No. 24-856

In the
Supreme Court of the United States

CISCO SYSTEMS, INC., ET AL.,
Petitioners,

v.

DOE I, ET AL.,
Respondents.

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

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, BUSINESS ROUNDTABLE, THE NATIONAL ASSOCIATION OF MANUFACTURERS, AND TECHNET AS *AMICI CURIAE* IN SUPPORT OF THE PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amicus curiae the Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

Amicus curiae Business Roundtable represents the chief executive officers of America's leading companies. The CEO members lead U.S.-based companies that support one in four American jobs and almost a quarter of U.S. gross domestic product. Business Roundtable was founded on the belief that businesses should play an active and effective role in the formulation of public policy, and Business Roundtable members develop and advocate for policies to promote a thriving U.S. economy and expanded opportunity for all. Business Roundtable participates in litigation as *amicus curiae* when important business interests are at stake.

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[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amici*, their members, or their counsel made any monetary contributions intended to fund the preparation or submission of this brief.

Amicus curiae the National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly thirteen million people, contributes $2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

Amicus curiae TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes American innovation. TechNet's diverse membership includes over one hundred dynamic American businesses ranging from startups to the most iconic companies in the world and represents five million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance.

Amici have a substantial interest in the issues presented in this case. Their members transact business across the world, and many have been and continue to be named as defendants in suits predicated

on expansive theories of liability under the Alien Tort Statute ("ATS"), 28 U.S.C. §1350, based on their foreign operations. In the past four decades, plaintiffs have filed over 200 ATS lawsuits against U.S. and foreign corporations doing business across industry sectors, including agriculture, financial services, manufacturing, and communications. Christopher Ewell, Oona A. Hathaway & Ellen Nohle, *Has the Alien Tort Statute Made a Difference? A Historical, Empirical, and Normative Assessment*, 107 CORNELL L. REV. 1205, 1210-11, 1239-41 (2022); *see* Jonathan C. Drimmer & Sarah R. Lamoree, *Think Globally, Sue Locally: Trends & Out-of-Court Tactics in Transnational Tort Actions*, 29 BERKELEY J. INT'L L. 456, 460-62, 461 n.33 (2011). These suits frequently result in costly and protracted litigation (spanning nearly fifteen years in Petitioners' case), imposing substantial legal and reputational costs on U.S. companies that do business abroad.

Amici have routinely participated in cases involving the scope of the ATS before this Court and other federal courts. *See, e.g.*, Brief for the Chamber of Commerce of the United States of America et al. in Support of Petitioners, *Nestle USA, Inc. v. Doe*, 593 U.S. 628 (2021) (No. 19-416), 2020 WL 5501204 (Chamber and NAM); Brief for the Chamber of Commerce of the United States of America et al. as Amici Curiae in Support of Neither Party, *Jesner v. Arab Bank, PLC*, 584 U.S. 241 (2018) (No. 16-499), 2017 WL 2806350; Brief for the National Foreign Trade Council et al. in Support of Petitioner, *Sosa v.*

Alvarez-Machain, 542 U.S. 692 (2004) (No. 03-339), 2004 WL 162760 (Chamber and Business Roundtable).

Amici are well positioned to offer a helpful perspective on the issues presented in this case, including specifically with respect to the harms American businesses face as a result of expansive liability under the ATS—liability that, in this case, conflicts with the purpose of the statute and this Court's precedents limiting the scope of liability under the ATS—and the Torture Victim Protection Act ("TVPA"), 28 U.S.C. § 1350 note.

SUMMARY OF ARGUMENT

Despite being enacted by the First Congress as a means of "avoid[ing] diplomatic friction," *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 245 (2018), the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, has evolved in recent decades into a tool deployed by foreign plaintiffs to impose massive liability against U.S. businesses with multinational operations for asserted human-rights violations committed overseas by third parties. This case presents precisely that scenario.

The First Congress authorized courts to recognize under the ATS three primary offenses that are a violation of the law of nations: "violation of safe conducts, infringement of the rights of ambassadors, and piracy." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 724 (2004). Notwithstanding this Court's clear warning in *Sosa* that courts must exercise "great caution" before recognizing any new causes of action under the ATS beyond the "very limited" categories envisioned

by the First Congress, *id.* at 712, 728, the Ninth Circuit has repeatedly—and significantly—expanded the scope of the ATS to include aiding-and-abetting liability. The decision below, which represents the Ninth Circuit's most recent effort to expand ATS liability, contravenes this Court's precedents while ignoring the far-reaching and damaging consequences of such a considerable expansion of ATS liability.

