No. 24-699

In The Supreme Court of the United States

EXXON MOBIL CORPORATION,

Petitioner,

v.

CORPORACIÓN CIMEX, S.A. (CUBA), *et al.*,

Respondents.

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

BRIEF OF *AMICI CURIAE* FOREIGN SOVEREIGN IMMUNITY SCHOLARS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are professors of law with expertise in the Foreign Sovereign Immunities Act, international law, civil litigation, and the federal courts. They have a professional and academic interest in the proper treatment of these issues by U.S. courts.

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[1] Pursuant to Supreme Court Rule 37(6), *amici curiae* state that no counsel for any party authored this brief in whole or in part, and that no entity or person other than *amici curiae* or their counsel made any monetary contribution toward the preparation and submission of this brief.

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SUMMARY OF ARGUMENT

Title III of the Helms-Burton Act does not *sub silentio* abrogate foreign sovereign immunity. As this Court has held for more than thirty years, the FSIA is the exclusive source of jurisdiction over foreign states and their agencies and instrumentalities. That bedrock principle is clear from the text and structure of the FSIA. Accordingly, when Congress intends to create a new exception to foreign sovereign immunity, it amends the Act, as it has done on numerous occasions, including during the same legislative session in which it adopted Title III. Congress' decision not to amend the FSIA when it enacted Title III should end this Court's inquiry.

The creation of a new cause of action in Title III may not be construed as impliedly repealing 28 U.S.C. § 1604, which establishes the FSIA as the comprehensive law governing foreign sovereign immunity. Neither the text nor the history of Title III permit such a construction of the statute, which must be read harmoniously with the FSIA.

Moreover, interpreting Title III as abrogating sovereign immunity would create a conflict with customary international law, which Congress codified in the FSIA. Absent any indication that Congress intended to depart from international law, this Court should decline to find that Title III was intended to

introduce an atextual exception to sovereign immunity that has not been codified in the FSIA.

What is more, the interpretation of Title III argued by Petitioner would destabilize the delicate balance between respect for foreign sovereigns and accountability embedded in the FSIA, injecting instability into international relations and inviting reciprocal actions against the United States. Because Title III is silent on foreign sovereign immunity, this Court should interpret the statute to avoid international friction and preserve the balance struck by Congress in the FSIA.

ARGUMENT

A. Creating an Exception to Immunity Not Found in the FSIA Would Unsettle Decades of Precedent Recognizing the FSIA as the Sole Source of Jurisdiction Over States and Their Agencies and Instrumentalities.

For more than thirty years, this Court has repeated the bedrock principle that the FSIA is the "sole basis for obtaining jurisdiction over a foreign state in our courts."[2] *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989). The Court's precedent is extensive and consistent:

- *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 605 U.S. 223, 229 (2025) ("[T]he FSIA imposes a bright-line rule: foreign

[2] The FSIA defines "foreign state" to include "an agency or instrumentality of a foreign state." 28 U.S.C. § 1603(a).

states and their instrumentalities are immune from suit unless one of the Act's enumerated exceptions applies.");

- *Republic of Hungary v. Simon*, 604 U.S. 115, 121 (2025) ("[U]nless a specified exception [to the FSIA] applies, a federal court lacks subject-matter jurisdiction over a claim against a foreign state.") (quoting *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993));
- *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 272 (2023) ("The FSIA prescribed a 'comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state.'") (quoting *Verlinden B.V. v. Cent. Bank of Nig.*, 461 U.S. 480, 488 (1983));
- *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 30 (2015) ("The Foreign Sovereign Immunities Act 'provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country.'") (quoting *Amerada Hess Shipping Corp.*, 488 U.S. at 443);
- *Permanent Mission of India to the UN v. City of N.Y.*, 551 U.S. 193, 197 (2007) (same); *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 611 (1992) (same);
- *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134, 141 (2014) ("The Act 'comprehensively regulates the

amenability of foreign nations to suit in the United States.'") (quoting *Verlinden*, 461 U.S. at 493);

- *Republic of Austria v. Altmann*, 541 U.S. 677, 699 (2004) ("Congress established a comprehensive framework for resolving any claim of sovereign immunity.").

