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 FOR RESPONDENTS

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QUESTIONS PRESENTED

1. Whether courts are categorically precluded from recognizing aiding-and-abetting liability for *Sosa*-qualifying norms under the Alien Tort Statute, 28 U.S.C. § 1350.

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

PARTIES TO THE PROCEEDING

Petitioners are Cisco Systems, Inc. (NASDAQ: CSCO), John Chambers, and Fredy Cheung.

Respondents are Doe I, Doe II, Ivy He, Doe III, Doe IV, Doe V, Doe VI, Roe VII, Charles Lee, Roe VIII, Doe IX, Liu Guifu, Wang Weiyu, and other individuals similarly situated.

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BRIEF FOR RESPONDENTS

INTRODUCTION

Petitioners ("Cisco") purposefully facilitated China's systematic persecution of a religious minority by creating sophisticated technology customized to identify, surveil, and forcibly convert Falun Gong adherents. In doing so, Cisco knowingly facilitated torture and extrajudicial killing.

Administrations of both parties have condemned the persecution at the heart of this case. Indeed, the United States raises no foreign-policy concerns specific to this litigation.

The text and history of the Alien Tort Statute ("ATS") demonstrates that aiding-and-abetting liability was intended by the Founders. The First Congress intended to open the newly created federal courts to law-of-nations claims brought by foreign citizens. Aiders and abettors were within the scope of liability for all the claims available in 1789.

In *Sosa v. Alvarez-Machain,* 542 U.S. 693 (2004), this Court created a strict test to evaluate whether modern international law norms, such as the prohibitions against torture and extrajudicial killings, may be recognized under the Alien Tort Statute ("ATS"). Cisco has never denied that these norms qualify under *Sosa*.

Claims based on aiding-and-abetting violations of norms satisfying *Sosa* ("*Sosa*-qualifying norms") are actionable. Such claims are not a judicial creation but rather implement congressional intent, unchanged for more than two centuries. Cisco and the United States offer no persuasive reasons for overruling *Sosa*'s core

holding or excluding aiding-and-abetting liability for *Sosa*-qualifying norms.

The prohibition on aiding and abetting international crimes is an essential and universal feature in customary international law today, as it was when the First Congress enacted the ATS. This is certainly true for fundamental *Sosa*-qualifying norms, including the long-standing prohibitions against torture and extrajudicial killings. Every circuit court decision that addressed this issue has held that aiding-and-abetting liability exists under the ATS. Notably, Cisco and the United States do not deny that aiding and abetting this conduct meets *Sosa*'s "historical paradigm" test.

Nothing in the history on which the *Sosa* Court relied, nor any development since, supports categorically excluding aiding-and-abetting liability. Systematic abuse requires significant resources and infrastructure. The Founders understood this in the context of piracy, the scourge of their time. Aiding-and-abetting liability is equally essential in responding to its modern equivalents: torture and extrajudicial killings. Preventing future abuses requires holding all culpable actors accountable, as the Allies did when they prosecuted the corporate actors who provided poison gas to Nazi death camps during the Holocaust.

This Court's decisions applying the presumption against extraterritoriality to ATS claims and rejecting claims against foreign corporations have, as a practical matter, sharply reduced the number of ATS cases, undermining Cisco's prophecy of dire consequences if this Court affirms.

There is also no basis to reject aiding-and-abetting liability under the Torture Victim Protection Act ("TVPA"). The statute's text and purpose overwhelmingly indicate congressional intent to enforce the norms against torture and extrajudicial killing on a universal, extraterritorial basis, finding this would advance U.S. foreign policy. These norms include aiding-and-abetting liability.

When the TVPA was passed, aiding-and- abetting liability was well-established and *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994), had yet to be decided. *Central Bank* did not impose a uniform presumption against aiding-and-abetting liability. The decision as to whether the TVPA includes aiding-and-abetting liability must be consistent with the TVPA's text and purpose.

The ATS and TVPA, passed centuries apart, reflect a continued congressional intent to provide civil remedies for violations of the law of nations, as it was in 1789 and as it is now. This Court should not overrule *Sosa* and should not categorically exclude aiding-and-abetting liability under these limited, but essential statutes.

STATEMENT

A. Factual Background

Respondents are Chinese nationals and one U.S. citizen who practice the Falun Gong religion. Pet. App. 14a ("PA"). Their faith centers on "truthfulness, compassion, and tolerance." PA 9a. Believers are dedicated to nonviolence. JA 11. Falun Gong spread rapidly across China in the 1990s, growing to around 100 million believers. PA 9a.

In 1999, the Chinese Communist Party ("CCP") decided the religion posed a threat to its rule and launched a crackdown to force Falun Gong believers to renounce their faith. PA 9a-10a. Over its history, the CCP has used these "*douzheng*" or "violent struggle" campaigns to eliminate perceived enemies, including religious minorities. JA 12-13. During these campaigns, CCP officials subject their targets to brutal human rights abuses, including torture, arbitrary detention, and reeducation through labor. JA 12.

The CCP's crackdown on Falun Gong was widespread and vicious. Officials arbitrarily detained believers in jails and reeducation-through-labor camps. JA 15; PA 9a. They subjected adherents to ideological conversion, including "beatings with steel rods and shocking with electric batons," and worse. PA 9a, 15a; JA 15. The State Department estimated that hundreds of thousands of believers had been persecuted and media reported that thousands of believers were tortured to death. PA 14a.

To implement its crackdown at scale, the CCP needed sophisticated Internet surveillance tools because Falun Gong believers were spread across China and, unlike other target groups, could not be readily identified by other means. Falun Gong believers also use the internet as part of their faith by "visiting specific websites, downloading material, and disseminating that religious material both in-person and online." JA 3. Thus, the CCP sought to cast a wide net over the nation's internet.

The CCP incorporated this goal into proposals to build the anti-Falun Gong "Golden Shield" system, a program which contemplated custom-built

components and systems integrated into a "vast and multi-tiered surveillance system" capable of capturing all Falun Gong activity in China with technology not available in China. PA 10a. Chinese engineers then lacked the expertise to independently create that technology. PA 10a. So, the CCP looked to Silicon Valley, inviting companies like Cisco to submit proposals to design the Golden Shield system and telling them that the most important goal of the system was to crack down on Falun Gong. JA 18.

Cisco answered the CCP's call, aggressively pushing to secure the contracts. Cisco knew it needed to develop "reciprocal-benefit relationships" with influential CCP leaders and public security officers to win the bid. JA 18-19. Cisco's Chief Executive Officer, John Chambers, met with China's President and, in meetings with CCP officials, promised to support the crackdown on Falun Gong. JA 61-62. Cisco's documents advertised how "its technology could be used to *douzheng* Falun Gong," adopting a term used by the CCP to refer to violent persecution of the religious minority. JA 20.

In 2001, China selected Cisco to submit high-level designs for the Golden Shield and later awarded it contracts, including for the specific component systems targeting Falun Gong. PA 11a. Cisco's selection depended on its promise to facilitate the crackdown. JA 18, 62.

Because of the technological sophistication needed, Cisco put its engineers in San Jose to the task, as that was where Cisco developed cutting-edge products. PA 66a. These engineers designed "first-of-their-kind features" to aid "in the detection, apprehension and interrogation of Falun Gong

practitioners." PA 11a. Cisco's experts employed early machine learning algorithms to catalogue patterns of Falun Gong internet activity enabling real-time alerts and automated surveillance. JA 25-27, 31-33. For example, Cisco installed sophisticated algorithms on its products to detect attempts by Falun Gong believers to access digital temple websites. When this activity was detected, the product logged identifying information about the user and sent alerts to Chinese security. JA 31.

Cisco also created databases to collect, compile, and deliver sensitive personal information about adherents to Chinese detention centers where officials tortured believers until they renounced their faith. JA 27, 31-35. These databases contained "home and work addresses, purchases, financial information, contact with other Falun Gong members, past Falun Gong activities, IP addresses, and family information." PA 10a. Cisco also ensured the CCP could store information on a target's "susceptibility to interrogation and ideological conversion." JA 44.

Because Falun Gong believers tried to avoid detection, the CCP needed Cisco to keep adapting the anti-Falun Gong components of the Golden Shield. JA 30. For example, in 2008, years after Cisco was questioned in Congress about its involvement in human rights abuses in China, Cisco bragged about a new system that was the "only product capable of recognizing over 90% of Falun Gong pictorial information." JA 32. To ensure the continued usability of its products, Cisco also provided the CCP ongoing "maintenance, testing and verification, [and] training and support." PA 67a. In one of these trainings, Cisco

publicly referred to Falun Gong believers as "viruses" or "despicable." JA 21.

The crackdown benefited Cisco. A Cisco presentation noted that *douzheng* was a key purpose of the Golden Shield and described the project as "a lucrative business opportunity." JA 20; PA 62a.

The CCP used the Golden Shield to identify and arrest respondents Does I, II and Ivy He by capturing their online religious activity, as confirmed by materials later submitted in sham trials. JA 68-72. Authorities entered Jane Doe V's home while she was visiting a Falun Gong website, seized her devices, abducted and viciously tortured her. JA 78.

