

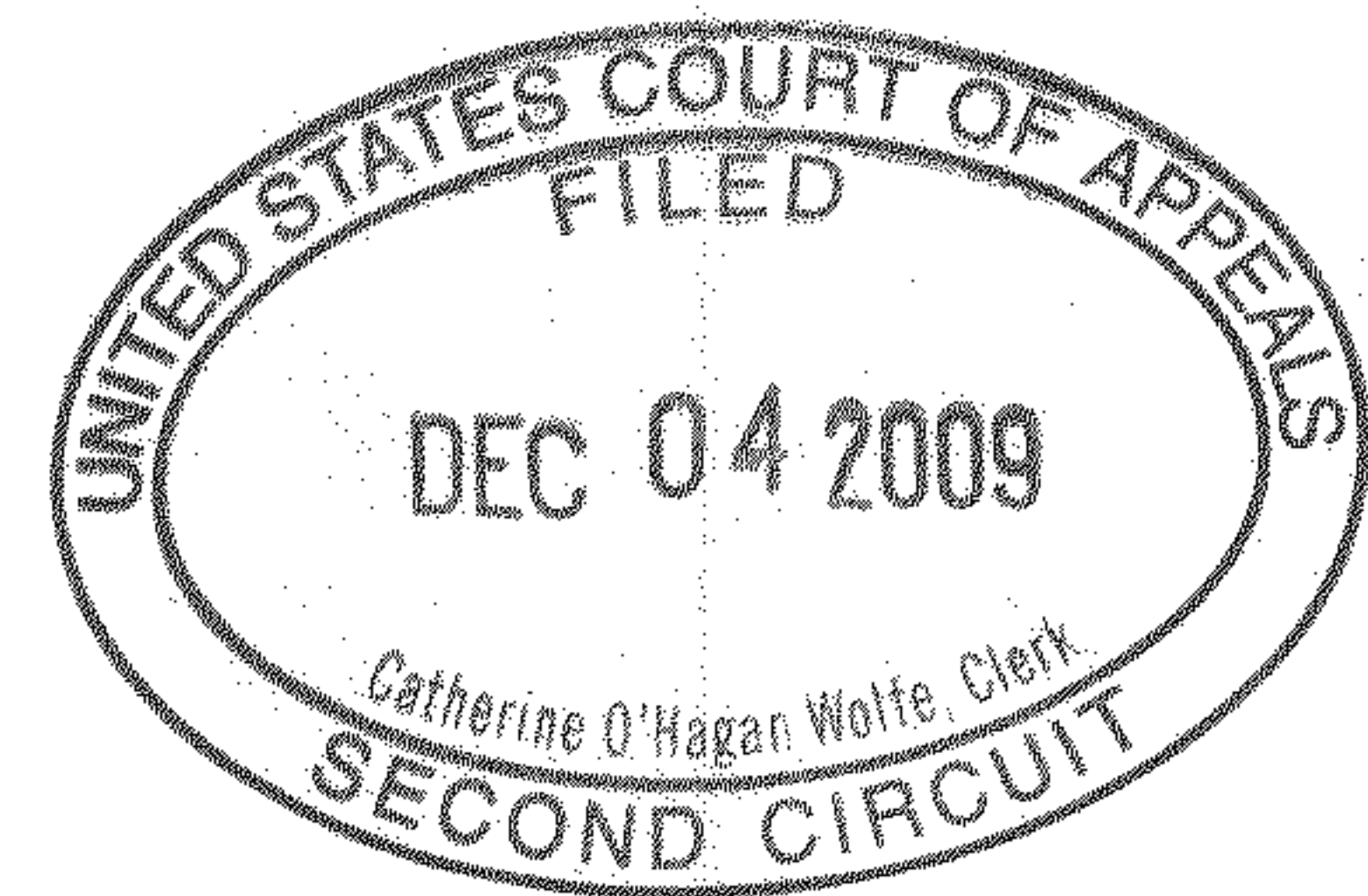
United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the fourth day of December, two thousand nine,

Present:

José A. Cabranes,  
Peter W. Hall,  
Debra Ann Livingston,  
*Circuit Judges.*



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Sakwe Balintulo, as personal representative of  
Saba Balintulo, *et al.*

*Plaintiffss-Appellees,*

v.

Daimler AG, *et al.*,

*Defendants-Appellants.*

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09-2778-cv (L)  
09-2780-cv (CON)  
09-2787-cv (CON)  
09-3037-cv (CON)  
09-2785-cv (CON)  
09-2801-cv (CON)  
09-2779-cv (CON)  
09-2781-cv (CON)  
09-2783-cv (CON)  
09-2792-cv (CON)

The Court requests that defendants-appellants, plaintiffs-appellees, and any interested amici submit additional briefing on the following question:

Inasmuch as the Alien Tort Statute ("ATS") has been construed to create a civil remedy for *criminal acts* "committed in violation of the law of nations or a treaty," 28 U.S.C. § 1350, does international law extend the scope of liability to corporations? *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 n.20 (2004) (explaining that courts must consider "whether international law extends the scope of liability for a violation of a given norm to the perpetrator being sued, if the defendant is a private actor such as a *corporation* or an individual" (emphasis added)). Although we recognize that, in the past, we have assumed that corporations may be liable for violations of customary

international law, *see, e.g., Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 261 n.13 (2d Cir. 2009) (assuming, without deciding, that corporations may be liable for violations of customary international law); *Flores v. Southern Peru Copper Corp.*, 414 F.3d 233 (2d Cir. 2003), the issue has never been decided by our court, *see Webster v. Fall*, 266 U.S. 507, 511 (1925) (“Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.”). We therefore seek the parties’ and amici’s views on this issue to the extent that they may be relevant to the pending appeal.

