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BITTERSWEET: A POTENTIAL AVENUE TO INTERNATIONAL TORT LIABILITY FOR AMERICAN COMPANIES IN THE COCOA SUPPLY CHAIN

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I. INTRODUCTION

A staple sweet in American households, chocolate nonetheless leaves a bitter taste when examining the cocoa supply chain's ties to child slave labor.[1] As of 2022, a recorded 1.56 million child slave labor cases occurred within the Ivory Coast cocoa farms[2] where most of the world's chocolate originates.[3] With conduct as egregious as slicing ten-year-old boys' feet with machetes and putting pepper in the cuts,[4] cocoa farms commit human rights violations that major American chocolate producers, such as Nestle Inc., effectively condone through continued use of product and provision of equipment to the farms.[5] These violations have been left unchecked, met only by empty promises from the American chocolate industry to self-regulate and eliminate child slave labor.[6] Thus, the question remains: What avenues of liability can be utilized to hold American companies liable for international torts in the cocoa supply chain?

This Comment analyzes avenues of liability previously used to hold domestic corporations liable for international torts and proposes a potential solution to holding American chocolate producers liable for human rights violations within the cocoa supply chain. First, Section II of this Comment discusses earlier judicial remedies to liability, culminating in the Supreme Court's decision in *Nestle Inc. v. Doe*.[7] Next, Section III proposes legislation, business model adjustment, and ethical consumerism promotion as new potential avenues of liability. Finally, Section IV concludes with the assertion that, in the absence of judicial remedies, a targeted consumer information campaign is an effective path towards the elimination of child slave labor within the American

1. Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931 (2021).

2. *Tony's 101: Your Guide to Everything You Should Know About Tony's*, TONY'S CHOCOLONELY [hereinafter *Tony's 101*], https://tonyschocolonely.com/us/en/our-mission/tonys-101 [https://perma.cc/64TC-M66A] (last visited Mar. 29, 2022).

3. Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1017 (9th Cir. 2014).

4. Terry Collingsworth, *Nestlé & Cargill v. Doe Series: Meet the "John Does" – The Children Enslaved in Nestlé & Cargill's Supply Chain*, JUST SEC. (Dec. 21, 2020), https://www.justsecurity.org/73959/nestle-cargill-v-doe-series [https://perma.cc/LLY4-KTUA].

5. *Doe I*, 766 F.3d at 1017.

6. Collingsworth, *supra* note 4.

7. Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931 (2021).

chocolate industry.

II. BACKGROUND

The United States' legal system has attempted, albeit unsuccessfully, to regulate the international cocoa system through both judicial and legislative means, both of which will be explored in this Part.[8] First, Section A discusses the Alien Tort Statute ("ATS"), a judicial[9] remedy that was thought to allow international tort victims to sue domestic corporations.[10] Next, Section B outlines the Torture Victim Protection Act of 1991, another judicial remedy that was ultimately found inapplicable to corporations.[11] Section C examines the mandatory labelling regime for cigarettes as a potential legislative remedy.[12] Section D details the substantive and procedural history of the 2021 case, *Nestle Inc. v. Doe*.[13] Finally, Section E highlights Tony's Chocolonely, a small chocolate producer within the industry that, through implementing ethical practices within the cocoa supply chain, could serve as a model business structure for larger American chocolate producers, despite a recent development in the company that raises ethical concerns.[14]

A. Alien Tort Statute "Alien Tort Claims Act" 28 U.S.C. § 1350

The ATS was once thought to be the main avenue for implementing international tort liability against American corporations.[15] However, three Supreme Court cases have considerably curtailed that avenue.[16] The ATS's text broadly states: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in

8. *Doe I v. Nestle, S.A.: Ninth Circuit Denies Rehearing En Banc of Case Permitting Domestic Corporate Liability Claim*, 133 HARV. L. REV. 2643 (2020) [hereinafter *Ninth Circuit Denies Rehearing*], https://harvardlawreview.org/2020/06/doe-i-v-nestle-s-a [https://perma.cc/F2K8-F66B].

9. While the ATS is a piece of legislation, it is categorized as a judicial remedy in the context of this Comment because the ATS was thought to enable judicial action in the area of international tort liability before subsequent Supreme Court decisions foreclosed this reading of the ATS. *See* discussion *infra* Section II(A).

10. 28 U.S.C. § 1350.

11. Mohamad v. Palestinian Auth., 566 U.S. 449, 451 (2012).

12. *2000 Surgeon General's Report Highlights: Warning Labels*, CDC [hereinafter *Warning Labels*], https://www.cdc.gov/tobacco/data_statistics/sgr/2000/highlights/labels/index.htm [https://perma.cc/M5TF-LQDX] (last visited February 28, 2022).

13. Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931 (2021).

14. *Tony's 101*, *supra* note 2.

15. *Ninth Circuit Denies Rehearing*, *supra* note 8.

16. Sosa v. Alvarez-Machain, 542 U.S. 692, 697 (2004); Kiobel v. Royal Dutch Petrol. Co., 569 U.S. 108, 111 (2013); Jesner v. Arab Bank, PLC, 138 S. Ct. 1386, 1388 (2018).

violation of the law of nations or a treaty of the United States."[17] The original text appeared in the Judiciary Act of 1789,[18] a response to concerns that foreign ambassadors may experience a tort against them while within the United States and be without a court that could provide them a legal remedy.[19] Some lower courts recognized that foreign plaintiffs could seek recovery in civil claims under the ATS after experiencing international human rights violations committed abroad, leading to the Supreme Court's concerted effort to clarify and constrain the application of the ATS.[20]

1. *Sosa v. Alvarez-Machain*

In *Sosa v. Alvarez-Machain*, the first case to significantly constrain the ATS, the Court created a test to determine whether a foreign plaintiff could bring a claim under the ATS.[21] Alvarez-Machain, a Mexican physician, alleged that Sosa, a member of a group of hired Mexican nationals working with the United States government to capture and briefly detain Alvarez-Machain in Mexico, was liable to him in a civil claim under the ATS for a violation of the law of nations.[22] Sosa argued that the ATS was merely a jurisdictional statute, barring courts from recognizing "any particular right of action without further congressional action."[23] The Court ultimately held that the ATS was a jurisdictional statute, limiting federal courts to only hear claims that were "defined by the law of nations and recognized at common law."[24] The Court pointed to three tort claims that were explicitly recognized as "against the law of nations" in 1789: "violation of safe conducts, infringement of the rights of ambassadors, and piracy."[25] Thus, the Court held that the ATS could apply to private claims that fell within those three categories.[26]

Consequentially, a two-part test emerged from the Court's holding in *Sosa*: (1) "whether a plaintiff can demonstrate that the alleged violation is "of a norm that is specific, universal, and obligatory"[27] and (2) whether allowing the case to proceed under the ATS is a proper exercise of judicial

17. 28 U.S.C. § 1350 (1948).

