No. 24A-___

IN THE
Supreme Court of the United States

SHARI MAYER BOROCHOV, ET AL.,

Applicants,

v.

ISLAMIC REPUBLIC OF IRAN AND
SYRIAN ARAB REPUBLIC,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE DISTRICT OF COLUMBIA CIRCUIT:

Under this Court's Rule 13.5, Applicants Shari Mayer Borochov et al. respectfully request a 45-day extension of time, to and including September 9, 2024, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit. The court of appeals entered its judgment on March 8, 2024, App., *infra*, 1a, and denied Applicants' timely petition for rehearing en banc on April 25, 2024, *id*. at 25a. Unless extended, the time within which to file a petition for a writ of certiorari will expire on July 24, 2024. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case presents an important and recurring question regarding the "terrorism exception" of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605A ("FSIA"). The terrorism exception supplies federal courts with subject-matter jurisdiction to adjudicate claims against a foreign state for, among other acts, the state's "act of * * * extrajudicial killing" or "the provision of material support for such an act." Prior to the decision below, the overwhelming consensus among courts to consider the issue was that this language supplies subject-matter jurisdiction in cases alleging state-sponsored terrorist attacks that attempt, but fail, to kill their victims,

leaving them injured or disabled.[1] But the court of appeals bucked that consensus and held that courts have jurisdiction under the terrorism exception only when a victim (even one unrelated to the plaintiff) dies in the attack. App., *infra*, at 2a.

2. This case arises from two terrorist attacks committed by Hamas in Israel—a shooting and a deliberate ramming of a car into a civilian bus stop. Fortunately, every victim of these attacks survived, but many were grievously injured and disabled. Victims of the attacks and their family members sued Hamas's state sponsors, Iran and Syria, in federal court. After the defendants did not appear, the clerk entered defaults. App., *infra*, at 26a. Because the FSIA requires a plaintiff to "establish[ ] his claim or right to relief by evidence satisfactory to the court" before the court can enter default judgment, 28 U.S.C. § 1608(e), the district court evaluated the plaintiffs' claims, including their invocation of the court's subject-matter jurisdiction, App., *infra*, at 36a-72a. The court concluded that "[t]he FSIA waives sovereign immunity for injuries caused by 'material support for' an extrajudicial killing," and that material support can be "for" an extrajudicial killing, and cause "personal injury," even if the terrorist's effort to perpetrate an extrajudicial killing is

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1 *See, e.g.*, *Borochov* v. *Islamic Republic of Iran*, 589 F. Supp. 3d 15, 32 (D.D.C. 2022) (McFadden, J.); *Pautsch* v. *Islamic Republic of Iran*, 2023 WL 8433216, at *3 (D.D.C. Dec. 5, 2023) (Boasberg, C.J.); *Cabrera* v. *Islamic Republic of Iran*, 2023 WL 1975091, at *4-11 (D.D.C. Jan. 27, 2023) (Bates, J.); *Fissler* v. *Islamic Republic of Iran*, 2022 WL 4464873, at *5 (D.D.C. Sept. 26, 2022) (Kollar-Kotelly, J.); *Roberts* v. *Islamic Republic of Iran*, 581 F. Supp. 3d 152, 169-70 (D.D.C. 2022) (Lamberth, J.); *Lee* v. *Islamic Republic of Iran*, 518 F. Supp. 3d 475, 491-92 (D.D.C. 2021) (Mehta, J.); *Gill* v. *Islamic Republic of Iran*, 249 F. Supp. 3d 88, 98-99 (D.D.C. 2017) (Walton, J.).

unsuccessful. App., *infra*, at 39a-40a. The court explained that "[a]s used in the provision, 'for' 'indicate[s] the object or purpose of an action or activity.'" *Id*. at 40a (second bracket in original). Thus "support with the object or purpose of an extrajudicial killing constitutes support 'for such an act' under the" terrorism exception. *Ibid*. The district court also found that the American plaintiffs, who sued under the terrorism exception's cause of action for American nationals, were entitled to damages and entered default judgment in those plaintiffs' favor. *Id*. at 55a-63a. It found, however, that most of the Israeli plaintiffs—who lack a direct cause of action under the FSIA and were required to demonstrate their entitlement to relief under Israeli law—had not met their burden to prove the availability of damages. *Id*. at 63a-69a.

