No. 10-947

In the Supreme Court of the United States

BANK MELLI IRAN NEW YORK REPRESENTATIVE OFFICE, PETITIONER

v.

SUSAN WEINSTEIN, ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

Section 201(a) of the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2337 (28 U.S.C. 1610 note), provides that, "in every case in which a person has obtained a judgment against a terrorist party" that is also a foreign state on a claim for which the foreign state lacks jurisdictional immunity under 28 U.S.C. 1605(a)(7) (repealed 2008), "the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to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." The questions presented are:

1. Whether Section 201(a) authorizes execution against a blocked asset of an instrumentality of a foreign state in order to satisfy a judgment that was entered against the foreign state and not its wholly owned instrumentality.

2. Whether execution against a blocked asset of such an instrumentality under Section 201(a) revises the final judgment entered against the foreign state in violation of the Article III principles articulated in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995).

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This brief is filed in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the Court should deny the petition for a writ of certiorari.

STATEMENT

1. Section 201(a) of the Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L. No. 107-297, 116 Stat. 2337 (28 U.S.C. 1610 note), defines the types of assets that are subject to execution to satisfy a judgment entered against a country designated as a state sponsor of terrorism on a claim for which that foreign state lacked jurisdictional immunity under 28 U.S.C. 1605(a)(7) (enacted 1996). Section 1605(a)(7) was part of the Foreign Sovereign Immunities Act of 1976 (FSIA), Pub. L. No. 94-583, 90 Stat. 2891 (codified as amended at, *e.g.*,

28 U.S.C. 1330, 1441(d), 1602 *et seq.*), until 2008, when Congress repealed the provision and replaced it with a new 28 U.S.C. 1605A. Both the FSIA and a series of enactments from 1996 to 2008—including TRIA Section 201(a)—addressing victims' collection of terrorism-based judgments against foreign states are relevant to petitioner's contention that an asset of a wholly owned commercial instrumentality of the Islamic Republic of Iran (Iran) is not subject to execution under Section 201(a) to satisfy a terrorism-based judgment against Iran.

a. The FSIA defines the scope of immunity enjoyed by a "foreign state," which Congress has defined to include an "agency or instrumentality" of a foreign state. 28 U.S.C. 1603(a). An "agency or instrumentality" is an entity that exists as "a separate legal person, corporate or otherwise," and is an organ of, or a majority of which is owned by, a foreign state or political subdivision thereof. 28 U.S.C. 1603(b). The Act defines the immunity of such entities by specifying the extent to which (i) a foreign state may be subject to suit in federal and state courts, see 28 U.S.C. 1604-1607, and (ii) its property may be subject to attachment and execution, see 28 U.S.C. 1609-1611.

i. The FSIA provides that a "foreign state" is "immune from the jurisdiction" of federal and state courts except as provided by certain international agreements and by the exceptions to immunity set forth in Sections 1605-1607. See 28 U.S.C. 1604. District courts accordingly have "jurisdiction" of a civil action against a "foreign state" only to the extent that one of those exceptions removes its immunity. 28 U.S.C. 1330(a).

The statute's exceptions largely "codify the restrictive theory of sovereign immunity," under which a for-

eign state's immunity is retained in suits involving its sovereign or public acts but abrogated in suits arising from its commercial activities. *Samantar* v. *Yousuf*, 130 S. Ct. 2278, 2285 (2010); see, *e.g.*, 28 U.S.C. 1605(a)(2), (3) and (b). Under the FSIA as originally enacted, all foreign states retained immunity from suit for non-commercial torts committed outside the United States. See 28 U.S.C. 1605(a)(5) (exception to immunity for torts "in the United States"). In 1996, Congress enacted the so-called "terrorism exception" to foreign sovereign immunity in Section 1605(a)(7). That provision abrogated jurisdictional immunity from claims seeking money damages for "personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, [or] hostage taking," if the foreign state was designated "as a state sponsor of terrorism" by the Secretary of State "at the time the act occurred" or later "as a result of such act." 28 U.S.C. 1605(a)(7).

ii. The FSIA's attachment and execution provisions, 28 U.S.C. 1609-1611, modify a foreign state's traditional immunity from execution against its property. See *Connecticut Bank of Commerce* v. *Republic of Congo*, 309 F.3d 240, 252 (5th Cir. 2002). Those provisions embody the general rule that "the property in the United States of a foreign state" is "immune from attachment arrest and execution," 28 U.S.C. 1609, with exceptions defined in Sections 1610-1611. Some exceptions apply to the property of a "foreign state" (including property of its "agenc[ies] or instrumentalit[ies]," 28 U.S.C. 1603(a)), see 28 U.S.C. 1610(a), whereas others apply only to property of an "agency or instrumentality," 28 U.S.C. 1610(b).

