No. 03-1147

In the Supreme Court of the United States

DAVID M. ROEDER, ET AL., PETITIONERS

v.

ISLAMIC REPUBLIC OF IRAN, ET AL.

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Petitioners include former hostages who were held in Iran for 444 days between 1979 and 1981, as well as family members of such hostages. The President negotiated their release under an international agreement known as the Algiers Accords. In exchange for the release of the hostages, the Algiers Accords included a commitment by the United States to bar and preclude the prosecution of any claim against Iran arising out of the hostages' seizure and detention. The question presented is as follows:

Whether the preclusion of private suits effected by the Algiers Accords was superseded by Acts of Congress providing that the Republic of Iran does not have sovereign immunity from the claims raised in the instant case.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 333 F.3d 228. The opinion of the district court (Pet. App. 20a-108a) is reported at 195 F. Supp. 2d 140.

JURISDICTION

The court of appeals entered its judgment on July 1, 2003. A petition for rehearing was denied on November 7, 2003 (Pet. App. 111a-112a). The petition for a writ of certiorari was filed on February 5, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On November 4, 1979, Iranian militants unlawfully seized the United States Embassy in Tehran, Iran,

and captured the Embassy's personnel. The captured individuals were held hostage for a period of 444 days. They were ultimately released on January 20, 1981, pursuant to an international executive agreement known as the Algiers Accords, which had been executed the preceding day. See *Dames & Moore* v. *Regan*, 453 U.S. 654, 662-665 (1981); Pet. App. 25a-27a.

The Algiers Accords include two declarations of the government of Algeria, embodying an international agreement between the United States and Iran. See Settlement of the Hostage Crisis, Jan. 18, 1981, U.S.-Iran, 20 I.L.M. 223; *Dames & Moore*, 453 U.S. at 664; Pet. App. 27a. A central purpose of the Algiers Accords was the negotiated release of the Americans held hostage in Tehran, and the international agreement was accordingly made contingent on the hostages' freedom. See 20 I.L.M. at 225 (requiring certification "that the 52 U.S. nationals have safely departed from Iran" before funds would be transferred from escrow). In agreeing to the Algiers Accords, the United States committed to "bar and preclude the prosecution against Iran of any pending or future claim of * * * a United States national arising out of events * * * related to (A) the seizure of the 52 United States nationals on November 4, 1979, [or] (B) their subsequent detention." *Id.* at 227 (quoted at Pet. App. 28a).[1] The Algiers Accords were subsequently implemented by a series of Executive Orders and Treasury Department regulations. See Pet. App. 29a-31a; *Dames & Moore*, 453 U.S. at 665-666.

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[1] Claims arising out of the seizure and detention of the hostages are also expressly excluded from the arbitral jurisdiction of the Iran-United States Claims Tribunal. See 20 I.L.M. at 231; Pet. App. 29a.

2. The Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1602 *et seq.*, provides "the sole basis for obtaining jurisdiction over a foreign state in our courts" in a civil suit. *Argentine Republic* v. *Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989). Under the FSIA, foreign governments and their agencies or instrumentalities are immune from suit in United States courts unless a specific statutory exception applies. 28 U.S.C. 1604; *Saudi Arabia* v. *Nelson*, 507 U.S. 349, 355 (1993). In 1996, Congress amended the FSIA to add a new exception to the general rule of foreign sovereign immunity. See Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, § 221(a)(1), 110 Stat. 1241 (28 U.S.C. 1605(a)(7) (Supp. I 2001)). Under that amendment, foreign sovereign immunity is unavailable in certain suits "in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources * * * for such an act." 28 U.S.C. 1605(a)(7) (Supp. I 2001). That exception to the general rule of foreign sovereign immunity applies if the foreign state was designated as a state sponsor of terrorism by the Department of State at the time the act occurred, or if the foreign state was subsequently so designated as a result of the act that is the basis for the suit. 28 U.S.C. 1605(a)(7)(A) (Supp. I 2001).

Later in 1996, Congress enacted a provision commonly known as the Flatow Amendment, which addresses the potential liability of foreign officers and agents for acts of terrorism perpetrated in the course of their official duties. See Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, Div. A., Tit. I, § 101(c) [Tit. V, § 589(a)], 110 Stat. 3009-172 (28 U.S.C.

