complaint mechanism, companies as well as individuals may submit a complaint to the association for alleged violations of the association's code of conduct. This complaint, which may remain anonymous if appropriately specified, must be filed in a set form to the Chief Liaison Officer of the Standards Committee, "who is an employee of IPOA and is not affiliated with any company."

Of course IPOA may not consider complaints against companies that are not members of the association. When responding to a complaint, IPOA Standards Committee follows a Standards Compliance and Oversight Procedure. The Standards Compliance and Oversight Procedure provides that the monitoring/sanctioning will take place in four steps: (1) an administrative panel will look at the complaint and decide whether it is worthy of review; (2) a review panel will hear the complaint which will determine whether a violation of IPOA's code of conduct has occurred; (3) a compliance panel will suggest and impose remedies and monitor the compliance of the company subject of the complaint; and (4) a disciplinary panel which will provide a final ruling on expulsion. As "IPOA is not a law enforcement or judicial organization," it "will not attempt to prove the guilt or innocence of a member company in a criminal or civil legal case."

Although a unique three-level enforcement mechanism is contemplated, the only sanction envisaged by the association itself is the expulsion of noncompliant members. Expulsion alone sidesteps true accountability. While the model of industry-led accountability is attractive at the procedural level - it avoids the need for new monitoring/enforcement bodies; cost is borne by individual companies which ought to punish 'bad actors'; and there are no guarantees of non-repetition - it fails on the substantive level. It would be preferable for IPOA to play a role in reporting violations of international humanitarian and human rights law to relevant authorities, rather than leaving it to the companies. In any event, the expulsion of non-compliant members remains too limited a sanction.

...

In addition to being disorderly and thus difficult to track, self-regulation often lacks the teeth necessary to attain its full potential. What is lacking, in other words, are the monitoring and - even more so - the sanctioning mechanisms needed to ensure compliance with the standards elaborated voluntarily by and within the industry. ...

The private military industry currently finds itself between the first and the second stage of this evolution toward self-regulation: it has succeeded in elaborating standards that can be applied industry-wide, but has yet to create robust monitoring mechanisms capable of enforcing these standards. Sanctioning is still at an embryonic stage. Under the vast majority of voluntary regulatory schemes, noncompliant contractors face only the termination of their employment contracts. Non-compliant companies may, theoretically, face expulsion from important industry associations; but such instances have not been documented. Only in rare cases does the self-regulation contemplate any type of real and effective sanctions - let alone the involvement of police or other law-enforcement authorities.

Similarly, Ren'ee De Nevers, Assistant Professor in the Department of Public Administration of the Maxwell School at Syracuse University, wrote in a journal article that:

The private security industry lacks the incentive and capacity to adopt and implement effective self-regulation on its own. "Effective" or "obligatory" self-

regulation includes both establishing industry standards for appropriate corporate behavior and creating mechanisms to ensure that companies comply with the standards they commit to by joining selfregulatory schemes. I use effective and obligatory to describe self-regulation that incorporates monitoring and sanctions to ensure compliance. To date, self-regulation by this industry has been both aspirational in character and lacking in oversight mechanisms. Absent external pressure from increased regulation or loss of contracts, private security companies are unlikely to take the steps needed to make industry self-regulation a useful complement to state and international regulation.¹⁴

Fifth, even if a company has high standards and devotes significant resources to trying to implement them, and we noted in our report that this was the case with respect to KBR, the implementation of standards becomes problematic when it comes to ensuring that a prime's subcontractors adhere to them.

For example, KBR has an extensive code of conduct,¹⁵ which has a section on health, safety, and environment. That section states, "The Company will comply with all applicable Laws and relevant industry standards of practice concerning protection of health and safety of its Employees in the work place and other persons affected by its business activities and the prevention of environmental pollution." If that section had been followed by KBR's subcontractor NICS the employees would never have been housed in the deplorable conditions found in their camp.

Najlala International Catering Services (NICS)

In regard to the subject of today's hearing, the exploitation of overseas worker, Najlala International Catering Services (NICS), the KBR subcontractor, was solicited by KBR in the spring of 2008 to provide a Request for Proposal (RFP) for approximately 32 Dining Facilities (DFAC) Services under LOGCAP (Logistics Civil Augmentation Program) III in the Iraq Theatre. Those RFPs are typically governed by the Federal Acquisition Regulations (FAR),¹⁶ Labor Practices and Scope of Work (SOW). NICS adopted illegal pricing strategies during its preparations of the bids which were in direct violation of the guidelines set forth by the RFP Documents and SOW; these specific strategies gave NICS questionable and unfair advantage over all other bidders for the same RFP.

Specifically, the pricing tactics and strategies were to waive the mobilization charge based on NICS's recruiting efforts where NICS contracted several specialized manpower suppliers from India, Sri Lanka, Nepal, Bangladesh, Dubai, Iraq and Kuwait to provide the labor force for the project. The agreement was for all agencies to charge the individual laborer a fee of approximately USD \$2000 – 3000 to cover the costs of medical screening, airline travel costs from their home country to Baghdad and all entry visa fees for UAE and Iraq. NICS would, therefore, not incur any costs to mobilize its labor force; this is in direct violation of TIPS rules.

This was an example when KBR did not exercise proper oversight. KBR chose to close the chapter on this matter despite clear violations of the TIPS rules; evidence of the employment contracts language of the labor force was not inspected. Clearly, the

contracts were executed between the employees and NICS. KBR in fact sub contracted with NICS and not its agents

KBR headquarters in Houston, Texas were contacted by at least one U.S. government agency via e-mail and the e-mail communication was relayed to KBR's LOGCAP III Head Quarters at Victory Base Camp (VBC). KBR concealed those facts from the US Military which was fully aware of human tragedies taking place right outside VBC.

Once the media acquired all of these violations, NICS began to demobilize the labor force at its own costs by chartering flights out of Baghdad International Airport (BIAP) temp camps. Clearly, acting as the responsible sponsor (in total contradiction of claiming those responsibilities) fell on the shoulders of the agencies. The damage was done, the laborers spent months stranded and paid huge amounts of money out of their own pocket in hopes of earning money in Iraq. What they received was perhaps one month salary amounting in most cases to USD \$300.

This is not to say that all of KBR's actions were bad. For example, a KBR Special Inspection done Nov. 11, 2008, after the riot, conducted at the NAJLAA temporary labor camp noted numerous deficiencies. Nine days later KBR notified NICS that KBR was formally rescinding the Notices of Award and subcontracts issued to NICS for DFAC Services. It also said:

KBR will report suspected Trafficking in Persons violations discovered at various labor camps to the appropriate authorities. The conditions these personnel are living in must be corrected at once. Food, water, medical care and basic hygiene are lacking at these camps.

On Dec. 1 KBR sent out a notice to all its subcontractors, including NICS, which, in part, said:

*Recently, it has come to our attention that some KBR subcontractors and/or their agents may be utilizing temporary labor camps located around the Baghdad International Airport known as SATCO Hotel, Elite Camp, and First Kuwaiti Camp. An inspection conducted November 20, 2008 by KBR's Health/Safety/Environment (HSE), Security and Trafficking in Persons (TIPs) teams, revealed serious and deplorable conditions in the immediate area outside the SATCO Hotel and inside the Elite Camp and 1st Kuwaiti Camp. The conditions at these facilities could have a direct impact on the health and welfare of not only the personnel forced to stay there, **but ultimately our client as well** [emphasis added]. None of the aforementioned facilities comply with the KBR LOGCAP III Scope of Work for Temporary Labor Camps and their utilization by KBR subcontractors or their agents will not be tolerated under any circumstances.*

Another letter, dated Dec. 2, 2008, sent to NICS said:

It appears that Najlao International Catering Company (Najlao) and/or their agent are still utilizing temporary labor camps located in the vicinity of the Baghdad International Airport known as SATCO, Elite Camp, and First Kuwaiti Camp. As you know, our inspection conducted 20 November 2008 by KBR's Health/Safety/Environment (HSE), Security and Trafficking in Persons (TIPs) teams, revealed serious and unacceptable conditions within these facilities. The

conditions observed could have a direct impact on the health and welfare of not only the personnel housed in these areas, but ultimately our client as well.

The following day KBR sent Bill Baisey, the NICS CEO, emails detailing how they felt NICS poor performance was giving them a “black eye” with their primary client, the U.S. military.

*From: Mark Brannen [mailto:Mark.Brannen@kbr.com]
Sent: Sunday, January 11, 2009 6:20 PM
To: bbaisey@easternsolutionsgroup.com
Importance: High*

Bill – appreciate your view, but it does not change the fact that the US Government is extremely upset at KBR right now and most of that frustration comes from Najlaa. Your man camp outside BIAP has become a corporate embarrassment that has the visibility of the US Ambassador to Iraq, the Army Leadership here at Victory Base and our Defense Contract Administrators.

*...
One last point, Bill. The US Military has become increasingly less tolerant of subcontractors operating on their Coalition Bases. The recurring complaints by your employees across various sites about their conditions and the mounting issues at BIAP, could lead to a debarment of Najlaa from all MNF-I bases in Iraq. We do not want this to occur and would encourage you to take the immediate steps to correct the situation at BIAP within the next 24 hours by flying these personnel home, or taking up the UN offer to do so on your behalf.*

Yet NICS continued business as usual and KBR allowed them to get away with such violations. It is quite possible these violations still occur while NICS continues to do business with KBR which reflects directly on the US government. If so, this is appalling. To find out KBR would only need need to conduct a simple audit to:

- Check the language of the employment contracts of NICS employees
- Interview NICS employees in theatre to verify what they paid to the employment agencies.
- Verify NICS procedure to dock each employee the cost to wire-transfer their monthly salaries to their home bank accounts.

However, we do not know whether KBR is doing that.

Several questions come to mind at this point in terms of what has taken place.

- Did KBR conduct a thorough bid evaluation on NICS? Were NICS prices within the natural competitive lines among all bidders? Were the highest and lowest bids ruled out?
- Did KBR inspect and verify the financial stability of NICS?

- Why has the majority of KBR's LOGCAP III – Iraq senior management left since the TIPS violations that were uncovered in December 2008?
- Why was NICS awarded an extension of the first option year of the contract? Is it an extension for convenience?
- Is NICS in compliance with the basic SOW requirements today? Including sixty (60) days of on hand consumable supplies, issuance of six (6) uniforms per employees, provide approved Personal Protection Equipment (PPE) per employee as specified, provide one (1) week salary advance to the employees, pay salaries on time, provide proper safety shoes, etc.

Although I did not cover it in the POGO report there are two other aspects of NICS activities that merit mention.

First, my investigation documented that NICS had a confirmed chicken pox case and 37 of its employees were supposed to be quarantined. NICS disputed with GlobalMed, its KBR-approved medical service provider, that it was a chicken pox case. NICS began to release the employees from the quarantine tent and put them back to work at the dining facilities (DFAC). This so disturbed GlobalMed that it sent an email to KBR notifying it that it was terminating its contract with NICS, effective immediately. The reasons were twofold: lack of payment, and professional medical ethical concerns:

On November 10, 2008, I was asked via email by the same senior member of your management team to submit a fraudulent medical report regarding the release of quarantined patients to your client KBR. This request for the fraudulent report was not entertained by GlobalMed. KBR did find out about the premature release and the NICS staff were returned to quarantine. These staff are still under quarantine as of this date. The early release of these staff, which was against out medical advice and done without our knowledge could possibly have caused a serious disease outbreak that could have had very negative impact to the health of all coalition forces.¹⁷

This was a clear violation of NICS' contract with KBR, as the KBR Statement of Work for the LOGCAP Task Order which NICS was working under states:

The contractor shall comply with all requirements of TB MED 530 requirements, including food safety, ensuring all employees have appropriate medical screening to document they are free from communicable diseases in accordance with MNC-I Surgeon's Memorandum requiring screening and maintenance of screening documentation and all employees have appropriate food sanitation training.

Second, another example of the opacity of subcontracting is that NICS contracted with Aram Media, a registered Iraqi company, to build at least one mancamp for Najlaa so they could meet the requirements of their new DFAC contracts. Najlaa was awarded so many DFAC contracts at one time they could not even build their own mancamps with their own manpower, so they subcontracted it to Aram, a minority

owned Iraqi company. According to Aram, Najlaa still owes them \$1.5 million for contracted services to build Najlaa mancamps so they could be in compliance with their KBR DFAC contracts.

In October 2009, in its effort to get paid for its work, Aram contacted KBR directly. Subsequently, after some email back and forth an Aram company official emailed Barbara Nelson, KBR subcontracts supervisor and explained the Najlaa issue again. Subsequently, the following exchange of emails took place:

Barbara: "I have been asked by Najlaa to refer you to them ... On contractual matters, especially regarding money issues this is best settled between Najlaa and yourselves".

Samir: "As per our previous communication, we followed your suggestion and contacted Najlaa Directly to collect the debt they owe us. We sent an e-mail to Houry and Bill Baeisi; neither one of them acknowledged the e-mail nor responded to our notice, knowing they received the e-mail. Please advise what is our next step in such a case? Is it the IG office and the Garrison Command our next option?"

Barbara : "I am sorry I cannot help you"

Samir: "We understand that this matter might be out of your hand, but can you please let us know who in your organization deals with such issues?"

Barbara Nelson: "No one that I am aware of"

From the perspective of U.S. taxpayers if Najlaa invoiced KBR for mobilization costs that they didn't actually incur because they didn't pay Aram Media for the mobilization work they did, and KBR in turn invoiced the DoD for those incurred costs, then that's fraud because no cost was incurred because Najlaa never paid Aram what it owed.

Aside from the mistreatment of workers one of the most depressing aspects of the whole affair was, for the most part, the lack of urgency by people in a position to do so to do anything about it. This applies to the U.S. government as well as KBR. For example, this past January 23, an agent of the Defense Criminal Investigative Service, Department of Defense-Office of the Inspector General contacted the person who had been courageous enough to reveal NICS misdeeds. That person had originally contacted USAID by letter on or about March 19, 2010. I can think of no reason it should take ten months to respond.

A Sri Lankan company that supplied laborers to Najlaa told POGO it complained about Najlaa's abusive practices to both KBR and the U.S. government, but said that U.S. law enforcement agencies never followed up.

Despite the handwringing between the U.S. government and KBR and between KBR and Najlaa over the deplorable conditions of the laborers and subsequent media attention that came after the labor camp exploded in protest, the ultimate consequence for Najlaa was basically a slap on the wrist. Although KBR warned of the possibility it did not suffer a

suspension of contract payments or lose award fees. It was not terminated for default. It was not disbarred.

As we noted in our report, KBR said to us that:

"Najlaa responded without delay to KBR's demand for corrective action, and the matter was resolved appropriately. KBR fully disclosed the incident to our U.S. government clients including all remedial actions taken by both KBR and Najlaa,"

However, KBR's statement that Najlaa "responded without delay" to KBR is not borne out by the numerous KBR emails to Najlaa that POGO has obtained, some of which are cited above.

POGO asked KBR about this inconsistency in a follow-up question. POGO gave KBR over two weeks to respond. KBR eventually did email a statement that said "Najlaa has been a supplier of ours since 2004, and when challenges have arisen in providing support to the military, we have brought them to their attention and worked with them to appropriately resolve." KBR also emailed that "We continue to work with Najlaa and other subcontractors today in providing much needed services to our troops."

If KBR continues to work with Najlaa despite Najlaa's well documented violations of the law what does that say about KBR's seriousness in ensuring proper oversight of and accountability towards its subcontractors.?

The bottom line, as our report concluded, is this:

In the case of Najlaa, KBR says neither it nor the U.S. military is responsible. There is a litany of reasons to believe they do have responsibility: as recounted above, emails by its very own employees on the ground in Iraq to Najlaa suggest otherwise. The chain of contracting down the manpower suppliers is fueled by U.S. taxpayer dollars, billions of which KBR receives. Unrest by the labor force of a DOD subcontractor in a country with an ongoing major military operation can be detrimental to U.S. interests. It should be no wonder that elements of the U.S. military in Iraq were angered by the conditions of the Najlaa laborers, and KBR employees threatened to cut off Najlaa's subcontracts as a result. Ultimately, however, Najlaa did not lose its business with KBR or the U.S. government.

Recommendations

From an oversight perspective there are more effective measures that can be taken. Aside from the recommendations by such experts as Sam W. McCahon, which I know the committee is familiar with, and my report co-author Nick Schwellenbach, I would also commend some of the measures suggested by law professor Laura Dickinson, author of *Outsourcing War and Peace: Preserving Public Values in a World of Privatized Foreign Affairs*.¹⁸ Recommendations that are particularly relevant include:

Enforcing Domestic Criminal Law

- Congress should eliminate current ambiguities by expanding the Military Extraterritorial Jurisdiction Act to apply to all contractors accused of committing federal crimes, no matter which government agency is the contracting party and no matter where in the world the criminal acts occurred.
- Congress should require the Department of Justice to establish a dedicated

office for investigating and prosecuting criminal cases involving contractors abroad. This office should be required to report regularly on the status of contractor investigations and prosecutions.

- *Congress should require the FBI to establish "theater investigative units" to deploy in theater to work in partnership with military investigators in cases involving allegations of serious abuses.*
- *The military should use its new authority to pursue criminal enforcement actions under the Uniform Code of Military Justice against contractors serving with or accompanying an armed force in the field.*

Enforcing Domestic Civil Law

- *Courts should clarify that civil tort suits against contractors do not implicate the political question doctrine.*
- *Courts and/or Congress should clarify that the Federal Tort Claims Act does not immunize contractors from suit or preempt civil suits unless the contractors are operating within the military chain of command.*

The industry might also try to create a code of standards for logistics contractors, as opposed to just a code of conduct. Currently there is no such thing as an ANSI (American National Standards Institute) for such workers. But it is worth noting that this past March the Defense Department awarded a contract to ASIS International to develop an ANSI standard that provides principles and requirements for a quality assurance management system for private sector security organizations to abide by and demonstrate accountability to internationally recognized norms of civil and human rights while providing quality assurance in the provision of their products and services.¹⁹

¹ *Transforming Wartime Contracting: Controlling costs, reducing risk*, Final Report to Congress, August 2011, p. 92.

² Dorsai, <https://secure.wikimedia.org/wikipedia/en/wiki/Dorsai!>

³ Nick Schwellenbach "The Struggle to Police Foreign Subcontractors in Iraq and Afghanistan Billions at Stake, but U.S. Investigators Stymied by Murky Rules, Enforcement Obstacles," August 29, 2010, Center for Public Integrity, <http://www.publicintegrity.org/articles/entry/2368>.

⁴ Blackwater Baghdad shootings, https://secure.wikimedia.org/wikipedia/en/wiki/Blackwater_Baghdad_shootings.

⁵ "Private Contractors in Conflict Zones: The Good, the Bad, and the Strategic Impact," Strategic Forum, Institute of National Strategic Studies, National Defense University, October 2010, http://www.ndu.edu/inss/docUploaded/SF%20260_final%20for%20Web.pdf.

⁶ David Isenberg, *Shadow Force: Private Security Contractors in Iraq*, (Westport, CT: Greenwood), 2009, p. 40.

⁷ Lester C. Thurow, *The Future of Capitalism: How Today's Economic Forces Shape Tomorrow's World*, New York: William Morrow and Company, 1996, p. 250.

⁸ https://docs.google.com/viewer?url=http://www.rightrespect.com/wp-content/uploads/2010/10/PSC-2010-10-08-International-Code-of-Conduct_final-4.pdf&embedded=true&chrome=true.

⁹ David Isenberg, "Dogs of War: Codes of conduct -- trust but verify," January 16, 2009 *United Press International*, http://www.upi.com/Top_News/Special/2009/01/16/Dogs_of_War_Codes_of_conduct_-_trust_but_verify/UPI-94401232117745.

¹⁰ Nils Rosemann, "Codes of Conduct: Tool for Self-Regulation for Private Military and Security Companies," Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2008, https://docs.google.com/viewer?url=http://se2.dcaf.ch/serviceengine/Files/DCAF/94661/ipublicationdocument_singledocument/6abc2c81-929c-45d7-9576-5471608920bd/en/OP15_Rosemann.pdf&embedded=true&chrome=true.

¹¹ David Isenberg, "The Weaknesses of PMSC Self-Regulation," *Huffington Post*, February 8, 2011, http://www.huffingtonpost.com/david-isenberg/the-weaknesses-of-pmsc-se_b_819262.html. For other useful analyses on codes of conduct and self-regulation issues see Karl Kruse, *Globalization, Standards-Setting and National Security*, Qualifying Paper III: Literature Review, University of California, Irvine, kkruise@uci.edu; Matthew Russell Lee, "UN Global Compact Allowed in Private Military Contractor G4S As 'Not Illegal' - but is that true? & Is It the Right Standard?," <http://www.innerecitypress.com/ungc2g4s031911.html>; and "Will Code of Conduct Clean Up Security Contracting Field?," October 27, 2010, <http://www.ombwatch.org/node/11347>.

¹² *Analysis of IPOA Code of Conduct v. 12*, July 2009 <http://www.amnestyusa.org/our-work/issues/business-and-human-rights/private-military-and-security-companies/improved-human-rights-policies-and-practices-0>.

¹³ Richemond-Barak, Daphné, *Regulating War: A Taxonomy in Global Administrative Law* (September 5, 2010). *European Journal of International Law*, <http://ssrn.com/abstract=1723036>.

¹⁴ Ren'ee De Nevers, "(Self) Regulating War?: Voluntary Regulation and the Private Security Industry," *Security Studies*, 18:479–516, 2009.

¹⁵ Index of Code of Business Conduct, <http://www.kbr.com/About/Code-of-Business-Conduct/Index-of-COBC>.

¹⁶ G&I General Conditions – (Services Performed outside of the U.S.) REV. 004, provision 27.

¹⁷ David Isenberg, "You Want Chicken Pox with That?," *Huffington Post*, August 8, 2011, http://www.huffingtonpost.com/david-isenberg/you-want-chicken-pox-with_b_920572.html.

¹⁸ Laura A. Dickinson, *Outsourcing War and Peace: Preserving Public Values in a World of Privatized Foreign Affairs*, Yale University Press, 2011, http://www.amazon.com/Outsourcing-War-Peace-Preserving-Privatized/dp/0300144865/ref=sr_1_1?ie=UTF8&qid=1294419947&sr=8-1.

¹⁹ "ASIS Awarded Department of Defense Contract to Develop Standard to Improve Performance and Accountability of Private Security Service Providers, Mar 16, 2011, <http://www.marketwire.com/press-release/ASIS-Awarded-Department-Defense-Contract-Develop-Standard-Improve-Performance-Accountability-1412927.htm>.

Documents Reveal Details of Alleged Labor Trafficking by KBR Subcontractor

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The Najlaa Episode Revisited

By DAVID ISENBURG and NICK SCHWELLENBACH

In December 2008, South Asian workers, two thousand miles or more from their homes, staged a protest on the outskirts of Baghdad. The reason: Up to 1,000 of them had been confined in a windowless warehouse and other dismal living quarters without money or work for as long as three months.

In a typical comment made by the laborers to news organizations at the time, Davidson Peters, a 42-year-old Sri Lankan man, told a McClatchy Newspapers reporter that "They promised us the moon and stars...While we are here, wives have left their husbands and children have been shut out of their schools" because money for their families back home had dried up.

The men came to Iraq lured by the promise of employment by Najlaa International Catering Services, a subcontractor performing work for Houston-based KBR, Inc. under the Army's Logistics Civil Augmentation Program (LOGCAP) III contract.

Now, a cache of internal corporate and government documents obtained by POGO offer insight into this episode of alleged war zone human trafficking by companies working for the U.S.—and suggest that hardly anyone has been held accountable for what may be violations of U.S. law.

The subcontractor, Najlaa, appears to have suffered no repercussions for its role in luring hundreds of South Asian workers to Iraq with promises of lucrative jobs only to turn around and warehouse at least 1,000 of them in dismal living conditions without work—and pay—for several months. In fact, Najlaa continues to win government contracts.

Despite strongly worded "zero tolerance" policies against human trafficking, the U.S. has directly awarded contracts to Najlaa after the December 2008 protests, including one contract that lasts through 2012.

The Najlaa Incident: An Accountability Case Study

The freshly unearthed documents show that for several months, KBR employees expressed exasperation at Najlaa's apparent abuse of the laborers and said the subcontractor was embarrassing KBR in front of its main client in Iraq: the U.S. military. But despite its own employees' strongly worded communications to Najlaa, to this day, KBR continues to award subcontracts to the company.

KBR's responsible official for preventing trafficking-in-persons said in an email that Najlaa rehired three former KBR employees who were terminated against the terms of Najlaa's subcontract with KBR. It is not clear if these employees were alleged to have engaged in human trafficking, and what, if any, repercussions these employees faced besides their termination. KBR did not address POGO's questions on these three former KBR employees directly.

Additionally, the documents raise questions about government officials' response in the wake of the 2008 protests by Najlaa employees. Although, at the time, the press reported that the U.S. government was investigating alleged trafficking by Najlaa, it has not led to any prosecution or termination of the subcontract. A Sri Lankan company that supplied laborers to Najlaa told POGO it complained about Najlaa's abusive practices to both KBR and the U.S. government, but said that U.S. law enforcement agencies never followed up.

A Two-Tiered System?

Labor trafficking is one of the highest profile human rights issues raised by the U.S. government's mass reliance on third-country nationals hired by contractors and their subcontractors, particularly in Iraq. It often appears that a two-tiered system of treatment exists—one for Western contractor employees and another for recruits from non-Western countries, which often arrive via specialized manpower suppliers.

The U.S. government's contracting rules, known as the Federal Acquisition Regulation (FAR), specifically prohibit trafficking in persons, or TIPS. The pertinent provisions of the FAR were created, in part, in response to past scandals concerning sex trafficking by contractor employees in the former Yugoslavia and labor trafficking in Iraq. Labor trafficking falls within the rubric of TIPS and indicators of it include poor working and living conditions; delayed compensation or an employer's failure to uphold the original terms of compensation; taking of a laborer's passport, which limits freedom of movement in a foreign country; contractual terms that impose coercive restrictions; and threats.

"At the heart of this phenomenon are the myriad forms of enslavement – not the activities involved in international transportation," according to a 2010 State Department report on trafficking. The Najlaa episode may involve one of two types of abuse practices: bonded labor or debt bondage. Bonded labor is "a form of trafficking in persons," according to the State Department report. "Workers around the world fall victim to debt bondage when traffickers or recruiters unlawfully exploit an initial debt the worker assumed as part of the terms of employment."

"Abuses of contracts and hazardous conditions of employment for migrant laborers do not necessarily constitute human trafficking," the report notes. "However, the attribution of illegal costs and debts on these laborers in the source country, often with the support of labor agencies and employers in the destination country, can contribute to a situation of debt bondage." This is possible even when the "worker's status in the country is tied to the employer as a guestworker in the context of employment-based temporary work

programs.” A 2004 memo by the Secretary of Defense is direct: “Trafficking includes involuntary servitude and debt bondage. These trafficking practices will not be tolerated in DoD contractor organizations or their subcontractors in supporting DoD operations.”

An Estimated Quarter of a Million Victims

There are no definitive numbers on the scale of labor trafficking. However, writing in *Fraud magazine*, supply chain compliance consultant Sindhu P. Kavinamannil and former federal prosecutor Sam McCahon estimate that “DOD contractors and their subcontractors in Iraq have victimized more than 250,000 men. That number does not include other agencies, such as the U.S. Agency for International Development, which uses TCN-contracted labor in support of its operations.” TCN stands for third country nationals.

The laborers’ protest in December 2008 did not mark the first time questions were publicly raised about Najlaa and KBR’s commitment to protecting their laborers’ well being in Iraq. A lawsuit brought by the family of deceased Najlaa employee Tareq Alhalabi in federal court in Houston alleged that KBR, Najlaa and other companies put Alhalabi at unnecessary risk leading to his wrongful death. The lawsuit was filed in late October 2008 and was dismissed in July 2010 due to inactivity on the part of the plaintiffs.

