No. 24-856

IN THE

Supreme Court of the United States

CISCO SYSTEMS, INC., *et al.*,

Petitioners,

v.

DOE I, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

TERRI E. MARSH
MATTHEW GRIECHEN
HUMAN RIGHTS LAW FOUNDATION
1701 Rhode Island Avenue, Suite 400
Washington, DC 20006
(202) 774-0893

PAUL L. HOFFMAN
Counsel of Record
CATHERINE SWEETSER
JOHN C. WASHINGTON
KAREN KARTUN
SUMMER WRIGHT
SCHONBRUN SEPLOW HARRIS HOFFMAN & ZELDES LLP
200 Pier Avenue, Suite 226
Hermosa Beach, CA 90254
(310) 717-7373
hoffpaul@aol.com

Counsel for Respondents

120396

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether aiding and abetting an international crime can be an actionable tort in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350.

2. Whether the *mens rea* for any such aiding and abetting claim is the knowledge standard broadly accepted as customary international law or the purpose standard adopted by the Second and Fourth Circuits.

3. Whether the Torture Victim Protection Act, 28 U.S.C. § 1350 note, authorizes civil claims for aiding and abetting torture and extrajudicial killing.

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INTRODUCTION

There are very few Alien Tort Statute ("ATS") cases pending after this Court's decisions in *Kiobel v. Royal Dutch Petroleum, Co.*, 569 U.S. 108 (2013); *Jesner v. Arab Bank, PLC*, 584 U.S. 241 (2018); and *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021). This Court has never overruled its ATS framework in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), and the ATS remains one means of remedying serious human rights violations that have been facilitated from U.S. soil, as was the case here.

Petitioner Cisco Systems, Inc., John Chambers, and Fredy Cheung ("Cisco") seek review of three different questions decided by the Panel below. None of those questions merit the Court's review at this time.

Every Circuit court to have considered the issue has approved the availability of aiding and abetting liability under the ATS. This is not surprising given the universal availability of such liability under international law and federal common law.

There is a Circuit split concerning the *mens rea* for aiding and abetting liability. The Panel applied the accepted customary international law standard of knowledge. Other Circuits have insisted on a showing of "purpose" based on a misreading of one treaty. The Panel's analysis is correct, but even so, there is no need for this Court to decide this issue because Respondents can meet any applicable *mens rea* standard. It would be more appropriate to wait for the development of a factual record and the litigation of

the many other issues in this case before this Court resolves the *mens rea* issue.

As with the ATS, every Circuit court to have considered the issue has found that aiding and abetting liability is available under the Torture Victim Protection Act ("TVPA"). This too is unsurprising given the statute's plain text and the Congressional purpose to implement the nation's human rights treaty obligations.

Respondents' claims are fully consistent with long standing bipartisan U.S. foreign policy regarding human rights violations against Falun Gong in China. Neither the United States nor China has intervened in this case in the past decade.

The Petition should be denied.

STATEMENT

A. Factual Background

Respondents are Chinese nationals and a U.S. citizen who practice the Falun Gong religion. Pet. App. 14a. The faith started in China in the 1990s and it centers on the tenets of "truthfulness, compassion, and tolerance." *Id.* at 9a. Falun Gong spread rapidly, growing to around 100 million believers by 1999. *Id.*

Sensing a threat to its rule, the Chinese Communist Party ("CCP")[1] launched a crackdown on Falun Gong in 1999 to force believers to renounce their faith. *Id.* at 9a–10a. The CCP has used these "*douzheng*" or "violent struggle" campaigns over its

[1] The CCP is distinct from the state, Pet. App. 9a, but it directs state agents, including those from the Ministry of Public Security, ER 38. CCP is used herein to refer to Party and state agents.

history to eliminate perceived enemies, always utilizing torture. ER 37.[2]

The crackdown on Falun Gong was widespread and brutal. Officials arbitrarily detained believers in black jails and in forced re-education through labor camps. ER 39; Pet. App. 9a. Believers were regularly subjected to ideological conversion, including "beatings with steel rods and shocking with electric batons." Pet. App. 15a; *see also id.* at 9a; ER 39. By 2001, the Department of State estimated that hundreds of thousands of believers had been persecuted. Pet. App. 14a. And thousands of believers were tortured to death. *Id.*

Because Falun Gong believers are spread across all regions in China and uniquely use the internet as part of their faith, the CCP needed sophisticated Internet surveillance tools to implement its crackdown at scale. ER 31. The CCP incorporated this goal into proposals for the "Golden Shield," which was imagined to include custom-built components and systems integrated into a "vast and multi-tiered surveillance system" with capacity to capture all Falun Gong activity in China. Pet. App. 10a. But Chinese engineers lacked the expertise to create the technology. *Id.* The CCP thus looked to the West, causing Silicon Valley companies like Cisco to vie "with one another to gain a stronghold in the lucrative security technology market." ER 41. The CCP told these companies that the most important goal of the Golden Shield was to crack down on Falun Gong. ER 41–42.

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[2] Citations to "ER" refer to the excerpts of record in the appeal below, Case No. 15-16909.

Cisco answered the CCP's call, aggressively pushing to secure the contracts. Cisco's Chief Executive Officer, John Chambers, personally met with China's President and promised to support the crackdown on Falun Gong in meetings with CCP officials. ER 73–74. Indeed, identifying, tracking, and violently suppressing Falun Gong believers was precisely the "problem" CCP officials asked Cisco to "solve" with its technology and expertise. ER 31. At trade shows, Cisco brochures advertised how "its technology could be used to *douzheng* Falun Gong" and Cisco China's then-Vice President, Fredy Cheung, touted how Cisco's products could ensure "social stability." ER 43.

This push succeeded. In 2001, China selected Cisco to submit high-level designs on the project and Cisco was later awarded contracts, including for various component systems targeted at Falun Gong. Pet. App. 11a. Cisco's selection depended on its promise to facilitate the crack down on Falun Gong. ER 41, 74.

Cisco then fulfilled its promise. Because of the needed technological sophistication, Cisco's engineers in San Jose were put to the task, as that was where Cisco developed cutting-edge products. Pet. App. 66a. These engineers designed "first-of-their-kind features" to aid "in the detection, apprehension and interrogation of Falun Gong believers." *Id.* at 11a. Cisco's experts constructed a library of patterns of Falun Gong internet activity enabling real-time alerts and automated surveillance. ER 46–47, 50. Cisco also integrated databases to collect, compile, and deliver sensitive personal information about believers to CCP and state officials at detention centers and other sites

where officials tortured them to force them to renounce their beliefs. ER 48, 53–54. These databases contained a "wealth of information, including descriptions of an individual believer's susceptibility to interrogation and ideological conversion," ER 60, and "home and work addresses, purchases, financial information, contact with other Falun Gong members, past Falun Gong activities, IP addresses, and family information," Pet. App. 10a. On top of the design, Cisco manufactured components in California. *Id.* at 11a–12a.