18. *Kiobel*, 569 U.S. at 114.

19. *Id.* at 120.

20. Filartiga v. Pena-Irala, 630 F. 2d 876, 890 (2nd Cir. 1980).

21. *Sosa*, 542 U.S. at 723.

22. *Id.* at 698. These individuals were hired by the Mexican government in response to a request by the U.S. Drug Enforcement Administration. *Id.*

23. *Id.* at 712.

24. *Id.*

25. *Id.* at 694.

26. *Id.* at 732.

27. *Id.* (citing *In re* Estate of Marcos Hum. Rts. Litig., 25 F.3d 1467 (9th Cir. 1994)).

discretion, or instead whether caution requires the political branches to grant specific authority before corporate liability can be imposed.[28] Under this test, Alvarez-Machain's claim of arbitrary arrest and detention did not qualify as a violation against the law of nations to raise an ATS claim, as he did not demonstrate that his alleged violation was specific and universal.[29] Alvarez-Machain's claim of arbitrary arrest and detention was a "general prohibition of 'arbitrary' detention defined as officially sanctioned action exceeding positive authorization to detain under the domestic law of some government, regardless of the circumstances," therefore not specific.[30] Additionally, Alvarez-Machain did not provide enough evidence that his claim had "the status of a binding customary norm;" therefore, the claim was not universal.[31]

2. *Kiobel v. Royal Dutch Petroleum Company*

In the second case limiting the ATS's application to civil cases, *Kiobel v. Royal Dutch Petroleum Company*, the Court held that the statutory canon of presumption against extraterritoriality applied to the ATS.[32] In other words, *Kiobel* found that foreign plaintiffs could not prevail under the ATS if all the alleged tortious conduct occurred entirely abroad.[33] Because the ATS's text did not explicitly provide that its jurisdiction reached conduct entirely "occurring in the territory of another sovereign," the Court declined to recognize a claim that would create potential foreign policy concerns.[34] The Court reasoned that such determinations were suited for the other political branches.[35] Furthermore, the Court held that "mere corporate presence" in the United States would not suffice to trigger ATS liability.[36]

3. *Jesner v. Arab Bank PLC*

Finally, the third case to substantially constrain the ATS's application, *Jesner v. Arab Bank PLC*, held that a foreign plaintiff could not bring a claim for the tortious conduct of foreign corporations under the ATS.[37]

28. Kiobel v. Royal Dutch Petrol. Co., 569 U.S. 116-117 (2013) (placing a gloss on the second-factor of the Sosa test found in *Sosa*, 542 U.S. at 732-733).

29. *Id.* at 732.

30. *Id.* at 736.

31. *Id.*

32. Kiobel v. Royal Dutch Petrol. Co., 569 U.S. 108, 115-16 (2013).

33. *Id.* at 124.

34. *Id.*

35. *Id.*

36. *Id.* at 125.

37. Jesner v. Arab Bank, PLC, 138 S. Ct. 1386, 1403 (2018).

The plaintiffs alleged that defendant Arab Bank "allowed the [b]ank to be used to transfer funds to terrorist groups in the Middle East, which in turn enabled or facilitated criminal acts of terrorism . . . ."[38] The plaintiffs also asserted that the defendant had used an electronic system for transferring money within the United States, alleging that the defendant used its New York branch to both "clear-dollar denominated transactions" and "launder money" from a Texas-based charity to fund terrorist acts abroad.[39] Applying the two-part *Sosa* test,[40] the Court held that the ATS could not be extended to foreign corporation liability.[41] The Court reasoned that recent precedents curtailed the judiciary from creating private rights of action, instead deferring to Congress.[42] Further, the Court held that Congress was the proper political branch for determining whether statutes imposed corporate liability.[43] The Court once again deferred to the other political branches to extend the ATS's liability, particularly with the foreign policy concerns raised regarding whether foreign corporations could be held civilly liable in the United States for their torts.[44]

In summation, the combination of *Sosa*, *Kiobel*, and *Jesner* drastically constrain the ATS to a limited subset of cases.[45] *Sosa*'s two-part test narrows the types of claims that can rise to an ATS violation.[46] *Kiobel*'s extraterritoriality presumption forecloses any claim of tortious conduct that occurred entirely abroad.[47] *Jesner*'s foreign corporation exclusion limits the parties that can be named in an ATS violation to individuals or domestic corporations.[48] As a result, the question of how much domestic conduct would suffice to trigger the ATS against a domestic corporation involved in international torts was one of the unresolved questions that sought to be answered in the latter case of *Nestle Inc. v. Doe*.[49]

B. Torture Victim Protection Act of 1991

The Torture Victim Protection Act of 1991 ("TVPA") was once considered an avenue to corporate liability for international torts such as

38. *Id.* at 1393.
39. *Id.* at 1394-95.
40. *Id.* at 1399.
41. *Id.* at 1403.
42. *Id.* at 1402.
43. *Id.* at 1403.
44. *Id.*
45. *Id.* at 1388; Sosa v. Alvarez-Machain, 542 U.S. 692, 697 (2004); Kiobel v. Royal Dutch Petrol. Co., 569 U.S. 108, 111 (2013).
46. *Sosa*, 542 U.S. at 722-23.
47. *Kiobel*, 569 U.S. at 124.
48. *Jesner*, 138 S. Ct. at 1403.
49. Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931, 1936 (2021).

child slave labor.[50] Enacted in 1992, the TVPA states that "[a]n individual, who, under actual or apparent authority, or color of law, of any foreign nation, . . . subjects an individual to torture shall, in a civil action, be liable for damages to that individual,"[51] and "[an individual who] subjects an individual to extrajudicial killing, shall, in a civil action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death."[52] The TVPA includes a ten-year statute of limitations and an exhaustion of remedies requirement.[53] Plaintiffs in lower courts proved successful in asserting claims under the TVPA in the 1990s, amassing considerable damage awards.[54]

Unfortunately, that avenue became nonviable when the Supreme Court limited the TVPA's application to human defendants, not organizations. In *Mohamad v. Palestinian Authority*, the petitioners brought a civil action under the TVPA for the torture and extrajudicial killing of Azzam Rahim at the hands of the Palestine Authority and Palestine Liberation Organization.[55] In a unanimous decision, the Court held that the TVPA's civil action did not extend to organizations because the ordinary meaning of "individual" in the TVPA does not include organizations.[56] The Court cited to the ordinary use of "individual" connotating natural persons alone, unlike the term "person" which may indicate natural persons or corporate entities.[57] The Court additionally reasoned that four other uses of "individual" in the TVPA indicated a singular natural person; following statutory construction principles, a word's meaning in a statute remains consistent, unless explicitly indicated otherwise.[58] The Court also referenced the legislative history of the statute that included explicit revisions and statements clarifying that the TVPA would not reach organizations.[59] Under this ruling, the TVPA can no longer impose liability upon corporations for their human rights violations, regardless of the violations' degree.[60]

50. Mohamad v. Palestinian Auth., 566 U.S. 449, 451 (2012).

51. Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1992).

