No. 19-807

In the
Supreme Court of the United States

BANK MELLI,

Petitioner,

vs.

MICHAEL BENNETT, *et al*.,

Respondents.

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

JOINT BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Section 201(a) of the Terrorism Risk Insurance Act of 2002 ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322 (2002) (reproduced as a note to 28 U.S.C. § 1610), states: "the blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)" are subject to execution in satisfaction of certain terrorism-based judgments. In 2016, the Ninth Circuit held that $17 million in a blocked account due and owing by contract to Bank Melli was a blocked asset of Bank Melli. The Ninth Circuit, joining the Second Circuit, also held that, because Bank Melli is an instrumentality of the Islamic Republic of Iran ("Iran"), a terrorist party under TRIA, Bank Melli's blocked assets were subject to execution in partial satisfaction of the judgment creditor-respondents' outstanding terrorism-based judgments entered against Iran. In 2019, the Ninth Circuit affirmed the district court's decision awarding the judgment creditors summary judgment and rejected Bank Melli's attempt to defeat summary judgment by raising an immaterial factual dispute. The questions presented are:

1. Whether certiorari review is warranted to address TRIA's ownership requirement where the Ninth Circuit held that Bank Melli owns the blocked assets at issue, rejected Bank Melli's attempt to defeat summary judgment by raising an immaterial factual dispute, and, alternatively, held that the facts Bank Melli relied on did not create a genuine issue of dispute requiring trial.

2. Whether TRIA means what it says, that the blocked assets of an agency or instrumentality of a

terrorist party are included in the blocked assets of that terrorist party.

INTRODUCTION

The entire premise of Bank Melli's first question presented is false. In 2016 and 2019, the Ninth Circuit held that, under TRIA, funds due and owing to Bank Melli by contract were "assets of" Bank Melli. The judgment creditors never argued that TRIA allows for execution even absent ownership, and the Ninth Circuit never so held. Bank Melli itself recognized this on the latest appeal, representing to the Ninth Circuit that "this case presents only a straightforward summary judgment question." Reply Br. of Bank Melli in 19-15101, Dkt. 25 at 1 (9th Cir. filed June 19, 2019). Having lost that straightforward dispute, Bank Melli strains to recast the Ninth Circuit's decisions as something less than straightforward. Certiorari review is not warranted just because Bank Melli disagrees with the Ninth Circuit's holding that it owns assets Visa owes to it. Moreover, examination of the Ninth Circuit's decisions reveals that those decisions are consistent with *Heiser v. Islamic Republic of Iran*, 735 F.3d 934 (D.C. Cir. 2013), and the Executive Branch's previously expressed position on TRIA.

Bank Melli's second question presented is based on a tortured misreading of TRIA. The plain meaning of TRIA's words leaves no doubt that Congress intended for the blocked assets of an instrumentality of a terrorist party (here, Bank Melli) to be available for execution in satisfaction of judgments entered against the terrorist party itself (here, Iran). The only two courts of appeals to consider this issue—the Second and Ninth Circuits—have both rejected Bank Melli's

argument that, because Bank Melli and Iran ordinarily are entitled to a presumption of juridical separateness under *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba ("Bancec")*, 462 U.S. 611 (1983), Congress actually intended to *limit* the assets of a terrorist instrumentality available for execution. Bank Melli's interpretation is contradicted by the plain text of the statute. The courts of appeals' consistent interpretation of TRIA is based on the text itself and does not conflict with *Bancec* or any of the United States' treaty obligations. This Court should not grant review of the second question presented—and further delay final resolution of this eight-year-old case—just to affirm the decision below.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

A. The Judgment Creditors

Respondents, four groups of judgment creditors, are all United States citizens or representatives of their estates who hold unsatisfied money judgments entered against Iran for injuries sustained in multiple terrorist attacks carried out with Iran's material support and assistance, specifically a Hezbollah orchestrated bombing of a United States military base in Saudi Arabia, Hezbollah and Hamas orchestrated bombings in Israel, and an assassination carried out in New York by the terrorist organization Al Gam'aa Islamiyah.[1] The judgment creditors' judgments are

[1] *See Estate of Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229 (D.D.C. 2006); *Bennett v. Islamic Republic of Iran*, 507 F. Supp. 2d 117 (D.D.C. 2007); *Acosta v. Islamic Republic of Iran*, 574 F. Supp. 2d 15 (D.D.C. 2008); *Greenbaum v. Islamic Republic of Iran*, 451 F. Supp. 2d 90 (D.D.C. 2006).

based on claims against Iran for which Iran was not immune under section 1605A and/or section 1605(a)(7) (as such section was in effect on January 27, 2008) of the Foreign Sovereign Immunities Act of 1976 ("FSIA"), Pub. L. No. 94-583, 90 Stat. 2891 (codified as amended at 28 U.S.C. §§ 1602, *et seq*.).

B. Bank Melli

Bank Melli is a bank wholly owned by Iran. C.A. E.R. 259, ¶ 7. In 1995, President Clinton issued broad sanctions against Iran, including sanctions prohibiting United States corporations from importing or exporting services on behalf of Iran or any entities owned or controlled by Iran. *See* Exec. Order No. 12,957, 60 Fed. Reg. 14,615 (Mar. 15, 1995); Exec. Order No. 12,959, 60 Fed. Reg. 24,757 (May 6, 1995). On August 10, 1995, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued a notice setting forth its determination that Bank Melli "and all [its] offices worldwide" are "owned or controlled by the Government of Iran." Implementation of Executive Order No. 12,959 With Respect to Iran, 60 Fed. Reg. 40,881, 40,884 (Aug. 10, 1995). From October 25, 2007 through the present, all of Bank Melli's property located in the United States has been blocked continuously under one or more executive orders, specifically Executive Orders 13,382, 13,599, and 13,224. *See* Additional Designation of Entities Pursuant to Executive Order 13,382, 72 Fed. Reg. 62,520, 62,521 (Nov. 5, 2007); Blocking Property of the Government of Iran and Iranian Financial Institutions, Exec. Order No. 13,599, 77 Fed. Reg. 6659, 6659, § 1(a) (Feb. 5, 2012); *see also* C.A. E.R. 456.

