No. 14-770

IN THE

Supreme Court of the United States

BANK MARKAZI, AKA THE CENTRAL BANK OF IRAN,
Petitioner,

v.

DEBORAH PETERSON, ET AL.,
Respondents.

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

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QUESTION PRESENTED

Whether Section 502 of the Iran Threat Reduction and Syria Human Rights Act, 22 U.S.C. § 8772, violates the constitutional separation of powers because it amends existing law applicable to claims seeking execution against particular assets to satisfy federal-court judgments obtained by victims of state-sponsored terrorism.

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INTRODUCTION

Petitioner Bank Markazi, the central bank of Iran, seeks to evade responsibility for horrific acts of terrorism that federal courts have definitively concluded that Iran committed. Those courts have awarded billions of dollars in damages in final judgments whose validity petitioner does not dispute. Nevertheless, petitioner claims that assets it owns in the United States cannot be used to satisfy these judgments because they are not subject to execution. In our constitutional structure, however, whether foreign states' property is immune from execution is a decision for the political Branches—in particular, Congress. And Congress has exercised that authority, enacting a statute that, on the facts of this case, entitles respondents—more than 1,000 of Iran's victims—to relief.

Petitioner urges the Court to disregard Congress's direction, and to declare the law eliminating alleged obstacles to execution unconstitutional. But petitioner does not contend that the statute in dispute, 22 U.S.C. § 8772, oversteps any enumerated constitutional constraint on Congress's power. Petitioner instead asks the Court to pronounce two new, unwritten limitations on congressional authority, which it asserts can be inferred from the separation of powers writ large. Its arguments for novel, atextual limitations on Congress's authority are baseless and subvert the constitutional structure.

Petitioner's submission starts from the fundamentally flawed premise that federal courts are free to impose on other Branches restrictions that the Framers did not. That premise is irreconcilable with the constitutional design. The Constitution places specific outer limits on Congress's authority: Con-

gress may exercise only its enumerated powers, cannot intrude on powers conferred on other Branches, and cannot contravene specific prohibitions on federal law. Within those boundaries, courts cannot superimpose additional limits on Congress's authority. It would defeat the carefully crafted structure of checks and balances to allow courts to invent additional strictures on an ad hoc basis.

The limits petitioner asks this Court to find in the constitutional ether are disconnected from—indeed, contrary to—well-established principles and precedent. Petitioner proposes novel prohibitions on laws that affect a "single pending case" or "effectively dictate the outcome" of particular cases. Neither limit has any basis in the Constitution's text or structure or in this Court's case law. Petitioner tries to ground both limits in Article III, but no plausible reading of the Constitution's grant of the "judicial Power" supports either of petitioner's contrived restrictions. Congress may not nullify final federal-court judgments, but nothing in the Constitution bars Congress either from modifying the applicable law *before* the Judicial Department has rendered a final decision, or from modifying the terms on which that judgment may be enforced. The Framers' inclusion of express provisions addressing particularized or retroactive laws makes petitioner's effort to read into Article III unwritten limitations on the same topics untenable. Indeed, only petitioner knows what exactly either of its proposed exceptions encompasses. Ambiguous and elastic boundaries—whose meaning neither Congress nor the Executive can discern—only hinder the proper functioning of the separation of powers.

The unprecedented and inscrutable constraints petitioner advocates are academic in any event because neither would apply to Section 8772. That statute does not affect only a single pending case; this proceeding is a composite of more than a dozen consolidated actions—comprising claims of more than 1,000 victims of multiple acts of Iran-sponsored terrorism over three decades, who already hold numerous binding (but unpaid) judgments. Some of those actions were added to the docket *after* Section 8772 opened this proceeding to *all* victims of Iranian terrorism. Section 8772 also does not decree Iran liable to anyone; Iran's liability has already been definitively adjudicated. And Section 8772 does not even make execution a foregone conclusion—as the district court, tasked with finding the relevant facts, made clear. Moreover, Section 8772 merely provides an additional path to the same result that would have obtained under the Terrorism Risk Insurance Act of 2002 ("TRIA")—whose constitutionality petitioner does not question, and which (as the district court concluded) independently entitles respondents to execution.

Petitioner transparently seeks to evade the will of the political Branches by foreclosing one of the few available avenues for Iran's victims—many of whom have waited decades for relief—to collect their judgments. Crediting petitioner's arguments would mark a significant departure from this Court's precedent and the constitutional structure. This Court should reject petitioner's effort to distort this Republic's Constitution for its own gain, and should affirm the court of appeals' judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional provisions, statutes, and rules are reprinted in Appendix B, *infra*.

STATEMENT

1. Determining whether private citizens may seek redress for wrongs committed by foreign states has always been the domain of the political Branches. Originally, foreign states enjoyed "virtually absolute immunity" from suit. *Verlinden B.V.* v. *Cent. Bank of Nigeria*, 461 U.S. 480, 486 (1983). "[F]oreign sovereign immunity," however, "is a matter of grace and comity" rather than a constitutional requirement, and "this Court consistently has deferred to the decisions of the political branches … on whether to take jurisdiction over actions against foreign sovereigns and their instrumentalities." *Ibid.* (citing *The Schooner Exchange* v. *McFaddon*, 11 U.S. (7 Cranch) 116 (1812)). In particular, "[b]y reason of its authority over foreign commerce and foreign relations, Congress has the undisputed power to decide, as a matter of federal law, whether and under what circumstances foreign nations should be amenable to suit in the United States." *Id.* at 493.

Congress did not enact general legislation addressing foreign sovereign immunity for many years. In the interim, courts looked to the Executive Branch for guidance. *Verlinden*, 461 U.S. at 486-87. The Executive ultimately adopted a "restrictive" theory of foreign sovereign immunity, under which only foreign states' public acts, but not their "commercial acts," were immune. *Id.* at 487. The Executive's views, however, increasingly failed to provide courts with adequate guidance. *See id.* at 487-88.

Congress intervened in 1976 by enacting the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1602 *et seq.*, which created a "'comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state.'" *Republic of Argentina* v. *NML Capital, Ltd.*, 134 S. Ct. 2250, 2255 (2014) (citation omitted). "For the most part," the FSIA "codifie[d]" the restrictive theory, but it established various exceptions permitting particular types of suits. *Verlinden*, 461 U.S. at 488; *see* 28 U.S.C. §§ 1604-1607. The FSIA also addresses immunity of foreign states' property from execution, likewise subject to an array of exceptions. *See* 28 U.S.C. §§ 1609-1611. Over time Congress has amended and added to these exceptions to make redress available in additional circumstances.

One area where Congress has steadily sought to make relief more readily available involves victims of terrorism sponsored by foreign states—including petitioner's sole owner, Iran. Iran has long sponsored and financed terrorist attacks. *Peterson* v. *Islamic Republic of Iran*, 264 F. Supp. 2d 46, 51-55 (D.D.C. 2003). For example, in 1983, Hezbollah—sponsored by Iran—detonated a truck bomb at a Marine barracks in Beirut, Lebanon, killing 241 American servicemen and wounding dozens more. *Ibid.* Another 19 U.S. servicemen were killed, and hundreds more wounded, in the 1996 bombing of the Khobar Towers in Saudi Arabia. *Estate of Heiser* v. *Islamic Republic of Iran*, 807 F. Supp. 2d 9, 11 (D.D.C. 2011).

Before 1996, victims of such horrific attacks were unable to seek damages against Iran because "foreign States were immune from civil liability in U.S. courts for injuries caused by acts of terrorism carried out by their agents and proxies." Jennifer K. Elsea,

Cong. Research Serv., RL31258, *Suits Against Terrorist States by Victims of Terrorism* 1 (2008). Congress amended the FSIA in 1996 to allow suits by U.S. victims of acts of terrorism committed by a state or its agents. *See* 28 U.S.C. § 1605(a)(7), *recodified as amended at id.* § 1605A.

2. Respondents are more than 1,000 American victims of Iran-sponsored terrorist attacks and their surviving family members and representatives. Pet. App. 21a, 52a-53a; *see also id.* at 130a-44a. Following the statutory amendments permitting terrorism-based suits against foreign states, respondents brought numerous separate actions against Iran for terrorist attacks that it had financed and organized. *Id.* at 16a-19a, 52a-53a n.1 (listing cases); Appendix A. Respondent Deborah Peterson, for example, is the representative of the estate of her brother, Lance Cpl. James C. Knipple, who was killed in the Beirut Marine-barracks bombing. In 2001, Peterson brought a wrongful-death action against Iran for its role in that attack. *Peterson*, 264 F. Supp. 2d 46. Hundreds of other similarly aggrieved families and survivors (collectively the "*Peterson* respondents") joined her in that action.

Although duly served, Iran refused to appear in any of these actions. The FSIA, however, does not allow courts automatically to enter default judgments against foreign states. 28 U.S.C. § 1608(e). Instead, the claimants must establish their claims "by evidence satisfactory to the court." *Ibid*. After bench trials, the courts in respondents' cases held that the plaintiffs proved by "clear and convincing evidence" that Iran was liable for the terrorist attacks that harmed respondents and their families. *See*, *e.g.*, *Peterson*, 264 F. Supp. 2d at 48, 61. Collec-

tively, respondents have "obtained billions of dollars in judgments against Iran." Pet. App. 53a. While not disputing the validity of these final judgments, Iran has refused to satisfy them, and consequently the "vast majority … remain unpaid." *Ibid.*

Because terrorism victims have faced great difficulty collecting final judgments, Congress has enacted several statutes specifically addressing execution. In 2002, Congress enacted TRIA Section 201(a), which subjects assets of a "terrorist party" to execution by judgment-holders when those assets have been "blocked," *i.e.*, frozen, by the President. Pub. L. No. 107-297, § 201(a), 116 Stat. 2322, 2337 (codified at 28 U.S.C. § 1610 note). Section 201(a) provides:

> Notwithstanding any other provision of law, … in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, … the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment ….

Ibid.; *see also* 28 U.S.C. § 1610(f)(1)(A), (g)(1).

3. Petitioner Bank Markazi—Iran's wholly owned central bank—attempted to conceal its interest in nearly $2 billion in bonds it held at an account at Citibank in New York through a chain of middlemen (the "Iranian Assets"). Pet. App. 2a.[1] The ac-

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[1] The last of the bonds matured in 2012, and the Iranian Assets now consist entirely of cash. Pet. App. 61a, 64a.

count at Citibank is an omnibus account for Clearstream Bank, S.A., a Luxembourg-based financial intermediary, which maintains the account for (among others) the Italian bank Banca UBAE S.p.A., "whose customer, in turn, is Bank Markazi." Pet. App. 2a. Clearstream since has paid a $152 million fine to settle its potential liability for violating sanctions against Iran in its dealings with respect to the Iranian Assets. Press Release, U.S. Treasury Dep't, Treasury Department Reaches Landmark $152 Million Settlement with Clearstream Banking, S.A. (Jan. 23, 2014), http://tinyurl.com/otdl4qg.

After discovering petitioner's interest in the Iranian Assets, the *Peterson* respondents sought restraints on them in the Southern District of New York. Pet. App. 3a. That court restrained the assets, and the *Peterson* respondents commenced an action seeking turnover to satisfy their judgments. *Id.* at 12a-14a, 62a-63a. Other groups of terrorist-victim plaintiffs who had obtained judgments against Iran served Citibank or Clearstream with similar restraining notices asserting claims on the Iranian Assets. *Id.* at 15a. The district court authorized Citibank to serve interpleader petitions on those respondents. *Ibid*. Still other plaintiff groups were added to this consolidated case by motions to intervene or by agreement. *Id*. at 15a-19a. All told, as many as 19 separate actions—comprising well over a thousand individuals—have been consolidated. *Id.* at 16a-19a, 52a-53a & n.1.

While those proceedings were pending, President Obama issued an Executive Order blocking all assets of Iran and its agencies and instrumentalities (including petitioner) "that are in the United States." Exec. Order No. 13,599, 77 Fed. Reg. 6659, 6659

(Feb. 5, 2012). The Order sought to combat "the deceptive practices of the Central Bank of Iran and other Iranian banks to conceal transactions of sanctioned parties." *Ibid*. Citibank placed the Iranian Assets in a segregated account, as required by federal regulations. Pet. App. 64a. Once the Iranian Assets were blocked, respondents sought turnover under TRIA Section 201(a), and moved for summary judgment under that statute. *Id*. at 3a.

4. In August 2012, while the parties litigated turnover under TRIA Section 201(a), Congress enacted, and the President signed, the Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, 126 Stat. 1214. Section 502 of that Act, codified at 22 U.S.C. § 8772, provides that, "notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempting any inconsistent provision of State law," assets "shall be subject to execution" if:

- the assets are "blocked assets";
- they are "equal in value to a financial asset of Iran";
- they are "held in the United States for a foreign securities intermediary doing business in the United States";
- they are among "the financial assets that are identified in and the subject of proceedings in" this consolidated action;
- they "remain restrained by court order";
- execution is sought to "satisfy any judgment … against Iran for damages for personal injury or death caused by" "extrajudicial killing" and other enumerated terrorist acts; *and*

- the court "determine[s]" that (1) "Iran holds equitable title to, or the beneficial interest in, the assets," and (2) "no other person possesses a constitutionally protected interest in the[m]."

Id. § 8772(a)-(b). Section 8772 defines "Iran" to include petitioner. *Id*. § 8772(d)(3).

Section 8772, like TRIA Section 201(a), thus provides an independent basis to execute against the Iranian Assets, but in certain respects Section 8772 expands the circumstances in which the enhanced execution remedies apply. While Section 201(a) permits execution only for judgments under specific FSIA provisions, Section 8772 applies to "any judgment" against Iran for enumerated acts of terrorism. 22 U.S.C. § 8772(a)(1). It also permits execution "whether or not" the blocked assets are "subsequently unblocked." *Id*. § 8772(a)(1)(B).

In one important respect, Section 8772 is narrower than TRIA Section 201(a): It applies only to the assets that are "the subject of" these consolidated proceedings, *i.e.*, the Iranian Assets. 22 U.S.C. § 8772(b), (c)(1). Section 8772 does not, however, confine its effect solely to the parties already part of the consolidated case when Section 8772 took effect in October 2012. Indeed, months after Section 8772's effective date, additional terrorism victims holding judgments against Iran intervened to assert claims to the Iranian Assets. Pet. App. 18a-19a. As the district court recognized, "*all* potential claimants to the [Iranian] Assets" were "brought before this Court in these proceedings," enabling the court to discharge Citibank "from any and all liability with respect to any and all claims made by any party with regard to the [Iranian] Assets." *Id*. at 21a (emphasis added).

