No. 10-1491

In The
Supreme Court of the United States

ESTHER KIOBEL, INDIVIDUALLY AND ON BEHALF OF HER LATE HUSBAND, DR. BARINEM KIOBEL, et al.,

Petitioners,

v.

ROYAL DUTCH PETROLEUM CO., et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF OF *AMICUS CURIAE* THE RUTGERS LAW SCHOOL CONSTITUTIONAL LITIGATION CLINIC IN SUPPORT OF PETITIONERS, ON RE-ARGUMENT OF THE CASE

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INTEREST OF *AMICUS CURIAE*[1]

Amicus, the Constitutional Litigation Clinic, has been part of the curriculum of the Rutgers School of Law-Newark since 1970. Its main goals are to successfully represent clients whose most fundamental rights have been violated; to protect and promote civil liberties and human rights; and to train law students (through the medium of impact litigation), to be creative and ethical lawyers of the highest quality.

The Constitutional Litigation is one the oldest legal clinics in the country. It has litigated civil rights and human rights cases of first impression in federal and state courts in this country and throughout the world, including before this Court.

Amicus curiae submits this brief to promote integrity and accuracy in the development of jurisprudence under the Alien Tort Statute, by providing this Court with a comprehensive discussion of the doctrine of *stare decisis*, and its relevant application to this case. In doing so, *amicus curiae* seeks to ensure that victims of the most serious abuses will

[1] Written consent from all parties, in both cases before the Court, concerning the filing of *amicus curiae* briefs are on file with the Clerk of this Court. Pursuant to Rule 37.6, *amicus curiae* affirms that no counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae* or its counsel contributed money to the preparation or submission of this brief.

continue to have access to an impartial forum, where they can seek and find justice.

SUMMARY OF ARGUMENT

The doctrine of *stare decisis* gives integrity to this Court as an institution, and strengthens its legitimacy to the public. *Stare decisis* requires that the law be predictable. It ensures that the law does not change based upon this Court's composition, and that legal issues are not re-litigated each time they arise in a case. As such, this Court's decision in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), in its entirety, should act as *stare decisis* in *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010), *reh'g denied*, 642 F.3d 268 (2d Cir. 2011), *reh'g en banc denied*, 642 F.3d 379 (2d Cir. 2011), *cert. granted*, 132 S. Ct. 472 (2011), and all future cases brought under the Alien Tort Statute ("ATS").

In *Sosa*, this Court endorsed *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980). *Sosa*, 542 U.S. at 731. Both *Sosa* and *Filartiga* were ATS lawsuits based on events that occurred outside U.S. borders – in Paraguary and Mexico, respectively. In *Sosa*, this Court rejected arguments by the United States and over twenty *amici* that the ATS bars federal courts from hearing lawsuits stemming from human rights abuses committed far from U.S. soil. Since *Sosa* was decided, over 100 ATS cases have been filed where the alleged human rights abuses took place extra-territorially. In all but five of those cases, federal

court jurisdiction over extra-territorial torts was not even questioned by any of the parties, or by the federal courts presiding over the cases. In the five cases where defendants *did* challenge jurisdiction based on extra-territoriality, all federal courts dismissed those challenges, citing *Sosa* as controlling precedent.

This Court's jurisprudence is clear that *stare decisis* is particularly strong in cases involving statutory interpretation. *Stare decisis* controls when the antiquity of the precedent has strengthened its holding, a particular decision has been relied upon, including by lower courts, and when the Court's decision was well-reasoned. *Sosa* satisfies all of these elements. As such, this Court should adhere to *Sosa*'s unequivocal endorsement of federal court jurisdiction over extra-territorial human rights abuses.

ARGUMENT

I. *STARE DECISIS* REQUIRES THAT THE LAW REMAIN CLEAR AND PREDICTABLE. *STARE DECISIS* IS PARTICULARLY STRONG IN CASES INVOLVING STATUTORY INTERPRETATION.

A. *Stare Decisis* Protects the Integrity of This Court and Its Jurisprudence.

"The principle of *stare decisis* and the interests that it serves . . . counsel strongly against reconsideration of precedents." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 63 (1996). *Stare decisis*

"represents an element of continuity in law, and is rooted in the psychologic need to satisfy reasonable expectations." *Helvering v. Hallock*, 309 U.S. 106, 119 (1940). This court adheres to *stare decisis* because of:

> the desirability that the law furnish a clear guide for the conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise; the importance of furthering fair and expeditious adjudication by eliminating the need to relitigate every relevant proposition in every case; and the necessity of maintaining public faith in the judiciary as a source of impersonal and reasoned judgments.

Moragne v. States Marine Lines, Inc., 398 U.S. 375, 403 (1970). *Stare decisis* "contributes to the integrity of our constitutional system of government, both in appearance and in fact," by preserving the presumption "that bedrock principles are founded in the law rather than in the proclivities of individuals." *Vasquez v. Hillery*, 474 U.S. 254, 265-66 (1986).

The only thing that has changed since *Sosa* was decided in 2004, is the make-up of this Court. That, however, should have no impact on *Sosa*'s precedential value. As Justice Cardozo famously stated: it would be "intolerable if the weekly changes in the composition of the court were accompanied by changes in its rulings." Benjamin N. Cardozo, *The Nature of the Judicial Process* 150 (1921). Moreover,

> [t]he labor of judges would be increased almost to the breaking point if every past decision could be reopened in every case, and one

> could not lay one's own course of bricks on the secure foundation of the courses laid by others who had gone before him.

Id. at 149.[2]

B. *Stare Decisis* is Stronger in Statutory Interpretation Cases.

Absent compelling evidence showing that this Court misinterpreted Congress's intent, *NLRB v.*

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[2] All members of this Court appointed after *Sosa* was decided expressed respect for precedent and *stare decisis* during their confirmation hearings. *See*, *e.g.*, *Confirmation Hearing of Chief Justice Roberts Before U.S. S. Judiciary Comm.*, 109th Cong. 142 (2005) (statement of C.J. Roberts) (" . . . the Founders appreciated the role of precedent in promoting evenhandedness, predictability, stability, [and] the appearance of integrity in the judicial process."). Chief Justice Roberts added that an individual Justice's belief that a prior decision was wrongly decided is not enough to overrule precedent. *Id.* at 144. *See also Confirmation Hearing of Justice Alito Before U.S. S. Judiciary Comm.*, 109th Cong. 318 (2006) (statement of J. Alito) ("the doctrine of *stare decisis* is . . . a fundamental part of our legal system and it's the principle that courts in general should follow their past precedents."); *Confirmation Hearing of Justice Sotomayor Before U.S. S. Judiciary Comm.*, 111th Cong. 96 (2009) (statement of J. Sotomayor) (the "basic premise [of *stare decisis*] is that there is a value in society to predictability, consistency, fairness, [and] evenhandedness in the law.") Justice Sotomayor explained further that "[s]ociety has the important expectation that judges won't change the law based on a personal whim." *Id.*; *see also Confirmation Hearing of Justice Kagan Before U.S. S. Judiciary Comm.*, 111th Cong. 149-50 (2010) (statement of J. Kagan) (stating that *stare decisis* "leads to predictability and stability in the law" and is "a measure of judicial humility.").

