

No. _____

In the
Supreme Court of the United States

JAMES OWENS, *et al.*,
Petitioners,
v.

TALIBAN,
AKA THE ISLAMIC EMIRATE OF AFGHANISTAN,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Half a century ago, Congress passed the Foreign Sovereign Immunities Act of 1976 to “transfer primary responsibility for deciding ‘claims of foreign states to immunity’ from the State Department to the courts.” *Samantar v. Yousuf*, 560 U.S. 305, 314 (2010) (quoting 28 U.S.C. § 1602). This Court has since recognized that “interpretation of the FSIA’s reach” poses “a pure question of statutory construction ... well within the province of the Judiciary.” *Republic of Austria v. Altmann*, 541 U.S. 677, 701 (2004) (quotation marks omitted).

In a divided opinion, the Second Circuit broke from this view. When determining whether funds held by Da Afghanistan Bank (“DAB”), a Taliban-controlled entity, are immune from attachment under the FSIA, the court found that it was “bound” to answer that question in the affirmative because of an online State Department fact sheet listing Afghanistan as an “independent state[]” and a three-page Department of Justice district court filing describing DAB as the central bank of the otherwise defunct state of Afghanistan. *See* App.24 & n.67. The panel denied rehearing, App.91, and the full court denied rehearing en banc, with five judges dissenting, App.94, 96–131.

The question presented is:

Does the FSIA require courts to independently interpret its provisions, or must a court defer to State Department websites and Department of Justice litigation filings in determining whether an entity is entitled to sovereign immunity under the FSIA?

PARTIES TO THE PROCEEDING

The following parties are defined as “Owens Petitioners”:

James Owens, the Estate of Betty Owens Evelyn, Gary Robert Owens, Barbara Goff, Daniel Briehl, Gary Cross, Lydia Hickey, Tabitha Carter, Robert Harris, Executor of the Estate of Laura Harris, deceased, Estate of Leroy Moorefield, the Estate of Rodney Moorefield, the Estate of Roger Moorefield, Lora Murphy, Loretta Paxton, Bettina Gould, Executrix of the Estate of Linda Shough, deceased, the Estate of Howard Sparks, Sr., Rizwan Khaliq, Margaret Baker, Yasir Aziz, the Estate of Inez Hirn, Abdul Shabani Mtuyila, Tirisa George Thomas, Imran Khaliq, Howard Sparks, Jr., Michael Ray Sparks, Imtiaz Begum, Venant Valentine Mathew Katunda, Gary Lonnquist, Eloise Hubble, Diana Valentine Katunda, Kamran Khaliq, Valentine Mathew Katunda, Edwin Valentine Mathew Katunda, Jenny Christina Lovblom, the Estate of Mtendeje Rajabu Mtulya, the Estate of Samuel Thomas Marcus, Desideriy Valentine Mathe Katunda, Tehsin Khaliq, Abella Valentine Katunda, the Estate of Clyde M. Hirn, Paul Hirn, Coronella Samuel Marcus, Naurin Khaliq, Patricia K. Fast, Shabani Saidi Mtulya, Irfan Khaliq, Serpil Buyuk, Joseph Donti Mwaipape, Saidi Shabani Mtuyila, Upendo Ramadhani, Halima Ndange, Happiness Abasi Mwila, the Estate of Yusuf Shamte Ndange, the Estate of William Abbas Mwila, Mwajabu Yusuph Shamte Ndange, Hanuni Ramadhani Ndange, Jon B. Pressley, Maua Ndange, Berk F. Pressley, Ramadhani Ndange, the Estate of Dotio Ramadhani, Frank B. Pressley, Jr., Elisha Donti

Mwaipape, Kulwa Ramadhani, Renema Ramadhani, the Estate of Montine Bowen, Donti Akili Mwaipape, Michael F. Pressley, Mengo Ramadhani, Tulay Buyuk, William Abasi Mwila, the Estate of Frank Pressley, Sr., Edwina Abasi Mwila, Sundus Buyuk, Ahmet Buyuk, Thomas C. Pressley, Dorothy Willard, David A. Pressley, Marc Y. Pressley, Bahar Buyuk, Juma Yusuph Shamte Ndange, Abdul Yusuph Shamte Ndange, the Estate of Victoria Donti Mwaipape, Nicholas Mwaipape, Judith Abasi Mwila, Yasemin B. Pressley, Gary Spiers, Richard David Patrick, the Estate of Donald G. Bomer, Linda Whiteside O'Donnell, John Rogath Saidi, Worley Lee Reed, the Estate of Adabeth Saidi Nang'oko, the Estate of Rogath Saidi Saidi, the Estate of Patricia Feore, the Estate of Nicholas Karas, the Estate of Flossie Varney, Eric Mathew Rutaheshelwa, Edward Mathew Rutaheshelwa, Idifonce Rogath Saidi, Sharon Teske, Happiness Mathew Rutaheshelwa, Victoria Q. Spiers, the Estate of Eulogio Quilacio, the Estate of Veronica Alois Saidi, Susan Quilacio Nicholas, Bret W. Reed, Selinia Rogath Saidi, Rolando Quilacio, Daniel Rogath Saidi, Joyce Reed, Victoria J. Spiers, Taylor Teske, George Karas, the Estate of Edilberto Quilacio, Michael James Cormier, the Estate of Aisha Mawazo, the Estate of Candelaria Quilacio Francisco, Timothy Teske, Jonathan Teske, Angelina Mathew Rutaheshelwa, Elizabeth Mathew Rutaheshelwa, the Estate of Ruth Ann Whiteside, Cheryl L. Blood, Ellen Richard, and the Estate of Julita A. Quilacio

