No. 24-909

IN THE

Supreme Court of the United States

AGUDAS CHASIDEI CHABAD OF UNITED STATES,
Petitioner-Appellee,

v.

RUSSIAN FEDERATION, *et al.*,
Respondents,

TENEX-USA, INCORPORATED
Respondent-Appellant.

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

BRIEF IN OPPOSITION OF RESPONDENT-APPELLANT TENEX-USA

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Tenex-USA, Incorporated ("Tenex-USA")—the appellant in the D.C. Circuit below—states that it is a corporation established in 2010 to market nuclear fuel products to U.S. utilities. Tenex-USA is incorporated under the laws of the State of Maryland, with its principal place of business in Washington, DC. Tenex-USA is a wholly owned subsidiary of the Russian company TENEX JSC ("TENEX"), whose indirect parent company is the Russian State Atomic Energy Corporation ROSATOM.

No publicly held company holds a 10% or greater ownership interest in Tenex-USA.

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INTRODUCTION

In 2004, Petitioner Agudas Chasidei Chabad of United States ("Chabad") brought suit against Defendants the Russian Federation and Russian Ministry of Culture and Mass Communication, as well as two alleged agencies and instrumentalities of the Russian Federation, the Russian State Library ("RSL") and Russian State Military Archive ("RSMA") (all four collectively, the "Russian Defendants").[1]

With this lawsuit, Chabad sought the U.S. courts' assistance in obtaining the turnover of certain religious and historical texts that have always been located outside the United States. The texts at issue were allegedly expropriated "following the Bolshevik Revolution and the Holocaust." Pet. 2-3. As Chabad concedes, these texts are presently located in Moscow in the possession of the RSL and RSMA. *Id.*

In 2010, the district court entered a default judgment against all of the Russian Defendants, ordering the turnover of the disputed property to Chabad. When the Russian Defendants failed to comply, the district court entered civil contempt sanctions of $50,000 per day. As the default sanctions judgments accrued to nearly $200 million, Chabad attempted to enforce the judgments against the assets of Respondent Tenex-USA, the appellant in the D.C.

[1] Tenex-USA takes no position on the agency or instrumentality status of the RSL and RSMA, whose status was not decided or at issue in the decisions below.

Circuit below, on a theory that Tenex-USA is the alter ego of the Russian Federation.

Tenex-USA is a Maryland corporation that markets uranium products to U.S. utilities. It is undisputed that Tenex-USA has nothing to do with the underlying dispute or the RSL or RSMA and that Tenex-USA does not possess or have access to the property Chabad seeks. Indeed, Tenex-USA was established in 2010, decades after any alleged expropriation. C.A.J.A.523. No court has ever found any basis to pierce the corporate veil between Tenex-USA and the Russian Federation—nor does one exist. *See* Pet. App. 19a (*Agudas Chasidei Chabad of United States v. Russian Federation ("Chabad III")*, 110 F.4th 242, 254 (D.C. Cir. 2024)) (leaving unresolved the question of whether Tenex-USA is an "alter ego of the Russian Federation, as Chabad alleges").

In the proceedings below, Tenex-USA challenged not only Chabad's alter-ego assertion but also the court's jurisdiction to enter the judgments against the Russian Federation. Based on D.C. Circuit precedent, Tenex-USA argued that a foreign state itself (as distinct from the foreign state's agencies or instrumentalities) is "'immune to claims for the expropriation of property not present in the United States.'" *Id.* at 15a (quoting *Schubarth v. Fed. Republic of Germany*, 891 F.3d 392, 394-395 (D.C. Cir. 2018)). Accordingly, as Tenex-USA argued, there was no jurisdictional basis for the judgments against the Russian Federation specifically.

The D.C. Circuit agreed. In its 2024 decision, the D.C. Circuit correctly determined that, given the property's undisputed location outside the United States, the district court lacked jurisdiction over Chabad's claims against the Russian Federation. The district court's default judgment and subsequent sanctions judgments were therefore "void" as to "the Russian Federation *itself*." *Id.* at 4a, 22a (emphasis added). The court held that there was thus no basis to authorize the attachment of Tenex-USA's assets.

As the D.C. Circuit emphasized, however, the 2024 decision did "not disturb the district court's exercise of jurisdiction over, or entry of judgement against, the RSL and RSMA," which are the entities that actually possess the property at issue. *Id.* at 24a. Chabad therefore "remains free to proceed against" both entities in further proceedings to enforce the sanctions judgments. *Id.* Nevertheless, rather than pursuing recourse against the RSL and RSMA, Chabad seeks this Court's review to reverse the D.C. Circuit's 2024 decision and revive its claims against the Russian Federation itself.

In particular, Chabad urges this Court to reconsider the well-settled interpretation of the "expropriation" exception to sovereign immunity, 28 U.S.C. § 1605(a)(3). Chabad argues that the Foreign Sovereign Immunities Act ("FSIA") permits an expropriation claim against the foreign state itself—even where the disputed property is located *outside* the United States—based on the U.S. commercial

activity of *juridically separate* agencies and instrumentalities. Pet. 1-2.

Chabad's interpretation of § 1605(a)(3), however, has been uniformly rejected by all the appellate courts to address the issue and by the United States' consistent position since 2004. *E.g.*, Br. for the United States as Amicus Curiae at 13, *Garb v. Republic of Poland* ("2004 U.S. Amicus"), No. 02-7844 (2d Cir. Sept. 10, 2004) ("This result is plainly absurd . . . [because] Congress did not intend to permit the sort of corporate veil-piercing advocated by plaintiffs."); Br. for the United States as Amicus Curiae at 8, *de Csepel v. Republic of Hungary* ("2018 U.S. Amicus"), No. 17-1165 (U.S. Dec. 4, 2018) ("The expropriation exception permits courts to exercise jurisdiction over a foreign state for expropriating property only when the property is in the United States in connection with the foreign state's *own* commercial activities in the United States.").

There are thus three distinct reasons for this Court to decline Chabad's petition for certiorari.

First, this Court's review of Chabad's statutory-interpretation question is not necessary for Chabad to obtain the relief it seeks. The disputed property is held ***not*** by Tenex-USA or even by the Russian Federation itself, but rather by two juridically separate entities, the RSL and RSMA, which have no alleged connection to Tenex-USA. As noted, the D.C. Circuit made clear that its decision in this case did not "disturb the district court's exercise of jurisdiction, or entry of judgment against, the RSL and RSMA." Pet. App. 24a

(*Chabad III*). The D.C. Circuit noted expressly that "Chabad remains free to proceed against those entities," *id.*, who were not the subject of Tenex-USA's appeal and whose status was explicitly not decided by the D.C. Circuit. This Court's intervention therefore is not needed to afford Chabad the opportunity to pursue relief against the entities which actually hold the disputed property—and against whom Chabad's judgments remain fully intact.