Amici agree with Petitioners that this Court should vacate the Ninth Circuit's decision and correct its errors, including as to the closely related issue of aiding-and-abetting liability under the Torture Victim Protection Act ("TVPA"), 28 U.S.C. § 1350 note, which could be used as an end run around limits on ATS liability by subjecting senior executives to the same claims that would (and should) be barred against the company under the ATS. Instead of repeating Petitioners' persuasive arguments, *Amici* submit this brief to discuss the harms that U.S. businesses will suffer if aiding-and-abetting claims against businesses and senior executives are cognizable under the ATS and the TVPA.

In *Sosa*, 542 U.S. at 732-33, and *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 115-17 (2013), this Court instructed courts to consider the practical, real-world consequences of ATS liability when crafting federal common-law rules to delineate the scope of the ATS. This case demonstrates how concerning those real-world consequences can be: If allowed to stand, the decision below would harm American businesses with foreign operations in several consequential ways.

First, recognizing a cause of action under the ATS for aiding-and-abetting liability expands the ATS far beyond the party in violation of international law itself. That expansive view of the ATS exposes U.S. companies to litigation and liability based solely on having conducted business in foreign countries—especially developing countries—at a time when their *governments* may have historically engaged in human-rights violations. The risk of these suits, which are expensive to defend and involve demands for large damages awards, threatens to chill foreign investment into those countries.

Second, the Ninth Circuit's decision puts U.S. businesses at a competitive disadvantage, exposing them to expanded ATS liability while foreign competitors are protected by this Court's ruling in *Jesner*. This disadvantage is especially acute in developing digital and internet-based industries where competitors may be located anywhere in the world. Indeed, the risk of potential ATS claims threatens to chill U.S.-based companies from even attempting to compete internationally.

Third, the Ninth Circuit's expansive vision of accessorial ATS liability threatens to place U.S. businesses squarely in the crosshairs of even *more* ATS litigation by allowing plaintiffs to sue domestic companies regardless of how attenuated their connection may be to alleged human-rights violations committed by foreign actors. The history of ATS suits demonstrates that such litigation is extraordinarily burdensome. Such cases are not only extremely costly, but they are also stigmatizing and time-consuming—with lawsuits frequently spanning over

a decade, as this case has. Even completely meritless claims impose substantial and unjustified reputational and economic harm on corporate defendants. These cases, which often involve allegations that U.S. corporations have engaged in or facilitated serious human-rights or other international violations, present a clear "danger of vexatiousness different in degree and in kind from that which accompanies litigation in general." *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 739 (1975).

In short, affirming the decision below would have harmful consequences for American businesses, as described throughout this brief. These significant harms alone justify vacating the Ninth Circuit's decision.

ARGUMENT

I. The Ninth Circuit's Decision Inflicts Significant Harm on U.S. Businesses.

Despite this Court's warning in *Sosa* that ATS claims must be "subject to vigilant doorkeeping," 542 U.S. at 729—and the Court's subsequent rulings in *Kiobel*, *Jesner*, and *Nestle* narrowing the scope of the ATS—U.S. businesses continue to find themselves in the crosshairs of ATS plaintiffs.

The Ninth Circuit's recognition of a cause of action for aiding and abetting under the ATS is inconsistent with this Court's precedents circumscribing ATS liability. It significantly expands the statute's reach, while exacerbating this regrettable trend and harming American businesses in the process. The decision below threatens to substantially harm American busi-

nesses by (i) discouraging U.S. corporations from investing in developing countries with controversial human-rights records out of fear of subjecting themselves to ATS claims; (ii) placing American businesses at a disadvantage as compared to their foreign competitors, who are shielded from ATS liability, particularly with respect to investment in developing economies; and (iii) threatening to amplify the financial and reputational harm imposed on U.S. businesses by encouraging more potential plaintiffs to direct ATS claims at U.S. corporations.

