

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 MEMBERS OF CONGRESS  
REPRESENTATIVE CHRISTOPHER H.  
SMITH, ET AL., AS *AMICI CURIAE* IN  
SUPPORT OF RESPONDENTS**

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**INTEREST OF *AMICI CURIAE*\***

Members of Congress submit this brief *amicus curiae* in the hope that a brief history of Congress's actions to draft and enact the Torture Victim Protection Act (TVPA), including its relationship to the Alien Tort Statute (ATS), is useful to the Court in its deliberations.

**Representative Christopher H. Smith** (R-NJ) is a senior member of the House Foreign Affairs Committee. He served on the Committee during its consideration of the TVPA and cosponsored the Torture Victim Protection Act of 1988 (H.R. 1417), 1989 (H.R. 1662), and 1991 (H.R. 2092). He also authored the Torture Victims Relief Act of 1998, which authorizes the President to provide assistance to programs designed to treat victims of psychological and physical torture. Mr. Smith has been appointed to serve as Co-Chair of the Tom Lantos Human Rights Commission, Co-Chair of the bipartisan Congressional-Executive Commission on China (CECC), and Chair of the House Foreign Affairs Subcommittee on Africa. Because of his length of tenure and leadership in foreign affairs, he is familiar with the important role of Congress in developing and supporting U.S. foreign policy. He is

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\* All parties have consented to this filing. No counsel for a party authored any part of this brief. No individual or entity except *amici*'s counsel contributed any funding toward the preparation or submission of this brief.

deeply committed to protecting religious freedom and democratic governance.

**Representative Joe Wilson (R-SC)** is a senior member of the House Foreign Affairs Committee, where he is a member of the Middle East and North Africa Subcommittee as well as the Subcommittee on Europe. He is also the most senior member of the House Armed Services Committee where he is on the Subcommittees on Readiness and also Strategic Forces. Additionally, he serves as the Chairman of the U.S. Helsinki Commission, also known as the Commission on Security and Cooperation in Europe. He has been appointed to the Republican Policy Committee, where he serves as the Chairman of the National Security Taskforce. He served as a member of the United States Armed Forces for 31 years.

**Representative Gus M. Bilirakis (R-FL)** is a Senior Member of the Energy and Commerce Committee. He is the Chairman of the Innovation, Data, and Commerce Subcommittee. He is also a Senior Member of the Health Subcommittee and the Communications and Technology Subcommittee.

**Representative Stephen F. Lynch (D-MA)** is a member of the Financial Services Committee, where he serves as Ranking Member of the Subcommittee on Digital Assets, Financial Technology and Artificial Intelligence and is a member of the Subcommittee on Capital Markets and the Subcommittee on Financial

Institutions. He is also a member of the Tom Lantos Human Rights Commission.

### **SUMMARY OF ARGUMENT**

A bipartisan, nearly unanimous Congress passed the Torture Victim Protection Act.

While the bill was under consideration, Congress consistently described torture as a violation of the law of nations that had been condemned by virtually every country — a universal crime akin to piracy, one of the three offenses against the law of nations referenced by Blackstone. Congress concluded that extrajudicial killing had also reached the same level of universal condemnation.

Congress understood the foreign policy implications of the TVPA, passing the act despite warnings from the State Department. Congress understood that enacting a civil remedy for torture committed under the color of foreign law might have foreign policy impacts but deliberately decided to proceed because Congress believed that stamping out torture was a worthwhile goal and that providing a civil remedy for its victims was a concrete step towards that goal. The TVPA is a deliberate, eyes-open choice by the political branches. In the words of Representative James Leach (R-IA), a member of the House Foreign Affairs Committee and original co-sponsor of the legislation, during the floor debate on passage of the TVPA:

Now and again in recent years critics of American foreign policy have alleged that we sometimes act as policemen of the world. Sometimes we do that for good cause. Sometimes we do it effectively; sometimes counterproductively. But in this particular approach what we are saying is that we are going to be and represent, and the first country so to do, although certainly consistent with the U.N. Convention Against Torture, we are going to provide a court to police the world.

