No. 24-

IN THE

Supreme Court of the United States

CISCO SYSTEMS, INC.; JOHN CHAMBERS; AND FREDY CHEUNG

Petitioners,

v.

DOE I; DOE II; IVY HE; DOE III; DOE IV; DOE V; DOE VI; CHARLES LEE; ROE VII; ROE VIII; LIU GUIFU; DOE IX; WEIYU WANG; AND THOSE INDIVIDUALS SIMILARLY SITUATED,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

TODD ANTEN
QUINN EMANUEL URQUHART & SULLIVAN, LLP
295 5th Avenue
New York, NY 10016

CHRISTOPHER G. MICHEL
Counsel of Record
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street NW, Suite 900
Washington, DC 20005
(202) 538-8000
christophermichel@quinnemanuel.com

Counsel for Petitioners

January 31, 2025

QUESTIONS PRESENTED

1. Whether the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, allows a judicially-implied private right of action for aiding and abetting.

2. Whether, if ATS aiding-and-abetting claims are cognizable, mere knowledge rather than purpose suffices to show the requisite *mens rea*.

3. Whether the Torture Victim Protection Act, 28 U.S.C. § 1350 note, allows a judicially-implied private right of action for aiding and abetting.

CORPORATE DISCLOSURE STATEMENT

Petitioner Cisco Systems, Inc. certifies that it has no parent companies and that no publicly held company has a 10% or greater ownership interest in it.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners (defendants-appellees in the court of appeals) are: Cisco Systems, Inc.; John Chambers; and Fredy Cheung.

Respondents (plaintiffs-appellants in the court of appeals) are: Doe I; Doe II; Ivy He; Doe III; Doe IV; Doe V; Doe VI; Charles Lee; Roe VII; Roe VIII; Liu Guifu; Doe IX; Weiyu Wang; and those individuals similarly situated.

RELATED PROCEEDINGS

United States District Court (N.D. Cal.):

Doe I v. Cisco Systems, Inc., No. 5:11-cv-02449-EJD (Sept. 5, 2014).

United States Court of Appeals (9th Cir.):

Doe I v. Cisco Systems, Inc., No. 15-16909 (July 7, 2023).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes and Regulations

Other Authorities

INTRODUCTION

The First Congress enacted the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, to avert diplomatic strife by conferring jurisdiction on U.S. courts to hear tort claims asserted by aliens for violations of international law. Dormant for nearly two centuries, the ATS was revived over the past four decades and is now invoked frequently by foreign plaintiffs against U.S. businesses with multinational operations for asserted human-rights violations occurring overseas.

Because it is only a jurisdictional statute, the ATS has required this Court to define through "federal common law" the causes of action that courts may hear. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004). Given the separation-of-powers concerns arising from judicial implication of any cause of action—and the foreign-policy sensitivities inherent in doing so by reference to international law—this Court has required "great caution" before recognizing causes of action beyond the "very limited" category envisioned by the First Congress. *Id.* at 720, 728. And while the Court has left the door slightly "ajar" to potential new causes of action, *id.* at 729, it has steadily closed that door in recent decisions by limiting the ATS's extraterritorial reach and excluding foreign corporations as defendants, *see Nestlé USA, Inc. v. Doe*, 593 U.S. 628 (2021); *Jesner v. Arab Bank, PLC*, 584 U.S. 241 (2018); *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013).

As this case demonstrates, however, the lower courts have left the ATS door too far ajar, particularly when it comes to aiding-and-abetting liability. Here, respondents—almost all foreign plaintiffs—brought claims under the ATS against petitioner Cisco

Systems, Inc. (a U.S. company) and two of its executives for supposedly aiding and abetting Chinese government officials' abuses of Falun Gong adherents in China. The crux of respondents' claims—also asserted against the executives under the Torture Victim Protection Act ("TVPA"), 28 U.S.C. § 1350 note—is that petitioners made lawful sales of internet networking equipment to Chinese government agencies allegedly knowing that Chinese officials would use the equipment to violate international law. The district court rightly dismissed the suit, but a divided Ninth Circuit panel reinstated it—provoking seven votes dissenting from denial of rehearing en banc—because the majority saw "no prudential reason to decline to recognize aiding or abetting liability" under the ATS or the TVPA "or to bar this particular action from proceeding." App. 30a.

This case provides the Court with an ideal vehicle to address three interrelated questions central to modern ATS and TVPA litigation: (1) the availability of aiding-and-abetting claims under the ATS; (2) the *mens rea* standard applicable to any such claims; and (3) the availability of aiding-and-abetting liability under the TVPA. Each of those questions is exceptionally important, cleanly decided below, and worthy of this Court's prompt resolution.

First, the Court should decide whether judicially-implied aiding-and-abetting causes of action can be asserted under the ATS—a question that arises in most ATS cases and that the United States has expressly urged this Court to resolve. *See* U.S. Invitation Br. 7, 13-18, *Nestlé, supra* (No. 19-416) (May 26, 2020); U.S. Cert. Amicus Br. 6, 8-11, *American Isuzu Motors, Inc. v. Ntsebeza,* 553 U.S. 1028 (2008) (No. 07-

919) (Feb. 11, 2008). The answer is no. Judicial implication of *any* cause of action under the ATS beyond the three contemplated by the First Congress (violation of safe conducts, infringement of the rights of ambassadors, and piracy) is improper given that creating causes of action is a legislative endeavor and that foreign-policy considerations categorically weigh against judicial innovation in the ATS context. *See Nestlé*, 593 U.S. at 638 (plurality op.); *id.* at 643-44 (Gorsuch, J. concurring). And even if courts may extend the three original torts to their close analogs, the claims here are not even remotely analogous.

Moreover, judicial implication of private aiding-and-abetting liability under the ATS is foreclosed by this Court's instruction against implying such liability in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994).

And at a minimum, the need for caution in implying ATS causes of action is especially acute in this case because respondents' aiding-and-abetting claims require a finding that Chinese government officials violated international law on Chinese soil and that Cisco was barred from making sales to China that Congress and the Commerce Department had deemed lawful. Such a fraught determination properly rests with the political branches rather than the courts.

Second, if the Court decides that ATS aiding-and-abetting claims are cognizable, it should resolve the *mens rea* standard applicable to such claims—a question subject to an acknowledged circuit conflict. App. 48a-49a & n.16; *Nestlé*, 593 U.S. at 657-58 (Alito, J., dissenting). The knowledge standard that the Ninth Circuit adopted for ATS aiding-and-abetting liability cannot be reconciled with the better-reasoned

decisions on the other side of the circuit split adopting a purpose standard. *See Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 259 (2d Cir. 2009); *Aziz v. Alcolac, Inc.*, 658 F.3d 388, 400-01 (4th Cir. 2011).

