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1 P R O C E E D I N G S

2 (11:11 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument next in Case 16-534, Rubin versus the
5 Islamic Republic of Iran.

6 Mr. Perlin.

7 ORAL ARGUMENT OF ASHER PERLIN

8 ON BEHALF OF THE PETITIONERS

9 MR. PERLIN: Mr. Chief Justice, and
10 may it please the Court:

11 In 2008, Congress comprehensively
12 overhauled the terrorism exception to foreign
13 sovereign immunity to close gaps that had for
14 years allowed foreign terrorist states to thumb
15 their noses at U.S. judgments finding them
16 liable for acts of terrorism while their
17 victims were drawn into a long, bitter, and
18 often futile search for scarce assets that
19 would be subject to execution under the
20 exceedingly narrow commercial exception to
21 foreign sovereign immunity.

22 The centerpiece of that legislation is
23 Section 1610(g). That provision provides that
24 American terrorism victims can execute their
25 judgments upon the property of a foreign state

1 that is subject -- against which a -- a
2 judgment has been entered under 1605A, and it
3 makes available the property of the state's
4 agencies and instrumentalities.

5 JUSTICE GINSBURG: If -- if --

6 JUSTICE BREYER: Well, as provided in
7 this section.

8 MR. PERLIN: As provided in this
9 section. The question is what that -- what
10 that provision means. The Respondents would
11 have the Court delete the three words between
12 the word "execution" and the words "as provided
13 in this section." What it actually says is
14 that the property is subject to execution upon
15 that judgment as provided in this section.

16 JUSTICE GINSBURG: We know what --
17 that -- that Congress wanted to do away with
18 what they call the Bancec factors, and this
19 statute was written perfectly to do just that.
20 You say it does something more.

21 MR. PERLIN: It has to do more, Your
22 Honor.

23 JUSTICE GINSBURG: And why does it
24 have to? What the statute did is it made more
25 assets available because you didn't have to

1 worry whether it was the state itself, an
2 instrumentality of the state, an agency. The
3 -- the property of any of those entities was
4 available.

5 So it swelled the assets that would be
6 available. But it didn't say anything, not a
7 word, about immunity.

8 MR. PERLIN: Well, there -- there's
9 two questions there. It doesn't say anything
10 about immunity, but those are magic words. It
11 does say that the property is subject to
12 execution.

13 JUSTICE SOTOMAYOR: Magic words under
14 (a) and (b).

15 MR. PERLIN: I'm sorry?

16 JUSTICE SOTOMAYOR: In 1610(a) and
17 (b), Congress knew how directly to say property
18 is not or is subject, immune from attachment.
19 But it used something very different here.
20 Rather, it says that property is "subject to
21 attachment as provided in this section." Those
22 are two very distinct formulations.

23 MR. PERLIN: They are different.
24 Subsections (a) and (b) were part of the
25 original Foreign Sovereign Immunity Act from

1 1976. There were other amendments since then.
2 If you look at subsection (f)(1), which the
3 President has waived, it says "shall be subject
4 to execution."

5 The -- the Terrorism Risk Insurance
6 Act, which is codified as a note to subsection
7 -- to Section 1610, also says shall be subject
8 to execution to -- to execution. So the
9 language -- when Congress sat down to write
10 subsection (g), it was looking at the other
11 terrorism exceptions to execution immunity that
12 it had already passed, and those were (f) in
13 TRIA, and it modeled (g) after -- after those
14 sections.

15 JUSTICE BREYER: Can they execute,
16 your clients, on the embassy?

17 MR. PERLIN: So --

18 JUSTICE BREYER: On the uniform -- on
19 the uniforms that the people in the embassy
20 wear, on -- on the papers that the ambassador
21 keeps in his desk if, in fact, you read "as
22 provided in this section," the answer is no.
23 If you read it to include because it has to be
24 commercial, all right? Under your reading,
25 where those words must mean something else,

1 can't they do it?

2 MR. PERLIN: They cannot.

3 JUSTICE BREYER: Why not?

4 MR. PERLIN: Subsection -- Section
5 1609 says that Section 1610 -- execution under
6 1610 is subject to international agreements
7 like the Vienna Convention which would protect
8 diplomatic property, and Section 1611 protects
9 military assets, certain central bank assets.

10 JUSTICE BREYER: Okay.

11 MR. PERLIN: Congress, when they
12 enacted 1610(g), they did not completely
13 abrogate foreign sovereign immunity for
14 terrorist states. They wanted to provide a
15 remedy for the victims, they wanted to punish
16 and deter the terrorist states, but at the same
17 time, Congress recognized that Iran and North
18 Korea, Syria, Sudan, these are sovereign
19 states, and they're entitled to a bare minimum
20 of sovereign immunity, and Congress retained
21 that bare minimum by protecting
22 quintessentially sovereign assets while making
23 everything else subject to execution.

24 JUSTICE ALITO: What does "as provided
25 in this section" mean? Am I right you think it

1 incorporates only procedural requirements?

2 MR. PERLIN: No, Your Honor there are
3 a number of -- a number -- no, Your Honor. A
4 number of --

5 JUSTICE ALITO: What does it -- what
6 does it mean?

7 MR. PERLIN: It means, as provided --
8 the way to read it is it refers to the judgment
9 that's entered under 1605A. As provided in
10 this section, it says, execution -- you can
11 have execution upon the property -- upon that
12 judgment as provided in this section.

13 "As provided in this section" modifies
14 the judgment, "upon that judgment," and it --
15 and it refers to the section -- Section 1605A,
16 which is the only section mentioned in this
17 sentence. It's referring back to the section,
18 1605A, that was a couple lines above in the
19 same sentence.

