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

2 (11:07 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument next in Case 07-615, Ministry of Defense and
5 Support For the Armed Forces of the Islamic Republic of
6 Iran versus Elahi.

7 Mr. Bederman.

8 ORAL ARGUMENT OF DAVID J. BEDERMAN

9 ON BEHALF OF THE PETITIONER

10 MR. BEDERMAN: Mr. Chief Justice, good
11 morning and may it please the Court:

12 At the heart of this appeal is a matter of
13 statutory construction. Respondent received \$2.3
14 million in public funds under the Victims Protection and
15 Terrorism Risk Insurance Act. TRIA provides, and this
16 is at the blue brief, page 11a, that a party electing to
17 receive such funds must relinquish rights with respect
18 to enforcement against property that is at issue in
19 claims against the United States before an international
20 tribunal or that is the subject of awards by such
21 tribunal.

22 The property in question here is the Cubic
23 judgment. Respondent renounced rights to attach the
24 Cubic judgment because in case B/61 before the
25 Iran-United States Claims Tribunal at the Hague the

1 United States has demanded that any awards Iran receives
2 in its claim against the United States be set off by the
3 amount of the Cubic judgment. This can only occur if
4 the Cubic judgment is released from Respondent's lien
5 and is remitted to Iran's Ministry of Defense.

6 CHIEF JUSTICE ROBERTS: Well, they could
7 have agreed that they have a bank account somewhere and
8 any amounts would be set off by that. That wouldn't
9 make that bank account at issue with respect to their
10 claim.

11 MR. BEDERMAN: No, in that scenario I agree
12 with you, Mr. Chief Justice, that that would not be
13 implicated, because I think the clear import of the
14 statutory language here that Congress is trying to
15 achieve is that being at issue -- as you'll notice, the
16 statutory provision in 201(c) is disjunctive. It refers
17 to claims against the United States -- at issue in
18 claims against the United States before an international
19 tribunal, or that is the subject of an award. So I
20 think the disjunctive character of the statute might
21 indicate that the at-issue prong includes a broader set
22 of property than would be indicated possibly by the
23 "subject of an award."

24 CHIEF JUSTICE ROBERTS: So it doesn't matter
25 that Iran recognizes that this would be used to set off

1 a judgment it might obtain, because you just said, well
2 they could -- a bank account could be used to set it off
3 and that's not sufficient.

4 MR. BEDERMAN: Well, the mutual -- let me be
5 clear. The mutual position of Iran and the United
6 States before the Claims Tribunal is that the Cubic
7 judgment, because it's related to a claim within the
8 tribunal's jurisdiction -- and I think that's a key
9 limiting principle here. The United States would not be
10 entitled to set off amounts in bank accounts that are
11 attributable to other parties or other aspects that are
12 not implicated in claims or defenses before the
13 tribunal.

14 So clearly an examination of the tribunal's
15 jurisdiction and the relevant claims or defenses that
16 are before the tribunal is relevant here. Petitioner is
17 not espousing a position before this Court that any
18 inchoate property located anywhere in the world would be
19 blanketed with immunity under this provision. It's not
20 necessary to reach that conclusion in order to find for
21 Petitioner here.

22 JUSTICE GINSBURG: The United States at some
23 stage told the tribunal in The Hague that the Cubic
24 judgment -- and now I'm quoting -- "has nothing to do
25 with matters before the international tribunal."

1 "Nothing to do with."

2 MR. BEDERMAN: Yes, that is the language
3 used by the United States in a memorial before the
4 tribunal. The United States has also indicated, and
5 this is clear in the gray brief at pages 81 in note 32
6 and the gray brief at pages 83 to 85, and in the
7 lodgment, that if -- if Iran receives an award in case
8 B/61 it must be offset or set off, or "recouped" is
9 sometimes the language used in the correspondence
10 between the two governments before the tribunal, by the
11 amount of the Cubic judgment.

12 I won't speak for the United States position
13 before the tribunal. The United States is here to do
14 that, of course, Justice Ginsburg. But the only way I
15 can interpret that remark is to indicate that obviously
16 before the tribunal is the issue of the United States'
17 obligations to Iran under the Algiers Accords. The
18 Cubic judgment deals, of course, with the private
19 disposition of the contractual relationship between
20 Iran's Ministry of Defense and the Cubic military
21 contractor.

22 Now Respondents take the position that these
23 two make the matters unrelated. But if you review
24 carefully the tribunal's jurisdiction as encompassing
25 both claims and counterclaims, and according to the

1 Algiers Accords in the claims settlement declaration,
2 counterclaims include that which arises out of the same
3 contract, transaction or occurrence that constitutes the
4 subject matter of the claim.

5 JUSTICE GINSBURG: There is no counterclaim
6 stated before the tribunal as of this moment.

7 MR. BEDERMAN: I'm sorry, I didn't hear the
8 first.

9 JUSTICE GINSBURG: There is no counterclaim
10 in the case before the tribunal.

11 MR. BEDERMAN: That's right. The United
12 States did not file a formal counterclaim in case B/61,
13 but it has made a demand for a setoff. And within the
14 tribunal rules, a setoff can be the subject of notice
15 under Rule 19-3 or an amendment or certainly comes under
16 waiver of objection provision in Rule 30.

17 JUSTICE KENNEDY: I was going to ask that
18 question. In other words, there are cases or at least
19 it is contemplated that there will be cases under the
20 rules, where the Iran-U.S. Claims Tribunal does
21 determine that there should or should not be an offset.

22 MR. BEDERMAN: There -- there certainly have
23 been cases, if you are speaking of the tribunal's
24 earlier jurisprudence in terms of offsetting claims.

25 JUSTICE KENNEDY: Yes.

1 MR. BEDERMAN: Yes, there has certainly been
2 ample tribunal precedent which the United States has
3 relied upon in making this demand for a setoff.

4 JUSTICE SOUTER: But assuming -- assuming
5 the tribunal takes up some such issue as Justice Kennedy
6 has mentioned, it will start with the assumption that
7 the Cubic judgment is in fact a valid judgment. It will
8 not look behind the Cubic judgment as such, will it?

9 MR. BEDERMAN: Of course, the validity of
10 the Cubic judgment does remain on appeal when the Ninth
11 Circuit --

12 JUSTICE SOUTER: But that's an entirely
13 separate proceeding. Assuming the Cubic judgment has
14 not been reversed through the appellate process that it
15 is going through, then the tribunal will take the Cubic
16 judgment as it finds it.

17 MR. BEDERMAN: I would assume it would. And
18 I assume --

19 JUSTICE SOUTER: Okay. Doesn't it make it
20 pretty tough to say that the Cubic judgment is at issue?

21 MR. BEDERMAN: No, Justice Souter. If -- if
22 we understand Congress' -- I don't -- I think this
23 matter can be resolved by a straightforward textual
24 approach in looking at TRIA section 201(c). Evidently,
25 though, if we are looking at congressional intent here,

1 it is to protect the United States' litigation position
2 before the tribunal. To allow the attachment of the
3 Cubic judgment would simply be allowing Respondent to
4 remove a source of money that would be available --

5 JUSTICE SOUTER: I mean, I think we
6 understand that. And -- and it's clear that the United
7 States, in effect, is taking the position that that's
8 all we need to bear in mind. But it suggests to me that
9 the drafting of the statute did not go as far as it
10 might have gone to protect the interests of the United
11 States.

12 MR. BEDERMAN: I won't speak, of course, for
13 the United States' position. The Petitioner's position
14 is that where property has been identified to the
15 tribunal as being related to a claim or defense within
16 its jurisdiction, and the availability of that property
17 affects the relief that can be granted by the tribunal,
18 it is at issue.

