Balintulo v. Daimler AG: The Application of the Binding Precedent Set Forth in *Kiobel* and Its Effect on the Alien Tort Statute

I. OVERVIEW

The noted case—addressing the matter of mandamus relief in a class action arising under the Alien Tort Statute (ATS)—resulted in a denial of relief because under the ATS, federal courts may not recognize common law causes of action for conduct occurring in another country.[1] The plaintiffs brought class actions against the subsidiary companies of the corporate defendants—Daimler, Ford, and IBM—asserting that these companies violated customary international law by aiding South Africa's apartheid regime.[2] The plaintiffs claimed that the defendants' subsidiary companies operating in South Africa provided technology and automobiles to the government, enabling the apartheid regime to commit countless injustices in violation of customary international law, including rape, torture, and murder.[3] However, the plaintiffs made no claims that these violations occurred in the United States because at the time the plaintiffs filed suit, no case law existed requiring such a geographical connection as a determinative factor in an ATS claim.[4]

The plaintiffs brought these suits in the United States District Court for the Southern District of New York under the ATS, which provides federal jurisdiction over tort claims brought by an alien where the acts

1. Balintulo v. Daimler AG, 727 F.3d 174, 182 (2d Cir. 2013).
2. *Id.* at 179-80.
3. *Id.* at 180.
4. *Id.* at 180-81.

were committed in violation of U.S. treaties or the law of nations.[5] The district court denied the defendants' motion to dismiss based upon the jurisdiction conferred to it by the ATS.[6] As a result, the defendants first sought appellate review through a motion to certify an interlocutory appeal, which the district court also denied.[7] Upon denial, the defendants sought immediate appellate review under either a writ of mandamus or the "collateral order" doctrine based upon three claims: (1) that the case should be dismissed to safeguard U.S. foreign policy interests, (2) that jurisdiction conferred by the ATS was not applicable to the case at hand because the tortious acts occurred in South Africa, and (3) that the district court erroneously found the defendants accessorily liable.[8] The United States Court of Appeals for the Second Circuit granted the defendants' motion for a stay on all proceedings to consider the case, placing the district court proceedings on pause.[9] The Second Circuit *held* that (1) federal courts do not have jurisdiction over common law suits alleging violations of customary international law occurring outside of the United States, (2) a writ of mandamus was unnecessary for the defendants to achieve their desired relief, and (3) the defendants' argument under the collateral order doctrine is unnecessary.[10] *Balintulo v. Daimler AG*, 727 F.3d 174 (2d Cir. 2013).

II. BACKGROUND

The ATS confers original jurisdiction to U.S. district courts, permitting aliens to bring tort actions resulting from violations of U.S. treaties or the law of nations.[11] Initially passed as part of the Judiciary Act of 1789, the ATS provides district courts with the authority to hear certain tort claims, but fails to provide express causes of action, which creates uncertainty surrounding the appropriate applicability of the statute.[12] This uncertainty arguably confers upon federal courts an excessive amount of power, enabling judges to create binding federal common law surrounding international claims that the United States

5. *Id.* at 180.
6. *Id.* at 181.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* at 193-94.
11. 28 U.S.C. § 1350 (2012) provides, "The district courts shall have original jurisdiction of 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 of nations" refers to a set of universally accepted laws that nations agree are binding. *See* Flores v. S. Peru Copper Corp., 414 F.3d 233, 247-48 (2d Cir. 2003).
12. *See* Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659, 1663 (2013).

Congress may not have initially considered nor intended when enacting the ATS.[13] In addition to the textual vagueness of the statute, the scarcity of which aliens filed claims under the ATS during the century following its passing further contributed to the convolution surrounding its intended use due to a lack of available case law.[14]

