UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SUHAIL NAJIM ABDULLAH AL SHIMARI, et al., Plaintiffs, v. CACI PREMIER TECHNOLOGY, INC. Defendant.	Case No. 1:08-CV-00827-GBL-JFA **PUBLIC (REDACTED) VERSION**

REPLY IN SUPPORT OF DEFENDANT CACI PREMIER TECHNOLOGY, INC.'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER REINSTATING PLAINTIFFS' ALIEN TORT STATUTE CLAIMS [Dkt. #159] OR IN THE ALTERNATIVE TO DISMISS THE ALIEN TORT STATUTE CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION

I. INTRODUCTION

If concurring opinions were majority opinions, the world would be a different place. Plaintiffs' opposition essentially asks this Court to apply a case-by-case, multi-factor balancing test to determine whether allegations of extraterritorial violations of the law of nations are cognizable under the Alien Tort Statute ("ATS"). *That* was the approach of the four-Justice *concurring opinion* in *Kiobel*, a concurrence that agreed with the result but disagreed with the majority's application of the presumption against extraterritoriality to the ATS.

That is not how American jurisprudence works. Supreme Court decisions are not delivered cafeteria-style, with litigants and lower courts free to choose the opinion they like best. Majority opinions control; opinions that cannot garner a majority do not. In *Kiobel*, the Court (despite the four-Justice concurrence's preference) *held* that the presumption against

extraterritoriality applies to the ATS and that, with the exception of piracy, the ATS does not provide jurisdiction for violations of the law of nations occurring outside the United States. That really is the end of the inquiry.

Predictably, Plaintiffs argue that *Kiobel* should not govern conduct in Iraq because Iraq was under the control of the Coalition Provisional Authority ("CPA"). But there is no support in the *Kiobel* decision for Plaintiffs' position, as the law of nations violations alleged by Plaintiffs are unquestionably extraterritorial. For these reasons, the Court should apply the binding holding of *Kiobel* and dismiss Plaintiffs' ATS claims (Counts I through IX of the Third Amended Complaint).

II. ANALYSIS

A. The Majority Opinion in *Kiobel* Bars Extraterritorial Application of ATS to the Claims Asserted By Plaintiffs

Plaintiffs' opposition proceeds as if this Court were writing on a blank slate as to whether the presumption against extraterritoriality should apply to ATS and, if so, how the presumption should be applied. That book, however, has already been written by the majority opinion in *Kiobel*. Thus, Plaintiffs' citation to cases construing other statutes might have been appropriate argument to the Supreme Court in *Kiobel*. But the Supreme Court decided *Kiobel*, and that decision controls the result here. This case is not, contrary to Plaintiffs' approach, a vehicle to seek reconsideration of *Kiobel.*

Plaintiffs' brief describes the Supreme Court's decision in *Kiobel* under the heading "*Kiobel*'s Rejection of a Bright Line Rule Against Extraterritorial Application." Pl. Opp. at 4. The Court will search *Kiobel* in vain to locate within the majority opinion that supposed rejection. The Court stated its holding as follows:

> We therefore conclude that the presumption against extraterritoriality applies to claims under the ATS, and that nothing in the statute rebuts that presumption. [T]here is no clear indication of extraterritoriality here, and petitioners' case seeking relief for violations of the law of nations occurring outside the United States is barred.

Kiobel v. Royal Dutch Petroleum Co., 569 U.S. ___, 2013 WL 1628935, at *10 (Apr. 17, 2013) (internal quotations omitted) (alteration in original). Somehow, Plaintiffs' opposition misses this language. Instead, Plaintiffs quote a handful of half-sentences from the *Kiobel* majority opinion in an effort to completely distort its holding.[1]

For example, Plaintiffs characterize the *Kiobel* majority as recognizing "that the ATS 'provides for some extraterritorial application.'" Pl. Opp. at 5 (quoting *Kiobel*, 2013 WL 1628935, at *21). The language Plaintiffs quote, however, does not involve a statement by the *Kiobel* majority as to the extraterritorial reach of the ATS, but rather is a quotation the *Kiobel* Court invokes from *Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869, 2883 (2010), to describe what happens "when" a statute "provides for some extraterritorial application." *Kiobel*, 2013 WL 1628935, at *21. Plaintiffs' opposition leaves out the "when" caveat. Worse, Plaintiffs opposition ignores the core point of the majority's opinion that the extraterritorial application of a statute in one respect does not support extraterritorial application in other respects, but actually acts as a *limit* on extraterritoriality. In context, *this* is what the *Kiobel* Court *actually* said, in explaining why the Congress enacting ATS could have contemplated ATS jurisdiction over pirates but that this fact did not overcome the presumption against