The following parties are defined as “Aliganga Petitioners”:

The Estate of Jesse Nathanael Aliganga, Leah Ann Colston-Baker, Clara Leah Aliganga, the Estate of Julian Leotis Bartley, Jr., the Estate of Julian Leotis Bartley, Sr., Edith Lynn Bartley, the Estate of Gladys Baldwin, Mary Linda Sue Bartley, the Estate of Jean Rose Dalizu, Egambi Fred Kibuhiru Dalizu, the Estate of Gwendolyn Tauwana Garrett, Estate of James Herbert Freeman, the Estate of Jeanette Ella Marie Goines, Jewell Patricia Neal, the Estate of Joyce McCray, June Beverly Freeman, Lawrence Anthony Hicks, Lori Elaine Dalizu, Mangairu Vidija Dalizu, the Estate of Rose Banks Freeman, the Estate of Sheila Elaine Freeman, Temina Engesia Dalizu, the Estate of Molly Huckaby Hardy, Brandi Hardy Plants, the Estate of Jane Huckaby, Stephen Harding Martin, the Estate of Kenneth Ray Hobson II, Robert Michael Kirk, Tara Lia Kavalier, Richard Martin Kavalier, the Estate of Pearl Daniels Kavalier, the Estate of Mary Louise Martin, the Estate of Mary Katherine Bradley, Maya Pia Kavalier, the Estate of Kenneth Alva Bradley, James Robert Klaucke, Robert Kirk, Jr., Douglas Norman Klaucke, Martha Martin Ourso, Karen Marie Klaucke, Estate of Kenneth Ray Hobson, Deborah Hobson-Bird, the Estate of Arlene Bradley Kirk, Bonnie Sue Hobson, the Estate of Leon Kavalier, Meghan Elizabeth Hobson, the Estate of Kathleen Martin Boellert, the Estate of Patricia Anne Bradley Williams, Michael Hawkins Martin, the Estate of Prabhi Gupta Kavalier, Maisha Kirk Humphrey, Neil Alan Bradley, Dennis Arthur Bradley, William Russell Klaucke, Katherine Bradley Wright, Susan Elizabeth Marti Bryson, the Estate of Howard Charles

Kavaler, the Estate of Joseph Denegre Martin III, the Estate of Joseph Denegre Martin, Jr., the Estate of Sherry Lynn Olds, Kimberly Ann Zimmerman, James Paul O'Connor, Jennifer Erin Perez, Tara Colleen O'Connor, Christa Gay DeGracia, Gwendolyn Frederic Deney, Marsey Gayle Cornett, Micaela Ann O'Connor, Delbert Raymond Olds, the Estate of Ann Michelle O'Connor, the Estate of Mary Evelyn Freeman Olds.

The Owens Petitioners and the Aliganga Petitioners were Plaintiffs-Appellants in the court of appeals and are petitioners in this Court.

The Taliban, AKA The Islamic Emirate of Afghanistan, was Defendant-Appellee in the consolidated appeals below and is respondent in this Court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioners state that they are individuals and their legal representatives. As such, they have no parent corporations, and there are no publicly held companies that own 10% or more of their stock.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition under Rule 14.1(b)(iii):

U.S. Court of Appeals for the Second Circuit:

Havlish v. Taliban, No. 23-258 (lead), consolidated with Nos. 23-263, 23-304, 23-346, 23-444, 23-354, & 23-797, 152 F.4th 339 (2d Cir. Aug. 26, 2025) (affirming district court's denial of motion to confirm pre-judgment attachment of DAB funds)

Havlish v. Taliban, No. 23-258 (lead), consolidated with Nos. 23-263, 23-304, 23-346, 23-444, 23-354, & 23-797, 170 F.4th 100 (2d Cir. Mar. 19, 2026) (denying rehearing en banc)

Aliganga v. Taliban, No. 23-354 (lead), consolidated with No. 23-797 (2d Cir. Apr. 3, 2026) (denying panel rehearing)

U.S. District Court for the Southern District of New York:

Owens v. Taliban, No. 22-cv-1949, 2023 WL 2214887 (S.D.N.Y. Feb. 24, 2023) (denying motion to confirm pre-judgment attachment of DAB funds)

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The Second Circuit's opinion is reported at 152 F.4th 339 (2d Cir. 2025) and reproduced at App.1–73. The Second Circuit's order denying rehearing en banc is reported at 170 F.4th 100 (2d Cir. 2026) and reproduced at App.92–131. The Second Circuit's amended order denying panel rehearing, which is unreported, is reproduced at App.90–91.

The district court's opinion and order is available at 2023 WL 2214887 (S.D.N.Y. Feb. 24, 2023) and reproduced at App.74–89.

JURISDICTION

The Second Circuit issued its opinion on August 26, 2025, and, following a timely petition for rehearing, denied rehearing en banc on March 19, 2026, and denied panel rehearing on April 3, 2026. *See* App.91, 94. On June 18, 2026, Justice Sotomayor granted Petitioners' application to extend the time to file this petition to August 31, 2026. *See Havlish v. Taliban*, No. 25A1393 (U.S.). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reproduced in the appendix. App.143–48.

INTRODUCTION

For the first time in the FSIA’s fifty-year history, a federal court of appeals has ruled that, in determining whether an entity is a “foreign state” within the meaning of the statute, courts must defer to the Executive’s determination of the matter. The Second Circuit’s divided ruling here shielded \$3.5 billion of assets held in the name of the Taliban-controlled Da Afghanistan Bank from individuals who were injured, or lost family members to, al-Qaeda’s 1998 bombings against American embassies in Kenya and Tanzania. Those victims hold a nearly \$5.2 billion judgment against the Taliban. They have identified no other assets to satisfy it. If the decision below stands, their judgment will remain nothing more than paper.

