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New York District Court Clarifies the Jurisdictional Scope of the Alien Tort Claims Act and Torture Victim Protection Act

By Eric A. Savage, Michael Congiu and Milton Castro

In a decision issued in late November, the Eastern District of New York confirmed the limited scope of jurisdiction under the Alien Tort Claims Act (ATCA) and further defined the scope of liability under the Torture Victim Protection Act (TVPA). *Velez v. Sanchez*, No. 04-CV-4797, 2010 U.S. Dist. LEXIS 126586 (Nov. 30, 2010). Although the decision arises from facts uncommon to multinational companies, the decision nonetheless serves as further clarification on the jurisdictional interrelation between ATCA and TVPA and is an example of how courts continue to interpret ATCA and TVPA claims.¹

ATCA and TVPA

Since ATCA's enactment in 1789, the statute has provided original jurisdiction to the federal district courts for any civil action: (1) brought by an alien; (2) for a tort; (3) committed in violation of international law or a U.S. treaty.² Over the years, ATCA claims have been utilized with little success in efforts to hold multinational corporations liable for alleged human rights abuses related to their international operations.

TVPA, a 1992 amendment to ATCA, established a cause of action for torture or extrajudicial killing committed by individuals acting under actual or apparent authority, or under "color of law." The Eleventh Circuit Court of Appeals recently explained the relationship between ATCA and TVPA as follows:

The two related statutes . . . perform complementary but distinct roles. [ATCA] is jurisdictional and does not create an independent cause of action. . . . In contrast, [TVPA] provides a cause of action for torture and extrajudicial killing but does not grant jurisdiction. . . . Federal courts are empowered to entertain complaints under [TVPA] when either [ATCA] or the federal question statute, 28 U.S.C. § 1331, provides jurisdiction.³

Although TVPA expressly creates a private right of action for torture and extrajudicial killing, TVPA appears to cover a much narrower set of potential claims than those that were potentially available under ATCA, due in large part to the U.S. Supreme Court's decision in *Sosa v. Alvarez-Machain*.⁴ In *Sosa*, the Court held that ATCA, although

jurisdictional in nature, establishes a private right of action, but only for violations of international law. The Court further held that ATCA claims must allege violations of international norms that are “specific, universal and obligatory.”⁵ Although these holdings created meaningful limitations on ATCA’s scope, the case law surrounding ATCA and TVPA claims continues to evolve.

The Facts: *Velez v. Sanchez*

The plaintiff, Linda Velez (“Velez”), filed a lawsuit under ATCA, alleging that she had been trafficked from Ecuador and forced to work in the home of defendant Betsy Sanchez (“Sanchez”) and her family.⁶ According to Velez, Sanchez asked Velez to come to the United States to stay in the Sanchez household, care for the Sanchez children, and perform various housekeeping duties. In return, Sanchez would pay Velez weekly wages and assist her in continuing her education. Velez agreed; moved from Ecuador to the United States on a 6-month tourist visa and began living and working in the Sanchez household.

However, Velez claimed that Sanchez never paid Velez for her services – providing only room and board – and was allegedly abusive to Velez, as were other family members. After several years under these conditions, Velez left the Sanchez household and its employ. When Velez was asked why she had not left sooner, she stated she had nowhere to go besides going back to Ecuador.

Clarifying ATCA and TVPA’s Jurisdiction

Velez pled her claims of human trafficking and forced labor under ATCA. Although the defendants did not challenge the jurisdictional basis of these claims, the court exercised its authority to do so. The court agreed that human trafficking and forced labor violate “specific, universal and obligatory” international norms so as to fall within ATCA’s jurisdiction, but ruled that other jurisdictional defects in Velez’s ATCA claims mandated dismissal.

Acknowledging that Velez’s ATCA claims were a matter of first impression, the court initially noted that all of Velez’s allegations involved actions that had occurred within the United States (*i.e.*, domestic actions). Although the court found no case law holding that ATCA claims must only involve actions occurring abroad, the court nonetheless held that Velez’s claims of human trafficking and forced labor were not within the Supreme Court’s conception of ATCA jurisdiction. Moreover, the court called Velez’s foreign national status “pure happenstance,” dismissing it as irrelevant to the establishment of ATCA jurisdiction.

