APPEAL NO. 05-36210

UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

CYNTHIA CORRIE and CRAIG CORRIE, *et al.*
Plaintiffs/Appellants

v.

CATERPILLAR INC., a Foreign Corporation,
Defendant/Appellee

Appeal from a Judgment of the
United States District Court
For the Western District of Washington, Tacoma Division,
Case No. CV-05192-FDB
The Honorable Frank D. Burgess

BRIEF AMICUS CURIAE OF INTERNATIONAL LABOR RIGHTS FUND IN SUPPORT OF PLAINTIFFS-APPELLANTS SUPPORTING REVERSAL OF THE DISTRICT COURT OPINION

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INTEREST OF AMICUS

The International Labor Rights Fund (ILRF) submits this *amicus curiae* brief in support of the Plaintiffs-Appellants herein pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure. All Parties have consented to the filing of this amicus brief.

ILRF is an independent, not-for-profit, non-governmental organization that seeks to promote the enforcement of worker rights in the global economy. It was formed in 1986 by a coalition of labor leaders, human rights activists, academics and religious leaders to monitor practices such as child labor, forced labor, attacks on and imprisonment of union leaders, and other violations of international labor standards, and more importantly to develop the means to counter these abuses. ILRF's core mission is to achieve just and humane treatment of workers worldwide through collaboration with labor and other non-governmental organizations both domestically and internationally.

A key aspect of ILRF's work has evolved to include lawsuits on behalf of human rights victims against U.S. multinational corporations for egregious violations of international law under the Alien Tort Statute (ATS) and the Torture Victims Protection Act (TVPA), 28 U.S.C. §1350. Specifically, ILRF is

lead counsel in several such cases, including *Doe v. Nestle et. Al.*, Case No. CV-05-5133-SVW (JTLX) (C.D.Cal. 2005), in which the ILRF represents a class of Malian children who were trafficked from Mali to the Ivory Coast and forced to labor on cocoa plantations. Also, in *Roe III v. Unocal Corp.*, Case No. CV-96-06112-RSWL (BQRx)(C.D.Cal. 1996), the ILRF represented peasant farmers who were forced to labor for the benefit of the Yadana Gas Pipeline Project in which Unocal was a joint venture partner with the Burmese military government. The ILRF therefore has a demonstrated interest in the development and application of law with respect to the ATS, particularly with respect to corporate liability for human rights abuses.

SUMMARY OF ARGUMENT

The District Court erroneously held that corporations cannot be held liable under the TVPA, finding that the reference to "individual" in the statute should be limited to natural persons. Corporations can, have, and should be held liable under the TVPA. Imposing such liability is demanded by the plain meaning of the statute using the rules of interpretation established by this Court and the Supreme Court; by the object and purpose of the statute; by the intent of Congress; and by the principles of international law that form the basis for the statute.

ARGUMENT

I. THIS COURT HAS CONSISTENTLY REFUSED TO LIMIT THE PLAIN MEANING OF "INDIVIDUAL" TO NATURAL PERSONS.

This Court has refused to restrict the term "individual" to natural persons, finding that a statutory reference to "individual" can, depending on the context, include corporations. *See United States v. Middleton*, 231 F.3d 1207 (9th Cir. 2000). To interpret a statute, this Court first looks to "the plain language of the statute, construing the provisions of the entire law, including its object and policy, to ascertain the intent of Congress." *Id.* at 1210. *See also Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013 (9th Cir. 2005) (in determining the meaning of a statute, courts are directed to "look to the plain and sensible meaning of the statute, the statutory provision in the context of the whole statute and case law, and to legislative purpose and intent"). When presented with an undefined term as in the present case, this Court, following Supreme Court precedent, "endeavors to give that term its ordinary meaning," and "to avoid, if possible, an interpretation that would produce 'an absurd and unjust result which Congress could not have intended.'" *Id.* (citing *Clinton v. New York*, 524 U.S. 417, 429 (1998)).

