

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 CENTER FOR JUSTICE AND
ACCOUNTABILITY AS AMICUS CURIAE
IN SUPPORT OF RESPONDENTS**

Susan H. Farbstein

Counsel of Record

INTERNATIONAL HUMAN RIGHTS CLINIC

HARVARD LAW SCHOOL

6 Everett St., 3rd Fl.

Cambridge, MA 02138

(617) 495-4589

sfarbstein@law.harvard.edu

Attorney for Amicus

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INTERESTS OF AMICUS CURIAE¹

Amicus the Center for Justice & Accountability (CJA) is a U.S.-based human rights organization dedicated to deterring torture, war crimes, crimes against humanity, extrajudicial killings, and other serious human rights abuses. Through high-impact litigation, CJA holds perpetrators of abuses accountable and seeks truth, justice, and redress for survivors and victims' families. Since its founding in 1998, CJA has worked to advance the rights of survivors and victims' families, and has represented plaintiffs in numerous lawsuits filed in federal courts under the Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350 note, and the Alien Tort Statute (ATS), 28 U.S.C. § 1350, against individuals who came to the United States after committing, commanding, or aiding and abetting grave human rights abuses abroad.

CJA has appeared before this Court on behalf of survivors of atrocities committed under Somali dictator Siad Barre in *Samantar v. Yousuf*, 560 U.S. 305 (2010), and as *amicus curiae* on issues related to the TVPA, the ATS, and international law in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), *Mohamad v. Palestinian Authority*, 566 U.S. 449 (2012), *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108 (2013), *Trump v. Hawaii*, 585 U.S. 667 (2018), and *Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021).

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

Petitioners present the Court with two questions for review: (1) whether courts are categorically precluded from recognizing aiding and abetting liability for *Sosa*-qualifying norms under the ATS; and (2) whether the TVPA authorizes aiding and abetting liability for torture and extrajudicial killing claims. Pet. Br. I.

CJA has a strong interest in the proper resolution of these questions, including whether the TVPA authorizes victims of torture and extrajudicial killing to seek redress against an individual who aided and abetted those violations when a U.S. court otherwise exercises jurisdiction over that individual.

SUMMARY OF ARGUMENT

Introduced by both Democratic (Gus Yatron, D-PA and Peter Rodino, D-NJ) and Republican (Jim Leach, R-IA) representatives in the House and by Senator Arlen Specter (R-PA) and bipartisan co-sponsors in the Senate, the TVPA was passed by a nearly unanimous, bipartisan Congress. It was signed into law by President George H.W. Bush in 1992.

The TVPA provides for liability against those who aid and abet torture and extrajudicial killing abroad. The TVPA's plain meaning and legislative history make clear it was enacted to permit "lawsuits against persons who *ordered, abetted, or assisted*" in the violations at issue. S. Rep. No. 102-249, at 8 (1991) (emphasis added). In *Mohamad*, this Court affirmed that "the TVPA contemplates liability against officers who do not personally execute the torture or extrajudicial killing . . ." 566 U.S. 458. The TVPA reflects Congress' understanding at the time of its drafting that the common law and the law of nations recognized the

existence of aiding and abetting liability for intentional torts such as torture and extrajudicial killing. The courts of appeals are aligned in finding that the TVPA extends liability beyond the direct perpetrators of torture and extrajudicial killing, including to those who aid and abet the violations. See Section I(A).

Petitioners' attempt to limit secondary liability under the TVPA solely to command responsibility fails because it rests on a fundamental misunderstanding of that doctrine. Petitioners wrongly equate command responsibility with a form of direct responsibility. Once the doctrine of command responsibility is properly understood, Petitioners' acknowledgment that it is available under the TVPA undermines, rather than supports, their broader argument. See Section I(B).

Eliminating aiding and abetting liability under the TVPA would deprive victims of some of the most serious rights abuses of a remedy in U.S. courts and would upend the long-standing policy of the United States to deny safe haven to human rights abusers. The importance of preserving aiding and abetting claims under the TVPA is made clear through the history of cases successfully brought by CJA against notorious human rights abusers living in the United States, including Armando Fernández-Larios, a member of the Chilean "Caravan of Death," and Alvaro Rafael Saravia Merino, who coordinated the 1980 assassination in El Salvador of then-Archbishop Oscar Romero, who was canonized to sainthood in 2018. See Section II.

