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Mohamad v. Palestinian Authority 132 S. Ct. 1702 (2012)

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Ohio Northern University Law Review

Student Case Notes

Mohamad v. Palestinian Authority 132 S. Ct. 1702 (2012)

I. INTRODUCTION

The Torture Victim Protection Act of 1991¹ establishes a cause of action for acts of torture and extrajudicial killings committed by individuals acting under the color of law of a foreign nation.² The single issue in this case was whether the word “individual,” as used in the Torture Victim Protection Act, included only natural persons, or extended to artificial entities as well.³ This issue was ultimately resolved as a matter of statutory construction.⁴

The Supreme Court of the United States has previously been tasked with determining the meaning of the word “individual” within the context of a statute, as it did in *Clinton v. City of New York*.⁵ In holding the Line Item Veto Act⁶ unconstitutional, the Court in *Clinton*, in rather cursory fashion, determined that “individual,” included both natural persons as well as corporations.⁷ This determination, however, was not made so much on the basis of any statutory construction, but rather was justified under the presumed intent of Congress and because any other reading of the statute

1. Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note (2006)). For an exhaustive analysis of the Torture Victim Protection Act and its treatment by the courts, see generally James L. Buchwalter, Annotation, *Construction and Application of Torture Victim Protection Act of 1991*, 28 U.S.C.A. § 1350 note, 199 A.L.R. FED. 389 (2005).

2. Mohamad v. Palestinian Auth., 132 S. Ct. 1702, 1705 (2012).

3. *Id.*

4. *See id.* at 1706.

5. 524 U.S. 417, 428-29 (1998).

6. Pub. L. No. 104-130, 110 Stat. 1200 (1996), *invalidated by Clinton v. City of New York*, 524 U.S. 417.

7. *Clinton*, 524 U.S. at 428-29.

would have produced an absurd result.⁸ *Mohamad v. Palestinian Authority*,⁹ by contrast, examined the word “individual” much more closely within its statutory context, employing an arsenal of construction methods to evaluate its meaning, and arriving at the exact opposite result as in *Clinton*.¹⁰

When interpreting a statute, words and phrases are not construed alone but are considered in context within a statute that is read as a coherent whole.¹¹ The Court’s first duty is to determine “whether the language at issue” is plain and unambiguous.¹² The Court should examine the text, “giving the words used their ordinary meaning.”¹³ “[W]here Congress has used technical words or terms of art,” however, interpretation in accordance with the technical meaning is appropriate.¹⁴ Similarly, legal phrases are given their typical legal meaning.¹⁵

If the statutory text is plain and unambiguous, the Court must apply the statute according to its terms.¹⁶ “The plain meaning of legislation should be conclusive [unless] ‘literal application of a statute’” would frustrate the intent of the legislature.¹⁷ In the event of such an outcome, the strict language of the statute is not controlling and must give way to the drafters’ intent.¹⁸ Ultimately, statutes should be interpreted to give meaning to every provision such that no part is rendered inoperative, superfluous, void, or insignificant.¹⁹ While the Court “ordinarily resist[s] reading words or elements into a statute that do not appear on its face,”²⁰ alternative constructions that are consistent with the intent of Congress should be preferred where a strict construction would lead to an absurd result.²¹

8. *Id.* (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 574 (1982)).

9. 132 S. Ct. 1702.

10. *Palestinian Auth.*, 132 S. Ct. at 1705-10.

11. *United States v. Morton*, 467 U.S. 822, 828 (1984).

12. *Roberts v. Sea-Land Servs., Inc.*, 132 S. Ct. 1350, 1356 (2012) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)).

13. *Id.* (quoting *Ingalls Shipbuilding, Inc. v. Dir., Office of Workers’ Comp. Programs, Dep’t of Labor*, 519 U.S. 248, 255 (1997)).

14. *Corning Glass Works v. Brennan*, 417 U.S. 188, 201 (1974) (quoting *Greenleaf v. Goodrich*, 101 U.S. 278, 284 (1879)).

15. *Bradley v. United States*, 410 U.S. 605, 609 (1973) (quoting *Henry v. United States*, 251 U.S. 393, 395 (1920)).

16. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (quoting *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989)).

17. *Ron Pair Enters.*, 489 U.S. at 242 (quoting *Griffin*, 458 U.S. at 571).

18. *Id.* (citing *Griffin*, 458 U.S. at 571).

19. *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)).

20. *Dean v. United States*, 556 U.S. 568, 572 (2009) (quoting *Bates v. United States*, 522 U.S. 23, 29 (1997)).

21. *Griffin*, 458 U.S. at 575.

Considerations of policy not contemplated within a statute's text and purpose cannot, however, supplant the statute's meaning.²²

Where the text of a statute is clear, no recourse to legislative history is necessary.²³ Legislative history "refers to the pre-enactment statements of those who drafted or voted for a law; it is considered persuasive by some, not because they reflect the general understanding of the disputed terms, but because the legislators who heard or read those statements presumably voted with that understanding."²⁴ "Post-enactment legislative history," however, is considered an illegitimate tool for statutory construction because "post-enactment legislative history by definition 'could have had no effect on the congressional vote.'"²⁵

In *Palestinian Authority*, these basic tenets of statutory interpretation, as well as a variety of canons of construction, are properly employed by the undivided Court to reach the only logical interpretation.²⁶ "Individual," as used by the Torture Victim Protection Act, refers to natural persons, and does not include corporations.²⁷

II. STATEMENT OF FACTUAL AND PROCEDURAL HISTORY

The Torture Victim Protection Act of 1991 was passed in response to the ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁸ Its genesis began with the case of *Filartiga v. Pena-Irala*,²⁹ which interpreted the Alien Tort Statute³⁰ to provide a cause of action against torture.³¹ Other judges, however, questioned whether there was a cause of action for torture under the Alien Tort Statute absent an express grant by Congress.³² In response to the general approval with which *Filartiga* and its progeny were met, Congress passed an express grant in the form of the Torture Victim Protection Act.³³ Specifically, the Torture Victim Protection Act provides that "[a]n individual who, under actual or apparent authority, or color of

22. *United States v. Tohono O'Odham Nation*, 131 S. Ct. 1723, 1731 (2011).

