

No. 25-3347

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

XU LUN, a pseudonym,
Plaintiff-Appellant,

v.

MILWAUKEE ELECTRIC TOOL CORPORATION,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Wisconsin
Case No. 24-cv-803-BHL (Judge Brett H. Ludwig)

BRIEF OF WASHINGTON LEGAL FOUNDATION
AS AMICUS CURIAE IN SUPPORT OF
DEFENDANT-APPELLEE AND AFFIRMANCE

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August 3, 2026

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 25-3347

Short Caption: Xu Lun v. Milwaukee Electric Tool Corporation

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Attorney's Signature: /s/ Zac Morgan Date: 8/3/26

Attorney's Printed Name: Zac Morgan

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N/A

Attorney's Signature: /s/ Cory L. Andrews Date: 8/3/26

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICUS CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT	4
I. XU HASN'T SHOWN "CLEAR, AFFIRMATIVE INDICATION" THAT SECTION 1595 REACHES ABROAD	4
II. THE 1595/1596 DIVISION PROPERLY RESPECTS THE EXECUTIVE'S FOREIGN AFFAIRS ROLE	9
III. IF XU IS RIGHT, MILWAUKEE TOOL'S DEFENSE MAY BE AT BEIJING'S MERCY	13
CONCLUSION	15
CERTIFICATE OF COMPLIANCE AND SERVICE	16

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Cisco Sys., Inc. v. Doe I</i> , 146 S. Ct. 1882 (2026).....	1, 2, 7, 8, 9
<i>Doe I v. Apple Inc.</i> , 2021 WL 5774224 (D.D.C. Nov. 2, 2021).....	9
<i>Doe 1 v. Apple Inc.</i> , 96 F.4th 403 (D.C. Cir. 2024).....	9
<i>Doe v. Exxon Mobil Corp.</i> , 654 F.3d 11 (D.C. Cir. 2011)	10, 11, 13
<i>Doe v. Exxon Mobil Corp.</i> , 527 F. App'x 7 (D.C. Cir. 2013).....	10, 11
<i>FS Credit Opportunities Corp.</i> <i>v. Saba Capital Master Fund, Ltd.</i> , 146 S. Ct. 1546 (2026).....	4
<i>Hernandez v. Mesa</i> , 589 U.S. 93 (2020).....	3
<i>Jesner v. Arab Bank, PLC</i> , 584 U.S. 241 (2018).....	7
<i>Kiobel v. Royal Dutch Petroleum Co.</i> , 569 U.S. 108 (2013).....	7
<i>Morrison v. Nat'l Austl. Bank Ltd.</i> , 561 U.S. 247 (2010).....	5, 7

<i>RJR Nabisco v. Eur. Cmty.</i> , 579 U.S. 325 (2016)	5, 8
<i>Taylor v. Salvation Army Nat’l Corp.</i> , 110 F.4th 1017 (7th Cir. 2024)	9
<i>TikTok Inc. v. Garland</i> , 604 U.S. 56 (2025)	10
<i>United States v. Palmer</i> , 3 Wheat. 610 (1818)	3, 7
<i>Wallace v. Grubhub Holdings, Inc.</i> , 970 F.3d 798 (7th Cir. 2020)	1

Statutory Provisions

18 U.S.C. § 1583	9
18 U.S.C. § 1584	9
18 U.S.C. § 1589	5, 9
18 U.S.C. § 1591	9
18 U.S.C. § 1595	2, 5, 6
18 U.S.C. § 1595(a)	6
18 U.S.C. § 1596	2, 5, 6, 12
18 U.S.C. § 1596(b)	6, 7

Treaty

<i>Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters</i> , 23 U.S.T. 2555 (Mar. 18, 1970)	3, 13, 14
--	-----------

National Security Strategies

<i>Nat'l Sec. Strategy</i> (Dec. 2017)	10
<i>Nat'l Sec. Strategy</i> (Oct. 2022)	10
<i>Nat'l Sec. Strategy</i> (Nov. 2025)	10

