No. 19-764

In the Supreme Court of the United States

MARK I. SOKOLOW, ET AL., PETITIONERS,

v.

PALESTINE LIBERATION ORGANIZATION
AND PALESTINIAN AUTHORITY

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

SUPPLEMENTAL BRIEF FOR PETITIONERS

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SUPPLEMENTAL BRIEF FOR PETITIONERS

Petitioners respectfully submit this supplemental brief to address the impact on the pending petition of the Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA), Pub. L. No. 116–94, div. J, tit. IX, § 903, 133 Stat. 3082-3085, which became law on December 20, 2019. The PSJVTA is reproduced as an appendix to this brief.

The PSJVTA amends the text of 18 U.S.C. § 2334(e), which the Second Circuit found ineffective to secure personal jurisdiction over respondents, the Palestine Liberation Organization (PLO) and Palestinian Authority (PA). This is now the second time in fifteen months that Congress has acted for the purpose of restoring jurisdiction in civil anti-terrorism cases against *these* respondents, in explicit disapproval of decisions of the Second Circuit in this case and of the D.C. Circuit in cases including *Klieman* v. *Palestinian Authority*, which is now pending in this Court on a petition for a writ of certiorari (No. 19-741). The judgment of the Second Circuit should be vacated and the case remanded for further consideration in light of the PSJVTA.

1. In 2015, after a seven-week trial, a jury found by special verdict that the PA's employees had committed the terror attacks at issue in this case while acting within the scope of their employment; that respondents had provided material support and resources to the terrorists and U.S.-designated Foreign Terrorist Organizations that carried out the attacks; and that respondents' conduct proximately caused petitioners' injuries and the deaths of their relatives. Pet. App. 65a-91a. The District Court entered judgment on the verdict. *Id.* at 57a-64a.

The Second Circuit reversed and remanded with instructions that the judgment be dismissed for lack of personal jurisdiction. *Id.* at 11a-56a. The decision received sharp criticism from Congress and commentators. See Pet. 7-8. This Court denied review. 138 S. Ct. 1438 (2018).

Congress then passed the Anti-Terrorism Clarification Act (ATCA), Pub. L. No. 115–253, § 4 (adding 18 U.S.C. § 2334(e)), which amended the Anti-Terrorism Act of 1992, 18 U.S.C. § 2331 *et seq.* (ATA), to provide that respondents are deemed to consent to jurisdiction in civil ATA cases if, after a specified date, they continued to maintain any facility within the jurisdiction of the United States or accepted foreign assistance from the United States. See H.R. Rep. No. 115–858 at 7 & n.23.

Petitioners promptly asked the Second Circuit to recall its mandate, but that court denied the motion. Pet. App. 1a-10a. The court acknowledged that "the passage of a new law might warrant recalling a mandate in some circumstances," *id.* at 6a, but held as a matter of law that the ATCA failed to give federal courts the authority to exercise personal jurisdiction over respondents. The court based its ruling on three conclusions: (1) the ATCA did not reach respondents, *id.* at 7a-8a; (2) respondents' building on East 65th Street in New York City "is not considered to be within the jurisdiction of the United States," *id.* at 8a; and (3) "[t]he ATCA does not provide explicitly or implicitly that closed cases can be reopened," *id.* at 9a.

2. Congress has now acted—again—passing the PSJVTA in direct response to these decisions. See 165 Cong. Rec. S7182-7183 (daily ed. Dec. 19, 2019). Therefore, this Court should grant the petition, vacate the judgment of the court of appeals, and remand for consideration of the impact of the PSJVTA. "A GVR is appropriate when [1] 'intervening developments . . . reveal a reasonable probability that the decision below rests upon a

premise that the lower court would reject if given the opportunity for further consideration, and [2] where it appears that such a redetermination may determine the ultimate outcome' of the matter." *Wellons* v. *Hall*, 558 U.S. 220, 225 (2010) (quoting *Lawrence* v. *Chater*, 516 U.S. 163, 167 (1996) (*per curiam*)) (ellipsis by the Court).