While these initial features were effective, Falun Gong believers used "methods to escape detection," ER 21, providing more opportunities for Cisco. For example, towards the end of the 2000s, Cisco offered the CCP a product called Ironport, which Cisco bragged was the "only product capable of recognizing over 90% of Falun Gong pictorial information." ER 50–51. To ensure the continued viability and useability of its products, Cisco also provided the Party ongoing "maintenance, testing and verification, [and] training and support." Pet. App. 67a. In one of Cisco's trainings, it described Falun Gong believers as "viruses" and "despicable." ER 43.

All along, Cisco was clear about how the crackdown benefitted the company. Cisco's files described the *douzheng* of Falun Gong "as a lucrative business opportunity." Pet. App. 62a. And in a PowerPoint presentation, Cisco noted that the *douzheng* was a key purpose of the Golden Shield and described the project as an opportunity for the company. ER 43.

Respondents or their associates were each identified, apprehended, and tortured after the

Golden Shield captured their online religious activity. Pet. App. 14a. Does I, II, and Ivy He, for example, were each apprehended in Tianjin. ER 78. The CCP used the Golden Shield to capture their online activities, as confirmed by materials later submitted in sham trials. ER 79. When torturing Respondents, officials also used data collected, compiled, and delivered from the components of the Golden Shield built by Cisco. Officers referred to Golden Shield-derived information during sessions where they beat Doe I with an electric baton, leaving her bloody and swollen. ER 78–79. And when officials tortured Doe IV, including by pouring ice water on his body, they brought up traces of his Falun Gong internet activities, including his emails and his anonymous creation of a Falun Gong website. ER 83–84. Officers likewise used Golden Shield-derived information about Respondents' family members during torture sessions, as when officers made threats against Mr. Wang's wife and questioned Mr. Wang about her whereabouts and messages to other Falun Gong believers. ER 65.

Respondents estimate that thousands of Falun Gong believers were identified, apprehended, and tortured by the CCP using Cisco's technology. ER 96. None of this could have occurred without Cisco's essential contributions. ER 32.

B. Procedural Background

Respondents initiated suit in 2011 and filed a second amended complaint in 2013. Pet. App. 15a, 141a. They asserted ATS claims against Petitioners Cisco, Chambers, and Cheung; and one Respondent asserted TVPA claims against Chambers and Cheung.

Id. at 16a. In 2014, the district court dismissed Respondents' federal claims. *Id.* at 153a.

In 2023, a Panel of the Ninth Circuit largely reversed. *Id.* First, the Panel reconsidered circuit precedent and found that aiding and abetting claims can be actionable under the ATS pursuant to *Sosa*'s two-part test. *Id.* at 23a–38a. Second, the Panel reviewed customary international law to identify the *actus reus* and *mens rea* for aiding and abetting, concluding that the *mens rea* is knowledge. *Id.* at 39a–44a, 48a–58a.

Third, the Panel assessed the sufficiency of Respondents' allegations. As to the *actus reus*, the Panel found Respondents plausibly alleged that Cisco's assistance to the CCP had a substantial effect on the CCP's torture and other crimes against Falun Gong believers, especially as China lacked access to equivalent technological tools at the time. *Id.* at 47a. As to the *mens rea*, the Panel found Respondents plausibly alleged Cisco "was aware of the Party and Chinese authorities' goal to use Golden Shield technology to target Falun Gong adherents" including by using "torture and arbitrary detention." *Id.* at 61a–62a. The Panel added that the allegations would be sufficient under a purpose standard, as Respondents allege Cisco admitted the CCP's persecution of Falun Gong was a lucrative business opportunity for the company and Cisco supported and benefitted from the persecution. *Id.* at 62a n.22.

Fourth, the Panel found that Respondents stated a domestic application of the ATS as to Cisco because Respondents alleged "the design and optimization of integrated databases and other software, the

manufacture of specialized hardware, and ongoing technological support all took place in California." *Id.* at 68a. By contrast, the Panel affirmed dismissal of the ATS claims against Petitioners Chambers and Cheung as impermissibly extraterritorial. *Id.* at 70a.

Fifth, the Panel held that one Respondent's TVPA claims against Chambers and Cheung could proceed. In doing so, the panel looked to the TVPA's text, statutory context, and legislative history to find that it authorizes claims for aiding and abetting. *Id.* at 75a–79a. And the Panel held that Respondents plausibly alleged Chambers and Cheung aided and abetted the abuses. *Id.* at 81a–82a.

Judge Christen concurred in part and dissented in part. *Id.* at 85a. Judge Christen agreed with the majority as to the TVPA claim and agreed with much of the majority's ATS analysis, but disagreed that the ATS claims should be remanded, especially without first soliciting the views of the United States. *Id.* at 85a, 92a–94a.

Cisco sought rehearing and rehearing *en banc*, which the Ninth Circuit denied. *Id.* at 97a.

REASONS FOR DENYING THE PETITION

I. The Interlocutory Posture of this Case Counsels Against Granting Review.

Cisco seeks review of an interlocutory decision reversing the grant of a pre-discovery motion to dismiss. Yet absent unusual circumstances, the interlocutory posture of a case is grounds for the denial of a petition for certiorari. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); *see also Nat'l Football League v. Ninth Inning, Inc.*, 141 S. Ct. 56, 56–57 (2020) (Kavanaugh, J., respecting

the denial of certiorari); *Taylor v. Riojas*, 592 U.S. 7, 11–12 (2020) (Alito, J., concurring); *Abbott v. Veasey*, 580 U.S. 1104 (2017) (Roberts, C.J., respecting denial of certiorari).

Addressing the questions presented now would be inefficient as the issues may change. The Panel below, for example, stated that the district court may "request the views of the State Department" on remand. Pet. App. 34a. And Cisco notes it has preserved other arguments for further proceedings. Pet. 11 n.2.

The posture of the case particularly counsels against review of the *mens* rea for aiding and abetting claims. Should the Court wish to consider that question, it would benefit from access to a factual record, as questions of mental state often depend on a complex analysis of "circumstantial evidence and inference." *Diaz v. United States*, 602 U.S. 526, 550 (2024) (Gorsuch, J., dissenting). Moreover, Respondents can meet any applicable *mens rea* standard.