52. *Id.*

53. *Id.*

54. Xuncax v. Gramajo, 886 F. Supp. 162, 198 (D. Mass. 1995) (awarding plaintiff three million in compensatory damages for torture from Guatemalan guerrillas under army control involving sexual assault and being lowered into a pit of corpses).

55. Mohamad v. Palestinian Auth., 566 U.S. 449, 449 (2012).

56. *Id.* at 451.

57. *Id.* at 454.

58. *Id.* at 456.

59. *Id.* at 459-60.

60. *Id.* at 451.

C. Mandatory Packaging Warning Labels

Corporate accountability via mandatory warning labels on packaging, such as those found on cigarette packages, is one avenue of indirect corporate liability for international torts.[61] In 1965, Congress passed The Federal Cigarette Labeling and Advertising Act.[62] This introductory legislation required a warning to be placed on cigarette packages stating: "Caution: Cigarette Smoking May Be Hazardous to Your Health."[63] Nevertheless, all that was required under the act was the warning to be in small print and on one side panel of the box.[64] Each successive mandatory labelling bill, however, required progressively more substantial warnings.[65] The warnings escalated from "Warning: Cigarette Smoking is Dangerous to Health and May Cause Death from Cancer and Other Diseases"[66] to "SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy."[67] A final iteration appeared as "SURGEON GENERAL'S WARNING: Smoking by Pregnant Women May Result in Fetal Injury, Premature Birth, and Low Birth Weight."[68]

In 2009, even stricter labeling requirements became a possibility with the passage of the Family Smoking Prevention and Tobacco Control Act, allocating to the Food and Drug Administration ("FDA") the "authority to regulate the manufacture, distribution, and marketing of tobacco products."[69] This possibility was realized in March 2020 when the FDA released the "Required Warnings for Cigarette Packages and Advertisements" rule, mandating "11 new cigarette health warnings, consisting of textual warning statements accompanied by color graphics in the form of concordant photorealistic images, depicting the negative health consequences of cigarette smoking."[70] The new warnings would

61. *Warning Labels*, *supra* note 12.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Family Smoking Prevention and Tobacco Control Act – An Overview*, FOOD & DRUG ADMIN. [hereinafter *Family Smoking Prevention and Tobacco Control Act*], https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/family-smoking-prevention-and-tobacco-control-act-overview [https://perma.cc/K43U-ZFWZ] (last visited Feb. 28, 2022). The FDA also has the authority to regulate food and drugs, which implicates the potential for the FDA to regulate chocolate as both a food and a drug, due to the caffeine present within chocolate. *See Caffeine*, ALCOHOL & DRUG FOUND., https://adf.org.au/drug-facts/caffeine [https://perma.cc/4UU8-JKD2] (last visited Dec. 17, 2022).

70. *Cigarette Labeling and Health Warning Requirements*, FOOD & DRUG ADMIN., https://www.fda.gov/tobacco-products/labeling-and-warning-statements-tobacco-products/cigarette-labeling-and-health-warning-requirements [https://perma.cc/KDE8-FMN4] (last visited Sep. 19, 2022).

require these images to compose fifty percent of both the front and back label of a cigarette carton, a substantial increase from then-current text-only warning labels.[71] While the rule will not go into effect until October 6, 2023,[72] cigarette manufacturers were required to submit their proposed labeling designs comporting with the rule by December 7, 2022.[73]

Consistent with the FDA's desired effect on consumer consumption, cigarette label requirements have decreased cigarette usage—to the detriment of corporate actors.[74] In 2019, fourteen percent of American adults smoked cigarettes regularly.[75] According to the Centers for Disease Control and Prevention, that percentage was still high enough for cigarette smoking to "remain the leading preventable disease and cause of death in the United States."[76] However, as many as forty-two percent of American adults smoked cigarettes regularly in 1965, the year the first cigarette labeling act passed in Congress.[77] The American Lung Association's data indicates that the rate of tobacco use has steadily decreased each year succeeding The Federal Cigarette Labeling and Advertising Act of 1965, from forty-two percent in 1965, to twenty-five percent in 1990, and eventually to fourteen percent in 2019.[78] While other factors such as a cultural norms shift have had an effect,[79] the power of a warning label requirement on products produced by corporate bad actors should be recognized.[80]

D. Nestle Inc. v. Doe

Although its end product is sweet, the chocolate industry's human rights violations as seen in *Nestle Inc. v. Doe* illustrate the bitter origins of the cocoa used to make much of the world's chocolate.[81] Seventy

71. *Id.*

72. *Id.*

73. *Id.*

74. *Overall Tobacco Trends*, AM. LUNG ASS'N, https://www.lung.org/research/trends-in-lung-disease/tobacco-trends-brief/overall-tobacco-trends [https://perma.cc/G9BC-JRNT] (last visited Feb. 28, 2022).

75. *Current Cigarette Smoking Among U.S. Adults Aged 18 Years and Older*, CDC, https://www.cdc.gov/tobacco/campaign/tips/resources/data/cigarette-smoking-in-united-states.html[https://perma.cc/4MN5-WV9R] (last visited Feb. 28, 2022).

76. *Id.*

77. Overall Tobacco Trends, supra note 74.

78. *Id.*

79. Chioun Lee et al., *Conscientiousness and Smoking: Do Cultural Context and Gender Matter?*, 11 FRONTIERS PSYCH. 1, 1 (2020), https://www.frontiersin.org/articles/10.3389/fpsyg.2020.01593/full [https://perma.cc/KM3X-RMZ5].

80. It could be argued that the product warning label could have influenced the cultural norms shift in tobacco use, as it provided potential smokers with information dissuading use.

81. Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1017 (9th Cir. 2014).

percent of the world's supply of cocoa originates from Ivory Coast farms that implement child slave labor practices.[82] An estimated 1.6 million children are forced to work under slave labor conditions in the Ivory Coast and Ghana.[83] The six John Doe plaintiffs in *Nestle* alleged that, as children, they were kidnapped from a bus stop in their home country of Mali by professional kidnappers called "locateurs."[84] The plaintiffs in *Nestle* ranged from ten to fourteen years old at the time they were kidnapped.[85] One plaintiff observed a farmer paying a locateur the equivalent of forty dollars for his subsequent three and a half years of slave labor.[86]

All the plaintiffs were forced to work up to fourteen-hour days, six days a week, in grueling conditions on cocoa farms.[87] The plaintiffs were forced to use "machetes to cut down, open, and clean cocoa pods, as well as apply[] hazardous pesticides and herbicides without any protective equipment."[88] One plaintiff, John Doe IV, relayed that, after his failed escape attempt, task masters sliced open his feet with a machete and placed pepper inside the cuts; this was a customary practice to intimidate the children to remain on the cocoa farms.[89] Other plaintiffs alleged observing recaptured children forced to drink their own urine as punishment.[90] All six plaintiffs "were beaten with whips or branches by their overseers for failing to work fast enough, and several sustained permanent injuries or scars from these beatings."[91] Working from two to four years under such conditions,[92] all six plaintiffs managed to escape from the cocoa farms; no one with authority over the farms or any corporation buying cocoa from the farms intervened on their behalf.[93]

Nestle USA, Inc. and Cargill Inc., two American corporations that dominate the chocolate industry, were named as defendants in *Nestle v. Doe*, among others.[94] The plaintiffs alleged that both corporations, while not directly performing the acts against them, enabled and incentivized the cocoa farmers by forming exclusive buyer/seller contracts with the

82. *Id.*

83. Collingsworth, *supra* note 4.

84. *Id.* While the direct translation of the French word is "landlord," this term is used in Mali to refer to the child kidnappers. *See Locateurs*, WORDSENSE, https://www.wordsense.eu/locateurs [https://perma.cc/7NNG-NUE8] (last visited April 13, 2022).

85. *Id.*

86. *Id.*

87. Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1017 (9th Cir. 2014).

88. Collingsworth, *supra* note 4.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1017 (9th Cir. 2014).

farms.[95] Nestle USA, Inc.'s and Cargill Inc.'s prices could only be obtained through child slave labor; no working adult wage would enable the desired profit margin.[96] When the House of Representatives passed legislation in 2001 that would have required U.S. chocolate manufacturers to "certify and label their products 'slave-free,"[97] the defendants lobbied against the legislation such that it failed to pass in the Senate.[98] Instead, the defendants, along with other manufacturers in the industry, vowed to self-regulate, promising to reduce child slavery in the industry by eliminating any child slave labor in their supply chain.[99] However, driven by the desire to keep cocoa prices low and maximize profits, the initial deadline for elimination of child slave labor in 2005 was ignored.[100] Instead, corporations like Nestle USA, Inc. and Cargill, Inc. extended their own deadlines not once, but three times.[101] The current self-imposed deadline is 2025.[102] Plaintiffs in *Nestle v. Doe*, therefore, sought to enforce international tort liability against companies that, the plaintiffs claimed, had provided both "personal spending money"[103] and "tools, equipment and technical support to farmers."[104] Additionally, the plaintiffs alleged that the companies had made several routine inspections of the cocoa farms implementing child slave labor.[105]

To obtain justice for human rights violations perpetuated against them between 1996 and 2000, the plaintiffs filed their first complaint in 2005.[106] They did not receive a Supreme Court decision until 2021.[107] The U.S. District Court for the Central District of California dismissed the lawsuit in 2010, holding that the defendants lacked the intent element to perpetuate child slavery on the farms.[108] Further, the district court held that the plaintiff's ATS claim failed because only persons, not corporations, could be held liable under the ATS.[109] The Ninth Circuit Court of Appeals vacated the district court's ruling, instead holding that corporations could be held liable under the ATS and allowing the

95. *Id.*

96. Collingsworth, *supra* note 4.; Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1017 (9th Cir. 2014).

97. *Doe I*, 766 F.3d at 1017-18.

98. *Id.*

99. Collingsworth, *supra* note 4.

100. *Id.*

101. *Id.*

102. *Id.*

103. Doe v. Nestle, S.A., 906 F.3d 1120, 1123 (9th Cir. 2018).

104. *Id.*

105. *Id.*

106. Collingsworth, *supra* note 4.

107. Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931, 1935 (2021).

108. *Nestlé USA v. Doe I*, BALLOTPEDIA, https://ballotpedia.org/Nestl%C3%A9_USA_v._Doe_I [https://perma.cc/8HZ5-CVT5] (last visited Feb. 28, 2022).

109. *Id.*

plaintiffs to file an amended complaint.[110] After the plaintiffs did so, the district court again dismissed the complaint, citing the *Kiobel* extraterritoriality prohibition under the ATS.[111]

However, the Ninth Circuit once again reversed the district court, holding that *Jesner*'s prohibition of foreign corporations' liability had not prohibited a finding of ATS liability for domestic corporations.[112] The Ninth Circuit held that the alleged conduct of personal spending money payments, technical support, and inspections of the cocoa farms perpetuated within the United States from Nestle USA, Inc. and Cargill, Inc. did not violate the *Kiobel* extraterritoriality prohibition.[113] However, the Ninth Circuit denied an en banc rehearing.[114] The Supreme Court then granted certiorari to hear the case in 2020,[115] consolidating *Nestle Inc. v. Doe* with a related case, *Cargill Inc. v. Doe et al*.[116]

Reversing the Ninth Circuit, Justice Thomas, writing for an eight-justice majority Court, held that the petitioners were barred by *Kiobel*'s extraterritoriality prohibition on the ATS, agreeing with the district court.[117] The Court applied a two-step framework to determine if an extraterritoriality challenge was implicated: (1) after presuming that the statute only applies domestically, search the statute's text for an indication to rebut the presumption[118] and (2) if the statute "does not apply extraterritorially, plaintiffs must establish that 'the conduct relevant to the statute's focus occurred in the United States.'"[119] While the petitioners argued that Nestle USA, Inc.'s and Cargill Inc.'s actions of providing personal money and providing technical support and training were enough to satisfy the domestic requirement for an ATS claim,[120] the Court held that these actions did not suffice as more than "general corporate activity," activity which does not trigger an ATS application.[121] The Court then remanded the cases back to the lower courts for further proceedings.[122]

110. *Id.*; Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1022 (9th Cir. 2014).