My own sense is that through courts, through the rule of law, through the western tradition, we have a greater chance to set a model for the world and to have an effect than we sometimes do through the exercise of force.

134 Cong. Rec. 28612 (Oct. 5, 1988).

Congress had heard testimony about a recent decision, *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), that provided a civil remedy pursuant to the Alien Tort Statute, 28 U.S.C. § 1350, to the family of a young man tortured to death in Paraguay. Congress repeatedly expressed its intent to provide a similar remedy to U.S. citizens and, at the same time, to preserve and clarify that the ATS remained available to provide redress for violations of international law.

The remedy chosen by Congress for the TVPA, like the ATS, was a tort claim for damages, a claim that encompasses aiding and abetting liability.

Members of Congress have consistently spoken out, including by passing resolutions and other measures, to condemn aiding and abetting religious persecution, particularly when it leads to torture and extrajudicial killing. Indeed, in 2000, Congress established the Congressional-Executive Commission on China (CECC) to monitor human rights and the rule of law in China. U.S.-China Relations Act of 2000, Pub. L. No. 106-286, § 301, 114 Stat. 880 (2000). The CECC has addressed political repression and persecution of religious minorities in China, including Falun Gong practitioners, Uyghur Muslims, and Christians. The legislative record establishes clearly and consistently that this litigation is neither inconsistent with U.S. law nor contrary to U.S. foreign policy. Plaintiffs should have the opportunity to prove their claims in a court of law, as Congress intended.

## ARGUMENT

### **I. A Bipartisan, Nearly Unanimous Congress Passed the TVPA**

The TVPA passed the House three times: first in 1988 by voice vote (H.R. 1417), then in 1989 by a vote of 362-4 (H.R. 1662) and finally in 1991 by voice vote (H.R. 2092). The TVPA passed the Senate by voice

vote in 1992. The TVPA was signed into law by the President on March 12, 1992.

**A. Before drafting and passing the TVPA,  
Congress spent years investigating the  
use of torture by foreign governments**

Congress spent years investigating the use of torture by foreign governments, focusing in particular on religious persecution and torture of political prisoners.

In 1984, the House of Representatives Committee on Foreign Affairs held a series of hearings on “The Phenomenon of Torture.” *Hearings and Markup on H.J. Res. 605 Before the H. Comm. on Foreign Affs. and its Subcomm. on Hum. Rts. and Int’l Orgs.*, 98th Cong. (May 15, 16, and Sept. 6, 1984). The Senate followed, with a hearing on the “Practice of Torture by Foreign Governments and U.S. Efforts to Oppose its Use.” *Hearing Before the S. Comm. on Foreign Rels.*, Hr’g 98-953, 98th Cong. (Jun. 26, 1984).

The Senate Committee heard graphic testimony about the persecution of followers of the Baha’i faith by the government of Iran. *See Practice of Torture at 20* (statement of Elliott Abrams, Assistant Sec’y of State for Hum. Rts. and Humanitarian Affs.); *at 73-74* (statement of Firuz Kazemzadeh, Vice-Chairman of Nat’l Spiritual Assembly of the Bahai’is describing torture).

The House Committee heard testimony about doctors in Chile who aided and abetted torture by

ensuring that victims survived for further torture “to prevent them from escaping through unconsciousness or death.” *Phenomenon of Torture* at 9. Members heard a similar account from a Uruguayan torture survivor. *Id.* at 44.

The House heard graphic testimony about the implements of torture. *Id.* at 9. And the Members heard testimony from evangelical pastors targeted for torture in Nicaragua, including from one pastor who testified that soldiers “took my hair and cut off first one ear and then the other.” *Id.* at 234. That pastor testified that his case was not an isolated one, and he described the torture suffered by other believers. *Id.*

