No. 24-1411

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DAVID BONIFACE; NISSANDERE MARTYR; JUDERS YSEME,
Plaintiffs-Appellees,

v.

JEAN MOROSE VILIENA,
Defendant-Appellant.

On Appeal from a Judgment of the United States District Court for the District of Massachusetts, Boston, Hon. Allison D. Burroughs, presiding,
Case No. 1:17-cv-10477

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AMBASSADORS STEPHEN J. RAPP AND DAVID J. SCHEFFER IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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October 16, 2024

Pursuant to Federal Rule of Appellate Procedure 29(a) Ambassadors Stephen J. Rapp and David J. Scheffer respectfully seek leave to file the accompanying *amicus curiae* brief in support of Plaintiffs-Appellees and affirmance. Counsel for Plaintiffs-Appellees consented to the filing of this brief, but Counsel for Defendant-Appellant have withheld consent.

IDENTITIES AND INTEREST OF *AMICI CURIAE*

David J. Scheffer is a Clinical Professor Emeritus and Director Emeritus of the Center for International Human Rights at Northwestern University School of Law. He was the Mayer Brown/Robert A. Helman Professor of Law and Director at Northwestern from 2006-2020. He served as U.S. Ambassador-at-Large for War Crimes Issues (1997–2001) and senior adviser and counsel to the U.S. Permanent Representative to the United Nations (1993–1997). Ambassador Scheffer led the U.S. delegation that negotiated the Rome Statute of the International Criminal Court (adopted July 17, 1998, 2187 U.N.T.S. 90), and its supplemental documents from 1997 to 2001. He was deputy head of the delegation from 1995 to 1997. On behalf of the U.S. Government, he negotiated the statutes of and coordinated support for the International Criminal Tribunals for the Former Yugoslavia and for Rwanda, the Special Court for Sierra Leone, and Extraordinary Chambers in the Courts of Cambodia. He was also the U.N. Secretary-General's Special Expert on United Nations Assistance to the Khmer Rouge Trials (2012-2018).

Stephen J. Rapp serves as a Senior Fellow for International Justice at the Center on National Security at Georgetown Law. He is also a Senior Fellow at the United States Holocaust Memorial Museum's Center for Prevention of Genocide and Oxford University's Center for Ethics, Law, and Armed Conflict. He served as U.S. Ambassador-at-Large for Global Criminal Justice (2009–2015), as prosecutor for the Special Court of Sierra Leone (2007–2009), as senior trial attorney and chief of prosecutions at the International Criminal Tribunal for Rwanda (2001–2007), and as the Sonia and Harry Blumenthal Distinguished Fellow for the Prevention of Genocide at the U.S. Holocaust Memorial Museum (2015–2016). He was previously U.S. Attorney for the Northern District of Iowa (1993-2001).

Ambassadors Scheffer and Rapp are international human rights practitioners and scholars with specialized knowledge and expertise in human rights litigation in U.S. federal courts and international tribunals. *Amici*'s interests are in ensuring that the Torture Victims Protection Act ("TVPA") continues to make clear to the global community that the U.S. stands firmly against torture and that the TVPA continues to be an effective and powerful tool to hold torturers civilly accountable for their violations of the international law of human rights.

STATEMENT OF REASONS THIS *AMICUS CURIAE* BRIEF IS DESIRABLE AND RELEVANT TO THE DISPOSITION OF THE CASE

The United States has a substantial interest in condemning and deterring torture both within the United States and across the globe. As international human rights practitioners, scholars, and former United States ambassadors focused on human rights, Ambassadors Scheffer and Rapp are uniquely well positioned to provide the court with additional background on the history of the TVPA and the United States interests in the Act's extraterritorial application.

