No. 23-_____

IN THE

Supreme Court of the United States

ROBERT BARTLETT, ET AL.

Petitioners,

v.

DR. MUHAMMAD BAASIRI AND

JAMMAL TRUST BANK SAL,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

C. Tab Turner
TURNER & ASSOCIATES, P.A.
4705 Somers Avenue
North Little Rock, AR 72216

John M. Eubanks
MOTLEY RICE LLC
28 Bridgeside Blvd.
Mount Pleasant, SC 29464

Michael Radine
Counsel of Record
Gary M. Osen
Ari Ungar
Dina Gielchinsky
OSEN LLC
190 Moore Street
Suite 272
Hackensack, NJ 07601
(201) 265-6400
mradine@osenlaw.com

Counsel for Petitioners

QUESTION PRESENTED FOR REVIEW

In *Dole Food Co. v. Patrickson*, this Court held that a party's status as an instrumentality of a foreign state under 28 U.S.C. § 1603(b)(2) of the Foreign Sovereign Immunities Act "is determined at the time of the filing of the complaint." 538 U.S. 468, 480 (2003). It made clear that this means that changes in instrumentality status occurring after filing do not change the legal basis for claims against such an entity, under "the 'longstanding principle that "the jurisdiction of the Court depends upon the state of things at the time of the action brought."'" *Id.* at 478 (quoting *Keene Corp. v. United States*, 508 U.S. 200, 207 (1993)).

Here, Respondent Jammal Trust Bank was a private Lebanese financial institution when Petitioners sued it for supporting Hezbollah, but it claimed it became an instrumentality of Lebanon when it later entered state-supervised liquidation (a result of its designation as a "Specially Designated Global Terrorist" by the U.S. Treasury Department). The Second Circuit, however, held that instrumentality status could be determined "after a suit is filed" notwithstanding *Dole Food*, because Supreme Court "opinions are not statutes." Pet. App. 22a, 33a. It also concluded that other circuits' decisions confirming that *Dole Food* applied to post-filing changes in instrumentality status were wrongly decided, *id.* at 27-28a, 29a n.3, 35a-36a, creating a sharp circuit split.

The question presented is:

Whether a defendant's status as an instrumentality of a foreign state under 28 U.S.C. § 1603(b)(2) "is determined at the time of the filing of the complaint," as this Court held in *Dole Food*, or at any time "after a suit is filed," as the Second Circuit held below.

PARTIES TO THE PROCEEDING

Petitioners are Robert Bartlett, Terrel Charles Bartlett, Linda Jones, Shawn Bartlett, Maxine E. Crockett, individually and on behalf of the Estate of Ricky Leon Crockett, Marvise L. Crockett, Tracie Arsiaga, individually and on behalf of the Estate of Robert R. Arsiaga, Sylvia Macias, Gilbert Arsiaga, Jr., George Arsiaga, Matthew Arsiaga, Angel Munoz, Robi Ann Galindo, Patricia Arsiaga on behalf of the Estate of Jeremy Arsiaga, Cedric Hunt, Steven Greenwood, Stephen W. Hiller, individually and on behalf of the Estate of Stephen Dustin Hiller, Jeremy Church, Sandra Hankins, Ingrid Fisher, individually and on behalf of the Estate of Steven Scott Fisher, Kristin Walker, Steven T. Fisher, Kathleen Gramkowski, Mary Carvill, Peggy Carvill-Liguori, individually and on behalf of the Estate of Frank T. Carvill, Daniel Carvill, Pamela Adle-Watts, individually and on behalf of the Estate of Patrick Adle, John Watts, Gloria Nesbitt, individually and on behalf of the Estate of Deforest L. Talbert, D.J.H., a minor, Chiquita Talbert, Tawanna Talbert Darring, Latasha Marble, James Talbert, Miranda Pruitt, Velina Sanchez, individually and on behalf of the Estate of Moses Rocha, Aloysius Sanchez, Sr., Rommel Rocha, Phillip Sanchez, Aloysius Sanchez, Jr., Gloria P. Reynoso, individually and on behalf of the Estate of Yadir G. Reynoso, Jasmin Reynoso, Patricia Reynoso, Jose Reynoso, Ashley Wells Simpson, individually and on behalf of the Estate of Larry Lloyd Wells, Chad Wells, Crystal Stewart, Chasity Wells-George, Candice Machella, Billy Doal Wells, Hope Elizabeth Veverka, Donna Jean Heath, individually and on behalf of the Estate of David Michael Heath, Lola Jean Modjeska, John David Heath, Olga Lydia Gutierrez, individually and on behalf of the Estate of

Jacob David Martir, Ismael Martir, Victoria M. Foley, individually and on behalf of the Estate of Alexander Scott Arredondo, Nathaniel Foley, Michael Scott Dewilde, Steven Morris, Danielle Dechaine-Morris, Nicholas Morris, K.M., a minor, Monica Arizola, Roberto Aaron Arizola, Roberto Arizola, Sr., Cecilia Arizola, Danny Arizola, Ricardo Arizola, Greg Klecker, Raymond Montgomery, Patricia Montgomery, Bryan Montgomery, Tony Wood, Joedi Wood, Adam Wood, Megan Wood, Lisa Ramaci, individually and on behalf of the Estate of Steven Vincent, Isabell Vincent, Estate of Charles Vincent, Maria Vidal, Tamara Hassler, Richard E. Hassler, Joanne Sue Hassler, Scott Huckfeldt, Kathryn Huckfeldt, Alisha Huckfeldt, Matthew Huckfeldt, Timothy Newman, Padraic J. Newman, Amenia Jonaus, individually and on behalf of the Estate of Jude Jonaus, Gernessoit Jonaus, Daphnie Jonaus Martin, Ricky Jonaus, Marckendy Jonaus, Claire Jonaus, Sharen Jonaus Martin, Masina Tuliau, Gwendolyn Morin-Marentes, individually and on behalf of the Estate of Steve Morin, Jr., Esteban Morin, Audelia Morin, Estavan Morin, Sr., Brianna Renee Navejas, Margarito A. Martinez, Jr., Amy Lynn Robinson and Floyd Burton Robinson, individually and on behalf of the Estate of Jeremiah Robinson, Jacob Michael Robinson, Lucas William Robinson, Alvis Burns, Jodee Johnson, James Higgins, Wendy Coleman, Brian Radke, Nova Radke, Steven Vernier, Jr., Clifford L. Smith, Jr., individually and on behalf of the Estate of Kevin J. Smith, Georgianna Stephens-Smith, Corena Martin, Adam Mattis, Terrance Peterson, III, Petra Spialek, David G. Cardinal, Jr., individually and on behalf of the Estate of Anthony Cardinal, Richelle Hecker, individually and on behalf of the Estate of William F. Hecker, III, Victoria Hecker, W.H.,

a minor, C.H., a minor, William F. Hecker, Jr., Nancy Hecker, John D. Hecker, Robert F. Mariano, individually and on behalf of the Estate of Robbie M. Mariano, Debra Mariano, Bobbie D. Mariano, Vickie Michay White, individually and on behalf of the Estate of Stephen J. White, Gladys E. Reyes Centeno, Veronica Lopez Reyes, individually and on behalf of the Estate of Jason Lopez Reyes, Zoraima Lopez, Jennifer Link, Sharon Johnston, Tara Hutchinson, Kenny Lee, Tom B. Lee, Ling P. Lee, Deborah Noble, individually and on behalf of the Estate of Charles E. Matheny, Iv, David Noble, Charles E. Matheny, III, Judy Collado, Kaiya Collado, Justin Waldeck, Tanja Kuhlmeier, individually and on behalf of the Estate of Daniel Kuhlmeier, K.K., a minor, Robert J. Kuhlmeier, Theresa A. Kuhlmeier, Theresa Ann Kuhlmeier, Edward Kuhlmeier, Thomas Kuhlmeier, John Kuhlmeier, Robert W. Kuhlmeier, Patrick Farr, individually and on behalf of the Estate of Clay P. Farr, Silver Farr, Carrol Alderete, Anthony Alderete, Chad Farr, Rayanne Hunter, individually and on behalf of the Estate of Wesley Hunter, W.H., a minor, T.H., a minor, Fabersha Flynt Lewis, Christopher Anthony Bershefsky, Lorenzo Sandoval, Sr., individually and on behalf of the Estate of Israel Devora-Garcia, Lorenzo Sandoval, Jr., Adrian Sandoval, Rosa Esther Sandoval, Henry J. Bandhold, Sr., individually and on behalf of the Estate of Scott Bandhold, Afonso Bandhold, Mariana Bandhold, H. Joseph Bandhold, Donald C. Bandhold, Joshua P. Stein, Nicole B. Stein, R.M.S., a minor, J.S.S., a minor, Jesse P. Stein, Michael Paul Alan Shelswell, Erik Roberts, E.C.R., a minor, Robin Roberts, James Craig Roberts, Cara Roberts, Colin Roberts, Luke Murphy, Willette Murphy, Shane Irwin, T.R., a minor, Helen Marguerite Irwin, Nicole Irwin,

Maria Gomez, individually and on behalf of the Estate of Jose Gomez, John Dana Greer, Stephanie C. Sander, Christopher D. Greer, Joseph L. Greer, Carl K. Greer, Christopher Joyner, Anne P. Joyner, Necole Dunlow Smith, Michael R. Mills, M.R.M., a minor, M.R.M., a minor, Eddie Jo Palinsky, individually and on behalf of the Estate of Jerry A. Palinsky, Jr., Jerry A. Palinsky, II, Adina Palinsky, Jerry A. Palinsky, Sr., Kathleen Hoke, Joel Palinsky, Karaleen Herb, Eric Brandon Stoneking, Carrie Sue Stoneking, Faith Renee Stoneking, Nanette Saenz, individually and on behalf of the Estate of Carlos N. Saenz, Juan Saenz, Joaqina Saenz Chorens, Luz Maria Estrada-Pulido, Frances Catherine Castro, Elva Espinoza, Amanda Vacho on behalf of the Estate of Nathan J. Vacho and on behalf of E.V., a minor, Bayli Vacho, individually and on behalf of the Estate of Nathan J. Vacho, John Vacho, individually and on behalf of the Estate of Carol Vacho, Ashley Vacho Leslie, Ronald Veverka, Carol Polley, Keith Veverka, Douglas Veverka, Sandra Soliday, Jeanette West, individually and on behalf of the Estate of Robert H. West, Shelby West, Donna Engeman, individually and on behalf of the Estate of John W. Engeman, Shannon Shumate, Lauren Shumate, L.S., a minor, L.S., a minor, Nicole DiCenzo, individually and on behalf of the Estate of Douglas Andrew DiCenzo, D.D., a minor, Larry DiCenzo, Kathy Crane, Johnny Allen Blair, individually and on behalf of the Estate of Robert Edward Blair, Charlee Blair Webb, Suzzettee Lawson, individually and on behalf of the Estate of Isaac S. Lawson, C.L., a minor, Arne Eastlund, Tina Eastlund, Sven Eastlund, Taylor Eastlund, Elizabeth Jo Eastlund, Matthew Adamson, R.A., a minor, Kathy Adamson, Richard Adamson, Christopher Adamson, Jeffrey Adamson, Justin Adamson,

James Shepard, John P. Sklaney, III, Kathy Crabtree, individually and on behalf of the Estate of Daniel Crabtree, M.C., a minor, Judy Ann Crabtree, Ronald Wayne Crabtree, Debra Wigbels, Ronald William Crabtree, Judy Huenink, individually and on behalf of the Estate of Benjamin J. Slaven, Sean Slaven, Chastity Dawn Laflin, Nicole Landon, Misti Fisher, Steven J. Friedrich, A.F., a minor, Philip Alan Derise, Norma Alicia Contreras, Jonathan Contreras, Sr., Carlos Contreras, Cesar Contreras, Hernan Contreras, Noel Contreras, Dannyel Contreras, Sharon M. Pugh, individually and on behalf of the Estate of Kenneth Irving Pugh, Britney E. Carter, Alicia Pearson, Daniel J. Evans, Justin Evans, Kevin Graves, Nicholas Gene Koulchar, Michael Koulchar, Suheil Campbell, individually and on behalf of the Estate of Edgardo Zayas, Alexander Zayas, A.Z.-C., a minor, Cathy Andino, individually and on behalf of the Estate of Edwin A. Andino, Jr., Luis Junior Puertas, Lidia Sullivan, Gabriela D. Puertas Vergara-Donoso, Christopher Michael Melendez, Narciso Melendez, Christina Melendez, Laurel Barattieri, individually and on behalf of the Estate of Guy Barattieri, Patricia Wheatley, Rebecca Barattieri, Nicole Barattieri, Gina Tesnar, Gloria L. Magana, individually and on behalf of the Estate of Kenny Frances Stanton, Jr., Mario Stanton, Brandie Stanton, Terrymarie Stanton, Fred Frigo, Nannette Bryne-Haupt, Lynn Forehand, individually and on behalf of the Estate of Ryan Haupt, Lance Haupt, Rhonda Haupt, Tifany Thompson, Sabrina Cumbe, William Witte, individually and on behalf of the Estate of Kevin M. Witte, Michael Mock, Tammy Dorsey, Eric Phye, James Gmachowski, Constance Brian, individually and on behalf of the Estate of Brian Brian, Amber Hensley, David W. Haines, Dawn Haines, Colin

Haines, Mackenzie Haines, Karar Alabsawi, Michelle Taylor, individually and on behalf of the Estate of David G. Taylor, Jr., J.T., a minor, Phyllis Taylor, John Taylor, Brian G. Taylor, Judas Recendez, Tyler Norager, Shalee Norager, M.N., a minor, Harry Riley Bock, Jill Ann Bock, Mariah Simoneaux, Kousay Al-Taie, individually and on behalf of the Estate of Ahmed Al-Taie, Nawal Al-Taie, Bashar Al-Taie, Hathal K. Taie, Lawrence Kruger, individually and on behalf of the Estate of Eric Kruger, Carol Kruger, C.K., a minor, E.K., a minor, Douglas Kruger, Kristy Kruger, Jackie Farrar-Finken, individually and on behalf of the Estate of Paul Finken, Emilie Finken, C.F., a minor, J.F., a minor, Stephen Finken, Alan Finken, Richard Finken, David Finken, Mark Finken, Peter Finken, Jean Pruitt, Joan Henscheid, Lori Ann McCoy, individually and on behalf of the Estate of Gregory McCoy, L.M., a minor, T.M., a minor, Glenn Michael Cox, Sangsoon Kim, Seop Kim, individually and on behalf of the Estate of Jang Ho Kim, Michelle Kim, Kurtiss Lamb, Francis L. Coté, Nancy Coté, Christopher Coté, Samantha Dunford, Maximillian Shroyer, Casey Reuben, Bree Reuben, Patrick Reuben, Jackie Stewart, Mark Munns, Crista Munns, Sharon Debrabander, Dennis Debrabander, Nicole Debrabander, Joella Pratt, Helen Fraser, Richard Fraser, individually and on behalf of the Estate of David M. Fraser, Tricia English, Nathan English, N.C.E., a minor, A.S.E., a minor, Todd Daily on behalf of the Estate of Shawn L. English, Joshua Starkey, Brent Hinson, William Hinson, Fran Hinson, Hilary Westerberg, Linda Gibson, John Gibson, Stephanie Gibson Webster, Sean Elliott, Travis Gibson, William Ronald Little, Brenda Little, individually and on behalf of William Ronald Little, Jr., Kira Sikes, Joshua Denman, Randolph

Delbert Nantz, Joshua Ryan Nantz, Lori Ann McCormick, individually and on behalf of the Estate of Clinton McCormick, Deborah Beavers, Denise Vennix, individually and on behalf of the Estate of Alan R. Blohm, Jeremy Blohm, individually and on behalf of the Estate of Chris Blohm, Kiana Blohm, James Smith, Megan Mauk, Robert Vaccaro, Joanne Gutcher, Charlotte Freeman, individually and on behalf of the Estate of Brian S. Freeman, G.F., a minor, I.F., a minor, Kathleen Snyder, Randolph Freeman, Kathaleen Freeman, Albert Snyder, Richard Lee, Danny Chism, Elizabeth Chism, individually and on behalf of the Estate of Johnathan B. Chism, Vanessa Chism, Julie Chism, Russell J. Falter, individually and on behalf of the Estate of Shawn P. Falter, Linda Falter, Marjorie Falter, Russell C. Falter, John Sackett, Jason Sackett, Michael Lucas, Marsha Novak, David Lucas, Tim Lucas, Andrew Lucas, Shannon Millican, individually and on behalf of the Estate of Johnathon M. Millican, Paul Mitchell Millican, Noala Fritz, individually and on behalf of the Estate of Jacob Fritz and the Estate of Lyle Fritz, Daniel Fritz, Ethan Fritz, Billy Wallace, Stefanie Wallace, Austin Wallace, Devon Wallace, C.W., a minor, Evan Kirby, Marcia Kirby, Steven Kirby, Johnny Washburn, Marvin Thornsberry, Cynthia Thornsberry, A.B., a minor, M.T., a minor, N.T., a minor, L.T., a minor, Tracy Anderson, Jeffrey Anderson, Adam G. Stout, Andrew Jeffrey Anderson, Elizabeth Lynn Islas, Anastasia Fuller, individually and on behalf of the Estate of Alexander H. Fuller, A.F., a minor, Samantha Balsley, individually and on behalf of the Estate of Michael C. Balsley, L.R.-W., a minor, Heath Damon Hobson, Jodi Michelle Hobson, M.D.H., a minor, Deadra Garrigus, individually and on behalf of the Estate of Mickel D. Garrigus,

David Garrigus, Nichole Garrigus, Kyla Ostenson, Matthew Garrigus, Shawn Ryan, Sharon Y. Dunn Smith, individually and on behalf of the Estate of Terrence Dunn, Dennis Dunn, Richard Landeck, Victoria Landeck, Lavonna Harper, Melba Anne F. Harris, Paul D. Harris, Hyunjung Glawson, individually and on behalf of the Estate of Curtis E. Glawson, Yolanda M. Brooks, Curtis Glawson, Sr., Kierra Glawson, Sabrina Glawson on behalf of the Estate of Cortez Glawson, Jazmon Reyna, Ryan Sabinish, R.J.S., a minor, S.J.S., a minor, Carrie Thompson, individually and on behalf of the Estate of Sean M. Thomas, A.T., a minor, Daniel Thomas, Sr., Diana Thomas, Daniel Thomas, Jr., Kelly Gillis, Melinda Flick, Ann Christopher, individually and on behalf of the Estate of Kwesi Christopher, Nancy Fuentes, individually and on behalf of the Estate of Daniel A. Fuentes, Armando Fuentes, Julio Fuentes, Tatyana Fuentes, Emma McGarry, D.J.F., a minor, John Kirby, Michael Murphy-Sweet, Elizabeth Murphy-Sweet, Anona Gonelli, Lindsay Young, individually and on behalf of the Estate of Brett A. Walton, S.W., a minor, Leasa Dollar, Eugene Delozier, Michelle Klemensberg, individually and on behalf of the Estate of Larry R. Bowman, Scott Lilley, Frank Lilley, Jolene Lilley, Matthew Lilley, Ava Tomson, individually and on behalf of the Estate of Lucas V. Starcevich, Richard Tomson, Bradley Starcevich, Glenda Starcevich, Ariana Starcevich, Trenton Starcevich, Samantha Tomson, Andrew Tomson, Jared S. Stevens, Susan Maria Doskocil Hicks, individually and on behalf of the Estate of Glenn Dale Hicks, Jr., Glenn Dale Hicks, Sr., David James Hicks, John Christopher Hicks, S.L.H., a minor, Karen Funcheon, individually and on behalf of the Estate of Alexander J. Funcheon, Robert Funcheon, Dwight

Martin, individually and on behalf of the Estate of Jay E. Martin, Dove Deanna Adams, Raven Adams, Lark Adams, Holly Burson, individually and on behalf of the Estate of Jerome Potter, Nancy Umbrell, individually and on behalf of the Estate of Colby J. Umbrell, Mark Umbrell, Casey Boehmer, Jeremy D. Smith, Daniel Dixon, individually and on behalf of the Estate of Ilene Dixon and the Estate of Robert J. Dixon, Jessica Hubbard on behalf of the Estate of Robert J. Dixon, M.R., a minor, L.R., a minor, David Dixon, Daniel Austin Dixon, Gretchen Lang, Rebecca J. Oliver, Daniel C. Oliver, Kimberlee Austin-Oliver, Tiffany M. Little, individually and on behalf of the Estate of Kyle A. Little, K.L., a minor, Shelley Ann Smith, Dakota Smith-Lizotte, Shyanne Smith-Lizotte, Erin Lee Ructor, individually and on behalf of the Estate of Blake Stephens, Trent Stephens, Kathleen Stephens, Derek Stephens, Rhett Stephens, Summer Stephens, Brittani Hobson, Cynthia Conner, William Farrar, Sr., individually and on behalf of the Estate of William A. Farrar, Joshua Brooks, Joyce Brooks, Danny Brooks, Daniel Tyler Brooks, Delilah Brown, individually and on behalf of the Estate of Scott J. Brown, Tonya K. Dressler, Ardith Cecil Dressler, Melissa Dressler, Tanya Suzzette Dressler, Daniel Dressler, James Dressler, Elizabeth Masterson, individually and on behalf of the Estate of Joshua D. Brown, Marian Brown, Wayne Brown, Danielle Sweet, individually and on behalf of the Estate of Ryan A. Balmer, A.B., a minor, G.B., a minor, Donna Kuglics, individually and on behalf of the Estate of Matthew J. Kuglics, Les Kuglics, Emily Adams, Derek Gajdos, Tammy Denboer, Brandeaux Campbell, Ryan Wilson, Jami Lin Wilson, Matthew Lammers, Alicia Lammers, Barbara Lammers, Gary Lammers, Stacy Pate, Angel Gomez, Denise

Jackson, Scott Hood, Flora Hood, Dixie Flagg, Stephanie Hood, Cheyenne Flagg, William Parker, Meghan Parker-Crockett, Andrew Moores, Sheila Tracy, individually and on behalf of the Estate of Jacob Tracy, Donald Tracy, Nichole Sweeney, Christina Sheridan, Matthew Benson, Melissa Benson, C.B., a minor, B.B., a minor, Daniel P. Benson, Carol Benson, Daniel R. Benson, Andrew James Raymond, Raymond Nigel Spencer, Sr., Sylvia Johnson Spencer, Michael Dean Moody, Sr., individually and on behalf of the Estate of Michael Dean Moody, Jr., Connie Moody, Kedrick Dante Moody, Drew Edwards, Donielle Edwards, Arifah Hardy, T.C., a minor, Aundra Craig, Joyce Craig, Debra Cook-Russell, Nashima Williams Craig, Matthew Craig, Jonathan Craig, Andre Brown, Michael Cook, Valencia Cook, Katherine M. Crow, individually and on behalf of the Estate of William J. Crow, K.A.C., a minor, K.E.C., a minor, Candace Cathryn Hudson, individually and on behalf of the Estate of Kathryn Ann Mondini, Amanda B. Adair, Patrick Tutwiler, Crystal Tutwiler, Shirley Stearns and John Stearns, individually and on behalf of the Estate of Michelle R. Ring, Karen Hall, Marilyn Haybeck, Marc Stearns, James Cole on behalf of B.C., a minor, John D. Lamie, Donna Lewis, individually and on behalf of the Estate of Jason Dale Lewis, J.L., a minor, J.L., a minor, G.L., a minor, Jean Mariano, Katherine McRill-Fellini, individually and on behalf of the Estate of Robert McRill, Brett Coke, Brian Coke, Ronald McRill, Matthew L. Mergele, Rene Pool, Derek Allen Hollcroft, Paula C. Bobb-Miles, individually and on behalf of the Estate of Brandon K. Bobb, Johnny Javier Miles, Sr., Johnny Javier Miles, Jr., Racquel Arnae Bobb Miles, Ursula Ann Joshua, individually and on behalf of the Estate of Ron J. Joshua, Jr., Tammy

