

Hostile State Asset Denial and Settlement Act (v3)

Anticipated challenges, responses, and probable outcomes

Each challenge is stated as the tribunal would state it at full strength, followed by the response, a probable-outcome call, and the change to the v3 text that reduces the exposure.

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ADVERSARIAL REVIEW — BENCH MEMORANDUM

Hostile State Asset Denial and Settlement Act (v3): Anticipated Challenges, Responses, and Probable Outcomes in United States and International Fora

TO Collin B. George, Sanctir LLC

DATE October 2, 2026

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Method. Twenty-two challenges are analyzed: fourteen in United States courts with the Supreme Court as the final forum, and eight in international fora. For each, the challenge is written from the bench, not from the sponsor's side. Outcomes use four calls: *Upheld* (settled authority, no serious doubt); *Likely upheld* (strong authority, some exposure on facts or framing); *Contested* (open question, outcome depends on the record or the panel); *Likely adverse* (the challenger has the better of existing authority). Part IV collects the outcomes in a matrix. Part V lists the textual amendments to v3 that follow from the analysis.

Bottom line. In United States courts the Act is on firm ground. The Captures Clause line of authority, the absence of constitutional rights in a foreign state, *Bank Markazi*, and the Tucker Act savings clause dispose of the serious challenges, and the exposures that remain are at the margins: separately incorporated state enterprises with private minority owners, the appropriation mechanics of section 305, and the diplomatic-negotiation savings that v3 lacks. Internationally the picture reverses. Against a state with which the United States still has a treaty containing a compromissory clause, the Act's central-bank provisions would probably lose at the International Court of Justice on the authority of *Jurisdictional Immunities* and *Certain Iranian Assets*, and the United States would then be in the position it took after *Medellín*: domestically unaffected, internationally in breach. That is a political judgment, not a drafting problem, and the memorandum says so where it applies.

Part I. Who sues, where, and when

Litigation follows the Act's three triggers.

- **On designation (section 101).** The hostile state and its instrumentalities sue in the Southern District of New York or the District of Columbia for declaratory and injunctive relief against blocking (section 103) and custody (section 104). Iran litigated *Bank Markazi* in its own name; Da Afghanistan Bank litigated *Havlish*. Expect the same here. Custodian banks and clearing institutions holding the assets seek declaratory protection. Terrorism-judgment creditors move to execute against identified assets under section 303(a) and litigate the identification and the court determination in section 303(b).
- **On conversion (section 201).** Separately incorporated state enterprises, their minority shareholders, secured creditors, and counterparties file claims under section 204 and, when denied, seek review. Takings suits go to the Court of Federal Claims under the preserved Tucker Act jurisdiction (section 502(d)). The hostile state challenges vesting as a bill of attainder, a due-process violation, and a taking, and loses on standing to assert those rights. Judgment creditors litigate the claims reserve and priority (section 307) and the USVSST override (section 308(b)).
- **On capture (title IV).** Owners of captured vessels and cargo, including neutral owners, appear in prize court. The existence of a state of war, the validity of any blockade, and the contraband character of cargo are litigated there, not in the district court of first instance.
- **Internationally.** The hostile state files at the International Court of Justice only if a treaty with a compromissory clause is in force; for Iran, Russia, and Venezuela none is, apart from the compensation phase of *Certain Iranian Assets* already pending. The hostile state seeks a General Assembly resolution and a request for an advisory opinion. Iran brings an interpretive case before the Iran–United States Claims Tribunal under the Algiers Accords. Neutral flag states protest captures through diplomatic channels. The hostile state and its allies retaliate against United States property in their jurisdiction.

Part II. United States courts

1. Separation of powers: Congress has intruded on the President's foreign-affairs and claims-settlement powers

Challenger and forum. The Executive Branch, in a signing statement or in defense of a conflicting executive agreement; the hostile state as a derivative argument. Supreme Court.

The tribunal's framing of the challenge. Sections 101(d), 106, 201, and 307(c) strip the President of authority to modify a designation, to confiscate under existing statutes, to convert custody to title, and to settle claims without an Act of Congress. *Dames & Moore v. Regan*, 453 U.S. 654 (1981), recognized the President's authority to suspend claims and dispose of foreign-state assets in settling an international dispute. *American Insurance Ass'n v. Garamendi*, 539 U.S. 396 (2003), held that state law interfering with executive claims-settlement agreements is preempted. *Zivotofsky v. Kerry*, 576 U.S. 1 (2015), held the recognition power exclusive to the President. An Act that forbids the President to release a hostile state's assets as part of a negotiated end to hostilities, and that requires congressional approval for any settlement, invades the core of the President's diplomatic function.

