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 FOR SECRETARY MICHAEL POMPEO AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

ANDRIANNA D. KASTANEK
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654

DOUGLASS MITCHELL*
Counsel of Record
PHILIP CHERTOFF
BRANDON STORM
JENNER & BLOCK LLP
1099 New York Ave. NW
Suite 900
Washington, DC 20001
(202) 639-6865
dmitchell@jenner.com

**Admission in the District of Columbia pending; practicing under direct supervision of members of the D.C. Bar*

Counsel for Amicus Secretary Michael Pompeo

TABLE OF CONTENTS

Appendix

TABLE OF AUTHORITIES

CASES

STATUTES

LEGISLATIVE MATERIALS

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*[1]

Former Secretary of State Michael 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 Palestine Liberation Organization (PLO) and the Palestinian Authority (PA) is one of the primary obstacles to achieving peace in the region. As Secretary of State, Pompeo 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 terrorist organizations, like the PLO and PA, that carry out or support terrorism. Those costs serve to, among other things, deter 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

---

[1] *Amicus* states that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amicus* and his counsel made a monetary contribution intended to fund the preparation or submission of this brief.

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 ARGUMENT

More than 30 years ago, Congress and the Executive Branch chose to take a new approach to counter the increasing rise of global terrorism. In passing the Anti-Terrorism Act of 1992 ("ATA"), Congress established a statutory scheme for the victims of international terrorism to obtain justice from perpetrators, no matter where they are in the world. By so doing, Congress intended:

> [T]o bring terrorists to justice the American way, by using the framework of our legal system to seek justice against those who follow no framework or defy all notions of morality and justice. It also sends a strong warning to terrorists to keep their hands off Americans and an eye on their assets.

Antiterrorism Act of 1990: Hearing Before the Subcomm. on Cts. & Admin. Prac. of the S. Comm. on the Judiciary, 101st Cong. 2–3 (1990) (statement of Sen. Charles Grassley, ATA co-sponsor) ("*1990 Hearing*").

And that framework has succeeded: It has allowed victims to obtain billions of dollars in damages as compensation for terrorist attacks, and terrorist organizations have been deprived of valuable funds that could otherwise be used to perpetuate new acts of terror. *See, e.g.*, *Fain v. Islamic Republic of Iran*, 885 F. Supp. 2d 78, 80, 83 (D.D.C. 2012); *Alejandre v. Republic of Cuba*, 996 F. Supp. 1239, 1242, 1253 (S.D. Fla. 1997).

However, starting in 2015—despite the PLO and PA receiving hundreds of millions of dollars in financial aid from the United States—U.S. courts began interpreting the ATA in ways that insulate them from liability, holding the PLO and PA are not subject to personal jurisdiction. In response, Congress and the Executive worked together to pass the PSJVTA, which provides personal jurisdiction over any foreign person or entity that gives material support to terrorists who kill American citizens or undertakes certain activities within the United States.

The PSJVTA builds upon more than 30 years of considered policy judgments by Congress and the Executive in the field of counterterrorism—a field the Constitution entrusts to the political branches. It is an important tool in the United States' counterterrorism arsenal, which gives force to the ATA's promise to empower victims of terror to seek justice. By establishing criteria for determining when the PLO and PA have consented to the jurisdiction of U.S. courts—based on choices that are wholly within the PLO's and PA's control—the PSJVTA helps hold the PLO and PA accountable for supporting violent acts against Americans and, in turn, provides powerful motivation for the PA to end its "pay-for-slay" program, a critical goal in the fight against terror.

ARGUMENT

I. THE SECOND CIRCUIT'S DECISION INVADES CONGRESS'S AND THE EXECUTIVE'S AUTHORITIES TO COMBAT GLOBAL TERRORISM.

The Constitution commits to Congress and the Executive the responsibilities and powers to determine the country's foreign policy and safeguard its national security. One of the most significant foreign policy and national security priorities is the development of counterterrorism policies that protect Americans at home and abroad. The Second Circuit improperly trammeled these responsibilities and powers. It invalidated a considered policy scheme to counter global terrorism, created by a bipartisan coalition in Congress in coordination with the Executive Branch. Its decision emboldens terrorist groups to continue plotting to harm Americans free from punishment and leaves victims without a remedy for the "unquestionably horrific" harms perpetrated against them. *See* Pet. App. 52a.

A. The Constitution Delegates to Congress and the Executive Alone the Responsibility and Power to Set the Nation's Counterterrorism Policy.