[1] Plaintiffs' use of sentence fragments to completely change the holding in *Kiobel* is reminiscent of the viral video in which an enterprising cinematographer took snippets from the movie *The Shining* and edited them to create a fake movie trailer that made the movie appear to be a heartwarming romantic comedy. *See* http://www.youtube.com/watch?v=sfout_rgPSA.

extraterritoriality with respect to those involved in other extraterritorial violations of the law of nations:

> Pirates were fair game wherever found, by any nation, because they generally did not operate within any jurisdiction. We do not think that the existence of a cause of action against them is a sufficient basis for concluding that other causes of action under the ATS reach conduct that does occur within the territory of another sovereign; pirates may well be a category unto themselves. *See Morrison*, 561 U.S. at ___, 130 S. Ct. at 2883 ("[W]hen a statute ***provides for some extraterritorial application***, the presumption against extraterritoriality operates to limit that provision to its terms").

Kiobel, 2013 WL 1628935, at *8 (emphasis added to snippet quoted by Plaintiffs) (citations other than *Morrison* omitted).

Plaintiffs also contend that the *Kiobel* majority "found that the presumption [against extraterritoriality] can be overcome, 'where the claims touch and concern the territory of the United States . . . with sufficient force.'" Pl. Opp. at 5. This Court will not find anywhere in the *Kiobel* majority opinion a holding that courts should conduct a case-by-case balancing test of extraterritorial claims brought under ATS to determine whether the presumption against extraterritoriality should be applied. The language quoted in Plaintiffs' sentence fragment is, instead, from a paragraph where the Court noted that corporate presence in the United States – such as CACI PT has – is insufficient to overcome the presumption against extraterritoriality. And it immediately follows the Court's statement of its holding that the presumption against extraterritoriality applies to ATS and that the petitioners' claims "seeking relief for violations of the law of nations occurring outside the United States is barred." *Kiobel*, 2013 WL 1628935, at *10.

Indeed, Plaintiffs' characterization of this language as commanding a case-by-case analysis as to whether the presumption would bar extraterritorial ATS claims is completely

inconsistent with the majority's discussion of piracy. As respects piracy, the Court noted that (1) piracy was a special case, specifically contemplated by the Congress that enacted ATS, (2) that allowing extraterritorial claims against pirates did not support extraterritorial recognition of other violations of the law of nations, and (3) that pirates "may well be category unto themselves." *Id.* at *8. Suggesting that the *Kiobel* decision is a broad grant of license for district courts to decide that extraterritorial torts other than piracy should be allowed under ATS is completely contradicted by the clear holding as well as by the language actually used by the majority in *Kiobel*.[2]

After twisting sentence fragments to argue that the *Kiobel* majority somehow rejected a general holding that ATS has no extraterritorial effect (beyond the limited exception of piracy) and instead requires a balancing test for extraterritoriality, Plaintiffs' brief, with no apparent sense of irony, advises the Court that there is an "absence of express guidance from *Kiobel*" as to how this balancing test would work. It would be a fairly odd omission for a Supreme Court majority to mandate, implicitly and not directly, a balancing test and then provide no guidance on what has to be balanced. The reason for this "omission" is clear. The *holding* of *Kiobel* is that, piracy aside, there is no extraterritorial application of ATS at all because there is no indication at all that the Congress that enacted ATS in 1789 intended the statute of reach extraterritorial conduct other than the very *sui generis* crime of piracy. As the majority in *Kiobel*

[2] Plaintiffs also argue that the *Kiobel* majority found that the presumption against extraterritoriality has particular force in ATS cases in order "to protect against unintended clashes between our laws and those of other nations [which] could result in international discord." Pl. Opp. at 5 (quoting *Kiobel*, 2013 WL 1628935, at *4). However, *Kiobel* relies heavily on the Court's decision in *Morrison*, where the Court specifically held that the presumption against extraterritoriality applies "regardless of whether there is a risk of conflict between the American statute and a foreign law." *Morrison*, 130 S. Ct. at 2877-78 (citing *Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 173–174 (1993)). Plaintiffs' opposition ignores this point.

made clear, if Congress desires a statute with any broader extraterritorial effect than that, a more specific statute would have to be enacted.[3]

