No. 22-CV-1138

In The

Supreme Court of the United States

October Term 2025

GALACTIC EMPIRE, INC. AND UNITED STATES,

Petitioners,

v.

HAN SOLO,

Respondent.

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

BRIEF FOR PETITIONERS

Team 29

Counsel for Petitioners

November 17, 2025

QUESTIONS PRESENTED

1. Whether the District of Alderaan properly exercised venue under 28 U.S.C. § 1391(b) solely on the allegation that personal injuries in property damage were sustained "above" the district in outer space?
2. Whether the Commercial Space Launch Activities Act (CSLAA), 51 U.S.C § 50901 *et seq.* applies to claims arising from the destruction of a space object in low-earth orbit rather than during "launch or reentry," and, if so, requires mere but-for causation as opposed to the traditional proximate causation standard consistent with common law tort principles?

PARTIES TO THE PROCEEDING

Petitioners are the Galactic Empire, Inc., and the United States of America who intervened in the case to protect its interests. Respondent is Han Solo.

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The en banc opinion of the United States Court of Appeals for the Sixteenth Circuit is unpublished and is printed in the Record on Appeal ("Record") at 1a–84a.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. Under 28 U.S.C. § 1254, cases decided in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari. The judgment of the Sixteenth Circuit Court of Appeals was entered on May 4, 2023. The Galactic Empire, Inc. and the United States filed a timely appeal. This Court granted certiorari on October 6, 2025.

CONSTITUTIONAL & STATUTORY PROVISIONS

28 U.S.C. § 1391 defines, in relevant part, the requirements of venue generally. *See* 28 U.S.C. § 1391 (2025).

28 U.S.C. § 1406 defines, in relevant part, a court's obligation to dismiss or transfer a suit filed in the wrong venue. *See* 28 U.S.C. § 1406 (2025).

49 U.S.C. § 40103 defines, in relevant part, the United States's sovereignty over its airspace. *See* 49 U.S.C. § 40103 (2025).

The Commercial Space Launch Activities Act (CSLAA), 51 U.S.C. § 50901 *et seq*. defines, in relevant part: The United States's commercial space launch and reentry licensing requirements, the goals of the chapter's regulatory scheme, launching and reentry activity requiring licensure, the insurance requirements of licensees under the chapter, and the United States's indemnity obligations toward those licensed under the chapter. *See* 51 U.S.C. § 50901 *et seq.* (2025).

Article I, Section 1 of the United States Constitution states, in relevant part: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." *See* U.S. Const. Art. I § 1.

STATEMENT OF THE CASE

A. Statement of Facts

The Petitioner, Galactic Empire, Inc. ("the Empire") a Mountain View, California-based corporation, is a subsidiary of Galgal, formed by executive Sheev Palpatine to design and construct the Defense System One (the DS-1), a massive space designed to destroy Earth-threatening asteroids. R. at 7.

The Empire designed the DS-1 in California and launched supplies and construction materials from there into low Earth orbit, where robotic "spiders" assembled the massive station. R. at 3a, 8a. Its massive size precluded any part of the DS-1 from being constructed on Earth. R. at 8a. The Empire built it solely in outer space. *Id.*

The announcement drew criticism from parts of the international community, as dissenters claimed that the Empire's plans to construct the DS-1 amounted to the weaponization of space and violated several treaties. R. at 3a. The citizens of Alderaan displayed particular hostility toward the Empire, as they staged several public protests against the DS-1's construction. R. at 19a. The Empire, in turn, has never conducted any business in Alderaan. *Id.*

However, the Empire constructed the DS-1 not to weaponize space, but rather to protect mankind from a mass-extinction event after a series of meteor strikes. R. at 7a, 68a. Despite some discontent from select international groups, none of the United States' treaty partners initiated any formal proceedings opposing the DS-1's construction. R. at 81a. The Empire conducted its launches without incident, meeting all of the statutory requirements of the CSLAA. R. at 11a.

By 2016, the Empire had completed construction of the DS-1's hypermatter reactor, achieving complete self-propulsion. R. at 8a n.4. Given this important benchmark, the Empire scheduled the DS-1 for completion by 2022. R. at 8a. But in 2017, a young Tunisian moisture farmer turned international terrorist named Luke Skywalker attacked the DS-1 with an X-wing starfighter armed with proton torpedoes. R. at 3a. Skywalker executed a precise strike on a thermal exhaust port measuring just two meters in diameter by turning off the X-wing starfighter's targeting computer—a "one-in-a-million" shot. R. at 3a, 83a. His strike totally destroyed the DS-1, causing debris fragments to explode and impact Earth and other spacecraft. R. at 3a.

Skywalker coordinated his terrorist strike against the DS-1 with a Guatemalan corporation known as Alianza Rebelde S.A., a terrorist organization that operated deep within the forests of Tikal, Guatemala, that a former Alderaanian princess funded. R. at 5a, 19a. Given the massive technological and financial barriers to a space launch of this kind, it is unclear how Alianza Rebelde managed to facilitate

this launch—much less acquire an X-wing starfighter equipped with proton torpedoes. R. at 82a.

Nonetheless, Alianza Rebelde learned of a design flaw in the DS-1, which would cause the entire space station to explode if a specific thermal exhaust port sustained a direct hit from a proton torpedo. R. at 13a. Empire employee Galen Erson produced this design flaw and the flaw remained unknown to the Empire until days before the attack. R. at 7a. Upon learning of this design flaw, the Empire sought to keep this information private. R. at 13a. However, Alianza Rebelde somehow gained possession of stolen plans for the DS-1, thereby discovering the design flaw before recruiting Skywalker to destroy Earth's only hope against a catastrophic meteor strike. R. at 82a.

This unhinged terrorist group's unprovoked attack on the DS-1 caused collateral damage to other spacecraft in orbit. R. at 69a. Han Solo, billionaire founder of Solleu, a company that provides lucrative commercial space tourism, sustained bodily injuries and property damage from the explosion that Skywalker's attack on the DS-1 caused. R. at 3a–5a. At the time of this explosion, Solo was flying an unlicensed spaceflight, for which the United States later fined him $100,000. R. at 14a. Fragments from the blast struck Solo's personal luxury spacecraft, the "Millennium Falcon," causing personal injuries to Solo and damaging the Millennium Falcon. R. at 14a.

B. Procedural History

Han Solo filed suit in the United States District Court for the District of Alderaan against Skywalker, Alianza Rebelde, the Republic of Guatemala, and the Empire. R. at 4a–5a. The United States intervened in the suit to assist with the Empire's defense. R. at 12a. Solo settled his claims against both Skywalker and Alianza Rebelde before trial, and the district court dismissed his claims against Guatemala at the summary judgment stage. R. at 6a. The Empire remained as the sole Defendant from the original lawsuit. R. at 9a.

The Empire timely moved to dismiss or transfer the suit for improper venue under Fed. R. Civ. P. 12(b)(3). R. at 7a–9a, 15a. The Empire challenged the sufficiency of the allegations in Solo's pleadings regarding venue in Alderaan, which rested on events that occurred "*directly above* Alderaan" and on some fragments of DS-1 debris that allegedly fell in Alderaan. R. at 3a, 20a. At an evidentiary hearing on the motion, the district court deemed all of Solo's evidence inadmissible, and no other party presented evidence—nor did the court make findings through judicial notice. R. at 20a–22a.

Only after the hearing did the court announce that the Empire bore an evidentiary burden to prove improper venue under Federal Rule of Civil Procedure 12(b)(3). R. at 22a. The Sixteenth Circuit affirmed, concluding that "the Empire bore the burden to produce evidence supporting its venue defense but failed to do so." *Id.* The district court denied the Empire's motion, holding that under 28 U.S.C. § 1391(b)(2) venue was proper because "a substantial part of the events

giving rise to the claim occurred *in* Alderaan"—not *above* it, as the en banc majority later concluded. *See* R. at 11a (emphasis added); *see contra* R. at 20a (Solo's claim about proper venue in Alderaan thus stems from his allegations about conduct that occurred ". . . directly above Alderaan.")

At trial, Solo argued that the DS-1's explosion caused his injuries. R. at 14a. Petitioners countered by arguing that the explosion was not a part of the launch or reentry activity that the CSLAA covers. Petitioners also argued that Skywalker's intentional act of shooting DS-1 was an independent, superseding cause. R. at 35a. Finally, Petitioners argued that liability under the CSLAA requires proof of proximate causation, not just causation-in-fact. R. at 15a, 17a.

At the close of evidence, the Empire moved for judgment as a matter of law on the issue of proximate causation, but the court denied the motion. R. at 40a–41a. Although the court instructed the jury on the issue of proximate cause, it disregarded the jury's answer on that issue in its verdict. *Id.* The jury awarded Solo $4.5 billion in compensatory damages for personal injuries and property damage, apportioning 50% each to Skywalker and the Empire. R. at 15a–16a. The Empire renewed its motion for judgment as a matter of law and the court denied it. R at 35a. The Empire and the United States appealed the decision. R. at 17a. A divided Sixteenth Circuit affirmed the decision en banc on the 12(b)(3) motion and the renewed motion for judgment as a matter of law. R. at 1a–2a, 35a.

Judge Jinn, writing for the majority, affirmed the district court's decision to deny the Empire's 12(b)(3) motion to dismiss for improper venue. R. at 12a. The

majority held that venue was proper in Alderaan as pled by Solo under 28 U.S.C. § 1391(b)(2) because a "substantial part" of the events took place "directly above Alderaan." R. at 20a. The concurrence held alternatively that venue was proper in Alderaan, not as pleaded by Solo and ruled by the district court under 28 U.S.C. § 1391(b)(2), but under the fall-back provision of (b)(3)—which applies only when venue cannot be established under (b)(1)–(2). R. at 55a.

