

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 *AMICI CURIAE*
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IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

Amici are professors who teach international law, federal jurisdiction, tort law, and legal history, who have an interest in the proper understanding and interpretation of the Alien Tort Statute, and of this Court's decision in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004). Among the *amici* are individuals who filed an *amicus curiae* brief in *Sosa*,² the position of which this Court adopted in Part III of its opinion. *Amici* have a professional interest in the proper application of the Alien Tort Statute, in light of its historical and legal context and the limited role of the federal courts in recognizing rights of action based on international law. A complete list of *amici* is provided in Appendix A.

SUMMARY OF ARGUMENT

The enactment of the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350, was part of the Founders’ effort to ensure that the fledgling United States met its core obligations under the law of nations. These obligations included providing redress for law of nations violations, in the form of prosecution, extradition, or civil remedies. Within this remedial scheme, the ATS provided a federal civil remedy to redress law of nations violations. At the time of the passage of the ATS, such violations included aiding

¹ No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution to fund the preparation or submission of this brief. No persons other than the *amici* or their counsel made a monetary contribution to this brief’s preparation or submission.

² The *amici* who joined the *Sosa* brief are William R. Casto and Anne-Marie Slaughter.

and abetting. The text of the ATS, with its reference to the “law of nations,” thus was understood to incorporate aiding and abetting liability. The statute’s provision of “tort” suits, which also allowed for aiding and abetting liability, further confirms that the Founders would have understood the ATS to encompass accessorial liability.

In the Founding era, conceptions of aiding and abetting, or assisting in a wrong, were found in both civil actions and criminal cases. Aiding and abetting also extended to the law of nations context. Indeed, aiding and abetting each commonly enumerated international violation of the time—piracy, breaches of neutrality, violations of safe conduct, attacks on ambassadorial protection, and other wrongs, such as robbery, that threatened the safety of all nations—was considered a violation of the law of nations. In addition, sovereign states had a duty to provide redress for *any* and *all* law of nations violations committed by *all* perpetrators, including aiders and abettors. Failing to provide redress was itself a violation and would make the sovereign complicit in the wrongdoing.

Both before and after the enactment of the ATS, in the cases where aiding and abetting law of nations violations was considered, American jurists—drawing on English and other traditions—always accepted it as part of the remedial landscape. For example, in responding to English complaints in 1795 about two Americans aiding and abetting a law of nations violation, Attorney General William Bradford stated unequivocally that he had “no doubt” that the ATS provided “a remedy by a *civil* suit in the courts of

the United States.” *See* *Breach of Neutrality*, 1 U.S. Op. Att’y Gen. 57, 57 (1795) (emphasis in original). In sum, the historical evidence emphatically indicates that the law of nations encompassed aiding and abetting liability. In fact, *amici* are not aware of any evidence that aiders and abettors would have been excluded as a class of offenders for law of nations violations in a case such as this one, and to do so here would be anathema to the Founders’ intent in passing the ATS to uphold the nation’s international obligations.

ARGUMENT

I. The Text and Purpose of the Alien Tort Statute (“ATS”) Support Aiding and Abetting Liability.

The text and purpose of the ATS make clear that aiding and abetting liability was part of the statute’s remedial scheme. The law of nations encompassed aiding and abetting during the Founding era. As such, drawing a line between principals and accessories to exclude aiders and abettors of violations of the law of nations from liability would have contravened the statute’s text and the obligations that arose under the law of nations as understood at the time. Excluding aiders and abettors from ATS liability would have also undermined the Founders’ clear intent in passing the statute. In contrast, holding aiders and abettors liable would have advanced the purpose of the ATS to provide redress for law of nations violations as the United States sought to join the “civilized nations” of the world and avoid foreign entanglements caused by

failures to provide a remedy to aliens who had been wronged.

A. The Plain Text of the ATS Supports Aiding and Abetting Liability.

The text of the ATS reflects the intent of the First Congress to provide redress for “violation[s] of the law of nations” through federal civil “tort” actions, which were one way for the young nation to meet its international obligations. 28 U.S.C. § 1350. Aiding and abetting liability is rooted in the ATS’s textual reference to “violation[s] of the law of nations.” *Id.* At the time of the statute’s enactment, law of nations violations included aiding and abetting. *See* Part II, *infra*. Aiding and abetting each commonly enumerated law of nations violation at the time was also its own independent law of nations violation (e.g., aiding and abetting piracy, aiding and abetting attacks on ambassadors, and aiding and abetting breaches of neutrality were each recognized international violations). *See* Part II.C, *infra*.

In addition, the original text of the ATS permitted “tort” suits for “all causes” by an alien.³ An Act to Establish the Judicial Courts of the United States, ch. 20, § 9, 1 Stat. 73, 77 (1789). This language is important for two reasons. First, “tort” under the common law at the time was understood to include aiding and abetting liability. *See* Part II.B, *infra*. As the common law at the time included the law of

³ The current statute provides jurisdiction over “any civil action.” 28 U.S.C. § 1350. The minor changes to the original text have not altered the statute’s scope or meaning.

nations,⁴ the Founders would have drawn on either source to affirm the existence of aiding and abetting under the ATS. Indeed, these sources of law were reinforcing in their treatment of aiding and abetting. Second, the use of broad, inclusive language in the text (i.e., “all causes”) was consistent with the international obligation for sovereign states to provide redress for all wrongs by private parties that were “contrary to the laws, and safety of all nations” and could be attributed to the nation. *See* Emmerich de Vattel, *The Law of Nations; or Principles of the Law of Nature: Applied to the Conduct and Affairs of Nations and Sovereigns* bk. 2, ch. 6, § 76 (London, J. Newberry et al., 1759) [hereinafter Vattel]. The ATS thus established a federalized civil remedial scheme, which was one way the country could meet its international obligations. *See id.* bk. 2, ch. 6, § 77 (stating sovereigns must redress damages by their subjects, and providing “reparation” as one way nations could discharge their duty).

Read together, the statute’s focus on “violation[s] of the law of nations,” along with its invocation of “tort[s]” for “all causes,” embraced the availability of various forms of accessorial liability for wrongdoers under the plain understanding of such language in the Founding era. 1 Stat. at 77. The law of nations applied to both principal violators and

⁴ The law of nations was recognized and integrated into U.S. common law before and at the time of the ATS’s enactment. *See, e.g.,* Who Privileged From Arrest, 1 U.S. Op. Att’y Gen. 26, 27 (1792) (“[T]he law of nations . . . is essentially a part of the law of the land.”); Stewart Jay, *The Status of the Law of Nations in Early American Law*, 42 Vand. L. Rev. 819, 842–45 (1989).

aiders and abettors, and there is nothing in the statute's text to indicate such offenders would have been excluded from the ATS's remedial scheme. See Part II, *infra*. Petitioners' argument that artificially draws lines between types of offenders is antithetical to the text of the ATS as well as the Founders' understanding of liability for both law of nations violations and torts. Attempts to deny the availability of liability for aiders and abettors would have flown in the face of the plain text of the ATS, which provided a broad remit for liability.

