

New Alien Tort Statute Case At The United States Supreme Court: *Kiobel, et al., v Royal Dutch Petroleum* Petition Filed

In *Kiobel, et al., v Royal Dutch Petroleum, et al.*, lawyers for 12 individuals seeking to hold major oil companies legally responsible for human rights abuses in Nigeria in the 1990s have asked the Supreme Court to overturn a federal appeals court's ruling that corporations are immune to such claims in U.S. courts. The law at issue is the Alien Tort Statute, a law that dates from the first Congress in 1789 but has grown in importance after a wave of lawsuits over the past three decades — lawsuits that were originally aimed at individuals, and then began targeting corporations in 1997. Prior coverage of the ATS has appeared on this site [here](#) and [here](#), and discussions of this very case have appeared [here](#), [here](#), [here](#), [here](#) and [here](#). As Lyle Denniston at the SCOTUSBlog puts it, “[t]he new petition raises what may be the hottest international law issue now affecting business firms,” and is “[i]n essence, the . . . ultimate test of what Congress meant when . . . it gave U.S. courts the authority to hear claims by foreign nationals that they were harmed by violations of international law.”

Last September, the Second Circuit Court became the first federal court to rule that ATS does not apply at all to corporations, but only to individuals. The panel split 2-1, and the en banc Court divided 5-5 in refusing to reconsider the panel result. The Petitioners at the Supreme Court now seek to challenge that result and argue that “[c]orporate tort liability was part of the common law landscape in 1789 and is firmly entrenched in all legal systems today. The notion that corporations might be excluded from liability for their complicity in egregious human rights violations is an extraordinary and radical concept.”

The *Kiobel* petition puts two questions before the Justices. The first issue is jurisdictional, and questions whether the Circuit Court should have reached the issue of corporate immunity at all. Indeed, neither side had raised the issue of whether ATS applied to corporations in the district court; that question was accordingly not decided by the district judge, and was not an issue sent up to the

Circuit Court. The Circuit Court panel majority, without deciding any of the issues actually sent up on appeal, acted *sua sponte* to conclude that it had no jurisdiction to decide the case because the ATS did not apply to corporations. The petition suggests that the Justices should summarily overturn the Circuit Court on this basic procedural point and remand the case for further proceedings.

The second question is the merits question: whether corporations are immune from tort liability for war crimes, crimes against humanity, and other human rights abuses perhaps even amounting to genocide, or whether they are liable as any private individual would be under ATS. On that point, there is a direct conflict between rulings of the Second Circuit and the Eleventh Circuit, and the issue is currently under review in the D.C., Seventh and Ninth Circuits as well. "Today," the petition says, "corporations may be sued under the ATS for their complicity in egregious international human rights violations in Miami or Atlanta, but not in New York or Hartford. This is contrary to the congressional intent that the ATS ensure uniform interpretation of international law in federal courts in cases involving violations of the law of nations."

The corporate defendants will have a chance to oppose the petition before the Justices act on it, and it is also possible that the Justices may seek the views of the federal government. No action on the petition will come until the Court's next Term, starting in October.