Nos. 24-20 and 24-151

IN THE
Supreme Court of the United States

MIRIAM FULD, ET AL., *Petitioners*,
v.
PALESTINE LIBERATION ORGANIZATION, ET AL.,
Respondents.

UNITED STATES, *Petitioner*,
v.
PALESTINE LIBERATION ORGANIZATION, ET AL.,
Respondents.

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

BRIEF OF *AMICUS CURIAE* AMERICA FIRST LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

America First Legal Foundation is a nonprofit organization dedicated to promoting the rule of law in the United States and defending individual rights guaranteed under the Constitution and federal statutes.

America First Legal is led and staffed by individuals who have substantial experience working in the highest levels of the White House, the Department of Justice, and the Department of Homeland Security, and it has unique expertise in the subject matter of this case. Currently, America First Legal is serving as counsel to U.S. Representative Ronny Jackson (R-Tx), Stuart and Robbie Force, and Sari Singer in a case captioned *Jackson et al. v. Biden et al.,* Case No. 2:22-CV-241-Z (N.D. Tx). *Jackson* alleges that the former administration violated the Taylor Force Act, Pub. L. No. 115-141, div. S, title X, 132 Stat. 1143 (2018), prohibiting the United States Government from obligating economic support funds for the West Bank and Gaza that directly benefit the Palestinian Authority.

Taylor Force, the child of plaintiffs Mr. and Mrs. Force and the Act's namesake, was a West Point graduate. Taylor was murdered by a Palestinian terrorist. The Palestinian Authority celebrated this

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[1] No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *Amicus*'s counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

crime and is paying the terrorist's family a monthly bounty in reward for his death.

As this Court quite correctly acknowledged, money is terrorism's life blood. "The State Department informs us that '[t]he experience and analysis of the U.S. government agencies charged with combating terrorism strongly suppor[t]' Congress's finding that all contributions to foreign terrorist organizations further their terrorism." *Holder v. Humanitarian L. Project,* 561 U.S. 1, 33 (2010). Congress passed the Taylor Force Act to prevent U.S. tax dollars from subsidizing the Palestinian Authority and thus incentivizing Palestinian terrorism; as America First Legal has argued in that case, Congress has recognized that all funds in the hands of the Palestinian Authority and the related Palestine Liberation Organization "ultimately inure[s] to the benefit of their criminal, terrorist functions—regardless of whether such support was ostensibly intended to support non-violent, non-terrorist activities." *Id.*; *see* 22 U.S.C. § 2378c-1.

Accordingly, America First Legal submits this brief to inform the Court about the errors in the decision below and the serious consequences for the Nation's security if the decision is not reversed.

SUMMARY OF THE ARGUMENT

In its decision below, the Second Circuit invalidated the Promoting Security and Justice for Victims of Terrorism Act of 2019 ("PSJVTA"), Pub. L. No. 116-94, § 903, 133 Stat. 2534, 3082, Congress's third attempt to allow victims of Respondents' terrorism to seek justice in federal courts. This Court should reverse for several reasons.

First, the Second Circuit misconstrued and misapplied this Court's recent decision in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023). Contrary to the opinion below, *Mallory* does not require a defendant to receive a benefit from a forum in exchange for impliedly consenting to personal jurisdiction there. *See* Part I.A, *infra*. In any event, Respondents *did* receive a benefit from the United States in the form of conducting activities and maintaining premises in America. *See* Part I.B, *infra*. The Second Circuit's response that these benefits were unlawfully received is both false and irrelevant. *See* Part I.B, *infra*.

Second, extending broad personal jurisdiction protections to Respondents is especially unsound because the Fifth Amendment's Due Process Clause, as originally understood, did not concern personal jurisdiction at all, *see* Part II.A, *infra*, and certainly not for foreign entities, *see* Part II.B, *infra*.

Third, if affirmed, the decision below will have devastating foreign-policy consequences and preclude

American victims of Palestinian terrorism from seeking justice. *See* Part III, *infra*.

The Court should reverse.

ARGUMENT

I. The Second Circuit Misapplied *Mallory*.

The Second Circuit made two dispositive errors when applying this Court's recent *Mallory* decision. The court held that (1) Respondents were required to receive a benefit from the forum in exchange for consenting to personal jurisdiction; and (2) any such benefits received here were unlawful and thus do not qualify. Both holdings are erroneous.