B. Foreclosing Liability for Aiding and Abetting Would Thwart the Purpose of the ATS to Provide Redress to Aliens for Violations of the Law of Nations.

The ATS was enacted to provide redress for law of nations violations committed against aliens, regardless of a wrongdoer's role as principal or accessory to the violation. The broad remedial purpose of the ATS fulfilled several objectives, all of which would be thwarted if aiders and abettors were excluded from ATS liability.

First, by providing a statute under which aliens could pursue remedy for such violations, the United States fulfilled its international obligations. In enacting the ATS, the First Congress understood the duty of every government to provide redress for violations of the law of nations. Anne-Marie Burley [Slaughter], *The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor*, 83 Am. J. Int'l L. 461, 475 (1989) ("The Alien Tort Statue was a direct

response to what the Founders understood to be the nation's *duty* to propagate and enforce those international law rules that directly regulated individual conduct.”) (emphasis in original); *see also* 4 William Blackstone, *Commentaries on the Laws of England* *68 (1769) [hereinafter Blackstone] (“[W]here the individuals of any state violate this general law [of nations], it is then the interest as well as duty of the government under which they live to animadvert upon them with becoming severity, that the peace of the world may be maintained.”); *Respublica v. De Longchamps*, 1 U.S. (1 Dall.) 111, 117 (Pa. O. & T. 1784) (quoting same Blackstone passage); Vattel, bk. 2, ch. 6, § 77. As a fledging nation, the United States was highly concerned with meeting its international obligations. *See Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 474 (1793) (Chief Justice Jay observing that “the United States had, by taking a place among the nations of the earth, become amenable to the laws of nations; and it was their interest as well as their duty to provide, that those laws should be respected and obeyed”); Burley [Slaughter], *supra*, at 475.

Second, in doing so, the United States aimed to join the international community as a “civilized” nation. *See, e.g.*, Burley [Slaughter], *supra*, at 484 (emphasis omitted); *see also Sosa*, 542 U.S. at 732 (discussing import of norms of “civilized nations”). Being a “civilized” nation was no trivial goal, as America aspired to diplomatic recognition from the European powers in order to be seen as a treaty-worthy nation on the global stage. *See* Eliga H. Gould, *Among the Powers of the Earth: The American*

Revolution and the Making of a New World Empire
113–14 (2012).

Third, providing redress helped avoid foreign entanglements that might result from failure to redress international harms. *See Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1397 (2018) (one objective of ATS “was to avoid foreign entanglements by ensuring the availability of a federal forum where the failure to provide one might cause another nation to hold the United States responsible for an injury to a foreign citizen.”); *see also Sosa*, 542 U.S. at 715; *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 123–24 (2013).

Importantly, aiders and abettors could embroil the United States in foreign entanglements just as primary perpetrators could. *See Part III, infra*. The First Congress knew these risks all too well—they had been repeatedly frustrated by their limited federal powers to address law of nations violations. The 1784 “Marbois Incident” in Pennsylvania and a similar case involving the Dutch ambassador in New York both raised sufficient concerns for the First Congress to seek a federal solution to preempt and rectify such incidents in the future. *See De Longchamps*, 1 U.S. 111–14 (describing Marbois Incident); Martin S. Flaherty, *Restoring the Global Judiciary: Why the Supreme Court Should Rule in U.S. Foreign Affairs* 61 (2019). The Founders intended the federal government to handle matters involving aliens and the law of nations to ensure proper oversight of potentially volatile matters of international relations. *See, e.g.*, The Federalist No. 42, at 264 (James Madison) (Clinton Rossiter ed.,

1961) (“If we are to be one nation in any respect, it clearly ought to be in respect to other nations.”). The Founders would have understood aiding and abetting attacks on ambassadors and other law of nations violations, *see* Part II.C, *infra*, to be wrongful acts that could embroil the nation in foreign entanglements, and if an aider and abettor had participated in either animating incident, the Founding generation would have thought them to be liable as well.

Petitioners’ argument seeking to insulate aiders and abettors from liability thus directly contradicts the statute’s core purpose and objectives. Congress would not have absolved accessorial perpetrators in the face of their overwhelming desire to forge strong alliances, facilitate international commerce, and avoid conflicts that the country was unprepared to handle. *See, e.g.*, Burley [Slaughter], *supra*, at 481–84; David M. Golove & Daniel J. Hulsebosch, *A Civilized Nation: The Early American Constitution, the Law of Nations, and the Pursuit of International Recognition*, 85 N.Y.U. L. Rev. 932, 939–40 (2010); Flaherty, *supra*, at 75.

II. Under Well-Established Concepts of Principal and Accessory Liability, Aiding and Abetting Constituted a Violation of the Law of Nations.

At the time of the passage of the ATS, aiding and abetting liability was firmly established.⁵ Within

⁵ The term “aiding and abetting” is commonly understood to “encompass[] assistance of various forms.” Petr’s’ Br. 16. *Amici* use “aiding and abetting” in a similar way herein to refer to

the common law, wrongdoers who aided and abetted an offense were considered responsible in both criminal and civil actions. This foundational rule also applied to law of nations violations. In fact, aiding and abetting each of the commonly enumerated law of nations violations was recognized as its own violation. Importantly, the Founders understood that the law of nations obligated sovereigns to provide redress for all violations committed by accessories as well as principals. *See, e.g.*, 1 U.S. Op. Att’y Gen. at 57. A sovereign who failed to provide such redress became complicit in the wrongdoing by risking the peace and harmony of all civilized nations.

A. The Law of Nations Required Sovereigns to Fully Redress All Wrongs, Including Wrongs Committed by Aiders and Abettors.

The law of nations of the eighteenth century outlined the obligations of nations, detailing where those obligations applied and against whom they must be enforced. It identified three jurisdictional arenas—subjects, territory, and safe harbor—wherein nations were obligated to provide redress for the wrongs of private parties that could be attributed to nations.⁶ Vattel, bk. 2, ch. 6, § 77. All three of these

wrongdoers who assist or encourage another to commit an offense.

⁶ It was uncontroverted that each law-abiding nation had a responsibility “to exercise justice in all the places under [its] obedience.” Vattel, bk. 2, ch. 7, § 84; *see id.* bk. 2, ch. 6 (discussing “Concern a Nation may have in the Actions of its Citizens”); *see also* Thomas Rutherford, *Institutes on Natural Law*, bk. 2, ch. 9, § 12 (2d ed. 1832) (“Connivance, or neglect to

jurisdictional bases are present in this case, where a U.S. company allegedly violated the law of nations from within U.S. territory and now seeks to be excluded from liability by this Court, which would effectively create a safe harbor.

To satisfy its law of nations obligations, the sovereign was required to identify *all* perpetrators under its purview, including its subjects who aided and abetted the violations of others.⁷ See Vattel, bk. 2, ch. 7, § 84 (sovereigns must “take cognizance of the crimes committed”); see also *Henfield’s Case*, 11 F. Cas. 1099, 1103 (C.C.D. Pa. 1793) (No. 6360) (“[W]hoever shall render himself liable to punishment or forfeiture, under the law of nations, by committing, aiding or abetting hostilities forbidden by his country, ought to lose the protection of his country against such punishment or forfeiture.”). Holding all perpetrators responsible would fulfill the obligation to redress all harms committed by private parties that threatened the rule of law and “safety of all nations.” Vattel, bk. 2, ch. 6, § 76.

