

In the Supreme Court of the United States

SHARI MAYER BOROCHOV, 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 AS AMICUS CURIAE

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QUESTION PRESENTED

The Foreign Sovereign Immunities Act of 1976, 28 U.S.C. 1330, 1441(d), 1602 *et seq.*, provides that a foreign state and its agencies and instrumentalities are immune from the jurisdiction of federal and state courts in civil actions, subject to limited exceptions. The “[t]errorism exception” provides that a foreign state that has been designated a state sponsor of terrorism is not immune from jurisdiction in certain civil actions for damages arising out of personal injury or death “caused by an act of * * * extrajudicial killing * * * or the provision of material support or resources for such an act” by a foreign state official, employee, or agent acting within the scope of his office, employment, or agency. 28 U.S.C. 1605A(a)(1). “[E]xtrajudicial killing” is defined as “a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” Torture Victim Protection Act of 1991, Pub. L. No. 102-256, § 3(a), 106 Stat. 73 (28 U.S.C. 1350 note); 28 U.S.C. 1605A(h)(7). The question presented is:

Whether the terrorism exception’s grant of subject-matter jurisdiction over claims of personal injury or death “caused by an act of * * * extrajudicial killing * * * or the provision of material support or resources for such an act,” 28 U.S.C. 1605A(a)(1), extends to cases in which the provision of material support did not result in the killing of a victim.

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INTEREST OF THE UNITED STATES

This brief is submitted 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 petition for a writ of certiorari should be denied.

STATEMENT

A. Legal Framework

1. Under the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. 1330, 1441(d), 1602 *et seq.*, a foreign state and its agencies and instrumentalities are immune from the jurisdiction of federal and state courts in civil actions unless an exception to immunity applies. 28 U.S.C. 1604. This case concerns the “[t]errorism exception,” which establishes jurisdiction in United States courts for certain civil actions against a foreign state that the U.S. Secretary of State has formally

designated as a “state sponsor of terrorism.” 28 U.S.C. 1605A(a)(2)(A)(i).

The terrorism exception permits suits against foreign state sponsors of terrorism for damages “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,” if the “provision of material support or resources is engaged in by an official, employee, or agent” of the defendant foreign state “while acting within the scope of his or her office, employment, or agency.” 28 U.S.C. 1605A(a)(1). Relevant here, the FSIA incorporates the definition of “extrajudicial killing” from the Torture Victim Protection Act of 1991 (TVPA), Pub. L. No. 102-256, § 3(a), 106 Stat. 73 (28 U.S.C. 1350 note), which defines the term to mean “a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” *Ibid.*; see 28 U.S.C. 1605A(h)(7).

2. Congress originally enacted the terrorism exception in 1996, in response to attacks perpetrated by foreign state sponsors of terrorism or terrorist organizations affiliated with or materially supported by such states. Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, § 221(a), 110 Stat. 1241-1242; see, *e.g.*, H.R. Rep. No. 383, 104th Cong., 1st Sess. 41 (1995) (citing, among other “examples of terrorism[,]” “the bombing of the U.S. Embassy in Beirut,” “the hostage takings of Americans in the Middle East,” and “the murder of American tourist Leon Klinghoffer” by the Palestine Liberation Front). In 2004, the United States Court of Appeals for the

District of Columbia Circuit held that the terrorism exception—which was then codified at 28 U.S.C. 1605(a)(7) (2000)—did not provide a federal cause of action against a foreign state, but “merely waive[d] the [jurisdictional] immunity of a foreign state” in lawsuits seeking to recover damages under other sources of law for the enumerated acts of terrorism. *Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024, 1033 (2004).

Congress responded in 2008 by amending the FSIA to create a federal cause of action for the same predicate acts as were included in the original terrorism exception to immunity. National Defense Authorization Act for Fiscal Year 2008 (NDAA), Pub. L. No. 110-181, Div. A, Tit. X, § 1083(a)(1), 122 Stat. 338. The federal cause of action, which is codified at 28 U.S.C. 1605A(c), imposes liability on a foreign state sponsor of terrorism for certain claims by U.S. nationals, service-members, employees, or contractors. Other plaintiffs suing under the terrorism exception to foreign sovereign immunity may rely on state- or foreign-law causes of action. See Pet. App. 3a-4a.

