Nos. 19-416 & 19-453

IN THE
Supreme Court of the United States

NESTLÉ USA, INC.,
Petitioner,
v.
JOHN DOE, I ET AL.,
Respondents.

CARGILL, INC.,
Petitioner,
v.
JOHN DOE, I ET AL.,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENTS IN 19-453

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QUESTIONS PRESENTED

1. Whether Respondents' claims that Cargill from U.S. territory aided and abetted the slavery and forced labor they suffered satisfies the "touch and concern" test set forth in *Kiobel v. Royal Dutch Petroleum Co.,* 569 U.S. 108, 124–25 (2013).

2. Whether this Court should create immunity for U.S. corporations under the Alien Tort Statute even though corporate tort liability has been an established feature of American law since the Founding and Respondents' slavery and forced labor claims apply to corporations in international law.

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INTRODUCTION

Petitioners, two U.S. corporations, have long supported and maintained a system of child slavery and forced labor in the Ivory Coast.[1] This is extremely profitable for Petitioners. They could end the system; instead they chose profits over ending their exploitation of children. Respondents are six former child slaves trafficked from Mali to work on Ivorian cocoa farms. They seek redress from these U.S. corporations for their complicity in the barbaric acts they were forced to endure.

In *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), this Court held that the Alien Tort Statute ("ATS"), 28 U.S.C. §1350 (1992), authorizes federal courts to recognize claims for relief for torts committed in violation of the law of nations so long as the violations were of norms supported by an international consensus of the same degree as the "historical paradigms" (*e.g.*, piracy) known to the Founders. International norms prohibiting child slavery and forced labor meet this demanding standard. No country or company has argued that the acts at issue in this case do not violate customary international law. The norms prohibiting child slavery and forced labor apply directly to corporations, just as piracy applied to entities in 1789.

The Founders passed the ATS to ensure a remedy in circumstances, including law-of-nations violations committed by U.S. nationals or on U.S. soil, where the United States

[1] This Brief responds to Petitioner Cargill Incorporated's brief in Case No. 19-453. Respondents have also filed a brief in response to Petitioner Nestlé USA 's brief in No. 19-416.

might be held responsible for failing to do so.. In *Kiobel v. Royal Dutch Petroleum Co.,* 569 U.S. 108 (2013), and *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018), this Court limited the ATS's application where the claims lacked sufficient U.S. connections and thus did not implicate the Founders' core concerns. This Court has been careful to avoid broader holdings that might undermine the Founders' purposes in enacting the ATS.

Petitioners' speculative concerns about separation of powers or infringement of U.S. foreign relations ring hollow in the context of tort claims against U.S. corporations. Congress has made it clear in the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. § 1595 *et. seq*. (2008), that it endorses both corporate and secondary liability when a corporation knowingly benefits from forced labor, slavery or trafficking in its supply chain. Respondents' claims are fully consistent with these policies.

More generally, providing a federal forum for foreign nationals to redress customary international law violations committed by U.S. corporations advances U.S. foreign policy.[2] Liability for aiding and abetting this system of child exploitation on Ivorian plantations advances both eighteenth and twenty-first century Congressional intent and policies.

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[2] *See, e.g.*, U.S. Supplementary Brief for United States as Amicus Curiae in Partial Support of Affirmance at 13, *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013) (No. 10-1491) ("*Kiobel* U.S. Supp. Brief"); Memorandum for the United States as Amicus Curiae, *Filártiga v. Peña-Irala*, 630 F.2d 876 (No. 78-6090) (2d Cir. 1980), 1980 WL 340146.

This case seeks tort remedies for the actions of these private corporations, not any actions by the Ivorian government. Providing such traditional tort damages will not unsettle U.S.-Ivory Coast relations.

The recognition of the child slavery and forced labor ATS claims here will have none of the purely speculative detrimental effects Petitioners claim. Those involved in modern day slavery are truly the pirates of our times. This Court should allow Respondents' claims to proceed.

STATEMENT

I. STATEMENT OF FACTS

A. The Respondents.

Respondents are six former child slaves who were trafficked from Mali and subsequently held for years in slavery on Ivorian cocoa plantations. Joint Appendix ("JA") 332-36.

Between the ages of twelve and fourteen Respondents were forced to work on Ivorian cocoa farms for twelve to fourteen hours per day, at least six days per week. JA 332-36. They were not paid and were given only scraps of food to eat. JA 332-36. Respondents were beaten with whips and tree branches when their overseers felt that they were not working quickly enough. JA 241, 332-36. They were forced to sleep on dirt floors in small, locked shacks with other children, and were guarded by men with guns to prevent them from escaping. JA 333-36.

Respondents witnessed other children who tried to flee the plantations being severely beaten and tortured. JA 333-36.

One Respondent, John Doe IV, tried to escape, and when the overseers caught him, they cut the bottoms of his feet and rubbed chili pepper into his wounds. JA 334-35. He was also tied to a tree and beaten until his arm was permanently damaged. JA 335. John Doe III witnessed small children who tried to escape being forced to drink urine. JA 241, 334. John Doe VI was severely beaten for working too slowly when he was sick and, like the other Respondents, his arms bear multiple scars from machete cuts he incurred while being forced to use the sharp tool to cut down and open cocoa pods. JA 335-36.

B. Facts Concerning Cargill's Aiding and Abetting Child Slavery and Forced Labor from the United States.

Petitioner grossly misstates the scope of Respondents' allegations, stating that the complaint merely alleged it has "corporate presence" in the United States, and its actions are nothing more than benign commerce. Pet. Br. 5-6, 22-26. That is not what Respondents allege. Cargill falsely tries to create the impression that it is merely a purchaser of cocoa from "unnamed farmers" in Cote D'Ivoire, but to the public, it claims to "form close, supportive relationships with farmers." JA 324.

Respondents' complaint alleges that Cargill is a large manufacturer, purchaser, processer, and retail seller of cocoa beans. JA 310-11. Cargill is a major domestic corporation headquartered in Minneapolis and its management operations are centralized there. JA 310-11. Every major operational decision, including the sourcing and supervision of its cocoa supply chain in the Ivory Coast, is made by Cargill's executives in the United States. JA 314-15.

Petitioners dominate the Ivorian cocoa market by maintaining exclusive buyer-supplier relationships with cocoa farmers engaged in child slavery and forced labor. JA 241, 316, 320. This is all done to secure the cheapest cocoa possible. JA 329-30.

Respondents further allege that Petitioner had specific and firsthand knowledge of its use of child slaves and the horrific conditions they endure through Cargill staff visits to and fieldwork with its specific farmers, as well as widely circulated reports of the slavery. JA 315-20. From the United States, Petitioner had complete control over the farms' labor practices, knew that the farmers they were assisting were using and continued to use forced child labor and purposefully relied on the enslavement of children to increase profits by ensuring the flow of cheap cocoa beans. JA 314-16, 318-20, 324, 329-30. Cargill maintains an unusual degree of control over the Ivorian cocoa sector because of its enormous buying power, and maintains that power, *inter alia*, by providing resources to plantations that engage in child slavery. JA 315-16, 318-20.

Petitioner continued to substantially aid its farmers despite its knowledge of slavery. JA 318-20. Petitioner provided both financial and technical assistance to cocoa farmers. JA 315-16, 318-20. Petitioner controlled the terms and conditions by which these plantations produce and supply cocoa. JA 315-16, 318-20. Petitioner maintains its influence on this slavery-based system in part by providing plantation owners with (1) ongoing financial support, including advance payments and personal spending money to maintain the plantations' loyalty as exclusive suppliers; (2) farming

supplies, including fertilizers, tools and equipment; and (3) training and capacity building. JA 315-16, 318-20.

When public awareness of child slaves harvesting Cargill's cocoa endangered its U.S. sales, Petitioner joined other major cocoa companies in the "Harkin-Engel Protocol," pledging in 2001 to use their control over and influence with their supplier plantations to end their use of child labor. JA 330-31. Cargill pledged to stop its admitted use of the "worst forms of child labor."[3]

Not only did Cargill fail to meet the Harkin-Engel Protocol's requirement to stop using child labor, Petitioner spent millions of dollars to ensure the legislation failed. JA 320, 329-31. Now, nineteen years later, Cargill continues to profit in the United States from subjecting thousands of children to slavery, forced labor and trafficking.

C. The Ongoing System of Child Slavery and Forced Labor in the Ivory Coast.

The system of child exploitation Respondents endured has only expanded. A 2015 study conducted by Tulane University and funded by the U.S. Department of Labor ("DOL") found that the total number of children performing

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[3] *Protocol for the Growing and Processing of Coca Beans and Their Derivative Products in a Manner that Complies with ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor*, 14 (2001), https://www.dol.gov/sites/dolgov/files/ILAB/legacy/files/Harkin_Engel_Protocol.pdf.

hazardous work harvesting cocoa in West Africa increased more than thirty-eight percent from 2008–2009 to 2013–2014. *See* Sch. of Pub. Health and Tropical Med., Tulane Univ., *Final Report 2013/14 Survey Research on Child Labor in West African Cocoa Growing Areas*, at 44 (2015).[4] Child slavery and forced labor continues unabated in the Ivory Coast.[5]

Cargill could stop its use of child slavery, as it has pledged to do. JA 242, 257-58, 314-15, 320, 324, 329-32. Doing so might reduce their profits but would end, or dramatically reduce, this system of child exploitation. JA 331. Instead, Cargill continues to aid and abet this child exploitation in pursuit of greater profits.