The Second Circuit did not reach this result by applying the FSIA. It reached this result by refusing to do so. The panel majority held that “the Executive Branch’s formal recognition of a state or government establishes that state or government as a foreign state” under the Act—and then discerned the requisite “formal recognition” from a fact sheet on state.gov and a cursory litigation letter submitted by the Justice Department. App.51; *see* App.24.

That holding cannot be reconciled with this Court’s precedents or with the decisions of three other circuits. The First, Third, and Sixth Circuits all recognize what the FSIA’s text, structure, and history, along with this Court’s precedents, make plain: Congress enacted the statute precisely to move sovereign-immunity determinations out of the State Department and into the courts. *See Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488 (1983);

Samantar v. Yousuf, 560 U.S. 305, 313 (2010). Those other circuits treat the Executive’s formal diplomatic recognition of a state as relevant to the FSIA immunity inquiry, but none has held, as the Second Circuit did here, that the Executive’s view is conclusive of “foreign state” status under the FSIA. And certainly no circuit has found “foreign state” status under the FSIA to be controlled by a State Department webpage or a government litigation letter’s *ipse dixit*. Indeed, five judges of the Second Circuit dissented from the denial of rehearing en banc, warning that the panel had become “the first Circuit court in history to conflate the Executive’s power to recognize nations with the Judiciary’s duty to interpret the jurisdictional grant of the FSIA.” App.104 (Sullivan, J., dissenting).

The stakes of that conflation extend well beyond this case. Under the panel’s rule, the Executive could just as easily declare Disneyland or Purdue Pharma a “foreign state,” and courts would have no principled basis to reject that conclusion and withhold FSIA immunity. App.102–03 n.2 (Sullivan, J., dissenting). That is not hyperbole; it is the logical consequence of substituting the Executive’s diktats for statutory interpretation. This Court should grant certiorari to restore the FSIA to its intended function and give these victims, and others like them, the judicial forum Congress promised them.

STATEMENT OF THE CASE

A. Statutory Background

1. The Constitution divides foreign relations power between Congress and the President. “The text

and structure of the Constitution grant the President the power to recognize foreign nations and governments.” *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 14 (2015). Such recognition may be established by “receiving an ambassador,” “on the conclusion of a bilateral treaty,” or by “the formal initiation of diplomatic relations, including the dispatch of an ambassador.” *Id.* at 13 (quotation marks omitted).

The Constitution empowers Congress to regulate foreign commerce, declare war, make appropriations, enact laws “necessary and proper for carrying into Execution” federal powers, and participate through the Senate in appointing ambassadors and other public ministers. U.S. Const. art. I, § 8 cls. 1–3, 11–13, 18; *id.* art. I, § 9, cl. 7; *id.* art. II, § 2, cl. 2. The Constitution also grants Congress authority to establish “Tribunals inferior to the supreme Court” and to confer and regulate the jurisdiction of those courts. U.S. Const. art. I, § 8, cl. 9; *see id.* art. III, §§ 1–2.

Congress’s power to accord foreign sovereign immunity from court jurisdiction and processes falls squarely within its constitutional purview. As this Court explained, “it remains Congress’ prerogative to alter a foreign state’s immunity.” *Bank Markazi v. Peterson*, 578 U.S. 212, 236 (2016). “Congress has the undisputed power to decide, as a matter of federal law, whether and under what circumstances foreign nations should be amenable to suit in the United States” “[b]y reason of its authority over foreign commerce and foreign relations.” *Verlinden*, 461 U.S. at 493.

2. In 1976, Congress exercised its constitutional power to enact the FSIA, which President Gerald Ford then signed into law. *See* Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94-583, 90 Stat. 2891 (codified as amended at 28 U.S.C. §§ 1602–1611); *see also Exxon Mobil Corp. v. Corporacion Cimex, S.A. (Cuba)*, 146 S. Ct. 1909, 1916 (2026). The FSIA replaced an ad hoc regime wherein “U.S. courts applied foreign sovereign immunity as a common-law doctrine.” *Exxon Mobil Corp.*, 146 S. Ct. at 1916. In implementing this regime, courts often deferred to “suggestions” of immunity from the State Department, which took the form of “case-specific guidance about [a particular] foreign sovereign’s entitlement to immunity.” *Opati v. Republic of Sudan*, 590 U.S. 418, 421 (2020). This resulted in fraught diplomatic and political relations, sparking numerous “[d]ebates over the degree of immunity foreign sovereigns should enjoy in this Nation’s courts.” *Republic of Hungary v. Simon*, 604 U.S. 115, 119 (2025); *Verlinden*, 461 U.S. at 487. The FSIA put an end to those debates by standardizing “the judicial process with respect to immunity for foreign sovereign entities in civil cases.” *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 272 (2023).

The FSIA establishes a statutory framework for resolving sovereign immunity questions in civil litigation. Section 1602 provides that “[c]laims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with” the Act’s principles. 28 U.S.C. § 1602. Section 1603 then supplies the Act’s threshold definitions. The term “foreign state,” for instance, encompasses not only a sovereign entity

itself, but also each “political subdivision” and “agency or instrumentality” of that state. *Id.* § 1603(a). “[A]gency or instrumentality,” in turn, includes both the “organ[s] of a foreign state” and entities that are majority owned by that state. *Id.* § 1603(b)(2).