Third, the Court should decide whether the TVPA permits aiding-and-abetting liability. TVPA and ATS claims are often asserted in tandem, and this Court has looked to the TVPA in interpreting the scope of the ATS. *See, e.g.*, *Jesner*, 584 U.S. at 265-67; *Kiobel*, 569 U.S. at 117. Resolving the availability of aiding-and-abetting claims under the two statutes together therefore makes sense, and *Central Bank*'s caution against judicial implication of civil aiding-and-abetting liability dictates the answer to both. *See Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 87 (D.C. Cir. 2011) (Kavanaugh, J., dissenting in part). Barring judicially-implied aiding-and-abetting liability under the TVPA would also ensure that plaintiffs cannot circumvent this Court's limitations on ATS claims by simply repleading those claims under the TVPA.

The Court should grant this petition to decide those significant and recurring questions, all of which have exceptional importance for the U.S. business community and the Nation's separation of powers and foreign policy. At a minimum, the Court should solicit the views of the United States given the separation-of-powers and foreign-policy issues presented and the government's previously expressed interest in their resolution.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-94a) is reported at 73 F.4th 700. The order of the court of

appeals denying panel rehearing and rehearing en banc, along with statements respecting that order and dissenting from the denial of en banc review (App. 95a-134a), are reported at 113 F.4th 1230. The opinion of the district court (App. 135a-153a) is reported at 66 F. Supp. 3d 1239. The unpublished opinion of the district court denying reconsideration (App. 154a-166a) is available at 2015 WL 5118004.

JURISDICTION

The judgment of the court of appeals was entered on July 7, 2023. Rehearing was denied on September 4, 2024. On November 6, 2024, Justice Kagan extended the time to file a petition for a writ of certiorari to January 31, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The ATS provides: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350.

The TVPA provides in relevant part: "An individual who, under actual or apparent authority, or color of law, of any foreign nation— … subjects an individual to torture shall, in a civil action, be liable for damages to that individual." *Id.* note § 2(a)(1); *see id.* § 2(a)(2) (same as to "extrajudicial killing").

STATEMENT

A. Legal Background

1. Enacted as part of the Judiciary Act of 1789, the ATS provides that federal district courts "shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations

or a treaty of the United States." 28 U.S.C. § 1350. As its text indicates and this Court has confirmed, "the ATS is a jurisdictional statute creating no new causes of action." *Sosa*, 542 U.S. at 724. Any cause of action asserted under the ATS therefore must be created separately by Congress or implied by courts as an exercise of "federal common law." *Id.* at 732.

"In more than 200 years, Congress has established just one" cause of action for aliens harmed by a violation of international law. *Nestlé*, 593 U.S. at 635 (plurality op.). It did so by enacting the TVPA, which—as described further below—"creates a private right of action for victims of torture and extrajudicial killings in violation of international law." *Id.* This Court has "assume[d] that the First Congress understood that the district courts would recognize private causes of action for" three "torts in violation of the law of nations" recognized at that time: "violation of safe conducts, infringement of the rights of ambassadors, and piracy." *Sosa*, 542 U.S. at 724. The Court has "found no basis to suspect Congress had any examples in mind beyond those." *Id.*

The Court has outlined a two-step test for recognizing potential new causes of action that can be asserted under the ATS. *First*, the alleged international-law violation must be "of a norm that is specific, universal, and obligatory." *Jesner*, 584 U.S. at 257-58 (quoting *Sosa*, 542 U.S. at 732). *Second*, even if such an international-law norm exists, a court must separately determine whether allowing a case "to proceed under the ATS is a proper exercise of judicial discretion, or instead whether caution requires the political branches to grant specific authority" for the cause of action. *Id.* at 258. In applying the second step, "[t]he

potential implications for the foreign relations of the United States of recognizing such causes should make courts particularly wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs." *Id.* (quoting *Sosa*, 542 U.S. at 727). This Court has "never created a cause of action under the ATS" pursuant to that test. *Nestlé*, 593 U.S. at 635 (plurality op.).

2. Enacted in 1992, the TVPA creates a civil cause of action for damages against "[a]n individual who, under actual or apparent authority, or color of law, of any foreign nation— … subjects an individual to torture" or "extrajudicial killing." 28 U.S.C. § 1350 note § 2(a)(1)-(2). Congress limited the category of plaintiffs who can assert TVPA claims to "natural persons alone." *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 455 (2012). The TVPA does not expressly provide a cause of action for aiding and abetting.

3. Following the Tiananmen Square protests of 1989, Congress and the U.S. Department of Commerce balanced human-rights concerns with the importance of ongoing trade by enacting the Foreign Relations Authorization Act for Fiscal Years 1990 and 1991. Pub. L. No. 101-246, 104 Stat. 15 (1990). As relevant here, the Act prohibits the export of certain crime-control equipment to the People's Republic of China ("PRC"). *Id.* § 902(a)(4), 104 Stat. at 83. The Commerce Department promulgated detailed export regulations under the Act, including a list of restricted crime-control equipment. At the times relevant here, the regulations limited the export of specified weapons and law enforcement tools to the PRC for crime-control purposes, but that list did not include software and technology products. *See* 15 C.F.R. § 742.7 (2010).

B. District Court Proceedings

1. Respondents are 12 Chinese nationals and one U.S. citizen who adhere to Falun Gong, a religious movement that the PRC declared illegal under Chinese law in 1999. App. 8a-10a, 14a-15a. Respondents filed suit in 2011 in the U.S. District Court for the Northern District of California alleging that Chinese Communist Party ("CCP") officials and law enforcement officers in the Chinese government's Ministry of Public Security had subjected them to torture, forced labor, beatings and other asserted international-law violations in China. App. 15a-16a.

Respondents did not sue the Chinese government or party officials who allegedly harmed them. They sued Cisco and two of its former executives: then-Chief Executive Officer John Chambers and then-Vice President of Cisco China Fredy Cheung. App. 15a-16a, 21a, 71a, 136a. Respondents alleged that, by selling networking equipment and related technology to the PRC, petitioners supposedly aided and abetted Chinese security officials' international-law violations against Chinese nationals who practiced Falun Gong in China. App. 11a-15a, 45a-48a, 72a-73a, 80a-82a. Based on those allegations, respondents asserted aiding-and-abetting causes of action against all petitioners under the ATS and against the individual petitioners under the TVPA. App. 14a-16a.

