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* OXFAM AMERICA AND PROFESSORS OF ECONOMICS AND POLITICAL SCIENCE JOSEPH STIGLITZ, SIMON JOHNSON, GEOFFREY HEAL, GABRIEL ZUCMAN, MARC GOERGEN, ADAM DEAN, AND MIRCEA RAIANU IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

This brief [1], of *amici curiae* is respectfully submitted by Professors of Economics and Political Science and by Oxfam America.

Amici offer their research, expertise, and experience to clarify central principles of investment, economic development, and socially responsible corporate behavior relevant to the questions of aiding and abetting liability, or accessorial liability, under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, and the Torture Victim Protection Act ("TVPA"), 28 U.S.C § 1350 note, to address arguments of Petitioners and certain *amici* that aiding and abetting liability will unfairly harm the reputation and revenue of U.S. corporations, deter U.S. corporate investment in less developed countries ("LDCs"), obstruct economic development and human rights outcomes, and undermine the competitiveness of U.S. corporations. *Amici* demonstrate that there is no foundation for these arguments and present additional arguments in support of accessorial liability, noting its ability to promote fair trade and protect American jobs from offshoring.

Joseph Stiglitz is a Professor of Economics at Columbia University. In 2001, he was awarded the Nobel Prize in Economic Sciences for his analyses of markets with asymmetric information.

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[1] No counsel for any party authored this brief in whole or part, nor did counsel for any party, any party itself, or any other person make a monetary contribution to support this brief.

Professor Stiglitz served as a member of the Council of Economic Advisers, Chief Economist and Senior Vice President of the World Bank, and chair of the United Nations General Assembly's Commission of Experts on Reform of the International Financial and Monetary System.

Professor Stiglitz founded the *Journal of Economic Perspectives*, co-founded the *Journal of Globalization and Development* and *Economists' Voice,* and has authored or co-authored numerous leading economics texts.

Professor Simon Johnson is the Ronald A. Kurtz Professor of Entrepreneurship and Professor of Global Economics and Management at the MIT Sloan School of Management. In 2024, he received the Nobel Prize in Economic Sciences, with Professors Daron Acemoglu and James A. Robinson, for their work studying how institutions cause differences in prosperity among nations. His works have explored the history and economics of major technological transformations up to and including the latest developments in artificial intelligence.

He currently co-chairs the CFA Institute Systemic Risk Council, a body addressing regulatory and structural issues relating to global systemic risk, is a Research Associate at the National Bureau of Economic Research, and is a Fellow at the Centre for Economic Policy Research.

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Professor of Social Enterprise. He previously taught at the Sussex, Essex, Yale, Stockholm, Princeton, and Stanford Universities, and École Polytechnique. Professor Heal has made significant contributions to economic theory and environmental economics. He studies the economics of corporate social responsibility. He is the author of 18 books and over 200 articles. Among the courses he teaches are "Business and Society: Doing Well by Doing Good?" and "The Business of Sustainability."

Gabriel Zucman is Professor of economics at the Paris School of Economics and Ecole Normale Supérieure. He received the John Bates Clark Medal of the American Economic Association in 2023. He is the Summer School Director of the James M. and Cathleen D. Stone Center on Wealth and Income Inequality at the University of California at Berkeley.

His research focuses on the accumulation, distribution, and taxation of global wealth and analyzes the macro-distributional implications of globalization. Professor Zucman is the author of articles published in journals such as the *Quarterly Journal of Economics*, the *American Economic Review*, the *Review of Economic Studies*, and of two books.

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Mircea Raianu is Associate Professor of History at the University of Maryland, College Park, with research expertise in the history of global capitalism and corporations. He is the author of *Tata: The Global Corporation that Built Indian Capitalism* (Harvard University Press, 2021), and has also published several related articles and book chapters. His current work focuses on legal frameworks of restructuring corporate ownership around the world.

Oxfam America is a non-profit organization that works to end the injustice of poverty and hold the powerful accountable for violations of international law. Oxfam America is part of a global Oxfam Confederation, operating in 81 countries. Oxfam focuses its humanitarian efforts in economically,

socially, and politically volatile countries. Its grants and technical support boost local economies, improve food access and labor conditions, establish land rights, and address water quality and scarcity. Through its Corporate Accountability and Worker Justice Department, Oxfam works to ensure that corporate practices align with international human rights.

SUMMARY OF ARGUMENT

This litigation asks whether a U.S. corporation and its executives that provide assistance to an entity that is committing gross human rights violations can be held liable under the ATS and TVPA as aiders and abettors. Petitioners and certain *amici* have urged that accessorial liability for human rights violations will: (1) cause financial and reputational harm to U.S. corporations; (2) lead corporations to disinvest in less developed countries ("LDCs"), undermining economic development and human rights outcomes; and (3) place U.S. businesses at a competitive disadvantage. These arguments are without merit.

Accessorial civil liability, under both the ATS and TVPA, is one of several incentives that induce firms to ensure they are not complicit in human rights abuses. This system of incentives includes not only aiding and abetting liability under the ATS and TVPA, but also other federal, state, and foreign laws that enforce compliance, as well as marketplace and reputational mechanisms for voluntary compliance. Standing alone, each of these factors is imperfect and has limitations, but together they form

complementary, reinforcing incentives which prevent and mitigate human rights abuses while promoting responsible corporate behavior.

Among these mechanisms, accessorial liability under the ATS and TVPA is an economically efficient means of enforcing laws (by reducing transaction costs) against the most egregious human rights abuses, because it allows enforcement by those with the greatest incentive to enforce compliance—the victims—and directs the costs of non-compliance to those with the greatest sensitivity to economic coercion and ability to police their own actions—corporations. This is particularly so where local systems provide no means to do so and judicial enforcement mechanisms are weak or non-existent. Aiding and abetting liability under ATS and TVPA thus reduces transaction costs associated with enforcing human rights law. It also promotes long-term economic development and foreign direct investment in LDCs.