Kinney, Daniel Price, Steven Price, Tausolo Aieti, Imo Aieti, Lisi Aieti, Poloka Aieti, Christopher Bouten, Erin Bouten, Daniel Dudek, Margaret Dudek, Katie Woodard, Sarah Dudek, Andrew Dudek, Emanuela Florexil, individually and on behalf of the Estate of Camy Florexil, Joseph T. Miller, Sean Harrington, Jessica Heinlein, individually and on behalf of the Estate of Charles T. Heinlein, Jr., Charles Heinlein, Sr., Jody Lyn Heinlein, Margarita Aristizabal, individually and on behalf of the Estate of Alfred H. Jairala, J.J., a minor, Sebastian Niuman, Richard Neiberger, Mary Neiberger, Ami Neiberger, Robert Neiberger, Eric Neiberger, individually and on behalf of the Estate of Christopher Neiberger, Brian J. Casey, Brittany Hogan, Shelley Ann Casey, Richard Casey, Sally Chand, individually and on behalf of the Estate of Michael Chand, Sr., Michael Chand, Jr., Christina Mahon, Ryan Chand, Brenda Chand, Mario Bowen, James David Hochstetler, Leanne Lizabeth Hochstetler, J.H., a minor, P.H., a minor, Kyle Austin Marshall, John Richard Tully, individually and on behalf of the Estate of Michael Tully, Marilyn Louise Tully, Slade Victor Tully, John Richard Tully, II, Heather Ann Farkas, Robert James Hunt, M.A.H., a minor, A.M.H., a minor, Boonchob Prudhome, Michele White, individually and on behalf of the Estate of Delmar White, S.W., a minor, Shelby White, Perry White, Robert White, Joshua P.G. Wold, E.W., a minor, P.A., a minor, Celeste Yantis, Maricel Murray, individually and on behalf of the Estate of Joel L. Murray, J.M., a minor, Bryan S. Shelton, individually and on behalf of the Estate of Randol S. Shelton, Darlene Shelton, Amanda Shelton, Brian T. Shelton, Dan Laird, Angela M. Laird, Jordan M. Laird, Hunter L. Laird, C.L., a minor, Leslie K. Reeves-Hardcastle,

individually and on behalf of the Estate of Joshua Reeves, J.R., a minor, James L. Reeves, W. Jean Reeves, Jared Reeves, Sherri C. Holiman, Joni Ariel Reeves Little, William Lee, Alexandria L. Lee, William J. Lee, Lillie Lai Lee, Jennifer Lynn Hunt, Christopher Golembe, Kathryn Head, Christopher Watts, Janet L. Rios, Anita Baker, Jennie L. Morin, Randall Geiger, individually and on behalf of the Estate of Wayne M. Geiger, Kimberly Geiger, Jesseca Lyn Tsosie, Eric Donoho, Tyler Ginavan, Timothy Tiffner, individually and on behalf of the Estate of Benjamin David Tiffner, Judith Tiffner, Joshua Tiffner, Seth Tiffner, Sarah Crosby, Alan Burks, individually and on behalf of the Estate of Peter Burks, Jackie Merk Hlastan, G.B., a minor, Alison Burks McRuiz, Sarah Phillips, Zachary Burks, Bridget Juneau, individually and on behalf of the Estate of William Juneau, Stephanie Juneau, Tammy Vanderwaal, A.L.R., a minor, Preston Shane Reece, Shaylyn C. Reece, Elena Shaw, C.S., a minor, L.S., a minor, Emily Shaw, Melissa Doheny, individually and on behalf of the Estate of Michael Doheny, Kathy Kugler, Robert Kugler, Tanya Evrard, Billy Johnson, Judy Hoffman, Ashley Gudridge Houppert, Joshua Schichtl, Mark Schichtl, Katherine Prowse, Nicholas Prowse, H.S., a minor, S.S., a minor, C.S., a minor, A.S., a minor, Steve Wadleigh, Lea-Ann Wadleigh, Michael Lukow, Rikki Lukow, Bruce Lukow, Joseph Lukow, Andrew Lukow, Kristen Kelley, Maira Alvarez, individually and on behalf of the Estate of Conrad Alvarez, K.A., a minor, Angela Alvarez on behalf of A.A. and C.A., Minors, Belinda Garcia, Jason Whitehorse, Jeffrey C. Mann, Michelle West, Rebecca L. Samten-Finch, individually and on behalf of the Estate of Tenzin Lobsang Samten, D.A.S., a minor, M.B.S., a minor, Ava Lanette Bradley, individually

and on behalf of the Estate of Juantrea Tyrone Bradley, A.D.B., a minor, T.T.B., a minor, J.T.B., a minor, Anthony Hudson, Austin Bewley, Christopher Levi, Eric Levi, Debra Levi, Emily Levi, Kimberly Vesey, Marion Crimens, Timothy W. Elledge, Mary Catherine McLaughlin, Brenda Habsieger, individually and on behalf of the Estate of Andrew J. Habsieger, Michael Habsieger, Amber Habsieger on behalf of the Estate of Jacob Michael Habsieger, Kelli D. Hake, individually and on behalf of the Estate of Christopher Hake, G.H., a minor, Denice York, Russel York, Peter Hake, Jill Hake, Zachary Hake, Keri Hake, Skylar Hake, Jennifer Renee York, Jason York, Maria E. Calle, individually and on behalf of the Estate of George Delgado, Cynthia Delgado, Tabitha McCoy, individually and on behalf of the Estate of Steve A. McCoy, Logan McCoy, R.M., a minor, Matthew Fieser, Benjamin Daniel Carrington, Jonathan Heslop, Russell Mason, Andy Pool, Frank L. Converse, individually and on behalf of the Estate of Paul R. Converse, Anthony M. Gerber, Charles B. Gregston, Kimberly Miller, Michael J. Miller, Carl Reiher, Walter Bailey, Cassandra Bailey, Kacey Gilmore, Terrell Gilmore, Jr., Kynesha Dhanoolal, individually and on behalf of the Estate of Dayne D. Dhanoolal, Jason Robinson, Frances Robinson, E.R., a minor, William Justin Weatherly, Michael Weatherly, Grant Von Letkemann, Merlese Pickett, individually and on behalf of the Estate of Emanuel Pickett, Harry Cromity, Marlen Pickett, Kemely Pickett, Vivian Pickett, Kyshia Sutton, Rachel M. Gillette, Rebekah Scott, Lee Wolfer, individually and on behalf of the Estate of Stuart Wolfer, L.W., a minor, M.W., a minor, I.W., a minor, Beverley Wolfer, Patricia Smith, Michael Smith, Jacqueline A. Smith, Thomas Smith, Rachelle Idol, James Vaughn,

Jeannine Vaughn, Clifford Vaughn, David Hartley, individually and on behalf of the Estate of Jeffery Hartley, David Wayne Hartley, Kaylie Hartley, Lisa Duncan, Virginia Billiter, Eric Billiter, Adrianne Kidd, Allen Swinton, Temika Swinton, T.S., a minor, T.S., a minor, T.B., a minor, Linda Pritchett, William Allmon, individually and on behalf of the Estate of William E. Allmon, Ronald Sloan, Mary Jane Vandegrift, individually and on behalf of the Estate of Matthew R. Vandegrift and the Estate of John Vandegrift, Mark E. Thomsen, Ardell Thomsen, Ralph Thomsen, Evan D. Bogart, Lani D. Bogart, Douglas R. Bogart, Christopher Bogart, Cana Hickman, Luis Rosa-Valentin, M.R., a minor, Iliana M. Rosa-Valentin, Pam Marion, Donnie Marion, Adrian McCann, Don Jason Stone, Preston Charles Kaplan, Nicole A. Kaplan, Noni Kaplan, David Kaplan, Jaime Zarcone, Jessalyn Holt, David Woodard, D.M.W., a minor, Adam Magers, Luis Garza, Susan Arnold, individually and on behalf of the Estate of Ronald J. Tucker, David Arnold, Samantha Tucker, Brandon Arnold, Daisy Tucker, John Daggett, Colleen Czaplicki, Russel Hicks, Sr., Russel Hicks, Jr., Wesley Williamson, Jesse Williamson, Patrick O'Neill, John O'Neill, Dianne O'Neill, Daniel Luckett, Breanna Lynn Gasper, individually and on behalf of the Estate of Frank J. Gasper, Jamie Barnes, Max W. Hurst, individually and on behalf of the Estate of David R. Hurst, Lillian Hurst, Christopher Hurst, Mark Hurst, Donna Farley, Noel J. Farley, Sr., Barbara Farley, Brett Farley, Cameron Farley, Chris Farley, Vickie McHone, Noel S. Farley, David C. Iverson, Daniel Menke, individually and on behalf of the Estate of Jonathan D. Menke, Paula Menke, Matthew Menke, Nichole Lohrig, Jessica H. Williams, individually and on behalf of the Estate of James M. Hale, J.M.H., a

minor, J.J.H., a minor, J.H., a minor, Rosemarie Alfonso, K.B., a minor, Tyler Latham, Michelle Benavidez, individually and on behalf of the Estate of Kennith W. Mayne, Daniel Benavidez, Christina Biederman, Daniel Benavidez, Jr., Jennifer Morman, Christopher Miller, Bryant Bearfield, Angeline Jackson, Kaytrina Jackson, Shilyn Jackson, Tony Gonzalez, Marlynn Gonzales, Tamara Runzel, Megan People, Shaula Shaffer, Carllie Paul, Kari Carosella, individually and on behalf of the Estate of Justin Bauer, Gregory Bauer, Connie Haddock, Jacob Bauer, Jeremy Bauer, Andrew Bradley, Julie Salhus, Kristen Galen, Patrick Ward, Jarrett Ward, Roberto Andrade, Sr., individually and on behalf of the Estate of Roberto Andrade, Jr., Veronica Pena Andrade, Sandra Valencia, Angelica Andrade, Veronica Denisse Andrade, Richard Hedgecock, II, Kara Connelly, Jean Dammann, Mark Dammann, Kevin Connelly, Ryan Bowman, Matthew C. Beatty, Theresa Davis, Rhonda Kemper, Robert Canine, S.C., a minor, Janet Jones, Calvin Canine, James Canine, Jennifer Roose, Rhett Murphy, Roady Landtiser, Nathan Richards, Steven Richards, Christopher Songer, Kimberly Songer, C.S., a minor, Linda David, individually and on behalf of the Estate of Timothy A. David and the Estate of Michael David, Christopher David, Kenneth J. Drevnick, Randall Klingensmith, Megan Marie Sabatino, individually and on behalf of the Estate of Zachary T. Myers, R.N.S., a minor, Tonya Freeman, Jerry L. Myers, Jeffrey D. Price, Cassie Collins, individually and on behalf of the Estate of Shannon M. Smith, Deborah Smith, James Smith, Cory Smith, Christina Smith, Joseph Helton, Sr., individually and on behalf of the Estate of Joseph D. Helton, Jr., Jessica Cabot, Jeanne Rhea McManus, Victor Ray Wise, II, Stephen W.

Evans, Theodore Lester, Katrina Coe, individually and on behalf of the Estate of Keith Coe, K.A.C., a minor, K.A.C., a minor, K.A.C., a minor, Rhonda Smith, Matthew Coe, Sabrina Chapman, Nicholas Baumhoer, Matthew Whiteside, Kandi Danielle Whiteside, M.T.W., a minor, Sharon Smithey Whiteside, Jackson Wiley Whiteside, Christopher Whiteside, James Kinsey, Angela M. Garcia, individually and on behalf of the Estate of Christian Anthony Saracho Garcia, K.M.G., a minor, K.R.G., a minor, Joel Hernandez, Christopher Satterfield, Victoria Hernandez, Michael Pasco, Angel Mayes, individually and on behalf of the Estate of Antonio Stiggins, Luke Stiggins, Donald Mayes, Rhonda Beattie, individually and on behalf of the Estate of Clifford Beattie, Jaydean Hamilton, Stephanie Kidder, Toni Attanasio, individually and on behalf of the Estate of Christopher Brook Fishbeck, Gary Douglas Fishbeck, Ana M. Gomez, Randi Jean Martz, Rene Gutel, Mark A. Hall, Athena Hall, M.J.H., a minor, Kiersten Hall, Kaitlyn Adams, Mackenzie G. Hall, Abigail Hall, Andrew Hall, George D. White, Natalia White, Kristin White, George J. White, Edna Luz Burgos, John McCulley, Stephanie McCulley, T.M., a minor, R.M., a minor, Donald Field, Angelica Field, Senovia Field, Selicia Field, Theresa Hart, Wayne Newby, Nathan Newby, Tyler Nicholas Ogden, Sheryl Ann Chen Jerrin Ogden, Sean M. Niquette, Lauren Niquette, Mary Niquette, Thomas Niquette, Daniel Kenney, Brooke Kenney, J.K., a minor, H.K., a minor, Ed Elliott, Brian Clark Alldridge, Joann Alldridge, Andrew Charles Major, Ashley Meikel Major, A.M.M., a minor, Dianna Alldridge, Ronald Alldridge, Todd Alldridge, Veronica Hickman, David Eugene Hickman, and Devon Fletcher Hickman.

Respondents are Jammal Trust Bank and Dr. Muhammad Baasiri.

RELATED PROCEEDINGS

Bartlett v. Société Générale de Banque au Liban, No. 19-cv-7 (CBA) (TAM) (E.D.N.Y. Aug. 6, 2021)

Bartlett v. Baasiri, No. 21-2019 (2d Cir. Aug. 24, 2023)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Rules

INTRODUCTION

Petitioners are more than 1,100 U.S. nationals who were injured or whose family members were killed or injured in hundreds of terrorist attacks while serving in the U.S. military in Iraq. These terrorist attacks, which occurred between 2004 and 2011, were orchestrated by Iran's Islamic Revolutionary Guard Corps together with its Lebanese proxy, Hezbollah, for the specific purpose of driving U.S. forces out of Iraq.

Petitioners sued several private Lebanese financial institutions for aiding and abetting those terrorist attacks by knowingly laundering billions of dollars for Hezbollah. Nine months after Plaintiffs filed suit, the U.S. Treasury Department designated one of those defendants, Respondent Jammal Trust Bank (JTB), as a Specially Designated Global Terrorist (SDGT), pursuant to Executive Order 13224. JTB subsequently entered into voluntary liquidation, and the Central Bank of Lebanon appointed an agent, Respondent Dr. Muhammad Baasiri, as liquidator. About a year after that, JTB moved to dismiss the case on the basis that it was now an instrumentality of Lebanon pursuant to 28 U.S.C. § 1603(b)(2) by virtue of Dr. Baasiri's appointment, and thus immune from the court's jurisdiction.

The district court denied JTB's motion, correctly relying on this Court's decision in *Dole Food*. In that case, this Court held that "the plain text of [§ 1603(b)(2)], because it is expressed in the present tense, requires that instrumentality status be determined *at the time suit is filed*." 538 U.S. at 478 (emphasis added). It premised that reasoning on "the 'longstanding principle that "the jurisdiction of the Court depends upon the state of things at the time of

the action brought."'" *Id.* (quoting *Keene*, 508 U.S. at 207). In *Keene*, as well as in other diversity jurisdiction cases cited in *Dole Food*, post-filing events or changes in status did not alter jurisdiction as found or not found at the time of filing.

Circuit court decisions have broadly reflected this holding, including affirming that post-filing changes in instrumentality status do not rob a court of jurisdiction. Two of these cases are particularly important here because the Second Circuit has explicitly rejected them, creating a circuit split. The first is *TIG Insurance Co. v. Republic of Argentina*, 967 F.3d 778 (D.C. Cir. 2020). In *TIG Insurance*, the D.C. Circuit, relying on *Dole Food*, explained that "[a] statute's use of the present tense ordinarily refers to the time the suit is filed, *not the time the court rules*." 967 F.3d at 783 (emphasis added). Moreover, as the D.C. Circuit pointed out, "[a] time-of-filing rule avoids such gamesmanship by ensuring that post-filing maneuvering by foreign sovereigns will not affect the result." *TIG Ins.*, 967 F.3d at 785.

The second is *Olympia Express, Inc. v. Linee Aeree Italiane, S.P.A.*, 509 F.3d 347 (7th Cir. 2007). There, Judge Posner wrote that "[i]t would be a big surprise to discover that the Court has changed its mind and now thinks that jurisdiction under the Foreign Sovereign Immunities Act is determined . . . years after the suit was first removed to federal district court under section 1441(d)." *Id.* at 349. Like the D.C. Circuit, the Seventh Circuit noted that the contrary rule—adopted by the Second Circuit below—"would invite strategic maneuvering." *Id.* at 351. Other cases agree—including a prior Second Circuit case rejecting changes in "a party's instrumentality's status" made

"[s]ince this lawsuit was filed" because of *Dole Food. Eur. Cmty. v. RJR Nabisco, Inc.*, 764 F.3d 129, 143 n.15 (2d Cir. 2014), *rev'd and remanded on other grounds*, 579 U.S. 325 (2016).

In the decision below, however, the Second Circuit has explicitly rejected the application of *Dole Food* and the analyses in *TIG Insurance* and *Olympia Express*. First, it held it was not bound to this Court's holding in *Dole Food*, explaining: "The plaintiffs object that *Dole Food* gave us a clear rule, and as a lower court, we are bound by it. But opinions are not statutes. They should not be read as if they were." Pet. App. 33a. Instead, the Second Circuit treated this Court's holding as inadvertently written too broadly and held that it should be read as limited to that case's precise facts, where the defendant *lost* its instrumentality status *before* suit was filed against it.

The Second Circuit acknowledged the contrary interpretations of *Dole Food* in *TIG Insurance* and *Olympia Express* but found them incompatible with its reading of the FSIA's "purposes" and pre-FSIA common law. It held instead that the FSIA was meant to accommodate "current political realities and relationships," even when those "realities" change post-filing, and even where those changes are raised by foreign states, as occurred here. Pet. App. 28a.

The result is a rare case where a circuit court not only explicitly splits from other circuits but also rejects the application of a holding from this Court—indeed, one it once called "unequivocal." *Abrams v. Société Nationale Des Chemins De Fer Francais*, 389 F.3d 61, 64 (2d Cir. 2004). But the decision also presents "an important question of federal law" because it provides a future roadmap for foreign states to game the

jurisdiction of U.S. courts by simply nationalizing their favored corporations, even if only nominally and temporarily, to avoid suit here. But "Congress cannot have intended a rule that would allow a foreign sovereign unilaterally to thwart" U.S. courts' jurisdiction. *TIG Ins.*, 967 F.3d at 785. This Court should grant certiorari to ensure its holdings—and Congress's clear intent—are applied uniformly across the circuits.

OPINIONS BELOW

The Second Circuit's opinion (Pet. App. 1a-36a) is reported at 81 F.4th 28. The district court's opinion (Pet. App. 37a-65a) has not been published in the Federal Reporter but is reported at 2021 WL 3706909.

JURISDICTION

The judgment of the court of appeals was entered on August 24, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Twenty-eight U.S.C. § 1603(b) states:

> An "agency or instrumentality of a foreign state" means any entity—
>
> (1) which is a separate legal person, corporate or otherwise, and
>
> (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and
>
> (3) which is neither a citizen of a State of the United States as defined in section 1332(c)

> and (e) of this title, nor created under the laws of any third country.

The entirety of 28 U.S.C. § 1603 is reprinted in the appendix. Pet. App. 66a.

STATEMENT OF THE CASE

I. The FSIA

1. The FSIA governs how "[c]laims of foreign states to immunity" should be decided by U.S. courts in order to "protect the rights of both foreign states and litigants in United States courts." 28 U.S.C. § 1602. To do that, it provides U.S. district courts with original jurisdiction over civil suits "against a foreign state" as to "any claim for relief in personam with respect to which the foreign state is not entitled to immunity." *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 143 S. Ct. 940, 943 (2023) (quoting 28 U.S.C. § 1330(a)).

The FSIA replaced an ad hoc system by which courts sought the views of the State Department on a case-by-case basis, which in turn "typically requested immunity in all suits against friendly foreign states." *See Republic of Arg. v. NML Capital, Ltd.*, 573 U.S. 134, 140 (2014). The State Department purported to narrow this policy in the 1952 "Tate Letter," embracing the "restrictive" theory of sovereign immunity, under which immunity shields only a foreign sovereign's public, noncommercial acts. *See id.* But the Tate Letter had "little, if any, impact" on federal courts; the State Department continued requesting immunity even in commercial contexts, for reasons including "political considerations," *Republic of Aus. v. Altmann*, 541 U.S. 677, 690 (2004), or "diplomatic concerns," *NML Capital*, 573 U.S. at 141.

Congress thus enacted the FSIA in 1976 to "abate[] the bedlam" of that ad hoc system, providing a "comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state." *Id.* It codified the "restrictive theory," generally limiting foreign state immunity to certain public acts through a set of enumerated exceptions to immunity from suit and transferred the responsibility for assessing immunity from the executive branch to the judicial branch. *Altmann*, 541 U.S. at 690.

2. The FSIA defines a "foreign state" to include "an agency or instrumentality," which is a "separate legal person," such as a state-owned corporation. 28 U.S.C. § 1603(a), (b). But the definition is limited to an entity "which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof." 28 U.S.C. § 1603(b)(2). These definitions are limited further by subsequent interpretation of § 1603(b). *See Dole Food*, 538 U.S. at 480 (limiting majority owned instrumentalities to those directly owned by the foreign state and determining instrumentality status at the time of the filing of the complaint).

II. Factual Background and Proceedings Below

1. Petitioners are former U.S. servicemembers and family members of U.S. servicemembers injured or killed in terrorist attacks while serving in Iraq. On January 1, 2019, Petitioners brought suit against 11 Lebanese banks, including JTB, under the Anti-Terrorism Act (ATA) as amended by the Justice Against Sponsors of Terrorism Act (JASTA). *See* 18 U.S.C. § 2333. Plaintiffs alleged that these private commercial banks aided and abetted (in addition to other

theories of liability) the attacks by laundering billions of dollars for Hezbollah for more than a decade.

On August 29, 2019, the Treasury Department designated JTB as an SDGT for largely the same reasons Plaintiffs alleged for JTB's liability in their amended complaint. In its announcement of JTB's designation, Treasury explained:

> []Treasury is targeting Jammal Trust Bank and its subsidiaries for brazenly enabling Hizballah's financial activities. Corrupt financial institutions like Jammal Trust are a direct threat to the integrity of the Lebanese financial system. Jammal Trust provides support and services to Hizballah's Executive Council and the Martyrs Foundation, which funnels money to the families of suicide bombers . . . .[]
>
> Jammal Trust knowingly facilitates the banking activities of U.S.-designated entities openly affiliated with Hizballah. . . . Hizballah has used accounts at Jammal Trust to pay its operatives and their families, and Jammal Trust has actively attempted to conceal its banking relationship with numerous wholly owned Martyrs Foundation subsidiaries. . . . Such a scheme is representative of the deep coordination between Hizballah and Jammal Trust, which dates back to at least the mid-2000s and which spans many of the bank's branches in Lebanon.

Pet. App. 67a-71a.[1] As a result of the designation, which effectively cut off JTB's ability to transact

---

[1] The "Martyrs Foundation" is a Hezbollah fundraising front and SDGT. *See Kaplan v. Lebanese Canadian Bank, SAL*, 999 F.3d 842, 849 (2d Cir. 2021).

business in U.S. dollars, JTB went into liquidation on September 27, 2019, under the auspices of Lebanon's Central Bank.

JTB did not substantively raise this fact to the district court or Petitioners when the liquidation occurred or for nearly an entire year thereafter—including in its motion to dismiss on Rule 12(b)(2) and 12(b)(6) grounds served four months after it went into liquidation. On August 31, 2020, the district court held oral argument on all defendants' motions to dismiss. JTB's counsel mentioned the liquidation but did not suggest that was a basis for dismissal or that the court lacked subject matter jurisdiction over it. The next day, however—presumably finding that oral argument had not gone as hoped—JTB's counsel filed a pre-motion conference letter on behalf of the bank and Dr. Baasiri, a non-party who was not previously mentioned in the case, announcing the now nearly year-old liquidation and stating their intent to move for (1) substitution of Dr. Baasiri for JTB or, in the alternative, his intervention in the case and (2) JTB's dismissal, premised on Dr. Baasiri's asserted sovereign immunity, or on international comity grounds, or because Plaintiffs' claims against JTB were not redressable. On December 30, 2020, JTB and Dr. Baasiri filed a joint motion as described in their pre-motion conference letter.

The district court denied all of Respondents' requested relief, except granting Dr. Baasiri's motion to intervene. The district court correctly denied dismissal based on foreign sovereign immunity because of this Court's ruling in *Dole Food* (as well as denying dismissal premised on international comity and lack of redressability). In fact, the district court relied on the Second Circuit's then-current endorsement of that

ruling, writing: "The Second Circuit has characterized *Dole Food* as 'holding unequivocally that an entity's status as an instrumentality of a foreign state should be "determined at the time of the filing of the complaint."'" Pet. App. 55a (quoting *Abrams*, 389 F.3d at 64).

2. Despite this "unequivocal" holding, Respondents brought an interlocutory appeal under the collateral order doctrine on the sovereign immunity issue, dropping their comity and redressability arguments. After the appeal was briefed and argued, the Second Circuit invited the views of the U.S. Department of State, stating:

> On March 2, 2023, the Court heard oral argument in this appeal. One of the issues briefed and discussed by the parties is whether the time-of-filing rule from *Dole Food Co. v. Patrickson*, 538 U.S. 468 (2003), precludes a post-filing claim of sovereign immunity under the [FSIA] when the defendant, sued as a private party, goes into liquidation under foreign law in a process governed by a foreign central bank. In light of the potential foreign-relations implications of answering this question, as well as the interest of the United States in the interpretation and application of the FSIA, we hereby solicit the views of the U.S. Department of State on this issue.

Order, *Bartlett* Appeal Dkt. Entry No. 112.

On June 20, 2023, the State Department filed its brief. It argued: "if such a defendant becomes an agency or instrumentality of a foreign state within the meaning of the FSIA in virtue of the liquidation (an issue governed in part by foreign law that the United

States does not address), it is entitled to immunity from suit under the FSIA, subject to the exceptions enumerated by that statute; *Dole Food* is not to the contrary." U.S. Amicus Brief, *Bartlett* Appeal Dkt. Entry No. 128 ("U.S. Br."), at 1. In support, the State Department strung together an assortment of diverse concepts like "general law," "substantive federal law," "customary international law," pre-FSIA case law, and some purported general purposes of the FSIA, although with little elaboration. U.S. Br. at 7 n.2, 9, 10, 18-19. But ultimately the State Department gave two reasons why *Dole Food* either does not apply here or does not mean what it says.

First, it argued that *Dole Food*'s holding was, evidently, too broadly written, because "the Court considered only two options"—determining instrumentality status at the time of conduct or at the time of filing—and thus "should not be read to resolve" the question of post-filing changes in instrumentality status. *Id.* at 15-16. Second, it argued that "the FSIA's substantive foreign sovereign immunity principles apply independently of the statute's grant of jurisdiction," so "*Dole Food*'s reliance on 'the longstanding principle that the jurisdiction of the Court depends upon the state of things at the time of the action brought,'" was simply—and inexplicably—irrelevant. *Id.* at 17 (quoting *Dole Food*, 538 U.S. at 478). Nothing in the amicus brief suggested the FSIA treated instrumentality status "in virtue of [a] liquidation" differently than any other basis for that status.

