No. 24-856

IN THE

Supreme Court of the United States

CISCO SYSTEMS, INC.; JOHN CHAMBERS; AND FREDY CHEUNG

Petitioners,

v.

DOE I; DOE II; IVY HE; DOE III; DOE IV; DOE V; DOE VI; CHARLES LEE; ROE VII; ROE VIII; LIU GUIFU; DOE IX; WEIYU WANG; AND THOSE INDIVIDUALS SIMILARLY SITUATED,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS

TODD ANTEN
QUINN EMANUEL URQUHART & SULLIVAN, LLP
295 5th Avenue
New York, NY 10016

CHRISTOPHER G. MICHEL
Counsel of Record
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street NW, Suite 900
Washington, DC 20005
(202) 538-8000
christophermichel@quinnemanuel.com

Counsel for Petitioners

May 5, 2025

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes and Regulations

Other Authorities

INTRODUCTION

Respondents' brief in opposition highlights how starkly the divided Ninth Circuit panel departed from this Court's precedents and what a compelling vehicle this petition provides for review of critical Alien Tort Statute (ATS) and Torture Victim Protection Act (TVPA) questions. By their own telling, respondents brought this suit against Cisco and its individual executives for allegedly aiding and abetting "*China's human rights abuses*." BIO 17 (emphasis added); BIO 32 (same). That description should sound loud alarms in the judiciary. As Judges Christen and Bumatay both warned below, this case would require a federal court to determine whether a foreign government—one with which the United States has notoriously fraught relations—violated international law in its treatment of its own citizens on its own soil. Pet.App.87a-90a, 130a-133a. Given that the ATS was adopted as a means of "*avoiding* diplomatic strife," something has gone badly wrong when it is deployed to "generate[]" such strife. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 124 (2013) (emphasis added).

What has gone wrong is reading the ATS to permit aiding-and-abetting claims. That reading inherently enables foreign-policy and separation-of-powers mischief, because plaintiffs can often allege that U.S. companies doing business with foreign governments played *some* role in facilitating those governments' later purported misdeeds. *See, e.g.*, Amici Chamber of Commerce et al. ("Chamber") Br. 6; Amici Chevron et al. ("Chevron") Br. 20-21. As this case shows, that is

true even when U.S. companies sell products for lawful purposes—not for use in human rights abuses.[1]

Respondents' principal answer is that no circuit split exists on the ATS aiding-and-abetting question. BIO 10. But other indicia of legal disagreement and practical significance are overwhelming. Three sitting Justices have opined that the ATS does not permit aiding-and-abetting claims because it does not permit *any* claims beyond the three contemplated by the First Congress. *Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 637-40 (2021) (plurality op.). Another has noted the "strong arguments" against recognizing any "new claims." *Id.* at 657-58 (Alito, J., dissenting). The United States has consistently opposed recognition of ATS aiding-and-abetting liability in light of *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994), and urged this Court to review the issue. Pet. 22-23. Six judges below concluded that aiding-and-abetting claims are not permitted under the ATS, Pet.App.108a-134a, and Judge Christen dissented from allowing respondents' ATS claims to proceed, Pet.App.85a-94a. Multiple amici, including leaders in the U.S. business community, urge the Court to grant review and reverse. And even an amicus Member of Congress *opposing* certiorari

---

[1] Respondents' account of petitioners' conduct (BIO 2-6) bears little resemblance to reality—or their own complaint, which alleges that Cisco sold a "surveillance and internal security network" that "perform[ed] … standard crime control police functions," ER30, and as the district court recognized, "can be used for many crime-control purposes in China without permitting torture or other human rights abuses," Pet.App.152a.

agrees that the case "raises issues of vital importance to the United States." Rep. Smith Br. 1.

The *mens rea* for any cognizable ATS aiding-and-abetting claims—an often-dispositive question that respondents concede is subject to a circuit split, BIO 20—warrants review too. So does the availability of aiding-and-abetting liability under the TVPA. Respondents admit the TVPA and ATS are interrelated. BIO 17. And exposing U.S. business executives to *personal* liability for purported misconduct by foreign governments "will have an enormous chilling effect on U.S. commerce abroad." Chamber Br. 20.