Concerns that the risk of future suits will disincentivize U.S. corporate investment in LDCs lack empirical support and any logical underpinning. Although corporations and their officers have faced the specter of ATS accessorial liability for decades, those opposing it have not identified any credible evidence that foreign direct investment ("FDI") in LDCs has declined. Corporations make investment decisions based on profitability. The risk of liability is unlikely to dissuade economically desirable investment. Moreover, liability for such conduct incentivizes behavior that improves human rights

conditions in the LDCs and fosters greater stability and long-term economic development that attracts further FDI.

Fears that U.S. firms would be disadvantaged relative to foreign competitors are without merit. First, the concern assumes that bad businesses in the United States should be on the same footing as bad businesses abroad. That assumption creates a race to the bottom. Accountability for aiding and abetting levels the playing field for U.S. corporations that already comply with human rights norms vis-à-vis their competitors that do not, encouraging a race to the top. U.S. experience with other laws demonstrates that this race to the top benefits U.S. corporations (and the United States) and encourages compliance abroad. Additionally, many foreign competitors already face pressure to comply with human rights norms so accessorial liability provides no disadvantage vis-à-vis them.

In fact, domestic corporations that comply with international law may experience a competitive *advantage* because LDCs without strong enforcement mechanisms may seek investment from companies that adhere to human rights standards. And any short-term disinvestment that might occur (despite no evidence that it would) should be offset by long-term improvements in LDCs' economic and social climate, which the ATS incentivizes and which ultimately benefits U.S. corporations.

Finally, accessorial liability will protect American jobs by disincentivizing the use of American-made AI

and surveillance technology to suppress foreign workers and wages in a manner that violates human rights. Such practices undercut the competitiveness of American workers. Authoritarian foreign governments often artificially depress wages of their citizens to ensure their exports outcompete competitors, including the U.S. This downward wage pressure can be facilitated through strict worker discipline, at times imposed through systematic human rights violations. Accessorial liability for technologists assisting in the commission of human rights abuses will reduce the use of such advanced technology by foreign governments and employers seeking to suppress their workers and harm American jobs and the economy.

ARGUMENT

I. TORT LIABILITY FOR AIDING AND ABETTING CREATES APPROPRIATE INCENTIVES THAT ENHANCE ECONOMIC EFFICIENCIES.

Tort law represents an important part of an efficient economy. It incentivizes appropriate behavior by requiring that those whose conduct injures others pay damages to those they have harmed. Accessorial liability under the ATS and TVPA might be unwelcome by *bad* businesses, but discouraging conduct that violates human rights embodies the very purpose of tort law by internalizing

the negative externalities[2] firms' conduct imposes on others.

Tort law complements other mechanisms that deter negative externalities and lawbreaking—including mandatory means such as regulation, taxation, and sanctions, as well as voluntary mechanisms like the United Nations Guiding Principles on Business and Human Rights. These means prevent only some violations which, in the absence of an omniscient and omnipotent regulator, allows persons and companies to continue harming others.

Aiding and abetting liability in tort is an especially efficient means of promoting accountability. As in this case, the principle perpetrator of human rights abuse is often a State or a non-State actor. These sovereign, or pseudo-sovereign, actors often commit violations for ideological or political reasons. As a result, they are unlikely to respond to economic coercion from liability. However, in many cases the principal perpetrator's violations are impossible without corporations enabling the abuse, providing the tools, intelligence, and resources to transgress international law. Aiding and abetting liability allows the injured party to pursue accountability from these corporations—entities that profit from the abuse and are most likely to respond to liability. *See* Kimberly Ann Elliott & Richard B. Freeman, White Hats or Don

[2] A negative externality occurs when one's actions cause harm that is neither compensated by enforcing private rights nor addressed by public law.

Quixotes? Human Rights Vigilantes in the Global Economy, in *Emerging Labor Market Institutions for the Twenty-First Century* 47 (Richard B. Freeman, Joni Hersch & Lawrence Mishel eds., Univ. of Chi. Press 2004). Aiding and abetting liability therefore creates a more direct incentive structure to prevent human rights violations.

Corporations' awareness that redress against them is available—including as accessories—provides incentives to avoid injurious behavior and supporting such behavior in their operations, supply chains, and sales of goods and services to known human rights abusers.

ATS plaintiffs often allege that corporations have aided human rights violations through their labor practices or those of their suppliers.[3] The literature on the economic impact of labor standards demonstrates how tort liability complements regulatory regimes and promotes economic efficiency. Even after the establishment of labor standards, violations continue to occur because enforcement is never perfect. Targeted penalties—in the form of fines—represent one incentive that has been incorporated into several U.S. bilateral trade agreements to *extend* in-country labor protections and improve enforcement efficiencies. *See* Sandra Polaski & Katherine Vyborny, *Labor Clauses in Trade Agreements: Policy and Practice*, 10 Integration & Trade 95 (2006). Accessorial liability for human rights

[3] *See, e.g., Nestlé USA, Inc. v. Doe*, 593 U.S 628 (2021) (alleging complicity in child labor violations).

violations is analogous to focused penalties on non-compliant corporations and would enhance both efficiency of oversight and fairness to other market participants.

Private redress under the ATS and TVPA against aiders and abettors is particularly advantageous. This is because the harmful acts at issue are the most egregious torts in violation of customary international law and often occur in locations where domestic courts provide an inadequate forum (or no forum at all) for pursuing and enforcing claims, and where other forms of sanctions, such as regulation and taxes, are weak.

