

In the Supreme Court of the United States

MIRIAM FULD, ET AL.,

Petitioners,

v.

PALESTINE LIBERATION ORGANIZATION, ET AL.,

Respondents.

UNITED STATES OF AMERICA,

Petitioner,

v.

PALESTINE LIBERATION ORGANIZATION, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNOPPOSED MOTION FOR DIVIDED ARGUMENT

Pursuant to Supreme Court Rule 28.4, petitioners respectfully move for divided argument in these consolidated cases and request that petitioners' argument time be divided by allotting 15 minutes for the private plaintiffs (petitioners in No. 24-20) and 15 minutes for the United States (petitioner in No. 24-151). The United States joins in this motion. Respondents do not oppose.

1. These cases present the question whether the Promoting Security and Justice for Victims of Terrorism Act of 2019 (the PSJVTA) violates the Due Process Clause of the Fifth Amendment. The private plaintiffs are families whose loved ones were murdered or maimed in terror attacks. They sued the Palestine Liberation Organization and the Palestinian Authority under the Anti-Terrorism Act of 1992, 18 U.S.C. § 2333 (ATA), in two separate

actions. *Sokolow v. Palestine Liberation Organization*, No 04 Civ. 397 (GBD) (S.D.N.Y.); *Fuld v. Palestine Liberation Organization*, No. 20 Civ. 3374 (JMF) (S.D.N.Y.).

2. In *Sokolow*, after a seven-week trial, a jury found the PLO and PA liable under the ATA and awarded damages. The district court entered judgment on the verdict. On appeal, the Second Circuit held that exercising personal jurisdiction over the PLO and PA in that case was forbidden by the Due Process Clause of the Fifth Amendment and remanded with instructions to vacate the judgment and dismiss the complaint.

3. Congress responded to this decision by enacting the Anti-Terrorism Clarification Act (ATCA), which provided that certain post-enactment conduct by the PLO and PA would be deemed to constitute consent to personal jurisdiction in civil actions under the ATA. Pub. L. No. 115-253, § 4. The *Sokolow* plaintiffs returned to the Second Circuit and moved to recall the mandate in light of the new statute. The panel held that the statutory predicates had not been met and denied the motion. Congress then passed the PSJVTA, which amended the ATCA by changing and clarifying the factual predicates. 18 U.S.C. § 2334(e). The *Fuld* plaintiffs filed suit against the PLO and PA soon after Congress passed the PSJVTA. In *Sokolow*, this Court granted the plaintiffs' petition for certiorari, vacated the Second Circuit's judgment, and remanded for further consideration of the case in light of the PSJVTA. The Second Circuit remanded the case to the District Court for findings and conclusions on the effect of the statute.

4. In both *Sokolow* and *Fuld*, the PLO and PA challenged the constitutionality of the PSJVTA. In both cases, the United States intervened pursuant to 28 U.S.C. § 2403 to defend the constitutionality of the statute. In both cases, the district court held the PSJVTA

unconstitutional under the Due Process Clause of the Fifth Amendment. The Second Circuit affirmed.

5. The private plaintiffs petitioned for a writ of certiorari in No. 24-20. The United States petitioned for a writ of certiorari in No. 24-151. The Court granted certiorari in both cases, consolidated them, and allotted one hour for argument. The private plaintiffs and the United States have each filed their own merits briefs.

6. The private plaintiffs and the United States each have a substantial interest and distinct perspective in this case. The private plaintiffs brought their cases to obtain redress for grievous losses. The Court's resolution of the question presented will determine whether they are or are not able to pursue a measure of justice on account of those losses, vindicate their interests in federal court, and receive just compensation. For its part, the interest of the United States in defending the constitutionality of the PSJVTA transcends any individual case. The PSJVTA reflects our Nation's compelling interest in deterring and disrupting terrorism by impeding the flow of funds and other support to terrorist activity, as well as affording an avenue for its nationals to pursue compensation for death or injury inflicted by such activity. The United States also has an interest in defending Congress's constitutional authority to regulate the jurisdiction of the federal courts and ensuring proper regard for the judgments of the political branches in matters of foreign affairs and national security.

7. Having both of those distinct perspectives and interests represented at argument would be of material assistance to the Court.

Dated: March 6, 2025

Respectfully submitted,

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