B. Plaintiffs' Argument That the Presumption Against Extraterritoriality Does Not Apply to Iraq is Wrong

As CACI PT observed in moving to dismiss, the *Kiobel* Court held that, with the exception of piracy, ATS does not apply to alleged law of war violations taking place "outside the United States." *Kiobel*, 2013 WL 1628935, at *10. CACI PT supposed that Plaintiffs might seek to quote language out of context from *Kiobel* to argue that *Kiobel* is limited to torts occurring in the territory of a foreign sovereign (*see id.* at *5, 7, 8, 9) and that Iraq was not the territory of a foreign sovereign while administered by the CPA. Plaintiffs derisively call the "foreign sovereign" argument a straw man (Pl. Opp. at 15), and CACI PT agrees that the "territory of a foreign sovereign" argument is too flawed to deserve serious consideration. Indeed, CACI PT pointed out that *Kiobel* is not limited to torts occurring in a foreign sovereign's territory and that, in any event, Iraq retained its sovereignty at the time of Plaintiffs' detention.

[3] Plaintiffs' extensive treatment of the *Kiobel* concurrences – a treatment more extensive, really, than Plaintiffs' treatment of the controlling majority opinion – does not help Plaintiffs' cause. Justice Breyer's four-Justice concurrence applies the sort of multi-factor approach to extraterritoriality Plaintiffs desire, but that view could not garner a fifth vote. *Kiobel*, 2013 WL 1628935, at *12 (Breyer, J., concurring) ("Unlike the Court, I would not invoke the presumption against extraterritoriality."). Justice Kennedy filed a concurring opinion, but fully subscribed to the "reasoning and holding" of the majority opinion. *Id.* at *11 (Kennedy, J., concurring). While Justice Kennedy is noted that issues may arise that are not covered by the "reasoning and holding" of the majority opinion, Justice Kennedy does not state any qualms with the notion that issues within the "reasoning and holding" of the *Kiobel* majority opinion are now settled. Justice Alito's concurrence also explicitly joins in the majority opinion, but simply notes that cases such as *Kiobel* could be resolved on the broader rationale that their causes of action are not sufficiently definite to be actionable under ATS and that, by definition, there is no extraterritorial cause of action available under ATS for such claims. *Id.* at *11 (Alito, J., concurring). None of this supports creation of some multifarious balancing test that the *Kiobel* majority neither adopted not left any gaps for it to fill.

Instead, Plaintiffs argue that sovereignty is irrelevant, and all that matters is whether Iraq was under the United States' "exclusive authority and control." Pl. Opp. at 11. This novel gloss on *Kiobel* is unsupported and unsupportable. As Plaintiffs would have it, if Iraq was under the United States' exclusive control, the presumption against extraterritoriality would not apply because the conduct would not be extraterritorial. There are so many flaws with this argument it is difficult to know where to begin.

First, this is not what *Kiobel* says. The *Kiobel* majority held that, with the exception of piracy, violations of the law of war occurring "outside the United States" are not actionable under ATS. *Kiobel*, 2013 WL 1628935, at *10. That holding settles the question.

Second, Plaintiffs' argument is based on an incorrect premise. The United States did not have exclusive authority and control over Iraq. Rather, the Coalition Provisional Authority, created by the United States, the United Kingdom, and the 38 other nations providing Coalition forces, had interim governing authority over Iraq. *United States v. Whiteford*, 676 F.3d 348, 351 (3d Cir. 2012).

Third, Plaintiffs' argument that control of foreign territory by the United States military makes that territory part of the United States for ATS purposes is a *non sequitur*. Under the Plaintiffs' reasoning, any time the United States took the lead in occupying a foreign country during time of war, ATS jurisdiction would extend to all violations of international norms occurring in the foreign war zone. Under Plaintiffs' reasoning, foreign nationals detained by the United States military would be regarded as being held on U.S. territory, thereby having the same rights under the United States Constitution as American citizens possess. This argument falls of its own weight.

Fourth, Plaintiffs' big case in support of their theory is *Rasul v. Bush*, 542 U.S. 466 (2004), but that case does not support Plaintiffs' position at all. In *Rasul*, the Court *rejected* the presumption against extraterritoriality in connection with the federal *habeas* statute, while in *Kiobel* the Court accepted and applied the presumption in the context of ATS. Indeed, the *Rasul* Court expressly warned of the peril of analogizing extraterritoriality jurisprudence from one area to the next:

> Whatever traction the presumption against extraterritoriality might have in other contexts, it certainly has no application to the operation of the habeas statute with respect to persons detained within "the territorial jurisdiction" of the United States.