2. In 2014, the district court (Davila, J.) dismissed the complaint with prejudice. App. 135a-153a. The court ruled that the ATS allegations were impermissibly extraterritorial under this Court's decision in *Kiobel*. App. 143a-148a. The court ruled in the alternative that respondents failed to adequately allege either the *mens rea* or *actus reus* elements of their

aiding-and-abetting claims asserted under the ATS. App. 150a-152a. The court dismissed the TVPA claims on the ground that aiding-and-abetting liability is not available under that statute. App. 149a (citing *Bowoto v. Chevron Corp.*, 621 F.3d 1116, 1128 (9th Cir. 2010)).

C. Court Of Appeals Proceedings

1. Following multiple abeyances, the replacement of a deceased panel member, supplemental briefs in light of *Jesner* and *Nestlé*, and two oral arguments, a divided Ninth Circuit panel in July 2023 reversed the district court's dismissal of the ATS claims against Cisco and the TVPA claims against the individual executives. App. 1a-84a.[1]

a. The panel majority (Berzon, J., joined by Tashima, J.) first concluded that the ATS allows judicial implication of a private right of action for aiding and abetting an alleged international-law violation. App. 23a-24a. The majority found under *Sosa* step one that "aiding and abetting liability is a norm of customary international law with sufficient definition and universality to establish liability under the ATS." App. 24a; *see* App. 25a-27a. The majority then held that "recognizing aiding and abetting liability does not raise separation-of-powers or foreign policy concerns under *Sosa* step two." App. 24a; *see* App. 27a-38a.

The majority acknowledged this Court's refusal to create an implied cause of action for aiding and abetting in *Central Bank* but deemed that reasoning "not apposite to the question whether the ATS provides

---

[1] The panel affirmed the dismissal of the ATS claims against the individual executives. App. 70a.

accomplice liability," which it stated is "generally determined under international law." App. 34a-35a. The majority likewise declined to place any weight on "Congress and the Executive's decision not to regulate or prohibit generally the export of computer networking software" to China. App. 38a; *see* App. 35a-38a. And the majority relied heavily on the absence of an amicus brief by the United States, even though it had not invited the government to present its views. App. 32a-34a.

b. The panel majority next addressed the *mens rea* standard applicable to aiding-and-abetting claims under the ATS, concluding that they require only "knowing assistance" rather than a purpose to facilitate an international-law violation. App. 39a, 48a-58a. The majority acknowledged the existence of a circuit conflict on the issue, and expressly disagreed with the Second and Fourth Circuits' adoption of a purpose standard. App. 48a-49a, 52a-58a.

c. Finally, the panel allowed respondents' aiding-and-abetting claims against the individual petitioners to proceed under the TVPA. App. 73a-82a. While recognizing that the TVPA does not expressly permit aiding-and-abetting liability, the panel concluded that the statute's creation of liability for a defendant who "subjects an individual to torture" encompasses aiding and abetting. *Id.* (quoting 28 U.S.C. § 1350 note § 2(a)). The panel rejected application of *Central Bank*, reasoning that this Court there "declined to create a presumption favoring the inclusion of aiding and abetting liability in a civil statute" that does not

expressly provide for it, but "did not adopt the opposite presumption." App. 79a.[2]

d. Judge Christen dissented in part, identifying "several sound reasons to decline to recognize a cause of action" under the ATS "for aiding and abetting the acts alleged in [respondents'] complaint." App. 88a; *see* App. 85a-94a. "Most saliently," such aiding-and-abetting liability "would necessarily require a showing that the [CCP] and Ministry of Public Security violated international law with respect to the Chinese-national Plaintiffs"—a determination that "could have serious ramifications for Sino-American relations, fraught as they already are." App. 87a, 89a. Judge Christen was also "deeply concerned about the practical consequences of allowing [respondents'] claims to go forward without input from the political branches." App. 88a-89a. She accordingly would have solicited the views of the United States, as courts have done in many prior ATS cases. App. 90a-94a (citing examples).

2. Petitioners timely sought panel rehearing and rehearing en banc. The panel denied rehearing over Judge Christen's dissent, and the court denied rehearing en banc over her dissent and the dissent of six other judges. App. 97a, 108a.

---

[2] The panel rejected a number of other arguments asserted by petitioners, including that the alleged conduct underlying the ATS claims is impermissibly extraterritorial, that the ATS does not apply to corporations, that respondents failed to allege sufficient conduct or scienter for either the ATS and TVPA claims, and that justiciability doctrines bar the claims. *See* App. 21a, 34a n.12, 39a-48a, 58a-73a, 80a-82a. Those arguments are preserved for any potential further proceedings.

a. Judge Berzon issued a statement (joined by Tashima and Paez, JJ.) reiterating the reasoning of the panel majority. App. 97a-107a. The statement added that the government had not filed an unsolicited amicus brief supporting en banc rehearing, which Judge Berzon treated as supposed confirmation that "the foreign policy implications here are not of sufficient concern to the United States government to trigger its involvement." App. 106a.

b. Judge Bumatay (joined by Callahan, Ikuta, Bennett, R. Nelson, and VanDyke, JJ.) issued an opinion dissenting from denial of rehearing en banc. App. 108a-134a. He explained that the court had committed "three main errors in refusing to reconsider this case en banc." App. 110a.

First, Judge Bumatay explained that the panel majority erred in "fail[ing] to restrict ATS liability to causes of action comparable to historically recognized torts"—particularly in light of *Central Bank*'s instruction against implying aiding-and-abetting liability from statutory silence. App. 110a-111a, 123a-126a.

Second, Judge Bumatay explained that the panel majority "violated the separation of powers in pronouncing a new cause of action … even though Congress has continued to legislate in this very area"—including through the TVPA, which "did *not* prohibit aiding and abetting." App. 111a-112a, 126a-130a.

Third, Judge Bumatay explained that the panel majority "ignored serious foreign-policy concerns" and "permit[ted] federal courts to intrude in the delicate relations with another world superpower" by allowing the claims to proceed despite the presence of "foreign policy concerns as obvious as they are serious." App.

111a-112a, 130a-134a. He added that it was "baffling" that the majority had "expressly declined to request the State Department's views" given both the foreign-policy implications and the fact that "the Government has long opposed the recognition of aiding and abetting liability under the ATS." App. 133a-134a.

REASONS FOR GRANTING THE PETITION

As the deep divisions below indicate, whether the ATS permits aiding-and-abetting claims is among the most significant questions under that statute. The United States has expressly urged this Court to resolve that question by applying *Central Bank*'s instruction against judicially-implied aiding-and-abetting liability, but the Court has not had occasion to reach that question because it has rejected the ATS claims in its earlier cases on other grounds. This case is arguably the best vehicle the Court has encountered to decide the issue because it so vividly illustrates the stakes. At bottom, respondents ask a federal court to conclude—with no direction from the political branches—that they can pursue a claim requiring a finding that Chinese government officials violated international law through their treatment of their own people on their own soil. As emphasized in the multiple dissents below, it is difficult to imagine a question less suited to judicial resolution.