Second, there is no "circuit split" concerning the interpretation of § 1605(a)(3). Contrary to Chabad's strained characterization (Pet. 23), no appellate court has ever adopted any interpretation of the expropriation exception that would conflict with the D.C. Circuit's interpretation. To the contrary, Chabad's analysis relies predominantly upon a 2011 decision of the Ninth Circuit, wherein the litigants "apparently assumed" and the Ninth Circuit "therefore did not address whether" § 1605(a)(3) authorizes U.S. courts to exercise "jurisdiction over the foreign state itself" based on the U.S. contacts of a juridically separate instrumentality defendant. Br. for the United States as Amicus Curiae at 15, *Kingdom of Spain v. Cassirer* ("2011 U.S. Amicus"), No. 10-786 (U.S. May 27, 2011).

Indeed, "there have been no meaningful developments" since 2019 and 2020, when this Court previously "declined to grant certiorari on the same question" on two occasions. *See* Br. for the United States as Amicus Curiae at 22, *Philipp v. Fed. Republic of Germany* ("2020 U.S. Amicus"), Nos. 19-

351 and 19-520 (U.S. May 26, 2020); *see also Philipp v. Fed. Republic of Germany*, 141 S. Ct. 188 (2020) (denying writ of certiorari); *de Csepel v. Republic of Hungary*, 586 U.S. 1096 (2019) (same). None of the cases that Chabad presently cites in support of its position has altered the legal landscape since 2019 and 2020. To the contrary, the most recent of those decisions was issued in March 2019. *Sukyas v. Romania*, 765 F. App'x 179 (9th Cir. 2019). As the United States subsequently explained in 2020, "there have been no meaningful developments in the interim." 2020 U.S. Amicus at 22.

Third, and in any event, the D.C. Circuit's interpretation of § 1605(a)(3) is correct. That is, the FSIA authorizes claims against a foreign sovereign defendant based only upon that individual defendant's activities and U.S. contacts, and "not the contacts of some other, separate entity." 2018 U.S. Amicus at 11.

Indeed, where Congress instructs U.S. courts to disregard the "default" presumption that "agencies and instrumentalities of a foreign state [are] to be considered separate legal entities," then Congress "abrogate[s]" that presumption explicitly in the FSIA's plain text. *Rubin v. Islamic Republic of Iran*, 583 U.S. 202, 210-211 (2018) (citing the example of 28 U.S.C. 1610(g)(1)); 2018 U.S. Amicus at 14 (explaining that the absence of language in § 1605(a)(3) "even remotely similar" to § 1610(g)(1) "is properly understood to indicate that Congress did not intend to depart from the background rule, and thus did not intend for U.S.

courts to assert jurisdiction over a foreign state based on U.S. activities of an agency or instrumentality").

Chabad's interpretation, however, would make § 1605(a)(3) an outlier in the FSIA. That is, under Chabad's interpretation, § 1605(a)(3) would be the only instance where U.S. courts may impute the conduct and activities of a foreign state's instrumentalities to the foreign state itself despite the absence of explicit text to that effect. No other exception to immunity operates this way under the FSIA. *See, e.g.*, *TransAmerica Leasing, Inc. v. La Republica de Venezuela*, 200 F.3d 843, 854 (D.C. Cir. 2000) (concluding that Venezuela was not amenable to suit under the FSIA's commercial-activity exception, 28 U.S.C. § 1605(a)(2), based on the acts of its instrumentality); *Doe v. Holy See*, 557 F.3d 1066, 1078-1080 (9th Cir. 2009) (per curiam) (reaching similar conclusion under the FSIA's tortious-act exception, 28 U.S.C. § 1605(a)(5)), *cert. denied*, 561 U.S. 1024 (2010); *First Inv. Corp. of Marshall Islands v. Fujian Mawei Shipbuilding, Ltd.*, 703 F.3d 742, 756 (5th Cir. 2012) (holding similarly under the FSIA's arbitration exception, 28 U.S.C. § 1605(a)(6)).

Chabad's interpretation would also disregard this Court's most recent analysis of § 1605(a)(3). As explained earlier this term, there is "good reason for the Court not to read" the expropriation exception "broadly," because § 1605(a)(3) was not intended "to operate as a radical departure from the basic principles" governing the restrictive theory of sovereign immunity. *Republic of Hungary v. Simon*,

145 S. Ct. 480, 494 (2025) (internal citation and quotation marks omitted). This Court has therefore limited § 1605(a)(3) by both incorporating the "domestic takings rule," *Fed. Republic of Germany v. Philipp*, 592 U.S. 169, 187 (2021), and requiring application of "tracing principles," *Simon*, 145 S. Ct. at 493.

In the present case, this Court should likewise resist Chabad's request to disregard the baseline presumption that foreign states are legally separate from their agencies and instrumentalities and the conduct of one legally separate entity may not be imputed as a basis to establish jurisdiction over another. Chabad's Petition presents no compelling reason for this Court to read § 1605(a)(3) more expansively, especially given the lack of any circuit split and the consistent views of the United States since 2004.

The Petition should be denied.

STATUTORY FRAMEWORK

This case involves the FSIA's expropriation exception to immunity from suit, which provides that:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the

> United States or of the States in any case—
>
> * * * * *
>
> (3)
>
> [1] in which rights in property taken in violation of international law are in issue and
>
> [2A] that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or
>
> [2B] that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States.

28 U.S.C. § 1605(a)(3) (bracketed text added).

It is undisputed that the first U.S.-nexus clause (labeled 2A above) is not applicable here because the disputed property is located outside the United States, in Moscow. It is also not at issue whether the second U.S.-nexus clause (labeled 2B above) is satisfied as to the RSL and RSMA; the D.C. Circuit did "not disturb" the prior judgments against those defendants or decide anything with respect to the instrumentality status,

and said that Chabad remains "free to proceed" against them. Pet. App. 24a (*Chabad III*).

The question presented by Chabad here, however, is whether Chabad's default judgment, turnover order, and sanctions judgments may be sustained against the Russian Federation itself under the second U.S.-nexus clause (labeled 2B above), due to the alleged U.S. commercial activity of the RSL and RSMA (the alleged agency and instrumentality defendants).

