No. 24-856

In the Supreme Court of the United States

CISCO SYSTEMS, INC., ET AL., PETITIONERS

v.

DOE I, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

CHRISTOPHER G. MICHEL
Counsel of Record
QUINN EMANUEL
URQUHART & SULLIVAN, LLP
555 13th Street, N.W.,
Suite 600
Washington, DC 20004
(202) 538-8000
christophermichel@quinn-emanuel.com

TODD ANTEN
QUINN EMANUEL
URQUHART & SULLIVAN, LLP
295 Fifth Avenue
New York, NY 10016

KANNON K. SHANMUGAM
MASHA G. HANSFORD
JAKE L. KRAMER
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

ANNA M. STAPLETON
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
535 Mission Street, 25th Floor
San Francisco, CA 94105

CANDICE J. YANDAM RIVIERE
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

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When it comes to this Court's jurisprudence concerning implied causes of action, respondents are swimming against the current. In the name of foreign policy, respondents urge this Court to expand the ATS to provide a cause of action for aiding and abetting liability. They do so despite a brief from the government identifying foreign-policy risks and entreating the Court not to imply any more causes of action under the ATS—and not to recognize aiding and abetting liability in particular. Whether or not the Court shuts the door it left open in *Sosa*, it should reject respondents' request to blow that door off its hinges.

To begin with, the time has come for courts to get out of the business of implying new causes of action under the ATS. Respondents dispute that this Court's doctrine about implied causes of action has developed since *Sosa*,

but the Court's recent decisions demonstrate otherwise. There is no valid reason to apply stare decisis to the relevant portion of *Sosa*, which set out a methodology for future cases that the Court itself has never invoked in the decades since.

But even if the Court were to continue to permit additional causes of action to be implied under the ATS, respondents fall far short of establishing that an aiding and abetting cause of action should be among them. Respondents' approach to the ATS would hollow out this Court's seminal decision in *Central Bank*, which held that liability for aiding and abetting a violation of a civil statute is generally not available absent a clear congressional directive—a presumption this Court reaffirmed just weeks ago. The mere fact that Congress provided federal jurisdiction over certain "tort[s]," coupled with a smattering of historical sources that primarily address *criminal* aiding and abetting liability, is insufficient to overcome the statute's silence on aiding and abetting.

Although respondents profess allegiance to *Sosa*, they ask this Court to jettison the "great caution" *Sosa* required before recognizing new causes of action. In pursuit of their own conception of the United States' foreign-policy priorities, respondents disregard the views of the actual United States. The government's brief makes clear that aiding and abetting liability poses grave separation-of-powers and foreign-policy risks that should foreclose a judicially implied cause of action.

Respondents' argument is particularly audacious because of the nature of their claims: claims premised on the wrongdoing of a foreign sovereign against its own citizens on its own soil. Respondents would cast themselves (and the courts) in the role of adjudicators of what is best for foreign policy, despite the Constitution's clear allocation of that authority to the political branches.

Respondent Lee is similarly unpersuasive in his effort to expand the TVPA to cover aiding and abetting liability. Again, *Central Bank* is dispositive. Respondent toils to read all of aiding and abetting liability into the single term "subjects," but that term captures a specific category of secondary liability far narrower than aiding and abetting. Respondent's invocation of the Nation's treaty obligations gets him no further: respondent mischaracterizes those obligations and the TVPA's role in fulfilling them. And once again, respondent disregards the views of the United States. The judgment of the court of appeals should be reversed.

I. RESPONDENTS' AIDING AND ABETTING CLAIMS ARE NOT COGNIZABLE UNDER THE ATS

A. No New Judicially Implied Private Causes Of Action Are Cognizable Under The ATS

As petitioners and the United States have explained, and several members of the Court have already recognized, the Court should reject aiding and abetting liability because "the door should be closed to judicial recognition of any new causes of action under the ATS." U.S. Br. 15; see Pet. Br. 17-27; U.S. Br. 13-18; *Nestlé USA, Inc.* v. *Doe*, 593 U.S. 628, 637 (2021) (opinion of Thomas, J., joined by Gorsuch and Kavanaugh, JJ.). Respondents avoid this argument for as long as they can; when they eventually face up to it, their responses lack merit.[1]

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[1] Respondents suggest in passing that reversing because no additional causes of action are available would be "outside the question presented." Br. 36. That is incorrect. The petition's *lead argument* was that the ATS does not "allow[] a judicially implied private right of action for aiding and abetting," Pet. i, precisely because no new judicially implied causes of action can permissibly be created. See Pet. 15-17. Notably, far from objecting that the argument was outside the scope of the petition in their brief in opposition, respondents engaged with it on the merits. See Br. in Opp. 11.

