Kiobel v. Royal Dutch Petroleum

Supplemental Brief of Amicus Curiae The CATO Institute In Support of Respondents

by Cato Institute on 8/9/2012

Last term, the Supreme Court postponed its decision in Kiobel v. Royal Dutch Petroleum, a case that initially asked whether the Alien Tort Statute — one of our oldest laws (1789), giving federal courts jurisdiction over lawsuits brought by aliens for actions "in violation of the law of nations" — applies to non-natural persons (i.e. corporations). Instead, the Court called for further briefing and re-argument on a more basic question: Does the ATS allow U.S. courts to even hear lawsuits for violations of international law on foreign soil? Cato's previous brief in this case argued that the ATS must be interpreted in a manner consistent with Congress's original jurisdictional grant — that is, in accordance with international law as of 1789, which allowed only natural persons to be sued — because courts cannot expand their own jurisdiction. But the inquiry need not end there, because the Founders understood "the law of nations" to provide a methodology for defining the extraterritorial scope of ATS jurisdiction as well, as we explain in our supplemental Kiobel brief. We argue that the Founders' understanding of jurisdiction rested on the nexus between territory and sovereignty and that the law of nations as of 1789 recognized a territorial nexus between the state asserting jurisdiction and the claim asserted. We further argue that the petitioners'— 12 Nigerians who sued an oil company and its subsidiaries for various human rights violations committed by Nigerian soldiers in Nigeria —heavy reliance on an analogy to piracy to support their expansive view of extraterritorial jurisdiction is unconvincing because "piracy," properly understood, occurs on the high seas, in a stateless zone, and involves crimes committed by stateless actors. That the law of nations permits jurisdiction under those unique circumstances does not mean that a U.S. court may assert jurisdiction over conduct occurring entirely within the territory of a foreign sovereign. Moreover, we note that the Supreme Court has already

ruled in Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund (1999) that courts should not resort to "evolving" standards of international law to define the ATS's extraterritorial scope. Petitioners have no answer for why the Court should not follow Grupo Mexicano or the clear principles of international law as of 1789. In any event, the supplemental briefs filed by the petitioners, supporting amici, and the United States (which previously supported the petitioners but now argues partially against them) demonstrate the need for a clear, principled methodology regarding all aspects of ATS claims. The law of nations, as understood by the Founders in 1789, provides just such methodological guidance.

Please see full brief below for more information.