23. *United States v. Gonzales*, 520 U.S. 1, 6 (1997) (citing *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992)).

24. *Dist. of Columbia v. Heller*, 554 U.S. 570, 605, 630 n.28 (2008).

25. *Bruesewitz v. Wyeth L.L.C.*, 131 S. Ct. 1068, 1082 (2011) (quoting *Heller*, 554 U.S. at 605).

26. *See Palestinian Auth.*, 132 S. Ct. at 1707-10.

27. *Id.* at 1705.

28. S. REP. NO. 102-249, at 3 (1991).

29. 630 F.2d 876 (2d Cir. 1980).

30. 28 U.S.C. § 1350 (2006).

31. *See Filartiga*, 630 F.2d at 884.

32. *See Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 799 (D.C. Cir. 1984) (Bork, J., concurring).

33. *See S. REP. NO. 102-249*, at 5.

law, of any foreign nation subjects an individual to torture . . . or . . . to extrajudicial killing shall, . . . be liable for damages to” that individual, or “to the individual’s legal representative” or claimant in the case of extrajudicial killing.³⁴

The Torture Victim Protection Act defines an extrajudicial killing as:

[A] deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.³⁵

The Torture Victim Protection Act further defines torture as:

[A]ny act, directed against an individual in the offender’s custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind. . . .³⁶

Petitioners were the widow and sons of Azzam Rahim.³⁷ Rahim was a Palestinian who was born and raised in the West Bank.³⁸ He became a naturalized citizen after immigrating to the United States in the 1970s.³⁹ While on a visit to the West Bank in 1995, Rahim “was sitting in a coffee shop” when he was forced into an unmarked car by a group of men who identified themselves as security police.⁴⁰ These men were intelligence officers of the Palestinian Authority.⁴¹ Rahim was imprisoned in Jericho where he was tortured and slain.⁴² In 1996, a report was issued by the

34. The Torture Victim Protection Act § 2(a), 106 Stat. at 73.

35. *Id.* § 3(a), 106 Stat. at 73.

36. *Id.* § 3(b)(1), 106 Stat. at 73.

37. *Mohamad v. Rajoub (Mohamad I)*, 664 F. Supp. 2d 20, 21 (D.D.C. 2009).

38. *Mohamad v. Rajoub (Mohamad II)*, 634 F.3d 604, 605 (D.C. Cir. 2011).

39. *Id.*

40. *Id.* at 605-06.

41. *Palestinian Auth.*, 132 S. Ct. at 1705.

42. *Id.*

United States Department of State, which stated that Rahim died in Jericho while in the custody of Palestinian Authority intelligence officers.⁴³

Petitioners brought an action in 2005 against Respondents, the Palestinian Authority and the Palestinian Liberation Organization, under the Torture Victim Protection Act for the torture and extrajudicial killing of Rahim.⁴⁴ The District Court, on Respondents' motion, dismissed the action against Respondents, stating that "[a] plain reading of the statute and applicable case law in this jurisdiction, leads this Court to overwhelmingly conclude that the term 'individual' includes only human beings"⁴⁵ The United States Court of Appeals for the District of Columbia Circuit affirmed, holding that "individual" as used in the statute clearly refers only to natural persons.⁴⁶ The Supreme Court of the United States granted certiorari⁴⁷ in order to resolve a division among the circuits as to whether the Torture Victim Protection Act establishes a cause of action against defendants who are not natural persons.⁴⁸

III. THE COURT'S DECISION AND RATIONALE

A. *The Majority Opinion*

Justice Sotomayor delivered the opinion of the Court, which was unanimous save that Justice Scalia declined to join as to Part III-B regarding the legislative history of the Torture Victim Protection Act.⁴⁹ The Court's opinion commenced by stating that, because the appeal was taken from a motion to dismiss, all allegations of the complaint are accepted as true.⁵⁰ After considering Petitioners' argument that the Torture Victim Protection Act, in its use of the word "individual," intended to impose liability against natural persons as well as non-sovereign organizations, the Court concluded that such a reading of the word was unnatural.⁵¹

The Court's analysis first considered the plain meaning of the word "individual" because the word was not specifically defined by the Torture Victim Protection Act.⁵² Terms are typically given their ordinary meaning

43. *Id.* (quoting DEPT. OF STATE, OCCUPIED TERRITORIES HUMAN RIGHTS PRACTICES, 1995 (Mar. 1996)).

44. *Id.* at 1706.

45. *Mohamad I*, 664 F. Supp. 2d at 22 (citing *Clinton*, 524 U.S. at 428 & n.13).

46. *See Mohamad II*, 634 F.3d at 608.

47. *Mohamad v. Rajoub*, 132 S. Ct. 454 (2011) (mem.).

48. *Palestinian Auth.*, 132 S. Ct. at 1706.