111. Doe v. Nestle, S.A., 906 F.3d 1120, 1122 (9th Cir. 2018).

112. *Id.* at 1124.

113. *Id.* at 1126.

114. Doe v. Nestle, S.A., 929 F.3d 623, 626 (9th Cir. 2019).

115. Nestlé USA, Inc. v. Doe, 141 S. Ct. 188 (2020).

116. Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931, 1935 (2021).

117. *Id.* at 1936. Justice Alito was the sole dissent, contending that if an individual could be held liable under the ATS, a domestic corporation could be held liable. His opinion did not reach the merits of the case. *See Nestlé USA, Inc.*, 141 S. Ct. at 1950 (Alito, J., dissenting).

118. Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931, 1936 (2021) (citing RJR Nabisco, Inc. v. European Cmty., 597 U.S. 325, 337 (2016)).

119. *Id.*

120. *Id.* at 1937.

121. *Id.*

122. *Id.* at 1940.

E. A Model Business Structure For The Chocolate Industry: Tony's Chocolonely

In direct contravention of any industry arguments that child slave labor cannot be structurally eliminated within the chocolate industry, Dutch corporation Tony's Chocolonely provides a model business structure that produces chocolate without child slave labor.[123] Founded by a Dutch investigative reporter to prove that the child slave labor practices within the chocolate industry were not inherently structural, Tony's Chocolonely produces several flavors of chocolate, all from ethically-sourced cocoa beans.[124] Since its inception in 2003, the company has implemented five sourcing principles for slave-free cocoa not only to maintain its ethically-sourced status, but also to encourage other actors in the chocolate industry to implement a similar strategy.[125] These five sourcing principles are as follows: "traceable cocoa beans, . . . a higher price,"[126] "strong farmers,"[127] "the long term,"[128] and "improved quality and productivity."[129] Each Tony's Chocolonely label indicates that the chocolate is produced without child slave labor and discloses the child slave labor issue in the chocolate industry on the inside label.[130] Instead of vilifying either the consumer or other chocolate producers, Tony's Chocolonely utilizes its disclosures as a call to action for consumers and producers to join its mission in eliminating child slave labor from the chocolate industry through structural changes.[131]

The need for structural changes becomes even more apparent in the contentious processing method for the otherwise ethical business model of Tony's Chocolonely.[132] Slave Free Chocolate, an American

123. *Our Mission*, TONY'S CHOCOLONELY, https://tonyschocolonely.com/us/en/our-mission [https://perma.cc/6AWA-NTQR] (last visited Mar. 29, 2022).

124. *Our Mission*, *supra* note 123.

125. *Id.*

126. *Id.* Chocolate producers would pay a higher price for the beans than the current market value, allowing farmers to instill ethical labor practices. *Id.*

127. *Id.* Tony's Chocolonely proposes that farmers work in farming collectives, allowing greater bargaining power and support that could favorably impact the supply chain. *Id.*

128. *Id.* Tony's Chocolonely implements contractual agreements that guarantee farmers at least five years of paying a higher price for cocoa beans, which allows them stability to instill better labor practices. *Id.*

129. *Id.* Tony's Chocolonely maintains these steps lead to a better quality in product, which in turn leads to higher production of beans that can be sold, which leads to more profit and elimination of child slave labor. *Id.*

130. *Id.*

131. *Id.*

132. Maarten Veeger, *Tony's Chocolonely uit lijst slaafvrije chocolademakers,* RTL NEWS, https://www.rtlnieuws.nl/economie/business/artikel/5214750/tonys-chocolonely-toch-geen-slaafvrije-chocolade-cacao-barry [https://perma.cc/BV8G-UNC9] (last visited Dec. 17, 2022). This article is written in Dutch, but I read a translated transcript.

organization, removed Tony's Chocolonely from its list of slave-free chocolate producers because the owner of the factory that processes Tony's Chocolonely's bars does use child slave labor in its own chocolate production.[133] Tony's Chocolonely's owner, while reasserting no child slave labor was used in its cocoa production, contended that working with the factory owner furthered Tony's Chocolonely's mission in two ways.[134] First, the factory's large production capability allowed Tony's Chocolonely to be produced in greater quantity to spread its message internationally.[135] Second, by working with a larger chocolate producer, Tony's Chocolonely could influence the producer to begin the chain of industry-wide adoption of its business model.[136] If other chocolate providers within the industry implemented an equivalent to Tony's Chocolonely's business model, the 'need' other chocolate providers see for child slave labor would be eradicated, as would the need for smaller chocolate providers to rely on any part of a system affiliated with child slave labor.[137]

III. DISCUSSION

While *Nestle Inc. v. Doe*'s holding signals the exhaustion of judicial avenues for holding domestic corporations liable for facilitating international torts, this Comment proposes legislative, corporate, and policy solutions for eradicating child slave labor in the chocolate industry.[138] Part A of this Section considers, yet ultimately rejects, a Congressional legislative act to expand the jurisdiction of the ATS.[139] Part B proposes a labeling act analogous to the mandatory cigarette labeling acts.[140] Part C applies the non-slavery-based business model of Tony's Chocolonely to the world's leading chocolate producers.[141] Part D suggests an awareness campaign with the goal of facilitating ethical consumerism.[142] Finally, this Comment contends that the maxim "knowledge is power" can only be effectuated through active attempts to inform consumers.[143]

133. *Id.*
134. *Id.*
135. *Id.*
136. *Id.*
137. *See* discussion *infra* Section III(C); Veeger, *supra* 132.
138. *See* discussion *infra* Section III.
139. *See* discussion *infra* Section III(A).
140. *See* discussion *infra* Section III(B).
141. *See* discussion *infra* Section III(C).
142. *See* discussion *infra* Section III(D).
143. *See* discussion *infra* Section III(D).

