Nos. 24-20, 24-151

In the Supreme Court of the United States

MIRIAM FULD, ET AL., ***Petitioners,***
v.
PALESTINE LIBERATION ORGANIZATION, ET AL.,

UNITED STATES OF AMERICA, ***Petitioner,***
v.
PALESTINE LIBERATION ORGANIZATION, ET AL.,

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

BRIEF AMICUS CURIAE OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS[1]

Amicus Curiae, the American Center for Law and Justice ("ACLJ"), is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have appeared often before this Court as counsel for parties, *e.g.*, *Trump v. Anderson*, 601 U.S. 100 (2024); *Heritage Foundation v. Parker*, No. 21A249 (U.S. filed Dec. 18, 2021); and *Pleasant Grove v. Summum*, 555 U.S. 460 (2009); or for amici, *e.g.*, *Republican National Committee v. Genser*, No. 24A408 (U.S. filed Oct. 28, 2024); *Beals v. Virginia Coalition for Immigrant Rights,* No. 24A407 (U.S. filed Oct. 28, 2024); *Fischer v. United States*, 144 S. Ct. 2176 (2024); addressing various constitutional and statutory issues, including those related to federal jurisdiction. The ACLJ submits this brief in support of all those who have lost family members to or have been injured by the terrorism spurred on by Respondents' payment program.

SUMMARY OF ARGUMENT

Congress has provided a route to hold terrorists accountable. It possesses robust authority to legislate in order to protect American international interests

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[1] Pursuant to Supreme Court Rule 37.6, amicus curiae states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

and American citizens. Its decision to deem the ongoing conduct of the Palestine Liberation Organization (PLO) and Palestinian Authority (PA) that threatens American citizens to be consent to jurisdiction is an appropriate exercise of its constitutional authority.

Congress can appropriately consider certain activities by the PLO and PA—specifically, making payments to terrorists who kill Americans and maintaining offices in the United States—as consent to personal jurisdiction in United States courts. Such implied consent statutes are common and regularly upheld by this Court. The Second Circuit held that such deemed consent violated due process absent a "reciprocal benefit" to the defendants. This novel requirement has no basis in this Court's precedent and wrongly hamstrings Congress's ability to hold supporters of terrorism accountable. For personal jurisdiction to violate due process, the lawsuit must "offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Holding the PLO and PA accountable for their funding of terrorism, merely by allowing them to be notified and have an opportunity to defend themselves in American courts, does not pose any risk to fair play.

First, the PLO and PA's payments to terrorists who kill Americans can properly be deemed consent to American jurisdiction. The organizations admittedly continue making these payments despite clear

congressional notice that doing so would subject them to American courts. They make payments in support of terrorism, and have continued to acknowledge that they do so, even in their briefing to this Court. *See* Br. in Opp. 15. Under this Court's recent decision in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), and related precedent, such knowing engagement in conduct that the legislature deems consent is amply sufficient for personal jurisdiction consistent with due process. This Court's precedent does not contain the reciprocal-benefit limitation on Congress's authority that the Second Circuit created out of whole cloth, but instead recognizes the broad authority of the legislature to treat a variety of actions as constituting implied consent. If the PLO and PA chose to continue making these odious payments, thus encouraging more terrorist attacks and putting more Americans at risk, then they can be sued in United States courts. No due process concern with "fair play" is threatened by such a conclusion.

Second, regardless of their actual payments, maintaining offices and conducting activities within the United States independently establishes a basis for personal jurisdiction. This activity is closely parallel to the exact kind of conduct forming the basis for jurisdiction in *Mallory*. The Second Circuit's suggestion that the illegality of some of these activities somehow shields the organizations from jurisdiction turns due process principles on their head. The PLO and PA's physical presence and intentional conduct in the United States amply

satisfies traditional requirements for jurisdiction. They knowingly and voluntarily opted for the benefits of residing and acting in the United States with knowledge of the consequences that would occur. This precisely parallels the choice in *Mallory* to use a registered agent, knowing it could result in jurisdiction. This intentional and ongoing activity demonstrates the reasonableness of a conclusion of implied consent.

