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Court Vacates Decision Reinstating Suit Alleging Human Rights Violations

Doe v. Exxon Mobil Corp.

U.S. Court of Appeals for the District of Columbia Circuit

The U.S. Court of Appeals for the District of Columbia Circuit this week vacated its 2011 decision that had upheld the right of activists to proceed with claims under the Alien Tort Statute (ATS) for alleged human rights violations. The lawsuit alleges that a multinational corporation aided and abetted human rights violations by the government of Indonesia, by providing financial support to security forces. The decision in *Doe v. Exxon Mobil Corp.* was a victory for the Washington Legal Foundation (WLF), which had urged the court to dismiss the ATS claims.

The appeals court's decision follows on the heels of the Supreme Court's April 2013 decision in *Kiobel v. Royal Dutch Petroleum Co.*, which called into question the continued viability of any ATS lawsuits based on overseas conduct. The appeals court in 2011 had ruled that the ATS broadly authorized such suits. This week's order vacated the 2011 ruling and remanded all ATS issues to the district court "for further consideration." The case will return to the same district court judge who dismissed the entire case in 2009.

The ATS is a 1789 statute that grants federal courts jurisdiction to hear tort suits filed by aliens alleging violations of "the law of nations." Applying the presumption that Congress does not intend statutes to apply extraterritorially in the absence of evidence of a contrary intent, the Supreme Court held in *Kiobel* that Congress intended that the ATS be inapplicable to conduct that occurs in a foreign country. The court left the door slightly ajar for plaintiffs. It stated that it remains open to ATS plaintiffs to argue that at least some of conduct "relevant" to the alleged human rights violation occurred in the U.S. But it made clear that "mere corporate presence" in the U.S. is insufficient to meet that standard. The defendant in *Kiobel* was a foreign corporation, while the defendants in this case and many other pending ATS cases are headquartered in the U.S. The plaintiffs in this case argued that the status of the defendant (Exxon Mobil) as a U.S. corporation distinguished this case from *Kiobel*. The appeals court's order vacating its prior judgment suggests that the court had significant doubts that *Kiobel* is distinguishable.

WLF has argued in numerous cases – including both *Kiobel* and this case – that federal law does not permit nonresident aliens to file tort suits in federal court based on overseas events having little or no connection to the United States. Disagreeing with WLF, the 2011 appeals court decision noted that numerous federal court decisions over the past 30 years have applied the ATS extraterritorially. But WLF took heart in the fact that Judge Kavanaugh made WLF's extraterritoriality argument the centerpiece of his dissent from the appeals court ruling. Judge Kavanaugh's dissent may in turn

have prompted the Supreme Court to take up the extraterritoriality issue *sua sponte* in *Kiobel*.

“The ATS was adopted in 1789 to allow the federal courts to hear cases involving piracy and assaults on ambassadors,” said WLF Chief Counsel Richard Samp following the appeals court’s order vacating its prior decision. “It has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of corporations. I am hopeful that the *Kiobel* decision will soon bring a halt to this perversion of the ATS,” Samp said.

In this case, Exxon Mobil was engaged in oil production activity in the Indonesian province of Aceh, for many years the site of a civil war. Members of the Indonesian military were assigned to guard the Exxon Mobil facilities from attacks by insurgents. The plaintiffs (a group of Indonesian citizens) allege that those military officials violated their rights under international law by engaging in extrajudicial killing, torture, and prolonged arbitrary detention. They further allege that Exxon and its Indonesian subsidiary ought to be held responsible for the alleged misconduct of the military personnel.

The case has been pending in federal court in the District of Columbia for more than a decade. In 2009, the district court dismissed all remaining claims, finding that the plaintiffs lacked “prudential standing” to maintain their suit. While the appeals court this week vacated its prior ATS ruling, it affirmed its reversal on the standing issue, a reversal that permits the case to proceed on the basis of several common law claims, including murder, torture, and sexual assault. Applying District of Columbia choice-of-law rules, the court held that the common law claims should be judged under Indonesian law. It will be open to Exxon on remand to argue that the common law claims should be dismissed on several alternative grounds, including that the claims are preempted by federal law. The district court will also be required to decide whether *Kiobel* requires dismissal of the plaintiffs’ ATS claims.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 States. It devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF’s brief is posted on its web site, www.wlf.org.