II. PROCEDURAL HISTORY

A. The Initial Dismissal and Appeal.

Respondents filed their complaint in 2005, and a first amended complaint in 2009. JA 25. The district court dismissed the first amended complaint, holding that Respondents had not plausibly pled the *mens rea* or *actus reus* of aiding and abetting under international law, JA 166, and that corporations could not be held liable under the ATS. JA 237.

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[4] *See* Sch. Of Pub. Health and Tropical Med., TULANE UNIVERSITY, FINAL REPORT 2013/14 SURVEY ON CHILD LABOR IN WEST AFRICAN COCOA GROWING AREAS, available at https://tinyurl.com/ve8zbkg.

[5] *See, e.g.*, Peter Whoriskey & Rachel Siegel, *Cocoa's Child Laborers*, WASHINGTON POST, June 5, 2019, available at https://www.washingtonpost.com/graphics/2019/business/hershey-nestle-mars-chocolate-child-labor-west-africa/

The Court of Appeals reversed, holding that the complaint plausibly alleged Defendants purposefully facilitated child slavery in the Ivory Coast. JA 256. It declined to rule on the *actus reus* of aiding and abetting given that *Kiobel* had been issued. Respondents were given leave to amend. JA 265.

B. The Second Dismissal and Appeal.

Plaintiffs did so, adding allegations concerning Petitioners' and others' acts on U.S. territory. JA 303. The district court dismissed the case again, finding that Respondents' allegations were insufficient to displace the presumption against extraterritoriality. Pet. App. 60a-66a.

The Court of Appeals reversed. *Doe v. Nestlé, S.A.*, 929 F.3d 623, 642 (9th Cir. 2019). It remanded with leave to amend because "*Jesner* changed the legal landscape," and for Respondents to remove the foreign Defendants and "specify which potentially liable party is responsible for what culpable conduct." *Id. at* 642-43.

The Court of Appeals also held that domestic corporations could be liable for Respondents' claims. *Id*. at 639. It emphasized that norms that are universal and absolute, or applicable to all actors, can provide the basis for corporate liability. *Id*. It again instructed the district court to address whether the allegations amounted to aiding and abetting. *Id*. at 642.

SUMMARY OF ARGUMENT

In *Sosa*, this Court set forth a two-step framework for evaluating whether ATS claims would be recognized as a matter of federal common law, which considers: (1) whether the alleged violation is "of a norm that is specific, universal,

and obligatory" and (2) whether allowing a particular cause of action to proceed under the ATS is a proper exercise of judicial discretion, or instead whether caution requires the political branches to grant specific authority before liability can be imposed. 542 U.S.at 732. Respondents' claims that Cargill aided and abetted the child slavery and forced labor they suffered rely on "specific, universal and obligatory" norms within *Sosa's* core meaning.

In *Kiobel,* this Court held that the "principles underlying" the rebuttable presumption against extraterritoriality applied to ATS claims and found that the mere "presence" of a defendant foreign corporations in the United States without any other significant connection to the claims asserted was insufficient to overcome the presumption. 569 U.S. at 124-25. However, the Court indicated that claims which "touched and concerned" the United States sufficiently would overcome the presumption. *Id*.

The Court of Appeals held that Respondents' claims of aiding and abetting child slavery and forced labor from the United States were not barred by the presumption against extraterritoriality. This decision was correct for at least two separate reasons.

First, the text, history and purpose of the ATS show that its aim was to provide a federal judicial forum for foreign nationals to bring tort claims for violations of the law of nations where the United States would be responsible for the failure to do so. Respondents' claims this framework.

Second, even if the "touch and concern" test applies in a manner similar to the "focus" test employed with respect to

modern statutes, as Petitioner asserts, Respondents' claims satisfy such a test. The "focus" of the ATS can be conceptualized as remedying law-of-nations violations for which the United States might be responsible under international law. That included such acts committed either by its citizens or on U.S. soil. Petitioners have committed torts in violation of the law of nations through conduct in the United States.

There are no persuasive reasons to immunize corporate aiding and abetting of child slavery and forced labor. Indeed, Congress has already provided secondary and corporate liability for facilitating and benefitting from such actions from U.S. territory in the much broader TVPRA. Congress has already rejected the policy arguments Petitioner contends should trigger judicial deference to it under the second step of *Sosa*.

Nor is there any reason to grant a blanket immunity to corporations from ATS claims. Here again, the statute's text, history and purpose strongly support corporate tort liability for domestic corporations. In *Jesner*, this Court used its judicial discretion under *Sosa's* second step to decide that foreign corporations should be exempt from ATS liability based on the potential disruption of U.S. foreign relations. 138 S. Ct. at 1408. But there is no similar evidence of interference with or disruption of foreign relations relating to ATS claims against U.S. corporations.

Respondents' claims are the equivalents of the historical paradigms this Court identified in *Sosa*. U.S. corporations engaged in child slavery and forced labor deserve no better treatment than the pirates of the Founders'

time. These six former child slaves should be permitted to bring these claims against these U.S. corporations in U.S. courts.

ARGUMENT

I. RESPONDENTS' CLAIMS THAT PETITIONER AIDED AND ABETTED CHILD SLAVERY FROM U.S. TERRITORY SATISFY *KIOBEL'S* "TOUCH AND CONCERN" TEST.

The presumption against extraterritorial application of the ATS is displaced where the claims "touch and concern" the United States sufficiently. *Kiobel*, 569 U.S. at 124-25. Respondents' claims that U.S. corporations aided and abetted child slavery and forced labor from U.S. territory "touch and concern" the United States sufficiently.

The core purpose of the ATS was ensuring a federal forum for conduct that would entail U.S. responsibility under international law, *Jesner*. 138 S. Ct. at 1396, including conduct on U.S. soil or by U.S. nationals. Petitioner's suggestion that the ATS's history and purpose show its aim was limited to injuries occurring within the United States conflicts with that history and purpose.

In focusing exclusively on its proposed "focus" test as step one of its assessment, Cargill assumes that *Kiobel's "*touch and concern" test has been superseded, Pet. Br. 21-26, but this Court reaffirmed this test in *Jesner,* 138 S. Ct. at 1406. Further, in jumping to its focus test developed solely in modern cases, *see* Pet. Br. 28-33, Cargill virtually ignores the history and

purpose of the ATS, essential steps in assessing Respondents' claims under the *Kiobel* test. Even if Petitioner's preferred "focus" test is used, the first Congress' focus was on acts which would trigger U.S. responsibility absent redress, which requires no domestic injury. Moreover, Respondents' claims are based on a tort committed in violation of the law of nations from U.S. territory and that the claims are not extraterritorial based on the text of the ATS. Under either test, these claims present a domestic application of the ATS.

A. Aiding and Abetting Slavery and Forced Labor Are the Type of Violations Implicating U.S. Responsibility the Founders Sought to Remedy under the ATS.

Aiding and abetting child slavery and forced labor are quintessential torts "in violation of the law of nations," that the ATS was designed to redress. In *Sosa*, this Court held that the recognition of ATS claims under the "present-day law of nations" extends to "norm[s] of international character accepted by the civilized world and defined with a specificity comparable to the features of the eighteenth-century paradigms we have recognized." 542 U.S. at 725. What actionable norms across the centuries share is a "specific, universal, and obligatory" character. *Id.* at 732. *Sosa's* essence is that the ATS authorizes federal courts to develop common law liability rules, with appropriate caution, to redress such violations.[6] *Id.* at 719 (Congress did not enact the ATS only to "leave it lying fallow . . . .").

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[6] This is precisely what the lower courts had done, as *Sosa* noted with approval. *Id.* at 732, citing *Filártiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

International norms prohibiting aiding and abetting slavery and forced labor indisputably meet the *Sosa* standard, and fall squarely within the ATS's remedial purpose, nor do Petitioner or the Government dispute this. [7] Indisputably, these norms apply to entities as well as natural persons. *See* Section II A-C, *infra*.

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[7] For over a century slavery and forced labor have clearly violated international law. Nations widely abolished slavery in the nineteenth century, culminating in international instruments acknowledging the same, including the Slavery Convention in 1926. Slavery Convention, art. 1, Sept. 25, 1926, 46 Stat. 483, 60 L.N.T.S. 254; *see also, e.g.*, 22 U.S.C. § 7101 (b)(23) ("[T]he international community agree[s] that trafficking in persons involves grave violations of human rights . . . . The international community has repeatedly condemned slavery and involuntary servitude."). Aiding and abetting has been recognized as an international law violation for centuries, from the seventeenth century through Nuremberg to the present. *E.g.*, Hugo Grotius, The Rights of War and Peace 197 (A.C. Campbell, A.M., trans., 1901) (1625); *Henfield's Case*, 11 F. Cas. 1099, 1103 (C.C.D. Pa. 1793); The Zyklon B Case (Trial of Bruno Tesch and Two Others), 1 Law Reports of Trials of War Crim. 93 (1947) (Brit. Mil. Ct., 1-8 March 1946) (recognizing liability for supplying Zyklon B to Nazi gas chambers); The Flick Case, 9 Law Reports of Trials of War Criminals (1949) (U.S. Mil. Tribunal, Nuremberg Apr. 20–22, 1947 (recognizing aiding and abetting through financial contributions). It was recognized as early as 1795 that the ATS would extend to those who "aided, and abetted a French Fleet . . . . " *Breach of Neutrality*, 1 Op. Att'y Gen. No. 57, 59 (1795). Aiding and abetting was recognized in the opinion as in and of itself a breach of neutrality. *Id*.

