No. 24-2187

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA AND
GALACTIC EMPIRE, INC.,
PETITIONERS,

v.

HAN SOLO,
RESPONDENT.

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

BRIEF FOR PETITIONERS

Team #72
Counsel for Petitioners

QUESTIONS PRESENTED

(1) Did the district court properly exercise venue in the District of Alderaan when it placed the burden of establishing venue on the defendant against the balance of circuit court decisions, and found that events occurring hundreds of kilometers above the Earth in non-sovereign international territory occurred in the District of Alderaan?

(2a) Does the Commercial Space Launch Act reach in-space activities other than licensed launches and reentries, imposing additional liability on the United States based on non-self-executing international agreements, and partially preempt state tort law as to causation?

(2b) Was a terrorist attack on a planetary defense system in orbit, requiring a non-state actor to acquire top-secret plans, marshal billions of dollars, and develop the capacity for spaceflight in secret, a superseding cause as a matter of law of the damage caused to a third party through exploitation of the defense system's design defect?

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STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1391 provides: "(a) … Except as otherwise provided by law—

(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

(b) … A civil action may be brought in—

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

(c) … For all venue purposes—

(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

(2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and

(3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants…."

51 U.S.C. § 50902 provides that, in chapter 509, "(7) 'launch' means to place or try to place a launch vehicle or reentry vehicle and any payload or human being from Earth—(A) in a suborbital trajectory; (B) in Earth orbit in outer space; or (C) otherwise in outer space, including activities involved in the preparation of a launch vehicle or payload for launch, when those activities take place at a launch site in the United States…. [and] (16) 'reenter' and 'reentry' mean to return or attempt to return, purposefully, a reentry vehicle and its payload or human beings, if any, from Earth orbit or from outer space to Earth."

51 U.S.C. § 50904(a) provides that "[a] license issued or transferred under this chapter, or a permit, is required for the following:

(1) 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.

(2) for a citizen of the United States … to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle, outside the United States.

(3) for a citizen of the United States … to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle, outside the United States and outside the territory of a foreign country unless there is an agreement between the United States Government and the government of the foreign country providing that the government of the foreign country has jurisdiction over the launch or operation or reentry.

(4) for a citizen of the United States … to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle, in the territory of a foreign country if there is an agreement between the United States Government and the government of the foreign country providing that the United States Government has jurisdiction over the launch or operation or reentry…."

51 U.S.C. § 50915(a) provides that: "(1) To the extent provided in advance in an appropriation law or to the extent additional legislative authority is enacted providing for paying claims in a compensation plan submitted under subsection (d) of this section, the Secretary of Transportation shall provide for the payment by the United States Government of a successful claim (including reasonable litigation or settlement expenses) of a third party against a person described in paragraph (3)(A) resulting from an activity carried out under the license issued or transferred under this chapter for death, bodily injury, or property damage or loss resulting from an activity carried out under the license. However, claims may be paid under this section only to the extent the total amount of successful claims related to one launch or reentry—

(A) is more than the amount of insurance or demonstration of financial responsibility required under [51 U.S.C. § 50914(a)(1)(A)]; and

(B) is not more than $1,500,000,000 (plus additional amounts necessary to reflect inflation occurring after January 1, 1989) above that insurance or financial responsibility amount.

(2) The Secretary may not provide for paying a part of a claim for which death, bodily injury, or property damage or loss results from willful misconduct by the licensee or transferee. To the extent insurance required under section 50914(a)(1)(A) of this title is not available to cover a successful third party liability claim because of an

insurance policy exclusion the Secretary decides is usual for the type of insurance involved, the Secretary may provide for paying the excluded claims without regard to the limitation contained in section 50914(a)(1).

(3) (A) A person described in this subparagraph is—

(i) a licensee or transferee under this chapter;

(ii) a contractor, subcontractor, or customer of the licensee or transferee;

(iii) a contractor or subcontractor of a customer; or

(iv) a space flight participant…."

51 U.S.C. § 50922(a)(5) provides that "The Secretary of Transportation, within 9 months after the date of the enactment of this section, shall issue regulations to carry out this chapter that include … procedures for the application of government indemnification."

OPINIONS BELOW

The opinion of the court of appeals, No. 22-cv-1138 (16th Cir. May 4, 2023), has not been published but is reprinted at R. 1a–84a. The district court's decision, No. 19-cv-421(TK) (D. Alderaan May 25, 2022), is not published.

JURISDICTION

The Sixteenth Circuit issued its decision on May 4th, 2023. R. 1a. The petition for certiorari was timely filed and granted on October 6th, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

INTRODUCTION

This case is about how courts may exercise their power over events that occur hundreds of miles above the Earth's surface and how the United States might govern, protect, and encourage exploration of the vast reaches of outer space. But this case is also about a tort claim between two private parties, subject to the normal rules of procedure and governed by traditional federal statutes and state tort law. The court below faced an unprecedented and extraordinary set of facts. It grappled with an untested indemnification scheme and a novel application of established principles of venue. And, answering multiple questions of first impression, it got them wrong. It misplaced the burden of proving venue, misconstrued the general venue statute, misinterpreted the plain language of a statutory indemnification scheme, and misapplied state tort law. These mistakes require that the Sixteenth Circuit be reversed.

Solo produced no evidence demonstrating that venue was proper in Alderaan. Venue, like personal jurisdiction, protects defendants from the risk that a plaintiff will improperly exercise their discretion over where to file suit. So it is the plaintiff, and not the protected party, who bears the burden of showing their choice was correct, as the majority of circuit courts have held.

But Solo could not have produced evidence establishing venue in Alderaan, because a substantial part of the events giving rise to his claim did not take place in the District of Alderaan. They occurred 460 kilometers above it, in the international territory of outer space, over which the Unites States has no sovereignty. Venue cannot extend beyond the borders of a judicial district into international territory. The only events giving rise to this claim that took place in a judicial district occurred in California, where Galactic Empire, Inc. ("the Empire") designed the Defense System One ("DS-1") and launched most of the station's materials. California, where the Empire is domiciled, is also the only proper location for venue based on personal jurisdiction.

Even if venue is proper in Alderaan, Solo's claim fails. By its plain language, the Commercial Space Launch Act ("CSLA") establishes an indemnification scheme, under which the United States will indemnify licensees for certain damages resulting from licensed activity when a plaintiff succeeds on an ordinary tort claim. This indemnification scheme applies only to licensed activity: launches and reentries. Solo's claim results from neither a launch nor a reentry. Even if the CSLA applied, the statute simply provides for payment by the United States of successful claims meeting specific criteria; it does nothing to change the substantive law applicable to the underlying claim.

And, under Alderaan tort law, the Empire's negligence was not the proximate cause of Solo's injuries. The terrorist attack that destroyed DS-1 required a "space pirate" marshalling billions of dollars and immense technical capabilities, conducting

a secret space launch in the Guatemalan jungle, acquiring confidential documents, and making a "one-in-a-million" shot on a two-meter target. R. 2a, 69a. This extraordinary attack constituted an unforeseeable superseding cause as a matter of law.

STATEMENT OF THE CASE

Recognizing the value of commercial space activities, Congress passed the Commercial Space Launch Act ("CSLA") to "facilitate[private space launches] by stable, minimal, and appropriate regulatory guidelines[.]" H.R. 3942, 98th Cong., 90 Stat. 3055, § 2(6) (1984). Under the CSLA, the United States will pay successful claims against licensees "'resulting from an activity carried out under the license," to the extent the total successful claims "related to one launch or reentry" fall within a statutory range, excluding damages resulting from the licensee's willful misconduct. 51 U.S.C. §§ 50915(a)(1), (2). The licenses in question are issued for launch, reentry, and operating a launch or reentry site. 51 U.S.C. §§ 50904(a)(1)–(4).

The United States is also party to several non-self-executing treaties regarding outer space. The 1967 Outer Space Treaty ("O.S.T.") declares "[o]uter space … is not subject to national appropriation by claim of sovereignty … or by any other means," establishes "international responsibility for national activities in outer space[,]" and requires supervision of non-governmental space activities. 18 U.S.T. 2410, arts. II, VI. The Registration Convention "obligates a launching State to register any space object launched into Earth orbit or beyond." R. 9a (citing 28 U.S.T. 695, art I.).

Finally, the Convention on International Liability for Damage Caused by Space Objects of 1972 ("Liability Convention"), provides that states shall be liable for damage caused to a space object or to persons or property on board such a space object only if the damage is due to the fault of the launching state or persons for whom the launching state is responsible. 24 U.S.T. 2389, art. III. But the Liability Convention explicitly "shall not apply to damage caused by a space object of a launching State to … Nationals of that launching State." *Id.* art. VII. Any claims for compensation under the Liability Convention must be presented to a state through diplomatic channels. *Id.* art. IX.

I. Galactic Empire Begins Construction of the DS-1 to Defend Earth from Meteor Strikes

The Empire, a California company, responded to the United States's failure to provide a planetary defense system with the capability to quickly guard against near-Earth objects by doing so itself. R. 68a. It had good reason to do so, despite protests that the DS-1 was secretly a military operation violating the O.S.T.: meteor strikes in modern history, one of which released thirty times more energy than the atomic bomb at Hiroshima, have destroyed whole forests and killed thousands of people. R. 63a, 67a. In the Cretaceous-Paleogene extinction event, a meteor strike eliminated 75 percent of all species on Earth. *Id.*

After two more meteor strikes, the Empire began construction on the DS-1 in May 2012. R. 7a. The Empire conducted hundreds of launches during that period to transport supplies and materials to the construction site orbiting roughly 460 kilometers above the Earth's surface. R. 8a, 12a. Most of these launched from

California, where the Empire is headquartered and where it designed the DS-1; none launched from Alderaan. R. 13a, 71a. The Empire planned to relocate the DS-1 into high-Earth orbit at 65,000 kilometers once fully built in 2022, to ensure the DS-1 could "destroy … approaching objects sufficiently far from the Earth to prevent the resulting fragments from striking the Earth[.]" R. 8a–9a.

