No. 19-741

IN THE
Supreme Court of the United States

ESTATE OF ESTHER KLIEMAN, BY AND THROUGH ITS ADMINISTRATOR, AARON KESNER, *et al.*

Petitioners,

v.

PALESTINIAN AUTHORITY, ALSO KNOWN AS PALESTINIAN INTERIM SELF-GOVERNMENT AUTHORITY AND PALESTINIAN LIBERATION ORGANIZATION, ALSO KNOWN AS PLO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioners raise four issues, two of which were not presented to the court of appeals:

1. Congress gave the Executive Branch exclusive power under 22 U.S.C. §5202 (Section 1003 of the 1987 Anti-Terrorism Act) to issue waivers to allow Respondent Palestine Liberation Organization to establish a presence within the jurisdiction of the United States. In this litigation, the Executive Branch represented to the court of appeals that no such waiver was currently in place.

Did the court of appeals err by joining its sister circuit in concluding, consistent with the unrebutted representations of the United States, that the actions of Respondents did not satisfy the factual predicates of the Anti-Terrorism Clarification Act (ATCA), Pub. L. No. 115-253 (Oct. 3, 2018)?

2. Should this Court grant *certiorari*, vacate the decision below, and remand based on the Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA), Pub. L. No. 116-94, §903, 133 Stat. 3082 (Dec. 20, 2019), where (1) the factual predicates of the PSJVTA are not satisfied, and (2) Petitioners' separate filed and stayed lawsuits are a better vehicle for developing new jurisdictional arguments?

3. When all parties agree that Respondents are not sovereign under U.S. law, does political recognition of the State of Palestine by international organizations determine whether Respondents Palestinian Authority and Palestine Liberation Organization are entitled to due process in United States courts? This issue was not presented to the court of appeals.

4. Do the standards for jurisdictional due process differ under the Fifth and Fourteenth Amendments in a case where the courts below held that there was no meaningful connection between Petitioners' claims and Respondents' contacts with the United States? This question was not presented to the court of appeals.

PARTIES TO THE PROCEEDING

Petitioners in this proceeding are Esther Klieman, estate of, Nachman Klieman, Ruanne Klieman, Dov Klieman, Yosef Klieman, and Gavriel Klieman. Respondents are the Palestinian Authority ("PA") and the Palestinian Liberation Organization ("PLO").

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RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF *CERTIORARI*

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The court of appeals' opinion is reported at 923 F.3d 1115 (D.C. Cir. 2019). Pet. App. 1a-32a. The court of appeals' orders denying rehearing and rehearing en banc are unreported. Pet App. 59a-61a. The district court's opinion is reported at 82 F. Supp. 3d 237 (D.D.C. 2015). Pet. App. 33a-58a.

JURISDICTION

The court of appeals entered its judgment on May 14, 2019. Pet. App. 1a. The court denied a timely petition for rehearing and rehearing en banc on July 8, 2019. Pet. App. 59a, 61a.

INTRODUCTION

The Petition presents no grounds for *certiorari*. Petitioners' lead argument was not raised before the court of appeals and finds no support in the law. Their theory that Respondents' participation as a "state" before international organizations eliminates Respondents' due process rights in the United States is without any case support. Similarly, Petitioners' argument that there is a circuit split on the Fifth Amendment was previously rejected by the Solicitor General in a parallel case. Their theory relies on *dicta* from decades-old cases rather than any new, relevant cases decided since the last time this Court denied *certiorari* on the issue.

Petitioners' argument under the ATCA, the only one in the Petition they raised below, does not warrant *certiorari* given that two courts of appeals have held that the ATCA's factual predicates have not been met, in accord with the unrebutted, factually-grounded views of the United States. The ATCA has also been replaced and will not be applied in future cases.

Petitioners' supplemental brief asks this Court to grant *certiorari*, vacate the decision below, and remand based on the statute that replaced the ATCA, the PSJVTA. Critically, Petitioners fail to show any "reasonable probability" that the PSJVTA in fact creates jurisdiction over Respondents. *See Wellons v. Hall*, 558 U.S. 220, 225 (2010) (a GVR requires a "reasonable probability" that the change in the law will affect "the ultimate outcome") (citation omitted).

The PSJVTA will not affect the outcome of this case because the record facts concerning Respondents' prior activities in the United States cannot satisfy the statute's requirements. Under the new statute, like the old statute, Respondents' UN Mission and the activities of its UN Mission personnel in the United States do not create jurisdiction. The PSJVTA, furthermore, provides that Respondents "shall be deemed to have consented to personal jurisdiction" if they take certain actions only ***after*** its recent enactment. Petitioners have given this Court no reason to believe the PSJVTA creates jurisdiction over Respondents at this time—or ever will do so in the future. This Court should not issue a GVR based on the speculation that, sometime in the future, the factual predicates of the PSJVTA might come to pass.

Perhaps in recognition of this, Petitioners filed two other lawsuits on the same facts to take advantage of future jurisdictional changes. Both cases are at the pleading stage in two different district courts. Future

factual developments are more appropriately addressed in Petitioners' newly-filed cases. *By Petitioners' own design*, the new cases (which, on Petitioners' request, are stayed pending disposition of this Petition) are better suited to develop Petitioners' arguments concerning the PSJVTA, including facts not yet in existence regarding Respondents' unknown future actions. In the new cases, the district court has a full toolkit for fact-based adjudication of new personal-jurisdiction questions. Those cases are a better vehicle for resolving Respondents' facial and as-applied constitutional challenges to, and other arguments concerning the application of, the newly-enacted statute.

All of this aside, the provisions of the PSJVTA and the ATCA at issue here apply exclusively to Respondents and a handful of plaintiffs. They are not of widespread application and their interpretation produces no precedent that will control other cases.

STATEMENT OF THE CASE

The 1993 Oslo Accords established the PA as the interim and non-sovereign government of parts of the West Bank and the Gaza Strip, collectively referred to as "Palestine." Pet. App. 16a. The PA is headquartered in the city of Ramallah in the West Bank. Pet. App. 16a. The PLO was founded in 1964. Pet. App. 17a. At all relevant times, the PLO was headquartered in Ramallah, the Gaza Strip, and Amman, Jordan. Pet. App. 17a. Because the Oslo Accords limited the PA's reach to domestic affairs, Israel retains external security control, and the PLO conducts Palestine's foreign affairs. Pet. App. 17a.

