No. 15-460

In the Supreme Court of the United States

ONE BEACON INSURANCE COMPANY, ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals should have applied the definition of "person" contained in the Dictionary Act, 1 U.S.C. 1, in determining whether the assets at issue in this case were "blocked assets" under Section 201(d)(2)(B) of the Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L. No. 107-297, 116 Stat. 2322.

2. Whether the court of appeals erred in relying on the parties' stipulations regarding the content of the license issued by the United States Department of Treasury's Office of Foreign Asset Control to determine whether the license satisfied the terms of Section 201(d)(2)(B) of TRIA.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes, regulation and rule: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-48a) is reported at 783 F.3d 607. The opinion of the district court (Pet. App. 107a-132a) is reported at 982 F. Supp. 2d 830.

JURISDICTION

The judgment of the court of appeals was entered on April 2, 2015. A petition for rehearing was denied on June 9, 2015 (Pet. App. 51a-52a). On September 4, 2015, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including October 9, 2015, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Congress has imposed numerous sanctions on individuals, entities, groups, and countries that perpe-

trate or support international terrorism. Property in the United States of sponsors of terrorism typically is "blocked" under sanctions programs established by Congress and implemented by the Executive. See, *e.g.*, International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, Tit. II, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Trading with the Enemy Act (TWEA), ch. 106, 40 Stat. 411 (50 U.S.C. App. 1 *et seq.*); Executive Order No. 13,224, 3 C.F.R. 786 (2002); 31 C.F.R. Pt. 594. Those programs authorize the President to prohibit transactions concerning particular assets subject to the United States' jurisdiction. When an asset is blocked, a person who wishes to engage in a transaction concerning that asset ordinarily must obtain a license from the United States Department of the Treasury's Office of Foreign Assets Control (OFAC). See, *e.g.*, 31 C.F.R. 594.201(a) (Global Terrorism Sanctions Regulations provide that certain terrorist property is "blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in," except as licensed or otherwise authorized).

The purpose of statutes permitting blocking is "to put control of foreign assets in the hands of the President" so that he may dispose of them in a manner that best furthers the United States' foreign-relations and national-security interests. *Dames & Moore* v. *Regan*, 453 U.S. 654, 673 (1981) (citation and internal quotation marks omitted). By blocking assets, the Executive Branch "immobilize[s] the assets * * * so that title to them might not shift from person to person, except by license, until" the Executive Branch determines how to dispose of the assets. *Propper* v. *Clark*, 337 U.S. 472, 484 (1949).

b. When a victim of terrorism has obtained a money judgment, efforts to enforce that judgment take place against the backdrop of the sanctions regimes to which the judgment debtor's United States assets are subject.

Congress has enacted several statutes designed to facilitate the efforts of plaintiffs who hold terrorism-related judgments to execute against property that is subject to a blocking regime, while at the same time preserving the Executive Branch's ability to dispose of blocked assets in order to further foreign-relations and national-security interests. The statute at issue here is the Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L. No. 107-297, 116 Stat. 2322, which provides:

> Notwithstanding any other provision of law * * * in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, * * * the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

§ 201(a), 116 Stat. 2337.

Section 201(d)(2) defines the "blocked asset[s]" that are subject to execution or attachment in aid of execution under Section 201(a). A "blocked asset" is "any asset seized or frozen by the United States under" TWEA or IEEPA, but it "[d]oes not include" property that "is subject to a license issued by the United States Government for final payment, transfer,

or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of such license has been specifically required by statute other than" IEEPA or the "United Nations Participation Act of 1945 (22 U.S.C. 287 *et seq.*)." TRIA § 201(d)(2)(B)(i), 116 Stat. 2339.

2. Muhammad Abdallah Abdan Al Ghamdi, also known as Abu al Tayyeb, was a member of al-Qaeda who provided financial and military support to the terrorist organization. Pet. App. 3a. Before his June 2006 arrest by law enforcement authorities in Saudi Arabia, al Tayyeb invested a substantial amount of money in trading accounts with R.J. O'Brien & Associates (RJO), a financial firm in Chicago, Illinois. *Ibid.* Al-Qaeda had a beneficial interest in the trading accounts. *Ibid.*

On June 18, 2006, OFAC issued an order blocking all funds in al Tayyeb's trading accounts with RJO, exercising its authority under the IEEPA, Executive Order No. 13,224, and the Global Terrorism Sanctions Regulations, 31 C.F.R. Pt. 594. Pet. App. 4a.

