

No. 12-842

IN THE
Supreme Court of the United States

REPUBLIC OF ARGENTINA,
Petitioner,

v.

NML CAPITAL, LTD.,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

**BRIEF FOR ADDITIONAL FAMILY MEMBERS
OF VICTIMS OF STATE-SPONSORED
TERRORISM AS AMICI CURIAE
SUPPORTING RESPONDENT**

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**BRIEF FOR
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INTEREST OF THE AMICI CURIAE*

Amici are the surviving family members or estates of victims of state-sponsored terrorism. Using their federal statutory rights to seek compensation for their losses, amici have pursued recompense from the foreign states that sponsored the terrorist attacks. They either already hold money judgments or are now actively litigating claims for monetary relief against foreign states for acts of state-sponsored terrorism.

Amici submit this short brief to add their voices to the arguments made in a brief filed by their fellow victims of state-sponsored terrorism, Beverly Burnett et al. (“Brief for Family Members and Estates of Victims of State-Sponsored Terrorism as Amici Curiae Supporting Respondent”; hereinafter “Burnett brief”). As described below, many years of terrorist acts against Americans have led to litigation against a variety of foreign sovereigns who have sponsored terrorism. The amici joining this brief provide additional perspective on the number of terrorist acts,

* Letters reflecting the parties’ consent to the filing of this brief are on file with the Clerk or being lodged herewith. No counsel for a party authored any portion of this brief. No party and no other entity, except *amici* and their counsel, made any monetary contribution toward the preparation or submission of this brief.

and the number of victims and survivors, who could be affected by a decision that severely curtails the ability to seek post-judgment discovery against foreign sovereigns in such cases.

Victims of North Korean state-sponsored terrorism: On May 30, 1972, 26 innocent people were killed and over 80 were wounded in a terrorist attack at Lod Airport in Tel Aviv, Israel. Seventeen of the victims were residents of Puerto Rico on a pilgrimage to Israel, including American citizen **Carmelo Calderón-Molina**, who was killed in the attack and whose estate is an amicus here. The attack was a joint operation of two terrorist organizations, the Japanese Red Army and the Popular Front for the Liberation of Palestine, and it was facilitated by, *inter alia*, material support provided by the Democratic People's Republic of North Korea; North Korea's Cabinet General Intelligence Bureau; and by the predecessor of the State of Libya. In *Calderon-Cardona v. Democratic People's Republic of Korea*, 723 F. Supp. 2d 441 (D.P.R. 2010), the district court awarded \$78 million in compensatory damages and \$300 million in punitive damages to the estates and surviving family members of Mr. Calderón-Molina and another victim. This judgment remains unsatisfied, and efforts to collect continue.

The estate and the other judgment creditors have obtained support in identifying assets from the U.S. Treasury Department's Office of Foreign Assets Control. Congress added a provision to the Foreign Sovereign Immunities Act (FSIA) directing the Secretary of the Treasury and the Secretary of State to assist plaintiffs like amici in identifying assets to satisfy

terrorism-related judgments. *See* 28 U.S.C. § 1610(f)(2); Burnett brief § II.A.

Victims of the attack on USS *Cole*: On October 12, 2000, the U.S. Navy destroyer USS *Cole* was attacked by a terrorist bomb while in the Port of Aden, Yemen. The attack was carried out by Al Qaeda operatives and supervised directly by Osama bin Laden. Seventeen U.S. Navy sailors were killed and 42 others were injured. Among those killed were Electronic Warfare Technician First Class Kevin Shawn Rux and Fireman Patrick Howard Roy. Amici **Saundra Flanagan, James Rux, Thomas Rux, Timothy Rux, and Matthew Rux** are Kevin Rux's surviving mother and brothers. They are pursuing claims for monetary damages against the Islamic Republic of Iran, the Republic of Sudan, and the Syrian Arab Republic. *See Flanagan v. Islamic Republic of Iran*, No. 1:10-cv-1643 (D.D.C. filed Sept. 28, 2010).

Amicus **Kevin Roy** is Patrick Roy's surviving brother. Mr. Roy is pursuing claims for monetary damages against the Republic of Sudan. *See Kumar v. Republic of Sudan*, No. 2:10-cv-171 (E.D. Va. filed April 16, 2010). The Republic of Sudan has twice been found liable for the bombing of USS *Cole* by virtue of the material support and resources it provided to Al Qaeda in the planning, preparation and execution of the attack. *Harrison v. Republic of Sudan*, 882 F. Supp. 2d 23 (D.D.C. 2012); *Rux v. Republic of Sudan*, 495 F.Supp.2d 541 (E.D. Va. 2007).

ARGUMENT

As set out in the Burnett brief, foreign states—including state sponsors of terrorism—enjoy no immunity from post-judgment discovery under the FSIA. To the contrary: the United States Congress has taken steps to ensure that the victims, and their families, are able to secure compensation through the American civil justice system. To prevent that guarantee from becoming entirely hollow, this Court should reject Argentina’s position that the FSIA severely limits post-judgment discovery.

CONCLUSION

For the reasons stated in the Burnett brief, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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