

App. No. _____

ESTATE OF ESTHER KLIEMAN, BY AND THROUGH ITS
ADMINISTRATOR, AARON KESNER, ET AL.,
Applicants,

v.

PALESTINIAN AUTHORITY, ALSO KNOWN AS
PALESTINIAN
INTERIM SELF-GOVERNMENT AUTHORITY AND
PALESTINIAN LIBERATION ORGANIZATION, ALSO
KNOWN AS PLO,
Respondents.

APPLICATION TO EXTEND TIME TO

FILE
A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States
and Circuit Justice for the D.C. Circuit:

Pursuant to Supreme Court Rules 13.5, 21, 22, and 30.3, Petitioners, the
Estate of Esther Klieman, Nachman Klieman, Ruanne Klieman, Dov Klieman,
Yosef Klieman, and Gavriel Klieman, respectfully request that the time in which
Petitioners may file a Petition for Writ of Certiorari in this matter be extended 60
days, until and including December 6, 2019.

The United States Court of Appeals for the District of Columbia Circuit
issued its decision on May 14, 2019 (attached as Exhibit A). The Court of Appeals
denied Petitioners' timely petition for rehearing and petition for rehearing *en banc*

on July 8, 2019 (orders attached as Exhibits B and C). Absent an extension of time, the Petition for a Writ of Certiorari would be due on October 7, 2019. Petitioners are filing this Application at least ten days before that date (*see* Sup. Ct. R. 13.5). The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1).

BACKGROUND

Esther Klieman, a 23-year-old American citizen and teacher, was murdered on March 24, 2002 when she was shot and killed by a terrorist in Israel. The Petitioners, all American citizens, initiated a lawsuit under the Antiterrorism Act (“ATA”), 18 U.S.C. § 2331, *et seq.*, which provides a federal cause of action for American citizens killed or injured. *see* 18 U.S.C. § 2333(a), “by reason of an act of international terrorism”, which is defined as an “violent act”, “dangerous to human life”, which “appear[s] to be intended—to influence the policy of a government by intimidation or coercion” or to “affect the conduct of a government” 18 U.S.C. § 2331(1). Petitioners brought suit against the PA and PLO for their roles in supporting the terrorist attack that resulted in Esther Klieman’s murder, which occurred during the Second Intifada when dozens of Americans were killed or injured in terrorist attacks by the Al Aqsa Martyrs Brigade (“AAMB”), among others.

After the District Court originally denied the PA and the PLO’s first of two motions to dismiss for personal jurisdiction and a subsequent motion for reconsideration, holding that under Petitioners’ general personal jurisdiction theory “both the PA and the PLO have sufficient minimum contacts within the United

States to permit suit here consistent with the Due Process Clause of the Constitution”, several years of intensive discovery and active trial preparation ensued. Then the Supreme Court announced a new “essentially at home” standard for general personal jurisdiction in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011), which overruled the prior test for general jurisdiction of “continuous and systematic” contacts.

On February 5, 2014, almost a year after the close of fact discovery, the PA and PLO moved for reconsideration of the district court’s orders on personal jurisdiction in light of the Supreme Court decision *Daimler AG v. Bauman*, although this decision relied on the earlier holding in *Goodyear*: “[i]nstructed by *Goodyear*, we conclude Daimler is not ‘at home’ in California, and cannot be sued there for injuries plaintiffs attribute to MB Argentina’s conduct in Argentina.” 571 U.S. 117, 122 (2014). While the PA and PLO waited nearly three years to raise the “at-home” defense on February 5, 2014, the fact discovery deadline expired on April 15, 2013 and the ongoing discovery finally wound down in subsequent months. On January 6, 2014 the magistrate judge appointed to manage the discovery process granted Petitioners’ motion to compel the production of information previously withheld by the PA and PLO, which included documentation of the links between the PA and PLO and the AAMB, an undisputed terrorist group that killed or injured many Americans during the Second Intifada. As the “at-home” defense was not raised until after the expiration of fact discovery, there would be no discovery on jurisdictional issues under the new state of the law, and the district court mooted

the magistrate judge's January 6, 2014 production order by granting the motion to dismiss based upon *Daimler*. Nonetheless, one of the district court's central premises in overruling Petitioners' waiver argument was that Petitioners had suffered no prejudice as a result of the late-raising of the "at-home" defense, despite the expiration of fact discovery. The district court granted the PA's and PLO's motion for reconsideration and Petitioners appealed.

Petitioners argued that the PA and PLO had forfeited and waived their right to assert a personal jurisdiction defense, among other arguments. On October 3, 2018, before oral argument at the D.C. Circuit, the President signed into law the Antiterrorism Clarification Act of 2018 ("ATCA"), Pub. L. 115-253. Under the ATCA, the PA and PLO's continued acceptance of financial assistance as specified in that law or maintenance of "any office headquarters, premises, or other facilities or establishments within the jurisdiction of the United States" after January 31, 2019¹ will constitute consent to personal jurisdiction in this and other cases under the Antiterrorism Act ("ATA"), 18 U.S.C. § 2333, "*regardless of the date of the occurrence of the act of international terrorism upon which such civil action was filed . . .*" ATCA Sec. 4, Pub. L. 115-253 (emphasis added).

The House Report on the ATCA explains that "[n]o defendant should be able to accept U.S. foreign assistance while simultaneously dodging responsibility in U.S. courts for aiding or carrying out terrorist attacks that harm Americans." H.R. Rep. No. 115-858, at 6-7. (2018). "If they continue to accept the covered benefits, they will

¹ 120 days from the law's passage.

subject themselves to personal jurisdiction in U.S. courts in ATA cases that are already pending or that may be filed in the future.” *Id*; accord 164 Cong. Rec. S5103 (daily ed. July 19, 2018) (statement of Sen. Grassley). The new law would apply to this case on appeal because, as the House Report explains, the provision:

is purely procedural and affects no substantive entitlement to relief, it takes effect on the date of enactment . . .

H.R. Rep. No. 115-858, at 7. Because the statute passed after Petitioners’ appeal and shortly before oral argument, Petitioners had no opportunity to take discovery regarding the PA and PLO’s activity required for the assertion of jurisdiction under the ATCA.

On May 14, 2019, the three-judge panel of the District of Columbia Circuit ruled that 1) “[w]e see no abuse of discretion in the ruling on forfeiture, Slip Op. at 8, and 2) that the ATCA did not apply to the PA and PLO. Slip Op. at 22.

Petitioners filed a timely petition for rehearing and petition for rehearing *en banc*.

This case presents exceptionally important questions regarding national security and the constitutional powers of Congress.

REASONS JUSTIFYING AN EXTENSION OF TIME

In support of their application for an extension of time to file their Petitioners, the Estate of Esther Klieman et al. states as follows:

1. Counsel for Petitioners have a number of upcoming deadlines in other cases, including one before the Supreme Court, *Opati v. Republic of Sudan*.
2. The issues and record in this case are sufficiently complex that Petitioner requires additional time to prepare their Petition for a Writ of Certiorari.

The passage of the ATCA by Congress during the pendency of the appeal has only made the constitutional issue still more complex and weighty.

3. An extension of time to file the Petition will not prejudice any of the parties because, regardless of whether the extension is granted, the case would not be heard until the next Term.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant them a 60-day extension of time, to and including December 6, 2019, within which to file its Petition for a Writ of Certiorari.

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