

STATEMENT OF
DOMINIC BARAGONA
BEFORE THE
SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT
November 18, 2009

Chairman McCaskill, Ranking Member Bennett, and members of the Subcommittee, I am Dominic Baragona, father of West Point graduate, the late Lt. Col. Dominic "Rocky" Baragona, Commander of the 19th Maintenance Battalion, and I appreciate the opportunity to appear before you to discuss the proposed bill named for my late son. I want to first introduce my wife, Vilma, our son, John, and our daughter, Pam, sitting behind me. Chairman McCaskill, we are humbled and honored that you chose to name this important legislation after our beloved Rocky and that you asked me to testify here today. It is our hope that in telling our story we can, for Rocky, achieve justice through a criminal investigation into Rocky's death; give him a legacy with the passage of the bill; and influence your future policymaking so our soldiers will be protected from contractors who use trafficking and other illegal practices that put our soldiers in harm's way.

That May 19th, 2003 was the last time I spoke to my son. He was just a few hours away from the border. I asked him if there was anything I had to worry about, he answered by saying, "Not unless something stupid happens." The next day two officers came to tell us our son was dead, and I realized that something stupid had happened. Near Safwan, a tractor-trailer owned and operated Kuwait & Gulf Lines Transport (KGL) careened across three lanes of the highway and destroyed my son's Humvee, killing him. Never could I have imagined that I would sit here six years later with no justice, no criminal investigation, few answers and my testimony here today.

That day we asked the officer the first questions about the accident. Had the accident occurred in the United States, it would have been investigated as a vehicular homicide, with potential imprisonment for the driver and civil liability for KGL and the driver. But in the crush of a wartime environment, the Army did not commit enough resources to investigating and determining the criminal liability for the accident – the official Defense Department press release merely says, "A tractor-trailer jackknifed on the road and collided with Baragona's Humvee causing his death." The Army didn't take possession of the KGL truck for investigation, and it disappeared the day after the accident. The Army didn't interview the truck driver; he disappeared and has never been seen since that day. The first accident report did not include any information about KGL or a criminal investigation as required. At our insistence, another Army office reviewed that report, and concluded that the initial accident investigation report was riddled with errors and failed to gather critical evidence. I have attached that report to my testimony.

The Army assured us that we would receive all of the answers through an official Army criminal investigation, known as a "15-6." So we waited patiently while Rocky was honored in three funerals, in Florida, Ft. Sill in Oklahoma, and at Arlington National Cemetery. We decided Arlington is appropriate because everyone goes to Washington and we knew he would want to be among his men.

We learned a number of disturbing facts about the accident later:

- The KGL truck did not have a license plate at the time of the accident, which is a violation of Kuwaiti law. The truck could not have crossed into Iraq without a

license plate, which leads us to believe that the license plate was removed after crossing the checkpoint for illicit activities.

- We believe that KGL was not properly insured for the accident, as was required by U.S. procurement law.
- The driver did not have the valid truck driver's license that all DOD contractors are required to have in order to be employed.

Army officers who investigated the accident concluded that the loss of evidence critically hindered the investigation. The investigators were unable to ascertain why a KGL truck was driving on that road without license plates by an unlicensed driver. The report did conclude that the KGL driver's negligence caused the accident that killed Rocky.

KGL has always refused to accept responsibility for Rocky's death – no admission, no apology, no communication, nothing. Angered by KGL's silence and insensitivity, and frustrated by the lack of a proper criminal investigation by the Army, we sued KGL in federal court in May 2005. KGL ignored the suit and did not respond to our complaint. KGL hired US counsel and closely monitored the suit, but then refused to participate in the jurisdictional briefing, even though the Court made KGL aware of briefing well before it occurred. In 2007, the federal judge openly admonished KGL for its bad behavior, and the judge awarded a summary judgment against KGL for almost \$5 million in damages. Attending the hearings and testifying at trial over the years of the lawsuit was emotionally and physically exhausting for me and my wife of 54 years, Vilma, but we were willing to walk through hell to make sure Rocky received his day in court. Testifying in court about Rocky was especially hard on us; it brought back a lot of memories and difficult emotions.

Then, in February 2008, after the Court found KGL liable for my son's death, KGL filed a motion to vacate the judgment on the grounds of lack of jurisdiction by federal courts. In other words, we had made incredible sacrifices and gone through the grueling ordeal of reliving my son's death for nothing, and even though KGL could have argued about jurisdiction before the trial, they stood on the sidelines waiting for the opportune time to sweep into court. In May of this year, the court reluctantly agreed with KGL and vacated the judgment, but noted that KGL's conduct was "indignant and callous" and questioned KGL's "blind eye to the death caused by a KGL employee of a United States service member." Our attorneys have filed an appeal in the case.

Over the past six-plus years, we have learned of other very disturbing facts about KGL:

- In 2004, while Americans and other Westerners were being beheaded in Iraq by Sunni terrorists, KGL paid one group \$500,000 ransom to release 7 kidnapped employees working in Iraq on contracts for the U.S. and United Nations (see attached story). In other words, KGL received our tax dollars through contracts and gave it to Sunni terrorists, who no doubt used it to finance more terrorist attacks against our men and women in Iraq.
- The Government of India banned KGL from operating in India after KGL lied to Indian nationals by saying they were being recruited to work in Kuwait but then forced them to work in the extremely dangerous conditions that prevailed in Iraq. Similar reports of human trafficking by KGL emerged in the Philippines and were investigated by the Philippine Senate.