B. Violations of *Sosa*-Qualified Norms from U.S. Soil by U.S. Defendants Sufficiently "Touch and Concern" the United States.

1. *Kiobel* Established a "Touch and Concern" Test.

In *Kiobel*, 569 U.S. at 125, this Court held that the "principles underlying" the presumption against extraterritoriality applied to federal common law claims for torts committed in violation of the law of nations under the ATS. The Court also held that "where [] claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application." *Id*. at 124-25; *Jesner*, 138 S.Ct. at 1406 (reaffirming "touch and concern" test).

Kiobel involved claims by Nigerian citizens against British and Dutch corporations for violations and injuries occurring exclusively outside the United States. The only U.S. connection was personal jurisdiction: the defendant corporations' "mere presence" in the United States.[8] Moreover, in *Kiobel* this Court was faced with protests by the United Kingdom and the Netherlands that the assertion of ATS jurisdiction over their corporations was itself a violation of international law.[9]

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[8] After *Daimler AG v. Bauman*, 571 U.S. 117 (2014), there likely would be no basis for personal jurisdiction in the United States on *Kiobel's* facts.

[9] Brief of the Governments of the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands as Amicus Curiae in Support of Respondents at 10, *Kiobel v. Royal Dutch Petroleum Co.,*

This Court emphasized that "all the relevant conduct took place outside the United States," *Kiobel*, 569 U.S. at 124, and expressly left open the application of the *Kiobel* presumption where the U.S. connections to the ATS claim were more significant. *Id*. at 125. (Kennedy, J., concurring) ("Other cases may arise with allegations of serious violations of international law principles protecting persons, cases covered neither by the TVPA nor by the reasoning and holding of today's case; and in those disputes the proper implementation of the presumption against extraterritorial application may require some further elaboration and explanation.").

2. The Founders' Purpose in Passing the ATS Was That U.S. Defendants Violating the Law of Nations Be Held Liable.

The ATS's original purpose "was intended to promote harmony in international relations by ensuring foreign plaintiffs a remedy for international-law violations when the absence of such a remedy might provoke foreign nations to hold the United States accountable." Jesner. 138 S. Ct. at 1396.

Kiobel and Jesner, unlike Sosa, involved ATS claims with minimal connection to U.S. territory, or U.S. citizens. The claims were not the kind that could have triggered U.S. responsibility in international law in 1789 or today. Unlike those cases, this case concerns violations by U.S. citizens from

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569 U.S. 108 (2013) (No. 10-1491), *available at*: 2012 WL 405480 ("UK-Netherlands *Kiobel* Brief").

U.S. territory where no foreign state could complain about the United States holding its citizens accountable for such violations.

There is general agreement that the ATS was enacted, at a minimum, to provide a forum and remedy for aggrieved foreign citizens whose rights under the law of nations were violated in circumstances in which the United States could be responsible in the absence of redress. The need to provide remedies to foreign subjects whose rights under the law of nations were violated by U.S. citizens or from the United States was crucial because without one, the United States could be held responsible under international law.

When the ATS was enacted, the law of nations was such that "nations held [other] nations responsible for the torts of their citizens," which nations were expected to redress "by providing criminal punishment, a civil remedy, or extradition of the offender." Anthony J. Bellia Jr. & Bradford R. Clark, The Alien Tort Statute and the Law of Nations, 78 U. Chi. L. Rev. 445, 470 (2011) ("Bellia & Clark"); Jesner, 138 S. Ct. at 1416-–17 n. 3 (Gorsuch, J., concurring); 1 Emmerich de Vattel, The Law of Nations; or Principles of the Law of Nature: Applied to the Conduct and Affairs of Nations and Sovereigns at bk II, §§71 & 75-77 (London, J. Newberry et al. 1759Newberry 1759) ("Vattel"); 4 William Blackstone, Commentaries on the Laws of England Ch. 5 *251 (1769) ("Commentaries") (similar). Such attribution occurred regardless of whether the act was committed from U.S. territory. E.g., Vattel §§75-77 (if the violator of the law of nations has "returned to his own country," that sovereign must "compel the transgressor to make reparation" or the sovereign "becomes responsible for it."). If they did not provide a

remedy, the international law violations were attributed to the forum State. E.g., Vattel §§71-72, 77.

At the end of the eighteenth century, the First Congress was deeply concerned about retribution for law-of-nations violations attributed to the new nation and the failure to provide a remedy for such violations. See Bellia & Clark, supra, at 494–98. As early as 1781, an anxious First Continental Congress asked states to enact laws to allow "punishment against violators of the law of nations," and authorize suits for violations "by a citizen." 21 Journals of the Continental Congress 1136-37 (G. Hunt ed.1912); Sosa, 542 U.S. at 716 (citing same).

The Founders' "concern over the inadequate vindication of the law of nations persisted." Sosa, 542 U.S. at 717 n.11. The Constitutional Convention expressed alarm that without the ability to punish those acting in violation of the law of nations, the federal government could not prevent a war and that there was no federal recourse if an ambassador were abused "by any citizen." 1 Records of the Federal Convention of 1787, at 24-25 (M. Farrand ed.1911) (emphasis added) (quoting speech of J. Randolph); see also Journals of the Continental Congress, 1774–1789 at 1136–37 (Nov. 23, 1781); Sosa, 542 U.S. at 717.

Several well-known incidents reinforced the Founders' desire to establish a remedial scheme in the ATS to redress such violations, though there is no indication in statutory text or history that these incidents defined the full scope of ATS liability. Bellia & Clark, supra, at 467; see also William R. Casto, The Federal Courts' Protective Jurisdiction Over Torts Committed in Violation of the Law of Nations, 18 Conn. L.

Rev. 467, 479-80 (1986). Cargill ignores this important historical issue.

In 1795, several years after the ATS' enactment, Attorney General William Bradford issued an opinion on the involvement of American citizens in a French fleet attack on a British colony in Sierra Leone. The complaint alleged that U.S. citizens took part in "attacking the settlement, and plundering or destroying the property" of the Sierra Leone Company and other British subjects. Breach of Neutrality, 1 Op. Att'y Gen. No. 57, 29 (1795) ("Breach of Neutrality"). Bradford noted there was "no doubt" that the injured British would have a remedy under the ATS. Id. at 30. The basis for the application of the ATS was a law-of-nations violation committed by U.S. citizens at least in part on foreign soil. Sosa, 542 U.S. at 721 (a law of nations violation can be based on a treaty or customary international law).

The First Congress certainly had law of nations violations committed on U.S. soil in mind in enacting the ATS but, as the statute's history and text make clear, the Founders did not limit the ATS based on geography or the identity or status of the violator. Indeed, U.S. nationals could commit all three of the historical paradigm violations Congress had in mind outside U.S. territory. Cargill ignores this crucial indication of the scope of the ATS.

First, a U.S. citizen could attack an ambassador abroad. For example, U.S. citizens supplying the weapons for the assassination of a British Ambassador on the territory of another country would have triggered the core concerns animating the ATS; yet, under Petitioners' ahistorical theory

the ATS would not apply unless the assassination itself occurred on U.S. soil.

Second, a U.S. citizen could violate a safe conduct abroad: as safe conduct was a sovereign obligation to protect an alien not only within the sovereign's territory but also abroad where it had a military presence. Thomas H. Lee, The Safe-Conduct Theory of the Alien Tort Statute, 106 Colum. L. Rev. 830, 872-73 (2006). Likewise, the Founders' concerns included acts of hostility against friendly nations – which could occur on their territory. Journals of the Continental Congress, 1774–1789, 1136–37 (Nov. 23, 1781); 4 Commentaries at *68 (listing such breaches as part of the three principal Blackstone offenses).

Third, piracy by definition was committed outside the U.S. Those who aided and abetted piracy from U.S. territory, particularly U.S. citizens, could not have been exempt without exposing the United States to claims by foreign countries. E.g., *Talbot v. Jansen*, 3 U.S. (3 Dall.) 1133 (1795).

This case falls within all three of the Founders' concerns. Petitioner, a U.S. citizen, violated international law on U.S. territory by aiding and abetting violations of the law of nations. Whatever the outer perimeter of the "touch and concern" test, this case falls within its core meaning based on the language, history and purpose of the ATS.

C. Respondents' Claims Also Meet a *Morrison*-Based Focus Test.

1. The "Focus" of the ATS is Redressing International Law Violations for Which the United States Might be Held Responsible.

Petitioner contends that *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090 (2016) ("RJR Nabisco"), meant to abandon *Kiobel*'s "touch and concern" test for ATS cases displacement of the presumption against extraterritoriality. Pet. Br. 26-30. *RJR Nabisco* was not an ATS case and did not purport to alter *Kiobel'*s "touch and concern" test. *RJR Nabisco*, 136 S.Ct. at 209-2111; s*ee Jesner*, 138 S.Ct. at 1406 (deciding, after *RJR Nabisco,* that the focus for the ATS is whether "the allegations are sufficient to 'touch and concern' the United States under *Kiobel*.")