In light of Section 8772, respondents supplemented their summary-judgment motion, arguing that Section 8772's requirements were met and provided an additional basis for execution. Pet. App. 4a. Petitioner and the other defendants "d[id] not dispute the validity of plaintiffs' judgments," but did dispute whether the Iranian Assets were subject to turnover under the TRIA and Section 8772. *Id*. at 55a. Clearstream, for example, argued (*inter alia*) that Section 8772 did not permit execution because Clearstream had a constitutionally protected interest in the Iranian Assets. *See id.* at 109a, 111a-12a, 116a-19a; 22 U.S.C. § 8772(a)(2)(B); *see also* Clearstream § 8772 Summ. J. Opp. 11-19 (S.D.N.Y. Oct. 26, 2012) (sealed) ("Clearstream S.J. Opp.").

5. The district court granted respondents summary judgment. Pet. App. 4a. It first concluded that the blocked Iranian Assets are subject to turnover under TRIA Section 201(a) because petitioner "is the[ir] only owner." *Id.* at 97a-98a & n.10.

The court further held that Section 8772 independently authorizes execution. Pet. App. 111a-13a. The court rejected petitioner's contention that Section 8772 violates the separation of powers, explaining that the statute "does not 'usurp the adjudicative function assigned to the federal courts,'" but "merely 'changes the law applicable to pending cases.'" *Id.* at 115a (brackets and citation omitted). Section 8772 also does not "dictate specific factual findings," but rather "requires the Court to make determinations." *Id*. at 114a-15a. While the court ultimately found each necessary element satisfied, "it [was] quite possible that the Court could have found that defendants raised a triable issue" on several of them, and

"[t]here [was] frankly plenty for th[e] Court to adjudicate." *Id.* at 115a.

The district court rejected petitioner's remaining arguments and ordered Citibank to turn over the Iranian Assets. Pet. App. 22a-26a. Respondents subsequently "settled with Clearstream and UBAE," leaving petitioner "as the sole appellant." *Id.* at 4a.

6. The Second Circuit unanimously affirmed. Pet. App. 1a-12a. Although the parties fully briefed turnover under the TRIA, the court found it unnecessary to decide that issue because it held that respondents were entitled to execution under Section 8772. *Id.* at 5a.

Petitioner argued that Section 8772 "violat[es] the separation of powers between the legislative branch and the judiciary under Article III by compelling the courts to reach a predetermined result." Pet. App. 7a. Petitioner acknowledged that statutes comport with Article III and this Court's decision in *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872), if they "merely 'chang[e] the law applicable to pending cases,'" but contended that Section 8772 violated that principle. Pet. C.A. Br. 48-49 (citation omitted).

The Second Circuit rejected petitioner's contentions. Under this Court's case law, it explained, while "Congress may not usurp the adjudicative function assigned to the federal courts," Congress "may change the law applicable to pending cases, even when the result under the revised law is clear." Pet. App. 8a (internal quotation marks and brackets omitted). Section 8772, the court held, comports with that principle. *Id.* at 9a. It "does not compel judicial findings under old law; rather, it changes the law applicable to this case … [and] explicitly leaves

the determination of certain facts to the courts." *Ibid.* The court analogized Section 8772 to the statute upheld by this Court in *Robertson* v. *Seattle Audubon Society*, 503 U.S. 429 (1992). Just as the statute in *Robertson* was permissible because it "'affected the adjudication of the cases'" by "'effectively modifying the provisions at issue in those cases,' not by compelling findings or results under those provisions," Section 8772 "does not compel judicial findings under old law; rather, it changes the law applicable to this case." Pet. App. 8a-9a (quoting *Robertson*, 503 U.S. at 440).[2]

The court of appeals denied rehearing. Pet. App. 128a.

SUMMARY OF ARGUMENT

I. Section 8772 is fully consistent with the separation of powers.

A. This Court's precedents and the Constitution's structure establish that Congress may enact laws that affect pending litigation; that are tailored to particular property, persons, or claims; and that are dispositive of particular claims. This Court has upheld statutes enacted to govern the outcome of specific, pending litigation concerning a single

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[2] Petitioner did not argue below, as it does now, that Article III and *Klein* forbid Congress from legislating as to a "single pending case." Pet. Br. 22; *see* Pet. C.A. Br. 48-56. Consequently, neither court below addressed that contention. Petitioner did argue that permitting turnover would constitute an unlawful taking and would violate the Treaty of Amity between the United States and Iran. The Second Circuit rejected both contentions. Pet. App. 5a-7a, 10a-11a.

bridge, particular forests, or a known, closed set of specific pending lawsuits.

Klein, 80 U.S. (13 Wall.) 128, casts no doubt on these principles. *Klein* confirmed that Congress may change the outcome in specific cases so long as Congress does so by altering the applicable law. *Klein* merely recognized the corollary that Congress may not direct Article III courts to reach a specific result, or dictate what effect to give particular evidence, *without* changing the applicable law—including where, as in *Klein* itself, Congress lacks authority to alter that law.

These principles and precedents resolve this case. Petitioner concedes that Section 8772 establishes new legal standards. And the subjects it addresses—federal-court jurisdiction and procedure, and the immunity *vel non* of foreign sovereigns' assets from execution—fall squarely within Congress's authority.

B. Petitioner nevertheless urges the Court to invalidate Section 8772 by adopting two unprecedented exceptions to Congress's authority: prohibitions on statutes that change the law for a "single pending case," or that "effectively dictat[e] the outcome" of specific cases. Pet. Br. 22, 42. Neither exception has any foothold in the constitutional text or structure or in this Court's precedents. Both exceptions, moreover, are arbitrary and impractical, and would yield irrational results and blur the "clear distinctions" essential to the separation of powers. *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 226 (1995).

Each purported exception is unavailing for petitioner in any event because neither would apply to Section 8772. The statute does *not* affect only a sin-

gle pending case. Although it applies only to these proceedings, these proceedings encompass numerous claims for execution against particular assets by *any* victim of Iranian terrorism consolidated in this omnibus action—including individuals added to the case *after* Section 8772's enactment. Section 8772 also does not dictate the outcome of those claims. It establishes legal standards requiring courts to make various determinations that could be, and were, disputed here. And it permits execution only to the extent that the assets remain restrained by court order—restraints that, under state law, the court retained broad discretion to lift for various reasons.

II. This Court need not—and therefore should not—decide petitioner's constitutional attack on Section 8772 because it can and should affirm the judgment below on an independent ground. As the district court correctly held, petitioners are separately entitled to execution under TRIA Section 201(a), which is not even arguably subject to petitioner's constitutional challenges. Petitioner's arguments below that its 100-percent interest in the Iranian Assets is insufficient for execution under Section 201(a) are meritless.

ARGUMENT

I. SECTION 8772 COMPORTS WITH THE SEPARATION OF POWERS.

Section 8772's validity follows straightforwardly from first principles and settled precedent establishing that Congress may amend the law applicable to pending cases. Petitioner invites the Court to strike down that statute based on arbitrary exceptions to this principle that lack any foundation in the Consti-

tution or this Court's case law. The Court should decline.

A. Section 8772 Is A Valid Exercise Of Congress's Power To Modify The Law Applicable To Pending Cases.

This Court's decisions make clear that Congress may alter the law applicable to pending litigation—even if the change affects only a limited number of claims, and even if it resolves the only seriously disputed issues in a given case. This Court has repeatedly upheld statutes that did just that. Section 8772 is fully consistent with these principles because it merely changed the law applicable to claims concerning specific property, on subjects within Congress's authority.

1. Congress May Amend The Law For Particular Pending Cases In Outcome-Determinative Ways.

a. Three well-settled principles together establish Congress's authority to amend the law applicable to specific pending cases in ways that influence the cases' outcome.

i. First, Congress unquestionably can amend the law applicable to pending civil cases, and courts must apply the law in effect at the time they render judgment. *See*, *e.g.*, *Plaut*, 514 U.S. at 226. Even after a trial court has rendered judgment, "if subsequent to th[at] judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied." *United States* v. *Schooner Peggy*, 5 U.S. (1 Cranch) 103, 110 (1801). And "[i]f the law be constitutional, … no court … can contest its obligation." *Ibid.* Congress's power to al-

ter the applicable law ceases only when "all appeals have been forgone or completed," and the "final word of the [judicial] department as a whole" has been rendered. *Plaut*, 514 U.S. at 227.

The Constitution's structure reinforces this principle. The Framers established several specific restrictions on retroactive legislation, but those "restrictions … are of limited scope." *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 267 (1994). The *Ex Post Facto* Clause, U.S. Const. art. I, § 9, cl. 3, prohibits laws that impose or increase penal sanctions for prior acts. The prohibition on federal bills of attainder, *ibid.*, "prohibit[s]" laws that "singl[e] out disfavored persons and met[e] out summary punishment for past conduct." *Landgraf*, 511 U.S. at 266. The Takings Clause forbids "depriving private persons of vested property rights except for a 'public use and upon payment of 'just compensation.'" *Ibid.* (quoting U.S. Const. amend. V). And "retroactive application" of a statute may lack a "justification sufficient" to satisfy due process. *Ibid.* "Absent a violation of one of those specific provisions," however, "the potential unfairness of retroactive civil legislation is not a sufficient reason for a court to fail to give a statute its intended scope." *Id.* at 267. Indeed, the existence of these specific restrictions—and their particular prerequisites—presupposes that Congress otherwise may change the law in pending cases. Congress must "make its intention" to legislate retroactively

"clear." *Id.* at 268. But where it does so, courts must apply that law in pending cases. *See id.* at 273, 280.[3]

ii. Second, Congress indisputably can alter the law applicable to particular persons, property, or claims. "[L]aws that impose a duty or liability upon a single individual or firm are not on that account invalid," and "Congress may legislate 'a legitimate class of one.'" *Plaut*, 514 U.S. at 239 n.9 (citation omitted). The Court has repeatedly upheld laws addressed to specific property that was the subject of particular lawsuits—even a single case. *See*, *e.g.*, *Robertson*, 503 U.S. at 435, 437-41 (upholding statute concerning 13 specific forests in two States in two pending lawsuits specified in the statute); *Pennsylvania* v. *Wheeling & Belmont Bridge Co.* (*Wheeling Bridge*), 59 U.S. (18 How.) 421, 429, 431-32 (1856) (upholding statute declaring particular bridge lawful that this Court had previously held unlawful).

This, too, fits perfectly with the Constitution's structure. The Constitution is not silent regarding particularized legislation, but establishes specific limits on it, such as the Bill of Attainder Clause. Such express prohibitions counsel strongly against reading in unwritten limitations. Otherwise, this Court "would not have the extensive jurisprudence that [it] do[es] concerning the Bill of Attainder Clause," which confines its application to laws that "'singl[e] out'" particular persons *and* inflict "*pun-*

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[3] Laws that "authoriz[e] or affec[t] the propriety of prospective relief," "confe[r] or ous[t] jurisdiction," or work "[c]hange[s] in procedural rules" generally may be applied to pending cases even without a clear congressional statement, because they concern what courts may do *going forward*. *Landgraf,* 511 U.S. at 273-75.

ishment." *Plaut*, 514 U.S. at 239 n.9 (citation omitted). Within the limits the Framers established, the decision of how narrowly to tailor legislation to address a particular problem belongs to the People's representatives.

Congress's authority to tailor laws to particular property, persons, or claims is powerfully confirmed by the centuries-old tradition of private bills—which by definition concern only one or a few parties. Such bills were ubiquitous at the Founding and long thereafter and addressed a range of particularized claims. *See Plaut*, 514 U.S. at 239 n.9; Matthew Mantel, *Private Bills & Private Laws*, 99 Law Libr. J. 87, 88-90 (2007). While the creation of specialized tribunals has decreased the practical need for private bills, they remain "common" in Congress today. *Plaut*, 514 U.S. at 239 n.9.

iii. Third, Congress may enact laws that are outcome-determinative in the cases to which they apply. "[V]irtually *all* of the reasons why a final judgment on the merits is rendered on a federal claim are subject to congressional control." *Plaut*, 514 U.S. at 228. "Congress can eliminate, for example, a particular element of a cause of action that plaintiffs have found it difficult to establish; or an evidentiary rule that has often excluded essential testimony; or a rule of offsetting wrong (such as contributory negligence) that has often prevented recovery." *Id.* at 228-29. Even statutes that render a plaintiff's claims "incontestable" or reduce the courts' role to performing "a mathematical computation" do not violate Article III. *Pope* v. *United States*, 323 U.S. 1, 11 (1944).

Conversely, subject to other specific constitutional constraints, nothing prevents Congress from enacting laws that clearly foreclose certain claims.

Numerous federal statutes have that effect—whether by barring certain claims altogether, *e.g.*, 47 U.S.C. § 230(c)(2) (barring claims against interactive-computer-service providers for restricting access to obscene material); conferring absolute defenses upon the defendant's proving particular facts, *e.g.*, 15 U.S.C. § 77m (three-year repose period for certain securities claims); or eliminating jurisdiction over particular claims, *e.g.*, 12 U.S.C. § 4617(b)(11)(D) (no jurisdiction over claims seeking payment from assets of entity for which Federal Housing Finance Agency acts as receiver); 31 U.S.C. § 3730(e)(1) (no jurisdiction over False Claims Act claims by one member of the military against another). The fact that laws render the fate of particular claims clear casts no doubt upon the validity of those laws.

b. It follows from these tenets that Congress can amend the law applicable to pending cases—even a specific, finite number—in outcome-determinative ways. This Court has consistently upheld statutes that did precisely that.

i. In *Wheeling Bridge*, 59 U.S. (18 How.) 421, this Court upheld a statute enacted specifically to resolve a dispute in a single case concerning the legality of a particular bridge. Pennsylvania had obtained a decree from this Court that the bridge unlawfully obstructed free navigation and posed a public nuisance, and an injunction requiring the bridge either to be raised (to allow ships to pass) or abated. *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 54 U.S. (13 How.) 518, 578, 625-27 (1852). Congress subsequently passed a statute that "'declared'" the bridge "'to be [a] lawful structur[e] in [its] present positio[n] and elevatio[n,] … anything in the law or laws of the United States to the contrary notwith-

standing.'" 59 U.S. (18 How.) at 429 (citation omitted). Relying on the new law, the bridge owner did not modify the bridge—and indeed rebuilt it when it was destroyed in a storm. *Id.* at 422-24.

