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 CENTER FOR A FREE CUBA, DOCTORS AGAINST FORCED ORGAN HARVESTING, THE INSTITUTE FOR THE AMERICAN FUTURE, MERCURY ONE, THE VULNERABLE PEOPLE PROJECT, AND JACO BOOYENS MINISTRIES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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March 27, 2026

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INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae are non-profit, non-governmental human rights, civil liberties, and faith-based organizations committed to the global protection of fundamental human rights. *Amici* advocate on behalf of vulnerable populations worldwide and have a strong interest in ensuring that the law provides meaningful accountability for those who violate universally recognized human rights.

Center for a Free Cuba (CFFC) is an international organization committed to promoting human rights, democratic governance, and political and economic freedoms. Led by president **Manuel E. Iglesias** and executive director **John Suarez**, CFFC disseminates information and exposes systemic violations of fundamental rights while advocating for accountability for state-sponsored repression. Mr. Iglesias is a longtime advocate for human rights, with decades of experience in public service and civic leadership, including service on multiple presidential transition teams. Mr. Suarez is an experienced human rights advocate, having served as a program officer at Freedom House, supported dissidents in congressional proceedings, and testified before the Inter-American Commission on Human Rights, the Western Hemisphere Subcommittee of the Congress of the United States, Standing Committee on Foreign

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel made a monetary contribution intended 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.

Affairs and International Development of the Canadian Parliament, the United Nations Human Rights Council, the European Parliament.

Doctors Against Forced Organ Harvesting (DAFOH) is an international organization founded by medical professionals dedicated to ending the practice of forced organ harvesting and promoting respect for fundamental human dignity. With a particular focus on abuses in China, DAFOH operates at the intersection of medical science and human rights law and has developed substantial expertise in the ethical, legal, and policy frameworks underlying systemic violations of international law. DAFOH received the Mother Teresa Award for Social Justice in 2019 and was nominated for the Nobel Peace Prize in 2016, 2017, and 2024.

The Institute for the American Future (IAF) is an organization dedicated to advancing policies that promote the security and stability of the United States. IAF focuses on identifying emerging global threats—particularly state-sponsored repression by the Chinese Communist Party—and works with national security practitioners, policymakers, and allied coalitions to counter such threats. **President Frank J. Gaffney** is a longtime national security policy expert with decades of experience in defense and foreign policy, including service acting as an Assistant Secretary of Defense in the Reagan Administration.

Mercury One (M1) is a humanitarian organization committed to advancing education and

preserving fundamental freedoms, with a particular focus on vulnerable populations. Through its initiatives and collaboration with organizations worldwide, M1 combats human trafficking systems, provides disaster relief, and works to protect individuals facing religious persecution and other forms of systemic abuse.

The Vulnerable People Project (VPP) is a humanitarian initiative of H.E.R.O., Inc., dedicated to promoting human dignity and protecting vulnerable populations. Led by founder and president **Jason Jones**, VPP focuses on advocacy, education, outreach, and direct support for communities facing human rights abuses, including through affiliated initiatives such as Movie to Movement.

Jaco Booyens Ministries (JBM) is an anti-trafficking organization focused on raising awareness of, preventing, and eradicating child exploitation and trafficking. In confronting organized and coordinated systems of exploitation operating across jurisdictions, JBM engages with domestic and international law enforcement agencies, policymakers, and humanitarian organizations to identify victims and provide long-term recovery to survivors.

INTRODUCTION

As a tool of surveillance, the internet provides "a cyber-sledgehammer of repression" used by the Chinese Communist Party ("CCP") to persecute and torture religious and political dissidents. *The Internet in China: A Tool for Freedom or Suppression?*, Joint Hearing Before Subcomm. of the H. Comm. on Int'l

Relations, 109th Cong., at 1 (2006). The CCP's human rights abuses include "forced labor camps" and the "horrifying trade in human organs." *Id.* *Amici*—as organizations committed to human rights, civil liberties, and religious freedoms—work to protect victims of persecution. Respondents allege a horrific torture scheme by the CCP based solely on their religious practices. Cisco created and continued to actively participate in the structure that identified and surveilled victims. The Alien Tort Statute ("ATS") and Torture Victim Protection Act of 1991 ("TVPA") provide critical remedies for victims of such abuses. Limiting those remedies, as Cisco urges, would not only stifle human rights objectives, it would betray the TVPA's plain text and the ATS's longstanding historical foundation.

SUMMARY OF ARGUMENT

Cisco's[2] actions, as alleged by Respondents, constitute a primary violation of the TVPA. Cisco played an essential role in a multi-phase torture scheme by developing the Golden Shield surveillance technology for the CCP, knowing it would be used to identify, monitor, apprehend, and torture Falun Gong practitioners. The question is not whether the TVPA provides aiding and abetting liability, but whether the scope of primary liability under the TVPA encompasses the conduct alleged by Respondents. The TVPA's plain language illustrates that it does.

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[2] The three Petitioners are collectively referred to herein as "Cisco".

The ATS similarly provides for liability for the horrors alleged by Respondents. The statute's text, structure, and historical context demonstrate Congress's intent to vest federal courts with the authority to provide meaningful redress for violations of the law of nations.

ARGUMENT

I. CISCO'S ALLEGED CONDUCT SUBJECTED RESPONDENTS TO TORTURE

At the outset, the procedural posture of this case colors how the Court must evaluate Cisco's conduct. This case comes before the Court on a motion to dismiss. The Complaint's factual allegations must, therefore, be accepted as true, and all reasonable inferences must be drawn in Respondents' favor. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). The question is not whether Cisco's conduct has been proven or is even likely to be proven at trial, but whether the Complaint states a plausible claim that Cisco subjected Respondents to torture within the meaning of the TVPA. It does.