C. The Blocked Assets

On April 15, 1991, Bank Melli submitted an application to Visa International to become a principal member in Visa International's "common bank card and/or travelers cheque program." C.A. E.R. 230-247. Bank Melli joined Visa International so that it could "issue and sell its own traveler checks denominated in the U.S. Dollar and other currencies." C.A. E.R. 238. As part of its application, Bank Melli entered into a Membership Agreement with Visa International, dated April 15, 1991. C.A. E.R. 231. Bank Melli admits that "it is or was a party to an agreement with Visa or a Visa affiliate pursuant to which Bank Melli agreed to accept Visa cards in Iran through its branches in that country, and that certain amounts are due and owing to Bank Melli pursuant to that agreement." C.A. E.R. 265, ¶ 16.

Visa was responsible for "routinely determin[ing] the amount(s) due and owing to Bank Melli" pursuant to Bank Melli's relationship with Visa. C.A. E.R. 227-228, ¶ 8. In April 1995, however, OFAC "informed Visa that, owing to sanctions imposed against the Republic of Iran, Visa could no longer accept transactions acquired by Bank Melli." *Ibid.* On July 4, 1995, Visa International informed Bank Melli that, because Bank Melli's accounts at Bank of New York had been frozen, Visa International transferred funds due to Bank Melli "to a separate settlement account." C.A. E.R. 248; *see also* C.A. E.R. 227-228, ¶ 8. "Shortly thereafter, all . . . transactions [acquired by Bank Melli] ceased, leaving certain sums owing to Bank Melli's settlement account." C.A. E.R. 228, ¶ 8. On March 15, 1996, "Visa International invested the $2,570,465.26 then due and owing to Bank Melli in securities issued by the Institutional Fiduciary

Trust." C.A. E.R. 228, ¶ 9. Thereafter, "[a]dditional funds due and owing to Bank Melli were invested in securities issued by the Institutional Fiduciary Trust up until January 9, 1998." C.A. E.R. 228, ¶ 10. On January 25, 2004, Bank Melli wrote to Visa International and admitted "[its] funds for acquiring transactions made by VISA cardholders in Iran from 6/6/95 till cease of operations are $11,587,627.02 which are held with [Visa International]." C.A. E.R. 249. The funds were held in an account named Visa International Special Account 5. C.A. E.R. 228, ¶ 11.

On September 29, 2010, Visa International completed an Annual Report of Blocked Property, as required by OFAC regulations. C.A. E.R. 250-252. In that Annual Report, Visa International reported to OFAC that it had blocked Visa International Special Account 5, which contained "Bank Melli funds." C.A. E.R. 252. Visa International reported that the value of the blocked account was $17,648,962.76. *Ibid.*; *see also* C.A. E.R. 253-255 (Annual Report of Blocked Property dated September 27, 2011). As of May 9, 2012, "the total amount due and owing (but not paid to) Bank Melli, including interest and return on investment, was $17,648,962.76." C.A. E.R. 228, ¶ 10. On that date, "through its counsel in this proceeding, Visa deposited the outstanding funds due and owing to Bank Melli, plus interest and any return on investment, in the Court's Registry amounting to $17,648,962.76." C.A. E.R. 228, ¶ 12; *see also* C.A. E.R. 305.

II. PROCEDURAL HISTORY

A. The Bennetts Commence an Action Against Visa and Visa Files an Interpleader Complaint

The Bennetts, one of the respondent judgment creditor groups, commenced this action on December 2, 2011, by filing a complaint against Visa Inc. and Franklin Resources, Inc. seeking the turnover of assets held by Visa and owned by Iran. C.A. E.R. 324-329. Visa thereafter filed an interpleader complaint against the Bennetts, the three other respondent judgment creditor groups (the Greenbaums, Acostas, and Heisers), and Bank Melli. C.A. E.R. 310-321. Visa and Franklin sought "a determination from the Court as to the rights, if any, of [the judgment creditors and Bank Melli] with respect to certain assets being held by Visa in a blocked account." C.A. E.R. 313, ¶ 1. Visa and Franklin also admitted that they were the "custodians of the[] Blocked Assets and claim[ed] no right, title or interest in the funds." C.A. E.R. 314, ¶ 4. They described the blocked assets as "funds due and owing by contract to Bank Melli pursuant to a commercial relationship with that bank." C.A. E.R. 317, ¶ 16. The Acostas, Greenbaums and Heisers all answered Visa's interpleader complaint and filed counterclaims asserting their own rights to the turnover of Bank Melli's assets. C.A. E.R. 459-471, 476-507.

On May 3, 2012, the district court granted Visa's motion to deposit $17,648,962.76, the then-present cash value of the Blocked Assets, in the court's registry. C.A. E.R. 309; *see also* C.A. E.R. 475, ¶¶ 4-6. A few days later, Visa wired $17,648,962.76 to the court, and the court confirmed that those funds were

received and deposited in the court's "Registry as of May 9, 2012." C.A. E.R. 305. "Visa claims no beneficial ownership in the $17,648,962.76 (and any interest thereon) in the Court's Registry." C.A. E.R. 228, ¶ 13.

B. The First Appeal and Petition for a Writ of Certiorari

On February 28, 2013, the district court denied Bank Melli's motion to dismiss the interpleader complaint. C.A. E.R. 274-292. Bank Melli took an immediate appeal, and the Ninth Circuit affirmed the district court's decision. Pet. App. 26a-51a. As relevant here, the Ninth Circuit held that, under the allegations in Visa's complaint, "Bank Melli has a contractual right to obtain payments from Visa and Franklin," and that "those assets are property of Bank Melli." *Id.* at 47a-48a. The court of appeals also rejected Bank Melli's argument that its blocked assets could not be executed on in partial satisfaction of judgments entered against Iran because Bank Melli and Iran are entitled to a presumption of juridical separateness under *Bancec*. The *Bancec* presumption did not apply, the Ninth Circuit held, because, in TRIA, "Congress clearly instructed courts to allow the instrumentality's blocked assets to be reached." *Id.* at 37a.

