Keeping the Door Open: Why There Is No Categorical Corporate Immunity to the Alien Tort Statute

by Ben Salinger[*]

The Alien Tort Statute ("ATS") permits foreign nationals to file lawsuits in United States district courts for violations of international law, but the statute is silent on the types of parties they can sue. The Supreme Court has held that foreign corporations cannot be sued under the ATS. However, the Court has left open the question of whether the same immunity extends to domestic corporations, and a circuit split has emerged on that issue. The Second and Ninth Circuits treat corporate liability as a "judicially created" cause of action beyond what Congress authorized in the ATS, and, accordingly, they analyze whether there is an established norm in international law of imposing liability on corporations that could justify creating a new "corporate liability" cause of action. The Fourth and D.C. Circuits, on the other hand, view corporate liability as a question of defendant identity, allowing corporations to be held liable so long as it is permitted by the ATS itself and the United States Constitution. This Contribution argues that the Supreme Court should adopt the Fourth and D.C. Circuits' domestic law approach and hold that domestic corporations are not categorically immune from ATS liability for three reasons. First, the domestic law approach best reflects the Court's own ATS jurisprudence; second, the statute's text, purpose, and founding era history compel a rejection of categorical corporate immunity; and finally, explicit adoption of this approach preserves an important pathway to relief for victims of corporate human rights abuses in the wake of the Court's recent decision in Cisco Systems, Inc. v. Doe I.

In 1976, Paraguayan police officer Americo Norberto Peña-Irala kidnapped and tortured Joelito Filártiga, the seventeen-year-old son of a political dissident.[1] Two years later, Peña-Irala fled to the United States, settling in Brooklyn on an expired tourist visa.[2] Joelito's sister, Dolly Filártiga, was residing in Washington, D.C.,

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[1] Filartiga v. Pena-Irala, 630 F.2d 876, 878 (2d Cir. 1980).

[2] *Id.* at 878–79.

while seeking political asylum and learned that Peña-Irala had been living in Brooklyn.[3] Dolly reported him to immigration authorities and filed a civil complaint against him for wrongful death by torture.[4] The complaint invoked a federal statute that had been largely forgotten for nearly two centuries: the Alien Tort Statute ("ATS").[5] The resulting ten-million-dollar judgment against Peña-Irala in *Filartiga v. Pena-Irala* transformed the long-overlooked Alien Tort Statute into a powerful tool for human rights litigation.[6] *Filartiga* established that individuals who commit human rights abuses abroad can be held liable under the ATS, but whether the same is true of the corporations that employ them remains unsettled.

The First Congress passed the ATS as a component of the Judiciary Act of 1789.[7] The statute provides that federal district courts have 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."[8] At its most basic level, the ATS permits federal courts to hear tort claims brought by foreign nationals for certain violations of international law.[9] The statute was rarely used until 1980, when *Filartiga* opened the door to ATS suits against government officials and corporations for their involvement in human rights abuses overseas.[10] As ATS suits proliferated, the statute attracted powerful opponents. By the early 2000s, the U.S. government and corporate interests were aligned in opposing the use of the ATS to obtain monetary relief for violations of international law.[11] The government saw ATS litigation as a threat to U.S. foreign policy, while corporations funded legal

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[3] *Id.*
[4] *Id.* at 879.
[5] Christopher Ewell, Oona A. Hathaway & Ellen Nohle, *Has the Alien Tort Statute Made a Difference?*, 107 CORNELL L. REV. 1205, 1207, 1216 (2022).
[6] *Id.* at 1207, 1216.
[7] STEVE P. MULLIGAN, CONG. RSCH. SERV., R44947, THE ALIEN TORT STATUTE: A PRIMER 1 (2026), https://www.congress.gov/crs-product/R44947.
[8] 28 U.S.C. § 1350.
[9] *See* Beth Stephens, *The Curious History of the Alien Tort Statute,* 89 NOTRE DAME L. REV. 1467, 1470 (2014) (describing the purpose of the ATS).
[10] *See* Ewell et al., *supra* note 5, at 1207 (describing the use of the ATS following *Filartiga*).
[11] *Id.*

defenses against ATS suits to protect their deep pockets from costly litigation.[12]