The Second Circuit vacated the district court's decision. It did not endorse any of Respondents' arguments but concluded: "We think the State Department has the better of it: The most natural reading of the

statute is one that gives foreign sovereigns immunity even when they gain their sovereign status mid-suit." Pet. App. 28a. It acknowledged that the D.C. and Seventh Circuits interpreted *Dole Food* to prohibit redetermining instrumentality status post-filing but viewed those circuits as incorrect, creating a circuit split.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Explicitly Disregards Binding Supreme Court Precedent and Creates a Serious Conflict with Other Circuits

This Court held that "the plain text of [28 U.S.C. § 1603(b)(2)], because it is expressed in the present tense, requires that instrumentality status be determined at the time suit is filed." 538 U.S. at 478. Section 1603(b)(2) defines "agency or instrumentality of a foreign state" as a separate legal person "which *is* an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest *is* owned by a foreign state or political subdivision thereof . . . ." 28 U.S.C. § 1603(b)(2) (emphasis added).

The Court explained that the present tense refers to the time of filing—and not a later time—by reference to established principles in determining jurisdiction at the time of filing:

> Construing § 1603(b) so that the present tense has real significance is consistent with the "longstanding principle that 'the jurisdiction of the Court depends upon the state of things at the time of the action brought.'" *Keene Corp.* v. *United States*, 508 U.S. 200, 207, 124 L. Ed. 2d 118, 113 S. Ct. 2035 (1993) (quoting

> Mollan v. Torrance, 22 U.S. 537, 9 Wheat. 537, 539, 6 L. Ed. 154 (1824)). It is well settled, for example, that federal-diversity jurisdiction depends on the citizenship of the parties at the time suit is filed. See, *e.g., Anderson* v. *Watt*, 138 U.S. 694, 702-703, 34 L. Ed. 1078, 11 S. Ct. 449 (1891) ("And the [jurisdictional] inquiry is determined by the condition of the parties at the commencement of the suit"); see also *Minneapolis & St. Louis R. Co.* v. *Peoria & Pekin Union R. Co.*, 270 U.S. 580, 586, 70 L. Ed. 743, 46 S. Ct. 402 (1926) ("The jurisdiction of the lower court depends upon the state of things existing at the time the suit was brought").

538 U.S. at 478.

Thus, if its "unequivocal" holding was not clear enough, *Abrams*, 389 F.3d at 64, its reliance on *Keene* as well as its analogy to the diversity jurisdiction doctrine and *Anderson* and *Minneapolis* make certain that under *Dole Food*, instrumentality status is determined at the time of filing, and no other time. In each of those cases, the Court held that post-filing changes did not alter (i.e., destroy or cure) the jurisdiction of the court at issue. *See Keene*, 508 U.S. at 207 ("focusing on facts as of the time Keene filed its complaints []instead of the time of [another] court's [later] ruling on the motion to dismiss[]"); *Minneapolis & St. Louis R. Co. v. Peoria & Pekin Union R. Co.*, 270 U.S. 580, 586 (1926) ("[L]ater facts alleged could not conceivably affect the result of the case before us."); *Anderson v. Watt*, 138 U.S. 694, 707 (1891) ("jurisdiction depended upon the state of the parties at the commencement of the suit, which no subsequent change could give or take away").

The circuit courts have followed *Dole Food*, as they must. Some of these decisions also specifically make clear that *Dole Food*'s holding means that instrumentality status is determined at the time of filing, and not at any time *after* filing. The Second Circuit rejected two of them explicitly in the case below. The first is *TIG Insurance*, in which the D.C. Circuit rejected Argentina's argument that the FSIA's use of the "present tense" meant that the district court should determine an entity's immunity status anew at any time it changed. The D.C. Circuit explained: "A statute's use of the present tense ordinarily refers to the time the suit is filed, not the time the court rules." 967 F.3d at 783.[2] For support, the D.C. Circuit pointed to *Dole Food*: "in considering whether plaintiffs have shown that a foreign corporation operates as an instrumentality of a foreign sovereign, the Supreme Court has held that the 'plain text . . . requires that instrumentality status be determined at the time suit is filed' because the text 'is expressed in the present tense.'" *Id.* (quoting *Dole Food*, 538 U.S. at 478).

The second is *Olympia Express*, in which the Seventh Circuit explicitly rejected the suggestion that *Dole Food* is limited to pre-filing changes in status. As Judge Posner explained:

> The specific question in *Dole* was whether the Act applied to a company that had ceased to be a "foreign state" before it was sued rather than, as in our case, after. But the Court based its decision on the familiar rule—emphatically

---

[2] It also pointed out, "[b]ecause litigation proceeds based on facts as alleged in a complaint, it makes sense that the time the complaint is filed is the presumptive temporal touchstone." *TIG Ins.*, 967 F.3d at 783.

> reaffirmed after *Dole,* in *Grupo Dataflux v. Atlas Global Group, L.P.,* 541 U.S. 567 (2004)—that jurisdiction is determined by the facts that exist when the suit is filed. 538 U.S. at 478. It would be a big surprise to discover that the Court has changed its mind and now thinks that jurisdiction under the Foreign Sovereign Immunities Act is determined when a party demands a jury trial—in this case, demands it years after the suit was first removed to federal district court under section 1441(d).

509 F.3d at 349.

Indeed, the Second Circuit itself held as such in a prior decision. In *European Community*, the Second Circuit disregarded a change in the European Community's status "[s]ince this lawsuit was filed," because, under *Dole Food*, "the court's subject matter jurisdiction and a party's instrumentality status for purposes of § 1603 are both determined at the time when the complaint is filed." 764 F.3d at 143 n.15 (citing *Dole Food*, 538 U.S. at 478).

Other circuits have also interpreted *Dole Food* to apply a time of filing rule. The Fourth Circuit, in a decision affirmed by this Court, likewise explained that "[t]he Supreme Court addressed the temporal implications of section 1603(b) in *Dole Food*": because § 1603(b)(2) "is expressed in the present tense, … instrumentality status [must] be determined at the time suit is filed." *Yousuf v. Samantar*, 552 F.3d 371 (4th 2009) (quoting *Dole Food*, 538 U.S. at 478) (citation shortened), *aff'd*, *Samantar v. Yousuf*, 560 U.S. 305 (2010). *See also USX Corp. v. Adriatic Ins. Co.*, 345 F.3d 190, 208 n.16 (3d Cir. 2003) ("we are holding that [defendant] was an organ when USX sued it and it

removed the case and its status at that time is what matters").

Neither the Second Circuit nor Respondents cite to any circuit-level decision suggesting that *Dole Food*'s holding means something far more limited than what it says (nor have they cited to any circuit decision holding that § 1603(b)—or any other relevant provision in the FSIA—dictates that instrumentality status can be re-determined after filing). To the contrary, as the Seventh Circuit noted in *Olympia Express*, this Court clarified again after issuing *Dole Food* that "post-filing changes" in a party's status (there, citizenship) cannot destroy or repair jurisdiction. *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 580-81 (2004). *Cf. Lindley v. FDIC*, 733 F.3d 1043, 1057 (11th Cir. 2013) (noting that, given *Dole Food* and *Grupo Dataflux*, if Congress wanted "to reject the time-of-filing rule" in a statute, "it would have said so."). This Court explained: "the policy goal of minimizing litigation over jurisdiction is thwarted whenever a new exception to the time-of-filing rule is announced, arousing hopes of further new exceptions in the future." *Grupo Dataflux*, 541 U.S. at 580-81. And yet here the Second Circuit has done precisely that.

Nonetheless, in the case below, the Second Circuit explicitly rejected the holdings in *Dole Food*, *TIG Insurance*, and *Olympia Express*, creating a sharp split between the Second Circuit and the D.C. and Seventh Circuits—as well as others, including the Third and Fourth Circuits, that have repeated *Dole Food*'s holding without the Second Circuit's cabined interpretation.

First, the Second Circuit disagreed that it was "bound" by *Dole Food*: "The plaintiffs object that *Dole*

Food gave us a clear rule, and as a lower court, we are bound by it. But opinions are not statutes. They should not be read as if they were." Pet. App. 33a. The Second Circuit argued that *Dole Food* was inapplicable because this Court "had occasion to consider only two options: setting instrumentality status at the time of the allegedly wrongful conduct or setting it at the time the suit was brought." *Id.* Thus, for the Second Circuit, this Court's (once "unequivocal") holding—"we hold . . . that instrumentality status is determined at the time of the filing of the complaint," 538 U.S. at 580—was simply inadvertently written far too broadly. The Second Circuit reasoned that this Court surely meant, "instrumentality status is determined at the time of the filing of the complaint, *or at any point thereafter*." In other words, according to the Second Circuit, the *Dole Food* decision only stands for the truism that "once the defendants had ceased to be instrumentalities of a foreign state, no foreign sovereign was involved." Pet. App. 32a.

In fact, the Second Circuit argued that, if anything, "[t]he logic of *Dole Food*, applied to these facts, supports the mirror-image outcome" from what occurred in that case. *Id.* According to the Second Circuit, the thrust of *Dole Food* was "to protect foreign sovereigns from 'the inconvenience of suit.'" *Id.* (quoting *Dole Food*, 538 U.S. at 479). Notwithstanding its otherwise clear holding, argued the Second Circuit, the *Dole Food* decision meant to fashion a rule that "reflects the FSIA's concern with 'current political realities and relationships,'" *id.* at 28a (quoting with approval from U.S. Br. at 11), where "current" means at any given moment, rather than the time of filing. As explained below, however, that phrase is not found in *Dole Food*,

and the Second Circuit is misinterpreting its actual source.

This view cannot be reconciled with *Dole Food*'s analysis of *Keene* and diversity jurisdiction cases which reject *post-filing* attempts to manufacture or destroy diversity. 538 U.S. at 478. The Second Circuit and State Department thus appeared to simply regard that analysis as wrong. In its amicus brief, the State Department argued that this Court's reference to "'the longstanding principle that the jurisdiction of the Court depends upon the state of things at the time of the action brought,'" is irrelevant "[b]ecause the FSIA's substantive foreign sovereign immunity principles apply independently of the statute's grant of jurisdiction. . . ." U.S. Br. at 17 (quoting *Dole*, 538 U.S. at 478). The Second Circuit agreed, noting on 1924 case "demonstrates that immunity and jurisdiction did not necessarily rise and fall together in the pre-FSIA regime." Pet. App. 30a n.4. It also rejected the guidance of its own prior decision in *RJR Nabisco* as relating "only to determining diversity jurisdiction where the sovereign was the plaintiff." *Id.* at 34a. But it was not Petitioners that raised jurisdictional principles—it was this Court, and whether the Second Circuit (or the State Department) agrees with that analysis or not is irrelevant.

The Second Circuit rejected the D.C. Circuit's interpretation of *Dole Food* in *TIG Insurance*, which also analyzed the word "is" as used in the FSIA. The Second Circuit conceded that "[t]he crucial word [in § 1603(b)(2)]—which goes a long way toward resolving this case—is *is*. The statute uses the present tense, and we, in the words of the Supreme Court, must give that choice 'real significance.'" *Id.* at 27a (quoting *Dole*

Food, 538 U.S. at 478). The Second Circuit also acknowledged that the D.C. Circuit held that "a 'statute's use of the present tense ordinarily refers to the time the suit is filed, not the time the court rules.'" *Id.* at 28a (subquoting *TIG Ins.*, 967 F.3d at 783). However, it disagreed with the D.C. Circuit's analysis, and held instead that "[t]he most natural reading of the statute is one that gives foreign sovereigns immunity even when they gain their sovereign status mid-suit." *Id.* That is, according to the Second Circuit, how the present tense is "ordinarily" interpreted does not apply to the FSIA, *contra TIG Insurance*. *Id.*

Finally, the Second Circuit explicitly set aside *Olympia Express*. In support of its reading of § 1603(b)(2), the Second Circuit cited an unpublished, pre-*Dole Food* decision from the Southern District of New York, *Matton v. British Airways Board, Inc.*, No. 85-cv-1268, 1988 U.S. Dist. LEXIS 11869, at *3 (S.D.N.Y. Oct. 27, 1988) — but then acknowledged that *Olympia Express* "reject[ed] *Matton*'s reasoning." *Id.* at 29a n.3.[3] The Second Circuit thus split from the Seventh Circuit without further elaboration.

Finally, the Second Circuit also described a Ninth Circuit decision as "consistent" with its reading of the FSIA, but that case only noted a similar (but pre-*Dole*

---

[3] Indeed, *Matton* cannot be squared with subsequent district court decisions from the same circuit (and others) interpreting *Dole Food* correctly. *See In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775 (JG) (VVP), 2008 U.S. Dist. LEXIS 107882, at *189-92 & n.35 (E.D.N.Y. Sep. 26, 2008) (rejecting effect of post-filing nationalization under *Dole Food*). *See also Biton v. Palestinian Interim Self-Government Auth.*, 510 F. Supp. 2d 144, 147 (D.D.C. 2007) (citing *Dole Food* to mean that "events subsequent to the filing of the complaint . . . cannot change Defendants' status as of the time this action commenced").

Food) circuit split as to the effect of post-filing nationalization. *Id.* at 29a & n.3. In *Straub v. A P Green, Inc.*, the Ninth Circuit observed that the Eleventh Circuit rejected immunity where "the plaintiffs filed their lawsuit *before* the defendant was nationalized by the Colombian government." 38 F.3d 448, 451 (9th Cir. 1994) (describing *In re Chase & Sanborn Corp.*, 835 F.2d 1341, 1347-48 (11th Cir. 1988), *rev'd on other grounds*, 492 U.S. 33 (1989)). Conversely, *Straub* noted that the Ninth Circuit "implied that the FSIA may be applicable if a party that becomes a 'foreign state' after the commencement of a lawsuit promptly brings its status as a 'foreign state' to the district court's attention." *Id.* (describing *Wolf v. Banco Nacional de Mexico, S.A.*, 739 F.2d 1458, 1460 (9th Cir. 1984)). However, in *Wolf*, the parties never *disputed* the application of the FSIA premised on the timing of nationalization (the issue related instead to application of the FSIA's exceptions to immunity). *Dole Food* presumably resolved that split (in favor of the Eleventh Circuit) but, if not, that is all the more reason to do so now.

In sum, the decision below constitutes a split from at least two circuits, if not others, as well.

II. The Second Circuit's Analysis Is Erroneous

As explained above, the Second Circuit attempt to cabin *Dole Food*'s holding to the precise facts of that case is irreconcilable with the analysis in that decision. But the Second Circuit's support for its own view—that the FSIA compels district courts to perpetually evaluate their jurisdiction over disputes based on political events in foreign countries—is also unavailing.

First, it asserts that its reading is dictated by this Court's observation in another case that "[FSIA]

immunity therefore focuses on 'current political realities,'" which the Second Circuit takes to mean whatever moment these realities change and are raised to the district court. Pet. App. 29a (quoting *Altmann*, 541 U.S. at 696). But the Second Circuit misreads *Altmann*. There, the plaintiff brought suit against Austria in 2000 under the FSIA's "expropriation exception" to immunity for its refusal in 1948 to return art the Nazis had stolen from her uncle. *Altmann*, 541 U.S. at 680, 685. Austria argued the FSIA could not apply retroactively to pre-enactment conduct. The Ninth Circuit held that applying the FSIA retroactively in that case would be consistent with the State Department's expressed policy as of 1949 against immunizing Nazi appropriations. *See id.* at 688-89.

This Court agreed that the FSIA applied to Austria's 1948 decision, but for a different reason. It held that the FSIA applied to all suits against foreign states filed after its enactment no matter when the conduct occurred, because the FSIA "reflects current political realities and relationships,"—that is, those realities at the time of *filing*, rather than the Ninth Circuit's "detailed historical inquiry" of the State Department's views in the 1940s. *Id.* at 700. Indeed, *Altmann* quoted *Dole Food*'s time-of-filing holding as support for its position. *See id.* at 698. It did not suggest that the FSIA was designed to inject sovereign immunity considerations into lawsuits as subsequent events unfold.

Altmann thus does not support the Second Circuit's reimagining of *Dole Food*. Notably, the Second Circuit read *Dole Food* as limited to its facts but relied on *Altmann* without acknowledging that that case did not involve a party becoming an instrumentality of a foreign state post-filing.

Second, the Second Circuit cited four cases that it argued demonstrate that immunity can be obtained post-filing: *Republic of Iraq v. Beaty*, 556 U.S. 848 (2009); *Abdulaziz v. Metro. Dade County*, 741 F.2d 1328 (11th Cir. 1984); *Zuza v. Off. of the High Representative*, 857 F.3d 935 (D.C. Cir. 2017); and *Oliver American Trading Co. v. United States of Mexico*, 264 U.S. 440 (1924). However, each case is inapposite. Not one of the four relates to determining instrumentality status, much less *when* that determination occurs, and none mentions *Dole Food*. Three of them—*Abdulaziz*, *Zuza*, and *Oliver*—do not relate to the FSIA *at all*. *Abdulaziz* and *Oliver* pre-date *Dole Food*—*Oliver* is a century-old case that pre-dates the FSIA itself by 50 years. In fact, it does not appear to have been cited in a majority opinion by *any* court since the 1920s.

Nevertheless, the Second Circuit relies chiefly on *Oliver*. It justified doing so because "[t]he FSIA, as we have seen, codified the pre-existing common law." Pet. App. 30a. But this Court has been clear that "[a]fter the enactment of the FSIA, the Act—and not the pre-existing common law—indisputably governs the determination of whether a foreign state is entitled to sovereign immunity." *Samantar v. Yousuf*, 560 U.S. 305, 313 (2010). This Court has explained that "any sort of immunity defense made by a foreign sovereign in an American court must stand on the Act's text. Or it must fall." *NML Capital,* 573 U.S. at 141-142. The case is also factually irrelevant to determining instrumentality status—there, the issue was the United States government's mid-suit recognition of Mexico.

In *Abdulaziz*, an Eleventh Circuit decision that pre-dates *Dole Food* by nearly 20 years, the plaintiffs invoked their diplomatic status after filing suit as a

defense to counterclaims. Their defense was found not in the FSIA, but the Diplomatic Relations Act, 22 U.S.C. § 254a-e. That law includes a statutory defense that specifically anticipates determining diplomatic status after cases have been commenced, as it states that "any action or proceeding brought against" diplomats "shall be dismissed," 22 U.S.C. § 254(d). It does not speak to the interpretation of § 1603(b); indeed, the Second Circuit's reading of *Abdulaziz* cannot be squared with a later Eleventh Circuit decision which held that the "FSIA is inapplicable" where "the suit to recover [certain] transfers occurred before Granfinanciera was nationalized." *In re Chase & Sanborn Corp.*, 835 F.2d at 1347.

Zuza also involved diplomatic immunity, but under the International Organizations Immunities Act (IOIA), 22 U.S.C. §§ 288 et seq. Again, nothing in that decision, issued by the D.C. Circuit in 2017, suggests that *Dole Food* or the D.C. Circuit's own subsequent decision construing the FSIA in *TIG Insurance* are somehow incorrect.

Of these four cases, only *Beaty* relates to the FSIA at all—but it does not interpret any language in the statute. In that case, the plaintiffs sued Iraq, a sovereign foreign state (and not an instrumentality of a foreign state), under the FSIA's Terrorism Exception (at the time, 28 U.S.C. § 1605(a)(7), now 28 U.S.C. § 1605A). The case focused on a short-lived statute not at issue here, the Emergency Wartime Supplemental Appropriations Act, 108 Pub. L. 11 § 1503, 117 Stat. 559 (2003) (EWSAA). That statute empowered the president to suspend the application of any "provision of law that applies to countries that have supported

terrorism," which included the Terrorism Exception. *Beaty*, 556 U.S. at 852-53, 856.

The president executed that option after the *Beaty* suit was filed. This Court determined that the Executive's statutorily authorized invocation of the EWSAA relieved the district court of its jurisdiction—not because *Dole Food*'s interpretation of the FSIA was called into question (or even mentioned), but for the unremarkable proposition that the statute providing jurisdiction in that suit (28 U.S.C. § 1605(a)(7)) ceased to apply to the defendant altogether. In sum, *Beaty* says nothing about whether the use of the present tense in § 1603(b)(2) means instrumentality status is determined at the time of filing or some later time.

The reliance on *Beaty* highlights another problem with the Second Circuit's analysis. *Beaty* is premised in part on this Court's recognition that the political branches are better suited than the courts to make foreign affairs decisions, such as suspending the application of certain, onerous laws to a "friendly successor government . . . in its infancy." *Id.* at 864 (citation omitted). Here, no branch of the U.S. government has declared JTB immune—*Lebanon* did. (The State Department submitted its *legal* views on the interpretation of *Dole Food*, but those "merit no special deference," as this Court held in *Altmann*, 541 U.S. at 701-02.) The Second Circuit's view flips *Beaty* on its head by taking decisions reserved for the United States' political branches for the administration of our foreign affairs and delegating them to another country.

Apparently aware of this affront to U.S. policy interests, JTB attempted to argue below that immunizing it for its role in the murder and maiming of hundreds of Americans and injuring their family members

was "not contrary to U.S. policy but in *furtherance* thereof." Pet. App. 64a (quoting JTB Mem. in Supp. Mot. to Dismiss, *Bartlett* Dist. Ct., Dkt. Entry No. 182, at 38). JTB reasoned that its liquidation "punishes JTB in the most severe manner possible, effectuating the United States' policy of punishing facilitators of terrorist acts," as "Lebanese liquidation law mandated that JTB cease all banking operations, its assets are now being liquidated under the direction and control of the Liquidator and Central Bank, and its shareholders have lost all equity." JTB Mem. at 38.[4] The argument is disturbing enough in its own right, but that "punishment" includes "prioritizing" depositors, *id.* at 31, which, according to the U.S. Treasury Department, include senior Hezbollah officials and entities. *See* Pet. App. 68a-69a (describing Hezbollah accounts at JTB).

Needless to say, Petitioners disagree that it is in furtherance of U.S. policy and the policies underlying the FSIA and JASTA for Hezbollah officials and U.S.-designated terrorist entities to recover JTB's assets instead of the victims of Hezbollah terrorism.

III. The Question Presented Is Important

Finally, the Second Circuit's decision also presents "an important question of federal law" that *had* been "settled by this Court," but has now resulted in a decision "that conflicts with relevant decisions of this

---

[4] As the district court explained, Respondents "focus on the wrong policy interest in arguing that dismissing this case would further 'the United States' policy of punishing facilitators of terrorist acts,'" because "JASTA evinces not only a generalized policy of punishing terrorists, but a specific policy of providing a procedurally privileged domestic forum where victims of terrorist attacks may seek justice for the injuries they suffered." Pet. App. 64a-65a.

Court." S. Ct. Rule 10(c). The decision creates a roadmap for foreign states that wish to help their preferred private corporations evade U.S. jurisdiction—at least in the Second Circuit. As other circuits have explained, such a rule "would invite strategic maneuvering," *Olympia Express*, 509 F.3d at 351. *See also TIG Ins.*, 967 F.3d at 785 ("foreign sovereigns would have every incentive to" change an instrumentality's status "as soon as a [plaintiff sued it] . . . and to draw out proceedings to delay the [case] . . . until it had been able to do so.").

Once notified that a preferred corporation has been sued in the Second Circuit, all a foreign sovereign is required to do is "nationalize" the corporation in some fashion until the suit is dismissed, at which point it could even be re-privatized. Depending on that foreign state's own laws (or lack thereof), that temporary nationalization could occur on paper with few practical consequences—but a total deprivation of the American litigant's rights. Indeed, the Seventh Circuit warned about precisely this, in the context of a defendant attempting to game whether it will face a jury trial, which are unavailable in suits against foreign sovereigns:

> What has been privatized can be renationalized. Suppose that confronted with an unexpected demand for a jury trial a privatized defendant owned 49 percent by the government asks the government to repurchase 2 percent of the shares from the private stockholders; conversely, suppose that a defendant 51 percent owned by its government decides when it is sued that it would prefer a jury trial and so it asks its government to sell 2 percent of the

> shares from the government's holding, which the government could then repurchase after the suit was over.

Olympia Express, 509 F.3d at 351.

The result below thus upends the purposes of the FSIA. Indeed, as the D.C. Circuit explained in *TIG Insurance*, "Congress cannot have intended a rule that would allow a foreign sovereign unilaterally to thwart" a suit (in that case, a writ of attachment), and thus "[a] time-of-filing rule avoids such gamesmanship by ensuring that post-filing maneuvering by foreign sovereigns will not affect the result." *TIG*, 967 F.3d at 785. It also observed that "the broader purpose of the FSIA further confirms that the time-of-filing rule is the better reading. Congress enacted the FSIA to 'protect the rights of both foreign states *and litigants* in United States courts.'" *Id.* at 785 (quoting 28 U.S.C. § 1602) (emphasis added). The Seventh Circuit likewise observed that the rule adopted by the Second Circuit is contrary to "the underlying purpose of the Foreign Sovereign Immunities Act." *Olympia Express*, 509 F.3d at 351.