Pennsylvania sought a writ of attachment against the company for disobeying the injunction. 59 U.S. (18 How.) at 425-27. This Court denied that request, holding that the new statute "afforded full authority to the [company] to reconstruct the bridge" and that the Court's prior decree "could not, therefore, be carried into execution after the enactment of this law." *Id.* at 436. The Court rejected Pennsylvania's contention that the statute interfered with the Court's authority by "annul[ling] the judgment of the court already rendered." *Id.* at 431. The statute merely changed the underlying law, and that change compelled a different result in the litigation in which the bridge's legality would be definitively adjudicated: "There [was] no longer any interference with the enjoyment" of the right to free navigation "inconsistent with law" because "this right ha[d] been modified by the competent authority," *i.e.*, Congress, "so that the bridge is no longer an unlawful obstruction," and the prior injunction "c[ould]not be enforced." *Id.* at 432.

ii. *Robertson*, 503 U.S. 429, similarly upheld a statute designed to resolve specific pending litigation, which identified the cases by caption and docket number. *Id.* at 435, 437-41. *Robertson* arose from several consolidated suits challenging federal policies governing timber harvesting and sales in certain federal forests as contrary to five federal statutes. *Id.* at 432-33. "In response to this ongoing litigation," Congress enacted an appropriations rider "establish[ing] a comprehensive set of rules to govern

[timber] harvesting within a geographically and temporally limited domain." *Id.* at 433. The statute "applied only to" thirteen specific forests. *Ibid*. And by its terms, the statute "expired automatically" less than one year after its enactment. *Ibid.*

That new statute spoke directly to the dispute in the litigation. While allowing limited sales of timber from the forests at issue, Section 318(b)(3) and (b)(5) of the law prohibited any harvesting from specific designated areas until the statute expired. *See* Pub. L. No. 101-121, § 318(b)(3), (b)(5), 103 Stat. 701, 745-47 (1989). A further provision, Section 318(b)(6)(A), "determine[d] and direct[ed] that" compliance with subsections (b)(3) and (b)(5) in the specific forests disputed in the litigation "is adequate consideration for the purpose of meeting the statutory requirements that are the basis for the consolidated cases," citing the cases by name and docket number. *Id.* § 318(b)(6)(A). The plaintiffs challenged this provision as a violation of Article III, and the Ninth Circuit held it unconstitutional. 503 U.S. at 435-36.

This Court unanimously reversed, rejecting the plaintiffs' separation-of-powers challenge. 503 U.S. at 437-41. The statute, *Robertson* held, did not usurp federal courts' role by "directing particular applications of either the old or the new standards," but instead "replaced the legal standards underlying the two original challenges" with those set forth in the new statute. *Id.* at 437. "Before subsection (b)(6)(A) was enacted, the original claims would fail only if the challenged harvesting violated none of five old provisions," but "[u]nder subsection (b)(6)(A), … those same claims would fail if the harvesting violated neither of two new provisions." *Id.* at 438. Congress

had left application of the new standards to the courts. *Ibid.*

It made no difference, *Robertson* held, that the new statute "deemed compliance with new requirements to 'meet' the old requirements," rather than expressly modifying or superseding the old requirements. 503 U.S. at 439 (brackets omitted). Congress's enactment of a statute deeming compliance with new standards "to constitute compliance" with existing law *necessarily* amounted to a "'modification'" of that existing law "through operation of the canon that specific provisions qualify general ones." *Id.* at 440. Congress's "intent to modify" the law was sufficiently "clear" and "express" even to overcome the presumption against implied repeals. *Ibid.* Even if the new statute were ambiguous, moreover, the Court held that it would be "obliged" by the constitutional-avoidance canon to construe it to "modif[y] previously existing law." *Id.* at 441.

Petitioner asserts (at 38) that the statute in *Robertson* referred to the particular cases only to identify the statutory requirements the new statute superseded. But Congress sought to identify those requirements because they were "*the basis for* the consolidated cases." Pub. L. No. 101-121, § 318(b)(6)(A) (emphasis added). Congress plainly was targeting those suits; the statute applied only to the specific *forests* disputed in those suits, and only for a specific *year*. *See ibid.*

iii. *Plaut*, 514 U.S. 211, rejected a claim that a statute violated the separation of powers because it directed the result in particular cases. *Id.* at 218. In *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U.S. 350 (1991), this Court had held that private claims under Section 10(b) of the Securities

Exchange Act of 1934, 15 U.S.C. § 78j(b), are time-barred unless "commenced within one year after the discovery of the facts constituting the violation and within three years after such violation." 501 U.S. at 364. Six months later, Congress enacted a new statute, 15 U.S.C. § 78aa–1, modifying those time bars retroactively. The new statute superseded *Lampf*'s holding regarding the time bar for Section 10(b) suits pending when *Lampf* was decided by reinstating "the laws applicable in the jurisdiction … as such laws existed" before *Lampf*. *Id.* § 78aa–1(a). A separate subsection—the provision challenged in *Plaut*—provided that cases pending when *Lampf* was decided that were later "dismissed as time barred" could be "reinstated" by motion if they "would have been timely filed" under pre-*Lampf* law, even if the dismissal had become final. *Id.* § 78aa–1(b).

The defendants in *Plaut* had secured a judgment in a Section 10(b) suit commenced prior to *Lampf* that was untimely under that precedent; the plaintiffs did not timely appeal, and the judgment became final. 514 U.S. at 213-14. After the statute's enactment, the plaintiffs moved to reinstate their suit. *Id.* at 215. Like petitioner here, the defendants argued that the new law violated the separation of powers under *Klein* by "direct[ing] a particular rule of decision to adjudicate private rights in pending Article III cases." Resp. Br. 27-28, *Plaut*, No. 93-1121 (Sept. 9, 1994), 1994 WL 496344 (citing *Klein*, 80 U.S. (13 Wall.) 128, and *Robertson*, 503 U.S. 429).

This Court rejected that challenge. 514 U.S. at 218. It acknowledged that, in *Klein*, it had "refused to give effect to a statute that was said 'to prescribe rules of decision to the Judicial Department of the government in cases pending before it.'" *Ibid.* (cita-

tion and brackets omitted). But *Plaut* held that this "prohibition does not take hold when Congress 'amends applicable law.'" *Ibid.* (citation and brackets omitted). Because "Section 27A(b) indisputably d[id] set out substantive legal standards for the Judiciary to apply," it did "in that sense chang[e] the law (even if solely retroactively)." *Ibid.* The statute thus did not "offend" the "previously established prohibitio[n]" on "'prescrib[ing] rules of decision to the Judicial Department'"—even though the law worked an outcome-determinative change in a limited number of cases. *Ibid.* (citation omitted).

Petitioner (at 49) writes off *Plaut*'s rejection of that separation-of-powers challenge as "dicta" because the Court went on to hold that the statute violated Article III for a different reason: It "retroactively command[ed] the federal courts to reopen final judgments," which infringed the Judiciary's authority "'to render dispositive judgments'" not subject to revision—authority which *Plaut* concluded was inherent in the Constitution's grant of the "'judicial Power'" to the courts that it created. 514 U.S. at 219 (citation omitted). But *Plaut* held the law invalid on that basis only *after* rejecting the defendants' argument that the statute was invalid under *Klein* because it directed the result in specific cases. *Id.* at 218. Indeed, the distinction *Plaut* drew between still-pending cases and completed judicial determinations only underscores that Congress may alter the law governing specific disputes *until* the Judicial Department has rendered final judgment. *See also McCullough* v. *Virginia*, 172 U.S. 102, 123-24 (1898) ("[l]egislation may act on subsequent proceedings, may abate actions pending," and "the power of the legislature to disturb the rights created … ceases"

only "when those actions have passed into judgment").

2. *Klein* Confirms That Congress Can Enact Statutes That Affect The Result In Specific Cases If It Can And Does Change The Law.

Petitioner and its *amici* strain to distill a contrary rule from *Klein*, 80 U.S. (13 Wall.) 128, contending that, "[w]hatever the scope of *Klein*," it forbids laws like Section 8772. Pet. Br. 21, 43-45, 49-50; Professors Br. 4-19. But they misread *Klein* and later cases, which have "'made clear'" that, "'[w]hatever the precise scope of *Klein*,'" it is inapplicable "'when Congress "amends applicable law."'" *Miller* v. *French*, 530 U.S. 327, 349 (2000) (brackets omitted) (quoting *Plaut*, 514 U.S. at 218, in turn quoting *Robertson*, 503 U.S. at 441). Properly understood, *Klein* merely recognized the corollary that, where Congress does *not* change the applicable legal standards—including because, as in *Klein* itself, Congress *cannot* do so—Congress also may not dictate how Article III courts must decide cases governed by those standards.

The core issue in *Klein* was the effect of a presidential pardon on the rights of alleged Confederate supporters to reclaim property taken by Union forces in the Civil War. From 1861 to 1863, Congress passed several statutes addressing confiscation of Confederate supporters' property. 80 U.S. (13 Wall.) at 130. An 1862 statute authorized seizure and divestiture of property of persons who engaged in or aided the rebellion, but authorized the President to grant pardons and amnesty. *Id.* at 130-31 (citing Act of July 17, 1862, ch. 195, 12 Stat. 589). An 1863 law allowed Union agents to take possession of property captured (or found abandoned) by Union forces, but

allowed the owner to petition the Court of Claims to have the property (or proceeds from its sale) restored, if he proved "'that he ha[d] never given any aid or comfort to the present rebellion.'" *Id.* at 131 (quoting Act of Mar. 12, 1863, ch. 120, 12 Stat. 820).

On December 8, 1863, President Lincoln issued an Amnesty Proclamation offering a "full pardon," including restoration of property rights, with certain exceptions, to those who had previously aided the Confederacy but later swore an oath of loyalty to the Union. 80 U.S. (13 Wall.) at 131-32. The Proclamation was not premised on the 1862 statute authorizing pardons; rather, Lincoln "emphasized … that he possessed the authority 'to grant or withhold a pardon at his own absolute discretion.'" Amanda L. Tyler, *The Story of* Klein*: The Scope of Congress's Authority to Shape the Jurisdiction of the Federal Courts*, in *Federal Courts Stories* 87, 90 (Vicki Jackson & Judith Resnik eds., 2010) (quoting Abraham Lincoln, Message to Congress (Dec. 8, 1863)).

Klein arose from an action in the Court of Claims to restore property taken from an alleged Confederate supporter, V.F. Wilson, who had accepted a pardon under the Proclamation. 80 U.S. (13 Wall.) at 132. The Court of Claims held that Wilson's estate was entitled to return of his property, and the government appealed to this Court. *Ibid.* While that appeal was pending, this Court decided *United States* v. *Padelford*, 76 U.S. (9 Wall.) 531 (1870), which held—relying on an earlier decision establishing that "the effect of a pardon" is "'that in the eye of the law the offender is as innocent as if he had never committed the offence'"—that one who accepted a pardon under the Proclamation was "purged of whatever offence against the laws of the United

States he had committed," "relieved from any penalty which he might have incurred," and entitled to restoration of property taken based on the pardoned offense. *Id.* at 542-43 (quoting *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 380 (1867)).

Less than three months after *Padelford*, Congress enacted an appropriations rider addressing the effect of pardons on claims to restore seized property. 80 U.S. (13 Wall.) at 133-34. The statute provided that no pardon "'shall be admissible in evidence'" to support a claim in the Court of Claims against the government; that no pardon previously "'put in evidence'" could "'be used or considered by'" that court or an "'appellate court'" to "'sustain the claim'"; that a person's acceptance of a pardon *without* protesting his innocence would constitute "'conclusive evidence'" that the person *did* support the Confederacy; and that, in any case where the Court of Claims had already entered judgment for a claimant based upon a pardon, this Court "'shall … have no further jurisdiction of the cause, and shall dismiss the same for want of jurisdiction.'" *Ibid.* (quoting Act of July 12, 1870, ch. 251, 16 Stat. 235, 230).

Citing the 1870 statute, the government moved to remand *Klein* with instructions to dismiss. 80 U.S. (13 Wall.) at 134. This Court denied the motion, holding that the 1870 statute violated the separation of powers by "prescrib[ing] rules of decision to the Judicial Department of the government in cases pending before it," and by "infringing" the President's pardon power. *Id.* at 146-47. The law, moreover, was an attempt by "one party to the controversy to decide it in its own favor." *Id.* at 146.

Although *Klein* held the statute unconstitutional, the Court's opinion confirmed that, so long as Con-

gress otherwise acts within its authority, it *can* modify the law applicable to individual claims or property. *Klein* did not overturn, but distinguished, the Court's decision in *Wheeling Bridge* that had reached exactly that conclusion: As *Klein* explained, in *Wheeling Bridge*, "Congress passed an act legalizing the [bridge] and making it a post-road," and the Court "held that the bridge had ceased to be a nuisance by the exercise of the constitutional powers of Congress." 80 U.S. (13 Wall.) at 146-47. There was nothing improper about that law, *Klein* explained, even though its purpose and effect were to yield a particular result. The law did not "prescrib[e]" an "arbitrary rule of decision" for courts to apply, but instead "created" "new circumstances," and left "the court … to apply its ordinary rules to th[ose] new circumstances." *Ibid*.

In contrast, *Klein* invalidated the law at issue because Congress attempted to direct a result *without* modifying the legal standards that federal courts would apply—because Congress *could not* alter those legal standards. The statute at issue in *Klein* purported to alter the legal consequences and evidentiary significance of a presidential pardon. But, as *Klein* recounted, this Court had already held that "the President's power of pardon 'is not subject to legislation'" and "that 'Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders.'" 80 U.S. (13 Wall.) at 141 (quoting *Garland*, 71 U.S. (4 Wall.) at 380). It thus was clear that Congress *had not* changed the law because Congress was constitutionally *unable* to do so. Unlike *Wheeling Bridge,* there were "no new circumstances … created by legislation" (*id.* at 147) because Congress had no authority to create any.

Because Congress could not (and thus did not) change the applicable law, *Klein* recognized, Congress could not direct this Court to decide a case governed by that law in a way contrary to the Court's own judgment. *See* 80 U.S. (13 Wall.) at 146-47. The Court was "bound" to decide disputes in accord with the Constitution, U.S. Const. art. VI, cl. 2, and as *Klein* explained, the Court had already held in *Padelford*, as a matter of constitutional law, that a pardon under the Proclamation entitled claimants to restoration of their property. *See* 80 U.S. (13 Wall.) at 138-39. Congress could not overturn *Padelford*, and it was thus a transgression of "the limit which separates the legislative from the judicial power" for Congress to direct the Court to disregard *Padelford* by giving a pardon an effect different from (indeed, antithetical to) the effect this Court had held the Constitution required. *Id.* at 147. Congress, in other words, could not *evade* a constitutional limitation on its authority by directing courts to decide cases involving pardons in a particular way *regardless* of the applicable law.

Klein thus stands for the unremarkable principle that Congress cannot direct the outcomes of cases, or direct courts what effect to give to particular evidence, *except* by enacting laws otherwise within its constitutional authority. If enacting a law would exceed Congress's enumerated powers, violate an external constitutional constraint on its authority (*e.g.*, the First Amendment or Due Process Clause), or impermissibly infringe the authority of another Branch, Congress cannot achieve the same result indirectly by instructing courts to reach the same outcome—or forcing them to do so, by manipulating their jurisdiction, or requiring them to give a particular effect to certain evidence. In all events, "[w]hatever the pre-

cise scope of *Klein*, … its prohibition does not take hold when Congress 'amend[s] applicable law.'" *Plaut*, 541 U.S. at 218 (quoting *Robertson*, 503 U.S. at 441).

