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 CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC has a strong interest in protecting meaningful access to the courts, in accordance with the text and history of the Constitution and important federal statutes, and therefore has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Enacted in 1992, the Torture Victim Protection Act (TVPA) imposes liability on any person who "subjects an individual to torture." Pub. L. No. 102-256, § 2(a)(1), 106 Stat. 73, 73 (28 U.S.C. § 1350 note). As the court below unanimously concluded, that provision does not just apply to those individuals who personally inflict torture or who are responsible for their subordinates' acts of torture. Rather, the ordinary public meaning of § 2(a)(1) establishes that it also covers individuals who knowingly provide substantial assistance to those who inflict torture—in other words, those who "aid and abet" torture. *See* Pet. App. 82a; *see also Twitter, Inc. v. Taamneh*, 598 U.S. 471, 493 (2023). Accordingly, the court below held that executives of Cisco, Inc., who designed, presented, and sold a custom-built software system to the Chinese Communist Party, enabling it to track down and torture Falun Gong adherents, could be liable under the TVPA. *See* Pet. App. 11a-15a.

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[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.

That conclusion is unsurprising given the statute's ordinary meaning. Dictionaries published at the time the TVPA was enacted confirm that the verb "subjects" means "to cause to undergo" or "to expose" to something, *Webster's Third New International Dictionary of the English Language Unabridged* 2275 (1993), especially something "unpleasant, inconvenient, or trying," *Merriam-Webster's Collegiate Dictionary* 1168 (10th ed. 1993).

Likewise, contemporaneous usages of "subjects" in judicial opinions, newspaper articles, and media sources demonstrate that one can subject someone to something without directly performing or ordering the underlying act. For example, a Washington Post article published the same year the TVPA was enacted described an organization as "subject[ing]" its employees to "continuing invective" simply by inviting a speaker critical of their work to an event. Paula Span, *The Spent Rage of the Playwright*, Wash. Post (Oct. 19, 1992), https://perma.cc/5KDK-SHKR. And just a few years later, this Court said that a school receiving Title IX funds "'subject[s]' its students to harassment" when it "cause[s]" them "to undergo harassment," "expose[s]" them to it, or "make[s] them liable or vulnerable to it." *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 644-45 (1999) (first quoting *Random House Dictionary of the English Language* 1415 (1966) (definition of "subject"), and then quoting *Webster's Third New International Dictionary* 2275 (1961) (same)). Because those who aid and abet torture cause victims to undergo such torture, they "subject" them to torture within the meaning of the TVPA.

Congress, too, has used the verb "subjects" to mean "causes to undergo" or "exposes" elsewhere in the U.S. Code. In the Americans with Disabilities Act, passed just two years before the TVPA, it specified

that a public accommodation could "subject" a disabled individual to discrimination not just directly, but also through downstream "contractual, licensing, or other arrangements." 42 U.S.C. § 12182(b)(1)(A)(i). Congress could have used the words "commit" or "inflict torture" in § 2(a)(1) of the TVPA to limit the class of defendants; indeed, it used those exact words elsewhere in the TVPA, *see* § 3(b)(1), and elsewhere in the U.S. Code, *see* 18 U.S.C. § 2340A(a); *id.* § 2441(a). But it did not; it chose "subjects." That "difference[] in language" means something. *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017).

Petitioners' arguments to the contrary are unpersuasive. They proffer two hypotheticals—a neighbor who complains about a child's behavior to a parent who then punishes the child, and a vendor who sells compliance tools to the government which then uses them in enforcement actions—which they claim demonstrate that "subjects" does not cover aiding and abetting. To be sure, no one would say that the neighbor subjected the child to punishment, or that the vendor subjected a regulated party to fines. But neither the neighbor nor the vendor would be liable for aiding and abetting either—neither provided "knowing and substantial assistance to the primary tortfeasor," *Twitter*, 598 U.S. at 491, at least under the facts provided by Petitioners. These hypotheticals therefore tell us nothing about the scope of the term "subjects" with respect to the specific question of whether it encompasses aiding-and-abetting liability. They tell us only that "subjects" does *not* encompass some acts that would also *not* constitute aiding and abetting—an observation wholly irrelevant to the question presented.