The Army has not been blind to KGL's improprieties but seems willing to overlook them, because KGL is still a defense contractor and is being considered for a new 10-year, multi-billion contract to

feed our troops in the region. In 2006 and again in 2008, the Army sent letters to KGL demanding more information as part of an investigation into debarring KGL from future contracts. KGL responded to the 2006 letter by hiring retired General Richard Bednar, a former U.S. Army debarment official, who held off-the-record conversations with the debarment office, and that debarment inquiry ended. We do not know how KGL responded to the Army's 2008 letter, but we do know that KGL is still in the running for the 10-year, multi-billion contract. We consider KGL to be a dirty company and unworthy of any contract for the care and feeding of our soldiers. What happens the next time that KGL kills or injures one of our soldiers? The family will have no recourse.

Numerous Members of Congress have tried to help us over the years: former Senators Mike DeWine and Mel Martinez; Senators Bill Nelson and George Voinovich; and Representatives Tim Ryan, Steve Driehaus, Dennis Kucinich and of course Senator Claire McCaskill. We applaud and thank you, Chairman McCaskill and Senator Bennett, for your letters this year and for Chairman McCaskill's questioning of the new Army Secretary during his confirmation hearing. We deeply appreciate the recent letter by Representatives Ryan and Driehaus to the Attorney General requesting a real criminal investigation into the accident and KGL's potential liability for contract fraud. At one point in 2004, Rocky's sister Pam was able to talk with President Bush and his White House military liaison, and we understood that the President personally ordered the debarment review. But nothing happened, perhaps because of Gen. Bednar's connections.

We are not trying to pick on the Army. We had 2 sons graduate from West Point, and Senator McCain nominated our grandson to the Naval Academy – who will be leaving to serve in Iraq sometime next month. We love the military and know that in the fog of war mistakes can and will be made. We are just asking for justice. We get renewed energy from the bill being named in our son's honor. Even though we know this bill would not help our case, since it is not retroactive, we know the passage would level the playing field between domestic and foreign contractors,

This bill will not bring us justice or peace. But it will ensure that no family of an American soldier will ever have to go through the hell that we have endured for over six years, thanks to KGL's inhuman silence.



DEPARTMENT OF THE ARMY
HEADQUARTERS, 212 FIELD ARTILLERY BRIGADE
III CORPS ARTILLERY
FORT SILL, OKLAHOMA 73503-5000

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6 January 2004

MEMORANDUM THRU: Commanding General, IIId Armored Corps Artillery, Fort Sill,
Oklahoma 73503

FOR: Commanding General, Human Resources Command, ATTN: AHRC-PD (BG Farrisee),
2461 Eisenhower Avenue, Alexandria, Virginia 22331-0481

SUBJECT: 23 December 2003 Fatal Ground Accident Investigation Presentation to the Family of
LTC Dominic Baragona (Date of Accident: 19 May 2003).

1. Purpose.

- a. Provide my assessment of the accident investigation report.
- b. Provide my assessment of the accident investigation presentation.
- c. Request additional information on behalf of LTC Baragona's family.

2. The Accident Investigation (Encl 1). The V Corps Commander approved the results of the Accident Investigation on 5 October 2003. I fully understand that this investigation was conducted under combat conditions. That said, it is my opinion that the investigation only very minimally addresses the pertinent questions of what happened, who was at fault, and what corrective actions should be taken to minimize the potential for future similar incidents. Additionally, the report contains several factual errors, failed to include direct statements from key witnesses, failed to include interviews with other key personnel, and was poorly assembled. I will discuss those problems and their impact on the briefing and the family later in this report.

3. The Accident Investigation Presentation.

a. Background.

(1) Briefing Team. I met and formed a personal relationship with the Baragonas when they came to Fort Sill last May for LTC Baragona's memorial service. We remained in contact via e-mail over the past seven months. CSM Nuijens was LTC Baragona's CSM. He spoke with Mr. Baragona (Father) often while LTC Baragona was serving in Iraq. His wife, Mrs. Christine Nuijens, was especially helpful to the Baragona family when they came to Fort Sill. The Nuijens continue to maintain a friendly relationship with the Baragona family.

(2) The Baragona family. Based on my previous conversations and e-mail traffic with the Baragonas, I knew that they were very interested in a few specific areas:

- (a) Who was at fault?

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(b) Was LTC Baragona wearing his seatbelt at the time of the accident?

(c) Were life-saving measures taken to save LTC Baragona at the accident scene and if not, why not?

(d) Who was driving the tractor-trailer? Was he qualified to drive a tractor-trailer? Was he insured? Who was he working for?

b. Preparation for the briefing.

(1) The investigative report.

(a) The investigating officer did determine, with reasonable certainty, that the accident was caused by the tractor-trailer driver's reaction to the debris on the road. Pictures of the accident scene, the location and position of the vehicles, and the investigating officer's summary of the statements by LTC Baragona's driver and the passenger in the back seat all positively indicate that the driver of the tractor trailer failed to notice the debris until the last minute, then took evasive action that caused the tractor - trailer to jack-knife in front of LTC Baragona's HMMWV. However, it is unfortunate that the investigating officer only summarized the witness statements, rather than having the witnesses give written statements/questions and answers. It is also unfortunate that the investigating officer and the 7th CSG SIR state the time of the accident as 1300HRs when all witnesses state that it occurred at 1500HRs. I checked with CSM Nuijens, LTC Baragona's driver, and the backseat passenger who all re-verified that the accident occurred at or about 1500HRs. I listed 1500HRs as the time of the accident in my briefing and explained that discrepancy up front during my 23 December presentation.

