

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
LUSIK USOYAN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:18-CV-01141-CKK
)	
THE REPUBLIC OF TURKEY,)	
)	
Defendant.)	
_____)	

DEFENDANT REPUBLIC OF TURKEY’S SUBSTITUTE MOTION TO DISMISS

Defendant Republic of Turkey (“Turkey”), by counsel and pursuant to Federal Rule of Civil Procedure 12(b)(1), hereby moves the Court to dismiss the Complaint for lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330 & 1602, *et seq.*¹ In support of its Motion, Turkey refers the Court to the Memorandum and its supporting exhibits, filed herewith.

¹ Pursuant to Fed. R. Civ. P. 12(h), Turkey expressly preserves and does not waive its right to assert additional defenses under Fed. R. Civ. P. 12(b)(6) and 12(c).

Date: June 7, 2019

Respectfully submitted

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**MEMORANDUM IN SUPPORT OF
DEFENDANT REPUBLIC OF TURKEY’S SUBSTITUTE MOTION TO DISMISS**

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT.

On May 16, 2017, two altercations occurred outside the Turkish Ambassador's Residence ("Residence") in Washington, D.C. (the "Incident"). The second of the two garnered wide publicity, the first, none. The altercations occurred during Turkish President Recep Tayyip Erdogan's official state visit to the United States with a delegation of his senior ministers. Just prior to the altercations, President Erdogan and President Trump met at the White House where they discussed matters of vital importance to both Turkey and the United States, including both nations' interlocking roles as partners in the Global Coalition to Defeat ISIS, as well as a host of issues raised by the civil war raging in Syria.

President Erdogan traveled by car from the White House to the Residence. Moments before he arrived, a group of protesters (the "Anti-Turkey Group") had physically confronted Turkish security officers and injured several Turkey supporters who had gathered to welcome President Erdogan. Upon his arrival, President Erdogan's security detail engaged physically with some of the Plaintiffs and other protesters in Sheridan Circle who were in close proximity to the President's car, senior Turkish ministers, and the Residence, and who were perceived as a threat to their safety.

The two altercations resulted in highly publicized injuries to some Plaintiffs, but scantily publicized injuries to police, civilian supporters of Turkey, and Turkish security officers, all of whom were assaulted by members of the Anti-Turkey Group. Plaintiffs' theories that President Erdogan intended the altercation to influence civil discourse and chill free expression in Turkey, or that Turkey's presidential security detail acted out of ethnic animus and a desire to intimidate Kurds abroad, are preposterous.

These unfortunate altercations should never have happened, and should never occur again due to the lessons learned that day. Fortunately, extensive video and other evidence related to this Incident is available, and depicts a sequence of events not mentioned by Plaintiffs' Complaint, but that show U.S. courts lack jurisdiction to hear Plaintiffs' claims against Turkey. The evidence shows that the actions of the Turkish presidential security agents occurred at a moment when they were faced with an angry and aggressive group of apparent supporters or affiliates of a U.S.-designated Foreign Terrorist Organization ("FTO"), who had not been subjected to security screenings at the site, who had just assaulted supporters of Turkey (the "Pro-Turkey Group") with impunity, and who had previously advanced towards the Residence despite police commands to stay back, and who remained within hand-gun or improvised explosive device ("IED") proximity of President Erdogan. The Turkish security officers' and Ambassador's requests for the Metropolitan Police Department ("MPD") to move this dangerous group away from their head of state had been ignored or denied. It was in this volatile environment that President Erdogan's personal security detail came to his aid to ensure he could safely emerge from his car and enter the Residence without risk of an assassination attempt, which is the primary objective of presidential security officers. These were discretionary acts of security, not acts of international terrorism, that are absolutely protected from liability by the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330 & 1602, *et seq.*

As set forth in Turkey's counterstatement of facts (*infra* § II.B), the video and other evidence submitted herewith objectively establish the following indisputable facts that undermine Plaintiffs' absurd theory that President Erdogan and his delegation carried out acts of international terrorism on U.S. soil just moments after leaving bilateral talks with President Trump at the White House:

- On May 16, 2017, while President Erdogan was meeting with President Trump at the White House, Pro- and Anti-Turkey Groups demonstrated in Lafayette Park. The Anti-Turkey Group displayed flags and signs supporting the Kurdistan Workers' Party ("PKK"), a dangerous terrorist organization responsible for tens of thousands of deaths that has been designated by the U.S. as a Foreign Terrorist Organization, and the YPG, the PKK's Syrian arm.
- U.S. law enforcement properly separated the Pro- and Anti- Turkey Groups at Lafayette Park, precluding physical conflict.
- Later, MPD inexplicably "escorted" the Anti-Turkey Group to Sheridan Circle and positioned them just two traffic lanes from the Residence. The Anti-Turkey Group advanced into traffic and ignored MPD commands.
- A first altercation, apparently initiated by one of the Plaintiffs in the related case *Kurd, et al. v. The Republic of Turkey, et al.*, United States District Court for the District of Columbia, Case No. 1:18-cv-01117-CKK ("*Kurd*"), erupted, during which *Kurd* Plaintiff Kasim Kurd ("Kurd") smashed a bullhorn on the head of a civilian supporter of Turkey, requiring his hospitalization. Kurd hurled it a second time at an MPD officer. Kurd or another member of the Anti-Turkey Group threw a full or frozen water bottle at another civilian in the Pro-Turkey Group, hitting him in the face and drawing blood. MPD arrested no one.
- After the first altercation subsided, members of President Erdogan's security detail and Turkey's Ambassador asked local law enforcement to move the Anti-Turkey Group farther away from the Residence because President Erdogan was arriving. These requests were either ignored or denied.
- When President Erdogan arrived at the Residence, the angry Anti-Turkey Group, of which several members had already acted violently, continued to tout symbols of PKK/YPG support while yelling aspersions about President Erdogan within an unsafe distance of the Residence he was attempting to enter.
- Local law enforcement did nothing to enforce U.S. federal law making it a crime for two or more persons to harass or attempt to harass a foreign dignitary within 100 feet. *See* 18 U.S.C. § 112. MPD either ignored or was unaware that under U.S. law, and international treaty obligations, dignitaries are different, and that the United States promises a higher level of security to "internationally protected persons" than ordinary persons, as part of the fabric of diplomacy and international comity.

Layer into these circumstances that Turkey, President Erdogan, his senior ministers, and other dignitaries in his delegation, who were being protected by Turkish security officers, face

monumental, daily security threats unparalleled by most NATO allies. And at the time of this Incident, Turkey's counter-ISIS missions in Syria were at their height.

Turkey borders some of the toughest patches of geography in the world, including Syria, which in 2017 was the center of the so-called ISIS caliphate¹ with armed conflict taking place just over the Turkish border. Importantly here, Turkey is also under constant terrorist threats from the PKK, and its Syrian arm, the YPG, which have been responsible for the brutal murders of tens of thousands of people. The PKK is responsible for scores of bombings throughout Turkey, numerous assassination attempts on Turkish politicians from multiple political parties, and is known to target diplomatic missions. Therefore, while MPD may have perceived this as just another group of protesters, the Anti-Turkey Group's indicia of support for, or affiliation with, a known terrorist organization presented unique grounds for concern about the intentions of this group when they achieved a position of close proximity to President Erdogan and members of his delegation. The Turkish security officers filled this security vacuum and exercised their discretion to remove the perceived threat.

In the context of these extraordinary circumstances, Turkey respectfully asks this Court to dismiss Plaintiffs' claims, with prejudice and without leave to amend, for lack of jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) due to Turkey's sovereign immunity under the FSIA. 28 U.S.C. §§ 1330 & 1602, *et seq.*

II. STATEMENT OF FACTS.

A. FACTS AS ALLEGED BY THE PLEADINGS.

Since this is a Rule 12(b)(1) motion, Turkey summarizes only those allegations of fact that are jurisdictionally relevant.

¹ In Turkey and the surrounding region, ISIS is more commonly referred to by its Arabic acronym "DAESH."

1. The Incident At Sheridan Circle As Alleged By Plaintiffs.

Plaintiffs Lusik Usoyan (“Usoyan”) and John Doe I (“Doe I”) allege that on May 16, 2017, they assembled outside the White House to protest against President Erdogan. (Compl. ¶¶ 19-20.) They then traveled with other protesters to the Residence, where they allege they assembled with other anti-Turkey protesters in Sheridan Circle across the street from the Residence. (*See id.* ¶¶ 22-24.) Plaintiffs allege that a number of persons, some civilians and some employees of Turkey, gathered on the Residence sidewalk. (*See id.* ¶ 26.)

The Complaint alleges that certain Turkish government employees rushed towards the protesters who were both in the street and on the sidewalk and commenced an initial assault on the protesters. (*See id.* ¶ 33.) Significantly here, Plaintiffs acknowledge that at this time, protesters had advanced from Sheridan Circle into the street between Sheridan Circle and the Residence, encroaching upon the Residence. (*See id.*) Plaintiffs allege that one of the Turkish government employees told an MPD officer, “You need to take them; if you don’t, I will.” (*Id.* ¶¶ 36-37.) Plaintiffs allege another Turkish agent told a U.S. Secret Service officer, “We are waiting you [sic] to take them out, because President [Erdogan] is coming. If you don’t take, I will take. Okay?” (*Id.* ¶ 40 (alteration in original).) Thus, Plaintiffs acknowledge that Turkish agents were expecting MPD and U.S. Secret Service to take action to protect their head of state. Individual Sinan Narin made a similar plea to MPD. (*See id.* ¶ 43.) The only MPD response Plaintiffs allege is that one officer exclaimed, “They have a right to talk,” referring to the anti-Turkey protesters. (*Id.* ¶ 36.)

President Erdogan then arrived at the Residence. (*See id.* ¶ 50.) He was allegedly seen speaking to his head of security and, following that interaction, Plaintiffs, none of whom could have possibly heard or known what was said, make the wild accusation that President Erdogan

ordered an attack on the protesters. (*See id.* ¶ 53.) Plaintiffs contend that following communications among Turkish government employees by earpieces, Turkish government employees then crossed the street, passed the MPD officers, and commenced a second assault on the anti-Turkey protesters. (*See id.* ¶ 46.) Plaintiffs allege that MPD was overwhelmed. (*See id.* ¶ 47.) Plaintiffs speculate that the Turkish agents’ purpose was to silence their protest, deprive them of their U.S. civil rights, and “chill further protests against President Erdogan and his regime” in the United States and Turkey, though they provide no factual predicate for this conjecture. (*See id.* ¶¶ 29-30.)

2. Individual Plaintiffs’ Claims.

a. Usoyan And Yuksel.

Usoyan alleges that within the same minute that President Erdogan stepped out of his car, “Turkish government employees” Hamza Yurteri, Mehmet Sarman, and Mahmut Sami Ellialti (“Ellialti”),² kicked, punched, and otherwise battered her. (*Id.* ¶¶ 60, 63.) She makes a legal conclusion that she was “protesting lawfully” at the time, but the Complaint is bereft of any facts supporting that her location or conduct at the time was, in fact, lawful. (*Id.* ¶ 61.) She contends that this incident has negatively impacted her relationship with her husband, Plaintiff Mehmet Yuksel (“Yuksel”), who was not present at the Incident but asserts loss of consortium claims along with Usoyan. (*See id.* ¶¶ 72-73; *see also id.* at Count VIII.)

b. John Doe I.

Doe I alleges that at approximately the same time Usoyan alleges she was battered, Harrettin Eren, who is alleged to be a Turkish paramilitary agent wearing “combat boots,” and

² Plaintiffs’ allegation in paragraph 60 that Ellialti was a Turkish employee is factually wrong. Ellialti was not an employee of Turkey or part of President Erdogan’s security detail. As alleged in paragraph 31 of the Complaint, and as alleged in paragraph 23 of the *Kurd* Complaint, Ellialti is a civilian Canadian citizen who was in Washington, D.C. on May 16, 2017.

another unknown person, assaulted him by kicking him in the lower back, head, and face. (*Id.* ¶¶ 74, 76, 78.) Like Usoyan, he asserts that he was “protesting lawfully,” but alleges no facts describing where he was in relation to President Erdogan or what conduct he was engaged in to support his legal conclusion that he was protesting lawfully. (*Id.* ¶ 75.)

c. John Doe II.

John Doe II (“Doe II”) alleges that at approximately the same time Usoyan and Doe I allege they were battered, an “unknown conspirator” kicked him in the leg, and his cell phone was knocked from his hand, causing it to break. (*Id.* ¶¶ 84-85.) Doe II does not describe his alleged attacker, nor does he allege that his attacker was an employee or agent of Turkey. (*See generally id.* ¶¶ 82-87.) Doe II also asserts that he was “protesting lawfully,” but like the other Plaintiffs, alleges no facts to support his legal conclusion that he was protesting lawfully. (*Id.*)

d. MacAuley.

Lacy MacAuley (“MacAuley”) alleges she was not present at the Incident, but was inspired by publicity of the Incident to create an anti-President Erdogan protest sign and to protest President Erdogan outside the Turkish Embassy Chancery, believing he would be traveling to the Embassy next. (*See id.* ¶¶ 88-89.) MacAuley alleges that while she was standing on a public sidewalk across from the Embassy, a group of individuals who she contends were part of President Erdogan’s motorcade emerged from a van and rushed towards her. (*See id.* ¶ 90.) She alleges that a female security agent, Feride Kayasan (“Kayasan”), grabbed her hand while three others, Lutfu Kutluca, Tugay Erkan, and another person she cannot identify, surrounded her. (*See id.* ¶¶ 91-92.) The unidentified person grabbed MacAuley’s protest sign, crumpled it up, and threw it aside. (*See id.* ¶ 93.) She also alleges Kayasan placed her hand over MacAuley’s mouth in an attempt to silence her. (*See id.* ¶ 94.)

3. Summary Of Legal Claims Alleged By The Complaint.

Usoyan, Doe I, Doe II, and MacAuley assert claims for assault and battery in Counts I and II. Usoyan, Doe I, Doe II, MacAuley, and Yuksel assert claims for negligent and intentional infliction of emotional distress in Counts III and IV. In Count V, all Plaintiffs assert claims for civil conspiracy to inflict physical and emotional pain and suffering, mental distress and medical expenses, alleging all injuries were caused by agents of Turkey. Count VI asserts civil claims by Usoyan, Doe I, Doe II, and MacAuley for bias-related crime under D.C. Code § 22-3704. In Count VII, Usoyan, Doe I, Doe II, and MacAuley allege Turkey violated the Anti-Terrorism Act pursuant to 28 U.S.C. § 1605B and 18 U.S.C. § 2333. Count VIII alleges loss of consortium claims by Usoyan and Yuksel.

B. COUNTERSTATEMENT OF FACTS IN SUPPORT OF TURKEY'S JURISDICTIONAL DEFENSES.

1. Turkey Is Entitled To Present A Counterstatement Of Facts And Evidence Outside Of The Pleadings In Support Of Its Jurisdictional Defenses.

In the context of a Rule 12(b)(1) challenge to jurisdiction under the FSIA, “the court must go beyond the pleadings and resolve any disputed issues of fact the resolution of which is necessary to a ruling upon the motion to dismiss.” *Phoenix Consulting Inc. v. Republic of Angola*, 216 F.3d 36, 40 (D.C. Cir. 2000) (reversing the lower court’s denial of an FSIA motion to dismiss because it failed to consider Angola’s evidence and assumed the truth of the complaint’s factual allegations). Courts may consider evidence beyond the pleadings and “must do so if resolution of a proffered factual issue may result in the dismissal of the complaint for want of jurisdiction.” *MMA Consultants I, Inc. v. Republic of Peru*, 245 F. Supp. 3d 486, 499 (S.D.N.Y. 2017) (quoting *Robinson v. Gov’t of Malaysia*, 269 F.3d 133, 140 n.6 (2d Cir. 2001)). “This evidence may include affidavits, exhibits and declarations.” *Id.* In the FSIA case *Republic*

of *Peru*, for example, the court granted a motion to dismiss based on “reports and articles from the late 1800s detailing Peruvian debt instruments and the guano trade,” “excerpts from newspaper articles,” “trade reports and a congressional hearing transcript,” none of which was in the pleadings. *Id.* at 503-04. The Court “has a duty to make its own independent factual determinations in order to ascertain its authority under the FSIA.” *SACE S.p.A. v. Republic of Paraguay*, 243 F. Supp. 3d 21, 43 (D.D.C. 2017) (granting Paraguay’s FSIA motion to dismiss in reliance on declarations it proffered). Thus, when a foreign state disputes the factual basis of subject matter jurisdiction under the FSIA, “the trial court is required to go beyond the pleadings” *Belhas v. Ya’Alon*, 466 F. Supp. 2d 127, 129 (D.D.C. 2006) (quoting *Price v. Socialist People’s Libyan Arab Jamahiriya*, 294 F.3d 82, 87 (D.C. Cir. 2002)) (granting FSIA motion to dismiss in reliance on an ambassador’s letter in response to litigation); *see also, e.g., Simon v. Republic of Hungary*, 812 F.3d 127, 144 (D.C. Cir. 2016) (“If the defendants were to challenge the factual basis of those allegations on remand, the district court would need to go beyond the pleadings and resolve the factual dispute.”).

Accordingly, on this Rule 12(b)(1) motion, it is proper for Turkey to present evidence outside the pleadings concerning the Incident that is relevant to its sovereign immunity defense. Evidence of the circumstances that show Turkey’s entitlement to sovereign immunity follows.

2. The Challenge Of Securing Turkish Leaders.

Turkey, a NATO, G-20, and Council of Europe member, is a consequential regional power with a population of over 80 million, located in a strategic and sometimes dangerous region.³ (Ex. 1, Yavuz Decl. ¶¶ 7, 9.) Its leaders’ policies are, therefore, scrutinized carefully

³ U.S. Dep’t of State, U.S. Relations With Turkey, Bureau of European and Eurasian Affairs Fact Sheet (Mar. 27, 2019), <https://www.state.gov/r/pa/ei/bgn/3432.htm> (last visited June 3, 2019).

both within and beyond the country's borders. Turkey's current head of state, President Recep Tayyip Erdogan, has been a public figure since the mid-1990s, having first served as Mayor of Istanbul, then as a member of the Turkish parliament, then as Prime Minister and, since July 2014, as President. (*Id.* ¶ 33.)

President Erdogan, perhaps no less so than the U.S. president, stokes heated discussion. His style of campaigning and governance, the policies he supports, the tenor of his public addresses, and even his mustache, engender passionate debate. Any person with a newspaper subscription or access to the Internet can attest to the many column inches of newsprint, megabytes of online journalism, and millions of social media posts that report on and analyze his actions.

And perhaps no less so than the U.S. president, President Erdogan has extraordinary security needs. (*See* Ex. 2, White Decl. ¶¶ 18-21, 26-27, 31-32; *see also* Ex. 1, ¶¶ 8, 34, 52.) In service of his country, he travels abroad frequently, having made twenty foreign visits between July 2018 and April 2019 alone.⁴ Moreover, on July 16, 2016, ten months before his visit to the U.S., an assassination attempt on President Erdogan killed one of his security guards and a policeman.⁵ And although security risks are not usually publicized, President Erdogan was the

⁴ Website of the Turkish Presidency, *Yurt Dışı Ziyaretler* (Foreign Visits), <https://www.tccb.gov.tr/receptayyipErdogan/yurtdisiziyaretler/?&page=1> (last visited June 3, 2019).

⁵ Times of Israel, *Erdogan said to have been target of assassination attempt during failed coup*, (July 18, 2016), <https://www.timesofisrael.com/Erdogan-said-to-be-target-of-assassination-attempt-during-failed-coup/1> (last visited June 3, 2019). Additionally, in December 2017, just months after the Sheridan Circle Incident, Greek authorities foiled a plan to assassinate President Erdogan during his visit to Athens by attacking his car with rockets, grenades, and Molotov cocktails. *See Arrested DHKP-C militants plotted to assassinate Erdogan in Athens: Greek media*, HURRIYET DAILY NEWS (Dec. 18, 2017), <http://www.hurriyetdailynews.com/arrested-dhkp-c-militants-plotted-to-assassinate-Erdogan-in-athens-greek-media-124323> (last visited June 3, 2019).

target of more than 300 assassination attempts between 2002 and 2013 when he was serving as Prime Minister.⁶ (*See* Ex. 1, ¶ 8.) As Turkey is a member of the anti-ISIS coalition and faces several U.S.-designated FTO's⁷ both on its home soil and in its near abroad, securing Turkey's leaders presents a host of acute and complex challenges. (*See id.* ¶¶ 8, 10-11, 51-52, 55 (describing ISIS attacks on Turkish targets since 2013, among them, bombings in Turkey that claimed 259 lives and maimed hundreds more).)

3. The U.S. Invited President Erdogan To Washington, D.C.

At the invitation of the White House, President Erdogan, and a delegation including his Minister of Foreign Affairs, Minister of Defense, Minister of Justice, Minister of Energy and Natural Resources, several senior diplomats, and other aides visited Washington, D.C. on May 15 and 16, 2017. The composition of the delegation reflected the breadth and significance of the U.S.–Turkey relationship and the planned meetings. The two nations are NATO members, partners in the anti-ISIS coalition in Iraq and Syria, and share a robust trading relationship of more than \$20 billion annually, with the balance of trade favoring the U.S.⁸ The centerpiece of the visit was the planned bilateral meeting at the White House chaired by the two presidents to take place on May 16. Topping the agenda were joint efforts to fight terrorism both globally and

⁶ Yahya Bostan, Alper Sancar, *Gündem Haberleri, Erdoğan'a 10 yılda 100 suikast girişimi*, *Sabah*, (Jan. 25, 2013), <https://www.sabah.com.tr/Gundem/2013/01/25/Erdogana-10-yilda-100-suikast-girisimi> (last visited June 3, 2019).

⁷ *See* U.S. Dep't of State, U.S. Relations With Turkey, Bureau of European and Eurasian Affairs Fact Sheet (Mar. 27, 2019), <https://www.state.gov/r/pa/ei/bgn/3432.htm> (last visited June 3, 2019) (referencing Turkey's security cooperation in defeating terrorist organizations including the PKK, DHKP/C, and ISIS); *see also* U.S. Dep't of State, Foreign Terrorist Organizations, Bureau of Counterterrorism, <https://www.state.gov/j/ct/rls/other/des/123085.htm> (last visited June 3, 2019).

⁸ U.S. Dep't of State, U.S. Relations With Turkey, Bureau of European and Eurasian Affairs Fact Sheet (Mar. 27, 2019), <https://www.state.gov/r/pa/ei/bgn/3432.htm> (last visited June 3, 2019).

within countries adjoining Turkey⁹ and the controversial decision of the U.S. to arm the Syrian branch of a U.S.-designated FTO.¹⁰ (*Id.* ¶¶ 41-46 (describing the alter ego status of the PKK and YPG), *id.* ¶¶ 11, 47-48, 54-55 (describing the policy problem inherent in the U.S.’ treatment of the PKK/YPG in Syria), *id.* ¶¶ 49-50, 53 (detailing Turkish security threats emanating from Syria and the humanitarian burden Turkey has absorbed from the influx of Syrian refugees).)

4. President Erdogan Arrived On May 15, 2017 Under Tight Security.

The U.S. provided President Erdogan lodging at the President’s Guest House, commonly known as Blair House, on Pennsylvania Avenue. When a Turkish head of state arrives in a foreign country, Turkish citizens and those with Turkish heritage customarily greet him or her. The May 2017 visit was no different. Prior to President Erdogan’s arrival on May 15, 2017, a group of Turkish Americans, some having traveled from long distances, gathered near the closest barricades outside of Blair House to welcome him to the U.S. They assembled on Pennsylvania Avenue near the northeast corner of 17th Street. The group had obtained a valid assembly permit from MPD. (Ex. 3, 5/15/17 MPD Assembly Plan.)

No protesters, whether anti-Turkey or anti-President Erdogan, were present. Nevertheless, out of an apparent abundance of caution, U.S. Secret Service officers ordered the

⁹ *Remarks by President Trump and President Erdogan of Turkey in Joint Statement* (May 16, 2017), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-president-erdogan-turkey-joint-statement/> (last visited June 3, 2019); Yasmeeen Serhan, *'A New Era' in U.S.-Turkish Relations*, THE ATLANTIC (May 16, 2017), <https://www.theatlantic.com/news/archive/2017/05/trump-erdogan/526851/> (last visited June 3, 2019).

¹⁰ Angela Dewan, *Erdogan meets Trump: 3 key issues topping the agenda*, <https://www.cnn.com/2017/05/16/politics/erdogan-trump-turkey-us-meeting/index.html> (last visited June 3, 2019); Julie Hirschfeld Davis, Mark Landler, *Trump Praises Erdogan as Ally in Terrorism Fight, Brushing Aside Tensions*, N.Y. TIMES (May 17, 2017), <https://www.nytimes.com/2017/05/16/world/middleeast/erdogan-turkey-trump.html> (last visited June 3, 2019).

group of friendly Turkish Americans to move to the northwest corner of 17th Street and Pennsylvania Avenue, a distance of approximately 280 feet from Blair House. (Ex. 4, A-E, May 16, 2017 Photos of 17th & Pennsylvania.) The group willingly complied and understood this to be a valid safety measure befitting the solemnity of President Erdogan's visit.

President Erdogan arrived by motorcade in the late afternoon. The Turkish Americans displayed a welcome banner, waved Turkish flags, sang the Turkish national anthem, and shortly afterward dispersed. (*See id.*)

5. The Lafayette Park Demonstrations: U.S. Security Officers Intervened To Separate Rival Groups.

On May 16, 2017, as Presidents Trump and Erdogan were meeting, the Pro-Turkey Group¹¹ and the Anti-Turkey Group staged demonstrations on Pennsylvania Avenue across from the White House and in Lafayette Park. Each group possessed a valid assembly permit from MPD. The Pro-Turkey Group, mainly Turkish Americans voicing support for the U.S.–Turkey relationship, obtained a permit in the name of the Turkish American National Steering Committee from MPD for Pennsylvania Avenue in front of the White House. (Ex. 5, 5/16/17 MPD Assembly Plan.) However, the area directly in front of the White House was closed due to security for the bilateral talks, so U.S. security officers moved the Pro-Turkey Group eastward on Pennsylvania Avenue. (Ex. 6, Video Thumbdrive at File Nos. LS01, LS02, LS03, LS04, LS05) (showing Pro-Turkey Group in front of the White House fence surrounded by heavy security).¹²

¹¹ Turkey uses the term Pro-Turkey Group with respect to the group in Lafayette Park, but not all of the people among the Pro-Turkey Group in Lafayette Park were present for the Incident because many of them went to the Turkish Embassy, rather than the Residence.

¹² Exhibit 6 was filed under seal.

Meanwhile the Anti-Turkey Group¹³ had gathered on the southeast quadrant of Lafayette Park, directly facing the Pro-Turkey Group, apparently having obtained a permit from MPD for the use of Lafayette Park. (*Id.* at File No. LS06) (showing Anti-Turkey and Pro-Turkey Groups separated on opposite sides of Pennsylvania Avenue).

a. The Anti-Turkey Group Displayed Support For A Foreign Terrorist Organization.

Members of the Anti-Turkey Group held signs and yellow flags that openly supported the PKK, a U.S.-designated Foreign Terrorist Organization,¹⁴ the PKK's founder and leader, Abdullah Ocalan, and the PKK's Syrian alter ego, the YPG.¹⁵ (*Id.* at File Nos. LS07, LS08, LS09; Ex. 1, ¶¶ 19-24 (describing Ocalan, "His main goal was to destroy not just the Turkish state, but also the traditional Kurdish societal structure," and the founding and operation of the PKK).) *Kurd* Plaintiff Jalal Kheirabadi ("Kheirabadi"),¹⁶ and others in this group, also displayed YPG flags. (Ex. 7, Photo of Kheirabadi with YPG flag; Ex. 8, Photos showing PKK and YPG

¹³ As will be illustrated, this group included PKK and YPG supporters, as well as persons espousing anti-President Erdogan and anti-Turkey rhetoric.

¹⁴ U.S. Dep't of State, *State Department Maintains Foreign Terrorist Organization (FTO) Designation of the Kurdistan Workers' Party (PKK)*, (Mar. 1, 2019), <https://www.state.gov/r/pa/prs/ps/2019/03/289833.htm> (last visited June 3, 2019).

¹⁵ Indeed, the so-called *Official YPG Page for International Fighters*, extols Ocalan as the "founder of the the Kurdistan Workers' Party (PKK), the armed wing of the Kurdish struggle for autonomy From 1984, the PKK fought for an independent Kurdish state in southeast Turkey, in a sustained popular uprising in which thousands of PKK guerrillas have fought the Turkish army, the second largest in NATO." *Official YPG Page for International Fighters*, <https://ypginternational.blackblogs.org/books/> (last visited June 3, 2019).

¹⁶ Kheirabadi, who is wearing a bright blue shirt, can be seen in one of these photos holding up a yellow YPG flag. Later, he appears in the Sheridan Circle videos, easily identifiable by his bright blue shirt, leading the Anti-Turkey Group's advancement on the Residence in the first altercation, failing to obey commands of Turkish security officers, kicking and punching Turkish security officers, assaulting an MPD officer, and being arrested for "APO," – assaulting a police officer. (*See infra* § II.B.8.)

signs among Anti-Turkey Group in Lafayette Park.)¹⁷ One of the flags displaying PKK leader Ocalan in Lafayette Park was a smaller version of the tremendous one displayed by the YPG in Raqqa, Syria. (*Compare* Ex. 1, ¶ 47 (citing internet photo of same flag in Raqqa) *with* Ex. 6, at File Nos. LS17, LS02, LS04 at 0:00-03, LS06 at 0:04-08, LS07 at 0:04-12, LS08, LS09, LS10.)

The PKK is a terrorist organization that aims to carve an ethnically pure, Marxist-Leninist state from the territory of Turkey. (Ex. 1, ¶ 19.) Turkish military operations to eliminate PKK terrorism have been ongoing since the mid-1980's. (*Id.* ¶ 25.) Fighting continues up to the present. Casualties from this period alone have been steep: since July 2015, over 1,200 Turkish soldiers and security officers have been killed by the PKK, with another 5,000 wounded. (*Id.* ¶ 50.) According to the U.S. Office of the Director of National Intelligence, the PKK's "campaign of armed violence, including terrorism, [has] resulted in over 45,000 deaths."¹⁸

PKK attacks have been numerous and gruesome. (Ex. 1, ¶ 26 (13 killed to protest Ocalan's arrest); *id.* at ¶ 24 (describing car and truck bombings that killed 57 people, including a mother and her baby); *id.* at ¶ 34 (describing five high-casualty PKK attacks, two of them by suicide bombers, and two PKK attacks against Turkish politicians, all near the date of President Erdogan's visit to the U.S.)) Of particular significance to the present case, the PKK routinely targets diplomatic missions, having attacked Turkish missions in multiple countries, the U.S. Embassy in Athens, the Israeli consulate in Berlin, as well as Greek and Kenyan embassies. (*Id.* ¶¶ 27-31.)

In short, PKK terrorism targeting Turkey constitutes a clear and present danger to the lives of Turkish officials, security forces, and innocent civilians. Understandably, all threats of

¹⁷ Exhibits 7 and 8 were filed under seal.

¹⁸ Office of the Director of National Intelligence, Turkish Domestic Terrorism, https://www.dni.gov/nctc/groups/turkey_domestic_terrorism.html (last visited June 3, 2019).

PKK violence and all expressions of support for the PKK are taken with extreme seriousness and urgency by the government of Turkey. (*Id.* ¶ 51.)

b. There Were Likely Military-Trained Men In The Anti-Turkey Group Who Had Fought With PKK Units.

The likelihood is great that among the crowd of Turkish Americans gathered in Lafayette Park and later at the Residence were individuals who had experienced PKK terror that claimed the lives of, or that injured, loved ones or close friends. The same would be true for the Turkish security officers accompanying President Erdogan and his delegation.

Added to this is the fact that foreign fighters from various countries have gone to Syria and returned, making the security challenges faced by those guarding Turkish officials worldwide more complex.¹⁹ (Ex. 2, ¶ 32.) Some of those foreign fighters include Americans who have joined the PKK/YPG.²⁰ At least two of the *Kurd* Plaintiffs' associations with such foreign fighters are illustrated through publicly available sources. (*See* Ex. 1, ¶ 25 (noting that, unlike these misguided American adventurers, the majority of Turkey's Kurds have not rallied to the PKK's cause).)

On September 21, 2017, three YPG supporters, including one woman holding the flag of the Women's Protection Units ("YPJ"), the female counterpart to the YPG, interrupted a speaking engagement by President Erdogan at a hotel in New York City by shouting obscenities

¹⁹ Megan Specia, *Foreign Fighters Back Kurdish Militia in Syria in Fight Against Turkey*, N.Y. TIMES (Jan. 27, 2018), <https://www.nytimes.com/2018/01/27/world/middleeast/foreign-fighters-kurdish-militia-syria.html> (last visited June 3, 2019).

²⁰ Shirin Jaafari, *For some Americans, the conflict in Syria is 'the Spanish Civil War of our time'*, PRI'S THE WORLD, (Sept. 13, 2017), <https://www.pri.org/stories/2017-09-13/some-americans-conflict-syria-spanish-civil-war-our-time> (last visited June 3, 2019). The YPG recruits using English language websites, among them, The Official YPG Page for International Fighters, <https://ypginternational.blackblogs.org> (last visited June 3, 2019), and the Lions of Rojava Facebook Page, <https://www.facebook.com/TheLionsofRojavaOfficial/> (last visited June 3, 2019).

at President Erdogan.²¹ U.S. security officials in President Erdogan’s detail forcibly ejected them, and they were then detained by venue security. (*Id.*) Among those detained was Kurd. Also detained were at least three individuals known to have taken up arms in Syria, quite likely in violation of 18 U.S.C. § 2339D, which prohibits “receiving military-type training from a foreign terrorist organization.” *See* 18 U.S.C. § 2339D.

