NO. 10-1491

In the

Supreme Court of the United States

ESTHER KIOBEL, INDIVIDUALLY AND ON BEHALF OF HER LATE HUSBAND, DR. BARINEM KIOBEL, ET AL.,
Petitioners

v.

ROYAL DUTCH PETROLEUM CO., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

SUPPLEMENTAL BRIEF OF FORMER UNITED STATES GOVERNMENT COUNTERTERRORISM AND HUMAN RIGHTS OFFICIALS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether and under what circumstances the Alien Tort Statute, 28 U.S.C. § 1350, allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States.

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INTEREST OF AMICI CURIAE

This supplemental brief *amicus curiae* is respectfully submitted by former officials of the United States government who have exercised counterterrorism responsibilities – seeking to enforce universal norms of civilized nations that condemn and forbid the heinous acts of aircraft hijacking, aircraft bombing, attacks on diplomats, terrorist bombings, attacks on civilians, and the international financing of terrorism – together with former United States government officials who have exercised diplomatic responsibilities for the protection of human rights.[1] Through the exercise of their official duties, *amici* are well versed in the practical realities and limits of United States and foreign enforcement efforts against terrorism's atrocious crimes and torts, including the key role played by civil damages judgments against culpable financial institutions, charitable organizations, and wealthy individual benefactors that provide financial support for terrorism.

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party or any other person other than *amici curiae*, or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. The parties' consents are on file or are being lodged herewith.

SUMMARY OF ARGUMENT

The instant brief *amicus curiae* is offered in support of the claim by petitioners that the Alien Tort Statute, 28 U.S.C. § 1350,[2] permits an American court to provide a tort remedy for heinous conduct abroad, including acts by a corporation with a significant American nexus, of such serious gravity as to constitute an international tort in violation of the law of nations, including aiding and abetting deliberate suicide bombing attacks on innocent civilians.

The availability of a remedy in American courts under the Alien Tort Statute for terrorist acts and terrorist financing – occurring either at home or abroad – should be understood in light of the classical rule concerning the nature of torts as "transitory" causes of action. Under international law, a suit for extraterritorial conduct may properly be litigated in any national court where there is an appropriate nexus between the miscreant acts and the venue. Whether the defendant is a person or corporation, it is the nature of the tortfeasor's heinous act and its nexus to the United States that is the appropriate test for whether a suit for extraterritorial misconduct may be entertained in federal court.

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[2] The entire text of the Alien Tort Statute reads, "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.

In particular, entities or individuals maintaining a presence in the United States that knowingly provide financial support and services to terrorists carrying out terror attacks abroad clearly fall within the ambit of the Alien Tort Statute. "Terrorism, Inc." should not be immune from a damages action for the universal crime of financing terrorism, particularly when the financial support and other services flowed, in whole or in part, from within the United States.

While *amici* recognize the respectable record of responsible American corporations and businesses in attempting to assure appropriate conduct by their employees and agents abroad, it is also the case that laws are not written for the good citizen or altruistic actor, but rather, to thwart the temptations that may emerge in any human situation. Joseph Conrad's famous work, "Heart of Darkness", captures the view that the distance from home in a more primitive or rugged environment may sometimes corrupt the best of men. Certainly, in some environments, there are foreign corporations and foreign "businessmen" who have acted without regard to and/or in defiance of ordinary standards of appropriate conduct, including the financing of international terrorism.

ARGUMENT

I. THE AMERICAN LAW INSTITUTE'S *RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES* § 421 AND EARLY AUTHORITY SUPPORT EXTRA-TERRITORIAL APPLICATION OF THE ALIEN TORT STATUTE.

By definition, in a case arising under the Alien Tort Statute, the task of an American court is first to determine what conduct or acts are sufficiently heinous to constitute a tort in violation of the law of nations. Under the teaching of *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), the gravity of the challenged conduct may be taken into account in deciding whether there is an actionable tort in violation of the law of nations. "De minimus" violations of international rules do not rise to the somber level of delictual conduct needed to sustain a cause of action. Additionally, the substantive rule of conduct must also be so well-established and clear in international law as to command universal or near universal assent, though it is not required in customary law that every country has to pronounce itself upon the rule. *See* FINAL REPORT OF THE COMMITTEE ON THE FORMATION OF CUSTOMARY (GENERAL) INTERNATIONAL LAW, STATEMENT OF PRINCIPLES APPLICABLE TO THE FORMATION OF GENERAL CUSTOMARY INTERNATIONAL LAW Principle 14(i) (International Law Association, London, 2000): "For a rule of general customary international law to come into existence, it is necessary for the State

practice to be both extensive and representative. It does not, however, need to be universal."

In *Sosa*, this Court cautioned that "federal courts should not recognize private claims under federal common law for violations of any international law norm with less definite content and acceptance among civilized nations than the historical paradigms familiar when § 1350 was enacted." *Sosa*, 542 U.S. at 732.

The immediate question before the Court concerns so-called prescriptive and adjudicative jurisdiction, i.e., whether and when a state may properly exercise its judicial power over particular parties and subject matter.[3] Here, the *Restatement*

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[3] *Restatement (Third) of the Foreign Relations Law of the United States* § 402 notes that "a state has jurisdiction to prescribe law with respect to (1)(a) conduct that, wholly or substantially, takes place within its territory; (b) the status of persons, or interests in things, present within its territory; (c) conduct outside its territory that has or is intended to have substantial effect within its territory; (2) the activities, interests, status, or relations of its nationals outside as well as within its territory; and (3) certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests." The urgent interest of the United States in thwarting terrorism and the financing of terrorism warrants the exercise of this prescriptive jurisdiction.