Petitioner resists this understanding of *Klein*, deriding its distinction between statutes that amend the law and those that dictate a result *without* amending the law as "incoherent" and "mak[ing] no sense." Pet. Br. 50. This Court need not and should not entertain that contention, which contradicts petitioner's own position below that laws comport with *Klein* if they "merely 'chang[e] the law applicable to pending cases.'" Pet. C.A. Br. 48-49 (citation omitted); *cf. OBB Personenverkehr AG* v. *Sachs*, 136 S. Ct. 390, 397-98 (2015) (deeming forfeited argument not raised below). In any event, petitioner's new claim is not an interpretation of *Klein*, but a direct attack upon it. The Court has described *Klein's* holding in precisely that manner in *Robertson*, *Plaut*, and *Miller*. Moreover, understood in the context of the circumstances *Klein* confronted, *Klein*'s distinction makes perfect sense. *See* Tyler, *supra*, at 108-10. This principle was so readily apparent to the Court that it presumed that Congress's error in violating it must have been "inadverten[t]." 80 U.S. (13 Wall.) at 147.

3. Section 8772 Validly Amends The Law Applicable To Respondents' Claims Regarding Issues Within Congress's Legislative Authority.

Like other statutes this Court has upheld, Section 8772 is fully consistent with the constitutional structure because it changed the underlying law applicable to pending claims regarding subjects within Congress's authority.

a. Section 8772 indisputably changed the law in the relevant sense, *i.e.*, it "set out substantive legal standards for the Judiciary to apply." *Plaut*, 514 U.S. at 218. Petitioner concedes that Section 8772 modified existing legal standards. Pet. Br. 27-28, 51-52. Section 8772 establishes new standards permitting execution by judgment-holders against particular assets of Iran and its instrumentalities in cases that are (or become) consolidated with this action. It expressly abrogates foreign sovereign immunity from execution to the extent that it would otherwise apply under the FSIA. 22 U.S.C. § 8772(a)(1). And it explicitly "preempt[s] any inconsistent provision of State law," including provisions of the Uniform Commercial Code ("U.C.C.") that petitioner claims would otherwise preclude execution here. *Ibid.*; *see also* Pet. Br. 4-5, 26-27. Section 8772 thus does not attempt to change the outcome of cases *without* altering the law, but modifies the legal standards themselves.

Indeed, Section 8772 is even more clearly constitutional than the statute upheld in *Robertson*. That statute did not in so many words modify existing standards, but *deemed* certain circumstances "'adequate'" to "'mee[t]'" *existing* "'statutory requirements.'" 503 U.S. at 435 (citation omitted). Yet the Court recognized that the statute amended existing law because its "operation" was to "modif[y] the old [statutory] provisions" to a limited extent. *Id.* at 438; *see also id.* at 439-40. Section 8772 says nothing about satisfying existing standards, and explicitly establishes new rules that apply "notwithstanding" other law and "preemp[t]" inconsistent state law. Were there any doubt that Section 8772 changes the law, such doubt would have to be resolved in favor of Section 8772's constitutionality, by construing it to

change the law rather than to dictate outcomes without altering legal standards. *See id.* at 441.[4]

b. Section 8772 also addresses subjects on which Congress plainly *could* change the underlying law: federal courts' jurisdiction and procedure generally, and the availability of foreign-state property for execution specifically—matters on which Congress's authority is near its apex.

Congress unquestionably "has the constitutional authority to define the jurisdiction of the lower federal courts." *Keene Corp.* v. *United States*, 508 U.S. 200, 207 (1993). Article III authorizes Congress—and "[o]nly Congress," *Kontrick* v. *Ryan*, 540 U.S. 443, 452 (2004)—to "ordain and establish" inferior courts. U.S. Const. art. III, § 1. Within the "boundaries fixed by the Constitution," Congress's power is plenary. *Kline* v. *Burke Constr. Co.*, 260 U.S. 226, 234 (1922). Congress likewise "has the power to prescribe rules of procedure for the federal courts," *Palermo* v. *United States*, 360 U.S. 343, 353 n.11 (1959)—including "the uncontrolled power to legislate in respect both to the form and effect of executions and other final process," *Riggs* v. *Johnson Cnty.*, 73 U.S. (6 Wall.) 166, 187-88 (1867).

Petitioner stresses that Section 8772 displaces state law concerning what property is subject to execution. Pet. Br. 5, 12, 26. But state law is pertinent

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[4] As explained in Part II, *infra*, respondents are independently entitled to execution under TRIA Section 201(a). But while Section 8772 yields the same *result* here, it nevertheless changes the law in the relevant sense because it establishes different standards and requires plaintiffs to prove different factual predicates to execution. *Supra* p. 10.

to execution of federal-court judgments only because the Federal Rules, promulgated under authority delegated by Congress, 28 U.S.C. § 2072, make it so. *See* Fed. R. Civ. P. 69(a)(1). Congress is perfectly free to depart from that default rule—in all cases or certain categories—which is what both the FSIA and Section 8772 do.

Congress's power over these matters, and its authority to tailor federal policy for specific disputes, is at its most expansive in the context of foreign sovereign immunity. *See Verlinden*, 461 U.S. at 486, 493. Decisions whether to extend immunity from suit or execution have always been the domain of the political Branches—and historically were often made on a case-by-case basis. *See id.* at 486-87. In the FSIA, Congress occupied the field, *see NML*, 134 S. Ct. at 2255, and in the original FSIA and since Congress has fashioned a variety of rules and exceptions to govern specific circumstances—including enforcement of judgments arising from state-sponsored terrorism. *Supra* pp. 5-7. Through these enactments, the political Branches—which share responsibility for conducting the Nation's foreign affairs—have sought to redress and deter, in a particularized way, state sponsorship of terrorist acts.

Section 8772 is an exercise of Congress's power over all of these subjects. In contrast to the statute in *Klein*—which purported to direct how courts would decide an issue (the legal effect of pardons) over which Congress *lacked* authority—Section 8772, therefore, is not an impermissible end-run around constitutional strictures on Congress's authority. The rules governing execution against foreign states' assets to satisfy federal-court judgments are Congress's to make. That is all Section 8772 does.

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Section 8772, in short, is fully consistent with the separation of powers because it merely changes the legal standards applicable to pending cases regarding matters within Congress's power. Just as the constitutional structure did not bar Congress from legislating as to one bridge, *Wheeling Bridge*, 59 U.S. (18 How.) at 431-32, specific forests, *Robertson*, 503 U.S. at 437-41, or a finite group of cases, *Plaut*, 514 U.S. at 218—even in ways that would directly affect the outcome of specific cases—nothing in the Constitution prevented Congress from tailoring Section 8772 to particular assets that were at the fore of its policy concern: assisting victims of terrorist attacks in their efforts to satisfy judgments against Iran, which sponsored those attacks but has defiantly refused to pay those judgments.

B. Petitioner's Invented Limitations On Congress's Authority Have No Basis In The Constitution Or Precedent.

Petitioner nevertheless urges the Court to invalidate Section 8772, contending that it contravenes two purported, unwritten limitations on Congress's authority: Congress, petitioner claims, cannot "change the law solely for a single pending case" or enact laws that "effectively dictat[e] the outcome of" specific cases. Pet. Br. 22, 42 (capitalization omitted). Petitioner forfeited the former argument by not presenting it to the court of appeals. Neither made-to-order exception, moreover, has any basis in this Court's case law or the constitutional structure, and each is arbitrary and unworkable. Even if either were meritorious, neither would apply to Section 8772.

1. Petitioner's "Single Pending Case" Exception Is Baseless And Inapplicable To Section 8772.

Petitioner's primary submission is that the Constitution forbids Congress from modifying the law solely for purposes of a "single pending case." Pet. Br. 22-42. The Court should not entertain that contention because petitioner did not present it to the court of appeals. *See OBB*, 136 S. Ct. at 397-98. In any event, that contrived limitation has no footing in the Constitution or this Court's precedent and would be hopelessly impractical in application. Moreover, by any plausible measure, Section 8772 does *not* change the law for a "single pending case." It prescribes standards governing more than 1,000 victims' claims in multiple separate actions that were consolidated for administrative convenience, as well as claims asserted by additional respondents who joined the proceedings after Section 8772's enactment.

a. Petitioner cites no decision of this Court supporting its invented single-pending-case exception. Petitioner does not pretend that its lead case, *Klein*, supports its theory. And for good reason: The Court in *Klein* did *not* invalidate the statute at issue in that case on the ground that it was targeted at just one case. *See generally* 80 U.S. (13 Wall.) at 145-48. Nor could it have done so. The statute applied to *any* case brought in the Court of Claims involving a pardon. *See id.* at 133-34.

This Court's decisions before and since *Klein* contradict petitioner's single-pending-case theory. *Wheeling Bridge* upheld a statute that was plainly directed at a single action: the proceedings to enforce this Court's prior decree requiring modification or abatement of a specific bridge. 59 U.S. (18 How.)

at 431-32. Petitioner contends that the statute in *Wheeling Bridge* reached more broadly than a single case because a hypothetical future plaintiff might conceivably have filed a subsequent suit seeking the same relief. Pet. Br. 36. But once the bridge's legality was definitively resolved in the suit seeking to enforce the injunction, there would be no need to reapply the law in any future lawsuit.

Plaut specifically rejected the view that a statute's breadth bears on whether it infringes the judicial power. 514 U.S. at 239. The Court explained that "laws that impose a duty or liability upon a single individual or firm are not on that account invalid," and reiterated the Court's earlier holding that "Congress may legislate 'a legitimate class of one.'" *Id.* at 239 n.9 (quoting *Nixon* v. *Adm'r of Gen. Servs.*, 433 U.S. 425, 472 (1977)). *Plaut* made clear that it did not matter that the statute at issue "reopen[ed] … final judgments in a whole class of cases rather than in a particular suit," and that "[i]t makes no difference whatever to that separation-of-powers violation that it is in gross rather than particularized." *Id.* at 227-28, 238-39; *see also id.* at 248 (Stevens, J., dissenting). Petitioner (at 39-40) dismisses this aspect of *Plaut* as confined to Congress's effort to overturn a final federal-court judgment, but that reading is far too narrow. *Plaut* rejected the concurrence's premise that the enactment of "particularized" legislation is necessarily "nonlegislative," stressing that rules of general applicability are "by no means [legislatures'] only legitimate mode of action." *Plaut*, 514 U.S. at 239 & n.9. If the statute's breadth cannot save it from intruding on the Judiciary's role, neither can the narrowness of a law that does not otherwise infringe the judicial power invalidate it.

Petitioner offers a handful of 18th and 19th century cases purportedly suggesting that legislatures may *only* enact laws of general applicability, Pet. Br. 24, 30-32, but none supports petitioner's position. Nearly all concern the structure of *state* governments and attempts to interfere with state courts' judgments. *See ibid.* And most of the laws that those cases struck down attempted to reopen final judgments—the challenge sustained in *Plaut*—*not* laws like Section 8772 that affect *pending* cases. In *Calder* v. *Bull*, 3 U.S. (3 Dall.) 386 (1798), for instance, the Connecticut Legislature passed a law setting aside a prior state-court decree. *Lewis* v. *Webb*, 3 Me. 326 (1825), held invalid a law granting a new right to appeal "long after the time allowed by law to claim an appeal had elapsed" and the case was "finally decided." *Id.* at 327, 332, 335; *see also Merrill* v. *Sherburne*, 1 N.H. 199, 202-03 (1818) (law granting new trial "from a final and absolute judgment"); *Appeal of Baggs*, 43 Pa. 512, 514 (1862) (law reviving claim presented "eleven years after the estate had been distributed and finally settled by the decree of the court"); *Tate's Ex'rs* v. *Bell*, 12 Tenn. (4 Yer.) 202, 207 (1833) (law "reviv[ing] the judgment"). None overrides the decisions of this Court that recognize that Congress may enact particularized laws that alter the standards applicable to pending litigation.[5]

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[5] Petitioner's other early authorities dealt with even further-removed concerns. *See Jones' Heirs* v. *Perry*, 18 Tenn. (10 Yer.) 59 (1836) (law extending expired limitations period for particular person); *Holden* v. *James*, 11 Mass. (11 Tyng) 396 (1814) (same); *Reiser* v. *William Tell Saving Fund Ass'n*, 39 Pa. 137 (1861) (law retroactively overriding court's interpretation of statute); *O'Conner* v. *Warner*, 4 Watts & Serg. 223 (Pa. 1842) (same).

b. Petitioner's single-pending-case exception also is meritless as an original matter. Petitioner points to nothing in the Constitution itself that supports its theory, and indeed it is irreconcilable with the constitutional structure and history.

i. The Framers' establishment of specific, carefully calibrated checks on each Branch's power—including, as relevant here, provisions that address when Congress may enact retroactive or particularized legislation, such as the Bill of Attainder or *Ex Post Facto* Clauses—counsels *against* inventing additional, amorphous limitations that address the same issues but are unmoored from the Constitution's text. *Supra* pp. 17-19; *cf. Plaut*, 514 U.S. at 239 n.9. The same principle dooms petitioner's effort to ground its single-pending-case limitation in Article III's grant of "'the judicial power.'" Pet. Br. 22 (brackets and citation omitted). As this Court has recognized, where a particular constitutional provision speaks to an issue, courts should not resort to "more generalized" provisions in search of a different answer. *Graham* v. *Connor*, 490 U.S. 386, 395 (1989) ("Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims."); *see also*, *e.g.*, *Whitley* v. *Albers*,

475 U.S. 312, 327 (1986) (same regarding Eighth Amendment).[6]

Petitioner rejoins that "the mere existence of" such specific checks does not "imply that any legislation not running afoul of that clause is *automatically* constitutional." Pet. Br. 41 (emphasis added). That is beside the point. A law that does not constitute a prohibited bill of attainder may still, for example, exceed Congress's authority under the Commerce Clause. But it is inconsistent with the constitutional structure to invent limitations that invalidate statutes for the *same reasons* as specific, enumerated provisions yet according to *different standards* than the Constitution establishes.

ii. Petitioner appeals (at 32-35) to historical legislative practice as purportedly supporting its narrow conception of legislative power. But history only

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[6] As the case comes to this Court, there is no suggestion that Section 8772 violates the Bill of Attainder, *Ex Post Facto*, Due Process, or Equal Protection Clauses, or any other enumerated constitutional constraint, by dint of its effect on pending claims concerning particular property. And Section 8772 does not attempt to overturn any final federal-court judgment. *Cf. Plaut*, 514 U.S. at 219-240. Petitioner did argue below that Section 8772 violates the Takings Clause, but the court of appeals rejected that claim, Pet. App. 10a-11a, and petitioner does not renew it here. Petitioner also argued that Section 8772 is invalid because it abrogates the Treaty of Amity, but as the Second Circuit held, that is incorrect and irrelevant to Section 8772's *validity*. *Id.* at 6a-7a. Congress is free to abrogate treaties, *see Breard* v. *Greene*, 523 U.S. 371, 376 (1998) (per curiam), and Section 8772(a)'s "notwithstanding" clause clearly supersedes any inconsistent treaty provisions, *see Cisneros* v. *Alpine Ridge Group*, 508 U.S. 10, 18 (1993).

further undermines petitioner's contention that Congress cannot legislate as to a single pending case.

