

# 16-3966

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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MASHUD PARVES RANA,

*Plaintiff-Appellee,*

v.

MONIRUL ISLAM,

*Defendant-Appellant,*

and

FAHIMA TAHSINA PROVA,

*Defendant.*

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On Appeal from the United States District Court  
for the Southern District of New York

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**BRIEF OF *AMICUS CURIAE* HUMAN TRAFFICKING PRO BONO LEGAL  
CENTER IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE**

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**RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* the Human Trafficking Pro Bono Legal Center states it has no parent corporation and that no publicly held corporation owns any part of it.

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INTEREST OF AMICUS CURIAE<sup>1</sup>

The **Human Trafficking Pro Bono Legal Center** (“HT Pro Bono”) respectfully submits this brief as *amicus curiae* in support of Plaintiff-Appellee Mashud Parves Rana. HT Pro Bono is an innovative non-profit that empowers courageous survivors of trafficking to seek justice. The organization connects trafficking victims with highly-skilled pro bono attorneys. HT Pro Bono works to obtain criminal convictions, criminal restitution, and civil judgments against traffickers. Since 2012, HT Pro Bono has trained more than 3,000 attorneys at top law firms across the country, has placed more than 200 cases for pro bono representation, and has educated over 14,000 community leaders on trafficking victims’ rights.

HT Pro Bono’s staff attorneys have worked for more than a decade to combat human trafficking by diplomats and international officials. The organization and its attorneys have published extensively on the topics

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<sup>1</sup> *Amicus curiae* submit this brief accompanied by a motion for leave of the Court pursuant to Federal Rule of Appellate Procedure 29(a)(2). Counsel for *amicus curiae* state pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E) that no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

of trafficking and abuse of domestic workers by diplomats.<sup>2</sup> Nationally, HT Pro Bono co-chairs a working group on the abuse of domestic workers brought to the United States on diplomat-sponsored visas. Internationally, HT Pro Bono is a member of a working group of European partner organizations committed to addressing this issue in Europe. HT Pro Bono advocates for justice for domestic workers abused and exploited by diplomats and international organization employees, fighting to hold all who abuse domestic workers accountable.

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<sup>2</sup> See Martina E. Vandenberg & Sarah Bessell, *Diplomatic Immunity and the Abuse of Domestic Workers: Criminal and Civil Remedies in the United States*, 26 DUKE J. COMP. & INT'L L. 595 (2016); Martina E. Vandenberg, *Innovations in the Fight Against Human Trafficking: Listening to Trafficking Survivors, Fighting for Justice*, 60 N.Y.L. SCH. L. REV. 631 (2015–2016); Martina E. Vandenberg, *Diplomats Who Commit Domestic-Worker Crimes Shouldn't Get a Free Pass*, WASH. POST (Jan. 1, 2014); Martina E. Vandenberg & Alexandra Levy, *Human Trafficking and Diplomatic Immunity: Impunity No More?*, 7 INTERCULTURAL HUM. RTS. L. REV. 77 (2012); Martina E. Vandenberg, *Why Are Diplomats Free to Abuse in America?*, WASH. POST (June 3, 2011).

### SUMMARY OF THE ARGUMENT

This Court should affirm the District Court's default judgment. Domestic workers brought to the United States by diplomats and international officials are extremely vulnerable and frequently exploited. Accordingly, Congress has mandated specific protections for those who enter this country on special visas reserved for diplomatic domestic workers. Specifically, Congress has authorized the State Department (1) to suspend the issuance of such visas to a nation that knew of and tolerated the abuse, and (2) to assist in the enforcement of final court judgments against diplomats, many of whom flee the jurisdiction and refuse to pay. Acting on this mandate, the State Department has successfully pressed diplomats' sending states to provide compensation directly to the victims.

Against this backdrop, the reasons for Defendants' frivolous appeal are apparent. First, the Defendants seek to delay or avoid triggering the State Department's duty to press for settlement by Bangladesh, Defendants' sending nation. By filing this meritless appeal, Defendants can avoid pressure from the State Department to resolve the matter and can delay the potential suspension of the Government of Bangladesh

from diplomatic domestic worker visas. Bangladeshi officials and diplomats currently face multiple allegations of exploitation and abuse of domestic workers, including two criminal cases pending in New York. Second, Defendants now seek to engage on the merits of the underlying claims by employing the “happy worker” defense, a common defense raised by trafficking defendants and frequently rejected by courts.

Neither of these arguments provide any basis upon which to reopen the judgment. Reversing the District Court’s default judgment would not only signal to similar perpetrators that they can continue to act with impunity, it would embolden would-be perpetrators to abuse and exploit domestic workers. This Court should uphold the District Court’s ruling.

