

No. 26-292

In the Supreme Court of the United States

FIONA HAVLISH, *ET AL.*,

Petitioners,

v.

THE TALIBAN, *ET AL.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

**BRIEF OF IOWA AND 30 OTHER STATES
AS AMICI CURIAE IN SUPPORT OF
GRANTING THE PETITION**

BRENNA BIRD

Attorney General of Iowa

ERIC WESSAN

Solicitor General

Counsel of Record

1305 E Walnut Street

Des Moines, IA 50319

(515) 823- 9117

eric.wessan@ag.iowa.gov

Counsel for Amici Curiae

(additional counsel listed in addendum)

QUESTION PRESENTED

Under the Terrorism Risk Insurance Act, does a plaintiff's right to execute on blocked assets depend on whether the assets' owner was a terrorist party or its agency or instrumentality at the time the assets were blocked?

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INTEREST OF AMICI CURIAE¹

Amici are the States of Iowa and 30 additional States. Their citizens were among the nearly 3,000 people murdered on September 11, 2001, and among the Americans the Taliban has killed and maimed since. Some of those citizens, and the estates of others, won the judgments at issue here: roughly \$17 billion in final judgments against the Taliban, entered by federal courts, many after decades of litigation.

Despite those judgments, the Second Circuit has now told them that \$3.5 billion in Taliban-controlled funds sitting a few blocks from Ground Zero is beyond their reach. The reason? The Treasury Department froze those funds on the day Kabul fell, eight days before the Taliban finished installing its own governors at Afghanistan's central bank. Pet.App. 8a, 11a–12a, 54a–55a.

Amici have three core interests in that holding.

First, judgment enforcement is traditionally the States' domain. When a judgment creditor executes in federal court, "[t]he procedure on execution . . . must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Fed. R. Civ. P. 69(a)(1). The Terrorism Risk Insurance Act of 2002 ("TRIA") is such a statute, and it displaces state law only as far as Congress wrote it to. Every State lets a creditor reach property the debtor acquires after judgment. The panel read into TRIA an after-acquired-property exception that Congress never enacted. Amici have a sovereign

¹ Pursuant to Rule 37.2, amici provided timely notice of their intent to file this brief to all parties.

interest in federal statutes displacing their laws only so much as the text requires, and in uniformly applying a federal statute that governs execution proceedings.

Second, amici States carry the costs of terrorism perpetrated on their citizens. Each amicus State operates a crime-victim compensation program that pays medical, funeral, and counseling expenses when the wrongdoer does not. *See, e.g.*, Iowa Code §§ 915.80–.94. Congress enacted TRIA so that terrorists’ assets, rather than taxpayers and victims, would bear those costs. Iowa’s then-Senator Tom Harkin explained that TRIA would “deal comprehensively with the problem” of enforcing judgments issued to “victims of terrorism in any U.S. court.” 148 Cong. Rec. 23,122 (2002). A rule that protects terrorist assets from the Americans terrorists injured defeats that purpose.

Third, amici have an interest in courts reading statutes as written. The panel conceded that TRIA’s text offered “no guidance” for its rule and adopted the rule for its “immediate appeal.” Pet.App. 52a. That determination is legislative. And the panel did so on a question “never considered by the district court, briefed by the parties, or discussed at oral argument.” Pet.App. 58a (Sullivan, J., concurring in part and dissenting in part). Amici regularly defend their own statutes against judicial revision.

The Court should grant the petition.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted TRIA less than fourteen months after September 11, with these plaintiffs in

mind. *See* 148 Cong. Rec. 16,397 (2002). Section 201(a) states that “[n]otwithstanding any other provision of law, . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, . . . the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution.” Pet.App. 215a (quoting section 201).

Congress meant to “establish[] once and for all” that terrorism judgments “are to be enforced against *any* assets available in the U.S.” *Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 50 (2d Cir. 2010) (quotation marks omitted). And the courts applied the statute that way: an asset is executable if it is blocked and if it belongs to a terrorist party or its instrumentality when the creditor comes to collect. *See Stansell v. Revolutionary Armed Forces of Colombia*, 45 F.4th 1340, 1350 (11th Cir. 2022); *Bennett v. Islamic Republic of Iran*, 778 F. App’x 541, 543 (9th Cir. 2019); *Bennett v. Islamic Republic of Iran*, 825 F.3d 949, 963 (9th Cir. 2016).