The law of nations created a general obligation that required every state to respect and uphold the rule of law on the global stage. It demanded states

prevent an injury, cannot make a nation a party to the injury, unless the offender is one of its own subjects; or, at least, was within its territories when the injury was done[.]”.

⁷ All perpetrators also included juridical entities and their agents. In the notorious *Skinner’s Case*, Thomas Skinner sought to hold the East India Company liable for the acts of its agents for the seizure of his ship and robbery of his assets on the high seas in violation of the law of nations. *Thomas Skinner v. The East India Company*, 6 State Trials 710, 711 (1666).

“mutually to respect each other” and for “justice and equity” to govern international relations. Vattel, bk. 2, ch. 6, § 71. If nations failed to uphold the rule of law, the field of international relations would devolve into “nothing but one nation robbing another.” *Id.* bk. 2, ch. 6, § 72. The commitment to uphold the rule of law also granted access to the community of “civilized” nations, cementing a state’s reputation as legitimate and worthy of international respect. *See* Burley [Slaughter], *supra*, at 484.

Civilized nations were required to redress law of nations violations. *See* 4 Blackstone at *67–68. Nations that failed to do so rendered themselves “in some measure an accomplice in the injury, and [became] responsible for it.” Vattel, bk. 2, ch. 6, § 77; 4 Blackstone at *68 (failing to provide redress means “the sovereign then avows [itself] an accomplice”). To fail to provide adequate redress was to provide safe harbor to violators of the law of nations, which was itself a violation. Indeed, “by granting protection to an offender, [the nation itself] may become a party . . . [to violations] committed abroad, either by its own subjects, or by foreigners, who afterwards take refuge in its territories.” Rutherforth, bk. 2, ch. 9, § 12; *see also* 4 Blackstone at *71 (describing piracy as against “all mankind”); Vattel, bk. 2, ch. 6, §§ 75–77.

This duty to redress could be satisfied in a variety of ways; once the sovereign of the wrongdoer “delivers up, either the goods of the guilty, or makes a recompense, in cases that will admit of reparation, or the person, to render him subject to the penalty of his crime, the offended has nothing farther [sic] to demand from him.” *Id.* bk. 2, ch. 6, § 77. The law of

nations left open which combinations of these three methods of redress—civil, criminal, or extradition—the state should undertake in response to a particular violation, but it made clear that adequate redress was absolutely required to meet international obligations.⁸

The Founders clearly understood this international obligation to provide various remedies for “infractions of the laws of nations.” 21 *Journals of the Continental Congress 1774–1789*, 1136 (Gaillard Hunt ed., 1912). Prior to the passage of the ATS, the Continental Congress passed a resolution recommending that the states “provide expeditious, exemplary and adequate punishment” for violations of the law of nations. *Id.* at 1136. The Continental Congress specifically recommended that the states “authorise suits to be instituted for damages by the party injured.” *Id.* at 1137. The ATS served to federally codify this obligation to redress law of nations violations, and there was no exception for aiders and abettors of law of nations violations in its framework for civil redress. Quite the opposite: the Founders determined that aiders and abettors fell

⁸ The sovereign’s obligation to thoroughly redress law of nations violations stemmed in part from the dual nature of the harm caused by such violations, marking them as both private and public wrongs. Blackstone defined private wrongs as infringements of individual rights typically remedied through civil actions, whereas public wrongs were violations of duties owed to the community and were typically punished as crimes. See 3 Blackstone at *2. This distinction was more conceptual than factual, with Blackstone emphasizing that “every public offense is also a private wrong,” because the same act simultaneously injures an individual and society. 4 Blackstone at *5–6.

squarely within the ambit of the ATS because those “committing, aiding, or abetting” offenses “render[ed] themselves liable to punishment under the law of nations.” 1 U.S. Op. Att’y Gen. at 59 (Attorney General Bradford having “no doubt” that “remedy by a *civil* suit in the courts of the United States” was available under the ATS for these violations) (emphasis in original); *see also* Part III.B, *infra*.

Importantly, when the First Congress incorporated the law of nations into the ATS—bringing accessorial liability with it—Founding-era leaders expected that the law of nations would continue to evolve. They understood the law of nations to be informed by the practice of nations and capable of development over time with respect to both the list of substantive violations and the modes of liability for those violations. *See Letter from Thomas Jefferson to Thomas Pinckney*, May 7, 1793, reprinted in 25 *The Papers of Thomas Jefferson* 674, 675 (John Catanzariti ed., 2018) [*The Papers of Thomas Jefferson* hereinafter cited as *Jefferson Papers*] (acknowledging that “the principles of that law [of nations]” had been, and would be, “liberalized in latter times by the refinement of manners and morals”); William S. Dodge, *Customary International Law, Change, and the Constitution*, 106 *Geo. L. J.* 1559, 1581–82 (2018) (“The Framers of the U.S. Constitution understood that the law of nations changes.”); *United States v. The La Jeune Eugenie*, 26 *F. Cas.* 832, 846 (C.C.D. Mass. 1822) (No. 15,551), *overruled on other grounds by The Antelope*, 23 *U.S.* (10 *Wheat.*) 66 (1825) (Justice Story discussing evolution of law of nations). Thus, limiting jurisdiction under the ATS to only those torts that

violated the law of nations recognized in 1789 would run counter to their vision. So too would limiting cognizable claims under the ATS to claims brought against principals, when Founding-era jurists themselves applied the ATS to accessorial perpetrators. *See* Part III.B, *infra*.

B. The Founders Understood Aiders and Abettors as Wrongdoers Under the Law of Nations.

In the Founding era, those who assisted in an offense were subject to liability for their participation. Whether in the civil context (e.g., trespass and tort actions) or the criminal arena, aiders and abettors were considered either principals or accessories to the wrongdoing, depending on the nature of the offense and the degree of their assistance. Law of nations violations were no exception; aiding and abetting such violations would commonly have rendered a perpetrator liable. Such wrongdoing could lead to either criminal sanction or civil liability to redress the harm. *See* Part II.A, *supra*. Finally, Founding-era jurists contemplated the role of aiders and abettors in situations relevant to this case, including where aiders and abettors had constructive presence or had provided counsel or materials to the principal as part of the wrongful scheme.