A. The "Ordinary Meaning" of Individual Can Include Corporations.

The term "individual" has long been recognized to include corporations under the proper circumstances. Black's Law Dictionary recognizes that although individual sometimes means only human beings, "this restrictive signification *is not inherent in the word*, and it may, in proper cases, include artificial persons." Black's Law Dictionary 772 (6th ed. 1990) (emphasis added).[1] This Court recognized exactly this point in *Middleton*, noting that "the ordinary meaning of 'individuals' . . . does not necessarily exclude corporations." 231 F.3d at 1210. In addition, this Court has found that under RICO, the term "group of individuals" encompassed "a group of corporations," and thus a group of corporations could constitute a criminal "enterprise" under RICO. *See U.S. v. Blinder*, 10 F.3d 1468, 1473 (9th Cir. 1993) (citing *U.S. v. Feldman*, 853 F.2d 648 (9th Cir. 1988), *cert. denied*, 489 U.S. 1030 (1989)). This point is not anew one; as far back as 1880, the Supreme Court of Ohio stated that, "[t]he word 'individual' is here used in the sense of person, and embraces artificial or

[1] While standard dictionaries suggest the ordinary meaning of "individual" means only human beings, such ordinary dictionaries also provide the same definition for "person." Thus person is defined in a common dictionary as "A living human being." American Heritage Dictionary of the English Language 1351 (3d ed. 1992). Yet, clearly "person" in a statute does not signify only human beings.

corporate persons as well as natural." *State ex rel. Am. Union Tel. Co. v. Bell Tel. Co.*, 36 Ohio St. 296, 310 (1880). There is no basis to believe that Congress automatically would have assumed that "individual" excludes corporations.

In fact, Congress has used another term when it wants to specify human beings only—the term "human being." For example, "[m]urder is the unlawful killing of a *human being* with malice aforethought." 18 U.S.C. § 1111 (emphasis added). Congress has also used "natural persons," a similarly unambiguous term. *See, e.g.*, 15 U.S.C. § 1693a(5) ("the term 'consumer' means a natural person"); *id.* § 6602(5) ("[t]he term 'personal injury' means physical injury to a natural person"); 28 U.S.C. § 1369(3) ("the term 'injury' means . . . physical harm to a natural person"). Congress could have chosen to specify that only human beings or natural persons could be sued under the TVPA, but did not.

B. Interpreting "Individual" to Exclude Corporations Is Contrary to the Object and Purpose of the TVPA and Would Lead to an Absurd and Unjust Result.

One of Congress's specific purposes in passing the TVPA was to extend to American citizens the remedies available to foreigners under the Alien Tort Claims Act, 28 U.S.C. § 1350:

> The TVPA would . . . enhance the remedy already available under section 1350 in an important respect: while the Alien Tort Claims Act

> provides a remedy to aliens only, the TVPA would extend a civil remedy also to U.S. citizens who may have been tortured abroad.

S. Rep. No. 102-249, 1991 WL 258662, at *5. It is beyond dispute that corporations may be found liable under international law as interpreted under the ATCA. *See Carmichael v. United Technologies Corp.*, 835 F.2d 109, 113-14 (5th Cir. 1988) (recognizing that ATS liability could attach to corporations); *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 445 (D.N.J. 1999) (opining that "no logical reason exists for allowing private individuals and corporations to escape liability for universally condemned violations of international law"). For example, corporations should not be shielded from liability for aiding and abetting such violations simply because of their corporate status. *See Doe I v. Unocal Corp.*, 395 F.3d 932, 951 (9th Cir. 2002), *vacated*, 395 F.3d 978 (9th Cir. 2003). *See also Presbyterian Church of Sudan v. Talisman Energy*, 374 F. Supp. 2d 331, 340-41 (S.D.N.Y. 2005); *Bowoto v. Chevron Texaco Corp.*, 312 F. Supp. 2d 1229, 1247 (N.D. Cal. 2004); *Wiwa v. Royal Dutch Petroleum Co.*, 2002 WL 319887 (S.D.N.Y. Feb. 28, 2002) (all accepting that corporations can be held liable for violations of international human rights law). Moreover, corporations have been held liable for complicity in extrajudicial killing and torture brought under the law of nations pursuant to ATS. *See, e.g., Sinaltrainal v. The Coca-Cola Co.*, 256 F. Supp. 2d 1345, 1358 (S.D. Fla 2003) ("courts have held

corporations liable for violations of international law under the related ATS.") (citing *NCGUB v. Unocal*, 176 F.R.D. 329 (C.D. Cal. 1997); *Wiwa*, 2002 WL 319887 (both allowing suits against private corporations under the ATS)).

