

ORAL ARGUMENT SCHEDULED JANUARY 9, 2017**No. 16-5149**

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

Roger C.S. Lin, *et al.*,

Plaintiffs-Appellants,

v.

United States of America, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE UNITED STATES OF AMERICA

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici

The court's docket lists plaintiffs as Dr. Roger C.S. Lin, Julian T.A. Lin, and the Taiwan Civil Government. The court's docket lists defendants as the United States of America and the Republic of China. There have been no intervenors or amici in this case, either in the district court or in this Court.

B. Rulings Under Review

The ruling under review (issued by Judge Kollar-Kotelly) is the district court's order and memorandum opinion dated March 31, 2016. The memorandum opinion has not been published, but is available on Westlaw at 2016 WL 1273187. The court's order and opinion are reproduced in the Joint Appendix at JA56-80.

C. Related Cases

This case has not been before this or any other Court other than the district court. Counsel for appellee United States of America is unaware of any related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

s/ Melissa N. Patterson

Melissa N. Patterson

GLOSSARY

JA

Joint Appendix

PRC

People's Republic of China

INTRODUCTION

In 2009, this Court concluded it lacked jurisdiction over a request to declare that the United States' actions in the aftermath of World War II rendered various residents of Taiwan "U.S. nationals." *See Lin v. United States*, 561 F.3d 502 (D.C. Cir. 2009) (*Lin I*). "Determining [the residents'] nationality would" have required the Court "to trespass into a controversial area of U.S. foreign policy in order to resolve a question the Executive Branch intentionally left unanswered for over sixty years: who exercises sovereignty over Taiwan." *Id.* at 503-04. This Court held that it "cannot" so "intrude" on the Executive Branch's decision to "deliberately remain[] silent on this issue," and held that "the political question doctrine bars consideration of [the residents'] claims." *Id.* at 504, 508.

In this case, plaintiffs—including the named plaintiff from *Lin I*—request a declaration that the United States' actions in the aftermath of World War II unlawfully rendered them "stateless." The district court correctly dismissed this case, recognizing that "[p]laintiffs' argument is essentially identical to the arguments rejected by the district court and the D.C. Circuit in" *Lin I*. JA75. As before, plaintiffs' claims would require this Court to opine on sovereignty over Taiwan, and is thus barred by the political question doctrine. Moreover, an independent barrier to this Court's jurisdiction exists: the district court also correctly determined that plaintiffs lack standing to bring this claim. This Court should affirm the dismissal for lack of jurisdiction.

STATEMENT OF JURISDICTION

Plaintiffs invoked the district court's jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 702. JA11-13.¹ The district court dismissed plaintiffs' claims on March 31, 2016. JA56. Plaintiffs filed a timely notice of appeal on May 20, 2016. JA81-82. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Whether the district court correctly dismissed this case for lack of subject matter jurisdiction.

STATEMENT OF THE CASE

A. Factual Background

The status of Taiwan has long been a subject of international dispute. At the close of the Sino-Japanese War in 1895, China ceded sovereignty over Taiwan (then called Formosa) to Japan, and many of Taiwan's residents became Japanese nationals. JA13-14. Upon the surrender of Japan to the United States and its allies in 1945, General Douglas MacArthur issued an order instructing all Japanese forces in Taiwan to surrender to the Republic of China. JA15. In 1946, the Republic of China issued two decrees announcing the restoration of Chinese nationality to those Taiwan residents who had become Japanese nationals in 1895. JA16.

¹ With respect to its claims against Defendant-Appellee Republic of China, plaintiffs also invoked the Alien Tort Statute, 28 U.S.C. § 1350. *See* JA11-12.

Diplomatic relations between the United States and the Republic of China had begun in 1928, JA53, and the United Nations Charter named the Republic of China as a permanent member of the Security Council, U.N. Charter art. 23, ¶ 1, *available at* <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>. After World War II, a civil war broke out in China between Chinese Communists forces and the Republic of China. JA54. The Communists established the People's Republic of China on mainland China, while the Republic of China retained control of Taiwan. JA54; U.S. Dep't of State, Office of the Historian, Milestones: 1945-1952: The Chinese Revolution of 1949, <https://history.state.gov/milestones/1945-1952/chinese-rev> (last visited November 4, 2016). The United States continued to recognize the Republic of China as the government of China, and the Republic of China represented China before the United Nations. JA53-54; *see, e.g.*, Representation of China in the United Nations, 1970 U.N.Y.B. 194, U.N. Sales No. E.72.I.1.