19 JUSTICE GINSBURG: Explain to me why it
20 would effect the relief? Because suppose Iran doesn't
21 get the proceeds of the Cubic judgment, but instead a
22 creditor of Iran, in this case Elahi, a creditor gets
23 it. It should still be -- you've paid the -- Iran's
24 bill. Iran owes money to X. Why shouldn't the United
25 States equally get the credit whether the Cubic judgment

1 in the end is pocketed by Iran or by Iran's creditor,
2 Elahi?

3 MR. BEDERMAN: Well, obviously we await the
4 tribunal's award in this respect. And I believe, based
5 on the tribunal's past precedents, the benefit in terms
6 of finding a breach of the Algiers Accords as it would
7 or it must in this case to find in favor of Iran, would
8 indicate that the benefits accruing for certain setoffs
9 must ultimately come back to Iran in order to be
10 credited in the way that you suggest.

11 I think it is an improper position to
12 suggest that if a creditor of Iran or Iran's Ministry of
13 Defense in this instance can claim or assert the lien so
14 that somehow it's credited to Iran's account, so to
15 speak, in calculating the setoff of the tribunal. That
16 has not been the tribunal's jurisprudence in terms of
17 examining the implications of a breach by the United
18 States under the Algiers Accords. And in a number of
19 cases --

20 JUSTICE GINSBURG: Would you -- something
21 that I would just like clarification on. You mentioned
22 that the Cubic judgment is on appeal to the Ninth
23 Circuit. It has been on appeal since June of '98?

24 MR. BEDERMAN: Yes, ma'am.

25 JUSTICE GINSBURG: And there are cross

1 appeals. What are the positions taken about that
2 judgment by the respective sides, and why is it pending
3 for ten years?

4 MR. BEDERMAN: That has been a mystery to me
5 as well. In fact, there has been a resolution by Cubic
6 Defense Systems and Iran's Ministry of Defense and as
7 soon as the Court renders its judgment in this case,
8 that matter will finally move to disposition. It is a
9 bit odd that the underlying issue of Cubic's objections
10 to the district court's enforcement of the International
11 Chamber of Commerce or ICC arbitral award has pended for
12 so long. I would have thought, logically, it would have
13 made more sense to have disposed of those issues and
14 then allow the disposition of the liens to be resolved
15 by the Court.

16 Essentially, it is Cubic's appeal
17 challenging aspects of the district court's enforcement
18 under the New York convention of the ICC arbitral award.
19 I think to the extent that there is a counterclaim it's
20 simply that there were some bases for support of the
21 judgment which Iran's Ministry of Defense would have put
22 forward in addition to the district court. That's what
23 I understand in terms of the ruling of Judge Brewster
24 originally in the district court on this manner.

25 So, yes, it is unfortunate that the

1 underlying validity of the Cubic judgment still remains
2 open as a matter of appeal.

3 But again to return to your point,
4 Justice Ginsburg, in Cases 815 and 821 before the
5 tribunal this question of what would be the
6 implications, financial and otherwise, for the United
7 States being found by the tribunal to be in breach of
8 the Algiers Accords because of the failure of not
9 allowing the export of Iranian property or repatriation
10 of Iranian property to the United States has been
11 explicated. And, in fact, in already one instance the
12 tribunal has found the United States to be in breach of
13 Algiers Accords obligations.

14 So again, I can't speak for what a ruling in
15 the tribunal would be. All I can suggest is certainly
16 the Iranian position before the tribunal would be that
17 in the instance that if Mr. Elahi or any other lienor
18 were successful in attaching the Cubic judgment that in
19 such a situation it should not be credited as a setoff
20 under these circumstances.

21 JUSTICE GINSBURG: Could -- let's assume
22 that the -- that Iran is able to execute on the Cubic
23 judgment. Could it take the proceeds out of the United
24 States, given the 2007 blocking order?

25 MR. BEDERMAN: Well, I mean, the issue of

1 the secretary of state's October 2007 designation, which
2 I think is what you are referring to, is a late
3 development in this case. Of course, that occurred
4 three months after the Ninth Circuit's amended opinion.

5 My submission to this Court is that the
6 appropriate disposition, assuming the Court well takes
7 Petitioner's position that Respondent has actually
8 relinquished its claim under TRIA, is to remand back to
9 the district court, because then we would have two new
10 sets of lienors, Mr. Raffi and Mr. Rubin. It would be
11 before the district court that factual issues like
12 whether the designation of the "Ministry of Defense and
13 Armed Forces Logistics," which is what is actually named
14 in the blocking order, actually covers the Ministry of
15 Defense and Support for the Armed Forces of the Islamic
16 Republic of Iran, who is your Petitioner today.

17 The issue of whether designations cover
18 particular entities or aliases of entities is an
19 intensely factual one; the D.C. Circuit in the National
20 Council of Resistance case, Chief Justice Roberts, an
21 opinion you are well aware of at the D.C. Circuit.
22 These are intensely factual inquiries about whether
23 aliases of particular organizations are covered by
24 designations.

25 JUSTICE GINSBURG: You mentioned -- you

1 mentioned that there were other claimants or others --
2 others who would like to execute --

3 MR. BEDERMAN: Other lienors.

4 JUSTICE GINSBURG: -- other lienors -- other
5 attachments. And so, you said in the end -- well --
6 well, what would be the effect of those other liens?

7 MR. BEDERMAN: My understanding,
8 Justice Ginsburg, is in both the cases of Mr. Rubin and
9 Mr. Raffi, as far as I am aware, they have not made the
10 relinquishment election under TRIA as Dr. Elahi has done
11 here. And because they have not made the relinquishment
12 proviso, they would not be subject to the at-issue
13 question that is now before the Court.

14 Iran's Ministry of Defense has other
15 substantive defenses against their liens, which we
16 appropriately presented before the district court.

17 The only submission I am making to this
18 Court at this time is that it is not necessary for this
19 Court exercising plenary authority to decide whether
20 it's a blocked asset. That is appropriate for remand
21 because, notwithstanding the U.S. position, I think
22 there are questions of whether your Petitioner is a
23 covered entity under the -- under the designation, and
24 whether in fact it is the beneficial owner, whether
25 Iran's Air Force is the beneficial owner of this claim.

1 And there are other substantive defenses that claim
2 retroactivity, as well. So, again, I just don't think
3 it's appropriate --

4 JUSTICE KENNEDY: But going back to the main
5 issue, the only reason that this is at issue before the
6 Iran tribunal is because it might be a setoff in the
7 event of judgment in favor of Iran?

8 MR. BEDERMAN: Yes. Whether it is available
9 for setoff. And again, I want to be clear that --

10 CHIEF JUSTICE ROBERTS: That's the -- that's
11 the only basis for your argument? I thought it was a
12 broader suggestion that these are, to some extent,
13 substitute assets for the assets that are at issue?

14 MR. BEDERMAN: Well, I mean, that may be one
15 useful analytic in thinking about this. I was trying in
16 imagining the interest of the Court in understanding the
17 tribunal's jurisdiction under the Algiers Accords and
18 what the tribunal has already ruled, and that's why I
19 think respectful consideration might be appropriate
20 here, inasmuch as the tribunal, in interpreting its
21 jurisdiction under the Algiers Accords, which is
22 essentially its organic instrument, has made a
23 determination in Case B/66 that the substantive
24 contracts at issue here between Cubic and the Iranian
25 Air Force are at issue in case B/61.

1 CHIEF JUSTICE ROBERTS: Can you -- can you
2 articulate a general test in a sentence or two about how
3 you decide whether particular assets are at issue?

