No. 16-733

In The
Supreme Court of the United States

GONZALO SÁNCHEZ DE LOZADA SÁNCHEZ BUSTAMANTE, ET AL.,

Petitioners,

v.

ELOY ROJAS MAMANI, ET AL.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the exhaustion provision of the Torture Victim Protection Act stands as a bar to respondents' cause of action because they received humanitarian assistance from the government of Bolivia.

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STATEMENT

This interlocutory petition presents a question of first impression, lacking any conflict among the courts of appeals, regarding the application of the exhaustion provision of the Torture Victim Protection Act of 1991 ("TVPA"). Those undisputed circumstances make this case a quintessential example of one in which certiorari should be denied.

1. Respondents are Bolivian citizens who sued petitioners, the former Bolivian President and the former Minister of Defense, under the TVPA, 28 U.S.C. § 1350 note, and on other grounds not at issue here.

Petitioner Gonzalo Sánchez de Lozada Sánchez Bustamante ("Lozada") was elected President of Bolivia on two separate occasions, serving from 1993 until 1997 and from August 2002 until October 2003. Pet. App. 2a. Before taking office for the second time, Lozada and his Minister of Defense, petitioner José Carlos Sánchez Berzaín ("Berzaín"), were aware that certain of their economic programs would trigger public opposition, particularly their plan to export natural gas. They agreed that, in the event that protests erupted, "they would use military force to kill as many as 2,000 or 3,000 civilians in order to squelch the opposition." *Id.* at 3a.

In September 2003, Lozada announced his intention to finalize a contract to sell natural gas to the United States and Mexico. Pet. App. 3a. As expected, that announcement spurred widespread protests, with opponents blocking roads by digging ditches and using rocks and other impediments to stop the flow of traffic. One such road led to Sorata, a small mountain town where hundreds of foreign tourists became trapped by the road blocks. *Id.* Using the tourists as a justification to stymie the protests, Lozada, Berzaín, and others made plans to execute military operations to clear the road to Sorata. In the operations that followed, over 400 civilians were injured and 58 were killed, including 8 of respondents' relatives. *Id.*

On October 17, 2003, the United States Embassy withdrew its support for the Lozada government. Lozada resigned the same day and fled to the United States along with Berzaín. Pet. App. 3a-4a.

In November 2003, the new Bolivian government enacted a "Humanitarian Assistance Agreement" providing for "humanitarian assistance compensation" for the families of those killed in the recent military operations. Pet. App. 4a. The agreement provided each victim's family 55,000 bolivianos as general compensation and 5,000 bolivianos for emergency and funeral expenses—equivalent to $7,181 U.S. dollars. *Id.*; *Mamani v. Sánchez-Berzaín*, 636 F. Supp. 2d 1326, 1329 (S.D. Fla. 2009) ("*Mamani I*").

In 2007, petitioners were indicted, along with 15 other former government officials, for various crimes related to the events of 2003. Those who remained in Bolivia were convicted of "genocide through mass killings." Pet. App. 4a. Petitioners, however, had fled to the United States. Because Bolivia does not permit trials in absentia, petitioners were not tried. *Id.* at 4a, 50a.

In 2008, the Bolivian government passed another law authorizing compensation for victims of the Lozada regime: the "Law for the Victims of the Events of February, September, and October 2003." In addition to free public university education, the new law provided the beneficiaries of each of the victims a one-time payment in an amount equal to $19,905 U.S. dollars. *Mamani I*, 636 F. Supp. 2d at 1330. Neither the 2008 law nor the 2003 "Humanitarian Assistance Agreement" released petitioners from liability or waived respondents' rights to pursue other legal remedies against them directly. Pet. App. 47a-48a nn.17-18.

2. In 2007, respondents sued petitioners (in pertinent part) under the TVPA. Respondents alleged that, through the military operations of September and October 2003 designed to suppress civilian opposition, petitioners caused the extrajudicial killings of respondents' relatives. Respondents sought compensatory, punitive, and exemplary damages, as well as attorney's fees and costs. Pet. App. 5a.

