22-624

In the United States Court of Appeals
for the Second Circuit

LUCILLE LEVIN, SUZELLE M. SMITH, as Trustee of the Jeremy Isadore Levin 2012 Revocable Trust,

Plaintiffs-Appellants,

v.

(See Inside Cover for Continuation of Caption)

On Appeal from the United States District Court for the Southern District of New York, No. 09-CV-5900

Brief of Amici Curiae Bank Policy Institute, American Bankers Association, and Institute of International Bankers

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JEREMY LEVIN,

Plaintiff,

THE BANK OF NEW YORK MELLON,

Third-Party-Plaintiff-Counter-Defendant,

v.

BANK OF NEW YORK, SOCIETE GENERALE CORPORATE & INVESTMENT BANKING, BNP PARIBAS, COMMERZBANK AG, JOHN BECKER, THE ESTATE OF ANTHONY BROWN, JOHN R. CUDDLEBACK, KATHY HODGES, RICHARD H. MENKINS, (BROTHER) RICHARD SCHNORF, (FATHER) ROBERT SCHNORF, JP MORGAN CHASE, JPMORGAN CHASE BANK, N.A., JPMORGAN CHASE & CO., AHME BUYUK, JPMORGAN CHASE BANK, N.A./LONDON,

Defendants-Third-Party-Plaintiffs-Counter-Defendants-Appellees,

CITIBANK,

Defendant-Third-Party-Plaintiff-Counter-Defendant-Third-Party-Defendant-Cross-Defendant-Appellee,

JENNY RUBIN, DEBORAH RUBIN, NORMAN RUBIN, ABRAHAM MENDELSON, STUART E. HERSH, RENAY FRYM,

Third-Party-Defendants-Cross-Defendants-Consolidated-Third-Party-Defendants,

REDACTED THIRD-PARTY DEFENDANT, TERRANCE VALORE, CATHRINE BONK HUNT, JOHN BONK, SR., KEVIN BONK, THOMAS BONK, LISA DIGIOVANNI, MARION DI GIOVANNI, ROBERT DIGIOVANNI, DANIELLE DIGIOVANNI, SHERRY LYNN FIEDLER, ROBERT FLUEGEL, THOMAS A. FLUEGEL, MARILOU FLUEGEL, EVANS HAIRSTON, FELICIA HAIRSTON, JULIA BELL HAIRSTON,

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CAMPBELL, ELIZABETH ADAMS, CHRISTOPHER R. NGUYEN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF THANH GUS NGUYEN,

Third-Party-Defendants-Counter-Claimants-Cross-Defendants-Cross-Claimants,

DEBORAH PETERSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES C. KNIPPLE, ET AL.

Third-Party-Defendant-Counter-Claimant.

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Interests of *Amici Curiae*[1]

The **American Bankers Association** is the voice of the nation's $23.7 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $19.6 trillion in deposits, and extend $11.8 trillion in loans.

The **Bank Policy Institute** is a nonpartisan public policy, research, and advocacy group, representing the nation's leading banks. Its members include universal banks, regional banks, and the major foreign banks doing business in the United States. Collectively, these banks employ nearly 2 million Americans, make nearly half of the nation's bank-originated small business loans, and are an engine for financial innovation and economic growth.

The **Institute of International Bankers** ("IIB") is the only national association devoted exclusively to representing and advancing the interests of banking organizations headquartered outside the United States that operate in the United States. The IIB's membership consists

[1] This brief is filed with consent of the parties. No party's counsel authored the brief in whole or in part, and no one other than Amici and their members contributed financially to the preparation of this brief.

of internationally headquartered financial institutions from over 35 countries around the world doing business in the United States.