On the last day of the House hearings, witnesses described the importance of financial compensation for victims and described a recent case based on “an old law,” *Filartiga v. Pena-Irala*, 630 F.2d 876, that awarded a \$10 million judgment to the family of a young man tortured to death in Paraguay. *Phenomenon of Torture* at 240 (statement of Michael Posner, Exec. Dir. of Laws. Comm. for Int’l Hum. Rts.). That case had proceeded to judgment under the Alien Tort Statute, 28 U.S.C. § 1350. Members heard that the Second Circuit had concluded that “for the purposes of civil liability, the torturer has become -- like the pirate and slave trader before him -- hostis humani generis, an enemy of all mankind.” *Phenomenon of Torture* at 245-6. Later hearings on the TVPA also focused on *Filartiga*. *E.g.*, *Torture Victim Protection Act of 1989: Hearing on S. 1629 and*

*H.R. 1662 Before the Subcomm. on Immigr. and Refugee Affs. of the S. Comm. on the Judiciary, Hr'g 101-1284, 101st Cong. 40-41 (Jun. 22, 1990) (statement of Robert F. Drinan, S.J.), 48-52 (statement of Michael Posner, Exec. Dir. of Laws. Comm. for Int'l Hum. Rts.).*

Following these hearings, Congress adopted and President Reagan signed a joint resolution in opposition to the practice of torture. That resolution, Pub. L. No. 98-447, focused on diplomatic solutions. It instructed the United States Representative to the United Nations to continue to raise the issue of torture practiced by governments; to continue to involve the United States in formulating international standards, particularly the draft Convention Against Torture; and requested the Secretary of State to issue formal instructions to each chief of mission to investigate and raise concerns in individual cases of torture. Joint Resolution, Pub. L. No. 98-447, 98 Stat 1722 (1984). Congress also resolved to enact laws to reinforce U.S. policy to oppose the practice of torture by foreign governments. *Id.* at 98 Stat. 1721.

**B. Congress decided to enact a tort remedy to provide money damages to victims, which it viewed as “clearly the most effective deterrent” to combat continued human rights abuses**

Consistent with the Joint Resolution and recognizing that diplomatic efforts were not enough on their own, Members of Congress moved forward to

draft and introduce a bill to provide a civil remedy to victims of torture and extrajudicial killing. As Representative Gus Yatron (D-PA) explained when he introduced the first TVPA bill in 1986, “Torture is a powerful and brutal enemy. It cannot be conquered if it is ignored, nor can it be beaten solely by admonitions or condemnations.” 132 Cong. Rec. 9710 (May 6, 1986). Senator Arlen Specter (R-PA) similarly explained when he introduced the Senate counterpart, “the resolution calls upon the Congress to develop [a] concrete mechanism by which the United States can combat the use of torture throughout the world . . . . Passage of the Torture Victim Protection Act would begin to fulfill that mandate.” 132 Cong. Rec. 12949 (Jun. 6, 1986) (statement of Sen. Specter); *see also H. Comm. on Foreign Affs., Torture Victim Protection Act of 1988*, H.R. Rep. No. 100-693, at 2 (1988) (hearings established that additional domestic legislation was needed).

The “concrete mechanism” Congress chose was a civil remedy. The Chairman of the House Foreign Affairs Committee, Representative Dante Fascell (D-FL), explained on the House floor during the debate on passage of the TVPA that nations must provide a remedy to victims of torture:

[T]he United States has been in the forefront in promoting respect for human rights throughout the world. If international human rights are to be given legal effect, we and other nations

must provide domestic remedies to victims of torture. . . .

135 Cong. Rec. 22715 (Oct. 2, 1989). *See also* H.R. Rep. No. 100-693, at 2. (“The United States has long recognized that if international human rights are to be given legal effect, adhering nations must make available domestic remedies and sanctions to address abuses regardless of where they occur.”).

Congress drafted the statute against the backdrop of tort liability and explained that it was enacting a remedy in tort for money damages. For example, the Chairman of the House Judiciary Committee, Representative Peter Rodino (D-NJ), spoke in support of the bill’s passage in 1988:

Mr. Speaker, I am one of the original authors of H.R. 1417, the Torture Victim Protection Act of 1988. This legislation is designed both to clarify current law with respect to tort liability for human rights violations, and to send a message to torturers throughout the world . . . . H.R. 1417 would clarify U.S. law by providing an explicit civil cause of action in tort for torture and extrajudicial killing, and by providing that U.S. courts shall have original jurisdiction over such actions.

