

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 UYGHUR HUMAN RIGHTS PROJECT,
HUMAN RIGHTS IN CHINA, NO BUSINESS WITH GENO-
CID, THE HUMAN TRAFFICKING LEGAL CENTER,
AND CORPORATE ACCOUNTABILITY LAB AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*

The Uyghur Human Rights Project (UHRP), Human Rights in China (HRIC), No Business with Genocide (NBWG), the Human Trafficking Legal Center (HTLC), and Corporate Accountability Lab (CAL) (together, *Amici*) file this brief to supplement Respondents' arguments that this Court should affirm that the Alien Tort Statute (ATS) provides civil remedies for torts committed in violation of the law of nations, including aiding and abetting such violations.¹ *Amici* are human rights non-profit organizations dedicated to (1) shedding light on international human rights violations, (2) supporting survivors of human rights abuses and their families, and (3) advocating policies across the public and private sector to prevent further human rights atrocities.²

UHRP promotes the rights of Uyghurs and other Turkic Muslim peoples through research-based advocacy. HRIC supports human rights advocates and protects international human rights in the People's Republic of China (PRC). NBWG is a global coalition to end genocide and other mass atrocities by pressuring corporations in key sectors to stop supporting regimes complicit in genocide and crimes against humanity. HTLC advocates for robust enforcement of

¹ No party or counsel for a party authored this brief in whole or in part. No counsel for a party other than *Amici*, their members, or their counsel made any monetary contributions intended to fund the preparations or submissions of this brief.

² *Amici* support Respondents' arguments about the availability of aiding-and-abetting liability under the Torture Victims Protection Act but focus here on the availability of aiding-and-abetting liability under the ATS.

federal anti-trafficking laws to eradicate forced labor. CAL is a non-partisan organization dedicated to holding corporations legally accountable for human rights violations and environmental harms.

SUMMARY OF ARGUMENT

Petitioners (Cisco) seek to circumscribe the unambiguous meaning of the text of the ATS. They want to avoid potential liability in a suit alleging that their domestic activity aided the Chinese Communist Party's (CCP) torture and religious persecution of Chinese Falun Gong practitioners. Cisco's request lacks constitutional or other legal merit. Granting it would require this Court to disregard strictures against judicial lawmaking. It would also arbitrarily deny access to the ATS for aliens alleging injuries from violations of international law that are contrary to and condemned by U.S. foreign policy.

The ATS granted district courts jurisdiction to hear certain tort actions brought by aliens against U.S. entities. That jurisdiction extends to torts alleged to have been committed in violation of the law of nations. Cisco does not contest that the prohibition against aiding and abetting a violation of the law of nations is an international norm. Nonetheless, it wants this Court to bar judicial recognition of that well-established prohibition.

Cisco attempts to justify its request in several ways. It asserts that the district courts may not entertain actions that are based on alleged violations of the law of nations as it evolved after 1789 and argues that this prohibition would exclude aiding and abetting as a basis for ATS jurisdiction. This rationale would require overturning this Court's decision in *Sosa v. Alvarez-*

Machain, 542 U. S. 692 (2004). Cisco also cites prohibitions against judicially implied causes of action to justify precluding aiding-and-abetting liability from ATS jurisdiction. However, a thorough examination of these arguments and others made by Cisco reveals that they do not support the request.

(1) Cisco cannot demonstrate that Congress limited ATS jurisdiction to violations of the law of nations cognizable in 1789 because the ATS references the law of nations—an ever-evolving body of law. (2) Cisco cannot demonstrate that Congress acted unconstitutionally in permitting the district courts to discern the evolving law of nations because Congress can define and punish offences by referencing a well-known term with a definite meaning. (3) Cisco cannot equate the district courts’ exercise of ATS jurisdiction with an unauthorized implication of a cause of action because the ATS explicitly authorizes the district courts to discern, not create or imply, the law of nations and adjudicate torts committed in violation of that law. (4) Cisco cannot rely on *Erie R. Co. v. Tompkins*, 304 U. S. 64 (1938), to forbid the recognition of federal common law pursuant to ATS jurisdiction because *Erie* only forbade federal courts sitting in diversity from replacing state common law with common law of their own making. Just as federal courts have done in their post-*Erie* exercise of diversity jurisdiction, federal courts applying the ATS discern whether international law prohibits aiding and abetting.