20 And what it says is that a judgment
21 entered -- that Section 1610(g), which provides
22 sweeping remedies for terrorism victims, is
23 only applicable to those who hold judgments
24 entered under the statutory cause of action of
25 1605A. It is not available to other plaintiffs

1 holding terrorism judgments.

2 It also extends -- it also extends,
3 "as provided in the section," extends the
4 remedies. The remedies -- remember, the
5 remedies of 1605A, capital A, are very novel,
6 to say the least. You -- you -- you don't have
7 a private right of action anywhere else in the
8 Sovereign -- Foreign Sovereign Immunities Act.
9 You don't have any other provision that allows
10 punitive damages against a sovereign state,
11 which is a sure sign that Congress was not
12 concerned about affronting the dignity of
13 terrorist states.

14 They allowed punitive damages. They
15 -- they expected those to be enforced. They
16 allowed a pre-judgment lien of lis pendens to
17 attach to all sovereign -- all of the state's
18 property that is subject to execution under
19 1610, that -- including property of any party
20 that the plaintiff identifies as being
21 controlled by -- by that terrorist state.

22 JUSTICE ALITO: So "as provided in
23 this section" is really superfluous, isn't
24 it --

25 MR. PERLIN: It's --

1 JUSTICE ALITO: -- under your
2 interpretation?

3 MR. PERLIN: It's not. It refers --
4 well, it's -- it emphasizes the centrality of
5 the 1605 judgment to this provision. And it
6 also -- there's -- there's no other way to read
7 it. If you read it as -- as the Respondents
8 would, there's no -- there's no provision
9 within 1610 that can pair with 1610. They say
10 that it must pair with another substantive
11 provision of 1610.

12 But nothing works. Try to -- try to
13 go through. It says that -- 1610(g) says that
14 the property of a foreign state is subject to
15 execution and the property of an agency or
16 instrumentality.

17 Now, if this were only a veil-piercing
18 mechanism, as the Respondents claim, there's no
19 reason to mention the property of the foreign
20 state.

21 You don't need to pierce the veil to
22 reach the property of the -- of the judgment
23 debtor terrorist state. You just go straight
24 for that property. And if you have a judgment
25 against the agency or instrumentality --

1 JUSTICE SOTOMAYOR: I'm sorry. I
2 thought that the University of Chicago had
3 raised an interesting argument, that the
4 definition of foreign state in the statute
5 includes, by definition, an agency or
6 instrumentality of a foreign state, so that the
7 reference to foreign state that you're relying
8 upon does include the concept of piercing the
9 corporate veil in its very definition.

10 MR. PERLIN: Well, that would -- that
11 would -- that itself would abrogate Bancec, the
12 rationale that University --

13 JUSTICE SOTOMAYOR: Well, that -- not
14 quite, because what -- I mean, this provision
15 deals directly in aid of the plaintiffs in the
16 Bancec case and in the others that had found
17 against plaintiffs.

18 There are at least three cases where a
19 class of plaintiffs were found not to be in a
20 sufficiently tied relationship to the foreign
21 state and the plaintiffs there couldn't
22 recover, so there was a real issue this was
23 addressing, the fact that there were
24 subsidiaries and agencies of foreign state who
25 had commercial property, and it wasn't being

1 made available to plaintiffs.

2 MR. PERLIN: So the question would be
3 to ask the Respondents why they don't mention
4 those cases in their briefs. We have
5 maintained, consistently, that the property of
6 the foreign state, those words, are completely
7 not just superfluous but misleading if there --
8 if this is just a veil-piercing mechanism. If
9 it's veil-piercing mechanism --

10 JUSTICE SOTOMAYOR: Why? It gave them
11 what those three cases denied them. It gives
12 other plaintiffs with similar claims a lot --
13 access to a lot of -- of property that they
14 wouldn't have had under Bancec.

15 MR. PERLIN: The provisions that allow
16 execution upon the property of an agency or
17 instrumentality gives access to -- to the
18 agency or instrumentality's property.

19 JUSTICE BREYER: Well, give an
20 example. I mean, there's a famous example
21 which you know about, the -- the letter of
22 Cyrus, saying to everybody throughout the
23 Middle East that the Jews are free and they can
24 go back to Israel, Palestine, the temple, and
25 that letter exists and Persia -- the Persian

1 letter, and Iran has sent it around the world.

2 Now, in your view, they have -- and
3 people have looked at it. And if it comes to
4 the United States, you can seize it. Is that
5 -- that's your view of it? Because if it is,
6 of course, if Congress knew about it, then they
7 -- they might have had a general idea, given
8 the nature of the stuff in Chicago. I -- I
9 would be surprised that they'd want to do that.

10 MR. PERLIN: You might be surprised,
11 but Congress has addressed --

12 JUSTICE BREYER: Your view is, yes,
13 you could seize it?

14 MR. PERLIN: It would depend on --
15 yes, you could. It -- Congress has addressed
16 this very question, twice, in 22 U.S.C. 2459,
17 Congress provided a very specific and limited
18 immunity for culturally significant objects
19 being brought to the United -- culturally
20 significant objects being brought to the United
21 States for display or exhibition.

22 There was a very specific immunity
23 there that the -- that somebody wants to bring
24 in -- in that property, those exhibits can
25 apply to the State Department in advance and

1 receive a letter immunizing those -- those
2 assets from -- from judicial process.