On June 8, 2011, OFAC issued a license that permitted the U.S. Department of Justice (DOJ) to "take all necessary actions in furtherance of the pursuit . . . of [the] civil forfeiture of" al Tayyeb's trading accounts with RJO. C.A. App. 272.[1]

3. a. On June 19, 2011, the United States filed a forfeiture complaint in the United States District Court for the Northern District of Illinois, seeking

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[1] As explained in more detail below, see pp. 7-8, *infra*, the actual OFAC license was not submitted to the court as part of the district court record, but the parties filed stipulated facts that described the license and its legal effect.

civil forfeiture of the funds in the al Tayyeb trading accounts. C.A. App. 1-15. The complaint revealed publicly for the first time the existence of the trading accounts and their link to al Tayyeb and al-Qaeda. *Id.* at 273. The United States sought and obtained warrants of arrest *in rem*, pursuant to which it took possession of approximately $6.2 million in the trading accounts. *Id.* at 272.

b. Petitioners are insurance companies that paid out insurance claims arising out of the September 11, 2001 terrorist attacks. On August 19, 2011, petitioners filed verified claims in the forfeiture action, challenging the United States' forfeiture of the defendant funds. Pet. App. 4a; Gov't C.A. Br. 1-2.

Petitioners' claimed interest in the trading accounts arose out of separate litigation brought by the insurance companies, along with thousands of other plaintiffs, for harms resulting from the September 11 terrorist attacks. Those claims were adjudicated in multidistrict litigation before the United States District Court for the Southern District of New York. See *In re Terrorist Attacks on Sept. 11, 2001*, 03-MDL-1570 (S.D.N.Y.). On April 7, 2006, the district court in the multidistrict litigation entered a "default judgment as to liability" against al-Qaeda. Pet. App. 5a. At the time petitioners filed their claims in the forfeiture action in Illinois, however, no monetary judgment had been entered by the district court in the Southern District of New York action. *Ibid.*

After petitioners filed their claims in the Northern District of Illinois contesting the forfeiture, a group of additional plaintiffs from the New York multidistrict litigation, who had suffered personal injuries in the September 11th terrorist attacks or were the surviv-

ing family members of individuals killed by the attacks, also moved to intervene in the forfeiture action. Pet. App. 5a.

The United States moved to strike the claims filed in the forfeiture action by petitioners and also opposed the motion to intervene filed by the personal-injury plaintiffs in the Southern District of New York multidistrict litigation. Pet. App. 6a. The government argued that the claimants and would-be claimants lacked the requisite ownership and legal interest in the funds to participate in the forfeiture proceedings because their judgment against al-Qaeda was not final and they had not secured a lien against the funds. *Ibid.*

The district court agreed that the claimants lacked standing and struck their claims. It also denied the personal-injury plaintiffs' motion to intervene. Pet. App. 7a.

c. In January 2012, the district court in the Southern District of New York multidistrict litigation entered a judgment for approximately $9 billion in money damages against al-Qaeda and in favor of petitioners. Pet. App. 5a-6a. Petitioners registered the judgment in the Northern District of Illinois and attempted to execute on the al Tayyeb trading accounts that were also the subject of the forfeiture action. *Id.* at 6a. After the district court granted petitioners a writ of execution, petitioners also sought to amend their claims in the forfeiture action to "reflect their perfected lien," which the court permitted. *Id.* at 7a-8a.

