

No. 24-856

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**In the Supreme Court of the United States**

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CISCO SYSTEMS, INC., *et al.*,  
*Petitioners,*

v.

DOE I, *et al.*,  
*Respondents.*

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

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**BRIEF OF *AMICI CURIAE*  
HUMAN RIGHTS FIRST, MICHAEL H. POSNER,  
AND THE INTERNATIONAL CORPORATE  
ACCOUNTABILITY ROUNDTABLE  
IN SUPPORT OF RESPONDENTS**

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## INTERESTS OF THE *AMICI CURIAE*

The *amici curiae* respectfully submit the Court should interpret the Torture Victim Protection Act (“TVPA”) in harmony with the treaty it implements: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT” or “Convention against Torture”).<sup>1</sup> That treaty requires states to impose criminal and civil liability for torture and for “complicity or participation in torture.” CAT, arts. 4(1), 14(1), Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85. The TVPA should be read to likewise encompass complicity in torture.

Human Rights First (“HRF”) is a non-profit, non-partisan international human rights organization based in New York and Washington, D.C. HRF builds respect for human rights and the rule of law to help ensure the dignity to which everyone is entitled and to stem intolerance, tyranny, and violence. HRF, then known as the Lawyers Committee for Human Rights, played an important role in promoting the adoption of the TVPA, including through congressional testimony.

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<sup>1</sup> *Amici* affirm that no counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

of Democracy, Human Rights, and Labor from 2009 to 2013. From 1978 to 2009, he led HRF. In 1990, as Executive Director of HRF's predecessor, the Lawyers Committee for Human Rights, Mr. Posner gave congressional testimony that informed the framing of the TVPA.

The International Corporate Accountability Roundtable ("ICAR") is a non-profit, nonpartisan, fiscally sponsored project of the Tides Center. ICAR harnesses the power of civil society organizations to advance systems of accountability for companies that commit human rights, labor rights, and environmental abuses.

*Amici* believe their professional expertise and knowledge of the TVPA, and its legislative history and context, will assist the Court.

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### SUMMARY OF ARGUMENT

In 1991, Congress enacted the TVPA "[t]o carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights." Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note) (preamble).

One key obligation was to implement the CAT, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (ratified in 1990).

That treaty requires states to criminalize torture, including "an act by any person which constitutes complicity or participation in torture," *id.*, art. 4(1),

and to guarantee victims “an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible,” *id.*, art. 14(1).

Because the TVPA implements the CAT, the two should be read in harmony under the *Charming Betsy* doctrine. See *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (holding courts should avoid construing a statute to “violate the law of nations if any other possible construction remains.”).

The CAT broadly imposes criminal and civil liability for complicity in torture. And the TVPA—as the CAT’s implementing act—should be read to do the same.

Taken together, Section 2(a)(1) of the TVPA harmonizes with Articles 4 and 14 of the CAT. “An individual who . . . subjects an individual to torture,” 28 U.S.C. § 1350 note § 2(a)(1), can do so either through an “act[] of torture” or through an act “which constitutes complicity or participation in torture,” CAT, art. 4(1). The TVPA, therefore, reaches acts of complicity or participation, not just the direct infliction of torture.

The texts of the CAT and TVPA compel this reading. *First*, the ordinary meaning of the verb “subject”—as used in Section 2(a)(1) of the TVPA—means “to cause or force someone to endure” torture. Webster’s New Collegiate Dictionary (1977). Thus, the causal relationship defines the universe of proper defendants. And the CAT reflects an understanding that torture is not caused solely by the hand that holds the truncheon—it is often the result of complicity and participation further up the chain of causation.

*Second*, complicity is embedded in the CAT's definition of torture in Article 1. That definition covers pain or suffering inflicted "at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." CAT, art. 1(1). The TVPA tracks this definition by requiring coordinated state action through "actual or apparent authority, or color of law, of any foreign nation." 28 U.S.C. § 1350 note § 2(a). Limiting the TVPA to direct perpetrators would exempt the very actors that Article 1 of the CAT expressly covers—public officials who instigate, consent to, or acquiescence in torture. For the same reason, liability also runs to private actors complicit in torture by officials. Again, the plain text of the treaty controls, imposing liability on "an act *by any person* which constitutes complicity . . . in torture." CAT, art. 4(1) (emphasis added). Thus, the TVPA, if it is to implement the CAT, covers accomplices both public and private.