Such damages actions have included, *inter alia*, *Almog v. Arab Bank PLC*, 471 F. Supp. 2d 257 (E.D.N.Y. 2006) (terror victims suing Jordanian bank with New York offices for, *inter alia*, terror financing for terrorist attacks committed in Israel), and *Krishanthi v. Rajaratnam*, 2010 U.S. Dist. LEXIS 88788 (D.N.J. Aug. 26, 2010) (terror victims suing two U.S. nationals and one multinational charitable

(Third) of the Foreign Relations Law of the United States (1987), notes that a state may "exercise jurisdiction through its courts to adjudicate with respect to a person or thing if the relationship of the state to the person or thing is such as to make the exercise of jurisdiction *reasonable*." *See Restatement (Third) of the Foreign Relations Law of the United States* § 421 (1987) (emphasis added). *See also*, *Id.* at § 401 ("Territoriality and nationality remain the principal bases of jurisdiction to prescribe, but in determining their meaning rigid concepts have been replaced by broader criteria embracing principles of *reasonableness and fairness* to accommodate overlapping or conflicting interests of states, and affected private interests.") (emphasis added).

This standard of reasonableness is often a fact-specific question. But "[i]n general" in American courts, the exercise of adjudicative jurisdiction for alleged tortious conduct is reasonable if one of several conditions is met, either, *inter alia*, "(a) the person or thing is present in the territory of the state, other than transitorily; … (e) the person, if a corporation or comparable juridical person, is organized pursuant to the law of the state; … (h) the person, whether natural or juridical, regularly carries on business in the state; or (i) the person, whether natural or juridical, had carried on activity in the state, but only in respect of such activity." *Id.*

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organization with a U.S. branch for, *inter alia*, financing terrorist acts that occurred in Sri Lanka from a United States locus). In such circumstances, the reasonableness of jurisdiction is clear.

The Restatement further states, in § 404, that "A state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism, even where none of the bases of jurisdiction indicated in § 402 is present."

In practice, of course, the exercise of jurisdiction in U.S. federal courts is also properly informed by doctrines of judicial discretion, including *forum non conveniens* – i.e., recognizing that under certain fact-specific circumstances, a case is better tried in another jurisdiction's courts. Even highly significant cases can be remitted to a foreign court because of the location of victims, witnesses, and physical evidence. But to the same degree, the absence of a functioning court system in another country, or the manifest interference with judicial independence in another country because of corruption, political influence or intimidation would be among the factors that would inform an American court's decision whether the exercise of jurisdiction was "reasonable" and whether *forum non conveniens* would compel holding a trial elsewhere. The failure of another state to permit any form of remedy for the type of injury may also be relevant to both questions.

The Court's supplemental question encompasses two possible kinds of cases under the Alien Tort Statute: first, so-called "alien-citizen" cases, where an alien victim seeks to sue in a United States court for damages against an

American citizen or American corporation for conduct occurring abroad; and second, so-called "alien-alien" cases, where an alien victim seeks to sue in a United States court for damages against a foreign citizen or foreign corporation arising from torts and criminal conduct that occurred abroad.

In an "alien-citizen" case, the provision of civil adjudicatory jurisdiction may be, in fact, a convenience to an American citizen defendant who otherwise faces being haled into a foreign court in which the procedures and language are unfamiliar. Such jurisdiction also serves the foreign policy interests of the United States, insofar as the failure to provide an effective judicial remedy for torts committed against an alien by an American citizen may create a diplomatic claim for compensation against the United States itself. *See, e.g.*, EMMERICH DE VATTEL, THE LAW OF NATIONS, OR, PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS FROM THE FRENCH OF MONSIEUR DE VATTEL 163 (Philadelphia, Abraham Small, publisher 1817) ("The sovereign who refuses to cause reparation to be made for the damage done by his subject, or to punish the offender, or, finally, to deliver him up, renders himself in some measure an accomplice in the injury, and becomes responsible for it.").

In an "alien-alien" case, the provision of civil adjudicatory jurisdiction also serves the larger interest of the United States in maintaining an effective regime of international law. This is not "universal" jurisdiction, for the only cases that can be heard in American courts are those where there is a significant nexus between the alien defendant

and the United States. As noted in the Restatement, adjudicative jurisdiction can be restricted.

American courts do not sit to remedy all wrongs in the world, but rather, only those acts that have a significant link to the United States or otherwise are of such offense as to justify such action. Early in the Republic, the unwanted presence in the United States of alien defendants who committed heinous acts abroad was considered to be a sufficient basis to allow U.S. *criminal* prosecution of such extraterritorial misconduct. *Pro tanto*, the jurisdictional reach that extends to the trial of crimes would also extend to the trial of serious torts.

This view was acknowledged by four Justices in the signal case of *Holmes v. Jennison*, 39 U.S. 540 (1840), taking the view that such competence belonged to state courts as well.

In *Holmes*, the Governor of Vermont wished to return a Canadian murder suspect to Canada to face trial, but was unable to do so as the extradition provisions of the 1794 Jay Treaty with Great Britain had expired in 1807,[4] and the Webster-Ashburton Treaty would not be completed until 1842. Faced with the prospect of having a Canadian murder suspect dwelling in his state, as well as two additional criminal suspects who were military men, the Vermont Governor proposed to deliver them informally to Canadian authorities.

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[4] *See* Treaty of Amity, Commerce and Navigation ("Jay Treaty"), U.S.-Great Britain arts. 27 and 28, Nov. 19, 1794, 8 Stat. 116.

The plurality opinion ruled that such an expulsion was improper without a valid extradition treaty. But the four Justices, including Justice Joseph Story, noted that the Canadian murder suspect and two other fugitives could be criminally tried locally in Vermont, even for the extraterritorial crimes. The American states "may, if they think proper, *in order to deter offenders in other countries from coming among them make crimes committed elsewhere punishable in their Courts, if the guilty party be found within their jurisdiction.*" 39 U.S. at 568 (emphasis added).

"In all of these cases," noted the Justices, "the state *acts with a view to its own safety*; and is in no degree connected with the foreign government in which the crime was committed." *Id.* (emphasis added). In other words, a murderer on the loose was seen to pose a hazard that entitled Vermont to exercise a form of universal criminal jurisdiction – just as the eighteenth and nineteenth century law of piracy permitted any state to act against a pirate for its own protection and mutual police.

The same type of nexus to the United States is without question sufficient to sustain adjudicative jurisdiction over grave torts committed abroad. Respondents in this case willfully ignore that even now, there are acts committed abroad in ungoverned territories of irresponsible states that dwarf the concerns evidenced in the *Holmes* court in 1840.