There is no decision of this Court in which it has suggested a different approach to foreign sovereign immunity.

This bedrock principle is clear from the "text and structure of the FSIA." *Amerada Hess Shipping Corp.*, 488 U.S. at 434. The Act states that "a foreign state *shall be immune* from the jurisdiction of the courts of the United States and of the States <u>*except*</u> *as provided in* sections 1605 to 1607 of *this chapter*." 28 U.S.C. § 1604 (emphases added). It unmistakably provides that unless one of the exceptions to immunity enumerated in the FSIA applies, foreign states and their agencies and instrumentalities are immune from jurisdiction. Accordingly, this Court has always recognized that states are "'presumptively immune from the jurisdiction of United States courts' unless one of the Act's express exceptions to sovereign immunity applies." *Sachs*, 577 U.S. at 31 (quoting *Nelson*, 507 U.S. at 355); *see also Jam v. Int'l Fin. Corp.*, 586 U.S. 199, 204 (2019); *Permanent Mission of India*, 551 U.S. at 197; *Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107, 108 (2022); *Bank Markazi v. Peterson*, 578 U.S. 212, 216 n.1 (2016).

Congress chose to make an exclusive carve out to the FSIA's comprehensive regulation of immunity for "existing international agreements to which the United States is a party at the time of enactment of this Act." 28 U.S.C. § 1604. By identifying pre-existing international agreements as the sole exception to which the regulation of immunity is "[s]ubject," 28 U.S.C. § 1604, Congress confirmed that it intends for other exceptions to sovereign immunity to be governed by the FSIA. *See Esteras v. United States*, 606 U.S. 185, 195 (2025) (recognizing "*expressio unius est exclusio alterius*" as a "well established cannon of statutory construction"); ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 111 (2012) (describing the application of the *expression unius* canon as "intuitive"). The FSIA thus makes clear that Congress does not intend to abrogate sovereign immunity through other statutes *sub silentio*.

Instead, when Congress intends to create a new exception to foreign sovereign immunity, it does so by amending the FSIA. Congress has done so on numerous occasions. As Respondents observe, Cimex Br. at 22, Congress has amended Section 1605 of the FSIA, which enumerates the exceptions to sovereign immunity, no less than fifteen times. *See* notes to 28 U.S.C. §§ 1602 *et seq*.

In fact, in the same session that adopted Title III, Congress expressly amended the FSIA to add an exception for cases seeking monetary damages for torture, extrajudicial killing, and other crimes committed by state officials, employees or agents in the scope of their duties where the relevant state was

designated by the Secretary of State as a sponsor of terrorism. Pub. L. No. 104-132, § 221(a), 110 Stat. 1214, 1241 (1996), originally codified at 28 U.S.C. § 1605(a)(7). This contemporaneous history makes plain that if Congress had wanted to strip foreign sovereign immunity in the case of suits under Title III of the Helms-Burton Act, it "knew how to say so." *Rubin v. Islamic Republic of Iran*, 583 U.S. 202, 216 (2018).

Congress later added a broader terrorism exception through the Justice Against Sponsors of Terrorism Act, by again expressly amending the FSIA. Pub. L. No. 114-222 § 3(a), 130 Stat. 852 (2016), codified at 28 U.S.C. § 1605B, seeking in part to permit jurisdiction over suits against Saudi Arabia concerning the September 11 terrorist attacks, *see, e.g.*, 162 Cong. Rec. S6167 (daily ed. Sept. 28, 2016). This exception provided for jurisdiction over claims against foreign states even if they are not designated as state sponsors of terrorism. At the same time, Congress set careful parameters for when the exception may be applied by, *inter alia*, barring jurisdiction over "a tortious act or acts that constitute mere negligence" and specifying that the act must occur "in the United States." 28 U.S.C. § 1605B(b)(1), (d). The upshot is that, even in the case of an existential threat to national security, such as the September 11 attacks, Congress concluded that an express exception to the FSIA was required to establish jurisdiction.

In another notable amendment to the FSIA, Pub. L. 100-669, § 2, 102 Stat. 3969 (1988), Congress enacted the arbitration exception, 28 U.S.C.