Petitioner does not dispute the prevalence or validity of private bills, which by definition affect only one or a few parties and claims, *supra* p. 19, and which "are still common" today, *Plaut*, 514 U.S. at 239 n.9. Petitioner argues instead that private bills, and most other particularized legislation, historically concerned only disputes over "public rights," such as "claims against the government." Pet. Br. 33, 41. That is incorrect. Private bills often addressed rights of private persons *inter se*. For example, Congress enacted private bills that "restored the copyrights of works that previously had been in the public domain," *Golan* v. *Holder*, 132 S. Ct. 873, 886 (2012), or that conferred patents.[7] Both types of bills governed rights to exclude other private persons from the use of the protected works or inventions. Congress also enacted, and this Court upheld, at least one private bill concerning a private employee's worker's compensation claim against his employer. *See Paramino Lumber Co.* v. *Marshall*, 309 U.S. 370, 374-77, 381 & n.25 (1940) (ordering administrative agency to conduct further review of its prior decision on employee's claim for compensation for work-related injury, and to issue a new decision). In any event, Section 8772 concerns public rights to the same degree as the examples petitioner cites: Acts of state-sponsored terrorism are public acts, and Congress's decision to

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[7] *See*, *e.g.*, Act of Feb. 17, 1898, ch. 29, 30 Stat. 1396; Act of June 11, 1878, ch. 187, 20 Stat. 542; Act of May 30, 1862, ch. 88, 12 Stat. 904; Act of Feb. 19, 1849, ch. 57, 9 Stat. 763; Act of Mar. 3, 1843, ch. 131, 6 Stat. 895; Act of June 30, 1834, ch. 213, 6 Stat. 589.

make available to victims of such acts new means of satisfying judgments against the foreign state implicates "public rights" no less than if the United States had elected to pay the judgment itself.

Petitioner claims that Congress has not previously enacted particularized legislation designed to govern specific *pending* cases. Pet. Br. 32-35, 40. That claim, too, is untrue. Indeed, petitioner concedes (at 16) that the statute in *Robertson* was "passed to resolve two environmental suits" that were still pending, which the statute identified by caption and docket number. *See* 503 U.S. at 435. The law in *Robertson* that "deemed" certain legal requirements to be satisfied for purposes of particular cases, notably, is not unique. Congress has enacted a number of statutes that settled specific suits pending in federal courts against States involving Native American land transfers—identifying the cases by name and docket number and providing that the transfers "shall be deemed to have been made in accordance with the Constitution and" other applicable federal law. 25 U.S.C. § 1705(a)(1); *see id.* §§ 1701-1702; *see also*, *e.g.*, *id.* §§ 1721-1722, 1723(a)(1), 1741-1742, 1744(a)(2), 1751-1752, 1753(a), 1771, 1771b(a).

Similarly, the statute in *Wheeling Bridge*, 59 U.S. (18 How.) 421—a "continuation of the suit" previously brought to this Court, *ibid.* (citing 54 U.S. (13 How.) 518)—was tailored to resolve that specific dispute by eliminating the legal basis of an existing injunction. *See* 59 U.S. (18 How.) at 429. And *Landgraf* discussed a statute that contained an exception "intended to exempt a single disparate impact lawsuit" from an otherwise-applicable new legal standard. 511 U.S. at 258; *see also Antonio* v. *Wards Cove Packing Co.*, 10 F.3d 1485, 1492 (9th Cir. 1993) (re-

jecting separation-of-powers challenge to same statute); *Me. Cent. R.R. Co.* v. *Bhd. of Maint. of Way Emps.*, 835 F.2d 368, 369-73 (1st Cir. 1987) (upholding statute enacted to "resolve a labor dispute" between a railroad and its workers).

Congress also has enacted—and courts have upheld—statutes that targeted a specific, finite *set* of claims. The statute at issue in *Plaut*, for instance, also contained a provision (not challenged in this Court) changing the limitations period applicable to the closed universe of cases that were pending when *Lampf* was decided and had *not* yet been dismissed. *See* 514 U.S. at 214-15; 15 U.S.C. § 78aa–1(a). Lower courts rejected separation-of-powers challenges to that provision. *See Axel Johnson Inc.* v. *Arthur Andersen & Co.*, 6 F.3d 78, 82 (2d Cir. 1993); *Gray* v. *First Winthrop Corp.*, 989 F.2d 1564, 1570 (9th Cir. 1993). More recently, in 2005, Congress enacted the Protection of Lawful Commerce in Arms Act, which directed courts to dismiss certain suits against gun manufacturers that were pending on the date of the statute's enactment—necessarily a finite set of cases. *See* 15 U.S.C. §§ 7902(b), 7903(5). Courts have upheld this law as well. *City of New York* v. *Beretta U.S.A. Corp.*, 524 F.3d 384, 396 (2d Cir. 2008); *Ileto* v. *Glock, Inc.*, 565 F.3d 1126, 1139-40 (9th Cir. 2009).

Petitioner dismisses these statutes that address categories of cases because (it says) they were "generally applicable legislation that was merely alleged to have been enacted for the purpose of affecting specific litigation." Pet. Br. 33 (emphasis omitted). But petitioner fails to explain how laws that target a fixed, finite, and known set of pending cases are meaningfully different from laws that enumerate each case by name and docket number; both apply

only to particular disputes and have "prospective effect" to the same extent. *Id.* at 17. Treating the two categories differently amounts to a meaningless "drafting rule" of the very type petitioner elsewhere decries. *Id.* at 50.

iii. Petitioner's attempt to distinguish statutes affecting a *single* case from those affecting a small, defined *category* of cases highlights the arbitrariness of its theory. Petitioner has admitted that "Congress can unquestionably enact legislation directed to a specific problem, party, or property," Pet. Cert. Supp. Br. 5—and that the mere fact that a statute "address[es] a specific person or problem" does not render it "unconstitutional," Pet. Br. 25; *see also* Pet. Cert. Reply 4. And petitioner does not dispute that Congress may enact laws that affect pending litigation. Petitioner claims that Congress violates the Constitution only if it does *both at once*, legislating as to one pending *case*. Pet. Br. 2, 17-19, 21-22, 25-28, 32, 35-36.

That limitation is utterly illogical. If Congress, as petitioner concedes, can prescribe law as to one piece of property or one pair of parties, it makes no sense to say that Congress's power evaporates the moment a complaint is filed in federal court. That would enable individual litigants to eviscerate Congress's authority by preemptively filing suits to scupper pending legislation.

Conversely, if Congress can change the law applicable to many pending cases, there is no principled basis to bar it from doing the same in a smaller number of suits. Within the Constitution's express limitations, the wisdom of legislating as to one claim or parcel instead of 100 is entirely the province of the People's representatives. Indeed, claims related to a

single piece of property, or even a single party's liability from one event or course of conduct, are often adjudicated in one case under various procedural mechanisms, such as the Federal Rules' joinder and class-action provisions, *see*, *e.g.*, Fed. R. Civ. P. 19, 23, and the "first-to-file" rule, *see*, *e.g.*, *Cadle Co.* v. *Whataburger of Alice, Inc.*, 174 F.3d 599, 606 (5th Cir. 1999). There is no reason why Congress's authority should depend on whether multiple claims, at a particular moment in time, have been consolidated for some or all purposes. Whether joinder, class certification, or consolidation is appropriate turns on factors that have nothing to do with Congress's authority. They are functions of the Federal Rules, which are creatures of Congress and subject to its authority, *see* 28 U.S.C. § 2072, not vice-versa. Procedures such as consolidation, moreover, do not fundamentally alter the individual character of the claims consolidated. *See*, *e.g.*, *Gelboim* v. *Bank of Am. Corp.*, 135 S. Ct. 897, 904 (2015) ("[c]ases consolidated for [multidistrict-litigation] pretrial proceedings ordinarily retain their separate identities").

c. Petitioner's illogical standard also would invite a raft of uncertainties and practical problems for which it offers no solution. Petitioner does not explain *what* (on its view) would count as a single pending case affected by legislation for purposes of its proposed exception. Would claims consolidated for *any* purpose forever constitute one case, or only claims joined for litigation on the merits? Must the case be *properly* pending in the forum where it was filed, or would even a case filed in a court lacking jurisdiction be sufficient to block Congress from legislating? What if Congress earnestly but mistakenly believes its enactment will affect multiple cases? Petitioner does not say.

Petitioner also does not explain *when* a case would have to be "pending" and constitute "one case" to bar legislation—the date a law is enacted, or when it takes effect? If claims that were consolidated when Congress enacts a law are later severed, would the statute spring back into force? What if the severed claims are reconsolidated? Petitioner never addresses the problems that its own theory would invite.

The People's representatives are entitled to know what laws are off-limits. As the party advocating a novel, unwritten exception to Congress's authority, petitioner bears the burden of demonstrating how Congress (and courts) will cope with it. It has not even tried.

d. Whatever answers petitioner might proffer to these questions, its single-pending-case criterion is inapplicable here. Section 8772 does *not* target a single suit between Jones and Smith; it applies to the "assets that are identified in and the subject of proceedings in" these now-consolidated actions. 22 U.S.C. § 8772(b). Petitioner stresses that Section 8772(c)(1) limits the statute's effect to these "'proceedings'" and that Section 8772 "has no effect on 'any *other* action.'" Pet. Br. 26, 39 (emphasis added) (quoting 22 U.S.C. § 8772(c)(1)). These "proceedings," however, consist of numerous claims by multiple groups of plaintiffs—more than 1,000 individuals altogether—who brought separate suits against Iran resulting in separate judgments, which they seek to enforce. 22 U.S.C. § 8772(b). No plausible definition of "one case" encompasses this vast array of independent claims by victims of separate acts of Iran-sponsored violence spanning decades.

Section 8772, moreover, was not limited to the claims for enforcement that were *already* part of the consolidated case when Section 8772 was enacted. The statutory text did not prevent additional claimants holding terrorism-based judgments against Iran from joining the action to pursue execution after Section 8772's enactment. Indeed, some did so: The respondents in *Wultz* v. *Islamic Republic of Iran*, 864 F. Supp. 2d 24 (D.D.C. 2012), who had obtained a separate judgment against Iran, intervened in these proceedings to assert their own claim for execution in February 2013, D.C. Dkt. 329, 330 & Ex. A; D.C. Dkt. 398, at 5-13; Pet. App. 18a-19a, months *after* Section 8772's enactment, *see* Pub. L. No. 112-158, § 502.

Section 8772 thus was *not* confined to specific parties and claims already involved in this litigation. Pet. Br. 18, 21. And it *did* have a "meaningful prospective effect" by "chang[ing] the law … for a class of circumstances," *id.* at 22—the claims of all who held terrorism-based judgments against Iran who sought (or would later seek) to enforce those judgments against particular assets by joining this consolidated litigation. Under any standard, Section 8772 comports with the separation of powers.

2. Petitioner's "Effectively Dictate The Outcome" Exception Is Also Meritless And Inapplicable.

Petitioner's alternative argument—that Congress cannot "effectively dictat[e] the outcome" of "specific" cases, Pet. Br. 42—is likewise unmoored from the Constitution and precedent and is equally opaque and unworkable. And this second exception similarly would not apply to Section 8772: As the district court recognized, the statute did *not* dictate

any findings or conclusions, but left application of the law's requirements to the courts. Pet. App. 115a. And it preserved courts' discretion to modify or vacate the underlying restraints.

a. Petitioner cannot point to any precedent of this Court forbidding legislation that "effectively dictates" (Pet. Br. 42) the outcome of cases. That is unsurprising. Congress can and often does enact laws that resolve the only issues disputed in given litigation. *Supra* pp. 19-20. The statutes in *Wheeling Bridge* and *Robertson* "effectively determined the … outcome" (Pet. Br. 42) of the disputes they addressed by resolving a dispositive issue—in *Wheeling Bridge*, whether the bridge was a lawful structure, 59 U.S. (18 How.) at 429, and in *Robertson,* whether the statutory requirements "that [we]re the basis for the consolidated cases" were "m[et]," 503 U.S. at 435 (internal quotation marks omitted).

Petitioner invokes *Klein* (at 43-44) to support its dictate-the-outcome exception, but *Klein* established no such principle. The statute in *Klein* infringed the judicial power not because it left too little for courts to do, but because it attempted to direct the result *without* altering the legal standards governing the effect of a pardon—standards Congress was powerless to prescribe. *See* 80 U.S. (13 Wall.) at 146-47. Indeed, *Klein* acknowledged and distinguished *Wheeling Bridge*, where Congress had enacted a law that was outcome-determinative in the dispute. *Ibid.* This Court has rejected the view that a law violates *Klein* simply because it renders a claim "uncontested or incontestable" or makes calculation of damages "depen[d] upon a mathematical formula." *Pope*, 323 U.S. at 11.

Nor does anything in the Constitution's text or structure support petitioner's proposed free-floating bar on statutes that leave courts too little work to do. Subject to express limitations such as the Takings, Due Process, and Bill of Attainder Clauses, nothing prevents Congress from defining rights and causes of action as it sees fit—making the viability of certain claims clear-cut or conversely foreclosing claims altogether. Clarity in laws is ordinarily viewed as a virtue. It would be strange if a Constitution that forbids vague laws that "fai[l] to give ordinary people fair notice of the conduct" they cover and that "invit[e] arbitrary enforcement" (*Johnson* v. *United States*, 135 S. Ct. 2551, 2556 (2015)) contained an unstated limitation on laws that are *too* clear and whose application is *too* predictable.

b. Petitioner's dictate-the-outcome exception is also arbitrary and impractical. Petitioner offers no principled, workable rule to determine whether a statute goes beyond providing appropriate clarity to impermissibly foreordaining a result. At the certiorari stage, petitioner argued that a law is invalid if it leaves "no meaningful questions for judicial determination," Pet. Cert. Supp. Br. 2—a vacuous standard petitioner neither defined nor justified. Petitioner now abandons that empty label, but offers *no* rule in its place. It does not deny that Section 8772 requires *some* determinations by the court, and quibbles only over whether those determinations are sufficiently substantial. Pet. Br. 45-48. But it tenders no *test* the Court could apply to reach that conclusion. Congress and the courts need (and deserve) much better than petitioner's I-know-it-when-I-see-it standard. Such "vague distinctions" are anathema to the separation of powers. *Plaut*, 514 U.S. at 239.