Fueling the contentious and convoluted history of the ATS are the potentially great ramifications that decisions concerning violations of customary international law may have on U.S. foreign relations.[15] To safeguard against potential international discord, the United States Supreme Court has long recognized that there is a presumption against extraterritorial application—absent proof of congressional intent for extraterritorial application, a statute is presumed to govern exclusively domestically.[16] This presumption protects against potential international discord that could arise from courts' interpreting U.S. laws as applying domestically absent any explicit language to the contrary.[17] The Supreme Court has stipulated that where a statute contains no language explicitly conferring the power of extraterritorial application, it should be interpreted as only applying domestically.[18] This method of strict statutory interpretation minimizes the possibility of U.S. laws conflicting with those of other nations and diminishes the likelihood of international tumult.[19]

A. Identifying Proper Claims Under the ATS

The enactment of the ATS provided original jurisdiction to federal courts to hear aliens' tort claims alleging violations of customary international law, but the statute itself failed to delineate particular causes of action.[20] As a result, it is not evident through a plain reading of the statute whether the ATS merely confers jurisdiction to federal courts, requiring further congressional action to establish causes of action, or if

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13. *See id.* at 1664; Sosa v. Alvarez-Machain, 542 U.S. 692, 724-25 (2004).

14. *See Kiobel*, 133 S. Ct. at 1663 ("[T]he ATS was invoked twice in the late 18th century, but then only once more over the next 167 years.").

15. *See id.* at 1664.

16. *See* Microsoft Corp. v. AT&T Corp., 550 U.S. 437, 454 (2007); EEOC v. Arabian Am. Oil Co., 499 U.S. 244, 248 (1991).

17. *EEOC*, 499 U.S. at 248.

18. *See* Morrison v. Nat'l Austl. Bank Ltd., 130 S. Ct. 2869, 2878 (2010) ("When a statute gives no clear indication of an extraterritorial application, it has none.").

19. *See EEOC*, 499 U.S. at 248 (stating that the presumption against extraterritoriality "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord").

20. *See* 28 U.S.C. § 1350 (2012).

the ATS itself provides for certain causes of action.[21] In *Sosa v. Alvarez-Machain*, the Supreme Court sought to clarify the ATS's function within the U.S. court system and found that although the ATS originally served strictly as a jurisdictional grant, it does vest federal courts with the power to hear a limited category of claims that constitute violations of the law of nations.[22] The Supreme Court further provided, "[C]ourts should require any claim based on the present-day law of nations to rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms we have recognized."[23] The Court provided three definitively actionable categories of offenses committed under the law of nations based upon these eighteenth-century paradigms: (1) violations of safe conduct, (2) offenses committed against ambassadors, and (3) piracy.[24] Essentially, the Supreme Court held that while it is important to keep the framers' intent behind enacting the ATS in mind when determining proper claims, it is equally important for courts to consider the modern-day international climate, allowing for the possibility of new causes of action for violations of the international norms currently recognized by nations.[25]

The Supreme Court thus set forth a constraint in the character of the claims federal courts can properly consider, increasing the requisite judicial discretion necessary before adjudicating tort claims under the ATS.[26] Although the Supreme Court has held that judicial caution is of the utmost importance in recognizing new causes of action under the ATS, this discretion is not simply limited to interpreting congressional acts in order to determine if the cause of action has been previously provided by another statute.[27] The ATS provides federal courts with the capacity to analyze what is customary amongst the nations and recognize enforceable international norms in determining which causes of actions are proper, allowing the statute to remain relevant as the international climate shifts.[28]

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21. *See id.*
22. 542 U.S. 692, 712 (2004).
23. *Id.* at 725.
24. *Id.* at 720.
25. *See id.* at 728-31 ("[J]udicial power should be exercised on the understanding that the door is still ajar subject to vigilant doorkeeping, and thus open to a narrow class of international norms today.").
26. *Id.* at 725.
27. *Id.* at 729.
28. *Id.* at 730.