Congress carefully crafted this personal jurisdiction regime as part of its comprehensive scheme to combat terrorism and protect Americans. Given Congress's unique authority over foreign affairs and national security, its judgment that these activities warrant jurisdiction deserves substantial deference. Congress has appropriately determined that if the PLO and PA make a direct or indirect payment to an individual who committed an act of terrorism that killed or injured an American national, or to the family of such individual, they have threatened United States security in a way that implies consent to personal jurisdiction for those acts in the United States. The actions constituting the basis for jurisdiction here are directly connected with the United States, and are predicated on activity in the United States. The Second Circuit's ruling frustrates Congress's considered policy choices and should be reversed. This case presents a straightforward application of this Court's personal jurisdiction precedents in the context of Congress's

vital interest in providing Americans harmed by terrorism access to justice in American courts.

ARGUMENT

I. THE PLO AND PA HAVE CONSENTED TO AMERICAN JURISDICTION BY THEIR ONGOING ACTIVITIES THAT THREATEN U.S. SECURITY.

Congress has provided that, if they continue to engage in actions that directly affect Americans, namely, by carrying out activities in this country or by making payments to incentivize acts of terrorism that harm American nationals, the PLO and PA have thereby consented to personal jurisdiction in United States courts. Congress has the authority to legislate to protect American international interests and American citizens abroad. In fact, when Congress legislates on foreign affairs issues that "implicate[] sensitive and weighty interests of national security," as in these cases, its judgments are "entitled to deference." *Holder v. Humanitarian L. Project*, 561 U.S. 1, 33 (2010). The PLO and PA have attempted to avoid this lawsuit, not on the merits, but by challenging this legal framework on due process grounds. Due process allows for personal jurisdiction if "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).[2] Accordingly, the question in this case is

[2] This amicus brief assumes *arguendo* that the traditional due process analysis is applicable, contending that it is easily

whether an entity can operate in the United States and pay people to kill American citizens, after Congress has passed a law specifically providing that such actions expose the actors to liability in United States courts, and the courts still be powerless to hold that entity accountable on grounds of "fair play." The answer is no.

The historical context of this case is crucial. Congress has set up a robust and complex framework to protect Americans from the threat of international acts of terror. The law provides a remedy against "any person who aids and abets" a terrorist attack "by knowingly providing substantial assistance" to the perpetrator, 18 U.S.C. § 2333(d)(2). In two past cases, the Second Circuit has concluded that there was no available path to personal jurisdiction for victims of the PLO and PA who sue under these antiterrorism provisions. *Waldman v. PLO* (*Waldman II*), 835 F.3d 317, 322 (2d Cir. 2016); *Waldman v. PLO* (*Waldman II*), 925 F.3d 570 (2d Cir. 2019). In order to specifically address and counteract the problem these decisions created, Congress enacted, and the President signed, the Promoting Security and Justice for Victims of Terrorism Act of 2019 ("PSJVTA"), Pub. L. No. 116-94, div. J, tit. IX, § 903, codified at 18 U.S.C. § 2334(e). The PSJVTA left no ambiguity or doubt that Congress intended to subject the PLO and the PA to the jurisdiction of the federal courts based on their voluntary contacts within the United States.

But Congress did not strip the PLO and PA of the chance to be heard or retroactively deem their conduct sufficient for personal jurisdiction. Instead, it created

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satisfied here. Amicus does not address Petitioners' argument that that standard is inapplicable to federal legislation.

a specific avenue whereby the PLO and PA's conduct would be considered, prospectively, to constitute consent to jurisdiction. Congress's revised statute expressly defined "defendant" to include the PLO, the PA, or any successor or affiliate of these entities. 18 U.S.C. § 2334(e)(5). It also provided new factual predicates that are considered consent to personal jurisdiction.

Section 2334(e) provides prospectively that, "for purposes of any civil action" under the anti-terrorism provisions, the PLO and PA "shall be deemed to have consented to personal jurisdiction" if they do either of two things. First, they have consented to personal jurisdiction if, more than 120 days after the law's enactment, they make

> any payment, directly or indirectly—
>
> > (i) to any payee designated by any individual who, after being fairly tried or pleading guilty, has been imprisoned for committing any act of terrorism that injured or killed a national of the United States, if such payment is made by reason of such imprisonment; or
> >
> > (ii) to any family member of any individual, following such individual's death while committing an act of terrorism that injured or killed a national of the United States, if such payment is made by reason of the death of such individual.