After their arrests, other respondents were tortured by officials using data collected, compiled, and delivered by the Golden Shield. PA 14a. Jane Doe I's torturers referred to Golden-Shield-derived information during sessions where they beat her with an electric baton, leaving her bloody and swollen. JA 69. When officials tortured John Doe IV, including by pouring ice water on his body, they brought up his emails and anonymous creation of a Falun Gong website. JA 76-77. Officers likewise used Golden-Shield-derived information about respondents' family members during torture sessions, as when officers threatened Mr. Wang's wife and questioned Mr. Wang about her whereabouts and messages to other Falun Gong believers. JA 91.

Respondents estimate that thousands of Falun Gong believers were identified, apprehended, and tortured by the CCP using Cisco's technology. JA 93. None of this could have occurred without Cisco.

B. Procedural Background

Respondents filed suit in 2011, PA 15a, asserting ATS claims against Cisco, Chambers, and Cheung. PA 16a. Charles Lee asserted torture claims against Chambers and Cheung under the TVPA. PA 16a. In 2014, the district court dismissed respondents' claims. PA 153a.

In 2023, the Court of Appeals reversed, finding that aiding-and-abetting liability was actionable under the ATS, PA 23a-38a, and that respondents' allegations against Cisco met the pleading requirements. PA 45a-62a. It also held that Mr. Lee's TVPA claims against Chambers and Cheung could proceed. PA 82a. The Court of Appeals looked to the TVPA's text, statutory context, and legislative history to find that it authorizes aiding-and-abetting liability, PA 75a-79a, and held that Mr. Lee plausibly alleged Chambers and Cheung aided and abetted his torture. PA 80a-82a.

Cisco's petition for rehearing and rehearing *en banc* was denied. PA 97a. This Court granted Cisco's petition for a writ of certiorari on January 9, 2026.

SUMMARY OF ARGUMENT

I. Federal courts may properly recognize aiding-and-abetting liability for *Sosa*-qualifying norms today, just as they would have recognized aiding-and-abetting liability for the three law-of-nations violations at the Founding.

A. Aiding-and-abetting liability was within the scope of the ATS in 1789. Aiding-and-abetting violations of safe conducts, piracy and assaults on

ambassadors would themselves violate the law of nations. Such liability is also critical to the congressional purpose of decreasing foreign strife by ensuring access to remedies from responsible parties. For example, there is no reason to believe that the First Congress would have denied a foreign ambassador attacked by a U.S. national redress under the ATS against aiders and abettors who facilitated the attack. The ATS's history and early interpretations of the ATS confirm the understanding that aiding-and-abetting liability was available.

B. Aiding-and-abetting liability meets all of *Sosa*'s requirements. All sources of modern international law show there is a specific, universal, and obligatory norm of aiding-and-abetting liability for *Sosa*-qualifying norms.

There is no textual, historical or other legal reason since the ATS was enacted to exclude aiding-and-abetting liability.

Aiding-and-abetting liability does not categorically implicate foreign policy concerns, as many ATS cases do not involve state action and many aiding and abetting cases do not generate any protests. Where cases do generate protests, courts have many doctrines at their disposal to manage them. Far from interfering with U.S. foreign relations, aiding-and-abetting liability advances U.S. foreign policy. This case is an example, as it seeks to deter complicity in China's brutal persecution of a religious minority, a policy consistently endorsed by the political branches over decades.

Eliminating aiding-and-abetting liability violates separation-of-powers principles by thwarting the First Congress's intent to avoid foreign strife by ensuring aliens harmed by law-of-nations violations

could obtain remedies in federal courts. The First Congress expected federal courts to interpret and apply international law, a core judicial task.

C. Aiding-and-abetting liability is wholly consistent with *Central Bank*. In that case, this Court looked to the text, context, and legislative history of the relevant securities law to determine whether Congress authorized aiding-and-abetting claims. Traditional statutory interpretation tools lead to the conclusion that aiding-and-abetting liability is available. *Central Bank* did not instruct courts to abandon traditional statutory interpretation by applying a presumption that such liability was unavailable.

D. No policy concerns justify barring aiding-and-abetting liability. In the more than 230 years since Congress enacted the ATS, only a modest number of cases have been brought under the statute. Since *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108 (2013), the number of cases has plunged. Given the longstanding consensus in the courts of appeals that aiding-and-abetting claims are available to ATS plaintiffs, there is little chance that affirming here will result in an explosion of new litigation. Nor is there evidence that ATS cases have harmed U.S. businesses or decreased foreign investment.

E. This Court should not overrule *Sosa*'s holding that claims under modern international law may be recognized because the First Congress authorized the federal courts to enforce the law of nations through damages suits. This Court's decisions concerning implied causes of action under federal statutes and the Constitution provide no support for overruling *Sosa* because the First Congress provided the necessary direction. Nor has *Sosa* undermined

any important legislative objectives or proven unworkable.

II. Congress authorized aiding-and-abetting liability under the TVPA, which provides liability for those who "subject[]" another to torture or extrajudicial killing. 28 U.S.C. § 1350 note.

A. The ordinary meaning of the verb "subjects" is to expose or render liable another to an effect or condition. Aiding and abetting fits squarely within this meaning, as those who aid and abet take concrete actions that have a substantial effect on causing a victim to experience torture or extrajudicial killing at the hands of the direct perpetrators. Indeed, this Court has already recognized TVPA claims based on command responsibility. Aiding-and-abetting liability often involves a closer connection to the direct perpetrators than that doctrine.

B. Congressional choices in related statutes demonstrate that Congress intended broad liability under the TVPA. In federal criminal statutes, Congress provided for liability for those who "commit" torture or war crimes, and accessories are liable under 18 U.S.C. § 2. Congress did not need to use the broader verb "subjects" to ensure that various forms of responsibility would be actionable.

C. Congress intended the TVPA to implement the nation's international legal obligations, including a treaty which prohibits abetting torture.

D. Were there any ambiguity, the legislative history resolves any doubts, showing that Congress intended for TVPA liability to extend to those who assisted or abetted torture.

E. *Central Bank* did not create a clear-statement rule that could overcome the statute's text and purpose. As discussed above, *Central Bank*

instructs courts to analyze statutory text and context rather than adopting a presumption for or against aiding-and-abetting liability. The TVPA's text and context show that Congress authorized aiding-and-abetting liability.

F. The arguments made to resist the TVPA's ordinary meaning lack merit. The reference in the TVPA's definition of torture to offenders with custody or control over victims does not narrow the liability subsection, which covers "individual[s] who "subject[]" others to torture and signals that Congress intended to include accessories. 28 U.S.C. §1350 note. The definition does not impose a custody-or-control requirement for liability. No such requirement could even plausibly apply to extrajudicial killings. Finally, all agree that TVPA claims may be based on the international law doctrine of command responsibility, yet aiding-and-abetting liability is equally established in international law. Both are available under the TVPA.

ARGUMENT

I. Recognizing Aiding-and-Abetting Liability for *Sosa*-Qualifying Norms Is Proper Today, as it Was When Congress Enacted the ATS.

A. Aiding-and-Abetting Liability Was an Essential Feature of the Historical Law-of-Nations Norms and Critical to the ATS's Purpose.

As this Court has recognized, the First Congress enacted the ATS in response to deficiencies in the Confederation system's ability to enforce

compliance with the law of nations, particularly three historical norms that entailed individual responsibility. *See*, *e.g.*, *Sosa*, 542 U.S. at 715-18 (finding the Framers were concerned with "violations of safe conducts, infringement of the rights of ambassadors, and piracy"). The Court reasoned any claims under modern international law must be supported by evidence similar to the "historical paradigms." *Id.* at 732. At the Founding, aiding-and-abetting violations of these norms themselves violated the law of nations.

1. Aiding-and-Abetting Liability Was Itself A Violation of the Law-of-Nations at the Founding.

Founding-era sources demonstrate accessories to law-of-nations violations were subject to liability. First, William Blackstone was clear that accessories must be punished for each of the law-of-nations violations that primarily motivated the First Congress. Second, there were prominent prosecutions for aiding and abetting law-of-nations violations before and after the Founding.

a. Blackstone addressed accessories to each of the historic law-of-nations torts. First, "abetting and receiving" those who violated express or implied safe conducts was high treason. 4 William Blackstone, *Commentaries on the Laws of England* *69-70 (1769). The sovereign was required to punish offenders and ensure "full restitution and amends to be made to the injured." *Id.*; *see also* Emmerich de Vatell, The Law of Nations 161-63 (Joseph Chitty ed. 1844) (1758). Second, those "soliciting" or otherwise involved in infringing on the immunities of ambassadors violated the law of nations. Blackstone, *supra*, at *70-71.

Finally, "all accessories to piracy" were treated as "principal pirates[] and felons." *Id.* at *72.

b. English authorities, colonial governments, and the federal government prosecuted individuals for aiding and abetting piracy, one of the eighteenth century's most recurrent law-of-nations violations. In 1721, for example, Parliament enacted a law to enhance penalties for piracy, targeting those who "aid[] and assist[]" pirates. An Act for the More Effectual Suppressing of Piracy, 1721, 8 George 1, c. 24 (Eng.).