Secondly, the court held that although Velez’s allegations fell within ATCA’s ambit, such jurisdiction has already been “implicitly withdrawn” by the enactment of TVPA. Finding that TVPA created a cause of action “for any individual who is a victim of a violation of the federal criminal laws prohibiting human trafficking and forced labor,” the court held (again as a matter of first impression) that Congress intended for TVPA to limit ATCA’s jurisdiction in the area of civil remedies for human trafficking and forced labor.

The court declined, however, to decide whether TVPA provides a remedy *only* for domestic violations of the criminal laws against human trafficking and forced labor, which, if true, would leave the scope of ATCA “undiminished.” Noting a lack of guiding authority or consensus among the courts, the *Velez* court tabled that issue, explaining that it would not resolve the question at this time, especially since all of Velez’s claims arose in the United States. The court further reasoned that even if TVPA applied to both domestic and foreign actions, ATCA would still remain viable for those claims by aliens alleging “any other violation of the law of nations or . . . treaty of the United States.”

The Merits of Velez’s ATCA/TVPA Claims

Despite finding jurisdictional defects in Velez’s ATCA claims, the court nonetheless moved onto the merits, explaining that it would treat the claims as if Velez had properly pled them under TVPA. The court began its analysis by defining “forced labor” as labor obtained by:

- (1) force or the threat of force; (2) serious harm or threat of serious harm; (3) abuse or threatened abuse of law or the legal process; [or] (4) any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

The court further noted that because TVPA defines *human trafficking* as “knowingly recruiting any person for forced labor,” an alleged violation requires establishment of one of the four criterion listed above.

Turning to the facts of the case, the court found that Velez was not subjected to force of any kind until the final days of her stay in the Sanchez household, in which the defendants on two occasions allegedly pushed or pulled Velez briefly, but did not completely restrain or confine her. Velez also cited incidents in which the defendants threatened her with legal action if she left the Sanchez household, but the court found that “Velez’s own testimony demonstrates that she did not feel forced to work because of [the legal threats]; on the contrary, she made a voluntary choice to stay to make a life for herself in the United States.” Accordingly, the court granted summary judgment on Velez’s ATCA/TVPA claims.⁷

Conclusion

Velez does three important things for the steadily developing body of ATCA and TVPA law. First, the case provides further support for the notion that Congress intended TVPA’s jurisdiction to supplant that of ATCA with regard to human trafficking and forced labor claims.

Second, Velez suggests that a plaintiff who improperly brings his or her claim under ATCA may still be permitted to proceed under TVPA even where he or she has not invoked TVPA on alternative grounds.

Finally, and perhaps most important for employers to note, is the reality that the court in Velez endorsed the notion that domestic and foreign-born employees may bring human trafficking or forced labor claims under TVPA even where the alleged violations occurred entirely within the United States.

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¹ For further information on these issues, see Littler’s ASAPs, *New York Federal Court Rejects Attempt to Litigate Alleged Human Rights Abuses in the U.S.* (Dec. 2010), and *The Continued Viability of the Alien Tort Claims Act and the Torture Victim Protection Act* (Jan. 2009).

² 28 U.S.C. § 1350 (2000).

³ *Juan Aquas Romero v. Drummond Co., Inc.*, 552 F.3d 1303, 1315 (11th Cir. 2008) (internal citations omitted).

⁴ 542 U.S. 692 (2004).

⁵ *Id.* at 732.

⁶ Velez also brought numerous state law and Fair Labor Standards Act (29 U.S.C. §§ 201-19) claims.

⁷ The district court ultimately granted summary judgment on all of Velez’s federal law claims and declined to exercise supplemental jurisdiction over Velez’s remaining state law claims. As such, the court dismissed the case in its entirety.