Other episodes of alleged labor trafficking by KBR subcontractors were recounted at a Wartime Contracting Commission hearing last year. Two referrals of suspected misconduct by KBR or its subcontractors were sent to Defense Criminal Investigative Service from April 2009 through March 2010 by the Defense Contract Audit Agency (DCAA) involve allegations of possible trafficking, according to information made available at another hearing before the Commission by DCAA Director Patrick Fitzgerald.

A July 2010 CENTCOM Contracting Command memo to all contractors in Iraq reveals evidence of broader contractor disregard for laborers. “[E]ight third country nationals (TCNs), several from countries whose current domestic laws prohibit their citizens from working in Iraq, were discovered to have been left behind by their previous employers at various contractor controlled camps (aka ‘mancamps’) throughout Iraq,” the memo states. “This raises numerous concerns about whether contractors are complying with travel and work restrictions.”

The Road to Man-Camp: Trouble from the Outset?

The third country national labor force that moves dirt, serves meals, cuts hair, cleans laundry, builds buildings, takes out the trash, and provides numerous other services for the U.S. military to this day in Iraq and Afghanistan, and other places such as Kuwait, is created and put in place by an extensive network of companies. The most visible to the American public are the big U.S. prime contractors (or “primes”), such as KBR, that have a direct contractual relationship with the U.S. government. The primes typically

subcontract out a great deal of work to an often bewildering array of subcontractors (who often, in turn, hire other subcontractors). One special type of subcontractor is the manpower supplier. In order to provide the labor force for projects in Iraq, Najlaa contracted with several manpower suppliers from India, Sri Lanka, Nepal, Bangladesh, Dubai, Iraq and Kuwait. To understand the conditions these workers face in Iraq, you have to understand how they got there—and what price they paid to get there.

Najlaa had agreements with its suppliers to charge the individual laborers a fee of approximately \$2,000 to \$3,000 to cover the costs of medical screening, airline travel costs from their home country to Baghdad and all entry visa fees for the United Arab Emirates and Iraq, according to the source familiar with KBR and Najlaa (the source requested anonymity out of fear of retaliation). Najlaa would, therefore, not incur any costs to mobilize its labor force.

Sam McCahon, the former federal prosecutor and a former general counsel for Agility, a Kuwaiti-based contractor, believes the recruitment fees charged to laborers are grossly inflated. “The cost of a medical exam, visa and airfare from the Indian subcontinent would amount to approximately \$500 USD maximum, not \$2,000-\$3,000,” he told POGO. The source, mentioned above, said the cost breakdown should be: \$250 for medical screening, \$350 for airfare and \$100 for Iraq’s visa entry fee. McCahon said that labor recruiters are typically only responsible for getting workers to Dubai, Kuwait, or Jordan, and that subcontractors then usually have to get them into Iraq. McCahon has written on trafficking by U.S. contractors and has on-the-ground experience interviewing dozens of laborers.

\$2,000 to \$3,000 is a crushing amount for many of these laborers to pay. The only reason many agree to pay is due to the fact that the recruiting firms often lie or mislead the laborers into thinking they will make far more money than they usually do—assuming they even get work.

Early Warning Signs

Documents show there were signs that something was wrong at the camp for Najlaa’s laborers in the months before the December 2008 protests. KBR awarded subcontracts to Najlaa in July and September 2008 to provide food services at 18 dining facilities (DFACs) at various military camps in Iraq under the Army’s Logistics Civil Augmentation Program (LOGCAP) III program. Najlaa was to begin its food service at these DFACs in November 2008.

Even before Najlaa was slated to serve its first meals at the dining facilities, KBR rescinded some of the awards to the subcontractor because KBR believed Najlaa was “endangering the performance of DFAC Services by the scheduled first meal served dates,” according to a September 19, 2008 KBR letter to Najlaa. “Najlaa has failed to mobilize personnel, materials, equipment or Temporary Labor Camp requirements” to many of the sites, the letter states. “[O]nly marginal progress has been made at the remaining sites.”

When Najlaa started moving labor power in place, other problems arose.

According to a November 10, 2008, email to Najlaa CEO Bill Baisey from Alaa N. Habib, a manager with Elite Home Group, which provided temporary housing for Najlaa's laborers, a storm of discontentment was building up among the laborers. As Habib wrote, "your people made big and dangerous problems in my camp and with my people, Many of my assists [sic] broken and some of my people injured. We tried to know the reasons, it is appeared that they want to work or take a salary from your company."

The same day, 2008 KBR conducted a special inspection at the Najlaa Temporary Labor Camp and discovered a host of problems. "Living accommodations were not kept in a clean, orderly and sanitary condition," the inspection found, and "[n]o Subcontractor employees had protective body armor to include a Kevlar ballistic helmet and a ballistic vest with inserted plates and these items are not onsite and readily available." The lack of body armor is troubling since insurgents in Iraq have killed many subcontractor laborers on base or traveling on convoys. To insurgents, third country national laborers are seen as part of the soft underbelly of the U.S. presence in Iraq, meaning they are seen as vital to U.S. efforts, but are not protected the way U.S. servicemembers are. The KBR inspection found that laborers had inadequate living space as well.

Within weeks, KBR acted on their findings. On November 20, 2008, a KBR manager sent an email to Baisey, providing a "formal notification that Kellogg Brown & Root Services, Inc is formally rescinding the Notices of Award and subcontracts issued to Najlaa International Catering Services for DFAC Services" at some KBR sites.

The email added that "KBR will report suspected Trafficking in Persons violations discovered at various labor camps to the appropriate authorities."

It is fair to say that Bill Baisey was not happy. An email he sent that day to other Najlaa managers said, "See this shit," referring to the KBR cancellation of its work with Najlaa.

Then, on November 24, 2008, KBR manager William Young told Baisey that conditions at several Najlaa sites "are endangering performance of the Subcontracts and jeopardizing the lives of all personnel." Young also stated that unless Najlaa could correct the deficiencies within 10 days, "KBR may terminate these subcontracts for default."

U.S. Government Officials, Criminal Investigators Take Notice

In early December 2008, U.S. Embassy officials in Iraq "confirmed media reports of some 1,000 third country nationals (TCN) living in transit housing facilities, 'man camps,' near the Baghdad airport while waiting for employment with MNF-I [Multi National Forces-Iraq] contractors," according to a January 2009 State Department cable. The cable's contents, marked "SBU," or sensitive but unclassified, said the laborers worked for "Najlaa Catering Company, a subcontractor of MNF-I contractor Kellogg,

Brown and Root (KBR).” Najlaa “procures such workers through independent labor brokers who operate in the workers’ home countries,” the cable said.

“KBR has fully cooperated with the Defense Contract Management Agency (DCMA) and MNF-I Criminal Law Division to investigate possible trafficking in persons (TIP) and human rights violations,” the cable stated. The U.S. Embassy “is seeking ways to ensure USG [U.S. Government] contractor and subcontractor compliance with appropriate labor, health, and safety standards.” It was also noted that there could be “corrupt, but lucrative, relationships between labor brokers, subcontractors and GOI [government of Iraq] officials.”

The FBI took notice too. An email from FBI Special Agent Michael F. McMahon with the International Contract Corruption Task Force on December 15, 2008, addressed reports that many Najlaa employees had not been paid.

“We have learned many of the TCN [third country national] service personnel employed by Najla [sic] at the Coalition Café have not been paid - in some cases for several months,” McMahon wrote to two KBR employees, including KBR’s Rita D. Wellborn, who was a company point person on human trafficking. “It may be that some of your personnel (KBR) in the field aren’t aware of the role of the TIPS program, or if they are, perhaps you have already heard of the situation with Najla [sic].” TIPS, as mentioned earlier, is a reference to “trafficking in persons.”

“On its face the issue of non-payment of wages can be rather nebulous. If, however, there is an effort underway to withhold wages for purposes of controlling the behavior of these men - there would likely be consequences,” McMahon wrote.

The FBI did not respond to a voicemail and an email from POGO requesting comment.

After the Protests

Baisey still did not appear to get the message after two months. On January 10, 2009, Derrick White, a KBR subcontracts supervisor, told Baisey that problems still existed. White wrote, “this matter is being tracked by the highest levels of both LOGCAP III and the United States military,” and demanded Baisey respond by the next day.

Baisey forwarded the comment to his colleagues and wrote: “This is a very bad one, we need to be very careful in responding to this one and our response must be acceptable.”

The following day KBR sent Baisey emails detailing how they felt Najlaa’s poor performance was giving them a “black eye” with their primary client, the U.S. military. Mark Brannen, a KBR deputy program manager, was blunt with Baisey, who denied a raft of allegations levied against Najlaa in an email earlier that day on January 11, 2009. “[T]he US Government is extremely upset at KBR right now and most of that frustration comes from Najlaa,” Brannen wrote. “Your man camp outside BIAP has become a

corporate embarrassment that has the visibility of the US Ambassador to Iraq, the Army Leadership here at Victory Base and our Defense Contract Administrators.”

“During the meeting today the United Nations offered to fly all of your employees from the BIAP camp to their homes at no cost to Najlaa. Najlaa refused,” Brannen further wrote. “I can only assume that your decision not to accept the UN’s offer was based upon some misguided idea that the Taji DFAC decision was negotiable. This is not the case.”

Brannen ended his email with a stern warning: “The US Military has become increasingly less tolerant of subcontractors operating on their Coalition Bases. The recurring complaints by your employees across various sites about their conditions and the mounting issues at BIAP, could lead to a debarment of Najlaa from all MNF-I bases in Iraq,” he wrote.

M. Faizer Mackeen, Chairman of Transtours, the company that supplied the laborers to Najlaa, explained what happened to the workers. “After three or three and a half months of staying under the poor conditions, these workers were forcibly repatriated,” Mackeen told POGO. He said that the workers themselves paid out of their own pocket to go home and that neither KBR nor Najlaa reimbursed them. “Even the cost of recruitment and sending these workers to the destination was not refunded,” he said. “It was not resolved peacefully, but by force.”

“These Najlaa workers were located on a transitory camp for which KBR and the U.S. government had neither responsibility nor authority, and which was located outside of any military base in Iraq,” KBR told POGO through a spokeswoman. It also said, “KBR continues to work closely with our subcontractors, including the regular inspection of foreign nationals’ living camps on the various bases on which we operate, to ensure that all subcontractors are in compliance with both the U.S. government and KBR Code of Business Conduct.”

The Blame Game

It did not take long for the blame game to start once the media started to pay attention.

On December 4, 2008, Deborah Haynes, a reporter with *The Times of London*, contacted Baisey with queries regarding the laborers and their claims that they were victims of human trafficking. Baisey forwarded Haynes’ email to Najlaa employees, and wrote, “what do you suggest we do.. Respond or what. Please let me [sic] so we can prepare some thing if you guys elect for us to respond.. In all cases I agreed that we will not mention KBR at any point of time.”

The next day Baisey emailed Rushdi Al Ayad, the director of Transtours, and wrote that “your staff have been creating riots and threatening other staff who wants [sic] to leave the site back to their home country to beat them. This is not acceptable.”

“These people never paid [Najlaa] any money to come to Iraq.. this was done between you and them,” Baisey wrote, adding that Najlaa’s “responsibility for these people starts when they move into the working location inside the camp, yet we are working diligently now to overcome the problem.”

Al Ayad disagreed. “[Y]our contention that your responsibility commence [sic] once they moved into their working locations inside camp cannot be accepted in spite of the fact they have arrived on your visa and may be you have your contractual obligation with KBR and not with us,” Al Ayad wrote. “I have boarded these workers on you [sic] instruction and confirmed acceptance by you and your company, so the responsibility lies with you and your company.” A few weeks later, on December 18, Al Ayad contacted KBR’s Houston offices with issues he had with Najlaa.

He also denied trafficking the men. “I or my company did not traffic these people illegally to Baghdad, but on your full authority and fully legalized,” Al Ayad wrote in the email to Baisey.

Baisey refused to accept Al Ayad’s denials. “Even if I accept the content of your email which I don’t, then these people are under the 3 months probation period.. the company has the right to terminate them during this 90 days,” he wrote, adding, “The circumstances we are currently in is not of our own making. Yet the people on the ground are not making it any easier to solve the issue at hand.”

“[W]e have to sort out this issue now and have to get these people under control,” Baisey also wrote.

After the *Sunday Times* ran an article on some of the workers, Al Ayad followed up with an email to Baisey on December 7, 2008. Given the newspaper coverage, the issue needs “your serious attention as our labour license and reputation at stake because of your action and will be facing legal actions by the government authorities,” he wrote. “[Y]ou have been acting against your promise, to provide employment in Kuwait until the camps in Iraq are ready for placement.”

To Sam McCahon, the former federal prosecutor, Najlaa’s position “does not ring true.”

“The subcontractor responsible for requesting the person to perform the labor is responsible for their welfare while they are in country. In the case of Kuwait, it is a law that the contractor must provide transportation, food, accommodations, medical care and compensation. In the case of Iraq, everyone who works on a military base must have a sponsor,” he said.

“How could a labor supplier on the Indian subcontinent, who has never even traveled to Iraq, much less be allowed to live in the Green Zone or a military base, be responsible for the welfare of the workers whom it retained? Clearly, this is a cover-up and ruse by the subcontractor,” McCahon said.

“The subcontractor fabricates the story with the belief that no one will ever be able to make contact with the recruiter to validate the account. The reason the subcontractors ‘warehouse’ laborers is because the prime contractor typically makes payment to the subcontractor based on man days provided.”

Did Najlaa Defraud the Government?

There could be more to this story than trafficking violations. Consider the employment contract between Najlaa and an employee. A contractual clause requires the employees to pay \$2,500 if they resign “before completion of one year of service” – that one year of service entails working 12 or more hours a day for seven days a week. This cost is covered by the mobilization cost KBR should have paid Najlaa; it could be considered a double dip by Najlaa as they might be getting paid twice for the same cost—once by KBR, and again by the employee—according to a source familiar with KBR’s subcontracting practices, who was not willing to be named. Keep in mind, as mentioned earlier, that individual laborers paid \$2,000 to \$3,000 in recruitment fees to pay for travel and other expenses from their home countries to Iraq.

McCahon, the former federal prosecutor, told POGO that “from a legal perspective, the ramifications are far greater than double dipping. The process, depending on how it is executed, may constitute procurement fraud against the government.”

He added, “if the subcontractor never incurred the cost, mobilization or demobilization but was reimbursed for the same, then there would be a fraud against the government.”

It is customary for KBR to pay its subcontractors an average amount of \$2,500 per person as a mobilization fee and approximately the same amount to demobilize, according to a person who is familiar with KBR’s subcontracting practices in Iraq and Kuwait. McCahon said “It is my understanding that the LOGCAP contract does allow for a mobilization/demobilization fee to the subcontractors.”

McCahon believes there also could be a kickback arrangement between Najlaa and its labor suppliers.

“The whole scenario seems to be missing some elements and sounds more like a subcontractor’s efforts to conceal a kickback by explaining the direct payment of money to a recruiter,” said McCahon. “Why would an agreement between the sub and recruiter specify the amount charged by the recruiter to the laborer?” Najlaa utilized several manpower recruitment companies that recruited from various parts of South Asia.

Najlaa did not respond to multiple requests for comment over several weeks.

Ex-KBR Employees Ended Up at Najlaa

Around the time of the protests, emails show that KBR discovered that some of its employees who were terminated were working for Najlaa. Najlaa was not to retain any former KBR management employees within a year of their departure from KBR, according to KBR emails.

“[Y]ou will need to make sure Najlaa removes these three men from any of the contracts that are supporting KBR until one year from their termination date,” KBR’s Mark Brannen wrote to other KBR employees on December 29, 2008.

Earlier, in an email to other KBR employees, KBR’s Rita D. Wellborn, who was a company point person on trafficking in persons, wrote, “former KBR expats” who “were terminated after investigation” in February 2008. “They are now direct hires for Najlaa,” she noted.

“KBR’s business ethics and values expressly state that our employees, subcontractors, and business partners be treated with dignity and respect,” KBR told POGO. “Employees, contractors, and subcontractors are expected and required to adhere to KBR’s entire code of business ethics—the KBR Code of Business Conduct (COBC). When KBR becomes aware of potential violations of our COBC, we investigate the issue and take appropriate action to address what happened and prevent recurrence.”

KBR did not specifically address POGO’s question on the termination of employees in its response.

The Aftermath: Where’s the Accountability?

Najlaa did not respond to multiple emailed queries to the contact email address listed on its website, emails to its CEO Bill Baisey, or to emails to its parent company, Eastern Solutions Group. The Louisiana phone number for its U.S. office is currently disconnected. In one of the earliest news reports on the December 2008 protests by laborers, *Najlaa told The Times of London*, “We work to very strict rules. We do not accept people being mistreated or mishandled.” More recently, a representative of a Najlaa’s associated firm in Amman, Jordan *told The New Yorker* which briefly mentioned the December 2008 protests, that “the workers’ mistreatment had been due to a temporary ‘cash money problem.’”

A spokeswoman for U.S. Forces Iraq (U.S.F-I), the successor organization to MNF-I, said “U.S.F-I does not have any records prior to Operation New Dawn. Operation Iraqi Freedom records are held at CENTCOM and I forwarded your query to them.” According to the State Department cable mentioned earlier, MNF-I Criminal Law Division investigated the alleged labor trafficking and other problems involving Najlaa laborers.

The spokesman for the U.S. military’s Central Command (CENTCOM) told POGO that “We do not have any documents regarding these allegations here. These were not CENTCOM contracts—U.S. Army Logistics Civil Augmentation Program (LOGCAP) managed food service in theater. Any investigation findings would have been forwarded

to them.” After he said he contacted several other government offices, the spokesman added that he could not “find a public affairs office that has situational awareness of this” and recommended POGO file a Freedom of Information Act (FOIA) request for more information. CENTCOM is responsible for the region of the world where the alleged labor trafficking and worker abuses by Najlaa took place. According to a DOD-specific provision of the Federal Acquisition Regulation, military commands such as CENTCOM are supposed to be notified of instances where there are indications of human trafficking by DOD contractors and subcontractors in their area of responsibility. CENTCOM said there were no responsive documents in response to a FOIA request filed last year for documentation of all trafficking instances in their possession, pursuant to the Federal Acquisition Regulation provision.

POGO also emailed and called Army Sustainment Command (ASC), which is responsible for LOGCAP, but was told by a spokeswoman that “after checking with subject matter experts in ASC, this is not an issue specific to KBR or LOGCAP. You need to contact Central Command, Tampa, Florida, since their area of responsibility includes Southwest Asia.” As mentioned above, CENTCOM told POGO that investigative findings related to LOGCAP would be forwarded to LOGCAP, i.e. the Army Sustainment Command.

While Najlaa has not responded to numerous requests for comment, Mackeen, the chairman of Transtours, one of Najlaa’s labor suppliers, provided an extensive emailed reply to POGO.

“Najlaa never paid any recruitment fees or cost of air ticket to Transtours, but workers agreed to incur initial expenses like medical, transport, and administrative cost and other expenses. Transtours was expecting Najlaa to make payment as agreed with them, which was not paid at all.”

Mackeen told POGO that Najlaa approached Transtours and several other manpower suppliers in Asia and said that “Transtours was called upon to recruit Sri Lanka workers via Dubai and Kuwait, as recruitment of workers directly from Sri Lanka was not permitted at that time of period.” He added that Najlaa sent one of its officials to Sri Lanka to interview and select prospective personnel.

Mackeen said Transtours submitted complaints “to the U.S. Army and other authorities” asking them to stop payments to Najlaa until the laborers and Transtours were paid, but said the complaints were not acknowledged and that there were no inquiries. POGO was provided with copies of the complaints Mackeen said he provided to the U.S. government.

Mackeen placed some of the blame at KBR’s feet. He said since the U.S. puts a great deal of emphasis on human rights he is “confident that this matter will be taken up” eventually and is “very happy to receive” POGO’s questions.

A Pentagon Inspector General (IG) report noted “one report of preliminary investigative activity of a contractor in Iraq” in fiscal year 2009 for labor trafficking violations. The case was briefed to the Justice Department and prosecutors “determined facts and circumstances did not warrant further action.” The “contractor took corrective action,” the Pentagon IG said. The Pentagon IG did not respond to POGO’s query asking whether the contractor was Najlaa, although Najlaa was a defense contractor suspected of labor trafficking in fiscal year 2009 that had come under investigation.

KBR’s response mirrors some of the language (e.g. “corrective action” was taken) used in the Inspector General report. “Najlaa responded without delay to KBR’s demand for corrective action, and the matter was resolved appropriately. KBR fully disclosed the incident to our U.S. government clients including all remedial actions taken by both KBR and Najlaa,” KBR told POGO in an emailed statement via a spokeswoman. However, KBR’s statement that Najlaa “responded without delay” to KBR is not borne out by the numerous KBR emails to Najlaa that POGO has obtained. POGO asked KBR about this inconsistency in a follow-up question. POGO gave KBR over two weeks to respond. KBR eventually did email a statement that said “Najlaa has been a supplier of ours since 2004, and when challenges have arisen in providing support to the military, we have brought them to their attention and worked with them to appropriately resolve.” KBR also emailed that “We continue to work with Najlaa and other subcontractors today in providing much needed services to our troops.”

In its communications with POGO, KBR put a great deal of emphasis on its code of conduct. However, at least in the case of Najlaa, KBR says neither it nor the U.S. military is responsible. There is a litany of reasons to believe they do have responsibility: as recounted above, emails by its very own employees on the ground in Iraq to Najlaa suggest otherwise. The chain of contracting down the manpower suppliers is fueled by U.S. taxpayer dollars, billions of which KBR receives. Unrest by the labor force of a DOD subcontractor in a country with an ongoing major military operation can be detrimental to U.S. interests. It should be no wonder that elements of the U.S. military in Iraq were angered by the conditions of the Najlaa laborers, and KBR employees threatened to cut off Najlaa’s subcontracts as a result. Ultimately, however, Najlaa did not lose its business with KBR or the U.S. government.

POGO has confirmed in conversations with sources that have requested anonymity that federal investigators this year have begun re-examining allegations of trafficking and other possible misconduct by Najlaa and other companies. However, Transtours’ CEO told POGO via email in late April that the U.S. government investigators had still not contacted his company.

Revisiting the December 2008 episode isn’t just a historical exercise. Besides its continuing work with KBR, Najlaa is still winning government contracts, such as a recent \$3 million contract to provide food services for the U.S. Agency for International Development (USAID) in Baghdad from February 2010 to February 2012.

According to a 2006 State Department report on human trafficking, a “DOD investigation, prompted by late 2005 media allegations of labor trafficking in Iraq, identified a number of abuses, some of them considered widespread, committed by DOD contractors or subcontractors of third country national (TCN) workers in Iraq.” The State Department said in response to the investigation that the “Department of Defense has responded swiftly with a number of measures to closely monitor the hiring and employment of foreign laborers.” The DOD’s response, the State Department assured, would “ensure the U.S. employs a ‘zero tolerance’ policy against human trafficking.” But clearly having policies on the books alone did not ensure anything -- besides the Najlaa episodes, there have been many instances of alleged trafficking and third country national worker abuse. Is it really “zero tolerance” when there are no repercussions?

David Isenberg has been an observer and commentator on private military and security contracting since its modern birth in the 1980s. He is the author of the book Shadow Force: Private Security Contractors in Iraq. His blog The PMSC Observer is the leading online resource for news and current events pertaining to subject of private military and security. Nick Schwellenbach is POGO's Director of Investigations.

Photo credit for photos of protesters, men living in temporary camp: Adam Ashton/MCT/Landov. Photo of KBR tower: WhisperToMe.

Minimum Mandated Savings

These are conservative estimates for the easily quantifiable *mandated* savings in the House Oversight Committee bill. These savings are mandated by the bill, meaning that under the provisions of this bill if USPS cannot meet its obligations (the PMG has announced they will still default on the \$5.5 billion payment on November 18th) then USPS would be in the position to make all of these moves and would be directed to achieve *at least* this level of savings.

- **Five Day Delivery:** \$2.5 billion/year (USPS estimates as much as \$3.1 billion/year)
- **Door Delivery Reduction:** \$3.5 billion/year (USPS IG estimates as much as \$5 billion/year from moving door to curb, and considerably more for areas which would move to clusterboxes)
- **Equalize Insurance Premiums with Rest of Federal Workforce:** \$700 million/year (USPS/OPM numbers)
- **Retail CPR:** \$1 billion/year (Target savings mandated in the bill, \$4.2-5 billion/year is spent on retail)
- **Processing CPR:** \$2 billion/year (USPS has indicated they can save \$3 billion per year)
- **Rate Changes*:** \$1 billion/year
- **Total Minimum Savings:** **\$10.7 billion/year**
 *Not an across the board rate increase, but USPS would increase rates on products that do not cover costs. This also includes the gradual reduction of the non-profit advertising discount, holding the non-profit editorial discount the same.

Additional Cost Cutting & Revenue Enhancing- Harder to Quantify

1. Consolidation of area and district offices.
2. Modernized collective bargaining procedures.
3. The switch to alternative access to postal services has been incentivized.
4. Restructuring required by the Solvency Authority.
5. The sale of Advertising.
6. The sale of State Services.
7. Streamlined approval of NSAs.
8. Alaska Bypass reimbursement.
9. Creation of an advocate for competition – can be sourced to a IG report for a 100M+ annually through better contracting.

Mr. LANKFORD. Thank you, Mr. Isenberg. Look forward to receiving questions as well.

Mr. Schwellenbach.

STATEMENT OF NICK SCHWELLENBACH

Mr. SCHWELLENBACH. Chairman Lankford, Ranking Member Connolly, and other distinguished members of the subcommittee, thank you for inviting me to testify today.

The United States has been a global leader in combating trafficking in persons, yet our tax dollars are inadvertently fueling this human rights tragedy through our overseas contract labor supply chain. Not only is trafficking and exploitation of laborers a moral wrong, but it can spark a backlash from the laborers and their home countries, and could undermine the U.S. mission abroad.

There have been some oversight improvements over the last several years, but there is a lack of enforcement. For example, to date, there have been no prosecutions for contractor-driven war zone trafficking.

First, I will recount some stories of laborers in Iraq; then I will summarize public reporting of U.S. investigative and enforcement activity; third, I will recommend some ways to strengthen enforcement.

In June, The New Yorker's Sarah Stillman reported on labor rights abuses against third country nationals on U.S. contracts in Iraq and Afghanistan, and she focused on the stories of two Fijian women, Vinnie Tuivaga and Lydia Qeraniu, who worked for the Army Air Force Exchange Service subcontractors in Iraq.

Vinnie and Lydia were, like many others, lured by promises of good pay. They were told by a local recruitment firm in Fiji that they could each make between \$1,500 and \$3,800 a month in Dubai, in the UAE. After arriving in Dubai, they and other women discovered their true destination, which was Iraq. They could have quit, but they had gone into massive debt to pay the recruitment fees to be there. Quitting would mean no income to pay off this debt.

But when they got to Iraq, Vinnie and Lydia and the other women further discovered that instead of making between \$1,500 and \$3,800 a month, as they were promised, they would only make \$700 a month, which was later further reduced to \$350 a month. The contract they signed specified that they would work 12 hours a day for 7 days a week, and that their vacation was a return ticket home.

In addition, an AAFES subcontractor supervisor had been repeatedly sexually assaulting Lydia according to The New Yorker article. The allegations eventually ended up in the hands of both AAFES officials and the Army Criminal Investigation Command. Army CID told me last year, when I was working on another article, that they did not substantiate the allegations of trafficking and sexual assault. They would not tell me if they had actually interviewed the women. According to The New Yorker, Lydia and Vinnie both say that no one from the military or AAFES spoke to them about their sexual assault claims.

In another case from 2004, several Nepali laborers believed that they would be working in a five-star hotel in Jordan. Cementing

that belief was paperwork filed with Nepal's Labor Ministry for several laborers to work at that hotel. The recruiting fee charged each laborer meant that they and their families were deeply in debt. But the promises of lucrative pay made the debt seem like a good deal.

Furthermore, the manager of the recruitment firm told the Chicago Tribune that he didn't mention anything about Iraq to the applicants. They believed they were going to Jordan. But after they arrived, the Jordanian brokers demanded that the Nepalis surrender 2 months' pay as a fee, in addition to their recruitment fee, and accept less than half the salaries promised them in Nepal, and that they go to Iraq. According to the Tribune, their families told them that they must go to Iraq to cover the loans used to pay a Nepalese broker \$3,500 for each man, more than a decade of earnings for the average Nepali laborer.