Before and after the Founding, American authorities prosecuted all involved in piracy, including aiders and abettors. In 1694, for example, Benjamin Blackledge was brought before a grand jury 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. Blackledge seemingly did not participate in the seizure of a ship but, afterwards, helped others take arms and cargo. *Id.* at *148-51. While the grand jury declined to indict, apparently for jurisdictional reasons, there was no doubt that Blackledge could be liable for aiding and abetting. *Id.* at *152; *see also United States v. Ross*, 27 F. Cas. 899, 901 (C.C.D.R.I. 1813) (Story, J.) (defendant could be liable for murder, even if he did not inflict fatal wounds because "[i]t is sufficient if [defendant was] present, aiding and abetting the act").

After the Constitution's ratification, the First Congress implemented a dual system of criminal punishment and civil liability for law-of-nations violations. The First Congress criminalized each of

these key offenses. An Act for the Punishment of Certain Crimes against the United States §§ 8-12, 1 Stat. 112, 113-15 (1790) (piracy offenses); *id.* § 28, 1 Stat. at 118 (violations of safe conducts); *id.* § 25-26, 28, 1 Stat. at 117-18 (offenses against ambassadors and public ministers).

Congress also penalized aiding and abetting. *See id.* § 10, 1 Stat. at 114 ("E]very person who shall . . . knowingly and wittingly aid and assist . . . any person or persons[] to do or commit . . . other piracy aforesaid); *see also Talbot v Jansen*, 3 U.S. 133, 161 (1795) (liability for aiding and abetting piracy). Congress likewise provided civil remedies in the ATS, granting federal jurisdiction over "all causes where an alien sues for a tort only in violation of the law of nations." Act of Sept. 24, 1789, ch. 20, § 9, 1 Stat. 77. Congress recognized that the law of nations would evolve and thus did not limit civil liability to the three historical norms.[1] *Sosa*, 542 U.S. at 714-15.

2. The First Congress Intended for Aiding-and-Abetting Liability to be Available Under the ATS.

The First Congress enacted the ATS to ensure foreign victims of a law-of-nations violation could obtain civil remedies from responsible parties, in part to avoid the use of governmental funds. The Confederation Congress had suggested using the "public treasury" to compensate the victims of such offenses to avoid foreign strife. 21 Journals of the Continental Congress 1136 (G. Hunt ed. 1912).

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[1] *See* William B. Dodge, *Customary International Law, Change and the Constitution*, 106 Geo. L.J. 1559, 1581-82 (2018) (collecting sources discussing the Framers' understanding of the law of nations).

Congress had previously recommended that states authorize private suits to avoid the need to use public funds and the First Congress enacted the ATS to satisfy this goal at the federal level. *See, e.g.*, *Sosa*, 542 U.S. at 716-18; *see also* Anthony J. Bellia Jr. & Bradford R. Clark, *The Alien Tort Statute and the Law of Nations*, 78 U. Chi. L. Rev. 445, 495-98 (2011).

This Court recognized that the Marbois incident, where France was offended by an attack on its minister and the Confederation Congress was powerless to hold the perpetrator to account, was a key reason for the passage of the ATS. *Sosa*, 542 U.S. at 716-17. It is inconceivable that the First Congress would have excluded those who aided or abetted an attack on an ambassador from ATS liability.

Categorically barring claims against those who injure foreign nationals by aiding and abetting a law-of-nations violation undermines this goal of requiring those responsible to provide compensation.

3. Early Interpretations of the ATS Confirm the Availability of Aiding-and-Abetting Liability.

Shortly after its enactment, federal officials interpreted the ATS to permit aiding-and-abetting claims.

First, in 1792, Secretary of State Thomas Jefferson opined that the ATS would permit such claims. Spain had complained that an American entered Spanish Florida and "stole" five enslaved persons from a Spanish subject with the aid of two other American citizens. Letter from Josef Ignacio de Viar & Josef de Jaudentes to Thomas Jefferson (June 26, 1792), *printed in* 24 The Papers of Thomas

Jefferson 129-31 (John Catanzariti ed. 1990) [hereinafter Jefferson Papers]. Jefferson opined that the ATS would provide a civil tort remedy against all three American subjects. Thomas Jefferson, Opinion on Offenses against the Law of Nations (Dec. 3, 1792), *printed in* Jefferson Papers at 693-96. Attorney General Edmund Randolph agreed that civil remedies were available. Edmund Randolph's Opinion on Offenses against the Law of Nations (Dec. 5, 1792), *printed in* Jefferson Papers at 702-03.

Second, in 1794, Americans aided-and-abetted French nationals in committing plunder in Sierra Leone (then a British colony). Memorial of Zachary Macaulay, Acting Governor of the Sierra Leone Colony to Lord Grenville, British Foreign Secretary (Nov. 28, 1794), *reprinted in* App. 3, Br. of *Amicus Curiae* Professors of Legal History, *Nestle USA, Inc v. Doe I*, No. 19-416 (Oct. 21, 2020) ("History *Amicus*"). The injured British subjects sought redress from the American nationals and Great Britain complained to U.S. authorities. Letter from George Hammond, Minister Plenipotentiary to the United States from Great Britain to Edmund Randolph, U.S. Secretary of State (June 25, 1795), *reprinted in* History *Amicus*, *supra*. Importantly, the British expected the United States or the offenders to ensure "ample indemnification of the parties aggrieved." *Id.*

Attorney General William Bradford opined that the British victims of this incident could file suit under the ATS against American nationals who aided and abetted in the attack and the plunder and destruction of property. *Breach of Neutrality*, 1 U.S. Op. Att'y Gen. 57, 57 (1795). Bradford had "no doubt" on this point. *Id.* at 59.

B. Aiding-and-Abetting Liability Should Likewise be Available for Modern *Sosa*-Qualifying Norms.

There is no textual, historical or other legal reason that aiding-and-abetting liability should not be available for *Sosa*-qualifying norms, as it was for the "historical paradigms." Courts may recognize ATS causes of action only for international norms that are "specific, universal, and obligatory." *Sosa*, 542 U.S. at 732 (quoting *In re Estate of Marcos, Human Rts. Litig.*, 25 F.3d 1467, 1475 (9th Cir. 1994)). To meet *Sosa*'s "historical paradigm" test the evidence supporting *Sosa*-qualifying norms must be the equivalent of the evidence supporting the historic law-of-nations norms actionable at the Founding. *Id.* Cisco has never contested that torture, extrajudicial killings, disappearances, or prolonged arbitrary detention are such norms. PA 22a.

The international sources demonstrate that aiding and abetting international crimes, like those at issue in this case, violates customary international law and the supporting evidence easily satisfies *Sosa*'s "historical paradigm" test. Indeed, Cisco and the United States ignore the evidence supporting aiding-and-abetting liability for *Sosa*-qualifying norms.

Nor are there reasons to eliminate aiding-and-abetting liability under *Sosa*'s second step. Adjudicating claims against those who facilitate international crimes, especially U.S. citizens, does not inherently create foreign relations problems. This case shows that ATS cases can advance U.S. interests. Nor are there inherent separation-of-powers reasons to bar aiding-and-abetting liability. Congress has

authorized the federal courts to interpret and apply international law. ATS cases are based on congressional intent.

1. Aiding-and-Abetting Liability is a Specific, Universal and Obligatory Norm of International Law.

a. All modern tribunals established to prosecute international crimes impose aiding-and-abetting liability. Following the horrors of World War II, the United States and other allied nations established the International Military Tribunal to try Axis leaders. 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. The tribunal had jurisdiction to try accessories. *Id.* art. 6; *see also* Charter of the International Military Tribunal for the Far East art. 5**,** Jan.19, 1946, T.I.A.S. No 1589. The Allied Powers similarly authorized each power to try individuals for international crimes, including aiding and abetting, within their zones of occupation. *See* Control Council Law No. 10 art. II(2)(b). Pursuant to this authority, the United States tried those who aided and abetted Nazi crimes.

In the *Einsatzgruppen Case*, for example, the United States tried Waldemar Klingelhoefer who developed lists of targets and gave those lists to killing squads. *United States v. Otto Ohlendorf* (The *Einsatzgruppen* Case), 4 Trials of War Criminals Before the Nuernberg Military Tribunals under Control Council Law No. 10 at 569 (1949). The Tribunal found Klingelhoefer could be liable for "locating, evaluating and turning over" lists of the

targets, knowing they would be murdered. *Id.* Similarly, a British military tribunal convicted Bruno Tesch, the owner of a pesticide firm, for aiding and abetting war crimes by supplying the S.S. poison gas knowing it would be used to exterminate those in camps. *Trial of Bruno Tesch and Two Others* (The Zyklon B Case), 1 Law Reports of Trials of War Criminals, 93-94, 102 (1947). Tesch was executed.