II. THE FINANCING OF TERRORISM REQUIRES DETERRENCE THROUGH TORT REMEDIES THAT REACH BOTH

U.S. AND FOREIGN FINANCIAL NETWORKS.

As Respondents have readily admitted,[5] the International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 2178 U.N.T.S. 229, creates liability for persons and entities engaged in the financing of terrorism. Funding of terrorist entities and terrorist attacks against civilian sites and civilian persons is a gross violation of the United Nations treaty, whether the funding is provided by natural persons or an entity in corporate form. *See* International Convention for the Suppression of the Financing of Terrorism art. 2, Dec. 9, 1999, 2178 U.N.T.S. 229 ("Any person commits an offence within the meaning of this Convention if that person…provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act").

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[5] *See* Brief of Respondents at 20, *Kiobel v. Royal Dutch Petroleum*, No. 10-1491 (Jan. 27, 2012); Transcript of Oral Argument at 28:1-28:6, *Kiobel v. Royal Dutch Petroleum Co.* (No. 10-1491, Feb. 28, 2012).

Equally, the *Restatement (Third) on the Foreign Relations Law of the United States* § 402 comment f, notes "the right of a state to punish a limited class of offenses committed outside its territory by persons who are not its nationals – offenses directed against the *security of the state or other offenses threatening the integrity of governmental functions that are generally recognized as crimes by developed legal systems*…." International terrorism and specifically the financing of terrorism are encompassed within these concerns reflected in the protective principle. The primary role played by the United States in combating terrorist financing demonstrates how these acts are viewed as a global threat under Section 402. The international community has recognized the need to punish and deter terrorist financiers wherever they reside.[6]

As the United States Congress has found, in order to effectively thwart the financing of international terrorist acts and terrorist organizations, it is crucial to suppress the financial flows at their origin. In *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705 (2010), this Court addressed the constitutionality of the "material support or resources" provision of 18 U.S.C. § 2339B, which criminalizes the provision of financial support to organizations designated by the U.S. Department of State as "foreign terrorist

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[6] For a discussion of measures taken by the international community, *see* Brief of Former U.S. Gov't Counterterrorism and Human Rights Officials as *Amicus Curiae* in Support of Petitioners at 6-16, *Kiobel v. Royal Dutch Petroleum, Co.* (No. 10-1491, Dec. 21, 2011).

organizations." The Court found that that "[a] number of designated foreign terrorist organizations have attacked moderate governments with which the United States has vigorously endeavored to maintain close and friendly relations" and "other foreign terrorist organizations attack our NATO allies, thereby implicating important and sensitive multilateral security arrangements." *See* 130 S. Ct. at 2726.

This Court observed that "[p]roviding foreign terrorist groups with material support in any form also furthers terrorism by *straining the United States' relationships with its allies and undermining cooperative efforts between nations* to prevent terrorist attacks." *Id.* (emphasis added). Neither organization at issue in *Humanitarian Law Project* (the Liberation Tigers of Tamil Eelam and the Kurdistan Workers Party) – for whom the provision of material support or resources is a crime under United States law and treaty obligations – carried out their terrorist attacks within the United States, but rather unleashed their violence in the regions of their target states. Notably, however, funding for these organizations came at least in part from organizations and individuals within the United States. The financing itself from within the United States, was seen as a sufficient basis for punishment as a federal felony and for international cooperation in enforcement.

The provision of "material support or resources" to these designated foreign terrorist organizations is also actionable under the Alien Tort Statute as a violation of the law of nations.

Congress made its position on this point clear in the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, § 301 (a)(2) (Apr. 24, 1996). The text of Section 301(a)(2) states that "[t]he Congress finds that ... the Constitution confers upon Congress the power to *punish crimes against the law of nations and to carry out the treaty obligations of the United States, and therefore* Congress may by law impose penalties relating to the provision of material support to foreign organizations engaged in terrorist activity" (emphasis added).

Thus, terrorist financing is a separate international crime, and is prohibited by U.S. law. This holds true even where, as in the case of the Tamil and Kurdish organizations, the primary torts – the infliction of terrorist attacks on unwitting civilians in foreign locales – are extraterritorial.

Because terrorism is a universal scourge that has challenged both the unilateral efforts of the United States and the joint efforts of the community of nations, it is strongly in the interest of the United States to prevent and thwart the financing of such heinous violence, including where the victims of violence are foreign citizens. It is inconsistent with Congressional policy to read the Alien Tort Statute in a crabbed or narrow way that might preclude the recovery of damages by the victims of international terrorism and terrorist financiers, merely because the ultimate attack is mounted abroad.[7]

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[7] *See also Krishanthi v. Rajaratnam*, No. 2:09-CV-05395 DMC-MF (D.N.J.) (suit under the Alien Tort Statute by Sri Lankan victims of terrorist attacks against United States-based defendants who allegedly financed and procured

III. THE ALIEN TORT STATUTE DOES NOT STAND ALONE ON THE GLOBAL STAGE CONTRARY TO THE ASSERTIONS OF OTHER *AMICI*.

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weapons for the Liberation Tigers of Tamil Eelam ("LTTE") within the United States). In *Krishanthi*, one of the defendants – the Tamil Rehabilitation Organization ("TRO") – was a charitable organization with a U.S. branch office located in Maryland classified as a Specially Designated Global Terrorist ("SDGT") by the U.S. Department of Treasury's Office of Foreign Assets Control because of the organization's material support for the LTTE. The TRO has now invoked immunity from suit, citing the Second Circuit's decision in *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010), *reh'g denied*, 642 F.3d 268 (2d Cir. 2011), *reh'g* en banc *denied*, 642 F.3d 379 (2d Cir. 2011), as it was incorporated as a non-profit charitable organization in the United States and was registered as a 501(c)(3) tax-exempt charity with the Internal Revenue Service. Providing immunity for charities engaging in terrorist financing undermines the U.S. government's antiterrorism objectives. *See generally*, *Anti-Money Laundering: Blocking Terrorist Financing and Its Impact on Lawful Charities: Hearing Before the H. Subcomm. on Oversight and Investigations of the Comm. on Financial Services*, 111th Cong. 53 (May 26, 2010) (prepared statement of Daniel L. Glaser, Dep. Asst. Sec. for Terrorist Financing and Financial Crimes, U.S. Dep't of the Treasury) ("Terrorist organizations have historically used charities in a number of ways…. Such charities are integral components of the terrorist organizations and are vital to their ability to raise funds and seek legitimacy."); U.S. Department of the Treasury, *Resource Center: Protecting Charitable Organizations*, http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/protecting-index.aspx (last visited June 11, 2012) ("Unfortunately, terrorists have exploited the charitable sector to raise and move funds, provide logistical support, encourage terrorist recruitment, or otherwise support terrorist organizations and operations.").