Petitioners concede—as they must—that "subjects" covers more than just directly inflicting torture. *See* Pet. Br. 40-41. But they offer no reason why it

would include "command responsibility"—under which superiors may be held liable for failing to prevent their subordinates from engaging in torture—but *not* aiding-and-abetting liability. Nor can they: because negligent commanders and aiders and abettors both "expose" a victim to torture and thus "subject" him to it, *Webster's Third New International Dictionary*, *supra*, at 2275 (1993), both fall within the TVPA's purview.

Petitioners also ask this Court to read a "custody or physical control" requirement into the TVPA's liability provision that plainly does not appear there in order to foreclose a claim for aiding-and-abetting liability. But Congress used that language in a different provision of the TVPA defining "torture" itself, *see* TVPA § 3(b)(1), not specifying who is liable for "*subject*[*ing*] an individual to torture," *id.* § 2(a)(1) (emphasis added). Again, when it comes to the ordinary meaning of the text of the actual provision governing liability under the TVPA, Petitioners come up short.

Unable to argue convincingly from the TVPA's text or structure, Petitioners insist that *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994), a case interpreting the Securities Exchange Act of 1934 (SEA), Pub. L. No. 73-291, 48 Stat. 881, requires Congress to "incant [the] magic words" "aid" and "abet" whenever it wishes to impose civil aiding-and-abetting liability, *Boechler v. Comm'r*, 596 U.S. 199, 203 (2022) (quotations omitted). But *Central Bank* did no such thing.

That case interpreted statutory text materially different from that of the TVPA: the relevant provision there prohibited manipulative or deceptive acts in securities transactions, whether committed "directly or indirectly." SEA § 10(b). By contrast, the TVPA does not require liable individuals to "engage, even

indirectly, in" torture, *Central Bank*, 511 U.S. at 176. Rather, it imposes liability on individuals who merely "subject[]" another to torture. TVPA § 2(a)(1). That language is materially broader and includes aiding and abetting.

Petitioners cherry-pick *Central Bank* for language creating a purported magic-words rule, but their selective quotations miss the full context of the opinion and, in any event, are dicta. If anything, *Central Bank* reaffirmed this Court's typical approach to statutory interpretation: it analyzed the text and structure of the Securities Exchange Act to discern its ordinary meaning and explained that Congress had taken a "statute-by-statute approach to civil aiding-and-abetting liability." 511 U.S. at 182. That approach requires giving full effect to the words Congress chose, not crafting a generic magic-words rule applicable at once to the entire federal civil code.

And for good reason. The magic-words rule that Petitioners concoct would raise separation-of-powers concerns by elevating judge-made "nit-picking technicalities" over the ordinary meaning of a statute's text, Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 285 (2012), thereby empowering judges to effectively rewrite the words that Congress passed. That surely "violates the baseline rule of legislative supremacy" in our constitutional system, Amy C. Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 167 (2010), which gives judges the power only to "implement Congress's choices rather than remake them," *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 178 (2023).

Even if Petitioners' argument could be construed as requesting a more modest clear-statement rule of the sort this Court has adopted in other contexts (and

it cannot), they provide no valid justification for adopting such a rule for civil aiding-and-abetting liability. They speculate about the "open-ended expansion" of liability that might materialize were this Court to hold that the TVPA covers aiding and abetting, Pet. Br. 44, but that rationale is entirely self-serving and does not advance any "value[] external to" the TVPA worthy of protection through a clear-statement rule, *Biden v. Nebraska*, 600 U.S. 477, 508 (2023) (Barrett, J., concurring). Nor is their invocation of possible foreign policy consequences any more persuasive, as Petitioners themselves concede that Congress has imposed primary liability under the TVPA "for conduct against foreign nationals on foreign soil." Pet. Br. 44.

Accordingly, this Court should simply give effect to the ordinary meaning of the TVPA's language and affirm.

ARGUMENT

I. One Who Aids and Abets Torture "Subjects an Individual to Torture" Under the TVPA.

As the court below held, under customary international law, someone who aids and abets an international law violation provides "knowing assistance" to the principal "that ha[s] a substantial effect on the commission of a violation of the law of nations." Pet. App. 39a-40a. At common law, the "conceptual core that has animated aiding-and-abetting liability for centuries" requires "that the defendant consciously and culpably 'participate[d]' in a wrongful act so as to help 'make it succeed.'" *Twitter*, 598 U.S. at 493 (quoting *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949)); *see also* Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 435 (2d ed. 2025) (one who "knowingly provides substantial aid or

encouragement to another's commission of a tort is jointly and severally liable for it").