On September 12, 2016, Bank Melli filed a petition for a writ of certiorari presenting two questions for review, including, in part, whether TRIA "require[s] that the sovereign *own* the property in question." Bank Melli Pet. in *Bank Melli v. Bennett*, No. 16-344 (U.S. filed Sep. 12, 2016) (emphasis in original). The Court invited the Acting Solicitor General to file a brief expressing the views of the United States and, on May 23, 2017, the United States filed a brief

amicus curiae. On the question of TRIA's ownership requirement, the United States argued that the Court should not grant review of that question presented. Although the United States "agree[d] with petitioner" that TRIA requires ownership, it nevertheless urged the Court to deny review because "the court of appeals does not appear to have rejected such a requirement." U.S. Br. in *Bank Melli v. Bennett*, No. 16-344 (U.S. filed May 23, 2017). The Court held Bank Melli's petition for a writ of certiorari pending its consideration of Bank Melli's first question presented as part of *Rubin v. Islamic Republic of Iran*, No. 16-534, and, on March 5, 2018, shortly after deciding *Rubin*, the Court denied the petition.

C. The District Court Grants Visa's Motion for Discharge and the Judgment Creditors' Motion for Summary Judgment

Following issuance of the Ninth Circuit's Mandate and discovery, the district court "reiterate[d]" its prior determination "that interpleader relief is appropriate in this action and that Visa and Franklin have demonstrated their entitlement to discharge and other relief." C.A. E.R. 23. The court specifically held that "[t]he requirements for a valid interpleader are met." C.A. E.R. 23. In so ruling, the district court rejected Bank Melli's argument that Visa and Franklin were interested stakeholders, holding that "Visa and Franklin do not claim an ownership interest in the Blocked Assets and have taken no position as to how the funds should be apportioned among the various claimants." C.A. E.R. 25. Accordingly, the district court entered an Order finding that Visa and Franklin were "disinterested stakeholders" and discharging them "from all liability and obligation of

any nature to the Bennett Judgment Creditors, the Greenbaum and Acosta Judgment Creditors, the Heiser Judgment Creditors, Bank Melli, and any other person or entity with respect to any claims against the Blocked Assets." C.A. E.R. 23-25. The district court also awarded Visa and Franklin $324,130.60 in attorney fees, "to be paid from the interpleaded funds." C.A. E.R. 27.

After discharging Visa and Franklin, the district court then determined which of the parties had a right to receive the blocked assets. The judgment creditors were the only parties to affirmatively seek distribution of the blocked assets, and, on December 19, 2018, the district court granted their motion for summary judgment under TRIA. Pet. App. 4a-25a. The court rejected Bank Melli's argument that a triable issue of fact existed as to whether Visa owns the blocked assets. According to the district court, "a reasonable jury could not find that [the blocked assets] belong to Visa" because (i) "Bank Melli has asserted repeatedly that it owns the funds"; (ii) Visa "claims no beneficial ownership in the $17,648,962.76 (and any interest thereon) in the Court's Registry"; and (iii) the Ninth Circuit's prior decision rejected Bank Melli's legal argument that it did not own the blocked assets because "the money is only 'due and owing' and not currently in Bank Melli's possession." Pet. App. 14a-15a.

D. The Second Appeal

Bank Melli appealed again. In their briefs, the parties *agreed* that TRIA required ownership. *See* Br. for the Acosta, Greenbaum, Bennett, and Heiser Judgment Creditors in 19-15101, Dkt. 19 at 21 (9th Cir. filed May 29, 2019) ("The Judgment Creditors do

not dispute that TRIA's use of the word 'of' requires some ownership interest by the agency or instrumentality for an asset to be subject to execution."). Accordingly, Bank Melli argued to the Ninth Circuit that "this case presents only a straightforward summary judgment question: Does the record show beyond doubt that Bank Melli *owns* the funds that Visa held in a blocked account and then transferred to the district court's registry?" Reply Br. of Bank Melli in 19-15101, Dkt. 25 at 1 (9th Cir. filed June 19, 2019).

The Ninth Circuit affirmed. The court reiterated its prior holding "that, for blocked assets 'to be subject to execution or attachment' under §201(a) of [TRIA], 'the blocked assets must be "assets of" the instrumentality.'" Pet. App. 2a (quoting *Bennett v. Islamic Republic of Iran*, 825 F.3d 949, 963 (9th Cir. 2016)). Applying well established summary judgment standards and relying on "two reasons," the court of appeals rejected Bank Melli's argument "that a genuine issue of material fact exists as to whether it 'owns' the funds, because two of Visa's regulatory filings listed Visa as 'owner' of the funds." *Id.* at 3a. First, the court held, "that issue of fact is not material" because "Bank Melli does not dispute any of the facts alleged in the complaint, on which [the court] rested [its] holding that the blocked assets are property of Bank Melli" – i.e., that "Bank Melli has a contractual right to obtain payments from Visa." *Ibid.* Second, the court held that, "even if [it] were to consider the 'ownership' facts to be material, the documents on which Bank Melli relies do not create a genuine issue of fact" because, "[r]eading the documents as a whole and in context, they describe the accounts as 'hold[ing] Bank Melli funds.'" *Ibid.*

REASONS FOR DENYING THE WRIT

I. THE NINTH CIRCUIT DID NOT REJECT TRIA'S OWNERSHIP REQUIREMENT

Bank Melli's first question presented does not warrant review because it is based on a false premise. According to Bank Melli, the Court should grant review because the Ninth Circuit held "that ownership is 'not material,'" which, Bank Melli claims, is a holding that "conflicts with the positions of both the D.C. Circuit and the Executive Branch." Pet. 15. Bank Melli is wrong. The Ninth Circuit held that Bank Melli owned the blocked assets, not "that ownership is 'not material.'" Its actual holding does not conflict with the positions of either the D.C. Circuit or the Executive Branch.