The United States does not recognize the PA or the PLO as a sovereign government. *Id.* Although the PLO had a diplomatic mission in Washington D.C., it

closed on October 10, 2018. Pet. App. 30a. The PLO also has a mission to the United Nations in New York City. Pet. App. 29a.

In this case, Petitioners alleged violations of the Anti-Terrorism Act and other laws for a terrorist attack against occupants of an Israeli bus in the West Bank committed by nonparties who Petitioners alleged were assisted by Respondents. Pet. App. 3a-4a. The PA and PLO timely moved to dismiss for lack of personal jurisdiction, asserting that they lacked "minimum contacts" with the United States. Pet. App. 4a-5a. The court denied that motion and a later reconsideration motion. *Id.*

In February 2014, Respondents filed another motion for reconsideration on personal jurisdiction after this Court's decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). Pet. App. 5a. The district court then dismissed for lack of jurisdiction, agreeing that Respondents were not "at home" in the United States as required for general jurisdiction under *Daimler*. Pet. App. 5a. It also held there was no specific jurisdiction under *Walden v. Fiore*, 571 U.S. 277, 291 (2014), because there was no relevant connection between the attack and the United States. Pet. App. 5a.

A. The appeal is held pending the results of petitions in related cases.

The D.C. Circuit held Petitioners' appeal in abeyance pending its decision in two other cases that raised the same issues of personal jurisdiction. Order, *Klieman v. Palestinian Auth.,* No. 15-7034 (D.C. Cir. May 28, 2015); *see Livnat v. Palestinian Auth.*, 851 F.3d 45 (D.C. Cir. 2017), *cert denied,* 139 S. Ct. 373 (2018); *Gilmore v. Palestinian Interim Self-Gov't Auth.*, 843 F.3d 958 (D.C. Cir. 2016), *cert. denied*, 138 S. Ct. 88 (2017).

In the *Livnat* case to which the D.C. Circuit gave precedence, the court of appeals held that general and specific jurisdiction over the PA was inconsistent with due process under *Daimler* and *Walden*. *Livnat*, 851 F.3d at 52. The court of appeals also rejected plaintiffs' argument that the Fifth Amendment is "less protective" of jurisdictional due process than the Fourteenth Amendment." *Id.* at 54. It explained that "[n]o court has ever held that the Fifth Amendment permits personal jurisdiction without the same 'minimum contacts' with the United States as the Fourteenth Amendment requires with respect to States." *Id.*

In a similar case, the Second Circuit likewise held that there was neither general nor specific jurisdiction over Respondents concerning attacks committed in Israel by nonparties. *Waldman v. PLO*, 835 F.3d 317, 322 (2d Cir. 2016), *cert. denied sub nom Sokolow v. PLO*, 138 S. Ct. 1438 (2018). The Second Circuit rejected the argument that the Fifth Amendment's guarantee of due process was particularly weak in a case involving a federal statute, holding that federal cases "clearly establish the congruence of due process analysis under both the Fourteenth and Fifth Amendments." *Id.* at 330. It further held that Respondents were "persons" under the Fifth Amendment as "neither the PLO nor the PA is recognized by the United States as a sovereign state, and the executive's determination of such a matter is conclusive." *Id.* at 329.

The subsequent *certiorari* petitions from both cases raised many of same arguments as the instant petition. *See* Petition for Writ of *Certiorari*, *Sokolow v. PLO*, No. 16-1071 (Mar. 3, 2017); Petition for Writ of *Certiorari*, *Livnat v. Palestinian Auth.*, No. 17-508 (Sept. 28, 2017). Those petitions argued that there was a circuit split about the differences between the

due process standards under the Fifth and Fourteenth Amendments. *See Sokolow* Pet., No. 16-1071, p. 22-29. They also argued that the court of appeals undercut the Legislative Branch's ability to prescribe and the Executive Branch's authority to enforce antiterrorism laws. *Id*. at 14-18.

This Court requested the views of the United States in the *Sokolow* case, and the Solicitor General recommended against *certiorari*. Br. of the United States as Amicus Curiae ("CVSG Br.") at 1, *Sokolow v. PLO*, No. 16-1071 (Feb. 22, 2018). The Solicitor General agreed that the Second Circuit's decision on due process did not conflict with any other court of appeals, and accorded with the D.C. Circuit's decision in *Livnat*. *Id*. at 9.

The United States also recommended denial of the petition because Petitioners' Fifth Amendment theory was "not [] well developed." CVSG Br. at 16-17. As the Solicitor General explained, the Second Circuit's decision "does not conflict with any decision of this Court, implicate any conflict among the courts of appeals, or otherwise warrant this Court's intervention" and there is no "conflict among the courts of appeals." *Id*. at 7, 15-16 ("Petitioners point to no decision adopting their [] theory . . . [i]ndeed, the D.C. Circuit concluded that 'no court has ever' adopted such an argument.").

Finally, the Solicitor General rejected the claim that the court of appeals' holding interfered with the Executive Branch's ability to enforce the Anti-Terrorism Act: "Nothing in the opinion calls into question the United States' ability to prosecute defendants under the broader due process principles the courts have recognized in cases involving the application of U.S. criminal laws to conduct affecting

U.S. citizens or interests." *Id.* at 18 (citing *Sokolow*, 835 F.3d at 340-41).

This Court denied *certiorari* in both *Sokolow* and *Livnat*. *Sokolow v. PLO*, 138 S. Ct. 1438 (2018); *Livnat v. Palestinian Auth.*, 139 S. Ct. 373 (2018).

B. The ATCA and Petitioners' supplemental briefing.

During the pendency of Petitioners' appeal to the D.C. Circuit in this case, Congress passed the Anti-terrorism Clarification Act of 2018, Pub. L. No. 115-253, 132 Stat. 3184 (Oct. 3, 2018) (ATCA). The ATCA purported to "deem" that Respondents consented to personal jurisdiction if, following a statutory grace period, Respondents either (1) accepted certain types of foreign aid from the United States, or (2) had a physical office "within the jurisdiction of the United States" that was "benefiting from a waiver or suspension of section 1003 of the Anti-Terrorism Act of 1987 (22 U.S.C. §5202)." Pet. App. 66a-67a. Soon afterward, Petitioners filed a supplemental brief with the D.C. Circuit, arguing that the ATCA created personal jurisdiction over Respondents. Pl. Supp. Br., Dkt. 1759517, p. 2, No. 15-7034 (D.C. Cir. Nov. 9, 2018). Because jurisdiction under the ATCA depended on whether Respondents were receiving certain aid or benefiting from a waiver from the Executive Branch, the court of appeals requested the views of the United States.

