NO. 16-778

In the
Supreme Court of the United States

YAAKOV LICCI, et al.,

Petitioners,

v.

LEBANESE CANADIAN BANK,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this petition should be held pending the Court's disposition of *Jesner v. Arab Bank PLC*, No. 16-499 (filed Oct. 5, 2016), notwithstanding the fact that *Jesner* itself does not warrant the Court's review and there are multiple independent reasons why Petitioners' claims fail.

PARTIES TO THE PROCEEDING

Respondent Lebanese Canadian Bank was the defendant in the district court and appellee in the Second Circuit.

Petitioners were plaintiffs in the district court and appellants in the Second Circuit. A full list of the petitioners is set forth in the Petition.

CORPORATE DISCLOSURE STATEMENT

Lebanese Canadian Bank, which is in liquidation and no longer has any active operations, certifies that it does not have a parent corporation and that no publicly held corporation owns more than ten percent of its stock.

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REASONS FOR DENYING THE PETITION

This case is one of five lawsuits brought by the same plaintiffs in different jurisdictions over the last several years alleging violations of the Anti-Terrorism Act, 18 U.S.C. §2331 ("ATA"), Alien Tort Statute, 28 U.S.C. §1350 ("ATS"), and Israeli tort law. The plaintiffs in each case allege that they were injured by rocket attacks during the Israel-Lebanon War of 2006. Every single one of those suits has ended in dismissal,[1] and the decision below was no exception.

In this case, Petitioners (foreign citizens) allege that Respondent Lebanese Canadian Bank (a now-defunct foreign bank that had no U.S. operations during the relevant time) violated the ATS by providing routine banking services in Lebanon to a foreign customer (a Lebanese charity). The charity in question did not appear on any financial "blacklists" (in the U.S. or otherwise) at the relevant time. Petitioners nonetheless allege that the charity was a front for Hezbollah and that Respondent facilitated rocket attacks on Israel during the 2006 war by providing banking services to the charity. None of this occurred in the United States.

There is also no question that Petitioners are seeking to litigate actions that took place during a *war* between two foreign sovereigns. On July 12, 2006, in response to the kidnaping of three Israeli

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[1] *See Kaplan v. Central Bank,* 961 F. Supp. 2d 185 (D.D.C. 2013); *Kaplan v. Hezbollah*, Nos. 09-00646 (RCL), 10-00483 (RCL), 2016 WL 5714754 (D.D.C. Sept. 30, 2016); *Kaplan v. Al Jazeera*, No. 10 Civ. 5298, 2011 WL 2314783 (S.D.N.Y. June 7, 2011); *Rothstein v. UBS AG,* 708 F. 3d 82 (2d Cir. 2013).

soldiers, Israel invaded Lebanon, beginning the military conflict recognized by the parties thereto and internationally as the Israel-Lebanon or Second Lebanon War.[2] By the time the United Nations brokered an end to the conflict 34 days later, 43 Israelis and more than 1,000 Lebanese civilians had been killed, in addition to military casualties.

The district court dismissed plaintiffs' ATA claims holding that plaintiffs were collaterally estopped from relitigating the dismissal of those same claims in another jurisdiction. Pet.App.47a-51a. The Second Circuit affirmed in a summary order. *Id.* 43a-45a.

The district court also dismissed Petitioners' ATS claims, correctly concluding that "[a]bsent facts to plausibly connect the executed wire transfers with an express purpose of facilitating the rocket attacks," Petitioners could not allege the requisite mens rea. Pet.App.52a-56a. Although there were multiple potential grounds for affirmance on appeal, the Second Circuit affirmed dismissal of Petitioners' ATS claims on the ground that the ATS does not provide jurisdiction over corporate defendants. Pet.App.37a-38a.

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[2] *See*, *e.g.*, *Kaplan*, 961 F. Supp. 2d at 188 (citing remarks of Prime Minister Ehud Olmert referring to the "act of war … about which there is no dispute"); *see also Habchy v. Filip,* 552 F.3d 911, 913-14 (8th Cir. 2009) (discussing "the military conflict between Lebanon and Israel"); Human Rights Council, Rep. of the Comm'n of Inquiry of Lebanon Pursuant to Human Rights Council Res. S-2/1, U.N. Doc. A/HRC/3/2, at 26 (Nov. 23, 2006), http://bit.ly/2lQQ2o5; Condoleezza Rice, Opinion, *A Path to Lasting Peace*, Wash. Post (Aug. 16, 2006) ("this war" between Israel and Lebanon), http://wapo.st/2lYW9Th.