For more than 100 years, this Court has held that the "conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative—'the political'—departments of the government." *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 302 (1918); *see also Chi. & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948) ("[Foreign policy]

decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative."). This significant responsibility emanates not from the "affirmative grants of the Constitution," but from the rights and powers invested in the United States as "a member of the family of nations." *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318 (1936).

Foreign policy and national security decisions fall to the political departments because decisions on these issues are "delicate" and "complex," and "should be undertaken only by those directly responsible to the people whose welfare they advance or imperil." *Waterman S.S. Corp.*, 333 U.S. at 111.

And, of all the issues within the realm of foreign policy and national security, countering global terrorism "is an urgent objective of the highest order." *Holder v. Humanitarian L. Project*, 561 U.S. 1, 28 (2010). Because counterterrorism strategy is inherently delicate and complex, it requires Congress and the Executive to cooperate, not just to foil the planning and carrying out of the violent attacks, but also to cut off the resources of these groups to stamp them out. *See id.* at 30–32.

By contrast, "the Judiciary has neither [the] aptitude, facilities, nor responsibility," to handle counterterrorism policy, *Waterman S.S. Corp.*, 333 U.S. at 111, and it is well-established that the separation of powers requires that the judiciary not intrude into the political branches' conduct of foreign affairs and national security, *see Baker v. Carr*, 369 U.S. 186, 210–11 (1962); *see also Harisiades v. Shaughnessy*, 342 U.S. 580, 589 (1952) (Matters relating "to the conduct of foreign relations[] .

. . are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference."); *Trump v. Hawaii*, 585 U.S. 667, 704 (2018) (the judiciary's "inquiry [on issues of national security] . . . is highly constrained"). The judiciary may only adjudicate questions of national security "consistent with a system of separated powers," *Flast v. Cohen*, 392 U.S. 83, 97 (1968). It may not sit as "overseer" of decisions expressly delegated to the other branches. *Dames & Moore v. Regan*, 453 U.S. 654, 660 (1981).

B. The PSJVTA represents the considered and reasoned policy judgments of Congress and the Executive Branch.

The ATA and subsequent supplemental amendments and expansions, including the PSJVTA, are the work of thousands of hours of fact-gathering, analysis, and negotiation, by hundreds of experts across the federal government, and take into account a whole range of national security interests implicated at home and abroad. While the judiciary certainly has a role to play in checking the constitutionality of federal government action, here, the Second Circuit applied Fourteenth Amendment jurisprudence to Fifth Amendment considerations, *see* Pet. App. 50a n.17 (citing *Livnat v. Palestinian Auth.*, 851 F.3d 45, 54 (D.C. Cir. 2017)), as a vehicle to question the political branches' considered judgments that the PSJVTA serves U.S. national security and counterterrorism goals.

Americans abroad have, since the 1970s and 1980s, faced significant threats from terrorism abroad by dint of their nationality. 136 Cong. Rec. 7593–94 (1990) (statement of ATA co-sponsor Sen. Howell Heflin). However,

it was only in the late 1980s that Congress and the Executive recognized that, not only did Americans face serious physical threats, but they also had little recourse against the perpetrators under existing U.S. law. On October 7, 1985, four individuals hijacked the Italian cruise liner Achille Lauro in the Eastern Mediterranean Sea and executed elderly, wheel chair-bound Jewish-American passenger, Leon Klinghoffer, by throwing him and his wheelchair overboard. According to reports, the seizure was undertaken at the behest of Abdul Abbas, a purported member of the PLO. *See Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria*, 937 F.2d 44, 47 (2d Cir. 1991).

At the time Mr. Klinghoffer was murdered, remedies available to victims of the PLO and other global terrorist groups were limited. Because Mr. Klinghoffer's murder occurred at sea, his widow was able to sue the PLO in the United States under admiralty law. *See Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria (Klinghoffer I)*, 739 F. Supp. 854, 858–59 (S.D.N.Y. 1990) (applying the Death on the High Seas Act, 46 U.S.C. §§ 761–768 (1982) (current version at 46 U.S.C. §§ 30301–30308 (2006))), *vacated*, 937 F.2d 44 (2d Cir. 1991). However, most terror victims from that era were left to pursue justice through ill-suited remedies like the Alien Tort Claims Act. *See, e.g.*, *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984) (per curiam).

It was for this reason that Congress and the Executive worked together closely to create a private cause of action for victims of international terrorism in the ATA.

