[NOT YET SCHEDULED FOR ORAL ARGUMENT]

No. 25-7046

# In the United States Court of Appeals for the District of Columbia Circuit

MOHAMMED FORHAD MIA, *et al.*,

*Plaintiffs-Appellants*,

*v.*

KIMBERLY CLARK CORPORATION, *et al.*,

*Defendants-Appellees*.

## BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANTS-APPELLEES

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## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES PURSUANT TO CIRCUIT RULE 28(a)(1)

**A. Parties and *Amici*.** Except for *amicus* filing this brief, all parties, intervenors, and *amici* appearing before the District Court and in this Court are listed in the Briefs for Plaintiffs-Appellants and Defendants-Appellees.

**B. Ruling Under Review.** An accurate reference to the ruling at issue appears in the Brief for Defendants-Appellees.

**C. Related Cases.** Counsel is unaware of any related case involving substantially the same parties and the same or similar issues.

*/s/ John B. Bellinger, III*
John B. Bellinger, III

## DISCLOSURE STATEMENT PURSUANT TO CIRCUIT RULE 26.1

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rules 26.1 and 29(b), undersigned counsel certifies:

*Amicus* the Chamber of Commerce of the United States of America ("Chamber") is a nonprofit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent company, and no publicly held company has a 10% or greater ownership interest in the Chamber.

*/s/ John B. Bellinger III*
John B. Bellinger, III

## STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

All parties have consented to the filing of this *amicus* brief.

Pursuant to Circuit Rule 29(d), *amicus* certifies that a separate brief is necessary to provide the unique perspective of members of the broader business community, which Plaintiffs' sweeping theory of liability directly affects.

Since *amicus* is not aware of any other *amicus* brief addressing these issues, it certifies pursuant to Cir. Rule 29(d) that joinder in a single brief with other *amici* would be impracticable.

*/s/ John B. Bellinger, III*
John B. Bellinger, III

## STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

No counsel for any party authored this brief in whole or in part and no entity or person, aside from the *amicus*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

*/s/ John B. Bellinger, III*
John B. Bellinger, III

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# GLOSSARY

| | |
|---|---|
| Br. | Plaintiffs-Appellants' Opening Brief (Doc. 2131038) |
| Professors Br. | Brief of Legal Scholars With Expertise in Extraterritoriality and Transnational Litigation As *Amicus Curiae* In Support of Neither Party (Doc. 2132285) |
| RICO | Racketeer Influenced and Corrupt Organizations Act |
| Trafficking Act | Trafficking Victims Protection Reauthorization Act |

## IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

The Chamber has a substantial interest in the issues presented in this case. Numerous U.S. companies have been, and continue to be, defendants in lawsuits predicated on meritless and expansive theories of liability and extraterritoriality based on their dealings in foreign markets. These suits often last a decade or more, imposing substantial legal and reputational costs on U.S. companies transacting business overseas.

## STATUTES AND REGULATIONS

All pertinent materials are contained in the addendum to the Brief for Defendants-Appellees.

## INTRODUCTION

The District Court correctly applied the presumption against extraterritoriality to hold that Section 1595(a) of the Trafficking Act—the provision granting private litigants a civil right of action for certain violations of the Act—does not apply to forced labor and injuries that allegedly occurred in Malaysia and Bangladesh, not in the United States.

Plaintiffs and law professor *amici* ask this Court to stretch Section 1595(a) in a manner that conflicts with the text and structure of the statute, as well as with this Court's precedents. Indeed, Plaintiffs and *amici* completely *ignore* a line of this Court's decisions that foreclose the extraterritorial application of the Trafficking Act's civil right of action. This Court has repeatedly held that where Congress *expressly* provides for extraterritorial application in one section of a statute—but is silent about extraterritoriality in *another* section of the same statute—that latter section does *not* apply extraterritorially. *Garvey v. Admin. Rev. Bd., U.S. Dep't of Labor*, 56 F.4th 110, 123 (D.C. Cir. 2022); *United States v. Garcia Sota*, 948 F.3d 356, 358 (D.C. Cir. 2020); *see also United States v. Thompson*, 921 F.3d 263, 266 (D.C. Cir. 2019).

Section 1596 of the Trafficking Act expressly provides that certain criminal statutes apply to extraterritorial conduct in prosecutions brought by the United States, but Section 1595(a) remains conspicuously silent about extraterritoriality as to civil actions brought by private litigants. Under a straightforward application of this Court's precedents—which Plaintiffs and *amici* fail to even acknowledge—the Court should affirm.

The Trafficking Act's different treatment of criminal prosecutions and private civil rights of action makes good sense. When the government pursues extraterritorial actions, executive oversight and prosecutorial discretion can minimize interference with the United States' foreign-policy goals. No such check restrains private civil litigants asserting private rights of action.

