NO. 16-534

In the Supreme Court of the United States

JENNY RUBIN, ET AL.,

Petitioners,

v.

ISLAMIC REPUBLIC OF IRAN, ET AL.,

Respondents.

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

BRIEF OF FORMER U.S. COUNTERTERRORISM OFFICIALS, NATIONAL SECURITY OFFICIALS, AND NATIONAL SECURITY SCHOLARS AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici are national security scholars and former U.S. officials who held senior positions in the federal government concerned with counterterrorism, diplomacy, and national security. Amici have spent substantial portions of their careers developing, interpreting, and enforcing this country's framework of federal laws designed to prevent heinous acts of terrorism. Amici's experience confirms that successfully starving terrorist organizations of funding is a sure way to save American lives. Amici also understand that private lawsuits must be an integral component of any effective strategy to keep money out of terrorists' hands.

Amici have previously participated in cases where the efficacy of private civil lawsuits as weapons for combatting terror was threatened. *Kiobel* v. *Royal Dutch Petrol. Co.*, No. 10-1491 (advocating the view that the Alien Tort Statute, 28 U.S.C. § 1350, allows claims against corporations for violations of international law); *Jesner* v. *Arab Bank PLC*, No. 16-499 (same); *Bank Markazi* v. *Peterson*, No. 14-770 (advocating successfully in support of the constitutionality of the Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, § 502, 126 Stat. 1258, which allows for execution of funds held by the Central Bank of Iran to satisfy certain terrorism-related judgments against the Islamic Republic of Iran, 22 U.S.C. § 1882).

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[1] All parties lodged blanket amicus consent letters with the court. No counsel for any party authored this brief in whole or in part, and no entity, other than amici, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief.

This case concerns a concerted effort to undermine one of the most effective civil terror-fighting tools: private lawsuits brought directly against designated state sponsors of terror like the Islamic Republic of Iran. Many of the dollars flowing into terrorists' pockets come from a select few countries. And even among these brutal states, Respondent the Islamic Republic Iran stands out as the most notorious—utilizing "terrorism as one of the regime's signature calling cards." *Joint Hr'g, House Homeland Security Subcomm. on Counterterrorism and Intelligence and Subcomm. on Oversight, Investigations, and Management, Iranian Terror Operations on American Soil*, 112th Cong. 1 (Oct. 26, 2011), <http://bit.ly/2j9e25p> (testimony of Prof. Matthew Levitt, Director, Stein Program on Counterterrorism and Intelligence). The enforcement of private judgments against such terror-supporting regimes can be critical in holding them accountable for their crimes, deterring them from taking part in the barbaric enterprise of terrorism, and providing justice for their victims. But the result below would thwart many such enforcement efforts, shielding assets that Iran and other state sponsors of terror hold in the United States. That would sap private lawsuits of much of their power against these rogue regimes.

Biographical information for each signatory to this brief is provided in the appendix.

SUMMARY OF THE ARGUMENT

Money is the lifeblood of terrorism. It provides not only the weapons and explosives needed to conduct terror operations, but also sustains the larger apparatus that every international terrorism enterprise needs, from the "compensation" provided to operatives and their families, to more mundane costs of paying employees and printing

propaganda materials. Starving terror networks of the funding needed to maintain these criminal enterprises has been a signature focus of Congress's antiterrorism efforts. Because an outsized portion of that funding comes from a select few countries, these countries have become targets of the highest priority in that effort.

Over the past four decades, Congress has developed a comprehensive set of antiterrorism laws that aim to completely dismantle these countries' terror funding capabilities. It has empowered Executive Branch officials to impose crippling administrative sanctions that have frozen their assets, stifled their commerce with other nations, sapped their key industries of investment, and even halted trade in their native currencies. Congress has also attacked the web of agencies, instrumentalities, affiliated organizations, and private bank accounts these countries use to distribute money to terror organizations.

Congress has also joined terror victims to the cause, enlisting their unique capacity to exert financial pressure on state sponsors of terror through civil lawsuits. And to ensure the potency of this financial pressure, Congress has created a different system of immunity rules for terrorism sponsors than the one enjoyed by their law-respecting peers. The latter generally enjoy immunity from both judgment and attachment, except when they engage in certain commercial activities. But for terrorism-sponsoring states, Congress has gradually stripped immunity from judgment—at first only for certain habitual offenders designated by the Executive, but now for all who support terrorist acts in the U.S. Congress has also acted repeatedly to strip designated sponsors of terror of attachment immunity.

Throughout the development of this robust and comprehensive anti-terror strategy—composed in equal parts of administrative sanctions, civil and criminal penalties, and private lawsuits—Congress has aimed to deny these nations of every dollar they might use to fund terrorism, in hopes of inhibiting their destructive capacity over the short term, and, over the longer term, raising the cost of terror sponsorship to the point that it is no longer a strategy worth pursuing. Congress has also worked to remove any artificial legal barriers standing in the way of these goals, to ensure that the only obstacles—public or private—to completely halting state sponsorship of terror are the necessarily finite resources available to combat it, and the practical difficulty of uncovering it.

Congress completed that project with the enactment of 28 U.S.C. § 1610(g), which plainly provides that *virtually all* property in which a terror-sponsoring state has a beneficial interest can be reached to satisfy judgments for terror-related injuries, except for certain limited categories of assets the U.S. has elected to protect under other laws in service of other national and international priorities. That development brought Congress's approach to civil immunity in FSIA into line with the remainder of its comprehensive antiterrorism strategy, which gives no quarter to terror-sponsoring states to ensure that they are deprived of any property that might be used to finance terror.

Respondents and the Government resist this natural reading of subsection 1610(g). But their insupportably narrow interpretation cannot be squared with that provision's plain text, or with the comprehensive antiterrorism strategy Congress has followed elsewhere in the law. In

their hands, subsection 1610(g)'s scope would be constricted, so that it would do no more than tinker with certain particulars for disregarding the corporate formalities between designated terror-sponsoring countries and their agencies and instrumentalities. Under this view of the statute, terrorism sponsors' property would otherwise remain shielded from attachment and execution on virtually the same terms as property belonging to their law-respecting neighbors. That would permit rogue nations to escape responsibility for sponsoring heinous acts of terror causing catastrophic harms to Americans. It would also erect a shield around assets these countries maintain in this country, ensuring their availability to finance terrorist activities, both on U.S. soil and abroad—thereby *facilitating*, rather than impairing, these countries' capacities to commit future acts of terror against American citizens.