Though this Court's "touch and concern" test applies, Respondents' claims overcome the presumption against extraterritoriality even if the "focus" test Petitioner proposes is applied. Cargill accepts that the focus of the ATS is determined by its history and purpose. Pet. Br. 27-30; *see also, e.g.*, *WesternGeco LLC v. ION Geophysical Corp*., 138 S. Ct. 2129, 2137 (2018) (considering statute's purpose to determine focus).

This Court has long recognized a category of statutes that have a nongeographic focus. *See United States v. Bowman*, 260 U.S. 94, 98 (1922) (noting "statutes which are, as a class, not logically dependent on their locality for the government's jurisdiction."). In *Kirtsaeng v. John Wiley & Sons*, *Inc.,* 568 U.S. 519, 530 (2013), this Court adopted a "nongeographical interpretation" of the Copyright Act's first-

sale provision. In *Impression Products, Inc. v. Lexmark International, Inc*., 137 S. Ct. 1523, 1536 (2017), this Court took a similar view of the Patent Act. The focus of the ATS is similarly non-geographic, *see* Section I B, *supra*, which means that the presumption against extraterritoriality should impose no geographic limits beyond those already incorporated in this Court's "touch and concern" test. *Kiobel*, 569 U.S. at 124-25; William S. Dodge, *The New Presumption Against Extraterritoriality*, 133 Harv. L. Rev. 1582, 1608 (2020) .

This Court has held that the ATS' purpose was "[t]o avoid foreign entanglements by ensuring the availability of a federal forum where the failure to provide one might cause another nation to hold the United States responsible for an injury to a foreign citizen." *Jesner*, 138 S. Ct. at 1397. Petitioner misreads that to mean that the focus was the geographic location of the "injury," Pet. Br. 28-29; but in fact, that passage correctly held that the focus was to "avoid foreign entanglements." And since such entanglements could and still can arise from the failure to provide a forum even when the injury occurs abroad, in particular when a U.S. national is responsible, the statute's purpose cut strongly against Petitioner's argument.

Nothing in the ATS's history or purpose indicates the location of the injury occurred was the statute's focus – and this is inconsistent with the accepted purposes the ATS was passed to serve. Indeed, piracy does not fit into this theory. U.S. nationals who aid and abet law-of-nations violations could trigger U.S. responsibility and thus diplomatic controversy or war even if they acted outside U.S. territory.

Vattel, *supra*, §§ 75–77. This was particularly true if they acted from U.S. soil.

2. Respondents' Claims Are Not Extraterritorial Based On The "Focus" Test Usually Applicable to Conduct Regulating Statutes.

In *Kiobel,* the Court explicitly left open the possibility that conduct occurring in the United States would be considered domestic, not extraterritorial. *Kiobel*, 569 U.S. at 124 (emphasizing that "all the relevant conduct took place outside the United States"). Since *Kiobel*, the Circuit courts have reached different results applying the "touch and concern." *Compare Al Shimari v. CACI Premier Tech*., 758 F. 3d 516, 524 (4th Cir. 2014), *with Doe v. Drummond Co.*, 782 F. 3d 576, 582 (11th Cir. 2015). Respondents' allegations satisfy even the narrow approach adopted by the Second Circuit in *Mastafa v. Chevron Corp*., 770 F. 3d 170, 189 (2d Cir. 2014), which the Court below followed. *Mastafa* held that allegations of aiding and abetting conduct from U.S. soil were sufficient to overcome the presumption against extraterritoriality even where both the violations aided and abetted and injuries occurred abroad. *Id*. Such aiding and abetting claims are domestic, not extraterritorial under the "focus" test.

Thus, even if *Kiobel* and the aim of the ATS and were disregarded, the presumption against extraterritoriality does not bar Respondents' claims. The ATS creates jurisdiction over an action by an alien for a "tort" "in violation of the law of nations." Respondents allege Petitioner committed a tort in

violation of the law of nations from the United States – as a matter of plain text there is no extraterritorial application at all.

The text of the ATS is equally clear: it reaches a "tort" "committed in violation of the law of nations," which includes aiding and abetting child slavery. There is simply no extraterritorial application of the statute. Petitioner offers no basis to go beyond the text and purpose in this statute for the policy it prefers.

There is no doubt that aiding and abetting child slavery is a tort violating the law of nations. Initially, the term "tort" would have been understood to encompass aiding and abetting international law violation – indeed by definition it is "[a] civil wrong, other than breach of contract, for which a remedy may be obtained . . . ." TORT, Black's Law Dictionary (11th ed. 2019) (citing 16th century origin); Tort, Noah Webster, American Dictionary of the English Language (1828) ("In *law*, any wrong or injury."). TORT, 1 Owen Ruffhead & J. Morgan, A New Law Dictionary (9th ed. 1772) (similar, and noting "a wrong or injury is properly called tort, because it is wretched or crooked); *see also* Restatement (Second) of Torts § 876(a) (1979), cmt. c (the precondition for liability for an aider and abettor is that his conduct is "in itself tortious."); *see*; *id.* cmt. d. (the aider and abettor "is himself a tortfeasor."). Cargill blatantly ignores this express language in the Restatement in citing only to section 876 (b), adding the follow on point that the aider and abettor is then *subject to liability* for his own act of assisting the primary tortfeasor. *See* Pet. Br. at 31 (emphasis added).

Courts and contemporaries long recognized torts or wrongs sounding in secondary modes of liability, particularly within the context of law-of-nations violations *E.g., Talbot*, 3 U.S. (3 Dall.) 133, 133-34 (1795). at 133-34 (liability for aiding and abetting illegally capturing a Dutch ship in violation of the law of nations); *Breach of Neutrality*, *supra*, *see also,* Dan B. Dobbs, *et al*, *The Law of Torts* § 435 (2d ed. 2011).

Aiding and abetting a law-of-nations violation is itself a violation of the law of nations, and a tort. The Founders would have known that aiders and abettors could embroil the country in foreign affairs entanglements. In fact, it was such accessories that did provoke international incidents. *E.g.*, *Henfield's Case*, 11 F. Cas. 1099, 1103 (C.C.D. Pa. 1793); *Breach of Neutrality*, *supra*.

Petitioner asks this court to ignore the ATS's purpose and plain text, and find that the "focus" here is the location of a principal violator's conduct. Pet. Br. 28-29. Petitioner's claim that the wrongfulness of aiding and abetting must link to the wrongfulness of the principal is irrelevant to whether domestic aiding and abetting allegations overcome the *Kiobel* presumption. *Id.*

Given the plain text and purpose is to provide tort remedies for international law violations committed in the United States and those committed by U.S. citizens which could trigger U.S. responsibility under international law, Congress did not intend to limit the ATS' application to domestic injuries. The contemporary understanding was that the ATS was not limited in this way. *E.g.*, *Breach of Neutrality*, *supra* (injuries in Sierra Leone caused by U.S. citizens' aiding and abetting causing are proper basis for

ATS); *Jansen v. the Vrow Christina Magdalena*, 13 F. Cas. 356 (D.S.C. 1794) (recognizing ATS claim would be a basis for jurisdiction for acts outside of U.S. territory, on high seas), *aff'd sub nom. Talbot*, *supra*. The United States would be liable for injuries caused by its citizens abroad, and asserting jurisdiction could not offend foreign sovereigns. Bellia & Clark at 492–93.

Petitioner's principal cases do not warrant any other reading. Pet. Br. 27-33. First, none involved a statute focused on acts that touched and concerned the United States, as the ATS does. *See* §§I(B) and (C)(1), *supra*. Second, *RJR Nabisco* and *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 266 (2010), addressed what was both the focus and text of the statute – and none remotely announced a "domestic injury rule." A tort in violation of the law of nations occurred here. *Microsoft* in particular noted that supplying goods and services from the United States—exporting assistance from here—was domestic conduct. *Microsoft Corp. v. AT&T Corp*., 550 U.S. 437, 455, 457 (2007).

Under a proper application of this test, there is no extraterritorial application in this case.

D. The Court Should Not Exercise its Common Law Discretion Under the Second Step in *Sosa* to Preclude a Lawsuit for Aiding and Abetting Child Slavery and Forced Labor from the United States by U.S. Defendants.

Ignoring the history and purpose of the ATS, Petitioner seeks a bright line rule that the ATS applies to Respondents' claims only where the Plaintiff is injured on U.S. territory. Pet. Br. 36-40. This approach conflicts with Congress's purpose in enacting the ATS, as found in *Sosa*. *Kiobel* U.S. Supp. Brief, 2012 WL 2161290, at *6–13. The United States is responsible for the acts of its nationals, particularly where their torts occur here. The bright line rule would not respect the role of Congress, but undermine it particularly given Congress has in fact approved of these claims.

1. Respondents' Claims Fall Within the Congressional Policies Embodied in the TVPRA.

Whatever may be the case regarding other ATS claims, Respondents' child slavery and forced labor claims advance the Congressional policies embodied in the TVPRA, which is construed more broadly than aiding and abetting child slavery. *See, e.g.*, *Ricchio v. McLean*, 853 F.3d 553, 556 (1st Cir. 2017) (Souter, J.) (Defendant violated TVPRA by renting a hotel room to someone engaged in trafficking). The TVPRA provides criminal and civil liability for "whoever knowingly benefits . . . from participation in a venture which has" engaged in providing or obtaining forced labor. 18. U.S.C. §§ 1589(b), 1595(a). The TVPRA expressly applies extraterritorially (at least since 2008) so long as an offender is

a U.S. national or present in the United States. 18 U.S.C. § 1596(a).