Defendant-Appellant has misinterpreted the doctrine of comity between nations to argue that extraterritorial jurisdiction is inappropriate in this case due to a supposed lack of U.S. interests in a matter involving foreign actors and conduct that took place outside the Unites States. The doctrine of comity only applies "in the absence of contrary congressional direction." *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 817 (1993) (Scalia, J., dissenting). The TVPA provides this "contrary congressional direction" by explicitly providing for extraterritorial reach. As the attached *amicus curiae* brief explains, extraterritorial application of the TVPA serves important U.S. interests, including (1) carrying out the U.S.'s international treaty obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (2) ensuring the U.S. does not serve as a safe haven for perpetrators of torture and extrajudicial killing, and (3) to condemn acts of torture wherever they occur.

Ambassadors Scheffer and Rapp believe this submission will assist the Court in its deliberations by providing additional background on the history of the TVPA and the U.S. interests in its extraterritorial application. They do not believe the issues discussed herein will be fully addressed by any other *amicus*. For the foregoing reasons, they respectfully request that the Court grant this motion for leave to file the accompanying *amicus curiae* brief.

Dated: October 16, 2024

Respectfully Submitted,

/s/ William R. Stein

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This motion complies with Fed. R. App. P. 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font. This motion complies with the type-volume limitations of Fed. R. App. P. 27(d)(2)(A) because it contains 727 words, excluding the accompanying documents authorized by Fed. R. App. P. 27(a)(2)(B).

/s/ William R. Stein
William R. Stein

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2024, I caused the foregoing document to be filed through the Court's CM/ECF system. I certify that to my knowledge all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

/s/ William R. Stein
William R. Stein

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STATEMENT OF IDENTITY AND INTERESTS OF *AMICI*

Stephen J. Rapp serves as a Senior Fellow for International Justice at the Center on National Security at Georgetown Law. He is also a Senior Fellow at the United States Holocaust Memorial Museum's Center for Prevention of Genocide and Oxford University's Center for Ethics, Law, and Armed Conflict. He served as U.S. Ambassador-at-Large for Global Criminal Justice (2009–2015), as prosecutor for the Special Court of Sierra Leone (2007–2009), as senior trial attorney and chief of prosecutions at the International Criminal Tribunal for Rwanda (2001–2007), and as the Sonia and Harry Blumenthal Distinguished Fellow for the Prevention of Genocide at the U.S. Holocaust Memorial Museum (2015–2016). He was previously U.S. Attorney for the Northern District of Iowa (1993-2001).

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of the U.S. Government, he negotiated the statutes of and coordinated support for the International Criminal Tribunals for the Former Yugoslavia and for Rwanda, the Special Court for Sierra Leone, and Extraordinary Chambers in the Courts of Cambodia. He was also the U.N. Secretary-General's Special Expert on United Nations Assistance to the Khmer Rouge Trials (2012-2018).

Ambassadors Rapp and Scheffer submit this brief in support of the constitutionality of the extraterritorial application of the TVPA and to highlight the important U.S. interests the TVPA serves, including carrying out the U.S.'s international treaty obligations under the Convention Against Torture, ensuring the U.S. does not serve as a safe haven for perpetrators of torture and extrajudicial killing, and upholding customary international law by providing redress for victims of human rights violations through the federal courts.

No party or party's counsel authored this brief in whole or in part, or financially supported this brief, and no one, other than *amici curiae* or their counsel, contributed money intended to fund the preparation or submission of this brief.

ARGUMENT

Relying on Justice Scalia's dissent in *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993), Appellant argues that application of the TVPA in this case is unconstitutional, principally on the grounds that the extraterritorial scope of the legislation violates the doctrine of comity between nations, given that the case involves foreign actors and conduct that took place outside the United States, and the United States has no interest in the case. Appellant Br. at 15–20. Appellant is fundamentally wrong in every aspect of his argument.

First, there is no constitutional issue here. Appellant misapprehends the doctrine of comity, which is "not an imperative obligation of courts but rather a discretionary rule of practice, convenience, and expediency." *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 423 (2d Cir. 2005) (citation omitted). Further, Justice Scalia's dissent makes clear that the doctrine "includes the choice-of-law principles that, '***in the absence of contrary congressional direction***,' are assumed to be incorporated into our substantive laws having extraterritorial reach." *Hartford Fire*, 509 U.S. at 817 (quoting *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 382 (1959)); *see also In re Maxwell Communication Corp. plc by Homan*, 93 F.3d 1036, 1047 (2d Cir. 1996) ("Because the principle of comity does not limit the legislature's power and is, in the final

analysis, simply a rule of construction, it has no application where Congress has indicated otherwise.").