The Act creates two different forms of immunity for qualifying foreign states. Section 1604 creates jurisdictional immunity, providing that “a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States,” absent certain enumerated exceptions. *Id.* § 1604. Section 1609 establishes execution immunity, providing that “the property in the United States of a foreign state shall be immune from attachment, arrest, and execution,” absent enumerated exceptions. *Id.* § 1609. These two forms of immunity—jurisdictional and execution—“operate independently.” *Walters v. Indus. & Com. Bank of China, Ltd.*, 651 F.3d 280, 286–88 (2d Cir. 2011).

B. Factual Background

In 1996, the Taliban ascended to power in Afghanistan and ruled until its ouster by United States-led coalition forces in 2001. App.7. Throughout this time, the Taliban furnished considerable material support to the international terrorist group al-Qaeda. App.6. This support included providing a “base of operations, training bases, and safe haven.” App.6 (quotation marks omitted).

During the Taliban’s brief rule, al-Qaeda committed acts of terrorism that killed and wounded thousands of innocent people. App.5–6. In 1998, al-Qaeda killed hundreds and injured several thousand

more when its operatives perpetrated coordinated suicide bombings at American embassies in Nairobi, Kenya and Dar es Salaam, Tanzania. App.6. In 2001, al-Qaeda killed thousands more when its operatives hijacked several passenger aircraft and flew them into the World Trade Center in New York City, the Pentagon in Washington, D.C., and a field in Somerset County, Pennsylvania. App.6. Based on the Taliban's role in these atrocities and the ongoing threat it posed to U.S. nationals, the United States designated the Taliban a Specially Designated Global Terrorist in July 2002. App.6–7. It remains so designated to this day.

In response to the September 11 terrorist attacks, the United States and a coalition of allied forces began strikes against al-Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan. *See In re Terrorist Attacks on Sept. 11, 2001*, 657 F. Supp. 3d 311, 321 (S.D.N.Y. 2023). These military actions toppled the Taliban regime and resulted in the development of a democratic government in Afghanistan. *Id.* The United States maintained a military presence in Afghanistan until 2021, when it withdrew its forces. *Id.* at 321–22. Following the withdrawal of U.S. forces, the Afghan government collapsed, and the Taliban recaptured de facto control of the majority of Afghanistan. App.7.

Neither the United States nor any other country has recognized the Taliban as Afghanistan's legitimate government. App.7. Since the U.S. Embassy in Kabul suspended operations in 2021, the United States has not maintained an embassy or consulate in Afghanistan. U.S. Dep't of State, *Travel*

Advisories: Afghanistan (Apr. 2, 2026), <https://tinyurl.com/289ep625>. Nor has it recognized any entity as the government of Afghanistan or accepted a Taliban-appointed ambassador. OIG, Lead Inspector General Report to the United States Congress: Operation Enduring Sentinel and Other U.S. Government Activities Related to Afghanistan, July 1, 2025–Dec. 31, 2025, at 8 (2026), <https://tinyurl.com/3khtdvn6>.

The Executive Branch’s treatment of assets held by what was once Afghanistan’s central bank, DAB, likewise reflects a clear break in diplomatic relations with Afghanistan. On the day that Kabul fell to the Taliban in 2021, the U.S. Treasury moved to block some \$7 billion in assets held by DAB at the Federal Reserve Bank of New York. App.7–8. When the Taliban demanded the funds’ immediate release, President Biden responded by blocking Taliban access to all DAB assets in the United States and consolidating the funds at the Federal Reserve Bank of New York. App.8–9. President Biden explained that preserving those assets was necessary both to address the crisis in Afghanistan resulting from the Taliban’s rise to power and to protect the “legal claims” of “victims of terrorism.” Exec. Order No. 14,064, 87 Fed. Reg. 8391, 8391 (Feb. 15, 2022). Today, \$3.5 billion of those assets remain at the Federal Reserve Bank of New York. App.11–12.

C. District Court Proceedings

Petitioners are victims of the 1998 terrorist attacks on the U.S. embassies in Kenya and Tanzania, perpetrated by al-Qaeda with substantial assistance from the Taliban. In March 2022, Petitioners sued the Taliban in the United States District Court for the

Southern District of New York, seeking to recover money damages for the Taliban's role in those attacks. D. Ct. Dkt. 7 at 4–5. To preserve their ability to collect on any future judgment, Petitioners simultaneously moved to attach blocked funds held in DAB's name at the Federal Reserve Bank of New York on the ground that the DAB was then (as it is now) an arm of the Taliban. D. Ct. Dkt. 5 at 2–3. The district court (Caproni, J.) initially granted Petitioners' motion for prejudgment attachment. D. Ct. Dkt. 33 at 1.

Petitioners then moved to confirm the attachment order. D. Ct. Dkt. 47 at 1. Neither DAB nor the Taliban appeared or opposed their motion. But at the district court's *sua sponte* invitation, the Department of Justice submitted a letter opposing Petitioners' motion. App.138–42. In just three paragraphs of explanation, the Justice Department urged that the FSIA “preclude[s] confirmation” because the government views DAB as an “agency or instrumentality of the State of Afghanistan” and thus a “foreign state” within the meaning of the FSIA. App.138–41. The government therefore concluded that the FSIA accorded the DAB assets immunity from attachment. App.142. The government's letter did not suggest that the United States and Afghanistan have formal diplomatic relations or otherwise discuss the United States' recognition authority vis-à-vis Afghanistan. App.138–42.