Other Authorities

Ian Austen, <i>Canada Frees Two Jailed Canadians after the U.S. Agrees to Release a Huawei Executive</i> , N.Y. Times (Sept. 24, 2021)	12
Debevoise & Plimpton, <i>China Triggers Its Counter-Sanctions and Anti-Extraterritorial Jurisdiction Regulations</i> (June 5, 2026)	14
Pub. L. 117-78 (Dec. 23, 2021)	10
Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012)	12
<i>Regulations on Countering Improper Extraterritorial Jurisdiction by Foreign States</i> , State Council Order No. 835 (Apr. 7, 2026)	14
Jonathan Turley, <i>“When in Rome”: Multinational Misconduct and the Presumption Against Extraterritoriality</i> , 84 Nw. U. L. Rev. 598 (1990)	8
President George Washington, <i>Sixth Annual Message on the State of the Union</i> (Nov. 19, 1794)	10

INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. To that end, it often appears before the Supreme Court and this Court as amicus curiae to advocate that judges interpret a court's appropriate reach to the fullest extent of Congress's vestiture—but not one inch further. *Cisco Sys., Inc. v. Doe I*, 146 S. Ct. 1882 (2026); *Wallace v. Grubhub Holdings, Inc.*, 970 F.3d 798 (7th Cir. 2020).

INTRODUCTION AND SUMMARY OF ARGUMENT

Xu Lun, proceeding under a pseudonym, says that he was imprisoned by the Chinese Communist Party (CCP) and forced to make Milwaukee Tool gloves. If true, that's an outrage. But it's not an outrage that can be remedied by a civil suit in an American court.

Xu argues that the extraterritoriality provision of the Trafficking Victims Protection and Reauthorization Act gets him past the courthouse

* No party's counsel authored any part of this brief. No one, apart from Amicus and its counsel, contributed money intended to fund the brief's preparation or submission. All parties have consented to WLF's filing of this brief.

steps. It doesn't. The Act neatly divides its civil and criminal reach. For criminal cases, Congress permitted the Act to prowl worldwide in search of monsters to destroy, knowing the statute would be leashed by a Department of Justice accountable to the Commander-in-Chief, the Nation's principal officer in foreign affairs. 18 U.S.C. § 1596. But it cabined civil cases—brought by plaintiff's lawyers with no authority to set the Nation's foreign policy—within our borders. 18 U.S.C. § 1595.

That makes sense and respects the Executive's unique constitutional role. The Act is designed to prohibit singularly evil injustices, from forced labor to slavery. In those circumstances, even cases involving American defendants will likely (as here) involve "allegations of heinous acts committed by foreign nations or individuals." *Cisco*, 146 S. Ct. at 1890. The decision to ask a federal court—an arm of the United States government—to deem another country, friend or foe, as a brigand or slaver is one best left to the Executive Branch, not the private bar. Such issues "belong more properly to those" who can constitutionally "place the nation in such a position with respect to foreign powers as to their own judgment shall appear wise; to whom are

entrusted all its foreign relations.” *United States v. Palmer*, 3 Wheat. 610, 634 (1818); *Hernandez v. Mesa*, 589 U.S. 93, 104 (2020) (observing that “the Executive Branch . . . has ‘the lead role in foreign policy’”) (quoting *Medellín v. Texas*, 552 U.S. 491, 524 (2008)).

Finally, reversal would place Milwaukee Tool at the mercy of Communist China to prove a potentially crucial defense. The company contends that Xu may have been forced to make *counterfeit* Milwaukee Tool gloves. Milwaukee Tool Br. 1, n.1 (“Milwaukee Tool believes, if Plaintiff did indeed make gloves in prison, that the gloves at issue were counterfeit products”). The best way to find certain proof of that claim, however, would be for the CCP to put aside its abject hostility to compliance with extraterritorial investigations within China, comply with letters of request filed by the company under the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, 23 U.S.T. 2555 (Mar. 18, 1970), and open Chishan Prison’s records to the parties and the district court. That’s obviously not going to happen. That may leave Milwaukee Tool facing a jury in a highly charged case, unable to prove its best defense, perhaps taking an undeserved punch for conduct orchestrated by the CCP.

The heart rends at Xu’s complaint. But the law is pellucid. “Rather than augmenting” the Act, the district court properly “interpret[ed]” and applied it. *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 146 S. Ct. 1546, 1553 (2026). The dismissal below should be affirmed.

ARGUMENT

I. XU HASN’T SHOWN “CLEAR, AFFIRMATIVE INDICATION” THAT SECTION 1595 REACHES ABROAD.

Per his complaint, Mr. Xu has suffered greatly at the hands of Communist China, which imprisoned him for political activism and forced him to work from Chishan Prison. SA-2. Mr. Xu claims Milwaukee Tool benefited from this injustice because his captors forced him to make the company’s gloves. *Id.* An outrage, if true.