Absent any legal justification, Cisco asks this Court to adopt its policy arguments for rejecting the plain meaning and ignoring the purpose of the ATS. It asks this Court to legislate a new statute creating exceptions to Congress’ broad jurisdictional grant to afford

impunity to Cisco and others who might be alleged to aid violations of the law of nations. But the purpose of the ATS was to assure other nations that their citizens could seek redress in U.S. courts when U.S. actors harm aliens by violating the law of nations. This goal remains as crucial today as it was in 1789, when the newly formed United States sought to assure its trading partners that U.S. actors were not immune from the then-nascent law of nations.

Cisco also argues that ATS cases alleging violations of the post-1789 law of nations should be prohibited simply because they implicate foreign policy. This argument has no foundation in the U.S. Constitution, the text of the ATS, or the facts of this case. Further, it would preclude many ATS actions that align with U.S. foreign policy condemning human rights abuses and corporate complicity in those abuses. *Amici* advocate on behalf of aliens who are subjected to human rights abuses that the United States strongly condemns. Actions brought under the ATS to remedy these abuses would be unlikely to raise any genuine foreign policy concerns. Yet Cisco's request would permanently preclude the opportunity to bring them.

Acceding to Cisco's request would require this Court to ignore its constitutional role, long-standing precedents regarding the interpretation of congressional mandates, and conservative tradition of adhering to earlier decisions. Cisco, however, fails to provide a compelling reason why this Court should not honor those foundational jurisprudential limits. Congress has the power to entertain Cisco's wish to eliminate the risk of aiding-and-abetting liability under the ATS. That is where Cisco should present its arguments for amending the ATS.

For the reasons briefed by Respondents and presented here, *Amici* respectfully request that this Court affirm the decision below. This would enable the lower courts to fulfill Congress’ jurisdictional mandate within the boundaries established by the Constitution, *Sosa*, and this Court’s related decisions.

ARGUMENT

The Constitution and Congress define the jurisdiction of the federal courts. Regarding matters over which the federal courts are granted jurisdiction, “[i]t is emphatically the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803) (Marshall, C.J.). The federal courts have “the solemn duty to interpret the laws, . . . however disagreeable that duty may be.” *United States v. Dickson*, 40 U.S. 141, 162 (1841) (Story, J.). “Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 403 (2024). “The place to make new legislation, or address unwanted consequences of old legislation, lies in Congress.” *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 680–81 (2020).

In *Sosa*, this Court applied those principles to determine the meaning of the ATS, a statute enacted by the First Congress. It concluded that the ATS “is a jurisdictional statute creating no new causes of action.” 542 U.S. at 724. It determined that the ATS is not “stillborn,” *id.* at 714, and does not require “legislation conferring a right of action,” *id.* at 723. Therefore, the ATS permits “further independent judicial *recognition*

of actionable international norms . . . subject to vigilant doorkeeping.” *Id.* at 729 (emphasis added).³

This Court next “derive[d]” a “set of standards” for assessing a particular ATS claim. *Id.* at 731. First, to be considered part of the law of nations, the cause of action must be based on a “specific, universal, and obligatory” international norm. *Id.* at 732 (internal citation omitted). Second, the district courts must exercise their “judgment about the practical consequences of making that cause available to litigants in the federal courts” to prevent judicial encroachment on Congress’ Article I and the Executive’s Article II powers. *Id.* at 732–33. This Court applied these standards in rejecting the *Sosa* plaintiff’s ATS claim. *Id.* at 733–38. District courts must use this two-step test to determine whether they may “entertain” an ATS claim. *Id.* at 714.

Since *Sosa*, this Court has placed additional limits on the availability of ATS actions to ensure the courts do not overstep Congress’ jurisdictional grant or the Executive’s primacy over foreign policy. *Kiobel v. Royal Dutch Petroleum Co.* held the ATS does not provide “relief for violations of the law of nations

³ Cisco asks this Court to decide “[w]hether the Alien Tort Statute, 28 U. S. C. § 1350, allows a judicially implied private right of action for aiding and abetting.” Pet. Br. I. As phrased, the question puts the rabbit in the hat. It assumes that an ATS aiding-and-abetting claim would require the judiciary to imply a private right of action. *Sosa* makes clear, however, that any such “right,” properly recognized, must already be a well-established component of the law of nations. The district courts, having recognized that law, are left to adjudicate torts alleged to arise from a violation of the law. That is a proper and common judicial function, and it requires no further congressional authorization. See p. 14, *infra*.