Over the past twenty-two years, the Supreme Court has gradually chipped away at the ATS. The first blow came in 2004, when the Court held in *Sosa v. Alvarez-Machain* that the ATS is merely a jurisdictional statute that does not permit the judiciary to recognize any new causes of action beyond those contemplated by Congress when it passed the ATS, except in certain limited circumstances.[13] The second blow came in 2013 when the Court held that the ATS did not apply extraterritorially—that is, to conduct occurring entirely in foreign countries—in *Kiobel v. Royal Dutch Petroleum Co.*[14] The third blow came in 2018 when the Court held in *Jesner v. Arab Bank, PLC* that the ATS did not apply to foreign corporations.[15] The fourth blow, and the Court's greatest leap in narrowing the ATS, came in June 2026. In *Cisco Systems, Inc. v. Doe I*, the Court abrogated the narrow exception it had outlined in *Sosa*, holding that courts may not create new causes of action to enforce international norms under the ATS.[16] After *Cisco*, the only valid causes of action under the ATS are those "corresponding to" the principal offenses against the law of nations thought to carry personal liability during the founding era, which are known as the "Blackstone three": violation of safe conducts, infringement of the rights of ambassadors, and piracy.[17]

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[12] *Id.*

[13] *See* Sosa v. Alvarez-Machain, 542 U.S. 692, 724–25, 729–30 (2004) (recognizing that federal courts may derive substantive law in "limited enclaves" and that domestic law incorporates international law, the Court created a two-part test for recognizing judicially created causes of action to enforce contemporary norms of international law).

[14] Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108, 124 (2013); *see also* Nestle USA, Inc. v. Doe, 593 U.S. 628, 634 (2021) (holding that allegations of general domestic corporate activity like making "operational decisions" were insufficient to connect overseas harm to domestic conduct under the ATS).

[15] Jesner v. Arab Bank, PLC, 584 U.S. 241, 272 (2018).

[16] Cisco Sys., Inc. v. Doe I, 146 S. Ct. 1882, 1892 (2026) ("We do not disturb *Sosa*'s holding that the ATS is a jurisdictional statute; nor do we revisit its assumption that causes of action are available for torts corresponding to the Blackstone three."); *see also Cisco*, 146 S. Ct. at 1894 (Sotomayor, J., dissenting) (arguing the Court "overrules *Sosa*, without even acknowledging it is doing so").

[17] *Id.* at 1888, 1892 (finding that the Blackstone three were the only causes of action contemplated by Congress when it passed the ATS).

However, although *Cisco* "close[d] the courthouse doors" to many ATS claims,[18] it did not go so far as to eliminate corporate liability for ATS violations altogether.

The Court has not given a definitive answer to the question of whether the ATS permits district courts to exercise jurisdiction over civil actions against domestic corporations. Not only do the circuit courts disagree about the answer to that question, but they also dispute the proper method for coming to that answer in the first instance. The Second and Ninth Circuits treat claims against corporations as distinct causes of action. They accordingly evaluate the question of corporate liability using the *Sosa* test for new judicially created causes of action, asking whether norms of international law support imposing liability on domestic corporations.[19] Conversely, the Fourth and D.C. Circuits see corporate liability as a mode of liability rather than a distinct cause of action. They forgo the *Sosa* test, instead focusing the inquiry on whether domestic law supports corporate liability.[20] This Contribution argues that the Supreme Court should adopt the domestic law approach of the Fourth and D.C. Circuits to find that domestic corporations are not categorically immune from liability under the ATS. This approach properly applies Supreme Court precedent, is supported by the text and history of the ATS, and preserves a narrow pathway to monetary relief for overseas victims of corporate international law violations.