3 And -- and last year --

4 JUSTICE GINSBURG: Did that -- did
5 that exist in, what was it, 1939 --

6 MR. PERLIN: It did not. It did not.

7 JUSTICE GINSBURG: -- when Chicago got
8 this?

9 MR. PERLIN: But Congress could have
10 made that provision retroactive, and it didn't.
11 And Congress --

12 JUSTICE GINSBURG: But what about the
13 provision that Congress did enact in -- and
14 we've been talking about (g) and so -- so this
15 is subsection 3, refers to nothing shall be
16 construed to supersede the authority of a court
17 to prevent the impairment of an interest held
18 by a person who is not liable in the action.

19 Why isn't the University of Chicago
20 such a person? They're certainly not liable in
21 the action. And they got this property when
22 Iran was not listed as a terrorist state.

23 MR. PERLIN: Uh-huh.

24 JUSTICE GINSBURG: The Shah was in
25 control, not the Ayatollah.

1 MR. PERLIN: The university hasn't
2 raised that as a defense. And because Section
3 1610(g)(3) refers to a -- a party with an
4 ownership interest, not just a -- some other
5 intangible interest -- and -- and even to the
6 extent that they do, that doesn't mean that the
7 Court should not be able to transfer title to a
8 -- to whatever party would be ready to -- to
9 pay the price.

10 And we think it would be Iran, by the
11 way. If -- if the Court would construe the
12 statute as Congress, we think, as we read it,
13 Congress would finally -- I mean Iran would
14 finally pay attention to a judgment, and they
15 would say, we're -- we're about to lose our --
16 our -- our artifacts --

17 JUSTICE GINSBURG: Well, what are the
18 terms of that? The University of Chicago had
19 this since 1939. Iran has never tried to take
20 it back. What are the terms of the lease?

21 MR. PERLIN: They have -- it's not a
22 lease. It was a long-term loan for the -- for
23 the study and cataloguing, publishing,
24 photographing, cleaning, of these -- of these
25 artifacts.

1 And University of Chicago does not
2 assert an ownership interest. They -- they say
3 that there -- in the briefs, they say they're
4 trustees, or they were entrusted -- they don't
5 even call themselves trustees even; they say
6 they were entrusted with this. Every -- they
7 use language, but they never say, we have a
8 concrete right in these -- in these assets.

9 And if they do, the court can -- the
10 district court, when it orders the sale, it can
11 make accommodation for that. It can say that
12 whoever buys it -- and we would be where -- my
13 clients would be perfectly happy if these
14 artifacts remained with the University of
15 Chicago.

16 JUSTICE GINSBURG: The University is
17 not interested in this property for the money
18 -- for money. It's interested in having these
19 antiquities on display, to be researched, to be
20 seen?

21 MR. PERLIN: But it doesn't belong to
22 them. It's not theirs. And whoever it belongs
23 to can decide whether they're the best
24 university to study it.

25 JUSTICE GINSBURG: You're answering my

1 question there, well, don't worry about
2 University of Chicago, the district court can
3 give them some money.

4 MR. PERLIN: No, not money. Not
5 money. The district court, if they have a
6 right, to the extent that they have a right to
7 retain the -- the artifacts and continue their
8 work with them, the district court can say that
9 the sale should be conducted subject to the
10 rights of the University of Chicago. It
11 doesn't -- it doesn't mean that it's all --
12 it's not all or nothing. The property can be
13 divided up.

14 JUSTICE GINSBURG: But what would
15 those rights be? Their rights have been from
16 1939 on, they have this property.

17 MR. PERLIN: Well, since 1980, they've
18 had the property because Iran couldn't get it
19 back, for a big part of that time, and for a
20 big part of the time before that, every now and
21 then, Iran was asking, when are you going to
22 finish -- when are you going to finish studying
23 these things. And -- and they were not very
24 forthcoming.

25 When this lawsuit was filed, they

1 moved into -- they expedited their study of the
2 assets because they realized that they might
3 lose them. And, now, again, University of
4 Chicago is really an amicus here. They don't
5 -- they have no interest in these assets.

6 They -- and to the extent that they
7 do, the Court can protect that. It can protect
8 that interest in a -- in a sale.

9 CHIEF JUSTICE ROBERTS: Well, assuming
10 you're right, does that mean, if you lose here,
11 you think Iran will be able to repatriate the
12 assets?

13 MR. PERLIN: Absolutely. There's
14 nothing in their way. They did. They did. We
15 lost -- we lost in the district court, and
16 there was another collection of Iran --
17 Iran-owned assets, and on the eve of the -- the
18 argument in the court of appeals, they were
19 shipped back to Iran after the court had denied
20 our -- our motion to stay, but -- but they were
21 shipped back to Iran. And they --

22 JUSTICE BREYER: They have other
23 things in the United States. I mean, it seems
24 to me so far, that the main difference between
25 your interpretation and the other side as a

1 practical matter is that, if you're right, that
2 private people will be able to take cultural
3 assets from Persia and sell them and ship them
4 back to Iran, and if they're right, you will
5 have to limit your recovery to commercial
6 objects because that's what the other parts of
7 the statute provide.

8 MR. PERLIN: Well --

9 JUSTICE BREYER: Now -- now, that's
10 not perhaps going to turn out to be relevant to
11 the decision. I grant you that. But I -- it's
12 something I'm -- I like to have in my mind.

13 MR. PERLIN: Okay. The -- the
14 distinction under the foreign sovereign
15 immunity -- let's put it this way. They want
16 to cabin us into Section 1610(a)(7), which is
17 the commercial use exception for property owned
18 by the state.

19 That provision, as the Seventh Circuit
20 held, requires not just use for a commercial
21 activity, but it has to be used by the foreign
22 state. And a number of courts of appeal have
23 held, as did the Seventh Circuit and this Court
24 did not accept review of this issue, that --
25 that it has to be -- that the use must be by

1 the foreign state itself, even though that's
2 not in the -- those words are not in the
3 statute.