B. The ATS's Reach for Tortious Conduct Occurring Outside the United States

In its 2013 *Kiobel* decision, the Supreme Court further constrained what constitutes a proper claim under the ATS by specifying where the conduct must occur in order to confer original jurisdiction to district courts.[29] The Supreme Court reasoned that when considering claims involving tortious conduct occurring abroad, the risk of judicial interference and adverse foreign policy consequences are greater, requiring heightened judicial discretion.[30] As a result of this heightened discretion, the Supreme Court set forth both textual and historical justifications as to why the ATS applies strictly to conduct occurring within the United States.[31]

In conducting a textual analysis of the ATS, the Court found the presumption against extraterritoriality applied.[32] Implicit in the reasoning behind the presumption against extraterritoriality is the notion that it is better to err on the side of caution when interpreting the ATS to prevent the courts from acting in a manner that encroaches on the Executive and Legislative Branches' authority and discretion involving foreign relations.[33] The only time when the presumption of extraterritoriality can be overcome is when a claim has close enough ties to a U.S. territory to displace the presumption by sufficient force.[34]

The Supreme Court also conducted a historical analysis in determining whether the ATS was intended to apply extraterritorially, which they found further supported the presumption against extraterritoriality.[35] After conducting an analysis of the context under which the ATS was enacted, the Court found that conduct occurring outside of the United States was not a category of conduct considered by the framers of the First Congress.[36] Additionally, the Court found that there was no contextual evidence that Congress enacted the ATS in order to create a welcoming forum for aliens to bring their tortious claims, which would

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29. *See* Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659 (2013).
30. *Id.* at 1664.
31. *Id.* at 1666.
32. *Id.* at 1665.
33. *Id.* at 1664; *Sosa*, 542 U.S. at 727 ("[T]he subject of those collateral consequences is itself a reason for a high bar to new private causes of action for violating international law, for the potential implications for the foreign relations of the United States of recognizing such causes should make courts particularly wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs.").
34. *Kiobel*, 133 S. Ct. at 1669.
35. *Id.* at 1666.
36. *Id.* at 1668.

result in the United States shouldering the burden of maintaining international norms amongst the nations.[37] As a result, the *Kiobel* Court held that claims under the ATS must pertain to conduct occurring within the United States.[38]

C. Mandamus Use in ATS Jurisprudence

A writ of mandamus is a review mechanism that may be sought by a party for immediate appellate revision of a final decision under extraordinary circumstances.[39] These extraordinary circumstances generally include extreme judicial indiscretion, which could result in great injustice should the petitioner not have the option of seeking mandamus relief.[40] In order for a party to successfully seek a writ, three conditions must be met: (1) the petitioner must have no other means to attain relief, (2) the petitioner must clearly and indisputably demonstrate their right to the issuance of the writ, and (3) the court must determine that the writ is appropriate under the circumstances.[41]

The Supreme Court has held that one of the many purposes for which courts may grant a writ is "to restrain a lower court when its actions would threaten the separation of powers."[42] Under ATS jurisprudence, the probability of an issuance of a writ of mandamus increases given the risk of negative foreign-policy repercussions if the lower courts interfere with intergovernmental relations and encroach upon the Executive and Legislative Branches' authority.[43] In ATS jurisprudence, given the great risks associated with interfering with foreign policy and creating international discord, appellate courts have been more likely to exercise appellate oversight through the issuance of writs.[44] Furthermore, the ATS allows judges to exercise discretion in determining which claims constitute a violation of the law of nations—thus effectively granting judges the ability to create binding federal common law—urging greater appellate oversight.[45] For these reasons, ATS jurisprudence provides a

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37. *Id.*

38. *Id.* at 1669.

39. *See* 28 U.S.C. § 1651(a) (2012) ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."); Cheney v. U.S. Dist. Ct. for D.C., 542 U.S. 367, 380 (2004).

40. *See* Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100, 111 (2009).

41. *Cheney*, 542 U.S. at 380-81.

42. *Id.* at 381.

43. *Id.*

44. *See Ex parte* Republic of Peru, 318 U.S. 578, 586-87 (1943).