1. Respondents contend (Br. 38) that there has been "no change in doctrine" since the Court's decision in *Sosa* v. *Alvarez-Machain*, 542 U.S. 692 (2004). That is wrong. See *Nestlé*, 593 U.S. at 637 (opinion of Thomas, J.). There have been multiple "intervening developments," U.S. Br. 15, since *Sosa*. Most notably, the Court's post-*Sosa* decisions have established that the creation of a new cause of action is *always* a "legislative endeavor." *Egbert* v. *Boule*, 596 U.S. 482, 491-492 (2022); see *Hernandez* v. *Mesa*, 589 U.S. 93, 100 (2020); *Ziglar* v. *Abbasi*, 582 U.S. 120, 132-133 (2017). Additionally, the Court has adopted a stricter standard for implied causes of action, asking whether "there is any rational reason (even one) to think that Congress is better suited" to decide whether to create a cause of action. *Egbert*, 596 U.S. at 491, 496 (emphases omitted).

In the face of those decisions, respondents doggedly suggest that "concerns about implying a cause of action" do not apply in this context because Congress passed the ATS "specifically to enable courts to recognize tort remedies for law-of-nations violations." Br. 39. They contend that, because the ATS contemplates "tort" suits, 28 U.S.C. 1350, the Court need not worry that Congress "may not wish to pursue the provision's purpose to the extent of authorizing private suits for damages." Br. 39 (quoting *Hernandez*, 589 U.S. at 100).

That analysis—which is inconsistent with *Sosa*, 542 U.S. at 727—misses the point. While it is undisputed that the ATS contemplates *some* tort claims for damages, the text leaves open the question of *which* claims are cognizable. And this Court has been unmistakably clear that, in answering that question, courts must restrain themselves to recognizing *only* those causes of action for which there is no conceivable reason that Congress itself would not provide a private right. See *Jesner* v. *Arab Bank, PLC*,

584 U.S. 241, 264 (2018). Respondents' effort to put daylight between the Court's *Bivens* cases and the Court's ATS cases ignores those cases' reasoning: the Court has regularly cited *Bivens* cases in its ATS cases (and vice versa). See, *e.g.*, *Egbert*, 596 U.S. at 491; *Jesner*, 584 U.S. at 264.

Respondents' reliance (Br. 38) on the First Congress's expectations get them no further. Closing the *Sosa* door would leave the scope of ATS liability as the First Congress likely understood it: to include the three broadly accepted torts of piracy, violation of safe conducts, and attacks on ambassadors, together with any additional causes of action subsequently created by Congress. See *Sosa*, 542 U.S. at 724. That it was once considered permissible for courts to create causes of action out of whole cloth cannot justify permitting them to do so today. See *Hernandez*, 589 U.S. at 100-101; *Alexander* v. *Sandoval*, 532 U.S. 275, 287-288 (2001).

Respondents further argue (Br. 39-40) that the TVPA somehow licenses courts to create new ATS causes of action. But the enactment of the TVPA demonstrates how new causes of action *should* be created—by Congress.

2. Respondents seek shelter in stare decisis, contending that "a departure from stare decisis" principles is not warranted. Br. 37. But as petitioners have explained (Br. 24-25), the Court need not overrule *Sosa* in order to hold that no new causes of action can be judicially created under the ATS. See *Jesner*, 584 U.S. at 265; *Nestlé*, 593 U.S. at 637 (opinion of Thomas, J.). *Sosa* simply sets out two prerequisites to judicial recognition without foreclosing additional limitations. See 542 U.S. at 732, 738.

3. Even if overruling a holding of *Sosa* were necessary, doing so would be amply warranted.

Respondents first suggest that a heightened form of stare decisis should apply because *Sosa* is a "statutory decision." Br. 37. But a lower, not higher, form of stare decisis applies to judicial decisions that give shape to a statute by "drawing on common-law tradition." *State Oil Co.* v. *Khan*, 522 U.S. 3, 20-21 (1997); see *Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.*, 551 U.S. 877, 899-900 (2007). *Sosa*'s discussion of the circumstances in which courts can recognize "common law actions derived from the law of nations," 542 U.S. at 721-722, likewise warrants "adapting to changed circumstances and the lessons of accumulated experience." *State Oil*, 522 U.S. at 20. And while the holding of a prior case *applying* a methodology to particular facts is "subject to statutory stare decisis," the Court's *adoption* of the methodology itself is not. *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369, 412 (2024); see *Sandoval*, 532 U.S. at 287.

Respondents offer little justification for adhering to *Sosa*'s reasoning concerning future causes of action. They do not assert that *Sosa*'s framework has generated reliance interests. See Pet. Br. 25-27. They weakly contend (Br. 40) that *Sosa* has been workable, but offer no response to the point that ATS litigation has been tremendously costly with minimal results. See Pet. Br. 26-27; Chamber Br. 18-24. In addition, determining whether the creation of a new cause of action would be a "proper exercise of judicial discretion" is a judgment "so wholly in the eyes of the beholder" that it "invites different results in like cases." *Loper Bright*, 603 U.S. at 408.

Simply put, "no *stare decisis* values would be served" by sticking with *Sosa*'s methodology. *Edwards* v. *Vannoy*, 593 U.S. 255, 274 (2021). As a growing chorus of judges has noted, keeping the *Sosa* door open "just leads to more confusion," because while the Court has "strongly suggested" that "federal courts should not create new

causes of action," some lower courts have been all too willing to do so. *Al Shimari* v. *CACI Premier Technology, Inc.*, No. 25-1043, 2026 WL 693110, at *42 n.6 (4th Cir. Mar. 12, 2026) (Quattlebaum, J., dissenting); see also Pet. App. 129a-130a (Bumatay, J., dissenting from the denial of rehearing en banc). Respondents offer no compelling reason why the *Sosa* door should not now be shut.

