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Supreme Court Limits Human Rights Suits Against Corporations

Six citizens of Mali had sued Nestlé USA and Cargill, accusing the companies of profiting from child slavery on Ivory Coast cocoa farms.

By Adam Liptak
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WASHINGTON — The Supreme Court ruled on Thursday in favor of two American corporations accused of complicity in child slavery on Ivory Coast cocoa farms. The decision was the latest in a series of rulings imposing strict limits on lawsuits brought in federal court based on human rights abuses abroad.

The case was brought by six citizens of Mali who said they were trafficked into slavery as children. They sued Nestlé USA and Cargill, saying the firms had aided and profited from the practice of forced child labor.

Justice Clarence Thomas, writing for an eight-member majority, said the companies' activities in the United States were not sufficiently tied to the asserted abuses.

The companies, he wrote, drawing on the plaintiffs' suit, "did not own or operate farms in Ivory Coast. But they did buy cocoa from farms located there. They also provided those farms with technical and financial resources — such as training, fertilizer, tools and cash — in exchange for the exclusive right to purchase cocoa."

The plaintiffs said the companies "knew or should have known" that the farms were using enslaved children but failed to use their economic power to stop the practice. (The companies have denied complicity in child labor.)

The flaw in the plaintiffs' case, Justice Thomas wrote, was its failure adequately to tie the companies' asserted conduct to their activities in the United States.

That failure, Justice Thomas wrote, meant that they could not sue under the Alien Tort Statute, a 1789 law that allows federal district courts to hear "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

The law was largely ignored until the 1980s, when federal courts started to apply it in international human rights cases. A Supreme Court decision in 2004, Sosa v. Álvarez-

Machain, left the door open to some claims under the law, as long as they involved violations of international norms with "definite content and acceptance among civilized nations."

Since then, the Supreme Court has narrowed the law in two ways, saying it does not apply where the conduct at issue was almost entirely abroad or where the defendant was a foreign corporation.

In 2013, in Kiobel v. Royal Dutch Petroleum, the court said there was a general presumption against the extraterritorial application of American law. It rejected a suit against a foreign corporation accused of aiding and abetting atrocities by Nigerian military and police forces against Ogoni villagers.

Chief Justice John G. Roberts Jr., writing for the majority in that case, said that minimal contact with the United States would not be sufficient to overcome the presumption.

"Even where the claims touch and concern the territory of the United States," he wrote, "they must do so with sufficient force to displace the presumption against extraterritorial application."

On Thursday, Justice Thomas wrote that the same kind of reasoning banned the suit against Nestlé and Cargill.

"Nearly all the conduct that they say aided and abetted forced labor — providing training, fertilizer, tools and cash to overseas farms — occurred in Ivory Coast," he wrote, while the companies were said to have made "major operational decisions" in the United States.

"But allegations of general corporate activity — like decision-making — cannot alone establish domestic application" of the 1789 law, Justice Thomas wrote.

In a part of his opinion joined by only Justices Neil M. Gorsuch and Brett M. Kavanaugh, Justice Thomas went on to say that American courts should be open to only three kinds of suits under the 1789 law even if the link to the United States were adequately established: "violation of safe conduct, infringement of the rights of ambassadors and piracy."

If other kinds of suits are to be permitted under the law, Justice Thomas wrote, the authorization must come from Congress.

In a concurring opinion, Justice Sonia Sotomayor, joined by Justices Stephen G. Breyer and Elena Kagan, agreed that the plaintiffs had "failed to allege a domestic application of the Alien Tort Statute." But she said Justice Thomas was wrong to try to limit the scope of the law to legal theories recognized in 1789.

"The First Congress chose to provide noncitizens a federal forum to seek redress for law-of-nations violations, and it counted on federal courts to facilitate such suits by recognizing causes of action for violations of specific, universal and obligatory norms of international

law," Justice Sotomayor wrote. "I would not abdicate the court's obligation to follow that legislative directive."

The court did not directly address a second argument made by the companies, one based on the 2018 decision in Jesner v. Arab Bank. In that case, the court ruled in favor of a bank based in Jordan that had been accused of processing financial transactions through a branch in New York for groups linked to terrorism. The court said foreign corporations may not be sued under the 1789 law, but it left open the question of the status of domestic corporations.

In dissent on Thursday, Justice Samuel A. Alito Jr. said he would have ruled against the companies on that question. "I would hold that if a particular claim may be brought under" the 1789 law "against a natural person who is a United States citizen," he wrote, "a similar claim may be brought against a domestic corporation."

Four justices, in concurring opinions in the case, Nestlé USA v. Doe, No. 19-416, agreed with Justice Alito on that point.