II. Alianza Rebelde Discovers a Secret Design Flaw and Launches a Terrorist Attack

In 2017, just over a week before the DS-1's destruction, the Empire discovered a design defect that would cause the station to explode if a two-meter thermal exhaust port was hit by a proton torpedo. R 13a. This defect was not publicized, and the Empire kept the information from any actors thought to have the means and desire to exploit the flaw. *Id*. Nevertheless, Alianza Rebelde S.A. ("Alianza"), a Guatemalan company headquartered deep in the forests amid the Mayan ruins near Tikal, managed to discover the defect from stolen plans, despite the Empire's efforts to recover them. R. 5a, 82a–83a.

Somehow, Alianza and Skywalker marshalled at least $2 billion, acquired an X-wing starfighter equipped with proton torpedoes, covertly developed the necessary launching facilities deep in the Guatemalan jungle, and then launched Luke Skywalker, a Tunisian national and former farmer, to destroy the DS-1. R. 69a, 82a. It just so happened that on that day, one of the three billionaires with the interest and ability to launch into space—Han Solo—had launched his ship (in violation of the CSLA) from a spaceport in Tunisia and was nearby when Skywalker, after turning off his targeting computer, managed a "one-in-a-million shot" on a two-meter-wide

target in low-Earth orbit. R. 14a, 82a, 83a. The "chain reaction" destroyed the DS-1 and some of the fragments collided with Solo's ship, damaging the ship's navigational computer and hyperdrive and injuring Solo. R. 14a. Solo sued Skywalker, the Empire, Alianza, and the Republic of Guatemala for bodily injury and property damage in the District of Alderaan. The United States intervened in the lawsuit to protect its interests. Skywalker and Alianza settled; the court granted Guatemala summary judgment. R. 5a, 6a. Only Solo, the Empire, and the United States are party to this appeal.

III. The Lower Courts Apply Overflight Venue to the Attack in Space and Strip the Proximate-Cause Requirement from the State Law Tort Claim

Going against the balance of circuit court decisions, the trial court placed the burden on the Empire and found venue was proper in Alderaan because a substantial part of the events giving rise to the claim occurred in outer space above it, R. 22a, relying on no admitted evidence: Solo's evidence was unreliable, hearsay, or inconclusive, and the Empire, arguing the burden to prove venue lay on Solo, did not present venue evidence. R. 21a. The court also determined that, under the CSLA, a but-for causation standard applied to Solo's claim, though it also had the jury make a proximate-cause finding. R. 35a. The jury found that both standards were met and the court denied defendants' renewed motion for judgment as a matter of law. The Empire's 50 percent share of the total liability amounted to $2.25 billion, rising to $2.7 billion with prejudgment interest. R. 15a. The United States was thus liable for $2.2 billion under 51 U.S.C. § 50915(a). R. 16a.

The Sixteenth Circuit affirmed the trial court's decisions. The majority agreed that the defendant bears the burden of proving venue, R. 25a, and, applying the contested overflight venue doctrine, that venue was proper in Alderaan. R. 34a. The majority also applied a but-for standard to Solo's claim, interpreting the CSLA to displace the state law causation standard. R. 48a–52a. The concurrence disagreed, arguing the indemnification scheme established by Congress in the CSLA does not change the causation standard for the underlying tort claim, which comes from state law. R. 57a. Nevertheless, the concurring judges joined the majority because the jury had found the Empire liable on a proximate cause standard. R. 53a. The dissent concluded that the general venue statute creates proper venue only in California, as no events giving rise to the claim took place in Alderaan. R. 72a–75a. The dissent further argued that Skywalker's attack severed the chain of proximate cause, as it was a superseding cause as a matter of law. R. 80a–84a.

ARGUMENT

I. As the Majority of Circuits Have Held, the Plaintiff Bears the Burden to Establish Proper Venue

Since "the beginning of the Republic," federal venue has been a statutory matter. *Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706, 708 (1972). The general civil venue statute, which governs venue in this case, R. 18a, provides three paths to establishing proper venue in a judicial district: (1) all defendants reside in the state where the district is located; (2) "a substantial part" of the events or omissions giving rise to the claim occurred in the district; or (3) when the previous two options fail, venue is proper in "any judicial district in which any defendant is

subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b).

A. The majority of circuit court decisions have correctly held that the plaintiff bears the burden of establishing proper venue

While the circuit courts are divided on which party bears the burden of establishing proper venue, the majority has it right. Five circuits explicitly place the burden with the plaintiff. *See Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979); *Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004); *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 355 (2d Cir. 2005); *DeLong Equip. Co. v. Washington Mills Abrasive Co.*, 840 F.2d 843, 857 (11th Cir. 1988); *Tobien v. Nationwide Gen. Ins. Co.*, 133 F.4th 613, 619 (6th Cir. 2025).

Even within the three circuits that place the burden on the defendant—the Third, Seventh, and Eighth Circuits—the burden issue is divisive. *See United States v. Orshek*, 164 F.2d 741, 742 (8th Cir. 1947); *Myers v. Am. Dental Ass'n*, 695 F.2d 716, 724 (3d Cir. 1982); *In re Peachtree Lane Assocs., Ltd.*, 150 F.3d 788, 792 (7th Cir. 1998). The Third Circuit placed the burden on the defendant over a vigorous dissent by Judge Garth. *Myers*, 695 F.2d at 731–34 (Garth, J., concurring and dissenting). And district courts in the Eighth Circuit have not followed the minority rule, despite *Orshek*. *See, e.g., Davis v. Advantage Int'l, Inc.,* 818 F. Supp. 1285, 1286 (E.D. Mo. 1993); *Pfeiffer v. Int'l Acad. of Biomagnetic Med.,* 521 F. Supp. 1331, 1336 (W.D. Mo. 1981).

The majority circuits have the correct view of the issue, given the close relationship between venue and another defense requiring the plaintiff "to institute

the action in a permissible forum": personal jurisdiction. *Tobien*, 133 F.4th at 619 (citation modified).

B. Because the plaintiff bears the burden of establishing personal jurisdiction, they must also establish venue

The general venue statute "relies heavily on jurisdictional concepts." Stephen E. Sachs, *How Congress Should Fix Personal Jurisdiction*, 108 Nw. U. L. Rev. 1301, 1304 (2014). Venue and personal jurisdiction "are closely related concepts in their application." *Tobien*, 133 F.4th at 619. They "both are personal privileges of the defendant" and subject to waiver. *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979). Because they are "subject to [the defendant's] disposition," they are affirmative defenses. *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 168 (1939).

Specifically, venue and personal jurisdiction are affirmative *dilatory* defenses relating to the proper location of a suit: they "temporarily obstruct[] or delay[] a lawsuit but do[] not address the merits." *Dilatory Defense*, *Black's Law Dictionary* (12th ed. 2024). A "substantive" or "exculpatory" defense, which the defendant must prove, would decide the case "on the merits." *Tobien*, 133 F.4th at 620. Affirmative dilatory defenses relating to the proper location of a suit, like personal jurisdiction, place the burden of proof on the plaintiff. *See, e.g.*, *Hannon v. Beard*, 524 F.3d 275, 279 (1st Cir. 2008); *Briskin v. Shopify, Inc.*, 135 F.4th 739, 751 (9th Cir. 2025) (en

banc).[1] Because venue also concerns the proper "locality of a law suit—the place where judicial authority may be exercised," *Neirbo*, 308 U.S. at 168, the plaintiff must establish it. "[O]nce the defendant contests venue, it is up to the plaintiff to show that he filed the action in a permissible court, even if he doesn't need to make that showing in his complaint." *Tobien*, 133 F.4th at 620.

Moreover, the existence of personal jurisdiction and venue often depend on "identical facts about the defendant's residence." *Id.* at 619. Domicile, for example, can determine both venue and personal jurisdiction for natural persons. Venue is proper if all defendants reside in the same judicial district, which for natural persons means where they are domiciled. 28 U.S.C. §§ 1391(b)(1), (c)(1). And defendants are subject to general personal jurisdiction in their "place of domicile." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358–59 (2021) (citation omitted). The connection is even clearer for entity defendants: an entity defendant resides, for venue purposes, "in any judicial district in which [it] is subject to the court's personal jurisdiction" for the civil action. 28 U.S.C. § 1391(c)(2). Congress has designed venue to turn on the same facts about a defendant's location that determine personal jurisdiction because the two defenses operate in similar ways. *Cf. Rumsfeld v. Padilla*, 542 U.S. 426, 451 (2004) (Kennedy, J., concurring) (contending that "the question of the proper *location* … is best understood as a question of personal jurisdiction or venue") (emphasis added). Because these defenses are often intertwined by the

[1] The defendant bears the burden to establish some dilatory defenses, like ripeness. *N. Mill St., LLC v. City of Aspen*, 6 F.4th 1216, 1230 (10th Cir. 2021). But those dilatory defenses are unrelated to the proper location of a suit.

"crucial" fact of the defendant's domicile, the same party should bear the burden to establish them: the plaintiff. *Tobien*, 133 F.4th at 619.

Congress's "fallback option" for establishing venue makes the close relationship between venue and personal jurisdiction explicit. *See Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.,* 571 U.S. 49, 56 (2013). If venue can't be established through Section 1391(b)(1) or (b)(2), it will exist in "any judicial district in which any defendant is subject to the court's personal jurisdiction." 28 U.S.C. § 1391(b)(3). "[S]o long as a federal court has personal jurisdiction over the defendant, venue will always lie somewhere." *Atl. Marine Const. Co.*, 571 U.S. at 57. Thus, *any* motion to dismiss for improper venue under the fallback option is effectively "a motion to dismiss for lack of personal jurisdiction." *Tobien*, 133 F.4th at 620. Imposing different burdens of proof for these motions to dismiss "wouldn't make sense." *Id.* The logical rule places the burden to prove personal jurisdiction and fallback venue on the plaintiff.