45. *See* Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659, 1664 (2013); Sosa v. Alvarez-Machain, 542 U.S 692, 724-25 (2004).

greater likelihood for obtaining mandamus relief in order to maintain foreign affairs and judicial integrity.[46]

III. THE COURT'S DECISION

In the noted case, the Second Circuit relied exclusively on *Kiobel* in determining whether to allow appellate review through a writ of mandamus or under the collateral order doctrine.[47] The court divided the discussion into two sections to evaluate each of the defendants' claims separately in light of the recent *Kiobel* decision.[48] The court denied the defendants' request for mandamus relief on the ground that the defendants would be able to obtain relief through a motion for summary judgment on the pleadings in the district court, rendering a writ of mandamus unnecessary.[49] The court then rendered the defendants' claim under the collateral order doctrine moot in the interest of judicial economy given the fact that *Kiobel* foreclosed the plaintiffs' claims under the ATS as a matter of law.[50]

First, the court discussed whether the issuance of mandamus relief was appropriate under an ATS suit.[51] Because ATS suits often involve potentially detrimental foreign policy implications and also provide judges with a high level of judicial discretion by enabling them to form federal common law, the court acknowledged that ATS jurisprudence generally required greater appellate oversight through mandamus relief.[52] However, one of the three requirements for the issuance of a writ of mandamus is that there be no other means to attain relief.[53] The court acknowledged the merit behind the defendants' arguments for mandamus relief, but found their analysis unnecessary given the relief available to them under Rule 12(c) of the Federal Rules of Civil Procedure, rendering the issuance of a writ of mandamus unnecessary in light of the *Kiobel* decision, which the court interpreted as barring the adjudication under the ATS of all claims based on conduct occurring abroad.[54]

The court then went into further detail discussing how *Kiobel* barred the plaintiffs' claims.[55] The court first clarified that even if claims

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46. *See Cheney*, 542 U.S. at 381-82.
47. Balintulo v. Daimler AG, 727 F.3d 174, 188 (2d Cir. 2013).
48. *Id.* at 185-86.
49. *Id.* at 182.
50. *Id.*
51. *Id.* at 187.
52. *Id.*
53. *Id.* at 186.
54. *Id.*
55. *Id.* at 189.

brought under the ATS involved conduct that pertained to or concerned the United States, the claims must do so with an adequate amount of force to displace the presumption against extraterritorial application.[56] The Second Circuit quickly found that simply was not present in the noted case because all the tortious conduct occurred in South Africa.[57] Further, the court found the defendant corporations could not be held vicariously liable for their subsidiary companies' actions, even though the defendant corporations were citizens of the United States, because the subsidiary companies' actions took place in South Africa.[58] The court found that whether the plaintiffs sought to hold the defendants liable or vicariously liable, *Kiobel* required that relevant conduct giving rise to ATS claims must take place in the United States.[59] The Second Circuit reiterated that in order to find vicarious liability for acts of the defendants' agents, the subsidiary companies operating in South Africa, the agents' conduct must have occurred within the United States regardless of the defendant corporations' citizenship.[60]

Second, the court rendered the defendants' claim under the collateral order doctrine moot, and did not consider this issue whatsoever.[61] The court recognized that collateral orders of appeal differ from mandamus relief because these orders do not require an individual jurisdictional analysis, but instead courts consider these collateral order appeals "as of right."[62] The court acknowledged that the defendants presented strong arguments under the collateral order doctrine supporting the immediate appealability of the district court's motion to dismiss, but chose not to discuss the issue.[63] Because *Kiobel* set forth such a clear precedent barring claims involving extraterritorial conduct under the ATS, therefore foreclosing the plaintiffs' claims as a matter of law, the court found ruling on the collateral order doctrine claim unnecessary due to considerations of judicial efficiency.[64]

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56. *Id.* at 190.
57. *Id.*
58. *Id.* at 192.
59. *Id.*
60. *Id.*
61. *Id.* at 193.
62. *Id.* (citing Mohawk Indus., Inc. v. Carpenter, 558 U.S. 1000 (2009)).
63. *Id.* (clarifying that the collateral order doctrine provides another discretionary mechanism for appellate review of district court decisions).
64. *Id.*