The Amman to Baghdad Highway, which runs through Iraq's Anbar Province, is dangerous even for convoys guarded by security details. But 12 Nepali laborers did not have the advantages of having a security detail; they traveled this route, were kidnaped by insurgents, held for weeks, and killed.

I will skip an example.

Looking at overall enforcement activity over the last several years, there have been a few investigations, but there were no DOD investigations into trafficking in both 2006 and 2007, according to the DOJ. This section detailing DOD investigations is missing in 2008 and 2009 reports. In 2009, according to the DOD IG, there was one report of a preliminary investigative activity of a contractor in Iraq for labor trafficking, but prosecutors determined the facts and circumstances did not warrant further action.

Over at the State Department, two investigations were opened in 2009 and closed in 2010, a State Department IG spokesman told me last year. He said both cases were unsubstantiated.

So there have been a few investigations, but so far none of them have led to prosecutions.

There was also a civil action where the DOJ joined a whistleblower lawsuit earlier this year and the company settled to "end the litigation."

But what can be done to improve enforcement? Investigators clearly need the resources that they require. The SIGOCO, or Special Inspector General for Overseas Contingency Operations, may be one way to do this. They also need to be trained in investigating trafficking in persons violations, and jurisdictional ambiguities should be closed with Civilian Extraterritorial Jurisdiction Act.

Thank you for this opportunity. I am open to questioning.

[The prepared statement of Mr. Schwellenbach follows:]



Testimony of Nick Schwellenbach
 Director of Investigations, Project On Government Oversight (POGO),
 before the House Committee on Oversight and Government Reform,
 Subcommittee on Technology, Information Policy,
 Intergovernmental Relations and Procurement Reform, on
**“Are government contractors exploiting workers overseas?
 Examining enforcement of the Trafficking Victims Protection Act”**
 November 2, 2011

Chairman Lankford, Ranking Member Connolly, other Members of the Subcommittee,

Thank you for inviting me to testify today on the topic of human trafficking and worker abuse as it relates to our contractor workforce in war zones and other contingency operations. I am the Director of Investigations at the Project On Government Oversight, also known as POGO. Founded in 1981, POGO is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government.

Estimates vary considerably on the scale of human trafficking, but whatever the number of victims is, the problem is serious.¹ The U.S. has been a global leader in combating trafficking in persons, yet our tax dollars are inadvertently fueling this human rights tragedy through our labor

¹ Luis CdeBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, “Special Briefing: Preview to Annual Meeting of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons,” February 3, 2010. <http://www.state.gov/g/tip/rls/rm/2010/136475.htm> (Downloaded October 31, 2011): “There are a number of different estimates and it's a pretty broad estimate, depending on the methodology. The International Labor Organization estimates that there are around 12.3 million persons laboring in bondage around the world. And some of the other estimates from other organizations are higher, up to 27 million. Some of it ends up, again, coming down to methodology. But certainly, 12.3 million is—we think that that's a pretty accurate number.”

supply chain in war zones and other contingency operations. Not only is trafficking and exploitation of laborers a moral wrong in and of itself, but it erodes our moral standing in the world, can spark a backlash from the laborers and their home countries, including riots, which have occurred in Iraq at labor camps, and could undermine the U.S. mission.

I have worked on the issue of contractors and human trafficking over the last two years. Earlier this year, I co-authored an article with my co-panelist David Isenberg on alleged worker abuse by Najlaa International Catering Services, a KBR subcontractor in Iraq.² David will be focusing on this story in his testimony. In addition, in a collaborative effort between *The Washington Post* and Center for Public Integrity last year, I co-wrote a detailed article that, among other things, noted the lack of prosecutions for any type of war-zone human trafficking despite several allegations of contractor involvement and the U.S. government's "zero-tolerance" policy.³

This topic received some attention from the Commission on Wartime Contracting. In its final report, the Commission stated:

...the Commission uncovered tragic evidence of the recurrent problem of trafficking in persons by labor brokers or subcontractors of contingency contractors. Existing prohibitions on such trafficking have failed to suppress it.⁴

² David Isenberg and Nick Schwellenbach, "Documents Reveal Details of Alleged Labor Trafficking by KBR Subcontractor: The Najlaa Episode Revisited," *POGO Blog*, June 14, 2011. <http://www.pogo.org/pogo-files/alerts/contract-oversight/co-ht-20110614.html>

³ Nick Schwellenbach and Carol Leonnig, "U.S. policy a paper tiger against sex trade in war zones," *The Washington Post*, July 18, 2010. http://www.washingtonpost.com/wp-dyn/content/article/2010/07/17/AR2010071701401_pf.html (Downloaded October 31, 2011); Nick Schwellenbach and Carol Leonnig, "Despite allegations, no prosecutions for war zone sex trafficking," *i Watch News*, July 17, 2010. <http://www.iwatchnews.org/2010/07/17/2609/despite-allegations-no-prosecutions-war-zone-sex-trafficking> (Downloaded October 31, 2011)

⁴ Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling costs Reducing risks*, August 2011, p. 159. http://www.warimecontracting.gov/docs/CWC_FinalReport-Ch7-lowres.pdf (Downloaded October 31, 2011)

Wartime Contracting Commission Co-Chair Christopher Shays, a former Member of Congress and of this Committee, called the abuse of foreign contract laborers, “a human-rights abuse that cannot be tolerated.”⁵

In a Senate hearing in October, Commissioner Dov Zakheim said, on the topic of contractor involvement in trafficking, “quite frankly, our commission just scratched the surface of this, to be honest. There’s a lot more in that iceberg. We just saw the tip of it.”⁶

Today’s hearing will help us see more of that iceberg. However, ultimately, greater enforcement and visibility into the activities of the often nebulous and complex chain of subcontractors and labor brokers, whose networks span continents, will be needed to get our arms around this horrific problem.

Currently, the Federal Acquisition Regulation, or FAR, relies on self-policing and reporting to contracting officers.⁷ As the State Department Office of Inspector General (OIG) noted earlier this year, “since the FAR does not specify how to monitor contractors for TIP [trafficking in persons], OIG could not conclude that TIP monitoring is effective.”⁸ Similarly, the DoD OIG “observed that contractor-initiated reporting to DoD contracting offices was the only means by which these offices could obtain timely and relevant information regarding actual or alleged TIP violations.”

⁵ Commission on Wartime Contracting in Iraq and Afghanistan, “Wartime Contracting team will examine big-dollar U.S. construction projects during Afghanistan trip,” August 23, 2010.

http://www.wartimecontracting.gov/docs/CWC_NR-31.pdf (Downloaded October 31, 2011)

⁶ Dov Zakheim, Commission on Wartime Contracting in Iraq and Afghanistan, “Testimony before Senate Committee on Armed Services, Subcommittee on Readiness and Management Support, on Wartime Contracting in Iraq and Afghanistan Report,” October 19, 2011. http://findarticles.com/p/news-articles/political-transcript-wire/mi_8167/is_20111019/sen-claire-mccaskill-holds-hearing/ai_n58315102/pg_19/ (Downloaded October 31, 2011)

⁷ Federal Acquisition Regulation (FAR), 52.222-50 Combating Trafficking in Persons. https://www.acquisition.gov/far/html/52_222.html#wp1151848 (Downloaded October 31, 2011): “The Contractor shall inform the Contracting Officer immediately of ... Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy.”

⁸ Department of State, Office of Inspector General, Middle East Regional Office, *Performance Evaluation of Department of State Contracts to Assess the Risk of Trafficking in Persons Violations in Four States in the Cooperation Council for the Arab States of the Gulf (MERO)-I-11-06*, January 2011, p. 6. <http://oig.state.gov/documents/organization/156263.pdf> (Downloaded October 31, 2011)

On the DoD side, they are trying to ensure compliance with the FAR by including trafficking considerations in quality assurance surveillance of DoD contractors, which is something State should consider if it has not already.⁹ Also, DoD guidance issued late last year should improve information sharing on trafficking cases with the DoD's Combating Trafficking in Persons Program Manager.¹⁰

These improvements are welcome, but some notable experts are perturbed by the lack of criminal enforcement. To date, there have been no prosecutions for contractor-driven war zone trafficking. Attorney Martina Vandenberg told the Senate in 2007 that "[w]ith zero prosecutions, zero tolerance has zero credibility."¹¹

First, I will recount in some detail a few stories of laborers in Iraq and what they experienced – the three examples all generated some sort of official government investigative activity that has been seen by at least some critics as wanting. Then, I will summarize my understanding of the U.S. government's investigative and enforcement activity in this area over the last several years. Third, I will summarize what I believe can be done to strengthen enforcement and to better prevent these abuses from occurring in the first place.

The New Yorker Article

In June, *The New Yorker* magazine ran an in-depth article by Sarah Stillman on labor rights abuses against third-country nationals on U.S. contracts in Iraq and Afghanistan, including the

⁹ Department of Defense, Office of Inspector General, *Evaluation of DoD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command* (Report No. SPO-2011-002), January 18, 2011, p. 10. http://www.dodig.mil/SPO/Reports/SPO-2011-002_508.pdf (Downloaded October 31, 2011)

¹⁰ Department of Defense, Office of Inspector General, *Evaluation of DoD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command* (Report No. SPO-2011-002), January 18, 2011, p. 9. http://www.dodig.mil/SPO/Reports/SPO-2011-002_508.pdf (Downloaded October 31, 2011) The new guidance directs the heads of military departments to "[p]rovide information on all known TIP cases to the USD(P&R) DoD Program Manager." Memorandum from Clifford L. Stanley, Under Secretary of Defense for Personnel and Readiness, regarding Combating Trafficking in Persons (CTIP), September 15, 2010, p. 7. <http://www.dtic.mil/whs/directives/corres/pdf/220001p.pdf> (Downloaded October 31, 2011)

¹¹ Martina E. Vandenberg, attorney at Jenner & Block, "Testimony on Legal Options to Stop Human Trafficking, before the Senate Judiciary Subcommittee on Human Rights," March 26, 2007. http://judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da123775c&wit_id=e655f9e2809e5476862f735da123775c-0-3 (Downloaded October 31, 2011)

abuse of two Fijian women—Vinnie Tuivaga and Lydia Qeraniu—who worked for Army Air Force Exchange Service (AAFES) subcontractors in Iraq.¹²

Vinnie and Lydia were, like many others, lured by promises of good pay. They were told by Meridian Services Agency, the local recruitment firm in Fiji, that they could each make up to \$3,800 a month as beauticians in Dubai.¹³ They signed up and in October 2007 were on a plane to the United Arab Emirates.

After arriving in the UAE, they and other women discovered their true destination: Iraq. According to *The New Yorker*, “Meridian had reportedly threatened some with more than a thousand dollars in early-termination fines if they left.” Many of the women had gone into debt to pay their recruitment fees—quitting with another \$1,000 added to their debt would have been crushing.¹⁴

In Iraq, Vinnie, Lydia, and the other women then learned that instead of making between \$1,500 and \$3,800 a month—the lucrative salary that lured them to a job around the world—that they would only make \$700 a month. This amount was in turn further reduced to \$350 a month. The contract they signed specified that they would work “‘Twelve (12) hours per day and seven (7) days a week.’ Their ‘vacation’ was a ‘Return ticket after the completion of the service.’”

¹² Sarah Stillman, “The Invisible Army: For foreign workers on U.S. bases in Iraq and Afghanistan, war can be hell,” *The New Yorker*, June 6, 2011.
http://www.newyorker.com/reporting/2011/06/06/110606fa_fact_stillman?currentPage=all (Downloaded October 31, 2011)

I had become aware of Vinnie and Lydia’s story about a year before The New Yorker story ran during the course of reporting. I stumbled across an Army Criminal Investigation Command summary of an investigation into allegations of trafficking and sexual assault that was posted online as part of an Army Inspector General PowerPoint presentation. Army, Inspector General, *Inspector General Issues* (DSN 655-3897).
<https://www.documentcloud.org/documents/5022-army-inspector-general-issues-briefing.html#search/p52/Army> (Downloaded October 31, 2011) POGO also obtained documents through the Freedom of Information Act on AAFES’s formulation of a media response to Stillman in the early stages of her reporting. Emails obtained by POGO through FOIA from Redacted to Redacted regarding AAFES’s proposed response to Iraq Fijian contractor TIP allegations. <http://pogoarchives.org/m/ns/aafes-trafficking-emails-2010.pdf>

¹³ Sarah Stillman, “The Invisible Army: For foreign workers on U.S. bases in Iraq and Afghanistan, war can be hell,” *The New Yorker*, June 6, 2011.
http://www.newyorker.com/reporting/2011/06/06/110606fa_fact_stillman?currentPage=all (Downloaded October 31, 2011)

¹⁴ Sarah Stillman, “The Invisible Army: For foreign workers on U.S. bases in Iraq and Afghanistan, war can be hell,” *The New Yorker*, June 6, 2011.
http://www.newyorker.com/reporting/2011/06/06/110606fa_fact_stillman?currentPage=all (Downloaded October 31, 2011)

Appended to the contract was a legal waiver: "I am willingly and of my own free will have decided to go and work in Iraq, and I declare that no one in Fiji or out of Fiji has approach me to work in Iraq. . . . I am contented with my job. . . . I want to complete my contract, till then, I will not go back home."¹⁵

Later, an American customer of the women's beautician services sent a letter to the Defense Department requesting an investigation into the women's recruitment and the labor practices to which they were subjected.¹⁶

According to *The New Yorker*, "soon thereafter, the aafes Inspector General dispatched a business manager to interview the beauticians. But the manager determined that, because the three had their passports and had known their ultimate destination after arriving in Dubai, aafes was not in violation of anti-trafficking regulations. (The organization did note that, in general, 'better safeguards and improvements were necessary to protect contract workers.')¹⁷

New Yorker reporter Sarah Stillman also learned from the two women that one of the AAFES subcontractor supervisors had been repeatedly sexually assaulting Lydia. Stillman called the U.S. Army's emergency sexual assault hot line several times over several days but no one ever picked up.¹⁸

¹⁵ Sarah Stillman, "The Invisible Army: For foreign workers on U.S. bases in Iraq and Afghanistan, war can be hell," *The New Yorker*, June 6, 2011.
http://www.newyorker.com/reporting/2011/06/06/110606fa_fact_stillman?currentPage=all (Downloaded October 31, 2011)

¹⁶ Sarah Stillman, "The Invisible Army: For foreign workers on U.S. bases in Iraq and Afghanistan, war can be hell," *The New Yorker*, June 6, 2011.
http://www.newyorker.com/reporting/2011/06/06/110606fa_fact_stillman?currentPage=all (Downloaded October 31, 2011)

¹⁷ Sarah Stillman, "The Invisible Army: For foreign workers on U.S. bases in Iraq and Afghanistan, war can be hell," *The New Yorker*, June 6, 2011.
http://www.newyorker.com/reporting/2011/06/06/110606fa_fact_stillman?currentPage=all (Downloaded October 31, 2011)

¹⁸ Sarah Stillman, "The Invisible Army: For foreign workers on U.S. bases in Iraq and Afghanistan, war can be hell," *The New Yorker*, June 6, 2011.
http://www.newyorker.com/reporting/2011/06/06/110606fa_fact_stillman?currentPage=all (Downloaded October 31, 2011)

After meeting with Vinnie and Lydia, the State Department's lead anti-trafficking official notified AAFES and the Department of Defense about the allegations and urged them to investigate.¹⁹ The allegations eventually ended up in the hands of both AAFES officials (this is separate from the earlier investigation, mentioned above) and Army Criminal Investigation Command (CID). Army CID told me last year that they did not substantiate the allegations of trafficking and sexual assault. They would not say if they interviewed the women.²⁰ According to *The New Yorker*, "Lydia and Vinnie both say that no one from the military or aafes spoke with them about the sexual-assault claims." When contacted by *The New Yorker*, CID said it could not find any record of the case.²¹

The "Pipeline to Peril"

The families of twelve Nepalese laborers who were killed by insurgents in Iraq and another victim filed a lawsuit against KBR, KBR subcontractor Daoud & Partners, and other entities in federal district court in 2008.²² That civil action is still ongoing.

The lawsuit alleges that "in an effort to fulfill their contractual obligations, Defendants and the co-conspirators willfully and purposely formed an enterprise with the goal of procuring cheap labor and increasing profits." Further, "the common scheme of this enterprise was to traffic in laborers and to profit from the provision of this labor."²³

¹⁹ Emails obtained by POGO through FOIA from Redacted to Redacted regarding AAFES's proposed response to Iraq Fijian contractor TIP allegations. <http://pogoarchives.org/m/ns/aafes-trafficking-emails-2010.pdf>

²⁰ Nick Schwellenbach and Carol Leonnig, "Despite allegations, no prosecutions for war zone sex trafficking," *i Watch News*, July 17, 2010. <http://www.iwatchnews.org/2010/07/17/2609/despite-allegations-no-prosecutions-war-zone-sex-trafficking> (Downloaded October 31, 2011)

²¹ Sarah Stillman, "The Invisible Army: For foreign workers on U.S. bases in Iraq and Afghanistan, war can be hell," *The New Yorker*, June 6, 2011. http://www.newyorker.com/reporting/2011/06/06/110606fa_fact_stillman?currentPage=all (Downloaded October 31, 2011)

²² Ramchandra Adhikari, et al. v. Daud & Partners, Kellogg Brown & Root, Inc., Kellogg Brown & Root Services, Inc. And John Does 1-5, August 27, 2008. http://www.contractormisconduct.org/ass/contractors/29/cases/1008/1369/halliburton-human-trafficking_complaint.pdf (Downloaded October 31, 2011) This original complaint has been superseded by an amended complaint. The venue has also changed from the U.S. District Court for the Central District of California to the U.S. District Court for the Southern District of Texas.

²³ Ramchandra Adhikari, et al. v. Daud & Partners, Kellogg Brown & Root, Inc., Kellogg Brown & Root Services, Inc. And John Does 1-5, August 27, 2008.

Many of these twelve laborers believed they would be working in a five-star hotel in Amman, Jordan, according to a *Chicago Tribune* investigation. Cementing that belief that was paperwork filed with Nepal's Labor Ministry for several laborers to work at a five-star hotel in Amman.²⁴ The recruiting fee charged each laborer meant that each laborer and their families "went deeply into debt," but the promises of lucrative pay made the debt seem like a good deal. The manager of the labor recruitment firm "said in an interview that he didn't mention anything about Iraq to the applicants [who ended up getting killed by insurgents]. Because of the danger, the Nepalese government had prohibited job agents from sending men there." Yet the manager told the *Chicago Tribune* that he did issue a warning that "Jordan's Morning Star is a multinational company, and it might send you somewhere else."

The 12 Nepalis "all came to Jordan under Morning Star's authority, along with about two-dozen others from the South Asian country," according to the *Tribune*. They registered with a police station in Amman, which is required for foreign visitors staying more than two weeks. Then the "Jordanian brokers were now demanding they surrender two months' pay as a fee and accept less than half the salaries promised them in Nepal, according to their families." According to the *Tribune*, "[t]he men were desperate to go home. But their families told them they must continue into Iraq, solely to cover the loans used to pay a Nepalese broker \$3,500 for each man—more than a decade of earnings."²⁵

The Amman to Baghdad highway, which runs through Iraq's Anbar Province, was dangerous even for convoys guarded by armored vehicles and private security details. The twelve Nepali laborers who were kidnapped by insurgents, held for weeks, and then killed had neither.

http://www.contractormisconduct.org/ass/contractors/29/cases/1008/1369/halliburton-human-trafficking_complaint.pdf (Downloaded October 31, 2011)

²⁴ Cam Simpson, "Desperate for work, lured into danger: The journey of a dozen impoverished men from Nepal to Iraq reveals the exploitation underpinning the American war effort," *Chicago Tribune*, October 9, 2005.

<http://www.chicagotribune.com/news/nationworld/chi-nepal-1-story.0,5585806.story> (Downloaded October 31, 2011)

²⁵ Cam Simpson, "Into a war zone, on a deadly road: Worker's chilling call home: 'I am done for,'" *Chicago Tribune*, October 10, 2005. <http://www.chicagotribune.com/news/nationworld/chi-0510100110oct10,0,431231,full.story> (Downloaded October 31, 2011)

The DoD OIG investigated after the State Department Ambassador-at-Large John Miller, then-chief of State's anti-trafficking office, made a referral to them in response to the *Chicago Tribune* series. After investigation, the DoD OIG, stated in a memo that it "found no reason to question the sequence or accuracy of events outlined in the Chicago Tribune articles" and that it confirmed that "[s]ome of the Nepalese [men] clearly felt they had been deceived about their place of employment (Iraq versus Jordan)." However, the DoD OIG memo concluded that "while it would appear that some foreign-based companies are using false pretenses to provide laborers to KBR/Halliburton subcontractors in Iraq, we must note that none of the allegations in the Chicago Tribune articles are against U.S. persons or U.S. contractors."²⁶

There are questions about the DoD OIG's investigation in the Nepali case. Attorney Martina E. Vandenberg, who is with the firm Jenner & Block, testified before the Senate Judiciary Subcommittee on Human Rights and the Law in 2007 that the DoD OIG's investigation into the case appears to have been flawed. Vandenberg stated that "there's no indication that the Inspector General actually delved into the issue of criminal complicity, or even criminal conspiracy by U.S. persons or contractors. Indeed, there is no hint of any investigation into the involvement of any of these U.S. contractors."²⁷ In their lawsuit, the Nepali victims' families and the one sole survivor have charged that the defendants, which include U.S. persons and contractors, had a scheme to supply low-cost labor through illegal means.²⁸ Vandenberg further stated that the DoD OIG confused criminal and civil law principles, thus mistakenly concluding the U.S. government had no jurisdiction because there was no direct contractual relationship between the U.S. government and the foreign subcontractors and suppliers. However, "that's

²⁶ Hearing before the Senate Subcommittee on Human Rights and the Law of the Committee on the Judiciary, regarding Legal Options to Stop Human Trafficking, March 26, 2007. <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg37695/pdf/CHRG-110shrg37695.pdf> (Downloaded October 31, 2011)

²⁷ Martina E. Vandenberg, attorney at Jenner & Block, "Testimony on Legal Options to Stop Human Trafficking, before the Senate Judiciary Subcommittee on Human Rights," March 26, 2007, p. 9. <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg37695/pdf/CHRG-110shrg37695.pdf> (Downloaded October 31, 2011)

²⁸ *Ramchandra Adhikari, et al. v. Daud & Partners, Kellogg Brown & Root, Inc., Kellogg Brown & Root Services, Inc. And John Does 1-5*, August 27, 2008. http://www.contractormisconduct.org/ass/contractors/29/cases/1008/1369/halliburton-human-trafficking_complaint.pdf (Downloaded October 31, 2011) "In an effort to fulfill their contractual obligations, Defendants and the coconspirators willfully and purposefully formed an enterprise with the goal of procuring cheap labor and increasing profits. In order to achieve the illegal purpose of this enterprise, Defendants established, engaged and/or contracted with a network of suppliers, agents, and/or partners in order to procure laborers from third world countries. The common scheme of this enterprise was to traffic in laborers and to profit from the provision of this labor."

simply incorrect as a matter of law,” according to Vandenberg.²⁹ The Military Extraterritorial Jurisdiction Act gives the U.S. government criminal jurisdiction over DoD subcontractors at any tier.³⁰

U.S. Embassy and First Kuwaiti

Another case of alleged labor trafficking in Iraq involved one of the U.S.’s largest projects: the construction of the New Embassy Compound in Baghdad by First Kuwaiti General Trading and Contracting Company, a KBR subcontractor.

First Kuwaiti was brought up at a Wartime Contracting Commission hearing in July 2010 on subcontracting. Commissioner Grant Green mentioned several instances where allegedly First Kuwaiti brought laborers to the Middle East under the impression that they were going somewhere other than Iraq. According to Green, First Kuwaiti gave Indian men plane tickets that identified their destination as Dubai, United Arab Emirates, but flew them to Iraq instead. Another group of Nepalese men in Jordan were transferred to First Kuwaiti and driven to Iraq. “Their passports were taken and with the burden of a large recruiting fee hanging over their heads, they had little or no choice other than to go,” said Green during the hearing.³¹

In another instance, after a group of Sri Lankan men brought to Kuwait refused to go on to Iraq, First Kuwaiti General Trading “gave them an ultimatum: agree to travel to Iraq and get more food and water; refuse and get nothing. Be put out in the street in Kuwait City and find your way

²⁹ ²⁹ Martina E. Vandenberg, attorney at Jenner & Block, “Testimony on Legal Options to Stop Human Trafficking, before the Senate Judiciary Subcommittee on Human Rights,” March 26, 2007, p. 9. <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg37695/pdf/CHRG-110shrg37695.pdf> (Downloaded October 31, 2011)

³⁰ 18 USC Chapter 212- Military Extraterritorial Jurisdiction. <http://uscode.house.gov/download/pls/18C212.txt> (Downloaded October 31, 2011)

³¹ Grant Green, Commissioner, Commission on Wartime Contracting in Iraq and Afghanistan, “Statement during Commission on Wartime Contracting in Iraq and Afghanistan hearing on Subcontracting: Who’s Minding the Store?,” July 26, 2010. http://www.wartimecontracting.gov/docs/hearing2010-07-26_transcript.pdf (Downloaded October 31, 2011)

home. Their [the Sri Lankans'] response: 'We could not go back, we did not have a ticket, a passport, or money,'" Green added.³²

Investigative journalist David Phinney also reported on allegations by two whistleblowers of labor trafficking by First Kuwaiti, which came under investigation by the full Oversight Committee.³³

The Multi-National Force-Iraq Inspector General (MNF-I IG) looked into these matters. A March 2007 memorandum by the MNF-I IG recounted the findings of two MNF-I IG inspections in December 2006. The memo states that several New Embassy Compound third country nationals "reported that fraudulent hiring practices were used during their recruitment. They

³² Grant Green, Commissioner, Commission on Wartime Contracting in Iraq and Afghanistan, "Statement during Commission on Wartime Contracting in Iraq and Afghanistan hearing on Subcontracting: Who's Minding the Store?," July 26, 2010. http://www.wartimecontracting.gov/docs/hearing2010-07-26_transcript.pdf (Downloaded October 31, 2011)

³³ David Phinney, "A U.S. Fortress Rises in Baghdad: Asian Workers Trafficked to Build World's Largest Embassy," *CorpWatch*, October 17, 2006. <http://www.corpwatch.org/article.php?id=14173> (Downloaded October 31, 2011)

Years ago the full Oversight Committee examined whether a previous State Department Inspector General's highly unusual examination in September 2006 into these allegations was sufficient and conducted properly. Committee on Oversight and Government Reform, Majority Staff, *Report on Allegations Regarding State Department Inspector General Howard Krongard*, November 2007. <http://oversight-archive.waxman.house.gov/documents/20071114102223.pdf> (Downloaded October 31, 2011) *Unusual* because the IG himself conducted the inquiry.

The minority disputed much of the majority's characterization of IG Howard Krongard, but did not contest that it is unusual for an IG to personally take on an inquiry: Committee on Oversight and Government Reform, 110th Congress, *Staff Report: Governing by Accusation: The Committee's Assault on the State Department Inspector General* <http://web.archive.org/web/20080529033535/http://republicans.oversight.house.gov/Media/PDFs/20071114StateOIGReport.pdf> (Downloaded October 31, 2011)

At a minimum, we know what Krongard did was not an in-depth investigation or audit. Krongard himself testified to the full Committee that he did not conduct an inquiry that could be considered in-depth. Krongard testified:

First of all, I didn't do an investigation. I have tried to point that out. This was not an audit. It was not an investigation.

This was an agreed upon procedures and a limited review which I also did in conjunction with visits by the management committee or the management counselor."

