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

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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The government's *amicus curiae* brief confirms that certiorari should be denied. The government admits there is no Circuit split on the first question presented, Br. for the U.S. as Amicus Curiae at 13 ("U.S. Brief"), and agrees that this Court's recent Alien Tort Statute ("ATS") decisions supply the relevant analysis, *id.* at 15. It is undisputed that the panel below was the first Court of Appeals to reconsider its precedent following those recent decisions. Given the small number of extant ATS cases, it is not clear that other Circuits will confront the question in the near term. Moreover, the United States failed to identify any risk that this case or others pending pose to American foreign policy. Quite the opposite: the Solicitor General emphasized that the government has long condemned China's persecution of Falun Gong believers and taken steps to prevent those abuses. *Id.* at 9. The first question presented does not merit the Court's review at this time.

The government likewise agrees the Court should not take up the second question presented on the *mens rea* applicable to ATS aiding and abetting claims. *Id.* at 22. That question is not dispositive in this case, as Respondents can meet any applicable standard, even the federal common law standard the government suggested applies. *Id.*

Nor does the Solicitor General offer any persuasive reason why this Court should review the third question on aiding and abetting under the Torture Victim Protection Act (TVPA). Like Petitioners, the government ignores the lack of a Circuit split on this issue. Nor does the *amicus* brief

try to argue the question is of national importance. Moreover, the government's argument on the merits, *id.* at 20–21, confirms that the analytic framework under the TVPA differs from the ATS, demonstrating why the questions should not be considered together.

The Petition should be denied.

ARGUMENT

I. There Is No Reason to Review the ATS Aiding and Abetting Question.

While the government urges this Court to review the first question presented, its argument confirms that there is no reason to do so. The Solicitor General agrees that this Court's recent ATS cases inform the analysis and does not contest that the issue has yet to be considered anew by any Circuit other than the court below. Moreover, the government confirmed that this case furthers American foreign policy and declined to point to any significant number of pending cases that could interfere with the Executive's conduct of foreign affairs. On the merits, the Solicitor General fails to engage with the substantial historical evidence showing that the Founding generation understood the ATS would permit aiding and abetting claims near the time of its enactment. Br. in Opp'n at 13–14 ("Opp'n").

1. The panel below reconsidered Ninth Circuit precedent on ATS aiding and abetting claims following *Jesner v. Arab Bank, PLC*, 584 U.S. 241 (2018) and *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021). Pet. App. 22a–24a. The government agrees those cases govern the analysis, U.S. Br. at 15–19, and acknowledges the three Circuits that already answered the question did so before those decisions,

id. at 13. There is no reason to consider this issue before other Circuits have had a chance to address it in light of *Jesner* and *Nestlé*.

2. Few ATS cases remain and this and the remaining pending cases do not interfere with foreign policy.

This Court's ATS decisions since 2013 have substantially reduced the universe of pending ATS cases, making the question of limited importance. Opp'n at 19. Because so few cases remain, the government points to actions mostly filed two decades ago that were ultimately dismissed and likely would not have made it past a motion to dismiss under this Court's recent precedents. *See* U.S. Br. at 12; *see also, e.g.*, *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 247, 261 (2d Cir. 2009) (foreign corporate defendants and claims premised on conduct abroad); *Balintulo v. Ford Motor Co.*, 796 F.3d 160, 168–70 (2d Cir. 2015) (finding bulk of ATS claims against remaining American defendants impermissibly extraterritorial).

The handful of recent cases the government cites were all dismissed, demonstrating that only the rare case passes the "vigilant doorkeeping" required by this Court's precedents, *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729 (2004), and that many other doctrines support dismissal of ATS claims on a motion to dismiss. *See, e.g.*, *Ali v. Al-Nahyan*, Case No. 23-cv-576, 2025 WL 3250945, at *15, *30 (D.D.C. Oct. 31, 2025) (dismissing claims for lack of standing and under the political question doctrine); *Alhathloul v. DarkMatter Grp.*, 795 F. Supp. 3d 1253, 1293–94 (D. Or. 2025) (dismissing claims under *Sosa* step two); *Xiong v. Laos People's Democratic Republic*, Case No.

23-cv-02531, 2025 WL 1207536, at *5–6 (E.D. Cal. Apr. 25, 2025) (dismissing claims because allegations were so insubstantial as to not raise an inference of liability), report and recommendation adopted, 2025 WL 2521177 (E. D. Cal. Sept. 2, 2025), appeal pending, No. 25-5914 (9th Cir.).