Of course, venue and personal jurisdiction differ in certain respects. Personal jurisdiction depends on the defendant's minimum contacts to the forum. *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 13–14 (2025). Transactional venue under Section 1391(b)(2), by contrast, turns on "the location of those events or omissions giving rise to the claim." *Cottman Transmission Sys., Inc. v. Martino*, 36 F.3d 291, 294 (3d Cir. 1994) (quotation omitted). While personal jurisdiction is rooted in the Constitution, transactional venue is solely a creation of Congress; thus, "the two doctrines should not be equated." 5B *Wright & Miller's Federal Practice & Procedure*

§ 3806 (4th ed. 2025). These distinctions, however, do not change the burden analysis. The critical issue for both personal jurisdiction and venue is the connection between the claim and the forum in which it will be heard. At bottom, both defenses concern the permissibility of the lawsuit's location, which the plaintiff must establish.

Neither transfer nor *forum non conveniens* suggests the defendant should bear the burden for venue. These two doctrines, which can also change the trial location based on litigant convenience, place the burden on the defendant. *See Plum Tree, Inc. v. Stockment*, 488 F.2d 754, 756 (3d Cir. 1973) (transfer); *Sinochem Int'l Co. Ltd. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 430 (2007) (*forum non conveniens*). But those doctrines are only relevant when the plaintiff has already selected a permissible venue. Transfer under 28 U.S.C. § 1404(a) "operates on the premises that the plaintiff has properly exercised his venue privilege." *Van Dusen v. Barrack*, 376 U.S. 612, 634 (1964). Similarly, "*forum non conveniens* can never apply if there is … mistake of venue." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 504 (1947) (superseded on other grounds by statute); *cf. Sinochem*, 549 U.S. at 424 (acknowledging the validity of *Gulf* but factually distinguishing the case). But a motion to dismiss for improper venue alleges that the plaintiff's chosen venue is impermissible, not that another location would be more appropriate. *Tobien*, 133 F.4th at 620. Venue fundamentally differs in its triggering conditions from transfer and *forum non conveniens*. It thus "doesn't follow" that the defendant bears the burden for venue because he bears the burden for transfer and *forum non conveniens*. *Id.* at 619 n.2.

By siding with the minority rule, the lower courts here erred. The burden to establish venue must lie—as it does for venue's doctrinal and statutory kin, personal jurisdiction—with the plaintiff.[2]

II. For Torts that Occur and Cause Injury in Outer Space, Venue is Properly Determined Through the Standard Section 1391(B) Criteria, Not the Overflight Venue Doctrine

Setting aside the improper placement of burden, a proper construction of the general venue statute precludes determining venue based on the location of events in outer space. Venue rules about the geographical scope of a judicial district, which depend on sovereignty, "necessarily break down in places where such sovereignty ceases to exist[,]" like the international territory of outer space. R. 74a (Walt, J., dissenting). Thus, the Sixteenth Circuit erred by holding that venue was proper in the District of Alderaan under Section 1391(b)(2)[3] based on an application of overflight venue to the outer space above Alderaan. *See* R. 32a–34a.

A. Non-sovereign international territory is not included within the geographical boundaries of a statutory judicial district

The general venue statute must be construed strictly. As this Court has instructed, venue is a "specific and unambiguous" requirement, "not one of those

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[2] Fairness to the defendant, a key purpose of venue, *see Leroy*, 443 U.S. at 183–84, also favors placing the burden on the plaintiff, who "often has more knowledge about the facts of his claim than the defendant," especially "within the short time period in which a defendant must challenge venue as improper." R. 77a (Walt, J., dissenting).

[3] As the Empire has conceded, venue could not be established under Section 1391(b)(1) because not all defendants resided in one state. R. 55a.

vague principles which, in the interest of some overriding policy, is to be given a 'liberal' construction." *Olberding v. Illinois Cent. R. Co.*, 346 U.S. 338, 340 (1953).

By its plain terms, the general venue statute ties the existence of venue to a "judicial district." 28 U.S.C. § 1391(b). Under (b)(2), venue exists in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." *Id.* § 1391(b)(2).

Congress created the federal judicial districts. *See* 28 U.S.C. §§ 81–131. Because judicial districts are created by Congress, their geographical scope can only cover territory over which the United States government maintains sovereignty. *See Am. Banana Co. v. United Fruit Co.*, 213 U.S. 347, 357–59 (1909) (noting that legislation is usually "confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power"); *see also District*, *Black's Law Dictionary* (12th ed. 2024) ("[a] territorial area into which a country, state, county, municipality, or other political subdivision is divided for judicial … purposes").

Outer space is not part of any "judicial district." It is undisputed that there is no sovereignty in space. The O.S.T., to which the United States is a signatory, declares: "[o]uter space … is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means." 18 U.S.T. 2410, art. II. The United States has long abided by this policy. *See* President Lyndon Johnson, *Special Message to the Senate on Transmitting Treaty on Outer Space* (Feb. 7, 1967) ("The Treaty lays down fundamental principles: … [n]o nation can claim

sovereignty to outer space[.]"); *National Space Policy* (Dec. 9, 2020), https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/12/National-Space-Policy.pdf (reaffirming that "outer space … is not subject to national appropriation by claim of sovereignty"). Because the United States lacks sovereignty in outer space, outer space cannot be part of a judicial district any more than international waters in the middle of the Atlantic Ocean could be part of a judicial district.

The lower court erred by holding that under Section 1391(b)(2) "a substantial part of the events or omissions giving rise to" Solo's tort claim occurred "in" the District of Alderaan when those events occurred in the outer space above—and thus outside of—the district. *See* R. 27a. Events occurring in outer space *above* a judicial district cannot be considered to occur *in* that judicial district.

B. The overflight venue doctrine cannot doctrinally or practically be extended to torts in outer space

Unlike the international territory of outer space, "the navigable airspace above [a] district is part of the district." *United States v. Barnard*, 490 F.2d 907, 911 (9th Cir. 1973). That's because the United States "has exclusive sovereignty of airspace of the United States." 49 U.S.C. § 40103(a)(1); Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180, art. I ("[E]very State has complete and exclusive sovereignty over the airspace above its territory."). Airspace is thus "part of a state's territory[.]" Alexandra Harris and Ray Harris, *The Need for Air Space and Outer Space Demarcation*, 22 Space Pol'y 3, 4 (2006). So sovereign airspace may properly be considered part of a judicial district. *Barnard,* 490 F.2d at 911–12. Under a statute

tying the venue analysis to a "judicial district," a court may determine venue based on the location of events in airspace.

This doctrine simply does not apply to outer space. As explained above, where a statute defines venue according to its relation to a "judicial district," courts must strictly construe the meaning of the term. The plain meaning of "judicial district" does not include outer space. Thus, the lower court erred by failing to distinguish the outer space above a district from the navigable airspace of the district itself. There cannot be venue for outer space events or omissions under Section 1391(b)(2). *Cf.* Matthew T. King, *Sovereignty's Gray Area*, 81 J. Air L. & Com. 377, 381 (2016) ("[I]f an area cannot be considered 'outer space' (in physical, geographic, or functional terms) then it must be considered part of the default, or baseline: sovereign airspace.").

This Court should not apply overflight venue here for an additional reason: an overflight venue rule for outer space torts would be unworkable for courts and unfair to defendants. The Ninth Circuit firmly rejected the overflight venue doctrine in *United States v. Lozoya*, 982 F.3d 648, 654 (9th Cir. 2020) (en banc). The considerable difficulties of determining overflight venue provided "good reason" to not resort to the doctrine. *Id.* Overflight venue would have required the government to "determine exactly when the crime was committed, use flight tracking sources to pinpoint the plane's longitude and latitude at that moment, and then look down five miles to see which district lay below." *Id.* This difficulty was compounded by the fact that witnesses "gave different estimates" of the crime's time, which meant that the plane could have been "over multiple states and districts" then. *Id.*; *see also United States*

v. Breitweiser, 357 F.3d 1249, 1253 (11th Cir. 2004) ("It would be difficult if not impossible for the government to prove, even by a preponderance of the evidence, exactly which federal district was beneath the plane when Breitweiser committed the crimes.").

Granted, the *Lozoya* court acknowledged that the continuing offense statute, inapplicable here, could permit venue in flyover districts. 982 F.3d at 654 n.8. But the court said that it was "not aware of any cases where the government prosecuted an in-flight crime in a flyover district with which the defendant had no ties." *Id.* Applying the overflight venue doctrine could thus be contrary to a primary purpose of statutorily defined venue: "to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." *Leroy*, 443 U.S. at 183–84.

If the overflight venue doctrine is unworkable and unfair for airspace crimes, it is certainly so for space torts. As Judge Walt warned in dissent, the overflight venue doctrine "does not and will not scale well as mankind continues to operate farther and farther away from Earth's surface." R. 69a. Echoing the *Lozoya* court's criticism of overflight venue, Judge Walt reasoned that space torts sufficiently far away from Earth "could fairly be considered 'over' every district, country, and continent in whatever hemisphere happens to be facing the actors when the tortious conduct occurs." R. 72a. Beyond the issues with pinpointing the location of a flight at the time of a crime, the astronomical speeds of an object in orbit and imprecision of measurement make determining its location at the moment of a tort "difficult, if not impossible[.]" *See Breitweiser*, 357 F.3d at 1253. And even if courts could marshal the

scientific and mathematic expertise needed to solve these complex overflight venue calculations, applying overflight venue to space torts would frustrate venue's key purpose: fairness to the defendant. Indeed, applying overflight venue to the space tort here would hale the Empire to Alderaan, a district in which it has no ties. Rather than adopt a "myopic approach" to venue, R. 69a, this Court should adhere to the traditional, fairer venue framework that Congress has already provided: transactional venue.