No extraordinary circumstances justify a departure from this Court's usual approach.

II. The Panel's ATS Aiding and Abetting Holding Does Not Warrant Review.

The Panel below reconsidered circuit precedent in light of this Court's recent ATS decisions, concluding that aiding and abetting international crimes can be actionable torts under the ATS. Pet. App. 22a–24a. The Panel was the first circuit to do so after *Jesner*, 584 U.S. 241 and *Nestlé*, 593 U.S. 628, and its conclusion is consistent with every other Circuit that considered the question before. The Panel's decision

was correct and does not present a question that is likely to recur often, given the limited number of ATS cases.

A. There Is No Circuit Split for this Court to Resolve.

Cisco's petition is silent on the most important certiorari factor because there is no disagreement in the Courts of Appeal. The Ninth, Second, Fourth, and Eleventh Circuits all hold that aiding and abetting claims may be actionable under the ATS. *See Aziz v. Alcolac, Inc.*, 658 F.3d 388, 396 (4th Cir. 2011); *Khulumani v. Barclay Nat'l Bank Ltd.*, 504 F.3d 254, 260 (2d Cir. 2007) (per curiam), *aff'd sub nom. Am. Isuzu Motors, Inc. v. Ntsebeza*, 553 U.S. 1028 (2008); *Cabello v. Fernández-Larios*, 402 F.3d 1148, 1157–58 (11th Cir. 2005); *cf. Doe VIII v. Exxon Mobil Corp.*, 654 F.3d 11, 32 (D.C. Cir. 2011), *vacated on other grounds*, 527 Fed. App'x 7 (D.C. Cir. 2013). No Circuit has dissented from this view.

Cisco's attempt to argue that the Panel's decision is inconsistent with *Jesner* and *Nestlé*, Pet. 16, only underscores why the petition should be denied. As the Panel below recognized, *Jesner* and *Nestlé* arguably clarified the proper analysis in ATS cases, thus prompting the Panel to reconsider prior precedents. Pet. App. 19a n.5, 23a n.9. No other Circuit has had the chance to do the same. Under these circumstances further percolation is warranted. *See, e.g.*, *Morris Cnty. Bd. of Chosen Freeholders v. Freedom from Religion Found.*, 586 U.S. 1213, 1216 (2019) (Kavanaugh, J., respecting the denial of certiorari).

B. The Panel Faithfully Applied this Court's Precedents.

Absent a Circuit split, Cisco attempts to fabricate a conflict between the decision below and this Court's cases. Yet Cisco points only to non-majority opinions and misconstrues precedent. By contrast, the Panel below accurately applied this Court's decisions.

1. Cisco first argues that courts cannot recognize ATS causes of action other than the three contemplated by the First Congress. Pet. 16. In *Sosa*, however, this Court expressly stated that claims based on the "present-day law of nations" could be actionable "subject to vigilant doorkeeping." 542 U.S. at 725, 729. While individual Justices have since argued that no causes of action may be recognized under modern international law, that view has not secured a majority. *See Nestlé*, 593 U.S. at 634–35 (plurality op.) (Thomas, J.); *id.* at 640 (Gorsuch, J., concurring). This Court's decisions limiting implied constitutional damages remedies, *see* Pet. 15–16, did not apply to the ATS or overrule *Sosa*.

2. Cisco also argues that the panel's decision conflicts with *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994). Not so. No Circuit has accepted Petitioners' argument in the ATS context.

Central Bank held that those who aid and abet a violation of § 10(b) of the Securities Exchange Act are not subject to civil liability under that provision's implied cause of action. *See id.* at 191. This holding was driven by congressional intent as embodied in the statutory text and legislative history. *See id.* at 180. Because the text spoke "so specifically in terms of manipulation and deception," *id.* at 177 (quoting

Ernst & Ernst v. Hochfelder, 425 U.S. 185, 214 (1976)), the statute did not cover aiders and abettors, as those individuals engage in "acts that are not themselves manipulative or deceptive," *id.* at 178. Nor would the Court adopt a presumption reading aiding and abetting liability into any statute where Congress creates a cause of action. *See id.* at 182.

The ATS and § 10(b) differ in significant respects, but the Panel's decision is consistent with *Central Bank*. Section 10(b) prohibits the use of "manipulative or deceptive device[s]" in connection with securities. 15 U.S.C. § 78j. The ATS, by contrast, grants jurisdiction over torts "committed in violation of the law of nations." 28 U.S.C. § 1350. Under *Central Bank*, the central question is thus whether aiding and abetting is a tort in violation of the law of nations, a question Cisco nowhere addresses. The Panel below did, using *Sosa*'s two-step framework. Pet. App. 35a; *see also Khulumani*, 504 F.3d at 282 (Katzmann, J., concurring); *Exxon*, 654 F.3d at 28. Moreover, there is ample evidence the First Congress understood aiding and abetting would be actionable under the ATS. *See infra* at 13–14; *see also Exxon*, 654 F.3d at 29. The Panel did not presume aiding and abetting liability is available, but conducted the analysis required by *Central Bank* and *Sosa*.

C. The Decision Below Is Correct.

In any event, this Court's review is unnecessary because the consensus in the Courts of Appeal is correct. Before recognizing claims under the ATS, courts must first ask whether "the alleged violation is 'of a norm that is specific, universal, and obligatory.'" *Jesner*, 584 U.S. at 257–58 (plurality op.) (quoting

Sosa, 542 U.S. at 732).[3] If the answer is yes, a court must then consider whether recognizing the cause of action is a "proper exercise of judicial discretion." *Id.*

The Panel concluded — and Cisco does not contest — that aiding and abetting liability is an established norm of international law. The Panel also correctly held that recognizing such liability is a proper exercise of judicial discretion.

1. Aiding and Abetting Liability Is a Specific, Universal, and Obligatory Norm.

Founding-era and modern sources of international law demonstrate that aiding and abetting is a violation of the law of nations.

a. International law prohibited aiding and abetting at the Founding.

Accessorial liability attached to each of the primary law of nations violations that motivated the drafters of the ATS. They likely had three offenses in mind: "violation of safe conducts, infringement on the rights of ambassadors, and piracy." *Sosa*, 542 U.S. at 715. Blackstone explained that contributing to each of these offenses violated the law of nations. *See* 4 William Blackstone, Commentaries on the Laws of England *69 ("abetting and receiving" those who violate safe conducts "was . . . high treason"); *id.* at 70–71 ("soliciting" an infringement on the rights of ambassadors is a violation of the law of nations); *id.*

[3] As the Panel noted, while the Court articulated the two-part test in a plurality opinion, a majority of the Court has endorsed that formulation. Pet. App. 19a n.5.

at 73 ("[A]ll accessories to piracy are declared to be principal pirates . . . .").