Wherever the line is drawn, whether a statute has the effect of making the outcome of a particular case a "foregone conclusio[n]" (Pet. Br. 47) often cannot be known in the abstract, but frequently will depend on the facts and posture of the case. Petitioner's exception would mean that the constitutionality of an Act of Congress turns on whether parties in a particular case choose to dispute certain facts. A law cannot be valid in one suit but invalid in another based on the parties' tactical decisions.

c. Even if petitioner's dictate-the-outcome exception had merit, it would not invalidate Section 8772. Petitioner's attempt to analogize Section 8772 to a law unilaterally directing "'that a court must award Jones $35,000'" from Smith (Pet. Br. 25 (citation omitted)) grossly distorts the statute. Section 8772 does *not* impose liability on petitioner or its parent state. It permits victims of terrorist acts perpetrated or sponsored by Iran who *already* obtained valid, final judgments to seek satisfaction of those judgments from certain assets. 22 U.S.C. § 8772(a)(1).[8] Any immunity of property of foreign sovereigns to execution to satisfy federal-court judgments is purely a matter of legislative grace. Here, Congress further withdrew it by opening an alternative avenue for persons established to be Iran's victims to execute on property that ultimately belongs to Iran.

Section 8772, moreover, requires a court to make multiple additional determinations that (as the district court here found) give courts "plenty … to adju-

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[8] Accordingly, three consolidated cases that had not yet obtained judgments were denied execution against the Iranian Assets by the district court. Pet. App. 19a-20a, 28a.

dicate." Pet. App. 115a. A court must find that the asset against which plaintiffs seek to execute is a "blocked asset" being "held in the United States for a foreign securities intermediary doing business in the United States" that is "equal in value to a financial asset of Iran" that the "intermediary or a related intermediary holds abroad." 22 U.S.C. § 8772(a)(1). While the statute is *limited* to the Iranian Assets disputed here, *id.* § 8772(a)(1)(B), (b), a court still must find that the assets meet the above criteria. And, as the district court explained, under Section 8772(a)(2), a court must further determine "whether and to what extent Iran has a beneficial or equitable interest in the assets at issue," and "whether constitutionally-protected interest holders *other than* Iran are present." Pet. App. 115a.

Petitioner dismisses these determinations (at 46) as "makeweights." But the district court—which was tasked with making the requisite findings—disagreed: "These determinations," it stressed, "are not mere fig leaves," for "it is quite possible that the Court could have found that defendants raised a triable issue" on them. Pet. App. 115a. Petitioner's contrary portrayal distorts the findings the statute required. Section 8772 does not (as petitioner claims) "effectively declar[e] that Iran loses so long as only Iran loses." Pet. Br. 46. The required findings that Iran has an interest in the assets and others do not are *necessary*, not *sufficient*, conditions for execution.

Petitioner also asserts (at 47) that the necessary findings were "foregone conclusions" because they were not "genuine[ly] dispute[d]." That is incorrect and irrelevant. Clearstream, for example, strenuously (albeit unsuccessfully) argued that turnover of the

assets would constitute an unconstitutional taking of its property. Pet. App. 109a, 111a-12a, 116a-19a; *see also* Clearstream S.J. Opp. 11-19 (sealed). Petitioner's assertion that Section 8772(a)(2) excluded Clearstream's interests misreads the statute: While "custodial interest[s] of a foreign securities intermediary" are excluded from interests that limit execution under Section 8772(a)(2)(*A*), they are *not* excluded from Section 8772(a)(2)(*B*), which pertains to "constitutionally protected interest[s]"—exactly what Clearstream asserted. 22 U.S.C. § 8772(a)(2)(A)-(B). In any event, whether petitioner and others chose to dispute certain factual issues is immaterial. *See Pope*, 323 U.S. at 11. Petitioner's theory would irrationally enable litigants to nullify federal statutes simply by declining to dispute a particular issue.

Even beyond these predicate findings, Section 8772 permits execution against the Iranian Assets only "so long as such assets remain restrained by court order." 22 U.S.C. § 8772(b). New York law accords courts broad discretion to modify existing restraints, including "to prevent 'unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.'" *Guardian Loan Co.* v. *Early*, 392 N.E.2d 1240, 1242-43 (N.Y. 1979) (citation omitted); N.Y. C.P.L.R. § 5240. Far from dictating the outcome, Congress thus expressly preserved the possibility that the court applying the statute might dissolve the restraint rather than permit execution. That Bank Markazi did not seek such relief hardly means that a result in Bank Markazi's favor was unavailable as a matter of law.

II. SECTION 201 OF THE TRIA INDEPENDENTLY AUTHORIZES EXECUTION AGAINST THE IRANIAN ASSETS.

Rather than "'pass upon [the] constitutional question'" petitioner raises regarding Section 8772, the Court can, and therefore should, affirm the court of appeals' judgment on the ground that, as the district court held, TRIA Section 201(a) independently authorizes execution here. *Pearson* v. *Callahan*, 555 U.S. 223, 241 (2009) (quoting *Ashwander* v. *TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring)); *see also*, *e.g.*, *Yeager* v. *United States*, 557 U.S. 110, 126 (2009) (respondents may "defend [their] judgment on any ground properly raised below whether or not that ground was relied upon, rejected, or even considered by the District Court or the Court of Appeals" (internal quotation marks omitted)). Petitioner does not and cannot plausibly contend that TRIA Section 201(a) violates the separation of powers. And the district court's conclusion that Section 201(a) permits execution here is manifestly correct. Pet. App. 96a-98a, 111a-13a.

TRIA Section 201(a) permits execution against "the blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)." TRIA § 201(a). The Iranian Assets are "blocked assets" under Executive Order 13,599. *See* 77 Fed. Reg. at 6659. As the district court held, the Iranian Assets are therefore subject to execution independently of Section 8772. Pet. App. 96a-98a, 111a-13a.

Petitioner resisted this straightforward conclusion below, but its arguments are insubstantial. It contended that the words "blocked *assets of* … [the] agency or instrumentality of [a] terrorist party" in

Section 201(a) permit execution only against assets "*owned by* [the] terrorist party,'" and that it does not "own" the Iranian Assets. Pet. C.A. Br. 15-19. But its own prior submissions in this case flatly contradict that denial of ownership.

As the district court chronicled, petitioner has repeatedly admitted in this litigation that "it owns the [Iranian Assets] and all proceeds associated with them." Pet. App. 60a; *id.* at 113a (finding that "Bank Markazi has repeatedly insisted that it is the sole beneficial owner of the [Iranian] Assets" and collecting statements). In the district court, petitioner described the Iranian Assets as "'securities *belonging to Bank Markazi*,'" and asserted "that the 'Restrained Securities [*i.e.*, the Iranian Assets] are the *property of Bank Markazi*, the Central Bank of Iran.'" *Id.* at 113a (citation omitted). And two of petitioners' officers "have sworn under penalty of perjury that the [Iranian] Assets are the 'sole property of Bank Markazi and held for its own account.'" *Ibid.* (citation omitted). Assuming arguendo that Section 201(a) requires ownership, petitioner's repeated concessions put any doubt of its ownership to rest. Indeed, if the assets did not belong to petitioner, it is unclear what standing or basis petitioner would have to oppose execution.

Petitioner attempted in the court of appeals to escape its admissions, claiming that its concessions could not control the "'legal question'" of whether it owned the Iranian Assets. Pet. C.A. Br. 21 (citation omitted). And petitioner contends that, under the applicable law, although it is the "beneficial" owner of the Iranian Assets, its beneficial interest does not constitute ownership under the TRIA. *Id.* at 28-34; Pet. Cert. Reply 10. Petitioner is incorrect on both

counts. A party's concessions below are binding on appeal, even on legal issues or mixed questions of law and fact. *See*, *e.g.*, *Alice Corp.* v. *CLS Bank Int'l*, 134 S. Ct. 2347, 2360 (2014) (validity of patent claim); *N. Ins. Co. of N.Y.* v. *Chatham Cnty., Ga.*, 547 U.S. 189, 194 (2006) (Eleventh Amendment immunity); *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 426, 428 (2006) (whether application of federal law "would substantially burden a sincere exercise of religion").

In any event, petitioner's new position is meritless. Petitioner's argument that its beneficial ownership is insufficient to establish ownership is premised on Article 8 of the U.C.C., which petitioner argued would apply but for Section 8772. Pet. C.A. Br. 24. Article 8 itself makes clear, however, that securities entitlements held by an intermediary *belong to the entitlement holder*, not to the intermediary. Section 8-503(a) provides that "all interests in that financial asset held by the securities intermediary are held by the securities intermediary *for the entitlement holders*, [and] *are not property of the securities intermediary*." U.C.C. § 8-503(a) (emphases added). Instead, "[a]n entitlement holder's property interest with respect to a particular financial asset under [Section 8-503(a)] is a pro rata property interest in all interests in that financial asset held by the securities intermediary." *Id.* § 8-503(b).

"Section 8-503" thus "expresses, in a fashion that takes account of the realities of the modern indirect holding system, the point that is captured by the colloquial notion that when a customer leaves securities with a broker or other intermediary, the securities belong to the customer not the broker." 7A Hawkland U.C.C. Series § 8-503:01 [Rev]. "[I]t is" thus

"correct to say that the *customer*, rather than the intermediary through whom the customer holds the position, *is the 'owner'* of the 'security.'" *Ibid.* (emphases added); *see also* U.C.C. art. 8 prefatory note II.C (1994). Petitioner, which has a *100-percent* beneficial interest in the Iranian Assets, is the "owner" of those Assets under Article 8. Pet. App. 113a.

Moreover, petitioner's beneficial interest in the Iranian Assets is *itself* an attachable "asset." Many courts have held that the term "assets," in New York law and in the TRIA, includes beneficial interests. *See*, *e.g.*, *EM Ltd.* v. *Republic of Argentina*, 2009 WL 2568433, at *1 (S.D.N.Y. Aug. 18, 2009), *aff'd,* 389 F. App'x 38 (2d Cir. 2010); *Weininger* v. *Castro*, 462 F. Supp. 2d 457, 494, 499 (S.D.N.Y. 2006); *see also Bennett* v. *Islamic Republic of Iran*, 799 F.3d 1281, 1290 (9th Cir. 2015) (same).

Petitioner's remaining arguments below rest on inapposite statutory provisions. Petitioner cited cases concerning electronic-fund transfers, Pet. C.A. Br. 31-33, but such transfers are governed by a separate Article of New York's U.C.C., Article 4A. *See*, *e.g.*, *Export-Import Bank of U.S.* v. *Asia Pulp & Paper Co., Ltd.*, 609 F.3d 111, 118 (2d Cir. 2010). Petitioner also contended that a provision of Article 8 relating to execution *under the U.C.C.* and Federal Rule 69, U.C.C. § 8-112, would not permit execution against the Iranian Assets. Pet. C.A. Br. 25-26. That contention confuses the question whether petitioner "owns" the Assets—which, petitioner concedes, suffices to permit execution under TRIA Section 201(a)—with the separate question whether, *but for* the TRIA, the Iranian Assets would be subject to execution under the U.C.C. The latter question is irrelevant because the TRIA explicitly establishes *new*

rules making property "subject to execution" "[n]otwithstanding any other provision of law." TRIA § 201(a). The law that purportedly would apply in the *absence* of Section 201(a) has no bearing. *See*, *e.g.*, *United States* v. *All Funds on Deposit with R.J. O'Brien & Assocs.*, 783 F.3d 607, 620 (7th Cir. 2015), *petition for cert. filed*, No. 15-460 (U.S. Oct. 9, 2015).

Petitioner's contention below that the Iranian Assets are immune from execution under 28 U.S.C. § 1611(b)—which protects central-bank assets from execution—fails for the same reason. Section 201(a)'s "notwithstanding" clause, enacted after Section 1611(b), trumps "any other provision of law," including Section 1611(b), that otherwise might prevent execution. TRIA § 201(a). "[A] clearer statement" than a "notwithstanding clause" of Congress's intent to supersede such other laws is "difficult to imagine." *Alpine Ridge*, 508 U.S. at 18 (internal quotation marks omitted).

Petitioner's attacks on Section 8772 are meritless, but in any event they do not matter here. Hewing to the "older, wiser judicial counsel 'not to pass on questions of constitutionality ... unless such adjudication is unavoidable,'" *Pearson*, 555 U.S. at 241 (citation omitted), the Court can and should affirm the judgment below without passing on petitioner's attempt to reshape the separation of powers.

CONCLUSION

The court of appeals' judgment should be affirmed.

Respectfully submitted.

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December 16, 2015

APPENDIX

APPENDIX A

Underlying actions against Iran brought by plaintiffs whose claims for execution were consolidated in No. 10 Civ. 4518 (KBF) (S.D.N.Y.) (*see* Pet. App. 16a-19a, 52a-53a n.1):

Acosta, et al. v. *Islamic Republic of Iran, et al.*, No. 06 Civ. 745 (RCL) (D.D.C.)

Arnold, et al. v. *Islamic Republic of Iran, et al.*, No. 06 Civ. 516 (RCL) (D.D.C.)

Beer, et al. v. *Islamic Republic of Iran, et al.*, Nos. 06 Civ. 473 (RCL) and 08 Civ. 1807 (RCL) (D.D.C.)

Bonk, et al. v. *Islamic Republic of Iran, et al.*, No. 08 Civ. 1273 (RCL) (D.D.C.)

Estate of Bland v. *Islamic Republic of Iran, et al.*, No. 05 Civ. 2124 (RCL) (D.D.C.)

Estate of Brown, et al. v. *Islamic Republic of Iran, et al.*, No. 08 Civ. 531 (RCL) (D.D.C.)

Estate of Heiser, et al. v. *Islamic Republic of Iran, et al.*, Nos. 00 Civ. 2329 (RCL) and 01 Civ. 2104 (RCL) (D.D.C.)

Estate of Silvia, et al. v. *Islamic Republic of Iran, et al.*, No. 06 Civ. 750 (RCL) (D.D.C.)

Greenbaum, et al. v. *Islamic Republic of Iran, et al.*, No. 02 Civ. 2148 (RCL) (D.D.C.)

Khaliq, et al. v. *Republic of Sudan, et al.*, No. 10 Civ. 356 (JDB) (D.D.C.)[*†]

Kirschenbaum, et al. v. *Islamic Republic of Iran, et al.*, Nos. 03 Civ. 1708 (RCL) and 08 Civ. 1814 (RCL) (D.D.C.)

Levin v. *Islamic Republic of Iran, et al.*, No. 05 Civ. 2494 (GK) (D.D.C.)

Murphy, et al. v. *Islamic Republic of Iran, et al.*, No. 06 Civ. 596 (RCL) (D.D.C.).

Mwila, et al. v. *Islamic Republic of Iran, et al.*, No. 08 Civ. 1377 (JDB) (D.D.C.)[†]

Owens, et al. v. *Republic of Sudan, et al.*, No. 01 Civ. 2244 (JDB) (D.D.C.)[†]

Peterson, et al. v. *Islamic Republic of Iran, et al.*, Nos. 01 Civ. 2094 (RCL) and 01 Civ. 2684 (RCL) (D.D.C.)