A. *Mallory* Does Not Require Receipt of a Benefit from the Forum in Exchange for Consenting to Personal Jurisdiction.

Mallory held that personal jurisdiction can be established through implied consent, but the Second Circuit erroneously held that Respondents could impliedly consent to personal jurisdiction only in two narrow circumstances: (1) via "litigation-related conduct," or (2) "where [they] accept[] a benefit from the forum in exchange for [their] amenability to suit in the forum's courts," meaning "reciprocal bargains." Pet.App.20a, 22–24a.[2]

That was wrong. *Mallory* did not turn on whether the defendant (Norfolk Southern) had "accept[ed] a

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[2] "Pet.App." refers to the certiorari-stage appendix filed by Petitioners Miriam Fuld et al. on July 3, 2024 (No. 24-20).

benefit from" the venue (Pennsylvania), but rather whether the defendant had "take[n] a 'voluntary act' that the law treats as consent." Pet.App.243a (Menashi, J., dissenting from the denial of rehearing *en banc*). Thus, "[t]he defendant need not specifically intend to consent to jurisdiction." *Id.* *Mallory* itself indicated as much. Far from being limited, "a variety of legal arrangements have been taken to represent … implied consent to personal jurisdiction consistent with due process," and this Court has "[n]ever imposed some sort of 'magic words' requirement" for such implied consent. *Mallory*, 600 U.S. at 136 n.5 (cleaned up).

Therefore, "[t]he consent of the foreign entity must only be knowing and voluntary and involve some nexus to the forum such that requiring consent would not be 'unfair.'" Pet.App.243–44a (citing *Mallory*, 600 U.S. at 141 (plurality opinion); *id.* at 153–54 (Alito, J., concurring in part and concurring in the judgment)). There is hardly anything "unfair," *Mallory*, 600 U.S. at 141, in subjecting sophisticated entities to jurisdiction for conduct that they surely recognized would qualify under the relevant statutes.

B. Even If *Mallory* Requires Respondents to Have Accepted Benefits, They Did So.

The Second Circuit also misapplied its own test. Even if *Mallory* did require Respondents to have accepted benefits from the forum, they did so—and thus consented to personal jurisdiction.

Plaintiffs' complaint "alleges that the [Palestine Liberation Organization ('PLO')] and the [Palestinian Authority ('PA')] maintained premises and engaged in official activities in the United States" after passage of the PSVJTA. Pet.App.248a (Menashi, J., dissenting from the denial of rehearing). Not only is that a benefit received, but the PSJVTA expressly warned Respondents that it would be. *See* 18 U.S.C. § 2334(e)(1)(B) (recognizing that after a fifteen-day grace period, Respondents' "maintain[ing]" or "establish[ing] or procur[ing] any office, headquarters, premises, or other facilities or establishments in the United States" or "conduct[ing] any activity while physically present in the United States on behalf of the [PLO] or the [PA]" would be a benefit resulting in personal jurisdiction).

That makes this an even easier case than *Mallory* itself, where the registration statute itself did not say it entailed consent to jurisdiction—rather, that was in a separate statute. 600 U.S. at 134.

The Second Circuit declined to count these benefits, however, because the PA and PLO allegedly procured them by engaging in unlawful conduct. The court claimed that "federal law has long prohibited [Respondents] from engaging in any activities or maintaining any offices in the United States, absent specific executive or statutory waivers." Pet.App.28a. The court acknowledged that the U.S. government has long permitted Respondents to engage in that conduct anyway, despite its illegality, but found that fact irrelevant. Pet.App.29a n.10.

But the court misread parts of the relevant provisions. To be sure, the Palestinian Anti-Terrorism Act of 2006 makes it "unlawful" for the PA "to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States" absent certain certifications. Pub. L. No. 109-446, § 7(a), 120 Stat. 3318, 3324 (codified at 22 U.S.C. § 2378b note). But the PA does not appear to be barred under that law from "conduct[ing] any activity while physically present in the United States" on the PA's behalf, which the PSJVTA establishes as an independent benefit that will confer personal jurisdiction. 18 U.S.C. § 2334(e)(1)(B)(iii). Thus, there is not complete overlap between what the PA is barred from doing and what acts will be considered a benefit conferring personal jurisdiction over the PA.

As Judge Menashi explained in dissent below, Pet.App.251a n.21, Plaintiffs triggered the PSJVTA's "conducting-and-activity" provision by alleging: (1) "while physically in the United States, [Respondents] have conducted press conferences and created and distributed informational materials," JA.409[3] (Fuld Am. Compl. ¶ 75); (2) made "communications," *id.* (¶ 76); and (3) "updated their website and/or their United States-based social-media accounts while physically inside the United States," JA.410, 414 (¶¶ 85, 88); and (3) social media updates, JA.414 (¶ 88).