### ARGUMENT

#### **I. Diplomatic human trafficking is a pervasive and repugnant practice.**

Domestic workers brought to the United States by diplomats and international officials are “among the most vulnerable who enter our borders legally.” Government Accountability Office, *The U.S. Government’s Efforts To Address Alleged Abuse Of Household Workers By Foreign Diplomats With Immunity Could Be Strengthened* 26 (2008) [Hereinafter GAO Report]. These workers enter the United States on

special visas reserved for the domestic employees of diplomats and foreign officials, known as A-3 and G-5 visas.<sup>3</sup> These workers face significant risk of abuse. As early as 1981, the State Department issued a diplomatic note to all embassies in the United States, expressing “deep concern . . . over the evidence that some members of diplomatic missions have seriously abused or exploited household servants who are in the United States under nonimmigrant A-3 visas.” Letter from Gilda Brancato, Office of the Legal Adviser, Diplomatic Law & Litig. Div., U.S. Dept. of State, (Oct. 23, 1990) (citing diplomatic note of 1981) (on file with *amicus*).

The trafficking of domestic workers by diplomats has not abated in the ensuing 36 years. Diplomatic trafficking—like other forms of trafficking of domestic workers to the United States for forced labor—is a significant issue. Since 2003, survivors of various forms of domestic servitude have filed 85 federal civil trafficking cases,<sup>4</sup> which constitute

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<sup>3</sup> Domestic workers employed by diplomats generally receive A-3 visas. Those employed by international organization officials generally receive G-5 visas. These will be referred to collectively as “A-3/G-5” visas.

<sup>4</sup> See *Federal Civil Human Trafficking Case Database*, HUMAN TRAFFICKING PRO BONO LEGAL CTR., <http://www.htprobono.org/resources/> (last visited June 30, 2017). To date, 247 civil trafficking cases have been filed by trafficking victims under 18 U.S.C. § 1595, the federal civil cause of action for trafficking victims created by the 2003 Trafficking Victims Protection Reauthorization Act. 18 U.S.C. § 1595.

34% of all federal civil trafficking cases filed in that period. Domestic workers alleging they were trafficked by diplomats and international organization officials filed 31 of those cases.<sup>5</sup> *See* HT Pro Bono, *Criminal & Civil Trafficking and Abuse Cases Involving Diplomats, Consular Officials, International Organization Officials, Military Officials, and Others*, attached as Appendix A. Stated differently, trafficking civil suits filed by domestic workers with A-3/G-5 visas account for a staggering 35% of all domestic worker federal trafficking suits.<sup>6</sup>

These cases are just the tip of the iceberg. It is likely that the true number of domestic workers trafficked by diplomats and international officials is much higher. A 2008 GAO report identified 42 cases in which A-3/G-5 domestic workers were trafficked and noted that the figure was “likely higher.” *See* GAO REPORT. Recent reports by domestic worker rights’ advocates indicate that the abuse continues. Tiffany Williams, *Nat’l Domestic Workers All., Beyond Survival: Organizing to End Human Trafficking of Domestic Workers* 60–65 (2015).

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<sup>5</sup> All but one of these cases were filed under 18 U.S.C. § 1595. The sole exception is *Swarna v. Al Awadi*, 622 F.3d 123 (2d Cir. 2010). The facts in that case predated passage of the 2003 TVPRA; the case was filed under the Alien Tort Statute.

<sup>6</sup> *See Federal Civil Human Trafficking Case Database*, HUMAN TRAFFICKING PRO BONO LEGAL CTR., <http://www.htprobono.org/resources/> (last visited June 30, 2017).

Survivors of trafficking by diplomats and international officials hail from all over the world. But they share a narrative of egregious abuse and exploitation. Many are enticed to the United States with promises of better wages and good working conditions. *See, e.g., Doe v. Siddig*, 810 F. Supp. 2d 127, 130 (D.D.C. 2011) (noting defendants promised that the victim would earn the federal minimum wage, attend school, and be “raised like a daughter”). Victims find a much different reality in the United States. They work from morning to night, six to seven days a week. *See Report and Recommendation of Default Judgment at 2, Lagasan v. Al-Ghasel*, 1:14-cv-01035 (E.D. VA. 2015) (stating the plaintiff worked up to 18 hours each day). In return, they receive little to no compensation.

Victims often suffer severe physical, verbal, and psychological abuse. Traffickers threaten the domestic workers with death, arrest, or deportation if they reveal the abuse. Victims are also at high risk for sexual abuse. Some live in “constant fear” of being raped. *See Swarna v. Al-Awadi*, 622 F.3d 123, 130 (2d Cir. 2010).

Domestic workers often live in abysmal conditions, forced to sleep on floors and in basements. *See, e.g., Lipenga v. Kambalame*, 219 F. Supp.

3d 517, 523 (D. Md. 2016) (noting the defendant forced the victim to sleep in the basement on a wooden floor with only one pillow and a blanket). Some suffer malnutrition and weight loss when traffickers restrict the domestic workers' food intake. *Swarna*, 622 F.3d at 130 (noting the victim, who weighed 150 pounds before working for the defendants, weighed 100 pounds at the time of her escape). Traffickers frequently deny domestic workers access to medical care, despite evidence of deteriorating health. *Siddig*, 810 F. Supp. 2d at 131 (stating the victim rarely received medical care, despite breathing difficulties and skin burns caused by harsh cleaning chemicals, and despite loss of hearing due to assault by defendants' children). Following escapes, domestic workers have been diagnosed with various forms of cancer, tuberculosis, and serious dental issues.<sup>7</sup>

The abuses alleged in this suit are, unfortunately, all too common among A-3/G-5 visa holders. Trafficking of domestic workers by

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<sup>7</sup> Report and Recommendation at 9, *Butigan v. Al Malki*, No. 13-cv-00514 (E.D. Va. Apr. 9, 2014) (victim denied access to dental care); *Lipenga*, 219 F. Supp. 3d at 524 (victim diagnosed with tuberculosis following escape); Transcript of Sentencing Hearing at 22-3, *United States v. Al Homoud*, No. 15-cr-00391 (Feb. 9, 2016) (victim diagnosed with cancer).

diplomatic personnel is a significant problem, and the District Court rightly entered judgment against the Defendants.

