

No. 23-568

In the Supreme Court of the United States

ROBERT BARTLETT, ET AL.,

Petitioners

v.

DR. MUHAMMAD BAASIRI AND
JAMMAL TRUST BANK SAL,

Respondents.

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

**BRIEF ON BEHALF OF JEWISH ORGANIZATIONS
AND ALLIES, AS *AMICI CURIAE*, IN SUPPORT OF
PETITIONERS**

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<i>Estates of Ungar v. Palestinian Auth.</i> , 304 F. Supp. 2d 232 (D.R.I. 2004)	16
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<i>Federal Repub. of Germany v. Elicofon</i> , 358 F. Supp. 747 (E.D.N.Y. 1970)	20
<i>First Nat. Bank v. Banco Para El Comercio Exterior de Cuba</i> , 462 U.S. 611 (1983).....	20
<i>Freeman v. HSBC Holdings PLC</i> , No. 14CV6601DLICLP, 2018 WL 3616845 (E.D.N.Y. July 27, 2018)	14

<i>Holder v. Humanitarian Law Project</i> , 561 U.S. 1 (2010).....	28
<i>Kilburn v. Socialist People’s Libyan Arab Jamahiriya</i> , 376 F.3d 1123 (D.C. Cir. 2004).....	26
<i>OI Eur. Grp. B.V. v. Bolivarian Rep. of Venezuela Petroleos de Venezuela</i> , 73 F.4th 157 (3d Cir. 2023).....	20
<i>Olympia Express, Inc. v. Linee Aeree Italiane, S.P.A.</i> , 509 F.3d 347 (7th Cir. 2007).....	23, 24
<i>Owens v. Rep. of Sudan</i> , 531 F.3d 884 (D.C. Cir. 2008).....	25
<i>Rodriguez de Quijas v. Shearson / Am. Exp., Inc.</i> , 490 U.S. 477 (1989).....	22
<i>TIG Ins. Co. v. Rep. of Argentina</i> , 967 F.3d 778 (D.C. Cir. 2020).....	23, 24, 27
<i>Turkiye Halk Bankasi A.S. v. United States</i> , 598 U.S. 264 (2023).....	8, 24
<i>Verlinden B.V. v. Center Bank of Nigeria</i> , 461 U.S. 480 (1983).....	26, 27
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28 U.S.C. § 1604	8, 24
28 U.S.C § 1607(a).....	25
Justice Against Sponsors of Terrorism Act (JASTA), Pub. L. No. 114-222, 130 Stat. 852, (2016).....	7, 18, 25

Other Authorities

H.R. 2297, 114th Cong. (2015).....	18
S. Rep. No. 102-342 (1992).....	17
Anna Ahronheim, <i>Iran pays \$830 million to Hezbollah</i> , THE JERUSALEM POST (Sept. 18, 2017), https://www.jpost.com/middle-east/iran- news/iran-pays-830-million-to-hezbollah- 505166	14

- Benjamin Allison, *Hezbollah's Precision Threat to Israel*, LAWFARE
(Oct. 31, 2023 9:51 AM),
<https://www.lawfaremedia.org/article/hezbollah-s-precision-threat-to-israel> 12
- Bruce Riedel, The Brookings Institution,
Who are the Houthis, and why are we at war with them?, (Dec. 18, 2017)
<https://www.brookings.edu/articles/who-are-the-houthis-and-why-are-we-at-war-with-them/> 10, 11
- CONGRESSIONAL RESEARCH SERVICE,
Lebanese Hezbollah, available at
<https://crsreports.congress.gov/product/pdf/IF/IF10703> (last visited, Dec. 18, 2023) 4
- Dion Nissenbaum, *At Israel-Lebanon Border, Fears Grow of a Second Front*, WALL STREET JOURNAL
(Oct. 12, 2023 2:09 pm ET)
<https://www.wsj.com/world/middle-east/at-israel-lebanon-border-fears-grow-of-a-second-battlefront-cda25139> 11
- Dr. Majid Rafizadeh, *In first, Hezbollah confirms all financial support comes from Iran*, Al Arabiya News
(Jun. 25, 2016 12:00 AM GST),
<https://english.alarabiya.net/features/2016/06/25/In-first-Hezbollah-s-Nasrallah-confirms-all-financial-support-comes-from-Iran> 15

- Emanuel Fabian, *Gallant: Hezbollah has fired over 1,000 munitions at Israel since start of war*, TIMES OF ISRAEL (Nov. 19, 2023) <https://www.timesofisrael.com/gallant-hezbollah-has-fired-over-1000-munitions-at-israel-since-start-of-war/> 6
- Gabriel Toueg, *Brazil nabs suspected Hezbollah operatives said planning attacks on Jewish targets*, TIMES OF ISRAEL (Nov. 8, 2023 11:39 pm) <https://www.timesofisrael.com/brazil-nabs-suspected-hezbollah-operatives-said-planning-attacks-on-jewish-targets> 13
- Hamas Charter (1988), <https://www.memri.org/reports/covenant-islamic-resistance-movement-%E2%80%93hamas>..... 10
- The Hizballah Program: An Open Letter*, THE JERUSALEM QUARTERLY (Jan. 1, 1988), available at <https://www.ict.org.il/UserFiles/The%20Hizballah%20Program%20-%20An%20Open%20Letter.pdf> 5, 10
- Joseph Jesner, et al. v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018), 32 N.Y. Int'l L. Rev. 43 (2019)..... 14

- Joyce Karam, *Iran pays Hezbollah \$700 million a year, US official says*, THE NATIONAL (Jun. 6, 2018), <https://www.thenationalnews.com/world/the-americas/iran-pays-hezbollah-700-million-a-year-us-official-says-1.737347> 14
- Kali Robinson, *What Is Hezbollah?*, COUNCIL ON FOREIGN RELATIONS, available at <https://www.cfr.org/backgrounders/what-hezbollah> (last updated Oct. 14, 2023 11:04 am EST)..... 10, 11
- Matthew Levitt, HEZBOLLAH, THE GLOBAL FOOTPRINT OF LEBANON'S PARTY OF GOD (2013)..... 11, 13, 14
- Matthew Levitt, *Hezbollah Isn't Just in Beirut. It's in New York, Too.*, FOREIGN POLICY (Jun. 14, 2019 4:03 am) <https://foreignpolicy.com/2019/06/14/hezbollah-isnt-just-in-beirut-its-in-new-york-too-canada-united-states-jfk-toronto-pearson-airports-ali-kourani-iran> 5
- News Desk, *Hezbollah pounds Israeli border sites in solidarity with Gaza*, THE CRADLE.CO (Dec. 3, 2023) <https://new.thecradle.co/articles/hezbollah-pounds-israeli-border-sites-in-solidarity-with-gaza> 12