B. A Private Cause Of Action For Aiding And Abetting Is Not Cognizable Under The *Sosa* Framework

As petitioners have explained (Br. 27), implying a private cause of action for aiding and abetting liability is impermissible under the second step of the *Sosa* framework because doing so would contravene this Court's decision in *Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994), and raise serious separation-of-powers and foreign-policy concerns. In their brief, respondents spill much ink attempting to establish that aiding and abetting liability is recognized under international law. See Br. 19-21. But that is relevant only to *Sosa*'s first step; the Court need not address whether the first step is satisfied because, as explained by petitioners and amici, the second step undoubtedly is not. See, *e.g.*, *Jesner*, 584 U.S. at 263.

1. a. As this Court recently reaffirmed, "[o]rdinarily, when Congress intends to impose secondary liability, it does so expressly." *Cox Communications, Inc.* v. *Sony Music Entertainment*, No. 24-171, slip op. 6-7 (2026) (citing *Central Bank*, 511 U.S. at 176-177). Respondents try to muster a textual argument, contending that the ATS language providing jurisdiction for "tort[s]" under international law incorporates civil liability for aiding and abetting. The common-law concept of a "tort," respondents reason, covered any "wrong and injury," which, in their

view, includes aiding and abetting liability for that wrong and injury. Br. 33.

As a threshold matter, respondents' position overlooks that this Court has carefully distinguished between primary liability for a tort and secondary liability for aiding and abetting that tort. See, *e.g.*, *Twitter, Inc.* v. *Taamneh*, 598 U.S. 471, 488-489 (2023). Moreover, respondents' argument runs headlong into *Central Bank*. The plaintiffs in *Central Bank* likewise contended that "Congress legislated with an understanding of general principles of tort law" and that "aiding and abetting liability was well established" in civil tort actions. 511 U.S. at 181. But the Court rejected that argument, explaining that aiding and abetting liability in tort law was "at best uncertain in application." *Ibid.* Given that uncertainty and the absence of a general civil aiding and abetting statute, the Court concluded that there was no "general presumption" that a cause of action for violating a statutory norm also allowed the plaintiff to "sue aiders and abettors." *Id.* at 182. Respondents offer no sound reason why a simple reference to "tort[s]" (or some intent to "incorporat[e] tort remedies," Br. 33) can nonetheless conjure that rejected presumption.

Respondents resist reading *Central Bank* to "adopt what amounts to a clear-statement rule." Br. 33. But *Central Bank* specifies that "statutory silence" as to aiding and abetting is insufficient. 511 U.S. at 185. For present purposes, it is immaterial whether that requirement is a "[b]ackground legal convention[]," *Biden* v. *Nebraska*, 600 U.S. 477, 511 (2023) (Barrett, J., concurring), reflecting the fact that "Congress knew how to impose aiding and abetting liability when it chose to do so," *Central Bank*, 511 U.S. at 176, or is instead a stronger-form requirement rooted in the judiciary's limited role in creating causes of action. Either way, the ATS says nothing about

aiding and abetting liability, and *Central Bank* is unequivocal that statutory silence forecloses such claims. See 511 U.S. at 185; see also *Doe* v. *Exxon Mobil Corp.*, 654 F.3d 11, 87 (D.C. Cir. 2011) (Kavanaugh, J., dissenting in part).

b. Respondents try to fill that textual hole with history. Specifically, based on a smattering of historical sources, respondents argue (Br. 13-17) that the First Congress would have understood aiding and abetting liability to be generally available under the ATS—regardless of the primary tort in question. None of the cited sources supports that conclusion.

i. Respondents first look to Blackstone's commentaries for the proposition that "accessories to law-of-nations violations were subject to liability." Br. 13. But the passages they cite relate only to the availability of aiding and abetting liability for the three core offenses envisioned by the First Congress. See 4 William Blackstone, *Commentaries on the Laws of England* 68-69 (1769) (Blackstone) (violation of safe conducts); *id.* at 70-71 (infringement of the rights of ambassadors); *id.* at 71-73 (piracy). They say nothing about the availability of a cause of action for aiding and abetting any of the primary torts alleged in this case, nor do they suggest that the common law recognized a freestanding aiding and abetting cause of action that would be generally available regardless of the primary tort.

In any event, respondents' reading of Blackstone does not hold up even as to the three core offenses. With respect to piracy, Blackstone explains that Parliament had enacted a statute making aiding and abetting piracy its own offense—suggesting that liability for that offense would not necessarily have been available at common law. See 4 Blackstone 72. With respect to infringement of the rights of ambassadors, Blackstone discusses liability for "soliciting," rather than aiding and abetting. See *id.* at 70.

As Judge Bumatay explained below, "solicitation is different from aiding and abetting," and the availability of liability for one does not necessarily imply the availability of liability for the other. Pet. App. 124a-125a n.5. And with respect to the violation of safe conducts, respondents cite a reference to "aiding and receiving," but the cited sentence discusses what happens when a series of violations escalates into "malicious rapacity [that] was not confined to private individuals, but broke out into general hostilities." 4 Blackstone 69. That aiding and abetting such general hostilities could create liability does not mean that liability would have attached to aiding and abetting a single safe-conduct violation.