(b) The investigating officer was not able to determine whether or not LTC Baragona was wearing his seatbelt at the moment of the accident. Only an examination of the seatbelt straps and/or fastener might determine whether the seatbelt was in use at the moment of the accident. The investigating officer was unable to examine either because the MedEvac crew cut the seatbelt straps out of the HMMWV to fasten LTC Baragona and the driver of the tractor-trailer to their stretchers. Additionally, the investigating officer was unable to examine the fastener because no one knows who removed the HMMWV from the scene and where it went. The investigating officer made a modest attempt to locate the HMMWV. There is nothing in the report, however, to indicate that the investigating officer ever identified the last MPs at the site by name, and asked them if they knew the disposition of the HMMWV.

(c) The investigating officer determined that CSM Nuijens was the first to arrive on the scene and that CSM Nuijens determined that LTC Baragona was deceased and did not render life saving measures. The report also states that a Navy corpsman arrived shortly after CSM Nuijens. The corpsman also determined that LTC Baragona was deceased, and that there was nothing he could do. The report did not state specifically why they both came to that conclusion. I discussed this with CSM Nuijens and, based on his description, I am convinced that LTC Baragona died on impact. CSM Nuijens is a trained paramedic. I asked him to accompany me to the briefing to look the family in the eyes and explain what he saw and why he came to that conclusion if they so desired.

(d) The investigating officer did not determine the exact identity of the tractor-trailer driver. While the investigating officer did attempt to locate the driver by checking with the UK 202nd Field Hospital's patient logs, he was only able to ascertain the name Hussain Mahmoud. He was not able to verify the name or determine the driver's address, phone number, or employer with the limited information on record at the hospital. The investigating officer did attempt to locate the driver through a contracting officer who was also unable to help. The report does not indicate that the investigating officer took any further action to locate the driver of the tractor-trailer. Upon viewing the pictures of the accident

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scene, however, I did notice that the tractor-trailer had the letters "KGL" on its door. I conducted a yahoo search of KGL and Kuwait on the Internet and discovered that "KGL" indicates that the truck may belong to Kuwait & Gulf Link Transport Company. In mid-December, I asked if DA Casualty or CJTF-7 could have the investigating officer attempt to find out more about the truck and driver through the company. I still have not received an answer.

c. Final coordination of the briefing.

(1) DA Casualty Office. I provided a copy of the briefing (Encl 2) to MAJ Sonia Carter, DA Casualty Assistance Office on 11 December 2003 and solicited her feedback. She was a great source of assistance throughout the entire preparation process. She had no significant comments or concerns with the briefing. I recommend DA Casualty Assistance Office continue to provide action officers to assist Next Of Kin briefers.

(2) Mr. Dominic Baragona (Father). I coordinated the briefing date and location with Mr. Dominic Baragona. He was concerned about whether or not the briefing would answer all his questions. I told him that, based on my review of the report, he would probably be frustrated by our inability to answer all his questions at this time but did not elaborate on which questions. I also told him we would give him the truth as we know it, and that we would take any questions he has back to the Army to see if they can get more complete answers. He also asked if he could have a copy of the report to read before the briefing. I told him that I would deliver three copies of the report to his son, David, the evening prior to the presentation. I delivered three copies of the report in tabbed binders to Mr. David Baragona on the afternoon of 22 December, after we arrived in Phoenix.

(3) David Baragona (Brother) invited CSM Nuijens, Chaplain Meyer, and me to join the entire Baragona family for dinner at his home the evening prior to the briefing. This event was entirely social. We did not discuss the pending briefing or the accident report. In fact, David Baragona told me he would not give the report to anyone to read until after we left the home that evening.

d. The Accident Report Presentation (23 December 2003).

(1) Facts.

(a) Army Personnel in attendance: COL David A. Schneider (Briefer), CSM Richard Nuijens (CSM, 19th Maint Bn), MAJ Robert Meyer (Bde Chaplain), MSG John Wright (DA Casualty).

(b) Family members in attendance: Dominic F. Baragona (Father), Vilma D. Baragona (Mother), David Baragona (Brother) with Ms. Tee Huntington (David's Fiancé), John and Carolyn Baragona (Brother and Sister-in-Law), Anthony and Patricia Baragona (Brother and Sister-in-Law), and Pam Baragona Robinson (Sister).

(c) Date/Time/Place of presentation: 23 December 2003 / 0930 – 1230 HRs / Home of David Baragona, 1225 Gwen Street, Phoenix, Arizona.

(2) Family's Reaction to the Report.

(a) Every family member read the accident report within 12 hours prior to the briefing. They were polite, attentive, patient, and courteous during the briefing. At the conclusion of the briefing, Mr. John Baragona (Brother) asked me what I thought of the accident investigation report. I told them that it minimally addressed many of the issues and failed to address others that we had already discussed and were working resolution of. He also asked MSG Wright what he thought. MSG Wright told him it was

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one of the weakest investigation reports he had seen. John then asked us to give the family a few minutes while they met in the backyard. About 10 minutes later, the family returned to the living room to give their opinion of the report and ask their questions.

