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The Impact of *Kiobel* Curtailing the Extraterritorial Scope of the Alien Tort Statute

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Just as foreign multinational corporations in recent years have faced an onslaught of so-called "foreign-cubed" securities class actions in the United States—so styled because the plaintiffs were foreign, the defendants were foreign, and the securities markets were foreign—so too, such companies have faced massive "foreign-cubed" class actions in the United States alleging that they aided and abetted foreign governments in the commission of human-rights violations in foreign countries against foreign victims. These human-rights class actions have been brought under the Alien Tort Statute (ATS),[1] a once-obscure 18th-century statute that gives federal courts jurisdiction over tort actions involving violation of international law.

In its recent decision in *Kiobel v. Royal Dutch Petroleum Co.*,[2] however, the Supreme Court put an abrupt and categorical end to foreign-cubed ATS litigation, just as it had ended foreign-cubed securities litigation three years earlier in its decision in *Morrison v. National Australia Bank Ltd.*, which reinvigorated a long-standing presumption against the extraterritorial application of federal statutes.[3] The Court's decision in *Kiobel* is profoundly significant: not only does it terminate a burgeoning species of complex and costly litigation, it also makes clear that the Supreme Court will continue to apply the presumption against extraterritoriality forcefully in future cases to other statutes in future cases.

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A (Very) Brief History of the ATS from 1789 to 2011

The ATS provides that "[t]he district courts shall have original jurisdiction of 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."[4] Judge Henry Friendly once described this "old but little used section" of the Judicial Code as "a kind of legal Lohengrin," because "no one seems to know whence it came."[5] It originally appeared, in much the same wording, in the Judiciary Act of 1789,[6] and its enactment came in the wake of two infamous Confederation-era incidents in which offenses had been committed in the United States against foreign ambassadors.[7] Still, no legislative history sheds light on what the first Congress had in mind in enacting the ATS—what torts it was concerned with, where it thought the torts had to be committed, or what precisely it meant by a tort "in violation of the law of nations." And there was little contemporaneous litigation involving the ATS, which was invoked only "twice in the late 18th century, [and] then only once more over the next 167 years."[8]

For the better part of two centuries, the ATS lay essentially dormant and forgotten: uninvoked, uninterpreted, and certainly not understood. That changed in 1980, when the U.S. Court of Appeals for the Second Circuit decided *Filártiga v. Peña-Irala*.[9] The plaintiffs, Paraguayan émigrés living in the United States, sued a former Paraguayan police official who was also living in the United States; they alleged that the defendant was responsible for kidnapping, mutilation, torture, and murder of a member of their family.[10] The district court dismissed for lack of subject-matter jurisdiction, but the Second Circuit reversed. Because it "conclude[d] that official torture is now prohibited by the law of nations," the court of appeals concluded that "[t]his is undeniably an action by an alien, for a tort only, committed in violation of the law of nations," and that, as a result, "this action is properly brought in federal court" under the ATS.[11]

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Filártiga inspired a revival of the ATS, and federal courts began entertaining an ever-increasing number of cases invoking the statute. The litigation came in two waves. First came what has been called "the 'dictator phase' of [ATS] litigation," in which "human rights lawyers generally focused on suing foreign officials who violated human rights."[12] And then, in 1995, the Second Circuit decided *Kadic v. Karadzíc*, which held that some norms of international human rights law—such as genocide and war crimes—did not require state action.[13] This holding led to a "'second wave' of ATS litigation," one in which "the breadth and frequency of ATS lawsuits increased dramatically."[14] "Largely in response to *Kadic*, alien plaintiffs began to bring suit—often in the form of class actions—against private corporations operating in foreign nations," and "generally sought to hold them secondarily liable for the primary conduct of foreign governments."[15] Among the more headline-grabbing cases that were brought, for example, were a class action brought against 50 companies that allegedly aided and abetted the maintenance of apartheid in South Africa,[16] and class actions alleging that companies had aided and profited from genocide in Europe during the Second World War.[17] In all, plaintiffs' lawyers have brought more than 120 ATS actions against corporations, with the vast majority filed in the past 15 years.[18]

