

No. 24-20

IN THE
**Supreme Court of the United
States**

MIRIAM FULD, ET AL.,
Petitioners,

v.

PALESTINE LIBERATION ORGANIZATION, ET AL.
Respondents.

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

**BRIEF AMICUS CURIAE OF SECRETARY
MIKE POMPEO IN SUPPORT OF PETITIONER**

ASHLEY KELLER
Counsel of Record
Keller Postman LLC
150 N. Riverside Plaza
Suite 4100
Chicago, Illinois 60606
(312) 741-5222
ack@kellerpostman.com

NOAH HEINZ
Keller Postman LLC
1101 Connecticut Ave. NW
Suite 1100
Washington, DC 20036

*Counsel for Amicus Secretary
Mike Pompeo*

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INTEREST OF *AMICUS CURIAE*¹

Former Secretary of State Mike Pompeo served as head of the State Department from 2018 to 2021. In that role, one of his primary missions was to enact and pursue policies that would lead to enduring peace in the Middle East. Support for acts of terror in Gaza and the West Bank by entities including the Palestinian Authority (PA) and Palestine Liberation Organization (PLO) is one of the primary obstacles to achieving peace in the region. As Secretary of State, Pompeo

¹ In accordance with Supreme Court Rule 37, counsel for all parties received notice of *amicus*'s intent to file this brief at least ten days before filing. No person or entity other than Secretary Pompeo and his counsel authored this brief in whole or in part, and no person or entity other than Secretary Pompeo and his counsel contributed money intended to fund the preparation or submission of this brief.

supported the Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA) as a commonsense solution—if entities like the PLO and PA promoted acts of terror while receiving American aid or maintaining facilities in the United States, they should be subject to U.S. federal court jurisdiction.

The Second Circuit’s decision undercuts Secretary Pompeo’s reasoned policy judgment that the PSJVTA advances U.S. national security interests by providing a mechanism to impose real costs on the PLO and PA for supporting terrorism. The PSJVTA serves as a deterrent against the PA’s “pay-for-slay” program, through which the PA furnishes terrorists and their families with monthly financial support. The PSJVTA incentivizes the PA to adjust its actions and behavior. Invalidating the PSJVTA strips Congress and the Executive of a key tool in their fight to protect Americans abroad and to stabilize the Middle East.

SUMMARY OF THE ARGUMENT

The PSJVTA is a federal antiterrorism statute, carefully crafted to discourage violent terror attacks against Americans abroad. In light of a horrific attack coordinated by the PLO, Congress created a way for victims to hold the PLO and similar organizations accountable in federal court. When lower courts rendered that system useless against the PLO and PA, Congress twice amended the legislation to ensure its effectiveness. The PSJVTA is the culmination of over thirty years of considered policy judgments by Congress and the Executive in the field of counterterrorism, a field the Constitution entrusts to the political branches.

The PSJVTA effectively discourages further terror attacks. It provides powerful motivation for the PA to end its “pay-for-slay” program, a critical goal in the

fight against terror. Moreover, subjecting the PLO and PA to monetary judgments for supporting violent acts against Americans cuts off avenues of financial support for would-be terrorists. This Court should grant review to ensure that this integral part of federal counterterrorism policy is operable.

ARGUMENT

I. The Second Circuit’s Decision Unduly Encroaches Upon Congress’s And The Executive’s Role In Combatting Terrorism.

It is unequivocally the role of Congress and the Executive to make decisions involving foreign policy and national security. Part of that role is enacting antiterrorism policies that protect Americans at home and abroad. The decision below—invalidating one such policy created in coordination with the State Department and enacted with bipartisan support—frustrates the political branches’ considered attempt to minimize the terror risk overseas. And it imposes real harms on Americans looking to their leaders to keep them safe.

A. Resolving this issue is critical to ensuring that the political branches can exercise their constitutional role in preventing terrorism.

Decisions of foreign policy, like those reflected in the PSJVT, “are wholly confided by our Constitution to the political departments of the government, Executive and Legislative.” *Chi. & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948). That is why on issues of national security, the judiciary’s “inquiry . . . is highly constrained.” *Trump v. Hawaii*, 585 U.S. 667, 704 (2018). At the intersection of foreign

policy and national security lies counterterrorism—a fight that “[e]veryone agrees . . . is an urgent objective of the highest order.” *Holder v. Humanitarian L. Project*, 561 U.S. 1, 28 (2010). It is a fight that Congress and the President attempted to advance when they passed and signed the PSJVTA.

The executive and legislative branches have the resources and expertise necessary to act in this country’s best interests when it comes to fighting terrorism abroad. *See Chi. & S. Air Lines*, 333 U.S. at 111; *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 284 (2018) (Gorsuch, J., concurring in part). Despite the critical importance of allowing the political branches to make reasoned judgments on fighting violent extremism, the decision below inhibits Congress and the Executive’s decisions in this area. To delay these branches’ exercise of their constitutionally delegated duties is to place Americans in harm’s way. The interests at stake in this case thus warrant immediate review by this Court.