Before and after the Founding, individuals were held accountable for aiding and abetting law of nations violations. In 1694, for example, a Boston man was indicted for "[c]onspir[ing], [a]bett[ing] and [j]oin[ing]" with others to commit piracy. John Franklin Jameson, Privateering and Piracy in the Colonial Period: Illustrative Documents *151–52. Congress determined "aid[ing] and assist[ing]" in piracy would be punishable by death. An Act for the Punishment of Certain Crimes against the United States, 1 Stat. 112, 114 (1790).

Shortly after Congress enacted the ATS, officials explained that those who aided and abetted law of nations violations could be held accountable. In 1795, Attorney General William Bradford opined that the British victims of a French attack in Sierra Leone would have a remedy under the ATS against American citizens that "aided [] and abetted" in the attack. *Breach of Neutrality*, 1 U.S. Op. Att'y Gen. 57, 57, 59 (1795). In 1797, Attorney General Charles Lee reasoned that the American associates who "joined, aided, and abetted" a Spanish subject in violating Spain's territorial rights could be prosecuted for violating the law of nations. *Territorial Rights — Florida*, 1 U.S. Op. Att'y Gen. 68, 68–69 (1797); *see also* Br. of *Amici Curiae* Professors of Legal History 15–19, *Nestlé USA, Inc. v. Doe I*, No. 19-416 (Oct. 21, 2020) (discussing opinions of Thomas Jefferson and Edmund Randolph affirming that the ATS would permit claims against perpetrator and two accomplices for robbery).

b. Aiding and abetting liability is well-established under the modern law of nations. When identifying such norms, courts look to the cases of significant international tribunals and treaties. *See Sosa*, 542 U.S. at 734; *Jesner*, 584 U.S. at 259–61. Each affirms that those who aid and abet certain conduct violate customary international law.

All major tribunals established to try those responsible for international crimes have imposed liability on aiders and abettors. The post-World War II military tribunals tried accessories. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Charter of the International Military Tribunal art. 6, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279; *see also* Control Council Law No. 10 art. II(2)(b). Since then, liability for aiding and abetting has continued to the present day. *See* Statute of the International Criminal Tribunal for the Former Yugoslavia art. 7(1), S.C. Res. 827 (May 25, 1993); Statute of the International Criminal Tribunal for Rwanda, art. 6(1), S.C. Res. 955 (Nov. 8, 1994); Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone Enclosure art. 6(1), U.N. Doc. S/2000/9915 (Oct. 4, 2000); Rome Statute of the International Criminal Court art. 25(3)(c), July 17, 1998, 2187 U.N.T.S. 90 ("Rome Statute").

Treaties, including those that address the abuses suffered by Respondents, likewise prohibit aiding and abetting. The Convention against Torture, with 174 state parties, requires states to prohibit "complicity or participation in torture." Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment art 4, Dec. 10, 1984, S. Treaty Doc. No.

100-20, 1465 U.N.T.S. 112 ("CAT"); *see also* International Convention for the Protection of All Persons from Enforced Disappearance art. 6(1)(a), Dec. 20, 2006, 2716 U.N.T.S. 3. Other major human rights treaties, ratified by most of the world, do the same. *See, e.g.*, Convention on the Prevention and Punishment of the Crime of Genocide art. III(e), Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art. 6(1), Sept. 7, 1956, 18 U.S.T. 3201, 2225 U.N.T.S. 209.

2. Recognizing Aiding and Abetting Claims Is a Proper Exercise of Judicial Discretion.

Cisco attempts to mislead, asserting that the Panel "blink[ed] past *Sosa*'s second step." Pet. 19. But the Panel conducted an exhaustive analysis of *Sosa*'s second step, considering potential foreign policy and separation of powers concerns. Pet. App. 27a–38a.

a. *Sosa* warned courts to be wary of recognizing "a limit on the power of foreign governments over their own citizens," 542 U.S. at 727, and urged "case-specific deference to the political branches," *id.* at 733 n.21. In *Jesner*, Jordan's strenuous objections to claims against a Jordanian corporation illustrated the need for caution. 584 U.S. at 271.

There is little reason to believe aiding and abetting liability in this case would generate these foreign policy concerns. As the Panel explained, accomplice liability is typically asserted in claims against nongovernmental entities, not foreign states.

Pet. App. 30a. ATS claims must be premised on domestic conduct, *Nestlé*, 593 U.S. at 634, and foreign corporations cannot be defendants, *Jesner*, 584 U.S. at 272. As opposed to adjudicating the treatment of foreign citizens by foreign governments, aiding and abetting claims are likely to examine the conduct of Americans on American soil, a core sovereign function.

Nor does this case pose foreign policy concerns. As discussed *infra* at 34–35, the United States has condemned the abuses Cisco facilitated. And the political branches have been clear that Americans cannot contribute to China's human rights abuses. In the nearly fifteen years this case has been pending, the Executive Branch has not intervened. "Cisco was . . . free to ask the United States to chime in" when it belatedly asked the Ninth Circuit to solicit the views of the United States on rehearing, but "either it did not do so, or the government chose not to come forward." Pet. App. 106a.

b. As the Panel held, no separations of power concerns caution against recognizing claims for aiding and abetting.

Civil liability in this case is consistent with the policies of the political branches. It furthers the purpose of the ATS by providing a federal forum for law of nations violations by American citizens. Pet. App. 31a–32a. And as this Court has explained, courts applying *Sosa*'s second step should look to analogous statutes like the TVPA. *See Jesner*, 584 U.S. at 265. In the TVPA, Congress supplemented the ATS by authorizing claims by American citizens, and the TVPA permits claims for aiding and abetting. *See infra* at 29–31.

Cisco argues that this case is inconsistent with U.S. trade policy, attempting to create the false impression that Congress deemed the sale of software and hardware products customized to facilitate the abuse of a religious minority lawful. Pet. 3, 21–22. But Congress and the Executive Branch did no such thing.

Congress was horrified when the CCP brutally assaulted peaceful demonstrators at Tiananmen Square in 1989. Foreign Relations Authorization Act for Fiscal Years 1990 and 1991, Pub. L. No. 101-246, §§ 901(a)(1), 104 Stat. 15, 80 (1990). Congress responded in multiple ways, including by suspending licenses for the export of crime control or detection instruments to China. *Id.* §§ 902(a)(1), (4). While relevant software and technological products were not included in the list of those items maintained by the Department of Commerce, Cisco points to no evidence that Congress considered relevant technologies in enacting the law. There is no basis to conclude that Congress determined tech exports to China should be generally unregulated. Even if Congress had, that decision would shed little light on whether Congress supported the customization of products to facilitate abuses.