C. The Court need not delimit the exact boundaries of outer space in order to decide this case

Because the boundary line between airspace and outer space informs where a "judicial district" may exist, it will eventually be "necessary to ascertain where precisely the airspace ends in legal terms and outer space begins." Gbenga Oduntan, *Sovereignty and Jurisdiction in Airspace and Outer Space: Legal Criteria for Spatial Delimitation* 147 (2012). That boundary line, however, "is still an open question and an unsettled issue in air and space law." *Id.* at 284. The United States has opposed defining the demarcation line "on the grounds that it could cause disputes about airspace violations below the boundary, or that too high a boundary could inhibit future space activities." Jonathan C. McDowell, *The Edge of Space: Revisiting the Karman Line*, 151 Acta Astronautica 668, 668 (2018).

In any event, it is not necessary for this Court to define a precise boundary line to resolve this case. Instead, this Court should simply hold that the alleged tortious acts or omissions here clearly occurred in outer space, far above any potential boundary line with airspace. The "most widely" accepted boundary line—the Karman

Line—is 100 kilometers above the Earth's surface. *Id.* at 668. An astrophysicist who studied the orbit of over 40,000 satellites contends that 80 kilometers is the proper boundary. *Id.* Because the outer space events in this case occurred far above any potential boundary line—approximately 460 kilometers above the Earth's surface, R. 8a—the Court should hold that, for purposes of interpreting the general venue statute, these events occurred in outer space, not airspace. Accordingly, because there is no sovereignty in outer space, the location of the tort in space—including over which judicial district the tort occurred—is irrelevant for the venue analysis. The lower court erred by extending overflight venue into outer space.[4]

III. Applying the General Venue Statute Places Proper Venue Only in California

The district court had sufficient evidence to determine venue under the traditional, congressionally provided paths to determining venue, transactional venue and venue through personal jurisdiction. Under both approaches, there is only one appropriate venue: California.

A. Under Section 1391(b)(2), venue only belongs in California

Transactional venue, which allows a plaintiff to bring a civil suit in "a judicial district in which a substantial part of the events … giving rise to the claim occurred," 28 U.S.C. § 1391(b)(2), is only proper in California, where the only actions "*in* a

[4] If the Court would nonetheless apply overflight venue, the most prudent course of action would be to remand this case to the lower courts to provide the parties with an opportunity to furnish sufficient venue evidence. As it stands, "the district court's venue determination was not based upon competent evidence presented by either side." R. 21a–22a. Overflight venue requires determining the precise location of the collision. *See Lozoya*, 982 F.3d at 654.

judicial district" occurred. Lower courts typically conduct a two-part analysis for transactional venue issues. First, a court identifies "the nature of the claims and the acts or omissions that ... give rise to those claims." *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 432 (2d Cir. 2005). Second, a court considers "whether a substantial part of those acts or omissions occurred in the district." *Id.* Acts and omissions are substantial if they have a "close nexus" to the plaintiff's claim, *id.* at 433–34 (collecting cases), or, in other words, they are "material to the plaintiff's claim[.]" *Gulf Ins. Co.*, 417 F.3d at 357; *accord Emps. Mut. Cas. Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153, 1165–66 (10th Cir. 2010) (collecting cases).

Transactional venue does not exist in Alderaan because no negligent or conspiratorial acts giving rise to Solo's claims occurred in Alderaan or its airspace. None of the Empire's launches were from Alderaan. R. 13a. "[T]he Empire has never done 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. 19a. There is no evidence that Skywalker entered Alderaan's airspace. R. 21a, 75a. Because no events or omissions with a close nexus to Solo's claims occurred in Alderaan, the state fails to meet the substantiality requirement for transactional venue. Placing venue in Alderaan would contravene the protective purpose of the substantiality requirement: it would hale the Empire "into a remote district having no real relationship to the dispute." *Cottman*, 36 F.3d at 294.

Moreover, the locations where the former defendants' acts or omissions occurred—Tunisia, Guatemala, and space—also fail to establish transactional venue,

but for a different reason: they occurred in locations where the United States lacks a judicial district. Skywalker is a citizen and resident of Tunisia. R. 5a. He launched the attack from Guatemala and completed it in space. R. 3a, 8a. Thus, Skywalker's negligence occurred in locations outside of transactional venue's reach. The same is true of any negligent or conspiratorial acts committed by Alianza, a Guatemalan company, or the Republic of Guatemala. R. 5a–6a.

Transactional venue exists only in California. The Empire's alleged negligence arises from its design and construction of the DS-1. The Empire designed the DS-1 in California. R. 71a. During the five-year construction of the DS-1, the Empire made hundreds of space launches to deliver supplies and materials to the station's construction site, mostly from California. R. 12a–13a. California satisfies the substantiality requirement since events with a close nexus to Solo's negligence claim—namely, the DS-1 design and most of the station's supply launches—occurred there. California is thus proper for transactional venue.

Because California is the only proper location for transactional venue, the district court erred by not transferring the case from Alderaan to California.

B. Under Section 1391(b)(3), California is still the only proper venue

This Court need not resort to Congress's "fallback option" for establishing venue, because California is the proper venue under transactional venue. *See Atl. Marine Const. Co.*, 571 U.S. at 56 (describing 28 U.S.C. § 1391(b)(3)). But, if, for some reason, the Court finds that California does not satisfy transactional venue, the fallback leads back to the Golden State all the same. Section 1391(b)(3) can only be

triggered "if there is no district in which an action may otherwise be brought" under Section 1391(b), and places venue in "any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b)(3).

Personal jurisdiction can be established either through general jurisdiction or specific jurisdiction. *Ford Motor Co.*, 592 U.S. at 358. General jurisdiction is where the defendant is "essentially at home[,]" including their domicile. *Id.* Corporate defendants are "at home" in their place of incorporation and principal place of business. *Id.* at 359. Specific jurisdiction does not require the defendant to have an intimate connection with the forum; instead, the defendant "must take some act by which it purposefully avails itself of the privilege of conducting activities within the forum State." *Id.* (quotation omitted).

Besides California, no other location in this case can establish personal jurisdiction over any defendant. Because none of the former defendants were "at home" in the United States, none were subject to general jurisdiction there—Skywalker is a citizen and resident of Tunisia, Alianza was a Guatemalan company, and the last former defendant was the Republic of Guatemala. R. 5a. Outside of California, no location satisfies specific jurisdiction. Contrary to the conclusion of the concurring judges, Alderaan fails to establish specific jurisdiction over any of the defendants.[5] *See* R. 55a–56a. Alderaan could have specific jurisdiction over the

[5] That Alianza's "primary financial benefactor" and sole director was Leia Organa, a *former* Alderaanian princess, does not establish specific jurisdiction in the state. *See*

foreign defendants if Skywalker purposefully availed himself of presence there to carry out his attack. But, as Judge Walt emphasized, the record lacks any evidence establishing that Skywalker entered Alderaan's airspace. R. 75a. Thus, Alderaan cannot exercise personal jurisdiction over Skywalker or any of the other foreign defendants. Nor can Alderaan claim personal jurisdiction over the Empire, which has no connections to the forum. *See* R. 19a.

There is one forum that has personal jurisdiction over a defendant: California. The Empire is headquartered there and its actions relevant to Solo's claim—the designing and launching of materials to construct the DS-1—occurred there. R. 7a, 13a. So, even under Section 1391(b)(3), California is the only proper venue.

C. <u>If there is a venue gap, Congress must fill it, not this Court</u>

As established above, there is no venue gap in this case. Venue can be established under either transactional venue or the personal jurisdiction option. But even if there was a "venue gap" for suits involving "torts that occur exclusively in outer space," R. 26a, that is a policy problem which "should be weighed by Congress and not by this Court." *Denver & R.G.W.R. Co. v. Bhd. of R.R. Trainmen*, 387 U.S. 556, 570 (1967) (Black, J., dissenting). Since venue is "defined by legislation," *Neirbo Co.*, 308 U.S. at 168, Congress is the proper body to fill venue gaps.

Congress is well-equipped to fill venue gaps and has done so historically. Modern transactional venue is a result of a congressional amendment that closed a

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R. 19a. The record does not reflect any activities in Alderaan by Organa or Alianza related to Solo's claim.

venue gap. *Bates v. C&S Adjusters, Inc.*, 980 F.2d 865, 866–67 (2d Cir. 1992). Congress has previously addressed venue gaps by revising venue statutes in 1948 and 1966. *Denver*, 387 U.S. at 558–59. Rather than encroach upon the legislative power, this Court should "leave the law of venue as it is until Congress decides its own policy." *Id.* at 570 (Black, J., dissenting).

Because the district court thus improperly exercised venue, the Sixteenth Circuit's decision must be reversed. But even if this Court determines venue does lie in Alderaan, the lower courts' misinterpretation and misapplication of the substantive law still requires reversal.

IV. The CSLA and Section 50915 Only Apply to Launch and Entry

The Commercial Space Launch Act ("CSLA") governs only launch and reentry activities and so cannot provide the causation standard here. But, citing no cases and one misapplied canon, the Sixteenth Circuit majority below "assume[d] Congress meant for the CSLA to have broad application" and read "activity carried out under the license" to include activity for which a license is not required. R. 42a. This reading ignores express language applying Section 50915 only to launch and reentry, and countless signals throughout the CSLA that Congress intended the regulatory framework to apply only to launch and reentry activities.[6] Because the DS-1's

[6] In fact, the Sixteenth Circuit seemed to be mistaken about the name of the law. The Sixteenth Circuit referred to the law at issue as the Commercial Space Launch *Activities* Act (CSLAA), while Congress entitled this law the "Commercial Space Launch Act[.]" Commercial Space Launch Act of 1984, H.R. 3942, 98th Cong., 90 Stat. 3055. To the extent the text is unclear, the title may thus demonstrate that the statute was meant to regulate launches—not "launch activities." *See United States v.*

construction was not a launch or reentry covered by the CSLA, Solo's claim is governed solely by state tort law.

