

Supreme Court Limits Extraterritorial Reach Of The Alien Tort Statute

Client Alert | June 17, 2021

Decided June 17, 2021

***Nestlé USA, Inc. v. Doe*, No. 19-416, consolidated with *Cargill, Inc. v. Doe*, No. 19-453**

Today, the Supreme Court held 8-1 that plaintiffs suing domestic corporations for aiding and abetting international law violations overseas had failed to allege a sufficient domestic nexus for the conduct to support liability under the Alien Tort Statute.

Background:

The Alien Tort Statute (“ATS”) gives federal courts jurisdiction over “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 plaintiffs in these consolidated cases sued Nestlé USA, Inc. and Cargill, Inc.—both domestic corporations—under the ATS for allegedly aiding and abetting the use of child slavery on cocoa farms in Côte d'Ivoire. The defendants sought dismissal on the ground that the ATS reaches only domestic violations, and that the plaintiffs' injuries were incurred entirely overseas. The defendants argued also that under *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018)—in which the Court held that foreign corporations may not be sued under the ATS—domestic corporations are not liable for violations of international law under the ATS.

The Ninth Circuit disagreed and permitted the plaintiffs to proceed with their claims. It held that the ATS covers any conduct that might constitute aiding and abetting, and that the plaintiffs' claims were not extraterritorial under that standard because the plaintiffs had alleged that the defendants had provided personal spending money to Côte d'Ivoire farmers to maintain their loyalty. The Ninth Circuit further held that *Jesner* addressed only whether foreign corporations may be sued under the ATS, as suits against domestic corporations do not raise the same foreign affairs concerns.

Issue:

Does the ATS extend liability to domestic corporations?

Does the ATS extend to suits alleging that a domestic corporation aided and abetted illegal conduct by unidentified foreign actors based on corporate activity in the United States?

Court's Holding:

The ATS does not extend to suits alleging that general corporate activity in the United States aided and abetted violations of the law that ultimately occurred overseas through unrelated, foreign third parties.

“[A]llegations of general corporate activity—like decisionmaking—cannot alone establish domestic application of the ATS.”

Justice Thomas, writing for the Court

Related People

[Allyson N. Ho](#)

[Lucas C. Townsend](#)

[Bradley J. Hamburger](#)

[Perlette Michèle Jura](#)

GIBSON DUNN

What It Means:

- Plaintiffs bringing suit under the ATS must establish a strong, domestic nexus for their claim. It is not sufficient for plaintiffs merely to allege general corporate decisionmaking in the United States.
- Domestic corporations will have strong arguments that they cannot be held liable in suits brought under the ATS simply for participating in a global supply chain in which foreign third parties may have violated international law.
- The Court did not resolve the issue whether corporations can held liable under the ATS, although five Justices indicated their view that corporations are not immune from liability under the ATS.
- Although not decided in this case, the various separate opinions indicate disagreement among the Justices as to whether courts are empowered to recognize new causes of action under the ATS, or whether they are confined to the three specific torts (violation of safe conducts, infringement of the rights of ambassadors, and piracy) identified in *Sosa v. Alvarez Machain*, 542 U.S. 692 (2004).

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Allyson N. Ho
+1 214.698.3233
aho@gibsondunn.com

Mark A. Perry
+1 202.887.3667
mperry@gibsondunn.com

Lucas C. Townsend
+1 202.887.3731
ltownsend@gibsondunn.com

Bradley J. Hamburger
+1 213.229.7658
bhamburger@gibsondunn.com

Related Practice: Transnational Litigation

Perlette Michèle Jura
+1 213.229.7121
pjura@gibsondunn.com

Related Capabilities

[Appellate and Constitutional Law](#)

[Transnational Litigation](#)

[ESG: Risk, Litigation, and Reporting](#)