49. *Id.* at 1705, 1709-10.

50. *Id.* at 1705 (citing *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2079 (2011)).

51. *Id.* at 1706.

52. *Id.* (citing *F.C.C. v. AT&T Inc.*, 131 S. Ct. 1177, 1182 (2011)).

when they are undefined by statute.⁵³ The Court then cited the definition of the word “individual” as explained by a variety of dictionaries, all invariably describing an “individual” as some form of “person.”⁵⁴ The Court explained that, “[a]fter all, that is how we use the word in everyday parlance.”⁵⁵ Indeed, the Court, within its own opinions, routinely uses the word “individual” to denote a natural person as opposed to a corporation.⁵⁶

Next, in considering the contrast between a person and other legal entities, the Court examined the Dictionary Act,⁵⁷ which states that, unless context should indicate otherwise, the word “person” is to include “corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”⁵⁸ Thus, the Court reasoned, the word “individual” was clearly set apart by Congress and distinguished from the artificial entities listed before it.⁵⁹ Following this observation, the Court proceeded to consider a variety of other federal statutes and found that they also routinely distinguished between “individuals” and organizational entities.⁶⁰ In concluding its analysis of the plain meaning of the word “individual,” the Court noted that the same Congress which enacted the Torture Victim Protection Act also enacted separate legislation granting a cause of action for U.S. nationals injured by an act of international terrorism.⁶¹ There, also, the word “person” was defined to include “any individual *or entity* capable of holding a legal or beneficial interest in property.”⁶²

Following this analysis, the Court explained that the word “individual” need not always translate as “natural person” when inserted into a statute.⁶³ Congress possesses the power to define the word as it sees fit.⁶⁴ Before Congress can be assumed to have intended a different meaning, however, some indication must be provided.⁶⁵ The Court then pointed out that certain

53. *Palestinian Auth.*, 132 S. Ct. at 1706-07 (quoting *F.C.C.*, 131 S. Ct. at 1182).

54. *Id.* at 1707 (quoting 7 OXFORD ENGLISH DICTIONARY 880 (2d ed. 1989)).

55. *Id.*

56. *Id.* (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853-54 (2011)).

57. 1 U.S.C. § 1 (2006).

58. *Palestinian Auth.*, 132 S. Ct. at 1707 (emphasis in original) (quoting 1 U.S.C. § 1).

59. *Id.*

60. *Id.* (citing 7 U.S.C. §§ 92(k), 511 (2006); 8 U.S.C. § 1101(b)(3) (2006); 15 U.S.C. § 717a (2006); 16 U.S.C. § 796 (2006)).

61. *Id.* (quoting Federal Court Administration Act of 1992, Pub. L. No. 102-572, 106 Stat. 4506 (codified at 18 U.S.C. §§ 2331(3), 2333(a) (2006))).

62. *Palestinian Auth.*, 132 S. Ct. at 1707 (emphasis in original) (quoting 18 U.S.C. §§ 2331(3), 2333(a)).

63. *Id.*

64. *Id.*

65. *Id.*

statutes may expressly define the word “individual” to include corporations.⁶⁶ Additionally, other specific cases may call for an alternative reading, such as where interpretation of the statute, according to its ordinary meaning, would lead to an absurd result.⁶⁷

The Court concluded, however, that no such evidence of an alternative interpretation was present regarding the Torture Victim Protection Act.⁶⁸ The Act itself leaves the word “individual” undefined, and the statutory context does not indicate a meaning other than the ordinary one.⁶⁹ The Court explained that the Torture Victim Protection Act employs the term “individual” five times within a single sentence, referring only to the perpetrator and the victim.⁷⁰ Further, a victim of torture or extrajudicial killing could be nothing other than a natural person because artificial entities cannot be tortured or killed.⁷¹ In supporting its holding that the statutory context points toward a narrow reading of “individual,” the Court quoted *Brown v. Gardner*⁷² for the proposition that a term is presumed to carry the same meaning throughout a statute, and this presumption is only strengthened when that term is used repeatedly within a single sentence.⁷³

Finally, in concluding its examination of the statutory context, the Court observed that, while the Torture Victim Protection Act holds “individuals” liable for extrajudicial killings, only “persons” may be claimants who are entitled to recover in a wrongful death action.⁷⁴ The word “person” is a legal term of art and is frequently understood to include artificial entities as well as natural persons.⁷⁵ The Court regarded this juxtaposition of “individual” with “person” as further evidence of Congress’s intent that “individual” be limited to natural persons.⁷⁶

Having considered the ordinary meaning of the word “individual” and the statutory context within which Congress placed it, the Court proceeded to consider the Petitioners’ counterarguments.⁷⁷ Petitioners, while conceding that the word “individual” ordinarily means “human being,” placed particular focus on the “oneness” that “individual” denotes, such as a

66. *Id.* (citing 26 U.S.C. § 542(a)(2) (2006)).

67. *Palestinian Auth.*, 132 S. Ct. at 1707 (quoting *Clinton*, 524 U.S. at 429).

68. *Id.*

69. *Id.* at 1707-08.

70. *Id.* at 1708 (citing Torture Victim Protection Act § 2(a)(2), 106 Stat. at 73).

71. *See id.* (quoting *Brown v. Gardner*, 513 U.S. 115, 118 (1994)).

72. 513 U.S. 115 (1994).

73. *Palestinian Auth.*, 132 S. Ct. at 1708 (quoting *Brown*, 513 U.S. at 118).