A. Congressional Extension of ATS Jurisdiction

A potential response to the judicial foreclosure of using the ATS to hold American companies liable for international torts could be Congressional extension of the ATS's jurisdiction.[144] Since *Nestle Inc v. Doe* reaffirmed *Kiobel*'s extraterritoriality prohibition,[145] only Congress has the power to extend the ATS's jurisdiction.[146] Congress would have to introduce a bill that proposes new language for the ATS that explicitly indicates an extension of the ATS to reach tortious conduct upon foreign soil.[147] An example of such language could take the form of an additional sentence specifying that: "A civil action may be heard and adjudicated by the courts of the United States if the tort is committed within a foreign principality, as long as the actor violates a treaty or another facet of international law." To address the concern of inciting the ire of foreign sovereignties,[148] Congress could also include limiting language, such as: "For any tort committed within a foreign principality, the actor, whether an individual or legal entity, must be domiciled within the United States," to overcome the extraterritoriality prohibition. As long as the statutory language is carefully crafted, Congress could reach conduct such as Nestle USA, Inc.'s and Cargill, Inc.'s without implicating foreign policy concerns.[149]

However, Congressional extension of ATS jurisdiction faces what is likely an insurmountable hurdle of obstacles, making it a nonviable solution for American corporate liability for international torts.[150] For one thing, twenty-one years of Congressional inaction regarding regulation of the chocolate industry is unlikely to suddenly result in extension of the ATS to impose liability.[151] In addition, with the *Nestle* plaintiffs' recent attempt to utilize the ATS to impose corporate liability,[152] large American chocolate producers are now on notice to monitor any proposed extension of the ATS—if such legislation were to be introduced, chocolate producers would lobby against it.[153] Such lobbying, backed by substantial funding, would likely kill any legislation on the matter.[154] Finally, the foreign policy concerns that arise in extending jurisdiction over acts

144. Jesner v. Arab Bank, PLC, 138 S. Ct. 1386, 1403 (2018).
145. Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931, 1936 (2021).
146. *Jesner*, 138 S. Ct. at 1402.
147. Kiobel v. Royal Dutch Petrol. Co., 569 U.S. 108, 124 (2013).
148. *Id.*
149. *Id.*
150. Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1017-18 (9th Cir. 2014).
151. *Id.*
152. Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931, 1936 (2021).
153. *Doe I*, 766 F.3d at 1017-18.
154. *Id.*

within foreign sovereignties likely would overtake any other considerations of extending the ATS.[155]

B. A Proposed Chocolate Labeling Act

Since extension of the ATS is not a likely path to corporate liability, an orchestrated information campaign may be the best option for holding the American chocolate industry accountable.[156] The first part in an orchestrated information campaign to hold chocolate producers liable for child slave labor practices would be to implement a mandatory chocolate labeling act (the "Chocolate Act") via congressional action.[157] The Chocolate Act would be heavily influenced by The Federal Cigarette Labeling and Advertising Act of 1965[158] and its progeny.[159] In 1965, the required labeling was relatively minor in comparison to the product packaging itself, and the textual warning was similarly mild, stating only that smoking could have detrimental effects on one's health.[160] In the chocolate context, a mandatory label could similarly be a smaller percentage of the packaging, such as a requirement for it to take up no more than the bottom left corner on the front of a chocolate bar's label.[161] The legislature could require a warning such as: "This chocolate cannot be certified as ethically-sourced."[162] Unfortunately, even this relatively minor requirement could invoke renewed pressure from the American chocolate industry upon legislators, stalling legislation like the industry did in 2001.[163]

Fortunately, two variables have changed within the legislative landscape since 2001 that may bode favorably for renewed campaigns to enact mandatory chocolate labeling legislation. First, the FDA can regulate cigarette labeling and issue robust labeling guidelines.[164] Second, the chocolate industry has not complied with its own self-regulations.[165] With the 2009 Family Smoking Control Act, Congress delegated cigarette

155. Kiobel v. Royal Dutch Petrol. Co., 569 U.S. 108, 124 (2013).

156. *See* further discussion *infra* Section III(D).

157. *See* discussion *supra* Section II(C).

158. *Warning Labels*, *supra* note 12.

159. *Family Smoking Prevention and Tobacco Control Act*, *supra* note 69.

160. *Warning Labels*, *supra* note 12.

161. *Id.* The bottom left corner of the front label would still be effective, however, since English reads left to right, meaning consumers would still take notice of the labeling. *Id*.

162. While this language would not be as blatant as "This chocolate was produced by child-slave labor," it would have a better chance of passing through Congress without the chocolate industry exerting influence to kill the bill outright. Regardless, even this smaller requirement would receive hostility.

163. *See* Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1017-18 (9th Cir. 2014).

164. *Cigarette Labeling and Health Warning Requirements*, *supra* note 70.

165. Collingsworth, *supra* note 4.

labeling regulations and enforcement to the FDA.[166] The FDA exerted further control than any prior Congressional cigarette labeling acts, the most recent labeling requirements including pictorial representations of the deteriorating health effects of smoking that will comprise fifty-percent of the back and front labeling.[167] The viability of this alternative currently rests on pending litigation in *R.J. Reynolds Tobacco Company v. U.S. Food and Drug Administration*, as the tobacco industry challenges the validity of the FDA's authority to promulgate and enforce these mandatory labels.[168]

Although dependent on the current tobacco litigation, Congress, instead of pursuing a legislative labeling act outright, could allocate chocolate labeling regulation to the FDA because chocolate could qualify both as an edible product and a drug.[169] If granted express authority to regulate the labeling of chocolate, the FDA could issue mandatory labeling requirements, analogous to the mandatory cigarette warning labeling requirements, that would be effective October 6, 2023.[170] In the chocolate context, the pictorial content could depict child slave laborers in the cocoa fields, the locateurs assembled in Mali's bus stops, or, perhaps most effective, the peppered wounds inflicted on children's feet, as John Doe IV alleged occurred to him.[171] Suggested textual requirements include: "Disclosure: This chocolate depends on child slave labor," or "Caution: This chocolate could have been produced by practices depicted on this bar." Either the implementation or threat of implementation of comprehensive labelling disclosure could shift the American chocolate industry's business model away from child slave labor.[172]

Although the graphic pictorial content wrapped on each chocolate bar would likely be the most effective deterrent,[173] children being the oft-intended consumer of chocolate presents a significant contrast to

166. *Family Smoking Prevention and Tobacco Control Act*, *supra* note 69.

167. *Cigarette Labeling and Health Warning Requirements*, *supra* note 70.

168. *R.J. Reynolds Tobacco Company et al. v. U.S. Food and Drug Administration et al. (2020)*, PUB. HEALTH L. CTR., https://www.publichealthlawcenter.org/litigation-tracker/rj-reynolds-tobacco-company-et-al-v-us-food-and-drug-administration-et-al-2020 [https://perma.cc/6HRL-QMYL] (last visited Sep. 16. 2022). The tobacco industry alleges that the FDA has no authority to mandate these labels, asserting this mandatory speech would violate their First Amendment rights. *Id.* The litigation is ongoing in the Eastern District of Texas, and its outcome could have a determinative effect on future proposed mandatory labels. *Id.*

169. Chocolate could be categorized as a drug due to the caffeine naturally present. *See Caffeine*, ALCOHOL & DRUG FOUND., https://adf.org.au/drug-facts/caffeine [https://perma.cc/4UU8-JKD2] (last visited Dec. 17, 2022).

