election, in addition to ongoing investigations and litigation regarding any connections between the Trump campaign and Russia.[19]

State Jurisdiction and Immunity

U.S. Supreme Court Holds that a Provision of the Foreign Sovereign Immunities Act Does Not Lift Immunity from Attachment of Iranian Artifacts

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The U.S. Supreme Court recently held unanimously that § 1610(g) of the Foreign Sovereign Immunities Act (FSIA) does not lift the immunity from attachment of certain artifacts belonging to Iran.[1] The case, *Rubin v. Islamic Republic of Iran*, stemmed from the petitioners' attempt to satisfy a prior judgment against Iran for injuries sustained in Hamas suicide bombings in Jerusalem in 1997.[2]

Subject to exceptions, the FSIA "grants foreign states and their agencies and instrumentalities immunity from suit in the United States (called jurisdictional immunity) and grants their property immunity from attachment and execution in satisfaction of judgments against them."[3] In *Rubin*, the petitioners sought to attach Iranian property in order to satisfy a judgment they had previously received under § 1605A of the FSIA, which provides an exception to jurisdictional immunity for acts of terrorism attributable in specified ways to state sponsors of terrorism. Specifically, the petitioners sought to seize Iranian artifacts known as the Persepolis Collection in the University of Chicago's possession.[4] The collection, which consists of approximately 30,000 ancient clay tablets and fragments with writings, was loaned to the University of Chicago by Iran in 1937.[5]

[19] U.S. Special Counsel Robert S. Mueller was appointed in May 2017 to investigate possible Russian interference and links to the Trump campaign. Rod J. Rosenstein, Acting Attorney General, Order. No. 3915-2017 re Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters (May 17, 2017), *available at* https://www.justice.gov/opa/press-release/file/967231/download [https://perma.cc/6M9E-T4ZV]. On February 16, 2018, thirteen Russian nationals and three companies were indicted. Indictment, United States v. Internet Research Agency LLC, No. 1:18-cr-00032-DLF, 2018 WL 914777 (D.D.C. filed Feb. 16, 2018), *available at* https://assets.documentcloud.org/documents/4380504/The-Special-Counsel-s-Indictment-of-the-Internet.pdf [https://perma.cc/V6J6-GH7M]. On April 20, 2018, the Democratic National Committee (DNC) filed a lawsuit against, among other persons and entities, the Russian government and the Trump campaign, alleging, among other things, that the campaign conspired with Russia in relation to hacked DNC emails. Complaint, Democratic Nat'l Comm. v. Russ. Fed'n, No. 1-18-cv-03501, 2018 WL 1885868 (S.D.N.Y. filed Apr. 20, 2018).

[1] Rubin v. Islamic Republic of Iran, 538 U.S. ___, 138 S. Ct. 816, 827 (2018). Justice Kagan did not participate in the decision. *Id.* at 827.

[2] *Id.* at 820–21. In 2003, a federal district court granted a default judgment against Iran under the prior state-sponsored terrorism exception to the FSIA's establishment of jurisdictional immunity. Campuzano v. Islamic Republic of Iran, 281 F. Supp. 2d 258, 260, 269–70 (D.D.C. 2003). The court subsequently granted the petitioners' motion to convert the judgment to one under 28 U.S.C. § 1605A, a more expansive exception to immunity for state-sponsored terrorism passed by Congress in 2008. 563 F. Supp. 2d 38, 39 n.3 (D.D.C. 2008). As part of their lengthy attempt to satisfy the judgment, petitioners sought to attach the artifacts at issue in this case. *See* Rubin v. Islamic Republic of Islam, 830 F.3d 470, 474–75 (7th Cir. 2016) (describing the procedural history).

[3] *Rubin*, 138 S. Ct. at 820–21 (citing 28 U.S.C. §§ 1604, 1609).

[4] *Id.* at 819–21.

[5] *Id.* at 821.

Section 1610 delineates exceptions to the FSIA's default of immunity from attachment or execution for state property. Sections 1610(a), (b), and (d) permit attachment of property used for commercial activity under certain conditions.[6] For example, § 1610(a) provides that the "property in the United States of a foreign state . . . used for a commercial activity in the United States, shall not be immune from attachment . . . if . . . (7) the judgment relates to a claim for which the foreign state is not immune under section 1605A. . . ."[7] Earlier in the litigation, petitioners had unsuccessfully argued that the Persepolis Collection was used for commercial activity for purposes of § 1610(a)(7).[8] By the time the Supreme Court heard the case on the merits, however, petitioners were limited to seeking the Persepolis Collection under a different sub-section—§ 1610(g)—which they argued provided a freestanding exception to immunity for the property of a state against whom a judgment has been entered under § 1605A.

Added to the FSIA in 2008, § 1610(g) provides:

> (g) Property in certain actions.
>
> (1) In general. . . . [T]he property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of–
> (A) the level of economic control over the property by the government of the foreign state;
> (B) whether the profits of the property go to that government;
> (C) the degree to which officials of that government manage the property or otherwise control its daily affairs;
> (D) whether that government is the sole beneficiary in interest of the property; or
> (E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.[9]

In an opinion by Justice Sotomayor issued in February 2018, the Supreme Court held unanimously that § 1610(g) did not create an independent exception to the immunity of state property for parties seeking to satisfy a § 1605A judgment. Instead, "[a] judgment holder seeking to take advantage of § 1610(g)(1) must identify a basis under one of § 1610's express immunity-abrogating provisions to attach and execute against a relevant property."[10]

[6] 28 U.S.C. § 1610.

[7] 28 U.S.C. § 1610(a).