At least, the Court should CVSG. Like the majority below, respondents wrongly draw inferences from the United States' silence even though it was never invited to participate. BIO 17. The Court should not deny review without seeking the government's views.

I. THE ATS AIDING-AND-ABETTING LIABILITY QUESTION WARRANTS REVIEW

The Ninth Circuit's decision allowing respondents' ATS aiding-and-abetting claims to proceed warrants review because it conflicts with "decisions of this Court" and presents an important federal question that this Court should "settle[]." S. Ct. R. 10(c).

A. Allowing respondents' ATS aiding-and-abetting claims conflicts with this Court's decisions in at least three respects. Pet. 14-22.

1. "[C]reating a cause of action is a legislative endeavor," *Egbert v. Boule*, 596 U.S. 482, 491 (2022), but Congress did not create an aiding-and-abetting cause of action in the ATS. At most, the First Congress contemplated three causes of action, none of which is aiding and abetting. Pet. 15. There is "no basis to

suspect" that Congress envisioned others. *Sosa v. Alvarez-Machain,* 542 U.S. 692, 724 (2004).[2]

Respondents dismiss that position as a minority view. BIO 11. But it is the view adopted by three sitting Justices in *Nestlé*, 593 U.S. at 637-40. A *majority* of the Court recognized the "argument" in support of that position in *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 265 (2018). And it reflects this Court's broader skepticism of judicially implied rights of action. *See* Chevron Br. 7-10; Amicus Washington Legal Found. ("WLF") Br. 4-6; Amicus American Free Enterprise Chamber of Commerce ("AmFree") Br. 7-8.

Respondents contend that courts should recognize aiding-and-abetting claims under the ATS because they "further[] the purpose of the" statute. BIO 17. But that argument openly seeks to restore the "*ancien regime*" of judicially implied rights of action, during which courts relied on vague notions of purpose rather than statutory text. *Hernandez v. Mesa*, 589 U.S. 93, 99 (2020) (citation omitted). This Court has rejected that approach based on core separation-of-powers principles, *id.*, and it should not turn back the clock by creating new causes of action under the ATS.

2. Even if courts could create new ATS causes of action, aiding and abetting would not be among them given this Court's direction in *Central Bank*. Pet. 17-19. The Court there "made crystal clear that there can be no civil aiding and abetting liability unless Congress expressly provides for it." *Doe v. Exxon Mobil*

---

[2] This case does not involve the three causes of action recognized in *Sosa*. If *Sosa* could be read to support recognition of aiding-and-abetting liability, the Court should revisit *Sosa* to that extent. Pet. 17; *see* Chevron Br. 5-23.

Corp., 654 F.3d 11, 87 (D.C. Cir. 2011) (Kavanaugh, J., dissenting in part). Because the ATS does not "expressly provide[]" for aiding-and-abetting liability, courts may not imply it. *Id.*; *see* Pet.App.128a-129a (Bumatay, J., dissenting); U.S. *Nestlé* Merits Amicus Br. 8, 24; Chevron Br. 21-22; AmFree Br. 4-5.

Respondents attempt to confine *Central Bank* to securities law, asserting that "the central question" under the ATS is "whether aiding and abetting is a tort in violation of the law of nations." BIO 12. That is the question posed by *Sosa* step one. But *Sosa* step two requires courts to *further* ask whether recognizing a cause of action is authorized by "federal common law." 542 U.S. at 732; *see Jesner*, 584 U.S. at 258; Pet.App.125a. That is where *Central Bank* applies. Pet. 19. And its teaching is not limited to securities law; courts have applied *Central Bank* in varying contexts to hold that "statutory silence on the subject of secondary liability means there is none." *Boim v. Holy Land Found.*, 549 F.3d 685, 689 (7th Cir. 2008) (en banc); *see Owens v. BNP Paribas, S.A.*, 897 F.3d 266, 277-79 (D.C. Cir. 2018) (same). The Ninth Circuit's position, Pet.App.35a, contradicts that direction.