In 1951, Japan and a number of the Allied Powers, including the United States, signed a peace treaty which provided that "Japan renounces all right, title and claim to Formosa and the Pescadores," but did not otherwise address Taiwan's status. Treaty of Peace with Japan, art. 2(b), Sept. 8, 1951, 3 U.S.T. 3169 (1952) (1952 WL 44661). In 1954, the United States and the Republic of China signed a mutual defense treaty defining the "Republic of China" to include Taiwan. *See* Mutual Defense Treaty Between the U.S. and the Republic of China, art. VI, Dec. 2, 1954, 6 U.S.T. 433

(stating that “the terms ‘territorial’ and ‘territories’ shall mean in respect of the Republic of China, Taiwan and the Pescadores”). In the ensuing decades, the United States continued to recognize the Republic of China as the government of China.

The United Nations General Assembly recognized the People’s Republic of China (PRC) as China’s representative before the United Nations in 1971. *See* G.A. Res. 2758 (XXVI) (Oct. 25, 1971). In 1972, following high-level diplomacy by National Security Advisor Henry Kissinger and President Nixon, the United States issued a joint communique with the PRC, in which the PRC stated its position that the “Taiwan question is the crucial question obstructing the normalization of relations between China and the United States.” JA43 (United States of America-People’s Republic of China Joint Communique of February 27, 1972, U.S. Dep’t of State Bulletin, Vol. 66 (1972), No. 1708, at 437 (“1972 Communique”)). The United States “acknowledge[d] that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China,” and confirmed that “[t]he United States Government does not challenge that position.” JA43-44. In the communique, the United States “reaffirm[ed] its interest in a peaceful settlement of the Taiwan question by the Chinese themselves.” JA44.

In December 1978, President Carter announced the United States’ recognition of the PRC and the establishment of diplomatic relations after “long and serious

negotiations.”² JA45. The United States and the PRC issued a second joint communique, dated January 1, 1979, regarding the establishment of diplomatic relations between the two countries. JA45 (United States of America-People’s Republic of China Joint Communique of January 1, 1979 on Establishment of Diplomatic Relations, U.S. Dep’t of State Bulletin, Vol. 79 (1979), No. 2022, at 25). In that communique, the United States again acknowledged the “Chinese position that there is but one China and Taiwan is part of China.” *Id.* The communique stated that the “people of the United States” would “maintain cultural, commercial, and other unofficial relations with the people of Taiwan.” *Id.* President Carter made clear in a speech accompanying this communique that any relations with the current governing regime in Taiwan would be “nongovernmental.” *Id.*³

² Since the United States’ recognition of the People’s Republic of China as the government of China, it does not refer to the authorities on Taiwan as the “Republic of China.” This brief uses the term “Republic of China” when referring to historical events occurring at a time when the United States recognized the Republic of China as the government of China. Given the manner in which this case is captioned, this brief refers to the other defendant-appellee as “Defendant-Appellee Republic of China.” However, this is not intended to suggest any change in the United States’ longstanding one-China policy.

³ On December 30, 1978, President Carter issued a memorandum to executive agencies directing them to continue to conduct programs relating to Taiwan through a corporate instrumentality, despite the termination of diplomatic relations. 44 Fed. Reg. 1075 (Dec. 30, 1978); *see* JA45. In his memorandum, President Carter also stressed that the “American people will maintain commercial, cultural and other relations with the people of Taiwan without official government representation and without diplomatic relations.” 44 Fed. Reg. at 1075. An executive order further