A. The plain text of Section 50915 unambiguously only applies to launch and entry

Beginning, as is required, with the text, Section 50915(a) (the section which the Sixteenth Circuit held governed the dispute) provides:

> the Secretary of Transportation shall provide for the payment by the United States Government of a successful claim … resulting from *an activity carried out under the license* issued or transferred under this chapter for death, bodily injury, or property damage or loss *resulting from an activity carried out under the license*. However, claims may be paid under this section only to the extent the total amount of successful claims *related to one launch or reentry* [fall within a certain range]. 51 U.S.C. § 50915(a)(1) (emphasis added).

The CSLA requires these licenses for enumerated activities carried out in the United States or by United States citizens, specifically "to launch a launch vehicle or to operate a launch site or reentry site, or to reenter a reentry vehicle[.]" *Id.* §§ 50904(a)(1)–(4). The CSLA does not require a license or permit to undertake activities in space unassociated with launch or reentry, so such activities are not carried out under a license. It is clear from this text and from the second sentence of Section 50915(a)(1)—which requires that each claim be "related to one launch or reentry"—that "activity carried out under [a] license" constitutes *only* launch and reentry.

Palmer, 16 U.S. 610, 631 (1818) (Marshall, C.J.) ("The title of an act cannot control its words, but may furnish some aid in showing what was in the mind of the legislature.").

The construction of the DS-1 was neither a launch nor a reentry. It was clearly not a reentry because the DS-1 was never intended to "return … from Earth orbit or from outer space to Earth[.]" *Id.* § 50902(16). And any argument that it was in the process of launch because of its future repositioning to deeper orbit, *see* R. 8a–9a, falls similarly flat. "'Launch' means to place or try to place a launch vehicle … from Earth—(A) in a suborbital trajectory; (B) in Earth orbit in outer space; or (C) otherwise in outer space[.]" 51 U.S.C. § 50902(7). Because the components of the DS-1 had been placed "in Earth orbit in outer space," each of the "hundreds" of launches of components had concluded. R. 12a. An interpretation of "activity under the license" which included the in-space construction of the DS-1 would directly contradict the statutory text.

B. Other sections of the CSLA make clear that Section 50915 only applies to launch and entry

Other sections of the CSLA make clear that the chapter does not contemplate regulation of activity unassociated with launches or reentries. One purpose of the CSLA is "to facilitate the strengthening and expansion of the United States *space transportation infrastructure,* including [launch sites, launch-site support facilities, and reentry sites], to support the *full range of United States space-related activities*." 51 U.S.C. § 50901(b)(4) (emphasis added). Congress thus distinguished the narrow category of "space transportation infrastructure" reached by the CSLA from the "full range of United States space-related activities" which that infrastructure is meant to "support." Thus, the CSLA is *not* intended to regulate "the full range of United States space-related activities." *See Yates v. United States*, 574 U.S. 528, 543 (2015) ("[W]e

rely on the principle of *noscitur a sociis*—a word is known by the company it keeps—to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress." (quotation omitted)).

The rest of the CSLA makes clear that Congress did not intend it to reach anything other than launch and reentry. Section 50924 imposes fees only for launches and reentries, Sections 50914(a)(3) and 50915(d)(2) tie insurance requirements and damage assessments to "the total claims related to one launch or reentry," and Section 50907 requires monitoring only launch and reentry activities, sites, and vehicles. Congress discussed space activities unrelated to launch and entry only once in the chapter—to *exempt* activity from the CSLA. *See* 51 U.S.C. § 50919(g) ("This chapter does not apply to [launch, reentry], *or other space activity* the Government carries out for the Government[.]" (emphasis added)).

Congress knows how to reach in-space activities other than launch and reentry if it chooses to do so. Regarding NASA, Congress defined "[a]eronautical and space activities" to include "the operation of a space transportation system … and such other activities as may be required for the exploration of space." *Id*. §§ 20103(1)(C), (D). Regulating NASA's contracting and procurement, Congress defined "commercial provider" to mean "any person providing space transportation services or *other space-related activities*[.]" *Id.* § 30308(a)(1) (emphasis added). Section 50915 included no similar broader phrase. Because Congress knew how to reach such activity, this Court should not presume it meant to do so in the absence of evidence.

C. The Sixteenth Circuit's interpretation would create practical problems and surplusage

If the construction of the DS-1 was carried out under licensure, it was carried out under many licenses. The Empire obtained licenses for hundreds of space launches carrying supplies to the DS-1. R. 11a–12a. These hundreds of launches demonstrate two incurable defects in the Sixteenth Circuit's interpretation of Section 50915. First, interpreting activities "under the license" to include construction in outer space using materials from hundreds of launches would make "the license" in the statute refer to hundreds of licenses. Courts have followed the grammatical rule that use of the definite article "the" followed by a singular subject indicates reference to a single instance of the noun. *See, e.g.*, *Renz v. Grey Advert., Inc.*, 135 F.3d 217, 222 (2d Cir. 1997) ("Placing the article 'the' in front of a word connotes the singularity of the word modified."); *accord Rumsfeld*, 542 U.S. at 434 ("The consistent use of ['the'] in reference to the custodian [in 28 U.S.C. § 2242] indicates that there is generally only one proper respondent to a given prisoner's habeas petition."). "Under the license" thus means one specific license.

Moreover, the Sixteenth Circuit's reading would render the second sentence of Section 50915(a)(1) completely superfluous. By its own terms, Section 50915 limits payment of the total successful claims "*related to one launch or reentry*" to a statutory range. Although Solo's claim falls within that range, it hardly "relate[s] to *one* launch or reentry." Because the construction of DS-1 required hundreds of launches, applying Section 50915 to claims resulting from its alleged negligent design is impossible, as one cannot calculate the amount of damages "relate[d]" to any specific

launch. This Court is "loath" to "render part of the statute entirely superfluous," *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 166 (2004), and this reading would go even further. It would essentially read out a congressionally imposed restriction on the *narrow* category of circumstances in which the United States would indemnify a commercial space launch or reentry operator for catastrophic damage.[7] To dramatically expand the reach of the statute would be wholly unwarranted.

D. Neither the Charming Betsy canon nor the canon against abrogation applies here

The only rationale which the Sixteenth Circuit claimed for its broad reading of Section 50915 was the *Charming Betsy* canon, purportedly meaning that the CSLA should be interpreted "in light of the relevant treaties." R. 44a. However, the Sixteenth Circuit's reliance on the *Charming Betsy* canon is flawed several times over—and, in fact, reading the statute in the context of the relevant treaties makes it *more* clear that the Sixteenth Circuit reached the wrong result.

First, the Sixteenth Circuit got the canons wrong. This Court has stated that, like the canon against implied repeals of statutes, "[t]here is … a firm and obviously sound canon of construction against finding implicit repeal of a treaty in ambiguous congressional action." *Trans World Airlines, Inc. v. Franklin Mint Corp.*, 466 U.S. 243,

[7] While the issue has more often arisen in cases analyzing purported waivers of sovereign immunity or direct suit, this Court has repeatedly cautioned that statutes should not be interpreted to impose liability on the United States that Congress did not explicitly allow. *See Ruckelshaus v. Sierra Club*, 463 U.S. 680, 685–86 (1983); *Pres. Endangered Areas of Cobb's Hist., Inc. v. U.S. Army Corps of Eng'rs*, 87 F.3d 1242, 1249 (11th Cir. 1996) ("Any statutory provisions allowing suits against the United States must be construed strictly.") (citing *Ruckleshaus*, 463 U.S. at 685–86).

252 (1984). The *Charming Betsy* canon cited by the Sixteenth Circuit, meanwhile, states that "an act of [C]ongress ought never to be construed to violate the law of nations, if any other possible construction remains[.]" *Weinberger v. Rossi*, 456 U.S. 25, 32 (1982) (quoting *Murray v. The Charming Betsy*, 2 Cranch 64, 118 (U.S. 1804)). Neither of these canons are applicable here. "[T]he canon [against implicit abrogation of treaties] does not apply with respect to non-self-executing treaties[,]" as explained by then-Judge Kavanaugh, "because non-self-executing treaties have no legal status in American courts[.]" *Fund for Animals, Inc. v. Kempthorne*, 472 F.3d 872, 880 (D.C. Cir. 2006) (Kavanaugh, J., concurring). The *Charming Betsy* canon, meanwhile, is also inapplicable because there is no possible reading here that would "violate the law of nations."

Even if the treaties in question were self-executing—and even if the statutory text was ambiguous—interpreting the CSLA to only regulate launch and reentry activities would not conflict with or "abrogate" the statutes because the treaties do not attempt to impose liability from states to private individuals. The Liability Convention specifically disclaims such liability under its terms even when an individual is injured. *See* 24 U.S.T. 2389, art. IV (when damage is done by the space objects of two countries "to a third State *or to its natural or juridical persons*, the first two States shall be jointly and severally *liable to the third State*," not to the persons injured). Moreover, "[t]he provisions of [the Liability] Convention shall not apply to damage caused by a space object of a launching State to … Nationals of that launching State[.]" *Id.* art. VII. Here, straightforwardly, the United States was the

launching state of the DS-1 and Solo is a national of the United States. While the United States may have been liable to another country if Solo were a citizen of that country instead of the United States, the treaties simply do not apply to a domestic suit by an individual for damage caused by a space object of his nation. The Liability Convention does not apply and so could not be violated by any interpretation of the CSLA.[8] *Cf. Sampson v. Fed. Republic of Ger.*, 250 F.3d 1145, 1152 (7th Cir. 2001) ("Because international law is silent on the grant of federal court jurisdiction at issue, we interpret the FSIA without reference to the *Charming Betsy* canon.").