For instance, Section 1610(a) authorizes execution against the U.S. property of a "foreign state" in certain

circumstances if the property is "used for a commercial activity in the United States." 28 U.S.C. 1610(a). Section 1610(b), by contrast, more broadly authorizes execution against the U.S. property of a foreign state's "agency or instrumentality * * * engaged in commercial activity in the United States" in certain circumstances, regardless of whether the property itself is used for commercial activity. 28 U.S.C. 1610(b). Both of those exceptions applied when "the judgment [being collected] relate[d] to a claim for which the foreign state" or its "agency or instrumentality" was "not immune under section 1605(a)(7)," and both continue to apply for judgments entered under Section 1605(a)(7)'s successor provision (Section 1605A)—even if the particular property was not "involved with the act upon which the claim is based." 28 U.S.C. 1610(a)(7) and (b)(2) (2006 & Supp. II 2008).

As enacted in 1976, the FSIA did not address "the attribution of liability among instrumentalities of a foreign state." *First Nat'l City Bank* v. *Banco Para El Comercio Exterior de Cuba (Bancec)*, 462 U.S. 611, 620 (1983). In the absence of a statutory rule, this Court in *Bancec* concluded that, in litigation permitted by the FSIA, "duly created instrumentalities of a foreign state are to be accorded a presumption of independent status." *Id.* at 627. Thus, a plaintiff who obtains a money judgment against a foreign state normally must collect that judgment from the assets of the foreign state itself and not from "assets of [its] instrumentality." See *id.* at 627-628.

b. Victims who obtained a judgment against a foreign state under Section 1605(a)(7)'s terrorism exception have faced "a number of practical, legal, and political obstacles" that "made it all but impossible * * * to en-

force" their judgments. *In re Islamic Republic of Iran Terrorism Litigation*, 659 F. Supp. 2d 31, 49 (D.D.C. 2009). State sponsors of terrorism often have little property in the United States, and what property is here typically is blocked under Executive Branch sanctions programs. *Id.* at 52; see, *e.g.*, International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701 *et seq.*; Trading with the Enemy Act (TWEA), 50 U.S.C. App. 5. Blocking broadly prohibits transactions in property without Executive Branch authorization. See, *e.g.*, Exec. Order No. 13,382, § 1(a), 3 C.F.R. 170 (2005 Comp.). As a result, victims with judgments under the FSIA's terrorism exception have often been unable to execute against property owned by the foreign state. See Jennifer K. Elsea, Cong. Research Serv., RL31258, *Suits Against Terrorist States by Victims of Terrorism* 7-9 (2008) (*Suits Against Terrorist States*). Congress addressed that issue in a series of statutes.

First, in 1998, Congress authorized execution against foreign-state property upon "any judgment relating to a claim for which a foreign state (including any agency or instrumentality of such state) claiming such property is not immune under section 1605(a)(7)['s]" terrorism exception to immunity. 28 U.S.C 1610(f)(1)(A). Congress authorized such execution "[n]otwithstanding any other provision of law, including" IEEPA, TWEA, and related sanctions programs, *ibid.*, but authorized the President to "waive the [new] requirements * * * in the interest of national security," 28 U.S.C. 1610 note (Supp. IV 1998). The President signed the legislation and, on the same day, waived its requirements. Presidential Determination No. 99-1, 3 C.F.R. 302 (1998 Comp.).

In 1999 and 2000, Congress again considered legislation to make blocked assets of terrorist states subject to execution with only limited presidential waiver authority. See H.R. 3485, 106th Cong. § 1 (2000). After the Executive Branch opposed the measure, see *Suits Against Terrorist States* 12-15, Congress enacted a statute authorizing compensation for specific judgment creditors of terrorist states; slightly modified the existing provision (Section 1610(f)) authorizing execution against blocked assets; and codified the President's waiver authority at Section 1610(f)(3). Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 2002(a)-(c) and (f), 114 Stat. 1541-1543. The President signed the legislation and, on the same day, again waived Section 1610(f)'s requirements. Presidential Determination No. 2001-03, 3 C.F.R. 405 (2000 Comp.).

