

Case No.: 15-16909

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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DOE I, DOE II, Ivy HE, DOE III, DOE IV, DOE V, DOE VI, ROE VII, Charles  
LEE, ROE VIII, DOE IX, LIU Guifu, WANG Weiyu, individually and on behalf of  
proposed class members,

Plaintiffs-Appellants,

v.

CISCO SYSTEMS, INC., John CHAMBERS, Fredy CHEUNG, and Does 1-100,

Defendants-Appellees.

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On Appeal from the United States District Court for the Northern District of  
California, Case No. 5:11-cv-02449-EJD, Honorable Edward J. Davila, United  
States District Judge

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**SUPPLEMENTAL *AMICUS CURIAE* BRIEF OF PROFESSORS OF LEGAL  
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## INTEREST OF AMICI CURIAE

*Amici curiae* respectfully submit this brief in support of Plaintiffs-Appellants.<sup>1</sup> *Amici* (listed in Appendix A) are professors of legal history who have an interest in the proper application of the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350, to ensure its interpretation is consistent with the Founders’ understanding.

## ARGUMENT

The Alien Tort Statute (“ATS”), 28 U.S.C. § 1350 was passed to create a federal forum for torts in violation of the law of nations. Although *Cisco Sys. v. Doe*, 146 S. Ct. 1882 (2026) closed the door on implied federal causes of action based on modern international law, state causes of action for qualifying torts (as are present in this case) are still permissible under the ATS, as they would have been during the Founding era. Moreover, the grant of ATS jurisdiction to federal courts is not discretionary. *See, e.g., Cohens v. Virginia*, 19 U.S. 264, 404 (1821) (noting courts have no “right to decline the exercise of jurisdiction which is given.”). *Amici* urge remand to the district court to consider whether qualifying state tort causes of action may proceed.

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<sup>1</sup> Counsel of record for all parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No persons other than *amici* or their counsel made a monetary contribution to this brief’s preparation or submission.

## **I. The Founders Enacted the Alien Tort Statute to Provide a Federal Forum for Torts in Violation of the Laws of Nations.**

The history, purpose, and text of the ATS all indicate that the statute grants federal subject-matter jurisdiction over torts in violation of the law of nations regardless of the law that creates the cause of action.

The Supreme Court has repeatedly held that the “ATS is a jurisdictional statute.” *See, e.g., Sosa v. Alvarez-Machain*, 542 U.S. 692, 697 (2004); *Cisco*, 146 S. Ct. at 1892. Although the ATS itself does not create a substantive cause of action, it also does not limit the available causes of action. *Sosa* recognized that “federal courts could entertain claims once the jurisdictional grant was on the books, because torts in violation of the law of nations would have been recognized within the common law of the time.” *Sosa*, 542 U.S. at 714.

Violations of the law of nations committed on U.S. territory or by U.S. actors could embroil the young republic in foreign conflicts, yet under the Articles of Confederation, the national government lacked the power to provide redress. As early as 1781, the Continental Congress urged states to provide such redress, and both the 1784 “Marbois Incident” in Pennsylvania and a 1787 case involving the Dutch ambassador in New York raised serious concerns for the Founders, prompting them to ensure such incidents could be addressed federally in the future. *See Sosa*, 542 U.S. at 717–19 & n.13. The new Constitution gave Congress the power to “define and punish ... Offences against the Law of Nations” and vested

federal courts with jurisdiction over controversies involving foreign states and citizens. U.S. Const. art. I, § 8, cl. 10; art. III, § 3.

The ATS was a part of this broad effort to provide federal redress given the sensitivities surrounding law of nations violations. The Founders sought to fulfill the republic's international obligations under the law of nations, uphold the global rule of law, and establish the United States as a "civilized nation". *See, e.g.,* Anne-Marie Burley [Slaughter], *The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor*, 83 Am. J. Int'l L. 461, 484 (1989); *Sosa*, 542 U.S. at 732.

Through the ATS, the Framers also sought to avoid foreign entanglements that might result from a failure to redress international harms, especially those by U.S. citizens. *See, e.g., Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1397 (2018).

The text of the ATS also reflects the intent of the First Congress to provide a federal forum for torts that were also law of nations violations. The original text of the ATS provided for "concurrent" state and federal jurisdiction, and the statute's subsequent codifications did not change that. An Act to Establish the Judicial Courts of the United States, ch. 20, § 9, 1 Stat. 73, 77 (1789) ("First Judiciary Act"); *see also* William R. Casto, *The Federal Courts' Protective Jurisdiction over Torts Committed in Violation of the Law of Nations*, 18 Conn. L. Rev. 467, 468, n.4 (1986). The importance of establishing a federal forum for law of nations violations is reinforced by comparing the ATS with the statutory grant of diversity

jurisdiction in the First Judiciary Act: the ATS imposed no amount-in-controversy requirement, whereas diversity jurisdiction did. *Id.* at 497–98.

Early interpretations of the ATS reflected the importance of having a federal forum to address law of nations violations. During both of George Washington’s administrations, the Founders, including Attorney General William Bradford, affirmed that there was “no doubt” that the ATS provided a federal remedy for law of nations violations committed by U.S. actors. *Breach of Neutrality*, 1 U.S. Op. Att’y Gen. 57, 57 (1795); *see also* Thomas Jefferson, *Opinion on Offenses Against the Law of Nations*, Dec. 3, 1792, *reprinted in* 24 *The Papers of Thomas Jefferson* 693–95 (John Catanzariti ed., 2018); Edmund Randolph, *Edmund Randolph’s Opinion on Offenses Against the Law of Nations*, Dec. 5, 1792, *reprinted in* 24 *The Papers of Thomas Jefferson* 702 (John Catanzariti ed., 2018).