*Third*, Article 14(1) of the CAT requires states to enable civil remedies broad enough to ensure "adequate compensation" and "as full rehabilitation as possible." *Id.*, art. 14(1). A narrow reading of the TVPA would frustrate this obligation, particularly where a direct perpetrator is unidentifiable or indigent. Restricting the TVPA to direct perpetrators would leave victims unable to obtain the full rehabilitation the CAT guarantees.

*Finally*, the TVPA's legislative history confirms Congress intended the TVPA to conform to the parameters of the CAT and to include aiding and abetting liability.

The Court should construe the TVPA to conform to the United States' obligations under the CAT and hold it provides for aiding and abetting liability.

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## ARGUMENT

### **I. The Torture Victim Protection Act implements the Convention against Torture.**

In 1991, Congress adopted the TVPA “to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights.” Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note) (preamble).

One key obligation was to implement the CAT, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (ratified in 1990).

Beginning in the 1970s, the United States was extensively involved in negotiating the CAT, culminating in its unanimous adoption by the U.N. General Assembly on December 10, 1984. The treaty was signed by President Ronald Reagan in 1988 and ratified by the Senate in 1990.

The CAT, however, is not a self-executing treaty. *See Nasrallah v. Barr*, 590 U.S. 573, 588 (2020) (Thomas, J., dissenting). To have domestic effect, it required implementing legislation. *See Medellín v. Texas*, 552 U.S. 491, 505 n.2 (2008).

Congress has implemented the CAT, and fulfilled the United States' treaty obligations, through a series of legislative acts. Congress began considering the

TVPA in 1986, after the United States voted for the CAT's adoption at the U.N. General Assembly. Then, in 1991, Congress enacted a private right of action for torture in the TVPA.<sup>2</sup> In 1994, Congress made torture a federal crime.<sup>3</sup> And in 1998, Congress incorporated the treaty's *non-refoulement* provisions into U.S. immigration law.<sup>4</sup>

The TVPA's legislative history confirms that the statute was intended to implement the CAT and adopt its liability framework. According to the Senate Judiciary Committee Report on the TVPA:

This legislation will carry out the intent of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which . . . obligates state parties to adopt measures to ensure that torturers within their territories are held legally accountable for their acts.

S. REP. NO. 102-249, at 3 (1991).

Presciently, Congress was concerned that federal courts would refrain from recognizing a common-law

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<sup>2</sup> The TVPA was first introduced by Senator Arlen Specter in 1986—after the CAT was adopted by the U.N. General Assembly, but before its signing by President Reagan. *See* 132 CONG. REC. S7062 (daily ed. June 6, 1986).

<sup>3</sup> Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. No. 103-236, title V, § 506, 108 Stat. 463 (1994) (codified at 18 U.S.C. §§ 2340-2340B).

<sup>4</sup> Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681-822 (1998) (codified at 8 U.S.C. § 1231 note).

cause of action for torture under the Alien Tort Statute, 28 U.S.C. § 1350. *See* H.R. REP. NO. 102-367, at 3–4 (1991). This would leave victims without a civil remedy—and the United States unable to fulfill its obligations under the CAT. The TVPA closed this gap, ensuring that torture victims would have the broad civil remedy the United States was bound to provide under Article 14 of the CAT.

## **II. The Convention against Torture mandates civil liability for complicity in torture.**

The CAT sets forth a comprehensive framework for criminal and civil liability for torture and complicity in torture.

Article 4(1) requires states to criminalize “all acts of torture” as well as any “act by any person which constitutes complicity or participation in torture.” CAT, art. 4(1).

After setting the scope of criminal liability in Article 4, the CAT creates co-extensive civil liability in Article 14(1):

Each state Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants [sic] shall be entitled to compensation.

*Id.*, art. 14(1).

Nothing in Article 14(1) limits civil liability to direct perpetrators. To the contrary, the civil remedy under CAT must be expansive. To achieve this, its civil and criminal provisions necessarily have coextensive reach.

In short, the text and structure of the CAT make clear that the treaty mandates civil liability for “an act by any person which constitutes complicity or participation in torture.” *Id.*, art. 4(1).

### **III. The TVPA—read together with the CAT—imposes aiding and abetting liability.**

Because the TVPA implements the CAT, the two should be read in harmony under longstanding principles of statutory interpretation. *See Nasrallah*, 590 U.S. at 588 (Thomas, J., dissenting) (construing the Foreign Affairs Reform and Restructuring Act of 1998 in light of the United States’ obligations under the CAT).