A. The Ninth Circuit's Decision Threatens to Chill Foreign Investment by U.S. Corporations in Developing Countries.

By expanding the ATS to encompass aiding-and-abetting claims, the Ninth Circuit's decision deters U.S. businesses from investing overseas. That is because the decision exposes U.S. companies to greater risk of being targeted by potential ATS plaintiffs, which in turn poses a significant threat to foreign investment by U.S. companies, particularly in developing countries.

Over the last four decades, various plaintiffs have filed over 200 ATS lawsuits against U.S. and foreign corporations for business activities in a wide range of industries in more than sixty countries. Oona A. Hathaway, *Replication Data for "Does the Alien Tort Statute Make a Difference?,"* HARV. DATAVERSE (2022), https://doi.org/10.7910/DVN/DUPKPA; Christopher Ewell, Oona A. Hathaway & Ellen Nohle, *Has the Alien Tort Statute Made a Difference? A Historical, Empirical, and Normative Assessment*,

107 CORNELL L. REV. 1205, 1210-11, 1239-41 (2022); John B. Bellinger, III & R. Reeves Anderson, *Whither to "Touch and Concern": The Battle to Construe the Supreme Court's Holding in Kiobel v. Royal Dutch Petroleum*, FEDERAL CASES FROM FOREIGN PLACES 22 (U.S. Chamber Inst. for Legal Reform, Oct. 2014); Donald E. Childress III, *The Alien Tort Statute, Federalism, and the Next Wave of Transnational Litigation*, 100 GEO. L.J. 709, 713 (2012). Despite that large volume of cases, a 2024 verdict in *Al Shimiri v. Caci* represented the first-ever ATS jury verdict against an American business. No. 1:08-cv-827, Doc. 1814 (E.D. Va. Nov. 12, 2024).

Corporate defendants in ATS cases, moreover, are rarely alleged to be the direct (or even indirect) wrongdoers. Instead, plaintiffs have made a practice of targeting corporations for violations of international law committed by other parties; frequently, as here, the conduct at issue is alleged to have been perpetrated by foreign governments who are protected by sovereign immunity, or by local nongovernmental actors that are difficult to subject to suit. In light of those barriers, ATS plaintiffs have sought to find corporate defendants with deep pockets that are subject to the jurisdiction of U.S. courts—a result this Court predicted in *Jesner*. 584 U.S. at 268-69 (noting that if ATS claims are permitted against foreign corporations, "plaintiffs may well ignore the human perpetrators and concentrate instead on multinational corporate entities").

As a result, the U.S. corporations targeted in these suits are often blamed for conduct committed by the foreign governments of the countries in which they

operate. *See, e.g.*, *Bowoto v. Chevron Corp.*, 621 F.3d 1116, 1120 (9th Cir. 2010) (involving allegations that American parent corporation of foreign subsidiary aided and abetted human-rights violations committed by Nigerian military during operation designed to protect oil facilities against attack); *Turedi v. Coca-Cola Co.*, 460 F. Supp. 2d 507, 509-10 (S.D.N.Y. 2006), (dismissing ATS claims based on allegations that U.S. company aided and abetted violations by local police clearing a sit-in by drivers of company hired by local bottler to deliver product), *aff'd*, 343 F. App'x 623 (2d Cir. 2009).

Other ATS claims have sought to hold U.S. corporations responsible for the actions of third parties involved in those corporations' foreign business, such as local suppliers. *See, e.g.*, *Nestle USA, Inc. v. Doe*, 593 U.S. 628, 628 (2021) (seeking to hold food manufacturers liable for aiding and abetting child slavery in Côte d'Ivoire by purchasing from cocoa producers that allegedly utilized child slave labor); *Doe v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 679 (9th Cir. 2009) (seeking to hold retailer liable for working conditions at suppliers' garment factories in China, Bangladesh, Indonesia, Swaziland, and Nicaragua).