Despite all this litigation, litigants and the courts paid surprisingly little attention to what ultimately became the critical question about the ATS's proper scope: whether, and to what extent, the ATS provides jurisdiction for torts committed abroad. Even though foreign governments had

objected to American courts' use of the ATS to adjudicate extraterritorial torts, with one foreign leader calling it "judicial imperialism,"19 parties and judges largely assumed, without analysis, that the ATS "validly creates federal court jurisdiction for suits alleging torts committed anywhere in the world."20 One litigant in particular, however, resisted this conclusion: concerned about the strenuous objections of foreign sovereigns to ATS litigation, the United States government began asserting that the presumption against extraterritoriality established a geographical limit on the torts that could be remedied under the ATS, but no court reached the government's argument.21 Private defendants in ATS cases began asserting the extraterritoriality argument vigorously after the Supreme Court, in its 2010 decision in Morrison v. National Australia Bank Ltd.,22 applied the presumption against extraterritoriality to sharply limit (and to abrogate several decades of lower court case law interpreting) the Securities Exchange Act of 1934. In 2011, three courts of appeals, over strong dissents in two of the courts, rejected these defendants' arguments.[23]

The *Kiobel* Decision

Kiobel v. Royal Dutch Petroleum was a paradigmatic "second wave" ATS case. The plaintiffs were from Ogoniland, a region in Niger where a subsidiary of Shell (the common name of Royal Dutch Petroleum) explored for and produced oil. The complaint alleged that the defendant corporations had enlisted the Nigerian government to repress the Ogoni people after they had begun protesting the environmental effects of the Shell subsidiary's activities. Invoking the ATS, the plaintiffs asserted that the defendants had violated international law by aiding and abetting the Nigerian government's commission of, among other things, extrajudicial killings, crimes against humanity and torture.[24] The defendants did not argue in the lower courts that these alleged international-law violations, all of which took place in Nigeria, exceeded the territorial scope of the jurisdiction conferred by the ATS.[25] Nor did the court of appeals address the issue.[26] Instead, a divided panel of the court of appeals held that that the complaint had to be dismissed because "the customary international law of human rights does not impose any form of liability on corporations."[27]

The Supreme Court granted *certiorari* to decide the corporate-liability question, and that was the principal question that the parties briefed. But an unusual thing happened when the case was argued in February 2012. Some of the Justices' questions focused on the extraterritoriality issue, which—for the first time in the litigation—had been raised as an alternative ground for affirmance in a short passage at the end of the defendants' brief and in one of the *amicus* briefs.[28] And then, in an unsigned order issued six days later, the Court directed that the case be reargued during the next term on the extraterritoriality question, which the Court phrased as follows:

> **Whether and under what circumstances the [ATS] allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States.[29]**

The case was accordingly reargued in October 2012, and the Court issued its decision in April. The Court unanimously affirmed the dismissal of the complaint, with all of the Justices agreeing that the Nigerian conduct at issue in the case did not suffice to justify jurisdiction under the ATS. The Court's opinion was written by Chief Justice John Roberts, and was joined by Justices Antonin Scalia, Anthony Kennedy, Clarence Thomas and Samuel Alito. Invoking the Court's decision three years earlier in *Morrison*, the Chief Justice's opinion for the Court strongly reaffirmed the "canon of statutory interpretation known as the presumption against extraterritorial application," which "provides that '[w]hen a statute gives no clear indication of an extraterritorial application, it has none.'"[30] The Court emphasized the importance of this presumption to the nation's foreign relations: "the presumption… helps ensure that the Judiciary does not erroneously adopt an interpretation of U.S. law that carries foreign policy consequences not clearly intended by the political branches."[31] Quoting *Morrison*, the Court stated that, "to rebut

the presumption, the ATS would need to evince a 'clear indication of extraterritoriality.'"[32]

Despite all this litigation, litigants and the courts paid surprisingly little attention to what ultimately became the critical question about the ATS's proper scope: whether, and to what extent, the ATS provides jurisdiction for torts committed abroad.

