Another Alien Tort Statute Case Moving Forward

A few weeks back, the Unite States Court of Appeals for the Fourth Circuit revived an Alien Tort Statute case that was at first dismissed in Kiobel's wake. The four plaintiffs in *Al Shimari v. CACI Premier Technology Inc*. are foreign nationals who allege that they were tortured and otherwise mistreated by American civilian and military personnel while detained at Abu Ghraib prison on Iraq. The plaintiffs allege that employees of CACI—a private, U.S.-based defense contractor— "instigated, directed, participated in, encouraged, and aided and abetted conduct towards detainees that clearly violated the Geneva Conventions, the Army Field Manual, and the laws of the United States." Based on the decision in Kiobel, the district court dismissed all four plaintiffs' ATS claims, concluding that the court "lack[ed] ATS jurisdiction over Plaintiffs' claims because the acts giving rise to their tort claims occurred exclusively in Iraq, a foreign sovereign."

The Fourth Circuit reversed, adopting a narrow read of the *Kiobel* decision. As noted before on this site, the Supreme Court in *Kiobel* said that "even where [ATS] claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application." Reading this directive, the Fourth Circuit:

"observe[d] that the Supreme Court used the phrase 'relevant conduct' to frame its 'touch and concern' inquiry, . . . [and] broadly stated that the 'claims,' rather than the alleged tortious conduct, must touch and concern United States territory with sufficient force. [This] suggest][s] that [lower] courts must consider all the facts that give rise to ATS claims, including the parties' identities and their relationship to the causes of action, [when assessing whether the presumption is overcome]."

"The Court's choice of such broad terminology," according to the Circuit, "was not happenstance." The "clear implication" is that "courts should not assume that the presumption categorically bars cases that manifest a close connection to United States territory. Under the 'touch and concern' language, a fact-based analysis is required in such cases to determine whether courts may exercise jurisdiction over certain ATS claims."

In this case, the plaintiffs' claims allege acts of torture committed by United States citizens who were employed by an American corporation which has corporate headquarters located in Virginia. These employees were hired in the United States; the contract was concluded in the United States; and CACI invoiced the U.S. government in the United States. Finally, the plaintiffs allege that CACI's managers located in the United States were aware of reports of misconduct abroad, attempted to "cover up" the misconduct, and "implicitly, if not expressly, encouraged" it.

These facts dictated a different result that *Kiobel*, even if the tortious acts occurred abroad, so the case was remanded to the District Court for further proceedings on the merits. Like *Doe v. Nestle* in the Ninth Circuit, and other cases discussed on this site, the ATS is far from dead.