4 But a number of courts of appeal have
5 looked at financial assets -- let's take the,
6 you know, proceeds of a -- of a commercial
7 transaction between a state and private parties
8 that are proceeds that are held in an account,
9 that are intended for the foreign state, and
10 the courts have said that's not commercial use
11 property. Why? Not because it's the proceeds
12 of a commercial transaction, but because those
13 proceeds have not yet been used by the foreign
14 state for commercial activity.

15 They're just sitting in the account
16 passively waiting to be used, but they haven't
17 been used yet, and the state can say, we're
18 going to put it in our general account in the
19 Treasury.

20 JUSTICE SOTOMAYOR: That just seems
21 like an issue Congress has to address.

22 MR. PERLIN: Well, Congress --

23 JUSTICE SOTOMAYOR: And those courts
24 may well be wrong. I don't know.

25 MR. PERLIN: What I'm saying is that

1 the practical difference between our
2 construction and the Respondents' construction
3 is not antiquities. It's all of these cases
4 dealing with -- with passive bank accounts.
5 There's another case in California where there
6 was a judgment obtained by the Ministry of
7 Defense of Iran against a defense contractor,
8 and the court said the money paid by the -- by
9 the Ministry of Defense, that's not commercial
10 use property because it hasn't been used by
11 Iran.

12 There -- there's -- there are
13 countless cases like this, and this is the body
14 -- these are the -- these are the -- the cases
15 that this provision is -- is -- or one group of
16 cases this provision is intended to cover.
17 It's not intended to cover antiquities, and I
18 don't think there's going to be a -- a mad rush
19 to grab antiquities.

20 JUSTICE BREYER: That's what you're
21 doing yourself in this case; that's what it is,
22 isn't it?

23 MR. PERLIN: That's all that they've
24 left. That's all -- this -- this proceeding
25 below began in 2003. The -- the terror attack

1 in this case was in 1997. My clients have been
2 waiting 20 years to enforce their judgment
3 against Iran. Iran does not pay judgments.

4 You know -- you know, it's not
5 Argentina, where they can't afford to pay the
6 judgment. They just don't. And they don't --
7 they don't care what the American courts say.
8 And Congress finally said enough is enough, and
9 -- and they said there's punitive damages and
10 we're going to waive res judicata, we're going
11 to waive collateral estoppel, we're going to
12 waive statutes of limitations; you can go back
13 and convert your old judgments into a new 1605A
14 judgment and use -- and use that tool under
15 1610(g), under our provision to enforce it.

16 Congress said enough is enough. We
17 want these judgments enforced. And it's not
18 about antiquities. That's -- that's -- that's
19 what the Respondents are writing about, but
20 they will not tell you what the -- what the
21 property of a foreign state applies to.

22 JUSTICE GINSBURG: Is there anything
23 --

24 MR. PERLIN: The United States doesn't
25 --

1 JUSTICE GINSBURG: Is there anything
2 -- is there anything in the legislative record
3 that shows that Congress was intending to do
4 anything other than dispense with the Bancec --

5 MR. PERLIN: Absolutely.

6 JUSTICE GINSBURG: Yes?

7 MR. PERLIN: Yes, it says that it
8 applies -- that the provision will apply to any
9 property in which the foreign state has a
10 beneficial ownership. That any property in
11 which the foreign state has a beneficial
12 ownership is subject to execution of that
13 judgment. It says the -- the -- the sponsors
14 -- Senate sponsors said that it is intended to
15 remove many of the barriers to execution of a
16 judgment. And according to Respondents, it
17 only addresses one of those barriers.

18 It says that the -- the right to the
19 -- to the property is subject to a simple
20 ownership test. A simple ownership test. When
21 you start piercing veils and layers of veils,
22 that is not a simple ownership test. That
23 might have been intended to be included in the
24 -- but that's not what was being addressed.

25 And, finally, what the -- what the

1 statute does say, the legislative history --
2 the House report says that "although it
3 subjects to execution any property in which the
4 state has a beneficial -- beneficial interest,
5 it does not extend to diplomatic property."

6 So once Congress is excluding
7 specifically that narrow class of
8 quintessentially sovereign property, diplomatic
9 property, you know that it's extending -- it
10 covers everything else. There's no reason --
11 if it didn't cover commercial use property or
12 non- -- sorry, non-commercial use property,
13 there's no reason to specifically mention
14 diplomatic property because, obviously, that's
15 going to be included in non-commercial.

16 This applies to everything.
17 Everything except diplomatic, military, and
18 certain central bank assets. The idea that --
19 that Congress would be concerned with
20 affronting the dignity of a state sponsor of
21 terrorism and would extend protection to their
22 non-commercial assets for that reason, to avoid
23 an affront to their dignity, is just
24 preposterous.

25 JUSTICE GINSBURG: Do you have any

1 other section that dispenses with the sovereign
2 immunity that doesn't mention -- doesn't say
3 anything that refers to immunity?

4 MR. PERLIN: Well, I mentioned Section
5 1610(f)(1). It says that the property shall be
6 subject to execution. And the TRIA, Terrorism
7 Risk Insurance Act, which is a note. I don't
8 think I included it -- it was an oversight --
9 in the -- in the statutory appendix, but it's
10 -- it's codified as a note to Section 1610, and
11 that -- that provision -- these are the three
12 terrorism provisions -- execution immunity
13 provisions of the Foreign Sovereign Immunity
14 Act, and not one of them uses the word immunity
15 -- it says we're abrogating immunity here or
16 limiting immunity. So, again, it's not
17 abrogating it wholesale; it's maintaining a --
18 a -- a skeletal remain of sovereign immunity
19 because -- in recognition of the fact that
20 these states are sovereign.