First, Supreme Court precedent overwhelmingly supports adoption of the domestic law approach. The competing international law approach originated with the Second Circuit's misinterpretation of *Sosa*. In *Sosa*, the Court fashioned a two-part test for creating new ATS causes of action based on norms of international law. A plaintiff must show that (1) the norm is widely accepted around the world and (2) it would be prudent for the court to create the new cause of action despite separation-of-powers concerns.[21] Although the *Sosa* test was designed for

[18] *Id.* at 1894 (Sotomayor, J., dissenting).
[19] Al Shimari v. CACI Premier Tech., Inc., 170 F.4th 162, 187 n.16 (4th Cir. 2026), *vacated on reh'g on other grounds,* No. 25-1043, 2026 WL 2547096 (4th Cir. Aug. 28, 2026).
[20] *Id.*
[21] *Cisco*, 146 S. Ct. at 1888 (citing *Sosa*, 542 U.S. at 726, 732, 736).

recognizing new causes of action, the international law approach mistakenly extends it to the question of whether corporations may be sued under the ATS.

And this mistake has serious consequences. Because *Cisco* narrowed *Sosa* to bar judicially created ATS causes of action,[22] treating corporate liability as a distinct cause of action—as the international law approach does—would necessarily prohibit courts from hearing claims against corporations entirely. In other words, the international law approach would, in a post-*Cisco* world, render corporations categorically immune from ATS liability under the Court's new precedent. Such a result, however, would run contrary to the Court's ATS jurisprudence because the international law approach was based on an incorrect interpretation of *Sosa* in the first place.

The domestic law approach avoids this outcome, properly recognizing that *Sosa*'s two-step test for establishing new causes of action answers whether a *form of conduct*—such as genocide, war crimes, or slavery—is actionable under the ATS, not whether a particular *type of defendant* can be sued under the ATS.[23] As Justice Gorsuch has noted, "[c]auses of action in tort normally focus on wrongs and injuries, not who is responsible for them."[24] There is no cause of action called "corporate battery"—battery is the cause of action, and agency law determines whether a corporation must pay damages for individuals acting as corporate agents.[25] Applying a test intended for evaluating new causes of action to evaluate types of defendants mistakenly conflates two distinct questions.

The *Sosa* majority makes clear that the purpose of the test was to evaluate whether a new cause of action beyond Blackstone's three primary offenses may be recognized under the ATS. The Blackstone three—violation of safe conducts, infringement of the

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[22] *Id.* at 1892.
[23] Kiobel v. Royal Dutch Petroleum Co., 621 F.3d 111, 176–77 (2d Cir. 2010) (Leval, J., concurring), *aff'd on other grounds*, 569 U.S. 108 (2013).
[24] *Nestle*, 593 U.S. at 641 (Gorsuch, J., concurring).
[25] Doe v. Exxon Mobil Corp., 654 F.3d 11, 41 (D.C. Cir. 2011), *vacated on other grounds*, 527 F. App'x 7 (D.C. Cir. 2013).

rights of ambassadors, and piracy[26]—are types of conduct, not classes of defendants. The Court reasoned that, because the First Congress contemplated that courts would recognize private causes of action only for violations of the Blackstone three, any new judicially created claim had to rest on a widely accepted international norm and be "defined with a specificity comparable to the features of" the Blackstone three.[27] Given that the Court tied *Sosa*'s international norms inquiry to the recognition of new offenses outside the Blackstone three, applying the *Sosa* test to determine who is a proper defendant under the ATS stretches the decision beyond its intended scope.

Nonetheless, the Second and Ninth Circuits insist on applying the *Sosa* test to defendant identity, and thus require, as a necessary condition for corporate liability, the existence of a widely accepted norm in international law that corporations, not just individuals, can be held liable for violating international law.[28] The doctrinal flimsiness of the international law approach is illustrated by its origin: the misinterpretation of a footnote. In *Kiobel*, the Second Circuit misconstrued footnote twenty in *Sosa*—which observed that "[a] related consideration is whether international law extends the scope of liability for a violation of a given norm to the perpetrator being sued, if the defendant is a private actor such as a corporation or individual"[29]—as a requirement to look to international law norms to determine whether corporations are liable under the ATS.[30] However, as Judge Leval recognized, *Sosa*'s footnote twenty merely reflects the caveat that some offenses are violations of international law only if perpetrated by states, as opposed to private actors (which include both individuals and corporations).[31] Thus, the footnote actually stands for the opposite of what the Second Circuit claims: *Sosa*