B. Factual And Procedural Background

1. This case arises from terrorist attacks that occurred in Hebron and Jerusalem in 2015. Pet. App. 4a, 34a-36a; see Pet. 6-7. Although those attacks caused serious injuries, no one other than the assailant died in the attacks. Pet. App. 35a-37a.

2. Victims of the attacks and their family members, including both U.S. and Israeli citizens, filed this suit against respondents, Iran and Syria. Pet. 7; see Pet. App. 27a. The plaintiffs—some of whom are petitioners here, see Pet. ii—alleged that Hamas terrorists committed the attacks and that Hamas could not have done so without respondents’ material support. Pet. App. 5a; see

id. at 27a-28a; Pet. 7. The U.S.-citizen plaintiffs invoked the federal cause of action in Section 1605A(c); the Israeli-citizen plaintiffs invoked common-law tort causes of action. Pet. App. 6a.

Neither Iran nor Syria appeared to defend against the action. Pet. App. 6a. The FSIA provides that in that scenario, “[n]o judgment by default shall be entered by a court” against a foreign state defendant “unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.” 28 U.S.C. 1608(e). The district court therefore considered the plaintiffs’ evidence and legal arguments. Pet. App. 27a-82a.

Most relevant here, the district court determined that the terrorism exception provided subject-matter jurisdiction over the claims, on the theory that respondents “gave material support ‘for’ an extrajudicial killing.” Pet. App. 41a (emphasis omitted). The court first determined that an attack in which no victim dies is not an “extrajudicial killing,” because the word “killing” “denotes a fatality,” and “an attack cannot be a ‘killing,’ deliberated or otherwise, if nobody dies.” *Id.* at 41a-42a; see *id.* at 42a-44a (explaining that the phrase “deliberated killing,” as used in the TVPA definition, is not coterminous with an “attempted killing”).

Nonetheless, the district court determined that petitioners established subject-matter jurisdiction based on the theory that respondents provided “material support *for*” extrajudicial killings. Pet. App. 44a (citation omitted). The court stated that the word “for indicates the object or purpose of an action or activity.” *Ibid.* (brackets, citation, and internal quotation marks omitted). And in the court’s view, just as “[o]ne dresses ‘for’ dinner or studies ‘for’ an exam even if the dinner or exam never occurs,” a foreign state may provide support for an extrajudicial

killing if it acts with that “object or purpose,” even if no killing results. *Ibid.*

The district court further found that respondents’ material support proximately caused petitioners’ injuries. Pet. App. 46a-48a. The court therefore granted a default judgment and awarded damages to several plaintiffs. *Id.* at 50a-72a. But the court held that one U.S. plaintiff could not recover solatium damages under U.S. law, and that some Israeli plaintiffs had failed to establish damages under Israeli law. *Id.* at 67a-68a, 75a-76a.

3. The plaintiffs who were denied relief—petitioners here—appealed with regard to the district court’s denial of damages. See Pet. App. 8a. Iran and Syria did not appear in the court of appeals. The court of appeals appointed an amicus curiae to defend the district court’s judgment. *Id.* at 26a n.2. The court also sought the views of the United States, which filed a brief taking the position that the terrorism exception does not apply to this case. Gov’t C.A. Br. 1-9; see C.A. Doc. 1997937 (May 4, 2023). The court of appeals then vacated the district court’s judgment on the ground that the court lacked subject-matter jurisdiction under the terrorism exception to the FSIA and remanded for dismissal of petitioners’ claims. Pet. App. 1a-26a.