Despite the importance of providing tort remedies that can deter terrorism and other international crimes, various *amici* in the instant case have suggested that this Court should slay the Alien Tort Statute with a single fatal blow – by confining its scope only to torts committed in the United States – as an act that would supposedly be saluted and welcomed in other jurisdictions. Such a claim shows an unwitting ignorance of developments in public and private international law.

Both American and foreign corporations now gain enormous protections under the rules of international law. Such rights are not without correlative responsibilities. Investment law is one example. Following the close of the period of contention between the Communist bloc and the democratic west, it is now established in modern international law that international investments are entitled to "fair and equitable treatment" in the countries where the investment projects are sited. A complex system of arbitral tribunals has developed to protect the rights of international investors against ill-considered attempts to interfere with their rights by short-sighted governments. It is now settled law as well that any exercise of eminent domain power by a foreign government to condemn or expropriate international investors' property must be compensated with prompt, adequate and effective compensation. In light of the protections provided by international law to the integrity of cross-border investments, it sounds churlish, at best, to suggest that the application of international law also to

protect individual victims of heinous torts or systematic acts of violence is somehow inappropriate or unreasonable.

The Hague Conference on Private International Law, to which the United States sends official legal representatives,[8] has completed a possible global treaty on the recognition of judgments and in so doing, the Hague Conference has proposed a "restatement" of the appropriate jurisdictional bases for judgments.

The draft treaty has been framed to include a universal form of the Alien Tort Statute that permits national state courts to assume civil jurisdiction over serious extraterritorial torts that also constitute crimes. *See* Hague Conference on Private International Law, Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters ("Draft Hague Jurisdiction Convention") art. 18, Oct. 30, 1999, available at http://www.hcch.net/upload/wop/jdgmpd11.pdf (last visited June 11, 2012). Article 18 of the Draft Hague Jurisdiction Convention initially registers a preference for jurisdiction at the principal place of business or the place of incorporation. The mere "presence" of a business would not suffice for

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[8] See K.H. NADELMANN, *The United States Joins the Hague Conference on Private International Law: A "History" with Comments*, 30 LAW AND CONTEMPORARY PROBLEMS 291 (1965).

jurisdiction unless there was a "substantial connection" between the presence and the dispute.[9]

Article 18 would reject jurisdiction in a civil matter on the basis of any of the following:

a) the presence or the seizure in that State of property belonging to the defendant, except where the dispute is directly related to that property;
b) the nationality of the plaintiff;
c) the nationality of the defendant;
d) the domicile, habitual or temporary residence, or presence of the plaintiff in that State;
e) the carrying on of commercial or other activities by the defendant in that State, except where the dispute is directly related to those activities;
f) the service of a writ upon the defendant in that State;
g) the unilateral designation of the forum by the plaintiff;
h) proceedings in that State for declaration of enforceability or registration or for the enforcement of a judgment, except where the dispute is directly related to such proceedings;

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[9] *See* Draft Hague Jurisdiction Convention art. 18 ("Where the defendant is habitually resident in a Contracting State, the application of a rule of jurisdiction provided for under the national law of the Contracting State is prohibited if there is no substantial connection between the State and the dispute.")

i) the temporary residence or presence of the defendant in that State;
j) the signing in that State of the contract from which the dispute arises.

Yet even with these highly restrictive rules, there is an exception for tort claims arising from serious international crimes.

Strikingly, the Draft Hague Jurisdiction Convention provides two variants that are "kissing cousins" to the Alien Tort Statute. The bracketed language for discussion in each proposal is noted *in haec verba* in the quoted text below.

Variant One of the Draft Hague Jurisdiction Convention provides that:

> Nothing in this Article shall prevent a court in a Contracting State from exercising jurisdiction under national law in an action [seeking relief][claiming damages] in respect of conduct which constitutes –
>
> > [(a) genocide, a crime against humanity or a war crime [, as defined in the Statute of the International Criminal Court]; or]
> >
> > [(b) a serious crime against a natural person under international law; or]
> >
> > [(c) a grave violation against a natural person of non-derogable fundamental rights established under international law, such as torture, slavery, forced labour and disappeared persons].

> [Sub-paragraphs [b) and] c) above apply only if the party seeking relief is exposed to a risk of a denial of justice because proceedings in another State are not possible or cannot reasonably be required.][10]

Variant Two provides that:

> Nothing in this Article shall prevent a court in a Contracting State from exercising jurisdiction under national law in an action [seeking relief][claiming damages] in respect of conduct which constitutes –
>
> > a serious crime under international law, provided that this State has established its criminal jurisdiction over that crime in accordance with an international treaty to which it is a party and that the claim is for civil compensatory damages for death or serious bodily injury arising from that crime.[11]

The continued consideration of these proposals as part of a global pact on the mutual recognition of judgments is clear evidence that the Alien Tort Statute reflects contemporary moral concerns as well as the commitments of the

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[10] Draft Hague Jurisdiction Convention art. 18.3.

[11] *Id.*

Founding Fathers and late eighteenth century Enlightenment thinkers.[12]

The Canadian Parliament also recently enacted a new "Justice for Victims of Terrorism Act."[13] This legislative action was needed, said the Canadian Parliament, in light of its obligations under the International Convention for the Suppression of the Financing of Terrorism as well as U.N. Security Council Resolution 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

The Canadian Statute recites that "it is in the public interest to enable plaintiffs to bring lawsuits against terrorists and their supporters, which will have the effect of impairing the functioning of terrorist groups" and authorizes

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[12] *See also* CATHERINE KESSEDJIAN, *Les Actions Civiles Pour Violation des Droits de l'Homme – Aspects de Droit International Privé*, DROIT INTERNATIONAL PRIVE : TRAVAUX DU COMITE FRANÇAIS DE DROIT INTERNATIONAL PRIVE, ANNEES 2002-2004, at 151-184 (Paris 2005). Professor Kessedjian of the University of Paris II served as the Deputy Secretary General of the Hague Conference on Private International Law from 1996 to 2000.