3. The divided decision below further contradicts this Court's direction by permitting claims that ask a court to "hold that a foreign government or its agent has transgressed … limits" on power "over their own citizens"—with no authorization from U.S. policy-making branches to make such a determination. *Sosa*, 542 U.S. at 727. As Judges Christen and Bumatay explained, respondents' claims expressly depend on a finding that *the Chinese government* violated international law through alleged mistreatment of its own people on its own soil. Pet.App.87a-90a, 130a-

132a. That exceptionally provocative finding is far beyond a U.S. court's purview, particularly given the President's and Congress's extensive engagement on the U.S.-China relationship. Pet. 21-22.

Respondents seek to wave away those startling foreign-policy and separation-of-powers concerns by emphasizing that their suit is against "nongovernmental entities, not foreign states." BIO 16. But this Court has never limited the concerns applicable at *Sosa* step two to suits against "foreign states." *Id.* Foreign states are generally immune from ATS suits, *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 437-38 (1989), so *Sosa* step two is unnecessary to bar ATS claims against them. *Sosa* step two instead protects broadly "against [U.S.] courts triggering ... serious foreign policy consequences." *Kiobel,* 569 U.S. at 124. That is why *Jesner* invoked *Sosa* step two to hold that suits against foreign *corporations* create impermissible foreign-policy concerns, even though no foreign *state* was directly implicated by the suit there. 584 U.S. at 272. Here, the Chinese government *is* directly implicated, escalating the foreign-policy and separation-of-powers stakes beyond those that sufficed to bar the claims in *Jesner*. Pet. 21.[3]

B. Whether the ATS permits aiding-and-abetting claims is a sufficiently "important question," *Nestlé*,

---

[3] Respondents concede (BIO 18) that Cisco *complied* with Congress's and the Commerce Department's post-Tiananmen controls, which permitted exports to China of computer-networking hardware and software for crime-control purposes. Pet. 21-22. Respondents disregard the separation-of-powers considerations inherent in that carefully balanced trade policy by inviting a judicially-imposed trade embargo superseding those judgments.

593 U.S. at 657 (Alito, J., dissenting), to warrant certiorari regardless of other factors. Persistent uncertainty on that question "significantly burdens corporations … that have operations or affiliates overseas, particularly in developing countries," Chevron Br. 2, and "threatens to chill foreign investment into those countries," Chamber Br. 6.

Respondents err in asserting based on outdated studies (BIO 18-20) that ATS litigation is no longer very important or burdensome. In fact, as one commentator noted soon after the decision below, "the [ATS] is far from dead."[4] In the past few weeks alone, several courts have issued decisions allowing ATS suits to proceed against U.S. companies.[5] And late last year, a jury awarded $42 million on ATS claims against a U.S. business, *Al Shimari v. CACI*, No. 1:08-cv-827, Doc. 1814 (E.D. Va. Nov. 12, 2024)—a decision hailed as opening a "path for plaintiffs and their lawyers seeking a way to navigate the constraints imposed by" this Court's ATS decisions.[6] The ATS aiding-and-abetting question thus remains ripe and exceptionally important.

---

[4] Susan H. Farbstein, HARV. L. SCH. INT'L HUMAN RTS. CLINIC, *A Good Summer for Human Rights Cases in U.S. Courts: Alien Tort Statute Update* (Sept. 5, 2023), https://bit.ly/4jEL3Ac.

[5] *See, e.g.*, *Barahona v. LaSalle Mgmt. Co.*, 2025 WL 961437, at *16 (M.D. Ga. Mar. 31, 2025); *Padre v. MVM, Inc.*, 2025 WL 674591, at *11 (S.D. Cal. Mar. 3, 2025).