1605 note). Under the Flatow Amendment, individual officers and agents of designated state sponsors of terrorism may be held personally liable for their perpetration of the acts described in 28 U.S.C. 1605(a)(7) (Supp. I 2001). See *Cicippio-Puleo* v. *Islamic Republic of Iran*, 353 F.3d 1024, 1029 (D.C. Cir. 2004). By its terms, however, the Flatow Amendment applies only to "[a]n official, employee, or agent of a foreign state designated as a state sponsor of terrorism," not to the foreign state itself. See *id.* at 1032. The D.C. Circuit recently held in *Cicippio-Puleo* that "neither 28 U.S.C. § 1605(a)(7) nor the Flatow Amendment, nor the two considered in tandem, creates a private right of action against a foreign government." *Id.* at 1033.

3. Petitioners include the Americans held hostage in Iran in 1979-1981, as well as their family members. They brought this suit in 2000, naming as defendants the Islamic Republic of Iran and the Iranian Ministry of Foreign Affairs. The suit seeks compensation for injuries resulting from the detention and seizure of the hostages. Iran did not appear in the district court to defend against petitioners' action, and in August 2001, the court entered a default judgment on liability. See Pet. App. 20-21a, 34a-35a.

In October 2001, shortly before a scheduled trial to determine the appropriate amount of damages, the United States filed a motion to intervene in this case, as well as a separate motion to vacate the default judgment and dismiss petitioners' complaint. Pet. App. 35a-36a. The government urged two independent grounds for dismissal. First, the United States argued that the government of Iran retained its sovereign immunity from this suit under the FSIA. The government contended that 28 U.S.C. 1605(a)(7), which provides that foreign states are not immune from suit for certain acts

of state-sponsored terrorism, was inapplicable to this case because Iran had not been designated as a state sponsor of terrorism either at the time the hostages were seized and detained, or as a result of the hostage-taking. Pet. App. 36a; see *id.* at 11a-12a. Second, the government argued that the Algiers Accords had extinguished petitioners' claims. *Id.* at 36a.

In December 2001, while the government's motions to intervene and to vacate the default judgment were pending in the district court, Congress amended 28 U.S.C. 1605(a)(7)(A)—the FSIA exception to the rule of foreign sovereign immunity that applies in certain cases involving state-sponsored terrorism—to add a specific reference to the present case. Act of Nov. 28, 2001, Pub. L. No. 107-77, § 626(c), 115 Stat. 803. Approximately one month later, Congress amended that provision to correct the erroneous designation of the district judge's initials in the provision as originally enacted. Act of Jan. 10, 2002, Pub. L. No. 107-117, § 208, 115 Stat. 2299 (reprinted at Pet. App. 115a); see Pet. App. 113a (text of 28 U.S.C. 1605(a)(7)(A) (Supp. I 2001) in its current form).

4. The district court granted the government's motion to intervene, vacated its earlier default judgment, and dismissed petitioners' complaint. Pet. App. 20a-108a. The court acknowledged that the recent appropriations provisions, cited above, had "amend[ed] the FSIA to allow for a waiver of sovereign immunity not only when the state-sponsor designation results from the act at issue, but also for any acts related to this litigation." *Id.* at 61a. The court held, however, that petitioners "do not have a cause of action against Iran because the Algiers Accords require that this suit be dismissed." *Id.* at 69a.

Petitioners contended that the Algiers Accords are invalid because they "resulted from Iran's 'demanding of money from another government to stop inflicting pain and suffering upon its innocent citizens' and are therefore an unenforceable illegal contract." Pet. App. 72a. The district court rejected that argument, explaining that petitioners' challenge was foreclosed by this Court's decision in *Dames & Moore*, 453 U.S. at 686, which "upholds the Algiers Accords as an exercise of the President's power." Pet. App. 72a-73a. The court recognized that "Congress has the power to disagree with and overturn" executive agreements that extinguish private claims. *Id.* at 73a. The court concluded, however, that none of the statutes on which petitioners relied manifested a clear legislative intent to abrogate the Algiers Accords. See *id.* at 73a-105a.