In 2008, the Bolivian government waived any immunity that petitioners might claim, and the United States government accepted that waiver. *Mamani v. Sánchez-Berzaín*, 654 F.3d 1148, 1151 (11th Cir. 2011); *see also* Notice of United States, Ex. B, *Mamani v. Sánchez-Berzaín*, No. 07-cv-22459 (S.D. Fla. Oct. 21, 2008), ECF No. 107 ("Gov't Notice").

In 2009, the district court dismissed respondents' TVPA claims without prejudice, finding that they had failed to exhaust the newly available remedies provided by the 2008 Bolivian law. *Mamani I*, 636 F. Supp. 2d at 1331-1332. Following the district court's dismissal, respondents sought and obtained the available compensation from the Bolivian government. They then amended their complaint to reflect that exhaustion and to include additional factual allegations directly linking petitioners to the planning, implementation, and supervision of the extrajudicial killings of their family members.

Petitioners again moved to dismiss. Among other reasons, petitioners argued that respondents' TVPA claims were precluded by the humanitarian assistance payments they collected in satisfying the

law's exhaustion requirement. The district court denied petitioners' motion, finding that the TVPA's exhaustion provision (section 2(b)) had no "preclusive effect under the circumstances of this case." Pet. App. 49a. The district court, however, granted petitioners' motion to certify its order for interlocutory review. *See* Order Granting Mot. for Certification for Interlocutory Appeal, *Mamani v. Sánchez-Berzaín*, No. 07-cv-22459 (S.D. Fla. Aug. 8, 2014), ECF No. 211 ("Certification Order").

3. After granting interlocutory review, the Eleventh Circuit unanimously affirmed the district court's decision that the humanitarian assistance payments respondents received did not preclude their TVPA claims. Pet. App. 1a-18a.[1]

"In construing a statute," the Eleventh Circuit stated, "we must begin, and often should end as well, with the language of the statute itself." Pet. App. 8a (quoting *United States v. Steele*, 147 F.3d 1316, 1318 (11th Cir. 1998) (en banc)). Section 2(b) of the TVPA, the court of appeals explained, provides that "[a] court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred." *Id.* at 9a (quoting Pub. L. No. 102-256, 106 Stat. 73, § 2(b) (1992) (codified at 28 U.S.C. § 1350, historical and statutory notes)).

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[1] The court of appeals "decline[d] to" consider "the part of the district court's order denying the motion to dismiss the second amended complaint for failure to state a claim." Pet. App. 18a. That issue is therefore not before this Court.

Noting that respondents had fulfilled the exhaustion requirement by availing themselves of the remedies provided by the Bolivian government, the Eleventh Circuit concluded that "the § 2(b) bar no longer bars their claims." Pet. App. 10a. Petitioners' preclusion argument, the court of appeals reasoned, would require it to revise the statutory text to "strike the words 'has not' before 'exhausted' and write in their place the words 'has successfully,' and *** also *** write in a clause about the claimant having received 'substantial compensation.'" *Id.* Leaving aside the vagueness problem that would arise if the term "substantial compensation" were included, the court declined to "amend, modify, or revise" the statute as petitioners requested. *Id.*

Addressing petitioners' contention that they sought only to give meaning to the "necessary import" of the statutory language, the court explained that "[t]he necessary import of 'if plaintiffs don't do X they lose' is not 'if plaintiffs do X and get Y, they also lose.'" Pet. App. 11a.