But not every atrocity confers a merits hearing. Xu complains of horrors imposed on him by the CCP within the People’s Republic. Hunan Province typically doesn’t fall within the reach of the Eastern District of Wisconsin. Xu claims it can in his case, however, because he’s suing under a statute that expressly applies to misconduct occurring outside the United States.

Unfortunately for him, he's not. Xu claims standing under 18 U.S.C. § 1595, which says nary a word about extraterritorial civil applications. Xu fills that blank by leaving § 1595 (civil cause of action) and leaping to § 1596 (criminal enforcement). Xu Br. 28. That's not a bad move; § 1596 reaches abroad—"the courts of the United States have extra-territorial jurisdiction" in criminal forced labor cases. 18 U.S.C. § 1589. But the anti-extraterritoriality canon is too strong to be juked that way. Even if one part of a statute applies worldwide, that grant doesn't seep through the page. *See Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 264–65 (2010) (extraterritorial cause of action in one part of Exchange Act didn't give a different section global reach). Xu must point to a "clear, affirmative indication" *in § 1595* to be able to bring his complaint from Yuanjiang to Wisconsin. *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 337 (2016). There isn't one—and that alone resolves this case. *Morrison*, 561 U.S. at 255 ("When a statute gives no clear indication of an extraterritorial application, it has none").

Xu nevertheless claims § 1596 controls both the civil and criminal aspects of the Act. Xu Br. 29 ("[S]ection 1596's grant of extraterritorial jurisdiction over any listed offense tells us that it encompasses an offense

of whatever kind—including when they are enforced civilly”) (internal quotation marks, citation, and emphasis omitted). That doesn’t work either. Section 1596 talks about “offenders” and “prosecutions.” *Id.* (pluralization supplied). It carries forward none of § 1595’s language about “civil action[s]” and “damages and reasonable attorneys fees.” 18 U.S.C. § 1595(a).

Section 1596 also contains a caveat to Congress’s grant of extraterritorial criminal reach, and that limit likewise solely uses criminal-law vocabulary. It says that “[n]o prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense,” unless “the Attorney General or the Deputy Attorney General” expressly authorizes it—and this “approval may not be delegated.” 18 U.S.C. § 1596(b). Section 1596 just isn’t a provision that’s concerned with civil liability. That’s fatal to Xu’s case.

Indeed, § 1596’s mandatory head-of-department review of delicate prosecutions really reinforces that conclusion. The anti-extraterritoriality canon doesn’t just presume Congress intends to govern

at home. It respects the separation of powers by preventing the Judicial Branch from sallying into “foreign affairs and national security” questions where it has no “expertise.” *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 284 (2018) (Gorsuch, J., concurring); *Palmer*, 3 Wheat. at 634; *Cisco*, 146 S. Ct. at 1888 (“[C]reating rights of action is Congress’s prerogative, and foreign policy is the political branches’ domain”).

Congress is aware of the canon and that purpose. So the Legislative Branch writes its statutes with an eye to minimizing judicial involvement in steering the ship of state through foreign waters. *Morrison*, 561 U.S. at 261 (presumption against extraterritoriality provides “a stable background against which Congress can legislate with predictable effects”). It’s not surprising then to see a double-check provision (“Are you sure you want to bring a court into this really sensitive international relations question?”) like section 1596(b)’s “no prosecution unless the AG or DAG signs off” rider. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 124 (2013) (observing potential for “a cause of action for conduct occurring in the territory of another sovereign” to catalyze “diplomatic strife”).

But a civil case can be just as disruptive to the Nation’s foreign relations as a criminal one, especially when—as often in forced labor cases—it involves claims of deeply disturbing foreign-state misconduct. *Cisco*, 146 S. Ct. at 1890; *cf. RJR Nabisco*, 579 U.S. at 348 (noting “potential for international controversy” in applying civil RICO statute to “foreign-injury claims”); *infra* at 9–13. Yet for Xu’s reading to be correct, we’d have to assume that a Congress cautious about criminal overenforcement left extraterritorial enforcement wide-open for any person with a plausible civil claim, even if the suit would put non-expert judges in a position to risk international comity by penalizing conduct already prosecuted or punished abroad. That doesn’t wash. Jonathan Turley, “*When in Rome*”: *Multinational Misconduct and the Presumption Against Extraterritoriality*, 84 Nw. U. L. Rev. 598, 606 (1990) (“The Supreme Court has long believed that Congress generally eschews unnecessary confrontation”).