Id. at 480. Indeed, the Court based its holding in *Rasul* in large part of the specific nature of United States control over Guantanamo Bay, where the United States has a long-term lease and the right "to exercise [complete] control permanently if it so chooses." *Id.* By contrast, there is no suggestion at all that the CPA (which is distinct from the United States anyway) had a right to exercise control over Iraq into perpetuity. CPA Order 1 expressly states that "[t]he CPA shall exercise powers of government temporarily in order to provide for the effective administration of Iraq," (O'Connor Decl., Ex. 1 at § 1.1, and the U.N. Security Council (of which the United States is a member) repeatedly noted the temporary nature of the Coalition presence in Iraq. O'Connor Decl., Exs. 2, 4. If anything, the better analogy to Iraq is not Guantanamo, where the United States has a contractual right to perpetual control, but Bagram Air Base in Afghanistan, where detainees *do not* have *habeas* rights. *Al Maqaleh v. Gates*, 605 F.3d 84, 99 (D.C. Cir. 2010).

Rasul also has no application here because the Respondents in *Rasul conceded* that statutory *habeas* jurisdiction would exist for an American citizen held at Guantanamo Bay. *Rasul*, 542 U.S. at 481. Building on that concession, the *Rasul* Court noted that historically there had been no distinction in terms of *habeas* jurisdiction between citizens and aliens and that,

consequently, there was no basis to conclude that Congress intended to deprive aliens of *habeas* jurisdiction from a place of detention where an American citizen would have such a right. *Id.* at 481-82.

Fifth, the United States did not exercise "legislative control" over Iraq. *See Souryal v. Torres Advanced Enter. Solutions, LLC*, 847 F. Supp. 2d 835, 840 (E.D. Va. 2012) (quoting *Foley Bros. v. Filardo*, 336 U.S. 281, 285 (1949)). Plaintiffs try to skip over this inconvenient fact by noting that the United States appointed the CPA administrator and that *the CPA administrator* exercised temporary governance over Iraq. The CPA, however, was not an instrumentality of the United States, but was a multi-national entity that governed Iraq. *See United States v. Whiteford*, 676 F.3d 348, 351 (3d Cir. 2012); *United States ex rel. DRC, Inc. v. Custer Battles, LLC*, 444 F. Supp. 2d 678, 688-89 (E.D. Va. 2006), *aff'd in part, rev'd in part*, 562 F.3d 295, 306 (4th Cir. 2009). It was the CPA and its Iraqi delegates, and not the Congress of the United States, that legislated for Iraq.

C. Plaintiffs Are Right on the Meaning of CPA Order 17, But Incorrectly Argue that CPA Order 17 Amends Duly-Enacted United States Laws

After arguing for years that CPA Order 17 provided contractors in Iraq with no immunity, Plaintiffs now change course and concede CACI PT's immunity in hopes that this concession will help save their ATS claims. PL. Opp. at 20 ("CPA Order 17, immunized U.S. personnel and U.S. contractors from the application of Iraqi law . . . ."). Plaintiffs' gambit is to concede CACI PT's immunity from Iraqi law and then argue that in confirming that immunity, CPA Order 17 also provides that "contractors are subject to liability under U.S. domestic law." *Id.*; *see also* Pl. Opp. at 15 ("[CPA Order 17] stipulates that contractors are subject to liability *by U.S. domestic law*, which would include the ATS and substantive legal standards the ATS incorporates."). There are several fatal flaws in Plaintiffs' argument.

As a threshold matter, CPA Order 17 does not state that contractors are subject to "U.S. domestic law." Indeed, the term "domestic law" does not appear in CPA Order 17. What the Order does say is that Coalition personnel are subject to their Parent State's criminal laws, a point CACI PT has repeatedly made. CPA Order 17, § 2.4, 2.5.[4] With respect to civil claims, CPA Order 17 makes no provision whatsoever for claims arising in connection with military combat operations. For claims not arising out of military combat operations, Section 6 of CPA Order 17 provides that such claims "shall be submitted and dealt with by the Parent State . . . in a manner consistent with the national laws of the Parent State." CPA Order 17, § 6.