The parties subsequently cross-moved for summary judgment. Pet. App. 8a. The United States argued, among other things, that petitioners contin-

ued to lack the ownership and legal interest in the funds necessary to participate in the forfeiture proceeding, and that TRIA did not supersede the standing requirements associated with civil forfeiture. *Ibid.* The government further argued that petitioners could not execute their judgment against the defendant funds because those funds were in the possession of the United States pursuant to the OFAC license and the *in rem* arrest warrant, and TRIA did not waive the United States' sovereign immunity. *Id.* at 8a & n.6. Petitioners argued that the funds were subject to attachment under TRIA, and that TRIA "supersedes the procedural oddities of civil forfeiture law." *Ibid.*

After summary judgment briefing had begun, the Fifth Circuit held in *United States* v. *Holy Land Foundation for Relief & Development,* 722 F.3d 677, 685-687 (2013), that certain assets that were subject to criminal forfeiture under an OFAC license were not "blocked assets" subject to execution in satisfaction of a judgment pursuant to TRIA. The United States sought leave from the district court to file a supplemental brief addressing the Fifth Circuit's decision. 11-cv-4175 Docket entry No. (Doc. No.) 138 (June 27, 2013). The district court denied that motion but directed the parties to address the decision in their remaining responsive briefs. Doc. No. 139 (June 28, 2013). The United States did so, arguing that the district court should hold, consistent with *Holy Land Foundation*, that the funds in question were not "blocked assets" within the meaning of Section 201(d)(2)(B) of TRIA because they were subject to an OFAC license authorizing the United States to undertake the forfeiture action. Doc. No. 150 (July 15, 2013). Because all evidentiary materials in support of

summary judgment had already been filed by that date, however, the parties' joint stipulation of undisputed facts provided the only record evidence of the existence and scope of the OFAC license. C.A. App. 272 (stating that OFAC issued a license that permitted DOJ to "take all necessary actions in furtherance of the pursuit . . . of [the] civil forfeiture of" the funds).

The district court granted petitioners' motion for summary judgment, holding that petitioners were permitted under TRIA to attach the funds in satisfaction of their judgment. Pet. App. 107a-132a. The court did not address the United States' argument that TRIA did not apply because the funds were not blocked. *Id.* at 121a-122a.

4. a. The court of appeals reversed. Pet. App. 1a-33a. The court first held that petitioners had constitutional and statutory standing to participate in the forfeiture proceeding. *Id.* at 10a-23a.

The court of appeals next held that the funds were not subject to execution under TRIA because they were not "blocked assets" within the meaning of Section 201(d).[2] Pet. App. 23a-30a. The court explained that Section 201(a) authorizes execution only against "blocked assets" of the terrorist party, and that Section 201(d) defines "blocked assets" to exclude property that is subject to a license issued by the United States Government for "final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction

[2] The court of appeals rejected petitioners' argument that the United States had waived the Section 201(d) issue by not raising it earlier in the proceedings before the district court. Pet. App. 30a-31a.

for which the issuance of such license has been specifically required by statute other than" IEEPA or the United Nations Participation Act of 1945, ch. 583, 59 Stat. 619 (22 U.S.C. 287 *et seq.*). *Id.* at 24a; see TRIA § 201(d)(2)(B)(i), 116 Stat. 2339. The court concluded that the assets were not blocked under Section 201(d) because they were the subject of a license issued by OFAC to DOJ to "'take all necessary actions in furtherance of the . . . pursuit of [the] civil forfeiture of the [defendant funds].'" Pet. App. 25a (quoting stipulation describing license). The court reasoned that "[a] license to effect forfeiture is, at bottom, a license for final transfer or disposition," as required by Section 201(d)(2)(B). *Id.* at 27a. The court further reasoned that the license was issued for disposition "by or to a person subject to the jurisdiction of the United States"—namely, DOJ. *Ibid.*

The court of appeals rejected petitioner's argument that the court should not rely on the OFAC license because the license itself was not part of the district court record. Pet. App. 25a-27a. The court explained that petitioners had "stipulated that OFAC issued a license concerning the defendant funds," and they had "also stipulated to the broad terms of this license, which expressly authorized the DOJ" to pursue civil forfeiture. *Id.* at 26a. That stipulation, the court stated, "quells any concern regarding the completeness of the record." *Ibid.*

The court of appeals recognized that the parties' joint stipulation did not indicate whether the OFAC license was issued "'in connection with a transaction for which the issuance of such a license has been specifically required by statute other than [IEEPA] * * * or the United Nations Participation Act of

1945.'" Pet. App. 28a (quoting TRIA § 201(d)(2)(B)(i), 116 Stat. 2339). The court concluded, however, that petitioners had waived any argument that the license was required by either statute by failing to develop it before the district court or to press it in their brief on appeal. *Id.* at 28a-29a. The court also concluded, in the alternative, that the license was required with respect to the civil forfeiture statute, not IEEPA, and that in any event, once the United States had taken possession of the funds pursuant to the OFAC license, they were no longer "seized or frozen" within the meaning of TRIA. *Id.* at 29a-30a.