Moreover, it is well-recognized that in a modern economy, appropriate incentives (to avoid injury) *must* extend beyond liability for the person who commits the injury.[4] *See, e.g.,* Giuseppe Dari Mattiacci & Francesco Parisi, *The Cost of Delegated Control: Vicarious Liability, Secondary Liability and Mandatory Insurance*, 23 Int'l Rev. L. & Econ. 453 (2003) ("In some situations, the direct incentives created by the tort system are not sufficient and society may rely on various systems of delegated control," noting vicarious liability and secondary liability.). In particular, corporations must be

[4] *Amici* for Petitioners claim that accessorial liability unfairly targets corporations who are not the primary tortfeasor (*e.g.*, Chamber of Commerce, Merits-Stage Br. 19). This argument ignores (1) that corporate liability does not foreclose suits against natural persons that carry out the violation; and (2) the difficulty of obtaining personal jurisdiction over individual or State perpetrators located abroad.

incentivized to ensure their products and services are not used to violate human rights and to develop compliance monitoring systems. Because corporations are best positioned to understand how their products and services are used by their customers (or how the inputs are produced), aiding and abetting liability reduces barriers to effective enforcement.

Similarly, specious reasoning lies behind the specter of frivolous lawsuits. Like any tool used to elicit appropriate behavior, tort law has costs and benefits. On the benefit side, it is often more efficient than regulation at creating accountability and inducing appropriate behavior. On the cost side, there is frivolous litigation. But every advanced country has concluded that it is important to complement regulations with civil liability. Even with a functional regulatory structure, the benefits of civil liability (cabined by procedures to reduce or eliminate frivolous suits) exceed the costs. This argument is even more compelling with regard to the ATS, reserved for the most egregious human rights abuses, and cases where there are deficiencies in regulatory structures or their enforcement.

Petitioners and *amici* also overlook how accessory liability uniquely incentivizes better human rights outcomes when U.S. corporations sell sensitive law enforcement, intelligence, and national security technology to foreign governments. In these markets, States strongly prefer to work with domestic firms. María D.C. García-Alonso & Paul Levine, *Strategic Procurement, Openness and Market Structure*, 26 Int'l

J. Indus. Org. 1180 (2008); Julien Gourdon & James Messent, *How Government Procurement Measures Can Affect Trade*, OECD Trade Pol'y Papers No. 199 (OECD Publ'g Apr. 12, 2017). When foreign governments instead turn to a U.S. supplier, such as Cisco, for national security, policing, and surveillance infrastructure, that choice likely reflects the absence of equally capable domestic alternatives. *See Doe I v. Cisco Sys., Inc.*, 73 F.4th 700, 710 (9th Cir. 2023) ("the Party and Public Security required technology not available in China at the time."); Fattorini, et al., *The Global AI Vibrancy Tool,* Stan. Univ. Human-Centered A.I., at 2, 21 (2024), https://hai.stanford.edu/assets/files/global_ai_vibrancy_tool_paper_november2024.pdf (in many cases a U.S. firm cannot be replaced because "the United States has consistently held the top global position in AI vibrancy since 2018, maintaining a substantial lead over other nations and excelling across most dimensions, particularly in R&D, Infrastructure, and Economy"). The U.S. firm is therefore not easily replaceable. If that firm faces ATS liability for aiding and abetting its governmental clients' human rights abuses, it has an incentive and a concrete source of leverage to insist on contractual human rights clauses governing how its technology is used by the foreign government. Because the foreign government relies on the American firm as its only supplier of critical national security tools, it is likely to accept limits on its use of the technology to only human rights compliant purposes.

Furthermore, accessorial liability demonstrates commitment to a variety of widely shared principles.

ATS liability reflects universally recognized human rights norms. The United States values, and benefits from, the existence of such international norms. Its human rights reputation has declined as the reputations of other countries have improved.[5] The United States and its corporations benefit in the increasingly global markets for labor, capital, and consumers by improving this reputation.

II. AIDING AND ABETTING LIABILITY WILL NOT DETER U.S. FOREIGN DIRECT INVESTMENT IN LDCS OR DEGRADE HUMAN RIGHTS OUTCOMES[6]

Those seeking immunity for aiding and abetting argue that domestic accountability for human rights violations will impede investment in and development

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[5] *See, e.g.,* Human Rights Watch, *World Report 2026, Events of 2025,* 1, 489-498 (2026), https://www.hrw.org/sites/default/files/media_2026/01/WR2026%20web_2.pdf.

[6] The same economic principles discussed throughout support preserving aiding and abetting liability for individuals under the TVPA just as for corporations under the ATS. Imposing TVPA liability on corporate executives creates targeted, enhanced incentives to alter the conduct of corporate decisionmakers. Holding executives personally liable when, in directing business operations, they aid and abet grave human rights abuses is therefore an efficient mechanism to promote good business practices, improving human rights outcomes. *See* Marianne Bertrand & Antoinette Schoar, *Managing with Style: The Effect of Managers on Firm Policies*, 118 Q. J. Econ. 1169 (2003).

of LDCs that rely on valuable FDI, obstructing improvements in human rights outcomes. These claims lack any empirical evidence and are contradicted by economic principles.

Petitioners and *amici* erroneously assert that without immunity from aiding and abetting claims, domestic corporations will exit LDCs in which they have invested and avoid future investment. This claim lacks empirical support.[7] In fact, although victims have used the ATS to enforce violations of human rights for the last 40 years,[8] and although courts have always assumed that aiding and abetting claims are available under the ATS,[9] to date, no study has shown that this potential liability has reduced investment in LDCs despite dire predictions to the contrary. *See* Robert Knowles, *A Realist Defense of the Alien Tort Statute*, 88 Wash. U. L. Rev. 1117, 1156–59 (2011) (discussing Gary Clyde Hufbauer &

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[7] For example, the Chamber of Commerce's support for that proposition—Sykes (2012)—offers no empirical evidence regarding such harm. Chamber of Commerce, Merits-Stage Br. 16. That author's only evidence is Talisman Energy's exit from Sudan. As discussed *infra*, Talisman divested for myriad other reasons.

[8] *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 743, (2004) (recognizing *Filartiga v. Pena–Irala*, 630 F.2d 876 (2d Cir. 1980), as the first of a series of cases applying the ATS to human rights abuses in violation of international law).

[9] *See Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 15, 19 (D.C. Cir. 2011) (noting "that aiding and abetting liability is well established under the ATS" as "[v]irtually every court to address the issue, before and after Sosa, has so held, recognizing secondary liability for violations of international law since the founding of the Republic.).