Introduction

Plaintiffs ask this Court to break with conventional methods of statutory construction and, as a result, put banks in an impossible position. Plaintiffs ask this Court to adopt a tortured construction of TRIA that, if accepted by this Court, would create significant legal and monetary risks for garnishee banks, which are mere passive stakeholders in TRIA cases. At issue is whether U.S. courts can order banks to turn over sovereign assets located in a foreign jurisdiction to satisfy U.S. judgments—without any judicial process in the foreign country. If that approach were correct under U.S. law, it would potentially require banks to transfer assets that they have no legal right to seize under the laws of the nation where those assets are held. It would also create a new low in international comity. Thankfully, Congress, in enacting TRIA, did not adopt such a disruptive rule. Instead, it provided judgment creditors of foreign sovereigns that support acts of terrorism with the right to execute on the sovereign's or its instrumentalities' blocked assets in the United States to satisfy such judgments. But Congress did not provide for extraterritorial application. As a result, judgment creditors are not barred from pursuing or recovering a sovereign's blocked assets overseas,

but they must first ask a foreign court to recognize their U.S. judgment before demanding that banks transfer assets held overseas. 31 C.F.R. § 594.201. That outcome respects the laws of other countries and avoids putting financial institutions in an impossible position.

Argument

Congress Has Not Waived Execution Immunity for Assets of a Foreign Sovereign Located Outside the United States

Historically, property of a foreign sovereign, wherever located, was "absolutely immune from attachment," even where a party had obtained a valid judgment against the foreign sovereign in a U.S. court. *See Stephens v. National Distillers and Chemical*, 69 F.3d 1226, 1234 (2d Cir. 1995). The Foreign Sovereign Immunities Act ("FSIA"), enacted in 1976, "did not alter that rule, other than to create" a handful of discrete exceptions to immunity set forth in 28 U.S.C. §§ 1610 and 1611. *Id.*; *see also Cayuga Indian Nation v. Seneca Cnty.*, 978 F.3d 829 (2d Cir. 2020) ("Congress saw these statutory exceptions as deviations from the common law rule of" absolute immunity to execution); H.R. Rep. 94-1487, 27 (1976), *reprinted at* 1976 U.S.C.C.A.N. 6604, 6626 ("[s]ection 1609 states a general proposition that the property of a foreign state, as defined in section 1603(a), is immune from attachment and from

execution, and then exceptions to this proposition are carved out in sections 1610 and 1611."). None of these exceptions purport to waive immunity for, or authorize execution against, property located outside the territorial jurisdiction of the United States. *See, e.g.*, *Autotech v. Integral*, 499 F.3d 737 (7th Cir. 2007) ("The FSIA did not purport to authorize execution against a foreign sovereign's property, or that of its instrumentality, wherever that property is located around the world.").

Section 201(a) of the Terrorism Risk Insurance Act ("TRIA"), Pub. L. No. 107-297, 116 Stat. 2322 (2002), which was enacted in 2002 and codified as part of the FSIA, did nothing to alter the long-standing principle that sovereign assets located outside the United States enjoy immunity in U.S. courts. In permitting terrorism victims to satisfy certain judgments from the "blocked assets of [the] terrorist party," without any specific mention of assets outside the United States, TRIA "subjects a class of [blocked] property *in the United States* to execution and attachment in aid of execution."[2] *Hegna v. Islamic Republic of Iran*,

[2] This Court's decision in *Peterson v. Islamic Republic of Iran*, 876 F.3d 63 (2d Cir. 2017) ("*Peterson II*"), *cert. granted, judgment vacated sub nom. Clearstream Banking S.A. v. Peterson*, 140 S. Ct. 813 (2020), the only case holding to the contrary, is no longer controlling law, as the District Court correctly recognized. SPA 6 (citing *Peterson v. Islamic Republic of Iran*,

380 F.3d 1000, 1002 (7th Cir. 2004) (emphasis added); *see also Stansell v. Revolutionary Armed Forces of Colom.*, 45 F.4th 1340, 1354 (11th Cir. 2022) (noting that "execution or attachment under the TRIA must occur in the United States").

That conclusion follows from the "longstanding principle of American law that . . . unless a contrary intent appears," congressional enactments are "meant to apply only within the territorial jurisdiction of the United States." *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010) (internal quotation marks and citation omitted). The presumption "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991). When a statute "gives no clear indication of an extraterritorial application, *it has none*." *Id.* (emphasis added); *see also Small v. United*

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963 F.3d 192, 196 (2d Cir. 2020)). Moreover, in connection with a petition for certiorari, the United States government explained that the *Peterson II* decision was "flawed" by giving short shrift to the long history of execution immunity accorded to overseas sovereign assets under the common law, which the FSIA did not purport to disturb. Brief of the Solicitor General for the United States as Amicus Curiae on Petitions for Writs of Certiorari, *Clearstream Banking S.A. v. Peterson*, 140 S. Ct. 813 (2020).