In 2002, when Congress yet again authorized execution on blocked assets in TRIA Section 201—the provision at issue in this case—Congress granted the President only limited waiver authority and, for the first time, separately addressed execution against the "blocked assets of any agency or instrumentality of [a] terrorist party." 28 U.S.C. 1610 note. Section 201(d) defines "terrorist party" to mean a non-state terrorist or terrorist organization or "a foreign state designated as a state sponsor of terrorism" by the Secretary of State. *Ibid.* Section 201(b) then authorizes the President to waive Section 201's requirements but only "on an asset-by-asset basis" and only in response to a court order directing execution against or attachment of certain diplomatic or consular property subject to international treaties protecting it from attachment. *Ibid.* Absent such a waiver, Section 201(a) 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, or for which a terrorist party is not immune under [28 U.S.C.] section 1605(a)(7) * * * , 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.

Ibid.[1]

In 2008, Congress repealed Section 1605(a)(7)'s terrorism exception to immunity—the provision upon which TRIA Section 201(a) was built—as part of a revision of the law governing suits against state sponsors of terrorism and the attachment of their property. See National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, § 1083(a), (b)(1)(A)(iii) and (3)(D), 122 Stat. 338-341. That revision enacted an updated terrorism exception in the new Section 1605A, which, like Section 1605(a)(7), abrogates sovereign immunity from damages suits for terrorist acts, 28 U.S.C. 1605A(a) (Supp. II 2008), but also creates an express cause of action for personal injury or death caused by terrorist acts for

[1] Section 201(a)'s application to a "judgment against a terrorist party on a claim based upon an act of terrorism" only addresses, in the government's view, judgments against non-sovereign terrorist parties. At TRIA's enactment, Section 1605(a)(7) provided the only statutory waiver of immunity for terrorism-related claims against foreign states. Section 201(a) thus addressed sovereign terrorist parties by extending its terms to judgments "for which [the] terrorist party is not immune under [S]ection 1605(a)(7)." 28 U.S.C. 1610 note.

which the foreign state lacks immunity, 28 U.S.C. 1605A(c) (Supp. II 2008). The revision also added a new provision that augmented the existing collection provisions of Section 1610, by providing that the property of a "foreign state against which a judgment is entered under [the new terrorism exception in] section 1605A" and "the property of an agency or instrumentality" thereof—including interests "held directly or indirectly in a separate juridical entity"—shall be subject to execution on "that judgment as provided for in [Section 1610]." 28 U.S.C. 1610(g)(1) (Supp. II 2008); see 28 U.S.C. 1610(g)(2) (Supp. II 2008) (including property blocked under IEEPA and TWEA).

2. Respondents are the relatives and representatives of the estate of Ira Weinstein, a United States citizen who was killed in 1996 in Jerusalem by a Hamas terrorist bombing. Pet. App. 2a. Weinstein's survivors filed suit in the District Court for the District of Columbia against Iran under Section 1605(a)(7)'s terrorism exception; alleged that Iran provided substantial monetary support for Hamas' terrorist attacks; and, in 2002, obtained a $183 million default judgment. *Id.* at 2a, 5a. In October 2002, the plaintiffs registered that judgment in the Eastern District of New York. *Id.* at 3a; see 28 U.S.C. 1963.

Petitioner is an Iranian bank "wholly owned by the Iranian government," Pet. 10, and "organized under the banking laws of Iran," *Weinstein* v. *Islamic Republic of Iran*, 299 F. Supp. 2d 63, 69 (E.D.N.Y. 2004). Petitioner previously operated a "representative office" in New York, *ibid.*, and owns real property in Forest Hills, Queens, New York. Pet. App. 3a.

In 2007, the Department of the Treasury's Office of Foreign Assets Control designated petitioner under the

sanctions program established by Executive Order No. 13,382, thereby blocking "all [of petitioner's] property" subject to U.S. jurisdiction. 72 Fed. Reg. 62,520-62,521 (2007). That designation was based on, *inter alia*, petitioner's provision of "banking services to entities involved in Iran's nuclear and ballistic missile programs," which "facilitat[ed] numerous purchases of sensitive materials for Iran's nuclear and missile programs." U.S. Dep't of the Treasury, Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism (2007), http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx. Petitioner has never sought review of that designation.