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[3] "JA" refers to the Joint Appendix filed on January 28, 2025 (No. 24-20).

More fundamentally, however, the Second Circuit's premise was wrong. Even if Respondents' conduct were all unlawful, that is no reason to disregard it for purposes of personal jurisdiction. "Congress often creates civil liability to penalize unlawful conduct. The whole premise of *specific* personal jurisdiction is that wrongful conduct in the forum gives the forum an interest in subjecting the bad actor to the jurisdiction of its courts. And tag jurisdiction, the analogue of deemed-consent statutes, has never been limited only to those *lawfully* present in the forum." Pet.App.252a (Menashi, J., dissenting from the denial of rehearing) (emphases in original) (collecting authorities).

The Second Circuit's rule that implied consent cannot consider unlawful conduct leads to absurd results. An "outlaw who refused to obey the laws of the state would be in better position than a corporation which chooses to conform." *Smolik v. Phila. & Reading Coal & Iron Co.*, 222 F. 148, 150 (S.D.N.Y. 1915) (Hand, J.). Imagine a statute analogous to Pennsylvania's in *Mallory*, except the statute instituted deemed consent for any business that knowingly opened a retail store in the state. In the Second Circuit's view, a lawful supermarket chain with a branch in Pennsylvania would have consented to personal jurisdiction, but not the owner of an illicit drug dispensary.

This Court has long recognized that unlawful conduct does not exempt a defendant from personal jurisdiction. For example, in *Old Wayne Mutual Life Ass'n v. McDonough*, the Court noted that "if an

insurance corporation of another state transacts business in Pennsylvania without complying with its provisions, it will be deemed to have assented to any valid terms prescribed by that commonwealth as a condition of its right to do business there," and would even "be estopped to say that it had not done what it should have done in order that it might lawfully enter that commonwealth and there exert its corporate powers." 204 U.S. 8, 21–22 (1907).

* * *

The decision below misinterpreted *Mallory*, but even if it didn't, this Court should still reverse because Respondents accepted benefits from the forum—and thus consented to personal jurisdiction.

II. Foreign Organizations Like Respondents Do Not Possess Constitutional Personal Jurisdiction Rights in Federal Courts.

Extending broad personal jurisdiction protections to Respondents was especially unsound because the Fifth Amendment's due process protection was not traditionally understood to limit federal courts' jurisdiction, and especially not for foreign entities.

A. The Fifth Amendment's Due Process Clause Was Not Originally Understood to Limit Federal Courts' Jurisdiction.

The Court has previously left "open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court" as the Fourteenth Amendment does for state courts. *Bristol-Myers Squibb Co. v. Super. Ct.*

of Cal., S.F. Cnty., 582 U.S. 255, 269 (2017); *see also Douglass v. Nippon Yusen Kabushiki Kaisha*, 46 F.4th 226, 254 (5th Cir. 2022) (Elrod, J., dissenting) ("If the … Fifth Amendment Due Process Clause, as originally understood, imposes the same set of jurisdictional rules that the Supreme Court has decreed pursuant to the Fourteenth Amendment, then it [must be] prov[en] … with reference to the Fifth Amendment's text, history, and structure."). There are strong originalist arguments for why the Fifth Amendment's Due Process Clause *does not* impose personal jurisdiction limits at all, making it all the more clear that the Second Circuit erred by granting extensive protections to Respondents.

First, scholarship has shown that the Fifth Amendment was not originally understood to limit personal jurisdiction; it merely required service of process in the narrow sense. *See* Max Crema & Lawrence B. Solum, *The Original Meaning of "Due Process of Law" in the Fifth Amendment*, 108 Va. L. Rev. 447 (2022); Stephen E. Sachs, *The Unlimited Jurisdiction of the Federal Courts*, 106 Va. L. Rev. 1703, 1743 (2020) ("The Fifth Amendment bars the execution of a federal judgment only if the federal court lacked jurisdiction. And Congress gets to answer th[e jurisdiction] question."); *see also* Pet.App.254–55a (Menashi, J., dissenting from the denial of rehearing) (discussing this scholarship).