occurring outside the United States.” 569 U. S. 108, 124 (2013). *Jesner v. Arab Bank, PLC* held “it would be inappropriate for courts to extend ATS liability to foreign corporations.” 584 U. S. 241, 265 (2018). And *Nestle USA, Inc. v. Doe* refined the standard set in *Kiobel*, holding that ATS “plaintiffs must allege more domestic conduct than general corporate activity.” 593 U. S. 628, 634 (2021). This Court enunciated each of these rules in the context of an aiding-and-abetting claim.

As pled, Respondents’ aiding-and-abetting claims satisfy *Sosa*’s two-step test and the requirements of the subsequent cases. First, the prohibition against aiding and abetting a violation of the law of nations is a specific, universal, and obligatory international norm. Pet. App. 23a–27a; Resp. Br. 13–17 (demonstrating that this prohibition was a well-recognized international norm at the time the ATS was enacted). Cisco does not contest this conclusion. Second, neither Cisco nor the United States has identified any specific negative foreign policy consequences that would justify the district court’s refusal to exercise jurisdiction over Respondents’ claims. Pet. Br. 33–39; Br. of U. S. as Amicus Curiae at 24–27. Moreover, as the Ninth Circuit found, Cisco is a domestic corporation, and Respondents “state a plausible claim that [Cisco] took substantial actions *domestically* that aided and abetted violations of international law.” Pet. App. 63a (emphasis added).

Respondents’ aiding-and-abetting claims also align with the intent of Congress in enacting the ATS. “The principal objective of the statute, when first enacted, was to avoid foreign entanglements by ensuring the availability of a federal forum where the failure to

provide one might cause another nation to hold the United States responsible for an injury to a foreign citizen.” *Jesner*, 584 U.S. at 255. *Amici* submit that, contrary to Cisco’s assertions, liability for U.S. corporations that aid and abet human rights abuses can aid U.S. foreign policy interests and does so here. See pp. 18–22, *infra*.

Amici respectfully submit that Cisco’s request is out of bounds. The same “judicial humility that requires [this Court] to refrain from adding to statutes requires [it] to refrain from diminishing them.” *Bostock*, 590 U.S. at 681. Accordingly, *Amici* respectfully urge this Court to refrain from pronouncing, based on a case still at the stage of a motion to dismiss, that aiding-and-abetting liability is never available under the ATS. Such a ruling would distort the text of the ATS, contravene the congressional purpose in enacting that statute, and usurp Congress’ constitutional power to “define and punish . . . Offenses against the Law of Nations.” U. S. Const., Art. I, § 8, cl. 10.

I. Cisco Offers No Compelling Reason for this Court to Deviate from the Text of the ATS and Its Decision in *Sosa*.

Cisco, going well beyond a request to reverse the decision below, asks this Court to preclude district courts from recognizing any violation of the law of nations beyond “the violation of safe conducts, the infringement of the rights of ambassadors, and piracy”—the violations that *Sosa* found likely existed in 1789. Pet. Br. 3. To this end, Cisco would have this Court overrule *Sosa*. *Sosa* upheld Congress’ constitutional power to authorize district courts to “recognize private causes of action for certain torts in violation of

the law of nations.” 542 U.S. at 724. *Sosa*, however, precluded the district courts from “recogniz[ing] . . . violations of any international law norm with less definite content and acceptance among civilized nations than the historical paradigms familiar when [the ATS] was enacted.” *Id.* at 732.

Respondents present ample contextual evidence that prohibitions on aiding and abetting *were* part of the law of nations at the time of the ATS’s enactment and are therefore presumptively within its jurisdiction. Resp. Br. 13–17. *Amici* demonstrate here that even if the international community had adopted such prohibitions after 1789, they would still fall within the plain text and intent of the ATS.