(b) Mr. John Baragona then told me that, speaking for the entire family, they read the entire report and think it is garbage. They were also disappointed that we would even deliver it to them. He cited factual errors by the investigating officer; sloppy, confusing, and often irrelevant statements by the investigating officer; the absence of direct statements by any of the witnesses; the absence of any statements or information about other key personnel; and the inability of the investigating officer to determine the identity and employer of the tractor-trailer driver as the family's greatest disappointments. I told John that I understood his frustration and reminded him that we were obligated to provide them with a copy of the report that was approved by LTG Sanchez, and that a week earlier I had warned his father that there were still some unresolved issues that we were working resolution on. He asked if the family should attempt to contact LTG Sanchez directly. I advised him to let us work the issues for them. I reminded the family that we asked to deliver this report precisely because we wanted to ensure the family got every possible answer to their questions. I believe they trust we will do our best, but that they have little confidence that the Army will expend much effort to cooperate.

(c) Mrs. Pam Baragona Robinson (Sister) expressed the same concerns as her brother John. She and her siblings asked us a series of questions, most of the questions pertained to how we could identify the driver of the tractor-trailer, whether or not we would ever be able to locate the HMMWV, why didn't anyone administer life-saving measures at the scene, and why didn't the MPs do a better job of recording pertinent information at the accident scene. We spent about two hours discussing their various questions. They did ask CSM Nuijens why he believed there was nothing he could do for LTC Baragona at the scene. CSM Nuijens gave them a graphic description of his checks and what he observed. I believe that was as thorough an explanation as the Army can give the family, and that the family appreciated his candor. I told the family we would ask the Army to provide more complete answers to any questions we could not fully answer.

4. Baragona Family Information Requirements. I told the Baragona family that I would pass their questions to the Army Casualty Office and would get back to them with any answers CJTF-7 or the Army Casualty Office may be able to provide. Most importantly, the family wants to know if the Army can identify the tractor-trailer driver by checking with KGL and they want to know if we can do more to locate the HMMWV by asking the MPs if they arranged to have it removed from the scene. Locating the HMMWV would better enable an investigating officer to check the seatbelt fastener for any faults. Specifically, the family wants to know:

a. Driver Identity. The identity of the tractor-trailer driver; who he worked for; whether or not he was licensed and insured. I recommend the investigating officer, MPI, or SJA check with KGL to determine whether or not they had a truck involved in an accident on 19 May 2003 and if, if so, can we link it and the driver to this accident. Such a link may enable us to answer the family's questions about the driver.

b. HMMWV Location. I explained that any number of people, civilian or military, might have removed the HMMWV for any number of reasons. I also told the family that we would ask CJTF-7 to ask its units to try to locate it at any cannibalization points. The family also wants to know who the last MPs on the scene were and whether or not they directed disposition of the HMMWV. If not, then why? One likely explanation is that the MPs did not have recovery assets to move the HMMWV before nightfall; so they left it there and it was stolen during the night. We do not know if that is the case or not because the investigating officer never identified the last MPs on site and never asked the question. The family wants to know why the investigating officer did not take those steps. They also want the investigating officer to question those MPs to get a better, or at least more complete, answer.

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c. Safety Report. The family requests a copy of the Safety Report. I told them that it was still under legal review (I had asked for a copy prior to the briefing) and that we would get to them as soon as it is released. I request that report be released as soon as possible.

d. Autopsy Report. An autopsy report was not included in the investigation. Why? Can the family have a copy of it?

e. Address Book. LTC Baragona's parents told me that LTC Baragona always kept a small black address book on or very near his person and that it was not listed in his personal effects or returned to the family. They want to know if anyone knows anything about it. CSM Nuijens removed all personal effects from the HMMWV and did not see it. It may have been left unnoticed in the HMMWV or around the accident scene. I ask that DA Casualty assistance check their records at their processing facilities to see if they have any unclaimed/unidentified address books fitting that description.

f. Other Witnesses. There were three HMMWVs in LTC Baragona's movement party. LTC Baragona's was the last of three in the movement. The two lead HMMWVs (with a driver and TC in each) returned to the scene after the accident. The family wants to know why the investigating officer only interviewed one of the four people in those two HMMWVs (CSM Nuijens). They are concerned about the investigating officer's lack of thoroughness and believe that so many other people who could have been questioned may have been able to confirm or deny the accounts provided by CSM Nuijens, LTC Baragona's driver, and the backseat passenger as well as provide better information about the tractor-trailer and its driver.

g. Unnamed Lieutenant Colonel. A lieutenant colonel from I MEF Headquarters Group initially took charge of the accident scene. The investigating officer knew his name and unit. Why didn't the investigating officer interview him or his corpsman? Did the lieutenant colonel file any reports with anyone? The family wants to know if they knew anything about the tractor-trailer, its driver, or any other pieces of information about the accident scene that may prove relevant. They also want to know if the investigating officer or lieutenant colonel know of any other units that passed by that may have more information about the tractor-trailer.

h. Media Presence. While the family was at Fort Sill in May 2003 for LTC Baragona's memorial service, one of the drivers in one of the other HMMWVs told Pam Baragona Robinson that he thought he saw media at the scene. She wants to know if anyone has any record of media coverage of the accident. I told her that it is unlikely that any records exist but that we would ask CJTF-7 to see if their PAO has any such records.