Joint Hearing before the Subcommittee on National Security and Foreign Affairs and the Committee on Oversight and Government Reform, 110th Congress, regarding Allegations of Waste, Fraud and Abuse at the New U.S. Embassy in Iraq, p. 147. <http://oversight-archive.waxman.house.gov/documents/20071114164530.pdf> (Downloaded October 31, 2011)

stated the promises made and the terms of the original contracts presented to them in their country of origin were inconsistent with the actual conditions (lower pay, longer hours, no days off) of their employment in Iraq.” Further, “[i]n all cases where deceptive hiring practices were evident, the workers originated from the Indian Subcontinent countries of Nepal, India, Pakistan, Bangladesh, and Sri Lanka. The deception was from recruiting agencies that were being paid by these workers.”³⁴

The MNF-I IG memo details the debt bondage some of these laborers faced. “A large majority of workers from the Indian Subcontinent incurred recruiting fees of up to 1 year’s salary, which far exceeded the legal limits of the countries where the recruitment took place. ... Recruiting fees from approximately \$2,000 to \$3,000 are normal for workers from the Indian Subcontinent; TCN [third-country national] workers typically make only \$240 to \$400 per month. These workers reported they usually raise money to pay their recruiting fees by selling or mortgaging their land/house to a bank at 18-24% interest per year. Other workers borrow money from family, friends, and their villages to pay these illegal fees to recruiters. In several extreme cases, TCN workers relinquished all pay for between 9 to 12 months of labor, in order to repay their recruiting fee and interest.”³⁵ If this isn’t indentured servitude, I don’t know what is.

MNF-I IG may have only scratched the surface as it only conducted inspections, rather than investigations or audits, which are more in-depth.

First Kuwaiti said in a written statement to Congress that “allegations by former employees that First Kuwaiti engages in human trafficking and mistreats its work force [are] unsubstantiated claims.”³⁶

³⁴ Joint Hearing before the Subcommittee on National Security and Foreign Affairs and the Committee on Oversight and Government Reform, 110th Congress, regarding Allegations of Waste, Fraud and Abuse at the New U.S. Embassy in Iraq, pp. 141-142. <http://oversight-archive.waxman.house.gov/documents/20071114164530.pdf> (Downloaded October 31, 2011)

³⁵ Joint Hearing before the Subcommittee on National Security and Foreign Affairs and the Committee on Oversight and Government Reform, 110th Congress, regarding Allegations of Waste, Fraud and Abuse at the New U.S. Embassy in Iraq, pp. 141-142. <http://oversight-archive.waxman.house.gov/documents/20071114164530.pdf> (Downloaded October 31, 2011)

³⁶ Statement of First Kuwaiti General Trading & Contracting Company before the Committee on Oversight and Government Reform regarding Allegations of Waste, Fraud, and Abuse at the New U.S. Embassy in Iraq, July 26, 2007, p.4.

Investigative activity and enforcement

During my research, I tried to pin down the total number of U.S. government investigations into federal contractors accused of human trafficking in contingency operations (both labor and sex trafficking).

For instance, I reviewed the publicly available Department of Justice (DOJ) reports on human trafficking enforcement, which summarize investigative activity across the federal government. There were no Defense Department investigations into trafficking in persons in 2006 and 2007, according to the annual reports.³⁷ The section detailing the military's efforts is altogether missing in the 2008 report.³⁸ The Justice Department declined to comment on the missing section in its 2008 report when I asked the DOJ about this last year. In the 2009 report, the most recent available online (the report is dated July 2010), this section is also missing.³⁹

http://democrats.oversight.house.gov/images/stories/subcommittees/NS_Subcommittee/7.26.07_Iraq_Embassy/First_Kuwait_Written.pdf (Downloaded October 31, 2011)

³⁷ Department of Justice, *Assessment of U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2006*, September 2007, p. 18. <http://www.justice.gov/archive/ag/annualreports/tr2007/assessment-of-efforts-to-combat-tip0907.pdf> (Downloaded October 31, 2011); Department of Justice, *Attorney General's Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2007*, May 2008, pp.25-26. <http://www.justice.gov/archive/ag/annualreports/tr2007/agreporthumantrafficking2007.pdf> (Downloaded October 31, 2011)

The 2006 report was originally released in May 2007, and re-released in September 2007 with the Department of Defense section added. In June 2007, in written responses to questions for the record after a Senate hearing, a Justice Department official said DOJ and DoD would add a DoD section on its anti-trafficking after Martina Vandenberg proposed such a section. Hearing before the Senate Subcommittee on Human Rights and the Law of the Committee on the Judiciary, regarding Legal Options to Stop Human Trafficking, March 26, 2007, pp.32-33.

<http://www.gpo.gov/fdsys/pkg/CHRG-110shrg37695/pdf/CHRG-110shrg37695.pdf> (Downloaded October 31, 2011) <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg37695/pdf/CHRG-110shrg37695.pdf> pages 32-33.

Original release of 2006 report. Department of Justice, *Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006*, May 2007.

<http://www.justice.gov/archive/ag/annualreports/tr2006/agreporthumantrafficking2006.pdf> (Downloaded October 31, 2011)

³⁸ Department of Justice, *Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2008*, June 2009.

<http://www.state.gov/documents/organization/125840.pdf> (Downloaded October 31, 2011).

³⁹ Department of Justice, *Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons*, July 2010.

<http://www.justice.gov/ag/annualreports/tr2009/agreporthumantrafficking2009.pdf> (Downloaded October 31, 2011)

In 2009, according to a 2010 DoD IG report, there was “one report of preliminary investigative activity of a contractor in Iraq” for labor trafficking violations, and while briefed to the Justice Department, prosecutors “determined facts and circumstances did not warrant further action.” The contractor took “corrective action,” according to the DoD IG report. This investigation may be the same one as that into Najlaa, but the DoD IG would not confirm this.

Over at the State Department, two investigations, one each on sex and labor trafficking, were opened in 2009 and closed in 2010, a State Inspector General spokesman told me last year. He said both cases were unsubstantiated, and declined to name companies or countries involved in the allegations.

The latest State Department annual report on human trafficking issued this past summer notes “during the reporting period, allegations were investigated and one employee was dismissed by a DoD contractor.” However, “no prosecutions occurred and no contracts were terminated” for the reporting period, although “allegations against federal contractors engaged in commercial sex and labor exploitation continued to surface in the media.”⁴⁰

In sum, although there are a few investigations into alleged contractor involvement in human trafficking in contingency operations, so far none of them have led to any prosecutions. It is possible that none of them warranted prosecution because allegations were not substantiated, prosecutors felt there wasn’t enough evidence to prosecute, or for other reasons. In at least two cases, prosecutors felt other appropriate remedies existed that were utilized so decided not to prosecute. Without knowing more, it can be hard to second-guess prosecutorial discretion in these cases.

But in one case, that of the Fijian women covered by *The New Yorker*, government investigators did not interview the women, according to the author of the article. That is a reason to be skeptical of the investigative outcome in that case.

⁴⁰ Department of State, “Country Narratives: Countries N Through Z: Office To Monitor and Combat Trafficking in Persons Trafficking in Persons: Report 2011.” <http://www.state.gov/g/tip/rls/tiprpt/2011/164233.htm> (Downloaded October 31, 2011)

Similarly, a labor broker in Sri Lanka told me during my reporting with David Isenberg on the Najlaa story that his company had submitted complaints in late 2008 “to the U.S. Army and other authorities” asking them to stop payments to Najlaa until the laborers and his company were paid, but said the complaints were not acknowledged and that there were no inquiries. POGO was provided with copies of the complaints the labor broker said he provided to the U.S. government. As of April this year, he said U.S. government investigators had not interviewed him or anyone with his company.⁴¹

While not criminal prosecutions, there have been some civil and administrative actions recently. Earlier this year, the Justice Department joined a whistleblower qui tam lawsuit that alleged that ArmorGroup North America had not reported trafficking-in-persons violations by its personnel as required by its contract. ArmorGroup North America, which had a contract to defend the U.S. Embassy in Kabul, settled the lawsuit for \$7.5 million.⁴² In a statement, ArmorGroup North America’s parent company said in a statement that the settlement was made “to avoid costly and disruptive litigation—and that there has been no finding or admission of liability.”⁴³

In addition, according to two State Department Office of Inspector General reports issued earlier this year that contain the findings of an audit and evaluation of U.S. Embassy locations in the Middle East, there are widespread indications of trafficking among the labor force working for embassy contractors and subcontractors. The State Department OIG stated in one report that two contractors were disqualified from winning future contracts. One contractor increased the risk of trafficking in persons “through exploitative conditions or work, including long work hours and payment issues.”⁴⁴ Another was disqualified and had its contract terminated in Jordan because the

⁴¹ David Isenberg and Nick Schwellenbach, “Documents Reveal Details of Alleged Labor Trafficking by KBR Subcontractor: The Najlaa Episode Revisited,” *POGO Blog*, June 14, 2011. <http://www.pogo.org/pogo-files/alerts/contract-oversight/co-ht-20110614.html>

⁴² Department of Justice, Office of Public Affairs, “Armor Group North America and Its Affiliates Pay \$7.5 Million to Resolve False Claims Act Allegations,” July 7, 2011. <http://www.justice.gov/opa/pr/2011/July/11-civ-889.html> (Downloaded October 31, 2011)

⁴³ Wackenhut Services Inc., “ArmorGroup North America Reaches Settlement with Dept. of Justice Resolving Former Employee’s Allegations,” July 7, 2011. <http://www.prnewswire.com/news-releases/armorgroup-north-america-reaches-settlement-with-dept-of-justice-resolving-former-employees-allegations-125162109.html> (Downloaded October 31, 2011)

⁴⁴ Department of State, Office of Inspector General, Middle East Regional Office, *Performance Evaluation of Department of State Contracts to Monitor Vulnerability to Trafficking in Persons Violations in the Levant (MERO)-I-11-07*, March 2011, p. 4. <http://oig.state.gov/documents/organization/160376.pdf> (Downloaded October 31, 2011)

“contracting officer stated that a female employee of the contractor alleged that her employer had solicited her to engage in prostitution” and had thus violated the Federal Acquisition Regulation’s prohibition on trafficking in persons.⁴⁵

Recommendations

If we assume that enforcement is not where it should be despite the 2002 Bush Administration National Security Presidential Directive 22, which set forth a “zero tolerance” policy on trafficking that includes prosecution and suspension and debarment of federal contractors,⁴⁶ what can be done?

One thing that can be done is to ensure that investigations are thorough and that investigative resources are adequate. One obvious deficiency in some of the investigations I’ve looked into is the lack of interviews of victims and other witnesses, including individuals who have directed submitted complaints to the government.

This raises an immediate red flag—how can an investigative agency make a determination that allegations are not substantiated without interviewing the individuals making the allegations?

This Subcommittee should consider requesting some of the underlying documentation on these cases, and a briefing on all investigations into trafficking by State and DoD investigators.

In addition, lurking in the background of almost any conversation on criminal enforcement in Iraq and Afghanistan are the oversight voids that existed for some time both in Iraq and

“Specifically, all employees for one contractor reported they routinely worked double shifts equating to 70-80 hours per work week, but did not receive overtime pay, in violation of local labor law. In addition, all the employees reported having to pay fees to the employer to renew their work permits at a cost amounting to approximately 1 month’s salary. However, at the time of OIG’s field work, the contract was in its final days of performance and a new contract solicitation had already been issued. Moreover, the embassy at which the contract was executed had previously learned of the contractor’s conduct and had disqualified it from issuing a proposal for the new contract.”

⁴⁵ Department of State, Office of Inspector General, Middle East Regional Office, *Performance Evaluation of Department of State Contracts to Monitor Vulnerability to Trafficking in Persons Violations in the Levant* (MERO)-1-11-07, March 2011, p. 4. <http://oig.state.gov/documents/organization/160376.pdf> (Downloaded October 31, 2011)

⁴⁶ Memorandum from the Office of the White House, to the Vice President, et al, regarding National Security Presidential Directive/NSPD-22 regarding Combating Trafficking in Persons, December 16, 2002. <http://www.combat-trafficking.army.mil/documents/policy/NSPD-22.pdf> (Downloaded October 31, 2011)

Afghanistan. At the beginning of and throughout contingency operations, adequate investigative and prosecutorial resources need to be in place. The proposed Special Inspector General for Overseas Contingency Operations (SIGOCO) could be the way to ensure that these resources are in place. The Wartime Contracting Commission and the Special Inspector General for Iraq Reconstruction have recommended the SIGOCO concept, and Representative John Tierney has introduced H.R. 2880, which would create a SIGOCO.⁴⁷

Beyond ensuring that investigators are conducting, and that they have the resources to conduct, adequate investigations, we need to ensure that there are not gaps in the rule of law. Currently, there is an ambiguity regarding the application of U.S. criminal law to non-DoD contractors and subcontractors (such as those working for State and USAID).

As the Commission on Wartime Contracting stated in its final report:

Expansion of investigative authority and jurisdiction would facilitate imposing effective accountability on contractors, especially foreign contractors and subcontractors who are difficult or impossible to subject to U.S. law. Increasing contractor accountability would also enhance protections against exploitation of persons.⁴⁸

To expand jurisdiction and authority, the Civilian Extraterritorial Jurisdiction Act, or CEJA, should be passed. House and Senate versions of the CEJA (H.R. 2136 and S. 1145) were introduced over the summer.

Yet another answer is that the government should create incentives for prime contractors to hold their supply chains accountable.

⁴⁷ H.R. 2880, Contingency Operation and Emergency Oversight Act of 2011. <http://www.gpo.gov/fdsys/pkg/BILLS-112hr2880ih/pdf/BILLS-112hr2880ih.pdf> (Downloaded October 31, 2011)

⁴⁸ Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling costs Reducing risks*, August 2011, p. 11. http://www.warimecontracting.gov/docs/CWC_FinalReport-lowres.pdf (Downloaded October 31, 2011)

The Commission recommended that enforcement be strengthened through prime contractors. One of their recommendations is to:

Direct agencies to incentivize contingency contractors to end trafficking in persons by labor brokers and subcontractors by requiring prime contracts to include performance incentives, such as award fees, and mandate that an assessment of contingency contractors' management of trafficking in persons be included in performance assessments.⁴⁹

Regarding the Commission's recommendation on performance assessments, the DoD published guidance last year directing contracting officer representatives to include trafficking considerations as part of their quality assurance surveillance plans so that contractor "non-compliance with FAR clause 52.222-50, Combating Trafficking in Persons, is brought to the immediate attention of the contracting officer."⁵⁰ It is not clear if an assessment of prime contractor management of its subcontractors and labor brokers in regards to trafficking is part of these quality assurance surveillance plans, but it should be if it is not.

Another partial solution is language contained in the House version of the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2011 (H.R. 2830) that would greatly strengthen the role of the DoD trafficking-in-persons program and improve reporting on enforcement activities. We fully support these provisions, but believe the section on foreign labor contracting should be amended to apply to foreign laborers recruited to work on U.S. government contracts (and subcontracts) outside of the U.S.

A former federal prosecutor, Sam McCahon, who is conducting a private investigation of labor trafficking, has a proposal to amend the TVPRA to expand coverage in the U.S. Code, Title 18, Section 1351—which is related to fraud in foreign labor contracting—which could help enforcement efforts. Currently Section 1351 makes it illegal to intentionally deceive labor

⁴⁹ Commission on Wartime Contracting in Iraq and Afghanistan, *Final Report to Congress: Transforming Wartime Contracting: Controlling costs Reducing risks*, August 2011, p. 160.

http://www.warimecontracting.gov/docs/CWC_FinalReport-lowres.pdf (Downloaded October 31, 2011)

⁵⁰ PGI 222.17—Combating Trafficking in Persons. http://www.acq.osd.mil/dpap/dars/pgi/pgi.htm/PGI222_17.htm (Downloaded October 31, 2011)

recruits outside of the U.S. for work in the U.S. with materially false or fraudulent pretenses, representations, or promises regarding the employment. That language should be expanded to include fraudulent labor recruitment and other questionable practices for work performed on U.S. government contracts performed outside of the U.S.

The problem of trafficking can also be approached with legal tools other than the TVPA. Often there is evidence of many elements of a trafficking violation, but not enough to put together an airtight criminal case on trafficking itself. However, the trafficking scheme may contain elements of procurement fraud and/or kickbacks between subcontractors and labor brokers. Investigators and prosecutors should consider going after those violations if they have prosecutorial merit.

We also need to make sure administrative tools such as suspensions and debarments, even in the absence of criminal prosecutions or civil actions in federal court, are used when warranted to protect the interests of the U.S. government. Furthermore, the government should add information on a contractor's connections to trafficking into its Past Performance Information Retrieval System. In our examination of the Najlaa case, David and I noted that, despite all the government's information on Najlaa's labor abuses as a subcontractor, nothing negative existed in the government's Past Performance Information Retrieval System entries on the company.⁵¹

Trafficking-in-persons training and contractual clauses will also help raise awareness to prevent this practice and promote the reporting of violations when they occur. The DoD IG has found that a substantial percentage of the contracts they have audited do not have the mandatory trafficking-in-persons clause.⁵² This is troubling, since, as the DoD IG pointed out in its report earlier this year:

⁵¹ Government Accountability Office, Bid Protest Decision regarding Najlaa International Catering Services, B-402434; B-402434.2 <http://www.gao.gov/decisions/bidpro/402434.htm> (Downloaded October 31, 2011) "Since no past performance information had been submitted for the firm, its initial proposal received an unknown risk rating under the past performance factor."

⁵² Department of Defense, Office of Inspector General, *Evaluation of DoD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command* (Report No. SPO-2011-002), January 18, 2011, p. 5. http://www.dodig.mil/SPO/Reports/SPO-2011-002_508.pdf (Downloaded October 31, 2011); Department of Defense, Office of Inspector General, *Evaluation of DoD Contracts Regarding Combating Trafficking in Persons* (Report No. IE-2010-001), January 15, 2010, p. 7. http://www.dodig.mil/inspections/IE/Reports/DODIG_Evaluation_CombatingTrafficking_Persons2010.pdf (Downloaded October 31, 2011)

Noncompliance with the requirement to include the CTIP [Combating Trafficking in Persons] clause in contracts has two negative effects. First, contractors remain unaware of the U.S. Government's "zero tolerance" policy and self-reporting requirements regarding CTIP. Second, contracting offices were potentially unable to apply applicable remedies to correct contractor violations when the CTIP clause was not properly present. The number of contracts without any form of a CTIP clause indicates that additional effort is still necessary to ensure compliance.⁵³

This is a baseline issue that needs to be remedied, and we need to ensure these clauses also flow down to subcontractors, which is where we've seen most of the problems with labor trafficking.

Additionally, every contractor and subcontractor site should be required to post in the language of the foreign nationals working on site a poster explaining their rights and offering a hotline for violations of trafficking in persons. This has been successful in other contexts, such as the requirement on Recovery Act job sites to post signage regarding whistleblower protections and a hotline to report waste, fraud, and abuse.⁵⁴ This would help meet the intent of the Federal Acquisition Regulation, which requires that contractors inform their employees of the U.S. government's zero tolerance policy.⁵⁵

The nexus between trafficking and our war zone supply chain has existed on a significant scale at least since the conflict in the Balkans at the end of the 1990s. Although there are some differences between that situation and the one that exists today, there are far more similarities. There are many horror stories. Enforcement is lacking in many key ways. Whistleblowers,

⁵³ Department of Defense, Office of Inspector General, *Evaluation of DoD Contracts Regarding Combating Trafficking in Persons: U.S. Central Command* (Report No. SPO-2011-002), January 18, 2011, p. 6. http://www.dodig.mil/SPO/Reports/SPO-2011-002_508.pdf (Downloaded October 31, 2011)

⁵⁴ Recovery.gov, "Whistleblower Information." <http://www.recovery.gov/Contact/ReportFraud/Pages/WhistleBlowerInformation.aspx> (Downloaded October 31, 2011)

⁵⁵ Federal Acquisition Regulations (FAR), 52.222-50 Combating Trafficking in Persons. https://www.acquisition.gov/far/html/52_222.html#wp1151848 (Downloaded October 31, 2011); Federal Acquisition Regulations (FAR), Subpart 22.17—Combating Trafficking in Persons. https://www.acquisition.gov/far/html/Subpart%2022_17.html (Downloaded October 31, 2011)

journalists, NGOs, and the fourth estate have been in the vanguard raising these issues. We must be vigilant in deploying U.S. policy and resources in ways that combat modern-day slavery, especially when our tax dollars may be inadvertently fueling it. We cannot allow these crimes to continue with impunity.

Before I conclude, I want to acknowledge some of the people whose work has informed mine. Thanks to the work of Dyncorp whistleblowers Kathryn Bolkovac and Ben Johnston who disclosed human trafficking by Dyncorp employees in the Balkans, and the investigation and advocacy of attorney Martina E. Vandenberg, formerly with Human Rights Watch, Sarah Mendelson, formerly with the Center for Strategic and International Studies, and many others, we have the laws, regulations, and training that we have today.

Mr. LANKFORD. Thank you, Mr. Schwellenbach.
Mr. McCahon.

STATEMENT OF SAM W. MCCAHERN

Mr. MCCAHERN. Chairman Lankford, Ranking Member Connolly, members of the committee, thank you for inviting me to testify before you today and thank you for taking an interest in the practice of modern day slavery on government contractors, and thank you for your commitment to take decisive action in this area.

I lived approximately 9½ years in the Gulf region, Kuwait, Iraq, Saudi Arabia. Trafficking in persons is not a unique phenomena to government contracts; it is par for the course in these countries, which is why the Department of State ranks them on tier 2 and tier 3 for trafficking countries. In support of our trafficking countermeasures, my colleague, Sindhu P.K., and I have collectively spoken with several thousand victims of trafficking on government contracts both in Iraq and back in South India.

As an attorney who has spent a significant portion of my career investigating allegations of procurement fraud on behalf of the U.S. Government and corporations, I look forward to talking to you today about the dynamics of trafficking in persons on government contractors performed in contingency areas.

I would like to focus and summarize three areas. The first I will describe the common schemes used by contractors and recruiters to exploit workers and reduce them to the status of indentured servants. Second, briefly describe the scope of trafficking on U.S. Government contractors and the inadequacy of Government efforts to date; and, finally, touch upon some mitigation measure that can be taken by the Government to abolish this practice.

Although there are many companies engaged in trafficking on U.S. Government contracts in Afghanistan and Iraq, they use a tried and tested business model to perpetrate the fraud. The following steps are standard operating procedure for the traffickers and also the subcontractors and prime contractors to take kickbacks from the traffickers.

First, subcontractor-prime contractor establishes direct contact with the recruiting company in the developing nation. The purpose of the personal contact by the subcontractor or prime is to solidify the kickback scheme.

Second, arrangements are made for the contractor company to pay the recruiter for the services of recruiting, such as air fare, visas, cost of medical examinations.

Third, the contractor and the recruiter agree to the amount of the kickback paid to the contractor for giving the recruiting firm the business. The kickback is typically 50 percent of the money charged by the recruiter to the prospective employee. This is where the violation of the Anti-Kickback Act of 1986 occurs.

Fourth, the recruiter retains the services of subagents to solicit victims. This process facilitates the layering or onion skin effect in order to provide plausible deniability up the trafficking chain.

Fifth, the recruiter will solicit victims from farming villages who are typically without resources. This category of victim is also less sophisticated concerning the fraudulent techniques used by recruiters.

Sixth, the recruiter deceives the victim into believing that he will receive money far beyond which he will actually earn. Oftentimes, but not always, the location of the work site is misrepresented.

The seventh step, the recruiter's agent informs the victim he will need to pay a fee between \$2,500 and \$5,000 in order to get the well-paying job and good working conditions servicing the U.S. Government. This action induces the victim to pay the high recruiting fee and will help ensure future compliance with the contractor's dictates because the victim will become indebted in order to pay the commission to the recruiter.

Eight, victims will typically obtain the money from a loan shark or use their house or their dowry gold as collateral. The interest on the loan is between 35 and 45 percent. The money paid the loan shark must be provided to the recruiter or subagent prior to departure for the work site.

Workers are not provided a written contract prior to the departure from their host nation. If they do receive an agreement once they arrive at the work site, it will not be written in a language they can understand.

The 10th phase, once the victim arrives in the combat zone, he is typically housed for several months without pay and not permitted to call his family. When he does receive his first work and pay, it is typically 50 percent of what he was promised by the recruiter. He tells his employer what was promised by the recruiter, but the subcontractor or prime informs him that is a matter between the worker and the recruiter.

By this time, the worker has missed monthly payments to the loan shark. He now pays approximately 50 to 75 percent of his monthly wages just to service the interest on the loan. Even though he knows he was deceived, he is helpless. If he speaks to anyone with the Government, he is terminated immediately and sent home. Often we found that the prime contractor instructs the employees that they are not allowed to inquire or report trafficking conditions of subcontractors, thereby completing the conspiracy of silence and mitigating detection of the crime.

In response to the focal question of this committee about the effectiveness of the Trafficking in Persons Act on the process on contingency contracts, it is not had any deterrent effect.

Several mitigation measures can be taken. I would be glad to address those in the questions.

Thank you for the time to speak.

[The prepared statement of Mr. McCahon follows:]

**Written Testimony of Sam McCahon, McCahon Law Office, LLC
Before the House Committee on Oversight and Government Reform,
Subcommittee on Technology Information Policy, Intergovernmental Relations and
Procurement Reform.**

Subject: Are government contractors exploiting workers overseas? Examining enforcement of the Trafficking Victims Protection Act?"

November 2, 2011

Chairman Lankford, Ranking Member Connolly, and members of the Subcommittee:

Thank you for inviting me to testify before you today and thank you for taking an interest in this practice of modern day slavery. I'm Sam McCahon and I am currently engaged in private practice, working primarily in the Middle East & India. The focus of my practice is U.S. government contracting in contingency areas and the establishment of corporate compliance programs for organizations in developing nations and contingency environments. A significant portion of my time is dedicated to pro bono work to combat trafficking in persons on U.S. government contracts. In support of the trafficking counter-measures my colleague, Sindhu P.K., and I have collectively spoken with several thousand victims of trafficking on government contracts.

Background

As an attorney who has spent a significant portion of his career investigating allegations of procurement fraud on behalf of the U.S. government and corporations, I look forward to talking to you today about the dynamics of trafficking in persons on government contracts performed in contingency areas.

In my written testimony I would like to focus on three key issues relating to trafficking in persons on U.S. government contracts in contingency areas:

- First, I will also describe the common schemes used by subcontractors and recruiters to exploit workers and reduce them to the status of indentured servants.
- Second, I'll describe the scope of trafficking on U.S. government contracts in particular and the inadequacy of governmental efforts to date to mitigate, much less stop the prolific trafficking in laborers from developing nations who are serving U.S. government interests.
- Finally, I will touch on mitigation measures the government can take to abolish trafficking in humans on government contracts.

Prior to elaborating on the key points of discussion, I would like to share with the committee some of the life experiences that have facilitated my observations and influenced the analysis of fraudulent recruiting and kickbacks taking place on government contracts.

My career in government contracts began twenty-two years ago as an assistant professor of government contracts at the Defense Acquisition University (ALMC). Since that time, I have served as Chief of the Contract Law Branch for Saudi Arabia and Kuwait, 22nd Support Command, in Operation Desert Storm; U.S. Army Regional Contract Counsel and Procurement Fraud Advisor for Bosnia, Croatia and Hungary (NATO); and as a trial attorney in the U.S. Army Procurement Fraud Division, Suspension/Debarment Branch. I have lived in Afghanistan, Iraq, Kuwait and Saudi Arabia for a total of nine years. With the exception of the military tours in Afghanistan, my efforts have focused on U.S. government contracts, representing the government and government contractors. I have also served as a federal prosecutor with the U.S. Department of Justice and Assistant Attorney General, State of Missouri, investigating and prosecuting fraud against the U.S. Government.