Respondents subsequently invoked TRIA Section 201(a) to attach the Forest Hills property. Pet. App. 25a-26a. Petitioner conceded that the property is a "blocked asset" and that petitioner is an "agency or instrumentality" of Iran under Section 201(a) but opposed attachment on other grounds. *Id.* at 26a-27a; see *id.* at 7a. The district court authorized attachment of the property, *id.* at 24a-37a, but stayed further proceedings pending appellate review, *id.* at 37a.

3. The court of appeals affirmed. Pet. App. 1a-23a. As relevant here, the court rejected two arguments that petitioner made "for the first time" on appeal. *Id.* at 4a, 11a.

a. First, the court held that TRIA Section 201(a) authorized the attachment of petitioner's property to satisfy a terrorism-based judgment against Iran, even though petitioner "was not itself a party to the underlying tort action that gave rise to [that] judgment," Pet. App. 7a. See *id.* at 4a-10a. The court determined that the statutory text compelled that conclusion. *Id.* at 8a-9a. The court emphasized that Section 201(a) applied "in

every case" in which a plaintiff has obtained a "judgment against a *terrorist party*" and that, by authorizing execution against the "blocked assets of that terrorist party (*including* the blocked assets of *any agency or instrumentality of that terrorist party*)," Congress made clear its intent that assets of an instrumentality of a state terrorist party were available to satisfy the terrorism judgment against the state itself. *Id.* at 8a (quoting Section 201(a)) (emphasis in original). The court also explained that petitioner's reading would render the parenthetical language above "superfluous" because, if an agency or instrumentality must be a party to the underlying tort action to reach its assets, "the agency or instrumentality would itself have been a 'terrorist party' against which the underlying judgment had been obtained." *Ibid.*

The court of appeals concluded that its reading was confirmed by Section 201's legislative history, which indicates that the provision "strip[s] a terrorist state of its immunity from execution or attachment" and "does not recognize any juridical distinction between a terrorist state and its agencies or instrumentalities." Pet. App. 10a (quoting 148 Cong. Rec. 23,122 (2002) (statement of Sen. Harkin)).

The court of appeals further concluded that Section 201(a)'s treatment of the assets of a foreign state's agencies or instrumentalities "override[s]" the "'presumption'" recognized in *Bancec* "that 'duly created instrumentalities of a foreign state are to be accorded * * * independent status.'" Pet. App. 12a (citation omitted). That result, the court determined, is consistent with the United States' obligations under the Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran (Treaty of Amity), Aug. 15, 1955, 8 U.S.T. 899. Pet. App. 15a-17a.

b. Second, the court of appeals rejected petitioner's contention that Section 201(a) unconstitutionally effectuated the "reopening of a final judgment" that was entered before TRIA was enacted. Pet. App. 11a-12a. The court explained that Section 201(a) leaves underlying judgments against a foreign state "unaffected" and simply addresses the "enforceability of judgments" against the assets of instrumentalities of that state. *Id.* at 12a.

DISCUSSION

Petitioner contends (Pet. 17-30) that TRIA Section 201(a) does not allow terrorism victims to satisfy judgments entered against state sponsors of terrorism under 28 U.S.C. 1605(a)(7) (repealed 2008) by attaching the property of wholly owned agencies or instrumentalities of the terrorist state. Petitioner further contends (Pet. 30-33) that permitting such attachment under Section 201(a) revises respondents' underlying final judgment in violation of the Article III principles in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). The court of appeals correctly rejected both contentions, and its decision does not conflict with any decision of this Court or any other court of appeals. No further review is warranted.

