No. _____ 06-134 JUL 25 20

In The
Supreme Court of the United States

THE PERMANENT MISSION OF INDIA
TO THE UNITED NATIONS AND THE
PERMANENT REPRESENTATIVE OF MONGOLIA
TO THE UNITED NATIONS,

Petitioners,

v.

THE CITY OF NEW YORK,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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and The Permanent Representative of
Mongolia to The United Nations

QUESTIONS PRESENTED

1. Does the exception to sovereign immunity for case "in which . . . rights in immovable property situate in the United States are in issue," 28 U.S.C § 1605(a)(4), provide jurisdiction for a municipality' lawsuit seeking to declare the validity of a tax lien c a foreign sovereign's real property when the munic pality does not claim any right to own, use, enter, cor trol or possess the real property at issue?

2. Is it appropriate for U.S. courts to interpret U statutes by relying on international treaties that ha not been signed by the U.S. Government and that c not accurately reflect international practice becau they have only been signed by a limited number other nations?

STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Petitioner The Permanent Mission of India to The United Nations is an agency and instrumentality of The Republic of India, a sovereign state.

Petitioner The Permanent Representative of Mongolia to The United Nations is an agent and instrument of The Republic of Mongolia, a sovereign state.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners The Permanent Mission of India to the United Nations and The Permanent Representative of Mongolia to the United Nations respectfully request that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on April 26, 2006.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Second Circuit, dated April 26, 2006, is reported at 446 F.3d 365 and is reproduced at Appendix ("App.") 1.

The decision of the United States District Court for the Southern District of New York, dated July 7, 2005, is reported at 376 F. Supp. 2d 429 and is reproduced at App. 25.

STATEMENT OF JURISDICTION

Petitioners seek review of the opinion and order of the United States Court of Appeals for the Second Circuit, dated April 26, 2006. The United States Supreme Court has jurisdiction to review decisions of the federal courts of appeals by virtue of 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This appeal raises questions concerning the proper interpretation and scope of 28 U.S.C. § 1605(a)(4), reprinted at App. 46.

STATEMENT OF THE CASE

Petitioners each own a building in Manhattan that is devoted entirely to offices for their respective Permanent Missions to the United Nations and residences for the diplomatic staff attached to those Missions. Every resident in each building possesses either a G-1 or G-2 visa (limited to employees of a permanent mission of a recognized government accredited to an international organization and their immediate families) or an A-1 visa (limited to foreign diplomats and consular officers and immediate family). Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (codified as amended at 8 U.S.C. §§ 1101 *et seq.*). Even though the properties in question are used exclusively to support the two sovereign states' diplomatic missions, the City of New York maintains that these two buildings are subject to the City's real property tax to the extent they are used as residences for diplomats other than an Ambassador or Consul General. As of January 2003, the total amount of taxes assessed by the City exceeded $16 million, after which time the City sued in New York State Supreme Court to enforce tax liens and collect the taxes that arose by operation of statute when the Missions resisted payment, based on their sovereign immunity. The City disclaimed, however, any right to foreclose on the properties or otherwise seek ownership, possession or control of the properties. App. 83-84. The City also instituted parallel actions to collect taxes from

other Missions, including the Republic of the Philippines App. 4 at n.2.

The petitioners removed the actions to the United States District Court for the Southern District of New York under 28 U.S.C. § 1441(d), which provides for removal by a foreign state or its instrumentality. After discovery on the issue of jurisdiction, the petitioners moved to dismiss the City's actions under the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1602 *et seq.*, which provides that subject to existing international agreements and to the enumerated exceptions in 28 U.S.C. § 1605, "a foreign state shall be immune from the jurisdiction of the courts of the United States or of the States. . . . " 28 U.S.C. § 1604.