A. The Ninth Circuit Did Not Hold that Ownership Is Immaterial

Contrary to Bank Melli's claim, the Ninth Circuit held that Bank Melli owned the blocked assets. In deciding the initial appeal in 2016, the Ninth Circuit "look[ed] to state law to determine *the ownership of assets* in this context," and it held that, "[u]nder California law, [the blocked] assets are property *of* Bank Melli and may be assigned to judgment creditors." Pet. App. 47a-48a (emphasis added). Then, in 2019, the Ninth Circuit reaffirmed its prior holding: "on the facts alleged [in the complaint and reviewed previously], the blocked assets in dispute are property *of* Bank Melli and so may be assigned to judgment creditors." *Id.* at 2a (emphasis added). The court observed that "the district court granted Plaintiffs' motion for summary judgment" because the district court held "that the funds that Visa deposited in the district court's registry are *Bank Melli's property*." *Id.*

at 2a-3a (emphasis added). And the court of appeals affirmed summary judgment because Bank Melli did not dispute the factual allegations the court relied on in 2016 when it held Bank Melli owned the blocked assets. *Ibid.*

Based on the above, Bank Melli's claim that the Ninth Circuit rejected TRIA's ownership requirement does not withstand scrutiny. Bank Melli ignores the Ninth Circuit's actual holdings (in 2016 and 2019) and twists the court's rejection of Bank Melli's attempt to raise an irrelevant factual dispute in opposing summary judgment. Specifically, in 2016, the court relied on the allegation that "Bank Melli has a contractual right to obtain payments from Visa and Franklin" in holding that "those assets are property of Bank Melli." *Id.* at 47a-48a. To raise a genuine issue of material fact, Bank Melli needed to dispute its contractual right to payment from Visa. Bank Melli did not do so. Instead, it "argue[d] that a genuine issue of material fact exists as to whether it 'owns' the funds, because two of Visa's regulatory filings listed Visa as 'owner' of the funds." *Id.* at 3a. The Ninth Circuit rejected this argument because "*that* issue of fact is not material." *Ibid.* (emphasis added). Regardless of how Visa described the funds in its regulatory filings, those descriptions did not challenge the undisputed fact that "Bank Melli has a contractual right to obtain payments from Visa." *Ibid.* Under the Ninth Circuit's interpretation of California law, Bank Melli's contractual right warranted summary judgment regardless of anything contained in the regulatory filings.

B. The Ninth Circuit's Decision Does Not Conflict with the D.C. Circuit's Decision in *Heiser*

The Ninth Circuit's decision is consistent with the D.C. Circuit's decision in *Heiser*. There, undisclosed originators of electronic fund transfers were attempting to complete those transfers to undisclosed beneficiaries through a series of debits and credits at various intermediary banks. 735 F.3d at 935-36.[2] Two of the intermediary banks—Wells Fargo and Bank of America—blocked the funds mid-transfer because the transfer instructions they received revealed "references to one of several designated Iranian banks." *Id.* at 936. "Because of those references, the banks froze the transfers and deposited the proceeds in separate accounts." *Ibid.* Accordingly, "[t]he money never reached the beneficiaries or their [Iranian] banks." *Ibid.* The D.C. Circuit held that the proceeds from the blocked transfers were not "assets of" the Iranian banks within the meaning of TRIA because the Iranian banks only "had a contingent future possessory interest in the funds." *Id.* at 937; *see also id.* at 938 ("If a debtor merely holds property as an intermediary for a third party, but does not own the property, then a creditor cannot attach it.").

Bank Melli has never argued, much less offered facts to show, that it has only a contingent future

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[2] "An electronic funds transfer is a series of transactions by which one party, called the 'originator,' transfers money through the banking system to another party, called the 'beneficiary.'" *Heiser*, 735 F.3d at 935. Intermediary banks are used to complete the transactions when the originator and beneficiary do not have accounts at the same bank or lending consortium. *See id.* at 935-36.

possessory interest in the blocked assets or that, if the blocked assets had been transferred to Bank Melli, it would have merely held those assets as an intermediary for a third party. Quite the opposite. The undisputed facts show that "Bank Melli has a contractual right to obtain payments from Visa," and "Bank Melli concedes that it has 'an interest in the funds' and a 'right to receive payment of the debt that Visa owes.'" Pet. App. 3a. To the extent the D.C. Circuit's analysis of ownership in the context of electronic fund transfers applies to Bank Melli's contractual relationship with Visa, the undisputed facts here render Bank Melli the owner of the blocked assets under the D.C. Circuit's rationale. According to the D.C. Circuit, the originator of the transfer owned the blocked funds because, "if the intermediary bank is prohibited from completing a transfer, then the originator is subrogated to its bank's right to a refund." 735 F.3d at 941. This subrogated right to a refund, the court held, "mean[t] that claims on an interrupted funds transfer ultimately belong to the originator, not the beneficiary or its bank." *Ibid.*

Under the *Heiser* court's rationale, Bank Melli owns the blocked assets because, like the originators in *Heiser*, Bank Melli has the "right to" payment of the blocked assets. Moreover, in *Heiser*, the intermediary banks, like Visa, "deposited the proceeds" from the blocked transfers "in separate accounts," and the court did not even entertain the notion that the listed owners of those accounts owned the blocked proceeds. *Id.* at 936. Thus, as the Ninth Circuit correctly held in 2016, "[e]ven if federal law applies, under the *Heiser* court's rationale, attachment and execution are allowed here because Bank Melli is the intended contractual beneficiary of the contested funds." Pet. App. 49a.

The fact that the Ninth Circuit relied on California law relating to the execution of money judgments does not mean, as Bank Melli suggests, that the court allowed execution on property Bank Melli does not own. *See* Pet. App. 48; Pet. 16-17. Under California law, judgment creditors are permitted to execute on payments owed to their judgment debtor because those assets belong to the judgment debtor. *See Weingarten Realty Investors v. Chiang*, 212 Cal. App. 4th 163, 167 (Ct. App. 2012) (under Cal. Civ. Proc. Code § 708.510(a), the judgment creditor, "as an assignee, 'stands in the shoes' of [the judgment debtor]"); *see also Casiopea Bovet, LLC v. Chiang*, 12 Cal. App. 5th 656, 663 (Ct. App. 2017) (reaffirming *Weingarten* and holding that "[t]he assignee's 'rights are no greater than those of the assignor'"). California law is consistent with *Heiser*. *See* 735 F.3d at 938 (interpreting TRIA consistently "with the established principle that 'a judgment creditor cannot acquire more property rights in a property than those already held by the judgment debtor'"). And the Court should not grant review just to assess the accuracy of the Ninth Circuit's application of California law.