It has long been the Court’s practice to read an implementing act consistently with its underlying treaty. *See, e.g., Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 178, 183 (1993) (determining the Refugee Convention did not require giving the Refugee Act of 1980 extraterritorial effect).<sup>5</sup>

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<sup>5</sup> The *in pari materia* reading of treaties and implementing acts has a long vintage. *See, e.g., Am. Express Co. v. United States*, 4 U.S. Cust. App. 146, 154 (Ct. Cust. App. 1913) (“If the treaty be a part of the law of the land, and if there was no purpose on the part of Congress to violate or put an end to the treaty, it would seem very clear that the treaty and the act in question are laws *in pari materia* and must be so construed.”).

And it is an ancient “maxim of statutory construction since the decision in [*Charming Betsy*] that ‘an act of congress ought never to be construed to violate the law of nations, if any other possible construction remains . . . .’” *Weinberger v. Rossi*, 456 U.S. 25, 32 (1982).

Thus, the *Charming Betsy* doctrine—and the Court’s practice of reading implementing acts *in pari materia* with treaties—guide interpretation of the TVPA.

The TVPA provides: “An individual who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to torture shall, in a civil action, be liable for damages to that individual.” 28 U.S.C. § 1350 note § 2(a)(1).

Read together, Section 2(a)(1) of the TVPA harmonizes with Articles 4 and 14 of the CAT. “An individual who . . . subjects an individual to torture,” 28 U.S.C. § 1350 note § 2(a)(1), can do so either through an “act[] of torture” or through an act “which constitutes complicity or participation in torture,” CAT, art. 4(1).

The TVPA’s text, structure, and history confirm that the act is consistent with the treaty it implements—and includes aiding and abetting liability.

**A. *Text:* “[S]ubjects an individual to torture” encompasses acts of complicity that cause a victim to endure torture.**

Construing Section 2(a)(1) of the TVPA to harmonize with the CAT is consistent with the ordinary meaning of that section’s operative term: “subjects.”

The contemporaneous meaning of the verb “subject”—as used in Section 2(a)(1)—is “to cause or force to undergo or endure (something unpleasant, inconvenient, or trying).” Webster’s Ninth New Collegiate Dictionary (9th ed. 1983); *see also* Black’s Law Dictionary (12th ed. 2024) (defining “subject” as “[t]o cause to undergo some action, agent, or operation”); Random House Webster’s College Dictionary (1999) (defining “subjects” as “to undergo the action of something specified; to expose . . . to make liable or vulnerable.”).

Under this definition, causation determines the ambit of liability. And the CAT sets forth the causal relationship necessary to impose liability: either direct perpetration *or* complicity. The treaty reflects the framers’ understanding that torture often results from concerted action—from complicity and participation further up the chain of causation.<sup>6</sup>

Read in context, the TVPA’s use of the term “subjects” is consistent with the CAT and with contemporary international-law usage. For example, the CAT, which incorporates aiding and abetting liability, uses the phrase “subjected to torture” four times to refer broadly to anyone covered by the treaty. CAT,

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<sup>6</sup> This understanding is consistent with longstanding domestic legal principles of proximate causation and foreseeability, under which one who aids and abets in wrongdoing may be held liable. *See, e.g., Halberstam v. Welch*, 705 F.2d 472, 488 (D.C. Cir. 1983) (describing elements of aiding and abetting tort liability and holding defendant civilly liable for killing based upon assistance with burglary enterprise because “under an aiding-abetting theory, it was a natural and foreseeable consequence of the activity [one defendant] helped [another] to undertake”).

preamble, arts. 3(1), 13. If the CAT’s framers had intended to exclude complicity in torture from these provisions, they only would have used more restrictive terms, such as the verb “commit” found in Article 4. *Id.*, art.4(1). Since the verb “subjects” has a broad scope in the CAT, it should carry the same meaning in the TVPA.

Further, the CAT references the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Declaration”), G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976). Like the CAT, the Declaration uses the same phrase “subjected to torture,” *id.*, art. 8, and prohibits “complicity” or “participation” in torture, *id.*, art. 7.

Thus, the phrase “subject[ed] to torture” was commonly used in international law and included those who aid and abet torture. The meaning of the term in the TVPA does not differ and should be read to fit closely with the CAT.

**B. *Structure: Complicity is embedded in the CAT’s definition of torture and the TVPA’s state-action requirement, encompassing public and private actors.***

The definition of torture in Article 1 of the CAT expressly references public officials who aid and abet or otherwise participate in torture:

[T]he term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally

inflicted on a person . . . [for enumerated purposes], when such pain or suffering is inflicted by *or at the instigation of or with the consent or acquiescence* of a public official or other person acting in an official capacity.

