

## Obama Administration States that Corporations are Proper Defendants in Alien Tort Cases



December 28, 2011 by [Sarah A. Altschuller](#)

The Obama Administration has [filed an amicus brief](#) with the U.S. Supreme Court in [Kiobel v. Royal Dutch Petroleum](#) in support of the plaintiffs' position that corporations are proper defendants in cases involving claims under the Alien Tort Statute ("ATS"). Filed on December 21, the [brief](#) was signed by the Department of Justice, the Department of State, and the Department of Commerce.

[The Supreme Court will review](#) the Second Circuit's controversial decision that corporations cannot be properly sued under the ATS for violations of customary international law. Notably, [the Ninth Circuit, the D.C. Circuit, the Seventh Circuit, and the Eleventh Circuit](#) have all upheld corporate liability under the ATS.

In its brief, the Administration states that neither international law nor "[t]he text and history of the ATS itself" provide a basis for distinguishing between natural and juridical persons. The brief then observes "[b]oth natural persons and corporations can violate international-law norms that require state action. And both natural persons and corporations can violate international-law norms that do not require state action."

Stating that international law is the proper source of law for the relevant standards of conduct in ATS cases, the Administration states that "[w]hether corporations should be held accountable for those violations in private tort suits is a question of federal common law." Federal courts must cautiously exercise their discretion to enforce specific international law norms and "[i]nternational law informs, but does not control, the exercise of that discretion."

*Kiobel* is scheduled for oral argument before the Supreme Court on February 28, 2012.

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