Nicholas K. Mitrokostas, *Awakening Monster: The Alien Tort Statute of 1789*, Inst. for Int'l Econ. (2003) and noting those authors' predictions that the ATS would depress trade, result in lower FDI, and cost the United States hundreds of thousands of manufacturing jobs have not materialized). In our judgment, aiding and abetting ultimately promotes FDI, and makes LDCs more willing to accept profitable FDI from the United States.

Certain *amici* attribute Talisman Energy's divestment from Sudan to ATS litigation relating to its complicity in the Sudanese government's human rights violations.[10] Talisman's decision, however, was influenced by a range of factors—a complex web of political risks with adverse economic and public relations outcomes. These include Canada's investigation of Talisman's Sudanese operations, the United States' designation of Sudan as a state-sponsor of terrorism, and a campaign by NGOs targeted at the U.S. and Canadian governments and Talisman's shareholders that caused a sell-off by institutional investors, reducing Talisman's share price and enterprise value. Stephen J. Kobrin, *Oil and Politics: Talisman Energy and Sudan*, 36 N.Y.U. J. Int'l L. & Pol. 425, 439–42, 444, 446–47 426 (2004).[11] Talisman would likely have divested regardless of the ATS litigation.

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[10] *E.g.*, Chamber of Commerce, Merits-Stage Br. 13.

[11] *See also*, *Talisman to Sell Its Stake in Company in Sudan*, N.Y. Times, Oct. 31, 2002, at C15, https://www.nytimes.com/2002/10/31/business/talisman-to-sell-its-stake-in-company-in-sudan.html.

Second, as Talisman's divestment demonstrates, corporations' foreign investment decisions are influenced by overall business opportunities. These include access to new markets (as was the case with Cisco); access to complementary assets, such as technology; access to natural resources; and efficiency-seeking largely through lower labor costs. Fernando Mistura & Caroline Roulet, *Foreign Direct Investment and its Drivers: The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter?* OECD Working Papers on International Investment, OECD Pub. 21–34 (2019).[12] These factors describe profit-generating activity, which is enhanced by political and economic stability. Results from a survey of more than 2,400 CEOs of firms engaged in FDI identified the most important factors to be political stability, macroeconomic stability, and the legal and regulatory environment. WBG, *2019/2020 Global Investment Competitiveness Report, Rebuilding Investor Confidence in Times of Uncertainty* 16 (2020). No respondent identified civil litigation risk as a factor, let alone ATS litigation.[13]

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[12] https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/03/the-determinants-of-foreign-direct-investment_c371303e/641507ce-en.pdf.

[13] As various *amici* admit, far from a flood of corporate ATS litigation, there has been but a trickle in 40 years. *See e.g.,* Chamber of Commerce, Merits-Stage Br. 8. (stating there have been approximately 200 ATS cases filed against corporations) (citing Oona A. Hathaway, *Replication Data for "Does the Alien Tort Statute Make a Difference?"* Harv. Dataverse (2022), https://doi.org/10.7910/DVN/DUPKPA). This number includes consolidated cases, cases where the Defendant was not a

Cisco's own conduct reinforces the conclusion that ATS liability will not deter investment in LDCs. Not only does the company continue to operate in China despite 15 years of ATS litigation relating to its business contacts there, but it still maintains high-level contact with members of the Chinese government.[14]

Empirical evidence further suggests that foreign capital flows to countries that respect human rights.

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corporation but instead was a State or subdivision thereof, with sovereign immunity, and cases filed before *Sosa* clarified the meaning of "law of nations," many of which involved commercial or employment disputes, securities actions *etcetera* (sometimes brought *by* corporations). Oona A. Hathaway, *Replication Data for "Does the Alien Tort Statute Make a Difference?"* Harv. Dataverse (2022), https://doi.org/10.7910/DVN/DUPKPA; Jonathan C. Drimmer & Sarah R. Lamoree, *Think Globally, Sue Locally: Trends & Out-of-Court Tactics in Transnational Tort Actions*, 29 Berkeley J. Int'l L. 456, 461 at n.33 (2011).

Contrast this with the 200,000 to 300,000 civil cases filed *annually* in federal courts over roughly the same period. Admin. Office of the U.S. Courts, *Judicial Facts and Figures 2023*, tbl. 4.1, Civil Cases Filed, Terminated and Pending, https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-facts-and-figures/judicial-facts-and-figures-2023.

[14] *See e.g.*, Evelyn Cheng, *Cisco is 'very optimistic' about its expanding business with China EVs*, CNBC (June 24, 2024), https://www.cnbc.com/2024/06/25/cisco-is-very-optimistic-about-its-growing-business-with-china-evs-.html; *Ambassador Xie Feng met with President and CEO of Cisco Chuck Robbins*, Embassy if the People's Republic of China in the United States of America (Dec. 12, 2025), https://us.china-embassy.gov.cn/eng/dshd/202512/t20251213_11772169.htm.

Such respect signals greater political stability and reduced corporate vulnerability to consumer outcries, and it facilitates an economic environment that is conducive to developing human capital, which attracts FDI. Ana Carolina Garriga, *Human Rights Regimes, Reputation, and Foreign Direct Investment,* 60 Int'l Stud. Q. 160–172 (2016). Hence, as ATS liability incentivizes human rights compliance, it can be expected to increase, not decrease, investment in LDCs. If FDI were undertaken only *because* human rights violations make it profitable, neither the United States nor the recipient country should encourage it.

The U.S. corporate divestment argument also assumes that economic development is unrelated to respect for human rights. But several economic studies show that respect for civil liberties and human rights is associated with improved economic performance in LDCs, potentially enhancing returns from FDI. Among the most compelling evidence comes from the World Bank while *amicus* Stiglitz was Chief Economist. It found that economic returns to World Bank-financed projects were systematically higher in countries with higher human rights and civil liberties scores. Jonathan Isham, et al., *Civil Liberties, Democracy, and the Performance of Government Projects*, 11 World Bank Econ. Rev. 219, 229-30 (1997). There is empirical evidence that protection of human rights and other civil liberties is associated with increased investment and economic growth and disregard for the same is associated with poorer economic outcomes. Wade M. Cole*, The Effects of*

Human Rights on Economic Growth, 1965 to 2010, 2 Soc. of Dev. 375 (2016).