**II. Enforcement of default judgments against diplomatic human traffickers or their sending nations is necessary to hold diplomats accountable and to provide redress to the injured victims.**

For most victims trafficked by diplomats, civil courts are the only forum in which they can secure justice. Criminal prosecutions of diplomatic traffickers are rare. Indeed, in the 17 years since the Victims of Trafficking and Violence Protection Act of 2000 first authorized criminal prosecution of trafficking crimes, only ten abuse cases have been filed.<sup>8</sup> *See* Appendix A. Diplomatic immunity often shields diplomatic perpetrators from criminal prosecution.<sup>9</sup> And while consular and other

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<sup>8</sup> *United States v. Rashid*, No. 17-mj-04658 (S.D.N.Y. June 19, 2017); *United States v. Al Homoud*, No. 15-cr-00391 (W.D. Tex. June 1, 2015); *United States v. Khobragade*, No. 1:14-cr-00176 (S.D.N.Y. Mar. 14, 2014); *United States v. Amal*, Nos. 1:14-cr-00151, 1:14-cr-00152 (E.D. Va. Mar. 4, 2014); *United States v. Penzato*, No. 3:12-cr-00089 (N.D. Cal. Feb. 9, 2012); *United States v. Soborun*, No. 2:12-mj-03121 (D.N.J. Sept. 7, 2012); *United States v. Liu*, No. 4:11-cr-00284 (W.D. Mo. Nov. 18, 2011); *United States v. Al-Ali*, No. 1:11-cr-00051 (D.R.I. Ma. 30, 2011); *United States v. Tolan*, No. 1:11-cr-00536 (E.D. Va. Nov. 23, 2011); *United States v. Bakilana*, No. 1:10-cr-00093 (E.D. Va. Mar. 29, 2010).

<sup>9</sup> It is possible to prosecute diplomats with full immunity, but the United States must request a waiver of immunity from the diplomat's sending state. The United States has requested a waiver of diplomatic immunity in domestic worker abuse criminal cases in just two cases: *Khobragade* and *Soborun*.

international officials do not enjoy full immunity, the number of criminal prosecutions against these officials also remains low. *Id.*

Accordingly, civil suits are often the sole means by which victims of diplomatic trafficking can be made whole, and are essentially the only means by which the perpetrators can be held accountable for their wrongdoing. But enforcement of civil judgments in diplomatic trafficking cases remains an intractable problem.<sup>10</sup> In an effort to address this issue, Congress created a role for the State Department, mandating that when the Secretary of State receives credible evidence of diplomatic trafficking, such as a *final* judgment, he or she shall take certain steps to punish the underlying wrongdoing and provide redress to the injured victims. Here, Defendants' frivolous appeal is a stalling tactic to avoid or delay the finality of the underlying default judgment in hopes of forestalling the State Department's Congressionally-mandated actions.

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<sup>10</sup> To date, there are four outstanding civil judgments against diplomats and international officials in trafficking cases, totaling \$4,980,168.97 in compensatory and punitive damages. See Order Granting in Part and Denying in Part Motion for Default Judgment, *Lipenga v. Kambalame*, No. 14-cv-03980 (D. Md. Nov. 9, 2016) (entering a judgment of \$1,101,345.20); Order Granting Default Judgment, *Carazani v. Zegarra*, No. 12-cv-00107 (D.D.C. July 3, 2013) (entering a judgment of \$1,188,688.77); Final Judgment, *Ballesteros v. Al-Ali*, No. 11-cv-00152 (D.R.I. Dec. 26, 2012) (entering a judgment of \$1,231,800); Decision and Order, *Gurung v. Malhotra*, No. 10-cv-05086 (S.D.N.Y. Mar. 16, 2012) (entering a judgment of \$1,458,335).