21 JUSTICE ALITO: In your brief, you
22 offer several other interpretations of the
23 phrase "as provided in this section,"
24 interpretations that are different from the one
25 you provided this morning. Are you disavowing

1 those now?

2 MR. PERLIN: I think that the best
3 construction is that it refers to the judgment
4 entered under 1605A. I think that those are
5 alternative constructions that are viable and
6 certainly more viable than the Seventh
7 Circuit's.

8 Again, if you sit down and try to
9 think of cases where -- where the property of
10 the state will have applicability --
11 applicability under 1610(g) where it wouldn't
12 -- where this property wouldn't be subject to
13 execution under 1610(a)(7), right, according to
14 the Respondents' construction, you won't find
15 it. You will not come up with a case or you're
16 going to have to work very, very hard and
17 there's no reason Congress would have included
18 -- if this were only meant to pierce a veil,
19 Congress would have said subject to subsection
20 (3), or paragraph (3), the property of an
21 agency or instrumentality of a foreign state
22 against which a judgment has been entered under
23 1605A is subject to execution -- to attachment
24 and execution.

25 It did not need to mention the

1 property of the foreign state. Iran and the
2 government both talk about how it had to
3 mention the foreign state. Well, it's true, it
4 had to mention the foreign state because a
5 judgment was entered against the foreign state,
6 but it does not need to single out the property
7 of the foreign state, if all this were -- was a
8 veil-piercing mechanism.

9 It doesn't work. It doesn't -- you
10 cannot pierce the veil of a company or a
11 country to reach the property the country owns
12 directly.

13 Now, let me just point out that none
14 of the other provisions of 1610 work with (g)
15 either. (b), which the Seventh Circuit relied
16 on -- it said this section refers to subsection
17 -- really refers to subsections (a) and (b).
18 Subsection (b) applies only where there's a
19 judgment entered against the agency or
20 instrumentality.

21 If you have -- again, if you have a
22 judgment against the agency or instrumentality,
23 you don't need a veil-piercing mechanism to
24 reach it because you go after -- you go after
25 its property directly.

1 (c) is -- specifically mentions (a)
2 and (b) only, that an execution referenced
3 under (a) and (b), and it doesn't mention (g).
4 And Congress could have amended it to include
5 executions under (g).

6 (d) is for prejudgment attachment
7 where there's an express waiver of immunity.

8 None of these provisions work. I'm
9 going to -- I'd like to reserve the rest of my
10 time for rebuttal, but if you -- if you sit
11 down and try to -- they don't work. It just
12 doesn't -- there's no way to read it according
13 to the Seventh Circuit and -- and apply it.

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 Mr. Strauss.

17 ORAL ARGUMENT OF DAVID A. STRAUSS

18 ON BEHALF OF THE RESPONDENTS

19 MR. STRAUSS: Thank you, Mr. Chief
20 Justice, and may it please the Court:

21 Let me first pick up on a piece of the
22 legislative history that my friend quoted to
23 the Court. Senator Specter, who introduced the
24 precursor of what became 1610(g), did say that,
25 as -- as Mr. Perlin said, that the provision

1 was designed to eliminate many of the barriers
2 which had prevented U.S. citizens from
3 collecting on court-ordered damages. He then
4 said it does this by changing the legal
5 standard of the Bancec doctrine. So that was
6 the way in which this exposed more -- more
7 property to execution by terrorism plaintiffs.

8 In fact, the Petitioners' position
9 about the construction of 1610(g) is wrong for
10 four independently sufficient reasons. One is
11 the language the Court has focused on, "as
12 provided in this section." This section, is
13 Section 1610, that is the section of which (g)
14 is a subsection. So the phrase "as provided in
15 this section" means the Petitioners have to
16 satisfy the provisions of 1610, which means
17 that only property used for commercial activity
18 in the United States can be seized. And
19 Petitioners, I think, have just not come up
20 with a plausible alternative account of what
21 "as provided in this section" means.

22 But there's a second reason. And it
23 has to do with the difference between
24 subsection (g) and the provisions of subsection
25 1610 that really do abrogate sovereign

1 immunity. The Foreign Sovereign Immunities Act
2 says, in Section 1609, that the property
3 foreign states in the U.S. shall be immune from
4 attachment, except as provided in 1610.

5 Then the subsections of 1610 say, in
6 terms, one after another, that certain property
7 shall not be immune. Subsection (a) says that,
8 as does (b), as does (d), as does (e).
9 Subsection (g) contains no such language. The
10 relevant part of subsection (g) does not refer
11 to immunity at all.

12 And there's a reason for that. The
13 reason is that (g) is about Bancec, and the
14 Bancec doctrine is not an immunity doctrine.
15 The Court was very explicit about that in the
16 decision, the Bancec decision itself.

17 CHIEF JUSTICE ROBERTS: Well, you do
18 think -- agree with him, don't you, that the
19 property of a foreign state in -- in (g)(1)
20 is a -- is a strong indication at least that it
21 is not limited to overturning the Bancec
22 decision?

23 MR. STRAUSS: No, I -- I don't agree
24 with that, Mr. Chief Justice. I think what's
25 going on there is Congress wanted to make it

1 very clear that Bancec was no longer -- no
2 longer going to be a barrier in these cases.

3 And so it said property of the state,
4 property of agencies, property of
5 instrumentalities, property of separate
6 juridical entities, interests in separate
7 juridical entities, all of these things are in
8 the same basket, and all of them are subject to
9 attachment and execution.