Longshoremen, 473 U.S. 61, 84, (1985), this Court has held that it must adhere to its prior interpretations of statutes. *Neal v. U.S.*, 516 U.S. 284, 296, (1996). The doctrine of *stare decisis* is stronger in statutory interpretation cases because "Congress is free to change this Court's interpretation of its legislation." *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 736 (1977). Congress's failure to do so, signifies agreement with this Court's statutory interpretation.

Stare decisis is so strong in the statutory interpretation context, that this Court has held that it should adhere to precedent even if a prior decision was "incorrect," unless the decision is "unworkable." *Patterson v. McLean Credit Union*, 491 U.S. 164, 173-74 (1989). A decision is "unworkable" when it poses "a direct obstacle to the realization of important objectives embodied in other laws," or is causing other problems. *Id.* For example, in *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265 (1995), this Court found that it had wrongly decided *Southland Corp. v. Keating*, 465 U.S. 1, 22 (1984) (interpreting § 2 of the Federal Arbitration Act). Nonetheless, it still upheld that decision. *Allied-Bruce*, 513 U.S. at 272. *Stare decisis* required upholding *Southland* because nothing significant had changed since that decision, private parties had likely written contracts relying on *Southland*, and several subsequent cases had built upon *Southland*'s reasoning. *Id.* Despite her strong dissenting opinion in *Southland* (charging that the majority's opinion was wrong), Justice O'Connor agreed to uphold *Southland*, because *Southland* had "not proved unworkable." *Id.* at 284 (O'Connor, J., concurring).

Sosa is not "unworkable." In all post-*Sosa* cases, courts have cited to *Sosa* as binding precedent. In doing so, they either explicitly stated, or assumed, that *Sosa* authorized federal court jurisdiction over extra-territorial human rights abuses. *See infra* Section II.B. Additionally, Congress has taken no steps to overrule *Sosa*.

II. ALL FACTORS THAT THIS COURT EXAMINES IN DETERMINING WHETHER TO ADHERE TO *STARE DECISIS* SUPPORT AFFIRMING *SOSA*'S ENDORSEMENT OF FEDERAL COURT JURISDICTION OVER HUMAN RIGHTS VIOLATIONS THAT WERE COMMITTED ABROAD.

The factors that this Court weighs in deciding whether to adhere to *stare decisis* include "the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned." *Montejo v. Louisiana*, 556 U.S. 778, 779 (2009) (citing *Pearson v. Callahan*, 555 U.S. 223 (2009). All of those factors are present here. Accordingly, this Court should rely on all aspects of *Sosa* as *stare decisis* in *Kiobel*, including its endorsement of federal court jurisdiction over extra-territorial human rights abuses.

A. *Sosa*'s Precedential "Antiquity" is Strong Because It Incorporated Over Two Decades of Lower Federal Court Jurisprudence, Relied on Eighteenth Century Sources (Including Blackstone), and Because Congress has Taken no Steps to Overrule *Sosa*.

The "antiquity" of precedent is one of the factors this Court examines in determining whether that precedent should serve as *stare decisis* in subsequent cases. *Montejo*, 556 U.S. at 792-93 (citing *Pearson*, *supra*, 555 U.S. at 232). "This Court has suggested precedents tend to gain, not lose, respect with age." *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. ___, 130 S. Ct. 1605, 1611 n.5 (2010). As a case ages, it is "tested by experience." *Patterson*, 491 U.S. at 174; *see also U.S. v. Home Concrete & Supply, LLC*, 566 U.S. ___, 132 S. Ct. 1836 (2012). After a decision is tested many times, it either becomes a "bedrock principle[ ]," deserving strong respect under *stare decisis*, *Vasquez*, 474 U.S. at 265, or it is "found to be inconsistent with the sense of justice or with social welfare," and can be overruled. *Patterson*, 491 U.S. at 174.

To determine an opinion's antiquity in the statutory context, this Court examines:

> whether the decisions in question misconstrued the meaning of the statute as revealed in its legislative history, whether overruling these decisions would be inconsistent with more recent expressions of congressional intent . . . whether the decisions in question

> constituted a departure from prior decisions and whether overruling these decisions would frustrate legitimate reliance on their holdings.

Patsy v. Bd. of Regents of State of Fla., 457 U.S. 496, 501 (1982) (citing *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 695-701 (1978)).

Although there is very little legislative history surrounding the ATS's enactment, this Court recognized that the First Congress understood the ATS to encompass torts of an "international character." *Sosa*, 542 U.S. at 715, 724-25. In fact, this Court cited to Blackstone to find that the early law of nations "regulat[ed] the conduct of individuals situated *outside domestic boundaries*. . ." *Id.* at 715 (emphasis added) (citing 4 W. Blackstone, Commentaries on the Laws of England 67 (1769)).

Accordingly, this Court found that, when the First Congress enacted the ATS, "violations of safe conduct were probably understood to be actionable, and individual actions arising out of prize captures and piracy may well have also been contemplated." *Sosa*, 542 U.S. at 718-20. Blackstone's commentary identified violations of safe conduct and piracy as involving extra-territorial acts. *Id.* (citing 4 W. Blackstone, Commentaries on the Laws of England 68 (1769)). Violations of safe conduct occur either "upon the sea, or in port within the king's obeisance," and piracy is an "act of hostility upon the high seas." *Id*. English courts' jurisdiction over extra-territorial

violations of the law of nations was a "historical antecedent[ ]" to the federal courts' jurisdictional grant under the ATS in the Founding era. *Sosa*, 542 U.S. at 732 (citing *United States v. Smith*, 18 U.S. (5. Wheat.) 153, 163-80 (1820)).

Sosa is nearly a decade old. But its "antiquity" value for *stare decisis* purposes is much older, as *Sosa* affirmed *Filartiga*, which was decided in 1980. *Sosa*, 542 U.S. at 730, 732. *Filartiga* cited English common law at the time of our nation's founding, as well as U.S. case law adopting English common law to find that the ATS had extra-territorial reach.

> If A becomes indebted to B, or commits a tort upon his person or upon his personal property in Paris, an action in either case may be maintained against A in England, if he is there found. . . . As to transitory actions, there is not a colour of doubt but that any action which is transitory may be laid in any county in England, though the matter arises beyond the seas.