On August 15, 2021, Taliban forces captured Kabul, and the Treasury Department froze the roughly \$7 billion that Da Afghanistan Bank (“DAB”) held at the Federal Reserve Bank of New York that same day. Pet.App. 11a. Eight days later the Taliban named a “Taliban loyalist” as DAB’s Acting Governor and installed two individuals designated as terrorists by the Office of Foreign Assets Control as its First and Second Deputy Governors. Pet.App. 11a–12a & n.10. From “its position of de facto control over both Afghanistan and DAB, the Taliban demanded immediate receipt of the approximately \$7 billion.”

Pet.App. 12a. No one disputes that the Taliban controls DAB today. Pet.App. 12a, 115a.

The panel held that none of that matters. It announced, “for the first time,” that an entity’s status as a terrorist party’s instrumentality “must be determined as of the date that the assets sought in the turnover motion were blocked.” Pet.App. 8a.

In short, because Treasury acted on August 15 and the Taliban completed its takeover of DAB on August 23, the victims lose ability to recover against those assets. The panel did not base its ruling on the text. It conceded that, in its view, the text gave “no guidance.” Pet.App. 52a. Instead, the court found the rule in the “immediate appeal” and “attractiveness” of a policy of its own devising. Pet.App. 52a–53a. Judge Sullivan dissented at the panel stage, and five judges dissented from the denial of rehearing en banc in two opinions. Pet.App. 58a, 74a–78a, 82a–94a, 95a–118a.

The petition explains why the panel’s rule conflicts with not only TRIA’s text, but also with the Ninth and Eleventh Circuits. Amici States seek to add more context as to the panel’s errors.

First, TRIA fixes the moment of assessment at execution. The statute speaks in the present tense, “in every case,” and “notwithstanding any other provision of law.” Congress knows how to write a backward-looking snapshot when it wants one, and it did so elsewhere in the same body of law. It did not do so here. The panel admitted as much. *See* Pet.App. 40a–41a.

Second, the panel’s rule contradicts the otherwise universal law of judgment enforcement that TRIA incorporates. Rule 69 borrows state execution

procedure, and every State, New York included, lets a creditor reach a debtor's after-acquired property. The panel gave Taliban-controlled assets a shield that no ordinary debtor in any State enjoys. Worse, the Second Circuit's own sovereign-immunity precedent assesses status by "current political realities." Under the panel's pairing of rules, an entity can gain immunity by becoming a sovereign instrumentality mid-suit but can never lose TRIA protection by becoming a terrorist instrumentality after blocking. Heads the terrorists win; tails the victims lose.

Third, the panel's rule restores through timing the executive waiver that Congress withdrew in 2002. Before TRIA, the President waived attachment of blocked terrorist assets "in almost all cases." Pet.App. 115a & n.7. Congress ended that. Under the panel's rule, the sooner the Executive freezes assets to keep them from terrorists, the more likely the victims lose. That judicial rule is at war with the statute's design, and it punishes the Executive's foresight. The Executive acted right here—but that swift action protects the Taliban's assets.

Fourth, the Second Circuit's rule will operate as, largely, the national rule. Blocked assets concentrate in New York. An outlier rule in the circuit that houses the Federal Reserve Bank of New York risks meaning that identical judgments now yield different results depending on which bank holds the money. That, and a split, together warrant this Court's consideration.

The Court should grant the petition.

ARGUMENT

I. TRIA FIXES THE MOMENT OF ASSESSMENT AT EXECUTION.

A. *The Statute Speaks In The Present Tense.*

Section 201(a) attaches one consequence, executability, to two conditions, (1) the asset must be “blocked,” and (2) it must be an asset “of” a terrorist party or its agency or instrumentality. Pet.App. 215a. The question is when a court asks whether those conditions are met. Four features of the text answer it.

First, start with “in every case in which a person has obtained a judgment.” Pet.App. 215a. The unit of analysis is the case in which the judgment creditor seeks to execute. It is in that case, and at that time, that the court asks whether the assets “shall be subject to execution.” Pet.App. 215a. The phrase links executability to the enforcement proceeding rather than to an executive branch decision that may have occurred years before any creditor came to court.