Nothing suggests that Congress would permit subsection 1610(g) to be employed to such unjust ends. And by advocating this position, the Government reveals that it prioritizes its institutional desire for flexibility in foreign relations above faithfulness to Congress's consistent antiterrorism objectives, and the protection of innocent lives. Indeed, the Government now finds itself aligned with a designated sponsor of terror against its American victims. Rejecting the interpretation that it and Respondents offer for subsection 1610(g) is necessary to remain true to FSIA's text and history, and to give due respect to the consistent framework Congress has developed across the entire body of federal antiterrorism law.

Rejecting the interpretation of subsection 1610(g) offered by Iran and the Government is also essential to preserving the coercive force of civil judgments against for-

eign sovereigns as an essential tool in the fight against terror. Civil litigation has been demonstrably effective in curbing the financing of terrorism. And when directed at state sponsors of terror, such suits provide the avenue of attack with perhaps the greatest potential for success in putting a dent in terror funding, given the sheer amount of money provided by states to terrorists, and the greater likelihood that states will respond to the coercive incentives from massive civil judgments when compared to other terrorist funding sources. These incentives are practically undone, however, when terror-sponsoring nations like Iran are permitted to shield their assets from recovery behind artificial barriers, and thereby limit realistic prospects of collecting the judgment. Without these incentives, rogue nations will be encouraged to kill Americans with impunity, terror victims will be denied justice after decades of litigation. And the next generation of potential private terrorism fighters, upon witnessing the pyrrhic victories of their predecessors, may remain on the sidelines rather than taking up the fight.

ARGUMENT

I. Interpreting subsection 1610(g) to allow attachment of all assets of terror-sponsoring nations respects Congress's consistent approach to combatting state terror finance.

Subsection 1610(g) cannot be understood in isolation, but must be interpreted as part of the larger legal antiterrorism framework in which it operates. This robust, comprehensive body of law evinces Congress's absolutist purpose to prevent rogue nations from sponsoring terror operations, utilizing every economic tool at its disposal, including administrative sanctions, civil and criminal penalties, and private lawsuits. Congress has also stripped

these criminal states of the immunities the U.S. extends to law-respecting nations, lest those immunities be abused to shield them from responsibility for harming Americans. As subsection 1610(g) is an integral part of this larger body of antiterrorism law, it should be understood to have the same absolutist purpose, and the same broad, immunity-stripping reach.

A. Congress utilizes administrative sanctions and criminal liability to dismantle foreign-sovereign terrorist funding networks.

While "[t]errorists seldom kill for money *** they always need money to kill." Jimmy Gurulé, *Unfunding Terror: the Legal Response to the Financing of Global Terrorism* 21 (2008) (*Unfunding Terror*). Direct terrorist operations themselves are relatively inexpensive, often costing only tens of thousands of dollars, but the larger terrorist enterprises necessary to support these operations require much greater sums of money to function. Financial Action Task Force, *Terrorist Financing* 7 (2008) <http://bit.ly/2xfrtXB>; *Unfunding Terror* 3. In the lead-up to the September 11, 2001 attacks for example, al Qaeda spent approximately $30 million a year. John Roth et al., Nat'l Comm'n on Terrorist Attacks Upon the United States, *Monograph on Terrorist Financing: Staff Report to the Commission* 19–30 (2004).

Much of the money that funds these activities comes from foreign sovereigns. Iran in particular is considered "the foremost state sponsor of terrorism" in the world, U.S. Dep't of State, *Country Reports on Terrorism 2016* (*2016 Country Report*), <http://bit.ly/2uzXW9m>,

providing "a range of support, including financial, training, and equipment, to groups around the world," U.S. Dep't of State, *Country Reports on Terrorism 2015* 284-585 (2015), <http://bit.ly/2qoqWz7>. The U.S. Department of Defense estimates that Iran provides between $100–200 million per year in funding to Hezbollah, its primary terrorist proxy. U.S. Dep't of Def., *Unclassified Annual Report on Military Power of Iran* 8 (2010), <http://bit.ly/2vJQsOu>. Iran has also provided tens of millions of dollars to Hamas and other terrorist groups such as al-Sabirin, Palestinian Islamic Jihad, and the Popular Front for the Liberation of Palestine General Command. *Id.* at 2; Matthew Levitt, *Iran's Support for Terrorism Under the JCPOA* Wash. Inst. Policywatch 2648 (July 8, 2016).

Given the sheer magnitude of terror funding these nations provide, every Congress for the past three decades has understandably made state sponsors of terror a central target of its antiterrorism efforts. At every turn, Congress has attacked these countries' financial resources, knowing that inhibiting the terror-financing capacities of even one of these countries would deal a major blow to global terrorist-financing networks.

1. The centerpiece of Congress's efforts to curb state-terror sponsors' destructive capabilities has long been its measures to authorize economic sanctions. Since World War I, Congress has authorized the President in times of war to seize property in which a foreign enemy state has an interest under the Trading with the Enemy Act (TWEA), ch. 106, 40 Stat. 422 (50 U.S.C. 1701 *et seq.*).

Over the past four decades, Congress has adapted this wartime sanctioning power to the fight against terrorism. First, in the International Emergency Economic Powers

Act (IEEPA), Pub. L. No. 95-223, §§ 202, 203, 91 Stat. 1627 (codified at 50 U.S.C. §§ 1701 *et seq.*), Congress lifted the requirement that formal war be declared before the President's seizure powers are triggered. IEEPA instead permits the President to unilaterally invoke this seizure power by declaring a national emergency whenever "the U.S. national security, foreign policy, or economy" are threatened by foreign interests. 50 U.S.C. §§ 1701, 1702. Congress expanded this sanctioning authority again with Section 106 of the USA PATRIOT Act, which amended IEEPA to allow the President to temporarily hold property while it decides whether that property or its owner is connected to the emergency and should be permanently seized. See Pub. L. No. 107-56, tit. I, § 106, 115 Stat 277 (codified at 50 U.S.C. § 1702(a)(1)(C)).

Five consecutive presidents have employed these Congressionally conferred powers to take control of terror-sponsoring nations' assets, block transactions in those assets, allow attachment and execution, *e.g.*, *Propper* v. *Clark*, 337 U.S. 472, 474–476 (1949), vest title in the United States, *ibid.*, and transfer funds directly to U.S. citizens to satisfy claims against the foreign states, see *Dames & Moore* v. *Regan*, 453 U.S. 654 (1981). And these presidents have treated every asset in possession of these nations as fair game, not simply those are used in commerce.