A new federal statute is a classic example of an "intervening development" meriting a GVR order. *Lawrence*, 516 U.S. at 167 (citing *Sioux Tribe of Indians* v. *United States*, 329 U.S. 685 (1946)). This Court has issued many GVR orders in light of new federal statutes. *E.g.*, *Clearstream Banking S.A.* v. *Peterson*, No. 17-1529, 2020 WL 129504 (U.S. Jan. 13, 2020); *Jefferson* v. *United States*, No. 18-9325, 2020 WL 129507 (U.S. Jan. 13, 2020); *Richardson* v. *United States*, 139 S. Ct. 2713 (2019); *Wheeler* v. *United States*, 139 S. Ct. 2664 (2019).

a. The intervening legislation (here, the PSJVTA) "reveal[s] a reasonable probability" that the court of appeals decision "rests upon a premise that the * * * court would reject if given the opportunity for further consideration." *Wellons*, 558 U.S. at 225 (quoting *Lawrence*, 516 U.S. at 167). Congress has carefully disposed of each of the lower court's three legal conclusions that the ATCA did not provide a basis for consent to personal jurisdiction.

First, the court of appeals held that 18 U.S.C. § 2334(e)(1) does not reach respondents because they are not "benefiting from a waiver or suspension" of Section 1003 of the Anti-Terrorism Act of 1987, 22 U.S.C. § 5202. Pet. App. 7a-8a. In response, Congress amended § 2334(e)(1) to omit the "benefiting from a waiver or suspension" requirement. See App. *infra*, 3a-4a (amending § 2334(e)(1)). Instead, the statute now applies simply to "defendant[s]," defined to include the respondents in this case *by name*. App., *infra*, 6a (adding § 2334(e)(5)).

Second, the court of appeals held that respondents' building on East 65th Street in New York City "is not considered to be within the jurisdiction of the United States" because it is used in part by the Palestinian UN observer. Pet. App. 8a (discussing *Klinghoffer* v. *S.N.C. Achille Lauro*, 937 F.2d 44 (2d Cir. 1991), discussing, in turn, Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, 61 Stat. 3416, T.I.A.S. 1676, 554 U.N.T.S. 308 (1947)). In response, Congress replaced the phrase "within the jurisdiction of the United States" in § 2334(e)(1)(B) with the phrase "in the United States." App., *infra*, 4a (amending § 2334(e)(1)(B)(i) and (ii)). In addition, to make doubly sure that the U.N. Headquarters Agreement is not construed to supersede the ATA, Congress added a rule of construction that, "[n]otwithstanding any other law (including any treaty)," any facility that is not used "*exclusively* for the purpose of conducting official business of the United Nations" is "considered to be in the United States." *Id.* at 5a-6a. (adding § 2334(e)(3)(A) and (4)) (emphasis added). Respondents have long used their building for non-UN purposes. *Klinghoffer* v. *S.N.C. Achille Lauro,* 795 F. Supp. 112, 114-115 (S.D.N.Y. 1992); Pet. App. 107a-109a; C.A. Doc. 305-2 at 8-9 (Mar. 25, 2019).

Third, the court of appeals stated that "the ATCA does not provide explicitly or implicitly that closed cases can be reopened." Pet. App. 9a. In response, Congress provided that the new statute and its amendments, "shall apply to any case pending on or after August 30, 2016," App., *infra*, 7a, § 903(d)(2), which is the day before the Second Circuit issued its decision reversing the judgment in this case, Pet. App. 11a. The PSJVTA also contains a "sense of Congress" that claims by U.S. nationals previously "dismissed for lack of personal jurisdiction"—*i.e.*,

this case and like cases—"should be resolved in a manner that provides *just compensation to the victims*" and *"without* subjecting victims to unnecessary or protracted litigation." App., *infra*, at 2a-3a, § 903(b)(4)(A), (b)(4)(B), (b)(5). Finally, Congress provided that the statute "should be liberally construed to carry out the purposes of Congress *to provide relief for victims of terrorism*," *id.* at 7a, § 903(d)(1)(A) (emphasis added).

Congress also expanded the bases of consent to jurisdiction to include additional types of conduct, including making payments to terrorists who killed or injured Americans. *Id.* at 4a (adding § 2334(e)(1)(A)).

