

U.S. Supreme Court Limits Suits Against Organizations Under Torture Statute

Yesterday, the Supreme Court issued a unanimous decision in [*Mohamad v. Palestinian Authority*](#), No. 11-88, holding that companies and other organizations cannot be sued under the U.S. Torture Victim Protection Act ("TVPA"). That statute creates a federal private right of action for torture and extrajudicial killing committed by "[a]n individual" acting under color of foreign law. 28 U.S.C. § 1350 & note. In short, the Court held that "individual" means a natural person, not a legal entity or organization. The case marks an important limitation on liability of corporations and others for acts committed outside the United States. For previous Clifford Chance memoranda on this topic, click [here](#).

Mohamad involved the alleged torture and extrajudicial killing of a naturalized U.S. citizen by the Palestinian Authority and the Palestine Liberation Organization. The Court looked first to the "ordinary" meaning of "individual" to conclude that "individual" does not include non-natural persons. Slip op. at 3-4. Next, the Court noted that the statute itself uses the same term four times to refer to the victim, who must be a natural person, indicating that "individual" similarly must mean a natural person when referring to the perpetrator. *Id.* at 5-6. The Court then explained that it need not rely on legislative history where the statute is clear, but found in any event that the law's history supported the view that Congress intended to limit the statute to natural persons. *Id.* at 8-9. Turning to arguments advanced by petitioners, the Court acknowledged their concerns about "limitations on recovery" if the statute does not apply to non-natural persons, but concluded that "they are ones that Congress imposed and that [the Court] must respect." *Id.* at 10.

The Court issued its decision just seven weeks after oral arguments in this case and a companion case, *Kiobel v. Royal Dutch Petroleum Co.* *Kiobel* similarly raised the issue of liability of non-natural persons under a related statute, the Alien Tort Statute ("ATS"). In recent years, the TVPA and the ATS have sparked an increasing wave of lawsuits against corporations whose funding or business activities are alleged to support regimes committing human rights abuses.

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The Court's holding in *Mohamad* is limited to lawsuits under the TVPA based upon the unique language of that statute; it does not address the issue of corporate liability under the ATS, which does not use the restrictive term "individual." In March 2012, the Supreme Court ordered that *Kiobel* be reargued next fall to address a new issue: whether the ATS even covers conduct committed outside of the United States. Accordingly, the Court's ruling yesterday in *Mohamad* may be only the first of two important rulings restricting suits against corporations and other organizations for conduct occurring outside the United States.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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