Filartiga, 630 F.2d at 885 (quoting *McKenna v. Fisk*, 42 U.S. (1 How.) 241 (1843) (quoting *Mostyn v. Fabrigas*, 1 Cowp. 161 (1774))).

Since *Sosa* was decided, it has been interpreted consistently. No federal court has questioned its jurisdiction over extra-territorial human rights violations, through the ATS. *See infra* Section II.B.

Additionally, when Congress takes no action to correct this Court's interpretation of a statute, this

Court's opinion controls future interpretation of the statute's language. *See*, *e.g.*, *Smith v. City of Jackson*, 544 U.S. 228, 240 (2005). Here, "Congress has not in any relevant way amended § 1350 or limited civil common law power by another statute." *Sosa*, 542 U.S. at 724-25. Rather, Congress has acted consistently with this Court's findings that the ATS provides for federal court jurisdiction over human rights abuses committed abroad.

Like this Court did in *Sosa*, in enacting the TVPA, Congress endorsed *Filartiga*.

> The Filartiqa [sic] case met with general approval. At least one Federal judge, however, questioned whether section 1350 can be used by victims of torture committed in foreign nations absent an explicit grant of a cause of action . . . The [Torture Victim Protection Act] would provide such a grant, and would also enhance the remedy already available under section 1350 in an important respect: While the Alien Tort Claims Act provides a remedy to aliens only, the TVPA would extend a civil remedy also to U.S. citizens who may have been tortured abroad.

HOUSE REPORT NO. 102-367(I), reprinted in 1992 U.S.C.C.A.N. 84, 86, 1991 WL 255964 at *3. In enacting the TVPA, Congress created a statute comparable to the ATS for the benefit of American citizens subjected to torture and extra-judicial killing abroad. *Sosa*, 542 U.S. at 728, 730.

In analyzing *Sosa*'s antiquity (and precedential value), it is significant that Congress has not amended either the TVPA or the ATS after *Sosa*. This inaction carries "special force" because, in the "area of statutory interpretation, . . . unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what [this Court has] done." *Patterson*, 491 U.S. at 172-73.

B. All Lower Federal Courts Have Relied on *Sosa* to Exercise Jurisdiction Over ATS Cases Involving Human Rights Abuses That Were Committed Extraterritorially.

"*Stare decisis* has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision." *Hilton v. S. Carolina Pub. Railways Comm'n*, 502 U.S. 197, 202 (1991). As acknowledged by this Court in *Sosa*, Congress has relied fully on *Filartiga*'s holding that federal courts have jurisdiction over human rights abuses that occur abroad, and enacted supplemental legislation, for the benefit of American citizens, that closely mirrors the ATS. *Sosa*, 542 U.S. at 728, 730; *see also supra*, Section II.A.

Another way that this Court measures "reliance" for *stare decisis* purposes is the degree to which lower federal courts have relied on or cited to the decision in question. *Allen v. Hardy*, 478 U.S. 255, 260 (1986) (examining reliance by "prosecutors, trial judges, and appellate courts throughout our state and federal

system," and "lower courts" generally, on Supreme Court precedent). *See also Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 918 (2007) (Breyer, J., dissenting) ("[A] Westlaw search shows that [the decision before the court] has been cited dozens of times in this Court and hundreds of times in lower courts. Those who wish this Court to change so well-established a legal precedent bear a heavy burden of proof.").

Since this Court decided *Sosa* in 2004, there have been a total of seventy-seven reported ATS cases (and twenty-five unreported cases) where the underlying tortious conduct occurred extra-territorially. Even though some of those cases were dismissed, no court took adverse action simply because the alleged abuses took place on foreign soil. Even the Second Circuit Court of Appeals, in *Kiobel, et al. v. Royal Dutch Petroleum Co., et al.*, 621 F.3d 111 (2d Cir. 2010), assumed that it had jurisdiction over extra-territorial human rights abuses under the ATS.

1. In seventy-three (out of a total of seventy-seven) reported ATS cases, defendants never even challenged federal court jurisdiction over extra-territorial human rights abuses, and federal courts assumed that such jurisdiction was proper.

In seventy-three reported ATS cases, decided after *Sosa*, all parties, and federal courts presiding over those cases, assumed that U.S. courts had jurisdiction

over human rights abuses committed abroad. *See Abagninin v. AMVAC Chemical Corp.*, 545 F.3d 733 (9th Cir. 2008) (allegations of deliberate distribution of highly toxic pesticides in Ivory Coast); *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163 (2d Cir. 2009) (allegations of nonconsensual medical experimentation in Nigeria); *Abecassis v. Wyatt*, 704 F. Supp. 2d 623 (S.D. Tex. 2010) (allegations of terrorist attacks in Israel); *Adhikari v. Daoud & Partners*, 697 F. Supp. 2d 674 (S.D. Tex. 2009) (allegations of human trafficking in Nepal and forced labor in Iraq); *Al Shimari v. CACI Intern., Inc.*, 657 F. Supp. 2d 700 (E.D. Va. 2009) (allegations of torture in Iraq); *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010) (allegations of threatened extrajudicial killing planned in the United States but set to take place in Yemen); *Al-Quraishi v. Nakhla*, 728 F. Supp. 2d 702 (D. Md. 2010) (allegations of torture, war crimes, and cruel, inhumane, or degrading treatment in Iraq); *Aldana v. Del Monte Fresh Produce N.A., Inc.*, 578 F.3d 1283 (11th Cir. 2009) (allegations of torture, arbitrary detention, crimes against humanity, and cruel, inhumane, or degrading treatment in Guatemala); *Ali Shafi v. Palestinian Authority*, 642 F.3d 1088 (D.C. Cir. 2011) (allegations of torture in the West Bank); *Almog v. Arab Bank, PLC*, 471 F. Supp. 2d 257 (E.D.N.Y. 2007) (allegations of financial support for terrorist acts committed in Israel); *Alperin v. Vatican Bank*, 410 F.3d 532 (9th Cir. 2005) (allegations of conversion of property and forced labor during the Holocaust in Europe); *Arias v. Dyncorp*, 738 F. Supp. 2d 46 (D.D.C. 2010) (allegations of pollution and damage to natural resources in Ecuador);