The court based its decision on so-called overflight principles for torts committed in airspace above the United States. R. at 28a–31a, 54a–56a. Both the majority and the concurrence noted supposed difficulties in gaining personal jurisdiction over the foreign defendants, which led them to conclude that Alderaan was not only proper but was the only possible venue for this case—California notwithstanding. *Id.*

The court further held that the Empire bore the burden of proof to show that venue was improper in its 12(b)(3) challenge, and that the Empire failed to do so. R. at 22a. Although the district court never expressly invoked the so-called minority rule for burdens in a venue challenge, the Sixteenth Circuit did so confidently, declaring the minority rule "better reasoned" based on supposed distinctions between personal jurisdiction and venue. R. at 24a. Judge Windu further suggested that the Empire bore a burden of making a "compelling argument" for venue in California in addition to presenting evidence. R. at 55a.

Judge Walt dissented, arguing that the court's application of legal principles was unsound and unwarranted. The dissent exposed the contradictions in the court's

rationale, including the undue focus on international opinion while ignoring sovereign boundaries of the United States in outer space. R. at 67a–74a. The dissent correctly perceived that the court's tortured logic served solely to avoid the conclusion that California was the sole proper venue for this case. R. at 71a. Judge Walt encountered no difficulty in labeling Skywalker's terroristic acts appropriately and finding that his attack superseded Petitioners' negligence as a matter of law. R. at 69a.

Furthermore, the Sixteenth Circuit held that the CSLAA applied to a broader range than simply launching and reentry activity. R. at 43a. The court also affirmed the district court's decision to deny the Empire's Motion for Renewed Judgment as a Matter of Law. The court interpreted CSLAA § 50915(a)(1) as requiring only proof of but-for causation. R. 35a. Judge Windu concurred in part, agreeing with the venue holding but stating that the CSLAA should be interpreted as requiring a showing of proximate causation. R. at 2a, 72a–73a.

The Empire timely petitioned this Court for certiorari, and the Court granted it on October 6, 2025. R. at 1a. This Court certified two questions: (1) whether the district court correctly exercised venue in this civil lawsuit involving torts committed in outer space; and (2) whether the district court property interpreted and applied the CSLAA, assigning strict liability instead of a traditional fault-based standard. *Id.*

SUMMARY OF THE ARGUMENT

Venue requirements ensure fairness in forum selection. The framework of 28 U.S.C. § 1391(b) requires plaintiffs to prove proper venue for each defendant.

California meets these statutory requirements, but Alderaan does not. Courts must follow these requirements, not create improper workarounds. No venue gap exists here, and outmoded "overflight" principles are unnecessary.

The courts below erred by applying incorrect legal analysis when deciding the venue under a 12(b)(3) motion. The courts misapplied 28 U.S.C. § 1391 and improperly shifted the burden of proof to the Empire. The courts below defied sound rules of law to give Solo unfettered choice in selecting his preferred forum. The result is spectacular and indefensible injustice to the Empire, whom the courts forced to defend the suit in a hostile and improper forum. This Court must reverse and grant the Empire's timely 12(b)(3) motion under 28 U.S.C. § 1406(a).

Furthermore, the Sixteenth Circuit misinterpreted the Commercial Space Launch Activities Act, 51 U.S.C. § 50901 *et seq.*, by reducing Section 50915's causation standard to but-for causation. This misapplication ignores the statute's text, structure, and traditional causation limitations. Section 50915 unambiguously limits the CSLAA's application to damages "resulting from an activity carried out under the license." Section 50904(a) defines licensed activities launching and reentering—not orbital activities.

At the time of Skywalker's terrorist attack, the DS-1 remained in low Earth orbit under construction, and, in fact, had *never* been launched or reentered. The court improperly relied on non-binding treating obligations to impose broad-sweeping liability, sufficiently wide to cover Solo's claims. The court extended the CSLAA to an incident never intended to trigger liability under the statute, as both orbital

construction and acts of terror do not fall within the limited scope of "licensed activities."

Moreover, to the extent that the CSLAA applies, the Sixteenth Circuit erred by lessening Section 50915's causation standard to mere but-for causation, because the statute requires a "successful claim" to impose liability. Federal courts assume that statutory causes of action are limit recovery to plaintiffs whose injuries result from proximate cause by violations of the statute.

By ignoring this presumption, the court assumed that the term "resulting from" requires only that a plaintiff show mere but-for causation, despite the statute's clear textual indication to the contrary. The requirement of an underlying successful claim incorporates state substantive law, which demands a showing of proximate causation.

The Sixteenth Circuit also erred by affirming the district court's denial of Petitioners' Federal Rule of Civil Procedure 50(a)(1) motion for judgment as a matter of law. Skywalker's attack on the DS-1 was an act of terror: a highly extraordinary and unforeseeable crime. Such intentional acts of malice supersede any negligent acts as a matter of law.

Under each Restatement factor used to determine whether an intervening cause superseded a defendant's negligence, a reasonable jury would lack any legally sufficient evidentiary basis to find that Skywalker's act of terror did not supersede any negligence by the Petitioners. This Court should reverse the decision of the

Sixteenth Circuit, and remand with instructions to grant Petitioners' motion for judgment as a matter of law.

ARGUMENT

I. California Alone Satisfies the Statutory Requirements for 28 U.S.C. § 1391 for Proper Venue.

The statutory requirements of proper venue promote fairness to civil defendants. *See* Bus. Torts and Unfair Comp. Handbook X.C. ("In the federal courts, venue is prescribed by statute and is governed exclusively by federal law."). When a defendant properly objects to venue, courts cannot adjudicate the plaintiff's claims. *Id.* A 12(b)(3) motion to dismiss for improper venue requires courts to independently assess venue apart from jurisdictional issues—and improper venue mandates dismissal or transfer. *See* 28 U.S.C. § 1406(a) (requiring dismissal or transfer).

The venue issue in this case hinges on 28 U.S.C. § 1391(b)(2), which establishes proper venue in any district where a "substantial part of the events or omissions giving rise to the claim occurred." This provision governs claims under the CSLAA. R. at 27a & n.14 (quoting *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 357 (2d Cir. 2005)) ("[F]or venue to be proper, *significant* events or omissions *material* to the plaintiff's claim must have occurred in the district in question, even if other material events occurred elsewhere."). Solo's claims stem entirely from events in outer space or California. R. at 3a, 5a, 35a.

California satisfies the statutory requirements of 28 U.S.C. § 1391(b)(2) for proper venue. The parties concede that the Empire resides in California for venue purposes and that it designed the DS-1 and conducted most launches there. R. at 71a.

California poses no jurisdictional or venue barriers to foreign defendants. *See* 28 U.S.C. § 1391(c)(3).

Indeed, multiple California districts—and others where space launches occurred—qualify as proper venues. R. at 13a (confirming that most launches originated in California). Because California qualifies as an available forum under 28 U.S.C. § 1391(b)(2), courts must evaluate any other forum choices under the "substantial part" test—not the expansive fallback provision of 28 U.S.C. § 1391(b)(3). No other forum satisfies this test.

Alderaan fails to satisfy the requirements of 28 U.S.C. § 1391(b)(2) because no substantial part of the events or omissions underlying Solo's claim occurred there. R. at 13a, 19a (stating that the Empire lacks contacts with Alderaan, and no launches carrying construction materials for the DS-1 originated there). Thus, Alderaan is not a proper forum for this suit. Convenience cannot override the fairness requirements of 28 U.S.C. § 1391(b), and no venue gap prevents Solo's claim for defective design of the DS-1.

A. Venue Under 28 U.S.C. § 1391 Demands Fundamental Fairness to Defendants in Plaintiff's Selection of Proper Venue

Civil plaintiffs who pursue claims in federal court must file suit in a district with proper venue. *See generally* 28 U.S.C. § 1391 (setting forth venue requirements). Although plaintiffs may select the venue, their choice lacks unlimited scope. R. at 27a & n.14 ("The plaintiff is given the first choice of venue, *assuming that venue is proper*.") (emphasis added). Proper venue options must satisfy certain statutory

requirements that balance fairness to defendants with the availability of a forum for plaintiffs. *See* 28 U.S.C. § 1391(b).

These requirements create an available venue and safeguard defendants against unfairness and inconvenience. *See Leroy v. Great W. United Corp.*, 443 U.S. 173, 183–84 (1979) (noting that venue requirements exist to "protect the defendant against the risk that a plaintiff will select an unfair or inconvenient place of trial."). Courts must construe venue requirements in their plain meaning. *See Olberding v. Illinois Central R. Co.*, 346 U.S. 338, 340 (1953) (stating that "[t]he requirement of venue is specific and unambiguous; it is not one of those vague principles which, in the interest of some overriding policy, is to be given a 'liberal' construction."). One principle stands clear: proper venue prevails over preferred venue.

"A proper venue ruling should have ended this destructive conflict," R. at 77a (Walt, J., dissenting), but the lower courts ventured into strange new worlds of judicial error and contrivance. The Sixteenth Circuit mistakenly perceived a venue gap where none exists and—misapplied principles of airspace jurisdiction to outer space—where the United States claims neither sovereign nor territorial control.