The United States filed two amicus briefs stating that the factual prerequisites for jurisdiction under the ATCA had not been met. U.S. Brief, *Klieman v. Palestinian Auth.,* No. 15-7034 (D.C. Cir. Feb. 15, 2019) ("Feb. 2019 U.S. Br."); U.S. Brief, *Klieman v. Palestinian Auth.,* No. 15-7034 (D.C. Cir. Mar. 13, 2019) ("Mar. 2019 U.S. Br."). The United States explained that the ATCA "does not operate to 'deem[]'

defendants to have consented to personal jurisdiction in this case." Feb. 2019 U.S. Br. at 1. The United States advised that the ATCA's "factual predicates are not satisfied" because Respondents "declined to 'accept' the foreign assistance specified in the ATCA and do not currently 'benefit' from a waiver of section 1003 of the Anti-Terrorism Act of 1987." Mar. 2019 U.S. Br. at 1.

The United States determined that the last waiver of Section 1003 expired in November 2017 and that Respondents' Washington, D.C. Mission closed as of October 10, 2018. Feb. 2019 U.S. Br. at 5-7. While Respondent PLO "continues to maintain its United Nations Observer Mission in New York," the United States explained that the UN Mission does not "fall within the terms of the ATCA." *Id.* at 6-7. For these reasons the United States concluded that "the ATCA's statutory predicates are not satisfied, and thus Section 4 does not operate to 'deem' the PA/PLO to have consented to personal jurisdiction." *Id.* at 7.

Notably, the ATCA was enacted while the *Livnat* petition was pending. *See Livnat v. Palestinian Auth.*, No. 17-508. In the same fashion as the Petitioners raised the PSJTVA here, the *Livnat* plaintiffs raised the ATCA by a supplemental brief before this Court and argued that the new statute required a GVR. *See Livnat v. Palestinian Auth.*, No. 17-508, Pet. Supp. Br. 1 (Sept. 14, 2018), and Pet. Letter (Oct. 5, 2018). As explained above, this Court denied *certiorari* in *Livnat*. 139 S. Ct. 373 (2018).

C. Petitioners refile their claims in two new cases.

Approximately one month after filing their supplemental brief on the ATCA, Petitioners refiled their claims in two different district courts. *See Klieman v. Palestinian Auth.*, No. 1:18-cv-03013

(D.D.C. filed Dec. 21, 2018); *Kesner v. Palestinian Auth.*, No. 1:18-cv-12238 (S.D.N.Y. filed Dec. 27, 2018). These two complaints have the same plaintiffs and are based on the same underlying conduct. But going beyond the allegations made in this case, the new complaints include jurisdictional allegations tailored to the ATCA, the decision of the D.C. Circuit in *Livnat*, and the decision of the Second Circuit in *Waldman*/*Sokolow*. Both district court cases are currently stayed at the pleading stage at the request of the Petitioners (no answer has been filed) pending the outcome of this petition for *certiorari*.

D. The court of appeals holds that there is no personal jurisdiction over Respondents.

Applying its prior decisions to this case, the D.C. Circuit held that there was no personal jurisdiction over Respondents. Pet. App. 13a-21a. It held that, "[b]ecause the PA's 'headquarters, officials, and primary activities are all in the West Bank' it is not subject to general jurisdiction in the United States" under *Daimler*. Pet. App. 13a (citations omitted). Petitioners also argued that specific jurisdiction was created by acts of terrorism that targeted Israeli "areas frequented by Americans" for purposes of influencing "United States foreign policy." Applying *Walden*, the court of appeals rejected this theory because Petitioners had "not alleged tangible facts as to how *this* attack was intended (or even used *ex post*) to further [Respondents'] political aims in the United States." Pet. App. 14a-15a.

As to the ATCA, the court held that, "in keeping with the view of the United States, the plaintiffs have failed to offer plausible allegations that any of the factual predicates of ATCA § 4 has been met." Pet. App. 26a-27a. As to the statute's foreign aid prong,

the court explained that Petitioners' "mere allusions to past examples [of foreign assistance] and hypothesizing their continuation or renewal is not enough to warrant a remand." Pet. App. 27a. In reliance on the unrebutted factual representations of the Executive Branch, the court rejected Petitioners' claim that Respondents were "benefitting from a waiver or suspension of section 1003," as required for jurisdiction under the ATCA. Pet. App. 30a-31a. It concluded that Petitioners "do not and cannot claim an express waiver or suspension" and "point to nothing that could either qualify or substitute for the formal written waiver or suspension evidently required." *Id.*

Petitioners petitioned for *certiorari* from the court of appeals' decision holding that it lacked personal jurisdiction over Respondents.

E. The PSJVTA.

Two weeks after Petitioners filed their Petition for *certiorari*, Congress amended the ATCA with the Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA), Pub. L. No. 116-94, §903, 18 U.S.C. §2334 (Dec. 20, 2019). Under the PSJVTA, Respondents are also "deemed to have consented to personal jurisdiction" if, after January 4, 2020, they "continue[] to maintain any office, headquarters, premises or other facilities or establishments" or "conduct[] any activity" "on behalf of the Palestine Liberation Organization or Palestinian Authority while physically present in the United States." 18 U.S.C. §2334(e)(1)(B).

The PSJVTA, however, specifically exempts from jurisdictional consideration (1) maintaining "any office, headquarters, premises, or other facility or establishment used exclusively for the purpose of conducting official business of the United Nations"; (2)

"any activity undertaken exclusively for the purpose of conducting official business of the United Nations"; (3) activities "exclusively for the purpose of meetings with officials of the United States or other foreign governments" or other activities approved by the Secretary of State, and (4) activities related to legal representations. *See* 18 U.S.C. §2334(e)(3)(A)-(E). Significantly, the PSJVTA expressly exempts "any personal or official activities conducted *ancillary to*" those types of activities. *Id.*, §2334(e)(3)(F) (emphasis added). The PSJVTA also contains a savings clause providing that it "shall not abrogate any consent deemed to have been given under" the ATCA. *Id.*, §903(d)(2).