74. *Id.* (quoting Torture Victim Protection Act § 2(a)(2), 106 Stat. at 73).

75. *Id.* (citing *Clinton*, 524 U.S. at 428 & n.13).

76. *Id.*

77. *Id.* at 1708-10.

single being or group of beings.⁷⁸ The Court countered this argument by pointing out that foreign states, which Petitioners agreed were not liable under the Torture Victim Protection Act, are no less “one” than non-sovereign organizations.⁷⁹

Petitioners next argued that federal tort statutes invariably allow for liability of organizations, and that this custom of corporate liability permeates legal systems across the world.⁸⁰ The Court responded by stating that whatever presumptions existed regarding organizational liability, they were insufficient to overthrow the plain meaning of the Torture Victim Protection Act.⁸¹ While Congress is considered to legislate within the context of established common law principles, it “plainly can override those principles”⁸²

Petitioners then contended that liability under the Torture Victim Protection Act should be construed to conform with other federal statutes that relate to torture and extrajudicial killings.⁸³ The Court summarily dismissed this argument, explaining that none of the statutes that Petitioners proposed used the word “individual” to describe the perpetrator, and so they were useless as an aid to interpretation.⁸⁴ Although the Torture Victim Protection Act may provide for accomplice liability against an officer who does not personally conduct torture or extrajudicial killing, the Court indicated that this does not logically establish that non-sovereign organizations may also be held liable.⁸⁵

Petitioners then turned to legislative history in their attempt to convince the Court, only for the Court to point out that the legislative history actually pointed directly toward the Court’s interpretation all along.⁸⁶ First, the Court noted that recourse to legislative history is not required when the statute is unambiguous.⁸⁷ Nevertheless, the Court deigned to venture into the legislative history, noting that the Senate Report and the House Report each expressly stated that neither foreign states and their entities nor private groups would be liable under the statute.⁸⁸ Next, the Court drew attention to

78. *Palestinian Auth.*, 132 S. Ct. at 1708.

79. *Id.*

80. *Id.* at 1708-09.

81. *Id.* at 1709.

82. *Id.* (citing *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991)).

83. *Palestinian Auth.*, 132 S. Ct. at 1209.

84. *Id.* (citing 18 U.S.C. §§ 2333, 2334(a)-(b), 2337 (2006); 28 U.S.C. §§ 1603(a), 1605A(c) (2006 & Supp. IV 2010); 42 U.S.C. § 1983 (2006)).

85. *Id.* (citing *Chavez v. Carranza*, 559 F.3d 486 (6th Cir. 2009)).

86. *Id.* at 1709-10.

87. *Palestinian Auth.*, 132 S. Ct. at 1709 (quoting *Milavetz, Gallop & Milavetz, P.A. v. United States*, 130 S. Ct. 1324, 1332 n.3 (2010)).

88. *Id.* at 1709-10 (quoting S. REP. NO. 102-249, at 7; citing H.R. REP. NO. 102-367, at 4).

the fact that, although the Torture Victim Protection Act was originally introduced to establish liability against a “person,” this wording was later amended to read “individual” in order to clarify that the statute would apply only “to individuals and not to corporations.”⁸⁹ The committee unanimously adopted the amendment, which was later passed by the 102nd Congress.⁹⁰ The Court stated that the addition of the amendment therefore confirmed its interpretation since Congress provided no explanation other than the limitation of liability for the change in wording.⁹¹

Petitioners’ final argument was that the Torture Victim Protection Act would be ineffective as a remedial statute unless liability extended beyond natural persons.⁹² Individuals, Petitioners argued, are more difficult to identify, locate, and secure personal jurisdiction over, and are ultimately likely to be judgment proof.⁹³ The Court responded to Petitioners’ arguments by explaining that, whatever practical limitations existed within the Torture Victim Protection Act, they were limitations imposed by Congress, and Congress appeared fully aware of the limits it established, as evidenced by the legislative history.⁹⁴

The Court then concluded by stating that the Torture Victim Protection Act’s text demonstrates that Congress did not intend to allow liability over organizations, whether sovereign or otherwise.⁹⁵ Congress, the Court stated, decided to proceed modestly, in spite of arguments for the extension of liability.⁹⁶ The Court ultimately held that the word “individual,” as used in the Torture Victim Protection Act, contemplates liability only against natural persons, and not corporations.⁹⁷

B. Concurring Opinion by Justice Breyer

Justice Breyer began his brief concurrence by stating that his decision to join in the majority opinion was qualified.⁹⁸ He explained that the word “individual” alone is not sufficient to resolve the case.⁹⁹ Rather, the word is

89. *Id.* at 1710 (quoting *Hearing and Markup on H.R. 1417 Before the H. Comm. on Foreign Affairs and Its Subcomm. on Human Rights and Int’l Org.*, 100th Cong. 81-87 (1988) [hereinafter *Hearing and Markup on H.R. 1417*]).

90. *Id.*

91. *See id.*

92. *Palestinian Auth.*, 132 S. Ct. at 1710.

93. *Id.*

94. *Id.* (quoting 138 CONG. REC. 4177 (1992) (statement of Sen. Simpson); 137 CONG. REC. 2671 (1991) (statement of Sen. Specter)).

95. *Id.*

96. *Id.* at 1710-11.

97. *Palestinian Auth.*, 132 S. Ct. at 1705.

98. *Id.* at 1711 (Breyer, J., concurring).