The district court denied the motion, holding that the City's actions fell within the statutory exception to foreign sovereign immunity created by 28 U.S.C. § 1605(a)(4) for cases "in which . . . rights in immovable property situated in the United States are in issue." App. 5.[1] After requesting the views of the Department of State on the relevance of certain international conventions to the construction of § 1605(a)(4)'s "immovable property" exception, and the diplomatic and foreign relations consequences of recognizing the exception in this case, the Court of Appeals for the Second Circuit rejected the Government's advice and affirmed.[2] The court acknowledged that on "facts very

[1] The district court found it unnecessary to decide whether the City's actions satisfied the separate FSIA exception under 28 U.S.C. § 1605(a)(2) for actions "based upon a commercial activity carried out in the United States by the foreign state." App. 5.

[2] The Court of Appeals concluded that appellate jurisdiction was proper under the collateral order doctrine. App. 5. *See generally Foremost McKesson, Inc. v. Islamic Republic of Iran*, 905 F.2d 438, 443 (D.C. Cir. 1990).

similar to those of this case," the Court of Appeals for the Third Circuit had found the "immovable property" exception did not allow jurisdiction over a New Jersey municipality's real property tax enforcement action against property used by Libya's United Nations Ambassador. App. 20 at n.15. Nevertheless, the Second Circuit rejected the Third Circuit's reasoning, agreeing instead with the district court below, that a real property tax enforcement action constituted a case "in which . . . rights in immovable property . . . are in issue." App. 2, 26.

On June 1, 2006, the Second Circuit stayed issuance of the mandate pending determination of a petition for a writ of certiorari in the Supreme Court.

REASONS FOR GRANTING THE PETITION

A. Review is Necessary to Resolve a Circuit Conflict

If the Second Circuit's ruling below is left to stand, foreign governments that own real property in New Jersey will be immune from real property tax lawsuits while foreign governments that own real property across the Hudson River in New York will be subject to real property tax lawsuits, even if they use the property exclusively for diplomatic purposes. The FSIA was enacted to eliminate "disparate treatment of cases involving foreign governments" because Congress recognized that resentment against disparate treatment in such cases carries "adverse foreign relations consequences." H.R. Rep. No. 1487, 94th Cong., 2d Sess. 13 (1976). Consequently, the FSIA was enacted to provide the sole basis for subject matter jurisdiction over suits against foreign states, and to provide

for removal of state court actions to federal courts in light of "the importance of developing a uniform body of law." H.R. Rep. No. 1487, 94th Cong., 2d Sess. 32 (1976). This Court should grant a writ of certiorari to resolve the Second and Third Circuits' conflicting interpretations of the FSIA's "rights in immovable property" exception to foreign state's sovereign immunity found at 28 U.S.C. § 1605(a)(4) to avoid the inevitable disparate treatment of foreign governments that is sure to flow from the Second Circuit's ruling.

In *City of Englewood v. Socialist People's Libyan Arab Jamahiriya*, 773 F.2d 31 (3d Cir. 1985), the City of Englewood assessed real property taxes on property the Government of Libya had purchased in New Jersey for use as a "weekend retreat" by Libya's Head of Mission, and sued the Government of Libya in New Jersey Tax Court to enforce a tax lien and compel payment of real estate taxes. *Id.* at 32-33. Libya removed the case to federal court and moved to dismiss for lack of subject matter jurisdiction. *Id.* at 32. The district court denied the motion to dismiss finding jurisdiction under the "rights in immovable property" exception to sovereign immunity in 28 U.S.C. § 1605(a)(4). *Id.* at 33-34.

The Third Circuit reversed. It read the text and history of § 1605(a)(4) merely as codifying "the recognized principle of international law that a sovereign may resolve *disputes over title to real estate within its geographical limits.*" *Id.* at 36 (emphasis added). The Third Circuit also relied on *Asociacion de Reclamantes v. United Mexican States*, 735 F.2d 1517, 1522 (D.C. Cir. 1984) (Scalia, J.) *cert. denied*, 470 U.S. 1051 (1985), in which the D.C. Circuit had concluded that the statutory FSIA exemption "like the traditional real property exception it was

intended to codify, is limited to disputes directly implicating property interests or rights to possession." *Id.* Based on the D.C. Circuit's reasoning in *Reclamantes* and its own analysis of the "plain language" of the statute and its legislative history, the Third Circuit concluded that § 1605(a)(4) did not provide jurisdiction to hear a dispute over enforcement of real property taxes or a tax lien because "[n]o one disputes Libya's title to the Englewood premises or its right to exclude others from possession thereof." *Id.*