Accordingly, Blackstone does not support the suggestion that the First Congress would have expected the causes of action for the three core torts to encompass aiding and abetting liability, let alone that it would have expected aiding and abetting liability to be available for all of the distinct (and, at the time, entirely unfamiliar) primary torts respondents assert in this case. To the contrary, despite the far stronger common-law lineage of criminal aiding and abetting liability, see *Central Bank*, 511 U.S. at 181-182, the First Congress felt the need to impose aiding and abetting liability expressly when fashioning criminal punishments for the three core offenses—and it chose to do so only for piracy. See Pet. Br. 30-31.

ii. Respondents also rely (Br. 17) on a 1795 opinion from then-Attorney General William Bradford discussing the possible mechanisms for addressing the conduct of American citizens who participated in the plunder of Sierra Leone, then a British colony. See Breach of Neutrality, 1 U.S. Op. Att'y Gen. 57 (1795). Respondents specifically contend (Br. 17) that General Bradford opined that an ATS suit against the Americans would be available on an aiding and abetting theory. But that interpretation of

Bradford's opinion has long since been debunked. See Curtis A. Bradley, *Attorney General Bradford's Opinion and the Alien Tort Statute*, 106 Am. J. Int'l L. 509, 524-525 (2012); Curtis A. Bradley, Jack L. Goldsmith & David H. Moore, '*Sosa,' Customary International Law, and the Continuing Relevance of 'Erie,'* 120 Harv. L. Rev. 869, 927 n.305 (2007). The Americans would have been liable as primary tortfeasors, not aiders and abettors. And the Americans violated the express terms of a treaty—not any norm of the law of nations. See *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 124 (2013); *Sosa*, 542 U.S. at 721.

Respondents' remaining historical sources are equally unavailing. The restitution award in *Talbot* v. *Jansen*, 3 U.S. (3 Dallas) 133 (1795), an admiralty-prize case, does not support the imposition of aiding and abetting liability under tort law. And Thomas Jefferson's 1792 opinion acknowledged the ATS's limited reach and identified gaps that needed to be filled through legislation without reaching the question of aiding and abetting. See Thomas Jefferson, Opinion on Offenses Against the Law of Nations (Dec. 3, 1792), *printed in* Jefferson Papers 693-696.

2. Even aside from their inability to overcome *Central Bank*, respondents offer no persuasive reason why they satisfy the second step of *Sosa*. An aiding and abetting cause of action would be improperly multiplicative and would pose grave harms to foreign policy and the separation of powers, as the brief of the United States powerfully establishes. See U.S. Br. 24-27.

a. Respondents seek this Court's approval of aiding and abetting liability across the board—including as to the multiple primary torts at issue here, none of which this Court has previously recognized as actionable. See, *e.g.*, Br. 12. That gets far ahead of the tort-by-tort inquiry that this Court prescribed in *Sosa*. And it fails to acknowledge

the additional legislative work that would be necessary in order to recognize a cause of action for aiding and abetting, including difficult questions concerning the requisite actus reus and mens rea. See Pet. Br. 22. If adopted, that approach would create a workaround of Congress's choice not to provide for aiding and abetting liability in the TVPA, the only express cause of action under the ATS created by Congress. See Pet. Br. 39-44; U.S. Br. 27-28; see also *Doe*, 654 F.3d at 85-86 (Kavanaugh, J., dissenting in part).

Respondents say little in response to those concerns, arguing that "there have never been many ATS cases" and that ATS cases have had "no significant economic impacts." Br. 34-35. That is inaccurate. See, *e.g.*, Chamber Br. 18-24; CACI Br. 1. Indeed, respondents acknowledge (Br. 34) that a recent study showed that federal courts had issued 531 published opinions in 300 separate ATS matters in recent decades. See Christopher Ewell, Oona A. Hathaway & Ellen Nohle, *Has the Alien Tort Statute Made a Difference?: A Historical, Empirical, and Normative Assessment*, 107 Cornell L. Rev. 1205, 1235, 1240 (2022). Respondents attempt to minimize that reality by citing the number of civil cases filed annually. But that is severely misleading because ATS litigation is costly and protracted; this case alone has dragged on for nearly fifteen years.

In any event, respondents' reliance on "past practice," Br. 34, does little to establish what ATS litigation will look like going forward if this Court were to recognize an ATS cause of action for aiding and abetting. The fact that so many amicus briefs have been filed in support of respondents belies any suggestion that an aiding and abetting cause of action would be used only sparingly if respondents were to prevail here.