10 I think that's why you have that --
11 that language in -- in (g)(1). It's not a --

12 CHIEF JUSTICE ROBERTS: But Bancec
13 wasn't about property of a foreign state. It
14 was about the agencies, instrumentalities, et
15 cetera.

16 MR. STRAUSS: It is -- that is -- it's
17 right that Bancec was not about the property of
18 a state itself, but the way the section is
19 written, property of a state, including
20 property that is in a separate juridical entity
21 or is an interest held directly or indirectly
22 in a separate juridical entity, what you see in
23 the legislative history is a lot of concern
24 that state judgment debtors would be arranging
25 their assets in ways that would distance

1 themselves from ownership.

2 JUSTICE BREYER: Is it the case there
3 on that particular point -- I was trying to
4 work out does Bancec ever apply -- could it
5 apply to funds or -- yeah, funds of the foreign
6 state itself? Is there anything that suggests
7 it applies where the -- where the foreign state
8 deposits some money in a bank?

9 And then they argue, we -- that isn't
10 our money, that's the bank's money, and we're
11 just the beneficial owner of that money. And
12 Bancec might have said, yes, that's right, it's
13 not their money, it's an agency -- it's an
14 agent's money.

15 MR. STRAUSS: I'll say two things to
16 that, Justice --

17 JUSTICE BREYER: What about that
18 argument?

19 MR. STRAUSS: -- Justice Breyer. I
20 think the Bancec criteria are not very clear.
21 The Court deliberately left the criteria vague.
22 And I think Congress was concerned about that
23 situation.

24 And I think that's why you see this
25 language in (g)(1) that really tries to be

1 comprehensive and cover every base. But what I
2 think you don't get out of (g)(1) is anything
3 about immunity because it even applies to
4 separate juridical entities who would have no
5 --

6 CHIEF JUSTICE ROBERTS: Well, it
7 doesn't want them to cover everything in every
8 case. It's titled property in certain actions.
9 And I think the other argument on the other
10 side is that the certain actions are, you know,
11 the ones in -- in -- don't include the ones
12 governing the property of the foreign state.

13 MR. STRAUSS: Well, I think the
14 certain actions, Mr. Chief Justice, are actions
15 to execute judgments under 1605A. This is a
16 special provision to make it easier for
17 terrorism plaintiffs to get assets. It doesn't
18 apply to ordinary judgment plaintiffs.

19 And I think that's the -- that's the
20 property it's referring to. This is -- really
21 was intended to make it much easier for
22 plaintiffs who have terrorism-based judgments
23 to get their hands on assets, but only those
24 plaintiffs. And I think those are the actions,
25 and that's why a judgment entered under 1605A,

1 but that doesn't mean that the rest of the
2 section does not apply.

3 In fact, it says the rest of the
4 section does apply upon -- as -- as provided in
5 this -- in this section.

6 JUSTICE SOTOMAYOR: Mr. Strauss, I
7 think you were cut off on three independent
8 reasons. You went through one and two. What
9 were three and four?

10 MR. STRAUSS: Two was the -- the
11 repetition --

12 JUSTICE SOTOMAYOR: The one you were
13 just talking about.

14 MR. STRAUSS: Not the repetition of --
15 shall not be immune. The third is this: The
16 Petitioners' position really would nullify a
17 decision Congress made at the very same time it
18 enacted 1610(g) in 2008. This is -- we go
19 through this on page 25 and 26 of our brief.

20 The -- the statute that added
21 subsection (g) also created 1605, the cause of
22 action that -- the remedy the Petitioners
23 invoke. That statute then amended the FSIA to
24 say that parties like Petitioners, who are
25 seeking to execute a 1605A judgment, must show

1 that the property they want to seize is used
2 for commercial activity of the United States.
3 That same statute said that. It said that by
4 inserting 1605A into subsection A, which is a
5 subsection that requires commercial activity.
6 So Congress did that. It created 1605 --
7 1605A.

8 It said if you have a judge -- if you
9 are trying to execute a 1605A judgment, here is
10 how you do it. Section -- you go to section --
11 subsection (a), subsection (a)(7) says you can
12 execute a 1605A judgment, provided you can show
13 that the property is used for commercial
14 activity in the United States. That's what
15 that statute does.

16 Then the next provision -- or a few
17 lines later in the statute, really, it's not
18 even the next provision, sets up, enacts
19 subsection (g). So, as Petitioners would --
20 would have it, Congress created this remedy,
21 provided that if you want to execute a judgment
22 based on this remedy, you go to subsection (a)
23 and you show that the property you're seizing
24 is used for commercial purpose -- commercial
25 activity in the United States.

1 And then immediately Congress said,
2 oh, never mind, you don't have to show a
3 commercial activity. That's Petitioners'
4 story.

5 That's Petitioners' account of the
6 significance of 1610(g). And I think that's
7 just no way to read Congress's actions. That
8 just does not -- is not a plausible account of
9 what Congress might have been doing.

10 And there's really a fourth reason as
11 well, and it has to do with how central the
12 commercial activity limit is to the FSIA and to
13 foreign sovereign immunity generally. The
14 principle at stake here is the principle that
15 commercial property may sometimes be subject to
16 seizure, but non-commercial property is not.

17 And that principle is -- has the
18 deepest roots in U.S. law and international
19 law. It's actually anticipated by Chief
20 Justice Marshall's opinion in the Schooner
21 exchange. It was the foundation of the Tate
22 Letter, which led to the reorganization of
23 foreign sovereign immunity doctrines.

