

2014

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Recommended Citation

Nellerhoe, Emily M. (2014) "*Balintulo v. Daimler AG*, 727 F.3d 174 (2013). Second Circuit Closes the Door for Victims of International Rights Violations," *South Carolina Journal of International Law and Business*: Vol. 11 : Iss. 1 , Article 7.
Available at: <http://scholarcommons.sc.edu/scjilb/vol11/iss1/7>

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BALINTULO v. DAIMLER AG, 727 F.3d 174 (2013).
SECOND CIRCUIT CLOSES THE DOOR FOR VICTIMS OF
INTERNATIONAL RIGHTS VIOLATIONS

*Emily M. Nellermoe**

INTRODUCTION

From 1948 to 1991, the South African government utilized a policy called *apartheid* to racially segregate and discriminate against its nonwhite population.¹ During the apartheid regime, over three million people were forcibly relocated, hundreds of protesters were killed in clashes with the government, and millions more endured political, economic, and social segregation.² The Rome Statute of the International Criminal Court officially designated apartheid as a crime against humanity in 1998.³ During the era of apartheid, the government of South Africa entered into contracts with several multinational corporations for products and services, including International Business Machines (IBM), Ford Motor Company, and Daimler AG.⁴

This case comment will discuss and analyze the opinion handed down in *Balintulo v. Daimler AG*,⁵ a consolidated class action lawsuit brought in U.S. federal district court under the Alien Tort Statute (ATS).⁶ In *Balintulo*, the Second Circuit narrowly interprets the Supreme Court's decision in *Kiobel v. Royal Dutch Petroleum Co.*,⁷ providing an answer to the following question: can multinational corporations that conducted business in a foreign country be held liable for tortious acts of human rights violations that occurred in that foreign country?

I. HISTORY

The ATS was originally enacted over two hundred years ago as part of the Judiciary Act of 1789.⁸ Despite laying dormant for most of its existence, the ATS has recently received a substantial amount of attention due to its

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¹ See generally *Apartheid*, BRITANNICA ONLINE ENCYCLOPEDIA, <http://www.britannica.com/EBchecked/topic/29332/apartheid> (last updated Aug. 25, 2014) (providing an entry on "apartheid").

² See generally *South Africa Profile: Timeline*, BBC, <http://www.bbc.com/news/world-africa-14094918> (last updated Jan. 2, 2015) (providing a timeline of major historical events in South Africa).

³ Rome Statute of the International Criminal Court pt. II, art. 5, July 17, 1998, 2187 U.N.T.S. 3.

⁴ See *Balintulo v. Daimler AG*, 727 F.3d 174 (2d Cir. 2013).

⁵ *Id.*

⁶ 28 U.S.C. § 1350 (1948). The ATS is also known as the Alien Tort Claims Act (ATCA), or the Alien Tort Act (ATA). See 14A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3661.2 (4th ed. 2014).

⁷ 133 S. Ct. 1659 (2013).

⁸ Judiciary Act of 1789, ch. 20, 1 Stat. 73 (codified as amended in scattered sections of 28 U.S.C.).

revival in *Filartiga v. Pena-Irala*, 630 F.2d 876 (1980).⁹ The statute confers federal jurisdiction over “all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States.”¹⁰ In other words, foreign nationals may utilize the U.S. court system as a venue to sue individual or corporate¹¹ defendants for torts associated with alleged human rights violations under federal common law.¹²

For years, most courts operated under the assumption that a geographical connection between the place of the alleged violation and the United State’s territory was unnecessary for ATS jurisdiction.¹³ This all changed in 2013 with the Supreme Court’s decision in *Kiobel v. Royal Dutch Petroleum*.¹⁴ There, Mr. and Mrs. Kiobel, Nigerian nationals who had been granted political asylum and legal residency in the U.S., filed suit in U.S. district court under the ATS alleging that Royal Dutch Petroleum, Shell Petroleum, and their joint Nigerian subsidiary “aided and abetted the Nigerian Government in committing violations of the law of nations in Nigeria.”¹⁵ The district court dismissed several of the Kiobels’ claims,¹⁶ and on appeal the Second Circuit dismissed their complaint entirely.¹⁷ The Supreme Court then granted certiorari to decide “whether and under what circumstances courts may recognize a cause of action under the ATS, for violations of the law of nations occurring within the territory of a sovereign other than the United States.”¹⁸

To answer this, the Court had to decide whether the “presumption against extraterritorial application,” a canon of statutory interpretation, applies to ATS claims.¹⁹ This presumption provides that “when a statute gives no clear

⁹ See 14A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3661.1 (4th ed. 2014) (“Despite the statute’s ancient lineage, its possible range of application has been focused on only during the past few decades.”).