Blackstone and others were concerned with the *degree* of legal responsibility for aiders and abettors, not *whether* legal responsibility existed for such wrongdoers. *See, e.g.*, 4 Blackstone at *34 (discussing “degrees of guilt among persons that are capable of offending, viz.: as *principal*, and as *accessory*”)

(emphasis in original); *see also* Matthew Hale, 1 *Historia Placitorum Coronæ* 613–17 (1736) [hereinafter Hale]; Thomas Wood, 3 *An Institute of the Laws of England* 396–98 (9th ed. 1763). Blackstone followed a long line of jurists who all agreed that aiding and abetting a harm created liability. *See* Hugo Grotius, *The Rights of War and Peace* 197 (1625) (A.C. Campbell trans., 1901) (“[B]esides the person immediately doing an injury, others may be bound also to repair the losses of the suffering party. . . . [A] principal in any crime or offence is one, that urges to the commission of it, that gives all possible consent, that aids, abets, or in any shape is a partner in the perpetration of it.”); Edward Coke, *The Third Part of the Institutes of the Laws of England* 138 (1644) (“In case of felony there are Principals and Accessories, and Accessories be of two sorts, either before the offence be committed, or after.”); Samuel Pufendorf, 3 *Of The Law of Nature and Nations* 217 (Basil Kennett trans., 4th ed. 1729).

In both civil and criminal arenas, aiders and abettors were considered liable for their participation. British civil tort suits pre-dating the Founding affirmed aiding and abetting liability was available. *See Rex v. Manning*, 92 Eng. Rep. 1236, 1238 (1738) (“[W]here several persons are engaged in a *tortious act*, all present and aiding and assisting in it are equally culpable.”) (emphasis added); *id.* at 1239 (“[I]n all cases of tort . . . all aiding and assisting in [the trespass] are liable”); *see also Berden v. Burton*, Y.B. Trin. 6 Ric. II, pl. 9, 19–23 (1382), *reprinted in* Charles Donahue, Jr., *The Modern Laws of Both Tort and Contract: Fourteenth Century Beginnings? Delloyd J. Guth Visiting Lecture in Legal History:*

September 17, 2015, 40 Man. L.J. 9, 33 (2017) (“[I]f you should be knowledgable [sic] or plotting or willingly present when the trespass is done, you shall be adjudged a principal feisor, for in trespass no one is an accessory.”).

Within criminal law, those assisting in an offense were considered liable, either as principal offenders or accessories. *See, e.g.*, 4 Blackstone at *39 (“[A]ccessories shall suffer the same punishment as their principals: if one be liable to death the other is also liable.”). For both the most serious crimes and the most minor, all actors were considered principals, including those who assisted before, after, or during the commission of the offense. *See* 4 Blackstone at *36 (for the “highest and lowest offences,” ranging from treason to petty misdemeanors, “there are no accessories . . . all persons concerned therein, if guilty at all, are principals”); *see also* Hale at 613 (in cases of treason, “all consenters, aiders, abettors, and knowing receivers . . . are all principals,” while in non-capital cases of “trespass, mayhem, or praemunire, there are no accessories,” as all are “in the same degree principals”). Liability attached both to those who were “present, aiding and abetting the fact to be done” and those who were constructively present, such as one acting as a lookout while another committed a crime. 4 Blackstone at *34 (“[B]ut there may be also a constructive presence, as when one commits a robbery or murder and another keeps watch or guard at some convenient distance.”); *see also* Hale at 615.

Relevant to the case at hand, assisting in an offense at *any* stage rendered one liable as an

accessory. *See, e.g.*, Wood, *supra*, at 397 (“There are Accessories *before* and *after* the Fact.”) (emphasis in original). Accessories before the fact “procure, counsel, or command another to commit a crime,” though they themselves are absent at the time of the crime. 4 Blackstone at *36; *see also* Hale at 616 (defining accessories by their “command, counsel, abatement, or procurement”); Wood, *supra*, at 397. Of particular relevance, “counselling” an offense rendered one liable as an accessory before the fact. *See* Hale at 435, 563, 613. For example, in the case of poisoning, anyone who counseled or abetted the poisoner, including one who “b[ought] the materials . . . knowing and consenting to the [principal’s] design,” was an accessory before the fact. *Id.* at 616. That accessorial liability extended even when the principal committed an act different from the one contemplated—for instance, a principal who stabs a victim despite the original plan to poison him. *Id.* at 617. Conversely, accessories after the fact arose where a person, knowing that a felony has been committed, “receives, relieves, comforts, or assists the felon.” 4 Blackstone at *37.

C. Aiding and Abetting Each Commonly Enumerated Law of Nations Violation of the Time Independently Violated the Law of Nations.

At the time of the enactment of the ATS, aiders and abettors that assisted in violating any of the commonly enumerated law of nations violations would have been considered wrongdoers themselves. Piracy, violations of safe conduct, and attacks on

ambassadors were paradigmatic violations of the time, but these offenses did not encompass all law of nations violations. *Sosa*, 542 U.S. at 720; *see also* Vattel, bk. 2, ch. 6, § 76 (law of nations offenses are those that threaten the safety and harmony between nations); *id.* bk. 2, ch. 6, § 71 (noting that whoever “offends the state, injures its rights, disturbs its tranquility, or does it a prejudice in any manner whatsoever” is subject to penalty under law of nations). The Continental Congress specifically acknowledged in 1781 that its enumerated list only included some of the “most obvious” law of nations offenses and recommended that each state establish tribunals to adjudicate and redress additional offenses. 21 *Journals of the Continental Congress 1774–1789*, *supra*, at 1137.

Aiding and abetting piracy was clearly recognized as a law of nations violation. 4 Blackstone at *72 (considering “trading,” “furnishing,” “consulting, combining, confederating, or corresponding” with pirates as piracy itself). Consistently, aiders and abettors to piracy were held liable alongside principals. 4 Blackstone at *72 (all those “yielding [goods] up voluntarily to a pirate” or “receiving or concealing [pirates] or their goods” will be punished with death, “whether he be principal or merely accessory”); *see also* Wood, *supra*, at 397; Charles Molloy, *De Jure Maritimo et Navali* 39 (1676) (describing that when pirates attack another ship and one pirate kills someone in the process, “by the Law Maritime . . . they who gave the wound only shall be principalls [sic], and the rest accessories”); Part III.A, *infra*.

Policymakers in the Founding era actualized this acknowledgement of aiding and abetting liability for piracy. *See, e.g.*, A Proclamation, By the Proprietary of the Province of Pensilvania, and Counties Annexed with the Advice of the Council (Reinier Jonsen 1699) (W. Penn) (“[c]ommand[ing] all *Magistrates* and *Officers*” to apprehend those who “be Aiding or Assisting to [pirates]”) (emphasis in original). Only one year after passing the ATS, the First Congress prioritized addressing accessories to pirates, including those who “aid and assist, procure, command, counsel or advise” piracy or robbery upon the sea. Crimes Act of 1790, ch. 9, 1 Stat. 112, 114.

The law of nations also prohibited acts against the person and property of ambassadors, including aiding and abetting those acts. 4 Blackstone at *70; *De Longchamps*, 1 U.S. at 115–16. Those who sought to arrest an ambassador or seize his goods were deemed violators of the law of nations, including anyone “prosecuting, soliciting, or executing such process.” 4 Blackstone at *70–71; *see also* Charles de Martens, *Causes célèbres du droit des gens* 74–96 (1827) (describing 1709 incident in which group of accomplices were found guilty of assaulting and falsely arresting Russian ambassador in violation of law of nations).