B. The PSJVTA represents a considered and popular policy decision by Congress and the Executive.

Congress has consistently proven its commitment to opening the courthouse doors to victims of PLO- and PA-backed terrorist attacks. Congress recognized the need for legislation to that effect after PLO-supported terrorists hijacked a cruise ship, shooting wheelchair-bound Leon Klinghoffer and throwing him overboard. 137 Cong. Rec. E1583–84 (daily ed. May 2, 1991) (statement of Rep. Edward Feighan); Pet. App. 4. Though Mr. Klinghoffer’s widow was able to sue the PLO in the United States under admiralty law, others injured on land or in the air had no recourse. 137 Cong.

Rec. E1583–84, *supra*. Organizations financing horrific attacks on Americans faced no consequences in U.S. courts.

In the aftermath of the attack on Mr. Klinghoffer and to discourage acts of terrorism perpetrated against Americans, Congress created a private cause of action for victims of overseas terrorism in the Anti-Terrorism Act of 1992 (ATA). 165 Cong. Rec. 7182 (2019). Providing this cause of action proved immensely popular—the Act passed unanimously. *Id.* For over twenty years, the Act succeeded in its purpose. Americans injured abroad by terrorists sued the PLO and PA in federal court and obtained judgments, putting pressure on these groups to stop sanctioning violent attacks. *See, e.g., Biton v. Palestinian Interim Self-Gov't Auth.*, 252 F.R.D. 1 (D.D.C. 2008). But this policy crumbled when the Second Circuit and D.C. Circuit held that federal courts lacked personal jurisdiction over the PLO or the PA. *Waldman v. Palestine Liberation Org.*, 835 F.3d 317 (2d Cir. 2016); *Livnat v. Palestinian Auth.*, 851 F.3d 45 (D.C. Cir. 2017). Victims and their families were left without a domestic forum in which to bring their claims.

Responding to those decisions, Congress passed the Anti-Terrorism Clarification Act of 2018 (ATCA) in the hopes of restoring federal court jurisdiction over the PLO and PA. The ATCA provided that entities consented to personal jurisdiction in federal court by accepting certain forms of U.S. aid. Pub. L. No. 115-253, sec. 4(a), § 2334(e), 132 Stat. 3183 (2018). The PA, frightened by the prospect of millions of dollars in judgments against them (like the \$655.5 million originally awarded in this case), chose to stop accepting the qualifying aid. Pet. App. 9a–10a, 62a.

After that choice, the Second Circuit held that the ATCA did not authorize personal jurisdiction over the PLO and PA. Pet. App. 10a.

To remedy U.S. courts' lack of personal jurisdiction over the PA and PLO, Democratic and Republican senators alike worked with the State Department to create the PSJVTA. Letter from James Lankford & Chuck Grassley, Sens., to Antony Blinken, Sec'y of State (Mar. 31, 2021). The PSJVTA enjoyed bipartisan support in Congress and support from the executive branch. Secretary Pompeo wrote an official letter of support to Senator Chuck Grassley, urging him to push the PSJVTA forward to isolate and limit those who would commit acts of terror in the Middle East. Time and time again, Congress and the President demonstrated a commitment to allowing plaintiffs seeking compensation from the PLO and PA to sue in federal court. But this commitment has been stymied at every turn by the lower courts. The Second Circuit's decision here has once more left terrorism victims and their families without justice.

II. Invalidating The PSJVTA Has Substantial Negative Effects On U.S. Counterterrorism Efforts.

Vitiating the ATA in its most critical application frustrates U.S. counterterrorism efforts. Senator Chuck Grassley, one of the PSJVTA's sponsors, emphasized that “[b]y cutting terrorists’ financial lifelines, the ATA is a key part of the U.S. arsenal in fighting terrorism and protecting American citizens.” 165 Cong. Rec. 7182, *supra*. That “key part” of U.S. counterterrorism efforts no longer applies to the PA and PLO, despite the deaths of over thirty Americans in last year’s October 7 attacks. Lindsay Whitehurst,

The Justice Department Is Investigating the Deaths and Kidnappings of Americans in the Hamas Attack, AP News (Dec. 6, 2023, 1:23 PM), <https://apnews.com/article/hamas-americans-killed-kidnapped-justice-department-investigation-64d851f794a6de4cbda40968dca50320>. There are no other mechanisms to do what the PSJVTA does; striking it down would be a great loss to U.S. efforts toward peace in the Middle East. We urge this Court to resolve the question presented so that the political branches may resume their productive counterterrorism efforts.