134 Cong. Rec. 28614 (Oct. 5, 1988); *see also* 135 Cong. Rec. 22714 (Oct. 2, 1989) (on passage of the TVPA, H.R. 1662, statement of Rep. Jack Brooks (D-TX),

Chairman of the House Judiciary Committee: “the Torture Victim Protection Act, provides any person, whether a citizen of the United States or alien, a cause of action in Federal court for damages resulting from torture or extra-judicial killing . . . [the perpetrator] shall be liable for money damages, or any other appropriate relief to the injured party or that party’s legal representative.”); 133 Cong. Rec. 6670 (Mar. 24, 1987) (statement by Sen. Specter on introduction of the TVPA of 1987: “this bill is designed to provide tangible results – a cause of action for damages for violations of the law of nations condemning torture and extrajudicial killing . . . . The legislation also would encourage other nations to develop and apply meaningful domestic remedies, clearly the most effective deterrent to continued human rights abuses.”).

Each Committee report filed on the TVPA referenced the information Congress had learned about *Filartiga*, the Second Circuit case. *E.g.*, *H. Comm. on the Judiciary, Torture Victim Protection Act of 1989*, H.R. Rep. No. 101-55, at 3 (“The *Filartiga* case met with general approval.”); *S. Comm. on the Judiciary, Torture Victim Protection Act of 1991*, S. Rep. No. 102-249, at 3-4 (1991) (quoting *Filartiga*’s holding); *see also* H.R. Rep. No. 100-693, at 3. Congress noted that questions had been raised by “at least one Federal judge” in another case, *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984), about whether the Alien Tort Statute provided an

adequate basis for a private right of action. H.R. Rep. No. 101-55 at 3 (1989); *see also* S. Rep. No. 102-249, at 4. In response, Congress endorsed the approach taken by *Filartiga* and enacted the TVPA “to provide a clear basis for future suits” and, in addition, expand the civil remedy to U.S. citizens. H.R. Rep. No. 100-693, at 3; S. Rep. No. 102-249, at 4. As the House Judiciary Committee Report explained, “[t]he TVPA would establish an unambiguous and modern basis for a cause of action that has been successfully maintained under an existing law, section 1350.” H.R. Rep. No. 101-55, at 3.

First, Congress agreed that “official torture and summary execution violate standards accepted by virtually every nation. The universal consensus condemning these practices has assumed the status of customary international law.” H.R. Rep. No. 101-55 at 2; *see also* S. Rep. No. 102-249, at 3 (same); *TVPA of 1989: Hr’g* at 17 (Senator Specter explains that torture is a universal crime, like piracy); 135 Cong. Rec. 22716 (Oct. 2, 1989) (Rep. Leach during debate on the passage of TVPA citing Dutch legal scholar Hugo Grotius and noting that while some principles of public international law remain unsettled, “there are some legal principles so fundamental to the existence of international society that they acquire the attributes of jus cogens, or peremptory norms of international law. The right of the individual to be free from torture is such a norm.”). The definitions in the TVPA were drawn from the definitions in the

Convention Against Torture and reflect customary international law. H.R. Rep. No. 100-693, at 3; S. Rep. No. 102-249, at 6.

Second, Congress (in both the House and Senate Committee reports) made clear that the ATS

has other important uses and should not be replaced. . . . [C]laims based on torture or summary executions do not exhaust the list of actions that may appropriately be covered by section 1350. That statute should remain intact to permit suits based on other norms that already exist or may ripen in the future into rules of customary international law.

H.R. Rep. No. 101-55, at 3-4.; *see also* S. Rep. No. 102-249, at 3-5 (same).