Beyond the troubling implications for our nation's foreign relations, Plaintiffs' erroneous interpretation of the Trafficking Act's civil right of action also would produce perverse outcomes and incentives for companies. Plaintiffs argue that a company's corporate policies, audits, and programs aimed at *preventing* forced labor in their supply chains should serve as a basis for liability. *E.g.*, Br. 46-47. But that would irrationally

punish laudable voluntary programs and discourage activities that could help thwart forced labor and human trafficking.

The Chamber is committed to the goal of eliminating involuntary labor worldwide. Achieving that goal requires room for Congress and the Executive Branch to continue their work addressing the issue, without interference by private civil litigants into sensitive matters of foreign affairs.

This Court should affirm the District Court's judgment.

## ARGUMENT

### I. Plaintiffs' Claims Are Impermissibly Extraterritorial.

Plaintiffs' claims under the Trafficking Act's civil private right of action, granted by Section 1595(a), face a threshold obstacle: Section 1595(a) does not apply to extraterritorial conduct. U.S. law "governs domestically but does not rule the world," *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 454 (2007), and "federal laws [are] construed to have only domestic application" unless there is "clearly expressed congressional intent to the contrary," *RJR Nabisco, Inc. v. European Cmty.*, 579 U.S. 325, 335 (2016). To overcome this "presumption against extraterritoriality," a federal statute must contain "a clear, affirmative indication" that it

applies to conduct abroad. *Id.* at 337. Section 1595(a) contains no such indication. To the contrary, the Trafficking Act's text and structure reflect Congress's intent that private civil actions should *not* apply to extraterritorial conduct.

### A. The Trafficking Act Does Not Contain a "Clear, Affirmative Indication" That Section 1595(a) Applies to Extraterritorial Conduct.

1. To determine whether a federal statute applies to extraterritorial conduct, this Court "begin[s] with the text of the statute." *Garvey v. Admin. Rev, Bd., U.S. Dep't of Labor*, 56 F.4th 110, 122 (D.C. Cir. 2022) (citation omitted). Section 1595, titled "Civil remedy," provides:

> An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, or attempts or conspires to benefit, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

18 U.S.C. § 1595(a).

Plaintiffs and law professor *amici* do not dispute that Section 1595(a)'s text says nothing about whether private civil actions should apply to conduct abroad. Br. 12-13; Professors Br. 12. Such statutory silence is fatal to Plaintiffs' claims. As the Supreme Court has repeatedly

emphasized, "[i]t is a rare statute that clearly evidences extraterritorial effect despite lacking an *express* statement of extraterritoriality." *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 420 (2023) (quoting *RJR*, 579 U.S. at 340) (emphasis added). If it had wanted to, Congress easily could have "clearly expressed" its intent that the civil private right of action provision applies to extraterritorial conduct. *RJR*, 579 U.S. at 335. But the Trafficking Act says nothing, not one word, about it. That is the opposite of "affirmatively and unmistakably instruct[ing] that the statute" applies to extraterritorial conduct. *Id.*

2. What's more, the Trafficking Act's other provisions confirm that Congress intended for Section 1595(a) *not* to apply to extraterritorial conduct. As this Court has repeatedly explained, "Congress's explicit provision for extraterritorial jurisdiction in one provision [of a statute] . . . militates against inferring any such application for a closely related and nearby provision with no such signal." *United States v. Garcia Sota*, 948 F.3d 356, 358 (D.C. Cir. 2020). "[L]egislation explicitly providing one provision with extraterritorial reach likely weighs against a finding that another provision without such language applies overseas." *Garvey*, 56 F.4th at 123.

In *Garvey*, the question was whether Section 806 of the Sarbanes-Oxley Act applied extraterritorially to conduct abroad. *Id.* at 122-23. This Court observed that "Section 806 is silent as to its territorial reach," which notably contrasted "with other SOX enactments, including a whistleblower provision, that expressly provide for extraterritorial enforcement." *Id.* at 123 (citation omitted). The Court held that "Congress's silence regarding Section 806's scope and concurrent grant of extraterritorial enforcement elsewhere under SOX convey the implication that it did not intend to provide Section 806 with extraterritorial effect." *Id.*

The same reasoning precludes the extraterritorial reach of Section 1595(a) of the Trafficking Act. While Section 1595(a)'s civil-right-of-action provision remains completely silent about its application to extraterritorial conduct, the very next provision *explicitly* provides for extraterritorial jurisdiction of certain *criminal* offenses prosecuted by the government. Section 1596, titled "Additional jurisdiction in certain trafficking offenses," provides:

> In general.—In addition to any domestic or extra-territorial jurisdiction otherwise provided by law, the courts of the United States have extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit an offense) under section 1581, 1583, 1584, 1589, 1590, or 1591 if—

> (1) an alleged offender is a national of the United States or an alien lawfully admitted for permanent residence (as those terms are defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)); or
>
> (2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender.