Petitioners and the government have failed to identify any articulable harm to, or interference with, American foreign policy risked by this or any other pending case. Indeed, the *amicus* brief confirmed Respondents' assertion that this litigation in fact furthers American foreign policy. Opp'n at 33–35. According to the government, "the United States has long condemned China's treatment of Falun Gong practitioners" and taken actions to combat those abuses. U.S. Br. at 9; *see also* Br. of Congressman Chris Smith as *Amicus Curiae* in Supp. of Resp'ts (detailing congressional actions condemning the abuses Respondents suffered and making clear that Americans cannot be complicit in the CCP's crimes). Notably, the Solicitor General declined Cisco's invitation to assert that Congress and the Executive approved the sale of the technology at issue here. Pet. at 21–22. That silence speaks volumes.

3. At the time the ATS was enacted, it would have been understood to permit aiding and abetting claims. The government agrees that authorizing aiding and abetting liability is a congressional choice, U.S. Br. at 16, but fails to consider evidence of the meaning of the ATS during the relevant period.

Near its adoption, the ATS was interpreted to include aiding and abetting claims. Tort was understood broadly, meaning "any wrong or injury." Tort, 2 Noah Webster, *Dictionary of the English*

Language (1828); *see also* 2 John Ash, *The New and Complete Dictionary of the English Language* (2d ed. 1795) (defining tortfeasor as "[o]ne who does wrong"). In 1795, it was clear to Attorney General William Bradford that Americans who "aided[] and abetted" an attack on British subjects could be liable under the ATS. *Breach of Neutrality*, 1 U.S. Op. Att'y Gen. 57, 59 (1795); *see also* Opp'n at 14 (citing additional historical sources). The government errs in suggesting that aiding and abetting is not tortious conduct and that Congress would not have supported an ATS remedy for it. U.S. Br. at 16.

II. The Government Confirms the *Mens Rea* Question Does Not Warrant Review.

The Solicitor General argues that this Court should not consider the *mens rea* applicable to aiding and abetting claims. U.S. Br. at 22. Respondents agree, as the panel below was correct and this case is a poor vehicle because Respondents can meet either standard. Opp'n at 20–28. Respondents note, however, that the same would be true even if the government is correct and federal common law supplies the *mens rea* standard. *See* U.S. Br. at 22.

The government declined to opine on the *mens rea* under international law, although it has previously endorsed the knowledge standard. *See, e.g.*, Government Supplemental Filing at 2, *United States v. Mohammad*, AE 120B (Oct. 18, 2023). While somewhat ambiguous, the *amicus* brief seems to suggest that the *mens rea* should be determined by domestic common law. U.S. Br. at 22. Respondents easily meet that standard.

Respondents' allegations demonstrate Cisco's conscious and culpable participation in the CCP's

persecution of them and other Falun Gong believers. To be liable for aiding and abetting, a defendant must have "consciously and culpably 'participate[d]' in a wrongful act." *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 493 (2023) (alteration in original) (quoting *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949)). The *mens rea* and *actus reus* exist on a spectrum, where a defendant who offers "direct, active, and substantial" aid might be liable "with a lesser showing of scienter." *Id.* at 502.

Here, Respondents allege that Cisco was an active partner with the CCP in furthering the torture and arbitrary detention of Falun Gong believers. Respondents allege the assistance was active, substantial, and direct — because the CCP lacked the expertise to design the anti-Falun Gong components of the Golden Shield, Cisco custom-designed cutting-edge tools that enabled identification of Falun Gong believers at scale and supplied critical information to those perpetrating forced-conversion through torture. Opp'n at 3–6. There is also more than enough to infer Cisco's participation was conscious and culpable, as it knew of the CCP's plans for torture, actively marketed its ability to further a persecutory campaign utilizing torture, stood to benefit from the continuation of the persecutory campaign, and used derogatory language towards Falun Gong believers. Opp'n at 21–22.

III. The Court Should Not Review the TVPA Question.

Like Petitioners, the United States ignores that there is no conflict in the Circuits concerning aiding and abetting under the TVPA. There is simply no pressing need to reach this issue. The government does not even attempt to argue that the question is of

national importance or that the Ninth Circuit misconstrued this Court's precedents. The *amicus* brief's cursory and flawed argument on the merits only underscores why the ATS and TVPA questions are subject to different analyses and thus ought not be considered together.