5. The court of appeals affirmed. Pet. App. 1a-19a.

a. The court of appeals held that the district court had acted properly in granting the government's motion to intervene as of right. Pet. App. 6a-9a. The court explained that the United States had moved to intervene "less than thirty days after the State Department received notice of the potential conflict with the executive agreement," and that "the interest of the United States in meeting its obligations under the executive agreement with Iran entitled it to intervene as a defendant." *Id.* at 8a (internal quotation marks omitted). The court also held that, for purposes of the Flatow Amendment (see pp. 3-4, *supra*), Iran's Ministry of Foreign Affairs "must be treated as the state of Iran itself rather than as its agent." Pet. App. 11a; see *id.* at 10a-11a.

b. The court of appeals held that the recent appropriations laws on which petitioners principally relied had not abrogated the Algiers Accords. Pet. App. 11a-

19a. While noting that "[t]he authority of the President to settle claims of American nationals through executive agreements is clear," the court acknowledged that "[t]here is no doubt that laws passed after the President enters into an executive agreement may abrogate the agreement." *Id.* at 11a. The court concluded, however, that petitioners had failed to identify any statutory language reflecting a clear congressional intent to accomplish that result.

The court of appeals explained that the recent appropriations laws

> created an exception, for this case alone, to Iran's sovereign immunity, which would otherwise have barred the action. The evident purpose was to dispose of the government's argument, in its motion to vacate [the default judgment], that [petitioners'] action should be dismissed because Iran had not been designated a state sponsor of terrorism at the time the hostages were captured and held, and that Iran's later designation (in 1984) rested not on the hostage crisis but on its support of terrorism outside its borders.

Pet. App. 12a-13a. The court observed, however, that "[t]he question remained whether the Algiers Accords, on which the United States had relied as a second ground for dismissal, survived the [appropriations laws]." *Id.* at 13a (citation omitted). The court noted that those laws "do not, on their face, say anything about the Accords," but "speak only to the antecedent question of Iran's immunity from suit in United States courts." *Ibid.* The court acknowledged that the joint explanatory statement accompanying the second appropriations law contained language supporting petitioners' position, see *id.* at 16a, but it observed that

"Congress did not vote on the statement and the President did not sign a bill embodying it," *id.* at 16a-17a. The court explained that "neither a treaty nor an executive agreement will be considered abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed," *id.* at 17a (internal quotation marks omitted), and it found "no clear expression in anything Congress enacted abrogating the Algiers Accords," *ibid.*

Finally, the court of appeals rejected petitioners' contention that the pertinent appropriations provisions would be rendered "futile" if they were construed not to abrogate the Algiers Accords. Pet. App. 18a-19a. The court explained that, assuming those provisions were constitutional, they

> had the effect of removing Iran's sovereign immunity, which the United States had raised in its motion to vacate. This enabled [petitioners] to argue that the Accords were not a valid executive agreement. [Petitioners] in fact made this argument in the district court (but they do not make it here). That the district court rejected the argument is of no moment. [Petitioners'] opportunity to have it decided resulted directly from the amendments.

Id. at 19a (footnote and citations omitted).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of another court of appeals. Further review is not warranted.

1. As the court of appeals explained, "[t]he authority of the President to settle claims of American nationals through executive agreements is clear." Pet. App. 11a;

see *American Ins. Ass'n* v. *Garamendi*, 123 S. Ct. 2374, 2387 (2003) ("Given the fact that the practice goes back over 200 years to the first Presidential administration, and has received congressional acquiescence throughout its history, the conclusion that the President's control of foreign relations includes the settlement of claims is indisputable.") (brackets and internal quotation marks omitted); *Dames & Moore*, 453 U.S. at 679 & n.8. In *Dames & Moore*, this Court upheld the settlement of claims accomplished in the Algiers Accords as a permissible exercise of that Presidential authority. See *id.* at 686, 688. And while petitioners contested the validity of the Algiers Accords in the district court, the district court rejected that challenge, see Pet. App. 72a-73a, and petitioners did not pursue it on appeal, see *id.* at 19a. Thus, any uncertainty that may exist concerning the scope of the President's authority to enter into executive agreements in other contexts (see Pet. 21 n.3) is irrelevant to the disposition of the instant case.

2. Twenty years ago, in *Persinger* v. *Islamic Republic of Iran*, 729 F.2d 835 (D.C. Cir.), cert. denied, 469 U.S. 881 (1984), the court of appeals dismissed an earlier suit brought by one of the American hostages and his parents seeking damages for his seizure and detention. The court held that no FSIA exception to the general rule of foreign sovereign immunity applied to the case, and that the Republic of Iran was therefore immune from suit. *Id.* at 838-839. In light of its determination that it lacked jurisdiction under the FSIA, the court in *Persinger* declined to reach the question whether the plaintiffs' claims were properly extinguished pursuant to the Algiers Accords. *Id.* at 838.