One of them, Lucas Chapman, is from the Washington, D.C. area. In an interview with *The New Yorker*, he explained that he meets other potential YPG military recruits at pro-Kurdish protests in Washington, D.C.²² Another who was stalking President Erdogan that day was Robert Amos, who in one of his published war diaries explicitly declares that the organizations that perpetuate the ideals of PKK founder Abdullah Ocalan are, “the PKK in Turkey, PJAK in Iran, and PYD in Rojava (northern Syria). All of these organizations are members of an umbrella”²³ Kheirabadi who, as shown above, was holding a YPG flag in Lafayette Park on May 16, 2017, is an associate of Amos.²⁴

²¹ Maggie Astor, Nicholas Fandos, *Fighting Breaks Out at Turkish President’s Speech in New York*, N.Y. TIMES, (Sept. 21, 2017), <https://www.nytimes.com/2017/09/21/us/erdogan-new-york.html> (last visited June 3, 2019).

²² Nicholas Schmidle, *College Grads Fight ISIS With The Kurds*, THE NEW YORKER, (July 31, 2017), <https://www.newyorker.com/magazine/2017/08/07/college-grads-fight-isis-with-the-kurds> (last visited June 3, 2019) (stating that Chapman’s job prior to taking up arms in Syria was in Washington, D.C., also stating that he meets YPG military recruits in D.C.); Liz Sly, *How two U.S. Marxists wound up on the front lines against ISIS*, THE WASHINGTON POST, (Apr. 1, 2017), https://www.washingtonpost.com/world/middle_east/how-two-us-marxists-wound-up-on-the-front-lines-against-isis/2017/03/30/3c722344-c79e-11e6-acda-59924caa2450_story.html?utm_term=.df85b4a78bfa (last visited June 3, 2019).

²³ Robert Amos, *I Fought ISIS with the Kurds In Syria. This Is What It Was Like*, THE TOWER MAGAZINE, (Jan. 2017), <http://www.thetower.org/article/i-fought-isis-with-kurds-in-syria-this-is-what-it-was-like/> (last visited June 3, 2019).

²⁴ Wes Enzinna, *This American Fought ISIS. Now He’s Trying to Get Washington to Untangle Its Syria Policy*, PULITZER CENTER, (Dec. 27, 2016), <https://pulitzercenter.org/reporting/american-fought-isis-now-hes-trying-get-washington-untangle-its-syria-policy> (last visited June 3, 2019) (describing a 2016 incident in Washington,

Thus, a proper intelligence and security briefing concerning the composition of the opposing groups should have alerted U.S. Secret Service and MPD that it was likely that there were individuals in the Anti-Turkey Group that had received training on the use of weapons and explosives from PKK/YPG terrorists and were part of PKK/YPG units. (*See* Ex. 2, ¶¶ 29-32.)

c. U.S. Officers Acted Decisively To Defuse A Potentially Violent Situation In Lafayette Park.

While the presidents were meeting, some members of each group in Lafayette Park began shouting slogans and unflattering epithets and gesticulating toward each other. As tempers flared, U.S. federal security officers decisively intervened to create additional space between the groups. First, federal security officers pushed the Pro-Turkey Group south across Pennsylvania Avenue. Then, the same officers moved the Anti-Turkey Group to the northeast quadrant of Lafayette Park, and shortly afterward moved the Pro-Turkey Group also into Lafayette Park. The two groups were separated by approximately 50-75 feet, with each side behind barricade tape, a phalanx of federal security officers between them, and police cars bordering the square. (*See generally* Ex. 6, at File Nos. LS07, LS11, LS12.) There were also SWAT officers present. (*Id.* at File No. LS13.) The Anti-Turkey Group chanted anti-President Erdogan rhetoric while the Pro-Turkey Group voiced support for Turkey and played patriotic Turkish music. (*See id.* at File Nos. LS14, LS15, LS16.)

D.C. where Robert Amos chased Joe Biden by car following a Hillary Clinton campaign speech where Amos shouted at Biden from the crowd regarding U.S. policy concerning the YPG, and referring to Amos' driver in the chase as, "Jay Kheirabadi, an Iranian Kurd who lives in Maryland," who then also helped Amos stage a protest outside the gates of the U.S. Naval Observatory).

In short, U.S. security officers perceived the need for physical separation, and moved the two groups apart accordingly, meanwhile allowing each group's members to express themselves within well-defined spaces at a safe distance.

Put another way, a combustible situation had arisen: fuel was present in the form of dozens of rival protesters; pressure had built from the groups being in close proximity; oxygen was present in the form of the ability of each group to hurl insults at each other. All that was needed for an explosion was a spark, whether a thrown fist or hurled object. But the officers, recognizing the risk of a conflagration, exercised their discretion and reacted by separating the groups and filling the gap with a sufficient number of officers to enforce the division. Therefore, other than some feelings being hurt, the Lafayette Park demonstrations concluded without incident.

6. MPD “Escorted” The Anti-Turkey Group To Sheridan Circle.

Following the demonstrations in Lafayette Park, while the majority of the Pro-Turkey Group made their way to the Turkish Embassy Chancery at 2525 Massachusetts Avenue, N.W., according to an affidavit recorded by one of the U.S. security officers, MPD officers were detailed to “escort” the Anti-Turkey Group to the Residence, which is located on 23rd Street, N.W., adjacent to Sheridan Circle. (*See* Ex. 9, MPD Off. Alberti Statement ¶ 2). There were no protocols for screening the Anti-Turkey Group upon their arrival at Sheridan Circle. (*See* Ex. 2, ¶¶ 34-35.)

7. U.S. Security Officers Placed The Rival Groups Within 35 Feet Of Each Other At Sheridan Circle, Leaving Them Separated By Only Two Lanes Of Traffic.

Prior to the arrival of the Anti-Turkey Group, supporters of Turkey and President Erdogan had gathered on the sidewalk adjoining the Residence to await the arrival of President

Erdogan and his delegation, intending to show their support for Turkey. (Ex. 6, at File No. SC01 at 0:01-0:40.) Having escorted the Anti-Turkey Group to the vicinity of the Residence, U.S. security officers arrayed the Anti-Turkey Group directly opposite the Pro-Turkey Group, separated only by two active lanes of traffic on Massachusetts Avenue on the southwest portion of Sheridan Circle. (*Id.*) This placed the Anti-Turkey Group within approximately fifty feet of the Residence. (*Id.*) “That [was] well within the range of a hand gun, an IED, or a biochemical projectile.” (Ex. 2, ¶ 35.) Some members of the Anti-Turkey Group, including Kheirabadi, moved into Massachusetts Avenue while Kurd and others yelled rhetoric like “Erdogan Terrorist!” and “Baby Killer Erdogan” over a megaphone as they advanced through two lanes of traffic towards the Residence and members of the Turkish delegation. (Ex. 6, at File No. SC01 at 0:01-0:40.) There were no physical barriers to maintain separation between the rival groups. Eventually, the Anti-Turkey Group, in defiance of repeated police commands to remain on Sheridan Circle, blocked traffic on Massachusetts Avenue. (*Id.* at 0:01-0:50.) There were no visual barriers blocking the direct line of sight between Sheridan Circle and the Residence where President Erdogan was to arrive. (*Id.*) Relative to the security applied for other events related to the Turkish state visit at, for example, Blair House and Lafayette Park, the insufficiency of the resources devoted to Sheridan Circle was aberrant.

The encroachment of the Anti-Turkey Group, predictably, caused members of each group to once again engage in shouting, chanting, insulting, and gesticulating toward each other. (*Id.*) The same combustible situation that had existed at Lafayette Park was thus recreated. But this time there was a spark.

8. The First Altercation Broke Out On Massachusetts Avenue.

At approximately 4:05 p.m., the shouting Anti-Turkey Group in Massachusetts Avenue was completely blocking both lanes of vehicular traffic, possibly to obscure the movements of others in their group. (*Id.* at File No. SC01 at 0:01-0:30; *see also* Ex. 2, ¶ 40.) Kheirabadi (in the bright blue shirt and wearing a backpack) can be seen almost at the edge of the sidewalk of the Residence, and Kurd (man with the bullhorn) is within a few feet of the sidewalk. (Ex. 6, at File No. SC01 at 0:01-0:30.) No U.S. officer intervened even to stop the Anti-Turkey Group from impeding traffic. (*Id.*) The groups continued to taunt each other. (*Id.*)

The first altercation broke out when Kheirabadi is seen in the video shouting and advancing towards a man in khaki uniform (which Plaintiffs allege signifies members of President Erdogan’s security team (*see* Compl. ¶ 28), breaking into a fist fight among them. (Ex. 6, at File No. SC01 at 0:30-1:02.) Kheirabadi’s backpack is an extremely serious security threat. (Ex. 2, ¶ 41.) *Kurd* Plaintiffs Kurd, Mehmet Tankan, Abbas Azizi, Heewa Arya, Ceren Borazan, Stephen Arthur, Mehmet Ozgen, and others also participated in this first altercation.²⁵ (Ex. 6, at File No. SC01 at 0:30-1:02.) Kurd smashed Canadian citizen Alpkenan Dereci in the head with a bullhorn, severely injuring him.²⁶ (*Id.* at 0:53-57; *see also id.* at File No. SC02 at 0:04-28.) Mr. Dereci was later hospitalized and required sixteen stitches to repair his split scalp and bruised skull. (*See id.* at File No. SC02 at 2:00-2:08.) Kheirabadi is seen kicking and fighting with Turkish security officers, and Kurd used his bullhorn as a weapon a second time, hurling it towards an MPD officer and Turkish security officers. (*Id.* at 0:29-51.) Approximately

²⁵ Exhibit 10 (filed under seal) is a set of screen shots taken from the end of File No. SC02 identifying the various persons from the still segments of that video, which identifies a number of the *Kurd* Plaintiffs involved in the first altercation.

²⁶ *See also id.* at File No. SC02 at 12:48 “Subject AK: Mollaouglu, Kasim a.k.a Kurd, Kasim” (showing Kurd about to throw his bullhorn at Alpkenan Dereci).

25-30 seconds into the altercation, Kheirabadi still had not retreated, but continued to advance toward Turkish security officers, and confronted an MPD officer. (*Id.* at 0:29-58.) It took two uniformed MPD officers to escort Kheirabadi back to Sheridan Circle. (*Id.* at File No. SC01 at 1:18-28.)

Someone in the Anti-Turkey Group hurled what appears to be a full or frozen bottle at the Pro-Turkey Group, which hit U.S. citizen Sinan Narin in the face, injuring him and drawing blood. (*Id.* at File No. SC02 at 0:57-1:04, 2:08-2:14 (showing blood above Narin’s lip).)

At this point most of the Pro-Turkey Group voluntarily withdrew to the sidewalk adjoining the Residence. But, the Anti-Turkey Group continued to hurl objects and shout provocations. *Kurd* Plaintiff Ceren Borazan, while accusing the Turkey supporters of being terrorists, sprayed the contents of another plastic bottle in the direction of the police and Pro-Turkey Group, while standing in the middle of the traffic lanes on Massachusetts Avenue. (*Id.* at File No. SC02 at 1:04-1:30.) Head of state security officers are typically “trained to treat the dispersal of any liquid as a potential biochemical hazard.” (*See* Ex. 2, ¶ 46.)

U.S. law enforcement at this point managed to separate the rival groups to the sidewalks on opposite sides of the street and re-open traffic flow on Massachusetts Avenue. (Ex. 6, at File No. SC01 at 1:15-3:55; *see also id.* at File No. SC02 at 1:29-2:31.) But, a physical barrier remained lacking, MPD offered no medical assistance to either Alpkenan Dereci or Sinan Narin, and MPD did not arrest Kheirabadi, *Kurd*, or anyone else in the Anti-Turkey Group whom they had just witnessed committing assaults on the Pro-Turkey Group, as well as one of their own officers. (*Id.*; *see also* Ex. 2, ¶¶ 35, 47-50, 54.)

9. After The First Altercation, Turkish Security Officers And The Turkish Ambassador Implored U.S. Security Officers To Move The Anti-Turkey Group Back.

Having heard or witnessed the altercation on Massachusetts Avenue, Turkish security officers and others awaiting the Turkish President's arrival exited the Residence to assess the situation. Between 4:05 p.m. and 4:13 p.m., numerous individuals pleaded with U.S. law enforcement officers to move the Anti-Turkey Group, who had already proven their capacity for violence, a reasonable distance away. (Ex. 6, at File No. SC03 ("they don't have a permit," and "why are you not taking them back"); *see also id.* at File Nos. SC04, SC05, SC06.) Members of the security detail of President Erdogan also spoke with U.S. law enforcement emphasizing the need to move the protesters farther away to ensure that President Erdogan would be able to enter the Residence safely. (*Id.*) It is consistent with standard operating procedure for presidential protective detail to seek the assistance of local law enforcement to protect the secure zone. (Ex. 2, ¶ 47.) Even Turkey's Ambassador was forced to leave the safety of the Residence to plead for this common sense security tactic, without success. (Ex. 6, at File No. SC07; *see also id.* at File No. SC08 at 0:01-25.) One of the Turkish security officers at least twice told local law enforcement: "Do you understand my president is coming? If you don't take, I will take." (*Id.* at File No. SC09 at 0:45-57, 4:35-53.) The MPD officer did not respond at all. A U.S. Secret Service agent responded: "Yes, sir." (*Id.* at 4:35-4:53.) These responses suggested local law enforcement was unwilling or unable to secure the perimeter or Turkish security officers had tacit approval to take action necessary to protect their head of state. (*See* Ex. 2, ¶ 48.) U.S. law enforcement took no action to move the Anti-Turkey Group farther away from the Residence where President Erdogan and senior Turkish ministers were about to arrive, (Ex. 6, at File No.

SC07; *see also id.* at File No. SC08 at 0:01-25), even though it was their function to neutralize threats outside the secure zone. (Ex. 2, ¶¶ 25, 48.)

10. President Erdogan Arrived And Was Held In His Vehicle By U.S. Secret Service And Turkish Security Pending The Restoration Of Order.

At approximately 4:12 p.m., President Erdogan's motorcade arrived at the Residence. (Ex. 6, at File No. SC05 at 1:01-2:28.) President Erdogan's vehicle was held in the Residence driveway and he remained in this vulnerable position where he could see and hear the PKK supporters in Sheridan Circle in close proximity. He and his security detail no doubt were aware of the violence that had just occurred minutes prior. (*Id.*; *see also id.* at File No. SC02 at 5:10-5:25; Ex. 2, ¶¶ 51-57.)

11. Turkish Security Officers, Perceiving A Threat To Their Protectees, Took Action To Push Back The Anti-Turkey Group.

At approximately 4:13 p.m., Turkish security officers, facing a compromised security environment and perceiving a risk to their protectees, exercised their discretion and moved to reduce the risk to the Turkish President and the ministers, advisors, and diplomats accompanying him. (Ex. 6, at File No. SC02 at 2:35-3:50; Ex. 2, ¶¶ 25, 51-57.) In so doing, they physically confronted the protesters, sparking an altercation, in which U.S. security officers and civilians took part. It lasted approximately one minute. (Ex. 6, at File No. SC02 at 2:35-3:50.) The altercation resulted in the Anti-Turkey Group being dispersed and pushed back from the edge of Sheridan Circle. When that occurred, the Turkish President entered the Residence. (*See generally id.* at File No. SC10 (showing President Erdogan in his vehicle during the second altercation, and emerging among U.S. Secret Service and Turkish security protection after Kheirabadi and others were removed from close proximity); *see also id.* at File No. SC02 at

5:10-7:04 (same); Ex. 2, ¶ 57.) The Turkish security officers, though armed, did not draw their weapons. (*See generally* Ex. 6, at File No. SC02 at 2:35-3:50.)

12. The Aftermath.

Following the events, arrest warrants were issued against four civilians from the Pro-Turkey Group and 15 Turkish security officers. Two of the civilians, Eyup Yildirim and Sinan Narin, have pleaded guilty to one count of assault each while two others have not yet been arrested or arraigned. Charges against all but four of the Turkish security officers have been dropped. Kurd, who grievously injured Alpkenan Dereci with a bullhorn and hurled the full or frozen water bottle that injured Sinan Narin, was neither arrested nor charged. (*See id.* at File No. SC11 (showing Eyup Yildirim pleading with MPD to arrest the assailant that assaulted Alpkenan Dereci with the bullhorn). Kheirabadi was charged with assaulting a police officer, but, inexplicably, the District of Columbia soon abandoned those charges. In arresting Turkish American Necmi Ayten, who was eventually cleared because he arrived at Sheridan Circle after the brawl had ended, an MPD officer offered a sworn statement labeling the Pro-Turkey Group as “radicalized,” (Ex. 9), while casting the Anti-Turkey Group as “peaceful.” (*Id.*; *see also* Ex. 11, Ayten Police Aff.) The videos showing Kheirabadi’s assault on a police officer and Kurd’s hurling his bullhorn at the opposing group and law enforcement, belie this characterization. The officer further described those presumed to be Turkish security officers as “Middle Eastern men,” a meaningless, if not biased characterization. (Ex. 9; *see also* Ex. 11.) Turkish Americans consider this narrative and failure of the U.S. to criminally prosecute any of the Anti-Turkey Group the result of bias.

In subsequent anti-Turkey protests outside the Residence, MPD has consistently deployed bike rack barricades and kept anti-Turkey protesters generally to the north side of the equestrian

statue in Sheridan Circle, approximately 150 feet from the Residence. There have been no repeat occurrences of events of the type that occurred on May 16, 2017. (*See* Ex. 12, Photos of anti-Turkey protest on Sheridan Circle, Apr. 24, 2018.)

13. Expert Analysis Of Former U.S. Secret Service Special Agent In Charge of Presidential Protective Division, Michael White, Shows That There Was A Security Void At Sheridan Circle That Presidential Protective Services Are Trained To Address, And Here, Secured Using Common Security Tactics.

Michael White is a twenty-six year veteran of the U.S. Secret Service and former Special Agent in Charge of its elite Presidential Protection Detail. He is one of the world's most experienced experts in protective services, including the training and protocols used by professional head of state security details throughout the developed world. (*See* Ex. 2, ¶¶ 2, 7-25.)

Mr. White has analyzed the video footage of the Incident at Sheridan Circle. (*Id.* ¶¶ 1, 3-5.) Mr. White concluded that the security conditions at Sheridan Circle, the violent behaviors of members of the Anti-Turkey Group, and their display of affiliations with a known terrorist organization violently hostile to the Turkish government, posed a significant, immediate threat to President Erdogan's personal safety that local law enforcement was unwilling or unable to control. (*Id.* ¶¶ 31, 34, 49-50.) Mr. White observed that when President Erdogan arrived at the Residence, the Turkish security officers took action to neutralize the threat of one or more members of the Anti-Turkey Group breaching the secure perimeter expected for head of state security, but that local law enforcement failed to create or safeguard, despite being asked repeatedly to do so. (*Id.* ¶¶ 47-48, 54.) Mr. White also concluded that the Turkish security officers' actions were consistent with standard operating protocols that call for discretionary use of whatever force is necessary to carry out the primary mission of protecting a head of state from

a legitimately perceived, imminent harm when defensive techniques to stop the advance fail. (*Id.* ¶¶ 24-25, 58-62.) Mr. White expects the Turkish security officers assigned to presidential protection would have been trained to assume the potential for an assassination attempt given the circumstances. (*Id.* ¶¶ 26-28, 55.)

Mr. White found significant that when President Erdogan arrived, the Turkish security officers had already witnessed the Anti-Turkey Group engage in numerous “pre-attack” behaviors that would have put them on high alert of the potential for a violent, possibly deadly, confrontation in the presence of their protectee. (*Id.* ¶¶ 36-46, 53.) In Mr. White’s training and experience, the Anti-Turkey Group repeatedly ignoring police commands to remain on Sheridan Circle could be indicators of attempts to either surveil the arrival point for weaknesses or breach the secure perimeter outside the Residence, or plans to initiate another violent altercation, like the first altercation which injured two Pro-Turkey Group civilians in the head and face. (*Id.* ¶¶ 37, 40, 45, 52-55.) Mr. White also found the failure of local law enforcement to move the Anti-Turkey Group a safe distance away from the head of state’s arrival point, failure to detain or arrest the Anti-Turkey Group members who were hurling projectiles (*i.e.*, full or frozen plastic bottles), spraying unknown substances in the direction of police (a potential biochemical hazard), and committing assaults, failure to confiscate the weapon (*i.e.*, bullhorn) used in the prior assaults, and failure to search and confiscate the backpack that Kheirabadi carried, to be matters of great security concern. (*Id.* ¶¶ 43-46.) The latter was a serious security failure by local law enforcement because of the well-known risk that backpacks can be used to carry or conceal IEDs, that if detonated so close to the arrival point, could have been lethal to the protectee, the Ambassador, the senior ministers in the delegation, and countless civilians. (*Id.* ¶ 41.) Another serious concern was the fact that local law enforcement positioned the Anti-Turkey Group

approximately fifty feet away from the Residence, with a direct line of sight to the arrival point, without any screening or other visual barriers, placing President Erdogan within “handgun distance.” (*Id.* ¶ 35.)

Based on Mr. White’s experience and training, it is his conclusion that President Erdogan was in an extremely vulnerable safety position when he arrived and was forced to temporarily remain in his vehicle. (*Id.* ¶¶ 51-52.) Mr. White opines that President Erdogan’s security detail made a reasonable decision, given the circumstances, the available intelligence, and lack of assistance from local law enforcement, not to permit him to exit the vehicle until the Anti-Turkey Group was under control and the threat neutralized. (*Id.* ¶¶ 56-57.)

14. The Lacy MacAuley Incident.

Later in the day on May 16, 2017, at approximately 6:17 p.m., Plaintiff Lacy MacAuley (“MacAuley”), who heard about the Incident and was apparently inspired by it, appeared outside the Turkish Embassy yelling anti-Turkey rhetoric, surrounded by a police barricade line and MPD who stated that if she crossed the line she would be locked up. (Ex. 6, at File No. SC02 at 7:10-8:26.) The incident she describes in the Complaint, where she contends a Turkish officer placed her hand over MacAuley’s mouth, lasted approximately two seconds as the video shows, and did not cause her any physical injuries. (*Id.* at 7:50-8:25.)

III. LEGAL STANDARD FOR RULE 12(b)(1) MOTION TO DISMISS.

Under Rule 12(b)(1), when a defending sovereign disputes the factual basis of the court’s subject matter jurisdiction the “plaintiff bears the initial burden” to overcome the presumption of sovereign immunity “by producing evidence that an [FSIA] exception applies.” *Azima v. RAK Investment Authority*, 305 F. Supp. 3d 149, 159 (D.D.C. 2018) (quoting *Helicopter Textron, Inc. v. Islamic Republic of Iran*, 734 F.3d 1175, 1183 (D.C. Cir. 2013)). Upon the plaintiff’s

production of evidence, the defending sovereign then bears the “burden of persuasion” to show the alleged exception does not apply. *Id.* (quoting *Helicopter Textron*, 734 F.3d at 1183). When resolving a fact-based challenge to subject matter jurisdiction, “the court may not deny the motion to dismiss merely by assuming the truth of the facts alleged by the plaintiff and disputed by the defendant. Instead, the court must go beyond the pleadings and resolve any disputed issues of fact” *Feldman v. Fed. Deposit Ins. Corp.*, 879 F.3d 347, 351 (D.C. Cir. 2018) (citation omitted) (quoting *Phoenix Consulting*, 216 F.3d at 40).

IV. ARGUMENT.

A. U.S. LAW MANDATES THE PROTECTION OF FOREIGN DIGNITARIES INVITED TO THE U.S.

1. By Treaty, The U.S. Is Required To Criminalize Threats Of Attacks On, And Prevent Attacks On, Internationally Protected Persons (“IPPs”).

The United States and Turkey are parties to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (the “IPP Convention”), a multi-national treaty borne out of the member states’ recognition that, “crimes against diplomatic agents and other internationally protected persons create a serious threat to the maintenance of normal international relations” Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, Feb. 20, 1977, 28 U.S.T. 1975. Article 2 of the IPP Convention requires states to make it a crime for persons to intentionally attack an IPP, their official premises, accommodation, or means of transport, or to make a “threat to commit any such attack,” or attempt to commit any such attack.” *Id.* at art. 2. Article 4 of the IPP Convention requires a receiving state to cooperate in the prevention of such crimes and take measures to ensure that the Article 2 crimes do not occur in the receiving state:

States Parties shall cooperate in the **prevention** of the crimes set forth in article 2, particularly by:

(a) taking all practicable measures to **prevent preparations** in their respective territories for the commission of those crimes within or outside their territories;

Id. at art. 4 (emphasis added). In sum, Articles 2 and 4 of the IPP Convention establish a plain and unequivocal obligation for the U.S. to protect foreign dignitaries visiting the U.S.²⁷

2. 18 U.S.C. §§ 112 And 878 Guide Law Enforcement Officers To Provide Foreign Officials, Official Guests, And IPPs With A 100-Foot Zone Of Protection From Threats Or Harassment, Which Was Eminently Achievable At Sheridan Circle.

Congress enacted 18 U.S.C. §§ 112 and 878 to implement the U.S.’ international obligation to protect foreign dignitaries visiting the U.S. from acts that threaten the maintenance of normal international relations.

Section 112(a) broadly prohibits assaults against foreign officials, official guests, and IPPs, and attacks upon the official premises, private accommodations, and means of transport of such persons. 18 U.S.C. § 112(a). The provision also criminalizes attempts to commit such offenses. *Id.* Notably, neither intent to injure an IPP nor proof of injury is required to be found guilty of a crime under Section 112(a). *See United States v. Gan*, 636 F.2d 28, 29-30 (2d Cir. 1980), *cert. denied*, 451 U.S. 1020 (1981).

Section 112(b) prohibits, among other things, (1) harassment or (2) attempts to harass a foreign official and (3) the congregation of two or more persons within 100 feet of a foreign official with the intent to harass. 18 U.S.C. § 112(b).²⁸ The term “harass” has been interpreted to apply to “such activities as may seriously alarm or persecute foreign officials.” *CISPES (Comm. in Solidarity with People of El Salvador) v. F.B.I.*, 770 F.2d 468, 476 (5th Cir. 1985).

²⁷ The IPP Convention also applies to diplomats.

²⁸ This section also prohibits coercion and intimidation of a foreign official and attempts to do the same. The behavior of the Anti-Turkey Group at Sheridan Circle could as easily fit the definitions of coercion and intimidation as it does harassment.

The legislative history of the statute (in its pre-amended form) includes the following example of individual misconduct criminalized by Section 112(b)(1) and (2):

Engaging in a course of conduct, including the use of abusive language, or repeatedly committing acts which alarm, intimidate or persecute him which serve no legitimate purpose;

Senate Report No. 1105, 92d Cong., 2d Sess. 18 (1972), *reprinted at* 1972 U.S. Code. Cong. and Adm. News 4316, 4327.²⁹ *See also* 18 U.S.C. § 878 (making it a crime to knowingly and willingly threaten to violate Section 112).

Of paramount relevance to the Sheridan Circle Incident is Section 112(b)(3)'s prohibition on the gathering of more than two people within 100 feet of a foreign official with the intent to intimidate or harass that official, which unequivocally occurred in Sheridan Circle and on Massachusetts Avenue on May 16, 2017. *See* 18 U.S.C. § 112(b)(3). This provision prohibits persons from gathering, even in the name of "protesting," within a 100-foot zone of an IPP with the intent to harass. *Id.* at § 112(b)(3). These protections are so important to the smooth functioning of international relations that the IPP Convention imposes a mandatory obligation on a "State Party in whose territory the alleged offender is present" to either extradite the offender or prosecute him. *See* IPP Convention, at art. 7.

Thus, demonstrations encroaching within 100 feet of an IPP, his or her official premises, or means of transport must remain peaceful. When demonstrations turn harassing, violent, or

²⁹ In contrast, 18 U.S.C. § 111, which prohibits assaults upon **U.S. government** employees, requires that the interference with the official be "forcibl[e]." (Emphasis added.) 18 U.S.C. § 112 lacks a "forcible" requirement and, thus, establishes a lower threshold for violation. In this respect, then, visiting foreign dignitaries are accorded a higher level of protection. Consequently, one can be guilty of violating Section 112 merely by harassing or interfering with the performance of a foreign official's duties, even without resorting to force. *Cf. Long v. United States*, 119 F.2d 717, 719 (4th Cir. 1952).

threaten violence in such close proximity to a foreign dignitary, official premises, or means of transport, “they lose their protected quality as expressions under the First Amendment” and become criminal acts. *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972). In responding to a constitutional challenge to a similar but more restrictive provision of the D.C. Code prohibiting the display of banners and placards near foreign embassies, the Supreme Court spoke approvingly of Section 112 and cited it as an example of careful legislative draftsmanship designed to withstand First Amendment scrutiny. *See Boos v. Barry*, 485 U.S. 312, 326 (1988). *See also CISPES*, 770 F.2d at 477 (affirming denial of protesters’ motion for TRO seeking prohibition on enforcement of Section 112 based on First Amendment challenge).³⁰

3. U.S. Law Enforcement At Sheridan Circle Ignored The Law Applicable To Dignitaries.

Based on the events that transpired at Sheridan Circle, it appears MPD was either not aware of, or not trained to give effect to, or ignored these U.S. international obligations. MPD took no action to enforce the U.S.’ obligations to afford President Erdogan and his delegation a 100-foot zone free from harassment or attempts to harass. To the contrary, police records show MPD “escorted” the Anti-Turkey Group to a position well within the 100-foot zone that the U.S. has committed to secure for IPPs. Moreover, despite witnessing Kheirabadi, Kurd, and other Anti-Turkey Group members engage in many direct violations of Sections 112 and 878 in the presence of IPPs that were inside or had emerged from the Residence, no one in the Anti-Turkey Group was arrested or removed from the 100-foot zone after the first altercation.³¹ Even after the

³⁰ U.S. Dep’t of Justice, *Justice Manual*, Criminal Resource Manual at 1625 (2018), <https://www.justice.gov/jm/criminal-resource-manual-1625-first-amendment-18-usc-112> (last visited June 3, 2019), (citing *CISPES*, 770 F.2d at 477).

³¹ Compare with *CISPES*, 770 F.2d at 470-71, where FBI agents who received tip that protesters might try to seize the Honduran Consulate told protesters picketing outside that they were

Incident, the United States Attorney’s Office failed to prosecute any of the numerous persons associated with the Anti-Turkey Group who the videos show openly violating Sections 112 and 878 for prolonged periods of time. The Turkish head of state, his senior ministers, and his diplomatic agents, as beneficiaries of and protectees under the IPP Convention, had every reason to expect U.S. law enforcement would uphold the U.S.’ promise to “prevent preparations” of the types of acts criminalized by Sections 112 and 878. Their failure to do so left an incurable security void in contravention of a decades long international commitment the U.S. had made to afford visiting IPPs, and in particular, heads of state, protection from harassment and threats in close proximity during official visits. Likely, the Incident at Sheridan Circle would have unfolded differently if the Anti-Turkey Group had been kept at a distance greater than 100 feet. Indeed, at subsequent anti-Turkey protests at Sheridan Circle, the United States has kept protesters at a distance greater than 100 feet from the Residence and there have been zero confrontations.³²

B. THE FOREIGN SOVEREIGN IMMUNITIES ACT DEPRIVES THIS COURT OF JURISDICTION OVER PLAINTIFFS’ CLAIMS.

1. Overview Of The FSIA And The Exceptions Claimed By Plaintiffs.

The Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. §§ 1330 & 1602, *et. seq.*, provides “the ‘sole basis’ for obtaining jurisdiction over a foreign sovereign.” *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 611 (1992); *Peterson v. Royal Kingdom of Saudi Arabia*, 416 F.3d 83, 86 (D.C. Cir. 2005) (“[T]here is only one way for a court to obtain jurisdiction over a foreign state and it is not a particularly generous one—the FSIA.”). It creates

violating Section 112 by their prior conduct of entering the Consul, asking questions challenging governmental policies, and taking pictures as if to surveil the premises, causing the protesters to disperse.

³² See *supra* Ex. 12, Photos of Anti-Turkey Protest on Sheridan Circle, April 24, 2018.

a blanket presumption of immunity, mandating that a “foreign state shall be immune from the jurisdiction of the courts of the United States.” 28 U.S.C. § 1604. Thus, unless a specific exception listed in Sections 1605 to 1607 applies, “a federal court lacks subject-matter jurisdiction over a claim against a foreign state.” *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993). “[I]mmunity remains the rule rather than the exception.” *MacArthur Area Citizens Ass’n v. Republic of Peru*, 809 F.2d 918, 919 (1987) (citation omitted); compare *id.* with *McMahon v. United States*, 342 U.S. 25, 27 (1951) (stating statutes waiving immunity of the United States “are to be construed strictly in favor of the sovereign”).

The policy underlying foreign sovereign immunity is two-fold. On the one hand, it recognizes that “[e]very sovereign state is bound to respect the independence of every other sovereign state.” *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897); see also *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 703-04 (1976) (noting the “risk of affronting” sovereignty of a foreign state by “attempt[ing] to pass on the legality of their governmental acts”). On the other hand, it recognizes that U.S. interests “will be better served in such cases if the wrongs to suitors, involving our relations with a friendly foreign power, are righted through diplomatic negotiations rather than by the compulsions of judicial proceedings.” *Ex parte Republic of Peru*, 318 U.S. 578, 589 (1943).

Plaintiffs allege that three of the FSIA’s enumerated exceptions to immunity apply: the waiver exception, 28 U.S.C. § 1605(a)(1); the tortious acts exception, 28 U.S.C. § 1605(a)(5); and the terrorism exception, 28 U.S.C. § 1605B. The following Sections IV.B.2 to 4 demonstrate that none of these exceptions is applicable.

2. The FSIA Waiver Exception, 28 U.S.C. § 1605(a)(1), Does Not Apply Because Turkey Neither Explicitly Nor Implicitly Waived Its Sovereign Immunity.

The FSIA permits jurisdiction over cases “in which the foreign state has waived its immunity either explicitly or by implication.” 28 U.S.C. § 1605(a)(1). Since Turkey has not expressly waived its immunity, the only issue for the Court to consider is whether Turkey has implicitly waived its sovereign immunity. As explained below, it has not.