In addition, a significant number of civil law countries permit the victim in a criminal case to bring an "action civile" for damages as part of the same proceeding. *See, e.g.*, Ordonnance no. 58-1296 du 23 decembre 1958 art.1, Journal Officiel du 24 decembre 1958 en vigueur l2 2 mars 1959, available at http://lexinter.net/PROCPEN/titre_preliminaire.htm. In the case of extraterritorial criminal jurisdiction, this permits an "action civile" for the same events.

[13] *See* Justice for Victims of Terrorism Act, S.C. 2012, c. 1, s. 2 (Can.).

private actions for damages against listed entities so long as the "action has a real and substantial connection to Canada."

This statute does not require that the prohibited behavior occurred within Canadian territory or had Canadian victims. Rather, as in the case of the Alien Tort Statute, the Canadian tort statute allows an action to go forward so long as there is a nexus constituting a "real and substantial connection" to Canada.[14]

Perhaps unaware of these sources, various *amici* in support of Respondents before this Court have offered far-reaching and draconian positions seeking to preclude any and all overseas applications of the Alien Tort Statute – whether in regard to U.S. and foreign corporations, corporate officials, or other individuals and regardless of the crime or tort in question. One may wonder whether the leaders of these respected American brand name companies fully appreciate the resonance of these propositions in states still emerging from a colonial past.

Some *amici* also seek to exclude any theory of complicity, including the common law theory of aiding and abetting that has been widely received in international criminal law. For example, the brief *amici curiae* filed on behalf of various important and responsible American corporations such as Chevron, Dole, Dow Chemical, Ford Motor

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[14] This nexus requirement is based on Canadian common law and is not specific to this legislation. *See Bouzari v. Islamic Republic of Iran* (2004), 71 O.R. 3d 65 (Can. Ont. C.A.).

Company, GlaxoSmithKline, and Procter & Gamble asks that the Alien Tort Statute be interpreted to exclude all corporate actors and, presumably, other artificial legal persons from its jurisdictional coverage – stating that the Alien Tort Statute is "an instance of American international law exceptionalism" and that "[i]f this Court takes international law seriously, it must rule for respondents."[15]

With respect, this rigid characterization of "American exceptionalism" is belied not only by the Hague conference work, but also by other *amicus* briefs actually filed in this Court, *inter alia*, by the Federal Republic of Germany, the Netherlands, and the United Kingdom.

The Federal Republic of Germany asks, reasonably, that other venues be considered before the Alien Tort Statute is invoked – proposing that "a foreign plaintiff who sues a foreign corporation in the United States for acts committed outside the United States without a significant United States nexus should be required to show that the available legal remedies in the country of incorporation or center of management are not available to him." Brief for the Federal Republic of Germany as Amicus Curiae in Support of Respondents at 14, *Kiobel v. Royal Dutch Petroleum Co.* (No. 10-1491).

But Germany also notes that it is "mindful that the atrocious acts that lead truly aggrieved plaintiffs to sue under the Alien Tort Statute are

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[15] Brief for Chevron Corp., et al., as *Amicus Curiae* in Support of Respondents at 3 & 5, *Kiobel v. Royal Dutch Petroleum Co.* (No. 10-1491).

most often committed within jurisdictions without adequate legal protection." *Id.* at 9, n.2. Acknowledging the grim history of the twentieth century, Germany avers that "it certainly would be inappropriate to require plaintiffs to exhaust their legal remedies in countries which have a proven record of human rights violations and no due process…." *Id.* at 13.

The brief of the Netherlands and the United Kingdom properly cautions against the assertion of jurisdiction in United States courts "where no factual nexus to the United States exists." But the Dutch and British brief acknowledges that international human rights obligations "may require a State to regulate corporations in particular ways" as well as discharge "a positive obligation to penalize the behavior of non-State actors." Brief for the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands in Support of Respondents at 6, 8, and 23, *Kiobel v. Royal Dutch Petroleum Co.* (10-1491). The British and Dutch governments also report to this Court that "some countries, when incorporating the Rome Statute [for the International Criminal Court] into their domestic law, imposed criminal liability on legal persons [i.e., including corporations] for the group of crimes included in the Rome Statute, viz. genocide, crimes against humanity and war crimes." *Id.* at 20.

While our Dutch and British NATO allies put the point that there is, as of yet, "not sufficient evidence to conclude that there is a positive rule of international law imposing direct criminal liability on legal [corporate] persons," neither do these two

allies argue that the imposition of such liability by a state would be in violation of international law. Indeed, the British and Dutch governments note that the French delegation to the International Criminal Court proposed in the ICC negotiations to allow prosecution of "legal entities (and therefore, corporations)" before the Court – a proposal abandoned because of the perception, *inter alia*, of "serious and ultimately overwhelming problems of evidence." *Id.* at 18.[16]

Finally, it should be said that a friend of court brief filed in the instant case by a former Solicitor General and former Legal Adviser to the U.S. Department of State also suggests an absolutist position, that there should be *tout court* no cause of action under the Alien Tort Statute against any corporate entity or corporate officer in any setting or circumstance.[17] This position is surely self-defeating in a world where the maritime pirates based in Somalia and operating in the Gulf of Aden, are attacking ships on their way to the Suez Canal and formally incorporating to sell shares in their enterprise.

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[16] For the fullest account of the 1998 International Criminal Court treaty negotiations in Rome concerning possible coverage of corporations, *see* ANDREW CLAPHAM, *The Question of Jurisdiction under International Criminal Law over Legal Persons: Lessons from the Rome Conference on an International Criminal Court*, LIABILITY OF MULTINATIONAL CORPORATIONS UNDER INTERNATIONAL LAW 139-195 (M.T. Kamminga & S. Zia-Zarifi eds., 2000).