**A. Congress has mandated State Department action only after a “final judgment.”**

Congress, concerned about the abuse and exploitation of domestic workers by diplomats and international officials, has mandated specific protections and remedial actions related to domestic workers with A-3/G-5 visas. Specifically, as explained more fully below, Congress authorized the State Department (1) to encourage a sending nation itself to satisfy a “final court judgment” against its diplomatic officials by providing compensation directly to the victim, and (2) to suspend A-3/G-5 visa issuance when there is credible evidence, such as a final court judgment, of known and tolerated abuse. *See generally* Brief of *Amicus Curiae* Senator Marco Rubio, *Cruz v. Maypa*, 773 F.3d 138 (4th Cir. 2014) (No. 1:13-cv-00862) (providing an overview of Congressional intent to provide protections for A-3/G-5 visa holders).<sup>11</sup>

As to the former, Congress has mandated that the Secretary of State “should assist in obtaining payment of final court judgments awarded to A-3 and G-5 visa holders, including encouraging the sending states to provide compensation directly to victims.” *See* Dep’t of State,

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<sup>11</sup> A copy of Senator Rubio’s brief is available at [https://www.rubio.senate.gov/public/\\_cache/files/c078e224-5700-4f4e-93c9-ea1c712c4947/5D0FDAE0247B47ED6738E46637604318.rubio-amicus-brief-final.pdf](https://www.rubio.senate.gov/public/_cache/files/c078e224-5700-4f4e-93c9-ea1c712c4947/5D0FDAE0247B47ED6738E46637604318.rubio-amicus-brief-final.pdf).

Foreign Operations, and Related Programs Appropriations Act of 2015, § 7034(k), Pub. Law No. 113-235.<sup>12</sup> State Department intervention has successfully held sending states accountable for the actions of their diplomats. In 2008, for example, a District Court awarded a victim trafficked into domestic servitude by a Tanzanian diplomat \$1,059,348.79 in compensatory and punitive damages. *See* Order Adopting Report and Recommendation, *Mazengo v. Mzenzi*, No. 07-cv-756 (D.D.C. Apr. 10, 2008). The default judgment remained unpaid for five years. In 2013, the Government of Tanzania succumbed to pressure from the White House, the Department of State, and the victim's lawyers, agreeing to settle the case with an *ex gratia* payment to the victim. *See* Senator Marco Rubio, *Rubio Comments On 2013 Trafficking In Persons Report*, June 19, 2013, <https://www.rubio.senate.gov/public/index.cfm/press-releases?ID=599A6FD6-D58D-4E21-9F7D-B3D95C7343CE>. It is likely this exact scenario that Defendants seek to avoid.

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<sup>12</sup> The 2017 Department of State, Foreign Operations, and Related Programs Appropriations Act extends this criteria through fiscal year 2017. Department of State, Foreign Operations, and Related Programs Appropriations Act of 2017, § 7034(j), Pub. Law No. 115-31.

In addition to the pressure on defendants to resolve these cases, Congress mandated that the Secretary of State shall suspend the issuance of A-3 or G-5 visas to applicants “seeking to work for officials of a diplomatic mission or an international organization, *if the Secretary determines that there is credible evidence that one or more employees have abused or exploited one or more non-immigrants holding an A-3 or G-5 visa*, where the diplomatic mission or international organization has tolerated such actions.” See Dep’t of State, Foreign Operations, and Related Programs Appropriations Act of 2015, § 7034(k), Pub. Law No. 113-235. Bangladesh is already a prime candidate for suspension from the A-3/G-5 visa program. As explained in greater detail below, there is mounting credible evidence of the abuse and exploitation of A-3/G-5 visa holders by Bangladeshi diplomats and international officials. This abuse is known to and tolerated by the Government of Bangladesh. Defendants also seek to avoid or delay suspension with this frivolous appeal.

**B. There is credible evidence to suspend the issuance of A-3/G-5 visas to Bangladesh.**

As noted above, the State Department may suspend the issuance of A-3/G-5 visas upon “credible evidence” that the sending nation tolerated abuse of diplomatic domestic workers. “Credible evidence” is defined as:

- (1) a final court judgment (including a default judgment) issued against a current or former employee of such mission or organization (for which the time period for appeal has expired);
- (2) the issuance of a T-visa to the victim; or
- (3) a request by the Department of State to the sending state that immunity of individual diplomats or family members be waived to permit criminal prosecution.

Department of State, Foreign Operations, and Related Programs Appropriations Act of 2015, § 7034(k), Pub. Law No. 113-235. In filing this frivolous appeal, the defendant seeks to delay a “final court judgment.” Such tactics serve to forestall suspension of A-3/G-5 privileges.

Bangladesh currently falls squarely within the category of nations Congress intended to suspend. Within the past two months, criminal cases have been filed against Bangladeshi diplomats and international officials, alleging the abuse and exploitation of A-3/G-5 domestic workers. In June 2017, Bangladesh’s current deputy consul general in New York was arrested and indicted on charges of exploiting a domestic worker. *See* Press Release, District Att’y Queen’s Cty, *Foreign Consular Officer Indicted For Labor Trafficking; Defendant Allegedly Forced House Servant To Work Without Pay* (June 12, 2017), <http://www.queensda.org/>

newpressreleases/2017/JUNE\_2017/md\_islam\_06\_12\_2017\_ind.pdf.

That same month, federal authorities filed charges of visa fraud and fraud in foreign labor contracting against a Bangladeshi economist for the United Nations who allegedly overworked and underpaid a G-5 domestic worker. *See* Criminal Complaint, *United States v. Rashid*, No. 17-mj-04658 (S.D.N.Y. filed June 19, 2017).