The legislative history of FSIA gives three examples of circumstances in which courts have found implied waivers: (1) a foreign state has agreed to arbitration in another country; (2) a foreign state has agreed that the law of a particular country governs a contract; or (3) a foreign state has filed a responsive pleading in an action without raising the defense of immunity.

Odhiambo v. Republic of Kenya, 930 F. Supp. 2d 17, 24 (D.D.C. 2013) (quoting *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, 905 F.2d 438, 444 (D.C. Cir. 1990)). The D.C. Circuit has found that these three examples “demonstrate that the theory of implied waiver contains an intentionality requirement, and that a finding of ‘an implied waiver depends upon the foreign government’s having at some point indicated its amenability to suit.’” *Id.* (quoting *Princz v. Fed. Republic of Germany*, 26 F.3d 1166, 1174 (D.C. Cir. 1994)). “[S]ince the FSIA became law, courts have been reluctant to stray beyond these examples when considering claims that a nation has implicitly waived its defense of sovereign immunity.” *Princz*, 26 F.3d at 1174 (quoting *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370, 377 (7th Cir. 1985)); see also *Odhiambo*, 930 F. Supp. 2d at 24 (finding Kenya National Commission on Human Rights’ contacts with the U.S. Embassy seeking assistance to facilitate plaintiff’s U.S. asylum application was not an implied waiver of sovereign immunity because Kenya did not engage in any adjudicatory process under U.S. law). For example, in *Princz*, where the plaintiff Holocaust survivor attempted to sue Germany to recover damages for injuries he sustained while a prisoner

in Nazi concentration camps, the D.C. Circuit reversed the district court's denial of Germany's motion to dismiss under the FSIA. *See Prinz*, 26 F.3d at 1168. In doing so, the D.C. Circuit considered and rejected *amici* argument that the "Third Reich impliedly waived Germany's sovereign immunity under the FSIA by violating *jus cogens* norms of the law of nations." *Id.* at 1173. The D.C. Circuit held this theory, based on the repugnance of the sovereign's behavior, "incompatible with the intentionality requirement implicit in § 1605(a)(1)." *Id.* at 1174. In reversing the district court's decision, the D.C. Circuit noted that the plaintiff did not contend that either the present or predecessor government of Germany indicated a willingness to waive immunity for actions arising out of Nazi atrocities. *Id.*; *see also Foremost-McKesson*, 905 F.2d at 444 (quoting *Frolova*, 761 F.2d at 378) (finding that Congress anticipated "waiver would not be found absent a conscious decision to take part in the litigation and a failure to raise sovereign immunity despite the opportunity to do so"). These cases are fully consistent with the 2012 decision of the International Court of Justice in *Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)*, Judgment, 2012 I.C.J. 99 (Feb. 3, 2012) ("Jurisdictional Immunities"), a case concluding that "under customary international law as it presently stands, a State is not deprived of immunity by reason of the fact that it is accused of serious violations of international human rights law . . . ," *id.* at 44, and that a determination of immunity is not affected by whether a violation of *jus cogens* norms is alleged, *id.* at 47.

The waiver exception is not applicable here for the same reasons espoused by the foregoing cases. None of the three recognized grounds for implied waiver exists: this case does not involve U.S. arbitration; no contractual choice of law provision is at issue; and Turkey has not failed to assert the defense of sovereign immunity in a responsive pleading. Plaintiffs allege no conduct reflecting a conscious decision by Turkey to take part in the litigation, and *Prinz*

illustrates that even the most repugnant alleged conduct by a government cannot be construed as an implied waiver of its sovereign immunity. Therefore, the waiver exception to foreign sovereign immunity is not applicable.

3. The Tortious Acts Exception To Sovereign Immunity, 28 U.S.C. § 1605(a)(5), Does Not Apply Because Turkey And Its Agents Were Performing A Discretionary Function.

a. The Discretionary Function Rule, 28 U.S.C. § 1605(a)(5)(A), Is An Exception To The Tortious Acts Exception That Protects Governments From Suits Arising Out Actions Based On Considerations Of Public Policy.

The tortious acts exception to the FSIA provides a potential path for U.S. courts to exercise jurisdiction over a sovereign’s alleged torts occurring in the United States. *See* 28 U.S.C. § 1605(a)(5) (hereinafter “Tortious Acts Exception”). Congress, however, explicitly carved out an exception for claims based on the foreign sovereign’s exercise of a discretionary function. *See* 28 U.S.C. § 1605(a)(5)(A) (hereinafter the “Discretionary Function Rule”). The Tortious Acts Exception and Discretionary Function Rule, read together, state in pertinent part, that jurisdiction lies in any case:

in which money damages are sought . . . for personal injury . . . occurring in the United States and caused by the tortious act . . . of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment . . . **except this paragraph shall not apply to—(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused.**

28 U.S.C. § 1605(a)(5) (emphasis added).

The Discretionary Function Rule protects “the discretion of the executive or the administrator to act according to one’s judgment of the best course.” *Dalehite v. United States*, 346 U.S. 15, 34 (1953) (affirming lower court’s dismissal of damages claims against the United States arising out of an explosion of fertilizer that had been produced and distributed under the

direction of the U.S. Coast Guard).³³ It is a “**highly important exception, intended to preclude any possibility that [the FSIA] might be construed to authorize suit for damages against the Government growing out of an authorized activity.**” *Id.* at 30 (emphasis added) (citing legislative history of FTCA, H.R. Rep. No. 79-1287, at 5-6 (1945)). Congress thus “exercised care to protect the Government from claims, however negligently caused, that affected the governmental functions.” *Id.* at 32.

Congress expressed its intent for the FSIA to afford foreign sovereigns the same Discretionary Function Rule protections as the U.S. The FSIA’s “legislative history counsels that the [Tortious Acts Exception] should be narrowly construed Accordingly, ‘acts or omissions of a fundamentally governmental nature’ are discretionary functions for purposes of [section 1605(a)(5)(A)].” *MacArthur*, 809 F.2d at 921 (citations omitted) (quoting *Olsen by Sheldon v. Gov’t of Mexico*, 729 F.2d 641, 645 (9th Cir. 1984), *cert. denied*, 469 U.S. 917 (1984)).³⁴ Thus, the protective shield of sovereign immunity is, by its terms, far-reaching and unassailable for any claim in tort involving a discretionary function.

³³ “[G]uidance on what acts should be deemed discretionary for FSIA purposes can be drawn from decisions construing the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2680 (1982) a statute with analogous language. *MacArthur*, 809 F.2d at 921-22 (comparing 28 U.S.C. § 2680(a) with § 1605(a)(5)(A)).

³⁴ The House Judiciary Committee explained that “[t]he purpose of section 1605(a)(5) is to permit the victim of a traffic accident or other noncommercial tort to maintain an action against the foreign state to the extent otherwise provided by law.” H.R. Rep. 94-1487, at 21 (1976). “Section 1605(a)(5) is directed primarily at the problem of traffic accidents but is cast in general terms as applying to all tort actions for money damages.” *Id.* at 20-21. The Committee hoped to give “American citizens[, who] are increasingly coming into contact with foreign states,” a means of recovery for nondiscretionary torts like “when a citizen crossing the street may be struck by an automobile owned by a foreign embassy.” *Id.* at 6-7.

b. Turkey's Conduct During The Sheridan Circle Incident Satisfies The D.C. Circuit's Two Prong Test For The Discretionary Function Rule.

The D.C. Circuit follows a two-part test for determining whether the Discretionary Function Rule applies. *Macharia v. United States*, 334 F.3d 61, 65 (D.C. Cir. 2003) (citing *United States v. Gaubert*, 499 U.S. 315, 323 (1991) and *Berkovitz v. United States*, 486 U.S. 531, 536 (1988)). Under this test, immunity is preserved over any claim where (1) a government employee or agent had discretion to act, rather than there being a statute, regulation or policy specifically proscribing a course of conduct, and (2) the exercise of that discretion was grounded in considerations of public policy. *Macharia*, 334 F.3d at 65.

i. Turkey Satisfies The First Prong Because Its Employees Had Discretion To Act.

Under the first prong of the discretionary acts test, courts must look to whether the government employee's acts were discretionary in nature and involved an element of judgment or choice. *Macharia*, 334 F.3d at 65 (quoting *Gaubert*, 499 U.S. at 322); *see also Berkovitz*, 486 U.S. at 538 (advising to look at whether the act was within a "permissible range of choices" accorded to that employee). For example, "[l]aw enforcement decisions of the kind involved in making or terminating an arrest must be within the discretion and judgment of enforcing officers." *Olaniyi v. District of Columbia*, 763 F. Supp. 2d 70, 89 (D.D.C. 2011) (quoting *Deuser v. Vecera*, 139 F.3d 1190, 1195 (8th Cir. 1998)) (finding Capitol Police's arrest and detention of plaintiff, who appeared as a threat based on a costume he was wearing, as well as police acts of physically cutting the costume from his body, were discretionary). However, if a government policy or statute leaves "no room for an official to exercise policy judgment in performing a given act, or if the act simply does not involve the exercise of such judgment, the

[Discretionary Function Rule] does not bar a claim that the act was negligent or wrongful.” *Berkovitz*, 486 U.S. at 546-47.

In *Macharia v. United States*, this Court found “determinations about what security precautions to adopt at American embassies” involved elements of choice and judgment and were therefore discretionary. 238 F. Supp. 2d 13, 23 (D.D.C. 2002); *aff’d Macharia*, 334 F.3d at 69. This Court granted a Rule 12(b)(1) motion by the United States invoking sovereign immunity in response to negligent security and failure to warn claims filed against it by survivors of the 1998 Al-Qaeda terrorist bombing of the U.S. Embassy in Nairobi. 238 F. Supp. 2d at 18. This Court held that “determinations about what security precautions to adopt at American embassies . . . do not involve the mechanical application of set rules, but rather the **constant exercise of judgment and discretion.**” *Id.* at 23 (emphasis added). In support of this finding, this Court reasoned that the U.S. Department of State Foreign Affairs Manual, Diplomatic Security (“FAM”) specifically instructs that “when full implementation of outlined standards is ‘impossible or inappropriate,’ foreign service officers should engage in a process of ‘risk management.’” *Id.* (citing 12 FAM 6 H 511.4) (brackets omitted). The Court further explained:

This **risk management** ‘process begins with an assessment of the value of the assets, the degree of a specific type of threat, and the extent of the vulnerabilities **A decision is then made as to what level of risk can be accepted and which countermeasures should be applied.** Such a decision involves a cost-benefit analysis, giving decision makers the ability to weigh varying security risk levels against the cost of specific countermeasures.’

Id. at 23-24 (citing 12 FAM 6 H 511.4) (emphasis added). The D.C. Circuit agreed, finding embassy security is vested in the discretion of the State Department and affirming dismissal of the claims. *Macharia*, 334 F.3d at 66.

As in *Macharia*, this Court, in cases brought under the Federal Tort Claims Act (“FTCA”), has repeatedly found governmental decisions concerning the level of security needed to protect certain persons or facilities are discretionary. *See also, e.g., Sledge v. United States*, 883 F. Supp. 2d 71, 87 (D.D.C. 2012) (finding the manner in which federal Bureau of Prisons security officer handled a transfer of an inmate that resulted in a deadly attack on the inmate was “the type of decision fraught with policy considerations,” and therefore discretionary); *see Singh v. South Asian Society of the George Washington University*, 572 F. Supp. 2d 11, 13-14 (D.D.C. 2008) (finding decisions concerning the posting of security guards at the Old Post Office Pavilion was a discretionary function); *Haygan v. United States*, 627 F. Supp. 749, 751 (D.D.C. 1986) (finding decision as to the number of security officers to patrol a government parking lot was discretionary).

Since the Turkish security officers’ acts involved elements of choice and judgment, they satisfy the first prong. As illuminated by the expert observations of Michael White, the Turkish security officers were thrust into a position where they had to make decisions based on risk-management that fell squarely within their professional training and discretion. Carrying out the primary mission of protecting a head of state requires constant monitoring and evaluation of potential and evolving threats to the head of state’s physical safety, how imminent and credible identified or perceived threats might be, and the tactics deemed necessary to neutralize those threats, given the circumstances and the available intelligence. (*See generally* Ex. 2, ¶¶ 25-28, 33, 37, 51-57.)

Following the first altercation, the Turkish security officers were keenly aware of the potential for another violent confrontation by the Anti-Turkey Group, who repeatedly defied commands by local enforcement not to approach the secure zone outside the Residence. (*See*

supra §§ II.B.7, 9.) Kheirabadi and Kurd, along with others in the Anti-Turkey Group, had already assaulted, or threatened to assault, the Pro-Turkey Group, as well as local law enforcement, without MPD making any arrests or taking any measures to push back the Anti-Turkey Group to a safer distance and physically separate them, as had been done in Lafayette Park. (*See supra* §§ II.B.5.c, 8.) Nothing had been done to search the Anti-Turkey Group, including Kheirabadi's backpack, or to confiscate Kurd's bullhorn that he used to severely injure a civilian in the Pro-Turkey Group. (*See Ex. 2, ¶ 55.*) Local law enforcement ignored multiple requests by Turkish security officers, and even the Turkish Ambassador himself, to move the Anti-Turkey Group farther away from President Erdogan's arrival point. (*See id. ¶ 48.*) At the time of President Erdogan's arrival, the Anti-Turkey Group was approximately fifty feet away, which is well-within the range of hand guns and explosive devices. (*See id. ¶ 35.*)

Under these circumstances, and with no assistance from local law enforcement, the Turkish security officers had to undertake the necessary risk assessment calculations to carry out their mission to protect their head of state. (*See id. ¶ 50.*) They were left to weigh the security risks posed to the President, his senior ministers traveling with him, and his diplomats by aggressive individuals in close range who had already demonstrated a capacity for violence, and who had already thrown projectiles and sprayed unknown liquids, and one of whom – Kheirabadi – carried a backpack that head of state security detail may perceive as a threat of containing explosives. (*See id. ¶¶ 41, 44, 45, 55.*)

The security concerns present at Sheridan Circle were not merely hypothetical given the hundreds of assassination attempts on President Erdogan's life, the Anti-Turkey Group's touting of flags bearing the image of the PKK's leader, and the PKK's terroristic slaughter of tens of thousands of people. (*Ex. 1, ¶¶ 21-31.*) In *Macharia*, victims of an embassy bombing attempted

to sue the United States for providing inadequate security and failing to protect them from perceived imminent threats. Similarly, here, the Turkish security officers took actions to protect certain individuals and all others in the public vicinity of a diplomatic edifice, from the risk of the type of tragedy that befell the victims at the U.S. Embassy in Nairobi. As in *Macharia*, the conduct challenged by Plaintiffs is the product of risk management decisions made by Turkish security officers about how best to protect not only their official diplomatic residence, but also their President and his senior ministers traveling with him. These are real-time decisions that do not involve mechanical application of rules and are decidedly discretionary. *See Macharia*, 238 F. Supp. 2d at 23.

ii. Turkey Satisfies The Second Prong Because Its Employees’ Acts Were Grounded In Public Policy.

Under the second prong of the Discretionary Function Rule test, the Court must decide:

‘[W]hether th[e] judgment is of the kind that the discretionary function exception was designed to shield,’ [] “Because the purpose of the exception is to prevent judicial ‘second-guessing’ of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort,’ the Supreme Court explained, ‘when properly construed, the exception protects only governmental actions and decisions based on considerations of public policy.

Macharia, 334 F.3d at 66. For example, if a state official, while carrying out the ordinary, routine duties of his office, negligently collides with another car, his tortious conduct is not grounded in public policy decision-making. *See id.* at 335 n.7. The discretion used to drive a car is separate from, and incidental to, the official mission, and “can hardly be said to be grounded in regulatory policy.” *Id.*³⁵

³⁵ Protecting foreign states from U.S. courts’ jurisdiction to the same degree afforded the United States preserves the concept of sovereign equality “which, as Article 2, paragraph 1, of the Charter of the United Nations makes clear, is one of the fundamental principles of the international legal order.” *Jurisdictional Immunities of the State (Germany v. Italy: Greece*

In *Macharia*, this Court found that the security decisions the Department of State made concerning the U.S. Embassy in Nairobi were grounded in policy, reasoning in part:

The conduct at issue in this case and the **decisions regarding what action to take related to security clearly are ‘susceptible to policy analysis’ and thus the discretionary function is applicable** [E]ach of Defendant’s decisions regarding security involved balancing potential inconvenience to State Department employees against the perceived security gains that would result from a safety measure As risk classification makes a statement about conditions in the country where the embassy is located, it could also influence United States relations with that country, and therefore be influenced by the footing on which the United States seeks to maintain those relations.

Macharia, 238 F. Supp. 2d at 25 (emphasis added).

In a similar vein, the Tenth Circuit held in an FTCA case against the U.S. government that its nuclear weapon testing activities undertaken in the name of national security were grounded in policy decisions, and therefore, immune from tort claims, even though the decisions resulted in mass casualties of U.S. citizens. *See Allen v. United States*, 816 F.2d 1417, 1424 (10th Cir. 1987). The Discretionary Function Rule precluded government liability for the 500 death and injury claims that resulted from radioactive fallout from open-air atomic bomb tests conducted in Nevada in the 1950s and 1960s. *See id.* at 1418. The Tenth Circuit recognized that the bomb-testing decisions by the President, the Atomic Energy Commission, and those with delegated authority were among the most “controversial choices made during” the relevant era. *Id.* at 1424. However, the FTCA’s Discretionary Function Rule was held to apply because the U.S. government’s “decisions expressly balanced public safety against what was felt to be a national necessity, in light of **national and international security.**” *Id.* (emphasis added). “However erroneous or misguided [the government’s] deliberations may seem today,” the court

intervening), Judgment, I.C.J. Reports 2012, 99 ¶ 57; *see The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116 (1812) (emphasizing the notion of sovereign equality among nations).

concluded that “it is not the place of the judicial branch to now question them.” *Id.* *Allen* illustrates the inviolate sovereign immunity afforded to nations’ highest leaders engaged in discretionary public policy decisions deemed to be of national security importance.

Decisions whether to pursue, detain, or arrest individuals during a riot or who are near dignitaries are “susceptible to policy analysis” no less so than the weighty decisions found discretionary in *Allen*. In *Monarch Ins. Co. of Ohio v. District of Columbia*, for example, the court explained that “[p]olicy considerations . . . pervade every phase of planning and executing a riot control program.” 353 F. Supp. 1249, 1258 (D.D.C. 1973) (dismissing claims against the United States as barred by the Discretionary Function Rule), *aff’d*, 497 F.2d 684, *cert. denied*, 419 U.S. 1021 (1974). In *Olaniyi*, for example, the court held that “the decision to detain and then arrest the plaintiff in the Capitol Building falls well within the scope of the discretionary function.” 763 F. Supp. 2d at 89 (dismissing detention and false arrest claims for lack of subject matter jurisdiction under the Discretionary Function Rule). And, decisions regarding arrests are the kind of government decisions, rife with considerations of public policy, that the judiciary is not to second-guess. *See Shuler v. United States*, 531 F.3d 930, 934 (D.C. Cir. 2008).

Protecting a head of state is no less grounded in policy than decisions concerning embassy security, the level of protection afforded to ordinary persons at government facilities, and whether to arrest or detain persons due to security concerns. In the United States, through an enabling statute, Congress has given the Secret Service wide latitude to protect the President. *See* 18 U.S.C. § 3056(a)(1) (U.S. Secret Service “is authorized to protect” the President). A threat against a president “is qualitatively different from a threat against a private citizen or other public official,” as is a presidential security officer’s corresponding duty and discretion to guard against such a threat. *Roy v. United States*, 416 F.2d 874, 877 (9th Cir. 1969). “A President’s

death in office has worldwide repercussions and affects the security and future of the entire nation.” *Id.* “A President not only has a personal interest in his own security, as does everyone, **he also has a public duty** not to allow himself to be unnecessarily exposed to danger.” *Id.* (emphasis added). Further, as a president’s authority to make discretionary decisions waxes in areas of national security, those decisions’ “susceptib[ility] to policy analysis” likewise increases. *Gaubert*, 499 U.S. at 325.

The Turkish security officers’ conduct satisfies the second policy prong because their discretionary acts to physically push back and disperse the encroaching crowd were based on national security policy considerations, principally, a perceived, imminent threat to the head of state’s and other IPPs’ physical safety. Taking actions to protect a head of state from individuals reasonably believed to be aligned with or sympathetic to a terrorist organization are quintessential government policy functions, and are among the responsibilities designated to the head of state’s security detail, as is their choice of the means for addressing such a threat. (*See* Ex. 2, ¶¶ 24-25.) Security decisions concerning a terrorist threat against a head of state are precisely the kind that are “susceptible to policy analysis” as they fall squarely within the ambit of national security and foreign policy under both Turkish and United States law and practice. *Gaubert*, 499 U.S. at 325. These decisions involve a real-time balancing of national security, foreign policy, and intelligence decisions. And, as in *Macharia*, the security decisions made by the Turkish security officers could have, and most certainly did, influence the footing of Turkey’s policy relations with the United States. *See Macharia*, 238 F. Supp. 2d at 25.

c. Turkey’s Interaction With MacAuley Satisfies Both Prongs Of The Discretionary Function Rule.

MacAuley was not present for, nor does she claim injury from, the Sheridan Circle Incident; therefore, Turkey separately applies the discretionary acts test to her jurisdictional allegations. Doing so produces the same result – the Discretionary Function Rule applies.

The Turkish security officers’ interaction with MacAuley satisfies the first prong because their conduct involved judgment or choice. *See Gaubert*, 499 U.S. at 322. MacAuley was screaming hateful anti-Turkey rhetoric about President Erdogan on the sidewalk across from the Turkish Embassy, where she alleges President Erdogan was scheduled to visit next. (Compl. ¶¶ 89-90.) The video shows MPD was present. (*See Ex. 6*, at File No. SC02 at 7:10-8:26.) The video also shows that at the time MacAuley alleges Turkish security officer Feride Kayasan touched her arm and placed her hand on MacAuley’s mouth (which lasted no more than two seconds), MacAuley was violating, or threatening to violate, 18 U.S.C. 112’s prohibition on “attempts to intimidate, coerce, threaten or harass a foreign official” and MPD was allowing her to do so. *See* 18 U.S.C. §§ 112(b)(2) & 878(a).

The Turkish security officers’ “judgment [and] choice” regarding whether to attempt to enforce the rights of their protectees under Sections 112 and 878, and whether to attempt to diminish MacAuley’s potential threat level as she was positioned outside the gates of the Turkish Embassy, was no doubt informed by the events that had transpired less than two hours earlier at Sheridan Circle. The Turkish security officers’ decisions about how to interact with MacAuley involved estimating the degree of potential threat MacAuley posed in the wake of the altercations sparked by the apparent PKK sympathizers or affiliates in Sheridan Circle. *Red Lake Band of Chippewa Indians v. United States*, 800 F.2d 1187, 1198 (D.C. Cir. 1986). Just as “[l]aw

enforcement decisions of the kind involved in making or terminating an arrest must be within the discretion and judgment of enforcing officers,” *Olaniyi*, 763 F. Supp. at 89 (quoting *Deuser*, 139 F.3d at 1195), so too were the Turkish security officers’ decisions in response to MacAuley’s conduct discretionary.

The Turkish security officers’ conduct also satisfies the policy prong. In *Monarch*, the court explained that “[p]olicy considerations . . . pervade every phase of planning and executing a riot control program.” 353 F. Supp. at 1258. Far from being an “arrest,” the Turkish security officers’ momentary attempt to assess the motives of and quell an angrily screaming MacAuley outside the Embassy falls squarely within the scope of the Discretionary Function Rule and gives effect to Turkey’s expectation that its IPPs would be free from harassment and threats in close proximity. Likewise the officers’ knowledge of credible threats to the security of Turkey’s head of state and senior ministers informed their decisions to approach and interact with MacAuley.³⁶ That conduct implicates matters of national security, U.S.–Turkey relations, and is “susceptible to policy analysis.” *Gaubert*, 499 U.S. at 325.

d. No Prior Cases Have Evaluated Whether Foreign Security Agents Taking Protective Measures To Remove Perceived Imminent Threats To A Head Of State By Apparent Associates Of An FTO Is A Discretionary Function.

No FSIA cases to date have dealt with a similar, imminent threat posed by supporters of a foreign terrorist organization within close proximity to a head of state, who moments earlier were engaged in acts of violence in the presence of MPD, without being arrested, and who were

³⁶ The officers’ decisions also likely were informed by their knowledge of MacAuley’s prior interactions with Turkish security who had detained her in Turkey not long before the Sheridan Circle Incident, about which MacAuley blogged extensively. *See, e.g., Lacey MacAuley, I Was Detained by Turkish Police*, (Apr. 22, 2016), <https://lacymacauley.wordpress.com/2016/04/22/i-was-detained-by-turkish-police/> (last visited June 3, 2019).

taunting further threats of harassment or violence against IPPs in blatant violation of 18 U.S.C. § 112. Therefore, the Court should rely exclusively on its application of the two part discretionary acts test in this case of first impression.

For example, *Letelier v. Republic of Chile*, 488 F. Supp. 665, 673 (D.D.C. 1980), which holds that a foreign state does not have discretion to commit an illegal act, is no longer good law.³⁷ Further, in *MacArthur*, the only D.C. Circuit case that appears to have interpreted the Discretionary Function Rule with respect to “wrongful acts,” confirmed that the proper jurisdictional inquiry is whether the governmental acts complained of were discretionary, not whether they were illegal. *See MacArthur*, 809 F.2d at 922 n.4. In doing so, the D.C. Circuit rejected *Letelier’s* seeming blanket rule that a foreign government lacks the discretion to commit illegal acts. *See id.* In *MacArthur*, the plaintiff relied on *Letelier* to argue that the Republic of Peru’s conversion of a residential building into a diplomatic chancery in violation of D.C. zoning laws was illegal, and thus not exempt under the Discretionary Function Rule. *See id.* The Court disagreed. It held that it was “beyond serious question that establishing a chancery in the District of Columbia to conduct foreign relations is a discretionary public policy decision,” and Peru was entitled to sovereign immunity, despite its alleged violation of D.C. zoning laws. *Id.* at 922. The Court explained that the choice of where to locate the chancery “embodies a political decision regarding the image that the Peruvian Government seeks to project through the offices it occupies” and, importantly here, “reflects **security considerations** that one might presume to be of interest in the present day.” *Id.* at 923 (emphasis added). The factual question of whether

³⁷ Moreover the facts of *Letelier*, are nothing like this case, because in *Letelier*, the Republic of Chile was alleged to have spent months orchestrating the overseas assassination of an IPP with no connections to known terrorist groups and who, unlike here, did not pose a security threat, let alone an imminent one, to a head of state within fifty feet of his presence. *Id.* at 665-66.

Peru's actions were criminal was not determinative of the threshold jurisdictional question of Peru's immunity from suit. The Circuit Court stressed that it "is hardly clear that, even if a criminal act were shown, it would automatically prevent designation of Peru's acts as discretionary." *Id.* at 922 n.4.

Risk v. Halvorsen, 936 F.2d 393 (9th Cir. 1991), further illustrates that illegal acts may nevertheless be discretionary within the meaning of the Discretionary Function Rule. In *Risk*, the Ninth Circuit considered claims against Norway stemming from the issuance of travel documents and travel funds to a Norwegian citizen and her children by a Norwegian diplomat to help them to leave the United States in violation of a temporary custody order, which constituted a felony under California law. *See id.* at 394, 396 n.3 (referencing Cal. Penal Code § 278.5). Citing the Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77, the Court held that the acts complained of fell expressly within the function of consular officials. *See id.* at 395-96. The Ninth Circuit acknowledged that, although the intentional violation of a custody order is a crime under California law, every conceivably illegal act is not outside protection of the Discretionary Function Rule. *See id.* at 397 (referencing *MacArthur*, 809 F.2d at 922 n.4).

More recently, in *Mohammadi v. Islamic Republic of Iran*, 947 F. Supp. 2d 48 (D.D.C. 2013), this Court dismissed various tort claims against Iran. *Id.* at 54. Though the Tortious Acts Exception to foreign sovereign immunity was abandoned by the plaintiffs, the Court considered it in a footnote, recognizing that "whether or not the [exception] applies in the instant case would depend upon whether the defendants had exceeded the permissible limits of their sovereign political discretion in harassing the plaintiffs via electronic communications while they were living in the United States." *Id.* at 81 n.4 (emphasis added). This Court in *Mohammadi* thus recognized the evolution from *Letelier's* conclusion that foreign sovereigns lack the discretion to

commit illegal acts, 488 F. Supp. at 673, to *Risk's* acknowledgement that illegal acts may fall within the Discretionary Function Rule, and ultimately followed *Risk*. See *id.* at 81 n.4; see also *Doe v. Federal Democratic Republic of Ethiopia*, 189 F. Supp. 3d 6, 27 (D.D.C. 2016) (concluding, in *dicta*, that “Congress did not mean to shield ‘discretionary’ acts by foreign states when those acts involve **serious violations of U.S. criminal law**,” while dismissing claims on other grounds) (emphasis added).

Finally, *Miango v. Democratic Republic of Congo*, 288 F. Supp. 3d 117 (D.D.C. 2018), appears to be the most recent case to apply the Discretionary Function Rule to intentional tort claims. In that case, protesters had gathered outside the hotel from which the President of the Democratic Republic of Congo (“DRC”) was exiting. Members of the President’s entourage allegedly proceeded to beat the protesters and steal items from the car of one of the plaintiffs. Plaintiffs filed suit against the DRC for various intentional torts, including assault, battery, and conversion. *Id.* at 124.³⁸ Unlike Turkey here, the DRC did not make an appearance to assert its immunity, and the District Court entered a default judgment. *Id.* at 128. The Court can hardly be said to have addressed the Discretionary Function Rule, only referring to it once in a single phrase of a single sentence buried in a footnote. In its only mention of the Rule, the Court cursorily cited, without examination, *Letelier’s* conclusion that a foreign state does not have discretion to commit an illegal act, and did not undertake the analysis required by the discretionary acts test. *Id.* at 126 n.3.

Thus, despite the limited case law, it is clear that those which have analyzed the FSIA’s Discretionary Function Rule have followed FTCA precedent and established that it is the scope

³⁸ Plaintiffs also sued the MPD and U.S. Secret Service for their alleged negligence in failing to protect them. *Miango*, 243 F. Supp. 3d 113 (D.D.C. 2017) (dismissed for failure to exhaust remedies under the FTCA, public duty doctrine and failure to state a claim).

of sovereign discretionary authority that matters, not the nature or unlawfulness of the underlying acts. Any argument that allegedly unlawful acts automatically strip a sovereign of its immunity must be rejected. (*See, e.g.*, Compl. ¶ 9 (“this attack subjects Turkey and its agents to criminal and civil liability under U.S. rule of law.”).) And this makes sense, because “if the scope of an official’s authority or line of duty were viewed as coextensive with the official’s lawful conduct, then immunity would be available only where it is not needed; in effect, the immunity doctrine would be ‘completely abrogate[d].’” *Martin v. D.C. Metro. Police Dep’t*, 812 F.2d 1425, 1429 (D.C. Cir. 1987) (alteration in original) (quoting *Briggs v. Goodwin*, 569 F.2d 10, 15 (D.C. Cir. 1977)); *Dalehite*, 346 U.S. at 33 (the “abuse of discretion” clause to the Discretionary Function Rule “connotes both negligence and wrongful acts in the exercise of the discretion.”). Accordingly, a “foreign state remains largely immunized from torts committed in its governmental capacity.” *MacArthur*, 809 F.2d at 921 (quoting *Olsen*, 729 F.2d at 645).

In sum, prior cases have bantered about the concept of whether illegal or wrongful acts may nevertheless be discretionary, without any clear rule or guidance emerging, other than there is no blanket rule, and sometimes illegal acts have been found to be discretionary. Importantly though, none of those cases arose in the context of protective measures employed by a head of state security detail, faced with protesters who were supporters of an FTO that had carried out a recent string of deadly attacks, who were harassing or threatening to harass an IPP in close proximity in violation of 18 U.S.C. §§ 112 & 878, and where MPD was unwilling to remove such persons from the IPP secure zone, despite some of the protesters injuring and assaulting multiple people in a prior altercation. No such prior case exists. Therefore, the Court need only rely on the two part discretionary acts test, without regard to whether the Turkish security

officers' acts were arguably criminal, because a core concept of sovereign immunity is to immunize foreign sovereigns from liability for wrongful conduct.

4. Plaintiffs' Anti-Terrorism Act ("ATA") Claims Fail, Too, Because The New Justice Against Sponsors Of Terrorism Act ("JASTA") Is Not Applicable And The ATA Does Not Apply To Some Plaintiffs.

a. JASTA's "International Terrorism" Exception Was Never Intended To Apply To Presidential Protective Security Activities – Its Use By Plaintiffs Is Baseless And Deeply Offensive To The Republic Of Turkey.

That JASTA can be cynically employed by civil plaintiffs to paste a "terrorism" label on an allied state that has in fact spilled its sons' and daughters' blood in a united cause with the U.S. to stamp out this very evil – terrorism – is extraordinarily insulting to the dignity of Turkey and dishonors the memory of those it has sacrificed. Sadly, tens of thousands of innocent people have lost their lives in Turkey because of the terrorist activities of U.S.-designated FTOs alone (*i.e.*, ISIS, PKK, DHKP-C). Turkey understands well, therefore, what is and what is not terrorism. To describe the acts of the Turkish security officers at Sheridan Circle as terrorism is to drain the word of any useful meaning.