See 1990 Hearing at 3. The U.S. Department of State and the U.S. Department of Justice agreed that the ATA was a necessary tool in countering rising global terrorism. As State Department Legal Advisor Alan Kreczko told the Senate Committee, the ATA was "a useful addition to the arsenal of legal tools for the fight against terrorism" *Id.* at 12–13. Similarly, Deputy Assistant Attorney for the Civil Division Steven Valentine pushed Congress to approve the ATA, characterizing it as "a significant new weapon against terrorists by providing a means of civil redress for those who have been harmed by terrorist acts," *see id.* at 25, and noting that it would "have a deterrent effect on the commission of acts of international terrorism against Americans," *id.* at 34.

Most pertinent here, the political branches carefully considered the circumstances under which U.S. courts should have jurisdiction over persons and entities that provide material support for terrorism that kills American citizens. *See id.* at 12 (statement of Alan Kreczko) ("This bill . . . expands the *Klinghoffer* opinion."); 137 Cong. Rec. 8143 (1991) (statement of Sen. Charles Grassley) (noting that the ATA "removes the jurisdictional hurdles in the courts confronting victims [of international terrorism,] . . . codif[ies] [the *Klinghoffer*] ruling[,] and makes the right of American victims definitive.").

When Congress and the Executive came back together after *Waldman v. Palestine Liberation Organization*, 835 F.3d 317 (2d Cir. 2016), and *Livnat v. Palestinian Authority*, 851 F.3d 45 (D.C. Cir. 2017), to pass the Anti-Terrorism Clarification Act of 2018 (ATCA) in the hopes of restoring federal court jurisdiction over the PLO and PA, they chose to include a

consent provision, providing that entities consent 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, 3184. Congress noted that the consent provision was based on a "reasonable and unambiguous choice: if you accept U.S. foreign assistance and enter our nation's borders, you must do so on the condition not to support or take part in acts of international terrorism and that you compensate your victims if you breach that promise." *See* H.R. Rep. No. 115-858, at 7 (2018) ("2018 ACTA H.R. Rep.").

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 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. *Id.* 10a –11a.

In the aftermath of that decision, Congress and the Executive again worked together to craft a reasoned remedy to U.S. courts' lack of personal jurisdiction: the PSJVTA. Letter from James Lankford & Charles Grassley, Sens., to Antony Blinken, Sec'y of State (Mar. 31, 2021) ("The PSJVTA was the result of constructive work between Congress and the State Department, reflecting a bi-partisan agreement to reopen the courthouse doors to American victims and their families, while permitting the restoration of humanitarian and security assistance to the Palestinians within the parameters permitted by Congress."). In an official letter of support to Senator Grassley, Secretary Pompeo noted his staff's collaboration with Senator Grassley's on development of the bill, which "advances two critical U.S.

interests by seeking to enable U.S. victims of terrorism to vindicate their rights in U.S. courts while simultaneously protecting our own national security interests and those of our close ally, Israel." Letter from Michael Pompeo, Sec'y of State, to Charles Grassley, Sen. (June 19, 2019), Amicus App. 1a.

The PSJVTA provides that if the PLO, PA, or any successor or affiliate 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, or maintains a facility or conducts any activity while physically present in the U.S. on behalf of the PLO or PA, it "shall be deemed to have consented to personal jurisdiction" in U.S. district courts. Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, div. J, tit. IX, § 903, 133 Stat. 2534, 3082 (2019) (codified at 18 U.S.C. § 2334(e)(A)(i)–(ii)). Simply put, if the PA chooses to continue making these odious payments, thus encouraging more terrorist attacks and putting more Americans at risk, or otherwise seeks to advantage itself of resources in the United States, then, under the PSJVTA, it can be sued in U.S. courts.

The PJSVTA does not extend personal jurisdiction to non-resident defendants for the purposes of a contract dispute or business deal. It instead was drafted and passed to effectuate a critical foreign policy and national security goal: deterring terrorism against Americans by cutting off the PLO's and PA's financial support for terrorists who kill or injure them. The exercise of personal jurisdiction by federal courts over foreign funders of terror does not implicate the same due process concerns as

hauling an out-of-state company into state court for a commercial dispute. But, to the extent those concerns are raised, whether American foreign policy interests justify rejecting those concerns "is a question that should be addressed 'only by those directly responsible to the people whose welfare' such decisions 'advance or imperil.'" *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 284 (2018) (J. Gorsuch, concurring) (quoting *Waterman S.S. Corp.*, 333 U.S. at 111). It was the reasoned judgment of those actors—Congress and Executive—that the provisions of the PSJVTA, including the "deemed consent" provision, are best suited to effectuate the nation's counterterrorism policy objectives.