The D.C. Circuit correctly held that clause 2B does ***not*** provide a basis for jurisdiction over claims against the foreign state itself based upon the U.S. contacts of a juridically separate agency or instrumentality. Accordingly, the court correctly found that the underlying judgments are void as to the Russian Federation and that there is therefore no basis for Chabad to seek attachment of the assets of Tenex-USA on an alter-ego theory. *See* Pet. App. 16a (*Chabad III*) ("[T]here is no jurisdiction over a claim against a foreign state under the FSIA's expropriation exception unless the expropriated property is located in the United States.").

STATEMENT OF THE CASE

1. In 2004, Chabad initiated a lawsuit against the Russian Defendants. Chabad's suit sought the turnover of two sets of religious texts and related historical documents—the "Library" and the "Archive"—that have been located within the territory of the Russian Federation (or its predecessor, the

Soviet Union) since at least the end of World War II. *See* Pet. App. 3a-4a (*Chabad III*).

In a 2006 decision, the D.C. district court addressed several arguments raised in the Russian Defendants' motion to dismiss, including whether Chabad had sufficiently alleged certain elements of § 1605(a)(3). *See Agudas Chasidei Chabad of United States v. Russian Federation*, 466 F. Supp. 2d 6 (D.D.C. 2006). The district court determined that Chabad had alleged a basis to assert jurisdiction over the claims as to the RSMA but not the RSL because the property allegedly held by the RSL had not been taken "in violation of international law." *Id.* at 16-19, 31. The district court's 2006 decision did not address the immunity of the Russian Federation itself.

On appeal in *Agudas Chasidei Chabad of United States v. Russian Federation ("Chabad I")*, 528 F.3d 934 (D.C. Cir. 2008), the D.C. Circuit affirmed the district court's determination as to claims against the RSMA and reversed as to the claims against the RSL. *See* Pet. App. 64a-75a, 89a (*Chabad I*). Similar to the district court in 2006, the *Chabad I* panel did not consider the distinct question of the Russian Federation's own immunity under § 1605(a)(3). Pet. App. 71a-75a (*Chabad I*); *see also de Csepel v. Republic of Hungary*, 859 F.3d 1094, 1105 (D.C. Cir. 2017) (confirming that "[t]he issue of the Russian state's immunity was completely unaddressed by the district court" in 2006 "and neither raised nor briefed on appeal" in *Chabad I*).

After the decision was issued in *Chabad I*, the Russian Defendants withdrew from the litigation. C.A.J.A.92-93.

2. In 2010, the district court entered a default judgment against the Russian Defendants and ordered them to deliver the disputed property to Chabad. *See* C.A.J.A.99-100. When the Russian Defendants failed to do so, in 2013, the district court (over opposition from the United States[2]) held the Russian Defendants in civil contempt and imposed sanctions of $50,000 for each day of the Russian Defendants' noncompliance with the court's turnover order. C.A.J.A.150. The district court subsequently entered several interim judgments aggregating the amounts of sanctions accrued, which eventually accumulated to nearly $200 million.

3. Chabad then embarked to enforce its sanctions judgments against the purported assets of the Russian Federation, first pursuing post-judgment discovery in aid of execution of the interim sanctions judgments. One of the targets of Chabad's efforts was Tenex-USA, a uranium trading company incorporated under the laws of the State of Maryland. It is undisputed that Tenex-USA has nothing to do with the underlying dispute, does not possess or have access to the religious

[2] The United States filed seven statements of interest in the district court proceeding opposing the unprecedented order directing a foreign state to turn over property located within its sovereign territory and the subsequent entry of civil contempt sanctions. *E.g.*, C.A.J.A.296; C.A.J.A.213; C.A.J.A.187; C.A.J.A.178; C.A.J.A.161; C.A.J.A.136; C.A.J.A.129.

texts, and has no relationship to the RSL and RSMA defendants.

In resisting Chabad's attempt to target Tenex-USA, Tenex-USA identified the erroneous jurisdictional basis for the district court's default judgments as to the Russian Federation. During the period between *Chabad I* and Tenex-USA's involvement in this case, the D.C. Circuit had issued several key decisions interpreting § 1605(a)(3). Specifically, in a number of cases involving Holocaust-era expropriation claims against Germany and Hungary (and certain agencies or instrumentalities), the D.C. Circuit consistently held that jurisdiction over the foreign state itself exists *only* where "the allegedly expropriated property is located in the United States," as is required under the first U.S.-nexus clause in § 1605(a)(3). *Schubarth*, 891 F.3d at 401; *de Csepel*, 859 F.3d at 1105-1108 (Hungary maintained its immunity because the disputed property was not "'present in the United States'" (quoting 28 U.S.C. § 1605(a)(3))); *Simon v. Republic of Hungary*, 812 F.3d 127, 146-148 (D.C. Cir. 2016) (same), *abrogated on other grounds sub nom. Fed. Republic of Germany v. Philipp*, 592 U.S. 169 (2021); *Philipp v. Fed. Republic of Germany*, 894 F.3d 406, 414 (D.C. Cir. 2018) ("[T]his panel is bound by *Simon* and *de Csepel*" and the claims against Germany itself "must be dismissed" because "the [disputed property] is in Berlin, not the United States . . . ."), *vacated and remanded on other grounds*, 592 U.S. 169 (2021).

The D.C. Circuit's interpretation of § 1605(a)(3) in these cases was not novel. To the contrary, the D.C. Circuit's interpretation corresponded fully with the consistent views of the United States since 2004. *See, e.g.*, 2020 U.S. Amicus (in *Philipp v. Germany*); 2018 U.S. Amicus (in *de Csepel v. Hungary*); 2011 U.S. Amicus (in *Spain v. Cassirer*); 2004 U.S. Amicus (in *Garb v. Poland*).

In view of these unanimous authorities, Tenex-USA moved pursuant to Federal Rule of Civil Procedure 60(b) to vacate the 2010 default judgment as to the Russian Federation for lack of jurisdiction under § 1605(a)(3), among other grounds. The district court denied Tenex-USA's Rule 60(b) motion. On appeal, the D.C. Circuit affirmed the district court's denial of Rule 60(b) relief, concluding that Tenex-USA was not a proper movant under that rule. *See Agudas Chasidei Chabad of United States v. Russian Federation ("Chabad II")*, 19 F.4th 472, 476-477 (D.C. Cir. 2021). Given its holding on standing under Rule 60(b), the D.C. Circuit did not reach Tenex-USA's jurisdictional challenge to the underlying judgments.