3. The Israeli plaintiffs appealed, and the court of appeals held that the entire action must be dismissed for lack of subject-matter jurisdiction under the terrorism exception. App., *infra*, at 24a. The court concluded that "because the attacker in this case (fortunately) did not kill anyone, the attack that caused [the victims'] injuries was not an 'extrajudicial killing,'" and therefore the terrorism exception did not apply. *Id*. at 2a. The court rejected the district court's interpretation of the statute's "material support" language and decided that the language provided only for "aiding-and-abetting liability." *Id*. at 16a. Because aiding-and-abetting liability requires "a completed crime," a foreign state could not be liable unless an "extrajudicial killing" was completed, i.e., if someone died in the attack. *Id*. at 17a.

4. The decision below eschews the considered consensus of other lower courts, *see* n.1, *supra*, and is at odds with the text of the statute and Congress's purpose in enacting the FSIA. The court of appeals' adoption of the minority view—that subject-matter jurisdiction under the terrorism exception depends on the fortuity of whether a victim happens to die—misreads the text of the statute for the reasons explained by the district court. The statute provides jurisdiction whenever a state sponsor of terrorism's "material support *for*" an act of "extrajudicial killing" injures the plaintiff. 28 U.S.C. § 1605A (emphasis added). These words make clear that it is the state-sponsor's supporting an act of terrorism intended to kill—rather than the happenstance of whether the terrorist the state supports is successful—that determines jurisdiction. *Ibid*. In adopting a contrary view, the court of appeals also failed to adhere to the FSIA's purpose, which is to "prevent state sponsors of terrorism—entities particularly unlikely to submit to this country's laws—from escaping liability for their sins." *Han Kim* v. *Democratic People's Republic of Korea*, 774 F.3d 1044, 1048 (D.C. Cir. 2014). As such, at least until the decision below, courts have held that that because "Congress sought to lighten the jurisdictional burdens borne by victims of terrorism seeking judicial redress," "the statute does not counsel a narrow reading," and that courts must "interpret its ambiguities flexibly and capaciously." *Van Beneden* v. *Al-Sanusi*, 709 F.3d 1165, 1167 & n.4 (D.C. Cir. 2013) (quoting *Doe* v. *Bin Laden*, 663 F.3d 64, 70 (2d Cir. 2011)). Moreover, because venue in actions against foreign states is proper where "the events or omissions giving rise to the claim occurred," or in the "District of Columbia," 28 U.S.C. § 1391(f), the vast

majority of cases arise in that one district. Even in rare cases decided elsewhere, courts look to "the decisions from the District of Columbia as persuasive authority." *Herrick v. Islamic Republic of Iran*, 2022 WL 3443816, at *1 n.2 (S.D. Tex. Aug. 17, 2022). Thus, the court of appeals' decision risks being the last word for the entire Nation on this important and recurring statutory question, absent this Court's intervention.

5. Good cause exists for a 45-day extension of time to file a petition for a writ of certiorari. Undersigned counsel currently faces a press of other matters, and Respondents will suffer no prejudice from a 45-day extension because they have not appeared for any purpose at any stage of this litigation.

6. Because Applicants obtained a default judgment before the district court, and no counsel appeared for either Respondent in either the district court or the court of appeals, obtaining Respondents' position on the application is not practicable.

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For the foregoing reasons, Applicants respectfully request that the time within which to file a petition for a writ of certiorari be extended by 45 days, to and including September 9, 2024.

Respectfully submitted,

/s/ Matthew D. McGill

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