Since Nuremberg, the international community has created *ad hoc* tribunals to prosecute genocide and other crimes committed in Yugoslavia and Rwanda. Each tribunal applied customary international law, was supported by the United States, and imposed liability on aiders and abettors. *See* Statute of the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), 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). Doing so was critical as secondary actors can be essential to enabling such crimes. *See, e.g.*, *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-A, Judgment, ¶ 154-55, 182 (Oct. 20, 2010) (affirming conviction for aiding and abetting genocide where defendant identified persons taking refuge at a seminary to soldiers who later killed them). *Prosecutor v. Furundzija*, Case No. IT-95-17-T, at ¶¶ 209-13, 264 (Trial Chamber, ICTY, Dec. 10, 1998) (finding defendant guilty because defendant aided and abetted by being present and asking questions during the torture).

b. Major international human rights treaties, including those addressing the norms at issue here, require parties to ensure that those who aid and abet violations are held accountable. The 175 states,

including the United States, that are parties to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention") have committed to penalize "complicity or participation in torture." Torture Convention, art. 4, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 11. Commenting on U.S. compliance with this requirement, the United States informed the Committee against Torture that "those who aid and abet the commission of an act of torture" are punishable under state and federal law. Periodic Report of the United States of America ¶ 44, *printed in* U.N. Doc. CAT/C/48/Add.3/Rev.1 (Jan. 13, 2006).

Other human rights treaties adopt a similar approach. The Convention on Enforced Disappearances requires accountability for those who are "accomplice[s] to" . . . an enforced disappearance." International Convention for the Protection of All Persons from Enforced Disappearance art. 6(1)(a), Dec. 20, 2006, 2716 U.N.T.S. 3. The Genocide Convention requires parties to prohibit "furnish[ing] 'aid or assistance'" to facilitate genocide. Case Concerning Application on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Serbia & Montenegro), Judgment, 2007 I.C.J. Rep. 43, ¶ 419–20 (Feb. 26, 2007). Treaties prohibiting slavery similarly require punishment of accessories. 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. There is no Reason to Exclude Aiding-and- Abetting Liability Under *Sosa* Step Two.

Courts can recognize ATS claims where doing so is a proper exercise of "judicial discretion." *Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 636 (2021) (plurality op.) (quoting *Sosa*, 542 U.S. at 736 n.27). Recognizing aiding-and-abetting claims for *Sosa*-qualifying norms, especially the fundamental norms here, is a proper exercise of judicial discretion under *Sosa*; indeed, barring aiding-and-abetting liability would undermine the statute's purpose.

a. Foreign Policy Considerations Do Not Require a Categorical Ban on Aiding-and-Abetting Liability.

i. ATS Aiding-and-Abetting Liability Does Not Categorically Interfere with Foreign Relations.

Cisco's argument that aiding-and-abetting claims invariably interfere with foreign relations is unsupported. First, not all ATS cases implicate foreign governments, undermining the argument for a categorical rule. *See, e.g.*, *Nestlé*, 593 U.S. at 631-32 (describing allegations that U.S. corporations aided and abetted child slave labor).

Second, only some previous ATS cases generated complaints from foreign governments. In some cases, foreign governments have argued that the United States was the "appropriate forum" to hear aiding-and-abetting claims. *See, e.g.*, *Balintulo v. Daimler AG*, 727 F.3d 174, 184 (2d Cir. 2013). Other

cases that did generate complaints would now be precluded by *Kiobel*'s presumption against extraterritoriality and the exclusion of foreign corporations from ATS liability. *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 272 (2018).

While Cisco speculates that this case will cause friction in the Sino-American relationship, PB 37, the United States raised no such objection. China has appeared in other cases,[2] but it has not communicated any objections to any court about this case since respondents filed suit in 2011. Hypothetical objections by China that have not materialized in over a decade of litigation offer no reason to decline recognizing aiding-and-abetting liability in this case.

Because each case presents its own considerations, this Court should not adopt a categorical bar on aiding-and-abetting claims. "[C]ase-specific deference to the political branches," where the Executive Branch identifies concrete foreign relations harms from litigation, is a more discriminating tool to manage any concerns. *Sosa*, 542 U.S. at 733, n.21. Indeed, federal courts have a variety of doctrinal tools to address potential foreign relations concerns, including *forum non conveniens,* international comity, state secrets, the political question doctrine, and various immunities. *See*, *e.g.*, 542 U.S. at 733 n.21; Br. of Professors of Civil Procedure & Federal Courts, at 19, *Kiobel v. Royal Dutch Petroleum, Inc.*, 569 U.S. 108 (2012) (No. 10-1491).

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[2] *See, e.g.*, Br. of *Amicus Curiae* Ministry of Commerce of the People's Republic of China, *Animal Sci. Prods., Inc. v. Hebei Welcome Pharma. Co. Ltd.*, 585 U.S. 33 (2018) (No. 16-1220).

ii. Accessorial Liability Often Furthers American Foreign Policy.

Aiding-and-abetting liability often advances America's foreign policy objective of promoting respect for human rights globally and ensuring Americans do not facilitate abuses. "[I]n keeping with the constitutional heritage and traditions of the United States . . . a principal goal" of U.S. foreign policy is "to promote the increased observance of internationally recognized human rights by all countries." 22 U.S.C. § 2304(a)(1).

Administrations of both parties have consistently worked to advance this goal by deterring Americans from assisting human rights abuses abroad. As the George W. Bush Administration's State Department explained, U.S. corporations can promote U.S. foreign policy by engaging in "legal and ethical behavior as well as respect[ing] . . . human rights." Lorne W. Craner, Assistant Sec'y of State for Democracy, Hum. Rts. & Lab., Remarks at the 2002 Surrey Memorial Lecture (June 18, 2002), https://2001-2009.state.gov/g/drl/rls/rm/11405.htm. The Obama Administration endorsed the United Nations Guiding Principles on Business and Human Rights, which outline the steps American entities must take to ensure that they do not contribute to abuses through their operations. *See, e.g.*, U.S. Dep't of State, Digest of United States Practice in International Law 2011 at 149–50 (2012); U.N. Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights:*

Implementing the United Nations "Protect, Respect and Remedy" Framework 13–14 (2011).

The Trump Administration has also underscored the importance of accountability for human rights violations and declared it a priority to promote religious freedom around the world. *See* White House, National Security Strategy of the United States of America 42 (2017), https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf; *see also* U.S. Dep't of State, Declaration of Principles for the International Religious Freedom Alliance (Feb. 5, 2020), https://2017-2021.state.gov/declaration-of-principles-for-the-international-religious-freedom-alliance/index.html (emphasizing U.S. role in protecting religious minorities and religion globally).

When Americans or U.S. entities assist human rights abuses, they subvert U.S. foreign policy goals and risk fracturing U.S. relations with the global community. "[T]he torturer has become—like the pirate and slave trader before him—*hostis humani generis*, an enemy of all mankind." *Sosa*, 542 U.S. at 732 (quoting *Filartiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980)). According to the United States, denying a private cause of action to a victim of torture "might seriously damage the credibility of our nation's commitment to the protection of human rights." Mem. for the U.S. as *Amicus Curiae*, at 22-23, *Filartiga*, *supra*.

Contrary to Cisco's assertion, PB 37-38, this case exemplifies how aiding-and-abetting claims advance American policy. As the Solicitor General confirmed, "the United States has long condemned

China's treatment of Falun Gong practitioners" and combatted those abuses. US Cert. Br. 9. In 2000, for example, the State Department explained 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, 106th Cong. Annual Report on International Religious Freedom 2000, *as printed in* S. Rpt. No. 106-61, at xxix (J. Cong. Print) (2000). The State Department also documented the crackdown on Falun Gong, explaining how the Party rounded up tens of thousands of believers, with credible reports of torture by electric shock. *Id.* at 171-72. In 2005, the State Department again condemned China's egregious abuse of religious adherents, documenting "[a]rrest, detention, and imprisonment of Falun Gong practitioners [in addition to] . . . credible reports of deaths due to torture and abuse." *See* U.S. Dep't of State, 2005 Report on International Religious Freedom: China (2005), https://2009-2017.state.gov/j/drl/rls/irf/2005/51509.htm.

Legislators have likewise condemned the abuses. In 2005, the House of Representatives deplored how thousands of Falun Gong believers have experienced "excessive force, abuse, detention, and torture." H.R. Res. 608, 109th Cong. (2005). The House 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); *see also* Br. of Congressman Chris Smith as *Amicus Curiae* in Supp. of Resp'ts.

The political branches have gone further and warned U.S. companies that they cannot facilitate

China's human rights abuses. In 2006, Representative Chris Smith 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). The Trump Administration took a "stand against the use of [American] technology to support China's military and technology-enabled authoritarianism." White House, United States Strategic Approach to People's Republic of China 15 (2020).[3]

Contrary to Cisco's claims, adjudicating this case will primarily focus on Cisco's conduct on U.S. soil. While a fact finder will have to decide that respondents each suffered the alleged violations, a trial would focus on Cisco's actions. Respondents will have to prove that Cisco's conduct in San Jose–namely custom-designing features of the Golden Shield to target Falun Gong–had a substantial effect on the violations respondents suffered. Policing the conduct of U.S. nationals is a core sovereign function and at the heart of the ATS's purpose.