¹⁰ Judiciary Act of 1789 § 9, 1 Stat. at 77.

¹¹ The issue of whether the ATS encompasses corporate defendants is unsettled. See discussion *infra* pp. 11–13.

¹² See, e.g., *Sosa v. Alvarez-Machain*, 542 U.S. 692, 724–25 (2004).

¹³ See, e.g., *Balintulo v. Daimler AG*, 727 F.3d 174, 180–181 (2013) (“Although the plaintiffs did not claim that any of the South African government’s alleged violations of the law of nations occurred in the U.S., at the time they filed their complaint they assumed (as did most American courts at that time) that no such geographical connection was necessary.” (citing *Flomo v. Firestone Nat’l Rubber Co., LLC*, 643 F.3d 1013, 1025 (7th Cir. 2011) (“[N]o court to our knowledge has ever held that [the ATS] doesn’t apply extraterritorially.”))).

¹⁴ 133 S. Ct. 1659 (2013).

¹⁵ *Id.* at 1662. The specific facts of *Kiobel* are as follows: Royal Dutch Petroleum and Shell Petroleum had a joint subsidiary incorporated in Nigeria (Shell Petroleum Development Company of Nigeria, Ltd.), which “engaged in oil exploration and production in Ogoniland.” *Id.* Many citizens of Ogoniland initiated protests against SPDC and their harmful environmental exploitation. *Id.* SPDC responded by “enlist[ing] the Nigerian Government to violently suppress the burgeoning demonstrations.” *Id.* The Kiobels alleged that the “Nigerian military and police forces attacked Ognoi villages, beating, raping, killing, and arresting residents and destroying or looting their property.” *Id.* The complaint further alleged that SPDC “aided and abetted these atrocities by, among other things, providing the Nigerian forces with food, transportation, and compensation, as well as by allowing the Nigerian military to use respondents’ property as a staging ground for attacks.” *Id.* at 1662–63.

¹⁶ See *Kiobel v. Royal Dutch Petroleum Co.*, 456 F. Supp. 2d 457 (S.D.N.Y. 2006).

¹⁷ *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 149 (2nd Cir. 2010).

¹⁸ 133 S. Ct. 1659, 1662.

¹⁹ *Id.* at 1664.

indication of extraterritorial application, it has none.”²⁰ After examining the language of the ATS, the Court determined that “nothing in the text of the statute suggests that Congress intended causes of action recognized under it to have extraterritorial reach.”²¹ The Court supplemented this by explaining that “the danger of unwarranted judicial interference in the conduct of foreign policy is magnified in the context of the ATS[.]”²² This cuts against the presumption against extraterrestrial application’s purpose “to protect against unintended clashes between our laws and those of other nations which could result in international discord[.]”²³ Accordingly, the *Kiobel* majority concluded that the “principles underlying the presumption against extraterritoriality . . . constrain courts exercising their power under the ATS[.]”²⁴ barring the *Kiobels*’ case since all “relevant conduct took place outside of the United States.”²⁵

Importantly, the Court provided the following guidance: “[E]ven where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application.”²⁶ The majority did not further define what it meant by “touch and concern,” nor did it give specific instructions for determining what qualifies as “sufficient force.” As Justice Kennedy noted in his concurring opinion, this was completely intentional:

[T]he Court is careful to leave open a number of significant questions regarding the reach and interpretation of the [ATS]. . . . Other cases may arise with allegations of serious violations . . . and in those disputes the proper implementation of the presumption against extraterritorial application may require some further elaboration and explanation.²⁷

II. FACTS

We now turn to the case at hand, *Balintulo*. In 2002, two class action suits (eventually consolidated) were initiated on behalf of apartheid victims in South Africa seeking damages from several corporate defendants (Daimler

²⁰ *Id.* at 1664 (quoting *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010)). There is a “presumption that U.S. law governs domestically but does not rule the world.” *Id.* (quoting *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 454 (2007)).

²¹ *Id.* at 1665.

²² *Id.* at 1664.

²³ *Id.* at 1664 (quoting *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991)).

²⁴ *Id.* at 1665.