In applying the presumption, the Court first looked to the language of the ATS, and concluded that "[n]othing in the text of the statute suggests that Congress intended causes of action recognized under it to have extraterritorial reach."[33] The Court held that the fact that "[t]he ATS covers actions by aliens for violations of the law of nations… does not imply extraterritorial reach," because "such violations affecting aliens can occur… within… the United States."[34] Again citing *Morrison*, the Court explained that "the fact that the text reaches '*any* civil action'" did not "suggest application to torts committed abroad," the Court held, because "it is well established that generic terms like 'any' or 'every' do not rebut the presumption against extraterritoriality."[35] The Court also rejected the plaintiffs' argument that the ATS's reference to "torts" necessarily referred to "'extraterritorial transitory torts that," under the common law, "could arise on foreign soil.'"[36] This "transitory torts doctrine," the Court observed, allows courts to hear causes of action established "in another civilized jurisdiction."[37] But under the ATS, federal courts do not "entertain… cause[s] of action provided by foreign or even international law"; instead, they decide whether "to recognize a cause of action *under U.S. law* to enforce a norm of international law."[38] Accordingly, the Court concluded that "[t]he reference to 'tort' does not demonstrate that the First Congress necessarily meant for those [U.S.-created] causes of action to reach conduct in the territory of a foreign sovereign."[39]

The Court next examined whether the ATS's "historical background" overcame the presumption against extraterritoriality.[40] The Court concluded that it did not. The "[t]wo notorious episodes involving violations of the law of nations… shortly before the passage of the ATS," incidents involving foreign ambassadors during the Articles of Confederation, "each involved conduct within the Union"—in Philadelphia and New York City.[41] Likewise, "[t]he two cases in which the ATS was invoked shortly after its passage also concerned conduct within the territory of the United States."[42] "These prominent contemporary examples," the Court concluded, "provide no support for the proposition that Congress expected causes of action to be brought under the [ATS] for violations of the law of nations occurring abroad."[43] The Court also rejected the plaintiffs' reliance on the fact that "piracy," which "typically occurs… beyond the territorial jurisdiction of the United States or any other country," was an "example of a violation of the law of nations familiar to the Congress that enacted the ATS." The plaintiffs "contend[ed] that because Congress surely intended the ATS to provide jurisdiction for actions against pirates, it necessarily anticipated the statue would apply to conduct occurring abroad."[44] The Court responded, however, that pirates "generally did not operate within any jurisdiction," and so the fact that Congress contemplated actions against pirates did not provide "a sufficient basis for concluding that… the ATS reach[es] conduct that *does* occur *within* the territory of another sovereign."[45] Again quoting *Morrison*, the Court observed that even "'when a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms.'"[46]

Justice Kennedy, in a one-paragraph concurrence, praised the Court's opinion for being "careful to leave open a number of significant questions regarding the reach and interpretation" of the ATS…

The Supreme Court accordingly concluded that nothing in the text or historical context provided the "clear indication of extraterritoriality" required by *Morrison*.[47] As a result, the Court

held that plaintiffs' "case seeking relief for violations of the law of nations occurring outside the United States is barred."[48] Given that "[o]n these facts, all the relevant conduct took place outside the United States," the Court's opinion did not try to define with precision when a violation of the law of nations occurs within the United States. Nevertheless, citing *Morrison*, a securities case in which the allegedly fraudulent conduct originated in the United States, Chief Justice Roberts's opinion for the Court emphasized that "even 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."[49] And he added that, given that "[c]orporations are present in many countries, …it would reach too far to say that mere corporate presence suffices."[50]

The Concurring Opinions

In concurring opinions, some Justices who joined the Court's opinion discussed how the line between territorial and extraterritorial alien torts should be drawn in future cases. Justice Kennedy, in a one-paragraph concurrence, praised the Court's opinion for being "careful to leave open a number of significant questions regarding the reach and interpretation" of the ATS, and observed that "[o]ther cases… with allegations of serious violations of international law" might not be "covered… by the reasoning and holding of today's case."[51] "[I]n those disputes," Justice Kennedy stated, "the proper implementation of the presumption against extraterritorial application may require further elaboration and explanation."[52]