Nor was the court of appeals persuaded by petitioners' resort to the "canon of imputed common-law meaning." Pet. App. 12a. The court declined to decide whether petitioners had indeed cited a "well-settled rule" dictating that exhaustion provisions be understood to bar claims where plaintiffs have obtained adequate remedies. *Id.* at 13a. In any event, the court reasoned, by using unambiguous text, Congress revealed its intent that no such rule should be incorporated into the TVPA. *Id.*

The Eleventh Circuit concluded by noting the limits of its holding. It did not, the court of appeals

made clear, decide "whether the recoveries [respondents] received in Bolivia ha[d] any preclusive effect under principles of res judicata," as no such claim had been raised. Pet. App. 14a. And it did not decide whether the compensation respondents received should be deducted from any ultimate award. *Id.* Rather, the court decided only that the "successful exhaustion of foreign remedies does not operate under § 2(b) to bar a TVPA claim." *Id.* at 14a-15a.

The Eleventh Circuit denied a petition for rehearing en banc, with no judge voting to rehear the case. Pet. App. 19a-20a.

REASONS FOR DENYING THE PETITION

Petitioners urge this Court to depart from its usual practice and to review the unanimous decision below on a question of "first impression" (Pet. 18), in the absence of any disagreement among the courts of appeals and despite its interlocutory posture. Petitioners assert that this is "the rare case of exceptional importance where certiorari should be granted even in the absence" of a circuit conflict. *Id.* at 9. Notwithstanding petitioners' effort to paint this case as a sea change in operation of the TVPA with far-reaching implications for U.S. foreign policy, their pleas in the unique circumstances of this case boil down to nothing more than a request for error correction where no error occurred. For these and other reasons, the petition should be denied.

I. THERE IS NO CIRCUIT CONFLICT AND NO OTHER COMPELLING REASON TO GRANT REVIEW

Petitioners acknowledge that "there is no conflict in the courts of appeals concerning the question presented." Pet 17. They nonetheless ask this Court to grant certiorari because the question presented (they say) is "exceptionally important." *Id.* In reality, the foreign-policy considerations petitioners invoke are wholly divorced from the question presented, and the United States already declined (despite judicial invitation) to take a position on this litigation. *See* Gov't Notice at 2. Moreover, the issue on which petitioners seek this Court's review has not arisen in any other case since the TVPA was enacted. *See* Pet. App. 8a ("No court of appeals has addressed this issue."); *Mamani I*, 636 F. Supp. 2d at 1331 ("As far as I can tell, no federal court has yet grappled with these issues[.]"); Certification Order at 5 ("[T]here is no case law directly on point.").

1. In support of their contention that this case merits review, petitioners (repeatedly) point to the fact that respondents have sued a former President and Minister of Defense for actions taken in their official capacity. *See* Pet. 2 ("This case involves an unprecedented effort to force a foreign head of state to stand trial in the United States under the Torture Victim Protection Act for his official actions."); *id.* at 3 ("If this lawsuit is permitted to proceed, it would be the first time that a foreign head of state has stood trial in the United States under the TVPA for his official actions."); *see also id.* at 9, 17, 19.

But neither the identity of petitioners, nor the circumstances of the challenged actions, has any bearing on the question presented. Petitioners do not raise any immunity doctrine—nor could they given that the United States accepted Bolivia's waiver of all immunities potentially applicable to petitioners. *See* Gov't Notice, Ex. B. Rather, petitioners seek review of the Eleventh Circuit's interpretation of section 2(b) of the TVPA—an exhaustion provision that applies in *all* TVPA cases, regardless of the defendant's official position or the circumstances underlying the plaintiff's claims. Petitioners' assertion that "the court of appeals' interpretation of the TVPA 'carries with it significant foreign policy implications'" (Pet. 18 (citation omitted)) thus rings hollow.

The facts on which petitioners rely are relevant, if at all, to their merits-related arguments that respondents cannot state a claim for relief under the TVPA. *See* Pet. 9 (indicating disagreement with the district court's holding that "national leaders may be liable under the doctrine of command responsibility for the acts of individual soldiers and police officers during a time of severe unrest"). But the Eleventh Circuit *declined* to consider those arguments in an interlocutory appeal, and they are not before this Court. *See* Pet. App. 18a; note 1, *supra*. Petitioners may have the opportunity to bring those arguments to this Court's attention one day, but they cannot claim the mantle of exceptional importance by shoehorning irrelevant facts into a discussion of the TVPA's exhaustion provision.

