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Supreme Court Seems Ready to Limit Human Rights Suits Against Corporations

Six citizens of Mali sued Nestlé USA and Cargill, saying the firms had profited from child slavery on Ivory Coast cocoa farms. Justices across the ideological spectrum questioned whether the plaintiffs' lawsuit had sufficiently tied the defendants to the abuses they said they had suffered.

By Adam Liptak

WASHINGTON — The Supreme Court, which has placed strict limits on lawsuits brought in federal court based on human rights abuses abroad, seemed poised on Tuesday to reject a suit accusing two American corporations of complicity in child slavery on Ivory Coast cocoa farms.

The case was brought by six citizens of Mali who said they were trafficked into child slavery as children. They sued Nestlé USA and Cargill, saying the firms had aided and profited from the practice of forced child labor.

"Plaintiffs are former child slaves seeking compensation from two U.S. corporations which maintain a system of child slavery and forced labor in their Ivory Coast supply chain as a matter of corporate policy to gain a competitive advantage in the U.S. market," said Paul L. Hoffman, a lawyer for the plaintiffs.

Neal K. Katyal, a lawyer for the companies, said they "abhor child slavery" and were not involved in it.

"The claim plaintiffs bring alleges something horrific: that locaters in Mali sold them as children to an Ivorian farm where overseers forced them to work," Mr. Katyal said. But, he added, "the defendants are not the locaters, not the overseers and not the farm."

The plaintiffs sued under the Alien Tort Statute, a cryptic 1789 law that allows federal district courts to hear "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

The law was largely ignored until the 1980s, when federal courts started to apply it in international human rights cases. A 2004 Supreme Court decision, Sosa v. Álvarez-Machain, left the door open to some claims under the law, as long as they involved violations of international norms with "definite content and acceptance among civilized nations."

Since then, the Supreme Court has narrowed the law in two ways, saying it does not apply where the conduct in question was almost entirely abroad or where the defendant was a foreign corporation.

In 2013, in Kiobel v. Royal Dutch Petroleum, the court said there was a general presumption against the extraterritorial application of American law. It rejected a suit against a foreign corporation accused of aiding and abetting atrocities by Nigerian military and police forces against Ogoni villagers.

Chief Justice John G. Roberts Jr., writing for the majority, said that even minimal contact with the United States would not be sufficient to overcome the presumption.

"Even where the claims touch and concern the territory of the United States," he wrote, "they must do so with sufficient force to displace the presumption against extraterritorial application."

In 2018, in Jesner v. Arab Bank, the court ruled in favor of a bank based in Jordan that had been accused of processing financial transactions through a branch in New York for groups linked to terrorism. The court said foreign corporations may not be sued under the 1789 law, but it left open the question of the status of domestic corporations.

In Tuesday's case, Nestlé USA v. Doe, No. 19-416, the companies sought to expand both sorts of limitations. They said the 1789 law did not allow suits even when some of the defendants' conduct was said to have taken place in the United States, and they urged the court to bar suits under the law against all corporations, whether foreign or domestic.

They seemed likely to succeed, but on narrower grounds. Justices across the ideological spectrum questioned whether the plaintiffs' lawsuit had sufficiently tied the defendants to the abuses they said they had suffered.

"When I read through your complaint," Justice Stephen G. Breyer told Mr. Hoffman, "it seemed to me that all or virtually all of your complaint amount to doing business with these people. They help pay for the farm. And that's about it. And they knowingly do it."

Justice Samuel A. Alito Jr. said even that overstated matters, as the lawsuit, first filed in 2005, said only that the companies knew or should have known of the practices.

"After 15 years, is it too much to ask that you allege specifically that the defendants involved, the defendants who are before us here, specifically knew that forced child labor was being used on the farms or farm cooperatives with which they did business?" he asked Mr. Hoffman. "Is that too much to ask?"

Those questions suggested that the court could rule for the companies without making a broad statement about corporate immunity. Indeed, Justice Alito said that some of the companies' broadest arguments "lead to results that are pretty hard to take."

Suppose, he said, that a firm "surreptitiously hires agents in Africa to kidnap children and keep them in bondage on a plantation so that the corporation can buy cocoa or coffee or some other agricultural product at bargain prices."

"You would say," Justice Alito asked Mr. Katyal, "that the victims, who couldn't possibly get any recovery in the courts of the country where they had been held, should be thrown out of court in the United States, where this corporation is headquartered and does business?"

Mr. Katyal said there were ways to hold such a corporation accountable. But he said the 1789 law was not one of them.