Congress was limited only by its enumerated powers, because all personal jurisdiction limits were derived from general, international law principles, which could always be overridden by federal statutes. Sachs, *supra*, at 1708–17; Pet.App.256–58a (Menashi,

J., dissenting from the denial of rehearing); *see also, e.g.*, *The Nereide*, 13 U.S. (9 Cranch) 388, 423 (1815) ("Till [a contrary] act be passed, the Court is bound by the law of nations which is a part of the law of the land."). "[W]hen it comes to personal jurisdiction, due process limitations may be largely coextensive with the process that Congress chooses to provide." Ingrid Wuerth, *The Due Process and Other Constitutional Rights of Foreign Nations*, 88 Fordham L. Rev. 633, 679–86 (2019).

Second, early caselaw strengthens that view. In *Picquet v. Swan*, Justice Story, riding circuit, held that "independent of some positive provision to the contrary, no judgment could be rendered in the circuit court against any person, upon whom process could not be personally served within the district." 19 F. Cas. 609, 613 (C.C.D. Mass. 1828). Even aliens without property in the United States would be constitutionally "amenable to the jurisdiction of any circuit court." *Id.* If Congress passed a statute authorizing jurisdiction, "a subject of England, or France, or Russia, having a controversy with one of our own citizens, may be summoned from the other end of the globe to obey our process, and submit to the judgment of our courts." *Id.* "If Congress had prescribed such a rule, the court would certainly be bound to follow it, and proceed upon the law," *id.* at 615, even though such a rule would be "repugnant to the general rights and sovereignty of other nations," *id.* at 613.

This Court later adopted Story's logic in *Toland v. Sprague*, which held that an American plaintiff attaching the American property of a foreign

defendant was "unjust" and unauthorized by statute. 37 U.S. (12 Pet.) 300, 328–29 (1838). Accepting the "great force" of the reasoning in *Picquet*, this Court explained that it reached this conclusion only "independent[] of positive legislation" because "Congress might have authorized civil process from any circuit court, to have run into any state of the Union," even for "persons in a foreign jurisdiction." *Id.* at 328, 330.

This early caselaw tracks the contemporary understanding that "due process" meant adherence to the "law of the land" *as decided by the legislature*. Writing just five years after *Picquet*, Justice Story noted that the Fifth Amendment's Due Process Clause derived from "the language of magna charta, '*nec super eum ibimus, nec super eum mittimus, nisi per legale juciium parium suorum, vel per legem terrae*,' neither will we pass upon him, or condemn him, but by the lawful judgment of his peers, or by the *law of the land*." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1783 (Hillard, Gray & Co. 1833) (emphasis added).[4] And "law of the land" meant the rules crafted by the legislature: "the law of the land … depends not upon the arbitrary will of any judge; but is permanent, fixed, and unchangeable, unless *by authority of parliament*." 1 William

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[4] *See also* Alexander Hamilton, *A Letter from Phocion to the Considerate Citizens of New York* (Jan. 1784), *reprinted in* 3 The Papers of Alexander Hamilton 485, 485–86 (Harold C. Syrett & Jacob E. Cooke eds., 1962) (noting that "if we enquire what is meant by the law of the land, the best commentators will tell us that it means due process of law") (citing 2 Edward Coke, *Institutes of the Lawes of England* 50 (1642)).

Blackstone, *Commentaries on the Laws of England* *141–42 (1753) (emphasis added).

Also telling is the absence of early rulings applying the Fifth Amendment to personal jurisdiction disputes. It was "not until the Civil War [that] a single court, state or federal, [would] hold a personal-jurisdiction statute invalid on due process grounds." Sachs, *supra*, at 1712.

There is also a solid logical reason why the Fifth Amendment's Due Process Clause would not impose the same limits on federal court as the *International Shoe* line of cases does on state courts via the Fourteenth Amendment. Congress, unlike States, can legislate beyond its borders. If Congress can regulate conduct beyond the United States, why can't it also take the lesser step of subjecting foreign entities to personal jurisdiction? Congress already routinely does so. Several securities statutes give the federal courts jurisdiction over claims related to "conduct *occurring outside the United States* that has a foreseeable substantial effect within the United States," while simultaneously authorizing nationwide service and personal jurisdiction. 15 U.S.C. §§ 77v(c), 78aa(b); 80a-43. Other statutes even allow for worldwide service. *See id.* § 22.