A. The TVPA imposes liability on any individual who "subjects" another to torture, not only on those who personally inflict physical harm

The TVPA provides: "An individual who, under actual or apparent authority, or color of law, of any

foreign nation—(1) **subjects** an individual to torture shall, in a civil action, be liable for damages to that individual; or (2) **subjects** an individual **to** extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death". TVPA, Pub. L. No. 102–256, 106 Stat. 73 (1992) (emphases added).

Analysis of the TVPA—as with all statutes—begins with the statutory text. *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 458 (2012). A fundamental canon of statutory construction is that "words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42 (1979).

The definition of "subject" does not appear to be in dispute, as both Cisco and Respondents define the verb "subject" to include "cause" or "expose." *See* Pet'rs' Br. 41 (defining subject as "to '**cause** to undergo or experience something' or to 'lay open or **expose** to the . . . infliction of . . . something'"; "to '**cause**' a person to 'undergo or submit to' something or to '**expose**' them to it"; and "to '**expose** to something' or to '**cause** to experience'" (emphases added)); Resp'ts' Br. 41–42 (defining subject as "[t]o lay open or **expose** to the incidence, occurrence, or infliction of, render liable to, something"; "'[t]o **expose** to something' or '[t]o cause to experience'"; and "'to make liable,' to '**expose**' or 'to **cause** to undergo or submit to'" (emphases added)).

This Court also applied the same definitions of "subject" in interpreting Title IX. *Davis ex rel.*

LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 638 (1999) ("No person in the United States shall, on the basis of sex. . . be **subjected** to discrimination." (emphasis added) (quoting 20 U.S.C. § 1681(a)). The Court, in defining "subjected to," cited the following sources:

> Random House Dictionary of the English Language 1415 (1966) (defining "subject" as "to **cause** to undergo the action of something specified; **expose**" or "to make liable or vulnerable; lay open; **expose**"); Webster's Third New International Dictionary 2275 (1961) (defining "subject" as "to **cause** to undergo or submit to: make submit to a particular action or effect: **EXPOSE**").

Id. at 645 (emphases added). The statute thus expressly contemplates liability for persons whose actions **expose** a victim to the conditions in which torture occurs.

Thus, under well-accepted definitions of the term, Cisco "subjected" Falun Gong practitioners to torture by developing and implementing the Golden Shield technology that identified, tracked, and monitored them. The CCP may have been the metaphorical hangman, but it was Cisco that led Respondents to the gallows.

Defining "subject" as "cause to undergo" similarly belies Petitioners' narrow reading of liability under the TVPA. The concept of causation is well developed under the law, and tort-based causation

analysis has been applied to federal statutes with causation-related language. *E.g.*, *Bostock v. Clayton Cnty.,* 590 U.S. 644, 656 (2020) (applying but-for causation standard to Title VII which prohibits discrimination "because of" sex). Cisco is both the but-for cause and proximate cause of Respondents' torture.

A person may "cause" someone "to undergo" torture without wielding the "electric baton" or "steel rod bearing sharp screw threads". *See* J.A. 69. An actor who implements the system to identify, locate, apprehend, and deliver victims to physical torture—with knowledge that torture will follow—**causes** those victims to undergo torture. Such an actor does not merely "aid" or "assist"; it "subjects." The Complaint's allegations, accepted as true, describe precisely this kind of conduct.

Congress could have limited the realm of tortfeasors to "any individual who **tortures** another person," or to "any individual who **inflicts torture**." Instead, Congress expanded the class of tortfeasors to any individual who "**subjects an individual to torture**." 28 U.S.C. § 1350 note, § 2(a) (emphasis added). Congress's choice of words matters. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.") (citations omitted); A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 174 (2012) ("If possible, every word and every provision is to be given effect (*verba cum effectu sunt accipienda*). None should be ignored.")

B. The Complaint alleges that Cisco designed, built, and operated an integrated system, the function of which was to identify, track, capture, and deliver Falun Gong practitioners to their torturers

Cisco's alleged conduct is not that of a passive vendor who sold a torture-neutral product that was later misused. The Complaint describes a company that conscientiously embedded itself at every stage of a systematic campaign of violent persecution.

As set forth in the Complaint, beginning in or about 2000, Cisco created a marketing campaign to win Golden Shield contracts, "knowing that [the system] would be used in China for the surveillance, apprehension, and suppression of Falun Gong practitioners, through the use of torture and other extreme methods." J.A. 22–23. At trade shows across China, including at least one show organized in part by an arm of the Chinese state, Cisco demonstrated how its technology could "stop" Falun Gong. J.A. 51. One Cisco sales team member described to a journalist how the Golden Shield's "Policenet" technology "could do far more than the technology Cisco provided to security in the US," including the capacity to "read the content of email, figure out if someone had uploaded a new website, and monitor the Internet surfing history and email of designated persons." J.A. 21–22.