Several months later Congress passed, and the President signed, the Taiwan Relations Act of 1979, which codified the United States' policy regarding Taiwan after recognition of the People's Republic of China. 22 U.S.C. § 3301. Congress passed the Act “(1) to help maintain peace, security, and stability in the Western Pacific; and (2) to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan.” *Id.* § 3301(a). Under this Act, the United States maintains unofficial relations with Taiwan through the American Institute in Taiwan, a “nonprofit corporation incorporated under the laws of the District of Columbia.” *Id.* § 3305(a)(1). The Act provides that references in the laws of the United States to “foreign countries, nations, states, governments, or similar entities” should be considered also to cover Taiwan. *See id.* § 3303(b)(1). Additionally, the Act provides that “[w]henever authorized by or pursuant to the laws of the United States to conduct or carry out programs, transactions, or other relations with respect to foreign countries, nations, states, governments, or similar entities, the President or any agency of the United States Government is authorized to conduct and carry out ... such

detailed the manner in which the United States is to maintain unofficial relations with the people of Taiwan. *See* Exec. Order No. 12,143, 44 Fed. Reg. 37,191 (June 22, 1979). This executive order was superseded in 1996 by a new order reflecting the same core principles. *See* Exec. Order No. 13,014, 61 Fed. Reg. 42,963 (Aug. 15, 1996).

programs, transactions, and other relations with respect to Taiwan,” through the American Institute in Taiwan. *Id.* § 3303(b)(2).

In 1982, the United States and the PRC issued a third joint communique, in which the two governments acknowledged that “[r]espect for each other’s sovereignty and territorial integrity and non-interference in each other’s internal affairs constitute the fundamental principles guiding United States-China relations.” JA46 (Joint Communique of the United States and the People’s Republic of China, 18 Weekly Comp. Pres. Doc. 1039 (Aug. 17, 1982). The United States and the PRC reiterated their former “agree[ment] that the people of the United States would continue to maintain cultural, commercial, and other unofficial relations with the people of Taiwan.” *Id.* President Reagan simultaneously issued a statement that “[b]uilding a strong and lasting relationship with China ha[d] been an important foreign policy goal of four consecutive American administrations” because “[s]uch a relationship is vital to [the United States’] long-term national security interests and contribute[d] to stability in East Asia.” JA47.

B. Prior Proceedings

1. Plaintiffs Dr. Roger C.S. Lin, Julian T.A. Lin, and the Taiwan Civil Government (a political and educational organization in Taiwan), filed their amended

complaint in this case in June 2015.⁴ JA7-37. They allege that the Republic of China “promulgated nationality decrees in 1946 that acted to illegally strip Japanese nationals living on Taiwan, as well as their descendants, of their Japanese nationality in violation of international law.” JA9-10. Plaintiffs further allege that the United States is legally responsible for these decrees because the Republic of China was “acting as an agent of the United States” when it promulgated them. JA9; *see also* JA19, 21, 24, 31. Plaintiffs contend that the Republic of China’s decrees rendered them “stateless” in violation of international law. JA34. They seek an order declaring these decrees invalid. JA35-36.⁵

2. The district court granted the United States’ motion to dismiss. JA56-80. The court concluded that it lacked subject matter jurisdiction over this case, both because plaintiffs lacked standing and because consideration of their claims was barred by the political question doctrine. JA62-76.

Plaintiffs lacked standing, the court explained, because they could show neither that their asserted injury was caused by the United States, nor that the declaration they

⁴ Roger C.S. Lin was also the named plaintiff in *Lin v. United States*, 561 F.3d 502 (D.C. Cir. 2009).

⁵ Plaintiffs also seek “monetary damages against” Defendant-Appellee Republic of China in connection with their second asserted cause of action, which pertains only to Defendant-Appellee Republic of China, the alleged “tort of arbitrary denationalization.” JA35-36. This brief addresses only plaintiffs’ allegations against the United States.

sought would provide redress. JA62-72. Plaintiffs' arguments regarding causation featured "several readily apparent deficiencies" regarding the United States' connections to the challenged decrees, and would also require the court to "address[] the complex and delicate contours of certain non-justiciable political questions, including whether the United States exhibited sovereign control over Taiwan during the time period at issue." JA67-69 (noting that plaintiffs contended that the United States had not authorized the challenged decrees, that plaintiffs' arguments conflated the United States and the Allied Powers, and that "seven decades have passed since the issuing of the nationality decrees in 1946, with numerous events having occurred that are directly relevant to Taiwan's political status"). The court concluded that, in any event, it could not redress plaintiffs' asserted injury. The court observed that "Plaintiffs do not even attempt to argue that the declaration that Plaintiffs are seeking would provide them with an internationally recognized nationality or directly affect their nationality status." JA71. Plaintiffs' contention that a declaration by the court would "significantly support" their efforts in Taiwan and "within international bodies such as the United Nations, to end their statelessness" was insufficient, the court concluded because "redressability cannot rest on speculation concerning the discretionary actions that non-parties may take in the future." JA71-72 (quoting Pls.' Opp'n to USA's Mot. to Dismiss, Dkt. No. 25, at 38-39).