Respondents also seek to minimize the fact that Cisco's sales were consistent with federal law regulating trade with China by suggesting that Congress was not "clairvoyant." See Br. 29. But in the nearly fifteen years since this case was filed and the allegations here became public knowledge, neither Congress nor the Department of Commerce has acted to ban sales of the type at issue here—despite repeated updates to the relevant export regulations in the intervening period. See 15 C.F.R. 742.7; 85 Fed. Reg. 4176 (Jan. 23, 2020); 85 Fed. Reg. 63,009, 63,010 (Oct. 6, 2020); 89 Fed. Reg. 28,594, 28,600 (April 19, 2024); 89 Fed. Reg. 34,680, 34,705 (April 30, 2024); 90 Fed. Reg. 47,170, 47,193 (Sept. 30, 2025).

b. Respondents tie themselves in knots to avoid the grave foreign-policy implications of recognizing aiding and abetting claims, even as those implications are expressly recognized by the United States. Respondents contend that ATS aiding and abetting liability does not "categorically" or "invariably" "interfere with foreign relations" because "not all ATS cases implicate foreign governments." Br. 22. But as the United States explains, "[a]iding-and-abetting actions under the ATS are especially likely to implicate significant foreign-policy concerns." U.S. Br. 24. That is sufficient to provide a "sound reason[] to think Congress might doubt the efficacy or necessity" of an aiding and abetting cause of action—regardless of whether it is possible to conjure up a case in which such concerns are not presented. *Jesner*, 584 U.S. at 264. Nor can respondents contest that the mine run of cases brought under the ATS on a theory of aiding and abetting liability *do* implicate foreign-policy concerns: for example, where the primary tortfeasor is a foreign government (as is the case here) or inflicts the asserted harm on foreign soil (as is also the case here).

Respondents protest that "only some" ATS aiding and abetting cases have generated affirmative objections from foreign governments. Br. 22. But that says little about the foreign-policy implications of other such cases. For any number of reasons, a foreign government accused of heinous wrongdoing may not wish to participate in American legal proceedings. And the fact that so many foreign governments have in fact done so, see Pet. Br. 35, is powerful evidence of the foreign-policy risks.

Recognizing that some aiding and abetting cases do raise foreign-policy concerns, respondents suggest that the Court could recognize an aiding and abetting cause of action under the ATS, but then withdraw that action in a case where the Executive Branch "identifies concrete foreign relations harms." Br. 23. Congress has already once rejected a similar approach in a context involving foreign-policy concerns. See *Samantar* v. *Yousuf*, 560 U.S. 305, 311-313 (2010) (explaining the history preceding the enactment of the Foreign Sovereign Immunities Act). And respondents make no effort to explain how the slew of other doctrines it lists in its brief would operate in practice if respondents were to prevail here. Indeed, the very fact that such doctrines would be necessary is powerful evidence that "caution" weighs against recognizing the cause of action. See *Sosa*, 542 U.S. at 728.

Respondents go so far as to argue that "[a]iding-and-abetting liability often advances America's foreign policy." Br. 24. But that argument cannot fly in the face of the government's contrary view. See U.S. Br. 24-27. Respondents disregard the grave affront to foreign sovereigns from such actions and focus instead on the potential promotion of human rights. See Br. 24-28. Even with that blinkered perspective, however, respondents cannot provide a single example of an ATS aiding and abetting case

having such a beneficial effect. That is not surprising, because, as respondents themselves recognize, only a small fraction of ATS plaintiffs have ultimately prevailed on the merits of their claims. See Br. 34-35. Respondents also ignore the chilling effect of burdensome ATS suits on U.S. investment abroad, which helps create "an essential foundation for human rights." *Jesner*, 584 U.S. at 269-270 (plurality opinion); see Chamber Br. 8-14.

In any event, the question is not what, on net, is better foreign policy. Instead, the courts' "job" is to "consider whether creating a new cause of action might create separation of powers concerns." *Al Shimari*, 2026 WL 693110, at *36 (Quattlebaum, J., dissenting). That is plainly the case here. Given the "obvious" risks of adverse consequences for our Nation's foreign policy, U.S. Br. 25, Congress, not this Court, should decide whether to make a cause of action for aiding and abetting available under the ATS.

C. At A Minimum, Respondents' Particular Aiding And Abetting Claims Are Not Cognizable

At times, respondents seem to forget the facts of their own case. They argue that some aiding and abetting claims do not implicate wrongdoing by a foreign sovereign. Br. 22. But of course *their* case does—they allege grave wrongdoing by a foreign sovereign against its own citizens on its own soil. And they would hold Cisco secondarily liable for that wrongdoing simply because the company sold routers and other technology to that sovereign government for a nationwide security infrastructure that respondents admit was used for standard policing

purposes, but which they contend was used for impermissible purposes as well.[2]

Any finding of liability against petitioners would inherently require a federal court to determine that agents of a foreign sovereign violated international law. See Pet. App. 89a (Christen, J., dissenting); *id.* at 130a-132a (Bumatay, J., dissenting from the denial of rehearing en banc). This Court has warned against making private parties "surrogates" for the conduct of foreign nations under the ATS, *Jesner*, 584 U.S. at 267, and against authorizing suits that "claim a limit on the power of foreign governments over their own citizens," *Sosa*, 542 U.S. at 727. At a minimum, the Court should reject ATS claims where, as here, they are premised on aiding and abetting alleged wrongdoing by a foreign government.[3]

II. AIDING AND ABETTING CLAIMS ARE NOT COGNIZABLE UNDER THE TVPA

Respondent Lee's arguments regarding the scope of liability under the TVPA similarly fail to come to terms with the statutory text, this Court's decision in *Central Bank*, or the views of the United States.