JASTA creates a limited exception to foreign sovereign immunity specifically "to close a 'loophole' in the FSIA that resulted in the dismissal of claims by the family members of the victims of the September 11, 2001 attacks in New York against foreign entities that allegedly funded the attacks." *Gonzalez v. Google, Inc.*, 282 F. Supp. 3d 1150, 1160 (N.D. Cal. 2017) (citing 162 Cong. Rec. S2845-48 (daily ed. May 17, 2016)); *see also In re Terrorist Attacks on September 11, 2001*, 298 F. Supp. 3d 631, 642 (S.D.N.Y. 2018) (same). Congress viewed JASTA as a "balanced fix to a law that has extended too large a shield to foreign actors who finance and enable terrorism on a **massive scale**." 162 Cong. Rec. S2845-48 (emphasis added). The Act is intended to hold foreign states "accountable if they are sponsors of heinous acts like

9/11,” 162 Cong. Rec. S6166-72 (daily ed. Sept. 28, 2016) (statement of Sen. Schumer, lead sponsor), and to prevent foreign governments from “giv[ing] terrorists bags of money and tons of explosives to carry out murder within our borders, as long as [they act from] outside our borders.” *Id.* at S6167 (statement of Sen. Blumenthal). Congress’ intended “balanced fix” was never intended to produce the pernicious, though clearly unintended, consequences of permitting civil plaintiffs to transmogrify ordinary tort claims into horrors that evoke the smoldering Twin Towers and Pentagon.

JASTA is far from applicable here because Plaintiffs have not alleged a single fact that would render their claims within the plainly intended scope of the statute, nor can they. The acts for which Plaintiffs ask this Court to group this NATO ally with the likes of Al-Qaeda were security measures undertaken in the name of protecting President Erdogan and his delegation from apparent supporters or affiliates of an actual terrorist group that the U.S. State Department has designated as an FTO.

Moreover, permitting Plaintiffs’ claims to proceed under JASTA would have a chilling effect on the discretionary tactics employed by presidential and diplomatic protective services offered to the U.S. President, visiting heads of state, and high level international diplomats who are in constant danger of assassination or terrorist threats when traveling abroad.³⁹ Applying

³⁹ JASTA was adopted over President Obama’s veto. In his lengthy veto message, President Obama cited several undesirable impacts of the law: (1) it removes the onus of “state sponsor of terrorism designations [from] national security, foreign policy, and intelligence professionals” and places it upon private litigants; (2) it departs from international practice on sovereign immunity, risking reprisal from other states against U.S. persons and Armed Forces abroad; and (3) it “threatens to create complications in our relationships with even our closest partners . . . [and] to limit their cooperation on key national security issues” THE WHITE HOUSE, *Veto Message from the President – S.2040* (Sept. 23, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/09/23/veto-message-president-s2040> (last visited June 3, 2019).

JASTA here will make America an unsafe place for foreign dignitaries to visit and encourage agitators to harass, assault, and incite dangerous confrontations with U.S. law enforcement and international security forces that visit this country, and in particular, Washington, D.C. This is not the intent of JASTA.

The Court should reject out of hand Plaintiffs' argument and limit the application of JASTA, as Congress intended and as required by its plain language, to true instances of "international terrorism," such as: the November 2015 terrorist attacks in Paris by ISIS, *see Gonzalez*, 282 F. Supp. 3d 1150; suicide bombings at United States embassies by Al-Qaeda and Hezbollah, *see Owens v. BNP Paribas, S.A.*, 897 F.3d 266 (D.C. Cir. 2018), and *Bathiard v. Islamic Republic of Iran*, 317 F. Supp. 3d 134 (D.D.C. 2018); or the Bank of China's knowing facilitation of international wire transfers to the Palestinian Islamic Jihad, a U.S.-designated FTO, for the purpose of planning, preparing for, and executing terrorist attacks, *see Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1 (D.D.C. 2010).

b. Doe I Lacks Standing To Sue Under The ATA.

As an initial matter, Doe I lacks standing to sue under the ATA. Only a "national of the United States" may sue under the ATA. 18 U.S.C. § 2333(a). The "term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act," 18 U.S.C. § 2331(2), which in turn defines the term as meaning "a citizen of the United States" or "a person who . . . owes permanent allegiance to the United States." 8 U.S.C. § 1101(a)(22).

Doe I is "a national of Turkey, and a legal resident of the Commonwealth of Virginia." (Compl. ¶ 14.) A non-citizen legal resident of the United States, like Doe I, is not a "national of the United States" under the ATA. *See Mohammadi v. Islamic Republic of Iran*, 782 F.3d 9, 14-

15 (D.C. Cir. 2015) (affirming the dismissal of terrorism claims brought by lawful permanent residents for failure to satisfy the FSIA’s nationality requirement). Doe I’s claims under the ATA (Count VII), therefore, fail as a matter of law and should be dismissed.⁴⁰ For this reason, our analysis of JASTA considers only the JASTA claims of Usoyan, Doe II, and MacAuley.

c. JASTA’s Exception To Sovereign Immunity Does Not Apply To Any Remaining Plaintiffs’ Claims.

A foreign sovereign state is immune from suit under JASTA unless a plaintiff shows the foreign state caused injury to person or property by (1) “a tortious act” exceeding “mere negligence”; and (2) “an act of international terrorism.” 28 U.S.C. § 1605B(b)(1)-(2), (d). To survive a motion to dismiss, a complaint must allege facts that “plausibly suggest” entitlement to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009); *see also In re Terrorist Attacks on September 11, 2001*, 298 F. Supp. 3d at 648 (applying *Iqbal*’s plausibility standard to a Rule 12(b)(1) motion to dismiss claims brought under JASTA). Plaintiffs’ allegations of “international terrorism” are implausible, particularly in light of the “obvious alternative explanation” for the altercation described in the Complaint: the security officers’ lawful and proportional response to a legitimate security threat to their head of state and senior ministers. *Iqbal*, 556 U.S. at 682 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 567 (2007)).

Turkey did not commit an act of “international terrorism.”⁴¹ *See* 28 U.S.C. § 1605B(b)(1). To qualify as “international terrorism” under JASTA an activity must satisfy a

⁴⁰ Yuksel does not assert a claim under the ATA, but even if he did, he would also lack standing to assert one. Yuksel is “a citizen of Denmark, and a legal resident of the Commonwealth of Virginia.” (Compl. ¶ 17.) Because he is not a U.S. national, he, like Doe I, cannot assert a claim against Turkey under the ATA.

⁴¹ For the sake of brevity, Turkey declines to address JASTA’s first element – causing a “tortious act” – in this Motion, but does not waive and preserves its right to contest that element. Resolution of the “tortious act” element cannot likely be adjudicated without litigating the merits

three-prong test.⁴² First, the activity must “involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State.” 18 U.S.C. § 2331(1)(A). Second, the activity must appear to be intended to “intimidate or coerce a civilian population”; “influence the policy of a government by intimidation or coercion”; or “affect the conduct of a government by mass destruction, assassination, or kidnapping.” *Id.* § 2331(1)(B)(i)-(iii). Third, acts of international terrorism must “occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.” *Id.* § 2331(1)(C). JASTA does not apply unless a plaintiff establishes all three Prongs.

As illustrated below, Prong 1 fails because Doe II did not allege conduct by a state actor, MacAuley did not experience a “violent act,” and Turkey did not violate U.S. or State criminal law.⁴³ Prong 2 fails because Plaintiffs are not a “civilian population” as intended by the international terrorism statutes. Prong 3—the lynchpin which fastens together Plaintiffs’ “international terrorism” allegation—fails because the alleged conduct did not transcend national boundaries in terms of the persons it appeared intended to intimidate or coerce. This section addresses each Prong in turn.

of the tort claims for which Turkey claims immunity. Turkey declines to engage in this inquiry, lest the Court be asked to pry into the merits of Plaintiffs’ claims at the jurisdictional motions phase. More importantly, since the Complaint falls well short of establishing JASTA’s second element, “international terrorism,” discussion of the “tortious act” element is unnecessary.

⁴² JASTA and the ATA use the same definition of “international terrorism.” *See* 18 U.S.C. § 2331(1). Case law interpreting “international terrorism” under either statute is therefore relevant.

⁴³ Fifteen Turkish security personnel were indicted following the Sheridan Circle Incident. None have been arrested, and charges against eleven have been dropped. Two pro-Turkey individuals who plead guilty to one count of assault each are not agents of Turkey.

i. Prong 1: The Alleged Conduct Did Not Involve Violent Acts In Violation Of State Or Federal Law.

Under the “international terrorism” test’s first prong, the allegedly terroristic activity must “involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State.” 18 U.S.C. § 2331(1)(A). Doe II and MacAuley have not plausibly established that they experienced “violent acts.” Moreover, Turkey did not act in “violation of the criminal laws of the United States or of any State” as to either of them. *Id.*

(a) Doe II Fails To Allege Any Conduct By A State Actor.

Doe II does not allege Turkey or its agents committed a violent act against him. The Complaint states “certain conspirators” threatened him, and in fact admits that whoever allegedly kicked him is “unknown.” (Compl. ¶¶ 82, 84.) Doe II’s factually unsupported conclusion that Turkey committed a violent act against him would not satisfy *Iqbal*’s plausibility or pleading standard in an ordinary Rule 12(b)(6) context, let alone here, where “the court may not deny the motion to dismiss merely by assuming the truth of the facts alleged by the plaintiff and disputed by the defendant.” *Feldman*, 879 F.3d at 351 (quoting *Phoenix Consulting*, 216 F.3d at 40). Doe II fails to establish Prong 1.

(b) MacAuley Did Not Experience A Violent Act.

Neither Turkey nor its officers committed a violent act against MacAuley. Violence is characterized “by the exertion of great physical force or strength.” *Johnson v. United States*, 559 U.S. 133, 140 (2010) (quoting 19 Oxford English Dictionary 656 (2d ed. 1989)). The Supreme Court has repeatedly held that simple battery, for example, is not a “violent” act under the Armed Career Criminals Act. *See Stokeling v. United States*, 139 S. Ct. 544, 552-53 (2019). “Slight[] offensive touching” is not a violent act. *Id.* at 553 (quoting *Johnson*, 559 U.S. at 139).

MacAuley’s interaction with Kayasan was not violent, and never exceeded slight touching. The Complaint alleges that Kayasan “grabbed MacAuley’s hand” and “placed her hand over MacAuley’s mouth” (Compl. ¶¶ 91, 94.) Undisputed video evidence shows that each of these touchings lasted less than two seconds and involved minimal contact. Since MacAuley did not experience “**violent** force—that is, force capable of causing physical pain or injury to another person,” *Stokeling*, 139 S. Ct. at 553 (quoting *Johnson*, 559 U.S. at 140), she cannot establish Prong 1.

(c) Turkey Did Not Violate Any Federal Or Local Criminal Laws Pursuant To The FSIA.

As discussed above, Turkey lawfully performed discretionary security functions in the course of responding to a legitimate safety threat created by the presence of apparent supporters of a U.S.-designated FTO. The FSIA authorizes such conduct, and expressly preserves a foreign state’s right to perform discretionary functions. Pursuant to the FSIA, which preempts any local law to the contrary, Turkey acted lawfully and did not violate “the criminal laws of the United States or of any State.” 18 U.S.C. § 2331(1)(A). Accordingly, no Plaintiff can establish Prong 1.

ii. Prong 2: Turkey’s Conduct Did Not Appear Intended To Intimidate Or Coerce A Civilian Population, Influence The Policy Of A Government By Intimidation Or Coercion, Or Affect The Conduct Of A Government By Mass Destruction, Assassination, Or Kidnapping.

Under the “international terrorism” test’s second prong, the activity must appear to be intended to (1) “intimidate or coerce a civilian population”; (2) “influence the policy of a government by intimidation or coercion”; or (3) “affect the conduct of a government by mass destruction, assassination, or kidnapping.” *Id.* § 2331(1)(B)(i)-(iii). From the outset, it is clear that the second and third subparts to Prong 2, which both apply to conduct directed toward a “government,” are not relevant. Plaintiffs are not a “government,” nor does the Complaint allege

in any way that Turkey’s conduct appeared to “influence the policy” or “affect the conduct” of some other government.

With respect to the first subpart of Prong 2, Plaintiffs are not a “civilian population” as intended by the international terrorism statutes. “Population” is defined as “the whole number of people or inhabitants in a country or region,” Merriam-Webster’s Collegiate Dictionary (11th ed. online version), or “all the inhabitants of a particular place,” Oxford English Dictionary Online. The legislative history of federal anti-terrorism law confirms this common-sense reading. In passing the Omnibus Diplomatic Security And Antiterrorism Act of 1986—JASTA and the ATA’s progenitor—Congress explained: “The term ‘civilian population’ includes a general population as well as other specific identifiable segments of society such as the membership of a religious faith or of a particular nationality.” H.R. Rep. No. 99-783, at 88 (1986) (Conf. Rep.). It is clear from the face of the Complaint that Plaintiffs do not constitute an “identifiable segment of society.” *Id.* Indeed, it would take a tortured reading of the statute to conclude that Plaintiffs are a “population” in any sense.⁴⁴

Plaintiffs allege that the population Turkey intended to intimidate was the “Turkish population.” (Compl. ¶ 4.) They contend that Turkey’s security agents acted with the intent to “chill further protests against President Erdoğan and his regime in . . . Turkey.” (*Id.* ¶ 29.) Yet those allegations bear on the **subjective** intent of Turkey’s security agents, which is irrelevant. Under JASTA, “the relevant state of mind is objective, not subjective.” *Wultz*, 755 F. Supp. 2d at 49 n.7. Whether the security agents’ actions appeared intended to intimidate or coerce a civilian population (then over 5,000 miles away in Turkey) is “a matter of external appearance

⁴⁴ The Court should reject Plaintiffs’ JASTA theory even if it is persuaded that a crowd is a “civilian population” because Turkey’s conduct did not transcend national boundaries with respect to the crowd. *See infra* § IV.B.4.c.iii.

rather than subjective intent.” *Weiss v. Nat’l Westminster Bank PLC*, 768 F.3d 202, 207 n.6 (2d Cir. 2014) (quoting *Boim v. Holy Land Found. for Relief and Dev.*, 549 F.3d 685, 694 (7th Cir. 2008) (en banc)).

The allegations that the alleged conduct appeared intended to intimidate or coerce a civilian population, if accepted by the Court, will set a dangerous precedent for future heads of state and diplomats who visit Washington, D.C. President Erdogan’s alleged role in the second altercation was limited to telling his head of security to restrain a demonstrably violent crowd. (See Compl. ¶¶ 50-59.) If Plaintiffs’ argument is adopted, the Court will be exposing all visiting foreign dignitaries to liability for international terrorism should they perceive the need to resort to protective measures beyond which U.S. officials are capable of providing in the moment.

Objectively, the Turkish security officers appeared to be removing the Plaintiffs from an unsafe encroachment on their protectees, not intimidating a civilian population. All Plaintiffs, therefore, fail to satisfy Prong 2 of the “international terrorism” test.

iii. Prong 3: The Alleged Conduct Did Not Occur Primarily Outside The United States Or Transcend National Boundaries.

Under Prong 3, acts of international terrorism must (a) occur primarily outside the territorial jurisdiction of the United States, or (b) transcend national boundaries in terms of (i) the means by which they are accomplished, (ii) the persons they appear intended to intimidate or coerce, or (iii) the locale in which their perpetrators operate or seek asylum. *See* 18 U.S.C. § 2331(1)(C).

(a) The Alleged Conduct Did Not Occur Primarily Outside The Territorial Jurisdiction Of The United States.

Prong 3 subpart (a) is facially inapplicable. The altercation described in the Complaint occurred entirely “on American soil.” (Compl. ¶ 4.) For this reason alone, Plaintiffs’ JASTA argument fails the Rule 8 and *Iqbal/Twombly* pleading standards.

(b) Plaintiffs’ Claim That The Alleged Conduct Transcended National Boundaries Fails Because Plaintiffs’ Theory Is Predicated On Nonjusticiable Political Questions.

The Complaint recites the elements of Prong 3 subpart (b) (*see* Compl. ¶¶ 2, 147), but it does not allege any facts that plausibly establish that Turkey’s conduct transcended national boundaries in terms of subpart (b)(i), “the means by which they are accomplished,” or (b)(iii), “the locale in which their perpetrators operate or seek asylum.” The two altercations at Sheridan Circle escalated rapidly and concluded minutes later. Turkey had no way of knowing the altercation would occur and its security officers made split-second decisions about how to respond to an unpredictable security threat. Thus, when Turkey decided the means by which to push Plaintiffs back, all involved were in the same locale – Washington, D.C. Assuming that Plaintiffs contend JASTA applies via Prong 3 subpart (b)(i) or (b)(iii), their “[t]hreadbare recitals of the elements . . . supported by mere conclusory statements” cannot stand against the ample factual evidence to the contrary. *Iqbal*, 556 U.S. at 678. Neither of these subparts confers jurisdiction to the Court.

Prong 3 subpart (b)(ii) is the cornerstone on which Plaintiffs’ theory of “international terrorism” rests. Plaintiffs’ theory that Turkey’s actions transcended national boundaries in terms of “the persons they appear intended to intimidate or coerce” is stated in the Complaint’s first and second paragraphs:

“By terrorizing American demonstrators . . . , Defendant sent a clear message to protesters . . . throughout the world, that anyone who has the temerity to oppose President Erdoğan shall face arbitrary beatings, or worse. After all, if President Erdoğan and his minions can brutalize United States citizens legally assembled in protest on United States soil, what would he inflict on his own citizens within the control of the Turkish security apparatus? Accordingly, Defendant’s violent attacks against Plaintiffs and other peaceful protestors are acts of “international terrorism” as defined by 18 U.S.C. § 2331.

(Compl. ¶¶ 1-2.) This theory echoes throughout the Complaint. Plaintiffs allege, for example, that “[t]he principal goals and purposes of Defendant’s conspiracy was to assault and attack protestors . . . to chill further protests against President Erdoğan and his regime in both the United States **and Turkey.**” (*Id.* ¶ 29) (emphasis added). Put simply, Plaintiffs contend that Turkey’s subjective intent was to initiate the altercation for the purpose of intimidating political opponents overseas.

Plaintiffs’ theory under Prong 3 subpart (b)(ii) proceeds in two steps. First, Plaintiffs ask the Court to find Turkey’s national policy is a “crackdown aimed at eliminating any real or perceived political opposition,” (*id.* ¶ 4) and that Turkey enforces a national “campaign to suppress civil discourse” with “violent acts of hate,” (*id.* ¶ 8). Second, in addition to defining the contours of Turkey’s national policies, Plaintiff’s ask the Court to then find that Turkey “carried out **this policy** on American soil,” (*id.* ¶ 4) (emphasis added), and that the altercation described in the Complaint “was not an isolated incident, but rather one component of [Turkey’s alleged] campaign to suppress civil discourse,” (*id.* ¶ 8).⁴⁵ Plaintiffs’ theory is as insulting as it is incorrect.

⁴⁵ The allegation that Turkey operates to suppress and eliminate any political opposition is facially inconsistent with reality. Opposition parties continue their activities freely and elections are held regularly within international standards. (*See* Ex. 1, ¶ 38.)

Plaintiffs' theory of "international terrorism," therefore, turns on the Court stretching to make a predicate finding about Turkey's national policies. But, "[i]t is not [the judiciary's] place to speak for the U.S. Government by declaring that a foreign government is at fault for [the supposed 'crackdown']. Any such policy condemning the [] regime must first emanate from the political branches." *Alperin v. Vatican Bank*, 410 F.3d 532, 561 (9th Cir. 2005). To request from the judiciary a declaration regarding a foreign country's "political status," especially as a terrorist organization, "certainly raises" a nonjusticiable political question. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 197 (2012).

Absent an otherwise impermissible judicial finding on Turkey's national policies concerning civil discourse, the Complaint is reduced to allegations of this spontaneous, unplanned, and isolated incident. *Cf. People's Mojahedin Org. of Iran v. United States Dep't of State*, 182 F.3d 17, 23-24 (D.C. Cir. 1999) (ignoring the portion of the complaint presenting a political question). Those allegations do not plausibly establish that the alleged conduct transcended national boundaries, particularly in light of the "obvious alternative explanation" for the altercation: Turkey was responding to legitimate security and safety concerns presented by the presence of supporters of a true FTO, both in Lafayette Park and then at Sheridan Circle. *Iqbal*, 556 U.S. at 681 (quoting *Twombly*, 550 U.S. at 567).

(c) The Political Question Doctrine Forbids The Court From Making Findings About Turkey's National Policies And International Goals.

Plaintiffs ask the Court to wander into a nonjusticiable political thicket and announce, as a finding of fact, that Turkey violently and systemically oppresses those that oppose President Erdogan and particular ethnic groups. The Court must decline the request pursuant to the political question doctrine.

The Court confronts a nonjusticiable political question where any **one** of the following six factors is present:

[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

bin Ali Jaber v. United States, 861 F.3d 241, 245 (D.C. Cir. 2017) (alterations in original) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). Factors 1, 2, 3, 4, and 6 are present here.

(1) Factors 1 And 6: Constitutional Commitment To A Coordinate Political Department, And Potentiality Of Embarrassment From Multifarious Pronouncements.

Speaking on behalf of the federal government regarding a foreign state's perceived national policies and goals is a function constitutionally committed to the Executive Branch. The Constitution distributes the powers of the federal government over external affairs between the Executive and the Legislative Branches, but "in foreign affairs the President has a degree of independent authority to act." *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 414 (2003). Article II of the Constitution provides that "[t]he executive Power shall be vested in a President of the United States of America." U.S. Const. art. II, § 1, cl.1. "[T]he historical gloss on the executive Power vested in Article II of the Constitution has recognized the President's vast share of responsibility for the conduct of our foreign relations." *Garamendi*, 539 U.S. at 414 (internal quotation marks omitted) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610-11 (1952)). The President has "plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations." *United States v. Curtiss-Wright Exp. Corp.*,

299 U.S. 304, 320 (1936). In addition, the Constitution grants to the President alone the authority to “receive Ambassadors and other public Ministers.” U.S. Const. art. II, § 3.

With respect to Turkey, the U.S. President is actively and publicly engaged in performing his unique constitutional duty to conduct foreign relations. Just weeks ago, the U.S. Department of State affirmed that Turkey is:

- “a key NATO Ally and critical regional partner,”
- “NATO’s vital eastern anchor,”
- “engaged in intensive efforts to defeat terrorist organizations both inside and outside its borders, including the Kurdistan Workers’ Party (PKK),”
- “a vital member of the Defeat ISIS Coalition,”
- “critical in the effort to degrade and ultimately destroy ISIS in Syria and Iraq,”
- “contribut[ing] to international security alongside U.S. Forces in Afghanistan, the seas bordering Somalia, and in the Mediterranean [and] borders Greece, Bulgaria, Georgia, Armenia, Azerbaijan, Iran, Iraq, and Syria,” and
- “a key partner for U.S. policy in the [Middle East] region.”⁴⁶

By answering the political question Plaintiffs pose, “the court would directly contradict the Executive, which has formally decided to take [a] position on the question” Plaintiffs submit to the Court. *Id.* at 13 (finding a nonjusticiable political question where the Executive formally took “no position” on the issue, let alone a position that is at odds with the conclusion Plaintiffs’ ask the court to reach). Judicially-issued policy decisions about the state of U.S.–Turkey relations and Turkey’s global and domestic policies and goals are “determination[s] of a kind clearly for nonjudicial discretion.” *bin Ali Jaber*, 861 F.3d at 245. This Court cannot make those determinations without expressing a lack of respect for a coordinate branch of the federal government, thus implicating the first *Baker* factor. The Complaint essentially asks the Court to

⁴⁶ U.S. Dep’t of State, Bureau of European and Eurasian Affairs, *U.S. Relations With Turkey* (Mar. 27, 2019), <https://www.state.gov/r/pa/ei/bgn/3432.htm> (last visited June 3, 2019).

invade the Executive Branch's deliberate foreign relations decisions and diplomatic initiatives by proclaiming that Turkey employs repugnant national policies. The first *Baker* factor prohibits the Court from entertaining those issues.

Moreover, this case implicates the sixth *Baker* factor in that Plaintiffs seek a pronouncement from the Court which, if inconsistent with the Executive Branch's substantial pre-existing body of public statements about U.S.–Turkey relations, could cause embarrassment to the Executive and/or the Judicial Branches. It is hard to image how the Court could answer questions about Turkish policy without risking interference with, and thereby dilution of, the Executive's position on U.S.–Turkey relations.

(2) Factor 2: Lack Of Judicially Discoverable And Manageable Standards.

There are no judicially discoverable and manageable standards for resolving Plaintiffs' allegations that Turkey's national policy is a "crackdown aimed at eliminating any real or perceived political opposition," (Compl. ¶ 4); that Turkey enforces a national "campaign to suppress civil discourse" with "violent acts of hate," (*id.* ¶ 8). If this Court adopts Plaintiffs' novel and federally unrecognized description of Turkey's national policies, it would be formulating national policy, a task that is "not legal in nature," and for which the courts are "fundamentally underequipped" to perform. *El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 844 (D.C. Cir. 2010) (quoting *Japan Whaling Assoc. v. Am. Cetacean Society*, 478 U.S. 221, 230 (1986)). There are no "manageable standards to channel any judicial inquiry" into "strategic choices directing the nation's foreign affairs." *Id.* at 843 (citing *Nixon v. United States*, 506 U.S. 224, 229-29 (1993)).

The recent decision *Al-Tamimi v. Adelson*, 916 F.3d 1 (D.C. Cir. 2019), provides good guidance on the manageable standards inquiry. In *Al-Tamimi*, when faced with adjudicating the question “whether Israeli settlers are committing genocide,” the court concluded that there **were** judicially manageable standards for deciding the issue because the Alien Tort Statute, the basis for the plaintiffs’ claims, defined “genocide.” *Id.* at 11 (citing the United Nations Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277, 280). “Thus, the ATS—by incorporating the law of nations and the definitions included therein—provides a judicially manageable standard to determine whether Israeli settlers are committing genocide.” *Id.* at 11-12. *But cf., e.g., Alperin*, 410 F.3d at 561 (holding that issues involving condemnation of a foreign regime’s wartime conduct are nonjusticiable).

Plaintiffs’ contentions about Turkey’s national policies, on the other hand, cannot be resolved by applying a statutory definition to knowable facts. Neither JASTA nor the ATA defines “ferocious crackdown,” “campaign to suppress civil discourse,” or any other like concept. There are no similar judicially manageable standards for resolving the questions Plaintiffs pose regarding Turkey’s national policies. This Court would have to hold hundreds of evidentiary hearings and review scores of evidence involving decades of Turkey’s socio-political history and role in the Middle East, often with no ability to obtain testimony or discovery from foreign witnesses, to resolve issues like the credibility of assassination attempts⁴⁷ and whether Turkey is responding appropriately to that constant threat. Such an unwieldy exercise is precisely the type of meddling in U.S. international relations the political question doctrine is designed to prevent. Accordingly, the Court must decline to decide these questions under the second *Baker* factor. *See, e.g., Doe I v. State of Israel*, 400 F. Supp. 2d 86, 112 (D.D.C. 2005) (declining to decide

⁴⁷ *See supra* § II.B.2 (discussing assassination attempts).

whether “Israel’s self-defense policies are tantamount to terrorism” because the issue is “peculiarly volatile, undeniably political, and ultimately nonjusticiable”).

Moreover, the U.S. judiciary is not equipped to judge a presidential security team in the discharge of sensitive executive functions. Questions such as whether a particular group or person poses a threat to a head of state’s life or physical safety that is likely or imminent are decisions informed by that foreign state’s intelligence, foreign policy, and security considerations. For example, in *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), individuals were charged under 18 U.S.C. § 2339B for providing material support to the PKK and another designated terrorist group.⁴⁸ The Supreme Court accepted the Executive Branch’s determination that the defendants’ facially lawful, nonviolent support of the terrorist organization nonetheless contributed to violent terrorist activity. *Id.* at 33-34. The Court explained that “when it comes to collecting evidence and drawing factual inferences in [the national security and foreign relations] area, ‘the lack of competence on the part of the courts is marked.’” *Id.* at 34 (quoting *Rostker v. Goldberg*, 453 U.S. 57, 65 (1981)). “One reason for that respect [for the Executive] is that national security and foreign policy concerns arise in connection with efforts to confront evolving threats in an area where information can be difficult to obtain and the impact of certain conduct difficult to assess.” *Id.*

Finally, the Court rejected the need for “specific evidence” and hard proof that the defendants’ alleged activities would support PKK terrorist attacks, considering such a requirement to be “dangerous.” *Id.* Rather, “[i]n this context, conclusions must often be based

⁴⁸ The Supreme Court acknowledged that the PKK is a “deadly group[.]” that by 2010 had claimed 22,000 lives. *Id.* at 29-30.

on informed judgment rather than concrete evidence, and that reality affects what we may reasonably insist on from the Government.” *Id.* at 34-35.

(3) Factors 3 and 4: The Prudential Factors.

The third and fourth *Baker* factors “are closely related in that they are animated by the same principle: as a prudential matter, the Judiciary should be hesitant to conflict with the other two branches.” *Al-Tamimi*, 916 F.3d at 12 (citing *Baker*, 369 U.S. at 217). The Court cannot decide issues of Turkey’s national policies without running afoul of this prudential principle.

(4) The D.C. Circuit’s Functional Approach To The Political Question Doctrine.

Since *Baker*, the D.C. Circuit has adopted a “functional approach” to the political question doctrine. *bin Ali Jaber*, 861 F.3d at 246. Under that approach, nonjusticiable claims are “those controversies which revolve around policy choices and value determinations,” *id.* at 245 (quoting *Japan Whaling*, 478 U.S. at 230), while justiciable claims present “purely legal issues,” *id.* at 246 (quoting *El-Shifa*, 607 F.3d. at 842). For example, a court may properly decide whether the government had legal authority to order a drone strike. The court cannot, however, decide whether the strike was factually justified. *See id.* In this case, Plaintiffs impermissibly ask the Court to declare that Turkey deploys a torture-based “crackdown aimed at eliminating any real or perceived political opposition” as a matter of official national “policy.” (Compl. ¶ 4; *see also id.* ¶¶ 5, 8, 29, 106.)

The court declined to decide a similar question in *Wultz v. Islamic Republic of Iran*, 755 F. Supp. 2d 1 (D.D.C. 2010). In *Wultz*, a Palestinian suicide bomber attacked a restaurant in Israel killing an American citizen. *Id.* at 18. After the bombing, the decedent’s estate sued the Bank of China (“BOC”) on the grounds that BOC knowingly facilitated international wire transfers to the Palestinian Islamic Jihad for the purpose of planning, preparing for, and

executing terrorist attacks. *Id.* BOC moved to dismiss arguing, in part, that the entire case was nonjusticiable because it raised inextricable political questions about the “political policies and goals of the Chinese government with respect to other foreign powers, . . . its relationship to Chinese citizens and corporations in connection with its policies, . . . and the Chinese government’s alleged disregard of Israeli government concerns about terrorism” *Id.* at 26 (quoting BOC’s Mot. to Dismiss at 9-10).

The court reasoned it could hear the case, but only because the plaintiffs “do not ask the Court to say anything at all with respect to the actual policies or goals of China,” or “ask this court to ‘pass judgment’ on whether those policies are ‘valid or invalid, good or evil.’” *Id.* (quoting Pl.’s Opp’n at 41). Rather, the plaintiffs “merely ask[ed] the Court to determine whether, as a matter of fact, China received certain information from Israel.” *Id.* The court concluded that the factual issues were extricable from questions of China’s political policies and goals, the resolution of which would invoke the political question doctrine. *Id.*

Plaintiffs in this case, unlike those in *Wultz*, seek far more than mere adjudication of discoverable or knowable facts. Plaintiffs expressly ask the Court to independently categorize and classify Turkey’s domestic and foreign policies and goals. Not only is there a “lack of judicially discoverable and manageable standards” for independent judicial classification of a foreign sovereign’s national policy, *bin Ali Jaber*, 861 F.3d at 245 (quoting *Baker*, 369 U.S. at 217), doing so will require the Court to intrude on the Executive Branch’s foreign policy prerogatives and interfere with U.S. foreign relations by contravening the Executive Branch’s constitutionally exclusive authority to manage the United States’ relationship with its critical NATO ally. Either of those obstacles alone is sufficient to bar this Court’s resolution of the issue. *See id.*

(d) Turkey's Conduct Does Not Objectively Appear To Transcend National Boundaries.

Ignoring the nonjusticiable political question of Turkey's national policies, Turkey's actions did not transcend national boundaries in any conceivable manner.

Turkey's alleged actions occurred entirely within the United States and the Complaint fails to allege any specific facts or basis on which to conclude that Turkey's actions appeared intended to intimate or coerce persons beyond the United States' borders. In their attempts to connect the isolated incident at Sheridan Circle with prior unrelated events, "the plaintiffs have shown little beyond mere happenstance and possibility." *Id.* at 573. Furthermore, Turkey has demonstrated through supporting declarations that the Turkish security officers were responding to a legitimate, precarious, uncontrollable threat of physical violence within intolerably close proximity of their protectees. (*See, e.g.*, Exs. 1-2.) The Complaint acknowledges that the altercation did not occur until President Erdogan was positioned in a car with unsafe egress adjacent to a frenzied crowd that moments earlier violated federal law and incited the first altercation. *See* 18 U.S.C. § 112(b) (making it unlawful to "attempt to intimidate, coerce, threaten, or harass a foreign official" or to congregate within 100 feet of any building occupied for diplomatic purposes with the intent to intimidate, coerce, threaten, or harass a foreign official).

The Complaint alleges that as President Erdogan approached Sheridan Circle, a Turkish security officer told an MPD officer: "You need to take [the crowd]. If you don't, I will." (Compl. ¶ 37.) Another Turkish security officer told the U.S. Secret Service: "We are waiting you [sic] to take them out, because President [Erdogan] is coming." (*Id.* ¶ 40 (alteration in original).) Two minutes later, another Turkish security officer pleaded with an MPD officer:

“My president is coming and you guys aren’t doing anything.” (*Id.* ¶ 43.) Turkey’s actions were thus objectively focused solely on clearing a safe zone for its head of state and senior ministers and resolving a reasonably perceived imminent security threat that was local and did not transcend national boundaries. “As between that ‘obvious alternative explanation for’ [Turkey’s] conduct, and the purposeful, invidious discrimination the [Plaintiffs] ask [the Court] to infer, discrimination is not a plausible conclusion.” *American Federation of State, Country, Mun. Employees Local 2401 v. District of Columbia*, 796 F. Supp. 2d 136, 141 (D.D.C. 2011) (quoting *Iqbal*, 556 U.S. at 682).