4 MR. BEDERMAN: Yes. I will repeat the one I
5 -- I rendered before because I think it is the most
6 useful analytic, and I -- I take no credit. This is
7 essentially Judge Fisher's analysis in the dissent
8 below. As he indicated, that -- that -- where property
9 has been identified to the Tribunal -- and certainly the
10 Cubic judgment and the proceedings that have occurred in
11 the Federal district court in -- in Southern California
12 and now the Ninth Circuit and now here have been
13 identified to the Tribunal in mutual representations and
14 undertakings by the parties. Where this property has
15 been identified to the Tribunal as being related to a
16 claim or defense within the Tribunal's jurisdiction --
17 and I think that is the key limiting principle here.
18 That's -- there is a criticism that an expansive reading
19 of TRIA's "At Issue" provision will allow Iran and the
20 United States, as unlikely as it sounds, to mutually
21 collude to cover various properties and assets around
22 the world, I think noting that the -- that the Cubic
23 judgment is within the Court's jurisdiction as
24 understood under the Algiers Accords Claims Settlement
25 Declaration, Article 2, paragraph 3.

1 And then the second prong is that the
2 availability of that property affects the relief that
3 can be granted by the Tribunal. And, again, we are not
4 hypothesizing here. The Tribunal has already indicated
5 in cases like Owens Corning, Futura Trading and Computer
6 Services, that when you have a situation avoiding a
7 double recovery, that a setoff derived from collateral
8 proceedings, even absent privity of contract with the
9 sovereign seeking adjustment and with respect to
10 different causes of action, a setoff is still
11 appropriate within the Tribunal.

12 So it's both an avoidance of a -- of a
13 double-recovery rule and also a notion that a -- a
14 certain offset is -- is related as within the -- the
15 jurisdiction of the tribunal as arising again from the
16 same contract transaction or occurrence.

17 JUSTICE SOUTER: "At Issue" means related to
18 -- "At Issue" means related to an issue in a separate
19 case.

20 MR. BEDERMAN: I mean --

21 JUSTICE SOUTER: That's what it boils down
22 to, doesn't it?

23 MR. BEDERMAN: Petitioner is not taking the
24 same --

25 JUSTICE SOUTER: Well, doesn't it?

1 MR. BEDERMAN: No, Your Honor. I'm sorry.
2 The Petitioner's position is slightly more modulated
3 than the United States. The United States' position
4 here is all it has to be is relevant. I -- I will leave
5 it to the Court to -- to speak with the United States
6 about that in a moment.

7 I think a more nuanced understanding of the
8 Tribunal's jurisdiction is appropriate here. Is -- and
9 here there is no question, based on the materials that
10 you have not only in the joint appendix but also in the
11 lodgment, that the Cubic contracts have been identified
12 to the Tribunal. And now the Cubic judgment as an
13 offset has a setoff -- or "recoupment" is sometimes the
14 language used in the diplomatic exchanges and filings
15 before the Tribunal -- has now been identified to the
16 Tribunal.

17 JUSTICE BREYER: Is it the case that there
18 are two other individuals who have attached this
19 judgment?

20 MR. BEDERMAN: Yes, Justice Breyer. I think
21 I spoke about that a moment ago. That would be --

22 JUSTICE BREYER: All right. And is it the
23 case that Iran's position in respect to those
24 attachments is that those attachments, insofar as they
25 are valid and executed, require a setoff from whatever

1 we owe Iran or vice-versa?

2 MR. BEDERMAN: My understanding, if you are
3 speaking of me characterizing the United States'
4 position --

5 JUSTICE BREYER: No. I'm saying I take
6 it from something I have read in this that Iran believes
7 that if, in fact, it won a judgment and that judgment is
8 from someone like Cubic --

9 MR. BEDERMAN: Yes.

10 JUSTICE BREYER: -- who they thought was
11 prevented from delivering planes because of the embargo
12 -- so it was relevant -- that that judgment, which they
13 get if they collect on it, should be deducted from other
14 money the United States owes them.

15 MR. BEDERMAN: Yes, and --

16 JUSTICE BREYER: -- unless instead of them
17 getting it, the attacher gets it.

18 MR. BEDERMAN: It's the --

19 JUSTICE BREYER: The attachee gets it.

20 MR. BEDERMAN: It's the "unless," I suppose,
21 that, of course, Iran objects to. It is that in order
22 for the setoff to be effective within the Tribunal's
23 jurisprudence and jurisdiction, Iran's Ministry of
24 Defense or -- or the --

25 JUSTICE BREYER: Has to get the money for

1 the attaching person. That's my point.

2 MR. BEDERMAN: Yes, sir.

3 JUSTICE BREYER: And so that is at issue
4 before the -- and -- and it is at issue in those cases.
5 If the person who attaches it gets the money rather than
6 Iran, Iran will say: We do not have to have a setoff.

7 MR. BEDERMAN: I agree. If it's at issue --

8 JUSTICE BREYER: Isn't that right or --

9 MR. BEDERMAN: Correct. If it's at --

10 JUSTICE BREYER: And that is the same
11 question that you think would be presented through this
12 attachment, is that right?

13 MR. BEDERMAN: I thought that's what we were
14 speaking of: The status of the Cubic judgment and --
15 and Dr. Elahi's attachment of the --

16 JUSTICE BREYER: Dr. Elahi is one of several
17 persons, is that right?

18 MR. BEDERMAN: That is correct. There is a
19 queue of individuals who have lined up to -- to --

20 JUSTICE BREYER: What I'm trying to get at
21 is Iran's position vis-a-vis the Elahi judgment is the
22 same as its position vis-a-vis the other two attachments
23 on the Elahi judgment.

24 MR. BEDERMAN: Yes, sir.

25 JUSTICE BREYER: That if Iran ends up with

1 the money, you can subtract it from other money the
2 United States owes them. But if the attaching people
3 end up with the money, you cannot.

4 MR. BEDERMAN: So it's "At Issue" -- I am --
5 I am sorry for having been so opaque. It is "At Issue"
6 in the sense of "joinder at issue," a legitimate
7 disagreement between the parties. And its also "At
8 Issue," I believe -- I think in the sense that Congress
9 intended by this provision of saying that the funds are
10 available for a tribunal ruling. And, therefore, to
11 allow an attachment under these circumstances would
12 frustrate the United States' litigation position. So
13 any way you parse what "At Issue" means --

14 JUSTICE BREYER: You would take the same
15 position if, in fact, this money which is owed to Iran
16 by -- by Cubic -- that is, Cubic, which then Iran got a
17 judgment on -- instead of a judgment in favor of Iran,
18 Cubic had written them a check, and they had taken the
19 check and bought a house in Manhattan, or they had put
20 it in an Iranian bank account, and either Mr. Elahi or
21 one of the other two people sought to attach the bank
22 account or the house or the grocery store, which they
23 might have also have used. Am I right --

24 MR. BEDERMAN: Yes.

25 JUSTICE BREYER: -- or wrong?

1 MR. BEDERMAN: Yes, Justice Breyer, you are
2 correct. There is a concern, which is a very natural
3 concern, that the more attenuated you get, can you
4 attribute a particular property, whether it's a bank
5 account or a -- or a New York condo --

6 JUSTICE BREYER: I don't see why either is
7 the slightest a bit more attenuated. In either case
8 they are owned by the Ministry of Defense of Iran.

9 MR. BEDERMAN: I would certainly concur;
10 and, if I may, I will reserve the balance of my time.

11 CHIEF JUSTICE ROBERTS: Thank you, Mr.
12 Bederman.

13 Mr. Hallward-Driemeier.

14 ORAL ARGUMENT OF DOUGLAS HALLWARD-DRIEMEIER

15 ON BEHALF OF THE UNITED STATES,

16 AS AMICUS CURIAE

17 MR. HALLWARD-DRIEMEIER: Mr. Chief Justice,
18 and may it please the Court:

19 The United States does not appear here today
20 in support of Iran, but, rather, in defense of critical
21 interests of the United States before the United States-
22 Iran Claims Tribunal. In particular, the holding of the
23 Court of Appeals that the United States never unblocked
24 Iranian military assets after the Algiers accords is
25 directly contrary to the position of the United States

1 before the Tribunal, and Iran immediately indicated that
2 it would use that holding against the United States and
3 in support of its multimillion-dollar --

4 JUSTICE GINSBURG: But that's not saying
5 that. Isn't that -- that issue is moot?

6 MR. HALLWARD-DRIEMEIER: Well, Your Honor,
7 there is now a new and independent reason why the asset
8 is blocked. And, in fact, Respondent no longer defends
9 the holding of the court of appeals on that basis.