- News Wires, *French court upholds Syria 'complicity in crimes against humanity' charge against Lafarge*, FRANCE 24 (May 18, 2022 14:42), <https://www.france24.com/en/live-news/20220518-paris-court-upholds-charges-of-complicity-in-crimes-against-humanity-linked-to-lafarge-s-cement-plant-in-syria>..... 19
- OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, *Interactive Timeline, Lebanese Hizballah: Select Worldwide Operational Activity 1983-2017*, available at https://www.dni.gov/nctc/groups/032004_Hizballah_Activity-Interactive-NCTC/index.html#/ (last visited, Dec. 13, 2023) 5
- Patrick Wintour, *How Iran uses proxy forces across the region to strike Israel and US*, THE GUARDIAN (Nov. 1, 2023 1:00 EDT), <https://www.theguardian.com/global/2023/nov/01/how-iran-uses-proxy-forces-across-the-region-to-strike-israel-and-us...> 14, 15
- Shaan Shaikhand and Ian Williams, *Hezbollah's Missiles and Rockets*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (Jul. 5, 2018) <https://www.csis.org/analysis/hezbollahs-missiles-and-rockets> 13

<i>Statement by President George Bush Upon Signing S. 1569, 28 Weekly Comp. Pres. Docs. 2112 (Oct. 29, 1992)</i>	17
<i>Terror suspects arrested in Europe, including several linked to Hamas who were allegedly plotting against Jews, CBS NEWS (Dec. 15, 2023 6:39 am), https://www.cbsnews.com/news/hamas-germany-denmark-terror-attacks-foiled-against-jewish-targets/</i>	6
U.S. DEP'T OF STATE, <i>Bureau of Counterterrorism, COUNTRY REPORTS ON TERRORISM 2020 (2020)</i>	12
U.S. DEP'T OF STATE, STATE SPONSORS OF TERRORISM, <i>available at https://www.state.gov/state-sponsors-of-terrorism/</i> (last visited, Dec. 24, 2023)	25
U.S. DEP'T OF THE TREASURY, <i>Following Terrorist Attack on Israel, Treasury Sanctions Hamas Operatives and Financial Facilitators (Oct. 18, 2023), available at https://home.treasury.gov/news/press-releases/jy1816</i>	19
U.S. DEP'T OF THE TREASURY, <i>Treasury Labels Bank Providing Financial Services to Hizballah as Specially Designated Global Terrorist (Aug. 29, 2019), available at https://home.treasury.gov/news/press-releases/sm760</i>	16

U.S. DEPT. OF JUSTICE, *Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations* (Oct. 18, 2022), available at <https://www.justice.gov/opa/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations>..... 19

INTEREST OF *AMICI CURIAE*¹

The undersigned *amici* encompass a broad spectrum of American Jewish organizations and their allies, whose members include American victims of terrorist attacks perpetrated by Hezbollah, Hamas, Al Qaeda, and ISIS. Though *amici*'s missions and viewpoints differ in certain respects, they are firmly united in their commitment to ensuring that *all* victims of international terrorism are compensated to the fullest extent allowed by the Justice Against Sponsors of Terrorism Act ("JASTA").

JASTA's secondary liability provision offers an essential mechanism for compensating victims and their families, holding terrorist organizations and their material supporters accountable, and deterring future terrorism. The Second Circuit's decision obstructs these statutory objectives, significantly enhancing the ability of Hezbollah and like-minded groups to finance and execute terrorist attacks around the world.

Agudath Israel of America. Agudath Israel of America, founded in 1922, is a national grassroots Orthodox Jewish organization. Among its other functions and activities, Agudath Israel articulates

¹ In accordance with Rule 37.6, counsel affirms that no counsel for any party authored this brief in whole or in part. No person or entity other than *amici* and the undersigned counsel contributed the costs associated with the preparation and submission of this brief. Additionally, consistent with Rule 37.2, *amici* provided notice to counsel for both parties of their intent to file this brief.

and advances the position of the Orthodox Jewish community on a broad range of legal issues affecting religious liberty. Agudath Israel regularly intervenes at all levels of government to advocate and protect the interests of the Orthodox Jewish community throughout the United States and the world.

Given the large population of American Jews who reside in Israel and across the globe, Agudath Israel is committed to ensuring the United States can protect Americans abroad, including by holding accountable terrorists and their supporters in U.S. courts. As current events in Israel make all too clear, acts of international terrorism frequently have killed or injured American Jews and many others. Agudath Israel is profoundly interested in reducing the number of terrorist attacks committed by cutting off terror funding.

The Anti-Defamation League (“ADL”). The ADL is a 501(c)(3) not-for-profit anti-hate organization founded in 1913 “to stop the defamation of the Jewish people and to secure justice and fair treatment to all.” For decades, ADL has been at the forefront of analyzing and reporting on the actions of domestic and international extremist and terrorist groups. These groups pose a substantial threat to the safety and security of Americans and others throughout the world.

Union of Orthodox Jewish Congregations of America (“OU”). The OU is the nation’s largest Orthodox Jewish synagogue organization, representing nearly 1,000 congregations. The OU, through its Advocacy Center, has participated in many cases nationwide that implicate important

matters of concern to the Orthodox Jewish community.

The OU is especially alarmed by the devastating impact of terrorism on its constituents and American citizens globally. The OU seeks to ensure that terrorists cannot exploit U.S. laws to avoid punishment and that victims of international terror—including those from the Orthodox Jewish community—can seek justice in American courts.