The text of the TVPA clearly allows for extraterritorial application. The TVPA, by its plain text, imposes civil liability on a person who, acting under color of law of any foreign nation, "subjects an individual to torture." 28 U.S.C. § 1350 note (Torture Victim Protection Act of 1991). This statutory language does not limit liability to U.S. citizens or residents or to acts committed within the jurisdiction of the United States. Nor does the statute limit its protection to victims who are U.S. citizens or residents. Several United States courts of appeal have affirmed this reding of the statute, and no courts have ruled to the contrary. *Warfaa v. Ali*, 811 F.3d 653 (4th Cir. 2016) (affirming district court holding applying the TVPA to conduct in Somalia); *Doe v. Drummond Co. Inc.*, 782 F.3d 576, 601 (11th Cir. 2015) ("we hold now that the TVPA applies extraterritorially"); *Chowdhury v. Worldtel Bangladesh Holding, Ltd.*, 746 F.3d 42, 51 (2nd Cir. 2014) (concluding "that the TVPA . . . has extraterritorial application"); *Chavez v. Carranza*, 559 F.3d 486 (6th Cir. 2009) (applying the TVPA to acts that took place in El Salvador); *see also Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 125 (2013) (citing the TVPA as an example of legislation that punishes crimes taking place abroad) (Kennedy, J., concurring); *Doe I v. Cisco Systems, Inc*, 73 F.4th 700, 745 n.27 (9th Cir. 2023) (noting that the parties did "not dispute that the TVPA applies extraterritorially"). Indeed, even if there were

no clear congressional direction to apply the TVPA extraterritorially, there is no basis for this Court to use its discretion to curb its jurisdiction under the principle of comity in the way Appellant proposes.

Second, Appellant is flat wrong in suggesting that the United States has no interest in imposing liability under the TVPA in the facts in this case. As *amici* demonstrate, the United States has a clear and strong interest in applying the TVPA extraterritorially in order to (a) fulfill its obligations under the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment, (b) ensure the United States does not become a safe haven for torturers, and (c) condemn further acts of torture, wherever they may occur.

I. The United States Has an Interest in Condemning Extraterritorial Acts of Torture Under the TVPA.

A. Congress Enacted the TVPA to Fulfill the United States' Obligations Under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The United States signed the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on April 18, 1988, the Senate gave its advice and consent to ratification on October 27, 1990, and entered it into force on November 20, 1994. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec, 10, 1984, T.I.A.S. No. 94-1120.1, 1465 U.N.T.S. 85 (the "Convention"); 136 Cong. Rec. 36198 (1990). The Convention specifies the duty of the United States to refrain from, prohibit, and deter torture.

Convention, art. 2, 4, 5. In its report recommending the ratification of the Convention, the Senate Committee on Foreign Relations explained that it "establishes a regime for international cooperation in the criminal prosecution of torturers relying on the principle of 'universal jurisdiction' and on the obligation to extradite or prosecute. Each State Party is bound to establish criminal jurisdiction over torture and to prosecute torturers who are found in its territory or to extradite them to other countries for prosecution." S. Exec. Rep. No. 101-30, at 2 (1990). The Senate Report also explained that parties to the Convention "are obligated to take legislative, administrative, judicial, or other measures to prevent acts of torture in territories under their jurisdiction." *Id*. Most relevant here, Article 14 of the Convention requires state parties to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible." Convention, art. 14.

Shortly after the United States signed the Convention, Congress enacted the TVPA. Congress made clear that the TVPA was intended to fulfill the United States' obligations under the Convention and that, to do so, the Act would apply to acts of torture in the torturers' territories. The Senate Committee on the Judiciary Report recommending passage explained:

> This legislation will carry out the intent of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment… The convention obligates state parties to adopt measures to ensure that torturers within their territories are held legally accountable for their acts[.] This legislation will do precisely that[.]