As an independent ground for dismissal, the court held that “[p]laintiffs’ request that a declaration be issued concerning the nationality status of Taiwan residents presents a quintessential non-justiciable political question.” JA72-76 (quotation marks omitted). The court noted that plaintiffs asked it “to address broad questions about the nationality of Taiwan residents under various international instruments and to issue declarations regarding their nationality,” and that “[u]nder settled D.C. Circuit precedent ... the nationality of Taiwan residents” is a “non-justiciable political question.” JA74 (citing *Lin v. United States*, 561 F.3d 502, 508 (D.C. Cir. 2009) (*Lin I*)). “[R]esolving Plaintiffs’ claims regarding their nationality status would first require answering the ‘antecedent question’ of identifying Taiwan’s sovereign, an issue that cannot be answered under the political question doctrine.” JA75 (quoting *Lin I*, 561 F.3d at 506).

The court observed that plaintiffs were trying to “have it both ways” by arguing that the declaration they sought satisfied the redressability requirement for standing, but did not trigger the political question bar. JA76. It is “fundamentally inconsistent,” the court reasoned, to argue that the “declaration is both unrelated to the current status of Taiwan and sufficiently related to the current status that [it] . . .

would be substantially likely to support and materially change the status of Taiwan.”

JA76 (quotation marks omitted).⁶

SUMMARY OF ARGUMENT

The district court correctly dismissed this suit for lack of jurisdiction on two independent grounds: the political question doctrine and lack of standing. Either ground is sufficient to affirm the district court’s decision to dismiss for lack of jurisdiction.⁷

This Court previously held that the political question doctrine precludes it from opining on the nationality of the residents of Taiwan and delineating their “resultant rights.” *Lin I*, 561 F.3d at 506. Plaintiffs again ask this Court to determine their nationality status by declaring them “stateless” and holding that the acts that they allege rendered them stateless violated international law. JA34. The district court

⁶ The district court also granted Defendant-Appellee Republic of China’s motion to dismiss. *See* JA56. In addition to the standing and political question analyses, the court concluded that it lacked jurisdiction over the claim against Defendant-Appellee Republic of China under the Foreign Sovereign Immunities Act. JA76-80. This Brief addresses only plaintiffs’ claims against the United States, and, while the United States notes the decision of the U.S. Supreme Court in *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428 (1989), the United States expresses no view at this time as to whether the provisions relied on by plaintiffs could provide the Court with jurisdiction over the claims against Defendant-Appellee Republic of China.

⁷ Because “either want of standing or the political question doctrine would prevent adjudication on the merits,” this Court “may resolve [these issues] in any order.” *United States ex rel. New v. Rumsfeld*, 448 F.3d 403, 410 (D.C. Cir. 2006) (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999)).

correctly concluded that consideration of this claim is likewise barred by the political question doctrine. By their own account, plaintiffs seek a judicial declaration regarding their national status in order to influence the international community's treatment of Taiwan. Declaring the United States' position regarding Taiwan in our dealings with other nations, however, is the province of the Executive Branch, and as this Court has previously emphasized, courts "cannot intrude" on that role. *Lin I*, 561 F.3d at 508.

The district court also correctly dismissed for lack of standing. The declaration plaintiffs seek would not redress their asserted injury—statelessness—and the district court properly concluded that plaintiffs' arguments about the possible indirect effects of such a declaration were impermissibly speculative. Nor can plaintiffs establish that their asserted injury is fairly traceable to the United States, and attempting to do so would require the court to address non-justiciable political questions.

STANDARD OF REVIEW

This Court reviews dismissal for lack of subject matter jurisdiction *de novo*. *Lin I*, 561 F.3d at 505.