A. TRIA Section 201(a) Permits Attachment Of The Property Of A Foreign State's Agency Or Instrumentality In Aid Of Execution On A Terrorism-Related Judgment Entered Against The State

1. TRIA Section 201(a)'s text and statutory context unambiguously authorize the attachment of blocked property of a foreign state's agency or instrumentality to collect a terrorism-related judgment entered against that state under Section 1605(a)(7), even if the agency or instrumentality was not a party in the action giving rise

to the judgment. The language of Section 201(a) precludes petitioner's contrary reading.

a. Section 201(a) establishes a rule of execution for "every case" involving a "judgment against a terrorist party" under Section 1605(a)(7). TRIA § 201(a) (28 U.S.C. 1610 note). It therefore applies "without exception" in that context. *Webster's Third New International Dictionary* 788 (2002) (defining "every"). And by authorizing execution against "the blocked *assets* of that terrorist party (*including* the blocked assets of *any* agency or instrumentality of that terrorist party)," § 201(a) (emphasis added), Congress "expansive[ly]" defined the attachable assets of the state terrorist party to include the blocked assets of "any" of its agencies or instrumentalities, not just "some subset" of them. *United States* v. *Gonzalez*, 520 U.S. 1, 5 (1997) ("the word 'any' has an expansive meaning") (citation omitted). Moreover, because Section 201(a) addresses execution on a "judgment against a terrorist party," Congress's decision to include within the attachable assets of the foreign state the assets of an "agency or instrumentality *of that* terrorist party," § 201(a) (emphasis added), plainly demonstrates that the "agency or instrumentality" need not be the "terrorist party" against which judgment was entered. As the court of appeals explained, that text "clearly differentiates between the party that is the subject of the underlying judgment itself" and the separate state entities whose assets are expressly included as subject to execution. Pet. App. 8a.

That reading comports with the FSIA framework to which Congress added the TRIA. Under the FSIA, a foreign state's agencies and instrumentalities are considered parts of the foreign state itself. 28 U.S.C. 1603(a). The Act also carefully distinguishes between

foreign states and their agencies or instrumentalities, sometimes treating both identically, *e.g.*, 28 U.S.C. 1605 (exceptions to jurisdictional immunity), and sometimes requiring different treatment, *e.g.*, 28 U.S.C. 1610(b) (allowing execution against assets of agencies or instrumentalities). See pp. 2-4, *supra*; see also *Ministry of Def. & Support for Armed Forces of the Islamic Republic of Iran* v. *Elahi*, 546 U.S. 450, 452 (2006) (per curiam) (noting that "critical" difference in treatment in Section 1610). Those careful statutory distinctions reinforce the conclusion that Section 201(a)'s language means what it says, particularly in light of Congress's repeated enactments in this area. See pp. 5-7, *supra*.

b. Petitioner contends (Pet. 27-28) that Section 201(a) reflects only that in certain circumstances the foreign state's blocked assets will include those of its agencies or instrumentalities, for instance, where the latter are "alter egos" of the state. But that restrictive reading cannot be squared with Section 201(a)'s application to "every case" involving a terrorism-related judgment against a foreign state under Section 1605(a)(7) and Section 201(a)'s express inclusion of the blocked assets of "any"—not just some—of the foreign state's agencies or instrumentalities.

Petitioner relatedly suggests (Pet. 28) that Section 201(a) be read only to "reach[] 'blocked assets of any agency or instrumentality *where permitted by Bancec*.'" But, unlike petitioner, "Congress did not add any language limiting the breadth of th[e] word" "any." *Gonzalez*, 520 U.S. at 5. Nor would it have had occasion to do so. If *Bancec*'s "presumption of independent status" is overcome in a particular case, the foreign state's agency or instrumentality would not be "accorded separate legal status" in that proceeding, *First Nat'l City*

Bank v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 627-628 (1983), and therefore could have its assets attached to satisfy the debt of the state on the underlying judgment without regard to Section 201(a). Section 201(a) thus has operative force with respect to agencies or instrumentalities only where they would otherwise have independent status under *Bancec*. Petitioner's reading would therefore render superfluous Section 201(a)'s express focus on a foreign state's separate agencies or instrumentalities.

c. Petitioner's discussion of *Bancec*, policy concerns previously expressed by government officials, and the Treaty of Amity provides no basis for ignoring Section 201(a)'s unambiguous text.