In contrast, Justice Alito, in a concurring opinion that Justice Thomas joined, suggested that the Court should have gone farther than it did. Although agreeing with the Court's opinion "as far as it goes," Justice Alito set forth a "broader standard" to explain why the case was beyond the scope of the ATS.[53] He noted that *Morrison* had considered the "'focus' of congressional concern" under the Securities Exchange Act—"purchases or sales of securities in the United States"—and, in light of that focus, concluded that Section 10(b) of that Act applied only to domestic securities transactions.[54] In Justice Alito's view, the focus of congressional concern under the ATS was identified in an earlier Supreme Court case, *Sosa v. Alvarez-Machain*: there, the Court explained that "the 'three principal offenses against the law of nations' that had been identified by Blackstone" and thus were familiar to the first Congress, included "violation of safe conducts, infringements of the rights of ambassadors, and piracy."[55] *Sosa* held that federal courts should only recognize causes of action for conduct that violates "international law norms" that are at least as "definite [in] content and accept[ed] [by] civilized nations [as these] historical paradigms."[56] As a consequence, Justice Alito, joined by Justice Thomas, concluded that an ATS claim should be considered extraterritorial—and accordingly "barred"—whenever the defendant's conduct *in the United States* does not "violate an international norm that satisfies *Sosa*'s requirements of definiteness and acceptance among civilized nations."[57]

> ***The Supreme Court accordingly concluded that nothing in the text or historical context provided the "clear indication of extraterritoriality" required by Morrison.***

Finally, the four Justices who agreed with the result but did not join the opinion of the Court, took a broader view of the territorial scope of the ATS. In an opinion concurring in the judgment, Justice Stephen Breyer, joined by Justices Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan, rejected the Court's view that the presumption against extraterritoriality limits the territorial scope of the ATS.[58] In Justice Breyer's view, the statute "was enacted with foreign matters in mind," as its "text refers explicitly to 'alien[s],' 'treat[ies],' and 'the law of nations,'" and because "one of the three kinds of activities that [*Sosa*] found to fall within the statute's scope, namely

piracy, normally takes place abroad."[59] Justice Breyer argued instead that the ATS' territorial scope should be determined considering "international jurisdictional norms" "in light of the… ATS' basic purpose" and the need "to avoid international friction."[60] These considerations led Justice Breyer to conclude that the ATS "provides jurisdiction where (1) the alleged tort occurs on American soil, (2) the defendant is an American national, or (3) the defendant's conduct substantially and adversely affects an important American national interest," such as the "distinct interest in preventing the United States from becoming a safe harbor… for a torturer or other common enemy of mankind."[61]

Kiobel's Impact

Kiobel is a very important decision, one that is likely to bring an end (or at least substantially curtail) the current wave of expensive and burdensome ATS litigation involving torts committed in other countries. It unquestionably puts an end to any "foreign-cubed" ATS case in which foreign individuals and corporations, like Shell and its subsidiaries, are alleged to have aided and abetted torts against aliens in foreign countries.

Kiobel may well also do away with what could be called "foreign-squared" ATS suits—cases brought against Americans and American corporations alleged to have aided and abetted foreign torts against aliens. To be sure, in an effort to limit *Kiobel* to its facts, plaintiffs will likely assert—and in fact, some already have asserted[62]—that American defendants in such ATS cases engage in "relevant conduct" that "touch[es] and concern[s] the territory of the United States… with sufficient force to displace the presumption against extraterritorial application."[63] This argument, however, will likely encounter significant difficulties in many cases. The Court in *Kiobel* explicitly focused on where the "relevant *conduct* took place," *not* on the location or citizenship of the defendants, and it sought to determine whether the "*violations* of the law of nations occur[ed] outside the United States."[64]