§ 1605(a)(6). Congress understood that an express exception in the FSIA permitting federal courts to exercise jurisdiction over petitions to enforce arbitral awards against foreign sovereigns was needed even though it had already created a cause of action for the recognition and enforcement of foreign arbitral awards pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in the Federal Arbitration Act, 9 U.S.C. § 207.

Congress further sought to make the existence of jurisdiction clear even though the FSIA's waiver exception, 28 U.S.C. § 1605(a)(1), had been historically used for actions to enforce arbitral awards. *See* S.I. Strong, *Enforcement of Arbitral Awards against Foreign States or State Agencies*, 26 NW. J. INT'L L. & BUS. 335, 337 (2006). Indeed, in enacting the FSIA, Congress had anticipated that arbitral enforcement may proceed under the waiver exception. *See* H.R. REP. NO. 94-1487, at 18 (1976) ("With respect to implicit waivers, the courts have found such waivers in cases where a foreign state has agreed to arbitration in another country"). However, Congress later determined that an express exception was needed to "perfect the jurisdiction of … court[s]" to confirm arbitral awards. 131 Cong. Rec. S5363-04 (May 3, 1985).

Congress' decision to add the arbitration exception—even though a cause of action providing for recognition and enforcement of arbitral awards was already in existence and notwithstanding the historic availability of a different immunity exception for those cases—underscores the importance that

exceptions to foreign sovereign immunity be expressed in clear language. If Congress believed an express revision to the FSIA was necessary even where an existing exception to foreign sovereign immunity in the FSIA could apply, it is even more farfetched to conclude that Congress would *sub silentio* create an implied immunity exception outside the FSIA.

Treating the FSIA as the exclusive statute governing foreign sovereign immunity is, moreover, crucial to ensuring predictability about when a foreign state and its agencies or instrumentalities may be subject to the jurisdiction of a United States court. As this Court has explained, the FSIA was Congress' "respon[se] to the inconsistent application of sovereign immunity," *Samantar v. Yousuf*, 560 U.S. 305, 313 (2010), and "fuzzy legal standards" that previously governed immunity determinations, *Antrix Corp.*, 605 U.S. at 229. The FSIA provided "clearer legal standards," and established immunity "as a predictable certain rule, if at times substantively unfavourable" to sovereigns. HAZEL FOX & PHILIPPA WEBB, LAW OF STATE IMMUNITY 238-39 (3d ed. 2015); *see also Altmann*, 541 U.S. at 716 ("The FSIA's passage followed 10 years of academic and legislative effort to *establish a consistent framework for the determination of sovereign immunity when foreign nations are haled into our courts*.") (emphasis added) (citing H.R. REP. NO. 94-1487, at 9 (1976); *Altmann*, 541 U.S. at 737 (Kennedy, J., dissenting) ("With the FSIA, Congress tried to settle foreign sovereigns' prospective expectations for being subject to suit in

American courts."). In enacting the FSIA, Congress did not intend for sovereign states and their agencies and instrumentalities to be hauled into court by surprise.

Petitioner fails to show why this Court should break from decades of precedent, ignore the text and history FSIA, and disregard Congress' unbroken practice of expressly amending the FSIA to expand foreign sovereign immunity.

B. The Creation of a Cause of Action under Title III of the Helms-Burton Act Was Not Intended to and Cannot Negate the Jurisdictional Limits of the FSIA.

That Congress chose not to amend the FSIA's "comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state,'" *Turkiye Halk Bankasi*, 598 U.S. at 272 (quoting *Verlinden*, 461 U.S. at 488), when enacting Title III of the Helms-Burton Act should end this Court's inquiry.

To avoid the conclusion compelled by 28 U.S.C. § 1604 that a statute outside the FSIA cannot *sub silentio* abrogate foreign sovereign immunity, Petitioner must establish that Section 1604 was implicitly repealed by Title III of the Helms-Burton Act. This Petitioner cannot do.