The political branches have employed such blocking sanctions against Iran several times since the Iranian Revolution and the Iranian Hostage Crisis. This was first done by President Carter in 1979, Exec. Order No. 12,170, 44 Fed. Reg. 65,729 (Nov. 14, 1979), and was most recently done by President Obama in February 2012, Exec. Order No. 13,599, 77 Fed. Reg. 6,659. Congress has also directed the President to use blocked property belonging to Cuba

and Iran to make payments to certain individuals with terrorism-related judgments against those states. Victims of Trafficking and Violence Protection Act, Pub. L. No. 106-386, Div. C, § 2002, 114 Stat. 1541.

Acting under authority granted by Congress, Presidents have also employed a range of other sanctions beyond blocking actions—most of which have also been directed at Iran. Presidents have banned travel to terror-supporting nations, Exec. Order No. 12,211, 45 Fed. Reg. 26,685 (Apr. 17, 1980); and issued trade embargos preventing imports and exports, Exec. Order No. 12,205, 45 Fed. Reg. 24,099 (Apr. 7, 1980); Exec. Order No. 12,613, 52 Fed. Reg. 41,490 (Oct. 28, 1987); Exec. Order No. 12,959, 60 Fed. Reg. 24,757 (May 6, 1995); Exec. Order No. 13,382, 70 Fed. Reg. 38,567 (June 28, 2005).

The political branches have also prohibited investment in specific sectors of terror-sponsoring countries' private economies. *See* Exec. Order No. 12,957, 60 Fed. Reg. 14,615 (Mar. 15, 1995) (prohibiting U.S. investment in Iran's energy sector); Exec. Order 13,590, 76 Fed. Reg. 72,609 (Nov. 20, 2011) (restricting sales to Iran of equipment and services related to Iran's oil industry); Exec. Order 13,645, 78 Fed. Reg. 33,945 (June 3, 2013) (imposing sanctions on financial institutions that engage in the Iranian automobile industry). Presidents have even restricted financial transactions with companies located in terror-sponsoring nations, Exec. Order No. 13,622, 77 Fed. Reg. 45,897 (July 30, 2012), and have prohibited trade in those nation's currencies, see Exec. Order No. 13,645, 78 Fed. Reg. 33,945 (June 3, 2013). And indeed, in the Anti-Terrorism and Effective Death Penalty Act (AEDPA), Congress went so far as to make it a crime to engage in *any* financial transaction with the governments

of designated supporters of international terrorism. Pub. L. No. 104-132, tit. III, § 321(a), 110 Stat. 1254 (18 U.S.C. § 2332d(a)).

None of these efforts was limited to property that these countries had placed into commerce themselves. On the contrary, many of them sought to seize property belonging to these nations' *private* citizens, and sought to disrupt these nations' *private* commerce, trade, and economic development. And these measures were all designed to work together to cripple these rogue nations' economies, so to maximize the potential for these economic pressures to disrupt their terror-funding capacities.

2. In addition to these crippling sanctions against terror-sponsoring nations—which target the flow of funds going *in* to these countries, and the assets in their possession—Congress has also targeted the flow of money going *out* of these countries, to dismantle their sprawling terror-financing operations. Congress has attacked the links between these countries and the terrorist organizations they sponsor, with unsparing laws targeting their agents, instrumentalities, and affiliates.

In AEDPA, Congress made it a crime for anyone to provide material support to organizations designated by the Executive to be sponsors of terror, 18 U.S.C. § 2339B(d), on the theory that these designated organizations are "so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct." AEDPA, § 301(a)(7), 110 Stat. 1247 (18 U.S.C. § 2339B note). In AEDPA, Congress included an expansive list of contributions that would constitute "material support," 18 U.S.C. § 2339B(g)(4) (incorporating the list in 18

U.S.C. § 2339A(a) & (b)(1)), with no hint that the list was limited to property used in international commerce.

Congress, in the Suppression of the Financing of Terrorism Convention Implementation Act of 2002, Pub. L. No. 107-197. Tit. II, § 202(a), 116 Stat. 724 (codified at 18 U.S.C. § 2339C), also made it a crime to "provide[]" or "collect[]" funds for terrorist activities, which disrupts the network of bank accounts through which much of these nations' terror funding flows. *E.g.*, *Owens* v. *BNP Paribas S.A.*, --- F. Supp. 3d ---, 2017 WL 394483 (D.D.C. Jan. 27, 2017) (alleging that banks processed transactions from Sudan going to a terrorist group).

Congress has also authorized the Executive Branch to block the assets of private individuals and terrorist-supporting groups that might be affiliated with terror-sponsoring nations—including partnerships, associations, corporations, and other organizations—on even broader terms than permitted against the foreign sovereigns themselves. Shortly after the September 11, 2011 terrorist attacks, President Bush entered Executive Order 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001), which ordered the seizure of "all property" belonging to such individuals and groups that "pose a significant risk of committing *** acts of terrorism," to the full extent permitted by IEEPA. In the USA PATRIOT ACT, 18 U.S.C. § 981(k), Congress went beyond our borders, permitting forfeiture of funds even when located in offshore accounts of foreign banks. The political branches have extended the reach of their power to block terrorist funds *still further* by participating in international efforts to freeze assets of international terrorist organizations under the International Convention for the Suppression of the Financing of Terrorism,

Dec. 9, 1999, art. 8, 2178 U.N.T.S. 229. None of these actions provided exemptions for those associated with foreign sovereigns, or the sovereigns themselves, and none exempted property that was kept out of international commerce. Taken together, these measures evince Congress's intent to do everything in its power to deprive terror-funding nations, their agencies, and their instrumentalities of every dollar that might be used to finance terror.

B. Congress also empowers private parties to disrupt state-sponsored terror through massive civil judgments.

1. Congress has also long recognized that civil tort actions "provide an invaluable supplement to the criminal justice process and administrative blocking orders." *Unfunding Terror* 324. Congress first enlisted private plaintiffs to help combat terror back in 1992, in the Anti-Terrorism Act, Pub. L. No. 102-572, tit. X, § 1003(a)(4), 106 Stat. 4506, 4522, which conveys to terror victims a direct civil remedy against those who provide "substantial assistance" to designated terror organizations involved in a terrorist attack. 18 U.S.C. § 2333(a) & (d)(2). This measure was designed both to ensure justice for terror victims, and also to "put[] terrorists' assets at risk" and "raise the cost of doing business for these outlaw organizations." *Antiterrorism Act of 1991: Hr'g before the H. Subcomm. on Intellectual Prop. and Judicial Admin.*, 102nd Cong., 2d Sess. 13 (1992); see also S. Rep. 102-342, at 22 (1992) ("[T]he imposition of liability at any point along the causal chain of terrorism" would "interrupt, or at least imperil, the flow of money."). Notably absent from Section 2333's civil remedy is any restriction on the types of assets available to enforce a civil terrorism judgment rendered under its provisions.