Other courts agree. The Third Circuit stated that: "We would invite fraud and injustice—the very concerns carefully cautioned against in *Bancec*—by considering only how a state acts after learning that its actions surrounding an instrumentality are under scrutiny." *OI European Grp. B.V. v. Bolivarian Repub. of Venezuela Petroleos de Venezuela*, 73 F.4th 157, 171 (3d Cir. 2023). In *Bancec*, this Court explained that "[t]o hold otherwise would permit governments to avoid the requirements of international law simply by creating juridical entities whenever the need arises." *First Nat'l City Bank v. Banco Para El Comercio*

Exterior De Cuba, 462 U.S. 611, 633 (1983) (*"Bancec"*). *Cf., e.g.*, *Bank of Hemet v. United States*, 643 F.2d 661, 665 (9th Cir. 1981) (explaining that a time of filing rule "restrains any tendency on the part of the government to manipulate its position subsequent to the filing of the complaint so as to present a situation that falls between the cracks of applicable waiver statutes").

The decision below acknowledged that the incentives for gamesmanship identified by the D.C. Circuit raise "real concerns," Pet. App. 35a, but nonetheless rejected them because it did not see gamesmanship *in this instance*: "It was the U.S. designation of JTB as a terrorist organization, not any attempt by Lebanon to avoid this lawsuit, that forced the bank into liquidation and public receivership." *Id.* at 36a. But of course, a rule designed to deter gamesmanship cannot be applied only where the court thinks gamesmanship has actually happened.[5] And where would such a rule come from? The FSIA provides no guidance for assessing whether a de jure nationalization is intended to deprive a U.S. court of jurisdiction. Likewise, the Circuit provides no legal standard according to which a district court could make either a factual or legal determination that a foreign sovereign's nationalization should be ignored because it is a cynical attempt to defeat its jurisdiction.

The Second Circuit's willingness to invest foreign sovereigns with total control over U.S. courts' jurisdiction over pre-existing lawsuits is similar to a prior Second Circuit decision in *Animal Science Products v.*

---

[5] No party discovery has occurred in this case, so the Second Circuit's assessment of the absence of Lebanon's "gamesmanship" is not based on any factual record.

Hebei Welcome Pharmaceutical Co., that this Court overturned as overly deferential to foreign states. 138 S. Ct. 1865 (2018) ("*In re Vitamin C Antitrust Litigation*"). There, Chinese companies accused of price fixing argued they were compelled to do so by Chinese law. The government of China submitted a statement to the district court interpreting its law in support of the defendants' view, but the court pointed to contrary evidence provided by the plaintiffs as to the meaning of those laws. The Second Circuit, however, held that when a foreign state provides a U.S. court with a reasonable statement interpreting its own laws, "a U.S. court is bound to defer to those statements"—even where the opposing party has contrary evidence. *Id.* at 1872 (quoting *In re Vitamin C Antitrust Litig.*, 837 F.3d 175, 189 (2d Cir. 2016)).

This Court vacated the judgment, finding the Second Circuit's rule far too deferential to foreign governments. It also found that such a rule incentivizes gamesmanship—for example, "[w]hen a foreign government . . . offers an account in the context of litigation, there may be cause for caution in evaluating the foreign government's submission." *Id.* at 1873. Here, too, the Second Circuit has issued a rule that defers to foreign state decisions, with a similar potential for gaming U.S. litigations. And like this Court's decision in *In re Vitamin C Antitrust Litigation*, applying a correct standard should be premised on mitigating the risk of gamesmanship—not merely when such gamesmanship is actually evidenced in the record.

This problem is doubly troubling here because the ATA (and JASTA) is a national security statute. The ATA was enacted with "a clear congressional intent to deter and punish acts of international terrorism."

Estates of Ungar v. Palestinian Auth., 304 F. Supp. 2d 232, 238 (D.R.I. 2004). By granting foreign states the option—especially those, like Lebanon, where terror financing is a significant problem—to exempt their private corporations from U.S. courts' jurisdiction, the Second Circuit has risked robbing the ATA of much of its effect.

CONCLUSION

Certiorari should be granted.

Respectfully submitted,

C. Tab Turner
TURNER & ASSOC'S, P.A.
4705 Somers Ave.
Suite 100
North Little Rock,
AR 72116

John M. Eubanks
MOTLEY RICE, LLC
28 Bridgeside Blvd
P.O. Box 1792
Mount Pleasant,
SC 29465

Michael Radine
Counsel of Record
Gary M. Osen
Ari Ungar
Dina Gielchinsky
OSEN LLC
190 Moore St., Suite 272
Hackensack, NJ 07061
(201) 265-6400
mradine@osenlaw.com

November 22, 2023

APPENDIX

APPENDIX TABLE OF CONTENTS

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2022
No. 21-2019

ROBERT BARTLETT, TERREL CHARLES BARTLETT, LINDA JONES, SHAWN BARTLETT, MAXINE E. CROCKETT, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF RICKY LEON CROCKETT, MARVISE L. CROCKETT, TRACIE ARSIAGA, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ROBERT R. ARSIAGA, SYLVIA MACIAS, GILBERT ARSIAGA, JR., GEORGE ARSIAGA, MATTHEW ARSIAGA, ANGEL MUNOZ, ROBI ANN GALINDO, PATRICIA ARSIAGA, ON BEHALF OF THE ESTATE OF JEREMY ARSIAGA, CEDRIC HUNT, STEVEN GREENWOOD, STEVEN W. HILLER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF STEPHEN DUSTIN HILLER, JEREMY CHURCH, SANDRA HANKINS, INGRID FISHER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF STEVEN SCOTT FISHER, KRISTIN WALKER, STEVEN T. FISHER, KATHLEEN GRAMKOWSKI, DANIEL CARVILL, MARY CARVILL, PEGGY CARVILL-LIGUORI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF FRANK T. CARVILL, PAMELA ADLE-WATTS, JOHN WATTS, GLORIA NESBITT, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DEFOREST L. TALBERT, D.J.H., A MINOR, TAWANNA TALBERT DARRING, LATASHA MARBLE, JAMES TALBERT, MIRANDA PRUITT, VELINA SANCHEZ, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MOSES ROCHA, ALOYSIUS SANCHEZ, JR., ROMMEL ROCHA, PHILLIP SANCHEZ, GLORIA P. REYNOSO, INDIVIDUALLY AND ON BEHALF OF THE

ESTATE OF YADIR G. REYNOSO, JASMIN REYNOSO, PATRICIA REYNOSO, JOSE REYNOSO, ASHLEY WELLS SIMPSON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF LARRY LLOYD WELLS, CHAD WELLS, CRYSTAL STEWART, CHASITY WELLS-GEORGE, CANDICE MACHELLA, BILLY DOAL WELLS, HOPE ELIZABETH VEVERKA, DONNA JEAN HEATH, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DAVID MICHAEL HEATH, LOLA JEAN MODJESKA, JOHN DAVID HEATH, OLGA LYDIA GUTIERREZ, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JACOB DAVID MARTIR, ISMAEL MARTIR, NATHANIEL FOLEY, MICHAEL SCOTT DEWILDE, STEVEN MORRIS, DANIELLE DECHAINE-MORRIS, NICHOLAS MORRIS, K.M., A MINOR, MONICA ARIZOLA, ROBERTO AARON ARIZOLA, ROBERTO ARIZOLA, SR., CECILIA ARIZOLA, DANNY ARIZOLA, RICARDO ARIZOLA, GREG KLECKER, RAYMOND MONTGOMERY, PATRICIA MONTGOMERY, TONY WOOD, JOEDI WOOD, ADAM WOOD, MEGAN WOOD, LISA RAMACI, LISA RAMACI INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF STEVEN VINCENT, ISABELL VINCENT, CHARLES VINCENT, MARIA VIDAL, TAMARA HASSLER, RICHARD E. HASSLER, JOANNE SUE HASSLER, SCOTT HUCKFELDT, KATHRYN HUCKFELDT, ALISHA HUCKFELDT, MATTHEW HUCKFELDT, TIMOTHY NEWMAN, PADRAIC J. NEWMAN, AMENIA JONAUS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JUDE JONAUS, GERNESSOIT JONAUS, DAPHNIE JONAUS MARTIN, RICKY JONAUS, MARCKENDY JONAUS, CLAIRE JONAUS, SHAREN JONAUS MARTIN, MASINA TULIAU, AUDELIA MORIN, ESTEBAN MORIN, ESTAVAN MORIN, SR., BRIANNA RENEE NAVEJAS, MARGARITO A. MARTINEZ, AMY LYNN ROBINSON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JEREMIAH ROBINSON, FLOYD BURTON ROBINSON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JEREMIAH ROBINSON, JACOB MICHAEL ROBINSON,

LUCAS WILLIAM ROBINSON, JODEE JOHNSON, JAMES HIGGINS, WENDY COLEMAN, BRIAN RADKE, NOVA RADKE, STEVEN VERNIER, JR., CLIFFORD L. SMITH, JR., INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF KEVIN J. SMITH, GEORGIANNA STEPHENS-SMITH, CORENA MARTIN, ADAM MATTIS, TERRANCE PETERSON, III, PETRA SPIALEK, DAVID G. CARDINAL, JR., INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ANTHONY CARDINAL, RICHELLE HECKER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF WILLIAM F. HECKER, III, VICTORIA HECKER, W.H., A MINOR, C.H., A MINOR, WILLIAM F. HECKER, JR., NANCY HECKER, JOHN D. HECKER, ROBERT F. MARIANO, DEBRA MARIANO, BOBBIE D. MARIANO, VICKIE MICHAY WHITE, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF STEPHEN J. WHITE, GLADYS E. REYES CENTENO, VERONICA LOPEZ REYES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JASON LOPEZ REYES, ZORAIMA LOPEZ, JENNIFER LINK, SHARON JOHNSTON, KENNY LEE, TOM B. LEE, LING P. LEE, DEBORAH NOBLE, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF CHARLES E. MATHENY, IV, DAVID NOBLE, CHARLES E. MATHENY, III, JUDY COLLADO, KAIYA COLLADO, JUSTIN WALDECK, TANJA KUHLMEIER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DANIEL KUHLMEIER, ROBERT J. KUHLMEIER, THERESA A. KUHLMEIER, THERESA ANN KUHLMEIER, EDWARD KUHLMEIER, THOMAS KUHLMEIER, JOHN KUHLMEIER, ROBERT W. KUHLMEIER, PATRICK FARR, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF CLAY P. FARR, SILVER FARR, CARROL ALDERETE, ANTHONY ALDERETE, CHAD FARR, RAYANNE HUNTER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF WESLEY HUNTER, W.H., A MINOR, T.H., A MINOR, FABERSHA FLYNT LEWIS, CHRISTOPHER ANTHONY BERSHEFSKY, LORENZO SANDOVAL, JR., INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF

ISRAEL DEVORAGARCIA, LORENZO SANDOVAL, JR., ADRIAN SANDOVAL, ROSA ESTHER SANDOVAL, HENRY J. BANDHOLD, SR., INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF SCOTT BANDHOLD, AFONSO BANDHOLD, MARIANA BANDHOLD, H. JOSEPH BANDHOLD, DONALD C. BANDHOLD, JOSHUA P. STEIN, NICOLE B. STEIN, NICOLE B. STEIN, A MINOR, J.S.S., A MINOR, JESSE P. STEIN, ERIK ROBERTS, E.C.R, A MINOR, ROBIN ROBERTS, JAMES CRAIG ROBERTS, CARA ROBERTS, COLIN ROBERTS, LUKE MURPHY, WILLETTE MURPHY, SHANE IRWIN, T.R., A MINOR, HELEN MARGUERITE IRWIN, NICOLE IRWIN, MARIA GOMEZ, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JOSE GOMEZ, JOHN DANA GREER, STEPHANIE SANDER, CHRISTOPHER D. GREER, JOSEPH L. GREER, CARL K. GREER, CHRISTOPHER JOYNER, ANNE P. JOYNER, BRIAN MONTOGMERY, K.K, A MINOR, NECOLE DUNLOW SMITH, MICHAEL R. MILLS, M.R.M., A MINOR, EDDIE JO PALINSKY, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JERRY A. PALINSKY, JR., JERRY A. PALINSKY, II, ADINA PALINSKY, JERRY A. PALINSKY, SR., KATHLEEN HOKE, JOEL PALINSKY, KARALEEN HERB, ERIC BRANDON STONEKING, CARRIE SUE STONEKING, FAITH RENEE STONEKING, NANETTE SAENZ, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF CARLOS N. SAENZ, JUAN SAENZ, JOAQINA SAENZ CHORENS, LUZ MARIA ESTRADA-PULIDO, FRANCES CATHERINE CASTRO, ELVA ESPINOZA, AMANDA VACHO, ON BEHALF OF THE ESTATE OF NATHAN J. VACHO AND ON BEHALF OF E.V., A MINOR, BAYLI VACHO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF NATHAN J. VACHO, JOHN VACHO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF CAROL VACHO, ASHLEY VACHO LESLIE, RONALD VEVERKA, CAROL POLLEY, DOUGLAS VEVERKA, SANDRA SOLIDAY, JEANETTE WEST, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF

ROBERT H. WEST, SHELBY WEST, DONNA ENGEMAN, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JOHN W. ENGEMAN, SHANNON SHUMATE, LAUREN SHUMATE, L.S., A MINOR, NICOLE DICENZO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DOUGLAS ANDREW DICENZO, D.D., A MINOR, LARRY DICENZO, KATHY CRANE, JOHNNY ALLEN BLAIR, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ROBERT EDWARD BLAIR, CHARLEE BLAIR WEBB, C.L., A MINOR, ARNE EASTLUND, TINA EASTLUND, SVEN EASTLUND, TAYLOR EASTLUND, ELIZABETH JO EASTLUND, MATTHEW ADAMSON, R.A, A MINOR, KATHY ADAMSON, RICHARD ADAMSON, CHRISTOPHER ADAMSON, JEFFREY ADAMSON, JUSTIN ADAMSON, JAMES SHEPARD, JOHN P. SKLANEY,, III, KATHY CRABTREE, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DANIEL CRABTREE, M.C., A MINOR, JUDY ANN CRABTREE, RONALD WAYNE CRABTREE, DEBRA WIGBELS, JUDY HUENINK, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF BENJAMIN J. SLAVEN, SEAN SLAVEN, NICOLE LANDON, MISTI FISHER, STEVEN J. FRIEDRICH, A.F., A MINOR, PHILIP ALAN DERISE, NORMA ALICIA CONTRERAS, JONATHAN CONTRERAS, JR., CARLOS CONTRERAS, CESAR CONTRERAS, HERNAN CONTRERAS, NOEL CONTRERAS, DANNYEL CONTRERAS, SHARON M. PUGH, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF KENNETH IRVING PUGH, BRITNEY E. CARTER, ALICIA PEARSON, DANIEL J. EVANS, JUSTIN EVANS, KEVIN GRAVES, NICHOLAS GENE KOULCHAR, MICHAEL KOULCHAR, SUHEIL CAMPBELL, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF EDGARDO ZAYAS, A.Z.C., A MINOR, CATHY ANDINO, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF EDWIN A. ANDINO JR., LUIS JUNIOR PUERTAS, LIDIA SULLIVAN, GABRIELA D. PUERTAS VERGARA- DONOSO, CHRISTOPHER MICHAEL MELENDEZ, NARCISO

MELENDEZ, CHRISTINA MELENDEZ, LAUREL BARATTIERI, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF GUY BARATTIERI, PATRICIA WHEATLEY, REBECCA BARATTIERI, NICOLE BARATTIERI, GINA TESNAR, GLORIA L. MAGANA, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF KENNY FRANCES STANTON JR., MARIO STANTON, BRANDIE STANTON, TERRYMARIE STANTON, FRED FRIGO, NANNETTE BRYNE-HAUPT, LYNN FOREHAND, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF RYAN HAUPT, LANCE HAUPT, RHONDA HAUPT, TIFANY THOMPSON, SABRINA CUMBE, WILLIAM WITTE, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF KEVIN M. WITTE, MICHAEL MOCK, TAMMY DORSEY, ERIC PHYE, JAMES GMACHOWSKI, CONSTANCE BRIAN, AMBER HENSLEY, DAVID W. HAINES, DAWN HAINES, MACKENZIE HAINES, KARAR ALABSAWI, MICHELLE TAYLOR, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DAVID G. TAYLOR, JR., J.T., A MINOR, PHYLLIS TAYLOR, JOHN TAYLOR, BRIAN B. TAYLOR, JUDAS RECENDEZ, TYLER NORAGER, SHALEE NORAGER, M.N., A MINOR, HARRY RILEY BOCK, JILL ANN BOCK, MARIAH SIMONEAUX, KOUSAY AL-TAIE, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF AHMED AL-TAIE, NAWAL AL-TAIE, BASHAR AL-TAIE, HATHAL K. TAIE, LAWRENCE KRUGER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ERIC KRUGER, CAROL KRUGER, C.K., A MINOR, E.K., A MINOR, DOUGLAS KRUGER, JACKIE FARRAR-FINKEN, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF PAUL FINKEN, EMILIE FINKEN, C.F., A MINOR, J.F., A MINOR, STEPHEN FINKEN, ALAN FINKEN, RICHARD FINKEN, DAVID FINKEN, MARK FINKEN, JEAN PRUITT, JOAN HENSCHEID, PETER FINKEN, LORI ANN MCCOY, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF GREGORY MCCOY, L.M., A MINOR, T.M., A MINOR, GLENN MICHAEL COX, SANGSOON KIM, SEOP STEVE KIM, INDIVIDUALLY AND ON BEHALF OF THE ESTATE

OF JANG HO KIM, MICHELLE KIM, KURTISS LAMB, FRANCIS L. COTE, NANCY COTE, CHRISTOPHER COTE, SAMANTHA DUNFORD, MAXIMILLIAN SHROYER, SAMANTHA DUNFORD, CASEY REUBEN, BREE REUBEN, PATRICK REUBEN, JACKIE STEWART, MARK MUNNS, CRISTA MUNNS, SHARON DEBRABANDER, DENNIS DEBRABANDER, NICOLE DEBRABANDER, JOELLA PRATT, HELEN FRASER, RICHARD FRASER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DAVID M. FRASER, TRICIA ENGLISH, NATHAN ENGLISH, N.C.E., A MINOR, A.S.E., A MINOR, TODD DAILY, ON BEHALF OF THE ESTATE OF SHAWN L. ENGLISH, JOSHUA STARKEY, BRENT HINSON, WILLIAM HINSON, FRAN HINSON, HILARY WESTERBERG, JOHN GIBSON, STEPHANIE GIBSON WEBSTER, SEAN ELLIOTT, TRAVIS GIBSON, WILLIAM RONALD LITTLE, BRENDA LITTLE, INDIVIDUALLY AND ON BEHALF OF WILLIAM RONALD LITTLE, JR., KIRA SIKES, RANDOLPH DELBERT NANTZ, JOSHUA RYAN NANTZ, CHAQUITA TALBERT, ALOYSIUS SANCHEZ, SR., VICTORIA M. FOLEY, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ALEXANDER SCOTT ARREDONDO, GWENDOLYN MORIN- MARENTES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF STEVE MORIN, JR., ALVIS BURNS, KEITH VEVERKA, SUZZETTEE LAWSON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ISAAC S. LAWSON, CHASTITY DAWN LAFLIN, ALEXANDER ZAYAS, COLIN HAINES, LORI ANN MCCORMICK, LORI ANN MCCORMICK INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF CLINTON MCCORMICK, DEBORAH BEAVERS, DENISE VENNIX, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ALAN R. BLOHM, JEREMY BLOHM, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF CHRIS BLOHM, KIANA BLOHM, JAMES SMITH, MAUK MAUK, ROBERT VACCARO, JOANNE GUTCHER, CHARLOTTE FREEMAN, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF

BRIAN S. FREEMAN, G.F., A MINOR, I.F., A MINOR, KATHLEEN SNYDER, RANDOLPH FREEMAN, KATHALEEN FREEMAN, ALBERT SNYDER, RICHARD LEE, DANNY CHISM, ELIZABETH CHISM, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JOHNATHAN B. CHISM, VANESSA CHISM, JULIE CHISM, RUSSELL J. FALTER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF SHAWN P. FALTER, LINDA FALTER, MARJORIE FALTER, RUSSELL C. FALTER, JOHN SACKETT, JASON SACKETT, MICHAEL LUCAS, MARSHA NOVAK, DAVID LUCAS, TIM LUCAS, ANDREW LUCAS, SHANNON MILLICAN, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JOHNATHON M. MILLICAN, PAUL MITCHELL MILLICAN, NOALA FRITZ, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JACOB FRITZ AND THE ESTATE OF LYLE FRITZ, DANIEL FRITZ, ETHAN FRITZ, BILLY WALLACE, BILLY WALLACE, STEFANIE WALLACE, AUSTIN WALLACE, DEVON WALLACE, C.W., A MINOR, EVAN KIRBY, MARCIA KIRBY, STEVEN KIRBY, JOHNNY WASHBURN, MARVIN THORNSBERRY, CYNTHIA THORNSBERRY, A.B., A MINOR, TRACY ANDERSON, JEFFREY ANDERSON, ADAM G. STOUT, ANDREW JEFFREY ANDERSON, ELIZABETH LYNN ISLAS, ANASTASIA FULLER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ALEXANDER H. FULLER, A.F., A MINOR, L.R.-W., A MINOR, HEATH DAMON HOBSON, JODI MICHELLE HOBSON, SAMANTHA BALSLEY, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MICHAEL C. BALSLEY, JODI MICHELLE HOBSON, M.D.H., A MINOR, NICHOLE GARRIGUS, DEADRA GARRIGUS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MICKEL D. GARRIGUS, DAVID GARRIGUS, KYLA OSTENSON, MATTHEW GARRIGUS, SHAWN RYAN, SHARON Y. DUNN SMITH, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF TERRENCE DUNN, DENNIS DUNN, RICHARD LANDECK, VICTORIA LANDECK,

LAVONNA HARPER, MELBA ANNE F. HARRIS, PAUL D. HARRIS, HYUNJUNG GLAWSON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF CURTIS E. GLAWSON, YOLANDA BROOKS, CURTIS GLAWSON,, SR., KIERRA GLAWSON, SABRINA GLAWSON, ON BEHALF OF THE ESTATE OF CORTEZ GLAWSON, JAZMON REYNA, RYAN SABINISH, R.J.S., A MINOR, S.J.S., A MINOR, CARRIE THOMPSON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF SEAN M. THOMAS, A.T., A MINOR, DANIEL THOMAS, SR., DIANA THOMAS, DANIEL THOMAS, JR., KELLY GILLIS, MELINDA FLICK, ANN CHRISTOPHER, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF KWESI CHRISTOPHER, NANCY FUENTES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DANIEL A. FUENTES, ARMANDO FUENTES, JULIO FUENTES, TATYANA FUENTES, EMMA MCGARRY, D.J.F., A MINOR, JOHN KIRBY, MICHAEL MURPHY-SWEET, ELIZABETH MURPHY- SWEET, ANONA GONELLI, LINDSAY YOUNG, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF BRETT A. WALTON, LEASA DOLLAR, EUGENE DELOZIER, MICHELLE KLEMENSBERG, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF LARRY R. BOWMAN, SCOTT LILLEY, FRANK LILLEY, JOLENE LILLEY, MATTHEW LILLEY, AVA TOMSON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF LUCAS V. STARCEVICH, RICHARD TOMSON, GLENDA STARCEVICH, ARIANA STARCEVICH, TRENTON STARCEVICH, SAMANTHA TOMSON, ANDREW TOMSON, JARED S. STEVENS, S.W., A MINOR, BRADLEY STARCEVICH, SUSAN MARIA DOSKOCIL HICKS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF GLENN DALE HICKS, JR., GLENN DALE HICKS, JR., DAVID JAMES HICKS, JOHN CHRISTOPHER HICKS, S.L.H., A MINOR, KAREN FUNCHEON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ALEXANDER J. FUNCHEON, ROBERT FUNCHEON, DWIGHT MARTIN, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JAY

E. MARTIN, DOVE DEANNA ADAMS, RAVEN ADAMS, LARK ADAMS, HOLLY BURSON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JEROME POTTER, NANCY UMBRELL, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF COLBY J. UMBRELL, MARK UMBRELL, CASEY BOEHMER, JEREMY D. SMITH, DANIEL DIXON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ILENE DIXON AND THE ESTATE OF ROBERT J. DIXON, JESSICA HUBBARD, ON BEHALF OF THE ESTATE OF ROBERT J. DIXON, M.R., A MINOR, L.R., A MINOR, DAVID DIXON, DANIEL AUSTIN DIXON, GRETCHEN LANG, REBECCA J. OLIVER, DANIEL C. OLIVER, KIMBERLEE AUSTIN-OLIVER, TIFFANY M. LITTLE, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF KYLE A. LITTLE, K.L., A MINOR, SHELLEY ANN SMITH, DAKOTA SMITH-LIZOTTE, KIMBERLEE AUSTIN-OLIVER, TIFFANY M. LITTLE, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF KYLE A. LITTLE, K.L., A MINOR, SHELLEY ANN SMITH, DAKOTA SMITH-LIZOTTE, SHYANNE SMITH-LIZOTTE, ERIN LEE DRUCTOR, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF BLAKE STEPHENS, TRENT STEPHENS, KATHLEEN STEPHENS, DEREK STEPHENS, RHETT STEPHENS, SUMMER STEPHENS, BRITTANI HOBSON, CYNTHIA CONNER, WILLIAM FARRAR, SR., INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF WILLIAM FARRAR, JOSHUA BROOKS, JOYCE BROOKS, DANIEL TYLER BROOKS, DELILAH BROWN, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF SCOTT J. BROWN, TONYA K. DRESSLER, ARDITH CECIL DRESSLER, MELISSA DRESSLER, TANYA SUZZETTE DRESSLER, DANIEL DRESSLER, ELIZABETH MASTERSON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JOSHUA D. BROWN, MARIAN BROWN, WAYNE BROWN, DANIELLE SWEET, A.B., A MINOR, G.B., A MINOR, DONNA KUGLICS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MATTHEW J. KUGLICS, LES KUGLICIS, EMILY ADAMS,