## **II. The Alien Tort Statute Granted Federal Courts Jurisdiction Over State Causes of Action if the Torts Were in Violation of the Law of Nations.**

After establishing subject-matter jurisdiction over tort actions under the ATS, federal courts would consider what law governed the cause of action. Tort actions for personal injuries were considered transitory and could be brought wherever the tortfeasor was found. *See, e.g., Rafael v. Verelst*, 96 Eng. Rep. 621,

622 (C.P. 1776).<sup>2</sup> Under the choice-of-law rules of the time, actions arising abroad were typically governed by foreign law, and recognized and applied by U.S. courts as a matter of comity.<sup>3</sup>

Actions that arose in the United States, by contrast, were typically governed by local law. During the Founding era, state causes of action could be based in either statute or common law. For example, in response to a 1781 resolution of the Continental Congress, Connecticut enacted a statute providing foreign subjects with a cause of action for damages caused by violations of the law of nations. *See* An Act for Securing to Foreigners in This State, Their Rights, According to the Laws of Nations, and To Prevent Any Infractions of Said Laws, Acts & L. St. Conn. in Am. 82, 83 (1784).

In the absence of a statute, the common law would govern. The common law was understood to incorporate the law of nations, and the assailant in the Marbois Incident was criminally prosecuted in Pennsylvania under the common law. *See*

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<sup>2</sup> The transitory tort doctrine was well-established in English jurisprudence and subsequently incorporated into American law. Casto, at 487, 503–04; *see, e.g., Stoddard v. Bird*, 1 Kirby 65, 68 (1786) (Super. Ct. Conn.); *Mostyn v. Fabrigas*, 98 Eng. Rep. 1021 (K.B. 1774).

<sup>3</sup> English courts adopted seventeenth-century Dutch jurist Ulrich Huber’s approach to applying foreign law, and U.S. courts followed suit. *See, e.g., Banks v. Greenleaf*, 2 F. Cas. 756, 757 (C.C.D. Va. 1799) (No. 959) (Washington, J.) (citing Huber); *see also* The Federalist No. 82 (Alexander Hamilton). For discussion, *see* William S. Dodge, *International Comity in American Law*, 115 Colum. L. Rev. 2071, 2084–87 (2015).

*Respublica v. De Longchamps*, 1 U.S. 111, 116 (Pa. O. & T. Oct. 1784) (“The first crime in the indictment is an infraction of the law of Nations. This law, in its full extent, is part of the law of this State....”). Similarly, in the 1787 Dutch ambassador case, the New York court applied “the law of nations as adopted by the common law.” Casto, at 494. If the victims in these cases had decided to bring tort actions, they would similarly have been governed by common law.

The passage of the ATS did not extinguish state causes of action. The ATS simply provided that federal courts could also exercise subject-matter jurisdiction over any available causes of action, including those rooted in foreign law, state statutes, or state common law.<sup>4</sup>

### **III. Founding-Era Jurists Understood That Federal Courts Could Not Abdicate Jurisdiction Over Tort Actions in Violation of the Law of Nations to State Courts.**

The Founders created the ATS to avoid depending solely on state courts to address torts in violation of the law of nations. This aversion stemmed from their special concern that foreigners be treated fairly in state courts. At the time of the

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<sup>4</sup> *Erie Railroad Co. v. Tompkins* did not change this. Although *Erie* abolished *federal* general common law, it emphasized that torts occurring in a state would be governed by state law. See *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938). The fact that a tort under state law *also* violates international law does not make it any less a tort under state law. In *Cisco*, the Supreme Court similarly closed the door on implied federal common law causes of action based on modern international law, but it did not foreclose causes of action under state or foreign law.

ATS’s enactment, cases such as this one would have had a heightened justification for mandatory jurisdiction, as cases involving foreign affairs questions were thought to be best heard in federal forums. *See* U.S. Const. art. III, § 2, cl. 1; *see also* Casto, at 471–72.

Although the ATS provided for federal jurisdiction concurrent with state courts, the federal jurisdictional grant was not discretionary. Both the original and current text of the ATS state that federal courts “shall have” subject-matter jurisdiction over torts in violation of the law of nations. *See* First Judiciary Act, at 77 (1789); 28 U.S.C. § 1350. This mandatory language does not provide federal courts discretion to abdicate jurisdiction over such actions to state courts, similar to diversity jurisdiction rather than supplemental jurisdiction.

The Founding-era understanding of the federal courts’ duty to exercise the jurisdiction given by Congress is reflected in Chief Justice John Marshall’s statement, “We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.” *Cohens*, 19 U.S. at 404. In the years since, the Supreme Court has repeatedly emphasized “the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.” *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *see also Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013). This duty is based on “the undisputed constitutional principle that Congress, and not the Judiciary,

defines the scope of federal jurisdiction....” *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 359 (1989).

The ATS grants federal courts subject-matter jurisdiction over torts in violation of the law of nations, including tort claims based on state law. Federal courts have no more right to decline to exercise their jurisdiction under the ATS than under any other subject-matter jurisdiction statute.

### CONCLUSION

For the foregoing reasons, *amici* urge the Court to remand with instructions to consider state tort claims that meet the ATS’s requirements for subject-matter jurisdiction by pleading violations of the law of nations.

Dated: September 2, 2026

Respectfully submitted,

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