i. Picture Quality. The pictures in the accident report are low-quality Xerox copies. The family wants to know if they can get a CD with copies of the original pictures.

j. MP Report. The family wants to know why none of the MPs who worked the scene that day ever filled out a written report. They understand that LTC Baragona's driver and other 19th Maintenance Battalion personnel at the scene were "numb" after the accident and can understand why they did not think to fill out a SF 91 (Motor Vehicle Accident Report) but do not understand why the MPs did not fill one out. What's more, they are dissatisfied with the apparent lack of accountability for those MPs and are upset that the investigating officer did not do more to highlight that deficiency in his report.

k. MedEvac Procedures. The family is upset that the Air MedEvac crew cut the seatbelts to use as straps to secure the tractor-trailer driver and LTC Baragona to their stretchers. They want to know if that

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is a common practice and, if so, why don't they have their own straps so that they do not have to remove evidence from an accident scene?

5. **Summary.** Again, I fully appreciate the fact that the investigating officer conducted this investigation under combat conditions in a very austere theatre of operations. That said, the factual errors; the summary, rather than direct statements from key witnesses; the failure to interview other accessible key personnel; the lack of accident documentation by the MPs; the failure to question the last personnel at the scene about the disposition of the HMMWV; and the failure to do more to identify the tractor-trailer driver significantly damage the credibility of the investigative process in the eyes of the Baragona family. While we left the Baragona home under still personally cordial terms, the Baragonas were more than outraged by the quality of the investigative report. At the same time, however, I sense that the Baragonas want to believe the Army will do a better job. The timeliness and quality of our response to that family is critical to our ability to keep the faith with them.

6. **Recommendations.**

a. That the DA Casualty Office work with CJTF-7 to determine whether or not they are able to answer the questions in paragraph 4 and that they provide those answers to the Commander, IIIrd Armored Corps Artillery so that we may follow-up with the Baragona family.

b. That IIIrd Armored Corps Artillery provide an assistant investigating officer here in the CONUS to assist the CJTF-7's investigating officer question any personnel who may have returned to the states since the accident/investigation. I am willing to provide that person from my brigade.

DAVID A. SCHNEIDER
COL, FA
Commanding

Enclosures
as







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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

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September 10, 2009

The Honorable Robert Gates
Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Gates:

As part of the Subcommittee's ongoing oversight of contract management, we are writing to raise concerns relating to the Defense Department's potential award of new contracts to Kuwait & Gulf Link Transport Company (KGL), a Kuwait-based company.

As you may know, the Subcommittee has opened an investigation into the death of Lieutenant Colonel Dominic "Rocky" Baragona, an Army logistician from Ohio. This is a continuation of work Senator McCaskill's office has been doing in reviewing the Baragona case over the past two years and that has led Senator McCaskill's introduction of S. 526, the "Lieutenant Colonel Dominic 'Rocky' Baragona Justice for American Heroes Harmed by Contractors Act."

On May 19, 2003, Lt. Col. Baragona was killed in Safwan, Iraq, when his vehicle was struck by a truck being driven by a driver employed by the Kuwait & Gulf Link Transport Company (KGL), a Kuwaiti company.¹ Since 2000, KGL has received nearly \$44 million in prime contracts from the federal government.² KGL has also received approximately \$100 million from federal subcontracts, including multiple subcontracts under KBR's massive LOGCAP contract to support the troops in Iraq.³

On May 12, 2005, Lt. Col. Baragona's family brought a wrongful death claim against KGL in federal court in Georgia.⁴ After KGL refused to appear in the matter, the court entered a default judgment and ordered the contractor to pay \$4.9 million in damages to the Baragona

¹ *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, Opinion and Order (N.D.Ga. Nov. 5, 2007).

² Federal Funding Accountability and Transparency Act Information Center, online at (accessed August 25, 2009).

³ S. 526, 111th Congress (March 4, 2009).

⁴ *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, Complaint (N.D.Ga. May 12, 2005).

family.⁵ On February 15, 2008, KGL requested that the judgment be vacated on the grounds that the court has no personal jurisdiction over the company.⁶ On May 8, 2009, the court granted KGL's request.⁷ The Baragona family intends to appeal the ruling.

We recently learned that the Defense Department has approved KGL to bid on a new, multi-billion dollar Defense Department contract to supply food in the Middle East. The winner of the "prime vendor" contract will become the Defense Department's sole supplier of perishable and non-perishable food items for military and civilian personnel in Kuwait, Iraq, and Jordan for up to six years.⁸ The contract value is currently estimated at more than \$3.1 billion with a maximum dollar value of \$9.4 billion.⁹

The Federal Acquisition Regulations require that all prospective contractors meet a "responsibility" standard, including "a satisfactory record of integrity and business ethics."¹⁰ The Government Accountability Office has interpreted this standard to find that contractor actions which may not rise to the level of suspension or debarment may still merit a finding that the contractor is not responsible.¹¹

We have significant concerns regarding KGL's responsibility as a potential contractor for the "prime vendor" contract. First, KGL's refusal to submit to the jurisdiction of U.S. courts to answer the claims brought by the Baragona family raises questions about KGL's integrity.¹² Second, it appears that KGL may have failed to carry liability insurance for its active contracts and subcontracts, in violation of federal contract regulations.¹³

⁵ *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, Opinion and Order (N.D.Ga. Nov. 5, 2007).