[17] See Brief for BP America, et al., as *Amicus Curiae* in Support of Respondents, *Kiobel v. Royal Dutch Petroleum Co.* (No. 10-1491).

Indeed it is hard to suppose that the statesmen of the early American republic, equally bedeviled in their shipping by North African beys demanding piratical ransoms for the release of captives and cargo, would have wished to forswear any effective economic remedy – as well as a military response – against these marauders. And certainly, in the professional work of the signatories to this *amicus* brief, it would have been madness to permit the use of a corporate form to shield from suit or seizure the proceeds that fund international terrorism, including terror attacks against foreign civilians.

Yet in the stated view of this particular *amicus* brief filed in support of the respondents, not even "Pirates, Inc." would qualify as a civil defendant under the Alien Tort Statute. It is surely unusual for any former U.S. government officials to attempt to characterize the private diplomatic views of our strategic partners through a website collection of diplomatic notes exhumed from the State Department archives in contradistinction to the representations made by the current Administration before this Court. There is no "government in exile" in the representation of the views of the Executive Branch.

IV. THE ALIEN TORT STATUTE PROVIDES A MEANS TO RESOLVE TRANSNATIONAL VIOLATIONS OF THE LAW OF NATIONS CONSISTENT WITH THE REQUIREMENTS OF DUE PROCESS.

Certainly, in the case of an American citizen or American business entity venturing abroad, the United States has both constitutional authority and the right under international law to protect their interests and set some boundaries to their commercial conduct. In the early Republic, foreign governments often asserted a right of retaliation for harms suffered by their nationals if the alleged offender was an American citizen, and providing a civil cause of action in federal court was one way to avoid such a grave consequence. And in the subsequent century and a half when there were often no effective or recognized governments in many foreign territories – whether in Africa or Asia or elsewhere – it would have been seen as purely fanciful to say that a victim of a tort committed by an American citizen or corporation should sue locally at the place of the tort.

Rather, the American nationality – and even the American residence – of an accused malefactor were seen as a sufficient basis for asserting jurisdiction in United States courts. It was widely accepted (and remains so) that nation states could assert jurisdiction over extraterritorial conduct by their nationals and even their residents.

Exercising extraterritorial criminal jurisdiction based on the nationality of the offender – and excluding extradition of nationals abroad – is still the dominant practice in France, most Latin American states (including Mexico), and Scandinavian states, indeed in most civil law

countries.[18] The extradition treaties negotiated by the United States with these countries recognize and accommodate the surprisingly common claim that the country of the offenders' nationality should have the right to try his crimes, rather than remitting him to a foreign sovereign for trial.[19]

It is thus hardly radical, and indeed it is a cognate principle, to provide that a heinous tort committed abroad by an American individual or

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[18] *See, e.g.*, MICHAEL ABBELL, EXTRADITION TO AND FROM THE UNITED STATES 78 (Martinus Nijhoff 2010) ("Most civil law countries … have refused to enter into extradition treaties requiring them to extradite their nationals. Their rationale in refusing to extradite their nationals is that, unlike most common law countries, they generally have jurisdiction to try their nationals by reason of their nationality for offenses committed in foreign countries"); *see also id.* at 327-28, and M. PLACHTA, *(Non)Extradition of Nationals: A Neverending Story?*, 13 EMORY INT'L L. REV. 77 (Spring 1999).

[19] In a separate and partially dissenting opinion in *Doe v. Exxon Mobil Corp.,* 654 F.3d 11 (D.C. Cir 2011), Judge Kavanaugh overlooks the "extraterritorial" nature of much criminal jurisdiction. Though, he notes, it is true that "the United States has extradition treaties with most other nations of the world" (654 F.3d at 78, n.7), in many of these treaties, as stated above, our foreign partners reserve the right to refuse to extradite their nationals even for crimes committed in the United States.

Thus, a "presumption against extraterritoriality" does not apply in all circumstances. Indeed, the reading of the Alien Tort Statute that allows United States adjudication of actions in tort for conduct undertaken abroad by American citizens or American legal persons is an exact analogue to the claim of home country jurisdiction based on nationality seen in so many criminal extradition treaties.

corporation can be adjudicated under the standards of the law of nations in an American court. It provides "home court advantage" in assuring a fair hearing to any American defendant, and signals the commitment of this country to the principles of justice that we have championed since the founding of the United States.

Additionally, the suggestion that the Alien Tort Statute could create some competitive disadvantage for American corporations abroad wholly ignores the leadership role of the United States. It is worth recalling that when the Foreign Corrupt Practices Act of 1977, Pub. L. 95-213 (Dec. 19, 1977), 91 Stat. 1495, was enacted, it became the goad that led the European Union and the Organization for Economic Cooperation and Development to strengthen their own prohibitions against bribery, including for transactions undertaken abroad as well as at home.

Harvard Professor John Ruggie – who has served since 2005 as the U.N. Secretary General's Representative on Business and Human Rights – has begun to consider what law is available to counter the heinous crimes and torts committed by militants, *de facto* authorities, and buccaneering blood diamond and cobalt corporations in locales where there is no effective law, such as the Eastern Congo. Professor Ruggie poses the following dilemma in regard to corporate responsibility for overseas operations:

> [T]he international human rights regime cannot possibly work as intended in a conflict-affected area where functioning institutions may not exist. What message

> should home countries send the victims of corporate-related human rights abuses in those situations? Sorry? Good Luck? Or that at a minimum, we will work harder to ensure that companies based in our jurisdictions do not contribute to the human rights abuses. And to help remedy them when they occur? Surely the latter is preferable.[20]

The difficulty of seeking civil remedies in Third World venues where an international corporation conducts, say, its mining or oil exploration can include, *inter alia*, a lack of functioning courts, rank intimidation by lawless actors in a chaotic environment, an overburdened or intimidated judiciary, short statutes of limitations, lack of legal aid, the challenge of piercing a corporate veil, jurisdictional limits on applying foreign law or international law, a "loser pays" fee-shifting rule, the reluctance of local law firms to alienate potential corporate clients, and the absence of human rights organizations able or willing to fund the substantial cost of litigation.[21]

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[20] Keynote Presentation at European Presidency Conference on the 'Protect, Respect and Remedy' Framework, Stockholm, November 10-11, 2009, available at http://www.se2009.eu/polopoly_fs/1.22911!menu/standard/file/Ruggie,%20speech.pdf (last visited June 11, 2012).