**C. Congress enacted and the President signed the TVPA despite the Administration's concerns about the foreign policy impact of the bill**

In 1988, the Reagan Administration agreed that torture is universally condemned and supported the goals of the TVPA, to deter torture and compensate its victims, but opposed its enactment as premature, stating “[a]lthough civil remedies are not per se unwarranted for extraterritorial acts of torture, we believe that enactment of the TVPA at this time would be premature and undesirable” and recommended instead reliance on the multilateral Convention

Against Torture framework. *Torture Victim Protection Act: Hearing and Markup on H.R. 1417 Before the Comm. on Foreign Affs. and its Subcomm. on Hum. Rts. and Int'l Orgs.*, 100th Cong. 91 (Mar. 23, Apr. 20, and Jun. 7, 1988). A representative of the Bush Administration testified later that the Administration was concerned that the TVPA “may interfere with complex and multifarious foreign policy.” *TVPA of 1989: Hr’g* at 8 (statement of John O. McGinnis, Deputy Assistant Att’y Gen., Off. of Legal Couns., U.S. Dep’t of Just.). In support of the Administration, Senators Alan Simpson and Charles Grassley filed Minority Views, opposing the TVPA because “it might create serious difficulties with the management of foreign policy.” S. Rep. No. 102-249, at 13.

The TVPA nonetheless passed both chambers by overwhelming margins. Members of Congress understood the warnings that the statute risked entangling U.S. courts in foreign disputes and could implicate sensitive international relationships. They nonetheless concluded that universal condemnation of torture justified the use of domestic courts as a forum for international human rights accountability. For example, Representative Lamar Smith (R-TX) of the House Judiciary Committee supported passage, explaining that the “infliction of torture under color of law is conduct so offensive to basic civilized norms as to justify providing a remedy in our courts even though the conduct occurs outside our borders.” 135 Cong. Rec. 22715 (Oct. 2, 1989). The Ranking Member

of the House Foreign Affairs Committee, Representative William Broomfield (R-MI), addressed the Administration's concerns directly:

It is unfortunate that the Department of State opposes this bill. I can appreciate the Department's view that Congress should focus its attention on ratifying the Torture Convention. But I do not believe these two approaches to addressing these horrible crimes need to be an either/or matter.

The United States should have a full arsenal of weapons against those who commit torture or murder under the cloak of official authority. Adopting the Torture Victim Protection Act will enhance the protections available to the victims of torture in the courts of the United States.

The Department of State is also concerned that through this bill the United States would be unilaterally extending its jurisdiction over actions that occur overseas. If there were ever a reason to extend the jurisdiction of our courts, however, this is certainly it. Enactment of this legislation would continue the leadership role of the United States on human rights.

*Id.* at 22717. Again, on final passage in 1991, Representative Broomfield reiterated, “There are, of course, situations in which application of this statute could create difficulties in our relations with friendly countries. But this is a small price to pay in order to see that justice is done for the victims of torture.” 137 Cong. Rec. 34786 (Nov. 25, 1991). Representative Bill McCollum (R-FL) of the House Judiciary Committee emphasized Congress’s intention that a remedy for victims of torture should be available, despite foreign policy concerns:

It seems to me that despite some opposition and some questions about it from sources concerned with the fact that there might be a reciprocity question that could get us into conflict somewhere, that this is not that big a deal, but it is indeed a very big deal to the victims involved, and we ought to provide civil remedies.

*Id.* at 34785-86.

Later, on the Senate floor, Senators Grassley (R-IA) and Specter (R-PA) entered into a colloquy directly addressing concerns about involving the judiciary in foreign affairs:

Mr. GRASSLEY. Will the bill involve the judicial branch of Government in foreign affairs?

Mr. SPECTER. I do not believe that it will. While it will allow a remedy for acts committed in foreign countries, torture is universally condemned by the family of nations. No nation officially supports or condones torture. Therefore, I do not expect that this act will entangle the judiciary in sensitive foreign policy matters.

138 Cong. Rec. 4176 (Mar. 3, 1992). The colloquy then highlighted case-by-case judicial management doctrines, including *forum non conveniens*, as tools for managing individual cases. *Id.* No Senator called for a recorded vote, and the bill passed.