Further, worldwide efforts to improve human rights outcomes in LDCs, especially labor standards, have not produced measurable declines in FDI in LDCs; indeed, evidence points in the opposite direction—improved labor rights are associated with greater FDI. *See* David Kucera, *The Effects of Core Workers Rights on Labour Costs and Foreign Direct Investment: Evaluating the "Conventional Wisdom,"* 2 Int'l Inst. for Labour Studies, Discussion Paper No. 130 (2001); Matthias Busse, Peter Nunnenkamp, & Mariana Spatareanu, *Foreign Direct Investment and Labor Rights: A Panel Analysis of Bilateral FDI Flows*, 18 Appl. Econ. Lett. 2, 149–152 (2011). The movement to improve LDC labor standards is, in part, analogous to the application of ATS. A firm is more likely to run afoul of national labor laws than it is to violate international law regarding human rights. Given that improved LDC labor standards have had no impact on investment (in LDCs or in the United States), the claim that ATS liability —which should improve human rights standards in LDCs—will decrease FDI appears far-fetched.

The argument also disregards that many corporations operate in LDCs to extract resources with few other alternative sources. For example, the Democratic Republic of the Congo ("DRC") alone produces nearly 75 percent of the world's mine cobalt; its next largest country competitor produced less than

a fifth of the DRC's volume.[15] Where resources are geographically concentrated, ATS liability is unlikely to affect FDI. Where resources are geographically disperse, even if ATS liability changes FDI decisions (no evidence suggests it does), it would shift investment to countries with better practices without affecting the overall level of investment. Again, the ATS principally encourages countries and companies to adopt better practices, the consequences of which are positive for the United States, domestic corporations, investment in LDCs, and the LDCs themselves.

Moreover, some American shareholders (including institutional investors) are reluctant to invest in companies operating in LDCs, lest their practices violate international law there. The ATS incentivizes the corporation and its executives not to engage in such practices.

As *amici* have noted, better human rights practices create an environment that is more conducive to growth and investment. This fact further undercuts the arguments of *amici* in support of Petitioners, who have claimed that aiding and abetting liability under ATS will increase human rights abuses by deterring foreign investment.[16] As demonstrated *supra*, the premise of this argument is

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[15] U.S. Geological Survey, *Mineral Commodity Summaries, in Cobalt Statistics and Information* (2026), https://pubs.usgs.gov/periodicals/mcs2026/mcs2026-cobalt.pdf.

[16] American Free Enterprise Chamber of Commerce, Cert.-Stage Br. at 11-13; Chamber of Commerce, Merits-Stage Br. at 13.

false. Encouraging U.S. companies to act as good corporate citizens promotes investment opportunities in LDCs that comply with international law. Better human rights outcomes will result as investment "contributes to the economic development that so often is an essential foundation for human rights." *Jesner v. Arab Bank, PLC,* 584 U.S. 241, 270 (2018) (plurality op.).

III. ACCESSORIAL LIABILITY WILL NOT PLACE U.S. CORPORATIONS AT A COMPETITIVE DISADVANTAGE.

Proponents of corporate immunity claim U.S. corporations are disadvantaged vis-à-vis foreign competitors that are not subject to jurisdiction under the ATS as these competitors will displace U.S. companies that divest from LDCs. But proponents cite no credible evidence and logic suggests that the opposite is more likely to be true.

First, as discussed *supra*, there is no evidence that the ATS has ever forced a U.S. company to withdraw from a country where its operations are profitable, or that acting in a socially responsible way (*i.e.*, not aiding and abetting human rights violations) would make a market that is otherwise profitable, unprofitable. Corporations that do not withdraw cannot be displaced. But even if aiding and abetting liability under the ATS were to deter FDI in the short-run, in the long-run it creates a more attractive environment for U.S. FDI by inducing governments to change their behavior. U.S. withdrawal from countries that systematically violate human rights

pressures governments to respect international law if they want to become attractive to U.S. investors.

When governments protect human rights, U.S. and foreign firms alike operating in LDCs become accountable. The playing field becomes more level. The Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. §§ 78dd-1, *et seq.*, for example, has created an international environment that is more attractive for U.S. firms. While there were initially complaints that domestic firms were disadvantaged by not being able to bribe foreign officials, it led to an economic and political environment that discouraged bribery. American businesses are the overall beneficiaries: in addition to the more conducive business environment they now encounter, they also earn a reputational premium because they are known as good corporate actors. In a recent poll of leading economists, not a single one agreed that permanently ending US enforcement of the FCPA would improve "US businesses' long-term profits and long-term competitiveness." *Enforcing the Foreign Corrupt Practices Act, Kent A. Clark Center for Global Market*, Chicago Booth-Kent A. Clark Ctr. For Glob. Mkts. (Feb 18, 2025), https://kentclarkcenter.org/surveys/enforcing-the-foreign-corrupt-practices-act/. Aiding and abetting liability under the ATS produces the same effects: since foreign jurisdictions generally seek U.S. investment, they are likely to improve their human rights outcomes to attract U.S. corporations that fear liability. As with the FCPA, U.S. companies will benefit for their practice of human rights compliance.

Second, there is no competitive disadvantage to U.S corporations from ATS jurisdiction for aiding and abetting when foreign firms are subject to similar or more burdensome human rights enforcement.