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Recognizing that Respondent is a defunct bank, Petitioners acknowledge that this case is not a suitable candidate for plenary review.[3] Instead, they ask the Court to "hold the petition in this case, and then consider the case in light of its ultimate decision in" *Jesner v. Arab Bank PLC*, No. 16-499 (filed Oct. 6, 2016). Respondent agrees with Petitioners that there is absolutely no reason to grant certiorari outright.

Nor is there any basis to hold this petition in light of *Jesner*. At the outset, *Jesner* itself should be denied, for the reasons set forth by the respondent in that case. The question of whether the ATS reaches corporations is of minimal and diminishing importance despite the Second Circuit's efforts to needlessly force that issue before this Court. *See* Br. in Opp. at 15-20, No. 16-499 (filed Dec. 14, 2016). Indeed, in recent years, this Court has declined a number of opportunities to consider this question, and the *Jesner* petitioners offer no reason for a different outcome this time around. Moreover, there are numerous other grounds on which the *Jesner* plaintiffs' claims fail, making that case an exceedingly poor vehicle for this Court's review even if the Court were interested in resolving the corporate liability issue.

Even putting aside the reasons why *Jesner* itself does not warrant this Court's review, there is no basis to hold this petition for *Jesner*. As Petitioners

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[3] Respondent no longer operates and has been removed by the Central Bank of Lebanon from that country's official list of banks.

acknowledge with considerable understatement, Respondent Lebanese Canadian Bank "no longer has active operations." Pet.4-5. In fact, Respondent is defunct, insolvent, and unable to pay any judgment rendered against it. Further litigation of this matter would thus yield little more than an advisory opinion.

Moreover, this case is an exceptionally poor vehicle for either a grant or a hold because (as in *Jesner*), Petitioners' ATS claims are independently barred by this Court's holding in *Kiobel v. Royal Dutch Petroleum*, 133 S. Ct. 1659 (2013). Like *Kiobel*, this is a paradigmatic "foreign-cubed" case: it involves foreign plaintiffs suing a foreign defendant for injuries that occurred on foreign soil during a declared war between two foreign sovereigns. At all relevant times, Respondent had no branches, offices, or employees in the United States. Indeed, the only link to the United States that Petitioners have even alleged is that *another company* (American Express Bank, Ltd. ("AmEx")) performed correspondent banking services in the U.S. while processing certain wire transfers. Despite the Second Circuit's dictum to the contrary, *see* Pet.App.27a-31a, there was literally no conduct *by Respondent* that took place within the United States.[4] Petitioners' claims thus

[4] It is especially ironic that the Second Circuit found that the correspondent banking services provided by AmEx were sufficient to displace the presumption against extraterritoriality given that all claims against AmEx itself were previously dismissed. *See Licci v. Lebanese Canadian Bank*, 672 F.3d 155 (2d Cir. 2012) (affirming dismissal of claims against AmEx). Notwithstanding that Petitioners made the same allegations against AmEx that they did against LCB—that AmEx "intentionally … provided … banking services to H[e]zbollah,"

fall within the heartland of *Kiobel*-barred claims, and the petition should be denied rather than held for that reason alone.

Finally, like *Jesner*, this case well-illustrates why U.S. courts should not be resolving ATS claims that arise out of armed conflicts between foreign countries. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 727-28 (2004) (noting "risks of adverse foreign policy consequences" in ATS litigation). Resolution of Petitioners' claims on the merits would inject a U.S. court into sensitive foreign policy issues, and would force the Court to sit in judgment of actions taken on a foreign battlefield by foreign military forces in a foreign war in which the U.S. played no part, and where the claims of U.S. citizens arising out of that conflict have already been dismissed. This is a role that a U.S. federal court is manifestly unsuited to play.

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that its actions "caused, enabled and facilitated the terrorist rocket attacks," and that AmEx knew its conduct would result in harm to Petitioners, *see* Joint Appendix at 38-46, 76-86, No. 10-1306-cv (2d Cir. Aug. 24, 2010)—the Second Circuit previously found that AmEx's conduct, the only conduct alleged in the Complaint to have occurred in the United States, did not violate New York law. If those actions of AmEx did not even violate New York law, they surely cannot constitute a violation of international law sufficient to displace the presumption against extraterritoriality.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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