Although the Second Circuit conceded that the *City of Englewood* case "involved facts very similar to those of this case," App. 20 at n.15, the Second Circuit issued a decision in this case in direct conflict with the Third Circuit's ruling, stating merely that "we decline to adopt the reasoning of *City of Englewood*." *Id.* The Second Circuit purported to rely on the D.C. Circuit's decision in *Reclamantes*, App. 19-20, the same decision the Third Circuit had read to support its opposite interpretation of the scope of the FSIA's "immovable property" exception to sovereign immunity.

As a result of the split caused by the Second Circuit's ruling in this case, the side of the Hudson River on which a foreign state locates a diplomatic mission now determines whether that foreign state's diplomatic mission is subject to local real estate tax litigation. The Second and Third Circuits' different interpretations of the *Reclamantes* opinion also render unclear whether the courts have jurisdiction to enforce tax liens against property owned by foreign sovereigns in the District of Columbia. The need for uniformity in our nation's international relations mandates that the happenstance of where a foreign state locates its diplomatic property in the U.S. should not

determine the extent of that foreign government's sovereign immunity. Given that the D.C., Second and Third Circuits are three of the circuits in which the "immovable property" exception is most likely to arise, it is especially appropriate for this Court to resolve the current federal judicial circuit split over whether the "immovable property" exception in 28 U.S.C. § 1605(a)(4) extends jurisdiction to U.S. courts to enforce tax liens against real property used by foreign sovereigns for diplomatic purposes.

B. The Second Circuit Did Not Properly Consider the United States' Foreign Policy Concerns of Documented Retaliation Against U.S. Property Abroad and Inevitable Conflict with the United Nations

This is not New York City's first attempt to tax foreign diplomatic property. *See Republic of Argentina v. City of New York*, 250 N.E.2d 698 (N.Y. 1969). The City of New York has already sued the Republic of the Philippines, seeking a declaration of validity for a $17.7 million tax lien on the building housing the Philippines' Permanent Mission to the United Nations, and "the City has publicly named other embassies as offenders, and so may well seek to initiate further proceedings if successful here." App. 4 at n.2. Nearly 40 years ago in *Republic of Argentina*, a case heard before the FSIA was enacted, the State Department prophetically warned that "[i]f left unchecked," local government taxation of foreign government-owned real property "will prejudice and hamper the effective conduct of our foreign relations." *Republic of Argentina*, 250 N.E.2d at 700. The Department of State reiterated the very same warning in this case. App. 73-75.

Before ruling in this case, the Second Circuit invited the State Department's advice as to whether diplomatic and foreign relations concerns counsel a narrow or expansive interpretation of § 1605(a)(4). App. 53. In response, the State Department advised the panel that "[c]onsiderations of diplomatic and foreign relations counsel in favor of a narrow reading of the immovable property exception to sovereign immunity, and against an assertion of jurisdiction over this dispute over taxes on a diplomatic property." App. 73. It cautioned that "the U.N. diplomatic community would respond vigorously" to a ruling that allowed municipalities to enforce tax liens against their diplomatic missions and that "a finding of jurisdiction here would . . . trigger a confrontation between the United States and the United Nations that could have serious implications for their diplomatic relationship." App. 73-74. Indeed, it reported that "bilateral relations with one of the sovereign defendants have already been adversely affected by the suit and the district court's assertion of jurisdiction over this sovereign; specifically, the sale of a major piece of U.S.-owned property has been blocked." App. 74-75. Having solicited the State Department's advice, the Second Circuit thereupon rejected the State Department's concerns as "vague" and "speculative." App. 22 at n.17.[3]

[3] The Second Circuit seems to have believed that the Government's concerns deserved less serious consideration because the Government did not submit a "statement of interest" under 28 U.S.C. § 517, but rather provided its views in response to the panel's invitation. App. 21 at n.17. Drawing a negative inference from the Government's initial silence is not consistent with the purpose of the FSIA, which was enacted in part to relieve the executive branch from the obligation to take sides in sovereign immunity disputes. *See Verlinden BV v. Central Bank of Nigeria*, 461 U.S. 480, 488 (1983).