Another core protection of the law of nations was the guarantee of safe conduct between civilized nations. *See, e.g.*, 21 *Journals of the Continental Congress 1774–1789, supra*, at 1136 (naming “commission of acts of hostility against such as are in amity, league or truce with the United States” as a law of nations violation). So important was this

protection, that “abetting and receiving” those who violated truces and safe conducts “was (in affirmance and support of the law of nations) declared to be high treason against the crown and dignity of the king.” 4 Blackstone at *69.

The breach of neutrality was another well-established law of nations violation as it directly threatened the legal regime’s aim to preserve harmony among nations. *See* Vattel, bk. 3, ch. 7, §§ 106, 109. At the Founding, violations of neutrality were understood to encompass not only direct perpetrators, but also those who aided, abetted, or otherwise assisted in hostile acts. *See* 1 U.S. Op. Att’y Gen. at 57, 58 (1795) (neutrality could be breached by direct perpetrators and by participants who “joined,” “conducted,” or “aided and abetted” hostile operations). “[C]ommitting, aiding, or abetting hostilities” that contravened the decision of the United States to remain impartial in European wars was treated as legally consequential by the Founders, rendering U.S. citizens liable under the “law of nations.” *Neutrality Proclamation No. 3* (Apr. 22, 1793), *reprinted in* 11 Stat. 753 (1859).

The law of nations further required sovereigns to redress *all* serious offenses that were contrary to the international order and safety of all nations. *See* Vattel, bk. 2, ch. 6, § 76. Accessorial participation in those offenses, including aiding and abetting, was not an exception to that liability, but indeed part of the rule. Vattel, bk. 2, ch. 6, § 71 (“[*w*]hoever offends the state, injures its rights, disturbs its tranquility, or does it a prejudice *in any manner whatsoever*” violates law of nations) (emphasis added). Offenses beyond the

paradigmatic violations of the time could also disrupt the harmony and safety among nations. *See* 21 *Journals of the Continental Congress 1774–1789, supra*, at 1137 (noting need to redress law of nations violations beyond “most obvious” offenses). For example, when U.S. citizens participated in the theft of enslaved individuals from a Spanish subject in Spanish territory, it was considered a law of nations violation. *See* Thomas Jefferson, *Opinion on Offenses Against the Law of Nations*, Dec. 3, 1792, *reprinted in* 24 *Jefferson Papers* at 693–95 (discussing seizure by private party as act of aggression in violation of law of nations). The Founders discussing the incident did not distinguish between liability for the primary perpetrator and his accomplices when affirming the nation’s responsibility to redress the robbery. *Id.*

Finally, beyond the enumerated list of law of nations violations involving aiding and abetting, the very framework that mandated redress for such violations was based on accessorial responsibility attaching to sovereigns. When the subjects of a civilized nation violated the law of nations, the sovereign bore responsibility to hold the violator to account. *See* Part II.A, *supra*; Vattel, bk. 2, ch. 6, §§ 71–72. If the sovereign failed to redress the violation, the law of nations treated the sovereign as akin to an accessory after the fact. *See* 4 Blackstone at *37 (one who “receives, relieves, comforts, or assists” offender is accessory after the fact and liable for offense); Vattel, bk. 2, ch. 6, § 72 (sovereign that allowed its subjects to injure another nation “d[id] no less injury to that nation, than if he injured [it] himself”). Under this framework, a sovereign that “refuse[d] to cause a reparation to be made of the

damage caused by his subject” became “in some measure an accomplice in the injury, and . . . responsible for it.” *Id.* § 77; *see also id.* § 74 (“a nation, or its leader” is liable when it “approves and ratifies the fact committed by a citizen”); 4 Blackstone at *68.

III. Early American Jurists Shared the Understanding that Aiding and Abetting Was a Violation of the Law of Nations.

English and early American jurists accepted aiding and abetting liability for violations of the law of nations. From at least the sixteenth century, English common law recognized aiding and abetting as a law of nations violation. During the infancy of the republic, U.S. subjects led and assisted a variety of law of nations offenses against foreign actors, provoking friction in international relations and ultimately leading to the passage of the ATS to provide redress for those offenses. In addressing those incidents, both before and after the passage of the ATS, the Founders unequivocally recognized liability for aiders and abettors of law of nations violations. *See* 1 U.S. Op. Att’y Gen. at 57; *Talbot v. Jansen*, 3 U.S. (3 Dall.) 133, 156–58 (1795).

A. Prior to the Enactment of the ATS, English and Founding-Era Jurists Recognized Aiding and Abetting Liability for Law of Nations Violations.

Prior to the passage of the ATS, English, colonial, and early American authorities that considered law of nations violations demonstrated broad agreement that liability attached to aiders and abettors. While the offenses varied, aiding and abetting liability remained constant.

Dating to at least the 1500s, English courts recognized that all offenders of law of nations violations, including aiders and abettors, could be held to account. In an effort to redress violations by English citizens against foreign ships, Queen Elizabeth I and her Privy Council condemned aiders and abettors of piracy and called for their arrest and punishment. *See Orders for the Repressing of Pirates, in 7 Acts of the Privy Council of England 1558–1570*, 282 (John Roche Dasent ed., 1893) (Privy Council Acts at *265) (calling for arrest of those “aiding, furthering, abetting, or consenting” to piracy) (modernized spelling alteration); Queen Elizabeth I, *A Proclamation Agaynst the Maintenaunce of Pirates* (1569) (Eng.) (those who bought or received “any wares or goodes [sic]” from pirates would be “adjudged and executed” as pirates as well); *see also* Piracy Act 1698, 11 Will. 3 c. 7 (Eng.); Piracy Act 1721, 8 Geo. 1 c. 24 (Gr. Br.). Other law of nations violations also carried accessory liability at the time. *See de Martens, supra*, at 74–96 (group of accomplices found

guilty in 1709 for conspiring to assault and arrest Russian ambassador).

Early American jurists affirmed that all perpetrators who assisted in law of nations violations were liable for their actions, including aiders and abettors. Colonial courts attached liability to those individuals who “did Conspire, Abett, and Joyne [sic]” in piratical activities, *Indictment of Benjamin Blackledge* (1694), in John Franklin Jameson, *Privateering and Piracy in the Colonial Period* 151–52 (1923) [hereinafter *Privateering and Piracy*], just as it attached to those “aiding and assisting” piracy and “shareing [sic] in the Plunder,” *Certificate for John Devin* (1698), in *Privateering and Piracy, supra*, at 178–80; see also *Cases of John Rose Archer and Others* (1724), in *Privateering and Piracy, supra*, at 323–45.

Because law of nations violations risked offending foreign powers, the Founders were concerned with fully redressing the harms committed by “*all persons*, appearing to be culpable.” See “Wednesday February 28th 1787,” IV *Journals of the Council of the State of Virginia (Dec. 1, 1786–Nov. 10, 1788)* 47 (George H. Reese ed., 1967) (“*Virginia Council Journals*”) (emphasis added).⁹ This compre-

⁹ In 1786, General George Rogers Clark of Virginia led a group to “convene[] a military court” and try three “Spanish subjects trading in American territory without permission,” confiscating their stores. See L.C. Helderman, *The Northwest Expedition of George Rogers Clark, 1786–1787*, 3 *Miss. Valley Hist. Rev.* 317, 321, 329 (1938). Virginia Governor Edmund Randolph and other Virginian officials labeled the seizure an “offence against the law of Nations” and called for “legal proceedings against *all persons*,

hensive redress was required by the law of nations in order to preserve the peace of all nations, *see* Part II.A, *supra*, and providing such redress was the animating justification for the passage of the ATS. *See, e.g., Jesner*, 138 S. Ct. at 1417 (Gorsuch, J., concurring).