18 U.S.C. § 1596(a).

"These provisions demonstrate that '[w]hen it desires to do so, Congress knows how' to speak with sufficient clarity to regulate beyond our borders." *Daramola v. Oracle Am., Inc.*, 92 F.4th 833, 839 (9th Cir. 2024) (alternation in original) (quoting *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 258 (1991)). Put simply, had Congress intended private civil actions under Section 1595(a) to apply to extraterritorial conduct, it naturally would have expressly said so, just as it did for criminal prosecutions under Section 1596.

This conclusion is reinforced by the fact that "Congress gave both provisions their current form in a single statute." *Garcia Sota*, 948 F.3d at 358. In 2008, Congress amended Section 1595(a) at the same time that it enacted Section 1596, *see* Pub. L. No. 110-457, §§ 221, 223, 122 Stat. 5044, 5067, 5071 (2008), and yet included express extraterritoriality language in only Section 1596. *See Garcia Sota*, 948 F.3d at 358 (statute not extraterritorial where Congress "revised the portion of § 1116 providing

for § 1116's extraterritorial application but inserted no similar provision into § 1114.").[1]

3. Plaintiffs and law professor *amici* completely ignore *Garvey* and *Garcia*, which squarely foreclose extraterritorial application of Section 1595(a). Instead, they argue that Section 1595(a) contains a sufficient "affirmative indication," that its private right of action reaches extraterritorially "because it directly incorporates predicate offenses [listed in Section 1596] that expressly apply extraterritorially," Professors Br. 11-12 (citation omitted); *see* Br. 15.

That argument contradicts the Supreme Court's decision in *RJR Nabisco*. There, the Court considered the extraterritorial application of provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), including its criminal liability provision at 18 U.S.C. § 1962

[1] Yet another indicator that Congress did not intend Section 1595(a) to apply to extraterritorial conduct is 18 U.S.C. § 3271. Section 3271 expressly provides for extraterritorial jurisdiction over all Chapter 77 criminal offenses when committed outside the U.S. by an employee of the U.S. government, including contractors. Section 1595(a) allows civil actions by a "victim of a violation of" Chapter 77, but remains silent about whether it applies to extraterritorial conduct. Again, that silence in the face of Section 3271's express extraterritoriality language indicates that had Congress intended for private civil actions to reach extraterritorial conduct it would have likewise said so expressly.

(which incorporates criminal "predicate acts" listed in § 1961), and its civil right-of-action provision at Section 1964(c). With respect to criminal prosecutions, the Court explained that "Congress's incorporation of [certain] extraterritorial predicates into RICO gives a clear, affirmative indication that § 1962 applies to foreign racketeering activity—but only to the extent that the predicates alleged in a particular case themselves apply extraterritorially." *RJR*, 579 U.S. at 339. But the same analysis did not apply to RICO's private civil right of action.

The Court in *RJR Nabisco* held that RICO's civil provision, which, like Section 1595(a) of the Trafficking Act, authorizes civil claims based on "violation[s]" of certain criminal statutes, does not to apply to extraterritorial conduct. *Id.* at 346-54. The Court emphasized that the extraterritoriality analysis for a federal statute's criminal prohibitions cannot simply be transferred to its private right of action. "It is not enough to say that a private right of action must reach abroad because the underlying law governs conduct in foreign countries." *Id.* at 350. This is because private rights of action are not subject to "the check imposed by prosecutorial discretion," *id.* at 346 (quoting *Sosa v. Alvarez-Machain*, 542 U.S. 692, 727 (2004)), and thus create a potential for international

friction that goes "beyond that presented by merely applying U.S. substantive law to that foreign conduct," *id.* at 347. In other words, private lawsuits carry a unique and heightened risk of generating international controversy. As such, the fact that a private civil right of action may rest on predicate violations of federal criminal statutes that apply to extraterritorial conduct does not alone imply that the civil action reaches conduct abroad. "Something more is needed," the Court held, "and here it is absent." *Id.* at 350.

The lack of that "something more" is even starker with respect to the Trafficking Act. Unlike RICO, the Trafficking Act includes express extraterritoriality language allowing for overseas application of certain criminal statutes, but includes no such language regarding its civil right of action established in Section 1595(a). Again, as this Court has recognized, this indicates that Congress did not intend Section 1595(a) to apply to extraterritorial conduct. *See supra* at pp.6-9.

4. Despite allowing certain criminal prosecutions for extraterritorial conduct under the Trafficking Act, Congress had good reason not to provide such extraterritorial reach for the Act's private civil right of action. One of the core purposes of the presumption against

extraterritoriality is "to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries." *Abitron*, 600 U.S. at 417 (citation omitted). As the U.S. government has previously recognized, extraterritorial private civil suits threaten to "embroil[] courts in difficult and politically sensitive disputes." *See* U.S. Br., *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021), 2020 WL 5498509 at *15.