Response. The Captures Clause assigns this subject to Congress by text. *Brown v. United States*, 12 U.S. (8 Cranch) 110 (1814), held that confiscation of enemy property requires an Act of Congress; *Little v. Barreme*, 6 U.S. (2 Cranch) 170 (1804), held that a capture outside the scope Congress authorized is unlawful even when ordered by the President. Under *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (Jackson, J., concurring), a President acting against the express will of Congress is at the lowest ebb. *Dames & Moore* turned on congressional acquiescence through IEEPA and the Hostage Act; it does not survive an express statute to the contrary, and the opinion said so. *Garamendi* concerned state law, not an Act of Congress. *Zivotofsky* is confined to recognition, which section 101(d) expressly disclaims. The President remains free to negotiate; the Act conditions only the disposition of property Congress has captured.

Probable outcome. *Likely upheld.* The one real exposure is a settlement the President has concluded by executive agreement that the Act prevents him from performing. A court would enforce the statute domestically (*Medellin v. Texas*, 552 U.S. 491 (2008)), leaving the United States in breach internationally.

Mitigation in v3 text. Add a rule of construction: nothing in the Act limits the President's authority to conduct diplomacy, to negotiate a settlement, or to recognize a foreign government; a settlement affecting property subject to the Act takes effect as to that property upon approval under section 104(d)(3) or section 307(c).

2. Legislative veto: the certification-and-disapproval mechanism violates *INS v. Chadha*

Challenger and forum. The Executive Branch. Supreme Court.

The tribunal's framing of the challenge. Section 104(e)(2) allows a release certification to be blocked by a joint resolution of disapproval, and sections 101(f) and 201 allow Congress to designate a state and convert custody to title by joint resolution under a fast-track procedure. *INS v. Chadha*, 462 U.S. 919 (1983), invalidated legislative action with the force of law taken without bicameralism and presentment.

Response. Every resolution in the Act is a joint resolution that must pass both Houses and be presented to the President. That is the structure *Chadha* requires and the Congressional Review Act and the Arms Export Control Act use. Section 503 governs only internal procedure and is enacted under each House’s rulemaking power, which *Chadha* does not reach.

Probable outcome. *Upheld.*

3. Bill of attainder: Congress has named a state and taken its property without trial

Challenger and forum. The hostile state and its instrumentalities. Supreme Court.

The tribunal’s framing of the challenge. Sections 101(a) and 202 single out a named state and vest its property by legislative act. *United States v. Lovett*, 328 U.S. 303 (1946), and *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), condemn legislation that inflicts punishment on identifiable persons without judicial trial. Confiscation is the historical paradigm of punishment.

Response. A foreign state is not a “person” within the protections of the Constitution. *Price v. Socialist People’s Libyan Arab Jamahiriya*, 294 F.3d 82 (D.C. Cir. 2002), held that foreign states lack Fifth Amendment due-process rights; the same reasoning governs the Attainder Clause. *Bank Markazi v. Peterson*, 578 U.S. 212 (2016), upheld a statute directed at one state’s assets in one pending case. On the *Nixon* functional test, confiscation of enemy property in wartime is a traditional war measure with a nonpunitive purpose (denial and reparation), which the Confiscation Acts and the Trading with the Enemy Act line confirm (*Miller v. United States*, 78 U.S. 268 (1871)).

Probable outcome. *Upheld* as to the state and its alter-ego instrumentalities. *Likely upheld* as to separately incorporated enterprises, which are reached by executive classification under section 3(7), not by legislative naming.

4. Due process: separately incorporated state enterprises and their private owners have been deprived of property without a hearing

Challenger and forum. State-owned enterprises with juridical separateness; private minority shareholders; secured creditors. District courts, Court of Federal Claims, Supreme Court.

The tribunal’s framing of the challenge. The hostile state may lack due-process rights, but its instrumentalities with independent juridical status do not. *First National City Bank v. Banco Para el Comercio Exterior de Cuba*, 462 U.S. 611 (1983), presumes the separateness of instrumentalities. *TMR Energy Ltd. v. State Property Fund of Ukraine*, 411 F.3d 296 (D.C. Cir. 2005), and *GSS Group Ltd. v. National Port Authority*, 680 F.3d 805 (D.C. Cir. 2012), hold that an instrumentality with sufficient independence from the state enjoys due-process protection. Section 202(a) vests the property of any entity 50 percent owned by the state on the day the conversion resolution is enacted, before any hearing.