One Israel Fund, Ltd. (“OIF”). OIF is the premier U.S. charity fulfilling humanitarian, educational, religious, and civilian security needs for Israeli and American residents of Judea and Samaria (the West Bank) and the Gaza “Envelope”—areas that are frequent targets of terror attacks. For the safety of these residents, OIF seeks to ensure that all avenues to thwart terrorism are available. Accordingly, OIF seeks this Court to ensure that Respondent faces the American justice system for providing material support to Hezbollah.

StandWithUs. StandWithUs is an international non-partisan education organization that supports Israel and fights antisemitism. StandWithUs inspires and empowers students and communities with leadership training and educational programs on hundreds of college campuses, high schools, and middle schools. Through these programs, distribution of print and digital materials, and legal action resources to protect the rights of students and community members facing antisemitism, StandWithUs’s many departments work together to provide individuals with the tools necessary to teach, identify, define, expose, and act against anti-Jewish

and anti-Zionist bigotry in its many forms. Founded in 2001 and headquartered in Los Angeles, StandWithUs has programs on six continents.

* * *

INTRODUCTION

Next year marks the thirtieth anniversary of the heinous Argentine Israelite Mutual Association bombing. On that day in 1994, a suicide bomb ripped through a Jewish community center in Buenos Aires, claiming 85 lives and injuring 300 more. The bombing closely followed a deadly attack on the Israeli Embassy in Buenos Aires, which killed 29 and wounded 242. Both tragic events came a decade after the 1983 attacks on the U.S. Marine barracks in Beirut—which killed 241, and the U.S. embassy, which killed 63, and the 1984 attack on the U.S. embassy annex in Beirut, which killed 24.

The common factor in these attacks is their perpetrator—Hezbollah, the Lebanon-based terrorist organization. Hezbollah is a critical component of Iran’s global terror apparatus, serving as Iran’s proxy in Lebanon, Africa, South America, and beyond.² Hezbollah’s principal objective is “the Destruction of Israel . . . the hated enemy that must be fought until

² See CONGRESSIONAL RESEARCH SERVICE, *Lebanese Hezbollah*, available at <https://crsreports.congress.gov/product/pdf/IF/IF10703> (last visited, Dec. 18, 2023).

the hated ones get what they deserve.”³ Its efforts to support and commit terrorist attacks throughout the world have continued unabated.⁴ And its sophistication and perceived legitimacy enhance its ability to seamlessly operate worldwide.⁵

Hezbollah raises funds to support its terrorist activities through sophisticated criminal enterprises, including illegal drug trafficking and diamond sales. Hezbollah then launders its illicit gains through corrupt financial institutions like respondent Jammal Trust Bank (“JTB”), exploiting the U.S. banking system in the process. Hezbollah also relies heavily on material support from its principal backer, Iran, which utilizes entities like JTB to circumvent anti-terror laws.

Recent events only underscore the havoc that terrorist groups can wreak. The October 7, 2023, Massacre perpetrated by Hamas—another Iran-backed terror group—showcased the ongoing, exigent

³ *The Hizballah Program: An Open Letter*, THE JERUSALEM QUARTERLY (Jan. 1, 1988), available at <https://www.ict.org.il/UserFiles/The%20Hizballah%20Program%20-%20An%20Open%20Letter.pdf> (“Hezbollah Open Letter”).

⁴ OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, *Interactive Timeline, Lebanese Hizballah: Select Worldwide Operational Activity 1983-2017*, available at https://www.dni.gov/nctc/groups/032004_Hizballah_Activity-Interactive-NCTC/index.html#/ (last visited, Dec. 13, 2023).

⁵ See Matthew Levitt, *Hezbollah Isn’t Just in Beirut. It’s in New York, Too.*, FOREIGN POLICY (Jun. 14, 2019 4:03 am) <https://foreignpolicy.com/2019/06/14/hezbollah-isnt-just-in-beirut-its-in-new-york-too-canada-united-states-jfk-toronto-pearson-airports-ali-kourani-iran/>.

threat posed by state-sponsored terrorism. And although Hamas explicitly targeted Jewish communities in Israel, this threat extends to others around the globe. Victims of the October 7 attacks hail from 40 countries, including the United States.⁶ And European law enforcement recently foiled a Hamas plot against Jewish targets in Europe.⁷

To counteract the illicit financial networks that support terrorist groups like Hezbollah and Hamas, Congress has carefully constructed a framework of anti-terrorism legislation aimed at deterring terror financing and compensating terror victims.

But the Second Circuit's decision imperils this anti-terrorism framework that has been critical to the fight against international terrorism. By interpreting the Foreign Sovereign Immunities Act ("FSIA") in a way that expands immunity for terrorists' corporate supporters, the court impairs an essential tool for preventing future attacks against Jewish communities around the world, Americans traveling or living abroad (including servicemembers stationed in the Middle East), and countless other targets. Congress did not intend such a result. At stake is the

⁶ Hezbollah also continues to target Israel. See Emanuel Fabian, *Gallant: Hezbollah has fired over 1,000 munitions at Israel since start of war*, TIMES OF ISRAEL (Nov. 19, 2023) <https://www.timesofisrael.com/gallant-hezbollah-has-fired-over-1000-munitions-at-israel-since-start-of-war/>.

⁷ See, e.g., *Terror suspects arrested in Europe, including several linked to Hamas who were allegedly plotting against Jews*, CBS NEWS (Dec. 15, 2023 6:39 am), <https://www.cbsnews.com/news/hamas-germany-denmark-terror-attacks-foiled-against-jewish-targets/>.

efficacy and availability of the United States' civil anti-terrorism remedy.

SUMMARY OF ARGUMENT

The Court should grant the petition⁸ for at least *two* reasons.