In addition, this case presents an acknowledged circuit conflict on what *mens rea* standard applies to any ATS aiding-and-abetting cause of action if the Court finds such actions cognizable. And the case includes the related question whether judicially-implied aiding-and-abetting liability is available under the TVPA—a claim that is often asserted in tandem with aiding and abetting under the ATS and should be

rejected for many of the same reasons, including the reasoning of *Central Bank*.

This Court should grant the petition to decide those exceptionally important and cleanly presented questions. At a minimum, the Court should solicit the views of the United States given its institutional interests in ATS and TVPA litigation and the highly sensitive foreign-policy issues implicated by this suit.

I. THE COURT SHOULD RESOLVE WHETHER AIDING-AND-ABETTING LIABILITY IS AVAILABLE UNDER THE ATS

The Court should first grant review to decide whether federal courts may imply a cause of action for aiding and abetting under the ATS. Multiple lines of this Court's precedent dictate that they may not. The divided Ninth Circuit panel's decision to nevertheless allow respondents' ATS claims to proceed is deeply mistaken. And this case is an ideal vehicle to resolve the question, which arises in many ATS suits and has been recognized as certworthy by the United States.

A. The Decision Below Is Wrong And Conflicts With This Court's Precedents

The Ninth Circuit's recognition of a cause of action for aiding and abetting under the ATS is wrong and conflicts with this Court's precedents for at least three reasons. *First*, this Court's decisions make clear that judicial implication of a cause of action is improper if there is *any* reason to believe that Congress should specify the cause of action, and there is *always* a reason for that belief under the ATS. *Second*, as the Court held in *Central Bank*, there are particular reasons to defer to Congress before implying aiding-and-abetting liability. *Third*, judicial reluctance to imply

aiding-and-abetting liability should reach its zenith where, as here, it would implicate the conduct of foreign governments—thereby provoking the international friction that the ATS was adopted to alleviate.

1. As a threshold matter, an aiding-an-abetting claim is not available under the ATS because *no* claims are available under the ATS beyond the three recognized at the time of its adoption and others subsequently created by Congress. *See Nestlé*, 593 U.S. at 637 (plurality op.).

In *Sosa*, this Court held that the First Congress in enacting the ATS "had ... in mind" only "three primary offenses" against the law of nations recognized by Blackstone: "violation of safe conducts, infringement of the rights of ambassadors, and piracy." 342 U.S. at 724. In declining (over Justice Scalia's dissent) to fully "close the door to further independent judicial recognition of" causes of action that could satisfy the two-step test that the Court defined, it indicated that no "development" in the law had "categorically precluded federal courts from recognizing" any additional claims. *Id.* at 725, 729.

But the development in the law that *Sosa* contemplated might occur has now occurred. In a recent line of cases addressing whether to judicially imply causes of action, this Court has "c[o]me to appreciate more fully the tension between this practice and the Constitution's separation of legislative and judicial power." *Hernandez v. Mesa*, 589 U.S. 93, 100 (2020); *see Ziglar v. Abbasi*, 582 U.S. 120, 135-36 (2017). In the most recent decision in that line, the Court stated emphatically that, "[a]t bottom, creating a cause of action is a legislative endeavor." *Egbert v. Boule*, 596 U.S. 482, 491 (2022). Thus, a court must refrain from creating

such a remedy if "there is *any* rational reason (even one) to think that *Congress* is better suited to" decide whether to create a cause of action." *Id.* at 496.

There are multiple such rational reasons here. In fact, the "separation-of-powers concerns that counsel against courts creating private rights of action apply with particular force in the context of the ATS." *Jesner*, 584 U.S. at 264-65. That is because the "political branches, not the Judiciary, have the responsibility and institutional capacity to weigh foreign-policy concerns," and those concerns are necessarily implicated by the ATS given its reference to the law of nations. *Id.* at 265. A majority of this Court has accordingly acknowledged that, "[i]n light of the foreign-policy and separation-of-powers concerns inherent in ATS litigation, there is an argument that a proper application of *Sosa* would preclude courts from ever recognizing *any* new causes of action under the ATS." *Id.* at 265 (emphasis added).

As multiple Justices have expressly explained, "that argument is correct." *Id.* at 283 (Gorsuch, J., concurring). Because "creating a cause of action to enforce international law beyond" the "three historical torts" recognized in *Sosa* "*invariably* gives rise to foreign-policy concerns," there "will *always* be a sound reason for courts not to create a cause of action" for additional violations of international law. *Nestlé*, 593 U.S. at 638 (plurality op.) (emphases added); *see id.* at 645 (Gorsuch, J., concurring); *see also id.* at 658 (Alito, J., dissenting) (recognizing the "strong arguments that federal courts should *never* recognize new claims under the ATS") (emphasis added).

This Court should follow the logic of its precedents and squarely hold that no new causes of action under

the ATS are available through judicial implication—including claims of aiding and abetting the international-law violations that respondents assert. That result is fully consistent with *Sosa*, *see id.* at 635, 640 (plurality op.), but if the Court were to conclude otherwise, it should "reexamin[e]" *Sosa* to the extent it holds to the contrary, *id.* at 635.

2. In any event, even accepting that the ATS permits judicial recognition of causes of action for the three "historical paradigms" as well as a "narrow class" of modern analogs, *Sosa*, 542 U.S. at 729, 732, implying aiding-and-abetting causes of action is still impermissible. That conclusion follows directly from *Central Bank*, where this Court "made crystal clear that there can be no civil aiding and abetting liability unless Congress expressly provides for it." *Exxon*, 654 F.3d at 87 (Kavanaugh, J., dissenting in part). Because Congress has not expressly provided for aiding and abetting liability under the ATS, "*Central Bank* controls" and forecloses judicial implication of ATS aiding-and-abetting causes of action. App. 125a (Bumatay, J., dissenting).