2. Stripped of those distractions, petitioners are left grasping at straws in an attempt to elevate the

importance of the decision below. They point to the district court's statement that there are "substantial grounds for disagreement" on the proper interpretation of section 2(b); assert that the Eleventh Circuit analyzed the issue "at length" (*i.e.*, all of seven pages); and note a press release calling the Eleventh Circuit's decision "an important legal precedent." Pet. 18 (quoting Certification Order at 5; Press Release, Human Rights Program at Harvard Law School, Human Rights Case Against Former Bolivian President for Role in 2003 Massacre Cleared to Move Forward (June 17, 2016), *available at* tinyurl.com/harvardpressrelease).

Needless to say, none of those factors, alone or in combination, comes close to justifying certiorari. In the more than 25 years since the TVPA was enacted, *not a single court outside of this case* has addressed the question presented. And in the months since it was issued, no TVPA litigant in the lower federal courts has so much as cited the Eleventh Circuit's decision. The lack of attention to this issue suggests that, whatever reasonable basis for disagreement may exist on the question presented, there is no pressing need for this Court to resolve it now.

3. No doubt cognizant of the exceedingly thin arguments asserted in support of certiorari, petitioners opt for a Hail-Mary and urge the Court to call for the views of the Solicitor General to keep their petition alive. Pet. App. 20. But this case does not warrant the attention of the Solicitor General any more than it warrants the attention of this Court.

The United States has had ample opportunity to express its views on this litigation and has declined to do so, beyond *accepting* Bolivia's waiver of any immunities that petitioners might have claimed (*see* p. 4, *supra*). In May 2008, the district court invited the Justice and State Departments to file amicus briefs in the case. Order Inviting Dep't of Justice & Dep't of State to File Amicus Briefs, *Mamani v. Sánchez-Berzaín*, No. 07-cv-22459 (S.D. Fla. Apr. 1, 2008), ECF No. 60. The United States declined the court's invitation to provide views, instead stating that the government took no position "on the merits of dispositive issues raised by the parties," which included exhaustion. Gov't Notice at 2. The United States has given no indication in the years since that it has become any more eager to involve itself in this case. *See id.* (noting that the United States would "continue to monitor this litigation").

Accordingly, this Court should decline petitioners' invitation to prolong this interlocutory appeal by calling for the views of the Solicitor General. With or without those views, the question presented will remain splitless and of limited consequence.

II. THE INTERLOCUTORY POSTURE OF THIS CASE STRONGLY COUNSELS AGAINST REVIEW

This Court has admonished that "piece-meal appellate review is not favored[] and this Court above all others must limit its review of interlocutory orders." *Goldstein v. Cox*, 396 U.S. 471, 478 (1970) (citation omitted). "Except in extraordinary cases, [a] writ [of certiorari] is not issued until final decree."

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916); *see also Abbott v. Veasey*, 137 S. Ct. 612, 613 (2017) (mem.) (Roberts, C.J., respecting denial of certiorari) ("The issues will be better suited for certiorari review" after "entry of a final judgment"); *Mount Soledad Mem'l Ass'n v. Trunk*, 132 S. Ct. 2535, 2536 (2012) (mem.) (Alito, J., respecting denial of certiorari) ("Because no final judgment has been rendered[,] *** I agree with the Court's decision to deny the petitions for certiorari.").

Petitioners offer no persuasive reason why this Court should depart from its usual practice and review this case before a final judgment has been entered. To the contrary, the balance of factors weighs heavily against interlocutory review.