Courts have thus recognized that in cases implicating foreign affairs, criminal and civil enforcement of the same statute can and should be treated differently. As the Second Circuit explained,

> When the United States prosecutes a criminal action, the United States Attorney acts in the interest of the United States, and his or her conduct is subject to the oversight of the executive branch. Thus, the foreign relations interests of the United States may be accommodated throughout the litigation. In contrast, a civil RICO case brought to recover tax revenues by a foreign sovereign to further its own interests, may be, but is not necessarily, consistent with the policies and interests of the United States.

*Attorney Gen. of Canada v. R.J. Reynolds Tobacco Holdings*, 268 F.3d 103, 123 (2d Cir. 2001). It makes perfect sense, then, that Congress would authorize extraterritorial Executive Branch *prosecutions* under the Trafficking Act, while restricting *private civil* enforcement to domestic applications.

### B. *Adhikari* and *Roe* Are Inapposite and Unpersuasive.

Plaintiffs and law professor *amici* invoke *Adhikari v. Kellogg Brown & Root, Inc.*, 845 F.3d 184 (5th Cir. 2017), and *Roe v. Howard*, 917 F.3d 229 (4th Cir. 2019), and district court cases relying on those decisions. Br. 14 n.4, 16-20; Professors Br. 8-9. But none of these decisions provides a basis to reverse.

*First*, *Adhikari* and *Roe* are limited to the context of those cases. In *Adhikari*, the question of extraterritoriality was not before the court—the parties "d[id] not dispute that the [creation of § 1596] enable[d] federal courts to entertain a private party's civil suit that alleges extraterritorial violations of the [Trafficking Act]." 845 F.3d at 200. And in *Roe*, the court was addressing conduct that occurred before Congress enacted the express extraterritoriality provision in Section 1596, and repeatedly indicated that the decision was "limited in scope" to the context at issue there: "persons employed abroad by the federal government" who engage in unlawful conduct while abroad. 917 F.3d at 244; *see id.* at 241 (clear indication of extraterritorial effect "at least with respect to the conduct at issue here").

*Second*, even if these decisions applied in the context here (they do not), neither *Adhikari* nor *Roe* considered that the Trafficking Act's inclusion of an express extraterritoriality provision in Section 1596 but not Section 1595 confirms that the private cause of action under Section 1595 does not reach extraterritorially. *See supra* at pp. 6-9 (discussing *Garvey* and *Garcia Sota*).

*Third*, both *Adhikari* and *Roe* relied on the very premise rejected by the Supreme Court in *RJR Nabisco*: that a civil right of action reaches extraterritorially merely because its supporting statute incorporates as predicate acts criminal statutes that apply extraterritorially. Br. 16; Professors Br. 13-14. That was the position of the *dissent* in *RJR Nabisco*. *See* 579 U.S. at 357 (Ginsburg, J., dissenting) ("Section 1962 . . . all agree, encompasses foreign injuries. How can § 1964(c) exclude them when, by its terms, § 1964(c) is triggered by 'a violation of' section 1962?'"). The majority rejected that view, repeatedly emphasizing that the analyses of a statute's criminal predicate acts and civil-liability provisions are distinct, and extraterritorial civil liability raises unique concerns. *See, e.g.*, *id.* at 346 ("Irrespective of any extraterritorial application of § 1962, we conclude that § 1964(c) does not overcome the presumption against

extraterritoriality."); *id.* ("[W]e separately apply the presumption against extraterritoriality to RICO's cause of action despite our conclusion that the presumption has been overcome with respect to RICO's substantive prohibitions.").

And as noted, the Supreme Court grounded its decision regarding RICO's private civil right of action in a long line of precedents addressing the potential for private lawsuits to cause "international friction" by seeking to regulate conduct abroad. *See id.* at 346-49. Neither *Adhikari* nor *Roe* address that consideration, despite the centrality of this concern in the Supreme Court's extraterritoriality jurisprudence.

*Finally*, given the thin reed of *Adhikari* and *Roe*, Plaintiffs argue that the Trafficking Act's "remedial purpose" requires that it be "liberally construed." Br. 18-19, 22. But that interpretive principle has been rejected. *See CTS Corp. v. Waldberge*, 573 U.S. 1, 12 (2014) ("The Court of Appeals was in error when it treated this as a substitute for a conclusion grounded in the statute's text and structure. After all, almost every statute might be described as remedial in the sense that all statutes are designed to remedy some problem."); *East Bay Mun. Util. Dist. v. United States Dep't of Commerce,* 142 F.3d 479, 484 (D.C. Cir. 1998) (expressing

the Court's "general doubts about the canon that 'remedial statutes are to be construed liberally' since virtually any statute is remedial in some respect"); *see* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 364 (2012) (criticizing the "false notion that remedial statutes should be liberally construed").