As these cases illustrate, ATS claims frequently involve U.S. corporations' business dealings in countries with questionable human-rights records or weak legal protections, which are often the developing countries most in need of foreign direct investment. If faced with the increased risk of being targeted in ATS lawsuits—which impose enormous costs and reputational risks to U.S. corporations—many companies may sensibly determine they are better off avoiding

jurisdictions that increase this potentially massive litigation risk and exposure. U.S. businesses are harmed when foreign investment is chilled: Direct foreign investment by U.S. businesses opens access to foreign markets, enables sales to customers that U.S. manufacturers and other businesses could not otherwise reach, and generates revenues that can be reinvested domestically. *See* National Association of Manufacturers, Comment Letter on Promoting Supply Chain Resilience 3-4 (Apr. 22, 2024), https://perma.cc/527Z-YR3X (NAM comments submitted to Office of the U.S. Trade Representative on promoting supply chain resilience).

Imposing expansive ATS liability on U.S. companies not only adversely affects U.S. businesses with overseas operations and investments but also deprives those countries' people of the much-needed economic benefits of such foreign investment. *See, e.g.*, *Khulumani v. Barclay Nat'l Bank Ltd.*, 504 F.3d 254, 297 (2d Cir. 2007) (Korman, J., concurring in part and dissenting in part) (noting the "chilling effect that actions of this kind may have on future foreign investment in developing countries"), *aff'd sub nom.*, *Am. Isuzu Motors, Inc. v. Ntsebeza*, 553 U.S. 1028 (2008); GARY CLYDE HUFBAUER & NICHOLAS K. MITROKOSTAS, AWAKENING MONSTER: THE ALIEN TORT STATUTE OF 1789, at 40 (2003) ("Conservatively, we calculate that $55 billion of US [foreign direct investment] could be deterred by ATS suits.").

The Executive Branch—which has also consistently taken the position that aiding-and-abetting liability is not cognizable under the ATS in light of this Court's decision in *Central Bank of Denver, N.A. v.*

First Interstate Bank of Denver, N.A., 511 U.S. 164 (1994)—has echoed the same concerns here and in other cases. U.S. Cert. Br. 10; Cisco Br. 34; *see also* Brief for the United States as *Amicus Curiae* in Support of Petitioners, *American Isuzu Motors, Inc. v. Ntsebeza*, 553 U.S. 1028 (2008) (No. 07-919), 2008 WL 408389, at 8-11. As noted in its submission to this Court in *American Isuzu*, the State Department rightly observed that the threat of ATS claims against corporations operating abroad creates "uncertainty for those operating in countries where abuses might occur," and thus has "a deterrent effect on the free flow of trade and investment." 2008 WL 408389, at 20. Moreover, by "hinder[ing] global investment in developing economies, where it is most needed," extraterritorial ATS litigation against corporations "inhibit[s] efforts by the international community to encourage positive changes in developing countries." *Id.* Indeed, private foreign investment is often the only means by which certain developing countries can achieve economic growth. *See Swimming Against the Tide: How Developing Countries are Coping with the Global Crisis* 6-7 (World Bank, Working Paper No. 47780, 2009).

Several Justices explicitly acknowledged this risk in *Jesner*, stating that, among other consequences, extending ATS liability to foreign multinational companies "could establish a precedent that discourages American corporations from investing abroad, including in developing economies where the host government might have a history of alleged human-rights violations, or where judicial systems might lack the safeguards of United States courts." 584 U.S. at 269-

70 (plurality op.). This would, as a plurality of the Court went on to observe, "deter the active corporate investment that contributes to the economic development that so often is an essential foundation for human rights." *Id.* at 270. Although *Jesner* specifically addressed whether ATS liability should apply to foreign corporations, the same logic (and outcome) applies here to the expansion of ATS liability to cover aiding-and-abetting claims.

These concerns are exactly what happened in the case of Talisman Energy, a Canadian oil company that was sued for allegedly conspiring with, or for aiding and abetting, the Sudanese government to commit human-rights abuses. *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 453 F. Supp. 2d 633, 639 (S.D.N.Y. 2006), *aff'd*, 582 F.3d 244 (2d Cir. 2009). Talisman strongly denied the allegations, stating that it "operated in both an ethical and transparent fashion with a genuine desire to improve the lives of the Sudanese people." TALISMAN ENERGY, INC., 2006 CORPORATE RESPONSIBILITY REPORT 2 (2006). Although Talisman was ultimately vindicated after years of litigation, *Talisman Energy, Inc.*, 453 F. Supp. 2d at 639, the damage was done. As a result of negative publicity arising from the claim, Talisman divested its interest in Sudan shortly after the litigation was filed. *See* Stephen J. Kobrin, *Oil and Politics: Talisman Energy and Sudan*, 36 N.Y.U. J. INT'L L. & POL. 425, 426, 430 (2004).