A month after the passage of the PSJVTA, Petitioners filed a supplemental brief asking this court to issue a GVR based on the PSJVTA. Petitioners' supplemental brief makes no meaningful assertion that the factual prerequisites of the PSJVTA have been satisfied since its passage.

REASONS TO DENY THE PETITION

I. *Certiorari* is unwarranted on the ATCA.

Petitioners argue that the decision below thwarts Congress' ability to combat terrorism and specifically undermines Congress' purposes in enacting the ATCA. This claim does not warrant *certiorari*.

First, this Court should not accept review of Petitioners' arguments under the ATCA because, with the passage of the PSJVTA, the ATCA is now applicable retrospectively to only the plaintiffs in this and the *Sokolow* case, and will not apply in any future cases. *See Vasquez v. United States*, 454 U.S. 975, 977 (1981) (Stevens, J., concurring in denial of certiorari) ("It is often appropriate to decline to review a decision

that turns on details of the evidence that are not likely to be duplicated in other cases."); *Triangle Improv. Council v. Ritchie*, 402 U.S. 497, 499 (1971) (Harlan, J., concurring in dismissal) ("The fact that the statute has been repealed since certiorari was granted and that less than 10 persons would be affected were we to accept petitioners' legal position renders this case, I think, a classic instance of a situation where the exercise of our powers of review would be of no significant continuing national import."). Although the PSJVTA provides that it "shall not abrogate any consent deemed to have been given under" the ATCA, PSJVTA §903(d)(2), two courts of appeals have accepted the United States' unrebutted determination that the ATCA's factual predicates were not met during the period before the PSJVTA supplanted the ATCA. As there are no further decisions on the ATCA, this issue will not affect any other cases and therefore is not significant enough to justify *certiorari*.

Granting *certiorari*, furthermore, would require this Court to address the thorny constitutional issues regarding Congress' creation of artificial "consent," which were avoided by both courts of appeals to address the ATCA. *See* Pet. App. 25a; *Waldman v. PLO,* 925 F.3d 570, 576 (2d Cir. 2019). Indeed, the United States expressly advised the court of appeals to avoid deciding those issues. Mar. 2019 U.S. Br. at 8 ("[i]t is particularly appropriate for the Court to avoid unnecessarily addressing the constitutional issue here, as it arises in the context of the conduct of foreign relations"). The relevant constitutional problems include that the government may not impose conditions which require the relinquishment of constitutional rights, and deemed consent cannot replace the due process-based tests for personal jurisdiction. The PSJVTA has changed the "deemed" jurisdictional framework yet again, and the

developing facts under the new framework have not been analyzed by any court. Accordingly, this case is not a good use of this Court's *certiorari* power and Petitioners' new cases are far better, and purpose-built, vehicles for doing so.

Nor is there any circuit split on the narrow, fact-intensive question of whether the ATCA's factual predicates were met here. The court below, the Second Circuit, and the United States all agree that Respondents' activities do not satisfy that now-superseded statute. In relevant respect, the ATCA provides that Respondents "shall be deemed to have consented to personal jurisdiction" in an action under the Anti-Terrorism Act ("ATA") if they "benefit[]" from a "waiver" of Section 1003 of the Anti-Terrorism Act of 1987 (22 U.S.C. §5202) with respect to a mission or office "within the jurisdiction of the United States."[1] The court below held that the ATCA did not apply in this case because Plaintiffs failed to demonstrate that the Executive Branch had issued a waiver for Respondents' benefit under 22 U.S.C. §5202.

The Executive Branch is in the unique position to settle that question conclusively. It represented that the Executive Branch had *not* issued such a waiver. The court of appeals accepted that representation, which was unrebutted by Petitioners below. The Second Circuit is in agreement. That agreement on a dispositive factual issue makes this question unworthy of *certiorari* review. *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 841 (1996) (The Court

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[1] The ACTA also creates jurisdiction if Respondents accept certain U.S. foreign aid. But Petitioners do not challenge the lower court's decision on this point: "the plaintiffs state only that the defendants have accepted qualifying assistance in the past; they do not contend that the defendants currently do so." Pet. App. 7a.

"cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error.") (citation omitted). Section 1003 of the 1987 ATA forbids the PLO from establishing any office or mission "within the jurisdiction of the United States." 22 U.S.C. §5202. As recently explained by the United States, the Executive Branch has the ability to waive that prohibition to allow the PLO "to maintain an office of the General Delegation in Washington, DC." Mar. 2019 U.S. Br. at 3-4. The Executive Branch explained that it stopped granting that waiver such that "defendants do not currently 'benefit[]' from a waiver of section 1003." *Id.* at 1, 4 ("No waiver of section 1003 currently is in effect.").

Petitioners argue that the Executive Branch has actually issued an "implied" waiver—the protestations of that very branch notwithstanding. Pet. 21. But those arguments are undeveloped and unsupported by any lower court decisions. They are also contrary to the statutory text. As explained by the court below, "the natural reading . . . of 'waiver or suspension'" in the statute "is the sort of formal exercise of power plainly contemplated in [the] statute setting forth the waiver procedure." Pet. App. 31a; *see also Waldman*, 925 F.3d at 574-75 ("allowing implied waivers to qualify under Section 4 of the ATCA would 'neglect the actual language of the legal authorization to issue waivers under [ATA] § 1003, . . . which creates legal consequences when the President 'certifies in writing' that a waiver is to be issued" (quoting Pet. App. 32a)).

Finally, Petitioners' claim that the court of appeals' decision on waiver "interferes with Congress's constitutional prerogatives" is wrong. Pet. 23. Under 22 U.S.C. §5202, Congress placed the decision of whether to issue a waiver in the hands of the

Executive. Rather than interfere with that framework, the court below accepted the Executive's unrebutted representations that there was no extant waiver. The court of appeals would indeed have interfered with *both* branches if it had overridden that determination and held that the Executive Branch had in fact issued an "implied" waiver when it never intended to do so. Petitioners' claims of a constitutional crisis are unfounded.

