SUPREME COURT OF THE UNITED STATES

No. 07–615

MINISTRY OF DEFENSE AND SUPPORT FOR THE ARMED FORCES OF THE ISLAMIC REPUBLIC OF IRAN, PETITIONER *v.* DARIUSH ELAHI

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

[April 21, 2009]

JUSTICE KENNEDY, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, concurring in part and dissenting in part.

I join Parts I and II of the Court's opinion but, with all respect, dissent from Parts III and IV. As to Parts I and II, the Court is correct, in my view, to hold that the Cubic Judgment was not a "blocked asset" when the Court of Appeals reached its decision. As to Parts III and IV, however, respondent Dariush Elahi has not relinquished his right to attach the Cubic Judgment. By holding otherwise, the Court departs from the plain meaning and the purpose of the statutes Congress enacted to compensate Elahi and other victims of terrorism.

I

A

The statutory phrase to be interpreted is "property that is at issue in claims against the United States before an international tribunal." Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), §2002(d)(s), as added by Terrorism Risk Insurance Act of 2002 (TRIA), §201(c)(4), 116 Stat. 2339, note following 28 U. S. C. §1610. The context, of course, is Case No. B61—a suit by Iran against the United States that is pending before the

Iran-U. S. Claims Tribunal. The word "property," as used in the statutory phrase, surely can refer both to tangible property, such as real estate or valuables in a safe-deposit box, and to intangible property interests, such as a claim, a cause of action or, as in this case, a judgment rendered by a United States district court. Still, it must be acknowledged that the term "at issue" is neither precise nor much illuminated by its operation in cases or other statutes. The absence of any clear authority on this point makes it imperative to adopt an interpretation that accords with familiar and well-settled principles of law. In this case those principles are the rules designed to give full and proper respect to final judgments rendered by courts of competent jurisdiction.

To determine whether the Cubic Judgment is "at issue" in Case No. B61, the primary consideration must be whether the Claims Tribunal, in the exercise of its own authority and jurisdiction, can affect the ownership, disposition, or control of the property the judgment comprises. Here the property in question is a judgment rendered by the United States District Court for the Southern District of California. As all acknowledge, that court had jurisdiction over the subject and the persons then before it. And, as is further conceded, that court's judgment is valid and has binding force on Cubic Defense Systems, Inc., the nongovernmental party before that court. See *Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran* v. *Cubic Defense Systems, Inc.*, 29 F. Supp. 2d 1168, 1170 (1998). Neither party to Case No. B61 questions the judgment or requests the Claims Tribunal to interpret it—much less to alter, enforce or invalidate it.

Even if one of the parties were to ask the Claims Tribunal to modify the Cubic Judgment, the Tribunal would simply lack power to do so. The judgment arises out of Iran's contractual dispute with Cubic, an American company, and the Tribunal has no "jurisdiction over claims by

Iran against United States nationals." *Ministry of Nat. Defence of Islamic Republic of Iran* v. *United States,* 14 Iran-U. S. Cl. Trib. Rep. 276, 278 (1987) (Case No. B66). Iran tried to sue Cubic in the Claims Tribunal 20 years ago, but the Tribunal dismissed that suit for lack of jurisdiction. *Ibid.* In these circumstances the Cubic Judgment is simply an extrinsic fact beyond the Claims Tribunal's power to affect. True, the Tribunal, when it enters its own orders, might or might not give credit to the United States for a payment, or a right to payment, arising out of the Cubic Judgment; but that does not put the judgment itself at issue.

B

Even if the Court's broad reading of the phrase "at issue" were correct, the Court's conclusion would still be wrong because the relinquishment provision is limited to property that is at issue "in claims against the United States." And the Cubic Judgment is not part of the claims Iran makes in Case No. B61, as both Iran and the United States have made clear in their submissions to the Claims Tribunal. To put the countries' filings in context, a brief review of both the Cubic Judgment and Case No. B61 is necessary.

The Cubic Judgment is the result of a contract dispute between Iran and Cubic. In the late 1970's, Iran hired Cubic to build an air combat training system, and advanced some $12 million for the project. But Iran failed to make all the payments due. App. 43–44. Thus rebuffed, Cubic sold the system to Canada and refused to refund any of Iran's advance payments. Iran brought an arbitration against Cubic. The panel of arbitrators, after ascertaining Cubic's costs of building the system, and after allowing the company a reasonable profit of $3.5 million, ordered Cubic to return to Iran $2.8 million of the $12 million advance. Iran brought this arbitration award to

the U. S. District Court for the Southern District of California, which issued the judgment at issue here. The judgment orders Cubic to pay Iran $2.8 million. *Cubic Defense Systems*, *supra*, at 1171, 1174.