Thus, a person who aids and abets torture knowingly provides substantial assistance to the principal who directly engages in torture. All parties appear to agree on this point. *See* Pet. Br. 42 (an aider and abettor gives "knowing and substantial assistance to the primary tortfeasor" (quoting *Twitter*, 598 U.S. at 491)); Resp. Br. 42 ("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'" (quoting *Twitter*, 598 U.S. at 493)).

The TVPA makes "liable for damages" "[a]n individual who, under actual or apparent authority, or color of law, of any foreign nation . . . *subjects* an individual to torture." TVPA § 2(a)(1) (emphasis added). The question in this case is therefore whether one "subjects" a person to torture within the meaning of the TVPA when one knowingly provides substantial assistance to a person who directly tortures another.

The answer is surely yes. This Court typically "interpret[s] statutory terms according to the ordinary meanings they had when they were enacted." *U.S. Postal Serv. v. Konan*, No. 24-351, slip op. at 6 (U.S. Feb. 24, 2026) (citing *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018)). And here, the ordinary meaning of the verb "subjects" in 1992 (as today) plainly covers aiding and abetting.

A. Dictionaries published around the time the TVPA was passed establish as much. For example, Webster's defined "subject" as "to cause to undergo or submit to," or "to expose." *Webster's Third New International Dictionary, supra*, at 2275 (1993). Likewise, the Random House Dictionary defined "subject" as "to cause to undergo the action of something specified;

expose" and "to make liable or vulnerable; expose." *Random House Webster's College Dictionary* 1330 (1991); *Random House Webster's Dictionary* 658 (1993) (similar). Because one who aids and abets another in committing torture has "caus[ed]" the victim "to undergo" torture, they have "subject[ed]" them to it.

Other dictionaries confirm that understanding. According to Merriam-Webster, one who "causes" an individual "to undergo or endure" something "unpleasant, inconvenient, or trying" "subjects" them to that experience. *Merriam-Webster's Collegiate Dictionary*, *supra*, at 1168. So, too, according to the Cambridge Dictionary, which defined "subject[s]" to mean "to cause (someone or something) to experience something, esp. something unpleasant." *Cambridge International Dictionary of English* 1451 (1995). Other contemporaneous dictionaries reflect the same understanding. *See Longman Dictionary of the English Language* 1493 (1984) ("to cause to undergo something"); 17 *The Oxford English Dictionary* 31 (2d ed. 1989) ("[t]o lay open or expose to the incidence, occurrence, or infliction of, render liable to, something"); *The Concise Oxford Dictionary of Current English* 1214 (8th ed. 1990) ("make liable; expose"); *The New Oxford Dictionary of English* 1849 (1998) ("cause or force to undergo (a particular experience of [sic] form of treatment)").[2]

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[2] Modern dictionaries indicate that the ordinary meaning of "subjects" has not changed since 1992. *See, e.g.*, *Merriam-Webster's Dictionary* (11th ed. 2026), https://www.merriam-webster.com/dictionary/subjects ("to make liable"; "to cause or force to undergo or endure (something unpleasant, inconvenient, or trying)"); *American Heritage Dictionary of the English Language* (5th ed. 2022), https://www.ahdictionary.com/word/search.html?q=subject (to "cause to experience, undergo, or be acted upon").

B. What dictionary definitions establish, the ordinary usage of "subjects to" confirms: those who provide substantial assistance with the knowledge that such assistance will help bring about a particular result have "subjected" an individual "to" that result. A biased school administrator, for example, subjects a libertarian speaker to censorship when she grants permission to known disruptors to protest an event. A disgruntled employee subjects a company to criticism by secretly leaking information about discriminatory hiring practices to the press, which then publishes an exposé. An ex-boyfriend subjects a woman to harassment by forwarding intimate photos to known online trolls who widely post about them.

Consistent with these examples, this Court has also used the term "subjects" in the sense that one may "subject" another "to" something without directly inflicting or ordering it. For example, this Court has stated that "Congress may subject nonconsenting States to suit in federal court when it does so pursuant to a valid exercise of its § 5 power," even though Congress was plainly not suing or commanding a plaintiff to do so. *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 364 (2001). Elsewhere, this Court has said that a recipient of Title IX funds can impermissibly "'subject' its students to harassment" through "deliberate indifference," as that "'cause[s] students to undergo' harassment," "expose[s]" them to it, or "make[s] them liable or vulnerable to it." *Davis*, 526 U.S. at 644-45 (alteration and quotations omitted) (first quoting *Random House Dictionary*, *supra*, at 1415 (1966) (definition of "subject"), and then quoting *Webster's Third New International Dictionary*, *supra*, at 2275 (1961) (same)).