Respondents brought these ATS claims before the TVPRA was made explicitly extraterritorial but similar claims can now be made under the TVPRA. The TVPRA was not intended to preempt ATS claims and Respondents' claims and are plainly consistent with Congressional policy.

2. Recognizing These ATS Claims Would Not Infringe on Foreign Policy.

Petitioner argues that recognizing corporate liability for U.S. corporations engaged in aiding and abetting child slavery and forced labor from the United States will lead to diplomatic controversies. Pet. Br. 36-40, 44-45. However, the evidence of diplomatic strife relied upon in *Jesner* was based almost entirely on diplomatic protests by foreign governments because of the assertion of ATS jurisdiction over foreign corporations. *Jesner*, 138 S. Ct. at 1406-07. There have been very few cases in which ATS claims against U.S. corporations have led to similar protests.[10] There have been no protests in this case.

[10] *See* U.K-Netherlands Amicus Brief, *supra* note 8, at 30 (expressing the view that "the extraterritorial application of the ATS to acts committed by American individuals, corporations, and other U.S. entities in foreign sovereign territory, would be consistent with international law."

Respondents have no claims against the Ivorian Government.[11] The complaint seeks damages only from Petitioners for their actions. *See, e.g.*, JA 314. It is Petitioners who reap the profits from maintaining the system of child slavery and forced labor on Ivorian cocoa plantations.

Additionally, numerous reports from the U.S. government and international agencies regularly expose the vast problem of child labor in cocoa harvesting in the Ivory Coast and call on the government there to do more. *See, e.g.*, JA 319-20. The State Department's annual human rights report often criticizes the Ivorian government's failure to act to end child labor in the cocoa sector. Its latest 2019 Report stated "[t]he government [of the Ivory Coast] did not effectively enforce the law. . . . Forced and compulsory labor continued to occur in small-scale and commercial production of agricultural products, particularly on cocoa, coffee, pineapple, cashew, and rubber plantations . . ."[12] Likewise the

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[11] The only references to the Ivorian government that could be construed as critical are the widely-shared and documented views that the judicial system is corrupt and that the country had been consumed by a civil conflict. JA 304, 313-14. These allegations could also be deleted without affecting Respondents' claims in their Amended Complaint. The same is true relating to Respondents' allegations concerning the existence of plantations owned or in areas the Ivorian government has control. Respondents make no claims about such officials and this allegation does not affect Respondents' claims against these Petitioners for their actions.

[12] *Cote d'Ivoire 2019 Human Rights Report*, U.S. Dep't. of State, Bureau of Democracy, Human Rights, and Lab. (2019), https://www.state.gov/wp-content/uploads/2020/02/COTE-DIVOIRE-2019-HUMAN-RIGHTS-REPORT.pdf.

U.S. Department of Labor annually cites Cote D'Ivoire for allowing the "Worst Forms of Child Labor" in cocoa harvesting.[13] Respondents' ATS claims against U.S. corporations create no additional foreign relations problems.

Even the cocoa industry itself has called upon the government of the Ivory Coast to do more to prevent child labor in cocoa harvesting.[14] Amidst all of this direct and public criticism of its record, in the 15 years this case has been pending, the Ivorian government has never mentioned this case. In stretching to find a basis to create a basis for a possible foreign relations dispute, Cargill cites a Statement of Interest in the *Mujica* case. Pet. Br. at 37. After 15 years, of litigation, the State Department has not submitted a Statement of Interest expressing concern about the impact of this case on foreign relations.

Respondents' claims do not raise the diplomatic problems identified by the *Jesner* Court. The ATS was not enacted to avoid all cases bearing on U.S. foreign relations. In fact, the ATS expressly enlists the federal courts in eliminating such diplomatic controversies by supplying a remedy for foreign subjects to redress law of violations in U.S. courts.

Petitioner contends that even if there are no foreign relations issues in this case, ATS claims against U.S. corporations will frequently cause such problems. Pet. Br. 37-39. Petitioners offer no evidence of this. Other nations, and

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[13] Bureau Int'l Lab. Affs., *2019 Findings on the Worst Forms of Child Labor: Cote d'Ivoire*, U.S. Dep't of Lab., https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings.

[14] Whoriskey & Siegel, *supra* note 5.

international law, recognize that each nation, including the United States, has the right to hold its citizens accountable for violations of universal international law. *E.g.*, UK-Netherlands *Kiobel* Brief 30. In the unlikely event that the U.S. holding its own corporations accountable for international law violations would cause foreign States to protest, federal courts have adequate tools to address such issues on a case-by-case basis.[15]

3. These ATS Claims Do Not Undermine the Harkin-Engel Protocol.

Petitioner argues that Respondents' claims should be dismissed because they somehow interfere with the Harkin-Engel Protocol. Pet. Br. 40, n.14. Respondents do not challenge the legality of this voluntary Protocol, nor does this action have anything to do with the Department of Labor's partnerships or actions. Multiple mutually supporting approaches to child slavery in cocoa production are necessary and fully consistent with U.S. policy. There is no doubt that child labor in the Ivorian cocoa sector has increased and the conditions remain inhumane. Recognizing Respondents' claims will further U.S. policies regarding child exploitation in the Ivory Coast, not conflict with them, and would provide remedies for these former child slaves.

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[15] Among the many tools available to federal courts they may exercise "case-specific deference to the political branches". *Sosa,* 542 U.S. at 733 n.21. Courts can also dismiss ATS actions on the basis of *forum non conveniens*. *E.g.*, *Fagan v. Deutsche Bundesbank*, 438 F. Supp. 2d 376, 384 (S.D.N.Y. 2006).

4. Recognizing These ATS Claims Will Not Put U.S. Corporations at a Competitive Disadvantage.

Petitioner contends that holding defendants liable for purposefully abetting child slavery would discourage their investment in foreign countries, and could put U.S. companies at a competitive disadvantage. Pet. Br. 39-40. During this case, there has been no record of identifiable impact on foreign investment in the Ivory Coast or anywhere else. Petitioners cite to no evidence supporting this claim.[16] Unsupported policy arguments do not justify the requested immunity from Respondents' claims. Allowing Petitioners to take advantage of child slavery actually places U.S. corporations which operate ethically and legally at a competitive disadvantage.

Nor will recognizing these ATS claims inspire foreign courts to impose liability on U.S. corporations any more than U.S. corporations are already subject to such actions. In fact, providing U.S. corporations with an unjustified immunity from the legitimate claims of foreign victims may actually inspire such actions. It seems unlikely that U.S. corporations would prefer foreign litigation over ATS litigation in U.S. court or tort litigation in state courts. There is no evidence that ATS litigation over the last forty years has led to retaliatory foreign litigation against U.S. corporations. Petitioner raises a host of other speculative concerns but there is no evidence that

[16] As Nobel Prize winning economist Joseph E. Stiglitz informed this Court, adhering to fundamental human rights norms does not undermine foreign investment. Brief for Joseph E. Stiglitz as Amicus Curiae Supporting Petitioners at 21-22, *Mohamad v. Palestinian Auth.*, 132 S.Ct. 994 (2012) (No. 11-88), 2011 WL 6813580.

any of these are present in or will result from this case going forward. *See* Pet. Br. 45-46.

Petitioner also suggests that holding it liable for aiding and abetting child slavery would act as a functional embargo. Pet. Br. 39-40. Nothing precludes Petitioner from using cocoa from farms where it is not purposely facilitating known child slavery and forced labor. In any event, Respondents seek no embargo in this action. Respondents seek traditional tort damages for the suffering visited upon them with Petitioner's purposeful assistance.

E. Respondents' Allegations Displace the Presumption Against Extraterritoriality.

As Respondents allege in Section B of their Statement of Facts, *supra*, Petitioner, a U.S. corporation, aided and abetted from the United States ongoing, systematic child slavery and forced labor in violation of international law. These allegations must be construed in the light most favorable to Respondents.

Cargill's fundamental premise is that Respondents' aiding and abetting allegations are too insubstantial to amount to aiding and abetting. Respondent's allegations, properly credited with all reasonable inferences in their favor, are more than sufficient to establish the wide range of actions that constitute acts of aiding and abetting under international and federal common law.[17]

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[17] *E.g.*, *Prosecutor v. Furundžija*, Case No. IT-95-17-1-T, Judgment, ¶ 249 (Dec. 10, 1998) ("[P]ractical assistance, encouragement, or moral support . . . has a substantial effect on the perpetration of the crime.").

Here, well beyond "mere corporate presence," Cargill sent U.S.-based employees to the Ivory Coast to inspect operations and report back to U.S. headquarters, to provide training and capacity building through these quality control visits, and to oversee pesticide eradication, cultivation assistance, harvesting, and packing and shipping, JA 315-20. Sending these U.S.-based employees to assist and train farmers using child slave labor was the type of act which international tribunals have frequently found constitutes "substantial assistance", the test for *actus reus*. *See, e.g.*, *Prosecutor v. Blagojevic*, Case No. IT-02-60-A, Judgment, ¶196 (May 9, 2007) (finding assistance substantial where a defendant, Dragan Jokić, sent machines and engineering personnel for digging mass graves).