The text of the ATS unambiguously provides that “[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” 28 U.S.C. § 1350. “[W]hen a statute refers to a general subject, the statute adopts the law on that subject as it exists whenever a question under the statute arises.” *Jam v. Int’l Fin. Corp.*, 586 U.S. 199, 209 (2019). The law of nations is “an external body of potentially evolving law,” which requires the law of nations and the jurisdictional reach of the ATS to “develop[] in tandem.” See *id.* at 210. Had Congress intended to limit the ATS’s jurisdictional reach to violations cognizable in 1789, it “could have specified that it was incorporating” the law of nations “as it existed” in 1789. See *id.* at 207. It did not enact that limitation. Instead, “the First Congress understood that the district courts would recognize private causes of action for certain torts in violation of the law

of nations,” regardless of when the law of nations recognized those violations. *Sosa*, 542 U. S. at 724.

Congress’ decision to provide the district courts with “original jurisdiction” over torts committed in violation of “a treaty of the United States” reinforces *Sosa*’s conclusion. 28 U.S.C. § 1350. Any suggestion that Congress intended to limit actionable treaties to those existing in 1789 would make no sense, as shown by the fact that the United States has entered hundreds of treaties with foreign states since that time. Likewise, inferring a limitation on what constitutes the law of nations to that prevailing in 1789 would make no sense, given that the law is constantly developing.

This Court “construe[s] statutes, not isolated provisions,” so the ATS is most naturally construed to recognize subsequent developments in the law of nations just as it recognizes subsequent treaties of the United States. Cf. *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U. S. 280, 290 (2010) (internal citation omitted) (holding that the word “administrative” in a clause of the False Claims Act did not refer exclusively to federal administrative forums because the surrounding clauses did not refer exclusively to federal forums).

Cisco argues that the district courts cannot do what Congress authorized them to do in the ATS. Pet. Br. 3–4. This inherently places in dispute whether Congress acted unconstitutionally by defining the “law of nations”—the predicate of an ATS action—as an evolving body of law subject to judicial discernment. This Court long ago answered this question in other contexts, where it determined that such definitions are constitutional. The Constitution gives

Congress plenary power “[t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.” U. S. Const., Art. I, §8, cl. 10. When exercising such powers, “Congress may as well define by using a term of a known and determinate meaning, as by an express enumeration of all the particulars included in that term.” *United States v. Smith*, 18 U.S. 153, 159 (1820) (Story, J.) (holding that Congress may define “piracy” by reference to the “law of nations”). This Court has also held that by referencing the law of war (a subset of the law of nations), Congress “incorporated by reference, as within the jurisdiction of military commissions, all offenses which are defined as such by the law of war, and which may constitutionally be included within that jurisdiction.” *Ex parte Quirin*, 317 U.S. 1, 30 (1942) (internal citation omitted). Like these referential definitions under the same constitutional clause, Congress’ invocation of the “law of nations” in the ATS was constitutionally sufficient to define the torts over which district courts have jurisdiction.

Alternatively, Cisco argues that the “development” of the law since *Sosa* “preclude[s] federal courts from recognizing a claim under the law of nations as an element of common law.” Pet. Br. 19, 24 (quoting *Sosa*, 542 U.S. at 724–25). This argument enlists this Court’s recent decisions criticizing *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) to assert that recognizing aiding-and-abetting liability under the ATS is tantamount to judicially implying an unauthorized cause of action. Pet. Br. 19–21. That begs the question of whether Congress delegated district courts the task of recognizing “torts . . . committed in violation of the law of

nations.” 28 U.S.C. § 1350. The answer to that question, once again, lies in the plain meaning of the ATS. There is no question that the district courts are so authorized.

Accordingly, there is no nexus between authorization to recognize violations of the law of nations under the ATS and authorization for the “judicial implication of private rights of actions” at issue in *Bivens* and like cases. In *Bivens*, this Court recognized a private cause of action that Congress had not authorized. *Ziglar v. Abbasi*, 582 U.S. 120, 130–31 (2017). Here, Cisco asks this Court to preclude jurisdiction for a certain cause of action that falls within the textual definition of a “tort . . . committed in violation of the law of nations” and *was* therefore authorized by Congress. See p. 6, n. 3, *supra*. Such preclusion would amount to the same judicial lawmaking (albeit in reverse) that this Court has rightly censored, see, e.g., *Bostock*, 590 U.S. at 681, including in its critiques of *Bivens*.