99. *Id.*

subject to a variety of interpretations, some of which may include entities other than natural persons.¹⁰⁰ Whatever room for interpretation still existed after a reading of the plain text was decided for Justice Breyer, however, by the legislative history.¹⁰¹ Justice Breyer explained that he ultimately decided to join the majority opinion after conducting an extensive review of the legislative history, in conjunction with the Court's reasoning.¹⁰²

IV. ANALYSIS

A. Introduction

Palestinian Authority is a modern example of statutory construction fit for a casebook.¹⁰³ The case stands for more, however, than a logical and consistent application of the principles of statutory construction.¹⁰⁴ Specifically, the case rectifies an anomaly created by the Court's decision in *Clinton* by confirming what everyone believed prior to *Clinton*: the word "individual" means "individual."¹⁰⁵ Finally, the opinion demonstrates proper respect for the sensitive foreign policy issues at stake by refraining from expanding the scope of liability under the Torture Victim Protection Act.¹⁰⁶

The scope of statutes like the Torture Victim Protection Act should be finely balanced in order to give meaningful redress to the contemplated class of victims,¹⁰⁷ while also respecting the role that the other branches play with regard to foreign policy.¹⁰⁸ On the whole, the Court successfully applies the law to the particular issue in this case, while refraining from overstepping its role in matters of foreign policy that are more appropriately left to the executive and legislative branches.¹⁰⁹ While the Torture Victim Protection Act certainly leaves something to be desired regarding a victim's legal recourse for the infliction of such terrible crimes as torture and

100. *Id.*

101. *Id.* (citing *Hearing on S. 1639 et al. Before the Subcomm. on Immigration and Refugee Affairs of the S. Comm. on the Judiciary*, 101st Cong. 65 (1990)).

102. *Palestinian Auth.*, 132 S. Ct. at 1711 (Breyer, J., concurring).

103. *See id.* at 1706-11 (majority opinion).

104. *See id.*

105. *See id.* at 1706-08, 1710-11.

106. *See id.* at 1710-11.

107. *See Palestinian Auth.*, 132 S. Ct. at 1710-11 (recognizing that the Act's protections may be limited).

108. *See Bowen v. Owens*, 476 U.S. 340, 347 (1986) (quoting *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955) ("This Court consistently has recognized that in addressing complex problems a legislature 'may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind'")).

109. *See Palestinian Auth.*, 132 S. Ct. at 1710-11 (recognizing the Court's duty to abide by Congress's "more modest steps" in establishing liability under the Act).

death,¹¹⁰ extension of liability under the Act is more appropriately resolved by an act of Congress.¹¹¹

B. Discussion

1. Consistency with the Text and Intent of Congress

The most noticeable thing about the Court's opinion is its logical consistency, both with the plain meaning of the text and the intent of Congress.¹¹² *Palestinian Authority* is yet another example of how the bygone days of *Holy Trinity Church v. United States*¹¹³ have largely given way to modern textualism,¹¹⁴ except for the unusual case such as *Clinton*.¹¹⁵ Indeed, at one point the Court appears to expressly reject purposivism in favor of textualism.¹¹⁶

The Court's analytical journey expressly follows many of the basic principles of statutory construction and implicitly utilizes a variety of others.¹¹⁷ The fact that the decision was unanimous would also seem to refute the common criticism that the Court cannot agree on a unified methodology for the interpretation of statutes.¹¹⁸ Indeed, that the holding was unanimous in a case where the Court's discussion was almost exclusively about statutory interpretation would seem to lend strong support for the proposition that *Palestinian Authority* establishes an accepted method for interpreting statutes.¹¹⁹

This simple method, as demonstrated by the Court, looks first to the plain meaning of the text of a statute.¹²⁰ Next, it considers a text's meaning within the context of the statute itself.¹²¹ Finally, it considers the statute as a whole within the context of other related statutes.¹²² If this analysis

110. *See id.* at 1710.

111. *See id.* at 1710-11.

112. *See id.* at 1706-08.

113. 143 U.S. 457, 459 (1892) (“[A] thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers.”).

114. *See* John F. Manning, *The New Purposivism*, 2011 SUP. CT. REV. 113, 113-14 (2011).

115. *Id.* at 114 n.5 (citing *Clinton*, 524 U.S. at 428-29).

116. *Palestinian Auth.*, 132 S. Ct. at 1710 (“[P]etitioners’ purposive argument simply cannot overcome the force of the plain text.”).

117. *See id.* at 1706-10.

118. *See id.* at 1705; *see also* Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1753 (2010).

119. *See Palestinian Auth.*, 132 S. Ct. at 1705-09.

120. *Id.* at 1706 (citing *F.C.C.*, 132 S. Ct. at 1182).

121. *See id.* at 1708.

122. *See id.* at 1707-09.

indicates an unambiguous meaning, no further work is required by the Court except to apply the statute as written.¹²³

While the Court states that no reliance on legislative history is required where a statute is unambiguous, it proceeds to consider that legislative history all the same.¹²⁴ This is clearly the area of greatest disagreement on the Court, as evidenced in Justice Breyer's concurring opinion, and the fact that Justice Scalia declined to join that part of the Court's opinion.¹²⁵ It is also the weakest logical point in the opinion.¹²⁶ For those seeking guidance from the Court on statutory interpretation, the actual relevance of legislative history remains opaque.¹²⁷ Justice Scalia's refusal to address the legislative history is consistent with the Court's statement that no review is indicated.¹²⁸ Alternatively, the explanation provided by Justice Breyer, that it was only when he inspected the legislative history that he was finally convinced of Congress's intent, would have been consistent with actual reliance on the legislative history but not with the Court's statement that no review was required.¹²⁹