1. The TVPA nowhere mentions aiding, abetting, assisting, facilitating, or otherwise participating in another's conduct. If Congress had intended to create such liability, this Court "presume[s] it would have used the words 'aid'

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[2] In describing their allegations, respondents go beyond the scope of the complaint in various respects. Once again, Cisco unequivocally denies those allegations. See Pet. Br. 9-10.

[3] Respondents note (Br. 23) that the Chinese government has not voiced its opposition to this suit. As explained above, a foreign government's silence says little about whether foreign-policy concerns are implicated. See p. 14, *supra*. Nor are China's views entirely unknown: China has previously warned about the potential for Falun Gong ATS lawsuits to endanger its relations with the United States. See *Doe* v. *Qi*, 349 F. Supp. 2d 1258, 1300 (N.D. Cal. 2004).

and 'abet' in the statutory text." *Central Bank*, 511 U.S. at 177. Indeed, Congress has used that formulation in dozens and dozens of statutes. See App., *infra*. Congress's silence here is telling. As then-Judge Kavanaugh put it, *Central Bank* "made crystal clear" that "there can be no civil aiding and abetting liability unless Congress expressly provides for it"; accordingly, "liability for aiding and abetting torture and extrajudicial killing does not exist under the TVPA." *Doe*, 654 F.3d at 87 (Kavanaugh, J., dissenting in part).

Respondent tries to resist the application of *Central Bank*, contending that courts "should not apply it to statutes" enacted before 1994, when that case was decided. Br. 51. But *Central Bank* did not announce a new doctrine; it crystalized a principle of statutory interpretation, drawing from the common law of aiding and abetting and longstanding congressional practice. See 511 U.S. at 181-182. Accordingly, as it did in *Central Bank* itself, this Court has routinely applied newly articulated clear-statement rules and similar interpretive principles to previously enacted statutes, rather than applying them only prospectively. See, *e.g.*, *ibid.*; *Department of Agriculture Rural Development Rural Housing Service* v. *Kirtz*, 601 U.S. 42, 48-51, 58 (2024); *Gregory* v. *Ashcroft*, 501 U.S. 452, 460-461 (1991); *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234, 242 (1985).

In an apparent effort to suggest that *Central Bank* may nevertheless be satisfied here, respondent contends (Br. 41-44) that the TVPA adopts aiding and abetting liability by imposing liability on a person who "subjects" an individual to torture. But as petitioners and the United States have explained, the word "subjects" recognizes one type of secondary liability—command liability for the officer responsible for the individual who physically inflicts the torture. See Pet. Br. 40-43; U.S. Br. 30-32. Command

liability is a specific form of vicarious liability, grounded in a superior's duty to control his subordinates. See *In re Yamashita*, 327 U.S. 1, 17 (1946). Vicarious liability turns on the relationship between the defendant and his agent and on the scope of the agent's authority—not the defendant's independent fault. See Restatement (Third) of Agency §§ 7.03 cmt. b, 7.07 (2006). By contrast, aiding and abetting is a form of contributory, not vicarious, liability, and it requires the defendant to have engaged in his own culpable conduct, regardless of any relationship of authority or control. See Restatement (Second) of Torts § 876(b) (1979); cf. Restatement (Third) of Agency § 7.03 cmt. b. A term that creates liability for a specific form of vicarious liability would be a particularly elliptical and imprecise way to incorporate the distinct concept of aiding and abetting. And "[t]he fact that Congress chose to impose some forms of secondary liability, but not others, indicates a deliberate congressional choice with which the courts should not interfere." *Central Bank*, 511 U.S. at 184.

Respondent cites no other statute in which Congress used "subjects" to mean "aids and abets." See Br. 40-54. Nor could he: aiding and abetting liability extends beyond persons who subject victims to torture, to those who merely "give a degree of aid to those who do." *Central Bank*, 511 U.S. at 176. Even on the most sensational version of the allegations here, it cannot seriously be suggested that the individual petitioners "subjected" respondent to torture—which, again, is why respondent needs an aiding and abetting theory in the first place. See Pet. Br. 42.

2. Respondent also fails to come to grips with the TVPA's custody requirement for torture claims. That requirement is antithetical to aiding and abetting liability. See Pet. Br. 43; U.S. Br. 30. Respondent points out that

the requirement applies only to torture, not to extrajudicial killing. See Br. 51. That is true, but it hardly helps respondent. It would make no sense for Congress to adopt expansive aiding and abetting liability for torture claims via the word "subjects" only to circumscribe that liability to those who have custody over the victim, nor would it make sense for Congress to impose a custody requirement that could be circumvented by alleging an aiding and abetting theory instead.

Respondent's answer is to contend that the TVPA's liability provision renders liable "[a]n individual * * * who subjects an individual to torture," whereas the custody requirement appears only in the definition of "torture" as "directed against an individual in the *offender's* custody or control." Br. 51 (emphasis added). Respondent's argument appears to be that an "individual" who is liable can be distinct from the "offender" who exercises custody or control. But that argument is perplexing, because the liability provision defines the offender who is liable for the act of torture. See Offender, 10 *Oxford English Dictionary* 725 (2d ed. 1989) (one who "transgresses a law, or infringes a rule or regulation").