ATS liability for aiding and abetting also helps reduce friction in America's foreign relations by ensuring the United States fulfills its international obligations, just as the Founders intended. The United States has an obligation to ensure that remedies are available to victims of certain international crimes. Each party to the Torture Convention—which addresses a crime central to this

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[3] Available at https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/05/U.S.-Strategic-Approach-to-The-Peoples-Republic-of-China-Report-5-24v.1.pdf.

case—must "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation." Torture Convention art. 14(1); *see also* International Covenant on Civil and Political Rights art. 2(3) Dec. 16, 1966, T.I.A.S. 92-908 (requiring parties to ensure victims have access to an "effective remedy"); International Convention for the Suppression of Financing of Terrorism art. 8(4), Dec. 9, 1999, S. Treaty Doc. No. 106-49 (encouraging states to make compensation available to victims of terrorism offenses). The United States has pointed to the ATS to demonstrate its fulfillment of this obligation. *See, e.g.*, Report of the United States of America to the Committee against Torture, U.N. Doc. CAT/C/28/Add.5, ¶ 51 (Feb. 9, 2000) (citing "civil suits for damages based on international legal prohibitions against torture under the [ATS]" as an example of an avenue for redress).

iii. Adjudication of this Case Will Not Conflict with any Foreign Policy Decision Made by the Political Branches.

Cisco argues erroneously that adjudication of this case would upset a specific foreign policy decision made by the political branches. Cisco treats the lack of export controls on software or technology in the 1990s and 2000s as an affirmative decision by the political branches to permit the design, sale, and maintenance of products like the Golden Shield and to immunize Cisco from lawsuits. PB 38. This misrepresents what Congress did and is also irrelevant to the issue of whether aiding-and-abetting

liability for *Sosa*-qualifying norms should be recognized in general.

Congress has repeatedly condemned human rights abuses by the CCP. For example, Congress condemned the 1989 Tiananmen Square massacre of peaceful, pro-democracy demonstrators and suspended licenses for the export of crime control or detection instruments to China. Foreign Relations Authorization Act for Fiscal Years 1990 and 1991, Pub. L. No. 101-246, §§ 901(a)(1), (9), 104 Stat. 15, 80 (1990). While relevant software and technological products were not included in the list of export-restricted items, Congress could not have considered the technologies at issue in this case. Only a clairvoyant Congress could have imagined in 1989 the type of cutting-edge technologies Cisco designed years later for the Golden Shield. There is no basis to conclude that Congress determined that exports of online-surveillance and pattern-tracking technology customized for the persecution of religious minorities should be unregulated or immune from lawsuits.

b. Recognizing Aiding-and-Abetting Liability Does Not Raise Separation-of-Powers Issues.

i. Aiding-and-Abetting Liability Fulfills the First Congress's Intent.

The First Congress enacted the ATS as part of a dual criminal and civil approach to enforcing the law of nations and to ensuring that the victims of law-of-nations violations could obtain remedies in federal courts. The Founders understood that providing civil remedies to vindicate law-of-nations violations

prevented international strife by making the U.S. commitment to its international obligations clear. *See* Anne-Marie Burley [Slaughter], *The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor*, 83 Am. J. Int'l L. 461 (1989). There can be no doubt shielding a U.S. national from liability for aiding and abetting an attack on a foreign ambassador would create precisely the accountability gap the Founders sought to eliminate in passing the ATS. Precluding claims against those who aid and abet law-of-nations violations against foreign nationals would undermine this goal, risking the very international relations consequences the First Congress sought to avoid.

ii. Recognition of Aiding-and-Abetting Liability is a Proper Exercise of Judicial Power.

Cisco contends that recognizing ATS aiding-and-abetting claims conflict with separation of powers principles because the judiciary lacks any role in foreign affairs. PB 21. The Framers disagreed, as they extended the judicial power to cases arising under treaties; "[c]ases affecting Ambassadors, other public Ministers and Consuls"; "[c]ases of admiralty and maritime [j]urisdiction;" and cases where foreign states are parties. U.S. Const. art. III § 2. In enacting the ATS, the First Congress likewise directed federal courts to adjudicate claims by aliens for law-of-nations violations. As *Sosa* recognized, Congress expected the newly established federal courts to hear ATS claims without awaiting further Congressional action. 542 U.S. at 719.

Cisco's suggestion that courts are ill-equipped to interpret the law of nations, PB 22, is puzzling, as

this Court has long recognized that "[i]nternational law is part of our law, and must be ascertained and administered by the courts of justice." *The Paquete Habana*, 175 U.S. 677, 700 (1900); s*ee Baker v. Carr*, 369 U.S. 186, 211 (1962) ("[I]t is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.").

As the ATS's history demonstrates, the First Congress intended federal courts to enforce international law, including against aiders and abettors, by means of civil tort remedies. Against the backdrop of judicial recognition of aiding-and-abetting liability, Congress has only acted to supplement the ATS, not restrict it. When Congress passed the TVPA, it made it clear that ATS liability should remain. *See, e.g.*, S. Rep. No 102-249, at 5 (1991); H.R. Rep. No 102-367(I), at 3 (1991). ATS aiding-and-abetting liability has long been recognized, PA 23a, and Congress has never considered eliminating such liability.

In sum, both the Framers and subsequent Congresses have expressed confidence in the judiciary's ability to ascertain and apply international law.

C. *Central Bank* Does Not Require Eliminating ATS Aiding-and-Abetting Liability.

Cisco and the United States argue that *Central Bank* forecloses aiding-and-abetting claims. PB 29-31; US Br. 21-23. No court of appeals has ever agreed with this argument[4] and for good reason: the availability of

[4] PA 35a; *see also Doe VIII v. Exxon Mobil Corp*., 654 F.3d 11, 28-29 (D.C. Cir. 2011), *vacated on other grounds*, 527 Fed. App'x 7 (D.C. Cir. 2013); *Aziz v. Alcolac, Inc*, 658 F. 3d 388, 396 (4th Cir. 2011); *Khulumani v. Barclay Nat'l Bank Ltd*., 504 F. 3d

aiding-and-abetting liability is subject to *Sosa*'s two-part analysis, and under that analysis, recognizing such liability is proper. Indeed, applying *Central Bank* to a statute passed by the First Congress would disregard the ATS's text and history.

Central Bank concerned an implied cause of action under the securities laws. Section 10(b) of the Securities Exchange Act of 1934 prohibited the use of "manipulative or deceptive device[s] or contrivance[s]" in connection with certain securities sales. 15 U.S.C. § 78j(b). This Court previously inferred a private cause of action for § 10(b) violations, 511 U.S. at 171, and *Central Bank* considered whether that cause of action also extended to those who aid and abet § 10(b) violations.

The text of § 10(b) focused on "manipulation and deception," *id.* at 177 (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 214 (1976)), but those who aid and abet do not themselves engage in "manipulative or deceptive" conduct, *id.* at 177-78. Nothing in the statute's legislative history suggested that Congress intended it to cover aiding and abetting in that context. *Id.* at 183. Moreover, Congress had explicitly provided for aiding-and-abetting liability in another contemporary section of the securities law, indicating that Congress did not intend such liability for the implied cause of action under §10(b). *Id.* *Central Bank* interpreted the text; it did not establish a blanket presumption against aiding-and-abetting liability.

254, 282 (2d Cir. 2007) (Katzmann, J. concurring), *aff'd sub nom. Am. Isuzu Motors, Inc. v. Ntsebeza*, 553 U.S. 1028 (2008).

Consistent with *Central Bank*'s statute-by-statue approach, the text of the ATS supports aiding-and-abetting liability. The ATS covers civil actions "for a tort only, committed in violation of the law of nations." 28 U.S.C. § 1350 note. At the time of enactment, tort covered any "wrong and injury." 2 Noah Webster, Dictionary of the English Language (1828); *see also Nestlé v. Doe*, 593 U.S. at 641 (Gorsuch, J., concurring) ("Causes of action in tort normally focus on wrongs and injuries, not who is responsible for them."). Further, aiding and abetting the three historical norms violated the law of nations in 1789 (and today) and would have been actionable under the ATS.

Sosa likewise supports the recognition of aiding-and-abetting claims, as aiding-and-abetting liability is a specific, universal, and obligatory norm for relevant international crimes, as it was in 1789, and there is no reason to exclude such liability for contemporary *Sosa*-qualifying norms.

Cisco instead asks this Court to disregard *Central Bank*'s straightforward application of statutory interpretation principles and adopt what amounts to a clear-statement rule. PB 29-30. According to Cisco, a statute must use the words "aid and abet" to authorize such liability. *Id.* Other than policy preference, Cisco offers no reasons why courts should disregard the other ways Congress may authorize aiding-and-abetting claims, especially for laws incorporating tort remedies. Cisco also acknowledges the ancient roots of aiding-and-abetting liability in criminal law. PB 29. The law-of-nations violations motivating the drafters of the ATS were treated as crimes, *Sosa*, 542 U.S. at 719, with the ATS

serving as a remedial complement for victims of those crimes. The same is true for contemporary international crimes such as torture or extrajudicial killings.

D. No Policy Concerns Justify a Bar on ATS Aiding-and-Abetting Claims.

Cisco and its *amici* predict dire consequences if this Court recognizes ATS aiding-and-abetting liability. *See, e.g.*, PB 26, 32-35. They argue the lower courts will see an explosion of ATS litigation and that these claims will produce harmful economic consequences. *Id.* at 26, 33. Neither argument is borne out by past practice.