Courts "will not infer a statutory repeal 'unless the later statute expressly contradicts the original act' or unless such a construction 'is absolutely necessary … in order that the words of the later

statute shall have any meaning at all.'" *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662 (2007) (quoting *Traynor* v. *Turnage*, 485 U.S. 535, 548, (1988)) (brackets in *Defs. of Wildlife* omitted); *see also Branch v. Smith*, 538 U.S. 254, 273 (2003) ("An implied repeal will only be found where provisions in two statutes are in 'irreconcilable conflict,' or where the latter act covers the whole subject of the earlier one and 'is clearly intended as a substitute.'") (quoting *Posadas* v. *National City Bank*, 296 U.S. 497, 503 (1936)). Neither is the case here.

First, Title III nowhere "expressly contradicts" the FSIA. *Defs. of Wildlife*, 551 U.S. at 662 (quoting *Traynor*, 485 U.S. at 548). In fact, it contains no reference whatsoever to immunity.

Second, requiring that an exception to sovereign immunity under the FSIA apply to a suit under Title III does not render the inclusion of foreign state agencies and instrumentalities among the permitted defendants under Title III "meaningless." A Title III suit may proceed so long as one of the exceptions to foreign sovereign immunity enumerated in the FSIA is satisfied. Indeed, the D.C. Circuit concluded that Petitioner's suit against CIMEX may go forward under the commercial activity exception to the FSIA, subject to the relevant factual showing. *Exxon Mobil Corp. v. Corp. Cimex, S.A.*, 385, 111 F.4th 12, 37 (D.C. Cir. 2024).

Petitioner's merits brief does not argue that the FSIA renders Title III meaningless either. Instead, Petitioner asserts only that "requiring plaintiffs to satisfy an FSIA exception would *conflict with the design of Title III*." Exxon Br. at 30 (emphasis added).

This is, on its face, insufficient to displace the text of the FSIA.

Petitioner's argument also wrongly conflates jurisdiction under the FSIA with the creation of a cause of action under Title III. The FSIA comprehensively regulates when foreign states, including their agencies and instrumentalities, are "immune from the jurisdiction of the courts of the United States," 28 U.S.C. § 1604, whereas Title III addresses when and to what extent potential defendants have "liability." 22 U.S.C. § 6082(a)(1). As this Court has explained, "whether there has been a waiver of sovereign immunity" and "whether the source of substantive law upon which the claimant relies provides an avenue for relief" are "two 'analytically distinct' inquiries." *FDIC v. Meyer*, 510 U.S. 471, 483-84 (1994) (quoting *United States v. Mitchell*, 463 U.S. 206, 218 (1983)). The FSIA itself distinguishes between jurisdiction and liability, *see* 28 U.S.C. § 1606, and its provisions governing jurisdiction were "never 'intended to affect the substantive law determining the liability of a foreign state or instrumentality' deemed amenable to suit." *Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107, 1113 (2022) (quoting *First Nat'l City Bank* v. *Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611, 620 (1983)); H.R. REP. NO. 94-1487, at 12 (1976) (same). Likewise, the substantive law of liability may not alter the FSIA's comprehensive regulatory framework.

Therefore, and consistent with the FSIA's comprehensive regulation of foreign sovereign immunity, courts routinely apply the FSIA to claims under statutes enacted after the FSIA that permit

suits against foreign sovereigns. *See, e.g.*, *Broidy Capital Mgmt., LLC v. State of Qatar*, 982 F.3d 582, 588-89 (9th Cir. 2020) (applying FSIA to Computer Fraud and Abuse Act claim against Qatar); *Azima v. Rak Inv. Auth.*, 305 F. Supp. 3d 149, 160 (D.D.C. 2018), *rev'd on other grounds*, 926 F.3d 870, 880 (D.C. Cir. 2019) (finding jurisdiction under the commercial activities exception of the FSIA over a Computer Fraud and Abuse Claim against an agency or instrumentality of the United Arab Emirates); *France.com, Inc. v. French Republic*, 992 F.3d 248, 252-55 (4th Cir. 2021) (applying FSIA to Anti-Cybersquatting Consumer Protection Act claim against France); *Rodriguez v. Pan Am. Health Org.*, 29 F.4th 710-17 (D.C. Cir. 2022) (applying FSIA to Trafficking Victims Protection Reauthorization Act claim against international organization and finding jurisdiction under the commercial activities exception of the FSIA).