Petitioners do not contend that the State Department's foreign policy views should necessarily govern the construction of § 1605(a)(4)'s "immovable property" exception. Nevertheless, the State Department's views on the foreign policy impact of a specific construction of the "immovable property" exception should be entitled to deference by the courts because matters of diplomatic and foreign policy concerns are uniquely within the province of the Executive Branch. In *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), this Court taught that "the Executive's views on questions within its area of expertise merit greater deference than its opinions regarding the scope of a congressional enactment." *Id.* at 702 n.23. The Second Circuit in this case disregarded the lesson of *Altmann* and relegated its discussion of the Executive's views on the foreign policy impacts of interpreting the "immovable property" exception broadly to a single dismissive footnote, giving little, if any, deference to its views that "considerations of foreign policy . . . counsel heavily in favor of a restrained reading of the immovable property exception to sovereign immunity." App. 75. Given that the United States has 272 embassies, consulates, and diplomatic missions in 166 foreign countries, the diplomatic stakes in this litigation far transcend the interests of the specific parties and include the likely application of similar assertions of jurisdiction and taxation by local governments against U.S. Government-owned property in foreign countries. *See, e.g., Boos v. Barry*, 485 U.S. 312, 323-24 (1988) ("the concept of reciprocity that governs much of international law . . . ensures that similar protections will be accorded those that we send abroad to represent the United States . . . mak[ing] our national interest in protecting [foreign] diplomatic personnel powerful indeed."). Moreover, the negative foreign policy consequences

identified by the Executive were neither "vague" nor "speculative" and surely implicate pressing foreign relations concerns regarding the appropriate interpretation of the Foreign Sovereign Immunities Act that are deserving of serious consideration. As such, this Court's independent review of the Second Circuit's ruling below is warranted.

Additionally, given the diplomatic and foreign policy implications of the judgment below, we respectfully suggest that this case may be an appropriate case in which to invite the Solicitor General to express further the views of the United States.

C. The Second Circuit Impermissibly Used International Law to Expand the FSIA's "Immovable Property" Exception Beyond the Scope Warranted by the FSIA's Text and History

When considering the scope of the term "rights in immovable property" in the FSIA's real property exception to sovereign immunity, 28 U.S.C. § 1605(a)(4),[4] the court's task "is not to give the term the most expansive reading possible, nor to extract from different sources of law an artificial consensus definition of the term, but to determine what Congress meant by the language in this particular statute." *Asociacion de Reclamantes*, 735 F.2d at 1521 (Scalia, J.). Disregarding the D.C. Circuit's admonition, the Second Circuit largely ignored the common law and customary international law background against

[4] Under FSIA, foreign states are immune from jurisdiction in federal as well as state courts unless the dispute falls within one of the exceptions to immunity recognized by that Act. *Verlinden*, 461 U.S. at 489 (1983); *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434-35 (1989).

which the FSIA was written. Instead, and again contrary to the Government's advice, it relied on two international conventions, the European Convention on State Immunity and the UN Convention on Jurisdictional Immunities of States and their Property,[5] to create what the Second Circuit called a "more detailed and workable standard" for § 1605(a)(4)'s exception to a foreign state's sovereign immunity. App. 20. Neither of the conventions relied upon by the Second Circuit accurately reflects international practice in 1976 when Congress enacted the FSIA, and neither reflects the current state of international law in 2006. Indeed, as the State Department advised the panel and as all the parties agreed, App. 58-59, 77 and 94, the European Convention and the UN Convention do not apply to cases like this one, but rather apply exclusively to the relations between states and *private* parties.[6] Moreover, neither document has been signed by the United States, or by the foreign sovereign petitioners in this case. Additionally, although the European Convention antedated the FSIA, it does not serve as a reliable indicator of international law because, while it has been open for signature for more than 34 years, only eight of the 47 member states of the Council of Europe have signed it. As for the UN Convention, it postdates the FSIA by 28 years

[5] European Convention on State Immunity, May 16, 1972, ETS No. 74, *reprinted in* 11 ILM 470 (1972); U.N. Convention on Jurisdictional Immunities of States and Their Property, G.A. Res. 59/38, U.N. Doc. A/RES/59/38 (Dec. 2, 2004).