10 It is, we wish to emphasize, essential that
11 this Court vacate that holding and indicate that it is
12 no longer legally valid so that it is not -- that
13 erroneous holding is not used against us in support of
14 Iran's two-million-dollar claim.

15 JUSTICE GINSBURG: But if we -- if we took
16 the position that you are expressing about what is at
17 issue, we would never reach the second question.

18 MR. HALLWARD-DRIEMEIER: Well, we -- we
19 think that the Court would not. It would vacate the
20 decision of the Court of Appeals. It would be helpful
21 certainly to the United States if the Court emphasized
22 the natural fact that that would mean that the court of
23 appeals' erroneous holding was not any longer legally --

24 CHIEF JUSTICE ROBERTS: But it's not our job
25 to help you -- it's not our job to help you in other

1 tribunals. If a -- if a judgment is moot, it's moot.
2 We are not going to go back and tell the Ninth Circuit
3 to revise its opinion just because that's helpful to
4 you.

5 MR. HALLWARD-DRIEMEIER: No. The -- the
6 Court would vacate the decision, certainly.

7 CHIEF JUSTICE ROBERTS: So is it your
8 position that that -- that is moot?

9 MR. HALLWARD-DRIEMEIER: It is our position
10 that the -- because Respondent has relinquished his
11 right to attach these assets, the decision of the court
12 of appeals should be vacated. And that would have the
13 affect of rendering inoperative that erroneous -- the
14 other erroneous holding of the court of appeals with
15 respect to blocked assets.

16 It is the position of the United States --
17 and we agree with Respondent on this point -- that as of
18 now, because of the October, 2007, designation, the
19 property of Petitioner is blocked and subject to
20 attachment under TRIA. And I don't believe there is any
21 need for further proceedings on that.

22 The Secretary of State designated the
23 Ministry of Defense of Iran, and the position of
24 Petitioner in the court of appeals on remand from this
25 Court was that it is the Ministry of Defense of Iran, a

1 central core constituent part of the Iranian state, that
2 is the entity that was designated.

3 JUSTICE GINSBURG: Do I understand correctly
4 that that means that because it's a blocked asset, then
5 Dr. Elahi can get it, but Iran itself couldn't get it?

6 MR. HALLWARD-DRIEMEIER: Elahi, Respondent
7 Elahi, could get it if he had not relinquished his
8 rights to attach --

9 JUSTICE GINSBURG: Yes.

10 MR. HALLWARD-DRIEMEIER: -- assets at issue
11 before the tribunal. As of right now, the asset is
12 blocked and Iran could not repatriate it, as of right
13 now. Of course, blocking orders can be amended, but as
14 of right now it is frozen and Petitioner cannot
15 repatriate it.

16 CHIEF JUSTICE ROBERTS: So why isn't the
17 consequence that you are so worried about under the
18 Victims of Trafficking and Violence Protection Act that
19 this is going to hurt your position by the tribunal, the
20 same consequence that is going to come from the fact
21 that these assets are blocked?

22 MR. HALLWARD-DRIEMEIER: Well, Your Honor,
23 again, the blocking order is the present status of the
24 assets. It doesn't mean that they could not later be
25 repatriated to Petitioner; whereas, execution by

1 Respondent against the assets would mean that they would
2 be forever denied to Petitioner.

3 CHIEF JUSTICE ROBERTS: But --

4 JUSTICE GINSBURG: So why wouldn't the
5 United States get credit for that, too, on the theory
6 that I suggested before?

7 MR. HALLWARD-DRIEMEIER: Well, you are
8 right, Your Honor, that is the position of the United
9 States. And earlier Your Honor quoted language from the
10 oral argument of the United States that the -- or maybe
11 it was one of our briefs -- that the Cubic judgment
12 is -- that the tribunal doesn't have to --

13 JUSTICE GINSBURG: It has nothing to do with
14 matters before the --

15 MR. HALLWARD-DRIEMEIER: That is in the
16 context of our saying that, whether or not -- in the
17 view of the United States, whether or not Petitioner
18 ever collects that money, the United States is entitled
19 to an offset, and in fact, we believe it's a complete
20 defense to Iran's claim.

21 Of course, Petitioner's argument -- or
22 Iran's argument before the tribunal is that it is --
23 that the United States is entitled to a reduction of
24 liability only if Iran actual receives the assets. And
25 that's why the language of the statute is written more

1 broadly when the litigation before the tribunal is
2 ongoing. At that point any property that is at issue
3 before the tribunal is not subject to attachment by one
4 who has relinquished, and that's because this Court nor
5 any other lower court in the United States is supposed
6 to pre-judge the merits of those respective positions.
7 Iran's position -- and it's on page 85a of the United
8 States' appendix -- is that the awarded amount, unless
9 received by Iran, cannot be offset against any relief
10 which the United States may be found to owe Iran.

11 So that is Iran's position. That is at
12 issue before the tribunal.

13 The Respondent would have the Court believe
14 that the proceedings in the tribunal are in the nature
15 of an in rem proceeding, that it's a property dispute.
16 They use that term repeatedly in the brief, "a property
17 dispute." But that is not the nature of the proceedings
18 in the tribunal. Iran has asserted a claim that the
19 United States violated its obligations under the Algiers
20 Accords. The remedy it seeks is , and I quote -- this
21 is from -- excuse me -- from the -- let's see -- the
22 remedy they seek -- they seek is the value of the Cubic
23 sale to Canada. They have said that in the state -- in
24 Iran's reply in statement -- claim 16 that Respondent
25 relies upon, they say that the remedy they seek is not

1 the asset itself.

2 Of course, the asset had been dissipated
3 before Iran ever filed a statement of claim against the
4 United States. The remedy is the proceeds of that sale
5 to Canada. The proceeds of the sale to Canada, which
6 are the subject of Iran's claim against the United
7 States in the tribunal, have been reduced to judgment in
8 the Cubic judgment. That --

9 CHIEF JUSTICE ROBERTS: I guess this may be
10 the same question Justice Breyer asked. I mean, where
11 do you cut this off? You've got the proceeds from the
12 sale to Canada that presumably go to Cubic, and then
13 Cubic, you know, builds a new facility somewhere with
14 those proceeds and then sells it to somebody else. I
15 mean, are those still assets at issue in the claims
16 before the tribunal?

17 MR. HALLWARD-DRIEMEIER: Well, I believe
18 that in fact the language of the statute makes it -- the
19 assertions of the parties before the tribunal that
20 define the property that is at issue before the
21 tribunal. That, again, is so that the courts are not
22 put in a position of adjudicating, prejudging, the
23 merits of the parties' arguments before the tribunal.

24 CHIEF JUSTICE ROBERTS: Well, that's kind of
25 a -- that's a broad assertion. In other words, so long

1 as you and Iran get together and say this asset is at
2 issue in a situation where whether it's at issue or not
3 saves you money and gives money to Iran, that seems to
4 be a very self-serving legal test.

5 MR. HALLWARD-DRIEMEIER: Well, Your Honor, I
6 don't believe that this Court needs to consider what the
7 outer reaches are. In this case, this is -- Iran
8 characterizes it, and this is at page, again, at page 85
9 of the U.S. appendix, that the Cubic judgment, quote
10 "constitutes an integral part of the remedy sought in
11 case B/61."