The question is simple: if no reliance on the legislative history is necessary, then why consider it? Unfortunately, this practice highlights the criticism that legislative history allows one to come to a final decision and then find those portions of the legislative history that simply conform to one's view while neglecting those portions that do not.¹³⁰ This is perhaps less troublesome in this case than in others, given that the legislative history appears to support the Court's holding.¹³¹ But in an opinion that otherwise demonstrates such unity by the Court on such a hotly debated issue as the proper use of legislative history, there is something left to be desired.¹³² If anything can be learned from the Court's treatment of the legislative history in this case, it is that its use and importance remain negotiable, uncertain, and ultimately unsettled.¹³³

123. *Id.* at 1709 (quoting *Milavetz*, 130 S. Ct. at 1332 n.3).

124. *See Palestinian Auth.*, 132 S. Ct. at 1709-10.

125. *Id.* at 1705, 1711.

126. *See id.* at 1709-10 (finding an examination of legislative history to be "unnecessary" (quoting *Milavetz*, 130 S. Ct. at 1332 n.3)).

127. *See id.*

128. *See id.* at 1705, 1709-10.

129. *See Palestinian Auth.*, 132 S. Ct. at 1711 (Breyer, J., concurring).

130. *See* Maura D. Corrigan, *Textualism in Action: Judicial Restraint on the Michigan Supreme Court*, 8 TEX. REV. L. & POL. 261, 263 (2004) (quoting ANTONIN SCALIA, *A MATTER OF INTERPRETATION* 36 (1997)).

131. *See Palestinian Auth.*, 132 S. Ct. at 1709-10 (majority opinion).

132. *See* Manning, *supra* note 114, at 123-24.

133. *See Palestinian Auth.*, 132 S. Ct. at 1709-10.

2. Restoring Predictability

Beyond the general application of principles of statutory construction, the Court also generally resolved an uncertainty created by its decision in *Clinton*.¹³⁴ There the Court held that, for the purposes of the Line Item Veto Act, which it held unconstitutional, the word “individual” included both natural persons and corporations.¹³⁵ The Court’s explanation for this departure from what it recognized as the ordinary meaning was unusual, to say the least.¹³⁶ The Court explained that the counsel’s failure to argue the meaning of the word “individual” at the District Court level was confirmation of Congress’s intent to construe “individual” as synonymous with “person” for the purposes of the Line Item Veto Act.¹³⁷ As if that non sequitur was not bad enough, the Court then proceeded to state, without explanation, that there was no plausible reason for Congress to preclude corporations from the definition, and that an absurd and unjust result unintended by Congress would occur if corporations were precluded.¹³⁸ Exactly what this absurd result would have been remains unspoken, but the Court’s reasoning did not go without criticism.¹³⁹

In an opinion concurring in part and dissenting in part written by Justice Scalia and joined by Justice O’Connor, Justice Scalia explained that one of the definitional provisions of the Line Item Veto Act specifically distinguishes between “individuals” and “persons.”¹⁴⁰ In response to the Court’s argument that Congress could not have intended such disparate treatment between individuals and corporations, Justice Scalia argued that “Congress treats individuals more favorably than corporations and other associations *all the time*.”¹⁴¹

There is nothing whatever extraordinary—and surely nothing so bizarre as to permit this Court to declare a “scrivener’s error”—in believing that individuals will suffer more seriously from delay in the receipt of “vetoed” benefits or tax savings than corporations will, and therefore according individuals (but not corporations) expedited review. It may be unlikely that this is what Congress

134. *See Clinton*, 524 U.S. at 428-29.

135. *See id.* at 429.

136. *See id.* at 428-29.

137. *See id.* at 428.

138. *See id.* at 429 (quoting *Griffin*, 458 U.S. at 574).

139. *See Clinton*, 524 U.S. at 454-55 (Scalia, J., concurring in part and dissenting in part).

140. *Id.* at 454. Justice Breyer also joined as to Part III, but that part is not related to interpretation of the word “individual.” *See id.* at 453.

141. *Id.* at 454 (emphasis in original).

actually had in mind; but it is what Congress said, it is not so absurd as to be an obvious mistake, and it is therefore the law.¹⁴²

So it would appear that the Court's holding on the meaning of "individual" in *Clinton* was at least questionable.¹⁴³

Nonetheless, *Clinton* was a major precedent that Petitioners relied upon in *Palestinian Authority*.¹⁴⁴ While the Court, in *Palestinian Authority*, did state that the word "individual" does not invariably mean "natural person," the Court immediately qualified that statement by explaining that such an alternate reading would require some evidence of congressional action or intent.¹⁴⁵ Considering that the infirmities that the Court identified in *Clinton*—a failure to argue the issue below and resulting absurdity¹⁴⁶—were not at all present in *Palestinian Authority*, the holding in *Clinton* would now appear to be considerably narrowed.¹⁴⁷ Thus, the extensive treatment of the meaning of "individual" in *Palestinian Authority* should go a long way to repairing the damage done by *Clinton* while restoring clarity and predictability to other federal statutes that employ the word "individual" within its commonly understood meaning.¹⁴⁸

3. Foreign Policy

As plainly stated in the United States's Amicus Curiae Brief for *Palestinian Authority*, the Torture Victim Protection Act "has significant implications for the United States' foreign relations, including its strong interest in promoting the protection of human rights."¹⁴⁹ Congress recognized as much in its consideration of the Act, as evidenced by the Senate Report.¹⁵⁰ While Petitioners complained that the Act would be "rendered toothless" without corporate liability because of difficulty in securing personal jurisdiction over individuals,¹⁵¹ the Senate Report makes clear that traditional limitations on jurisdiction are important to prevent the

142. *Id.* at 454-55 (Scalia, J., concurring in part and dissenting in part).