1. There is no "Venue Gap," Frustrating Respondent's Claim

Outer space may constitute a void but creates no venue gap. A venue gap occurs when no forum exists for federal courts to assert jurisdiction. *See Leroy*, 443 U.S. at 184 (addressing congressional power to resolve venue gaps). Congress generally avoids creating venue gaps. R. at 26a–27. This rare circumstance never occurs when an applicable venue statute provides at least one available forum for a

suit—even if that forum proves inconvenient or unfavorable. The framework of 28 U.S.C. § 1391 ensures that "so long as the court has personal jurisdiction over the defendant, venue will always lie somewhere." 17 Moore's Federal Practice – Civil § 110.02 (2025).

The Sixteenth Circuit majority erroneously concluded that under the CSLAA, "no venue can ever exist for torts that occur exclusively in outer space because such claims necessarily must be tethered to some conduct that occurs on terrestrial Earth." R. at 26a. Yet, the court lacked reason to find a venue gap or to "interpret the CSLAA and Section 1391 to create such a venue gap." *Id.* The Empire never argued that no venue exists under the CSLAA, as the majority conceds. *See* R.at 18a ("The Empire contends venue is not proper in Alderaan but would be proper in California.").

Nor does the Empire contend that terrestrial conduct alone underlies such claims, as the CSLAA encompasses both commercial space launch and reentry activities. *See* 51 U.S.C. § 50915(a)(1) (restricting the government's indemnity obligations to "successful claim[s] . . . resulting from an activity carried out under the license . . . ."); *see also Id.* § 50904(a)(1)–(2) ("A license . . . is required for the following: for a person to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle . . . .").

The Empire solely challenges that venue in Alderaan lacks propriety under 28 U.S.C. § 1391(b). Solo's alleged damages occurred in outer space, but on the activities causing his claim did not occur exclusively in outer space. R. at 3a, 26a. Venue in California rests not on the location of the DS-1 at the time of Skywalker's

terrorist attack, but on the residency and activities of the Empire in designing and launching the construction materials for the DS-1—activities governed by the CSLAA. Because California offered a venue, the court erred in "reject[ing] the Empire's suggestion that venue can exist only in California." This conclusion misinterprets 28 U.S.C. § 1391 and misconstrues the nature of a venue gap, which does not exist here. R. at 27a.

Congress avoided creating a venue gap by enacting the CSLAA without specific statutory venue provisions because a general venue statute already offers options for venue. *See* 28 U.S.C. § 1391(a)(1), (b)(1)–(3); R. at 54a (Windu, J., concurring) (noting amendments to 28 U.S.C. § 1391(b) addressing venue gaps). As the majority acknowledged, "Congress apparently anticipated these kinds of space torts might happen." R. at 2a. The statutory amendments of 28 U.S.C. § 1391(b) provide at least one venue for any case, regardless of its complexity. *See Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004) ("Under the amended statute, it is possible for venue to be proper in more than one judicial district."). Conversely, a venue gap exists only where "the plain language of the statute does not open the severe type" of gap that Congress intended to remedy. *Leroy*, 443 U.S. at 184.

Neither the Sixteenth Circuit nor the parties contest that the CSLAA lacks venue provisions, yet this does not render the venue requirements of 28 U.S.C. § 1391 ambiguous or inapplicable here. R. at 18a. Congress enacted venue provisions to cover all areas of federal jurisdiction, and no "venue gap" arises merely because the statutes' application appears less than perfectly clear. The CSLAA confers

jurisdiction over "activities" related to commercial space launches, regardless of their location in the United States where those activities occur. *See* 51 USCS § 50902(7) (defining covered launch activities). Although "Congress did not say which district court(s) should hear these claims," the statutory scheme of 28 U.S.C. § 1391 provides ample venue options for CSLAA claims. R. at 2a.

2. *"Overflight" principles have no application in outer space because there is no terrestrial tether to the land-based jurisdiction of the United States.*

If the Sixteenth Circuit's assertion of a venue gap proved fiction, its application of overflight principles amounted to pure farce. The court needlessly applied "antiquated notions about 'navigable airspace' or 'overflight venue' . . . where the existing rules provide a simpler, more reasonable option." R. at 71a (Walt, J., dissenting). Overflight principles apply solely to the airspace context.

The United States asserts sovereign jurisdiction over its airspace, covering torts and crimes committed therein. *See* 49 U.S.C. § 40103(a)(1). This principal rests on a geographic, earthbound connection to sovereign territorial ties. *Cf. United States v. Causby*, 328 U.S. 256, 264 (1946) (noting that a landowner "control[s] . . . the immediate reaches of the enveloping atmosphere").

The majority acknowledged that the "legal difference is one of sovereignty" but failed to recognized that its application rested on "a disguised notion about sovereignty" in outer space. R. at 31a, 73a (Walt, J., dissenting). The United States claims no sovereignty over outer space, only over its airspace and territorial waters. *See* United States, *Survey of Space Law*, U.S. Gov't. Print. Off. (1959) (noting that "[e]xisting international flight agreements refer to sovereignty only in the airspace

over national territory, and hence do not apply, in their terms, to outer space."). Sovereignty terminates at outer space.

Furthermore, no nation—including the United States—asserts outer space as *territory*. No terrestrial tether connects outer space to the territorial sovereignty of the United States in any straightforward linear or geographical sense. Given the vastness of space, these principles provide no practical method for identifying a *specific* venue—the sole issue under the CSLAA. *See* R. at 70a (Walt, J., dissenting) (graphically depicting the absurdity of overflight rules to outer space).

Conceptually, all of outer space sits "over" the entire United States—and the world. Jurisdictional principles of sovereign airspace—which remain "above" the territory of the United States regardless of Earth's rotation—fails to address the "where?" and "why here?" questions that venue must resolve. They constitute the wrong tool for a problem that lacks existence in this case.

Worse still, overflight principles *generate* venue gaps in outer space. Applying outer space "above" a district creates "blackout zones" where events occur in a part of space not "above" any district due to Earth's rotation—an issue absent in airspace jurisdiction. This produces more gaps than coverage, undermining Congress's intent to eliminate venue gaps. Because 28 U.S.C. § 1391 already assigns venue based on launch activities that occurred on Earth, even if a tort occurred in outer space, these rules prove both unnecessary and ineffective for determining venue.

The attack on the DS-1 in outer space poses no unique challenges for determining venue. Federal jurisdiction arises from launch and reentry activities, not

outer space itself. The CSLAA claims permit the application of this jurisdiction under the established framework of 28 U.S.C. § 1391. When 28 U.S.C. § 1391 offers a clear and available forum for a suit—here, in California—no need exists to discuss venue gaps or overflight principles.

B. The Sixteenth Circuit erred in denying the Empire's Motion to Dismiss for Improper Venue.

The Empire moved to dismiss this suit for improper venue under Federal Rule of Civil Procedure 12(b)(3). R. at 15a. This challenge targeted the alleged facts of venue in Solo's pleadings and rejected the discredited fiction that a "substantial part" of the events occurred "*directly above* Alderaan." R. at 20a. These allegations—unsubstantiated by admissible evidence—fail to establish proper venue in Alderaan because they concern events that occurred in outer space, not in the *district* of Alderaan. *See id*.

The Sixteenth Circuit disregarded the clear statutory requirements of 28 U.S.C. § 1391(b), which safeguard fundamental fairness to defendants. Instead of dismissing or transferring for lack of venue under 28 U.S.C. § 1406(a), the court forced the Empire to face trial in an improper venue. This Court must remedy these errors with reversal and an order to dismiss this suit.

3. Solo cannot legally establish proper venue in Alderaan against the Empire.

No statute establishes a proper venue for Alderaan as a matter of law under 28 U.S.C. § 1391(b). Although in general "[v]enue simply concerns the place where . . . judicial authority may be exercised," the framework of 28 U.S.C. § 1391(b) demands a further inquiry: "why here?" 17 Moore's Federal Practice – Civil § 110.01 (2025).

Fundamental fairness to the defendant demands proof of proper venue under the statutory requirements. *See Leroy*, 443 U.S. at 183 (stating that "in most instances, the purpose of statutorily specified venue is to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial.").

Plaintiffs must demonstrate not only the existence of a plausible forum but also that venue proves proper in that district. *See Tobien v. Nationwide Gen. Ins. Co.*, 133 F.4th 613, 621 (stating that "the plaintiff must show by a preponderance of the evidence that venue is proper"). Congress created a cascading framework of priority to establish proper venue under 28 U.S.C § 1391(b). Proper venue exists in: (1) a district where any defendant resides, if all defendants reside in the same state; (2) a district where a substantial part of the events causing the claim occurred (or where property is located); or (3) if no forum satisfies (1) or (2), any district where any defendant faces personal jurisdiction. *See id.* § 1391(b)(1)–(3).

Subsections (b)(1) and (b)(2)—the primary venue provisions that Congress authorized—constitute the principal pathways for establishing proper venue. These options, grounded in residency and "substantial part" analysis, serves as genuine alternatives. By contrast, (b)(3) functions only as a "fall-back provision." *See* 17 Moore's Federal Practice – Civil § 110.02 (2025).

A party may rely on (b)(3) only if no district meets (b)(1) or (b)(2). *See* 28 U.S.C. § 1391(b)(3). This fallback operates only when venue proves "unavailable" or "impossible" under (b)(1) or (b)(2). *See* 17 Moore's Federal Practice – Civil § 110.02

(2025). Absent a waiver of venue, neither a court nor a party may claim proper venue under (b)(3) if a proper venue already exists under (b)(1) or (b)(2). *See id*.