The Complaint does not allege that Cisco sold off-the-shelf routers or marketed general-purpose software that could be adapted by the user for the

user's own nefarious purposes. It alleges that Cisco designed "first-of-their-kind features" and integrated systems "developed specifically to aid Chinese security officers in the detection, apprehension and interrogation of Falun Gong, as well as in subsequent torture and further persecution." J.A. 24. These bespoke features included, at least: (1) a library of "'signatures,' *i.e.*, carefully analyzed patterns of Falun Gong Internet activity designed to enable the intelligent identification of individual Falun Gong Internet users"; (2) log/alert systems providing real-time monitoring and notification of Falun Gong internet traffic; (3) national and provincial "Information Centers" with centralized databases dedicated specifically to Falun Gong practitioners; (4) a "National Information System for Falun Gong Contact Persons"; and (5) a Falun Gong "Web Notification Server," enabling "comprehensive surveillance and tracking of Falun Gong coordinators and other suspects." J.A. 25. Cisco designed and deployed these components to subject Falun Gong practitioners to persecution. *Id.*

The Complaint further alleges that Cisco recommended anti-Falun Gong features that "Party officers could not have envisioned based on their lack of expertise; even technical experts in China lacked the experience, training, or resources to develop these cutting edge innovative solutions." J.A. 24. That is, without Cisco, the persecution apparatus could not have functioned at scale—indeed, "[t]he ideological conversion of millions of ('hard core') Falun Gong believers could not have been carried out in China without the database driven network of the scale and

capacity of the apparatus designed and developed by [Cisco] in San Jose." J.A. 34.

Cisco also implemented "many if not all of the features and applications" customized for four sequential objectives: "1) identify, 2) apprehend and detain, 3) interrogate and transform through torture, and 4) maintain a constantly updated 'lifetime' information profile for every Falun Gong adherent." J.A. 30–31. Each step fed into the next. The surveillance identified practitioners; the tracking located them; and the databases supplied interrogators with individualized profiles detailing a practitioner's "susceptibility to interrogation and ideological conversion," J.A. 44, including "family composition, contact information," and other leverage points. J.A. 29. The system was designed so that "different 'reeducation and *zhuanhua*' methods" could be "used for different types of people." J.A. 28.

Cisco's Ironport product—marketed as the "only product capable of recognizing over 90% of Falun Gong pictorial information"—was specifically designed to identify Falun Gong email communications as distinct from other traffic. J.A. 32. To create these "unique Falun Gong 'signatures' required Cisco's extensive and long-term identification and analysis of Internet activity unique to Falun Gong practitioners." *Id.* Cisco "intentionally incorporated the Falun Gong-specific signatures into security software upgrades at regular intervals to ensure Falun Gong activities and individuals were identified, blocked, tracked and suppressed." *Id.*

Critically, Cisco did not design one system for surveillance and another for detention. It designed a single, integrated apparatus in which surveillance, identification, profiling, tracking, interrogation, and "conversion through torture" were sequential phases of a unified torture scheme. J.A. 58. The Golden Shield's design required that the system "constantly obtain, update, and cross-reference information about individual Falun Gong adherents throughout this entire 'lifetime' in the system," including "each and every interrogation, each and every forced confession, torture/forced conversion, and further incarceration." J.A. 35. A practitioner's "lifetime" profile began with internet surveillance, continued through detention and torture, and persisted after release—enabling re-identification and re-detention if the practitioner returned to the faith. *See id.* at 29, 35. The surveillance did not merely lead to torture as some remote consequence. It was the mechanism by which victims were selected, delivered, and prepared for torture. Cisco designed that mechanism with full knowledge of and commitment to the Chinese government's stated goal of eliminating Falun Gong from China.

The system's integrated character matters because it forecloses Petitioners' attempt to disaggregate Cisco's conduct into a series of discrete, individually insufficient acts. *See* Pet'rs' Br. 9 (characterizing Respondents' claims as limited to Cisco's sale of "custom networking equipment and related technology to the Chinese government" which the Chinese government then, independently, used "to create a network known as the 'Golden Shield'"). The

correct unit of analysis is not each individual sale of technology to the Chinese state, but rather the comprehensive system Cisco designed, built, and maintained—a system whose *raison d'être* was the identification, capture, and coercive conversion of Falun Gong practitioners. Each component derived its significance from the whole. Stripped of its connection to the downstream persecution, a database that actively identifies and tracks Falun Gong practitioners is pointless. But connected to the Golden Shield's interrogation and conversion pipeline, it is an essential instrument of torture. Cisco designed the components *and* facilitated their use for a particular purpose.

Additionally, Cisco trained Chinese security officers "to use Cisco equipment to monitor and arrest Falun Gong practitioners." J.A. 36. In training materials posted by Cisco on pages of its website, Cisco described Falun Gong practitioners as "viruses" and "despicable," confirming that Cisco was in on the torture scheme. J.A. 21. Between 2001 and 2008, Cisco employees "tested and verified the operability of the Golden Shield system[.]" J.A. 35. The system also required "post-product maintenance, testing and verification, training and support, as well as 'Advanced Services,'" all of which Cisco provided. *Id.* This was not a one-time sale followed by indifference to how the product was used. Rather, it was continuous, hands-on participation in a meticulously designed system of persecution.

Cisco's internal documents described the "*douzheng*"—the CCP's term of art for persecutory

campaigns involving torture—as a "lucrative business opportunity." J.A. 59. PowerPoint presentations prepared from San Jose "specifically reference the ongoing crackdown or *douzheng* against Falun Gong and illustrate how Cisco's products are tailored to meet the stated goal of persecuting and suppressing Falun Gong practitioners in China." J.A. 58. The Communist Party "appears to have an office within Cisco China with a website that was accessible to all Cisco employees in China," with authority to "define objectives and set important policy for significant projects like the Golden Shield." J.A. 52. Cisco shareholder resolutions raised human-rights concerns repeatedly from 2002 through 2010. Each time, the Board of Directors recommended rejection, and the company continued its work. J.A. 56. Accepting these allegations as true, a court cannot reasonably conclude that Cisco's conduct was remote or that Cisco was otherwise uninvolved in effectuating the CCP's torture of the Falun Gong.