²⁵ *Id.* at 1670.

²⁶ *Id.* at 1669 (citing *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 264–273 (2010)).

²⁷ *Id.* (Kennedy, J. concurring).

AG, Ford Motor Co., and IBM).²⁸ The complaints first alleged the corporate defendants “committed both direct and secondary violations of the law of nations”²⁹ by aiding and abetting violations of international law in South Africa during that country’s repressive system of apartheid.³⁰ The plaintiffs claimed that under apartheid, they were subjected to discriminatory and retaliatory employment practices, denationalization, geographic segregation, torture, forced exile, arbitrary arrest and detention, and the extrajudicial killing of family members.³¹ Specifically, the plaintiffs accused Daimler and Ford of manufacturing and supplying military vehicles to South African security forces, aiding security forces in identifying and torturing anti-apartheid leaders, and engaging in workplace discrimination that “mimicked and enhanced apartheid[.]”³² Similarly, the plaintiffs accused IBM of providing the South African government with computer supplies, maintenance, and support that enabled the government to effectively carry out acts of segregation and denationalization.³³

After a long and complicated series of judicial proceedings, the Second Circuit finally had the opportunity to address *Balintulo* in 2009 when the corporate defendants petitioned the court for a writ of mandamus.³⁴ Defendants sought to appeal the lower court’s denial of their motion to dismiss, arguing, among other things, “the jurisdiction conferred by the ATS does not permit suits against corporations or apply to acts committed outside of the United States.”³⁵ The Second Circuit granted the defendants’ motion for a stay of lower court proceedings while they took the case under advisement.³⁶ As the court of appeals was considering *Balintulo*, the U.S. Supreme Court issued its final decision in *Kiobel*, significantly limiting the scope of the ATS and placing the *Balintulo* defendants in a much more favorable position.

During supplemental briefing, plaintiffs argued that their suit was not precluded by the decision in *Kiobel* because it was “based on foreign conduct when the defendants are American nationals” and because “the defendants’ conduct affront[ed] significant American interests[.]”³⁷ Plaintiffs admitted that under *Kiobel*’s sufficient force test, “mere corporate presence” in the U.S. would indeed be insufficient for an ATS claim to “touch and concern” the

²⁸ *Balintulo v. Daimler AG*, 727 F.3d 174, 183 (2013).

²⁹ *Id.* at 182.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 182–83.

³³ *Id.* at 183.

³⁴ *Id.* at 181. Defendants also appealed under the collateral order doctrine. *Id.*

³⁵ *Id.* Other grounds for appeal include that the case “threatened significant United States foreign-policy interests” and that “the District Court erroneously imposed accessorial liability”. *Id.*

³⁶ *Id.*

³⁷ *Id.* at 189.

U.S.; however, they argued that their claims were sufficient and would meet the *Kiobel* burden because “corporate citizenship” is something more than presence.³⁸

III. DISCUSSION

A. REPORT

The Second Circuit finally issued its opinion in August of 2013, strongly disagreeing with the plaintiffs.³⁹ After a lengthy discussion of whether writs of mandamus are appropriate for reviewing interlocutory decisions—in this case, the district court’s denial of the defendants’ motion to dismiss⁴⁰—the court adamantly rejected plaintiffs’ arguments:

The Supreme Court expressly held that claims under the ATS [cannot] be brought for violations of the law of nations occurring within the territory of a sovereign other than the United States. The majority framed the question presented in these terms no fewer than three times; it repeated the same language, focusing solely on the location of the relevant “conduct” or “violation,” at least eight more times in other parts of its eight-page opinion . . . [l]ower courts are . . . without authority to “reinterpret” the Court’s binding precedent in light of irrelevant factual distinctions, such as the citizenship of the defendants. Accordingly, if all the relevant conduct occurred abroad, that is simply the end of the matter under *Kiobel*.⁴¹

Finally, the Second Circuit denied defendants’ writ of mandamus petition: “In light of the Supreme Court’s decision in *Kiobel* . . . issuance of the writ is unnecessary . . . because the defendants have an adequate means of relief through a motion for judgment on the pleadings.”⁴² The Second Circuit vacated the stay imposed on the lower court and remanded for inevitable dismissal.⁴³

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 186–87. Essentially, the court explained that writs of mandamus are “drastic and extraordinary remed[ies] reserved for really extraordinary cases. *Id.* at 186 (quoting *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004)). There are three narrow instances where the writ is appropriate: (1) the writ-seeking party “must have no other adequate means to obtain the relief he desires[;]” (2) the writ-seeker must show “that his right to issuance of the writ is clear and indisputable[;]” and (3) the issuing court “must be satisfied that the writ is appropriate under the circumstances.” *Id.* at 186–87 (quoting *Cheney*, 542 U.S. at 380–81). However, the court stated that cases involving ATS questions are entitled to “greater appellate oversight” given the “danger of unwarranted judicial interference in the conduct of foreign policy of the United States.” *Id.* at 187 (citing *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1664 (2013)).

