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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SOSA *v.* ALVAREZ-MACHAIN ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 03–339. Argued March 30, 2004—Decided June 29, 2004*

The Drug Enforcement Administration (DEA) approved using petitioner Sosa and other Mexican nationals to abduct respondent Alvarez-Machain (Alvarez), also a Mexican national, from Mexico to stand trial in the United States for a DEA agent's torture and murder. As relevant here, after his acquittal, Alvarez sued the United States for false arrest under the Federal Tort Claims Act (FTCA), which waives sovereign immunity in suits "for . . . personal injury . . . caused by the negligent or wrongful act or omission of any [Government] employee while acting within the scope of his office or employment," 28 U. S. C. §1346(b)(1); and sued Sosa for violating the law of nations under the Alien Tort statute (ATS), a 1789 law giving district courts "original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations . . . ," §1350. The District Court dismissed the FTCA claim, but awarded Alvarez summary judgment and damages on the ATS claim. The Ninth Circuit affirmed the ATS judgment, but reversed the FTCA claim's dismissal.

Held:

1. The FTCA's exception to waiver of sovereign immunity for claims "arising in a foreign country," 28 U. S. C. §2680(k), bars claims based on any injury suffered in a foreign country, regardless of where the tortious act or omission occurred. Pp. 4–17.

(a) The exception on its face seems plainly applicable to the facts of this case. Alvarez's arrest was said to be "false," and thus tortious, only because, and only to the extent that, it took place and endured

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*Together with No. 03–485, *United States* v. *Alvarez-Machain et al.,* also on certiorari to the same court.

in Mexico. Nonetheless, the Ninth Circuit allowed the action to proceed under what is known as the "headquarters doctrine," concluding that, because Alvarez's abduction was the direct result of wrongful planning and direction by DEA agents in California, his claim did not "aris[e] in" a foreign country. Because it will virtually always be possible to assert negligent activity occurring in the United States, such analysis must be viewed with skepticism. Two considerations confirm this Court's skepticism and lead it to reject the headquarters doctrine. Pp. 4–7.

(b) The first consideration applies to cases like this one, where harm was arguably caused both by action in the foreign country and planning in the United States. Proximate cause is necessary to connect the domestic breach of duty with the action in the foreign country, for the headquarters' behavior must be sufficiently close to the ultimate injury, and sufficiently important in producing it, to make it reasonable to follow liability back to that behavior. A proximate cause connection is not itself sufficient to bar the foreign country exception's application, since a given proximate cause may not be the harm's exclusive proximate cause. Here, for example, assuming the DEA officials' direction was a proximate cause of the abduction, so were the actions of Sosa and others in Mexico. Thus, at most, recognition of additional domestic causation leaves an open question whether the exception applies to Alvarez's claim. Pp. 8–9.

(c) The second consideration is rooted in the fact that the harm occurred on foreign soil. There is good reason to think that Congress understood a claim "arising in" a foreign country to be a claim for injury or harm occurring in that country. This was the common usage of "arising under" in contemporary state borrowing statutes used to determine which State's limitations statute applied in cases with transjurisdictional facts. And such language was interpreted in tort cases in just the same way that the Court reads the FTCA today. Moreover, there is specific reason to believe that using "arising in" to refer to place of harm was central to the foreign country exception's object. When the FTCA was passed, courts generally applied the law of the place where the injury occurred in tort cases, which would have been foreign law for a plaintiff injured in a foreign country. However, application of foreign substantive law was what Congress intended to avoid by the foreign country exception. Applying the headquarters doctrine would thus have thwarted the exception's object by recasting foreign injury claims as claims not arising in a foreign country because of some domestic planning or negligence. Nor has the headquarters doctrine outgrown its tension with the exception. The traditional approach to choice of substantive tort law has lost favor, but many States still use that analysis. And, in at least some cases the

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Ninth Circuit's approach would treat as arising at headquarters, even the later methodologies of choice point to the application of foreign law. There is also no merit to an argument that the headquarters doctrine should be permitted when a State's choice of law approach would not apply the foreign law of the place of injury. Congress did not write the exception to apply when foreign law would be applied. Rather, the exception was written at a time when "arising in" meant where the harm occurred; and the odds are that Congress meant simply that when it used the phrase. Pp. 9–17.