Second, the operative verbs are present-tense and mandatory. The assets “shall be subject to execution,” and they must be “the blocked assets of that terrorist party.” Pet.App. 215a. “Of” denotes present ownership or control. This Court read the same kind of language the same way in *Dole Food Co. v. Patrickson*, holding that because the FSIA’s instrumentality definition “is expressed in the present tense,” status must be determined at the time suit is filed rather than at the time of the underlying events. 538 U.S. 468, 478 (2003).

Congress “could have phrased its requirement in language that looked to the past,” but it “did not

choose this readily available option.” *Hewitt v. United States*, 606 U.S. 419, 431 (2025) (quoting *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 57 (1987)). Indeed, in the section TRIA cross-references, Congress fixed a backward-looking snapshot: a state sponsor of terrorism loses immunity if it was so designated “at the time the act . . . occurred.” 28 U.S.C. § 1605A(a)(2)(A)(i). “Atextual judicial supplementation is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language or provision.” *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019).

Third, “blocked asset” continues from the time of the failed execution. The statute defines the term as “any asset seized or frozen by the United States” under the Trading With the Enemy Act or the International Emergency Economic Powers Act. Pet.App. 217a. An asset frozen in August 2021 remains seized or frozen by the United States in 2026. As Judge Menashi put it, “while ‘blocking’ is a status *imposed* by the United States at a certain time, the status of being a ‘blocked asset’ continues past the blocking date.” Pet.App. 114a (quoting Pet.App. 52a). So the statute’s two conditions are both conditions of present status—and the text nowhere requires that those two present conditions coincided.

Fourth, all of this operates “[n]otwithstanding any other provision of law.” Pet.App. 215a. This Court recognized that the “Courts of Appeals” read such clauses to “supersede all other laws,” *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993), and the panel itself agreed that the clause abrogates both jurisdictional and execution immunity under the FSIA. Pet.App. 8a, 45a. A statute that sweeps aside

every competing rule of immunity does not silently enact a new one.

The statute's structure points the same direction. The one exception Congress carved from § 201(a) is keyed to enforcement proceedings, not to blocking. The President may waive execution against diplomatic property only "in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution," and only "on an asset-by-asset basis." Pet.App. 216a.

Congress thus contemplated that the operative moment for assessing an asset's availability is when a court orders execution and the creditor moves to enforce that order. It tied the President's single, narrow exemption to that moment. It said nothing about the date of blocking, which in many cases will have occurred years earlier under laws or programs having nothing to do with the judgment creditor's claim. When Congress builds a statute around enforcement proceedings, courts should not relocate its operative date to an earlier administrative event the statute never mentions.

The two courts of appeals to consider the question read the text this way. The Eleventh Circuit holds that a third party's assets "must be blocked under the TRIA when the motion for a writ of garnishment is filed, and when the writ is issued," but that "does not mean that agency/instrumentality status must be determined as of that point in time." *Stansell*, 45 F.4th at 1350 (citation modified). The Ninth Circuit asks whether the blocked assets presently "*are* property" of the instrumentality when execution is sought. *Bennett*, 778 F. App'x at 543; *Bennett*, 825 F.3d at 963. Under either approach

DAB's assets are reachable, because DAB was and is the Taliban's. Pet.App. 77a, 115a. The Second Circuit now splits from two circuits.

B. No Text Can Support the Panel's Interpretation.

The panel's opinion is candid about its atextual approach to interpreting TRIA. It "first turn[ed] to the text of the TRIA," found that "no guidance is provided there for determining the date of assessment," and moved on. Pet.App. 52a. It then reasoned that because blocking "is a status imposed by the United States at a certain time," there was "some immediate appeal to utilizing the blocking date." *Id.* The "attractiveness of this approach only deepen[ed]" when the panel considered "the purpose of the TRIA." Pet.App. 52a–53a. So, looking solely to purpose and not to text, the panel "identif[ied] one such limit." Pet.App. 54a.