Although this Court has not addressed the issue directly, other courts have found that corporations can be held liable under the TVPA. *See Estate of Rodriguez v. Drummond Co.*, 256 F. Supp. 2d 1250, 1266-67 (N.D. Ala 2003); *Sinaltrainal*, 256 F. Supp. 2d at 1358-59. This Court has, however, along with others, tacitly acknowledged corporate liability under the TVPA by not addressing the issue *sua sponte*. *See Deutsch v. Turner Corp.*, 324 F.3d 692, 717-18 (9th Cir. 2003) (holding that Plaintiffs could not amend their complaint to add TVPA claims against a corporation, given that the statute of limitations had run, but remaining silent on the liability of corporations under the act); *Wiwa v. Royal Dutch Petroleum*, No. 96 CIV. 8386, 2002 WL 319987, at *12 (S.D.N.Y. 2002) (assuming corporate liability under the TVPA without deciding).

Both *Rodriguez* and *Sinaltrainal* concluded that the term "individual" was meant to include corporations. *See Estate of Rodriguez*, 256 F. Supp. 2d at 1267 (individual includes corporations since corporations can be sued under the ATCA, and Congress did not clearly intend to exclude corporations from the term individual); *Sinaltrainal*, 256 F. Supp. 2d at 1359 ("individual" includes

corporations based upon legislative history, the fact that corporations can be sued under the ATCA, and that plain meaning of individual usually includes corporations). The *Sinaltrainal* court also cited the Senate Judiciary Report, which explains that the purpose of the TVPA is to permit suit "against persons who ordered, abetted, or assisted in torture." *Sinaltrainal*, 156 F. Supp. 2d at 1358. Because a corporation is generally viewed as a person in other areas of the law, the *Sinatrainal* court thought it reasonable to conclude that had Congress intended to exclude corporations it would have expressly done so. *Id.*

Excluding corporations from the TVPA would frustrate Congress's intent to provide the same remedies to U.S. citizens as are available to foreigners under the ATCA. Such an interpretation would lead to the absurd and unjust result of providing foreigners with a right to bring a claim against a corporation for torture or extrajudicial killing while denying that same right to US citizens. It is unimaginable that Congress would have wanted to deny US citizens rights it has provided to foreign citizens, and the District Court failed to identify any evidence to suggest such an intent.

C. The Legislative History of the TVPA Supports Including Corporations in the Definition of "Individual."

Senator Kennedy, a cosponsor of the TVPA, stated upon its introduction in the Senate that "we have an obligation to make our courts accessible to . . . victims *to the maximum extent* that the Constitution allows to assure that torturers feel the full weight of international law." 137 Cong. Rec. S1381 (emphasis added). Consistent with Senator Kennedy's remarks, there is no indication that Congress exempted corporations from liability for torture, and ample evidence that corporations should be liable.

A review of the legislative history from both the House and the Senate demonstrates that in choosing the term "individual," Congress was concerned with sovereign immunity issues and not with shielding corporations involved in human rights violations from liability. The House Report states, "[o]nly 'individuals,' *not foreign states*, can be sued under the bill." H.R. Rep. No. 102-367, 1991 WL 255964, at *4. (emphasis added). The Senate Report states, "The legislation uses the term 'individual' to make crystal clear that foreign states or their entities cannot be sued under this bill under any circumstances: only individuals may be sued." S. Rep. No. 102-249, 1991 WL 258662, at *6. This language should be taken at face value, not expanded to ascribe the intent to

exclude corporations when the reports address only foreign states.