First, because the Second Circuit's decision impairs key statutory mechanisms for addressing the financing of terrorism, allowing the decision to stand will amplify threats to Jews and other Americans around the world. Foreign donors and facilitators of terrorism, sometimes acting in concert with their governments, provide material financial support to Hezbollah and other terrorist groups through private corporations like JTB. Congress has enacted finely-tuned legislation to thwart these aiders and abettors, like the Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2331 *et seq.*, and JASTA. The Second Circuit's decision, however, gives foreign governments a roadmap for using the FSIA's state instrumentality exception to evade these statutes, with potentially devastating consequences for *amici* and the world at-large. 28 U.S.C. §§ 1602 *et seq.*

Second, the decision below defies this Court's precedent and ignores the FSIA's text, structure, and purpose. The Second Circuit's interpretation irreconcilably conflicts with the Court's decision in *Dole Food Co. v. Patrickson*, 538 U.S. 468 (2003) and the several other courts of appeals that subsequently have addressed this issue. In *Dole*, the Court

⁸ See Petition for a Writ of Certiorari, at pp. ii–xvii, for a complete listing of the Petitioners.

unequivocally held that because the “plain text of [§ 1603(b)(2)] is expressed in the present tense,” the FSIA “requires that instrumentality status be determined at the time suit is filed.” *Id.* at 478. By deviating from this unambiguous dictate—and well-reasoned decisions from other circuits—the Second Circuit misreads the FSIA and undercuts its effectiveness.

Additionally, the Second Circuit’s opinion disregards this Court’s admonition to read statutory provisions in “context and with a view to their place in the overall statutory scheme.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). In rejecting the time-of-filing rule, the Second Circuit ignores the established link between immunity and jurisdiction rooted in the FSIA’s statutory structure. *See Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 276 (2023) (citing 28 U.S.C. §§ 1330(a), 1604). Moreover, it frustrates the central purposes of Congress’s greater anti-terrorism scheme.

The decision below also misconstrues important historical context. Congress passed the FSIA to *replace* the Executive Branch’s unstable, ad hoc approach to immunity determinations. Yet the Second Circuit’s decision undermines this objective, inviting foreign sovereigns to engage in gamesmanship and, in turn, eroding predictability. Moreover, while Congress intended for the FSIA to balance comity with the political branches’ foreign policy agenda, the Second Circuit’s decision thwarts Congress’s and the Executive Branch’s capacity to implement anti-terrorism efforts—like using SDGT designations to combat terror financing. These anomalous

consequences not only pose serious practical concerns; they also demonstrate that the Second Circuit's interpretation sharply contradicts congressional intent.

In sum, the Court should grant the petition to resolve (1) the important question of whether a defendant's status as an instrumentality of a foreign state under 28 U.S.C. § 1603(b)(2) can attach after the complaint is filed, and (2) the circuit split created by the decision below.

ARGUMENT

I. The Petition raises vital issues for American citizens in Jewish communities locally and abroad.

The political branches have responded to terrorist networks supported by foreign banks and corporations by enacting targeted policies and a robust federal statutory scheme. But the Second Circuit's decision seriously undermines these efforts.

Under the Second Circuit's holding, foreign sovereigns—including those specifically seeking to finance terrorism and those that are merely indifferent—can insulate their preferred corporations from civil suits brought by terrorist attack victims in American courts. When a private bank faces suit (or even after a court has ordered it to pay damages), the foreign government can simply nationalize it or place it in a temporary government receivership, blanketing it in FSIA immunity. This reading of the FSIA is patently wrong and creates a giant loophole in the statutory scheme.

Given the anti-Jewish and anti-Israel motivations driving many international terrorist groups, Jewish communities around the world are likely to suffer disproportionately from a breakdown of this statutory framework.⁹

A. Hezbollah aims to destroy the Jewish people and the State of Israel.

Hezbollah’s steadfast resolve to eradicate the Jewish people and Israel were part of its central, founding principles,¹⁰ and remain so, as detailed in Hezbollah’s 2009 “updated” manifesto.¹¹ In its forty-

⁹ *Amici* focus here on Hezbollah, given the facts of the case. But the need to ensure the anti-terrorism statutory scheme works effectively applies equally to other terrorist groups like Hamas, Islamic Jihad, ISIS, Al Qaeda, and the Houthis, most of which share Hezbollah’s genocidal ambitions towards the Jewish people. *See, e.g.*, Hamas Charter art. 7, para. 4 (1988), <https://www.memri.org/reports/covenant-islamic-resistance-movement-%E2%80%93hamas> (“The hour of judgment shall not come until the Muslims fight the Jews and kill them”); Bruce Riedel, The Brookings Institution, *Who are the Houthis, and why are we at war with them?*, (Dec. 18, 2017) <https://www.brookings.edu/articles/who-are-the-houthis-and-why-are-we-at-war-with-them/> (“[D]eath to Israel, curse the Jews”).

¹⁰ Hezbollah Open Letter, at 3–5.

¹¹ Kali Robinson, *What Is Hezbollah?*, COUNCIL ON FOREIGN RELATIONS, available at <https://www.cfr.org/background/what-hezbollah> (last updated Oct. 14, 2023 11:04 am EST) (“Robinson, *Hezbollah*”).

year history, Hezbollah has not veered from these overarching goals.¹²

But its political power, global influence, financial resources, and military capabilities have grown dramatically in the intervening decades.¹³ Hezbollah's military prowess looms large over the current Israel-Hamas war. U.S. government leaders worry that Hezbollah will react to Israel's response to the October 7th attacks by opening a "second front" of fighting in Northern Israel.¹⁴ Recent reports corroborate these fears. Hezbollah has been "pound[ing] Israeli border

¹² Hezbollah has killed many Americans along the way. Hezbollah's deliberate and intertwined targeting of Americans and Jews was explicit in two 1985 attacks. In a plane hijacking, Hezbollah kidnapped U.S. military personnel and passengers with Jewish-sounding names and murdered an American servicemember. Matthew Levitt, *HEZBOLLAH, THE GLOBAL FOOTPRINT OF LEBANON'S PARTY OF GOD*, 54–55 (2013). The same year, Hezbollah bombed both an American airline office and synagogue in Copenhagen. *Id.* at 58.

¹³ Hezbollah "wields significant power in Lebanon, where it operates as both a Shiite Muslim political party and militant group," raising a veil between its more legitimate functions as the former and barbaric actions when acting as the latter. Robinson, *Hezbollah, supra*.