[21] For a comprehensive survey of comparative national law regarding corporate civil liability for overseas operations, *see* OBSTACLES TO JUSTICE AND REDRESS FOR VICTIMS OF CORPORATE HUMAN RIGHTS VIOLATIONS: A COMPARATIVE SUBMISSION PREPARED FOR PROFESSOR JOHN RUGGIE, U.N. SECRETARY-GENERAL'S REPRESENTATIVE ON BUSINESS AND HUMAN RIGHTS, (Oxford Pro Bono Publico

Thus, there may be serious tort cases where a suit in the United States is the only alternative if there is to be *any remedy*, and even then, the capacity to bring suit in an American court will be subject to a rigorous test.

A dramatic European Union regulation – referred to as "Brussels I"[22], 44/2001, entered into force March 1, 2002 – has newly made the courts of European Union member states "competent to adjudicate civil proceedings against corporations based in the EU for acts which have taken place outside the EU even if the damage occurred outside

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2008). *See also* KEVIN JON HELLER & MARKUS D. DUBBER, THE HANDBOOK OF COMPARATIVE CRIMINAL LAW (Stanford University Press 2011), and GLOBAL BUSINESS AND HUMAN RIGHTS: JURISDICTIONAL COMPARISONS (James Featherby ed., European Lawyer Reference, London, 2011).

[22] Brussels I Regulation of 22 December 2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (EC) No 44/2001, entered into force March 1, 2002, available at http://www.dutchcivillaw.com/legislation/brusselsone.htm (last visited June 12, 2012). *See* paragraphs 10 and 11 ("(10) For the purposes of the free movement of judgments, judgments given in a Member State bound by this Regulation should be recognised and enforced in another Member State bound by this Regulation, even if the judgment debtor is domiciled in a third State. (11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.").

the EU and the victim is not domiciled in the EU."[23]

This new "competence of European courts to deal with civil cases against corporations on the basis of their being domiciled in the EU" has been described as the "European 'Foreign Tort' Claims Act" – although it has a far broader compass in regard to choice of law – claims are not confined to torts under the law of nations – and there is, apparently, no cognizable plea of *forum non conveniens.* From the point of view of a defendant, an American courtroom may in fact look more attractive.[24]

The other tools of American judicial self-discipline – including this Court's foundational pleading cases of *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) – as well as scrutinizing whether the exercise of personal jurisdiction comports with Due Process, abiding by the prudential doctrine of *forum non conveniens*, and demanding that only settled law can sustain a cause of action arising under the Alien Tort Statute, can provide a proper balance between managing the caseload of the federal courts and helping to assure that the United States maintains its leadership role in the international community.

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[23] See JAN WOUTERS & LEEN CHANET, *Corporate Human Rights Responsibiity; A European Perspective*, 6 NW. U. J. INT'L HUM. RTS. 262, 295 (Spring 2008).

[24] *Id.*

V. AIDING AND ABETTING IS AN ESTABLISHED THEORY OF COMPLICITY IN TORT UNDER INTERNATIONAL LAW.

The other question that appears to be encompassed within this Court's request for further briefing – concerning "'under what circumstances" the Alien Tort Statute would permit courts to recognize a cause of action for extraterritorial conduct – pertains to the issue of aiding and abetting liability. In particular, the question has arisen whether aiding and abetting is a recognized theory in tort and criminal law under the law of nations.

It has been settled law since the eighteenth century that complicity in a tort may be established by acts of aiding and abetting. A powerful contemporaneous authority on the point is the 1795 opinion of U.S. Attorney General William Bradford, condemning the involvement of several American citizens in a "plundering" raid against a British colony in Sierra Leone. See 1 Op. Att'y Gen. 57 (1795). The British ambassador forwarded a diplomatic memorial to Bradford on November 28, 1794, noting the conduct of "certain American subjects trading to this coast" who "join[ed] themselves to the French fleet" and "were aiding and abeting (sic) in attacks and destroying the property of British subjects". See Petitioner's Supplemental Opening Brief, *Kiobel v Royal Dutch Petroleum Co.*, at B-1.

In this dramatic turn of events, Attorney General Bradford concluded there was no

applicable American criminal law for the extraterritorial events, but also declared that "there can be no doubt that the company or individuals who have been injured by these acts of hostility have a remedy by a *civil* suit in the courts of the United States; jurisdiction being expressly given to these courts in all cases where an alien sues for a tort only in violation of the law of nations or a treaty of the United States." 1 Op. Att'y Gen. at 59 (emphasis in original).

In asserting *ipse dixit* that the Alien Tort Statute "does not create a cause of action for civil aiding and abetting liability," see Brief for BP America, Caterpillar, et al., as Amici Curiae in Support of Respondents at 2, *Kiobel v. Royal Dutch Petroleum Co.* (No. 10-1491), these *amici* have apparently overlooked this well-known historical incident involving Attorney General Bradford and the archives that memorialize his views.

As to what state of mind or degree of involvement is necessary to qualify as an "aider and abettor," in a more modern setting, the *Restatement (Second) of the Law of Torts* has opined that knowing and substantial assistance to a tortfeasor will suffice to create civil liability.[25] This standard of aiding and abetting is also grounded in international criminal law. For example, the statute of the International Criminal Tribunal for the former Yugoslavia provides for

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[25] *See Restatement (Second) of the Law of Torts* § 876. *See also Restatement (Second) of the Law of Torts* § 877 ("Directing or Permitting Conduct of Another").

individual responsibility for war crimes and crimes against humanity where the actor has "aided and abetted in the planning, preparation or execution of a crime." So, too, Article 2(3) of the Statute of the International Criminal Tribunal for Rwanda provides similarly for "aiding and abetting" liability. The jurisprudence of those two "ad hoc" criminal tribunals and their standards for liability for complicity have become central to international criminal law.