ARGUMENT

I. Congress Recognized Aiding and Abetting as a Viable Mode of Liability In Enacting the TVPA.

The text and legislative history of the TVPA make clear that Congress intended the statute to reach all those responsible for torture and extrajudicial killings committed abroad, not merely those who personally carry out the acts. The TVPA’s plain text, its legislative history, and the legal backdrop against which it was enacted all confirm that aiding and abetting is a cognizable theory of liability under the statute, a position uniformly adopted by the courts of appeals. Further, Petitioners’ attempt to confine secondary liability to an arbitrarily narrow understanding of command responsibility misreads that doctrine. That command responsibility is available under the TVPA only supports the premise that aiding and abetting liability also exists under the TVPA.

A. The TVPA Provides a Civil Remedy for Torture and Extrajudicial Killings Committed Abroad, Including Through Aiding and Abetting Liability.

By its express terms, the TVPA extends liability not just to individuals who personally *commit* the acts of torture or extrajudicial killing, but to anyone who “*subjects*” another to torture. Section 2(a), the liability provision, states that “[a]n individual who . . . *subjects* [another] individual to torture shall . . . be liable for damages . . .” 28 U. S. C. § 1350 note, § 2(a)(1) (emphasis added); see also Section 2(a)(2) (also using the term

“subjects” for liability for extrajudicial killing). Under its dictionary definition, the verb “subject” means “to cause someone ‘to undergo the action of something specified; to expose . . . to make liable or vulnerable.’” *Wiwa v. Royal Dutch Petroleum Co.*, No. 96 Civ. 8386 (KMW), 2002 WL 319887, at *15 (SDNY Feb. 28, 2002) (quoting Random House Webster’s College Dictionary (1999) and noting that “[t]he legislative history of the TVPA supports this reading”).

The legislative history of the TVPA further underscores the statute’s reach. The Senate Report accompanying the TVPA states clearly that the statute permits “lawsuits against persons who *ordered, abetted, or assisted in the torture.*” S. Rep. No. 102-249, at 8 (Section IV.E. Scope of liability) (emphasis added).

In *Mohamad*, this Court stated unanimously that “Congress is understood to legislate against a background of common law adjudicatory principles,” 566 U.S. at 457 (internal quotation marks omitted). When the TVPA was passed in 1992, it was understood that the common law provided for aiding and abetting liability for intentional torts. See, e.g., *Halberstam v. Welch*, 705 F.2d 472, 477–78 (CA DC 1983).

This extension of liability to all responsible parties reflects Congress’s abhorrence of torture and extrajudicial killing and its acknowledgment that victims should be provided a civil means of redress for these grave harms. 137 Cong. Rec. H11245 (1991) (“Provisions implementing the criminal aspects of [the UN Convention Against Torture] are included in the crime bill [later 18 U.S.C. § 2340A] that this committee recently approved. However, a criminal prosecution does not make the victim whole. The Torture Victim Protection Act complements what we did in the crime

bill by allowing victims to obtain money damages from torturers in a civil cause of action.”). It was also a recognition of the scope of liability available under customary international law, and the types of claims available under the ATS as violations of the law of nations. In enacting the TVPA, Congress codified certain causes of action that could be brought under the ATS in 1991. S. Rep. No. 102-249, at 4 (“Th[e] universal consensus condemning [torture and extrajudicial killing] has assumed the status of customary international law” and “[t]he TVPA would establish an unambiguous basis for a cause of action that has been successfully maintained under an existing law, [the ATS] . . .”). These included aiding and abetting liability.

The existence of aiding and abetting liability and other forms of secondary liability under the law of nations was well-established at the time of the TVPA’s enactment. The Nuremberg Charter, whose drafters included Justice Robert H. Jackson,² specifically provided liability for “leaders, organisers [sic], instigators and accomplices” of the crimes enumerated in the Charter. Charter of the International Military Tribunal art. 6, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279. The Convention Against Torture—which the TVPA was designed to implement³—also condemns not only “all acts of torture” but also any “*act by any person which constitutes complicity or participation in the*

² See John Q. Barrett, *The Nuremberg Roles of Justice Robert H. Jackson*, 6 WASH. U. GLOBAL STUD. L. REV. 511, 519-20 (2007).