1. There Have Never Been Many ATS Cases.

The ATS has never been a significant source of federal litigation. In fact, this Court's recent decisions severely diminished the number of claims. Cisco's cited empirical study identified 300 ATS cases since 1789. Christopher Ewell, Oona Hathaway & Ellen Noble*, Has the Alien Tort Statute Made a Difference? A Historical, Empirical, and Normative Assessment*, 107 Cornell L. Rev. 1205, 1237, 1240 (2022). By contrast, in one year alone, more than 2,547 new federal civil rights cases were filed. *See* U.S. Courts, *Federal Judicial Caseload Statistics 2025*, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2025 (last visited Mar. 18, 2026).

This Court's decisions have further decreased the already-small number of ATS cases. This Court held that ATS claims must be premised on domestic conduct, *Kiobel*, 569 U.S. at 124-25, and foreign

corporations cannot be defendants. *Jesner*, 584 U.S. at 272. These decisions "contributed to a substantial decline" in ATS suits, as extraterritoriality became the leading reason cases were dismissed after 2013. Ewell, *supra*, at 1237, 1242-43.

Cisco cannot credibly claim that recognizing aiding-and-abetting liability will suddenly cause a deluge of ATS cases, because aiding-and-abetting liability has long been the norm in ATS cases. PA 23a n.8. Despite Cisco's *amici*'s protestations, ATS litigation has never been a primary concern for U.S. corporations. *See*, *e.g.*, Norton Rose Fulbright, Annual Litigation Trends Survey 8 (2026) (explaining that corporate counsel are most concerned with litigation related to contracts, cybersecurity, and data privacy in 2026). It is telling that neither Cisco nor its *amici* could identify substantial numbers of pending cases.

2. ATS Cases Have Had No Significant Economic Impacts.

ATS cases have also never generated the economic consequences that Cisco and its *amici* predict. For example, Cisco's *amici* rely on a 2003 assertion that ATS litigation would reduce foreign direct investment by billions, Br. of the Chamber of Commerce *et al*, at 11, but that "catastrophic prediction[]" never materialized. Robert Knowles, *A Realist Defense of the Alien Tort Statute*, 88 Wash. U. L. Rev. 1117, 1157 (2011). There is simply no empirical evidence that ATS cases have had any significant negative effect on international investment or trade. See, e.g., Br. Of Amicus Curiae Oxfam et al, *Nestlé*, 593 U.S. 628 (2021) (No 19-416) (demonstrating ATS liability would not deter

investment in the U.S. or place U.S. companies at a competitive disadvantage).

Cisco*'s amici* misinterpret the anecdotes upon which they rely. The U.S. Chamber of Commerce argues that Talisman Energy divested from Sudan because of ATS litigation. S*ee* Br. of the Chamber of Commerce et al, at 13. Studies of that decision, however, point to many more prominent causes, including a high-profile Canadian investigation of Talisman's involvement in the Sudanese conflict and the significant deterioration of conditions on the ground. Stephen J. Kobrin, *Oil and Politics: Talisman Energy and Sudan*, 36 N.Y.U. J. Int'l L. & Pol. 425, 439–40, 446–47 (2004).

The best empirical evidence demonstrates that ATS liability would tend to promote responsible foreign direct investment. One prominent study looked at foreign investment from 1980 through 2003 and concluded that countries with greater respect for human rights "tend to attract significantly higher levels of" foreign direct investment. Shannon L. Blanton & Robert G. Blanton, *What Attracts Foreign Investors? An Examination of Human Rights and Foreign Direct Investment*, 69 J. Pol. 143, 147, 149-50 (2007).

E. This Court Should Not Overrule *Sosa*.

Without persuasive arguments for excluding aiding-and-abetting liability for *Sosa*-qualifying norms, Cisco suggests this Court should overrule *Sosa* and hold that courts cannot recognize any claims under the ATS except for those alleging the three historical torts. PB 17-18. This argument is outside the question presented, and, in any event, fails on the

merits. Cisco comes nowhere close to carrying its burden to justify a departure from *stare decisis*, and its argument conflicts with the statute's text, context, and purpose.

1. Limiting recognition of ATS claims to three eighteenth-century law-of-nations torts conflicts with *Sosa*. This Court has characterized *Sosa* as holding that courts may recognize causes of action under the modern law of nations. *See Jesner*, 584 U.S. at 256 ("The *Sosa* Court . . . held that in certain narrow circumstances courts may recognize a common-law cause of action for claims based on the present-day law-of-nations in addition to the 'historical paradigms familiar when § 1350 was enacted.'" (quoting *Sosa,* 542 U.S. at 732)). This point in *Sosa* was not "dicta;" the Court reinforced this holding in *Jesner* and the United States is in accord with this interpretation. US Br. 14.

Even if *Sosa* did not so hold, Cisco's argument conflicts with *Sosa*'s reasoning, which is "just as binding." *Bucklew v. Precythe*, 587 U.S. 119, 136 (2019). While the Court held that plaintiff's claim, which centered on a one-day illegal detention, could not be recognized, it did so only after establishing a standard for assessing ATS claims under modern international law. *Sosa*, 542 U.S. at 738. The Court's conclusion cannot be understood without this underlying reasoning.

2. "Overruling precedent is never a small matter." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015). This is especially true for statutory decisions. *Id.* at 458; *see also Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989). A statutory decision may be overruled where the prior decision is

completely undermined by a substantial change in judicial doctrine or further action taken by Congress. *See Patterson*, 491 U.S. at 173. Other justifications include where a precedent conflicts with important legislative objectives or has proven unworkable. *Id.* at 173–74.

No such justification exists to overturn *Sosa*. First, there has been no change in doctrine since *Sosa*. Contrary to Cisco's argument, PB 19-21, 25, *Sosa*'s effort to translate the expectations of the First Congress to modern federal judicial doctrine distinguishes the ATS from this Court's cases on implied statutory and constitutional causes of action.

"[T]he First Congress did not pass the ATS as a jurisdictional convenience to be placed on the shelf for use by a future Congress." *Sosa*, 542 U.S. at 719. Instead, the First Congress expected courts would recognize ATS claims under the law of nations, as the law of nations was part of the general law. *See id.* at 742 (Scalia, J., concurring in part & concurring in the judgment). No Justice disputed this historical analysis. *See id.* at 729. The remaining question was how the Court should respond to subsequent jurisprudential developments. *See id.* at 726. In resolving this question, the Court prioritized respect for the First Congress's intent to provide civil tort remedies for law-of-nations violations. *See id.* at 728, 731. Respecting and implementing this Congressional intent by means of civil tort remedies is fundamentally different from this Court's *Bivens* jurisprudence, which lacks Congressional authorization.

Thus, *Sosa* is nothing like the cases Cisco cites. Previously, courts implied causes of action when it

was thought that private lawsuits would help achieve a statutory goal. *See Alexander v. Sandoval*, 532 U.S. 275, 287 (2001). The Court abandoned that regime long before *Sosa*, and *Sosa* was not grounded in that analysis. As early as 2001, this Court recognized that its decision to imply private damage remedies under the Constitution was no longer viable. *See Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 67 n.3 (2001).

But these concerns about implying a cause of action Congress did not contemplate or authorize do not apply when, as here, Congress passed a statute specifically to enable courts to recognize tort remedies for law-of-nations violations. Indeed, the reasons courts cannot infer the existence of a damages remedy in other contexts is because "a lawmaking body that enacts a provision that creates a right . . . may not wish to pursue the provision's purpose to the extent of authorizing private suits for damages." *Hernandez v. Mesa*, 589 U.S. 93, 100 (2020). But as *Sosa* made clear, the First Congress intended federal courts to provide civil remedies for law-of-nations violations under the ATS. 542 U.S. at 724-25.

In any event, this Court's reluctance to imply rights of action is not new, as the *Sosa* Court itself cited to decisions reflecting that reluctance. *See id.* at 727 (citing *Malesko*, 534 U.S. at 68, and *Sandoval*, 532 U.S. at 286-87). Cisco acknowledges as much, undermining any argument that *Sosa* was wrong when it was decided or that judicial doctrine has changed substantially. PB 20. Limitations on *Bivens* claims should not negate the First Congress's intent in the ATS to enforce the law of nations.

Nor has *Sosa* undermined any important legislative objectives. In passing the TVPA, Congress

was clear that the ATS should remain intact, and Congress endorsed cases cited favorably in *Sosa*. *Compare* S. Rep. No. 102-249, at 4-5 (1991) (discussing how the TVPA would establish an unambiguous basis for the cause of action recognized in *Filartiga*, 630 F.2d at 878), *with Sosa*, 542 U.S. at 731 (noting that the Court's conclusion was consistent with *Filartiga*).

Cisco claims that *Sosa* "has proven to be unworkable." PB 26. This argument lacks substance. Despite the fact that only a small number of ATS cases have been filed, Cisco's concern is that these cases carry hypothetical "risk[s]." PB 26. But the fact that Cisco can only identify hypothetical risks since *Sosa* was decided is fatal to its argument. The unanimity in the courts of appeals on the legal issue in this case, *see* PA 24a, demonstrates that *Sosa* has not created any unworkable confusion.

II. Congress Authorized Aiding and Abetting Liability under the TVPA.

The text and legislative context of the TVPA support the recognition of aiding-and-abetting liability for the two international crimes Congress codified. The term "subjects" encompasses more than direct perpetrators of torture and extrajudicial killings. Moreover, one congressional purpose was to implement U.S treaty obligations, which require redress for aiding-and-abetting violations.