Arndt v. UBS AG, 342 F. Supp. 2d 132 (E.D.N.Y. 2004) (allegations of conversion of property during the Holocaust in Germany); *Aziz v. Alcolac, Inc.*, 658 F.3d 388 (4th Cir. 2011) (allegations of aiding and abetting genocidal attacks against Kurds in Iraq); *Baloco ex rel. Tapia v. Drummond Co., Inc.*, 640 F.3d 1338 (11th Cir. 2011) (allegations of assassination and extrajudicial killing in Colombia); *Bancoult v. McNamara*, 445 F.3d 427 (D.C. Cir. 2006) (allegations of torture, racial discrimination, genocide, cruel, inhumane, or degrading treatment, and forced relocation in the Chagos Archipelago, a British Territory); *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909 (9th Cir. 2011) (allegations of torture and extrajudicial killing in Argentina); *Belhas v. Ya'Alon*, 515 F.3d 1279 (D.C. Cir. 2008) (allegations of war crimes, extrajudicial killing, crimes against humanity, and cruel, inhumane, or degrading treatment in Lebanon); *Chavez v. Carranza*, 413 F. Supp. 2d 891 (W.D. Tenn. 2005) (allegations of torture and extrajudicial killing in El Salvador); *Chowdhury v. WorldTel Bangladesh Holding, Ltd.*, 588 F. Supp. 2d 375 (E.D.N.Y. 2008) (allegations of false imprisonment and torture in Bangladesh); *Corrie v. Caterpillar, Inc.*, 503 F.3d 974 (9th Cir. 2007) (allegations of war crimes and extrajudicial killing in Israel); *Czetwertynski v. U.S.*, 514 F. Supp. 2d 592 (S.D.N.Y. 2007) (allegations of wrongful confiscation and destruction of property, fraud, and replevin in Poland); *Daventree Ltd. v. Republic of Azerbaijan*, 349 F. Supp. 2d 736 (S.D.N.Y. 2004) (allegations of fraud and corruption in Azerbaijan); *Do Rosario Veiga v. World Meteorological Organisation*,

486 F. Supp. 2d 297 (S.D.N.Y. 2007) (allegations of wrongful termination, intentional interference with a contract, intentional infliction of emotional distress, and defamation in Switzerland); *Doe v. Nestle, S.A.*, 748 F. Supp. 2d 1057 (C.D. Cal. 2010) (allegations of forced labor in Ivory Coast); *Doe v. Qi*, 349 F. Supp. 2d 1258 (N.D. Cal. 2004) (allegations of torture, cruel, inhumane, or degrading treatment, and arbitrary detention in China); *Doe v. Rafael Saravia*, 348 F. Supp. 2d 1112 (E.D. Cal. 2004) (allegations of assassination and extrajudicial killing in El Salvador); *El-Masri v. Tenet*, 479 F.3d 296 (4th Cir. 2007) (allegations of prolonged arbitrary detention and cruel, inhumane, or degrading treatment in Macedonia and Afghanistan); *El-Shifa Pharmaceutical Industries Co. v. U.S.*, 607 F.3d 836 (D.C. Cir. 2010) (allegations of bombing and destruction of property in Sudan); *Enahoro v. Abubakar*, 408 F.3d 877 (7th Cir. 2005) (allegations of torture and extrajudicial killing in Nigeria); *Estate of Abtan v. Blackwater Lodge and Training Center*, 611 F. Supp. 2d 1 (D.D.C. 2009) (allegations of war crimes in Iraq); *Estate of Amergi ex rel. Amergi v. Palestinian Authority*, 611 F.3d 1350 (11th Cir. 2010) (allegations of extrajudicial killing in Israel); *Estate of Manook v. Research Triangle Institute, Intern.*, 759 F. Supp. 2d 674 (E.D.N.C. 2010) (allegations of war crimes and extrajudicial killing in Iraq); *Genocide Victims of Krajina v. L-3 Services, Inc.*, 804 F. Supp. 2d 814 (N.D. Ill. 2011) (allegations of genocide and crimes against humanity in Croatia); *Giraldo v. Drummond Co., Inc.*, 808 F. Supp. 2d 247 (D.D.C. 2011) (allegations of war crimes and extrajudicial killing in Colombia);

Gonzalez-Vera v. Kissinger, 449 F.3d 1260 (D.C. Cir. 2006) (allegations of torture and false imprisonment in Chile); *Harbury v. Hayden*, 444 F. Supp. 2d 19 (D.D.C. 2006) (allegations of torture and extrajudicial killing in Guatemala); *Holocaust Victims of Bank Theft v. Magyar Nemzeti Bank*, 807 F. Supp. 2d 689 (N.D. Ill. 2011) (allegations of genocide during the Holocaust in Hungary); *Hwang Geum Joo v. Japan*, 413 F.3d 45 (D.C. Cir. 2005) (allegations of sexual slavery in China, Taiwan, South Korea, and the Philippines); *In re Chiquita Brands Intern., Inc.*, 792 F. Supp. 2d 1301 (S.D. Fla. 2011) (allegations of torture, extrajudicial killing, terrorism, and war crimes in Colombia); *In re Motors Liquidation Co.*, 447 B.R. 150 (S.D.N.Y. 2011) (allegations of extrajudicial killing, crimes against humanity, torture, cruel, inhumane, or degrading treatment, and aiding and abetting apartheid in South Africa); *In re Iraq and Afghanistan Detainees Litigation*, 479 F. Supp. 2d 85 (D.D.C. 2007) (allegations of torture in Iraq and Afghanistan); *In Re South African Apartheid Litigation*, 617 F. Supp. 2d 228 (S.D.N.Y. 2009) (allegations of aiding and abetting apartheid government in South Africa); *In re XE Services Alien Tort Litigation*, 665 F. Supp. 2d 569 (E.D. Va. 2009) (allegations of war crimes and summary executions in Iraq); *Jean v. Dorelien*, 431 F.3d 776 (11th Cir. 2005) (allegations of torture, extrajudicial killing, and arbitrary detention in Haiti); *Kiobel, et al. v. Royal Dutch Petroleum Co., et al.*, 621 F.3d 111 (2d Cir. 2010) (allegations of extrajudicial killing, crimes against humanity, torture, forced exile, and arbitrary arrest and detention in Nigeria);

Kpadeh v. Emmanuel, 261 F.R.D. 687 (S.D. Fla. 2009) (allegations of torture and arbitrary detention in Liberia); *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 673 F.3d 50, (2d Cir. 2012) (allegations of aiding and abetting terrorist attacks in Israel); *Licea v. Curacao Drydock Co., Inc.*, 584 F. Supp. 2d 1355 (S.D. Fla. 2008) (allegations of human trafficking in Cuba and Curacao); *Lizarbe v. Rondon*, 642 F. Supp. 2d 473 (D. Md. 2009) (allegations of extrajudicial killing, torture, and war crimes in Peru); *M.C. v. Bianchi*, 782 F. Supp. 2d 127 (E.D. Pa. 2011) (allegations of rape and child sex tourism in Moldova); *Mamani v. Berzain*, 654 F.3d 1148 (11th Cir. 2011) (allegations of extrajudicial killing in Bolivia); *Matar v. Dichter*, 500 F. Supp. 2d 284 (S.D.N.Y. 2007) (allegations of war crimes, extrajudicial killing, and cruel, inhumane, or degrading treatment in Gaza); *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070 (9th Cir. 2010) (allegations of torture and cruel, inhumane, or degrading treatment in Egypt, Morocco, Jordan, and Afghanistan); *Mother Doe I v. Al Maktoum*, 632 F. Supp. 2d 1130 (S.D. Fla. 2007) (allegations of kidnapping, child trafficking, and enslavement in the United Arab Emirates); *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1164 (C.D. Cal. 2005) (allegations of torture, extrajudicial killing, and war crimes in Colombia); *Mwani v. Bin Laden*, 417 F.3d 1 (D.C. Cir. 2005) (allegations of terrorism in Kenya); *Orkin v. Swiss Confederation*, 770 F. Supp. 2d 612 (S.D.N.Y. 2011) (allegations of illegal takings in Germany and Switzerland); *Presbyterian Church Of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244 (2d Cir. 2009)