[6] Although petitioners do not contend that the Executive Branch's views are necessarily determinative of the construction of § 1605(a)(4), to the extent that the Second Circuit relied on international conventions to interpret § 1605(a)(4), certainly the State Department's developed expertise in the application of those international conventions deserved deference and was relevant to the court's inquiry.

and has not been signed by a sufficient number of states to come into effect.

While international conventions may inform the proper interpretation of U.S. law intended to codify preexisting international law, it is not permissible to use international conventions that have not been signed by the United States, do not accurately reflect international practice and, in the case of the UN Convention, postdate FSIA to read into Congress's text a "more detailed and workable" standard that Congress did not supply. App. 20. Indeed, to the extent that the European Convention's text may be used to interpret what Congress meant, the relevant portions of the European Convention text have been identified in the FSIA's legislative history. Thus, 28 U.S.C. § 1607(b), which provides an exception to sovereign immunity for counterclaims "arising out of" the subject matter of the foreign state's claims, may properly be interpreted in light of the European Convention's similar language because the House Report says that this statutory exemption is "based upon article 1 of the European Convention." H.R. Rep. No. 1487, 94th Cong., 2d Sess. 23 (1976). In contrast, Congress did not use the European Convention's "arising out of" language when it enacted § 1605(a)(4). While the European Convention's immovable property exception applies to all "obligations arising out of" immovable property, *see supra* n.5, ETS No. 74 at Art. 9, the U.S. Congress did not borrow the "arising out of" test for the immovable property exception when it enacted the FSIA. Rather, it selected very different language, applicable only to cases in which "rights in immovable property" are "in issue." 28 U.S.C. § 1605(a)(4). Where, as here, Congress selected the European Convention's broad "arising out of" language in one section of the statute, but

chose narrower "in issue" language in other parts of th same statute, basic rules of statutory construction requir that the different language be given different effect. *See e.g., United States v. Gonzales*, 520 U.S. 1, 5 (1997 ("Where Congress includes particular language in on section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely."). Accordingly, the only guidance available from the European Convention's immovable property exception is that Congress intended a narrower exception when it enacted § 1605(a)(4).

The Second Circuit's importation of the Europear Convention's "arising out of" test to expand the scope o § 1605(a)(4) is suspect for other reasons as well. At th time the FSIA was enacted, settled international practic used a broad "arising out of" test to identify when foreig sovereigns were *immune*. Under this test, a foreign sove eign was generally immune from suit in cases involving "*claim arising out of* a foreign state's ownership or posse sion of immovable property," but the foreign sovereign w not immune from cases involving a claim "contesting su ownership or the right to possession." Restatement (S ond) of Foreign Relations Law § 68, cmt. d (1965) (empl sis added); *see also Documents of the Thirty-Fifth Sessic* 1983 Y.B. Int'l L. Comm'n 48, U.N. Sales No. E.84.V (Part I) ("judicial practice . . . seems to bear out the sence of immunity for proceedings involving determinat of ownership of property and its acquisition or title unc the internal law of the State of the *situs* by the territor court").

