

Supreme Court Further Limits Liability Under the ATS and TVPA

Client Alerts

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Last month, the Supreme Court decided *Cisco Systems v. Doe*, holding that aiding-and-abetting claims are not available under two statutes frequently invoked in human rights litigation, the Alien Tort Statute (ATS) and the Torture Victim Protection Act of 1991 (TVPA). In holding that an American company and its executives could not be liable for allegedly aiding and abetting violations of international law under the ATS and TVPA, the Court reaffirmed that the ATS is a jurisdictional statute and “close[d] the door” to the ATS as a litigation vehicle for violations of international law outside of three historically recognized causes of action.¹ Although the decision reduces the scope of liability for actors that are alleged to have supported violations of international law, the Court expressly preserved TVPA liability for individuals who “subject” another to torture or extrajudicial killing, including those who instruct or “giv[e] an order to torture.”²

Background

Victims of alleged international human rights abuses have often turned to the ATS and the TVPA when seeking redress in US courts.

The ATS, passed by the First Congress, provides jurisdiction over “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”³ Although the statute speaks in jurisdictional terms, courts have assumed that under limited circumstances, it provided for an implied cause of action. In *Sosa v. Alvarez-Machain*, the Supreme Court set out a framework to determine whether a particular cause of action was available under the ATS, hinging on whether the international law norm at issue was “specific, universal, and obligatory.”⁴ Since *Sosa*, the Supreme Court has continued to limit the application of the ATS.⁵ Even as the courts narrowed the statute, however, and despite the fact that relatively few ATS cases have proceeded to final judgment, the statute has continued to have practical effects; settlements under the ATS, for example, may have served as a deterrent against conduct previously thought to be covered by the statute.⁶

Thirteen years before *Sosa*, Congress passed the TVPA, which provides an explicit cause of action against individuals “who, under actual or apparent authority, or color of law, of any foreign nation . . . subject[] an individual to torture . . . or . . . extrajudicial killing.”⁷

In the *Cisco* case, 13 Chinese nationals and one US citizen—practitioners of Falun Gong—filed suit against Cisco Systems, Inc. in the Northern District of California, bringing aiding-and-abetting claims under the ATS and TVPA. The plaintiffs alleged they were violently persecuted by the Chinese government, and that such persecution was facilitated and enabled by technology that Cisco developed.⁸ The Ninth Circuit sustained the plaintiffs’ claims and held that the plaintiffs plausibly alleged Cisco’s knowing participation in the violation of international law norms.⁹ The Supreme Court granted certiorari to determine whether the plaintiffs’ aiding and abetting theory was viable under the ATS and TVPA.

The Court’s Decision

The Supreme Court reversed. In an opinion authored by Justice Barrett, *Cisco* held that the plaintiffs did not have a viable cause of action under either the ATS or the TVPA.¹⁰

With respect to the ATS, the Court held that federal courts lack authority to recognize additional implied causes of action under the ATS beyond three particular international law torts recognized at the time of the statute’s enactment: violations of safe conducts, infringement of ambassadors’ rights, and piracy.¹¹ These preserved, historical causes of action are colloquially called the “Blackstone three,” given their recognition in Blackstone’s 1769 treatise.¹²

Although *Cisco* did not expressly overrule *Sosa*, it stressed that *Sosa*’s framework for recognizing new ATS causes of action was already “narrow at the outset”; *Sosa* urged caution for recognizing new causes of action under the ATS due to the potentially “adverse foreign policy consequences.”¹³ The Court reiterated that Congress, not the judiciary, has the power to create causes of action.¹⁴ Although the dissent would have preserved a case-by-case approach to assessing causes of action under the ATS, the majority held that recognizing any new implied cause of action would risk interfering with the political branches’ conduct of foreign policy and violate the separation of powers. As a result, the *Cisco* plaintiffs’ aiding and abetting claims necessarily failed for each of their seven claimed violations of international law.¹⁵

With respect to the TVPA, the Court examined the statutory text and held that aiding and abetting liability is not available.¹⁶ The statute’s language that anyone who “subjects” another to torture may be liable under the TVPA was held to be too narrow to encompass broader theories of aiding and abetting liability.¹⁷ The dissent critiqued the majority for having created a “magic words” requirement for aiding-and-abetting liability.¹⁸

That said, the Court expressly noted that the TVPA continues to apply to individuals who “subject[]” another to torture, which is not limited to those who “personally” participate in the torture, but includes those who “giv[e] an order to torture.”¹⁹

Takeaways:

- **TVPA litigation will continue, with courts delineating the scope of what it means to “subject” another to torture or extrajudicial killing.** The Supreme Court expressly recognized that TVPA liability may lie against more than just the individuals who personally carried out the underlying violation, while making clear that such liability is narrower than traditional aiding-and-abetting liability. As a result, litigants will continue to seek to hold liable a range of actors who were allegedly involved in the underlying misconduct.²⁰
- **Litigants may still opt to pursue ATS claims under the “Blackstone three,” and courts will be asked to determine whether particular modern torts fall within their scope.** The Blackstone three—violations of safe conducts, infringement of ambassadors’ rights, and piracy—remain viable causes of action under the ATS, and litigants may attempt to shoehorn a range of modern issues within their scope. Violations of safe conducts and piracy are most likely to translate to contemporary international rights abuses. For example, international law violations committed in connection with fishery operations may be covered by the ATS’s recognition of a piracy cause of action, as could attacks on civilian cargo ships.²¹
- **Cisco removes a potential deterrent to human rights abuses.** Although the ATS has never been a major driver of federal litigation, the threat of ATS claims has arguably shaped parties’ conduct. As both the majority and dissent noted, some ATS litigation has resulted in “multimillion-dollar payments to plaintiffs.”²² The narrowing of the ATS expressly removes a tool to seek redress. Although the Supreme Court’s decision is hardly surprising—and indeed the writing has been on the wall for over a decade—decisions confirming longstanding assumptions about what the Supreme Court might hold in a given case nonetheless have shown the potential to unleash conduct that was previously restrained.²³ Going forward, litigants may seek to invoke state tort law and foreign law in service of similar claims.²⁴

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Footnotes

[1] *Cisco Sys., Inc. v. Doe I*, 146 S. Ct. 1882 (2026)

[2] *See* Slip Op. at 14 n.4.

[3] 28 U.S.C. § 1350.

[4] *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004).

[5] *See Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013) (presumption against extraterritoriality); *Jesner v. Arab Bank, PLC*, 584 U.S. 241 (2018) (not applicable to foreign corporations); *Nestlé USA, Inc. v. Doe I*, 593 U.S. 628 (2021) (“general corporate activity” in the U.S. is insufficient nexus).

[6] *See* Slip Op. at 11, n.2; C. Ewell, O. Hathaway, & E. Nohle, *Has the Alien Tort Statute Made a Difference?: A Historical, Empirical, and Normative Assessment*, 107 Cornell L. Rev. 1205, 1251–1252, 1278 (2022). The Court itself cited this article for the proposition that the ATS has had consequential effects notwithstanding the relatively small number of cases brought to judgment.

[7] 106 Stat. 73, note following 28 U.S.C. § 1350.

[8] Slip Op. at 6.

[9] Brief in Opp. at 7-8.

[10] Slip Op. at 14; Slip Op. Syllabus at 4. The Justices split 6-3 on the ATS question, and 8-1 on the TVPA question.

[11] Slip Op. at 12.

[12] *See* Slip Op. at 12; 4 W. Blackstone, *Commentaries on the Laws of England* 68 (1769).

[13] *Id.* at 8.

[14] *Id.* at 9.

[15] Slip Op. at 12; Slip Op. (J. Sotomayor Dissent) at 4 (plaintiffs alleged that Cisco aided and abetted seven international law violations: torture; cruel, inhuman, or degrading treatment; forced labor; prolonged and arbitrary detention; crimes against humanity; extrajudicial killing; and forced disappearance).

[16] Slip Op. at 13-14.

[17] *Id.*

[18] Slip Op. (J. Sotomayor Dissent) at 26-27.

[19] Slip Op. at 14, n.4; *Mohamad v. Palestinian Authority*, 566 U.S. 449, 458 (2012).

[20] *See Mamani v. Sanchez Bustamante*, 968 F.3d 1216, 1220 (11th Cir. 2020) (granting new trial for TVPA wrongful-death claims and noting earlier TVPA jury verdict of \$10 million against former Bolivian president and former Defense Minister of Bolivia under the command-responsibility doctrine for extrajudicial killings); *Arce v. Garcia*, 434 F.3d 1254 (11th Cir. 2006) (TVPA jury verdicts totaling \$54,600,000 against two high-ranking Salvadoran military officers under the doctrine of command responsibility).

[21] See, e.g., U.S. Dep't of State, *Houthi Attacks on International Shipping*, <https://2021-2025.state.gov/houthi-attacks-on-international-shipping/> (condemning Houthi attacks on international shipping as piracy); Mallory Miller, *Grasping at ATS Straws: Piracy & Human Rights Abuses on the High Seas*, Corp. Accountability Lab (Nov. 16, 2020), <https://corpaccountabilitylab.org/calblog/2020/11/16/grasping-at-ats-straws-piracy-amp-human-rights-abuses-on-the-high-seas>.

[22] Slip Op. at 11.

[23] See, e.g., *Rucho v. Common Cause*, 588 U.S. 684 (2019) (holding that partisan gerrymandering claims present a nonjusticiable political question); see also Nicholas Riccardi & Jim Vertuno, *Texas House Approves Redrawn Maps Sought by Trump Ahead of 2026 Elections*, Associated Press (Aug. 20, 2025), <https://apnews.com/article/texas-redistricting-congressional-map-882eae23a280a68dd6e0fc5a3bf11a0d> (describing the recent wave of mid-decade partisan redistricting).

[24] See, e.g., Rebecca Hamilton, *Seeking Justice the Day After SCOTUS Killed the Alien Tort Statute*, Just Security (June 24, 2026), <https://www.justsecurity.org/144005/justice-after-alien-tort-statute/>.

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