C. THE DOCTRINE OF INTERNATIONAL COMITY FAVORS DISMISSAL OF PLAINTIFFS’ CLAIMS.

Plaintiffs’ claims should be rejected under the doctrine of international comity. Comity “is a doctrine of deference based on respect for the decisions of foreign sovereigns.” *United States v. One Gulfstream G-V Jet Aircraft*, 941 F. Supp. 2d 1, 8 (D.D.C. 2013) (citing *United States v. Kashamu*, 656 F.3d 679, 683 (7th Cir. 2011)). “To permit the validity of the acts of one sovereign state to be reexamined and perhaps condemned by the courts of another would very certainly imperil the amicable relations between governments and vex the peace of nations.” *Oetjen v. Central Leather Co.*, 246 U.S. 297, 304 (1918). The doctrine, thus, is “a ‘golden rule among nations—that each must give the respect to the laws, policies and interests of others that it would have others give to its own in the same or similar circumstances.’” *Gulfstream*, 941 F. Supp. 2d at 8 (quoting *Mich. Cmty. Servs., Inc. v. NLRB*, 309 F.3d 348, 356 (6th Cir. 2002)).

Chief among these concerns for respecting a coequal sovereign state is the protection of its head of state when traveling abroad. This concern is particularly acute for the U.S.

Government, which demands unparalleled cooperation from its host countries. As former President Obama cautioned in his veto statement for JASTA,

[R]eciprocity plays a substantial role in foreign relations, and numerous other countries already have laws that allow for the adjustment of a foreign state's immunities based on the treatment their governments receive in the courts of the other state.

Veto Message from the President, S.2040 (Sept. 23, 2016). This Court should abstain from allowing the “validity of the acts of [Turkey] to be reexamined and perhaps condemned,” for doing so “would very certainly imperil the amicable relations between governments and vex the peace of nations.” *Oetjen*, 246 U.S. at 304. The risk of assassination for Turkey’s and the United States’ head of state is acute and ever present; the U.S. demands far-reaching security protections for its head of state and government officials within Turkey; in the past decade alone, Turkish security guards have died protecting the U.S. embassy and consulates in Turkey from terrorist attacks. (*See* Ex. 1, ¶¶ 8, 27-30, 34.) The inaction of MPD at Sheridan Circle constituted a failure to reciprocate the same protections afforded to U.S. officials in Turkey. The apparent failures by MPD upended the delicate reciprocity between the U.S. and Turkey and, therefore, for reasons of international comity, this Court should defer to the political branches of government to resolve the consequences.

1. Assassination Attempts Are A Constant Reality For A Traveling President.

Assessing whether a target is a threat to the president is different than assessing other forms of violence, and persons who pose an actual threat to a president often do not make threats, especially direct threats.⁴⁹

⁴⁹ *See* Robert A. Fein and Bryan Vossekuil, *A Guide for State and Local Law Enforcement Officials*, U.S. Dep’t of Justice, Protective Intelligence & Threat Assessment Investigations (July 1998), <https://cryptome.org/assassins.htm> (last visited June 3, 2019).

For example, in April 2009, ahead of President Obama’s visit to Turkey where he held bilateral talks and attended the Alliance of Civilizations Summit, Turkish security forces foiled an assassination plot by a Syrian permanent resident of Turkey planning to pose as an *Al Jazeera* reporter.⁵⁰ And in May 2005, just as President Bush began delivering a speech in Tbilisi, Georgia, Vladimir Arutyunian threw a live grenade at the podium, landing 61 feet from the President and First Lady.⁵¹ It is the duty and expertise of presidential security details to anticipate and neutralize threats, whether they are expressly pronounced in advance or identified in the moment through the experience and expertise of the presidential security detail. (*See also* Ex. 2, ¶¶ 22-25, 33.)

2. U.S. Secret Service Demands Heavy Security Cooperation From Its Host State.

The United States is keenly aware of the increased vulnerability of a U.S. President traveling abroad. This in turn leads U.S. security officials to demand extensive cooperation, security measures, and manpower from its host country. President Trump’s 2018 visit to London involved all-encompassing security precautions to ensure that protesters and supporters alike were kept at distances far beyond 100 feet of the President at all times. A multi-million dollar “ring of steel” was erected around the part of Regent’s Park on which the U.S. Ambassador’s residence sits,⁵² roads were closed to the public, and thousands of U.K. police officers stood on

⁵⁰ Ed Henry, *Plot to assassinate Obama foiled in Turkey*, CNN (Apr. 6, 2009), <http://www.cnn.com/2009/POLITICS/04/06/turkey.assassination.plot/index.html> (last visited June 3, 2019).

⁵¹ Federal Bureau of Investigation, *The Case of the Failed Hand Grenade Attack: Man Who Tried to Assassinate President Convicted Overseas* (Jan. 11, 2006), https://archives.fbi.gov/archives/news/stories/2006/january/grenade_attack011106 (last visited June 3, 2019).

⁵² Alexander Robertson, *Trump ruined my picnic!: The moment two Osprey helicopters fly over Regent’s Park in London as \$40m ‘ring of steel’ takes shape ahead of US President’s three-day visit*, DAILY MAIL (July 9, 2018), <https://www.dailymail.co.uk/news/article-5934249/Osprey->

guard. This was in addition to the 150 U.S. special agents, rooftop snipers, and counter-terrorism police brought in from the United States to secure the President.⁵³

President Obama's 2009 visit, as well as his visit to Turkey in 2015 for the G-20 summit meeting, also demanded heavy security not only around the U.S. Embassy Residence in Ankara but any place near to where the President would be. On these visits, air traffic was suspended over areas where the President would be, U.S. security officers set up extensive inspection stations to screen all reporters and other persons who would be in the same vicinity as the President, roads were blocked and traffic stopped in areas around his location at all times.⁵⁴ Over 8,800 Turkish policemen were deployed to ensure Obama's security during his 2009 visit.⁵⁵ At the request of the United States, all persons, supporters and protesters alike, were all kept at a great distance from the U.S. President at all times.⁵⁶ (*See also* Ex. 2, ¶¶ 19, 20-21.)

Such methodical or organized security apparently was lacking as President Erdogan departed the White House and arrived at the Residence where he faced an angry and encroaching crowd, sympathetic to a U.S.-designated FTO and which had engaged in violence moments

helicopters-fly-Regents-Park-London-ahead-Trump-three-day-visit.html (last visited June 3, 2019).

⁵³ Holly Ellyatt, *The UK is spending millions on security for Trump's controversial visit*, CNBC (July 12, 2018), <https://www.cnbc.com/2018/07/12/uk-spending-millions-on-security-for-trumps-controversial-visit.html> (last visited June 3, 2019).

⁵⁴ *See Tight Security measures applied for Obama's one-night stay at G-20 Summit in Turkey*, HURRIYET DAILY NEWS (Nov. 17, 2015), <http://www.hurriyetdailynews.com/tight-security-measures-applied-for-obamas-one-night-stay-at-g-20-summit-in-turkey-91272> (last visited June 3, 2019).

⁵⁵ *Obama due to arrive in Ankara for symbolic two-day Turkey visit*, HURRIYET (Apr. 5, 2009), <http://www.hurriyet.com.tr/gundem/obama-due-to-arrive-in-ankara-for-symbolic-two-day-turkey-visit-11368320> (last visited June 3, 2019).

⁵⁶ *Antalya air traffic stopped for Obama's departure from the G20 Summit*, DAILY SABAH (Nov. 16, 2015), <https://www.dailysabah.com/turkey/2015/11/16/antalya-air-traffic-stopped-for-obamas-departure-from-the-g20-summit> (last visited June 3, 2019).

before. Turkey takes every measure so that U.S. Presidents' security details are not faced with the tough discretionary decisions of the type the Turkish agents faced in Sheridan Circle.

3. Turkish Security Officers Have Died Protecting U.S. Missions.

Turkish security officers have died protecting U.S. missions in Turkey. In 2008, at the U.S. Consulate in Istanbul, three Turkish security officers died in a shootout defending the Consulate after a group of men with concealed weapons approached the entrance and began shooting.⁵⁷ In 2013, a man walked up to the entrance of the U.S. Embassy in Ankara and detonated an explosives-laden vest. Just before doing so, however, a Turkish security officer threw himself on the suicide bomber to blunt the impact of the explosion and protect the Embassy.⁵⁸ In 2015, Turkish security officers defended the U.S. Consulate in Istanbul from an attack by two female members of the Revolutionary People's Liberation Party-Front (Turkish acronym, "DHKP-C"), a U.S.-designated terrorist group that was also responsible for the 2013 attack on the U.S. Embassy in Ankara.⁵⁹ (*See* Ex. 1, ¶ 8.)

4. Security For Turkey's Head Of State At Sheridan Circle.

According to former U.S. Assistant Secretary of State for European Affairs, Wess Mitchell, Turkey has "suffered more casualties from terrorism in the past several years than any

⁵⁷ *6 die in attack on U.S. Consulate in Istanbul*, N.Y. TIMES (July 9, 2008), <https://www.nytimes.com/2008/07/09/world/europe/09iht-turkey.4.14369483.html> (last visited June 3, 2019).

⁵⁸ Tim Arango and Sebnem Arsu, *Suicide Blast Kills U.S. Embassy Guard in Turkey*, N.Y. TIMES (Feb. 1, 2013), <https://www.nytimes.com/2013/02/02/world/europe/2-dead-in-suicide-bombing-at-us-embassy-in-turkey.html> (last visited June 3, 2019).

⁵⁹ Yesim Dikmen and Seyhmus Cakan, *U.S. consulate in Turkey targeted as wave of attacks kills 9*, REUTERS (Aug. 10, 2015), <https://www.reuters.com/article/us-turkey-usa-attack/u-s-consulate-in-turkey-targeted-as-wave-of-attacks-kills-9-idUSKCN0QF0DT20150810> (last visited June 3, 2019).

other [U.S.] Ally”⁶⁰ Turkey’s national security interest in heightened security for its traveling officials cannot be understated. Physical injury to the Turkish head of state at the hands of a PKK member, sympathizer, or associate in the U.S. would surely serve the PKK’s nefarious purposes by destabilizing Turkey–U.S. relations.

These threats to President Erdogan, which may have been beyond the comprehension of MPD in May of 2017, are very real. Just months after the Sheridan Circle Incident, in December 2017, Greek counter-terrorism police foiled an attempt by members of the DHKP-C (the terrorist group that carried out a suicide attack at the U.S. Embassy in Ankara) to assassinate President Erdogan during his December visit to Athens by throwing hand grenades, Molotov cocktails, and rockets at his official car.⁶¹ The un-permitted Sheridan Circle protesters were in close enough proximity to President Erdogan to have done the same. (*See* Ex. 2, ¶¶ 51, 56.) Understanding the persistence of this threat sheds light on the Incident at Sheridan Circle on May 16, 2017.

Prior to President Erdogan’s arrival at the Residence, D.C. local police escorted a crowd within fifty feet of the Residence without warning to Turkish security. The crowd did not have an assembly permit; violated federal law prohibiting the harassment of IPPs within 100 feet of diplomatic or consular premises, *see* 18 U.S.C. § 112(b) and included apparent supporters of a terrorist organization that has been targeting the Turkish state for decades and had carried out numerous deadly attacks in Turkey just months earlier. *See supra* § II.B.5.a. The local police

⁶⁰ Testimony for Assistant Secretary Wess Mitchell, House Foreign Affairs Committee Hearing on “U.S. Policy Toward a Turbulent Middle East” (Apr. 18, 2018), <https://docs.house.gov/meetings/FA/FA00/20180418/108182/HHRG-115-FA00-Wstate-MitchellA-20180418.pdf> (last visited June 3, 2019).

⁶¹ *Arrested DHKP-C militants plotted to assassinate Erdoğan in Athens: Greek media*, HURRIYET DAILY NEWS (Dec. 18, 2017), <http://www.hurriyetdailynews.com/arrested-dhkp-c-militants-plotted-to-assassinate-erdogan-in-athens-greek-media-124323> (last visited June 3, 2019).

were deaf not only to the criminal threats, harassment and attempts to intimidate Turkish officials by protesters spoken in the Turkish language, but apparently dismissed the Turkish security officers' and Ambassador's legitimate pleas to push back the throng of agitators who had hurled the bullhorn and two plastic bottles of liquid, and were blatantly violating federal criminal law that is designated to protect foreign dignitaries from precisely this type of security risk. 18 U.S.C. § 112. (*See* Compl. ¶¶ 33-40; *Kurd* Compl. ¶ 75 (acknowledging efforts by Turkish authorities to request that the protesters be moved).)

For reasons of international comity, therefore, this Court should defer to the political branches of government to resolve this dispute.

V. 42 U.S.C. § 1985 DOES NOT CONFER SUBJECT MATTER JURISDICTION.

The Complaint cites 42 U.S.C. § 1985 as a basis for subject matter jurisdiction without further elaboration on this allegation. (Compl. ¶ 10.) Section 1985 is not a jurisdictional statute – it creates a substantive cause of action based on two or more **persons** conspiring to violate certain laws. *See* 42 U.S.C. § 1985(3). Foreign sovereigns are immune from Section 1985 claims, absent an exception. *Youming Jin v. Ministry of State Secretary*, 475 F. Supp. 2d 54, 65-66 (D.D.C. 2007) (dismissing a Section 1985 claim under the FSIA). Therefore, Plaintiffs' reference to Section 1985 in its jurisdictional allegation is presumed to be in error due to Section 1985's lack of jurisdictional significance. Turkey does, however, expressly preserve and does not waive all defenses to this claim, including that a foreign government is not a "person" within the meaning of Section 1985. *See Sturdza v. United Arab Emirates*, 281 F.3d 1287, 1306-07 (D.C. Cir. 2002) (affirming trial court's grant of the United Arab Emirates' Rule 12(b)(6) motion to dismiss a Section 1985 claim).

VI. CONCLUSION

For the foregoing reasons, the Republic of Turkey requests that the Court grant its Substitute Motion to Dismiss in its entirety and order that the Complaint be dismissed with prejudice and without leave to amend.

Date: June 7, 2019

Respectfully submitted

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EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LUSIK USOYAN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:18-CV-01141-CKK
)	
THE REPUBLIC OF TURKEY,)	
)	
Defendant.)	
)	

DECLARATION OF PROFESSOR M. HAKAN YAVUZ

Pursuant to 28 U.S.C. § 1746, I, Professor M. Hakan Yavuz, hereby declare as follows:

1. I am a U.S. citizen and resident of the state of Utah.

Professional And Educational Background.

2. I am a tenured, full Professor in the Department of Political Science and the Middle East Center at the University of Utah.

3. I obtained my Ph.D. from the University of Wisconsin-Madison in 1998 after having earned my master’s degree from the University of Wisconsin-Milwaukee and bachelor’s degree from Ankara University. I also completed coursework at the Hebrew University, Jerusalem, in 1989-90. I have been granted fellowships by the John D. and Catherine T. MacArthur Foundation, the Rockefeller Foundation, the Alexander von Humbolt Foundation, and Tanner Humanities Center to support my research on the origins of nationalism and the process of nation-state-building.

4. I am a subject matter specialist on Turkey and the surrounding region. My current work and teaching also focuses on nationalism, ethnic conflicts, ethnic management,

secularism, Islamic modernity, transnational Islamic networks, civil society and the public sphere. I engage in continual research and analysis on the origins and evolution of Kurdish nationalism, and Kurdish political parties in the Middle East.

5. I am the author of three books including *Islamic Political Identity in Turkey*, Oxford University Press 2005, and *Secularism and Muslim Democracy in Turkey*, Cambridge University Press 2009. I have edited ten books, six in English and four in Turkish. Of the more than 60 published academic articles I have authored, 11 have specifically concerned Kurdish nationalism. I serve as a member of the Editorial Board of the *Journal of Muslim Minority Affairs and Critique: Critical Middle Eastern Studies*, both published by Taylor & Francis in London. I am also a Series Editor for the University of Utah Press in Salt Lake City. My published work has been cited, according to Google Scholar Citations, more than 5,900 times. A partial list of my publications is attached hereto as Exhibit A.

6. I have read and am familiar with the Complaint filed by Lusik Usayan and others against Turkey.

Turkey And Its Security Challenges.

7. Turkey is a sovereign state and constitutional republic situated in southeastern Europe and southwestern Asia, bordering Syria, Iraq, Iran, Azerbaijan, Armenia, Georgia, Bulgaria and Greece. Its current population is approximately 81 million. In area, Turkey is slightly larger than the U.S. state of Texas. Its longest land border, 900 km or approximately 560 miles, is with Syria.

8. By virtue of Turkey's location, its national security challenges are immense. The threat of terrorist attacks against Turkey is a constant reality and heightens the security needs for its travelling officials. According to former U.S. Assistant Secretary of State for European

Affairs A. Wess Mitchell, Turkey has “suffered more casualties from terrorism in the past several years than any other [U.S.] Ally.”¹ Turkey’s diplomats, ministers, and political leaders are under constant assassination threat both inside and outside the country. Kemal Kilicdaroglu, the leader of Turkey’s main opposition party, the leader of the Republican People’s Party (Turkish acronym CHP), has had three assassination attempts by the PKK and ISIS terrorists inside the country. The Armenian Secret Army for the Liberation of Armenia, known as ASALA, and the Justice Commandos for the Armenian Genocide, targeted and killed 46 Turkish diplomats, and government officials worldwide, killing four diplomats in the U.S. And just weeks after the Sheridan Circle incident, in June 2017, local Greek authorities thwarted an attempt to assassinate President Erdogan in Athens by members of DHKP-C, who had planned to use hand grenades, rockets, and Molotov cocktails against President Erdogan while he was in his official car.² DHKP-C is also a U.S.-designated foreign terrorist organization, which carried out a suicide attack at the U.S. Embassy in Ankara in 2015.

Turkey-U.S. Security Cooperation.

9. Turkey and the United States are NATO allies, Turkey having joined the alliance in 1952. Turkey and the United States are also fellow members of the Organization for Economic Co-operation and Development (“OECD”), the Organization for Security and Co-operation in Europe (“OSCE”) and the G-20.

¹ Testimony of Assistant Secretary Wess Mitchell, House Foreign Affairs Committee Hearing on “U.S. Policy Toward a Turbulent Middle East” (Apr. 18, 2018), <https://docs.house.gov/meetings/FA/FA00/20180418/108182/HHRG-115-FA00-Wstate-MitchellA-20180418.pdf> (last visited May 5, 2019).

² *Arrested DHKP-C militants plotted to assassinate Erdoğan in Athens: Greek media*, HURRIYET DAILY NEWS (Dec. 18, 2017), <http://www.hurriyetdailynews.com/arrested-dhkp-c-militants-plotted-to-assassinate-erdogan-in-athens-greek-media-124323> (last visited May 5, 2019).

10. Accurately describing the mutually dependent security relationship between the United States and Turkey, the U.S. State Department currently affirms:

Turkey is an important U.S. security partner. Turkey has been a valued North Atlantic Treaty Organization (NATO) Ally since 1952. Turkey is a leader in the Alliance's Resolute Support Mission in Afghanistan and serves as NATO's vital eastern anchor, controlling (in accordance with international conventions) the straits of the Bosphorus and the Dardanelles, which link the Black Sea with the Mediterranean.

Turkey is engaged in intensive efforts to defeat terrorist organizations both inside and outside its borders, including the Kurdistan Workers' Party (PKK), the Revolutionary People's Liberation Party/Front (DHKP-C), and ISIS. As a vital member of the Defeat ISIS Coalition, Turkey opened its military bases to the United States and Coalition partners in July 2015. Since that time, Incirlik Air Base has been critical in the effort to degrade and ultimately destroy ISIS in Syria and Iraq.

Turkey contributes to international security alongside U.S. forces in Afghanistan, the seas bordering Somalia, and in the Mediterranean. Turkey borders Greece, Bulgaria, Georgia, Armenia, Azerbaijan, Iran, Iraq, and Syria, and is a key partner for U.S. policy in the surrounding region.³

11. Turkey closely worked with the U.S. during the Cold War and militarily cooperated with the U.S. in the Balkan wars to protect vulnerable Bosnian and Albanian populations. The two countries have for over a half century cooperated on military operations, from the Korean War to the ongoing global war on terrorism. Most recently, Turkish military and intelligence services have been working with the U.S. against the ISIS terrorists in Iraq and Syria.

Turkey And The Kurds.

12. Citizens of Turkey belong to a dense web of crosscutting affiliations, where an opponent in one context can be an ally in another. This offers multiple opportunities for and

³ *U.S. Relations With Turkey*, U.S. DEP'T OF STATE (Mar. 27, 2019), <https://www.state.gov/r/pa/ei/bgn/3432.htm> (last visited May 5, 2019).

constraints on the policies and conduct of individuals. The country and its citizens have multiple affiliations, such as Turkish, Kurdish, Jewish, Armenian, Albanian, Bosnian, and Chechen. These groups are all tied to the Republic of Turkey with citizenship. Thus, the key characteristic of Turkish nationalism is that it is a civic nationalism.

13. The Kurds are an ethno-linguistic group native to a large swathe of the Middle East, comprising parts of eastern Turkey, northern Syria, northern Iraq, northern Iran, and parts of Armenia and Azerbaijan. The largest portion of Kurds worldwide live in Turkey. The Istanbul metropolitan area is home to the largest concentration of Kurds in the world, while significant populations can be found in Turkey's other large cities. Kurds also represent a noteworthy portion of the population of rural areas in eastern and southeastern Turkey. The Kurdish landscape in Turkey is also divided along a number of linguistic (the Kirmanci, Zaza, and Sorani Kurdish dialects) and religious (Sunni Safii, Sunni Hanefi, Shia and Alevi) fault lines.

14. Although there has long been a Kurdish separatist movement, discussed further herein, the vast majority of Kurds are fully integrated into Turkish social, cultural, and political life. Kurdish Turks work in all professions and serve in the Turkish government and military at all levels. For instance, in political life: Turgut Ozal (Prime Minister 1983-89 and President of Turkey 1989-1993), Ferit Melen (Prime Minister 1972-1973), Huseyin Celik (Minister of Education 2003-2009), Mehdi Eker (Minister of Agriculture 2005-2015), Mehmet Şimşek (Deputy Prime Minister, Minister of Finance, 2007-2018); and in art and literature: Yasar Kemal (the most prominent writer of Turkey), Kucuk Iskender (a leading Kurdish poet), Murathan Mungan (prominent novelist), Ibrahim Tatlisles and Mahsun Kirmizigul, (the most prominent folk singers).

Development Of Kurdish Nationalism.

15. The politicization of Kurdish cultural identity was driven by the shift from the multi-ethnic, multi-cultural realities of the Ottoman Empire to the modern nation-state model that established an overarching Turkish nationalism.

16. Yet, Kurds remain divided by linguistic, religious and tribal loyalties. This tribal structure has played a dual role: it has prevented the formation of a unified Kurdish identity by fragmenting Kurds, and preserved a heightened Kurdish particularism vis-à-vis the Turks, Persians, and Arabs among whom Kurds live. The Kurdish tribal structure, constituting the core depository of Kurdish identity, facilitated mobilization against centralizing governments, but also prevented the formation of a modern conception of nationalism until the mid-20th century. In other words, allegiances among the Kurdish tribes are fluid, but division itself has been a constant feature.

17. Another source of fragmentation of Kurdish identity is geography. Originating at the crossroads of the Persian, Arab, and Turkish worlds many Kurds still live in extremely rugged, mountainous terrain and this, in turn, has reinforced existing separations by tribal and linguistic differences. Tribal, geographic, and linguistic sub-ethnic identities have become, therefore, more powerful than Kurdish consciousness.

18. The relatively successful secularizing, centralizing, and nation-building project of Mustafa Kemal Ataturk, the Republic of Turkey's first president (1923-1938), in education, urbanization, and communication helped to create a Kurdish ethnic elite. Yet some tribes reacted to the government's centralization policies by carrying out a series of rebellions. These early Kurdish tribal rebellions created a cumulative image of the Kurdish people of the rural areas as socially tribal, religiously fanatical, and economically backward.

The PKK's Founding By Abdullah Ocalan.

19. The PKK (Partiya Karkaren Kurdistan) developed under the autocratic leadership of Abdullah Ocalan, who was born in 1948 in a village in Urfa, the son of an impoverished Kurdish farmer. Ocalan studied political science at the prestigious Faculty of Political Science in Ankara University in 1971. By 1973 he had organized a Marxist-Leninist group, which initially included both Kurdish and non-Kurdish militants, and whose goal was to foment a socialist revolution in Turkey. After years of recruiting and indoctrinating followers and honing his message, Ocalan established the PKK on November 27, 1978. Ocalan's personality was strongly shaped by his childhood experiences and the socio-political conditions of southeastern Turkey. He developed a deep animosity toward the traditional structure of the Kurdish society in which his family had no standing. This aversion extended to the Turkish state. His main goal was to destroy not just the Turkish state, but also the traditional Kurdish societal structure. In its place, he sought a socialist Pan-Kurdish state. He sought assistance in this goal from, among others, the Soviet Union and Bashar al-Assad's Syria.

20. In the mid-1980s, at the height of the Cold War, the Soviet Union stepped up its support of Ocalan and the PKK in order to weaken Turkey, as a member of NATO and close ally of the U.S. The archives of the Soviet Union indicate that the support was not merely ideological; rather, the Soviet Union directly supported the armament of the PKK and its growing violent insurgency. The Soviet Union also encouraged the establishment of Kurdish-oriented political parties in Turkey and surrounding countries.

PKK Terrorism Intensifies From The 1980s Onward.

21. From the mid-1980s forward, the PKK launched waves of terrorism against Turkish officials and others. With Ocalan directing the PKK from Syria and Syrian-occupied

Lebanon, the PKK repeatedly targeted educational infrastructure in the Turkish southeast, branding the public schools as “instruments of Ankara’s assimilation policy.” The PKK reportedly killed 400 teachers and destroyed 150 schools to “stop assimilation.” It blew up bridges, hospitals, and businesses. Teachers, doctors, journalists, businessmen, police, and army officers all fell victim to the PKK. Kurds and Turks alike were targeted so long as the victims were perceived as pro-state. The PKK forced some families to give up a son or daughter to serve in its ranks. The PKK and its leadership have never tolerated dissent from the party line and considered assimilated Kurds as the “biggest enemy.”

22. The PKK, according to German intelligence sources, has 30,000 supporters among the half million Kurds in Germany. It also has managed to mobilize Kurdish diaspora communities in Australia, Europe, Canada and the U.S. against Turkey. Although PKK militants are a small minority of Kurds worldwide, they are well-organized and violent. It has been credibly reported that the PKK is involved in heroin trafficking and human trafficking throughout Europe. Income generated through organized crime activities is a major financial source for the PKK. It also controls and benefits from drug trafficking. The PKK has an active role in the European drug market through its collaborators and members residing in Europe. The PKK’s involvement in multiple transnational organized crime and international drug trafficking networks, has been documented in a number of international reports, including the EU Terrorism and Situation and Trend Report 2018.⁴ The report indicates that the PKK “forcibly collects funds in the EU to finance its activities. The organization also uses front organizations and

⁴ European Union Terrorism Situation And Trend Report, EUROPOL (2018), https://www.europol.europa.eu/sites/default/files/documents/tesat_2018_1.pdf (last visited May 5, 2019).

charities in the EU for its purpose and is suspected of being involved in criminal activities to supplement its income to cover expenses in Turkey, the Middle East and Europe.

23. Income generated through organized crime activities is the major financial source for the PKK. The PKK and its Syrian arm, the YPG/PYD, are involved in the production of heroin in the north of Iraq. They also control and benefit from drug smuggling across the Iraqi and Iranian border. It has been credibly reported that the PKK is involved in heroin trafficking and human trafficking throughout Western Europe.⁵ The PKK has an active role in the European drug market through its collaborators and members residing in Europe. The PKK's transnational criminal network and drug trafficking have been documented in a number of international reports, including the EU Terrorism and Situation and Trend Report 2018. The report indicates that the PKK "forcibly collect[s] funds in the EU to finance its activities."⁶ The terrorist group also uses front organizations and charities in the EU for its purpose and is suspected of being involved in criminal activities to supplement its income to cover expenses in Turkey, the Middle East, and Europe.

24. Among the PKK attacks since mid-2015 alone have been a truck bombing in Diyarbakir on May 12, 2016 that killed 16 and injured 23, including 10 children, and a car bombing in Ankara on March 13, 2016 that killed 39 and wounded 312. And on July 31, 2018, Ms. Nurcan Karakaya was returning home with her 11-month-old baby, Mustafa Karakaya,

⁵ See, e.g., *Report links PKK drug activities to UK, Germany cells*, TRT WORLD (Apr. 16, 2018), <https://www.trtworld.com/turkey/report-links-pkk-drug-activities-to-uk-germany-cells-16775> (last visited May 5, 2019); *PKK uses Europe as logistics base: Europol report*, HURRIYET DAILY NEWS (June 21, 2018), <http://www.hurriyetdailynews.com/pkk-uses-europe-as-logistics-base-europol-report-133571> (last visited May 5, 2019).

⁶ European Union Terrorism Situation And Trend Report at 11, *supra* note 4.

following a visit to her husband in a military base. She and her baby were killed as a result of detonation of a remote-controlled IED planted on the road.

25. In order to contain and suppress the PKK, the Turkish state pursued a number of policies, including the implementation of military-style security operations in rural eastern Turkey. Yet, despite the PKK's attacks on civilian and state targets and the state's response to them, the majority of Turkey's Kurds trust the state and have neither given in to the fear sown by the PKK nor have they rallied to its cause.

Ocalan's 1999 Arrest Did Nothing To Halt PKK Terror, Especially Against Diplomatic Targets.

26. Abdullah Ocalan found safe haven among PKK members in Syria from the moment he fled Turkey in July 1979. Northern Syria thus became a PKK center of operations and a launching point for PKK attacks against Turkey. It was only after Ocalan's expulsion from Syria in October 1998 that he was captured by Turkish commandos in Nairobi in February 1999, following which he was tried and convicted. He remains in Turkish prison, but continues to be revered by the PKK and its regional offshoots, including in Syria. After Ocalan's arrest, his brother and other members of the PKK leadership authorized the PKK's military arm, then labeled the Peoples Liberation Army of Kurdistan (Kurdish acronym ARGK), "to wage a war that will make the Turkish state tremble" and called for a *serhildan* (Kurdish intifadah). On March 13, 1999, less than one month after Ocalan's arrest, a group calling itself the "Revenge Hawks of Apo" attacked a shopping mall and killed 13 people in Kadiköy, Istanbul. "Apo" is one of Ocalan's *nommes de guerre*.

27. Of critical significance, the PKK regularly attacks Turkish diplomatic mission buildings under the cover of so-called peaceful demonstrations and exercises of free expression. In 1993, while Ocalan was still operating out of northern Syria, PKK members stormed and

occupied Turkish consulates in Munich and Marseille and the Embassy in Bern, wounding 16 and taking many hostages. Turkish banks and travel agencies in European cities were also attacked, causing heavy damage.⁷

28. In 1999, PKK members reacted to the capture of Ocalan by attacking the Israeli consulate in Berlin, where Israeli security guards killed three PKK members. Simultaneously, PKK members occupied Greek and Kenyan Embassies in many major European cities.⁸

29. In this same spasm of violence, on February 25, 1999, ten days after Ocalan's capture, PKK supporters attacked the U.S. Embassy in Athens, throwing stones and burning an American flag.⁹

30. More recently on March 19, 2018, four PKK members threw Molotov cocktails at the Turkish Embassy in Copenhagen, causing an extensive fire. Perpetrators were given prison sentences by the Danish courts.¹⁰

31. Following the launch of the Operation Olive Branch (OOB) on January 20th, 2018, PKK cells in Europe and North America staged more than 700 demonstrations promoting violence and propagating terrorism by displaying Ocalan's posters, terrorist symbols, and flags. During the same period, Turkish diplomatic and consular missions, the Turkish communities, individuals and the mosques abroad, as well as Turkish companies and other Turkish interests,

⁷ Prof. Bayram Ali Soner, Dr. Ömer Aslan, Hakan Kiyici, *PKK's Regional Franchise of Terror* (Mar. 2017), <http://madrid.be.mfa.gov.tr/Content/assets/consulate/images/localCache/1/f030f81b-e866-4e14-acd9-c256fc6265bf.pdf> (last visited May 5, 2019).

⁸ *Three Kurdish protesters shot dead in clash with Israelis*, CNN (Feb. 17, 1999), <http://edition.cnn.com/WORLD/europe/9902/17/ocalan.protest.03/> (last visited May 5, 2019).

⁹ *Political Violence Against Americans 1999*, U.S. DEP'T OF STATE (Dec. 2000), <https://2009-2017.state.gov/documents/organization/24968.pdf> (last visited May 5, 2019).

¹⁰ Frank Zorlu, *Denmark jails 4 over attack on Turkish Embassy*, ANADOLU AGENCY (Feb. 20, 2019), <https://www.aa.com.tr/en/europe/denmark-jails-4-over-attack-on-turkish-embassy/1398254> (last visited May 5, 2019).

became targets of the PKK affiliated groups. One example is PKK-member Ercan Polater's attack on the Turkish Consulate in Amsterdam on August 11, 2018 with Molotov cocktails, for which Dutch authorities sentenced him to a 16-month prison term.

Recep Tayyip Erdogan, President Of Turkey.

32. Earlier in his political career, President Erdogan endorsed a position paper defending the cultural rights of Turkey's Kurds. When Erdogan was elected mayor of Istanbul in 1994, he surrounded himself with numerous capable Kurdish advisors. He was first elected to the parliament from the overwhelmingly Kurdish province of Siirt in 2003. As prime minister, his cabinet always included Kurdish ministers. Due to his policies while Prime Minister, Erdogan's Justice and Development Party (Turkish acronym AKP) received roughly one-third of the Kurdish vote in successive elections.