There is a far simpler explanation for Congress's choice of terminology. As this Court has explained, Congress used "individual" in the liability provision in order to narrow the class of eligible defendants to natural persons—not to expand it to secondary actors. See *Mohamad* v. *Palestinian Authority*, 566 U.S. 449, 453-456 (2012). And Congress used the word "offender" in the definition of "torture" simply to distinguish the "offender" from the other "individual" referenced therein: namely, the victim. See 28 U.S.C. 1350 note, § 3(b)(1). The custody requirement thus confirms that the TVPA does not provide for aiding and abetting liability.

3. Looking beyond the text, respondent relies on legislative history and the United States' treaty obligations. See Br. 45-49. As to the legislative history: neither the ambiguous statement in the Senate Report nor the individual floor statement cited by respondent (Br. 48) move the needle here. See Pet. Br. 45; U.S. Br. 32 n.4. And respondent's effort to get more mileage out of that scant history by arguing that "Congress legislates against the backdrop of contemporary tort principles," Br. 48, again ignores *Central Bank*. See p. 8, *supra*.

As to the United States' treaty obligations: respondent contends (Br. 45-48) that the TVPA must be read to include aiding and abetting in order to fulfill our obligations under the Convention Against Torture. To begin with, nothing in the Convention requires that a civil remedy for torture extend to secondary actors. The Convention's requirement that states criminalize "complicity or participation in torture," Art. 4, is already fulfilled by the federal *criminal* torture statute, 18 U.S.C. 2340A, which provides for aiding and abetting liability under 18 U.S.C. 2. The Convention's separate obligation to provide civil remedies, Art. 14, contains no requirement that those remedies reach aiders and abettors.

In any event, Congress routinely enacts implementing legislation that is not coterminous with the underlying treaty. See, *e.g.*, *Mohamad*, 566 U.S. at 453-456 (noting that the TVPA excludes corporate liability despite the absence of any such limitation in the Convention). While the TVPA's title may refer to international agreements, "the title of an Act cannot enlarge or confer powers by itself," especially where Congress does not enact the title into the U.S. Code. *Medina* v. *Planned Parenthood South Atlantic*, 606 U.S. 357, 382 (2025) (internal quotation marks and citation omitted). Here, the operative text simply does not provide for aiding and abetting liability, and there is no

basis for overriding that text with extratextual considerations.

Finally, while respondent adopts a maximalist view of American treaty obligations, he does not acknowledge the troubling consequences for American businesses and their leaders. Respondent's TVPA claim would hold liable two former Cisco executives who are far removed from the alleged misconduct in this case. As the Chamber of Commerce has explained, sanctioning claims such as this one would disincentivize capable individuals from serving in senior roles at globally engaged companies and risk chilling legitimate international commerce. See Chamber Br. 24-26. That result would disserve American foreign-policy interests.

* * * * *

Cisco shares the broadly held commitment to human rights that animates this litigation. Respondents vigorously argue that civil aiding and abetting liability would serve that purpose and further American foreign policy; the government disagrees. In the end, there is simply no indication, either in the ATS or in the TVPA, that Congress intended to provide for aiding and abetting liability. Respondents' argument that such liability should be available should thus be directed not to this Court, but to the elected officials across the street.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

CHRISTOPHER G. MICHEL
QUINN EMANUEL
URQUHART & SULLIVAN, LLP
555 13th Street, N.W.,
Suite 600
Washington, DC 20004
(202) 538-8000
christophermichel@quinn-emanuel.com

TODD ANTEN
QUINN EMANUEL
URQUHART & SULLIVAN, LLP
295 Fifth Avenue
New York, NY 10016

KANNON K. SHANMUGAM
MASHA G. HANSFORD
JAKE L. KRAMER
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

ANNA M. STAPLETON
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
535 Mission Street, 25th Floor
San Francisco, CA 94105

CANDICE J. YANDAM RIVIERE
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

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APPENDIX

Civil Statutes Expressly Referencing "Aiding" and "Abetting" Liability

Statute Name	Citation
Small Business Investment Act Amendments of 1966	15 U.S.C. 687f
An Act to Amend the Commodity Exchange Act	7 U.S.C. 13c
Omnibus Crime Control and Safe Streets Act of 1968	5 U.S.C. 7313
Customs Procedural Reform and Simplification Act of 1978	19 U.S.C. 1592
Tax Equity and Fiscal Responsibility Act of 1982	26 U.S.C. 6701
Futures Trading Act of 1982	7 U.S.C. 25
Trade and Tariff Act of 1984	19 U.S.C. 1641
Farm Credit Amendments Act of 1985	12 U.S.C. 2271
Clinical Laboratory Improvement Amendments of 1988	42 U.S.C. 263a
Business Opportunity Development Reform Act of 1988	15 U.S.C. 636
International Narcotics Control Act of 1988	22 U.S.C. 2291f