The court of appeals held that petitioners’ injuries “were not ‘caused by an act of * * * extrajudicial killing’ because the terrorist attack that injured them did not kill anyone.” Pet. App. 11a (quoting 28 U.S.C. 1605A(a)(1)). Rather, “[a]t most, the perpetrator attempted, but failed, to commit an extrajudicial killing,” which is “not enough to confer jurisdiction under Section 1605A.” *Ibid.* The court explained that the ordinary meaning of “killing” requires a death, and that nothing in the FSIA or the TVPA (which provides the relevant definition of “extrajudicial

“killing”) suggests a broader meaning. *Id.* at 12a. And although the court recognized its precedent interpreting certain aspects of the FSIA’s terrorism provisions “‘capaciously,’” given the statute’s “broad purpose” to hold state sponsors of terrorism responsible for their actions, the court found “no relevant ambiguity that would allow [it] to hold that ‘killing’ means ‘no killing.’” *Id.* at 14a (citation omitted).

The court of appeals further determined that “a full reading of the statutory text and context” did not support “expanding the material-support provision to cover attempted but uncompleted extrajudicial killings,” as the district court had done. Pet. App. 15a. The court of appeals observed that Section 1605A(a)(1) provides jurisdiction over injuries resulting from “the provision of material support or resources *for such an act*”—here, “a completed act of * * * extrajudicial killing.” *Id.* at 16a (quoting 28 U.S.C. 1605A(a)(1)) (brackets omitted). The court further noted that the material-support provision draws on the concept of aiding-and-abetting liability, which requires a completed crime or tort. *Id.* at 16a-19a.

The court of appeals rejected the argument that “providing ‘material support or resources *for* such an act,’” Pet. App. 19a (quoting 28 U.S.C. 1605A(a)(1)) (brackets omitted), “refers to the ‘intent’ behind the provision of resources, rather than the end result,” *ibid.* (quoting Pet. C.A. Supp. Br. 4). The court recognized that the word “for” can refer to intent, but it explained that in the FSIA’s context of support for an act of terrorism, “the word ‘for’ naturally refers to support that causes or facilitates that terrorist act, rather than just the intent behind a monetary or resource contribution.” *Id.* at 20a. The court further noted that the district court’s reading “would broadly expand” the terrorism exception “to

include not just attempted-but-failed killings, but also providing advance funding for attacks that never occur at all.” *Id.* at 21a.

The court of appeals further explained that statutory context defeated the district court’s interpretation. Under the district court’s view, a foreign sovereign would be immune from suit if it *directly* attempted an extrajudicial killing, but it could be sued (and held liable) if it provided material support for someone else’s attempt. Pet. App. 21a. The court of appeals could not discern any “reason why Congress would have wanted to encourage terrorist states to keep their extrajudicial killings in-house.” *Ibid.*

Finally, the court of appeals explained that reading the terrorism exception to cover attempted extrajudicial killings would “place challenging factual inquiries at the threshold of every material support case.” Pet. App. 21a. Courts would have to determine a foreign state’s intent in providing aid to terrorist groups and wrestle with factual questions regarding where and when the predicate aid occurred, as several of the FSIA’s jurisdictional requirements depend on the location and timing of the “act” in question. *Id.* at 21a-25a; see 28 U.S.C. 1605A(a)(2)(A)(i)-(iii). And “[m]aking [a court’s] jurisdiction contingent on the intent behind a particular payment, shipment, or transfer ‘would as a practical matter eliminate * * * liability except in cases in which the [defendant] was foolish enough to admit [its] true intent’ or specifically tie its support to a single pre-planned terrorist act.” Pet. App. 22a (quoting *Owens v. Republic of Sudan*, 864 F.3d 751, 799 (D.C. Cir. 2017), vacated and remanded on other grounds, *Opati v. Republic of Sudan*, 590 U.S. 418 (2020)) (third and fourth set of brackets in original). For all of these reasons, the court determined that the terrorism exception’s provision of subject-matter

jurisdiction over claims of “extrajudicial killing” does not extend to events in which the perpetrator does not kill a victim.