***Kiobel* may well also do away with what could be called "foreign-squared" ATS suits—cases brought against Americans and American corporations alleged to have aided and abetted foreign torts against aliens.**

The Court expressly rejected, moreover, the proposition that "mere corporate presence" in the United States could overcome the presumption.[65] And neither the Court's opinion nor any Justice who joined in that opinion expressed any support for Justice Breyer's view that the ATS could apply whenever "the defendant is an American national."[66] As a result, American defendants may well succeed in arguing that they may not be sued after *Kiobel* unless they have committed wrongful acts of some kind in the United States. Exactly what those acts may entail, of course, will be decided in future cases. Those cases may turn on how much daylight there may be between Justice Kennedy's allusion to "serious violations of international law principles" not "covered… by the reasoning and holding" of *Kiobel*[67] and Justice Alito's reference to "domestic conduct… sufficient to violate an international law norm that satisfies *Sosa*'s requirements of definiteness and acceptance among civilized nations."[68]

But even apart from whatever its full impact on the ATS may ultimately be, *Kiobel* carries significance because of what it says about the Justices' approach to extraterritoriality generally. In *Morrison*, the Supreme Court shocked many practitioners and scholars when it abrogated more than four decades of lower-court decisions applying the Securities Exchange Act extraterritorially. In *Kiobel*, it similarly surprised observers when it discarded more than 30 years' of lower-court decisions applying the ATS to torts committed abroad. And the Court's concern about enforcing limits on the extraterritorial reach of American law is not limited to the five Justices who joined the Court's opinions in both *Morrison* and *Kiobel*: the vote for the *result* in both *Morrison*

and *Kiobel* was *unanimous*, and, in other decisions in recent years, some of the Justices who did not join the *Morrison* and *Kiobel* holdings have themselves strongly opposed the extraterritorial application of domestic law in other contexts.

In short, in future cases involving different statutes, we can expect the Supreme Court to continue to adhere to the view, as Justice Ginsburg put it in one case, "that United States law governs domestically but does not rule the world,"[69] and to avoid, as Justice Breyer put it in another, engaging in "legal imperialism" by applying American law to conduct committed abroad.[70]

