

Calendar No. 682

111TH CONGRESS
2^D SESSION

S. 2782

To provide personal jurisdiction in causes of action against contractors of the United States performing contracts abroad with respect to members of the Armed Forces, civilian employees of the United States, and United States citizen employees of companies performing work for the United States in connection with contractor activities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2009

Mrs. McCASKILL (for herself, Ms. COLLINS, Mr. BENNETT, Mr. BROWN, Mr. NELSON of Florida, Mr. LEMIEUX, Mr. CASEY, Mr. TESTER, Mr. LEAHY, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 9, 2010

Reported by Mr. LIEBERMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To provide personal jurisdiction in causes of action against contractors of the United States performing contracts abroad with respect to members of the Armed Forces, civilian employees of the United States, and United States citizen employees of companies performing work for the United States in connection with contractor activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Lieutenant Colonel
 5 Dominic ‘Rocky’ Baragona Justice for American Heroes
 6 Harmed by Contractors Act”.

7 **SEC. 2. DEBARMENT OR SUSPENSION OF UNITED STATES**
 8 **GOVERNMENT CONTRACTORS FOR EVASION**
 9 **OF PROCESS OR FAILURE TO APPEAR IN AC-**
 10 **TIONS IN CONNECTION WITH GOVERNMENT**
 11 **CONTRACTS.**

12 (a) **IN GENERAL.**—Not later than 90 days after the
 13 date of enactment of this Act, the Federal Acquisition
 14 Regulatory Council established under section 25(a) of the
 15 Office of Federal Procurement Policy Act (41 U.S.C.
 16 421(a)) shall amend the Federal Acquisition Regulation
 17 to provide that a contractor with the United States may
 18 be debarred or suspended from contracting with the
 19 United States if—

20 (1) the contractor evades service of process in
 21 any civil action or criminal prosecution brought
 22 against the contractor by the United States or a cit-
 23 izen or national of the United States in connection
 24 with the performance of the contract; or

1 (2) the contractor refuses or fails to appear be-
 2 fore a Federal court in a matter brought against the
 3 contractor by the United States or a citizen or na-
 4 tional of the United States in connection with the
 5 performance of the contract.

6 (b) **APPLICABILITY.**—The amendments to the Fed-
 7 eral Acquisition Regulation made under subsection (a)
 8 shall apply to any action of a contractor that occurs on
 9 or after the effective date of the amendments.

10 **SEC. 3. PERSONAL JURISDICTION IN COVERED CIVIL AC-**
 11 **TIONS BY MEMBERS OF THE ARMED FORCES,**
 12 **CIVILIAN EMPLOYEES OF THE UNITED**
 13 **STATES, AND UNITED STATES CITIZEN EM-**
 14 **PLOYEES OF COMPANIES PERFORMING**
 15 **WORK FOR THE UNITED STATES AGAINST EN-**
 16 **TITIES UNDER UNITED STATES GOVERNMENT**
 17 **CONTRACTS PERFORMED ABROAD.**

18 (a) **IN GENERAL.**—Not later than 90 days after the
 19 date of enactment of this Act, the Federal Acquisition
 20 Regulatory Council established under section 25(a) of the
 21 Office of Federal Procurement Policy Act (41 U.S.C.
 22 421(a)) shall amend the Federal Acquisition Regulation
 23 to require that any covered contract—

24 (1) requires that the contractor consent to per-
 25 sonal jurisdiction over the contractor by the Federal

1 courts with respect to any covered civil action, in-
2 cluding a covered civil action against 1 or more em-
3 ployees of the contractor for which the contractor
4 may be liable under theories of vicarious liability;

5 (2) specifies that consent to personal jurisdic-
6 tion under paragraph (1) shall not operate to de-
7 prive or terminate personal jurisdiction of the con-
8 tractor in any court that otherwise has personal ju-
9 risdiction under another provision of law;

10 (3) requires the contractor to consent to per-
11 sonal jurisdiction in the United States District
12 Court for the District of Columbia for a covered civil
13 action in which—

14 (A) the events giving rise to the cause of
15 action occurred outside the United States; and