DEREK GAJDOS, TAMMY DENBOER, BRANDEAUX CAMPBELL, RYAN WILSON, JAMI LIN WILSON, MATTHEW LAMMERS, ALICIA LAMMERS, BARBARA LAMMERS, GARY LAMMERS, STACY PATE, ANGEL GOMEZ, DENISE JACKSON, SCOTT HOOD, FLORA HOOD, DIXIE FLAGG, STEPHANIE HOOD, CHEYENNE FLAGG, WILLIAM PARKER, MEGHAN PARKER-CROCKETT, ANDREW MOORES, SHEILA TRACY, INDIVIDUALLY AND BEHALF OF THE ESTATE OF JACOB TRACY, DONALD TRACY, NICHOLE SWEENEY, CHRISTINA SHERIDAN, MATTHEW BENSON, MELISSA BENSON, C.B., A MINOR, B.B., A MINOR, DANIEL P. BENSON, CAROL BENSON, DANIEL R. BENSON, RAYMOND NIGEL SPENCER, JR., SYLVIA JOHNSON SPENCER, MICHAEL DEAN MOODY, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MICHAEL DEAN MOODY, JR., CONNIE MOODY, KEDRICK DANTE MOODY, DREW EDWARDS, DONIELLE EDWARDS, ARIFAH HARDY, T.C., A MINOR, AUNDRA CRAIG, JOYCE CRAIG, DEBRA COOK-RUSSELL, NASHIMA WILLIAMS CRAIG, JONATHAN CRAIG, ANDRE BROWN, MICHAEL COOK, VALENCIA COOK, KATHERINE M. CROW, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF WILLIAM J. CROW, K.A.C., A MINOR, CANDACE CATHRYN HUDSON, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF KATHRYN ANN MONDINI, K.E.C, A MINOR, JOHN TAYLOR, CARROL ALDERETE, TRACY ANDERSON, J.J., R.J.S., LORI ANN MCCORMICK, TINA EASTLUND, NANETTE SAENZ, BARBARA FARLEY, JACKIE MERK HLASTAN, KATHRYN HUCKFELDT, RANDOLPH FREEMAN, MAXINE E.CROCKETT, CAMERON FARLEY, JUAN SAENZ, THOMAS SMITH, JENNIFER RENEE YORK, BOONCHOB PRUDHOME, STEPHANIE MCCULLEY, DREW EDWARDS, RHONDA KEMPER, DANIEL C. OLIVER, CECILIA ARIZOLA, JACOB MICHAEL ROBINSON, MICHELLE TAYLOR, T.M.(A MINOR), DEREK STEPHENS, BRUCE LUKOW, KATHY KUGLER, STEPHANIE HOOD, M.R.(A MINOR), TONYA

FREEMAN, MICHELLE BENAVIDEZ, EDWARD KUHLMEIER, JUSTIN ADAMSON, NICHOLE LOHRIG, ANTHONY ALDERETE, NAWAL ALTAIE, WILLIAM WITTE, ANNE P. JOYNER, CLIFFORD VAUGHN, A.F.(A MINOR), LAUREN SHUMATE, TAWANNA TALBERT DARRING, DANIEL BENAVIDEZ, SKYLAR HAKE, MICHAEL LUKOW, CHARLEE BLAIR WEBB, HENRY J. BANDHOLD, SR, JEFFREY D. PRICE, MARC STEARNS, BRANDON ARNOLD, ADAM WOOD, CHRISTOPHER LEVI, I.W., NICHOLAS GENE KOULCHAR, WAYNE BROWN, C.S.(A MINOR), B.B., GREG KLECKER, GLENN DALE HICKS, SR, ROBERT FUNCHEON, NANCY UMBRELL, COLLEEN CZAPLICKI, JOAQINA SAENZ CHORENS, DANIELCARVILL, ALOYSIUS SANCHEZ, SR, AVA TOMSON, NATHANIEL FOLEY, DONNA JEAN HEATH,AUDELIA MORIN, KATRINA COE, G.H., PHILIP ALAN DERISE, MARLYNN GONZALES, JOSHUADENMAN, CORY SMITH, ANGELA M. LAIRD, MEGAN WOOD, L.W., MATTHEW CRAIG, JUDY ANN CRABTREE, ANDREW LUKOW, DARLENE SHELTON, WESLEY WILLIAMSON, LUKE MURPHY, RAYMOND NIGEL SPENCER, SR., DEADRA GARRIGUS, KATHRYN HEAD, DENISE VENNIX, K.A.C, LARRY DICENZO, JOYCE CRAIG, CESAR CONTRERAS, EMILY LEVI, JOEDI WOOD, JOSEPH LUKOW, CANA HICKMAN, ROBIN ROBERTS, SARAH DUDEK, S.S., SEAN ELLIOTT, GEORGIANNA STEPHENSSMITH, JORDAN M. LAIRD, CHRISTOPHER BOUTEN, PATRICK WARD, MELISSA DRESSLER, TATYANA FUENTES, TANJA KUHLMEIER, ERIC PHYE, GLORIA P REYNOSO, JOAN HENSCHEID, NICHOLAS MORRIS, STEVEN J. FRIEDRICH, G.L., MATTHEW MENKE, ROBERT KUGLER, TERREL CHARLES BARTLETT, CATHY ANDINO, ADAM MATTIS, PHYLLIS TAYLOR, J.M.H., AMBER HABSIEGER, ARIANA STARCEVICH, K.A., HEATH DAMON HOBSON, S.L.H., BRENT HINSON, TIMOTHY TIFFNER, E.R., KIMBERLEE AUSTINOLIVER, MARK HURST, LISA RAMACI, KELLY GILLIS, NORMA ALICIA CONTRERAS,

M.B.S., J.L.(A MINOR), JOSEPH T. MILLER, JEREMY D. SMITH, DONALD MAYES, ALAN BURKS, MEGAN PEOPLE, JOHN RICHARD TULLY, II, BRETT FARLEY, CHRISTOPHER JOYNER, ANGELICA ANDRADE, MATTHEW GARRIGUS, STEVEN T. FISHER, JENNIFER ROOSE, CASSANDRA BAILEY, ERIC NEIBERGER, SHAREN JONAUS MARTIN, TRENT STEPHENS, LEE WOLFER, NICHOLAS PROWSE, THERESA DAVIS, KAIYA COLLADO, TABITHA MCCOY, JUSTIN WALDECK, JONI ARIEL REEVES LITTLE, TAMMY DORSEY, JODEE JOHNSON, ROBERTO ARIZOLA, SR, NATHAN ENGLISH, ALISON BURKS MCRUIZ, CYNTHIA DELGADO, ANDREW BRADLEY, KEDRICK DANTE MOODY, DON JASON STONE, DONNA LEWIS, ANDY POOL, JERRY L. MYERS, JEFFREY C. MANN, GEORGE ARSIAGA, JOHN STEARNS, BRIDGET JUNEAU, BREANNA LYNN GASPER, DONNA FARLEY, AUSTIN WALLACE, BRIAN T. SHELTON, AFONSO BANDHOLD, MARY NEIBERGER, NANCY HECKER, KIRA SIKES, RICHARD TOMSON, MACKENZIE HAINES, CHRISTOPHER BOGART, LUZ MARIA ESTRADAPULIDO, JESSICA H. WILLIAMS, NICHOLAS BAUMHOER, SANDRA HANKINS, ESTEBAN MORIN, MICHAEL KOULCHAR, GINA TESNAR, LINDSAY YOUNG, REBECCA J. OLIVER, CHARLES B. GREGSTON, JAMES SMITH, JACKIE FARRARFINKEN, SABRINA GLAWSON, MICHAEL SCOTT DEWILDE, SHANNON SHUMATE, JOHN D HECKER, LILLIAN HURST, DAVID WAYNE HARTLEY, RYAN WILSON, LOLA JEAN MODJESKA, BEVERLEY WOLFER, DENICE YORK, FABERSHA FLYNT LEWIS, KERI HAKE, PAMELA ADLEWATTS, ROBI ANN GALINDO, BRANDIE STANTON, KURTISS LAMB, BRYAN S. SHELTON, M.R.M, JOHNNY JAVIER MILES, JR, JACQUELINE A. SMITH, MELISSA BENSON, MARK MUNNS, CARL K. GREER, CARRIE THOMPSON, TOM B. LEE, RICHARD FRASER, JOANNE SUE HASSLER, ANDREW LUCAS, HUNTER L. LAIRD, JONATHAN CONTRERAS, SR, MARIA ALVAREZ,

ALEXANDER ZAYAS, NANNETTE BRYNEHAUPT, CONNIE HADDOCK, JENNIFER LINK, DOVE DEANNA ADAMS, CHARLOTTE FREEMAN, HOLLY BURSON, CHRISTOPHER WATTS, NATALIA WHITE, ZACHARY HAKE, T.S. (A MINOR), SEAN HARRINGTON, TAMARA RUNZEL, SHYANNE SMITHLIZOTTE, K.B., SUZZETTEE LAWSON, CEDRIC HUNT, E.C.R., GLADYS E. REYES CENTENO, LAVONNA HARPER, DAWN HAINES, ROBERT NEIBERGER, JENNIFER MORMAN, HARRY RILEY BOCK, CARLOS CONTRERAS, DEVON WALLACE, TIFFANY M. LITTLE, MARY JANE VANDEGRIFT(INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MATTHEW R. VANDEGRIFT), SAMANTHA DUNFORD, CHRISTINA MELENDEZ, CALVIN CANINE, LES KUGLICIS, WAYNE NEWBY, REBECCA BARATTIERI, KYLA OSTENSON, FRANCES CATHERINE CASTRO, JUDY HOFFMAN, BRENDA LITTLE, PAULA MENKE, CONNIE MOODY, DEBRA WIGBELS, JEAN DAMMANN, DONNA ENGEMAN, STEPHANIE KIDDER, SYLVIA JOHNSON SPENCER, DEBORAH SMITH, DEBRA COOKRUSSELL, MICHAEL HABSIEGER, H. JOSEPH BANDHOLD, I.F., MEGAN MAUK, ESTAVAN MORIN, SR, J.T.B., RAYANNE HUNTER, DANIEL BENAVIDEZ, JR, HERNAN CONTRERAS, TAYLOR EASTLUND, CHRISTINA SMITH, MICHEAL PAUL ALLEN SHELSWELL, J.M., JUDY COLLADO, DIXIE FLAGG, CHASTITY DAWN LAFLIN, ASHLEY VACHO LESLIE, RICKY JONAUS, M.R.M., TANYA EVRARD, COLIN HAINES, LUCAS WILLIAM ROBINSON, JOHN RICHARD TULLY, MARK UMBRELL, P.A., JEAN PRUITT, VERONICA PENA ANDRADE, RICHARD LEE, CAROL BENSON, ROBERTO AARON ARIZOLA, TIMOTHY NEWMAN, COLIN ROBERTS, ROBERTO ANDRADE, SR., SVEN EASTLUND, SABRINA CHAPMAN, SHANE IRWIN, SCOTT LILLEY, CRYSTAL TUTWILER, SUHEIL CAMPBELL, DOUGLAS KRUGER, DAVID FINKEN, MARIANA BANDHOLD, PETRA SPIALEK, VELINA SANCHEZ, DANIEL THOMAS, SR, PATRICIA MONTGOMERY, JAMES VAUGHN, A.L.R., K.K,

DAVID C. IVERSON, KAYTRINA JACKSON, L.R., N.C.E., T.C., DIANNE O'NEILL, WILLIAM PARKER, ETHAN FRITZ, EDNA LUZ BURGOS, WILLIAM FARRAR,SR., BRANDEAUX CAMPBELL, CHRISTINA SHERIDAN, JERRY A. PALINSKY, SR, STEVE WADLEIGH, KATHLEEN HOKE, MICHELLE WEST, TIFANY THOMPSON, JESSECA LYN TSOSIE, KEVIN GRAVES, JUDAS RECENDEZ, CORENA MARTIN, DANIEL FRITZ, MIRANDA PRUITT, JAMES KINSEY, KEMELY PICKETT, JARRETT WARD, D.A.S., MARY CARVILL, JEFFREY ANDERSON, VICTOR RAY WISE II, BILLY DOAL WELLS, NICOLE BARATTIERI, NICHOLE GARRIGUS, VICTORIA LANDECK, DONNA KUGLICS, CHRISTOPHER SONGER, JESSALYN HOLT, VALENCIA COOK, LING P. LEE, ROSEMARIE ALFONSO, DANIEL DRESSLER, LARK ADAMS, RICHARD E. HASSLER, ERIK ROBERTS, PATRICIA WHEATLEY, A.M.H., MARGARITA ARISTIZABAL, THERESA HART, MARY JANE VANDEGRIFT (INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF JOHN VANDEGRIFT), DANIEL MENKE, JOSEPH L. GREER, SHELLEY ANN CASEY, CHRISTOPHER MILLER, RENE POOL, JARED S. STEVENS, KENNY LEE, A.Z.C., MELINDA FLICK, JOHN GIBSON, OLGA LYDIA GUTIERREZ, FRED FRIGO, NICOLE A. KAPLAN, REBECCA L. SAMTENFINCH, TAMMY VANDERWAAL, TYLER NORAGER, BRITNEY E. CARTER, DAVID JAMES HICKS, SHANNON MILLICAN, R.A., CARLLIE PAUL, THEODORE LESTER, LORI ANN MCCOY, K.L., BOBBIE D. MARIANO, C.L.(A MINOR), ANASTASIA FULLER, RICHARD FINKEN, JOSHUA SCHICHTL, KIERRA GLAWSON, FAITH RENEESTONEKING, PATRICIA REYNOSO, BRIANNA RENEE NAVEJAS, POLOKA AIETI, DONIELLE EDWARDS, SHELBY WEST, VICTORIA M. FOLEY, RUSSEL HICKS, JR., ELVA ESPINOZA, CHAD FARR, CRISTA MUNNS, DAVID ARNOLD, ANTHONY HUDSON, JOSEPH HELTON, SR., JOHN D. LAMIE, GEORGE D. WHITE, C.F., BASHAR ALTAIE, MATTHEW LILLEY, VIVIAN PICKETT, BILLY

JOHNSON, CARA ROBERTS, C.B., CHRIS FARLEY, JESSICA HUBBARD, RANDALL GEIGER, ROBERT CANINE, JOHN SACKETT, J.T., LEASA DOLLAR, JOHN MCCULLEY, CANDICE MACHELLA, MATTHEW LAMMERS, WILLIAM RONALD LITTLE, CASSIE COLLINS, CHRISTOPHER COTE, NICOLE LANDON, JOSHUA P. STEIN, CARRIE SUE STONEKING, URSULA ANN JOSHUA, MATTHEW BENSON, JAMES CANINE, CHRISTINA BIEDERMAN, MARIO STANTON, VERONICA DENISSE ANDRADE, BILLY WALLACE, DIANA THOMAS, MONICA ARIZOLA, DAKOTA SMITHLIZOTTE, LEAANN WADLEIGH, LESLIE K. REEVESHARDCASTLE, A.S.E., TONY GONZALEZ, JENNIFER LYNN HUNT, SLADE VICTOR TULLY, DOUGLAS VEVERKA, THOMAS KUHLMEIER, JOHN VACHO, KIMBERLY VESEY, ELIZABETH CHISM, AVA LANETTE BRADLEY, HILARY WESTERBERG, M.C., DEBORAH BEAVERS, MAX W. HURST, TANYA SUZZETTE DRESSLER, JAMIE BARNES, PEGGY CARVILLLIGUORI, JEFFREY ADAMSON, SAMANTHA BALSLEY, ELIZABETH JO EASTLUND, ANGEL MAYES, ALOYSIUS SANCHEZ, JR, JUDITH TIFFNER, T.R., HOPE ELIZABETH VEVERKA, A.S., ARIFAH HARDY, JUSTIN EVANS, GILBERT ARSIAGA, JR, SELICIA FIELD, A.B.(A MINOR), FRANK LILLEY, JEANNINE VAUGHN, NOEL CONTRERAS, ADINA PALINSKY, BRIAN MONTOGMERY, EMANUELA FLOREXIL, STEPHEN FINKEN, RUSSELL J. FALTER, CASEY REUBEN, M.A.H., STEVEN GREENWOOD, SEOP KIM, PAUL MITCHELL MILLICAN, JAMES TALBERT, GEORGE J. WHITE, ANITA BAKER, KARALEEN HERB, PAM MARION, KELLI D. HAKE, BRIAN G. TAYLOR, MATTHEW ARSIAGA, DONALD C. BANDHOLD, JEANNE RHEA MCMANUS, DANIEL PRICE, MARK FINKEN, K.M., VICKIE MICHAY WHITE, REBEKAH SCOTT, ERIC BILLITER, MICHAEL J. MILLER, RICHELLE HECKER, STEVEN KIRBY, MARLEN PICKETT, SHAYLYN C. REECE, GLORIA L. MAGANA, ROMMEL ROCHA, T.H., MARILYN LOUISE TULLY,

TAMARA HASSLER, DAVID DIXON, BRITTANI HOBSON, HELEN FRASER, JOHN DAVID HEATH, JOHN KUHLMEIER, P.H., KIMBERLY SONGER, MATTHEW FIESER, BRIAN COKE, DEREK ALLEN HOLLCROFT, ADAM MAGERS, JOYCE BROOKS, MARICEL MURRAY, SEBASTIAN NIUMAN, SAMANTHA TUCKER, JOSHUA P.G. WOLD, ANDREW TOMSON, JACOB BAUER, JOHNNY JAVIER MILES, SR, CLAIRE JONAUS, DANNYEL CONTRERAS, STEPHANIE C. SANDER, ROBERT WHITE, CHRISTOPHER D. GREER, DANNY CHISM, MICHAEL DEAN MOODY, ROBERT VACCARO, SHALEE NORAGER, MICHAEL LUCAS, ARDELL THOMSEN, TIMOTHY W. ELLEDGE, ARNE EASTLUND, DAVID W. HAINES, MELBA ANNE F. HARRIS, JESSE P. STEIN, RALPH THOMSEN, MICHAEL WEATHERLY, SUSAN MARIA DOSKOCIL HICKS, VERONICA LOPEZ REYES, AUNDRA CRAIG, SANDRA SOLIDAY, ANDREW MOORES, L.R.W., RONALD SLOAN, KATHLEEN SNYDER, HATHAL K. TAIE, SHEILA TRACY, ROBERT F. MARIANO, JUDY HUENINK, MICHAEL SMITH, DENNIS DUNN, CYNTHIA CONNER, IMO AIETI, CONSTANCE BRIAN, JOHN O'NEILL, DAVID KAPLAN, ELENA SHAW, G.B.(A MINOR), ANGELA ALVAREZ, AMI NEIBERGER, JOLENE LILLEY, JENNIE L. MORIN, JONATHAN CRAIG, ANDRE BROWN, JAMES DRESSLER, KATHY ADAMSON, RHETT MURPHY, MICHAEL R. MILLS, CAROL POLLEY, CYNTHIA THORNSBERRY, ALAN FINKEN, CELESTE YANTIS, KRISTIN WHITE, JASON ROBINSON, JODI MICHELLE HOBSON, SCOTT HOOD, SHAULA SHAFFER, DANIEL J. EVANS, C.W., MARION CRIMENS, GABRIELA D. PUERTAS VERGARADONOSO, DONALD TRACY, DONALD FIELD, CHRISTOPHER GOLEMBE, ANGELICA FIELD, LANI D. BOGART, FRANK L. CONVERSE, RUSSELL C. FALTER, MARVISE L. CROCKETT, JEAN MARIANO, SENOVIA FIELD, JESSICA CABOT, LORENZO SANDOVAL, JR, EUGENE DELOZIER, SHARON JOHNSTON, STACY PATE, SHILYN JACKSON,

VICTORIA HECKER, MARIO BOWEN, SETH TIFFNER, JOHN P. SKLANEY, III, JOELLA PRATT, PRESTON SHANE REECE, JEREMY BAUER, DAVID G. CARDINAL, JR, JEREMY CHURCH, LAUREL BARATTIERI, EDDIE JO PALINSKY, CHEYENNE FLAGG, JOEL PALINSKY, S.J.S., BRENDA CHAND, SAMANTHA TOMSON, MICHELLE KIM, JERRY A. PALINSKY, II, LATASHA MARBLE, PHILLIP SANCHEZ, LUIS GARZA, CHRISTOPHER MICHAEL MELENDEZ, JOHN DANA GREER, PADRAIC J. NEWMAN, ALICIA PEARSON, LINDA GIBSON, CHRISTOPHER ADAMSON, ELIZABETH MASTERSON, GREGORY BAUER, M.N., KATHY CRABTREE, J.R., EVAN D. BOGART, MAXIMILLIAN SHROYER, CHASITY WELLSGEORGE, MICHELLE KLEMENSBERG, JOHNNY WASHBURN, G.F., ISABELL VINCENT, MICHAELMURPHYSWEET, MARGARITO A. MARTINEZ, JR, STEFANIE WALLACE, NATHAN NEWBY, VANESSA CHISM, ZORAIMA LOPEZ, SUSAN ARNOLD, EMILIE FINKEN, VICKIE MCHONE, JOSHUA TIFFNER, MATTHEW HUCKFELDT, JAYDEAN HAMILTON, MARIAH SIMONEAUX, SHARON M. PUGH, DONNIE MARION, JAMES CRAIG ROBERTS, AMBER HENSLEY, AMENIA JONAUS, MELISSA DOHENY, SHELLEY ANN SMITH, NOEL S. FARLEY, TAMMY KINNEY, GLORIA NESBITT, KIMBERLY MILLER, SEAN SLAVEN, ERIC BRANDON STONEKING, JULIE CHISM, DWIGHT MARTIN, KATHY CRANE, RONALD VEVERKA, TRAVIS GIBSON, NOALA FRITZ, MATTHEW L. MERGELE, LAWRENCE KRUGER, SHARON Y. DUNN SMITH, JOSE REYNOSO, BRADLEY STARCEVICH, DANIEL P. BENSON, KEITH VEVERKA, PATRICIA SMITH, E.W., SHIRLEY STEARNS, ADAM G. STOUT, ARMANDO FUENTES, RONALD WAYNE CRABTREE, SANDRA VALENCIA, KAREN FUNCHEON, ISMAEL MARTIR, E.K., BRYANT BEARFIELD, WILLIAM J. LEE, MARVIN THORNSBERRY, ANN CHRISTOPHER, CHRISTOPHER DAVID, TAUSOLO AIETI, BENJAMIN DANIEL CARRINGTON, NANCY COTE, JANET

JONES, MERLESE PICKETT, NICOLE IRWIN, AMANDA VACHO, RICHARD CASEY, PERRY WHITE, SHARON DEBRABANDER, ADRIAN SANDOVAL, JAMI LIN WILSON, HYUNJUNG GLAWSON, LINDA FALTER, KARAR ALABSAWI, JASON SACKETT, ROADY LANDTISER, JEREMY BLOHM, PETER FINKEN, TERRANCE PETERSON, III, ANGELINE JACKSON, ERIC LEVI, FRANCES ROBINSON, RYAN SABINISH, SHELBY WHITE, ASHLEY GUDRIDGE HOUPPERT, JOSHUA BROOKS, MICHAEL COOK, NICHOLE SWEENEY, SARAH CROSBY, JAMES SHEPARD, STEPHANIE JUNEAU, ROBERT W. KUHLMEIER, GARY LAMMERS, LINDA JONES, SHAWN BARTLETT, TEMIKA SWINTON, JOHN DAGGETT, LYNN FOREHAND, JANET L. RIOS, MARK E. THOMSEN, LAUREN NIQUETTE, JOEL HERNANDEZ, VICTORIA HERNANDEZ, ATHENA HALL, MATTHEW C. BEATTY, ANDREW CHARLES MAJOR, H.K., KIERSTEN HALL, JERRIN MATTHEW OGDEN, RONALD ALLDRIDGE, BROOKE KENNEY, K.R.G., TODD ALLDRIDGE, RENE GUTEL, ABIGAIL HALL, JOANN ALLDRIDGE, ANDREW JAMES RAYMOND, KANDI DANIELLE WHITESIDE, THOMAS NIQUETTE, A.M.M., ANA M. GOMEZ, RANDALL KLINGENSMITH, SHARON SMITHEY WHITESIDE, KAITLYN ADAMS, ANGELA M. GARCIA, RYAN BOWMAN, MICHAEL PASCO, ANDREW HALL, DANIEL KENNEY, CHRISTOPHER WHITESIDE, SEAN M. NIQUETTE, CHRISTOPHER SATTERFIELD, GRANT H. VON LETKEMANN, II, ASHLEY MEIKEL MAJOR, BRIAN CLARK ALLDRIDGE, SHERYL ANN CHEN, TARA HUTCHINSON, RANDI JEAN MARTZ, J.K., K.M.G., M.J.H., STEPHEN W. EVANS, JACKSON WILEY WHITESIDE, TYLER NICHOLAS OGDEN, M.T.W., RICHARD HEDGECOCK, II, MATTHEW WHITESIDE, MACKENZIE G. HALL, DIANNA ALLDRIDGE, MARY NIQUETTE, MARK A. HALL, GARY DOUGLAS FISHBECK, TONI ATTANASIO,

Plaintiffs-Appellees,

v.