³ “This legislation will carry out the intent of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by the U.S. Senate on October 27, 1990.” S. REP. NO. 102-249 at 3.

torture.” S. Rep. No. 102-249, at n.16 (quoting Art. 4(1) of the Convention Against Torture).

After the passage of the TVPA, courts affirmed Congress’s understanding of the theories of liability available under the ATS. See *Yousuf v. Samantar*, 2012 WL 3730617, at *10–11 (EDVA Aug. 28, 2012) (finding that “[a]iding and abetting liability is well established under the ATS[]” and noting that “‘virtually every court to address the issue’ has ‘recognized secondary liability for violations of international law since the founding of the Republic’”) (quoting *Aziz v. Alcolac, Inc.*, 658 F. 3d 388, 396 (CA4 2011)); *Cabello Barrueto v. Fernández-Larios*, 205 F. Supp. 2d 1325, 1332 (SDFL 2002), *aff’d sub nom. Cabello v. Fernández-Larios*, 402 F. 3d 1148 (CA11 2005) (“many federal courts have recognized that the [ATS] reaches conspiracies and accomplice liability”); *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1355 (NDGA 2002), *abrogated in part on other grounds by Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F. 3d 1242, 1247 (CA11 2005) (“United States courts have recognized that principles of accomplice liability apply under the [ATS] to those who assist others in the commission of torts that violate customary international law”).

In light of the text and legislative history of the TVPA, the courts of appeals are aligned in finding that the TVPA extends liability beyond the direct perpetrators of torture and extrajudicial killing, including to those who aid and abet the violations. See, e.g., *Mamani v. Sánchez Bustamante*, 968 F. 3d 1216, 1220 (CA11 2020) (noting that plaintiffs bringing suit pursuant to the TVPA can “recover based on theories of indirect liability, including aiding and abetting, conspiracy, agency, and command responsibility”); *Doe v.*

Drummond Co., 782 F. 3d 576, 607–08 (CA11 2015) (holding that aiding and abetting claims are cognizable under the TVPA); *Cabello*, 402 F. 3d at 1157 (finding that “the TVPA was intended to reach beyond the person who actually committed the acts, to those ordering, abetting, or assisting in the violation”); *Hilao v. Estate of Marcos*, 103 F. 3d 767, 779 (CA9 1996) (affirming jury instructions that stated defendant could be liable under the TVPA for more than his own direct actions); *Boniface v. Viliena*, 145 F. 4th 98, 119 (CA1 2025) (finding that “aiding and abetting is available as a theory of liability under the TVPA”).

B. Petitioners’ Argument that the TVPA Recognizes Command Responsibility While Excluding Aiding and Abetting Is Misguided.

Petitioners acknowledge that Congress intended for the TVPA to extend liability beyond those “who do not personally execute the torture or extrajudicial killing” and concede that the TVPA creates liability for command responsibility. Pet. Br. 41. Petitioners, however, attempt to cabin secondary liability under the TVPA solely to command responsibility to the exclusion of aiding and abetting. This effort fails on multiple fronts.

First, a plain reading of the TVPA and an examination of its legislative history make clear that Congress intended the statute to encompass liability for individuals who aided and abetted torture and extrajudicial killing abroad, in addition to those who order it. See pp. 4–5, *supra*. Nothing in the TVPA’s text or history distinguishes command responsibility from aiding

and abetting, let alone evinces an intent to exclude the latter in favor of the former.

Second, Petitioners' argument is premised on a flawed understanding of the doctrine of command responsibility. Petitioners wrongly equate command responsibility with a form of direct responsibility, wherein liability attaches only where a defendant "themselves order[ed] or inflict[ed] th[e] torture." Pet. Br. 39; see also Pet. Br. 41 (arguing that command responsibility is a theory of liability "narrower than" aiding and abetting).