ARGUMENT

I. Plaintiffs' Claims Are Nonjusticiable Under The Political Question Doctrine.

A. 1. “The political question doctrine is one aspect of ‘the concept of justiciability, which expresses the jurisdictional limitations imposed on the federal courts by the “case or controversy” requirement’ of Article III of the Constitution.” *Bancoult v. McNamara*, 445 F.3d 427, 432 (D.C. Cir. 2006) (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 215 (1974)). The “doctrine is essentially a function of the separation of powers.” *El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 840 (D.C. Cir. 2010) (en banc) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)) (internal quotation marks omitted). It “excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch.” *El-Shifa*, 607 F.3d at 840 (quoting *Japan Whaling Ass’n v. American Cetacean Soc’y*, 478 U.S. 221, 230 (1986)).

While the parameters of the political question doctrine have not been susceptible to a precise formula, the Supreme Court has identified several considerations that may render a case nonjusticiable under the political question doctrine:

[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.

Baker, 369 U.S. at 217. Even the presence of one *Baker* factor can trigger the political question doctrine. See *Schneider v. Kissinger*, 412 F.3d 190, 194 (D.C. Cir. 2005).

“Disputes involving foreign relations ... are ‘quintessential sources of political questions.’” *El-Shifa*, 607 F.3d at 841 (quoting *Bancoult*, 445 F.3d at 433). “[D]ecision-making in the fields of foreign policy and national security is textually committed to the political branches of government.” *Lin I*, 561 F.3d at 505 (quoting *Schneider*, 412 F.3d at 194). “Not only does resolution of” foreign relations issues “frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature; but many such questions uniquely demand single-voiced statement of the Government’s views.” *Baker*, 369 U.S. at 211.

These considerations are especially relevant when deciding a case would require a court to determine sovereignty over a territory. “Who is the sovereign ... of a territory, is not a judicial, but a political, question.” *Jones v. United States*, 137 U.S. 202, 212 (1890) (collecting cases); see also *Baker*, 369 U.S. at 212 (“[R]ecognition of foreign governments so strongly defies judicial treatment that without executive recognition a

foreign state has been called a republic of whose existence we know nothing”) (quotation marks omitted); *cf. Zivotofsky ex rel. Zivotofsky v. Clinton*, 132 S. Ct. 1421, 1427 (2012) (concluding that a question was justiciable where it did not require “courts to decide the political status of Jerusalem,” but rather whether a plaintiff could vindicate a statutory right regarding his passport’s listing of place of birth) (quotation marks omitted).

Applying these principles, this Court concluded in 2009 that a request to declare Taiwan’s residents U.S. nationals presented a nonjusticiable political question. *See Lin I*, 561 F.3d at 503-08. “Because deciding sovereignty is a political task, Appellants’ case is nonjusticiable.” *Id.* at 505. This Court explained that “[d]etermining Appellants’ nationality would require us to trespass into a controversial area of U.S. foreign policy in order to resolve a question the Executive Branch intentionally left unanswered for over sixty years: who exercises sovereignty over Taiwan. This we cannot do.” *Id.* at 503-04. This Court declined to “jettison the United States’ long-standing foreign policy regarding Taiwan in favor of declaring a sovereign,” observing that the courts “do not dictate to the Executive what governments serve as the supreme political authorities of foreign lands.” *Id.* at 506-07.

2. This Court’s *Lin I* analysis applies equally here. *See* JA75 (district court’s conclusion that “Plaintiffs’ argument is essentially identical” to that rejected in *Lin I*).

Once again, plaintiffs ask this Court to opine on sovereignty over Taiwan. Instead of seeking a declaration that the United States has sovereignty over Taiwan, plaintiffs seek a declaration that no state has sovereignty over Taiwan, such that Taiwan's residents are "stateless." *See* JA34. The underlying inquiry is the same; only plaintiffs' proposed answer is different. A court cannot adjudicate this case without impermissibly interfering with the Executive Branch's power to speak with one voice about "what governments," if any, "serve as the supreme political authorities of foreign lands." *Lin I*, 561 F.3d at 507 (citing *Jones*, 137 U.S. at 212).