Response. Enemy taint attaches to enterprises controlled by the enemy state regardless of corporate form; *Clark v. Uebersee Finanz-Korporation*, 332 U.S. 480 (1947), upheld TWEA vesting on that basis. *Juragua Iron Co. v. United States*, 212 U.S. 297 (1909), denies enemy property Takings Clause protection. For the residual class of independent enterprises and private minority interests, section 105 provides notice, disclosure of the basis, and judicial review; section 204 provides a claims process with judicial review and applies the innocent-owner

defense; section 502(d) preserves the Tucker Act. Post-deprivation process satisfies due process where the government interest is exigent (*Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974)).

Probable outcome. *Likely upheld* as to enterprises controlled by the state. *Contested* as to private minority interests in those enterprises, where the exposure is not invalidation but compensation under the Tucker Act.

Mitigation in v3 text. Amend section 202(c)(3) to exclude expressly the pro rata interest of any shareholder or creditor that is not the hostile state, an agency or instrumentality, or a designated national, and direct the Custodian to segregate that interest at vesting rather than after a claim.

5. Takings: custodians, counterparties, and United States persons have had property taken for public use

Challenger and forum. Banks and clearing institutions holding blocked assets; United States persons with interests in vested property; buyers under covered licenses. Court of Federal Claims; Federal Circuit; Supreme Court.

The tribunal's framing of the challenge. Blocking under section 103 and custody under section 104 freeze assets in which United States financial institutions hold security interests, fees, and set-off rights. Vesting under section 202 and the levy under section 306 withhold money that would otherwise pass through United States hands. Each is a taking for which just compensation is owed.

Response. Blocking is a regulatory restraint, not a taking: *Paradissiotis v. United States*, 304 F.3d 1271 (Fed. Cir. 2002); *Holy Land Foundation for Relief & Development v. Ashcroft*, 333 F.3d 156 (D.C. Cir. 2003). A custodian holds no compensable interest in its customer's property beyond fees and liens, which section 204 pays. The levy withholds the hostile state's proceeds, not the institution's. Where a United States person does hold a compensable interest, the Act preserves Tucker Act jurisdiction, and the availability of a compensation remedy defeats a facial takings challenge (*Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984)).

Probable outcome. *Upheld* as to invalidation. Compensation exposure exists for United States interests the section 204 process fails to pay, and is bounded by that process.

6. Article III: Congress has directed the outcome of judicial proceedings

Challenger and forum. The hostile state; judgment debtors in section 303 proceedings. Supreme Court.

The tribunal's framing of the challenge. Section 303(a) subjects identified assets to execution notwithstanding the Foreign Sovereign Immunities Act, and section 402(c) makes congressional findings admissible on the existence of a state of war. *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872), forbids Congress to prescribe rules of decision in pending cases.

Response. *Bank Markazi* upheld a statute materially identical to section 303(a) and held that Congress may change the governing law for pending cases even when the change determines the outcome; *Patchak v. Zinke*, 583 U.S. 244 (2018), is to the same effect. Section 303(b) leaves the ownership determination to the court. Section 402(c) directs the court to decide the state-of-war question independently and makes the findings admissible, not conclusive, which is the opposite of a rule of decision.

Probable outcome. *Upheld*.

7. Political question and justiciability of the designation and conversion findings

Challenger and forum. The hostile state, seeking review of the findings in a designation or conversion resolution. Supreme Court.

The tribunal's framing of the challenge. A finding of “armed attack” or “aggression” enacted by joint resolution is unreviewable, so the property of a state is vested on a legislative label that no court will examine.

Response. That is correct, and it is a feature. The existence of hostilities and the identity of the enemy are committed to the political branches: *The Prize Cases*, 67 U.S. (2 Black) 635 (1863); *Baker v. Carr*, 369 U.S. 186 (1962). *Bas v. Tingy*, 4 U.S. (4 Dall.) 37 (1800), and *Talbot v. Seeman*, 5 U.S. (1 Cranch) 1 (1801), upheld captures under statutes authorizing a limited war that Congress never declared. The unreviewability of the finding does not deprive any person with constitutional rights of process, because the persons with such rights are protected by sections 105 and 204, which are reviewable.

Probable outcome. *Upheld.*

8. Appropriations Clause: sections 302(e), 304(c), and 305(b) spend money without an appropriation

Challenger and forum. Taxpayer or competitor plaintiffs lack standing; the issue arises through the Comptroller General, the Antideficiency Act, or a defendant in a Custodian action. Supreme Court if reached.

The tribunal's framing of the challenge. Section 305(b) allows the Secretary of Defense to use captured enemy currency “without further appropriation.” Captured property belongs to the United States and is public money that may be drawn only by appropriation made by law. Sections 302(e) and 304(c) are permanent appropriations outside the annual process.