Finally, the First and Second Circuits have not "similarly diverged over the scope of TRIA's 'assets of' requirement." Pet. 17. In *Villoldo v. Castro Ruz*, 821 F.3d 196 (1st Cir. 2016), the First Circuit held that Cuba's confiscatory law did not render U.S.-based assets owned by Cuban nationals "assets of" Cuba. *See id.* at 203-04. No court has held otherwise. As for the Second Circuit, it previously held that TRIA requires "a property interest," and that a blocked electronic fund transfer is only an asset of a foreign state if the foreign state or its agency or instrumentality "transmitted the [electronic fund transfer] directly to the bank where the [electronic fund transfer] is held

pursuant to the block." *Calderon-Cardona v. Bank of N.Y. Mellon*, 770 F.3d 993, 1002 (2d Cir. 2014). Like the D.C. Circuit, the Second Circuit reached this conclusion by relying on its interpretation of Article 4-A of the U.C.C. and, in particular, its determination that "the only party with a claim against an intermediary bank is the sender to that bank, which is typically the originator's bank." *Id.* at 1001.[3] Thus, the Second Circuit agreed with the D.C. Circuit that blocked proceeds from electronic fund transfers were "assets of" the entity "with a claim" to the blocked funds. *Ibid.*; *see also Heiser*, 735 F.3d at 941 (originator owned funds because it was "subrogated to its bank's right to a refund"). Although the Second Circuit held this entity was the originator's bank, not the originator itself, the D.C. Circuit has never ruled otherwise. *See Heiser*, 735 F.3d at 936 n.3 ("The question whether a judgment creditor can attach assets [for which an Iranian entity was an originator's bank] is not before the court."). In any event, neither the Second Circuit nor the D.C. Circuit held that the entity holding the transfer proceeds in a blocked account (Visa's equivalent) owned those proceeds.

[3] The Second Circuit applied New York's version of Article 4-A directly, whereas the D.C. Circuit adopted Article 4-A as the relevant rule of decision under federal law. *Compare Calderon-Cardona*, 770 F.3d at 1001-02 *with Heiser*, 735 F.3d at 940-41. Bank Melli does not argue that this split warrants review, presumably because the Ninth Circuit held that "[f]ederal law and California law are aligned." Pet. App. 48a.

C. The Ninth Circuit's Decision Does Not Conflict with the Executive Branch's Position on TRIA

Bank Melli's claim that the Ninth Circuit's decision conflicts with the Executive Branch's position on TRIA is wrong. In arguing otherwise, Bank Melli makes two points. First, Bank Melli argues that the United States has previously taken the position that TRIA requires ownership. *See* Pet. 18. Second, citing statements that pre-date TRIA's enactment, Bank Melli argues that "[t]he Executive Branch has repeatedly opposed using blocked assets to pay private plaintiffs," and claims that "the Ninth Circuit has greatly expanded the range of blocked assets subject to execution to pay private plaintiffs." *Id.* at 19. Both of Bank Melli's arguments are premised on its incorrect belief that the Ninth Circuit allowed the judgment creditors to execute on blocked assets that Bank Melli does not own. For the reasons discussed above, *see supra* at 12-17, that is not true.

D. This Case Is a Poor Vehicle to Review TRIA's Ownership Requirement

Even if the Court were to conclude that the Ninth Circuit's first holding conflicts with *Heiser*, the court's second holding makes this case a poor vehicle to review TRIA's ownership requirement. Bank Melli's entire case rests on its argument that the district court serving as fact finder could reasonably conclude that Visa (not Bank Melli) owns the blocked assets.[4] As the Ninth Circuit and the district court held, "the

[4] No party timely demanded a trial by jury, and, in any event, no right to a jury trial exists under TRIA. *See Havlish v. 650 Fifth Ave. Co.*, 934 F.3d 174, 183-84 (2d Cir. 2019).

documents on which Bank Melli relies do not create a genuine issue of fact" because, "[r]eading the documents as a whole and in context, they describe the accounts as 'hold[ing] Bank Melli funds.'" Pet. App. 3a; *see also id.* at 15a. Bank Melli ignores the district court's holding entirely, and it waves away the Ninth Circuit's holding as "flout[ing] settled summary judgment standards" and "so facially implausible that it smacks of an intentional effort to avoid this Court's review." Pet. 24. Bank Melli's unsubstantiated hyperbole aside, the Ninth Circuit's second holding renders the first question presented moot.

The Ninth Circuit did not "flout settled summary judgment standards." It is well settled that, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The Ninth Circuit applied that standard when it determined that the two reports Bank Melli relies on "do not create a genuine issue of fact." Pet. App. 3a; *see also id.* 15a (in ruling on summary judgment, the district court held: "in terms of summary judgment, there is no genuine dispute about the ownership of the funds, because a reasonable jury could not find that they belong to Visa"). The Ninth Circuit's holding was correct. The first report, dated September 29, 2010, identifies Visa as the owner of "Account No. 140-14000855747, asset summary number 03396229," and explicitly states that the "[a]ccount holds Bank Melli funds." *Id.* at 133a. Although the second report, dated September 27, 2011, does not contain the same reference to "Bank Melli funds," there is no dispute that the funds in both reports are the same. The account number, asset summary number, account value, and account name ("Visa International Special

Account 5") are identical. Pet. App. 137a. Under these circumstances, no reasonable fact finder could conclude that Visa owns assets it deposited in a blocked account, as required by federal law, when Visa itself identified those assets as "Bank Melli funds."

There are other factual issues this Court would need to address before ruling in Bank Melli's favor, which further demonstrates that this case is a poor vehicle to review TRIA's ownership requirement. The district court held that no genuine issue of fact exists on the question of ownership, in part, because "Bank Melli has asserted repeatedly that it owns the funds." *Id.* at 14a. That holding was correct. In 2004, before litigation on this issue, Bank Melli admitted that "our [i.e., Bank Melli's] funds . . . are held with [Visa]." C.A. E.R. 249. Post commencement of litigation, when arguing that Visa and Franklin's attorney fees should not be paid from the blocked assets, Bank Melli likewise admitted that it owned those funds, asserting that "any legal fees [Visa and Franklin] incurred were for their own benefit and should be borne by them – not by Bank Melli." C.A. E.R. 92. And, in arguing for a stay of the district court's judgment, Bank Melli asserted that it "will suffer irreparable harm absent a stay . . . [i]f the funds in the Court's registry are distributed to the hundreds of Judgment Creditors in this case [because], as a practical matter Bank Melli will never be able to recover them even if it prevails on appeal." C.A. E.R. 143. As the district court held, the implications from Bank Melli's assertions are obvious and indisputable—Bank Melli admittedly has an ownership interest in the blocked assets. Otherwise, Bank Melli would not be bearing the cost of Visa and Franklin's legal fees if those fees are paid from the blocked assets, nor would Bank Melli suffer

irreparable harm if it was unable to recover the blocked assets from the judgment creditors.[5]