First, petitioner contends (Pet. 16-19) that the court of appeals "repudiated" this Court's holding in *Bancec* that assets of a foreign state's instrumentalities are ordinarily unavailable to satisfy a judgment against the state. That contention is misplaced. The Court in *Bancec* adopted "a presumption" that, in litigation under the FSIA, "duly created instrumentalities of a foreign state are to be accorded * * * independent status." 462 U.S. at 627. The Court's rationale for that presumption was "guided by the policies articulated by Congress in enacting the FSIA." *Id.* at 621. *Bancec*'s reliance on the FSIA's legislative history, *id.* at 627-628, thus itself suggests that Congress may identify circumstances in which the juridical independence of a foreign state's agency or instrumentality will not be recognized. That is precisely what Congress did in TRIA Section 201(a), which addresses the limited context of victims' execution on terrorism-related judgments obtained under Section 1605(a)(7). Nothing in *Bancec* limits that authority. Indeed, *Bancec* expressly disclaimed a "mechanical for-

mula" for deciding when to displace the presumption of independence and proceeded to overcome that presumption by allowing the debt of a foreign state to be set off against a claim of one of its instrumentalities. *Id.* at 633.

Second, petitioner notes (Pet. 19-24) Executive Branch opposition to earlier attempts to amend the FSIA to permit property of an agency or instrumentality to be attached when collecting on a judgment against a foreign state under Section 1605(a)(7). But whatever policy differences the Executive Branch and Congress may have had were resolved by the President's decision to sign TRIA Section 201(a) into law. And, in the government's view, petitioner's suggestion of possible adverse foreign-policy implications does not warrant review in this case.

Third, petitioner argues (Pet. 29-30) that the court of appeals' decision conflicts with the United States' obligations under the Treaty of Amity. That is incorrect. Even assuming the Treaty of Amity applies to agencies or instrumentalities of a state party, petitioner's argument is unavailing. The court of appeals correctly explained that petitioner relies on a treaty provision that is "substantively identical" to many other treaties postdating the Second World War. Pet. App. 16a (citation omitted); see Br. in Op. 9-10 (citing relevant treaties). This Court has explained that the "primary purpose of the corporation provisions of [such treaties] was to give corporations of each signatory legal status in the territory of the other party, and to allow them to conduct business in the other country on a comparable basis with domestic firms." *Sumitomo Shoji Am., Inc.* v. *Avagliano*, 457 U.S. 176, 185-186 (1982). The court of appeals' reading of TRIA Section 201(a) does not deprive peti-

tioner of legal status within the United States, and it does not conflict with the Treaty of Amity.[2]

2. Petitioner contends (Pet. 25; Reply Br. 8-9) that the court of appeals's interpretation of TRIA Section 201(a) conflicts with two other decisions: *Alejandre* v. *Telefonica Larga Distancia de Puerto Rico, Inc.*, 183 F.3d 1277 (11th Cir. 1999), and *Flatow* v. *Islamic Republic of Iran*, 308 F.3d 1065 (9th Cir. 2002), cert. denied, 538 F.3d 944 (2003). That is incorrect. Petitioner itself acknowledges (Pet. 26) that both decisions interpreted different, "earlier provisions" predating the 2002 enactment of TRIA, and nothing in the rationale of either decision conflicts with the decision of the court of appeals in this case.

The *Alejandre* court addressed Section 1610(f)(1)(A), which provides that blocked property "shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality of such state) claiming such property is not immune under section 1605(a)(7)." 28 U.S.C. 1610(f)(1)(A). After noting (without resolving) the government's position that the Presi-

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[2] The court of appeals erroneously stated that Section 201(a) confers "subject matter jurisdiction over post-judgment execution and attachment proceedings." Pet. App. 10a. Although Section 201(a) abrogates foreign-state immunity from execution and attachment remedies, it does not confer subject-matter jurisdiction. If a judgment is entered by a district court exercising subject-matter jurisdiction over the cause, a party who registers the judgment in a second district court under 28 U.S.C. 1963 does not need an independent basis for subject-matter jurisdiction to seek execution on that judgment against property in that district. Collateral enforcement proceedings in the second district are governed by the normal rules governing execution. See, *e.g.*, Fed. R. Civ. P. 69. The court of appeals nevertheless reached the correct result, and petitioner does not seek review of this aspect of its decision.

dent had waived that provision (as discussed at p. 6, *supra*), see 183 F.3d at 1282 & n.10, the Eleventh Circuit concluded that the statute simply allowed execution against "property *claimed* by the [foreign] Government itself," not property of an instrumentality thereof, based on a judgment relating to a terrorism claim from which that "Government was not immune by virtue of section 1605(a)(7)." *Id.* at 1287 (emphasis added). That holding correctly reflects that by the text of Section 1610(f) the "*foreign state* (including any agency or instrumentality of such state)" that "claim[s] such property" subject to attachment must be the *same* entity that was "not immune under section 1605(a)(7)" in the underlying suit giving rise to the judgment. 28 U.S.C. 1610(f)(1)(A) (emphasis added).[3]