16 (B) personal jurisdiction cannot be estab-
17 lished in another Federal court; and

18 (4) if the covered contract has a value of not
19 less than \$5,000,000 and was awarded to a con-
20 tractor that does not maintain an office in the
21 United States, requires that the contractor designate
22 an agent located in the United States for service of
23 process in any covered civil action; and

24 (5) requires that—

(A) except as provided in subparagraph (B), any covered civil action shall be analyzed in accordance with the laws of the United States; and

(B) the substantive law of the State in which the covered civil action is brought shall be the law applicable to a covered civil action if—

(i) the substantive law otherwise applicable to the covered civil action would be the law of the location where the events giving rise to the cause action occurred; and

(ii) the location is designated as a hazardous duty zone by the Secretary of Defense.

(b) APPLICABILITY.—

(1) IN GENERAL.—The amendments to the Federal Acquisition Regulation made under subsection (a) shall apply with respect to any covered contract that is entered into on or after the effective date of the amendments under subsection (a).

(2) PROSPECTIVE APPLICABILITY UNDER CERTAIN CURRENT CONTRACTS.—For a covered contract that is an indefinite delivery, indefinite quantity con-

tract or blanket purchase agreement in effect on the effective date of the amendments to the Federal Acquisition Regulation made under subsection (a); the amendments to the Federal Acquisition Regulation made under subsection (a) shall apply to any task order under the covered contract, including any sub-contract of the covered contract, that is made on or after the effective date of the amendments.

SEC. 4. PERSONAL JURISDICTION FOR CIVIL OR CRIMINAL SUITS BROUGHT BY THE UNITED STATES GOVERNMENT ALLEGING WRONGDOING UNDER UNITED STATES GOVERNMENT CONTRACTS PERFORMED ABROAD.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall amend the Federal Acquisition Regulation to require that any covered contract—

(1) requires that the contractor consent to personal jurisdiction over the contractor by the Federal courts with respect to any civil action or criminal prosecution brought by the United States alleging wrongdoing associated with the performance of the covered contract;

1 ~~(2)~~ specifies that consent to personal jurisdic-
 2 tion under paragraph ~~(1)~~ shall not operate to de-
 3 prive or terminate personal jurisdiction of the con-
 4 tractor in any other court that has personal jurisdic-
 5 tion under another provision of law;

6 ~~(3)~~ requires the contractor to consent to per-
 7 sonal jurisdiction in the United States District
 8 Court for the District of Columbia for a civil action
 9 or criminal prosecution described in paragraph ~~(1)~~
 10 in which—

11 (A) the events giving rise to the cause of
 12 action occurred outside the United States; and

13 (B) personal jurisdiction cannot be estab-
 14 lished in another Federal court; and

15 ~~(4)~~ if the covered contract has a value of not
 16 less than \$5,000,000 and was awarded to a con-
 17 tractor that does not maintain an office in the
 18 United States, requires that the contractor designate
 19 an agent located in the United States for service of
 20 process in any civil action or criminal prosecution
 21 described in paragraph ~~(1)~~.

22 (b) APPLICABILITY.—

23 (1) IN GENERAL.—The amendments to the
 24 Federal Acquisition Regulation made under sub-
 25 section (a) shall apply with respect to any covered

contract that is entered into on or after the effective date of the amendments under subsection (a).

~~(2) PROSPECTIVE APPLICABILITY UNDER CERTAIN CURRENT CONTRACTS.—~~For a covered contract that is an indefinite delivery, indefinite quantity contract or blanket purchase agreement in effect on the effective date of the amendments to the Federal Acquisition Regulation made under subsection (a), the amendments to the Federal Acquisition Regulation made under subsection (a) shall apply to any task order under the covered contract, including any subcontract of the covered contract, that is made on or after the effective date of the amendments.

SEC. 5. SAVINGS CLAUSE.

Nothing in this Act shall be construed to limit any cause of action or remedy under any other provision of law.

SEC. 6. DEFINITIONS.