Further, "Visa claims no beneficial ownership in the [blocked assets] (and any interest thereon) in the Court's Registry." C.A. E.R. 228, ¶ 13. The district court relied, in part, on Visa's disclaimer in granting the judgment creditors summary judgment, Pet. App. 14a, *and* in granting Visa and Franklin's motion for discharge because "Visa and Franklin are disinterested stakeholders" that have "no interest in the disposition of the fund," C.A. E.R. 25. Bank Melli did not appeal the discharge order, waiving its right to do so. *See McKay v. Ingleson*, 558 F.3d 888, 891 n.5 (9th Cir. 2009) (arguments not "raised clearly and distinctly in the opening brief [are] waived"). Thus, the Court would need to address the discharge order's impact on Bank Melli's claim that Visa actually owns the blocked assets because Bank Melli's identical claim was rejected in that order, which raises law of the case issues. *See United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) ("Under the 'law of the case' doctrine, 'a court is generally precluded from reconsidering an issue that has already been decided

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[5] On appeal, Bank Melli attempted to walk away from its admissions by claiming that they were not admissions of ownership but either "simply an argument that, if the funds were dissipated pending appeal, they would no longer be available as a source for Visa to pay Bank Melli the money it owes," or "merely an argument that, if the funds were used to pay Visa and Franklin's fees, they would not be available to pay Visa's debt to Bank Melli." Br. for Bank Melli in 19-15101, Dkt. 14 at 24-25 (9th Cir. filed Apr. 19, 2019). Neither excuse withstands even a cursory comparison to Bank Melli's actual assertions to the district court.

by the same court, or a higher court in the identical case.").

Similarly, neither Visa nor Bank Melli made a claim to distribution of the blocked assets on deposit in the court's registry, and, as Bank Melli concedes, "[i]f [the] Court reverses, the assets would remain blocked." Reply Br. of Bank Melli in 19-15101, Dkt. 25 at 18 (9th Cir. filed June 19, 2019). Accordingly, the Court will need to address whether the district court has the authority to not only reject Visa's disclaimer of ownership (having already relied on it in the discharge order), as it would need to do as a fact finder to rule in Bank Melli's favor, but then subsequently order Visa to accept a distribution of the blocked assets from the court's registry (even though Visa made no claim to those assets). Such an order would impose significant obligations on Visa, an unchallenged disinterested stakeholder, because it would force Visa to deposit the blocked assets in a new blocked account and then continue to hold the blocked assets indefinitely until such time as the blocking orders against Bank Melli are lifted and the assets can be transferred to Bank Melli in satisfaction of Visa's debt. *See, e.g.*, 31 C.F.R. § 560.213.

Finally, there are several other facts the Court would need to address before resolving whether the reports create a genuine issue of fact as to Visa's ownership of the blocked funds. Specifically, (1) Visa obtained a court order allowing it to deposit $17,648,962.76, the then-present cash value of the blocked assets, in the court's registry, C.A. E.R. 309; (2) Visa converted the securities previously held in the blocked account referenced in the reports to cash, C.A. E.R. 475, ¶¶ 4-6; and (3) Visa wired $17,648,962.76 to the court's registry, C.A. E.R. 305. Accordingly, Visa

is no longer in possession of the securities Bank Melli claims Visa owns. The Court would need to address the impact of Visa's actions on Bank Melli's claim because, even if it determines that a reasonable fact finder could conclude that Visa owned the securities referenced in the reports, that does not necessarily mean that a reasonable fact finder could conclude that Visa continues to own the different asset (cash) currently on deposit in the court's registry.[6]

II. THE NINTH CIRCUIT'S HOLDING THAT TRIA ABROGATES BANK MELLI'S SEPARATE JURIDICAL STATUS DOES NOT WARRANT REVIEW

In 2016, the Ninth Circuit became only the second court of appeals to analyze whether TRIA abrogated the *Bancec* presumption of juridical separateness ordinarily afforded to instrumentalities of terrorist

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[6] Bank Melli will likely argue that Visa's act of depositing the cash in the court's registry under Rule 67 of the Federal Rules of the Civil Procedure has no legal effect on Visa's alleged ownership because Rule 67 "cannot be used as a means of altering the contractual relationships and legal duties of the parties." *LTV Corp. v. Gulf States Steel, Inc. of Ala.*, 969 F.2d 1050, 1063 (D.C. Cir. 1992). Bank Melli's argument misses the mark. Visa converting the securities to cash and depositing the cash in the court's registry did not alter Visa and Bank Melli's contractual relationships and legal duties. Both before and after Visa wired the cash to the court's registry, Visa owed Bank Melli approximately $17 million. That Visa's conduct calls into question the inference Bank Melli would ask the fact finder to draw does not mean the conduct altered contractual relationships or legal duties. And, in any event, the critical fact was the liquidation of the securities to cash, which renders Bank Melli's argument about ownership immaterial regardless of Visa's subsequent act of wiring the cash to the court's registry under Rule 67.

parties in proceedings to enforce judgments entered against the terrorist parties themselves. The Ninth Circuit joined the Second Circuit in holding that TRIA *did* abrogate the *Bancec* presumption because TRIA allows judgment creditors to execute and attach "property held in the hands of an instrumentality of the judgment-debtor [(here, Iran)], even if the instrumentality is not itself named in the judgment." Pet. App. 36a (quoting *Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 50 (2d Cir. 2010)). Bank Melli sought certiorari review in *Weinstein* on the exact same question presented, the United States opposed Bank Melli's interpretation of TRIA, and the Court denied certiorari. *See Bank Melli Iran N.Y. Rep. Office v. Weinstein*, 567 U.S. 934 (2012); U.S. Br. in *Bank Melli Iran N.Y. Rep. Office v. Weinstein*, No. 10-947 at 11-19 (U.S. filed May 24, 2012); Bank Melli Pet. in *Bank Melli Iran N.Y. Rep. Office v. Weinstein*, No. 10-947 (U.S. filed Jan. 18, 2011). The result should be no different now. The Ninth and Second Circuits' holdings are correct, there is no split among the courts of appeals that needs to be resolved, and there are no other grounds warranting certiorari review.