The parenthetical phrase in Section 1610(f)(1)(A) on which petitioner relies (Pet. 25) simply ensures that the term "foreign state" will "includ[e] any agency or instrumentality of such state," 28 U.S.C. 1610(f)(1)(A), such that the "claimed" property of an agency or instrumentality will be subject to execution under Section 1610(f) to collect a judgment under Section 1605(a)(7) in which the agency or instrumentality was *itself* held liable. That function is significantly different than the function of the parenthetical in Section 201(a), which ensures that the blocked "assets" of the foreign terrorist party

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[3] Petitioner suggests (Pet. 27) that TRIA Section 201(a) was "modeled on" Section 1610(f)(1)(A). But petitioner relies on legislative history explaining that "Section 201 builds upon *and extends* the principles in section 1610(f)(1)." H.R. Conf. Rep. No. 779, 107th Cong., 2d Sess. 27 (2002) (emphasis added). Nothing in that history suggests that Congress intended to make the scope of those distinct provisions coterminous.

subject to execution will "includ[e] the blocked assets" of its agencies or instrumentalities. TRIA § 201(a).

Notably, *Alejandre* concluded that unenacted legislation reflected the intent—absent in Section 1610(f)—to make assets of instrumentalities available for collection on judgments against foreign states. 183 F.3d at 1287 n.25. That legislation would have eliminated immunity from execution where "the property belongs to an agency or instrumentality of a foreign state" and "the judgment relates to a claim for which the foreign state is not immune from jurisdiction by virtue of section 1605 or 1607." *Ibid.* (quoting H.R. 3763, 100th Cong. § 3(1)(D) (1988)) (emphasis omitted). Like TRIA Section 201(a), that provision "clearly differentiate[d] between the party that is the subject of the underlying judgment itself" and "parties whose blocked assets are subject to execution or attachment." Pet. App. 8a. *Alejandre* does not reflect a division of authority.

Flatow is even further afield. In *Flatow*, a judgment creditor of Iran argued that 28 U.S.C. 1605(a)(7)—the terrorism exception to the *jurisdictional* immunity of a foreign state—of its own force made the property of a foreign state's agency or instrumentality subject to execution on a terrorism-related judgment against the foreign state. *Flatow*, 308 F.3d at 1071 n.10. The Ninth Circuit dismissed that argument in a footnote, noting the distinction between the "jurisdictional" immunity at issue in Section 1605(a)(7) and a plaintiff's execution on a judgment of liability. *Ibid.*; see also pp. 2-4, *supra*. Nothing in that decision suggests a division of authority that could warrant this Court's review.

3. Petitioner appears to acknowledge (Pet 23 n.4) that the questions it presents turn on the interpretation of "prior law." TRIA Section 201(a) applies to judg-

ments based on Section 1605(a)(7), but Congress repealed that provision in 2008; replaced it with a revised terrorism exception in Section 1605A; and enacted a new collection provision expressly authorizing victims' execution on property interests that are subject to execution "as provided in" Section 1610(a)(7) and (b)(2), *even if* the property is "held directly or indirectly in a *separate* juridical entity" of the foreign state, 28 U.S.C. 1610(g)(1) (emphasis added). The repeal of Section 1605(a)(7) in 2008 makes Section 201(a) inapplicable to subsequently entered terrorism-related judgments against foreign states. See pp. 6-7 & n.1, *supra*. Plaintiffs in terrorism suits against state sponsors of terrorism after January 2008 must therefore proceed under Section 1605A and seek execution against property of the "separate juridical entit[ies]" of the foreign state under Section 1610(g). See *Calderon-Cardona* v. *Democratic People's Republic of Korea*, 723 F. Supp. 2d 441, 457-458 (D.P.R. 2010). It thus is unclear why petitioner asserts (Pet. 23 n.4) that the TRIA decision here is "important even to judgments entered under Section 1605A." But to the extent petitioner concludes that courts might allow those judgments to be collected using TRIA Section 201(a), that speculation would not justify review at this time.