In *Central Bank*, the Court addressed whether a private plaintiff could bring a civil action for aiding and abetting securities fraud under the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq*. 511 U.S. at 167. The Court explained "that the statutory text controls the definition of conduct covered" by the Act and "'does not in terms mention aiding and abetting.'" *Id.* at 175 (citation omitted). The Court added that any argument for implied aiding-and-abetting liability was especially weak because Congress knows "how to impose aiding and abetting liability" but Congress neither did so in the Act nor "enacted a general civil

aiding and abetting statute." *Id.* at 176, 182. As the Court summarized, "when Congress enacts a statute under which a person may sue and recover damages from a private defendant for the defendant's violation of some statutory norm, there is no general presumption that the plaintiff may also sue aiders and abettors." *Id*. at 182. Unless there is some affirmative indication that Congress means to create aiding-and-abetting liability, "statutory silence" is not "tantamount to an implicit congressional intent to impose … aiding and abetting liability." *Id*. at 185.

Everything that was true of the Exchange Act in *Central Bank* is true of the ATS. As in *Central Bank*, the text of ATS does not provide for aiding-and-abetting liability. As in *Central Bank*, there is no generally applicable civil aiding-and-abetting statute. As in *Central Bank*, Congress has shown that it can provide for aiding-and-abetting liability when it wants to do so; indeed, the First Congress—the same one that enacted the ATS—made aiding and abetting piracy a crime in the Crimes Act of 1790, ch. 9, § 10, 1 Stat. 1112, 1114 (1790). Thus, as in *Central Bank*, there is no basis to infer congressional intent to create such aiding-and-abetting liability under the ATS.

That straightforward position has long been embraced by the United States, which has particular interest and expertise in construing the ATS. As far back as 2008, the government has argued to this Court that "aiding and abetting is not cognizable under the ATS" in light of *Central Bank*. U.S. Merits Amicus Br. 8, *Nestlé, supra* (No. 19-416) (Sept. 8, 2020); *see* U.S. Cert. Amicus Br. 8-11, *American Isuzu*, *supra*. The United States has never retreated from

that position, which correctly applies this Court's precedents and forecloses respondents' ATS claims.

The panel majority concluded that *Central Bank* is "not apposite" because ATS liability "is generally determined under international law." App. 35a. But that is wrong and flatly contradicts this Court's precedents. Under *Sosa*'s two-step test, a court can recognize an ATS cause of action only if it *both* rests on a universally recognized international-law norm *and* reflects "a proper exercise of judicial discretion." *Jesner*, 584 U.S. at 258 (citing *Sosa*, 542 U.S. at 732-33). As the en banc dissenters correctly explained, the majority erred in simply blinking past *Sosa*'s second step. App. 125a.

3. At a minimum, judicial implication of aiding-and-abetting liability under the ATS is improper here, where the claims raise profound foreign-policy and separation-of-powers concerns. To begin with, the ATS claims here would require plaintiffs to establish a primary violation of international law by a foreign state against its own people. *See* App. 87a-90a (Christen, J., dissenting); App. 130a-132a (Bumatay, J., dissenting). Such a claim could not be further from the original intent of the ATS.

To the contrary, the ATS was adopted "to promote harmony in international relations by ensuring foreign plaintiffs a remedy for international-law violations in circumstances where the absence of such a remedy might provoke foreign nations to hold the United States accountable." *Jesner*, 584 U.S. at 270. Specifically, the young Republic was "embarrassed by its potential inability to provide judicial relief to foreign officials injured in the United States" and adopted the ATS as a means of "avoiding diplomatic

strife" from the absence of such a forum. *Kiobel*, 569 U.S. at 123-24.

Using the ATS to convert U.S. courts into a forum for suits targeting the conduct of foreign sovereigns would have precisely the "opposite" of the statute's intended effect. *Jesner*, 584 U.S. at 270. Indeed, *Sosa* expressly warned against using the ATS to permit suits that "claim a limit on the power of foreign governments over their own citizens, and to hold that a foreign government or its agent has transgressed those limits." 542 U.S. at 727; *see Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 813 (D.C. Cir. 1984) (Bork, J., concurring) (doubting that the ATS should be read to require federal courts to "sit in judgment of the conduct of foreign officials in their own countries with respect to their own citizens").

That is precisely what suits like this one entail. Civil "aiding and abetting is inherently a rule of secondary liability" that applies "only when someone commits" a primary violation. *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 494 (2023). The panel majority recognized as much, explaining that respondents' "allegations of aiding and abetting require 'a predicate offence committed by *someone other than*'" petitioners. App. 71a (emphasis added; citation omitted). That "someone," according to respondents, is the PRC, which allegedly used its law-enforcement personnel to violate the rights of its own people. *Id.* As Judge Christen's panel dissent aptly explained, "a finding of liability in this case would necessarily require a showing that the [CCP] and Ministry of Public Security violated international law with respect to the Chinese-national Plaintiffs." App. 89a; *see* App. 130a-132a (Bumatay, J., dissenting). Whatever is foreclosed by

this Court's precedents requiring "judicial caution" to avoid "'triggering ... serious foreign policy consequences'" under the ATS, it must include suits that put a foreign government's conduct on trial in U.S. courts without any directive from the political branches. *Jesner*, 584 U.S. at 272 (quoting *Kiobel*, 569 U.S. at 124).

The panel majority suggested that respondents' suit does not create foreign-policy concerns because it names only "nongovernmental" defendants. App. 30a-31a. That makes no sense. Even assuming that diplomatic relations with China might be *even more* strained if federal courts were to hold Chinese government officials *directly* liable for committing international-law violations, it hardly follows that there would be *no* foreign-policy consequences from a suit requiring the same highly sensitive finding through an aiding-an-abetting claim against other defendants. After all, *Jesner* relied on foreign-policy concerns to preclude recognition of ATS claims against foreign corporations, even though those claims were likewise not asserted against foreign governments directly. 584 U.S. at 270-72. If anything, "[t]he concerns the Court expressed in *Jesner* about holding a foreign corporation liable apply tenfold to a case that hinges on whether a foreign government's treatment of its own nationals violated international law." App. 90a (Christen, J., dissenting).

Apart from those foreign-policy concerns, the decision below also raises significant separation-of-powers concerns by disregarding the considered judgment of Congress and the Executive Branch in setting U.S. trade policy with China. When Cisco began selling internet networking products to Chinese law-

enforcement authorities in 2001, Congress and the Commerce Department had carefully balanced the importance of ongoing trade with China against human-rights concerns after Tiananmen Square. As discussed above, the regulations controlling exports to China for crime-control purposes at that time prohibited some law-enforcement products but *not* computer networking hardware and software. *See* p. 7, *supra*.