Finally, the court of appeals rejected petitioners' argument that while "general" OFAC licenses may render funds unblocked, "specific" licenses do not. Pet. App. 31a-32a. The court explained that that distinction had no basis in the text of Section 201(d)(2)(B), which provides that certain licenses render funds unblocked for TRIA purposes without mentioning any difference between "general" and "specific" licenses. *Ibid.*

b. Judge Manion concurred in part and dissented in part. Pet. App. 34a-48a. Judge Manion agreed that petitioners had standing, but he would have held that the funds remained blocked notwithstanding the forfeiture license issued to the United States. *Id.* at 34a. Judge Manion was of the view that the record was insufficient to show that the issuance of the OFAC license brought the funds within the definitional exclusion in TRIA. *Id.* at 38a-40a.

5. The court of appeals denied petitioners' petition for rehearing en banc. Pet. App. 52a.

ARGUMENT

Petitioners contend (1) that the court of appeals should have applied the Dictionary Act's definition of "person," 1 U.S.C. 1, in construing Section 201(d) of TRIA (Pet. 13-16); and (2) the court erred in relying on the parties' stipulated facts describing the terms of the license issued by OFAC (Pet. 17-21). Further review is unwarranted. The first question concerns an argument not raised in or passed on by the courts below. The second question concerns a factbound, case-specific issue that is unlikely to recur in the future. The court of appeals' decision is correct, and petitioners have not identified any conflict among the courts of appeals with respect to either question.

1. Petitioners first contend (Pet. 13-16) that the court of appeals erred in "concluding that the Department of Justice is a 'person' under TRIA." Pet. 13. Petitioners argue that the court should have applied the Dictionary Act's definition of "person" in construing TRIA, and that under that definition, DOJ is not a "person." See 1 U.S.C. 1 (defining "person" to "include corporations" and other entities, "as well as individuals"). As a result, petitioners argue, the OFAC license at issue here is not a license for transfer or disposition "by or to a person subject to the jurisdiction of the United States," TRIA § 201(d)(2)(B)(i), 116 Stat. 2339, and the funds therefore had not been unblocked by the time petitioners sought to attach them. That contention does not warrant review.

a. As an initial matter, the court of appeals did not consider petitioners' Dictionary Act argument because petitioners did not raise it before that court or at any prior stage of this litigation. See Pet. C.A. Br. 51-55.

Petitioners never argued that the license issued to DOJ was not issued for final disposition or transfer of the assets "by or to a person" for purposes of Section 201(d) of TRIA, nor did they argue that the Dictionary Act's definition of "person" should apply to Section 201(d). That is sufficient reason to deny further review. Because this Court is "a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005), it does not ordinarily review an issue that was neither pressed nor passed upon in the court of appeals, see *United States* v. *Williams*, 504 U.S. 36, 41 (1992).

b. In any event, petitioners' argument lacks merit. The Dictionary Act's definition of the term "person" does not apply to Section 201(d) of TRIA. The Dictionary Act provides that the definitions it contains do not apply when "the context indicates otherwise." 1 U.S.C. 1. As this Court explained in *Rowland* v. *California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194 (1993), the relevant "context" includes "the text of the Act of Congress surrounding the word at issue, or the texts of other related congressional Acts." *Id.* at 199. In addition, the relevant context need only "indicate[]" that the definition does not apply—a standard that "certainly imposes less of a burden than, say, 'requires' or 'necessitates.'" *Id.* at 200.

The "context" in which the term "person" is used in Section 201 of TRIA indicates that it should not be defined using the definition in the Dictionary Act. First, Title I of TRIA, which establishes a system of compensation for certain insured losses resulting from certain acts of terror, contains a definition of "person" that includes "a State or political subdivision of a

State or other governmental unit." § 102(9), 116 Stat. 2326. Although that definition is not made explicitly applicable to Title II of TRIA, it nevertheless suggests that Congress intended for "person" to have a broader meaning in TRIA than the definition in the Dictionary Act.