The Second Circuit also ignored the distinction un U.S. law between "rights in" real property and m security interests in real property. As this Court held

Department of the Army v. Blue Fox, Inc., 525 U.S. 255, 262 (1999), liens "are merely a means to the end of satisfying a claim for the recovery of money." The City's lien is merely a device through which the City may seek to enforce its tax claim. The lien is not a "right in immovable property" as that phrase has traditionally been understood by United States courts. Rather, a lien is a mere "charge on [the] property," which "confers no general right of property." *Marine Midland Bank v. Marcal Enterprises, Inc.*, 398 N.Y.S.2d 782, 783 (N.Y. Co. Ct. 1977), *aff'd per curiam*, 407 N.Y.S.2d 833 (N.Y. App. Div. 1978); *see also* Restatement (First) of Property § 540, cmt. a (1944) (a lien is "merely additional security"); *Bertie's Apple Valley Farms v. United States*, 476 F.2d 291, 292 (9th Cir. 1973) (per curiam) (distinguishing between "title interest" in property as to which U.S. has not waived sovereign immunity and "lien interest"); *Terry Contracting Inc. v. State of New York*, 273 N.Y.S.2d 528, 532 (N.Y. Ct. Cl. 1966) ("[a] 'lien' is not a property in or right to the thing itself"), *rev'd on other grounds*, 280 N.Y.S.2d 450 (N.Y. App. Div. 1967).

This body of established U.S. domestic law at the time the FSIA was enacted strongly suggests that Congress intended to make a distinction between "rights in" real property and mere security interests (such as liens) when it enacted § 1605(a)(4). It is therefore not surprising that the Second Circuit failed to identify a single instance prior to the enactment of FSIA in which a court exercised jurisdiction over a foreign sovereign to adjudicate a dispute over the taxation of real property or the validity of a tax lien. The two state law cases upon which the court relied provide no support for its conclusion. In *Republic of Argentina*, the sovereign republic sued for, and won, a declaratory judgment that it was exempt from the City's

real estate tax and that the City's tax liens were void. 25 N.E.2d 698. The New York Court of Appeals agreed wit Argentina and with the State Department that "under recognized principles of international law and comity th several states of the United States, as well as their polit cal subdivisions, should not assess taxes against foreig government-owned property used for public noncommer cial purposes." *Id.* at 700. Argentina waived its sovereig immunity from suit by "seeking affirmative benefit fro the litigation," *i.e.*, a declaration that it was immune fro taxation. *Aboujdid* v. *Singapore Airlines, Ltd.*, 494 N.E.2 1055, 1059 (N.Y. 1986) (citing *De Sapio v. Kohlmeyer*, 3 N.E.2d 770, 772 (N.Y. 1974)). That the New York cou accepted jurisdiction at Argentina's request provides support for the Second Circuit's conclusion that "at th time of the FSIA's enactment, courts had jurisdiction hear disputes such as this one" in which the City has su unconsenting sovereigns to enforce a tax lien. App. 17 n.12.

The Second Circuit's reliance on *United States v. Ci of Glen Cove*, 322 F. Supp. 149 (E.D.N.Y. 1971), w equally misplaced. In *Glen Cove*, the United States won injunction barring the local government from imposing enforcing a real estate tax against property of the Sov Union's Mission to the United Nations. The Soviet Un was not a party to that lawsuit, and Glen Cove's lc scarcely supports the notion that the city could have su the unconsenting Soviet Union to enforce its tax.[7]

[7] *The Schooner Exch. v. M'Faddon*, 11 U.S. (7 Cranch) 116, 1 (1812), does not support the proposition that "when owning prope here" a foreign state subjects itself to the same local laws a burdens as any other property owner. App. 16-17. The quo

(Continued on following page)

The Second Circuit's decision in this case raises important questions concerning the proper interpretation of a U.S. statute intended to codify international law. Where, as here, the lower court relied on international conventions that the U.S. and the majority of European States have refused to sign while ignoring well-settled contemporaneous international law to create a very broad real property exception to a foreign state's sovereign immunity under § 1605(a)(4) that is unsupported by prior U.S. legal precedent, and is in fact in direct conflict with a sister circuit's ruling, this Court should grant review of the decision.

D. The Second Circuit Erroneously Used Present-Day Appropriations Bills to Interpret What Congress Intended When Enacting 28 U.S.C. § 1605(a)(4) in 1976

The Second Circuit also turned to appropriations laws that were enacted in 2004 and 2005, almost 30 years after the FSIA was written, to support its proposition that in 1976 Congress intended the "immovable property" exception to the FSIA to grant jurisdiction to U.S. courts to enforce a tax lien against a foreign sovereign's property used exclusively to support its diplomatic mission. App. 5-6. These appropriations laws require that 110 percent of unpaid property taxes owed by any country be withheld from that country's foreign aid, with the exact amount of taxes due to be determined "in a court order or judgment entered against such country by a court of the United

passage *distinguishes* between property that a "prince" acquires as a personal investment and the property owned and used by a sovereign in its sovereign capacity.