12 This isn't an offset or a counterclaim.
13 Justice Ginsburg, you previously alluded to the fact the
14 United States did not file a counterclaim. And that's
15 because this is not some unrelated counterclaim the
16 United States has against Iran. This is a critical part
17 of Iran's claim against the United States. It defeats,
18 in the view of the United States, Iran's claim entirely.
19 At the very least, it reduces the amount of Iran's claim
20 against the United States.

21 This isn't somehow unrelated; we're
22 asserting, well, we can use this as an offset because
23 you also owe us money from something else. This is in
24 Iran's own statement, and this is the statement that you
25 --

1 JUSTICE KENNEDY: But how is that affected
2 -- how is that affected depending on whether or not the
3 judgment is executed or not. Would the Iran tribunal
4 have the authority to order Cubic not to satisfy the
5 judgment, but to just hold the funds?

6 MR. HALLWARD-DRIEMEIER: I -- I don't know.
7 Cubic is not before the tribunal. But what we can ask
8 is, can we conceive of -- and I think it's relatively
9 easy to conceive of -- an award of the tribunal that
10 says, the United States owes Iran \$2.8 million; if the
11 Cubic judgment is received by Iran, the United States
12 owes Iran nothing. And clearly, in that circumstance,
13 the Cubic judgment is the subject of the award of the
14 tribunal.

15 JUSTICE KENNEDY: I don't know that it's the
16 subject of the award. And it's really not at issue;
17 it's just recognizing that there has been some prior
18 transaction.

19 MR. HALLWARD-DRIEMEIER: Well, I guess, Your
20 Honor, you have to think what does it mean for any
21 property -- property to be at issue before the tribunal
22 or the subject of the award?

23 JUSTICE SOUTER: It means that at the end of
24 the proceeding one side or the other gets the property.

25 MR. HALLWARD-DRIEMEIER: Well --

1 JUSTICE SOUTER: And that is not going to be
2 the -- what one side or the other gets in this
3 proceeding is going to be a new judgment. And that new
4 judgment may or may not be satisfied by dealing with the
5 prior judgment. But that doesn't mean that the prior
6 judgment is at issue; it simply means that the prior
7 judgment may be used to discharge in an appropriate case
8 an obligation which is determined in the later
9 proceeding.

10 MR. HALLWARD-DRIEMEIER: If I may respond.
11 Your Honor, on that view, even the ACMR is not at issue
12 before the tribunal, because the tribunal cannot order
13 the United States to hand over the ACMR to Iran. In the
14 A/15 judgment to which Petitioner's counsel alluded
15 earlier, the tribunal recognized that it is not a
16 violation of the United States' obligations under the
17 Algiers Accords not to issue an export license.
18 Therefore, Iran --

19 JUSTICE SOUTER: Okay. So Iran --

20 MR. HALLWARD-DRIEMEIER: -- is not entitled
21 to the ACMR. It's entitled to its loss, and its loss
22 has been reduced to judgment in the Cubic judgment.

23 CHIEF JUSTICE ROBERTS: Thank you, counsel.

24 MR. HALLWARD-DRIEMEIER: Thank you, Your
25 Honor.

1 Mr. Phillips.

2 ORAL ARGUMENT OF CARTER G. PHILLIPS

3 ON BEHALF OF THE RESPONDENT

4 MR. PHILLIPS: Thank you, Mr. Chief Justice,
5 and may it please the Court:

6 I think the previous 25 or so minutes has
7 demonstrated one sort of overarching fact, which is that
8 there is an enormous risk, if this Court decides to
9 interpret the language of this statute broadly, that it
10 will easily sweep beyond any kind of arrangements
11 between Iran and the United States in ways that
12 fundamentally, obviously, disadvantage the very people
13 that Congress clearly intended to benefit by this entire
14 statutory scheme.

15 This is a scheme that was designed to
16 provide remedies, recoveries, to the victims of
17 terrorism. And somehow in the scheme of everything that
18 was discussed in the first 25 or so minutes of this
19 argument, the victims of terrorism are completely
20 shunted aside on basic -- on the basis of very technical
21 ways of reading it.

22 But if we go back to the language of the
23 statute, which is in the Petitioner's brief at 11a, it
24 talks about "enforcement against property that is at
25 issue in claims against the United States." So the

1 notion that we would focus on the word "property," as it
2 relates to the tribunal and that the tribunal has in
3 front of it, is a natural consequence of the language of
4 that provision. And to me, at least, the best way to
5 look at the logic is to review how often the United
6 States has described and Iran has described what was the
7 property at issue before the claims tribunal and the
8 B/61 proceeding? And this is at 65a of the joint -- of
9 the government's brief: "The property at issue consists
10 of one air combat maneuvering range system and all
11 necessary subparts." There is no dispute that the
12 property was within the jurisdiction of the United
13 States. Now --

14 CHIEF JUSTICE ROBERTS: So that if you had
15 these military assets, which are clearly the assets that
16 are at issue in Iran's claim --

17 MR. PHILLIPS: Absolutely.

18 CHIEF JUSTICE ROBERTS: Cubic is worried
19 about what to do with it and so they sell them to the
20 Canadians but they keep the proceeds in escrow, under
21 the theory that look we may end up owing this to the
22 Iranians under the tribunal. Under the setoff, this may
23 not be our assets, which -- I mean the Iranians have a
24 claim to these. Would those -- would those escrow funds
25 be assets at issue?

1 MR. PHILLIPS: I think they would be because
2 of the way the Iranians actually pled this. They said
3 give us either back -- give us either the military
4 equipment that we bought, or give us the economic value
5 of that. But that's -- and that's why --

6 CHIEF JUSTICE ROBERTS: Well, why is that
7 very different from this situation, where you have an
8 arbitration award saying that you, Cubic, owe the
9 equivalent of what you should have -- what you would
10 have provided to Iran, if there hadn't been the
11 revolution?

12 MR. PHILLIPS: Well, there are two answers
13 to that. The first one is remember precisely what the
14 arbitration award is. The arbitration award is not the
15 value of the asset. That was asked for; that was
16 rejected by the arbitrator. The arbitration award is
17 for the value of a separate contract between Cubic and
18 the Canadian government. You will recall in the award,
19 specifically the arbitrator said with respect to the
20 underlying ACMR contract with Iran, that was mutually
21 walked away from by both parties, and then there was a
22 separate agreement that was entered into between the
23 parties, and that was the basis for the arbitration
24 award saying the value of breach of that secondary
25 agreement is the part that serves as the arbitral award.

1 That it seems to me ought to be regarded at a minimum as
2 one step too far removed, because that's not the
3 property that is at issue before the claims tribunal in
4 any way that the parties are disputing about it. They
5 accept that number. And then --

6 JUSTICE BREYER: Right. So what is the --
7 it seems at the moment, frankly you could read it either
8 way. Let's imagine that -- that Cubic sold some jets
9 that we blocked and they get some money, and they did it
10 under their contract, and they got 2 million dollars.
11 And suppose they said, we owe Iran this money, and they
12 pay Iran the money, and Iran puts it in a bank account
13 or buys the grocery store. All right?

14 MR. PHILLIPS: Right.

15 JUSTICE BREYER: Now suppose that happened.
16 It makes it simpler. And then what happens is three
17 people, including Mr. Elahi and two others who don't
18 accept money, the other two, attach it, on the ground
19 Iran owes us this money.

20 MR. PHILLIPS: Right.

21 JUSTICE BREYER: We want the grocery store.
22 And suppose, further, Iran then says, if they get their
23 money, you cannot subtract it, United States, from what
24 you owe us. But if we get the money, then you can
25 subtract it. That's their view.

