
Case Name and Number: *Nestlé USA, Inc. v. Doe I*, No. 19-416; *Cargill, Inc. v. Doe I*, No. 19-453

Introduction: Today, the Supreme Court held in an 8-1 decision that allegations of general corporate activity within the United States (such as headquarters oversight and decisionmaking) are insufficient to establish a permissible domestic application of the Alien Tort Statute (ATS).

Background: The ATS provides for federal jurisdiction over claims for torts “committed in violation of the law of nations.” 28 U.S.C. § 1350. In *Kiobel v. Royal Dutch Petroleum Co.*, 569 U. S. 108 (2013), the Supreme Court held that the ATS does not apply extraterritorially to claims based on conduct occurring in another nation.

Plaintiffs in *Nestlé* and *Cargill* are Malian citizens who allege that they were trafficked into the Ivory Coast and forced to work on cocoa farms there. Nestlé and Cargill are U.S. corporations that purchase, process, and sell cocoa from the Ivory Coast.

Plaintiffs sued Nestlé and Cargill under the ATS. Plaintiffs did not allege that Nestlé or Cargill directly engaged in wrongdoing, but rather alleged that Nestlé and Cargill aided and abetted third parties who committed the trafficking and forced-labor offenses in Africa. All of the underlying conduct took place in Africa, and so did nearly all of the conduct alleged to establish aiding and abetting – providing training, fertilizer, tools, and cash to farmers in Africa. The only allegation of conduct within the United States concerned general corporate activity, such as engaging in corporate oversight from, and making “major operational decision[s]” at, the companies’ U.S. headquarters.

Issue: Whether allegations of general corporate-headquarters activity within the United States are sufficient to establish a permissible domestic application of the ATS.

Court’s Holding: In an opinion written by Justice Thomas and joined in relevant part by Chief Justice Roberts and Justices Breyer, Sotomayor, Kagan, Gorsuch, Kavanaugh, and Barrett, the Supreme Court held that to establish a permissible domestic application of the ATS, “plaintiffs must allege more domestic conduct than general corporate activity.” Plaintiffs in these cases alleged only general corporate activity, such as decisionmaking, which the Court held insufficient to state a viable claim under the ATS.

In a part of his opinion joined only by Justices Gorsuch and Kavanaugh, Justice Thomas expressed the view that courts may not recognize causes of action under the ATS other than for the three torts that Congress had in mind when it enacted the ATS in 1789 – violation of safe conducts, infringement of the rights of ambassadors, and piracy. Because the Plaintiffs in *Nestlé* and *Cargill* did not assert any such claim, Justice Thomas would have rejected their complaint on this ground as well.

Justice Gorsuch authored a concurrence, joined in part by Justice Alito and in part by Justice Kavanaugh. In the portion joined by Justice Alito, the concurrence expressed the view that in an otherwise appropriate case, U.S. corporations may be sued under the ATS to the same extent as natural persons. In the portion joined by Justice Kavanaugh, the concurrence amplified Justice Thomas’s alternative rationale, explaining why courts have no authority to create new causes of action under the ATS.

Justice Sotomayor also authored a concurrence, joined by Justices Breyer and Kagan. While Justice Sotomayor joined in the majority’s extraterritoriality holding, she disagreed with Justice Thomas’s alternative rationale – expressing the view that Congress expected the courts to provide redress for violations of international law by recognizing new causes of action, and that the allegations in these cases would support such a claim if sufficient domestic conduct had been alleged.

Justice Alito dissented from the Court’s disposition. He would have held that domestic corporations may be sued under the ATS, and would not have reached the extraterritoriality question. He would instead have remanded the case to the district court for consideration of whether the Plaintiffs have stated a viable claim for aiding and abetting violations of international law.

Mayer Brown represented Cargill before the Supreme Court.

Read the opinion [here](#).