That is not interpretation. "[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461–62 (2002) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992)). When a statute's text is silent on a limit, the ordinary inference is not that the court may choose one. This Court said as much about the FSIA three terms ago: "it is not our role to rewrite the FSIA based on purported policy concerns that Congress and the President have not seen fit to recognize." *Türkiye Halk Bankası A.S. v. United States*, 598 U.S. 264, 280 (2023). The same holds for the statute Congress wrote to override the FSIA. Courts "must interpret the law as Congress has written it, not as we would wish it to be." *Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.*, 550 U.S. 81, 122

(2007) (Scalia, J., dissenting); *see* Pet.App. 94a (Sullivan, J., dissenting from the denial of rehearing en banc).

Judge Sullivan characterized the panel opinion as having “pretzel logic, disregard of precedent, and indifference to text and purpose.” Pet.App. 94a. The panel reasoned that if an entity becomes a terrorist instrumentality after its property is blocked, “those blocked assets cannot have been utilized to further the mission of the terrorist party.” Pet.App. 53a. But “nothing in the text of the TRIA limits its scope to assets actively employed to fund a terrorist campaign.” Pet.App. 93a. TRIA is a judgment-enforcement statute. The question is ownership, not use. An ordinary judgment creditor may levy on a debtor’s inheritance, lottery winnings, or savings account, none of which was ever “utilized” to injure the creditor. The panel imported a tracing requirement that appears nowhere in the text and that no other court has recognized.

Nor does the panel’s semantic argument fare better. The panel suggested that blocked assets are not “of” a terrorist party unless they belonged to it “as of the date that the assets were blocked.” Pet.App. 53a. “But assets that yesterday were not ‘of’ a terrorist party might today be ‘of’ a terrorist party if the owner has become an agency or instrumentality of a terrorist party.” Pet.App. 115a. Blocking does not transfer title.

As the panel’s own footnote acknowledges, when property is blocked “title to the blocked property remains with the blocked [entity]”; only “the exercise of powers and privileges normally associated with ownership is prohibited without authorization from

OFAC.” Pet.App. 52a n.138 (quoting U.S. Department of the Treasury OFAC guidance).

Here, title to the \$3.5 billion remains with DAB. And the Taliban now own DAB. “If the assets were unblocked today, DAB—and therefore the Taliban—would control the assets.” Pet.App. 115a. TRIA “deals with actual rather than imaginary ownership.” Pet.App. 117a.

Bolstering grounds for finding an alternative to the panel’s atextual approach is that the argument “was never considered by the district court, briefed by the parties, or discussed at oral argument.” Pet.App. 58a; *cf. United States v. Sineneng-Smith*, 590 U.S. 371, 375–76 (2020). The panel announced the rule “for the first time,” Pet.App. 8a, applied it “in the first instance” on facts drawn from sources outside the record, and declined to remand so that petitioners could develop evidence of the Taliban’s control over DAB before August 15, 2021. A rule created that is independent to the statute’s text, and judicially crafted without adversarial presentation, is the kind of rule this Court corrects. Statutory limits on the rights of terrorism victims should come from Congress, after debate, not from a court of appeals in the first instance.

In sum, the panel found no textual basis for its rule because there is none. The Court should grant review to say so.

II. THE PANEL’S RULE CONTRADICTS THE LAW OF JUDGMENT ENFORCEMENT THAT TRIA INCORPORATES.

A. *Every State Lets A Judgment Creditor Reach After-Acquired Property.*

TRIA does not operate in a vacuum. It makes blocked assets “subject to execution or attachment in aid of execution.” Pet.App. 215a. And execution in federal court proceeds under state law: “[t]he procedure on execution . . . must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.” Fed. R. Civ. P. 69(a)(1).

That is why Petitioners’ motions were brought under New York law. Pet.App. 78a; *see* N.Y. C.P.L.R. 5225(b). TRIA incorporates a body of state execution law that Congress left in place. And Congress “‘legislate[s] against a background of common-law adjudicatory principles,’ and it ‘expects’ those principles to ‘apply except when a statutory purpose to the contrary is evident.’” *Minerva Surgical, Inc. v. Hologic, Inc.*, 594 U.S. 559, 572 (2021) (quoting *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 108 (1991)) (alterations omitted).

The relevant background principle is well-settled across the country—and has been for a long time. A judgment “imposes upon the defendant an obligation to pay a sum of money to the plaintiff” that “can be enforced by the seizure . . . of any personal property of the defendant, then owned or thereafter acquired, which is subject to execution.” Restatement (First) of Judgments 1, Intro. Note (1942) (emphasis added). This Court has applied that principle for

decades. See *United States ex rel. I.R.S. v. McDermott*, 507 U.S. 447, 452 (1993) (judgment lien attaches to after-acquired property at the “instant” the debtor “acquired the property”).