Second, Petitioners assert without foundation that the court of appeals "immunized overseas acts of terrorism" (Pet. 17) by applying *Daimler* and *Walden*'s personal jurisdiction analysis to Respondents and by holding that the ATCA was not satisfied. Pet. 14-18. But the court of appeals did no such thing. Faithfully applying this Court's clear precedent, it held only that Respondents were not "at home" in the United States for purposes of general jurisdiction under *Daimler*, and that the attack had no meaningful connection with the United States for purposes of specific jurisdiction under *Walden*. Pet. App. 19a-21a. The court further found that Petitioners presented no evidence that the attack at issue was targeted towards Americans or directed to the United States. *Id.*

Neither of these holdings undermines jurisdiction in civil cases over defendants that target the United States or American citizens abroad. Indeed, that was a key corollary of the court of appeals' analysis: when a defendant directs its conduct to a forum, *Walden* allows that defendant to be held responsible in that forum. Pet. App. 19a-21a. Thus, Petitioners are wrong that the decision below immunizes terrorist groups like ISIS or Al Qaeda (Pet. 15), as civil jurisdiction is available under *Walden* against defendants that target the United States.

The court of appeals' holdings on *Daimler* and *Walden* also have an extremely narrow application. Respondents are a non-sovereign government created by international treaties supported by the United States. They are a *sui generis* government in a category of one. Decisions applying general and specific jurisdiction to their unique factual situation would not control jurisdiction over any other entity in the world. *See* CVSG Br. at 12, *Sokolow v. PLO*, No. 16-1071 ("respondents are *sui generis* entities with a unique relationship to the United States government," and so "a ruling on whether respondents have due process protections is unlikely to have broad utility in resolving future cases concerning other entities."). And the "waiver" provisions of the ATCA that are at issue here apply *exclusively* to Respondents. That decision, by its own terms, will not apply to any other organization.

Notably, the court of appeals' decision is also supported by the unrebutted position of the United States. Despite the same argument made by the petitions in *Sokolow*, the United States advised that *certiorari* should be denied. CVSG Br. at 1. And here, the United States specifically advised the court of appeals that the ATCA does not create personal jurisdiction over Respondents. *See* Feb. 2019 U.S. Br.; Mar. 2019 U.S. Br. If the United States believed that its position on the ATCA, or on *Daimler* and *Walden*, would undermine national security, it surely would have said so.

II. A GVR should not issue because Petitioners fail to show a "reasonable probability" that the PSJVTA would change the outcome.

A GVR requires a "reasonable probability" that that newly-passed legislation will affect "the ultimate outcome" of the case. *Wellons v. Hall*, 558 U.S. 220,

225 (2010). While this requires Petitioners to show that the PSJVTA likely creates personal jurisdiction over Respondents, they do not attempt to make this showing. As with the ATCA, the record facts as to Respondents' past presence and activities in the United States do not create jurisdiction under the PSJVTA's revised framework.

A. Petitioners fail to show that the PSJVTA creates personal jurisdiction.

The PSJVTA altered the ATCA's "within the jurisdiction of the United States" language to deem that Respondents "consent" to jurisdiction if they have a physical presence or engage in certain activities "in the United States" after January 4, 2020. But, as with the ATCA, the record facts as to Respondents' U.S. presence and activities are exempt from jurisdiction under the PSJVTA's revised framework.

First, as the Second Circuit explained relevant to the ATCA provisions, Petitioners "have not shown that the defendants have established or continued to maintain an office or other facility within the jurisdiction of the United States." Pet. App. 8a. The PSJVTA's "in the United States" language has no bearing on the PLO's UN Mission, as it is not "in the United States" for jurisdictional purposes as a matter of law. *See Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 51 (2d Cir. 1991) ("the PLO's participation in the UN is dependent on the legal fiction that the UN Headquarters is not really United States territory at all, but is rather neutral ground over which the United States has ceded control.").

Second, the PSJVTA forecloses Petitioners' claim that the ordinary-course activities of the PLO's UN Mission personnel can create "deemed-consent" jurisdiction over Respondents. The PSJVTA adds an express exemption that forecloses jurisdiction

predicated on "any personal or official activities conducted *ancillary to*" Respondents' United Nations business, meetings with U.S. government officials, and meetings with counsel. 18 U.S.C. §2334(e)(3)(A)-(F) (emphasis added). For consent to jurisdiction to be "deemed" under the PSJTVA, Petitioners would have to show that Respondents' physical presence and activities in the United States go beyond those that are "ancillary" to United Nations' business, meetings with U.S. or foreign government officials, and legal representation. *See* 18 U.S.C. §2334(e)(3)(A)-(F).

Petitioners nowhere discuss the PSJVTA's express exception for "ancillary" activities, let alone claim that the past activities of Respondents' UN Mission personnel, reflected in the record below, exceed those that are "ancillary" under the PSJVTA. Ancillary means "supplementary," Black's Law Dictionary (11th ed. 2019), or "incidental or peripheral to another thing," The Wolters Kluwer Bouvier Law Dictionary Desk Ed. (2012). *See also Wis. Dep't of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 228-29 (1992) (distinguishing activities that are "essential" to an activity from those that are "ancillary" because they have a mere "connection" to an activity); *see also* Statement of Sen. Leahy, Cong. Rec.—Sen., S267 (Jan 28, 2020) (statement that under the PSJVTA, Respondents "may meet with advocates regarding relevant issues, make public statements, and otherwise engage in public advocacy and civil society activities that are ancillary to the conduct of official business without consenting to personal jurisdiction").[2] The "ancillary" language means that

[2] Petitioners extrapolate from vague statements in the legislative history and the "Sense of Congress" (Pet. Supp. Br. 7), but the language of the statute is quite clear—and consistent with Sen. Leahy's statement.

none of Respondents' past actions that Petitioners relied on in the court of appeals under the ATCA would create jurisdiction under the PSJVTA.

Petitioners have made no claim that facts exist to support jurisdiction here. The *only* assertion presented in their supplemental brief is that Respondents "have long used their building [i.e., the UN Mission in New York] for non-UN purposes." Supp. Pet. Br. 4. Petitioners make no claim that Respondents are *currently* using the building for "non-UN purposes," and do not explain what actions they believe constitute "non-UN purposes," or why any such activities would not qualify as "ancillary" under the PSJVTA. Nor do Petitioners provide any citations to the record or make any other effort to plausibly support this claim.