Response. Permanent and indefinite appropriations are constitutional when the statute identifies a source and a purpose: *CFPB v. Community Financial Services Ass'n of America*, 601 U.S. 416 (2024); the Judgment Fund, 31 U.S.C. 1304, is the model for section 302(e). Sections 302(e) and 304(c) satisfy that test. Section 305(b) is drafted as an authorization to use, not as an appropriation, and that is a defect.

Probable outcome. *Upheld* as to sections 302(e) and 304(c). *Contested* as to section 305(b) as drafted.

Mitigation in v3 text. Restate section 305(b): “There are appropriated, out of property described in subsection (a), amounts not to exceed [\$____] in any fiscal year, to the Secretary of Defense for...,” and strike “without further appropriation.”

9. Judgment creditors: the priority scheme, claims reserve, and USVSST override impair vested rights

Challenger and forum. Holders of judgments under 28 U.S.C. 1605A and TRIA § 201; the United States Victims of State Sponsored Terrorism Fund's claimants. District courts; Supreme Court.

The tribunal's framing of the challenge. A final judgment is property. Section 303(e) abolishes the creditor's existing statutory right to execute against blocked assets under TRIA § 201 and 28 U.S.C. 1610(g), substitutes a pro rata administrative payment behind FCSC awards, and section 308(b) diverts forfeiture proceeds the Fund would otherwise receive. This is retroactive impairment of vested rights.

Response. The right to execute against particular assets is a remedy created by statute, which Congress may modify prospectively (*Landgraf v. USI Film Products*, 511 U.S. 244 (1994)); the judgment itself is untouched. Section 303(a) preserves and expands execution against identified assets on the *Bank Markazi* model, and section 303(d) guarantees payment from the Account. No claimant has a vested right in future forfeitures; the Fund's share is a legislative allocation Congress may change.

Probable outcome. *Upheld.* The opposition is political, not legal.

Mitigation in v3 text. Add to section 303: "Nothing in this Act affects the validity or amount of any judgment." Retain the sponsor option in section 308(b).

10. Retroactivity, Ex Post Facto, and Excessive Fines

Challenger and forum. The hostile state; owners of forfeited property. Supreme Court.

The tribunal's framing of the challenge. Vesting reaches property acquired and held lawfully before enactment, and forfeiture under section 403 punishes. The Ex Post Facto Clause and the Excessive Fines Clause (*Austin v. United States*, 509 U.S. 602 (1993); *United States v. Bajakajian*, 524 U.S. 321 (1998)) apply to punitive civil forfeiture.

Response. The Ex Post Facto Clause applies only to criminal laws (*Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798)). Vesting under section 202 is a capture, not a forfeiture tied to an offense, so *Austin* and *Bajakajian* do not reach it; the Confiscation Acts and TWEA vesting reached pre-existing property and were upheld. Section 403 forfeiture rests on 18 U.S.C. 981 and carries the ordinary Eighth Amendment proportionality review, which the Act does not displace.

Probable outcome. *Upheld.*

11. Appointments Clause: the Custodian exercises significant authority without proper appointment

Challenger and forum. A claimant whose section 204 claim the Custodian denies. Supreme Court.

The tribunal's framing of the challenge. The Custodian sells property, operates enterprises, and adjudicates claims. That is significant authority under *Lucia v. SEC*, 585 U.S. 237 (2018), and the office must be filled by a properly appointed officer.

Response. The Custodian is an inferior officer appointed by the Secretary of the Treasury, a Head of Department, with determinations reviewable in court; that satisfies *Edmond v. United States*, 520 U.S. 651 (1997).

Probable outcome. *Upheld.*

Mitigation in v3 text. State in section 203(a) that the Custodian is appointed by the Secretary of the Treasury as an inferior officer and serves at the Secretary's pleasure.

12. Nondelegation and vagueness in the designation standard

Challenger and forum. Persons designated under section 103(c). D.C. Circuit; Supreme Court.

The tribunal's framing of the challenge. "Materially assisted" and "war effort" are standardless; designation carries blocking consequences for nationals and reputational consequences for third-country persons without an intelligible principle.

Response. The standard is defined in section 103(c)(2) (knowing provision of significant support to the armed forces or war effort), supported by written findings, periodically reviewed, subject to a delisting petition and to judicial review under section 105. Comparable IEEPA and Kingpin Act standards have been upheld; *FCC v. Consumers' Research* (2025) reaffirmed the intelligible-principle test.

Probable outcome. *Upheld.*

13. Sixty-day review window and channeling of review

Challenger and forum. Interest holders who miss the window. Supreme Court.