In this Act:

~~(1) CONTRACTOR.—~~The term “contractor”, with respect to a contract, includes the contractor under the contract, any subcontractor under the contract, any subordinate contractor under the contract, any subsidiary, parent company, or successor entity of the contractor formed to act as a successor

1 in interest of the contractor, and any employee
 2 thereof performing work under or in connection with
 3 the contract.

4 (2) COVERED CIVIL ACTION.—The term “cov-
 5 ered civil action” means a civil action alleging a rape
 6 or sexual assault of or serious bodily injury to a
 7 member of the Armed Forces of the United States;
 8 civilian employee of the United States; or employee
 9 of a company performing work for the United States
 10 who is a citizen or national of the United States.

11 (3) COVERED CONTRACT.—The term “covered
 12 contract”—

13 (A) means a contract, grant, or cooperative
 14 agreement—

15 (i) for work to be performed outside
 16 the United States that is awarded or en-
 17 tered into by the United States (including
 18 any executive department, independent es-
 19 tablishment, or agency thereof); and

20 (ii) with a value of not less than
 21 \$1,000,000; and

22 (B) includes any subcontract or subordi-
 23 nate contract, grant, or cooperative agreement
 24 under a contract, grant, or cooperative agree-
 25 ment described in subparagraph (A).

1 (4) RAPE.—The term “rape” means conduct
 2 that would violate section 920(a) of title 10, United
 3 States Code (article 120(a) of the Uniform Code of
 4 Military Justice), if the conduct was committed by
 5 a person subject to chapter 47 of title 10, United
 6 States Code (the Uniform Code of Military Justice).

7 (5) SERIOUS BODILY INJURY.—The term “seri-
 8 ous bodily injury” has the meaning given that term
 9 in section 1365 of title 18, United States Code.

10 (6) SEXUAL ASSAULT.—The term “sexual as-
 11 sault” means conduct that would violate section
 12 920(e), (h), or (m) of title 10, United States Code
 13 (article 120(e), (h), or (m) of the Uniform Code of
 14 Military Justice), if the conduct was committed by
 15 a person subject to chapter 47 of title 10, United
 16 States Code (the Uniform Code of Military Justice).

17 (7) UNITED STATES.—The term “United
 18 States”, in a geographic sense—

19 (A) means the several States and the Dis-
 20 trict of Columbia; and

21 (B) does not include any military installa-
 22 tion or facility located outside the area de-
 23 scribed in subparagraph (A).

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Lieutenant Colonel*
 3 *Dominic ‘Rocky’ Baragona Justice for American Heroes*
 4 *Harmed by Contractors Act”.*

5 **SEC. 2. DEBARMENT OR SUSPENSION OF UNITED STATES**
 6 **GOVERNMENT CONTRACTORS FOR EVASION**
 7 **OF PROCESS OR FAILURE TO APPEAR IN AC-**
 8 **TIONS IN CONNECTION WITH GOVERNMENT**
 9 **CONTRACTS.**

10 *(a) IN GENERAL.—Not later than 180 days after the*
 11 *date of enactment of this Act, the Federal Acquisition Regu-*
 12 *latory Council established under section 25(a) of the Office*
 13 *of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall*
 14 *amend the Federal Acquisition Regulation to provide that*
 15 *a contractor with the United States may be debarred or*
 16 *suspended from contracting with the United States if—*

17 *(1) the contractor evades service of process in*
 18 *any civil action or criminal prosecution brought*
 19 *against the contractor by the United States or a cit-*
 20 *izen or national of the United States in connection*
 21 *with an obligation under the terms of the contract; or*

22 *(2) the contractor refuses or fails to appear be-*
 23 *fore a Federal court in a matter brought against the*
 24 *contractor by the United States or a citizen or na-*
 25 *tional of the United States in connection with an ob-*
 26 *ligation under the terms of the contract.*

1 (b) *APPLICABILITY.*—*The amendments to the Federal*
 2 *Acquisition Regulation made under subsection (a) shall*
 3 *apply to any action of a contractor that occurs on or after*
 4 *the effective date of the amendments.*

