

FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

DOE I; DOE II; IVY HE; DOE III;  
DOE IV; DOE V; DOE VI;  
CHARLES LEE; ROE VII; ROE VIII;  
LIU GUIFU; DOE IX; WEIYU  
WANG, and those individuals  
similarly situated,

*Plaintiffs-Appellants,*

v.

CISCO SYSTEMS, INC.; JOHN  
CHAMBERS; FREDY CHEUNG,  
AKA Zhang Sihua; DOES, 1-100,

*Defendants-Appellees.*

No. 15-16909

D.C. No. 5:11-cv-  
02449-EJD

OPINION

Appeal from the United States District Court  
for the Northern District of California  
Edward J. Davila, District Judge, Presiding

Argued and Submitted October 20, 2021  
Pasadena, California

Filed July 7, 2023

Before: A. Wallace Tashima, Marsha S. Berzon, and  
Morgan Christen, Circuit Judges.

Opinion by Judge Berzon;  
Partial Concurrence and Partial Dissent by Judge Christen

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### SUMMARY\*

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#### **Alien Tort Statute / Torture Victim Protection Act**

In an action brought by practitioners of Falun Gong who alleged that they or family members were victims of human rights abuses committed by the Chinese Communist Party and Chinese government officials and that these abuses were enabled by technological assistance of U.S. corporation Cisco Systems, Inc., and two Cisco executives, the panel affirmed the district court’s dismissal of plaintiffs’ claims under the Alien Tort Statute against the Cisco executives; reversed the dismissal of plaintiffs’ Alien Tort Statute claims against corporate defendant Cisco; reversed the dismissal of one plaintiff’s claims under the Torture Victim Protection Act against the Cisco executives; and remanded for further proceedings.

The district court dismissed plaintiffs’ claims under the Alien Tort Statute (“ATS”) on the ground that plaintiffs did not allege conduct sufficient to meet the standard for aiding and abetting liability under international customary law or to

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\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

overcome the presumption against the extraterritorial application of the ATS. The district court also dismissed plaintiff Charles Lee’s Torture Victim Protection Act (“TVPA”) claim against the Cisco executives on the ground that the statute does not provide for accomplice liability.

The panel held that under *Nestle USA, Inc. v. Doe*, 141 S. Ct. 1931 (2021), corporations may be held liable under the ATS. Agreeing with other circuits, the panel further held that, under the test set forth in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), aiding and abetting liability is a norm of customary international law with sufficient definition and universality to establish liability under the ATS. In addition, because aiding and abetting liability did not raise separation-of-powers or foreign policy concerns, such liability is cognizable for the purposes of the ATS.

The panel held that plaintiffs’ allegations against Cisco were sufficient to meet the applicable aiding and abetting standard. Joining other circuits, the panel held that the *actus reus* of aiding and abetting liability requires assistance to the principal with substantial effect on an international law violation. Joining the Eleventh Circuit, the panel held that the *mens rea* for aiding and abetting liability under customary international law is knowing assistance. Applying this standard, the panel concluded that plaintiffs plausibly alleged that corporate defendant Cisco provided assistance to the Party and to Chinese Public Security that had substantial effects on those entities’ violations of international law. Plaintiffs also plausibly alleged that Cisco knowingly provided such assistance.

Recognizing that the ATS does not apply extraterritorially, the panel held that this case involved a permissible domestic application of the ATS against Cisco

because much of the corporation's alleged conduct constituting aiding and abetting occurred in the United States. By contrast, plaintiffs did not sufficiently connect the alleged actions taken by the Cisco executives to the United States.

Reversing the district court's dismissal of the claim under the TVPA against the Cisco executives, the panel held, as a matter of first impression in the Ninth Circuit, that based on the text and the Convention Against Torture background of the TVPA, the TVPA provides a private right of action against those who aid and abet torture or extrajudicial killing. The panel held that the allegations against the executives were sufficient to meet the aiding and abetting standard, as determined under international law.

Concurring in part and dissenting in part, Judge Christen wrote that she joined Part II of the majority's opinion, addressing the TVPA claim. Judge Christen wrote that the majority's careful and cogent analysis of aiding and abetting liability under the ATS in Part I of its opinion was consistent with the views of other circuits, and in an appropriate case, Judge Christen would join it. She, however, did not do so here because she concluded that recognizing liability for aiding and abetting alleged human rights violations, committed in China and against Chinese nationals by the Chinese Communist Part and the Chinese government's Ministry of Public Security, was inconsistent with the purpose of the ATS. Judge Christen wrote that she would affirm the dismissal of plaintiffs' ATS claims on this basis, and go no further.

**COUNSEL**

Paul L. Hoffman (argued), Catherine Sweetser, and John C. Washington, Schonbrun Seplow Harris & Hoffman LLP, Hermosa Beach, California; Terri E. Marsh, Human Rights Law Foundation, Washington, D.C.; for Plaintiffs-Appellants.

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William J. Aceves, California Western School of Law, San Diego, California; David J. Scheffer, Northwestern University School of Law Bluhm Legal Clinic, Chicago, Illinois; for Amicus Curiae David J. Scheffer, former United States Ambassador-at-Large for War Crimes Issues.

Sophia S. Cope and Cindy Cohn, Electronic Frontier Foundation, San Francisco, California, for Amici Curiae Electronic Frontier Foundation, Article 19, and Privacy International.

Marco B. Simons, Richard L. Herz, Maryum Jordan, Marissa Vahlsing, and Michelle Harrison, EarthRights International, Washington, D.C., for Amici Curiae Human Rights Organizations EarthRights International and the Center for Constitutional Rights.

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