Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 09–73

ASTEROSINZ *v.* NIR2602

ON CERTIFIED QUESTION BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[December 12, 2020]

PER CURIAM.

This case concerns tort claims arising from an incident at a U. S. federal courthouse. Defendant moves to dismiss, positing that federal tort law does not extend to the federal courthouses because Congress has not formally designated them as within U. S. sovereignty. Plaintiff responds that formal congressional designation is unnecessary because, *de facto*, the federal courthouses are within U. S. sovereignty. As evidence of *de facto* sovereignty, plaintiff cites the regular use of these locations for official judicial business, the fact that their exclusive purpose is related to the U. S., the fact that no other sovereign possesses a valid legal claim to the land, and a clan manager statement certifying that the U. S. has factual control over the area.

We assume jurisdiction over the motion to dismiss in its entirety, under this Court's Rule 19, and now deny. The clan manager statement cited by plaintiff is clear and convincing evidence of *de facto* sovereignty, which—we hold—is sufficient to establish federal tort jurisdiction. The claims may proceed to trial.

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We begin with a simple proposition: Congress has not

textually limited the geographic reach of the federal tort code. But nobody would suggest that federal tort law applies when you visit the Town of Robloxia or play Phantom Forces. Thus, to the extent any such geographic limitations exist, they arise from background principles of law, not enacted legislative text. And as a result, we need not look to the text of the law to determine the contours of these limitations. We must consult the underpinnings of the background principles themselves.

In this case, the background principle which commands our attention is the presumption against extraterritoriality. The presumption is founded on the "basic premise . . . that, in general, '[U. S.] law governs domestically but does not rule the world.'" *RJR Nabisco, Inc.* v. *European Community*, 579 U. S. ___, ___ (2016) (slip op., at 7) (quoting *Microsoft Corp.* v. *AT&T Corp.*, 550 U. S. 437, 454 (2007)). In the absence of a "clear indication" to the contrary, federal laws are construed to have only domestic effect. *Morrison* v. *National Australia Bank Ltd.*, 561 U. S. 247, 255 (2010). The federal tort code contains no such contrary "clear indication" and so we proceed with the knowledge that it applies only domestically.

We next must consider whether the application of the federal torts to the federal courthouses would be non-domestic. We begin by acknowledging what is not in dispute: Congress has not formally designated the courthouses as within U. S. sovereignty nor do they fall within the geographic boundaries of anything which has received such designation. Nor is it asserted that any other source of positive law—treaties, international agreements, legitimate governmental declarations, etc.—establishes U. S. sovereignty over the area. As such, we can safely rule out the possibility of *de jure* sovereignty. But it is asserted that *de facto* sovereignty will do the trick all the same. And, with substantial evidentiary support, it is alleged that the U. S. has *de facto* sovereignty over the federal courthouses. We consider

each issue in turn.

Sufficiency of de facto *sovereignty*. The threshold question is whether *de facto* sovereignty—even if it could be established—is enough to support federal tort jurisdiction. Our answer is yes. We look to three primary considerations: (1) the purpose of the presumption; (2) its historic application; and (3) the public interest. Each supports our conclusion.

Consider first the purpose of the presumption. The presumption is targeted at avoiding the potential for complication which can arise from trying to apply U. S. rules to territory outside U. S. control. See, *e.g.*, *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U. S. ___, ___–___ (2013) (slip op., at 4–5); *EEOC* v. *Arabian American Oil Co.*, 499 U. S. 244, 248 (1991); *Benz* v. *Compania Naviera Hidalgo, S. A.*, 353 U. S. 138, 147 (1957). In those locations where we are capable of exercising substantial authority—those places where we possess *de facto* sovereignty—it is easy to see how we could apply our laws. It is considerably more difficult to imagine U. S. courts issuing orders and granting remedies respecting conduct on foreign sovereign land (what practical reason would a foreign state generally have to give credit to our judgments?). But whatever may be said of that issue, it is entirely impossible to conceive of U. S. law being applied to nonsovereign, *i.e.*, out-of-genre, locations like Adopt Me or ROBLOX High School.

This analysis makes clear that our assessment under the presumption against extraterritoriality ultimately turns on the practicalities of applying our law to particular locations. This necessarily connotes an assessment of fact, not formal legal text.

Consider also the historic application of extraterritoriality principles, especially regarding the *de jure*/*de facto* distinction. An illustrative example is the case of *Boumediene* v. *Bush*, 553 U. S. 723 (2008). There, in assessing whether U. S. law and procedure ran in Guantanamo Bay, we asked

not whether the U. S. possessed a formal *de jure* claim to sovereignty over the area. Instead, we examined whether the U. S. possessed "complete jurisdiction and control"—"*de facto* sovereignty." *Id.*, at 755.

Finally, look to the public interest, which would be greatly disserved by a requirement of *de jure* sovereignty to establish federal tort jurisdiction. Federal tort law is ultimately about remedying injuries and there is a strong public interest in such remedies. The public interest therefore generally favors a broader conception of federal tort jurisdiction. More specifically, as well, if the courthouse doors were closed to injuries occurring within U. S.-controlled land on the basis of overly-legalistic technicalities, public access to justice would be undermined. Of course, nothing in the law requires that the law be construed in the way most beneficent to the public. But recall that we are not interpreting text enacted by Congress. We are exploring the contours of a judicially-created gloss on legislative text. And in doing so we must be mindful of the fact that policy judgments are ultimately the province of Congress. If such harm to the public interest is to be worked, it must be by the will of elected lawmakers.

We hold that *de facto* sovereignty is sufficient to establish federal tort jurisdiction.

Evidence of sovereignty. We consider now the evidence offered by plaintiff of *de facto* U. S. sovereignty over the federal courthouses. Plaintiff submits a good deal of evidence, including information about the regular use of the facilities, their exclusive purpose, and the absence of any foreign sovereign claim. But we think most salient the fourth piece of evidence submitted by plaintiff: a clan manager statement certifying that the federal courthouses are within *de facto* U. S. sovereignty. We do not say this to diminish the other pieces of evidence offered, each of which may be helpful in establishing *de facto* sovereignty; we simply conclude that the clan manager statement, on its own, is highly probative

evidence of *de facto* U. S sovereignty.

To begin with, defendant does not dispute the expertise of the clan managers in making a finding of factual sovereignty. And we are persuaded by plaintiff's argument that they do possess this expertise. As a result, in the absence of any contrary evidence—and since we have already rejected the necessity of *de jure* sovereignty—we conclude that the U. S. possesses sufficient *de facto* sovereignty over the federal courthouses to establish federal tort jurisdiction.

Accordingly, setting aside the particular certified question, we assume jurisdiction over the motion to dismiss in its entirety and now deny. The case is remanded to the District Court for trial on the merits.

It is so ordered.