The text of 28 U.S.C. § 1391(b) mandates exhaustion of (b)(1) and (b)(2) before parties or courts may establish a forum by invoking (b)(3). *See* 28 U.S.C. § 1391(b)(3). Neither courts nor plaintiffs can treat (b)(3) as first resort. *See id*. Here, Alderaan fails as a proper venue under (b)(2), but California qualifies.

As both a legal and factual matter, Solo lacks recourse to (b)(3) to establish venue in Alderaan. The Sixteenth Circuit correctly held that Alderaan lacked propriety as a proper venue under (b)(2), but it disregarded California entirely as proper under the same provision. R. at 55a. Deviating from the statutory requirements, the court held Alderaan proper under the fallback provision of (b)(3) without considering the availability of a forum under (b)(2). R.at 56a.

Plaintiffs must establish venue separately for each defendant. *See Beattie*, 756 F.2d at 100 (stating that "[t]he general rule is that venue must be established as to each separate cause of action."). In *Beattie*, multiple claims against one defendant constituted a single claim, posing no venue issue. *Id.* Yet no reason exists for subjecting the Empire to a hostile and unfair venue in Alderaan when it lacks contacts or connection to that district.

Undisputed evidence fails to establish venue in Alderaan under (b)(2) but does establish venue in California—a situation that precludes any invocation of (b)(3) by the court. *See* 28 U.S.C. § 1391(b)(3). The concurring and dissenting opinions agreed that no "substantial part" of the events occurred in Alderaan. R. at 55a, 75a. Even if

(b)(3) applied, Alderaan lacks any connection to the design of the DS-1 or to launches of its construction materials. R. at 71a.

No part of the DS-1's construction occurred in Alderaan, and although "some launches occurred elsewhere in the United States, [n]one were launched from the State of Alderaan." R. at 13a (citation modified). Accordingly, although "California [qualifies as] a district in which a substantial part of the events or omissions [causing] the plaintiff's claim occurred. . . . Alderaan [does] not." R. at 71a (Walt, J., dissenting).

Under a proper 28 U.S.C. § 1391(b) analysis, "[v]enue properly [lies] only in California." R. at 71a (Walt, J., dissenting). The "weight of the contacts' test" assigns venue where the contacts weigh most significant—here, California. *See Delong Equipment Co. v. Washington Mills Abrasive Co.*, 840 F.2d 843, 855 (11th Cir. 1988). The Empire resides in California, where it designed the DS-1, and where it conducted a "substantial part" of the commercial space launches of construction materials. R. at 13a, 71a. Moreover, California offers access to all the evidence of the design and to witnesses. *Id.* In contrast, "the Empire has never [conducted] any business in Alderaan. None of its employees are from Alderaan; it acquired no supplies from Alderaan; and it never even registered to do business there." R. at 19a.

The Sixteenth Circuit relied on (b)(3) based solely on the speculative concern that California might lack personal jurisdiction over Skywalker, thus rendering Alderaan the only available forum. *See* R. at 20a, 55a (noting that Skywalker allegedly flew through Alderaan airspace). Yet as the Sixteenth Circuit repeatedly conceded, personal jurisdiction and venue constitute different issues, and no party

raised jurisdictional issues in this case. Fundamental fairness in venue selection must not hinge on whether a court may obtain personal jurisdiction over foreign terrorists. *See* 28 U.S.C. § 1391(c)(3).

1. *Fundamental fairness in venue against the Empire does not depend on a court's jurisdiction over foreign terrorists.*

This case commenced with multiple defendants whose actions allegedly caused Solo's damages—defendants whom solo voluntarily dismissed and who no longer serve as a party to this appeal. *See* R. at 5a (noting that Solo's claims against Skywalker and Alianza Rebelde settled before trial). The Sixteenth Circuit repeatedly based its holding on these foreign defendants and never considered the effect of their dismissal on venue. The court conceded that "[t]he Empire is the last remaining defendant from the original lawsuit," but relied on the pretext that Alderaan proves proper based solely on these dismissed defendants. R. at 9a.

The presence of foreign defendants fails to justify venue in Alderaan as a matter of law. The dissent correctly noted, "no evidence, either way, indicat[ed] whether Luke Skywalker flew into any airspace over which Alderaan does or ever could claim sovereignty," and no party raised issues of personal jurisdiction in this case. R. at 75a.

No matter how complex the case, plaintiffs must establish proper venue for each cause of action against each defendant. *See Beattie*, 756 F.2d at 100–01. Even under a "broad definition of cause of action," Skywalker's and Alianza Rebelde's terrorist acts bear no relation in origin or nature to the alleged defective design of the DS-1. *Id.* That these acts occurred in outer space fails to make Alderaan a proper

venue. No connection exists between any of Solo's claims and Alderaan. As the majority observed, "the Empire has never [conducted] any business in Alderaan. None of its employees are from Alderaan; it acquired no supplies from Alderaan; and it never even registered to do business there." R. at 19a. This is no surprise, given the demonstrated antipathy by the citizens of Alderaan toward the Empire. *Id.*

Nor does the record show that Solo lacked ability to establish venue in California over these foreign defendants. Plaintiffs may sue foreign defendants in any judicial district, and "the joinder of such defendants *shall* be disregarded in determining *where* the action may be brought *with respect to other defendants*." 28 U.S.C. § 1391(c)(3) (emphasis added).

The record lacks a single objection by foreign defendants to either jurisdiction or venue in this case. No reason exist for concluding that they lacked ability to face trial in California even if they had remained in this case. The plain text of the law and the facts of this case yields only one conclusion: 28 U.S.C. § 1391(b)(2) allows venue in California, but not in Alderaan. The venue question stands settled.

2. The Sixteenth Circuit erred by placing the burden on the Petitioner to prove lack of venue as an affirmative defense.

A motion under Federal Rule of Civil Procedure 12(b)(3) challenges the sufficiency of venue allegations under 28 U.S.C. § 1391(b), and in "a case laying venue in the wrong division or district," the court "shall dismiss, or . . . transfer." 28 U.S.C. § 1406(a). Venue constitutes a substantive right of the defendant to challenge a plaintiff's claims of legally proper venue, not an "affirmative dilatory defense" that requires the defendant to bear a burden of proof. *Myers v. Am. Dental Ass'n*, 695 F.2d

716, 724 (3d Cir. 1982); *see also* Fed. R. Civ. P. 8(c) (omitting venue from the list of affirmative defenses for pleadings). Defendants may waive this challenge, but courts may not dismiss it.

Courts must scrutinize the sufficiency of pleaded venue allegations in a 12(b)(3) motion. *See Myers*, 695 F.2d at 724 & n.7 (noting that venue concerns "the proper place where the power to adjudicate may be exercised"). The burden of proof in a 12(b)(3) challenge must lie with the non-movant—as it does with all other 12(b) challenges. *Cordis Corp. v. Cardiac Pacemakers*, 599 F.2d 1085, 1086 (1st Cir. 1979) (stating that "there is ample authority placing the burden . . . on the plaintiff once a defendant has challenged venue by filing a motion to dismiss based on the lack thereof."); *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1012 (D.C. Cir. 2018) (noting that the party "who has the burden of persuasion on the elements of a legal rule is treated across many contexts as a substantive aspect of the legal rule").

The Sixteenth Circuit's endorsement of the minority rule on burdens in venue challenges rests on a single statement: "there is no reason why a defendant 'should not be required [to] make an evidentiary showing that venue is improper to reap the benefits of dismissal or transfer.'" R. at 25a (quoting *Simon v. Ward*, 80 F. Supp. 2d 464, 467 (E.D. Pa. 2000)). Yet the reason this fails as the rule stems from what a venue challenge entails: the defendant's right to a fair trial. *Leroy*, 443 U.S. at 183–84. The challenger enjoys the ability to impose this on the party alleging proper venue. Only after the party offers such proof does the challenger bear any burden.

The Empire's objection to improper venue in this case relies on the plain text of the law in 28 U.S.C §§ 1391 and 1406(a), along with the undisputed facts in the record. The Empire's challenge arose not from a general denial of venue, but from a specific challenge grounded in the substantive law of 28 U.S.C. § 1391 governing Federal Rules of Civil Procedure 12(b)(3) motions to dismiss for lack of proper venue. R. at 17a. The same rule governs motions to dismiss or transfer for improper venue: "[W]hen [venue] is implicated, the movant is seeking to disturb a plaintiff's choice to file in a proper venue in compliance with applicable statutes and rules." *In re ZTE*, 890 F.3d at 1012 (citation modified).

The plaintiff bears the burden of proof and receives the benefit of inferences on a motion to dismiss. "To survive a motion to dismiss for improper venue when no evidentiary hearing is held, the plaintiff need only make a prima facie showing of venue." *Mitrano*, 377 F.3d at 405. Evidentiary hearings on a 12(b)(3) motion fail to alter which party bears the burden. *See Glasbrenner*, 417 F.3d at 355. ("If the court holds an evidentiary hearing . . . the plaintiff must demonstrate [venue] by a preponderance of the evidence.").

Here, Solo offers no facts that if true would establish proper venue in Alderaan. Solo claimed proper venue under 28 U.S.C. § 1391(b)(2) on the following grounds: DS-1 orbited "directly above Alderaan" at the time of Skywalker's attack; Skywalker entered Alderaan's navigable airspace during his attack; and Solo suffered injury near the DS-1. R. at 20a–22a.