DISCUSSION

The United States condemns in the strongest terms the terrorist acts that caused petitioners’ injuries and sympathizes with the suffering they have experienced. The United States further recognizes that private suits that fall within the FSIA’s terrorism exception are an important means of fighting terrorism, discouraging material support for terrorism, and providing a measure of redress to victims of terrorist attacks and their families. But the terrorism exception’s conferral of subject-matter jurisdiction is limited to certain predicate acts or material support for “such * * * act[s].” 28 U.S.C. 1605A(a)(1). Here, the court of appeals correctly held that the predicate act at issue—an “extrajudicial killing”—requires that a victim was killed in the attack. Because the court of appeals correctly interpreted the statute as written, and there is no division of appellate authority on the question presented, this Court’s review is not warranted.

A. The Decision Below Is Correct

The court of appeals correctly held that the district court lacked subject-matter jurisdiction over petitioners’ claims because they do not seek damages for “personal injury or death that was caused by an act of * * * extrajudicial killing * * * or the provision of material support for such an act.” 28 U.S.C. 1605A(a)(1). Petitioners’ contrary arguments lack merit.

1. In general, the FSIA provides that foreign sovereigns and their agencies and instrumentalities are not subject to civil suits in the courts of the United States.

Section 1605A(a)(1) creates an exception to the presumption of foreign state immunity for damages suits against a state sponsor of terrorism “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. 1605A(a)(1). The statute incorporates the definition of “extrajudicial killing” from the TVPA, which defines the term as “a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” § 3(a), 106 Stat. 73 (28 U.S.C. 1350 note); see 28 U.S.C. 1605A(h)(7).

Those provisions require that, for a foreign state to be subject to suit, its actions must result in the death of a victim. As the court of appeals explained, the plain meaning of “[t]he word ‘killing’ refers to an action resulting in the death of another.” Pet. App. 11a (citing 8 *The Oxford English Dictionary* 430 (2d ed. 1989); *Black’s Law Dictionary* 886 (8th ed. 2004); *The American Heritage Dictionary* 701 (2d Coll. ed. 1982); *Merriam-Webster’s Collegiate Dictionary* 642 (10th ed. 1993)). And “[i]ncluding the phrase ‘act of’ before ‘extrajudicial killing’ changes nothing.” *Id.* at 12a. That phrase connotes a completed act—here, the completed act of killing a victim of a terrorist attack. *Ibid.*

That the FSIA draws its definition of “extrajudicial killing” from the TVPA confirms the point. The TVPA authorizes civil suits for wrongful death, which requires a fatality. § 2(a)(2), 106 Stat. 73 (28 U.S.C. 1350 note); see *Force v. Islamic Republic of Iran*, 610 F. Supp. 3d 216, 223 (D.D.C. 2022); see also *Owens v. Republic of Sudan*, 864 F.3d 751, 770 (D.C. Cir. 2017), vacated and

remanded on other grounds, *Opati v. Republic of Sudan*, 590 U.S. 418 (2020). By contrast, where the FSIA’s predicate acts do not require a death, the statute makes that clear. For example, the FSIA incorporates the TVPA’s definition of torture, which provides that “‘torture’ means any act, directed against an individual in the offender’s custody or physical control, by which severe pain or suffering * * * is intentionally inflicted on that individual” for particular purposes. 28 U.S.C. 1350 note; see 28 U.S.C. 1605A(h)(1) (incorporating the definition of “aircraft sabotage” provided in the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, *done* Sept. 23, 1971, 24 U.S.T. 565, 974 U.N.T.S. 177 (entered into force Jan. 26, 1973), which includes any “act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft”); 28 U.S.C. 1605A(h)(2) (incorporating the definition of “hostage taking” from the International Convention Against the Taking of Hostages, *done* Dec. 17, 1979, T.I.A.S. No. 11,081, 1316 U.N.T.S. 205 (entered into force June 3, 1983), which defines the term to include “seiz[ing] or detain[ing] and threaten[ing] to kill, to injure or to continue to detain another person” for certain purposes).