To be sure, Congress did not *require* the courts to reopen closed cases—such a requirement would invade the province of the Judiciary. *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 225 (1995). Rather, Congress *enabled* the Judiciary to reopen judgments and provided every reasonable signpost that it *should* do so by including: an effective date when this and similar cases indisputably remained pending; a sense of Congress that terror victims whose claims were dismissed for lack of jurisdiction should receive just compensation without unnecessary litigation; and instructions that the statute should be liberally construed to provide relief for victims of terrorism. As Senator Lankford, the lead sponsor, explained, "we are making clear Congress's intent that courts have the power to restore jurisdiction in cases previously dismissed for lack of jurisdiction after years of litigation." 165 Cong. Rec. S7182 (daily ed. Dec. 19, 2019); *id.* at S7183 (statement of Sen. Grassley) (PSJVTA will "empower courts to restore jurisdiction in cases previously dismissed"). Thus, Congress properly left the decision whether to reopen any particular case to the discretion of the Judicial Branch. See *Plaut*, 514 U.S. at 233 (approving "discretionary judicial revision of judgments in * * * 'extraordinary

circumstances'" to account for new legislation (quoting *Liljeberg* v. *Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988)).

b. This Court is "a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005); see *PDR Network, LLC* v. *Carlton & Harris Chiropractic, Inc.*, 139 S. Ct. 2051, 2056 (2019) (remanding to allow court of appeals to address threshold question in the first instance); *Frank* v. *Gaos*, 139 S. Ct. 1041, 1046 (2019) (same).

A GVR order is the proper course here, because redetermination by the court of appeals on remand "may determine the ultimate outcome of the litigation." *Wellons*, 558 U.S. at 225. Courts of appeals have discretion to recall their mandates, *Calderon* v. *Thompson*, 523 U.S. 538, 549 (1998), weighing "the interest in finality of litigation" and "the interests of justice," *Gondeck* v. *Pan Am. World Airways, Inc.*, 382 U.S. 25, 26-27 (1965) (*per curiam*) (quoting *United States* v. *Ohio Power Co.*, 353 U.S. 98, 99 (1957)).

Here, the court of appeals did not consider the interests of justice, presumably because it decided that the ATCA failed to reach respondents. Now that Congress has acted—again—to amend the governing statute, this Court should issue a GVR order so that the lower courts may apply the amended text to the relevant facts (after additional fact-finding, if needed), and weigh the imperative to salvage jurisdiction and other relevant interests.

A GVR order is an appropriate response to a court of appeals' failure to recall its mandate after a change in applicable law, as demonstrated by this Court's GVR on a petition seeking review following the denial of a motion to recall or stay the mandate in *Lords Landing Village Condominium Council of Unit Owners* v. *Continental Ins. Co.*, 520 U.S. 893, 896-897 (1997) (*per curiam*). In this case, there is especially good reason to believe that the "interest in finality" and the "interests of justice" will *both*

militate in favor of recalling the mandate and avoiding a useless retrial.

i. The "interest in finality" serves two goals: "party reliance in the finality of judgments and the need to conserve judicial resources for other litigation as yet unresolved." *McGeshick* v. *Choucair*, 72 F.3d 62, 63 (7th Cir. 1995) (citing *American Iron & Steel Inst.* v. *EPA*, 560 F.2d 589, 592 (3d Cir. 1977)). Both goals would be served by recalling the mandate.

First, taking these goals in reverse order, "the need to conserve judicial resources for other litigation" strongly counsels *in favor* of recalling the mandate. As the court of appeals noted, petitioners refiled their claims in a new placeholder case in the district court before the statute of limitations expired. See Pet. App. 9a-10a n.2.

Declining to recall the mandate would thus require a retrial of the case, and such a "do-over" in the district court would severely *harm* the systemic interest in finality. As the Second Circuit has explained, there is an "imperative to salvage jurisdiction where possible" once a case has proceeded to trial and judgment on the merits. *Universal Reinsurance Co. v. St. Paul Fire & Marine Ins. Co.*, 312 F.3d 82, 89 (2d Cir. 2002). "Once the district court has proceeded to final judgment, 'considerations of finality, efficiency, and economy become overwhelming,' and federal courts are directed to salvage jurisdiction where possible." *Id.* (quoting *Caterpillar Inc.* v. *Lewis*, 519 U.S. 61, 75 (1996)); see also *CGB Occupational Therapy, Inc.* v. *RHA Health Servs. Inc.*, 357 F.3d 375, 381 n.6 (3d Cir. 2004) ("[C]ourts should strive to cure jurisdictional defects, rather than dismiss for want of jurisdiction, in cases that have already proceeded to trial and judgment.").