To the contrary, Respondents' UN Mission, and the record facts concerning the past activities of its Mission personnel, all easily fall within the exceptions for Respondents' UN and governmental activities and activities "ancillary" thereto. And it is telling that Petitioners do not discuss the record facts they relied on below. In the court of appeals, Petitioners argued that personal jurisdiction was created by Respondents' "UN Mission website and social media accounts on Facebook and Twitter." Pls. Brief, Mar. 13, 2019, Dkt 1777379, p.6 (D.C. Cir. No. 15-7034). But a presence on the internet is not an "office" or "physical[]" presence in the United States, and it is certainly "ancillary" to UN Mission activities in any case. Petitioners also claimed that UN Mission employees have spoken "with members of the press, as well as the general public," pointing to a statement by Respondents' UN Ambassador to Fox News about a Security Council initiative, *id.* at 6, Exhibit 3, and a talk given by the Ambassador at a church near his longtime residence about the peace process, *id.* at 6,

Exhibit 4. These past actions were plainly "personal or official activities conducted ancillary" to the Ambassador's official UN business.

In the court below, Petitioners also cited to filings under the Foreign Agents Registration Act that Respondents received "advice and advocacy" from the undersigned's law firm. Pls. Br., Mar. 13, 2019, Exhibits 1 & 2. The PSJVTA explicitly allows for legal representation. *See* §2334(e)(3)(F). Petitioners also argued that one of Respondents' employees at the UN Mission was not included in the Blue Book published by the UN's Protocol and Liaison Service. *Id*. at 7, Exhibit 5. This is irrelevant, as neither the ATCA nor the PSJVTA has any such requirement.[3]

The United States and the Second Circuit have already considered and rejected Petitioners' claims about the significance of such activities under the ATCA. Feb. 2019 U.S. Br. at 6-7 (Respondents' UN Mission does not "fall within the terms of the ATCA"). Given that the PSJVTA has been amended to now explicitly exempt conduct that is "ancillary" to official functions of the UN Mission, there is no reasonable probability that the same conduct could create jurisdiction under that statute. In other words, Petitioners have no evidence of pre-enactment conduct and no current prospects of future facts regarding UN Mission personnel that could create jurisdiction under the PSJVTA.

A GVR where the facts creating jurisdiction do not yet (and may never) exist is a poor use of this Court's

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[3] The Blue Book itself acknowledges that it does "not include all diplomatic and administrative staff exercising official functions in connection with the United Nations." UN Protocol & Liaison Service, Blue Book, Doc. ST/PLS/SER.A/308/Rev.1, at: https://protocol.un.org/dgacm/pls/site.nsf/BlueBook.xsp.

power. Petitioners rely on this Court's recent GVR orders, including *Clearstream Banking S.A. v. Peterson*, 205 L. Ed. 450 (2020), claiming that the PSJVTA is no different than the other legislation. Supp. Pet. Br. 1, 5 n.1, 8. But the legislation at issue in each of the cases they cite applied to the existing record facts. On remand from a GVR, the court of appeals could simply apply the new laws to the *existing* facts in the record. The PSJVTA, by contrast, applies only to *new* facts occurring *after* its enactment—which must necessarily be developed in the future. The record facts developed by Petitioners in the court of appeals would not meet the PSJVTA's standards, and Petitioners show no likelihood that facts different in kind will come to pass.

Without facts about Respondents' activities, there is no "reasonable probability" that the factual predicates of jurisdiction under the PSJVTA will ever come to pass. The statute's potential to affect the outcome of a long-final judgment depends on facts that may never occur. *Cf. Tex. v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'"). The delay and uncertainty that would accompany a GVR in such circumstances counsels strongly against such an action. *Lawrence v. Chater*, 516 U.S. 163, 167-68 (1996) ("if the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration by the lower court, a GVR order is inappropriate"). If Petitioners believe that facts may develop that implicate the PSJVTA, then Petitioners can use their already-filed parallel lawsuits to raise them.

This Court was faced with this exact same situation in *Livnat v. Palestinian Auth.* (No. 17-508). Congress passed the ATCA when the petition for *certiorari* in

Livnat was pending, and those plaintiffs asked the Court for a GVR based on the possibility that Respondents would take *future* actions that would create jurisdiction under the new statute. Pet. Supp. Br., Sep. 14, 2018, p. 2 (*Livnat*, No. 17-508) ("If the Palestinian Authority chooses to continue receiving" certain U.S. foreign aid "it will consent to personal jurisdiction in the present cases . . ."). This Court rejected the request for a GVR and denied the Petition, *Livnat*, 139 S. Ct. 373. The same result should obtain in this case.

In sum, a GVR is inappropriate because Petitioners make no attempt to show that the PSJVTA creates a "reasonable probability" of changing the outcome of the case. This Court should deny the petition. Nonetheless, the Court may consider it useful to seek the views of the United States concerning the PSJVTA-interpretation issues given the potential impact of any aggressive interpretations of the PSJVTA on the Administration's recently announced "*Peace to Prosperity*" framework to resolve the Israeli-Palestinian conflict.

B. Petitioners have filed two other parallel cases in which they can raise any future jurisdictional facts that may arise under the PSJVTA.

Petitioners themselves have already developed appropriate cases in which to pursue future jurisdictional developments under the PSJVTA. Petitioners chose to file two cases now pending and stayed before the district courts to develop jurisdictional facts and arguments soon after the ATCA was passed. *See Klieman v. Palestinian Auth.*, No. 1:18-cv-03013 (D.D.C. filed Dec. 21, 2018); *Kesner v. Palestinian Auth.*, No. 1:18-cv-12238, (S.D.N.Y. filed Dec. 27, 2018). Insofar as facts may arise in the

future that raise jurisdictional questions under the PSJVTA, those cases are better vehicles to resolve exactly such issues. The district courts in those cases can adjudicate the fact-based questions of personal jurisdiction, which Respondents will raise at the appropriate time.

Petitioners would not be prejudiced by pursuing new, post-judgment jurisdictional theories through lawsuits they chose to initiate. In *Sokolow*, the Second Circuit recognized that the plaintiffs' purpose-built new case provides a better vehicle for developing new jurisdictional arguments based on new legislation:

> The plaintiffs in this case have filed a new complaint in the Southern District of New York. . . . To the extent that there are any developments in the activities of the PA or the PLO that may subject them to personal jurisdiction under the ATCA, they can be raised in that case.

Waldman, 925 F.3d at 576 n.2. The same logic applies in this case, where Petitioners also filed new cases to take advantage of new jurisdictional statutes.