⁶ *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, Defendant Kuwait & Gulf Link Transport Company's Memorandum of Law in Support of its Motion to Vacate Default Judgment (N.D.Ga. Feb. 15, 2008).

⁷ *Baragona v. Kuwait Gulf Link Transport Co.*, Civ. No. 1:05-CV-1267-WSD, slip op. (N.D.Ga. May 8, 2009).

⁸ Defense Supply Center Philadelphia, Defense Logistics Agency, Solicitation for Prime Vendor Kuwait/Iraq/Jordan (May 2, 2008) (SPM300-08-R-0061).

⁹ Supply Center Philadelphia, Defense Logistics Agency, Amendment of Solicitation/Modification of Contract (May 29, 2008) (SPM300-08-R-0061 Amendment 18).

¹⁰ Federal Acquisition Regulation § 9.1.

¹¹ *See, e.g., Drexel Industries Inc.*, BV-189344 (Nov. 6, 1977) (citing *Kennedy Van and Storage Company Inc.* B-180973 (June 19, 1974), finding that a determination regarding integrity need not be based on standards as rigid as suspension and debarment).

¹² Letter from Christine McCommas, Chief, Army Procurement Fraud Branch, to KGL Legal Affairs Director Ahmed Afifi (Dec. 4, 2008).

¹³ *Id.*; Federal Acquisition Regulation §28.3 *et seq.*

We urge you to consider these concerns when evaluating KGL's bid for the new "prime vendor" contract. Previous logistics and supply contracts in Iraq have been plagued by waste, fraud, abuse, and mismanagement. We need to ensure that we take every step possible to ensure that the next generation of contracts does not repeat the mistakes of the past.

We look forward to working with you in the future to ensure that this and other Defense Department contracts are truly in the best interests of the U.S. taxpayer. Please contact us or ask your staff to contact Margaret Daum with Senator McCaskill's Subcommittee staff at (202) 224-3230 or Molly Wilkinson with Senator Bennett's Subcommittee staff at (202) 228-3141 with any questions.

Sincerely,



Senator Claire McCaskill
Chairman
Subcommittee on Contracting Oversight



Senator Robert Bennett
Ranking Member
Subcommittee on Contracting Oversight

Congress of the United States
Washington, DC 20515

November 12, 2009

The Honorable Eric H. Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Subject: Request for commencement of formal investigation and report of findings.

This is a request that a criminal and civil investigation be conducted into the misconduct of a foreign United States government contractor for vehicular homicide and for civil contract fraud for operating without mandatory licenses and the U.S. government contractor insurance protection required under the Federal Acquisition Regulation ("FAR").

We request an investigation of egregious contractor misconduct involved in the death of Lieutenant Colonel Dominic Baragona in Iraq on May 19, 2003 on a road in Iraq. His death was caused by a tractor trailer truck owned and operated by Kuwait Gulf Link & Transport Company ("KGL"), the predecessor company to an enormous group of international Kuwaiti companies, which have and continue to perform large U.S. government contracts potentially worth billions of U.S. dollars. KGL's tractor trailer careened across three lanes of a highway in the middle of a clear, sunny day and destroyed the Humvee in which Colonel Baragona was riding.¹ At the time of his death, Colonel Baragona had served honorably during Operation Iraqi Freedom and was on his way home to his family. Indeed, this company's negligence has led to another traffic fatality of a U.S. soldier. Staff Sgt. Javares J. Washington, 27, of Pensacola, Florida, died February 11, 2008 at Camp Buehring in Kuwait City, Kuwait, from injuries sustained in a vehicle accident with a KGL truck.

The official U.S. Army 15-6 2004 accident reconstruction report found that the driver caused Colonel Baragona's death, but a criminal investigation into the circumstances surrounding the traffic accident never occurred. Mahmoud Muhammed Hussein Serour, the KGL driver was airlifted to a military hospital after the accident, from which he later disappeared. KGL later claimed that he quit his job, and moved back to Egypt but did not have his contact information. Other troubling facts have emerged from the US Army investigation of this accident. It is clear from US Army photographs of the accident that the KGL truck did not have a license plate at the time of the accident, which is a violation of Kuwaiti law.² The truck could not have crossed into Iraq through security checkpoints without a license plate, which leads to the presumption that the license plate was removed after crossing the checkpoint for illicit activities. The KGL truck also disappeared immediately after the accident.³

¹ See attached photos of accident site.

² See attached photos of accident site.

³ U.S. Army amended 15-6 report, exhibit 22.

There remains an open question whether KGL was properly insured for the accident as required by the U.S. government contracts, and therefore U.S. procurement law, it was operating under at the time of accident. The question remains critical because KGL never offered an insurance payment to the Baragona family, testified in a U.S. federal court proceeding that it did not retain any records of its insurance contracts for the time period involved and has refused to produce its response to a request for information from the U.S. Army Legal Services Agency, Fraud Procurement Branch regarding this issue.

