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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

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## JESNER ET AL. *v.* ARAB BANK, PLC

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 16–499. Argued October 11, 2017—Decided April 24, 2018

Petitioners filed suits under the Alien Tort Statute (ATS), alleging that they, or the persons on whose behalf they assert claims, were injured or killed by terrorist acts committed abroad, and that those acts were in part caused or facilitated by respondent Arab Bank, PLC, a Jordanian financial institution with a branch in New York. They seek to impose liability on the bank for the conduct of its human agents, including high-ranking bank officials. They claim that the bank used its New York branch to clear dollar-denominated transactions that benefited terrorists through the Clearing House Interbank Payments System (CHIPS) and to launder money for a Texas-based charity allegedly affiliated with Hamas. While the litigation was pending, this Court held, in *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U. S. 108, that the ATS does not extend to suits against foreign corporations when "all the relevant conduct took place outside the United States," *id.,* at 124, but it left unresolved the Second Circuit's broader holding in its *Kiobel* decision: that foreign corporations may not be sued under the ATS. Deeming that broader holding binding precedent, the District Court dismissed petitioners' ATS claims and the Second Circuit affirmed.

*Held*: The judgment is affirmed.

808 F. 3d 144, affirmed.

JUSTICE KENNEDY delivered the opinion of the Court with respect to Parts I, II–B–1, and II–C, concluding that foreign corporations may not be defendants in suits brought under the ATS. Pp. 6–11, 18–19, and 25–27.

(a) The Judiciary Act of 1789 included what is now known as the ATS, which provides: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in viola-

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tion of the law of nations or a treaty of the United States." 28 U. S. C. §1350. The ATS is "strictly jurisdictional" and does not by its own terms provide or delineate the definition of a cause of action for international-law violations. *Sosa* v. *Alvarez-Machain*, 542 U. S. 692, 713–714. It was enacted against the backdrop of the general common law, which in 1789 recognized a limited category of "torts in violation of the law of nations," *id.,* at 714; and one of its principal objectives was to avoid foreign entanglements by ensuring the availability of a federal forum where the failure to have one might cause another nation to hold the United States responsible for an injury to a foreign citizen, see *id.*, at 715–719. The ATS was invoked but a few times over its first 190 years, but with the evolving recognition—*e.g.*, in the Nuremberg trials—that certain crimes against humanity violate basic precepts of international law, courts began to give some redress for violations of clear and unambiguous international human-rights protections. After the Second Circuit first permitted plaintiffs to bring ATS actions based on modern human-rights laws, Congress enacted the Torture Victim Protection Act of 1991 (TVPA), creating an express cause of action for victims of torture and extrajudicial killing in violation of international law. ATS suits became more frequent; and modern ATS litigation has the potential to involve groups of foreign plaintiffs suing foreign corporations in the United States for alleged human-rights violations in other nations. In *Sosa*, the Court held that in certain narrow circumstances courts may recognize a common-law cause of action for claims based on the present-day law of nations, 542 U. S., at 732, but it explicitly held that ATS litigation implicates serious separation-of-powers and foreign-relations concerns, *id.*, at 727–728. The Court subsequently held in *Kiobel* that "the presumption against extraterritoriality applies to [ATS] claims," 569 U. S., at 124, and that even claims that "touch and concern the territory of the United States . . . must do so with sufficient force to displace" that presumption, *id.*, at 124–125. Pp. 6–11.

(b) *Sosa* is consistent with this Court's general reluctance to extend judicially created private rights of action. Recent precedents cast doubt on courts' authority to extend or create private causes of action, even in the realm of domestic law, rather than leaving such decisions to the Legislature, which is better positioned "to consider if the public interest would be served by imposing a new substantive legal liability," *Ziglar* v. *Abbasi*, 582 U. S. ___, ___ (internal quotation marks omitted). This caution extends to the question whether the courts should exercise the judicial authority to mandate a rule imposing liability upon artificial entities like corporations. Thus, in *Correctional Services Corp.* v. *Malesko*, 534 U. S. 61, 72, the Court concluded that Congress, not the courts, should decide whether corporate defendants

could be held liable in actions under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388.

Neither the language of the ATS nor precedent supports an exception to these general principles in this context. Separation-of-powers concerns that counsel against courts creating private rights of action apply with particular force in the context of the ATS, which implicates foreign-policy concerns that are the province of the political branches. And courts must exercise "great caution" before recognizing new forms of liability under the ATS. *Sosa, supra,* at 728. The question whether a proper application of *Sosa* would preclude courts from ever recognizing new ATS causes of action need not be decided here, for either way it would be inappropriate for courts to extend ATS liability to foreign corporations absent further action from Congress. Pp. 18–19.

(c) The ATS was intended to promote harmony in international relations by ensuring foreign plaintiffs a remedy for international-law violations when the absence of such a remedy might provoke foreign nations to hold the United States accountable. But here, and in similar cases, the opposite is occurring. Petitioners are foreign nationals seeking millions of dollars in damages from a major Jordanian financial institution for injuries suffered in attacks by foreign terrorists in the Middle East. The only alleged connections to the United States are the CHIPS transactions in Arab Bank's New York branch and a brief allegation about a charity in Texas. At a minimum, the relatively minor connection between the terrorist attacks and the alleged conduct in the United States illustrates the perils of extending the scope of ATS liability to foreign multinational corporations like Arab Bank.