In particular, we request briefing on the following:

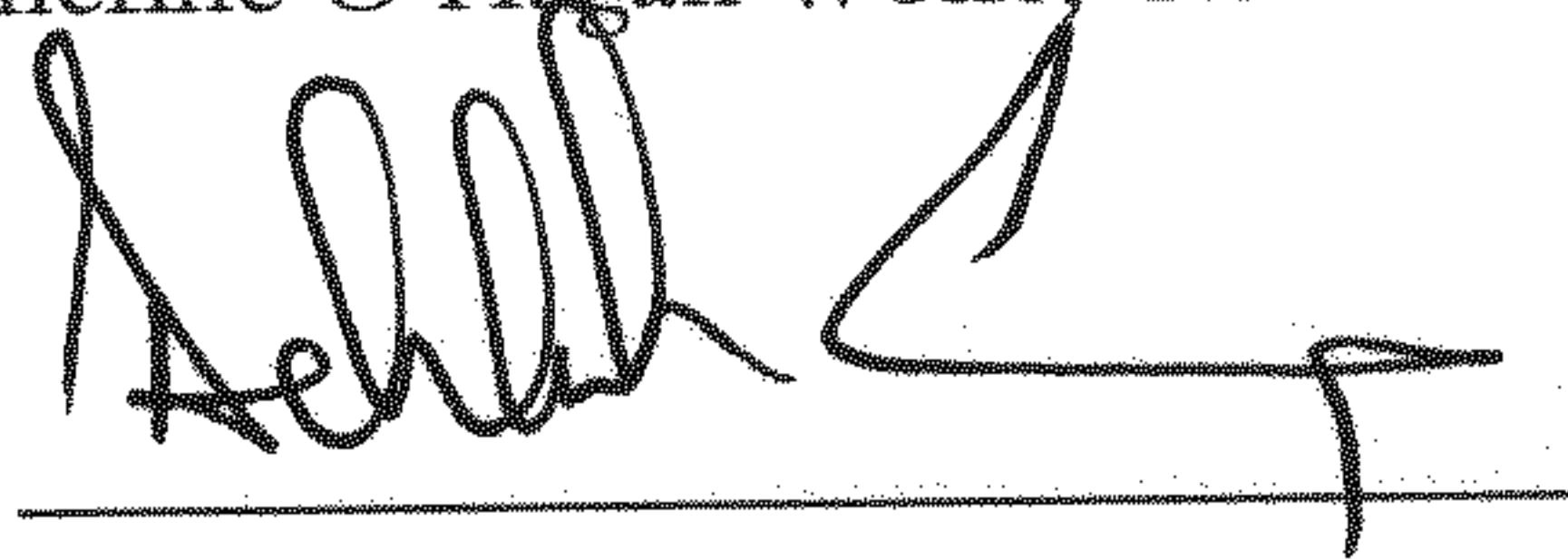
- (1) Whether the violations of customary international law for which the ATS provides jurisdiction, *see Sosa*, 542 U.S. at 725 (“[A]ny claim based on the present-day law of nations [must] rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of [violation of safe conducts, the infringement of the rights of ambassadors, and piracy].”), can encompass non-criminal conduct?
- (2) In light of the fact that we look to international law to determine the scope of liability under the ATS, *see Presbyterian Church of Sudan*, 582 F.3d at 258-59 (looking to international law to determine the scope of aiding and abetting liability under ATS), what do sources of international law, *see Flores*, 414 F.3d at 250-52 (discussing proper sources of international law), evince with respect to whether customary international law recognizes corporate criminal liability? *See Filartiga v. Pena-Irala*, 630 F.2d 876, 888 (2d Cir. 1980) (“[T]he mere fact that every nation’s municipal law may prohibit theft does not incorporate ‘the Eighth Commandment ‘Thou Shalt not steal’ . . . (into) the law of nations.’ It is only where the nations of the world have demonstrated that the wrong is of mutual, and not merely several, concern, by means of express international accords, that a wrong generally recognized becomes an international law violation within the meaning of the [ATS].” (quoting *IIT v. Vencap*, 519 F.2d 1001, 1015 (1975) (Friendly, J.)); *see also The Nuremberg Trial*, 6 F.R.D. 69, 110 (1946) (“Crimes against international law are committed by men, not by abstract entities . . . .); The Rome Statute of the International Criminal Court art. 25(1), *opened for signature* July 17, 1998, 37 I.L.M. 99, 116 (entered into force July 1, 2002) (providing for jurisdiction over “natural persons”).

Any additional briefing must be filed with the Clerk's Office by December 22, 2009.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Catherine O'Hagan Wolfe", written over a horizontal line. The signature is stylized and cursive.