D. Given the Decline in ATS Litigation, the Question Is of Limited Importance

Overstating the importance of this issue, Cisco and its *amici* imply there are a deluge of ATS cases that harm the business community. Pet. 23–24; Br. of Chamber of Commerce et al. at 8 (Mar. 13, 2025) ("Chamber Br."). In fact, ATS claims are sparse following *Kiobel*. And the parade of horrors

envisioned by Cisco and its *amici* did not arise even when there were more cases.

1. ATS claims have decreased since *Kiobel*. Cisco's cited study found *Kiobel* "contributed to a substantial decline" in ATS suits, with extraterritoriality being the leading reason cases were dismissed after 2013. Christopher Ewell et al., *Has the Alien Tort Statute Made a Difference? A Historical, Empirical, and Normative Assessment*, 107 Cornell L. Rev. 1205, 1237, 1242–43 (2022). According to the U.S. Chamber Institute for Legal Reform, "perhaps *Kiobel's* most significant impact is that only one new ATS case has been filed against a U.S. company in the two years since *Kiobel*." U.S. Chamber Inst. for Legal Reform, *As Kiobel Turns Two* 11 (2015).[4] Cisco did not identify any significant numbers of pending cases that would be affected by deciding the question presented.

2. Cisco and its *amici* also speculate that aiding and abetting liability will harm the U.S. business community. Pet. 24; *see also, e.g.*, Chamber Br. at 7–20. Given the longstanding consensus that aiding and abetting liability is available, however, it is notable that they cannot document actual harm. Cisco's *amici* suggest that Talisman Energy divested from Sudan because of ATS litigation. *See, e.g.*, Chamber Br. at 13. But that decision was motivated by many other factors, including a Canadian investigation and the U.S. designation of Sudan as a state-sponsor of terrorism. *See* Br. of *Amici Curiae* Oxfam America et

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[4] Available at https://instituteforlegalreform.com/wp-content/uploads/2020/10/Kiobel_v6.pdf.

al. 15, *Nestlé USA, Inc. v. Doe I*, No. 19-416 (Oct. 21, 2020) ("Oxfam Br.").

Cisco and its *amici* likewise continue to point to the same hypothetical economic harms that ATS cases have simply never generated. For example, Cisco's *amici* rely on a 2003 prediction that ATS litigation would reduce foreign direct investment by billions, Chamber Br. at 11, but that "catastrophic prediction[]" obviously never materialized, Robert Knowles, *A Realist Defense of the Alien Tort Statute*, 88 Wash. U. L. Rev. 1117, 1157 (2011). Cisco and its *amici* also guess that ATS liability will place American businesses at a competitive disadvantage. Pet. 23–24; Chamber Br. at 13–15. As leading economists have explained, however, "no study has shown that [ATS liability] has reduced investment in" less developed countries and ATS liability would tend to promote responsible foreign investment. *See* Oxfam Br. at 14–22.

III. The Panel's *Mens Rea* Holding Does Not Warrant Review.

The Panel below correctly found that only a knowledge *mens rea* for aiding and abetting has the specificity and universality to satisfy *Sosa*. Pet. App. 56a–58a. This was a departure from the Second and Fourth Circuits, which require purpose. *See Aziz*, 658 F.3d at 400; *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 258–59 (2d Cir. 2009). As the Panel stated, however, Respondents' allegations meet the purpose standard. Pet. App. 62a n.22. If the Court wishes to resolve this question, it should do so in a case where the answer makes a difference and where the factual record has been developed.

A. Because Respondents Satisfy Any Relevant *Mens Rea* Standard, This Case Is a Poor Vehicle.

While the Panel below adopted a knowledge standard, it also found the allegations are "sufficient to state a plausible claim that Cisco acted with the purpose of facilitating the violations of international law." *Id.* at 62a. Choosing between standards will not alter the outcome of this case.

1. Respondents adequately allege Cisco purposefully facilitated the CCP's use of the Golden Shield to persecute Falun Gong believers. When the CCP proposed the Golden Shield, it told Silicon Valley that above all else, enabling the persecution of Falun Gong was the CCP's goal. *See supra* at 3. Without promising to assist, Cisco would not have been selected to work on the project. *See supra* at 4.

To obtain benefits from the project, Cisco continually communicated its desire to further the crackdown. Cisco's CEO promised to support it. *See id.* Cisco's marketing materials broadcasted that Cisco could advance the *douzheng* against the Falun Gong. *Id.* Cisco even described believers as "viruses" and "despicable" in training materials. *See supra* at 5.

Cisco's efforts to obtain the initial contracts support the inference that Cisco desired the persecution of Falun Gong. If the Party ended the crackdown, Cisco stood to lose business. The technology that Cisco created was highly customized — this case is not about off-the-shelf products. It is natural to infer that the customization meant a higher fee for Cisco.

On top of the initial contracts, Cisco stood to benefit from the ongoing persecution of Falun Gong as it drove demand for increasingly sophisticated services. Cisco supplied even more advanced features to facilitate the crackdown, including the Ironport product offered by 2007. *See id.* Cisco also provided ongoing maintenance, training, and support. *Id.* Had the Party's violent crackdown not continued, Cisco's revenues likely would have declined. Indeed, Cisco basically acknowledged as much in its internal files when it described the crackdown as a "lucrative business opportunity." Pet. App. 62a n.22.

2. These allegations satisfy the Second and Fourth Circuit's purpose standard. In those Circuits, a Plaintiff must plausibly allege that the defendant act "with the purpose of facilitating [the] violation." *Talisman*, 582 F.3d at 258–59; *Aziz*, 658 F.3d at 401. "[I]ntent must often be demonstrated by the circumstances," and may be inferred. *Talisman*, 582 F.3d at 264. The Second Circuit found that the plaintiffs plausibly alleged purpose in *Licci by Licci v. Lebanese Canadian Bank, SAL*, 834 F. 3d 201, 218 (2d Cir. 2016). In its *mens rea* analysis, the court considered that the bank had actual knowledge that Hezbollah's financial arm had accounts at its various branches and made transfers at Hezbollah's direction. The plaintiffs' allegations that the bank carried out wire transfers with the specific purpose and intention of enabling and assisting Hezbollah to carry out rocket attacks on Israel were sufficient to state an aiding and abetting claim.