(allegations of genocide, torture, and war crimes in Sudan); *Romero v. Drummond Co., Inc.*, 552 F.3d 1303 (11th Cir. 2008) (allegations of torture and extrajudicial killing in Colombia); *Saleh v. Titan Corp.*, 580 F.3d 1 (D.C. Cir. 2009) (allegations of aiding and abetting torture in Iraq); *Saludes v. Republica De Cuba*, 655 F. Supp. 2d 1290 (S.D. Fla. 2009) (allegations of torture, arbitrary arrest, denial of the right to a fair trial, and crimes against humanity in Cuba); *Simpson v. Socialist People's Libyan Arab Jamahiriya*, 529 F. Supp. 2d 80 (D.D.C. 2008) (allegations of unlawful and forcible detention in Libya); *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. 2009) (allegations of torture and extrajudicial killing in Colombia); *Tachiona v. U.S.*, 386 F.3d 205 (2d Cir. 2004) (allegations of torture and extrajudicial killing in Zimbabwe); *Taveras v. Taveraz*, 477 F.3d 767 (6th Cir. 2007) (allegations of violation of the terms for safe conduct based on abduction of a child from the Dominican Republic); *Tobar v. U.S.*, 639 F.3d 1191 (9th Cir. 2011) (allegations of unlawful search, seizure, and detention of a boat crew in international waters near the Galapagos Islands); *Turedi v. Coca-Cola Co.*, 460 F. Supp. 2d 507 (S.D.N.Y. 2006) (allegations of torture and false imprisonment in Turkey); *Vietnam Ass'n for Victims of Agent Orange v. Dow Chemical Co.*, 517 F.3d 104 (2d Cir. 2008) (allegations of development of chemical weapons in Vietnam); *Weiss v. American Jewish Committee*, 335 F. Supp. 2d 469 (S.D.N.Y. 2004) (allegations of displacement of human remains in Poland); *Weixum v. Xilai*, 568 F. Supp. 2d 35 (D.D.C. 2008) (allegations of human rights abuses

in China); *Ye v. Zemin*, 383 F.3d 620 (7th Cir. 2004) (allegations of torture, genocide, and arbitrary imprisonment in China); *Yousuf v. Samantar*, 552 F.3d 371 (4th Cir. 2009) (allegations of torture in Somalia).

In addition to these reported opinions, twenty-five unreported ATS opinions were issued after *Sosa*. In twenty-four of those decisions, all parties and the courts hearing their claims also assumed that federal courts have jurisdiction over extra-territorial torts through the ATS.[3]

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[3] *See Abiola v. Abubakar*, No. 02-C-6093, 2007 WL 2875493 (N.D. Ill. Sept. 28, 2007) (allegations of wrongful detention and torture in Nigeria); *Asemani v. Ahmadinejad*, No. RDB-10-874, 2010 WL 1609787 (D. Md. Apr. 20, 2010) (allegations of arbitrary detention and torture in Iran); *Carrizosa v. Chiquita Brands Intern., Inc.*, No. 07-60821-CIV, 2007 WL 3458987 (S.D. Fla. Nov. 14, 2007) (allegations of extrajudicial killing in Colombia); *Chen v. China Central Television*, No. 06 Civ. 414(PAC), 2007 WL 2298360 (S.D.N.Y. Aug. 9, 2007) (allegations of genocide, torture, arbitrary arrest and imprisonment, and religious persecution); *Dacer v. Estrada*, No. C 10-04165 WHA, 2011 WL 6099381 (N.D. Cal. Dec. 7, 2011) (allegations of torture and extrajudicial killing in the Philippines); *Devi v. Silva*, No. 11 Civ. 6675(JPO), 2012 WL 398626 (S.D.N.Y. Feb. 8, 2012) (allegations of torture and extrajudicial killing in Sri Lanka); *Doe v. Constant*, 354 Fed. Appx. 543 (2d Cir. 2009) (allegations of extrajudicial killing, torture, and crimes against humanity in Haiti); *Doe v. Xudong*, 123 Fed. Appx. 727 (7th Cir. 2005) (allegations of torture in China); *Frazer v. Chicago Bridge and Iron*, No. Civ. A. H-05-3109, 2006 WL 801208 (S.D. Tex. Mar. 27, 2006) (allegations of unsafe labor practices in Trinidad & Tobago); *Hereros ex rel. Riruako v. Deutsche Afrika-Linien Gmblt & Co.*, 232 Fed. Appx. 90 (3d Cir. 2007) (allegations of forced and slave labor in South Africa); *Institute of Cetacean Research v. Sea Shepherd*

(Continued on following page)