Cisco also argues that *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994) requires the ATS to “expressly provide[] for aiding and abetting liability.” Pet. Br. 28. That argument overstates the holding in *Central Bank*. There, the question was whether the federal courts could create by implication a cause of action *that Congress had not textually authorized*. *Central Bank* rejected the judicially created prohibition against aiding and abetting because it was “beyond the scope of conduct prohibited by the statutory text.” *Id.* at 177. This Court held that its analysis required “[a]dherence to the text in defining the conduct covered,” *id.* at 174, (a requirement Cisco now asks this Court to eschew) and that the text of Section 10(b) of the Securities Exchange

Act of 1934 prohibited only the “making” or “commission” of a “manipulative act” rather than “giving aid to a person who commits” such an act, *id.* at 177.

Unlike Section 10(b), the text of the ATS provides district courts with “original jurisdiction” over tortious conduct claimed by an injured foreign citizen to have been “committed in violation of the law of nations.” 28 U.S.C. § 1350. Congress referred to the law of nations in defining the “conduct covered” by the ATS. See p. 9, *supra*. Its “failure to speak directly to [the] specific case” of aiding and abetting in its “more general” invocation of the law of nations does not “create[] a tacit exception” to subject-matter jurisdiction for aiding-and-abetting liability. See *Bostock*, 590 U.S. at 669. Conversely, any judicially imposed requirement that Congress be more specific than it chose to be in the ATS would do violence to Congress’ exclusive constitutional role to “define and punish . . . Offences against the Law of Nations.” U.S. Const., Art. I, § 8, cl. 10. This Court may also take note of the fact that, inexplicably, Cisco is not challenging Congress’ delegation to the district courts to discern the law of nations as of 1789.

Cisco erroneously contends that *Sosa* “was wrong even at the time it was decided” because it was an “invitation” to undertake “judicial lawmaking.” Pet. Br. 25 (quoting *Sosa*, 542 U.S. at 739 (Scalia, J., concurring in part and concurring in judgment)). Justice Scalia’s primary concern was that *Sosa* would require the district courts to transgress the limits on federal common law found in *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). The limit imposed by *Erie* is that the district courts, when hearing diversity cases, may not create a common law that would supplant the

common law of the states in which they are sitting. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U. S. 487, 497 (1941) (holding that the “proper function” of a district court sitting in diversity “is to ascertain what the state law is, not what it ought to be”); *accord West v. Am. Tel. & Tel. Co.*, 311 U. S. 223, 237 (1940). Here, there can be no such transgression, as the district courts do not supplant state common law when they discern the law of nations.

Amici note that Cisco neglects to point out that post-*Erie* district courts, under their diversity jurisdiction, entertain aiding-and-abetting causes of action when recognized by the governing state law. See, e.g., *Halberstam v. Welch*, 705 F.2d 472, 479 (CA DC 1983) (finding a “high probability” that D.C. law would “accept[]” the “legal rationale underlying aiding-abetting”); *Fassett v. Delta Kappa Epsilon (New York)*, 807 F.2d 1150, 1162 (CA3 1986) (finding “that Pennsylvania law recognizes a cause of action against accomplices who assist in a minor’s consumption of intoxicants”). As the district courts recognize that state law prohibits aiding and abetting, they are equally capable of recognizing that international law prohibits aiding and abetting pursuant to ATS jurisdiction.

Failing in its legal arguments, Cisco is reduced to advocating for the overruling of *Sosa* based on nothing more than policy preferences. In support of its position, Cisco notes this Court has not “recognize[d] a new [ATS] cause of action for the violation of a norm of international law,” Pet. Br. 24, and cites an academic study suggesting ATS litigation “has had little benefit for plaintiffs,” *id.* at 26. These observations have no bearing on the plain meaning of the ATS. Moreover, when interpreting statutes, this Court does

not “favor contemporaneous or later practices *instead of* the laws Congress passed.” *McGirt v. Oklahoma*, 591 U. S. 894, 914 (2020).

Cisco also complains, without support from the record or elsewhere, that recognizing aiding-and-abetting liability under the ATS would “blow the *Sosa* door wide open,” “captur[e] a broad array of conduct,” Pet. Br. 4, and “embroil large swaths of the Nation’s economy in complex litigation that will harm the reputation of American companies and chill foreign trade and investment,” *id.* at 39.⁴ This Court, however, does not place “the limits of the drafters’ imagination” or “extratextual considerations” over the “express terms of a statute.” *Bostock*, 590 U. S. at 653. That successful ATS actions may impact the business community says nothing about whether the text of the ATS grants jurisdiction over such claims.⁵

⁴ One must wonder about the state of commercial practices when considering that Cisco, one of the world’s largest corporations, is concerned about the impact on the business community of the availability of ATS aiding-and-abetting actions. In those actions, the plaintiff cannot get past the first motion to dismiss without meeting the first step of *Sosa*’s test and, among other requirements, adequately alleging the defendant’s domestic activity offered “knowing assistance” that had “substantial effect on an international law violation.” Pet. App. 39a; cf. *Nestle*, 593 U. S. at 634 (holding that “plaintiffs must allege more domestic conduct than general corporate activity”).