At the bill's signing, President George H.W. Bush identified the diplomatic risks posed by the TVPA but nonetheless signed it into law:

There is thus a danger that U.S. courts may become embroiled in difficult and sensitive disputes in other countries, and possibly ill-founded or politically motivated suits, which have nothing to do with the United States and which offer little prospect of successful recovery. Such potential abuse of this statute undoubtedly would give rise to serious frictions in international relations . . . .

*Statement on Signing the Torture Victim Protection Act of 1991*, 1 Pub. Papers 437 (Mar. 12, 1992).

President Bush grounded his decision to sign the bill, despite the foreign policy concerns, in the United States' continued leadership on human rights:

Today I am signing into law H.R. 2092 . . . because of my strong and continuing commitment to advancing respect for and protection of human rights throughout the world. The United States must continue its vigorous efforts to bring the practice of torture and other gross abuses of human rights to an end wherever they occur.

*Id.*

**D. Congress intended to include aiding and abetting liability**

Consistent with the Convention Against Torture, the TVPA imposes liability on any individual “who subjects” another to torture. 28 U.S.C. § 1350 (note). The Senate Judiciary Committee Report, in a section entitled “scope of liability,” explains that the TVPA applies to those who “ordered, abetted, or assisted in the torture,” S. Rep. No. 102-249, at 8.

Relying on this Court’s opinion in *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994), Petitioners argue that Congress was required to use the words “aiding and abetting” in the text of

the TVPA if it intended to include aiding and abetting liability. Pet'r's Br. 40. As described above, Congress drafted the TVPA as a tort statute, against the backdrop of ordinary tort-related liability rules.<sup>1</sup> “[W]here a common-law principle is well established, . . . the courts may take it as given that Congress has legislated with an expectation that the principle will apply except ‘when a statutory purpose to the contrary is evident.’” *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991) (citations omitted) (quoting *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952)); see also, e.g., *Meyer v. Holley*, 537 U.S. 280, 285 (2003) (“[W]hen Congress creates a tort action, it legislates against a legal background of ordinary tort-related vicarious liability rules and consequently intends its legislation to incorporate those rules.”). When the TVPA was passed in 1991, it was well established that the common law prohibited aiding and abetting intentional torts. See, e.g., *Halberstam v. Welch*, 705 F.2d 472, 477-78 (D.C. Cir. 1983).

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<sup>1</sup> Indeed, when a representative of the State Department appeared before the Senate Judiciary Committee, he argued that the United States already complied with the Convention Against Torture, because “[e]xisting U.S. law already establishes private rights of suit sufficient to implement this requirement domestically, for example, through a common law tort action, a civil action for violations of civil rights or a suit for constitutional tort.” *TVPA of 1989: Hr’g* at 25-26 (statement of David P. Stewart, Assistant Legal Adviser of the Dep’t of State). These remedies include aiding and abetting liability.

*Central Bank of Denver* does not impose a clear-statement rule on Congress. Rather, the Court held that “the statutory text controls the definition of conduct covered by § 10(b)” of the Securities Exchange Act of 1934. *Cent. Bank of Denv.*, 511 U.S. at 175. And it held that the text of § 10(b), which imposed liability only on those who “use or employ . . . any manipulative or deceptive device or contrivance,” *id.* at 171 (quoting 15 U.S.C. § 78j(b)), was too narrow to encompass aiding-and-abetting liability. Thus, a court will not presume, without more, that a private right of action includes aiding and abetting liability when the text of the statute expressly limits liability to the primary tortfeasor. *See id.* at 174-75. That is not the case here, where the Convention Against Torture and the legislative history provide important context for Congress’s word choice.