If Congress had used the word "person" instead of "individual," there is a very high likelihood that governments, including foreign governments, would have been included in that definition. In *Pfizer, Inc. v. Government of India*, 434 U.S. 308 (1978),[2] the Supreme Court held that the language "any person" in the antitrust laws applied to foreign states. *Id.* at 320. This Court came to the same conclusion with respect to the definition of "person" under the Racketeer Influenced and Corrupt Organizations Act, concluding that "a governmental body is a person within the meaning of 18 U.S.C. § 1961(3) . . . The foreign nature of the [plaintiff] does not deprive it of statutory personhood." *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1358 (9th Cir. 1988). Other courts have reached similar conclusions with respect to other statutes. *See, e.g., Stone v. Export-Import Bank*, 552 F.2d 132, 136-37 (5th Cir. 1977) (holding that the definition of "person" in the Administrative Procedure Act, 5 U.S.C. § 551, includes an agency of a foreign government); *Neal-Cooper Grain Co. v. Kissinger*, 385 F. Supp. 769, 776 (D.D.C. 1974) (definition of "person" under the Freedom of Information Act includes a foreign government). There are also

[2] Superseded by statute on other grounds as stated in *Turicentro, S.A. v. Am. Airlines, Inc.*, 303 F.3d 293, 304 n.12 (3d Cir. 2002).

explicit statutory definitions of "person" that include foreign states. *See, e.g.*, 16 U.S.C. § 1540(g)(1)(A) (defining "person" to include a "foreign government"); 10 U.S.C. § 2507 (providing that "[t]he term 'person' includes . . . the United States . . . or any other government"); 12 U.S.C. § 84 (providing that "the term 'person' shall include . . . [a] sovereign government"); 7 U.S.C. § 3508 (providing that "the term 'foreign person' means . . . any foreign government"). The failure to use the term "person" rather than "individual" is thus easily explained by the Congressional intent to exclude foreign sovereigns from the scope of the TVPA.

Indeed, even one of the cases holding that "individual" does not include corporations—*Beanal v. Freeport-McMoRan, Inc.*, 969 F. Supp. 362 (E.D. La. 1997)—expressly holds that Congress did *not* intend to exclude corporations from liability under the TVPA:

> Congress purposefully chose the term ["individual"] so as to circumscribe foreign state liability under the Act. Congress does not appear to have had the intent to exclude private corporations from liability under the TVPA. Nevertheless, the Act clearly applies only to "individuals" and this court understands that term to plainly mean natural persons, not corporations. By use of the term "individual" the drafters may have unintentionally excluded corporations from liability under the Act.

969 F. Supp. at 382. It is clear from this discussion that the *Beanal* decision resulted simply from an error in the understanding of the "plain meaning" of the

term "individual." *Beanal* was decided prior to *Clinton v. New York*, when the Supreme Court clarified that the term "individual" does not necessarily exclude corporations, a conclusion followed by this Court in *Middleton*. *Beanal*'s conclusion that Congress did not intend to exclude corporations is thus contrary to superseding precedent of this Court and of the Supreme Court.

II. THE DISTRICT COURT'S REASONING IS LOGICALLY FLAWED AND WOULD LEAD TO ABSURD RESULTS IF APPLIED TO OTHER CONGRESSIONAL LEGISLATION.

The District Court concluded that the term "individual" must refer only to natural persons as the same term is used to describe victims as well as perpetrators, and only natural persons can be the victims of torture and extrajudicial killings. The lower court's reliance on the reasonable interpretation of one category of people mentioned in the statute (victims) to restrict the interpretation of another category of people also mentioned in the statute (perpetrators) is logically flawed and would lead to absurd results if applied to other Congressional legislation.

Congress often uses the same term to refer to different groups of people, some of whom can only be natural persons and others of which can be either natural or organizational persons. Interpreting every Congressional reference to

"person," for example, to imply an intent to *include* corporations regardless of the statutory context would lead to absurd results. For example, the U.S. criminal torture statute reads:

> '[T]orture' means an act committed by a *person* acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another *person* within his custody or physical control.