⁴¹ *Id.* at 189–90 (internal citations omitted).

⁴² *Id.* at 188; 193–94. “[T]he defendants can obtain the dismissal of all claims now that the Supreme Court in *Kiobel* has made clear that federal courts may not, under the ATS, recognize common-law causes of action for conduct occurring in another country.” *Id.* at 194.

⁴³ *Id.*

B. ANALYSIS

While I think the Second Circuit reached the correct final result in *Balintulo*, the panel's rigid interpretation of *Kiobel* creates unfortunate precedent that will bar many ATS claims that may have otherwise had merit. It was obvious that the Supreme Court left leeway in *Kiobel* for special situations that "may require some further elaboration and explanation"⁴⁴ in order to overcome the *presumption* against extrajudicial application. It is well known that legal presumptions can be overcome, which is why they are presumptions and not rules. *Kiobel* merely "[left] for another day the determination of just when the presumption against extraterritoriality might be overcome."⁴⁵ One could conceive of situations where human rights violations occur outside the borders of the U.S. and still present claims that "touch and concern" the U.S. with "sufficient force."⁴⁶ However, the *Balintulo* court, in its zeal to dismiss the plaintiffs' arguments, held that "if all the relevant conduct occurred abroad, that is simply the end of the matter under *Kiobel*."⁴⁷ In fact, this was never stated in *Kiobel*. As Justice Breyer stated in his concurrence:

The ATS . . . was enacted with "foreign matters" in mind. . . . Nothing in the statute or its history suggests that our courts should turn a blind eye to the plight of victims in that handful of heinous actions. . . . To the contrary, the statute's language, history, and purposes suggest that the statute was to be a weapon in the "war" against those modern pirates who, by their conduct, have declared war against all mankind. . . . [My] approach would avoid placing the statute's jurisdictional scope at odds with its substantive objectives, holding out "the word of promise" of compensation for victims of torture, while "breaking it to the hope."⁴⁸

C. PRACTICAL IMPACT

1. FINDING THE LIMITS OF *KIOBEL*

When considering the practical impact of *Balintulo*, it is first helpful to distinguish it from another ATS case where the Fourth Circuit deemed ties to the U.S. were sufficient to overcome the *Kiobel* presumption, despite the fact that all the violations occurred in a foreign country. In *Al Shimari v. CACI Premier Tech., Inc.*,⁴⁹ the plaintiffs filed an ATS suit against an American corporation, CACI Premier Technology, Inc. (CACI), seeking damages for

⁴⁴ 133 S. Ct. 1659, 1669 (Kennedy, J. concurring).

⁴⁵ *Id.* at 1673 (Breyer, J. concurring) (internal quotation marks omitted).

⁴⁶ And indeed there have been; see discussion of *Al Shimari v. CACI*, *infra* pp. 9–11.

⁴⁷ 727 F.3d at 190.

⁴⁸ 133 S. Ct. 1659 at 1672, 1674, 1677 (internal citations omitted).

⁴⁹ 758 F.3d 516 (4th Cir. 2014).

the torture and mistreatment of foreign national detainees at the Abu Ghraib prison in Iraq.⁵⁰ CACI, a corporation domiciled in the U.S., provided civilian contractors (interrogators) to the U.S. Department of the Interior from 2003–2004, which stationed these CACI employees at the Abu Ghraib prison near Baghdad.⁵¹ In a widely publicized investigation, revealing events that President George W. Bush condemned as “abhorrent,”⁵² the U.S. Department of Defense discovered that CACI contractors and U.S. military personnel perpetrated acts of torture and mistreatment against the detainees.⁵³ The *Al Shimari* plaintiffs alleged that the “CACI employees ‘instigated, directed, participated in, encouraged, and aided and abetted conduct towards detainees that clearly violated the Geneva Conventions, the Army Field Manual, and the laws of the United States.’”⁵⁴ Specifically, the *Al Shimari* plaintiffs claimed to have been “‘repeatedly beaten,’ ‘shot in the leg,’ ‘repeatedly shot in the head with a taser gun,’ ‘subjected to mock execution,’ ‘threatened with unleashed dogs,’ ‘stripped naked,’ ‘kept in a cage,’ ‘beaten on [the] genitals with a stick,’ ‘forcibly subjected to sexual acts,’ and ‘forced to watch’ the ‘rape [] [of] a female detainee.’”⁵⁵ Relying on a strict interpretation of *Kiobel*, the district court dismissed the plaintiffs’ ATS claims, deciding that the court lacked ATS jurisdiction “because the acts giving rise to their tort claims occurred exclusively in Iraq, a foreign sovereign.”⁵⁶