Plaintiffs also rely on legislative history and tout an *amicus* brief filed in another case by legislators purporting to describe Section 1595(a)'s purpose. Br. 20. But this Court "do[es] not resort to legislative history to cloud a statutory text that is clear," and has found statements of individual legislators or post-enactment legislative history "[il]legitimate tool[s] of statutory construction." *Eagle Pham., Inc. v. Azar*, 952 F.3d 323, 339 (D.C. Cir. 2020) (citation omitted).

Because Congress has not "affirmatively and unmistakably instructed that" Section 1595(a) applies to extraterritorial conduct, *RJR*, 579 U.S. at 335, the Court must proceed to the second step of the extraterritoriality analysis: whether the focus of Plaintiffs' claims are domestic. As discussed below, they are not.

### C. Plaintiffs' Case Does Not Involve a Domestic Application of Section 1595(a) of the Trafficking Act.

If a federal statute does not apply to extraterritorial conduct, "plaintiffs must establish that 'the conduct relevant to the statute's focus occurred in the United States.'" *Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 633 (2021) (quoting *RJR*, 579 U.S. at 337). "[T]he focus of a statute is the object of its solicitude, which can include the conduct it seeks to regulate, as well as the parties and interests it seeks to protect or vindicate." *Abitron*, 600 U.S. at 418 (cleaned up).

Both the focus of the conduct Section 1595(a) seeks to regulate and the parties it seeks to protect or vindicate are outside the United States in this case. *First*, Section 1595(a) grants a civil cause of action to a person who suffered "a violation of this chapter." Plaintiffs allege that they were victims of violations of Section 1589 (forced labor) and Section 1590 (human trafficking). JA 3-4, 39-61, 62-69, 70-73. Plaintiffs' Complaint confirms that these alleged "violation[s] of this chapter," occurred in Malaysia or Bangladesh, not in the United States. *See* JA 5-6 (Compl. ¶ 6) ("All injuries Plaintiffs suffered were a result of their being trafficked [from Bangladesh] and subjected to harsh conditions performing forced labor [in Malaysia].").

*Second*, Section 1595(a)'s text also identifies "the parties and interests it seeks to protect or vindicate," *Abitron*, 600 U.S. at 418—i.e., "*[a]n individual who is a victim* of a violation of this chapter," 18 U.S.C. § 1595(a) (emphasis added). The victims here—workers allegedly trafficked from Bangladesh and subjected to forced labor in Malaysia—suffered injuries in those countries, not in the United States.

Other statutory factors confirm that the specific conduct Section 1595(a) regulates is the underlying offense, and that the specific injury to be prevented is forced labor and other kinds of human trafficking. The name of the relevant statute—the Trafficking Victims Protection Reauthorization Act—confirms that the Act is focused first and foremost on trafficking and its victims. That same concern is evident throughout the Act's purposes and findings: "The purposes of this chapter are to combat trafficking in persons . . ., to ensure just and effective punishment of traffickers, and to protect their victims." 22 U.S.C. § 7101(a). Further, other provisions of the law, including the overwhelming majority of the violations that Section 1595 makes actionable, are also focused on "[f]orced labor," 18 U.S.C. § 1589, "[s]ex trafficking of children or by force, fraud, or coercion," *id.* § 1591, and "[t]rafficking with respect to peonage,

slavery, involuntary servitude, or forced labor," *id.* § 1590. Every aspect of Section 1595(a) thus makes plain that the provision's "focus" is either on the underlying offense or on the victims' injury. Here, those focuses confirm that Plaintiffs' suit is impermissibly extraterritorial.

Plaintiffs argue that under Section 1595(a), "the focus of the statute is receipt of a 'benefit' that occurred in the U.S." Br. 24. But as even the law professor *amici* agree, "Section 1595(a) does not create criminal offenses" for benefiting in the United States, Professors Br. 18, so that cannot be the focus of the provision.

Plaintiffs alternatively adopt the law professors' view that the District Court's focus analysis conflicts with *Rodriguez v. Pan Am. Health Org.*, 29 F.4th 706 (D.C. Cir. 2022). Br. 25-26; Professors Br. 21-24. They argue that *Rodriguez* held that the domestic act of benefitting from forced labor is the relevant focus of Section 1589(b), violations of which the Plaintiffs plead as criminal predicate acts. This argument mischaracterizes *Rodriguez*.

For starters, *Rodriguez* did not analyze the "focus" of Section 1589(b) for purposes of the presumption against extraterritoriality; it instead analyzed whether the "gravamen" of the plaintiffs' claims under

Section 1589(b) brought those claims within the Foreign Sovereign Immunities Act's commercial-activity exception to immunity. *See* 29 F.4th at 712-17.