[6] Oona A. Hathaway, JUST SECURITY, *Abu Ghraib Torture Survivors' Landmark Win Gives Hope for Alien Tort Statute Cases* (Nov. 20, 2024), https://bit.ly/42UHqyH.

II. THE ATS *MENS REA* QUESTION WARRANTS REVIEW

Respondents concede a circuit split on the second question but claim it is still unworthy of review. BIO 20. That is mistaken. The admitted conflict on the *mens rea* standard for any cognizable ATS aiding-and-abetting claims provides a straightforward basis for certiorari. Amici Law Professors Estreicher et al. ("Law Prof.") Br. 2-18.

1. Seeking to minimize the conflict, respondents rely (BIO 21) on a footnote surmising that the panel "would *likely*" allow respondents' claims to proceed under a purpose standard. Pet.App.62a n.22 (emphasis added). But that hypothetical aside is just that—a hypothetical aside. It has not prevented district courts within the Ninth Circuit from applying the knowledge standard adopted by the decision below as binding circuit precedent.[7] The need to resolve the circuit conflict accordingly persists.

Regardless, the standard floated in the footnote would not eliminate the circuit split. The panel deemed "purpose" satisfied by a defendant's mere "support[]" of and "benefit[]" from the asserted international-law violation. Pet.App.62a n.22 (citation omitted). But the Second and Fourth Circuits do not consider such allegations of "support" or "benefit" sufficient to meet a purpose standard. Pet. 28; *see Doe v. Nestlé USA, Inc.*, 788 F.3d 946, 948-51 (9th Cir. 2015)

---

[7] *See, e.g.*, *Jan v. People Media Project*, 2024 WL 4818503, at *2 (W.D. Wash. Nov. 18, 2024); *Al-Sadhan v. Twitter Inc.*, 2024 WL 536311, at *9 & n.10 (N.D. Cal. Feb. 9, 2024).

(Bea, J., dissenting from denial of rehearing en banc) (same). Respondents offer no answer.

Applying an *actual* purpose standard, the Second Circuit would not have reached the result below. That court held in *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244 (2d Cir. 2009), that a purpose standard requires "the 'purpose' to advance the [foreign] Government's human rights abuses," *id.* at 260, not mere "knowledge of those abuses coupled only with … commercial activities," *id.* at 264. And in a case with allegations resembling those here, the Second Circuit deemed inadequate ATS allegations that, "by developing hardware and software to collect innocuous population data, IBM's purpose was to denationalize black South Africans and further the aims of a brutal regime." *Balintulo v. Ford Motor Co.*, 796 F.3d 160, 169-70 (2d Cir. 2015).

Licci v. Lebanese Canadian Bank, SAL, 834 F.3d 201 (2d Cir. 2016), is not to the contrary. *Contra* BIO 22-23. The *Licci* complaint alleged that a Lebanese bank, "pursuant to its official policy" of supporting Hezbollah, carried out wire transfers on Hezbollah's behalf "with the specific purpose and intention of enabling and assisting Hezbollah to carry out terrorist attacks." 834 F.3d at 206, 218-19 (cleaned up). No such allegations of "official policy" are present here.

2. Respondents argue the merits of their *mens rea* theory (BIO 25-28), but err there too. *Sosa* requires international consensus on the availability of a cause of action *and* "the *scienter* or *mens rea*" applicable to aiding and abetting. Law Prof. Br. 10. Respondents improperly flout that requirement in disregarding the Rome Statute of the International Criminal Court, which undisputedly requires that an aider-and-

abettor must act "[f]or *the purpose of facilitating the commission* of … a crime." Art. 25(3)(c) (emphasis added). As the Second and Fourth Circuits recognize (Pet. 26), a purported consensus that excludes one of the world's most prominent international-law authorities—signed by more than 100 countries—is no consensus at all. Moreover, the Rome Statute relied on the U.S. Model Penal Code, which itself applies a purpose standard. Law Prof. Br. 14-16.