2. Alvarez is not entitled to recover damages from Sosa under the ATS. Pp. 17–45.

(a) The limited, implicit sanction to entertain the handful of international law *cum* common law claims understood in 1789 is not authority to recognize the ATS right of action Alvarez asserts here. Contrary to Alvarez's claim, the ATS is a jurisdictional statute creating no new causes of action. This does not mean, as Sosa contends, that the ATS was stillborn because any claim for relief required a further statute expressly authorizing adoption of causes of action. Rather, the reasonable inference from history and practice is that the ATS was intended to have practical effect the moment it became law, on the understanding that the common law would provide a cause of action for the modest number of international law violations thought to carry personal liability at the time: offenses against ambassadors, violation of safe conducts, and piracy. Sosa's objections to this view are unpersuasive. Pp. 17–30.

(b) While it is correct to assume that the First Congress understood that district courts would recognize private causes of action for certain torts in violation of the law of nations and that no development of law in the last two centuries has categorically precluded federal courts from recognizing a claim under the law of nations as an element of common law, there are good reasons for a restrained conception of the discretion a federal court should exercise in considering such a new cause of action. In deriving a standard for assessing Alvarez's particular claim, it suffices to look to the historical antecedents, which persuade this Court that federal courts should not recognize claims under federal common law for violations of any international law norm with less definite content and acceptance among civilized nations than the 18th-century paradigms familiar when §1350 was enacted. Pp. 30–45.

(i) Several reasons argue for great caution in adapting the law of nations to private rights. First, the prevailing conception of the common law has changed since 1790. When §1350 was enacted, the accepted conception was that the common law was found or discovered, but now it is understood, in most cases where a court is asked

to state or formulate a common law principle in a new context, as made or created. Hence, a judge deciding in reliance on an international norm will find a substantial element of discretionary judgment in the decision. Second, along with, and in part driven by, this conceptual development has come an equally significant rethinking of the federal courts' role in making common law. In *Erie R. Co.* v. *Tompkins,* 304 U. S. 64, 78, this Court denied the existence of any federal "general" common law, which largely withdrew to havens of specialty, with the general practice being to look for legislative guidance before exercising innovative authority over substantive law. Third, a decision to create a private right of action is better left to legislative judgment in most cases. *E.g., Correctional Services Corp.* v. *Malesko,* 534 U. S. 61, 68. Fourth, the potential implications for the foreign relations of the United States of recognizing private causes of action for violating international law should make courts particularly wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs. Fifth, this Court has no congressional mandate to seek out and define new and debatable violations of the law of nations, and modern indications of congressional understanding of the judicial role in the field have not affirmatively encouraged greater judicial creativity. Pp. 30–37.

(ii) The limit on judicial recognition adopted here is fatal to Alvarez's claim. Alvarez contends that prohibition of arbitrary arrest has attained the status of binding customary international law and that his arrest was arbitrary because no applicable law authorized it. He thus invokes a general prohibition of arbitrary detention defined as officially sanctioned action exceeding positive authorization to detain under the domestic law of some government. However, he cites little authority that a rule so broad has the status of a binding customary norm today. He certainly cites nothing to justify the federal courts in taking his rule as the predicate for a federal lawsuit, for its implications would be breathtaking. It would create a cause of action for any seizure of an alien in violation of the Fourth Amendment, supplanting the actions under 42 U. S. C. §1983 and *Bivens* v. *Six Unknown Fed. Narcotics Agents,* 403 U. S. 388, that now provide damages for such violations. And it would create a federal action for arrests by state officers who simply exceed their authority under state law. Alvarez's failure to marshal support for his rule is underscored by the Restatement (Third) of Foreign Relations Law of the United States, which refers to prolonged arbitrary detention, not relatively brief detention in excess of positive authority. Whatever may be said for his broad principle, it expresses an aspiration exceeding any binding customary rule with the specificity this Court requires. Pp. 38–45.

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331 F. 3d 604, reversed.

SOUTER, J., delivered the opinion of the Court, Parts I and III of which were unanimous, Part II of which was joined by REHNQUIST, C. J., and STEVENS, O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., and Part IV of which was joined by STEVENS, O'CONNOR, KENNEDY, GINSBURG, and BREYER, JJ. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, in which REHNQUIST, C. J., and THOMAS, J., joined. GINSBURG, J., filed an opinion concurring in part and concurring in the judgment, in which BREYER, J., joined. BREYER, J., filed an opinion concurring in part and concurring in the judgment.