Cisco concedes, as it must, that "subjects" includes liability against persons who do not personally execute the torture or extrajudicial killings. It erroneously argues that "subjects" only encompasses command responsibility, even though that doctrine is even more removed from the direct

perpetrator than aiding-and-abetting liability and both are equally established in international law.

Central Bank does not require Congress to use the words "aiding and abetting" for such liability to apply. Congress had no reason to think that authorizing aiding-and-abetting liability required including those words. Here, the text and context of the TVPA indicates congressional intent to include such liability in civil actions to provide a civil remedy for victims of torture and extrajudicial killing, as all circuit decisions to date have found. *See, e.g., Boniface v. Viliena*, 145 F.4th 98, 118 (1st Cir. 2025); PA 79a; *Cabello v. Fernandez-Larios*, 402 F.3d 11488, 1157-58 (11th Cir. 2005). That satisfies *Central Bank*.

A. The Ordinary Meaning of the Verb "Subjects" Includes Aiding-and-Abetting.

The TVPA's plain text authorizes aiding-and-abetting claims. The statute imposes liability on those who "subject[]" others to torture or extrajudicial killing. 28 U.S.C. § 1350 note. "Subject" is an intentionally broad verb that extends to those who substantially contribute to acts of torture and extrajudicial killing. As this Court has recognized, the TVPA extends liability beyond the direct perpetrators of these crimes. *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 458 (2012).

Statutory terms must be interpreted according to their ordinary meaning. *See, e.g.*, *Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018). 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, 31 (2d ed. 1989); *see also* American Heritage Dictionary, 807 (3d ed. 1992) (defining "subjects" as "[t]o expose to something" or "[t]o cause to experience"); Webster's Third New International Dictionary, 2275 (1993) (defining subjects as "to make liable," to "expose" or "to cause to undergo or submit to"). This Court has relied on these very definitions. *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 645 (1999);[5] *see also Auer v. Robbins*, 519 U.S. 452, 461 (1997). So does Cisco. PB 41.

Aiding-and-abetting liability fits squarely within this meaning. The TVPA was intended to implement U.S. international obligations. Under international law, aiding and abetting occurs where one provides assistance that has a "substantial effect" on the perpetration of an international crime. *See, e.g.*, PA 39a. Under common law, aiding-and-abetting liability attaches based on a person's conscious and culpable participation "in a wrongful act so as to help 'make it succeed.'" *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 493 (2023) (quoting *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949)); *see also* Black's Law Dictionary (12th ed. 2024) (defining "aid and abet" as "[t]o assist or facilitate the commission of a crime or tort"). Under any of these formulations, aiders and abettors take actions that are a substantial cause of an effect or consequence.

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[5] While *Davis* held that Title IX harassment claims require a showing that the defendant exercised substantial control over the harasser and the environment where the harassment occurred, it derived those control requirements from Title IX's prohibition on subjecting another to discrimination *under* an education program. *See Davis,* 526 U.S. at 645.

Using "subject" in this way would sound natural to the ordinary speaker. For example, a victim of a cyberattack would say that a tech company subjected her to a cybersecurity breach if it provided a hacking tool to the criminals who infiltrated her system. Similarly, a torture victim would understand that the company which had knowingly provided torture instruments to a repressive regime had subjected him to torture.

Cisco errs by suggesting aiding-and-abetting departs from the ordinary meaning of "subjects." The proposition that aiding-and-abetting liability does not require a causal connection to the violation is simply wrong. PB 41. Under international law, it must be shown that the assistance provided has a "substantial effect" on the commission of the violation. PA 40a. This is equivalent to the common law substantial assistance requirement. *See, e.g.*, *Twitter*, 598 U.S. at 478. In any formulation, the assistance must be causally related to the event that occurs. *See, e.g.*, Restatement (Second) of Torts § 876 cmt. d (Am. L. Inst.) (1979) ("If the encouragement or assistance is a substantial factor in *causing* the resulting tort, the one giving it is himself a tortfeasor" (emphasis added)).

Cisco's argument also rings hollow because it concedes that the TVPA permits claims based on command responsibility, PB 41, but that doctrine holds commanders liable based on an even more remote causal relationship, typically based on the commander's failure to prevent or punish a subordinate's action. *Chavez v. Carranza*, 559 F.3d 486, 499 (6th Cir. 2009). Moreover, aiding-and-abetting liability has a more stringent knowledge

requirement than the "should have known" requirement for command responsibility. *Compare id*, *with* PA 49a, 58a (holding that aiding-and-abetting liability requires actual knowledge that one's assistance will facilitate the offense). The TVPA was intended to enforce international law, including liability for those who aid or abet torture or extrajudicial killings.

B. Congressional Choices in Related Statutes Confirm "Subjects" Has a Broad Meaning.

Congress's choice of the word "subjects" reflects an effort to expand the reach of the TVPA compared to narrower word choices elsewhere. When Congress uses one word in one statute but a different one in a related statute, there is a "presumption" that the "different term denotes a different idea." *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 170 (2012)).

When it was unnecessary to incorporate aiding-and-abetting liability, Congress used narrower terms. In the torture statute, Congress addressed those who "commit[] or attempt[] to commit torture." 18 U.S.C. § 2340A(a). In the war crimes statute, Congress addressed those who "commit[] a war crime." *Id.* § 2441(a). Congress had no need to use the more expansive verb "subjects" to include aiders and abettors because abettors are punishable under the general aiding-and-abetting provision of Title 18. 18 U.S.C. § 2. Had Congress wanted to narrow liability under the TVPA to those who directly commit torture or extrajudicial killings, it would have defined liable

parties as those who commit torture or extrajudicial killings. *See, e.g.*, PA 76a; *Boniface*, 145 F.4th at 118.

Cisco's references to other federal statutes are inapposite. First, Cisco erroneously claims that when Congress enacted the TVPA, the civil cause of action for victims of terrorism applied against one who "aids and abets." PB 40 (quoting 18 U.S.C. § 2333(d)(2)). That language, however, was not added until 2016, and then only because lower courts had rejected aiding-and-abetting liability. *Compare* Federal Courts Administration Act, Pub. L. No. 102-572 § 1003, 106 Stat. 4506 (1992), *with* Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222 § 4, 130 Stat. 852 (2016). Second, Cisco cites to 18 U.S.C. § 2, but that provision says little about how Congress authorizes civil aiding-and-abetting liability. PB 40.

C. Congress Intended for the TVPA to Fulfill U.S. Obligations Under International Law.

In enacting the TVPA, Congress intended, in part, to implement U.S. obligations under the Torture Convention. That Convention requires states to ensure remedies are available to torture victims, including from aiders and abettors. Torture Convention, arts. 4, 14. This context further demonstrates that "subjects" must be read to include aiding-and-abetting claims.

Multiple indicia demonstrate Congress enacted the TVPA to implement the Torture Convention and other U.S. human rights obligations. First, the title of the TVPA declared the act was meant "to 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 of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1992). As this Court has recognized, titles can be useful tools to glean statutory meaning. *See, e.g.*, *Dubin v. United States*, 599 U.S. 110, 120-22 (2023); *FTC v. Mandel Bros., Inc.,* 359 U.S. 385, 388-89 (1959). The TVPA's long title is especially informative here as it clearly articulates the law's purpose. Contrary to Cisco's assertion, PB 45, respondents are not making a policy argument but are instead using the title to confirm the meaning of the statute's text.

Second, Congress enacted the TVPA shortly after the United States signed and ratified the Torture Convention. The General Assembly of the United Nations adopted the Torture Convention in 1984, and President Ronald Reagan signed it and transmitted it to the Senate in 1988. Ronald Reagan Message to the Senate Transmitting the Convention against Torture and Inhuman Treatment of Punishment, Ronald Reagan Presidential Library (May 20, 1988), https://www.reaganlibrary.gov/archives/speech/message-senate-transmitting-convention-against-torture-and-inhuman-treatment-or. Members of Congress introduced precursors to the TVPA beginning in 1986. *See, e.g.*, H.R. 4756, 99th Cong. (1986). By October 1990, the Senate provided advice and consent on ratifying the Convention. 136 Cong. Rec. 36192–99 (Oct. 27, 1990). Just a few months later, Representative Yatron introduced H.R. 2092, 102nd Cong. (Apr. 24, 1991), which Congress enacted as amended in 1992.

If there is any doubt remaining, the legislative history is clear. *See* H.R. Rep. No. 102-367, pt. 1, at 3 (1991) (explaining that the TVPA is intended to fulfill the U.S. "obligation [under CAT] to provide means of redress to victims of torture"); S. Rep. No. 102-249, at 3 (1991) ("This legislation will carry out the intent of the Convention Against Torture.").

The Torture Convention requires states to ensure victims have access to remedies against those who aided and abetted their torture. The Convention treats those who are "complicit" in torture as responsible parties, Torture Convention art. 4(1), and the United States has agreed that complicity includes aiding and abetting. *See, e.g.*, Comm. Against Torture, Second Periodic Report of the United States of America ¶ 44, U.N. Doc. CAT/C/48/Add.3/Rev.1 (Jan. 13, 2006). The Torture Convention likewise requires states to ensure that victims have access to remedies. Torture Convention art. 14(1).[6] Thus, "subjects" in the TVPA should be read to provide for liability against those who aid and abet torture, in line with the Torture Convention that Congress sought to implement through the TVPA.