States, 544 U.S. 385, 388-89 (2005) (noting "the legal presumption that Congress ordinarily intends its statutes to have domestic, not extraterritorial, application").

This presumption against extraterritoriality applies with particular force to statutes, like TRIA, that waive execution immunity under certain circumstances, given the "special sensitivities implicated by executing against foreign state property," coupled with the historical immunity that sovereign assets long enjoyed. *See Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1127-28 (9th Cir. 2010). As explained further in Section II below, a construction of TRIA that would allow U.S. courts to order a bank to turn over foreign state funds held in a third country—where that property is subject to an entirely different set of laws and even, potentially, to competing legal claims—would do serious violence to principles of comity between nations. *Cf. Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013) (finding policy concerns to be "magnified" where extraterritorial application would thrust courts into fraught foreign policy arena); *Hofpmann-La Roche Ltd. v. Empagran S. A.*, 542 U.S. 155, 164 (2004) (observing "rule of statutory construction . .

. to assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws").

Against this backdrop, courts are appropriately reluctant "to read into the [FSIA] a blanket abrogation of attachment and execution immunity . . . absent a clear[] indication of Congress' intent." *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816 (2018) (declining to construe § 1610(g) to waive execution immunity, in light of "historical practice" and in the absence of express language). It is no answer to say that Congress was unconcerned about the effects of extraterritoriality by virtue of TRIA's focus on the assets of terrorist parties. As this case illustrates, a target's assets may be located in friendly foreign countries whose laws may not recognize a U.S. court's exercise of jurisdiction over assets within its borders, particularly a foreign sovereign's assets whose turnover to enforce a U.S. judgment would have diplomatic consequences for that third country.

Here, TRIA does not contain the sort of "clear indication" of extraterritorial application, *Morrison*, 561 U.S. at 255, that one would expect to see if Congress had intended to take the extraordinary step—for the first time in U.S. history—of subjecting sovereign assets located

outside the United States to the jurisdiction of, and execution by, U.S. courts. Contrary to Plaintiffs' contention, TRIA's reference to "blocked assets"—which the statute defines as "any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act [TWEA] (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act [IEEPA] (50 U.S.C. 1701; 1702)," *see* 28 U.S.C. § 1610 note—does not constitute the requisite "clear indication" of extraterritorial reach. *Cf. Kiobel*, 569 U.S. at 118 (2013) ("[I]t is well established that generic terms like 'any' or 'every' do not rebut the presumption against extraterritoriality.").

Nor does the mere fact that blocked assets *may* be located overseas, without more, overcome the presumption against extraterritoriality. *See Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 118 (2013) (statute's reference to "violations of the law of nations . . . does not imply extraterritorial reach" where "such violations . . . can occur either within or outside the United States."). Plaintiffs point to OFAC regulations implementing the Weapons of Mass Destruction ("WMD") Proliferators Sanctions, which require any U.S. entity, "including its foreign branches," to block property subject to those regulations. Reply Br. at 15

(quoting 31 C.F.R. §§ 544.311). But neither TWEA nor IEEPA contains a similar definition. Indeed, TRIA's legislative history indicates congressional concern with exposing banks to precisely the sort of irreconcilable obligations that would result from Plaintiffs' reading of the statute. In 2001, Congress rejected an amendment to TRIA that would have removed foreign sovereign immunity for judgments under the statute. H8572-04, 147 Cong. Rec. H8572-04 (2001) at H8626. Instead, Congress adopted legislation—TRIA—that left foreign sovereign immunity intact. The definition of "blocked asset" in that legislation reflects Sen. Harkin's statement on the floor of the Senate that "[a]s the conference committee stated, this title establishes, once and for all, that such judgments are to be enforced against any assets available in the U.S." 148 Cong. Rec. at S11528 (2002).

