Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TENET ET AL. *v.* DOE ET UX.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 03–1395. Argued January 11, 2005—Decided March 2, 2005

Respondent husband and wife filed suit against the United States and the Director of the Central Intelligence Agency (CIA), asserting estoppel and due process claims for the CIA's alleged failure to provide them with financial assistance it had promised in return for their espionage services during the Cold War. The District Court denied the Government's motions to dismiss and for summary judgment, finding that respondents' claims were not barred by the rule of *Totten* v. *United States,* 92 U. S. 105, prohibiting suits against the Government based on covert espionage agreements. Affirming in relevant part, the Ninth Circuit reasoned that *Totten* posed no bar to reviewing some of respondents' claims and thus the case could proceed to trial, subject to the Government's asserting the evidentiary state secrets privilege and the District Court's resolving that issue.

Held: Respondents' suit is barred by the *Totten* rule. In *Totten,* this Court concluded with no difficulty that the President had the authority to bind the United States to contracts with secret agents, observed that the very essence of such a contract was that it was secret and had to remain so, and found that allowing a former spy to bring suit to enforce such a contract would be entirely incompatible with the contract's nature. The Ninth Circuit was quite wrong in holding that *Totten* does not require dismissal of respondents' claims. It reasoned that *Totten* developed merely a contract rule, prohibiting breach-of-contract claims seeking to enforce an espionage agreement's terms but not barring due process or estoppel claims. However, *Totten* was not so limited. It precludes judicial review in cases such as respondents' where success depends on the existence of their secret espionage relationship with the Government. *Id.,* at 107. The Ninth Circuit also claimed that *Totten* had been recast simply as an early

Syllabus

expression of the evidentiary "state secrets" privilege, rather than a categorical bar to respondents' claims, relying mainly on *United States* v. *Reynolds,* 345 U. S. 1, in which widows of civilians killed in a military plane crash sought privileged military information in their wrongful death action against the Government. While the *Reynolds* Court looked to *Totten* in invoking the "well established" state secrets privilege, it in no way signaled a retreat from *Totten*'s broader holding that lawsuits premised on alleged espionage agreements are altogether forbidden. The Court later credited *Totten*'s more sweeping holding in *Weinberger* v. *Catholic Action of Haw./Peace Ed. Project,* 454 U. S. 139, 146–147, thus confirming its continued validity. *Reynolds* therefore cannot plausibly be read to have replaced *Totten*'s categorical bar in the distinct class of cases that depend upon clandestine spy relationships. Nor does *Webster* v. *Doe,* 486 U. S. 592, which addressed constitutional claims made by acknowledged (though covert) CIA employees, support respondents' claim. Only in the case of an alleged former spy is *Totten*'s core concern implicated: preventing the existence of the plaintiff's relationship with the Government from being revealed. The state secrets privilege and the use of *in camera* judicial proceedings simply cannot provide the absolute protection the Court found necessary in enunciating the *Totten* rule. The possibility that a suit may proceed and an espionage relationship may be revealed is unacceptable. Forcing the Government to litigate these claims would also make it vulnerable to "graymail," *i.e.,* individual lawsuits brought to induce the CIA to settle a case out of fear that litigation would reveal classified information that might undermine covert operations. And requiring the Government to invoke the privilege on a case-by-case basis risks the perception that it is either confirming or denying relationships with individual plaintiffs. Pp. 5–10.

329 F. 3d 1135, reversed.

REHNQUIST, C. J., delivered the opinion for a unanimous Court. STEVENS, J., filed a concurring opinion, in which GINSBURG, J., joined. SCALIA, J., filed a concurring opinion.