Human rights enforcement and corporate accountability are global trends. Multinational corporations face liability exposure or due diligence requirements in their home countries and in markets where they operate. There is no shortage of foreign legal regimes that impose corporate liability for human rights violations, including for conduct outside of the regulating jurisdiction. For example, the Canadian Supreme Court permitted Eritrean plaintiffs alleging forced labor and other violations occurring at an Eritrean mine to pursue claims for violations of customary international law against a Canadian defendant for the actions of its foreign sub-contractor. *Nevsun Res. Ltd. v. Araya*, [2020] S.C.R. 5 (Can.).[17]

[17] Courts in other countries have done likewise. *See* Morrison Foerster, *UK Companies Responsible for Business and Human Rights Violations Overseas,* June 8, 2020, https://www.mofo.com/resources/insights/200608-uk-human-rights-violations.html; Nicol Jägers, et al., *The Future of Corporate Liability for Extraterritorial Human Rights Abuses: The Dutch Case Against Shell*, 107 Am. J. Int'l L. Unbound 36-41 (2013), doi:10.1017/S2398772300009673.

In recent years, foreign jurisdictions have passed legislation affecting corporations' duties regarding the human rights impact of their operations. These laws, which impose civil, criminal, and administrative liability, further minimize any supposed competitive disadvantage faced by U.S. corporations because of ATS. In some cases, foreign laws impose due diligence rules requiring companies to detect, prevent, and remedy human rights violations in which they are implicated. In 2024, for example, the European Union codified such standards with the Corporate Sustainability Due Diligence Directive (CSDDD). Directive (EU) 2024/1760 of the European Parliament and of the Council of June 13, 2024 on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, 2024 O.J. (L 2024/1760) (July 5, 2024). The CSDDD establishes a duty for companies, including EU and non-EU companies over a certain size, to carry out "risk-based human rights and environment due diligence." *Id*. at art. 5(1). Companies must "prevent[] and mitigat[e] potential adverse impacts," and "provid[e] remediation for actual adverse impacts," even when such impacts occur outside the EU. *Id*. CSDD provisions provide for pecuniary penalties, up to at least five percent of a company's annual turnover, and require civil liability to be available in Member State laws when companies cause damage through failure to comply with their due diligence obligations. *Id*. at art. 29.

France's "Duty of Vigilance" law provides a private right of action for harms caused by failure to comply with their duty to develop and implement a vigilance plan. Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [Parent and Contracting Company Due Diligence Law], Journal Officiel de la République Française [J.O.] Mar. 28, 2017. Germany's 2023 Supply Chain Due Diligence Act enables human rights advocates to file administrative complaints that, if proven, carry extensive fines and can render the corporation ineligible for public procurement contracts. Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten [Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains], July 16, 2021.[18] Other countries have implemented, or are considering implementing, similar due diligence laws.[19] Many

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[18] *See also* Jennifer Schappert, *Second case filed under the German Supply Chain Due Diligence Act*, Due Diligence Design (July 7, 2023) (describing a case against car manufacturers Volkswagen, BMW and Mercedes-Benz for alleged human rights violations in their supply chains.

[19] *See, e.g.*, Norway's Act of June 21, 2024 relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act), https://lovdata.no/dokument/NLE/lov/2021-06-18-99/%C2%A710#%C2%A710 (requiring companies to implement "measures to cease, prevent, or mitigate adverse impacts" and imposing penalties for noncompliance); Canada's Fighting

countries impose criminal liability on corporations and their executives that are complicit in the worst international crimes.[20] There can be no competitive

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Against Forced Labour and Child Labour in Supply Chains Act (S.C. 2023, c. 9) (requiring reporting on child and forced labor; imposing penalties for noncompliance); United Kingdom Modern Slavery Act 2015, (requiring corporations publish statements on steps taken "to ensure that slavery and human trafficking is not taking place— (i)in any of its supply chains, and (ii)in any part of its own business." The act includes provisions for compensation and penalties); *S. Korea: Mandatory Human Rights and Environmental Due Diligence Bill Marks First Push Under New Government*, Business and Human Rights Centre (June 13, 2025), https://www.business-humanrights.org/en/latest-news/s-korea-mandatory-human-rights-and-environmental-due-diligence-bill-marks-first-push-under-new-government/ (the Korean proposed legislation "establishes mandatory corporate due diligence to proactively identify and address potential human rights and environmental abuses across global supply chains."); *Thailand to introduce mandatory supply chain due diligence law*, Walk Free (Mar. 13, 2025), https://www.walkfree.org/news/2025/thailand-to-introduce-mandatory-supply-chain-due-diligence-law/ (discussing Thailand's proposal to require businesses to "to identify, prevent, and address human rights and environmental risks in their operations and supply chains.").

[20] *See, e.g.*, Sruthi Rao, *Lundin Corporate Executives Face Prosecution for Aiding and Abetting War Crimes*, Corporate Accountability Lab, https://corpaccountabilitylab.org/calblog/2023/12/18/unprecedented-corporate-executives-of-anbsp-company-face-prosecution-for-aiding-and-abetting-war-crimes (Dec. 18, 2023) (describing the criminal prosecution in Sweden of Lundin Oil executives for aiding and abetting war crimes in Sudan through their companies' oil exploration and extraction operations); *Lafarge in Syria: Accusations of complicity in grave human rights violations*, European Center for Constitutional and Human Rights, https://www.ecchr.eu/en/case/lafarge-in-syria-

disadvantage to U.S. firms when foreign corporations are subject to similar, if not more burdensome, liability risks.