The unprecedented strain on comity that Plaintiffs' reading of TRIA would create, as discussed below, further counsels against implying extraterritorial reach on the basis of OFAC's complex regulations, which TRIA nowhere mentions and which do not involve execution immunity. After all, it is one thing for OFAC's WMD regulations to require a U.S. entity to temporarily freeze-in-place assets within its custody overseas.

It is another thing for a court to enter an order purporting to effect a permanent change in ownership over those assets, something that would involve a materially different and additional exercise of extraterritorial judicial authority for which TRIA provides no support. Had Congress intended this extraordinary departure from prevailing norms, it presumably would have spoken in terms of "blocked property, *including outside the territory of the United States*," or even "blocked property, wherever located." Tellingly, this explicit geographic language appears elsewhere in the FSIA, for example, in Section 1605(a)(2), which waives a foreign state's immunity for "act[s] *outside the territory of the United States* in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States." 28 U.S.C. § 1605(a)(2) (emphasis added). Congress conspicuously omitted such language in TRIA, and its choice should be respected. *See Prime Int'l Trading, Ltd. v. BP P.L.C.*, 937 F.3d 94 (2d Cir. 2019) (finding it significant that other provisions in Commodities Exchange Act "contain what the [provisions in question] lack: a clear statement of extraterritorial effect") (internal punctuation altered).

TRIA's introductory phrase, "notwithstanding any other law" (the "Notwithstanding Clause"), also fails to overcome the presumption against extraterritoriality. The Notwithstanding Clause preempts *conflicting* laws that would otherwise confer immunity from execution, such as 28 U.S.C. § 1609. *See Rubin*, 138 S. Ct. at 824. It does not enlarge the substantive scope of TRIA. *See Smith v. Federal Reserve Bank of New York*, 280 F. Supp. 2d 314 (S.D.N.Y. 2003) (concluding that the Notwithstanding Clause "does not mean . . . that the TRIA covers the entire field"). Because no conflict exists between any provision of TRIA and the presumption against extraterritoriality, the Notwithstanding Clause does not, without more, give TRIA extraterritorial effect.

The Notwithstanding Clause also does not purport to override ordinary judicial presumptions and principles of statutory interpretation. Indeed, Congress has demonstrated—in the precise context of TRIA—that when it wants to override a judicially created presumption, it knows how to do so. Thus, before TRIA's enactment, the FSIA was silent as to the circumstances in which property of an agency or instrumentality of a foreign state could be attached and turned over in satisfaction of a judgment against the state itself. Faced with this silence, the Supreme

Court adopted a rebuttable presumption that agencies and instrumentalities of a foreign state were to be considered separate juridical entities from the state itself. *See First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 627-28 (1983) ("*Bancec*").

In enacting TRIA, Congress included a parenthetical phrase explicitly abrogating the presumption in *Bancec*, authorizing the execution on the "blocked assets of that terrorist party *(including the blocked assets of any agency or instrumentality of that terrorist party)*." 28 U.S.C. § 1610, note (emphasis added); *see Weinstein v. Islamic Republic of Iran*, 609 F.3d 43 (2d Cir. 2010) (concluding that the italicized language abrogated *Bancec*). Had TRIA's Notwithstanding Clause been intended to overcome any and all judicial presumptions, as Plaintiffs contend, there would have been no need for Congress to expressly abrogate the *Bancec* presumption.[3] S*ee Corley v. United States,* 556 U.S. 303, 314, (2009) ("[a] statute should be construed so that . . . no part will

[3] Indeed, § 1610(f) contains an identical "notwithstanding" clause but lacks any reference to "agencies or instrumentalities," and courts have construed it *not* to make agencies and instrumentalities liable for the debts of their related foreign governments. *Alejandre v. Telefonica Larga Distancia*, 183 F.3d 1277, 1287-88 (11th Cir. 1999).

be inoperative or superfluous, void or insignificant.") (internal quotation marks omitted). Accordingly, the Notwithstanding Clause cannot bear the weight that Plaintiffs place on it.