24 That distinction between commercial
25 and non-commercial property is stated

1 explicitly in the FSIA itself in Section 1602.
2 It's central to the U.N. Convention on
3 Immunities of States. It was the holding of a
4 recent decision of the International Court of
5 Justice which barred the seizure of, as it
6 happens, a cultural center. The ICJ barred the
7 seizure of a cultural center because the
8 cultural center is non-commercial, and that
9 case actually involved the victims of Nazi
10 crimes. So this is an extremely deeply rooted
11 principle. Now, that's not to say Congress
12 could not abrogate it. Of course, Congress
13 could.

14 But the Court said, just last term, in
15 Helmerich, the case involving the Venezuelan
16 seizure of oil rigs, that the Court is not
17 going to assume that Congress has made a quote,
18 in the Court's words, radical departure from
19 central principles like that one, unless
20 Congress has made its determination very clear,
21 and here what's really very clear is the
22 opposite, that Congress did not intend to
23 override sovereign immunity in Section 1610(g).

24 If the Court has no further questions.
25 Thank you very much.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.

3 MR. STRAUSS: Thank you very much.

4 CHIEF JUSTICE ROBERTS: Mr. Tripp.

5 ORAL ARGUMENT OF ZACHARY D. TRIPP ON BEHALF OF THE
6 UNITED STATES, AS AMICUS CURIAE, SUPPORTING THE
7 RESPONDENTS

8 MR. TRIPP: Mr. Chief Justice, and may
9 it please the Court:

10 These ancient Persian artifacts are
11 immune from execution under 1609, and nothing
12 in 1610(g) lifts that immunity. And if I could
13 just make three quick points about why that's
14 right.

15 The first, as most of the questioning
16 has already been focused on today, is it just
17 can't be squared with the statutory text. The
18 statute says that the property of these
19 different entities is subject to execution "as
20 provided in this section."

21 But the way Petitioners read it, it
22 would work exactly the same way if it said the
23 exact opposite. If it said that the property
24 was subject to execution, regardless of what is
25 provided in the section, and that just can't be

1 right.

2 And then so, second, I think another
3 thing that really drives home that they are
4 misreading this law is that the way they read
5 it, it gives with one hand what it takes away
6 with another.

7 So, as my brother was explaining,
8 Congress added (g) at the same time it added
9 (a)(7), and what (a)(7) says is that these very
10 same people, victims of terrorism with
11 judgments under 1605A, it says that they can
12 execute against the property of a foreign
13 state, but only if it's used in commercial
14 activity.

15 But the way they read (g), those
16 people can defeat that limitation just by
17 invoking a different subsection of the same
18 statute. They can get commercial,
19 non-commercial property, whatever, and that's
20 just not a sensible way to draft a statute.

21 JUSTICE SOTOMAYOR: Don't they --
22 don't they explain (a)(7) as being present to
23 permit state law claims based on the same
24 actions as the federal action?

25 MR. TRIPP: So --

1 JUSTICE SOTOMAYOR: That would render
2 (a) (7) --

3 MR. TRIPP: So we -- we don't think
4 that's right, and we also just don't think it
5 really helps them.

6 JUSTICE SOTOMAYOR: I know you're
7 saying it, but explain to me why.

8 MR. TRIPP: Yes. So the reason it's
9 not right, we explain this on pages 24 and 25
10 of our brief. It has to do with the language
11 of 1605A itself. This is on 12A of our gray
12 brief if you want to see it.

13 And what 1605A says is "The Court
14 shall hear a claim under this section if" and
15 then the prerequisites to jurisdiction are
16 satisfied. So we think anytime a court gets
17 jurisdiction and enters a judgment, it's a
18 judgment under 1605A, regardless of what cause
19 of action they happen to invoke.

20 I also think this doesn't really move
21 the dial for them much because, in practice, in
22 the mine-run application of 1605A, when
23 somebody gets jurisdiction, they're also going
24 to use the cause of action.

25 As Petitioners were -- were describing

1 it, it's very powerful, it's directly on point,
2 punitive damages, vicarious liability, and so
3 it would still be true that, in the mine-run
4 application of (g), they would be reading the
5 law to give with one hand what it takes away
6 with the other.

7 And then the last thing I'd just like
8 to mention here is about the United States'
9 competing interests in this case. I mean,
10 obviously, we have a very strong interest in
11 combatting state-sponsored terrorism. We also
12 have concerns in these cases about the
13 reciprocal -- reciprocal treatment of our own
14 property abroad. And I think, particularly in
15 light of those concerns which are quite
16 weighty, if Congress was really going to take
17 the step of allowing execution against property
18 of a cultural and historic significance to
19 another country and its people, that would be a
20 big deal and it would not be the kind of thing
21 you would expect to see buried in a conforming
22 amendment without remark.

23 JUSTICE SOTOMAYOR: Well, how about
24 the cases, the other cases he was talking
25 about, the ones with proceeds in the bank from

1 a commercial activity, et cetera?

2 His reading would take care of those
3 rulings, wouldn't they?

4 MR. TRIPP: I -- so I think one thing
5 about -- the way we read the statute too, I
6 think it does help to some extent with -- with
7 the breadth of the using commercial activity,
8 is that the way we read (g), once you -- if you
9 have a judgment against the foreign state, you
10 can pierce the veil down through to the agency
11 or instrumentality, and then you can go after
12 the agency or instrumentality's property under
13 (b) (3). And (b) (3) does not require that the
14 -- the property be used in commercial activity.
15 It's enough that the instrumentality is engaged
16 in commercial activity.