1 The United States' view is different. Who
2 will resolve that question? The tribunal. So they say,
3 what is at issue is not who owns the grocery store; what
4 is at issue is the question of whether we get the money
5 or you get the money. What money? The money that is
6 the value of the grocery store, or the bank account, in
7 which case it's identical.

8 Now I think in that situation it's easy for
9 me to say that money, the grocery store, or the bank
10 account, of course is at issue before the tribunal. For
11 the question is, does Iran get it or does the United
12 States get it, in the situation where the two other
13 people -- leaving Elahi out of it -- can attach it. I
14 can easily read it that way. I can also read it the way
15 you want.

16 MR. PHILLIPS: Right.

17 JUSTICE BREYER: All right? So now, which
18 do I do?

19 (Laughter.)

20 MR. PHILLIPS: Well, you clearly -- and I
21 agree with you; there is no question you can read this
22 statute either way.

23 JUSTICE BREYER: All right. I'll then add
24 that the strongest argument against you, it seems to me,
25 is the whole point of this was not simply to compensate

1 victims of terrorism. That's a worthy goal, and that's
2 one of the points. But it was to compensate them
3 consistent with the proper running, in the interests of
4 the United States, of the Iranian-American Claims
5 Tribunal.

6 And so this is just the kind of issue we
7 don't want to simply take away and let the victim have,
8 because there is a strong risk the tribunal will rule
9 against us, and we will have to pay it twice. Okay.
10 That's the argument against you.

11 Now, what's the argument for you?

12 MR. PHILLIPS: Right. First of all --

13 JUSTICE BREYER: Yes.

14 MR. PHILLIPS: A significant purpose of this
15 entire exercise obviously is to provide redress to the
16 victims of terrorism.

17 JUSTICE BREYER: That's one, but --

18 MR. PHILLIPS: 201(d) is a specific
19 statutory construction provision which seems to suggest
20 that Congress says that if there are doubts about how to
21 apply this particular provision, you ought to put the
22 thumb on the scale in favor of the victim. So you do --
23 you will give meaning to section 201(c)(4) of the TRIA
24 if you adopt a position consistent with our position.

25 The reality is that given that there are two

1 more lienholders in line, none of this has anything to
2 do with Iran and with the way the tribunal is going to
3 proceed, because even if you were to say that Dr. Elahi
4 is not entitled to this, there is no relinquishment
5 claim with respect to the others, so this money is never
6 going back to Iran, under any set of circumstances.

7 JUSTICE BREYER: That creates the issue,
8 because the question is whether money that never goes
9 back to Iran, but rather goes to an attaching person, is
10 money that is or money that is not subtracted from the
11 amount that the United States owes Iran.

12 MR. PHILLIPS: But -- but --

13 JUSTICE BREYER: And that question is the
14 question --

15 MR. PHILLIPS: But Justice Breyer --

16 JUSTICE BREYER: -- is the question that is
17 before the commission.

18 MR. PHILLIPS: But the problem with this,
19 Justice Breyer, is that this is a relinquishment
20 provision. It -- it is saying to us in return for these
21 limited resources, 20 percent of the judgment -- and
22 that is only 20 percent of the compensatory judgment and
23 completely lose the punitive judgment -- in return for
24 that you have to relinquish certain rights; and it seems
25 to me that Congress would not have adopted the a

1 provision that said and the rights you relinquish are
2 essentially unknowable under any circumstances and
3 extend to the ends of the earth. What I --

4 JUSTICE BREYER: They are totally knowable.
5 They are totally knowable. In order to decide what they
6 are all you have to do is to look at the issues before
7 the commission and decide whether those issues concern
8 specific, concrete property; that is, the property that
9 you have an interest in.

10 With my grocery store, with my bank account,
11 and with this claim, it is absolutely specific, and Iran
12 has put before the commission the question of whether if
13 you pay the money to an attaching person, we don't get
14 it, or we do get it.

15 MR. PHILLIPS: Justice Breyer --

16 JUSTICE BREYER: That's what I gather. Now
17 you can tell me I'm wrong on that if you want.

18 MR. PHILLIPS: The parties have been very
19 specific about it, and we cited in a series of
20 quotations about what is the property at issue here; and
21 the property at issue, Justice Breyer is the ACMR system
22 or the economic value of the ACMR system. What is not
23 at issue in this case is the value of the Cubic
24 judgment. First of all, there was an effort to bring
25 the Cubic judgment specifically before the tribunal, and

1 it was rejected as having no jurisdiction, certainly no
2 jurisdiction over Cubic and then no jurisdiction over
3 the United States' part of the Cubic judgment because
4 that was not a contract between --

5 JUSTICE BREYER: They are trying to attach
6 the ACMR system.

7 MR. PHILLIPS: They did --

8 JUSTICE BREYER: They are trying to attach
9 the Cubic judgment. The ACMR judgment is in Canada.

10 MR. PHILLIPS: But that's the whole point of
11 this. The property at issue before the tribunal is the
12 ACMR system, and indeed in 1981 when this was originally
13 brought what Iran wanted was the ACMR system.

14 JUSTICE BREYER: And that's one piece of
15 property. The other piece of property that is at issue
16 is the judgment, and the way it's at issue is I take it
17 that two other people are saying, we attach it; Iran
18 says because they attach it, you don't subtract it from
19 the ACMR judgment; and we are saying, even though they
20 attach it, you subtract it, and therefore it's before
21 the tribunal as well.

22 That's my understanding at the moment, and
23 I'm asking you to explain why that's wrong.

24 MR. PHILLIPS: Justice Breyer, there is no
25 question that the fact that there are subsequent

1 lienholders in line affects the possibility, but I would
2 have thought it would only affect it in a way that is
3 positive for me. Because Iran is saying, look, this
4 doesn't have any relevance to the -- to the Iran
5 tribunal if we don't ever get the money; and the reality
6 is whether Dr. Elahi gets the money or the other
7 lienholders get the money, Iran is never going to get
8 the money, which says to me it's not at issue under any
9 theory of the case in front of the U.S.-Iranian claims
10 tribunal.

11 And so that would be my quickest answer to
12 that; to the extent that you have other lienholders, it
13 simply means that there really is nothing at issue
14 there. But it still seems to me that the better way --

15 JUSTICE GINSBURG: Why not? I mean, the
16 question I raised before, why wouldn't the United States
17 be urging that it gets credit, whether Iran gets the
18 money or whether the people who are creditors of Iran
19 get the money. In either case, the United States should
20 be able to have --

21 MR. PHILLIPS: Right, the United States
22 would still have that -- would still have that argument,
23 but it's not a claim against the United States, which is
24 what's required under the statute that we are dealing
25 with here when it's viewed that way.

1 JUSTICE KENNEDY: But Iran might say in the
2 tribunal, in responding to the setoff argument, this
3 claim that we brought against you, the United States,
4 implicates a breach of obligations that you have that
5 are un -- somewhat unrelated to what was at issue in
6 the -- in the -- in the Cubic judgment. And then the
7 United States would say, no, that's not true. So they
8 would have to examine the Cubic judgment. So that means
9 it's at issue before the court.

10 MR. PHILLIPS: No, I don't think there is
11 anybody whose going to -- well, maybe there is some
12 sense in which examining the Cubic judgment, but I don't
13 think the tribunal has remotely been asked to or will
14 under any circumstances be asked to review the Cubic
15 judgment.

16 JUSTICE KENNEDY: There might be in the
17 setoff proceedings. There might -- there might be an
18 argument that there are two obligations, and there is a
19 setoff or that there is a setoff.