2. a. Petitioners do not meaningfully contest that the terrorism exception is inapplicable where a foreign state *itself* attempts to commit an extrajudicial killing, but no victim dies. See Pet. 22 n.2 (advancing this “alternative” argument only in a footnote). But petitioners contend (Pet. 13) that the terrorism exception “provides freestanding jurisdiction for a state’s ‘material support,’ and that jurisdiction exists even where the act of extrajudicial killing is not completed.” The court of appeals correctly rejected that assertion.

Where other requirements are met, Section 1605A(a)(1) removes a foreign state’s immunity from suit 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. 1605A(a)(1) (emphasis added). Rather than provide a “freestanding” basis for jurisdiction, Pet. 13, the phrase “such an act” refers back to the enumerated acts to which the exception applies. That is the function of “such,” which “usually refers to something that has already been ‘described’ or that is ‘implied or intelligible from the context or circumstances.’” *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 766 (2023) (citation omitted). The term “for,” in turn, connects the predicate act and the material support, indicating that the support must aid such an act to be within the exception. The exception thus applies where a foreign state sponsor of terrorism provides material support or resources for “‘such an act’ listed earlier in the sentence—that is, a completed act of torture, extrajudicial killing, aircraft sabotage, or hostage taking.” Pet. App. 16a. If there is no such predicate act—here, no terrorist attack that meets the definition of an “extrajudicial killing”—then the material support was not “provided for ‘such an act.’” *Force*, 610 F. Supp. 3d at 225.

That result flows from the provision’s plain text. See, e.g., *Republic of Sudan v. Harrison*, 587 U.S. 1, 8 (2019) (adopting “[t]he most natural reading” of the FSIA’s text). “[S]upport’ just means ‘assist[ance]’ or ‘help’ in an action; it does not change what the baseline action is.” Pet. App. 16a (citation omitted; second set of brackets in original). The same is true for the provision of “resources.” *Ibid.*; see 18 U.S.C. 2339A(b)(1) (defining

“material support or resources”). A foreign state cannot naturally be said to have provided material support or resources *for* an act of extrajudicial killing if no such act occurs.

Statutory context further supports the court of appeals’ holding. The court explained that reading Section 1605A to provide jurisdiction based on material support, and in the absence of a completed predicate act, “would write an illogical asymmetry into Section 1605A.” Pet. App. 21a. A foreign state sponsor of terrorism could not be sued for *itself* attempting an extrajudicial killing in which no one died, but it *could* be sued for supporting *another actor’s* failed attempt. That “lopsided liability regime,” *ibid.*, would make little sense.

b. Petitioners’ additional contrary arguments lack merit. In fact, several of those arguments underscore the difficulties that would follow from adopting petitioners’ interpretation of Section 1605A.

i. Petitioners contend (Pet. 13-16) that the terrorism exception confers jurisdiction so long as a foreign state sponsor of terrorism provided material support to a terrorist group “‘with the object or purpose’” that the group commit an act of extrajudicial killing, “even if all victims survive.” Pet. 14 (quoting Pet. App. 44a). According to petitioners, that interpretation “follows naturally from the plain meaning of the word ‘for.’” *Ibid.* (citation omitted). But “[t]he word ‘for,’ by itself, cannot bear the weight [petitioners] place on it.” Pet. App. 19a. Rather, as already discussed, “for” may also “refer to the cause or instigation of an act, or something contributing to the act’s occurrence.” *Ibid.*