Conservation Soc., No. C11-2043RAJ, 2012 WL 958545 (W.D. Wash. Mar. 19, 2012) (allegations of illegal commercial whaling in international waters); *Jane Doe I v. Wal-Mart Stores, Inc.*, No. CV 05-7307 AG, 2007 WL 5975664 (C.D. Cal. Mar. 30, 2007) (allegations of violation of fair labor practices in China, Bangladesh, Indonesia, Swaziland, and Nicaragua); *Kaplan v. Al Jazeera*, No. 10 Civ. 5298, 2011 WL 2314783 (S.D.N.Y. June 7, 2011) (allegations of war crimes in Israel); *Krishanthi v. Rajaratnam*, No. 09-CV-05395(DMC-JAD), 2010 WL 3429529 (D.N.J. Aug. 26, 2010) (allegations of aiding and abetting crimes against humanity and terrorism in Sri-Lanka); *Liu Bo Shan v. China Const. Bank Corp.*, 421 Fed. Appx. 89 (2d Cir. 2011) (allegations of torture, cruel, inhumane, or degrading treatment, and arbitrary detention in China); *Martinez-Aguero v. Gonzalez*, No. EP-03-CA-411(KC), 2005 WL 388589 (W.D. Tex. Feb. 2, 2005) (allegations of assault, battery, and false arrest at Mexico-U.S. border crossing); *Mastafa v. Australian Wheat Bd. Ltd.*, No. 07 Civ. 7955(GEL), 2008 WL 4378443 (S.D.N.Y. Sept. 25, 2008) (allegations of torture, extrajudicial killing, rape, and murder in Iraq); *Mesnaoui v. Christopher*, No. CIV. S-10-1129 GEB, 2010 WL 2740162 (E.D. Cal. July 9, 2010) (allegations of fraud in Morocco); *Prince Hotel, SA v. Blake Marine Group*, 433 Fed. Appx. 706 (11th Cir. 2011) (allegations of misrepresentation in Haiti); *Ruiz v. Federal Government of Mexican Republic*, No. EP-07-CV-079-PRM, 2007 WL 2978332 (W.D. Tex. Sept. 28, 2007) (allegations of deprivation of medical care in Mexico); *Saperstein v. Palestinian Authority*, No. 1:04-cv-20225-PAS, 2006 WL 3804718 (S.D. Fla. Dec. 22, 2006) (allegations of supporting terrorism in Israel); *Shaoulian-Tehrani v. Khatami*, No. 06 Civ. 6868(DC), 2008 WL 708252 (S.D.N.Y. Mar. 17, 2008) (allegations of torture, extrajudicial killing, and false imprisonment in Iran); *Viera v. Eli Lilly and Co.*, No. 1:09-cv-0495-RLY-DML, 2010 WL 3893791 (S.D. Ind. Sept. 30, 2010) (allegations of environmental contamination and pollution in Brazil); *Zapolski v. Federal Republic of Germany*, No. 09 Civ. 1503(BMC), 2010 WL 1816327 (E.D.N.Y. May 4, 2010) (allegations of theft, extortion, and torture in Germany).

2. In the four reported opinions (and one unreported opinion) decided after *Sosa*, where defendants affirmatively challenged federal court jurisdiction over extra-territorial human rights abuses, all courts rejected their arguments, citing *Sosa* as controlling authority.

In the four reported ATS opinions where defendants affirmatively challenged federal court jurisdiction over extra-territorial torts, courts have cited to *Sosa* to deny those challenges. For example, in the child labor lawsuit *Flomo v. Firestone Natural Rubber Co., LLC*, 643 F.3d 1013, 1015 (7th Cir. 2011), Judge Posner summarily rejected Firestone's jurisdictional challenge over events that took place in Liberia. He found that *Sosa* was "a case of non-maritime extra-territorial conduct." *Id.* at 1025. Citing *Sosa*, he also held that "[c]ourts have been applying the [ATS] statute extra-territorially (and not just to violations at sea) since the beginning," and "no court . . . has ever held that it doesn't apply extra-territorially." *Id.*

In *Sarei v. Rio Tinto, PLC*, Papua New Guinea residents sued alleging genocide, crimes against humanity, war crimes, and racial discrimination. 671 F.3d 736, 743 (9th Cir. 2011) (en banc). In finding that extra-territorial abuses were actionable under the ATS, the court cited *Sosa* and held that the 1789 Congress "had overseas conduct in mind" when it drafted the ATS. *Id*. at 745, 747.

Similarly, citing *Sosa*, the Court of Appeals for the D.C. Circuit, in *Doe v. Exxon Mobil Corp*., held that it had jurisdiction over human rights abuses committed in Indonesia. 654 F.3d 11, 26 (D.C. Cir. 2011). The court held that "two modern developments convince us that it is entirely appropriate to permit appellants to proceed with their . . . claims even though much of the [defendants'] conduct . . . occurred in Indonesia." *Id.* First, although the United States argued in *Sosa* that the ATS did not apply to torts committed outside the United States, "no Justice indicated agreement with the United States' position." *Id.* And second, in enacting the TVPA, Congress endorsed the line of "modern ATS litigation [that] has primarily focused on atrocities committed in foreign countries . . . [and also] endorsed federal courts' exercise of jurisdiction over such lawsuits." *Id.*

In *Bowoto v. Chevron Corp*., 557 F. Supp. 2d 1080 (N.D. Cal. 2008), even though the Court partially granted Chevron's summary judgment motion, *id.* at 1095-96, it completely rejected the defendants' argument that ATS did not have reach over events that took place in Nigeria. *Id.* at 1088. The court noted that other federal courts "have consistently permitted the extra-territorial application of the ATS to non-U.S. nationals, provided the claims are brought under a sufficiently definite and universal norm of international law, as required by *Sosa*." *Id*.

Lev v. Arab Bank, PLC, is the sole unpublished ATS case that explicitly addresses federal court jurisdiction over extra-territorial human rights violations.

No. 08-CV-3251(NG)(VVP), 2010 WL 623636, at *1 (E.D.N.Y. Jan. 29, 2010) (events occurred in Gaza strip). In denying the defendant's motion to dismiss, the district court held that "in citing *Filartiga* and *Kadic*, the Supreme Court in *Sosa* made no reference to any limitation on the jurisdiction of courts to hear claims under the ATS which might arise from the extra-territoriality of the actions or the parties." *Id.* at *3.

Federal court jurisdiction over ATS claims involving extra-territorial torts is so well-established that it has spawned some unusual decisions. *See*, *e.g.*, *Velez v. Sanchez*, 754 F. Supp. 2d 488 (E.D.N.Y. 2010) (U.S.-based ATS case where plaintiff alleged that she had been trafficked into the United States from Ecuador and forced to work as a maid). Citing *Sosa*, the district court dismissed the case, declaring that "the expanded role for the ATS has always been understood as covering torts committed abroad."[4]

As these lengthy citations demonstrate, all federal courts have relied on *Sosa* as unequivocally endorsing federal court jurisdiction over extra-territorial human rights abuses. This strengthens *Sosa*'s precedential value.

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[4] *Magnifico v. Villanueva*, 783 F. Supp. 2d 1217, 1221-22 (S.D. Fla. 2011) (allowing U.S.-based human trafficking suit to proceed), subsequently explicitly rejected *Velez*'s holding. Citing to *Sosa*, the district court held that the statute "grants jurisdiction for torts committed both inside and outside of the United States." *Id*.

C. *Stare Decisis* Requires That All Aspects of *Sosa* Be Followed Because *Sosa* Is "Well Reasoned."

To determine whether a prior decision is "well reasoned" for *stare decisis* purposes, this Court examines several factors, including: whether there was a clear majority in a particular opinion, whether lower courts followed the decision consistently, whether the decision was criticized, whether the case was comprehensively briefed, and whether the Court's legislative interpretation was accurate. According to these factors, *Sosa*, in its entirety, is "well reasoned."

1. *Sosa* is "well reasoned" because there was a clear majority, and it has not created any confusion.

When members of this Court are in agreement, an opinion is considered well reasoned. An opinion is not considered well reasoned if the split of the Court was of "the narrowest margins, [with] . . . spirited dissents challenging the basic underpinnings of those decisions." *Payne v. Tennessee*, 501 U.S. 808, 829 (1991). Such divided opinions confuse lower courts and call into question a decision's holding and application. *Seminole Tribe of Fla.*, 517 U.S. at 63-64.