[26] *Sosa*, 542 U.S. at 724.
[27] *Id.* at 724–25.
[28] *Al Shimari*, 170 F.4th at 187 n.16.
[29] *Sosa*, 542 U.S. at 732 n.20.
[30] *Kiobel*, 621 F.3d at 127–28.
[31] *Id.* at 165 (Leval, J., concurring) (noting that the cases cited in *Sosa* footnote twenty concerned whether torture, if perpetrated by a private actor rather than a state actor, violated international law).

treats corporations and individuals identically, under the umbrella of private actors.[32]

Still, just one year after *Kiobel,* the Ninth Circuit followed suit and adopted the international law approach in *Sarei v. Rio Tinto*.[33] But where the Second Circuit's application of the international law approach led it to conclude that corporations are categorically immune from ATS liability, the Ninth Circuit reached the opposite conclusion. The Second Circuit held that corporations are categorically immune because no international criminal court had ever imposed liability on a corporation,[34] whereas the Ninth Circuit rejected categorical corporate immunity because customary international law did not entirely bar corporate liability.[35] These uneven results reveal that the international law approach is not only based on a fundamental misunderstanding of *Sosa*, but it is also practically convoluted and uncertain.

The Supreme Court's ATS decisions after *Sosa* provide additional support for the domestic law approach. In *Jesner*, the Court's holding that foreign corporations are immune from liability under the ATS was based entirely on domestic separation-of-powers concerns, not international norms governing corporate immunity.[36] The Court interpreted *Sosa* as standing for general judicial caution and found that extending ATS liability to foreign corporations would encroach on both Congress's legislative authority and the executive branch's foreign policy powers.[37] Although a three-Justice plurality endorsed the Second Circuit's international law approach, the majority of Justices expressly declined to adopt it.[38]

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[32] *Id.*
[33] Sarei v. Rio Tinto, PLC, 671 F.3d 736, 760–61 (9th Cir. 2011), *vacated on other grounds,* 569 U.S. 945 (2013).
[34] *Kiobel*, 621 F.3d at 132.
[35] *Sarei*, 671 F.3d at 760–61.
[36] *See Jesner*, 584 U.S. at 264–65, 272 (addressing the separation-of-powers issue).
[37] *Id.*
[38] *See id.* at 259, 264–65, 272 (three Justices would have adopted the Second Circuit's approach to find foreign corporate immunity based on international law norms, but the majority decided solely on the basis of separation of powers).

In *Cisco*, too, the Court grounded its reasoning in separation-of-powers concerns, i.e., domestic law, rather than an international law inquiry. Although the Ninth Circuit applied the international law approach to aiding-and-abetting liability, treating the mode of liability as a distinct cause of action and applying the *Sosa* test,[39] the Court declined to adopt this approach.[40] The Court instead framed its decision as barring judicially created causes of action for *types of conduct* that do not "correspond[] to" the Blackstone three, and thus found that aiding-and-abetting liability failed solely because the underlying violations were not themselves cognizable.[41] Critically, in *Nestle USA, Inc. v. Doe*, after the majority opinion avoided the question of domestic corporate immunity,[42] five Justices agreed that, based on an analysis of domestic law, they would reject a categorical corporate immunity to the ATS.[43] *Nestle, Cisco,* and *Jesner* indicate that the Court has all but explicitly adopted the domestic law approach advocated by this Contribution.