DR. MUHAMMAD BAASIRI,

Movant-Appellant,

JAMMAL TRUST BANK SAL,

Defendant-Appellant.

On Appeal from a Judgment of the United States District Court for the Eastern District of New York.

ARGUED: MARCH 2, 2023

DECIDED: AUGUST 24, 2023

Before: JACOBS, PARK, and NARDINI, *Circuit Judges*.

A group of American victims of terrorist attacks in Iraq sued several Lebanese banks for aiding and abetting the Lebanese militant group Hezbollah in carrying out those attacks. One of the banks, Jammal Trust Bank (JTB), was later designated a terrorist organization by the U.S. Treasury Department, sending it into liquidation and prompting Lebanon's central bank to acquire its assets. JTB moved to dismiss the suit against it on the ground that it now possessed foreign sovereign immunity. The United States District Court for the Eastern District of New York (Carol Bagley Amon, *Judge*) denied the motion on the ground that a defendant is entitled to foreign sovereign immunity only if it possesses such immunity at the time suit is filed. We hold that immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1604, may attach when a defendant becomes an instrumentality of a foreign sovereign after a suit is filed. We therefore

VACATE and REMAND for a determination of whether JTB is such an instrumentality.

MICHAEL RADINE (Gary M. Osen, Dina Gielchinsky, and Aaron Schlanger, *on the brief*), Osen LLC, Hackensack, NJ, *for Plaintiffs-Appellees*.

MARK W. DELAQUIL (David B. Rivkin, Jr., Elizabeth Price Foley, and Kendall E. Wangsgard, on the brief), Baker & Hostetler LLP, Washington, DC, *for Movant-Appellant and Defendant-Appellant*.

Lewis S. Yelin, Attorney, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC (Richard C. Visek, Acting Legal Adviser, Department of State; Brian M. Boynton, Principal Deputy Assistant Attorney General; Breon Peace, United States Attorney for the Eastern District of New York; Sharon Swingle, Attorney, Civil Division, United States Department of Justice, Washington, DC, *on the brief*), *for Amicus Curiae* United States of America.

Jay S. Auslander (Natalie Shkolnik, Michael Van Riper, *on the brief*), Wilk Auslander LLP, New York, NY, *for Amicus Curiae* Professor Joseph W. Dellapenna.

WILLIAM J. NARDINI, *Circuit Judge*:

The plaintiffs in this case are American service members who were wounded, and the relatives of service members who were killed or wounded, in terrorist attacks carried out in Iraq from 2004 to 2011 by proxies of the Lebanese militant group Hezbollah. In 2019, victims and their family members sued several Lebanese banks, alleging that the banks aided and abetted the attacks by laundering money for Hezbollah.

After the plaintiffs filed suit, the United States Department of the Treasury labelled one of those banks, Jammal Trust Bank (JTB), a Specially Designated Global Terrorist. That designation prompted the Banque du Liban, Lebanon's central bank, to liquidate JTB and acquire its assets. JTB then moved to dismiss the case against it, on the ground that it was now entitled to sovereign immunity as an instrumentality of Lebanon. The district court denied the motion, holding that a defendant is entitled to foreign sovereign immunity only if it possesses such immunity at the time suit is filed. JTB appealed. We hold that immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1604, may attach when a defendant becomes an instrumentality of a foreign sovereign after a suit is filed. We therefore vacate the district court's decision and remand for determination of whether JTB is such an instrumentality.

I. Background

Between 2004 and 2011, the Lebanese militant group Hezbollah armed and trained numerous proxy groups in Iraq with increasingly sophisticated roadside bombs, grenades, and rockets, which those groups used to kill and injure thousands of American soldiers.

Hezbollah, which is a U.S.-designated Foreign Terrorist Organization, allegedly coordinated the attacks with Iran's Islamic Revolutionary Guard Corps, which supplied much of the weaponry.

On January 1, 2019, a group of American victims and their relatives sued eleven Lebanese banks, including JTB, in the United States District Court for the Eastern District of New York (Carol Bagley Amon, *Judge*) for allegedly laundering money for Hezbollah. They brought their claims under the Anti-Terrorism Act, 18 U.S.C. § 2333(a) and (d), as amended by the Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, 130 Stat. 852 (2016), which authorizes suits against those who aid and abet acts of terrorism. The plaintiffs filed an amended complaint on August 2, 2019.

On August 29, 2019, the United States Department of the Treasury named JTB a Specially Designated Global Terrorist. The Treasury Department accused JTB of "brazenly enabling" Hezbollah's financial activities and posing a "direct threat to the integrity of the Lebanese financial system." Joint App'x at 881.

That designation ended things for JTB. Shut out of the dollar system, the bank was unable to trade with many of its counterparties or to carry out other business denominated in dollars. In September, the Banque du Liban, Lebanon's central bank, responded by freezing JTB's deposits and liquidating its operations. JTB is now undergoing liquidation under Lebanese law. Movant-Appellant Dr. Muhammad Baasiri is the central bank's liquidator.

After the Banque du Liban took over, JTB and Baasiri, acting separately from the other defendants, moved for (1) substitution of Baasiri for JTB or, in the

alternative, intervention by Baasiri, and (2) dismissal, based on (a) Baasiri's asserted sovereign immunity, (b) international comity, or (c) lack of redressability as to JTB.

The district court granted Baasiri's motion to intervene but denied the motion to substitute and the motion to dismiss. The court concluded that JTB could not raise sovereign immunity as a defense because the liquidation process began only after the plaintiffs brought their suit. It rested that conclusion on the Supreme Court's decision in *Dole Food Co. v. Patrickson*, 538 U.S. 468 (2003), which it read to hold that "instrumentality status [must] be determined at the time suit is filed." Special App'x at 16 (quoting *Dole Food*, 538 U.S. at 478). JTB and Baasiri appealed. After oral argument, we solicited the views of the United States State Department, which submitted an *amicus* brief.

II. Discussion

The decisive issue in this appeal is whether JTB may raise a defense of immunity under the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1602–1611, when it alleges that immunity arose after suit was filed.[1] We review the district court's resolution of this question of law *de novo*. *A&B Alternative Mktg. Inc. v. Int'l Quality Fruit Inc.*, 35 F.4th 913, 915 (2d Cir. 2022); *Rukoro v. Fed. Republic of Germany*, 976 F.3d 218, 223 (2d Cir. 2020).

---

[1] We have appellate jurisdiction over this appeal because the collateral order doctrine "allows an immediate appeal from an order denying immunity under the FSIA." *Petersen Energía Inversora S.A.U. v. Argentine Republic & YPF S.A.*, 895 F.3d 194, 203 (2d Cir. 2018) (internal quotation marks omitted).

To determine the effect of the FSIA, one must know something of the system that came before it. We begin, therefore, as almost all modern discussions of foreign sovereign immunity do, with *The Schooner Exchange v. McFaddon*, 7 Cranch 116 (1812). In that case, Chief Justice John Marshall explained that foreign sovereigns have no inherent exemption from the power of American courts, since the "jurisdiction of the nation within its own territory is necessarily exclusive and absolute." *Id.* at 136. Still, he wrote, it would "degrade the dignity" of a sovereign state to have its rights adjudicated in the courts of another country, so, most countries had agreed to waive jurisdiction over foreign sovereigns. *Id.* at 137–40. The young United States, the Chief Justice announced, would do the same. *Id.* at 147.

This was a matter of "grace and comity," not power, and of "common law," not statute. *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 486 (1983); *Samantar v. Yousuf*, 560 U.S. 305, 311 (2010). Although district courts had subject-matter jurisdiction over suits against foreign states under the Constitution and the diversity statute, they elected not to exercise it when a defendant was entitled to immunity. *See Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 437 n.5 (1989).

For many years, that entitlement was determined by the executive branch, not the judiciary. *See Verlinden*, 461 U.S. at 486–87. In "nearly every action brought against a foreign sovereign," the State Department would submit a "suggestion of immunity" and the receiving court would surrender its jurisdiction over the case. *Beierwaltes v. L'Office Federale De La Culture De La Confederation Suisse*, 999 F.3d 808, 818 (2d Cir. 2021) (cleaned up).

Things started to change in 1952, when the State Department announced that it would follow the more modern "restrictive" theory of foreign sovereign immunity. *Turkiye Halk Bankasi A.S. v. United States*, 143 S. Ct. 940, 946 (2023). In what came to be known as the Tate Letter, the State Department explained that "the immunity of the sovereign [would be] recognized with regard to sovereign or public acts *(jure imperii)* of a state, but not with respect to private acts (*jure gestionis*)." Letter of Jack B. Tate, Acting Legal Adviser, Department of State, to Acting Attorney General Philip B. Perlman (May 19, 1952), *reprinted in* 26 Dep't of State Bull. 984, 984–85 (1952), *and in Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 711–12 (1976) (Appendix 2 to opinion of the Court).

The Tate Letter threw immunity doctrine "into some disarray." *Republic of Austria v. Altmann*, 541 U.S. 677, 690 (2004). Although the State Department continued to file suggestions of immunity, and the courts continued to respect them, "political considerations" sometimes led the State Department to support immunity when a straightforward reading of the restrictive theory would have led it to oppose. *Id.* Confusing things still more, if the State Department did not step in, courts made immunity determinations by themselves, "generally by reference to prior State Department decisions." *Verlinden*, 461 U.S. at 487. With two branches, having different institutional considerations, deciding who should be immune and who should not, "the governing standards were," unsurprisingly, "neither clear nor uniformly applied." *Id.* at 488.

Twenty-four years after the Tate Letter, Congress brought order to the chaos. It replaced the old ad hoc system with the Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94–583, 90 Stat. 2891, which

provided a "comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state." *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 141 (2014) (internal quotation marks omitted). In doing so, it intended to "codify the restrictive theory of sovereign immunity" laid out in the Tate Letter, "which Congress recognized as consistent with extant international law." *Samantar*, 560 U.S. at 319–20; *see Garb v. Republic of Poland*, 440 F.3d 579, 586 (2d Cir. 2006) ("Congress . . . intended to codify the Tate Letter.").

The FSIA provides that "a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided" in the Act. 28 U.S.C. § 1604; *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993). Any "agency or instrumentality" of a foreign state is similarly immune. 28 U.S.C. §§ 1603(a), 1604. The FSIA defines "agency or instrumentality," in relevant part, as an entity "which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof." 28 U.S.C. § 1603(b)(2).[2]

The crucial word there—which goes a long way toward resolving this case—is *is*. The statute uses the present tense, and we, in the words of the Supreme Court, must give that choice "real significance." *Dole Food*, 538 U.S. at 478. The parties, however, disagree on that significance. The plaintiffs argue that a

[2] The district court did not decide whether JTB is now an instrumentality of a foreign state under the FSIA. *See Bartlett v. Société Générale de Banque au Liban SAL*, No. 19-CV-00007, 2021 WL 3706909, at *8 (E.D.N.Y. Aug. 6, 2021) (noting that defendants "claim that they qualify as an 'agency or instrumentality' of Lebanon" without deciding this question).

"statute's use of the present tense ordinarily refers to the time the suit is filed, not the time the court rules." Appellees' Br. 46–47 (quoting *TIG Ins. Co. v. Republic of Argentina*, 967 F.3d 778, 783 (D.C. Cir. 2020)). JTB counters that a time-of-filing rule would violate the purposes of the FSIA. The State Department argues that here, the present tense reflects the FSIA's concern with "current political realities and relationships" and its aim that "foreign states and their instrumentalities" be given "some *present* protection from the inconvenience of suit as a gesture of comity." Br. of *Amicus Curiae* U.S. Department of State 11 (quoting *Republic of Austria v. Altmann*, 541 U.S. 677, 696 (2004)). We think the State Department has the better of it: The most natural reading of the statute is one that gives foreign sovereigns immunity even when they gain their sovereign status mid-suit. We therefore hold that immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1604, may attach when a defendant becomes an instrumentality of a foreign sovereign after a suit is filed.

To see why, look first to the structure of the FSIA. The act gives foreign states immunity not only from judgments, but from process, too. It shields them from the "expense, intrusiveness, and hassle of litigation altogether." *Beierwaltes*, 999 F.3d at 817 (internal quotation marks omitted). We see no reason why that protection should apply only if the defendant had sovereign status from the beginning of the suit. The fact that a defendant acquired instrumentality status after the suit began will not ordinarily justify subjecting a foreign sovereign to the "inconvenience of suit." *Altmann*, 541 U.S. at 696; *cf. Zuza v. Off. of the High Representative*, 857 F.3d 935, 938 (D.C. Cir. 2017) (concluding that foreign official immunity under the International Organizations Immunities Act, 22 U.S.C.

§ 288d(b), "compels prompt dismissal even when it attaches mid-litigation").

This reading is consistent with other authority[3] and dovetails with the purposes of foreign sovereign immunity. Such immunity exists for different reasons than "other status-based immunities," including the qualified immunity accorded to many state actors. *Dole Food*, 538 U.S. at 478–79. Immunity for government officers prevents "the threat of suit from crippling the proper and effective administration of public affairs." *Id.* at 479 (cleaned up). "Foreign sovereign immunity, by contrast, is not meant to avoid chilling foreign states . . . in the conduct of their business but to give [them] some protection from the inconvenience of suit as a gesture of comity between the United States and other sovereigns." *Id.* The immunity therefore focuses on "current political realities." *Altmann*, 541 U.S. at 696; *see Republic of Iraq v. Beaty*, 556 U.S. 848, 864 (2009) (same). What matters is whether a foreign sovereign is subject to the burdens of suit at any point before judgment.

The pre-FSIA history of foreign sovereign immunity likewise suggests that immunity may kick in after a lawsuit has been filed. Take the Supreme Court's

---

[3] *See Straub v. A P Green, Inc.*, 38 F.3d 448, 451 (9th Cir. 1994) (suggesting, but not deciding, that "the FSIA may be applicable if a party that becomes a 'foreign state' after the commencement of a lawsuit promptly brings its status as a 'foreign state' to the district court's attention"); *cf. Matton v. Brit. Airways Bd., Inc.*, No. 85 CIV. 1268, 1988 WL 117456, at *3 (S.D.N.Y. Oct. 27, 1988) (holding that a post-filing privatization of a sovereign instrumentality meant the FSIA no longer applied because the purposes of foreign sovereign immunity were no longer implicated). *But see Olympia Express, Inc. v. Linee Aeree Italiane, S.p.A.*, 509 F.3d 347, 349–50 (7th Cir. 2007) (rejecting *Matton*'s reasoning).

decision in *Oliver American Trading Co. v. United States of Mexico*, 264 U.S. 440 (1924), which illustrates the need for immunity to reflect the latest political developments. *Oliver* involved a breach of contract suit brought by a Delaware corporation against the government of Mexico. At the time the company filed suit, the United States did not recognize the *de facto* Mexican government as legitimate, but the United States established diplomatic relations while the suit was pending. *Id.* at 442. Once that happened, the district court held that Mexico was entitled to immunity. *Id.* The corporation sought review in the Supreme Court, under a statute authorizing such direct review of decisions that "present the question of jurisdiction of the District Court as a federal court." *Id.* The Supreme Court, however, concluded that the question of foreign sovereign immunity did not implicate "the power of the court" and transferred the appeal to this Court to proceed in the ordinary course. *Id.* at 442–43. We affirmed. *Oliver Am. Trading Co. v. Gov't of the United States of Mexico*, 5 F.2d 659, 667 (2d Cir. 1924). The upshot: In the preFSIA world, a defendant who gained foreign sovereign immunity after a suit was filed had to be dismissed from the case.[4] The FSIA, as we have seen, codified the pre-existing common law. *Samantar*, 560 U.S. at 319–20.

---

[4] *Oliver* also demonstrates that immunity and jurisdiction did not necessarily rise and fall together in the pre-FSIA regime. A court could still have jurisdiction even when a defendant gained sovereign immunity after filing and the court was thereby compelled to dismiss. *See Oliver*, 264 U.S. at 442 (noting that the case did not implicate the constitutional or statutory power of the court to hear the case); *Oliver*, 5 F.2d at 667 (holding that post-filing diplomatic recognition conferred immunity on the Mexican government and required dismissal).

More recently, courts have reached the same conclusion in other immunity cases. In 2009, the Supreme Court held that when a 2003 presidential designation made an FSIA exception inapplicable to Iraq, "immunity kicked back in" and then-pending cases had to be dismissed. *Beaty*, 556 U.S. at 865. Six years ago, the D.C. Circuit held that officers of international organizations entitled to immunity under the International Organizations Immunities Act (IOIA), 22 U.S.C. §§ 288 *et seq.*, could invoke that immunity, and compel dismissal, even when they gained their status only after the suit was filed. *Zuza*, 857 F.3d at 938. The IOIA, we note, provides that international organizations enjoy "the same immunity from suit . . . as is enjoyed by foreign governments." 22 U.S.C. § 288a(b). And in a case involving claims against members of the Saudi ruling family, the Eleventh Circuit held that diplomatic immunity requires dismissal even when the defendant becomes a diplomat after the action commences. *See Abdulaziz v. Metro. Dade County*, 741 F.2d 1328, 1330 (11th Cir. 1984).

With structure, purpose, and history arrayed against them, the plaintiffs argue that Supreme Court precedent is nevertheless on their side. They contend that the Court's statement in *Dole Food* that "instrumentality status is determined at the time of the filing of the complaint" forecloses changes in status after filing. *Dole Food*, 538 U.S. at 480. We disagree. In *Dole Food*, a group of farm workers from Costa Rica, Ecuador, Guatemala, and Panama sued the Dole Food Company (and several others) over alleged injuries from exposure to a chemical used as an agricultural pesticide. *Id.* at 471. Some of the defendants moved to dismiss, arguing that they were instrumentalities of Israel when the alleged conduct took place, although not at the time the suit was brought. *Id.* at 471–72. The Supreme

Court granted certiorari to decide "whether a corporation's instrumentality status is defined as of the time an alleged tort or other actionable wrong occurred or, on the other hand, at the time suit is filed." *Id.* at 471.

The answer, the Court held, is that "instrumentality status is determined at the time of the filing of the complaint," not at the time the wrong occurred. *Id.* at 480. The Court reasoned that "the plain text" of § 1603(b)(2) is "expressed in the present tense," *id.* at 478. It also invoked "the longstanding principle that the jurisdiction of the Court depends upon the state of things at the time of the action brought." *Id.* (internal quotation marks omitted). Giving the companies immunity for a status they no longer held would, the Court concluded, do nothing to advance the purpose of foreign sovereign immunity—protecting sovereigns from "the inconvenience of suit as a gesture of comity"—because, once the defendants had ceased to be instrumentalities of a foreign state, no foreign sovereign was involved. *Id.* at 479.

The situation here is flipped: The defendant claims to have gained sovereign status after filing, rather than losing it before. The logic of *Dole Food*, applied to these facts, supports the mirror-image outcome: Although pre-suit sovereign immunity cannot be retained by a no-longer-sovereign defendant, sovereign status acquired post-filing can confer immunity. That result gives the FSIA's use of the present tense "real significance," as *Dole Food* instructed. 538 U.S. at 478. It also accords with *Dole Food*'s explanation of the purposes behind foreign sovereign immunity, which exists to protect foreign sovereigns from "the inconvenience of suit," and not, as with qualified immunity, to shape conduct ex ante. *Id.* at 479.

The plaintiffs object that *Dole Food* gave us a clear rule, and as a lower court, we are bound by it. But opinions are not statutes. They should not be read as if they were. *See Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979). The Supreme Court has "often admonished that general language in judicial opinions should be read as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not then considering." *Turkiye Halk Bankasi A.S. v. United States*, 143 S. Ct. 940, 950 (2023) (internal quotation marks omitted).[5]

Read in context, the statement in *Dole Food* does not support the plaintiffs' position. The *Dole Food* court had occasion to consider only two options: setting instrumentality status at the time of the allegedly wrongful conduct or setting it at the time the suit was brought. 538 U.S. at 471. The Court did not consider—and has not since considered—the immunity of a defendant who gains sovereign status after the suit begins. That question, as we have explained, raises

[5] *Turkiye Halk Bankasi* provides a nice example of the need for caution in reading broad judicial statements in the FSIA context. The case concerned the criminal prosecution of a Turkish bank for conspiring to evade U.S. sanctions. 143 S. Ct. at 943. The bank, which was wholly owned by the Republic of Turkey, argued that the FSIA gave it immunity from prosecution, claiming that no FSIA exception applied to it and pointing to the Supreme Court's statement in a 1989 case that the FSIA is the "sole basis for obtaining jurisdiction over a foreign state in federal court." *Id*. at 950 (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989)). That language, the bank said, was definitive. But the Court, noting that *Amerada Hess* was a civil, not a criminal, case, concluded that its logic did not "translate to the criminal context." *Id*.

quite different concerns from the ones the Court faced in *Dole Food*.

The plaintiffs point to two statements from this Court that they argue support their reading of *Dole Food*. First, in 2014, citing *Dole Food*, we observed in a footnote that "the court's subject matter jurisdiction and a party's instrumentality status for purposes of § 1603 are both determined at the time when the complaint is filed." *European Cmty. v. RJR Nabisco, Inc.*, 764 F.3d 129, 143 n.15 (2d Cir. 2014), *rev'd on other grounds*, 579 U.S. 325 (2016). The plaintiff in *RJR Nabisco* was the European Community (EC), which was incorporated into the European Union after the suit was brought, a change that the Court said was irrelevant given *Dole Food*. *Id.* That holding, the plaintiffs argue, ties our hands.

We disagree. For one thing, the case lacks precedential status, as the Supreme Court reversed the judgment. Even if the decision had not been reversed, the footnote's cursory incantation of *Dole Food* would not bind us, since the opinion's reference to "instrumentality status" related not to immunity, but only to determining diversity jurisdiction where the sovereign was a plaintiff. *RJR Nabisco*, 764 F.3d at 143. Because 28 U.S.C. § 1332(a)(4) creates jurisdiction over suits between "a foreign state . . . as plaintiff and citizens of a State," the district court had diversity jurisdiction only if the EC was a foreign state or an instrumentality of one. *RJR Nabisco*, 764 F.3d at 143. We thus considered the EC's instrumentality status to establish jurisdiction; we did not consider the EC's potential immunity, because the EC was the plaintiff. *See id*.[6]

---

[6] *RJR Nabisco* thus considered neither the effect of a post-filing change in instrumentality status on jurisdiction in a federal

The plaintiffs also point to a 2004 case in which we said that *Dole Food* had "unequivocally" held that instrumentality status under the FSIA is "determined at the time of the filing of the complaint." *Abrams v. Société Nationale Des Chemins De Fer Francais*, 389 F.3d 61, 64 (2d Cir. 2004). But *Abrams* cited *Dole Food* only to establish that an entity nationalized pre-suit was entitled to immunity even though the nationalization took place after the conduct at issue. *Id.* ("Once the railroad is encompassed by the FSIA, its prior incarnation as a private entity does not bar the statute's retroactive application."). That application of *Dole Food* is not at issue in this case.

Finally, the plaintiffs caution that allowing post-filing changes in sovereign status will encourage gamesmanship. Those are real concerns. Take, for example, *TIG Insurance Co. v. Republic of Argentina*, 967 F.3d 778 (D.C. Cir. 2020). In that case, an insurance company tried to execute a judgment against Argentina by attaching a house the country owned in Washington, D.C. *Id.* at 780. Argentina had listed the house for sale, but as soon as the company sought to attach the property to satisfy its judgment, Argentina took it off the market. *Id.* The parties then disputed whether the building was still in commercial use, and thus within one of the FSIA's exceptions. *Id.* The D.C. Circuit held that commercial status had to be determined at the time the attachment was filed. *Id.* at 782. The court noted that the relevant statute, 28 U.S.C. § 1610(a), did not use the present tense, and it worried about creating an incentive for foreign sovereigns "to halt

---

question case, such as this one, nor in a diversity jurisdiction suit brought *against* a foreign state under 28 U.S.C. § 1330, which provides diversity jurisdiction in cases against foreign states that are not immune under the FSIA.

any commercial use of a property as soon as a creditor sought to attach it." *Id.* at 782–83, 785. Those concerns are absent in this case. It was the U.S. designation of JTB as a terrorist organization, not any attempt by Lebanon to avoid this lawsuit, that forced the bank into liquidation and public receivership.

III. Conclusion

In sum, we hold as follows:

1. Immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1604, may attach when a defendant becomes an instrumentality of a foreign sovereign after a suit is filed. We remand for the district court to determine whether JTB is now such an instrumentality.

2. Given that holding, we need not reach appellants' alternative argument that the district court erred in not substituting Baasiri for JTB.

We therefore VACATE the judgment of the district court and REMAND for further proceedings consistent with this opinion.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

19-CV-00007 (CBA) (TAM)

ROBERT BARTLETT, *et al.*,

Plaintiffs,

-against-

SOCIETE GENERALE DE BANQUE AU LIBAN SAL, *et al.*,

Defendants.

MEMORANDUM & ORDER

AMON, United States District Judge:

Plaintiffs brought this case under the Anti-Terrorism Act, as amended by the Justice Against Sponsors of Terrorism Act ("JASTA"), against a group of Lebanese banking institutions. I previously granted in part and denied in part a motion to dismiss brought by all Defendants for lack of personal jurisdiction and failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6). Presently before the Court is Defendant Jammal Trust Bank ("JTB") and proposed intervenor Dr. Muhammad Baasiri's (collectively, "Moving Defendants'") Motion to Substitute, Intervene, and Dismiss. For the reasons stated below, the motion is DENIED in part and GRANTED in part.