For 13 years, this litigation has caused considerable diplomatic tensions with Jordan, a critical ally that considers the litigation an affront to its sovereignty. And this is not the first time that a foreign sovereign has raised objections to ATS litigation in this Court. See *Sosa*, *supra,* at 733, n. 21. These are the very foreign-relations tensions the First Congress sought to avoid.

Nor are the courts well suited to make the required policy judgments implicated by foreign corporate liability. Like the presumption against extraterritoriality, judicial caution under *Sosa* "guards against our courts triggering . . . serious foreign policy consequences, and instead defers such decisions, quite appropriately, to the political branches." *Kiobel*, *supra,* at 124. Accordingly, the Court holds that foreign corporations may not be defendants in suits brought under the ATS. Pp. 25–27.

JUSTICE KENNEDY, joined by THE CHIEF JUSTICE and JUSTICE THOMAS, concluded in Parts II–A, II–B–2, II–B–3, and III:

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(a) Before recognizing an ATS common-law action, federal courts must apply the two-part test announced in *Sosa*. The threshold question is whether a plaintiff can demonstrate that the alleged violation is "'of a norm that is specific, universal, and obligatory.'" 542 U. S., at 732. Assuming that such a norm can control, it must be determined whether allowing the case to proceed under the ATS is a proper exercise of judicial discretion or whether caution requires the political branches to grant specific authority before corporate liability can be imposed. *Id.*, at 732–733, and nn. 20–21. With regard to the first *Sosa* question, the Court need not resolve whether corporate liability is a question governed by international law or whether that law imposes liability on corporations, because, as shown by the parties' opposing arguments, there is at least sufficient doubt on the point to turn to *Sosa*'s second question: whether the Judiciary must defer to Congress to determine in the first instance whether that universal norm has been recognized and, if so, whether it should be enforced in ATS suits. Pp. 11–18.

(b) Especially here, in the realm of international law, it is important to look to analogous statutes for guidance on the appropriate boundaries of judge-made causes of action. The logical statutory analogy for an ATS common-law action is the TVPA—the only ATS cause of action created by Congress rather than the courts. Drafted as "an unambiguous and modern basis for [an ATS] cause of action," H. R. Rep. No. 102–367, p. 3, the TVPA reflects Congress' considered judgment of the proper structure for such an action. Absent a compelling justification, courts should not deviate from that model. Relevant here, the TVPA limits liability to "individuals," a term which unambiguously limits liability to natural persons, *Mohamad* v. *Palestinian Authority*, 566 U. S. 449, 453–456. Congress' decision to exclude liability for corporations in TVPA actions is all but dispositive in this case. Pp. 19–23.

(c) Other considerations relevant to the exercise of judicial discretion also counsel against allowing liability under the ATS for foreign corporations, absent congressional instructions. Corporate liability under the ATS has not been shown to be essential to serving that statute's goals, the ATS will seldom be the only way for plaintiffs to hold the perpetrators liable, and plaintiffs still can sue the individual corporate employees responsible for a violation of international law under the ATS. That the corporate form can be an instrument for inflicting grave harm and suffering poses serious and complex questions for the international community and for Congress. And this complexity makes it all the more important that Congress determine whether victims of human-rights abuses may sue foreign corporations in federal court. Pp. 23–25.

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(d) In making its determination, Congress might decide that violations of international law do, or should, impose that liability to ensure that corporations make every effort to deter human-rights violations, and so that compensation for injured persons will be a cost of doing business. Or Congress could conclude that neutral judicial safeguards may not be ensured in every country and that, as a reciprocal matter, ATS liability for foreign corporations should be subject to some limitations or preconditions. Finally, Congress might find that corporate liability should be limited to cases where a corporation's management was actively complicit in the crime. Pp. 27–29.

JUSTICE ALITO concluded that the outcome in this case is justified not only by "judicial caution" but also by the separation of powers. Assuming that *Sosa* v. *Alvarez-Machain*, 542 U. S. 692, correctly held that federal courts, exercising their authority in limited circumstances to make federal common law, may create causes of action under the ATS, this Court should not create such causes of action against foreign corporate defendants. The objective for courts in any case requiring the creation of federal common law must be "to find the rule that will best effectuate the federal policy." *Textile Workers* v. *Lincoln Mills of Ala.*, 353 U. S. 448, 457. The First Congress enacted the ATS to help the United States avoid diplomatic friction. Putting that objective together with the rules governing federal common law generally, the following principle emerges: Federal courts should decline to create federal common law causes of action whenever doing so would not materially advance the ATS's objective of avoiding diplomatic strife. Applying that principle here, it is clear that courts should not create causes of action under the ATS against foreign corporate defendants. Customary international law does not generally require corporate liability, so declining to create it under the ATS cannot give other nations just cause for complaint against the United States. To the contrary, creating causes of action against foreign corporations under the ATS may instead provoke exactly the sort of diplomatic strife inimical to the statute's fundamental purpose. Pp. 1–7.

JUSTICE GORSUCH concluded that there are two more fundamental reasons why this lawsuit should be dismissed. Pp. 1–14.

(a) This Court has suggested that Congress originally enacted the ATS to afford federal courts jurisdiction to hear tort claims related to three violations of international law that were already embodied in English common law: violations of safe conducts extended to aliens, interference with ambassadors, and piracy. *Sosa* v. *Alvarez-Machain*, 542 U. S. 692, 715. Here, the plaintiffs seek much more. They want the federal courts to recognize a new cause of action, one that did not exist at the time of the statute's adoption, one that Congress has never authorized. They find support in a passage suggesting that the

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