The Second Circuit got it wrong in holding otherwise. The panel's basis for striking down the statute was that the activities identified by Congress as giving rise to consent are activities "not targeted at the United States" and thus are insufficient to provide general or specific jurisdiction. Pet. App. 26a. But, as Congress and the Executive determined—relying on resources uniquely available to those branches, but not to the judiciary—the PLO's and PA's support of terrorism need not target the United States in order for the PLO and PA to reasonably foresee that its support of terrorism could led to the murder of U.S. citizens, and in that way, be directed at the United States. *See* 165 Cong. Rec. S7183 (daily ed. Dec. 19, 2019) ("The PLO and Palestinian Authority's 'pay to slay' policies are nothing short of an incitement for further acts of terrorism [against Americans]."). Likewise, Congress and the Executive determined, as it was their prerogative to do, that if the PLO and PA "enter our nation's borders, [they] must do

so on the condition not to support or take part in acts of international terrorism and [to] compensate [their] victims if [they] breach that promise." 2018 ACTA H.R. Rep. at 7. It is squarely within the ambit of the political branches to set conditions upon the entry of foreign terrorist-affiliated entities to our country, and to stipulate that doing so grants our courts jurisdiction to resolve disputes regarding those conditions.[2]

II. INVALIDATING THE PSJVTA CRIPPLES CONGRESS'S AND THE EXECUTIVE'S ABILITY TO EMPOWER VICTIMS OF TERROR AND END THE BLOODY PAY-FOR-SLAY PROGRAM.

Congress and the Executive crafted the PSJVTA to be a key tool in saving American lives by dismantling the PA's "pay-for-slay" program. The program consists 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*

---

[2] The Second Circuit also questioned the prudence of choosing the "deemed consent" provision as the mechanism to effect U.S. counterterrorism goals. While noting that Congress chose to use the PJSVTA to deter the "congressionally disfavored activity" of funding foreign terrorist attacks against Americans, the panel found that this policy objective would be better effectuated by the "variety of other tools [that Congress has] at its disposal." Pet. App. 27a. The decision regarding which "tool" is best suited to effectuating the foreign policy and national security objectives of the country is, clearly, one committed to the political branches, not the judiciary.

Bank: Hearing Before the H. Comm. on Foreign Affs., 114th Cong. 1–2 (2016) (statement of Edward Royce, Chairman, H. Comm. on Foreign Affs.). These monthly payments provide powerful incentives for individuals to commit acts of terror because they are "much higher than the average monthly wage in either Gaza or in the Palestinian-populated parts of Judea and Samaria." Hugh Fitzgerald, *The Palestinian Authority's Diabolical 'Pay-for-Slay' Program*, World Israel News (Jan. 27, 2025), https://worldisraelnews.com/the-palestinian-authoritys-diabolical-pay-for-slay-program/. The payments incentivize and reward acts of terror, including those directly responsible for the deaths of Americans, such as the more than thirty Americans murdered 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-killedkidnapped-justice-department-investigation-64d851f794a6de4cbda40968dca50320.

The decision below vitiates Congress's and the Executive's repeated efforts to protect U.S. national security interests by giving victims the right to sue their victimizer and cut off financial incentives to perpetrate brutal terrorist attacks against Americans. The decision below also intrudes upon arenas of national security and foreign policy that are constitutionally reserved to Congress and the Executive by suggesting the judiciary knows of more effective "tools" to achieve those policy goals. But Congress and the Executive have determined there are no better 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. This Court should reverse the Second Circuit's decision, allowing the political branches to resume their productive counterterrorism efforts.

A. The PSJVTA is a keystone of Congress's and the Executive's efforts to deter the PA's "pay-for-slay" program and save American lives.

Congress and the Executive have long recognized that granting our courts jurisdiction for victim claims against terrorists is an indispensable tool in cutting off the perverse incentives to kill Americans. As the legislative history makes clear, the PSJVTA is just the latest piece in a statutory scheme set up by Congress and the Executive to stymie the pay-for-slay program by granting such jurisdiction.

The Second Circuit's opinion hamstrings the government's efforts to provide remedies for victims of terrorism. Congress and the Executive took decisive action to, once again, empower victims of terror to seek justice by starving the pay-for-slay program of the funds it relies upon. But lower courts have yet again stepped in to usurp the political branches' prerogative to protect our national security. They have eliminated the only means of providing civil remedies to victims of terrorist attacks sponsored by the PLO and PA. Letting the opinion stand would signal to the defendants that they can continue to fund terrorism without fear of facing justice before federal courts—regardless of what Congress and the Executive do.