Following *Davis*, other courts have explained that "[t]o 'subject' a student to harassment," an institution

need only "have caused the student to undergo harassment, made her more vulnerable to it, or made her more likely to experience it." *Fitzgerald v. Barnstable Sch. Comm.*, 504 F.3d 165, 171 (1st Cir. 2007), *rev'd on other grounds*, 555 U.S. 246 (2009); *Czerwienski v. Harvard Univ.*, 666 F. Supp. 3d 49, 84-85 (D. Mass. 2023) (same); *Farmer v. Kan. State Univ.*, 918 F.3d 1094, 1103 (10th Cir. 2019) (similar); *Hernandez v. Baylor Univ.*, 274 F. Supp. 3d 602, 613 (W.D. Tex. 2017) ("[T]o 'subject' a student to harassment a school need only make the student vulnerable to that harassment." (citing *Davis*, 526 U.S. at 645)). Of course, in each of these cases, the school itself did not directly inflict the harassment or order someone to perform it. Rather, the school knowingly exposed the victim to harassment by creating the conditions necessary for it to occur.

Similarly, it is natural to say that one may subject an individual to something even if she does not exercise any control over the person that directly commits the act, as with aiding and abetting. This is true of the cases above involving peer-on-peer sexual harassment in educational institutions—the school does not exercise any direct authority over the harasser (like that of an employer over an employee) when the harasser is a student and not a teacher, yet the school may still "subject" the victim to harassment through "actual knowledge of the harassment" and "deliberate indifference" to it. *Fitzgerald*, 504 F.3d at 171; *see Farmer*, 918 F.3d at 1102 (school "subjected" student to heightened risk of sexual assault by a peer); *Hernandez*, 274 F. Supp. 3d at 613 (same).

This usage of "subjects" appears in other contexts as well. For example, in *State v. Bernhardt*, 376 P.3d 316 (Or. Ct. App. 2016), the Oregon Court of Appeals quoted Webster's definition of "subject" to explain that

"an adult 'subjects' a minor to" prohibited "devia[nt] sexual intercourse if the adult causes the minor to be exposed to that sexual conduct"—"actual control or dominion" is not required. *Id.* at 321. Likewise, the Supreme Judicial Court of Maine has recognized that an adult "intentionally subject[s] another person" to sexual contact by "caus[ing]" them "to have [such] contact." *State v. Severy*, 8 A.3d 715, 718 (Me. 2010); *see Schrag v. Schrag*, 32 Wash. App. 2d 1063, at *1-*2 (Wash. Ct. App. 2024) (holding that an individual can "subject[]" another "to" sexual abuse by enabling a third person to commit the deplorable act). So, too, a parent "subject[s] a child to cruel maltreatment" by "expos[ing]" the child "to maltreatment." *See State v. Campbell*, 306 N.W.2d 272, 278 (Wis. Ct. App. 1981) (Gartzke, J., concurring).

And that makes sense. "Subjects to" connotes an attenuated causal connection with the underlying act. That is why an organization "subject[s]" its employees to "continuing invective" by inviting a critic of their work to lecture at them. Span, *supra*. Or the host of a karaoke party subjects guests to misery when she invites someone known to shrill at the mic. Or a character in a famous television show kindling a new romantic relationship chooses not to invite her partner to a magazine party: she does not wish to "subject him to" the scrutiny of "slimy media leeches." Sex and the City: *The Big Time* (HBO, released 2000).

Congress, too, has used "subjects to" elsewhere in the U.S. Code to refer to an attenuated causal link with the underlying conduct. In the Americans with Disabilities Act, enacted just two years before the TVPA, Congress prohibited public accommodations from "subject[ing] an individual . . . on the basis of a disability . . . to a denial of the opportunity . . . to . . . benefit from" its "goods, services,

facilities, privileges, advantages, or accommodations," indicating that such denial could also occur through downstream "contractual, licensing, or other arrangements." 42 U.S.C. § 12182(b)(1)(A)(i); *see* 28 C.F.R. § 36.202(a) (same). By contrast, when Congress wished to refer to a more direct causal connection, it knew how to do so. In § 3(b)(1) of the TVPA, for example, it defined "torture" as "intentionally inflicted" severe pain and suffering, and in other statutes, it punished individuals who "commit[]" torture, 18 U.S.C. § 2340A(a), or "commit[] a war crime," *id.* § 2441(a). This "difference[] in [§ 2(a)(1)'s] language" conveys a "difference[] in meaning." *Henson*, 582 U.S. at 86.