C. Cisco's alleged conduct goes beyond "aid" and "assistance" and constitutes subjecting Respondents to torture

Cisco's alleged role was not that of a bystander who "g[a]ve a degree of aid to those who" committed the underlying wrong. *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 176 (1994). It was the role of a co-designer and co-operator of the persecution apparatus itself. Cisco studied the objectives of the persecution campaign, designed technology to achieve them, recommended

features that Chinese officials lacked the expertise to conceive, trained officers in using the system, and maintained it to ensure its continued efficacy. The system Cisco built identified Respondents, tracked them, delivered them into custody, and supplied their interrogators with the individualized intelligence needed to "transform" them through torture. J.A. 30–31.

A company that performs these functions—with knowledge that the endpoint is torture—does not merely "assist" or "facilitate" another's tortious conduct. *See Cent. Bank of Denver*, 511 U.S. at 169, 181; Pet'rs' Br. 42. It **causes** the victim to undergo torture, or put another way, it "subjects" the victim to it. The TVPA requires no more.

Petitioners may object that the TVPA defines torture as an act "directed against an individual in the offender's custody or physical control," 28 U.S.C. § 1350 note, § 3(b)(1), and that Cisco never had custody of any Respondent. *See* Pet. Br. 43. But this argument conflates the **definition of torture** with the **scope of liability**. Section 3(b)(1) further defines what conduct constitutes "torture"—*i.e.*, severe pain intentionally inflicted on someone in the **offender's** custody. Section 2(a)(1) then separately identifies who is liable: any **individual** who "subjects" a person to the conduct so defined. As Respondents' Supplemental Brief opposing certiorari explained, Congress used "the offender" in section 3(b)(1) and "an individual" in section 2(a)—a deliberate terminological distinction suggesting that the person liable need not be the same person who holds custody. *See Stanley v. City of*

Sanford, 606 U.S. 46, 53 (2025) ("[W]hen a document uses a term in one place and a materially different term in another, '"the presumption is that the different term denotes a different idea."') (quoting *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022))); *Loughrin v. United States*, 573 U.S. 351, 358 (2014) ("We have often noted that when 'Congress includes particular language in one section of a statute but omits it in another'—let alone in the very next provision—this Court 'presume[s]' that Congress intended a difference in meaning." (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

The legislative history confirms the breadth of the statutory text. The Senate Judiciary Committee's report—which this Court has recognized as "the authoritative source for finding the Legislature's intent," *see Garcia v. United States*, 469 U.S. 70, 76 (1984)—explicitly describes the TVPA's **scope of liability** as extending well beyond direct perpetrators. The Report states that "[t]he legislation is limited to lawsuits against persons who ordered, abetted, or assisted in the torture[.]" S. Rep. No. 102-249, at 8 (1991). Congress used three district terms—"ordered," "abetted," and "assisted"—each describing a different category of primary tortfeasor. "Ordered" captures command responsibility. "Abetted" and "assisted" reaches participants who facilitate the torture through knowing, purposeful conduct without necessarily commanding it. Indeed, the Report cites Article 4(1) of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires state parties to ensure that "complicity or participation in

torture" constitutes an offense. *Id.* at 9 n.16. The inclusion of "complicity" underscores that the Committee understood the TVPA to reach knowing participants rather than merely those in the chain of command.

Thus, the issue is not whether the TVPA "allows a judicially implied private right of action for aiding and abetting," but whether the scope of **direct** liability encompasses those who knowingly design, implement, and operate the very machinery by which victims are identified, apprehended, and delivered to their torturers.

This Court has recognized a broader scope of TVPA liability in the context of command responsibility. *Mohamad*, 566 U.S. at 458 ("[P]etitioners rightly note that the TVPA contemplates liability against officers who do not personally execute the torture or extrajudicial killing.") Cisco also recognizes command responsibility under the TVPA. Pet'rs' Br. 45. Cisco, however, argues—with no support—that the words "subjects to" extend liability to command responsibility **only**.

Moreover, Cisco argues "statutory silence on the subject of secondary liability means there is none." Pet'rs' Br. 29 (citing *Boim v. Holy Land Foundation*, 549 F.3d 685, 689 (7th Cir. 2008) (en banc)). The characterization of Cisco's conduct as secondary liability is inapt because it played an essential role in the torture scheme itself. A closer look at that en banc opinion authored by Judge Posner confirms that

primary liability can apply even when aiding and abetting is not specified in the statutory scheme. There, the Seventh Circuit interpreted the Anti-Terrorism Act (ATA), 18 U.S.C. § 2331 *et seq.*, to decide whether donations to Hamas (non-violent actions) violated the statute. The court recognized, as Cisco notes, that the ATA did not provide for secondary liability.[3] *Id.* at 689.

