

No. 17-508

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In The  
**Supreme Court of the United States**

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RIVKA LIVNAT, Individually and as  
Personal Representative of the  
Estate of Ben-Yosef Livnat, *et al.*,

*Petitioners,*

v.

PALESTINIAN AUTHORITY, aka THE PALESTINIAN  
INTERIM SELF-GOVERNMENT AUTHORITY,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The District Of Columbia Circuit**

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**SUPPLEMENTAL BRIEF OF PETITIONERS**

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ANDREW D. LEVY  
*Counsel of Record*  
JESSICA P. WEBER  
ABIGAIL A. GRABER  
BROWN, GOLDSTEIN & LEVY, LLP  
120 E. Baltimore Street  
Suite 1700  
Baltimore, Maryland 21202  
(410) 962-1030  
adl@browngold.com

*Counsel for Petitioners*

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**SUPPLEMENTAL BRIEF**

Petitioners Rivka Livnat, *et al.*, respectfully file this Supplemental Brief pursuant to Rule 15.8 to inform the Court that Congress has passed the Antiterrorism Clarification Act of 2018 (“ATACA”), S. 2946, 115th Cong. (as passed by the Senate, Aug. 22, 2018, and House of Representatives, Sept. 13, 2018). Barring veto, it will become law on or before September 26, 2018. *See* U.S. Const. art. I, § 7.

The ATACA materially alters the legal regime applicable to these cases. Specifically, respondent Palestinian Authority’s continued acceptance of financial assistance from the United States as specified in the ATACA will constitute consent to personal jurisdiction in this and other cases under the Antiterrorism Act (“ATA”), 18 U.S.C. § 2333.

Petitioners respectfully request that this Court grant certiorari, vacate the judgment, and remand these cases to the United States Court of Appeals for the District of Columbia Circuit to allow the lower courts to determine in the first instance whether respondent has consented to personal jurisdiction under the ATACA. In the alternative, petitioners request that this Court briefly hold their Petition to allow the Palestinian Authority the time to make its election within the time prescribed by the ATACA.

The district court dismissed these cases on the ground that the court lacked personal jurisdiction over the Palestinian Authority, and the District of Columbia Circuit affirmed on that same basis. The ATACA

provides that a defendant in a civil action under the ATA “shall be deemed to have consented to personal jurisdiction” if, “regardless of the date of the occurrence of the act of international terrorism” forming the basis of the civil action, 120 days after the date of enactment of the ATACA, the defendant continues to accept certain foreign assistance, “however provided,” from the United States. S. 2946, § 4(a). The Palestinian Authority receives hundreds of millions of dollars in aid from the United States each year. C.A. App. 871; Jim Zannotti, Cong. Research Serv., RS22967, U.S. Foreign Aid to the Palestinians 2 (May 18, 2018), <https://fas.org/sgp/crs/mideast/RS22967.pdf> (reporting that the Palestinian Authority received more than \$200 million in aid from the United States in FY2018). If the Palestinian Authority chooses to continue receiving that assistance during the time period prescribed, it will consent to personal jurisdiction in the present cases, which would resolve the issues presented in the Petition and allow the cases to proceed on their merits. *See Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982) (“Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived.”).

Allowing time for the ATACA to take effect and for respondent to choose whether to submit to jurisdiction by continuing to accept U.S. aid may avoid the need for this Court to rule on the issues presented by the Petition; it will also respect the clearly stated remedial intent of Congress. The ATACA is designed “to better ensure that victims of international terrorism can

obtain justice in United States courts” and “addresses lower court decisions that have allowed entities that sponsor terrorist activity against U.S. nationals overseas to avoid the jurisdiction of U.S. courts.” H.R. Rep. No. 115-858, at 2–3 (2018). The House Report describes Congress’s concern that court decisions, including this Court’s denial of certiorari in *Sokolow v. Palestine Liberation Organization*, 138 S. Ct. 1438 (2018), “have called into question the ATA’s continued ability to bring terrorists or their abettors to justice in U.S. courts” and “and severely limits the extraterritorial scope of the ATA.” *Id.* at 6. These views were echoed in the Senate. 164 Cong. Rec. S5103 (daily ed. July 19, 2018) (statement of Sen. Grassley). Thus, Congress intends that “[n]o defendant should be able to accept U.S. foreign assistance while simultaneously dodging responsibility in U.S. courts for aiding or carrying out terrorist attacks that harm Americans,” and through the ATACA ensures that defendants like the Palestinian Authority who continue to accept U.S. aid “will subject themselves to personal jurisdiction in U.S. courts in ATA cases that are already pending or that may be filed in the future.” H.R. Rep. No. 115-858, at 7.

The new law would apply to these cases because, as the House Report explains, the provision

is purely procedural and affects no substantive entitlement to relief, it takes effect on the date of enactment and will begin to apply in cases (including cases that are pending in the courts of the United States on the date of enactment) in which a defendant more than 120

days after the date of enactment receives the types of assistance, or takes advantage of a waiver, listed in that section.

*Id.* at 10; *accord* 164 Cong. Rec. S5103 (statement of Sen. Grassley) (noting that the bill “restores jurisdiction in cases pending at the time of the bill’s enactment”); *see United States v. Alabama*, 362 U.S. 602, 603–04 (1960).

Yesterday, September 13, 2018, the House of Representatives unanimously passed the Senate version of the bill. *Actions Overview S.2946—115th Congress (2017-2018)*, Congress.gov, <https://www.congress.gov/bill/115th-congress/senate-bill/2946/actions> (last visited Sept. 14, 2018). Absent presidential veto, the ATACA will become law on or around September 26, 2018. *See* U.S. Const. art. I, § 7. Under section 4(b) of the ATACA, if respondent continues to accept U.S. aid 120 days after enactment (January 24, 2019, at the latest), respondent will be deemed to have consented to personal jurisdiction as of “the date of enactment.” S. 2946, § 4(b). Given the material impact of this remedial legislation on the Petition before this Court and the importance of respect for the views of a co-equal branch, it is appropriate for the Court to act to preserve this matter to determine whether respondent will consent to personal jurisdiction under this imminent legislation. Accordingly, petitioners respectfully request that the Court either grant certiorari, vacate judgment, and remand these cases so that the lower courts can determine in the first instance whether they can exercise personal jurisdiction over the Palestinian

Authority pursuant to the ATACA, or briefly hold the Petition for Certiorari for at least 120 days after the ATACA's enactment.

Respectfully submitted,

ANDREW D. LEVY  
*Counsel of Record*  
JESSICA P. WEBER  
ABIGAIL A. GRABER  
BROWN, GOLDSTEIN & LEVY, LLP  
120 E. Baltimore Street  
Suite 1700  
Baltimore, Maryland 21202  
(410) 962-1030  
adl@browngold.com

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