Although there are many companies engaged in trafficking on U.S. government contracts in Afghanistan and Iraq, they used a tried and tested business model to perpetrate the fraud. The following steps are the standard operating procedure:

1. Subcontractor/Prime contractor establishes direct contact with a recruiting company in the developing nation. The purpose of the personal contact by the subcontractor is to solidify the kickback scheme.
2. Arrangements are made for the contractor company to pay the recruiter for the services of recruiting, i.e. physical, airfare to site, VISA and fee.
3. The contractor and recruiter also agree to the amount of the kickback paid to the contractor for giving the recruiting firm the business. This kickback is typically 50% of the money charged by the recruiter to the prospective employee. (This conduct constitutes a violation of the Anti-Kickback Act of 1986)
4. Recruiter retains the services of subagents to solicit victims. This process facilitates the layering or onion skin affect in order to provide plausible deniability up the trafficking chain.
5. The recruiter will solicit victims from farming villages who are typically without resources. This category of victim is also less sophisticated concerning the fraudulent techniques used by the recruiter.
6. Recruiter deceives the victim into believing that he will receive money far beyond that which he will actually earn. Often times, but not always, the location of the worksite is misrepresented.
7. Recruiter's agent informs the victim that he will need to pay a fee, between \$2,500-\$5,000 in order to get the well paying job with good working conditions servicing the U.S. government. This action induce the victim to pay the high recruiting fee and will help ensure future compliance with the contractors dictates because the victim will become indebted in order to pay the commission to the recruiter.
8. Victims will typically obtain the money from a loan shark or use their house or dowry gold as collateral. The interest on the loan is between 35% and 45%. The money paid to the loan shark must be provided to the recruiter/subagent prior to departure for the worksite.
9. Workers are not provided a written contract prior to their departure from their host nation. If they do receive an agreement once they arrive at the worksite, it will not be written in a language they can read.

10. Once the victim arrives in the combat zone he is typically housed for several months without pay and not permitted to call his family. When he does receive his first work and pay it is typically 50% of what he was promised by the recruiter. He tells him employer what was promised by the recruiter, but the subcontractor/prime informs him that is a matter between the worker and the recruiter.

By this time, the worker has missed monthly payments to the loan shark. He now pays approximately 50-75% of his monthly wages just to service the interest on the loan. Even though he now knows he was deceived, he is helpless. If he speaks to anyone with the government he is terminated immediately and sent home. (The prime contractor typically instructs its employees that they are forbidden to inquire or report trafficking conditions of subcontractors, thereby completing the conspiracy of silence and mitigating detection of the crime.) The victim cannot quit because he has the outstanding loan to the loan shark. He must remain, working 12 hour days, 6 to 7 days per week in the combat zone. By the time he completes two to three years, he has still not retired the debt. He is an indentured servant to the U.S. government contractor.

In response to the focal question of this subcommittee, the Trafficking Victims Protection Reauthorization Act has not had any deterrent effect on labor trafficking on government contracts. Subcontractors and labor brokers have been exploiting and engaging in modern day slavery in support of U.S. government contractor for nearly 10 years. The practice is unabated. Moreover, prime contractors have a history of turning a blind eye to the practice and lack any motivation to get involved in mitigation efforts. My first exposure to the prime contractor response to trafficking evidence occurred at a conference where I was a speaker. The conference was conducted in the summer of 2007 and was intended to discuss measures contractors could take to mitigate the trafficking practice. A Vice President responsible for contracting was asked what measures his company, a current LOGCAP prime contractor, was taking to mitigate the practice of trafficking on government contracts. He merely stated, "We have no privity of contract with the subcontractor's employees, so it is not our problem". Unfortunately, that is the prevalent position taken by prime contractors.

There are several mitigation measures the government can take to abolish human trafficking on U.S. government contracts. None of the measures will result in a budgetary impact. Together, they would have the affect of abolishing trafficking on government contracts. From a contract administration perspective, the government can shift the responsibility for abolishing trafficking by subcontractors where it belongs, with the prime contractor. This task can be accomplished in the solicitation phase of the acquisition cycle for contracts anticipated to use unskilled or semi-skilled labor. The procurement contracting officer can require the prime contractor to provide a Trafficking in Persons mitigation strategy and recruiting plan to be evaluated as evaluation factors for award. Just as the government requires a subcontracting plan for socio-economic reasons, it should evaluate measures the contractor will take to abolish the practice of modern day slavery currently being supported by the U.S. taxpayer. The solicitation can also mandate that all workers on the contract must receive a written copy of their contract, binding upon the worker's employer, that identifies at a minimum: 1) the work location; 2) amount of compensation; 3) any fees charged to the worker; 4) duration of the agreement; and 5) the agreement must be written in the language of the host nation from which the worker is recruited and provided at least five days prior to departure for the worksite. The subcontractor should also

be held responsible for payment to the worker the day after departure from the nation from which the worker is recruited.

From a legislative perspective, Congress can amend 18 U.S.C. §1351, (Fraud in Foreign Labor Recruiting) to include language prohibiting fraudulent recruiting in support of U.S. government contracts performed outside the U.S.. This minor amendment would go to the crux of the human trafficking phenomena on government contracts, fraudulent recruiting. It would enhance reporting and adverse action by triggering the mandatory contractor disclosure requirements contained in the Closing the Contractor Fraud Loophole Act of 2008 as implemented in FAR 3.1.

A quote recently appeared in the New Yorker about trafficking on government contracts. The article was written by Sarah Stillman after conducting on the ground interviews with victims. They are words I have had relayed to me on many occasions by my colleague, Sindhu, who has also spoken with thousands of trafficking victims on U.S. government contracts: "The American people are a good people...they will help us if they know what is happening".

Thank you for the opportunity to share with you, the representatives of the American people, what is happening to hundreds of thousands of laborers supporting U.S. government operations and policies in Iraq and Afghanistan.

Sam W. McCahon

Mr. LANKFORD. Thank you for your testimony.

I now recognize myself. I am going to do 6 minute question rounds. Are you okay with that?

Mr. CONNOLLY. Fine.

Mr. LANKFORD. There you go, we just settled it.

This is one of those moments where you think, okay, where do we start? All right, let me begin here. Do you feel like, anyone can answer this, that we have the right policies and regulations in place? Because this is not some new feature that we have never heard of; this has gone on now 20 years. All the way back to Bosnia they were very aware that this has flipped into our subcontracting and contracting process for overseas contingencies.

At this point we have added new laws, added new regulations, added new policies, added new procedures over and over again, added new officers and lead in it; yet, we still have stories of this occurring. Do we have the right policies and procedures and regulations in place, in your perspective? And anyone can answer that at this point.

Mr. MCCAHERN. Chairman Lankford, members of the committee, I do believe we have the right regulations in place. The problem is transparency and reporting. There are not enough agents on the ground to report this conduct. It has to be the responsibility of the prime contractor. But now the prime contractor has no incentive and all the disincentive in the world to report the conduct. It makes the prime contractor look bad if they do report it, and they get no incentive for engaging in reporting.

Mr. LANKFORD. Okay. I am going to come back to that. Anyone else have another comment to add to that? Mr. Isenberg.

Mr. ISENBERG. Mr. Chairman, I believe that the right policies are in place, but I believe that some of those policies and regulations are rarely used, in part due to opposition from the industry. For example, major trade associations, I have in mind the Professional Services Council and the International Stability Operations Association to name two, have been quite voluble in their opposition to the Government using its powers of suspension and debarment against contractors who do wrong things.

Mr. LANKFORD. But do we have suspension and debarment being applied to people that are doing human trafficking? If we are aware that is happening on the ground, do we know of a case that a contractor has been suspended or debarred?

Mr. SCHWELLENBACH. There was one State Department embassy subcontractor, I believe in Jordan or somewhere else in the Lavant, that was terminated earlier this year, according to a State Department Office of Inspector General report, after the contracting officer discovered that there was a violation of the FAR for prostitution. Apparently one of the employees was being solicited by a manager of the subcontractor.

Mr. LANKFORD. Okay, so one?

Mr. SCHWELLENBACH. That's all I know of.

Mr. LANKFORD. As far as we know at this point? I mean, for a policy that, as Ms. Wyler referenced earlier, has come up again and again and again, these zero tolerance policy for this, why is it that I talk to soldiers coming back and ask them what it was like in the wire, and they tell me stories about TCNs over and over again

in their abusive living conditions, in the way that they are treated on the ground, the recruiter fees, how they are trying to get out, they can't get home. I mean, those are the stories that I hear from soldiers when they begin to tell me about what was happening on the ground while they are in Afghanistan. Those are the reports that continue to come back.

So if we have the right regulations in place, we have a zero tolerance policy, we have the options in the toolbox, suspension and debarment, what is holding us back to actually enforcing this on contractors and subcontractors so we can make this stop?

Mr. SCHWELLENBACH. I will weigh in here. I completely agree with my co-panelists here. And while I think there are some tweaks to law and regulation that would be beneficial, such as clearing up any ambiguity about U.S. jurisdiction over non-DOD contractors in overseas contingency operations. I think the biggest problem is commitment to enforcement of the laws and regulations on the books.

I didn't get to it in my oral, but in my written testimony I recount the example of the Nepali laborers who were killed in Iraq on the Amman to Baghdad Highway. Attorney Martina Vandenberg, several years ago before a Senate subcommittee, remarked that the DOD IG, and this was several years ago, keep in mind, seemed to confuse the principles of civil and criminal law, and the IG said, well, we couldn't go after the subcontractor because there was no privity of contract between the U.S. Government and the subcontractor. But this was a criminal matter and, according to the Military Extraterritorial Jurisdiction Act, criminal jurisdiction extends to all tiers of subcontracting. So if the remarks by the then-acting DOD IG were correct, they were totally confused.

Mr. LANKFORD. Well, let me clarify this as well. Do you have a perspective on what is an appropriate recruiting fee or these broker fees at this point? For someone to pay a \$2,500 to \$5,000 broker fee to someone in a very poor country, and then they go and they work and they receive less than that, than what they paid, that is difficult not to define that as slavery. That is very difficult not to say this is not some sort of debt bondage, that we put you in \$5,000 worth of debt, and if you work for us in a year you will get your \$5,000 back, maybe, unless you mess up or report what is going on, and then you will get way less than that and we will send you home.

Is there an appropriate level you would say that is a recruiter fee?

Mr. MCCAHERN. Chairman Lankford, I believe that there is an appropriate recruiting fee; it is defined by the host nations. All of these nations that produce foreign labor have their own laws. Some say a specific amount, like Kenya, maybe \$275; others will limit it to 1 month of the salary as a maximum recruiting fee for foreign laborers; which also creates a conflict within the U.S. Government contracts, which say that the contractors are abiding by all the laws of the host nation, wherever they are performing.

Mr. LANKFORD. But not having to pay for their travel, their flight, all that stuff in transitioning, that is not an appropriate level? Obviously, that should be paid for in the contract.

Mr. McCAHON. And in many of the countries, Mr. Chairman, for instance, Kuwait mandates that the employer pay for those fees, and the housing and transportation over.

Mr. LANKFORD. Someone, when we are going through the contract, we are aware of what it costs to move people into the country, what it costs for travel, what it costs for a laborer. So at some point we can say this is out there. We are not tracking it, but someone signed off on this contract with the details within it of what that money would pay for, so either that money is being skimmed off completely by an unscrupulous contractor or we are aware this is going on. But it can't be none of the above on that.

With that, I would like to yield to Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

As I said in my opening statement, taking away human autonomy is perhaps the most abhorrent crime imaginable, and it occurs with murder and it occurs with human trafficking. What you have described is a process of, the most charitable phrase, indentured servitude. And that is being charitable.

Ms. Wyler, you noted that the 2003 TVPA directed agencies to cease contracting with firms that engage in human trafficking or which sexually abuse their employees. Is it correct that not a single case of trafficking or sexual assault has been prosecuted under this statute or the 19 other laws, executive orders, and DOD memos banning such trafficking and abuses?

Ms. WYLER. Representative Connolly, thank you for your question. Unfortunately, issues related to the U.S. criminal justice system and the status of prosecutions in U.S. courts are beyond the scope of my expertise, but I am happy to share your question with my colleagues in the American—

Mr. CONNOLLY. Are you aware, Ms. Wyler, of a single prosecution?

Ms. WYLER. As far as I know, according to the State Department's last two reports, there have not been prosecutions.

Mr. CONNOLLY. Right.

Mr. McCahon, why? One thing I gleaned from your testimony, if I can interrupt, we have created a system of disincentive for reporting. The prime contractor gets dinged if he is diligent and says, you know, I have encountered a case here; I think we need to pursue it. He actually loses if he does that, if I understood your testimony.

Mr. McCAHON. I believe that is correct, sir. I do believe that is correct. Right now there is no mandate to report it, and if they do report the misconduct, it has a negative reflection upon them. To date, the only thing we have seen reported is when there has been such overwhelming attention to a given issue, as identified in The New Yorker and by POGO, that the prime contractor will take action.

And if I might respond to the chairman's question, I think one of the problems why there is no suspension and debarment is people don't understand suspension and debarment. I was a trial attorney for the Army's Procurement and Fraud Division, Suspension and Debarment Branch. Suspension and Debarment Branch is not a criminal or civil matter, it is a business decision by a preponderance of the evidence, whereby the official makes the determination

we don't want to do business with this company; and it is more likely than not——

Mr. CONNOLLY. Again, a disincentive. If I am a private contractor, debarment and suspension are not desirable goals.

Mr. MCCAHERN. That is correct.

Mr. CONNOLLY. So why would I want to risk that? And it seems to me we have the wrong set of incentives and disincentives in place if we want to really deal with this.

Now, I asked Ms. Wyler, and maybe she is the wrong person to ask, but I am not aware of a single case being prosecuted. Are you, Mr. McCahon?

Mr. MCCAHERN. I am not of a single case, nor am I aware of any suspension or debarment.

Mr. CONNOLLY. So that must mean that our zero tolerance policy is working, is that correct?

Mr. MCCAHERN. I believe it is a zero tolerance policy on reporting the conduct.

Mr. CONNOLLY. Well, Mr. Schwellenbach and Mr. McCahon, we are talking about some very isolated examples, then, right? This is not a widespread practice. We are not talking about a lot of people, are we?

Mr. SCHWELLENBACH. My understanding is this could potentially impact thousands of laborers. I mean, the exact percentage of the third country national work force that is subjected to these kind of labor practices is quite large, although I am not sure if it is the majority or not. Sam might be more prepared to answer that.

Mr. CONNOLLY. Time is limited. Would you concur it is thousands?

Mr. MCCAHERN. I would say tens to hundreds of thousands.

Mr. CONNOLLY. Dear Lord. Okay, my goodness. So it is not some isolated, random practice. We are aware of it. We have a zero tolerance policy. We have 19 laws, executive orders, and DOD memos making it very clear we frown on this practice, we won't tolerate it if it is ever uncovered, but fortunately it has never been uncovered, at least not rising to the level of a single prosecution. Is that correct?

Mr. MCCAHERN. That is correct.

Mr. CONNOLLY. Well, then I guess I would ask, these are all contractors or subcontractors serving the U.S. Government we are talking about?

Mr. MCCAHERN. Yes.

Mr. CONNOLLY. So to what do you ascribe the apparent indifference of the U.S. Government and its prime and subprime contractors with respect to this abhorrent practice?

Mr. SCHWELLENBACH. Well, with regards to suspensions and debarments, Government agencies are often loathed to suspend or debar a contractor or subcontractor unless there is some sort of successful civil action or criminal prosecution, so it becomes this kind of Catch-22 situation: well, there is no prosecution or conviction or civil action, so we can't suspend or debar; and that is a misunderstanding of the suspension and debarment practice. As Sam mentioned, they can do what are called fact-based debarments to protect the interests of the U.S. Government if they can success-

fully document noncompliance with U.S. Federal acquisition regulations.

Mr. CONNOLLY. But we are in this system that protects itself.

Mr. SCHWELLENBACH. Exactly.

Mr. CONNOLLY. Not the victims.

Mr. SCHWELLENBACH. Absolutely.

Mr. CONNOLLY. Not human beings whose autonomy is being lost or compromised. Because I guess it is inconvenient or—other than, bureaucratically, debarments and suspensions are messy and complicated and people don't like them, but, I mean, your testimony is it could be tens of thousands, maybe even hundreds of thousands of individuals we are talking about in this victim pool serving the U.S. Government and its prime contractors, and we have not had, to our knowledge, this panel, not a single prosecution. The laws are all in place, the policies are all in place. We have zero tolerance. And what that system has produced is zero reporting.

Mr. SCHWELLENBACH. Zero prosecutions.

Mr. CONNOLLY. Zero prosecution.

Mr. SCHWELLENBACH. And there have been cases that have been presented to prosecutors, but they have declined to prosecute, at least two that I know of.

Mr. MCCAHERN. Yes, I believe Nick is correct, Representative Connolly. There was one case in 2009, one case in 2010 when the DOD IG surveyed all the four Federal law enforcement agencies on the ground, and they reported one case in each year.

Mr. CONNOLLY. A final question because I have 3 seconds. Does DOD take this issue seriously, in your view, given what you just described?

Mr. MCCAHERN. I believe that there are some elements in DOD that take it very seriously, Representative Connolly, but I think that the people that can make a difference don't give it enough attention.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. LANKFORD. Recognize Mr. Walberg for 6 minutes.

Mr. WALBERG. Thank you, Mr. Chairman, and I thank the panel for being here.

Mr. Schwellenbach, you cut short your descriptions or stories. I want to give you a little further opportunity to tell us some of those stories. I mean, you talked about the Nepalis who were captured and ultimately murdered. I guess we use that term. But also the fact that one of them was decapitated and the rest were murdered later on.

Tell us a few more stories, because a panel like this, its purpose is to get the answers and problems, but I think it is also to give voice to those who have no voice.

Mr. SCHWELLENBACH. The third example that I wasn't able to recount in my oral testimony earlier was a case of alleged labor contracting or labor trafficking in Iraq with a DOD subcontractor or a State Department subcontractor that was involved in building the new embassy compound in Baghdad. The Multinational Force Iraq Inspector General did look into these allegations that First Kuwaiti was doing this, and according to an Inspector General memorandum from 2007, they stated that several laborers reported that fraudulent hiring practices were used during the recruitment;

they stated that promises made and terms of the original contracts presented to them in their country of origin were inconsistent with the actual conditions regarding lower pay, longer hours, no days off of their employment in Iraq.

The memo also details debt bondage that some of these laborers faced. A large majority of the workers from the Indian subcontinent incurred recruiting fees of up to 1 year's salary, which far exceeded the legal limits of the countries where the recruitment took place; and in some extreme examples third country national workers relinquished all pay, all pay, for between 9 to 12 months of labor. And if that isn't indentured servitude, I don't know what is.

But that was the third example.

Mr. WALBERG. And that was in violation of the country of origin.

Mr. SCHWELLENBACH. Yes. They could not charge recruitment fees, but the labor brokers did anyway, and the laborers signed up with the belief that they would be making more pay when they eventually got to the country where they were going to do the work, and they often believed they were not going to Iraq; they were going to Dubai or some other non-war zone country.

Mr. WALBERG. How difficult is it to investigate human trafficking allegations?

Mr. SCHWELLENBACH. Well, if you don't talk to the victims, it can be very difficult, and that is one problem I have seen in a few of these investigations, is the victims say they were not interviewed by U.S. Government investigators. So that is a basic principle of criminal investigation, is you want to talk to the victim. I mean, they are a key witness.

Mr. WALBERG. So it is not difficult if you can talk to the witness, but if you choose not to talk to the witness—

Mr. SCHWELLENBACH. I don't want to minimize the difficulty of these investigations; they span continents, there is often a complex chain of subcontractors and labor brokers and recruitment companies. And sometimes I also think the investigators sometimes use a narrow lens when they look at a potential crime. They don't look at the procurement fraud elements of trafficking violations, and I think they would be wise to do so.

Mr. MCCAHERN. If I might, Representative Walberg, I also say that it isn't that difficult if you really take an interest in it. My colleague, Sindhu P.K., and I recently interviewed a dozen victims in the south of Indian Chunai and we interviewed many, many victims on the ground in Iraq. The problem is, and one of the problems with the DOD IG report, when you read about the people they interviewed, they never spoke to a victim; they spoke to Government personnel, they said they even spoke to some of the management of the contractors.

Mr. WALBERG. But not the victims.

Mr. MCCAHERN. But never the victims. And the victims also need to be protected, because we have had situations when we would speak to a victim and the next day they are on a plane home. In fact, we interviewed these dozen men in Chunai this summer, that is exactly what all of them said, they knew they couldn't speak to an American because, if they did, they would be put on a plane home, which meant no job, they still owned the loan shark, and some very serious consequences for them.

Mr. WALBERG. And they don't perceive that the DOD would be of any help or protection for them?

Mr. McCAHON. One of the things that we found was echoed in Sarah Stone's comments in The New Yorker, that please tell the American people, because if the American people know what is going on here, they will help us. And we heard that several times in our interviews. They believe that if the American people know how they are being treated, that we would help them.

Mr. WALBERG. Mr. Isenberg, what needs to happen to increase oversight and enforcement?

Mr. ISENBERG. Well, I would say that somebody within the hierarchy of the various executive departments needs to emphasize that this is a real problem. As an example, the person responsible for bringing to my attention, at considerable cost to themselves, what happened with Najlaa had originally tried contacting the U.S. Government directly. That person had sent letters and emails to Department of Justice, Department of Defense, USAID, Department of State.

Mr. WALBERG. With no results?

Mr. ISENBERG. No results except that earlier this year that person finally got contacted initially via email, more than 10 months later, after that person had originally contacted that agency, to say we are in receipt of your email and would like to talk to you more about it. Since then there has been an interview of that person and phone calls, and presumably they are now looking at it. Where the status of that is, I don't know, but clearly there is no excuse, in my mind, for a 10 month delay between receiving information and getting back to that person.

Mr. WALBERG. I thank you. Thank you for bringing light. Yield back.

Mr. LANKFORD. Thank you, Mr. Walberg.

Let me do a quick question as well. On the investigation side, I can fully appreciate this becomes quickly a he said-she said, where an investigator goes in, talks to a third country national who is terrified and says, I paid \$5,000. There is a language barrier, there is all kinds of difficulty in investigation there. Then the subcontractor or the prime, either one, says, no, we didn't do that; no, our recruiters don't. Can you find that recruiter? No, they are just some firm we used overseas. So validating these things, I would assume, would be incredibly difficult to do. The problem is just the frequency of the number of stories, you would assume someone would rise up and say we have to start tracking this in some way.

Right or wrong on that?

Mr. SCHWELLENBACH. You are absolutely correct, Chairman. Building an airtight criminal case can be quite difficult, especially when you have that kind of he said-she said situation. But I think if there was—there is certainly, I think, plenty of opportunities to build criminal cases, and I think a high profile criminal case that leads to successful conviction could have some sort of deterrent effect. And I do think, given the plethora of allegations out there, I think something could be made of at least some of those.

Mr. LANKFORD. Right. But you go back again to suspension and debarment does not have the same threshold.

Mr. SCHWELLENBACH. Exactly. You have a lower—

Mr. LANKFORD. At a minimum. So the tools and the options are out there to do something. The question is are we doing anything other than saying it has to be included in the contract, which even then, through the statistics, even the basic statement of the FAR and that we don't do trafficking in persons, that is not always included in contracts.

Mr. SCHWELLENBACH. Yes. As the DOD IG has found in some of its audits, all the contracts need to have this clause; sometimes the clause is just missing. But you are absolutely right, suspension and debarment could be a tool used to protect the Government's interest, and it is not used enough.

Mr. McCAHON. Chairman Lankford, I would also mention it is not as difficult as it might appear at first. What the subcontractor usually does is deny the representations made by the recruiter. One need only see who entered into the agreement with that recruiter to start their investigation. That is the person who has the responsibility.

What we have found is oftentimes there is no paper trail. The contractors say, well, we don't really have a written agreement with the recruiter. We will say, well, how do you flow down the clauses, then, that are mandatory; which goes to the whole suspension and debarment. I think that it is difficult to prosecute these cases because of the jurisdictional issues and also the distance and language barriers. It isn't difficult to do a fact-based debarment.

Mr. LANKFORD. Okay.

Mr. Connolly, would you like to ask some questions?

Mr. CONNOLLY. It is exactly that area I wanted to ask you about, Mr. McCahon, because in listening again to your testimony, it seems to me that—well, first of all, this is all about money, so, frankly, going after criminal prosecution may be ideally a good thing to do down the road. But what we need to do is change the incentive-disincentive system, and it is all about money; for recruiters, for the workers, the lure of that money, and for the subcontractors who are getting paid by the U.S. Government through the prime.

It seems to me that the system you described in your 10-point sort of list, the weak link is the recruiting, potentially. If we really want to go after this practice, requiring documentation, working with the host government getting at deceptive practices, laying out in more contractual terms exactly what is expected and exactly what it is going to cost, and how we document that those payments are made or not made, or they are exorbitant or they are not.

Could you talk just a little bit about that and what is the U.S. Government doing back in the host country with those recruiters?

Mr. McCAHON. I would be glad to address that, Representative Connolly. One of the things that the U.S. Government can do is mandate in the contract that every worker receive a copy of their contract prior to departing their host nation in a language that they understand, in their host language. Doesn't cost anyone anything. Because you hit it upon the head, the crux of this is deceptive recruiting. It is all deceptive recruiting about where they are going to work, how much money they are going to make paying the commission.

Another thing that they could do is make the subcontractor required to compensate that individual 1 day after they depart their host nation. The men we talked to languished for months in warehouses until they can be pulled off the shelf like a widget and then supplied and put into the supply system. They get no money, only subsistence food. They are not making payments to their loan sharks or anything like that. So you could make the subcontractor require to be responsible and also make sure that these recruiting agreements are in writing. Very few of the people we talked to ever had a contract. So those few simple steps would mitigate this significantly.

Mr. CONNOLLY. And, to your knowledge, has there been such discussion with DOD in imposing such requirements so that we can try to get our arms around deceptive recruiting practices?

Mr. MCCAHERN. My colleague and I have forwarded a summary, a four-page memorandum on solicitation strategies and contract provisions that can be used. We forwarded it to DOD and Department of State for consideration.

Mr. CONNOLLY. When?

Mr. MCCAHERN. To Department of State about 15 months ago, and to the Department of Defense maybe 6 or 8 months ago.

Mr. CONNOLLY. And the reaction?

Mr. MCCAHERN. We have worked with the chief of the CTIPS operation at DOD and I believe they are committed to this, and we recently spoke at a conference, a CTIPS conference in August on the topic.

Mr. CONNOLLY. You have spoken about it at a conference.

Mr. MCCAHERN. Yes, sir.

Mr. CONNOLLY. But there has been no formal response in 15 months to your State Department memo or in 6 months to your DOD memo.

Mr. MCCAHERN. Not to the State Department at all, sir.

Mr. CONNOLLY. Let me ask this question, again on the recruiting side. Obviously, when a recruiter—it is one thing to engage in deceptive practices on the financial end, but the purpose of your labor is a different matter. If I am recruiting and I tell you you are going to go to a five-star hotel and you are going to serve fancy dancy clientele, and you are going to be rich from the tips alone, and, instead, I am actually luring you into a prostitution ring where you are serving whoever in Iraq or some other war zone, presumably somebody at the receiving end knows full well what I am doing, and so do I. The only person deceived is the poor victim.

Mr. MCCAHERN. Yes.

Mr. CONNOLLY. What has been done to try to crack down on that practice, that aspect of human trafficking?

Mr. MCCAHERN. To my knowledge, Representative Connolly, nothing has been done. I spoke at a conference in 2007 specifically entitled Things That Government Contractors Can Do to Mitigate Trafficking, and there was a major contractor who spoke ahead of me who was vice president of contracting, currently one of the LOGCAP contractors. His response, when he was asked what they were doing to mitigate trafficking, he said we have no privity of contract with the employees of the subcontractor, therefore we are taking no action; it is not our responsibility.

So I think what we see is all the way down the trafficking chain people disavow the responsibility for it.

Mr. CONNOLLY. I have to say, Mr. Chairman, I am just stunned at this testimony, I mean, stunned, that in the name of the American people these practices have been allowed and we have turned a blind eye to them for either bureaucratic reasons or because we have what we consider to be more important parts of the mission. And it seems to me that whatever it is we are fighting for in Iraq and Afghanistan under the banner of our flag, allowing these practices compromises it all. It couldn't be more antithetical to American values what you are describing.

I look forward to the testimony of the next panel.

Mr. LANKFORD. As do I.

Thank you, ladies and gentlemen, for being here as part of this first panel.

With that, we will take a short recess to reset for panel number two.

[Recess.]

Mr. LANKFORD. We will return from recess.