33. Whereas for decades Turkey's president was appointed by the legislature, constitutional changes via national referendum in 2007 led to the institution of direct elections for the office of the president. In 2014, Recep Tayyip Erdogan was elected president with 51.79 percent of the vote. Following additional constitutional changes via national referendum on April 16, 2017, which transformed the government from a parliamentary system to a presidential system, a presidential election was held on June 24, 2018. President Erdogan, the incumbent, was re-elected with 52.59 percent of the vote.

**PKK Attacks Preceded And Followed The Turkish President's Visit
To Washington In May 2017.**

34. Attacks by the PKK on Turkish officials immediately preceding and proceeding May 2017 undoubtedly led to heightened security concerns by President Erdogan and his delegation during the May 2017 visit. On December 10, 2016, two PKK-linked suicide bombers attacked Turkish police and security officers at a soccer game in Istanbul, killing 36 officers and

8 civilians, and injuring another 150.¹¹ On December 17, 2016, a PKK suicide bomber rammed his car into a bus carrying off-duty Turkish military officers and killing 14 of them.¹² On January 5, 2017, the PKK detonated a car bomb outside a courthouse in Izmir, Turkey, killing two people and wounding at least five. It was believed that an even larger attack had been planned.¹³ On April 15, 2017, the majority Justice and Development political party's Muradiye district head's motorcade was attacked by the PKK, killing one person.¹⁴ Just after the Sheridan Circle Incident, on June 9, 2017, the PKK attacked the official car of the mayor of Kozluk, who is from the majority Justice and Development political party. A music teacher who was a bystander was killed.¹⁵ On June 16, 2017, a primary school teacher was abducted while driving his car and his body was later found in a river. The PKK announced that the teacher was "penalized" for collaborating with Turkish security forces.¹⁶ On July 1, 2017, the majority Justice and Development Party's deputy head of Diyarbakir's Lice district was shot dead in front of his house. The women's branch of PKK's urban youth wing, YPS-Jin (Civil Protection Units-

¹¹ Arwa Damon, Chandrika Narayan, Max Blau, *Istanbul explosions: 44 killed, 155 wounded in twin blasts*, CNN, (Dec. 12, 2016), <https://www.cnn.com/2016/12/11/europe/istanbul-explosions/index.html> (last visited May 5, 2019).

¹² *Turkish bus attack: 13 off-duty soldiers killed by car bomb*, BBC, (Dec. 17, 2016), <https://www.bbc.com/news/world-europe-38350662> (last visited May 5, 2019).

¹³ *Car bomb kills two outside courthouse in Turkish city of Izmir*, THE GUARDIAN (Jan. 5, 2017), <https://www.theguardian.com/world/2017/jan/05/turkish-police-shoot-dead-two-suspected-attackers-after-explosion> (last visited May 5, 2019).

¹⁴ *Id.*

¹⁵ *Promising young music teacher killed by PKK in Batman*, T-VINE (June 12, 2017), <http://www.t-vine.com/promising-young-music-teacher-killed-by-pkk-in-batman/> (last visited May 5, 2019).

¹⁶ *Education Under Attack 2018 – Turkey*, GLOBAL COALITION TO PROTECT EDUCATION FROM ATTACK (May 11, 2018), <https://www.refworld.org/docid/5be942fea.html> (last visited May 5, 2019).

Women), claimed responsibility, alleging the deputy head was spying for the Turkish state and trying to recruit Kurdish youths as spies.¹⁷

The U.S. Designated The PKK A Foreign Terrorist Organization In 1997 And Has Reconfirmed This Designation Every Year Since.

35. The PKK was designated a “Foreign Terrorist Organization” by the U.S. State Department on October 8, 1997. The U.S. has maintained that designation ever since. As stated by the State Department Spokesperson on March 1, 2019:

Since designating the PKK over two decades ago, the United States has worked with Turkey and other Allies to counter the terrorist threat from the PKK. The United States maintains a strong commitment to our partnership with our NATO ally Turkey, including fighting PKK fundraising operations in Europe and elsewhere.

Today’s actions notify the U.S. public and the international community that the PKK remains a terrorist organization. In addition to its continued status as an FTO, the PKK has also been designated as a Specially Designated Global Terrorist under Executive Order 13224 since 2001.¹⁸

36. The Council of the European Union has also designated the PKK and DHKP-C as terrorist organizations subject to freezing of financial assets and enhanced measures in police and judicial cooperation.¹⁹

¹⁷ Berkay Mandiraci, *Turkey’s PKK Conflict Kills almost 3,000 in Two Years*, INTERNATIONAL CRISIS GROUP (July 20, 2017), <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/turkeys-pkk-conflict-kills-almost-3000-two-years> (last visited May 5, 2019).

¹⁸ *State Department Maintains Foreign Terrorist Organization (FTO) Designation of the Kurdistan Workers’ Party (PKK)*, U.S. DEP’T OF STATE (Mar. 1, 2019), <https://www.state.gov/r/pa/prs/ps/2019/03/289833.htm> (last visited May 5, 2019).

¹⁹ Council Decision (CFSP) 2017/1426 of 4 August 2017, art. 1 & Annex, 2017 O.J. (L204) 95, 98 (Aug. 4, 2017), <https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:32017D1426&from=EN> (last visited May 5, 2019).

Plaintiffs' Allegations And Implications That All Kurds Are Oppressed Is Not Accurate.

37. Contrary to the allegations and implications made by the Plaintiffs in their Complaints filed in the Usayan Lawsuit, captioned above, and the related lawsuit *Kasim Kurd, et al. v. The Republic of Turkey, et al.*, United States District Court for the District of Columbia, Case No. 18-cv-01117-CKK (“Kurd Lawsuit”), both of which stem from the May 16, 2017 Incident, there is no systemic prejudice against or oppression of the Kurdish population of Turkey.

38. Plaintiffs in the Lawsuits stemming from the Incident allege that the actions of the Turkish security agents were intended to intimidate and influence Kurds or others who would otherwise politically oppose President Erdogan. Those accusations are not consistent with the reality on the ground in Turkey. First, the overwhelming proportion of Turkey’s Kurds support the integrity of the Turkish state and disavow the PKK and all of its offshoots. Second, ethnically Kurdish citizens of Turkey vote for no one party. And in fact Kurds make up a large part of the electorate of the Justice and Development political party, which is the current majority party and the party of President Erdogan. Kurdish voters equally are present in the CHP, the current main opposition party. And most recently in the March 31, 2019 municipal elections, the Kurdish-oriented HDP political party ran candidates, won contests, and currently governs 17 major municipalities. In Istanbul, Ankara, and Izmir, Turkey’s three most populous cities, the HDP entered into a coalition with the Republican People’s Party and defeated the candidates from the governing Justice and Development Party. Pro-Kurdish and other political parties in Turkey have routinely formed coalitions based on shared political interests. In Turkey’s unicameral national parliament, the main Kurdish-oriented party, the People’s Democratic Party (Turkish acronym HDP), has consistently been represented. Sixty-five deputies from HDP serve

the current parliament. However, many more deputies of Kurdish ethnicity from the Justice and Development the CHP parties also serve in the current parliament.

39. Turkey has cultivated positive relations with the Kurdistan Regional Government (“KRG”) in northern Iraq, maintaining a consulate in Erbil, the regional capital. The KRG maintains official representation in Ankara. The initial leaders of the KRG, Jalal Talabani, who also served as president of Iraq 2006-2014, and Masoud Barzani were issued Turkish diplomatic passports to facilitate their travel beyond Turkey and Iraq during and after the Iraq War of 2003-2011.

The YPG Is The Syrian Wing Of The PKK.

40. Video widely available on the Internet shows that many of the protestors at Lafayette Park and Sheridan Circle on May 16, 2017 were carrying flags and other outward support for groups known as the PYD and YPG.²⁰ The YPG, the Kurdish language acronym for People’s Protection Units, is an armed terrorist group operating in Syria partially in coordination with the U.S. The YPG is overseen by a Syrian Kurdish political organization known as the PYD, which is the Kurdish language acronym for the Democratic Union Party. The PYD lacks lawful status in Syria as it seeks to dismember the Syrian state and create a Kurdish dominated state in northern Syria. Turkey vehemently disagrees with the U.S.’ stance toward the YPG because of its indisputable status as an alter ego of the PKK.

41. The alter ego status of the PKK and YPG has been confirmed numerous times by U.S. government agencies and officials:

²⁰ *Witnesses reveal what actually happened outside Turkish embassy in US*, DAILY SABAH (May 20, 2017), <https://www.dailysabah.com/politics/2017/05/20/witnesses-reveal-what-actually-happened-outside-turkish-embassy-in-us> (last visited May 5, 2019).

a. The 2018 Worldwide Threat Assessment of the U.S. Intelligence Community, published by the Director of National Intelligence refers to the YPG and PKK synonymously: “**the Kurdish People’s Protection Unit—the Syrian militia of the Kurdistan Workers’ Party (PKK) . . .**” Director Coats continues that the YPG “probably will seek some form of autonomy [in Northern Syria] but will face resistance from Russia, Iran, and Turkey.”²¹

b. The U.S. Army Training and Doctrine Command (“TRADOC”) concurs. Its Tactical Action Report from April 2016 concerning the Battle for Sinjar, Iraq, openly states that, “**A smaller group allied with the PKK is the Syrian YPG**, the military arm of the Democratic Union Party.”²²

c. Ambassador James Jeffrey, current U.S. Special Representative for Syria Engagement and former U.S. Ambassador to Turkey (2008-2010), described the YPG-PKK relationship at the 6th Annual Defense One Summit on November 15, 2018. He said U.S. operations in Syria could not be done without the active participation, coordination, and cooperation of Turkey. But, he added that the U.S. was not able to function in northeastern Syria without a local partner. “That local partner since 2014 has been the PYD, **which is the Syrian offshoot of [the] PKK**, but we have not designated it as a terrorist organization which we did with the PKK. That’s an issue, a great concern to

²¹ Daniel R. Coats, Dir. Of Nat’l Intelligence, *Worldwide Threat Assessment of the US Intelligence Community* at 21 (emphasis added) (Feb. 13, 2018), <https://www.dni.gov/files/documents/Newsroom/Testimonies/2018-ATA---Unclassified-SSCI.pdf> (last visited May 5, 2019).

²² Rick Burns, *Threat Action Report* at 5 (emphasis added), U.S. ARMY TRAINING AND DOCTRINE COMMAND (Apr. 2016), <https://info.publicintelligence.net/USArmy-BattleforSinjar.pdf> (last visited May 5, 2019).

the Turks.”²³ On March 15, 2018, before Jeffrey was appointed as the Secretary’s Special Representative for Syria Engagement and the Special Envoy to the Global Coalition to defeat ISIS, he penned an opinion for the Cipher Brief, an Internet-based discussion platform devoted to national security issues. Jeffrey noted, “Turkey, **for understandable reasons**, considers the PYD – and its YPG militia, aka ‘People’s Protection Units’ – to be an arm of the Turkish Kurdistan Worker’s Party or PKK. The PKK has fought for Kurdish independence inside Turkey since 1984 – and also has had off-and-on close relations with the Assad regime.”²⁴

d. Then U.S. Secretary of Defense Ashton Carter acknowledged that the YPG is affiliated with the PKK. During the testimony before the Senate Armed Services Committee on April 28, 2016, when asked by Senator Lindsey Graham whether the PYD and its military wing, the YPG, were aligned or at least had substantial ties with the PKK, Carter replied, “**Yes**” and further stated, “The PKK is a terrorist organization, not only in the eyes of the Turkish government, but in the eyes of the U.S. Government as well.”²⁵

e. Then commander of the U.S. Special Operations Command, General Raymond “Tony” Thomas, acknowledged the link between the YPG and the PKK. He

²³ *Ambassador James Jeffrey on Syria; Plus Sue Mi Terry of CSIS and Evan Medeiros of Georgetown Univ.* at 23:48-24:02, EP. 29, DEFENSE ONE RADIO (Nov. 16, 2018), <https://www.defenseone.com/ideas/2018/11/ep-29-ambassador-james-jeffrey-syria-plus-sue-mi-terry-csis-and-evan-medeiros-georgetown-university/152894/> (last visited May 5, 2019); *see also YPG is “Syrian offshoot” of PKK: US envoy*, HURRIYET DAILY NEWS (emphasis added) (Nov. 16, 2018), <http://www.hurriyetdailynews.com/ypg-is-syrian-offshoot-of-pkk-us-envoy-138914> (last visited May 5, 2019) (same).

²⁴ James Jeffrey, *Turks in Afrin: How Does It End?*, THE CIPHER BRIEF (emphasis added) (Mar. 15, 2018), https://www.thecipherbrief.com/column_article/turks-afrin-end (last visited May 5, 2019).

²⁵ *US confirms links between the PYD-YPG and the PKK*, (Apr. 28, 2016), <https://www.youtube.com/watch?v=hU7sODRsYD0> (last visited May 5, 2019).

explained that the U.S. encouraged the YPG to rebrand itself specifically because of its links to the PKK, and its now imprisoned leader Abdullah Ocalan. Gen. Thomas recollected,

The first time Brett McGurk and I went out to this very old, cold guildhall in Kobani, right on the Turk border, we went in there, a bunch of somber technocrats and military people, and whose beaming face is looking down on us from the front of the guildhall but Ocalan [T]hey got to work on their own branding. If they continue to keep linkage to their past product - the PKK linkage, specifically - the relationship is fraught with challenges.²⁶

So we literally played back to them that you've got to change your brand. What do you want to call yourself besides the YPG? With about a day's notice they declared that they were the Syrian Democratic Forces.²⁷

42. The YPG-PKK equivalence has been further corroborated by eminent think tanks. For example, in his February 24, 2016 report for the Atlantic Council, Former U.S. Ambassador to Turkey, Francis Ricciardone, stated, the PYD is “the PKK’s Syrian wing,” and, “**the PYD is undeniably and organically linked to the PKK, designated by the United States and Europe as a terrorist group.**”²⁸

43. Another Atlantic Council report, “The YPG-PKK Connection,” stated that, “[t]he YPG’s casualty data confirms linkages between international PKK-linked groups. Kurds from Turkey total 49.24 percent of the YPG’s self-reported casualties between January 2013 and

²⁶ General Raymond Thomas Commander US Special Operations Command Aspen Security Forum 072117 (Jan. 29, 2018), <https://www.youtube.com/watch?v=N3yhzetpuWA> (last visited May 5, 2019).

²⁷ American General Explains Rebranding the YPG Away From the PKK (July 22, 2017), https://www.youtube.com/watch?v=kVZCiel_2Xw (last visited May 5, 2019).

²⁸ Francis Ricciardone and Aaron Stein, *Mitigating US - Turkish Disagreement over the PYD*, ATLANTIC COUNCIL (emphasis added) (Feb. 24, 2016), <http://www.atlanticcouncil.org/blogs/meanasource/mitigating-us-turkish-disagreement-over-the-pyd> (last visited May 5, 2019).

January 2016.”²⁹ The report also noted, “The PKK’s involvement in two overlapping fronts shape this assessment. The first front remains inside Turkey against Turkish security forces for what the Democratic Society Congress (a PKK-linked Kurdish group inside Turkey) recently called the formation of autonomous regions based on cultural, economic, and geographic ties. The second hinges on support for the PYD’s project inside Syria via the YPG. This investment and possible PKK-YPG cooperation suggests similar political ambitions in Turkey and Syria, and is disturbing to the Turkish government.”³⁰ Moreover, the report referred to an interview in a Wall Street Journal article in which Kurdish fighter Zind Ruken declared, “Sometimes I’m a PKK, sometimes I’m a PJAK [the PKK affiliate in Iran], sometimes I’m a YPG. It doesn’t really matter. They are all members of the PKK.”³¹

44. The International Crisis Group’s extensive and detailed report, “The PKK’s Fateful Choice in Syria,” also thoroughly substantiates the YPG-PKK alter ego relationship:

Because they spent their formative years fighting Turkey in the 1990s, most senior PYD and YPG cadres, regardless of citizenship, have long considered Turkey the primary theatre in which to implement the ideological project, possibly as a precondition for success with Kurdish communities elsewhere.³²

The PKK and its Syrian affiliates are linked by the history of the latter’s creation and the profile of the military cadres they share. After three decades of guerrilla war, the PKK had a large force of fighters from the four parts of the Kurdish realm: Turkey, Iran, Iraq and Syria. They received basic training in PKK military

²⁹ Aaron Stein and Michelle Foley, *The YPG-PKK Connection*, ATLANTIC COUNCIL (Jan. 26, 2016), <http://www.atlanticcouncil.org/blogs/menasource/the-ypg-pkk-connection> (last visited May 5, 2019).

³⁰ *Id.*

³¹ Matt Bradley and Joe Parkinson, *America’s Marxist Allies Against ISIS*, THE WALL STREET JOURNAL (July 24, 2015), <https://www.wsj.com/articles/americas-marxist-allies-against-isis-1437747949> (last visited May 5, 2019).

³² *The PKK’s Fateful Choice in Northern Syria*, INTERNATIONAL CRISIS GROUP (May 4, 2017), <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/176-pkk-s-fateful-choice-northern-syria> (last visited May 5, 2019).

camps and ideological academies in Qandil [Iraq], the movement's base since the 1990s, and spent their formative years fighting Turkey.³³

In 2003, the PKK established organisations [sic] with civilian goals in Syria, . . . groups ideologically inspired by the imprisoned Öcalan.³⁴

YPG fighters who arrived in Syria in July 2012 were Syrian nationals who had joined and been trained by the PKK in Qandil in the 1990s and fought in Turkey during the war's height. During the 2000s, many operated underground or under civilian cover in northern Syria.³⁵

YPG-PYD decision-making is secretive, limited to a few of PKK-trained cadres . . .³⁶ The more territory the YPG has seized, the more the PKK has appointed trusted Qandil-trained cadres, including Kurds from Turkey and Iran, in sensitive locations, and the more closely the YPG-PYD has remained tied to the PKK and its conflict with Turkey."³⁷

45. Another substantial International Crisis Group research report titled, "Flight of Icarus? The PYD's Precarious Rise in Syria," detailed the PYD's origins within the PKK:

As the PYD's growing power has brought its leaders to the forefront of Kurdish politics, they have downplayed their PKK affiliation, but sceptics are unconvinced. . . . The ideological affiliation is manifest, as the PYD belongs to the Union of Communities in Kurdistan (Koma Civakên Kurdistan, KCK), an umbrella organisation [sic] that includes the PKK and its affiliates in Iran, Iraq and Syria. All KCK parties operate under Öcalan's leadership and are committed to his ideological program; the KCK name is in practice often used interchangeably with that of the better-established PKK. Militarily, the PKK's Qandil leadership exerts authority over the YPG, whose leadership in the early days of the Syrian uprising was dominated by Syrian PKK fighters trained at that base.³⁸

³³ *Id.* at 6.

³⁴ *Ibid.*

³⁵ *Id.* at 7.

³⁶ *Id.* at 10.

³⁷ *Id.* at 13.

³⁸ *Flight of Icarus? The PYD's Precarious Rise in Syria*, Middle East Report 151, INTERNATIONAL CRISIS GROUP (May 8, 2014), <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/flight-icarus-pyd-s-precarious-rise-syria> (last visited May 5, 2019).

46. In “Fighting ISIS: The Road to and beyond Raqqa,” the International Crisis Group recognized that despite the YPG’s apparent indispensability to certain U.S. military operations in Syria, it remains troubling that the U.S. is supporting a group that is simultaneously engaged in deadly violence against a NATO ally:

The YPG may be an essential partner for Washington, but it also is a highly problematic one, because it is the armed Syrian affiliate of the Kurdistan Workers Party (PKK) in Turkey, which the U.S. lists as a terrorist organisation, [sic] and which is locked in a round of violence with Turkey, a NATO member that is indispensable to U.S. counter-terror efforts and to any attempt to de-escalate and ultimately end the Syrian civil war. The YPG now operates under the banner of the Syrian Democratic Forces (SDF), an umbrella grouping designed to facilitate recruitment among Arabs and provide an additional nominal degree of separation between U.S. support and the PKK. While the SDF has grown in recent months to include a notable number of Arab recruits, in practice it remains squarely under YPG command and wholly reliant upon the PKK-trained Kurdish fighters who form its backbone.”³⁹

The YPG and its political wing, the Democratic Union Party (PYD), are the PKK’s Syrian affiliates, and there is little prospect for their organic link with the mother party to change in the foreseeable future. Qandil-trained and battle-hardened PKK cadres with years – in some cases decades – of experience in the organisation’s [sic] struggle against Turkey hold the most influential positions within the YPG and, by extension, within the SDF’s chain of command; within the PYD-run civil governing bodies that administer YPG-held areas; and within the security forces, such as the Asayesh (security police), which are the backbone of that governance.⁴⁰

While the YPG is indispensable to defeat ISIS, there is no avoiding the fact that the U.S. is backing a military force led by PKK-trained cadres in Syria, while the PKK itself continues an insurgency against a NATO ally.⁴¹

47. When YPG forces reached Naim Square in the center of Raqqa, the former ISIS capital, they did not salute the flag of the United States, their ostensible benefactor who has

³⁹ *Fighting ISIS: The Road to and beyond Raqqa*, Middle East Briefing 53, INTERNATIONAL CRISIS GROUP, (Apr. 28, 2017), <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/b053-fighting-isis-road-and-beyond-raqqa> (last visited May 5, 2019).

⁴⁰ *Id.* at 2 (emphasis added).

⁴¹ *Id.* at 3.

sought to liberate Syria from extremists; rather, they unfurled a tremendous flag bearing the face of Abdullah Ocalan, an avowed Marxist-Leninist and leader of a U.S.-designated Foreign Terrorist Organization.⁴²

48. How to deal with the YPG is a genuine matter of ongoing bilateral political concern in which Turkey and the United States are actively engaged, militarily and politically, with contacts on a near daily basis.

PKK/YPG And The Syrian Civil War Have Taken An Enormous Toll On Turkey.

49. Syria has been in a state of civil war since March 2011. The vast majority of the fighting in that horrific war has taken place on or near Turkey's border, presenting a critical security challenge for Turkey. For example, Aleppo is just 25 miles from the Turkish border. Manbij is 18 miles from the Turkish border. Kobane and Jarabulus are virtually on the border. And the long-time seat of the so-called ISIS caliphate, Raqqa, is just 50 miles from the Turkish border. One of the major security threats for Turkey is the PKK affiliated Kurdish insurgency groups in Syria.

50. The Kurds of Syria, comprising between 8-10 percent of the Syrian population, generally live along the Turkish border. In the absence of central governmental authority, most Syrian Kurds now live under the control of the YPG and it engages in regular armed conflict

⁴² See, e.g., *Kurdish fighters raise flag of PKK leader in center of Raqqa*, MIDDLE EAST EYE (Oct. 19, 2017), <https://www.middleeasteye.net/news/kurdish-fighters-raise-flag-pkk-leader-centre-raqqa> (last visited May 5, 2019); *YPG fighters credit Ocalan with Syria victory*, REUTERS (Oct. 23, 2017), <https://www.reuters.com/article/us-mideast-crisis-syria-raqqa/ypg-fighters-credit-ocalan-with-syria-victory-idUSKBN1CS1J7> (last visited May 5, 2019); Raja Abdulrahim, *Symbol of Kurdish Nationalism Rises in Raqqa*, THE WALL STREET JOURNAL (Oct. 19, 2017), <https://www.wsj.com/articles/symbol-of-kurdish-nationalism-rises-in-raqqa-1508446645> (last visited May 5, 2019).

with other Kurdish organizations, especially those in Iraq, over the leadership of the Kurds. Thus, Turkey faces both ISIS and PKK/YPG terrorism on its borders.

51. Turkey has conducted two major counter-terrorism operations to ensure border security by reducing the terrorist threat emanating from Syria: Operation Euphrates Shield (OES); Operation Olive Branch (OOB). Turkey launched Operation Euphrates Shield on August 24, 2016. OES, which officially ended on March 29, 2017 succeeded in clearing an area of over 2,000 square kilometers of land controlled by ISIS and neutralized 2,647 ISIS members. OOB was launched on January 20, 2018, aimed at sealing Turkey's borders with Syria against all terrorist infiltrations and attacks, whether from ISIS, Al-Qaeda or PKK/YPG.

52. Turkey's principled stance as a member of the anti-ISIS coalition has come at considerable cost. ISIS terrorist attacks in Turkey have killed more than 300 people since 2013. On May 11, 2013, dual car bombs in Reyhanlı, Turkey killed 51 people and injured another 140. On June 11, 2014 ISIS captured the Turkish consulate in Mosul, Iraq and held its 49 staff hostage for over three months. On January 6, 2015, a bomb at Istanbul's historic Sultanahmet Square killed one police officer and injured another. On October 10, 2015, multiple bombs outside Ankara's central rail station killed 109 people and injured another 500. On July 20, 2015, a cultural center in Suruç, Turkey was bombed, killing 49, mostly university students, injuring another 100. The students had gathered to plan reconstruction efforts in the Syrian border town of Kobani. On January 12, 2016, an ISIS suicide bomber killed 12 people, all of them foreign tourists, at Istanbul's Sultanahmet Square. On March 19, 2016, an ISIS suicide bomber in Istanbul's Beyoğlu district killed 4 people and wounded another 36. On June 28, 2016, ISIS gunmen and suicide bombers attacked Istanbul's Ataturk Airport, killing 45 people and wounding another 230. And on January 9, 2017, an ISIS gunman opened fire on celebrants

at an Istanbul night club killing 39 and wounding another 79. These attacks, and Turkey's ongoing participation in the anti-ISIS coalition, have significantly raised the security concerns of Turkish officials at home and abroad. Turkey conducted 187 operations against ISIS in 2015, 367 operations in 2016, 500 operations in 2017 and over 1,130 operations in 2018.

53. Turkey has shouldered a tremendous humanitarian burden as well due to the civil war in Syria, currently hosting over 3.6 million registered Syrian civilian refugees.⁴³ Approximately 400,000 of the refugees are Syrian Kurds who cannot return to their homes due to PKK/YPG repression. Turkey's expenditure for Syrian refugee relief now likely exceeds \$30 billion.⁴⁴ Keeping the border open for refugees has posed its own security problem as it is difficult to vet every person who walks into a camp and who may slip out undetected. Turkey's humanitarian policy only heightens its security concerns.

54. The portion of Syria in which the PKK/YPG operates, generally along the Turkish border, is an active theater of war and a complex battle space in which multiple armed actors are vying for control and influence, among them, the U.S., leader of an anti-ISIS coalition; Turkey, participant in the anti-ISIS coalition; the Free Syrian Army, supported variously by Turkey, the U.S., the U.K., Saudi Arabia, France and Qatar; the Syrian National Defence Forces, supported variously by the Russian Federation, Hezbollah, Iran, Iraq, and Belarus, and; the YPG/PKK. Multifarious political calculations are made on a daily basis by each of these actors.

⁴³ *Syria Regional Refugee Response: Turkey*, Operational Portal Refugee Situations, UNITED NATIONS HIGH COMMISSION ON REFUGEES (Apr. 11, 2019), <https://data2.unhcr.org/en/situations/syria/location/113> (last visited May 5, 2019).

⁴⁴ *Turkey Spends \$30 Billion on Syrian Refugees: FM*, HURRIYET DAILY NEWS (Nov. 6, 2017), <http://www.hurriyetdailynews.com/turkey-to-continue-responding-to-humanitarian-crises-121982> (last visited May 5, 2019).

55. Within this complex environment, and despite sincere and vigorous disagreement over the U.S.' decision to use YPG mercenaries, the Turkish and U.S. militaries are working side-by-side in Syria. Since November 2018, the two militaries have engaged in joint patrols in the Manbij area as part of a bilateral "roadmap" endorsed on June 4, 2018 and aimed, within the broader framework of effective counter-ISIS strategic planning and deconfliction among allies, at ending the PKK/YPG presence in the Manbij area. In support of the anti-ISIS coalition: Turkey has allowed its airspace to be used by U.S. and Coalition aircraft for both combat and non-combat roles, including intelligence gathering and personnel recovery; Turkey hosted the "train and equip" program that has trained 7,000 Iraqi security personnel, composed of professionals and volunteers, for the fight against ISIS; and from January 2016 until the launch of Operation Euphrates Shield in August 2016, Turkey hit ISIS targets through air, artillery, and other military assets as part of Coalition operations and neutralized over 1,200 ISIS members.

56. As the civil war in Syria deepened, Syria's Kurdish groups declared their autonomy and developed military and political ties with the Kurds across the border. They also requested the "partition of sovereignty" in Turkey through Kurdish autonomy. The Turkish government regarded these statements and initiatives as existential threats to its security. Since July 2015, approximately 1,200 Turkish troops and security officers have been killed by the PKK and more than 5,000 wounded.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6 day of May 2019.


M. Hakan Yavuz

EXHIBIT A

PUBLICATIONS LIST

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Single-Authored Books:

1. M. Hakan Yavuz, *Islamic Political Identity in Turkey* (Oxford University Press, 2003; 2005). (3rd print).
2. M. Hakan Yavuz, *Secularism and Muslim Democracy in Turkey* (Cambridge: Cambridge University Press, 2009).
3. M. Hakan Yavuz, *Toward and Islamic Enlightenment: The Gülen Movement* (New York: Oxford University Press, 2013).

Edited Books:

1. M. Hakan Yavuz and Bayram Balci, eds. *Turkey's July 15th Coup: What Happened and Why?* (Salt Lake City: University of Utah Press, 2017).
2. with Feroz Ahmad, eds, *War and Collapse: World War I and the Ottoman State* (Salt Lake City: University of Utah Press, 2015).
3. with Isa Blumi, eds., *War and Diplomacy: The Russo-Turkish War of 1877-1878 and the Treaty of Berlin* (Salt Lake City: University of Utah, 2013).
4. with Peter Sluglett, eds., *War and Diplomacy: The Russo-Turkish War of 1877-1878 and the Treaty of Berlin* (Salt Lake City: University of Utah, 2011).
5. ed., *The Emergence of a New Turkey: Democracy and AK Parti* (Salt Lake City: University of Utah Press, 2006).
6. with John Esposito eds., *Turkish Islam and the Secular State: The Gülen Movement* (Syracuse University Press, 2003).

In Turkish:

1. *Modernlesen Muslumanlar* (Istanbul: Kitap Yayınları, 2005).

2. *Laik Devlet ve Turk Islami* (Istanbul: Gelenek, 2004).
3. *AK Parti* (Istanbul: Kitap Yayınları, 2010).
4. *Erbakan'dan Erdoğan'a: Laiklik, Kurt Sorunu* (Istanbul: Kitap Yayınları, 2011).

Edited Special Issue Journals.

1. with Erdi Ozturk, Secularism in Turkey, *Southeast and the Black Sea Studies*, 2019.
2. World War I and the Ottoman State, *Middle East Critique*, 2014.
3. The Ottoman-Armenian Relations, *Middle East Critique*, 2011.
4. with Wade Jacoby, Special Issue, Islam in Europe, *Journal of Muslim Minority Affairs*, 2008.
5. with Payam Faroughi, Special issue, Islam in Asia, *Journal of Muslim Minority Affairs*, 2006.
6. with Roberta Micallef Turkish and Muslim Diaspora, *Journal of Muslim Minority Affairs*, 2004.
7. Kurdish Question in Turkey, *Journal of Muslim Minority Affairs*, 1998.
8. Islam in Turkey: The Case of Said Nursi, *The Muslim World*, 1999.

Articles (English):

1. M. Hakan Yavuz, "Understanding *Turkish Secularism* in the 21th century: A Contextual Roadmap." *Southeast European and Black Sea Studies*, 19:1 (2019)
DOI:10.1080/14683857.2019.1576367
2. M. Hakan Yavuz and Ahmet Erdi Ozturk, "Introduction" special issue on Secularism in Turkey *Southeast European and Black Sea Studies* 19:1 (2019). DOI:
10.1080/14683857.2019.1580828
3. M. Hakan Yavuz, "A Framework for Understanding the Intra-Islamist Conflict between the AK Party and the Gülen Movement." *Politics, Religion & Ideology* 19: 1 (March 2018): 11-32.
4. M. Hakan Yavuz and Bayram Balci, "Introduction." In *Turkey's July 15th Coup: What Happened and Why?* (Salt Lake City: University of Utah Press, 2017), pp. 1-19.

5. M. Hakan Yavuz, "The Three Stages of the Gülen Movement: From Pietistic Weeping Movement to Power-Obsessed Structure," in *Turkey's July 15th Coup: What Happened and Why?* (Salt Lake City: University of Utah Press, 2017), pp. 20-45.
6. M. Hakan Yavuz and Rasim Koc, "The Gülen Movement vs. Erdogan: The Failed Coup." in *Turkey's July 15th Coup: What Happened and Why?* (Salt Lake City: University of Utah Press, 2017), pp. 78-97. In *Turkey's July 15th Coup: What Happened and Why?* (Salt Lake City: University of Utah Press, 2017).
7. M. Hakan Yavuz, "Postscript: How Credible Are Alternative Coup Scenarios?" in *Turkey's July 15th Coup: What Happened and Why?* (Salt Lake City: University of Utah Press, 2017), pp. 309-318.
8. M. Hakan Yavuz and Rasim Koc, "The Turkish Coup Attempt: The Gülen Movement vs. State," *Middle East Policy* 23:4 (2016): 20-39.
9. M. Hakan Yavuz, "Social and Intellectual Origins of Neo-Ottomanism: Searching for a Post-National Vision," *Die Welt Des Islams*, Vol. 56: 3-4 (2016): 438-465.
10. M. Hakan Yavuz and Nihat Ali Ozcan, "Democracy and the Kurdish Question," *Middle East Policy*, 22: 4 (Winter 2015): 73-87.
11. M. Hakan Yavuz and Feroz Ahmad, "Introduction" in eds. M. Hakan Yavuz with Feroz Ahmad, *War and Collapse: World War I and the Ottoman State* (Salt Lake City: University of Utah Press, 2015), pp. 1-47.
12. M. Hakan Yavuz, "A Topography of Positions in the Turkish-Armenian Debate," in eds. M. Hakan Yavuz with Feroz Ahmad, *War and Collapse: World War I and the Ottoman State* (Salt Lake City: University of Utah Press, 2015), pp. 541-569.
13. M. Hakan Yavuz, "Orientalism, the 'Terrible Turk' and Genocide." *Middle East Critique* Vol. 23, No. 2 (2014): 11-126.
14. Edibe Sozen and M. Hakan Yavuz, "The Gezi Protests: An Outburst at Turkey's Shattered Zone," *Insight Turkey* 16:1 (2014): 147-162.
15. Isa Blumi and Hakan Yavuz, "Introduction: Lasting Consequences of the Balkan Wars (1912-1913),: In eds. M. Hakan Yavuz and Isa Blumi, eds., *War and Nationalism: The Balkan Wars 1912-1913, and Their Sociopolitical Consequences* (Salt Lake City: University of Utah, 2013), pp. 1-30.
16. M. Hakan Yavuz, "Warfare and Nationalism: The Balkan Wars as a Catalyst of Homogenization." In ed. M. Hakan Yavuz and Isa Blumi, eds., *War and Nationalism The*

Balkan Wars 1912-1913, and Their Sociopolitical Consequences (Salt Lake City: University of Utah, 2013), pp. 31-84.