Case No. B61 is in essence a contract dispute between Iran and the United States. Iran accuses the United States of breaking its promise, made in the Algiers Accords, to "arrange . . . for the transfer to Iran of all Iranian properties" located in the United States on January 19, 1981. 20 I. L. M. 224, 227, ¶9 (1981). One of the properties Iran claims is Cubic's air combat training system. See Statement of Claim in No. B61, (Iran-U. S. Cl. Trib.), App. to Brief for United States 22a, 24a, 31a. Both parties have confirmed, in their joint report describing all the "property claimed by Iran," that Cubic's system is "at issue" in Iran's claims. Cover Letter to Final Joint Report (July 14, 1989), App. to Brief for Respondent 14.

But the Cubic Judgment, in contrast to Cubic's training system, is not part of Iran's claims in Case No. B61. Both countries made this clear in their submissions to the Tribunal. Their joint report does not list the Cubic Judgment among the properties "at issue." Final Joint Report (July 14, 1989), App. to Brief for Respondent 15–23. And, in a statement altogether consistent with that omission, Iran told the Tribunal that "[t]he subject matter of [Case No. B61], at variance with the [arbitration] action [against Cubic], is the losses suffered by Iran as a result of the United States' non-export of Iranian properties." Iran's Statement 16, App. 73, 76. The United States agreed, stating that the "only 'property that' . . . is properly at issue" in Case No. B61 is property that "'has already been made the subject of a claim'" by Iran against the United States. U. S. Rebuttal (Sept. 1, 2003), 1 Lodging p. L419 (emphasis deleted) (Sealed). The United States reaffirmed this position in oral argument before the Tribunal: "Any losses in relation to [the Iran-Cubic] contract are not re-

coverable against the United States and issues regarding losses under that contract do not belong before this Tribunal." Tribunal Hearing 124 (Dec. 12, 2006), App. to Brief for Respondent 42.

Because the Claims Tribunal lacks jurisdiction over the Cubic Judgment, and because that judgment is not part of Iran's claims against the United States in Case No. B61, the judgment is not "property that is at issue in claims against the United States" under the plain meaning of the TRIA's relinquishment provision. TRIA §201(c)(4), 116 Stat. 2339 (amending VTVPA §2002(d)).

II

Even if the text of the relinquishment provision were somehow ambiguous—and it is not—then the purpose of the VTVPA and TRIA would tip the scales in Elahi's favor. The text and the evident purpose of those statutes demonstrate that Congress' primary purpose was to compensate the victims of terrorism, not to secure from those victims a relinquishment of their claims to property owned by entities found to have sponsored terrorism.

The text of the VTVPA, and of the amendments made to it by the TRIA, shows that Congress' primary purpose was to enable the victims of terrorism to execute on the assets of a state found to have sponsored or assisted in a terrorist act. In the first subsection of the TRIA concerning the attachment of state assets by victims of terrorism, Congress provided that "[n]otwithstanding any other provision of law . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism . . . the blocked assets of that terrorist party . . . shall be subject to execution or attachment in aid of execution in order to satisfy such judgment . . . ." TRIA §201(a), *id.,* at 2337. The effect of this subsection is to ensure that other laws do not bar victims' efforts to enforce judgments against terrorist states. To like effect is

another paragraph of the VTVPA concerning victims of Iranian terrorism. Entitled "Statutory Construction," this paragraph reads: "Nothing in this subsection shall bar, or require delay in, enforcement of any judgment to which this subsection applies under any procedure . . . ." §2002(d)(4), as added by TRIA §201(c)(4), *id.*, at 2339. Though neither provision refers in direct terms to the relinquishment provision, both provisions show Congress' intent to broaden, rather than limit, the rights of victims like Elahi to execute on property owned by state sponsors of terrorism. Yet the opinion issued by the Court today does just the opposite.