Plaintiffs appealed to the Fourth Circuit Court of Appeals, who heard arguments concerning “whether the [ATS], as interpreted by the Supreme Court in [*Kiobel*], provides a jurisdictional basis for the plaintiffs’ alleged violations of international law, despite the presumption against extraterritorial application of acts of Congress.”⁵⁷ Plaintiffs argued that even though the acts themselves took place in Iraq, the court should apply a fact-based inquiry to utilize the flexibility built into *Kiobel*.⁵⁸ In support of their “touch and concern” analysis, Plaintiffs alleged that CACI “insufficiently supervised [its] employees, ignored reports of abuse, and attempted to ‘cover up’ the misconduct.”⁵⁹ Plaintiffs further alleged that senior CACI employees, including the Abu Ghraib site manager and

⁵⁰ *Id.* at 520.

⁵¹ *Id.* at 521.

⁵² Interview by Al-Ahram with George Walker Bush, President, U.S., in Dubai, U.A.E. (May 5, 2004).

⁵³ See Amnesty International, *Memorandum on Concerns Relating to Law and Order* 11–12 (July 2003), available at <http://image.guardian.co.uk/sys-files/Guardian/documents/2003/07/23/MDE1415703.pdf>. See generally *Chronology of Abu Ghraib*, WASHINGTON POST (Feb. 17, 2006), <http://www.washingtonpost.com/wp-srv/world/iraq/abughraib/timeline.html> (explaining that Saddam “Sam” Saleh Aboud is involved in a lawsuit against military contractor CACI International, Inc., over allegations that Army Brig. Gen. Janis L. Karpinski witnessed abuses at Abu Ghraib).

⁵⁴ *Al Shimari*, 758 F.3d at 521.

⁵⁵ *Id.* at 521.

⁵⁶ *Al Shimari v. CACI Int’l, Inc.*, 951 F. Supp. 2d 857, 858 (E.D. Va. 2013).

⁵⁷ *Al Shimari*, 758 F.3d at 520.

⁵⁸ See *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013).

⁵⁹ 758 F.3d at 522.

the CACI vice president, had knowledge of “potential abuse by CACI employees,” but failed to investigate despite frequent contact with CACI’s U.S. headquarters.⁶⁰

The Fourth Circuit agreed, holding that, “the plaintiffs’ claims ‘touch and concern’ the territory of the U.S. with sufficient force to displace the presumption against extraterritorial application of the [ATS].”⁶¹ The Fourth Circuit specifically distinguished *Al Shimari* from *Balintulo*, stating that, “[t]hese ties to the territory of the United States are far greater than those considered . . . in *Balintulo*”⁶² based on CACI’s status as a U.S. corporation, the U.S. citizenship of its implicated employees, the fact that its contract was issued in the U.S. by the Department of the Interior, and the fact that its U.S.-based managers “gave tacit approval to the acts of torture committed by CACI employees at the Abu Ghraib prison [and] attempted to cover up the misconduct[.]”⁶³

Because *Kiobel* was decided so recently, lower courts will slowly be building a body of law around ATS suits to determine if “relevant conduct” “touches and concerns” the territory of the U.S. with “sufficient force” to overcome the presumption against extraterrestrial application. While it is clear that the breadth of the ATS has been curtailed, it is not yet clear which factors courts will find most persuasive, or the level of attenuation judges will accept. Defendants should argue for a strict interpretation of *Kiobel* supported by *Balintulo*, while plaintiffs should look to *Al Shimari* and draw as many ties between the defendant and the U.S. as possible.