Allegations against Bangladeshi diplomats arose as early as 2007, when a domestic worker who worked for Bangladesh's Deputy Permanent Representative to the United Nations alleged that the family deceived her into coming to the United States by promising that they would arrange to bring her son to the United States. Instead, the victim alleged that the family made her work continuously from 6 a.m. to 9 p.m., paying her a mere \$29 a month. The family allegedly rarely allowed the victim outside and even made her sleep under the dining room table so that guests would not see her.<sup>13</sup>

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<sup>13</sup> *See* Am. Civ. Liberties Union, Declaration of Raziah Begum to the Inter-American Commission on Human Rights (Oct. 19, 2007), <https://www.aclu.org/other/declaration-raziah-begum-inter-american-commission-human-rights?redirect=cpreldirect/32693>. Ms. Begum did not file a complaint or take legal action against the alleged diplomats. She stated in her declaration that she feared for her son's safety. *Id.* at 5.

Allegations of abuse by Bangladeshi diplomats do not stop at the borders of the United States. In the United Kingdom, a Bangladeshi diplomat with diplomatic immunity was alleged to have abused a domestic worker in 2012.<sup>14</sup> In Germany, a former driver at the Embassy of Bangladesh alleged that the Ambassador threatened him, beat him on his head with a chair, and threw a vase at his head but missed.<sup>15</sup> These allegations point to a failure by the Government of Bangladesh to prevent—or punish—abuse by the state’s diplomats and officials.

The District Court’s default judgment is a firm message that the abuse and exploitation of A-3/G-5 visa holders will not be tolerated in the United States. Defendants’ frivolous appeal seeks to thwart accountability for the Defendants and for the Government of Bangladesh.

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<sup>14</sup> The Secretary of State for Foreign and Commonwealth Affairs (Mr William Hague), *Alleged Offenses (Diplomatic Immunity)*, UK PARLIAMENT, <https://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130711/wmstext/130711m0001.htm>.

<sup>15</sup> Manuela Heim, *Sklavenarbeit bei Diplomaten* [Slave Labor with Diplomats], DIE TAGESZEITUNG, Oct. 20, 2011, <http://www.taz.de/!5109455/>; Dagmar Dehmer, *Bangladeschs Botschafter in Berlin führt ein hartes Regime* [Bangladesh’s Ambassador in Berlin is Leading a Tough Regime], DER TAGESSPIEGEL, Oct. 18, 2011, <http://www.tagesspiegel.de/weltspiegel/undiplomatische-arbeitsbedingungen-bangladeschs-botschafter-in-berlin-fuehrt-ein-hartes-regime/5221864.html>.

**C. Bangladesh has tolerated the actions of its diplomats and international officials.**

The second prong of the suspension analysis concerns the actions of the diplomat's sending state. The Explanatory Statement to the 2017 Consolidated Appropriations Act provides a definition of having "tolerated such actions":

[T]he Secretary of State shall consider the following as sufficient to determine that a diplomatic mission "tolerated such actions": the failure to provide a replacement passport within a reasonable period of time to a T-visa recipient; the existence of multiple concurrent civil suits against members of the diplomatic mission; or a failure to satisfy a civil judgment against an employee of the diplomatic mission.

Explanatory Statement, Consolidated Appropriations Act of 2017, Pub. L. No. 115-31, § 7034.

The Government of Bangladesh continues to tolerate the abuse and exploitation of domestic workers by its diplomats and international officials. Bangladesh has made no effort to settle the 2016 default judgment of \$922,597.31 against the defendants. *See Findings of Fact and Conclusions of Law, Rana v. Islam*, No. 14-cv-1993 (S.D.N.Y. Sept. 26, 2016). Bangladesh has made no moves to censure Mr. Islam, who currently enjoys the position of Ambassador of Bangladesh to the Federal

Democratic Republic of Ethiopia. *See* Press Release, Ministry of Foreign Affairs, *The Government has decided to appoint Md. Monirul Islam, currently serving as the Ambassador of Bangladesh in Morocco as our inaugural Ambassador to the Federal Democratic Republic of Ethiopia* (Jan. 7, 2016), <http://mofa.gov.bd/media/government-has-decided-appoint-md-monirul-islam-currently-serving-ambassador-bangladesh>.

Bangladesh's response to recent allegations against its diplomats is not encouraging. Following the June 2017 arrest of the country's deputy consul general to the United States, the Bangladesh foreign ministry summoned a U.S. diplomat to protest the diplomat's arrest and urge his release. *Bangladesh summons U.S. diplomat to protest arrest of envoy in New York*, REUTERS (Jun. 13, 2017, 11:52 AM) <https://www.reuters.com/article/us-usa-bangladesh-idUSKBN194264>. The Foreign Ministry of Bangladesh has also attempted to transfer the deputy consul general to the Permanent Mission to the UN, so that he can "enjoy full diplomatic facilities" including diplomatic immunity. *Diplomat Shahedul, Facing Charges of Assaulting Servant, Transferred to UN Mission*, BDNEWS24.COM (July 1, 2017), <http://bdnews24.com/bangladesh/2017/07/>

01/diplomat-shahedul-facing-charges-of-assaulting-servant-transferred-to-un-mission.<sup>16 & 17</sup>

