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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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REPUBLIC OF IRAQ *v.* BEATY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07–1090. Argued April 20, 2009—Decided June 8, 2009*

The Foreign Sovereign Immunities Act of 1976 (FSIA) prohibits suits against other countries in American courts, 28 U. S. C. §1604, with certain exceptions. One exception, §1605(a)(7) (now repealed), stripped a foreign state of immunity in any suit arising from certain acts of terrorism that occurred when the state was designated as a sponsor of terrorism under §6(j) of the Export Administration Act of 1979 or §620A of the Foreign Assistance Act of 1961.

Iraq was designated as a sponsor of terrorism in 1990, but in 2003, following the American-led invasion of Iraq, Congress enacted the Emergency Wartime Supplemental Appropriations Act (EWSAA), §1503 of which included a proviso clause (the second in a series of eight) authorizing the President to "make inapplicable with respect to Iraq [§]620A of the Foreign Assistance Act of 1961 or any other provision of law that applies to countries that have supported terrorism." Although President Bush exercised that authority, the D. C. Circuit held in its 2004 *Acree* decision that the EWSAA did not permit the President to waive §1605(a)(7), and thereby restore Iraq's sovereign immunity, for claims arising from actions Iraq took while designated as a sponsor of terrorism.

Thereafter, Congress repealed §1605(a)(7) in §1083(b)(1)(A)(iii) of the National Defense Authorization Act for Fiscal Year 2008 (NDAA) and replaced it with a new, roughly similar exception, §1083(a). The NDAA also declared that nothing in EWSAA "ever authorized, directly or indirectly, the making inapplicable of any provision of [the FSIA] or the removal of the jurisdiction of any court" (thus purport-

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*Together with No. 08–539, *Republic of Iraq et al.* v. *Simon et al.,* also on certiorari to the same court.

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ing to ratify *Acree*), §1083(c)(4); and authorized the President to waive "any provision of this section with respect to Iraq" under certain conditions, §1083(d). On the same day the President signed the NDAA into law he also waived all of §1083's provisions as to Iraq.

Respondents filed these suits against Iraq in early 2003, alleging mistreatment by Iraqi officials during and after the 1991 Gulf War. Under *Acree*, the courts below refused to dismiss either case on jurisdictional grounds. The D. C. Circuit also rejected Iraq's alternative argument that even if §1605(a)(7)'s application to it survived the President's EWSAA waiver, the provision was repealed by NDAA §1083(b)(1)(A)(iii); and that the President had waived NDAA §1083(a)'s *new* exception with respect to Iraq under his §1083(d) authority. The court held instead that it retained jurisdiction over cases pending against Iraq when the NDAA was enacted.

Held: Iraq is no longer subject to suit in federal court. Pp. 6–17.

(a) The District Court lost jurisdiction over both suits in May 2003, when the President exercised his EWSAA authority to make §1605(a)(7) "inapplicable with respect to Iraq." Pp. 6–13.

(i) Iraq's (and the United States') reading of EWSAA §1503's second proviso as sweeping in §1605(a)(7)'s terrorism exception to foreign sovereign immunity is straightforward. In the proviso's terms, the exception is a "provision of law" (indisputably) that "applies to" (strips immunity from) "countries that have supported terrorism" (as designated pursuant to certain statutory provisions). Because he exercised his waiver authority with respect to "all" provisions of law encompassed by the second proviso, his actions made §1605(a)(7) "inapplicable" to Iraq. Pp. 6–7.

(ii) *Acree*'s resistance to the above construction was based on a sophisticated attempt to construe EWSAA §1503's second proviso as limiting that section's principal clause, which authorized suspension of "any provision of the Iraq Sanctions Act of 1990." While a proviso's "general office . . . is to except something from the enacting clause, or to qualify and restrain its generality," *United States* v. *Morrow*, 266 U. S. 531, 534, another recognized use is "to introduce independent legislation," *id.,* at 535, which was the function of the proviso here. In any event, §1605(a)(7) falls within the scope of the proviso even accepting the narrower interpretation adopted by the *Acree* decision. Pp. 7–11.

(iii) Respondents' other objections to the straightforward interpretation of EWSAA §1503's proviso are rejected. Pp. 11–12.

(iv) Nothing in the NDAA changes the above analysis. Although NDAA §1083(c)(4) appears to ratify *Acree*, this Court need not decide whether such a ratification is effective because §1083(d)(1) authorized the President to "waive any provision of this section with respect

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to Iraq," and he waived "all" such provisions, including §1083(c)(4). Pp. 12–13.

(b) The Court rejects the argument that §1605(a)(7)'s inapplicability does not bar claims arising from Iraq's conduct *prior* to the President's waiver. In order to exercise jurisdiction over these cases, the District Court had to "apply" §1605(a)(7) with respect to Iraq, but the President's waiver made that provision "inapplicable." No retroactivity problem is posed by this construction, if only because the primary conduct by Iraq that forms the basis for these suits actually occurred before §1605(a)(7)'s enactment. Pp. 13–16.

(c) Respondents also argue that EWSAA §1503's sunset clause—under which "the authorities contained in [that] section" expired in 2005—revived §1605(a)(7) and restored jurisdiction as of the sunset date. But expiration of the §1503 *authorities* is not the same as cancellation of the *effect* of the prior valid exercise of those authorities. Pp. 16–17.

No. 07–1090, and No. 08–539, 529 F. 3d 1187, reversed.

SCALIA, J., delivered the opinion for a unanimous Court.