Moreover, insofar as the CSLA implements these non-self-executing treaties, divergence from the treaties is meaningful. Particularly in the context of a lengthy, complicated statute that could expose the United States to billions in liability, and which Congress revised on multiple occasions, continuous congressional divergence from the terms of that treaty is properly viewed as purposeful, rather than as an error to be corrected by an interloping federal judiciary. The Third Circuit has emphasized this logic, interpreting whether an implementing statute created a private right of action, explaining: "[t]he district court accepted [that, b]ecause Congress consciously chose not to grant the Cable Convention's explicit causes of action, … we should imply a civil remedy. We reach a different conclusion over Congress's decision to omit these

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[8] Neither of the other relevant treaties would be violated by any reading of the CSLA. The O.S.T. only establishes "*international responsibility* for national activities in outer space" by "*State Parties*[,]" 18 U.S.T. 2410, art. VI (emphasis added) and the Registration Convention has nothing to say about liability at all, *see* 28 U.S.T. 695.

and other private causes of action." *Am. Tel. & Tel. Co. v. M/V Cape Fear*, 967 F.2d 864, 872–73 (3d Cir. 1992). Congress clearly intended to diverge from the treaties in at least some ways: by excluding from indemnification the results of "willful misconduct by the licensee[,]" 51 U.S.C. § 50915(a)(2), Congress diverged from multiple provisions of the Liability Convention without such an exception. *See* 24 U.S.T. 2389, arts. III & IV(1)(b). Congress also diverged from the breadth of the treaties by regulating only launch and reentry activities, and "[u]nder our constitutional scheme, … there is nothing the [Judiciary] can do about it." *See Diggs v. Shultz*, 470 F.2d 461, 466 (D.C. Cir. 1972), *cert. denied*, 411 U.S. 931 (1973), *abrogated on other grounds as recognized in Dellums v. U.S. Nuclear Regul. Comm'n*, 863 F.2d 968, 976 (D.C. Cir. 1988).

Finally, any reliance on 51 U.S.C. § 50919(e)(1)—to which the Sixteenth Circuit alluded—is misplaced. The statute merely instructs the Secretary to implement the CSLA "consistent with" treaty obligations, which requires only that regulations not violate international law. *See Trans World Airlines*, 466 U.S. at 246 (approving a regulation challenged under a similar statute because it was "not inconsistent" with a treaty). Section 50919(e) is not a direction to anyone (let alone this Court) to interpret the CSLA according to international law.

V. Section 50915 Does Not Change the Causation Standard to be Applied in the Negligence Suit Here

Even if the CSLA applies to in-space activities, it does not establish a new, lower, standard for tort causation in space. Rather, it establishes the indemnification scheme described by the concurrence below, where injured third parties may bring a

claim against licensees and the government will indemnify licensees to the extent the "successful claim" meets the requirements of the statute. R. 57a–58a (Windu, J., concurring). In the face of a clear textual answer, supported by legislative history, agency interpretation, and workability—the Sixteenth Circuit got it wrong.

A. By its plain text, Section 50915 establishes the indemnification scheme described by the concurrence below and does not change the causation standard applied under state tort law

Starting once again with the text of Section 50915(a), Congress commanded that "the Secretary of Transportation [pay] a *successful claim* (including reasonable litigation or settlement expenses) of a third party … *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) (emphasis added).

The Sixteenth Circuit held that use of the phrase "resulting from" established a "but-for" causation standard for all claims under the section "against a licensee (and by extension, the U.S. Government)[.]" R. 46a–47a. This is plainly incorrect. As Judge Windu's concurrence explained, "[t]he term 'resulting from,' as used in Section 50915, cannot be divorced from the remainder of that section, which also requires proof of a 'successful claim.'" R. 56a.

In the surrounding statutory language, Congress used the same text that the Sixteenth Circuit believed altered the causation standard to do the work that it much more naturally does—to establish what the concurrence accurately describes as "an additional evidentiary requirement" to establish or modify the United States's liability based on a claim's relationship to licensed activity. *See* R. 57a. The phrase

"resulting from" is also used twice in the sentence. The Sixteenth Circuit was—on the most plausible reading of its opinion—referring to its second use, the italicized portion in the majority's quotation. *See* R. 42a. This being the case, it would simply make no sense to have "resulting from" in one part of the sentence dramatically alter a requirement for liability and earlier in that same sentence establish the necessary nexus between licensed activity and indemnified activity.

Moreover, Congress used a version of that same phrase in the subsequent subsection, commanding that the United States not pay "a part of a claim for which death, bodily injury, or property damage or loss *results from* willful misconduct by the licensee or transferee[,]" 51 U.S.C. § 50915(a)(2) (emphasis added), again establishing a nexus between the licensee's conduct and the United States's indemnification. What Section 50915(a)(1) *does* do is thus accurately described by Judge Windu's concurrence:

> 1. A third party must succeed on an ordinary tort claim against the non-governmental actor, including proof of negligence, proximate cause, and damages.
> 2. If that successful claim "result[s] from" the licensee's activities carried out under a Chapter-509 license, the Government must then indemnify the licensee for covered damages awarded against the tortfeasor in the underlying "successful claim."
> 3. But if the Government determines the third party's claim resulted from the licensee's "willful misconduct," the Government may deny indemnity. R. 58a.[9]

[9] Step one does not *necessarily* require proof of negligence and proximate cause if the underlying claim does not require that showing. The CSLA also includes settlements as a potential "successful claim" eligible for indemnification. *See* 51 U.S.C. §§ 50915(a)(1), (b)(3); *see also* 14 C.F.R. §§ 440.19(a), (e)(3). The important point here is that a successful claim requires establishing liability against the licensee under

1. The cases on which the Sixteenth Circuit relied do not justify reading "resulting from" to lower a causation standard

Citing two cases, the Sixteenth Circuit wrote: "[i]t is well-settled that the statutory phrase 'resulting from,' as used in Section 50915, means only but-for causation." R. 47a (citing *Spicer v. McDonough*, 61 F.4th 1360, 1364 (Fed. Cir. 2023) and *Burrage v. United States*, 571 U.S. 204, 210–11 (2014)). Those cases do not stand for that proposition. In *Spicer* and in *Burrage*, the issue was whether the statute required *even* but-for causation; in each of those cases, one party asked the court to find that "resulting from" meant something *narrower* than "simply standard but-for causation." *Spicer*, 61 F.4th at 1364 (rejecting government's argument for a less-than-but-for standard); *Burrage*, 571 U.S. at 216 (same).

The Sixteenth Circuit identified no cases where a court read "resulting from" to *change* what would ordinarily be a proximate causation standard into a but-for causation standard. This is because none exist. True, in the context of *creating* causes of action and criminal statutes, "[the] ancient and simple 'but for' common law causation test … supplies the 'default' or 'background' rule against which Congress is normally presumed to have legislated[,]" *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 332 (2020) (rejecting a lower-than-but-for standard for 42 U.S.C. § 1981), but there is simply no caselaw to support the Sixteenth Circuit's reading. In cases interpreting the phrase "resulting from" or similar phrases, the

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otherwise existing law "for death, bodily injury, or property damage or loss resulting from an activity carried out under the license." Indemnification payments also require specific authorization by Congress. *See* 51 U.S.C. §§ 50915(a)(1), (e).

question is generally what level of causation is required by that phrase.[10] In other cases, criminal defendants have argued that statutes imposing sentences where specific harms "result from" conduct should be read to impose more than but-for causation, an argument rightfully rejected by many courts. *See, e.g.*, *United States v. Ramos-Delgado*, 763 F.3d 398, 401 (5th Cir. 2014) (interpreting U.S.S.G. 2L1.1(b)(7)); *United States v. Felder*, 993 F.3d 57, 69 (2d Cir. 2021) ("Both before and after *Burrage*, … every court of appeals to address the question has concluded that [21 U.S.C.] § 841(b) does not require proof that the resulting death was reasonably foreseeable.").[11] In context, for the reasons set forth above and below, Congress established an indemnification scheme under which the United States would indemnify licensees and transferees for "successful claims" under existing law.

In fact, Congress explicitly described this scheme as "government indemnification[,]" 51 U.S.C. § 50922(a)(5), so this term should be read in its normal use within an indemnification scheme. The Sixteenth Circuit majority did not acknowledge this subsection and did not even explain the procedure by which liability would attach to the government here, simply stating that their holding applied to "claims covered by the CSLAA [sic]—that is, claims by a third party against a licensee

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[10] *See, e.g.*, *United States v. Regeneron Pharms., Inc.*, No. CV 20-11217-FDS, 2023 WL 7016900, at *8–10 (D. Mass. Oct. 25, 2023) (collecting cases on both sides of the debate whether "resulting from" in 42 U.S.C. § 1320a-7b(g) requires but-for causation or "some other, less demanding, standard").

[11] Notably, at least one circuit has appeared to read this language to impose a causation standard *higher* than but-for. *See United States v. Mares-Martinez*, 329 F.3d 1204, 1207 (10th Cir. 2003).

(and by extension, the U.S. Government)[.]" R. 46a. Yet the majority below declined to "decide the complete scope of the term 'successful claim[,]'" holding only that its meaning included "Solo's proof of negligence and but-for causation[.]" R. 52a n.20. For reasons discussed more below, this cannot be squared with the realities of how indemnification works. *See Am. Growers Ins. Co. v. Fed. Crop Ins. Corp.*, 532 F.3d 797, 804 (8th Cir. 2008) (holding that the government indemnification in 7 U.S.C. § 1508(j)(3) applies "only where an insurer has been sued by a producer to recover on a claim for loss").