⁵ See *Sedima, S.P.R.L. v. Imrex Co.*, 473 U. S. 479, 499 (1985) (“The fact that [civil RICO] is used against respected businesses allegedly engaged in a pattern of specifically identified criminal conduct is hardly a sufficient reason for assuming that the provision is being misconstrued. Nor does it reveal the ‘ambiguity’ discovered by the court below. ‘The fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.’”) (quoting

II. Cisco’s Assertions of General Foreign Policy Concerns are Neither Legally nor Factually Sound.

Cisco requests that this Court prohibit all ATS claims based on violations of the modern law of nations because they “necessarily ‘implicate[]’ foreign policy. Pet. Br. 21 (citing *Kiobel*, 569 U.S. at 117). But that assertion is no more true today than it was when the First Congress passed the ATS in 1789. The First Congress would have been aware that ATS claims will always implicate foreign policy to some extent because all ATS plaintiffs are “alien[s].” 28 U.S.C. § 1350.

The assertion that a federal court can never adjudicate any claim that “implicates” foreign policy is certainly wrong under the Constitution. See, e.g., *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.”); accord *Japan Whaling Ass’n v. Am. Cetacean Soc.*, 478 U.S. 221, 229–30 (1986). The Constitution itself “extend[s]” the “judicial Power” to “all Cases affecting Ambassadors” and “Controversies . . . between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects.” U.S. Const., Art. III, § 2, cl. 1. Cisco’s citation to *Hernandez v. Mesa* does not compel a different conclusion. 589 U.S. 93 (2020). There, this Court barred a *Bivens* cause of action because, among other case-specific reasons, this Court would have had to “arbitrate,” *id.* at 106, the U.S. and Mexican governments’ “disagreement” over how to adjudicate a “cross-border shooting,” *id.* at 104. As *Hernandez*

Haroco, Inc. v. Am. Nat’l Bank & Tr. Co. of Chicago, 747 F.2d 384, 398 (CA7 1984)).

shows, this Court approaches foreign policy concerns on a case-specific—rather than categorical—basis.

To justify a blanket prohibition of ATS aiding-and-abetting claims based on foreign policy, Cisco cites foreign states’ objections to such claims.⁶ Pet. Br. 35. But the voiced objections of implicated foreign states are not the only foreign relations consideration district courts review under the ATS. As the Ninth Circuit explained, a relevant consideration is “potential scrutiny by the international community generally” if U.S. corporations were permitted to aid and abet violations of the law of nations with impunity. Pet. App. 31a. The First Congress passed the ATS to avoid this scrutiny and increase harmony with the international community. See Resp. Br. 29–30. Its text does not insulate U.S. actors from liability for enabling ATS plaintiffs’ own governments to violate

⁶ Cisco’s examples of foreign states’ specific objections to certain ATS litigation prove only that such objections should be evaluated on a case-by-case basis, not categorically. Jordan expressed fear that litigation against the Arab Bank would “destabilize” its economy. *Jesner*, 584 U.S. at 271. Canada expressed fear that litigation against a Canadian company investing in Sudan would inhibit its “stick and carrot” approach to resolving the human rights crisis in Sudan. *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, No. 01 CIV.9882(DLC), 2005 WL 2082846, at *1 (SDNY Aug. 30, 2005). Indonesia expressed fear that litigation would “undermin[e]” a peace treaty that was the result of a “democratic process.” *Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 62 (CA9 2011), *vacated* 527 F.App’x 7 (CA9 2013). And Papua New Guinea, which later reversed its position to support ATS liability, feared the litigation would have “very serious social, economic, legal, political and security implications” for its international relations, “especially its relations with the United States.” *Sarei v. Rio Tinto, PLC*, 487 F.3d 1193, 1199 (CA9 2007), *on reh’g en banc* 550 F.3d 822 (CA9 2008).

plaintiffs' rights under international law. To the extent that cases involve foreign states' conduct, the offending state's objection cannot be dispositive, as that would nullify the application of international law with respect to U.S. actors in direct contravention of the ATS.