B. Holding the PLO and PA financially liable for supporting terrorism is an indispensable means of discouraging further attacks and saving American lives.

Empowering victims of terror to sue their victimizers is one of the most effective tools Congress and the Executive have in their fight to end the pay-for-slay program and protect our national security. Subjecting the PA to U.S. jurisdiction was not an empty 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. As Senator Grassley emphasized, "[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. S7182 (daily ed. Dec. 19, 2019).

The ATA has been effective for decades. Offering monthly payments greater than local salaries is a powerful means of effectuating terrorism. But those payments are only possible if the defendants have funds to disperse. In passing the ATCA, Congress recognized that "by cutting terrorists' financial lifelines, the [ATCA] furthers the United States' longstanding efforts to reduce global terrorism and thus protect Americans here and abroad." 2018 ACTA H.R. Rep. at 3–4. The PSJVTA, like all legislation building on the ATA, similarly seeks to cutoff the terrorists from their financial

incentives and resources. This is not a novel idea. Subjecting terrorist organizations to civil suit has long been effective in discouraging violent attacks. *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.

The current pause on its use has already wounded our national security by allowing the PA to continue making thousands of payments, rewarding violent terrorists that have attacked Americans. Just four months after the Second Circuit curtailed courts' jurisdiction over the PLO and PA, 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, while the PA will face no justice in U.S. courts if this Court does not step in.

Reversing the decision below and allowing the political branches to protect our national security will save American lives and advance the United States' national security interests, as the PLO's and PA's efforts to evade federal jurisdiction make plain. 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 is an effective tool to disincentivize terrorism against Americans.

By obstructing the PSJVTA, the decision below risks giving the PLO and PA the go-ahead to continue funding acts of terror abroad that foreseeably lead to violence against Americans. *See* The Ed. Bd., *Palestinian 'Pay for Slay' Keeps Growing*, *supra*. This Court should instead resolve the issue and support the objectives of both Congress and the Executive in enacting the PSJVTA: to subject the PLO, PA, and any other terror organizations to federal jurisdiction and, in doing so, halt the funding of terrorism perpetrated against Americans.

If the decision below stands, terrorist groups can murder or injure U.S. citizens around the world with no recourse unless the group creates substantial connections with the U.S. But it is difficult to imagine what contacts such a terrorist group would plausibly make with the U.S., above and beyond the substantial connections alleged by plaintiffs—that the PLO and PA (1) implement policies like the pay-for-slay program that result in the murder of Americans with reasonable foreseeability, and (2) undertook certain activities in the United States. These connections are, in the political branches' reasoned judgments, precisely the kind of activities that provide a constitutionally sufficient basis for defining "pay-for-slay" as consent to personal jurisdiction in

United States courts.

CONCLUSION

Accordingly, amicus respectfully urges this Court to reverse the decision of the court of appeals below, uphold the constitutionality of the PSJVTA, and instruct that the PLO and PA constitutionally consented to personal jurisdiction in the district court.

Respectfully submitted.

ANDRIANNA D. KASTANEK
JENNER & BLOCK LLP
353 North Clark Street
Chicago, IL 60654

DOUGLASS MITCHELL*
Counsel of Record
PHILIP CHERTOFF
BRANDON STORM
JENNER & BLOCK LLP
1099 New York Ave. NW
Suite 900
Washington, DC 20001
(202) 639-6865
dmitchell@jenner.com

*Admission in the District of Columbia pending; practicing under direct supervision of members of the D.C. Bar

Counsel for Amicus Secretary Michael Pompeo

APPENDIX

INDEX

THE SECRETARY OF STATE
WASHINGTON

June 19, 2019

The Honorable
Charles Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Please accept my personal thanks for the commitment and dedication demonstrated by you and your staff in working with the Department of State to come to agreement on an amendment related to the Anti-Terrorism Clarification Act (ATCA) of 2018 (P.L. 115-253). The attached draft legislation advances two critical U.S. interests by seeking to enable U.S. victims of terrorism to vindicate their rights in U.S. courts while simultaneously protecting our own national security interests and those of our close ally, Israel. I look forward to working with you to advance this important legislation.

Sincerely,

/s/ Michael R. Pompeo
Michael R. Pompeo

Enclosure:
As stated.