However, the court looked at the statutory text and concluded that the plain language expanded the scope of **primary** liability to indirect actors beyond the terrorists themselves: "Primary liability in the form of material support to terrorism has the character of secondary liability." *Id.* at 691–92. The original panel's "common law aiding and abetting gloss" was not the source of liability; rather, the plain language of the ATA expanded the scope beyond merely violent actors. The ATA's definition of international terrorism included "acts dangerous to human life," 18 U.S.C. § 2331(1)(A), and the court reasoned "[g]iving money to Hamas, like giving a loaded gun to a child (which also is not a violent act), is an 'act dangerous to human life.'" *Boim*, 549 F.3d at 689. Similarly, here, the actions of Cisco "subject[ed]" Respondents "to" torture. Cisco and the CCP perpetuated a torture scheme by which Cisco knowingly provided the tools for identification, surveillance, and detection of Falun Gong members

[3] In 2016, Congress enacted the Justice Against Sponsors of Terrorism Act ("JASTA"), which provided aiding and abetting liability under the ATA. 18 U.S.C. § 2333(d)(2). Before then, however, no explicit guidance existed as to the scope of liability for ATA violations. The *Boim* opinion predated JASTA.

that the CCP used to perpetuate the horrific tortures alleged by Respondents.

"When a federal tort statute does not create secondary liability, so that the only defendants are primary violators, the ordinary tort requirements relating to fault, state of mind, causation, and foreseeability must be satisfied for the plaintiff to obtain a judgment." *Boim*, 549 F.3d at 692. Intentional misconduct requires subjective knowledge of misconduct or deliberate indifference. *Id.*

As applied to the TVPA, this renders fears propounded by business interests hyperbolic. Putting Cisco's executives within the scope of primary liability of the TVPA would not be "exposing all senior executives of U.S. corporations that conduct business abroad to potential accessorial liability." *See* Amicus Br. of The Chamber of Commerce of The United States of America et al., 20–21. Rather, it would only expose executives who **knowingly** subjected an individual to torture. Such business—business that perpetuates the detection, interrogation, detention, and torture of religious groups—ought to be chilled. In any event, the chilling is "compelled by the statutory text[]" enacted by Congress.[4] *See Boim*, 549 F.3d at 691.

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[4] The policy interests advanced by Petitioners and *amici* who support them were considered by members of Congress, who enacted the TVPA anyway. E.g., 137 Cong. Rec. H11244-45 (daily ed. Nov. 25, 1991) (Former Rep. Bill McCollum: "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.")

Under the TVPA, Cisco's executives may be primarily liable as joint tortfeasors with the CCP; plainly sufficient well-pled allegations support this theory at this procedural posture. In *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1164, 1172 (C.D. Cal. 2005), the court held that the plaintiffs alleged a cause of action against the defendants as joint tortfeasors of the Colombian Air Force, rather than as aiders and abettors. The plaintiffs claimed that the defendant companies provided funding and other support to the Colombian Air Force in exchange for protection of their financial interests. Whether the plaintiffs presented sufficient facts to support their joint tortfeasor theory, however, was a determination better reserved for summary judgment.[5] In the present case, the horrific allegations of a scheme of torture clearly satisfy the standards of Rule 12(b)(6).

Petitioners' preferred analogy is the "software vendor" who sells "compliance tools to [an] agency" and is said not to "subject" anyone to a resulting fine. Pet'rs' Br. 42–43. But this analogy is inapt, because it describes a vendor of general-purpose tools. A closer analogy is a government contractor that designs and implements an interrogation system at the government's direction, knowing it will be used to torture detainees—the very scenario in which the Fourth Circuit recently upheld a jury verdict holding CACI Premier Technology, Inc., liable, in a case brought under the ATS, for $42 million in damages for conspiring with military personnel to torture Iraqi

5 The Court, however, dismissed the TVPA claim on other grounds because the defendant was a corporation rather than an individual under the TVPA.

prisoners at Abu Ghraib. *Al Shimari v. CACI Premier Tech., Inc.*, No. 25-1063, ---- F.4th ----, 2026 WL 693110, at *28, 31–32, 35 (4th Cir. Mar. 12, 2026) If a contractor that provides interrogation instructions can be liable for the torture that results, a contractor that designs, constructs, and implements the means by which the infliction of physical harm is carried out can be liable on the same logic. The Complaint alleges that Cisco occupied this role precisely with respect to the Golden Shield. That is enough, at the motion-to-dismiss stage, to state a claim that Cisco directly subjected Respondents to torture.

II. CISCO ACTED UNDER COLOR OF FOREIGN LAW WITHIN THE MEANING OF THE TVPA

Having established that Cisco's alleged conduct subjected Respondents to torture, the Complaint must independently allege facts sufficient to show that Cisco acted "under actual or apparent authority, or color of law, of any foreign nation." 28 U.S.C. § 1350 note, § 2(a). This requirement parallels the "under color of state law" element of 42 U.S.C. § 1983, and the same analytical frameworks apply. *See* S. Rep. No. 102-249, at 8 (1991) (In interpreting the TVPA's "color of law" requirement "[c]ourts should look to principles of liability under U.S. civil rights laws, in particular [42 U.S.C. § 1983]"). Under this Court's well-established state-action doctrine, a private party acts under color of law when its conduct is "fairly attributable" to the state. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). Multiple independent

theories establish that Cisco's alleged conduct satisfies this requirement.

A. Cisco was a willful participant in joint activity with the Chinese state

Under the joint-action test, a private party acts under color of law when it is a "willful participant in joint activity with the State or its agents." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970) (quoting *United States v. Price*, 383 U.S. 787, 794 (1966)); *see also Lugar*, 457 U.S. at 941. The private party need not be a state official. It is enough that it "jointly engage[s] with state officials in the prohibited action[.]" *Adickes*, 398 U.S. at 152.