The panel majority waved away that carefully balanced congressional and executive regulatory scheme, deeming it not "comprehensive and direct" enough to displace judicial power to determine that petitioners' conduct violated international law. App. 37a. But as the en banc dissent correctly observes, "this turns the separation of powers on its head," for even if "the political branches haven't comprehensively regulated Cisco's products and services," that does not mean that judges "may trade positions with our elected officials and legislate in the margins." App. 130a. The correctness of the dissent's reasoning has only grown clearer as the political branches have demonstrated their ability to address the United States' relationship with China through targeted legislative and executive measures. *See, e.g.*, *TikTok Inc. v. Garland*, 604 U.S. __, 2025 WL 222571, at *2-3 (U.S. Jan. 17, 2025).

B. This Case Provides An Ideal Vehicle For Reviewing This Exceptionally Important And Recurring Question

This case presents an ideal vehicle for this Court to resolve the exceptionally important and recurring question whether aiding-and-abetting claims are cognizable under the ATS. The question was clearly presented and squarely decided below. App. 23a-38a. And the United States has repeatedly urged this

Court to grant review in a case that will allow it to provide the answer. *See* U.S. Invitation Br. 13-18, *Nestlé, supra*; U.S. Cert. Amicus Br. i, 23, *American Isuzu*, *supra*. This is that case.

This case illustrates that the Court's previously announced guardrails have failed to stop ATS suits from disrupting the separation of powers and undermining the primacy of the political branches in setting U.S. foreign policy. In particular, the record here demonstrates that plaintiffs have found ways to plead around this Court's extraterritoriality holdings in *Nestlé* and *Kiobel* by converting their allegations of foreign human-rights violations to allegations of domestic conduct that arguably are less generic than the allegations this Court found inadequate in *Nestlé*. That approach highlights the need for this Court's review of the aiding-and-abetting question.

Moreover, the potential adverse consequences for the Nation's business community of unchecked ATS aiding-and-abetting claims are significant. U.S. companies operate in global markets and their supply chains in a wide range of industries—including technology, manufacturing, mining, oil and gas extraction, consumer products, pharmaceuticals, agriculture, financial services, chemicals, automotive, and defense—reach into a host of countries with varied human rights records under their domestic laws. ATS litigation accusing U.S. companies of aiding and abetting those governments' human-rights violations against their own citizens has the potential to embroil large swaths of the Nation's economy in complex litigation that harms the reputation of leading U.S. companies and affects foreign trade and investment. *See,*

e.g., Amicus Brief of U.S. Chamber of Commerce et al. 3-5, 24-27, *Nestlé, supra* (Sept. 8, 2020).

In addition, ATS litigation in the federal courts remains prolific, active, and prolonged, notwithstanding this Court's recent ATS decisions. This case, for example, is now 15 years old and will require discovery from witnesses about now 20-year-old technologies if allowed to proceed. As a recent empirical study shows, the Court's decision in *Sosa* "did little to halt the rise in ATS suits," and the federal courts had, as of 2022, "issued a total of 531 published opinions" in "300 separate lines of [ATS] cases," almost all in the past few decades. 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). And while those suits have inflicted burdensome costs on defendants and threatened to inflame foreign-policy tensions, they have yielded only paltry benefits for plaintiffs; according to the study, "only twenty-five cases have resulted in monetary judgments that were not subsequently overturned." *Id*. at 1250. That lopsided ledger further supports resolving the aiding-and-abetting question in this case.

II. THE COURT SHOULD RESOLVE THE *MENS REA* APPLICABLE TO ANY AVAILABLE ATS AIDING-AND-ABETTING LIABILITY

If the ATS does permit aiding-and-abetting claims, the Court should resolve what *mens rea* standard applies to such claims. The Ninth Circuit acknowledged that its decision is part of a square circuit conflict on that question. App. 48a-49a & n.16. And the answer

is exceptionally important because it is often outcome-determinative in ATS litigation as a practical matter.[3]

A. The Decision Below Is Wrong And Squarely Conflicts With The Decisions Of Other Circuits

The question of which *mens rea* standard applies to ATS aiding-and abetting claims—purpose or mere knowledge—has squarely divided the lower courts. *Id.*; *see Nestlé*, 593 U.S. at 658 (Alito, J., dissenting) (noting this conflict). The Second Circuit "hold[s] that the *mens rea* standard for aiding and abetting liability in ATS actions is *purpose* rather than knowledge alone." *Talisman*, 582 F.3d at 259 (emphasis added); *see Balintulo v. Ford Motor Co.*, 796 F.3d 160, 167 (2d Cir. 2015) (applying *Talisman*); *Mastafa v. Chevron Corp.*, 770 F.3d 170, 191-92 (2d Cir. 2014) (same). The Fourth Circuit "agree[s] with the Second Circuit that a purpose standard" applies. *Aziz*, 658 F.3d at 401. The decision below, in contrast, joins the Eleventh Circuit in adopting a *mens rea* standard of mere knowledge that an ATS defendant's actions will facilitate the primary tortfeasor's violation of international law. *See* App. 49a, 58a; *Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1158 (11th Cir. 2005). Only this Court can resolve this intractable split.

This Court's review is particularly warranted because the decision below falls on the wrong side of the circuit split. Under *Sosa*, a cognizable ATS claim must have "definite content and acceptance among civilized nations" that is equivalent to the widespread

---

[3] If the Court were to agree with petitioners on the first question presented, it would need not address this question presented.

consensus that characterized the "historical paradigms familiar when [the ATS] was enacted." 542 U.S. at 732. As the Second and Fourth Circuits have correctly held, only a purpose standard has gained such near-universal acceptance. *Aziz*, 658 F.3d at 400-01 (citing *Talisman*, 582 F.3d at 259); *see Khulumani v. Barclay Nat'l Bank Ltd.*, 504 F.3d 254, 276-77 (2d Cir. 2007) (Katzmann, J., concurring).

The most authoritative international-law sources confirm as much. Most notably, the Rome Statute of the International Criminal Court ("Rome Statute"), 37 I.L.M. 999 (1998)—which has been signed by 125 countries[4]—provides for criminal liability where a person "*[f]or the purpose of facilitating the commission of such a crime*, aids, abets or otherwise assists in its commission or its attempted commission." Art. 25(3)(c) (emphasis added); *see Talisman*, 582 F.3d at 258-59 (relying on the Rome Statute in adopting purpose standard); *Aziz*, 658 F.3d at 399-401 (same).