1. To start, granting the petition will only increase the burdens respondents have already incurred in this protracted litigation. *See Gillespie v. United States Steel Corp.*, 379 U.S. 148, 152 (1964) (citing "inconvenience and cost" as the most important factors weighing against piecemeal review).

Respondents filed this lawsuit in 2007, almost ten years ago. After two interlocutory appeals and multiple stays, the case remains in its early stages. Petitioners only recently answered the operative complaint, and the discovery process has barely begun. If this Court grants the petition (or even calls for the views of the Solicitor General), and a new stay is entered, the case will stall again, further compromising respondents' ability to prove their claims on the merits. *See* Opp'n to Mot. for Certification for Interlocutory Appeal at 13, *Mamani*

v. Sánchez-Berzaín, No. 07-cv-22459 (July 11, 2014), ECF No. 209 (noting that "[a]nother stay and interlocutory review will only exacerbate the risk that evidence and witnesses will be lost").

2. For all its attendant costs, interlocutory review offers no countervailing benefit because, even if this Court grants certiorari and petitioners prevail, the issue of exhaustion will not be put to rest.

Petitioners explain that their interpretation of section 2(b) does not mean that "when it comes to exhaustion, you're barred if you do and barred if you don't." Pet. 16 (quoting Pet. App. 2a). Rather, petitioners assert, "[u]nder [their] interpretation, a plaintiff is permitted to proceed with a TVPA claim if he exhausts but *fails adequately to recover*." *Id.* In other words, a TVPA claim is precluded only if the plaintiff obtains an "adequate" local remedy.

Petitioners breezily suggest that the question of adequacy has already been answered in the lower courts. Pet. 16-17. Not so. In its decision denying petitioners' motion to dismiss, the district court declined to address the issue. *See* Pet. App. 52a-53a ("[Respondents'] prior recoveries from the Bolivian government—*even if arguably 'adequate' compensation for their losses*—do not preclude them from seeking to hold [petitioners] liable under the TVPA.") (emphasis added). And in its decision granting petitioners' motion to certify an appeal, the district court made clear that the adequacy of respondents' recovery is a fact-intensive question that is inappropriate for interlocutory review. *See* Certification Order at 5 (noting respondents' objection to certification on grounds that "judging the

adequacy of the humanitarian aid" required inquiry into facts and concluding that "the issue presented for certification is *not* whether [respondents] received adequate compensation, but rather whether receiving *any compensation at all* from the Bolivian government precludes them from holding [petitioners] liable under the TVPA") (emphases added). Consistent with that fact, the court of appeals—though criticizing petitioners' rule for its "vague" requirement that plaintiffs receive "substantial compensation" from the local forum (Pet. App. 10a)—did not purport to determine adequacy either. [2]

Because the adequacy of respondents' recovery remains in dispute, respondents' claims would not be

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[2] As respondents explained in the courts below, petitioners cannot meet their burden of proving adequacy simply by comparing the amount of respondents' recovery with the average annual income in Bolivia. If respondents had been able to pursue a civil action against petitioners in their home country (which they could not do because such suits require a determination of criminal liability and petitioners avoided being held to account for their actions by absconding to the United States, *see* Pet. App. 50a), they would have been entitled to something akin to punitive damages. *See* Resp. C.A. Br. 33-34. The availability of such damages is relevant to the question whether the humanitarian aid respondents received constitutes an adequate remedy; that is particularly true because, under Bolivian law, that aid would not count against any civil recovery respondents obtained in court. *Id.*; *see also* Pet. App. 47a-48a nn. 17-18. Moreover, a determination of adequacy would have to take into account whether respondents' recovery fulfilled the purposes of the TVPA, including holding torturers legally accountable and providing a means of redress against them for their victims. *See* pp. 19-20, *infra*.

dismissed even if the Court granted the petition and petitioners prevailed on the merits. Rather, the only end served would be delay.

3. Petitioners suggest that interlocutory review is warranted because the Eleventh Circuit's decision threatens to "open the doors" to TVPA suits where plaintiffs have obtained "adequate" remedies in the local forum. Pet. 17. That argument is unpersuasive.