Third, aiding and abetting liability may make U.S. firms with a reputation for human rights compliance more attractive to communities and governments in LDCs. To function effectively in a country or region, companies require a "social license to operate"—the consent and acceptance by the local population of the corporation's activities. Hugh Breakey, et al, *Understanding and Defining the Social License to Operate: Social Acceptance, Local Values, Overall Moral Legitimacy, and 'Moral Authority'*, 102 Res. Pol'y. 1 (2025). Whether the company is viewed as morally legitimate and respectful of human rights factors significantly into this social license. *Id.* At 3. Local stakeholders' desire for U.S. investment may be outweighed by concerns about human rights violations and the inability of companies to obtain this license. This concern is exacerbated when local institutions cannot, or will not, remedy such violations due to a lack of sufficient enforcement tools, resources, or political will to hold powerful corporations accountable. Colombian communities' search for accountability for human rights violations

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accusations-of-complicity-in-grave-human-rights-violations/ (last visited Mar. 9, 2026) (describing France's criminal prosecution of LaFarge and its Syrian subsidiary, initiated by a criminal complaint against the companies filed by eleven Syrian former employees alleging complicity in the Islamic State group's human rights violations and those of several other armed groups, with whom the companies engaged in commercial transactions.).

following internal conflict offers an example. Colombia has a well-developed tort law system and a robust statute providing remedies for those harmed by civil conflict,[21] but its legal system is plagued by corruption and rule of law deficits.[22] Plaintiffs seeking recourse for infringements on their rights have turned to U.S. courts.[23] Accessory liability under ATS can encourage corporate behavior that assures such governments and communities that U.S. firms respect human rights norms.

Fourth, aiding and abetting liability does not increase costs for all companies equally. A company that already complies with international human rights norms will not incur extra costs of compliance. Aiding and abetting liability for corporations that have not implemented policies and procedures levels the playing field. This principle has been reflected in

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[21] *See, generally*, Vega D. Vásquez. *Adequate and Proximate Cause vs Scope of Liability: A Comparative Analysis Between the U.S. Third Restatement of Torts and Colombian Supreme Court Decisions from 2016 to 2018*. 26 Dos mil tres mil, 1-22 (comparing U.S. and Colombian tort law); Abigail Zislis, *Justice Compromised: How Systemic Corruption Hinders Colombia's Victims' Law (Law 1448)*, 49 Fordham Int'l L. J. 249 (2025), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2914&context=ilj.

[22] Zislis, *supra* note 21 at 251-4; World Justice Project, *The Rule of Law in Colombia*, Corruption and Trust, https://worldjusticeproject.org/our-work/research-and-data/rule-of-law/colombia-2022#SectionII (last visited Mar. 9, 2025).

[23] *See, e.g.,* Compl., *Doe 1 v. Chiquita Brands Int'l*, 2:07-cv-03406-JMV-JBC (D.N.J. July 19, 2007), ECF No. 1.

decades of U.S. trade law, particularly Section 307 of the Tariff Act of 1930, which prohibits the importation of goods produced with forced labor. 19 U.S.C. § 1307; *See also*, Off. Of the U.S. Trade Representative, *Agreement between the United States of America, the United Mexican States, and* Canada, Arts. 23 (labor) & 31-A (July 1, 2020), https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between (prohibiting violence against workers and their trade union representatives and the import of goods made with forced labor, providing a rapid response dispute resolution mechanism for alleged violations). Customs and Border Patrol may detain products for which it has reasonable suspicion were produced using such labor to, in the agency's words, "Level[] the Playing Field." U.S. Customs & Border Prot., *Forced Labor Leveling the Playing Field*, https://www.cbp.gov/trade/forced-labor/leveling-playing-field (last visited Mar. 25, 2026).

Following enactment of the Sarbanes–Oxley Act of 2002, P.L. 107-204, 116 Stat. 745 (codified in scattered sections of 15 U.S.C.), which imposed potentially costly accounting standards on companies operating in the United States, some foreign companies chose to delist from U.S. exchanges. Studies show that those that did had weaker corporate governance than foreign firms that did not delist and suffered lower stock prices than foreign firms that continued to cross-list. *See, e.g.,* Peter Hostak, et al., *An Examination of the Impact of the Sarbanes-Oxley Act on the Attractiveness of U.S.*

Capital Markets for Foreign Firm, 18 Rev. Acct. Stud. 522 (2013). Thus, when corporations are held to account, for example as aiders and abettors, compliant corporations can reap economic benefits over non-compliant firms. *See* John C. Coffee, Jr., *Law and the Market: The Impact of Enforcement*, 156 U. Pa. L. Rev. 229, 231 n.2 (2007) (foreign firms' decision to list in U.S. may be the cause of empirically observed U.S. listing premium).

IV. AIDING AND ABETTING LIABILITY FOR U.S. AI AND SURVEILLANCE TECHNOLOGY COMPANIES WILL PROMOTE FAIR TRADE AND PROTECT AMERICAN JOBS

The context of this case—use of U.S.-sourced advanced surveillance technology to track, intimidate, and ultimately physically harm the non-compliant—suggests another benefit of accessorial liability: protecting American jobs and wages. Surveillance technology, including emerging AI, can be used on foreign labor forces to unlawfully extract labor from foreign workers, undercutting U.S. jobs at home as cheap labor abroad out-competes U.S.-made products. Accessorial liability helps ensure that U.S. technology cannot be used by foreign competitors to create unfair and artificial trade advantages through worker and wage suppression that rises to the level of violating human rights.

As consistently highlighted by economic scholarship, trade liberalization and offshoring has cost millions of American jobs, especially in import-competing sectors like manufacturing. Daron

Acemoglu, et al., *Import Competition and the Great US Employment Sag of the 2000s*, 34 J. Lab. Econ. S141 (2016). Moreover, in trade-exposed labor markets, wages have fallen, while transfer payments (government support) through State and federal programs have increased. Mary Amiti & Donald R. Davis, *Trade, Firms, and Wages: Theory and Evidence*, 79 Rev. Econ. Stud. 1 (2012); David Dorn & Peter Levell, *Trade and Inequality in Europe and the US,* 3 Oxford Open Econ. 1060 (2024). In addition to hurting the pocketbooks of millions of Americans, trade liberalization has cost lives and harmed communities in unpredictable ways. U.S. counties that were more exposed to changes in international trade policy even experienced increased rates of drug overdose deaths relative to less exposed counties. Justin R. Pierce, Peter K. Schott, *Trade Liberalization and Mortality: Evidence from US Counties*, 2 Am. Econ. Rev.: Insights 47, 48 (2020).