IV. ANALYSIS

The court's discussion and analysis of the defendants' claims for immediate appellate review of the district court's denial of their motion to dismiss is brief and seemingly straightforward in light of the Supreme Court's recent decision in *Kiobel*.[65] The court applied *Kiobel*, which held claims under the ATS cannot be adjudicated if they involve exclusively extraterritorial conduct, as an unambiguous standard constraining the types of cases courts have jurisdiction over under the ATS.[66] The brevity of the discussion in the noted case concerning the conduct at issue highlighted what the court considered to be the only two pertinent factors in determining whether a claim is proper under the ATS: the type of conduct involved and where the conduct occurred.[67]

The court's treatment of *Kiobel* as a bright-line test barring all extraterritorial conduct oversimplifies the necessary analysis of what constitutes a proper ATS claim. Upon closer examination of the Supreme Court decision in *Sosa*, which presents the guidelines for the presumption against extraterritorial application, there also exists a qualification that could confer jurisdiction to the courts under a given statute.[68] Courts can find jurisdiction under a statute where "the defendant's conduct substantially and adversely affects an important American national interest, and that includes a distinct interest in preventing the United States from becoming a safe harbor (free of civil as well as criminal liability) for a torturer or other common enemy of mankind."[69] Relying on *Kiobel*, the court did not consider whether the conduct of the corporate defendants' subsidiary companies in the noted case substantially affected an interest of the United States. As a result, the court failed to conduct a thorough analysis of the relative violation, creating more ubiquitous case law surrounding the ATS.

Similar to the conclusion reached by Justice Breyer in his concurrence in *Kiobel*, the plaintiffs in the noted case set forth the argument that although the presumption against extraterritorial application was invoked in *Kiobel*, the Supreme Court's decision does not preclude all suits under the ATS based on conduct occurring abroad if the plaintiffs can successfully prove this conduct had close enough ties to the United States, either through the defendants' U.S. citizenship or through the defendants' conduct should it prove to significantly

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65. *See* Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659 (2013).
66. *Balintulo*, 727 F.3d at 190.
67. *Id.*
68. Sosa v. Alvarez-Machain, 542 U.S. 692, 732 (2004).
69. *Kiobel*, 133 S. Ct. at 1671 (Breyer, J., concurring) (citing *Sosa*, 542 U.S. at 732).

contradict U.S. interests.[70] Arguably, a pivotal difference existed between *Kiobel* and the noted case concerning the defendants' citizenship. In *Kiobel*, the corporate defendants were foreign corporations,[71] while two of the defendants in the noted case were U.S. corporations.[72] As a result of this distinguishing fact, the plaintiffs argued that where the relevant conduct occurred was just one consideration in a multifactor test in deciding whether the ATS appropriately confers jurisdiction and that the court should further analyze the effect of the defendants' U.S. citizenship.[73] However, keeping with the court's pattern of brevity, rather than considerthe distinguishing fact thoroughly before dismissing the claim, the court instead found the *Kiobel* decision served as a bright-line test barring all extraterritorial conduct.[74] The court found that because all of the relevant conduct considered in *Kiobel* took place in Nigeria and the Supreme Court found this conduct insufficient to adequately tie the conduct to the interests of the United States, all claims involving exclusively extraterritorial conduct were insufficient to provide jurisdiction under the ATS without further inquiry.[75]

Because the Second Circuit treated *Kiobel* as a bright-line test barring all ATS claims involving extraterritorial conduct, the court had no trouble deciding that the claim at issue did not fall under the ATS given the location of the defendants' conduct.[76] However, the brief decision in the noted case will likely further contribute to the convoluted history of the ATS by failing to conduct a thorough analysis to provide guidelines for future analysis of ATS claims.[77] As stated in *Sosa*, when determining the kinds of claims recognized under the statute, the court in the noted case could have addressed the framers' intent in enacting the ATS, while tailoring this intent to the modern-day international atmosphere and the governing norms of customary international law.[78] While *Kiobel* foreclosed ATS claims involving conduct on foreign soil by foreign defendants, it did not involve the foreign conduct of U.S.