The district court conducted many years of litigation, culminating in trial and final judgment on the merits. The

district court decided discovery motions, summary judgment motions, *Daubert* motions, *in limine* motions, and all manner of other pre-trial proceedings. See C.A. App. 3092-8261. It selected a twelve-member jury from a panel of hundreds of citizens. See D.Ct. Doc. 747, at 6. It presided over a seven-week trial. It decided extensive post-trial motions. C.A. App. 215-233, 8355-8952, 9458-9584; C.A. Special App. 54-59. The parties had the benefit of a full assessment of the disputed evidence by an impartial judge and jury. The 37-volume Joint Appendix in the court of appeals exceeded 10,000 pages; the only non-jurisdictional issue respondents raised on appeal was a make-weight assertion that the district court was too lenient in allowing certain expert testimony on cross-examination and redirect. Starting all over now would be a massive undertaking. And to what end? Recalling the mandate to salvage jurisdiction would preserve, rather than squander, the resources required to bring this case to an end.

The "imperative to salvage jurisdiction where possible," *Universal Reinsurance*, 312 F.3d at 89, has particular resonance where, as here, a retrial "after years of litigation would impose unnecessary and wasteful burdens on the parties, judges, and other litigants waiting for judicial attention." *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826, 836-837 (1989).

Second, petitioners have a strong reliance interest in restoring the final judgment on the merits in their favor. Requiring them to undergo a second trial in order to realize their rights under the ATA would be cruel. A terror victim forced to undergo "the wrenching process of testifying again" suffers "serious prejudice," due to the "enormous emotional cost to Plaintiffs should they be forced to undergo the excruciating process of testifying about their loss all over again." *Gilmore* v. *Palestinian Interim Self-*

Governing Auth., 675 F. Supp. 2d 104, 111 (D.D.C. 2009) (internal quotation marks omitted), *aff'd*, 843 F.3d 958 (D.C. Cir. 2016).

Respondents, in contrast, have no countervailing reliance interest in the finality of the Second Circuit's dismissal on jurisdictional grounds. If that decision remains in place, respondents would still be required to answer for their misconduct in the pending re-filed case, which has been stayed pending the decision on restoring the judgment in this case. Moreover, the dismissal for lack of personal jurisdiction came as an eleventh-hour unexpected windfall to respondents, who (prior to this Court's decision in *Daimler AG* v. *Bauman*, 571 U.S. 117 (2015)) had been held subject to general jurisdiction by the district court, following "every federal court to have considered the issue." Pet. App. 101a & n.10. According to respondents themselves, their jurisdictional objection "arose only after *Daimler*." C.A. Doc. 138 at 42. This is certainly not a case in which the existing legal framework permitted respondents "to shape their conduct in reliance on the promise of future immunity from suit in United States courts." *Republic of Austria* v. *Altmann*, 541 U.S. 677, 696 (2004).

Finally, the passage of time since the judgment is no bar to recalling the mandate. This Court denied review in April 2018, only six months before Congress enacted the ATCA and petitioners filed their motion to recall the mandate—and during those six months, respondents' counsel were active lobbyists in Congress, so they knew or should have known of the proposed legislation. See C.A. Doc. 305-3 at 127-137 (Mar. 25, 2019). In *Gondeck*, 382 U.S. at 28, this Court recalled its own mandate three years after denying certiorari. And in *Hazel-Atlas Glass Co.* v. *Hartford Empire Co.*, this Court held that the Third Circuit should have recalled its mandate *nine years* after it was

issued. 322 U.S. 238, 251 (1944); see also *United States* v. *Emeary*, 794 F.3d 526 (5th Cir. 2015) (five years).

ii. The "interests of justice" also weigh heavily in favor of recalling the mandate. "Congress conceived of the ATA, at least in part, as a mechanism for protecting the public's interests through private enforcement." *Linde* v. *Arab Bank, PLC*, 706 F.3d 92, 112 (2d Cir. 2013).

By imposing liability for intentional misconduct, the ATA deters entities like the PLO and PA from engaging in or supporting terrorism. The terror campaign orchestrated by respondents lasted for years, killing over a thousand innocent civilians. The court of appeals described the attacks as "heinous" and "horrific," Pet. App. 42a, 55a, and respondents' own expert, human rights lawyer Michael Sfard, called them "crimes against humanity." C.A. App. 7530. And, as the Department of Justice has explained, terror attacks in Israel "threaten the national security of the United States." Brief for Respondents at 3, *Kahane Chai* v. *Dep't of State*, 466 F.3d 125 (D.C. Cir. 2006) (No. 03-1392), 2006 WL 1354333.