B. The Ninth Circuit's Decision Disadvantages U.S. Corporations Relative to Their Foreign Competitors.

If allowed to stand, the decision below will place U.S. corporations at a disadvantage relative to their foreign competitors, particularly with regards to investment in developing countries.

In *Kiobel*, this Court dramatically restricted the scope of the ATS, holding that the statute does not extend to suits against foreign corporations when "all the relevant conduct took place outside the United States." 569 U.S. at 124. The Court in *Jesner* went further, holding that "foreign corporations may not be defendants in suits brought under the ATS." 584 U.S. at 272.

Meanwhile, foreign competitors are free to capitalize on those investment opportunities and potential customers without exposure to the massive potential liability facing U.S. companies operating in foreign jurisdictions. The competitive asymmetry created by the Ninth Circuit's decision cannot be overstated. Under *Jesner*, foreign corporations—including Petitioners' direct competitors based in China, Europe, or elsewhere—are categorically immune from ATS liability. *Id.* Yet under the decision below, U.S. corporations face expanded liability for allegedly aiding and abetting the very same foreign government conduct. This means that when a U.S. technology company and a Chinese technology company both sell networking equipment to a foreign government, only the U.S. company can be sued under the ATS if that government later uses the equipment for human-

rights abuses. The practical effect is to penalize U.S. companies for being American.

This concern is heightened by the well-established fact that other nations do not impose comparable civil liability for extraterritorial violations of customary international law. The ATS is an outlier in this respect. *See* John B. Bellinger, III, *Enforcing Human Rights in U.S. Courts and Abroad: The Alien Tort Statute and Other Approaches*, 42 VAND. J. TRANSNAT'L L. 1, 8–9 (2009) (noting the view of foreign governments that "the scope of ATS jurisdiction is inconsistent with principles of international law"). Competitors of U.S. businesses thus face no comparable liability exposure anywhere.

This asymmetry is particularly acute in markets for digital infrastructure and surveillance technology, where U.S. companies compete directly with Chinese state-backed enterprises. If U.S. companies withdraw from markets due to litigation risk, their foreign competitors will fill the gap—and often with fewer scruples about how their products or services are used. In fact, that is precisely what happened in the Talisman Energy case (discussed above). After Talisman Energy decided to withdraw from Sudan (even though the Second Circuit eventually affirmed dismissal of the suit), Chinese companies moved in and dominated the market. *See* Harry Akoh, HOW A COUNTRY TREATS ITS CITIZENS NO LONGER EXCLUSIVE DOMESTIC CONCERN 201 (2009). Although Talisman Energy was a Canadian company, the same principle applies for U.S. corporations. The Ninth Circuit's decision may cause the perverse result of *harming* human rights by driving U.S. companies out of

markets where they might otherwise exert positive influence by bringing American corporate values to jurisdictions where the rule of law and concern for human rights lags behind.

Furthermore, U.S. corporations facing discriminatory liability may seek to avoid being displaced in foreign markets by restructuring their operations—such as by creating foreign subsidiaries, spinning off overseas units, or selling those operations to companies that are not subject to suit in U.S. courts. *See* Alan O. Sykes, *Corporate Liability for Extraterritorial Torts Under the Alien Tort Statute and Beyond: An Economic Analysis*, 100 GEO. L.J. 2161, 2179-80, 2197-2200, 2205 (2012). These measures, however, are expensive and burdensome and thus further disadvantage U.S. businesses by increasing their costs relative to their foreign competitors.

The disadvantages faced by U.S. corporations under the Ninth Circuit's expanded conceptions of ATS liability would only grow as more industries rely on digital and internet-based products, which are "now affecting every business sector" and increasingly involving "everyone in every industry and every aspect of our life." Mark Minevich, *20 Leading Social Impact Platforms Making a Difference with Digital Potential*, FORBES (Aug. 3, 2021). As digital products and services are typically offered online, U.S. corporations would face pressure to limit their offerings as compared to their foreign competitors for fear of liability for the product's misuse by a foreign customer.