Thank you for resetting and for waiting. I assume most of you all were in the earlier panel as well and got a chance to enjoy some of the conversation that was occurring. I would like to go ahead and, pursuant to all committee rules, swear in the witnesses before they testify.

Would you please stand and raise your right hand? Thank you.

[Witnesses sworn.]

Mr. LANKFORD. Thank you. You may be seated.

Let the record reflect the witnesses all answered in the affirmative.

In the second panel we have Ms. Evelyn Klemstine, the Assistant Inspector General for the Department of State. Thank you for being here. Ambassador Kenneth Moorefield, the Deputy Inspector General for the Department of Defense; Ms. Linda Dixon, the Program Manager for Combating Trafficking in Persons Office for the Department of Defense; and Mr. Mike Howard is the Chief Operations Officer for the Army and Air Force Exchange Service.

I am grateful that you are here and looking forward to being able to receive your testimony and be able to hear what is going on. Obviously, your written testimony has already been submitted. That will be part of the record. Be honored to be able to receive oral testimony at this point.

Ms. Klemstine.

STATEMENTS OF EVELYN R. KLEMSTINE, ASSISTANT INSPECTOR GENERAL FOR AUDITS, U.S. DEPARTMENT OF STATE; KENNETH P. MOOREFIELD, DEPUTY INSPECTOR GENERAL FOR SPECIAL PLANS & OPERATIONS, U.S. DEPARTMENT OF DEFENSE; LINDA DIXON, COMBATING TRAFFICKING IN PERSONS PROGRAM MANAGER, U.S. DEPARTMENT OF DEFENSE; AND MICHAEL P. HOWARD, CHIEF OPERATING OFFICER, ARMY AND AIR FORCE EXCHANGE SERVICE

STATEMENT OF EVELYN R. KLEMSTINE

Ms. KLEMSTINE. Thank you, Chairman Lankford, Ranking Member Connolly, and members of the subcommittee, for the opportunity to discuss our Office's oversight of the Department's compliance with the Federal Acquisition Regulations, FAR Trafficking in Persons clause.

OIG has actively conducted TIP oversight to include making it an area of emphasis for audits, inspections, and evaluations. Specifically, the objective of our October 2011 audit on the Bureau of East Asian and Pacific Affairs, EAP, was to measure the extent to which Department personnel and contractors were complying with laws, regulations, and policies established to prevent and detect TIP activities on Department-awarded contracts.

While the audit did not find evidence of any form of TIP involving contractor employees or contractors, the Department must strengthen implementation of its zero tolerance policy regarding TIP. We found that Department employees in the Asia Pacific Region were not uniformly aware of what constitutes TIP activity, the penalties for TIP violations, where to report suspected violations, and whether the TIP policy applies to Department contractors.

A general awareness survey was distributed to employees in the Asia Pacific Region to assess whether the employees were aware of TIP issues. One thousand, seven hundred two Department employees responded to the survey, which disclosed—that 46 percent of the Department employees either were somewhat aware or not at all aware of the zero tolerance. Forty-three percent of the employees did not know where to report suspected violations and 79 percent of the employees had not received training about TIP.

We also found that contractors in the region were not always aware of or complied with their obligations under the FAR clause. We visited 24 contractors whose contracts included the FAR clause and found that 83 percent had not notified their employees of the TIP policy and 92 had not informed the employees of the consequences of violating that policy. Additionally, six contractors hired subcontractors to perform services; however, no contractors had included the required FAR clause in their subcontracting agreement.

We found that Department contracting officials did not consistently include the FAR clauses in contracts. Of 41 contracts reviewed in the region, we found that 27 percent of them did not contain the clause and 8 contracts did not contain the correct version of the clause. Further, even when the clause was contained in contracts, Department contracting officials did not monitor contractor compliance with the clause.

Inspectors also found that an embassy contract did not always include the FAR clause. In fiscal year 2010, inspectors reviewed contracts at 20 posts and found that 25 percent of them had contracts without the required clause. In fiscal year 2011, teams addressed the same issue at 16 posts and found that 19 percent of them had contracts without the required clause. When inspectors found contracts that did not include the FAR clause, embassy staff immediately began the process of modifying the contract.

During the October 2011 audit, the Department issued a Procurement Information Bulletin [PIB], on Combating Trafficking in Persons, which requires contracting officers to ensure that all solicitations and contracts over the micro-purchase threshold of \$3,000 contain the TIP clause. The PIB also provides guidance to contracting officer representatives [CORs], on how to monitor TIP compliance. We expect the new guidance will enhance the Department process for monitoring contractors for TIP compliance.

We recommended that the Department implement a policy in the Foreign Affairs Manual on TIP, expand the Department's code of conduct to prohibit TIP activities, and designate an office to which employees and contractors should report suspected violations. In addition, the Department should expand its TIP training to all Department employees.

In response to the audit, the Ambassador-at-Large for the Office to Monitor in Combat Trafficking in Persons stated that his office found the report helpful if somewhat troubling, and there was undoubtedly a need for increased awareness and understanding of human trafficking in the State Department. The Ambassador generally agreed with all the report's recommendations and stated he was taking corrective actions.

OIG also released an evaluation in January 2011 of six contracts in Arab states in the Gulf which assessed the risk of TIP-related activities. Although we found no direct evidence that contractors violated provisions of the FAR clause, we found indicators that increased the likelihood that a TIP violation could occur. Specifically, our team found that 77 percent of contract employees interviewed had to pay fees up front during recruitment, which could indicate an increased risk of debt bondage, and that every contractor reviewed confiscated workers' passports. In addition, contract workers at all posts expressed frustration with inconsistent payments, confusing pay stubs, and withheld wages. More than 70 percent of the workers interviewed also reported that they lived in overcrowded, unsafe, or unsanitary conditions.

TIP monitoring was ineffective because CORs did not have standard procedures to monitor the implementation of FAR. We recommended that posts strengthen TIP monitoring procedures and the Department provide detailed guidance on how to monitor contractors' practices.

Negative contracting practices can affect foreign workers and reflect poorly on the United States. We believe that adopting a strong TIP program which includes mechanisms to increase employee awareness, report suspected TIP violations, and provide for a strong monitoring program of contractors will help TIP and ensure that foreign workers are treated fairly and within the law.

Once again, thank you for the opportunity to present our work on this important topic. I am pleased to answer any questions you may have.

[The prepared statement of Ms. Klemstine follows:]

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TESTIMONY OF EVELYN R. KLEMSTINE
ASSISTANT INSPECTOR GENERAL
FOR AUDITS
OFFICE OF INSPECTOR GENERAL
U.S. DEPARTMENT OF STATE AND
THE BROADCASTING BOARD OF GOVERNORS

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON TECHNOLOGY, INFORMATION POLICY,
INTERGOVERNMENTAL RELATIONS AND PROCUREMENT REFORM

ON

ARE GOVERNMENT CONTRACTORS EXPLOITING WORKERS OVERSEAS?
EXAMINING ENFORCEMENT OF THE TRAFFICKING VICTIMS
PROTECTION ACT

NOVEMBER 2, 2011

Thank you, Chairman Lankford, Ranking Member Connolly, and Members of the Subcommittee, for the opportunity to discuss our office's oversight of the Department's compliance with the *Federal Acquisition Regulation* (FAR) clause 52.222-50, "Combating Trafficking in Persons (TIP)."

OIG has actively conducted TIP oversight, to include making it an area of emphasis for audits, inspections, and evaluations. We appreciate the opportunity to present the findings of our October 2011 audit on the Bureau of East Asian and Pacific Affairs' (EAP) compliance with TIP requirements and our January 2011 evaluation on TIP in various Arab States of the Persian Gulf region.

The objective of our October 2011 audit was to measure the extent to which Department of State (Department) personnel and contractors were complying with laws, regulations, and policies established to prevent and detect TIP activities on Department-awarded contracts. While the audit team did not find evidence "of any form of TIP involving Department employees or contractors," it remains clear from the audit that the Department must strengthen its approach to employing the "zero-tolerance" policy regarding TIP.

Specifically, we found that Department employees in EAP and the Asia-Pacific region were not uniformly aware of what constitutes TIP activity, the

penalties for TIP violations, where to report allegations of violations, and how the TIP policy applies to Department contractors. The audit team, with the assistance of EAP, distributed a "General Awareness Survey" to employees in the Asia-Pacific region to assess whether the employees were aware of issues related to TIP. A total of 1,702 Department employees responded to that survey. The survey disclosed that 46 percent of the Department employees either were "somewhat aware" or "not at all aware" of the "zero-tolerance policy" for TIP; 43 percent of the employees would not know where to report a TIP violation; and 79 percent of the employees had not received training related to the awareness, prevention, or reporting of TIP violations.

The audit team concluded that the lack of awareness occurred because the Department had not established and communicated a formal TIP policy to its employees that included a definition of TIP activities and a mechanism for reporting suspected violations. In addition, although the Department's code of conduct prohibits employees from acquiring a commercial sex act and using forced domestic labor, it does not specifically address TIP, nor does it require employees to report suspected TIP violations. The lack of clarity in the code of conduct, compounded with the absence of knowledge regarding TIP-related activities, could lead to TIP violations, since many incidents may go unreported.

In addition to Department employees' lack of awareness, we found that contractors in the Asia-Pacific region were not always aware of or did not comply with their obligations under FAR clause 52.222-50. We conducted site visits and met with 24 contractors whose contracts included the FAR clause. We found that 20 contractors (83 percent) had not notified their employees of the U.S. Government's TIP policy, and 22 contractors (92 percent) had not informed their employees of the consequences for violating that policy. Additionally, six contractors hired subcontractors to perform services; however, no contractors had included the required FAR clause in their subcontracting agreement.

A contributing factor to the contractors' lack of awareness was that Department contracting officials did not consistently include FAR clause 52.222-50 in Department contracts. Of 41 contracts reviewed in the Asia-Pacific region, we found that 11 contracts (27 percent) did not contain the clause, and eight contracts did not contain the correct version of the clause. Further, even when the clause was contained in contracts, Department contracting officials did not monitor contractor compliance with the clause. As a result, Department contractors, subcontractors, and their respective employees may not be aware of the U.S. Government's zero-tolerance policy regarding TIP.

Also, during 2010 and 2011 inspections, the inspectors also found that embassy contracts did not always include FAR clause 52.222-50. In FY 2010, the inspectors reviewed contracts at 20 embassies and consulates and found that 25 percent of the posts had contracts that did not include the required FAR clause. In FY 2011, teams addressed the same issue at 16 overseas locations and found that 19 percent of the posts had contracts that did not include the required FAR clause. When the inspectors found contracts that did not include the FAR clause, embassy staff immediately began the process of modifying the contract.

During the course of our October 2011 audit, the Department issued Procurement Information Bulletin (PIB) No. 2011-09, "Combating Trafficking in Persons," which requires contracting officer's representatives (CORs) to ensure that all solicitations and contracts over the micro-purchase threshold (\$3,000) contain FAR clause 52.222-50. The publication also provides guidance to CORs on how to monitor contracts for TIP compliance. We expect that the new guidance will enhance the Department's process for monitoring contractors for TIP compliance.

In our October 2011 audit report, we recommended that the Department implement a policy in the *Foreign Affairs Manual* (FAM) on TIP, expand the

Department's code of conduct to prohibit TIP activities, and designate an office to which employees and contractors should report suspected TIP violations. In addition, the Office to Monitor and Combat Trafficking in Persons (G/TIP) should, in collaboration with the Foreign Service Institute, expand TIP training to all Department employees.

In response to the audit, the Ambassador-at-Large for G/TIP stated that his office found the report helpful, if "somewhat troubling," and that there was "undoubtedly a need for increased awareness and understanding of human trafficking in the State Department." The Ambassador generally agreed with all the report's recommendations and stated that he was in the process of taking corrective actions.

We also released an evaluation in January 2011 of six contracts in Kuwait, Oman, Saudi Arabia, and the United Arab Emirates, which assessed the risk of TIP-related activities occurring within these Arab States of the Gulf. Although we found no direct evidence that contractors violated provisions of FAR clause 52.222-50, we found indicators that increased the likelihood that a TIP violation could occur.

Specifically, the evaluation team found that 77 percent of contract employees interviewed had to pay fees up-front during recruitment, which could indicate an increased risk of debt bondage, and that every contractor we reviewed confiscated workers' passports. In addition, contract workers at all embassies and consulates general expressed frustration with inconsistent payment, confusing pay stubs, and withheld wages. Also, more than 70 percent of the workers interviewed reported that they lived in overcrowded, unsafe, or unsanitary conditions.

TIP monitoring was ineffective because CORs did not have standard procedures to monitor the implementation of the FAR clause. We recommended that embassies strengthen TIP monitoring procedures and the Department provide detailed guidance on how to monitor contractors' practices and activities regarding TIP. In general, the Department agreed with the recommendations and either has implemented, or is in the process of implementing them.

Contractors' practices can negatively affect foreign workers and reflect poorly on the United States. We believe that adopting a strong TIP program, which includes mechanisms to increase employees' awareness, report suspected

TIP violations, and provide for strong monitoring of contractors, will help prevent TIP and ensure that foreign workers are treated fairly and within the law.

Once again, thank you for the opportunity to present our work on this important topic. I am pleased to answer any questions you may have.

Mr. LANKFORD. Thank you.
Ambassador Moorefield.

STATEMENT OF KENNETH P. MOOREFIELD

Ambassador MOOREFIELD. Good morning, members of the committee. Chairman Lankford and Ranking Member Connolly and distinguished members of this committee, I want to thank you for the opportunity today to discuss our oversight reporting at the Department of Defense Inspector General's Office with respect to trafficking in persons. I have also presented a written statement which I ask be submitted for the record.

The DOD IG previously presented testimony on oversight efforts concerning the topic of human trafficking in 2004 and again in 2006. Our first assessment was initiated in response to a request from Members of the Congress to the Secretary of Defense, asking for an investigation into allegations concerning the U.S. military leadership in South Korea and whether or not they had been implicitly condoning sex slavery in that country. In addition to that project, DOD IG initiated another parallel assessment into allegations that the European Command activities in Bosnia-Herzegovina and Kosovo also had similar problems.

In addition to the Command actions taken in response to our reports to prohibit and prevent sex slavery in these two environments, both assessments recommended strongly that the Secretary of Defense issue a policy statement that clearly and unambiguously set forth DOD opposition to any activities promoting, supporting, or sanctioning human trafficking, and the Department subsequently did that. Further, DOD established annual CTIP awareness training in 2004 for all service members and DOD civilians, which continues until today.

In a followup initiative, the DOD IG Initiated an evaluation of CTIP efforts across all of DOD in 2005. The resulting report recommended that the Office of the Secretary of Defense develop CTIP policy and program guidance. In a response, the Department issued DOD instruction, Combating Trafficking in Persons, that assigned CTIP program responsibilities across the Department.

Our most recent efforts were conducted as a result of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. This act, as you know, requires State Department, USAID, and DOD IGs to each report each year, in January, for three consecutive years beginning in January 2010, on a sample of contracts or subcontracts under which there is a heightened risk that a contractor may engage knowingly or unknowingly in acts related to trafficking in persons.

To accomplish this, the DOD IG has consulted each year with the State Department's Office to monitor and combat trafficking in persons, as well as the DOD CTIP Program Office. We selected four combatant commands to conduct these reviews: the U.S. Pacific, Central, European, and Africa Commands. To date, we have issued two of these reports, covering the Pacific and Central Commands, and the report on European and Africa Commands will be issued in January 2012.

In the U.S. Pacific Command overview, we found the Federal Acquisition Regulation, the FAR clause, Combating Trafficking in

Persons, present in 93 percent of the contracts. The DOD IG recommended in its final report that the Director, Defense Procurement, and Acquisition Policy modify contract writing software to ensure that the FAR CTIP clause was automatically included in all contracts, and this was accomplished.

In the U.S. Central Command, we found the CTIP clause present in 79 percent of the contracts reviewed. The team did identify good practices had been taken by several U.S. contracting commands in Kuwait who had incorporated CTIP compliance items in their quality assurance reviews. The team found, however, that contracting officers in none of the commands had ready access to TIP violation information from DOD criminal investigative organizations. Providing timely communication of TIP-related indictment and conviction information to DOD contracting organizations remains a systemic challenge.

For each reporting year of our investigations in the last two-plus years, the teams have received DOD criminal investigative data on possible TIP violations. Two TIP incidents have been reported so far. In both cases the contractor had dismissed the offending employees and there was no further judicial investigation taken or certainly judicial action.

During our DOD field work, we have noted that nonappropriated funds were not required to include the FAR CTIP clause in their contracts. As a consequence, the Army and Air Force Exchange Service and Navy Exchange were included in assessments of our U.S. Central Command, European and Africa Commands, and in December 2010 the Navy Exchange Command Headquarters recommended changes inserted in DOD Instruction Nonappropriated Fund Procurement Procedure, which required inclusion of a CTIP clause in all nonappropriated fund contracts, and as of October, as of this month, that instruction revision process is still ongoing.

I also want to report that the DOD IG has self-initiated an assessment of CTIP program compliance and performance among DOD components. So far, over 70 DOD organizations have been reviewed, and this report will also be issued in January 2012.

Finally, let me emphasize that the DOD Inspector General remains committed to providing oversight support of the U.S. Government's zero tolerance policy against trafficking in persons. We will continue to evaluate DOD CTIP performance and compliance.

On behalf of DOD IG, I thank you again for this opportunity to testify.

[The prepared statement of Ambassador Moorefield follows:]

Chairman Lankford, Ranking Member Connolly, and distinguished members of the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform:

Thank you for this opportunity to discuss past and ongoing efforts by the Department of Defense (DoD) Office of Inspector General (DoD IG) in the area of combating trafficking in persons (CTIP). The DoD IG previously presented testimony on oversight efforts concerning the topic of human trafficking in 2004 and again in 2006.

Completed DoD IG Efforts

DoD IG initiated its first assessment of DoD CTIP as a result of a May 31, 2002, request made by thirteen Members of Congress to the Secretary of Defense seeking a “thorough, global and extensive” investigation into the publicized allegation that U.S. military leadership in Korea had been implicitly condoning sex slavery at the hands of traffickers.

In response to those Congressional concerns, the DoD IG initiated an assessment project to assess efforts to combat human trafficking within the United States Forces-Korea. In addition, DoD criminal investigations of DoD contractors underway during this period led to an expanded assessment focus incorporating the European Command

theater of operations, specifically its activities in Bosnia-Herzegovina and Kosovo.¹ The two assessments recommended that the Secretary of Defense issue a policy statement that clearly and unambiguously set forth DoD opposition to any activities promoting, supporting, or sanctioning human trafficking, which the Undersecretary of Defense for Personnel and Readiness subsequently did. In addition, DoD established annual CTIP awareness training for all Service members and DoD civilians, which has been in effect since 2004. With respect to the TIP issues raised concerning Korea, the Command took multiple actions to prohibit and prevent US military, DoD civilian, and DoD contractor personnel from patronizing establishments it had declared off-limits due to reports of forced labor or commercial sex.

In 2005, the DoD IG initiated an evaluation of CTIP efforts across DoD in further response to the 2002 request from Members of Congress. The resulting report, issued in November 2006, recommended that the Office of the Secretary of Defense, the Military Services and Combatant Commands develop CTIP policy and program guidance, and that the military commands evaluate the effectiveness of their CTIP awareness training. In response to the report, in 2007, the Under Secretary of Defense for Personnel and Readiness issued DoD Instruction 2200.01, "Combating Trafficking in Persons," that established policy and assigned CTIP program responsibilities across the Department.

¹ "Assessment of DoD Efforts to Combat Trafficking in Persons, Phase I – United States Forces Korea," July 2003, www.dodig.mil/fo/Foia/H03L88433128PhaseI.pdf, and "Assessment of DoD Efforts to Combat Trafficking in Persons, Phase II – Bosnia-Herzegovina and Kosovo," December 2003, www.dodig.mil/fo/Foia/HT-Phase II.pdf.

The Under Secretary also created and filled the position of DoD CTIP Program Manager within that office. Additionally, the CTIP program officer for each DoD Component reports on CTIP training metrics and effectiveness to the DoD CTIP Program Manager within the office of the Under Secretary of Defense for Personnel and Readiness.

The most recent oversight efforts conducted by the DoD IG were in response to Public Law 110-457, the “William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008,” signed on December 23, 2008. Section 232 of the Act required the Inspectors General of DoD, State and USAID to “...investigate a sample of ... contracts, or subcontracts at any tier, under which there is a heightened risk that a contractor may engage, knowingly or unknowingly, in acts related to trafficking in persons....” The Act also required the respective Inspectors General to submit a report to Congress, no later than January 15, for three consecutive years beginning in 2010.

The DoD IG consulted with the State Department’s Office to Monitor and Combat Trafficking in Persons and selected for assessment four Combatant Commands with overseas responsibilities and contracting presence: U.S. Pacific, U.S. Central, and U.S. European and Africa Commands, in that order. To date, the DoD IG has issued two annual reports - covering the Pacific and Central Commands - and completed fieldwork for a third report on the European and Africa Commands, which will be issued in

January 2012.² The contract sample in each case included all construction and service contracts with a place of performance outside the United States, a period of performance in FY 2009 or later, and with a total contract value of \$5 million or greater. This provided a reasonable data set which particularly focused on labor-intensive contracts.

The U.S. Pacific Command CTIP report, issued on January 15, 2010, was based on a sample of 99 contracts which had a place of performance in the Republic of Korea, Japan, and the Territory of Guam. We found Federal Acquisition Regulation (FAR) clause 52.222-50, "Combating Trafficking in Persons," present in 93 percent of the contracts we reviewed. However, 42 percent of those clauses were added shortly before the site visit. Further, the team found that the Command's contract quality assurance reviews did not specifically include reviews of contractor TIP compliance and/or violations, and that contracting offices did not have access to an effective DoD process for obtaining TIP violation information from DoD criminal investigative organizations.

The DoD IG recommended that the Director, Defense Procurement, and Acquisition Policy modify widely-used contract writing software to ensure that the FAR CTIP clause was automatically included in contracts or solicitations. Also recommended was that the Defense Federal Acquisition Regulations System (DFARS) guidance be

² IE-2010-001, "Evaluation of DoD Contracts Regarding Combating Trafficking in Persons," January 15, 2010, and SPO-2011-002, "Evaluation of DoD Contracts regarding Combating Trafficking in Persons: U.S. Central Command," January 18, 2011. For copies of the reports see <http://www.dodig.mil/Inspections/IE/Reports.htm>.

updated to require CTIP oversight in contract quality assurance plans. The Director initiated the modification and had it distributed in 2010. And, in January 2011, the Director also revised the relevant DFARS guidance.

The DoD IG team also determined that contracting officers lacked the benefit of an effective process for obtaining information concerning TIP-related violations. DoD Instruction 2200.01, “Combating Trafficking in Persons (CTIP)”, September 15, 2010, requires the Secretaries of the Military Departments and Commanders of the Combatant Commands to “provide information on all known TIP cases to the USD (P&R), DoD Program Manager.” However, providing timely communication of substantiated and publicly releasable TIP-related indictment and conviction information to DoD contracting organizations remains a systemic challenge.

The report on U.S. Central Command, issued January 15, 2011, was based on a sample of 369 contracts with place of performance in the Republic of Iraq, the State of Kuwait, the State of Qatar, and the Kingdom of Bahrain. A CTIP clause was present in 79 percent of the contracts reviewed.

The team also found that the U.S. Central Command Contracting Command had published a supplement for inclusion in all service and construction contracts within the Command’s area of responsibility to strengthen the FAR CTIP clause. This was in response to allegations that some DoD contractors were providing poor living conditions or withholding employee passports.

However, the DoD IG team also identified a significant number of contracts where the Command supplement had actually replaced the required pre-existing FAR clause. To correct this, the team recommended that the Commander, U.S. Central Command Contracting Command modify their guidance to clarify proper usage of both the FAR and Command supplement CTIP clauses. The Commander concurred and issued modified guidance in September 2011.

The team also identified examples of proactive action taken by two U.S. contracting commands in Kuwait, both of which had incorporated a requirement to include CTIP compliance in contract quality assurance reviews. Additionally, Army Contracting Command-Kuwait had developed and implemented a CTIP questionnaire, translated into five common employee languages, as part of quality assurance audits.

In addition, the Defense Contract Management Agency (DCMA) in Kuwait had included CTIP-focused questions into their Theater Quality Plan quality assurance contract audits which reviewed contractor knowledge and understanding of CTIP clause requirements. DCMA representatives also provided reports based on periodic health and sanitation inspections they had conducted of employee camps in Iraq. In 2010, the DoD IG team visited several employee camps run by subcontractors in Iraq; the employees interviewed verified that DCMA personnel checked conditions on a regular basis. The team did not observe any conditions in the camps that would constitute a CTIP violation.

The DoD IG team was unable to review conditions in Afghanistan in time to meet the January 15, 2011, publication date for the report of the assessment of U.S. Central Command. However, we are planning to conduct this evaluation in FY 2012.

In 2009, 2010, and 2011, the team requested that DoD criminal investigative organizations provide TIP-related criminal investigative summary data for each of these years. To date, these requests have resulted in reports of only two alleged TIP incidents. In both cases, the contractor had dismissed the offending employee.

Ongoing Assessments

The next DoD IG CTIP report, in compliance with Public Law 110-457, will be issued in January 2012. It will be based on a sample of approximately 250 contracts with place of performance in the U.S. European and Africa Commands. In September 2011, the team conducted CTIP field evaluations of the Commands' headquarters and military installations in Germany and Italy for this assessment.

In addition to and concurrent with the multi-year review of contracts required by PL 110-457, the DoD IG has self-initiated an assessment of DoD Component CTIP program compliance and performance. As of this date, we have reviewed CTIP policies, procedures, awareness, and implementation in over 70 DoD organizations, including responsible officials in the Office of the Under Secretary of Defense for Personnel and

Readiness, and headquarters and major subordinate commands of Military Services, Defense Agencies and Combatant Commands. At each location, the team interviewed:

- commanders and staff responsible for the CTIP program;
- law enforcement personnel and legal counsels;
- contracting officers, specialists, and quality assurance specialists, contracting officer representatives; and
- representatives of contracting firms, and when possible, their employees.

In addition, at each location visited, the DoD IG team interviewed contracting officials, none of whom reported that they were aware of any TIP-related offense that had been brought to the attention of a DoD contracting office.

DoD Non-Appropriated Fund Organizations

During the DoD IG CTIP assessment of the U.S. Pacific Command, in 2009, the team noted that non-appropriated fund entities were not required to include the FAR CTIP clause in their contracts. Therefore, we included an assessment of the Navy Exchange (NEX) and Army and Air Force Exchange Service (AAFES) CTIP policy and procedures within the reviews of the U.S. Central Command and the U.S. European and Africa Commands.

The review of the NEX operation in the Kingdom of Bahrain determined that the Command had required all managers, associates, and vendors to take CTIP training.

Further, in December 2010, NEX Command headquarters in Virginia reported having submitted recommended changes to a proposed update of DoD Instruction 4105.71, “Nonappropriated Fund (NAF) Procurement Procedure,” which would require inclusion of a CTIP clause in all non-appropriated fund contracts. As of October 2011, the revision process was still ongoing.

The review of AAFES Europe identified that the Commander had issued a Manpower Associate “Bill of Rights,” available in English and eight other languages, that subordinate organizations were directed to post on employee bulletin boards for easy access. The Commander also had established an employee passport possession policy to ensure that “contractors do not withhold the passports of TCNs [Third Country Nationals] working in our facilities.”

In Kuwait, the DoD IG team observed AAFES passport checks and employee interviews first-hand while accompanying a contracting officer representative to several facilities. No CTIP violations were observed. The team also received a detailed briefing from the AAFES legal counsel outlining several additional TIP-related incidents and the contract remedies applied including show cause notices and cure letters.

Conclusion

The DoD IG remains committed to providing oversight support of the U.S. Government's "zero tolerance policy" against trafficking in persons. We will continue to evaluate the related DoD programs for compliance.

I thank you again for this opportunity to update you on DoD IG oversight of DoD actions to combat trafficking in persons.

Mr. LANKFORD. Thank you.
Ms. Dixon.