4. Back in the district court, Chabad filed a motion under 28 U.S.C. § 1610(c) seeking authorization to attach the assets of Tenex-USA. The district court denied Chabad's § 1610(c) motion without prejudice and ordered that Chabad first needed to serve the default sanctions judgments on the Russian Defendants before any attachments would be authorized. C.A.J.A.550. In the same decision, the district court again rejected Tenex-USA's

jurisdictional challenge and concluded that jurisdiction "still" existed as to the Russian Federation under § 1605(a)(3) because, according to the district court, "a 2008 panel of the D.C. Circuit held as much in" *Chabad I* and "the Circuit has never overruled that holding." C.A.J.A.561-562.

Tenex-USA again appealed, arguing that Chabad's motion for authorization of attachment should have been denied *with* prejudice given that the disputed property is not, and has never been, in the United States, and thus § 1605(a)(3) does not support jurisdiction over Chabad's claim against the Russian Federation (*i.e.*, the only connection to Tenex-USA's assets). In *Chabad III*, the D.C. Circuit vacated the order below and concluded that:

> Because the district court entered the default judgment and sanctions judgments against the Russian Federation in excess of its jurisdiction, those judgments are void as against the Federation. And without the judgments against the Federation, there is no predicate for Chabad to attach the property of [Tenex-USA].

Pet. App. 2a (*Chabad III*). The D.C. Circuit's decision reiterated, consistent with its holding in *Simon*, 812 F.3d at 146-148, and its progeny, that § 1605(a)(3) contains distinct U.S.-nexus requirements depending on whether the defendant is the foreign state itself or an agency or instrumentality. *See* Pet. App. 13a-15a

(*Chabad III*). Because the property Chabad seeks "sits in Russia, not the United States" the first U.S.-nexus clause was not satisfied and "the expropriation exception cannot provide a basis for jurisdiction over Chabad's claims against the Russian Federation." *Id.* at 15a.

The D.C. Circuit subsequently denied Chabad's petitions for panel rehearing and rehearing *en banc*, with no judges dissenting. *See* Pet. App. 93a (Order Denying Rehearing En Banc, *Agudas Chasidei Chabad of United States v. Russian Federation*, No. 23-7036, 2024 WL 4291931 (D.C. Cir. Sept. 23, 2024)) (per curiam).

REASONS FOR DENYING THE PETITION

I. This Case Is a Poor Vehicle for the Court's Review of the Question Presented

Chabad's Petition raises a single issue of statutory interpretation under 28 U.S.C. § 1605(a)(3). This Court has denied review of the very same question presented two times since 2019. *Philipp v. Fed. Republic of Germany*, 141 S. Ct. 188 (2020); *de Csepel v. Republic of Hungary*, 586 U.S. 1096 (2019). Those denials were appropriate given that no circuit split exists on this question and the D.C. Circuit's interpretation is correct and well settled. *See infra* §§ II, III. No new case or legal development has emerged since 2020 to warrant this Court's review now. Indeed, to the contrary, just this year, this Court's decision in *Simon* underscored the narrowness of the expropriation exception and even appeared to

endorse the dispositive point that "[w]hen a foreign sovereign is responsible for the expropriation, a suit may proceed *only* if the property is 'present in the United States.'" 145 S. Ct. at 491-493 (quoting § 1605(a)(3)) (emphasis added).

In any event, this case presents a particularly poor vehicle for review of the question presented. Regardless of whether this Court grants certiorari review, Chabad's judgments will remain intact with respect to the RSL and the RSMA defendants, *i.e.*, the actual defendants in possession of the property at issue. Respondent Tenex-USA has no alleged connection to those defendants. As the D.C. Circuit made clear, its decision on Tenex-USA's appeal does not "disturb the district court's exercise of jurisdiction over, or entry of judgment against, the RSL and RSMA," and "Chabad remains free to proceed against those entities." Pet. App. 24a (*Chabad III*). The D.C. Circuit did not consider or decide anything with respect to those defendants, and the judgments as to *those* entities are not before this Court. This Court's resolution of the question presented therefore is unnecessary in order for Chabad to proceed with its claims against the RSL and RSMA defendants—which continue to incur $50,000 daily contempt sanctions pursuant to the district court's order.

Further, this case does not raise the prototypical expropriation claim involving private commercial property that motivated the Second Hickenlooper amendment and the adoption of § 1605(a)(3). *Cf.* Pet. 8. As the United States emphasized repeatedly

between 2014 and 2019, "the longstanding U.S. position" has been that "out-of-court dialogue, rather than litigation, is most likely to lead to a resolution" of the present case. C.A.J.A.298; *see also* C.A.J.A.173 ("We continue to believe that an out-of-court dialogue presents the best means towards an ultimate resolution, and we have emphasized to Chabad the Department's belief that further steps in the litigation will not be productive."). Underscoring the broader cultural and religious interests at issue here, the RSL has already digitized a significant portion of the Library, which is available online through the Jewish Museum and Tolerance Center for the benefit of all people.[3]

Granting certiorari in this case to address a limited question of statutory interpretation that applies only to the foreign state itself will not bring Chabad any closer to the resolution it seeks. This Court should therefore decline Chabad's invitation to use this case as a vehicle to "expand[] the set of circumstances in which foreign sovereigns could be sued in United States courts for public acts involving expropriation." *Simon,* 145 S. Ct. at 495.

[3] *See* Schneerson Family Library, https://www.jewish-museum.ru/en/libraries/schneerson-library/ (last visited April 22, 2025).

II. The D.C. Circuit's Holding Does Not Conflict with the Holding of Any Other Circuit

Chabad's attempt to present this Court with a circuit split is unavailing. *See* Pet. 23-28. Chabad cites three Ninth Circuit cases—*Altmann v. Republic of Australia*, *Cassirer v. Kingdom of Spain*, and *Sukyas v. Romania*—and one Eleventh Circuit case—*Comparelli v. Republica Bolivariana de Venezuela*—for the proposition that these circuits have "held that both U.S.-nexus tests apply to abrogate the immunity of 'a foreign state'" under § 1605(a)(3). Pet. 23. None of these cases, however, dealt directly with the question presented and accordingly they do not constitute holdings that could conflict with the decision below. There is no actual circuit split implicated by the D.C. Circuit's settled precedents, as the United States emphasized in 2018 and 2020. *See* 2018 U.S. Amicus at 19 (reviewing the same case law and finding that "no reasoned decision" of any court of appeals "differs" from the D.C. Circuit's approach); 2020 U.S. Amicus at 22 (explaining that "this Court declined to grant certiorari on the same question just last term in *de Csepel*, [] and there have been no meaningful developments in the interim").