Cisco also ignores that there are instances where foreign states have *supported* ATS litigation, including aiding-and-abetting claims where foreign states allegedly committed the "primary wrongdoing." *Contra* Pet. Br. 35. These include: (1) *In re Est. of Ferdinand Marcos Hum. Rts. Litig.*, 94 F. 3d 539, 547 (CA9 1996) (the Philippines "urged" for an ATS "suit to proceed in American courts" because "relations may well be improved if Filipino citizens see that justice is available in U.S. courts"); (2) *Sarei v. Rio Tinto, PLC*, 671 F. 3d 736, 756 (CA9 2011), *judgment vacated* 569 U. S. 945 (2013) (Papua New Guinea "expressly urged" that an ATS aiding-and-abetting case "be heard by courts in the United States" because it would not "adversely affect[] any relations between [Papua New Guinea] and the United States"); and (3) *Balintulo v. Daimler AG*, 727 F. 3d 174, 184 (CA2 2013) (South Africa explained that it was "now of the view" that a U.S. court "is an appropriate forum to hear the remaining claims of aiding and abetting in violation of international law").

Along with preserving the United States' relations with the international community, ATS aiding-and-abetting liability can bolster U.S. foreign policy objectives, including its strong interest in preventing human rights abuses abroad. See, e.g., Elie Wiesel Genocide and Atrocities Prevention Act of 2018, Pub. L. No. 115-441, § 3, 132 Stat. 5586, 5586 (2019) ("It shall

be the policy of the United States to regard the prevention of atrocities [defined as war crimes, crimes against humanity, and genocide] as in its national interest.”); 22 U. S. C. § 2304(a)(1) (“[A] principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.”). In addition to the case at hand, the following is an example of where an ATS aiding-and-abetting claim would *align with* U.S. foreign policy.

The CCP has subjected more than 11 million Uyghurs living in their historical homeland of East Turkestan, which the CCP calls the Xinjiang Uyghur Autonomous Region (“XUAR”), to egregious human rights abuses. Lindsay Maizland, *China’s Repression of Uyghurs in Xinjiang*, Council on Foreign Relations (Oct. 3, 2025), <https://perma.cc/MZ4W-AQ5C>. In the late 1990s and early 2000s the CCP began “carrying out a harsh crackdown on Uighur Muslims,” purportedly to combat terrorism. Cong.-Exec. Comm’n on China, *Annual Report* 18 (Oct. 2, 2002), <https://perma.cc/BT4A-VF9P>.

The CCP intensified its abuse of the Uyghurs in 2017, instituting systematic mass internment, arbitrary detention, forced labor, torture, sexual violence, coercive birth prevention campaigns, and destruction of cultural and religious sites. U.S. Dept. of State, *2024 Country Reports on Human Rights Practices: China (Includes Hong Kong, Macau, and Tibet)* (Aug. 12, 2025), <https://perma.cc/C6AW-PYK9>. The CCP has arbitrarily detained or imprisoned more than one million Uyghurs, and its genocidal abuses against the population at large remain unabated. Lindsay Maizland, *China’s Repression of Uyghurs in Xinjiang*,

Council on Foreign Relations (Oct. 3, 2025), <https://perma.cc/MZ4W-AQ5C>.

The United States has officially determined that the PRC, under the control of the CCP, has committed genocide and other crimes against humanity in its treatment of the Uyghurs and other ethnic and religious minorities in the XUAR.⁷ Secretary of State Michael R. Pompeo, *Determination of the Secretary of State on Atrocities in Xinjiang* (Jan. 19, 2021), <https://perma.cc/6RQQ-B4KV>. Its official response to this genocide has been consistent and bipartisan.