STATEMENT OF LINDA DIXON

Ms. DIXON. Mr. Chairman, Ranking Member Connolly, and members of the subcommittee, thank you for this opportunity to discuss past and ongoing DOD efforts to combat trafficking in persons.

The Department of Defense Trafficking in Persons, TIP, Program was designed to ensure that our military services, combatant commands, and Defense agencies have the necessary tools to stop it. Training is mandatory for all employees and is mandated by DOD instruction first published in February 2007 and revised September 15, 2010. The instruction is directive in nature and established policies and assigns responsibilities for combating trafficking. The policy recognizes DOD's opposition to trafficking in persons, prostitution, forced labor, and any related activities that may contribute to the phenomenon of TIP. Engaging in trafficking in persons is incompatible with DOD core values.

To help enforce the policy, heads of DOD components must designate a component Combating Trafficking in Persons, CTIP, Office of Primary Responsibility and they must assign a program officer. We maintain a list of all the components points of contacts within our office. We maintain this list and we also provide this information to our DOD IG when they conduct their periodic evaluations of the DOD CTIP program.

DOD started training on TIP using a multimedia Combat Trafficking in Persons Program in January 2005. Our training consists of general awareness training, law enforcement training, and training for our leadership. As well, we also have PowerPoint presentations for our training. Our general awareness training is now available on mobile devices.

An annual DOD CTIP conference has been held ever since 2007. A CTIP workshop was held in August 2011. Best practices among our components are shared and we receive information from the U.S. Government agencies, as well as from non-governmental organizations at our conferences and workshops. Our DOD CTIP Web site, ctip.defense.gov, displays information regarding our trafficking in persons training, events, and links to other agencies' TIP Web sites.

In response to early concerns about possible labor trafficking in subcontracts in Iraq, DOD took swift action. The first TIP clause was in the Defense Federal Acquisition Regulation supplement, DFAR, as an interim rule and was published in the Federal Register in October 2006. The clause required contractors to establish an awareness program to inform employees regarding trafficking in persons.

The Federal Acquisition Regulation published a TIP clause in 2009 that required the contractor to notify its employees of U.S. Government's zero tolerance policy and to take appropriate action against employees of subcontractors that violated the policy. It did not require contractors to establish an awareness program for their employees.

When the FAR rule was published, the DFAR rule clause moved to become program guidance for our contractors regarding DOD's

zero tolerance policy and CTIP training program. A new DFAR requirement soon to be published in the Federal Register adds additional contract administration duties to maintain surveillance over contractor compliance with trafficking in persons for all DOD contracts.

In December 2010, the Defense Incident Base Reporting System, DIBRS, was updated with the new FBI TIP offense codes, commercial sex acts, involuntary servitude, and prostitution offense, allowing the reporting of TIP offenses by our DOD law enforcement agencies. Human trafficking public service announcements [PSAs], two 30-seconds and two 15-seconds, aired on our Armed Forces Network from October 2009 to October 2010. DOD released four new PSAs in September 2011 that will air for 5 years.

Trafficking in persons is a form of modern day slavery, and DOD will do our part to strive for its total abolition.

Thank you again for scheduling this hearing, and I look forward to your questions.

[The prepared statement of Ms. Dixon follows:]

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TESTIMONY

OF

LINDA K. DIXON

Program Manager for Combating Trafficking in Persons

Office of the Under Secretary of Defense for Personnel Readiness

Defense Human Resources Activity

Department of Defense

BEFORE THE UNITED STATES HOUSE OF

REPRESENTATIVES

HOUSE COMMITTEE FOR OVERSIGHT AND GOVERNMENT

REFORM, SUBCOMMITTEE ON SUBCOMMITTEE ON

TECHNOLOGY, INFORMATION POLICY,

INTERGOVERNMENTAL RELATIONS AND PROCUREMENT

REFORM

November 2, 2011

Chairman Lankford, Ranking Member Connolly, and members of the Subcommittee, thank you for the opportunity to appear before you today to discuss our efforts to combat trafficking in persons.

As the Program Manager for Combating Trafficking in Persons (CTIP) my top priority is to develop initiatives to enforce DoD's zero tolerance policy. We work closely with the State Department's Office to Monitor and Combat Trafficking in Persons in developing and implementing actions required by the Trafficking Victims Protection Act of 2000 and subsequent Reauthorizations. We also participate and coordinate our initiatives with the Trafficking in Persons Senior Policy Operating Group and the President's Interagency Task Force. We provide input to the annual Department of State and the Attorney General's Trafficking in Persons Reports. DoD participates in the State Department's Foreign Exchange Program providing international visitors information on the DoD CTIP training and program initiatives. Additionally we receive and share actions to combat trafficking in persons with nongovernmental organizations who are at the forefront of this fight.

The First DoD Trafficking in Persons (TIP) policy was distributed in January and September 2004. The policy was subsequently revised in February 2007 and again in September 2010. The DoD Trafficking in Persons program was designed to ensure that the Services, Combatant Commands and Defense Agencies have the necessary tools to prevent trafficking. Trafficking in Persons training is mandatory for all members of DoD (military and civilian) and is mandated by DoD Instruction 2200.01 Combating Trafficking in Persons (CTIP) September 2010. The policy recognizes DoD's opposition to trafficking in persons, prostitution and any related activities that may contribute to the phenomenon of TIP as inherently harmful and dehumanizing. Engaging in TIP is a violation of U.S. law and an abuse of internationally

recognized human rights, and is incompatible with DoD core values. The instruction provides statutory requirements and procedures for implementing the DoD Combating Trafficking in Persons Program. It is directive in nature and states the DoD TIP policy, assigns responsibilities and seeks to reduce demand by increasing awareness and deterring activities by DoD military, civilian and contract personnel that support or facilitate trafficking in persons. To help enforce the policy, heads of DoD Components must designate a Component CTIP office of primary responsibility and a CTIP program officer. The DoD IG is required to conduct periodic evaluations of the DoD CTIP program.

The DoD CTIP training consists of a general awareness (GA) interactive multimedia module and a PowerPoint presentation most recently revised in December 2010. Some objectives of the training include the definition of TIP, identifying common myths about TIP, identifying sex trafficking, identifying labor trafficking, identifying child soldiers that are trafficking victims, identifying victims generally, identifying vulnerable populations, identifying traffickers, identifying where victims are found, identifying victim indicators, taking appropriate actions against TIP, identifying factors of post-conflict and humanitarian vulnerability aide and protection measures for victims of trafficking.

The Awareness Training is given via Military Services' knowledge-on-line systems and Agencies' Learning Management Systems. The training is also available on the Joint Knowledge Development and Distribution Capability website for use either in a formal training setting or on an individual basis. DoD CTIP Awareness Training is a part of the DoD pre-deployment training packages. Mobilization stations have theater-specific information which is required to be added to the training. The general awareness training was recently made available on mobile devices. Troops can download a free app to their cell phones and iPads. The

Advanced Distributed Learning Mobile Team showcased the DoD CTIP training running on iPhone, iPod touch, iPad and Blackberry devices at the Interservice/Industry Training, Simulation and Education Conference in November 2010.

A leadership module was developed in 2008 and revised in June 2011. This module outlines the leader's role and responsibilities for combating TIP. A Law Enforcement module was developed in 2009 and will be revised in 2012. This module assists law enforcement agencies in carrying out their responsibilities in identifying the crime of TIP, actions to take, and scenarios for appropriate responses. Defense contractors are encouraged to take the DoD CTIP training. Each Service, Combatant Command, and Defense Agency has a TIP representative. The TIP representative ensures that the training is available to their personnel. The representatives capture training data and report the information to the CTIP Program Manager every fiscal year.

Trafficking in Persons objectives are included in our National Action Plan on Women, Peace, and Security. In this effort our main objective is to implement national and multinational efforts to combat human trafficking in support of the U.S. commitments to United Nations Security Council Resolution 1325, which reaffirms the importance of women's participation and a gender perspective in peace negotiations, conflict and post-conflict stabilization, governance, and other peacebuilding efforts.

The DoD CTIP website (<http://ctip.defense.gov>) displays information regarding training, events, and links to other agencies' trafficking websites. The website also provides a direct link to the DoD hotline and the National Human Trafficking Hotline.

Public Service Announcements (PSA) regarding combating commercial sex and labor trafficking are broadcast on the American Forces Network (AFN) and the Pentagon Channel.

There were four TV In-House Human Trafficking Spots (two 30-second and two 15-second) that aired on AFN News, AFN Sports, AFN Xtra, and AFN Spectrum from 24 October 2009 through 24 October 2010. They each aired at least three times a week on those four AFN Channels, for an estimated total of 2496 airings of Combating Human Trafficking spots in FY 10 on American Forces Network.

We currently have four TV and four radio Combating Trafficking In Persons spots that were recently produced and released under our contract with Filmhouse. The scripts were reviewed for accuracy by the Office to Monitor and Combat Trafficking in Persons. The spots went into rotation on all AFN Channels in September 2011 and will run for a period of five years. The US Forces Korea Public Affairs Office also conducts a vigorous Public Service Announcement (PSA) campaign via radio, television and print media.

Contractors are paramount to the success of DoD's missions. Our efforts include initiatives for their compliance with DoD's CTIP policy. In October 2006, DoD published an anti-trafficking interim rule clause within the Defense Federal Acquisition Regulation (DFAR) supplement for contracts performed outside the United States. The clause required contractors to establish an awareness program to inform employees regarding TIP. The clause also required contractors to develop policy and procedures that prohibit any activities on the part of contractor employees to establish an awareness program to inform employees regarding TIP. The Federal Acquisition Regulation published a TIP clause in 2009 that required the contractor to notify its employees of the US Government's zero tolerance policy toward TIP and to take appropriate action against employees or subcontractors that violate the policy. It did not require contractors to establish an awareness program for their employees. When the FAR rule was published, the DFAR TIP clause moved to PGI Part 222, Procedures, Guidance, and Information for contractors

regarding DoD's zero tolerance policy and CTIP training program. A DFARS requirement, soon to be published in the Federal Register, adds additional contract administration duties to maintain surveillance over contractor compliance with Trafficking in Persons requirements for all DOD contracts, as specified in the FAR clause 52.222-50 on TIP.

The DoD Instruction for Combating Trafficking in Persons was updated requiring Commanders to provide information on indictments and convictions on all known TIP cases to the Office of the Secretary of Defense. The Defense Incident-Based Reporting System (DIBRS) is DoD's Uniform Crime Reporting (UCR) System for providing criminal incident data to the FBI's National Incident-Based Reporting System (NIBRS), under the Uniform Federal Crime Reporting Act of 1988, as amended. The DIBRS Manual was revised December 7, 2010, incorporating the FBI's new Human Trafficking Offense Codes (50A - Commercial Sex Acts and 50B - Involuntary Servitude). With the TIP offense codes now in the system, we are able to collect data on the number of criminal incidents reported by the Military Services. We have received one offense since the database was updated with the codes. It was a "Prostitution Offense (Purchasing Prostitution)" from the Marine Corps Military Police submitted in May 2011. Several Service Members received non-judicial punishment for prostitution and human trafficking activities. The DoD remains vigilant in our efforts to combat TIP. We have a strong commitment to take the necessary actions required in combating trafficking in persons within the scope of DoD's responsibilities.

Thank you for scheduling this hearing and giving us the opportunity to speak about the DoD's CTIP program. I look forward to your questions.

Mr. LANKFORD. Thank you.
Mr. Howard.

STATEMENT OF MICHAEL P. HOWARD

Mr. HOWARD. Mr. Chairman and members of the subcommittee, again, thank you for the opportunity to testify today. I am looking forward to sharing the measures taken by the Army Air Force Exchange Service to prevent human trafficking in Southwest Asia.

AAFES is a joint military activity providing merchandise and services to active duty, reserve, National Guard, and their families worldwide. AAFES is responsible for 3,100 facilities worldwide in 30 countries, 5 U.S. territories, and 50 United States. We have 43,000 employees. Thirty percent of those are family members of the military active duty. Another 1 percent are military members on their part-time working after-duty hours. We take great pride in our employee relations, no matter where they serve.

Combating human trafficking is a complex and challenging mission. The responsibility is substantial, but our policy is clear: zero tolerance. My report today will confirm that AAFES has implemented and is enforcing a comprehensive Combating Human Trafficking program throughout our contingency area of operations.

AAFES runs exchange facilities in eight countries, spread over 71 locations in combat zones in the United Central Command area responsibility. The core of the AAFES team consists of 300 direct hire associates; however, we have over 3,100 individuals that are third country nationals that are hired to provide additional services to the military. These manpower agencies and concessionaires are often third country nationals and they are an integral part of our team. In fact, without third country nationals we would not be able to provide world class support to our deployed troops and customers.

Today I would like to highlight three essential elements in AAFES's fight against human trafficking: an enforceable bill of rights for third country national associates, consistent inspection in reporting to ensure compliance, and effective communication to increase awareness of command and the workers and planning for the future also.

AAFES has an inherent responsibility and contractual right to ensure humane treatment of third country nationals working in our facilities. The first element in deterring human trafficking among the third country national population is an enforceable bill of rights. In 2008, AAFES developed the bill of rights, which contains non-negotiable aspects of working for the Exchange. The right to elevate complaints without fear of reprisal, to have a copy of the contract under which they are employed, to receive pay in a timely fashion, to leave their deployed location at any time. These are among the inalienable rights that each of the third country national workers working with the MPA agency has to have.

One of the most important of these rights is the freedom to retain possession of their passport. The bill of rights is very clear: at no time will any official, either contractor or AAFES, will withhold a passport of a third country national worker. This bill of rights is part of every manpower agency and concession contract we have, which ensures AAFES has legal authority to enforce it.

The second component of the AAFES program is frequent inspection and mandatory reporting to enforce the bill of rights, especially the right to maintain passports. AAFES leaders ensure manpower agencies and concessionaire contractors do not withhold passports of third country nationals working in our facilities. As a part of the policy, AAFES team leaders, our service business managers, food business managers, and other direct hire AAFES associates in leadership positions are required to conduct 100 percent inspections every month to ensure that the third country nationals of manpower agencies and concession contracts are in possession of their own passports.

Leaders report results of the monthly passport verification inspections through the chain of command to the AAFES Regional Operations Center and the Contracting Officer Representative, documenting any contractor employees that do not or cannot present their passports. AAFES has a zero tolerance of violation of this policy. Corrective action to contractors may include a warning letter or a cure notice, as we call it, which gives the contractor the opportunity to address and rectify the issue; termination for default and/or referral to criminal or civil authorities for enforcement.

Finally, effective communication and command level oversight is the heart of the AAFES Combating Human Trafficking program. To make certain AAFES managers and third country nationals understand Combating Human Trafficking policies and procedures, the AAFES bill of rights, posted in prominent areas in their workplaces, have been translated into 11 languages. The AAFES Inspector General conducts sensing sessions with third country nationals to collect independent feedback about the program and our education efforts.

Metrics from the Combating Human Trafficking program are incorporated into AAFES' Balanced Scorecard Management program. The scorecard information regarding passport inspections, proper living conditions, communication efforts, and fair pay are measured and provided to AAFES leadership to ensure the program is implemented and enforced throughout the contingency area and to identify areas for improvement.

I am pleased to say that the AAFES efforts to condemn and combat this serious crime has been successful. Now completing our third year of the program, AAFES has achieved these following results: Because of our efforts, third country national workers are now in possession of their own passports, several have been liberated from involuntary servitude and been able to return to their own home country as a direct result of this program.

AAFES's Contracting Officer Representative in Kuwait and Qatar and UAE was cited in January 2011 by the DOD Inspector General for outstanding work in combating human trafficking.

In the January 2011 report, the DOD IG inspection cited AAFES as an excellent example of Combating Trafficking in Persons awareness and contract quality assurance that merits being considered for replication.

Regardless of our significant achievements, human trafficking still exists, and AAFES must and will remain vigilant in these efforts to combat it.

We recognize the threat to basic human rights and the zero tolerance for it. AAFES does not have the power to eradicate this scourge throughout Southwest Asia. We do have the power to fight it to our best abilities so that our contract workers are not victimized. We make it clear to our contractors: if you want to do business with AAFES, then you will not engage in human trafficking. AAFES does not have police powers; we cannot enforce contractors to do anything. What AAFES does have is power of contracting, which in many ways is more powerful than police authorities. The ability to take the contract away for violations of our policy is very persuasive; our contractors respond quickly.

We might not be able to change the world, but we can and we do combat human trafficking. I look forward to your questions.

[The prepared statement of Mr. Howard follows:]

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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today. I look forward to sharing the measures taken by the Army and Air Force Exchange Service (AAFES) to prevent human trafficking in Southwest Asia. Combating human trafficking is a complex and challenging mission. The responsibility is substantial, but our policy is clear: zero tolerance on trafficking violations. My report today will confirm that AAFES has implemented and is enforcing a comprehensive Combating Human Trafficking program throughout our contingency area of operations.

AAFES runs exchange facilities in eight countries, spread over 71 locations in combat zones across the U.S. Central Command Area of Responsibility (AOR). The core of the AAFES team consists of about 300 direct hire AAFES associates; however, the vast majority of our teammates in these contingency areas—more than 3,000 individuals—are provided by manpower agencies (MPAs) and concessionaire contractors. These MPA and concessionaire employees are often Third Country Nationals (TCN), who are an integral part of the AAFES team. In fact, without TCNs, AAFES cannot provide world class support for our deployed troops and customers.

Today, I will highlight three essential elements in AAFES' fight against human trafficking: (1) an enforceable bill of rights for TCN associates, (2) consistent inspection and reporting to ensure compliance, and (3) effective communication to increase worker awareness and command-level oversight and planning.

AAFES has the inherent responsibility and contractual right to ensure humane treatment of TCNs working in our facilities. The first element in deterring human trafficking among the TCN population is an enforceable bill of rights. In 2008, AAFES developed a bill of rights

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which states non-negotiable aspects of working for the exchange. The right to elevate complaints without fear of reprisal, to have a copy of the contract under which they are employed, to receive pay in a timely fashion, to leave their deployed location at any time; these are among the inalienable rights of TCN workers working under MPA contracts with AAFES. One of the most important of these rights is the freedom to maintain possession of their passport. The bill of rights is clear--at no time will any official, either from the contractor or AAFES withhold the passport of a TCN worker. This bill of rights is a part of MPA and concession contracts, which ensures AAFES has legal authority to enforce it.

The second component of the AAFES program is frequent inspection and mandatory reporting to enforce the bill of rights, especially the right to maintain passports. AAFES leaders ensure MPA and concessionaire contractors do not withhold passports of TCNs working in our facilities. As part of the policy, AAFES team leaders, service business managers, food business managers, and other direct hire AAFES associates in leadership positions are required to conduct 100% monthly physical passport inspections that verify that TCN employees of MPA and concessionaire contracts are in possession of their own passports.

Leaders report results of monthly passport verification inspections throughout the chain-of-command to the AAFES Regional Operations Center and Contracting Officer Representatives (CORs), documenting any contractor employees that do not or cannot present their passports. AAFES has zero tolerance of violations of this policy. Corrective action to contractors may include a warning letter/cure notice, which gives the contractor the opportunity to address and rectify the issue, termination for default and/or referral to criminal or civil law enforcement officials.

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Finally, effective communication and command-level oversight is at the heart of the AAFES Combating Human Trafficking program. To make certain AAFES managers and TCNs understand Combating Human Trafficking policy and procedures, the AAFES bill of rights, posted in prominent areas of the workplace, has been translated into 11 languages. The AAFES Inspector General (IG) conducts occasional sensing sessions with TCN workers to collect independent feedback about the program and our education efforts. Metrics from the Combating Human Trafficking program are incorporated into the AAFES Balanced Scorecard Management program. Scorecard information regarding passport inspections, proper living conditions, communication efforts and fair pay are measured and provided to AAFES leadership to ensure the program is implemented and enforced throughout the contingency area, and to identify opportunities for continuous improvement.

I am pleased to say that AAFES efforts to condemn and combat this serious crime have been successful. Now completing the third year of our program, AAFES has achieved good results:

- Because of our efforts, TCN workers are now in possession of their own passports; several have been liberated from involuntary servitude and been able to return to their home country, as a direct result of our program.
- The AAFES' COR based in Kuwait/Qatar and United Arab Emirates was cited by the January 2011 Department of Defense (DOD) IG for outstanding work in combating human trafficking.

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- In their January 2011 report, the DoD IG inspection cited AAFES as an excellent example of Combating Trafficking in Persons awareness and contract quality assurance that merits being considered for replication.

But regardless of our significant achievements, human trafficking still exists and AAFES must remain vigilant in our efforts to combat it.

We recognize this threat to basic human rights and we combat the danger. Our employees in Iraq, Afghanistan, Kuwait, Qatar and many other locations in Southwest Asia, on a daily basis, counter this threat. We, in AAFES, do not have the power to eradicate this scourge throughout all of Southwest Asia. We do have the power to fight it, to the best of our ability, so that our contractor workers are not victimized. We make clear to our contractors: if you want to do business with AAFES, then you will not engage in human trafficking. AAFES does not have police powers. We cannot force contractors to do anything. What AAFES does have is the power of contracting, which in many ways is more powerful than police powers. The ability to take the contract away for violations of our policy is very persuasive. Our contractors respond quickly.

We might not be able to change the world, but we can and we do combat human trafficking. We do this so that contractor employees working in our facilities and supporting AAFES on US government bases are treated humanely. I look forward to your questions.

Mr. LANKFORD. Thank you. Thank you for all your testimony.

Let me say, first, you will find in Members of Congress and those that are included, they can all speak for themselves as well, we have tremendous honor and respect for the work that is done by DOD and the State Department. We are Federal employees as well. We get it. You are also, I am sure, when you got out of bed today, said I can't wait to go do a congressional hearing on this. You also understand you are getting the full heat for what is really happening beyond you. We understand that as well. My goal with this hearing today, though, is to find ways to get this to stop.

Are any of you ready to go on record right now and to say there is no one in State Department or in DOD, that says there is currently no one that is being trafficked right now?

[No response.]

Mr. LANKFORD. We know this reality is out there. Whether it be one or whether it be 10,000. And it is working through the process to try to work through. We have 19 or 20, as Mr. Connolly mentioned before, policies and procedures that are major pieces that are there. You have all kinds of process pieces that are in place. The issue in our conversation today is how do we move from these things that are in place to this has gone away. We now have the things in line on that.

So I want this to be a dialog today as we go through these questions, so let me just field some questions and go through some things.

Mr. Howard, you mentioned you have the power of contracting and of making those decisions of, if a contractor is out of bounds, not doing contracts with him anymore. How often does that occur?

Mr. HOWARD. Chairman Lankford, we have done six cure letters. The majority of these were for withholding passports, and the contracting management agency did the corrective action; there was no more disciplinary action after that. But it does, when we do that cure letter, it is the first step toward termination. If they did not adhere to that, the second one would be—

Mr. LANKFORD. Okay, any others beyond just the passport issue on that?

Mr. HOWARD. No, it is just the passport, the withholding the passport.

Mr. LANKFORD. The reason I say that is I have talked to some military personnel coming back as well and saying that is a standard. If you work inside the wire, you have to have your paperwork with you; you have to have the designation on you. They need to know who is walking around.

Mr. HOWARD. Yes.

Mr. LANKFORD. So that is not only just, obviously, your requirement, that is if you are going to be on that base especially, that is their requirement as well.

What about the next step of the issue of the recruiting fees and the brokers fees? Because that is where this begins. If someone is recruited and they are going to work for the State Department or the Department of Defense even secondarily, through AAFES or whatever it may be, and they are coming through the process, do we have verification from them or anyone holding a conversation

with that person that is now working on one of our bases or one of our embassies how much did you pay to get this job?

Mr. HOWARD. I cannot say that for the record. The discussion is there. We do ensure they have the contract, we do ensure that their fair pay is documented in the contract. But as far as prior to that, the fees and so forth, I am not aware. I could check back on that, take it for the record.

Mr. LANKFORD. Okay. Because that is where, obviously, this begins.

Mr. HOWARD. Right.

Mr. LANKFORD. Do we have any kind of tracking in place that a subcontractor that has the recruiting responsibilities, that they are doing a contract with them that we can see is coming from their home country that shows how much they paid in recruiter fees? Is any of that in the chain at all?

Mr. HOWARD. I would have to check with our procurement to make sure, and we can take that for the record.

Mr. LANKFORD. Okay. The effective communication part of that, obviously, that becomes a big issue. Posting something and translating it into languages, that is a good start, but if they are fired for talking to American leadership, or an investigation begins and suddenly that person disappears, or as I have had conversations with military personnel that have said some of these bosses will just release a person for the slightest thing in their encounters with American personnel.

This person, let's say, paid a \$5,000 fee to be able to come, which they took out a loan for. They get there, they work for 3 months, they find out it is terrible, talk to an American and say that this is a problem, then they are gone. Now they have lost their \$5,000, they worked 3 months as a slave in horrible conditions, and they are out before the reporting occurs.

It is the tracking of all of that. Do you have a sense that any of that may be occurring?

Mr. HOWARD. Well, we ensure that they get their monthly pay. We also ensure that they are aware of the contract. Our contracting officers representative in country visits sites regularly and talks to the associates and has a real good working relationship with the third country nationals, and I believe has a very good back and forth flow of information. So if one had seen any issues of that, it would have been brought to our attention, and she had no recollection of that.

Mr. LANKFORD. Okay. It is a struggle when we hear so many stories that we have a zero tolerance policy, yet these stories continue to rise up still, and we are still seeing this as a practice of whatever scale that that may be. And I know that we can all have different numbers of what scale this may occur, but it is difficult for me to say we have had these letters that have gone out dealing with passports, but we are not dealing with recruiter fees, we are not dealing with housing issues, for instance, and are they in the 50 square feet required housing; just the basics of how we care for people that are caring for us.

Mr. HOWARD. Chairman Lankford, we stress also the living conditions. If our own AAFES associates are in trailers, our third country nationals will be in trailers. If we are in tents, then the

same thing. Whatever the military is in, we have that same living standard for our own associates, as well as our third country nationals.

Mr. LANKFORD. Okay.

Ms. Dixon, let me ask who is responsible for assuring that these contracts are fulfilled? Let me just give you an example. Someone that is on the ground, begins to get reports that they have recruiter fees, that their living conditions are not good, they are being mistreated, whether it is sexual abuse or whatever it may be. Who begins to follow through the process of assuring that the contractor is identified, that we don't have a continuing pattern of this occurring? Does that make sense?

Ms. DIXON. I don't want to step out on I am not sure, but I believe it should be the contracting officer and contracting officer representative that monitor the contract. Those people should be the ones responsible.

Mr. LANKFORD. Do they have adequate conversation time with the people that are on the ground, these third country nationals?

Ms. DIXON. I can't really speak to that. I will definitely take that for the record.

Mr. LANKFORD. That becomes the challenge. If the person that is responsible for overseeing is not interacting with the third country nationals to see if that is actually being fulfilled as promised, then we have a breakdown in that as well. And I am confident in the AAFES area and other areas these American companies that are there represented, whether they be fast food or product or whatever it may be, I am sure they would be mortified to know that some of the employees of their company in other countries working for American soldiers have the possibility of being in indentured servitude. I am confident none of those American companies want that to be able to get out or would want to be able to see it, nor would we, as American citizens and taxpayers, want to know that any of our tax dollars or our process of dealing with our own soldiers and the folks that are service members on that.

There will be plenty of questions, we will have several rounds, get a chance to talk through, and we will have this ongoing conversation on that. I would like to be able to recognize Mr. Connolly for 6 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman. If I could just pick up on that last point.

Ms. Dixon, I am not sure I understood your answer to the chairman's question. You said you would have to get back to us on the record. Your title is Combating Trafficking in Persons Program Manager. Do you get out in the field? Do you meet with contractors and subcontractors to satisfy yourself that this practice is not as widespread as testimony indicated?

Ms. DIXON. Yes, sir, I do go out and talk to contracting officers. I have been invited to come and do—I try to do outreach training to—

Mr. CONNOLLY. Have you been to Iraq?

Ms. DIXON. No, I have not. I have not been to Iraq.

Mr. CONNOLLY. And you are the program manager for Combating Trafficking in Persons.