Respondents easily meet this standard. They plausibly allege that Cisco had actual knowledge of the goals and means of the CCP's violent crackdown

on Falun Gong, given that Cisco endorsed them in its own materials and designed software to facilitate them. Cisco also created, designed, customized, maintained, and trained China on the use of Golden Shield technology, with the specific purpose and intention that China could carry out the crackdown. As in *Licci*, the allegations here are that Cisco knew of the violations and benefitted financially from the continued persecution.

The allegations here are more like those in *Licci* than the insufficient allegations in *Talisman* where a Canadian company was alleged to have aided and abetted abuses committed by Sudanese armed forces. *See* 582 F.3d at 247. In its *mens rea* analysis, the *Talisman* court emphasized that Sudan's abuses "threatened the security of the company's operations, tarnished its reputation, angered its employees and management, and ultimately forced" the company to "abandon the venture." *Id.* at 263. In other words, no inference of purpose was plausible given that the abuses undermined the defendant's interests. *See also Mastafa v. Chevron Corp.*, 770 F.3d 170, 194 (2d Cir. 2014) (finding allegations insufficient where plaintiffs failed to articulate how the defendants benefitted from abuses); *Aziz*, 658 F.3d at 401 (finding a single conclusory allegation that defendant acted purposefully insufficient).

Here, Cisco's purpose to facilitate the abuses against Falun Gong believers is linked to concrete benefits for the company, admitted in Cisco's own documents, and reflected in Cisco's anti-Falun Gong comments. Whereas in *Talisman* the record showed corporate employees objecting to the abuses, Respondents allege that Cisco executives and

employees actively marketed Cisco's ability to facilitate the abuses and described Falun Gong as viruses. Whereas in *Talisman* the defendant's operations were disrupted by the abuses, the abuses against Falun Gong were the key driver of the Golden Shield project. Had the violent campaign not created the need for the advanced technology, Cisco would have missed out on an opportunity to gain a significant foothold in the Chinese market and the higher revenues associated with customized products.

Balintulo v. Ford Motor Co., 796 F.3d 160 (2d Cir. 2015), is not to the contrary. There, the plaintiffs argued IBM aided and abetted South Africa in committing apartheid by supplying hardware and software for the creation of identity documents. *See id.* at 169. The Second Circuit explained that the plaintiffs plausibly alleged only knowledge. *Id.* Unlike here, there were no allegations in *Balintulo* that (1) committing to facilitate apartheid was necessary for IBM to obtain the contracts; (2) that IBM aggressively marketed its ability to facilitate apartheid; (3) that IBM ever used language reflecting hostility towards the victims of apartheid; or (4) that the continuation of the abuses created opportunities for IBM to generate additional revenues. The *Balintulo* court could imagine innocuous uses for IBM's product and would not hold IBM liable merely for selling computer systems to an apartheid regime. But here the anti-Falun Gong systems of the Golden Shield were not built for an innocuous purpose and the allegations are that they were purposefully tailored for religious persecution.

B. The Correct Standard Is Knowledge, But Plaintiffs Can Satisfy Any International Standard.

Knowledge is the correct standard under international law. Actionable ATS claims must be based on norms that are "specific, universal, and obligatory." *Jesner*, 584 U.S. at 258 (quoting *Sosa*, 542 U.S. at 732). Only the knowledge standard meets this test. In any event, Respondents clearly meet any interpretation of the Rome Statute and even the overruled specific direction standard. Thus, this case is a poor vehicle for deciding the *mens rea* issue under international law as well.

1. This Court looks to international tribunals to identify customary international law. *See, e.g.*, *Jesner*, 584 U.S. at 260. The major ad hoc tribunals are uniform in that to be liable for aiding and abetting, accessories must know that their assistance facilitates the violation.

First, the post-World War II military tribunals convicted persons for knowingly providing assistance. For example, Waldemar Klingelhoefer was convicted by a U.S.-established tribunal in the occupied zone for crimes against humanity and war crimes. *United States v. Otto Ohlendorft (The Einsatzgruppen Case)*, 4 Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council Law No. 10 at 570 (1949). Reminiscent of the allegations in this case, Klingelhoefer developed lists of targets and gave those lists to Nazi killing squads. *Id.* at 569. The Tribunal explained that if "he was aware that the people listed would be executed when found" he "served as an accessory to the crime." *Id.*; *see also United States v. Flick*, 6 Trials of War Criminals

Before the Nuernberg Military Tribunals under Control Council Law No. 10 at 1217 (1947).[5]

Second, all the ad hoc international criminal tribunals applying customary international law hold that the *mens rea* for aiding and abetting is knowledge. The Special Court for Sierra Leone, for example, conducted a comprehensive review dating to Nuremberg, and concluded "an accused's knowledge of the consequence of his acts or conduct . . . is a culpable *mens rea*." *Prosecutor v. Taylor*, Case No. SCSL-03-01-A, Judgment ¶¶ 436, 486–87 (Sept. 26, 2013); *see also* Government Supplemental Filing at 2, *United States v. Mohammad*, AE 120B (Oct. 18, 2013) (relying on *Taylor*'s assessment of the *mens rea* in the 9/11 prosecutions). The other tribunals are in accord. *See, e.g.*, *Co-Prosecutors v. Nuon Chea and Khieu Samphan*, Case No. 002/19-09-2007/ECCC/TC, Judgment ¶ 704 (Aug. 7, 2014); *Prosecutor v. Šainović*, Case No. IT-05-87-A, Judgment ¶ 1772 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 23, 2014); *Ndahimana v. Prosecutor*, Case No. ICTR-01-68-A, Judgment ¶ 157 (Dec. 16, 2013).

2. The Rome Statute of the International Criminal Court does not support a purpose standard. The Second and Fourth Circuits relied almost exclusively on Article 25 the Rome Statute, which uses the word purpose in reference to aiding and abetting. *See Khulumani*, 504 F.3d at 275

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[5] In adopting a purpose standard, Judge Katzmann misinterpreted a single Nuremberg-era case. *See Khulumani*, 504 F.3d at 276 (Katzmann, J., concurring). In that case, the defendant was acquitted because his conduct did not meet the *actus reus* requirement, not because he failed to act with purpose. *See* Pet. App. 49a n.16; *Exxon*, 654 F.3d at 38.

(Katzmann, J., concurring); *Aziz*, 658 F.3d at 398–401. But the Rome Statute conflicts with customary international law and its standard is unsettled.