B. Plaintiffs claim that their request to have this Court "review the legality" of the Republic of China's decrees from 1946 is distinguishable from the claim in *Lin I*, asserting that their present complaint does not implicate "the question of Taiwan's sovereignty." Appellants' Br. 47. Rather, plaintiffs argue, they want a declaration about their "nationality," which they contend was not addressed in *Lin I*. *Id.* But plaintiffs' claims in *Lin I* equally involved a claim about nationality. *See Lin I*, 561 F.3d at 503 (observing that plaintiffs "want to be U.S. nationals" and declining to determine their "nationality"); *id.* at 505 (describing the declarations plaintiffs sought regarding their asserted status as "U.S. nationals"). As this Court held, determining sovereignty over Taiwan was an "antecedent question to Appellants' claims" regarding their nationality. *Id.* at 505-06 (noting that "[o]nce the Executive determines Taiwan's

sovereign, we can decide Appellants' resulting status and concomitant rights"). The same is true here.

That plaintiffs' claim here would require opining on sovereignty over Taiwan is clear from plaintiffs' own filings. Plaintiffs' complaint turns on numerous factual allegations regarding sovereignty over Taiwan. *See* JA14 (¶ 30), JA17 (¶ 41), JA19 (¶ 48), JA27 (¶¶ 65, 67), JA29 (¶¶ 71, 72), JA30 (¶¶ 73, 74, 75). And plaintiffs assert that "[t]he nationality status of Taiwan residents has remained unsettled ... because the [San Francisco Peace Treaty] did not transfer Taiwan *to* any sovereign" and that their resultant "lack of a recognized nationality constitutes statelessness." Appellants' Br. 12, 13; *see also id.* at 21-22 ("[I]n this case, complete sovereignty over Taiwan was not transferred to any other sovereign by treaty, including the [Republic of China], an ambiguity that persists to this day.').

Indeed, plaintiffs' arguments are nearly identical to those made unsuccessfully in *Lin I*, in which plaintiffs claimed that they did "not seek to contradict any political decisions relating to Taiwan" nor to "determine ultimate sovereignty over Taiwan." Appellants' Br. 26, 29, *Lin I*, No. 08-5078 (Nov. 3, 2008) (2008 WL 5416437). They argued "that the political question doctrine d[id] not prohibit the District Court from interpreting the [San Francisco Peace Treaty] in order to declare" them United States nationals. Appellants' Reply Br. 11, *Lin I*, No. 08-5078 (Dec. 16, 2008) (2008 WL 5416438). This Court rejected such arguments, explaining that although it "could

resolve th[e] case through treaty analysis and statutory construction,” “the political question doctrine forb[ade] [it] from commencing that analysis.” *Lin I*, 561 F.3d at 506-07. Here, as in *Lin I*, adjudicating plaintiffs’ complaint would involve a determination regarding Taiwan’s political status and therefore “jettison the United States’ long-standing foreign policy regarding Taiwan.” *Id.* at 506. The political question doctrine precludes this Court from taking such an action. *See El-Shifa*, 607 F.3d at 842-43 (explaining that the “courts are not a forum for reconsidering the wisdom of discretionary decisions made by the political branches in the realm of foreign policy”).⁸

II. Plaintiffs Lack Standing Because They Cannot Establish Causation Or Redressability.

In the alternative, the Court could affirm the dismissal of plaintiffs’ complaint for lack of standing. To establish standing, a plaintiff must show that: (1) it has suffered an injury in fact; (2) its injury was caused by the defendant’s conduct; and (3) the relief sought is likely to redress the injury. *See Lujan v. Defenders of Wildlife*, 504 U.S.

⁸ Although plaintiffs assert that the district court erred in concluding that the “presence” of even one *Baker* factor can trigger the political question doctrine, *see* Br. 44-45, the district court’s observation is entirely consistent with this Court’s statement that “[t]o find a political question, we need only conclude that one factor is present, not all.” *Schneider*, 412 F.3d at 194; *see also Baker*, 369 U.S. at 217 (listing factors in the disjunctive, and stating that “[u]nless *one* of these formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question’s presence”) (emphasis added).

555, 560-61 (1992). The district court correctly concluded that plaintiffs' pleadings did not establish causation or redressability. *See* JA62-72.

A. Plaintiffs Cannot Establish Causation.

For a plaintiff to have standing, “there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly ... trace[able] to the challenged action of the defendant,” not the result of “the independent action of some third party not before the court.” *Lujan*, 504 U.S. at 560 (internal quotation marks omitted). “When ‘[t]he existence of one or more of the essential elements of standing depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict,’ it becomes ‘substantially more difficult to establish’ standing.” *American Freedom Law Ctr. v. Obama*, 821 F.3d 44, 48-49 (D.C. Cir. 2016) (quoting *Lujan*, 504 U.S. at 562 (internal quotation marks omitted)).