The panel majority below relied instead on its own interpretation of certain decisions by the Nuremberg tribunals and international criminal tribunals for the former Yugoslavia and Sierra Leone. App. 49a-52a. But "international law at the time of the Nuremberg trials recognized aiding and abetting liability only for purposeful conduct," and that "purpose standard has been largely upheld in the modern era, with only sporadic forays in the direction of a knowledge standard." *Talisman*, 582 F.3d at 259. "Only a purpose standard, therefore, has the requisite 'acceptance among

---

[4] https://asp.icc-cpi.int/states-parties (last visited Jan. 31, 2025).

civilized nations' … for application in an action under the ATS." *Id.* (quoting *Sosa*, 542 U.S. at 732).[5]

B. The *Mens Rea* Standard Has Exceptional Practical Importance And Requires National Uniformity

The recognized circuit conflict on the *mens rea* standard applicable to an ATS aiding-and-abetting claims provides a paradigmatic basis for this Court's review. Assuming ATS aiding-and-abetting suits are cognizable at all, ATS defendants should not face differing *mens rea* standards if sued in San Jose, Miami, or New York. The need for a uniform nationwide *mens rea* standard is particularly acute for corporate defendants like Cisco that operate in multistate and multinational markets. Absent this Court's resolution, corporations will face conflicting ATS *mens rea* standards for the same alleged conduct based on a plaintiff's choice of forum—effectively inviting plaintiffs to shop for the most lenient standard.

Resolution of the circuit split on *mens rea* for ATS aiding and abetting is all the more important because the choice between knowledge and purpose is often case-dispositive at the pleading stage. It is far more difficult to plausibly allege that a defendant acted with the specific intent to advance a foreign government's violation of international law than to allege

---

[5] There is also no reason to suppose that knowledge rather than purpose is the proper standard for federal courts to adopt under federal common law at *Sosa* step two. *See, e.g.*, Model Penal Code § 2.06(3)(a) ("[a] person is an accomplice of another person in the commission of an offense if" he solicits or aids that offense "with the *purpose* of promoting or facilitating the commission of the offense") (emphasis added).

that a defendant acted with mere knowledge of possible assistance to the foreign government's actions. For example, the Second Circuit affirmed dismissal of an ATS suit against IBM for selling computer technology to South Africa because the plaintiffs "plausibly allege[d], at most, that the company acted with knowledge that its acts might facilitate th[at] government's apartheid policies." *Balintulo*, 796 F.3d at 170. The choice of *mens rea* standard thus may make all the difference in determining whether an ATS aiding-and-abetting claim is dismissed or must proceed to burdensome and lengthy discovery.

It is no obstacle to this Court's review that the panel majority stated in a footnote that it "would likely reach the same conclusion" under a purpose standard. App. 62a n.22. The panel's adoption of a knowledge standard in a precedential opinion creates the law of the circuit in ATS cases going forward, regardless of speculative dicta in this case. Moreover, the "purpose" standard invoked by the panel majority *itself* conflicts with the law of the Second and Fourth Circuits. Those courts define "purpose" as the "specific intent" to facilitate the alleged violation. *Aziz*, 658 F.3d at 400; *see Talisman*, 582 F.3d at 259. The panel majority, in contrast, relied on the Ninth Circuit's now-vacated decision in *Nestlé* to deem "purpose" satisfied by mere "support[]" of and "benefit[]" from the violation. App. 62a n.22 (citation omitted). Such a vague definition could not possibly satisfy the Second and Fourth Circuits' specific-intent standard. *See e.g.*, *Balintulo*, 796 F.3d at 170 (holding that plaintiffs did not "plausibly allege that, by developing hardware and software to collect innocuous population data, IBM's purpose was to denationalize black South Africans and further the aims of a brutal regime").

Accordingly, the panel majority's footnote cannot dissipate the circuit split.

III. THE COURT SHOULD RESOLVE WHETHER AIDING-AND-ABETTING LIABILITY IS AVAILABLE UNDER THE TVPA

Finally, the Court should grant certiorari to decide whether the TVPA permits a judicially-implied cause of action for aiding and abetting. That issue is closely related to the ATS aiding-and-abetting question discussed above, as ATS and TVPA claims are frequently asserted together and courts often consider the interplay between the two statutes in interpreting them. *See, e.g.*, *Jesner*, 584 U.S. at 265-67; *Kiobel*, 569 U.S. at 117. Like its decision on aiding-and-abetting liability under the ATS, the panel's decision on aiding-and-abetting liability under the TVPA contradicts this Court's decision in *Central Bank*. *See Exxon*, 654 F.3d at 87 (Kavanaugh, J., dissenting in part). It also misinterprets the text of the TVPA. And it invites a troubling end-run around this Court's ATS precedents through the repleading of foreclosed ATS claims against U.S. corporations as TVPA claims against senior corporate executives.

A. The Decision Below Is Wrong And Conflicts With This Court's Precedents

The TVPA provides liability for "[a]n individual" who "subjects an individual to torture … or … to extrajudicial killing." 28 U.S.C. § 1350 note §§ 2(a)(1)-(2). The terms "torture" and "extrajudicial killing" are defined within the statute. *Id.* §§ 3(a)-(b). There is no mention of aiding and abetting. Based on both this Court's reasoning in *Central Bank* and the plain meaning of the statutory text alone, the TVPA does

not create aiding-and-abetting liability. *See Exxon*, 654 F.3d at 58 (majority opinion) ("The authorities … that Congress can provide for aiding and abetting liability absent direct liability, do not support the inference that Congress so provided in the TVPA.").[6]

1. The Ninth Circuit's holding that the TVPA implicitly authorizes aiding-and-abetting claims directly conflicts with *Central Bank*. As explained above, *Central Bank* makes clear that courts may not imply private aiding-and-abetting liability absent explicit direction from Congress. 511 U.S. at 182. As then-Judge Kavanaugh explained, relying on *Central Bank*, "liability for aiding and abetting torture and extra-judicial killing does not exist under the TVPA." *Exxon*, 654 F.3d at 87. The six-judge dissent from denial of en banc review agreed, concluding that the TVPA "recognizes a cause of action for torture" but does "*not* prohibit aiding and abetting." App. 128a. The United States has also consistently stated in briefs to this Court that "[t]he TVPA does not provide for aiding-and-abetting liability." U.S. Merits Amicus Br. 25-26, *Nestlé, supra*. Well-reasoned district court decisions have read *Central Bank* the same way. *See, e.g.*, *Reynolds v. Higginbottom*, 2022 WL 864537, at *13-17 (N.D. Ill. Mar. 23, 2022) (dismissing TVPA aiding-and-abetting claim under *Central Bank* because "[n]othing in the text of the TVPA creates aiding and

---

[6] The D.C. Circuit's *Exxon* decision was vacated on other grounds after *Kiobel*, 527 Fed. Appx. 7 (D.C. Cir. 2013), but it remains persuasive evidence of the judicial disagreement on this issue. Indeed, the Ninth Circuit panel relied on *Exxon* multiple times. App. 27a, 33a, 35a, 39a-40a, 49a-50a, 52a-53a, 56a, 58a.

abetting liability"); *Sikhs for Just. v. Nath*, 893 F. Supp. 2d 598, 618 (S.D.N.Y. 2012) (similar).