NOTES

1. The Alien Tort Statute (ATS), 28 U.S.C.A § 1350.
2. *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 185 L. Ed. 2d 671 (2013).
3. *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869, 177 L. Ed. 2d 535, Fed. Sec. L. Rep. (CCH) P 95776, R.I.C.O. Bus. Disp. Guide (CCH) P 11932, 76 Fed. R. Serv. 3d 1330 (2010).
4. ATS.
5. *IIT v. Vencap, Ltd.*, 519 F.2d 1001, 1015 Fed. Sec. L. Rep. (CCH) P 95082 (2d Cir. 1975) (abrogated by, *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869, 177 L. Ed. 2d 535, Fed. Sec. L. Rep. (CCH) P 95776, R.I.C.O. Bus. Disp. Guide (CCH) P 11932, 76 Fed. R. Serv. 3d 1330 (2010)).
6. Act of Sept. 24, 1789, ch. 20, § 9, 1 Stat. 77 ("the district courts... shall also have cognizance... of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States").
7. *See Kiobel* at 1666-67; *Sosa v. Alvarez-Machain*, 542 U.S. 692, 716-17 124 S. Ct. 2739, 159 L. Ed. 2d 718, 158 O.G.R. 601 (2004); William R. Casto, *The Federal Courts' Protective Jurisdiction Over Torts Committed in Violation of the Law of Nations*, 18 CONN. L. REV. 467, 491-94 (1986).
8. *Kiobel* at 1663.
9. *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).
10. *See Filártiga* at 878-79.
11. *Filártiga* at 884, 887.
12. Harvard Law School, *The Future of Alien Tort Statute Litigation*: A Talk by Paul Hoffman (Mar. 11, 2011), http://hvrd.me/Tjr0af.
13. *Kadic v. Karadzic*, 70 F.3d 232, 241-43 (2d Cir. 1995).
14. Julian G. Ku, *The Third Wave: The Alien Tort Statute and the War on Terrorism*, 19 EMORY INT'L L. REV. 105, 109 (2005).
15. Petition for a Writ of Certiorari at 4, *Rio Tinto plc v. Sarei*, No. 11-649 (U.S. filed Nov. 23, 2011).
16. *See, e.g., Khulumani v. Barclay Nat. Bank Ltd.*, 504 F.3d 254, 258-59 (2d Cir. 2007), judgment aff'd, 553 U.S. 1028, 128 S. Ct. 2424, 171 L. Ed. 2d 225 (2008).
17. *See, e.g., Abelesz v. OTP Bank*, 692 F.3d 638, 644-45 (7th Cir. 2012); *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117, 121-23(E.D. N.Y. 2000).
18. *See, e.g.*, Brief of Product Liability Advisory Counsel, Inc., as *Amicus Curiae* in Support of Respondents at 5 & Appx. B, *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 185 L. Ed. 2d 671 (2013); Jonathan C. Drimmer & Sarah R. Lamoree, *Think Globally, Sue Locally: Trends and Out-of-Court Tactics in Transnational Tort Actions*, 29 BERKELEY J. INT'L L. 456, 460 (2011).
19. *See, e.g., Kiobel v. Royal Dutch Petroleum Co.*, 642 F.3d 268, 270 (2d Cir. 2011) (Jacobs, C.J., concurring in denial of panel rehearing; quoting the criticism by the President of South Africa of the Second Circuit's decision in *Khulumani*).
20. *Kadic*, 70 F.3d at 236.
21. *See, e.g.*, Brief for the United States as Respondent Supporting Petitioner at 46, *Sosa* (No. 03-339); Brief for the United States as *Amicus Curiae* in Support of Petitioners at 12-14, *American Isuzu Motors, Inc. v. Ntsebeza*, 553 U.S. 1028, 128 S. Ct. 2424, 171 L. Ed. 2d 225 (2008); Brief for the United States as *Amicus Curiae* at 5-12, *Presbyterian Church Of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244 (2d Cir. 2009); Brief for the United States as *Amicus Curiae* at 5-6, *Khulumani*, 504 F.3d 254 (No. 05-2141).
22. *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869, 177 L. Ed. 2d 535, Fed. Sec. L. Rep. (CCH) P 95776, R.I.C.O. Bus. Disp. Guide (CCH) P 11932, 76 Fed. R. Serv. 3d 1330 (2010).
23. Sarei v. Rio Tinto, PLC, 671 F.3d 736 (9th Cir. 2011), cert. granted, judgment vacated, 133 S. Ct. 1995, 185 L. Ed. 2d 863 (2013); Doe v. Exxon Mobil Corp., 654 F.3d 11, 174 O.G.R. 306 (D.C. Cir. 2011); *Flomo v. Firestone Natural Rubber Co.*, 643 F.3d 1013, 1025 (7th Cir. 2011); *see also Sarei* at 809-11 (Kleinfeld, J., joined by Bea and Ikuta, JJ., dissenting); *Doe*, 654 F.3d at 74-81 (Kavanaugh, J., dissenting in part).
24. *Kiobel*, 133 S. Ct. at 1662-63.
25. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010), cert. denied, 132 S. Ct. 248, 181 L. Ed. 2d 142 (2011) and cert. granted, 132 S. Ct. 472, 181 L. Ed. 2d 292 (2011) and judgment aff'd, 133 S. Ct. 1659, 185 L. Ed. 2d 671 (2013).
26. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 117 n.10 (2d Cir. 2010), *aff'd*, 133 S. Ct. 1659 (2013).
27. *Kiobel*, 621 F.3d at 147 (emphasis omitted).