20 MR. PHILLIPS: Well, I mean, I think there
21 is no question these are for two different obligations.
22 And I think that's why candidly the Court ought to
23 decide that this is not property at issue here, because
24 it is so clearly unrelated to the weapons system itself
25 or to any monetization of the weapons system. Remember

1 the Cubic judgment comes from an arbitral award that
2 doesn't have anything to do with that arms sale. It has
3 to do with a completely separate contractual undertaking
4 between the Cubic and the Canadian government --

5 JUSTICE KENNEDY: Well, I think we might get
6 --

7 MR. PHILLIPS: -- and Iran.

8 JUSTICE KENNEDY: -- substantial -- a
9 substantial degree of argument on that point.

10 MR. PHILLIPS: I don't know how there could
11 be an argument on that point, Justice Kennedy. If you
12 read the opinion of the arbitrator, it is absolutely
13 clear that the -- that the underlying agreement between
14 Iran and Cubic with respect to the arms sale was
15 mutually terminated by the parties, and a new agreement
16 entered into in order to resell those properties to
17 Canada. The opinion is crystalline in that regard.

18 And it was on the basis of the violation of
19 that separate agreement that the -- that Cubic was then
20 held to be liable to Iran for the \$2.8 million.

21 CHIEF JUSTICE ROBERTS: The agreement
22 between who -- between who --

23 MR. PHILLIPS: Between Iran and Cubic.

24 CHIEF JUSTICE ROBERTS: So Iran, I assume,
25 would say, look, we entered into this agreement to take

1 the place of what was at dispute. Which is what they
2 owed us because they didn't ship us the arms that we
3 paid for. I don't see that that adds anything to your
4 argument.

5 MR. PHILLIPS: Well, it just says that you
6 move even further down the road from what are the
7 properties that are, in fact, at issue before the
8 tribunal.

9 CHIEF JUSTICE ROBERTS: Right, so Iran says,
10 look, you are not going to ship us the planes, whatever
11 it is, you are not --

12 MR. PHILLIPS: Although they wanted that.

13 CHIEF JUSTICE ROBERTS: You were not going
14 to give us the money, right?

15 MR. PHILLIPS: And they still want that.

16 CHIEF JUSTICE ROBERTS: And we still have a
17 dispute. So, I tell you what, you are going to sell
18 this stuff to Canada, you are going to get some money
19 from them, and we have got an agreement that that money
20 is ours.

21 MR. PHILLIPS: Mr. Chief Justice, that --
22 that -- they may have been able to make that argument.
23 That is not an argument they have made. The argument
24 they made, which represents the property at issue in the
25 claims, is first, give us back the arms; and then two,

1 give us the value of those arms, not as they have been
2 reformulated in a completely separate contract, give us
3 the value of those arms. It seems to me the --

4 CHIEF JUSTICE ROBERTS: Well, why would
5 Cubic enter into a contract with Iran to give them money
6 if it wasn't taking the place of the money they owed
7 them in the original agreement?

8 MR. PHILLIPS: Well, the question was, they
9 were going to try to go forward in these arrangements.
10 And it was a, you know, complicated problem because you
11 couldn't tell whether or not you would ever be able to
12 send things back to Iran, et cetera. And so, they were
13 perfectly happy to enter into an agreement where they
14 would say, look, we will just do the best we can and see
15 how it turns out.

16 I mean, in reality, the litigation in front
17 of the Ninth Circuit, obviously, on the Cubic judgment,
18 Cubic is screaming loud and clear that they don't think
19 they owe a nickel as a consequence of this arrangement
20 that there had been no breach of anything under any
21 circumstances, and that there is not a penny that's to
22 be owed. And as counsel said earlier, it's in some ways
23 unfortunate that this has moved in this sequence. So,
24 we don't really have --

25 CHIEF JUSTICE ROBERTS: Do you know why it

1 was pending for ten years?

2 MR. PHILLIPS: Well, it was stayed as a
3 consequence of this other litigation -- as a consequence
4 of these proceedings in order to allow, I think in
5 general the Iran claims tribunal to -- to sort out, at
6 least, some portion of these issues. It would obvious
7 be -- I mean, we have moved -- I mean, we are not a
8 party.

9 CHIEF JUSTICE ROBERTS: So the stayed
10 because it was at issue before the Iranian claims
11 tribunal?

12 MR. PHILLIPS: Right. I mean, the truth is
13 just as the issue was a more important issue for the
14 United States prior to the new blocking order, you know,
15 the questions that could potentially have arisen were
16 potentially more important to the claims tribunal at the
17 outset. As the litigation has played out, it turns out
18 that there's no relationship between the two.

19 JUSTICE BREYER: Well, the -- the other
20 thing -- and I think this counts against you, but maybe
21 you have an answer to it, that there could be a lot of
22 property that was directly at issue in '79 or '80 that
23 Iran didn't get. And because they didn't get it, all
24 kinds of things happened with property, and you get more
25 of it or you get less of it. And during the interim

1 years all kinds of things happened.

2 And it could be that those transformations
3 at different times are directly before the tribunal,
4 irrespective to how much damages you are going to get,
5 and how much -- we can easily think of cases if we have
6 three or four hours. But you see where I am going?

7 MR. PHILLIPS: Sure.

8 JUSTICE BREYER: Now, I can understand
9 Congress in passing this statute having one of two
10 possible things: One is say we are just going to cut an
11 arbitrary line here because it's a compromise, and what
12 we will do is, you can go ahead, victim, and seize
13 anything you want, as long as it doesn't narrowly fit
14 within this. That's a somewhat arbitrary line but a
15 compromise.

16 MR. PHILLIPS: But it also provides
17 protection for victims, right, and those are the people
18 who are the most --

19 JUSTICE BREYER: The other way to look at it
20 is to say, well, what we that had in mind here is we
21 will pay these victims something; you know, they are
22 going to get something right from Congress right now,
23 because they are hurt. But in return from that, we
24 don't want you taking action that will really affect our
25 liability to Iran. And if it's the second, then we

1 needed broader definition; if it's the first, we don't.

2 MR. PHILLIPS: Justice Breyer, I think the
3 Hague cases are the place to look in terms of trying to
4 understand this, because what it's what -- Hague, that
5 line of cases all involve efforts to seize consular
6 properties of Iran and all arose prior to the Accords,
7 and every one of those courts of appeals has concluded
8 that each of those properties is beyond the ability of
9 the courts to attach all of those properties.

10 And -- and it seems to me that what Congress
11 was concerned about was having inconsistent claims
12 potentially arise in both the district -- in federal
13 court in the United States and in front of the claims
14 tribunal.

15 So where you have a situation where the
16 claims tribunal says, look, that's a consular property
17 that belongs to the Iranian government, you should
18 return it, and have the United States have to show up in
19 front of that tribunal and say, oh, excuse me, but
20 unfortunately, we have been forced to sell that property
21 under a federal court order and the embarrassment that
22 arises from that. That seems to me so clearly what
23 Congress had in mind, or at least is clearly covered by
24 this and the case law or all the case law up to this
25 point that has dealt with it has consistently ruled in

1 favor of the United States and Iran in that context.
2 But there is no reason to go beyond that context in
3 order to deprive the clear victims of terrorism of a
4 meaningful remedy.

5 And I think, Justice Breyer, just to be
6 clear about this, we got money back, to be sure. A
7 substantial portion of the money we got back came from
8 the values of the properties that the United States
9 seized from Iran that they've used, they have leased out
10 embassies and stuff like that. And that is not property
11 that comes out of the United States' fist.

12 So it's not reasonable to assume, as the
13 government does, that simply because these moneys were
14 paid out, that there is some huge relinquishment that is
15 required there. It seems to me that it makes much more
16 sense for this Court to narrowly construe this.

17 I guess the last thing I would say in that
18 regard is, that insofar as we can tell, this case will
19 affect one party -- actually, I guess the other two
20 lienholders behind us. But realistically, there are no
21 cases in the pipeline. There is no other litigation
22 that is on going out there. This is a singular -- I
23 mean, it's kind of unusual for this Court, but this is
24 the only case that we can figure that this applies to.