The tribunal's framing of the challenge. Section 105(c) extinguishes judicial review 60 days after notice; a short window on constitutional claims is a denial of access to the courts.

Response. Short review windows with notice are routine and constitutional (*Yakus v. United States*, 321 U.S. 414 (1944); *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994)). Section 105(c) restarts the clock on later actual notice and section 502(d) preserves Tucker Act claims outside the window.

Probable outcome. *Upheld.*

14. Conflict with the Algiers Accords and other executive agreements as domestic law

Challenger and forum. The Executive Branch; Iran if designated. Supreme Court.

The tribunal's framing of the challenge. The Algiers Accords of 1981 bound the United States to channel claims against Iran to the Claims Tribunal and to refrain from attachments. The Act overrides that commitment.

Response. As a matter of domestic law a later statute prevails over an earlier treaty or executive agreement (*Whitney v. Robertson*, 124 U.S. 190 (1888); *Breard v. Greene*, 523 U.S. 371 (1998)), and Congress has already enacted 28 U.S.C. 1605A, TRIA § 201, and 22 U.S.C. 8772 against Iranian assets without domestic invalidation. The international consequence is addressed in Part III.

Probable outcome. *Upheld* domestically.

Part III. International fora

The International Court of Justice has jurisdiction over the United States only by consent. The United States withdrew its optional-clause declaration in 1986, terminated the 1955 Treaty of Amity with Iran effective 2019, and withdrew from the Optional Protocol to the Vienna Convention on Diplomatic Relations in 2018. No bilateral treaty with a compromissory clause is in force with Iran, Russia, or Venezuela. The challenges below therefore assume either a remaining treaty basis, a General Assembly request for an advisory opinion, the Iran–United States Claims Tribunal, or state responsibility asserted diplomatically and enforced by retaliation. The arguments are written as the Court would write them, because that is how they will be quoted against the United States whether or not a case is ever filed.

15. Immunity of state property from measures of constraint

Challenger and forum. The hostile state. ICJ if jurisdiction exists; otherwise advisory opinion or diplomatic claim.

The tribunal's framing of the challenge. Customary international law immunizes the property of a foreign state, and in particular the property of its central bank, from measures of constraint in the forum state absent consent. *Jurisdictional Immunities of the State (Germany v. Italy)*, I.C.J. Reports 2012, p. 99, held that immunity applies even where the underlying conduct violates peremptory norms, and that the forum state may not take enforcement measures against state property in use for governmental purposes. Article 21 of the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property, which codifies custom on this point, lists central bank property as immune per se. Section 202 vests that property by legislative act; the form of the measure does not change its character.

Response. Immunity is a rule about the jurisdiction of courts in peacetime. The rights of a belligerent over enemy state property arise from the existence of armed conflict and are governed by the law of armed conflict, which has permitted confiscation of enemy public movable property since before the Hague Regulations (article 53) and which the Allied vesting programs of 1917–1952 applied without protest from the states later admitted to the United Nations. *Germany v. Italy* concerned judicial proceedings decades after the conflict, not measures taken during one, and the Court said nothing about belligerent rights. The United States is not a party to the 2004 Convention, which is not in force. For central bank property, v3 does not vest until Congress itself finds an armed attack or aggression and expressly so provides, which is the one circumstance in which belligerent rights are strongest.

Probable outcome. *Likely adverse* for central bank property before the ICJ; the Court has never endorsed the belligerent-rights exception and the 2012 judgment reads immunity broadly. *Contested* for commercial state property, which article 19(c) of the 2004 Convention exposes to post-judgment constraint and which the Court in *Certain Iranian Assets* treated differently from the central bank.

Mitigation in v3 text. Keep section 202(b) as drafted. Require the conversion resolution to state the international-law basis relied on (self-defense, belligerent rights, or collective countermeasures) so the record is made by Congress rather than reconstructed by counsel.

16. Countermeasures: the custody tier fails the conditions of the law of State responsibility

Challenger and forum. The hostile state. ICJ; advisory opinion.

The tribunal's framing of the challenge. A countermeasure must respond to a prior internationally wrongful act, be directed at the responsible state, be proportionate, be preceded by notification and an offer to negotiate, and be reversible (*Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, I.C.J. Reports 1997, paras. 83–87; Articles on State Responsibility, arts. 49–53). Section 104 withholds earnings without a prior determination of wrongfulness by any body, without notification, and for a period the United States alone controls.

Response. Section 104 preserves principal, suspends new deposits when the dispute is before a competent tribunal (104(f)(2)), releases with yield on cessation and reparation (104(e)), and is subject to annual review (104(f)(1)). Those are the reversibility and good-faith conditions the Commentary to article 49 describes. The conversion resolution's findings supply the determination of wrongfulness; General Assembly Resolution ES-11/5 (2022) shows that a political-organ finding of aggression is accepted as the predicate for measures of this kind. The gap is procedural: the Act does not require notification and an offer to negotiate before custody begins.