Petitioner provided funding, supplies, tools and equipment it knew would perpetuate the system of child slavery and forced labor that ensnared Respondents, six former child slaves. Cargill argues that the training and inspections of Cargill's plantations "were in Africa," but the allegation made is that the U.S. headquarters directed these activities and those returning to the U.S. headquarters provided specific knowledge of the child slavery-infused operations to the U.S.-based company, an essential element of aiding and abetting. JA 314-20. Further, it is an entirely reasonable inference that if all operational decisions were made at the Cargill headquarters in the U.S., this would include funding to the plantations, providing supplies, training and equipment, and, most important, a market for the cocoa harvested by child slaves. *Id*.

To the extent Petitioner contends the allegations are unclear as to whether Cargill or foreign corporations engaged in conduct at issue, and thus dismissal was appropriate, the Court of Appeals granted an opportunity to amend the complaint, and instructed Plaintiffs to specify which potentially liable party is responsible for what culpable conduct. *Doe v. Nestlé*, 906 F. 3d at 1127. Respondents have developed additional specific facts bearing on these issues, but have not had this opportunity to amend given the grant of certiorari. Because this Court is "a court of review, not of first view," the lower courts should have the first opportunity to review the new allegations in Respondents' amended complaint, which should be the basis for any decision. *Cutter v. Wilkinson*, 544 U.S. 709, 718, n.7 (2005) (*citing F. Hoffmann-La Roche Ltd* v. *Empagran S. A.,* 542 U.S. 155, 175 (2004).

Petitioner argues cursorily that the District Court lacked Article III standing over Respondents' claims. Pet. Br. 12, n. 7. Respondents' allegations meet the minimum pleading requirements for Article III standing here easily. *E.g.*, *Bell v. Hood,* 327 U.S. 678, 682 (1946).

II. THE ATS'S TEXT, HISTORY, AND PURPOSE SUPPORT LIABILITY FOR U.S. CORPORATIONS.

As this Court has recognized, the ATS's text excludes no category of defendants. *Argentine Republic v. Amerada Hess Shipping Corp*., 488 U.S. 428, 438 (1989). The text does not distinguish between natural persons and entities in providing tort remedies for law-of-nations violations suffered by foreign

citizens. Moreover, entity liability for law-of-nations violations was well-established in the Founding era. Indeed, corporate tort liability has been a fixture of U.S. law throughout American history.

The ATS's purpose, as described in Section I, *supra*, was to provide remedies where unredressed law-of-nations violations might lead to diplomatic strife. This purpose is undermined by immunizing U.S. corporations.

The text, history, and purpose of the ATS have led lower courts, with the exception of the Second Circuit, to find corporate liability under the ATS.[18] Whether federal common law or international law controls, there is corporate liability for these ATS claims. The international norms prohibiting child slavery and forced labor apply directly to private parties, including corporations. This case does not require a decision about whether other ATS claims may be made against corporations.

This Court has deferred a decision on any domestic corporations' liability since *Kiobel*. In *Jesner*, the Court found that foreign corporations could not be sued based on *Sosa*'s

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[18] Every circuit court to address corporate liability under the ATS, except *Kiobel v Royal Dutch Petroleum Co*., 621 F. 3d 111, 131 (2d Cir. 2011), has found that corporate liability is available. *See Flomo v. Firestone Nat. Rubber Co*., 643 F.3d 1013, 1021 (7th Cir. 2011); *Doe v. Exxon Mobil Corp*., 654 F.3d 11, 15 (D.C. Cir. 2011) ("[N]either the text, history, nor purpose of the ATS supports corporate immunity . . . ."), *vacated on other grounds*, 527 F. App'x 7 (D.C. Cir. 2013); *Sarei v Rio Tinto, PLC*, 671 F.3d 736, 748, 759-61, 764-65 (9th Cir. 2011) (en banc) (concluding the prohibition against genocide extends to corporations), *vacated on other grounds*, *sub nom. Rio Tinto PLC v. Sarei*, 133 S. Ct. 1995 (2013); *Romero v. Drummond Co.,* 552 F.3d 1303, 1315 (11th Cir. 2008).

second step. 138 S. Ct. at 1406–07. Nothing in *Sosa* or *Jesner* precludes corporate liability for U.S. corporations for slavery and forced labor and such immunity is at odds with the statute's text and purpose.

A. The Text of the ATS Supports Corporate Liability.

At least two aspects of the ATS's language signal that the ATS provides for tort liability against entities, including corporations. First, the ATS specifically confers jurisdiction over "tort" claims. Second, though Congress restricted the category of defendants in other portions of the First Judiciary Act, it did not do so in the ATS.

1. "Tort" Liability Includes Corporate Liability.

A corporation can be a Defendant in a civil action for a tort. Indeed, by using the term "tort" Congress legislated "against a legal background of ordinary tort-related . . . liability rules and consequently intends its legislation to incorporate these rules." *Meyer v. Holley*, 537 U.S. 280, 285 (2003); *see also Staub v. Proctor Hosp.*, 562 U.S. 411, 418 (2001).

Corporate liability has always been part of tort liability. *E.g.*, *Phila., Wilmington, & Balt. R.R. Co. v. Quigley*, 62 U.S. (21 How.) 202, 210-11 (1858) (from the early period in U.S. and Great Britain Courts recognized tort actions against corporate agents "of nearly every variety."); *see also Chestnut Hill & Spring House Tpk. Co. v. Rutter*, 4 Serg. & Rawle 6, 17 (Pa. 1818) ("[F]rom the earliest times to the present, corporations have been held liable for torts.").

Thus, when Congress enacted the ATS it was "unquestionable" that corporations could be held liable in tort.

United States v. Amedy, 24 U.S. (11 Wheat.) 392, 412 (1826); *see also Beaston v. Farmers' Bank of Del.*, 37 U.S. (12 Pet.) 102, 134 (1838); *Mayor v. Turner*, [1774] 98 Eng. Rep. 980 (holding a corporation liable for failing to repair creek in 1774).[19]

Nothing has changed since the ATS was enacted. In fact, the rule that tort actions may be brought against corporations has been "so well settled as to not require the citation of any authorities . . . ." *Balt. & Potomac R.R. Co. v. Fifth Baptist Church*, 108 U.S. 317, 330 (1883). This remains true today. *See, e.g., Meyer*, 537 U.S. at 285-86; 9A William M. Fletcher, Cyclopedia of Corporations § 4521 (2016 rev. ed.); Restatement (Third) of Agency § 7.03 (2006). The rule effectuates deterrence and accountability, ensuring that entities responsible for misconduct make their victims whole. *See* Restatement (Second) of Torts § 901 (1979).

2. Congress Chose Not to Limit the Scope of the ATS's Defendants.

The ATS limits jurisdiction to "tort" suits by "aliens." The statute "does not distinguish among classes of Defendants." *Argentine Republic*, 488 U.S. at 438.

The maritime provisions of the First Judiciary Act, which do not specifically identify corporations as defendants, have been long construed, based on the same common law backdrop, to allow corporate liability. *See, e.g.*, *Oceanic Steam Nav. Co. v. Mellor*, 233 U.S. 718, 734 (1914) (The Titanic); *Panama R. Co. v. Napier Shipping Co.*, 166 U.S. 280,

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[19] *See also* G. Edward White, *The Intellectual Origins of Torts in America*, 86 YALE L. J. 671, (1977).

288 (1897). The ATS should be likewise construed to allow corporate tort liability.

Congress knew how to define classes of defendants when it wanted to. Other provisions of the First Judiciary Act, in contrast, limited the classes of defendants. In the same section nine, Congress provided that the district courts "shall also have jurisdiction exclusively of the courts of the several states of all suits against *consuls or vice-consuls*." Judiciary Act of 1789, Ch. 20, § 9, 1 Stat. 73, 77 (1789) (emphasis added). The absence of any limitation of the class of defendants in the ATS should be presumed to be intentional. *Russello v. United States*, 464 U.S. 16, 23, (1983).

B. The ATS's History and Purpose Support Corporate Liability.

Corporate liability is required by the ATS' history and purpose, which was to provide a federal judicial forum to foreign nationals to redress violations of the law of nations by U.S. citizens or from U.S. territory. *See* Section I(A), *supra*. Congress had "[n]o good reason to distinguish between foreign entanglements for which natural persons were responsible and foreign entanglements for which organizations of natural persons, such as corporations were responsible"; thus it had "[no] good reason" to "bar[] recovery against [a] corporation." *Jesner* U.S. Br. 17.

This history and purpose evince no Congressional intent to exclude corporations from tort liability for law-of-nations violations. Indeed, entity liability for acts of piracy for the same tort purposes of compensation, loss allocation and deterrence was well established in the founding era. English law recognized corporate liability for acts of piracy a century

before the ATS. *Skinner v. East India Co.* (1666) 6 State Trials 710, 711 (HL) (The "Company should pay unto Thomas Skinner, for his losses and damages sustained" for acts of piracy committed by the Company's agents).[20]

Early American courts imputed losses for acts of piracy to entities (i.e. ships). *See, e.g.*, *The Malek Adhel*, 43 U.S. (2 How.) 210, 233 (1844) (ship liability was necessary for "insuring an indemnity to the injured party."); *Purviance v. Angus*, 1 U.S. (1 Dall.) 180, 185 (High Ct. Err. & App. Pa. 1786) (Rush, J., dissenting) ("By rendering the owners responsible for the captains," the law deterred malfeasance and encouraged owners "to employ none but men of skill, capacity and integrity to navigate their vessels.")