Moreover, even if any conflict between the FSIA and the "design of Title III," Exxon Br. at 30, could be found, it plainly does not amount to an "irreconcilable conflict" required to displace the FSIA. *Branch*, 538 U.S. at 273. Any uncertainty about how to interpret Title III must be resolved in favor of a harmonious interpretation that gives effect to both statutes. *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 154 (1976) ("[W]hen two statutes are capable of coexistence, it is the duty of the courts … to regard each as effective.") (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)). Doing so is necessary to respect the separation of powers between Congress and the judiciary and to ensure that Congress' intent in promulgating both statutes is given full effect:

> Respect for Congress as drafter counsels against too easily finding irreconcilable conflicts in its work. More than that, respect for the separation of powers counsels restraint. Allowing judges to pick and choose between statutes risks transforming them from expounders of what the law *is* into policymakers choosing what the law *should be*. Our rules aiming for harmony over conflict in statutory interpretation grow from an appreciation that it's the job of Congress by legislation, not this Court by supposition, both to write the laws and to repeal them.

Epic Sys. Corp. v. Lewis, 584 U.S. 497, 511 (2018) (emphasis in original). In sum, because Title III and the FSIA can be construed harmoniously, Petitioner cannot use Title III to rewrite the United States' sovereign immunity regime.

Petitioner's heavy reliance on *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42 (2024) is misplaced. *Kirtz* is inapposite because, among the reasons explained by Respondents, Cimex Br. at 15-18, its context was not analogous to the FSIA, where immunity is already governed by a comprehensive statute. For that reason, the Court in *Kirtz* had no reason to opine on a claim to jurisdiction that—as here—would negate Congress' earlier command. In this case, the duty to harmonize Title III with the FSIA forecloses an implied abrogation of foreign sovereign immunity.

Further confirming that Title III did not abrogate sovereign immunity *sub silentio*, the statute's legislative history demonstrates that if

Congress had wanted to "rescind[] immunity" in Title III, it "knew how to say so." *Rubin*, 583 U.S. at 216. The original language of the Helms-Burton Act would have amended the FSIA to expressly remove foreign sovereign immunity for any case "in which the action is brought with respect to confiscated property under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act," H.R. 927, 104th Cong. § 302(c) (Apr. 18, 1995); *see also* S. 381, 104th Cong. § 302(c) (Feb. 9, 1995) (same). However, both the House and the Senate later amended their respective bills to remove the language that would have expressly created an exception to sovereign immunity for purposes of bringing a claim under Title III of the Helms Burton Act. 141 Cong. Rec. S15055, 15062 (Oct. 11, 1995); H.R. REP. NO. 104-468, at 57 (Mar. 1, 1996) (Conf. Rep.). Congress' choice to leave the FSIA's existing exceptions to immunity intact is entitled to respect and makes plain that Congress did not intend to create a new exception to immunity. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 442-43 (1987) ("Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded[.]").

Dispelling any doubt that Congress "knew how to" legislate foreign sovereign immunity in the Helms-Burton Act, *Rubin*, 583 U.S. at 216, Title III did in fact amend the FSIA with respect to immunity from attachment and execution. *See* Pub. L. No. 104-114, § 302(e), 110 Stat. 118 (1996), codified at 28 U.S.C. § 1611(c) (stating that "[n]otwithstanding the provisions of section 1610 of [the FSIA], the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity

(LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes"). Congress' decision to expressly amend the FSIA in Title III makes clear that Congress did not silently rewrite the FSIA in the same statute. *See Gross v. FBL Fin. Servs.*, 557 U.S. 167 (2009) ("When Congress amends one statutory provision but not another, it is presumed to have acted intentionally.") (citing *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 256 (1991)).

Furthermore, that Title III permits the executive to suspend its application also demonstrates that the statute did not *sub silentio* strip foreign sovereign agencies and instrumentalities of immunity. A central purpose of the FSIA and, indeed, the modern law of foreign sovereign immunity, is to ensure that judges, not the executive, decide whether foreign sovereigns are immune to depoliticize foreign sovereign immunity determinations.