S. Rep. 102-249, at 3 (1991). Similarly, the House Committee on the Judiciary Report clarified in the first sentence that the legislation was intended "to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing"—referring to the Convention as one of those international agreements. H.R. Rep. No. 102-367, pt. 1, at 1 (1991), *as reprinted in* 1992 U.S.C.C.A.N. 84. The House Report also discussed the United States' obligations under the Convention, including the need to provide for civil redress to victims. *Id.* at 3, *as reprinted in* 1992 U.S.C.C.AN. 85. The House Report explained that, to provide for effective relief, the TVPA required extraterritorial reach, given that "[j]udicial protections agains[t] flagrant human rights violations are often least effective in those countries where such abuses are most prevalent." *Id.*

Congress enacted the TVPA following robust Congressional fact finding, including expert testimony about the relationship between the TVPA and the Convention. In hearings conducted by the House Committee on Foreign Affairs, Michael Posner, then Executive Director of The Lawyers Committee for Human

Rights, testified that the TVPA was "consistent with and reinforcing of the US action in support of the Torture Convention." *The Torture Victim Protection Act: Hearing and Markup on H.R. 1417 Before the Comm. on Foreign Affairs and its Subcomm. on Hum. Rts. & Int'l Orgs.*, 100th Cong. 20 (1988). Likewise, a statement submitted to the House by the Association of the Bar of the City of New York, Committee on International Human Rights, explained that the TVPA would respond to the obligation imposed on parties to the Convention to "provide means of civil redress to victims of torture." *Id*. at 33.

During the legislative process, the TVPA's extraterritorial reach was expressly challenged. Officials from the Department of State and Department of Justice submitted testimony to Congress opposing the extraterritorial application of the TVPA. *See, e.g., The Torture Victim Protection Act: Hearing and Markup on H.R. 1417 Before the Comm. on Foreign Affairs and Subcomm. On Hum. Rts. & Int'l Orgs.*, 100th Cong. 91–92 (1988) (Statement of J. Edward Fox, Assistant Sec'y Legis. Affs., U.S. Dep't of State).

Congress carefully considered the question of the extraterritorial application of the Act. Congress ultimately rejected the view of the Administration officials, and determined that extraterritorial application was required for the United States to fully comply with its obligations under the Convention:

> Essentially enforcement-oriented, this Convention obligates state parties to adopt measures to ensure that torturers are held legally accountable for their acts. One such obligation is to provide means of civil redress to victims of torture. Judicial protections agains[t] flagrant human rights violations are often least effective in those countries where such abuses are most prevalent. A state that practices torture and summary execution is not one that adheres to the rule of law. The general collapse of democratic institutions characteristic of countries scourged by massive violations of fundamental rights rarely leaves the judiciary intact. The Torture Victim Protection Act [TVPA], H.R. 2092, would response [sic] to this situation.

H.R. Rep. No.102-367, pt. 1, at 3 (1991), *as reprinted in* 1992 U.S.C.C.A.N. 84, 85-86.

The executive branch has since made clear through its reports to the UN Committee Against Torture that the TVPA formed part of the U.S.'s implementation of the Convention. In its initial report to the UN Committee Against Torture, the State Department listed the numerous actions taken by the United States to comply with article 14 of the Convention, including enactment of the TVPA. *See* U.S. Department of State, Initial Report of the United States of America to the UN Committee Against Torture (October 15, 1999). In response, the UN Committee Against Torture "particularly welcome[d] . . . [t]he broad legal recourse to compensation for victims of torture, whether or not such torture occurred in the United States of America." Report of the Comm. Against Torture, U.N. Supplement No. 44 (A/55/44), at 31 (2000).