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[6] While the Executive Branch has asserted that Article 14 extends only to acts of torture on American territory, *see* Christopher Keith Hall, *The Duty of States Parties to the Convention against Torture to Provide Procedures Permitting Victims to Recover Reparations for Torture Committed Abroad*, 18 Euro. J. Int'l L. 921, 934-35 (2008), the negotiating history of the Torture Convention does not support that interpretation, *see id*. In any event, Congress clearly disagreed when it enacted the TVPA, as Congress made the TVPA extraterritorial. *See, e.g.*, *Chowdhury v. Worldtel Bangladesh Holding, Ltd.*, 746 F.3d 42, 51 (2d Cir. 2014).

D. The TVPA's Legislative History Resolves Any Doubt.

The Senate Judiciary Committee emphasized that liability under the TVPA is not limited to those who "personally performed or ordered the abuses." S. Rep. No. 102-249, at 9. Rather, consistent with international law, liability extends to those who "ordered, *abetted*, or *assisted* in the torture." *Id.* at 8 (emphasis added).

Despite this language, Cisco argues that the Committee was concerned only with the doctrine of command responsibility. PB 45. Yet in the relevant discussion, the Committee cited the Torture Convention's requirement that states parties prohibit complicity in torture. S. Rep. No. 102-249, at 9 n.16.

Furthermore, the legislative history demonstrates that Congress intended to craft a civil tort remedy. One of the authors of a TVPA precursor explained that the bill conferred an "explicit civil cause of action *in tort* for torture and extrajudicial killing." 134 Cong. Rec. 28, 614 (Oct. 5, 1988) (statement of Rep. Rodino) (emphasis added). Even when there is less clear evidence of legislative intent, this Court presumes Congress legislates against the backdrop of contemporary tort principles. *See, e.g.*, *Comcast Corp. v. Nat'l Ass'n of African Am-Owned Media*, 589 U.S. 327, 331 (2020). As with international law, there was a general principle of aiding-and-abetting liability in domestic tort law when the TVPA was passed. *See, e.g.*, Restatement (Second) of Torts, § 876(b) (1979); *Halberstam v. Welch*, 705 F.2d 472, 477-88 (D.C. Cir. 1983). Combined with the broad text and intent to implement international law, general tort

principles further indicate that aiding-and-abetting claims are authorized under the TVPA.

E. Adopting a Novel Clear-Statement Rule Would Upset Separation-of- Powers.

In *Central Bank*, this Court used normal statutory interpretation tools to find that aiding-and-abetting liability is not available for the § 10(b) implied cause of action. *Central Bank*, 511 U.S. at 164. Cisco misinterprets *Central Bank*, arguing that this Court implicitly imposed a clear-statement rule for any statute authorizing aiding-and-abetting liability. PB 39-40. Cisco also misstates the decision below, claiming that the Court Appeals held *Central Bank* does not apply to claims based on international law. PB 44. Rather, the Court of Appeals correctly acknowledged that *Central Bank* did not adopt a requirement that Congress use certain words to authorize aiding-and-abetting liability. Instead, it engaged in an ordinary statutory interpretation exercise. PA 79a-80a. Imposing a clear-statement rule would undermine separation of powers by ignoring Congress's intent to authorize aiding-and-abetting claims under the TVPA.

Central Bank applied traditional tools of statutory construction to assess whether Congress had authorized aiding-and-abetting liability. Here, the text, history, articulated congressional purpose, and legislative history all demonstrate that Congress intended to authorize aiding-and-abetting liability for TVPA claims.

Cisco nonetheless asks this Court to abandon the normal tools of statutory interpretation because the TVPA does not include the words "aiding and

abetting." This Court has never suggested *Central Bank* establishes a clear-statement rule. *See, e.g.*, *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 552 U.S. 148, 157 (2008) (describing *Central Bank* as finding no aiding-and-abetting liability based on § 10(b)'s text).

Imposing a clear-statement rule would be inappropriate for two additional reasons. First, doing so would upset the separation of powers without adequate justification. Clear-statement rules "impose something of a clarity tax upon legislative proceedings . . . which would seem to demand a justification other than the raw expression of judicial value preferences." John F. Manning, *Clear Statement Rules and the Constitution*, 110 Colum. L. Rev. 399, 403 (2010); *see also Biden v. Nebraska*, 600 U.S. 477, 509 (2023) (Barrett, J., concurring) (explaining that imposing clear statement rules undeniably "pose[s] 'a lot of trouble' for the 'honest textualist'" (quoting Antonin Scalia, A Matter of Interpretation 28 (1997))). The "proper role of the judiciary" is "to apply, not amend, the work of the People's representatives." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 90 (2017). Disregarding the plain meaning of a statute because Congress failed to use certain words warps this role and should only be done where merited by other significant constitutional values. *See Jones v. Hendrix*, 599 U.S. 465, 492 (2023) ("Typically, we find clear-statement rules appropriate when a statute implicates historically or constitutionally grounded norms that we would not expect Congress to unsettle lightly.") No such values justify a clear-statement rule here.

Second, even if a clear-statement rule were justified, the Court should not apply it to statutes that predate *Central Bank*. Congress enacted the TVPA in 1992. This was two years before *Central Bank* was decided. While one could attempt to justify a clear-statement rule on the presumption of "congressional understanding of" the Court's cases and "interpretive principles," *King v. St. Vincent's Hosp.*, 502 U.S. 215, 574 n.9 (1991), Congress could not have been aware of a rule that did not exist at the time it enacted the TVPA.

F. The Counterarguments Lack Merit.

Cisco and the United States resist the plain meaning of the statute and instead rely on the TVPA's definition of torture to try to narrow the scope of liability. They argue that the TVPA's definition of torture shows that Congress did not intend aiders and abettors to be covered by the TVPA's liability provision. *See* PB 43; US Br. 30. Cisco also argues that the TVPA's context demonstrates Congress intended for the statute to be narrow. PB 43. Neither argument is persuasive.

The TVPA's definition of torture indicates Congress intended that liability cover secondary actors. In one subsection, the TVPA defines the two underlying offenses of torture and extrajudicial killing. The torture definition, but not the extrajudicial killing definition, refers to certain acts "directed against an individual in the offender's custody or control." TVPA, § 3(b)(1). The TVPA then defines liability in a separate subsection, providing that "[a]n individual who . . . subjects an individual to torture" shall be liable. *Id.* § 2(a)(1). While offenders are included in the categories of individuals who may

be liable, by using the word "individual," Congress clarified that the category goes beyond direct perpetrators.

Cisco and the United States nonetheless argue that the reference to *offenders* limits the category of *individuals* who can be liable. Under this view, because those who aid and abet torture do not necessarily have custody or control over the victim, aiding-and-abetting liability is unavailable. PB 43. But this flouts basic rules of statutory interpretation. "[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) (citation omitted); *see also Sosa*, 542 U.S. at 711 n.9. Moreover, the definition of extrajudicial killing contains no similar custody or control reference, further indicating that the offense definitions were not meant to exclude aiders and abettors who would be liable under international law and U.S. common law.

Cisco's arguments also conflict with the widespread agreement that the TVPA authorizes claims based on command responsibility. This Court noted that "the TVPA contemplates liability against officers who do not personally execute the torture or extrajudicial killing." *Mohamad*, 566 U.S. at 458 (citing cases relying on command responsibility). 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*, 559 F.3d at 499.

Command responsibility doctrine contains no requirement that the commander have custody or physical control over the victim. Indeed, the doctrine is rooted in the relationship between the superior and the subordinate, whereby the superior holds a "duty to control the operations of the members of his command." *In re Yamashita*, 327 U.S. 1, 17 (1946). The relevant commander is often far afield from the direct perpetrator and is held liable based on the legal right to control the conduct of subordinates. For example, this Court found General Tomoyuki Yamashita was properly charged by the military commission with law of war violations in the Philippines. *Id.* at 5, 16. Yamashita served as the military governor for the entirety of the Philippines and was held responsible for crimes across Philippine territory. *See id.* at 13-16. Yamashita was held responsible based on his ability to control the soldiers that committed the offenses, not because he had custody or physical control of the victims.

Respondents' textual analysis demonstrates why command responsibility, like aiding-and-abetting liability, is authorized. A commander who can prevent torture by his subordinates and fails to take reasonable measures to achieve that end "subjects" the victim to torture, in the sense that he exposes them to the risk of torture or causes them to experience it.

2. Contrary to Cisco's assertion, PB 43, the statute's inclusion of an exhaustion requirement says nothing about the scope of liability. Rather, Congress likely thought international law might require

exhaustion. *See Sosa*, 542 U.S. at 733 n.21. The statute of limitations likewise offers little insight into the scope of liability. If anything, the fact that Congress imposed a ten-year limitations period, which is considerably longer than the period for other causes of action, reflects Congress's belief in the profound importance of ensuring torture victims have access to remedies. *Compare, e.g.*, 28 U.S.C. § 1350 note, *with* § 1658.

CONCLUSION

For these reasons, the Court should affirm.

Respectfully submitted,

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March 20, 2026