Even if *Central Bank of Denver* created a clear-statement rule, the Court should not apply it here to a statute that pre-dates that decision. Clear statement rules “insist that Congress speak with unusual clarity when it wishes to effect a result that, although constitutional, would disturb a constitutionally inspired value.” John F. Manning, *Clear Statement Rules and the Constitution*, 110 Colum. L. Rev. 399, 407 (2010). Clear statement rules come with a cost – often described as a “clarity tax.” *E.g.*, *Biden v. Nebraska*, 600 U.S. 477, 508 (2023) (Barrett, J., concurring); *see also* Manning, *supra*, at 419 (clear-statement rules can “accentuate the

countermajoritarian difficulty by multiplying the occasions upon which courts act in the teeth of apparent legislative preferences”). No important value, constitutional or otherwise, justifies imposing a clear statement rule to limit the intended scope of the TVPA. Notably, it is undisputed that the TVPA creates liability for command responsibility, Pet’r’s Br. 41, though the text is no more specific about command liability than it is aiding-and-abetting liability.<sup>2</sup>

## **II. This Case is Consistent with Federal Law and U.S. Foreign Policy, Which Have Long Sought to Address Serious Human Rights Abuses in China**

Congress has long sought to address serious human rights abuses by the Chinese Communist Party (CCP), especially the persecution of religious minorities in that country. Members of Congress have been clear that Americans, including American companies, must not be complicit in furthering those abuses.

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<sup>2</sup> It is also undisputed that Congress imposed criminal liability for aiding and abetting torture in the companion crime bill, which imposed criminal penalties consistent with the Convention Against Torture. 18 U.S.C. §§ 2, 2340A; Pet’r’s Br. 40 (citing 18 U.S.C. § 2(a)); see also 137 Cong. Rec. 34785 (Nov. 25, 1991) (statement of Rep. Mazzoli (D-KY) of the House Judiciary Committee referencing crime bill provisions implementing the Convention Against Torture and stating TVPA “complements what we did in the crime bill.”). In Title 18, aiding and abetting liability was imposed by a general code provision, which operates much like the background tort principles do here.

In particular, Congress has repeatedly expressed concern about the transfer of surveillance technology by American companies to the CCP. Congress has held a number of hearings to highlight this problem. See, e.g., *The Internet in China: A Tool for Freedom or Suppression?: Joint Hearing Before the Subcomm. on Africa, Glob. Hum. Rts. and Int'l Operations and the Subcomm. on Asia and the Pacific of the H. Comm. on Int'l Rels.*, Hr'g 109-157, 109th Cong. 1 (Feb. 15, 2006) (“We are here to examine a problem that is deeply troubling . . . and that is that American technology and know-how is substantially enabling repressive regimes in China and elsewhere in the world to cruelly exploit and abuse their own citizens.” (statement of Rep. Christopher H. Smith (R-NJ))).

These hearings included discussion of Cisco and its provision of network equipment to China. *Global Internet Freedom: Corporate Responsibility and the Rule of Law: Hearing Before the Subcomm. on Hum. Rts. & the L. of the S. Comm. on the Judiciary*, Hr'g 110-643, 110th Cong. 3 (May 20, 2008), (“Human rights groups have accused Cisco of providing network equipment that forms the backbone of the Great Firewall of China and is used by other repressive countries to censor Internet and monitor users.” (statement of Sen. Durbin (D-IL))). This focus has continued during the current Congress. On January 30, 2025, the Senate Foreign Relations Committee examined the use of advanced technology in Chinese government surveillance operations. *The Malign*

*Influence of the People's Republic of China at Home and Abroad: Recommendations for Policy Makers: Hearing Before the S. Comm. on Foreign Rels., Hr'g 119-33, 119th Cong. (Jan. 30, 2025).*

The House has also passed a number of bipartisan resolutions condemning religious persecution in China, including of the Falun Gong, and calling on China to cease its persecution, torture and other abuse of believers. *E.g.*, H.R. Res. 608, 109th Cong. (2005) (agreed to by 363 to 1, condemned torture of Falun Gong and determined that U.S. policy should be to “defend religious freedom and freedom of conscience in China.”); H.R. Res. 605, 111th Cong. (2010) (agreed to 412 to 1, called upon the Chinese government to “immediately cease and desist from its campaign to persecute, intimidate, imprison, and torture Falun Gong practitioners” and to abolish an extrajudicial security apparatus); H.R. Res. 343, 114th Cong. (2016) (agreed to by voice vote, expressed concern regarding organ harvesting from non-consenting prisoners of conscience, including Falun Gong practitioners, Uyghurs, and members of other religious groups).