The Complaint alleges precisely this kind of joint engagement. Cisco did not independently design the Golden Shield and hand it off. It worked in "full collaboration" and "partnership" with Public Security officials across China. J.A. 51, 64, 74. The Party "was the entity ultimately responsible for engaging with Cisco at all stages of the Golden Shield project," from CEO John Chambers's initial meeting with CCP Secretary General Jiang Zemin in 1998, through the Golden Shield's official launch, chaired by Politburo Standing Committee member Huang Ju in 2003, and afterward. J.A. 52. Cisco's Public Security Sales Team was "tasked with accessing and sharing with company superiors all public security information about the Golden Shield," including reports about the "*zhuanhua*" purpose of the databases and other anti-Falun Gong specifications. J.A. 29. Cisco entered into agreements with Public Security officials at regional

levels to provide software, hardware, infrastructure, training, and database hosting. J.A. 50–51.

B. Cisco was pervasively entwined with the Chinese government's persecution apparatus

In *Brentwood Academy v. Tennessee Secondary School Athletic Association*, this Court held that a nominally private entity's conduct constitutes state action when there is "pervasive entwinement of public institutions and public officials in its composition and workings." 531 U.S. 288, 298 (2001). The inquiry is "necessarily fact-bound." *Lugar*, 457 U.S. at 939.

The facts alleged here describe entwinement comparable in depth to that held sufficient in *Brentwood*. As discussed above, the Communist Party "appears to have an office within Cisco China with a website that was accessible to all Cisco employees in China" and with "authority to define objectives and set important policy for significant projects like the Golden Shield." J.A. 52. Cisco's design processes required "close collaboration among different San Jose departments" and "careful evaluation of Golden Shield project objectives" in light of the Party's persecutory goals. J.A. 43. Cisco's engineers in San Jose conducted "careful study of all purposes and objectives of the specific applications and systems required by Party and security officers," including applications that would "facilitate the identification of Internet users including Falun Gong, their location and apprehension, interrogation, forced conversion and coerced confessions, movement throughout the

system, from entry into the database system through arrest, confessions, detention, release and so on." J.A. 25.

The symbiotic nature of this relationship defeats any notion that Cisco and the Chinese government acted neutrally towards one another's interests or at arm's length. Cisco needed access to Chinese security's objectives and intelligence to design the system; Chinese security needed Cisco's technical expertise to build it. "Cisco executives frequently met with Party leaders" and established a dedicated "Cisco Public Security marketing team specifically to ascertain and help Cisco meet Chinese security objectives." J.A. 19. Cisco "even hired consulting agencies to provide regular updates and compilations of news articles . . . that describe the persecutory goals of the apparatus." *Id.* This degree of institutional integration—in which a private company internalizes the state's persecutory objectives as its own operational requirements—constitutes pervasive entwinement and is sufficient to render Cisco's conduct state action under the TVPA.

C. Cisco and the Chinese government were indispensable to one another's stated objectives

Under *Burton v. Wilmington Parking Authority*, a private party's conduct is attributable to the state when the state "has so far insinuated itself into a position of interdependence" with the private entity "that it must be recognized as a joint participant in the challenged activity." 365 U.S. 715, 725 (1961).

This standard is met where the private actor's conduct constitutes an "indispensable element[]" of the government's stated objectives. *Id.* at 723–24.[6]

The Complaint plainly describes Cisco's indispensable role in realizing the Chinese government's persecutory aims and Cisco's benefit from fostering positive relationships with China. China needed Cisco's technology because its own engineers "lacked the experience, training, or resources" to build the Golden Shield. J.A. 24. Cisco, in turn, depended upon the "lucrative business opportunity" presented by the Chinese government's contracts. J.A. 59. "The ability to cultivate strong relationships with the Party and Public Security officials was especially crucial to [Cisco's] well-planned marketing campaign." J.A. 22. And Cisco characterized its "strong relationships with Public Security customers as one of its greatest marketing advantages in China." *Id.* Indeed, CEO Chambers "consistently claimed [the Chinese] market as one of

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[6] While *Burton* "was one of [this Court's] early cases dealing with 'state action' under the Fourteenth Amendment, and later cases have refined the vague 'joint participation' test embodied in that case." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 57 (1999) (discussing *Blum v. Yaretsky*, 457 U.S. 991 (1982), and *Jackson v. Metro. Edison Co.*, 419 U.S. 345 (1974)), *Burton*'s discussion of "indispensability" in the context of evaluating whether private conduct constitutes state action remains good law. *See All. for Fair Bd. Recruitment v. SEC*, 85 F.4th 226, 241–42 (5th Cir. 2023) (discussing this Court's jurisprudence following *Burton*), *vacated on reh'g en banc on other grounds*, 125 F.4th 159 (5th Cir. 2024).

the company's key targets for future expansion." J.A. 54.

Each party depended on the other to achieve objectives neither could accomplish alone. China could not surveil, identify, and deliver Falun Gong practitioners for torture without Cisco's technology. And Cisco could not access the lucrative Chinese security market without embedding itself in the Party's persecutory apparatus. That mutual indispensability renders Cisco's conduct state action under *Burton* and its progeny. Each of these theories independently supports the conclusion that Cisco acted under color of Chinese law.

III. *SOSA'S* WELL-ESTABLISHED FRAMEWORK TO PROVIDE REDRESS FOR UNIVERSALLY CONDEMNED HUMAN RIGHTS VIOLATIONS SHOULD NOT BE ABANDONED

As alleged in the Complaint, Cisco did not merely assist in wrongful conduct, it directly participated in and was primarily responsible for implementing a complex system designed to identify, locate, apprehend, and subject individuals to a long-term torture scheme stemming from religious persecution. More fundamentally, without Cisco's mastery of complex technologies, Respondents would not have been subjected to the myriad and detailed human rights abuses alleged in the Complaint. That framing alone underscores why this case is an unnecessary and ill-suited vehicle for overruling *Sosa*

and eviscerating the framework developed by the federal judiciary for providing limited but meaningful redress for universally condemned human rights abuses.