Those inquiries are very different. The question of whether a lawsuit targets the type of commercial conduct for which Congress has stripped a foreign state's immunity is worlds apart from whether a lawsuit is a permissible domestic application of a given statute. The Foreign Sovereign Immunity Act's "gravamen" analysis examines only whether "*the action* is based upon a commercial activity" by evaluating the precise "activity" that plaintiff targets. *Id.* at 712, 716 (citation omitted). By contrast, identifying a federal statute's "focus" for purposes of the presumption against extraterritoriality examines first the "congressional concern underlying the provision at issue," and only then whether "the conduct relevant to that focus occurred in United States territory." *Abitron*, 600 U.S. at 418 (cleaned up). The domestic-application analysis thus turns on identifying the provision's animating concern, a step wholly absent in the Foreign Sovereign Immunity Act context. *Rodriguez* thus provides no help to Plaintiffs.

Indeed, even if *Rodriguez*'s gravamen analysis and the Supreme Court's extraterritorial analysis were the same, it would not change the result. Plaintiffs and *amici* ignore that *Rodriguez* found that the "gravamen" of the claim was domestic only because the defendant was alleged to have *committed a financial crime in the United States*. 29 F.4th at 716. The Court explained that "[i]f the conduct is itself wrongful—as opposed to wrongful based only on other conduct—it constitutes the 'core,'" i.e., gravamen, "of the claim." *Id.* There, the defendant was alleged to have engaged in "illegal financial activity" by acting as a pretextual intermediary and moving money through U.S. bank accounts. *Id.*; *see id.* at 709-10. That fact made the "financial benefit" itself wrongful. *Id.* at 716. But here, as the District Court correctly held, "plaintiffs have not claimed that defendants committed any affirmative financial wrongdoing, but only that any benefits received from their dealings with Brightway were wrongful based on its alleged labor abuses. Again, those abuses occurred entirely abroad, making plaintiffs' claims impermissibly extraterritorial." JA 98.

Moreover, allowing private plaintiffs to sue those who allegedly benefit in the United States from forced labor abroad would risk exactly

the kind of "conflicts with foreign laws and procedures" that the presumption against extraterritoriality is meant to avoid. *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 269 (2010) (citation omitted). That presumption "would be a craven watchdog indeed if it retreated to its kennel" whenever a plaintiff alleges domestic benefit from conduct abroad. *Id.* at 266.

## II. Courts Should Not Stretch the Trafficking Act Beyond What Congress Intended or Impose Liability Based on Business Anti-Trafficking Policies and Efforts.

### A. Congress and the Executive Are Responsible for Making Policy Decisions to Address Forced Labor.

Forced labor, and human trafficking more broadly, unfortunately remain serious problems. Many companies are actively addressing them through independent private efforts. *See infra* Part II.B. Congress and the Executive Branch continue to work to address forced labor—including in the medical equipment and apparel industries and in Malaysia—and courts should not strain to read statutes like the Trafficking Act expansively to fill perceived gaps in those legislative and regulatory efforts.

1. Congress is actively engaged in efforts to address forced labor and human trafficking. For example, Congress has repeatedly reauthorized the Trafficking Act, ensuring that its remedies remain available to

victims and sometimes expanding them. *See* Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108–193, § 4(a)(4)(A), 117 Stat. 2875, 2878 (incorporating private right of action for damages); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110–457, §§ 221-22, 122 Stat. 5044, 5067-71 (broadening scope of criminal and civil liability); Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, Pub. L. No. 115–425, § 133(a), 132 Stat. 5472, 5481-82 (charging the Secretary of Labor and the Bureau of International Labor Affairs with identifying "goods that are produced with inputs that are produced with forced labor or child labor"); Abolish Trafficking Reauthorization Act of 2022, Pub. L. No. 117–347, § 102, 136 Stat. 6199, 6200 (broadening scope of civil liability to include anyone who "attempts or conspires to benefit" from a violation of Section 1595(a)); Trafficking Victims Prevention and Protection Reauthorization Act of 2022, Pub. L. No. 117–348, § 102, 136 Stat. 6211, 6215 (eliminating sunset for advisory council on human trafficking).

Congress has also taken other efforts to address forced labor, such as establishing the Forced Labor Enforcement Task Force "to monitor United States enforcement of the prohibition" on importing goods

produced by forced labor. United States-Mexico-Canada Agreement Implementation Act, Pub. L. No. 116-113, § 741, 134 Stat. 11, 88 (2020). Congress has directed that task force via the Uyghur Forced Labor Prevention Act to develop a "strategy" to prevent "importation of goods made through forced labor in the Xinjiang Uyghur Autonomous Region" and established a "rebuttable presumption" that imports from that region generally cannot be imported into the United States. Pub. L. No. 117-78, §§ 2, 3, 135 Stat. 1525, 1526, 1529 (2021) (capitalization modified).