**III. The narrative of the “happy victim” provides no basis upon which to countenance the abuse and exploitation of domestic workers.**

The myth of the “happy slave” is a common defense raised by defendants in both civil and criminal trafficking cases. *See, e.g.* Matt Grady, *Human Trafficking Forced Labor*, Combating Trafficking in Persons: U.S. Dept. of Defense (June 22, 2015), <http://ctip.defense.gov/Training/Legal-Counsel/>; AM. SOC’Y INT’L L., BENCHBOOK ON

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<sup>16</sup> This is the same ploy used in the *Khobragade* case, where the diplomat defendant was transferred to the Indian Mission to the United Nations to obtain full diplomatic immunity. *United States v. Khobragade*, 15 F. Supp. 3d 383 (S.D.N.Y. 2014). The State Department subsequently issued a diplomatic memorandum, stating that to qualify for diplomatic privileges and immunities, a person must “not be subject, at the time accreditation is sought, to any pending criminal charges in the United States punishable by incarceration for more than one year nor have a family member forming part of the diplomatic envoy’s household who is subject to any such charges and is present in the United States at the time such accreditation is sought.” Diplomatic Note from the U.S. Mission to the United Nations, to the Permanent Missions to the United Nations (Jan. 13, 2016), [http://usun.state.gov/sites/default/files/organization\\_pdf/hc-01-16.pdf](http://usun.state.gov/sites/default/files/organization_pdf/hc-01-16.pdf).

<sup>17</sup> It has also been reported that Bangladeshi diplomats may be barred by their own government from bringing A-3/G-5 “domestic aides” to postings “where labour rights issue[s] figure highly,” like the United States and Europe. *See* Gov’t Likely to Stop Diplomats Taking Domestic Aides From Home, UBN News (July 7, 2017), <http://www.unb.com.bd/bangladesh-news/Govt-likely-to-stop-diplomats-taking-domestic-aides-from-home/1269>. *Amicus curiae* respectfully suggests that rather than barring diplomats from bringing domestic aides to the United States, Bangladesh would do better to enforce existing judgments against its diplomats and prevent further abuse within its diplomatic community throughout the world.

INTERNATIONAL LAW III.E-47 (Diane Marie Amann ed., 2014). A prosecutor for the Human Trafficking Prosecution Unit at the Department of Justice referred to this defense as the “happy photo defense,” “the Facebook defense,” and “the social media defense.” Grady, *supra*. Traffickers frequently claim the victim was a happy worker, substantiating this with photographs of the victim seemingly enjoying themselves at parties or Disneyland. *See* AM. SOC’Y INT’L L., *supra*, at III.E-47. The happy photo defense is “frequently rejected by the court of first instance.” *See id.* at III.E-49.

Defenses similar to Mr. Islam’s have been raised by defendants in multiple trafficking cases. In *Doe v. Siddig*, for example, the defendant, a former Sudanese diplomat, was alleged to have trafficked the plaintiff into the United States and to have subjected her to false imprisonment and involuntary servitude for 19 years. *See Doe v. Siddig*, 810 F. Supp. 2d 127 (D.D.C. 2011). The defendant argued that the plaintiff “came voluntarily,” saying that she “used to spend day and night hours watching TV, lately in the internet online chatting rooms, using web cam till 2 am and 3 am and sleep till the mid day,” attaching photos as “a proof of her social life.” *See* Answer to Plaintiff: Jane M Doe Complaint at 9,

17, *Doe v. Siddig*, No. 1:10-cv-01256 D.D.C. July 26, 2010). In *United States v. Norris*, the defendant faced charges for holding women against their will and transporting them to other locations for the purpose of forced prostitution. *See United States v. Norris*, 2014 BL 364689 (N.D. Ga. Dec. 29, 2014), *aff'd*, 358 Fed. Appx. 60 (11th Cir. 2009). The defendant, a former professional wrestler, argued the women were merely training at his residence and that they were free to leave at will. *See id.* He introduced photographs of the alleged victims smiling at the Hoover Dam as evidence that there was no force, fraud, or coercion in the victims' engagement in prostitution. *Id.* The jury rejected his argument and found him guilty of multiple violations of federal sex trafficking and forced labor statutes. *Id.*

Here, Defendants allege that Mr. Rana “passed day’s [sic] most of the time watching TV channels,” and says there are photos of the plaintiff “with the Hon. Foreign Minister and Foreign Secretary” that prove that the defendants treated the plaintiff like family. *See App.’s Br.* at 10–11. This argument, much like the arguments made by Siddig, Norris and others, is part of the standard defense playbook. It is an argument that

is routinely made by defendants in trafficking cases to undermine the credibility of the victim.

Defendants' appeal raises frivolous, canned arguments in an attempt to forestall accountability for both himself and his country. The District Court rightly entered a default judgment in favor of Mr. Rana against Mr. Islam and his wife. The decision should be upheld.

### CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully requests this Court affirm the ruling of the District Court.