Businesses naturally seek to situate their labor-intensive operations in markets with comparative advantages in labor production to maximize efficiency. *See,* Rudiger Dornbusch, Stanley Fischer & Paul A. Samuelson, *Heckscher-Ohlin Trade Theory with a Continuum of Goods,* 95 Q.J. Econ. 203–224 (1980); Jonathan Eaton & Samuel Kortum, *Technology, Geography, and Trade*, 70 Econometrica 1741–1779 (2002). For example, when China liberalized its economy in the 1990s and early 2000s, businesses opened more factories there. *See*, World Trade Org., *World Trade Report 2007*, 11, 18 (2007). Job-loss in the U.S. in certain affected industries and regions was an expected, if regrettable, result. *See,*

e.g., 19 U.S.C. §§ 2271, *et seq*. (trade adjustment assistance for U.S. workers).

But when a competing nation's comparative advantage is based not on the relative productivities or abundance of the factors of production, but instead on the repression of workers and their working conditions, the negative effects of trade on U.S. workers are aggravated and cannot easily be compensated with the gains that result from greater efficiency.

Economic indicators show that one of America's leading trade partners and major superpower competitor has prolonged and deepened its comparative labor advantage over the U.S. through these artificial and unfair means. While this country has boomed, its workers have taken home a shrinking share of the pie.[24] Between the 1980s and 2024, the share of its GDP that went to workers stagnated and even shrunk, as the country overall grew much richer. Davis, *Share of Labour Compensation in GDP at Current National Prices for China*, Fed. Rsrv. Bank of St. Louis, FRED,

[24] Consider, by comparison, Korea, whose manufacturing boom in the mid-to-late 20th century and concomitant development coincided with a democratic transformation, resulting in greater rights to negotiate higher wages. Today, Korean workers receive a greater share of their country's GDP when compared with America's foremost trading partner. *See*, Federal Reserve Bank of St. Louis, *Share of Labour Compensation in GDP at Current National Prices for Republic of Korea*, https://fred.stlouisfed.org/series/LABSHPKRA156NRUG (last visited 3/24/2026).

https://fred.stlouisfed.org/series/LABSHPCNA156NRUG. The statutory minimum wage in that country has also flatlined and even gone down as a share of purchasing power.[25]

The result? Manufacturing output by this U.S. trade partner is now equal to that of the next nine largest manufacturing economies combined. Richard Baldwin, *China Is the World's Sole Manufacturing Superpower: A Line Sketch of the Rise*, VoxEU (Jan. 17, 2024), https://cepr.org/voxeu/columns/china-worlds-sole-manufacturing-superpower-line-sketch-rise. *See also,* OECD, *Trade in Value Added (TiVA) Database*, https://www.oecd.org/sti/ind/tiva/ (last visited 3/24/2026). By reducing the share of GDP that goes to labor, this country has increased the supply of, and decreased the cost of, capital.

Worker suppression is one way to achieve this unfair advantage. Brutal crackdowns on worker uprisings, a no-tolerance policy for worker organizing, and greater surveillance and securitization in the workplace can cow workers into submission, forcing them to accept lower wages and work longer hours.[26]

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[25] As a proportion of per capita GDP (PPP), minimum wage in this country has fallen from 0.45 in 2000 to 0.24 in 2024. *See*, *Statutory Nominal Gross Monthly Minimum Wage by Currency*, Int'l Lab. Org., https://ilostat.ilo.org/topics/wages/; World Bank, *GDP per Capita, PPP (Current International $)*https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD (last visited 3/24/2026).

[26] *See.* e.g., Yasheng Huang, *How China Forgot Karl Marx*, Foreign Affairs (Mar. 23, 2026),

In this way, the cost of labor as a factor of production is artificially reduced. This not only creates unfair advantages over national competitors, such as the United States, but also reduces demand for U.S. products. When incomes in foreign markets are allowed to grow, consumer spending, including on imports from the U.S., increases also. When instead wages are kept artificially low there is less capacity abroad for purchases of U.S. goods and services. *See, generally* Robert C. Feenstra, et al., *US Exports and Employment* 120 J. Intl' Econ. 46 (2019) (noting that "[c]onventional wisdom" dictates that trade liberalization that grants access to foreign markets should allow U.S. businesses to sell more and expand, "therefore generating new jobs."). American workers are squeezed on both the demand and supply side.

A liability shield for aiding and abetting under ATS would help replicate the trade shock and job losses experienced by the United States after China's economic liberalization, by giving autocratic governments around the world new and powerful tools to drive down the wages paid by manufacturing corporations to their own populations, thereby once again outcompeting, and ultimately impoverishing, U.S. workers. Surveillance technologies, like those at issue in this case, which, in the decades since Respondents' injuries were inflicted have become light-years more advanced, will serve as powerful tools for worker suppression. This repression already exists: trade union activists face violence; workers are

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https://www.foreignaffairs.com/china/how-china-forgot-karl-marx.

forced to labor in unsafe environments, including as children; and dissent is met with vicious reprisals. *See, e.g., Iran's Workers: Battered by Brutal Repression and Lethal Work Conditions*, Center for Hum. Rts. In Iran (April 30, 2025), https://iranhumanrights.org/2025/04/irans-workers-battered-by-brutal-repression-and-lethal-work-conditions/. AI and other advanced surveillance tools will worsen these conditions as authoritarian regimes use these technologies to squeeze excess value from their workers while paying them less. Countries that previously had fixed costs that made outcompeting the United States improbable will be able to do so, prompting a new offshoring wave..

Accessorial liability under ATS disincentivizes the sale of American technology to countries or employers for the purpose of inflicting the worst acts of worker suppression. There may be legitimate workplace uses of AI and surveillance technology but its use to subdue workers with the most egregious human rights violations—torture, murder, and forced disappearances, among others—with the knowledge and assistance of U.S. technologists is not one.

CONCLUSION

For the foregoing reasons, this Court should reject policy arguments asserting adverse economic consequences from liability for aiding and abetting under the ATS and TVPA and affirm the judgment below.

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