2. Interpretation in light of international law does not suggest a different result

For the reasons discussed above, neither the *Charming Betsy* canon nor the canon against abrogation applies to this case but, even if they did, they would not suggest a different result. As acknowledged by the Sixteenth Circuit, "the Liability Convention never established a specific standard of care for space conduct, apart from 'fault.'" R. 50a (citing Mousa Martin, Note, *Shepherding Space: How Participation in an Open Architecture Data Repository Informs Spacefaring Liability*, 12 Geo. Mason Int'l L.J. 115, 131 (2021)). But the concept of "fault" in international law is broad; it sometimes is "equated to an actor's intention" but "more often, in situations of negligence, fault flows from duty (the hearthstone of any analysis), breach, causation, and harm." Martin, 12 Geo. Mason Int'l L.J. at 131. Nothing in any treaty purports to apply a specific causation standard to damage caused to space objects (or, again, purports to impose *any* legal rule on the case at hand).

B. The Sixteenth Circuit's rule would create an unworkable mess

Even beyond this clear statutory language, the result reached by the Sixteenth Circuit, in conjunction with the indemnification procedures set out by the CSLA and regulations, would create such an unworkable mess that Congress could not possibly have intended it. *See Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 252 (2010) ("[W]e decline [the] invitation to adopt a view of the statute that is contrary to its plain meaning and would produce an absurd result.").

1. Lower courts would be unable to instruct the jury on causation before determining total damages resulting from a single launch or reentry

There is no mechanism by which the Sixteenth Circuit's interpretation could be implemented. Section 50915 applies only "to the extent the total amount of successful claims related to one launch or reentry" falls in a statutory range. 51 U.S.C. § 50915(a)(1). To determine, therefore, whether state law applies to the case or whether it is preempted on causation, a court would have to not only determine damages before determining the law to be applied, it would have to determine "the total amount of successful claims related to one launch or reentry[,]" an impossibility even under the majority's definition of "successful claims."

This issue does not present itself here because there is only one plaintiff asserting a claim.[12] Imagine, though, a hypothetical with five parties injured by a

[12] This is further obfuscated by the fact that the CSLA does not apply at all to this case because it does not result from a single launch or reentry. For the purposes of this section, however, we must assume that the destruction of the DS-1 resulted from a launch.

single launch, each with plausible claims ranging between $100 million and $300 million in damages, where (as here) the licensee held $500 million in insurance. The first plaintiff to sue the licensee could plead $300 million in damages, but the court would be unable to determine whether Section 50915 applies without determining whether that first plaintiff's claim *and that of the other four plaintiffs* were successful *and the extent of their damages*. Even here, where some fragments of the DS-1 struck "artificial satellites also orbiting in low Earth orbit[,]" R. 3a, and the amount of damages to Solo "was hotly disputed at trial[,]" R. 14a n.8, by what mechanism should the trial court have determined whether Section 50915(a) applied before deciding the law to apply? It appears the Sixteenth Circuit's rule would require trial courts to do what the district court did here, and instruct the jury to make findings on issues of *both* but-for and proximate cause separately. *See* R. 35a n.15. Moreover, courts would have to instruct juries to separately determine the amount of damages caused by defendants under two different causation standards, and then wait for all claims resulting from the same launch to be resolved before entering a final judgement. This case is an excellent example; if the Court agrees that Solo's claim fails as a matter of law under the proximate-cause standard and the other damages from the explosion of the DS-1 do not total $500 million, Section 50915(a) plainly would not apply to those suits.

2. The Sixteenth Circuit's interpretation of Section 50915 would leave courts without clear law to apply

Finally, it is unclear *what law* the Sixteenth Circuit would have lower courts apply—or even what law it applied. The majority appeared to ratify the approach

taken by the district court, which "generally applied the substantive law of the State of Alderaan … with one notable exception": the court "applied a lower [but-for] causation standard than the proximate-cause standard usually applied under Alderaanian state law." R. 37a. It thus preempted Alderaan law "*[t]o the extent* that lesser causation standard [was] inconsistent with state law requiring proof of proximate causation[.]" R. 51a n.19 (emphasis added). Countless questions beg to be answered, chief among them: what precedent is binding? In a case applying state tort law but a federal causation standard, are state court interpretations of all elements *except* causation binding? If so, are the only binding precedents on causation federal appellate court decisions analyzing but-for causation under the CSLA, or should district courts search for any binding cases applying a but-for causation standard, potentially including state court decisions, and extract only the causation analysis? These results are not compatible with a doctrine that clearly establishes that "state laws that conflict with federal law are without effect." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) (quotation omitted). Never before has this Court approved preemption of one element while leaving the remaining state law intact, and it should not start now.

C. Congress knows how to establish an indemnification scheme with a lower causation standard and chose not to do so here

These interpretive and practical issues are magnified by the fact that Congress knows how to bring about the result the Sixteenth Circuit reached, further demonstrating that it did not intend to do so in the CSLA. In the Price-Anderson Act of 1957, Congress established an indemnification scheme which *did* lower the

causation standard in state tort cases. It did so using a mechanism that both was clear from the statutory text and did not create the myriad practical issues discussed above. In 42 U.S.C. § 2210(n)(1), Congress provided that, by regulation, licensees as part of the indemnification scheme for an "extraordinary nuclear occurrence" could be required to "waive ... any issue or defense as to conduct of the claimant or fault of persons indemnified[.]" The agency employed this authority, requiring that licensees waive "[a]ny issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to … [u]nforeseeable intervening causes, whether involving the conduct of a third person or an act of God." 10 C.F.R. § 140.92, App. B, art. II. In doing so, Congress and the agency implemented the policy envisioned by the Sixteenth Circuit, importing whatever law is otherwise applicable but modifying the causation standard. If this is the result Congress desires, it can use the Price-Anderson Act as a model to amend the CSLA.

VI. Under a Proximate Causation Standard, the Empire and the United States Were Entitled to a Judgment as a Matter of Law Due to the Unforeseeable Superseding Cause of Skywalker's Terrorist Destruction of DS-1

Applying Alderaan tort law, unmodified by the CSLA, the district court should have granted defendants' renewed motion for judgement as a matter of law because Skywalker's terrorist attack was so unforeseeable that it constitutes a superseding cause. "Alderaanian state law is fairly typical on the questions of cause in fact, proximate causation, foreseeability, and intervening and superseding causes[,]" R. 37a, and "[t]o determine whether a second cause constitutes an intervening and superseding cause, ... follows Sections 442 to 453 of the Restatement (Second) of

Torts." R. 40a. While judgment as a matter of law requires a finding that the only reasonable conclusion on the available evidence was that the Empire was not liable, *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986), that high standard is met in this case.

A. Applying Alderaan state law of proximate causation, the Court should hold that, as a matter of law, an act of terrorism is a superseding cause

As argued by Judge Walt in dissent, the lower courts should have joined other federal courts in holding that a terrorist attack is a superseding cause as a matter of law. *See* R. 83a. Lower courts have consistently deemed terrorists' actions to be superseding causes, relieving innocent parties from liability. In cases arising out of the bombings of the World Trade Center in 1993 and the Oklahoma City Federal Building in 1995, the Third and Tenth Circuits both concluded that "the terrorists' actions were superseding and intervening events breaking the chain of causation." *Port Auth. of N.Y. & N.J. v. Arcadian Corp.*, 189 F.3d 305, 319 (3d Cir. 1999); *accord Gaines-Tabb v. ICI Explosives, USA, Inc.*, 160 F.3d 613, 621 (10th Cir. 1998) ("Because the conduct of the bomber or bombers was unforeseeable, independent of the acts of defendants, and adequate by itself to bring about plaintiffs' injuries, the criminal activities of the bomber or bombers acted as the supervening cause of plaintiffs' injuries."). Faced with a design-defect suit, "the World Trade Center bombing was not a natural or probable consequence of any design defect in defendants' products.… Rather, it was caused by the terrorists' intentional acts to

create an explosive device and to cause the harm to the World Trade Center and its occupants." *Port Auth.*, 189 F.3d at 319.

The Third Circuit later held, in the context of the licensing of a nuclear power plant, that "a terrorist attack on a nuclear facility would be a superseding cause of the environmental effects felt after an attack." *N.J. Dep't of Env't. Prot. v. U.S. Nuclear Regul. Comm'n*, 561 F.3d 132, 141 (3d Cir. 2009). This case is the strongest statement of the general rule that should be articulated here—and is exceedingly logical. In that case, the Third Circuit agreed "that terrorist attacks are 'too far removed from the natural or expected consequences of agency action' to require an environmental impact analysis[.]" *Id.* at 133. The court thus approved a *categorical* rule that, for NEPA analysis, "acts of sabotage are not reasonably expected" and thus do not require consideration in the licensing process under a standard this Court has "likened … to 'the familiar doctrine of proximate cause from tort law.'" *Id.* at 134, 137–38 (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

Courts addressing similar questions have reached similar conclusions. After the Soviet Air Forces shot down a flight which had drifted into Soviet airspace, the court considered whether "the action of the Soviet Union [was] foreseeable." *In re Korean Air Lines Disaster of Sept. 1, 1983*, MDL No. 565, 1985 WL 9447, at *1 (D.D.C. Aug. 2, 1985). The court granted summary judgement for the defendants on the issue of proximate causation because "the Soviet attack … operated as an independent and intervening cause of the damages suffered by Plaintiffs and relieves Defendants of

any legal responsibility." *Id.* at *3. Relying in part on the fact that the Soviet attack "was, at the least, a deviation from accepted international norms," the Court found as a matter of law that it was a superseding cause. *Id.* at *8.

The common thread through all of these cases is that the defendants' actions that *were* but-for causes of harm brought about by a terrorist attack or illegal military action were *not* proximate causes of the harm, because of the superseding attack. This must be the case. "[P]roximate cause is determined upon mixed considerations of logic, common sense and experience, policy, and precedent." *Ballenger v. S. Worsted Corp.*, 209 S.C. 463, 466 (1946); *accord Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992). This Court should hold as a matter of law that an act of terrorism is a superseding cause, when that attack is not especially foreseeable.[13]

To the extent that Solo points to *In re Sept. 11 Litig.*, 280 F. Supp. 2d 279 (S.D.N.Y. 2003), that case does not suggest otherwise. Denying a pre-discovery motion to dismiss, the district court emphasized that "[t]he defendants may well be able to show at a later stage in this litigation" that a terrorist attack constituted a superseding cause. *Id.* at 302. Here, all the evidence has come to light and, with "full knowledge of all that has happened," the court may determine that this attack was "highly extraordinary" and the categorical rule should apply. *See* Restatement (Second) of Torts § 435 cmt. d.