The court of appeals in *Persinger* thus recognized that Iran's sovereign immunity under the FSIA, and the extinguishment pursuant to the Algiers Accords of

private claims arising out of the seizure and detention of the American hostages, imposed two analytically distinct barriers to claims of the sort raised in this case. In its initial district court filings in this case, the United States likewise relied on the FSIA and the Algiers Accords as independent grounds for dismissal of petitioners' suit. Although the appropriations laws on which petitioners rely refer to the instant case by docket number, and thus reflect congressional awareness of the litigation, they speak only to the question whether Iran is immune from suit under the FSIA. Those laws neither address the continuing validity of the Algiers Accords nor purport to confer a cause of action. See Pet. App. 16a (court of appeals explains that "[t]he text of [the first appropriations provision] is consistent with removing the government's first argument for dismissal" but "says nothing about the second"). Particularly in light of the legal backdrop against which Congress acted, there is no basis for construing the recent appropriations laws as abrogating the commitment made by the President in the Algiers Accords.

3. Petitioners' arguments on the merits do not withstand scrutiny.

a. Petitioners suggest (Pet. 27-28) that the relevant appropriations provisions would serve no meaningful purpose if they are construed not to affect the validity of the Algiers Accords. As the court of appeals recognized (Pet. App. 19a), however, those provisions removed Iran's sovereign immunity for the acts in question, and thus allowed petitioners to obtain a judicial ruling on their claim that the Algiers Accords were invalid *ab initio*—a contention that the court in *Persinger* had previously declined to address. Elimination of the barrier to suit that was formerly imposed

by the FSIA also served the related purpose of clarifying the locus of responsibility for dismissal of petitioners' claims. Before those appropriations laws were enacted, petitioners' suit was subject to dismissal on one ground (the FSIA) that was attributable to Congress itself, and on another ground (the Algiers Accords) that reflected a legitimate exercise of purely executive power. Even though Congress was unwilling to abrogate the executive agreement through which the release of the hostages had initially been obtained, Congress may have wished to make clear that the Legislative Branch had not imposed any affirmative obstacle to petitioners' efforts to obtain relief.

b. Petitioners rely on the joint explanatory statement accompanying the second of the two pertinent appropriations laws, which contains language that in petitioners' view (Pet. 26) suggests that Congress intended in the first of the appropriations laws to remove *all* existing barriers to petitioners' suit. See H.R. Conf. Rep. No. 350, 107th Cong., 1st Sess. 422-423 (2001) (stating that the previously enacted appropriations provision "acknowledges that, notwithstanding any other authority, the American citizens who were taken hostage by the Islamic Republic of Iran in 1979 have a claim against Iran under [AEDPA] and the provision specifically allows the judgment to stand"). The court of appeals stated that the language contained in the joint explanatory statement (and particularly the phrase "notwithstanding any other authority") might have been sufficient to abrogate the Algiers Accords if that language had been enacted into law. Pet. App. 16a. The court recognized, however, that, while legislative history may assist in the interpretation of ambiguous statutory language, the joint explanatory statement does not itself have the force of law. See *id.* at 16a-17a

("Congress did not vote on the statement and the President did not sign a bill embodying it."). Because the relevant appropriations provisions only amended the FSIA to expand the pre-existing state-sponsored terrorism exception to the rule of foreign sovereign immunity, but did not abrogate the Algiers Accords or amend any law other than the FSIA, those provisions cannot properly be construed to eliminate the barrier to petitioners' suit imposed by the executive agreement.

Petitioners' reliance (Pet. 26) on the joint explanatory statement is particularly misplaced because that statement was published *after* the enactment of the appropriations law that is alleged to have abrogated the Algiers Accords. The joint explanatory statement in question accompanied the *second* of the two appropriations provisions, which simply corrected an error in the initials of the district judge in the caption of this case. See p. 5, *supra*. Obviously that technical correction could not have had the effect of abrogating the Algiers Accords. Although the joint explanatory statement purports to describe the legal effect of the *first* appropriations provision, such "subsequent legislative history" has minimal interpretive value. See, *e.g.*, *Consumer Prod. Safety Comm'n* v. *GTE Sylvania*, 447 U.S. 102, 118 n.13 (1980); Pet. App. 17a.