Second, with the Court's ATS precedent suggesting that domestic law is the proper vehicle for addressing domestic corporate liability, an analysis of the relevant domestic law—the text and purpose of the ATS itself—reveals that the statute does not shield domestic corporations from liability. The text of the ATS does not provide special protections to corporations.[44] The statute specifies the type of plaintiff that may sue ("alien[s]") and the type of claim they can bring ("tort[s]" in "violation of the law of nations or a treaty of the United States"), but says nothing about what types of defendants may be sued.[45] The ATS stands in contrast to the Torture Victim Protection Act ("TVPA"), in which Congress expressly limited liability to individuals.[46] The notion that

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[39] Doe I v. Cisco Sys., Inc., 73 F.4th 700, 717 (9th Cir. 2023), *rev'd*, 146 S. Ct. 1882 (2026).
[40] *Cisco*, 146 S. Ct. at 1888, 1892.
[41] *Id.*
[42] *Nestle*, 593 U.S. at 640 (Gorsuch, J., concurring).
[43] *Id.* at 652 n.4 (Sotomayor, J., concurring).
[44] *Id.* at 641 (Gorsuch, J., concurring).
[45] *Id.* (quoting 28 U.S.C. § 1350).
[46] Torture Victim Protection Act, Pub. L. 102-256, § 2(a); Mohamad v. Palestinian Auth., 566 U.S. 449, 456 (2012) (finding the text of the TVPA limited liability to natural persons).

corporations could be held liable for tortious conduct would have been well understood by the First Congress because there was robust common law precedent for recognizing that civil actions can be maintained against corporations for nearly all torts.[47] If Congress had intended to exclude corporations from liability under the ATS, it would have expressly done so in the statute's text, as it did with the TVPA.

The purpose of the ATS was to provide recourse for tortious conduct that, if unchecked, could have provided other countries "with just cause for reprisals or war."[48] The First Congress recognized that, without the ATS, the United States could be dragged into diplomatic strife if so much as a single U.S. citizen "offended a foreign power" by violating the law of nations while overseas.[49] As Justice Gorsuch acknowledged in *Nestle*, "[i]f early Americans assaulted or abducted the French Ambassador, what difference would it have made if the culprits acted individually or corporately?"[50] Regardless of whether the tort was committed by an individual or a corporation, the United States' failure to provide recourse for the injured ambassador would have provided just cause for the French government to retaliate.[51] Founding era cases confirm that the ATS did not distinguish between types of defendants—notably, one of the first ATS cases involved a piracy claim against a ship.[52] Accordingly, the text and underlying purpose of the ATS indicate that the First Congress intended for the statute to apply to corporations and individuals with equal force.

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[47] *Exxon Mobil*, 654 F.3d at 48; *Nestle*, 593 U.S. at 641–42 (Gorsuch, J., concurring) ("[a]t a very early period, it was decided in Great Britain, as well as in the United States, that actions might be maintained against corporations for torts . . . of nearly every variety") (quoting Philadelphia, W., & B.R. Co. v. Quigley, 62 U.S. 202, 210 (1859)).

[48] *Nestle*, 593 U.S. at 642 (Gorsuch, J., concurring) (quoting Anthony J. Bellia Jr & Bradford R. Clark, *The Alien Tort Statute and the Law of Nations*, 78 U. CHI. L. REV. 445, 476–77 (2011)).

[49] *Exxon Mobil*, 654 F.3d at 46.

[50] *Nestle*, 593 U.S. at 642 (Gorsuch, J., concurring).

[51] *Id.* at 642–43.

[52] *Id.* (citing Jansen v. The Vrow Christina Magdalena, 13 F. Cas. 356, 358–59 (D.S.C. 1794) (No. 7,216)).

Third, from a public policy perspective, the ATS should apply to corporations to preserve a narrow path to monetary relief for overseas victims when U.S. corporations are involved in human rights violations. Justice Sotomayor observed in dissent that, by limiting ATS causes of action to those corresponding to the Blackstone three, *Cisco* "close[d] the courthouse doors . . . to virtually every future litigant seeking redress for a violation of international law under the ATS."[53] Indeed, plaintiffs seeking redress for human rights violations under the ATS will now have to make the difficult showing that the alleged human rights violation corresponds to one of the Blackstone three.[54] In supplemental briefing submitted to the Fourth Circuit in *Al Shimari v. CACI Premier Tech., Inc.* in the wake of the *Cisco* ruling, plaintiffs argued that the defendant corporation's role in the torture of detainees at the Abu Ghraib prison in Iraq was tantamount to piracy because it was perpetrated in order to "obtain a financial bounty."[55] The extent to which *Cisco* closed the courthouse door will depend on how broadly courts are willing to construe the Blackstone three.[56] As the future of the ATS as a tool for vindicating human rights appears increasingly bleak, courts should explicitly confirm that corporations are subject to ATS liability to preserve a narrow pathway to redress for victims.