The States’ statutes say the same. New York, whose law governs this execution, explains that “[a] money judgment may be enforced against any property which could be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested.” N.Y. C.P.L.R. 5201(b).

So too with Iowa, which makes every judgment enforceable by execution against the judgment debtor’s property, with no carve-out for property acquired after judgment. Iowa Code §§ 626.1, 626.2. Florida subjects a debtor’s “lands and tenements, goods and chattels, equities of redemption in real and personal property, and stock in corporations” to execution. Fla. Stat. § 56.061. Ohio makes “[l]ands and tenements” and “goods and chattels” of the debtor “liable to be taken on execution.” Ohio Rev. Code § 2329.01. Texas directs that judgments “shall be enforced by execution” against the debtor’s nonexempt property. Tex. R. Civ. P. 621

Amici know of no State whose law lets a judgment debtor hold property free of execution simply because a third party restrained it before the debtor acquired it. The rule is universal because the alternative is absurd: a debtor could defeat every creditor by acquiring only assets already subject to someone else’s hold.

State law also fixes a uniform reference point for asking whether property belongs to the debtor: the

moment of levy or turnover. A sheriff executing a writ asks whether the property in hand is the debtor's today. A court ordering turnover of a bank account asks whether the account is the debtor's now. *See, e.g.*, N.Y. C.P.L.R. 5225(b); Iowa Code § 626.2.

No State asks whether the property belonged to the debtor on some earlier date chosen by a stranger to the judgment. TRIA's reference point is also administrable. It asks a present question that the parties can litigate and on which parties can create a record. The panel's rule, by contrast, sent a court of appeals to reconstruct the chain of ownership custody (or chain of command) at a foreign central bank during the eight days after a capital fell, using press reports and a Congressional Research Service memorandum, with no factual findings below and no opportunity for the parties to be heard. Pet.App. 11a–12a, 54a–55a. Congress explicitly incorporated a long-standing body of law—and did not secretly abrogate it in silence.

But that is, in effect, what the panel found. Under the panel's approach, if a terrorist organization acquires an entity whose assets the United States has already frozen, those assets are immune from the terrorist party's judgment creditors, forever. That extends *more* protections to terrorists than to other debtors. A deadbeat in Des Moines who inherits a frozen account after judgment must answer to his creditors. The Taliban, under the decision below, need not.

Nothing in TRIA suggests Congress meant to displace the after-acquired-property rule. Indeed, TRIA is a rights-expanding statute. It “supersedes” immunity. Pet.App. 8a, 45a. Its sponsors described its purpose as “deal[ing] comprehensively with the

problem of enforcement of judgments issued to victims of terrorism in any U.S. court by enabling them to satisfy such judgments from the frozen assets of terrorist parties.” 148 Cong. Rec. 23,122 (2002) (statement of Sen. Harkin). A statute enacted to remove obstacles to enforcement should not be read to erect one that state law has never recognized. *Cf. Bank Markazi v. Peterson*, 578 U.S. 212, 216–17 (2016) (describing the “practical and legal difficulties” terrorism judgment creditors have faced “at the enforcement stage” and Congress’s repeated efforts to remove them) (quotation omitted).

B. The Second Circuit’s Own Immunity Rule Looks To Present Realities, And The Panel’s Asymmetry Cannot Be Squared With It.

The panel’s rule is also irreconcilable with the Second Circuit’s treatment of the same question in the FSIA context. In *Bartlett v. Baasiri*, the court held that “immunity under the [FSIA] may attach when a defendant becomes an instrumentality of a foreign sovereign *after* a suit is filed,” because the statute’s present tense “reflects the FSIA’s concern with current political realities and relationships.” 81 F.4th 28, 33 (2d Cir. 2023) (citation modified); *see Schansman v. Sberbank of Russia PJSC*, 128 F.4th 70, 79 (2d Cir. 2025). The panel relied on *Bartlett* to discard its own time-of-filing rule for TRIA. Pet.App. 50a–51a & n.133. It then swung to the opposite extreme, freezing status at a date that precedes even the filing of the turnover motion. Pet.App. 54a.