Originally, direct suits against "foreign state[s]" were not included among the ATA's civil remedies. 18 U.S.C. § 2337(2). But motivated by a purpose to "both deter and redress specific attacks," and "prompt sovereigns to disentangle their operations from terrorist networks," *Hr'g before the H. Subcomm. on the Constitution and Civil Justice on H.R. 2040*, 114th Cong., 2d Sess. 43 (July 14, 2016) (H.R. 2040 Hr'g), Congress later added mechanisms for direct recovery against states. National Defense Appropriations Act for Fiscal Year 2008 (NDAA), Pub. L. No. 110-181, § 1083, 122 Stat. 3, 338; Justice Against Sponsors of Terrorism Act (JASTA), Pub. L. No. 114-222, § 3, 130 Stat. 852, 853. Under these provisions, terror victims can maintain direct causes of action against states whether they are officially designated by the Executive as sponsors of terror, 28 U.S.C. § 1605A(a) & (c), or not, *id.* § 1605B (a) & (c).

2. Congress has likewise repeatedly acted to deny terror-sponsoring states the immunities the U.S. extends to other nations under the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. § 1602 *et seq*. As originally enacted, FSIA "codif[ied] the restrictive theory of sovereign immunity," *Samantar* v. *Yousuf*, 560 U.S. 305, 313 (2010), recognized [u]nder international law," by which foreign states' immunity from jurisdiction is lifted only "insofar as their commercial activities are concerned," and only their "commercial property may be levied upon for the satisfaction of judgments," 28 U.S.C. § 1602.

Terror-sponsoring states were originally able to shield themselves from liability for terrorism-related injuries under the generous umbrella of FSIA's restrictive immunity. *E.g.*, *Saudi Arabia* v. *Nelson*, 507 U.S. 349 (1993); *Cicippio* v. *Islamic Republic of Iran*, 30 F.3d 164 (D.C. Cir.

1994); *Smith* v. *Socialist People's Libyan Arab Jamahiriya*, 886 F. Supp. 306 (E.D.N.Y. 1995). Recognizing this failure in FSIA, Congress determined it necessary to craft a different immunity regime for foreign states that engage in terror-sponsorship: "sovereign acts which are repugnant to the United States and the international community," *Flatow* v. *Islamic Republic of Iran*, 999 F. Supp. 1, 12 (D.D.C. 1998), and "an internationally recognized wrong." H.R. Rep. No. 103-702, at 5 (1994).

In order to "give American citizens an important economic and financial weapon against" the "outlaw states" that sponsor terrorism, H.R. Rep. No. 104-383, 137–38 (1995), Congress in AEDPA added a new "terrorism exception" to FSIA codified at subsection 1605(a)(7) (since relocated to Section 1605A), which would "allow[] suits in the federal courts against countries responsible for terrorist acts." *Ibid.* This new exception carves out states designated by the Department of State as state sponsors of terrorism, and strips them of any jurisdictional immunity in any case brought against them by U.S. nationals for claims based on the state's terrorist acts or material support of terrorism. See 28 U.S.C. § 1605A(a)(1).

Congress then went further to strip terror-sponsoring nations of immunity so that their funding of terror might be halted. Congress amended FSIA to allow punitive damages to be imposed against terror-sponsoring nations, which are not allowed against other foreign sovereigns. 28 U.S.C. § 1606. It first provided for recovery of punitive damages under the Flatow Amendment, Pub. L. No. 104-208, § 589, 110 Stat. 3009, 3009-172 (codified at 28 U.S.C. § 1605 note). But some courts interpreted this provision narrowly, to permit punitive damages only against the

agents and instrumentalities of foreign sovereigns. *Haim* v. *Islamic Republic of Iran*, 425 F. Supp. 2d 56, 71 n.2 (D.D.C. 2006) (collecting cases). Congress legislatively overturned those decisions in Section 1083 of the NDAA, codified at 28 U.S.C. § 1605A(c), which explicitly authorizes recovery of punitive damages against foreign states themselves. In doing so, Congress recognized that "the only way to achieve the goal of altering state conduct 'was to impose massive civil liability on foreign state sponsors of terrorism whose conduct results in the death or personal injury of United States citizens.'" *Leibovitch* v. *Islamic Republic of Iran*, 697 F.3d 561, 565–566 (7th Cir. 2012) (quoting Congressman Jim Saxon, Chairman of the House Task Force on Counterterrorism and Unconventional Warfare).

And just last year in JASTA, Congress created an entirely new avenue "to deter" state sponsors of terrorism "and remedy acts of terrorism" by stripping them of immunity. H.R. 2040 Hr'g at 43. JASTA amended FSIA's "non-commercial tort" exception in subsection 1605(a)(5) to strip foreign states of immunity for any claims "in which money damages are sought against a foreign state for personal injury or death" caused by "the tortious act or omission of that foreign state" on U.S. soil. 28 U.S.C. § 1605B(b). JASTA's terrorism exception now stands alongside AEDPA's original terrorism exception. And JASTA's new terrorism exception is considerably broader, because it enables suits against states that have not been "designated as a state sponsor of terrorism," as required to meet 1605A's exception.

Beyond these efforts to strip jurisdictional immunity from state sponsors of terror, Congress also acted to strip

terror-sponsoring nations of the immunity from attachment enjoyed by law-respecting nations—efforts that culminated in the enactment of subsection 1610(g).

When Congress first enacted AEDPA's terrorism exception, it made only minor modifications to the attachment shield. While it allowed attachment against designated state sponsors of terror, their agencies, and instrumentalities, AEDPA § 221(b), 110 Stat. 1214, 1242–1243, it permitted the property to be attached to satisfy a terrorism judgment only when "used for a commercial activity in the United States." 28 U.S.C. §§ 1610(a), 1610(b).

Congress moved swiftly to change that rule, however. Two years later, in 1998, Congress amended FSIA to add subsection 1610(f). Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, div. A, tit. I § 117, 112 Stat. 2681, 2681-491. This subsection provides that any property of a terrorist state, including that held by its agencies and instrumentalities, which has been frozen pursuant to TWEA or IEEPA is subject to execution or attachment of a judgment against that state. See also Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L. No. 107-297, § 201, 116 Stat. 2322, 2337 (reproduced at 28 U.S.C. § 1610 note). The President can waive this right of attachment "in the interest of national security" 28 U.S.C. § 1610(f)(3), and in some instances on an asset-by-asset basis, *id.* § 1610 note (b)(1).