Plaintiffs allege that they are stateless because the decrees deprived them of an internationally recognized nationality. The Republic of China, not the United States, issued the decrees; plaintiffs' theory of liability turns on its assertion that the Republic of China acted as the United States' agent. *See, e.g.*, JA9-10 (Am. Compl. ¶¶ 5, 6, 9); JA31 (¶ 77); JA34 (¶¶ 91, 92). Before the district court, plaintiffs argued that the United States was liable because it was aware of the Republic of China's actions. *See* JA68; *see also* Dkt. No. 25, at 8, 28, 36-37. On appeal, plaintiffs recharacterize their

assertions to argue that the United States is liable for failing to supervise the Republic of China and for ratifying its actions.⁹ Appellants' Br. 20-29.

The district court correctly observed that “[p]laintiffs have not put forward any evidence demonstrating that [their] current situation is a result of the events in 1946 and not a consequence of the ‘years and years of diplomatic negotiations and delicate agreements’ that have occurred during the intervening years.” JA69 (quoting *Lin v. United States*, 539 F. Supp. 2d 173, 181 (D.D.C. 2008)). Plaintiffs do not account for intervening developments regarding Taiwan’s status such as the United States’ decision to recognize the People’s Republic of China as the government of China, rather than the Republic of China, or the United Nations General Assembly vote to recognize the People’s Republic of China as the representative of China before the United Nations. *See* JA54; G.A. Res. 2758 (XXVI) (Oct. 25, 1971). And, as the district court stressed, the causation inquiry would require it to “address[] the complex and delicate contours of certain non-justiciable political questions, including whether the United States exhibited sovereign control over Taiwan during the time period at issue.” JA67-68. As discussed above, this the Court cannot do. *See supra* § I.

⁹ Plaintiffs claim to have argued before the district court that the United States “had a legal duty to supervise and correct” the Republic of China and contend that the district court “ignored ... ‘failure to supervise’ principles.” Appellants’ Br. 24. Plaintiffs direct this Court to a section of their district court briefing that does not discuss such principles. *See* Dkt. No. 25, at 4. Nor do plaintiffs point to any authority for the proposition that the United States can be held liable for failing to supervise foreign nations. *See* Appellants’ Br. 20-29.

B. Plaintiffs Cannot Establish Redressability.

1. For a plaintiff to have standing, “it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 561 (quotation marks omitted). “Courts have been loath to find standing when redress depends largely on policy decisions yet to be made by government officials.” *US Ecology, Inc. v. U.S. Dep’t of Interior*, 231 F.3d 20, 24 (D.C. Cir. 2000). Such decisions “depend[] on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict.” *Id.* (quoting *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989)). A case where redress depends on the actions of “an international organization that is not regulated by [the United States] government and therefore not bound by [United States] [c]ourt[s]” “is even one step further removed from the typical case in which redress depends on the independent action of a third party.” *Spectrum Five LLC v. FCC*, 758 F.3d 254, 261 (D.C. Cir. 2014).

Plaintiffs’ theory of redressability depends entirely on discretionary actions by the international community. They concede that they “do not—and could not—ask the District Court to end [their] statelessness.” Appellants’ Br. 7. Instead, they assert that the declaration they seek “would significantly motivate the U.N. (and nations bound to comply with international laws prohibiting statelessness)” to provide them with an internationally recognized nationality. *Id.* at 38. They suggest that the

requested declaration could prompt the U.N. High Commissioner for Refugees to provide assistance to them. *Id.* at 40, 42.