Here, “the word ‘for’ naturally refers to support that causes or facilitates” the completed predicate act—*i.e.*, an extrajudicial killing. Pet. App. 20a. Again, the

material-support provision applies where the state provides material support or resources “for such an act,” 28 U.S.C. 1605A(a)(1)—a clear reference back to the statutory predicates. And nothing in the statute suggests that Congress intended that the foreign state’s object or purpose would obviate the requirement that a predicate act occur. Indeed, the court of appeals correctly reasoned that “when, as here, Congress draws on a common-law concept like aiding-and-abetting liability, we presume that the statutory term ‘share[s] fundamental attributes of common law torts’ absent an indication to the contrary.” Pet. App. 16a (citation omitted). Had Congress intended to expand liability beyond the common-law understandings that “[t]here is no established aiding-and-abetting liability for uncompleted torts * * * [n]or is there liability for attempted but failed torts,” *id.* at 18a, it would have expressly included those possibilities, rather than using the phrase “material support or resources for such an act.” 28 U.S.C. 1605A(a)(1); cf. 18 U.S.C. 2339A(a) (criminalizing providing “material support or resources * * * knowing or intending that they are to be used in preparation for, or in carrying out,” certain violations of law, as well as attempts or conspiracies to commit such acts).

Petitioners’ interpretation of “for” also would yield anomalous results. Petitioners assert (Pet. 15) that “a material-support claim” requires only two elements: (1) that the defendant provided material support or resources “‘for’ the purpose of bringing about” a predicate act (here, extrajudicial killing), and (2) the “provision of material support [was] the proximate cause of the plaintiff’s injury or death.” *Ibid.* (quoting *Cabrera v. Islamic Republic of Iran*, No. 19-cv-3835, 2023 WL 1975091, at *8 (D.D.C. Jan. 27, 2023)). Petitioners’ view

thus would not require *any* complete predicate act specified in the statute. See Pet. App. 21a. In that way, it would “broadly expand” the statute by making foreign states subject to jurisdiction and potentially liable when they provide material support with the requisite intent, even if the act that injures the plaintiff is not one covered by the terrorism exception. *Ibid.*

As the court of appeals explained (Pet. App. 22a-25a), petitioners’ argument would raise other confusion as well. Section 1605A provides that the court “shall hear a claim” if certain requirements are met. 28 U.S.C. 1605A(a)(2). Two of those requirements—that the foreign state was designated as a state sponsor of terrorism, and that the claimant or victim was a national of the United States, a member of the armed forces, or an employee or contractor of the U.S. government—depend on the facts “at the time the act described in paragraph (1) occurred.” 28 U.S.C. 1605A(a)(2)(A)(i)(I) and (ii).¹ “If the immunity exception in paragraph (1) is triggered only by completed ‘act[s] of torture, extrajudicial killing, aircraft sabotage, [or] hostage-taking,’” then it is easy to determine the relevant date, even where the plaintiff’s claim is based on the foreign state’s material support for the act. Pet. App. 23a (brackets in original). But if no completed predicate act is required, then it is unclear how courts would determine the relevant date for purposes of these provisions. Perhaps the court would look to the date of the “personal injury,” 28 U.S.C. 1605A(a)(1), or the date on which the material support was given, even though those are not predicate “act[s]” identified in Section 1605A(a)(1). And to the

¹ Under Section 1605A(a)(2), a court also must hear a claim if the state was designated as a state sponsor of terrorism “as a result of such act.” 28 U.S.C. 1605A(a)(2)(A)(i)(I).

extent a court considered the date of material support relevant, “proving the time and place at which money, weapons, or other forms of support changed hands, perhaps over the course of years or decades, would be an onerous and unwieldy task.” Pet. App. 23a-24a; see *id.* at 24a-25a (discussing similar issues with Section 1605A(a)(2)(A)(iii)’s requirement that, where the predicate act occurred in the defendant state, the claimant must afford the foreign state “a reasonable opportunity to arbitrate the claim”); cf. Pet. 25 (contending that “subject-matter jurisdiction” should not depend on “a potentially unknowable fact”).

ii. Petitioners’ arguments based on legislative history and policy fail to demonstrate that no completed predicate act is required. Pet. 15. Petitioners point out (*ibid.*) that Congress has repeatedly “expanded the reach of the terrorism exception, often in direct response to judicial decisions.” See Pet. 15-17. But that simply shows that this is an area in which Congress has acted when it wishes to change the law. It does not suggest that courts should construe the statute in a manner inconsistent with the best reading of its text. Petitioners also state (Pet. 17) that none of the legislative history “demonstrates” Congress’s intent “to limit relief” on a material-support theory to attacks that “result in a death.” But the best evidence of Congress’s intent is the text itself, see, *e.g.*, *Republic of Hungary v. Simon*, 145 S. Ct. 480, 497 (2025)—and the text requires an “act of * * * extrajudicial killing,” 28 U.S.C. 1605A(a)(1).