Viewed in that light, the Ninth Circuit's decision is especially consequential for America's technology sector—a crown jewel of the U.S. economy. Technology products and services are, by their nature, capable of being used for virtually any purpose. If a U.S. technology company can be held liable for aiding and abetting a foreign government's human-rights violations simply because it sold equipment that the government later misused—as alleged here—then the scope of potential liability becomes virtually limitless. Under this theory, U.S. companies that sell internet infrastructure, cloud services, data-center equipment, data-analytics platforms, communications hardware, cybersecurity products, or surveillance technologies to any foreign government could face ATS liability whenever that government commits alleged human-rights abuses—regardless of the company's intentions or whether the products had legitimate uses. This standard would effectively require U.S. technology companies to refuse to do business with entire countries, ceding those markets to foreign competitors.

According to one empirical study, the different treatment of foreign and domestic firms under the ATS has already resulted in practical consequences. *See* Darin Christensen & David K. Hausman, *Measuring the Economic Effect of Alien Tort Statute Liability*, 32 J. L. ECON. & ORG. 794 (2016). In that study, the authors specifically examined "*Kiobel*'s different implications for foreign and domestic firms to estimate its economic effects." *Id.* at 795. The authors found that extractive industry firms with headquarters abroad experienced larger cumulative abnormal returns following *Kiobel* than comparable

U.S. firms, which did not benefit from that decision. *Id.* at 794. The study therefore confirms that U.S. corporations already face a measurable competitive disadvantage relative to foreign corporations—a disadvantage that will only be compounded if the broad expansion of ATS liability under the Ninth's Circuit's decision is permitted to stand.

C. The Ninth Circuit's Decision Amplifies the Financial and Reputational Harm to U.S. Businesses, Which Have Increasingly Become Targets of ATS Plaintiffs.

The recent increase in ATS claims against corporations has inflicted enormous and unjustifiable financial and reputational harm to U.S. businesses, and the Ninth Circuit's expansion of ATS liability threatens to exacerbate this concerning trend.

The history of ATS litigation clearly demonstrates the extraordinary burden imposed on corporate defendants by such claims. This case, which was filed in 2011, remains at the pleadings stage nearly *fifteen years later*, and is emblematic of the lengthy and laborious process of defending ATS claims, which have proven notoriously difficult for both district and appellate courts to handle and have frequently taken over a decade to resolve, as with this case. *See, e.g.*, *Daimler AG v. Bauman*, 571 U.S. 117, 141 (2014) (rejecting claims for lack of jurisdiction after this Court reversed the Ninth Circuit's expansive jurisdictional holding after ten years of litigation); *Mujica v. AirScan Inc.*, 771 F.3d 580, 593 (9th Cir. 2014) (rejecting ATS claims after eleven years of litigation);

Sarei v. Rio Tinto, PLC, 722 F.3d 1109, 1110 (9th Cir. 2013) (rejecting ATS claims after thirteen years of litigation); *Bowoto v. Chevron Corp.*, 621 F.3d 1116, 1126 (9th Cir. 2010) (rejecting ATS claims after eleven years of litigation).

This trend has persisted in recent cases notwithstanding this Court's decisions limiting the scope of the ATS. For example, in *Nestle*, it took nearly *sixteen years* between the filing of the complaint and this Court's decision holding that plaintiffs sought an impermissible extraterritorial application of the ATS, with the case never having proceeded past the pleadings stage. 593 U.S. at 634; *see also Doe v. Exxon Mobil Corp.*, 391 F. Supp. 3d 76, 93 (D.D.C. 2019) (dismissing ATS claims after eighteen years of litigation). The Ninth Circuit's recognition of a cause of action for accessorial liability under the ATS will only magnify the already extraordinary costs and delays of ATS litigation. Even if claims are ultimately unsuccessful, discovery multiplies the costs and extends the length of proceedings.

The burdens of ATS litigation are especially severe where, as here, claims are predicated on aiding-and-abetting liability. Unlike direct-liability claims—which focus on the defendant's own conduct—aiding-and-abetting claims necessarily require extensive inquiry into the conduct of the alleged primary tortfeasor, which in ATS cases will almost always be based abroad and will frequently involve the conduct of a sovereign entity. And, as here, that means engaging in the burdensome (and politically fraught) process of seeking discovery into the conduct of a foreign

government. That burden typically falls, moreover, on the corporate defendant.