Rubin, et al. v. *Islamic Republic of Iran, et al.*, No. 01 Civ. 1655 (RCL) (D.D.C.)

Valore, et al. v. *Islamic Republic of Iran, et al.*, No. 03 Civ. 1959 (RCL) (D.D.C.)

Wultz, et al. v. *Islamic Republic of Iran, et al.*, No. 08 Civ. 1460 (RCL) (D.D.C.)[**]

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[*] Listed as 08 Civ. 1273 (JDB) (D.D.C.) in Pet. App. 17a, 52a-53a n.1.

[†] Turnover order vacated as to plaintiffs in these actions July 9, 2013. *See* Pet. App. 19a-20a, 28a.

[**] Granted permission to intervene May 10, 2013. *See* Pet. App. 19a; D.C. Dkt. 398.

APPENDIX B

U.S. Const. art. I, § 8, cl. 3:

Section 8. The Congress shall have Power . . .

* * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

* * *

U.S. Const. art. I, § 9, cl. 3:

No Bill of Attainder or ex post facto Law shall be passed.

U.S. Const. art. III:

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

U.S. Const. art. VI, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Act of Aug. 31, 1852, ch. 111, §§ 6-7, 10 Stat. 110, 112:

SEC. 6. *And be it further enacted*, That the bridges across the Ohio River at Wheeling, in the State of Virginia, and at Bridgeport, in the State of Ohio, abutting on Zane's Island, in said river, are hereby declared to be lawful structures, in their present position and elevation, and shall be so held and taken to be, anything in any law or laws of the United States to the contrary notwithstanding.

SEC. 7. *And be it further enacted*, That the said bridges are declared to be and are established post-roads for the passage of the mails of the United States, and that the Wheeling and Belmont Bridge Company are authorized to have and maintain their said bridges at their present site and elevation, and the officers and crews of all vessels and boats navigating said river are required to regulate the use of their said vessels and boats, and of any pipes or chimneys belonging thereto, so as not to interfere with the elevation and construction of said bridges.

Act of July 12, 1870, ch. 251, § 1, 16 Stat. 230, 235:

Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled, That the following sums be, and the same are hereby, appropriated . . . :—

* * *

For payment of judgments which may be rendered by the court in favor of claimants, one hundred

thousand dollars: *Provided*, That no pardon or amnesty granted by the President, whether general or special, by proclamation or otherwise, nor any acceptance of such pardon or amnesty, nor oath taken, or other act performed in pursuance or as a condition thereof, shall be admissible in evidence on the part of any claimant in the Court of Claims as evidence in support of any claim against the United States, or to establish the standing of any claimant in said court, or his right to bring or maintain suit therein; nor shall any such pardon, amnesty, acceptance, oath, or other act as aforesaid, heretofore offered or put in evidence on behalf of any claimant in said court, be used or considered by said court, or by the appellate court on appeal from said court, in deciding upon the claim of said claimant, or any appeal therefrom, as any part of the proof to sustain the claim of the claimant, or to entitle him to maintain his action in said Court of Claims, or on appeal therefrom; but the proof of loyalty required by the Abandoned and Captured Property Act, and by the sections of several acts quoted, shall be made by proof of the matters required, irrespective of the effect of any executive proclamation, pardon, amnesty, or other act of condonation or oblivion. And in all cases where judgment shall have been heretofore rendered in the Court of Claims in favor of any claimant, on any other proof of loyalty than such as is above required and provided, and which is hereby declared to have been and to be the true intent and meaning of said respective acts, the Supreme Court shall, on appeal, have no further jurisdiction of the cause, and shall dismiss the same for want of jurisdiction: *And provided further,* That whenever any pardon shall have heretofore been granted by the President of the United

States to any person bringing suit in the Court of Claims for the proceeds of abandoned or captured property under the said act, approved 12th March, 1863, and the acts amendatory of the same, and such pardon shall recite in substance that such person took part in the late rebellion against the government of the United States, or was guilty of any act of rebellion against, or disloyalty to, the United States; and such pardon shall have been accepted in writing by the person to whom the same issued without an express disclaimer of; and protestation against, such fact of guilt contained in such acceptance, such pardon and acceptance shall be taken and deemed in such suit in the said Court of Claims, and on appeal therefrom, conclusive evidence that such person did take part in, and give aid and comfort to, the late rebellion, and did not maintain true allegiance or consistently adhere to the United States; and on proof of such pardon and acceptance, which proof may be heard summarily on motion or otherwise, the jurisdiction of the court in the case shall cease, and the court shall forthwith dismiss the suit of such claimant.

* * *

Pub. L. No. 101-121, § 318(b), 103 Stat. 701, 745 (1989):

> (b) (1) In accordance with subsection (b)(2) of this section, all timber sales from the thirteen national forests in Oregon and Washington known to contain northern spotted owls prepared or offered pursuant to this section shall minimize

fragmentation of the most ecologically significant old growth forest stands. "Old growth forest stands" are defined as those stands meeting the criteria according to Forest Service Research Publication Numbered PNW-447. In those instances where the Forest Service, after consultation with the advisory boards established pursuant to subsection (c) of this section, determines that the definition in Forest Service Research Publication Numbered PNW-447 is not fully applicable in national forests known to contain northern spotted owls, the Forest Service shall use old-growth definitions contained in its Pacific Northwest Regional Guide.

(2) To the extent that fragmentation of ecologically significant old growth forest stands is necessary to meet the timber sale levels directed by subsection (a)(1) of this section, the Forest Service shall minimize such fragmentation in the ecologically significant old growth forest stands on a national forest-by-national forest basis based on the Forest Service's discretion in determining the ecologically significant stands after considering input from the advisory boards created pursuant to subsection (c) of this section. The habitat of nesting pairs of spotted owls which are not in the Spotted Owl Habitat Areas (SOHAs) described in subsection (b)(3) of this section shall be considered an important factor in the identification of ecologically significant old growth forest stands.

(3) No timber sales offered pursuant to this section from the thirteen national forests in Oregon and Washington known to contain northern

spotted owls may occur within SOHAs identified pursuant to the Final Supplement to the Environmental Impact Statement for an Amendment to the Pacific Northwest Regional Guide—Spotted Owl and the accompanying Record of Decision issued by the Forest Service on December 8, 1988 as adjusted by this subsection:

(A) For the Olympic Peninsula Province, which includes the Olympic National Forest, SOHA size is to be 3,200 acres;

(B) For the Washington Cascades Province, which includes the Mt. Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford-Pinchot National Forests, SOHA size is to be 2,600 acres;

(C) For the Oregon Cascades Province, which includes the Mt. Hood, Willamette, Rogue River, Deschutes, Winema, and Umpqua National Forests, SOHA size is to be 1,875 acres;

(D) For the Oregon Coast Range Province, which includes the Siuslaw National Forest, SOHA size is to be 2,500 acres; and

(E) For the Klamath Mountain Province, which includes the Siskiyou National Forest, SOHA size is to be 1,250 acres.

(F) All other standards and guidelines contained in the Chief's Record of Decision are adopted.

(4) In planning for the preparation and offer of timber sales authorized in subsection (a)(1) of this section, the Forest Service, to the extent

possible in areas proximate to SOHA sites identified in subsection (b)(3) of this section, should exercise discretion in selecting sites and/or silvicultural prescriptions in order to retain spotted owl habitat characteristics in such areas. The Forest Service should consider the relative location and quality of such areas contiguous to the SOHAs and should give higher priority to preparing and offering sales in areas of lower quality and less important location than to areas of greater quality and more important location relative to the SOHAs.

(5) No timber sales offered pursuant to this section on Bureau of Land Management lands in western Oregon known to contain northern spotted owls shall occur within the 110 areas identified in the December 22, 1987 agreement, except sales identified in said agreement, between the Bureau of Land Management and the Oregon Department of Fish and Wildlife. Not later than thirty days after enactment of this Act, the Bureau of Land Management, after consulting with the Oregon Department of Fish and Wildlife and the United States Fish and Wildlife Service to identify high priority spotted owl area sites, shall select an additional twelve spotted owl habitat areas. No timber sales may be offered in the areas identified pursuant to this subsection during fiscal year 1990.

(6) (A) Without passing on the legal and factual adequacy of the Final Supplement to the Environmental Impact Statement for an Amendment to the Pacific Northwest Regional Guide—Spotted Owl Guidelines and

the accompanying Record of Decision issued by the Forest Service on December 8, 1988 or the December 22, 1987 agreement between the Bureau of Land Management and the Oregon Department of Fish and Wildlife for management of the spotted owl, the Congress hereby determines and directs that management of areas according to subsections (b)(3) and (b)(5) of this section on the thirteen national forests in Oregon and Washington and Bureau of Land Management lands in western Oregon known to contain northern spotted owls is adequate consideration for the purpose of meeting the statutory requirements that are the basis for the consolidated cases captioned Seattle Audubon Society et al., v. F. Dale Robertson, Civil No. 89-160 and Washington Contract Loggers Assoc. et al., v. F. Dale Robertson, Civil No. 89-99 (order granting preliminary injunction) and the case Portland Audubon Society et al., v. Manuel Lujan, Jr., Civil No. 87-1160-FR. The guidelines adopted by subsections (b)(3) and (bX5) of this section shall not be subject to judicial review by any court of the United States.

(B) The Forest Service is directed to review and revise as appropriate the decision adopted in the December 1988 Record of Decision referenced in subsection (b)(6)(A) of this section and shall consider any new information gathered subsequent to the issuance of the Record of Decision, including the interagency guidelines for conservation of northern spotted owls developed by the In-

teragency Scientific Committee to address conservation of the northern spotted owl. This review, and any resulting changes to the December 1988 decision determined to be necessary by the Forest Service are to be completed and in effect not later than September 30, 1990.

Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, § 201(a)-(b), (d), 116 Stat. 2322, 2337, 2339, codified at 28 U.S.C. § 1610 note:

SEC. 201. SATISFACTION OF JUDGMENTS FROM BLOCKED ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

(b) PRESIDENTIAL WAIVER.—

(1) IN GENERAL.—Subject to paragraph (2), upon determining on an asset-by-asset basis that a waiver is necessary in the national security in-

terest, the President may waive the requirements of subsection (a) in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(2) EXCEPTION.—A waiver under this subsection shall not apply to—

(A) property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that has been used by the United States for any nondiplomatic purpose (including use as rental property), or the proceeds of such use; or

(B) the proceeds of any sale or transfer for value to a third party of any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

* * *

(d) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ACT OF TERRORISM.—The term "act of terrorism" means—

(A) any act or event certified under section 102(1); or

(B) to the extent not covered by subparagraph (A), any terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration

and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii))).

(2) BLOCKED ASSET.—The term "blocked asset" means—

(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702); and

(B) does not include property that—

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of such license has been specifically required by statute other than the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or

(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

(3) CERTAIN PROPERTY.—The term "property subject to the Vienna Convention on Diplomatic

Relations or the Vienna Convention on Consular Relations" and the term "asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations" mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

(4) TERRORIST PARTY.—The term "terrorist party" means a terrorist, a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))), or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, § 502, 126 Stat. 1214, 1258, codified at 22 U.S.C. § 8772:

SEC. 502. INTERESTS IN CERTAIN FINANCIAL ASSETS OF IRAN.

(a) INTERESTS IN BLOCKED ASSETS.—

(1) IN GENERAL.—Subject to paragraph (2), notwithstanding any other provision of law, including any provision of law relating to sovereign immunity, and preempting any inconsistent provision of State law, a financial asset that is—

(A) held in the United States for a foreign securities intermediary doing business in the United States;

(B) a blocked asset (whether or not subsequently unblocked) that is property described in subsection (b); and

(C) equal in value to a financial asset of Iran, including an asset of the central bank or monetary authority of the Government of Iran or any agency or instrumentality of that Government, that such foreign securities intermediary or a related intermediary holds abroad,

shall be subject to execution or attachment in aid of execution in order to satisfy any judgment to the extent of any compensatory damages awarded against Iran for damages for personal injury or death caused by an act of torture, extrajudicial killing, aircraft sabotage, or hostage-taking, or the provision of material support or resources for such an act.

(2) COURT DETERMINATION REQUIRED.—In order to ensure that Iran is held accountable for paying the judgments described in paragraph (1) and in furtherance of the broader goals of this Act to sanction Iran, prior to an award turning over any asset pursuant to execution or attachment in aid of execution with respect to any judgments against Iran described in paragraph (1), the court shall determine whether Iran holds equitable title to, or the beneficial interest in, the assets described in subsection (b) and that no other person possesses a constitutionally protected interest in the assets described in subsection

(b) under the Fifth Amendment to the Constitution of the United States. To the extent the court determines that a person other than Iran holds—

(A) equitable title to, or a beneficial interest in, the assets described in subsection (b) (excluding a custodial interest of a foreign securities intermediary or a related intermediary that holds the assets abroad for the benefit of Iran); or

(B) a constitutionally protected interest in the assets described in subsection (b),

such assets shall be available only for execution or attachment in aid of execution to the extent of Iran's equitable title or beneficial interest therein and to the extent such execution or attachment does not infringe upon such constitutionally protected interest.

(b) FINANCIAL ASSETS DESCRIBED.—The financial assets described in this section are the financial assets that are identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG), that were restrained by restraining notices and levies secured by the plaintiffs in those proceedings, as modified by court order dated June 27, 2008, and extended by court orders dated June 23, 2009, May 10, 2010, and June 11, 2010, so long as such assets remain restrained by court order.

(c) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to affect the availability, or lack thereof, of a right to satisfy a judgment in any other ac-

tion against a terrorist party in any proceedings other than proceedings referred to in subsection (b); or

(2) to apply to assets other than the assets described in subsection (b), or to preempt State law, including the Uniform Commercial Code, except as expressly provided in subsection (a)(1).

(d) DEFINITIONS.—In this section:

(1) BLOCKED ASSET.—The term "blocked asset"—

(A) means any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under section 202 or 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701 and 1702); and

(B) does not include property that—

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of the license has been specifically required by a provision of law other than the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or

(ii) is property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Rela-

tions, or that enjoys equivalent privileges and immunities under the laws of the United States, and is being used exclusively for diplomatic or consular purposes.

(2) FINANCIAL ASSET; SECURITIES INTERMEDIARY.—The terms "financial asset" and "securities intermediary" have the meanings given those terms in the Uniform Commercial Code, but the former includes cash.

(3) IRAN.—The term "Iran" means the Government of Iran, including the central bank or monetary authority of that Government and any agency or instrumentality of that Government.

(4) PERSON.—

(A) IN GENERAL.—The term "person" means an individual or entity.

(B) ENTITY.—The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

(5) TERRORIST PARTY.—The term "terrorist party" has the meaning given that term in section 201(d) of the Terrorism Risk Insurance Act of 2002 (28 U.S.C. 1610 note).

