No. 19-764

In the Supreme Court of the United States

MARK SOKOLOW, ET AL.,
Petitioners,
v.
PALESTINE LIBERATION ORGANIZATION AND
PALESTINIAN AUTHORITY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENTS' OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF OF SENATOR CHARLES GRASSLEY, REPRESENTATIVE JERROLD NADLER, REPRESENTATIVE ROBERT GOODLATTE (RET.), SENATOR RICHARD BLUMENTHAL, SENATOR MARCO RUBIO, REPRESENTATIVE THEODORE DEUTCH, SENATOR THOM TILLIS, REPRESENTATIVE KATHLEEN RICE, AND SENATOR BILL NELSON (RET.) AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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This Court should deny the motion of Senator Grassley, *et al.*, for leave to file an *amicus curiae* brief in support of Petitioners. Section I of the *amicus* brief does nothing but repeat the arguments in the Petition. Indeed, it repeats the arguments that these same *amici* previously made in support of Petitioner's first petition for *certiorari* in this same case. Section II of the *amicus* brief is similarly unhelpful because it goes to the other extreme, by placing a new issue before the Court that is nowhere in Petitioners' question presented, and that Petitioners have not raised despite the opportunity to do so in a timely supplemental brief.

1. The proffered *amicus* brief has nothing helpful to offer the Court. Rule 37.1 encourages *amici* to bring new matter to the Court's attention, and states that briefs that do not serve this purpose burden the Court. Unfortunately, the bulk of the *amicus* brief is dedicated to repeating the arguments in the Petition regarding the interpretation of the Anti-Terrorism Clarification Act of 2018, Pub. L. No. 115-253, 132 Stat. 3183-3185 (ATCA) and the application of Fourteen Amendment due process standards to due process cases arising under the Fifth Amendment. This is a double repetition because the *amici* are also repeating the same jurisdictional arguments they made to this Court in prior *amicus* briefs

filed in support of Petitioner's first petition for *certiorari* in this case. *See* Br. for the U.S. House of Reps. as *Amicus Curiae*, *Sokolow v. PLO*, No. 16-1071 (Apr. 2017) (H.R. Br.); Br. of U.S. Senators Charles E. Grassley *et al.* as *Amici Curiae*, *Sokolow v. PLO*, No. 16-1071 (Apr. 2017). Those arguments have not aged well, as the new proposed *amicus* brief has far less support from the House and Senate than did the prior *amicus* briefs.

The *amici curiae*, who are current and former senators and representatives, repeat the legislative history in an apparent attempt to create an "authoritative" spin on that history. But many of the *amici curiae* have already made statements in the legislative history, and those statements speak for themselves. This Court does not need special congressional help to read and understand legislative history—nor is that history relevant given the clear language of the statute. Insofar as the *amicus brief* also purports to set forth the interests and opinions of the United States, this Court would be far better served by reviewing the *amicus curiae* brief for the United States previously filed in this case by the Solicitor General. *See* Br. for the United States as *Amicus Curiae*, *Sokolow v. PLO*, No. 16-1071 (Feb. 2018) (recommending that the Court deny certiorari). Amici's individual "political" perspectives on the

Petitioner's legal arguments do not speak authoritatively for either the House or the Senate, and are not helpful to the Court.

2. The proffered *amicus* brief also raises an entirely new statute that was not raised in the Petition, and that Petitioners have not deemed worthy of a timely supplemental brief discussing "new legislation" as provided in Rule 15.8. The *amicus* brief appears to read the new legislation (enacted on December 20, 2019) as mooting the decision below, a position at odds with both the statute itself and Petitioners' continuing silence on the issue. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.23, 117 S. Ct. 1055, 1069 (1997) ("It is the duty of counsel to bring to the federal tribunal's attention, '*without delay*,' facts that may raise a question of mootness."), quoting *Bd. of License Comm'rs v. Pastore*, 469 U.S. 238, 240 (1985) (emphasis in original)

It is inappropriate for an *amicus curiae* to place an entirely new statute before the Court that Petitioners themselves have not discussed, and to suggest a result that Petitioners have not requested. *Lalli v. Lalli*, 439 U.S. 259, 262 n.3 (1978) (deciding not to reach an issue that was "raised for the first time by a brief *amici curiae* in this Court").

Respondents therefore ask this Court to deny the motion for leave to file an amicus curiae brief.

Respectfully submitted,

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