



# Big chocolate companies use child labor. Can a 1789 US law hold them accountable for violations abroad?

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“What’s not to love about chocolate?” actor Idris Elba asks in a [video](#) that circulated on social media [last month](#) by the [Dutch](#) ethically sourced chocolate brand, [Tony’s Chokolonely](#).

Elba goes on to answer his own question: “Well, 2 million children working on cocoa plantations — that’s unfair.”

It’s a well-documented problem: Several big chocolate companies [pledged](#) to put an end to child slavery in the industry in 2001, under pressure from Congress. Yet, earlier this month, The University of Chicago, in a [report](#) sponsored by the US Department of Labor, [found that](#) some of the world’s leading chocolate companies depend on cocoa produced by more than 1 million child laborers in West Africa. And, despite the companies’ promises to do better, the report says, the problem has gotten worse.

Some groups, like Tony’s Chokolonely, are trying to put a stop to it by raising public awareness. Others are taking legal action.

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“Chocolate can be a powerful force for change,” Elba says in the video. “Join Tony’s Chokolonely — make illegal child labor and modern-day slavery a shame of the past.”

[Tony’s Chokolonely](#) was one of many interested parties that submitted amicus briefs last week in [a case that’s coming](#) before the [US Supreme Court in December](#). The suit was filed by six men who say they were kidnapped as children from their native Mali and enslaved on cocoa plantations in Ivory Coast. They allege that the US arms of companies Nestlé and Cargill knew that child labor was being used. Supreme Court justices will decide if those companies can be held responsible using an obscure law passed by the [first US Congress in 1789](#) — called the [Alien Tort Statute](#).

“Yes, it was in 1789, but it is still on the books,” said [Katherine Gallagher](#) of the [Center for Constitutional Rights](#), which also [filed an amicus brief in the case](#). “At the time that it was enacted, the Alien Tort Statute is clear that Congress intended there to be an option for non-US citizens to come into US courts and sue, especially US nationals when they’ve committed [law of nations](#) [international law] violations. And that’s precisely the case before the Supreme Court in Nestle/Cargill.”

Human rights lawyers first started using the Alien Tort Statute to go after corporations in the 1990s. [John Bellinger](#) said it caused chaos in the US State Department. He was its [legal adviser](#) under Secretary of State Condoleezza Rice.

“Foreign governments would come to me regularly at the State Department to complain, to say this is not the job of US judges to be adjudicating claims that occur in our countries,” said Bellinger, who submitted an amicus brief in support of Nestle/Cargill on behalf of the US Chamber of Commerce. “The United States, if the shoe was on the other foot, is concerned about the courts and prosecutors of other countries hearing claims about US conduct in the United States or elsewhere.”

He said that’s why, in recent years, the Supreme Court has handed down rulings that limited the Alien Tort Statute’s scope. In 2013, it ruled that the Alien Tort Statute does not apply to violations committed outside the US, said Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute, which also submitted an amicus brief.

“It's understandable that if you have human rights violations, you would try to find a remedy for that wherever you can,” he said. “But I don't think this is an appropriate way of either reading the Alien Tort Statute or of dragging American courts into disputes where Congress has not clearly stated they should be.”

The case coming before the US Supreme Court gives justices a chance to clarify their interpretation of the Alien Tort Statute. Human rights lawyers hope they’ll consider the larger context: Europe is moving toward holding corporations liable for human rights violations committed outside their countries. And Canada’s Supreme Court recently opened the door for Canadian companies to be tried in Canada for human rights violations abroad. Canadian justices acknowledged that it’s often difficult to bring a case against a company in the countries where violations happen, said Tara Scurr, who works on corporate accountability for Amnesty International Canada.

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If other countries move toward more corporate accountability and the US doesn’t, international companies committing human rights violations may come to see the US as a safe harbor, said Charity Ryerson of the Chicago-based Corporate Accountability Lab.

“If companies know that they can get away with stuff like this, there's no reason for them to investigate their supply chains,” she said. “So, if you're incentivizing companies not being responsible for what happens in the production of the goods that they sell and that they produce, well, then you will have a lot of abuses.”