A. The Ninth and Second Circuits' Holdings Are Correct

TRIA provides:

> Notwithstanding any other provision of law, . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605A or 1605(a)(7) [of the FSIA], the blocked assets of that terrorist party

> (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution.

TRIA § 201(a). As the Ninth and Second Circuits held, the statute "clearly differentiates" between the identity of the judgment debtor (the "terrorist party") and the identity of blocked assets that are subject to execution, which can be "the blocked assets of that terrorist party" or "the blocked assets of any agency or instrumentality of that terrorist party." *Weinstein*, 609 F.3d at 49; *see also* Pet. App. 37a ("Congress clearly instructed courts to allow the instrumentality's blocked assets to be reached.").

Instead of reading TRIA as a whole, Bank Melli isolates one word—"including"—and claims that through its use of that word, Congress intended to "merely clarif[y] that the statute reaches instrumentality assets when they are included within the sovereign's own assets—for example, because the sovereign and instrumentality are alter egos." Pet. at 29 (emphasis omitted). Bank Melli's interpretation of the statute is contrary to the plain meaning of the words Congress used in broadly defining TRIA's scope. The Court should not grant review of the second question presented merely to affirm that the Ninth and Second Circuits correctly interpreted TRIA.

TRIA applies to "the blocked assets of *any* agency or instrumentality of that terrorist party." (Emphasis added.) As this Court has recognized, "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997); *Dep't of Housing &*

Urban Dev. v. Rucker, 535 U.S. 125, 131 (2002). Where, as here, Congress did not "add any language limiting the breadth of that word," the Court "must read [TRIA] as referring to all [the blocked assets of agencies or instrumentalities of that terrorist party]," not "some subset" of those blocked assets. *Gonzales*, 520 U.S. at 5 (the phrase "any other term of imprisonment" refers "to all 'term[s] of imprisonment,' including those imposed by state courts"); *see also Rucker*, 535 U.S. 130-31 (the phrase "any drug-related criminal activity" is not limited to "just drug-related activity that [a person] knew, or should have known, about"); *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 635 (2012) (observing the use of the word "['any'] can broaden to the maximum"). Bank Melli's interpretation ignores the word "any" and rewrites TRIA to only apply to a miniscule number of blocked assets belonging to a select number of agencies or instrumentalities and only then based on a case-by-case analysis of *Bancec*'s applicability.[7]

Other words Congress used in TRIA confirm the breadth of its scope. TRIA applies "notwithstanding any other provision of law." This Court has recognized

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[7] This is not a situation where defining "any agency or instrumentality of that terrorist party" to mean all such agencies and instrumentalities would render any "transformative" instead of merely "expansive." *Freeman*, 566 U.S. at 635. In *Freeman*, the Court rejected an interpretation of "portion, split, or percentage" that was contrary to "the words' common 'core of meaning'" regardless of the fact that "the phrase is preceded by 'any'" because "any" is not "transformative." *Ibid.* Unlike in *Freeman*, the judgment creditors are not trying to transform the plain meaning of "agency or instrumentality of that terrorist party" because there is no dispute that Bank Melli *is* an instrumentality of a terrorist party. There is nothing "transformative" about treating it as such.

that "similar 'notwithstanding' language" is generally understood "to supersede all other laws." *Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18 (1993). And TRIA applies "in *every* case in which a person has obtained a judgment against a terrorist party." (Emphasis added.) "Every" is defined as "without exception." *Webster's Third New International Dictionary* 788 (2002). Bank Melli's interpretation conflicts with Congress's word choice because, under Bank Melli's interpretation, TRIA would apply subject to the *Bancec* presumption, instead of notwithstanding that presumption, and it would only apply in a limited number of cases, instead of in "every case."

Even Congress's use of the word "including," relied on so heavily by Bank Melli, contradicts Bank Melli's restrictive interpretation. "To 'include' is to 'contain' or 'comprise as part of a whole.'" *Chickasaw Nation v. United States*, 534 U.S. 84, 89 (2001); *see also Montello Salt Co. v. Utah*, 221 U.S. 452, 465 (1911). By providing that "the blocked assets of that terrorist party" includes "the blocked assets of any agency or instrumentality of that terrorist party," Congress indicated that all blocked assets of a terrorist party's agencies and instrumentalities are contained in or comprised as part of the blocked assets of the terrorist party itself.

Bank Melli's attempt to use "including" to *narrow* the scope of blocked assets subject to execution under TRIA is contrary to that word's plain meaning and finds no support in either *Montello Salt Co.* or *Chickasaw Nation*. In *Montello Salt Co.*, the Court interpreted a statute granting Utah "one hundred and ten thousand acres of land, to be selected and located [by Utah] as provided [elsewhere in the statute], and including all saline lands in said state." 221 U.S. at

459. The issue was whether the phrase "all saline lands in said state" literally granted Utah *all* the saline lands in the state, or whether the statute merely permitted Utah to "select[] . . . such lands as part of the 110,000 acres." *Ibid.* The Court applied the latter interpretation because the use of including meant "all saline lands" were "to be contained in or comprise a part of the 110,000 acres of land" Utah could select. *Id.* at 465. There was no question that Utah could select saline lands as part of the 110,000 acres granted to it because those lands were statutorily defined as being contained in and comprised of the lands Utah was authorized to select. The only question was whether Utah had a right to those lands independently of selecting them as part of the grant. No one is suggesting that the judgment creditors can execute on Bank Melli's blocked assets independently of seeking to enforce their judgments against Iran. But, when enforcing judgments against Iran, the blocked assets of Bank Melli, like the saline lands in Utah, are contained in and comprised of the blocked assets of Iran.