B. After the Enactment of the ATS, American Jurists Recognized Aiding and Abetting Liability for Law of Nations Violations.

Incidents following the passage of the ATS demonstrate that American courts and jurists in the 1790s were highly concerned with meeting the young nation’s obligations under the law of nations. When U.S. subjects injured the person or property of foreign citizens, both criminal and civil remedies were readily deployed to avoid further conflict. The application of the ATS indicates that the Founders intended the statute to meet the obligation of the United States to redress accessorial violations of the law of nations. All early American Founders, jurists, and courts known to have expounded on accessorial liability for law of nations violations under the ATS understood it the

appearing to be culpable.” *See* “Wednesday February 28th 1787,” *Virginia Council Journals* (emphasis added). Secretary of Foreign Affairs John Jay recognized the acts of Clark and his accomplices as a “violation of the Laws of Nations” that threatened relations with Spain. *See 32 Journals of the Continental Congress 1774–1789, supra*, at 194 (Report to Congress of Secretary of Foreign Affairs John Jay on Apr. 12, 1787). Without the ATS yet available, Jay advised that the Continental Congress adopt a resolution expressing their displeasure and providing aid “to apprehend and deliver . . . *all such of the said Offenders.*” *Id.* at 197 (emphasis added).

same way: the ATS provided general coverage over “tort[s] . . . in violation of the law of nations” and held accountable those who aided and abetted. 28 U.S.C. § 1350; see *Jansen v. The Vrow Christina Magdalena*, 13 F. Cas. 356, 358 (D.S.C. 1794), *aff’d sub nom. Talbot v. Jansen*, 3 U.S. (3 Dall.) 133 (1795).

Beyond the ATS context, American jurists and courts understood the general law of nations obligation to extradite or provide civil or criminal redress for serious offenses committed by U.S. subjects or connected to U.S. territory, including aiding and abetting. See, e.g., *Henfield’s Case*, 11 F. Cas. at 1102 (criminal aiding and abetting prosecution of U.S. citizen for law of nations violation); *Neutrality Proclamation No. 3* (expressly declaring that U.S. citizens were “liable to punishment or forfeiture under the law of nations” for “committing, aiding or abetting hostilities”); 1 Stat. at 114 (criminalizing those who “aid and assist, procure, command, counsel or advise” murder, robbery, or piracy “upon the seas”).

Even more aptly, within the ATS context, one of the first well-known ATS cases involved a quintessential aiding and abetting law of nations violation. In 1794, U.S. citizens David Newell and Peter William Mariner breached U.S. neutrality by aiding French sailors in attacking a British settlement.¹⁰ Newell and Mariner “voluntarily joined,

¹⁰ In the 1790s, the U.S. government proclaimed its neutrality in the war between France and Great Britain. See William R. Casto, *The Federal Courts’ Protective Jurisdiction over Torts Committed in Violations of the Law of Nations*, 18 Conn. L. Rev. 467, 501–02 (1986).

conducted, aided, and abetted a French fleet in attacking the settlement, and plundering or destroying the property of British subjects.” 1 U.S. Op. Att’y Gen. at 57–58; *see also* Appendix B (Transcription from Original Memorial of Zachary Macaulay and John Tilley (Nov. 28, 1794)) (complaining to British officials about involvement of two Americans “aiding and abe[t]ting in attacking and destroying the property of British subjects”). In response, British Minister Plenipotentiary George Hammond insisted that the United States must “adopt[] the most vigorous measures with a view to restrain in [sic] future such illegal and piratical aggressions.” Appendix C (Letter from George Hammond 4 (June 25, 1795)).

Attorney General Bradford unequivocally agreed. In no instance would a U.S. subject “committing, aiding, or abetting hostilities” against a foreign nation “receive the protection of the United States against such punishment,” for aiders and abettors of such offenses were “liable to punishment under the law of nations.” 1 U.S. Op. Att’y Gen. at 59. Making clear reference to the ATS, Bradford expressed “no doubt” that those “who have been injured by these acts of hostility have a remedy by a *civil* suit in the courts of the United States.” *Id.* (emphasis in original).

The Founders also recognized that the ATS was available to redress a wide range of law of nations offenses that threatened relations with foreign powers. *See Opinion on Offenses Against the Law of Nations, supra*, at 693–95; Edmund Randolph, *Edmund Randolph’s Opinion on Offenses Against the*

Law of Nations, Dec. 5, 1792, reprinted in 24 *Jefferson Papers* at 702–03. In 1792, Thomas Harrison and two accomplices entered Spanish Florida and stole five enslaved individuals belonging to a Spanish subject to satisfy a debt owed to Harrison. See *Letter from Josef Ignacio de Viar and Josef de Jaudenes to Thomas Jefferson*, June 26, 1792, reprinted in 24 *Jefferson Papers* at 129–30. Upon receiving a complaint from Spain, Secretary of State Thomas Jefferson and Attorney General Edmund Randolph identified the ATS as available to provide redress. See *Opinion on Offenses Against the Law of Nations, supra*, at 693–95 (citing ATS to find that federal courts have jurisdiction for “all causes, where an alien sues for a tort only, in violation of the law of nations”) (emphasis omitted); *Edmund Randolph’s Opinion on Offenses Against the Law of Nations, supra*, at 702 (“[D]amages may be recovered in the courts of the U.S., under the jurisdictions established by the judicial law, if an alien be a party.”).¹¹

Also instructive is a law of nations aiding and abetting case that reached the Supreme Court in 1795. Fittingly, the lower court in *Talbot v. Jansen* justified its ability to hear the case by invoking the language of the ATS that grants jurisdiction “where an alien sues for a tort only in violation of the law of nations,

¹¹ Jefferson and Randolph signaled their understanding that the ATS recognized accomplice liability by identifying the ATS as applicable to an incident involving multiple offenders with apparently varying degrees of participation. Importantly, no parties involved suggested that accessory participation precluded liability. See, e.g., *Letter from Josef de Jaudenes and Josef Ignacio de Viar to Thomas Jefferson*, May 12, 1793, enclosures, reprinted in 26 *Jefferson Papers* at 10–12.

or a treaty of the United States.” *The Vrow Christina Magdalena*, 13 F. Cas. at 358. The Supreme Court granted review to decide the matter as a law of nations prize case, as it involved the seizure of a Dutch ship.¹² *See Talbot*, 3 U.S. at 133–34. The Court held that Talbot violated the law of nations by aiding and abetting the actions of Ballard, a U.S. citizen. *See id.* at 156–57. By “furnishing Ballard with guns, in aiding him to arm and outfit, in co-operating with him on the high seas, and using him as the instrument and means of capturing vessels,” Talbot was liable for “abet[ting] the predatory schemes of an illegal cruiser on the high seas.” *Id.* at 156; *see also id.* at 157–58 (stating “[i]t is an act of justice, *resulting from the law of nations*” that “restitution will be awarded” in such cases) (emphasis added).