4. Petitioners contend (Pet. 15-18) that the court of appeals' holding conflicts with decisions of this Court and of other courts of appeals. Petitioners do not allege a conflict with respect to the specific question of statutory interpretation presented by this case—*i.e.*, whether the Algiers Accords were abrogated by the recent appropriations provisions that amended 28 U.S.C. 1605(a)(7)(A). Rather, petitioners argue that the interpretive standard applied by the court of appeals, under which an Act of Congress will not be treated as

abrogating an executive agreement unless the statute contains a clear expression of that intent (see Pet. App. 17a-18a), conflicts with prior rulings. That claim lacks merit.

a. Petitioners' reliance (Pet. 16) on *Whitney* v. *Robertson*, 124 U.S. 190 (1888), is misplaced. The Court in *Whitney* held only that "*when a law is clear in its provisions*, its validity cannot be assailed before the courts for want of conformity to stipulations of a previous treaty." *Id.* at 195 (emphasis added). The Court did not suggest that an *ambiguous* federal statute can properly be interpreted to abrogate an existing treaty. To the contrary, the Court stated that, when a treaty and a statute "relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either." *Id.* at 194. This Court has consistently recognized that "[a] treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed." *Trans World Airlines, Inc.* v. *Franklin Mint Corp.*, 466 U.S. 243, 252 (1984) (quoting *Cook* v. *United States*, 288 U.S. 102, 120 (1933)); see also, *e.g.*, *ibid.* (referring to the "firm and obviously sound canon of construction against finding implicit repeal of a treaty in ambiguous congressional action").

Petitioners identify no decision suggesting that the rule of construction described above is inapplicable when an Act of Congress is claimed to have abrogated an executive agreement. Nor would such a distinction be appropriate. Although the term "treaty" has different meanings in different contexts, see *Weinberger* v. *Rossi*, 456 U.S. 25, 29-31 (1982), "[u]nder principles of international law, the word ordinarily refers to an international agreement concluded between sovereigns,

regardless of the manner in which the agreement is brought into force," *id.* at 29. And, as the court of appeals recognized, "[e]xecutive agreements are essentially contracts between nations, and like contracts between individuals, executive agreements are expected to be honored by the parties." Pet. App. 18a. The determination whether a federal statute has abrogated an executive agreement thus directly implicates the long-established interpretive principle that "an act of congress ought never to be construed to violate the law of nations, if any other possible construction remains." *Murray* v. *The Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804)); see *Rossi*, 456 U.S. at 32.[2]

b. The court of appeals decisions on which petitioners rely (Pet. 16-17) are likewise inapposite.[3] The court in *Havana Club Holding, S.A.* v. *Galleon S.A.*, 203 F.3d 116 (2d Cir.), cert. denied, 531 U.S. 918 (2000), held only that an Act of Congress may have the effect of abrogating a prior international agreement even if the agreement is not specifically identified in the text of the superseding statute. *Id.* at 124. Rather, the court

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[2] Requiring a clear statement of legislative intent to abrogate an executive agreement ensures, *inter alia*, that the President can make a fully informed decision whether to sign or veto a bill passed by Congress. See U.S. Const. Art. I, § 7, Cl. 2. In making that decision, the President could consider the foreign policy consequences, including the possible reactions of other governments, that abrogation of an existing agreement might entail. In the instant case, the President signed both of the appropriations laws on which petitioners rely, while expressing his intent that the laws be implemented "in a manner consistent with the obligations of the United States under the Algiers Accords." Pet. App. 17a n.6 (quoting Presidential signing statement).

[3] Although petitioners refer to those decisions as "faithfully following *Whitney*" (Pet. 16), neither of the court of appeals decisions described at pages 16-17 of the petition cites *Whitney*.

explained, "[w]hat is required is a clear expression by Congress of a purpose to override protection that a treaty would otherwise provide." *Ibid.* The D.C. Circuit's decision in the instant case is consistent with that analysis. The appropriations laws on which petitioners rely contain no "clear expression" of a congressional purpose to validate petitioners' claims on the merits or to provide petitioners a cause of action against Iran, and thus to override the effect of the Algiers Accords. Nor did the D.C. Circuit hold that a specific statutory reference to the Algiers Accords was a prerequisite to abrogation of that agreement.[4]