Petitioners further contend that their construction of the statute advances the “terrorism exception’s purpose” of ensuring that state sponsors of terrorism are held accountable for their actions. But “[n]o statute pursues a single policy at all costs.” *Bartenwerfer v.*

Buckley, 598 U.S. 69, 81 (2023). And while petitioners discern (Pet. 19) “no conceivable reason” why Congress would have wanted injured plaintiffs to recover only when the relevant attack resulted in a death, “[e]ach prong of the state-sponsored terrorism exception to the FSIA requires line-drawing and will inevitably exclude some cases that involve horrific conduct and grievous injuries.” *Force*, 610 F. Supp. 3d at 228. Indeed, on the district court’s view—which petitioners generally appear to adopt, see, *e.g.*, Pet. 17—a victim of a failed extrajudicial killing for which a foreign state provided material support could recover, but a victim of a failed extrajudicial killing that the state *itself* attempted could not. Petitioners suggest (Pet. 20) that this “asymmetry is hardly illogical” because “state sponsors of terrorism rarely commit acts of terror directly.” But that is no reason to ignore the plain text of the statute, which requires that a predicate act—here, an extrajudicial killing—occur.

At bottom, petitioners’ “policy concerns * * * cannot surmount the plain language of the statute.” *Simon*, 145 S. Ct. at 497 (citation and internal quotation marks omitted). That is particularly so in the context of the FSIA, where this Court has emphasized that foreign sovereigns are “presumptively immune” from suit except in “specific” enumerated statutory circumstances, and the Court has interpreted the statute “to avoid, where possible, ‘producing friction in our relations with [other] nations and leading some to reciprocate by granting their courts permission to embroil the United States in expensive and difficult litigation.’” *Federal Republic of Germany v. Philipp*, 592 U.S. 169, 173, 184 (2021) (citation omitted; brackets in original). Contrary to petitioners’ suggestion (Pet. 22), that concern is not

“irrelevant” in the context of the terrorism exception. Rather, in this context, as in others, it is important to hew to Congress’s “policy choice,” *ibid.*, which here, requires a completed act of extrajudicial killing to fall within the exception to immunity.

B. Further Review Is Not Warranted

1. Petitioners do not suggest that the courts of appeals are divided on the question presented. Instead, they contend that this Court’s review is warranted because, before the court of appeals’ decision, several district court decisions within the District of Columbia Circuit had adopted their interpretation of the terrorism exception. See, *e.g.*, Pet. 10. But courts of appeals often resolve disagreements among district courts within their circuits—indeed, that is one of their primary functions. The court of appeals did that here, and its correct decision does not warrant further review. Cf. *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (*per curiam*).

2. Petitioners suggest (Pet. 10) that due to the venue statute, 28 U.S.C. 1391(f), the court of appeals’ decision “effectively imposes a nationwide rule,” such that further percolation is unlikely. See Pet. 29. Even if that assertion were accurate, this case would not warrant this Court’s review. The court of appeals’ decision is correct, and to the extent Congress might prefer a different result, this is an area in which it has been active (as petitioners themselves emphasize, see Pet. 15-17).