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**CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Local Rule 29.1(c) because this brief contains 4,458 words, including footnotes, but excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

July 19, 2017

/s/ Miles E. Coleman

Miles E. Coleman

Counsel for *Amicus Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of July 2017, I caused the foregoing Brief of *Amicus Curiae* to be filed with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to the following:

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I further certify that on the 19th day of July 2017, I caused a copy of the Brief of Amicus Curiae to be served via electronic mail and third-party commercial carrier on the following addresses, which were listed on the Notice of Appeal:

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# Appendix A

*(Rana v. Islam, No. 16-3966)*

Criminal & Civil Trafficking and Abuse Cases Involving Diplomats, Consular Officials,  
International Organization Officials, Military Officials, and Others

<b>Criminal &amp; Civil Trafficking and Abuse Cases Involving Diplomats, Consular Officials, International Organization Officials, Military Officials, and Other (42 cases)</b>			
<b>Civil (Federal): 31; Criminal (Federal): 10; Criminal (State): 1</b>			
<b>Countries with 4 Cases</b>			
<b>Country</b>	<b>Case Docket</b>	<b>Sponsoring Organization</b>	<b>Outcome</b>
Qatar	Judavar v. Al Mannai, No. 11-cv-00625 (D.D.C. filed Mar. 25, 2011)	Embassy of Qatar	Dismissed (voluntarily)
Qatar	Butigan v. Al Malki, No. 13-cv-00514 (E.D. Va. filed Apr. 26, 2013)	Embassy of Qatar	Dismissed with prejudice pursuant to a confidential settlement agreement
Qatar	United States v. Al Homoud, No. 15-00391 (W.D. Tex. filed Jun. 1, 2015)	Camp Bullis Military Training Reservation	Mr. Al-Homoud pled guilty to visa fraud. Ms. Al-Hosani pled guilty of failing to report knowledge of a felony. They were sentenced to five and three five years supervised released probation, respectively, and immediate removal from the United States. The court also ordered restitution in the amount of \$120,000.
Qatar	Sulaiman v. Laram, No. 16-cv-08182 (S.D.N.Y. filed Oct. 19 2016)	Permanent Mission of Qatar to the United Nations	Ongoing
<b>Countries with 3 Cases</b>			
<b>Country</b>	<b>Case Docket</b>	<b>Sponsoring Organization</b>	<b>Outcome</b>
Bangladesh	United States v. Rashid, No. 17-mj-04658 (S.D.N.Y. filed June 19, 2017)	United Nations	Ongoing
Bangladesh	New York v. Islam	Consulate General of Bangladesh	Ongoing

Bangladesh	Rana v. Islam, No. 14-cv-1993 (S.D.N.Y. filed Mar. 21, 2014)	Consulate General of Bangladesh	Default judgment for the plaintiff in the amount of \$922,597 (on appeal)
India	Gurung v. Malhotra, No. 10-cv-5086 (S.D.N.Y. filed July 1, 2010)	Consulate General of India	Default judgment for plaintiff in the amount of \$1,458,335 (unpaid)
India	Bhardwaj v. Dayal, No. 11-cv-04170 (S.D.N.Y. June 20, 2011)	Consulate General of India	Settled
India	United States v. Khobragade, No. 13-MAG-2870 (S.D.N.Y. filed Dec. 11, 2013)	Permanent Mission of India to the United Nations (originally Consulate General of India)	The indictment was dismissed on diplomatic immunity grounds. An indictment was re-issued after Ms. Khobragade left the United States.
Kuwait	Swarna v. Al Awadi, No. 06-cv-04880 (S.D.N.Y. filed June 23, 2006)	Permanent Mission of Kuwait to the United Nations	Settled
Kuwait	Sabbithi v. Al Saleh, No. 07-cv-115 (D.D.C. filed Jan. 18, 2007)	Embassy of Kuwait	Settled
Kuwait	Leo v. Al Naser, No. 08-cv-01263 (D.D.C. filed July 22, 2008)	Embassy of Kuwait	Settled
Philippines	Baoanan v. Baja, No. 08-cv-05692 (S.D.N.Y. June 24, 2008)	Permanent Mission of the Philippines to the United Nations	Settled
Philippines	Cruz v. Maypa, No. 13-cv-00862 (E.D. Va. filed July 16, 2013)	World Bank	Settled in the amount of \$140,000
Philippines	Nabong v. Paddayuman, No. 17-cv-00400 (D.D.C. filed Mar. 6, 2017))	International Finance Corporation (a member of the World Bank Group)	Ongoing