5 (c) *RULE OF CONSTRUCTION.*—*Nothing in this section*
 6 *shall be construed to limit the ability of a contractor to*
 7 *assert any settled right under the Constitution of the United*
 8 *States.*

9 **SEC. 3. PERSONAL JURISDICTION IN COVERED CIVIL AC-**
 10 **TIONS BY MEMBERS OF THE ARMED FORCES,**
 11 **CIVILIAN EMPLOYEES OF THE UNITED**
 12 **STATES, AND UNITED STATES CITIZEN EM-**
 13 **PLOYEES OF COMPANIES PERFORMING WORK**
 14 **FOR THE UNITED STATES AGAINST ENTITIES**
 15 **UNDER UNITED STATES GOVERNMENT CON-**
 16 **TRACTS PERFORMED ABROAD.**

17 (a) *IN GENERAL.*—*Not later than 180 days after the*
 18 *date of enactment of this Act, the Federal Acquisition Regu-*
 19 *latory Council established under section 25(a) of the Office*
 20 *of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall*
 21 *amend the Federal Acquisition Regulation to require that*
 22 *any covered contract—*

23 (1) *requires that the contractor consent to per-*
 24 *sonal jurisdiction over the contractor in accordance*
 25 *with paragraphs (3) through (5) with respect to any*

1 covered civil action, including a covered civil action
2 against 1 or more employees of the contractor for
3 which the contractor may be liable under theories of
4 vicarious liability;

5 (2) specifies that consent to personal jurisdiction
6 under paragraph (1) shall not operate to deprive or
7 terminate personal jurisdiction of the contractor in
8 any court that otherwise has personal jurisdiction
9 under another provision of law;

10 (3) requires the contractor to consent to personal
11 jurisdiction in the United States District Court for
12 the District of Columbia for a covered civil action in
13 which—

14 (A) the events giving rise to the cause of ac-
15 tion occurred outside the United States; and

16 (B) personal jurisdiction cannot be estab-
17 lished in another Federal court; and

18 (4) if the covered contract was awarded to a con-
19 tractor that does not maintain an office in the United
20 States, requires that the contractor designate an agent
21 located in the United States for service of process in
22 any covered civil action; and

23 (5) requires that—

24 (A) except as provided in subparagraph

25 (B), any covered civil action shall be analyzed in

1 *accordance with the laws of the United States;*
 2 *and*

3 *(B) the substantive law of the State (includ-*
 4 *ing the District of Columbia) in which the cov-*
 5 *ered civil action is brought shall be the law ap-*
 6 *plicable to a covered civil action if—*

7 *(i) the substantive law otherwise appli-*
 8 *cable to the covered civil action would be the*
 9 *law of the location where the events giving*
 10 *rise to the cause action occurred; and*

11 *(ii) the location is designated as a haz-*
 12 *ardous duty zone by the Secretary of De-*
 13 *fense.*

14 *(b) APPLICABILITY.—The amendments to the Federal*
 15 *Acquisition Regulation made under subsection (a) shall*
 16 *apply with respect to any covered contract that is entered*
 17 *into on or after the effective date of the amendments under*
 18 *subsection (a).*

19 **SEC. 4. PERSONAL JURISDICTION FOR ACTIONS BROUGHT**
 20 **BY THE UNITED STATES GOVERNMENT AL-**
 21 **LEGING WRONGDOING UNDER UNITED**
 22 **STATES GOVERNMENT CONTRACTS PER-**
 23 **FORMED ABROAD.**

24 *(a) IN GENERAL.—Not later than 180 days after the*
 25 *date of enactment of this Act, the Federal Acquisition Regu-*

1 latory Council established under section 25(a) of the Office
2 of Federal Procurement Policy Act (41 U.S.C. 421(a)) shall
3 amend the Federal Acquisition Regulation to require that
4 any covered contract—

5 (1) requires that the contractor consent to per-
6 sonal jurisdiction over the contractor by the Federal
7 courts with respect to any action brought by the
8 United States alleging wrongdoing associated with the
9 performance of the covered contract;