Probable outcome. *Likely upheld* for the custody tier if notification is added. *Not available* as a justification for vesting, which is why v3 does not rely on it for title.

Mitigation in v3 text. Add to section 101 a requirement that the President notify the designated state of the measures and offer negotiation, and report the notification to Congress, before earnings are first deposited under section 104.

17. Self-defense does not extend to property measures; the use of force itself is unlawful

Challenger and forum. The hostile state. ICJ.

The tribunal's framing of the challenge. Article 51 of the Charter permits force in self-defense against an armed attack; it does not authorize confiscation of property, which is an economic sanction outside the law of self-defense. *Military and Paramilitary Activities in and against Nicaragua*, I.C.J. Reports 1986, and *Oil Platforms (Iran v. United States)*, I.C.J. Reports 2003, p. 161, confine self-defense to necessary and proportionate force against an armed attack, and in *Oil Platforms* the Court found that the United States had not established that its actions against Iran met that test. If the underlying hostilities are unlawful, no belligerent right can be derived from them.

Response. The Act does not rest property measures on article 51. It rests them on the law of armed conflict, which applies equally to all parties regardless of the lawfulness of the resort to force; that separation of *jus ad bellum* from *jus in bello* is the Court's own position. The existence of an armed conflict is a question of fact. The findings in a conversion resolution are the United States' formal statement of its position, and the Act requires them before any title passes.

Probable outcome. *Contested.* The Court would accept the *ad bellum/in bello* separation and would still reach the immunity question in challenge 15.

18. Treaty-based expropriation and fair-and-equitable-treatment claims by state enterprises

Challenger and forum. State enterprises of the hostile state; the hostile state on their behalf. ICJ under a treaty with a compromissory clause; investment arbitration under a bilateral investment treaty where one exists.

The tribunal's framing of the challenge. *Certain Iranian Assets (Iran v. United States)*, Judgment of 30 March 2023, found the United States in breach of the Treaty of Amity with respect to measures against the assets of Iranian companies, rejected the United States' essential-security defense, and held that Bank Markazi was not a "company" entitled to the Treaty's protection. Section 202 does to every state enterprise what the Court has already condemned, and the compensation phase of that case remains before the Court.

Response. The Treaty of Amity was terminated effective 2019 and governs only pre-termination conduct; the 2023 judgment does not reach measures taken under this Act. No bilateral investment treaty is in force between the United States and Iran, Russia, or Venezuela, so no arbitral forum exists for state enterprises of those states. Where a treaty with another state is in force, its security exception is the defense, and after *Oil Platforms* and *Certain Iranian Assets* that defense must be proven on the facts, not asserted.

Probable outcome. *Likely adverse* if a treaty with a compromissory clause is in force with the designated state; *no forum* for the three states most likely to be designated.

Mitigation in v3 text. Add to section 507(b) a requirement that the first report after designation inventory every treaty in force with the hostile state that contains a dispute-settlement clause, with the Executive Branch's assessment of exposure.

19. The Algiers Accords and the Iran–United States Claims Tribunal

Challenger and forum. Iran, if designated. Claims Tribunal, interpretive ("A") case.

The tribunal's framing of the challenge. Under the General Declaration of 19 January 1981 the United States undertook to restore Iran's financial position, to terminate litigation against Iran in United States courts, to nullify attachments, and to channel claims to the Tribunal. A statute that vests Iranian state property and pays United States claimants from it repudiates those undertakings. The Tribunal has jurisdiction over disputes concerning the interpretation and performance of the Accords.

Response. The Accords settled the claims arising from the 1979–1981 crisis; they did not immunize Iran from the consequences of later wrongful acts, and the United States has for three decades applied 28 U.S.C. 1605A, TRIA § 201, and 22 U.S.C. 8772 to Iranian assets while litigating the Accords' scope before the Tribunal. Measures taken in an armed conflict that began in 2026 are outside the Accords' object.

Probable outcome. *Contested.* The Tribunal has found against the United States on Accords questions before, and an adverse award would be a reparation obligation the United States would decline to pay. Domestic effect: none.

20. Prize and blockade: captures of neutral vessels are unlawful because the blockade was not

Challenger and forum. Neutral flag states and cargo owners (China, India, Gulf states). Prize court first; diplomatic claims; possibly ITLOS or arbitration under UNCLOS Annex VII for a flag state party to the Convention, though the United States is not a party.