These same reasons for corporate liability apply today and in this case with full force. As a practical matter, Respondents have no ability to sue plantation owners in Ivorian courts. Nor is it clear that the plantation owners – who have profited less from this system of slavery than Petitioner – could satisfy any judgment. Only civil tort claims against the corporations which profit from and maintain the system of child exploitation offers the possibility of compensation and deterrence.

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[20] Over a century ago, the Attorney General concluded that corporations are capable of violating the law of nations or a treaty of the United States for ATS purposes. 26 *Op. Att'y Gen*. 250 (1907) (concluding that aliens injured by a private company's diversion of water in violation of a bilateral treaty between Mexico and the United States could sue under the ATS); *see also Sosa*, 542 U.S. at 721.

C. The Corporate Identity of an Actor is Irrelevant to *Sosa*'s First Step of Identifying a Norm Supporting an ATS Claim.

As indicated above, there is no dispute that the prohibition against aiding and abetting child slavery and forced labor qualify as norms "of international character accepted by the civilized world and defined with a specificity comparable to the feature of the 18th Century paradigms" of "violations of safe conducts, infringements on the rights of ambassadors, and piracy." *Sosa*, 542 U.S. at 724–25. The issue of corporate liability is not part of the first step of *Sosa*.

1. Corporate Liability Is an Issue for Federal Common Law Not International Law.

As a general principle, international law does not dictate the means for *enforcing* customary international law norms. International law usually leaves questions of enforcement to each State. *See* Brief for the U.S. as Amicus Curiae at 17, *Jesner*, 138 S. Ct. 1386 (No. 16-399) ("*Jesner* U.S. Br."). ,(noting that "international law . . . establishes substantive standards of conduct but generally leaves each nation with substantial discretion as to the means of enforcement within its own jurisdiction.") (citations omitted); *see also Kiobel* U.S. Amicus Brief at 18; *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 423 (1964) (noting that "the public law of nations can hardly dictate to a country . . . how to treat [a violation of international law] within its domestic

borders.").[21] Thus, international law would not require corporate liability in any particular domestic remedial statute.[22]

Consistent with this the ATS requires a law-of-nations violation, *Sosa*, 542 U.S. at 732, and it is a civil action involving federal common law. *Id.* at 714–24; *Kiobel*, 569 U.S. at 109 (acknowledging ATS actions "recognize a cause of action under U.S. law to enforce a norm of international law."); *see also* Jesner U.S. Brief at 9 (noting "defining a cause of action" "involves specifying who may be liable").

For the reasons set forth by the Solicitor General's briefs in both *Kiobel* and *Jesner*, this Court need not identify a mandatory norm of corporate liability applicable to all law-of-nations violations.[23] *Sosa* does not require that there be a

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[21] *See also* Eileen Denza, *The Relationship Between International Law and National Law*, in *International Law* 423, 423 (Malcolm Evans ed., 2d ed. 2006) ("[I]nternational law does not itself prescribe how it should be applied or enforced at the national level"); Louis Henkin, *Foreign Affairs and the United States Constitution* 245 (2d ed. 1996) ("International law itself . . . does not require any particular reaction to violations of law"); Restatement (Third) of the Foreign Relations Law of the United States §111 cmt. h ("Restatement (Third)") ("In the absence of special agreement, it is ordinarily for the United States to decide how it will carry out its international obligations").

[22] The text of the ATS reflects this through its use of liability for a "tort" in violation of the law of nations, §A(1), *supra*, and the fact that the "law of nations" modifies the violation – not the civil action. *Jesner* U.S. Brief 17–21.

[23] The Solicitor General's brief in this case, without convincing reasons, opposes corporate liability despite the overwhelming historical evidence contained in the U.S. briefs in *Kiobel* and *Jesner*. Nothing in *Jesner*

general customary norm of corporate tort liability; that is a liability question that the ATS, *Sosa* and international law all leave to domestic law. *Jesner* U.S. Amicus Brief 8–25. American common law has recognized corporate tort liability for centuries. § II(B)(1), *supra*.

2. Corporate Liability is Not Relevant to *Sosa*'s "Historical Paradigm" Test.

Petitioner asserts but does not establish that *Sosa* and *Jesner* require ATS Plaintiffs to prove a "specific, universal, and obligatory" norm of corporate liability. Pet. Br. 41-43. Sosa's footnote 20 was concerned with the distinction between international norms which applied directly to non-state actors, as these norms do, and norms which require a connection to state action (e.g. torture). *See Jesner* U.S. Amicus Brief at 19–21.

Footnote 20 does not distinguish between classes of non-state actors rather it treats corporations and individuals the same. The footnote states that "if the Defendant is a private actor *such as* a corporation or an individual," a court must consider whether private actors are capable of violating the international law at issue. *Sosa*, 542 U.S. at 732 n.20 (emphasis added). Thus, this Court understood that international norms apply to corporations, even though that was not the subject addressed in the footnote.

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undermines the history and analysis in the prior U.S. briefs supporting corporate liability.

3. International Norms Prohibiting Child Slavery and Forced Labor Apply to Corporations.

The slavery and forced labor norms in this case apply to non-state actors, including corporations, and therefore comply with a view of footnote 20 that requires the international norm to apply to a corporation. Petitioner's argument that corporate liability under the ATS is permissible only if *all* international norms apply to corporations conflicts with the text, history, and purpose of the ATS and is not required by *Sosa* or *Jesner*.

From its origins, the slave trade was a quintessentially corporate activity. *See, e.g.*, The Royal African Company and the Politics of the Atlantic Slave Trade, 1672-1752 11 (2013) (describing the Royal African Company and its successor); Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity as Defined by International Law*, 19 Am. U. Int'l L. Rev. 883, 912 (2003) (describing incorporated companies "as an organized method to finance slaving expeditions."). Enforcement of the prohibition against slavery required enforcement against private companies, and by the nineteenth century, companies understood they were not immune under treaties banning slavery. *See* Jenny S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (2012), *supra*, 164 n. 12& n. 14.

Those who engaged in slavery had their ships seized, and corporations were not immune. For example, the seizures of ships engaging in the slave trade were adjudicated by the Mixed Courts, established in 1817 by several European

countries.[24] The Mixed Courts seized corporate property for violations of the prohibition against slavery. Martinez at 163–64 & n.13.

Nearly a century later, the Nuremburg tribunals demonstrated that they understood the prohibition on slavery to extend to corporate entities' use of slave labor. *See generally* Brief for Nuremberg Scholars as Amicus Curiae Supporting Petitioners, *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386 (No. 16-499) ("*Jesner* Nuremberg Scholars' Brief").

Likewise, the norm against forced labor applies to corporations. The Forced Labor Convention covers "*all* work or service" performed involuntarily, no matter who extracts the labor. Convention Concerning Forced or Compulsory Labor art. 2, June 28, 1930, 39 U.N.T.S. 55 (emphasis added). The Worst Forms of Child Labour Convention requires members states to eliminate forced child labor, and the optional protocol requires that they "design and implement programmes of action" to do so. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour art. 6, June 17 1999, 2133 U.N.T.S. 161.

The prohibition on forced labor has long been applicable to corporations, as the League of Nations indicated in 1930. *See* Report of the International Commission of Enquiry into the Existence of Slavery and Forced Labour in the Republic of Liberia 74, League of Nations Doc. C.658 M.272 1930 VI (1930) (recognizing that forced labor by

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[24] The United States participated as of 1862. *See* Treaty between the United States and Great Britain for the Suppression of the Slave Trade, U.S.-Gr. Brit., Apr. 7, 1862, 12 Stat. 1225.

private employers was "universally agreed" to be impermissible). Several years later, the London Charter allowed the Nuremberg military tribunal to declare groups or organizations criminal. *See Jesner* Nuremberg Scholars' Brief. As with slavery, corporations have always been understood to be covered by the prohibition on forced labor.

International law prohibits violations of certain fundamental human rights, and in doing so creates both rights and obligations for non-state actors. *See* Restatement (Third) § 702 (listing recognized human rights norms, including "slavery or slave trade" and "a consistent pattern of gross violations of internationally recognized human rights"). None of these norms apply only to natural and not to juridical persons. *See Kiobel* U.S. Amicus Brief at 7 ("At the present time, the United States is not aware of any international-law norm of the sort identified in *Sosa* that distinguishes between natural and juridical persons. Corporations (or agents acting on their behalf) can violate those norms just as natural persons can."); *Jesner* U.S. Amicus Brief at 13-14; *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, [2020] 443 D.L.R. 4th 183 (Can.) (Canadian high court ruling rejecting argument that under international law corporations do not violate obligatory, definable, and universal norms such as forced labor).

Every legal system provides for the equivalent of civil tort liability for the kinds of violations at issue here. Brief for the Center for Constitutional Rights as Amicus Curiae Supporting Neither Party at 15-16 & n. 18, *Jesner*, 138 S. Ct. (No. 16-499); *see also*, M. Cherif Bassiouni, Crimes Against Humanity, in International Criminal Law 379 (2d rev. ed 1999); Tyler G. Banks, *Corporate Liability Under the Alien Tort Statute: The Second Circuit's Misstep Around General*

Principles of Law in Kiobel v. Royal Dutch Petroleum Co., 26 Emory Int'l L. Rev. 228, 255 (2012). Thus, corporate tort liability is a general principle of law appropriate to employ in ATS federal common law actions to enforce the law of nations.