BACKGROUND

I assume the parties' familiarity with the facts, which are set forth more fully in the Memorandum and Order denying the previous motion to dismiss. *(See* ECF Docket Entry ("D.E.") # 163.) In short, Plaintiffs or their family members are United States service members who were allegedly injured in a series of terror attacks perpetrated by Hezbollah in Iraq between 2004 and 2011. Defendants are Lebanese banks that Plaintiffs allege provided financial services to Hezbollah and Hezbollah affiliates. Hezbollah is an entity dedicated to religiously inspired terrorism, and in 1997 was designated by the United States as a Foreign Terrorist Organization. Plaintiffs allege that Defendants knowingly provided Hezbollah with financial services, including access to the U.S. financial system through correspondent bank accounts in New York, and facilitated Hezbollah's terrorist attacks by enabling the organization's operational funding.

Plaintiffs filed their complaint on January 1, 2019. Approximately nine months later, Defendant JTB was designated by the United States government as a Specially Designated Global Terrorist ("SDGT"). Authorities froze the bank's assets—including at least $8 million in a New York bank account. In September 2019, JTB sought liquidation and was placed in receivership pursuant to Article 17 of Law 110 of Lebanese law. Lebanon's Central Bank confirmed a liquidator, Dr. Baasiri, who is statutorily charged with overseeing JTB's liquidation under the supervision and control of the Lebanese Central Bank. The Lebanese Central Bank is a public entity established under Lebanese law.

The liquidator must prioritize JTB's depositors in disbursing its assets. Plaintiffs are not depositors. As

non-depositors, they may submit claims to the liquidator; but those claims will not be paid if there is no surplus after the bank's depositors have been paid. Moving Defendants anticipate that in JTB's liquidation there will be no surplus. Specifically, they expect JTB's assets to pay about 90% of depositors, with the remainder to be paid by the Lebanese Government. If Plaintiffs were to obtain a judgment and sought to submit a claim to the liquidator based upon that judgment, they would need to obtain recognition of the judgment by a Lebanese court before the bank's liquidation was complete. A typical Lebanese bank liquidation takes approximately two to five years.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(1) provides for dismissal of a complaint for "lack of subject-matter jurisdiction." A motion to dismiss for lack of standing is properly brought under Rule 12(b)(1) because a party must have standing in order to invoke a court's power to adjudicate cases under Article III of the United States Constitution. *See McCrory v. Adm'r of Fed. Emergency Mgmt. Agency,* 600 F. App'x 807, 808 (2d Cir. 2015) (citing *Makarova v. United States,* 201 F.3d 110, 113 (2d Cir. 2000)). "Because standing is challenged on the basis of the pleadings, [the Court] accept[s] as true all material allegations of the complaint, and must construe the complaint in favor of the [plaintiff]." *Connecticut v. Physicians Health Servs. of Conn., Inc.,* 287 F.3d 110, 114 (2d Cir. 2002) (citation and internal quotation marks omitted). To survive a motion to dismiss for lack of Article III standing, a plaintiff must allege facts that, when accepted as true, "affirmatively and plausibly suggest that it has standing to sue." *Amidax Trading Grp. v. S.W.I.F.T. SCRL,* 671 F.3d 140, 145 (2d Cir. 2011).

DISCUSSION

I. Motion to Substitute

Moving Defendants first move to substitute Dr. Baasiri for JTB pursuant to Federal Rule of Civil Procedure 25(c). That Rule provides for substitution upon transfer of interest: "If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party." "Substitution of a successor in interest . . . under Rule 25(c) is generally within the sound discretion of the trial court." *Organic Cow, LLC v. Ctr. for New Eng. Dairy Compact Research,* 335 F.3d 66, 71 (2d Cir. 2003) (quoting *Prop-Jets, Inc. v. Chandler,* 575 F.2d 1322, 1324 (10th Cir. 1978)). The "primary consideration" is "whether substitution will expedite and simplify the action." *Advanced Mktg. Grp., Inc., v. Bus. Payment Sys., LLC,* 269 F.R.D. 355, 359 (S.D.N.Y. 2010) (internal quotation marks omitted) (quoting *Taberna Capital Mgmt. v. Jaggi,* 1:08-CV-11355 (DLC), 2010 WL 1424002 at *2 (S.D.N.Y. Apr. 9, 2010)). When substitution would cause complications in discovery, this may prejudice the non-moving party such that substitution should be denied. *See Potvin v. Speedway LLC,* 891 F.3d 410, 416 (1st Cir. 2018); *Fashion G5 LLC v. Anstalt,* No. 1:14-cv-5719-GHW, 2016 WL 7009043, at *3 (S.D.N.Y. Nov. 29, 2016) (denying substitution which would "impede plaintiff's ability to take discovery"). Substitution is inappropriate where it "would serve only to add duration, costs, and complexity to an action . . . [and] would prolong rather than bring the litigation nearer to its conclusion." *Advanced Mktg. Grp.,* 269 F.R.D. at 359.

Moving Defendants argue that a transfer of interest has occurred, because JTB's assets and rights are now

controlled by the Central Bank of Lebanon and its liquidator. Plaintiffs dispute that there has been a sufficient transfer of interest. They argue that Dr. Baasiri is not JTB's successor and that he does not control JTB's assets outside of Lebanon—i.e., the $8 million in a New York account frozen by U.S. law. I need not decide, however, whether the requisite transfer of interest has occurred because I agree with Plaintiffs' further contention that substitution here would complicate the proceedings and unfairly frustrate Plaintiffs' ability to obtain a judgment against the party they properly sued: JTB. "The primary consideration in deciding a motion pursuant to Rule 25(c) is whether substitution will expedite and simplify the action." *Id.* Defendants' only argument that substitution would simplify this case is that "it is legally more direct and appropriate to permit the Liquidator to raise the sovereignty-based defenses of sovereign immunity and international comity." (D.E. # 185 at 23-24 (emphasis omitted).) But as discussed *infra,* those arguments for dismissal are meritless whether they are asserted by JTB or Dr. Baasiri.

Removing JTB from this case would also needlessly complicate discovery. *See Fashion G5,* 2016 WL 7009043, at *3; *cf. SEC v. Collector's Coffee Inc.,* 451 F. Supp. 3d 294, 298 (S.D.N.Y. 2020) (granting substitution where "[t]here has been no suggestion . . . that the Dodgers will not be amenable to discovery as a nonparty through the Rule 45 subpoena process"). Removing JTB from this case would force Plaintiffs to seek third-party discovery from the bank rather than through the rules providing for automatic discovery from parties, *e.g.,* Fed. R. Civ. P. 26. (D.E. # 187 ("Opp'n") at 20.) Clearing those procedural hurdles could prove especially challenging given JTB's ongoing liquidation in a distant country which, as JTB tells it,

"has been in a political and economic crisis since 2019." (D.E. # 182 ("Def. Br.") at 1.) Indeed, JTB has been unable to communicate with its own counsel—making it all the more doubtful that the bank would readily provide third-party discovery. (D.E. # 186 ¶ 3 ("I have never communicated with any individuals at JTB, as JTB has ceased operations pursuant to Lebanese liquidation law . . . .").)

In sum, Plaintiffs would be prejudiced by JTB's removal from this case, and Moving Defendants have identified no prejudice from JTB remaining in this case. The motion for substitution is denied.[1]

II. Motion to Intervene

Dr. Baasiri alternatively moves to intervene, either of right or permissively, pursuant to Rule 24 of the Federal Rules of Civil Procedure. Plaintiffs oppose this motion on the merits, and also contend that the motion is procedurally defective because Dr. Baasiri has not first brought a petition pursuant to Chapter 15 of the United States Bankruptcy Code.

A. A Chapter 15 Petition is Not Required for Dr. Baasiri to Intervene

Congress created Chapter 15 of the Bankruptcy Code through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. 11 U.S.C. § 1501 *et seq*. The statute adopts, nearly in its entirety, the Model Law on Cross-Border Insolvency promulgated in 1997 by the United Nations Commission on International Trade Law. H.R. Rep. No. 109–31(1), at

[1] Because I conclude that substitution would be inappropriate on the merits, I need not address Plaintiffs' alternate argument to deny substitution based on the application of Chapter 15 of the Bankruptcy Code.

105 *reprinted in* 2005 U.S.C.C.A.N. 88, 169 (2005). "Chapter 15 addressed a persistent problem in cross-border liquidations: creditors would initiate multiple bankruptcy proceedings to recover assets from a debtor in jurisdictions other than the site of the principal liquidation." *Trikona Advisers Ltd. v. Chugh,* 846 F.3d 22, 30 (2d Cir. 2017). That situation "caused administrative inefficiency and also allowed creditors to bypass the priority restraints of the main bankruptcy proceeding and attempt to recover more than their fair share of the debtor's assets." *Id.* To redress these inefficiencies and debtor windfalls, Chapter 15 establishes a process by which a foreign representative of a debtor may petition a United States court and receive permission to pursue or participate in United States court proceedings in an effort to harmonize the transnational bankruptcies. *See generally* 11 U.S.C. §§ 1509, 1515, 1517.

By its own terms, Chapter 15 applies only in limited circumstances. Plaintiffs assert that Chapter 15 applies here because this is a case in which "assistance is [being] sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding." *Id.* § 1501(b)(1). The decision of the Second Circuit in *Trikona Advisers* undermines this claim. 846 F.3d at 30. The district court in that case had given preclusive effect to the judgment of a Cayman Islands wind-up proceeding. *Id.* at 29. The plaintiff argued that the district court was precluded by Chapter 15 from applying collateral estoppel to that proceeding. *Id.* The Second Circuit rejected the argument: "the requirements of Chapter 15 [did] not apply," because no party was "seeking the assistance of the district court in enforcing or administering a foreign liquidation proceeding." *Id.* at 30. Accordingly, to decide whether "assistance is sought . . . in connection

with a foreign proceeding," 11 U.S.C. § 1501(b)(1), requires asking whether Dr. Baasiri, through his intervention, seeks assistance "in enforcing or administering a foreign liquidation proceeding," *Trikona Advisers,* 846 F.3d at 30.

The strictures of Chapter 15 are inapplicable here because Dr. Baasiri's motion cannot be fairly characterized as an attempt to enforce or administer a foreign liquidation proceeding. Plainly he does not seek to "enforce" the Lebanese proceeding—for example, to "seek the assistance of [this Court] in enforcing any judgment of the [Lebanese] court." *Id.* at 31 n.2. Nor is his motion to intervene an attempt to "administer" the Lebanese liquidation in this Court—for example, to seek a stay of this action pursuant to Lebanese liquidation law. *E.g., United States v. J.A. Jones Constr. Grp., LLC,* 333 B.R. 637, 638-39 (E.D.N.Y. 2007) (declining to grant an indefinite "stay of this action in accordance with Canadian bankruptcy law" where movant had not commenced a Chapter 15 proceeding); *Orchard Enter. NY, Inc. v. Megabop Records Ltd.,* No. 9-cv-9607, 2011 WL 832881, at *2-3 (S.D.N.Y. Mar. 4, 2011) (same, where movant sought stay pursuant to English law). Rather, Dr. Baasiri seeks principally to intervene so that he may assert directly the sovereign immunity–related defenses which JTB could assert only indirectly.

Chapter 15 was created to address situations in which "creditors would initiate multiple bankruptcy proceedings to recover assets from a debtor in jurisdictions other than the site of the principal liquidation." *Trikona Advisers,* 846 F.3d at 30. This is not a bankruptcy proceeding. Plaintiffs' reading would bring within Chapter 15's ambit any case involving a party undergoing a foreign bankruptcy—even where the

intervenor did not seek to enforce any aspect of the foreign proceeding or to administer that proceeding in the United States court. Should Dr. Baasiri ever seek to enforce or administer the Lebanese liquidation in this Court without first making a Chapter 15 petition, Plaintiffs are free to renew their objection at that time.

B. Dr. Baasiri May Intervene of Right.

Dr. Baasiri moves in the alternative to intervene pursuant to Federal Rule of Civil Procedure 24(a). That Rule provides for "Intervention of Right":

> On timely motion, the court must permit anyone to intervene who:
>
> (1) is given an unconditional right to intervene by a federal statute;
>
> or
>
> (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a). In considering a motion to intervene, courts "accept as true nonconclusory allegations of the motion." *SEC v. Callahan,* 2 F. Supp. 3d 427, 436 (E.D.N.Y. 2014). Courts construe Rule 24(a)(2) liberally. *Davis v. Smith,* 431 F.Supp. 1206, 1209 (S.D.N.Y. 1977), *aff'd,* 607 F.2d 535 (2d Cir. 1978); *see* 7C Fed. Prac. & Proc. Civ. (Wright & Miller) § 1904 (3d ed.).

Dr. Baasiri is entitled to intervention of right. First, he "claims an interest relating to the property or transaction that is the subject of the action." Fed. R. Civ. P. 24(a). Specifically, by operation of Lebanese law,

Dr. Baasiri is charged with disposing of all of JTB's assets. Plaintiffs seek to recover from those assets in this lawsuit. Dr. Baasiri therefore has an interest in the outcome of this litigation. The Second Circuit has repeatedly recognized that a liquidator has an interest in a suit brought against the entity undergoing liquidation. *Finanz AG Zurich v. Banco Economico S.A.,* 192 F.3d 240, 245 (2d Cir. 1999); *Drexel Burnham Lambert Grp. Inc. v. Galadari,* 12 F.3d 317, 327-28 (2d Cir. 1993).

Because Lebanese law requires Dr. Baasiri to prioritize the claims of JTB's depositors, "disposing of the action may as a practical matter impair or impede [Dr. Baasiri's] ability to protect [his] interest." Fed. R. Civ. P. 24(a). If Plaintiffs can recover damages from JTB—and if their doing so involves a prolonged litigation requiring substantial legal defense costs—Dr. Baasiri's ability to disburse JTB's assets to its depositors may be impeded. *See In re Reliance Grp. Holdings, Inc. Sec. Litig.,* No. 00-CV-4653 (TPG), 2004 WL 601973, at *1 (S.D.N.Y. Feb. 24, 2004) (granting intervention by liquidator of insurance company); *In re $6,871,042.36,* 217 F. Supp. 3d 84, 94 (D.D.C. 2016) (granting intervention of right because "this action threatens to impair the Liquidator's interest in the resolution of its claim to the [funds at issue].").

Dr. Baasiri's interest also may be inadequately represented by other parties in this litigation, including JTB. *See* Fed. R. Civ. P. 24(a). His status *vis a vis* the government of Lebanon differs from that of JTB, enabling him to make different arguments. Moreover, JTB's and Dr. Baasiri's legal interests diverge to the extent that only Dr. Baasiri is statutorily charged with disbursing the assets with priority to JTB's depositors. And since entering liquidation, JTB is no longer an

ongoing banking concern—a status with practical effects that may lead to inadequate representation; for example, counsel for Moving Defendants has averred that he has "never communicated with any individuals at JTB, as JTB has ceased operations pursuant to Lebanese liquidation law and there is no one with whom I could communicate relating to this matter." (D.E. # 186 ¶ 3.) The foregoing satisfies Dr. Baasiri's "minimal" burden as to the adequacy of representation. *Trbovich v. United Mine Workers of Am.,* 404 U.S. 528, 538 n.10 (1972).

Plaintiffs lastly argue that the motion to intervene is untimely. Moving Defendants first raised these arguments in September 2020, nearly a year after Dr. Baasiri was appointed liquidator. But this is not, as Plaintiffs contend, a case in which Dr. Baasiri "hid in the tall grass" until the timing was most advantageous to emerge and file the motion. *Mastercard Int'l Inc. v. FIFA,* No. 06-cv-3036 (LAP), 2006 WL 3065598, at *2 (S.D.N.Y. Sept. 26, 2006), *aff'd sub nom. Mastercard Int'l Inc. v. Visa Int'l Serv. Ass'n, Inc.,* 471 F.3d 377 (2d Cir 2006). Moving Defendants' counsel began identifying potential bases for dismissal after taking over from JTB's prior counsel in January 2020. Counsel faced communications challenges due to severe civil strife in Lebanon, which forced their client to retreat into a mountainous region where he could not easily be reached. Even if their delay in bringing this motion ordinarily would be untimely, these are "unusual circumstances militating for" a finding of timeliness. *Floyd v. City of New York,* 770 F.3d 1051, 1058 (2d Cir. 2014).

Crucially, Plaintiffs have failed to articulate any plausible prejudice that they would suffer from granting Dr. Baasiri's motion to intervene. *See Farmland*

Dairies v. Comm'r of N.Y. Dep't of Agric., 847 F.2d 1038, 1044 (2d Cir. 1988).[2] The motion to intervene is granted.

III. Motion to Dismiss

Moving Defendants raise three arguments for dismissal: (1) that Plaintiffs lack standing to sue; (2) that the claims are barred by sovereign immunity, either under the Foreign Sovereign Immunities Act ("FSIA") or the sovereign immunity provision of the Anti-Terrorism Act, 18 U.S.C. § 2337(2); and (3) that I should exercise my discretion to dismiss the action against Moving Defendants in the interests of international comity. I consider each argument in turn.

A. JTB's Post-Filing Insolvency Does Not Deprive Plaintiffs of Standing.

Moving Defendants' first argument is that Plaintiffs lack constitutional standing to sue. Under Article III of the United States Constitution, federal courts are courts of limited jurisdiction and may hear only "cases or controversies." U.S. Const. Art. III. "The case-or-controversy limitation on our jurisdiction . . . manifests in three distinct legal inquiries: standing, mootness, and ripeness." *Klein v. Qlik Techs., Inc.,* 906 F.3d 215, 221 (2d Cir. 2018). The standing inquiry requires plaintiff to have suffered an injury in fact, which is fairly traceable to the conduct alleged and is likely to be redressed by the judgment sought. *Lujan v. Defs. of*

[2] Nor would Dr. Baasiri's intervention apparently require Plaintiffs to conduct additional motions practice, as the parties have already briefed his motion to dismiss. Plaintiffs contend that they are prejudiced by having to address motions to dismiss "piecemeal." (Opp'n at 26.) But they can hardly complain now, having prevailed on Dr. Baasiri's motion to dismiss as is discussed *infra.*

Wildlife, 504 U.S. 555, 559-61 (1992). A corollary to these requirements is that courts may not issue advisory opinions. *See Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 101 (1998). The bar of establishing redressability is real, though not especially high: even "an award of nominal damages by itself can redress a past injury." *Uzuegbunam v. Preczewski,* 141 S. Ct. 792, 796 (2021).

Defendants argue that Plaintiffs lack standing because their claims against JTB are not redressable. They assert that JTB would be unable to pay any judgment due to its insolvency, so there is no use in proceeding with this case. The reasons why JTB could not pay differ for its U.S. and Lebanese assets. The U.S. assets—$8 million in a New York bank account—are currently frozen because of JTB's designation as an SDGT. Their disposition is within the discretion of United States government officials, which Moving Defendants contend is too speculative to confer standing. The Lebanese assets would be unavailable because they are being liquidated to JTB's depositors; and there is no surplus from which Plaintiffs could be paid. Because JTB could not pay, the argument goes, Plaintiffs' claims are not likely to be redressed by a money judgment.

In *Mission Product Holdings, Inc. v. Tempnology, LLC,* 139 S. Ct. 1652 (2019), the Supreme Court rejected the argument that a case had become moot when a "bankruptcy estate has recently distributed all of [the defendant's] assets" and the plaintiff would "be unable to convert any judgment in its favor to hard cash." *Id.* at 1661. The Court observed that "courts often adjudicate disputes whose 'practical impact' is unsure at best, as when 'a defendant is insolvent.'" *Id.* (quoting *Chafin v. Chafin,* 568 U. S. 165, 175 (2013)).

"For better or worse, nothing so shows a continuing stake in a dispute's outcome as a demand for dollars and cents." *Id.* at 1660. Because mootness and standing are distinct inquiries, *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.,* 528 U.S. 167, 189 (2000), *Tempnology* does not automatically dispose of the arguments here. But courts have "an independent obligation to determine that standing exists," *Summers v. Earth Island Inst.,* 555 U.S. 488, (2009), and so the Supreme Court's sanctioning of cases "whose practical impact is unsure at best" implicitly recognizes that the potential inability to satisfy a judgment does not defeat standing. *Tempnology,* 139 S. Ct. at 1661; *see Wells Fargo Equip. Fin., Inc. v. Titan Leasing, Inc.,* 768 F.3d 741, 742 (7th Cir. 2014) ("[T]he doubtful collectability of a judgment does not affect federal subject-matter jurisdiction."). Further, the standing inquiry is "focused on whether the party invoking jurisdiction had the requisite stake in the outcome *when the suit was filed." Davis v. FEC,* 554 U.S. 724, 734 (2008) (emphasis added); *see also In re SunEdison, Inc.* No. 16-10992, 2019 WL 2572250, at *10 (Bankr. S.D.N.Y. June 21, 2019). If the ongoing mootness inquiry cares not about a defendant's mid-suit insolvency, then the temporally antecedent standing inquiry should likewise disregard a defendant's pecuniary state. *See Choi's Beer Shop, LLC v. PNC Merchant Servs. Co., L.P.,* ___ F. App'x ___, 2021 WL 1235704, at *2 (2d Cir. Apr. 2, 2021) ("[Defendant]'s postcomplaint actions . . . are relevant to determining whether [Plaintiff]'s claims later became moot, but they have no bearing on whether the complaint was adequate to begin with.").

Under the foregoing principles, JTB's mid-suit insolvency does not render Plaintiffs' injuries non-redressable. In essence, Moving Defendants urge the adoption of a

"de facto redressability" requirement. That is, they would have the Court assess standing based on the likelihood that a defendant will actually satisfy a money judgment. That is not the relevant question. The relevant question is whether the requested judgment—assuming that judgment is satisfied—would redress Plaintiffs' injuries. There is no dispute here that a satisfied money judgment would redress Plaintiffs' injuries.[3]

For similar reasons, I reject Moving Defendants' argument that any judgment of liability against them would be an advisory opinion. Plaintiffs seek a judgment that Moving Defendants are liable under JASTA for acts allegedly committed in the past, and for which a judgment of money damages could redress Plaintiffs' injuries. Such a judgment would not be advisory.

To the extent it is appropriate to consider the likelihood that Defendants will actually satisfy any judgment, Moving Defendants' arguments are too speculative to warrant dismissal. By JTB's own admission, its liquidation will likely not be completed for several years. And the liquidation might not disburse the $8 million which is frozen in the United States by government order. Plaintiffs contend that they could attach JTB's U.S. assets pursuant to the Terrorism Risk Insurance Act ("TRIA"), a statute which "authorizes

---

[3] This distinction between the effect of a satisfied judgment and the de facto likelihood of a judgment being satisfied also explains why this case is not, as Moving Defendants contend, one in which redress depends largely on policy decisions yet to be made by government officials. Here, the "policy decisions" which Moving Defendants postulate would not bar Plaintiffs from obtaining relief through a money judgment, but are rather exogenous hurdles to *satisfying* a money judgment. There is no dispute that money would redress Plaintiffs' injuries.

plaintiffs holding a judgment against a terrorist party to attach blocked assets of the terrorist party or any agency or instrumentality of the terrorist party." *Calderon-Cardona v. Bank of N.Y. Mellon,* 770 F.3d 993, 998-99 (2d Cir. 2014). Although it is premature to determine whether TRIA would apply to any hypothetical judgment, *see id.* at 1000 (assessing the statute's applicability based on the facts "[a]t the time the judgment . . . was entered"), the possibility of its application is sufficient to confer standing on plaintiffs. *Tempnology,* 139 S. Ct. at 1660 ("If there is *any* chance of money changing hands, [the] suit remains live." (emphasis added)).

Moving Defendants cite several out-of-circuit cases for the proposition that seeking a money judgment does not necessarily confer standing. None of those cases is binding on me, and each is distinguishable. Most of the cases cited involve the same fact pattern: a plaintiff challenged a signage regulation which barred the plaintiff from posting an advertisement; but the injury was not redressable because the proposed advertisement would have been barred by other regulations which the plaintiff did not challenge. *See Midwest Media Prop., LLC v. Symmes Township,* 503 F.3d 456, 461 (6th Cir. 2007); *KH Outdoor, LLC v. Clay County,* 482 F.3d 1299, 1303 (11th Cir. 2007); *Int'l Outdoor, Inc. v. City of Troy,* 361 F. Supp. 3d 713, 719 (E.D. Mich. 2019). Because of those additional unchallenged regulations, the plaintiffs' injuries would not have been redressed by a judgment invalidating the one challenged regulation *(i.e.,* they still could not post their advertisements). The same is not true here. If Plaintiffs ultimately obtain a money judgment against Moving Defendants that is satisfied, that will redress their claims.

Even further afield is *ASARCO Inc. v. Kadish,* 490 U.S. 605, 614-15 (1989). That case involved the question of whether taxpayers had standing to challenge a statute on the basis that invalidating the statute would redound to their benefit in the form of lower taxes. The Court held that even if the statute were invalidated and the state's treasuries increased, it was unpredictable how the state would use those funds. *Id.* at 615. The case did not involve a claim between private parties for statutory damages. Here, if Plaintiffs receive a money judgment, they would be entitled to that damages award. Although the administration of JTB's liquidation might make it difficult for Plaintiffs to convert any judgment into cash, their situation would be unlike that of the plaintiffs in *Kadish,* who sought a judgment that would not legally entitle them to any money at all.