A. The PSJVTA deters the PA’s “pay-for-slay” program and is a key aspect of the U.S. campaign to end terror attacks against Americans.

The PSJVTA provides that if, within 120 days of enactment, an organization “makes any payment, directly or indirectly” to a person jailed for committing an act of terrorism against an American national or to their family by reason of the terrorist act, that organization “shall be deemed to have consented to personal jurisdiction” in U.S. district courts. Pub. L. No. 116-94, div. J, tit. IX, § 903, 133 Stat. 3082 (2019) (codified at 18 U.S.C. § 2334(e)(A)(i)–(ii)). This refers to the PA’s perverse “pay-for-slay” policy, consisting of monthly payments by the PA to those imprisoned for terrorism, or to their families if they died committing the act. *See Financially Rewarding Terrorism in the West Bank: Hearing Before the H. Comm. on Foreign Affs.*, 114th Cong. 1–2 (2016) (statement of Edward Royce, Chairman, H. Comm. on Foreign Affs.). If the PA chooses to continue making these odious payments, thus encouraging more terrorist attacks and putting

Americans at risk, then under the PSJVTA it can be sued in U.S. courts.

Subjecting the PA to U.S. jurisdiction was not an empty or meaningless threat; Congress and the Executive knew the PA was sensitive to the risk. Just one year prior to passing the PSJVTA, Congress enacted the ATCA, to which the PA responded decisively—they stopped accepting much of the aid they received from the U.S. to avoid tripping the jurisdictional trigger. Pet. App. 9a–10a. Knowing this, the bill’s drafters crafted the PSJVTA to induce the PA to stop the “pay-for-slay” program.

Yet once again, the Act faced roadblocks in the federal courts. The Second Circuit, finding the Act unconstitutional, affirmed the district court’s dismissal of Petitioners’ claims. Pet. App. 52a. That decision was made in September of last year. Just four months after the Second Circuit effectively neutralized the political branches’ effort to end the “pay-for-slay” program, the PA announced they would be making payments to over *23,000* new individuals and their families. The Ed. Bd., *Palestinian ‘Pay for Slay’ Keeps Growing*, Wall St. J. (Jan. 15, 2024, 6:38 PM),. Over 600 of those new payments will go to Hamas terrorists. *Id.* Those who killed and injured American citizens will receive financial rewards from the PA, who will face no justice in U.S. courts if this Court does not step in to resolve the issue.

B. Holding the PLO and PA financially liable for supporting terrorism is an effective means of discouraging further attacks.

Acts of terrorism require funding. One effective way to hinder further attacks is thus to disrupt

terrorists' financial support. Allowing plaintiffs to obtain judgments against organizations who fund terrorism does just that. "[B]y cutting terrorists' financial lifelines, the [ATCA] furthers the United States' longstanding efforts to reduce global terrorism and thus protect Americans here and abroad." H.R. Rep. No. 115-858, at 3–4 (2018). This is not a novel idea. Subjecting terrorist organizations to civil suit has been effective in discouraging violent attacks elsewhere. *See* Jack D. Smith & Gregory J. Cooper, *Disrupting Terrorist Financing with Civil Litigation*, 41 Case W. Res. J. Int'l L. 65, 77–79 (2009). Losing the PSJVTA means losing a tried-and-true way to disincentivize further terrorist attacks.

One might think American judgments against a foreign organization are practically hollow. But that is not the case here. It is eminently clear that the PLO and PA expend substantial time and resources attempting to avoid adverse judgments in U.S. courts. There are various examples of the PLO and PA asking courts to reverse default judgments against them so they can litigate on the merits. *See, e.g., Ungar v. Palestine Liberation Org.*, 599 F.3d 79 (1st Cir. 2010); *Knox v. Palestine Liberation Org.*, 248 F.R.D. 420 (S.D.N.Y. 2008). These organizations' fervent desire to avoid U.S. judgments demonstrates the PSJVTA's effectiveness. In obstructing the PSJVTA, the decision below risks giving the PLO and PA the go-ahead to continue funding acts of terror abroad. This Court should instead resolve the issue to support the objectives of both Congress and the Executive in enacting the PSJVTA: to subject the PA and PLO to federal jurisdiction and, in doing so, halt the funding of terrorism perpetrated against Americans.

CONCLUSION

For the reasons stated above, this Court should grant the writ of certiorari.

Respectfully submitted,

ASHLEY KELLER
Counsel of Record
Keller Postman LLC
150 N. Riverside Plaza
Suite 4100
Chicago, Illinois 60606
(312) 741-5222
ack@kellerpostman.com

NOAH HEINZ
Keller Postman LLC
1101 Connecticut Ave. NW
Suite 1100
Washington, DC 20036

Counsel for Amicus Secretary
Mike Pompeo

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