As an initial matter, TVPA plaintiffs were equally free to pursue claims in similar circumstances before the Eleventh Circuit's decision. Indeed, to respondents' knowledge, this case is the first one in which a defendant has raised the defense of exhaustion based on the victims' receipt of local humanitarian assistance. Nor do petitioners provide any basis to believe that a meaningful number of such cases even exist. It is thus difficult to see why the decision below would materially alter the landscape of TVPA claims moving forward.

In any event, deferring review of the question presented until final judgment will only benefit this Court. *If* the issue arises in other courts (as petitioners predict), the Eleventh Circuit's reasoning will be tested. And *if* petitioners are correct that the decision below is clearly erroneous, other courts will disagree. *If* that occurs, a circuit conflict may develop and the question presented might become worthy of this Court's attention. But there is no reason to grant immediate review when, assuming petitioners are correct, the Court will have ample opportunity to review the question presented after further percolation in the lower courts.

III. THE ELEVENTH CIRCUIT'S DECISION IS CORRECT

The principal argument petitioners advance is that the Eleventh Circuit's decision is wrong. Pet. 10-17. Even if that request for error correction were a sufficient reason to grant certiorari (which it is not), the unanimous decision of the court of appeals is in fact correct and of "limited reach." Pet. App. 14a.

1. The Eleventh Circuit's analysis of the question presented in this case is straightforward: the text of section 2(b) does not categorically bar suit by a TVPA plaintiff who has sought and obtained relief in a local forum, and no canon of statutory construction necessitates amending, modifying, or revising the text to the degree necessary to find that it does.

Although complaining that the court of appeals "rested entirely on the text of the TVPA's exhaustion provision" (Pet. 11)—as if that were an unconventional approach—petitioners do not take issue with much of that text-based analysis. They do not argue, for example, that section 2(b)'s text addresses preclusion on its face. *See id.* Nor do petitioners disagree that the presumption that Congress intends to "incorporate the common-law meaning" of the words it uses is rebuttable and will yield in the event that there is some "other indication" of Congress's intent. *See id.* at 11-12 (quoting *Sekhar v. United States*, 133 S. Ct. 2720, 2724 (2013)) (internal quotation marks omitted). Petitioners' disagreement with the Eleventh Circuit's analysis largely centers on whether section 2(b)

includes such an "other indication" of congressional intent.

On that point, petitioners contend that the Eleventh Circuit relied on "nothing more than the TVPA's silence on the issue" to rebut the presumption of imputed common-law meaning. Pet. 15. Having set up that strawman, petitioners proceed to knock it down, observing that "this Court has explained *** [that] the presumption that Congress intends to incorporate common-law principles is so strong that it applies even where, as here, a statute is silent on the relevant issue." *Id.* (citing *Neder v. United States*, 527 U.S. 1 (1999); *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91 (2011)).

But the Eleventh Circuit did not rely on silence in rejecting petitioners' preferred interpretation of section 2(b). Instead, it endeavored to give meaning to the plain language Congress chose. "Congress," the court explained, "used the words 'if' and 'not' to frame § 2(b)'s exhaustion bar as a negative condition," making clear that "the provision limits that bar to cases where the claimant has not exhausted her remedies in the foreign state." Pet. App. 13a. In contrast, petitioners' "interpretation would extend the exhaustion bar to exactly the opposite situation, making it applicable where the claimant has (successfully) exhausted her remedies in the foreign state," and thereby "render[ing] superfluous the words 'if' and 'not'." *Id.* at 12a. The court rejected that interpretation not because it refused to infer meaning from silence, but because it was unwilling to "presume that Congress intended to

imply a meaning that *undercuts the explicit words it chose to use*." *Id.* at 13a (emphasis added).