Statute Name	Citation
Financial Institutions Reform, Recovery, and Enforcement Act of 1989	12 U.S.C. 1467a
Financial Institutions Reform, Recovery, and Enforcement Act of 1989	12 U.S.C. 1972
Financial Institutions Reform, Recovery, and Enforcement Act of 1989	12 U.S.C. 1847
Financial Institutions Reform, Recovery, and Enforcement Act of 1989	12 U.S.C. 1813
Financial Institutions Reform, Recovery, and Enforcement Act of 1989	12 U.S.C. 1786
Financial Institutions Reform, Recovery, and Enforcement Act of 1989	12 U.S.C. 505
Financial Institutions Reform, Recovery, and Enforcement Act of 1989	12 U.S.C. 504
Financial Institutions Reform, Recovery, and Enforcement Act of 1989	12 U.S.C. 93
Immigration Technical Corrections Act of 1991	8 U.S.C. 1227
International Securities Enforcement Cooperation Act of 1990	15 U.S.C. 80b-3
International Securities Enforcement Cooperation Act of 1990	15 U.S.C. 80a-9
International Securities Enforcement Cooperation Act of 1990	15 U.S.C. 78u-2
Securities Enforcement Remedies and Penny Stock Reform Act of 1990	15 U.S.C. 78u-2

Statute Name	Citation
Securities Acts Amendments of 1975	15 U.S.C. 80b-3
Securities and Exchange Commission Authorization Act of 1990 / International Securities Enforcement Cooperation Act of 1990	15 U.S.C. 80a-9
Securities and Exchange Commission Authorization Act of 1990 / International Securities Enforcement Cooperation Act of 1990	15 U.S.C. 78o
The Chemical and Biological Weapons Control and Warfare Elimination Act of 1991	22 U.S.C. 2798
The Chemical and Biological Weapons Control and Warfare Elimination Act of 1991	50 U.S.C. 4613
Generic Drug Enforcement Act of 1992	21 U.S.C. 335a
Mammography Quality Standards Act of 1992	42 U.S.C. 263b
Foreign Bank Supervision Enhancement Act of 1991	12 U.S.C. 3110
North American Free Trade Agreement Implementation Act	19 U.S.C. 1593a
Nuclear Proliferation Prevention Act of 1994	22 U.S.C. 6301
Nuclear Proliferation Prevention Act of 1994	22 U.S.C. 2780

Statute Name	Citation
An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V–X of title 49, United States Code, "Transportation", and to make other technical improvements in the Code	49 U.S.C. 40106
Uruguay Round Agreements Act	19 U.S.C. 1592a
Private Securities Litigation Reform Act of 1995	15 U.S.C. 78t
Anticounterfeiting Consumer Protection Act of 1996	19 U.S.C. 1526
National Defense Authorization Act for Fiscal Year 1997	12 U.S.C. 635
Omnibus Consolidated Appropriations Act, 1997	8 U.S.C. 1101
Child Abuse Prevention and Treatment Act Amendments of 1996	42 U.S.C. 5106
Miscellaneous Trade and Technical Corrections Act of 1996	19 U.S.C. 2462
Balanced Budget Act of 1997	26 U.S.C. 5761
Adoption and Safe Families Act of 1997	42 U.S.C. 675

Statute Name	Citation
Adoption and Safe Families Act of 1997	42 U.S.C. 671
Chemical Weapons Convention Implementation Act of 1998	22 U.S.C. 6723
Foreign Narcotics Kingpin Designation Act	21 U.S.C. 1907
Plant Protection Act	7 U.S.C. 7702
Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001	8 U.S.C. 1182
New Markets Venture Capital Program Act of 2000	15 U.S.C. 689n
Farm Security and Rural Investment Act of 2002	7 U.S.C. 2009cc-14
Animal Health Protection Act	7 U.S.C. 8302
Sarbanes–Oxley Act of 2002	15 U.S.C. 78d-3
Homeland Security Act of 2002	6 U.S.C. 442
Fair and Accurate Credit Transactions Act of 2003	15 U.S.C. 1681g
Prevention of Terrorist Access to Destructive Weapons Act of 2004	42 U.S.C. 2122

Statute Name	Citation
Energy Policy Act of 2005	42 U.S.C. 2158
Protection of Lawful Commerce in Arms Act	15 U.S.C. 7903
Codification of Title 46	46 U.S.C. 70305
Federal Housing Finance Regulatory Reform Act of 2008	12 U.S.C. 4502
Emergency Economic Stabilization Act of 2008	12 U.S.C. 1828
Dodd-Frank Wall Street Reform and Consumer Protection Act	15 U.S.C. 77o
Dodd-Frank Wall Street Reform and Consumer Protection Act	15 U.S.C. 80b-9
Justice for Victims of Trafficking Act of 2015	18 U.S.C. 3014
Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015 (USA FREEDOM Act of 2015)	50 U.S.C. 1801
Justice Against Sponsors of Terrorism Act	18 U.S.C. 2333
Korean Interdiction and Modernization of Sanctions Act	22 U.S.C. 2708
Fentanyl Sanctions Act	21 U.S.C. 2302

Statute Name	**Citation**
Horseracing Integrity and Safety Act of 2020	15 U.S.C. 3057