Second, construing "person" in Section 201(d)(2)(B) to exclude the United States Government would be inconsistent with the purpose and intended operation of the statute. By precluding attachment of assets already unblocked by certain OFAC licenses, Section 201(d)(2)(B) protects the United States Government's ability to direct the transfer or other disposition of blocked property under existing sanctions regimes. Economic sanctions programs "permit the President to maintain" particular "foreign assets at his disposal for use in negotiating the resolution" of a serious foreign policy conflict, including for use as a bargaining chip in international negotiations. *Dames & Moore* v. *Regan*, 453 U.S. 654, 673 (1981). As this Court has recognized, the Executive Branch would be unable to utilize blocking regimes to further important national-security interests if "individual claimants throughout the country" could "minimize or wholly eliminate this 'bargaining chip' through attachments, garnishments, or similar encumbrances on property." *Ibid.* TRIA's provisions accommodate that concern. Although TRIA permits certain judgment creditors to enforce their judgments against blocked assets, Section 201(d)(2)(B) also preserves the Executive Branch's ability to determine the appropriate disposition of such assets by issuing OFAC licenses in

furtherance of its conduct of foreign relations.[3] See *Smith* v. *Federal Reserve Bank of N.Y.*, 346 F.3d 264, 271 (2d Cir. 2003) (TRIA "imposes no obligation on the President to maintain [blocked] funds for future attachment [by judgment creditors].").

Construing Section 201(d)(2)(B) to exclude licenses granted for disposition or transfer of assets by or to United States governmental entities would interfere with the government's ability to use blocked assets to further important national interests, including (for example) resolving disputes with foreign governments. After blocking a foreign government's property, for instance, the United States might negotiate a resolution for disposition of a foreign government's property, and be issued a license by OFAC to effectuate that resolution. Under petitioners' view, the issuance of such a license would not render the foreign-government property "unblocked," and a private judgment holder would retain the ability to seek to execute against it, thereby thwarting the United States Government's effort to use the assets to further important foreign-relations interests. Similarly, the license at issue here served important national-security interests by permitting the United States Government to seek forfeiture of terrorist assets to ensure, among other things, that those engaged in planning and perpetrating terrorist acts do not have access to the property. C.A. App. 2, 10-11. There is

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[3] Petitioners' assertion (Pet. 12) that the United States engaged in "gamesmanship" by instituting a forfeiture proceeding against the funds is misplaced. By exempting certain OFAC licenses from the definition of "blocked assets," TRIA anticipates that the Executive Branch may sometimes take actions that remove particular funds from the ambit of assets attachable under TRIA.

no reason to conclude that Congress intended the term "person" in Section 201(d) to be defined in a manner that would permit individual plaintiffs to tie the hands of the Executive Branch in an arena in which flexibility and dispatch are crucial. Cf. *Dames & Moore*, 453 U.S. at 673-674 & n.6.

c. Petitioners contend (Pet. 15) that the court of appeals' decision in this case conflicts with *Fayed* v. *Central Intelligence Agency*, 229 F.3d 272 (D.C. Cir. 2000). Petitioners are incorrect. There, the D.C. Circuit held that 28 U.S.C. 1782, which permits a district court to order a "person" to produce discovery for use in a foreign proceeding, did not include United States government entities. In the context of that distinct statute, the court of appeals held that the statutory text, structure, and context—including sovereign-immunity concerns—did not provide sufficient evidence that Congress intended to subject the United States to potentially broad-ranging discovery in connection with foreign proceedings. *Fayed*, 229 F.3d at 274-275. That conclusion is inapposite here.

2. Petitioners next argue (Pet. 16-21) that the court of appeals erred in relying on the parties' stipulations regarding the terms of the OFAC license rather than examining the license itself. That fact-bound, case-specific question does not warrant this Court's review.

a. The court of appeals concluded that the stipulation—which explained that the license permitted DOJ to "take all necessary actions in furtherance of the . . . pursuit of [the] civil forfeiture of" the funds, C.A. App. 272—contained sufficient information from which conclude that the funds in question were excluded from the definition of "blocked assets" under

TRIA Section 201(d)(2)(B). Pet. App. 17a-18a. Petitioners do not identify any reason to suppose that the license did not in fact authorize disposition of the assets in the forfeiture action—nor do they identify any legal principle that would bar a court categorically from relying on stipulated facts to ascertain the scope of an OFAC license, where that license is not part of the record before the court.