Recently, the Special Court for Sierra Leone convicted Charles Taylor of aiding and abetting the commission of crimes against humanity and acts of terrorism in Sierra Leone holding that "Aiding and abetting requires that the accused gave practical assistance, encouragement, or moral support which had a substantial effect on the perpetration of a crime." *Prosecutor v. Charles Taylor*, Case No.: SCSL-03-1-T, Judgment Summary, ¶ 148 (April 26, 2011). Moreover, "[t]he essential mental element required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator." *Id.* at ¶ 166.

The brief *amicus curiae* filed by BP America, et al., has suggested that this Court should rule that there is no viable cause of action under the Alien Tort Statute unless the defendant has acted with the "purpose" of "violating international law" and "'bringing about the abuses.'" Brief for BP

America, et al., at 34-35.[26] Of course, this proposed test conflates two very different questions – one is specific knowledge of the standards of international law, while the other is an intention to cause the abuses.

The high hurdle demanded by these *amici* for civil liability *far exceeds* what is required in international and national jurisprudence for criminal culpability. The standard of knowledge is as to the wrongfulness of the acts, not whether they specifically violate international law. As noted by the late Professor Antonio Cassese, former president of the International Criminal Tribunal for the former Yugoslavia and former president of the International Tribunal for Lebanon, "A person may participate in a crime without sharing the criminal intent of the principal perpetrator, but simply by assisting him in the commission of the crime. In aiding and abetting, the objective

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[26] This position is grounded in application of the Rome Statute of the International Criminal Court art. 25(3)(c), July 17, 1998, 37 I.L.M. 999, which states: "In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person … For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission…." However, the leading appellate decision addressing the application of this "purpose" standard admits that it "has yet to be construed by the International Criminal Court; its precise contours and the extent to which it may differ from customary international law thus remain somewhat uncertain." *See Khulumani v. Barclay Nat'l Bank Ltd.*, 504 F.3d 254, 275-76 (2d Cir. 2007) (J. Katzmann, concurring).

element is constituted by *practical assistance*, encouragement, or moral support … to the … author of the main crime …. The subjective elements reside in the accessory *having knowledge* that his actions assist the perpetrator in the commission of the crime." *See* ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW 188 (Oxford University Press 2003). *See also* G. BOAS ET AL., FORMS OF RESPONSIBILITY IN INTERNATIONAL CRIMINAL LAW vol. 1, ch. 4 (Cambridge University Press 2007).

Yet spurning the Restatement as well as international precedent, some *amici* have urged this Court to disqualify aiding and abetting altogether as a theory of civil liability, or else to rule that such complicity requires specific purpose and intent, in addition to knowledge. This proposition is akimbo. Every Circuit Court of Appeals to address the issue agrees that aiding and abetting qualifies as a theory of culpability under the Alien Tort Statute. And while the elements of state of mind may be best developed in the context of specific cases, there is no persuasive reason to suppose that specific intent should be required in any Alien Tort Statute case that turns upon inherently wrongful acts.

CONCLUSION

Amici respectfully submit that the Second Circuit's decision immunizing corporations from liability under the Alien Tort Statute, regardless of setting or circumstances, is incompatible with

congressional intent, historical views on corporate liability for torts, and the law of nations as set forth in their initial brief filed with the Court on December 21, 2011. Furthermore, *amici* respectfully submit that any decision regarding extraterritorial application of the Alien Tort Statute – whether through aiding and abetting conduct or otherwise – should look to the nature of the jurisdictional grant permitting claims for torts "committed in violation of the law of nations." Where a federal court in the United States can assert personal jurisdiction over a defendant for acts consistent with the jurisdictional grant set forth in *Sosa*, then there should be no bar based simply on the locus of the primary tort. This is especially true in the area of terrorist financing where terrorist financiers may operate with impunity within the United States or through a nexus with the United States to provide funding for terrorist acts which serve as a threat to the national security of the United States.

Respectfully submitted,

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APPENDIX – LIST OF *AMICI*

The *amici curiae* joining this brief include:

Victor D. Comras – Mr. Comras has had an extensive international law and diplomatic career with the U.S. Department of State, the United Nations, and in private law practice. He was appointed in 2002 by UN Secretary General Kofi Annan to serve as one of five international monitors charged with evaluating and making recommendations concerning the implementation of Security Council measures against Al Qaeda and the Taliban, and again, by Secretary General Ban Ki-Moon to evaluate and report on the implementation of Security Council measures directed at North Korea. He has also been actively engaged, both inside and outside the U.S. government, in advising government agencies, international organizations, foreign governments, and private clients concerning matters related to international sanctions, trade and financial regulations, and political risk assessment.

Jimmy Gurulé – Professor Gurulé is currently a tenured member of the law faculty at Notre Dame Law School, located in South Bend, Indiana, where he teaches courses in Criminal Law, White Collar Crime, International Criminal Law, and the Law of Terrorism. Professor Gurulé served as Under Secretary (Enforcement), U.S. Department of the Treasury, from 2001-2003. In his role as Under Secretary of the Treasury, he played a central role in developing and implementing the U.S. Government's anti-terrorist financing strategy.

Malvina Halberstam – Professor Halberstam is a professor of law and a member of the founding faculty of the Benjamin N. Cardozo School of Law. She currently teaches International Law, U.S. Foreign Relations Law, and Constitutional Criminal Procedure. She has also taught courses on International Criminal Law, Terrorism and the Law, and International Protection of Human Rights. She served as Counselor on International Law, U.S. Department of State, Office of the Legal Adviser. In that capacity, she headed the U.S. delegation to negotiations on the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, a treaty dealing with terrorism on the high seas. She has lectured and published articles on various aspects of international law, including terrorism.

Ambassador Richard Schifter – Ambassador Schifter has held numerous positions within the United States Government addressing issues of human rights and national security. From 1983 to 1985, he was the United States Representative to the United Nations Commission on Human Rights. From 1986 to 1992, Ambassador Schifter served as Assistant Secretary of State for Human Rights and Humanitarian Affairs. From 1993 to 2001, Ambassador Schifter served successively as Special Assistant to the President, Counselor and Senior Director on the staff of the United States National Security Council and Special Adviser to the Secretary of State.