C. Resisting the ordinary meaning of "subjects," Petitioners proffer two hypotheticals which they claim demonstrate that "subjects" does not cover aiding and abetting.

In the first, a neighbor complains about a child's behavior, and the parent then punishes the child for the behavior by grounding him. Pet. Br. 42. True, the neighbor has not "subjected" the child to the punishment within the ordinary meaning of that word—but no one would say that he *aided or abetted* the punishment either: he did not "conscious[ly], voluntar[ily], and culpabl[y] participat[e]" in the punishment. *Twitter*, 598 U.S. at 493 (defining aiding and abetting). It is unclear if he even *knew* the parent would punish the child.

In the second, a software vendor sells "compliance tools" to a government agency that then imposes a fine on a regulated company. Pet. Br. 42-43. Again, Petitioners are correct that the vendor has not "subjected" the company to the fine under these bare facts. But again, the vendor has not *aided or abetted* the fines either. In Petitioners' hypothetical, the vendor possesses only generic knowledge at the point of sale that

its software may be "used in" unspecified "enforcement actions" against unnamed companies. *Id.* at 42. By contrast, it would be perfectly natural to say that the vendor subjected the company to a fine if the vendor, in close partnership with the government, developed a highly specialized proprietary program to be deployed in an action against that specific company, with awareness that fines against that company "were substantially likely" and "with the purpose of facilitating [the fines]." Pet. App. 82a (describing the allegations in the instant case).

D. As they must, Petitioners recognize that "subjects" covers more than just directly committing torture. Thus, they concede that the TVPA also covers "command responsibility." *See* Pet. Br. 41. According to the sources Petitioners cite, that doctrine imposes liability upon a commander who turns a blind eye to the abuses of his subordinates. *See id.* (first citing Michael J. Kelly, *Prosecuting Corporations for Genocide Under International Law*, 6 Harv. L. & Pol. Rev. 339, 349 (2012), and then citing Matthew Lippman, *The Evolution and Scope of Command Responsibility*, 13 Leiden J. Int'l L. 139, 141-42 (2000)); *see also Chavez v. Carranza*, 559 F.3d 486, 494 (6th Cir. 2009) (same). Petitioners contend that the TVPA covers this theory of liability but not aiding-and-abetting liability because the latter "does not require any causal connection between the defendant and the injury." Pet. Br. 41.

That makes no sense. As Respondents explain, causation is indisputably an element of aiding-and-abetting liability under both international law principles and the common law. *See* Resp. Br. 43 (citing Restatement (Second) of Torts § 876 cmt. d (Am. L. Inst.) (1979)).

What is more, aiding-and-abetting liability at least arguably requires a *closer* causal link to torture than "command responsibility" does. For command responsibility to lie, three elements must be present: "authority, knowledge—either actual or constructive—and inaction." Kelly, *supra*, at 349; *see* Lippman, *supra*, at 141-42 (similar). In contrast, mere inaction that facilitates the primary tort is insufficient for aiding-and-abetting liability, which requires "some 'affirmative act'" that "facilitate[s] the offense's commission." *Twitter*, 598 U.S. at 490 (quoting *Rosemond v. United States*, 572 U.S. 65, 71 (2014)).

At bottom, Petitioners cannot explain why command responsibility fits their theory of causation but aiding and abetting does not. One who aids and abets has surely "caused" an underlying injury just as much as a negligent commander has "caused" the torture his subordinates commit. Indeed, the very dictionaries that Petitioners cite define the noun "cause" broadly, as something "that brings about an effect" or "produces" a "state." *Webster's Third New International Dictionary*, *supra*, at 356 (1993); *see* 2 *Oxford English Dictionary*, *supra*, at 1000 (2d ed. 1989) ("That which produces an effect; that which gives rise to any action, phenomenon, or condition."). Those definitions cover both command responsibility *and* aiding and abetting. Here, for instance, it is clear that Cisco's tailor-made software "brought about" the torture of Falun Gong adherents at the hands of the Chinese Communist Party.