These provisions still make it *possible* to completely remove attachment immunity for most assets in which a foreign sovereign possesses a beneficial interest. And it sets terror-sponsoring nations apart, making attachment of their assets possible under circumstances that would not be permitted against law-abiding nations. The only

assets that still lie beyond reach under subsection 1610(f)(1)(A) are those protected from attachment under other laws, such as assets the U.S. is obliged to protect by treaty, 28 U.S.C. § 1609, and consular, *id.* § 1610(a)(4)(B), central bank, *id.* § 1611(b)(1), or military property, *id.* § 1611(b)(2) of the foreign sovereign.

These original inroads against terror sponsors' attachment immunity had flaws, however. They did not categorically exempt assets from FSIA's restrictions on attachment immunity, but instead left it to the Executive Branch to determine whether the assets should be blocked, and attachment should be allowed. Terrorism-sponsoring states would still enjoy at least "restrictive immunity" from attachment so long as their assets had not been blocked or Congress had not specifically directed that the assets be available for attachment.

C. As an integral part of this comprehensive federal antiterrorism scheme, subsection 1610(g) allows attachment against all assets in which terror-sponsoring nations have a beneficial interest

Congress's enactment of FSIA's subsection 1610(g), in Section 1083 of the NDAA, was the next step in this decades-long legislative effort to deprive terrorists of funding, where it finally removed *all* barriers standing in the way of terror victims seeking to attach and execute upon assets belonging to terror-sponsoring sovereigns. In subsection 1610(g), Congress permits "the property of a foreign state against which a judgment is entered under section 1605A" to be attached or executed upon, without listing any restrictions on the types of assets that could be reached. And it goes further, to allow recovery of "the

property of an agency or instrumentality of such a state, including property that is a separate juridical entity" to satisfy a terrorism judgment against the sovereign principal. Subsection 1610(g) thus permits attachment or execution upon *all* property in which the state has a beneficial interest, save for consular, central bank, and military property that the U.S. is elsewhere obliged by law or by treaty to protect from attachment.

1. Only a broad reading of subsection 1610(g) can be squared with Congress's consistent approach elsewhere in anti-terrorism law.

Subsection 1610(g) makes clear that attachments conducted under its provisions are subject only to the specific rules listed within that subsection itself, and these override the larger body of restrictions on attachment listed elsewhere in Section 1610. Beyond allowing attachment of all property that ultimately belongs to the foreign sovereign, Section 1610 also provides that attachment will be permitted "regardless of" whether the traditional factors for piercing the veil between states and their juridically separate instrumentalities are met, overruling this Court's decision in *First National City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611 (1983) (*Bancec*). Subsection 1610(g) likewise subjects property to attachment even if it is "regulated by the United States Government by reason of an action taken" by the executive under TWEA or IEEPA. 28 U.S.C. § 1610(g)(2). But unlike under subsection (f)(3) and TRIA, the President is given no authority under subsection (g)(2) to waive this right of attachment in the interest of national security. Indeed, the only limitation on attachment or execution provided in subsection 1610(g) is in subsection (g)(3), which permits a court to protect the interests of a third party

that may have an interest in the property to be attached or executed upon, but "who is not liable in the action."

Subsection 1610(g) thus gives every indication that it was meant to serve as a separate, self-contained exception to the rules regarding attachment immunity located elsewhere in Section 1610. In it, Congress evinced its intent to hold designated sponsors of terror like Respondent Iran to a completely separate body of rules than the commerce-based restrictions on attachment immunity FSIA imposes on law-abiding nations in subsections 1610(a)-(e). Through these unique rules, Congress meant to strip terrorism-sponsoring nations of virtually all attachment immunity, thus ensuring that victims of terror will be able to execute on virtually all property belonging to such states located within the jurisdiction of U.S. courts. Recognizing this absolutist purpose is essential to remain faithful to the consistent legal framework Congress has developed over decades, intended to deprive sponsors of terrorism of any assets they could use to finance terrorist-related activities.

The much narrower interpretation of subsection 1610(g) advanced by the Government and Respondents, on the other hand, is inconsistent with that purpose. They maintain that Congress's addition of subsection 1610(g) was intended only to "abrogate[] distinctions between a foreign state and its agencies and instrumentalities for purposes of attachment," but otherwise shield the assets of terror-supporting nations under the same "restrictive immunity" afforded to law-abiding nations, thus allowing only property used in "commercial activity" to be attached. US Amicus Br. I. In the view they adopt, subsection 1610(g) merely "counteract[s]" the presumption adopted in *Bancec* that property of state instrumentalities

would remain separate from the states themselves, and unavailable for attachment to satisfy a judgment entered against the state. Resp. Memo. In Op. 10. Accordingly, the Government and Respondents would demand that terror victims "satisfy[] the criteria for overcoming immunity elsewhere in §1610" to attach or execute upon a terror-sponsoring state's assets. *Id.* at i. This would mean that only property used for a commercial activity could be attached to enforce a terrorism judgment, as subsections 1610(a) & (b) demand.

This view cannot be squared with Congress's entire body of antiterrorism law, of which subsection 1610(g) is an integral part. Given that, in all other areas of this consistent legal framework, Congress has deemed it necessary to strip terror-sponsoring nations of *virtually all* immunity, as the best hope of inhibiting their capacity to fund terrorism and persuading them to change course, it makes no sense for Congress to stop short of full repeal in 1610(g), and allow attachment of foreign property only when used for commercial activities. It further serves no discernable purpose for Congress to deny terror victims the right to attach discrete assets owned by terror-sponsoring nations located within the jurisdiction of U.S. courts, where elsewhere Congress has consistently recognized the need to seize *all* assets of terror-sponsoring nations, wherever they might be located. And it blinks reality to suggest Congress would give civil judgments some secondary status as weapons for combatting terror-financing nations, where it has so often explicitly recognized the utility of such civil judgments as holding equal place among the other economic tools at its disposal.

2. Subsection 1610(g) does more than merely override Bancec*'s distinctions between a foreign government and its instrumentalities.*

Iran and the Government cannot answer any of these concerns, and their attempts to find support for their narrow reading in the text or history of subsection 1610(g) are likewise unsuccessful. For instance, it likely is true that Congress was motivated to change 1610(g) by the need to "abrogate[]" *Bancec*'s "distinctions between a foreign state and its agencies and instrumentalities," US Amicus Br. I. Indeed, *part* of 1610(g), in subdivisions (1)(A) through (1)(E), clearly reads as a response to *Bancec*, making clear that "the property of an agency or instrumentality" of a state "is subject to attachment" and "execution," and noting that this should be the case "regardless of" the factors announced in *Bancec*. But a desire to overrule *Bancec* merely describes the *impetus* for Congress's action. It does not delimit the content of Congress's response.