The Sixteenth Circuit correctly observed that "Solo's claim about proper venue in Alderaan thus stem[med] from his allegations about conduct that occurred in low Earth orbit directly above Alderaan." R. at 20a. Yet "[n]o matter who bore the burden of proof and persuasion, venue was improper as a matter of law because a substantial part of the events or omissions [causing] Han Solo's claims did not occur in the district of Alderaan." R. at 75a. (Walt, J., dissenting). The Empire's challenge succeeds on these grounds.

The "procedural wrinkle" of the evidentiary hearing bears no relevance to the outcome of this case. R. at 20a. The court conceded that any burden applies only "to the extent [which] the Empire's venue challenge turns on the evidence (or lack thereof) presented at the hearing." R. at 25a. Here, "no party presented competent evidence on the venue question, and the court made no factual findings" and the venue determination "was not based upon competent evidence presented by either side." R. at 21a–22a. Any burden of proof requires "a hearing, *where findings are made* by the trial court." *Glasbrenner*, 417 F.3d at 355. The evidence, not the hearing, triggers the burden.

Without any findings or evidence, the parties and the court must rely solely on their pleadings and prima facie evidence of their claims for proper and improper venue. The Empire easily established a case of legal impropriety in Solo's venue selection, which on a Fed. R. Civ. P. 12(b)(3) motion requires dismissal under 28 U.S.C. § 1406(a).

The Empire's venue challenge implicates fundamental fairness concerns which can only be resolved by dismissal. Solo's forum shopping—unsupported by 28 U.S.C. § 1391(b)—threatened the Empire with an unfair trial in Alderaan. Alderaanian citizens bitterly opposed the Empire's construction of the DS-1 and have no limits on liability for CSLAA claims. R. at 19a. This affects not only the Empire's interests but those of the United States an as intervenor. *Id.* This Court must reverse this absurd and unjust result.

II. The Lower Court Erred in Applying the CSLAA, Because the CSLAA Only Applies to Injuries That Occur During Launch or Reentry.

The Sixteenth Circuit erred in applying the CSLAA, as the language of 51 U.S.C. § 50915's indemnity scheme authorizes payment only "of a successful claim . . . resulting from an activity carried out under the license issued or transferred under [the CSLAA] for death, bodily injury, or property damage or loss resulting from an activity carried out under the license." 51 U.S.C. § 50915(a)(1). The CSLAA, read as a whole defines "activity carried out under the license" as launches and re-entry. The CSLAA thus limits its application to damages that result from those launching and reentry activities. Solo's injuries were caused by Skywalker's act of terror, while the DS-1 orbited approximately 460km above Earth, not in launch or re-entry. R. at 8a.

The Sixteenth Circuit erred in interpreting the CSLAA using the United States' international treaty obligations, as 51 U.S.C. § 50915(a)(1) lacks ambiguity, and courts should not use non-self-executing treaties as a tool to interpret binding domestic legislation. Any inconsistency between the United States' international treaty obligations and the text of the statute lacks relevance, as the canon against

interpreting statutes to abrogate treaties applies only to self-executing treaties, and later-enacted statutes trump any earlier-enacted treaty to any extent of conflict.

Because the CSLAA unambiguously restricts its application to damages from launches and reentry, and the Respondent's damages resulted from the destruction of a space object in low Earth orbit, the Respondent's damages did not result from an activity covered by the CSLAA's indemnity scheme, and the Sixteenth Circuit improperly expanded its scope.

C. The CSLAA's Text Limits Payment Under Section 50915 Solely to Injuries That Occur During Launch or Reentry, Because These are the Only Activities the Act Governs.

As a threshold matter, the Sixteenth Circuit erred in applying the CSLAA, as it fails to cover Solo's claims. Courts apply the fundamental "canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Mich. Dep't. of the Treasury*, 489 U.S. 803, 809 (1989). Courts begin any textual analysis with this "first step . . . to determine whether the language at issue has a plain and unambiguous meaning . . . by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–41 (1997).

This canon requires courts to construe statutes "as a symmetrical and coherent regulatory scheme," and to "fit [every provision], if at all possible, . . . into a harmonious whole." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). This principle proves especially important in sprawling regulatory schemes

such as the CSLAA, as "[a] provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . , because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *King v. Burwell*, 576 U.S. 473 (2015) (quoting *United Sav. Assn. of Tx. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988)). When "the statutory language provides a clear answer, it ends there as well." *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999).

The Sixteenth Circuit ignored this fundamental canon of statutory interpretation and extended the CSLAA's scope of application beyond its textual limits. The court pointed to Section 50915, which outlines the indemnity scheme under the statute. *See* 51 U.S.C. § 50915. Section 50915 limits the United States' indemnity obligations to "successful claim[s] . . . resulting from an *activity carried out under the license* . . . for death, bodily injury, or property damage or loss resulting from an *activity carried out under the license*." 51 U.S.C. § 50915(a)(1) (emphasis added). The Sixteenth Circuit ascribed the broadest possible meaning of the term "activity carried out under the license" —that essentially any space-faring activity leading to damage triggers the CSLAA's indemnity scheme. *See* R. at 42a ("We assume Congress meant for the CSLAA to have broad application.")

The court pointed to Section 50914, which sets the insurance requirements of licensees under the statute. *Id.* (citing 51 U.S.C. § 50914(a)(1)). Section 50914 uses the same term, "activity carried out under the license," to define what maximum probable loss a licensee must account for in its insurance policy. *See* 51 U.S.C. §

50914(a)(1). Relying on this second appearance of the term, the Sixteenth Circuit looked no further to justify its conclusion that the CSLAA's text supports virtually unlimited liability, reasoning that "Congress *could have* used the term 'launch or reentry' but instead broadly provided for payment for injuries resulting from any *activity* carried out under the license." R. at 42a.

Had the Sixteenth Circuit explored the CSLAA further, it would have reached the same conclusion as its dissenting colleague, Judge Walt, that "[t]he CSLAA does not apply here." R. at 77a (Walt, J. dissenting). Congress *did use* "launch or reentry," most importantly, to describe what activities are required to be licensed in 51 U.S.C. § 50904(a). Section 50904(a) provides that:

> A license issued or transferred under this chapter . . . *is required for the following*: for a person to *launch a launch vehicle*, or to *operate a launch site* or *reentry site*, or to *reenter a reentry vehicle* in the United States.

51 U.S.C. § 50904(a) (emphasis added). Congress *could have* required all orbital activities to be licensed, but instead limited the CSLAA's licensing requirements to launches and reentries. Section 50904(a) does not suggest any "broad application" of Section 50915(a)(1)'s indemnity scheme but rather indicates that "activity carried out under the license" means exactly what Section 50904(a) requires licensees to license—launches and reentries.

Congress's narrow definition of licensed activity aligns with the entire statutory scheme's narrow goals of "encourag[ing], facilitat[ing], and promot[ing] commercial space *launches and reentries* by the private sector[,]" not imposing unlimited liability for any orbital activity. *Id.* § 50903(b)(1) (emphasis added).

Because Section 50904(a) expressly limits activities requiring a license to launches and reentries, the Sixteenth Circuit's broad interpretation of "activity carried out under the license" in Section 50915 disrupts the entire scheme's harmony. Moreover, courts need not search across the statutory scheme to determine the CSLAA's scope, as this limiting language also appears in the *very next sentence* of Section 50915(a)(1), capping the United States's indemnity obligations to "one launch or reentry." *Id.* § 50915(a)(1). The Sixteenth Circuit's application renders this part of Section 50915(a)(1) entirely superfluous because Congress would have had no reason to limit the scope of indemnity if it had truly intended such a broad application.

Furthermore, construing "activity carried out under the license" as limited to only activities requiring licensure in Section 50904(a) also aligns with the rest of the CSLAA. The CSLAA's broader statutory scheme shows that nearly every operative section of the chapter refers not to any broad orbital activity, but rather only to launches and reentries. *See e.g.,* 51 U.S.C. § 50901 (explaining Congress's finding that the United States should encourage private launches and reentries); § 50902 (defining "launch," "launch property," "launch services," "launch vehicle," "reentry," "reentry services," "reentry site," and "reentry vehicle."); § 50903 ("In carrying out this chapter . . . the Secretary shall . . . encourage, facilitate, and promote commercial space launches and reentries by the private sector[.]"); § 50904 (requiring a license under the statute only "to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle"); § 50905 (limiting the Secretary's authority under the statute to policies, procedures, systems, and vehicles "that may

be used in conducting licensed commercial space launch or reentry activities"); § 50907 (limiting government monitoring activities to "launch site[s] or reentry site[s] the licensee uses" and production facitlities). No substantive provision within the CSLAA suggests that Congress intended to broaden the scope of "activity carried out under the license" to anything more than the activity it mentions exhaustively—launches and reentries.

Because the Sixteenth Circuit failed to read the CSLAA as a whole, it misapplied the CSLAA to a terrorist attack on the DS-1 while it was already in stable orbit at approximately 460km above Earth's surface. *See* R. at 8a. In fact, the DS-1, which Solo claims caused his damages, was never launched and could not reenter. *See* R. at 8a ("Owing to its massive size, the DS-1 could not be built on Earth and then launched into space. Instead, the Empire launched supplies and construction materials into low Earth orbit, where robotic 'spiders' . . . would perform much of the construction work."); R. at 8a n.4 (explaining that the DS-1 was powered by a self-sustaining hypermatter reactor to prevent the DS-1 from reentering).

The only activities that the Empire performed that required licensing under the CSLAA were launches to transport construction materials. *Id.* at 3a. Solo does not claim that this licensed activity led to his injuries. *Id.* at 3a–4a. Because Solo's injuries stemmed not from any licensed activity, such as the launch or reentry of one of these rockets carrying construction materials, the Sixteenth Circuit erred in applying the CSLAA to his claim.