143. *See Clinton*, 524 U.S. at 454-55.

144. *See* Reply Brief for Petitioners at 8, 10, *Palestinian Auth.*, 132 S. Ct. 1702 (No. 11-88), 2012 WL 588467 at *6-7.

145. *See Palestinian Auth.*, 132 S. Ct. at 1707.

146. *Clinton*, 524 U.S. at 428-29 (majority opinion) (quoting *Griffin*, 458 U.S. at 574).

147. *See Palestinian Auth.*, 132 S. Ct. at 1707 (citing *Clinton*, 524 U.S. at 429).

148. *See id.* (citing *Clinton*, 524 U.S. at 429).

149. Brief for the United States as Amicus Curiae Supporting Affirmance at 1, *Palestinian Auth.*, 132 S. Ct. 1702 (No. 11-88), 2012 WL 362808 at *5.

150. *See* S. REP. NO. 102-249, at 7.

151. *Palestinian Auth.*, 132 S. Ct. at 1710.

Act from “turn[ing] the U.S. courts into tribunals for torts having no connection to the United States whatsoever.”¹⁵²

Senators Simpson and Grassley, representing the minority view, expressed concern that cases might be brought that ultimately did not concern the United States, and that the Torture Victim Protection Act could seriously interfere “with the management of foreign policy.”¹⁵³ There was also argument that “[t]he executive branch is and should remain . . . left with substantial foreign policy control.”¹⁵⁴ In response to these concerns, Senator Specter responded that “[t]he act is intended to deny torturers a safe haven in this country. If a torturer does not come to the United States and establish sufficient contacts, then he or she cannot be sued under this act.”¹⁵⁵ Senator Simpson responded to Senator Specter’s explanations by replying, “I am also encouraged to hear that, as a practical matter, this legislation will result in a very small number of cases, indeed.”¹⁵⁶

Foreign policy was also of concern to the administration at the time the Torture Victim Protection Act became law.¹⁵⁷ In signing the Torture Victim Protection Act into law, President George W. Bush expressed concern about U.S. courts becoming “embroiled in difficult and sensitive disputes in other countries, and possibly ill-founded or politically motivated suits , which have nothing to do with the United States and which offer little prospect of successful recovery.”¹⁵⁸ He also noted concern that abuse of the statute would give rise to “serious frictions in international relations” and become “a waste of our own limited and already overburdened judicial resources.”¹⁵⁹ The House Report expressed a similar concern for balancing the policies of providing meaningful redress for victims while refraining from increasing the burden on U.S. courts.¹⁶⁰

In addition to the foreign policy concerns of the government, corporations have also expressed concern regarding the foreign policy issues surrounding corporate liability under the Torture Victim Protection Act.¹⁶¹ American businesses, some argued, would be at a disadvantage

152. S. REP. NO. 102-249, at 7.

153. *Id.* at 13.

154. *Id.* at 14-15.

155. 138 CONG. REC. 4177 (statement of Sen. Specter).

156. *Id.*

157. Presidential Statement on Signing the Torture Victim Protection Act of 1991, 28 WEEKLY COMP. PRES. DOC. 465 (Mar. 16, 1992), *reprinted in* 1992 U.S.C.C.A.N. 91.

158. *See id.*

159. *Id.*

160. H.R. REP. NO. 102-367, at 4.

161. *See* Brief of KBR, Inc. as Amicus Curiae in Support of Respondents at 24, *Palestinian Auth.*, 132 S. Ct. 1702 (No. 11-88), 2012 WL 337015 at *11.

compared to other corporations not subject to U.S. jurisdiction.¹⁶² Defending against allegations of human rights abuses is extremely costly, in terms of both money and reputation, and even successful litigants are unable to escape the damage to their public image.¹⁶³ Congress could not have intended to impose such a unique disadvantage upon American businesses operating abroad.¹⁶⁴ Subjecting corporations to such liability would also damage the economy by discouraging foreign businesses from operating in the United States and thereby subjecting themselves to U.S. jurisdiction.¹⁶⁵ Finally, imposing corporate liability would discourage American companies from doing business in developing countries.¹⁶⁶

Business investment and engagement is crucial to lifting the populations of these nations out of the condition of poverty, and encouraging such development is a cornerstone of U.S. foreign policy. Litigation risk under the TVPA for operating in the developing world would have the perverse effects of discouraging foreign engagement and development in the regions where it is most important and, by reducing economic opportunities in these regions, causing enormous harm to their institutions and residents.¹⁶⁷

Congress, it was argued, could have imposed such corporate liability, but did not because to do so would have broken with customary international law.¹⁶⁸

On the opposite end of the policy spectrum, others have argued that there are strong policy arguments in favor of corporate liability under the Torture Victim Protection Act.¹⁶⁹ If corporate liability were not imposed, it was argued, corporations would have no reason to discourage the “plague of corporate-sponsored torture under the color of State law”¹⁷⁰ Imposing liability would discourage corporations from abusing the weak legal

162. *See id.*, 2012 WL 337015, at *11.

163. *See id.*, 2012 WL 337015, at *11.

164. *See id.* at 24-25, 2012 WL 337015, at *11.