In *Chickasaw Nation*, the Court refused to give an "including" clause its plain meaning because it held that Congress committed "a drafting mistake" when it "fail[ed] to delete an inappropriate cross-reference in a bill that [it] later enacted into law." 534 U.S. at 91. There, the parenthetical "including" clause was an "illustrative list" of Internal Revenue Code provisions "concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations." *Id.* at 87. Because one of the cited provisions had "nothing to do with 'reporting and withholding,'" the Court held it was "simply a bad example" and read it out of the statute. *Id.* at 88, 90. Unlike in *Chickasaw Nation*, there is no basis for the

Court to treat TRIA's parenthetical as a drafting mistake, deprive the parenthetical of its plain meaning, and reduce it to a nullity.

B. The Ninth and Second Circuits' Decisions Do Not Conflict with *Bancec* or the Treaty of Amity

Review is not warranted to resolve alleged conflicts between the Ninth and Second Circuits' interpretation of TRIA, on the one hand, and *Bancec* and the Treaty of Amity, on the other, because no conflicts exist. The Court's holding in *Bancec* relied, in part, on "Congress['s] clearly expressed . . . intention [in the FSIA] that duly created instrumentalities of a foreign state are to be accorded a presumption of independent status." 462 U.S. at 627. The Court recognized that Congress is free to statutorily override whatever presumption of separateness instrumentalities are otherwise afforded, but, in the context of interpreting the FSIA, it determined that Congress had not done so. TRIA was enacted almost 20 years after *Bancec*. Congress's clearly articulated intent in TRIA to override an instrumentality's separateness from a terrorist party cannot "conflict" with *Bancec*'s holding or with the *Bancec* Court's consideration of prudential reasons supporting that holding.

As for the Treaty of Amity, Bank Melli's claim that the Ninth and Second Circuits' interpretation of TRIA conflicts with certain provisions of the Treaty ignores TRIA's "notwithstanding clause," which signals that TRIA "supersede[s] all other laws," including the Treaty of Amity. *Cisneros*, 508 U.S. at 18 (noting that "[a] clearer statement is difficult to imagine"). Thus, even assuming the Ninth and Second Circuits'

interpretation of TRIA conflicts with the Treaty of Amity, TRIA prevails. *See Breard v. Greene*, 523 U.S. 371, 376 (1998) ("We have held 'that an act of Congress . . . is on full parity with a treaty, and that when a statute which is subsequent in time is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null.'").

Regardless, the Ninth and Second Circuits' interpretation of TRIA does not conflict with any provisions of the Treaty. Bank Melli's primary argument is that the Ninth and Second Circuits failed "to respect the 'juridical status' of companies organized under Iranian law." Pet. 26. Bank Melli does not, however, explain how application of federal law that applies equally to all agencies or instrumentalities of terrorist parties constitutes disrespect to Bank Melli's juridical status.[8] *See Todok v. Union State Bank of Harvard, Neb.*, 281 U.S. 449, 454-55 (1930) (holding that "the general purpose of treaties of amity and commerce is to avoid injurious discrimination in either country against the citizens of the other," not "to place an alien [beneficiary of the treaty] on a better footing than that of a citizen of the state"); *see also Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185-86 (1982) ("The primary purpose of the corporation provisions of [Friendship, Commerce and Navigation Treaties the United States executed with multiple foreign countries] was to give

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[8] The term "terrorist party" is defined to include "a terrorist, a terrorist organization . . . , or a foreign state sponsor of terrorism." TRIA does not single out Bank Melli or other Iranian companies. It only applies to Iranian agencies and instrumentalities because Iran has been designated as a state sponsor of terrorism continuously since 1984. *See* 49 Fed. Reg. 2836-02 (Jan. 23, 1984).

corporations of each signatory legal status in the territory of the other party, and to allow them to conduct business in the other country on a comparable basis with domestic firms.").

Bank Melli's conflict argument fares no better with the other Treaty provisions it string cites. *See* Pet. 26. Bank Melli has been afforded "access to courts" on terms equally applicable to all other litigants, as evidenced by the fact that it has been litigating its claims with the judgment creditors for almost a decade. Congress's decision to disregard the separate juridical status between a terrorist party and its agencies and instrumentalities is neither unreasonable nor discriminatory as applied to Bank Melli (or any other non-Iranian agency or instrumentality of a terrorist party). And the United States is under no obligation under international law or otherwise to "protect" Bank Melli's property from application of generally applicable federal law.

More fundamentally, Bank Melli's reliance on the Treaty of Amity is academic. In 2019, the United States officially withdrew from the Treaty. *See* Michael R. Pompeo, Sec'y of State, U.S. Dep't of State, *Remarks to the Media* (Oct. 3, 2018), https://www.state.gov/remarks-to-the-media-3/ ("Remarks"). There is no suggestion that Congress was considering the Treaty when it enacted TRIA, nor would such an inference make sense. Congress wanted "to deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties." H.R. Rep. No. 107-779, at 27 (2002). The Court should not assume that Congress

silently intended to limit that comprehensive solution to adhere to a decades-old treaty, signed with an overthrown Iranian regime, that the United States now acknowledges it should have terminated "39 years" ago. Remarks, *supra*; *see also Marks v. United States*, 161 U.S. 297, 305 (1896) (refusing to apply treaty where signatory "was not, at the time of [interpretation] in amity with the United States").

Bank Melli cannot salvage this argument by repackaging it as one based on "[t]he canon that statutes should be construed to be consistent with international law and treaty obligations." Pet. 30. Bank Melli ignores the "cardinal canon" of construction: "[A] legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). For the reasons discussed above, *see supra* at 24-29, the plain text of TRIA demonstrates that the blocked assets of all ("any") instrumentalities of a terrorist party are contained in or comprised as part of ("including") the blocked assets of that terrorist party. There is no ambiguity in the words "including" or "any," nor is there any ambiguity as to whether TRIA prevails over any inconsistent provision of law. The Ninth and Second Circuits correctly applied TRIA's plain terms. Bank Melli's attempt to create ambiguity through a tortured reading of TRIA does not warrant certiorari review. *See Conn. Nat'l Bank*, 503 U.S. at 254 ("When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'").

For the same reason, the alleged "specter of liability the Ninth Circuit's decision creates" for the United States in pending proceedings in the International Court of Justice does not warrant granting review of

the second question presented. Pet. 32. Congress gave the clear directive Bank Melli claims is missing.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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