The tribunal's framing of the challenge. Capture of neutral property for breach of blockade requires a blockade that was declared, notified, effective, impartially enforced, and not intended to starve the civilian population (San Remo Manual, paras. 93–104). The 2026 blockade of Iranian ports was announced by the Executive without a congressional act and lifted and reimposed by negotiation. Captures made under it, and condemnations under section 402(a)(3), are without lawful basis.

Response. Section 402 does not validate any blockade; it limits condemnation to the categories the customary law of naval warfare recognizes and requires a prize court to adjudicate each capture with the neutral owner present. The court determines the existence of a state of war independently (402(c)) and the lawfulness of the blockade is a question within its jurisdiction under chapter 883. The United States accepts the Paris Declaration rules in practice and section 402 is consistent with them.

Probable outcome. *Likely upheld* in prize court on a capture that meets the San Remo conditions; *contested* diplomatically on any capture made during a ceasefire or after notification lapsed.

Mitigation in v3 text. Add to section 402(a): “and consistent with the law of naval warfare, including the requirements for a lawful blockade.”

21. The export-revenue levy is collective punishment and an unauthorized unilateral sanction

Challenger and forum. The hostile state; humanitarian organizations; third states whose nationals buy the commodities. General Assembly; Human Rights Council; ICJ advisory opinion.

The tribunal's framing of the challenge. Section 306 takes a percentage of the proceeds of a state's exports, which fall on the civilian economy, without Security Council authorization. The precedent invoked, the United Nations Compensation Commission, was created under Chapter VII by Resolutions 687 and 705; a unilateral levy has no such basis and is a coercive measure the General Assembly has repeatedly condemned.

Response. The levy applies only to transactions the United States is free to prohibit outright; a condition on a license is a lesser measure than the prohibition the hostile state already faces, and the hostile state can decline to transact. Proceeds are held for claims and reparation, not for general revenue, and the condition suspends when the dispute is before a competent tribunal and terminates on settlement. Humanitarian exceptions under section 103(f) are unaffected.

Probable outcome. *Contested* internationally; *upheld* domestically. The weakest provision in international-law terms because the UNCC analogy depends on a Chapter VII basis the Act lacks.

Mitigation in v3 text. Add to section 306 an exclusion for transactions the Secretary determines are necessary for food, medicine, and humanitarian supplies for the civilian population of the hostile state.

22. Reciprocity: the Act licenses mirror-image seizures of United States property abroad

Challenger and forum. Not a legal challenge; the consequence that follows adverse findings in challenges 15–18. Decisions of the hostile state and third states.

The tribunal's framing of the challenge. Russia placed Western-owned enterprises under “temporary management” by Presidential Decree No. 302 of 25 April 2023 and has conditioned any release of immobilized reserves on reciprocal treatment. A United States statute that vests state enterprises and central bank reserves will be cited as the precedent for seizure of United States corporate assets in the hostile state and in states aligned with it, and for pressure on European custodians holding far larger sums.

Response. Section 2(c) disclaims the lawfulness of reciprocal measures, which is correct and changes nothing. The honest answer is that reciprocity is the cost of the confiscation tier, which is why v3 confines it to a second vote of Congress, excludes central bank reserves unless Congress says otherwise, and keeps the custody tier reversible. The sponsor should present it that way.

Probable outcome. *Not adjudicable.* The exposure is proportional to how far beyond Tier 1 the conversion resolution goes.

Part IV. Outcome matrix

#	CHALLENGE	FORUM	OUTCOME	CONTROLLING AUTHORITY
1	Separation of powers; claims settlement	U.S.	Likely upheld	Brown; Little v. Barreme; Youngstown; Dames & Moore (acquiescence); Medellín
2	Legislative veto	U.S.	Upheld	Chadha
3	Bill of attainder	U.S.	Upheld	Price v. Libya; Bank Markazi; Nixon v. GSA
4	Due process of state enterprises and minority owners	U.S.	Likely upheld / Contested (minority interests)	Bancec; TMR Energy; GSS Group; Clark v. Uebersee; Calero-Toledo
5	Takings	U.S.	Upheld (compensation exposure bounded)	Paradissiotis; Holy Land; Monsanto
6	Article III / Klein	U.S.	Upheld	Bank Markazi; Patchak
7	Political question	U.S.	Upheld	Prize Cases; Bas v. Tingy; Talbot v. Seeman; Baker v. Carr
8	Appropriations Clause	U.S.	Upheld (302, 304); Contested (305 as drafted)	CFPB v. CFSA; 31 U.S.C. 1304
9	Judgment creditors; USVSST	U.S.	Upheld	Landgraf; Bank Markazi
10	Retroactivity; Ex Post Facto; Excessive Fines	U.S.	Upheld	Calder; Austin; Bajakajian; Miller
11	Appointments Clause	U.S.	Upheld	Edmond; Lucia
12	Nondelegation; vagueness	U.S.	Upheld	Consumers' Research
13	Review window	U.S.	Upheld	Yakus; Thunder Basin
14	Algiers Accords as domestic law	U.S.	Upheld	Whitney v. Robertson; Breard
15	Immunity of state property	Int'l	Likely adverse (central bank); Contested (commercial)	Germany v. Italy; 2004 UN Convention arts. 19, 21