The pre-FSIA regime in which courts "defer[red] to the Executive's case-specific views on whether immunity was due" to a foreign sovereign "created 'considerable uncertainty,' and a troublesome inconsistency in immunity determinations" due to "changes in administrations and shifting political pressures." *Altmann*, 541 U.S. at 716 (quoting H.R. REP. NO. 94-1487, at 7) (other internal quotation marks omitted). As a result, Congress concluded that the FSIA "was needed to 'reduc[e] the foreign policy implications of immunity determinations and assur[e] litigants that these often crucial decisions are made on purely legal grounds and under procedures that

insure due process.'" *Altmann*, 541 U.S. at 716 (quoting H.R. REP. NO. 94-1487, at 7).

The FSIA accordingly "sought to implement its objectives by removing the Executive influence from the standard determination of sovereign immunity questions." *Altmann*, 541 U.S. at 717 (citing H.R. REP. NO. 94-1487, at 7) (under the FSIA "U.S. immunity practice would *conform to the practice in virtually every other country—where sovereign immunity decisions are made exclusively by the courts* and not by a foreign affairs agency" (emphasis added)).

Construing Title III as Petitioner suggests would return to the executive the power to alter the scope of foreign sovereign immunity, undermining one of the "primary purposes" of the FSIA, and turn back the clock on Congress' effort to "transfer primary responsibility for deciding 'claims of foreign states to immunity' from the State Department to the courts." *Samantar*, 560 U.S. at 313 (quoting 28 U.S.C. § 1602); *see also* 28 U.S.C. § 1602 ("Congress finds that the determination by United States courts of the claims of foreign states to immunity … would serve the interests of justice and would protect the rights of both foreign states and litigants[.]").

Petitioner's contention that Title III was intended to create a "dynamic akin to the pre-FSIA regime," Exxon Br. at 34—a regime that Congress has forcefully rejected—finds no support in the text and history of the FSIA. The statute nowhere indicates an intent to revert to the pre-FSIA regime. And as explained above, Congress considered and rejected a version of Title III that expressly amended the FSIA to abrogate sovereign immunity for suits under the

statute, H.R. 927, 104th Cong. § 302(c) (Apr. 18, 1995). Notably, even the version of Title III that would have abrogated immunity did not permit the executive to suspend the effect of the statute. *See id*. The presidential suspension clause was introduced only after the FSIA provision was removed, H.R. 927, 104th Cong. § 306(c) (Jan. 3, 1996), providing further evidence that Congress did not intend to revert to the "troublesome inconsistency," of the pre-FSIA regime, *Altmann*, 541 U.S. at 716 (internal quotation marks omitted).

In sum, neither the text nor the history of Title III permits a construction of the statute that would negate the jurisdictional provisions of the FSIA that Congress established to govern foreign sovereign immunity.

C. The Interpretation of Title III Advanced by Petitioner Would Conflict with International Law, Which is Codified in the FSIA, and with the *Charming Betsy* Canon.

This Court has recognized that a core purpose of the FSIA was to codify the international law of sovereign immunity. *See, e.g.*, *Samantar*, 560 U.S. at 319–20. Following the *Charming Betsy* canon, this Court should adopt the narrow interpretation of Title III endorsed by the Court of Appeals, thus avoiding a conflict between U.S. practice and customary international law.

In enacting the FSIA, Congress understood itself to be codifying customary international law governing the treatment of foreign states in domestic

courts. H.R. REP. NO. 94-1487, at 8 (1976) ("Sovereign immunity is a doctrine of international law under which domestic courts, in appropriate cases, relinquish jurisdiction over a foreign state."), and 14 ("Section 1602 sets forth the central premise of the bill: That decisions on claims by foreign states to sovereign immunity are best made by the judiciary on the basis of a statutory regime *which incorporates standards recognized under international law*." (emphasis added)). This Court has repeatedly emphasized that "one of the primary purposes of the FSIA was to codify the restrictive theory of sovereign immunity, which Congress recognized as consistent with extant international law. … [A] related purpose was *codification of international law* at the time of the FSIA's enactment." *Samantar*, 560 U.S. at 319–20 (emphasis added) (internal citation and quotation marks omitted); *see also Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co.*, 581 U.S. 170, 179 (2017) ("The Act for the most part embodies basic principles of international law long followed both in the United States and elsewhere."); *Permanent Mission of India*, 551 U.S. at 199.