There is another part of subsection 1610(g) that cannot be explained by a mere desire to overrule *Bancec*'s rules for distinguishing between the property of the state and its separately incorporated instrumentalities. In addition to allowing attachment and execution upon property belonging to a state's "separate juridical entit[ies]," subsection 1610(g) elsewhere announces that the "property of a foreign state" and that of its "agenc[ies]" shall both be available for attachment and execution. *Bancec*'s rules have no operation for either of these categories of property—there are no corporate formalities between the state and *itself* to ignore; nor do such corporate barriers

normally exist between the state and its agencies. By including these provisions in subsection 1610(g), Congress signified that it intended to solve the *Bancec* problem by acting broadly, by reducing *all* questions concerning attachment of a terror-sponsoring state's property to "a simple ownership test," 154 Cong. Rec. S54-01 (Jan. 22, 2008) (statement of Sen. Lautenberg), thereby "subject[ing] any property interest in which the foreign state enjoys a beneficial ownership to attachment and execution," H.R. Rep. No. 11-447, at 1001 (2007). Accordingly, Congress responded to the issues that *Bancec* raised in the same manner it responded to all other problems related to the immunities of terror-sponsoring nations—by removing them completely.

3. Subsection 1610(g)'s requirement that attachments proceed "as provided in this section" incorporates only the procedural requirements located elsewhere in Section 1610.

Nor is Respondents' forced reading compelled by subsection 1610(g)'s requirement that attachments under its stand-alone exception occur "as provided in this section." Respondents and the Government contend that this language as incorporates all of the other requirements for attachments found elsewhere in Section 1610, which they take to mean that attachments of terror-sponsoring nations' property under subsection (g) must take place on the same substantive terms as attachments of property belonging to law-abiding foreign sovereigns, which are subject to the commerce-based restrictions in subsections 1610(a)–(b). But that reading is unfaithful to the language they reference, and would render the broad, unqualified

language in subsection 1610(g)'s stand-alone exception largely redundant and ineffective.

Instead, by dictating that attachments occur in the *manner* "provided in this section," this language in subsection 1610(g) focuses on *procedure*, and is most naturally understood as incorporating only the procedural aspects of attachments outlined elsewhere in Section 1610. Thus, for example, the referenced language would incorporate subsection 1610(c)'s requirement that attachment or execution shall not be permitted until a "reasonable period of time has elapsed following entry of judgment and the giving of" notice. And it likewise incorporates the obligations of the Secretaries of Treasury and State, outlined in Section 1610(f)(2)(A), to assist in "identifying, locating, and executing against the property" of a foreign state for attachment. Subsection 1610(g)'s command that attachments occur "as provided in this section" incorporates all of these procedures, even though some of them, such as under subsection 1610(c), by their terms only apply to attachments under "subsections (a) and (b)."

Indeed, subsection 1610(g)'s incorporation of the procedures provided "in this section" extends even to the rules for prejudgment attachment outlined in subsection (d). Although such prejudgment attachments require a waiver by the sovereign—which one would not normally expect to come from a terrorism-sponsoring state—it is not only possible, but entirely feasible that such a procedure might nonetheless come into play in terrorism cases. It is not hard to imagine the U.S. negotiating a settlement with a reformed terrorist state in which a procedure for processing victims' claims is negotiated that makes use of the prejudgment attachment rules in subsection (d).

When it comes to Section 1610's substantive restrictions, however, these survive *only to the extent* they are not specifically overridden by the more specific provisions of subsection 1610(g). Thus, for example, Section 1610(f)(3)'s option allowing the President to waive a right of attachment for blocked assets cannot applicable to attachments under subsection 1610(g), because incorporating that waiver authority would override subdivision 1610(g)(2)'s specific terms, which provide the President no such waiver right. Yet under the Respondents' and Government's contrary reading, attachments would somehow be subject to *both* sets of rules—a logical impossibility. It is likewise impossible to import the commerce-based restrictions in subsections 1610(a) & (b) into attachments under subsection 1610(g), because incorporating them would contradict Section 1610(g)'s textual command that *all* property in which the terror-sponsor has a beneficial interest is available for attachment and execution, not just property used in commerce. The language simply cannot be given the unyielding reading that the other side demands.

4. Any redundancy in Section 1610's terrorism exceptions is no vice, and forces no narrower reading of subsection 1610(g).

Concerns that interpreting subsection 1610(g) as a stand-alone immunity exception would render subsections 1610(a)(7) and (b)(3) "superfluous," Resp. Mem. in Opp. 12, Gov't Br. in Opp. 7, should also force no narrower reading. There is no question that Congress approached the drafting of Section 1610, and subsection (g), with the same "'belt-and-suspenders' caution" *Yates* v. *United States*, 135

S. Ct. 1074, 1096 (2015) (Kagan, J., dissenting), it has employed in all of FSIA, yielding considerable overlap in provisions.

This multi-layered redundancy is a feature, not a bug, in the statute. Congress not infrequently takes this approach. Abbe R. Gluck & Lisa Bressman, *Statutory Interpretation from the Inside - An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 Stan. L. Rev. 901, 934 (2013). And here it serves an important purpose: not only to preserve the right of attachment for judgments under the old terrorism exception, but also to ensure that if there were "some flaw" in Congress's drafting, and a person was somehow unable to attach assets under subsection 1610(g) for whatever reason, then attachment would still be available under subparts 1610(a)(7) and (b)(3) "as a backstop," albeit subject to the commerce-based restrictions on attachment in subsections 1610(a) and (b). *Yates*, 135 S. Ct. at 1096 (Kagan, J., dissenting).

Congress can hardly be faulted for taking cautious approach, given FSIA's complexity, the ingenuity foreign sovereigns have exhibited in interpreting its terms to avoid liability, and the statute's considerable evolution over time, which continues even today. This is precisely this reason that the "rule against creating redundancy is far from categorical" *King* v. *Burwell*, 135 S. Ct. 2480, 2498 (2015) (Scalia, J., dissenting), and cannot overcome subsection 1610(g)'s clear command that *all* property of the foreign sovereign be available for attachment and execution, without regard to whether it is used in commerce.

Indeed, it is the interpretation urged by the Government and Respondents, and adopted by the Court below, that has more serious flaws. Theirs would render a full

third of the statute's benefits a virtual nullity. If terror victims wishing to attach an agency's assets to collect a judgment against the state must proceed through the restrictions in subsection 1610(b) to reach an agent's assets, then such an avenue of recovery would never be used. This is because attachment under subsection (b) is only permitted when a party meets one of the exceptions to immunity in subsection (b)(1) through (b)(3). 28 U.S.C. § 1610(b). And in a terrorism case, only the terrorism exception in subsection 1610(b)(3) is likely to be available. But meeting that exception requires proving that the agency and the foreign sovereign itself were *both* involved in the acts of terrorism that caused the victim's injuries, because the victim must prove that the "agency or instrumentality" *itself* "is not immune by virtue of section 1605A or *** 1605(a)(7)." And that would make proceeding under subsection 1610(g) unduly burdensome, and virtually pointless, when the victim could proceed against the agency by itself. Risks like these make a strict reading urged by the Government and Iran impossible, and call instead for subsection 1610(g)'s provisions to be read in harmony with the other features of Section 1610, but only to extent they are not overridden with subsection 1610(g)'s stand-alone attachment rules.