A. The text, history, and purpose of the ATS confirm that federal courts must be able to provide civil remedies for violations of the law of nations

Since its enactment in 1789, the ATS has remained an uncommonly used—but critically and symbolically important—deterrent for U.S. actors who might otherwise evade legal accountability. That purpose is reflected in the statute's text, structure, and historical context, which together demonstrate Congress's intent to vest federal courts with authority to provide meaningful redress for violations of the law of nations.

As this Court has reiterated, the ATS—in both its original form in the Judiciary Act of 1789 and its modern codification at 28 U.S.C. § 1350—is a jurisdictional statute. *Sosa v. Alvarez-Machain,* 542 U.S. 692, 713 (2004). The First Congress understood that jurisdictional grant and legislated on the assumption that courts would exercise general common-law powers in fashioning remedies "not specially provided for by statute[.]" Judiciary Act of 1789, ch. 20, § 14, 1 Stat. 73, 81-82 (1789); Process Act of 1789, ch. 26, § 2, 1 Stat. 93 (1789); Process Act of 1792, ch. 36, § 2, 1 Stat. 275, 276 (1792); U.S. Const. art. III. That understanding is consistent with Article III's broad grant of jurisdiction over **cases and**

controversies and this Court's recognition that, where legal rights are invaded, "federal courts may use any available remedy to make good the wrong done." *Bell v. Hood,* 327 U.S. 678, 684 (1946). Within this framework, it was—and remains—understood that courts recognize the law of nations can be relevant to U.S. law. *See Chisholm v. Georgia,* 2 U.S. 419, 475 (1793) (law of nations governs certain cases); *The Paquete Habana,* 175 U.S. 677, 700 (1900) ("International law is part of our law"); *Sosa,* 542 U.S. at 729.

Also integral to the enactment of the ATS was the understanding that an individual's violation of the law of nations implicates not only personal wrongdoing, but also the peace and security of the Nation itself. A citizen's tortious conduct against a foreign national threatens international peace by exposing the U.S. to accountability in the global arena. The Federalist No. 3 (John Jay) ("[E]ither designed or accidental violations of treaties and the laws of nations afford JUST causes of war[.]") This ongoing concern underscores why the ATS remains essential: to ensure that injuries caused by U.S. actors are redressed so that the U.S. would not itself bear responsibility for unremediated violations.

Consistent with this understanding, the Founding-era conception of a "tort" was broad and dynamic—not confined to the fixed set of paradigmatic offenses such as piracy, violations of safe conduct, and offenses against ambassadors. In 1781, as the Continental Congress exercised its earliest lawmaking authority, it recognized: (1) that criminal

law "**does not sufficiently comprehend offenses against the law of nations**[;]" (2) the "necess[ity] of disavow[ing] ***any*** **transgression**" of that law; and (3) that civil redress was essential "to **repair out the public treasury injuries**" "**for the avoidance of war[.]**" 21 Journals of the Continental Congress 1136 (1781) (emphases added) (hereinafter Journals).

Taken together, this framework reflects two principles: (1) the concept of a "tort" encompassed "**any transgression**" against the law of nations; and (2) intentional injury to a foreign national caused harms to the U.S. itself. *Id; see also* 1 W. Blackstone, *Commentaries on the Laws of England* 75, 85 (1765) (defining "private wrongs" as violations of rights resulting in "civil injuries" for which courts provide redress through civil actions).

In consideration of those core principles, and to ensure the "public faith and safety" of the Nation, Congress recommended that the States punish the "**most obvious**" crimes "against the law of nations", which included violations of safe conduct and offenses against ambassadors, 21 Journals at 1136–37 (emphases added). States were further asked to prosecute crimes "**not contained in the foregoing enumeration"** in addition to "**authoriz[ing] suits. . . for damages . . .** and **for compensation to the United States**" resulting from a U.S. citizen's tort against a foreign national. *Id.* at 1137 (emphases added).

When the States failed to effectively implement these directives—notably illustrated by incidents

including the Marbois Affair; *Respublica v. De Longchamps,* 1 U.S. 111 (1784), the First Congress recreated this dual framework at the federal level by enacting the Crimes Act of 1790, 1 Stat. 112, ch. IX, §§ 8-11, 25–28 (1790), and the ATS, 1 Stat. 73, ch. XX, § 9 (1789). In doing so, however, there is no indication that it intended to limit the range of actionable wrongs reflected in the Journals. To the contrary, its use of similarly broad language—authorizing jurisdiction over "any civil action" by a foreign national—confirms that the statute preserved the full scope of "any transgressions against the law of nations" as contemplated in the Journals.

Nor did the effective transfer of jurisdiction from the states to federal courts impose any reduction in available causes of action available for plaintiffs. Contrary to Cisco's position, the absence of enumerated civil remedies—like those provided in the Crimes Act—reflects a deliberate choice not to confine ATS claims to those which are "**most obvious**", 21 Journals at 1137, but instead to rely on federal courts to develop applicable common law remedies. *See Commentaries,* 75; *Breach of Neutrality.,* 1 U.S. Op. Atty. Gen. at 59 (1795) ("[T]here can be no doubt that the company or individuals who have been injured by these acts of hostility have a remedy by a *civil* suit in the courts of the United States"). Congress likewise never limited the ATS's scope in any of the amendments to the Judiciary Act in 1793, 1801, and 1802.