In any event, petitioners acknowledge (Pet. 11) that courts outside of the D.C. Circuit may decide cases under the terrorism exception. In fact, courts in at least eight other circuits have considered at least a dozen

cases involving the terrorism exception.² Some of those courts have expressly addressed venue and found it proper outside of the D.C. Circuit. See *Stewart v. Islamic Republic of Iran*, No. 22-cv-77, 2024 WL 2779848, at *1 n.2 (S.D. Tex. May 30, 2024) (reasoning that the venue provisions of 28 U.S.C. 1391(f) are “permissive and not exclusive”); *Herrick v. Islamic Republic of Iran*, No. 21-cv-168, 2022 WL 3443816, at *1 n.2 (S.D. Tex. Aug. 17, 2022) (cited at Pet. 11) (adopting same reasoning). In other cases, plaintiffs have noted that improper venue is an affirmative defense that a defendant forfeits by failing to raise it. See, e.g., Complaint ¶ 13, *Edwards v. Islamic Republic of Iran*, No. 23-cv-1052, 2023 WL 3633172 (N.D. Ohio May 23, 2023); see

² See, e.g., *In re Terrorist Attacks on Sept. 11, 2011*, 117 F.4th 13, 17 (2d Cir. 2024); *Sullivan v. Republic of Cuba*, 891 F.3d 6, 11-12 (1st Cir. 2018) (considering the Section 1605A requirements in the context of a motion to enforce a state court judgment); *Leibovitch v. Islamic Republic of Iran*, 697 F.3d 561, 562, 570-573 (7th Cir. 2012); *Stewart v. Islamic Republic of Iran*, No. 22-cv-77, 2024 WL 2779848, at *1, *10 (S.D. Tex. May 30, 2024); *Edwards v. Islamic Republic of Iran*, No. 23-cv-1052, 2024 WL 3179661, at *1-*3 (N.D. Ohio June 26, 2024); *Soto v. Islamic Republic of Iran*, No. 15-cv-8410, 2024 WL 1376439, at *1, *18 (N.D. Ill. Mar. 31, 2024); *Baarbé v. Syrian Arab Republic*, 679 F. Supp. 3d 303, 326-327, 365-369 (E.D.N.C. 2023); *Villoldo v. Republic of Cuba*, 659 F. Supp. 3d 1158, 1171-1172, 1175-1183 (D. Colo. 2023) (cited at Pet. 11) (considering the Section 1605A requirements in the context of a motion to enforce a state court judgment); *Herrick v. Islamic Republic of Iran*, No. 21-cv-168, 2022 WL 3443816, at *4-*6 (S.D. Tex. Aug. 17, 2022) (cited at Pet. 11); *Kumar v. Republic of Sudan*, No. 10-cv-171, 2019 WL 13251350, at *1-*4 (E.D. Va. July 31, 2019); *Weinstock v. Islamic Republic of Iran*, No. 17-cv-23272, 2019 WL 1507255, at *1-*5 (S.D. Fla. Apr. 5, 2019); *Spaulding v. Islamic Republic of Iran*, No. 16-cv-1748, 2018 WL 3235556, at *1 (N.D. Ohio July 2, 2018); *Calderon-Cardona v. Democratic People’s Republic of Korea*, 723 F. Supp. 2d 441, 443-445, 459-460 (D.P.R. 2010).

also *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960) (observing that a properly served defendant “waives venue by failing seasonably to assert it, or even simply by making default”).

Petitioners likewise err in suggesting (Pet. 11) that terrorism-exception cases are unlikely to reach the courts of appeals because “state sponsors of terrorism typically do not appeal the judgments entered against them.” Recent decisions of this Court demonstrate that that claim is not universally true. See, e.g., *Opati v. Republic of Sudan*, 590 U.S. 418, 422-425 (2020) (describing procedural history in which Sudan, which was at the time designated as a state sponsor of terrorism, appeared and appealed a judgment against it under the terrorism exception); *Harrison*, 587 U.S. at 7 (describing procedural history in which Sudan appeared “for the purpose of contesting jurisdiction,” appealed to the Second Circuit, sought rehearing en banc, and then sought this Court’s review). And as this case shows, courts of appeals also may address the scope of the terrorism exception in appeals filed by plaintiffs. Thus, although many cases under the terrorism exception are litigated in the D.C. Circuit, further percolation is possible.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2025