25 CHIEF JUSTICE ROBERTS: Well, but the point

1 is, depending on how it comes out, once you give a
2 argument to the Iranians that they can raise with the
3 claims tribunal that will affect far more than your one
4 single case. We -- the argument would be the United
5 States is not living up to the obligations it undertook
6 in the Algiers Accords.

7 MR. PHILLIPS: Right. And,
8 Mr. Chief Justice, that -- I understand why the
9 government filed in support of Certiorari at the earlier
10 stages of this proceeding. But after the intervening
11 blocking order that takes the -- I mean, that issue is
12 off the table.

13 We are no longer defending the Ninth
14 Circuit's view that the United States breached the
15 original Algiers Accords in the context of this case.
16 Nothing in the blocking order that is in place now and
17 would prevent Iran from getting this remotely violates
18 the Algiers Accords. And as far as I know, no one is
19 making that argument at this stage. So all you have is
20 a relatively clean -- issues. Does the blocking order
21 apply here in stopping the payment of these funds to
22 Iran? There the answer seems to me unquestionably yes.

23 And then the second question is, do we adopt
24 a rule to the detriment to a single terrorist victim in
25 a way that deprives him of an opportunity to get back

1 fair redress in the absence of some clear indication
2 from Congress that it intended that result where it
3 would affect no one else and where Congress has said
4 specifically in a rule of construction, put your thumb
5 on the scale in favor of the victim of terrorism?
6 That's what we are asking the Court to do in this case.
7 It provides no problems to the United States in its
8 claims tribunal litigation. It's only an issue of
9 money.

10 CHIEF JUSTICE ROBERTS: What provision --
11 can you cite me the provision where the Congress said
12 put your thumb on the scale?

13 MR. PHILLIPS: Yes. It's 201(d)(4), the
14 Petitioner's brief at 11a.

15 CHIEF JUSTICE ROBERTS: 11a. And how does
16 that -- the title of the section says statutory
17 construction. I just don't see what follows as
18 statutory construction.

19 MR. PHILLIPS: Well, I think what you have
20 to do is give the language some credit. And our way --
21 what we think Congress intended there was to say, tip
22 the scale in favor of the victims of terrorism, which is
23 the underlying purpose of the statute.

24 I will confess, the language is not nearly
25 as clear as I would like it to be, but I will also

1 recognize that the -- the Government of Iran's position
2 renders that language as total dead letter --

3 CHIEF JUSTICE ROBERTS: You don't see any --

4 MR. PHILLIPS: -- alternative it seems to me
5 you ought to give it -- again, give the tie to the
6 victims under this --

7 CHIEF JUSTICE ROBERTS: You don't see any
8 problem with Congress telling us how to conduct
9 statutory construction?

10 MR. PHILLIPS: No, I think Congress does --
11 is entitled to suggest, if it's -- if you have ambiguity
12 in our language, which way to come out as a matter of
13 policy. No, I don't think that's -- no, I don't think
14 that's dictating -- that's certainly not dictating a
15 result in this particular case.

16 JUSTICE GINSBURG: Mr. Phillips, one piece
17 of -- I don't -- you have agreed that the United States
18 could recoup from Iran the amount paid to the victims,
19 including Dariush Elahi, including the 2.3 million. How
20 would the United States go about recouping from Iran the
21 money it has paid to the victims of Iran's terrorism?

22 MR. PHILLIPS: You mean in the situations
23 where the United States has subrogate -- right to
24 subrogation?

25 JUSTICE GINSBURG: Yes. How would that

1 work? How would -- how would the United States --

2 MR. PHILLIPS: Well, I think it would almost
3 certainly work as a matter of diplomacy and not as a
4 matter of adjudicated resolution. I think what they
5 will say is, these are rights, these are amounts of
6 money that we have had to pay. And if we are ever to
7 normalize relations with the Government of Iran, we are
8 going to expect the Government of Iran to recognize
9 those payments and to make some kind of retribution to
10 the United States under those circumstances.

11 And again, all it does is it shifts the
12 burden of these injuries from the victims, who are in
13 the least best position to deal with them, and put them
14 in the United States, which is in a position of at least
15 some hope of being able to resolve them diplomatically
16 in a way that the United States can, in fact, be
17 recompensed.

18 JUSTICE GINSBURG: You said this is a one of
19 a kind case. Are there no other victims who have
20 successfully sued Iran?

21 MR. PHILLIPS: There are, but the problem is
22 you have to back into the situation of property that is
23 at issue in the claims tribunal. The claims tribunal
24 was created in '81. It's not a lot of that property
25 around. We're talking 25 years later. So, they have

1 pretty much played out their course.

2 There were the Hague noted cases, and the
3 Elahi case. The others are going to be resolved without
4 regard to these provisions. And so, the reality is what
5 the Court says today will affect my client, but as far
6 as I can tell no one else. And certainly, the only
7 interest the United States has at this stage in this
8 litigation is its own financial interest. And it would
9 seem to me, that's not a basis on which to interpret the
10 statute.

11 If there are no further questions, I urge
12 the Court to affirm.

13 CHIEF JUSTICE ROBERTS: Thank you, Mr.
14 Phillips.

15 Mr. Bederman, you have two minutes left.

16 REBUTTAL ARGUMENT OF MR. DAVID J. BEDERMAN
17 ON BEHALF OF THE PETITIONER

18 MR. BEDERMAN: If I can make just a few
19 points. In response to Respondent counsel's assertion
20 that in the International Chamber of Commerce arbitral
21 award there's been so form of novation here, which makes
22 the connection between the ACMR and the Cubic judgment
23 somehow attenuated. I think that's -- by the
24 tribunal's -- the panel's discussion, this is at the
25 joint appendix at page 47.

1 The panel makes very clear that under the
2 sales contract credit has to be given to Iran for its
3 advance payment. Here you have a breakout of the
4 salvage value of the ACMR. All that the panel was
5 indicating was that Iran was not entitled to specific
6 performance here, to make that ruling is not a finding
7 of a novation in the sense which would respond to
8 counsel using that phrase. So, I don't see the
9 attenuation here.

10 Speaking to the assertion that, again, the
11 enormous risk presented by this case of the broad
12 construction of the congressional intent, I think if you
13 look carefully at the language at the blue brief at 11a
14 of the statutory construction provision -- that was part
15 of the colloquy between the Chief Justice and
16 Respondent's counsel. And if you read this, it
17 completely reserves, if not begs the question of whether
18 the Cubic judgment is, quote, an asset otherwise
19 available under the section for attachment.

20 So, I think it completely doesn't answer,
21 one way or the other -- a finger on the scale, as
22 Respondent's counsel has evocably said, or some form of
23 command by Congress to this Court. It simply reserves
24 that question for the Court's analysis.

25 In response to Justice Ginsburg's last

1 question to Respondent's counsel, the one thing I would
2 point out to you again, is another clue in the statute.
3 If we look at the Victims Protection Act, which was the
4 predecessor statute here, section 2002(c), what Congress
5 wanted to protect is the right of the United States to,
6 quote, pursue these subrogated rights as claims or
7 offsets of the United States in appropriate ways.

8 So, again, Congress has contemplated the
9 notion that there will be a process of setoffs either
10 before the Iran U.S. claims tribunal or in some other
11 context, which I'm not sure I can imagine beyond what
12 response counsel has said. So, to suggest that the
13 broad remedial thrust of TRIA, which Petitioner is not
14 denying -- it's not our place to deny that -- is
15 nonetheless tempered by these carefully crafted
16 provisions in the statute.

17 We would support, obviously, reversal of the
18 lower court's opinion.

19 CHIEF JUSTICE ROBERTS: Thank you, counsel.
20 The case is submitted.

21 (Whereupon, at 12:09 p.m., the case in the
22 above-entitled matter was submitted.)

23

24

25

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