The United States' summary of the case law was correct, as detailed below.

In *Altmann v. Republic of Austria*, the Ninth Circuit's holding primarily concerned temporal issues, with Austria maintaining that "jurisdiction is lacking because the FSIA may not be retrospectively applied

to conduct pre-dating the Department of State's 1952 issuance of the Tate Letter, while the last taking in this case purportedly occurred in 1948." 317 F.3d 954, 962 (9th Cir. 2002). After deciding that the FSIA could apply to pre-1952 conduct, the court concluded that the commercial activities of the Austrian art gallery instrumentality were sufficient to satisfy § 1605(a)(3)'s U.S.-nexus requirement. *Id*. at 969. In so doing, the court assumed *without deciding* that jurisdiction also was satisfied as to Austria itself. *Id*. at 974. *See* 2018 U.S. Amicus at 19 (explaining that, in the *Altmann* litigation, "the court did not address why the Gallery's books sales and other U.S. commercial activities rendered Austria itself subject to jurisdiction").

In *Cassirer v. Kingdom of Spain*, 616 F.3d 1019 (9th Cir. 2010), the Ninth Circuit again considered the expropriation exception, this time addressing the foreign-state defendants' "lead point" of whether the expropriation exception requires "that the foreign state against whom suit is brought be the foreign state that took the property at issue in violation of international law." *Id*. at 1028, 1032. After establishing that § 1605(a)(3) did not contain such a requirement, the court then found that the commercial activities of Spain's instrumentality were sufficient to satisfy the U.S.-nexus requirement and allowed the claims to proceed, once again, assuming without deciding that jurisdiction was satisfied as to Spain itself. *Id*. at 1037. *See also* 2011 U.S. Amicus at 15 (explaining that the litigants in *Cassirer* "apparently assumed" and the Ninth Circuit "therefore did not

address whether" § 1605(a)(3) authorizes U.S. courts to exercise "jurisdiction over the foreign state itself" based on the U.S. contacts of a juridically separate instrumentality defendant).

And finally, in the unreported opinion *Sukyas v. Romania*, 765 F. App'x 179 (9th Cir. 2019), the Ninth Circuit held that Romania's instrumentality was engaged in commercial activity in the United States sufficient to satisfy the U.S.-nexus requirement, assuming without deciding that jurisdiction was satisfied as to Romania. *See id.* at 180 ("In fact, by licensing U.S. films to screen in Romania, RADEF România Film receives 'profits and benefits…derived from U.S. sources,' thus bringing the Sukyas brothers' claims within the second commercial-activity nexus clause of 28 U.S.C. § 1605(a)(3).") (internal citations omitted).

The Eleventh Circuit case relied on by Chabad is similarly inapposite. In *Comparelli v. Republica Bolivariana de Venezuela*, the Eleventh Circuit considered whether expropriation claims against Venezuela and its instrumentality could be maintained by dual nationals. 891 F.3d 1311 (11th Cir. 2018). The court held that as "long as the [U.S.-] nexus requirement is met, § 1605(a)(3) may apply to an extraterritorial taking in violation of international law of property belonging to individuals who are not United States nationals," but remanded to the district court to determine if the expropriation exception is satisfied. *Id.* at 1325-1328. *Comparelli*, therefore, neither addressed the question presented nor

permitted jurisdiction over a foreign state itself. *See Comparelli v. Bolivarian Republic of Venezuela*, 655 F. Supp. 3d 1169, 1193 n. 10 (S.D. Fla. 2023) (dismissing claim with prejudice because plaintiff could not establish a taking in violation of international law while noting that the court did not reach the U.S.-nexus element), *appeal taken,* 23-10633 (11th Cir. 2023), *oral argument held* June 12, 2024.

Chabad's reliance on *Comparelli* is further undermined by Eleventh Circuit district courts that have subsequently dealt with the application of the expropriation exception to a foreign state itself. While citing *Comparelli* for general propositions regarding § 1605(a)(3), a court in the Middle District of Florida expressly adopted the D.C. Circuit's interpretation of § 1605(a)(3)'s distinct U.S.-nexus requirements. "As is suggested by the disjunctive language of the commercial nexus requirements, the standard is different for a foreign state itself (like Defendant), as opposed to a state's agencies and instrumentalities." *Dvoinik v. Republic of Austria,* No. 8:22-cv-1700, 2025 WL 589250, at *5 (M.D. Fla. Feb. 24, 2025) (citing *de Csepel*, 859 F. 3d at 1104-1105 and *Chabad I*, 528 F.3d at 942). The court accordingly held that "[b]ecause the Republic of Austria is the only defendant in this suit, Plaintiff must satisfy the first nexus requirement." *Id*. The district court applied the D.C. Circuit's correct interpretation of the expropriation exception, without even acknowledging that *Comparelli* could instruct a contradictory interpretation.

Moreover, well after the relevant decisions were issued in the *Comparelli* case (in 2018), and the *Sukyas* case (in 2019), this Court denied petitions to review the D.C. Circuit's interpretation of the expropriation exception in *de Csepel* and *Philipp*, respectively. *Accord de Csepel v. Republic of Hungary*, 586 U.S. 1096 (2019) (denying certiorari); *Philipp v. Fed. Rep. of Germany*, 141 S. Ct. 188 (2020) (same).

In both of those proceedings, the litigants disputed the existence of a purported circuit split. The United States consistently agreed with the respondents in those proceedings, Germany and Hungary, that no actual split of authority had formed before or since 2019. *E.g.*, 2020 U.S. Amicus at 22 (explaining that "there have been no meaningful developments in the interim" since certiorari was denied in *De Csepel*).

Meanwhile, as Chabad concedes, the other circuits that have addressed this question have "indicated support for the D.C. Circuit's approach." Pet. 25-26 (citing *Berg v. Kingdom of Netherlands*, 24 F.4th 987, 992 (4th Cir. 2022) and *Garb v. Poland*, 440 F.3d 579, 589-598 (2d Cir. 2006)). In a similar vein, Chabad's contention that this Court's intervention is warranted without waiting for an actual circuit split—because of a purported "strong presumption that suits against a foreign state will be filed or transferred to the D.C. Circuit" (Pet. 26-27)—is undercut by Chabad's own citation to expropriation cases adjudicated in other circuits. *See, e.g.*, Pet. 23-26 (discussing expropriation claims brought against foreign states and/or their

agencies and instrumentalities in the Ninth, Eleventh, Second, and Fourth Circuits).