The Executive Branch has been active in addressing forced labor as well. Take this very case: Customs and Border Patrol stopped importation of Brightway Group's gloves by issuing a Withhold Release Order under 19 U.S.C. § 1307 and federal regulations. *See* JA 81. The government later found that Brightway Group "t[ook] actions to fully remediate the forced labor indicators within its manufacturing process," and Customs and Border Patrol modified its Order to allow Brightway' s gloves to enter the United States. Press Release, U.S. Customs and Border Patrol, *CBP Modifies Withhold Release Order on Brightway Group in Malaysia* (Oct. 11, 2024), http://bit.ly/4mVBUUr.

The government has also previously issued other Withhold Release Orders concerning gloves made in Malaysian facilities, modifying those orders to lift the import restrictions only after the companies "t[ook] steps to remediate the forced labor indicators identified in its supply chain," Press Release, U.S. Customs and Border Patrol, *CBP Will No Longer Detain Disposable Gloves Produced by Supermax Corporation Bhd. and Its Wholly Owned Subsidiaries* (Sept. 19, 2023), http://bit.ly/4h8WsaU, including by "issuing more than $30 million in remediation payments to workers and improving labor and living conditions at the company's facilities," Press Release, U.S. Customs and Border Patrol, *CBP Modifies Forced Labor Finding on Top Glove Corporation Bhd.*, (Sept. 9, 2021), http://bit.ly/4745zVM (citation omitted).

Malaysia has likewise committed to eradicate forced labor and human trafficking within its borders. Malaysia adopted a National Action Plan on Forced Labour, setting the goal of eliminating the practice within the country. *Malaysia Takes Major Step Towards Ending Forced Labor*, Int'l Labor Org. (Nov. 26, 2021), http://bit.ly/48lcg8b; *accord Malaysia Plans New Steps in Fight Against Forced Labour*, Int'l Labour Org. (Jun. 20, 2025), http://bit.ly/3J7DyEL. Malaysia also ratified the Protocol to

the International Labor Organization's Forced Labour Convention, which requires member states to take effective measures to prevent forced labor, protect victims, and ensure victims' access to justice. *See* Protocol of 2014 to the Forced Labour Convention, 1930, June 11, 2014; *see also Ratifications of P029 – Protocol of 2014 to the Forced Labour Convention, 1930*, Int'l Labour Org., http://bit.ly/3ID5S1K (last visited Oct. 25, 2025).

The U.S. government has supported and joined Malaysia in these efforts. It funded the International Labour Organization's project that helped develop Malaysia's National Action Plan on Forced Labour. *Malaysia Takes Major Step Towards Ending Forced Labor*, Int'l Labor Org. (Nov. 26, 2021), http://bit.ly/48lcg8b. And it has "cooperat[ed]" with Malaysia to "build the capacity of Malaysian institutions and civil society to understand the indicators of forced labor and enforce labor laws." Press Release, U.S. Dep't Labor, *Readout: US Department of Labor's Deputy Undersecretary Lee, Malaysian Minister Saravanan Discuss Forced Labor, Labor Law Reform, Migrant Workers* (May 13, 2022), http://bit.ly/46JNJse.

The U.S. State Department "upgraded" Malaysia's ranking in last year's annual Trafficking in Persons Report, noting that "[t]he government demonstrated overall increasing efforts," including "increasing the number of trafficking investigations, including of suspected labor trafficking; convicting more traffickers, including under the trafficking law, with the majority of traffickers receiving significant sentences; increasing trafficking public awareness efforts, and prosecuting allegedly complicit officials." U.S. Dep't of State, 2024 Trafficking in Persons Report: Malaysia, http://bit.ly/3J5OT8g. Malaysia retained that upgraded ranking in this year's report. U.S. Dep't of State, 2025 Trafficking in Persons Report: Malaysia, http://bit.ly/4q3Publ.

*Amicus* and its members are well-positioned to contribute to and complement these efforts. For example, through public-private partnerships, the business community helps drive adoption of technologies to enhance mapping of high-risk supply chains and improve due-diligence mechanisms. *See generally* U.S. Chamber of Com. & United Way Ctr. to Combat Human Trafficking, *Trust by Performance: Uniting Business and Philanthropy Against Trafficking* (2022), https://bit.ly/3QNjp6l.

2. Several of Plaintiffs' positions pose a danger of frustrating competing foreign-relations interests and considerations that the political branches are best-positioned to properly balance. Consider the implications of the Plaintiffs' expansive understanding of what it means to "participat[e] in a venture" under Section 1595(a). Defendants have explained why that phrase does not encompass a contractual buyer-seller relationship between two entities, no matter how extensive. But Plaintiffs nonetheless encourage this Court to stretch "venture" beyond its plain meaning. Under Plaintiffs' "venture" theory, companies risk venture liability simply by maintaining profitable, long-term relationships with their suppliers. Companies increase that liability risk further, according to Plaintiffs, if they broaden their supplier relationships, such as by selling equipment to the suppliers, or by taking steps like conducting audits to ensure they are being equitably supplied. *See, e.g.*, Br. 7, 31.