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70. *Balintulo*, 727 F.3d at 189.
71. *Kiobel*, 133 S. Ct. at 1662.
72. *Balintulo*, 727 F.3d at 189.
73. *Id.* This argument mirrored Justice Breyer's analysis in *Kiobel*. *See* 133 S. Ct. at 1671 (Breyer, J., concurring) (identifying three factors a court should consider in evaluating statutes before assuming the presumption against extraterritorial application applies: (1) whether the alleged conduct took place domestically or extraterritorially, (2) what the defendant's nationality is, and (3) does the defendant's conduct substantially contradict U.S. interests).
74. *Balintulo*, 727 F.3d at 189-90.
75. *Id.* at 191.
76. *Id.* at 189.
77. *Id.*
78. Sosa v. Alvarez-Machain, 542 U.S. 692, 730 (2004).

corporate defendants' subsidiary companies as in the noted case. This distinguishing fact created an opportunity for the court in the noted case to further analyze the subsidiary companies' actions abroad and whether these actions could constitute a potential ATS claim by adversely affecting U.S. interests. The *Sosa* decision defined piracy as one of the three broad categories of claims that embodied the framers' intent at the time of the ATS's enactment.[79] The U.S. defendants in the noted case afforded the Second Circuit the opportunity to consider what constitutes modern-day piracy and whether such conduct can occur extraterritorially while still adhering to the framers' original intent—a consideration stated by Justice Breyer in his concurring opinion in *Kiobel*.[80] This consideration would require an analysis of the current international atmosphere and the accepted norms among customary international law to determine what constitutes a violation of the law of nations, rather than a quick assumption that simply because the conduct occurred outside the United States, the claim does not fall under the ATS.[81] While it seems highly unlikely that the foreign actions of the subsidiary companies in the noted case would constitute modern-day piracy simply because these companies dealt with a corrupt South African government, the court's failure to conduct this analysis results in a lack of guidance for lower courts considering ATS claims.

Upon closer inspection of the framers' intent behind enacting the ATS, the text of the ATS is necessarily international in nature given its subject matter.[82] Supporting the international implications of the ATS, piracy, one of the identified categories falling under the ATS, necessarily involves conduct occurring abroad, further demonstrating that the framers' intent behind passing the ATS was to encompass a narrow category of extraterritorial conduct.[83] In treating *Kiobel* as a bright-line test barring all extraterritorial conduct, instead of a narrower test barring

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79. *Id.* at 720.

80. Kiobel v. Royal Dutch Petroleum Co., 133 S. Ct. 1659, 1673 (2013) (Breyer, J., concurring).

81. *Id.* at 1671.

82. *See* 28 U.S.C. § 1350 (2012) (pertaining to the law of nations and the United States' treaty obligations, both of which have international implications).

83. *See Kiobel*, 133 S. Ct. at 1672 (Breyer, J., concurring). Here, the Court states that the presumption against extraterritorial application is premised on the idea that Congress generally legislates with respect to domestic matters and that therefore extraterritorial application should be avoided unless explicitly stated otherwise. *Id.* However, the ATS was enacted with foreign matters in mind, in particular by encompassing piracy, which is a general category of claims that necessarily includes extraterritorial conduct. *Id.* Therefore, the presumption that the ATS should strictly apply to domestic conduct completely disregards the context in which the framers enacted the statute. *Id.*

extraterritorial conduct by foreign defendants, the court failed to analyze the purpose of the ATS as applied to the facts of the noted case and perhaps precluded an entire category of extraterritorial claims that could necessarily be protected by the statute.[84]

The *Kiobel* decision argued that in utilizing the presumption against extraterritorial application, the constrained application of the ATS safeguards the United States against becoming a forum to settle all questions surrounding international disputes.[85] However, this argument does not necessarily preclude all claims involving extraterritorial conduct because the intent behind the ATS's enactment was to protect aliens suffering from narrow categories of torts arising from violations of the law of nations.[86] It necessarily follows that Congress did not intend the United States to turn a blind eye to the protected categories of conduct under the ATS strictly to promote judicial efficiency.[87] While *Kiobel* dealt with foreign defendants' conduct abroad and is thereby further attenuated to the United States' interests, the noted case dealt with U.S. corporate defendants and their subsidiaries' conduct abroad, a claim that arguably requires deeper analysis before dismissal.

