

No. 19-741

IN THE
Supreme Court of the United States

ESTATE OF ESTHER KLIEMAN, BY AND THROUGH
ITS ADMINISTRATOR, AARON KESNER, *et al.*

Petitioners,

v.

PALESTINIAN AUTHORITY, AKA PALESTINIAN
INTERIM SELF-GOVERNMENT AUTHORITY AND
PALESTINIAN LIBERATION ORGANIZATION,
ALSO KNOWN AS PLO,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

SUPPLEMENTAL BRIEF OF RESPONDENTS

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April 22, 2020

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SUPPLEMENTAL BRIEF OF RESPONDENTS

Petitioners' second supplemental brief provides nothing new for this Court's consideration but instead underscores why arguments concerning the PSJVTA are better developed in Petitioners' newly-filed cases, which are tailor-made for this purpose.

The news articles discussed by Petitioners are immaterial to jurisdiction under the PSJVTA. The first article, published on March 29, 2020—five days *before* Petitioners' Reply Brief—states that public salary payments for March would be disbursed on a staggered schedule to avoid crowding at banks.¹ The article also warns that, due to the coronavirus crisis, the Palestinian Authority may be unable to continue those payments in April. The second article says nothing about payments or finances but only that “[t]he issue of the prisoners will remain our first priority.” *See* Second Pet. Supp. Br. at 3-4.

Both articles are irrelevant to this case. Neither discusses payments made after April 18, 2020. And neither states whether payments were made to prisoners convicted for harming an American national in a terrorist attack, or to the families of those killed when committing terrorist attacks on American nationals. Both requirements must be met before payments can be relevant under the PSJVTA. *See id.* 4a-5a.

More importantly, the D.C. Circuit last week held that “the mere prospect” that the Palestinian

¹ K.T. & M.N, *Shtayyeh announces emergency budget amid shrinking government revenues*, Palestinian News & Information Agency (Mar. 29, 2020), at: <http://english.wafa.ps/page.aspx?id=0fYv8Fa115572318543a0fYv8F>. The article clearly refers to a plan to pay March salaries over the next week rather than those for April, as implied by Petitioners. *Id.*

government “*might* ... in the future” make payments falling within the ambit of the PSJVTA “does not create personal jurisdiction now,” and therefore rejected the plaintiffs’ “request that this court remand the case to the district court to address the implications of this new statute in the first instance.” *Shatsky v. Palestine Liberation Organization*, No. 17-7168, 2020 U.S. App. LEXIS 11734, *42 (D.C. Cir. Apr. 14, 2020). In *Shatsky*, the district court had granted summary judgment for Respondents on the merits, but the court of appeals vacated the judgment and directed dismissal for lack of personal jurisdiction. The court of appeals concluded that a remand for factual development was unwarranted even though “after April 18, 2020, the Palestinian Defendants might make the type of payments covered by the Justice for Victims Act [PSJVTA] and, in so doing, trigger retroactive consent to personal jurisdiction.” *Id.* at *41-42. The court concluded that the better course would be for the plaintiffs “to refile if new facts establish personal jurisdiction.” *Id.* at *43.

In *Shatsky*, the D.C. Circuit joined the Second Circuit to hold that new legislation that requires prospective evidence of jurisdiction should be addressed in new cases. Just as the Second Circuit refused to re-open an old case under the Anti-Terrorism Clarification Act of 2018, the D.C. Circuit directed dismissal rather than entertain speculation that there might be jurisdiction at some point in the future under the PSJVTA. *See* Resp. Br. Opp. 22-23.

As the D.C. Circuit’s *Shatsky* decision shows, the PSJVTA does not provide a reason to issue a GVR here. The possibility that future facts might create a statute-based argument for jurisdiction—subject to Respondents’ constitutional counter-arguments—does not justify a remand to consider future developments under a new statute, when plaintiffs

have the option of pursuing those same arguments in a re-filed case. See *Shatsky*, 2020 U.S. App. LEXIS 11734, at *42 (citing *Timbisha Shoshone Tribe v. Salazar*, 678 F.3d 935, 937-39 (D.C. Cir. 2012)); see also Resp. Br. Opp. at 21 (citing *Texas v. United States*, 523 U.S. 296, 300 (1998) (“A claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’”)).

CONCLUSION

For all of the foregoing reasons, the Court should deny the Petition.

Respectfully submitted,

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