Multiple courts have already acknowledged Congress's intent to implement the United States's Convention obligations through the enactment of the TVPA, including in matters concerning purely extraterritorial acts of torture and extrajudicial killing. *See, e.g., Doe I v. Cisco Sys., Inc.*, 73 F.4th 700, 743 (9th Cir. 2023) ("[T]he TVPA adopted its definition of torture directly from the Convention . . ., confirming that the TVPA 'carr[ied] out the intent of the Convention.'" (quotation omitted)); *Chowdhury v. Worldtel Bangladesh Holding, Ltd.*, 746 F.3d 42, 50–52 (2d Cir. 2014) (finding "no bar on the basis of extraterritoriality" to TVPA claims concerning detention and torture in Bangladesh and describing the Convention as "the multilateral international convention upon which the TVPA was based."); *Khulumani v. Barclay Nat. Bank Ltd.,* 504 F.3d 254, 317, 323 (2d Cir. 2007) (Korman, J., concurring in part) (acknowledging that "[t]he language of the TVPA . . . executed in part the Torture Convention."), *aff'd sub nom. Am. Isuzu Motors, Inc. v. Ntsebeza,* 553 U.S. 1028 (2008); *Mamani v. Berzain*, 21 F. Supp. 3d 1353, 1369 (S.D. Fla. 2014) (allowing claims that the former president and former minister of defense of Bolivia were liable under the TVPA for the extrajudicial killings that occurred in Bolivia and acknowledging that "Congress enacted the TVPA in … response to our nation's obligations under

the [Convention]."), *aff'd in part, appeal denied in part*, 825 F.3d 1304 (11th Cir. 2016).

This Court should join its sister Circuits in recognizing the United States' clear interests in the extraterritorial application of the TVPA, including in fulfilling its treaty obligations under the Convention.

B. Congress Enacted the TVPA to Ensure the United States Does Not Become a Safe Haven for Torturers.

The United States maintains a strong national interest in ensuring that perpetrators of torture and extrajudicial killing are not permitted to take advantage of the benefits of residency in this country. This interest is rooted in both this country's commitment to upholding principles of international human rights and the domestic legal regime that incorporates and implements these human rights norms. *See Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 106 (2d Cir. 2000) (reasoning that the TVPA "convey[ed] the message that torture committed under color of law of a foreign nation in violation of international law is 'our business,' as such conduct not only violates the standards of international law but also as a consequence violates our domestic law"). The TVPA is a critical component of that domestic legal regime and—as the Act's legislative history demonstrates—seeks to, among its other objectives, prevent the United States from becoming a safe haven for those

individuals convicted of committing the egregious crimes of torture and extrajudicial killing.

Members of Congress involved in the TVPA's drafting and passage consistently highlighted the Act's importance to ensuring the U.S. does not become a safe haven for human rights abusers. The Senate Judiciary Committee's report on the TVPA stipulated that the legislation would ensure "that torturers and death squads will no longer have a safe haven in the United States." S. Rep. No. 102-249, at 3 (1991). Senator Arlen Specter (R-PA)—the lead sponsor of the TVPA in the Senate—stated during consideration of the bill that it was "intended to deny torturers a safe haven in this country." 138 Cong. Rec. S2668 (daily ed. Mar. 3, 1992) (statement of Sen. Arlen Specter). He continued by explaining that "one reason for enacting this bill is to discourage torturers from ever entering this country. There is no question that torture is one of the most heinous acts imaginable, and its practitioners should be punished and deterred from entering the United States." *Id.*

Members of the House of Representatives echoed this sentiment. Representative Gus Yatron (D-PA-06), the lead sponsor of the Act in the House, emphasized that "the Torture Victim Protection Act, as amended, also sends a distinct and forceful message that the U.S. will not host torturers within its borders." 137 Cong. Rec. H11245 (daily ed. Nov. 25, 1991) (statement of Rep. Gus Yatron). Representative Romano Mazzoli (D-KY-03) began his House floor speech on the

TVPA bill by noting that the Act would "put[] torturers on notice that they will find no safe haven in the United States. Torturers may be sued under the bill if they seek the protection of our shores or otherwise subject themselves to the personal jurisdiction of a U.S. court." *Id*. at H11244 (daily ed. Nov. 25, 1991) (statement of Rep. Romano Mazzoli).