E. Finally, unable to establish that the text of the TVPA's *liability* provision precludes aiding-and-abetting liability, Petitioners assert for the first time before this Court that a *different* section of the TVPA demonstrates that liability under the statute requires "custody or physical control of the victim." Pet. Br. 43 (citing § 3(b)(1)). Reprising an argument raised by the

government's certiorari-stage briefing, *see* U.S. Cert. Br. 21, Petitioners point to § 3(b)(1)'s definition of "torture" as an intentionally harmful act "directed against an individual in *the offender's* custody or physical control," *see* Pet. Br. 43 (emphasis added). Splicing that provision with § 2(a)(1), they argue that "the offender" under § 3(b)(1) is "the individual who is liable for subjecting a victim to torture" under § 2(a)(1). *Id.* (quotations omitted). And because "those who aid and abet generally will not have either direct or indirect custody or control of the victims," Petitioners conclude that the TVPA does not cover aiding-and-abetting liability. *Id.*

That argument holds no water. Section 3(b)(1) does not tell us who is *liable* for torture; rather it tells us what torture *is*. And for "torture" to occur within the meaning of the TVPA, the "offender"—meaning the *torturer*—must have "custody or physical control" over the victim. TVPA § 3(b)(1). In other words, a condition precedent to "torture" is the existence of a direct torturer with "custody or physical control" over the victim.

To be sure, the presence of a direct torturer (with "custody or physical control" of the victim) is a condition precedent to aiding-and-abetting liability under the TVPA too. After all, an individual cannot aid and abet a tort unless a primary tortfeasor "complete[s] *its commission*." *Twitter*, 598 U.S. at 494 (quoting *Rosemond*, 572 U.S. at 70).

But just because there must be a direct torturer with certain characteristics ("custody or physical control" of the victim) for "torture" to occur within the meaning of the TVPA does not mean that only *that* person may be held *liable* under the TVPA. Congress made that abundantly clear by including a separate provision of the TVPA entitled "Liability." TVPA § 2(a). And that provision does not just hold liable any

person who *commits* the act of torture; rather, it makes liable anyone who "subjects" an individual to torture, as that act is defined in § 3(b)(1), thus extending liability to secondary tortfeasors who aid and abet the primary "offender."

The bottom line is that if Congress wished to narrow the class of individuals liable under the TVPA, the obvious place to do so would have been in the subsection called "Liability." The "separate provision[]" upon which Petitioners fixate would "be a surprisingly indirect route to convey [that] important and easily expressed message." *County of Maui v. Haw. Wildlife Fund*, 590 U.S. 165, 180 (2020) (quotations omitted). No such hidden message exists in the TVPA.

The structure of the TVPA confirms that conclusion. In addition to imposing liability upon "[a]n individual" who "subjects" another "to torture," TVPA § 2(a)(1), Section 2(a) also makes that "individual" liable if he "subjects" another person "to extrajudicial killing," *id.* § 2(a)(2). Under Petitioners' theory, an individual liable for "extrajudicial killing" under the TVPA necessarily must *also* have "custody or physical control" over the victim. That is because Petitioners' theory borrows the "custody or physical control" requirement from § 3(b)(1)'s definition of "torture" and imposes it upon the "individual" whom the TVPA makes liable for *both* torture *and* extrajudicial killing. *See id.* § 2(a).

In many cases, however, individuals who subject victims to extrajudicial killing will not have custody or physical control over them—they may target them at a distance, for example, or leave the sordid work to someone for hire. *See, e.g.*, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Ukraine*, U.N. Doc. A/HRC/27/75 (Sept. 19, 2014), https://ukraine.ohchr.

org/sites/default/files/2024-03/A-HRC-27-75_en.pdf (describing the notorious extrajudicial killing of protestors in 2014 in Independence Square in Kyiv, conducted in part by snipers); Christof Heyns, *End of Visit Statement of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions* (Sept. 18, 2015), https://www.ohchr.org/en/statements-and-speeches/2015/09/end-visit-statement-special-rapporteur-extrajudicial-summary-or (same). On Petitioners' theory, such killings necessarily fall outside the TVPA—a truly implausible result. Indeed, likely for that very reason, Congress did *not* include a "custody or physical control" requirement in the TVPA's express definition of "extrajudicial killing." *See* TVPA § 2(a)(2).