Consider what that novel pairing produces. An entity that becomes a sovereign instrumentality mid-suit gains immunity, because immunity tracks

“current political realities.” But an entity that becomes a terrorist instrumentality after its assets are blocked never loses protection, because TRIA status is frozen at the blocking date. The same court, construing two statutes that Congress designed to work together, assesses status by present conditions when doing so shields the assets and by a historical snapshot when doing so would expose them. As noted in the introduction, the effect is straightforward: Heads the terrorists win; tails the victims lose.

The panel’s justification for the asymmetry was that “the TRIA cares nothing for immunity,” so the FSIA’s timing logic need not carry over. Pet.App. 51a. But that cuts the other way. A statute that “cares nothing for immunity” and operates “notwithstanding any other provision of law” is the last statute into which a court should read a new form of immunity.

And the Second Circuit’s own execution-immunity precedent, which the panel did not mention, looks to conditions “*at the time* the writ of attachment or execution is issued.” *Aurelius Cap. Partners, LP v. Republic of Argentina*, 584 F.3d 120, 130 (2d Cir. 2009); see Pet.App. 76a, 93a. Judge Sullivan would assess status at the turnover order; Judge Menashi agreed. Pet.App. 77a, 96a. The Ninth Circuit looks to the time writs issue. *Bennett v. Islamic Republic of Iran*, 825 F.3d 949, 963 (9th Cir. 2016), *abrogated on other grounds by Rubin v. Islamic Republic of Iran*, 583 U.S. 202 (2018)). The Eleventh Circuit asks whether the entity “is or was ever” a terrorist instrumentality. *Stansell*, 45 F.4th at 1350. Amici need not choose among those formulations, because DAB qualifies under every one. Pet.App. 77a. The only

formulation under which it does not is the one the panel invented.

III. THE PANEL’S RULE EFFECTIVELY RESTORES THE EXECUTIVE WAIVER CONGRESS WITHDREW, AND IT PUNISHES FORESIGHT.

A. Congress Ended Executive Discretion Over Blocked Terrorist Assets Except As TRIA Expressly Provides.

TRIA’s history is one of Congress narrowing the Executive’s discretion to keep blocked assets from judgment creditors. Before 2002, the President was statutorily authorized to waive attachment of blocked property in the national security interest, and “[t]he President waived [attachment] in almost all cases after finding that attachment of blocked property would ‘impede the ability of the President to conduct foreign policy.’” *Heiser v. Islamic Republic of Iran*, 735 F.3d 934, 939 (D.C. Cir. 2013) (quoting 63 Fed. Reg. 59,201 (Oct. 21, 1998)); see Pet.App. 115a–16a. Terrorism judgments were thus often uncollectible.

Congress responded with a statute that made execution mandatory and confined waiver to a single category. Section 201(a) says blocked assets “shall be subject to execution.” Pet.App. 215a. Section 201(b) permits presidential waiver only as to property “subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations,” only “on an asset-by-asset basis,” and only following a national-security determination. Pet.App. 216a.

The sponsors were explicit that the statute “establishes, once and for all, that such judgments are

to be enforced against any assets available in the U.S., and that the executive branch has no statutory authority to defeat such enforcement under standard judicial processes, except as expressly provided in this act.” 148 Cong. Rec. S11,528 (Nov. 19, 2002) (statement of Sen. Harkin); *see Weinstein*, 609 F.3d at 50. Blocked assets would go to victims “whether or not the executive agreed.” *Heiser*, 735 F.3d at 939.

Nor was TRIA a one-off in Congress’s attempt to extend American liability to foreign terror organizations. Each time enforcing terrorism judgments has stalled, Congress has intervened to make execution easier. It added the terrorism exception to the FSIA in 1996, made blocked assets attachable in 1998, enacted TRIA in 2002 after the waiver power swallowed the 1998 rule, created a federal cause of action and expanded execution rights in § 1605A in 2008, and in 2012 passed a statute directed at a single pool of Iranian assets to make them available to a single group of judgment creditors. *See Bank Markazi*, 578 U.S. at 216–21 (recounting that history); *Heiser*, 735 F.3d at 938–40.