Petitioners' framing of command responsibility contravenes established law. It is a longstanding principle of U.S. and international law that, pursuant to command responsibility, a civilian or military commander need not have "either committed or directed the commission of" a subordinate's unlawful acts to be held responsible for those acts. *In re Yamashita*, 327 U. S. 1, 14–15 (1946); see also S. Rep. No. 102-249, at 9 ("a higher official need not have personally performed or ordered the abuses in order to be held liable"). Command responsibility does not depend on a commander's participation in the underlying unlawful act. *Yamashita*, 327 U. S. at 14–15; see also *Hamdan v. Rumsfeld*, 548 U. S. 557, 604 n. 36 (2006) (noting with approval the *Yamashita* reading of the "Fourth Hague Convention of 1907" as "impos[ing] 'command responsibility' on military commanders for acts of their subordinates"); see also S. Rep. No. 102-249, at 9 ("Under international law, responsibility for torture, summary execution, or disappearances extends beyond the person or persons who actually committed those acts—anyone with higher authority who authorized, tolerated or knowingly ignored those acts is

liable for them” (citing *Forti v. Suarez Mason*, 647 F. Supp. 1531, 1537–38 (NDCA 1987)). Pursuant to command responsibility, a defendant is liable where he “knew, or should have known, in light of the circumstances at the time, that subordinates had committed, were committing, or were about to commit human rights abuses” and “failed to take all necessary and reasonable measures to prevent . . . and punish” those acts. *Chavez v. Carranza*, 559 F. 3d 486, 499 (CA6 2009) (citing *Ford v. Garcia*, 289 F. 3d 1283, 1288 (CA11 2002)); see also *Yamashita*, 327 U. S. at 15–18.

Once the doctrine of command responsibility is properly understood, Petitioners’ acknowledgment that it is available under the TVPA undermines, rather than supports, their broader argument. If the term “subjects” reaches a defendant who fails to prevent or punish torture by subordinates, where no actual knowledge or affirmative act is required, there is no principled basis to exclude liability for a defendant who knowingly and substantially assisted the commission of the torture. Aiding and abetting is, in most formulations, closer to direct perpetration than command responsibility, which can be established through omission and constructive knowledge alone. See *Twitter, Inc. v. Taamneh*, 598 U. S. 471, 493 (2023) (describing aiding and abetting as conscious and culpable participation in a wrongful act so as to help “make it succeed”).

Third, Petitioners seek to bolster their command responsibility argument by noting that the TVPA’s definition of torture requires that the victim be in the offender’s custody or physical control, which purportedly reflects an intent to limit liability to those who

directly inflict or order the abuse. Pet. Br. 43. As an initial matter, the statute’s structure, which separates out “Liability” (Section 2(a)) from the “Definitions” of the underlying offenses (Section 3), makes clear this was not Congress’ intention. The more natural reading is that the custody or physical control requirement in Section 3(b) is simply an element of the underlying offense of torture, not a limitation on who can be held liable for its commission.⁴ Petitioners err by reading a definition of the underlying offense as if it were a limitation on secondary liability, which conflates two distinct statutory functions. Their misunderstanding is reinforced by the fact that the TVPA, which applies to both torture and extrajudicial killings, does not include a similar custody or physical control requirement for the underlying offense of extrajudicial killing. Cf. Section 3(b) (Torture) with Section 3(a) (Extrajudicial Killing).⁵

⁴ Similarly, when the definition of “torture” in international law incorporates a custody or physical requirement as part of the underlying offense, this does not limit who can be held secondarily liable for the commission of the underlying offense. See, e.g., Rome Statute of the International Criminal Court, art. 7(2)(e), art. 25, July 17, 1998, 2187 U.N.T.S. 3 (Article 7(2)(e) defines torture as a crime against humanity as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the *custody or under the control* of the accused . . .” while Article 25 separately establishes liability for anyone who “aids, abets or otherwise assists in” the commission of a crime) (emphasis added).

⁵ “EXTRAJUDICIAL KILLING.—For the purposes of this Act, the term “extrajudicial killing” means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under

Petitioners’ custody or physical control argument is also irreconcilable with their concession that the TVPA encompasses command responsibility. As detailed above, command responsibility does not require custody or physical control—nor proximate causation or actual knowledge. *Yamashita*, 327 U. S. at 14–15. If the custody or physical control element of Section 3(b) were a limitation on who can be held liable, it would run counter to the applicability of the command responsibility doctrine.