In any event, that evidentiary question does not warrant review. No other court of appeals has considered the question whether a stipulation describing an OFAC license is a sufficient basis on which to conclude that Section 201(d)(2)(B) applies. The unusual circumstances of this case, moreover, are unlikely to recur. The license is not in the record only because the question whether the funds were "blocked assets" after OFAC's issuance of a license to the United States arose after the parties' cross-motions for summary judgment were filed.

b. Petitioners also appear to argue (Pet. 20) that only a "general" OFAC license would be sufficient to render those assets unblocked under TRIA, and the stipulation did not establish whether the license was "general" or "specific." The question whether Section 201(d)(2)(B) requires a "general" license (*i.e.*, one that authorizes a category of transactions broader than the government's forfeiture action) is not fairly included within the question presented. That question asks only whether the court of appeals erred in "rejecting [the] requirement that the court examine the text" of an OFAC license. Pet. i; see Sup. Ct. R. 14(a); *Yee* v. *City of Escondido*, 503 U.S. 519, 535 (1992) ("[W]e ordinarily do not consider questions outside those presented in the petition for certiorari.").

In any event, the court of appeals correctly held that petitioners' asserted distinction between general and specific licenses has no basis in Section 201(d)(2)(B)'s text. Section 201(d)(2)(B) does not mention "general" or "specific" licenses, but instead requires that the license be one "issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States." TRIA § 201(d)(2)(B)(i), 116 Stat. 2339. As petitioners acknowledge (Pet. 18-19), courts of appeals have held that both general and specific OFAC licenses alter the status of previously blocked assets under TRIA and render them "unblocked" and no longer subject to execution by a terrorism judgment holder pursuant to Section 201(d). See *United States* v. *Holy Land Found. for Relief & Dev.*, 722 F.3d 677, 686-687 (5th Cir. 2013) (specific license); *Bank of N.Y.* v. *Rubin*, 484 F.3d 149, 150 (2d Cir. 2007) (per curiam) (general license); *Estate of Heiser* v. *Islamic Republic of Iran*, 807 F. Supp. 2d 9, 18 n.6 (D.D.C. 2011) (general license); see also *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran* v. *Elahi*, 556 U.S. 366, 376 (2009) (reasoning that Iranian property was "unblocked" under OFAC general license and/or Executive Order No. 12,281, 3 C.F.R. 112 (1982)). No court has held that a specific license, such as the license at issue here, does not have the effect of unblocking the funds under TRIA, simply because it is specific. Further review is unwarranted.[4]

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[4] There is no need for this Court to hold the petition in this case pending its decision in *Bank Markazi* v. *Peterson*, No. 14-770 (argued Jan. 13, 2016). That case presents the question whether an Act of Congress that altered the law governing execution upon

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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foreign-state assets that are subject to a blocking order violates the separation of powers. No similar question is presented here.

The respondents in *Bank Markazi* have argued that the Court may affirm the judgment on the alternative ground that the assets at issue in that case are attachable under TRIA. See Resp. Br. at 53-57 (No. 14-770). Even if the Court reached that question, its decision would not affect the proper resolution of this case. It is undisputed that the assets at issue in *Bank Markazi* are "blocked" for purposes of TRIA. See *id.* at 53; Reply Br. at 20-22 (No. 14-770). Consequently, no issue concerning the proper interpretation of Section 201(d)(2)(B) is presented. Instead, the parties dispute whether the assets are "assets of [a] terrorist party" within the meaning of Section 201(a)—in other words, whether Bank Markazi possesses a sufficient ownership interest in the assets to render them attachable to satisfy judgments against Iran. See Resp. Br. at 53 (No. 14-770); Reply Br. at 21-22 (No. 14-770). Resolving that question would not shed light on the Section 201(d)(2)(B) issues presented here.