This Court upheld the 2012 statute against a separation-of-powers challenge, explaining that Congress had acted within its authority to “direct[] courts to apply” a new rule to “pending” enforcement proceedings. *Bank Markazi*, 578 U.S. at 230–31. The through-line is unmistakable. Congress has spent three decades tearing down barriers between terrorism victims and blocked terrorist assets.

That design reflects a considered division of labor. The Executive decides when to freeze. Congress decided what happens to frozen terrorist assets once a victim holds a judgment. The two decisions were

meant to operate in harmony: freeze fast to keep money from terrorists, then let victims collect through standard judicial processes. Alas, the panel decision here impeded that considered approach.

B. Under The Panel's Rule, The Timing Of A Freeze Does The Work Of A Waiver.

The panel's rule sets Congress's imposition of liability in conflict with Presidential determinations relating to freezing assets. Under it, the date the Executive chooses to block an asset determines whether victims may ever reach it. Block on day one, before the terrorist takeover is complete, and the assets are immune forever. Block on day nine, after the takeover, and the assets are available. "Pursuant to the panel opinion, if the government had blocked the assets *after* the Taliban took over DAB, the funds would be available to victims of the Taliban. But if the government blocked the assets *because* the Taliban was *about* to take over DAB, the victims cannot recover." Pet.App. 117a.

To be clear, the Executive did nothing wrong. Treasury froze DAB's funds the day Kabul fell "precisely to *avoid* the use of the assets for terrorist purposes." Pet.App. 117a. That was the right call, and it is the call Congress wanted made quickly.

The fault lies with this unexpected judicial rule that converts the Executive's foresight into the Taliban's shield. By "limiting the reach of the TRIA to assets that belonged to terrorists before the Executive Branch blocked the assets," the panel "effectively returned to the Executive Branch the sort of discretionary power over the assets that the TRIA aimed to eliminate." Pet.App. 116a. It did so without

any statement from the Executive asking for that power, and without any textual hook. “Congress does not ordinarily enact self-defeating statutes.” *Exxon Mobil Corp. v. Corporación Cimex, S.A.*, 146 S. Ct. 1909, 1919 (2026). A reading under which prompt blocking defeats TRIA-authorized victim recovery is self-defeating on its face.

The rule also creates incentives no one should want. If the timing of a freeze determines victims’ rights, then Treasury officials deciding when to act must weigh collection prospects for private judgment creditors against the national-security case for acting sooner. Congress removed that tension by making execution mandatory once assets are blocked, but the panel’s rule here reintroduced it. Nothing in § 201 suggests Congress meant the Executive’s speed to count against the victims.

And the problem is not confined to Afghanistan. The panel’s rule applies whenever blocked assets are later “illicitly transferred to a terrorist party or its agency or instrumentality, or a person or entity whose assets are already blocked later becomes an agency or instrumentality of a terrorist party by other means.” Pet. 29.

Sanctioned entities change hands. Iran’s Revolutionary Guard, Hezbollah, and other designated groups capture banks, companies, and accounts that the United States froze years earlier. Under the panel’s rule, every such acquisition comes with a built-in exemption from TRIA. That is a loophole for the world’s most sophisticated terrorist financiers, and Congress did not write it.

IV. THE SECOND CIRCUIT'S RULE OPERATES AS A NATIONAL RULE, SO THE SPLIT DEMANDS RESOLUTION NOW.

The petition documents the conflict with the Ninth and Eleventh Circuits. Amici add a practical point that makes the conflict more urgent than most: the Second Circuit's rule will govern the bulk of the assets to which TRIA applies.

Blocked assets concentrate in New York. The Federal Reserve Bank of New York holds the dollar reserves of foreign central banks, including the \$7 billion that DAB held there. Pet.App. 11a. The dollar-clearing banks through which sanctioned parties' transactions are intercepted sit in Manhattan.

And TRIA execution is asset-driven: a creditor must go where the money is. Fed. R. Civ. P. 69(a)(1); N.Y. C.P.L.R. 5225(b). So a rule adopted by the Second Circuit is, in practice, the rule for most blocked terrorist assets in the country, regardless of the Ninth and Eleventh Circuits' different interpretations.