Nor is the Court compelled to adopt a narrower reading of subsection 1610(g) to avoid intruding on other branches' responsibilities regarding matters "affect[ing] the United States' foreign relations." SG Amicus Br. 9. Questions regarding the proper scope and application of foreign sovereign immunity always present competing foreign policy concerns, especially when they involve our tenuous relations with state sponsors of terror. But the

proper balancing of these demands is ultimately a judgment that was Congress's to make. When Congress adopted subsection 1610(g), it decided to prioritize recovery for victims and terrorism deterrence over concerns that withdrawing immunity might adversely affect relations with other countries.

Congress has reached roughly the same balance on many other occasions in FSIA—often over the State Department's objections—including most recently, when it enacted JASTA in 2016. In the debates over JASTA, Congress heard similar concerns about potential reprisals and other risks to foreign relations that might arise expanding FSIA's exceptions to immunity. See H.R. 2040 Hr'g at 33 (warning of possible "political and foreign policy considerations"); *ibid.* (referring to the "grave matter" of "identifying states that are mortal threats to U.S. interests"); *id.* at 27 (warning that JASTA might "increase[] the exposure of our antiterrorism effort to foreign legal liability"); *id.* at 26 (outlining and responding to the State Department's "foreign policy-related concerns" with JASTA).

Indeed, these concerns were far more salient with JASTA, because that legislation expanded FSIA's terror-based exceptions to immunity beyond designated state sponsors of terror, with whom relations are already strained, to potentially implicate the interests of allies like Saudi Arabia. But Congress rejected these arguments all the same. And having failed to persuade Congress to diverge from its consistent stance on combatting terrorism through the State Department, the Executive Branch should not be permitted to rewrite the law through the Solicitor General's interpretation simply to fit its own policy objectives.

Furthermore, adopting an interpretation of subsection 1610(g) that aligns it with Congress's larger anti-terrorism objectives hardly cuts the political branches out of the process. The terrorism exception to judgment immunity in 1605A—and thereby the attachment immunity under 1610(g) with which it is intrinsically linked—depends upon an official designation by the Executive Branch that a particular country is a "state sponsor of terrorism," 28 U.S.C. § 1605A(a)(2)(A)(i)(I). Accordingly, if a particular terror attack presents especially grave foreign policy concerns, the decision whether to allow attachment is still in the hands of the Executive Branch. It can always step in to prevent attachment by changing that country's designation before suit is filed. *Id.* And under Section 5 of JASTA, 130 Stat. 854, the Secretary of State can request that litigation be stayed while a settlement is negotiated.

This Court thus got it right in *Bank Markasi* v. *Peterson*, 136 S. Ct. 1310, 1318 n.2 (2016), when it interpreted subsection 1610(g) to make available for execution *all* "the property (whether or not blocked) of a foreign state sponsor of terrorism, or its agency or instrumentality, to satisfy a judgment against that state."

II. The unfettered ability of plaintiffs to hold foreign sovereigns accountable through civil attachment is vital in the fight against terror.

Interpreting subsection 1610(g) to allow attachment of the assets of terror-supporting countries is not only necessary to remain faithful to the statute's text and the purposes Congress has pursued throughout all of federal antiterrorism law. It is also imperative to preserve one of the most effective tools to deter states from supporting terrorism: imposing massive liability imposed through private lawsuits.

A. Civil litigation is a key weapon in the war on terror.

Amici have written elsewhere of the vital role that civil litigation plays in supplementing governmental antiterrorism efforts. Br. of Fmr. U.S. Counterterrorism and National Security Officials as Amici Curiae in Support of Petitioners at 20-28, *Jesner* v. *Arab Bank, PLC*, No. 16-449. This is because terror enterprises "rest[] on a foundation of money." See *Antiterrorism Act of 1990: Hearing on S. 2465 Before the Sen. Subcomm. on Courts & Admin. Practice*, 101st Cong. 84 (1990) (testimony of Joseph A. Morris, former General Counsel, U.S. Information Agency). When funds available to terrorists are constrained, their capabilities decline. Less money is available to maintain the high costs of terror networks and carry out operations. And terrorists are forced to route funds through ever more complicated, and less secure, means, increasing the likelihood that their violent plans will be uncovered.

Government efforts to combat terror financing have had some success. The 9/11 Commission Report, *Final Report of the National Commission on Terrorist Attacks Upon the United State*s 382–383 (2004), <http://bit.ly/1jwpzQZ>. For instance, documents found in Osama Bin Laden's compound revealed that the global efforts to restrict terrorist funding frustrated al Qaeda's efforts to raise and transfer money around the world. Juan C. Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare* ix (2013).

Yet government enforcement alone is not enough to stanch the flow of terror funds. Limited government resources mean that many terror transactions simply lie beyond the government's reach, despite the more than $1 trillion spent since 9/11 to combat terror. Amy Belasco,

Cong. Research Serv., RL 33110, *The Cost of Iraq, Afghanistan, and Other Global War on Terror Operations Since 9/11* 5 (2014), <http://bit.ly/1IRYWqi>.

Civil litigation provides an essential complement to government enforcement efforts, augmenting the government's capabilities without adding to the taxpayer-borne bottom line. Civil claimants multiply the resources available to uncover terror-funding networks, and they possess monetary incentives that ensure that they will find and pursue leads that might otherwise go unnoticed. Civil litigation also provides advantages over criminal investigation and enforcement or multinational enforcement efforts, including a lower burden of proof, an absence of constitutional restrictions on investigation, and more liberal discovery rules than government or multinational investigating agencies enjoy. *Unfunding Terror* 325. It will thus come as no surprise that it was ultimately private plaintiffs, not federal law enforcement, that brought the Ku Klux Klan to its knees, through a string of wins in civil litigation. See Jack D. Smith & Gregory J. Cooper, *Disrupting Terrorist Financing With Civil Litigation*, 41 Case W. Res. J. Int'l L. 65, 77 (2009).