Although the entire global community, including businesses, must address the stubborn problems of forced labor and human trafficking, it does not follow that Congress intended for every actor along affected supply chains to be held liable in court for those problems' harms. Nor does it follow that Congress intended to make every company on the planet

responsible for overseeing each of its partners' entire work forces on pain of potential vicarious liability for those partners' human trafficking. Determining whether to extend Trafficking Act liability far beyond the common meaning of the term "venture" as Plaintiffs propose thus presents a fundamental policy choice best made by the elected branches with the benefit of their decades-long experience combatting forced-labor practices across the global economy.

Extending the territorial reach of Section 1595(a) presents similarly knotty policy challenges. As noted above, the presumption against extraterritoriality recognizes the delicate foreign-policy considerations inherent in determining whether a law applies abroad. Where, as here, a statutory provision lacks the "clearly expressed congressional intent" required to overcome that presumption, *RJR*, 579 U.S. at 335, the judiciary should not try to independently balance those foreign-policy considerations in Congress's stead.

Congress and the Executive Branch have been carefully crafting and refining a comprehensive, multifaceted approach to eradicating forced labor—including in the medical-equipment and apparel industries and specifically in Malaysia—centered on Executive Branch

enforcement, diplomacy, and civil-society building. This Court need not and should not get ahead of Congress by extending the Trafficking Act's civil cause of action to extraterritorial conduct.

### B. Industry-Led Efforts Should Be Encouraged, Not Punished.

Commercial leaders have also undertaken significant industry-wide initiatives to combat human trafficking in the apparel industry. Glove manufacturers, distributors, and their supply chains have collaborated to form the Responsible Glove Alliance, dedicated to "us[ing] their collective influence and application of due diligence to drive responsible sourcing practice to reduce the risk of forced labor." *Home*, Responsible Glove Alliance, http://bit.ly/4qapM56 (last visited Oct. 25, 2025). Members voluntarily commit to employment standards, ongoing due diligence on their supply chains, reporting, and specific mitigation and remedial measures, among other steps. *Overview*, Responsible Glove Alliance, http://bit.ly/4mUXUPn (last visited Oct. 25, 2025).

Individual companies in the medical-equipment and apparel industries have likewise adopted specific safeguards against forced labor in their supply chains. *See, e.g.*, Migrant Worker: Employment Standards & Implementation Guidance, Patagonia (Nov. 1, 2020),

http://bit.ly/47kYJwk; 2024 Slavery and Human Trafficking Statement, Honeywell (Feb. 2024), http://bit.ly/3LcNJIJ; 2025 Modern Slavery Statement, 3M (March 2025), http://bit.ly/4h9dUMh. These voluntary efforts include mandatory standards for suppliers along with compliance audits and the threat of contract termination for violators.

Defendants here took several steps to address any potential labor issues in their supply chains, including publishing reports and statements detailing company efforts to combat forced labor and issuing policies to "prohibit child labor, prohibit all forms of forced labor, properly compensate employees, and monitor human rights progress and impact within the company." JA 35 (Compl. ¶ 64); *see also, e.g.*, JA 21-22, 32, 35-37 (Compl. ¶¶ 44, 60, 64-65); Defs. Br. 7. Such efforts should be encouraged.

Nevertheless, Plaintiffs argue that Defendants' efforts should be used against them to impose liability. *See, e.g.*, Br. 45-47. But imposing liability in the manner Plaintiffs urge would create perverse outcomes and incentives. Corporate efforts to *decrease* human trafficking in the global supply chain would *increase* liability risk under the Trafficking Act. This in turn may discourage companies from continuing such

programs or other efforts. "Companies or individuals may be less likely to engage" in these types of efforts "if they fear those activities will subject them to private suits." *Nestlé*, 593 U.S. at 638.

Reading the Trafficking Act as Plaintiffs urge would incongruously transform steps taken to address forced labor into legal liability—a development antithetical to the shared mission of remedying global supply-chain concerns. This Court should reject that reading.

## CONCLUSION

For the foregoing reasons and the reasons set forth in the Brief for Defendants-Appellees, this Court should affirm the judgment below.

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Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 6,120 words, excluding the parts exempted by Fed. R. App. P. 32(f) and Cir. R. 32(e)(1). I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the brief was prepared in 14-point Century Schoolbook font using Microsoft Word.

*/s/ John B. Bellinger, III*
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## CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(d) and Cir. R. 25, that on October 27, 2025, the foregoing brief was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter who are registered with the Court's CM/ECF system.

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