That same day—and before Petitioners could respond to the letter—the district court denied the confirmation motion and vacated its prior attachment order. App.88–89. The court deferred to the government's view, holding that because the letter

had “define[d] DAB as “the Central Bank of Afghanistan,” the funds were immune from attachment under the FSIA. App.85 (quotation marks omitted).

Petitioners appealed to the Second Circuit, which consolidated their case with a separate appeal brought by victims of the September 11, 2001 terrorist attacks that had unsuccessfully sought turnover of the same blocked DAB funds. *See* App.2–3.

While the appeal proceeded, the court entered a default judgment against the Taliban, awarding Petitioners \$1,905,269,836.12 in compensatory damages with pre-judgment interest and \$3,291,109,761.26 in punitive damages, for a total judgment of \$5,196,379,597.38 (plus post-judgment interest). App.137. Petitioners remain unable to collect on that judgment because the court’s vacatur stripped away the only assets they had secured to satisfy it.

D. The Second Circuit’s Split Decision and Denial of En Banc Review

In a divided opinion, the Second Circuit affirmed. App.52. The Executive did not appear or file a brief in the appeal, but the panel majority nevertheless deferred to the letter the government filed in the district court and a State Department website listing Afghanistan as an “independent state[.]” App.24. Based on those Executive branch statements, and without any further interpretive analysis of the FSIA’s text, the panel majority held that Afghanistan is a “foreign state” under the FSIA and that DAB remains the central bank of Afghanistan,

notwithstanding its takeover by the Taliban. App.24 & n.67.

The Second Circuit first determined that whether an actor is a foreign state under the FSIA is a question for the Executive Branch. According to the majority, “[t]he Executive Branch’s formal recognition of a state or government *establishes* that state or government as a foreign state for purposes of the [FSIA].” App.51 (emphasis added); *see* App.24–28. The Second Circuit then concluded that, because a State Department webpage lists Afghanistan as an “independent state[],” the court was “*bound* to acknowledge that Afghanistan is a foreign state” under the FSIA. App.24 & n.67 (citing U.S. Dep’t of State, Bureau of Intel. & Rsch., *Fact Sheet: Independent States in the World* (Mar. 12, 2025), <https://www.state.gov/independent-states-in-the-world>).

The majority then concluded that DAB is “an agency or instrumentality” of a foreign state. App.28–33; *see* App.24 n.67 (noting “the official position of the United States is that DAB is the central bank of the state of Afghanistan” based on the separate Fact Sheet cited in the United States’s letter to the district court). And because it determined that DAB is the central bank of a recognized foreign state, it concluded that the assets held by that bank are immune from attachment under the FSIA. App.34.

In a separate opinion, Judge Sullivan dissented from the panel’s holding that FSIA immunity applied. *See* App.53–73 (Sullivan, J., concurring in part and dissenting in part). He explained that the panel’s “blind deference” to the Executive in interpreting the FSIA “turns a blind eye” to this Court’s precedent and

to the FSIA's history. *See* App.53, 59. Construing the statute for himself, he found it "clear" that Afghanistan "no longer meets the definition of a foreign state" under the FSIA, and that, in any event, "DAB is no longer supervised by the state of Afghanistan but rather by the Taliban," meaning it is not "an agency or instrumentality of a foreign state." *See* App.58–59. He therefore concluded that the DAB funds "are not entitled to immunity" from attachment. *See* App.64.

When the Second Circuit denied Petitioners' request for rehearing en banc, five judges dissented in two separate opinions. *See* App.94, 96–131. Judge Sullivan, joined by Chief Judge Livingston and Judges Bianco and Park, once more dissented on the ground that the panel "conflated diplomatic recognition with statutory immunity[,] ... subverted the purpose of the FSIA, and ignored the precedent interpreting it." App.96 (Sullivan, J., dissenting). In his view, the panel improperly outsourced the FSIA analysis to the Executive, contravening the FSIA's goal to ensure that immunity determinations are made by courts as a matter of statutory interpretation, not via Executive Branch pronouncements shaped by foreign-policy considerations. App.99–101 (Sullivan, J., dissenting). Judge Sullivan also described the "disastrous consequences" of leaving in place the panel's erroneous decision, which "impedes victims of terrorism in their [] quest to recover lawful damages from the perpetrators of heinous acts of terrorism" and "marks a return to the very 'bedlam' that Congress sought to abate by enacting the FSIA." App.104 (quoting *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 141 (2014)).

Judge Menashi filed a separate dissent, emphasizing that DAB does not qualify as “an agency or instrumentality” of Afghanistan because Afghanistan neither owns nor controls it. App.109 (Menashi, J., dissenting). Instead, DAB is controlled by the Taliban (which the Executive Branch has not recognized as the government of Afghanistan) and therefore is not entitled to FSIA immunity. App.126–27 (Menashi, J., dissenting).

REASONS FOR GRANTING THE PETITION

The Second Circuit’s unprecedented opinion made it the first court to hold that a State Department website and three-page DOJ litigation filing could conclusively resolve an entity’s entitlement to FSIA immunity. This holding conflicts with case law from the First, Third, and Sixth Circuits, all of which recognize (as do decisions of this Court) that FSIA immunity determinations belong to courts—not the Executive Branch. The decision also contravenes the FSIA’s text, purpose, and this Court’s instruction that immunity questions present “pure question[s] of statutory construction.” *Republic of Austria v. Altmann*, 541 U.S. 677, 679 (2004) (quotation marks omitted). The petition should be granted.

I. The Second Circuit’s Decision Creates Inter-Circuit Conflict over Which Branch of Government Has Authority to Interpret the Statutory Term “Foreign State.”