II. Aiding and Abetting Liability Under the TVPA Advances Important U.S. Interests.

Perpetrators of gross human rights abuses do not act in a vacuum—their actions are made possible through the assistance and support of numerous others. Accordingly, aiding and abetting liability is a core tenet of international law and a well-recognized basis for liability under the TVPA. See p. 7, *supra*; *Lizarbe v. Rondon*, 642 F. Supp. 2d 473, 490 (DMD 2009), *aff’d in part, appeal dismissed in part*, 402 F. App’x 834 (CA4 2010) (“numerous U.S. and international bodies have recognized causes of action under ATS/TVPA based on theories of conspiracy and aiding and abetting”). Aiding and abetting liability ensures that participants in atrocity crimes are held accountable for conduct that significantly contributes to such abuses. This mode of liability is particularly important in the TVPA context, where potential plaintiffs frequently have no other legal recourse against human rights violators who have fled to the United

international law, is lawfully carried out under the authority of a foreign nation.” 28 U. S. C. § 1350, n. Section 3(a).

States. Reversing the Ninth Circuit’s holding and eliminating aiding and abetting liability under the TVPA would foreclose the ability of many victims and their families to seek redress for torture and extrajudicial killing when the culpable actors have found safe haven in the United States.

Such a reversal would allow significant conduct to go unpunished and unremedied. See, e.g., *Boniface*, 145 F. 4th at 119 (finding evidence at trial was sufficient to support TVPA torture claims under an aiding and abetting theory of liability against defendant who participated in an armed attack against civilians in a radio station in Haiti); *Cabello*, 402 F. 3d at 1159 (CA11 2005) (upholding a jury verdict of liability against a Pinochet-era death squad member for the execution of a political prisoner “[b]ecause there is sufficient evidence to support a finding of aiding and abetting”); *Yousuf v. Samantar*, 2012 WL 3730617, *13 (finding defendant liable under the TVPA for torture and extrajudicial killings committed during his tenure as Siad Barre’s Minister of Defense and Prime Minister in Somalia because he “substantial[ly] assist[ed]” his subordinates with “the purpose of facilitating the alleged acts”); *Lizarbe v. Hurtado*, 2007 WL 9702177, *1–2 (SDFL Nov. 21, 2007) (finding defendant liable for extrajudicial killing and torture under the TVPA and ATS because he, inter alia, “aided and abetted his subordinates in carrying out the killings and torture”); *Doe v. Rafael Saravia*, 348 F. Supp. 2d 1112, 1148 (EDCA 2004) (finding that the evidence against the defendant was sufficient to establish liability against him under the TVPA and ATS, including as an aider and abettor, in the coordinated assassination of Saint Oscar Romero); *Mehinovic v.*

Vuckovic, 198 F. Supp. 2d at 1355–56 (finding the defendant “aided and abetted Serb military and political forces in committing” torture and abuse against plaintiffs by providing “assistance and encouragement to those who directly perpetrated acts of torture and abuse against plaintiffs”); *Jaramillo v. Naranjo*, 2021 WL 4427455, at *1 (SDFL Sept. 27, 2021) (finding the defendant, the commander of a Colombian paramilitary group, liable under the TVPA for aiding and abetting the killing of a community leader and the torture of his wife).

Armando Fernández-Larios, a former member of a death squad commissioned by the Chilean dictator Augusto Pinochet, is one example of the type of individual who has been held liable under the TVPA for aiding and abetting torture and extrajudicial killing. See *Cabello*, 402 F. 3d at 1157. In October 1973, under the command of General Sergio Arellano Stark, Fernández-Larios and the death squad traveled from city to city, torturing and executing political prisoners in what became known as the “Caravan of Death.” *Id.* at 1152. Among many others, the death squad murdered thirteen political prisoners in Copiapó, Chile. Winston Cabello, an economist who had served the government of the democratically-elected President Salvador Allende before Allende was overthrown by Pinochet, was among those killed. *Ibid.*

To facilitate these killings, on October 16, 1973, Fernández-Larios and several other members of the death squad retrieved prisoner records from the garrison at Copiapó. From those records, thirteen prisoners, including Cabello, were selected for death. *Ibid.* Witnesses testified that Fernández-Larios was with General Arellano when the thirteen were selected and

may have even chosen some victims himself. *Id.* at 1159. Later that evening, Arellano’s death squad ordered some of the prisoners onto a truck, brutally murdering two on the spot. The remaining prisoners were forced to sit with the mangled bodies as they were carted away to a fate unknown. Second Am. Compl. ¶¶ 40–41, *Cabello v. Fernández-Larios*, No. 99-0528-civ-LENARD (SDFL Sept. 17, 2001).

