

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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APPLICATION OF ALIEN TORT STATUTE: IN NESTLÉ USA, INC. V. DOE

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Introduction

Nestle USA, Inc. v. Doe (593 U. S. ____ (2021)), the case involved a class-action complaint against Nestlé USA and Cargill for helping to promote child slavery in Côte d'Ivoire by purchasing from cacao producers who use child slave labor from Mali. The plaintiffs, being former slave laborers on cocoa fields, filed their suit in US district courts under the Alien Tort Statute (ATS)¹. The ATS endures a convoluted history in federal court. This centuries-old statute grants federal courts authority over torts "committed in violation of the law of nations."² The core legal questions before the Court were whether the ATS permits foreign plaintiffs to sue U.S. corporations for actions occurring outside the United States and whether U.S. corporations can be held liable for aiding and abetting violations of international law. The Court's decision ultimately set significant limitations on the use of the ATS to hold corporations accountable for overseas human rights abuses, emphasizing the need for a stronger connection to U.S. territory and highlighting the complexities surrounding corporate liability for international law violations.

Facts of the Case

Six Malians, recognized as John Doe I–VI, had been trafficked into Côte d'Ivoire as children and held on cocoa farms. The children, aged 12 to 14, were subjected to terrible living circumstances on the farms and were compelled to cultivate cocoa for over thirteen hours each day without remuneration. The children were faced with guards torturing those held caught while attempting to leave the property. Most of the cocoa grown by slaves on Côte d'Ivoire farms was sold to US multinationals such as Nestlé and Cargill and imported into US markets.³ Petitioner Nestlé USA is a major producer, purchaser, processor, and retailer of cocoa beans. Nestlé USA had its headquarters in California at the time of filing (it has since relocated to

¹ Mehta, M. and Vogt, J. (2022) 'Nestle v. Doe: Supreme Court deals setback to forced child laborers, but US corporations lose bid for alien tort statute immunity', *International Labor Rights Case Law*, 8(1), pp. 63–67.

² Hlr (2023) Doe I V. Nestle, S.A., Harvard Law Review. Available at: <https://harvardlawreview.org/print/vol-133/doe-i-v-nestle-s-a/#footnote-ref-2> (Accessed: 20 January 2024).

³ Nestlé USA, Inc. v. Doe I, Oyez, <https://www.oyez.org/cases/2020/19-416>

Virginia) and sold Nestlé-branded items in the States. Every significant operational decision for Nestlé's US market, particularly the sourcing and monitoring of its Ivory Coast supply chain, is decided or authorized in the United States.⁴

Issue in Hand:

1. Can an aiding or abetting assertion against a domestic company brought according to the Alien Tort Statute overcome the extraterritoriality bar if the claim is based on accusations of general corporate conduct in the United States and the plaintiffs are unable to associate alleged harms, which took place abroad at the hands of unidentified foreign actors, with such activity?⁵
2. Does the Alien Tort Statute give the judiciary the authority to impose liabilities on domestic corporations?⁶

Procedural History

The children filed a proposed class action lawsuit in the United States District Court for the Central District of California, claiming that the defendant firms were responsible pursuant to the ATS over aiding and abetting child enslavement in Ivory Coast. The court approved the defendants' motion to dismiss because it determined that corporations may not be sued under the ATS and that, assuming they could, the plaintiffs failed to state the necessary components of their claim for aiding and assisting child labor.⁷ In an 8-1 decision written by Justice Thomas, the Supreme Court determined that these accusations did not establish a "sufficient connection" between the stated forced labor and U.S.-based conduct to sustain ATS jurisdiction. Even though Nestlé USA and Cargill approved and authorized "every major operational decision" from the United States, the Court found that decision making was too "common" or "generic" a corporate function to link the claim to the United States. The Court found that such "general corporate activity" was insufficient to argue a domestic ATS application.⁸

⁴ 593 U. S. ____ (2021)

⁵ Id

⁶ Id

⁷ *Nestlé USA, Inc. v. Doe I*, Oyez, <https://www.oyez.org/cases/2020/19-416>

⁸ STEPHEN P. MULLIGAN, CONG. RESEARCH SERV., R44947, THE ALIEN TORT STATUTE (ATS): A PRIMER 6–7 (2018)

