

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

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MINISTRY OF DEFENSE AND SUPPORT FOR THE
ARMED FORCES OF THE ISLAMIC REPUBLIC OF
IRAN *v.* ELAHICERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 07–615. Argued January 12, 2009—Decided April 21, 2009

In 1997, the International Court of Arbitration awarded petitioner Iranian Ministry of Defense (hereinafter Iran) \$2.8 million to settle a dispute with Cubic Defense Systems, Inc., a California company, over a 1977 contract that would have provided Iran with an air combat training system. When Cubic refused to pay, Iran sued in the Federal District Court in San Diego, which ordered Cubic to pay the award plus interest (Cubic Judgment). In 2000, respondent Elahi sued Iran in the D.C. Federal District Court, claiming that Iranian agents had murdered his brother. He obtained a default judgment of about \$312 million and sought to collect some of the money by attaching the Cubic Judgment. Iran opposed the lien under the Foreign Sovereign Immunities Act of 1976 (FSIA). The California District Court denied Iran’s immunity claim, and the Ninth Circuit affirmed, finding an exception to sovereign immunity. This Court vacated and remanded. *Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran v. Elahi*, 546 U. S. 450.

On remand, the Ninth Circuit found that a different immunity exception applied, citing the Terrorism Risk Insurance Act of 2002 (TRIA), which permitted holders of terrorism-related judgments against Iran to attach “blocked” Iranian assets. The United States had blocked Iranian assets following the Iranian hostage crisis in 1979, and the court held that the asset Elahi sought to attach had remained blocked notwithstanding the unblocking orders issued after the crisis was resolved by the Algiers Accords in 1981. The court reasoned that those unblocking orders had omitted military goods such as the training system underlying the Cubic Judgment. The court

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further rejected Iran's argument that Elahi had waived his right of attachment, and concluded that he could attach the Cubic Judgment.

Held:

1. The asset in question was not "blocked" at the time of the Ninth Circuit's decision. Contrary to that court's holding, the relevant asset is not Iran's interest in the air combat training system, but, rather, a judgment enforcing an arbitration award based upon Cubic's failure to account to Iran for its share of the proceeds of the system's eventual sale to Canada. And neither the Cubic Judgment nor the sale proceeds it represents were blocked assets at the time of the Court of Appeals' 2007 decision. In a 1981 order, the Treasury Department unblocked transactions involving property in which Iran's interest arose after January 19, 1981. Iran's interest in the Cubic Judgment itself arose on December 7, 1998, when the District Court confirmed the arbitration award. And Iran's interest in the property underlying the judgment arose, as the arbitrators ruled, when Cubic completed its sale of the air combat system in October 1982. Thus, whether Iran's "interest in property" is considered to be its interest in the Cubic Judgment itself or its underlying interest in the sale proceeds, the interest falls within the terms of the Treasury Department's general unblocking order. Even assuming (as the Ninth Circuit held) that the relevant asset was Iran's pre-1981 interest in the training system itself, that asset still was not "blocked" at the time of the decision below. Such an interest would fall directly within the scope of Executive Order No. 12281, which required that property owned by Iran be transferred "as directed . . . by the Government of Iran." No authority supports the contrary conclusion. Pp. 8–11.

2. Elahi cannot attach the Cubic Judgment because he has waived his right to do so. Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (VPA) offers compensation to individuals holding terrorism-related judgments against Iran. It requires those receiving payment to relinquish "all rights to . . . attach property that is at issue in claims against the United States before an international tribunal." §2002(a)(2)(D). In 2003, the U. S. Government paid Elahi \$2.3 million under the VPA as partial compensation for his judgment against Iran, and he signed a waiver form that mirrors the statutory language. A review of the record in Iran-U. S. Claims Tribunal Case No. B61 demonstrates that the Cubic Judgment falls within the terms of Elahi's waiver. Iran filed that case in 1982, claiming that between 1979 and 1981 the United States had wrongly barred the transfer of the Cubic training system and other military equipment to Iran. Iran asked the Tribunal to order the United States, among other things, to pay Iran damages. The United States answered that the Tribunal should set off the \$2.8 million represented by the Cubic

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Judgment against any award. Iran argued that the Tribunal should not set off the \$2.8 million insofar as third parties have attached the judgment. In the terms of Elahi's waiver, therefore, the Cubic Judgment is "property," and Case No. B61 itself is a "clai[m] against the United States before an international tribunal." And there remains a significant dispute about whether the Cubic Judgment can be used by the Tribunal as a setoff, placing the Judgment "at issue" in Case No. B61. Elahi's arguments to the contrary are unavailing. Pp. 12–20.

3. Given Elahi's waiver, this Court need not decide whether the Cubic Judgment was blocked by new Executive Branch actions following the Ninth Circuit's decision. P. 20.

495 F. 3d 1024, reversed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, THOMAS, and ALITO, JJ., joined, and in which KENNEDY, SOUTER, and GINSBURG, JJ., joined as to Parts I and II. KENNEDY, J., filed an opinion concurring in part and dissenting in part, in which SOUTER and GINSBURG, JJ., joined.