Indeed, under the ATS itself, juridical entities could be victims of these violations and sue. *See Breach of Neutrality*, 1 Op. Att'y Gen. No. 55, 29 (1795) (expressing "no doubt" that in an attack on the Sierra Leone Company "the company or individuals" could sue), fn. 11, *supra.* It makes no sense for corporations to be victims and not perpetrators.

Thus, even if the question of corporate liability is determined under international law, the issue is not whether corporate liability is a mandatory norm of international law in all instances but whether the norms in question apply to corporations. The norms against slavery and forced labor do apply to entities. Petitioner's request for blanket immunity would undermine U.S. international obligations in this and many other areas.

4. International Criminal Tribunals do not Preclude Civil Corporate Liability.

Petitioner argues that the fact that the charters of international criminal tribunals do not apply criminal liability to corporations is somehow a reason to immunize corporations from civil tort liability under the ATS. Pet. Br. 41-43. However, the decision not to subject corporations to criminal liability in international criminal tribunals reflects differences in how legal systems apply criminal law to entities, not that corporations cannot be held accountable for international law violations. *See* David Scheffer & Caroline

Kaeb, *The Five Levels of CSR Compliance: The Resilience of Corporate Liability Under the Alien Tort Statute and the Case for a Counterattack Strategy in Compliance Theory*, 29 Berkeley J. Int'l. L 334, 368 (2011). Thus, while corporations cannot be tried under the Rome Statute, several nations have imposed criminal liability on their corporations in the statutes they have passed implementing the Rome statute. *See* Br. of Ambassador David J. Scheffer as *Amicus Curiae* in Support of Petitioners at 18-19, *Kiobel,* 569 U.S. (No. 10-1491).

D. *Sosa* and *Jesner* Provide No Basis for Immunizing Domestic Corporations for Aiding and Abetting Slavery and Forced Labor.

The second step of the *Sosa* framework permits courts to exercise their "residual common law discretion" to define the bounds of an ATS cause of action. *Sosa*, 542 U.S. at 738. There is no reason to employ the Court's "residual common law discretion" to provide for corporate immunity for aiding and abetting child slavery and forced labor. Moreover, the foreign affairs complications this Court identified as the basis for exercising such discretion in *Jesner* do not apply to the context of ATS claims against U.S. corporations.

There is no persuasive reason to expand *Jesner*'s exclusion of ATS liability for foreign corporations to U.S. corporations. There is no comparable history of diplomatic strife. Moreover, ATS liability for domestic corporations is in accord with express Congressional policies addressing transnational issues of slavery, forced labor, and trafficking. *Jesner*, 138 S. Ct. at 200 ("[T]he Court looks to analogous

statutes for guidance on the appropriate boundaries of judge-made causes of action.")

Congress has repeatedly expanded liability for those, including corporations, who knowingly benefit from slavery, forced labor and trafficking, including in extraterritorial supply chains. Thus, recognizing the ATS tort claims brought by these former child slaves advances Congressional purposes enjoying broad bipartisan support.

None of Petitioner's arguments for immunity justify denying these paradigmatic ATS claims.

1. Respondents' Claims Fall Within the Congressional Policies Embodied in the TVPRA.

Respondents' child slavery and forced labor claims fall squarely within the core of Congressional policies embodied in the TVPRA. Thus, these ATS claims further clear Congressional policies with bipartisan support.

Congress has repeatedly expanded liability for those, including corporations, who knowingly benefit from slavery, forced labor and trafficking, including in extraterritorial supply chains. Thus, recognizing the ATS tort claims brought by these former child slaves advances Congressional purposes.

In arguing that other comparable statutes do not allow for corporate liability, Cargill barely discusses TVPRA and references it as a "narrow" statute. Pet. Br. 47-48. Contrary to Cargill's argument, TVPRA secondary liability is even broader than trafficking or forced labor liability under customary international law, applies extraterritorially, *see*

Section I (D)(1), *supra,* and was designed to apply to corporate defendants. *E.g.*, *Barrientos v. CoreCivic, Inc.*, 951 F.3d 1269, 1277 (11th Cir. 2020).

Recognizing ATS claims alongside the TVPRA presents no conflict with Congressional policies, and Congress evinced no attempt to preempt ATS liability in the TVPRA.

2. The Torture Victim Protection Act ("TVPA") Was Not Intended to Limit the Scope of the ATS.

Petitioner argues that the TVPA's textual limitation to natural persons should limit ATS liability. Pet. Br. 47-49. The TVPA, which provides a cause of action for torture and extrajudicial execution claims, should not be used to circumscribe these child slave and forced labor claims against corporations. Nothing in this Court's decision in *Mohamad v. Palestinian Auth.*, 566 U.S. 449 (2012) indicated that the exclusion of corporate liability under the TVPA had any impact on the scope of ATS liability, as it was based on the text. With the TVPA Congress was addressing claims requiring state action. Respondents' claims for slavery and forced labor, on the other hand, clearly concern private parties, including corporations. Whatever the reasons for limiting TVPA liability to "individuals," those considerations do not apply to these claims, particularly given Congress has in fact found corporate liability is not precluded for such claims.

Moreover, Congress repeatedly emphasized that the TVPA was meant to supplement the ATS, not replace or restrict it. *See* H.R. Rep. No. 102–367, pt. 1, p. 3 (1991) ("Section 1350 has other important uses and should not be replaced. "); *id.*, at 4 ("The TVPA . . . would also enhance the remedy already available under section 1350 in an important

respect: while the [ATS] provides a remedy to aliens only, the TVPA would extend a civil remedy also to U.S. citizens who may have been tortured abroad"); *id*. ("[C]laims based on torture or summary executions do not exhaust the list of actions that may appropriately be covered b[y] section 1350. That statute should remain intact to permit suits based on other norms that already exist or may ripen in the future into rules of customary international law"); S. Rep. No. 102–249, at 4-5 (1991). Indeed, *Sosa*, 542 U.S. at 731, explained that the TVPA "supplement[ed] the judicial determination" in *Filártiga*. Thus, there is no basis to use the TVPA to eliminate corporate liability here.

Regardless, even if the TVPA could affect some ATS claims, it would not affect these. Petitioner claims that the TVPA is the most analogous statute, but for claims of corporate complicity in slavery, forced labor and trafficking the TVPRA is clearly the closest statute.

3. Petitioner's Reliance on *Bivens* Jurisprudence is Inapt.

Petitioner contends that the limits on corporate liability in this Court's *Bivens* jurisprudence is an additional reason to limit corporate liability under the ATS. Pet. Br. 44-45. *Bivens* claims, of course, have been implied by this Court based directly on the Constitution without Congressional authorization. This Court has pointed to the absence of statutory authorization as a reason for refusing to extend *Bivens* liability in several respects, including extending such liability to corporations. *E.g.*, *Ziglar v Abassi*, 137 S. Ct. 1843, 1855-56 (2017). Unlike *Bivens* claims, ATS claims are authorized by Congress and that authorization has never been

revoked or altered in any respect. Congress assigned to the federal courts a responsibility to enforce law of nations claims using their common law powers and methodology. There is no separation of powers issue when Congress has given the Courts these powers, subject to any limitation Congress wishes to place on that authority, including repealing it.

4. Recognizing These ATS Claims Would Not Infringe on U.S. Foreign Policy.

For the reasons largely set forth in Section I (D) (2), *supra,* Petitioner's arguments based on interference with U.S. foreign policy are unavailing, particularly in light of the breadth of the TVPRA and its application to international supply chains like the one here.

Recognizing corporate liability will not put U.S. corporations at a competitive disadvantage or subject them to retaliatory foreign litigation. *See generally* § I (D)(4), *supra*.

Many other legal systems also hold their corporations accountable civilly (and sometimes criminally) for the kinds of claims at issue here. The United Kingdom, France, Germany, and Japan have all found corporations can be held liable under international law. *See* Jennifer Zerk, *Office of the UN High Comm'r for Human Rights, Corporate Liability for Gross Human Rights Abuses* 71 (2013).

Most recently, in *Nevsun Resources Ltd. v. Araya*, [2020] 443 D.L.R. 4th 183, the Canadian Supreme Court upheld a decision against a Canadian corporation for slavery, forced labor, crimes against humanity, and cruel, unusual, or degrading treatment abroad. The claims were brought by Eritrean refugees subjected to these conditions while fulfilling

mandatory civil service at a mine owned by Nevsun's Eritrean subsidiary.

Corporate liability is ubiquitous within tort law both in the United States, *see* § II (A)(1), *supra*, and internationally. Many civil law jurisdictions even attach civil liability to corporate criminal misconduct. Zerk, *supra*, at 42, 45. Thus, recognizing corporate liability in this case falls squarely within international practice and places U.S. corporations at no competitive disadvantage.

Nor is it a way to hold parent corporations liable contrary to *Jesner*. Pet. Br. 45. Respondents' only remaining claims are against Petitioners.

Similarly, this action does not conflict with the voluntary Harkin-Engel Protocol. *See* Section I (D)(3), *supra*. In fact, ATS actions advance the Protocol's objective of ending child slavery and forced labor.

CONCLUSION

For all these reasons the Judgment below should be affirmed.

Respectfully submitted,

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