Accordingly, Chabad has not cited—and counsel for Tenex-USA is unaware of—any reasoned holding of any court of appeals that contradicts the D.C. Circuit warranting this Court's review.

III. The D.C. Circuit's Interpretation of § 1605(a)(3) Is Correct, as the United States Has Recognized

The D.C. Circuit concluded that expropriation claims against the foreign state itself may proceed only if the disputed property "'is present in the United States'" in connection with the foreign state's *own* commercial activities in the United States. Pet. App. 13a (*Chabad III*) (quoting 28 U.S.C. § 1605(a)(3)). That is, expropriation claims against a foreign state could only proceed under the first U.S.-nexus test.

It is undisputed that the Russian Federation is a "foreign state" within the meaning of 28 U.S.C. § 1603(a), and that the property Chabad seeks is and always has been located outside the United States. As the D.C. Circuit recognized, Chabad "remains free to proceed" under § 1605(a)(3)'s second U.S.-nexus clause against the alleged instrumentality defendants (the RSL and the RSMA who actually possess the property Chabad seeks. Pet. App. 24a (*Chabad III*). The only question is whether Chabad's claim may ***also*** proceed against the Russian Federation under the ***second*** U.S. nexus of the expropriation exception—that is, by imputing the commercial activities of the RSL and

RSMA to the Russian Federation for jurisdictional purposes.[4]

The D.C. Circuit correctly answered this question in the negative. As reflected in longstanding precedent, given the FSIA's "'presumption' that agencies and instrumentalities have 'independent status' from the foreign state, '[w]hen a state instrumentality is not immune . . . , the claim is *ordinarily to be brought only against the instrumentality*.'" *de Csepel*, 859 F.3d at 1107 (quoting *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, 905 F.2d 438, 446 (D.C. Cir. 1990)).

A. The D.C. Circuit's Decision Accords with the FSIA's Text and Structure

Under the FSIA, foreign states and their agencies or instrumentalities are presumptively immune from civil suits in U.S. courts, subject to certain exceptions provided at 28 U.S.C. §§ 1605 to 1607. *See Simon*, 145 S. Ct. at 486 ("[T]he FSIA provides that foreign sovereigns and their agencies cannot be haled into this Nation's courts at all, but the Act sets forth exceptions to that general immunity."); *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989) (holding that "the FSIA provides the sole basis

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[4] The D.C. Circuit left unresolved the question of the Russian Ministry of Culture and Mass Communication's immunity under the expropriation exception. *See* Pet. App. 24a (*Chabad III).* The Ministry is likely a "political subdivision" of the Russian Federation within the meaning of § 1603(a), and therefore the Ministry is part of the state itself and shares the same immunity under § 1605(a)(3) as the Russian Federation.

for obtaining jurisdiction over a foreign state in the courts of this country").

The FSIA defines the phrase "foreign state" to include both the "foreign state" itself and any "agency or instrumentality" of the foreign state. 28 U.S.C. § 1603(a). To qualify as an "agency or instrumentality," however, the FSIA provides explicitly that the relevant entity must be "*a separate legal person*, corporate or otherwise." *Id.* § 1603(b)(1) (emphasis added).

To establish jurisdiction under the expropriation exception, a court must find that "rights in property" are at issue, that property was taken in violation of international law, and that the appropriate U.S. territorial nexus is satisfied as to the "property or any property exchanged for such property." 28 U.S.C. § 1605(a)(3). Whether the U.S.-nexus requirement is satisfied as to the Russian Federation is the only jurisdictional element of § 1605(a)(3) implicated in Chabad's Petition.[5]

The D.C. Circuit correctly interpreted § 1605(a)(3)'s text as establishing distinct U.S.-nexus requirements depending on whether the sovereign defendant is a foreign state "or" an agency or instrumentality. As the United States previously explained to this Court, if the entity whose immunity

[5] Tenex-USA takes no position on whether Chabad has satisfied § 1605(a)(3)'s additional jurisdictional elements, "rights in property" and "taken in violation of international law," as to any defendant.

is at stake is the foreign state itself, then the "more demanding" first U.S.-nexus clause applies. 2018 U.S. Amicus at 10. By contrast, if the entity whose immunity is at stake is an agency or instrumentality, then the "more forgiving" second U.S.-nexus requirement applies. *Id.*

Although Chabad encourages a contrary interpretation, the "text and structure" of § 1605(a)(3) "is naturally read to require that the entity that loses its immunity (the 'foreign state' in [§ 1605(a)'s] introductory paragraph) *must be the same entity* whose commercial activities in the United States subject it to jurisdiction of a U.S. court." 2018 U.S. Amicus at 11 (emphasis added).

In other words, the FSIA generally precludes a plaintiff from establishing jurisdiction over the foreign state itself by imputing the U.S. commercial activities of any "*separate* legal person," as agencies and instrumentalities are defined to be. 28 U.S.C. § 1603(b)(1) (emphasis added). *See de Csepel*, 859 F.3d at 1107 (explaining that "the foreign state itself does not lose immunity merely because one of its agencies and instrumentalities satisfies an FSIA exception"); *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba ("Bancec")*, 462 U.S. 611, 623, 626-627 (1983) (explaining that "[d]ue respect for the actions taken by foreign sovereigns and for principles of comity between nations" underscores the principle "that government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such").

The D.C. Circuit's reading accords with the United States' consistent position since 2004. *See, e.g.*, 2020 U.S. Amicus at 23 (in *Philipp v. Germany*) ("Section 1605(a)(3)'s text and structure are most naturally read to establish two distinct tracks for obtaining jurisdiction, depending on the entity whose immunity is at stake. If that entity is the foreign state itself, then the stricter 'foreign state' nexus must be satisfied; if that entity is an agency or instrumentality, then the looser 'agency or instrumentality' nexus must be satisfied."); 2018 U.S. Amicus at 8 (in *de Csepel v. Hungary*) ("The expropriation exception permits courts to exercise jurisdiction over a foreign state for expropriating property only when the property is in the United States in connection with the foreign state's *own* commercial activities in the United States."); 2011 U.S. Amicus at 15 (in *Spain v. Cassirer*) ("[W]here a plaintiff alleges that the property is 'owned or operated by an agency or instrumentality of the foreign state . . . engaged in a commercial activity in the United States,' then there is jurisdiction over only the foreign agency or instrumentality that has availed itself of American markets, not the foreign state.") (quoting § 1605(a)(3)); 2004 U.S. Amicus at 13 (in *Garb v. Poland*) ("Congress did not intend to permit the sort of corporate veil-piercing advocated by plaintiffs.").