This legislative history demonstrates that from the TVPA's inception Congress understood that a core purpose of the legislation was to further the U.S. interest in preventing perpetrators of torture and extrajudicial killing from escaping accountability and residing in the U.S. The Act's extraterritorial scope makes clear that egregious acts such as torture and extrajudicial killing, including of noncitizens by noncitizens, is, as the Second Circuit in *Wiwa* noted, "our business," and thus that perpetrators of such crimes should not be able to enjoy the benefits of U.S. residency just because their crimes and victims were, at the time of the abuse, located outside of U.S. territory. This core impetus for the TVPA was clear to members of Congress at the time of its drafting and consideration and both houses of Congress proceeded to pass the Act through a voice vote, a strong indication of the broad support for the Act's stated goals. *See* 137 Cong. Rec. 34786 (1991); 138 Cong. Rec. 4178 (1992).

C. Congress Enacted the TVPA in Recognition of the United States' Interest in Condemning Acts of Torture and Extrajudicial Killing.

The TVPA reflects the U.S. interest in creating liability under U.S. law for specified violations of the law of nations as a means of condemning such conduct. The TVPA incorporated the law of nations into the law of the United States, thereby ensuring that "a violation of the international law of human rights is (at least with regard to torture) *ipso facto* a violation of U.S. domestic law." *Wiwa v. Royal Dutch Petroleum Co.,* 226 F.3d 88, 104-05 (2d Cir. 2000). As the Second Circuit characterized it, extrajudicial killing and torture committed under color of law of a foreign nation is "'our business,' as such conduct not only violates the standards of international law but also as a consequence violates our domestic law," regardless of where the torture or killing occurs. *Id.* at 106.

Congress enacted the TVPA in part to codify the Second Circuit's holding in *Filartiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980), "which recognized the status of torture as a violation of customary international law." *Bowoto v. Chevron Corp.,* 557 F. Supp. 2d 1080, 1091 (N.D. Cal. 2008), *aff'd*, 621 F.3d 1116 (9th Cir. 2010); *see Wiwa,* 226 F.3d at 104 ("In passing the [TVPA], Congress expressly ratified our holding in *Filartiga* that the United States courts have jurisdiction over suits by aliens alleging torture under color of law of a foreign nation."); *Flores v. S.*

Peru Copper Corp., 414 F.3d 233, 247 (2d Cir. 2003) (same).[1] The *Filartiga* court held:

> In light of the universal condemnation of torture in numerous international agreements, and the renunciation of torture as an instrument of official policy by virtually all of the nations of the world (in principle if not in practice), we find that an act of torture committed by a state official against one held in detention violates established norms of the international law of human rights, and hence the law of nations.

Filartiga, 630 F.2d at 880. The Second Circuit reasoned that the "human rights and fundamental freedoms" guaranteed by article 55(c) of the U.N. Charter "include, at a bare minimum, the right to be free from torture" and that "it has been the Department of State's general experience that no government has asserted a right to torture its own nationals." *Filartiga*, 630 F.2d at 881-82, 884.

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[1] In citing to *Filartiga* with approval, Congress specifically noted that the TVPA was being enacted to dispel any concerns after one federal judge in *Tel–Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir.1984), "questioned whether [the Alien Tort Statute] can be used by victims of torture committed in foreign nations absent an explicit grant of a cause of action." H.R. Rep. 102-367, pt.1, at 4, *as reprinted in* 1992 U.S.C.C.A.N. 84, 86. Congress explained that "[t]he TVPA would provide such a grant," thereby enhancing the remedy already available under the Alien Tort Statute by "extend[ing] a civil remedy also to U.S. citizens who may have been tortured abroad." *Id.*; S. Rep. No. 102–249, at 4-5 (1991); *see also Ali Shafi v. Palestinian Auth.,* 686 F. Supp. 2d 23, 26 (D.D.C. 2010), *aff'd*, 642 F.3d 1088 (D.C. Cir. 2011) ("After a federal circuit judge expressed doubt that such a judicially-created cause of action was appropriate, *see Tel–Oren v. Libyan Arab Republic,* 726 F.2d 774, 813 (D.C.Cir.1984) (Bork, J., concurring) (questioning the propriety of finding that 'a rule has evolved against torture by government so that our courts must sit in judgment of the conduct of foreign officials in their own countries with respect to their own citizens'), Congress passed the TVPA.").