Sosa was a clear majority opinion with no dissent. *Sosa*'s interpretation of the ATS and its extraterritorial reach was supported by seven members of this Court. Although there were three concurrences, two of them are inconsequential for purposes of this

discussion. Justice Ginsburg's concurrence discusses issues related to the Federal Tort Claims Act (FTCA), which is a different statute than the ATS. *Sosa*, 542 U.S. at 751-60 (Ginsburg, J., concurring in part and concurring in the judgment). Justice Breyer's concurrence supports the majority's opinion in full, but emphasizes that the allegations in *Sosa* did not rise to the level of abuse that nations of the world have universally agreed to eradicate (such as piracy). *Id.* at 760-61 (Breyer, J., concurring in part and concurring in the judgment).

The only concurrence that challenges the majority's core holding is Justice Scalia's, which was joined by Justice Thomas. The thrust of that concurrence is that the majority exceeded its judicial authority in finding that the ATS created a cause of action, in violation of *Erie R. Co. v. Tompkins*. *Sosa*, 542 U.S. at 740-41 (citing *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)) (Scalia, J., concurring and concurring in the judgment). Although Justice Scalia takes issue with the majority's holding concerning the ATS's extra-territorial reach, he does so only in a few paragraphs within his eleven page concurrence. *Sosa*, 542 U.S. at 746, 750 (Scalia, J., concurring and concurring in the judgment).

Notably, the *Sosa* majority opinion refutes all of Justice Scalia's charges, including his interpretation of *Erie*. *Id.* at 726-35. And Justice Scalia's concurrence has not been adopted by any lower federal court, including the Second Circuit Court of Appeals in *Kiobel*. Thus, *Sosa* is not the kind of narrow decision

that has caused confusion among lower courts in any way that would diminish its value as *stare decisis* in future ATS cases.

2. *Sosa* is "well reasoned" because lower courts have consistently applied its endorsement of federal court jurisdiction over extra-territorial human rights abuses.

An opinion is considered well reasoned when lower courts apply the decision in a consistent fashion. *Payne*, 501 U.S. at 830. When lower courts consistently defy a decision, its precedential value diminishes. *Id.* If subsequent similar cases "undermined the doctrinal underpinnings," of the original opinion, *stare decisis* does not have as much weight. *Dickerson v. U.S.*, 530 U.S. 428, 443 (2000).

As discussed thoroughly in section II.B *supra*, all lower federal courts have cited to *Sosa* consistently in dismissing jurisdictional challenges over human rights abuses committed abroad. Over 100 lower federal court decisions decided since 2004 have relied on *Sosa* as precedent in exercising jurisdiction over human rights cases involving extra-territorial abuses.

3. *Sosa* is "well reasoned" because its endorsement of federal court jurisdiction over extra-territorial human rights abuses has not been criticized by the academic community.

Criticism from the academic community and foreign courts can signify that this Court's prior opinion was not well reasoned. For example, in *Continental T.V., Inc. v. GTE Sylvania Inc.*, this Court overturned precedent because of academic criticism. 433 U.S. 36, 48-49 (1977). In overruling *United States v. Arnold, Schwinn & Co.*, 388 U.S. 365 (1967), this Court noted that *Schwinn* had been "the subject of continuing controversy and confusion, both in the scholarly journals and in the federal court." *Id.* at 48. Similarly, in *Lawrence v. Texas*, this Court considered international legal decisions in deciding to overrule *Bowers v. Hardwick*, 478 U.S. 186 (1986). 539 U.S. 558, 576 (2003). Justice Kennedy "noted that the reasoning and holding in *Bowers* has been rejected elsewhere," including by the European Court of Human Rights. *Id.*

This Court's endorsement of federal court jurisdiction over extra-territorial human rights violations has not been questioned or criticized by the academic community in any of fifty-four law review articles written about *Sosa*.[5] Only a handful of articles

[5] A full list of all the law review articles about *Sosa*, many of which are student notes, appears in the Appendix to this brief.

criticize *Sosa*, but none do for its discussion of the ATS's extra-territorial reach. The limited critiques focus the Court's discussion of federal common law,[6] customary international law,[7] the effects of the decision on corporations,[8] and the supposed limitations that the opinion places on the kinds of claims that are actionable under the ATS.[9]

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[6] Only one article critical of *Sosa* on this point was written by a legal academic. *See* Eric Engle, Alvarez-Machain v. United States *and* Alvarez-Machain v. Sosa: *The Brooding Omnipresence of Natural Law*, 13 Willamette J. Int'l L. & Dispute Res. 149 (2005). There is also one student note critical of *Sosa* on this point. *See* Note, *An Objection to* Sosa – *and to the New Federal Common Law*, 119 Harv. L. Rev. 2077 (2006).

[7] Only one article critical of *Sosa* on this point was written by a legal academic. *See* John Harrison, Response, Sosa *and Substantive Solutions to Jurisdictional Problems*, 93 Va. L. Rev. In Brief 23 (2007). There is also one student note critical of *Sosa* on this point. *See* Brinton M. Wilkins, Note, *Splitting the Baby: An Analysis of the Supreme Court's Take on Customary International Law Under the Alien Tort Statute in* Sosa v. Alvarez-Machain, 2005 B.Y.U.L. Rev. 1415 (2005).

[8] Only one article critical of *Sosa* on this point was written by a legal academic. *See* Gary Clyde Hufbauer, *The Supreme Court Meets International Law: What's the Sequel to* Sosa v. Alvarez-Machain?, 12 Tulsa J. Comp. & Int'l L. 77 (2004). There is also one student note critical of *Sosa* on this point. *See* Tim Kline, Note, *A Door Ajar or a Floodgate?: Corporate Liability After* Sosa v. Alvarez-Machain, 94 Ky. L.J. 691 (2005-2006).

[9] Only two articles critical of *Sosa* on this point were written by legal academics. *See* David C. Baluarte, Sosa v. Alvarez-Machain: *Upholding the Alien Tort Claims Act While Affirming American Exceptionalism*, 12 Hum. Rts. Br. 11 (2004); Lucian J. Dhooge, *Lohengrin Revealed: The Implications of* Sosa v. Alvarez-Machain *for Human Rights Litigation Pursuant to the*

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4. *Sosa* is "well reasoned" because it was briefed comprehensively.

This Court, in determining whether one of its prior opinions was well reasoned, also considers the level and quality of briefing and argument in the original case. *Pearson*, 555 U.S. at 239-41. Specifically, this Court "feels less constrained to follow precedent where . . . the opinion was rendered without full briefing or argument." *Hohn v. U.S.*, 524 U.S. 236, 251 (1998).