It is far better to deny certiorari than to issue a GVR where the facts creating jurisdiction under the new statute *do not (and may never) exist*. The delay and uncertainty that would accompany a GVR counsels strongly against such an action. *Lawrence*, 516 U.S. at 167-68 ("if the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration by the lower court, a GVR order is inappropriate"). If Petitioners believe that future facts that implicate the PSJVTA may develop, Petitioners can use their already-filed parallel lawsuits to raise those issues. Petitioners' new cases

thus are far better vehicles for resolution of their PSJVTA arguments than a GVR in this case.

III. The Petition's remaining arguments regarding due process are not worthy of *certiorari*.

A. The lead argument in the Petition was not presented to the court of appeals and is unsupported by any authority.

The Petition argues that Respondents' participation as a "state" before the United Nations and the International Court of Justice deprives Respondents of due process in U.S. courts. Pet. 11-13. Petitioners assert that participation as a "state" in those forums is incompatible with receiving due process under U.S. law, even though they acknowledge that the United States itself does not recognize Respondents as sovereign. *Id.* But even though Respondents do not receive the statutory and comity-based protections under U.S. law for *sovereigns*, Petitioners say that Respondents also should be denied the due process protections accorded to *non-sovereigns*. *Id*.

Petitioners never raised this argument before the court of appeals, and this Court should decline to review it in the first instance. *Webster v. Cooper*, 558 U.S. 1039, 1041 (2009) ("Since he did not argue that ground to the Court of Appeals, and since that court did not address it, we would almost certainly deny certiorari."); *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 108-109 (2001) (per curiam) (dismissing a writ as improvidently granted because the question at issue was not raised or considered below); *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (dismissing certiorari as improvidently granted when petitioner failed the "burden of showing that the issue was properly presented" below).

Petitioners had every chance to raise this argument below but did not do so. After Petitioners filed their ICJ case in September 2018, Petitioners made no fewer than six substantive filings before the court of appeals, including a reply brief and a 28(j) letter in October 2018, a supplemental brief and a reply in November 2018, a supplemental brief in March 2019, and an *en banc* petition in June 2019. Pls. Reply Brief, Dkt. 1754765, No. 15-7034 (D.C. Cir. Oct. 11, 2018); 28(j) Letter, Dkt. 1754767, No 15-7034 (D.C. Cir. Oct. 11, 2018); Pls. Supp. Brief, Dkt. 1759517, No. 15-7034 (D.C. Cir. Nov. 9, 2018); Pls. Reply Brief, Dkt. 1761433, No. 15-7034 (D.C. Cir. Nov. 26, 2018); Pls. Supplemental Brief, Dkt. 1777379, No. 15-7034 (D.C. Cir. Mar. 13, 2019); Pls. Petition for Rehearing, Dkt. 1792711, No. 15-7034 (D.C. Cir. Jun. 13, 2019).

None of these filings refers to the ICJ proceedings or argues that claims of sovereignty by the PA under international regimes should change the due process analysis under U.S. law.

Petitioners assert that *certiorari* is appropriate because the United States did not have the chance to address the issue in its *Sokolow* CVSG brief submitted before the ICJ case was filed. Pet. 11. But this argument overlooks that the United States has in fact filed two briefs in this case addressing jurisdiction after the ICJ case was filed in September 2018. *See* Feb. 2019 U.S. Br.; Mar. 2019 U.S. Br. The United States never took the position that the ICJ proceeding deprived Respondents of due process in U.S. courts. On the contrary, the United States did not believe the issue was worth mentioning in either brief. There is certainly no need for this Court to grant *certiorari* to reopen the subject.

Furthermore, as the United States was well aware, Respondents' position on statehood before the ICJ is

not new. Since the UN granted them "Non-member Observer State" status in 2012, Respondents have actively participated in the United Nations and signed multiple treaties as a "state."[4] Respondents' status before the UN allowed them to accede to the Vienna Convention on Diplomatic Relations in April 2014, and then the Optional Protocol to the Vienna Convention on Diplomatic Relations Concerning the Compulsory Settlement of Disputes in March 2018.[5]

Even if the issue had not been forfeited, *certiorari* is not appropriate because Petitioners cite no case holding that, in U.S. courts, sovereignty determinations by foreign states or multilateral entities override the Executive's determination. On the contrary, the courts of appeals are in long-standing agreement that Respondents' international activities are irrelevant to whether they are sovereign under U.S. law. *See Ungar v. PLO*, 402 F.3d 274, 291 (1st Cir. 2005) ("The fact remains, however, that neither political recognition of the PLO nor United Nations support for self-governance is sufficient to signify that the Restatement's conditions for statehood have been met."); *Klinghoffer*, 937 F.2d at 48 (the PLO did not satisfy the objective requirements for statehood despite its Permanent Observer status in the UN and political recognition by foreign states); *see also Livnat*, 851 F.3d at 50 ("Both parties acknowledge that the Palestinian Authority is not recognized by the United States as a government of a sovereign state."); *Waldman*, 835 F.3d at 329 ("neither the PLO nor the PA is recognized by the United States

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[4] UN Doc. A/RES/67/19 (11/29/12), *available at*: https://undocs.org/en/A/RES/67/19.

[5] *See* Signatories of the Vienna Convention on Diplomatic Relations (Apr. 18, 1961), 500 U.N.T.S. 241, *available at*: https://treaties.un.org.

as a sovereign state, and the executive's determination of such a matter is conclusive").

This issue was not presented to the court of appeals, is under-developed, and has never been accepted by any court of appeals. *Certiorari* on this issue should be denied.

B. Petitioners forfeited their due process argument and rely on a circuit split that does not exist.

For the first time, Petitioners argue that there is a "circuit split regarding due process requirements under the Fifth Amendment" and "the analysis for a federal question case should derive from the Fifth Amendment, and not the Fourteenth." Pet. 23, 25. Petitioners' argument is forfeited because it was not raised before the court of appeals. *See, e.g.*, *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1978 (2016) ("[t]he Department failed to raise this argument in the courts below, and we normally decline to entertain such forfeited arguments"); *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390, 397 (2015) ("[t]hat argument was never presented to any lower court and is therefore forfeited."). On this basis alone, Petitioners' due process argument should be disregarded and *certiorari* should be denied.