States or any State or subdivision thereof." Foreign Opera tions, Export Financing, and Related Programs Appropria tions Act of 2006, Pub. L. No. 109-102, 119 Stat. 2172, 2214-15, § 543 (2005); Consolidated Appropriations Act (2005, Pub. L. No. 108-447, 118 Stat. 2809, 3011-12, § 54 (2004).

The Second Circuit's reliance on the two appropriation bills disregards this Court's repeated warning against usin the "views of a subsequent Congress" to "infer[] the intent (an earlier one." *United States v. Price*, 361 U.S. 304, 31: (1960). This warning carries special force where appropria tions bills are concerned. *See TVA v. Hill*, 437 U.S. 15' 190 (1973); *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 54' 629 (1990) (O'Connor, J., joined by Rehnquist, C.J., Scali & Kennedy, J.J., dissenting), *overruled on other ground* by *Adarand Constructors, Inc. v. Pena*, 515 U.S. 20 (1995). The effect of later appropriations bills on extar substantive legislation must be "construed narrowly *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1558 (D.(Cir. 1984) (Bork, J.) (citing *United States v. Langston*, 11 U.S. 389 (1886)). Moreover, there is no reason to read thes appropriations bills, as the Second Circuit appears to hav read them, as a congressional endorsement of New Yor City's construction of the "immovable real propert exception. It is a simple fact that the FSIA's exception f actions "based upon a commercial activity" provides a independent basis for jurisdiction to enforce a tax lie where some or all of a foreign sovereign's property has bee used for commercial purposes. 28 U.S.C. § 1605(a)(2). A such, Congress's requirement to withhold a country's unpa property taxes from foreign aid by no means requires or eve suggests that the FSIA's "immovable property" exceptic

must encompass jurisdiction for actions to enforce a tax lien. The Second Circuit's attempt to rewrite statutory history with present-day appropriations bills is unsupportable and should not be allowed to stand.

CONCLUSION

For all the foregoing reasons, Petitioners respectfully request that the Supreme Court grant review of these cases.[8]

Dated: New York, New York
July 25, 2006

Respectfully submitted,

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[8] As we noted earlier, we respectfully suggest that this case is an appropriate case in which to invite the Solicitor General to express the views of the United States.

446 F.3d 365

United States Court of Appeals, Second Circuit.
The CITY OF NEW YORK, Plaintiff-Appellee,
v.
THE PERMANENT MISSION OF INDIA TO THE UNITED NATIONS and Bayaryn Jargalsaikhan, as principal resident representative to the United Nations the Mongolian People's Republic, Defendants-Appellants Great American Leasing Corporation and Jane Doe, The names of the last 20 defendants being unknown to the plaintiff, the persons or parties intended to be persons c corporations, if any, having or claiming an interest in or li upon the property described in the complaint, Defendants
Docket Nos. 05-4260-CV(L), 05-42639-CV(CON).

Argued: Jan. 23, 2006.
Decided: April 26, 2006.

Norman Corenthal, Assistant Corporation Coun (Kristin M. Helmers and John Low-Beer, of counsel), Michael A. Cardozo, Corporation Counsel of the City c New York, New York, N.Y., for Plaintiff-Appellee.

John J.P. Howley (Robert A. Kandel and Robert Gra of counsel), Kaye Scholer LLP, New York, N.Y., for Defe dant-Appellee.

Before: KATZMANN and HALL, Circuit Judge KORMAN, District Judge.[1]

KATZMANN, Circuit Judge.

This case arises out of the City of New York's (t "City") attempts to collect property taxes from certa

[1] The Honorable Edward R. Korman, Chief United States Judge the Eastern District of New York, sitting by designation.