The Court observed in *Cisco* that most successful ATS suits have resulted in plaintiffs obtaining large settlements out of court rather than obtaining a final judgment awarding damages.[57] Because corporations have deep pockets, suing a corporation increases the likelihood that victims of human rights violations

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[53] *Cisco*, 146 S. Ct. at 1894 (Sotomayor, J., dissenting).
[54] *See id.* at 1892 (holding that causes of action under the ATS are available only for "torts corresponding to the Blackstone three").
[55] Supplemental Brief of Plaintiffs-Appellees at 5, Al Shimari v. CACI Premier Tech., Inc., 170 F.4th 162 (4th Cir. 2026) (No. 25-1043), 2026 WL 1972350, at *5.
[56] *See, e.g.*, Al Shimari v. CACI Int'l, Inc., No. 25-1043, 2026 WL 2547096, at *2 (4th Cir. Aug. 28, 2026) (Quattlebaum, J., concurring) (construing the Blackstone three narrowly by rejecting the argument that torture is tantamount to piracy because "any modern-day human rights violation would qualify" under that reasoning).
[57] *Cisco*, 146 S. Ct. at 1892 n.2.

and their families will receive adequate monetary relief.[58] Multinational corporate law firms have already alerted their clients that *Cisco* significantly reduced corporate litigation risk exposure under the ATS, noting that the Court "all but end[ed]" corporate aiding-and-abetting liability under the ATS,[59] and that settlement numbers "may decrease now that the underlying causes of action are less viable."[60] A categorical bar on corporate defendants would eliminate what little leverage ATS plaintiffs still have to obtain monetary relief.

Allowing foreign nationals whose human rights were violated by U.S. corporations to obtain monetary relief in U.S. courts is not just morally right—it is supported by the policy interests underlying the ATS. For example, the abuse of prisoners at Abu Ghraib in Iraq, perpetrated at the instruction of private interrogators employed by the United States contractor CACI Premier Technology, drew widespread condemnation from the international community.[61] The United States' own 9/11 Commission Report, released several months after the abuses at Abu Ghraib were revealed, recognized that "[a]llegations that the United States abused prisoners in its custody make it harder to build the diplomatic, political, and military alliances the

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[58] *See* David Golove, *The Alien Tort Statute and the Law of Nations: Newly Uncovered Historical Evidence of Founding Era Observations* (Harvard L. Sch. Working Paper No. HRP 21-001, 2020) (observing that introduction of corporate defendants to ATS litigation "raised the stakes of human rights litigation by several orders of magnitude" because corporate defendants "have deep pockets").

[59] Austin R. Evers et al., *Supreme Court All But Ends Corporate Liability for Aiding-and-Abetting Human Rights Abuses,* FRESHFIELDS (July 23, 2026), https://www.freshfields.com/en/our-thinking/blogs/a-fresh-take/supreme-court-all-but-ends-corporate-liability-for-aiding-and-abetting-human-righ-102ne0s.

[60] Claire A. DeLelle et al., *U.S. Supreme Court Closes the Door on Aiding-and-Abetting Liability Under the Alien Tort Statute and the Torture Victim Protection Act of 1991*, WHITE & CASE (July 13, 2026), https://www.whitecase.com/insight-alert/us-supreme-court-closes-door-aiding-and-abetting-liability-under-alien-tort-statute.

[61] *See What the World is Saying…*, CENTER FOR AMERICAN PROGRESS (May 6, 2004), https://www.americanprogress.org/article/what-the-world-is-saying-9/ (reporting on international editorials discussing the torture of prisoners at Abu Ghraib prison and concluding that "[t]he international community has unequivocally condemned the U.S. military").

government will need."[62] This is the precise outcome that ATS was designed to prevent: damaging relationships with foreign powers and stoking international conflict.[63] To shield CACI from liability simply by virtue of it being a corporation would frustrate the principal purpose of the ATS.