B. TRIA Section 201(a) Does Not Reopen Final Judgments In Violation Of Article III

Petitioner contends (Pet. 30-33) that applying TRIA Section 201(a) to allow execution against the assets of an instrumentality of Iran to collect on a judgment that was entered before TRIA was enacted will "retroactively * * * expand an already final judgment" in a manner inconsistent with the Article III principles in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). Petitioner

does not claim a conflict of authority on that issue, and it does not warrant review.

Petitioner argues (Pet. 31-32) that allowing execution against property of a foreign state's agency or instrumentality to satisfy a judgment against the foreign state itself impermissibly "reopen[s] a final judgment" in a manner forbidden by *Plaut* by effectively "changing the parties liable to pay" the judgment. Petitioner is incorrect. When a money judgment is entered against a defendant, the judgment defines the amount of an enforceable debt. Such a judgment normally will not itself address the proper extent of future collection efforts or determine from which assets the judgment creditor may seek satisfaction. Cf. *Fink* v. *O'Neil*, 106 U.S. 272 (1882) (resolving whether specific property was subject to execution on a money judgment). Indeed, "[m]any questions arise on the process subsequent to the judgment," *Wayman* v. *Southard*, 23 U.S. (10 Wheat.) 1, 23 (1825) (Marshall, C.J.), which the judgment itself will not have resolved. Any number of events after the entry of judgment, for instance, may make particular assets available that were not previously available to satisfy the judgment.

TRIA Section 201(a) simply resolves certain matters relevant to the collection of a terrorism-related judgment against a foreign state by specifying which assets of the foreign state are subject to execution on the judgment. Section 201(a) in no way alters the terms of the underlying judgment, which, in this case, did not specify the assets that would be subject to execution, much less whether respondents could attach any particular asset of a wholly owned instrumentality of Iran. Although petitioner argues that its assets should not be subject to attachment to satisfy the judgment against its sovereign

owner, the resolution of that question—by making the instrumentality's assets available to satisfy the foreign state's liability on its debt under the judgment—in no way alters any terms of the underlying judgment itself.

Moreover, Congress unquestionably possesses the constitutional authority to determine how to regulate the extent to which U.S. assets are available to satisfy the liability of foreign states. See *Verlinden B.V.* v. *Central Bank of Nig.*, 461 U.S. 480, 493 (1983) ("By reason of its authority over foreign commerce and foreign relations, Congress has the undisputed power to decide, as a matter of federal law, whether and under what circumstances foreign nations should be amenable to suit in the United States."). Congress has determined, as a matter of federal law, that agencies or instrumentalities of a foreign state are component parts of the foreign sovereign. 28 U.S.C. 1603(a). And as noted, Congress has chosen to treat foreign states and their agencies or instrumentalities alike for some purposes, see, *e.g.*, 28 U.S.C. 1605(a), and differently for others, see, *e.g.*, 28 U.S.C. 1610(a) and (b). In enacting TRIA Section 201(a), Congress made the policy determination that the juridical independence of a foreign state's agencies and instrumentalities should not be respected in the limited context of the execution on a judgment entered against the foreign state under Section 1605(a)(7)'s terrorism exception to immunity.

That determination reflects underlying foreign sovereign immunity principles, which "reflect[] current political realities and relationships" informing the decision whether to "give foreign states and their instrumentalities some *present* 'protection from the inconvenience of suit.'" *Republic of Austria* v. *Altmann*, 541 U.S. 677, 696 (2004) (citation omitted); see *id.* at 697 (concluding

that Congress intended the FSIA's exceptions to immunity "to apply to preenactment conduct"). Like the FSIA, TRIA Section 201(a) "reflects current political realities and relationships." Most fundamentally, it reflects Congress' judgment that the assets of the component parts of a foreign state sponsor of terrorism—here, a wholly owned instrumentality of Iran—should be available to satisfy a terrorism-related judgment against the state. Nothing in the Article III principles in *Plaut* limits Congress's authority to provide that the instrumentality will to that extent be liable for the debt created by the judgment against the state itself. Cf. *Plaut*, 514 U.S. at 236 (a statute creating a new cause of action for attorney's fees attributable to already concluded litigation "would create no separation of powers problem" and would involve a matter "uniquely separable from the cause of action to be proved at trial") (citation omitted). Further review of this issue is likewise not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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