Ms. DIXON. Correct. I rely on our Inspector Generals in-country, as well as—

Mr. CONNOLLY. Ms. Dixon, we just heard testimony that this is a widespread problem. We are talking about human beings who are being forcibly recruited and lured into employment on our behalf, and you have not made it your business to go and kick the tires and check the dipstick to ascertain to your own satisfaction that these reports are accurate?

Ms. DIXON. No, I have not.

Mr. CONNOLLY. Do you think it might be your responsibility to do that?

Ms. DIXON. Definitely.

Mr. CONNOLLY. Thank you.

Ambassador Moorefield, I placed in the record this statistic, that not a single prosecution with respect to this kind of human trafficking has yet been brought by the Department of Defense against any contractor or subcontractor. And, again, you heard the testimony in the first panel. Unless you wish to contradict it, it is widespread. We are not talking about isolated examples, we are talking about tens of thousands, if not multiples of that. Help me understand, help this committee understand why not a single prosecution has been brought on this subject.

Ambassador MOOREFIELD. It is a fair question, Congressman Connolly. I only know of one case that was referred to the Department of Justice, and they disinclined to pursue it for lack of substantiating evidence.

Mr. CONNOLLY. I have limited time, I am sorry, Mr. Ambassador, but do you have any reason to dispute the testimony we heard from the previous panel that this is a widespread problem involving tens of thousands, if not as many as hundreds of thousands of individuals?

Ambassador MOOREFIELD. I can't verify or deny the number of persons that may be affected.

Mr. CONNOLLY. Okay. If we posit that that is even remotely accurate, the fact that we have five cure letters, no prosecutions, and one reference to the Justice Department, they declined to prosecute, might suggest to a layman, if not a Member of Congress, that we are not taking this subject seriously at all.

Ambassador MOOREFIELD. Well, I can only say that with respect to the justice process and the criminal investigative process that, and I am not trying to avoid your question, we are not directly responsible. I can consult with our investigative agency to find out what their belief is and get back to you as to why more cases have not been investigated to the point of being referred to the Justice Department for prosecution.

Mr. CONNOLLY. Like none.

Ambassador MOOREFIELD. One referred, none prosecuted, that I know of.

Mr. CONNOLLY. One.

Ambassador MOOREFIELD. Yes.

Mr. CONNOLLY. How many subcontractors are there, just to pick one country, Iraq? How many would you guess?

Ambassador MOOREFIELD. I am sure there are dozens and dozens.

Mr. CONNOLLY. Dozens? Perhaps many more than that.

Ambassador MOOREFIELD. Well, we have been scaling down, so I can't really say what it is today. It was one point, no doubt, hundreds.

Mr. CONNOLLY. Okay.

Ms. Klemstine, you heard Mr. McCahon, in the previous panel, indicate that he had written with some suggestions about how the State Department might help deter this phenomenon with its contractors and subcontractors, and he wrote that letter 15 months ago and has yet to receive a reply. Can you explain why?

Ms. KLEMSTINE. No.

Mr. CONNOLLY. Are you aware of the letter?

Ms. KLEMSTINE. No, I am not aware of the letter.

Mr. CONNOLLY. May I ask you, Mr. Chairman, with your indulgence, that we would like you to get back to the committee with an explanation and with a response to Mr. McCahon that is cc'd this committee?

Mr. LANKFORD. Without objection.

Ms. KLEMSTINE. Would be glad to do.

Mr. CONNOLLY. I thank the Chair.

In your testimony, Ms. Klemstine, if I understood you correctly, you said that human trafficking among State Department subcontractors apparently is fairly commonplace, particularly the fact that 77 percent of contract employees paid a recruitment fee, which ought to be a red flag. Doesn't necessarily prove there is human trafficking, but it is one red flag out there. And that passports confiscated and wages were stolen. And you also testified to the fact that the awareness level, even among State Department employees, was, frankly, not where we want it to be, nowhere near where we want it to be.

Is State Department taking this issue seriously?

Ms. KLEMSTINE. I believe so, in reference to the response that we just received on our October report. I would say that prior to the October report, although our Department had, on several instances, disclosed potential TIP violations, the seriousness wasn't taken. However, recently, and I think a lot of it had to do with the survey that was actually sent out to employees that substantiated the fact that there was an awareness problem, really did bring the GTIP office to say, yes, we have a problem, now we have to do something.

Mr. CONNOLLY. My time is up, Mr. Chairman, and I do have a series of questions for Mr. Howard that I will revisit in the other round. Thank you.

Mr. LANKFORD. Thank you.

Mr. Walberg is recognized.

Mr. WALBERG. Thank you, Mr. Chairman.

Mr. Howard, in your testimony you stated that, because of your efforts, several third country national workers have been liberated from involuntary servitude. In these cases, what actions were taken against the contractors?

Mr. HOWARD. That is where the cure letters went into play and the third country nationals were returned to their country and the cure letters, to ensure that did not occur again, was done with the contractors.

Mr. WALBERG. There was no termination for defaults or suspension or debarment in the cases of these contractors?

Mr. HOWARD. No.

Mr. WALBERG. How many contractors are you aware of that have engaged in these types of abuses?

Mr. HOWARD. I don't have the exact figures. I would have to take one for the record and get back to the committee.

Mr. WALBERG. Appreciate that. You were here with the last panel and it was indicated that while there were hundreds and hundreds of allegations and incidences of contract or alleged contractor abuse, there were nationals that were sent back, that there were allegations made; yet, it was indicated that generally speaking, overwhelmingly speaking, Department of Defense, other governmental entities did not question the victims. Do you agree with that or do you reject that as being hyperbole?

Mr. HOWARD. If we have the opportunity to question the individuals before they leave country, we do. But once they are out of country, we don't have the capability to.

Mr. WALBERG. So what you are indicating is that, generally speaking, they are out of country before you find out any of the abuse has taken place.

Mr. HOWARD. Well, again, if there would be abuses, our contracting officer representative, who is talking to them all the time, our store managers, our general managers that are at each location every day, if they are aware of anything, they would take the appropriate action and contact our Inspector General also. So I am not aware of any.

Mr. WALBERG. Ms. Dixon, what is your policy on that? I mean, do you agree with the statements made earlier by the panel that very few, if any, of the victims were interviewed by the Department of Defense?

Ms. DIXON. I can't speak to whether victims were interviewed or not. I know that attempts were made to interview victims; they tried to get in touch with victims to interview them.

Mr. WALBERG. Ambassador Moorefield, how do you respond?

Ambassador MOOREFIELD. Frankly, I am not aware from any of our oversight initiatives so far that we have determined whether or not they are systematically the prime contractor or is determining whether or not people were—their CTIP rights were violated before they left the country. We have been accompanying Defense Contract Management Agency and contracting officers on visits to camps where the laborers are kept or in their places of employment where interviews were conducted asking these sorts of questions. So far we have not determined that there was an identifiable CTIP violation.

Mr. WALBERG. I certainly would appreciate hearing subsequent information that Department of Defense and others are interviewing more of the alleged victims, that we are seeing some aggressive action taken there, because it seems like the evidence is leaving the scene and we are not gaining the opportunity to find ways of achieving success in this area.

I would like to give my remaining time to the chairman.

Mr. LANKFORD. Thank you. I receive that.

Let me just ask a quick question, then we are going to continue to move on.

State Department report that came out, the OIG report, January 2011, this year. Here's the statement that comes out of it: 77 percent of the interviewed workers stated they obtained their jobs by paying a recruitment agency in their country of origin. Of the 77 percent, approximately 50 percent of those workers said they paid a recruitment fee that totaled more than 6 months contracted salary; 27 percent reported paying fees of more than 1 year's salary; and 11 of those 75 workers paid a recruitment fee that would take 2 years to pay off.

They paid a recruiter fee 2 years. That is the length of their typical contract. When it listed out and broke out of those that were interviewed, the minimum and maximum, the average payment here, an average person coming in from Bangladesh, \$2,383 for a recruiting fee.

Here's my struggle. We have to move passed they have their passport; they could leave if they want to. They don't have the money to leave; they are in indentured servitude, in debt bondage to a recruiter that came, and I am not sure we are verifying that. We have to be able to move passed that.

With that, I would like to be able to yield to Ms. Speier for 6 minutes for questioning time.

Ms. SPEIER. Thank you, Mr. Chairman.

And thank you all for participating.

Let me ask this simple question. Is there a problem, in your mind? Ms. Klemstine.

Ms. KLEMSTINE. Yes.

Ms. SPEIER. Ambassador Moorefield.

Ambassador MOOREFIELD. Yes.

Ms. SPEIER. Ms. Dixon.

Ms. DIXON. Yes.

Ms. SPEIER. Mr. Howard.

Mr. HOWARD. Yes.

Ms. SPEIER. What tools do you not have that you need in order to make this problem go away?

Ms. KLEMSTINE. Well, I think in the State Department there are really three answers to that question. I think, first of all, there needs to be better awareness within the Department. Secondary of all, the contracting officer representatives need to be far more proactive in this area than they have in the past. And as you probably know, the State Department has suffered in the area of CORs on many of its contracts, and that is one of the reasons why our office, the IG Office, has been actively working with the State Department to increase CORs within the whole region. That has been a huge issue.

The third area that I think would definitely help in this arena is to establish some type of hotline, a place where people can call if they feel that they are victims of human trafficking. Right now something like that doesn't exist, and I think that we need to, just like we have in the OIGs a hotline for people to call in things throughout the Department, I think we need one also on the contractor level so that people that are working in these conditions can actually report it; and it would give us on the investigative side

some mechanism by which to go back and to really dig into these issues.

Ms. SPEIER. All right.

Ambassador Moorefield, what tools do you need?

Excuse me. Ms. Klemstine, how many people do you have working specifically on this issue?

Ms. KLEMSTINE. On this issue? I have had two teams working on it. I am divided into two sections.

Ms. SPEIER. Just give me a number.

Ms. KLEMSTINE. Probably about 10 people.

Ms. SPEIER. Ten people?

How about you, Ambassador, how many people are working on this issue?

Ambassador MOOREFIELD. I would say on the various teams we have sent out or are sending out, about 10.

Ms. SPEIER. Ms. Dixon, how many in your office?

Ms. DIXON. It is only two people in my office; however, we work—

Ms. SPEIER. Is that including you?

Ms. DIXON. Yes, it is.

Ms. SPEIER. All right.

Mr. Howard.

Mr. HOWARD. We have 300 because all of our AAFES associates are directly involved in monitoring and being aware of what is going on, in addition to our oversight from our European headquarters and our headquarters in Dallas, Texas.

Ms. SPEIER. Have you all read The New Yorker piece?

Mr. HOWARD. Yes.

Ms. DIXON. Yes.

Ambassador MOOREFIELD. Yes.

Ms. KLEMSTINE. Yes.

Ms. SPEIER. Have you taken any action based on The New Yorker piece?

Ms. DIXON. Yes.

Ms. SPEIER. What action have you taken? You sent a cure letter?

Ms. DIXON. I answered yes.

Ms. SPEIER. Oh, Ms. Dixon. What have you done?

Ms. DIXON. Contacted the DOD IG about further inquiries into the matter, looked at the previous inspection that was done, the evaluation that was done, and looked at the issues that were sent down on that previous inquiry, which was different from what was put out in The New Yorker.

Ms. SPEIER. Okay. I have to tell you I am as frustrated as my colleagues on this panel. First of all, Ms. Klemstine, I have just been informed that there is a hotline; no one answers it, and that third country nationals don't speak English.

Ms. KLEMSTINE. I am not sure what hotline they are referring to because, as far as I know and based on the audit work that we have done, there has not been a hotline dedicated to TIP.

Ms. SPEIER. All right, so here is this New Yorker reporter, Sarah Stillman, who spent a year investigating this. Retired General Stanley McCrystal says that the unregulated rise of the Pentagon's Third World logistics army is undermining America's military objective. So you have that issue. You have former Congressman

Christopher Shays saying it is a human rights abuse that cannot be tolerated.

There are references made that these workers, primarily from South Asia and Africa, often live in barbed wire compounds on U.S. bases, eat at meager chow halls, and host dance parties featuring Nepalese romance ballads and Ugandan church songs, a larger number employed by fly by-night, some contractors who are financed by the American taxpayer but who are often operating outside the law.

Now, this is not like it is not happening under our noses. That is what is most offensive to me. These are on bases in these countries. We know that, moving forward, in Iraq, State Department is going to be employing more of these third country nationals.

So are we just going to compound this problem or are we going to do something about it? I feel like our focus is on dotting Is and crossing Ts and making sure that people have their passports or have been informed about the responsibilities to inform, but we are not doing anything about the underlying problem, which is people are being enslaved, providing services, being told one thing and yet being offered something very different.

And we are allowing these subcontractors to continue to operate. A cure letter is a slap on the hand. They should be booted out of there. They should lose the privilege to work for the U.S. Government forever. And we send them a cure letter, Mr. Howard? That is the extent of the penalty that is going to be imposed on anyone who is trafficking?

Mr. HOWARD. These, again, were for holding on to passports. And we give a cure letter and if they don't abide by that, we would debar them and never do business with them again.

Ms. SPEIER. Except that you did say that you believe there is a problem. And your response so far has been to send out cure letters.

Mr. HOWARD. No. It is also working on a daily basis to ensure that the problems don't occur in our areas of responsibility.

Ms. SPEIER. My time has expired.

Mr. LANKFORD. Let me tell you a quick story. Then we are going to a different round, if you all have additional questions as well.

Part of my own preparation and my own research on this, I sat down with an MP coming back from Afghanistan who handles internal security for one of the bases, and I am going to leave their name out of it. When I asked about the questions of third country nationals on that base in Afghanistan right now, there was a long hesitation and the response was, what would you like to know? We started talking about human trafficking and trafficking in persons. Their response was, I don't even know where to report it, but I know it is going on. This is an MP doing internal security on one of our bases. When I asked about living conditions, their response was we would never ever want to live where they live on base, never.

They said that they had some of the companies that they work for, they would lose their position and would immediately be kicked out, which terrifies them because they have this massive loan back home they have to pay for; they have to stay and keep that job. If they don't stay and keep that job, they will never be able to pay

off the loan, so they are terrified they are going to lose it at any point. If they ever interact with Americans in any way that their boss considers in any way questionable, that they are pushing toward that, they are just kicked out, which obviously they have now lost everything and have no chance of even gaining back what they paid into the system.

This MP could identify this in the areas where prostitution was happening in sex trafficking.

This is the reality that is on the ground right now, and my frustration is we know it. We have to find some way to stop this. A zero tolerance policy is not working. Failing to prosecute is not working. Cure letters are not working. Not doing debarments and suspensions of contractors, that is not working. What needs to be done? And I think Ms. Speier's question is a great question: What tool do you need in your toolbox to make sure that this stops happening?

This violates everything in the American value; that we value the individual person. It is a person created in God's image and has inalienable rights no matter what country they are from. They are to be honored as an individual in the middle of all that. And to know that our State Department, which stands up for human rights around the world, has indentured servitude happening in our embassies is deplorable to me. This is the group that is standing up for American values worldwide. Yet, when these individuals return back to their home countries, all they can speak of is I worked for a year for nothing and lived in these deplorable conditions. This violates everything about who we are and what we do.

And the challenge is we have to have back to this committee some suggestions that extend beyond posting something in the cafeteria or a hotline to call into; some way that we shift from we have talked about this, we put policies in place, to we suspend, debar, to where contractors understand completely this is not acceptable. Some path of documentation that begins in their home country, that if they don't come in with documentation saying how much they paid as a recruiter fee, and it is verified that is a legal amount to pay as a recruiter fee in that; some kind of pathway.

I understand keeping their passport is a big deal, but if they have a passport and no way to get home, or they have such a large debt that they can't leave for fear they will never be able to catch up on it and pay it off, that doesn't matter, their passport is meaningless to them at that point, because that would be the worst thing for them to go home because now it is even worse; they have to go home and face the loan shark with no money.

All these dynamics all wrap in the middle of this for us, and I am sure it does for you as well. This can't just be an issue that is only passionate for us; obviously, you live and breathe in this all the time. But it is simple, we have to move from the contracts that we put out to primes and sub-primes and all these contractors are out there has the right language into it. That is a good start, but just checking to see if they have the right language is only the beginning point; the real issue is do we have trafficking in persons that we are paying for with Federal tax dollars or that we are turning a blind eye to. That is the ending destination on this.

Now, I want to just throw it open for just a quick moment and then we will go to Mr. Connolly for a comment.

What response do you have at this point? What do you see is going to begin to make this shift? What will help us turn around? Any suggestion that you have that you would say this is what we are looking at, I think it will turn the corner on this?

Ambassador MOOREFIELD. Chairman, I am not sure I have a definitive answer; I think I have plenty of questions I have written down here that obviously we need to examine more carefully in our own inspection work.

The judicial side is, frankly, a bureaucratic set of hurdles that I don't presume to understand.

Mr. LANKFORD. But the suspension and debarment is a very low threshold.

Ambassador MOOREFIELD. No, no. But suspension and debarment of prime contractors is certainly something accessible to contracting officers and commands in the field, and I don't have a good answer yet. I am going to get one on why we haven't been more proactive in using it.

Mr. LANKFORD. Can you give me a time on when you are going to get that answer? Because we would like to have a copy of that answer as well.

Ambassador MOOREFIELD. Sure. Well, we have a report that we are working on right now that is due to you in January, two reports, and one of them is a broader perspective look at issues across DOD; and that would be the obvious place to make sure we have done sufficient research and can address this.

The other issue, as you know, is the subcontractor issue, which is beyond the contracting purview of contracting officers, and that is an extreme vulnerability, needless to say.

Mr. LANKFORD. But if a subcontractor violates the rules, we can hold the prime accountable for it.

Ambassador MOOREFIELD. That is correct, and—

Mr. LANKFORD. But we are not currently holding the prime accountable for it.

Ambassador MOOREFIELD. Not to the best of my knowledge, and not to the best of our oversight work yet. And I also don't have a good answer why that is not being used more aggressively.

Mr. LANKFORD. Okay.

Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

It seems to me that maybe we have some legislative refinements required for this topic, but, frankly, it has to do with will and moral outrage. Maybe if more of us thought of it as our sister or our daughter there might be some reflection of moral outrage in the practice, and then maybe we would be motivated to make sure we are enforcing our own laws, regulations, memos, executive orders, and the like.

It is not okay to turn a blind eye to this practice. It is not okay to treat it as a bureaucratic requirement that we can check off a box because people have been trained or made more aware. The object here is to cease the practice. It is a violation not only of human rights, but of everything America stands for. We fought a civil war to end this kind of practice, and yet we are turning a blind eye to

subcontractors serving our Government, who are in fact engaged in involuntary servitude, and in some cases sexual trafficking.

And we know what the problem is. And I am deeply disturbed that we don't seem to be seized with a mission here, and until and unless we are, we are never going to solve the problem. All the laws and all the executive orders in the world aren't going to solve the problem.

Mr. Howard, I was intrigued by our bill of rights. It sounds like a substantive contribution to helping us resolve a very complex problem. When was that bill of rights promulgated?

Mr. HOWARD. It was developed in 2008 and started to apply to our third country nationals in March, April 2009.

Mr. CONNOLLY. Okay. And how do we enforce it?

Mr. HOWARD. We have monthly checks where the managers on the ground have to validate to us that all points of the bill of rights are being adhered to for our associates.

Mr. CONNOLLY. Our managers.

Mr. HOWARD. Our associates, yes.

Mr. CONNOLLY. Gotcha. And that extends to subcontractors?

Mr. HOWARD. We hold the contractor liable for the subcontractor, so we check all of the third country nationals on a monthly basis.

Mr. CONNOLLY. You heard the testimony of the first panel and the dialog we had. And let's assume, obviously inadvertently, but the system of incentives and disincentives actually works against us in the enforcement against human trafficking because all of the disincentives encourage a prime or subcontractor, frankly, not to report because he or she is at risk if they do.

Mr. HOWARD. Right.

Mr. CONNOLLY. How can we fix that so that we are actually rewarding people who ferret it out and report it so that we can deal with it?

Mr. HOWARD. I am not sure how you can reward the subcontractors. I do know—

Mr. CONNOLLY. No, no, the prime, the prime.

Mr. HOWARD. I would have to take that back and think of how we would reward them. I do know that our associates, the AAFES employees, U.S. citizens, continually watch out for this and they will let our—we have a hotline for the Exchange and they will let the Inspector General for AAFES know if they see any violations at all.

Mr. CONNOLLY. My colleague referenced the New Yorker story. It documented the abuses of several beauticians from Fiji who were falsely lured by recruiters back home, over whom, apparently we have no jurisdiction or even interest, but ostensibly to go work in a hotel in Dubai, but in fact they ended up working for subcontractors serving the U.S. Government in Iraq. Is that correct?

Mr. HOWARD. Yes, that is my recollection from reading the article.

Mr. CONNOLLY. They worked 12 hour days, 7 days a week; their passports were in fact held for some period of time, presumably against their will; and their wages, whatever they were promised, which was substantially more than what in fact they received, according to this article, were only \$350 a month. To your knowledge, is that accurate?

Mr. HOWARD. It is accurate in fact that the contract said \$350 plus tips. And when our Inspector General reviewed it, the tips amounted to about \$450, which took the pay on a monthly basis up to about \$800.

Mr. CONNOLLY. Did AAFES ever interview these women?

Mr. HOWARD. We attempted to, but they had already gone back to Fiji and we could not interview them. But we did interview additional associates at that site.

Mr. CONNOLLY. And did you corroborate what you understood to be their story?

Mr. HOWARD. Yes. Well, no. What we found is that the beauticians that were working there said they all had their passports, that they enjoyed working there, and they had a few questions about their pay, but nothing about holding on to the passports or any sexual activity.

Mr. CONNOLLY. So you have reason, therefore, to doubt the narrative of The New Yorker with respect to these two women?

Mr. HOWARD. All I can do is based on what our Inspector General did find during their research.

Mr. CONNOLLY. You indicate that your writ is limited in terms of sort of third countries from which these people are being recruited. But in your opening testimony I thought I heard you say you have a presence in something like 30 countries?

Mr. HOWARD. We are in 30 countries—

Mr. CONNOLLY. Thirty countries. But you are not in, for example, Fiji or Nepal, or places like that.

Mr. HOWARD. No. This is where the manpower agencies go out and employ.

Mr. CONNOLLY. Would you agree, in light of the concerns we have about human trafficking, that figuring out some methodology, whether it is with AAFES or IG offices or maybe Ms. Dixon's office, if we can get passed two people staffing it, we ought to be addressing the place where people are recruiting because that is really the weak link in the chain, as Mr. McCahon indicated in the first panel?

Mr. HOWARD. Based on what I heard today, yes, the root cause is right at the beginning.

Mr. CONNOLLY. All right. I would certainly, and I know the chairman and members of the committee would, welcome any additional thoughts you might have as you think about that in terms of how we might get at that, because I think if we don't get at that, we are never going to solve this problem. There are several links in the chain we have to get at, but that is certainly one of them.

Thank you, Mr. Chairman.

Mr. LANKFORD. With that, let me make one quick request. I am going to ask Ms. Speier if she would like an additional round of questions.

Could the four of you independently put together a set of ideas of how to be able to resolve this that we could have by February 1? That would give you 3 months to be able to pull together ideas of how we move passed what we have in place to here are solutions to fix this, so that a year from now we don't have a hearing like this other than to say well done and be able to move passed that. Is that acceptable? By February 1st on that.

With that, Ms. Speier, recognize you for 6 minutes.

Ms. SPEIER. Mr. Chairman, thank you, and thank you for giving the direction you just did. One of my biggest concerns about the hearings that we have here is that we show great outrage, the hearing is over, and business as usual. And it is also a problem on the issue of military rape in this country, where we have had 16 years and 18 hearings, and nothing has changed. And I fear that we will be in a similar situation in this arena as well if we don't stay on it.

And I compliment you on making this request. I also would encourage you to have subsequent hearings. If we don't stay on this issue, it will continue without being addressed appropriately.

I guess I would just like to understand, to you, Mr. Howard, when the Inspector General went and the beauticians had left, there still was a company, a subcontractor that had hired them, correct?

Mr. HOWARD. Correct.

Ms. SPEIER. And what happened to the subcontractor?

Mr. HOWARD. Due to the fact we could not validate the accusations, nothing.

Ms. SPEIER. Nothing. Did you show the subcontractor this article and say what is your response to this?

Mr. HOWARD. I can't specifically say what the IG did or didn't say. I could get back to the committee on this.

Ms. SPEIER. All right, I think, as you can tell, we are vitally interested in this issue. We expect that you are going to put metal to the pedal.

Mr. HOWARD. Yes, pedal to the metal.

Ms. SPEIER. Pedal to the metal, and take this on as if it was your own family member. I think that was a reference that my colleague had referenced. Because this is not just incompatible. I think that was the word Ms. Dixon used. This is offensive and violates every principle in our Constitution. Every principle. And it is only going to get worse because our use of third party nationals is increasing as we wind down in both Iraq and Afghanistan. So if we don't get this right, the problems are just going to explode, in my view.

So, Mr. Chairman, I think at this point I will just yield back.

Mr. LANKFORD. I do appreciate you being here today. As I mentioned before, I am sure this wasn't a fun day. It is not a fun day for us as well. Some of this was both out of a prior hearing with the Commission on Overseas Contingencies came and submitted their report. A small aspect of that report, which is not relevant to what they are doing, highlighted that this is an ongoing problem. There will be more that will follow up from this as well, and both your testimony and the previous panel as well.

The prime issue is now if we have a contract in place and we know what the cost of the contract should be based on the travel of the people coming, the cost of the labor, the cost of housing; either these primes and subs are skimming off dollars and taking that dollar that is to be committed to workers or they are working on an additional kickback, which is also illegal, from the recruiter on the field, getting a cut back to the contractors, or were violating the basics of what is a legal recruiter fee in the country. It is just on and on and on. But they are all things that are discoverable.

At this point it is moving from we have great rules and regulations to we are enforcing them and we are accomplishing that. We are going and asking the questions that we are afraid to ask, knowing what the answer might be. My concern is—and it is only my suspicion and concern. My concern is that we are not reporting it, we are not pushing it, we are not following through on this for fear that it gets out into the media and it becomes—it is easier to say we have had no prosecutions, assuming that means it is not occurring, rather than we have had 25 prosecutions because it is occurring.

I think it is out. It is occurring, has been occurring. It has been addressed for the past 20 years just a piece at a time. Now we have to move it from it is being addressed in right policies, win contracts and right language, those are all good first steps, to it is completely eradicated from what we do. That is what we are looking forward to being in the final step.

I appreciate your time and the effort you put into this. I look forward to getting a chance to read back the ideas that you are submitting back to us by February 1. And, with that, we are adjourned.

[Whereupon, at 12:16 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Elijah E. Cummings follows:]

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Opening Statement

Rep. Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform

Subcommittee on Technology, Information Policy, Intergovernmental
Relations, and Procurement Reform
Hearing on "Are Government Contractors Exploiting Workers Overseas?
Examining Enforcement of the Trafficking Victims Protection Act"

November 2, 2011

Chairman Lankford and Ranking Member Connolly, I want to thank you for convening today's hearing on U.S. government contractors and the Trafficking Victims Protection Act.

U.S. contractors have been implicated in allegations of human trafficking violations at various locations overseas, including Iraq and Afghanistan. Our nation has sought to respond to these allegations by enforcing a "zero tolerance" policy that prohibits government employees and contractors from engaging in forced labor and other abuses.

But our nation's policy has failed, and this failure is an appalling embarrassment that should be of concern to every Member of Congress.

During the 110th Congress, under the leadership of then-Chairman Henry Waxman, our Committee heard testimony in 2007 about abuses carried out by contractors working to construct our own U.S. embassy in Baghdad.

More recently, the Final Report of the Commission on Wartime Contracting concluded that existing prohibitions on human trafficking are not working. The Commission made several recommendations to help protect workers and hold government contractors more accountable.

Chairman Lankford and Ranking Member Connolly, by holding today's hearing you are demonstrating your commitment to ending these abuses. I look forward to the testimony of our witnesses and to working to identify ways we can hold contractors responsible for ensuring that foreign workers are protected. Thank you.

Contact: Ashley Etienne, Communications Director, (202) 226-5181.