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U.S. Supreme Court Holds That Only Natural Persons Can be Sued Under the Torture Victim Protection Act

On April 18, 2012, the U.S. Supreme Court decided in *Mohamad v. Palestinian Authority*, No. 11-88, that parties may bring suit under the Torture Victim Protection Act of 1991 (TVPA) only against human beings — not organizations. This decision has far-reaching implications for corporations doing business in politically volatile regions.

The TVPA authorizes a cause of action against an "individual" for acts of torture or extrajudicial killing committed under the authority or color of law of any foreign nation. 28 U.S.C. § 1350, note § 2(a). In *Mohamad*, relatives of a naturalized U.S. citizen who was arrested, imprisoned, tortured and ultimately killed during a visit to the West Bank brought suit in the U.S. District Court for the District of Columbia under the statute against the Palestinian Authority and the Palestinian Liberation Organization.

The D.C. district court dismissed the suit, holding that the TVPA's authorization of a suit against an "individual" applies only to natural persons. The U.S. Court of Appeals for the District of Columbia affirmed, and petitioners sought review by the Supreme Court, pointing out that, although the D.C. Circuit's interpretation accorded with that of the Fourth and Ninth Circuits (which also limited liability under the TVPA to natural persons), the Eleventh Circuit had extended TVPA liability to corporate defendants. On the basis of this circuit split, the U.S. Supreme Court granted certiorari.

In an opinion written by Justice Sotomayor, the Supreme Court held that, under the plain text of the TVPA, the term "individual" encompasses only natural persons and, consequently, does not impose liability against organizations. In reaching this decision, the Court looked first to the ordinary meaning of the term "individual," as reflected in dictionary definitions and everyday parlance, to conclude that it ordinarily means a "human being." The Court further found that Congress does not, in the ordinary course, use the word any differently. Next, the Court noted that, because the statute itself uses the word "individual" four times to refer to the victim of torture or extrajudicial killing, who must be a natural person, "individual" also must mean a natural person when referring to the perpetrator. The Court then explained that, although resort to legislative history was unnecessary in light of this "unambiguous language," the legislative history confirms that Congress intended to limit the statute to natural persons. Although the Court acknowledged petitioners' concerns that these "limitations on recovery" might render the statute "toothless," the Court concluded that "they are the ones that Congress imposed and that we must respect."

Justice Breyer wrote a separate concurrence to assert his stance that the word "individual" is open to "multiple interpretations, permitting it, linguistically speaking, to include natural persons, corporations, and other entities." He ultimately joined in the Court's judgment, however, because the "legislative history of the statute [] makes up for whatever interpretive inadequacies remain after considering language alone."

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Mohamad is a case of great importance for corporations doing business in politically volatile regions. In recent years, the TVPA sparked an increasing wave of lawsuits in U.S. federal courts against corporations on the theory that corporations engaging in business in foreign countries could be held responsible for alleged human rights abuses committed in those countries. Although the *Mohamad* decision, as a technical matter, addressed lawsuits against organizations, its reasoning is equally applicable to suits against corporations. In fact, on April 23, 2012, just five days after issuing its opinion in Mohamad, the Court denied certiorari in a case which presented that very issue, thereby suggesting that the *Mohamad* rationale is applicable under such circumstances. *See Bowoto v. Chevron Corp*., 621 F.3d 1116 (9th Cir. 2010), *cert. denied*, No. 10-1356, 2012 U.S. LEXIS 3199 (Apr. 23, 2012). Further, *Mohamad* probably forecloses arguments that corporations can be held liable under the TVPA upon a theory of aiding and abetting. *See id.* Thus, the upshot of *Mohamad* is that plaintiffs may not use the TVPA to seek damages from corporations in U.S. courts for acts of torture or extrajudicial killing committed overseas.

Notably, the Court's holding in *Mohamad*, based on the language of the TVPA, does not resolve the issue of corporate liability under the related Alien Tort Statute (ATS), 28 U.S.C. § 1350, which vests U.S. federal courts with jurisdiction to hear claims by aliens for torts committed in violation of international law. The Court is reviewing that issue, however, in *Kiobel v. Royal Dutch Petroleum,* No. 10-1491. Indeed, the Court heard argument in *Kiobel* on the same day that it heard argument in *Mohamad*. But, after the *Kiobel* argument, the Court ordered that the case be briefed afresh and reargued next term to address an additional issue of extraterritoriality, *i.e.*, whether the ATS even applies to violations of international law committed on foreign soil.[1]

Although the Court briefly mentioned *Kiobel* in its *Mohamad* opinion, it provided little insight into how it might rule on the question of corporate liability under the ATS (assuming that it even reaches that question). Instead, the Court simply stated that the ATS offers "no comparative value" because, unlike the TVPA, it does "not employ[] the term 'individual' to describe the covered defendant[.]" Accordingly, while the *Mohamad* decision should put to rest the question of corporate liability under the TVPA, it remains to be seen whether corporations will continue to face lawsuits under the ATS.

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1 *See*, "Supreme Court Broadens Its Review of Alien Tort Statute – May Limit Corporate Liability in Human Rights Lawsuits," *Skadden, Arps, Slate, Meagher & Flom LLP*, April 4, 2012.