Critics may argue that the Second Circuit's finding of corporate immunity based on the international law approach is a more faithful interpretation of Supreme Court precedent. The ATS is an unusual statute because the substantive norm it enforces—a "violation of the law of nations"[64]—derives from international law rather than domestic law. It may be reasonable, therefore, to broadly construe *Sosa*'s footnote twenty as generally recognizing the principle that if international law supplies the norm, then it should also supply the scope of who can violate the norm.[65] Under the international law approach, the historical record provides some support for corporate immunity. From the Nuremberg Trials through the Rome Statute, international criminal law has consistently imposed liability on natural persons only.[66] Given the Court's insistence on "great caution" before extending ATS liability,[67] the argument concludes, courts should hesitate where no international tribunal has imposed liability on the category of defendant at issue.

Even assuming that this position is logically sound, it cannot be reconciled with the Court's jurisprudence. As Judge Leval observed in his *Kiobel* concurrence, the Second Circuit's interpretation of *Sosa*—that international norms determine who is liable for ATS violations[68]—contradicts the Court's reasoning elsewhere in *Sosa*. If international norms broadly governed the

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[62] NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, 379 (2004), https://www.9-11commission.gov/report/911Report.pdf.
[63] *Exxon Mobil*, 654 F.3d at 46.
[64] 28 U.S.C. § 1350.
[65] *Sosa*, 542 U.S. at 732 n.20.
[66] *Kiobel*, 621 F.3d at 136–37.
[67] *Sosa*, 542 U.S. at 728.
[68] *See Kiobel*, 621 F.3d at 128 (interpreting footnote twenty in *Sosa* to require that international norms support corporate liability); *Sarei*, 671 F.3d at 760 (same).

scope of liability for ATS defendants, then the Court could not have concluded that civil damages are available under the statute at all because there is no widely accepted international norm of imposing civil liability against any defendant for violating international law.[69] Because the Court "unmistakably concluded" that damages are recoverable upon a showing of an ATS violation, *Sosa* cannot possibly require what the Second Circuit attributes to it.[70] Moreover, the Court's holding in *Cisco* is a fatal blow to the international law approach. By overruling the *Sosa* test, *Cisco* rendered the international law approach doctrinally obsolete: after *Cisco*'s limitation of ATS claims to the Blackstone three, treating corporate liability as a cause of action itself would necessitate a finding of corporate immunity regardless of whether it is supported by international norms. A close reading of *Sosa* and *Cisco* reveals that the domestic law approach is the more faithful interpretation of the Court's ATS jurisprudence.

With *Cisco* closing the door on causes of action beyond the Blackstone three, the fate of the ATS now rests on whether plaintiffs can connect the underlying conduct to piracy, safe conduct violations, or offenses against ambassadors. This fight has already been lost in *Al Shimari*'s post-*Cisco* rehearing; despite the plaintiffs' efforts to analogize the torture of detainees to piracy, the Fourth Circuit ordered the district court to dismiss the case for lack of jurisdiction in view of *Cisco*.[71] However broadly courts are willing to construe the Blackstone three to preserve ATS causes of action, categorical corporate immunity would completely eliminate the ability of overseas victims of corporate human rights abuses to obtain meaningful monetary relief under the ATS. Such an outcome is directly contrary to the First Congress's intent for the ATS to "have practical effect the moment it became law."[72] The Court should preserve a narrow pathway to relief by affirmatively holding that there is no categorical domestic corporate immunity. To hold otherwise would offend the Court's own ATS jurisprudence and run afoul of the text and purpose of the statute.

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[69] *Kiobel*, 621 F.3d at 178 (Leval, J., concurring).
[70] *Id.*
[71] *Al Shimari*, 2026 WL 2547096, at *1.
[72] *Sosa*, 542 U.S. at 724.