2. CORPORATE DEFENDANTS

Another important practical issue raised but not thoroughly discussed in *Balintulo* concerns whether courts have subject matter jurisdiction over corporate defendants in ATS suits. The first lawsuit to implicate corporate defendants under the ATS was decided in 1997;⁶⁴ ever since this decision, jurisdictions have been split on the issue and the Supreme Court has yet to definitively provide an answer.⁶⁵ To further complicate matters, almost every recently published ATS case finding for plaintiffs has been remanded for reconsideration in light of *Kiobel*; whether

⁶⁰ *Id.* at 522.

⁶¹ *Id.* at 520.

⁶² *Id.* at 529.

⁶³ *Id.* at 530–31.

⁶⁴ *See Doe v. Unocal Corp.*, 963 F. Supp. 880 (C.D. Cal. 1997) (naming corporate defendants Unocal Corp., Total S.A., and Myanmar Oil and Gas Enterprise), *aff’d in part and rev’d in part*, 395 F.3d 932 (9th Cir. 2002).

⁶⁵ 14A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3661.2 (4th ed. 2014) (“Recently, the question of whether [ATS] plaintiffs should further be confined to suing only natural persons has generated a flurry of activity and a split among the courts of appeals.”).

the remands were based on subject matter jurisdiction, sufficiency of connection to the U.S., or for some other reason is unclear at this time.⁶⁶

Balintulo acknowledged the issue of subject matter jurisdiction briefly, providing a citation to *Kiobel*'s predecessor, *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2nd Cir. 2010). There, the court found that the ATS did not provide subject matter jurisdiction over claims against corporations, explaining “[n]o corporation has ever been subject to *any* form of liability (whether civil, criminal, or otherwise) under the customary international law of human rights.”⁶⁷ The *Balintulo* court also mentioned that the Second Circuit’s treatment of corporate defendants was “long-settled” even before the *Kiobel*-2010 holding.

The D.C. Circuit reached the opposite conclusion in *Doe v. Exxon Mobil Corp.*, 654 F.3d 11 (2011).⁶⁸ There, the court examined the history and purpose of the ATS along with the intent of the First Congress, concluding that “[c]orporate immunity . . . would be inconsistent with the ATS”⁶⁹ and criticizing the Second Circuit’s holding in *Kiobel*-2010 for “a number of problems with [its] analysis” regarding jurisdiction over corporate defendants.⁷⁰ The Seventh and Ninth Circuits have also held that corporate liability under the ATS is not barred.⁷¹

The U.S. Supreme Court has yet to bar ATS cases naming corporate defendants despite having the opportunity to do so; rather, it specifically mentioned corporate defendants in its *Kiobel* holding,⁷² implying ATS plaintiffs could bring claims against corporations if they could show more than “mere corporate presence” in the U.S. Ultimately, because the Court has only heard a few ATS cases, the federal circuits’ interpretation of *Kiobel* will control for now. If and until the Court addresses jurisdiction over corporate defendants, the outcome of ATS cases will depend heavily on the circuit where the case is filed.

⁶⁶ See, e.g., *Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 15 (D.C. Cir. 2011).

⁶⁷ *Id.* at 148.

⁶⁸ This decision was recently appealed to the D.C. Circuit Court of Appeals where the ATS issue was remanded for reconsideration in light of *Kiobel*. *Doe v. Exxon Mobil Corp.*, 527 Fed. Appx. 7 (D.C. Cir. 2013).

⁶⁹ *Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 47 (2011).

⁷⁰ *Id.* at 50.

⁷¹ See *Flomo v. Firestone Natural Rubber Co.*, 643 F.3d 1013 (7th Cir. 2011); *Sarei v. Rio Tinto PLC*, 671 F.3d 736 (9th Cir. 2011); *vacated* 133 S. Ct. 1995 (2013).

⁷² “Corporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices.” *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013).

IV. CONCLUSION

The ATS has resurfaced with a bang after lying dormant for over two hundred years. Its relatively recent rediscovery presents challenges in interpretation, which are currently being shaped by U.S. courts. *Kiobel* attempted to provide guidance regarding extraterritorial application of the ATS and left flexibility for lower courts in deciding questions of subject matter jurisdiction. However, in *Balintulo*, the Second Circuit narrowly interpreted *Kiobel*'s holding, thus unnecessarily closing the door for future victims of human rights violations. Because of *Kiobel*, cases across the country are being remanded for reconsideration, leaving the practical impact of *Balintulo* and cases like it unclear.