17 JUSTICE SOTOMAYOR: So you think those
18 other courts were wrong?

19 MR. TRIPP: Those other -- I believe
20 the other decisions that he was talking about
21 were interpreted in (a) (7), not (b) (3). And so
22 -- but as we understand it, the statute works
23 together with -- with all of it. It works --
24 1610, you can pierce the veil and use (a), (b),
25 the procedures in (c) would apply, (d) could

1 apply, (f) could apply if it weren't waived.
2 And so I think a natural way for Congress to
3 pick up all those -- all those procedures was
4 to say that the property is subject to
5 execution as provided in this section.

6 And so what Congress did was to tether
7 the extent of execution under this
8 veil-piercing provision to all the protections
9 that are already baked in elsewhere in 1610,
10 and those protections ensure that you can't
11 execute against the ancient Persian artifacts
12 like these.

13 So, if there's no further questions,
14 we're asking the Court to affirm.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 Mr. Perlin, you have five minutes
18 remaining.

19 REBUTTAL ARGUMENT OF ASHER PERLIN

20 ON BEHALF OF THE PETITIONERS

21 MR. PERLIN: The first point I want to
22 make is that the -- the government and the
23 university claim that our reading would render
24 this -- would render subsections (a)(7) and
25 (b)(3) superfluous. That's -- that's not the

1 case.

2 The private right of action under --
3 under Section 1605A(c) applies only where the
4 plaintiffs are U.S. nationals, members of the
5 military, or government contractors or
6 employees.

7 The immunity waiver that's also in
8 1605A, but subsection (a), so 1605A(a), applies
9 where the claimant or the victim is a U.S.
10 national, a member of the military, or a
11 government employee or contractor.

12 It's a -- it applies to a broad -- it
13 -- the immunity waiver reaches a broader class
14 of plaintiffs. The remedy provided under
15 1610(g) is limited to those who hold judgments
16 under 1605A, and this judgment that's available
17 under 1605A is a -- is the statutory judgment.

18 The provisions of 1610(a)(7) and
19 (b)(3) apply where the judgment relates to a
20 claim for which the foreign state is not immune
21 under 1605A, which is explicitly referring to
22 the immunity exception and is explicitly
23 referring to the broader class of plaintiffs.
24 So we don't think that -- that there's -- there
25 is some overlap, but it does -- that does not

1 render (a) and (b) superfluous.

2 Second of all, (b), as Iran argues and
3 they argued below in -- in the Bennett case,
4 which is Case 16-334, I believe, there, there
5 was a case where VISA had collected money for
6 Bank Melli, a bank -- an Iranian bank, and was
7 holding it because -- because of the sanctions.
8 It could not return that -- it could not pay
9 that money out. Terrorism victims came and
10 said we want to -- we want to enforce a
11 judgment against that money that VISA collected
12 on behalf of Bank Melli. And VISA filed an
13 interpleader action.

14 Iran defended, and they said you can't
15 -- you cannot enforce your judgment under
16 1610(b)(3) because that applies only where the
17 judgment is entered against the instrument --
18 the agency or instrumentality, and Bank
19 Melli -- there's no judgment here. That's what
20 Iran -- that's what Iran's argument was. The
21 -- and Iran continues to maintain that -- that
22 it won't apply to (b)(3).

23 And I think that that's -- I mean,
24 that's -- you would have to say that -- you
25 would have to read out of (b)(3) the limitation

1 that you need a judgment against the agency or
2 instrumentality for it to apply to (b) (3).
3 Again, there's -- there's no way to read this
4 through according to their construction, to
5 read it through and apply it.

6 Now, again, just to make clear the
7 point about the "as provided" -- "upon a
8 judgment as provided in this section," if you
9 look at the other substantive provisions of
10 1610, they allow -- let's start with -- let's
11 look at 1610(a). The opening paragraph says
12 that the property of a foreign state used for
13 commercial activity in the United States shall
14 not be immune from attachment or from
15 execution, upon a judgment entered by a court
16 of the United States. Right?

17 There's "execution, upon a judgment"
18 and then words that modify the judgment. Same
19 thing in subsection (b). It's the exact same
20 structure.

21 Subsection (f), it's not the exact
22 same words, but it's the same structure again
23 that -- that the property is subject to
24 execution of any judgment relating to a claim
25 for which the state is not immune. Again, the

1 words following "judgment" are modifying the
2 word "judgment," which makes sense under the
3 last antecedent rule, and it also makes sense
4 here because we're -- we're talking about a
5 particular judgment. Section 1610(g) applies
6 to -- to a particular judgment.

7 The -- the word "execution" is
8 separated from that phrase by a comma. The
9 words "upon that judgment as provided in this
10 section" do not contain a comma. Those words
11 are meant to be read together, and the "as
12 provided in this section" is modifying the word
13 "judgment."

14 The U.S. concerns about foreign --
15 about foreign -- foreign relations are
16 misplaced. The explicit purpose -- one of the
17 explicit purposes of the Foreign Sovereign
18 Immunities Act was to remove foreign sovereign
19 immunity decisions from the executive branch
20 and -- and place them with the courts.

21 And that was for two reasons. One,
22 that -- that plaintiffs, American plaintiffs,
23 were being treated unequally based on whatever
24 policy consideration was relevant at the time.
25 And, two, the government was subject to foreign

1 pressure. So to -- to remove this pressure
2 from the government, Congress placed this
3 authority in the hands of the courts rather
4 than the government.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 MR. PERLIN: Thank you, Your Honor.

8 CHIEF JUSTICE ROBERTS: The case is
9 submitted.

10 (Whereupon, at 11:56 a.m., the case in
11 the above-entitled matter was submitted.)

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Official - Subject to Final Review

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