#	CHALLENGE	FORUM	OUTCOME	CONTROLLING AUTHORITY
16	Countermeasures conditions	Int'l	Likely upheld (custody) if notification added	Gabčíkovo-Nagymaros; ARSIWA 49–53
17	Self-defense scope; ad bellum	Int'l	Contested	Nicaragua; Oil Platforms
18	Treaty expropriation claims	Int'l	Likely adverse if a treaty is in force; no forum for Iran, Russia, Venezuela	Certain Iranian Assets (2023)
19	Algiers Accords before the Tribunal	Int'l	Contested	General Declaration (1981)
20	Prize and blockade	Int'l / prize court	Likely upheld (lawful blockade); Contested (ceasefire captures)	San Remo Manual; Paris Declaration
21	Export levy	Int'l	Contested	UNSCR 687, 705 (Chapter VII basis absent here)
22	Reciprocity	Political	Not adjudicable	Russian Decree 302 (2023)

Part V. Amendments to v3 that follow from this review

- **New section 508 (rule of construction).** “Nothing in this Act limits the authority of the President to conduct the foreign relations of the United States, to negotiate with any foreign government, or to recognize or decline to recognize any foreign government. An agreement affecting property subject to this Act takes effect as to that property upon approval under section 104(d)(3) or section 307(c).” (Challenge 1.)
- **Section 101, new subsection (g).** Before the first deposit of earnings under section 104, the President shall notify the designated state of the measures to be taken under this Act and offer negotiation, and shall report the notification to the appropriate congressional committees. (Challenge 16.)
- **Section 201(a), new paragraph.** The conversion resolution shall state the basis in international law on which the United States relies for vesting. (Challenge 15.)
- **Section 202(c)(3).** Exclude expressly the pro rata interest of any shareholder or creditor that is not the hostile state, an agency or instrumentality, or a designated national, and direct the Custodian to segregate that interest at vesting. (Challenge 4.)
- **Section 203(a).** State that the Custodian is an inferior officer appointed by the Secretary of the Treasury and serving at the Secretary’s pleasure. (Challenge 11.)
- **Section 303, new subsection (f).** “Nothing in this Act affects the validity or amount of any judgment.” (Challenge 9.)
- **Section 305(b).** Restate as an express appropriation out of captured property, with the annual cap, and strike “without further appropriation.” (Challenge 8.)
- **Section 306, new subsection.** Exclude transactions the Secretary determines are necessary for food, medicine, and humanitarian supplies for the civilian population. (Challenge 21.)
- **Section 402(a).** Add “and consistent with the law of naval warfare, including the requirements for a lawful blockade.” (Challenge 20.)
- **Section 507(b).** Require the first semiannual report after designation to inventory every treaty in force with the hostile state that contains a dispute-settlement clause, with an assessment of exposure. (Challenge 18.)

Part VI. What the sponsor should expect

In United States courts the Act will be upheld in every material respect, and the litigation will be about money at the margins: minority interests in state enterprises, custodian liens, and the division of the Account among claimants. The one drafting error with constitutional consequence is section 305(b), and it is a one-line fix.

Internationally the Act will be condemned, in the General Assembly with certainty and at the International Court of Justice if any treaty basis exists, for the same reason the European Union has declined for three years to confiscate Russian central bank principal: the Court's reading of immunity in *Germany v. Italy* is broad, and no international tribunal has yet accepted the belligerent-rights or collective-countermeasures justification for confiscating sovereign reserves. The Act is drafted to make that exposure a choice Congress takes by a second vote, with central bank reserves excluded unless Congress says otherwise. The sponsor should present it as exactly that: a statute that structures a power the Executive already has, adds the process and the congressional control that power now lacks, and leaves the decision to accept international-law risk to the body the Constitution assigns it.

Verification note. The reporter citations in this memorandum are standard and were not re-opened in this session; open each once before the memorandum leaves your hands. The 2023 *Certain Iranian Assets* judgment should be checked for the specific Treaty articles the Court found breached before any article is cited in a committee print.

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