Other courts have likewise "recognized that the prohibition against state torture has attained *jus cogens* status—the highest and most universal norm of international law." *Doe I v. Cisco Sys., Inc.,* 73 F.4th 700, 716 n.7 (9th Cir. 2023); *see In re Est. of Ferdinand Marcos, Human Rights Litig.,* 25 F.3d 1467, 1475 (9th Cir. 1994) ("[T]he right to be free from official torture is fundamental and universal, a right deserving of the highest stature under international law, a norm of *jus cogens*.") (internal citation omitted); *Cabiri v. Assasie-Gyimah*, 921 F. Supp. 1189, 1196 (S.D.N.Y. 1996) (acknowledging "a fundamental principle of the law of nations: the human right to be free from torture"); *Bowoto,* 557 F. Supp. 2d at 1091 ("[T]orture has been widely recognized as a violation of customary international law."); *Flores,* 414 F.3d at 261 ("Our position is consistent with the recognition in *Filartiga* that the right to be free from torture embodied in the Universal Declaration of Human Rights … has attained the status of customary international law."); *see also* Restatement (Third) of Foreign Relations Law § 702(d) ("A state violates international law if, as a matter of state policy, it practices, encourages, or condones […] (d) torture or other cruel, inhuman, or degrading treatment or punishment.").

Legislative history unambiguously supports the same conclusion. The House and Senate Reports on the TVPA expressly cited to *Filartiga* and acknowledged the universality of prohibitions against torture and extrajudicial killing. *See* H.R. Rep. 102-367, pt. 1, at 2-3, *as reprinted in* 1992 U.S.C.C.A.N. 84, 85 ("Official torture

and summary execution violate standards accepted by virtually every nation. The universal consensus condemning these practices has assumed the status of customary international law. As the Second Circuit Court of Appeals held in 1980, 'official torture is now prohibited by the law of nations.'") (citing *Filartiga*, 630 F.2d at 884); S. Rep. 102-249 at 4 ("As Judge Kaufman explained in the *Filartiga* decision: Among the rights universally proclaimed by all nations is the right to be free of physical torture.").

In fact, not only has Congress "permit[ed] U.S. District Courts to entertain suits alleging violation of the law of nations," but it "expresse[d] a policy favoring receptivity by our courts to such suits." *Wiwa,* 226 F.3d at 105. As a leader in the worldwide theater, the United States has an interest in promoting "universal respect for, and observance of, human rights and fundamental freedoms for all." U.N. Charter art. 55(c); *see The Torture Victim Protection Act: Hearing and Markup on H.R. 1417 Before the Comm. on Foreign Affairs and its Subcomm. on Hum. Rts. & Int'l Orgs.*, 100th Cong. 31 (1988) (statement of the Association of the Bar of the City of New York, Committee on International Human Rights) ("This nation's willingness to take steps to extract even the smallest measure of civil justice from torturers would put the United States firmly on record as a leader in promoting respect for human rights and in expressing its condemnation of torture and extrajudicial killing."); *id*., 100th Cong. 8 (1988) (statement of Father Robert Drinan,

American Bar Association) ("If adopted, the legislation would serve notice on rights violators that the United States strongly condemns such actions.").

The TVPA therefore provides an avenue for the United States to further this interest; it was "designed not simply to compensate the victims of torture, but with an eye toward eradicating the evil altogether." *Xuncax v. Gramajo*, 886 F. Supp. 162, 199–200 (D. Mass. 1995).

CONCLUSION

For the foregoing reasons, Ambassadors Rapp and Scheffer, as *amici curiae*, respectfully request that the Court consider the United States' interest in the extraterritorial application of the TVPA.

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Respectfully submitted,

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I hereby certify that on October 16, 2024, I caused the foregoing document to be filed through the Court's CM/ECF system. I certify that to my knowledge all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

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