Chabad's contrary interpretation emphasizes that § 1603(a) defines the phrase, "foreign state," to include "both the foreign state and its agencies or instrumentalities" under § 1603(a). Pet. 18. According to Chabad, the reference to claims against "a foreign state" in the chapeau of § 1605(a) means

that claims may proceed against *any* foreign state so long as *either* U.S.-nexus is satisfied under § 1605(a)(3). Chabad's interpretation, however, disregards many key elements of the FSIA's text.

First, the references to "the foreign state" in both the chapeau of § 1605(a) and in § 1605(a)(3) are all written in the singular. There is nothing in this text to suggest that a *single* claim against an agency or instrumentality should automatically proceed against *two* "foreign state" defendants. To the contrary, automatically extending jurisdiction to the instrumentality's parent entity—*i.e.*, the foreign state itself—is contrary to the FSIA's explicit requirement that these two entities are "*separate legal person[s]*." 28 U.S.C. § 1603(b)(1) (emphasis added).

Chabad's interpretation of § 1605(a)(3) is thus inconsistent with the presumption of juridical separateness applied "as a default" rule in analyzing issues of both jurisdiction and liability in FSIA cases. *Rubin*, 583 U.S. at 210 (citing *Bancec* and explaining that agencies and instrumentalities generally "cannot be held liable for acts of the foreign state"). As noted, courts consistently have applied this default rule by refusing to take jurisdiction against a foreign state under the FSIA based on the conduct of agencies or instrumentalities. *E.g.*, *TransAmerica Leasing*, 200 F.3d at 852-854; *Doe*, 557 F.3d at 1078-1080; *First Inv. Corp. of Marshall Islands*, 703 F.3d at 756.

Second, where Congress intends to depart from the FSIA's default presumption of separateness, it does so expressly—as it did in the plain text of 28 U.S.C.

§ 1610(g)(1). Unlike the expropriation exception, § 1610(g)(1) explicitly departs from the background rule of separateness by authorizing veil-piercing for the purpose of enforcing money judgments based upon state-sponsored terrorism. In other words, "[§] 1610(g) serves to abrogate *Bancec* with respect to the liability of agencies and instrumentalities of a foreign state where a § 1605A judgment holder seeks to satisfy a judgment held against the foreign state." *Rubin*, 583 U.S. at 211.

By contrast, as the United States has emphasized, § 1605(a)(3) "includes no language that is even remotely similar." 2018 U.S. Amicus at 14. "That silence is properly understood to indicate that Congress did not intend to depart from the background rule, and thus did not intend for U.S. courts to assert jurisdiction over a foreign state based on U.S. activities of an agency or instrumentality." *Id.*

Third, it would be anomalous for § 1605(a)(3) to create a more *permissive* avenue for jurisdiction over the foreign state itself, while establishing a more *restrictive* avenue for jurisdiction over the foreign state's agency or instrumentality. Every other element of the FSIA's structure provides for the opposite result. Indeed, as the United States explained in 2018, the background principle that "it is more delicate for a court to exercise jurisdiction over a foreign state than over an agency or instrumentality" is reflected in multiple FSIA provisions, involving the availability of punitive damages, effecting service of process, and the attachment of assets. *See* 2018 U.S.

Amicus at 14-15 (surveying §§ 1606, 1608, 1609, and 1610, and concluding that the more "permissive procedures" consistently apply to the agency or instrumentality); *see also Singh ex rel. Singh v. Caribbean Airlines Ltd.*, 798 F.3d 1355, 1359 (11th Cir. 2015) ("The lesser protections the FSIA offers to agencies or instrumentalities of foreign states reflect the significance of its distinction between traditional governmental activities and commercial activities.").

As noted *supra*, § 1605(a)(3)'s first U.S.-nexus clause imposes a "much more demanding" test where the entity facing the loss of immunity is the foreign state itself, 2018 U.S. Amicus at 9, and requires that the disputed property (or property exchanged for such property) is "present in the United States in connection with a commercial activity carried on in the United States by the foreign state." 28 U.S.C. § 1605(a)(3). By contrast, § 1605(a)(3)'s second U.S.-nexus clause applicable to agencies or instrumentalities requires a much less direct nexus with the United States: the agency or instrumentality that possesses the disputed property (or property exchanged for such property) must be engaged in any commercial activity in the United States, regardless of whether such activity is connected to the property at issue. *Id.*

It thus makes sense that the initial, "stricter" U.S.-nexus test applies to foreign states or agencies and instrumentalities, while the second, less-strict U.S. nexus test applies to agencies and instrumentalities alone. 2018 U.S. Amicus at 11. The contrary approach

urged by Chabad would render § 1605(a)(3) an outlier to the general structure of the FSIA.

B. The D.C. Circuit's Decision Accords with the FSIA's Legislative History and Purpose

Chabad contends that the FSIA's "legislative history" confirms that § 1605(a)(3) sets forth "two alternative ways to establish jurisdiction over the foreign state itself." Pet. 22. According to Chabad, "Congress differentiated the two [U.S.-nexus tests] based on the location of the expropriated property," and that either clause would suffice for obtaining jurisdiction as to expropriation claims against the foreign state itself. Pet. 22-23.

Chabad's interpretation is wrong, however, for several reasons concerning the history and purpose of the FSIA's expropriation exception.

1. Before the FSIA's enactment in 1976, the practice of the U.S. State Department was to invite U.S. courts to exercise jurisdiction over agencies and instrumentalities engaged in commercial activities in the United States. 2018 U.S. Amicus at 17-18. That limited historical practice was ultimately codified in the second U.S.-nexus clause at § 1605(a)(3).

The first U.S.-nexus clause, by contrast, represented only an "incremental" expansion of jurisdiction. *Id.* As the United States explained in 2004:

> In creating for the first time an exception to the *in personam* immunity of a foreign state, Congress adopted an incremental approach granting jurisdiction over foreign states that paralleled those few cases in which title to property in the United States had been in issue, while permitting, as had historically been the case, a broader class of cases against agencies and instrumentalities.

