

Client Alert

Latham & Watkins Litigation Department

US Supreme Court Holds That Liability Under the Torture Victim Protection Act Extends Only to Natural Persons and Does Not Extend to Organizations

On April 18, 2012, the US Supreme Court in *Mohamad v. Palestinian Authority* unanimously held that the term "individual" under the Torture Victim Protection Act of 1991 (TVPA) encompasses only natural persons and does not extend to organizations.¹ In so holding, the Supreme Court limited the scope of the TVPA in a manner that will exclude corporations from liability and effectively terminate claims made against corporations under the act for allegations of aiding and abetting torture and extrajudicial killing committed abroad under foreign color of law.

The case was heard in tandem with *Kiobel v. Royal Dutch Petroleum*, in which the issue before the Court is whether the Alien Tort Statute (ATS) extends civil liability to corporations for violations of customary international law,² including crimes against humanity, torture, and arbitrary detention. The Court has since ordered a rehearing of *Kiobel* and has asked the parties to file supplemental briefs to address the question "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."³ A decision on *Kiobel* is expected during the Supreme Court's next Term.

Background on the Torture Victim Protection Act

The Alien Tort Statute provides: "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."⁴ The ATS permits aliens (that is, non-US citizens) to bring claims for violations of customary international law.

Even though it was adopted in the 1789 Judiciary Act, the ATS remained nearly dormant until the 1980 Second Circuit Court of Appeals decision *Filartiga v. Peña-Irela*. In *Filartiga v. Peña-Irela*, the Second Circuit held that under the ATS federal courts have jurisdiction over civil claims for torture outside of the US by an individual.⁵ Some circuit courts have since interpreted the statute as extending civil liability to corporations for aiding and abetting human rights abuses committed abroad.⁶ The US Supreme Court addressed the scope of the ATS for the first time in *Sosa v. Alvarez-Machain* and held that the ATS granted federal courts jurisdiction

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over a narrow set of causes of action derived from the “present-day law of nations” provided that the claims rest on “norm[s] of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms recognized.”⁷

In 1992, in order to extend some of the rights under the ATS to US citizens, Congress enacted the Torture Victim Protection Act of 1991. The TVPA granted US citizens the right to bring civil claims against individuals who commit torture and/or extrajudicial killing under the authority of color of law of any foreign nation.⁸ But it was unclear whether liability under the TVPA extends only to natural persons or also extended to non-sovereign organizations and corporations.

Proponents of the TVPA's application to organizations and corporations primarily argued that the TVPA was enacted to extend the D.C. Circuit's *Tel-Oren v. Libya Arab Republic*⁹ decision to US citizens.¹⁰ Since the court in that case held that under the ATS organizations could be held liable for torture and extrajudicial killings that occurred abroad, proponents argued that the TVPA should be interpreted to extend the same liability to organizations.¹¹ Opponents argued that extending liability to organizations went beyond the plain meaning of the TVPA and Congress's intent. *Mohamad v. Palestinian Authority* has now resolved these divergent interpretations of the law.

Mohamad v. Palestinian Authority

Mohamad v. Rajoub involved the capture, torture and ultimate killing of Azzam Rahim, a US citizen, by Palestinian Liberation Organization (PLO) agents in the Palestinian territory. Mr. Azzam's family brought a claim under the TVPA in the US District Court for the District of Columbia against the PLO and the individual officers involved in his torture and extrajudicial killing.¹²

The federal district court dismissed the claim on grounds that the TVPA applies only to natural persons and not to organizations,¹³ the D.C. Circuit affirmed that decision on the same grounds,¹⁴ and the Supreme Court granted *certiorari* on October 17, 2011.¹⁵