¹⁴ See Dion Nissenbaum, *At Israel-Lebanon Border, Fears Grow of a Second Front*, WALL STREET JOURNAL (Oct. 12, 2023 2:09 pm ET) <https://www.wsj.com/world/middle-east/at-israel-lebanon-border-fears-grow-of-a-second-battlefront-cda25139>.

sites in solidarity with Gaza”—thus exploiting an already volatile situation to assist Hamas.¹⁵

These recent attacks are merely a continuation of Hezbollah’s longstanding campaign against Israel. Over the past two decades, Hezbollah periodically has fired rockets into Israel, including during the 2006 Hezbollah-Israel War. Future attacks are inevitable. Some reports estimate that Hezbollah currently possesses up to 150,000 rockets in its arsenal.¹⁶ And recent assessments suggest Hezbollah is producing its own precision-guided missiles and drones.¹⁷ As Hezbollah obtains more precise weaponry from foreign backers like Iran, it will only become more dangerous.¹⁸

Hezbollah’s ambition to murder Jews is not limited to Israelis, as demonstrated by the 1994 Argentinian bombings, among many other examples. Just days after the October 7, 2023 attacks, authorities foiled a Hezbollah-led plot aimed at recruiting Brazilian

¹⁵ News Desk, *Hezbollah pounds Israeli border sites in solidarity with Gaza*, THE CRADLE.CO (Dec. 3, 2023) <https://new.thecradle.co/articles/hezbollah-pounds-israeli-border-sites-in-solidarity-with-gaza>.

¹⁶ U.S. DEP’T OF STATE, *Bureau of Counterterrorism*, COUNTRY REPORTS ON TERRORISM 2020 (2020).

¹⁷ Benjamin Allison, *Hezbollah’s Precision Threat to Israel*, LAWFARE (Oct. 31, 2023 9:51 AM), <https://www.lawfaremedia.org/article/hezbollah-s-precision-threat-to-israel>.

¹⁸ *Id.*

citizens to perpetuate attacks against synagogues and other Jewish targets.¹⁹

In short, the threat Hezbollah poses to the Jewish people, Israel, and thus *amici*—as well as Americans everywhere—is as significant as ever.

B. Hezbollah relies on corrupt private financial institutions to finance its terrorist operations.

Hezbollah maintains its status as “the world’s most heavily armed non-state actor”²⁰ through several extensive and diverse funding sources.

Hezbollah amasses revenue from a wide range of criminal activities, including narcotics, weapons and conflict diamond trafficking, and its control of key criminal networks in South America, Africa, and the Middle East. It solicits donations through its ostensible charities around the world. And perhaps most significantly, Iran funnels extensive support to

¹⁹ Gabriel Toueg, *Brazil nabs suspected Hezbollah operatives said planning attacks on Jewish targets*, TIMES OF ISRAEL (Nov. 8, 2023 11:39 pm) <https://www.timesofisrael.com/brazil-nabs-suspected-hezbollah-operatives-said-planning-attacks-on-jewish-targets/>; see also Levitt, HEZBOLLAH at 387-88 (describing 2014 arrest of Hezbollah operative plotting attacks on Jews and Israelis in Peru); *Id.* at 381 (describing 2008 Hezbollah plot in New Zealand “planning terrorist attacks against Israeli interests abroad”).

²⁰ Shaan Shaikhand and Ian Williams, *Hezbollah’s Missiles and Rockets*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (Jul. 5, 2018) <https://www.csis.org/analysis/hezbollahs-missiles-and-rockets>.

Hezbollah through the global financial system.²¹ U.S. intelligence estimates that Iran provides Hezbollah with \$700 million per year in cash outlays alone.²² And Israel has suggested that the amount could be as high as \$830 million annually.²³ Notably, these funds are often collected and distributed in U.S. dollars—the “preferred currency” for terror organizations and their supporters.²⁴

Leveraging its substantial financial sway, Iran has made Hezbollah the crown jewel of its terror network, using it as its proxy in launching terror attacks in Lebanon, Syria, and, relevant here, Iraq.²⁵ Hezbollah’s “campaign of attacks, bombings, hijackings and direct military confrontations with Israel in the 1990s and 2000s has served Tehran’s

²¹ The 1994 Buenos Aires bombing was facilitated by international bank transfers. Levitt, *HEZBOLLAH* at 89 (transfers from Iran’s Bank Mellī through a local branch of Deutsche Bank).

²² Joyce Karam, *Iran pays Hezbollah \$700 million a year, US official says*, *THE NATIONAL* (Jun. 6, 2018), <https://www.thenationalnews.com/world/the-americas/iran-pays-hezbollah-700-million-a-year-us-official-says-1.737347>.

²³ Anna Ahronheim, *Iran pays \$830 million to Hezbollah*, *THE JERUSALEM POST* (Sept. 18, 2017), <https://www.jpost.com/middle-east/iran-news/iran-pays-830-million-to-hezbollah-505166>.

²⁴ Michael Fabrizio, *Joseph Jesner, et al. v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018), 32 N.Y. Int’l L. Rev. 43, 44 (2019); see *Freeman v. HSBC Holdings PLC*, No. 14CV6601DLICLP, 2018 WL 3616845, at *2 (E.D.N.Y. July 27, 2018) (discussing the reliance of Iran on the U.S. banking system given the instability of the Iranian Rial).

²⁵ Patrick Wintour, *How Iran uses proxy forces across the region to strike Israel and US*, *THE GUARDIAN* (Nov. 1, 2023 1:00 EDT), <https://www.theguardian.com/global/2023/nov/01/how-iran-uses-proxy-forces-across-the-region-to-strike-israel-and-us>.

strategic objectives in the Middle East without provoking any direct military confrontations with Israel.”²⁶

The US and other global leaders have adopted policies to target Hezbollah’s sources of financing. But Hezbollah has voiced its defiant resolve to circumvent such restrictions. Its leader, Hassan Nasrallah, has proudly declared: “No law will prevent us from receiving [financial assistance].”²⁷

Corrupt financial institutions—like Respondent—have served a critical role in funding Hezbollah by helping it covertly move vast sums between its global networks and money laundering operations. As the Department of Treasury highlighted when announcing its designation of JTB as a Specially Designated Global Terrorist (“SDGT”):

[JTB] has a longstanding relationship with a key Hizballah financial entity and . . . knowingly facilitates the banking activities of U.S.-designated entities openly affiliated with Hizballah[.] . . . Hizballah has used

²⁶ *Id.*

²⁷ Dr. Majid Rafizadeh, *In first, Hezbollah confirms all financial support comes from Iran*, Al Arabiya News (Jun. 25, 2016 12:00 AM GST), <https://english.alarabiya.net/features/2016/06/25/In-first-Hezbollah-s-Nasrallah-confirms-all-financial-support-comes-from-Iran>.

accounts at [JTB] to pay its operatives and their families. . . .²⁸

In short, institutions like JTB are an indispensable vehicle for financing Hezbollah's terrorist activities.