Accepting Plaintiffs' Position Would Expose American Banks to Conflicting Legal Obligations that Congress Never Intended

Plaintiffs' interpretation of TRIA would have significant negative consequences for the banking industry. Overseas property is subject to regulation by the foreign state in which it is located. At least some foreign jurisdictions do not permit a bank to transfer assets belonging to an accountholder to a third party in satisfaction of a judgment in the United States. JA 404–05 (reply decl. of Sonia Tolany, QC, explaining English law applicable here). For a bank, therefore, extraterritorial application of TRIA raises the prospect of irreconcilable obligations: a U.S. court orders transfer of assets, but a foreign tribunal prohibits the same action. In this circumstance, the bank is subject to two conflicting but legally binding obligations. Without a clear indication that Congress intended to put banks in this bind, the Court should refuse to do so.

Banks in the United States faithfully freeze assets belonging to terrorists and their backers and comply with orders under TRIA to turn

over assets held in the United States. These efforts block terrorist states' access to those assets and to the U.S. financial system. Once the assets are frozen, they are worthless to the criminals who would use them, thus accomplishing the lion's share of the deterrent effect sought by financial sanctions. At issue in this case is whether TRIA also imposes a burden on U.S. banks by mandating that they take actions outside the United States that expose them to liability under local laws for transferring frozen funds to plaintiffs holding a judgment in the United States.

The threat to U.S. banks is easy to understand. Under Plaintiffs' proposed reading, TRIA authorizes a court in the United States to order a bank to transfer blocked assets held overseas to a plaintiff in satisfaction of a judgment against the accountholder. If the foreign jurisdiction does not recognize the judgment, or if the foreign court does not permit a transfer, the bank faces a choice between violating a court order in the United States or the laws of a foreign jurisdiction by essentially converting funds from its depositor overseas. Both options expose the bank to liability. If it turns over the funds, it almost certainly violates foreign banking laws (as discussed below), and the depositor would likely succeed in a cause of action for its lost money. On the other

hand, if it refuses to obey a U.S. court's order, it could be guilty of contempt and again would likely face a civil action for payment of the judgment from its own resources. The end result is the same: the bank takes a financial loss despite not doing anything wrong.

Here, the property is held in London, and the record confirms that British law would not allow JPMorgan Chase-London to raise an enforcement order in the United States as a defense to a claim by Bank Melli. Both parties' experts agreed that the situs of the debt is in England and that English law applies to JPMorgan London's handling of that property. That fact precludes enforceability of a foreign garnishment order against a sovereign or its instrumentality under English law. JA 405 (reply decl. of Sonia Tolany, QC). Equally problematic as a matter of English law is the jurisdiction of U.S. courts. As explained in considerable detail in the reply declaration of Sonia Tolany, QC, under the circumstances here, "a court of a foreign country outside the U.K. has no jurisdiction to give a judgment capable of enforcement or recognition in England." JA 404. Thus, the bank would struggle to defend a claim by Bank Melli for misappropriating its funds. JA 405; *see also* Appellees' Br. at 37.

The English rule is not unique. Apart from the United Kingdom, many jurisdictions prohibit banks from transferring funds from an account in satisfaction of foreign judgments that have not been recognized domestically. In Italy, for example, a non-European Union judgment is not enforceable unless separately recognized by an Italian court. L. 218/1995 art. 67 (Italy). Part of the recognition process asks whether the foreign court had jurisdiction to enter a judgment as a matter of Italian law. *Id.* Plaintiffs' interpretation of TRIA therefore goes beyond awarding victims' rights to blocked assets; it reads TRIA to relieve a judgment creditor of the obligation to follow foreign laws that apply to the property in question. That approach not only disrespects allies like the U.K. and Italy, but it also puts banks in the impossible position of violating domestic law by transferring assets based on a judgment that the local government has not recognized.

This risk is not hypothetical. The long-running litigation in *Peterson v. Islamic Republic of Iran*, 963 F.3d 192 (2d Cir. 2020), shows the potential for conflicting obligations. In an earlier iteration of that litigation, this Court prescribed a "two-step" process by which a foreign sovereign's property was first "recall[ed]" to the United States and then

subject to execution proceedings. *Peterson v. Islamic Republic of Iran*, 876 F.3d 63, 94–95 (2d Cir. 2017), *vacated by Clearstream Banking S.A. v. Peterson*, 140 S. Ct. 813 (2020). In *Peterson*, the property in question is approximately $1.7 billion held in Luxembourg. That country does not permit the defendant bank to transfer a depositor's funds to a third party without a judgment in Luxemburg to that effect. *See* Bank Markazi/Clearstream Banking S.A., District Court of an in Luxembourg, second chamber (Apr. 30, 2021) No. TAL-2020-02660 (Lux.) (declaring €10 million fine for any action that Clearstream takes pursuant to the Petersons' judgment) (Exhibit A); *see also* Charlie Savage, *Iran Wins Court Ruling in 9/11 Lawsuit*, N.Y. Times, Mar. 29, 2019, at A10 (summarizing trial court outcome).