(6) UNITED STATES.—The term "United States" includes all territory and waters, continental, or insular, subject to the jurisdiction of the United States.

(e) TECHNICAL CHANGES TO THE FOREIGN SOVEREIGN IMMUNITIES ACT.—

(1) TITLE 28, UNITED STATES CODE.—Section 1610 of title 28, United States Code, is amended—

(A) in subsection (a)(7), by inserting after "section 1605A" the following: "or section 1605(a)(7) (as such section was in effect on January 27, 2008)"; and

(B) in subsection (b)—

(i) in paragraph (2)—

(I) by striking "(5), 1605(b), or 1605A" and inserting "(5) or 1605(b)"; and

(II) by striking the period at the end and inserting ", or"; and

(ii) by adding after paragraph (2) the following:

"(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.".

(2) TERRORISM RISK INSURANCE ACT OF 2002.—Section 201(a) of the Terrorism Risk Insurance Act of 2002 (28 U.S.C. 1610 note) is amended by striking "section 1605(a)(7)" and inserting "sec-

tion 1605A or 1605(a)(7) (as such section was in effect on January 27, 2008)".

15 U.S.C. § 78aa–1. Special provision relating to statute of limitations on private causes of action

(a) Effect on pending causes of action

The limitation period for any private civil action implied under section 78j(b) of this title that was commenced on or before June 19, 1991, shall be the limitation period provided by the laws applicable in the jurisdiction, including principles of retroactivity, as such laws existed on June 19, 1991.

(b) Effect on dismissed causes of action

Any private civil action implied under section 78j(b) of this title that was commenced on or before June 19, 1991—

(1) which was dismissed as time barred subsequent to June 19, 1991, and

(2) which would have been timely filed under the limitation period provided by the laws applicable in the jurisdiction, including principles of retroactivity, as such laws existed on June 19, 1991,

shall be reinstated on motion by the plaintiff not later than 60 days after December 19, 1991.

15 U.S.C. § 7902. Prohibition on bringing of qualified civil liability actions in Federal or State court

(a) In general

A qualified civil liability action may not be brought in any Federal or State court.

(b) Dismissal of pending actions

A qualified civil liability action that is pending on October 26, 2005, shall be immediately dismissed by the court in which the action was brought or is currently pending.

15 U.S.C. § 7903. Definitions

In this chapter:

(1) Engaged in the business

The term "engaged in the business" has the meaning given that term in section 921(a)(21) of title 18, and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) Manufacturer

The term "manufacturer" means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18.

(3) Person

The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) Qualified product

The term "qualified product" means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) Qualified civil liability action

(A) In general

The term "qualified civil liability action" means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, or a comparable or identical State felony law, by a party directly harmed by

the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition un-

der subsection (g) or (n) of section 922 of title 18;

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26.

(B) Negligent entrustment

As used in subparagraph (A)(ii), the term "negligent entrustment" means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) Rule of construction

The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this chapter shall be construed to create a public or private cause of action or remedy.

(D) Minor child exception

Nothing in this chapter shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

(6) Seller

The term "seller" means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18;

(B) a dealer (as defined in section 921(a)(11) of title 18) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18) in interstate or for-

eign commerce at the wholesale or retail level.

(7) State

The term "State" includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) Trade association

The term "trade association" means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of title 26 and exempt from tax under section 501(a) of such title; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) Unlawful misuse

The term "unlawful misuse" means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

25 U.S.C. § 1701. Congressional findings and declaration of policy

Congress finds and declares that—

(a) there are pending before the United States District Court for the District of Rhode Island two consolidated actions that involve Indian claims to certain public and private lands within the town of Charlestown, Rhode Island;

(b) the pendency of these lawsuits has resulted in severe economic hardships for the residents of the town of Charlestown by clouding the titles to much of the land in the town, including lands not involved in the lawsuits;

(c) the Congress shares with the State of Rhode Island and the parties to the lawsuits a desire to remove all clouds on titles resulting from such Indian land claims within the State of Rhode Island; and

(d) the parties to the lawsuits and others interested in the settlement of Indian land claims within the State of Rhode Island have executed a Settlement Agreement which requires implementing legislation by the Congress of the United States and the legislature of the State of Rhode Island.

25 U.S.C. § 1702. Definitions

For the purposes of this subchapter, the term—

(a) "Indian Corporation" means the Rhode Island nonbusiness corporation known as the "Narragansett Tribe of Indians";

(b) "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to, minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish;

(c) "lawsuits" means the actions entitled "Narragansett Tribe of Indians v. Southern Rhode Island Land Development Co., et al., C.A. No. 75–0006 (D.R.I.)" and "Narragansett Tribe of Indians v. Rhode Island Director of Environmental Management, C.A. No. 75–0005 (D.R.I.)";

(d) "private settlement lands" means approximately nine hundred acres of privately held land outlined in red in the map marked "Exhibit A" attached to the Settlement Agreement that are to be acquired by the Secretary from certain private landowners pursuant to sections 1704 and 1707 of this title;

(e) "public settlement lands" means the lands described in paragraph 2 of the Settlement Agreement that are to be conveyed by the State of Rhode Island to the State Corporation pursuant to legislation as described in section 1706 of this title;

(f) "settlement lands" means those lands defined in subsections (d) and (e) of this section;

(g) "Secretary" means the Secretary of the Interior;

(h) "settlement agreement" means the document entitled "Joint Memorandum of Understanding Concerning Settlement of the Rhode Island Indian Land Claims", executed as of February 28, 1978, by representatives of the State of Rhode Island, of the town of Charlestown, and of the parties to the lawsuits, as filed with the Secretary of the State of Rhode Island;

(i) "State Corporation" means the corporation created or to be created by legislation enacted by the State of Rhode Island as described in section 1706 of this title; and

(j) "transfer" includes but is not limited to any sale, grant, lease, allotment, partition, or conveyance, any transaction the purpose of which was to effect a sale, grant, lease, allotment, partition, or conveyance, or any event or events that resulted in a change of possession or control of land or natural resources.

25 U.S.C. § 1705. Publication of findings

(a) Prerequisites; consequences

If the Secretary finds that the State of Rhode Island has satisfied the conditions set forth in section 1706 of this title, he shall publish such findings in the Federal Register and upon such publication—

(1) any transfer of land or natural resources located anywhere within the United States from, by, or on behalf of the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, and any transfer of land or natural resources located anywhere within the town of Charlestown, Rhode Island, by, from, or on behalf of any Indian, Indian nation, or tribe of Indians, including but not limited to a transfer pursuant to any statute of any State, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation or tribe of Indians (including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790, ch. 33, sec. 4, 1 Stat. 137, and all amendments thereto and all subsequent versions thereof), and Congress does hereby approve any such transfer effective as of the date of said transfer;

(2) to the extent that any transfer of land or natural resources described in subsection (a) of this section may involve land or natural resources to which the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, or any other Indian, Indian nation, or tribe of Indians, had aboriginal title, subsection (a) of this section shall be regarded as an extinguishment of such aboriginal title as of the date of said transfer; and

(3) by virtue of the approval of a transfer of land or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, any State or subdivision thereof, or any other person or entity, by the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof, or any other Indian, Indian nation, or tribe of Indians, arising subsequent to the transfer and based upon any interest in or right involving such land or natural resources (including but not limited to claims for trespass damages or claims for use and occupancy) shall be regarded as extinguished as of the date of the transfer.

(b) Maintenance of action; remedy

Any Indian, Indian nation, or tribe of Indians (other than the Indian Corporation or any other entity presently or at any time in the past known as the Narragansett Tribe of Indians, or any predecessor or successor in interest, member or stockholder thereof) whose transfer of land or natural resources was approved or whose aboriginal title or claims were extinguished by subsection (a) of this section may, within a period of one hundred and eighty days after publication of the Secretary's findings pursuant to this section, bring an action against the State Corporation in lieu of an action against any other person against whom a cause may have existed in the absence of this section. In any such action, the remedy shall be limited to a right of possession of the settlement lands.

28 U.S.C. § 1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

28 U.S.C. § 1603. Definitions

For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is

owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

28 U.S.C. § 1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

28 U.S.C. § 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement

to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

(7) [Repealed]

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That—

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party deter-

mined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

(e), (f) [Repealed]

(g) Limitation on discovery.—

(1) IN GENERAL.— (A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) SUNSET.— (A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would—

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) EVALUATION OF EVIDENCE.—The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) BAR ON MOTIONS TO DISMISS.—A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

(5) CONSTRUCTION.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

28 U.S.C. § 1605A. Terrorism exception to the jurisdictional immunity of a foreign state

(a) IN GENERAL.—

(1) NO IMMUNITY.—A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case not otherwise covered by this chapter in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.

(2) CLAIM HEARD.—The court shall hear a claim under this section if—

(A) (i) (I) the foreign state was designated as a state sponsor of terrorism at the time the act described in paragraph (1) occurred, or was so designated as a result of such act, and, subject to subclause (II), either remains so designated when the claim is filed under this section or was so designated within the 6-month period before the claim is filed under this section; or

(II) in the case of an action that is refiled under this section by reason of section 1083(c)(2)(A) of the National Defense Authorization Act for Fiscal Year 2008 or is filed under this sec-

tion by reason of section 1083(c)(3) of that Act, the foreign state was designated as a state sponsor of terrorism when the original action or the related action under section 1605(a)(7) (as in effect before the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) was filed;

(ii) the claimant or the victim was, at the time the act described in paragraph (1) occurred—

(I) a national of the United States;

(II) a member of the armed forces; or

(III) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment; and

(iii) in a case in which the act occurred in the foreign state against which the claim has been brought, the claimant has afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration; or

(B) the act described in paragraph (1) is related to Case Number 1:00CV03110 (EGS)

in the United States District Court for the District of Columbia.

(b) LIMITATIONS.—An action may be brought or maintained under this section if the action is commenced, or a related action was commenced under section 1605(a)(7) (before the date of the enactment of this section) or section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (as contained in section 101(c) of division A of Public Law 104-208) not later than the latter of—

(1) 10 years after April 24, 1996; or

(2) 10 years after the date on which the cause of action arose.

(c) PRIVATE RIGHT OF ACTION.—A foreign state that is or was a state sponsor of terrorism as described in subsection (a)(2)(A)(i), and any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, shall be liable to—

(1) a national of the United States,

(2) a member of the armed forces,

(3) an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment, or

(4) the legal representative of a person described in paragraph (1), (2), or (3),

for personal injury or death caused by acts described in subsection (a) (1) of that foreign state, or of an official, employee, or agent of that foreign state, for which the courts of the United States may maintain

jurisdiction under this section for money damages. In any such action, damages may include economic damages, solatium, pain and suffering, and punitive damages. In any such action, a foreign state shall be vicariously liable for the acts of its officials, employees, or agents.

(d) ADDITIONAL DAMAGES.—After an action has been brought under subsection (c), actions may also be brought for reasonably foreseeable property loss, whether insured or uninsured, third party liability, and loss claims under life and property insurance policies, by reason of the same acts on which the action under subsection (c) is based.

(e) SPECIAL MASTERS.—

(1) IN GENERAL.—The courts of the United States may appoint special masters to hear damage claims brought under this section.

(2) TRANSFER OF FUNDS.—The Attorney General shall transfer, from funds available for the program under section 1404C of the Victims of Crime Act of 1984 (42 U.S.C. 10603c), to the Administrator of the United States district court in which any case is pending which has been brought or maintained under this section such funds as may be required to cover the costs of special masters appointed under paragraph (1). Any amount paid in compensation to any such special master shall constitute an item of court costs.

(f) APPEAL.—In an action brought under this section, appeals from orders not conclusively ending the litigation may only be taken pursuant to section 1292(b) of this title.

(g) PROPERTY DISPOSITION.—

(1) IN GENERAL.—In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall have the effect of establishing a lien of lis pendens upon any real property or tangible personal property that is—

(A) subject to attachment in aid of execution, or execution, under section 1610;

(B) located within that judicial district; and

(C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.

(2) NOTICE.—A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.

(3) ENFORCEABILITY.—Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

(h) DEFINITIONS.—For purposes of this section—

(1) the term "aircraft sabotage" has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(2) the term "hostage taking" has the meaning given that term in Article 1 of the Interna-

tional Convention Against the Taking of Hostages;

(3) the term "material support or resources" has the meaning given that term in section 2339A of title 18;

(4) the term "armed forces" has the meaning given that term in section 101 of title 10;

(5) the term "national of the United States" has the meaning given that term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(6) the term "state sponsor of terrorism" means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 40 of the Arms Export Control Act (22 U.S.C. 2780), or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism; and

(7) the terms "torture" and "extrajudicial killing" have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

28 U.S.C. § 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

28 U.S.C. § 1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

(a) for which a foreign state would not be entitled to immunity under section 1605 or 1605A of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

28 U.S.C. § 1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall

send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dis-

patched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

28 U.S.C. § 1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

28 U.S.C. § 1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A, regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a) (2), (3), or (5), 1605(b), or 1605A of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f) (1) (A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2) (A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries—

(i) may provide such information to the court under seal; and

(ii) should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

(3) WAIVER.—The President may waive any provision of paragraph (1) in the interest of national security.

(g) PROPERTY IN CERTAIN ACTIONS.—

(1) IN GENERAL.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

(2) UNITED STATES SOVEREIGN IMMUNITY INAPPLICABLE.—Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action

taken against that foreign state under the Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) THIRD-PARTY JOINT PROPERTY HOLDERS.—Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

28 U.S.C. § 1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its

immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

New York Civil Practice Law & Rules § 5240. Modification or protective order; supervision of enforcement

The court may at any time, on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure. Section 3104 is applicable to procedures under this article.

Uniform Commercial Code § 8-112. Creditor's Legal Process

(a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d).

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d).

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the

claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

Uniform Commercial Code § 8-503. Property Interest of Entitlement Holder in Financial Asset Held by Securities Intermediary

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8-511.

(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under Sections 8-505 through 8-508.

(d) An entitlement holder's property interest with respect to a particular financial asset under

subsection (a) may be enforced against a purchaser of the financial asset or interest therein only if:

(1) insolvency proceedings have been initiated by or against the securities intermediary;

(2) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) the securities intermediary violated its obligations under Section 8-504 by transferring the financial asset or interest therein to the purchaser; and

(4) the purchaser is not protected under subsection (e).

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under Section 8-504.

Federal Rule of Civil Procedure 69. Execution

(a) IN GENERAL.

(1) *Money Judgment; Applicable Procedure.* A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) *Obtaining Discovery.* In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

(b) AGAINST CERTAIN PUBLIC OFFICERS. When a judgment has been entered against a revenue officer in the circumstances stated in 28 U.S.C. § 2006, or against an officer of Congress in the circumstances stated in 2 U.S.C. § 118, the judgment must be satisfied as those statutes provide.