In a 2015 Statement of Interest in this case, the State Department highlighted the national security and foreign policy interests served by this case, which furthers "our nation's compelling interest in combatting and deterring terrorism at every level, including by eliminating sources of terrorist funding and holding sponsors of terrorism accountable for their actions." D. Ct. Doc. 953-1, at 2 (Aug. 10, 2015). By shifting to respondents the cost of terror attacks committed by their agents and employees, the ATA "contributes to U.S. efforts to disrupt the financing of terrorism and to impede the flow of funds or other support to terrorist activity." *Id.*

CONCLUSION

This Court should grant the petition, vacate the judgment, and remand for consideration in light of the PSJVTA.

Respectfully submitted.

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APPENDIX

SEC. 903. PROMOTING SECURITY AND JUSTICE FOR VICTIMS OF TERRORISM.

(a) SHORT TITLE.—This section may be cited as the Promoting Security and Justice for Victims of Terrorism Act of 2019.

(b) FACILITATION OF THE SETTLEMENT OF TERRORISM-RELATED CLAIMS OF NATIONALS OF THE UNITED STATES.—

(1) COMPREHENSIVE PROCESS TO FACILITATE THE RESOLUTION OF ANTI-TERRORISM ACT CLAIMS.—The Secretary of State, in consultation with the Attorney General, shall, not later than 30 days after the date of enactment of this Act, develop and initiate a comprehensive process for the Department of State to facilitate the resolution and settlement of covered claims.

(2) ELEMENTS OF COMPREHENSIVE PROCESS.—The comprehensive process developed under paragraph (1) shall include, at a minimum, the following:

(A) Not later than 45 days after the date of enactment of this Act, the Department of State shall publish a notice in the Federal Register identifying the method by which a national of the United States, or a representative of a national of the United States, who has a covered claim, may contact the Department of State to give notice of the covered claim.

(B) Not later than 120 days after the date of enactment of this Act, the Secretary of State, or a designee of the Secretary, shall meet (and make every effort to continue to meet on a regular basis thereafter) with any national of the United States, or a representative of a national of the United States, who has a covered claim and has

informed the Department of State of the covered claim using the method established pursuant to subparagraph (A) to discuss the status of the covered claim, including the status of any settlement discussions with the Palestinian Authority or the Palestine Liberation Organization.

(C) Not later than 180 days after the date of enactment of this Act, the Secretary of State, or a designee of the Secretary, shall make every effort to meet (and make every effort to continue to meet on a regular basis thereafter) with representatives of the Palestinian Authority and the Palestine Liberation Organization to discuss the covered claims identified pursuant to subparagraph (A) and potential settlement of the covered claims.

(3) REPORT TO CONGRESS.—The Secretary of State shall, not later than 240 days after the date of enactment of this Act, and annually thereafter for 5 years, submit to the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on Foreign Affairs of the House of Representatives a report describing activities that the Department of State has undertaken to comply with this subsection, including specific updates regarding subparagraphs (B) and (C) of paragraph (2).

(4) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) covered claims should be resolved in a manner that provides just compensation to the victims;

(B) covered claims should be resolved and settled in favor of the victim to the fullest extent

possible and without subjecting victims to unnecessary or protracted litigation;

(C) the United States Government should take all practicable steps to facilitate the resolution and settlement of all covered claims, including engaging directly with the victims or their representatives and the Palestinian Authority and the Palestine Liberation Organization; and

(D) the United States Government should strongly urge the Palestinian Authority and the Palestine Liberation Organization to commit to good-faith negotiations to resolve and settle all covered claims.

(5) DEFINITION.—In this subsection, the term "covered claim" means any pending action by, or final judgment in favor of, a national of the United States, or any action by a national of the United States dismissed for lack of personal jurisdiction, under section 2333 of title 18, United States Code, against the Palestinian Authority or the Palestine Liberation Organization.

(c) JURISDICTIONAL AMENDMENTS TO FACILITATE RESOLUTION OF TERRORISM-RELATED CLAIMS OF NATIONALS OF THE UNITED STATES.