Some treaties may reflect customary international law, but not all treaties are meant to codify existing rules. As America's lead negotiator for the Rome Statute, former Ambassador David Scheffer, has explained with a co-author, this is true of the Rome Statute and Article 25. David Scheffer & Caroline Kaeb, *The Five Levels of CSR Compliance: The Resiliency of Corporate Liability under the Alien Tort Statute and the Case for a Counterattack Strategy in Compliance Theory*, 29 Berkeley J. of Int'l L. 334, 350 (2011). Indeed, Article 10 declares that the Rome Statute shall not "be interpreted as limiting or prejudicing . . . existing . . . rules of international law for purposes other than this Statute." Rome Statute art. 10. The Second and Fourth Circuits erred by looking to a treaty that disclaimed any effort to codify customary international law.

Moreover, because the Rome Statute standard appears to depart from customary international law, its meaning is ambiguous. Ambassador Scheffer posits that aiding and abetting liability under the Rome Statute requires that an individual intentionally engage in the facilitative conduct but act only with knowledge as to the consequence of the crime occurring. *See, e.g.*, Amicus Curiae Br. of Former U.S. Ambassador-at-Large for War Crimes Issues David J. Scheffer at 13–14, *Doe v. Cisco Systems, Inc.*, No. 15-16909 (9th Cir. June 29, 2023); *see also Prosecutor v. Bemba*, ICC-01/05-01/13, Judgment Pursuant to Art. 74 of the Statute ¶¶ 97–98 (Oct. 19, 2016) (holding that the aider and abettor

must have purpose to facilitate but need only knowledge that the primary offense will occur). As the Panel below reasoned, this standard is too ambiguous to satisfy *Sosa*. Pet. App. 56a.

Even if a higher standard applied, the facts alleged by Respondents meet any international standard. Here, Cisco not only directed its assistance toward the identification, round up, and forced conversion (torture) of religious adherents, it purposefully designed, marketed, customized, built and maintained a program to play a key role in that persecution. Respondents adequately alleged that Cisco knew that religious practitioners would be jailed, tortured, and even killed based on their design of software and hardware to those ends. These allegations meet any possible international law *mens rea* standard, even the discredited "specific direction" standard. *See Prosecutor v. Perišić*, Case No. IT-04-81-A, Judgment ¶ 73 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 28, 2013).

IV. The Panel's TVPA Holding Does Not Warrant Review.

The Panel below found that the TVPA authorizes claims against those who aid and abet torture and extrajudicial killing. This issue is not the subject of a Circuit split and the conclusion is unsurprising, as the text, statutory context, and legislative history of the TVPA unambiguously demonstrate aiding and abetting liability is available.

A. There Is No Circuit Split.

Cisco again glosses over the key certiorari factor because there is no Circuit conflict to resolve. In holding that the TVPA authorizes aiding and abetting

liability, the Panel agreed with the Eleventh Circuit. *See* Pet. App. 74a; *Cabello*, 402 F.3d at 1158; *cf. Exxon Mobil*, 654 F.3d at 58 & n.49 (declining to decide whether the TVPA authorizes aiding and abetting claims, but noting it is clear Congress intended it to). No Court of Appeal has dissented from this holding.

Because there is no Circuit split, this Court would be without the benefit of a well-reasoned court of appeals opinion arguing Petitioners' view of the question presented. While Cisco suggests judges of the Ninth Circuit made that argument when the court denied rehearing, Pet. 30, those judges asserted the TVPA does not authorize aiding and abetting liability in a single sentence without any analysis, *see* Pet. App. 128a. The issue would benefit from further percolation before resolution by this Court.

B. The Decision Below Is Correct.

This Court's review is also not needed because the Panel's conclusion is the certain result of applying straightforward rules of statutory interpretation. The TVPA's text, context, and legislative history unambiguously show that those who aid and abet torture and extrajudicial killing are liable under the statute.

1. The TVPA imposes liability on those who "subject[]" others to torture or extrajudicial killing. 28 U.S.C. § 1350 note. The ordinary meaning of "subject" is "[t]o lay open or expose to the incidence, occurrence, or infliction of, render liable *to*, something." *Oxford English Dictionary* (2d ed. 1989); *see also American Heritage Dictionary of the English Language* (3d ed. 1992) (defining "subjects" as "[t]o expose to something" or "[t]o cause to experience").

Aiding and abetting falls squarely within this meaning. In Petitioners' own formulation, aiding and abetting is akin to "facilit[ating] another's torture or extrajudicial killing." Pet. 31. Of course, one who facilitates takes concrete actions that expose someone to a consequence.

Indeed, this Court has already explained that TVPA liability goes beyond direct perpetrators. As the Court noted, "the TVPA contemplates liability against officers who do not personally execute the torture or extrajudicial killing." *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 458 (2012). And while Petitioners note the Court went on to cite a case finding liability based on the doctrine of command responsibility, Pet. 32 n.7, Petitioners do not even try to explain why that basis for liability is consistent with the statutory language while aiding and abetting is not.

2. The TVPA's context further supports this view. The TVPA was meant "[t]o carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights." Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992). Congress enacted the TVPA shortly after the Senate provided advice and consent on ratifying the Torture Convention. *See* 136 Cong. Rec. 36007, 36192–99 (Oct. 27, 1990). The Torture Convention, in turn, requires states parties to prohibit "*complicity or participation* in torture," CAT art. 4(1) (emphasis added), and requires states to ensure that torture victims have access to legal remedies, *id.* art. 14(1). And aiding and abetting liability for international crimes is a specific, universal, and obligatory norm

dating to Nuremberg. *See supra* at 15–16. Given the TVPA's purpose of implementing these obligations, "subjects" must be read to encompass aiding and abetting.

3. Finally, were there any ambiguity (there is not), the legislative history could not be clearer. Both the House and Senate explained the TVPA would implement the Torture Convention. H.R. Rep. No. 102-367, pt.1, at 3 (1991); S. Rep. No. 102-249, at 3 (1991). And the history states the TVPA authorizes suit against those who "ordered, *abetted, or assisted* in" torture or extrajudicial killing. S. Rep. No. 102-249, at 8 (emphasis added).

4. To reach a contrary conclusion, Petitioners argue that courts must put aside the ordinary tools of statutory construction because *Central Bank* supplies a uniform rule. Pet. 30–31. But Petitioners again misread *Central Bank*. As discussed above, in that case this Court rejected aiding and abetting liability under § 10(b) by looking to the text, context, and legislative history of the relevant law. None of those sources suggested Congress intended liability to extend to aiders and abettors. By contrast, the TVPA's text and "the TVPA's background . . . confirms that liability . . . extends to those who abetted, participated in, or were complicit in torturing others." Pet. App. 80a.