2. Petitioners also complain that the Eleventh Circuit's decision is inconsistent with the "overriding purpose" of the TVPA as gleaned from the legislative history. Pet. 11. That purpose, they contend, "was to provide a 'means of civil redress to victims of torture' from countries whose 'governments still engage in or tolerate torture of their citizens' and are thus unwilling (or unable) to provide a means of redress." *Id.* (quoting H.R. REP. NO. 102-367 (1991)). Petitioners insist that "Congress would [not] have wanted to permit [a] plaintiff to seek additional remedies from an American court under the TVPA" if that "plaintiff has already obtained adequate relief in a foreign country for alleged misconduct that took place in that country." *Id.* at 17.

Petitioners' purpose-based argument suffers from two fatal flaws. *First*, the Eleventh Circuit's decision does not sweep as broadly as petitioners suggest. The court did not hold that a TVPA claim could *never* be barred where the plaintiff had obtained adequate local remedies—it merely declined, in light of section 2(b)'s plain text, to read the exhaustion provision to establish that categorical bar. The court explicitly left open the possibility that res judicata principles might apply in appropriate cases. Pet. App. 14a. In a circumstance in which a TVPA plaintiff has recovered adequately *from the perpetrator*, the application of res judicata rules could prevent the type of double recovery petitioners envision. *See id.* at 50a n.19 ("Any concern about a plaintiff using the TVPA to pursue a double recovery

from a defendant—e.g., obtaining and recovering on a foreign judgment against a defendant, and then seeking to obtain a second judgment against that defendant under the TVPA—is assuaged by the incorporation of res judicata principles into the statute.") (citing S. REP. NO. 102-249, at 10 (1991)).

Second, the legislative history confirms that it is petitioners' interpretation, and not the Eleventh Circuit's decision, that is discordant with the TVPA's purpose. In its report on the TVPA, the Senate Judiciary Committee was explicit about its aims in passing the new law. "The purpose of this legislation," the Committee explained, "is to provide a Federal cause of action against any individual who, under actual or apparent authority or under color of law of any foreign nation, subjects [another] to torture or extrajudicial killing." S. REP. NO. 102-249, at 3. The legislation was intended to fulfill the United States' obligations under the Convention Against Torture and Other Cruel, Inhuman, or Degrading, Treatment or Punishment, which requires parties to "adopt measures to ensure that torturers within their territories are held legally accountable for their acts." *Id.* The TVPA, the Committee made clear, would "do precisely that—by making sure that torturers and death squads will no longer have a safe haven in the United States." *Id.*[3]

[3] Statements affirming this perpetrator-directed purpose abound in the TVPA's legislative history. *See, e.g.*, 134 CONG. REC. H9692-02, 1988 WL 177020 (1988) (statement of Rep. Fascell) (stating that "[n]o longer can torturers find safe haven from their crimes in the United States"); *id.* (statement of Rep.

Under petitioners' reading, respondents' "indisputably adequate" recovery precludes their TVPA claims even though the humanitarian aid they received came from the Bolivian government, and not from the perpetrators, and even though petitioners' flight to the United States means that they cannot be held criminally or civilly liable at home. That result is wholly at odds with the TVPA's avowed purposes: providing a federal cause of action for victims against torturers; ensuring that torturers are held *legally accountable* for their actions; and denying torturers a safe haven in the United States. *See* S. REP. NO. 102-249, at 3.

In short, petitioners' interpretation of section 2(b) seeks to achieve precisely the outcome Congress intended to prevent when it enacted the TVPA: torturers' evasion of accountability in the United States. The Eleventh Circuit's decision sensibly avoids that result, and this Court should not disturb it.

Mazzoli) (stating that victims will "no longer *** have to stand by helplessly while their torturers enter and leave the jurisdiction of the United States untouched"); *id.* (statement of Rep. Broomfield) (stating that the bill provides the "last recourse to justice" for those victims whose torturers attempt to seek a "safe haven" in the United States).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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