165. *See id.* at 25, 2012 WL 337015, at *11.

166. *See* Brief of KBR, Inc. as Amicus Curiae in Support of Respondents, *supra* note 161, at 25, 2012 WL 337015, at *11.

167. *Id.* at 25-26, 2012 WL 337015, at *11-12 (citing 21 U.S.C. § 2191 (2006)) (internal citation omitted).

168. *See id.* at 26, 2012 WL 337015, at *12.

169. Brad Emmons, *Tortured Language: ‘Individuals,’ Corporate Liability, and the Torture Victim Protection Act*, 96 MINN. L. REV. 675, 678 (2011).

170. *Id.* at 678.

infrastructure of other countries by using torture and death as means of achieving business goals.¹⁷¹

Establishing corporate liability would also encourage American businesses to take responsible action over their subsidiaries in order to prevent human rights violations.¹⁷² “By allowing victims to file suit in the United States—the location of the corporation’s base or activity, the location of the corporation’s shareholders, and the location of the corporation’s consumers—corporations can be publicly held accountable, and as a result their behavior will be influenced.”¹⁷³ Finally, as Petitioners in *Palestinian Authority* argued, without corporate liability the Torture Victim Protection Act would be largely symbolic, as demonstrated by the reality that only two plaintiffs have successfully recovered, and one of those only after the defendant had won the lottery.¹⁷⁴ Without corporate liability, American citizens are left without recovery, while aliens, ironically, can still recover under the Alien Tort Statute.¹⁷⁵

Ultimately, with so many different and legitimate policy arguments to be considered, and with so many of them being made by members of Congress in considering the passage of the Torture Victim Protection Act, the Court was correct in declining to expand corporate liability under the Act.¹⁷⁶ It appears, by all measures, that Congress was aware of and carefully considered the policy implications of the Torture Victim Protection Act.¹⁷⁷ In fact, Congress specifically altered the language of the original draft, which would have clearly established corporate liability, in favor of a version that seems to have just as clearly proscribed it.¹⁷⁸

The degree to which foreign policy concerns permeate the Torture Victim Protection Act further justifies the Court leaving such delicate balancing of political matters to the political branches of government under whose province such decisions are more appropriate.¹⁷⁹ While all questions

171. *Id.* at 699.

172. *Id.* at 699.

173. Emily M. Martin, *Torture, Inc.: Corporate Liability Under the Torture Victim Protection Act*, 31 N. ILL. U. L. REV. 175, 205 (2010).

174. *Palestinian Auth.*, 132 S. Ct. at 1710 (citing *Jean v. Dorelien*, 431 F.3d 776, 778 (11th Cir. 2005)).

175. Claims brought pursuant to the Alien Tort Statute must still be subject to the territorial jurisdiction of the courts, however, and mere corporate presence in another country is insufficient to provide such jurisdiction. *Kiobel v. Royal Dutch Petroleum Co.*, No. 10-1491, 2013 WL 1628935 (April 17, 2013).

176. *See Palestinian Auth.*, 132 S. Ct. at 1710-11.

177. *See id.* at 1709 & n.4, 1710-11.

178. *Id.* at 1710 (quoting *Hearing and Markup on H.R. 1417*, *supra* note 89).

179. *Id.* at 1710-11.

of statutory construction are clearly within the Court's jurisdiction,¹⁸⁰ imposition of judicially determined policy goals upon a plain and unambiguous statute such as the Torture Victim Protection Act may well run afoul of the political question doctrine, considering the sensitive foreign policy concerns that permeate the statute and were of express concern to both the legislative and executive branches.¹⁸¹ "Not only does resolution of such issues [as foreign relations] frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature; but many such questions uniquely demand single-voiced statement of the Government's views."¹⁸² In light of the clarity with which the political branches expressed themselves in drafting, passing, and signing the Torture Victim Protection Act, any action by the Court beyond applying this unambiguous statute as written would arguably be an encroachment into the constitutional realms of the executive and legislative branches.¹⁸³

V. CONCLUSION

While the facts of this case are truly heartbreaking and the Court's holding no doubt provides small comfort to the victims of such heinous acts, the clarity with which Congress enacted the Torture Victim Protection Act makes the policy issue of extending liability beyond natural persons more of a political question than a legal one.¹⁸⁴ Only the most ardent judicial activist can find fault with the Court's reasoning in this case, where the only apparent disagreement within the otherwise unanimous Court is Justice Breyer's reliance on the legislative history and Justice Scalia's refusal to even reach it.¹⁸⁵ Congressional intent was clearly expressed throughout the legislative history, and the sensitive foreign policy issues that are necessarily involved in the statute are better left to those branches of government that are, by their nature, more responsive to public criticism and debate.¹⁸⁶ The decision now lies with Congress whether the victims of torture and extrajudicial killing are to be left without meaningful redress in

180. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

181. *See, e.g., Baker v. Carr*, 369 U.S. 186, 210 (1962) ("The nonjusticiability of a political question is primarily a function of the separation of powers.").

182. *Id.* at 211.

183. *See* Melville Fuller Weston, *Political Questions*, 38 HARV. L. REV. 296, 319 (1925) ("[T]he decisions of the 'political' departments must be final upon [foreign relations] topics").

184. *See Palestinian Auth.*, 132 S. Ct. at 1710-11.

185. *See id.* at 1705, 1709-10.

186. *See id.* at 1710-11.

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the courts, or whether the law will be amended to hold corporations responsible for their actions abroad.¹⁸⁷

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187. *See id.*