For example, given the nature of the claims, defending this case may require taking discovery into the Chinese government's treatment of Falun Gong practitioners, the operations of the Ministry of Public Security, and the Chinese Communist Party's enforcement of laws against religious groups. Such discovery is virtually impossible to obtain. And even if such discovery could be obtained, it would raise acute foreign-relations concerns, as a U.S. court would effectively be conducting an investigation into a foreign government's internal security operations. U.S. Cert. Br. 10-12. The Ninth Circuit's decision thus creates a one-sided litigation dynamic in which plaintiffs can make allegations about foreign government conduct that defendants cannot effectively rebut.

Given the overseas conduct at issue, defendants in ATS actions must frequently seek discovery through letters rogatory, a notoriously slow and unpredictable process. *See* Gary B. Born & Peter B. Rutledge, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 1025 (5th ed. 2011). Responses to letters rogatory might arrive—if they ever arrive at all—only after months or even years of waiting. *See Tiffany (NJ) LLC v. Forbse*, No. 11-cv-4976-NRB, 2012 WL 1918866, at *7 (S.D.N.Y. May 23, 2012) (ordering plaintiff to direct its discovery requests to two Chinese banks through the Hague Convention), *aff'd in part, vacated in part on other grounds sub nom.*, *Tiffany (NJ) LLC, Tiffany & Co. v. China Merchants Bank*, 589 F. App'x 550 (2d Cir. 2014), *as amended* (Sept. 23, 2014).

Therefore, even unmeritorious claims remain exceedingly costly and time-consuming to litigate—and that will continue, if not worsen, if this Court affirms the decision below. The cost and length of ATS litigation involving aiding-and-abetting theories is exacerbated not only by involvement in these cases of foreign conduct (which creates enormous challenges in obtaining discovery, as discussed above), but also by the lengthy ten-year statute of limitations for ATS claims and the complexity of the jurisdictional, merits, and damages issues involved. All of the ATS claims discussed above were ultimately dismissed, but not before the defendants were forced to spend staggering amounts on legal fees and costs and to endure, in each of those cases, over a decade of litigation. These direct litigation costs, while enormous, do not even begin to account for the costs incurred by U.S. companies in terms of resources that litigation diverts from research and development and other productive activities that could potentially lead to innovation, job creation, and an increase in shareholder value.

What is more, because ATS claims seek to hold corporate defendants liable for grave international law violations, such as human-rights abuses, defendants suffer substantial reputational damages simply by being named as defendants in these cases. Regardless of the merits or outcome of the case, these reputational harms can be difficult to remedy, even if the claims are ultimately dismissed. *See* Cheryl Holzmeyer, *Human Rights in an Era of Neoliberal Globalization: The Alien Tort Claims Act and Grassroots Mobilization in* Doe v. Unocal, 43 L. & SOC'Y REV. 271,

291 (2009) (noting activist organization's observation that defendant corporation's "preoccupation with defending its Burmese investments to shareholders indicated the importance of negative publicity from the case").

The threat of costly and protracted litigation, combined with the risk of reputational damage associated with allegations of serious human-rights violations, impose significant, undue settlement pressure on U.S. corporate defendants. Plaintiffs' lawyers have openly taken advantage of such pressures to bring actions against, and to extract settlements from, "deep pocket" corporations. *See id*. at 279; *see also Khulumani*, 504 F.3d at 295 (Korman, J., concurring in part and dissenting in part) (describing the South Africa apartheid litigation as "a vehicle to coerce a settlement").

In fact, in many cases, drawing negative attention to corporate defendants is a primary goal of the litigation. In one case, plaintiffs sued a U.S. beverage company, alleging that it was complicit in human-rights violations in Colombia. *See* Complaint, *Sinaltrainal v. Coca-Cola Co.*, No. 01-3208 (S.D. Fla. July 20, 2001). According to one of plaintiffs' counsel in that case, the plaintiffs were "not in a hurry for the cases to be resolved, because as long as they stay tied up in the courts they will continue to receive attention in the media." Malcolm Fairbrother, *Colombia, Human Rights and U.S. Courts* (April 25, 2002).