The Second Circuit’s holding that it must defer to Executive Branch websites and district court filings in determining whether an entity is a “foreign state” under the FSIA departs from every other circuit to

address the issue. As Judge Sullivan observed, the decision below made the panel “the first Circuit court in history to conflate the Executive’s power to recognize nations with the Judiciary’s duty to interpret the jurisdictional grant of the FSIA.” App.104 (Sullivan, J., dissenting).

The Third Circuit has squarely held that Executive Branch actions cannot alone resolve when foreign sovereign immunity is available under the FSIA. In *OI European Group B.V. v. Bolivarian Republic of Venezuela*, the court confronted the question whether Venezuela’s national oil company, PDVSA, was Venezuela’s alter ego, such that judgment creditors of Venezuela could apply an immunity exception applicable to Venezuela’s assets to assets of PDVSA, allowing creditors to attach them. 73 F.4th 157, 163–65, 168 (3d Cir. 2023). The district court had accepted the creditors’ argument, denying PDVSA’s claim of immunity based on its conclusion that PDVSA was an alter ego of Venezuela. *Id.* at 164–65. Challenging that finding before the Third Circuit, PDVSA argued that the court should disregard the oil company’s relationship to the regime of President Nicolás Maduro because “the U.S. Government” had “explicitly withdr[awn] recognition of the Maduro Government,” *id.* at 164; instead, it argued that the inquiry could look only to the relationship between the newly recognized government of Juan Guaidó and PDVSA’s new Ad Hoc Board, *see id.* at 168. Rejecting that argument, the court recounted the FSIA’s history, warning that “to hold that the decisions about sovereign immunity from suit are once again an Executive prerogative ... would undermine the principal purpose of the FSIA: to transfer primary

responsibility for deciding claims of foreign states to immunity from the State Department to the courts.” *Id.* at 170 (quotation marks omitted). Congress “adopt[ed] the FSIA to charge judges, not diplomats,” with making sovereign immunity determinations. *Id.* at 166.

The First Circuit has likewise emphasized that courts must interpret the FSIA rather than defer to the Executive. In *Ungar v. Palestinian Liberation Organization*, the First Circuit applied the Restatement’s attributes-of-statehood test to determine whether the Palestinian Authority and the Palestine Liberation Organization qualified as “foreign states” entitled to FSIA immunity. 402 F.3d 274, 276–77, 283 (1st Cir. 2005). The court acknowledged that formal Executive recognition might be informative, but it applied the statutory criteria itself rather than outsourcing the question to the Executive. *Id.* at 284 n.6, 288–93.

In a footnote, the court acknowledged that “[i]t may be argued that a foreign state, for purposes of the FSIA, is an entity that has been recognized as a sovereign by the United States government,” citing a treatise about a statute later modified by the FSIA. *Id.* at 284 n.6 (citing 13B Wright & Miller, Federal Practice & Procedure § 3604 (2d ed. 1984)). But far from suggesting that the Executive Branch could resolve whether an entity is a foreign state with a legal filing, that treatise indicates that the relevant question is whether there is formal “diplomatic recognition of that country by the United States.” 13B Wright & Miller, Federal Practice & Procedure § 3604 (2d ed. 1984); cf. *Murarka v. Bachrack Bros.*, 215 F.2d

547, 552 (2d Cir. 1954) (considering as relevant when the United States received “India’s first ambassador”).

The Sixth Circuit followed a similar approach in *O’Bryan v. Holy See*, where it considered whether the Holy See qualified as a “foreign state” under the FSIA. 556 F.3d 361, 372 (6th Cir. 2009). The court applied the Restatement criteria and considered formal recognition as one factor—noting that “the United States recognized the Vatican in 1984” through the establishment of formal diplomatic relations. *Id.* But the court rejected the Holy See’s argument that its status as a foreign sovereign was a political question for the Executive alone. *Id.* at 374 n.4. The Sixth Circuit explained that courts routinely apply the FSIA’s statutory criteria “without becoming entangled in a non-justiciable political question.” *Id.*

As Judge Sullivan’s panel dissent pointed out, the Second Circuit’s divided opinion breaks with this consensus, “mark[ing] the first time that *any* Circuit across the country has reached [the] sweeping conclusion” that Executive’s “recognition of a state or government establishes that state or government as a foreign state for purposes of the Foreign Sovereign Immunities Act.” App.60 (Sullivan, J., concurring in part and dissenting in part) (quotation marks omitted). It held that a three-page letter and online fact sheet conclusively established Afghanistan as a “foreign state” under the FSIA, describing itself as “bound” by these materials. App.24 & n.67. Unlike the formal diplomatic acts that other courts have held are, at most, informative of foreign statehood, these cursory materials bear none of the hallmarks of formal Executive recognition. Yet the Second Circuit declined

to apply the Restatement test, instead concluding that it “*must* [] rely upon the Executive’s recognition of Afghanistan’s statehood.” App.26.

No other circuit has found that the Executive Branch can resolve for a court whether an entity is a foreign state merely by saying so in a litigation filing or posting on a website. App.104 (Sullivan, J., dissenting). To the contrary, “courts consistently have concluded that the meaning of the term ‘foreign state,’ as it relates to a sovereign power, should be derived by [judicial] application of the standard set forth in [the Restatement].” *Est. of Klieman v. Palestinian Auth.*, 424 F. Supp. 2d 153, 158 (D.D.C. 2006) (collecting cases). And as part of that analysis, courts have considered formal acts of recognition, including the establishment of diplomatic relations. *E.g.*, *O’Bryan*, 556 F.3d at 372. That consensus reflects decades of practice across multiple courts of appeal with which the Second Circuit’s decision breaks. The FSIA governs the jurisdiction of every federal court over every foreign sovereign defendant. The Second Circuit’s outlier holding warrants this Court’s review before it spreads any further.