C. Congress enacted a comprehensive statutory scheme to disrupt terror support networks.

Over several decades, Congress has enacted a comprehensive statutory framework intended “to deter and punish acts of international terrorism.” *Estates of Ungar v. Palestinian Auth.*, 304 F. Supp. 2d 232, 238 (D.R.I. 2004). But terror groups and their “financial angels” often have thwarted these efforts through “procedural gamesmanship.” *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685, 690 (7th Cir. 2008). The Second Circuit's decision enables further gamesmanship, striking a blow to the vital anti-terrorism legislative framework.

When enacting JASTA and the ATA, Congress was clear that these statutes were intended to reach foreign financial institutions—like JTB—that provide material support to terrorist organizations that endanger Americans. Congress aimed to accomplish *two* related, specific objectives.

²⁸ U.S. DEPT OF THE TREASURY, *Treasury Labels Bank Providing Financial Services to Hizballah as Specially Designated Global Terrorist* (Aug. 29, 2019), available at <https://home.treasury.gov/news/press-releases/sm760> (“JTB SDGT Designation”).

First, both Congress and the Executive Branch intended for the ATA to provide American terror victims with a civil remedy in federal courts for extraterritorial acts of terrorism. A Senate report notes Congress intended for the ATA to “open[] the courthouse door to victims of international terrorism,” and to “extend[] the same jurisdictional structure” at the core of “American criminal law to the civil remedies that [the ATA] defines.” S. Rep. No. 102-342, at 45 (1992). And President George H. W. Bush affirmed that the ATA provides “a remedy . . . for Americans injured abroad by senseless acts of terrorism.”²⁹

Second, Congress intended for the ATA to deter international terrorism by exposing financial institutions that knowingly provide material support to terrorist organizations to civil liability resulting from that support—thereby cutting off their primary funding streams. *See* S. Rep. 102-342, at 22 (“[T]he imposition of liability at any point along the causal chain of terrorism, [] would interrupt, or at least imperil, the flow of money.”); *see also Boim*, 549 F.3d at 690 (“Damages are a less effective remedy against terrorists and their organizations than against their financial angels.”).

These purposes are evident throughout the statutory scheme. Congress included in JASTA’s statement of purpose that the act was designed to provide “civil litigants with the *broadest possible*

²⁹ *Statement by President George Bush Upon Signing S. 1569*, 28 Weekly Comp. Pres. Docs. 2112 (Oct. 29, 1992) (“Bush ATA Signing Statement”).

basis . . . to seek relief.” JASTA, § 2(b) (emphasis added). It authorizes civil damages against foreign actors who carry out, facilitate, and support “terrorist activities against the United States.” 18 U.S.C. § 2333(a). The law provides terror victims with a cause of action for extraterritorial acts against individuals and organizations “wherever acting and wherever they may be found.” *Id.* Furthermore, the ATA imposes liability on anyone that “knowingly or recklessly contribut[ed] material support or resources” to terrorist organizations that threaten American citizens. JASTA, § 2(a)(6), 2(b).

Congress also recently passed terror financing initiatives directly targeting Hezbollah. For example, in 2015, President Obama approved the Hezbollah International Financing Prevention Act, which sanctions banks that “knowingly facilitat[ed]” one or more “significant transaction[s]” for Hezbollah or another designated terrorist group. H.R. 2297, 114th Cong. (2015).

The Executive Branch also has utilized SDGT designations to prevent terrorists’ private financiers from continuing to support foreign terrorist activities. Relevant here, in 2019, the U.S. Treasury designated JTB as an SDGT, ending JTB’s usefulness to Hezbollah and Iran and impairing the Iran-Hezbollah terror apparatus.³⁰

Recent events have further highlighted the centrality of these policies to U.S. anti-terror strategy. Following the October 7th Massacre, the U.S.

³⁰ JTB SDGT Designation.

Treasury issued new sanctions against Hamas³¹ and the White House reiterated the importance of policies that target terrorists' financial resources.

Critically, statutes like JASTA not only provide a vital compensation for victims, but also are key U.S. government weapons for deterring terror financing. Civil suits are particularly important because, with one recent exception,³² the United States has been reluctant to invoke the ATA's criminal sanction provision to punish foreign corporations that aid and abet terrorist organizations and facilitate terror activities. And even in that case, the DOJ only acted *after* French authorities had already done so.³³

The Second Circuit's opinion undermines Congress's carefully-crafted statutory scheme. By permitting foreign states to exempt their private corporations from U.S. jurisdiction, the Second Circuit is paving the way for terror financiers to use strategic gamesmanship to evade accountability. Determining

³¹ U.S. DEPT OF THE TREASURY, *Following Terrorist Attack on Israel, Treasury Sanctions Hamas Operatives and Financial Facilitators* (Oct. 18, 2023), available at <https://home.treasury.gov/news/press-releases/jy1816>.

³² U.S. DEPT. OF JUSTICE, *Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations* (Oct. 18, 2022), available at <https://www.justice.gov/opa/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist-organizations>.

³³ News Wires, *French court upholds Syria 'complicity in crimes against humanity' charge against Lafarge*, FRANCE 24 (May 18, 2022 14:42), <https://www.france24.com/en/live-news/20220518-paris-court-upholds-charges-of-complicity-in-crimes-against-humanity-linked-to-lafarge-s-cement-plant-in-syria>.

immunity status based on “how a state acts after learning that its actions surrounding an instrumentality are under scrutiny”—invites “fraud and injustice.” *OI Eur. Grp. B.V. v. Bolivarian Rep. of Venezuela Petroleos de Venezuela*, 73 F.4th 157, 171 (3d Cir. 2023).³⁴

Given these stakes, this petition raises a vitally “important question of federal law,” which—according to the Second Circuit’s erroneous reading of *Dole*—“has not been, but should be, settled by this Court.” SUP. CT. R. 10(c).

