

HEARING ON ACCOUNTABILITY FOR FOREIGN CONTRACTORS: THE LIEUTENANT  
COLONEL DOMINIC 'ROCKY'  
BARAGONA JUSTICE FOR AMERICAN HEROES  
HARMED BY CONTRACTORS ACT  
November 18, 2009

Senator Claire McCaskill

Opening Statement

This hearing will now come to order.

Since the beginning of the wars in Iraq and Afghanistan, more than 5,000 American service members have been killed and more than 35,000 have been wounded. One of these brave Americans was Lieutenant Colonel Dominic "Rocky" Baragona.

Lieutenant Colonel Baragona was killed in Iraq in 2003 when his vehicle was struck by a truck being driven by an employee of the Kuwait & Gulf Link Transport Company ("KGL"). An Army investigation found that the accident was caused by KGL's driver.

For two years, the Baragona family went to the Army, the Defense Department, and the Bush White House to obtain information about their son's death and whether these officials intended to seek accountability. And for two years, the government did nothing.

So in 2005, the Baragona family acted on its own and brought a lawsuit against KGL. The company refused to appear in the matter until after the court entered a \$4.9 million judgment against them. Only then did KGL enter the case, arguing that the court had no jurisdiction over the Kuwaiti company and that the lawsuit must be dismissed.

In September 2006 - seventeen months after the Baragona family's suit began and more than three years after the accident- the Army sent KGL the first of three letters asking for information about KGL's tactics in the litigation and other concerns. Each time, the relevant information was supplied to the Army by the Baragona family or their lawyers. KGL responded to each letter and the Army took KGL's response at face value every time.

This February, Uldric Fiore, the Army's Suspension and Debarment Official, decided, based on review of [QUOTE] "the information available" that he would not initiate any suspension or debarment proceedings against KGL.

This May - four years after the Baragona family brought their lawsuit - the court vacated its \$4.9 million default judgment and dismissed the Baragona family's case for lack jurisdiction over KGL.

Today, more than six years after Rocky's death, the Baragona family is still waiting for justice. KGL has never admitted that their employee caused the accident. They have never paid a dime of compensation, even though they were required to carry liability insurance. They have never even expressed condolences to the Baragona family for the loss of their son.

Meanwhile, KGL has received millions of taxpayer dollars in subcontracts from major defense contractors like KBR, CSA, and IAP. According to information produced to the Subcommittee, KGL has received more than \$200 million in new subcontracts since Lieutenant Colonel Baragona was killed.

That is why I introduced “The Lieutenant Colonel Dominic ‘Rocky’ Baragona Justice for American Heroes Harmed By Contractors Act” in March of this year. Yesterday, the Ranking Member on the Subcommittee, Senator Bennett, the former Acting Ranking Member, Senator Collins, and Senators Brown, Casey, Lemieux, Bill Nelson, and I reintroduced this legislation.

This bill provides needed tools to ordinary Americans and the U.S. government to hold foreign contractors accountable.

First, the bill requires foreign entities who choose to enter into contracts with the United States to consent to personal jurisdiction in cases involving serious bodily injury, sexual assault, rape, and death.

The bill also provides explicit authority under the Federal Acquisition Regulation (FAR) for agencies to suspend or debar those companies who attempt to frustrate the legal process in these cases by failing to accept service or appear in court.

The legislation that my fellow Senators and I reintroduced yesterday is a good first step. But the need for Congress to act with this legislation has raised serious questions for me about the systemic failures that have allowed companies like KGL to escape accountability for their actions.

In April, the Subcommittee began an investigation of the suspension and debarment process. The Subcommittee’s findings are summarized in a fact sheet I am releasing today, and I ask unanimous consent that it be made part of the record.

The Subcommittee found that federal agencies have only rarely used the suspension and debarment process to protect the government’s interest. In fact, agencies have consistently failed to suspend or debar even those companies who have been convicted through the work of their own Inspectors General. For example:

- From 2004 through March 2009, the Defense Department Office of Inspector General reported 2768 convictions. The Defense Department suspended or debarred only 708 individuals and companies.
- The State Department is the second largest Department responsible for contracting in Iraq and Afghanistan behind the Department of Defense. In 2008, the State Department did not suspend or debar a single company.
- From 2005 through 2008, DHS awarded 325,270 contracts to 67,696 different contractors and debarred just 4 companies. In 2006, amidst widespread reports of waste, fraud, and abuse following Hurricane Katrina, DHS did not suspend or debar a single company.

At today's hearing, we will hear from Lieutenant Colonel Baragona's father, Dominic Baragona, about his family's struggle to hold KGL accountable, and how legislation like this could have helped him. We will also hear from two distinguished legal scholars about the gaps in the legal framework that this bill will help to address.

We will also hear from the Justice Department about its efforts to pursue accountability for foreign contractors, and ask whether they have the tools they need to protect the U.S. government.

We will also ask our witnesses from the Defense Department and the Army tough questions about their suspension and debarment practices.

And we will ask our witnesses what we need to do to ensure that federal agencies act aggressively to protect the government and its citizens from irresponsible contractors.

I intend to get answers to these questions today.

I thank our witnesses for being here and look forward to their testimony.



*Fact Sheet*

**AGENCIES FAIL TO SUSPEND OR DEBAR COMPANIES**

**Senator Claire McCaskill**

**Chairman, Subcommittee on Contracting Oversight**

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Under the Federal Acquisition Regulation, agencies are authorized to suspend or debar irresponsible contractors. Individuals and companies can be suspended or debarred for offenses including fraud, delinquent federal taxes, violations of the Drug-Free Workplace Act, lack of business integrity, or any other “serious or compelling” cause.

Over the last five years, GAO, agency inspectors general, and other officials have issued countless reports of waste, fraud, and abuse in contracts across the federal government. Despite these findings, federal agencies have only rarely used the suspension and debarment process to protect the government’s interest. In fact, agencies have consistently failed to suspend or debar even those companies who have been convicted through the work of their own Inspectors General.

The federal government suspends or debars far more individuals than companies. More than 61,000 individuals but fewer than 5,500 companies are currently excluded from receiving federal contracts. In other words, 10 times more individuals than companies have been suspended or debarred.

In 2008, the federal government awarded contracts to more than 227,000 companies. Only 452 companies were suspended or debarred in 2008.<sup>1</sup>

Defense Department: From 2004 through March 2009, the Defense Department Office of Inspector General reported 2768 convictions. The Defense Department suspended or debarred only 708 individuals and companies.

State Department: The State Department is the second largest Department responsible for contracting in Iraq and Afghanistan behind the Department of Defense. During a four year period, from 2005 through 2008, the State Department awarded contracts to 89,593 companies and debarred only one company. In 2005, 2006 and 2008, the State Department did not debar a single company or individual.

Department of Homeland Security: From 2005 through 2008, DHS awarded 325,270 contracts to 67,696 different contractors and debarred just 4 companies. In 2006, amidst

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<sup>1</sup> Data in this fact sheet are from the *Semiannual Reports of Inspectors General*, *USASpending.gov*, and the *Excluded Parties List System*.

widespread reports of waste, fraud, and abuse following Hurricane Katrina, DHS did not suspend or debar a single company.

US Agency for International Development: USAID has debarred only one firm in 2009 to date. In 2007 and 2008, the agency did not debar any companies.

Small Business Administration: From 2004 through March 2009, the SBA Office of Inspector General reported 220 convictions and just 41 debarments. In 2008, despite more than 25 convictions reported by the SBA Inspector General, SBA did not suspend or debar a single company.