18 U.S.C. § 2334(e)(1)(A).

Second, they have consented to jurisdiction if they

maintain an office or conduct any activity while physically present within the United States, other than activity necessary to enumerated purposes inapplicable here, such as to participate in the United Nations. 18 U.S.C. § 2334(e)(1)(B).

The actions that are the basis for jurisdiction here are directly connected with the United States. The payments that are deemed to constitute consent to jurisdiction must involve "act[s] of terrorism that injured or killed a national of the United States," and the activities giving rise to personal jurisdiction must take place in the United States. 18 U.S.C. 2334(e)(1)(A) and (B). There is nothing unfair or unreasonable about deeming Respondents' actions consent to jurisdiction in the United States. On the contrary, this Court's precedent well establishes the sufficiency of their implied consent.

A. Making Payments for the Deaths of Americans Can be Deemed by Congress to Constitute Consent to Jurisdiction.

If the PLO and PA make a direct or indirect payment to an individual who committed an act of terrorism that killed or injured a U.S. national, or to their family, they have consented to personal jurisdiction for those acts in the United States. The PLO and PA have not even attempted to contradict the crucial fact supporting jurisdiction over them, their ongoing funding of terrorist activity towards the United States. In particular, they "do not dispute that they 'made payments'" to compensate terrorists "sufficient to satisfy the PSJVTA's first statutory

prong for 'deemed consent.'" *Fuld v. PLO*, 82 F.4th 74, 86 n.5 (2d Cir. 2023) (quoting *Fuld v. PLO*, 578 F. Supp. 3d 577, 583 (S.D.N.Y. 2022)). The trial court further highlighted that "Defendants all but concede that they did in fact make such payments." *Fuld*, 578 F. Supp. 3d at 583 n.3. But it goes even beyond this. The trial court highlighted that the PLO and PA told that court in their briefing that they had made a "decision to continue engaging in . . . conduct" described by the PSJVTA's factual prongs, *id.*, namely, to continue to make payments to those who engage in terrorist activities against Americans. *See* Taylor Force Act, Pub. L. No. 115-141, Div. S, Tit. X, § 1002(1), 132 Stat. 1143 (2018) (22 U.S.C. 2378c-1 note) (finding that the PA's "practice of paying salaries to terrorists serving [time] in Israeli prisons, as well as to the families of deceased terrorists, is an incentive to commit acts of terror").

They have not attempted to conceal that concession now. Perhaps most strikingly, even in their very briefs to this Court, the PLO and PA do not dispute that they have continued to make these payments for acts of terrorism. Instead, they purport to justify them under so-called "Palestinian law." *See* Br. in Opp. 15 ("The payments at issue occur entirely outside the United States under a uniform Palestinian law, and do not require authorization from the U.S. government or the involvement of any U.S. entity. The payments reflect Respondents' own domestic laws and policies, rather than some implicit agreement to knowingly and voluntarily submit to jurisdiction in the United States."). The PLO and the PA have expressly admitted that they made payments to terrorists who kill or injure Americans in the past

and that they intend to do so in the future. They purport to justify those payments under their "laws" as a state that the United States does not recognize, but regardless, the terroristic murder of Americans remains a crime under American law.

By enacting this law, Congress warned entities like the PLO and PA that they would face potential liability in American court as the consequences for their terrorist activity. Yet, "[t]he PLO and the PA continued past the 120-day notice period to make payments to both the designees and family members of terrorists who committed acts of terrorism that killed or injured American nationals." *Fuld v. PLO*, 101 F.4th 190, 207 (2d Cir. 2024) (Menashi, J., dissenting, joined by Livingston, C.J. & Park, J.). There is simply no risk of unfairness by the imposition of accountability here, no surprise to the PLO and PA from imposing the liability they knew to expect. They made these payments in full knowledge of relevant law: "[t]he PLO and the PA knew that supporting terrorists who killed or injured Americans and maintaining an office and conducting activities in the United States would subject them to the jurisdiction of the federal courts; the organizations knowingly and voluntarily engaged in that conduct anyway." *Id.* at 204 (Menashi, J., dissenting, joined by Livingston, C.J. & Park, J.).