Countries with 2 Cases			
Country	Case Docket	Sponsoring Organization	Outcome
Morocco	Doe v. Amal, No. 12-cv-1359 (E.D. Va. filed Nov. 27, 2012)  Criminal case: United States v. Amal, Nos. 14-151; 14-152 (E.D. Va filed Mar. 4, 2014)	Embassy of Morocco	Settled  Defendants pled guilty to alien harboring and paid \$52,700 in restitution. Mr. Amal was sentenced to three years of probation. Mrs. Amal was sentenced to three months home confinement and two years probation.
Morocco	Laamime v. Abouzaid, No. 13-cv-00793 (E.D. Va. filed June 27, 2013)	International Finance Corporation (a member of the World Bank Group)	Settled
Peru	Villarreal v. Tenorio, No. 11-cv-2147 (D. Md. Filed Aug. 9, 2011)	Embassy of Peru	Dismissed (not voluntarily) on diplomatic immunity grounds
Peru	Rios Fun v. Pulgar, No. 13-cv-03679 (D.N.J. filed June 13, 2013)	Permanent Mission of Peru to the United Nations	Dismissed (not voluntarily) on diplomatic immunity grounds, but without prejudice
Tanzania	Mazengo v. Mzengi, No. 07-cv-756 (D.D.C. filed Apr. 25, 2007)	Embassy of Tanzania	Default judgment for the plaintiff in the amount of \$1,059,348.79. The Government of Tanzania settled the case with an <i>ex gratia</i> payment.
Tanzania	Kiwanuka v. Bakilana, No. 10-cv-01336 (D.D.C. filed Aug. 9, 2010)  Criminal case: United States v. Bakilana, No. 10-00093 (E.D. Va filed Mar. 29, 2010)	World Bank Group	Settled  Ms. Bakilana pled guilty to two counts of making false

			statements to federal authorities and paid restitution in the amount of \$41,626.80.
United Arab Emirates (Egypt)	United States v. Tolan, No. 11-00536 (E.D. Va filed Nov. 23, 2011)	Embassy of the United Arab Emirates	The defendants fled the jurisdiction and “remain at large.”
United Arab Emirates	Ballesteros v. Al-Ali, No. 11-cv-00152 (D.R.I. filed Apr. 12, 2011)  Criminal case: United States v. Al-Ali, No. 11-00051 (D.R.I. filed Mar. 30, 2011)	U.S. Naval War College (training)	Default judgment for the plaintiff in the amount of \$1,231,800 (unpaid)  Defendant acquitted of one count of fraud in foreign labor contracting (18 U.S.C. §1351) and one count of making false statements (18 U.S.C. §1001(a)(2)&(3)).
<b>Countries with 1 Case</b>			
<b>Country</b>	<b>Case Docket</b>	<b>Sponsoring Organization</b>	<b>Outcome</b>
Bolivia and Germany	Carazani v. Zegarra, No. 12-cv-107 (D.D.C. filed Jan. 23, 2012)	World Bank	Default judgment for the plaintiff in the amount of \$1,188,688.77 (unpaid)
Burkina Faso	Ouedraogo v. Bonkoungou, No. 15-cv-01345 (S.D.N.Y. filed Feb. 24, 2015)	Permanent Mission of Burkina Faso to the United Nations	Dismissed (voluntarily)
Cameroon	Elat v. Ngoubene, No. 11-cv-2931 (D. Md. file Oct. 13, 2011)	Embassy of Cameroon	Dismissed (voluntarily)
Indonesia	Arma v. Prakoso, No. 14-cv-03113 (D. Md. filed Oct. 2, 2014)	Embassy of Indonesia	Dismissed (voluntarily)
Italy	Doe v. Penzato, No. 10-cv-5154 (N.D. Cal. filed Nov. 12, 2012)  Criminal case: United States v. Penzato, No. 12-00089 (N.D. Cal filed Feb. 9, 2012)	Consulate General of Italy	Settled  Defendants pled guilty in to a misdemeanor charge of

			conspiring to possess an illegal identification document. Both were sentenced to five years probation and paid \$13,000 in restitution.
Ethiopia	Chere v. Taye, No. 04-cv-06264 (D.N.J. filed Dec. 21, 2004)	United Nations Development Program	Settled
Kenya	Oluoch v. Orina, No. 14-cv-421 (S.D.N.Y. filed Jan. 23, 2014)	Permanent Mission of the Republic of Kenya to the United Nations	Ongoing
Malawi	Lipenga v. Kambalame, No. 14-cv-03980 (D. Md. filed Dec. 19, 2014)	Embassy of the Republic of Malawi	Default judgment for the plaintiff in the amount of \$1,101,345.20 (unpaid)
Mauritius	United States v. Soborun, No. 12-03121 (D.N.J. filed Sept. 7, 2012)	Permanent Mission of the Republic of Mauritius to the United Nations	The Government of Mauritius waived the defendant's immunity. Mr. Soborun pled guilty and paid a \$5,000 fine and \$24,153 in back wages to the victim.
Pakistan	Hussain v. Shaukat, No. 16-cv-322 (E.D. Va. filed Mar. 22, 2016)	Embassy of Pakistan	Ongoing
Sudan	Doe v. Siddig, No. 10-cv-01256 (D.D.C. filed July 26, 2010)	Embassy of Sudan	Settled
Taiwan	United States v. Liu, No. 11-00284 (W.D. Mo. filed Nov. 18, 2011)	Taipei Economic and Cultural Office	Defendant pled guilty to fraud in foreign labor contracting (18 USC §1351). Ms. Liu paid \$80,044.62 in restitution and an \$11,040 fine.
Uganda	Waru v. Madhvani, No. 05-cv-00662 (D.D.C. filed Apr. 1, 2005)	Embassy of Uganda	Settled
Zambia	Sakala v. Milunga, No. 16-cv-00790 (D. Md. filed Mar. 17, 2016)	World Bank	Ongoing