So Xu can’t overcome the presumption against extraterritoriality. That leaves him just one other path to the courthouse door—if his “case involves a domestic application of the [Act].” *RJR Nabisco*, 579 U.S. at 337. That would do the trick only if “the conduct relevant to the statute’s

focus occurred in the United States.” *Id.* But the Act’s focus “is to prohibit forced labor under the threat of legal consequences,” *Taylor v. Salvation Army Nat’l Corp.*, 110 F.4th 1017, 1034 (7th Cir. 2024), and should most “naturally fall” where the forced labor took place. *See Doe I v. Apple Inc.*, 2021 WL 5774224, at *16 (D.D.C. Nov. 2, 2021), *aff’d on other grounds sub. nom Doe 1 v. Apple Inc.*, 96 F.4th 403 (D.C. Cir. 2024). And Xu was held in China, not the United States. Xu’s civil case can’t be heard in federal court.

II. THE 1595/1596 DIVISION PROPERLY RESPECTS THE EXECUTIVE’S FOREIGN AFFAIRS ROLE.

The Act’s division is a neat one. Criminal cases apply extraterritorially. Civil ones don’t. This isn’t just proper textualism, it’s salutary policy. Once more, consider what the Act bans. Forced labor. 18 U.S.C. § 1589. Sex trafficking of children. *Id.* § 1591. Involuntary servitude. *Id.* § 1584. Slavery. *Id.* § 1583. Injustices that rightly brand those who undertake them as enemies of mankind.

No nation likes being called evil by a superpower, even if it’s true. *Especially* if it’s true. Asking a U.S. court to deem a foreign government or its citizens as traffickers or slavers beckons obvious “detrimental foreign policy consequences.” *Cisco*, 146 S. Ct. at 1890. Think over the

foreign policy considerations that would factor into the United States bringing a forced labor case like this one. On one hand, China is a hostile power that regularly acts inimically to American interests—as the past three administrations have emphasized. *Nat’l Sec. Strategy* 25 (Dec. 2017); *Nat’l Sec. Strategy* 24 (Oct. 2022); *Nat’l Sec. Strategy* 19–24 (Nov. 2025); see also *TikTok Inc. v. Garland*, 604 U.S. 56, 65–66 (2025). As part of this unfriendly competition, the United States has spotlighted China’s forced labor practices. Pub. L. 117-78 (Dec. 23, 2021) (Uyghur Forced Labor Prevention Act). Doing so can diminish the attractiveness of the Chinese system abroad, provide support for dissidents, and strike at the party-state’s legitimacy. And bringing such cases can reinforce the U.S. government’s longstanding role as a “safeguard of human rights.” President George Washington, *Sixth Annual Message on the State of the Union* (Nov. 19, 1794).

On the other hand, precisely because China’s a totalitarian threat, it doesn’t play by the same rules as, say, Canada—although the Canadians do get annoyed when our courts reach into their affairs. *Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 77 (D.C. Cir. 2011) (Kavanaugh, J., dissenting in part), *vacated*, 527 F. App’x 7 (D.C. Cir. 2013) (noting

Canadian objection to U.S. civil suit “brought against a Canadian corporation for conduct that occurred in Sudan” because “the suit interfered with Canada’s foreign relations”). It would be irresponsible for an Executive Branch considering bringing a real criminal case premised on CCP-run forced labor not to evaluate the risk of a hostile Chinese riposte.

To prove forced labor occurred at Chishan Prison, the Department of Justice can’t just claim that “everybody knows” inhumane horrors occur there. It would have to gather evidence beyond a reasonable doubt—which might involve platforming Chinese dissidents or even seeking information from within the CCP carceral apparatus itself. That may come with consequences—such as retaliatory exit visa bans for U.S. nationals living in China or the filing of sham litigation against U.S. companies designed to expose “similar” problems with the U.S. criminal justice system or the federal government for propaganda value.