2. Even apart from its conflict with *Central Bank*, the decision below contradicts the TVPA's text and structure. As noted, the TVPA imposes liability on a defendant who "*subjects* an individual to torture or … extrajudicial killing," 28 U.S.C. § 1350 note §§ 2(a)(1)-(2) (emphasis added). As a matter of ordinary meaning, that language does not create liability for a defendant who merely *facilitates* another's torture or extrajudicial killing. That reading follows from common sense and familiar understandings of accomplice liability: a bank robber might "subject" a teller to fear by pointing a gun at her, but no one would say the getaway driver "subjected" the teller to fear even if he aided and abetted commission of the robbery.

The Ninth Circuit suggested that Congress could have chosen the term "'tortures' or 'inflicts torture'" rather than "subjects … to torture" if it had meant to foreclose accomplice liability. App. 75a-76a. The court also relied on a dictionary definition to interpret "subjects" to torture to mean "in some respect *cause* another to undergo torture"—which the court deemed to encompass aiding and abetting. *Id.* But such linguistic legerdemain comes nowhere close to showing that Congress silently created aiding-and-abetting liability with its choice of the word "subjects." To the contrary, when Congress wants to provide a civil cause of action for aiding and abetting, it does so explicitly. *See, e.g.*, 18 U.S.C. § 2333(d)(2) (providing for civil liability against "any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed [a specified]

act of international terrorism"); *Twitter*, 598 U.S. at 483 (discussing adoption of that provision).

The Ninth Circuit's implication of aiding-and-abetting liability under the TVPA is also difficult to reconcile with this Court's text-based reading of the statute in *Mohamad*. 566 U.S. at 456. There, the "text of the TVPA convince[d the Court] that Congress did not extend liability to organizations," and the Court deemed it beyond "the province of this Branch" to read in such liability. *Id.* at 461. Congress likewise did not extend TVPA liability to aiders and abettors, and it is not the province of the courts to do so.[7]

B. The Availability Of TVPA Aiding-And-Abetting Liability Is A Recurring And Exceptionally Important Question

The Court should review whether the TVPA creates aiding-and-abetting liability alongside the parallel ATS question. "It is not uncommon for plaintiffs to assert ATS and TVPA claims together" based on the same underlying facts, as respondents did here. *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1269 (11th Cir. 2009). And as explained above, the ATS and TVPA questions involve overlapping legal issues, particularly the proper interpretation of *Central Bank*.

---

[7] The Ninth Circuit relied in part on this Court's statement in *Mohamad* that "the TVPA contemplates liability against officers who do not personally execute the torture or extrajudicial killing." App. 76a (quoting 566 U.S. at 458). But in making that statement, this Court cited a case finding liability based on the military doctrine of "command responsibility," not aiding and abetting. *Chavez v. Carranza*, 559 F.3d 486, 499 (6th Cir. 2009); *see Reynolds*, 2022 WL 864537, at *13 (explaining this distinction in rejecting aiding-and-abetting liability under the TVPA).

The Court should accordingly review the intertwined ATS and TVPA aiding-and-abetting issues here.

Practical considerations also strongly support review of the TVPA question. The prospect of imposing individual liability on U.S. corporate executives based on lawful sales to foreign governments is chilling and will gravely inhibit the conduct of U.S. commerce abroad. The decision below exposes every CEO or senior officer in U.S. companies that do business abroad to suit for supposedly aiding and abetting heinous acts by foreign governments premised on lawful export or sales activity.

The Ninth Circuit's TVPA ruling also invites an invidious end-run around the Court's decisions cabining the scope of ATS liability. Under the Ninth Circuit's reading of the TVPA, a plaintiff who cannot press an ATS claim against a U.S. corporation for facilitating human-rights violations by a foreign government can instead sue the U.S. corporation's CEO and other individual corporate executives under the TVPA for allegedly aiding and abetting a foreign government's acts of torture or extrajudicial killing. This Court should not allow such adverse consequences for the Nation's business community and trade policy without careful review.

IV. AT A MINIMUM, THE COURT SHOULD SOLICIT THE GOVERNMENT'S VIEWS

Given the importance of "case-specific deference to the political branches" in interpreting the ATS, *Sosa*, 542 U.S. at 733 n.21, this Court and others have often invited the views of the United States in ATS cases. *See* App. 90a-91a (Christen, J., dissenting) (collecting examples). As noted above, the United States has

filed several briefs in this Court urging review and resolution of the important ATS aiding-and-abetting issue petitioners raise here and has also addressed aiding-and-abetting liability under the TVPA. *See* pp. 18, 22-23, 30, *supra*. The government has never withdrawn those briefs or disclaimed the position taken in them, and there is no reason to believe its views have changed. The Court could accordingly rely on the government's prior submissions as a strong basis for granting review here.

If the Court has any remaining questions about the government's position on the issues presented, it should call for the views of the Solicitor General. That approach would be especially warranted here given that the Ninth Circuit panel majority inferred the government's acquiescence in this suit from the fact that it had not filed an uninvited amicus brief. As the panel dissent emphasized, that inference is misplaced because it is not "realistic to expect" the government "to monitor all 94 federal district courts for any ATS litigation raising foreign policy concerns." App. 93a (Christen, J., dissenting). Moreover, it would have been odd for the government to file an uninvited amicus brief in the Ninth Circuit when the district court had dismissed the ATS and TVPA claims and thus obviated any separation-of-powers or foreign-policy concerns. Finally, the United States is already on record as *objecting* to allowing a similar ATS suit brought by Falun Gong adherents against Chinese officials to proceed in a U.S. court, strongly suggesting that the panel majority's inference of acquiescence had it backwards. *See Doe v. Qi*, 349 F. Supp. 2d 1258, 1270-71

(N.D. Cal. 2004) (quoting letter of Legal Adviser William H. Taft, IV).[8]

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

TODD ANTEN
QUINN EMANUEL URQUHART & SULLIVAN, LLP
295 5th Avenue
New York, NY 10016

CHRISTOPHER G. MICHEL
Counsel of Record
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street NW, Suite 900
Washington, DC 20005
(202) 538-8000
christophermichel@quinnemanuel.com

Counsel for Petitioners

January 31, 2025

[8] The panel majority read *Qi* to suggest that the government would have filed an uninvited statement here if it had a similar interest. App. 32a. But "the State Department submitted a statement of interest in *Qi* only after the district court solicited the Department's views." App. 92a-93a (Christen, J., dissenting).