These widely known opinions and cases immediately following the passage of the ATS point to the conclusion that aiders and abettors were among those liable for violating the law of nations. This was true for prohibitions ranging from robbery to breaches of neutrality and others, as all violations by all offenders required redress under the law of nations. Petitioners’ argument that such liability was foreclosed therefore finds no purchase in the historical record.

¹² Although this case was not adjudicated directly under the ATS, the lower court recognized the statute as a source of concurrent jurisdiction, and there is no indication the result of the case would have differed under the ATS: prize cases were law of nations cases, and the ATS provided general coverage over such claims. *See The Vrow Christina Magdalena*, 13 F. Cas. at 358–59.

CONCLUSION

For the foregoing reasons, *amici* urge the Court to uphold the text, history, and purpose of the ATS by affirming the judgment below.

March 27, 2026

Respectfully submitted,

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APPENDIX A
LIST OF *AMICI CURIAE*¹

William R. Casto

Paul Whitfield Horn Distinguished Professor
Texas Tech University School of Law

Martin S. Flaherty

Charles and Marie Robertson Visiting Professor
Princeton University

Eliga H. Gould

Harmsworth Professor of American History
Oxford University

Stanley N. Katz

Lecturer with Rank of Professor of Public and
International Affairs
Princeton University

Samuel Moyn

Kent Professor of Law and History
Yale Law School

Anne-Marie Slaughter

Bert G. Kerstetter '66 University Professor of
Politics and International Affairs, Emerita
Princeton University
Chief Executive Officer, New America

¹ *Amici* affiliations are provided for identification purposes only.

APPENDIX B

MEMORIAL OF ZACHARY MACAULAY AND JOHN TILLEY (NOV. 28, 1794)

Transcription from Original

This 1794 Memorial is from Zachary Macaulay, Acting Governor of the Sierra Leone Company, and John Tilley, the Agent of the Andersons, Merchants in London who owned Bance Island in British Sierra Leone. Memorial of Zachary Macaulay, Acting Governor of the Honorable the Sierra Leone Co.'s Colony at Sierra Leone, and John Tilley, Agent of Messrs John and Alexander Anderson to the Right Honorable Lord Grenville, One of His Majesty's Principal Sec'ys of State (Nov. 28, 1794) (on file with U.S. National Archives in Boston, MA, Microfilm M-50, Roll 2, Record Group RG-59); *see also* Memorial of Zachary Macaulay, Acting Governor of the Honorable the Sierra Leone Co.'s Colony at Sierra Leone, and John Tilley, Agent of Messrs John and Alexander Anderson to the Right Honorable Lord Grenville, One of His Majesty's Principal Sec'ys of State (Nov. 28, 1794) (on file with British National Archives in Kew, United Kingdom, Microfilm "America" 1794-95 FO 5/9 17-20). This Memorial accompanied the Letter from George Hammond to Edmund Randolph. Addendum C; *see also* Letter from George Hammond, Minister Plenipotentiary of His Britannic Majesty, to Edmund Randolph, Sec'y of State, United States of Am. (April 15, 1795) (on file with British National Archives in Kew, United Kingdom, Microfilm "America" 1794-95 FO 5/9 11-16) (showing Macaulay and Tilley

Memorial delivered to Mr. Hammond in April 1795). The Memorial is also referenced in the Bradford Opinion. *See Breach of Neutrality*, 1 Op. Att'y Gen. 57, 58 (1795).

[Page 1]

To the Right Hon^{ble} Lord Grenville one of his Majesty's principal Secretary's of State.

The Memorial of Zachary Macaulay acting Governor of the Hon^{ble} the Sierra Leone Company's Colony of Sierra Leone, on the coast of Africa, and of John Tilley Agent of Mess^{rs} John and Alexander Anderson, Merchants in London, and proprietors of Bance Island an establishment, on the said coast, Sheweth

That on the 28th of September last a french fleet consisting of, one fifty gun ship, two frigates, two armed brigs, with several armed prizes, did enter the river Sierra Leone, and did take the Hon^{ble} the Sierra Leone Company's chief establishment of Freetown, and also Bance Island the establishment as is stated above of Mess^{rs} John and Alexander Anderson's

That contrary to the existing neutrality between the British and American Governments, certain American subjects trading

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to this coast, did voluntarily join themselves to the French fleet, and were aiding and abeting [sic] in attacking and destroying the property of British subjects at the above named places and elsewhere, as your memorialists will take the liberty of stating more particularly to your Lordship.

That an American subject of the name of David Newell, commanding a schooner called the Massachusetts belonging to Boston in the state of Massachusetts, the property as your memorialists believe of Daniel Macniel a Citizen of Boston in the said state of Massachusetts, did with the consent and concurrence of the said Daniel Macniel who was then and there present, voluntarily assist in piloting the said french fleet from the Isle de Loss to the river Sierra Leone.

That when the French had taken Freetown, the said David Newell, did land there with arms in his hands and at the head

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of a party of French soldiers, whom he conducted to the house of the acting Governor one of your memorialists

That the said David Newell did make use of violent and threatening language towards your said memorialists and others, declaring aloud that it was now an American war, and he was resolved to do all the injury in his power to the persons and property of the inhabitants of Freetown.

That the said David Newell was active in exciting the French soldiery to the commission of excesses, and was aiding and abetting in plundering of their property the Hon^{ble} the Sierra Leone Company and other individuals British subjects.

That on the same day, namely the 28th day of Sept^r last the said David Newell, did assist in piloting a French frigate up the River Sierra Leone to Bance Island, which place was attacked by the said frigate

and two other vessels, and on the 30th day of September was taken and destroyed

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That as a reward to the said Daniel Macniel and to the said David Newell for their services, the French Commodore did deliver to the said David Newell on board the Schooner commanded by him called the Massachusetts a considerable quantity of goods, which had been the property of British subjects.

That another American subject of the name of Peter William Mariner, who during the last war had acted as [sic] a Lieutenant on board of one of his Majesty's ships but now commanding a Schooner, belonging to New-York called the ___ the joint property as your memorialists believe, of Geo Bolland late of the Island of Bananas, on the coast of Africa, a British subject and ___ Rich a citizen of New-York did in like manner voluntarily assist in conducting the said French fleet from the Isle de Loss to the river Sierra Leone.

That the said Peter W^m Mariner did also land at Freetown in company of the French with arms in his hands and was

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exceedingly active in promoting the pillage of the place.

That the said Peter W^m Mariner was more eager in his endeavors to injure the persons and property of British subjects than the French themselves, whom he the said Peter W^m Mariner instigated to the commission of enormities by every

mean [sic] in his power, often declaring that his heart's desire was to wring his hands in the blood of Englishmen.