These assertions, as the district court correctly concluded, do not suffice to establish redressability. “Plaintiffs allege no facts plausibly demonstrating how the sought declaration ... would be used ‘within international bodies such as the United Nations [] to end their statelessness.’” JA72 (quoting Pls.’ Opp’n to U.S.’s Mot. to Dismiss, Dkt. No. 25, at 39). “[R]esolution of Plaintiffs’ alleged injury necessarily involves “independent actors not before the court and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict.” JA72 (quoting *Lujan*, 504 U.S. at 562). This Court has upheld dismissals of plaintiffs’ cases in which redressability required the independent action of just one non-party state, *see US Ecology*, 231 F.3d at 24-25, two non-party state regulators, *see Klamath Water Users Ass’n v. FERC*, 534 F.3d 735, 739-40 (D.C. Cir. 2008), or a non-party “specialized agency of the United Nations,” *see Spectrum Five LLC*, 758 F.3d at 256, 260-64. Plaintiffs’ generalized plan to use a U.S. court’s declaration to enlist the United Nations’ support for their cause thus cannot demonstrate the requisite redressability to sustain Article III standing. *See Spectrum Five LLC*, 758 F.3d at 264 (dismissing petition for lack of standing where theory of redress would have required an international third party to reconsider an earlier decision where petitioner had “not adduce[d] facts demonstrating how the reconsideration process work[ed], much

less demonstrating that the [third party] would likely reach a different conclusion upon reconsideration”) (quotation marks omitted).

2. Plaintiffs’ reliance on *Teton Historic Aviation Foundation v. U.S. Department of Defense*, 785 F.3d 719 (D.C. Cir. 2015) (per curiam), and *National Parks Conservation Ass’n v. Manson*, 414 F.3d 1 (D.C. Cir. 2005), is misplaced. Br. 37, 42-43. Plaintiffs there clearly and specifically demonstrated how the declaratory relief they sought was sufficiently likely to change third party behavior. In *Teton*, the plaintiff sought a declaration invalidating a Department of Defense policy restricting the availability of surplus military equipment for public sale through a third-party vendor. 785 F.3d at 721-24. This Court determined the plaintiff had established redressability based on the strength of its showing that “the third party’s pecuniary interests and the basic dynamic of naked capitalism” would make third-party sales sufficiently likely again in the future if the government again made equipment available for such sales, a conclusion supported by the third party’s own “past expressions of intent.” *Id.* at 727-29 (quotation marks omitted). Similarly in *National Parks Conservation Ass’n*, this Court determined that a change in the challenged Interior Department action would “doubtless ... significantly affect” specific “ongoing proceedings” before a state agency, which was obliged by federal law to take into account the Department’s views. 414 F.3d at 3, 7 (noting that although the state “retains final decision-making authority, a federal impact report is not purely advisory”).

Neither of these rationales bears any resemblance to plaintiffs' arguments here. A declaration that the 1946 decrees are invalid will have no direct impact on any third party that could remedy plaintiffs' asserted injury. The United Nations is not the type of market participant this Court addressed in *Teton*. Nor does any federal law apply oblige the United Nations to change its behavior in light of a challenged U.S. agency action, as in *National Parks*. Plaintiffs claim that they had inadequate opportunity to develop the record relating to their standing. *See* Br. 39, 42. But "a bald allegation of standing is not enough to survive even a motion to dismiss where neither the factual allegations nor their logic establish redressability." *Renal Physicians Ass'n v. U.S. Dep't of Health & Human Servs.*, 489 F.3d 1267, 1278, (D.C. Cir. 2007). Plaintiffs' "attempts to show redressability are based on nothing but unadorned speculation," which this Court has made clear cannot defeat a motion to dismiss. *National Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 944 (D.C. Cir. 2004) (quotation marks omitted).¹⁰

¹⁰ Plaintiffs also invoke *Shannon v. Graves*, 2000 U.S. Dist. LEXIS 1943, at *14-15 (D. Kan. 2000), and *Prakash v. American Univ.*, 727 F.2d 1174, 1180 (D.C. Cir. 1984). Br. 38-39. *Shannon*—a case concerning whether a prisoner had standing to bring a constitutional challenge to living conditions at a correctional facility—provides no support for plaintiffs' contention that "this Circuit" has "accepted" that a "connection is plain" between a declaration invalidating the challenged actions and the alleviation of the asserted injuries here. Appellants' Br. 38-39. And *Prakash* involved a litigant's opportunity to have his credibility assessed at a hearing regarding his asserted intent to return to an alleged domicile in Pennsylvania, such that diversity jurisdiction existed. *See* 727 F.2d at 1178-81. No credibility determinations are at issue here.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's dismissal for lack of jurisdiction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 32(a). This brief contains 5,909 words.

s/ Melissa N. Patterson
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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2016, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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