2004 U.S. Amicus at 12-13.

This first U.S.-nexus clause was evidently intended to codify the prior U.S. practice of denying sovereign immunity to foreign states "to determine rights to property in the United States" for *in rem* proceedings. 2018 U.S. Amicus at 17-18. This is why the first U.S.-nexus clause explicitly limits claims against the foreign state itself to those involving "property or any property exchanged for such property" that "is *present in the United States*." § 1605(a)(3) (emphasis added). The first U.S.-nexus clause further accords with the well-established international law that the acts of a sovereign within its territory are not subject to decision by another sovereign's national courts. *See Simon*, 145 S. Ct. at 497-498 (recognizing expropriation exception's "conformity with international law"). There is no reason to conclude that Congress thus intended to dramatically expand the U.S. courts' jurisdiction beyond the two narrow categories of pre-1976 cases that could already be

litigated against foreign states prior to the enactment of § 1605(a)(3).

It is thus highly implausible that, as Chabad suggests, the FSIA's expropriation exception was intended to permit unprecedented jurisdiction over a foreign state itself wherever *any* of the foreign state's agencies or instrumentalities were also subject to jurisdiction. Chabad fails to cite any historical analogue for such assertion.

Indeed, this Court has also consistently recognized the incremental nature of § 1605(a)(3) in several recent decisions. Specifically, the FSIA's expropriation exception reflected only a "limited departure from the restrictive theory, which provides foreign sovereign immunity for public acts like expropriation." *Simon*, 145 S. Ct. at 498; *see also Philipp*, 592 U.S. at 183 (rejecting the suggestion that Congress intended the expropriation exception to operate as a "'radical departure'" from the "'basic principles'" of the restrictive theory) (quoting *Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 581 U. S. 170, 171-72 (2017)).

Chabad's interpretation of § 1605(a)(3), however, would reflect the same type of "radical departure" that this Court has rejected.

2. In line with the pre-1976 history, this Court has consistently interpreted § 1605(a)(3) to incorporate traditional presumptions concerning the "domestic takings rule," *Philipp*, 592 U.S. at 187, and direct "tracing principles," *Simon*, 145 S. Ct. at 493, that

underscore the narrowness of the expropriation exception to immunity. In two recent cases, the Court thus warned against interpreting the FSIA's expropriation exception so "broadly" as to "undermine those principles" in respect of "the circumstances in which foreign sovereigns can be brought into United States courts for their public acts." *Simon*, 145 S. Ct. at 494 (analyzing *Philipp*, 592 U.S. at 176, 183).

The reasoning of those cases is instructive. In *Philipp*, this Court held that § 1605(a)(3) "retained the domestic takings rule," reflecting the international law on expropriation at the time of the FSIA's enactment. *Philipp*, 592 U.S. at 181. In doing so, this Court rejected plaintiffs' argument that Congress intended § 1605(a)(3) to encompass other "areas of international law [that] do not shield a sovereign's actions against its own nationals." *Id.* To the contrary, "subject[ing] all manner of sovereign public acts to judicial scrutiny under the FSIA by transforming the expropriation exception into an all-purpose jurisdictional hook for adjudicating human rights violations" would "destroy" the FSIA's "general effort to preserve a dichotomy between" a foreign state's "private and public acts." *Id.* at 183.

Similarly, in *Simon*, this Court rejected plaintiffs' "commingling theory" and explained that § 1605(a)(3) requires "plaintiffs to identify and trace" the expropriated property (or property exchanged for such property) to the United States, regardless of whether the property is fungible or nonfungible. *Simon*, 145 S. Ct. at 493, 495-496. This direct tracing

requirement reflected Congress's intent to "add[] a limitation to the expropriation exception not found in the Second Hickenlooper Amendment." *Id.* at 488. Whereas that "amendment permits claims based upon (or traced through) a confiscation or other taking, the expropriation exception requires that stolen property, or property exchanged for such property, have a commercial nexus to the United States." *Id.* (internal quotation marks and citation omitted).

As relevant to the present case, Congress likewise must have understood § 1605(a)(3) to incorporate the traditional presumption of corporate separateness. *See Rubin*, 583 U.S. at 210-11 (recognizing that FSIA incorporates "default" presumption of legal separateness). As noted above, there certainly is no express indication that Congress intended to disregard this presumption in § 1605(a)(3). *See supra.*

3. Chabad further contends that the D.C. Circuit's decision "provides a simple playbook for autocratic regimes" to "steal property from U.S. citizens and keep that property outside the territory of the United States" to maintain immunity under the expropriation exception. Pet. 28. This suggestion, however, must also be rejected based on the history of such claims prior to the FSIA.

As this Court explained in *Simon*, "Congress drafted the expropriation exception" under § 1605(a)(3) specifically to encompass the type of situation arising in the *Sabbatino* case. *Simon*, 145 S. Ct. at 494 (analyzing *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964)). That case had

involved proceeds that were traceable from the "the sale of expropriated sugar" to a bank account in New York. *Id.*

Contrary to Chabad's suggestion, the D.C. Circuit's interpretation leaves intact this type of claim in accordance with the FSIA drafters' intent. As recent cases confirm, even autocratic regimes such as Iran attempt to use "the U.S. financial system," much like in the Cuban cases from the 1960s. *See Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 267 (2023) (describing how "billions of dollars of Iranian oil and gas proceeds" were channeled through banks in the United States).

It is not correct, therefore, that an effective interpretation of § 1605(a)(3) would require a dramatic expansion beyond the circumstances of the *Sabbatino* case.

Finally, Chabad's expansive interpretation would be contrary to "the United States' 'reciprocal self-interest' in receiving sovereign immunity in foreign courts." *Simon*, 145 S. Ct. at 494 (quoting *Nat'l City Bank of New York v. Republic of China*, 348 U.S. 356, 362 (1955)); *see also Philipp*, 592 U.S. at 184 ("We interpret the FSIA as we do other statutes affecting international relations: to avoid, where possible, 'producing friction'" in U.S. foreign relations) (quoting *Helmerich*, 581 U.S. at 183).

For this reason, this Court has interpreted § 1605(a)(3) to "conform fairly closely" with international law. *Helmerich*, 581 U.S. at 181

(internal citation and quotation marks omitted). That is why the exception requires a commercial nexus with the United States, and why the FSIA was not intended to provide for Chabad's overbroad interpretation.

CONCLUSION

For the foregoing reasons, Chabad's Petition for a writ of certiorari should be denied.

Respectfully submitted,

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