The issue before the Supreme Court was whether the TVPA applied to the PLO even though it was an organization and not a natural person.¹⁶ The petitioners argued that the statute extends beyond natural persons and encompasses non-sovereign organizations because, *inter alia*, the TVPA does not define “individual” and that the ordinary meaning of the term could encompass a “being or thing or group of beings or things,” such as an organization.¹⁷ But the Court rejected that position unanimously. Observing that the TVPA does not define “individual,”¹⁸ the Court interpreted the word according to its ordinary meaning, *i.e.*, a “human being, a person.”¹⁹ The Court conceded that “individual” may have a broader connotation in some statutes, but explained that there must be some indication from Congress as to such broader intent and here found none.²⁰ The Court went on to find that the legislative history of the TVPA confirms the plain meaning of its text. Citing an earlier version of the bill that became the TVPA, which had referred to lawsuits against a “person,” rather than an “individual,” the Court concluded that the language had been changed purposefully to accommodate a sponsor's desire “to make it clear we are applying it to individuals and not to corporations.”²¹ Although the PLO was not itself a corporation, the Court's holding left no doubt that the limitation of “individual” to natural persons will exclude liability under the TVPA.

Justice Scalia concurred and joined all of the opinion except for Part III-B, which relied on the legislative history of the TVPA.²² (His refusal to join that part of the

opinion is consistent with Justice Scalia's general view that the Court should not consider statements from legislators for the purposes of statutory interpretation.) Justice Breyer issued a concurring opinion.²³

This decision does not necessarily suggest that the Court will find in *Kiobel* that corporations are similarly excluded from liability under the ATS, which is a differently worded and much older statute for which no useful legislative history is available. Latham & Watkins will provide further updates as this area of law continues to develop.

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Endnotes

¹ 132 S. Ct. 1702 (2012).

² Also known as “the law of nations.”

³ *Kiobel, et al. v. Royal Dutch Petroleum, et. al.*, 132 S. Ct. 1738 (2012).

⁴ 28 U.S.C. § 1350 (2006).

⁵ 630 F.2d 876 (2d Cir. 1980).

⁶ See e.g. *Romero v. Drummond Co., Inc.*, 552 F.3d 1303, 1315 (11th Cir. 2008) (“The text of the Alien Tort Statute provides no express exception for corporations, and the law of this Circuit is that this statute grants jurisdiction from complaints of torture against corporate defendants.” (internal citations omitted)); *In re XE Servs. Alien Tort Litig.*, 665 F.Supp.2d 569, 588 (E.D. Va. 2009) (“Nothing in the ATS or *Sosa* may plausibly be read to distinguish between private individuals and corporations.”).

⁷ 542 U.S. 692, 725 (2004).

⁸ Pub.L. 102-256, 106 Stat. 73 (1992).

⁹ 726 F.3d 744 (D.C. Cir. 1984).

¹⁰ S. Rep. No. 102-249, at 4-5 (1991).

¹¹ *Id.* at 775.

¹² *Mohamad v. Rajoub*, 664 F.Supp.2d 20, 22-24 (D.D.C. 2009).

¹³ *Id.*

¹⁴ *Mohamad v. Rajoub*, 634 F.3d 604 (D.C. Cir. 2011).

¹⁵ 80 U.S.L.W. 3237 (U.S. Oct. 17, 2011) (No. 11-88).

¹⁶ *Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702, 1702-03 (2012).

¹⁷ *Id.* at 1708.

¹⁸ *Id.* at 1706.

¹⁹ *Id.* at 1707.

²⁰ *Id.*

²¹ *Id.* at 1710.

²² *Id.* at 1702.

²³ In Justice Stephen Breyer's concurring opinion, he joined the Court's reasoning with one qualification – that the term “individual” may in other contexts be “open to multiple interpretations” and extend to “natural persons, corporations, and other entities.” *Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702, 1711 (2012) (Breyer, J., concurring).

If you have any questions about this *Client Alert* or for more information regarding the Torture Victim Protection Act and Alien Tort Statute please contact one of the authors listed below or the Latham attorney with whom you normally consult:

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