The Second Circuit manufactured and required a "reciprocal benefit" before the PLO and PA would be subject to American jurisdiction. This requirement for a "benefit" is incongruous and unnecessary when seeking to hold admitted funders of terrorism of accountable. There is no normative justification for hamstringing Congress's ability to hold terrorists

accountable unless there is some "benefit" to the terrorists. And there is no justification in this Court's precedent either. Instead, **"**the panel opinion clearly invented a new requirement that applies when Congress or a state legislature attempts to extend personal jurisdiction through a deemed-consent statute such as the PSJVTA." *Fuld*, 101 F.4th at 209 (Menashi, J., dissenting, joined by Livingston, C.J. & Park & Sullivan, JJ.). On the contrary, this Court has always made clear that choosing to take actions with a nexus to a forum while knowing their jurisdictional consequences is sufficient to make personal jurisdiction possible.

In *Mallory v. Norfolk Southern Railway Company*, this Court held that Pennsylvania may deem, via statute, an out-of-state corporation's registration to do business to be consent to personal jurisdiction in Pennsylvania. 600 U.S. 122, 127 (2023). The Court made clear that implied-consent statutes are constitutional and proper. No "benefit" was required. The Pennsylvania statute, like the statute at issue here, determined that an entity would be deemed to have consented to jurisdiction when it chose to make affirmative actions that the legislature had determined would indicate consent to jurisdiction. There is no risk of unfairness in such a case, and in fact, the due process analysis is "easily answered." *Id.* at 149 (Jackson, J., concurring). "Having made the choice to register and do business in Pennsylvania despite the jurisdictional consequences . . . Norfolk Southern cannot be heard to complain that its due process rights are violated." *Id.*

Consent is enough to establish jurisdiction, and consent can be implied through statute. In *Mallory*,

just as in *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 94 (1917), the Court was clear that the willing engagement in actions deemed to constitute consent amply addresses any due process concerns. *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, was a unanimous decision of this Court penned by Justice Holmes that concluded the existence of a similar "statute thus adopted hardly leaves a constitutional question open." *Id.* at 95. This Court held unanimously that "the defendant's voluntary act," agreeing to jurisdiction, was sufficient to render it open to be sued. *Id.* at 96.

This Court in *Mallory* also specifically stressed that "under our precedents a variety of 'actions of the defendant' that may seem like technicalities nonetheless can 'amount to a legal submission to the jurisdiction of a court,'" 600 U.S. at 146 (plurality opinion) (quoting *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 704-05 (1982)), and indeed "a variety of legal arrangements have been taken to represent express or implied consent to personal jurisdiction consistent with due process," *id.* at 136 n.5 (majority opinion) (internal quotation marks and alteration omitted). This was not novel; in *Ins. Corp. of Ir.*, this Court emphasized that "the application of a legal presumption to the issue of personal jurisdiction does not in itself violate the Due Process Clause," *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. at 709, and accordingly upheld a decision determining personal jurisdiction was merited. There are a wide range of acts, not limited to one specific activity, that are by law sufficient to constitute consent to jurisdiction.

Mallory decides this case and decides it directly.

It did not contain the limitation on Congress's authority that the Second Circuit created out of whole cloth of a reciprocal benefit, but instead, it recognized the broad authority of the legislature to treat a variety of actions as constituting implied consent. No bargain or exchange is necessary. This Court made very clear that "precedents approving other forms of consent to personal jurisdiction have [n]ever imposed some sort of 'magic words' requirement" or required a particular formula. *Mallory*, 600 U.S. at 136 n.5. Agreeing to engage in conduct that a particular jurisdiction will deem as constituting implicit consent is, under this Court's precedent, *more* than sufficient. "The PLO and the PA similarly chose to take actions with a nexus to the United States knowing the jurisdictional consequences." *Fuld*, 101 F.4th at 204 (Menashi, J., dissenting, joined by Livingston, C.J. & Park, J).