The result is that identical judgments now yield different outcomes depending on which bank holds the debtor's money. A victim of the Taliban with a judgment from a federal court in Florida may execute on Taliban-controlled assets held in Miami. *Stansell*, 45 F.4th at 1350. The same victim, with the same judgment, may not execute on the same debtor's assets held at the Federal Reserve Bank of New York. Pet.App. 55a. Congress enacted TRIA to "deal comprehensively" with enforcement "in any U.S. court" and against "any assets available in the U.S." 148 Cong. Rec. 23,122; *Weinstein*, 609 F.3d at 50. A

statute meant to produce one national rule now produces two, and the outlier governs the largest pool.

The States cannot fix this. State execution law applies only where “a federal statute” does not “govern[],” Fed. R. Civ. P. 69(a)(1), and the blocking regime and TRIA are exclusively federal. A State may not unfreeze an asset, and it may not supply a rule of TRIA timing. Only this Court can restore the uniform rule Congress wrote.

This case is the right vehicle. The timing question was outcome-determinative: the panel agreed that TRIA abrogates DAB’s immunity and confers jurisdiction, Pet.App. 8a, 45a, and rested its judgment solely on the blocking-date rule. The facts that matter are undisputed. The panel itself found that “[t]here is little question that the Taliban has attained de facto control over DAB,” Pet.App. 12a, and the magistrate judge found that “the Taliban is using their control of DAB to advance their aims,” Pet.App. 203a. Had the case been brought in Miami or Los Angeles, the judgment would be executable. The question is one of pure statutory construction, fully aired in three dissenting opinions below, and it arrives with no antecedent obstacles. The FSIA holdings the petition does not challenge are severable from the question presented and play no role in it.

The stakes counsel against waiting. \$3.5 billion in DAB assets remain at the Federal Reserve Bank of New York. Pet.App. 15a. Another \$3.5 billion has already been transferred to a fund in Switzerland that, as of January 2025, had “not yet made any disbursements.” Pet.App. 14a & n.21. Thousands of judgment creditors, holding some \$17 billion in final judgments, have waited in some cases more than two

decades. Five judges of the Second Circuit dissented from the denial of rehearing en banc. Pet.App. 81a. And this Court has described the political branches' interest in providing "a forum for American victims to hold the perpetrators of such acts accountable" as "an urgent objective of the highest order." *Fuld v. Palestine Liberation Org.*, 145 S. Ct. 2090, 2107, 2109 (2025).

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

BRENNA BIRD

Attorney General

State of Iowa

ERIC WESSAN*

Solicitor General

(515) 823- 9177

eric.wessan@ag.iowa.gov

October 5, 2026

**Counsel of Record*

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Additional Counsel	1a

ADDITIONAL ATTORNEYS GENERAL

Steve Marshall
Attorney General of
Alabama

Russell M. Coleman
Attorney General of
Kentucky

Cori Mills
Acting Attorney
General of Alaska

Liz Murrill
Attorney General of
Louisiana

Kristin K. Mayes
Attorney General of
Arizona

Anthony G. Brown
Attorney General of
Maryland

Tim Griffin
Attorney General of
Arkansas

Lynn Fitch
Attorney General of
Mississippi

James Uthmeier
Attorney General of
Florida

Catherine Hanaway
Attorney General of
Missouri

Chris Carr
Attorney General of
Georgia

Austin Knudsen
Attorney General of
Montana

Raúl R. Labrador
Attorney General of
Idaho

Michael T. Hilgers
Attorney General of
Nebraska

Theodore E. Rokita
Attorney General of
Indiana

John Formella
Attorney General of
New Hampshire

Kris Kobach
Attorney General of
Kansas

Raúl Torrez
Attorney General of
New Mexico

2a

Jeff Jackson
Attorney General of
North Carolina

Drew Wrigley
Attorney General of
North Dakota

Andy Wilson
Attorney General of
Ohio

Gentner Drummond
Attorney General of
Oklahoma

Dave Sunday
Attorney General of
Pennsylvania

Alan Wilson
Attorney General of
South Carolina

Marty Jackley
Attorney General of
South Dakota

Jonathan Skrmetti
Attorney General of
Tennessee

Ken Paxton
Attorney General of
Texas

Derek E. Brown
Attorney General of
Utah

John B. McCuskey
Attorney General of
West Virginia

Keith G. Kautz
Attorney General of
Wyoming