³⁴ Courts have acknowledged the risk of foreign governments using similar tactics to gain a litigation advantage. *E.g.*, *First Nat. Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 633 (1983) (allowing foreign government to avoid setoff on a counterclaim by “retransferring . . . assets to separate juridical entities” would be unjust); *see also Federal Repub. of Germany v. Elicofon*, 358 F. Supp. 747, 757 (E.D.N.Y. 1970) (noting risk of acknowledging “juridical entities” created by foreign governments for purposes of litigation).

II. The Second Circuit’s decision defies precedent, undercuts the anti-terrorism legislative framework, and raises grave constitutional concerns.

The Court also should grant certiorari because the Second Circuit’s interpretation of the FSIA, disregards this Court’s precedent, defies the text and structure of the FSIA and the broader anti-terrorism statutory scheme, and misunderstands the FSIA’s purpose and historical foundations.

A. The Second Circuit’s decision misinterprets this Court’s binding precedent.

In *Dole*, this Court unambiguously held that a defendant’s instrumentality status under the FSIA is determined at the time a lawsuit is filed—not during its pendency. 538 U.S. at 478. The Second Circuit’s contrary conclusion is erroneous and should be reversed.

The *Dole* court held, without qualification, that because the “plain text of [§ 1603(b)(2)] is expressed in the present tense,” the FSIA “requires that instrumentality status be determined at the time suit is filed.” *Id.* In so holding, the Court rejected arguments that immunity ought to attach at a time other than “at the time of the action brought.” *Id.* Yet, the Second Circuit jettisoned this Court’s unequivocal holding in favor of a flawed, overexpansive approach that treats this Court’s time-of-filing rule to mean that instrumentality status is determined “at the time of filing or *anytime thereafter.*”

This refusal to apply binding precedent flouts longstanding principles of vertical *stare decisis*. Lower courts *must* follow this Court’s precedents that “ha[ve] direct application in a case.” *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989). Accordingly, the Second Circuit was not free to disregard *Dole* based on speculation that this Court inadvertently stated its holding too broadly. Such “defiance of vertical *stare decisis*, if allowed to stand, substantially erodes confidence in the functioning of the legal system.” *Andrus v. Texas*, 142 S. Ct. 1866, 1879 (2022) (Sotomayor, J., dissenting from denial of certiorari).

The Second Circuit attempted to justify its deviation from *Dole* by reasoning that mirror-image facts (JTB claimed instrumentality status after filing, whereas the *Dole* defendants lost instrumentality status before filing) supported a “mirror-image” outcome, in which JTB’s status could be assessed after filing. *Id.*

However, the facts here are hardly a mirror image of those in *Dole*. Both cases ask the same question—when is instrumentality status determined under the FSIA? There is no reason for differing answers. Just as this Court held that it was inappropriate to extend immunity to foreign defendants who no longer had sovereign status at the time of filing, so too is it inappropriate to extend immunity to foreign defendants who never had sovereign status until long after filing. The “longstanding principle that the jurisdiction of the Court depends upon the state of things at the time of the action brought” conclusively

resolves the question against JTB. *Dole*, 538 U.S. at 478.

Moreover, the Second Circuit's flawed interpretation contradicts well-reasoned FSIA interpretations by the Seventh and D.C. Circuits affirming that post-filing changes in instrumentality status do not strip a court of jurisdiction. *TIG Ins. Co. v. Rep. of Argentina*, 967 F.3d 778, 785 (D.C. Cir. 2020); *Olympia Express, Inc. v. Linee Aeree Italiane, S.P.A.*, 509 F.3d 347, 349 (7th Cir. 2007).

In *TIG*, the D.C. Circuit concluded that the "time-of-filing approach best accords with the text and purpose of FSIA." 967 F.3d at 782, 783. It reasoned that "[a] statute's use of the present tense ordinarily refers to the time the suit is filed, not the time the court rules." *Id.* at 785. Moreover, "[a] time-of-filing rule avoids such gamesmanship by ensuring that post-filing maneuvering by foreign sovereigns will not affect the result." *Id.*

In *Olympia*, the Seventh Circuit similarly concluded that *Dole's* time-of-filing rule controls. Judge Posner wrote: "[i]t would be a big surprise to discover that the Court has changed its mind and now thinks that jurisdiction under the [FSIA] is determined . . . years after the suit was first removed to federal district court under section 1441(d)." 509 F.3d at 349.

In rejecting these holdings, the Second Circuit relied on flawed reasoning that unsettles this Court's established principles governing FSIA interpretation. The resulting, untenable circuit split over application

of a crucial federal law is sufficient reason in itself for this Court to grant review. SUP. CT. R. 10(a).

B. The Second Circuit’s interpretation of the FSIA defies its text and structure, as well as the broader anti-terrorism statutory scheme.

The Second Circuit’s decision not only contravenes Court precedent, but is also unsupported by the FSIA’s text and structure. The broader statutory scheme and purpose of the FSIA, the ATA, and JASTA further bolster this conclusion.

First, unlike *Dole* and the other circuits, the Second Circuit refused to recognize the established link between foreign sovereign immunity and jurisdiction. *Dole*, *TIG*, and *Olympia* explicitly root the time-of-filing rule in the “longstanding principle that the jurisdiction of the Court depends upon the state of things at the time of the action brought.” *Dole*, 538 U.S. at 469 (quotation omitted); *see also Olympia Express*, 509 F.3d at 350; *TIG*, 967 F.3d at 783.

This Court later explained that this connection derives from the statute’s structure: “[T]he public law containing the FSIA begins with” the jurisdictional provision “and then later follows with” the immunity provision. *Turkiye Halk Bankasi A.S.*, 598 U.S. at 276. Therefore, these sections must be read “together” and “sequentially.” *Id.*; *see also Argentine Rep. v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989) (“Sections 1604 and 1330(a) work in tandem.”). The Second Circuit, however, divorced FSIA immunity from jurisdiction without explanation.