The truck carried the prisoners to a location off the main road where the death squad executed the prisoners. Cabello refused to leave the truck and was slashed to death, likely with a *corvo*, a specialized knife designed to cause a slow and excruciating death. While circumstantial evidence suggested Fernández-Larios may have murdered Cabello, the direct evidence was lacking. *Cabello*, 402 F. 3d at 1158 (discussing the evidence of Fernández-Larios’s direct involvement in the killings and concluding that “the evidence supporting direct liability is not as strong as that supporting indirect liability”). The prisoners’ bodies were placed in a mass grave, and a false narrative was spread that they had died during an attempted escape.

Fernández-Larios never faced accountability in Chile for his role in the Caravan of Death and he resettled in the United States towards the end of the Pinochet regime. He lived in comfortable retirement for over a decade until Cabello’s family brought claims against him under the TVPA for his role in Cabello’s torture and extrajudicial killing. U.S. courts ultimately found Fernández-Larios liable for his role in that night of cruelty and terror. See *id.* at 1160.

The availability of indirect liability under the TVPA was critical to holding him accountable for his actions.

Fernández-Larios argued that the plaintiffs had no viable claim because, despite clear evidence of his participation in the gross human rights violations leading up to Cabello's death, the plaintiffs could not show he had personally killed or tortured Cabello. See *id.* at 1157, 1159. Whether or not Fernández-Larios personally wielded the blade that killed Cabello, he was an active participant in the sequence of events that resulted in Cabello's torture and extrajudicial killing, and the torture and killing of many others. After reviewing the TVPA's legislative history, the Eleventh Circuit found that liability under the TVPA encompassed secondary theories of liability and that the plaintiffs had proffered sufficient evidence to support aiding and abetting liability. *Ibid.* ("Because there is sufficient evidence to support a finding of aiding and abetting, the jury's general verdict should stand."). Aiding and abetting liability ensures that individuals like Fernández-Larios cannot escape accountability for their participation in such crimes.

Crucially, aiding and abetting liability does not require a perpetrator to be present at the moment a trigger is pulled or a life ended in order to be held accountable for their role. For example, Alvaro Rafael Saravia Merino, under the command of Major Roberto D'Aubuisson, coordinated the 1980 assassination of Oscar Romero, the then-Archbishop of San Salvador, El Salvador, who was later canonized to sainthood. D'Aubuisson, a retired Salvadoran military officer, created and commanded paramilitary death squads after leaving the military. These death squads carried out extrajudicial killings and other human rights abuses in El Salvador against the perceived political opponents of the military forces. *Saravia*, 348

F. Supp. 2d at 1118. Saravia, also retired from the Salvadoran military, was an integral part of these groups and, in 1980, served as head of security for D'Aubuisson. *Ibid.*

In the midst of this widespread terror, Saint Oscar Romero was a beacon of hope for the people of El Salvador. Horrified by the violence taking place around him, Saint Oscar Romero spoke out against the brutality of the military groups through weekly radio homilies broadcast nationwide. *Id.* at 1121. His pleas for peace and an end to widespread violence earned him the enmity of D'Aubuisson, Saravia, and their allies who sought to silence him. The day before his assassination, Saint Oscar Romero gave a particularly impassioned speech urging the death squads to stop their violence against the populace. He counseled them that “[n]o soldier is obliged to obey an order counter to the law of God.” *Ibid.*

On March 24, 1980, D'Aubuisson, Saravia, and others met and determined that Saint Oscar Romero should be killed that very day. *Ibid.* Saravia coordinated the logistics of the assassination, including delivering payment to the assassin and arranging for the driver to take the assassin to and from the scene. *Id.* at 1121–22. Saravia also gave the assassin guidance on how to best carry out his task, advising him to aim for Saint Oscar Romero’s head and not his chest in case he was wearing a bulletproof vest. *Id.* at 1122. On Saravia’s instructions, the driver took the assassin to where Saint Oscar Romero was celebrating mass and waited while the assassin shot and killed him, before returning the assassin to an expectant Saravia. *Ibid.* The assassin confirmed to Saravia that he had completed his assignment, and Saravia reported to

D'Aubuisson that the mission had been accomplished. *Id.* at 1122–23.