C. The TVPA Is Distinct from the ATS and Consideration of Both Questions Is Unwarranted.

Because the TVPA holding does not meet this Court's certiorari factors, Petitioners argue that the Court should nonetheless take the question because it is "intertwined" with questions presented under the

ATS. Pet. 33. Petitioners also speculate that aiding and abetting liability under the TVPA will circumvent this Court's ATS jurisprudence and harm the American business community. Neither argument is persuasive.

1. The ATS and the TVPA are distinct statutes that are analyzed differently. Whether aiding and abetting is a tort in violation of the law of nations under the ATS is subject to *Sosa*'s two-part test. *See supra* at 12–18. By contrast, whether the TVPA authorizes aiding and abetting liability is an ordinary question of statutory interpretation. The ATS and the TVPA both use different language and have different statutory backgrounds, and thus the *Central Bank* analysis will differ for both. While the ATS questions presented do not merit this Court's review, should the Court grant any, there would be little reason to take the TVPA question as well.

2. Petitioners argue in favor of review by speculating that aiding and abetting liability will "invite an invidious end-run around the Court's" ATS decisions and harm the American business community. As an initial matter, Petitioners' complaint is better suited for Congress than this Court: Congress made the TVPA extraterritorial, *see, e.g.*, *Chowdhury v. Worldtel Bangladesh Holding, Ltd.*, 746 F.3d 42, 51 (2d Cir. 2014), so asserting claims under that statute is in no way an end-run around *Kiobel* or *Nestlé*. And while Petitioners point to no evidence that foreign commerce would be chilled by TVPA liability, that is likewise an argument for Congress. Of course, Petitioners are likely aware that Congress does not support Americans or American businesses facilitating China's human rights abuses.

Finally, Petitioners far overstate the ease of asserting TVPA claims against corporate executives. To survive a motion to dismiss, a plaintiff must plausibly allege that a corporate executive or employee offered assistance to an act of torture or extrajudicial killing that had a substantial effect on the crime *knowing* that the assistance would have such an effect. As the Eleventh Circuit explained, "TVPA claimants may face significant hurdles in bringing suits against individuals employed by or working on behalf of a company rather than the corporate entity itself." *Doe v. Drummond Co.*, 782 F.3d 576, 611 (11th Cir. 2015). In this case, for example, Plaintiffs met the high bar by alleging that Petitioner Chambers had specific knowledge of the intent to use Cisco's designs to persecute Falun Gong from his attendance at meetings with Chinese officials. *See supra* at 4.

V. This Case Furthers American Foreign Policy.

Soliciting the views of the United States is unnecessary, as there is abundant evidence this case is consistent with the federal policy.

1. The political branches have condemned the human rights abuses suffered by Respondents. The Department of State explained in 2000 that it is "sometimes necessary . . . to denounce particularly abhorrent behavior by another nation openly" and thus designated China as a country of particular concern based on its widespread violations of religious liberty. U.S. Dep't of State, Annual Report on International Religious Freedom 2000, *as printed in* S. Rpt. No. 106-61, at xxix (2000). The Department also documented the crackdown on Falun Gong,

explaining how the Party rounded up tens of thousands of believers, *id.* at 171, with credible reports of torture by electric shock, *id.* at 172. In July 2020, then-Secretary of State Michael R. Pompeo called on China "to immediately end its depraved abuse and mistreatment of Falun Gong." Press Release, Sec'y Michael R. Pompeo, 21st Anniversary of the PRC Government's Persecution of Falun Gong (July 20, 2020).[6]

Legislators have likewise condemned the abuses. In 2005, the House of Representatives deplored how thousands of Falun Gong believers "have been subject to excessive force, abuse, detention, and torture." H.R. Res. 608, 109th Cong. (2005). The House of Representatives has also called on China to "immediately cease and desist from its campaign to persecute, intimidate, imprison, and torture Falun Gong practitioners." H.R. Res. 605, 111th Cong. (2010).

The political branches have likewise warned American companies that they cannot facilitate China's human rights abuses. The Trump Administration advised Americans against engaging with entities in the Xinjiang Uyghur Autonomous Region, where mass arbitrary detention, torture, and other human rights abuses run rampant. U.S. Dep't of State et al., *Risks and Considerations for Businesses with Supply Chain Exposure to Entities Engaged in Forced Labor and other Human Rights*

[6] Available at https://2017-2021.state.gov/21st-anniversary-of-the-prc-governments-persecution-of-falun-gong/.

Abuses in Xinjiang 1 (2020).[7] In 2006, Representative Chris Smith even questioned Cisco about how its technology could facilitate abuses against Falun Gong believers in China. *See The Internet in China: A Tool for Freedom or Suppression? Joint Hearing Before Subcommittees of the H. Comm. on Int'l Relations*, 109th Cong. 87–88 (2006).

2. Cisco's reliance on the Executive Branch's position in a different case is misplaced. Pet. 34. *Doe v. Qi* involved claims against high-level Chinese government officials. 349 F. Supp. 2d 1258, 1266–68 (N.D. Cal. 2004). In a letter, the Department of State explained that the federal government had condemned the abuse of Falun Gong believers, but that adjudication of claims against government officials could cause concerns about reciprocal treatment. Letter from William H. Taft, IV to Assistant Att'y Gen. Robert D. McCallum at 7–8 (Sept. 25, 2002).[8] The same concerns are not implicated in suits against U.S. corporations for their domestic conduct. Pet. App. 32a, 61a.

Adjudicating Respondents' claims is consistent with longstanding and bipartisan U.S. policy. And the Panel below invited Cisco to request that the district court solicit the views of the Executive Branch on remand. There is no need for this Court to take that step now.

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[7] Available at https://web.archive.org/web/20210725104523/https:/2017-2021.state.gov/wp-content/uploads/2020/07/Xinjiang-Supply-Chain-Business-Advisory_FINAL_For-508-508.pdf.

[8] Available at 2009-2017.state.gov/documents/organization/57535.pdf.

CONCLUSION

For these reasons, the petition should be denied.

Respectfully submitted,

Terri E. Marsh
Matthew Griechen
HUMAN RIGHTS LAW FOUNDATION
1701 Rhode Island Avenue, NW
Suite 4-717
Washington, DC 20036

Paul L. Hoffman
Counsel of Record
Catherine Sweetser
John C. Washington
Karen Kartun
Summer Wright
SCHONBRUN SEPLOW HARRIS HOFFMAN & ZELDES LLP
200 Pier Avenue,
Suite 226
Hermosa Beach, CA 90254
(310) 717-7373
hoffpaul@aol.com

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