II. This Court Has Never Imposed a "Magic Words" Requirement for Civil Aiding-and-Abetting Liability, and It Should Not Tread on Congress's Authority by Doing So Here.

Failing to show that the ordinary meaning of the TVPA precludes aiding-and-abetting liability, Petitioners assert that this Court's decision in *Central Bank of Denver* created a "magic words" rule that requires Congress to use the words "aid" and "abet" before such liability can exist under *any* civil statute. *See* Pet. Br. 40 (quoting *Central Bank*, 511 U.S. at 177). *Central Bank* did no such thing.

A. To start, that case interpreted a different statute enacted nearly sixty years before the TVPA was passed concerning a wholly unrelated area of law: the Securities Exchange Act of 1934 (SEA). What is more, the relevant provision there contained materially different text from § 2(a)(1) of the TVPA: it prohibited manipulative or deceptive acts in the purchase or sale of securities, whether committed "directly or indirectly." SEA § 10(b). As the Court there explained, § 10(b)'s text only reached "persons who engage, even

indirectly, in a proscribed activity," and thus did not cover those who merely aided and abetted others. *Central Bank*, 511 U.S. at 176. Unlike § 10(b), however, § 2(a)(1) of the TVPA does not prohibit "directly or indirectly" committing torture; it imposes liability upon anyone who "subjects an individual to" torture. That language is meaningfully broader and, as explained above, includes aiding and abetting. *See supra* Part I.

To be sure, in rejecting the argument that the "[i]nclusion of those who act 'indirectly' suggests a legislative purpose fully consistent with the prohibition of aiding and abetting" in § 10(b), *Central Bank*, 511 U.S. at 175-76 (quotations omitted), this Court also stated that "Congress knew how to impose aiding and abetting liability when it chose to do so," *id.* at 176-77 (first citing 18 U.S.C. § 2, and then citing 7 U.S.C. § 192(g)), and that if "Congress intended to impose aiding and abetting liability, we presume it would have used the words 'aid' and 'abet' in the statutory text," *id.* at 177 (citations omitted). But it is clear from the context of that remark that it was limited to the arena of securities law, as this Court cited only securities cases for the proposition, *see id.* (first citing *Pinter v. Dahl*, 486 U.S. 622, 650 (1988) (interpreting Securities Act of 1933), and then citing *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 734 (1975) (interpreting Securities Exchange Act of 1934)), and Congress had indeed used the words "aid and abet" elsewhere in the securities statutes but conspicuously omitted them in § 10(b), *see id.* at 183 (collecting provisions of securities statutes).

In any event, that passage from *Central Bank* was not "necessary to th[e] result," *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67 (1996), which turned on the text of § 10(b) and the fact that "numerous [other] provisions" of the Securities Exchange Act employed the

phrase "directly or indirectly" in ways that did "not impose aiding and abetting liability," *Central Bank*, 511 U.S. at 176; *see Stoneridge Inv. Partners, LLC v. Sci.-Atlanta*, 552 U.S. 148, 157 (2008) (confirming that *Central Bank* was decided on these grounds). It would be especially anomalous to transform *Central Bank*'s dicta into a magic-words rule for the entire federal civil code when the successful party in that case did not even attempt such an ambitious argument. *Cf.* Pet. Reply Br. 7, *Central Bank*, No. 92-854. Notably, this Court has not relied upon any purported magic-words rule created by *Central Bank* in any subsequent case.

If anything, *Central Bank* recognized that Congress has taken a "statute-by-statute approach to civil aiding and abetting liability." 511 U.S. at 182. That approach requires examining the specific text of a statute to determine whether its ordinary meaning covers aiding and abetting: "the fact that Congress chose to use certain language [elsewhere] . . . hardly means it was 'foreclosed from using different language to accomplish the same goal.'" *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 52 (2024) (alteration omitted); *see Bostock v. Clayton County*, 590 U.S. 644, 656-60 (2020) (concluding that discrimination "because of . . . sex" covers discrimination on the basis of gender identity and sexual orientation even though Congress had used those more specific terms elsewhere in the U.S. Code). The statute-by-statute approach thus counsels against any generic rule applicable at once to every single federal civil statute.