II. The Second Circuit’s Decision Is Wrong.

By extending execution immunity to assets held by the Taliban, the Second Circuit applied the wrong analysis to reach the wrong result. Defying this Court’s instruction, the Second Circuit deferred to the Executive on the purely statutory question of whether an entity is a foreign state under the FSIA. But the Executive’s authority to recognize sovereigns through official diplomatic acts does not give it authority to dole out statutory immunity through litigation papers.

A. Interpreting the FSIA is an exercise of judicial power. The Court has instructed that the FSIA's reach presents a "pure question of statutory construction." *Altmann*, 541 U.S. at 679 (quotation marks omitted). Because FSIA immunity turns on whether an entity is a "foreign state," courts must first determine whether the defendant is a foreign state within the meaning of the Act. *See Samantar*, 560 U.S. at 313; 28 U.S.C. §§ 1604, 1609.

This Court has explained precisely how lower courts should make this threshold determination: using the ordinary tools of statutory interpretation. Courts must review "the text, purpose, and history of the FSIA" to ascertain its meaning. *Samantar*, 560 U.S. at 325. On this interpretive question, the Executive's views "merit no special deference." *Altmann*, 541 U.S. at 701.

Applying these tools, the Court has interpreted the statutory term "foreign state." Under the FSIA, "[t]he term 'foreign state' on its face indicates a body politic that governs a particular territory." *Samantar*, 560 U.S. at 314. This means that a foreign state must "ha[ve] a defined territory and population under the control of a government" and it must "engage[] in foreign relations." *Id.* (quoting Restatement (Second) of Foreign Relations Law § 4 (1965)). The FSIA has expanded that definition, but only "by mandating the inclusion of the state's political subdivisions, agencies, and instrumentalities." *Id.* (citing § 1603(a)); *see id.* at 314–15 (citing § 1603(b), which expands the statutory definition of a "foreign state" to include an "agency or instrumentality of a foreign state"). This statutory

definition governs the inquiry of whether the FSIA's sovereign immunity applies.

B. The Executive's constitutional power to recognize other governments informs whether a foreign entity is a sovereign state entitled to immunity, but the Executive cannot dictate whether sovereign immunity applies based on websites and litigation filings. The "power to recognize foreign nations and governments" lies exclusively with the Executive Branch. *Zivotofsky*, 576 U.S. at 14. Whether the Executive Branch has engaged in formal diplomatic relations with a state and offered it recognition is thus highly relevant to determining whether a population is "under the control of a government" that "engages in foreign relations." *Samantar*, 560 U.S. at 314 (quoting Restatement (Second) of Foreign Relations Law § 4).

The President's exercise of his state recognition power here weighs heavily against any conclusion that Afghanistan is a "foreign state" under the plain meaning of the FSIA. Since the United States withdrew its forces and the Taliban took effective control of much of Afghanistan, the Executive Branch has not officially recognized the Taliban or any other entity as the Government of Afghanistan, or as part of such a government. U.S. Dep't of State, *Countries & Areas: Afghanistan* (Jan. 20, 2025), <https://tinyurl.com/y9xy8a> (archived content). Nor has the United States had any embassy or consulate in Afghanistan since August 31, 2021. U.S. Dep't of State, *Travel Advisories: Afghanistan*, <https://tinyurl.com/289ep625>. And the United States has received no ambassadors from Afghanistan since 2021. *See* Lead Inspector

General Report, *supra*, at 8. Indeed, *no* country has recognized the Taliban as Afghanistan's legitimate government. App.7.

The President's exercise of his constitutional prerogative not to engage in diplomatic relations with the Taliban deserves respect. History confirms that the President's decision to "receiv[e] an ambassador was tantamount to recognizing the sovereignty of the sending state." *Zivotofsky*, 576 U.S. at 12. This is because "[e]very state, truly possessed of sovereignty, has a right to send ambassadors." *Id.* (citing E. de Vattel, *The Law of Nations* § 78, p. 461 (1758) (J. Chitty ed. 1853)). The President's decision not to receive ambassadors indicates that Afghanistan, under the Taliban, is not a state "truly possessed of sovereignty." *Id.*

The way that a President wields his recognition power after a regime change in a country is especially informative. "The first debate over the recognition power arose in 1793, after France had been torn by revolution." *Id.* at 24. After France established a new "Revolutionary Government," President Washington and Secretary of State Jefferson "authorized" the American ambassador "to resume relations with th[is] new regime" and agreed to "receive[]" a new ambassador that France proposed to send to the United States. *Id.* That ambassador's "reception marked the Nation's first act of recognition." *Id.* As Hamilton wrote, the President should use his recognition power to judge "in the case of a revolution of government in a foreign country, whether the new rulers are competent organs of the national will, and ought to be recognized or not." *Id.* at 13 (quoting A.

Hamilton, *Pacificus* No. 1, in the *Letters of Pacificus and Helvidius* 5, 12 (1845) (reprint 1976)); *see also Altmann*, 541 U.S. at 696 (explaining that sovereign immunity “reflects current political realities and relationships”). Here, as the Second Circuit itself acknowledged, the President has never judged the Taliban to be a competent organ of the national will. *See* App.7 (“[N]o country,” including the United States, “has recognized the Taliban as Afghanistan’s legitimate government.”).