The Sixteenth Circuit's broad interpretation of "activity carried out under the license" in Section 50915 ignores the limiting context of the CSLAA, transforming it into a galaxy-spanning warranty for anything that has ever orbited. Congress never intended this result based on the statutory context in which the term appears, or on the fact that any other interpretation would turn the CSLAA into a disastrous weapon of liability, cutting against the very goals of the CSLAA.

This Court has explained "time and time again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (citations omitted). Congress meant what it said: only launches and reentries are covered by the CSLAA. Because the Sixteenth Circuit failed to limit the CSLAA's application as Congress did, this Court should reverse.

D. The CSLAA Should Not Be Interpreted According to Any International Treaty, Because the Text of the Statute is Unambiguous and the U.S.'s Treaty Obligations are Non-Self-Executing.

The Sixteenth Circuit erred by interpreting the CSLAA's scope through international treaty obligations, because "when the words of a statute are unambiguous, then, [the] first canon is also the last: 'judicial inquiry is complete.'" *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992) (citation omitted). When a statute's text fails to resolve the meaning of a term, this Court has explained that "[a] treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed." *TWA v. Franklin Mint Corp.*, 466 U.S. 243, 252 (1984) (quotation omitted).

However, the canon against abrogation *only applies when a statute is ambiguous*. *See Iraheta-Martinez v. Garland*, 12 F.4th 942, 953 (9th Cir. 2021) (explaining that courts do not apply this canon when a statutory term is unambiguous); *Swinomish Indian Tribal Cmty. v. BNSF Ry. Co.*, 951 F.3d 1142, 1160 (9th Cir. 2020) (holding that a statute's "unambiguous language" overcomes the presumption against abrogating treaty rights); *Fund for Animals, Inc. v. Kempthorne*, 472 F.3d 872, 878 (D.C. Cir. 2006) ("The canon only applies to ambiguous statutes[.]).

In the case of unambiguous statutes, this Court applies the "last-in-time rule," which provides "that when a statute which is subsequent in time is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null." *Breard v. Greene*, 523 U.S. 371, 375 (1998) (quoting *Reid v. Covert*, 354 U.S. 1, 18 (1957)). These two canons of interpretation yield a "straightforward practice: Courts apply a statute according to its terms even if the statute conflicts with a prior treaty . . . , but where fairly possible, courts tend to construe an *ambiguous* statute not to conflict with a prior treaty . . . ." *Fund for Animals, Inc. v. Kempthorne*, 472 F.3d 872, 879 (D.C. Cir. 2006).

The Sixteenth Circuit misapplied the canon against abrogation when it interpreted the scope of the CSLAA through the United States's international treaty obligations, as the statute's text is not ambiguous. As discussed above, the term "activity carried out under the license," which appears in Section 50915(a)(1) as a trigger for liability, plainly means launches and reentries. The statute, the sentence immediately following, and Section 50904(a)'s definition of licensable activity all

unambiguously confirm this meaning. Because this plain meaning arises from the statute's text, the Sixteenth Circuit committed reversible error by using extratextual considerations to broaden the CSLAA's application.

Moreover, the Sixteenth Circuit also erred by utilizing the U.S.'s international treaty obligations to interpret "activity carried out under the license," whether ambiguous or not. Congress and the President can "incorporate international-law principles into domestic U.S. law by way of a . . . self-executing treaty." *Ghaleb Nassar Al-Bihani v.* Obama, 619 F.3d 1, 10 (D.C. Cir. 2010). These self-executing treaties immediately "become part of the domestic U.S. law that federal courts must enforce[.]" *Id.* "By contrast, non-self-executing treaties are customary international law and are not domestic U.S. law." *Id*. (citation omitted).

The Sixteenth Circuit recognized that "the relevant treaties (the Outer Space Treaty, the Liability Convention, and the Registration Convention) are not self-executing and therefore cannot form the basis for a private right of action." R. at 43a. Nonetheless, it utilized these treaties to interpret the term "activity carried out under the license" broadly enough to cover Solo's claims.

Whether courts should construe statutes to avoid conflicts with non-self-executing treaties, as they do with self-executing ones, has remained a topic of debate among courts and commentators. *See Saleh v. Bush*, 848 F.3d 880, 891 (9th Cir. 2017) ("[W]e have suggested that ambiguous statutes should be interpreted to avoid conflicts with non-self-executing treaties[.]"); Rebecca Crootof, *Judicious Influence: Non-Self-Executing Treaties and the Charming Betsy Canon*, 120 Yale L.J 1784,

1790–91 (2011) (arguing that ambiguous statutes should be read to avoid conflicting with non-self-executing treaties); *but see Norsk v. Hydro Can., Inc. v. United States*, 472 F.3d 1347, 1360 n.21 (Fed. Cir. 2006) (holding that non-self-executing treaties should not be used to interpret federal statutes); *Ghaleb Nassar Al-Bihani v. Obama*, 619 F.3d 1, 10 (D.C. Cir. 2010) (Kavanaugh, J., concurring in the denial of rehearing en banc) (arguing that the canon against abrogation "does not permit courts to alter their interpretation of federal statutes based on international-law norms that have not been incorporated into domestic U.S. law"). Although arguments exist on both sides, utilizing non-self-executing treaties as an interpretive tool is a bad idea for several reasons.

First, non-self-executing treaties create no rights or obligations within the United States. *Medellin v. Texas*, 552 U.S. 491, 505 (2008). Construing statutes to avoid conflict with these treaties would effectively elevate them to domestic law, bypassing Congress's role under Article I as the lawmaking branch of government. *See* U.S. Const. Art. I § 1. This would cause major separation of powers concerns.

Next, allowing courts to harmonize statutes with non-self-executing treaties invites subjective interpretation and inconsistent application. An *international* non-self-executing treaty's *domestic* effect is undefined, as its construction provides for only the international obligations of parties to the treaty. Because, by the very nature of the treaty, it lacks guidance on domestic application, this could produce varying subjective interpretations of the same terms, because courts will find no ground in these treaties to define its domestic scope.

Illustrative of this issue is the fact that the Sixteenth Circuit blurred the otherwise clear language defining what activity the CSLAA applies to, providing a broader application than the text of the statute permits. This could impose crippling liability, as the Sixteenth Circuit does here, through a statute that unambiguously provides a remedy only for damages resulting from an activity carried out under the license, namely, launches and reentry.

The Sixteenth Circuit's reliance on non-self-executing treaty obligations to expand the CSLAA's unambiguous text ignored bedrock canons of statutory interpretation and invites daunting judicial overreach. By elevating these treaties to have the effect of binding, domestic law, the Sixteenth Circuit not only misapplied the CSLAA, but also undermined Congress's authority as the lawmaking branch of our government, risking inconsistent liability that could stifle U.S. commercial space innovation. For those reasons, this Court should reverse.

III. Even if the CSLAA Applies, the Lower Court Misinterpreted Section 50915 as only Requiring But-For Causation, and Skywalker's Act of Terrorism Was a Superseding Cause as a Matter of Law.

The CSLAA does not transform a licensee into an insurer for every harm that would not have occurred but for the mere existence of its orbital asset. The CSLAA's indemnity scheme authorizes government payment only for a "successful claim . . . of a third party . . . resulting from an activity carried out under the license issued . . . under this chapter . . . for death, bodily injury, or property damage or loss resulting from an activity carried out under this chapter." 51 U.S.C. § 50915(a)(1).

Congress's requirement of a "successful claim" by a third party imposes an additional evidentiary requirement, requiring a traditional negligence (and proximate cause) showing under state substantive laws for the underlying claim. The Sixteenth Circuit reduced this evidentiary requirement to mere "but-for" causation, and thus imposed liability in the absence of a "successful claim."

The Sixteenth Circuit also erred by affirming the district court's denial of Petitioner's Renewed Motion for Judgment as a Matter of Law, as no reasonable jury would have had a legally sufficient evidentiary basis to find Skywalker's terrorist attack as anything other than a superseding cause. For those reasons, this Court should reverse.

A. The Sixteenth Circuit Erred in Its Interpretation of Section 50915 as Requiring Proof of Mere But-For Causation, Because the Requirement of a "Successful Claim" Demands a Showing of Proximate Causation.

The CSLAA's express requirement of a "successful claim" against a licensee incorporates traditional tort law principles, which require proof of negligence and proximate causation. "It is textbook tort law that a plaintiff seeking redress for a defendant's legal wrong typically must prove but-for causation." *Comcast Corp. v. Nat'l Ass'n of African Am. Owned Media*, 589 U.S. 327, 332 (2020) (quotation omitted). Under this standard, a plaintiff shows that a defendant's "act or omission [was] a substantial factor in bringing about the harm, and absent the act or omission—i.e., but for the act or omission—the harm would not have occurred." *Peterson v. Johnson*, 57 F.4th 225, 236 (5th Cir. 2023).

Proximate causation imposes a more demanding standard, "meaning that allegations satisfying the former necessarily will satisfy the latter, though the opposite is not true but is possible[.]" *Ramara, Inc. v. Westfield Ins. Co.*, 814 F.3d 660, 675 (3rd Cir. 2016). Proximate cause exists "when a harm was a reasonably foreseeable result of the defendant's conduct." *United States v. George*, 949 F.3d 1181, 1187 (9th Cir. 2020). This standard "excludes some of the improbable or remote causal connections that would satisfy a pure but-for cause standard." *Id.*

Federal courts "generally presume that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute . . . [because] it has been a well-established principle of the common law, that in all cases of loss, we are to attribute it to the proximate cause, and not to any remote cause." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132 (2014) (citation modified).