A federal court could conceivably exercise jurisdiction consistent with international law over a Title III claim against a foreign agency or instrumentality under the commercial activity exception or the expropriation exception, both of which the Court of Appeals recognized are potentially applicable to claims under Title III, *Exxon Mobil Corp.*, 111 F.4th at 26-37.

However, interpreting Title III itself as providing a blanket abrogation of foreign sovereign immunity for any claim for "traffic[king] in property

which was confiscated by the Cuban Government," 22 U.S.C. § 6082(a)(1); Exxon Br. at 20, would create an exception to sovereign immunity that is inconsistent with international law. This is because it would permit suits with no territorial nexus to the United States, unlike the commercial activity and expropriation exceptions. Indeed, during congressional debate the Justice Department stated that the version of Title III that added a new FSIA exception lacking a territorial nexus to the United States contained "an exception which is *not in line with currently accepted international practice*." Cimex Br. App. 5a-7a (Justice Dep't)[3] (emphasis added)*; see also Republic of Hungary v. Simon*, 604 U.S. 115, 116 (2025) (recognizing that "Congress included the commercial nexus requirement [in the expropriation exception] to help ensure the exception would conform fairly closely with international law.") (internal quotation marks omitted).

Under this Court's long-standing jurisprudence, statutes are to be construed to avoid conflicts with international law where possible. *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804) ("[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains."); *see also Talbot v. Seeman*, 5 U.S. 1, 43 (1801) ("[T]he laws of the United States ought not, if it be avoidable, so to be construed

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[3] Letter, Dep't of Justice to Chair, House Judiciary Committee (June 27, 1995), copying Chair, House Int'l Relations Committee (on file with Jesse Helms Center), *available at* https://www.american.edu/centers/latin-american-latino-studies/upload/markus-letter-june-27-1995-2.pdf, *reproduced at* Cimex Br. App. A.

as to infract the common principles and usages of nations."); *Samantar*, 560 U.S. at 320 n.14. Here, that compels reading Title III as not containing an implicit exception to foreign sovereign immunity that is out of step with international law.

D. The Interpretation Advanced by Petitioner Would Have Wide-Reaching Deleterious Consequences for Foreign Sovereign States and Their Agencies and Instrumentalities and May Subject the United States to Reciprocal Treatment Abroad.

In enacting the FSIA, Congress struck a "careful balance between respecting the immunity historically afforded to foreign sovereigns and holding them accountable, in certain circumstances, for their actions." *Rubin*, 583 U.S. at 208–09. The interpretation of Title III urged by Petitioner would destabilize this delicate equilibrium and invite reciprocal actions against the United States.

Interpreting Title III to implicitly abrogate foreign sovereign immunity would inflict two related harms on foreign sovereigns, thereby frustrating the FSIA's purpose of giving effect to international comity and promoting stable international relations. *See Altmann*, 541 U.S. at 696 (holding that foreign sovereign immunity "aims to give foreign states and their instrumentalities some present protection from the inconvenience of suit as a gesture of comity"); *Simon*, 604 U.S. at 119 ("To grant [foreign] sovereign entities an immunity from suit in our courts both recognizes the absolute independence of every

sovereign authority and helps to induce each nation state, as a matter of international comity, to respect the independence and dignity of every other, including our own." (quoting *Helmerich*, 581 U.S. at 179)).

First, it would necessarily restrict the presumptive immunity enjoyed by states and their agencies and instrumentalities to lawsuits in the United States based on language that does not clearly restrict that immunity. Sovereign entities would thus be subject to the burdens of litigating lawsuits brought under Title III and any other statutes similarly deemed to abrogate foreign sovereign immunity by implication. This broad expansion of the exposure of foreign sovereigns to U.S. litigation would frustrate the purpose of the FSIA, which Congress crafted to carefully balance the protections and accountability of foreign sovereigns in U.S. courts. *Rubin*, 583 U.S. at 208–09.