The effects of the assassination reverberated throughout the country. Saint Oscar Romero had been a revered and respected figure—a voice for the people and a mediator between the sharply divided political movements in El Salvador. *Id.* at 1137. That he had been so boldly struck down in the midst of celebrating mass showed the people that “no one is sacred,” *id.* at 1138, not even an individual whose bravery and compassion was so revered that he was later canonized to sainthood by the Roman Catholic Church.⁶ The sacrilege of killing an archbishop delivering mass demonstrated that this attack was not simply a strike at one man but at Salvadorans at large and the church itself. After his death, many priests and church leaders were murdered or forced to flee the country. *Id.* at 1140–41. Worshippers in El Salvador practiced their faith in secret. *Id.* at 1141. For many, Saint Oscar Romero’s death signaled an end to the possibility of non-violent resolution of the Salvadoran conflict and galvanized guerrilla resistance against the military and paramilitary groups, resulting in an 11-year civil war. *Id.* at 1138–39. None of the individuals involved in his killing faced accountability in El Salvador, where attempts to investigate and bring them to justice were thwarted at every turn.

⁶ Camila Domonoske, *Oscar Romero, Pope Paul VI Elevated to Sainthood*, NPR (Oct. 14, 2018, 10:39 AM), <https://www.npr.org/2018/10/14/657277667/oscar-romero-pope-paul-vi-elevated-to-sainthood>; see also *Saravia*, 348 F. Supp. 2d at 1136 (noting that as of the time of the opinion, the Catholic Church was considering Oscar Romero for sainthood).

Saravia moved to the United States where, aside from one failed extradition attempt in 1987, he lived freely and comfortably. In 1993, an amnesty law passed in El Salvador seemed to foreclose any further extradition attempt and the possibility of justice in his home country. *Id.* at 1134–35. Saravia would have continued to live with impunity in the United States but for one final option—a civil suit in a U.S. court. In 2003, a family member of Saint Oscar Romero brought suit under the TVPA for extrajudicial killing and under the ATS for extrajudicial killing and crimes against humanity. The following year, 24 years after Saint Oscar Romero’s assassination, a judge found Saravia liable for his role in the killing. *Id.* at 1148 (holding that “Saravia’s role in coordinating and planning the assassination of Archbishop Romero is sufficient to establish liability against him under the TVPA” and finding Saravia liable for, *inter alia*, aiding and abetting extrajudicial killing under the TVPA). Absent indirect liability under the TVPA, Saravia’s responsibility and role in the historic and horrific assassination of Saint Oscar Romero could not have been recognized and adjudged.

In short, aiding and abetting liability under the TVPA ensures that individuals like Saravia and Fernández-Larios can be held accountable for their role in gross human rights violations and that the United States does not serve as a safe haven for perpetrators of atrocity. Eliminating aiding and abetting liability risks allowing perpetrators of extrajudicial killing and torture to live freely under the protection of the United States. Such a result would severely undermine the vital U.S. interest in holding human rights abusers accountable and in providing redress to

victims—an interest affirmed by this Court and Congress, and served by the TVPA for the last 35 years. See S. Rep. No. 102-249, at 3 (the TVPA will “mak[e] sure that torturers and death squads will no longer have a safe haven in the United States”); *Kiobel*, 569 U. S. at 133 (Breyer, J., concurring) (noting that “we should treat this Nation’s interest in not becoming a safe harbor for violators of the most fundamental international norms as an important jurisdiction-related interest”); see also H. Rep. No. 102-367, at 3 (acknowledging the U.S.’s obligation to “adopt measures to ensure that torturers are held legally accountable for their acts” and adopting the TVPA in response to this obligation). This outcome should be rejected. The Ninth Circuit’s holding that aiding and abetting is a viable mode of liability under the TVPA should be upheld.

CONCLUSION

For the foregoing reasons, and those put forth by Respondents and other amici in support of Respondents, the Ninth Circuit’s judgment should be affirmed.

Susan H. Farbstein
Counsel of Record
INTERNATIONAL HUMAN RIGHTS CLINIC
HARVARD LAW SCHOOL
6 Everett St., 3rd Fl.
Cambridge, MA 02138
(617) 495-4589
sfarbstein@law.harvard.edu

Attorney for Amicus

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