To improve its ability to monitor human rights and the rule of law in China and to provide detailed analysis and policy recommendations for Congress and the President, Congress established the Congressional-Executive Commission on China

(“CECC”). § 301, 114 Stat. at 880.<sup>3</sup> The CECC is a bipartisan body that includes both legislative and executive branch members. It has held numerous hearings on religious persecution by the CCP. *See, e.g., Surveillance, Suppression and Mass Detention: Xinjiang’s Human Rights Crisis: Hearing Before the Cong.-Exec. Comm’n on China*, 115th Cong. 64 (July 26, 2018) (“The Chinese government and Communist Party are equal opportunity oppressors – targeting unregistered and registered Christians, Tibetan Buddhists, Falun Gong practitioners, and others with harassment, detention, imprisonment and more.” statement of Sen. Marco Rubio (R-FL)); *Religious Freedom in China: Hearing Before the Cong.-Exec. Comm’n on China*, 108th Cong. (Nov. 18, 2004); *Roundtable on Religious Freedom in China: Roundtable Before the Cong.-Exec. Comm’n on China*, 107th Cong. (March 25, 2002); *CECC at 20: Two Decades of Human Rights Abuse and Defense in China: Hearing Before the Cong.-Exec. Comm’n on China*, 117th Cong. (Dec. 13, 2022).

Petitioners assert that the United States and China have “a complex diplomatic and economic relationship.” Pet’r’s Br. 7. They argue that because the Foreign Relations Authorization Act for Fiscal Years 1990 and 1991 restricted crime control equipment, but not crime-control software and

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<sup>3</sup> The CECC’s functions are codified at 22 U.S.C. §§ 6911 et seq.

technology products, that official U.S. policy favors permitting the sale of custom-designed tools that facilitate the CCP's religious persecution. That is not so. These provisions were adopted in response to the Tiananmen Square Massacre, well before the internet became a prominent tool. In addition, the specific prohibitions in the law addressed known technologies and indicated an intention to prohibit rather than permit the type of support to the Chinese government that Petitioners are alleged to have provided. The Tiananmen Square Act contains detailed findings of fact that the Chinese government had engaged in "an unprovoked, brutal, and indiscriminate assault on thousands of peaceful and unarmed demonstrators and onlookers in and around Tiananmen Square." Foreign Relations Authorization Act for Fiscal Years 1990 and 1991, Pub. L. No. 101-246, § 901(a)(1), 104 Stat. 80 (1990). The Act described that the Chinese government had executed dozens of individuals who participated in the pro-democracy demonstrations and arrested thousands of protestors. *Id.* at § 901(a)(2)–(4). For these reasons, Congress indicated:

[i]t is the sense of the Congress that . . . the resumption of normal diplomatic and military relations . . . will depend directly on the Chinese Government's halting of executions of prodemocracy movement supporters, releasing those imprisoned for their political beliefs, and increasing

respect for internationally recognized human rights; . . . .

*Id.* at § 901(b)(4).

Rather than supporting Petitioners' transactions with the Chinese government, the legislative record establishes clearly and consistently that Congress has condemned the types of actions that gave rise to this lawsuit.

In sum, Congress has repeatedly expressed concern about the human rights situation in China. It has denounced religious persecution by the Chinese government. It has also expressed concern about U.S. corporate complicity in the transfer of surveillance technology to China. This case is neither inconsistent with U.S. law nor contrary to U.S. foreign policy.<sup>4</sup>

## CONCLUSION

In passing the TVPA, Congress communicated its intent that U.S. courts remain open for victims of torture to seek justice against those responsible, including Americans who aid and abet bad actors like

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<sup>4</sup> Counsel thank the following students for their valuable research assistance: Carson Holmgren, Patrick Kissel, and Reagan Nail of the University of Minnesota Law School and Renata Valquier Chavez of Georgetown Law.

the Chinese Communist Party. The Court should honor Congress's intent.

Respectfully submitted,

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