28. *See* Transcript of February 28, 2012 Oral Argument at 3-4, 8, 11, *Kiobel*, 133 S. Ct. 1659; Brief for Respondents at 53-56, *Kiobel*, 133 S. Ct. 1659; Brief of *Amici Curiae* BP America *et al.* at 13-30, *Kiobel*, 133 S. Ct. 1659.
29. *Kiobel v. Royal Dutch Petroleum Co.*, 132 S. Ct. 1738, 182 L. Ed. 2d 270 (2012).
30. *Kiobel*, 133 S. Ct. at 1664 (quoting *Morrison*, 130 S. Ct. at 2878).
31. *Kiobel* at 1664.
32. *Kiobel* at 1665 (quoting *Morrison*, 130 S. Ct. at 2883).
33. *Kiobel* at 1665.
34. *Kiobel* at 1665.
35. *Kiobel* at 1665 (citing *Morrison*, 130 S. Ct. at 2881-82).
36. *Kiobel* at 1665 (quoting Supplemental Brief for Petitioners at 18, *Kiobel*, 133 S. Ct. 1659).
37. *Kiobel* at 1666 (quoting *Cuba R. Co. v. Crosby*, 222 U.S. 473, 479 (1912)).
38. *Kiobel* at 1666 (emphasis added).
39. *Kiobel* at 1666 (internal quotation marks omitted).
40. *Kiobel* at 1666.
41. *Kiobel* at 1666-67.
42. *Kiobel* at 1667 (citations omitted).
43. *Kiobel* at 1667.
44. *Kiobel* at 1667.
45. *Kiobel* at 1667 (emphasis added).
46. *Kiobel* at 1667 (quoting *Morrison*, 130 S. Ct. at 2883).
47. *Kiobel* at 1669 (quoting *Morrison*, 130 S. Ct. at 2883).
48. *Kiobel* at 1669.
49. *Kiobel* at 1669.
50. *Kiobel* at 1669.
51. *Kiobel* at 1669 (Kennedy, J., concurring).
52. *Kiobel* at 1669 (Kennedy, J., concurring).
53. *Kiobel* at 1669-70 (Alito, J., concurring).
54. *Kiobel* at 1670 (Alito, J., concurring; quoting *Morrison*, 130 S. Ct. at 2884).
55. *Kiobel* at 1670 (Alito, J., concurring; quoting *Sosa*, 542 U.S. at 723-24).
56. *Kiobel* at 1670 (Alito, J., concurring; quoting *Sosa*, 542 U.S. at 732).
57. *Kiobel* at 1670 (Alito, J., concurring).
58. *Kiobel* at 1672-73 (Breyer, J., concurring in judgment).
59. *Kiobel* at 1672 (Breyer, J., concurring in judgment; citations and internal quotation marks omitted).
60. *Kiobel* at 1673-74 (Breyer, J., concurring in judgment).
61. *Kiobel* at 1674 (Breyer, J., concurring in judgment).
62. *See, e.g.*, Plaintiffs-Appellants-Cross-Appellees' Motion To Govern at 9-10, 15-16, *Doe v. Exxon Mobil Corp.*, No. 09-7125 (D.C. Cir. filed May 17, 2013); Appellants' Reply Brief at 26-29, *Aldana v. Del Monte Fresh N.A.*, No. 12-16143-E (11th Cir. filed May 15, 2013).
63. *Kiobel*, 133 S. Ct. at 1669.
64. *Kiobel* at 1669 (emphasis added).
65. *Kiobel* at 1669.
66. *Kiobel* at 1671 (Breyer, J., concurring in judgment); *see Kiobel* at 1669; *Kiobel* at 1669 (Kennedy, J., concurring); *Kiobel* at 1669-70 (Alito, J., concurring in judgment).
67. *Kiobel* at 1669 (Kennedy, J., concurring).
68. *Kiobel* at 1669-70 (Alito, J., concurring in judgment).
69. *Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 454, 127 S. Ct. 1746, 167 L. Ed. 2d 737, 82 U.S.P.Q.2d 1400, 33 A.L.R. Fed. 2d 745 (2007), *quoted in Kiobel*, 133 S. Ct. at 1664.
70. *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 169, 124 S. Ct. 2359, 159 L. Ed. 2d 226, 2004-1 Trade Cas. (CCH) ¶; 74448 (2004).