17. "Contours of Scholarship on Armenian-Turkish Relations," *Middle East Critique*, 20:3 (2011): 231-251.
18. "Islam without Shari'a," in ed. Rober Hefner, *Shari'a Politics Islamic Law and Society in the Modern World* (Bloomington: Indiana University Press, 2011), pp.146-178.
19. with Peter Sluglett, "Introduction: Laying the Foundations for Future Instability." In ed. M. Hakan Yavuz and Peter Sluglett, *War and Diplomacy: The Russo-Turkish War of 1877-1878 and the Treaty of Berlin* (Salt Lake City: University of Utah Press, 2011), pp. 1-16.
20. "The Transformation of *Empire* through Wars and Reforms: Integration vs. Oppression," in ed. M. Hakan Yavuz and Peter Sluglett, *War and Diplomacy: The Russo-Turkish War of 1877-1878 and the Treaty of Berlin* (Salt Lake City: University of Utah Press, 2011), pp. 17-55.
21. with Wade Jacoby, Hakan Yavuz, "Modernization, Identity and Integration: An Introduction to the Special Issue on Islam in Europe," *Journal of Muslim Minority Affairs*, Vol. 28, No. 1 (April 2008), pp. 1-6.
22. "'The Trifurcated Islam of Central Asia: A Turkish Perspective,'" *Asian Islam in the 21st Century*. eds., John L Esposito, John Voll and Osman Bakar (New York: Oxford University Press, 2007), pp. 109-144.
23. M. Hakan Yavuz and Michael Gunter, "Turkish Paradox: Progressive Islamists versus Reactionary Secularists," *Critique*, Vol. 16, No. 3 (Fall 2007).
24. M. Hakan Yavuz and Nihat Ali Özcan, "Crisis in Turkey: the conflict of political languages," *The Middle East Journal*, Vol. 14:3 (Fall 2007), pp.118-136.
25. "Islam and Europeanization in Turkish-Muslim Socio-Political Movements," In *Religion in an Expanding Europe*, eds. Peter J. Katzenstein and Timothy A. Byrnes (Cambridge: Cambridge University Press, 2006), pp. 225-255.
26. M. Hakan Yavuz and Nihat Ali Özcan, "The Kurdish Question and the JDP," *The Middle East Journal*, Vol 13:1 (2006), pp. 102-119.
27. Michael M. Gunter and M. Hakan Yavuz, "The Continuing Crisis in Iraqi Kurdistan," *The Middle East Policy*, Vol 12: 1 (Spring 2005), pp. 122-133.
28. M. Hakan Yavuz "The Kurdish Ethno-Nationalism," in *Nationalism and Minority*

Identities in Islamic Societies, ed. Maya Shatzmiller (McGill: McGill-Queen's University Press, 2005), pp. 56-85.

29. M.H. Yavuz, "Is there a Turkish Islam? The Emergence of Convergence and Consensus," *Journal of Muslim Minority Affairs*, Vol. 24, No. 2 (2004), 1-22.
30. M. Hakan Yavuz, "Die Renaissance des religiösen Bewusstseins in der Türkei: Nur-Studienzirkel," in Nilüfer Göle and Ludwing Amman, *Islam in Sicht* (Biefeld, verlag, 2004), pp. 121-146.
31. "Turkey's Kurdish-Centered Iraqi Policy," In Mohammed A. A. Ahmed and Michael Gunter, eds., *The Kurdish Question and the 2003 Iraqi War* (Costa Mesa, CA: Mazda Publisher, 2005), pp. 163-173.
32. with M. Khan, "Turkey and Europe: Will east Meet West?," *Current History*, Vol. 103, No. 676 (November 2004), pp. 389-393.
33. Turkey, Iraq and the Kurds," Panel Discussion, *Middle East Policy*, Vol. 11, No. 1 (Spring 2004), pp. 106-131.
34. Proceedings of the forum, "Conversations in Islam: Politics and Religion in the Global Public Sphere," Budapest, May 29, 2003.
<http://www.humanities.uci.edu/history/levineconference/MLbudapesttranscriptedit2.pdf>
Edited version appearing in the *Yearbook of the Sociology of Islam*, 2004.
35. "A Typology of Islamic Social Movements: The Opportunity Spaces and the Case of Turkey," In Quintan Wiktorowicz and Charles Kuzman, eds. *Islamic Activism: A Social Movement Theory Approach* (Bloomington: Indiana University Press, 2003), pp. 270-288.
36. "The Case of Turkey," *Daedalus*, Vol. 132, No. 3 (Summer 2003), pp. 59-62.
37. "Nur Study Circles (Dershanes) and the Formation of New Religious Consciousness in Turkey," In *Islam at the Crossroads: On the life and thought of Bediüzzaman Said Nursi* (New York: State University of New York Press, 2003), 297-316.
38. co-authored, "Bringing Turkey into Europe," *Current History*, Vol. 102, No. 662, (March 2003), pp. 119-123.
39. "The Politics of Fear: The Rise of the Nationalistic Action Party (MHP) in Turkey," *Middle East Journal*, Vol. 56, No. 2 (2002), pp. 200-221.
40. "Five Stages of the Construction of Kurdish Nationalism in Turkey," *Nationalism and Ethnic Politics*, vol. 7, No. 3 (Autumn 2001), pp. 1-24.

41. M.Hakan Yavuz and Michael M. Gunter, "The Kurdish Nation," *Current History*, (January 2001), pp. 33-39.
42. "Değişim Sürecindeki Alevi Kimliği/Die alewitische Identität in VeränderungsprozesseB," *Aleviler: Identität und Geschichte Vol 1* (Hamburg: Deutsche Orient-Institut, 2000), pp. 75-95.
43. "Cleansing Islam from the Public Sphere and the February 28 Process," *Journal of International Affairs* (Columbia University Press), Vol. 54, No. 1 (Fall 2000), pp. 21-42.
44. "Turkish identity Politics and Central Asia," In *Islam and Central Asia: An Enduring Legacy or an Evolving Threat?* eds., Roald Z. Sagdeev and Susan Eisenhower (Washington DC: the Center for Political and Strategic Studies, 2000), pp. 193-211.
45. "Turkey's Fault Lines and the Crisis of Kemalism," *Current History*, Vol. 99 (January 2000), pp. 33-39.
46. "The Assassination of Collective Memory: The Case of Turkey," *The Muslim World* Vol. 99 (1999), pp. 193-207.
47. "Towards an Islamic Liberalism?: The Nurcu Movement and Fethullah Gülen," *The Middle East Journal*, Vol. 53, No. 4 (Autumn 1999), pp. 584-605.
48. "Societal Search for a New Social Contract in Turkey: Fethullah Gülen, The Virtue Party and the Kurds," *SAIS Review*, Vol. 29, No. 1 (Winter 1999), pp. 114-143.
49. "Media Identities for Kurds and Alevis in Turkey," in *New Media and the Politics of Civil Society in Muslim Societies* eds. Dale F. Eickelman and Jon Anderson (Indiana University Press, 1999), pp. 180-200.
50. "The Matrix of Modern Turkish Islamic Movements: The Naqshbandi Sufi Order," In *The Naqshbandis in Western and Central Asia*, ed. Elisabeth Ozdalga (London: Curzon Press, 1999), pp. 125-142.
51. "The Abrading of the Turkish Republican Myths," *JIME Review* (Japan), Vol. 12, No. 41 (1998), pp. 18-34.
52. "Political Islam and the Welfare (Refah) Party in Turkey," *Comparative Politics*. Vol. 30, No. 1 (October 1997), pp. 63-82.
53. "Turkic Identity and Foreign Policy in Flux: The Rise of neo-Ottomanism," *Critique*, No. 12 (1998), pp. 19-42.
54. "A Preamble to the Kurdish Question: The Politics of Kurdish Identity," Introduction to

special issue on the Kurds, *Journal of Muslim Minority Affairs*, Vol. 18, No. 1 (1998) pp. 9-18.

55. "Turkish-Israeli Relations Through the Lens of the Turkish Identity Debate," *Journal of Palestine Studies*, Vol. 27, No. 1 (Autumn 1997), pp. 22-37.
56. "Return of Islam?" New Dynamics in State-Society Relations and the Role of Islam in Turkish Politics," *Muslim World Report* Vol. 1, No. 3 (1996), pp. 77-87.
57. "Nationalism and Islam: Yusuf Akçura, 'Üç Tarz-i Siyaset,'" *Oxford Journal of Islamic Studies*, Vol. 4, No. 2 (1993), pp. 175-207.
58. "The Patterns of Political Islamic Identity: Dynamics of National and Transnational Loyalties and Identities," *Central Asian Survey*, Vol 14, No. 3 (1995), pp. 341-372.
59. "Bosnian Struggle for Recognition," *Journal of Muslim Minority Affairs*, Vol. 16, No.1 (1996), pp. 135-142.
60. "Turkey's Imagined Enemies: Kurds and Islamist," *The World Today*, (April 1996), pp. 98-103.
61. "Cyprus and International Politics," *The Cyprus Review*, Vol. 4, No. 2 (Fall 1992), pp. 135-143.
62. Co-author, "A Bridge between East and West" Duality and the Development of Turkish Foreign Policy Toward the Arab-Israeli Conflict" *Arab Studies Quarterly*, Vol. 14, No. 4 (Fall 1992), pp.69-95.
63. "The Evolution of Ethno-nationalism in Cyprus under the Ottoman and British Systems," *The Cyprus Review*, Vol. 3, No. 2 (Fall 1991), pp. 57-80.

Book Chapters and Articles (Turkish):

1. M. Hakan Yavuz, "Neo-Nurcular: Gülen Hareketi," *İslamcılık* (Istanbul: İletisim, 2004).
2. M. Hakan Yavuz, "Nurculuk," *İslamcılık* (Istanbul: İletisim, 2004), pp.
3. M. Hakan Yavuz, "Millî Görüş Hareketi: Muhalif ve Modernist Gelenek" (Istanbul: İletisim, 2004).
4. M. Hakan Yavuz, "Alevilerin Türkiye'deki Medya Kimlikleri: 'Ortaya Cıkış'" in Serüveni, In Tarihi ve Kültürel Boyutlarıyla Aleviler, Bektasiler ve Nusayriler (Istanbul: Ensar Nesriyat, 1999), pp. 57-87.

5. M. Hakan Yavuz "Efsanevi Islam: Atalar Dini ve Modern Bağlantılar," In Türk Dünyasının Dini Meseleleri (Ankara: Türkiye Diyanet Vakfı Yayınları, 1998), pp. 11-24.
6. M. Hakan Yavuz "İkicilik(Duality): Turk-Arap İlişkileri ve Filistin Sorunu," in Türk Dış Politikasının Analizi, ed., Faruk Sönmezoğlu (Istanbul: Der Yayınları, 1994), pp. 243-259.

Journal Articles and Essays (Turkish):

1. M. Hakan Yavuz, "28 Şubat'ı ABD'ye taşıyan Gürüz'e göre: AKP demokrasi düşmanı!" Zaman, 5 Jan 2005.
2. M. Hakan Yavuz, "11 Eylül: Zamanın Kirilisi ve Notre Dame Ayini," Türkiye Gunlugu, No. 66 (2001), pp. 38-41.
3. M. Hakan Yavuz, "MHPnin Yükselisi: Demokrasi rehin mi Alındı," Türkiye Günlüğü 55 (March-April 1999), pp. 28-33.
4. M. Hakan Yavuz, "Anadolu Tasavvufunun Yetimleri: Aleviler," Köprü, No. 62 (April-June 1998), pp. 67-71.
5. M. Hakan Yavuz, "Orta Asya'daki Kimlik Oluşumu: Yeni Kolonizatör Dervişler: Nurcular," Türkiye Günlüğü No. 33, (March-April 1995), pp. 160-165.
6. M. Hakan Yavuz, "Refah Partisi: Modernleşmenin İçinde Batılılaşmanın Dışında; Sistemin İçinde, Hükümetin Dışında," Türkiye Günlüğü No. 38 (January-February 1995), pp. 45-50.
7. M. Hakan Yavuz, "Turkistan'da halkın manevi dünyası: Efsanevi Islam," Dergâh No. 62 (April1995), pp. 12-13.
8. M. Hakan Yavuz, "Efsanevi Islam-Folk Islam: Alaxender Benningsen," Nehir (May 1995), pp. 58-60.
9. M. Hakan Yavuz "Mayınlı Tarlada Türk Dışpolitikası," Nehir (October-November 1994),14-18.
10. M. Hakan Yavuz, "Islam ve Türkiye," Türkiye Günlüğü, (July-August 1994), 236-240.
11. M. Hakan Yavuz, "Din ve Milliyetçilik: Yeni Bir Kuramsal Cerceve," Bilgi ve Hikmet, No: 6 (1994), pp. 156-160.

12. M. Hakan Yavuz, "*Pan-Islam Kavramı Neden Terkedilmeli?*" *Türkiye Günlüğü*, 1992.

Encyclopedia Contributions:

1. *Encyclopedia of the Modern Middle East and North Africa* (New York: Gale, 2004).
2. *Encyclopedia of Nationalism*, ed. Alexander J. Motyl (Academic Press, 2001). Ziya Gökalp, Alevi, Pan-Islam, Enver Pasa, Yusuf Akcura, Turkish Cypriot Nationalism, Kurdish Nationalism.
3. *The Oxford Dictionary of Islam* ed. John Esposito (Oxford University Press, 2002) Adil Düzen and Fethullah Gülen.

Newspapers and Magazines:

1. M. Hakan Yavuz, "Self-Hating Turks and the Genocide Debate," *Daily Sabah*, February 6, 2019. <https://www.dailysabah.com/op-ed/2019/02/07/self-hating-turks-and-the-genocide-debate>
2. M. Hakan Yavuz, "Erdogan's Ottomania," *Boston Review*, <http://bostonreview.net/politics/m-hakan-yavuz-erdogan-ottomanophilia>
3. M. Hakan Yavuz and Mujeeb R. Khan, "Turkish coup, Muslim democracy and Western bad faith" <https://www.aljazeera.com/indepth/opinion/2016/09/turkish-coup-muslim-democracy-western-bad-faith-160908091821163.html>
4. M. Hakan Yavuz, "15 Temmuz darbe tesebbüsü üzerine," *Türkiye Günlüğü* No. 127 (Summer 2017): 120-131.
5. M. Hakan Yavuz, "Robert Fisk ve Tehlirian Davası," *Türkiye Günlüğü* No. 126 (Spring 2016): 96-99.
6. M. Hakan Yavuz, "Interview: Turkey's Armenian Question," AVİM <http://www.avim.org.tr/analiz/en/INTERVIEW-WITH-PROF--HAKAN-YAVUZ---20-APRIL--DAILY-SABAH/4008>
7. M. Hakan Yavuz, "Mulakaat: Ermeni Meselesindeki Tartismalar," *Türkiye Günlüğü*, No. 121 (Winter 2015): 8-24.
8. M. Hakan Yavuz and Mujeeb R. Khan, "Turkey Asserts Its Role in the Middle East," *The New York Times*, 11 February 2015. <http://www.nytimes.com/2015/02/12/opinion/turkey-asserts-its-role-in-the-middle-east.html>

9. "Sargsyan's letter to President Erdoğan: Armenia's imagined history" *Daily Sabah*, 20 January 2015.
10. "Orientalism: 'Terrible Turk' becomes a 'genocidal Turk,'" *Today's Zaman*, 14 January 2014.
11. With Umut Uzer, "Ermeni Meselesi, Devlet ve Aydinlar," *Zaman*, 22-23 February 2013.
12. "Being Modern in the Nurcu Way," *ISIM Newsletter* (International Institute for the Study of Islam in the Modern World, Leiden University), No. 6 (October 2000), pp. 7, 14.
13. with Mujeeb R. Khan, "The Turkish Quake and Its Socio-Political Aftershocks," *Middle East International*, (September 1999).
14. "Turkey and the Guns of August," *Middle East International* (July 1998).
15. "Democracy is an Islamic Plot; Human Rights are a Kurdish Agenda: The Political ironies of Turkey's Erstwhile 'Westernizers.'" *Middle East International* (February 1998).
16. "Turkey: the establishment against liberalization," *Middle East International* (August 1997).

Editorial Board

BOOK REVIEW EDITOR: *Journal of Muslim Minority Affairs* (Carfax).

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SERIES EDITOR, Utah Series in Middle East Studies, The University of Utah Press (published 18 and 7 in print)

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
LUSIK USOYAN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:18-CV-01141-CKK
)	
THE REPUBLIC OF TURKEY,)	
)	
Defendant.)	
_____)	

DECLARATION OF MICHAEL WHITE

I, Michael White, declare as follows:

1. I am over the age of eighteen (18) and am fully competent to make this Declaration. I have personal knowledge of the facts attested to below that derive from my professional experiences and training, and my knowledge of the May 16, 2017 incident at Sheridan Circle (“Incident”), which is derived from my review of video footage of the Incident, the indictment, and affidavit in support of the warrant for Eyup Yildirim in the criminal cases that have been prosecuted against certain civilian individuals. I am also familiar with Plaintiffs’ Complaint.¹

2. I am currently Senior Vice President & Practice Lead, Private Client and Family Office Services at Hillard Heintze, a leading security risk management firm. Prior to joining Hillard Heintze, I was employed by the U.S. Secret Service for 26 years. A copy of my professional resume, which accurately summarizes my background and experience, is attached hereto as Exhibit A.

¹ I am also familiar with the Complaint filed in *Kasim Kurd, et al. v. Republic of Turkey, et al.*, Case No. 1:18-cv-01117-CKK (United States District Court for the District of Columbia), which I refer to as the *Kurd* case.

3. I was retained by counsel for the Republic of Turkey (“Turkey”) to provide:
 - a. Expert analysis and opinions in the above-captioned matter regarding, among other things, non-confidential security protocols and procedures for hosting a foreign dignitary in the United States, the responsibilities and training of presidential security detail agents, the security situation at Sheridan Circle from the perspective of a presidential security detail agent;
 - b. Observations regarding security risks, threats, and vulnerabilities present at Sheridan Circle both before and during the Incident; and
 - c. Professional analysis of certain tactics employed by the Turkish security officials present at Sheridan Circle, and the extent to which U.S. presidential security details, both domestically and abroad, have and will respond to neutralize physical threats of violence in close proximity to their head of state protectee.

4. I reviewed the videos attached to Turkey’s memorandum of law in support of its motion to dismiss as Exhibit 6. In addition to these materials, I relied on my professional experience, training, and knowledge gained during 26 years with the U.S. Secret Service, including 20 years of service in the elite Presidential Protective Division (“PPD”) for five U.S. Presidents – Presidents Trump, Obama, Bush (43), Clinton, and Bush (41).

5. In reaching the conclusions set forth herein, I applied my professional experience, training, and knowledge of head of state protective detail for U.S and foreign heads of state and other high-level dignitaries, both domestically and abroad, to the facts and circumstances of the Incident.

6. Hillard Heintze is being compensated at an hourly rate for my time spent in undertaking the analyses above and conveying my conclusions to counsel for the Republic of Turkey. My compensation is not contingent upon the nature or substance of my opinions or the outcome of this case.

I. QUALIFICATIONS AND PROFESSIONAL EXPERIENCE.

7. I am a seasoned professional in private client security services, executive protection, and special event security. As the head of Hillard Heintze's Private Client and Family Office Services practice, I serve as a trusted security advisor to private clients and their families across the United States and the world.

8. My 26-year U.S. Secret Service career included responsibility for all protective measures for the U.S. President, First Lady, First Family, and White House Complex.

9. As Special Agent in Charge of PPD, I led and directed hundreds of special agents, sworn officers, and administrative staff. In addition to developing and executing a multi-million dollar budget and all protective programs for PPD, I authorized, directed, and implemented contingency plans and supervised the day-to-day intelligence stream on domestic and international threats toward the President, the First Family, and other protectees. I also enacted daily facility and operational plans to protect the First Family against internal and external threats, lone assailants, multiple attackers, or explosive-laden vehicles, and ensured presidential environments were protected against covert listening devices.

10. As the Special Agent in Charge of PPD, I was constantly at the President's side – at the White House and on Air Force One, Marine One, and the Secret Service limousine – to ensure compliance with all security protocols and threat mitigation measures.

11. I was first selected to join President Clinton's protective detail in 1998. I was promoted to a key supervisory position in 2003. While serving on the presidential detail, I was responsible for implementing numerous strategic and operational enhancements to PPD, including development of specialized covert surveillance teams to strengthen protective measures surrounding the First Family following the September 11 attacks. I later returned to the criminal arena, where I led an office that focused on new criminal threats involving cyber tactics, and implemented a critical systems protection program for significant infrastructure and protective venues. I also served as a supervisor for the FBI's Joint Terrorism Task Force.

12. In 2006, I was ranked the top supervisory Special Agent in the entire Secret Service and promoted to a senior position within PPD. In that capacity, I worked on complex security issues, classified facility planning management, global presidential travel and numerous intelligence matters, and developed extensive partnerships with multiple agency representatives at the White House Complex, as well as domestic, international, governmental, and private sector entities.

13. In 2015, I was selected as the Special Agent in Charge of PPD. There have been only thirty-four Special Agents in Charge of PPD throughout U.S. history. I was the thirty-third. I have been recognized for outstanding performance on multiple occasions.

14. During my career with the U.S. Secret Service, I traveled to over 100 countries in every region of the world on protective assignments, including presidential visits to active war zones and areas of armed conflict. By way of example only, I accompanied the President on diplomatic trips to Turkey, Russia, China, Saudi Arabia, Japan, Korea, Cuba, and Latin and South America. I played key roles in presidential travel to Afghanistan and Iraq. I led dozens of advance teams for presidential protective assignments domestically and internationally, and held

dozens more supervisory roles responsible for reviewing, evaluating, and ultimately approving presidential security plans.

15. It is rare for the U.S. Secret Service on a presidential protective assignment to have a confrontation with their counterparts in the host nation because of the level of effort and planning during the advance stage. However, I can recall one instance in my career where there was a skirmish at the entrance to an event attended by President George Bush (43). The Special Agent in Charge was assaulted from behind by a local security officer, and I intervened by physically removing him and two other local security officers from the situation.

16. Based on the above experience, I am well-versed in the training and protocols that head of state security details follow in the field throughout the developed world.

II. OVERVIEW OF HEAD OF STATE SECURITY PROTECTION.

A. Non-Confidential Security Protocols and Procedures for Hosting a Foreign Head of State in the United States.

17. I am very familiar with the security protocols and procedures for hosting a foreign head of state in the United States. In my role within the senior management of the U.S. Secret Service Dignitary Protection Division, I was responsible for coordinating the advance stage of numerous foreign dignitary and head of state visits. And, whenever a foreign dignitary visited the White House, I was involved in the preparations in varying roles throughout my service in the PPD.

18. Foreign heads of state visiting the United States have different expectations depending on whether the State Department classifies the dignitary as a low, medium, or high risk. That classification dictates the type of protection the dignitary receives and the amount of personnel, assets, and resources that will be assigned to the dignitary. A foreign head of state classified as a high risk is typically offered round-the-clock security detail, armored Secret

Service vehicles, and advance agents for each venue visited. In some instances, a high-risk head of state will travel with a counterassault team – a heavily-armed, quasi-military group ready to deploy only when there are explosives or automatic gunfire. The State Department determines whether the foreign head of state’s own security detail may carry weapons, and the U.S. Secret Service typically abides by that decision.

19. Prior to the visit, an advance team typically arrives to negotiate specific requests for additional security measures. Those requests may or may not be granted depending on the circumstances. The U.S. Secret Service agent in charge of the visit would be expected to liaise with his/her counterpart on the foreign head of state’s security detail, as well as local law enforcement agencies and other governmental agencies needed to sign-off on special requests (*e.g.*, Federal Aviation Administration and state counterparts to approve fencing around a dignitary’s plane). Each visit is different, but for foreign heads of state who have visited the United States in the past or on a regular basis, the U.S. Secret Service and its counterparts on the foreign head of state’s security detail normally brief each other on areas of concern from prior trips and up-to-date intelligence on potential threats.

B. Non-Confidential Protocols and Procedures for Protecting the Physical Security of U.S. Presidents Abroad.

20. The planning and execution of a presidential trip abroad is exhaustive, but typically follows the same process described above. An advance team of security, logistics, and communications specialists travels to the host nation to negotiate the security measures that will be permitted. The goal is to achieve as sterile and protective an environment for the President as possible, and as close to the level of protection provided when he is at the White House. Not all requests are granted. For example, friendly nations may not grant requests to close roads for a

visiting U.S. President. Bottom line, if the security measures the presidential security detail deems necessary are not allowed, the trip, or certain portions of it, are cancelled, circumscribed, or rerouted. In my experience, U.S. Presidents often receive greater security measures, especially when visiting volatile areas of the world, than other heads of state.

21. In my experience and observation, during the visits with which I was associated, Turkey granted all requests for security, including to close roads and to establish broad areas within which unscreened personnel were not allowed to approach the President. Turkish Security provided professional and capable advance counterparts to work hand-in-hand with U.S. Secret Service in planning for secure environments at all venues. Turkish Security arranged for uniformed or overt security officers to cordon off all areas on the outer most perimeter of the established security zones, in effect, allowing U.S. Security Service the ability to concentrate on middle and inner security zones. Protestors or crowds, regardless of their political positions, would have been maintained at the outer most perimeter and controlled by host nation security.

C. Responsibilities and Training of U.S. Presidential Security Detail Agents.

22. The PPD consists of an elite group of U.S. Secret Service agents. They are highly-trained and recognized worldwide as the premier law enforcement protective agency.

23. Agents are usually selected for protective security detail after 7-10 years of experience as a criminal investigator. Basic training is approximately one year, with four months of general protective training. If selected to serve on the presidential protective detail, the agent receives additional on-site training on White House protocols and logistics. Presidential security detail agents also undergo a continuous cycle of training for two weeks every eight weeks.

24. The primary mission of a presidential security detail agent is to protect the President, First Family, and select White House staff, who travel with the President. When the

President travels domestically or internationally, the presidential security detail agent's job is to protect the secure zone, or "protective bubble," around the President from any and all threats with whatever force is necessary to carry out the primary mission.

25. It is the function of local law enforcement agencies to control crowds and, where necessary, make arrests. In situations where local law enforcement fails in that function, the presidential security detail agent has the discretion to act to protect the President. Typically, that discretion is exercised consistent with the training and protocols used to protect the President when in the White House. This is true even when the President travels internationally. When faced with a threat to the President's safety that local law enforcement cannot or does not contain, the presidential security detail agent reverts to his/her training regardless of what local laws or customs allow. In my experience, no presidential or head of state security detail is expected to respond differently based on local customs or laws when there is an imminent threat beyond the resources of local law enforcement.

D. Threats of Particular Concern with Protest Situations.

1. Assassination Threats.

26. Standard operating procedure for any head of state security detail is to assume some level of risk of an assassination attempt, particularly when the head of state is traveling abroad and to regions where known terrorist organizations operate. It is always a threat regardless of the relationship between the visiting nation and the host nation, and regardless of the degree to which the rule of law applies, because it takes only one lone assailant to attempt an assassination.

27. Foreign dignitaries traveling to the United States are designated as a low, medium, or high risk of an assassination attempt. That classification is driven by intelligence.

Based on my experience, my understanding of the armed conflicts in Turkey's region of the world, and the controversy that had surrounded President Erdogan, including the coup attempt in July 2016 and its aftermath, it is likely that he was designated a high risk dignitary during his visit to the United States in May 2017.

28. The Turkish Security Detail would have been on high alert for anyone overtly hostile toward the secure zone around President Erdogan, and persons disguised as innocuous protestors or capable of infiltrating the press to gain closer access to President Erdogan. John Hinckley, Jr. pretended to be a member of the press to gain closer access before his assassination attempt on President Regan. Even women and children can pose a threat. Head of state security detail agents are trained to focus on behaviors, not appearances, and take nothing for granted.

2. Terrorism Threats.

29. Standard operating procedure for a head of state protective detail is to obtain, prior to a foreign visit, a briefing from the host nation on potential terrorist threats.

30. During my service on the PPD, I received detailed briefings on a range of intelligence matters that could assist in security planning, from known terrorist organizations that might be operating in the area, to noteworthy cultural cues to be aware of, and everything in between. These briefings typically included intelligence on the capabilities of local law enforcement (*i.e.*, size of the police force, quality of training, degree of cooperation during past visits, corruption concerns, etc.) to handle such threats. Based on my experience and training, including numerous instances of coordinating and overseeing visits by foreign heads of state to the White House, it is my conclusion that President Erdogan's security team would have received a similar briefing prior to his visit to the United States in May 2017. It is likely, based on my knowledge of the U.S. Secret Service's coordination with D.C. Metro Police ("MPD")

and the United States' commitment to protection of internationally protected persons pursuant to treaty, that that briefing would have indicated that local law enforcement was adequately trained and capable of handling such threats.

31. I understand from my review of video footage of the Incident that the protestors who assembled on Sheridan Circle (the "Anti-Turkey Group") carried flags and other signs indicating their affiliation with a known wing of the Kurdistan Workers Party or PKK. I also viewed video footage of the Anti-Turkey Group's protest just prior to the Incident at Lafayette Park in which the Anti-Turkey Group appeared to promote the PKK in its own name and waved a flag bearing the image of the group's founder and leader, Abdullah Ocalan. *See* Ex. 6, File No. LS17.² I am familiar with the PKK. During my service in the White House, I received a briefing book every day, or nearly every day, that contained a global perspective on various intelligence matters, including major terrorist organizations and their activities. I learned about the PKK and terrorist activities attributed to the PKK through these daily briefings, and through my work on protective detail trips to Turkey and when Turkish dignitaries visited the United States. It is my understanding that the PKK is a well-organized, radicalized group of Kurdish separatists operating predominantly in the area at the crossroads between Turkey, Syria, Iran, and Iraq. The U.S. State Department considers the PKK a foreign terrorist organization. The PKK has been in an armed conflict with the Turkish government over political and ethnic differences. The Turkish Security Detail for President Erdogan's May 2017 visit would have been equally, and likely more, familiar with the PKK, its offshoots, and its terrorist activities.

² Videos cited in my declaration correspond to the videos contained in Exhibit 6 to Turkey's memorandum of law in support of its motion to dismiss.

32. Through my service with the U.S. Secret Service, I am also aware that foreign fighters from various countries have gone to Syria in recent years. It would not have been unusual for the Turkish Security Detail and the State Department/U.S. Secret Service to have discussed the possibility that foreign fighters backing the PKK's wing in Syria could be among the crowds expected to protest President Erdogan's visit to the United States for bilateral talks with President Trump in May 2017.

III. ASSESSMENT OF SECURITY RISKS, THREATS, AND VULNERABILITIES AT SHERIDAN CIRCLE.

A. Before the First Altercation.

1. Venue.

33. Standard operating procedure for head of state security detail agents is to assess the threat level posed by particular venues. Not every condition can be controlled, and plans change. Therefore, the threat assessment has to be fluid and security detail agents are trained to respond in real-time to increases or decreases in the threat level.

34. Common risk factors in an outdoor protest situation include: (1) proximity of the protest group to the arrival area and whether the protest group is within gun range or the range of an improvised explosive device ("IED") or biochemical weapon to the arrival area; (2) whether screening protocols (*e.g.*, magnetometers) have been used on the protest group; (3) the number, size, strength, and location of physical barriers separating the protest group from the arrival point; (4) whether there are visual barriers (*e.g.*, a tent or screen) blocking the line of sight from the protest group to the arrival point; (5) whether traffic has been blocked or rerouted; (6) if traffic is not blocked or rerouted, how many lanes of traffic will be allowed to pass, how closely to the arrival point, how congested will traffic be at the arrival time, and will protestors be able to

use traffic to obscure their movements; and (7) whether traffic flow will allow a car or cyclist to drop or throw an IED in or near the arrival point.

35. Based on my experience and training, it is my conclusion that the conditions present at Sheridan Circle on May 16, 2017, posed a significant threat to President Erdogan upon his arrival at the Turkish Ambassador's private residence (the "Residence"). *See* Ex. 6, File No. SC01. The Anti-Turkey Group was positioned on the sidewalk on the Sheridan Circle side of Massachusetts Avenue, which I understand to be within fifty feet of the sidewalk on the Residence side of Massachusetts Avenue. *Id.* at 0:41-44. That is well within the range of a handgun, an IED, or a biochemical projectile. I did not see any evidence that anyone in the Anti-Turkey Group had undergone any screening protocol. There were no physical barriers separating the Anti-Turkey Group other than two lanes of traffic and a turn lane. There were no visual barriers blocking the direct line of sight between Sheridan Circle and the arrival point. Traffic was not blocked, and there were several cars and buses flowing past the arrival point. It was approximately 4:00 p.m., and the traffic lanes were fairly congested at that time. I observed one cyclist with a large backpack stopped in the turn lane next to the Residence just before the first altercation. *Id.* All of these factors would have caused the Turkish Security Detail significant concern with the imminent arrival of President Erdogan.