III. THE TVPA AIDING-AND-ABETTING QUESTION WARRANTS REVIEW

The Court should also decide whether the TVPA permits aiding-and-abetting liability alongside the same question about the ATS. Pet. 29-33; Chamber Br. 20-21; WLF Br. 11. Respondents stress the absence of a circuit split (BIO 28-29), but the TVPA aiding-and-abetting question—like the parallel ATS question—is certworthy because the decision below conflicts with *Central Bank*, the United States' consistent position, and the decisions of multiple respected jurists. Pet. 30-33.

Respondents rely (BIO 30) on one sentence in *Mohamad v. Palestinian Authority*, 566 U.S. 449, 458 (2012), recognizing the possibility of TVPA liability against an "officer" on a theory of military command responsibility. But liability on that theory requires "control" of the tortfeasor, not mere assistance. *Reynolds v. Higginbottom*, 2022 WL 864537, at *12-13 (N.D. Ill. Mar. 23, 2022) (rejecting aiding-and-abetting liability under text of TVPA, contrasting with officer commands). *Mohamad*'s allusion to command responsibility thus does not help respondents' TVPA aiding-and-abetting claims. And *Mohamad*'s focus on the TVPA's text cuts strongly against them. Pet. 32.

The TVPA aiding-and-abetting question is exceptionally important. Respondents also all but admit (BIO 32-33) that allowing aiding-and-abetting claims under the TVPA would enable circumvention of this Court's ATS holdings. For example, ATS aiding-and-abetting claims of the kind brought in prior ATS cases could instead be filed against individual business executives under the TVPA. Pet. 33; Chamber Br. 21. Respondents assert that the knowledge standard will prevent meritless TVPA claims of that kind, but they then double down on their meritless claims against former Cisco CEO John Chambers. BIO 33. At minimum, "exposing all senior executives of U.S. corporations that conduct business abroad to potential accessorial liability for actions taken by foreign actors will" deter U.S. commerce abroad. Chamber Br. 20-21. The exceptional importance of this issue to the Nation's trade policy and the U.S. business community weighs strongly in favor of review.

IV. THE PETITION IS AN IDEAL VEHICLE TO GRANT CERTIORARI OR AT LEAST CALL FOR THE VIEWS OF THE UNITED STATES

The questions presented were all cleanly decided below, and this case is an ideal vehicle to resolve them. Respondents briefly contend (BIO 8-9) that this Court should deny review because the case is an "interlocutory posture" following the Ninth Circuit's reversal of the district court's dismissal of the suit. But the questions presented are purely legal, and this Court often reviews interlocutory orders to resolve such issues. *See, e.g.*, *Coinbase, Inc. v. Suski*, 602 U.S. 143, 147 (2024); *Health & Hosp. Corp. v. Talevski*, 599 U.S. 166, 174 (2023). Indeed, this Court did so in its most recent ATS case. *Nestlé*, 593 U.S. at 632. The

same course is warranted here, especially because the case is already more than 14 years old.

The United States has repeatedly urged the Court to review the ATS aiding-and-abetting liability question and has argued against aiding-and-abetting liability under the TVPA as well. Pet. 33-34. The government has never wavered from those positions, and the Court could rely on them as further grounds to grant review. If the Court has uncertainty about the "case-specific" position of the Executive Branch, *Sosa*, 542 U.S. at 733 n.21, it should call for the views of the Solicitor General—as it did in *Nestlé*, 140 S. Ct. 912 (2020). Seeking the United States' position is particularly warranted because respondents—like the divided Ninth Circuit panel—draw unjustified inferences (BIO 17) from the absence of an uninvited government brief. If the Court questions whether "this case is consistent with … federal policy," BIO 33, it should not defer to respondents' self-serving assertions or the views of a lone Congressman, *see* Smith Br. 1. It should ask the United States.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

TODD ANTEN
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
295 5th Avenue
New York, NY 10016

CHRISTOPHER G. MICHEL
Counsel of Record
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
1300 I Street NW, Suite 900
Washington, DC 20005
(202) 538-8000
christophermichel@
quinnemanuel.com

Counsel for Petitioners

May 5, 2025