In contrast with the conclusiveness of formal recognition actions by the Executive, an Executive’s filing of litigation papers suggesting an entity’s sovereign immunity does not conclusively resolve how the FSIA applies. As this Court has recognized, the point and purpose of the FSIA was to relieve the Executive of “case-by-case diplomatic pressures” and “assur[e] litigants” that such decisions would be “made on purely legal grounds and under procedures that insure due process.” *Verlinden*, 461 U.S. at 488 (quoting H.R. Rep. No. 94-1487, at 7 (1976)). So where a court considers the “interpretation of the FSIA’s reach,” the United States’ views “are of considerable interest” but “merit no special deference.” *Altmann*, 541 U.S. at 701.

C. The Second Circuit’s divided opinion defies this Court’s instruction and ignores the Executive Branch’s exercise of its recognition power after the Taliban’s takeover. Instead of applying the plain meaning of the term “foreign state,” as this Court instructed in *Samantar*, the Second Circuit held that “[t]he FSIA neither defines what a foreign state is nor provides the Judiciary with a statutory scheme to

determine the qualifications for statehood or [whether] a particular regime is the effective government of a state.” App.19 (quotation marks omitted). The Second Circuit then turned to the Executive Branch’s actions, but it ignored their necessary implications. The majority conceded that the Executive Branch “denies formal recognition of any *government*” of Afghanistan. App.24. But based on “the U.S. Department of State’s ‘Fact Sheet’” website and a Department of Justice letter filed with the district court, the Second Circuit determined that it was bound to conclude that “Afghanistan qualifies as a foreign state for the purposes of our FSIA analysis.” App.24.

This “blind deference to the Executive runs contrary to the purpose of the FSIA.” App.59 (Sullivan, J., concurring in part and dissenting in part). The FSIA was enacted specifically “to strip the immunity determination from the Executive Branch and ensure that it was ‘made on purely legal grounds and under procedures that insure due process.’” App.59 (Sullivan, J., concurring in part and dissenting in part) (quoting *Verlinden*, 461 U.S. at 488). The Second Circuit’s decision that the Executive Branch’s views *are* entitled to “special deference” (or even complete submission) runs counter to this Court’s precedent, the text of the FSIA, and the role of the Judiciary. *Altmann*, 541 U.S. at 701; *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (noting that courts have an “obligation to independently interpret the statute”).

Worse still, the court’s rule “dispense[s] with any limiting principle: the Executive could recognize

Disneyland, Facebook, or Purdue Pharma as a ‘foreign state,’ and courts would have to defer to that decision, toss the text of the FSIA aside, and dismiss all private civil suits against those entities.” App.103 n.2 (Sullivan, J., dissenting). The FSIA does not create such an easily manipulable rule, and the Constitution does not require one.

III. This Case Is an Ideal Vehicle to Address an Important Issue.

This case presents a clean vehicle for review. The Second Circuit squarely held that Executive recognition conclusively establishes foreign-state status for FSIA purposes. App.24–28. This holding was outcome-determinative, it was preserved and controverted below, and it divided the court during panel review and on rehearing. *See* App.53–64 (Sullivan, J., concurring in part and dissenting in part); App.99–105 (Sullivan, J., dissenting).

The issue presented is legal and dispositive. The Taliban did not appear; neither did DAB. There was no trial on the merits, no developed evidentiary record to sift through, and no need for this Court to resolve sprawling factual disputes. The decision below turned on a small set of materials: a State Department fact sheet and a three-page letter from the Department of Justice. *See* App.24 & n.67. The Court is well positioned to address the statutory and separation-of-powers questions presented here without becoming mired in case-specific factual complexities.

Moreover, this legal question is exceptionally important. The decision below unsettles the interpretive framework for FSIA immunity

nationwide by creating inter-circuit conflict. *See, e.g., Ungar*, 402 F.3d at 284; *OI Eur. Grp. B.V.*, 73 F.4th at 168–69; *O’Bryan*, 556 F.3d at 374 n.4. The decision below “marks the first time that *any* Circuit” has conflated diplomatic recognition with the judiciary’s explicit statutory duty to construe the FSIA. App.60 (Sullivan, J., concurring in part and dissenting in part).

The systemic consequences of this conflation are profound. It undercuts Congress’s constitutional prerogative to entrust immunity determinations to the courts, abdicates judicial responsibility to construe a jurisdictional statute, and misrepresents the scope of the Executive recognition power. These are precisely the sort of constitutional issues that merit this Court’s intervention.

The human stakes further underscore the need for review. The underlying embassy bombings were devastating acts of terrorism that killed more than 200 innocent people and injured thousands more. App.6. The related September 11 litigation concerns the deadliest terrorist attack in our nation’s history and a profound national trauma. *See* App.6. The Taliban furnished considerable support to al-Qaeda terrorists in committing both sets of atrocities. App.6. The panel’s rule therefore affects not only these embassy-bombing victims, but also the related September 11 judgment creditors and future victims seeking to enforce judgments against terrorist groups.

It is notoriously difficult to enforce judgments against the perpetrators of terrorist attacks. *See Bank Markazi*, 578 U.S. at 216–17. The victims here have identified no other Taliban assets in the United

States, so if the DAB funds remain immune, their multibillion-dollar award will remain a paper judgment. The same systemic concern extends to the September 11 plaintiffs, who seek to satisfy their own judgments from the same blocked DAB assets.

The question presented implicates serious legal concerns and determines whether hundreds of terrorism victims will have any meaningful prospect of judicial redress. This Court should grant review.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

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