That on the 29th day of Sept^r last the said Peter W^m Mariner did voluntarily go in a sloop commanded by him, and carrying American colours in pursuit of a sloop belonging the said Mess^{rs} John and Alexander Anderson of London, which had taken refuge in Pirat[e]'s bay, in the River Sierra Leone. That on the same day, the said Peter W^m Mariner did seize the said sloop and did deliver her up as a prize to the French Commodore.

That the said Peter W^m Mariner did receive from the French Commodore as a reward for his exertions a Cutter which had been the property

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of the Hon^{ble} the Sierra Leone Company called the Thornton together with a considerable quantity of goods, which had been the property of British subjects.

That the said Peter W^m Mariner did also carry off from Freetown and apply to his own use a great variety of articles the property of British subjects; particularly a library of books belonging to the Hon^{ble} the Sierra Leone Company, which there is reason to believe would not have been carried off by the French.

That on the 7th day of Oct^r last the said Peter W^m Mariner did receive on board the said Cutter Thornton commanded by him, a number of armed Frenchmen, with whom and in company of a French armed brig, he did voluntarily go in pursuit of a ship in the offing, which proved to be the Duke of Bucclugh of London John Maclean Master. That by the orders

of the said Peter W^m Mariner, a boat belonging to the said Duke of Bucclugh was seized, and the chief mate of the said Duke of Bucclugh who was on board the boat made prisoner.

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That the said Peter W^m Mariner did hail the said Duke of Bucclugh and did desire the said John Maclean to strike his colours, and to surrender to the said Cutter Thornton which he the said Peter W^m Mariner commanded. That on the said John Maclean refusing to strike the said Peter W^m Mariner did fire a four pound shot at the said Duke of Bucclugh.

That on the 9th day of Oct^r last, the said Peter W^m Mariner did in the said Cutter Thornton commanded by him voluntarily accompany three French vessels in pursuit of the Ship Harpy of London Daniel Telford Master, which ship they captured.

That the said Peter F Mariner did shew himself on all occasions the determined and inveterate enemy of British subjects, and was a cause together with the beforementioned [sic] persons Daniel Macniel and David Newell of considerably more injury being done to British property on this coast, than without their aid could have been done.

That your memorialists

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are ready to produce legal evidence of [the] above facts, which they submit to your Lordship's judgment in the confidence that they will be taken into serious consideration both that the parties concerned may obtain such redress as is to be had and that such

wanton aggressions on the part of subjects of a neutral government may meet their due punishment

That in confirmation of the above your memorialists do affix to these presents which are contained on this and the nine preceding pages their hands and seals at Freetown this 28th day of Nov^r 1794

Signed Zachary Macaulay (LS)
John Tilley (LS)

APPENDIX C

LETTER FROM GEORGE HAMMOND (JUNE 25, 1795)

Transcription from Original

This letter, dated June 25, 1795, was addressed to Edmund Randolph, the U.S. Secretary of State, from George Hammond, the British Minister Plenipotentiary. Letter from George Hammond, Minister Plenipotentiary of His Britannic Majesty, to Edmund Randolph, Sec'y of State, United States of Am. (June 25, 1795) (on file with U.S. National Archives in Boston, MA, Microfilm M-50, Roll 2, Record Group RG-59); *see also* Letter from George Hammond, Minister Plenipotentiary of His Britannic Majesty, to Edmund Randolph, Sec'y of State, United States of Am. (April 15, 1795) (on file with British National Archives in Kew, United Kingdom, Microfilm "America" 1794-95 FO 5/9 11-16) (draft letter). Mr. Randolph then delivered the letter to Attorney General William Bradford, requesting an opinion on the matter. Letter from Edmund Randolph, Sec'y of State, United States of Am. to William Bradford, Att'y Gen., United States of Am. (June 30, 1795) (on file with U.S. National Archives in Boston, MA, Microfilm M-40, Roll 8, Record Group RG-59). Attorney General Bradford referenced the letter from Mr. Hammond in his opinion on the Sierra Leone incident. *See Breach of Neutrality*, 1 Op. Att'y Gen. 57, 58 (1795).

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The Undersigned Minister Plenipotentiary of His Britannic Majesty has received instructions to lay before the Government of the United States the inclosed memorial[s?] from the acting Governor of the British Colony of Sierra Leone on the coast of Africa, and from the Agent of Mess^{rs} John and Alexander Anderson, Proprietors of Bance Island on the same Coast.

The Undersigned in communicating this Paper to the Secretary of State does not think it necessary to dwell either on the nature or the importance of the particular transactions which are there stated.

He would not however do Justice to the friendly dispositions of his Court, or to the principles upon which the present political relations of the two Countries are established, if upon an occasion of so serious, and in its extent of

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of so unprecedented a nature, he were not to remark that the line of forbearance hitherto pursued by His Majesty under the circumstances of similar though less aggravated offences cannot be considered as applicable to the present case.

The Citizens of the United States mentioned in the inclosed paper[s?], if they were not originally the authors of the expedition against the Settlements at Sierra Leone, have taken so decided and leading a part in the business, that the French crews and vessels employed on the same occasion, appear rather in the light of Instruments of hostility in their hands than as Principals in an enterprise undertaken against the Colony of a Power with whom France only was at war.

The forbearance hitherto shewn by the British government towards those citizens of the United States who

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who have been found in the actual commission of acts of hostility against His Majesty's subjects has proceeded partly from an unwillingness to carry to their full extent against the Individuals of a friendly Nation measures of severity which would however have been justified by the indisputable Laws of Nations, and partly from the persuasion that these acts however frequent have arisen at least in some degree from an ignorance on the part of the persons concerned, with respect to the extent of the crime which they were committing, and of the consequences to which they were making themselves liable. But even the circumstance of that forbearance entitles His Majesty to expect that more attention will be paid to His representations on the occasion of a transaction of the nature and extent of that complained of in this memorial. It might be stated with truth that under all the circumstances of the Case these proceedings

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proceedings could hardly have been justified even by any state of hostility between two countries who had felt a common interest in the cause of humanity and in the general welfare of mankind: How much more reason is there then for complaint when these acts are committed by the Citizens of a Power with whom His Majesty is living on terms of perfect Amity, and towards whom He had been anxious to shew every

degree of attention and friendship. On all these grounds this case must be felt to be of a nature, which calls for the most serious attention of both governments; and the rather, because it appears by other accounts which have been received by the British government, that similar practices are daily multiplying in the West Indies and elsewhere. The King is confident that the United States will feel the necessity of adopting the most vigorous measures with a view to restrain in future such illegal and piratical aggressions which must

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must be as repugnant to the wishes and intentions of the American government as they are contrary to all the principles of Justice and all the established rules of neutrality. And His Majesty trusts on the present occasion, that to the ample indemnification of the parties aggrieved will be added such exemplary punishment of the offenders as may satisfy the just claims of the British government, and secure to the two Countries the uninterrupted enjoyment of that intercourse of friendship and good understanding, which proceedings of the nature complained of have so obvious a tendency to disturb.

Geo. Hammond.

Philadelphia
25 June 1795.