Moreover, the killing of American citizens is an act well within the authority of Congress to regulate. It bears noting that international law has recognized "a state's exercise of jurisdiction to adjudicate with respect to a person or thing is reasonable," Restatement (Third) of Foreign Relations Law § 421(2), in a variety of circumstances, including where "the person, whether natural or juridical, has consented to the exercise of jurisdiction" § 421(2)(g), and where "the person, whether natural or juridical, has carried on outside the state an activity having a substantial, direct, and foreseeable effect within the state[.]" § 421(2)(j).

The "passive personality" principle is a crucial application of this doctrine. "Under this principle, a state may, under certain circumstances, assert jurisdiction over crimes committed against its

nationals." *United States v. Neil*, 312 F.3d 419, 422 (9th Cir. 2022). This principle "is increasingly accepted as applied to terrorist and other organized attacks on a state's nationals[.]" Restatement (Third) of Foreign Relations Law § 403 cmt. g.

Congress declared that defendants engaging in certain conduct affecting the United States after a future date would be considered to have consented to personal jurisdiction. Each defendant here, with "clear notice that [the United States] considered its [actions] as consent to [personal] jurisdiction," engaged in that conduct. *Mallory*, 600 U.S. at 153 (Alito, J., concurring in part and concurring in the judgment).

But this is not consent in the abstract. The PLO and PA chose to further "their political goals at the expense of American lives." *Fuld*, 101 F.4th at 205. (Menashi, J., dissenting, joined by Livingston, C.J. & Park, J.). Knowing that the funding of terrorism would subject them to jurisdiction in American courts, they chose to continue to do so. The basic principle of due process is to maintain personal jurisdiction in a way consonant with "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (quoting *Milliken* v. *Meyer,* 311 U.S. 457, 463 (1940)). There must be "sufficient contacts or ties with the state of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there." 326 U.S. at 320. Those principles are not at risk here, when holding funders of terrorism accountable merely by allowing them to be sued in the United States – where they will enjoy the full panoply

of procedural protections.

The PLO and PA are sophisticated entities that consider themselves to govern the fictious state of Palestine. (Ironically, "foreign states are not 'persons' entitled to rights under the Due Process Clause." *Frontera Res. Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic*, 582 F.3d 393, 400 (2d Cir. 2009).) While they claim to be a foreign state, they also claim one of the benefits of not being a foreign state, a due process argument against personal jurisdiction. But in light of their claims to be a foreign state, their claims that fairness denies the Petitioners a day in court here is ultimately even more untenable. "It is not 'unfair' for Congress to require a foreign entity to consent to the jurisdiction of the federal courts when the entity compensated terrorists who killed Americans with the knowledge that such compensation would be considered consent to jurisdiction." *Fuld*, 101 F.4th at 212-213 (Menashi, J., dissenting, joined by Livingston, C.J. & Park & Sullivan, JJ.).

The idea that Congress must bargain with terrorists by giving them "governmental benefit[s]" to obtain their willingness to subject themselves to the jurisdiction of federal courts is incongruous and absurd. It has no place in the law. If the PLO and PA chooses to continue making these odious payments, thus encouraging more terrorist attacks and putting more Americans at risk, then under the PSJVTA it may be sued in U.S. courts. No due process concern with "fair play" is threatened by such a conclusion.

B. Maintaining an Office in the United States Is Sufficient to Constitute Consent Consistent with Due Process.

If the direct funding of terrorism against Americans were not enough, the PLO and PA also engage in activities and maintain offices in the United States. Many of those activities are likely illegal. But the illegality of those activities does not change the fact that by engaging in that conduct, the Respondents could expect federal jurisdiction. In fact, "it is perverse to suggest that a foreign entity may *unlawfully* extract a benefit from the forum and receive constitutional protection from personal jurisdiction." *Fuld*, 101 F.4th at 205 (Menashi, J., dissenting, joined by Livingston, C.J. & Park, J.).