B. Sovereign Immunity

a. Foreign Sovereign Immunities Act

Moving Defendants next claim that they are immune from suit pursuant to the Foreign Sovereign Immunities Act. "Under the Act, a foreign state is presumptively immune from the jurisdiction of United States courts; unless a specified exception applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state." *Saudi Arabia v. Nelson,* 507 U.S. 349, 355 (1993). The FSIA provides immunity to foreign states as well as to any "agency or instrumentality" of a foreign state. 28 U.S.C. § 1603(a); 28 U.S.C. § 1604. The FSIA defines "agency or instrumentality" as an entity:

> (1) which is a separate legal person, corporate or otherwise, and

> (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and
>
> (3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (e) of this title, nor created under the laws of any third country.

28 U.S.C. § 1603(b). Moving Defendants claim that they qualify as an "agency or instrumentality" of Lebanon because JTB's liquidation is carried out under the supervision and control of the Central Bank of Lebanon. Plaintiffs contend that the FSIA provides no immunity here under *Dole Food Co. v. Patrickson,* 538 U.S. 468 (2003), which directs courts to evaluate instrumentality status at the time a lawsuit is filed; JTB is only alleged to have come under government control many months after this lawsuit was filed.

In *Dole Food,* the Supreme Court considered "whether a corporation's instrumentality status is defined as of the time an alleged tort or other actionable wrong occurred or, on the other hand, at the time suit is filed." 538 U.S. at 471. The defendant in *Dole Food* asserted immunity as an entity whose majority "shares or other ownership interest is owned by a foreign state or political subdivision thereof." 28 U.S.C. § 1603(b)(2). The plaintiffs disputed that the defendants could assert sovereign immunity because the defendants' shares were not government-owned—and they thus lacked instrumentality status–when the lawsuit was filed. The Court agreed: because "the plain text of this provision" is "expressed in the present tense . . . instrumentality status [must] be determined at the time suit is filed." 538 U.S. at 478. The Court grounded

its holding in "the longstanding principle that 'the jurisdiction of the Court depends upon the state of things at the time of the action brought.'" *Id.* (quoting *Keene Corp. v. United States,* 508 U.S. 200, 207 (1993)).

Dole Food thus militates toward denying Moving Defendants' motion under the FSIA. It is undisputed that JTB lacked instrumentality status "at the time suit [was] filed." *Id.* at 478. Nonetheless, Moving Defendants attempt to avoid the holding of *Dole Food* by urging a cabined reading of the Court's opinion. They characterize that case as being limited to the following underlined portion of 28 U.S.C. § 1603(b), defining a foreign agency or instrumentality as an entity "which is an organ of a foreign state or political subdivision thereof, *or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof.*" Because Moving Defendants assert instrumentality status based on the non-underlined portion of the foregoing, they say that *Dole Food* is of no moment here.

Nothing in the Court's opinion nor in the cases that have followed supports Moving Defendants' strained reading of *Dole Food*. The Court expressly endeavored to answer the broader question of "whether a corporation's instrumentality status is defined as of the time an alleged tort or other actionable wrong occurred or, on the other hand, at the time suit is filed." 538 U.S. at 471. The Second Circuit has characterized *Dole Food* as "holding unequivocally that an entity's status as an instrumentality of a foreign state should be 'determined at the time of the filing of the complaint.'" *Abrams v. Societe Nationale des Chemins de Fer Francais,* 389 F.3d 61, 64 (2d Cir. 2004) (quoting *id.* at 480). That characterization makes sense in light of the Court's reasoning, which focused on the plain text of the

statute being "expressed in the present tense." 538 U.S. at 478. Just "like the 'ownership interest' clause at issue in *Dole Food,* the clause immediately preceding it"—which Moving Defendants rely upon here—"is also expressed in the present tense." *Yousuf v. Samantar,* 552 F.3d 371, 382 (4th Cir. 2009).[4]

Moving Defendants rely on *Drexel Burnham Lambert Grp. Inc. v. Galadari,* 12 F.3d 317 (2d Cir. 1993), in which the Second Circuit affirmed that one of the defendants—a government-created committee—was an instrumentality entitled to FSIA immunity. But the timing of when instrumentality status should be assessed was not raised in that case. Indeed, "the parties [did] not dispute that the Committee [was] an 'agency or instrumentality' of the Emirate." *Galidari,* 12 F.3d at 324 (quoting 28 U.S.C. § 1603). *Galidari* is also distinguishable on its facts. The committee found

---

[4] I recognize that this case involves a defendant claiming it has attained post-filing instrumentality status, whereas *Dole Food* involved a defendant who claimed instrumentality status at the time of the tortious conduct. But *Dole Food* announced a clear rule: that instrumentality status is determined at the time of a lawsuit's filing. The Court grounded that rule in the longstanding jurisdictional time-of-filing rule, under which post-filing changes to "the condition of the party" are irrelevant in assessing jurisdiction. *Grupo Dataflux v. Atlas Glob. Grp., L.P.,* 541 U.S. 567, 574 (2004) (quoting *Conolly v. Taylor,* 27 U.S. 556, 565 (1829)); *Freeport-McMoRan, Inc. v. K N Energy, Inc.,* 498 U.S. 426, 428 (1991). Accordingly, courts have rejected the argument that a "post-filing change" can confer instrumentality status on a defendant who was not under sovereign control when the lawsuit was filed. *In re Air Cargo Shipping Servs. Antitrust Litig.,* No. MD 06-1775 (JG) (VVP), 2008 WL 5958061, at *39-40 (E.D.N.Y. Sept. 26, 2008), *report and recommendation adopted* 2009 WL 3443405, *aff'd on other grounds* 697 F.3d 154 (2d Cir. 2012); *Biton v. Palestinian Interim Self-Gov't Auth.,* 510 F. Supp. 2d 144, 147 (D.D.C. 2007).

to have instrumentality status there was not analogous to Moving Defendants here. That committee was "the successor to a provisional board . . . established by the government of Dubai." *Id.* at 320. After the lawsuit was filed the committee immediately began participating—filing an answer on behalf of the non-governmental defendants in liquidation. *Id.* The committee had thus existed as a government-created provisional board when the lawsuit was filed, and immediately began participating in the case. The same is not true here. JTB only entered liquidation approximately nine months after this lawsuit was filed. At the time of filing, JTB was a solvent, private bank.[5]

Because Moving Defendants were not an agency or instrumentality of a foreign state at the time this suit was filed, their motion to dismiss based on sovereign immunity under the FSIA is denied.

b. Anti-Terrorism Act

Moving Defendants next argue that the claims against them should be dismissed under the separate sovereign immunity provision of the ATA:

> No action shall be maintained under section 2333 of this title against . . . a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his or her official capacity or under color of legal authority.

18 U.S.C. § 2337(2). Moving Defendants contend, however, that the ATA should be construed consistent

[5] In addition to having not directly confronted the issue presented here and being factually distinguishable, *Galadari* was decided a decade before *Dole Food;* to the extent they are inconsistent, I must follow *Dole Food.*

with the FSIA. Accepting this invitation to treat the ATA as coextensive with the FSIA, Plaintiffs do not distinguish between the two in their opposition papers. *(See* Opp'n at 13-15.) Moving Defendants likewise do not make distinct arguments for the two statutes in their reply; the ATA provision is mentioned only fleetingly. (D.E. # 185 at 12.)

The Supreme Court has stated that "the Foreign Sovereign Immunities Act 'provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country.'" *OBB Personenverkehr v. Sachs,* 577 U.S. 27, 30-31 (2015) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.,* 488 U.S. 428, 434 (1989)). Mindful of this guidance to "decide claims of sovereign immunity in conformity with [FSIA's] principles," *Republic of Austria v. Altmann,* 541 U.S. 677, 691 (2004), courts have regarded "an assertion of sovereign immunity under the ATA as being functionally equivalent to an assertion of sovereign immunity under the FSIA." *Ungar v. Palestinian Liberation Org.,* 402 F.3d 274, 283 (1st Cir. 2005) (internal citation omitted); *e.g., Sokolow v. Palestine Liberation Org.,* 583 F. Supp. 2d. 451, 457 (S.D.N.Y. 2008) ("The ATA's exclusion, of foreign states and governmental actors from its coverage, is consistent with, and to be applied in accordance with, the ordinary sovereign immunity principles codified in the FSIA."), *vacated on different grounds sub nom. Waldman v. Palestinian Liberation Org.,* 835 F.3d 317 (2d Cir. 2016). Moving Defendants have offered no reason to construe the ATA's sovereign immunity provision as being more expansive than the FSIA's. Their motion to dismiss pursuant to the ATA's sovereign immunity provision is accordingly denied.

C. International Comity

Moving Defendants finally move for dismissal pursuant to international comity. They argue that allowing Plaintiffs' suit to move forward will undermine the Lebanese liquidation of JTB and the single, orderly proceeding it provides for disposition of claims against it. This suit will also, they say, inevitably create conflict with a foreign sovereign's policy choices about prioritization of claim payment, potentially creating diplomatic and other tensions.

"American courts have long recognized the particular need to extend comity to foreign bankruptcy proceedings." *Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.,* 825 F.2d 709, 713 (2d Cir. 1987). That is because deferring to a foreign bankruptcy proceeding "enables the assets of a debtor to be dispersed in an equitable, orderly, and systematic manner, rather than in a haphazard, erratic or piecemeal fashion." *Cunard S.S. Co. Ltd. v. Salen Reefer Servs. AB,* 773 F.2d 452, 457 (2d Cir. 1985). So although the "extension or denial of comity is within the court's discretion." *Allstate Life Ins. Co. v. Linter Grp. Ltd.,* 994 F.2d 996, 999 (2d Cir. 1993), the existence of foreign bankruptcy proceedings "generally requires the dismissal of parallel district court actions." *Royal & Sun All. Ins. Co. of Can. v. Century Int'l Arms Inc.,* 466 F.3d 88, 92-93 (2d Cir. 2006). Courts will afford comity to foreign bankruptcies only if those proceedings do not "violate the laws or public policy of the United States," *Banco Economico,* 192 F.3d at 246, and if "the foreign court abides by 'fundamental standards of procedural fairness,'" *Allstate,* 994 F.2d at 999 (quoting *Cunard,* 773 F.2d at 457).

Outside the bankruptcy context there is no general preference favoring abstention—just the opposite: given the district courts' "virtually unflagging obligation . . .

to exercise the jurisdiction given them," *Colo. River Water Conservation Dist. v. United States,* 424 U.S. 800, 817 (1976), "[t]he task of a district court evaluating a request for dismissal based on a parallel foreign proceeding is not to articulate a justification *for* the exercise of jurisdiction, but rather to determine whether exceptional circumstances exist that justify the surrender of that jurisdiction." *Royal,* 66 F.3d at 93 (emphasis in original). Courts "should be guided by the principles upon which international comity is based: the proper respect for litigation in and the courts of a sovereign nation, fairness to litigants, and judicial efficiency." *Id.*

1. The Lebanese Liquidation Would Not Provide an Adequate, Parallel Forum for Plaintiffs to Pursue Their Claims.

When the Second Circuit has sanctioned comity-based abstention, it has done so on the understanding that the plaintiffs may pursue their claims in the foreign forum. *See Banco Economico,* 192 F.3d at 244 ("It is undisputed that [Plaintiff] filed a timely claim to recover the value of the promissory notes in the Brazilian liquidation"); *Allstate,* 994 F.2d at 1000 ("[T]here is no indication that appellants would be prejudiced if they are required to maintain their actions in Australia."); *Cunard,* 772 F.3d at 459 ("[T]here is no indication that Cunard will be prejudiced or treated unjustly if it were to participate in the Swedish bankruptcy proceedings."). Courts therefore determine whether there exists "a parallel action in an adequate foreign jurisdiction" before abstaining due to international comity. *Royal,* 466 F.3d at 95-96 ("The existence of a parallel action in an adequate foreign jurisdiction must be the beginning, not the end, of a district court's determination of

whether abstention is appropriate."); *JP Morgan Chase Bank v. Altos Hornos de Mex., S.A. de C.V.,* 412 F.3d 418, 424 (2d Cir. 2005); *see Bigio v. Coca-Cola Co.* 448 F.3d 176, 178 (2d Cir. 2006). That remains true where the foreign proceedings are bankruptcy proceedings. *See Royal,* 466 F.3d at 92-93.

Moving Defendants do not contend that Plaintiffs would be able to pursue their ATA claims against JTB in Lebanon. Whatever the merits of Lebanon's liquidation law, Moving Defendants have not shown that it (or any other Lebanese law) offers Plaintiffs the ability to assert claims against JTB for having aided and abetted terrorist attacks. This is thus a case in which deferring to the foreign proceeding "threatens the very enforceability of" Plaintiffs' claims. *Banco Economico,* 192 F.3d at 244. When courts defer to foreign bankruptcy proceedings, the plaintiff is typically seeking a predetermined sum. *E.g., id.* at 242 ("[Plaintiff] sought to recover on certain promissory notes allegedly guaranteed by the defendant . . . currently subject to an extrajudicial liquidation in Brazil . . . ."). Although a tort claimant is in some sense a creditor, *see In re Viking Offshore (USA),* 405 B.R. 434 (Bankr. S.D. Tex. 2008) (dismissing based on international comity where Netherlands bankruptcy proceedings would permit plaintiffs to pursue their claim for tortious conversion), Moving Defendants have not shown that Lebanon would permit Plaintiffs to pursue the claims they bring here. They state that creditors "may register their debts in the inventory for such pro rata payment." (D.E. # 185 at 8.) But Plaintiffs have no "debts" to "register." Rather, they have a complex claim brought pursuant to U.S. law that may involve substantial discovery spanning years of underlying facts. This is not a case of a creditor who

can simply collect on a promissory note in a foreign bankruptcy proceeding.

Moving Defendants further argue that the law does not require that the foreign bankruptcy be completely "parallel." *(Id.* at 7). For this proposition they cite to two cases approving of comity-based abstention where the U.S. case was not itself a bankruptcy proceeding. *(Id.* (first citing *Banco Economico,* 192 F.3d at 242 (contract suit); and then citing *Allstate,* 994 F.2d at 999 1000 (securities suit))). But in each of those cases, the court expressly noted that the Plaintiffs would be able to pursue their claims as part of the foreign proceeding. *Allstate,* 994 F.2d at 1000 ("[T]here is no indication that appellants would be prejudiced if they are required to maintain their actions in Australia."); *Banco Economico,* 192 F.3d at 249 (plaintiff "received actual notice of the Brazilian proceeding . . . and subsequently filed a timely claim"). Moving Defendants must show that the foreign proceeding provides an adequate and sufficiently parallel forum such that abstention would not "threaten[] the very enforceability of" Plaintiffs' claims. *Banco Economico,* 192 F.3d at 244. They have not done so.[6]

2. Abstention Would Contravene the Laws and Public Policy of the United States.

Abstaining due to international comity would also be improper because it would violate the "public policy

[6] Plaintiffs further argue that the Lebanese liquidation process would be inadequate because Lebanon is a jurisdiction controlled by Hezbollah—the proverbial fox guarding the henhouse. Moving Defendants contend that there is no "corruption exception" to international comity. I need not reach and do not rely on Plaintiffs' corruption arguments, given the separate bases for denying the motion.

of the United States." *Id.* at 246. JASTA evinces a strong policy of holding accountable in United States courts those who enable terrorist attacks. The statute allows plaintiffs to recover treble damages and "the cost of the suit, including attorney's fees." 18 U.S.C. § 2333(a). The stated purpose of JASTA is to provide "the broadest possible basis" for liability:

> The purpose of this Act is to provide civil litigants with *the broadest possible basis,* consistent with the Constitution of the United States, to seek relief against persons, entities, and foreign countries . . . that have provided material support . . . to foreign organizations or persons that engage in terrorist activities against the United States.

18 U.S.C. § 2333 Statutory Notes (emphasis added). The legislative history of the ATA confirms the strong public policy of providing recourse to victims of foreign terrorist attacks in United States courts, notwithstanding that the relevant events may have occurred abroad. *See* 138 Cong. Rec. S17254–01, S17260 ("[T]he first and best remedy is to bring these terrorists to justice *in our courts of* law.") (statement of Sen. Grassley) (emphasis added); *see also Statement by President George H.W. Bush Upon Signing S. 1569,* 1992 U.S.C.C.A.N. 3942, 1992 WL 475753 (Oct. 29, 1992) ("I am pleased that the bill explicitly authorizes an American national to file suit *in the United States* for the recovery of treble damages against the perpetrators of international terrorism.") (emphasis added); 136 Cong. Rec. S4568–01 at S4593 ("With the enactment of this legislation, we set an example to the world of how the United States legal system deals with

terrorists.") (Statement of Sen. Grassley).[7] As the Honorable Charles P. Sifton once explained, "the legislative history as well as the language of the statute demonstrate that the ATA was designed to give American nationals broad remedies in a procedurally privileged U.S. forum." *Goldberg v. UBS AG,* 660 F. Supp. 2d 410, 422 (E.D.N.Y. 2009). Foreclosing Plaintiffs' claims against JTB would run afoul of the strong public policy of enabling American terrorism victims to pursue their claims in American courts.

Moving Defendants lastly argue that because "JTB's liquidation was precipitated by [the United States] designating it as an SDGT," that liquidation "is not contrary to U.S. policy but in furtherance thereof." (Def. Br. at 38.) But declining to dismiss this proceeding will not unduly impede the Lebanese liquidation. Apart from gesturing at the possibility of incurring litigation costs, Moving Defendants have offered no reason to believe that the Lebanese proceeding will not continue apace. Further, Moving Defendants focus on the wrong policy interest in arguing that dismissing this case would further "the United States' policy of punishing

---

[7] Plaintiffs also raise the venue provision of the ATA, which states that a "district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless," *inter alia,* "that foreign court is significantly more convenient and appropriate [and] offers a remedy which is substantially the same as the one available in the courts of the United States." 18 U.S.C. § 2334(d). Although I agree with Moving Defendants that this provision appears to concern forum *non conveniens* motions rather than comity motions, it further reflects the strength of the United States policy to ensure that victims of terrorism receive relief in American courts. *See also* 28 U.S.C. § 1605A (disallowing the foreign sovereign immunity defense in cases alleging terrorist acts).

facilitators of terrorist acts." As discussed, JASTA evinces not only a generalized policy of punishing terrorists, but a specific policy of providing a procedurally privileged domestic forum where victims of terrorist attacks may seek justice for the injuries they suffered.

* * *

In sum, comity-based dismissal would be inappropriate because the Lebanese liquidation does not provide an adequate parallel proceeding, and abstention would violate this country's public policy. Indeed, Moving Defendants' redressability argument—that any eventual judgment in this case will wholly fail to redress Plaintiffs' injuries—belies the notion that allowing this case to proceed would hamper the ongoing liquidation, let alone upend the "amicable working relationships" between the United States and Lebanon. *Altos Hornos,* 412 F.3d at 423.

CONCLUSION

For the foregoing reasons, the motion to substitute is DENIED, the motion to intervene is GRANTED, and the motion to dismiss is DENIED. The Clerk of Court is respectfully directed to enter Muhammad Baasiri as a defendant in this case.

SO ORDERED.

Dated: August 6, 2021
Brooklyn, New York

/s/ Carol Bagley Amon
Carol Bagley Amon
United States District Judge

APPENDIX C

28 U.S. Code § 1603 – Definitions

For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

APPENDIX D

U.S. DEPARTMENT OF THE TREASURY

PRESS RELEASES

Treasury Labels Bank Providing Financial Services to Hizballah as Specially Designated Global Terrorist

August 29, 2019

Washington – Today, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned Jammal Trust Bank SAL (Jammal Trust), a Lebanon-based financial institution that knowingly facilitates banking activities for Hizballah. Specifically, OFAC designated Jammal Trust as a Specially Designated Global Terrorist (SDGT) pursuant to Executive Order (E.O.) 13224 for assisting in, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, Hizballah. Jammal Trust has a longstanding relationship with a key Hizballah financial entity and provides financial services to Hizballah's Executive Council and the Iran-based Martyrs Foundation. As part of today's action, OFAC also designated Jammal Trust's Lebanon-based subsidiaries Trust Insurance S.A.L., Trust Insurance Services S.A.L., and Trust Life Insurance Company S.A.L., for being owned or controlled by Jammal Trust.

"Treasury is targeting Jammal Trust Bank and its subsidiaries for brazenly enabling Hizballah's financial activities. Corrupt financial institutions like Jammal Trust are a direct threat to the integrity of the Lebanese financial system. Jammal Trust provides support and services to Hizballah's Executive Council and the Martyrs Foundation, which funnels money to the families of suicide bombers," said Sigal Mandelker,

Under Secretary for Terrorism and Financial Intelligence. "The U.S. will continue to work with the Central Bank of Lebanon to deny Hizballah access to the international financial system. This action is a warning to all who provide services to this terrorist group."

Today's action highlights how Hizballah continues to prioritize its interests, and those of its chief sponsor, Iran, over the welfare of Lebanese citizens and Lebanon's economy. We regret that Hizballah has brought hardship to the Shia community, in particular, and call upon the Lebanese Government to exert every effort to mitigate the impacts on innocent account holders who did not realize Hizballah was putting their savings at risk. The United States is confident that the Central Bank of Lebanon and other Lebanese institutions, through their legal and regulatory policies and oversight functions, will continue to work to protect the stability and soundness of Lebanon's financial system, which is critical to supporting a stable and prosperous economy.

The Department of State designated Hizballah as a Foreign Terrorist Organization in October 1997 and as a Specially Designated Global Terrorist (SDGT) pursuant to E.O. 13224 in October 2001. Hizballah was first listed in January 1995 in the Annex to E.O. 12947, which targets terrorists who threaten to disrupt the Middle East peace process, and also designated in August 2012 pursuant to E.O. 13582, which targets the Government of Syria and its supporters.

JAMMAL TRUST BANK SAL

Jammal Trust assists in, sponsors, or provides financial, material, or technological support for, or financial or other services to or in support of, Hizballah.

Jammal Trust knowingly facilitates the banking activities of U.S.-designated entities openly affiliated with Hizballah, Al-Qard al-Hassan and the Martyrs Foundation, in addition to services it provides to Hizballah's Executive Council. Hizballah has used accounts at Jammal Trust to pay its operatives and their families, and Jammal Trust has actively attempted to conceal its banking relationship with numerous wholly owned Martyrs Foundation subsidiaries. When opening purportedly "personal accounts" at Jammal Trust, Al-Qard al-Hassan officials clearly identified themselves to Jammal Trust as senior members of the terrorist group. Jammal Trust then facilitated these accounts to be used to conduct business on Al-Qard al-Hassan's behalf. Such a scheme is representative of the deep coordination between Hizballah and Jammal Trust, which dates back to at least the mid-2000s and which spans many of the bank's branches in Lebanon. Also, Hizballah Member of Parliament Amin Sherri coordinates Hizballah's financial activity at Jammal Trust with the bank's management. OFAC designated Amin Sherri in July 2019 for acting for or on behalf of Hizballah pursuant to E.O. 13224.

The Treasury Department designated the Martyrs Foundation, including its U.S. branch, and Al-Qard al-Hassan, under E.O. 13224 in July 2007. The Martyrs Foundation is an Iranian parastatal organization that channels financial support from Iran to several terrorist organizations in the Levant, including Hizballah and the Palestinian Islamic Jihad (PIJ). Martyrs Foundation branches in Lebanon have also provided financial support to the families of killed or imprisoned Hizballah and PIJ members, including suicide bombers in the Palestinian territories. Additionally, Hizballah used Al-Qard al-Hassan as a cover to manage its

financial activity, and it has assumed a prominent role in Hizballah's financial infrastructure.

TRUST INSURANCE S.A.L.

OFAC designated Trust Insurance S.A.L. (Trust Insurance) for being owned or controlled by Jammal Trust.

In 2001, Trust Insurance and Trust Life Insurance Company S.A.L. became members of the Jammal Trust group, to provide standard insurance products to individuals and institutional clients. Trust Insurance, which was established in 1996, is a subsidiary of Jammal Trust and is 99.42% owned by the bank.

TRUST INSURANCE SERVICES S.A.L.

OFAC designated Trust Insurance Services S.A.L. (Trust Insurance Services) for being owned or controlled by Jammal Trust.

Trust Insurance Services, which was established in 2012, is a subsidiary of Jammal Trust and is 90% owned by the bank.

TRUST LIFE INSURANCE COMPANY S.A.L.

OFAC designated Trust Life Insurance Company S.A.L. (Trust Life) for being owned or controlled by Jammal Trust.

Trust Life, which provides life insurance services, was established in 2001. Trust Life and Trust Insurance products are backed by Jammal Trust. Moreover, Trust Life is a subsidiary of Jammal Trust and is 99.56% owned by the bank.

SANCTIONS IMPLICATIONS

The Treasury Department continues to prioritize disruption of the full range of Hizballah's illicit financial activity. With this action, OFAC has designated over

50 Hizballah-affiliated individuals and entities since 2017.

As a result of today's sanctions, all property and interests in property of these targets that are in the United States or in the possession or control of U.S. persons must be blocked and reported to OFAC. OFAC's regulations generally prohibit all dealings by U.S. persons or within the United States (including transactions transiting the United States) that involve any property or interests in property of blocked or designated persons. In addition, persons that engage in certain transactions with the individuals and entities designated today may themselves be exposed to sanctions or subject to an enforcement action.

The four entities designated today are further subject to secondary sanctions pursuant to the Hizballah Financial Sanctions Regulations, which implements the Hizballah International Financing Prevention Act of 2015, as amended by the Hizballah International Financing Prevention Amendments Act of 2018. Pursuant to this authority, OFAC can prohibit or impose strict conditions on the opening or maintaining in the United States of a correspondent account or a payable-through account by a foreign financial institution that knowingly facilitates a significant transaction for Hizballah, or a person acting on behalf of or at the direction of, or owned or controlled by, Hizballah.

View identifying information related to today's action here.

####