While Plaintiffs are correct that CPA Order 17 precludes application of Iraqi law to CACI PT, and does not change CACI PT's amenability to United States law, there is nothing in CPA Order 17 that ***changes*** United States law to provide extraterritorial reach to statutes that Congress did not make extraterritorial. The legislative power of the United States rests with the United States Congress, U.S. Const. art. I, and the administrator of the CPA lacks the power to amend federal statutes to give them extraterritorial effect. Thus, for example, extraterritorial federal statutes such as the Anti-Torture Statute, 18 U.S.C. § 2340, 2340A, applied at all times in Iraq, as did the Military Extraterritorial Jurisdiction Act of 2000, 18 U.S.C. § 3261 *et seq.* If the United States had ever found a basis for commencing a prosecution under those statutes, it could have done so. But United States statutes such as ATS that, as a matter of statutory construction, simply do not apply to extraterritorial conduct are not somehow amended by CPA Order 17 to provide extraterritorial reach.

[4] A copy of the relevant version of CPA Order 17 is attached as Exhibit 1 to the April 29, 2013 Declaration of John F. O'Connor filed with CACI PT's motion to dismiss Plaintiff Al Shimari's common-law claims. *See* Dkt. #365, at Ex. 1.

D. Plaintiffs' Argument That Their Claims Against CACI PT Involve Domestic Conduct Is, At Best, Disingenuous

Plaintiffs acknowledge, as they must, that their ATS claims involve torts occurring abroad. Pl. Opp. at 22. Under *Kiobel*, that is enough to conclude the matter, as what counts in an extraterritoriality analysis is where the alleged violation of the law of nations occurred. *Kiobel*, 2013 WL 1628935, at *10 ("[T]here is no clear indication of extraterritoriality here, and petitioners' case seeking relief for violations of the law of nations occurring outside the United States is barred." (citations and internal quotations omitted) (alteration in original)). Undeterred, Plaintiffs argue that "CACI's conduct inside the United States contributed to and exacerbated the torts occurring abroad" (Pl. Opp. at 22), and that this is enough to transform ATS into an extraterritorial statute. In that regard, we note that Plaintiffs studiously avoid any treatment of the leading Fourth Circuit case on determining whether a claim is territorial or extraterritorial, as Plaintiffs' claims are clearly extraterritorial under the Fourth Circuit's approach. *In re French*, 440 F.3d 145, 149-50 (4th Cir. 2006); CACI PT Mem. at 18-19.

Even if Plaintiffs' argument were not flagrantly in conflict with *Kiobel* and *French*, Plaintiffs' argument would fail because they grossly misstate the record in arguing that domestic conduct by CACI PT is sufficient to create extraterritorial jurisdiction for Plaintiffs' claims. Pl. Opp. at 22-25. Plaintiffs argue that CACI PT is an American company headquartered in this district and that CACI PT hired interrogators to deploy to Iraq from the United States. Pl. Op. at 21-22. CACI PT admits those facts. CACI PT also admits that it denied allegations that it was a corporate conspirator in the United States. Pl. Opp. at 24-25.

But it is simply not candid for Plaintiffs to imply to this Court that the record shows involvement from the United States in completion of the interrogation mission in Iraq other than the administrative process of finding candidates to fill slots called for by the United States. The

record cites offered by Plaintiffs do not support Plaintiffs' position; rather, all they show is that CACI PT provided *administrative* support to its employees who were embedded within Army units in Iraq.[5] Supervision of interrogation operations in Iraq remained under the purview of the United States military at all times. As explained by Colonel William Brady, who was the contracting officer's representative on the CACI PT contracts:

> During all relevant times, the civilian interrogators provided by CACI PT in support of the U.S. Army's mission at the theater interrogation site were under the supervision of military personnel from the military unit to which they were assigned to support under contract. . . . The CACI PT interrogators were integrated within the military interrogation process of the military units to which they were assigned to support. That is, CACI PT interrogators received the same operational interrogation taskings and direction from the military as their military interrogator counterparts. . . .
>
> While the CACI PT interrogators were under the functional control and supervision of the United States military, CACI PT did have a country manager and site leads who provided administrative support for these interrogators. For example, if a CACI PT interrogator had a pay issue, he or she would address that administrative issue through the CACI PT site leads and country manager. . . . With respect to the conduct of required interrogations and related operational issues, however, CACI PT interrogators reported directly to the United States Army personnel who supervised them.