If KGL did not carry the insurance required under the FAR for the performance of its U.S. government contracts, criminal penalties could result. The FAR contains several mandatory insurance clauses which are incorporated into a wide variety of federal contracts, including transportation contracts, e.g. FAR 52.228-8. The historic purpose of those clauses is to serve two equally important public policy goals. First, they are to protect innocent third parties from financial losses experienced through the negligent acts of contractors while in the performance of government contracts by making liability insurance coverage an available resource for the satisfaction of any damages to innocent victims of contractor negligence. The second purpose is to protect the United States from lawsuits by those third parties under the theory of respondent-superior. A former KGL employee named Robert Stephens stated to Steven R. Perles, representative for the Baragona family, that:

[H]e had been directed by Mohamed Fahmie, a legal advisor for KGL at the time, to improperly certify that KGL carried the proper insurance requirements for US government contracting, even though KGL did not meet the US government insurance requirements. Mr. Stephens believed this to be an act of procurement fraud and refused to bid on the contracts that required him to make those certifications. He was subsequently let go.⁴

Counsel for the Baragona family filed this statement in an affidavit in the United States District Court for the Northern District for the District of Georgia. Mr. Perles subsequently received an email from Mr. Stephens that stated he could not participate in the matter any further because he was being threatened with deportation by Kuwaiti government officials unless he retracted his prior statements regarding KGL.

There remain other open questions regarding the legality of KGL's transportation operation from the day of the accident. According to the U.S. Army 15-6 report the driver of the truck had a license as a "Chauffer" and not a "CDL class A" driver as required by U.S. Army regulations for the driver of a tractor trailer truck.⁵ As stated in the Army Regulation 600-55, paragraph 2,⁶ all DOD contractors are required to have a valid CDL license in order to be employed. It is clear that the driver did not carry the license necessary since his passport would have reflected the proper license or the special clearance that a foreign national would have needed.⁷ A further concern was the driver's age, 58 years, which would have required the Army to issue a 346 special condition order that should have

⁴ Exhibit to Opposition to Motion to Vacate, Docket Entry #48, exhibit 6, Baragona v. KGL, 05-cv-01267-WSD (filed March 21, 2008).

⁵ U.S. Army amended 15-6 report, exhibit 23.

⁶ http://www.army.mil/USAPA/epubs/pdf/r600_55.pdf

⁷ section 6.3 Army Regulation 600-55

been indicated on the driver's passport, which was not on the passport.⁸ More troubling details permeate the record of the accident. The nurse who treated the KGL driver was told that he was a Kuwaiti civilian working in Iraq as a truck driver, which was incorrect.⁹ The nurse treated him for a fractured wrist and pain in his ribs. She then arranged a taxi upon his request for Basra.¹⁰

KGL, in a subsequent statement to a U.S. Army investigator¹¹, claimed that the driver had a back injury, as opposed to a rib injury, quit his job and returned to Egypt ten days after the accident. The driver should be found and interviewed regarding the suspicious circumstances of this accident, which resulted in the death of a U.S. Army colonel. KGL is responsible for employee discipline, proper training and licensing. In a fatality, as a contractor, KGL is required to fully and completely cooperate with investigating officials. At the least, by allowing their driver to return to Egypt, KGL impeded a federal investigation. KGL personnel are subject to prosecution under Federal law as a result of the Military Extra-territorial Jurisdiction Act ("MEJA").¹²

A KGL manager¹³ later stated that a crew was sent the day after the collision to retrieve the badly damaged KGL vehicle. According to the KGL manager, the vehicle disappeared. Other photographs taken at the scene of the accident show clearly that the KGL truck was missing its license plates, which were required by Kuwaiti law.¹⁴ Thus, both the driver and the truck involved in a fatal accident with a U.S. Army colonel disappeared after the accident. Statements in both U.S. Army 15-6 reports by the investigating officers conclude that the loss of evidence in the form of vehicles, driver and witnesses critically hindered the investigation. The investigators were unable to ascertain why a KGL truck was driving on a road without license plates by an unlicensed driver. The missing license plates, combined with the fact that a waybill was not produced at any time after the accident, raises further questions.

The Army admitted that the initial accident investigation report was replete with errors and failures to gather pertinent evidence. In his report to the Commanding General of the Human Resources Command, dated January 6, 2004, on the accident investigation presentation to the family, Col. David Schneider stated, "I fully understand that this investigation was conducted under combat conditions. That said, it is my opinion that the investigation only very minimally addresses the pertinent questions of what happened, who was at fault, and what corrective actions should be taken to minimize the potential for future similar incidents. Additionally, the report contains several factual errors, failed to include direct statements from key witnesses, failed to include interviews with other key personnel, and was poorly assembled." This stunning declaration leaves no doubt that a new investigation is warranted to determine the circumstances of the accident, the potential criminal liability of both the driver for the accident and of KGL for obstruction of justice, and the potential civil liability of KGL for civil contract fraud.

The troubling nature of these facts is further highlighted in the context of the history of misconduct by this company. KGL has been placed on the Indian government's Prior Approval List

⁸ U.S. Army amended 15-6 report, exhibit 23.

⁹ U.S. Army 15-6 report, exhibit DD.

¹⁰ U.S. Army 15-6 report, exhibit DD.

¹¹ U.S. Army amended 15-6 report, exhibit 22.

¹² <http://www.fas.org/irp/agency/dod/1206report.pdf> at pg. 10

¹³ U.S. Army amended 15-6 report, exhibit 22.

¹⁴ See attached photos of accident site.