To contravene the statute's clear design, the Court surmises that Congress also had a "more complicated" purpose, namely, to "protec[t] property that the United States might use to satisfy its potential liability to Iran." *Ante*, at 17. This imagined purpose, the Court says, requires us to read the relinquishment provision as broadly as possible so as to prevent victims of terrorism from attaching property. But the Court does not point to evidence of this putative purpose, aside from the text of the relinquishment provision itself—a text which, as submitted above, the Court reads the wrong way.

The better reading of the relinquishment provision—and one much more consistent with Congress' protective purpose—is not as a "revenue-saving" device, *ibid.*, but as a way to foster compliance with the Government's international obligations. If Iran has asked the Claims Tribunal to resolve the status of certain property, then Iran and the Tribunal may well take the position that the United States has a responsibility under the Algiers Accords to prevent U. S. nationals from executing against that property. That concern is not present in this case. The ownership of the Cubic Judgment is not disputed, and allowing Elahi to attach it will not affect Iran's right to obtain full recovery from the United States in Case No. B61. At

most, the attachment might affect the right of the United States to use the judgment to offset its liability.

The Court purports to agree with this reading of the statute's purpose. *Ante*, at 17. But that agreement is hard to square with the Court's insistence upon fulfilling what it sees as the statute's "revenue-saving purpose." *Ibid.* If the Court did in fact believe that the "'better reading'" of the statute's purpose, *ibid.*, is to foster compliance with the United States' international obligations, then the Court would affirm the judgment of the Court of Appeals. Elahi's attachment of the Cubic Judgment does not hinder the U. S. Government's efforts to comply with its obligations under the Algiers Accords. At Algiers, the United States agreed to "arrange . . . for the transfer to Iran of all Iranian properties" located in the United States. 20 I. L. M., at 227, ¶9. That is not an obligation to pay Iran money, as the Court seems to believe. See *ante*, at 17. It is instead an obligation to take specific action in regard to specific properties. These specific properties do not include the Cubic Judgment—as the Court concedes. See *ante*, at 9 (holding that the Cubic Judgment was not blocked). Therefore, Elahi's attachment of the Cubic Judgment does not impede the United States' efforts to make good on its obligations under the Algiers Accords.

To be sure, a judicial lien on one of the specific properties referenced by the Algiers Accords might make it difficult for the U. S. Government to comply with its obligations, under those Accords, to arrange for that property's transfer to Iran. By encouraging creditors such as Elahi to give up their liens on these specific properties that are subject to the Algiers Accords, the TRIA makes it easier for the Government to comply with its obligation to "arrange . . . for the transfer" of these properties to Iran. This purpose (fostering compliance with the United States' obligation under the Algiers Accords) is more in keeping with the statute's text than is the Court's "revenue-saving"

purpose. And this purpose—that is, the purpose of enabling the United States to meet its obligations under the Algiers Accords—is not in the least frustrated by permitting Elahi to attach the Cubic Judgment, a property that, as the Court concedes, is not subject to the Algiers Accords.

III

The facts of this case show the injustice of the Court's interpretation. The Court today puts an end to Elahi's decade-long quest to hold Iran to account for murdering his brother Cyrus. In 2000, Elahi won a wrongful-death lawsuit against Iran and was awarded some $6 million in compensatory damages. See *Elahi* v. *Islamic Republic of Iran*, 124 F. Supp. 2d 97 (DC). In April 2003, Elahi took what he must have considered a further step toward his goal when he accepted $2.3 million from the U. S. Government under the VTVPA.

After today's ruling, what once appeared Elahi's gain of $2.3 million now seems to be a loss of $500,000. By taking the VTVPA's $2.3 million, the Court holds, Elahi relinquished his right to the $2.8 million Cubic Judgment he had already attached. The practical effect of the Court's ruling is to turn the purpose of the VTVPA on its head. Rather than further Elahi's effort to obtain compensation for the murder of his brother, the Act has instead set him back half a million dollars. For the reasons given above, this result was not what Congress intended when it passed the VTVPA.

IV

Congress passed the Victims of Trafficking and Violence Protection Act and the Terrorism Risk Insurance Act to compensate victims of terrorism. Congress expressed this purpose both in the text of the principal provision interpreted here and in accompanying sections of the statute.

By stripping Elahi of his right to attach the valid judgment against Cubic rendered by the District Court—a judgment not before the Claims Tribunal in any sense—the Court fails to give the statute its intended effect. These reasons explain my respectful dissent.