In some cases, these coercive litigation tactics have ultimately proven successful in securing large settlements. *See, e.g.*, Daniel Diskin, *The Historical and*

Modern Foundations for Aiding and Abetting Liability Under the Alien Tort Statute, 47 ARIZ. L. REV. 805, 809-10 (2005) (discussing $30 million settlement). By expanding the ATS to cover accessorial-liability claims, the Ninth Circuit's decision only increases the likelihood that plaintiffs' lawyers will continue to follow this playbook to target U.S. corporations' reputations as a means of extracting large settlements.

Put simply, these cases show that the longer plaintiffs can avoid dismissal, the stronger the "*in terrorem* increment of the settlement value." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005). Notwithstanding this Court's rulings restricting the scope of the ATS, plaintiffs have found new ways to plead around this Court's limitations—for example, by reframing their allegations of foreign human-rights violations as allegations of domestic conduct to circumvent this Court's extraterritoriality holdings in *Nestle* and *Kiobel*. Cisco Br. 26. The Ninth Circuit's expansion of the scope of ATS to include aiding-and-abetting claims will therefore give opportunistic plaintiffs even more latitude to creatively plead their cases to avoid dismissal, thus exposing U.S. businesses with foreign operations to extraordinary and unjustifiable litigation costs and reputational damage.

Recent developments underscore that ATS litigation against U.S. businesses remains robust and increasingly threatens significant liability. In the past year alone, federal courts have allowed ATS suits to proceed against U.S. companies in multiple cases. *See, e.g.*, *Barahona v. LaSalle Mgmt. Co.*, No. 7:23-

cv-24-WLS, 2025 WL 961437, at *16 (M.D. Ga. Mar. 31, 2025); *Padre v. MVM, Inc.*, 68 F. Supp. 3d 1111, 1128-29 (S.D. Cal. 2025). These developments confirm that, notwithstanding this Court's prior decisions limiting ATS liability, plaintiffs continue to find ways to plead around those limitations and subject U.S. businesses to the burdens of ATS litigation. The Ninth Circuit's expansion of ATS liability to include aiding-and-abetting claims will only accelerate that trend.

II. The Same Practical Consequences and Concerns Extend to Expanded Liability Under the TVPA.

Amici further agree with Petitioners that this Court also should reverse the Ninth Circuit's erroneous decision that the TVPA implicitly authorizes aiding-and-abetting claims.

As Petitioners aptly note, it is "not uncommon for plaintiffs to assert ATS and TVPA claims together" based on the same underlying facts, Cisco Petition at 32 (quoting *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1269 (11th Cir. 2009))—as plaintiffs have done in this case by naming a highly regarded former CEO of a U.S. corporation as a defendant.

The same concerns raised above regarding the practical impact and the international repercussions of recognizing accessorial liability under the ATS apply equally to the TVPA. Indeed, exposing all senior executives of U.S. corporations that conduct business abroad to potential accessorial liability for actions taken by foreign actors will have an enormous chilling effect on U.S. commerce abroad, as well as on the

ability of U.S. corporations who operate abroad to attract top talent for executive positions.

By opening the door to accessorial liability under the TVPA, plaintiffs could easily circumvent the limits on ATS liability imposed by this Court's recent decisions by simply repleading the same claims against corporate executives that would be barred against the company. Viewed in that light, the Ninth Circuit's recognition of aiding-and-abetting liability under the TVPA is especially troubling because it creates an end run around this Court's limits on ATS liability.

Consider the implications: A plaintiff who cannot sue a U.S. corporation's foreign subsidiary under the ATS (because it is a foreign corporation) can instead sue the U.S. parent company's CEO under the TVPA for allegedly aiding and abetting the foreign government's conduct. The factual allegations are the same; only the defendant changes. This is precisely the kind of pleading gamesmanship this Court has sought to prevent.

This potential exposure threatens to deter qualified individuals from serving in senior executive positions at U.S. companies with international operations or make those executives overly cautious in their business dealings with countries that might give rise to litigation risk. Either result harms American business and, paradoxically, may reduce U.S. companies' positive influence in countries where human rights are most at risk.

Amici therefore agree with Petitioners that this Court should hold that the TVPA, like the ATS, does not permit aiding-and-abetting claims.

CONCLUSION

For the foregoing reasons, this Court should vacate the Ninth Circuit's decision.

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