(1) IN GENERAL.—Section 2334(e) of title 18, United States Code, is amended—

(A) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of any civil action under section 2333 of this title, a defendant shall be deemed to have consented to personal jurisdiction in such civil action if, regardless of the date of the occurrence of

the act of international terrorism upon which such civil action was filed, the defendant—

"(A) after the date that is 120 days after the date of the enactment of the Promoting Security and Justice for Victims of Terrorism Act of 2019, makes any payment, directly or indirectly—

"(i) to any payee designated by any individual who, after being fairly tried or pleading guilty, has been imprisoned for committing any act of terrorism that injured or killed a national of the United States, if such payment is made by reason of such imprisonment; or

"(ii) to any family member of any individual, following such individual's death while committing an act of terrorism that injured or killed a national of the United States, if such payment is made by reason of the death of such individual; or

"(B) after 15 days after the date of enactment of the Promoting Security and Justice for Victims of Terrorism Act of 2019—

"(i) continues to maintain any office, headquarters, premises, or other facilities or establishments in the United States;

"(ii) establishes or procures any office, headquarters, premises, or other facilities or establishments in the United States; or

"(iii) conducts any activity while physically present in the United States on behalf of the Palestine Liberation Organization or the Palestinian Authority.";

(B) in paragraph (2), by adding at the end the following: "Except with respect to payments

described in paragraph (1)(A), no court may consider the receipt of any assistance by a nongovernmental organization, whether direct or indirect, as a basis for consent to jurisdiction by a defendant."; and

(C) by adding at the end the following:

"(3) EXCEPTION FOR CERTAIN ACTIVITIES AND LOCATIONS.—In determining whether a defendant shall be deemed to have consented to personal jurisdiction under paragraph (1)(B), no court may consider—

"(A) any office, headquarters, premises, or other facility or establishment used exclusively for the purpose of conducting official business of the United Nations;

"(B) any activity undertaken exclusively for the purpose of conducting official business of the United Nations;

"(C) any activity involving officials of the United States that the Secretary of State determines is in the national interest of the United States if the Secretary reports to the appropriate congressional committees annually on the use of the authority under this subparagraph;

"(D) any activity undertaken exclusively for the purpose of meetings with officials of the United States or other foreign governments, or participation in training and related activities funded or arranged by the United States Government;

"(E) any activity related to legal representation—

"(i) for matters related to activities described in this paragraph;

"(ii) for the purpose of adjudicating or resolving claims filed in courts of the United States; or

"(iii) to comply with this subsection; or

"(F) any personal or official activities conducted ancillary to activities listed under this paragraph.

"(4) RULE OF CONSTRUCTION.—Notwithstanding any other law (including any treaty), any office, headquarters, premises, or other facility or establishment within the territory of the United States that is not specifically exempted by paragraph (3)(A) shall be considered to be in the United States for purposes of paragraph (1)(B).

"(5) DEFINED TERM.—In this subsection, the term 'defendant' means—

"(A) the Palestinian Authority;

"(B) the Palestine Liberation Organization;

"(C) any organization or other entity that is a successor to or affiliated with the Palestinian Authority or the Palestine Liberation Organization; or

"(D) any organization or other entity that—

"(i) is identified in subparagraph (A), (B), or (C); and

"(ii) self identifies as, holds itself out to be, or carries out conduct in the name of, the 'State of Palestine' or 'Palestine' in connection with official business of the United Nations.".

(2) PRIOR CONSENT NOT ABROGATED.—The amendments made by this subsection shall not abrogate any consent deemed to have been given under

SECTION 2334(e) of title 18, United States Code, as in effect on the day before the date of enactment of this Act.

(d) RULES OF CONSTRUCTION; APPLICABILITY; SEVERABILITY.—

(1) RULES OF CONSTRUCTION.—

(A) IN GENERAL.—This section, and the amendments made by this section, should be liberally construed to carry out the purposes of Congress to provide relief for victims of terrorism.

(B) CASES AGAINST OTHER PERSONS.—Nothing in this section may be construed to affect any law or authority, as in effect on the day before the date of enactment of this Act, relating to a case brought under section 2333(a) of title 18, United States Code, against a person who is not a defendant, as defined in paragraph (5) of section 2334(e) of title 18, United States Code, as added by subsection (c)(1) of this section.

(2) APPLICABILITY.—This section, and the amendments made by this section, shall apply to any case pending on or after August 30, 2016.

(3) SEVERABILITY.—If any provision of this section, an amendment made by this section, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this section, the amendments made by this section, and the application of such provisions to any person or circumstance shall not be affected thereby.