Or worse. In response to Canada’s assistance with a U.S. prosecution of Huawei executive Meng Wanzhou, Beijing seized two Canadians, Michael Kovrig and Michael Spavor. The case of the “Two Michaels” dragged out for nearly three years. The men were released only

when the U.S. Department of Justice inked a deferred prosecution agreement with Meng, who was permitted to leave Canadian custody. Ian Austen, *Canada Frees Two Jailed Canadians after the U.S. Agrees to Release a Huawei Executive*, N.Y. Times (Sept. 24, 2021).

That's not to say that the U.S. shouldn't bring a criminal forced labor case just because China might retaliate. Maybe the federal government should. But that call should stay in the hands of significant executive officers, superintended by the President of the United States—not the plaintiff's bar. Fittingly, that's exactly what the Act does. 18 U.S.C. § 1596.

We may still be tempted to let Xu's case through because his cause seems righteous and the Chinese Communist Party is an adversary. But this feeling is precisely what the anti-extraterritoriality canon is designed to check. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 212 (2012) (“[W]hen something less than a clear indication of extraterritorial application is allowed to avoid the presumption,” this “results in purposivism”). And while Beijing's handiwork is targeted this time, Xu's understanding of the Act isn't delimited to the Nation's foreign adversaries. Today's case involves a

geopolitical foe. Tomorrow's may involve NATO allies or other military partners. *See Doe*, 654 F.3d at 77–78 (Kavanaugh, J., dissenting in part) (collecting objections from Canada, Germany, and the United Kingdom to extraterritorial application of the Alien Tort Statute).

III. IF XU IS RIGHT, MILWAUKEE TOOL'S DEFENSE MAY BE AT BEIJING'S MERCY.

Finally, it's worth noting that Xu's reading of the Act may put Milwaukee Tool at the mercy of Communist China to prove a slam-dunk defense. One of the company's contentions is that Xu's allegations may be correct in every particular sans one—rather than Milwaukee Tool gloves, he may have been forced to sew counterfeits. Milwaukee Tool Br. at 1, n.1. If that's so, conclusive proof for that defense (as well as other claims) may literally reside in records kept at Chishan Prison by the CCP's Ministry of Justice. To obtain any such evidence, Beijing would have to open those records to the parties or the court, with the knowledge that damning evidence of Chinese human rights violations might be entered in a federal trial and made public via the courts and the global media.

True enough, China is a party to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, 23 U.S.T.

2555 (Mar. 18, 1970). So Milwaukee Tool could send letters of request under that treaty to the proper authority in China for review. The company's just ask will almost certainly be rejected, however, because the Hague Convention explicitly affords signatories a right to refuse to comply if it "considers that its sovereignty or security would be prejudiced thereby." Hague Convention, art. 12(b). One imagines the CCP will think their gulags are a matter of both. *See, e.g.,* Debevoise & Plimpton, *China Triggers Its Counter-Sanctions and Anti-Extraterritorial Jurisdiction Regulations* (June 5, 2026) (noting CCP's "hostility towards foreign investigations in China"), <https://perma.cc/YR8N-W732>; *Regulations on Countering Improper Extraterritorial Jurisdiction by Foreign States*, State Council Order No. 835 (Apr. 7, 2026) (CCP order compelling the identification of improper extraterritorial jurisdiction actions, prohibiting compliance with those, and authorizing countermeasures).

If that happens (and there's no reason to think it wouldn't) it might leave Milwaukee Tool without access to critical information to mount a credible defense, leaving it in the unpleasant circumstance of trying to prove a negative to a jury in a highly charged, emotional case. Ironically, that offers the CCP a pretty good outcome, no internal investigation of

its human rights abuses, while a company domiciled in a geopolitical adversary takes the hit.

A proper reading of the statute—just saying no to extraterritorial civil reach—also has the benefit of taking this outcome off the table.

CONCLUSION

Not every outrage opens every courthouse door. This Court should affirm.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I certify:

(i) That this brief complies with the relevant length limitations set forth in the Rules. It contains 2,842 words.

(ii) That this brief complies with the format, typeface, and type-style requirements of Fed. R. App. P. 32(a)(4)–(6) because it has been prepared using Microsoft Office Word and is set in 14-point Century Schoolbook font.

(iii) That I electronically filed this brief with the Clerk via the CM/ECF system, which will serve all parties automatically.

/s/ Zac Morgan
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August 3, 2026