In *United States* v. *Guy W. Capps, Inc.*, 204 F.2d 655, 658 (4th Cir. 1953), aff'd on other grounds, 348 U.S. 296 (1955), the court of appeals held that an executive agreement was void where it "contravened provisions of a statute dealing with the very matter to which it related." In the instant case, by contrast, petitioners do not contend that any federal statute enacted prior to 1981 conferred a cause of action for their claims against Iran. Nor did the D.C. Circuit in this case question the

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[4] In discussing the legislative history accompanying the second of the appropriations laws on which petitioners rely, the court of appeals quoted the assertion in the joint explanatory statement that "*notwithstanding any other authority*, the American citizens who were taken hostage by the Islamic Republic of Iran in 1979 have a claim against Iran." Pet. App. 16a (quoting H.R. Conf. Rep. No. 350, 107th Cong., 1st Sess. 422–423 (2001)) (emphasis added by court of appeals). The court observed that "[t]his statement, and the italicized language in particular, is the type of language that might abrogate an executive agreement—if the statement had been enacted." *Ibid.* In light of the court of appeals' characterization of that language as potentially sufficient to abrogate the Algiers Accords, the court's opinion cannot reasonably be read to require specific identification in the statutory text of the executive agreement sought to be superseded.

proposition that, if the Algiers Accords were shown to conflict with subsequently enacted federal legislation, the provisions of the Act of Congress would supersede those of the executive agreement. Because the court in *Guy W. Capps* did not discuss the interpretive standard to be used in determining whether an executive agreement and an Act of Congress are in conflict, that decision is irrelevant to the question presented here.[5]

5. Petitioners contend (Pet. 18-25) that the court of appeals' decision contravenes separation-of-powers principles by allowing an executive agreement that was not ratified by the Senate to supersede an Act of Congress. That argument is baseless. The court of appeals did not, as petitioners suggest (Pet. 20), treat "legislation abrogating an executive agreement" as "constitutionally suspect"; nor did it "elevat[e] * * * unilateral executive action over statutes enacted by

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[5] Petitioners also suggest (Pet. 29) that the D.C. Circuit's decision in this case is inconsistent with the same court's subsequent ruling in *Cicippio-Puleo* v. *Islamic Republic of Iran*, 353 F.3d 1024 (D.C. Cir. 2004). If any tension between those decisions existed, its resolution would be primarily entrusted to the D.C. Circuit. See *Wisniewski* v. *United States*, 353 U.S. 901 (1957) (per curiam). In any event, the two decisions are wholly consistent. The court in *Cicippio-Puleo* recognized that, under the Flatow Amendment (see pp. 3-4, *supra*), individual officers and agents of designated state sponsors of terrorism may be held personally liable for their perpetration of the acts described in 28 U.S.C. 1605(a)(7) (Supp. I 2001). See 353 F.3d at 1029. The court also observed that, subject to certain conditions, "Section 1605(a)(7) waives the sovereign immunity of a designated 'foreign state' in actions in which money damages are sought for personal injury or death caused by one of the specified acts of terrorism." *Id.* at 1032. The court squarely held, however, that "neither 28 U.S.C. § 1605(a)(7) nor the Flatow Amendment, nor the two considered in tandem, creates a private right of action against a foreign government." *Id.* at 1033; see p. 4, *supra*.

Congress and signed by the President" (*ibid.*). To the contrary, the court recognized that "[t]here is no doubt that laws passed after the President enters into an executive agreement may abrogate the agreement." Pet. App. 11a. The court's determination that the particular laws on which petitioners rely did not have that effect raises no meaningful constitutional concern.

Petitioners are also wrong in contending (Pet. 26-30) that the instant case provides an "ideal vehicle" (Pet. 26) for determining what interpretive standard to apply when an Act of Congress is alleged to have abrogated a prior executive agreement. At the time Congress enacted the pertinent appropriations laws, it was well established that the barrier to private suits imposed by the Algiers Accords was separate and distinct from Iran's sovereign immunity under the FSIA. See pp. 9-10, *supra*. Congress nevertheless chose in the appropriations laws only to amend the FSIA to eliminate Iran's immunity from the instant suit, *without* expressly abrogating the executive agreement, granting petitioners a cause of action against the foreign state, or addressing the merits of petitioners' claims in any respect. Accordingly, by far the most natural reading of the amendments to the FSIA made by the relevant appropriations provisions is that they leave undisturbed the independent bar to suit imposed by the Algiers Accords. For that reason, the proper disposition of this case does not depend on the precise degree of clarity that is required for an Act of Congress to abrogate an executive agreement.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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