Citing this record, judges across the country have reasoned that the Fifth Amendment simply does not contain the same sort of personal jurisdiction protections as the Fourteenth Amendment. *See* Pet.App.254–55a (Menashi, J., dissenting from the denial of rehearing); *Lewis v. Mutond*, 62 F.4th 587, 598 (D.C. Cir. 2023) (Rao, J., concurring); *Douglass*,

46 F.4th at 255 (5th Cir. 2022) (*en banc*) (Elrod, J., dissenting); *id.* at 282 (Higginson, J., dissenting); *id.* at 284 (Oldham, J., dissenting); *Devas Multimedia Priv. Ltd. v. Antrix Corp.*, 91 F.4th 1340, 1352 (9th Cir. 2024) (Bumatay, J., dissenting from the denial of rehearing *en banc*).

Regardless of how the Court has construed the Fourteenth Amendment's Due Process Clause in the context of challenges to personal jurisdiction, the *Fifth Amendment* should not render the PSJVTA unconstitutional.

B. Foreign Entities in Particular Are Subject to Whatever Procedural Rules the Legislature Imposes.

Foreign entities like Respondents are particularly unlikely to possess personal-jurisdiction rights arising from the Constitution.

Take foreign nation-states, for example. Despite being sovereigns, they lack constitutional due process rights altogether—and thus personal jurisdiction rights—because they are not "persons" for purposes of the Fifth or Fourteenth Amendments. Pet.App.238a (Menashi, J., dissenting from the denial of rehearing); *see, e.g.*, *Frontera Res. Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic*, 582 F.3d 393, 400 (2d Cir. 2009).

It would be nonsensical to say that foreign unincorporated entities (like Respondents) receive greater constitutional due process protections than foreign sovereigns themselves receive. Such entities, just like "foreign State[s]" themselves, "lie[] outside

the structure of the Union." *Principality of Monaco v. Mississippi*, 292 U.S. 313, 330 (1934). And all the more so when one of Respondents already claims to be a sovereign government. *See* Pet.App.238a (Menashi, J., dissenting from the denial of rehearing); *see also United States v. Morton Salt Co.,* 338 U.S. 632, 652 (1950).[5]

In the nineteenth century, courts repeatedly held that foreign corporations were subject to whatever procedural rules had been imposed by the state in which the corporation operated. *See, e.g.*, *Paul v. Virginia*, 75 U.S. 168, 181 (1868); *Lafayette Ins. Co. v. French*, 59 U.S. (18 How.) 404, 404–07 (1855). Of course, "foreign" in that context usually meant incorporated in a different state within the United States, *see Mallory*, 600 U.S. at 129, but the treatment is informative. An entity operating in a particular state had to abide by whatever procedural rules it imposed, or else it could cease operating there. It makes sense that the same rule would apply here: entities formed outside the United States have to comply with whatever procedural rules the federal government itself imposes. The alternative—which was spelled out in the PSJVTA—was to cease operating here. Respondents declined and thus are

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[5] According to Justice Jackson, "corporations can claim no equality with individuals in the enjoyment of a right to privacy. They are endowed with public attributes. They have a collective impact upon society, from which they derive the privilege of acting as artificial entities. The Federal Government allows them the privilege of engaging in interstate commerce. Favors from government often carry with them an enhanced measure of regulation." *Morton Salt Co.*, 338 U.S. at 652.

subject to personal jurisdiction in the courts of the United States.

III. Affirming the Decision Below Would Cause Serious Harms to National Security and Americans' Safety.

As Judge Menashi noted in his dissent below, "[i]nvalidating an act of Congress is 'the gravest and most delicate duty that [a federal court] is called on to perform.'" Pet.App.230a (quoting *Blodgett v. Holden*, 275 U.S. 142, 148 (1927)). And even graver and more delicate is invalidating a federal law addressing "a matter of foreign policy," *Bank Markazi v. Peterson*, 578 U.S. 212, 215 (2016), which is "delicate, complex, and involve[s] large elements of prophecy for which the Judiciary has neither aptitude, facilities, nor responsibility," *Hernandez v. Mesa*, 589 U.S. 93, 113 (2020) (cleaned up).

Here, in response to a serious national security and foreign policy threat, and taking into account the Second Circuit's rulings on prior statutes seeking to hold Respondents accountable, Congress and the President enacted a law crafting a very specific solution to enable American victims and their families to obtain justice and to strengthen deterrence by imposing financial consequences on those who commit, support, and facilitate Palestinian terrorism. *Accord Holder*, 561 U.S. at 32–33.

But if even that narrow provision is unenforceable, Plaintiffs will likely be unable ever to seek any measure of justice for Respondents' crimes, not only letting them off the hook but further emboldening them.