B. Civil suits targeting foreign sovereigns are especially effective in deterring terror financing.

Suits against designated terror-supporting sovereigns can be especially effective in choking off funding to terror networks. The states that actively support terrorism are few in number—there are currently only three: Iran, Sudan, and Syria, *Country Report 2016* 304–306. But they represent some of the biggest funding sources of terror activities.

Civil litigation against such terror-supporting nations provides a major opportunity to halt terror funding. The fact that these nations provide a large percentage of many terror groups' operating budgets means that if even one of them could be persuaded to cease funding terror, it would deal a major blow to worldwide terror finance. Indeed, "while the prospect of large monetary judgments may have little or no deterrent value for radical jihadists, the same may not be true of individual donors, charitable organizations," or, for that matter, foreign sovereigns. *Unfunding Terror* at 324. And it will likely be easier to change the behavior of these terror-sponsoring states than to impact other sources of funding, such as drug trafficking, counterfeiting, ransom, bribes, and other illegal trade. Eben Kaplan, Council on Foreign Relations, *Tracking Down Terrorist Financing* (Apr. 4, 2006) <on.cfr.org/2i3KgOE>; Itai Zehorai, *The World's Richest Terrorist Organizations*, Forbes Int'l, Dec. 12, 2014, <bit.ly/2vC8WCA>.

"While the prospect of large monetary judgments may have little or no deterrent value for radical jihadists, the same may not be true of individual donors, charitable organizations," or, for that matter, foreign sovereigns. *Unfunding Terror* at 324. Since their sponsorship of terror is often as much military strategy as political or religious ideology, *e.g.*, Unclassified Report at 1–3, that strategic course could change if the costs of the strategy could be made to outweigh the benefits. This is especially true when many of these countries have substantial assets in the United States that might be attached to enforce civil terrorism judgments, such as the estimated $1.7 billion that Iran has here. H.R. 2040 Hr'g 63 (Testimony of Professor Jimmy Gurulé). Accordingly, there is some chance

that these nations' strategic behavior will be shaped by the prospect of massive terror-related judgments. Faced with potential awards that often range in the hundreds of millions—or even billions—of dollars, *e.g.*, *Bank Markazi*, 136 S. Ct. at 1317 (concerning multiple judgments against Iran "together amounting to billions of dollars"), these nations might eventually be persuaded that it is better to stop funding terror, and join the body of legitimate nations, than to continue funneling money to support terror activities only to face massive liabilities on top of those costs. Moreover, for these countries, the condemnation of a civil judgment itself will provide a meaningful disincentive. Indeed, experts estimate that civil judgments have had a noticeable impact upon the present regime in Iran, even if they have not convinced them to change. *Peterson* v. *Islamic Republic of Iran*, 264 F. Supp. 2d 46, 62 (D.D.C. 2003).

But for these civil judgments to have a meaningful impact, they must come with a reasonable prospect that the award will be collected, and that assets of the foreign sovereigns might be attached. Terror-sponsoring countries will be little dissuaded by a monetary award, no matter the size, when there is no realistic prospect that it could be enforced. By the same token, plaintiffs will not bring suit if there is no prospect for recovery. The idea that foreign sovereigns will be able to shield their assets from attachment even where they are located in the United States, thus provides exactly the wrong incentive. This provides yet another reason why subsection 1610(g) should be interpreted to allow attachment of all foreign sovereigns' property to enforce a terror-related judgment.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX

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APPENDIX

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Professor Banks has served as a Special Counsel to the US Senate Judiciary Committee (for the confirmation hearings of Supreme Court nominee Stephen G. Breyer); on the ABA Standing Committee on Law and National Security; as a member of the InfraGard National Members Alliance Board of Advisors; on the Advisory Council for the Perpetual Peace Project; on the Executive Board of the International Counter-Terrorism Academic Community (ICTAC); as an Editorial Board member at The International Centre for Counter-Terrorism in The Hague, The Netherlands; and as a Distinguished Fellow of the Institute for Veterans and Military Families at Syracuse University. Banks also is the Editor-in-Chief of the Journal of National Security Law & Policy.

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Malvina Halberstam – Professor Halberstam is a member of the founding faculty of the Benjamin N. Cardozo School of Law. She has served as an assistant district attorney, as a reporter for the American Law Institute (Model Penal Code Project), and as a counselor on international law for the US Department of State, Office of the Legal Advisor. As counselor, she supervised the State Department's comments on what became the Restatement of U.S. Foreign Relations Law (Third) and headed the U.S. delegation in the negotiations on the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, adopted in Rome in

1988.

Dennis M. Lormel – Mr. Lormel is an international expert addressing terrorist financing, money laundering, fraud, and financial crimes. He amassed extensive major case experience in the FBI while working there from 1976 through 2003, as a street agent, supervisor and senior executive, particularly in complex finance related crimes. In response to the terrorist attacks of September 11, 2001, Mr. Lormel assumed responsibility for establishing, coordinating and directing the FBI's comprehensive terrorist financing initiative, serving as Chief of the Terrorist Financing Operations Section, in the Counterterrorism Division. Mr. Lormel is a member of the Advisory Board of the Association of Certified Anti-Money Laundering Specialists.

Dennis B. Ross – For more than twelve years, Ambassador Ross played a leading role in shaping U.S. involvement in the Middle East peace process and dealing directly with the parties in negotiations. Ambassador Ross was the U.S. point man on the peace process in both the George H. W. Bush and Bill Clinton administrations. He was instrumental in assisting Israelis and Palestinians to reach the 1995 Interim Agreement; he also successfully brokered the 1997 Hebron Accord and facilitated the 1994 Israel-Jordan peace treaty. Ambassador Ross is currently counselor and William Davidson Distinguished Fellow at The Washington Institute for Near East Policy. Before rejoining the Institute in 2011, he served for two years as special assistant to President Obama and the National Security Council senior director for the Central Region, and a year as special advisor to Secretary of State Hillary Rodham Clinton.

Lee Wolosky – Mr. Wolosky is the former U.S. Special Envoy for Guantanamo Closure. He has served under the last three Presidents in significant national security positions, and was awarded the personal rank of ambassador by President Obama in 2016. Mr. Wolosky served as Director for Transnational Threats on the National Security Council under Presidents Clinton and George W. Bush. In this capacity, he had specific responsibility for coordinating U.S. policy relating to illicit finance impacting national security. Mr. Wolosky is a partner in the New York City Office of Boies Schiller Flexner. He is a life member of the Council on Foreign Relations, and a founder and member of the board of directors of the National Security Network.

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habeas cases brought on behalf of detainees in Afghanistan. She was the Deputy Department Head of the Department of Law and Assistant Professor of Law at the U.S. Air Force Academy in Colorado Springs, Colorado, where she managed a legal department of 19 professors and taught international law and military law courses.