18 U.S.C. § 2340(1) (emphasis added). This statute implies that corporations, which are undisputedly included within the term "persons," can be tortured, which is obviously absurd.[3]

Congress has even expressly defined the term "persons" to include corporations in a statute where every reference to "person" is clearly not meant to include corporations. For example, the chemical weapons statute prescribes penalties for "[a]ny person" who causes "the death of another person" by chemical weapons, 18 U.S.C. § 229A, and specifically defines "person" to include a "corporation, partnership, firm, [or] association." *Id.* § 229F. Even though corporations obviously cannot be killed, Congress had no trouble using "death of another person" in a context where it would only apply to a subset of

[3] Indeed, if one were to read the criminal code similarly, one would think that Congress believes that corporations can be kidnapped, *see* 18 U.S.C. § 1201, taken hostage, *see id.* § 1203, sold into slavery, *see id.* § 1584, or made to commit forced labor, *see id.* § 1589, in addition to being tortured.

its definition of "person." *See also* 8 U.S.C. § 1324 (prescribing punishment for "any person" who commits various immigration crimes that "result[] in the death of any person") *and id.* § 1101(b)(3) (defining "person" in the immigration code to include "an organization"); 33 U.S.C. § 1319 (providing penalties for "any person" who knowingly "places another person in imminent danger of death or serious bodily injury" when committing acts of water pollution, while also providing separate penalties for "a person which is an organization," which includes "a corporation, company, association"); 42 U.S.C. § 7413 (similar with respect to air pollution).

The more sensible approach demanded by the precedent of this Court is to accept that while Congress uses words consistently, not every member of the set covered by a word will always be relevant to every use of the word. A reference to "individual" or "person" may include corporations and other organizations, even though other references in the same statute will only apply to human beings. It is the context in which the word is found, as informed by the object and purpose of the statute that guides us in determining the meaning intended by Congress. This is an approach consistent with ordinary meaning and usage, and required by this Court's precedent. *See, e.g., Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013 (9th Cir. 2005); *United States v. Middleton*, 231 F.3d 1207 (9th Cir.

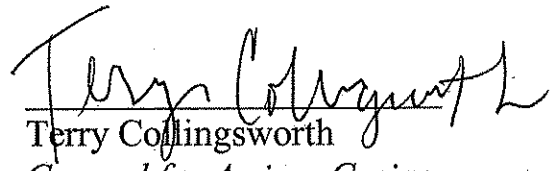
2000).

III. CONCLUSION

Given the decisions in this Circuit that in other contexts "individual" does include corporations, combined with the clear intent of Congress to have the TVPA apply as broadly as possible to reach a broad range of human rights abusers, and that the ATCA and international law clearly recognize corporate liability, the District Court clearly erred in ruling that corporations could not be sued under the Torture Victim Protection Act.

DATED: March 29, 2006

Respectfully submitted,



Terry Collingsworth
Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. P. 32 (a)(7)(C) AND CIRCUIT RULE 32-1

Case No. 05-36210

I certify that, pursuant to Fed. R. App. P. 29(d) and 9th Cir. R. 32-1, the attached *amicus curiae* brief is proportionally spaced, has a typeface of 14 point and contains 3,197 words.

DATED: March 29, 2006

Respectfully submitted,

Terry Collingsworth
Counsel for Amicus Curiae

PROOF OF SERVICE

I, the undersigned, say: I am employed by the International Labor Rights Fund, whose address is 2001 S Street, NW Suite 420 Washington, DC 20009; I am over the age of eighteen, and I am not a party to this action.

I further declare that on March 29, 2006, I served a copy of the **Brief of *Amicus Curiae* International Labor Rights Fund In Support of Plaintiffs-Appellants Supporting Reversal of the District Court Opinion** on the interested parties in this action by placing true and correct copies thereof in envelopes addressed as follows:

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Declarant