This makes sense, because "Congress . . . is familiar with the common-law rule and does not mean to displace it *sub silento*. [The Supreme Court has] thus construed federal causes of action in a variety of contexts to incorporate a requirement of proximate causation." *Id.* (citation omitted). Although "courts regularly read phrases like 'results from' to require but-for causality[,]" this only holds true when "there is no textual or contextual indication to the contrary[.]" *Burrage v. United States*, 571 U.S. 204, 212 (2014).

Despite this overwhelming presumption that federal statutes incorporate the common law causation requirements of both but-for and proximate causation, the

Sixteenth Circuit interpreted 51 U.S.C. § 50915 to require mere but-for causation. R. at 46a. The court relied on Section 50915(a)(1)'s use of the term "resulting from[,]" reasoning that, because courts view this term as imposing only a showing of but-for causation, there was no need to "decide whether Skywalker's actions were foreseeable or whether they constituted an intervening and superseding cause. *Id.* at 47a.

It squared this reasoning with *Burrage v. United States*, which explained that "[w]here there is *no textual or contextual indication to the contrary*, courts regularly read phrases like 'results from' to require but-for causality." 571 U.S. 204, 212 (2014) (emphasis added). As observed by Judge Windu below, the operative language lies in the first part of the sentence—that this reading of the phrase "results from" applies in the absence of a textual or contextual indication to the contrary. R. at 57a.

Congress provided this textual indication to the contrary through its express requirement of a "successful claim" in the same sentence on which the Sixteenth Circuit and the district court relied to impose only a but-for causation requirement. *See* 51 U.S.C. 50915(a)(1) (authorizing government payment only for a "*successful claim* . . . of a third party . . . resulting from an activity carried out under the license issued . . . under this chapter . . . for death, bodily injury, or property damage or loss resulting from an activity carried out under this chapter") (emphasis added); R. at 47a ("It is well settled that the statutory phrase 'resulting from,' as used in Section 50915, means only but-for causation.").

That underlying "successful claim" is governed by substantive state law principles, which, in this case, would be that of Alderaan, which require a showing of

proximate causation. *See* R. at 37a. The CSLAA as a whole also provides a contextual indication to the contrary. The CSLAA establishes an *indemnity scheme*, not a liability-creating statute.

This matters, because Section 50915, the section interpreted by the Sixteenth Circuit as requiring only but-for causation, *presupposes* a successful underlying tort claim by its very nature, because the statute only serves as a tool for indemnification after a successful claim has been made by a third party. Logically, this requires that a third party prove all of the typical state substantive law requirements of a "successful claim" before any indemnity obligations are triggered under the CSLAA, because the statute itself does not create its own cause of action.[1]

This aligns with Congress's intent, because the entire purpose of the CSLAA exists not to impose unlimited liability on the United States vis-à-vis licensees, but rather to "encourage, facilitate, and promote commercial space launches and reentries by the private sector"—a goal that becomes virtually impossible if the presupposed underlying tort claim requires anything less than traditional causation requirements before triggering the indemnity scheme.

Such a reading would spread liability for third-party claims far beyond what Congress intended in the CSLAA—a result that would discourage private operators

[1] Similarly, other indemnification statutes, such as the Price-Anderson Act, also incorporate the requirement of a successful claim under state substantive laws before indemnity obligations are triggered. *See* Dan M. Berkovitz, *Price-Anderson Act: Model Compensation Legislation? The Sixty-Three Million Dollar Question*, 13 Harv. Envtl. L. Rev. 1, 4 (1989) ("The Act did not create a federal cause of action for damages arising out of a nuclear incident, and it did not alter any of the rules of state law that might apply."); John P. Napoli, *Federal Preemption: State Law Principles of Strict Liability in a Nuclear Accident—A Preemption Problem in Light of the Price-Anderson Act*, 6 U. Dayton L. Rev. 281, 287 (1981) ("Clearly, the state tort law must apply since the Price-Anderson Act does not create an independent cause of action. Under the Act, the claim arises out of state law.").

from investing in space development. This is the result that Congress eliminated through its express requirement of a "successful claim," and that this Court should eliminate as well. By closing its eyes to the existence of this limiting requirement of a "successful claim," the Sixteenth Circuit extended liability far beyond what the drafters of the CSLAA ever intended.

Moreover, the Sixteenth Circuit supported its requirement of only but-for causation through the United States' international treaty obligations. R. at 51a. These treaties, which outline a State Party's international obligations, are of no moment in interpreting the causation requirements of the CSLAA. As explained above, every treaty that the Sixteenth Circuit used to justify this position is a non-self-executing international treaty, and, therefore, is of no help in interpreting the meaning of binding, domestic law.

Furthermore, to the extent that these treaties are relevant, they only explain a State's international obligations to another state, not a State's domestic obligations to a private citizen. *See* Outer Space Treaty, 18 U.S.T. 2410, art. VI ("State Parties to the Treaty shall bear international responsibility . . . ."); *Id.* art. VII ("Each State Party to the Treaty that launches or procures the launching of an object into outer space . . . is internationally liable for damage to another State Party to the Treaty . . . ."). The United States did not agree to domestic liability after a showing of only but-for causation in any of these treaties, and neither did the Empire.

The Sixteenth Circuit committed reversible error by interpreting the CSLAA to require only but-for causation, given Congress's textual requirement of a

"successful claim" before triggering the United States' indemnity obligations, the contextual requirement of the indemnity scheme as a whole, and the results that would follow cut against the very goals of the statute. Because of this, this Court should reverse the Sixteenth Circuit's affirmance of the district court's denial of Petitioners' Renewed Motion for Judgment as a Matter of Law.

B. The Sixteenth Circuit Erred in Affirming the District Court's Denial of Petitioners' Renewed Motion for Judgment as a Matter of Law, Because No Reasonable Jury Would Have a Legally Sufficient Evidentiary Basis to Find that Skywalker's Criminal Act of Terror was Foreseeable.

The Sixteenth Circuit should have reversed the district court's denial of Petitioners' Renewed Motion for Judgment as a Matter of Law, because there was no legally sufficient evidentiary basis for a reasonable jury to find that Skywalker's superseding act of terror was a foreseeable consequence of the DS-1's design defects. "Proximate cause is that cause which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the injury would not have occurred." *McDermott v. Midland Management, Inc.*, 997 F.2d 768, 770 (3rd Cir. 1993) (quotation omitted). "Generally, there is no proximate cause where the chain of events is broken by the intervention of a new, separate, wholly independent and efficient intervening cause." *Id.* (quotation omitted).

This is largely because it is a "black-letter tort law principle that an intervening force breaks the chain of proximate causation when that intervening force is sufficiently unforeseeable as to constitute a superseding cause." *Hundley v. District of Columbia*, 494 F.3d 1097, 1104 (D.C. Cir. 2007). These superseding causes

include instances such as "a third party's criminal action that directly causes all of the damages [and] break[s] the chain of causation." *James v. Meow Media, Inc.*, 300 F.3d 683, 699 (6th Cir. 2002).

In most cases, in light of such events, "questions of whether an intervening act severs the chain of causation depend[s] on the foreseeability of the intervening act and should be determined by the finder of fact." *Port Auth. of N.Y. & N.J. v. Arcadian Corp.*, 189 F.3d 305, 318 (3rd Cir. 1999) (citation omitted). However, "in appropriate circumstances, the court may resolve the issue as a matter of law. Those cases generally involve independent intervening acts which operate upon but do not flow from the original act." *Id.* (citation omitted).

The district court utilized Section 448 of the Restatement (Second) of Torts to instruct the jury on superseding causes. R. at 64a. Alderaan, like many other states, follows the standard laid out therein. *Id.* This section provides that, even if "the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit . . . a tort or crime," the actor will not be liable, because "[t]he act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom[.]" Restatement (Second) of Torts § 448. The only instance where a third party's tort or crime does not break the chain of causation is when the "actor[,] at the time of his negligent conduct[,] realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime." *Id.*

Echoing the Restatement's "realized or should have realized" language, most courts have hinged the analysis on the foreseeability of that third party's conduct. *See Doyle v. Exxon Corp.*, 592 F.2d 44, 48 (2nd Cir. 1979) (explaining that the Restatement approach has adopted the foreseeability requirement in the context of an intervening criminal act of another); *McDermott v. Midland Management, Inc.*, 997 F.2d 768, 772 (10th Cir. 1993) ("The ultimate question under [the Restatement] is whether the intervening tort or crime was foreseeable."); *Westfarm Assocs. Ltd. Pshp. v. Washington Suburban Sanitary Comm'n*, 66 F.3d 669, 688 (4th Cir. 1995) (explaining that proximate cause can still be found when the tortious or criminal conduct of a third party is foreseeable).

The Restatement lays out six factors that are relevant in determining whether an intervening cause was sufficiently foreseeable as to not have superseded a defendant's negligence, on which the jury was instructed. R. at 78a. These factors are:

> (a) [whether] its intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence;
> (b) [whether] its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;
> (c) [whether] the intervening force is operating independently of any situation created by the actor's negligence, or, on the other hand, is or is not a normal result of such a situation;
> (d) [whether] the operation of the intervening force is due to a third person's act or to his failure to act
> (e) [whether] the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him; and
> (f) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion.