In *Sosa* this Court received comprehensive briefing on the multiple issues that the Court was considering. It received twelve briefs by the parties, and over twenty *amicus* briefs representing dozens of academics, human rights advocates, religious groups,

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Alien Tort Claims Act, 28 Loy. L.A. Int'l & Comp. L. Rev. 393 (2006). The rest of the criticism of *Sosa* on this point is expressed in five law student notes. *See* Jillian David D. Christensen, Note, *Corporate Liability for Overseas Human Rights Abuses: The Alien Tort Statute After* Sosa v. Alvarez-Machain, 62 Wash & Lee L. Rev. 1219 (2005); Laura A. Cisneros, Case Note, Sosa v. Alvarez-Machain – *Restricting Access to U.S. Courts Under the Federal Tort Claims Act and the Alien Tort Statute: Reversing the Trend*, 6 Loy. J. Pub. Int. L. 81 (2004); Dana Howard, Note, *The Consistency of* Sosa: *A Comparison of the Supreme Court's Treatment of Customary International Law with Other Types of Federal Common Law*, 94 Ky. L.J. 669 (2005-2006); Caitlin Hunter, Note, Aldana v. Del Monte Fresh Produce: *Cruel, Inhumane, and Degrading Treatment After* Sosa v. Alvarez-Machain, 44 U.C. Davis L. Rev. 1347 (2011); Jeffrey Loan, Note, Sosa v. Alvarez-Machain: *Extra-territorial Abduction and the Rights of Individuals Under International Law*, 12 ILSA J. Int'l & Comp. L. 253 (2005).

business organizations, and even foreign nations. The level of legal analysis in the *Sosa* briefs was detailed and exhaustive. Given that *Sosa* was the first human rights case to be considered by this Court, the briefs were all of the highest quality imaginable.

Relevant to this brief, is the U.S.'s argument, as respondent, that applying the ATS to extra-territorial acts would be improper and "incompatible with the presumption against extra-territoriality. . . ." Reply Brief for the United States as Respondent Supporting Petitioner, 2003 U.S. Briefs 339 at 19-20. Five separate briefs (representing twenty-one *amici*), were submitted in support of that position, specifically arguing that the ATS did not authorize our federal courts to hear claims that take place outside our borders. Those briefs were from: the governments of Australia, Switzerland and the United Kingdom;[10] ten organizations (National Foreign Trade Council, USA Engage, the Chamber of Commerce of the United States of America, the United States Council for International Business, the International Chamber of Commerce, the Organization for International Investment, the Business Roundtable, the American Petroleum Institute, and the US-ASEAN Business Council, and the National Association of Manufacturers); the National Association

[10] Brief of the Governments of the Commonwealth of Australia, the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland as *Amici Curiae* in Support of the Petitioner, 2003 U.S. Briefs 339, 22-27 (2004).

of Manufacturers;[11] the Pacific Legal Foundation; and seven law professors (Samuel Estreicher, John C. Harrison, John O. McGinnis, Michael D. Ramsey, Paul B. Stephan, Ruth Wedgwood, and Mark Weisburd).[12]

This Court also considered briefs from *amici* of the petitioner, taking the opposite position (i.e., that the ATS grants jurisdiction to federal courts to adjudicate human rights claims, even those committed abroad). Among the signatories of those briefs were: the Center for Justice and Accountability, the National Consortium of Torture Treatment Programs, the World Jewish Congress and the American Jewish Committee, law professors, human rights and religious organizations, and families of the victims of the September 11, 2001 terrorist attacks.[13]

The European Commission, on behalf of neither party, also contributed considerable discussion to this issue.[14]

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[11] The National Association of Manufacturers submitted two *amicus* briefs; one individually, and one as part of a group.

[12] Author's LEXIS and Westlaw searches of the briefs filed in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2003) (LEXIS citation 2003 U.S. Briefs 339 (2004)).

[13] Author's LEXIS and Westlaw searches of the briefs filed in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2003) (LEXIS citation 2003 U.S. Briefs 339 (2004)).

[14] Brief of *Amicus Curiae* the European Commission in Support of Neither Party, 339 U.S. Briefs 339 (2004). The European Commission argued that ATS jurisdiction existed only over violations of peremptory norms sufficient to confer universal jurisdiction. *Id.*

Thus, in deciding *Sosa*, this Court had access to multiple perspectives from prominent *amici* from around the world. The Court considered and very consciously rejected the U.S.'s (and its *amici*'s) position that the ATS does not contemplate federal court jurisdiction for extra-territorial human rights abuses. *Doe*, *supra*, 654 F.3d at 26. Additionally, it clearly and explicitly endorsed *Filartiga*'s findings on extra-territoriality. *Sosa*, 542 U.S. at 724-25, 731.[15] As such, *Sosa* is well reasoned, and should serve as *stare decisis* in *Kiobel* and subsequent ATS cases.

5. *Sosa* is "well reasoned" because it accurately interpreted the Alien Tort Statute's legislative history.

Another factor that determines whether precedent is "well reasoned" is whether this Court accurately interpreted a statute's legislative history. *Patsy*, 457 U.S. at 501 (1982) (citing *Monell*, 436 U.S. at 659-701 (1978)).

As discussed more thoroughly *supra* in Sections II.A and II.C.4, this Court explored in great detail the ATS's very limited legislative history. *See Sosa*, 542 U.S. at 712-25.

In its efforts to determine Congress's intent in enacting the ATS, this Court looked to Blackstone,

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[15] In *Filartiga*, the Second Circuit held that it is "not extraordinary for a court to adjudicate a tort claim arising outside of its territorial jurisdiction." 630 F.2d at 885.

and also examined Eighteenth Century Congressional legislative practices. *See Sosa*, 542 U.S. at 712-25, 737. Additionally, this Court examined Congress's more recent endorsement of the ATS and *Filartiga* in enacting the TVPA in 1991. *Id.* at 728. Finally, this Court considered over twenty *amicus* briefs, many of which discussed the ATS's legislative history.

This Court's meticulous attention to every source of the ATS's legislative history, demonstrates that *Sosa* was a well reasoned opinion for *stare decisis* purposes.

CONCLUSION

For the foregoing reasons, *Sosa*, in its entirety, should serve as *stare decisis* for *Kiobel* and all future ATS cases. In particular, in this case, the Court should apply *Sosa*'s holding that the ATS provides federal court jurisdiction for human rights abuses that are committed abroad.

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APPENDIX

Michael Barsa & David Dana, *Three Obstacles to the Promotion of Corporate Social Responsibility by Means of the Alien Tort Claims Act: The* Sosa *Court's Incoherent Conception of the Law of Nations, the Purposive Action Requirement for Aiding and Abetting, and the State Action Requirement for Primary Liability*, 21 Fordham Envtl. L. Rev. 79 (2010).

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