The ordinary concerns of due process are the "burdens" of litigation "in a distant or inconvenient forum." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). But as the dissent below noted, the Respondents' New York address is in Manhattan, and they were served with process at their homes in the United States. "The litigation burden entailed travel of approximately four miles from the defendants' office in Manhattan to the courthouse downtown." *Fuld*, 101 F.4th at 209 (Menashi, J., dissenting, joined by Livingston, C.J. & Park, J.). The PLO and PA chose to maintain offices and conduct business in the United States, knowing that such conduct would be treated as consent to jurisdiction.

The Second Circuit majority tried to avoid the effects of this conclusion by the fact that "federal law has long prohibited the defendants from engaging in

any activities or maintaining any offices in the United States, absent specific executive or statutory waivers." *Fuld*, 82 F.4th at 92. The concern in a due process analysis of personal jurisdiction is fairness to the defendant. Whether a defendant's activities in the forum, the United States, are lawful or not is entirely irrelevant to whether it is fair to hold that defendant accountable in American federal courts. To hold otherwise would be to conclude "that the Constitution protects a foreign entity from the jurisdiction of the federal courts if the entity conducts *illegal* activities in the United States but does not extend such protection to foreign entities that act *legally* in the United States." *Fuld*, 101 F.4th at 214 (Menashi, J., dissenting, joined by Livingston, C.J. & Park, J.). The legality of the defendant's conduct does not change the reasonableness of jurisdiction.

The Second Circuit majority also contended that due process here would be an unlawful "punishment" for conduct "with no connection to the establishment of personal jurisdiction." *Fuld v. PLO*, 82 F.4th 74, 94. But the targeted support of the killing of Americans and the purposeful establishment of offices and conduct in the United States is undoubtedly connected to the establishment of jurisdiction. And if Congress has justification to punish anything, it is the financing of terrorism against Americans.

"[C]onsent may be manifested in various ways by word or deed." *Mallory*, 600 U.S. at 138 (plurality opinion). Here, the PLO and PA have manifested that consent by regular and intentional conduct in the United States, despite a federal law stating that such conduct would be deemed consent to jurisdiction. The plaintiffs' claims plainly relate to the United States,

implicating the vital national interest in ensuring the safety of Americans abroad and an avenue for recovering compensation for injuries or death.

C. The Court should defer to Congress.

Congress has made a careful policy judgment, a judgment designed to ensure that plaintiffs like the Fulds would be able to have their day in court. "Congress has now deliberately and unequivocally authorized the federal courts to entertain this lawsuit, but the panel dismissed it for a third time." *Fuld*, 101 F.4th at 204 (Menashi, J., dissenting, joined by Livingston, C.J. & Park, J.). The Constitution entrusts "the field of foreign affairs . . . to the President and the Congress." *Zschernig v. Miller*, 389 U.S. 429, 432 (1968). The authority of Congress and the Executive branch to protect American interests abroad is robust. "Congress and the Executive are uniquely positioned to make principled distinctions between activities that will further terrorist conduct and undermine United States foreign policy, and those that will not." *Holder*, 561 U.S. at 35.

There is simply no due process risk here. Due process prevents the deprivation of a covered person's life, liberty, or property without a legally valid process. It provides a right to notice and an opportunity to be heard. The PSJVTA, enacted as part of Congress's broad authority to legislate over foreign affairs, empowers federal courts to provide the PLO and PA with process, a process that would be just as thorough as the process available to anyone else. This is the "elementary and fundamental requirement of due process[,]" namely, a process that will "apprise

interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

As "an exercise of congressional authority regarding foreign affairs, a domain in which the controlling role of the political branches is both necessary and proper[,]" the PSJVTA "warrants respectful review by courts." *Bank Markazi v. Peterson*, 578 U.S. 212, 215, 234 (2016). Congress gave the PLO and PA a choice. Congress has employed a robust and comprehensive scheme, including administrative sanctions, civil remedies, and criminal penalties, that aims to deny malefactors of every dollar for funding terrorism. One aspect of that scheme is to warn the PLO and PA that if they contribute money to terrorist activity that harms Americans, they could face liability here.

CONCLUSION

For these reasons, amicus curiae respectfully urges this Court to reverse the Second Circuit's decision.

Respectfully submitted,

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