Second, interpreting Title III to abrogate foreign sovereign immunity would generate uncertainty about foreign sovereign immunity in lawsuits brought under other statutes. Foreign states and their agencies and instrumentalities will no longer be able to rely on the FSIA and its jurisprudence to understand the circumstances under which they might be subject to the jurisdiction of U.S. courts. Instead, their sovereign immunity will depend on an uncertain number of statutes with lurking implied abrogations of sovereign immunity. This state of affairs would reintroduce the "fuzzy legal standards" that the FSIA was designed to eliminate. *Antrix Corp.*, 605 U.S. at 229.

This uncertainty threatens to chill the political and economic relations of foreign states with the United States. At the same time, subjecting foreign sovereigns to additional litigation risk is likely to strain U.S. relations with other states, again frustrating the purpose of the FSIA.

The history of Title III itself illustrates the very real risk of friction generated by the prospect of litigation against sovereign entities. Title III creates an extraterritorial cause of action, imposing liability on non-U.S. entities with no territorial connection to the United States. *See* 22 U.S.C. § 6082(a)(1). This extraterritorial aspect of the statute generated a strong backlash from many states, including Canada, Mexico, and the European Union, which imposed blocking and clawback legislation. *See* William S. Dodge, *The Helms-Burton Act and Transnational Legal Process*, 20 HASTINGS INT'L & COMP. L. REV. 713 (1997) (summarizing the international response to Title III). Interpreting Title III to abrogate foreign sovereign immunity would spark further international tensions, particularly since the decision would specifically concern sovereign entities. Given the silence of the statutory text on sovereign immunity, the Court should leave the choice of whether to embroil the United States in such tensions to the political branches and decline to endorse Petitioner's atextual reading.

The increased uncertainty and exposure to litigation for foreign sovereigns caused by a broad reading of Title III could also harm the United States and its agencies and instrumentalities. Foreign states may respond by lifting the immunity of U.S. sovereign entities. Indeed, the People's Republic of China and

the Russian Federation have enacted foreign sovereign immunity legislation with reciprocity clauses providing the same level of immunity to foreign sovereigns as their sovereign entities are afforded in those foreign sovereigns' courts. Foreign State Immunity Law of the People's Republic of China, art. 21 (Sept. 1, 2023); Federal Law on Jurisdictional Immunities of a Foreign State and the Property of a Foreign State of 3 November 2015, art. 4, N 297-FZ, SZ RF 09.11.2015 N 45 at 6198 (Russian Federation).

This Court has repeatedly emphasized the importance of "reciprocal self-interest" in approaching foreign sovereign immunity issues. *Nat'l City Bank of N.Y. v. Republic of China*, 348 U.S. 356, 362 (1955); *see also Simon*, 604 U.S. at 138 (holding that an expansive interpretation of the FSIA's expropriation exception "could undermine the United States' foreign relations and *reciprocal self-interest*") (emphasis added). As this Court stated in *Federal Republic of Germany v. Philipp*: "As a Nation, we would be surprised—and might even initiate reciprocal action—if a court in Germany adjudicated claims by Americans that they were entitled to hundreds of millions of dollars because of human rights violations committed by the United States Government years ago." 592 U.S. 169, 185 (2021).

The same reciprocal considerations apply here. Some foreign states, finding themselves or their agencies and instrumentalities subject to litigation in U.S. court under Title III or similar statutes, may respond by lifting the sovereign immunity of the United States or its entities in their courts. The executive branch emphasized this risk during

legislative debates over the bill, expressing concern over "the possibility that the [version of the bill explicitly amending the FSIA] will prompt foreign states to expose the United States to a range of judicially imposed liabilities for conduct disapproved by the foreign state, and to do so based upon weak jurisdictional connections to the forum, broad grounds of substantive liability, and regardless of the age of the claim." Cimex Br. App. 8a (Justice Dep't).

To avert this outcome, this Court should interpret Title III as it does "other statutes affecting international relations: to avoid, where possible, 'producing friction in on [U.S.] relations with [other] nations and leading some to reciprocate by granting their courts permission to embroil the United States in expensive and difficult litigation.'" *Philipp*, 592 U.S. at 184 (*quoting Helmerich*, 581 U.S. at 183). The D.C. Circuit's reading of Title III is faithful to this principle and should be upheld.

CONCLUSION

For the reasons stated in this brief, the decision of the Court of Appeals for the D.C. Circuit should be affirmed.

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