10 (2) specifies that consent to personal jurisdiction
11 under paragraph (1) shall not operate to deprive or
12 terminate personal jurisdiction of the contractor in
13 any other court that has personal jurisdiction under
14 another provision of law;

15 (3) requires the contractor to consent to personal
16 jurisdiction in the United States District Court for
17 the District of Columbia for any action described in
18 paragraph (1) in which—

19 (A) the events giving rise to the cause of ac-
20 tion occurred outside the United States; and

21 (B) personal jurisdiction cannot be estab-
22 lished in another Federal court; and

23 (4) if the covered contract was awarded to a con-
24 tractor that does not maintain an office in the United
25 States, requires that the contractor designate an agent

1 *located in the United States for service of process in*
 2 *any action described in paragraph (1).*

3 *(b) APPLICABILITY.—The amendments to the Federal*
 4 *Acquisition Regulation made under subsection (a) shall*
 5 *apply with respect to any covered contract that is entered*
 6 *into on or after the effective date of the amendments under*
 7 *subsection (a).*

8 *(c) RULE OF CONSTRUCTION.—Nothing in this section*
 9 *shall be construed to limit any other jurisdictional basis*
 10 *for a civil action against or criminal prosecution of a con-*
 11 *tractor.*

12 **SEC. 5. SAVINGS CLAUSE.**

13 *Nothing in this Act shall be construed to limit any*
 14 *cause of action or remedy under any other provision of law.*

15 **SEC. 6. DEFINITIONS.**

16 *In this Act:*

17 *(1) CONTRACTOR.—The term “contractor”, with*
 18 *respect to a contract, includes the contractor under*
 19 *the contract, any subcontractor under the contract,*
 20 *any subordinate contractor under the contract, any*
 21 *subsidiary, parent company, or successor entity of the*
 22 *contractor formed to act as a successor in interest of*
 23 *the contractor, and any employee thereof performing*
 24 *work under or in connection with the contract.*

1 (2) *COVERED CIVIL ACTION.*—The term “covered
 2 *civil action*” means a civil action alleging a rape or
 3 *sexual assault of or serious bodily injury to a member*
 4 *of the Armed Forces of the United States, civilian em-*
 5 *ployee of the United States, or employee of a company*
 6 *performing work arising out of the performance of the*
 7 *covered contract for the United States who is a citizen*
 8 *or national of the United States.*

9 (3) *COVERED CONTRACT.*—The term “covered
 10 *contract*”—

11 (A) means a contract—

12 (i) for work to be performed outside the
 13 United States that is awarded or entered
 14 into by the United States (including any
 15 executive department, independent establish-
 16 ment, or agency thereof); and

17 (ii) with a value of not less than
 18 \$5,000,000; and

19 (B) includes any subcontract or subordinate
 20 contract under a contract described in subpara-
 21 graph (A).

22 (4) *RAPE.*—The term “rape” means conduct that
 23 would violate section 920(a) of title 10, United States
 24 Code (article 120(a) of the Uniform Code of Military
 25 Justice), if the conduct was committed by a person

1 *subject to chapter 47 of title 10, United States Code*
 2 *(the Uniform Code of Military Justice).*

3 (5) *SERIOUS BODILY INJURY.*—*The term “serious*
 4 *bodily injury” has the meaning given that term in*
 5 *section 1365 of title 18, United States Code.*

6 (6) *SEXUAL ASSAULT.*—*The term “sexual as-*
 7 *sault” means conduct that would violate section*
 8 *920(c), (h), or (m) of title 10, United States Code (ar-*
 9 *ticle 120(c), (h), or (m) of the Uniform Code of Mili-*
 10 *tary Justice), if the conduct was committed by a per-*
 11 *son subject to chapter 47 of title 10, United States*
 12 *Code (the Uniform Code of Military Justice).*

13 (7) *UNITED STATES.*—*The term “United States”,*
 14 *in a geographic sense—*

15 (A) *means the several States and the Dis-*
 16 *trict of Columbia; and*

17 (B) *does not include any military installa-*
 18 *tion or facility located outside the area described*
 19 *in subparagraph (A).*

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