Petitioners' claimed circuit-split also does not exist. No court has disagreed with the Fifth Amendment due process analysis of the court below. *See* Pet. App. 16a (noting that "[t]his circuit's previous decision in *Livnat* appears controlling"); *Livnat*, 851 F.3d at 54 ("No court has ever held that the Fifth Amendment permits personal jurisdiction without the same 'minimum contacts' with the United States as the Fourteenth Amendment requires with respect to States.") (citations omitted). On the contrary, the Second Circuit has reached the same holding. *See*

Waldman, 835 F.3d at 330 (Federal "precedent clearly establish[es] the congruence of [the] due process analysis under both the Fourteenth and Fifth Amendments.").

In the parallel *Sokolow* case, the Solicitor General advised this Court that there was no circuit split relevant to Respondents' jurisdictional due process rights. The Solicitor General recommended against *certiorari* in that case because the application of due process did "not conflict with any decision of this Court, implicate any conflict among the courts of appeals, or otherwise warrant this Court's intervention at this time. . . . In fact, the decision below accords with the D.C. Circuit's decision in *Livnat*, which also held that the PA is entitled to due process protections." *Sokolow* CVSG Br. at 7, 9. The Solicitor General explained that, "the contours and implications of petitioners' jurisdictional theory—which turns on whether a defendant's conduct 'interfered with U.S. sovereign interests as set out in a federal statute' . . . —are not themselves well developed." *Id*. at 16-17. The Solicitor General also rejected Petitioners' arguments about undermining the ATA because "nothing in the court's opinion calls into question the United States' ability to prosecute defendants under the broader due process principles the courts have recognized in cases involving the application of U.S. criminal laws to conduct affecting U.S. citizens or interests." *Id*. at 18.

This Court then denied *certiorari* in both cases that raised the same purported circuit split raised here. *See* Petition for Writ of *Certiorari*, *Livnat v. Palestinian Authority*, No. 17-508 (filed Oct. 4, 2017); Petition for Writ of *Certiorari*, *Sokolow v. Palestine Liberation Organization*, No. 16-1071 (filed Mar. 3, 2017). The Petition cites no new cases that change the analysis. As nothing has changed in the interim,

certiorari on the question is just as unwarranted now as it was then. It is a waste of the Court's time and the parties' resources to address the same issues in successive petitions without new law.

The Petition's cherry-picking of quotations from cases going back to the 1950s that have no relation to the issues in this case do not warrant *certiorari*. *See* Pet. 24-25. *Dicta* that the due process concerns of the Fifth and Fourteenth Amendment are "slightly different" or "not precisely parallel" do not conflict the decision below. Pet. 25 (quotations omitted). Indeed, the D.C. Circuit did not address the issue *as a result of Petitioners' failure to raise it*. Pet. App. 2a-3a.

Notably, Petitioners do not take issue with the D.C. Circuit's determination that "[w]here, as here, a claim arises under federal law and, as the parties agree, a 'defendant is not subject to jurisdiction in any state's court of general jurisdiction,'" the relevant forum for purposes of assessing a defendant's jurisdictional contacts is "the United States as a whole." Pet. App. 7a (quotations omitted). This determination is consistent with the decision in *Waldman* that "the due process analysis [for purposes of the court's *in personam* jurisdiction] is basically the same under both the Fifth and Fourteenth Amendments. The principal difference is that under the Fifth Amendment the court can consider the defendant's contacts throughout the United States, while under the Fourteenth Amendment only the contacts with the forum state may be considered." *Waldman*, 835 F.3d at 330 (quotation omitted).

The cases cited in the Petition do not reach a contrary holding. For example, the Third Circuit and Sixth Circuit agreed that the Fourteenth Amendment's standards for "minimum contacts" and "reasonableness" apply with equal force under the

Fifth Amendment. *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 368-69 (3d Cir. 2002); *Handley v. Indiana & Michigan Electric Co.*, 732 F.2d 1265, 1272 (6th Cir. 1984). Likewise, the Tenth Circuit "discern[ed] no reason why the Fourteenth Amendment's fairness and reasonableness requirements should be discarded completely when jurisdiction is asserted under a federal statute," recognizing instead that "[t]he Due Process Clauses of the Fourteenth and Fifth Amendments are virtually identical." *Peay v. BellSouth Med. Assistance Plan*, 205 F.3d 1206, 1212 (10th Cir. 2000) (quotation omitted); *see also Republic of Pan. v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935, 946 (11th Cir. 1997) ("courts should consider the factors used in determining fairness" under the Fourteenth Amendment for a Fifth Amendment analysis).

The criminal cases cited by Petitioners concern the jurisdiction to prescribe extraterritorial conduct (*i.e.*, subject matter jurisdiction), not personal jurisdiction over extraterritorial actors, and are therefore irrelevant. Both *United States v. Noel*, 893 F.3d 1294, 1297 (11th Cir. 2018), *cert denied*, 140 S. Ct. 157 (Oct. 7, 2019), and *United States v. Murillo*, 826 F.3d 152, 154 (4th Cir. 2016), *cert denied*, 137 S. Ct. 812 (Jan. 17, 2017), addressed only subject-matter jurisdiction challenges raised by individuals physically present in the United States for overseas attacks against American nationals. Indeed, the defendant in *Murillo* did not even challenge personal jurisdiction on appeal. *Murillo*, 826 F.3d at 156-58. There is no suggestion in either case that the framework for criminal subject-matter jurisdiction should become the personal-jurisdiction framework for civil cases. *See, e.g.,* Brief for the United States, *Murillo v. United States*, No. 16-5924 (Dec. 14, 2016) at 17-18.

As previously explained by the Solicitor General, Petitioners' cases simply do not discuss any circuit split that is relevant to this case. CVSG Br. at 15-17. Review by this Court is at best premature. *See, e.g., Box v. Planned Parenthood of Indiana & Kentucky, Inc.*, 139 S. Ct. 1780, 1784 (2019) (Thomas, J.) ("[B]ecause further percolation may assist our review of this issue of first impression, I join the Court in declining to take up the issue now.") (concurring in denial of *certiorari*); *Arizona v. Evans*, 514 U.S. 1, 24 n.1 (1995) (Ginsburg, J., dissenting) ("We have in many instances recognized that when frontier legal problems are presented, periods of 'percolation' in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court.").

CONCLUSION

For all of the foregoing reasons, the Court should deny the Petition.

Respectfully submitted,

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