B. A magic-words rule for civil aiding-and-abetting liability would also be inappropriate because it would raise separation-of-powers concerns. The Constitution vests Congress with the power "of making laws" and empowers the judiciary only to "interpret[] and apply[]" the law. *Patchak v. Zinke*, 583 U.S. 244,

249 (2018) (quoting *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923)). That means courts "implement Congress's choices rather than remake them," *Talevski*, 599 U.S. at 178, typically by giving effect to the ordinary public meaning of the text at the time Congress passed it. But a magic-words requirement distorts the ordinary meaning of a given statute. It forces judges to elevate judge-made "nit-picking technicalities" over the ordinary meaning of a statute's text. Scalia & Garner, *supra*, at 285. That rewrites the text of the statute, leading judges to "arrogat[e] legislative power" and undermine "the Constitution's separation of legislative and judicial power." *Hernandez v. Mesa*, 589 U.S. 93, 100 (2020).

To be sure, this Court has sometimes applied clear-statement rules when interpreting statutes, for example when it assesses waivers of sovereign immunity, *see FAA v. Cooper*, 566 U.S. 284, 291 (2012), or considers an interpretation of a federal statute that threatens to alter the usual constitutional balance between the states and federal government, *see Gregory v. Ashcroft*, 501 U.S. 452, 460-61 (1991). But even then, this Court has emphasized that clear-statement rules do not require Congress to use magic words. For example, it has explained that Congress "need not use magic words" to effectuate a waiver of sovereign immunity even though it must use "unmistakably clear" language. *Kirtz*, 601 U.S. at 48-49 (quotations omitted). Similarly, it has clarified that Congress must use "unmistakably clear" language when it wishes to alter the usual balance of federal and state power, but need not be "explicit." *Gregory*, 501 U.S. at 467 (quotations

omitted); *see Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206 (1998) (applying that rule).[3]

Petitioners' proposed magic-words rule for civil aiding-and-abetting liability is thus more extreme than even the strictest clear-statement rules this Court has applied. It would require Congress to "incant [the] magic words" "aid" and "abet" even if the "traditional tools of statutory construction . . . plainly show that Congress" imposed aiding-and-abetting liability. *Boechler*, 596 U.S. at 203 (quotations omitted). This Court should decline "such an aggressive" request by Petitioners, one that surely "violates the baseline rule of legislative supremacy." Barrett, *supra*, at 166-67.

Even if Petitioners' argument could be characterized as a more modest clear-statement rule—and it cannot—Petitioners fail to provide any appropriate justification for such a rule. In adopting clear-statement rules in other contexts, this Court has identified substantive "values external to a statute" that justify the rule's application. *Nebraska*, 600 U.S. at 508 (Barrett, J., concurring). In the sovereign immunity context, for example, it has explained that "the power to waive the federal government's immunity" and expose the government to monetary liability "is Congress's prerogative" alone, and courts must carefully confirm Congress indeed did waive such immunity. *Kirtz*, 601

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[3] Even these clear-statement rules have not been immune from critique. *See, e.g.*, *Nebraska*, 600 U.S. at 508-09 (Barrett, J., concurring) (citation omitted) (clear-statement rules are "in significant tension with textualism" because they "counsel[] a court to *strain* statutory text" and "mean[] that the better interpretation of a statute will not necessarily prevail"); John Manning, *Clear Statement Rules and the Constitution*, 110 Colum. L. Rev. 399, 403 (2010) (clear-statement rules impose a "clarity tax" on Congress).

U.S. at 48. Similarly, in the federalism clear-statement context, it has explained that "Congress does not" "lightly" tread onto "areas traditionally regulated by the States" given the importance of federalism principles under our constitutional structure. *Gregory*, 501 U.S. at 460.

But Petitioners offer no such persuasive justification here. They raise the specter of the potentially "open-ended expansion" of liability that would materialize if the TVPA were to cover aiding and abetting. Pet. Br. 44. Even if that were plausible, such a self-serving rationale is not the kind of "value[] external to a statute" that could justify a clear-statement rule. *Nebraska*, 600 U.S. at 508 (Barrett, J., concurring). Nor can Petitioners' invocation of foreign policy consequences perform the required heavy lifting, *see* Pet. Br. 44, given that—as all parties agree—Congress *has* imposed primary liability through the TVPA "for conduct against foreign nationals on foreign soil," *id.*; *contra id.* at 33-36.

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At bottom, Petitioners protest the breadth of the verb "subjects" in § 2(a)(1). "But Congress enacted" it, "and it is up to Congress—if it so chooses—to change it." *Kousisis v. United States*, 605 U.S. 114, 135 (2025).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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