The official policy of the United States is “to address gross violations of human rights” in the XUAR “using all the authorities available to the United States Government.” Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, § 1(6)(B), 135 Stat. 1525, 1525–1526 (2021) (“UFLPA”). The United States has called on its corporations to “ensure” that “their commercial activities are not contributing to human rights violations in [the XUAR] or elsewhere in China” and that “their supply chains are not compromised by forced labor.” Uyghur Human Rights Policy Act of 2020, Pub. L. No. 116-145, § 4(7), 134 Stat. 648, 651 (2020). It has

⁷ The Uyghur genocide is but one example of the United States condemning state-sponsored genocide. See, e.g., *The Crisis in Darfur: Hearing Before the S. Foreign Relations Comm.*, 108th Cong. (2004) (testimony of Secretary of State Colin Powell), <https://perma.cc/T65Z-7E7B>; H.R. Con. Res. 467, 108th Cong. (2004); S. Con. Res. 133, 108th Cong. (2004); Secretary of State Antony J. Blinken, *Genocide, Crimes Against Humanity and Ethnic Cleansing of Rohingya in Burma* (Mar. 26, 2022), <https://perma.cc/Q7FL-6MGU>; 22 U.S.C § 10251(a)(1) (authorizing the Secretary of State to assist “civilian or international entities” that “identify suspected perpetrators of war crimes, crimes against humanity, and genocide in Burma”).

created a “presumption” that “goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in [the XUAR]” are made from forced labor and are to be denied entry to the United States. UFLPA at § 3(a). And it has warned corporations that failure to “exit supply chains, ventures, and/or investments connected to [the XUAR] could run a high risk of violating U.S. law.” Dep’t of State et. al, *Xinjiang Supply Chain Bus. Advisory 2* (July 13, 2021), <https://perma.cc/D9G4-A839>.

Some U.S. corporations, however, are reported to have knowingly supported the CCP’s genocidal campaign against the Uyghurs. Dake Kang & Yael Grauer, *Detailed findings from AP investigation into how US tech firms enabled China’s digital police state*, AP News (Sept. 9, 2025), <https://perma.cc/G8ZC-QYSC>. Genocide is considered a violation of the law of nations. *Jesner*, 584 U.S. at 262 (plurality opinion) (“International human-rights norms prohibit acts repugnant to all civilized peoples—crimes like genocide, torture, and slavery, that make their perpetrators ‘enemies of all mankind.’”) (quoting *Sosa*, 542 U.S. at 732). So is aiding and abetting genocide. *Prosecutor v. Krstić*, Case No. IT-98-33-A, Judgment, ¶¶ 135–144 (Yugoslavia Tribunal Appeals Chamber Apr. 19, 2004) (convicting member of the Bosnian Serb Army for aiding and abetting genocide in Bosnia and Herzegovina).

Claims for aiding and abetting the Uyghur genocide, like Respondents’ aiding-and-abetting claims, would likely not generate any new “diplomatic friction” between the United States and the PRC. *Contra* Pet. Br. 17. The United States already considers the PRC one of its “foreign adversaries” because the PRC has “engaged in a long-term pattern or serious

instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.” 15 C.F.R. § 791.4(a)(1). The United States has also condemned the PRC’s treatment of its religious and philosophical minorities, including the Falun Gong. Resp. Br. 24–27; see also 22 U.S.C. § 6401(b)(1)(A) (It is “the policy of the United States to condemn violations of religious freedom.”); 22 U.S.C. § 6901(11) (“The human rights record of the [PRC] is a matter of very serious concern to the Congress.”).

It is difficult to fathom how such cases would contravene U.S. foreign policy if they seek to remediate harms that the United States vehemently condemns. In the present case, for example, the United States has been free for fifteen years to explain “the [foreign policy] implications of exercising jurisdiction over *particular* petitioners in connection with *their* alleged conduct.” *Republic of Austria v. Altmann*, 541 U.S. 677, 702 (2004). It has not done so. Br. of U.S. as Amicus Curiae at 24–27.

ATS litigation against U.S. corporations that aid and abet the CCP’s human rights abuses is *prima facie* consistent with U.S. foreign policy. See Cert. Br. of Congressman Chris Smith as Amicus Curiae at 11 (“Clearly, this case is neither inconsistent with U.S. law nor contrary to U.S. foreign policy.”); Resp. Br. 25–27. It is unlikely to create the “diplomatic friction” sufficient for dismissal. Instead, it materially *advances* stated U.S. foreign policy by dissuading U.S. corporations from participating in the condemned actions.

CONCLUSION

For these reasons, this Court should affirm the Ninth Circuit and uphold the continued availability of aiding-and-abetting liability under the ATS.

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