Second, by declining to harmonize its interpretation of the FSIA with the larger body of related anti-terror legislation, the Second Circuit disregarded this Court’s admonition to read statutory language in “context and with a view to their place in the overall statutory scheme.” *Brown & Williamson*, 529 U.S. at 133.

Most problematically, the Second Circuit’s interpretation directly undermines the ATA. As discussed, the ATA explicitly aims to ensure American victims of foreign terrorist attacks may obtain relief in U.S. courts.³⁵ See 18 U.S.C. § 2334(a), (d). To make this right “to seek relief” meaningful, Congress instructed courts to extend jurisdiction over ATA suits on the “broadest possible basis.” JASTA, § 2(b). By allowing foreign sponsors of terror to strategically invoke FSIA immunity post-suit, the decision below contradicts this clearly-stated Congressional objective.

The Second Circuit’s decision also widens a gaping loophole in the FSIA’s terror exception, 28 U.S.C §1607(a), which was added in 1996 to reinforce the ATA by abrogating FSIA immunity for designated foreign terrorist-supporting states. While Lebanon does not fall within the exception,³⁶ many of the most notorious supporters of global terror do. See, e.g., *Owens v. Rep. of Sudan*, 531 F.3d 884, 894–95 (D.C.

³⁵ Bush ATA Signing Statement.

³⁶ U.S. DEPT OF STATE, STATE SPONSORS OF TERRORISM, available at <https://www.state.gov/state-sponsors-of-terrorism/> (last visited, Dec. 24, 2023) (listing Iran, Syria, North Korea, and Cuba as the currently-designated state sponsors of terror).

Cir. 2008) (FSIA “terrorism exception” prevented Sudan from invoking immunity); *Kilburn v. Socialist People’s Libyan Arab Jamahiriya*, 376 F.3d 1123, 1136 (D.C. Cir. 2004) (FSIA “terrorism exception” stripped Libya of sovereign immunity shield).

Under the Second Circuit’s decision, countries designated as “State Sponsors of Terrorism”—like Iran—can evade the exception by funneling terror funds through private institutions in non-designated states, like JTB in Lebanon. If and when terror victims attempt to sue these private financiers, Iran can rely on the non-terror sponsoring state to nationalize and thus immunize them. Accordingly, the Second Circuit’s decision provides a roadmap for terror sponsoring states—which Congress explicitly wanted to *exclude* from the FSIA’s reach—to indirectly obtain the statute’s benefits.

C. The Second Circuit’s decision misunderstands the FSIA’s historical context and contradicts legislative intent.

Finally, the Second Circuit’s decision misunderstands the FSIA’s purpose and historical foundations. The court reasoned that its post-filing rule must govern because the FSIA “codified the pre-existing common law,” which afforded immunity to foreign sovereigns as a gesture of comity. *Bartlett v. Baasiri*, 81 F.4th 28, 34 (2nd Cir. 2023). But as even the Second Circuit’s *own account* of the FSIA’s history acknowledges, the statute was intended to *replace* the chaotic, ad hoc scheme that predated it—not further entrench it. *Id.* at 31–32; see *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 488 (1983) (noting

Congress passed the FSIA “to free the Government from the case-by-case diplomatic pressures, to clarify the governing standards, and to assure litigants that decisions are made on purely legal grounds” (cleaned up)). By rejecting an interpretation that would fix immunity determinations at the start of litigation, the Second Circuit placed the FSIA’s applicability in the hands of foreign governments—directly undermining these objectives.

But even if Congress had attempted to codify the preexisting state of affairs, the Second Circuit’s approach *still* would contradict congressional intent. Before the FSIA was enacted, courts “*deferred to the decisions of the political branches*—in particular, those of the Executive Branch.” *Verlinden*, 461 U.S. at 486 (emphasis added). In other words, when comity and political considerations collided, courts prioritized the latter and denied foreign sovereign immunity. But the Second Circuit’s opinion *hamstrings* the Executive’s capacity to implement its anti-terrorism agenda.

First, by allowing post-filing events to bestow immunity, the Second Circuit gives foreign governments “every incentive” to change an instrumentality’s status “as soon as” suit is filed “and to draw out proceedings to delay the [case] . . . until it had been able to do so.” *TIG*, 967 F.3d at 785. This effectively *subverts* the Executive Branch’s policy prerogatives to a foreign sovereign’s interests—which contradicts *any interpretation* of the FSIA’s purpose and historical context.

Second, the decision below impairs the U.S. Treasury’s ability to use SDGT designations to address terror financing. The Second Circuit suggested that JTB’s immunity is consistent with the FSIA’s purpose because “[i]t was the U.S. designation of JTB as a terrorist organization, not any attempt by Lebanon to avoid this lawsuit, that forced the bank into liquidation and public receivership.” 81 F.4th at 37. But this statement implies that under the FSIA, the United States must choose between either (1) declining to classify terror financiers as terrorist organizations to keep the courthouse doors open, or (2) issuing terrorist designations that wholly immunize financiers from suit by their victims.

Such a result is not only practically concerning—but it is plainly at odds with any interpretation of the FSIA that aims to balance comity and Executive branch policy prerogatives. And because this interpretation directly impedes the Executive’s capacity to combat terror financing, it further underscores the necessity of this Court’s review. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010) (“the Government’s interest in combating terrorism is an urgent objective of the highest order”).

Thus, regardless whether the FSIA attempted to codify the pre-statutory state of affairs, the Second Circuit’s decision contradicts congressional intent and poses alarming practical implications that merit this Court’s review.

* * *

In sum, the Second Circuit’s decision not only unsettles the previously established “time-of-filing” rule,

departing from other circuits, but it also abrogates this Court's clear instructions as to the FSIA's interpretation. If unaddressed, these errors have the potential to infect other FSIA provisions—posing grave practical and constitutional concerns. SUP. CT. R. 10(a).

CONCLUSION

For the above reasons, the petition for certiorari should be granted.

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