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

SUPREME COURT OF THE UNITED STATES

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SAMANTAR *v.* YOUSUF ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

No. 08–1555. Argued March 3, 2010—Decided June 1, 2010

Respondents, who were persecuted by the Somali government during the 1980's, filed a damages action alleging that petitioner, who then held high level government positions, exercised command and control over the military forces committing the abuses; that he knew or should have known of these acts; and that he aided and abetted in their commission. The District Court concluded that it lacked subject-matter jurisdiction and granted petitioner's motion to dismiss the suit, resting its decision on the Foreign Sovereign Immunities Act of 1976 (FSIA or Act), which provides that a "foreign state shall be immune from the jurisdiction" of both federal and state courts except as provided in the Act, 28 U. S. C. §1604. The Fourth Circuit reversed, holding that the FSIA does not apply to officials of a foreign state.

Held: The FSIA does not govern petitioner's claim of immunity. Pp. 4–20.

(a) Under the common-law doctrine of foreign sovereign immunity, see *Schooner Exchange v. McFaddon*, 7 Cranch 116, if the State Department granted a sovereign's diplomatic request for a "suggestion of immunity," the district court surrendered its jurisdiction, *Ex parte Peru*, 318 U. S. 573, 581, 587. If the State Department refused, the court could decide the immunity issue itself. *Id.*, at 587. In 1952, the State Department moved from a policy of requesting immunity in most actions against friendly sovereigns to a "restrictive" theory that confined immunity "to suits involving the foreign sovereign's public acts." *Verlinden B. V. v. Central Bank of Nigeria*, 461 U. S. 480, 487. Inconsistent application of sovereign immunity followed, leading to the FSIA, whose primary purposes are (1) to endorse and codify the restrictive theory, and (2) to transfer primary responsibility for deciding "claims of foreign states to immunity" from the State Department

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to the courts. §1602. This Act now governs the determination whether a foreign state is entitled to sovereign immunity. Pp. 4–7.

(b) Reading the FSIA as a whole, there is nothing to suggest that “foreign state” should be read to include an official acting on behalf of that state. The Act specifies that a foreign state “includes a political subdivision . . . or an agency or instrumentality” of that state, §1603(a), and specifically delimits what counts as an “agency or instrumentality,” §1603(b). Textual clues in the “agency or instrumentality” definition—“any entity” matching three specified characteristics, *ibid.*—cut against reading it to include a foreign official. “Entity” typically refers to an organization; and the required statutory characteristics—*e.g.*, “separate legal person,” §1603(b)(1)—apply awkwardly, if at all, to individuals. Section 1603(a)’s “foreign state” definition is also inapplicable. The list set out there, even if illustrative rather than exclusive, does not suggest that officials are included, since the listed defendants are all entities. The Court’s conclusion is also supported by the fact that Congress expressly mentioned officials elsewhere in the FSIA when it wished to count their acts as equivalent to those of the foreign state. Moreover, other FSIA provisions—*e.g.*, §1608(a)—point away from reading “foreign state” to include foreign officials. Pp. 7–13.

(c) The FSIA’s history and purposes also do not support petitioner’s argument that the Act governs his immunity claim. There is little reason to presume that when Congress codified state immunity, it intended to codify, *sub silentio*, official immunity. The canon of construction that statutes should be interpreted consistently with the common law does not help decide the question whether, when a statute’s coverage is ambiguous, Congress intended it to govern a particular field. State and official immunities may not be coextensive, and historically, the Government has suggested common-law immunity for individual officials even when the foreign state did not qualify. Though a foreign state’s immunity may, in some circumstances, extend to an individual for official acts, it does not follow that Congress intended to codify that immunity in the FSIA. Official immunity was simply not the problem that Congress was addressing when enacting that Act. The Court’s construction of the Act should not be affected by the risk that plaintiffs may use artful pleading to attempt to select between application of the FSIA or the common law. This case, where respondents have sued petitioner in his personal capacity and seek damages from his own pockets, is governed by the common law because it is not a claim against a foreign state as defined by the FSIA. Pp. 13–19.

(d) Whether petitioner may be entitled to common-law immunity and whether he may have other valid defenses are matters to be ad-

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 dressed in the first instance by the District Court. P. 20.
552 F. 3d 371, affirmed and remanded.

 STEVENSON, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in part and concurring in the judgment. SCALIA, J., filed an opinion concurring in the judgment.