The text and history of the ATS demonstrate that it was enacted with the specific intent to protect against piracy, and this intent should be acknowledged in analyzing the category and location of the conduct occurring in ATS claims.[88] Instead of arguing that the framers did not intend for the ATS to turn the United States into a safe harbor for aliens to settle claims surrounding international norms, it is equally as evident that the framers did not intend for the ATS to turn the United States into a safe harbor for violators of the law of nations.[89] The noted case involved domestic corporate defendants whose subsidiary companies allegedly violated international norms abroad, requiring the court to further analyze whether the conduct affected the United States' interests and thus whether the claim could be adjudicated in a U.S. court. This further contributes to the argument that *Kiobel* should not serve as an unambiguous bright-line test barring all extraterritorial conduct, but instead the ATS claims should be adjudicated based on multiple conditions present in the text and history of the statute itself.[90]

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84. Balintulo v. Daimler AG, 727 F.3d 174, 191 (2d Cir. 2013).
85. *Kiobel*, 133 S. Ct. at 1668.
86. *Id.* at 1663.
87. *Id.* at 1674 (Breyer, J., concurring).
88. *Id.*
89. *Id.*
90. *Id.*

As it stands after *Kiobel*, the category of conduct encompassed by the ATS is narrower due to the limitation of locations in which proper claims may occur.[91] However, by choosing to ignore all claims involving extraterritorial conduct without fully exploring the conduct's effect on the United States, the court in the noted case chose to ignore the congressional intent behind providing courts with jurisdiction over claims brought by aliens involving tortious conduct that violates the law of nations.[92] While the nature of ATS jurisdiction requires judicial caution to avoid upsetting foreign relations, this caution should not be achieved by removing categories of conduct the ATS was originally intended to protect.[93] Even after *Kiobel*, the Second Circuit could have chosen to exercise discretion in conducting a full analysis of claims involving extraterritorial conduct distinguishable from the facts of *Kiobel*, while still protecting against potential international discord by keeping the category of claims encompassed by the ATS narrow, as originally intended by the framers.[94]

V. CONCLUSION

In an attempt to clarify the proper application of the ATS, the Second Circuit relied exclusively upon the recent Supreme Court decision in *Kiobel* to determine whether to grant the defendants' request for mandamus relief. The Second Circuit's treatment of *Kiobel* as a bright-line test barring ATS claims involving extraterritorial conduct precluded the petitioners' claims based on the location of the alleged tortious conduct alone. As a result, the much-disputed application of the ATS is further tailored to strictly prohibit claims based on exclusively foreign conduct absent any congressional statutory modifications. The practical effect of this decision further illuminates which claims fall under ATS jurisdiction, leaving less discretion to judges to determine whether certain conduct violates the law of nations by providing a clear standard for the required location of conduct encompassed under the ATS. However, the Second Circuit's treatment of *Kiobel* as a bright-line rule without conducting an in-depth analysis of the possible implications that the defendants' of U.S. citizenship could have on ATS claims may result in undesirable consequences not intended by the framers of the ATS.

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91. Balintulo v. Daimler AG, 727 F.3d 174, 192 (2d Cir. 2013).
92. *Kiobel*, 133 S. Ct. at 1673 (Breyer, J., concurring).
93. *Id.* at 1664 (majority opinion).
94. Sosa v. Alvarez-Machain, 542 U.S. 692, 724 (2004).

If the Second Circuit's holding remains unchallenged and no future amendments are made to the ATS expressly clarifying aliens' causes of action under the statute, it is likely that claims that the framers intended to fall under the ATS will be overlooked based solely on the location of the alleged conduct. As a result, on the one hand, the Second Circuit's holding presents a victory with regards to providing strict guidelines for courts in the future in determining which claims may be brought under the ATS—a seemingly necessary step in disseminating the mystery surrounding the intentions and applicability of the vaguely phrased statute. On the other hand, in an effort to clarify, the Second Circuit's holding may have the detrimental effect of precluding claims that the framers considered to be in need of protection with regards to customary international law and intended to fall under the ATS.

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