[13] If Alderaan's state courts disagree, they are not bound by this Court's decision, *see West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236–37 (1940), though this Court's decision will be persuasive to other courts.

B. Even without a categorical rule, the Skywalker attack was so unforeseeable that it was a superseding cause as a matter of law

Even barring a categorical rule, the attack here was so unforeseeable that the district court, properly applying a proximate causation standard, should have granted the renewed motion for judgement as a matter of law. While, generally, "questions of whether an intervening act severs the chain of causation [and thus is a superseding cause] … should be determined by the finder of fact … 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." *Port Auth.*, 189 F.3d at 318.

Alderaan law, incorporating the Restatement, examines six "considerations … of importance" to the question of whether an act is a superseding cause. Restatement (Second) of Torts § 442. These "considerations" are not factors in a balancing test; courts have frequently found an event to be a superseding cause without examining all six. *See, e.g.*, *Johnson v. City of Philadelphia*, 837 F.3d 343, 352 (3d Cir. 2016) (only examining four of the considerations); *Vattimo v. Lower Bucks Hosp., Inc.*, 502 Pa. 241, 253–54 (1983) (only discussing the extraordinariness of an intervening cause). Thus, events that are truly "extraordinary" have frequently been found to be superseding, even when no other Section 442 considerations are met. *See, e.g.*, *Port Auth.*, 189 F.3d at 318; *Mico Mobile Sales & Leasing, Inc. v. Skyline Corp.*, 97 Idaho 408, 412 (1975) (applying Section 442 and stating that "the issue is whether [an illegal act] was such a highly extraordinary act so as not to be foreseeable …, thus, becoming

a superseding cause of the injury."); *see also* Restatement (Second) of Torts §§ 435(2), 448.

1. Skywalker's terrorist attack was so extraordinary that it was unforeseeable and superseding as a matter of law

Skywalker's extraordinary attack culminated in "a one-in-a-million shot." R. 2a. This severely understates the extraordinary circumstances that combined to bring about the destruction of the DS-1. Judge Walt asked whether the Empire "should have reasonably foreseen that an unbalanced space pirate would have the financial and technical capabilities to take action on their threats." R. 69a.[14] Even this exaggerates the foreseeability of such an attack. While the DS-1 was controversial, *see* R. 59a–63a, there is no evidence that anybody ever made "threats" to attack it. The concurrence ominously alludes to the likelihood "that some actor would 'take matters into their own hands' and engage in 'methods of self-help[,]'" R. 63a (quoting Clayton J. Schmitt, Note, *The Future is Today: Preparing the Legal Ground for the United States Space Force*, 74 U. Mia. L. Rev. 563, 587 (2020)), presenting this conclusory quotation without context or analysis. The "self-help" measures at issue are diplomatic and, at the extreme, "a *state*'s traditional right to *self-defense*[,]" "in response to actual or threatened violence ... creat[ing] an instant and overwhelming necessity to respond[.]" Schmitt, 74 U. Mia. L. Rev. at 588 (emphasis added); James

[14] The question is not whether "the Empire *and the U.S.* should have reasonably foreseen" the attack, R. 69a (emphasis added); properly interpreting the CSLA makes clear that the suit is only against the Empire, with the United States indemnifying it for any damages.

J. McHugh, *Forcible Self-Help in International Law*, 62 Int'l L. Stud. 139, 143 (1980). It was not at all foreseeable that a non-state actor would undertake the terrorist attack, especially after the Empire "explained its peaceful intent, to offer benefits to all mankind" through planetary defense. *See* R. 68a.

Rather, the evidence at trial clearly demonstrated that the attack on the DS-1 was so extraordinary that the Empire could not have foreseen it. Crucially, launching the attack cost "at least $2 billion or so." R. 64a. *Any* actor doing so was unforeseeable. Redirecting $2 billion of government spending would certainly draw public attention in all but the largest countries. And surely it would be unforeseeable for a major world power with existing space capacity to launch an unprovoked attack on a peaceful planetary defense installation, no matter the threat they may have perceived, especially when there is no indication in the record that any nation believed the construction of the DS-1 to even be illegal under international law, let alone an act of hostility. *Cf. The Lusitania*, 251 F. 715 (S.D.N.Y. 1918) (holding that the unprovoked German submarine attack, illegal under international law, was a superseding cause of the *Lusitania*'s sinking, even though sinking of enemy merchant ships was in some circumstances permissible); *see also* R. 63a (Windu, J., concurring) (describing refusal to allow inspection of the DS-1 as "an arguable interpretation" of the O.S.T.).

Somehow, a *non-state* actor pulled off this attack in secret, including the multi-billion-dollar project of making it possible: the acquisition of Incom T65-B X-wing starfighter and proton torpedo, the construction of a spaceport "deep within the forests amid the Mayan ruins near Tikal, Guatemala," and the acquisition of the top-

secret plans for the DS-1 less than two weeks after the Empire itself discovered the design defect, "notwithstanding the Empire's diligent efforts to recover those plans" and efforts "to keep that information private and to avoid its dissemination[.]" R. 13a, 82a–83a. "Further, there was no evidence presented about how Luke Skywalker and Alianza Rebelde got possession of a X-wing starfighter, much less one equipped with proton torpedoes[,]" R. 82a, and thus no evidence on which the jury could have relied to find that it was foreseeable for them to do so. In the absence of such evidence, the record establishes as a matter of law that it was unforeseeable that Alianza would undertake and successfully complete this attack, particularly considering the Empire's efforts to keep the design defect secret. *Cf. Perry v. Rochester Lime Co.*, 219 N.Y. 60 (1916) (Cardozo, J.) (holding it was not foreseeable that young boys would steal and play with negligently stored explosives because defendant had hidden them in an unmarked box).

And, finally, the success of the attack itself was unforeseeable. Skywalker "*turned off his targeting computer* but *still* hit a 2-meter-wide target anyway" in the low-gravity vacuum of orbit, R. 83a, despite his qualifications arising out of practice hitting targets on the surface of the Earth, R. 13a. By any definition, this is extraordinary. *See Hayward v. P.D.A., Inc.*, 573 N.W.2d 29, 34 (Iowa 1997) (finding an intervening cause to be superseding under the Restatement approach in part because "[t]he chain of events which unfolded that night would have been difficult to foresee and are difficult to imagine, even in hindsight.").

2. The other superseding cause considerations further strengthen the conclusion that the attack was a superseding cause as a matter of law

Given the extraordinariness of this terrorist attack, Skywalker's attack *is* a superseding cause under Alderaan's incorporation of Sections 442(b) and 448 of the Restatement (Second) of Torts. While the concurrence below pointed to anger that some people and nations expressed over the construction of the DS-1, there was nothing to indicate that Skywalker or anybody else "might avail himself of the opportunity to" launch a spacecraft and blow it up, given the extreme barriers to doing so discussed above, even if the Empire realized the defect created the possibility of a chain reaction. Restatement (Second) of Torts § 448.

But, even applying Section 442 as a multifactor balancing test as some courts have done, *see, e.g.*, *Hayward.*, 573 N.W.2d at 32, the other considerations favor a finding that the attack was a superseding cause as a matter of law. The extraordinariness consideration of Section 442(b) is discussed in depth above. Section 448 gives meaning to Section 442(c), *see* Restatement (Second) of Torts § 442, cmt. c, stating that a criminal act is a superseding cause even where the actor's negligence created the situation in which a third person had opportunity to commit the crime. *Id.* § 448. So Skywalker's attack was not a "normal result" of the DS-1's design defect, even if it created the opportunity for such an attack. *Id.* § 442(c).

Considering whether the "intervention brings about harm different in kind from that which would otherwise have resulted from the actor's negligence" does not militate to the contrary. *Id.* § 442(a). If Skywalker had not blown up the DS-1, it would have—in 2022—been repositioned "into a high-Earth orbit of 65,000

kilometers." R. 8a. At that point, the negligent design would have been extraordinarily unlikely to cause damage to a third party's private spacecraft because, in the event of an explosion, there would be hours' notice before debris reached the Earth, allowing spacecraft in low Earth orbit (and aircraft) to be grounded.[15] In fact, the high orbit "was intended to allow the DS-1 to destroy ... objects sufficiently far from the Earth to prevent the resulting fragments from striking the Earth." R. 9a. Had Skywalker not attacked the DS-1 when (and, more importantly, where) he did, there likely would have been no damage at all to in-flight spacecraft. Potential damage would likely have been limited to satellites that could not be brought within the protection of Earth's atmosphere, which prevents damage on the Earth's surface by burning up the vast majority of space debris.

The three remaining considerations demonstrate quite strongly that Skywalker's attack was a superseding cause. Skywalker's terrorist attack was "due to a third person's act[,]" Restatement (Second) of Torts § 442(d), which was "wrongful toward [Solo] and as such subjects [Skywalker] to liability to him[,]" *id.* § 442(e), as suggested by the fact that Solo sued Skywalker and Skywalker settled, *see* R. 5a. Finally, Skywalker's "degree of culpability[,]" *see* Restatement (Second) of Torts § 442(f), was incredibly high: he committed an intentional criminal act resulting in

[15] An object launched directly at the Earth at the top speed of a high explosive, 8 km/s, from 65,000 kilometers above the Earth's surface, would reach the Earth in approximately two hours and fifty-six minutes, considering only Earth's gravity.

billions of dollars of damages. The Empire was entitled to judgment as a matter of law that Skywalker's terrorist attack was a superseding cause.

CONCLUSION

The judgment of the Sixteenth Circuit should be reversed.