Restatement (Second) of Torts § 442(b). The jury did not have a legally sufficient evidentiary basis to find Skywalker's act of terror as a foreseeable consequence of the DS-1's design defect under any of these factors, which should have led to the lower courts granting the Empire and United States' Renewed Motion for Judgment as a Matter of Law.

As correctly explained by Judge Walt below, many courts have suggested that factor (b), the extraordinary nature of an intervening act's operation or consequence, is grounds enough for a court to determine that, as a matter of law, it superseded a Defendant's negligence. R. at 79a; *see also Hundley v. District of Columbia*, 494 F.3d 1097, 1104 (D.C. Cir. 2007) (relying on the Restatement's approach and explaining that "a defendant may not be held liable for harm actually caused where the chain of events leading to the injury appears highly extraordinary in retrospect") (citation omitted); *Port Auth. v. Arcadian Corp*, 189 F.3d 305, 318 (3rd Cir. 1999) (holding that "responsibility for the highly extraordinary consequence is also a matter of law for the court").

Even more, the Restatement itself takes this position by relying on Section 435(2) in its comment on factor (b). *See* Restatement (Second) of Torts § 442 cmt. b ("As to the statement in Clause (b), see § 435(2) . . . ."). Section 435(2) explains that an "actor's conduct may be held not to be a legal cause of harm to another where after the event and looking back from the harm to the actor's negligent conduct, it appears *to the court highly extraordinary* that it should have brought about the harm." *Id.* §

435(2) (emphasis added). This is the approach that the Sixteenth Circuit should have taken.

An appropriate analysis of this factor would have resulted in the lower courts determining that, as a matter of law, Skywalker's act of terror broke the causal chain by superseding Petitioners' negligence. This made the denial of the Petitioners' Renewed Motion for Judgment as a Matter of Law inappropriate. Several courts have analyzed the highly extraordinary and unforeseeable nature of an act of terror and the effect that such acts have on the chain of causation.

For example, in *Port Authority v. Arcadian Group*, the plaintiff, owner of the World Trade Center, sued Arcadian Group "on theories of negligence and products liability, alleging that terrorists used [Arcadian]'s fertilizer products to construct [an] explosive device" that was placed under the building, killing six people and injuring several others. 189 F.3d 305, 309 (3rd Cir. 1999). The plaintiff appealed after the district court found, as a matter of law, that "the World Trade Center bombing was not proximately caused by defendants' actions." *Id.*

The district court reasoned that doing so was appropriate under the circumstances, because "[n]o jury could reasonably conclude that . . . scattered terrorist[] incidents throughout the world over the course of the last 30 years would make an incident like the World Trade Center bombing anything more than a remote or theoretical possibility." *Id.* at 315. The Third Circuit agreed, reasoning that "the issue of responsibility for the highly extraordinary consequence is . . . a matter of law for the court[,]" and any harm sustained by the plaintiff "was not proximately caused

by [the] defendants. Rather, it was caused by the terrorists' intentional acts to create an explosive device and to cause harm to the World Trade Center and its occupants." *Id.* at 318. The district court and the Sixteenth Circuit could have and should have reached the same result.

There is no question that Skywalker's attack on the DS-1 was an intentional, criminal act of terror. Terrorist attacks are, by their very nature, overwhelmingly extraordinary, especially without a history of terrorist attacks known to a Defendant. *See N.J. Dep't of Envtl. Prot. v. United States NRC*, 561 F.3d 132, 140) (3rd Cir. 2009) (explaining that a hypothetical terrorist attack on a nuclear facility "would *certainly* be 'extraordinary'" in the absence of a history of similar events) (emphasis added).

The concurrence justified the majority's conclusion that Skywalker's act of terror did not, as a matter of law, constitute an intervening and superseding cause of Solo's injuries based on the "controversial" nature of the DS-1. R. at 59a. This simply does not obviate the highly extraordinary nature of a ragtag terrorist group recruiting a Tunisian moisture farmer to destroy Earth's only hope against a mass extinction event.

Unlike the focus of the concurrence's analysis, the question of whether Petitioners knew or should have known that this terrorist attack was foreseeable determines if it superseded the Empire's negligence, not whether a select portion of the international community disagreed with the DS-1's construction. When this analysis is conducted, Skywalker's attack speaks for itself.

Skywalker's attack does not fall within the universe of results that should have been foreseen from the "international outrage and claims that the DS-1 would violate an international treaty[.]" *See* R. at 3a. The concurrence ominously suggested that, because "the Outer Space Treaty is not privately enforceable, the Empire and the United States should have been able to anticipate that some actor would 'take matters into their own hands' and engage in 'methods of self-help.'" R. at 63a. It cited a law review article to support this argument, but the author of that article explains exactly what kind of self-help an actor could engage in, and apart from self-defense, all of these methods are peaceful.[2]

There is no indication in the record that any state had pursued even a peaceful method of reconciling its concern with the DS-1, much less had suggested they would do something militarily about it. Even more, this reasoning does not provide a logical pathway to concluding that a lone terrorist group would, or could, do anything about this "international outrage"—much less acquire an X-wing starfighter equipped with proton torpedoes to do so. It does not follow that from this international discontent that Petitioners could have foreseen a terrorist committing an intentional criminal act of such magnitude.

Furthermore, as explained by Judge Walt below, the financial implications of the launch which led to the DS-1's destruction effectively limited the capability to do so to states—none of which did, or planned to do anything about the DS-1's

[2] *See* Clayton J. Schmitt, Note, *The Future is Today: Preparing the Legal Ground for the United States Space Force*, 74 U. Miami L. Rev. 563, 587–588 (explaining self-help methods, including unilateral sanctions, requesting consultation, seeking expulsion or trade sanctions through the World Trade Organization, or, "in the most extreme case, a state's traditional right to self-defense").

construction. R. at 82a (Walt, J., dissenting). A single mission into space could cost more than $2 billion, and there were only "three billionaires with the financial ability, interest, and technical capabilities to launch into space" at the time. *Id*. Not a single one of these private actors ever suggested their intent to destroy the DS-1. Even if they had, it would require gaining possession of stolen plans for the DS-1 and somehow having the expertise to identify the design defect in a specific thermal exhaust port.

Petitioners could not have foreseen that Alianza Rebelde, a private entity operated in the forests of Guatemala, could have obtained these plans, recruited a pilot with enough skill to hit a 2-meter wide thermal exhaust port with a proton torpedo, acquired an X-wing starfighter equipped with those proton torpedoes, and subsequently financed a $2 billion launch to complete this act of terror—a "chain of events leading to the injury appear[ing] highly extraordinary in retrospect." *Hundley v. District of Columbia*, 494 F.3d 1097, 1104 (D.C. Cir. 2007).

Foreseeing such an act of terror would require facts not presented in the record or known by the Petitioners; the exact scenario that courts have found time and time again to be appropriately settled as a matter of law. *See Gaines-Tabb v. ICI Explosives, USA, Inc.*, 160 F.3d 613, 621 (10th Cir. 1998); *Port Auth. v. Arcadian Group*, 189 F.3d 305, 309 (3rd Cir. 1999).

Even if the highly extraordinary nature of Skywalker's act of terror does not conclusively establish that it superseded any negligence by the Petitioners, not a

single one of the other factors within the Restatement's approach could have provided a legally sufficient evidentiary basis for the jury to find it foreseeable.

First, Skywalker's attack brought about a harm entirely different in kind from what could have been foreseen from a design defect in the DS-1's exhaust port. Although a direct hit from a proton torpedo would have caused a chain reaction leading to an explosion and potential damage to surrounding spacecraft, in the absence of a third party firing a proton torpedo into the exhaust port, the range of harm from this design defect was extremely limited, if not non-existent. *See* R. at 13a. This weighs factor (a) heavily in Petitioners' favor.

Moreover, the operation of the intervening force, Skywalker's act of terror, operated entirely independently of any negligence by the Petitioners, because neither Petitioner took part in, had knowledge of, or assisted Alianza Rebelde and Skywalker whatsoever. This weighs factor (c) entirely in the Petitioners' favor. Additionally, Skywalker's act of terror was an intervening force entirely due to an act of a third party, namely Alianza Rebelde and Skywalker, and was wrongful toward the Petitioners, subjecting both the terrorist group and Skywalker to liability for catastrophic property damage resulting from the attack. This weighs factors (d) and (e) entirely in the Petitioners' favor.

Finally, the degree of culpability behind an intentional terrorist attack aimed at destroying Earth's only hope against a mass extinction event is immeasurably high, weighing factor (f) exclusively in Petitioners' favor. Even if "[t]he jury was entitled to consider the evidence relating to all six factors in deciding whether

Skywalker's actions constituted a superseding cause[,]" (R. at n.4) there is not an indicia of evidence that could have led it to conclude that this was anything other than an intentional, unforeseeable act of terror by a ragtag group of terrorists.

Skywalker's act of terror was both an anomaly and a textbook example of a superseding cause for which our court system does not hold actors liable. For these reasons, the Sixteenth Circuit erred in finding that the district court's denial of Petitioners' Renewed Motion for Judgment as a Matter of Law was appropriate, and this Court should reverse.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court reverse the decision of the Sixteenth Circuit that affirmed the district court's denial of the Empire's Motion to Dismiss for Improper Venue under Federal Rule of Civil Procedure 12(b)(3), remanding with instructions to grant the Empire's motion. In the alternative, Petitioners' respectfully request that this Court reverse the decision of the Sixteenth Circuit that affirmed the district court's denial of Petitioners' Renewed Motion for Judgement as a Matter of Law, remanding with instructions to grant the Petitioners' motion.

Respectfully submitted,

Team 29

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