CAT, art. 1(1) (emphasis added).<sup>7</sup>

Yet limiting liability under the TVPA to direct perpetrators would exempt those participants in torture who are referenced in the very definition of the offense. That reading is at odds with the TVPA’s role as a treaty-implementing act and should be avoided under *Charming Betsy*.

At the same time, the CAT cannot be read to limit potentially liable accomplices or participants to public officials: the treaty prohibits “an act *by any person* which constitutes complicity or participation in torture.” CAT, art. 4(1) (emphasis added).

Nor can the TVPA. The TVPA translates the CAT’s state action requirement into American terms of art, requiring “actual or apparent authority, or color of law, of any foreign nation.” 28 U.S.C. § 1350 note § 2(a). This echoes, of course, 42 U.S.C. § 1983, which this Court has long interpreted as embracing private actors who aid and abet state authorities under the joint action test. *See, e.g., Dennis v. Sparks*, 449 U.S. 24, 27 (1980) (holding that “[p]rivate persons, jointly

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<sup>7</sup> As Representative Romano Mazzoli stated on the House floor in support of the TVPA, “[t]orture is defined in accordance with the definition contained in the UN Convention Against Torture.” 137 CONG. REC. H11244–45 (daily ed. Nov. 25, 1991) (statement of Rep. Mazzoli).

engaged with state officials in the challenged action, are acting ‘under color’ of law”).

Moreover, the CAT’s embrace of complicity in torture extends beyond Article 4’s criminal prohibition. Article 3 prohibits another form of indirect participation in torture: “No State Party shall expel, return (‘refouler’) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.” CAT, art. 3(1).

Complicity liability is thus incorporated into the structure of both the CAT and the TVPA.

**C. *Context: The CAT’s remedial mandate requires broad civil liability, and the *Charming Betsy* canon compels the same reading of the TVPA.***

Limiting the TVPA’s scope of liability is inconsistent with the United States’ broad remedial obligation under Article 14 of the CAT. That provision requires states to ensure a right to “adequate compensation, including as full rehabilitation as possible.” *Id.*, art. 14(1).

This obligation requires a broad ambit of civil liability that reaches beyond direct perpetrators. Complicity liability, as required by the CAT, achieves this by expanding the universe of defendants, enabling fuller compensation and rehabilitation for the victim.

A narrow reading of the TVPA would have the opposite effect. The United States would no longer be fulfilling its robust remedial obligation. Under the

*Charming Betsy* canon, there is a strong presumption that Congress did not intend that result.

**D. *Legislative History: The record confirms Congress intended to include complicity.***

Legislative history confirms that Congress meant to impose aiding and abetting liability in the TVPA, consistent with the CAT.

On the Senate floor, the bill’s sponsor, Senator Arlen Specter, specifically addressed the scope of liability under the TVPA, confirming that it provides for liability for aiding and abetting torture: “The bill is limited to suits against persons who specifically ordered, *abetted*, or *assisted* in the torture.” 137 CONG. REC. S1378–79 (daily ed. Jan. 31, 1991) (statement of Sen. Specter) (emphasis added).

In this statement, Senator Specter echoed testimony by *amicus* Michael H. Posner, HRF’s then-Executive Director: “[The TVPA] covers individuals who ordered or assisted in the abuses.” *Torture Victim Protection Act of 1989: Hearing on S. 1629 and H.R. 1662 Before the Subcomm. on Immigration and Refugee Affairs of the S. Comm. on the Judiciary*, 101st Cong. 48 (1990) (statement of Michael H. Posner, Executive Director, Lawyers’ Committee for Human Rights).

The Senate Judiciary Committee’s report on the TVPA reiterates this point. “The legislation is limited to lawsuits against persons who ordered, *abetted*, or *assisted* in the torture. . . . Under international law, responsibility for torture . . . extends *beyond the person or persons who actually committed those acts.*” S. REP. NO. 102-249, at 8–9 (1991) (emphasis added). In

making this observation, the Committee directly cited Article 4(1) of the CAT and emphasized, in italics, that the treaty extended liability “*to an act by any person which constitutes complicity or participation in torture.*” *Id.* at 9 n.16.

The *Charming Betsy* canon dictates honoring Congress’ intent and reading the TVPA to include aiding and abetting liability.

### CONCLUSION

The TVPA was enacted to implement the United States’ obligations under the CAT. Those obligations include prohibiting and providing civil redress for all acts of complicity or participation in torture. The text of the TVPA, read in harmony with the CAT, thus encompasses aiding and abetting liability.

Respectfully submitted,

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