“(PAC”), which functioned as a blacklist for any emigration by Indian nationals overseas based upon employment with KGL. This blacklisting was predicated upon KGL’s hiring Indian nationals to work in Iraq upon the “pretext of deploying them to Kuwait.” It is widely reported in Indian news sources that employees were recruited to work in Kuwait or other Gulf States but then were forced to work in the extremely dangerous conditions that prevailed in Iraq at the time.¹⁵ The U.S. commander in Iraq responded to abuses such as these by ordering that contractors return all confiscated passports by May 1, 2006.¹⁶ Penalties for disregarding this order included blacklisting from future work.¹⁷ KGL remained on the Indian government’s blacklist as late as August 25, 2008 for these types of violations. Based upon this company’s extensive history of human trafficking violations, the licensing issues with the driver of the truck and his subsequent disappearance, KGL must answer whether the driver was another case of forced labor, this time forced to drive into Iraq without insurance and, considering the missing license plates, potentially carrying illegal cargo.

It is troubling that a criminal investigation of this company was never conducted given the suspicious circumstances surrounding the accident and KGL’s well-documented history of human trafficking. Based upon these findings by the Indian government, Senator Mel Martinez wrote to Secretary Robert Gates on July 9, 2008 to question the fitness of KGL to receive any further contracts from the U.S. government. Other letters have been sent by the Senate this year regarding KGL’s fitness as a federal contractor, based upon the KGL’s conduct in a court case filed against it for its responsibility for the death of Colonel Baragona and for other reasons. Senator Claire McCaskill, Chairwoman of the Senate Subcommittee on Contracting Oversight, sent a letter to KGL on April 3 requesting information about the contract (attached). On September 14, Senator McCaskill and Senator Robert Bennett, the Ranking Minority Member on the Subcommittee, expressed their doubts about KGL’s qualifications to Secretary Gates (attached).

As a result of Colonel Baragona’s death, the U.S. Army proposed KGL for debarment on September 22, 2006 in a “show cause” letter and reopened the investigation with a “request for information” letter in December of 2008. KGL’s disregard for law and decent conduct has also resulted in KGL’s official ban from recruiting in India for human trafficking. Similar reports of human trafficking by KGL have begun to emerge in the Philippines and were the subject of an inquiry by the Philippine Senate.¹⁸ KGL’s numerous instances of ethically challenged behavior will create obstacles in its future performance of any U.S. contracts. A U.S. federal contractor is required to conduct itself with the highest degree of integrity and honesty under Section 3.10 of the FAR. The U.S. Army’s Fraud Procurement Branch sent a request for information to KGL on December 4, 2008 to inquire about the human trafficking issue and to determine whether KGL has carried sufficient insurance as required by the Federal Acquisition Regulation. It seems to these members of Congress that any contractor, foreign or domestic, which is found at fault for causing death or bodily injury to a U.S. service member or a U.S. citizen accompanying the force, and which refuses to pay any compensation under the laws of the United States ought to be deemed non-responsible *per se* and precluded from doing further business with the United States.

¹⁵ <http://www.voanews.com/english/archive/2004-08/a-2004-08-16-21-1.cfm?moddate=2004-08-16;>
[http://www.corpwatch.org/article.php?id=13184;](http://www.corpwatch.org/article.php?id=13184) [http://www.indianexpress.com/news/tn-men-killed-in-iraq-kin-to-sue-firm/312765/.](http://www.indianexpress.com/news/tn-men-killed-in-iraq-kin-to-sue-firm/312765/)

¹⁶ <http://www.chicagotribune.com/news/local/chi-060423pipeline-story,0,1853590.story>

¹⁷ <http://www.chicagotribune.com/news/local/chi-060423pipeline-story,0,1853590.story>

¹⁸ [http://www.senate.gov/ph/lisdata/69846222!.pdf.](http://www.senate.gov/ph/lisdata/69846222!.pdf)

Finally, there is a question regarding the propriety of the off-the-record contacts between counsel for KGL, retired Brigadier General Richard Bednar, the former Army Chief Debarring Official and the U.S. Army Legal Services Agency. What ethical issues are present when the former Army Chief Debarring Official is hired to lobby the debarment office, which is a quasi-judicial body? The former chief debarring officer should not be able to exert any influence on a quasi-judicial proceeding.

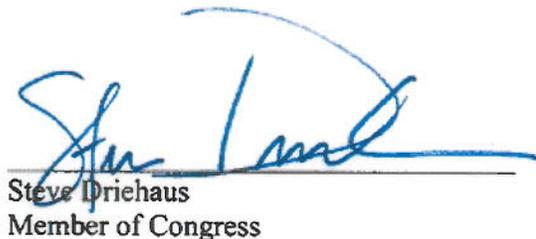
We request that you investigate the facts and circumstances raised in this request. This matter is urgent, as a corporate alter ego of the company whose negligence resulted in the wrongful death of Colonel Baragona is bidding on a service contract(s) with an approximate value of 9.4 billion dollars over ten years¹⁹ to feed thousands of U.S. service members in the Iraq and Kuwait theater. This committee is acutely sensitive to the grave risks associated with any such potential award, as U.S. service members could be put in some harm's way by this contractor's gross negligence, and like Colonel Baragona's family will have no practical remedy under the current law and regulations.

The Baragona family and their representatives have done a great deal of research on the issues explained above, among others, and have more information that can be made available upon request. A potential contact for issues arising from the Army's 15-6 report would be the investigating officer, Colonel Schneider. Thank you in advance for your prompt attention to this pressing matter.

Sincerely,



Tim Ryan
Member of Congress



Steve Driehaus
Member of Congress

¹⁹ Solicitation number SPM300-08-R-0061, contracting officer Linda A. Ford of the Defense Logistics Agency.