170. *Cigarette Labeling and Health Warning Requirements*, *supra* note 70.

171. Collingsworth, *supra* note 4.

172. *See* discussion *supra* Section II(C).

173. *Cigarette Labeling and Health Warning Requirements*, *supra* note 70.

cigarettes' intended consumers—adults.[174] Adults, particularly parents, would likely try to curb any effort to require American chocolate producers to implement graphic pictorial content on chocolate packaging.[175] Parents would likely view the FDA's proposed regulations as insensitive exposure of disturbing, graphic content to their children.[176] American chocolate producers would lobby heavily against regulations requiring such an extreme remedy, out of a reasonable fear that backlash from parents would cause a sharp decline in sales.[177] Instead, a wrapper with smaller textual elements would be most likely to succeed, though not without facing some opposition for even that minimal requirement.[178]

The second variable that has changed since 2001 is the American chocolate industry's failure to implement its own regulations in eliminating child slave labor from its supply chain.[179] Part of the accord which resulted in the 2001 chocolate labeling bill being tabled included the chocolate industry's promise to self-regulate.[180] The chocolate industry's promise to eliminate child slave labor from its supply chain by 2005 has been extended every five years since, with industry insiders already admitting that the newest deadline will also be extended.[181] There is no apparent reason to suspect that the pattern of deadline extensions will end.[182] Because the chocolate industry has failed to honor its promise, Congress should renew motivation to introduce a mandatory chocolate labeling bill or expressly empower the FDA to promulgate chocolate labeling requirements.[183] The chocolate industry would be forced to the bargaining table, as economic and political pressures seem more likely to effectuate change than egregious human rights violations.[184]

174. *Overall Tobacco Trends*, *supra* note 74.

175. *Family Smoking Prevention and Tobacco Control Act*, *supra* note 69. While the FDA seeks to prevent minors from smoking, its regulations are meant to inform the legal consumer base of adults about the risks associated with smoking. *Id.* Chocolate varies from this dichotomy, as both age groups consume chocolate indiscriminately, although chocolate advertising may specifically target children unlike cigarette advertising. *Id.*

176. The counterargument, or cruel irony, to this justifiable concern is the continued existence of that disturbing graphical content for Malian children on cocoa farms. *See* Collingsworth, *supra* note 4. Parents justifiably shelter their children from inhumane brutality, but that brutality will be perpetuated against other children unless an equivalently drastic remedy advances within the legislative and public conscience.

177. Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1017-18 (9th Cir. 2014) (mentioning the much smaller legislative requirement for a textual disclaimer of "100% slave free" was lobbied against and effectively killed in the Senate).

178. *Id.*

179. Collingsworth, *supra* note 4.

180. *See Doe I*, 766 F.3d at 1017-18; Collingsworth, *supra* note 4.

181. Collingsworth, *supra* note 4.

182. *Id.*

183. *See* discussion *supra* Sections III(A), III(B).

184. *See* discussion *supra* Section II(D).

C. The Chocolate Industry's Business Model Adjustment

If small chocolate producer Tony's Chocolonely, through implementing a multi-step plan for eliminating reliance on child slave labor within its supply chain, can operate successfully, the American chocolate industry can follow suit with similar business practices.[185] While an industry-wide business model adjustment following Tony's Chocolonely's model could lead to higher consumer prices, lowered supply, and an implementation lag, American chocolate producers could turn these short-term negative outcomes into long-term financial and reputational gains.[186]

A major component of Tony's Chocolonely's business model involves chocolate producers paying higher prices for cocoa beans, which enables farmers to use paid labor.[187] In the short-term, larger American chocolate producers may fear that paying a higher price for cocoa beans will adversely affect their profits.[188] Additionally, if they raise the chocolate's prices to reflect the higher price of cocoa beans, chocolate producers will contend that higher consumer prices would exponentially affect their profits as consumers would avoid their products.[189]

In the long-term, however, paying higher prices for cocoa beans could be used to chocolate producers' reputational and financial advantage.[190] If they were to raise consumer prices to meet the higher price of the cocoa beans, chocolate producers could market their products as an ethical alternative to those producers who do not pay higher prices.[191] If consumers are informed that higher prices ensure ethically-sourced products, many consumers would be willing to participate in that exchange, increasing the producer's reputation as ethically-mindful.[192] If business model adjustment occurred throughout the industry, a further effect on the chocolate industry would be price neutralization.[193] If higher prices for cocoa beans became the norm, the price would eventually even out as every chocolate producer would be paying the same rate to cocoa farmers.[194] Additionally, if all the major chocolate producers

185. *Our Mission*, *supra* note 123.

186. *Id.*

187. *See supra* note 128 and accompanying text.

188. *See generally* Collingsworth, *supra* note 4. The reluctance of large chocolate producers to eliminate child slave labor has traditionally run along similar arguments. *Id.*

189. *Id.*

190. *Our Mission*, *supra* note 123.

191. *Id.* While Tony's Chocolonely instead advocates for the rest of the chocolate industry to join its ethical practices when it discloses them, other chocolate producers could use disclosure to gain reputational reward.

192. *See* discussion *infra* Section III(D).

193. *Our Mission*, *supra* note 123.

194. *Id.*

implemented the business model adjustment at relatively the same time, the overall price of chocolate would rise, eliminating the concern of competitors' lower priced chocolate.[195] As America's staple sweet, enough consumers would continue purchasing chocolate to alleviate any remaining price concerns.[196]

Another concern large American chocolate producers may harbor in the short-term is a lowered supply of cocoa beans if they can only utilize ethically-sourced beans.[197] Since most of the world's cocoa beans originate from the Ivory Coast—the same location as many child slave labor violations[198]—large chocolate producers would contend that the supply of ethically-sourced beans could not meet the demand of chocolate products in the highly consumptive market.[199] A reduced production of chocolate would, yet again, detrimentally affect production output and thereby, profit intake.[200]

In the long-term, however, large American chocolate producers would be the only actors with enough influence and money in the chocolate industry to effectuate change within the Ivory Coast.[201] Nestle USA, Inc. and Cargill, Inc. already provide training, supervision, excess capital, and tools to cocoa farms that commit human rights violations;[202] the infrastructure exists for them to exert pressure upon these same farms by only providing those benefits if the farms stop utilizing child slave labor.[203] The perpetuation of a system "requiring" child slave labor only continues if made viable by the largest buyers within that system.[204] If the largest buyers pulled out of the system, diverting their funds to ethically-sourced farms, the system will ultimately adapt to eliminate the one factor preventing participation in the profit system: child slave labor.[205]