[8] *Rubin*, 830 F.3d at 479 (rejecting arguments that "a third party's commercial use of the property triggers § 1610(a)" and also expressing skepticism that "the University's academic study of the Persepolis Collection counts as a commercial use"); *see also* 137 S. Ct. 2326 (2017) (granting certiorari only with respect to the interpretation of § 1610(g)).

[9] 28 U.S.C. § 1610(g)(1).

[10] *Rubin*, 138 S. Ct. at 824.

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In reaching this holding, the Court observed that § 1610(g)(1) was added to the FSIA in 2008 to abrogate in part the Court's earlier decision in *First National City Bank v. Banco Para el Comercio Exterior de Cuba* (*Bancec*).[11] *Bancec* had established a presumption that, under the FSIA, a foreign state's agencies and instrumentalities with separate juridical status could not be deemed liable for the state's acts.[12] The federal appellate courts then developed a five-factor test to determine when this presumption would be overcome.[13] In *Rubin*, the Supreme Court reasoned that, in § 1610(g)(1), Congress had clearly rejected *Bancec* and its subsequent refinement as to the satisfaction of judgments entered for state sponsorship of terrorism under § 1605A.[14] This is evident, noted the Court, because § 1610(g)(1) provides that state agencies and instrumentalities are liable "regardless of" five listed factors which, the Court noted, resemble "almost verbatim" the prior five-factor test.[15]

The Court then asked whether, in addition to abrogating *Bancec*, "§ 1610(g) does something more . . . [and] provides an independent exception to immunity so that it allows a § 1605A judgment holder to attach and execute against *any* property of the foreign state."[16] Based on statutory text and historical practice, the Court concluded that the answer was no:

> Section 1610(g)(1) provides that certain property will be "subject to attachment in aid of execution . . . *as provided in this section*." (Emphasis added.) The most natural reading is that "this section" refers to § 1610 as a whole, so that § 1610(g)(1) will govern the attachment and execution of property that is exempted from the grant of immunity as provided elsewhere in § 1610.
>
> . . .
>
> [Unlike § 1610 (a)(7) and other sub-sections of § 1610, § 1610(g)] conspicuously lacks the textual markers "shall not be immune" or "notwithstanding any other provision of law" that would have shown that it serves as an independent avenue for abrogation of immunity.
>
> . . .
>
> If the Court were to conclude that § 1610(g) establishes a basis for the withdrawal of property immunity any time a plaintiff holds a judgment under § 1605A, each of [various other § 1610 sub-sections] would be rendered superfluous because a judgment holder could always turn to § 1610(g), regardless of whether the conditions of any other provisions were met.
>
> The Court's interpretation of § 1610(g) is also consistent with the historical practice of rescinding attachment and execution immunity primarily in the context of a foreign state's commercial acts.[17]

[11] *Id.* at 823.
[12] First Nat. City Bank v. Banco Para el Comercio Exterior de Cuba, 462 U.S. 611, 628 (1983).
[13] *Rubin*, 138 S. Ct. at 823.
[14] *Id.*
[15] 28 U.S.C. § 1610(g)(1); *Rubin*, 138 S. Ct. at 823.
[16] *Rubin*, 138 S. Ct. at 823.
[17] *Id.* at 823–25.

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The Court thus held that parties who seek to satisfy a judgment under § 1605A's state-sponsored terrorism exception to jurisdictional immunity cannot rely on § 1610(g), but must instead satisfy one of § 1610's other immunity-abrogating provisions. In an amicus brief filed in support of Iran, the United States emphasized that this reading of § 1610(g) was consistent with broader U.S. policy interests. The U.S. brief explained:

> Even in the context of actions against state sponsors of terrorism, execution could provoke serious foreign policy consequences, including impacts on the treatment of the United States' own property abroad. . . .
>
> The property at issue here consists of ancient Persian artifacts, documenting a unique aspect of Iran's cultural heritage, that were lent to a U.S. institution in the 1930s for academic study. Iran has never used the Collection for commercial activity in the United States . . . . Execution against such unique cultural artifacts could cause affront and reciprocity problems that are different in kind from execution under any other provision of Section 1610.[18]

Although the Court did not discuss these policy interests, it emphasized the "delicate balance that Congress struck in enacting the FSIA."[19]

International Economic Law

U.S. Tariffs on Steel and Aluminum Imports Go into Effect, Leading to Trade Disputes

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Consistent with President Trump's America First trade agenda, his administration imposed tariffs on steel and aluminum imports in early March of 2018, triggering various responses and challenges. Countries have followed through on early objections to the tariffs through retaliatory tariffs and challenges in the World Trade Organization (WTO), and steel importers have challenged the legality of these tariffs under U.S. domestic law. At the same time, these tariffs have been revised multiple times, either to delay the implementation period for certain countries seeking exemptions or to permanently grant exemptions to countries who reached negotiated arrangements with the United States.

On March 8, 2018, the United States imposed a ten percent tariff on imported aluminum,[1] and a twenty-five percent tariff on imported steel.[2] These tariffs were imposed pursuant to Section 232 of the Trade Expansion Act of 1962,[3] which allows the president to adjust imports once "the [Secretary of Commerce] finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the

[18] Brief for the United States as Amicus Curiae Supporting Respondents, Rubin v. Islamic Republic of Iran at 31–32, 538 U.S. ___, 138 S. Ct. 816 (2018) (No. 16-534).

[19] *Rubin*, 138 S. Ct. at 825.

[1] Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 8, 2018) [hereinafter Aluminum Tariff].

[2] Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 8, 2018) [hereinafter Steel Tariff].

[3] 19 U.S.C. § 1862 (2012).