1. At the time of this Court's initial conference on the petition, only two Circuits had addressed whether the TVPA's reference to "subject[ing]" others to torture encompasses aiders and abettors. *See* Pet. App. 79a; *Cabello v. Fernández-Larios*, 402 F.3d 1148, 1157–58 (11th Cir. 2005). Since then, the First Circuit also found that the text and purpose of the TVPA establish aiding and abetting claims are available. *Boniface v. Viliena*, 145 F.4th 98, 118 (1st Cir. 2025).

2. The *amicus* brief likewise does not address the importance of the question and does not even try to suggest the panel's decision conflicts with this Court's precedents. This is alone reason to decline review. Sup. Ct. R. 10.

Even though the question does not meet this Court's standard for certiorari, the government nonetheless argues that the ATS and TVPA questions are intertwined, so should be reviewed together. But the government's argument on the merits shows otherwise. The United States agrees that under *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994), Congress takes a statute-by-statute approach to authorizing aiding and abetting civil claims and thus deciding the question requires a particularized analysis of the relevant statute. U.S. Br. at 20. The government also argues that under the ATS, courts must use *Sosa*'s two-part analysis to assess whether aiding and abetting is

available. *Id.* at 14. By contrast, the same question under the TVPA will look to the TVPA's text and context. U.S. Br. at 20–21. The analysis will greatly differ for each question.

3. Contrary to the government's cursory analysis, the text, context, and legislative history of the TVPA show Congress authorized aiding and abetting claims. As an initial matter, it is notable that the Solicitor General failed to define the verb "subjects." That is likely because it is difficult to argue that aiding and abetting does not "lay open or expose [another] to the incidence, occurrence, or infliction of" an effect. *Oxford English Dictionary* (2d ed. 1989).

The solicitor general's limited textual analysis collapses under scrutiny. The government argues that the TVPA's definition of torture tells us that to be liable, the defendant must have custody or control over the person tortured. U.S. Br. at 21.

This position is flawed for at least two reasons. First, the TVPA defines substantive norms in one subsection, *see* Pub. L. No. 102-256 § 3(b)(1), 106 Stat. 73 (1992), and then identifies who can be liable in another, *id.* § 2(a)(1). And the decision to refer to "the offender" in the definition of torture and "an individual" in the liability subsection suggests Congress understood the person liable may not be the offender. "[W]hen a document uses a term in one place and a materially different term in another, ""the presumption is that the different term denotes a different idea."" *Stanley v. City of Stanford*, 606 U.S. 46, 53 (2025) (quoting *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022)).

Second, the government's interpretation conflicts with its own professed understanding of the scope of

liability. The government concedes that individuals may be liable under the doctrine of command responsibility. U.S. Br. at 21. To establish command responsibility, one must show (1) the existence of a superior-subordinate relationship between the commander and torturer; (2) that the commander "knew, or should have known," the subordinate had committed or was going to commit torture; and (3) that the commander failed to take "reasonable and necessary measures to prevent" the torture. *Chavez v. Carranza*, 559 F.3d 486, 499 (6th Cir. 2009). A superior who is far up the chain of command and geographically distant lacks custody or control over the torture victim. By contrast, superiors subject, or expose, others to torture when they know their subordinates are torturing others and fail to take effective steps to stop them.

Because neither Petitioners nor the Solicitor General offer any insight into the meaning of the word "subjects," none can convincingly explain why command responsibility fits within the statutory language while aiding and abetting does not. Courts have held command responsibility does not require proximate causation, *see, e.g.*, *Chavez*, 559 F.3d at 499, and extends to superiors distant from the torturer, *see id.* at 490–91 (defendant was Vice-Minister of Defense responsible for multiple security agencies). It is odd to suggest those superiors "subject" others to torture while someone at the scene who supplies the interrogator torture instruments does not.

Similarly, the government fails to explain why a corporate executive supplying poison gas to the soldiers actively using it to commit mass murder could

not be found liable under the TVPA. An interpretation of the TVPA that lends to such an absurd result should not be endorsed by this Court, especially in light of Congress's aim of implementing America's international legal obligations concerning the protection of human rights. 106 Stat. at 73.

In any event, it is essentially undisputed that the TVPA question has only been addressed by a few Courts of Appeal, that there is no Circuit split to resolve, and that no other factors make the question important enough to merit the Court's review at this time.

CONCLUSION

For these reasons, the petition should be denied.

Respectfully submitted,

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