A final concern for both large American chocolate producers and ethically-minded consumers in the short-term would be an implementation lag; a business model adjustment that changes the entire supply chain of an industry would likely take considerable time to implement.[206] In the interim, chocolate producers may have concerns that if they do not immediately comply with the shift in adjusting, their

195. *Id.*
196. *Id. See supra* Section I.
197. *Id.*
198. Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1017 (9th Cir. 2014); *Tony's 101*, *supra* note 2.
199. *See generally* Collingsworth, *supra* note 4.
200. *Id.*
201. *Our Mission*, *supra* note 123.
202. *Doe I*, 766 F.3d at 1017.
203. *See generally Our Mission*, *supra* note 123.
204. *Id.*
205. *Our Mission*, *supra* note 123.
206. *Id.*

company practices and products could be shunned by now ethically-conscious consumers.[207] Similarly, ethically-conscious consumers may find themselves uncertain of which chocolate producers have eliminated or begun to eliminate child slave labor from their business model, leading to reduced sales for chocolate producers still implementing the necessary business model adjustment.[208] More concerningly, a considerable time lag could lead to farmers' retaliation against current child slaves, or to more children being forced into slavery; measures would have to be taken to protect against further harm being inflicted in eliminating the source of that harm.[209]

Conclusively, the long-term result of the elimination of child slave labor in the cocoa supply chain outweighs the short-term uncertainty.[210] Any step taken by large American chocolate producers toward the elimination of child slave labor would be a long jump compared to the twenty-one-year stagnation of empty, self-imposed regulation.[211] Chocolate producers could initiate press releases to the public declaring active steps taken toward business model adjustment.[212] Additionally, producers could indicate on chocolate bar labels that certain product lines are ethically-sourced, slowly building up their product lines until all comply with ethically-sourced standards.[213] Any and all efforts to implement a business model adjustment of the chocolate industry, regardless of the delay, would place the industry closer to child slave labor elimination than it has ever been. [214]

D. Ethical Consumerism Promotion

Another effective deterrent to the continued implementation of child slave labor in the American chocolate industry would be a targeted information campaign toward chocolate consumers. [215] If consumers were informed of the slave labor practices used to produce the chocolate bars they consume, they would be able to practice ethical consumerism.[216]

207. *See* discussion *infra* Section III(D).

208. *Id.*

209. *See generally* Collingsworth, supra note 4. The harms committed against the John Doe plaintiffs would reoccur the longer the implementation period lags. *Id.*

210. *Our Mission*, *supra* note 123.

211. Collingsworth, *supra* note 4.

212. *Our Mission*, *supra* note 123. The website's mission statement serves as a public declaration of its mission and achieved business model. *Id.*

213. *Id.* This label inclusion would mirror Tony's Chocolonely indicating on its label that it is 100% child slave labor free. *Id.*

214. *See generally* Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1017 (9th Cir. 2014).

215. *See* discussion *supra* Section III.

216. *A Guide to Ethical Consumerism*, WORLD VISION CANADA,https://web.archive.org/web/2022

Potential models for a targeted information campaign could be nationwide information sessions in schools, analogous to the D.A.R.E. program, or through human rights advocacy groups sending representatives to discuss the issue on radio, podcasts, or television news segments.[217] By informing the target consumer base of the human rights violations that they would be contributing to child slave labor by continuing consumption, consumers would gain the power to choose ethically-sourced alternatives or demand accountability from American chocolate providers.[218] The economic loss through product sales decline and the reputational loss through the exposure of complicity in the current supply chain would, arguably, bolster the likelihood of labelling requirements and the chocolate industry's business model adjustment as the chocolate industry would become accountable to the consumers who knew of the atrocities committed in the cocoa supply chain.[219]

IV. CONCLUSION

Nestle Inc. v. Doe exemplifies that the American judicial system can be unexpectedly limited in reaching conduct that most Americans would find deserving of liability.[220] Although actively aware of the human rights violations that enabled their profits, American chocolate producers' conduct of providing oversight, funding, and tools used to facilitate child slave labor proved insufficient to trigger judicial liability under either the ATS[221] or the TVPA.[222] With judicial remedies for international torts perpetuated by domestic corporations effectively foreclosed, another avenue for international tort liability for American companies must emerge to address the egregious human rights violations inherent in the cocoa supply chain.[223]

Combining legislative, corporate, and policy solutions, a concentrated consumer information campaign is a promising potential avenue for holding American chocolate producers liable for child slave labor

0304010521/https://www.worldvision.ca/no-child-for-sale/resources/a-guide-to-ethical-consumerism [https://perma.cc/KPW9-5XND] (last visited Apr. 29, 2022). Ethical consumerism consists of consumer behavior dictated by only purchasing products that "are ethically sourced, ethically made and ethically distributed." *Id.*

217. *About*, D.A.R.E. AM., https://dare.org/about/#MissionVision [https://perma.cc/H4FM-JZCJ] (last visited Apr. 29, 2022).

218. *See generally A Guide to Ethical Consumerism*, *supra* note 216.

219. *See* discussion *supra* Sections III(B), III(C).

220. *See* discussion *supra* Sections II(A), II(B), II(D).

221. *See* discussion *supra* Sections II(A), II(D).

222. *See* discussion *supra* Section II(B).

223. *See* discussion *supra* Section III.

practices in the supply chain.[224] Legislative mandatory labeling requirements, if implemented, would inform consumers of the child slave labor practices that currently run unchecked in the industry.[225] If not implemented, the threat of legislative mandatory labeling could incentivize American chocolate producers to implement more changes in the supply chain than their failed self-regulations.[226] Entities within the chocolate industry that have already eliminated child slave labor from their supply chains, such as Tony's Chocolonely, could also serve as a model for major American chocolate producers.[227] Finally, consumer information media campaigns targeted at chocolate consumers could garner the economic and reputational loss that would incentivize the American chocolate industry to implement systematic changes in the supply chain.[228] In lieu of judicial power, consumer power—ignited by consumer knowledge—should prove to be a crucial force over the American chocolate industry.[229]

224. *See* discussion *supra* Sections III(B), III(C), III(D).
225. *See* discussion *supra* Section III(B).
226. *See* discussion *supra* Section III(B).
227. *See* discussion *supra* Section III(C).
228. *See* discussion *supra* Section III(D).
229. *See* discussion *supra* Section III(D).