Ultimately, Clearstream, one of the largest correspondent banks in the world, faces potentially irreconcilable requirements from two different nations.[4] Luxembourg threatens significant penalties for any action "to comply with any order, judgment or decision" under TRIA that

[4] Clearstream's cautionary tale arises from case-specific legislation. *Clearstream Banking S.A. v. Peterson*, 140 S. Ct. 813 (2020). Plaintiffs' theory in this case would create the same liability for all banks under TRIA itself.

would require "CLEARSTREAM BANKING SA to proceed to the transfer/repatriation of the assets held in its books in Luxembourg . . . by the Central Bank of the Republic of Iran . . . ." Ex. A at 39. Yet plaintiffs in the United States, all judgment creditors of Iran, seek precisely that action. If their view prevails, Clearstream faces a choice between liability and fines in Luxembourg or liability for the U.S. judgment. Because of the massive amount in question and the substantial penalties announced by the Luxembourgish court, the stakes for Clearstream are enormous if not existential. If TRIA were to apply extra territorially, there would be more occurrences like above and more banks would be placed in the untenable position that Clearstream occupies in the above matter.

Finally, the banking industry has an interest in preserving international comity wherever possible. If the United States compels banks to transfer sovereign assets held overseas, there is nothing to prevent similar orders by foreign courts against property of the United States, or of its citizens. But enforcing a foreign judgment in the United States requires the plaintiff to file suit in a court of competent jurisdiction and obtain a judgment from a U.S. court. *Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venez.*, 863 F.3d 96 (2d Cir. 2017) (tracing various

bases for enforcing foreign judgments). Absent such legal justification, the accountholder would have a cause of action against the bank for any funds taken without permission.

Comity, therefore, focuses on extending the same respect to legal processes in the many nations with which U.S. banks engage in correspondent banking. "Comity is 'the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation.'" *Gucci Am., Inc. v. Bank of China*, 768 F.3d 122, 139 (2d Cir. 2014) (quoting *Hilton v. Guyot*, 159 U.S. 113, 164 (1895)). As discussed above, numerous countries have procedures for recognizing foreign judgments and permitting plaintiffs to enforce them against persons and property within that country's borders. Banks, as much as their clients, rely on the current system of mutual respect to facilitate commerce across borders.

Amici, of course, share the goal of deterring terror, which takes a horrible humanitarian and economic toll. But construing TRIA as Plaintiffs request—*i.e.*, to permit them to skip the step of obtaining a judgment in whichever country holds the assets—does not materially aid the goal of discouraging and curtailing terror. Sanctioned parties are

unable to use assets that have been frozen. As a result, they cannot deplete those assets before plaintiffs have an opportunity to clear whatever hurdles to execution are necessary in the jurisdiction where the property is held. It is therefore reasonable to insist that plaintiffs take the required step of asking local courts to recognize their judgment before demanding that banks transfer property without authorization. *See* 31 C.F.R. § 594.201. Following the law does not provide succor to terror, and it avoids punishing the lawful banking sector, which is an important conduit through which the United States carries out its foreign policy and national security goals.

Conclusion

As a matter of statutory construction, logic, and international comity, this Court should affirm the decision below.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I certify that the original of the foregoing **Brief of *Amici Curiae* Bank Policy Institute, American Bankers Association, and Institute of International Bankers** was e-filed with the Clerk of the United States Court of Appeals for the Second Circuit on November 10, 2022, and that a copy was served via CM/ECF e-service and e-mail on this same date, as follows:

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1. **CERTIFICATE OF COMPLIANCE**

This Amicus Brief complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 4,036 words.

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Dated this 10th day of November, 2022.

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