

# Republic of Turkey v. Usoyan

Docket 21-1013 (Pending Petition for Review)

April 18, 2022

**Issues:** (1) Whether the discretionary function rule within the Foreign Sovereign Immunities Act—which preserves foreign sovereign immunity for “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”—applies to claims based upon a presidential security detail’s use of force during an official state visit to the United States, when they are acting within the scope of their employment; (2) whether the U.S. Court of Appeals for the District of Columbia Circuit’s opinion conflicts with relevant decisions of the Supreme Court interpreting the policy prong of the discretionary function rule by authorizing judges to second-guess whether a visiting presidential security detail’s discretionary use of physical force was “plausibly” related to protecting their president, rather than determining whether a presidential security detail’s decisions to physically engage with encroaching civilians is “susceptible to policy analysis”; and (3) which party bears the burden of proving that the discretionary function rule does not apply.