By reenacting a substantially unchanged statutory counterpart in 1948, Congress reaffirmed

the judiciary's role in exercising its Article III authority to develop federal common law under the ATS. *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (Congress is "presumed" to adopt "judicial interpretation . . . when it re-enacts a statute without change"); *see also Haig v. Agee,* 453 U.S. 280, 297-98 (1981). Moreover, Congress affirmatively endorsed the judiciary's understanding of the ATS when it enacted the TVPA as a supplement, confirming that the statute "has other important uses and should not be replaced" while recognizing that any impact on foreign relations was "a small price to pay" to ensure justice for victims. S. Rep. No. 102-249, 4 (1991); *see also Sosa,* 542 U.S. at 731 (Congress "has not only expressed no disagreement" but instead "responded" by "supplementing the judicial determination").

Against this backdrop, the *Sosa* Court did not create new law or exceed its authority—it preserved the Founding-era framework while accommodating modern developments, confirming that federal courts may recognize claims grounded in international law norms. In the absence of alternative mechanisms for accountability, the ATS remains a critical means of redress for egregious violations such as torture, extrajudicial killing, and religious persecution—ensuring that the U.S. does not become a safe harbor that affords blanket immunity to citizens who commit and enable extreme violations of the law of nations.

B. Preserving *Sosa's* framework maintains a narrow standard that already limits ATS claims to exceptional cases

Cisco seeks to transform this case into a vehicle for imposing broad, categorical limitations on the causes of action that can be brought under the ATS. That framing ignores the procedural posture of this case and the allegations themselves, which show that Cisco was primarily responsible for the design, development, and operation of a fully integrated system intended to identify, track, and deliver religiously persecuted individuals into a regime of torture. It is also legally flawed.

The ATS itself does not define or limit the scope of liability once a claim has been identified. Nor does *Sosa*. Instead, *Sosa* makes clear that the relevant threshold question is whether the proposed "**cause of action**" is based upon a norm that is specific, universal, and obligatory. 542 U.S. at 732. Once a norm is recognized, courts—exercising judicial caution—must consider additionally whether recognizing a particular cause of action would improperly invoke separation-of-powers concerns. *Id.*

As *Sosa* and its progeny make clear, that second step entails a careful, context-specific inquiry; it should not be invoked to impose categorical limitations on either the recognition of a universally accepted claim or the scope of liability. *See* Resp'ts' Br. 23. Accordingly, it would be improper to impose sweeping limitations categorically barring claims

under the ATS based on speculative foreign relations concerns that are unknowable, as they depend on the specific claim and factual context presented. Because that inquiry does not foreclose recognition at the outset, the analysis returns to threshold question—one Cisco misstates.

In addressing the first step in its effort to overturn *Sosa*, Cisco collapses two distinct inquiries by improperly conflating the identification of a specific, universally accepted norm with the scope of liability for its violation. Here, it is manifest that torture and extrajudicial killing are universally condemned norms. But that question is analytically and legally distinct from how responsibility for violations is attributed to tortfeasors that participated in the harms caused. The *Nestlé* Court grappled with this question, finding that "international law supplies the substantive prohibitions that give rise to actionable torts under the ATS (*e.g.*, the prohibition against child slavery), [and] domestic law provides the answer to any subsidiary questions regarding 'how a particular actor is held liable for a given law-of-nations violation.'" *Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 654 n.5 (2021) (Sotomayor, J., concurring) (internal citations omitted); *see also Hamdan v. Rumsfeld,* 548 U.S. 557, 611 n. 40 (2006) ("species of liability for the substantive offense" are not "crime[s] on its own").

Although framed as aiding-and-abetting, the allegations, taken as true, demonstrate that Cisco has a primary liability for its role in subjecting victims to torture. Claims have "facial plausibility when the

plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal,* 556 U.S. at 678.

Here, the allegations support the conclusion that Cisco was a primary actor whose actions directly caused great harm to Respondents. *Twitter v. Taamneh,* 598 U.S. 471, 506 (2023) ("When there is a direct nexus between the defendant's acts and the tort, courts may more easily infer such culpable assistance"). Its conduct is not incidental but integral to the commission of the underlying violations. This case demonstrates that *Sosa's* carefully circumscribed remedial framework is even more critical today given that, in many instances, other forms of enforcement remain unavailable or ineffective, and that modern forms of human rights abuses are increasingly sophisticated through the use of technology. Where U.S. actors are alleged to have knowingly, directly, and extensively participated in violations such as torture and religious persecution, the absence of a civil remedy would create a gaping hole in accountability.

Particularly given the horrific allegations of this case, the U.S. should not now decide to become a safe harbor for those who knowingly and extensively participate in a scheme of torture. And the Court need not—and should not—adopt sweeping rules restricting the forms of liability available under the ATS and undermine its core function: ensuring that victims of horrific violations are not left without a remedy, and that the U.S. is not exposed to international responsibility or conflict. Preserving

Sosa's framework ensures that the ATS remains a narrow but meaningful vehicle for redress, rather than a hollow jurisdictional grant that offers no remedy for even the most appalling violations of international law.

CONCLUSION

At the motion-to-dismiss stage, the question is only whether the Complaint's allegations, accepted as true, plausibly allege violations of the TVPA and ATS. Cisco will have ample opportunity on remand to contest these allegations on their merits. But at this stage, the Complaint more than adequately pleads that Cisco was a direct participant in multiple phases of a scheme of any and thus primarily liable for the harms caused to Respondents.

Respectfully submitted,

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March 27, 2026