2. Pre-Attack Behaviors Displayed by the Anti-Turkey Group.

36. In addition to the venue's physical vulnerabilities, the Anti-Turkey Group's movements and actions would have put the Turkish Security Detail on alert for a potential breach of President Erdogan's secure zone.

37. It is standard operating procedure for head of state security detail agents to be trained to monitor and identify what are known in this field as "pre-attack behaviors." These

behaviors include, for example, aggressive attempts to approach and surveil the secure zone for weaknesses; aggressive attempts to breach the secure zone; non-compliance with commands of local law enforcement to move back; holding up unidentified objects that could contain IEDs or biochemical weapons; and hurling unidentified projectiles toward the secure zone.

38. The trained response to pre-attack behaviors is to tighten security, call for reinforcements, establish a firm perimeter, closely monitor the individuals engaging in pre-attack behaviors, and, if possible, request the assistance of local law enforcement to allow the protective detail to interview these individuals to gather intelligence on their true intent. To a trained security officer, a primary objective of pre-attack behaviors is to incite a reaction or cause a distraction that will create an opportunity to harm the protectee. Therefore, real-time intelligence gathering is a common technique, and in my experience, a useful tool. Even hostile protestors are often willing to speak with security detail agents and provide valuable information to assess an escalation in the threat level.

39. The response to pre-attack behaviors is further heightened when protestors are displaying signs of their affiliation with a known terrorist organization with a record of violence toward the head of state protectee or his/her government.

40. I observed the Anti-Turkey Group display numerous pre-attack behaviors. Several members of the Anti-Turkey Group, all at once, repeatedly ignored police commands to remain on Sheridan Circle, entered the street, and advanced toward the Residence while blocking traffic, possibly to obscure the movements of other protestors. That is a common tactic that I have seen many times.

41. *Kurd* Plaintiff Kheirabadi, who is wearing a backpack – an extremely serious security threat – can be seen almost at the edge of the sidewalk of the Residence side of

Massachusetts Avenue. *See* Ex. 6, File No. SC01 at 0:23-41. Based on my experience, his behavior was consistent with a person surveilling the arrival point for weaknesses and/or attempting to gain access to the arrival point. He is within range of throwing the backpack or himself into the driveway. I know from my many years of service in the PPD that IEDs are typically carried on the body or concealed in backpacks. Recent news reports indicate that backpacks were used to conceal at least some of the bombs that were detonated inside churches and hotels in Sri Lanka on Easter Sunday and that at least one of the bombers trained in Syria.³ The Turkish Security Detail had to assume that Kheirabadi's backpack might contain an IED, and that if he detonated it within feet of the arrival point, the result would be catastrophic. Based on my review of the video footage, it is my conclusion that *Kurd* Plaintiff Kheirabadi engaged in pre-attack behaviors to incite a reaction, and was responsible for starting the fight.

42. I observed the Turkish Security Detail follow standard protocol in responding to the Anti-Turkey Group's pre-attack behaviors. For example, several Turkish Security officers in green and tan uniforms quickly appeared on the sidewalk outside the Residence. *See* Ex. 6, File No. SC01 at 0:40-57. They were the front line of defense and were apparently called in greater numbers to establish and hold the perimeter and monitor the Anti-Turkey Group's movements. These Turkish Security officers, and the Turkish Security agents in suits (collectively, the "Turkish Security Detail"), can be seen communicating with each other through their earpieces. It is standard protocol to relay real-time security information to the entire team. These are defensive, not offensive, responses to the Anti-Turkey Group's pre-attack behaviors.

³ *See* <https://www.wsj.com/articles/sri-lanka-attacks-show-isiss-reach-even-after-defeat-11556561912>.

B. During the First Altercation.

43. The Anti-Turkey Group brazenly continued to engage in pre-attack behaviors during the first altercation. For example, *Kurd* Plaintiff Kheirabadi repeatedly ignored commands from MPD and the Turkish Security Detail to stop, and repeatedly tried to hit and kick his way through. *See* Ex. 6, File No. SC01 at 0:40-57; File No. SC02 at 0:29-58. He was not deterred by the defensive actions of the Turkish Security Detail. Approximately 25-30 seconds into the first altercation, Kheirabadi still had not retreated. *See* Ex. 6, File No. SC02 at 0:29-58. He continued to advance, managed to get around the Turkish Security Detail, and physically confronted a local law enforcement officer.

44. *Kurd* Plaintiff Kasim Kurd smashed a large bullhorn on top of *Kurd* Defendant Alpkenan Dereci's head, inflicting a serious injury that caused him to bleed profusely. *Id.* at 0:21-28. Seconds later, he deliberately hurled the same bullhorn a second time in the direction of an MPD officer with the apparent intent to hit someone in the head given the angle at which he threw it. *Id.* at 0:42-50.

45. Another Anti-Turkey Group member deliberately threw a full plastic bottle, hitting *Kurd* Defendant Sinan Narin squarely in the face. *Id.* at 0:57-1:04. This is another serious pre-attack behavior. The Turkish Security Detail would have been trained to view hurling projectiles at a person's head as an intent to inflict serious bodily harm.

46. After the Pro-Turkey Group had retreated back to the sidewalk, *Kurd* Plaintiff Ceren Borazon uncapped a plastic bottle and sprayed the contents in the direction of MPD officers and the Pro-Turkey Group, while repeatedly rushing into the middle of Massachusetts Avenue. *Id.* at 1:08-45. The Turkish Security Detail would have been trained to treat the dispersal of any liquid as a potential biochemical hazard. During my time with PPD, if anyone

threw a water bottle over the fence of the White House complex, it would have been treated as a suspicious package and a HAZMAT team would have responded. The Turkish Security Detail would have been trained to have a similar response and assume that the Anti-Turkey Group's water bottles might contain biochemical weapons.

C. After the First Altercation and Before the Second Altercation.

47. Based on my experience and training, given the conditions on the ground, the primary objective of the Turkish Security Detail after the first altercation would have been to move the perimeter farther away from the arrival point. It is standard operating procedure to seek the assistance of local law enforcement to achieve this objective. Typically, a foreign head of state security detail will ask local law enforcement to move the protest group out of assault range, set up physical barriers and patrol those barriers, detain or arrest suspects who have committed assaults, confiscate dangerous objects, for example, a bullhorn that has already been used as a weapon and caused severe injury, and/or allow protestors to be interviewed to gather intelligence.

48. I observed the Turkish Security Detail follow this protocol and repeatedly request that local law enforcement assist them in securing a safe perimeter before President Erdogan's arrival. Over and over again, I observed the Turkish Security Detail ask local law enforcement for assistance in dealing with the Anti-Turkey Group in the moments leading up to President Erdogan's arrival. *See* Ex. 6, File No. SC12 at 1:50-2:11, 3:00-3:20, 6:10-6:43. That is the function of local law enforcement – to neutralize threats outside the “protective bubble” when a head of state is about to arrive. I noted that a Turkish Security Agent (whom I identified by his lapel pins) twice said: “Do you understand my president is coming? If you don't take, I will take.” *See* Ex. 6, File No. SC09 at 0:45-57, 4:35-53. The MPD officer did not appear to

respond. The U.S. Secret Service agent replied: “Yes, sir.” *Id.* at 4:35-53. Based on my experience, a trained head of state security agent, under the conditions that existed at Sheridan Circle at that moment, would have interpreted that response in one of two ways, or both: (1) local law enforcement was unwilling or unable to secure the perimeter; or (2) local law enforcement was giving tacit approval to the Turkish Security Detail to take whatever action they deemed necessary to secure the perimeter and protect their president.

49. The fact that there may have been a language barrier does not alter my conclusion. I have personally been in many situations on presidential protective details abroad where the U.S. Secret Service and their counterparts in the host country do not speak each other’s language. That is just another factor that goes into a trained security agent’s calculation of the threat level and whether it can be neutralized with or without local law enforcement’s involvement to achieve the ultimate objective of protecting the head of state.

50. It is my conclusion from reviewing the videos that MPD failed to address a legitimate, perceived threat posed by the Anti-Turkey Group. That was the decision point for the Turkish Security Detail. They had no choice but to react. The head of state’s own security detail cannot let an aggressive, violent group of protestors with sympathies toward or ties to a known terrorist organization overwhelm local law enforcement that is unwilling or unable to contain them once the head of state is on site.

D. Position of President Erdogan’s Vehicle upon Arrival at the Residence.

51. Based on my professional experience, it is my conclusion that President Erdogan was in an extremely vulnerable position when he arrived at the Residence and his vehicle was parked in the front driveway. *See* Ex. 6, File No. SC10. President Erdogan could not remain in that position for any length of time. A stationary vehicle within fifty feet of an aggressive and

violent group with a direct line of sight to the protectee is one of the most dangerous positions. The primary objective of President Erdogan's Head of Security would have been to get him out of the vehicle and into the Residence. A decision had to be made to get the Anti-Turkey Group under control quickly so that President Erdogan could retreat into the safety of the Residence.

52. In making that decision, the Turkish Security Detail had to assume that the Anti-Turkey Group was willing and able to escalate their violent confrontations as soon as President Erdogan exited the vehicle. The Anti-Turkey Group was overtly sympathetic to or affiliated with a known terrorist organization with a record of deadly opposition to the Turkish government.

53. Shortly before President Erdogan's arrival, the Turkish Security Detail witnessed the Anti-Turkey Group repeatedly ignore MPD commands to remain across the street on Sheridan Circle, attempt to breach the secure zone multiple times, initiate a violent confrontation within just a few feet of the Residence and President Erdogan's arrival point, and deliberately assault two civilians among the Pro-Turkey Group, resulting in severe injuries to the head and face. *See* Ex. 6, File No. SC02 at 0:46-1:30, 1:58-2:07, 2:16-2:30.

54. The Turkish Security Detail also had to assume that local law enforcement could not, or would not, take preventative action if the Anti-Turkey Group attempted to harm President Erdogan when he exited the vehicle. Both MPD and U.S. Secret Service were unable or unwilling to act on the Turkish Security Detail's repeated requests for assistance to get the Anti-Turkey Group under control or to move them farther away when President Erdogan's arrival was imminent. *See* Ex. 6, File No. SC09 at 4:35-53.

55. The Turkish Security Detail also had to assume that the Anti-Turkey Group had weapons or other projectiles capable of killing or severely injuring President Erdogan. The Anti-

Turkey Group was within fifty feet of the arrival point and had a direct line of sight from Sheridan Circle. Fifty feet is within the range of a hand gun or IED. I did not see any footage showing that, prior to President Erdogan's arrival, MPD screened or searched the Anti-Turkey Group, searched or confiscated Kheirabadi's backpack, or confiscated Kurd's bullhorn that was used as a weapon to assault *Kurd* Defendant Alphenan Dereci during the first altercation.

56. It is my conclusion that, under these conditions, the Turkish Security Detail made a reasonable decision not to permit President Erdogan to exit the vehicle until they had the Anti-Turkey Group under control and neutralized the threat that one or more of them would breach the secure zone around President Erdogan when he emerged from his vehicle.

57. The video footage shows that it is not until the Turkish Security Detail has advanced toward Sheridan Circle and engaged the Anti-Turkey Group that President Erdogan's Head of Security permitted him to emerge from the vehicle and enter the Residence with the assistance of U.S. Secret Service agents who also gathered around President Erdogan and his vehicle as he emerged. *See* Ex. 6, File No. SC10 at 1:09-20.

IV. ANALYSIS OF TACTICS EMPLOYED BY TURKISH SECURITY OFFICIALS.

58. Based on my experience and training, it is my conclusion that the Turkish Security Detail at Sheridan Circle was trained in how to protect the secure zone around their protectee and neutralize perceived threats with the minimal degree of force necessary. I observed the Turkish Security Detail use defensive techniques in a graduated sequence as they responded to the aggressive movements and violent behaviors of the Anti-Turkey Group.

59. Standard operating procedure in responding to an attempt to breach the secure zone for a security detail officer is to first give an oral command to stop. If that oral command is ignored, the security detail officer raises hands with a motion to stop, as when a police officer

raises hands to signal a car to stop. When that command is ignored, the security detail officer assumes a defensive posture with hands positioned in front. If a person attempting to breach the protective zone continues to advance and physical contact is necessary, the security detail officer is trained to pat or touch around the person's waist to determine if he/she has any weapons. At this point, the security detail officer may reach for the person's wrist because, if you can control the wrist, you can control the hands and prevent the person from reaching for a weapon or hurling a projectile. The security detail officer is also trained to use flat hands, not closed fists, to hold the line and deflect any physical contact with the minimal use of force. Using flat hands is a very common technique and is designed to avoid or minimize pain or injury to the person attempting to breach the secure zone.

60. If techniques designed to defensively stop the advance fail to deter further advancement, the security detail officer is trained to use greater physical force to hold the line and push back the aggressor. Typically, that means using one level of force higher than the security detail officer encounters depending on the perceived threat.


61. I observed the Turkish Security Detail employ this sequence of defensive techniques.

62. For example, when MPD finally intervened, the Turkish Security Detail gave way. They restrained themselves and assumed a defensive posture with hands in front of their bodies. I did not observe any Turkish Security Officer or Agent confront any local law enforcement officers. Throughout the first and second altercations, the Turkish Security Detail, though armed, never drew their weapons and never even reached for their weapons. The Turkish Security Detail was responsive to MPD's presence and was the first to comply with MPD's commands for both sides to retreat to opposite sides of the street during the first altercation. In

contrast, it took two uniformed MPD officers to contain *Kurd* Plaintiff Kheirabadi and to escort him back to Sheridan Circle. *See* Ex. 6, File No. SC01 at 1:18-28.

Pursuant to 28 U.S.C. § 1746, I, Michael White, swear under the penalty of perjury under the laws of the United States of America that the foregoing factual statements are true and correct, and the opinions I have offered are provided to the best of my professional abilities, experience and beliefs.

Executed May 5, 2019.



Michael White

EXHIBIT A

Michael White

SUMMARY OF QUALIFICATIONS

Extraordinarily accomplished U.S. Secret Service executive official with responsibility for the development and execution of complex operational security plans for the President, First Lady, First Family and White House Complex. Vigilant leader who has built and managed professional security and investigative teams that excelled in fast-paced, high-stress environments. Developed extensive partnerships with multiple agency representatives on the White House Complex as well as domestic, international, governmental and private sector entities to resolve operational conflicts and build highly intricate executable plans. Executive oversight involving a significant level of fiscal and human capital management. Direct and straightforward interaction with a wide variety of political leaders and executives. Acclaimed 26-year U.S. Secret Service career with numerous meritorious promotions. Top Secret/Sensitive Compartmented Information (TS/SCI) Security Clearance.

RELEVANT EXPERIENCE

Hillard Heintze

Senior Vice President, Practice Lead, Private Client + Family Office Services
Chicago, Illinois

June 2017 – Present

- Leads team of subject-matter experts in serving as trusted security advisors to private clients and their families across the United States and the world as well as lead expansion of Private Client + Family Office Services.
- Work to align, integrate and engage all facets of firm's core competencies to serve private clients, including investigations and due diligence, security program development, executive protection and major event security, security operations assessment, emergency preparedness and crisis management, active shooter planning, threat assessment and violence prevention, threat intelligence and social media monitoring, law enforcement liaison, technical surveillance counter measures (TSCM), and cybersecurity.
- Learn about private clients and families and their culture, principles, history and priorities to identify past events or situations that illustrate the risks, threats and vulnerabilities that the families may face.
- Oversee team in establishing a comprehensive and integrated set of procedures and safeguards that reduce the likelihood of identified risks, threats and vulnerabilities from occurring in the future.
- Coordinate the anticipation of private client and families' needs and continuously update security measures as necessary.
- Oversee team in establishing secure cyber environments with adequate physical security measures such as intrusion detection, smart camera systems and easy-to-use access control platforms that result in a significant decrease in the risk associated with an incident originating at a given location.
- Help establish guidelines that help govern how private clients and families handle departing employees and build the foundation for policies and procedures that not only involve due diligence for new employees and periodic due diligence for current employees.

U.S. Secret Service



**Special Agent in Charge – Presidential Protective Division
Washington, D.C.**

2015 – 2017

- Led and directed over 300 special agents, 700 sworn officers, 50 administrative staff. Develop and execute a multimillion-dollar budget and all protective programs for the Presidential Protective Division. Create and execute strategic vision relating to the protection of the President of the United States, the First Family and other protectees as directed by statute or directive.
- Authorize, direct, coordinate and implement contingency plans and supervise the day-to-day intelligence stream on domestic and international threats toward the President, the First Family and other protectees.
- Coordinate and plan capital construction projects to enhance the mission of the Presidential Protective Division.
- Enacts daily facility and operational plans to protect the White House against internal and external threats, lone assailant, multiple attackers or an explosive-laden vehicle. Ensures presidential environments are protected against covert listening devices.
- Prepares and delivers oral security briefings to White House senior executive staff.
- Routinely travels directly with the President via Air Force 1, Marine 1 and the Secret Service Limousine to ensure compliance to all security protocols and threat mitigation measures.

**Senior Executive - Deputy Special Agent in Charge – Presidential Protective Division
Washington, D.C.**

2010 – 2015

- Managed daily security operations on the 18-acre White House Complex, including the White House and multiple buildings and facilities located within and outside the immediate perimeter.
- Recommended and coordinated facility enhancements to provide protection for the White House Complex.
- Served as the U.S. Secret Service representative to the Joint Agency Steering Committee – a team of Facilities professionals who plan and execute construction projects on the White House Complex.
- Oversaw U.S. Secret Service capital construction program on the White House Complex.
- Planned, directed, coordinated, and implemented all protective policies, programs, and operations of the Presidential Protective Division and Uniformed Division White House Branch.
- Supervised the access control processes for over one million visitors to the White House Complex each year.
- Supervised the Joint Operations Center in the coordination of inter-and intra-agency resources in the command and control of the White House Complex and the sites frequented by Secret Service protectees.
- Directed special agents assigned to the Air Security Program, Access Control Section, Emergency Preparedness Program, and Information Technology Section, in addition to 700 White House Branch Uniformed Division members.
- Served as the final authority for resolving discipline matters and grievances of sworn uniformed Secret Service law enforcement officers.
- Oversaw multiple sensitive, critical, and high-value classified projects.



**Assistant Special Agent in Charge - Presidential Protective Division
Washington, D.C.**

2009 – 2010

- Ensured staff compliance with all Secret Service policies and procedures. Initiated disciplinary action when necessary.
- Supervised the development and execution of large-scale operational security plans for international and domestic trips of the President, First Lady, First Family and others receiving protection as deemed by Executive Order of the President.
- Worked with the Executive Office of the President's capital construction team and the General Services Administration as a partner in the Eisenhower Executive Office Building Modernization (\$800 million) and the West Wing Plant construction project (\$130 million).
- Served as the primary supervisor responsible for the overall security plan involving the President's travel, assigned appropriate personnel to highly complex missions, and ensured all agents were properly trained.
- Developed and implemented long-term strategic personnel and performance management plans for all special agents assigned to the Presidential Protective Division.
- Supervised and mentored hundreds of protective detail personnel while fostering career development and ensuring compliance with approved security procedures.
- Evaluated existing protection strategies in detail, and collaborated with the Office of Training to modify training requirements as necessary.

**Detail Leader – Candidate/President-Elect
Washington, D.C.**

2007 – 2009

- Ultimate accountability for the protection of a presidential candidate and president-elect for the duration of the campaign through the Inauguration.
- Managed a protective detail of special agents and support personnel during a high-profile campaign with extensive travel and limited resources.
- Regularly coordinated briefings of high-ranking officials, politicians and staff resulting in seamless implementation of Secret Service methodologies.
- Evaluated sensitive and privileged information, and ensured confidentiality.

**Assistant to the Special Agent in Charge – Philadelphia Secret Service Field Office
Philadelphia, Pennsylvania**

2005 – 2007

- Directed criminal squads in oversight of various fraud and counterfeit investigations.
- Managed special operations including recruitment of special agents, background investigations of employees, and oversight of contract employees.
- Supervisor and management liaison for the Joint Terrorism Task Force.
- Member of Philadelphia Crime Commission that provided crime and fraud prevention techniques to external



business partners.

**Shift Leader – Presidential Protective Division
Washington, D.C.**

2003 – 2005

- Assisted the Special Agent in Charge. Scheduled assignments, advised regarding career development, trained, and evaluated 25 special agents.
- Managed command and control of a shift of special agents as it performed its protective mission related to the President of the United States.
- Provided guidance on logistics and tactics during a heavily travelled campaign season.

**Presidential Protective Division
Washington, D.C.**

1998 – 2003

- Led Secret Service advance teams and coordinated with White House staff, military, and other agencies in performing on-site advance security operations and analysis for domestic and international travel by the First Family.
- Selected to lead Secret Service advance security teams in foreign countries.

**Forensic Services Division
Washington, D.C.**

1997 – 1998

- Oversaw and provided operational management of all Secret Service polygraph examiners nationwide.
- Maintained quality control compliances for all Secret Service polygraph examinations.
- Coordinated between federal agencies for joint investigative, intelligence, and national security matters requiring forensic service assistance.
- Selected for assignment to high profile domestic and international fraud, intelligence, and counterfeit investigations.
- Extensive training in interviewing and interrogation techniques.

**Philadelphia Secret Service Field Office
Philadelphia, Pennsylvania**

1991 – 1997

- Served as lead case agent for numerous fraud, counterfeit U.S. currency, and forged or stolen U.S. government obligation investigations.
- Planned and coordinated logistics for undercover operations, round-the-clock surveillance, entry teams, and search and arrest teams that resulted in multiple successful federal and state prosecutions.
- Conducted several hundred polygraph examinations including criminal suspects, intelligence matters, internal investigations, and Secret Service applicants.

EDUCATION

Master of Public Administration

Iowa State University, Ames, Iowa – 1987



Bachelor of Arts, Criminal Justice and Political Science (Dual Degree)

Central Missouri State University, Warrensburg, Missouri – 1985

PROFESSIONAL TRAINING

- Harvard – National Preparedness Leadership Initiative
- Office of Personnel Management’s Senior Executive Service Candidate Development Program
- Department of Defense Polygraph Institute (DODPI) – Polygraph Examiner Certificate
- U.S. Secret Service Firearms Training Certification
- Extensive Counter Surveillance expertise
- Leadership, diversity, management, protective and investigative training
- Eagle Scout

EXHIBIT 3

Assembly Plan Notification/ Application for Approval of Assembly Plan Metropolitan Police Department Washington, DC



Assembly
 Picket

Mail to: Metropolitan Police Department
Special Operations Division
2850 New York Avenue, NE
Washington, DC 20002

Email to: sod.events@dc.gov

Date Application Submitted: May 15, 2017

Date of Event: May 15, 2017

Purpose:

THIS IS AN AMENDMENT TO THE ORIGINAL PLAN NOTIFICATION THAT WAS SUBMITTED ON MAY 10, 2017.

As the Turkish President's arrival time at the the President Guest House (Blair House) has changed to 4:00pm, this Amends the Plan Notification Times to 3pm - 9pm.

POSITIVE EVENT TO WELCOME TURKISH PRESIDENT AND COMMEND PRESIDENT TRUMP'S STATE VISIT MEETING

Location:

Principal Officer/Person in Charge (If there is a different person in charge of activities at different locations, each person must be listed):

Gunay Evinch, Co-Chairman
Semrin Aleckson, Programs Director
Emre Eren - Volunteer Coordinator

Contact Information (include area codes with phone numbers)

Day Phone Number: [REDACTED] Evening Phone Number: [REDACTED]
Cell Phone Number: [REDACTED] Fax Number: [REDACTED]
Email Address(es): [REDACTED]

Event Information TURKISH AMERICAN NATIONAL STEERING COMMITTEE

Name of Group:
Estimated Number of Participants: 200

Assembly Time: 3PM Disbanding Time: 9PM

List any special equipment (props, stages, sound equipment, other structures) that will be used in assembly or rally areas (If additional space is needed, please list on a separate sheet):

Signs, banners, flags, bull horns.

Any planned civil disobedience: Yes No
(If yes, please indicate the individual/group, number of participants & locations)

Signature

Date

EXHIBIT 4











EXHIBIT 5

Assembly Plan Notification/ Application for Approval of Assembly Plan Metropolitan Police Department Washington, DC



Assembly
 Picket

Mail to: Metropolitan Police Department
Special Operations Division
2850 New York Avenue, NE
Washington, DC 20002

Email to: sod.events@dc.gov

Date Application Submitted: May 10, 2017

Date of Event: May 16, 2017

Purpose:
Support US-Turkish Relations.

Location: Penn Ave in front of White House

or east half of Penn Ave.

*DE
5/12/17*

Principal Officer/Person in Charge (If there is a different person in charge of activities at different locations, each person must be listed):
Gunay Evinch, Chairman, Turkish American National Steering Committee (TASC)

Contact Information (include area codes with phone numbers)

Day Phone Number: [REDACTED] Evening Phone Number: [REDACTED]
Cell Phone Number: [REDACTED] Fax Number: [REDACTED]
Email Address(es): [REDACTED]

Event Information Turkish American National Steering Committee

Name of Group:
Estimated Number of Participants: 200

Assembly Time: 12pm Disbanding Time: 7pm

List any special equipment (props, stages, sound equipment, other structures) that will be used in assembly or rally areas (If additional space is needed, please list on a separate sheet):

Signs, banners, flags, bull horns.

~~Portable sound system powered by gas generator will be placed on sidewalk (NPS permit submitted)~~
Marshals will have fluorescent green/yellow t-shirts with the words "Volunteer" printed on them.

*removed
sound
system DE
5/12/17*

Any planned civil disobedience: Yes No
(If yes, please indicate the individual/group, number of participants & locations)

5/10/17

Signature

Date

EXHIBIT 6

FILED UNDER SEAL

EXHIBIT 7

FILED UNDER SEAL

EXHIBIT 8

FILED UNDER SEAL

EXHIBIT 9

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

UNITED STATES

VS

NECMI, AYTEN

CCN #: 17082031

Arrest Number: 021718493

The event occurred on **05/16/2017** at approximately **16:01** at **GENERAL PHILIP SHERIDAN CIRCLE / SHERIDAN CIRCLE, SHERIDAN CIRCLE NW, WASHINGTON, DC 20008**

The event occurred on 5/16/17 at approximately 1615 hours at the southwest corner of Sheridan Circle N.W. Washington, D.C.

MPD Officers were working a detailed assignment in reference to escorting a group of peaceful protesters from Lafayette Square Park which is located at 1600 Pennsylvania Ave.N.W. towards the vicinity of the Turkish Embassy residence at 1606 23rd St. N.W. Within the first hour and upon the arrival at the Turkish Residence, a group of a radicalized protesters began taunting the peaceful protesters. The radicalized group began shouting obscenities and derogatory remarks towards the peaceful protesters. A group of approximately four to five Middle Eastern men dressed in dark clothing came from within the crowd and began attacking several of the peaceful protesters. Approximately eight victims came forward stating they were attacked, thrown onto the ground and stomped on several times.

One victim, Sub-1, stated she observed one of the men within the crowd as the suspect who threw her onto the ground then began kicking and punching her. She identified him as a Middle Eastern male wearing a dark suit and tie. The individual she identified was still in the large crowd of protesters and began pushing and shoving several other peaceful protesters. MPD officers apprehended the Middle Eastern male here forth known as Defendant Ayten Necmi .

Several of the other suspects who assaulted the additional victims fled the scene during the mass victim rescuing and melee. Secret Service, MPD and Park police Detectives all responded to the scene and conducted further interview. SUB-1 sustained injuries to her knees, lower back and head. Sub-1 responded to the hospital for treatment by the DCFEMS Mass casualty Bus along with eight other victims.

Defendant Ayten Necmi was placed under arrest for Aggravated Assault and transported to the Second District for processing.

The event and acts described above occurred primarily in the District of Columbia and were committed as described by defendant(s) listed in the case caption.

Subscribed and sworn before me this **05/16/2017**

ALBERTI, TABITHA / 2447 / 7800 (05/16/2017) E-SIGNATURE

Police Officer / Badge# / CAD#

FLEMING, WALTER / 2811 (05/17/2017) E-SIGNATURE

Unit

Witness / Deputy Clerk

ALBERTI, TABITHA / 2447 / 7800

Printed Name of Member / Badge# / CAD#

FLEMING, WALTER / 2811

Printed Name of Witness / Deputy Clerk

The foregoing statement was made under penalty of criminal prosecution and punishment for false statements pursuant to D.C. Code 22-2405

EXHIBIT 10

FILED UNDER SEAL

EXHIBIT 11

CCN #17082178 – PUBLIC NARRATIVE

On the listed date time and location, V-1 through V-11 were peacefully protesting and were attacked by S-1, S-2, S-3, S-4. The suspects kicked, punched and stomped all the victims on to the ground and then fled the scene towards an unknown location. The victims described the suspects as Middle Eastern males in their early 30's wearing all dark clothing. All victims were transported to the hospital by DCFEMS Mass Casualty bus. All victims sustained head, leg, arm and back injuries.

CCN #17082178 – INTERNAL NARRATIVE

Areas were canvassed with negative results. Secret Service will contact the embassy directors for video surveillance.

Second District Watch Commander Cpt. Williams responded to the scene.

Sgt. Connors, Sgt. Firehock, Sgt. Koenig, Detective Kimball also responded to the scene.

Crime Scene Search officer Maslona responded to the scene.

REPORTING OFFICER SIGNATURE / DATE Victor DePeralta (#8558) 06/27/2017 (e-signature)	SUPERVISOR SIGNATURE / DATE ALAN HILL (#4020) 06/27/2017 (e-signature)
PRINT NAME Victor DePeralta (#8558)	PRINT NAME ALAN HILL (#4020)

APPROVAL HISTORY

Report Submitted by Tabitha Alberti (#7800)

May 16, 2017 22:23

Report Completed by Miguel Rodriguezgil (#8134)

May 16, 2017 22:27

Report Returned to Draft by Kenneth Downey (#5988)

May 16, 2017 23:31

3 more victims added.

Report Submitted by Kenneth Downey (#5988)

May 16, 2017 23:55

Report Completed by William Hackerman (#8883)

May 17, 2017 01:48

Report Returned to Draft by Victor DePeralta (#8558)

Jun 14, 2017 10:27

Arrest created

Report Submitted by Victor DePeralta (#8558)

Jun 14, 2017 10:39

Report Completed by RALPH NEAL (#4705)

Jun 14, 2017 11:57

LOCATION PROPERTY TYPE Public

Lonnie Mays (#7251) added attribute to **DC COURTHOUSE / MOULTRIE COURTHOUSE, 500 INDIANA AVENUE NW, WASHINGTON, DC 20001, UNITED STATES**

May 30, 2017 12:27

LOCATION PROPERTY TYPE Private

Lonnie Mays (#7251) removed attribute from **DC COURTHOUSE / MOULTRIE COURTHOUSE, 500 INDIANA AVENUE NW, WASHINGTON, DC 20001, UNITED STATES**

May 30, 2017 12:27

LOCATION PROPERTY TYPE Public

Lonnie Mays (#7251) removed attribute from **DC COURTHOUSE / MOULTRIE COURTHOUSE, 500 INDIANA AVENUE NW, WASHINGTON, DC 20001, UNITED STATES**

May 30, 2017 12:16

LOCATION PROPERTY TYPE Private

CARLA BRYANT YOUNG (#1415) changed **Offense: Simple Assault**

May 17, 2017 11:56

UCR CLASSIFICATION 4E - Aggravated Assault - Other Assaults - Simple, Not Aggravated

APPROVED by William Hackerman (#8883)

May 17, 2017 01:48

Kenneth Downey (#5988) submitted the report for approval

May 16, 2017 23:55

REASON FOR CHANGE 3 more victims added.

Kenneth Downey (#5988) changed **Event # 17082178**

May 16, 2017 23:55

EXTERNAL NARRATIVE

~~On the listed date time and location, V-1 through V-8 were peacefully protesting and were attacked by S-1, S-2, S-3, S-4. The suspects kicked, punched and stomped all the victims on to the ground and then fled the scene towards an unknown location. The victims described the suspects as Middle Eastern males in their early 30's wearing all dark clothing. All victims were transported to the hospital by DCFEMS Mass Casualty bus. All victims sustained head, leg, arm and back injuries.~~

On the listed date time and location, V-1 through V-11 were peacefully protesting and were attacked by S-1, S-2, S-3, S-4. The suspects kicked, punched and stomped all the victims on to the ground and then fled the scene towards an unknown location. The victims described the suspects as Middle Eastern males in their early 30's wearing all dark clothing. All victims were transported to the hospital by DCFEMS Mass Casualty bus. All victims sustained head, leg, arm and back injuries.

Kenneth Downey (#5988) changed [REDACTED]

May 16, 2017 23:54

MEDICAL TREATMENT RECEIVED Hospital Released

MEDICAL TRANSPORT TYPE Unknown

TAKEN TO HOSPITAL BY own

HOSPITAL OF TREATMENT GeorgeTown

Kenneth Downey (#5988) added Injury: Head - Pain to [REDACTED]

May 16, 2017 23:54

Kenneth Downey (#5988) added Injury: None - None to [REDACTED]

May 16, 2017 23:54

Kenneth Downey (#5988) added Injury: None - None to [REDACTED]

EXHIBIT 12





IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
LUSIK USOYAN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:18-CV-01141-CKK
)	
THE REPUBLIC OF TURKEY,)	
)	
Defendant.)	
_____)	

ORDER

Upon consideration of Defendant Republic of Turkey’s Substitute Motion to Dismiss (“Motion”), it is hereby

ORDERED that the Motion is **GRANTED**. It is further

ORDERED that the Complaint is **DISMISSED** with prejudice and without leave to amend.

Date: _____, 2019

United States District Judge