The facts in one of the cases below are instructive. "[W]ith respect to Hamas's bombing of the Hebrew University in Jerusalem on July 31, 2002, the jury found that the defendants 'knowingly provided material support or resources that were used in preparation for or in carrying out this attack'; that 'an employee of the PA, acting within the scope of his employment and in furtherance of the activities of the PA, either carried out, or knowingly provided material support,' for the attack; that both the PLO and the PA knowingly provided material support to Hamas following its designation as a foreign terrorist organization; and that both defendants 'harbored or concealed a person who the [defendants] knew, or had reasonable grounds to believe, committed or was about to commit this attack.'" Pet.App.234a n.4 (Menashi, J., dissenting from the denial of rehearing) (quoting Jury Verdict Form at 5–6, *Sokolow v. PLO*, No. 04-CV-00397 (S.D.N.Y. Feb. 25, 2015), ECF No. 825).

But the Second Circuit has never allowed the PSJVTA to go into effect, and unsurprisingly Respondents have not been deterred. On October 7, 2023, Hamas committed its most appalling act of terrorism yet, slaughtering "1,200 men, women, and children – including 46 Americans and citizens of more than 30 countries" and taking "254 people hostage – including 12 Americans." Matthew Miller, *Department Press Briefing – October 7, 2024*, Dep't of State (Oct. 7, 2024), https://2021-2025.state.gov/briefings/department-press-briefing-october-7-2024/. Even after the horror of October 7, Respondents continue to support terrorism. As part of its "martyr"

payments to terrorists killed or imprisoned in their efforts to kill Jews, the PA is currently paying salaries to at least 661 Hamas terrorists involved in the October 7 attacks. Editorial Board, *Palestinian 'Pay for Slay' Keeps Growing*, Wall St. J. (Jan. 15, 2024), https://www.wsj.com/articles/palestinian-pay-for-slay-hamas-oct-7-israel-gaza-antony-blinken-ramallah-2dce9a22.

As noted in the *Interest of Amicus* section above, America First Legal represents the family of Taylor Force, who was murdered by a Palestinian terrorist whose family now receives a monthly payout as reward. *See also* Am. Compl. ¶¶ 1-9, 18–34, 57–72, 98–101, *Jackson v. Biden,* No. 2:22-cv-241 (N.D. Tex. Mar. 25, 2024).

Congress rightfully recognized that "all contributions to foreign terrorist organizations further their terrorism," and thus the only way to obtain some measure of deterrence is to go after the money, which is precisely what the PSJVTA allows. *Holder,* 561 U.S. at 33.

"[B]ased on Israel Defense Forces estimates of enemy casualties and prisoners, the PA has put itself on the hook for more than $97 million in such payments for more than 13,000 Hamas terrorists in the year following Oct. 7." Andrew Tobin, *Palestinian Authority, Key to Biden's Mideast Peace Plan, Commits to Pay $97M a Year to Hamas*, Wash. Free Beacon (Mar. 4, 2024), https://freebeacon.com/national-security/palestinian-authority-key-to-bidens-mideast-peace-plan-commits-to-pay-97m-a-year-to-hamas/.

Even before these latest atrocities, Congress and the President reasonably concluded that enough is enough. Judicial deference to that political foreign policy solution is particularly appropriate, yet the decision below risks "upsetting the delicate web of international relations" on an international policy issue of the greatest magnitude. *Hernandez*, 589 U.S. at 113.

The unavailability of civil relief could very well lead to more dramatic action against the PA and the PLO. Congress has previously authorized the use of military force against those who have committed acts of terrorism against Americans, *see, e.g.*, Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001), and the President has also taken military action against terrorists, *see, e.g.*, *Notice on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations* 1 (2020), https://www.documentcloud.org/documents/6776446-Section-1264-NDAA-Notice/.

The Due Process Clause would impose no barrier against those more drastic actions. Indeed, as Judge Menashi noted below in dissent, there is no constitutional question that the federal government could have criminalized certain terrorist offenses and support for Respondents, sanctioned them, and even used unrestricted military force against them. Pet.App.262–65a (Menashi, J., dissenting from the denial of rehearing) (citing constitutional and statutory authorities for these actions).

"It does not make sense to conclude that [Respondents] … have an inviolable liberty interest in avoiding a civil suit in federal court" when they could be criminalized, sanctioned, and bombed for "the same" underlying conduct. Pet.App.265a.

CONCLUSION

The Court should reverse.

Respectfully submitted,

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