Koegel Decl., Ex. 1 at ¶¶ 4-5. [redacted]

[redacted] Thus, even if some domestic connection with Plaintiffs' claims would suffice to overcome the presumption against extraterritoriality, and corporate presence is not enough, all

[5] Ironically, Plaintiffs assert to the Court that CACI PT's motion is properly treated as a Rule 12(b)(6) motion but then present the Court with matters from outside the Third Amended Complaint.

Plaintiffs have is that CACI PT hired employees in the United States and tended to their administrative needs, and that CACI PT (truthfully) denied participating in a conspiracy to injure detainees in Iraq. As even Plaintiffs admit, *all* of the alleged conduct in supposed violation of the law of nations occurred in Iraq. Even if Plaintiffs were correct that some mixture of conduct inside and outside the United States in violation of international norms might suffice to provide jurisdiction, this case – where all the conduct alleged to violate international norms occurred outside the United States – is not an appropriate vehicle to carve out that exception to *Kiobel.*

E. CACI PT's Motion is Properly Denominated as a Rule 12(b)(1) Motion, Though CACI PT Would Be Equally Entitled to Relief Under Rule 12(b)(6)

Plaintiffs argue that CACI PT's motion is properly treated as a motion to dismiss for failure to state a claim, presumably because Plaintiffs want to avoid the burden associated with a challenge to the Court's subject matter jurisdiction. Nevertheless, Plaintiffs submit voluminous materials from outside the complaint, at least *acting* like Rule 12(b)(1) is the correct vehicle.

CACI PT's motion is properly considered a Rule 12(b)(1) motion. This Court recognized precisely this in issuing an Order directing the parties to address the effect of *Kiobel* on Plaintiffs' ATS claims. Dkt. #342. ATS is solely a jurisdictional statute. The statute itself creates no substantive claims. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 713-14 (2004). Thus, when a party asserts a claim under ATS, and ATS does not recognize the claim, the claim fails for lack of subject matter jurisdiction, as the jurisdictional statute under which the plaintiff has proceeded does not apply. This is exactly what happened in *Kiobel*. In *Kiobel*, the Second Circuit held that the plaintiffs did not state a viable claim under ATS and therefore dismissed the plaintiffs' claims *for lack of subject matter jurisdiction. Kiobel v. Royal Dutch Petroleum Co.*,

621 F.3d 111, 149 (2d Cir. 2010). The Supreme Court *affirmed* the judgment of the Second Circuit. *Kiobel*, 2013 WL 1628935, at *10.[6]

Indeed, the Plaintiffs themselves, in seeking reinstatement of their ATS claims, expressly stated that their claims sounding in torture, war crimes, and cruel, inhuman or degrading treatment were brought under ATS. As Plaintiffs explained: "The Complaint asserts common law claims for assault, battery, sexual assault, infliction of emotional distress, and negligent hiring and supervision and under the ATS for torture, cruel, inhuman or degrading treatment, and war crimes." Dkt. #145 at 1. Thus, Plaintiffs expressly brought these claims under a jurisdictional statute that provides no jurisdiction because Plaintiffs' claims are extraterritorial. As in *Kiobel*, dismissal in such a circumstance is for lack of subject matter jurisdiction.

It is Plaintiffs' burden to establish subject matter jurisdiction, and at this they have failed. CACI PT also notes that three of the four Plaintiffs (Plaintiffs Rashid, Al-Ejaili, and Al Zuba'e) have no common-law claims, as their common-law claims have been dismissed by the Court as untimely under the applicable statute of limitations. Dkt. #226. Therefore, if these Plaintiffs are now asserting an entitlement to proceed on some basis other than ATS's jurisdictional grant, CACI PT is entitled to dismissal of these Plaintiffs' claims as barred by the applicable statute of limitations.

In any event, even if Plaintiffs were right on the question of the proper vehicle for dismissal under Rule 12, CACI PT would be entitled to dismissal of Plaintiffs' ATS claims because they are clearly barred by *Kiobel*.

[6] The Supreme Court affirmed on the basis of a lack of extraterritoriality, while the Second Circuit held that the ATS claims were subject to dismissal based on a lack of corporate liability under ATS. While the Supreme Court affirmed on alternative grounds, that does not change that the Supreme Court affirmed the judgment that dismissal for lack of subject matter jurisdiction was appropriate.

III. CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' ATS claims.

Respectfully submitted,

/s/ J. William Koegel, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April, 2013, I will electronically file the public version of the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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On that same date, I will serve the sealed version of the foregoing by email delivery to the above-listed counsel.

/s/ J. William Koegel, Jr.

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