Analysis

The Ninth Circuit Court of Appeals reversed, holding that the corporations are culpable of aiding and abetting the practice of slavery, in part because it determined that norms that are "universal and absolute" can serve as the foundation for an ATS claim upon a corporation, and that the prohibition of trafficking is "universal. The Court's rulings provide "a two-step framework for analyzing extraterritoriality issues." First, a court must presume that an act applies exclusively domestically and then ask "whether the legislation gives a clear, affirmative indication" that contradicts this assumption. Second, if the act cannot be applied extraterritorially, plaintiffs must show that "the conduct relevant to the statute's focus took place in the United States." The ATS does not challenge the presumption, hence that the issue is whether the relevant behavior happened in the United States.⁹ "To address the lower court's concern concerning extraterritorial interpretations of the ATS, the court referred to an older Supreme Court ATS case of *Kiobel v. Royal Dutch Petroleum Company*¹⁰. *Kiobel* ruled that to be redressable under the ATS, action must "touch and concern" the United States "with enough force to displace any presumption against extraterritorial application." Contra the district court, the Ninth Circuit's decision determined that this requirement was fulfilled because, while the slave labor occurred overseas, the plaintiffs claimed that it was "perpetuated from headquarter in the United States."¹¹

The Court found that nearly all the conduct relevant to the plaintiffs' claims occurred outside the United States. The plaintiffs argued that the corporate decisions made by Nestlé and Cargill executives in the U.S. contributed to the human rights abuses. However, the Court concluded that general corporate oversight or decision-making within the U.S. did not amount to actionable conduct under the ATS. The actions were insufficient to "touch and concern" the territory of the United States with sufficient force to displace the presumption against extraterritorial application of U.S. law. The decision emphasized the importance of the extraterritoriality principle, a legal doctrine that generally limits the ability of U.S. laws to apply to conduct occurring outside the United States. The Court reiterated that the ATS does not apply to actions that occur entirely outside U.S. territory, especially when the alleged activities are conducted by foreign entities or occur in a foreign country. While the Court did not make a definitive ruling on whether corporations could ever be held liable under the ATS,

⁹ *Nestlé USA, Inc. v. Doe I*, Oyez, <https://www.oyez.org/cases/2020/19-416>

¹⁰ [569 U.S. 108 \(2013\)](#)

¹¹ *Hlr (2023) Doe I V. Nestle, S.A.*, Harvard Law Review. Available at: <https://harvardlawreview.org/print/vol-133/doe-i-v-nestle-s-a/#footnote-ref-2> (Accessed: 20 January 2024).

the decision did not foreclose the possibility. Instead, it focused on the lack of a sufficient connection between the alleged conduct and the United States, rather than the question of corporate liability itself.

The decision significantly limits the scope of the ATS by reinforcing the requirement that a sufficient nexus to the United States must exist for claims to be brought against U.S. entities. This sets a high bar for foreign plaintiffs seeking to hold U.S. companies accountable for actions that predominantly occur outside of U.S. territory. The ruling poses a challenge for human rights advocates who aim to use U.S. courts to hold corporations accountable for their complicity in human rights abuses abroad. It underscores the Court's reluctance to extend U.S. judicial power to global human rights enforcement without clear congressional authorization. Although the ruling did not decide on the broader issue of corporate liability under the ATS, it left open the possibility for future cases to explore whether U.S. corporations could be held accountable for violations of international law.

Conclusion

Until recently, the ATS gave human rights plaintiffs with advantages unrivalled anywhere in the world, allowing the federal courts to hear cases ranging from Colombian trade union harassment to Chinese speech restrictions. If any one of the tools suggested above are to replace it, advocates will have to create them. While the continued validity of ATS claims against companies does not preclude plaintiffs from employing other methods that they believe are more beneficial, those plaintiffs should be aware that domestic corporate liability appears to be coming to an end.¹² To criticize the Ninth Circuit's approach, noting that it fails to engage meaningfully with the consequences of *Jesner*¹³, perhaps condemning ATS claimants to lengthy and unpredictable litigation. Despite minority judgements calling for a more restricted interpretation of ATS responsibility, the Ninth Circuit retained its position on domestic corporation liability.

The Supreme Court may decide to reduce ATS liability further, particularly given the Court's current makeup. The Ninth Circuit's dissenting judges underlined the need of judicial restraint, arguing that the ATS ought to be narrowly defined and used sparingly.

¹² Short, A.K. (no date) Is the alien tort statute sacrosanct--retaining *forum non conveniens* in Human Rights Litigation, Texas A&M Law Scholarship. Available at: <https://scholarship.law.tamu.edu/facscholar/193/>

¹³ 138 S. Ct. 1386 (2018)